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**ISLAM & HUMAN RIGHTS:
A POSSIBLE WAY OF
RECONCILIATION**

Summary

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Introduction

Religion resurgence and the theory of human rights are two of the most discussed issues in contemporary political and philosophical debates. The assertion of special communal identities and the demand for increased protection for some basic rights occur in a complex world in which technology reinforces 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 doctrine with these standards.

The aim of this essay is to demonstrate that reconciliation between Islam and human rights is possible and the claims for the respect of human rights' standards can be found within the same Islam.

Chapter 1

Islamic Position on Human rights

The relation between Islam and human rights in the contemporary world is complex. First of all there is not a clear, traditionally established Islamic position on them, because Islam is not a unique, monolithic entity.

In the Muslim religion we do not have neither a church nor a unique doctrinal mastery, or a centralizing authority guarantor of the orthodoxy.

“There are many and various conceptions of Islam - admits Mohammad Khatami, past president of the Islamic Republic of Iran - which does not belong to our time, but they have been elaborated in the course of history [...] However, I think that Muslims do not share a common and definitive opinion [...]”¹.

¹ Mohammad Khatami, *Religione, libertà e democrazia*, Laterza, Roma – Bari 1999, pp. 65 e 68 .

It is not possible to consider reliable the existence of a single, authoritative, identifiably “Islamic” cultural position on rights issues, because of the existence of different schools of thought and of the fact that the possible interpretations of the sacred texts of Islam are various.

Thus, speaking of Islam is about how Muslims understand and practice their religion, rather than religion in the abstract.² There is in fact, a Quranic Islam different from a historical Islam: Qur’an is in truth atemporal, whereas Islam is an interpretation that many scholars tend to impose on Muslims as if it was definitive and total, claiming its perfect correspondence to the Holy text.³

Chapter 2

Are Islam and Human Rights Incompatible?

Aware of this 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 human rights are systematically violated. Are there some elements, in the Islamic culture, that at least slow the promotion of human rights?

Those who consider Islam and human rights as incompatible, basically found their argument on the idea that human rights are a western product: 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”⁴, that is to say the tendency to present democracy and human rights as an hegemonic taking up of power of a predominant western world⁵.

There is no doubt that the idea of human rights, spread in the aftermath of the Second World War. 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 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 resistance in Western countries such as US and United Kingdom. Generally speaking, resistance to human rights

² 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.

³ Mohammed Talbi & Guendoline Jarczyk, *Islam e libero pensiero*, UTET, Torino 2005, p. 183.

⁴ 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.

⁵ See also Jürgen Habermas, “Legittimazione in forza dei diritti umani”, *Fenomenologia e Società*, 2, 1997, p. 8.

came 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.

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.⁶ 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.

In Islam, as in all major religions, we can find a wide range of concepts and believes that can be used to support both human rights and their denial. What has happened throughout the Muslim world is that official Islam (*al-Islam al-rasmi*) usually provided rulers with the legitimacy they needed to be in power, exploiting those religious elements that could be interpreted in favor of their position. *Ulama* have generally helped non-democratic regimes through their Friday sermons, underscoring obedience to authority, supporting governments and emphasizing their inseparability from Islam.⁷

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”⁸.

Many Islamic scholars are convinced that thought a liberal interpretation of the Qur'an is possible to adopt international human rights' standards even in respect of these issues.

A key concept for an Islamic promotion of human rights is *ijtihad* (independent reasoning). *Ijtihad* describes the process of making a legal decision by independent interpretation of the legal sources, the Qur'an and the Sunnah; is opposed to the imitative following of medieval authorities, and call on the Muslim to “draw independent conclusions and judgments on legal and other issues”.⁹

⁶ Eva Brems, *Human Rights: Universality and Diversity*, Martinus Nijhoff, The Hague, 2001, p. 17

⁷ James Bill and Robert Springborg, *Politics in the Middle East*, Reading, MA: Addison-Wesley 2000, p. 43.

⁸ Nasr Abu Zaid, “The Nexus of Theory & Practice” in *The New Voices of Islam*, Ed. Mehran Kamrava, I.B. Tauris, London - New York 2006, p. 174-175.

⁹ Mir Zohair Husain, *Global Islamic Politics*, Longman, New York 2003, p. 90

Reformists stress the dynamic and context-driven potential of an interpretation based on *ijtihad*, calling for a texts analysis based on changing and evolving circumstances.¹⁰

Another key concept for an Islamic promotion of human rights can be the one of *Istislah*, whose literally meaning is to deem something preferable.¹¹

In its juristic sense, *Istihsan* is a method of exercising personal opinion, that can be use in order to avoid any rigidity and unfairness that might result from literal application of law. The decision of Caliph Umar Bin Khattab to suspend, in 634 AD, "hadd" penalty of amputation of hand for thieves during famine is consider a typical case of *Istihsan*. Here, in fact, positive law of Islam was suspended as an exceptional measure in an exceptional situation.

The concept of *Istislah*, is related to that of *maslaha*, or public interest.¹²

Maslaha is invoked to prohibit or permit something on the basis of whether or not it serves the public's benefit or welfare.

Maslaha 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.

Chapter 3

A Way of Reconciliation

The different forms of resistance to a universal acceptance of human rights mostly depend to the dual nature of the same human rights. They, in fact, have both an empirical (historical and legal) and philosophical (moral and ontological) 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 and, if we take pluralism seriously, there could be different of these foundations. On the other side, being connected with specific global institutions, such as UN for example, human rights are characterized by a general background agreement.

¹⁰ Mehran Kamrava, "Reformist Islam in Comparative Perspective" in *The New Voices of Islam*, Ed. Mehran Kamrava, I.B. Tauris, London - New York 2006, p. 10.

¹¹ See http://www.witness-pioneer.org/vil/Books/SH_Usul/istihsan_and_maslaha.htm.

¹² See Knut S. Vikøer, "Between God and State", in *The Oxford dictionary of Islam*, Spartacus, 2003.

Resistances to a universal acceptance of human rights usually deny the possibility of finding out this kind of general background agreement, given the fact of pluralism.

Of course, 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. If human rights are to be at all universal (which they have to be since they are the rights of all human beings everywhere), they must be integral to the culture and experience of all societies, and not only of so-called Western societies that are transplanting them elsewhere".¹³

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. The question is therefore how to generate, promote, and sustain consensus on universal human rights norms, which requires a clear understanding of the nature and implications of differentials in power relations between different participants in these consensus-building processes, within as well as among cultures.¹⁴

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

Legitimation is based on the empirical consent that peoples give to a system of norms and is complementary with justification: no regime, in fact, is legitimate unless it is reasonable from every individual's point of view.¹⁵

The problem with justification is that cannot be so public or widespread, because of the existence of a plurality of point 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.

After demonstrating, in last chapter, the feasibility of finding out a human rights' justification in the same Islam, 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

¹³ Abdullahi Ahmed An-Na'im, *The Future* cit., <http://sharia.law.emory.edu/fr/universality>.

¹⁴ *Ibidem*.

¹⁵ Stanford Encyclopedia of Philosophy, 2007, <http://plato.stanford.edu/entries/justification-public/#2.1>

of Rawlsian “overlapping consensus” considering human rights as a freestanding political conception.

In his *Political Liberalism*, Rawls defined the overlapping consensus as consisting “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, a regime in which the criterion of justice is that political conception itself.” (*PL* 15). The necessity of an overlapping consensus arises because those with comprehensive moral views must seek some common ground for reaching consensus about principles of justice. The actual circumstances of living in a democratic society then provide individuals with the motivation for accepting a political conception that is not in conflict with each other's comprehensive views (*PL* 134).

In my opinion, it is possible to adapt Rawlsian model to the global society, where each single human being, Muslim, Chinese, Western or lesbian, can be considered a citizen of the entire world. Given globalization process, we are in fact all necessarily involved with one another and we cannot avoid to face the other on some basic issues such as environmental ones or human rights.

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 community, even Islam. And, as shown in last chapter, it is possible to find in the same Islam some key concepts that can be used, in this sense, to reach a stability for the for the right reasons.¹⁶

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 right. Therefore, when we look for a possible way of reconciliation between Islam and human rights, we cannot take into account Islam as a religion, but Islam in its legal application to the everyday life of Muslims.

Here overlapping consensus, in Rawlsian sense, can help us because we look at the political dimension, not to the one related to Islam as a comprehensive doctrine.

¹⁶ Stanford Encyclopedia of Philosophy, 2008, <http://plato.stanford.edu/entries/rawls/>.

Overlapping consensus approach allows us to avoid 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.

Moreover, this approach has the merit to shift the focus of human rights advocacy to a more “people-centred” approach that is less dependent on the ambiguities and contingencies of inter-governmental relations.

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 tradition. The overlapping consensus is able to find an equilibrium between these two perspectives. Moreover, it is able to reach reconciliation between justification (moral and universal) and legitimation (empirical consensus on HR) not even possible on such an issue.

I am persuaded that 16 million Muslims in the World can contribute individually to a dialogical solution of conflict such as the one presented in this chapter. Furthermore, the contribute of every religion is precious to such a model. Think to Gandhi’s earthshaking concept of nonviolent resistance, *satyagraha*: wasn’t it derived from Hinduism and Jainism? And what about the Dalai Lama, Martin Luther King Jr., Desmond Tutu, Malcom X – don’t you think they can be “forgiven” for having religion because of what they have done with religion?¹⁷

Even Rawls admitted, in *Political Liberalism*, the importance of comprehensive doctrines in public reasoning. 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”.¹⁸

Conclusions

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 and re-interpretation

¹⁷ Irshad Manji, *The Trouble with Islam Today*, St. Martin’s, NY 2003, pp. 211-212.

¹⁸ John Rawls, “Introduction to the Paperback Edition”, *Political Liberalism*, p.li-lii.

to transform traditional interpretations of Shari'a.¹⁹ As far as Muslims are routinely taught that the Koran 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. When abuse occurs under the aegis of Islam, a minority of Muslims know how to argue, reassess or reform.²⁰

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.²¹

The burden of sustaining a new moral course of Islam, stressing the Quranic message of tolerance and respect for the other, of course falls on the shoulders of contemporary Muslim interpreters of the tradition,²² but I am persuaded that many things can be done by the West to improve dialogue and contribute to an Islamic way to democracy.

First of all, 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.

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 refugees, and in December 2005 a Libyan writer was assassinated and his fingers cut for writing articles on an opposition Web site.²³

Even if the 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,

¹⁹ See An-Na'im project on *The Future* cit., <http://sharia.law.emory.edu/fr/universality>.

²⁰ Irshad Manji, *The Trouble* cit. p. 31.

²¹ Mohammed Talbi, "La shari'a ha ancora un futuro tra laicità e ateismo?" *Filosofia e questioni pubbliche*, vol.VII n. 2/2002, p. 7.

²² Khaled Abou El Fadl, "The Place of Tolerance in Islam", *Boston Review*, 26, December 2001/January 2002.

²³ Valentina Colombo, *Basta*, Mondadori, Milano 2007, p. XXII

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".²⁴ Help from the West is crucial to face this situation.

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

Unfortunately, as Samuel Huntington pointed out in his *The Clash of Civilization*, as western leaders become aware of the fact that democratic processes in non-western countries tend to produce governments hostile to the West, they try to influence elections and, in the meantime, loose interest in promoting democracy – and human rights I would add – in those countries.²⁵

But the international community has to be awoken about the drama that many Muslim scholars are experiencing in those 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.

To conclude, 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 way we, western, are as responsible of these choices as Muslims.

²⁴Michael 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>.

²⁵ Samuel Huntington, *Lo scontro delle civiltà*, Garzanti, Milano 2003, p. 289.