

# **The Western Concept of Universal Human Rights**

**and**

## **Its Enemy Islam**

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This dissertation is submitted in partial fulfillment of the requirements for the degree of LLM in International Law of the School of Oriental and African Studies (University of London).

Date of submission: 13.09.2013

Word Count: 15,000

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## **Abstract**

Throughout history, other civilisations have been greatly challenged by the West. As a result, the Western culture has been predominant all over the world with Western notions such as human rights have become universal. Islam, on the other hand, opposes this universality on the grounds that it has its own human rights concept. In fact, unlike Islam, the birth of the Western human rights have been created due to the serious social realities. Slavery, colonisation and the predominance of the Catholic Church led to the ideology of human rights and has been developed simultaneously with secular liberal democracy which automatically led to the refusal of Islamic values. Therefore, each culture's historical development created "western" or "democratic" and "islamic" societies. Existence of diverse societies have resulted in different perceptions of human rights. Today, the attitude of the West towards Islam through universalism makes it difficult to find commonalities between the two civilisation, in terms of human rights. The reaction of the Islamic world also nourishes this difficulty. Western concept of human rights have been practised in European regional system and in order to find commonalities between the two concepts of human rights, Islamic regional system has to become reality.

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## **Chapter I: Introduction**

Human Rights are one of the most widely accepted but also one of the most controversial topics in today's world. Human rights discourse was founded in the Western world and developed simultaneously with secular liberal democracy. In fact, Western civilisation has been predominant since the enlightenment era. Therefore, in the West, it is accepted that human rights discourse is universal. However, a great challenge for this universality comes from the Islamic world. Because Islam is a dynamic religion that regulates every aspect of human life. The natural developments of Western and Islamic societies have resulted in different perceptions and different worldviews. In addition, the structure of a human-made system is naturally different from the structure of a religion. Therefore, it is quite normal to have both points of compatibility and points of conflict between human-made systems and religions.

Furthermore, the majority of scholars, mostly from the West, claim that human rights are universal because they refer only to human nature. In other words, human rights encompass all human beings due to the universality of human nature. Islamic scholars, on the other hand, argue that the perception of a human being is different between the West and Islam. In Islam, humans were created by God and are dependant on God. Therefore, in Islam, God and His Prophets, by His permission, can intervene in every aspect of human life, and Muslims accept this as a precondition. However, in the West, Christianity had imprisoned individuals in the medieval times because of the predominance of the Catholic Church on the social life. On the other hand, some Islamic scholars claim that the Islamic concept of human rights is also universal because it applies to the children of Adam. They claim that, if all humans come from Adam's generation, then all human beings deserve human rights.

Being human cannot be considered based on appearance and human nature, and cannot be considered in limited scope like animals. The nature of humans comprises not only the flesh but also thought, belief, conscience, reason and the soul. These characteristics also make human beings different from each other. Additionally, each human lives in a society and is influenced by society's reality. Therefore, the generalisation of something based on uncertainties is not always a good thing. In terms of universalist ideas, both the Western and Islamic forms of universalism have problematic areas.

The historical development of Islamic countries is different from the development of the Western states. This divergent development has created different societies: Western or democratic societies and Islamic societies. The events that triggered improvements in human rights occurred mostly in the West because of slavery, colonisation, the predominance of the Church and revolutions. Therefore, ideas about human rights naturally grew out of Western society. However, in Islam, social life was designed by the Prophet in the first place, and even if some unrests had occurred, the main principles of society had been protected until the last century.

The different developmental trajectories of these cultures have also influenced the perception of human rights between the two societies. Different perceptions have then created different aspects. In Islam, it is generally accepted that human rights are intertwined with duty because Islam promises heaven as a reward for obedience to God. Therefore, God gave His slaves both rights and obligations. As a result of this dual structure, human rights are limited by duties.

Human rights have not been practised universally by universal remedies. Regional systems have been established to implement human rights. For instance, the European Court of Human Rights has functioned very well with the exception of Turkey because Turkey does

not share the same background with Europe. Therefore, in terms of fundamental rights, it is problematic for a European Court to apply human rights to Turkey in exactly the same way as it does to Europe. For instance, in the *Refah Partisi (the Welfare Party) vs. Turkey* case, the European court made an exceptional decision and considered Islam as a danger to democracy in Turkey. Apart from Turkey, as a regional system of human rights, the European Court has generally worked coherently. On the other hand, Islam have never had an independent human rights system. Therefore, the claim that Islam has its own universality has never been practised. In addition, there is no regional system like the European system for Islamic human rights.

As has been emphasised, universalist ideas have mostly been raised from the West. This is because Western culture is the most widespread in the world. It is easy to claim universality of Western notions. Even some Islamic countries have substantially adopted Western culture. This situation empowers universalists. For instance, Turkey, despite its Islamic society, has adapted secular democracy, replaced Sharia with a law system based on the continental European system and joined the European system of human rights. In addition, many Muslim societies, especially gulf states, have allowed Western culture into their social life.

This thesis will attempt to put everything in the right place. Firstly, in the second chapter, the historical development of the West and Islam will be given in terms of human rights in order to show how human rights ideas have been improved divergently in the two worlds. The circumstances that triggered human rights ideas will also be shown. The evolution of human rights will be demonstrated from its inception through to the modern day both in the West and in Islam. The first clues which show different perceptions on human rights will also be examined in this chapter.

In the third chapter, the universalist ideas and counter arguments will be examined in order to show that there is no consensus on the universality of human rights. Ideas on universalism raised by scholars from both the Western world and the Islamic world will be given for comparison. In addition, the relationship between the human rights concept and secular liberal democracy will be considered shortly in order to see whether Western human rights and democracy are interdependent or not.

The fourth chapter comprises two case studies in terms of freedom of expression and freedom of association. These two rights or freedoms were chosen due to the consensus in these areas. In other words, these two rights or freedoms are accepted as universal in both cultures. In terms of freedom of expression, the Danish Cartoons and the Salman Rushdie affair will be given as two examples. These two events can help us to understand why the perception of free speech is still different even in modern times. Then, the solution of the United Nations (UN) and the Organisation of Islamic Cooperation in terms of the defamation of religions, and the solution of the European Court of Human Rights (ECHR) in terms of hate speech will briefly be discussed.

In the second part of the fourth chapter, which focuses on freedom of association, the *Refah Partisi v. Türkiye* (Welfare Party vs. Turkey) case in the European Court of Human Rights will be examined. This case can help us to understand the relationship between human rights and democracy. In addition, the principle of militant democracy will be considered in order to seek an answer to whether militant democracy is against human rights or aims to protect human rights.

At the end of each chapter, a short evaluation based on the findings will be given. Then, finally, the last chapter will offer a conclusion of the overall findings and an evaluation of the

thesis. In addition, this chapter will contain some suggestions for possible future solutions regarding the conflict of universalism and Islam.

## Chapter II: Historical Development of Human Rights

### 2.1. In the Western World

Throughout history, human rights have been understood as the basic rights of human beings, this definition was used especially by Natural Law theorists. Although the inception of human rights ideas are quite controversial, it is generally accepted that the first ideas can be found in the time of the Ancient Greeks and Roman Empire. In fact, the word “rights” was not used at that time.<sup>1</sup> In ancient times, there was slavery and the ideas of human rights were first introduced against slavery in the form of the cause and effect paradigm. These first reactions against slavery triggered human rights ideas. For instance, the Sophist School, which was a group of Greek philosophers, highlighted that all mankind was equal in nature, and slavery was therefore unfit given this nature.<sup>2</sup> In addition, some well-known writers in society emphasised fundamental rights in their writings. Sophokles (496–406 BC), for instance, was a famous tragedy writer and in his book “Antigone”, he narrated the story of a female soldier Antigone who claimed that “every human being has the right to be buried” against King Kreon who did not allow her to bury her own brother who died in battle.<sup>3</sup> Furthermore, Roman philosophers, such as Cicero, Ulpianus, Seneca, Epictetus and those in the Stoic School, developed the notion of “natural equality”. According to Natural Law Theory, the unseen universal law of nature governs the world. Therefore, all people are equal before the law and they must obey this law.<sup>4</sup> Ulpianus, for example, emphasised that natural law belongs to human nature not to the state. All human beings had to be treated equally before the Roman

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<sup>1</sup> According to McIntyre, there is no word for "right" in any language before 1400. In Freeman, M. (2002) *“Human Rights : An Interdisciplinary Approach”* Cambridge Polity Press, pp. 15-17

<sup>2</sup> Russell, B. (1945) *“A History of Western Philosophy”* Taylor & Francis Publishing, p.54

<sup>3</sup> Gokberk, M. (1999) *“History of Philosophy”* Remzi Publishing, p.37

<sup>4</sup> For further information see: [http://en.wikipedia.org/wiki/Natural\\_law](http://en.wikipedia.org/wiki/Natural_law) [Accessed 10.09.2013]

Law, without taking citizenship into account. Moreover, according to Cicero, this equality and human dignity had a basis of the Roman State.<sup>5</sup>

In the Middle Ages, the suppression of Kings and the Catholic Church triggered the second step in the development of human rights. As reactions of these authorities, the Bill of Rights and the Protestant Movement can be seen as two important milestones in human rights history. In the early 1200s in England, the King was an absolute monarch who owned all land and was able to tax people as he pleased. Soon, feudal barons rose up against King John in order to end the tyranny of the King and obtain some rights. The barons wanted the King to sign a written charter which contained certain rights, recognised legal procedures for everyone and accepted that his will was restricted by the law. The King accepted these proposals and bound himself by the following words of the Magna Carta, which was signed in 1215: “No Freeman shall be taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will We not pass upon him, nor condemn him, but by lawful judgment of his Peers, or by the Law of the Land. We will sell to no man, we will not deny or defer to any man either Justice or Right.”<sup>6</sup>

In the medieval society of Europe, people had a concept of different dignity contrary to Cicero’s ideas on natural equality and human dignity. A state’s legitimacy required the consent of the Catholic Church. Therefore, this system formed a clerical hierarchy and gave the Church too much power. As a result, the Church started to oppress people by dispossessing citizen’s properties.<sup>7</sup> Additionally, the Inquisition Courts, which were established by the Church, had violated fundamental human rights, such as freedom of expression. For instance, the Church regulated the publication of books and banned books

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<sup>5</sup> Ebenstein, W. (1999) *“Great Political Thinkers: From Plato to the Present”* Wadsworth Publishing Company, p.54

<sup>6</sup> Clanchy, M.T. (1997) *“A History of England: Early Medieval England”* The Folio Society, pp. 141-147

<sup>7</sup> Bielefeldt, H. (2000) *“‘Western’ versus ‘Islamic’ Human Rights Conceptions?: A Critique of Cultural Essentialism in the Discussion on Human Rights”* Political Theory, Vol. 28, No. 1 pp. 90-121

which promoted the rights of people. Those who did not obey these rules were sent to Inquisition Courts. Descartes, Galileo, Hume, Locke, Rousseau and Voltaire are examples of famous authors whose books had been banned by Catholic Church.<sup>8</sup> Eventually, this oppressive situation was ended by the Protestant movement led by Martin Luther. Even though the Protestant movement was a religious uprising against the Church, rather than a human rights movement, it can also be considered as one of the milestone of human rights history because it ended an unfair situation and some fundamental human rights, such as freedom of speech, were allowed.<sup>9</sup>

Another two steps in the development of the history of human rights were the French and American enlightenments, also known as the French American Revolutions. The American colonies were under the rule of the British Empire but became independent in 1776. After the American Revolution, independent states' constitutions regulated human rights. The concepts of equality, liberty, the individual rights of those living in a society, and opposition towards corruption became core values of liberal republicanism.<sup>10</sup> Then, in 1789, the French people's uprising against the absolute monarchy of King Louis XVI replaced aristocracy, monarchy and the sovereignty of the Church with liberty, equality and fraternity.<sup>11</sup> Therefore, the French jurist Karel Vasak divided human rights into "three generations" which was perhaps inspired by this famous French Revolution notions of liberty, equality and fraternity. There is no doubt that there were Enlightenment ideas behind the revolutions, particularly John Locke's ideas on equality and liberty. Donnelly argues that the history of human rights in today's sense of the concept started in England with John Locke's ideas.<sup>12</sup>

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<sup>8</sup> Castillo, A. (2010) *"Banned Books: Censorship in Eighteenth-Century England"* GRIN Verlag, p.12

<sup>9</sup> Bielefeldt, H. (2000) *"'Western' versus 'Islamic' Human Rights Conceptions?: A Critique of Cultural Essentialism in the Discussion on Human Rights"* Political Theory, Vol. 28, No. 1 p. 95

<sup>10</sup> Wood, G. S. (2003) *"The American Revolution: A History"* Modern Library Publishing, p.142

<sup>11</sup> Doyle, W. (2002) *"The Oxford History of the French Revolution"* Oxford University Press, pp.73–74

<sup>12</sup> Donnelly, J. (1998) *"International Human Rights"* Westview Press, p.39

In 1948, the Universal Declaration of Human Rights, which was proposed by United Nations, first introduced the notion of “Universal” into the global arena. Although the League of Nations had been established after World War I and promoted human rights, it was not able to prevent another World War breaking out. Following World War II, the United Nations was established to replace the League of Nations, and human rights discourse passed the most important turnaround because people had seen the devastation of World War II and decided that restricting states by a binding them to a human rights convention was a good idea to make the world more peaceful place. Gearon claims that behind all modern human rights declarations, including the Universal Declaration of Human Rights, lay ideas against totalitarianism and violence brought about by technology. For instance, the Nazi genocide and detonation of atomic bombs in Hiroshima and Nagasaki can be given as examples of this violence.<sup>13</sup> As a result, these ideas inspired a non-binding universal declaration.<sup>14</sup> In the preamble of the declaration, the following words can be given to understand the spirit of the declaration: “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind...”<sup>15</sup>

Freeman claims that the modern conception of human rights was mixed with moral, legal and political ideas rooted in Christianity which then become secularised. In the 20th century, the

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<sup>13</sup> Gearon, L. (2006) *Freedom of Expression and Human Rights* Sussex Academic Press, p.115

<sup>14</sup> Morsink, J. (1999). *The Universal Declaration of Human Rights: origins, drafting, and intent* University of Pennsylvania Press, pp. 4-46

<sup>15</sup> Universal Declaration of Human Rights (1948) Available at: <http://www.un.org/en/documents/udhr/> [Accessed 10.09.2013]. For full text of the Declaration, see Annex II.

United Nations established this concept as the direct opposite of fascism to unite world states with prototypical standards.<sup>16</sup>

## **2.2. In the Islamic World**

Islam's developmental trajectory is different from the West's. Therefore, it is important to understand what Islam is and under what conditions it began in order to see the basis for the differences. Between the death of Prophet Isa (Jesus) and the first inception of Islam, there was a long period of time, about 600 years, without religion. The light of the teachings and knowledge of Jesus disappeared. As a result of this period, the Arabic Peninsula had become a place of mixed traditions. While a few people tried to follow in the footsteps of Prophet Abraham (Khanifs), others worshipped false idols. Moreover, social order was controlled by certain families, slavery was an important trade and new-born female babies was being buried. Prophet Muhammad was chosen as the last messenger of God under these conditions in 610 AD. He started to spread Islam by speaking to people. Interestingly, the first verses of the Quran are about criticising the established social order, including the abuse of slaves, oppressing orphans and burying new-born female babies, and all of these attitudes were a great challenge to the powerful families in the society. After a long period of struggle, the society was divided into two groups: believers of Islam and non-believers. As a result, God commanded His Prophet to migrate to Medinah, where the Prophet established a state and became a political leader of Islamic Society. He signed a convention (commonly known as the constitution) with the Christians and Jews, who are named in the Quran as the People of the Book (Ahl al-Kitab). Until He died, He ruled social life, diplomatic relations, wars and

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<sup>16</sup> Freeman, M. (2004) "*The Problem of Secularism in Human Rights Theory*" Human Rights Quarterly, Vol.26, No.2, p.400

personal relationships based on Sharia (the Quran and Sunnah) which is the main source of Islam.<sup>17</sup> After He passed away, nearly all of Arabic Peninsula joined Islam.

Since Islam is a religion, there are certain rules which cannot be changed. Therefore, in order to find the foundations of human rights in Islam, these basic rules (Sharia) have to be traced. However, in a religion, it is not possible to find such rules as in secular human-made systems. The holy book of Islam, the Quran, regulates many of the human rights including equality, women's rights, right to property, right to life and so on. Furthermore, the following verse from the Quran shows that Islam's concept of human rights is based on human dignity and the equality of mankind before God: "We have honoured the children of Adam and carried them by land and sea; We have provided good sustenance for them and favoured them specially above many of those We have created."<sup>18</sup> However, in terms of human rights, the most important source is the Last Sermon of the Prophet Muhammad (also called the Farewell Sermon). This Sermon demonstrates that Islam has its own human rights concept. In the year of 632, Prophet had completed His pilgrimage and addressed thousands of people with the following words: "...All mankind is from Adam and Eve, an Arab has no superiority over a non-Arab nor a non-Arab has any superiority over an Arab; also a white has no superiority over black nor a black has any superiority over white except by piety and good action..."<sup>19</sup>

As it specifies, the Quran and Sunnah (Sharia) are unchangeable but this does not mean that Islam is stable. The methods of Ijtihad (jurisprudence) and Qiyas (analogy) help to update Sharia without changing them. In addition, there can be tazir (discretionary) decisions which are made by governors. The important point is that all these system should be based on Sharia. In other words, like Hans Kelsen's hierarchy of norms, Sharia is like a constitution

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<sup>17</sup> An Nadwi, Abu'l H. A. (1993) "*Muhammad the Last Prophet: A Model for All Time*" Academy of Islamic Research and Publications, pp.11-75

<sup>18</sup> Abdel Haleem, M. A. S. (2005) "*The Quran: A New Translation*" Oxford University Press, Al-Isra (The Night Journey), Verse 70

<sup>19</sup> Bukhari "*Sahih*" Otuken Publications, 2004 Edition, Hadith 148. For full text of the Sermon, see Annex I.

and all other things under Sharia need to be based on it. Therefore, human rights firstly need to be acceptable under Sharia and any rights must firstly be defined by Sharia. When examining Sharia, it can be seen that rights can turn into duties sometimes unlike in the West. This dual structure gives three characteristics to the Islamic human rights concept: firstly, a right cannot contradict God's or Prophet's consent, which also comes from God. Secondly, the protection of society should be the prior aim of a right. Thirdly, a right has to be moral and ethical.<sup>20</sup> According to Chaudhry, in any mention of human rights, two things should be kept in mind. Firstly, the rights naturally arise in a society and have no meaning outside of society. For instance, Robinson Crusoe had no rights and duties on his island of which he was the master of all and servant of none. Secondly, rights requires duties. Someone's right can turn into a duty for someone else. Rights and duties are like men and shadows or like two sides of a coin, they cannot be separated.<sup>21</sup>

Chaudhry observes that the religious nature of Islamic human rights comes from the perception of sovereignty. In Islam, absolute sovereignty belongs to God and His commandments are supreme law. Therefore, in Islamic states, people exercise what God's commandments. Conversely, the nature of Western human rights is secular and people are considered as sovereign.<sup>22</sup>

Since the perception of sovereignty is different from the West, therefore, the classification of rights is also different in Islam. Muslim jurists classify rights into the rights of God, which are referred to as such because of the absolute sovereignty and rights of men that belong to individuals. For instance, faith, prayers, some types of punishments, taxes etc. are considered

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<sup>20</sup> Zaidan, A. (1969) *"Citizen and State in the Islamic Shariah"* Kultur Press, p.80

<sup>21</sup> Chaudhry, M. S. (1993) *"Human Rights in Islam"* All Pakistan Islamic Education Congress Publications, p.2

<sup>22</sup> Chaudhry, M. S. (1993) *"Human Rights in Islam"* All Pakistan Islamic Education Congress Publications, pp.14-15

rights of God, whereas the right to property, the right to life, family rights etc. are considered rights of men.<sup>23</sup>

In terms of slavery, by contrast with the Western development, Chaudhry claims that Islam abolished slavery step by step. Islam did not do that by an obvious prohibitive rule because slavery was very well rooted in society at that time. However, the abolishment of slavery was encouraged by the Quran and Sunnah. In addition, slaves had same conditions with free men and most slaves were close companions of Prophet as freemen such as Bilal and Zaid.<sup>24</sup> Therefore, Chaudhry condemns that Western countries consider themselves as the champions of human rights, but they ignore the fact that Islam had given rights more than fourteen centuries ago.<sup>25</sup>

In Islamic Law, there is a principle which says that when Sharia gives a right to someone, then nobody including the Caliph can abolish that right.<sup>26</sup> An argument between one of the most powerful Caliphs, Omar ibn Khattab, who was also one of the closest companions of the Prophet, and a woman can be given as an example in order to explain this principle. When Caliph Omar was giving a khutbah (speech) in a Friday prayer (jumuah), he attempted to limit Mahr, which is given to a wife by a husband as a gift of economic value. Suddenly, a woman stood up from back side and said that this was against the Quranic verses by referring to the following verse: "If you wish to replace one wife with another, do not take any of her bride-

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<sup>23</sup> Chaudhry, M. S. (1993) *"Human Rights in Islam"* All Pakistan Islamic Education Congress Publications, pp.17-18

<sup>24</sup> Chaudhry, M. S. (1993) *"Human Rights in Islam"* All Pakistan Islamic Education Congress Publications, pp.186-199

<sup>25</sup> Chaudhry, M. S. (1993) *"Human Rights in Islam"* All Pakistan Islamic Education Congress Publications, p.13

<sup>26</sup> Caliph is used in Islamic notion as political leader of Muslims after the Prophet

gift back, even if you have given her a great amount of gold.”<sup>27</sup> After this warning, Caliph Omar said: “woman spoke truth, Omar had made a mistake”<sup>28</sup>.

The Era of Rightly Guided Caliphs, who were Abu Bakr, Omar, Uthman and Ali, between the years 632 and 661 is known as the Golden Age of Islam. There are some verses and hadiths which are used as evidence that the practices of the Rightly Guided Caliphs are also the source of Islam. Throughout this time, the foundations of the Islamic State fell into place. Therefore, this Age is still used as a secondary source by Islamic scholars.<sup>29</sup> The following verse can be given as an example: “You who believe, obey God and the Messenger, and those in authority among you. If you are in dispute over any matter, refer it to God and the Messenger, if you truly believe in God and the Last Day: that is better and fairer in the end.”<sup>30</sup>

Thus, after the Rightly Guided Caliphs, the caliphate turned into a sultanate starting with the sovereignty of Umayyads. The transformed caliphate was then transferred from kingdom to kingdom until the Turkish Republic abolished it in March of 1924. In fact, the caliphate had been used for political legitimacy, rather than as it was used in the era of the Rightly Guided Caliphs. Therefore, it can be said that all states which used caliphate were not a perfect Islamic State. Furthermore, it is quite controversial as to whether there was a pure Islamic State in history.

Since there is no caliphate today in the Muslim world and the caliphate was also the authority of defining how Sharia can be applied, judging based on Sharia is arguable. However, today, there are some declarations which regulate human rights in Islam using the notion of Sharia.

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<sup>27</sup> Abdel Haleem, M. A. S. (2005) *“The Quran: A New Translation”* Oxford University Press, An-Nisa (The Women) Verse 71

<sup>28</sup> Canan, I (2004) *“Kutub al Sittah”* (Six Books) Zaman Publications, vol.10, p.224

<sup>29</sup> Delling, M. (2004) *“Islam and Human Rights”* Master Thesis, Goteborg University Press, p.19

<sup>30</sup> Abdel Haleem, M. A. S. (2005) *“The Quran: A New Translation”* An-Nisa (The Women) Verse 59. Also see: Ahmad ibn Hanbal *“Musnad”* Hadith 169, Dar-as-Salam Publications

For instance, the Universal Islamic Declaration of Human Rights<sup>31</sup>, the Arab Charter on Human Rights<sup>32</sup> and the Cairo Declaration on Human Rights in Islam<sup>33</sup> were all declared in the 20th century. Among these documents, the Cairo declaration can be given as an example of using the notion of Sharia.

The Cairo Declaration on Human Rights in Islam was declared in 1990 by 45 member states of the Organisation of the Islamic Conference (OIC, now named the Organisation of Islamic Cooperation). In terms of Sharia, article 25 of the declaration states that “the Islamic Sharia is the only source of reference for the explanation or clarification of any of the articles of this Declaration” and article 24 clarifies that “all the rights and freedoms stipulated in this Declaration are subject to the Islamic Sharia.” The Declaration highlights its universality in article 1: “All human beings form one family whose members are united by their subordination to Allah and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, colour, language, belief, sex, religion, political affiliation, social status or other considerations. The true religion is the guarantee for enhancing such dignity along the path to human integrity”<sup>34</sup>.

According to O’Sullivan, no declaration can define Sharia and its restrictions because Islamic Law includes a variety of different interpretations. Fixing it on one interpretation could cause

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<sup>31</sup> Available at: [http://www1.umn.edu/humanrts/instree/islamic\\_declaration\\_HR.html#belief](http://www1.umn.edu/humanrts/instree/islamic_declaration_HR.html#belief) [Accessed 10.09.2013]

<sup>32</sup> Available at: <http://www1.umn.edu/humanrts/instree/loas2005.html> [Accessed 10.09.2013]

<sup>33</sup> Available at: <http://www1.umn.edu/humanrts/instree/cairodeclaration.html> [Accessed 10.09.2013]

<sup>34</sup> “Cairo Declaration on Human Rights in Islam” (1990) article 1 (1). For full text of the Cairo Declaration, see Annex III.

serious problems, such as declaring apostate those who interpret Sharia differently including Mahmoud Mohammad Taha from Sudan<sup>35</sup>

### **2.3. Findings and Evaluation**

As has been explained, the historical development of the West created democratic society and the historical development of Islam created Islamic society. There is no doubt that there are common codes between the two cultures. However, this situation did not bring about common understanding of human rights. As it specified, each development of human rights in the West was triggered by an unjust situation, such as slavery, colonisation and despotism. Therefore, human rights discourse naturally improved in the West. However, Islam itself came to be against unjust social order. Although there were some naturally unfair situations through the history of Islam, these situations never triggered uprisings regarding human rights. Furthermore, Islamic Society does not consider religion to be a private matter. Therefore, it regulates every moment of human life including politics. However, in the West, religion and politics are separated (the example of Turkey will be explored later on).

The conception and categorisation of rights is also different between the two worlds. This is because of the perception of sovereignty and religion. In the West, religion is considered to be a private matter which is only regulated by the relationship between God and His slave. Therefore, in the public life, democracy has filled its space. However, in Islam, the absolute sovereign is God, who has allowed people to regulate limited areas. This permission has been used by jurists to update Islam throughout history. However, they have been limited by the religion itself. Although some universal principles have been sought in both worlds by conventions and declarations, as a result, this situation has not affected different perceptions.

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<sup>35</sup> O'Sullivan, D. (2001) "The Death Sentence for Mahmoud Muhammad Taha: Misuse of the Sudanese Legal System and Islamic Shari'a law?" The International Journal of Human Rights, vol. 5, issue 3, pag. 45-70

## Chapter III: Universalist Ideas on Human Rights and Secular Liberal Democracy

### 3.1. Debate on the Universality of Human Rights

Universalist ideas are based on the assumption that all human rights are applicable to all human beings. At least in theory, it refers to global acceptance.<sup>36</sup> Therefore, although there are some counter-arguments against universalism, in the West, it is generally accepted that human rights are universal and they have predominance over other rights. In the West, human rights cannot be forfeited and are inalienable.<sup>37</sup>

However, some cultural relativists and Islamic Scholars argue that the Western concept of human rights is unique and not only different from Islamic Worldview but also different from the values of other cultures. In terms of the universality of human rights, according to Tibi, the politicisation of Western and Islamic ideas may have resulted in a clash of civilisations because they both make similar claims.<sup>38</sup> Alves claims that in order to accept all human rights regulated by the Universal Declaration of Human Rights, which were strongly influenced by the Western concept, all people would need to have same historical, cultural, political and ideological background. But many cultures such as Islam have their own concept of human rights. For instance, the perception of freedom of expression in Islam is quite different from the West's.<sup>39</sup> In fact, nearly all states that first signed the Universal Declaration were Western states.<sup>40</sup> The few Islamic countries that signed the declaration objected to some of the articles

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<sup>36</sup> Baderin, M. A. (2001) *“Dialogue Among Civilizations As A Paradigm for Achieving Universalism in International Human Rights – A Case Study With Islamic Law”* Asia-Pacific Journal on Human Rights and the Law, Volume 2, Number 2, p.2

<sup>37</sup> Donnelly, J. (1998) *“International Human Rights”* Westview Press, pp.18-19

<sup>38</sup> Tibi, B. (2001) *“Islam between Culture and Politics”* Palgrave, p.214

<sup>39</sup> Alves, J. A. L. (2000) *“The Declaration of Human Rights in Postmodernity”* Human Rights Quarterly, Vol. 22, p.481

<sup>40</sup> Cassese, A. (1990) *“Human Rights in a Changing World”* Worcester, Polity Press, p. 32–47; Renteln, A. D. (1990) *“International Human Rights: Universalism Versus Relativism”* Sage Publications, p. 29–32.

of the Declaration.<sup>41</sup> Pollis and Schwab claim that the Universal Declaration has a strong Western bias and is a product of Western political, social and economic history. Therefore, its applicability is limited.<sup>42</sup>

In today's world, human rights are an important discourse in the international community. Therefore, despite reservations, every state can recognise the Universal Declaration as a political strategy. According to Donnelly and Howard, this political acceptance can be referred to as the "normative universality of human rights".<sup>43</sup> In fact, Donnelly accepts the universality of human rights in principle but he rejects absolute universalism. Rather, he suggests that universalism should allow a "weak cultural relativism" allowing each culture to benefit from each other's values.<sup>44</sup>

Likewise, as a Muslim scholar, An-Naim claims that if the values of other cultures involve human rights discourse, the Western concept of universality can be reformulated. An-Naim argues that each culture has its own unique concept of human rights. Therefore, there must be some commonalities which can be used as a bridge from culture to culture.<sup>45</sup> However, for Islam, he claims that in order to seek reconciliation based on the commonalities between the West and Islam, Islam needs reformation. Furthermore, he claims that Islam should adopt a secular state system to join the universal system of human rights.<sup>46</sup>

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<sup>41</sup> Cerna, C. M. (1994) "Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts", Human Rights Quarterly, Vol. 16, p. 746.

<sup>42</sup> Pollis, A. & Schwab, P. (1979) "Human Rights: Cultural and Ideological Perspectives" Praeger Publishers, p.17

<sup>43</sup> Howard, R. E. & Donnelly, J. (1997) 'Liberalism and Human Rights: A Necessary Connection'. In Ishay, M. (Ed.) (1997) "The Human Rights Reader: Major Political Essays, Speeches, and Documents From the Bible to the Present", New York and London, Routledge, p. 268.

<sup>44</sup> For this claim and further debate see: Cobbah, J. A. M. (1987) "African Values and the Human Rights Debate: An African Perspective", Human Rights Quarterly, Vol. 9, p. 330

<sup>45</sup> An-Naim, A. A. (1992) 'Toward a Cross-Cultural Approach to Defining International Standards of Human Rights - the Meaning of Cruel, Inhuman, or Degrading Treatment or Punishment'. In An-Naim, A. A. (Ed.) (1995) "Human Rights in Cross-Cultural Perspectives: A Quest for Consensus" University of Pennsylvania Press, p.19

<sup>46</sup> An-Naim, A. A. (2008) "Islam and the Secular State" Harvard University Press, p.1; In addition see An-Naim, A. A. (1990) "Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law" Syracuse University Press

According to An-Naim, the paradox of having the universal human rights concept established and developed by the West should not be an obstacle for international standards. Because universality requires global agreement on universal commonalities, the normative systems can change from one another. In this way, international standards can be applied and incorporated within a particular culture. People cannot change the historical fact that human rights naturally grew in the West, but they can seek a consensus between international standards and their particular culture.<sup>47</sup>

Similarly, Galtung argues that Western human rights discourse is predominant. Islamic values can be used to enrich the universality of human rights.<sup>48</sup> In addition, Renteln claims that all cultures recognise human rights in their codes. These codes need to be examined comparatively in order to reach universal human rights discourse.<sup>49</sup> Furthermore, Kurasawa suggests solidarity of both universalism and cultural relativism around cosmopolitanism. According to him, cosmopolitanism moves beyond universal and particular claims by supporting mutual responsibility for global justice.<sup>50</sup>

However, some scholars, such as Mawdudi, strictly criticise human rights discourse by saying that human rights are a Western creation and Islam does not need this concept. Mawdudi claims that in a perfect Islamic society, which he refers to as the time of Prophet, all human beings automatically have liberty and rights. He accuses Western society with the following words: “The people in the West have the habit of attributing every good thing to themselves

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<sup>47</sup> An-Naim, A. A. (1994) “*What Do We Mean by Universal*” Index on Censorship, Vol.4-5, p.121

<sup>48</sup> Galtung, J. (1999) “*Human Rights in Another Key*” Metis Publishing, pp. 33-34

<sup>49</sup> Renteln, A. D. (1990) “*International Human Rights: Universalism Versus Relativism*” Sage Publications, pp. 88-141.

<sup>50</sup> Kurasawa, F. (2007) “*The Work of Global Justice*” Cambridge University Press, pp.157-193

and try to prove that it is because of them that the world got this blessing, otherwise the world was steeped in ignorance and completely unaware of all these benefits.”<sup>51</sup>

From the Hanafi School perspective, Senturk claims that Islam has its own universality of human rights. The Hanafi Jurists (mujtahidin) formulate their universalistic ideas within two notions: “ismah” (inviolability or legal and political protection of basic human rights) and “adamiyyah” (humanity, personhood). From this perspective, the Quran emphasised that all people are children of Adam and they are entitled to human rights regardless of religion, race, gender and language. Senturk highlighted that this approach can be formulated into the following postulate: “human rights are due for humanity (al ismah bi al adamiyyah).”<sup>52</sup> In fact, it seems that modern declarations regarding human rights in Islam such as the Cairo Declaration support this idea because they use the notion of “children of Adam”.

Furthermore, some scholars think that being against the universality of human rights is not wise. According to Mayer, human rights are originally Western. Even if it can be said that human rights discourse started with the ancient Greeks, there is no doubt that it had become universal during the Renaissance Era because of Humanism. The values of Islam should be examined but Islam has never had its own systematic human rights discourse. Therefore, advocating cultural relativist ideas such as Islamic rights against the universality of human rights is nonsense.<sup>53</sup> Similarly, Hoang argues that it does not matter what makes human rights universal since fundamental freedoms and rights were formulated by human history itself. Therefore, cultural relativists should not ignore this natural development.<sup>54</sup> In addition, Chase

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<sup>51</sup> Mawdudi, A. A. (1976) “*Human Rights in Islam*” p.1 available at: [http://dspace.jgu.edu.in:8080/dspace/bitstream/10739/325/1/Maulana\\_Maududi\\_Human\\_Rights\\_in\\_Islam.pdf](http://dspace.jgu.edu.in:8080/dspace/bitstream/10739/325/1/Maulana_Maududi_Human_Rights_in_Islam.pdf) [Accessed 10.09.2013]

<sup>52</sup> Senturk, R. (2002) “*Adamiyyah and Ismah: The Contested Relationship between Humanity and Human Rights in Classical Islamic Law*” *Journal of Islamic Studies*, Vol.8, pp.1-3

<sup>53</sup> Mayer, A. E. (1999) “*Islam and Human Rights: Tradition and Politics*” Westview Press, Boulder, pp.8-37

<sup>54</sup> Hoang, N. (2002) “*Human Dignity and Freedoms: Global and Universal Values of Human Rights*” *Communist Journal*, No. 35, p.12

highlighted that the relativist critique needs to be aware of the irony of defending against universal human rights as claiming cultural rights because universal human rights also promote cultural rights.<sup>55</sup>

Bennett stressed that an obstacle to the universality of human rights is a sceptical approach among Muslims on the origin and aim of human rights. Many Muslims think that human rights discourse is a new form of colonialism and it is originally West-centric which means that there is no need for Islamic support.<sup>56</sup>

Halliday categorised Islamic responses to the universal human rights debate into four classes. The first is that Islam is compatible with the Western universal human rights concept. The second is that Islam is incompatible with universal human rights. The third is that Islam is the best system to fully realise human rights. The fourth is that human rights discourse has an imperialist agenda and is a new form of colonialism which must be rejected.<sup>57</sup> Baderin adds that a fifth is that the universal human rights idea has anti-religious intentions against Islam.<sup>58</sup>

According to Baderin, the most sustainable idea amongst these five responses is that Islam is compatible with international human rights because Islam contains common principles for the protection of human life and dignity and justice are the central principle inherent in the Sharia. On the other hand, he continues, the second view is unsustainable. There may be some conceptual differences between two system but this does not make Islam incompatible with

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<sup>55</sup> Chase, A. T. (2012) *“Human Rights, Revolution and Reform in Muslim World”* Lynne Reinner Publishers, p.99

<sup>56</sup> Bennett, C. (2005) *“Muslims and Modernity: An Introduction to the Issues and Debates”* Continuum Press, p.63

<sup>57</sup> Halliday, F. (1995) ‘Relativism and Universalism in Human Rights: The Case of the Islamic Middle East’ in Beetham, D. (Ed.) (1995) *“Politics and Human Rights”* Blackwell, pp.152-155

<sup>58</sup> Baderin, M. (2003) *“International Human Rights and Islamic Law”* Oxford University Press, p.13

universal human rights. In addition, Baderin think that other three view are either egocentric or paranoiac.<sup>59</sup>

### **3.2. Relationship with Secular Liberal Democracy**

It is widely debated whether human rights require secularism and liberal democracy. Numerous scholars claim that there is a strong connection between human rights and the political system of a society. In other words, they claim that human rights can only be implemented in democratic regimes and democratic societies. At first glance, this idea makes a system based on religion such as Islam incompatible with human rights. On the other hand, various scholars, including Muslim scholars, claim that as a religion, Islam is compatible with democracy and human rights. According to Khatab and Bouma, Islamic thought and Quranic verses suggest that Islam is compatible with Western democracy and the Islamic interpretation of democracy is naturally slightly different from the Western interpretation.<sup>60</sup> However, the majority of scholars argue that the fundamentalist interpretations of Islam and political Islam makes this compatibility difficult. They claim that apart from extremist Islam, the mainstream ideas are not opposed to liberal democracy and universal human rights.

As a specialist on the debate, Hashemi observes that liberal democracy requires secularism but this does not make religion incompatible with democracy. Before the September 11<sup>th</sup> events, numerous scholars including Samuel P. Huntington, Benjamin Barber, Robert Kaplan and Francis Fukuyama raised intellectual debates regarding the differences between Western and Islamic culture and the incompatibility of Islam, at least the fundamentalist version, with liberal democracy. The Al-Qaeda attacks reopened this debate.<sup>61</sup> For instance, according to

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<sup>59</sup> Baderin, M. (2003) *"International Human Rights and Islamic Law"* Oxford University Press, pp.14-16

<sup>60</sup> Khatab, S. & Bouma, G. D. (2007) *"Democracy in Islam"* Routledge Press, p.192

<sup>61</sup> Hashemi, N. (2009) *"Islam, Secularism and Liberal Democracy"* Oxford University Press, p.4. For further information on this debate see: Fukuyama, F. (1992) *"The End of History and the Last Man"* Free Press; Huntington, S. P. (1996) *"The Clash of Civilizations and Remaking of World Order"* Simon and Schuster Press;

Fukuyama, fundamentalist Islam has been dominant in recent years and makes Muslim societies resistant to modernity. Among Muslim societies, a few countries like Turkey have democracy.<sup>62</sup> Therefore, Hashemi continues, the issue of Islam's compatibility with Western liberal democracy is the origin of the main debate about the universality of human rights.<sup>63</sup>

Hashemi also argues that there is an inaccurate reading of the history of liberal democracy. In the West, particularly in the Anglo-Saxon tradition, first inception of liberal democracy started with changing religious ideas because Christianity contained similar ideas to democracy. Therefore, Islam, as a religion, gives similar clues for liberal democracy when the main source is examined. Scholars who have studied democracy are often not familiar with the Islamic world and they often rely on works of Bernard Lewis, whose approach is pretty orientalist, as the main source on this topic. However, when Lewis examined the relationship between Islam and liberal democracy, he avoids mentioning the role of religion in the development of liberal democracy in the West.<sup>64</sup>

In order to achieve democratic standards, some scholars argue that religion and state should be separated. This is a necessity to introduce secularism which is considered as a precondition for liberal democracy. John Rawls emphasised in his book named "political liberalism" that certain things such as religion should be taken out of politics.<sup>65</sup> This means that the political agenda must be secular.

Hashemi claims that the reconciliation of Muslim societies with liberal democracy can be exemplified by Turkey and Indonesia. Religion is distinctive identity in Muslim societies and

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Barber, B. (1996) *"Jihad vs. McWorld: How Globalism and Tribalism are Reshaping the World"* Ballantine Books; Kaplan, R (2000) *"The Coming Anarchy: Shattering the Dreams of the Post Cold War"* Vintage Books

<sup>62</sup> Fukuyama, F. (2001) *"History is Still Going Our Way"* Wall Street Journal, 5 October 2001

<sup>63</sup> Hashemi, N. (2009) *"Islam, Secularism and Liberal Democracy"* Oxford University Press, p.4

<sup>64</sup> Hashemi, N. (2009) *"Islam, Secularism and Liberal Democracy"* Oxford University Press, p.12. Also see Lewis, B. (1996) *"Islam and Liberal Democracy: A Historical Overview"* Journal of Democracy, vol.7

<sup>65</sup> Rawls, J. (1993) *"Political Liberalism"* Columbia University Press, p.151

reconciliation between Islamic political thought and secularism is a precondition for engagement of liberal democracy. In addition, the separation of religion and state can play a constructive transformative role for the development of democracy and the protection of human rights.<sup>66</sup>

Langlois observes that there is a separationist theory which says that if human rights strictly depend on democracy, the states which have not achieved democracy cannot promote human rights. However, all people deserve human rights without being dependant on democracy. Langlois claims that benevolent authoritarianism can be legitimised by separationist theory through this way. The process of democratisation cannot be separated from human rights because even benevolent dictators can sometimes give people some rights, but this does not allow people to legitimise authoritarianism.<sup>67</sup> Therefore, human rights cannot be separated from democracy.

On the other hand, some scholars claim that Islam cannot be separated from political systems. Schacht emphasised that Islam does not separate religion from daily life and politics. It regulates all spheres of human life and establishes the connection of individuals with God.<sup>68</sup> Likewise, Mustafa Sabri, who was the last shaykh al-Islam (religious authority) in the Ottoman empire, observed that separating religion from the state was brought about by those who imitate Western ideas and support modernity. If people do like this on both the state and social level, there will be no Islam.<sup>69</sup> Furthermore, Algar narrates Ayatollah Khomeini's opinion on the separation of religion and politics from his famous lectures on "Islamic Government." According to Khomeini, the perception of the separation of religion from political and social affairs has been formulated by imperialists and those who want to shape

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<sup>66</sup> Hashemi, N. (2009) *"Islam, Secularism and Liberal Democracy"* Oxford University Press, pp.134-135

<sup>67</sup> Langlois, A. J. (2003) *"Human Rights without Democracy? A Critique of the Separationist Thesis"* Human Rights Quarterly, Vol.25, No:4, p.1017

<sup>68</sup> Schacht, J. & Bosworth, C. E. (1974) *"The Legacy of Islam"* Oxford University Press, p.405

<sup>69</sup> Khatab, S. & Bouma, G. D. (2007) *"Democracy in Islam"* Routledge Press, p.11

Muslim society, because they know that the Islamic way of governance will interfere with their unjust world system.<sup>70</sup>

Another controversial area is that the Western orientalist approach to Islam made these two worlds enemies. Said argues that one obstacle to finding commonalities between the West and Islam is orientalism. Orientalist scholarship dehumanizes oriental men in order to serve Western imperialist goals.<sup>71</sup> Ettmueller states that Edward Said was right to say that Western imperialism has ended in the spirit of orientalism continuing in the works of Bernard Lewis and the Think Tanks of the USA. According to her, it seems that the new enemy of the capitalist West is the Islamic East.<sup>72</sup>

However, many scholars claim that Western opposition is not against Islam itself. For instance, Esposito comments that Western opposition against communism has been replaced by a contradiction against Islamic fundamentalism, but not against mainstream Islam.<sup>73</sup> Therefore, various scholars claim that the most important obstacle between Islam and secular liberal democracy is political Islam or fundamentalism which is considered as an extreme interpretation of Islam.

As one of the most influential scholars on this debate, Tibi argues that mainstream Islam as a religion is not threatening the West but political Islam may very well threaten the West.<sup>74</sup> Tibi observes that democracy and human rights are standards of civilisation and within international order they are necessary to establish peace and justice. Both Western globalisation and Islamic neo-absolutism want to impose their own notions on the other, causing a clash of two civilisations. In order to open a cross-cultural discussion of morality,

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<sup>70</sup> Algar, H. (1981) *Islam and Revolution: Writings and Declarations of Imam Khomeini* Mizan Press, p.38

<sup>71</sup> Said, E. (1978) *Orientalism* Routledge, pp.18-43

<sup>72</sup> Ettmueller, E. U. (2006) *Islam and Democracy* Revista Internacional de Filosofia, Vol.3 p.2

<sup>73</sup> Esposito, J. L. (1999) *The Islamic Threat? Myth or Reality* Oxford University Press, p.218

<sup>74</sup> Tibi, B. (1998) *The Challenge of Fundamentalism: Political Islam and the New World Disorder* University of California Press, p.41

Tibi suggests that the West needs to abandon its policy of imposing its values on the rest. Likewise, he suggests that Islam must abandon its historical separation of the world into dar-al Islam and dar-al Harb and abandon fundamentalism and imposing political Islam on the rest of the world. Only this way can Muslims and Westerners be brought around a single table to work on a moral consensus based on commonalities and shared values.<sup>75</sup> On the other hand, Tibi criticises cultural relativists who deny the universality of human rights. Cultural relativists, for Tibi, fail to defend their own values and give fundamentalists a thesis to deny other cultures' values. Furthermore, Tibi also criticises Mawdudi for denying human rights for Muslims. In his view, there are no different rights for Muslims and they are equally human beings. Tibi claims that human rights discourse is a recent addition to moral discourse and a product of modern times that did not exist in any religions or civilisations. Therefore, saying 'Muslims had human rights before the Westerners did' does not help.<sup>76</sup>

Likewise, Cox and Marks claim that Islamism, which they prefer to refer to as fundamentalism, is the exact opposite of liberal democracy. It is a brand of totalitarianism and must be distinguished from mainstream Islam. However, reconciliation is possible between mainstream Islam and the West.<sup>77</sup>

Chase claims that, although human rights discourse itself is contested in the Muslim world, the demand of human rights turned into political thought in the recent Arab Spring. Human rights have become politically inescapable fabric and more than a legal tool in the Muslim world.<sup>78</sup> In addition, Chase continues, support of human rights in the Muslim world is nearly 86% per cent. Generally, Islamists and followers of political Islam claim that human rights

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<sup>75</sup> Tibi, B. (2001) *"Islam Between Culture and Politics"* Palgrave Publications, pp.152-229

<sup>76</sup> Tibi, B. (1998) *"The Challenge of Fundamentalism: Political Islam and the New World Disorder"* University of California Press, pp.106-209

<sup>77</sup> Cox, C. & Marks, J. (2003) *"The West, Islam and Islamism: Is the Ideological Islam Compatible with Liberal Democracy?"* Civitas Publications, p.10

<sup>78</sup> Chase, A. T. (2012) *"Human Rights, Revolution and Reform in Muslim World"* Lynne Rienner Publishers, pp.1-6

show the hypocrisy of the West. For instance, the Leader of Al-Qaeda, Osama bin Laden, criticised the failure of the implementation of human rights in Palestine and Guantanamo Bay.<sup>79</sup>

### **3.3. Findings and Evaluation**

Ideas on the universality of human rights have been influenced by Western political thought and counter-arguments coming from Islamic scholars are influenced by Islamic political thought. The West-centric approach is sometimes orientalist and they make the rest “others”. On the other hand, the approach of some Islamic scholars is paranoiac. They consider everything originating from the West as evil.

Being against universalism only because human rights discourse originated from the West is nonsense. As has been demonstrated in the first chapter, the development of the West naturally produced human rights. Therefore, it is less important to discuss the origin of human rights as it is to discuss the effectiveness of human rights, and their compatibility with Islam needs to be traced in order to reach beneficial results.

To turn back to the universalism debate, it can be said that the debate itself shows the universality of human rights is a myth. However, this does not mean that some specific rights, such as freedom of expression, are truly universal. The whole concept is contested.

Scholars like Tibi and An-Naim approach with constructive criticism but their ideas are ambiguous. They have not explained very well what mainstream Islam is and what fundamentalism is. In fact, the majority of Muslims take mainstream Islam as the four sects of sunni Islam, which are hanafites, malikites, safiites and hanbalites. However, scholars of

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<sup>79</sup> Chase, A. T. (2012) *“Human Rights, Revolution and Reform in Muslim World”* Lynne Reinner Publishers, p.60

mainstream Islam consider these sects as traditionalists and they think that traditionalists cannot be reconciled with the Western concept. Furthermore, their ideas on political Islam and fundamentalism are vague. For instance they consider the Milli Görüş (National View) movement in Turkey and the Al-Qaeda movement together. It seems that their understanding of mainstream Islam has been influenced by Western experience. Therefore, they strictly separates politics and religion and call for reformation in Islam. However, throughout the 1400 years of Islam, the majority of Muslims, including jurists, were interested in politics and they did not separate them from each other. The example of Turkey is not enough to prove the separation of the state and Islam because, in Turkey, religious services are still regulated by the state. In addition, the demands of Muslims are considered as a danger for democracy by the European Court of Human Rights.

Secularism and liberal democracy have improved simultaneously and interdependently. However, the necessity of secularism in the Muslim world is a recent debate and the notion of “Political Islam” is a product of the 20th century, since, before the 20th century, there had always been a caliphate and the separation of politics and Islam was out of the question. However, when the Ottoman Empire, which was the last caliphate, collapsed, this secular state debate was opened because it was the first time that Muslims lost their religious and political authority. On the other hand, placing political Islam as directly opposite to liberal democracy makes the two worlds appear to be enemies.

The claim of the Hanafi scholars that Islam has its own universality is also uncorroborated. It can be said that Islam has its own concept of human rights, which is mixed with duties but claiming the universality of Islamic rights based on the notion of “children of Adam” is not verified because Islamic rights have never implemented as universal or regional remedies.

The Islamic concept has always been an internal matter for a state. In terms of universalism, the Western concept could also not have been practised at the international level. However, the same concept has been implemented very well in the European System. This shows that in order to accept the same human rights concept, the people need to have a similar historical background and a similar perception of rights. In order to prove this claim for the Islamic world, a regional system led by the Organisation of Islamic Cooperation needs to be established. Through this way, it will be shown that each concept of human rights is suitable for different people. In addition, regional systems can show that both Western and Islamic universality is impossible.



## **Chapter IV: Case Studies**

### **4.1. Freedom of Expression**

The historical development of human rights has resulted in a diversity of perceptions between the West and Islam. As it was explained, in the West, it is generally accepted that one who has human nature deserves human rights because the human is honourable and respectable.<sup>80</sup> Islam accepts a similar understanding but, in Islam, it is that God who created humans as respectable and honourable creatures. If God defines what it is to be human, then Muslims firstly look to God's words. According to the Quran, God created humans with good and bad inclinations. Therefore, a human can be more honourable than angels or more despicable than animals.<sup>81</sup> Moreover, the Quran indicates that God wants people to obey him, promote good and forbid bad. In other words, God sent people to the world with a mission.<sup>82</sup> These divergent worldviews can be seen in the Danish Cartoons and Salman Rushdie affairs.

#### **4.1.1. Danish Cartoons Affair**

The Danish Cartoons affair is still being debated among scholars in terms of freedom of expression. Even in the 21st century, the Danish Cartoons have shown that there are still different perspectives between the West and Islam. The Danish newspaper Jyllands-Posten published twelve caricatures of the Prophet Muhammad on 30th September 2005. Muslims considered these caricatures as scornful because, in one of the caricatures, the Prophet held a bomb in his hand, and in another one, the Prophet informed suicide bombers and encouraged them in front of a paradise with virgin girls. The caricatures caused great indignation among

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<sup>80</sup> Donnelly, J. (1998) *"International Human Rights"* Westview Press, p.18

<sup>81</sup> Senturk, R. (2005) *"Sociology of Rights: 'I Am Therefore I Have Rights': Human Rights in Islam between Universalistic and Communalistic Perspectives"* Muslim World Journal of Human Rights, Vol.2 Issue.1, pp.1-34

<sup>82</sup> Berween, M. (2002) *"The Fundamental Human Rights: An Islamic Perspective"* 6 International Journal of Human Rights, No.1, pp.61-78

Muslims and protests started all over the world. After one year of protests, the Danish and EU consulates in Damascus, Beirut and Tehran were set on fire. As a result, 139 people died and over 800 people were wounded in the protests.<sup>83</sup>

Even Western countries were divided into two groups because of the Danish Cartoons. On the one hand, countries like the UK, USA and the Vatican declared that the caricatures should not be under the protection of freedom of expression, but were examples of provocation. On the other hand, some states such as Norway considered the caricatures as freedom of expression.

Klausen argues that Western people have drawn Prophet Muhammad in insulting ways throughout the past centuries. When Western people won victory against the Muslims during the Crusades, they pictured the Prophet as a barbarian wearing Turkish clothes. After that, many artists including Dante, William Blake and Salvador Dali depicted the Prophet. Therefore, the Danish Cartoons were not the first incidence of this insult to Muslims' religious values.<sup>84</sup>

Similarly, Hansen claims that this is hypocrisy and exceptionalism of the West against Muslims. In the past, Western people insulted Muslims a number of times and Muslims reacted against those insults, But awareness of human rights has reached a peak during the 20th century. Therefore, at the dawn of the 21st century, the Danish newspaper cannot say that they did not expect any reactions from Muslims.<sup>85</sup>

Ibn Hisham narrated a story which showed that causing chaos (fitnah) in society can be punishable by death. According to story, a Jew named Ka'b ibn al-Ashraf strongly mocked

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<sup>83</sup> Jeton, M. (2009) "*Tensions Between Freedom of Expression and Religious Sensitivity-An Analysis of Danish Cartoons*" CEU eTD Collection, p.24-25

<sup>84</sup> Klausen, J. (2009) "*The Danish Cartoons and Modern Iconoclasm in the Cosmopolitan Muslim Diaspora*" Harvard Middle Eastern and Islamic review, Vol.8, p.87-88

<sup>85</sup> Hansen, R. (2006) "*The Danish Cartoon Controversy: A Defence of Liberal Freedom*" IOM International Migration, Vol.44, p.6-7

Prophet Muhammad in public places. When mocking turned into a call for revenge, the Prophet did not tolerate this call of violence and allowed one of His companions to kill him.<sup>86</sup> To turn back to the Danish Cartoons, Muslims' reactions can be considered as extreme, but Muslims have right to react to such provocations as this. Since today there is no Caliphate, there is no authority to regulate the scope of protests and reactions. Therefore, when fitnah is started, it is difficult to predict how it will end.

#### **4.1.2. Salman Rushdie Affair**

Salman Rushdie is originally from an Indian Muslim family, but moved to the UK for education. When his book named "The Satanic Verses" was published in 1988, it was banned in India, Pakistan, Saudi Arabia, Somalia, Egypt, Bangladesh, Malaysia, Sudan, Indonesia, South Africa and Qatar because of Muslims' reactions. In the following days, protests were spread all over the world and 17 people died in protests which were held in 1989 in Islamabad, Bombay and Kashmir. Furthermore, Ayatollah Khomeini, who was the leader of Iranian Shiites, declared a fatwa (specific jurisprudence) which said that Rushdie was an apostate because of his blasphemous ideas. The fatwa condemned Rushdie to death and promised a three million dollar bounty for whoever killed Rushdie. When Khomeini died in 1989, Rushdie was forgotten for a while. Then, Ayatollah Khamanei abolished the death punishment for Rushdie.<sup>87</sup>

The important passage of The Satanic Verses is a so-called story between Satan and Prophet. Before Islam, the non-believers were worshipping false idols such as Lat, Menat and Uzza. The story says that Satan influenced Prophet to say that "idols are exalted birds between people and God". Then Gabriel came and warned Prophet by explaining these words are not

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<sup>86</sup> Ibn Hisham "Al-Sira al-Nabawiyya (The Life of The Prophet)" English translation of Stillman, N. (1979), p. 124

<sup>87</sup> Slaughter, M. M. (1993) "The Salman Rushdie Affair: Apostasy, Honor and Freedom of Speech" Virginia Law Review, Vol.79, p.156-157

God's verses. God then abolished these words and replaced them with other verses which emphasise that worshipping false idols is forbidden.<sup>88</sup> Rushdie said that he was not only man who narrated this story, Tabari, who was an Islamic Historian, also narrated this story in his books. However, most Muslims considered that this story made Rushdie an apostate.

An-Naim thinks that the Salman Rushdie affair serves to demonstrate the incompatibility of Sharia with modern human rights discourse.<sup>89</sup> He argues about the validity of Khomeini's fatwa on the death of Rushdie and says that the ruler of an Islamic state cannot punish a citizen of a non-Muslim country. In fact, An-Naim continues, the death sentence for apostasy have no place in Islamic law today and can be replaced by discretionary punishment (tazir). Therefore, An-Naim claim that traditional Islam is not compatible with universal human rights, so it needs reformation.<sup>90</sup>

In order to defend Rushdie, Kureishi accused Khomeini's fatwa as an act of intellectual terror. He argues that fundamentalism is a danger for society and extremist Muslims must be eradicated from society.<sup>91</sup>

On the other hand, Kabbani argues that Rushdie committed cultural treason and Rushdie was not the one who was politically responsible to tell this dubious story.<sup>92</sup> In addition, Akhtar did not accept that Rushdie's attempt was literary, exploring the phenomena of revelation, rather he takes the view that Rushdie was trying to intentionally slander the Prophet.<sup>93</sup>

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<sup>88</sup> Akhtar, S. (1989) *"Be Careful With Muhammad!: The Salman Rushdie Affair"* India Today, p.21

<sup>89</sup> An-Naim, A. A. (1998) 'Sharia and Basic Human Rights Concerns'. In Kurzman, C. (ed.) *"Liberal Islam: A Sourcebook"* Oxford University Press, p.236

<sup>90</sup> An-Naim, A. A. (1990) *"Towards an Islamic Reformation: Civil Liberties, Human Rights and International Law"* Syracuse University Press, pp.222-236

<sup>91</sup> Kureishi, H. (1995) *"The Black Album"* Faber and Faber Publications, p.159

<sup>92</sup> Kabbani, R. (1989) *"Letter to Christendom"* Virago Publications, p.67

<sup>93</sup> Akhtar, S. (1989) *"Be Careful with Muhammad: The Salman Rushdie Affair"* Bellew Press, pp.6-85

The punishment for Apostasy comes from a Hadith narrated by Bukhari: “Whoever changes his religion, kill him.”<sup>94</sup> First Caliph Abu Bakr had fought against those who refused to pay Zakah (a sort of tax commanded by God) and considered them as apostates. Therefore, nearly all Muslim jurists from classical sects (madhab) accepted this punishment. However, Baderin observes that many Islamic scholars including traditionalists and modernists think that this Hadith was not fit to a verse from Sura al-Baqara 256 which says “There is no compulsion in religion...”<sup>95</sup> Scholars like Ibrahim al-Nakhai, Sufyan al-Thawri, M. S. El-Awa, and M.H. Kamali, M.Hamidullah claim that punishment of apostasy is not a had-type punishment. Therefore, a Muslim apostate must never be sentenced by capital punishment but has to be invited back to Islam.<sup>96</sup>

According to Sachedina, Islam developed as a religious phenomenon and later turned into political reality. Early events such as ridda (apostasy) battles used to define Islamic ideology rather than looking at the Quran itself.<sup>97</sup>

To turn back to the Salman Rushdie affair, the University of Al-Azhar, which is the most popular authority of Sunni Muslims, declared an advisory opinion which said that Khomeini’s Fatwa was inapplicable to Rushdie because he migrated to a foreign (non-Muslim) country. According to al-Azhar, the punishments of an Islamic country (Dar-Al-Islam) cannot be applied in a non-Muslim (Dar-Al-Harb) country. In addition, in Islam, there is no tradition of killing people without trying them.<sup>98</sup>

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<sup>94</sup> Bukhari “*Jihad*” Otuken Publications 2004 Edition, Hadith 148

<sup>95</sup> Abdel Haleem, M. A. S. (2005) “*The Quran: A New Translation*” Oxford University Press, Al-Baqara (The Cow) Verse 256

<sup>96</sup> Baderin, M. (2003) “*International Human Rights and Islamic Law*” Oxford University Press, p.13

<sup>97</sup> Little, D. Kelsay, J. and Sachedina, A. (1988) “*Human Rights and the Conflict of Cultures*” University of South Carolina Press, p.85

<sup>98</sup> For further information see: [http://en.wikipedia.org/wiki/The\\_Satanic\\_Verses\\_controversy](http://en.wikipedia.org/wiki/The_Satanic_Verses_controversy) [Accessed 10.09.2013]

### 4.1.3. Solutions of International Organisations

The European Court of Human Rights established a principle known as “Hate Speech”. Hate Speech is offence against an individual or a group of people based on religion, race, gender, ethnicity etc. Being a member of a community or a society requires respect for others. Hate Speech strikes the values of shared social life. In fact, the European Convention on Human Rights does not regulate Hate Speech and there is no exact definition of Hate Speech proposed by the European Court. However, the Court provides some clues in its cases that reveal how Hate Speech could be an additional restriction used by the Court.

Norwood vs. United Kingdom case<sup>99</sup> is an example of the European Court’s view. As a member of the British National Party, Mark Anthony Norwood supplied a poster showing the twin towers in flames and saying “Islam out of Britain”. The European Court considered Norwood’s attitude as an excessive attack on a religious group. The Court argued that tolerance is guaranteed under the convention and Norwood’s claim regarding freedom of expression was unacceptable.<sup>100</sup> However, in the Gunduz vs. Turkey case, Müslüm Gündüz accused democracy and secularism as impious and called for the introduction to Sharia Law. The Court considered that in Turkish society, it is normal to have excessive ideas as necessity of pluralist societies. Therefore, Guzduz’s speech was protected under freedom of expression.<sup>101</sup>

The United Nations has adopted various resolutions entitled “combating defamation of religions” from 1999 to 2005 regarding the “defamation of Islam” in collaboration with the

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<sup>99</sup> *Norwood v. the United Kingdom*, ECHR case no. 23131/03

<sup>100</sup> European Court of Human Rights (2012) “*Factsheet-Hate Speech*” ECHR Publications, p.4

<sup>101</sup> European Court of Human Rights (2012) “*Factsheet-Hate Speech*” ECHR Publications, p.4-5

Organisation of Islamic Cooperation.<sup>102</sup> The purpose of the resolutions was to protect religious values, and particularly Islam, from defamations.<sup>103</sup>

#### 4.2. Freedom of Association

Freedom of Association is one of the fundamental human rights in every free society. Although the universality of human rights is contested, some rights such as the freedom of association are widely accepted as a truly universal human right.<sup>104</sup> McBride emphasised that in order to establish a genuine democracy and keep it healthy and flourishing, all state public authorities should respect freedom of association and all other sections of society must be allowed to exercise this freedom.<sup>105</sup> Today, freedom of association is placed in nearly all human rights conventions and declarations and almost all state constitutions. However, as an authority of the implemented human rights systems, the definition of the European Convention on Human Rights article 11 is widely accepted: “Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.”<sup>106</sup>

In terms of freedom of association, on 13th February 2003, the European Court of Human Rights gave one of the most important decisions in its history: *Refah Partisi (The Welfare Party) and Others vs. Turkey*.<sup>107</sup> Refah was established in 1983 in Turkey and it had tested its success in general and local elections. In the general election of 1995, Refah took 22 per cent

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<sup>102</sup> The name was ‘Organisation of the Islamic Conference’ at that time.

<sup>103</sup> Graham, L. B. (2009) “Defamation of Religions: The End of Pluralism?” *Emory International Law Review*, vol.23, p.70-71

<sup>104</sup> White, S. (1997) “Freedom of Association and the Right to Exclude” *The Journal of Political Philosophy*, Vol.5, No.4, p.373

<sup>105</sup> McBride, J. (2005) “Freedom of Association, The Essentials of Human Rights” Hodder Arnold Press, p.18

<sup>106</sup> “European Convention on Human Rights” Available at: [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf) [Accessed 10.09.2013]

<sup>107</sup> *Refah Partisi (The Welfare Party) and Others v. Turkey*, European Court of Human Rights Grand Chamber, Application No. 41340/98, 41342/98 and 41344/98, 13 Feb. 2003. Full case published by American Society of International Law (2003) “*International Legal Materials*”, Vol. 42, No. 3, pp. 560-595

of the vote and became the largest party in the General Assembly. Then, Refah came to power by forming a coalition with Dogru Yol Partisi (True Path Party) on 28th June 1996 and Necmettin Erbakan was the prime minister of this government. However, the rise of Refah was not welcomed by some people. On 21st May 1997, proceedings were commenced in the Turkish Constitutional Court in order to dissolve Refah. According to the indictment, Refah's leaders' ideas and speeches had become the centre of activities contrary to the principles of secularism and Refah promoted Holy War (jihad) and Islamic law (Sharia). Then, the Constitutional Court decided that Refah's political perspective was incompatible with democratic society. On 16th January 1998, the Constitutional Court ordered the dissolution of Refah and prohibited politics for Refah's leaders for five years.<sup>108</sup> Refah was the third party, which was led by Necmettin Erbakan was closed.<sup>109</sup>

Before examining the Refah Case, the Courts' regular opinion on democratic society and differences should be kept in mind. In the United Communist Party case, the European Court emphasised its opinion on democratic society and common understanding of human rights with the following words: "Democracy is without doubt a fundamental feature of the 'European public order'... The Preamble goes on to affirm that European countries have a common heritage of political tradition, ideals, freedom and the rule of law. The Court has observed that in that common heritage are to be found the underlying values of the

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<sup>108</sup> Cumper, P. (2003) "Europe, Islam and Democracy – Balancing Religious and Secular Values under the European Convention on Human Rights" European Yearbook of Minority Issues, Vol.3, pp.167-168. On 28 February 1997 National Security Council which mostly consist of military commanders declared a series of decisions, which named post-modern military coup later on, regarding rising of political islam and Refah was forced to implement these decisions. After that tension had reached a peak and prime minister Necmettin Erbakan resigned in 18 June 1997 in order to prime ministry to True Path Party but President of Turkey gave mission to establish new government to another party. For further information see: [http://en.wikipedia.org/wiki/1997\\_military\\_memorandum\\_\(Turkey\)](http://en.wikipedia.org/wiki/1997_military_memorandum_(Turkey)) [Accessed 10.09.2013]

<sup>109</sup> The first was Milli Nizam Partisi (National Order Party): Turkish Constitutional Court E.1971/1, K.1971/1, 20 May 1971; the second was Milli Selamet Partisi (National Salvation Party) closed in 16 October 1981 by military government after 1980 coup. In addition, after Refah, the fourth party named Fazilet Partisi (Virtue Party) which was established by those who were not prohibited by the Court was also closed: Turkish Constitutional Court E.1999/2, K.S.2001/2, 22 June 2001.

Convention... it has pointed out several times that the Convention was designed to maintain and promote the ideals and values of a democratic society...<sup>110</sup> The fact that a political programme is incompatible with the current principles and structures of a state does not make it incompatible with the rules of democracy. It is of the essence of democracy to allow diverse political programmes to be proposed and debated, even if that calls into question the way the state is currently organised provided that does not harm democracy itself.<sup>111</sup>

When looking to the United Communist Party case, Boyle pointed out that the European Court has in mind the model of democracy constituted by human rights and pluralism. However, political parties have a 'primordial role' in order to achieve pluralism of different opinions in democracies. Therefore, only convincing reasons could justify restrictions on their freedom of association. Contrarily, contracting parties have a narrow margin of appreciation regarding determining the necessity of the dissolution of political parties. The European Court should not be influenced in contracting states' evaluations.<sup>112</sup>

To turn back to Refah case, the European Court established a different perception from United Communist Party case. The evaluation of the European Court triggered a "Militant Democracy" debate through the Refah Case.

"Militant Democracy" is a theory first introduced by Karl Loewenstein in 1937, at the time of the German Nazis, which states that a constitutional democracy can restrict human rights and

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<sup>110</sup> *United Communist Party of Turkey and Others v. Turkey*, European Court of Human Rights Grand Chamber, Application No. 113/1996/752/951, 30 January 1998, Para. 45

<sup>111</sup> *United Communist Party of Turkey and Others v. Turkey*, European Court of Human Rights Grand Chamber, Application No. 113/1996/752/951, 30 January 1998, Para. 57

<sup>112</sup> Boyle, K. (2004) "Human Rights, Religion and Democracy: The Refah Party Case" Essex Human Rights Review, Vol.1, No.1, p. 8

freedoms in order to prevent events aimed to disqualify democracy, such as fascism.<sup>113</sup> In other words, according to the theory, democracy refuses all danger against its existence by restricting and suspending democratic rights. For instance, the banning of political parties and associations are the most used methods of militant democracy.<sup>114</sup>

In fact, the question of “what will happen when a party wants to change democracy, by using democratic ways, and wins?” had been asked by various philosophers since the enlightenment era. From Jean Jacques Rousseau’s perspective, true democracy can only be achieved by consensus of society (general will).<sup>115</sup> According to Karl Popper, in a democracy, the majority must respect innocuous fractions in society.<sup>116</sup> However, it seems that the most recent answer is that liberal democracy can turn into militant democracy.

Militant democracy had been exercised in numerous states including European states such as the UK, Germany, France and Italy on the grounds of fascism, extremist-separatist groups and terror.<sup>117</sup> However, in the Refah case, Islam was also defined as a danger by both Turkish and European courts. The Turkish Constitutional Court defined democracy as the antithesis of Sharia. The Court emphasised that secularism is the philosophy of the life and core of modernisation of Turkey. Furthermore, the Court highlighted that the Turkish revolution which was led by Mustafa Kemal Ataturk became meaningful through secularism, allowing a party to reinstate Islamic state is not possible in democracy. Nevertheless, the Court pointed

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<sup>113</sup> Loewenstein, K. (1937) “*Militant Democracy and Fundamental Rights I*” *The American Political Science Review*, Vol.XXXI, No.3, p.417

<sup>114</sup> Macklem, P. (2006) “*Militant Democracy, Legal Pluralism and The Paradox of Self-Determination*” *International Journal of Constitutional Law*, Vol.4, pp.488-489

<sup>115</sup> Rousseau, J. J. (1762) “*The Social Contract*” translated by G.D.H. Cole, p.18 Available at: [http://mongolianmind.com/wp-content/uploads/2012/11/Rousseau\\_contrat-social-1221.pdf](http://mongolianmind.com/wp-content/uploads/2012/11/Rousseau_contrat-social-1221.pdf) [Accessed 10.09.2013]

<sup>116</sup> Popper, K. R. (1945) “*The Open Society and Its Enemies: The Spell of Plato*” Routledge, pp.149-178

<sup>117</sup> For further information see: Sajo, A. (2004) “*Militant Democracy*” Eleven International Publishing; and Thiel, M. (2009) (Ed.) “*The Militant Democracy Principle in Modern Democracies*” Ashgate Publishing

out that Refah had not reacted to offensive public statements and had not called for violence.<sup>118</sup>

Likewise, the European Court affirmed that Refah's intention was to set up the plurality of legal systems based on religious discrimination and to apply Sharia to the internal and external relations of the Muslim community (ummah) within the context of legal pluralism.<sup>119</sup>

As regards Sharia, the European Court stated its view with the following words: "Like the Constitutional Court, the Court considers that Sharia, which faithfully reflects the dogmas and divine rules laid down by religion, is stable and invariable. Principles such as pluralism in the political sphere or the constant evolution of public freedoms have no place in it. The Court notes that, when read together, the offending statements, which contain explicit references to the introduction of Sharia, are difficult to reconcile with the fundamental principles of democracy, as conceived in the Convention taken as a whole. It is difficult to declare one's respect for democracy and human rights while at the same time supporting a regime based on Sharia, which clearly diverges from Convention values, particularly with regard to its criminal law and criminal procedure, its rules on the legal status of women and the way it intervenes in all spheres of private and public life in accordance with religious precepts."<sup>120</sup>

According to Boyle, the European Court made a critique of Islam, which has over 100 million followers in the area of the jurisdiction of the European Court, unnecessarily and inappropriately.<sup>121</sup> Furthermore, according to Russian Judge Kovler, there is no doubt of the

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<sup>118</sup> Turkish Constitutional Court, Refah Partisi, E.1997/1, K.1998/1, 16 January 1998, AYMKD Vol.34/2, pp.1027-1054

<sup>119</sup> Oder, B. E. (2009) 'Turkey'. In Thiel, M. (2009) (Ed.) "*The Militant Democracy Principle in Modern Democracies*" Ashgate Publishing, Chapter 12, p.305

<sup>120</sup> *Refah Partisi (The Welfare Party) and Others v. Turkey*, European Court of Human Rights Grand Chamber, Application No. 41340/98, 41342/98 and 41344/98, 13 Feb. 2003, paragraphs 72 and 123.

<sup>121</sup> Boyle, K. (2004) "*Human Rights, Religion and Democracy: The Refah Party Case*" Essex Human Rights Review, Vol.1, No.1, p.4

extremely sensitive issues raised by religion and its values. However, as an international court, the European Court should avoid using terms borrowed from politico-ideological discourse, such as "Islamic fundamentalism" (paragraph 94), "totalitarian movements" (paragraph 99), "threat to the democratic regime" (paragraph 107).<sup>122</sup>

According to Schilling, the mission of the European Court should not to be the judging of secular values. Rather, its role is to ensure whether freedom of association has been violated or not. However, in the Refah decision, the Court did not consider arguments made by the Refah members based on the Party constitution. In fact, Refah's constitution did not promote Islamic values and as a prime minister Necmettin Erbakan always upheld principles of democracy by his decisions. Furthermore, Refah was the largest and ruling party elected by people democratically. Every political party has different people with different ideas and naturally some of them may be excessive. Judging an entire party's strategy based on a few people's ideas is not fair. Therefore, it seems that the European Court was influenced by Islamophobia<sup>123</sup> However, Refah had never introduced Islamic law.<sup>124</sup>

### **4.3. Findings and Evaluation**

As specified, historical development and natural improvements have resulted in different perceptions. Different perceptions define the limits of freedoms. In Islam, the values of God and Prophet are greater than Muslims' lives themselves. There are plenty of verses and hadiths which emphasise these values. For instance, the following hadith gives an idea to understand what the Prophets' position is in Islam: "If you do not love me more than your

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<sup>122</sup> *Refah Partisi (The Welfare Party) and Others v. Turkey*, European Court of Human Rights Grand Chamber, Application No. 41340/98, 41342/98 and 41344/98, 13 Feb. 2003, concurring opinion of Judge Kovler, para.2

<sup>123</sup> Islamophobia was first defined by British Runnymede Trust in 1997. It is prejudice and hatred towards Islam and therefore refers to practice of discrimination and dislike against all Muslims. For further information see: <http://en.wikipedia.org/wiki/Islamophobia> [Accessed 10.09.2013]

<sup>124</sup> Schilling, D. (2004) "European Islamophobia and Turkey – Refah Partisi (The Welfare Party) v. Turkey" Loyola of Los Angeles International and Comparative Law Review, Vol.26, pp.501-515

parents, children and yourself, you will not be truly believers”<sup>125</sup> Therefore, both in Danish Cartoons and Salman Rushdie events, Muslims had reacted with great anger. Since the Salman Rushdie affair was the older one, Jyllands-Posten cannot say that they did not expect any reactions from Muslims. However, this situation does not justify the casualties which occurred because of reactions. But these two incidents demonstrated that even in the last 50 years, Muslims’ perceptions of rights are still different from that of Westerners. Freedom of expression was chosen in order to show that there is no consensus on a universal freedom which is both regulated in the West and Islam. Furthermore, today, there is no authority to limit Muslims attitudes against such events like these.

The impact of Islamophobia and the orientalist approach also results in insulting Islam. In fact, even in Hollywood films, Muslims have been insulted a numbers of times. Especially after the September 11th attack, tensions have risen between the two worlds. Al-Qaeda called a Holy War (jihad) and in response US president George W. Bush called Gods War and considered their attempt as a new Crusade. As a result, persuasiveness of Western-originated notions such as democracy and human rights have been lost before Muslims. Now, the majority of Muslims think that there is Western hypocrisy against themselves, although the European Court of Human Rights established jurisprudence of hate speech and the UN adopted resolutions regarding the defamation of religions.

In terms of freedom of association, which is also regulated both in the West and Islam as a universal freedom, the European Court took one of the most contested decisions. The court has established its opinion on Islam and considered a political party which was led by Muslims as a danger to democracy. The Refah case shows that the European Court adopted

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<sup>125</sup> Bukhari “*Iman*” Otuken Publications, 2004 Edition, Hadith 8

the principle of militant democracy and trivialised freedom of association which is the fundamental freedom needed to sustain democracy. Militant democracy itself is like a paradox but using this principle against Islam is inadmissible.



## **Chapter V: Conclusion**

This thesis has shown that there are ontological differences between the Western world and the Islamic world. The historical development of the West has resulted in rise of human rights and secular democracy due to unjust situations, including slavery, colonisation and tyranny. Furthermore, the experience of the West with religion gave rise of secular states. As a result, religion and the state were separated. The natural progression of the West created “democratic society”, and the perception of rights has been influenced by public memory. Therefore, the limits of rights has been defined by society itself. On the other hand, the first inception of Islam started under distinctive circumstances. As a religion, Islam replaced current social order by its new rules and created “Islamic Society” step by step. The Islamic society has continued to transform until today but the main perception of society is still the same. In Islam, the limits of rights is the same as the limits of religion because Islam teaches that every human being has been sent by God to fulfil a mission, which is obedience to God. In response, God promises Heaven to His slaves. When belief of hereafter come together with the mission in this world, it can be said that Muslims have “dual perception”. In other words, a Muslim thinks that he or she is responsible for his or her deeds both in this life and hereafter. Therefore, if God says that Sharia is an untouchable area, Muslims obey Him. However, qualified scholars can update Sharia at any time. This cannot be fundamental reformation, but there is a lack of scholars to update Sharia. This is the main reason why lots of Western scholars claim that Islam is stable.

Different perceptions can be seen on the ground of two fundamental freedoms which are considered by both the West and Islam as universal: freedom of expression and freedom of association. The Danish Cartoons and Salman Rushdie affairs have shown that the perception of Westerners and Muslims on freedom of expression is different. Muslims considered that

insulting the Prophet exceeds the limits of their religion. Western people, on the other hand, considered that this is another form of freedom of expression. In fact, the question of why Western people want to show their freedom on others' religious values has not been answered. However, there is no doubt that some people think that religion is a restriction for life and they want to prove that they are not bound by dogma or unchangeable rules.

Politically, many scholars claim that Islam and the West are in clash of civilisations like two opponent enemies. However, in terms of human rights, the European Court made an unfortunate decision in the *Refah vs. Turkey* case and has adopted the principle of Militant Democracy. As a regional court of human rights, the European Court considered Islam as the direct opposite of democracy and claimed that Islamic demands in Turkey such as the wearing of headscarves are a danger for the existence of democratic society. However, the Court should have only examined whether or not there was a violation of freedom of association. Giving an opinion on political Islam, which is a recent debate as has been explained, was not its area of jurisdiction.

Especially after the enlightenment, Western ideas and culture have become predominant across the rest of the world. The Renaissance, the American and French revolutions, the industrial revolution, and the Protestant movement helped Western civilisation to spread all over the world. Meanwhile, human rights discourse has spread all over the world step by step. While some cultures accepted Western human rights, others started to trace their own human rights concept. As a result, particularly after the establishment of UN, universalist ideas have reached a peak and most cultures accepted human rights discourse except Islam. In fact, if secular democracy is required for the realisation of human rights, it is normal for Islam to refuse this concept. Furthermore, if human rights is only for democratic societies, this claim itself proves that human rights is not universal. However, every human deserve to have rights

and every culture has a concept of rights one way or another. Therefore, there must be some commonalities between the two worlds. The otherisation of Islam and Muslims by claiming that they are fundamentalists, jihadists and political Islamists is not working in today's world. This orientalist approach must be abandoned by the West. On the other hand, Muslims have to realise that not everything that comes from west is evil. In response, they have to abandon their occidentalist approach. In fact, declarations from the Islamic world, such as the Cairo declaration, are too reactionary and they imitate the Universal Declaration of Human Rights.

Furthermore, the universality of western human rights has never been practised universally. Likewise, the universality of the Islamic concept of human rights has never been practised either. These two universalistic approaches are based on orientalism and occidentalism and these attitudes are too ego-centric. Therefore, the myth of universality polarises the two worlds like enemies. However, the Western concept of human rights has been realised in a regional system, which is the European Court's Human Rights System. With the exception of Turkey, the European Court worked quite well because European countries share the same historical background. The Islamic concept has never had a regional system of human rights.

One misconception about Islam is that Islamic law has different interpretations and there is no consensus on Sharia. In fact, different interpretations based on common principles are beneficial. For instance, in the Western world, fundamental principles of democracy have been implemented divergently between Anglo-Saxon countries and Continental European countries. Alike democracy, Sharia gives fundamental principles, then, different interpretations help to implement Sharia in different societies. Therefore, it is quite ordinary to have different interpretations in today's pluralist and cosmopolitan world.

As a possible future solution, a regional system and Islamic Court of Human Rights need to be established, and the Islamic world should adopt this system in order to realise the human

rights concept in Islam. Only this way can theoretical debate on whether Islam has its own human rights concept be proved. The commonalities and differences between the two worlds in terms of human rights will appear by comparing regional systems. Furthermore, an international legal system and court based on human rights needs to be established. In fact, in 1987, the Organisation of Islamic Cooperation attempted to establish the “International Islamic Court of Justice” to be an international judicial system for the Muslim world. The OIC states had drafted its statute in Kuwait but the court has not yet been established, and it seems that it will not be established in the near future. The draft of the Islamic International Court of Human Rights considered that Sharia is the only source that will be used for International disputes between signatory states. This attempt itself demonstrates that it is possible to establish a regional system based on human rights around a possible Islamic Court of Human Rights. The current “OIC Independent Permanent Human Rights Commission” is just an advisory opinion, and it should be replaced by an effective international remedy which can be an Islamic Court of Human Rights. Consequently, benefits of “regional pluralism” will open new discussion, in terms of human rights.

## Bibliography

- Abdel Haleem, M. A. S. (2005) *"The Quran: A New Translation"* Oxford University Press
- Ahmad ibn Hanbal *"Musnad"* Hadith 169, Dar-as-Salam Publications
- Akhtar, S. (1989) *"Be Careful with Muhammad: The Salman Rushdie Affair"* Bellew Press, pp.6-85
- Algar, H. (1981) *"Islam and Revolution: Writings and Declarations of Imam Khomeini"* Mizan Press, p.38
- Alves, J. A. L. (2000) *"The Declaration of Human Rights in Postmodernity"* Human Rights Quarterly, Vol. 22, p. 481
- An Nadwi, Abu'l H. A. (1993) *"Muhammad the Last Prophet: A Model for All Time"* Academy of Islamic Research and Publications, pp.11-75
- An-Naim, A. A. (1990) *"Towards an Islamic Reformation: Civil Liberties, Human Rights and International Law"* Syracuse University Press, pp.222-236
- An-Naim, A. A. (1992) 'Toward a Cross-Cultural Approach to Defining International Standards of Human Rights - the Meaning of Cruel, Inhuman, or Degrading Treatment or Punishment'. In An-Naim, A. A. (Ed.) (1995) *"Human Rights in Cross-Cultural Perspectives: A Quest for Consensus"* University of Pennsylvania Press, p.19
- An-Naim, A. A. (1994) *"What Do We Mean by Universal"* Index on Censorship, Vol.4-5, p.121
- An-Naim, A. A. (1998) 'Sharia and Basic Human Rights Concerns'. In Kurzman, C. (ed.) *"Liberal Islam: A Sourcebook"* Oxford University Press, p.236
- An-Naim, A. A. (2008) *"Islam and the Secular State"* Harvard University Press, p.1
- Baderin, M. (2003) *"International Human Rights and Islamic Law"* Oxford University Press, pp.13-16
- Baderin, M. A. (2001) *"Dialogue Among Civilizations As A Paradigm for Achieving Universalism in International Human Rights – A Case Study With Islamic Law"* Asia-Pacific Journal on Human Rights and the Law, Volume 2, Number 2, p.2
- Barber, B. (1996) *"Jihad vs. McWorld: How Globalism and Tribalism are Reshaping the World"* Ballantine Books
- Bennett, C. (2005) *"Muslims and Modernity: An Introduction to the Issues and Debates"* Continuum Press, p.63
- Berween, M. (2002) *"The Fundamental Human Rights: An Islamic Perspective"* 6 International Journal of Human Rights, No.1, pp.61-78

- Bielefeldt, H. (2000) “‘Western’ versus ‘Islamic’ Human Rights Conceptions?: A Critique of Cultural Essentialism in the Discussion on Human Rights” *Political Theory*, Vol. 28, No. 1, pp. 90-121
- Boyle, K. (2004) “*Human Rights, Religion and Democracy: The Refah Party Case*” *Essex Human Rights Review*, Vol.1, No.1, p. 4-8
- Bukhari “*Iman*” Otuken Publications, 2004 Edition, Hadith 8
- Bukhari “*Jihad*” Otuken Publications 2004 Edition, Hadith 148
- Bukhari “*Sahih*” Otuken Publications, 2004 Edition, Hadith 148
- Canan, I (2004) “*Kutub al Sittah*” (Six Books) Zaman Publications, vol.10, p.224
- Cassese, A. (1990) “*Human Rights in a Changing World*” Worcester, Polity Press, p. 32–47
- Castillo, A. (2010) “*Banned Books: Censorship in Eighteenth-Century England*” GRIN Verlag, p.12
- Cerna, C. M. (1994) “*Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts*”, *Human Rights Quarterly*, Vol. 16, p. 746.
- Chase, A. T. (2012) “*Human Rights, Revolution and Reform in Muslim World*” Lynne Rienner Publishers, pp.1-99
- Chaudhry, M. S. (1993) “*Human Rights in Islam*” All Pakistan Islamic Education Congress Publications, p.2-199
- Clanchy, M.T. (1997) “*A History of England: Early Medieval England*” The Folio Society, pp. 141-147
- Cobbah, J. A. M. (1987) “*African Values and the Human Rights Debate: An African Perspective*”, *Human Rights Quarterly*, Vol. 9, p. 330
- Cox, C. & Marks, J. (2003) “*The West, Islam and Islamism: Is the Ideological Islam Compatible with Liberal Democracy?*” Civitas Publications, p.10
- Cumper, P. (2003) “*Europe, Islam and Democracy – Balancing Religious and Secular Values under the European Convention on Human Rights*” *European Yearbook of Minority Issues*, Vol.3, pp.167-168.
- Delling, M. (2004) “*Islam and Human Rights*” Master Thesis, Goteborg University Press, p.19
- Donnelly, J. (1998) “*International Human Rights*” Westview Press, pp.18-39

- Doyle, W. (2002) *“The Oxford History of the French Revolution”* Oxford University Press, pp.73–74
- Ebenstein, W. (1999) *“Great Political Thinkers: From Plato to the Present”* Wadsworth Publishing Company, p.54
- Esposito, J. L. (1999) *“The Islamic Threat? Myth or Reality”* Oxford University Press, p.218
- Ettmueller, E. U. (2006) *“Islam and Democracy”* Revista Internacional de Filosofia, Vol.3 p.2
- European Court of Human Rights (2012) *“Factsheet-Hate Speech”* ECHR Publications, p.4-5
- Freeman, M. (2002) *“Human Rights : An Interdisciplinary Approach”* Cambridge Polity Press, pp. 15-17
- Freeman, M. (2004) *“The Problem of Secularism in Human Rights Theory”* Human Rights Quarterly, Vol.26, No.2, p.400
- Fukuyama, F. (1992) *“The End of History and the Last Man”* Free Press
- Fukuyama, F. (2001) *“History is Still Going Our Way”* Wall Street Journal, 5 October 2001
- Galtung, J. (1999) *“Human Rights in Another Key”* Metis Publishing, pp. 33-34
- Gearon, L. (2006) *“Freedom of Expression and Human Rights”* Sussex Academic Press, p.115
- Gokberk, M. (1999) *“History of Philosophy”* Remzi Publishing, p.37
- Graham, L. B. (2009) *“Defamation of Religions: The End of Pluralism?”* Emory International Law Review, vol.23, p.70-71
- Halliday, F. (1995) ‘Relativism and Universalism in Human Rights: The Case of the Islamic Middle East’ in Beetham, D. (Ed.) (1995) *“Politics and Human Rights”* Blackwell, pp.152-155
- Hansen, R. (2006) *“The Danish Cartoon Controversy: A Defence of Liberal Freedom”* IOM International Migration, Vol.44, p.6-7
- Hashemi, N. (2009) *“Islam, Secularism and Liberal Democracy”* Oxford University Press, p.4-135
- Hoang, N. (2002) *“Human Dignity and Freedoms: Global and Universal Values of Human Rights”* Communist Journal, No. 35, p.12
- Howard, R. E. & Donnelly, J. (1997) ‘Liberalism and Human Rights: A Necessary Connection’. In Ishay, M. (Ed.) (1997) *“The Human Rights Reader: Major Political Essays, Speeches, and Documents From the Bible to the Present”*, New York and London, Routledge, p. 268.

Huntington, S. P. (1996) *“The Clash of Civilizations and Remaking of World Order”* Simon and Schuster Press

Ibn Hisham *“Al-Sira al-Nabawiyya (The Life of The Prophet)”* English translation of Stillman, N. (1979), p. 124

Jeton, M. (2009) *“Tensions Between Freedom of Expression and Religious Sensitivity-An Analysis of Danish Cartoons”* CEU eTD Collection, p.24-25

Kabbani, R. (1989) *“Letter to Christendom”* Virago Publications, p.67

Kaplan, R (2000) *“The Coming Anarchy: Shattering the Dreams of the Post Cold War”* Vintage Books

Khatab, S. & Bouma, G. D. (2007) *“Democracy in Islam”* Routledge Press, pp.11-192

Klausen, J. (2009) *“The Danish Cartoons and Modern Iconoclasm in the Cosmopolitan Muslim Diaspora”* Harvard Middle Eastern and Islamic review, Vol.8, p.87-88

Kurasawa, F. (2007) *“The Work of Global Justice”* Cambridge University Press, pp.157-193

Kureishi, H. (1995) *“The Black Album”* Faber and Faber Publications, p.159

Langlois, A. J. (2003) *“Human Rights without Democracy? A Critique of the Separationist Thesis”* Human Rights Quarterly, Vol.25, No:4, p.1017

Lewis, B. (1996) *“Islam and Liberal Democracy: A Historical Overview”* Journal of Democracy, vol.7

Little, D. Kelsay, J. and Sachedina, A. (1988) *“Human Rights and the Conflict of Cultures”* University of South Carolina Press, p.85

Loewenstein, K. (1937) *“Militant Democracy and Fundamental Rights I”* The American Political Science Review, Vol.XXXI, No.3, p.417

Macklem, P. (2006) *“Militant Democracy, Legal Pluralism and The Paradox of Self-Determination”* International Journal of Constitutional Law, Vol.4, pp.488-489

Mawdudi, A. A. (1976) *“Human Rights in Islam”* p.1 available at: [http://dspace.jgu.edu.in:8080/dspace/bitstream/10739/325/1/Maulana\\_Mawdudi\\_Human\\_Rights\\_in\\_Islam.pdf](http://dspace.jgu.edu.in:8080/dspace/bitstream/10739/325/1/Maulana_Mawdudi_Human_Rights_in_Islam.pdf) [Accessed 10.09.2013]

Mayer, A. E. (1999) *“Islam and Human Rights: Tradition and Politics”* Westview Press, Boulder, pp.8-37

McBride, J. (2005) *“Freedom of Association, The Essentials of Human Rights”* Hodder Arnold Press, p.18

Morsink, J. (1999). "[The Universal Declaration of Human Rights: origins, drafting, and intent](#)" University of Pennsylvania Press, pp. 4-46

*Norwood v. the United Kingdom*, ECHR case no. 23131/03

O'Sullivan, D. (2001) "*The Death Sentence for Mahmoud Muhammad Taha: Misuse of the Sudanese Legal System and Islamic Shari'a law?*" The International Journal of Human Rights, vol. 5, issue 3, pag. 45-70

Oder, B. E. (2009) 'Turkey'. In Thiel, M. (2009) (Ed.) "*The Militant Democracy Principle in Modern Democracies*" Ashgate Publishing, Chapter 12, p.305

Pollis, A. & Schwab, P. (1979) "Human Rights: Cultural and Ideological Perspectives" Praeger Publishers, p.17

Popper, K. R. (1945) "*The Open Society and Its Enemies: The Spell of Plato*" Routledge, pp.149-178

Rawls, J. (1993) "*Political Liberalism*" Columbia University Press, p.151

*Refah Partisi (The Welfare Party) and Others v. Turkey*, European Court of Human Rights Grand Chamber, Application No. 41340/98, 41342/98 and 41344/98, 13 Feb. 2003. In American Society of International Law (2003) "*International Legal Materials*", Vol. 42, No. 3, pp. 560-595

Renteln, A. D. (1990) "*International Human Rights: Universalism Versus Relativism*" Sage Publications, pp. 29-141

Rousseau, J. J. (1762) "*The Social Contract*" translated by G.D.H. Cole, p.18 Available at: [http://mongolianmind.com/wp-content/uploads/2012/11/Rousseau\\_contrat-social-1221.pdf](http://mongolianmind.com/wp-content/uploads/2012/11/Rousseau_contrat-social-1221.pdf) [Accessed 10.09.2013]

Russell, B. (1945) "*A History of Western Philosophy*" Taylor & Francis Publishing, p.54

Said, E. (1978) "*Orientalism*" Routledge, pp.18-43

Sajo, A. (2004) "*Militant Democracy*" Eleven International Publishing

Schacht, J. & Bosworth, C. E. (1974) "*The Legacy of Islam*" Oxford University Press, p.405

Schilling, D. (2004) "*European Islamophobia and Turkey – Refah Partisi (The Welfare Party) v. Turkey*" Loyola of Los Angeles International and Comperative Law Review, Vol.26, pp.501-515

Senturk, R. (2002) "*Adamiyyah and Ismah: The Contested Relationship between Humanity and Human Rights in Classical Islamic Law*" Journal of Islamic Studies, Vol.8, pp.1-3

Senturk, R. (2005) "*Sociology of Rights: 'I Am Therefore I Have Rights': Human Rights in Islam between Universalistic and Communalistic Perspectives*" Muslim World Journal of Human Rights, Vol.2 Issue.1, pp.1-34

Slaughter, M. M. (1993) “*The Salman Rushdie Affair: Apostasy, Honor and Freedom of Speech*” Virginia Law Review, Vol.79, p.156-157

Thiel, M. (2009) (Ed.) “*The Militant Democracy Principle in Modern Democracies*” Ashgate Publishing

Tibi, B. (1998) “*The Challenge of Fundamentalism: Political Islam and the New World Disorder*” University of California Press, p.41-209

Tibi, B. (2001) “*Islam Between Culture and Politics*” Palgrave Publications, pp.152-229

Turkish Constitutional Court E.1971/1, K.1971/1, 20 May 1971

Turkish Constitutional Court, Refah Partisi, E.1997/1, K.1998/1, 16 January 1998, AYMKD Vol.34/2, pp.1027-1054

Turkish Constitutional Court E.1999/2, K.S.2001/2, 22 June 2001.

*United Communist Party of Turkey and Others v. Turkey*, European Court of Human Rights Grand Chamber, Application No. 113/1996/752/951, 30 January 1998, Para. 45-57

White, S. (1997) “*Freedom of Association and the Right to Exclude*” The Journal of Political Philosophy, Vol.5, No.4, p.373

Wood, G. S. (2003) “*The American Revolution: A History*” Modern Library Publishing, p.142

Zaidan, A. (1969) “*Citizen and State in the Islamic Shariah*” Kultur Press, p.80

[http://en.wikipedia.org/wiki/1997\\_military\\_memorandum\\_\(Turkey\)](http://en.wikipedia.org/wiki/1997_military_memorandum_(Turkey)) [Accessed 10.09.2013]

<http://en.wikipedia.org/wiki/Islamophobia> [Accessed 10.09.2013]

[http://en.wikipedia.org/wiki/Natural\\_law](http://en.wikipedia.org/wiki/Natural_law) [Accessed 10.09.2013]

[http://en.wikipedia.org/wiki/The\\_Satanic\\_Verses\\_controversy](http://en.wikipedia.org/wiki/The_Satanic_Verses_controversy) [Accessed 10.09.2013]

[http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf) [Accessed 10.09.2013]

<http://www1.umn.edu/humanrts/instree/cairodeclaration.html> [Accessed 10.09.2013]

[http://www1.umn.edu/humanrts/instree/islamic\\_declaration\\_HR.html#belief](http://www1.umn.edu/humanrts/instree/islamic_declaration_HR.html#belief) [Accessed 10.09.2013]

<http://www1.umn.edu/humanrts/instree/loas2005.html> [Accessed 10.09.2013]

<http://www.un.org/en/documents/udhr/> [Accessed 10.09.2013]

## **Annex I: The Farewell Sermon**

O People, lend me an attentive ear, for I know not whether after this year, I shall ever be amongst you again. Therefore listen to what I am saying to you very carefully and take these words to those who could not be present here today.

O People, just as you regard this month, this day, this city as Sacred, so regard the life and property of every Muslim as a sacred trust. Return the goods entrusted to you to their rightful owners. Hurt no one so that no one may hurt you. Remember that you will indeed meet your Lord, and that He will indeed reckon your deeds. ALLAH has forbidden you to take usury (interest), therefore all interest obligation shall henceforth be waived. Your capital, however, is yours to keep. You will neither inflict nor suffer any inequity. Allah has Judged that there shall be no interest and that all the interest due to Abbas ibn 'Abd'al Muttalib (Prophet's uncle) shall henceforth be waived...

Beware of Satan, for the safety of your religion. He has lost all hope that he will ever be able to lead you astray in big things, so beware of following him in small things.

O People, it is true that you have certain rights with regard to your women, but they also have rights over you. Remember that you have taken them as your wives only under Allah's trust and with His permission. If they abide by your right then to them belongs the right to be fed and clothed in kindness. Do treat your women well and be kind to them for they are your partners and committed helpers. And it is your right that they do not make friends with any one of whom you do not approve, as well as never to be unchaste.

O People, listen to me in earnest, worship Allah, say your five daily prayers (Salah), fast during the month of Ramadan, and give your wealth in Zakat. Perform Hajj if you can afford to.

All mankind is from Adam and Eve, an Arab has no superiority over a non-Arab nor a non-Arab has any superiority over an Arab; also a white has no superiority over black nor a black has any superiority over white except by piety and good action. Learn that every Muslim is a brother to every Muslim and that the Muslims constitute one brotherhood. Nothing shall be legitimate to a Muslim which belongs to a fellow Muslim unless it was given freely and willingly. Do not, therefore, do injustice to yourselves.

Remember, one day you will appear before Allah and answer your deeds. So beware, do not stray from the path of righteousness after I am gone.

O People, no prophet or apostle will come after me and no new faith will be born. Reason well, therefore, O People, and understand words which I convey to you. I leave behind me two things, the QURAN and my example, the SUNNAH and if you follow these you will never go astray.

All those who listen to me shall pass on my words to others and those to others again; and may the last ones understand my words better than those who listen to me directly. Be my witness, O Allah, that I have conveyed your message to your people.



## **Annex II: Universal Declaration of Human Rights**

Preamble,

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore, The General Assembly, Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

## Article I

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

## Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

## Article 3

Everyone has the right to life, liberty and security of person.

## Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

## Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

## Article 6

Everyone has the right to recognition everywhere as a person before the law.

## Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

## Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

## Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

## Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

## Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

## Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

## Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

#### Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

#### Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

#### Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

#### Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

#### Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

#### Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

#### Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

#### Article 21

- 1 . Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

#### Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

#### Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

#### Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

#### Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

#### Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

#### Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

#### Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

#### Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

#### Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

### **Annex III: Cairo Declaration on Human Rights in Islam**

The Nineteenth Islamic Conference of Foreign Ministers (Session of Peace, Interdependence and Development), held in Cairo, Arab Republic of Egypt, from 9-14 Muharram 1411H (31 July to 5 August 1990),

Keenly aware of the place of mankind in Islam as vicegerent of Allah on Earth;

Recognizing the importance of issuing a Document on Human Rights in Islam that will serve as a guide for Member states in all aspects of life;

Having examined the stages through which the preparation of this draft Document has so far, passed and the relevant report of the Secretary General;

Having examined the Report of the Meeting of the Committee of Legal Experts held in Tehran from 26 to 28 December, 1989;

Agrees to issue the Cairo Declaration on Human Rights in Islam that will serve as a general guidance for Member States in the Field of human rights.

Reaffirming the civilizing and historical role of the Islamic Ummah which Allah made as the best community and which gave humanity a universal and well-balanced civilization, in which harmony is established between hereunder and the hereafter, knowledge is combined with faith, and to fulfill the expectations from this community to guide all humanity which is confused because of different and conflicting beliefs and ideologies and to provide solutions for all chronic problems of this materialistic civilization.

In contribution to the efforts of mankind to assert human rights, to protect man from exploitation and persecution, and to affirm his freedom and right to a dignified life in accordance with the Islamic Shari'ah.

Convinced that mankind which has reached an advanced stage in materialistic science is still, and shall remain, in dire need of faith to support its civilization as well as a self motivating force to guard its rights;

Believing that fundamental rights and freedoms according to Islam are an integral part of the Islamic religion and that no one shall have the right as a matter of principle to abolish them

either in whole or in part or to violate or ignore them in as much as they are binding divine commands, which are contained in the Revealed Books of Allah and which were sent through the last of His Prophets to complete the preceding divine messages and that safeguarding those fundamental rights and freedoms is an act of worship whereas the neglect or violation thereof is an abominable sin, and that the safeguarding of those fundamental rights and freedom is an individual responsibility of every person and a collective responsibility of the entire Ummah;

Do hereby and on the basis of the above-mentioned principles declare as follows:

#### ARTICLE 1:

(a) All human beings form one family whose members are united by their subordination to Allah and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, colour, language, belief, sex, religion, political affiliation, social status or other considerations. The true religion is the guarantee for enhancing such dignity along the path to human integrity.

(b) All human beings are Allah's subjects, and the most loved by Him are those who are most beneficial to His subjects, and no one has superiority over another except on the basis of piety and good deeds.

#### ARTICLE 2:

(a) Life is a God-given gift and the right to life is guaranteed to every human being. It is the duty of individuals, societies and states to safeguard this right against any violation, and it is prohibited to take away life except for a shari'ah prescribed reason.

(b) It is forbidden to resort to any means which could result in the genocidal annihilation of mankind.

(c) The preservation of human life throughout the term of time willed by Allah is a duty prescribed by Shari'ah.

(d) Safety from bodily harm is a guaranteed right. It is the duty of the state to safeguard it, and it is prohibited to breach it without a Shari'ah-prescribed reason.

#### ARTICLE 3:

(a) In the event of the use of force and in case of armed conflict, it is not permissible to kill non-belligerents such as old men, women and children. The wounded and the sick shall have the right to medical treatment; and prisoners of war shall have the right to be fed, sheltered and clothed. It is prohibited to mutilate or dismember dead bodies. It is required to exchange prisoners of war and to arrange visits or reunions of families separated by circumstances of war.

(b) It is prohibited to cut down trees, to destroy crops or livestock, to destroy the enemy's civilian buildings and installations by shelling, blasting or any other means.

#### ARTICLE 4:

Every human being is entitled to human sanctity and the protection of one's good name and honour during one's life and after one's death. The state and the society shall protect one's body and burial place from desecration.

#### ARTICLE 5:

(a) The family is the foundation of society, and marriage is the basis of making a family. Men and women have the right to marriage, and no restrictions stemming from race, colour or nationality shall prevent them from exercising this right.

(b) The society and the State shall remove all obstacles to marriage and facilitate it, and shall protect the family and safeguard its welfare.

#### ARTICLE 6:

(a) Woman is equal to man in human dignity, and has her own rights to enjoy as well as duties to perform, and has her own civil entity and financial independence, and the right to retain her name and lineage.

(b) The husband is responsible for the maintenance and welfare of the family.

#### ARTICLE 7:

(a) As of the moment of birth, every child has rights due from the parents, the society and the state to be accorded proper nursing, education and material, hygienic and moral care. Both the fetus and the mother must be safeguarded and accorded special care.

(b) Parents and those in such like capacity have the right to choose the type of education they desire for their children, provided they take into consideration the interest and future of the children in accordance with ethical values and the principles of the Shari'ah.

(c) Both parents are entitled to certain rights from their children, and relatives are entitled to rights from their kin, in accordance with the tenets of the shari'ah.

#### ARTICLE 8:

Every human being has the right to enjoy a legitimate eligibility with all its prerogatives and obligations in case such eligibility is lost or impaired, the person shall have the right to be represented by his/her guardian.

#### ARTICLE 9:

(a) The seeking of knowledge is an obligation and provision of education is the duty of the society and the State. The State shall ensure the availability of ways and means to acquire education and shall guarantee its diversity in the interest of the society so as to enable man to be acquainted with the religion of Islam and uncover the secrets of the Universe for the benefit of mankind.

(b) Every human being has a right to receive both religious and worldly education from the various institutions of teaching, education and guidance, including the family, the school, the university, the media, etc., and in such an integrated and balanced manner that would develop human personality, strengthen man's faith in Allah and promote man's respect to and defence of both rights and obligations.

#### ARTICLE 10:

Islam is the religion of true unspoiled nature. It is prohibited to exercise any form of pressure on man or to exploit his poverty or ignorance in order to force him to change his religion to another religion or to atheism.

#### ARTICLE 11:

(a) Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them, and there can be no subjugation but to Allah the Almighty.

(b) Colonialism of all types being one of the most evil forms of enslavement is totally prohibited. Peoples suffering from colonialism have the full right to freedom and self-determination. It is the duty of all States peoples to support the struggle of colonized peoples for the liquidation of all forms of and occupation, and all States and peoples have the right to preserve their independent identity and econtrol over their wealth and natural resources.

#### ARTICLE 12:

Every man shall have the right, within the framework of the Shari'ah, to free movement and to select his place of residence whether within or outside his country and if persecuted, is entitled to seek asylum in another country. The country of refuge shall be obliged to provide protection to the asylum-seeker until his safety has been attained, unless asylum is motivated by committing an act regarded by the Shari'ah as a crime.

#### ARTICLE 13:

Work is a right guaranteed by the State and the Society for each person with capability to work. Everyone shall be free to choose the work that suits him best and which serves his interests as well as those of the society. The employee shall have the right to enjoy safety and security as well as all other social guarantees. He may not be assigned work beyond his capacity nor shall he be subjected to compulsion or exploited or harmed in any way. He shall be entitled - without any discrimination between males and females - to fair wages for his work without delay, as well as to the holidays allowances and promotions which he deserves. On his part, he shall be required to be dedicated and meticulous in his work. Should workers and employers disagree on any matter, the State shall intervene to settle the dispute and have the grievances redressed, the rights confirmed and justice enforced without bias.

#### ARTICLE 14:

Everyone shall have the right to earn a legitimate living without monopolization, deceit or causing harm to oneself or to others. Usury (riba) is explicitly prohibited.

ARTICLE 15:

(a) Everyone shall have the right to own property acquired in a legitimate way, and shall be entitled to the rights of ownership without prejudice to oneself, others or the society in general. Expropriation is not permissible except for requirements of public interest and upon payment of prompt and fair compensation.

(b) Confiscation and seizure of property is prohibited except for a necessity dictated by law.

ARTICLE 16:

Everyone shall have the right to enjoy the fruits of his scientific, literary, artistic or technical labour of which he is the author; and he shall have the right to the protection of his moral and material interests stemming therefrom, provided it is not contrary to the principles of the Shari'ah.

ARTICLE 17:

(a) Everyone shall have the right to live in a clean environment, away from vice and moral corruption, that would favour a healthy ethical development of his person and it is incumbent upon the State and society in general to afford that right.

(b) Everyone shall have the right to medical and social care, and to all public amenities provided by society and the State within the limits of their available resources.

(c) The States shall ensure the right of the individual to a decent living that may enable him to meet his requirements and those of his dependents, including food, clothing, housing, education, medical care and all other basic needs.

ARTICLE 18:

(a) Everyone shall have the right to live in security for himself, his religion, his dependents, his honour and his property.

(b) Everyone shall have the right to privacy in the conduct of his private affairs, in his home, among his family, with regard to his property and his relationships. It is not permitted to spy

on him, to place him under surveillance or to besmirch his good name. The State shall protect him from arbitrary interference.

(c) A private residence is inviolable in all cases. It will not be entered without permission from its inhabitants or in any unlawful manner, nor shall it be demolished or confiscated and its dwellers evicted.

#### ARTICLE 19:

(a) All individuals are equal before the law, without distinction between the ruler and the ruled.

(b) The right to resort to justice is guaranteed to everyone.

(c) Liability is in essence personal.

(d) There shall be no crime or punishment except as provided for in the Shari'ah.

(e) A defendant is innocent until his guilt is proven in a fast trial in which he shall be given all the guarantees of defence.

#### ARTICLE 20:

It is not permitted without legitimate reason to arrest an individual, or restrict his freedom, to exile or to punish him. It is not permitted to subject him to physical or psychological torture or to any form of maltreatment, cruelty or indignity. Nor is it permitted to subject an individual to medical or scientific experiments without his consent or at the risk of his health or of his life. Nor is it permitted to promulgate emergency laws that would provide executive authority for such actions.

#### ARTICLE 21:

Taking hostages under any form or for any purpose is expressly forbidden.

#### ARTICLE 22:

(a) Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari'ah.

1.. Everyone shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Islamic Shari'ah.

(c) Information is a vital necessity to society. It may not be exploited or misused in such a way as may violate sanctities and the dignity of Prophets, undermine moral and ethical Values or disintegrate, corrupt or harm society or weaken its faith.

(d) It is not permitted to excite nationalistic or doctrinal hatred or to do anything that may be an incitement to any form or racial discrimination.

#### ARTICLE 23:

(a) Authority is a trust; and abuse or malicious exploitation thereof is explicitly prohibited, in order to guarantee fundamental human rights.

(b) Everyone shall have the right to participate, directly or indirectly in the administration of his country's public affairs. He shall also have the right to assume public office in accordance with the provisions of Shari'ah.

#### ARTICLE 24:

All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah.

#### ARTICLE 25:

The Islamic Shari'ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration.