John Locke in conversation with El Debusi

Universal human rights from an Islamic perspective

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What are human rights?

In contrast to civil rights, human rights are rights that people possess solely by virtue of their humanity. They are subjective rights to which everyone is equally entitled. The concept of human rights is based on the idea that these rights are innate, universal, indivisible and inalienable. Civil rights, on the other hand, belong exclusively to citizens (of a particular state, within the borders of that state). When civil or human rights are regulated in a constitution, they are referred to as fundamental rights.

Universality means that these rights are universally valid. Every person has these rights by virtue of their humanity and is obliged to respect the human rights of others. Universality is opposed to locality. Human rights do not need a state or a social structure in order to be valid. They are - in the parlance of the Enlightenment - "innate".[1]

Indivisibility means that human rights must be realized in their entirety. Freedom rights and social rights cannot be separated from each other. The right to freedom cannot be conceived without the right to life. A hierarchy of norms among human rights is inconceivable. All human rights are of equal rank and equally binding in the human rights system.[2]

Inalienability means that these rights cannot and may not be bought for a fee. They cannot be transferred to another person, nor can they be voluntarily waived. For example, a person may not be tortured despite their consent. Nor can they sell their organs in return for payment. These rights cannot be waived.

Can we imagine a world in which people have no right to life, property, freedom, fair legal procedures or security? If these rights did not exist, how could people live and interact peacefully with each other? These rights are indispensable prerequisites for a life that corresponds to human dignity.

This is why the term "human dignity" (*dignitas humana*) is repeatedly used in the literature. Without these rights, no human being on earth can lead a dignified life.

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[1] Legal positivism, on the other hand, denies the universality of human rights. It assumes that a right only comes into being when it is set out in a treaty. Thus, legal positivism finds the source of human rights in the guaranteeing treaties and constitutions.

[2] Without wanting to equate them, this interdependence of human rights is similar to the relationship between the six basic principles of the Islamic faith, for example. They are so interwoven that the non-observance of one principle would be tantamount to a deficit of faith. With regard to human rights, this non-observance would mean a violation of human rights.

The three generations in the doctrine of human rights

In terms of their historical development, human rights are divided into three generations. Human rights of the first generation are roughly formulated in the Universal Declaration of Human Rights (UDHR). As a rule, these are the civil and political defensive rights of liberalism and the democratic rights of participation. In these catalogs, the individual is endowed with rights vis-à-vis the powerful state and their rights to freedom are protected.

Second-generation human rights are generally embodied in international treaties on economic, social and cultural rights. Third-generation human rights represent the collective rights of the global South vis-à-vis Western states. Western states guarantee to help these countries realize the ideals of human rights. These rights include the right to peace and to clean water. They are therefore guaranteed not only for individuals, but also for peoples.

Can human rights be justified by religion?

Human rights are not alien to religions, but rather are anchored in religion, and they can very well be justified on religious grounds - for example, in biblical or Koranic terms.[3] There is a tradition in the European context of justifying human rights in secular terms in order to ensure their objectivity and universality. To this end, central concepts of human rights such as dignitas humana are interpreted. Heiner Bielefeldt, for example, sees human dignity as a claim to respect for the human being as a subject of.[4] The concept of human dignity is understood by some authors as an exclusively Christian concept. Others see its origins in antiquity.[5] However, it is clear that people are committed to human dignity and derive a normative attitude from it.

The relationship between religion and the state and between religion and the individual in Europe has not always been unproblematic. The dimension of this conflict was particularly evident in the confessional wars of the early modern period. Over time, the different denominations found a peaceful coexistence. However, a complex relationship between the churches and the states of Europe and different views on these relationships still exist in the individual European countries. For example, the European Council was unable to agree on a reference to God in the Constitutional Treaty. France, Belgium and Sweden resisted a corresponding proposal by Poland and the Vatican, as they wanted to see the secular requirement of state neutrality safeguarded.[6] Not even the term “Christian heritage” was included in the EU Constitutional Treaty. The preamble alone refers to “the common cultural, religious and humanist heritage of Europe”.[7]

However, pioneers of human rights in Europe, such as John Locke, often referred to religious sources and concepts. In his main work “Two Treaties of Government”, Locke

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[3] Wittinger, Michaela, Christentum, Islam, Recht und Menschenrechte. Spannungsfelder und Lösungen. Otto-von-Freising-Vorlesungen der Katholischen Universität Eichstätt-Ingolstadt, Wiesbaden 2008, S. 24 f.

[4] Bielefeldt, Heiner, Menschenwürde, Der Grund der Menschenrechte, Berlin 2008, S. 30 f.

[5] Hoffmann, Hasso, Recht und Kultur, Drei Reden, Wissenschaftliche Abhandlungen und Reden zur Philosophie, Politik und Geistesgeschichte, Band 55, Berlin 2009.

[6] Wittinger, S. 17 f.

[7] Wittinger, S. 10.

justifies his idea of the highest legal rights of life, liberty of the person, equality, health and property with the fact that man was created by God. For Locke, people are "his property, for they are his handiwork, created by him to last as long as he pleases".[8] In his explanations, he always refers to the Old and New Testaments. His key term is the biblical concept of the image of God (imago Dei).

Fundamental rights and freedoms in the Islamic doctrine of norms

Discussions on fundamental rights were also conducted in the Islamic cultural area, taking into account the sources and concepts of revelation. In historical research, the discussion about fundamental rights and freedoms is largely attributed to the natural law doctrine of the School of Salamanca in the 16th century. The following quote should at least put this view into perspective, because half a millennium before the scholars from Salamanca, ʿAbdullah ibnʿUmar el-Debūsī, an important legal scholar from Transoxania, wrote the following in his book on legal methodology:

> "El-ḏimme means "covenant" in the lexical sense. When God, the Exalted, created man to transfer His trust (el-emāne) to man, He endowed him with reason (ʿaql) and rights and dignity (el-ḏimme) so that he would be capable of rights and duties. He granted him the right/protection [of life, property, dignity, reason...](ʿiṣme), freedom (ḥurrīye) and ownership (mālikīye) so that he may bear his rights. Then He laid upon him divine rights, which He called emāne [9], as He willed. Similar to when we make a covenant with non-Muslims and grant them rights (el-ḏimme). [10] In this way, all rights that apply to Muslims are also established for non-Muslims in this world."[11]"
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> In his explanations, el-Debūsī (d. 1038) appears to be more progressive in certain respects than John Locke (d. 1704). Locke's concept of tolerance excluded atheists, for example, as for him belief in God was a necessary prerequisite for people to adhere to basic ethical values and the social contract. But Catholics were not included either, because they obeyed a second prince, the Pope, in addition to the head of state and therefore called into question the government's necessary monopoly on rule.[12]

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[8] Wittinger, S. 19.

[9] A reference to the verse el-Aḥzāb 33:72, where it says: "We offered the trust (emāne) to the heavens and the earth and the mountains, but they refused to bear it and shied away from it, but man took it upon himself..."

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[11] El-Debūsī, ʿAbdullahibnʿUmar, Taqwīm el-edille fī uṣūlel-fiqh, Cairo, 2001, vol. 1, p. 417. El Debusi compares the covenant of God with man with the covenant of Muslims with non-Muslims. By illustrating the emergence of fundamental rights, he is merely using a comparison to create a better understanding among his readers at the time. However, one should not conclude from these statements that Muslims take the position of God by entering into a covenant with non-Muslims. On the contrary. Much more important is the aspect that a scholar of the 11th century demands the same rights that are granted to Muslims (i.e. his own religious community) for non-Muslims or people of other faiths and at the same time tries to justify them ontologically.

[12] Wittinger, S. 20.

The key term in El-Debusi's remarks, ḏimme, goes back to the Koran, specifically to a passage in which it says that the Arab idolaters respect neither blood ties nor fundamental rights:

> „*How (can there be an alliance with the idolaters who have dissolved their alliance) if they, if they gain the upper hand over you, would not honor against you any ties of blood (illen) nor any law or covenant (ḏimme)...“* (el-Tewbe 9:8).

Similarly, the Qur'an makes it clear that the idolaters do not respect the believers as legal entities:

> *„They respect neither any blood ties nor any law or agreement against the believers. They are the ones who transgress all boundaries!“* (el-Tewbe 9:10).

Thus, the term ḏimme in the Qur'an (right, agreement, protection, respect) aims at a religion-neutral content, it means a dignity to which a person is entitled as a person of respect. The later application of the concept of ḏimme in the Islamic doctrine of norms in relation to non-Muslims confirms this thesis.

Human rights content of the Quranic revelation

Right to life

The Qur'an, like the Torah and the Bible, contains instructions for all of life and addresses the absolute rights of man. Since the Qur'an is not a legal code or a modern constitution, it only occasionally mentions these inalienable, indivisible and universal rights explicitly and often only refers to them implicitly.

In the Koran, for example, a fundamental right is addressed as follows:

> „*And when the girl buried alive is asked for what fault she was slain* “ (el-Tekwīr 81:8–9).

Here a fundamental right is described without reference to concepts such as law or life, namely the right to life, by categorically rejecting a widespread custom of pre-Islamic society, namely the killing of a child because of its sex.

However, there are also verses that not only agree with the human rights demands in terms of content, but also literally and explicitly. Thus it says:

> „*And do not kill the life that God has made inviolable (ḥarām) unless rightly [...].*“ (el-Isrāʾ 17:33).

In such contexts, terms such as haqq, “rightly”, ḥarām, “untouchable”, “inviolable” or maẓlūm, “unjust”, appear in other passages of the Qur'an. Welī, “heir”, “legal representative” or sulṭān, “authorization”, “claims”, also belong in this series.

Right to freedom of religion and opinion

Contrary to the prevailing opinion, we find numerous passages in the Koran in which the right to freedom of religion and opinion is guaranteed:

> „*And if your Lord willed it,*
> *so believed On earth all in all;*

Will you force people to believe?“ (Yunus 10:99)
„So say: This is the truth From your Lord!
Whoever will, let him believe!
And whoever will, let him deny!“ (el-Kehf 18:29)
“(There is) no compulsion in religion!
There is a clear separation
Rightness from error.” (el-Baqara 2:256)

The concept of the five fundamental rights - “ed-Darurāt al-Khamse”

The five basic rights (el-ḍarūrāt al-ḫamse or el-uṣūlel-ḫamse) represent an approach to a concept similar to human rights in Islamic jurisprudence: the right to freedom of worship, life, property, offspring, dignity and reason. These rights were discussed in detail by Muslim scholars in the 11th century. Rights concerning life, religion, reason, family and property are inherent rights.[13] Human dignity, el-ʿirḍ, is referred to as the sixth fundamental right in some classical books,[14] based on the Prophet's farewell sermon. Universalist scholars also emphasize the “protection of dignity” as the sixth pillar.[15] I am of the opinion that this should also include the protection of the environment, since without a healthy environment the realization of the ideal of human rights will hardly be possible. In addition, the common term “actions of the responsible party” (*efʿālel-mukellefīn*) presupposes “freedom” of the legal subjects. There is no responsibility under coercion. Even el-Debūsī counted *freedom* among the innate rights of human beings.

A further subdivision of rights: human rights and God's rights

In Islamic jurisprudence, the rights are referred to as “huqūq el-ʿibād” (human rights) and “ḫuqūq Allāh” (divine rights) with regard to the options (ḫiyara). The rights of God are the belief in one God, the performance of acts of worship and some public duties, such as “recommending good and discouraging evil”.

Human rights, on the other hand, are claims of one person against another, which the holder of the rights or the person whose rights have been violated can waive. Civil debts, inheritance claims, defamation, etc. can be forgiven by the person whose rights have been violated and are then redeemed both in this world and in the hereafter. God does not forgive the violation of a person's rights unless the rights holder himself forgives them.[16]

God's law is terminologically that law whose norms - regardless of whether they are rational or trans-rational in nature - the subjects of law (*mukallaf*) have no choice of self-eradication, and human rights are those whose observance is important for this world. Even if a right looks outwardly like an exclusive right of man, this is not the case, for it cannot be completely independent of God's right. Conversely, the right of man is directly or indirectly affected by every divine right.

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[13] Eskicioğlu, Osman, İslam HukukuAçısındanHukukveİnsanHakları, Izmir 1996, S. 287.
[14] Eskicioğlu, 1996, S. 281.
[15] Şentürk, Recep, İnsanHaklarıve İslam: SosyolojikveFıkhiYaklaşımlar, Istanbul 2007, S. 88.
[16] Al-Šāṭibī 1417/1997, Bd. 2, S. 539.

“Literary chauvinism” in the human rights debate?

The legal culture developed by Muslims over the centuries provides numerous documents that support the current concept of human rights. Nevertheless, the development of human rights is often regarded in the literature as a European phenomenon. Authors of Muslim origin who contributed to its development, such as Jeremy Bentham or John Locke, are rarely cited.[17] Not even John Locke himself was so indifferent to the culture of Islamic law. He states: “The Calvinists and Armenians are free to practise their faith in Constantinople, but not in Christian Europe”.[18]

Not a single historical Islamic document is cited in the literature on the UDHR. Yet there are documents whose significance is comparable to that of the Magna Carta, if not even surpassing it: for example, the Charter of Medina (el-ṣaḥīfet el-Medīna), the agreement el-Bakt (641) of the Muslims with the Kingdom of Makuria, a Christian state in what is now northern Sudan, which was observed for 700 years,[19] or the treaty with the Christians of Najrān.[20] Even some experts note that there is a conspicuous indifference to the Islamic sources.[21] Despite Lorenz Müller's investigative work, the situation has not changed in either the German or European standard works on international and constitutional law.[22]

Even more astonishing is the indifference of many Muslims towards universal human rights, the objectives of which are in line with the Koran and Sunnah and the realization of which they urgently need, as they are often confronted with brutal human rights violations.

References

Abdel Rahim, Muddathir, Volume 3, The Islamic Tradition: in Human Rights and the World’s Major Religions, Brackney, William, (Hrsg.), Westport, Connectitut/London 2005, S. 5.

Abdel Rahim, Muddathir, Volume 3, The Islamic Tradition: in Human Rights and the World’s Major Religions, Brackney, William, (Hrsg.), Westport, Connectitut/ London, 2005, S. 151–152.

Al-Šāṭibī 1417/1997, Bd. 2, S. 539.

[17] Balcı, Muharrem; Sönmez, Gülden, Temel Belgelerde İnsan Hakları, Örnekli Açıklamalı Karşılaştırmalı, İstanbul 2001, S. 435–437. (The authors cite Surah Al-Isra and include the text of the Farewell Sermon.)

[18] Abdel Rahim, Muddathir, Volume 3, The Islamic Tradition: in Human Rights and the World’s Major Religions, Brackney, William, (Hrsg.), Westport, Connectitut/London 2005, S. 5.

[19] https://en.wikipedia.org/wiki/Baqt , http://ar.wikipedia.org/wiki/البقط_معاهدة

[20] For the English versions, see: Abdel Rahim, Muddathir, Volume 3, The Islamic Tradition: in Human Rights and the World’s Major Religions, Brackney, William, (Hrsg.), Westport, Connectitut/ London, 2005, S. 151–152.

[21] Mayer, Ann Elizabeth, Islam and Human Rights, Colorado/ Oxford 1999, S. 41.

[22] Müller, Lorenz, Islam und Menschenrechte, Sunnitische Muslime zwischen Islamismus, Modernismus und Säkularismus, Hamburg 1996, S. 21.

Balcı, Muharrem; Sönmez, Gülden, Temel Belgelerde İnsan Hakları, Örnekli Açıklamalı Karşılaştırmalı, İstanbul 2001, S. 435–437.

Bielefeldt, Heiner, Menschenwürde, Der Grund der Menschenrechte, Berlin 2008, S. 30 f.

El-Debūsī, ʿAbdullahibnʿUmar, Taqwīm el-edille fī uṣūlel-fiqh, Cairo, 2001, vol. 1, p. 417.

Eskicioğlu, Osman, İslam HukukuAçısındanHukukveİnsanHakları, Izmir 1996, S. 287.

Hoffmann, Hasso, Recht und Kultur, Drei Reden, Wissenschaftliche Abhandlungen und Reden zur Philosophie, Politik und Geistesgeschichte, Band 55, Berlin 2009.

https://en.wikipedia.org/wiki/Baqt , http://ar.wikipedia.org/wiki/البقط_معاهدة

Mayer, Ann Elizabeth, Islam and Human Rights, Colorado/ Oxford 1999, S. 41.

Müller, Lorenz, Islam und Menschenrechte, Sunnitische Muslime zwischen Islamismus, Modernismus und Säkularismus, Hamburg 1996, S. 21.

Otto-von-Freising-Vorlesungen der Katholischen Universität Eichstätt-Ingolstadt, Wiesbaden 2008, S. 24 f.

Şentürk, Recep, İnsanHaklarıve İslam: SosyolojikveFıkhiYaklaşımlar, Istanbul 2007, S. 88.

Wittinger, Michaela, Christentum, Islam, Recht und Menschenrechte. Spannungsfelder und Lösungen.