

## Artykuly

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### **A Discourse on Human Rights and Civil Rights and Liberties in Muslim-Majority Societies: Highlights of a Widely Diverse Debate**

#### **Abstract**

Is the fact that the majority of the population in the Middle East belongs to Islam actually the reason why human rights in Muslim-majority countries appear to be so difficult to work out and enforce? Are Islam and human rights not basically compatible? Historically it cannot be disputed that the thought of human rights first took shape in the European and Western context. Over the course of several centuries, it became widely accepted, and finally the thought of human rights also became a political reality as they were implemented in democratic states and constitutions. However, it would be a wrong conclusion, as for instance has been emphasized by Heiner Bielefeldt, the former United Nations Special Rapporteur on freedom of religion or belief, to say that the ability to implement human rights, in particular thoughts about freedom and the equality of all people, is a one-sided affair and can only occur in the Western-Christian context. As far as Heiner Bielefeldt is concerned, this historic development, however, justifies neither the assertion that it had to happen as it did, nor does it justify Western representatives' taking sole occupation of considerations relating to human rights thinking. Viewed from this perspective, human rights cannot boast a "Western" origin or a "Christian" character in a way that they would be incompatible with notions justified by Islam. Having that said, one is still to a large degree able to recognize a desolate situation in matters relating to human rights in Muslim-majority countries. But conflicts between Islam and human rights do not arise automatically out of the religious affiliation of a majority of the people. They certainly do stand out in those places where for political decision-making authorities Sharia law ranks higher than human rights and the granting of human rights is made dependent upon a traditional interpretation of the Sharia. Apart from the societal advocacy of human

rights, there is the question as to the framework within which theological assessments of human rights questions occur. The following article aims at pointing to three discernable positions about human rights in the context of Islamic theologians, the a) the inclusive position, b) the pragmatic position, and c) the progressive position.

**Keywords:** Human Rights, United Nations Charter of Human Rights, Reconciliation Commission, The Egyptian Organization for Human Rights, Cairo Declaration of Human Rights

I recently had the unexpected opportunity to visit with the UN Human Rights Council in Geneva: The large ornate and wood paneled chamber of the European headquarters of the United Nations has a sublime and imposing effect upon a visitor. Our “side event” on the topic of religious freedom entitled *Respecting Religious Freedom: Legally Safeguarding a Threatened Right* was followed by a panel discussion on apostasy and blasphemy. Our activities ran parallel to a session of the Human Rights Council which was also taking place. Despite our emotionally laden topic, there seemed to be no disagreement at all.

Although there were representatives of numerous states among the listeners joining in the discussion where human rights in general and freedom of expression and freedom of religion in particular are currently somewhat strained, there was only agreement on the panel to the calls made for respect for, defense of, and legal implementation of complete, i.e., positive as well as negative, religious freedom. Not a single objection clouded the unity of those gathered. At such moments, there appears to be a world within the UN Human Rights Council (namely one of harmony and of unity in things relating to human rights) and another world consisting of the harsh reality outside – one in which the situation surrounding these rights could frequently be better.

Up to now, this has not essentially changed in a region which beginning in 2011 was shaken by months of demonstrations and protest rallies by millions of people from Morocco to Jordan (and if one goes back to 2009 then all the way to Iran). An essential call brought forward during the “Arabellion” was for increased civil liberties in personal, political, and religious spheres as well as calls for an improvement in the human rights situation.

At present in Middle Eastern societies, one has to soberly observe that in respect to the urgent calls for a legal guarantee of human rights and with respect to the socio-political regard for and defense of human rights, things do not look better than prior to the revolutions. And if not even the loss of life of hundreds and indeed a total of several thousand people was able to at least bring about a noticeable amount of progress in the expansion of human rights, the question arises as to which factors are responsible for this ossification on the human rights front. This situation offers nothing new to Arab human rights activists, who have soberly determined the following after around 25 years of committed human rights work in the region: “Successes have been few and far between,

progress – when it has come – has been painstakingly slow, and human rights violations remain widespread among the region”<sup>1</sup>.

What explains this dogged deadlock with encrusted power structures? And why is there in the end so little progress – if there is even any noticeable progress at all, especially after the strongly calls for demands on the part of hundreds of thousands, indeed throngs totaling several million people, who assembled for demonstrations in the streets and demanded expanded civil rights from repressive regimes? What is the path discussions take when it comes to human rights in the Middle East? What is the point of view held by Muslim human rights activists?

## 1. Differentiated Observations on the Topic of Human Rights in the Context of Middle Eastern Societies

It is not seldom that a religious element is supposed as a cause for the limitation on human rights and that “Human rights and Islam [are] perceived as an area of conflict”<sup>2</sup>. However, is the fact that the majority of the population in the Middle East belongs to Islam actually the reason why human rights in Muslim-majority countries appear to be so difficult to work out and enforce? Are Islam and human rights not basically compatible?

Historically it cannot be disputed that the thought of human rights first took shape in the European and Western context. Over the course of several centuries, it became widely accepted, and finally the thought of human rights also became a political reality as they were implemented in democratic states and constitutions. However, it would be a wrong conclusion, as for instance has been emphasized by Heiner Bielefeldt, the United Nations Special Rapporteur on freedom of religion or belief, to say that the ability to implement human rights, in particular thoughts about freedom and the equality of all people, is a one-sided affair and can only occur in the Western-Christian context. He considers such an attitude to be “cultural essentialist occupation [...] of human rights”<sup>3</sup> which often accompanies an essential denial of the compatibility of human rights with other cultural contexts – for instance with Islam.

Nevertheless, as far as the origins of the precursors of today’s universal human rights declarations are concerned, such as the United Nations Charter of Human Rights dating from 1948, it can be noted that they are located in the Western-Christian context. For instance, milestones that can be mentioned include the 1215 *Magna Charta*, the

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<sup>1</sup> Hanny Megally, *Human Rights in the Arab World: Reflections on the Challenges Facing Human Rights Activism*, in: *Human Rights in the Arab World. Independent Voices*, Anthony Chase and Amr Hamzawy (ed.), Philadelphia 2006, p. 107.

<sup>2</sup> Moussa Al Hassan Diaw, *Das Verhältnis von Menschenrechten und Gottesrecht (Scharia) im Islam*, in: *Die Menschenrechte im interreligiösen Dialog. Konflikt- oder Integrationspotential?*, Friedrich Johannsen (ed.), Stuttgart 2013, pp. 52.

<sup>3</sup> Heiner Bielefeldt, “Western” versus “Islamic” Human Rights Conceptions? *A Critique of Cultural Essentialism in the Discussion on Human Rights*, in: “Political Theory” 2000, 28,1, p. 114.

Reformation with its emphasis on individual responsibility before God, the 1628 *Petition of Right*, or the *Habeas Corpus* Act of 1679. Complementary to this, as for instance the Sudanese Professor of Law and Director of the Religion and Human Rights Program at Emory University, USA, Abdullahi Ahmed An-Na'im, has emphasized in his call for founding a culture of universal human rights independent of any specific cultural or religious context, the Enlightenment and humanism have also played a part in the emergence of Western human rights concepts<sup>4</sup>.

As far as Heiner Bielefeldt is concerned, this historic development, however, justifies neither the assertion that it had to happen as it did, nor does it justify Western representatives' taking sole occupation of considerations relating to human rights thinking. As Bielefeldt emphasizes, this is especially the case since only a protracted and tenacious process can be referred to until the time when Protestant and Catholic churches finally were able to reconcile themselves to the concept of human rights in the 20<sup>th</sup> century. Even if in retrospect this is not always reflected in such clarity from the side of the church, the churches' reconciliation with human rights was "the result of a complicated and lengthy learning process"<sup>5</sup>.

Viewed from this perspective, human rights cannot boast a "Western" origin or a "Christian" character in a way that they would be incompatible with notions justified by Islam. Indeed, one is to a large degree able to recognize a desolate situation in matters relating to human rights in Muslim-majority countries. However, according to multiple opinions, this cannot be ascribed in a single line to the "Islam factor"<sup>6</sup>. Alternatively, one cannot just say that the problematic human rights situation in Muslim-majority countries is to be abstractly inferred from the relationship between Islam and human rights<sup>7</sup>, even if "the concept of 'human rights' [...] does not exist in the Islamic legal tradition"<sup>8</sup>.

In any event, the economic, political, cultural, and historical developments have to be taken into account, and they are in part hidden "under the cloak of religion"<sup>9</sup>. Included, among others, are social phenomena. For example, there is the demographic development that most Middle Eastern societies have at least 50% of their population under the age of 30<sup>10</sup> and present an army of young people searching for education and

<sup>4</sup> Comp. Abdullahi Ahmed An-Na'im, *Islam and Human Rights. Introductory Remarks and Reflections*, in: *Beiträge zum Islamischen Recht VII. Islam und Menschenrechte*, Hatem Elliesie (ed.), 2010, pp. 42; 47.

<sup>5</sup> Bielefeldt, "Western" versus "Islamic" Human Rights Conceptions?, p. 100; comp. p. 98f.

<sup>6</sup> So e.g. Mashood A. Baderin, *Islam and the Realization of Human Rights in the Muslim World: A Reflection on Two Essential Approaches and Two Divergent Perspectives*, "Muslim World Journal of Human Rights" 2007, 4,1, p. 10.

<sup>7</sup> For instance in *ibid.*

<sup>8</sup> Muhammad Kalisch, *Islam und Menschenrechte: Betrachtungen zum Verhältnis von Religion und Recht*, in: *Beiträge zum Islamischen Recht VII. Islam und Menschenrechte*, Hatem Elliesie (ed.), 2010, p. 59.

<sup>9</sup> Anne Duncker, *Menschenrechte im Islam. Eine Analyse islamischer Erklärungen über die Menschenrechte*, Berlin, 2006, p. 16.

<sup>10</sup> Comp. Viola Lucas, *Gesellschaftliche Herausforderungen*, in: "Naher Osten. Nachbarregion im Wandel, Informationen zur Politischen Bildung" 2012, 317,4, p. 46.

training, qualified employment, and advancement<sup>11</sup>. With this sort of population growth, the exploitation of what are often scarce resources cannot keep up with economic development owing to, among others, the frequently low productivity. Advancement on this front according to individual abilities, successive development within the country, and a just distribution of natural resources are in turn not possible due to a widespread clientele network and a neo-patrimonial system. Additional distinguishing factors largely linked to the Middle East are a high level of unemployment among youth almost everywhere, widespread poverty, and rampant corruption, limited rights for women and for minorities, rapid urbanization and rural exodus, water shortages and environmental problems, a lack of constitutional legality, and omnipresent security authorities which often act arbitrarily. This mixture of economic underdevelopment and undesirable development and permanent oppression, paternalism, despotism, and degradation are considered to be significant factors behind the calls for increased civil rights and liberties during the Arab revolutions<sup>12</sup>.

Therefore, conflicts between Islam and human rights do not arise automatically out of the religious affiliation of a majority of the people. They certainly do stand out in those places where for political decision-making authorities Sharia law ranks higher than human rights and the granting of human rights is made dependent upon a traditional interpretation of the Sharia.

## 2. Human Rights in Morocco: The Reconciliation Commission

While on the one hand political regimes and influential theological protagonists limit and deny human rights, on the other hand there are committed pioneers for human rights and women's rights whose organizations and progress in the battle for human rights are hardly noticed in Western countries. There are not only individual activists known among them. Instead, there are also reformed intellectuals who in part at high personal risk persistently call for the government to limit the religious-political claims and seizure of personal civil rights and liberties on the part of the government and the theology associated with it.

Beyond the individual personalities and initiatives associated with the topic of human rights, state initiatives can also be mentioned, such as the Commission on Equity and Reconciliation (*L'Instance Équité et Réconciliation*, or IER) introduced by King Mohammed VI at the beginning of 2004. Its intention has been to address human rights violations under the government of the previous King Hassan II from 1961–1999, during the “years of lead.”

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<sup>11</sup> Comp. Martin Beck and Simone Hüser, *Politischer Wandel im Nahen Osten. Versuch einer Analyse des “Arabischen Frühlings”*, in: *Arabellions. Zur Vielfalt von Protest und Revolte im Nahen Osten und Nordafrika*, Annette Jünemann and Anja Zorob (ed.), Wiesbaden 2013, pp. 199f.

<sup>12</sup> Comp. Anja Zorob, *Der Zusammenbruch des autoritären Gesellschaftsvertrags. Sozio-ökonomische Hintergründe der arabischen Proteste*, in: *Arabellions. Zur Vielfalt von Protest und Revolte im Nahen Osten und Nordafrika*, Annette Jünemann and Anja Zorob (ed.), Wiesbaden 2013.

The founding of several human rights organizations immediately preceded this initiative, which have been able to increasingly push the topic of human rights into the center of society despite a number of setbacks. The first Moroccan human rights organization was the nationalistically characterized Moroccan League for Defense of Human Rights (*Ligue Marocaine de Défense des Droits de l'Homme*, or LMDDH), which was started back in 1972. There is also the leftist-oriented Moroccan Association of Human Rights (*Association Marocaine des Droits Humains*, or AMDH), which was started in 1979. At the beginning of the 1980s, both organizations were almost brought to a standstill through the considerable persecution they experienced<sup>13</sup>. The organizations mentioned, along with the cross-party Moroccan Organization for Human Rights (*Organisation Marocaine des Droits de l'Homme*, or OMDH) are up to the present day the most important Moroccan human rights organizations.

After the topic of human rights was brought into societal life in this manner, König Hassan II had the the Consultative Council on Human Rights (*Conseil Consultatif des Droits de l'Homme*, or CCDH) formed in 1990. It was an advisory board which conveyed recommended actions in human rights questions to the King, albeit without having a right to their implementation<sup>14</sup>. In 1993, the King founded a separate Ministry of Human Rights and introduced foundational improvements, such as the limitation on police custody to 48 hours<sup>15</sup>.

The Reconciliation Commission, or IER, which was installed in 2004, was in the end charged with determining the type and seriousness of human rights violations and arbitrary measures such as the “forced disappearance” of numerous individuals, jailings, and the severe torture of members of the opposition (frequently stemming from the left-leaning end of the spectrum). It was also charged with determining appropriate rectification. Beyond that, the Commission was charged with developing suggestions for reform so that “Moroccans could be reconciled with their history” and charged with contributing to the “spreading of a culture of human rights<sup>16</sup>. At the end of 2005, the Commission brought forward its 700-page final report. There were over 20,000 applications filed for redress, and over 10,000 of them received positive rulings<sup>17</sup>. To this day, the Commission on Reconciliation has remained the sole truth commission in the Arab world.

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<sup>13</sup> Comp. Bettina Dennerlein, *Nicht umblättern, sondern lesen. Die Versöhnungskommission Instance Equité et Réconciliation hat für Marokko viel geleistet, aber was kommt nun?* in: “Frankfurter Rundschau” January 9, 2006 / Zentrum Moderner Orient, Pressespiegel, [http://www.zmo.de/pressekit/material/fr\\_dennerlein.pdf](http://www.zmo.de/pressekit/material/fr_dennerlein.pdf). [viewed: October 10, 2014], p. 105.

<sup>14</sup> Comp. *ibid.*, p. 106.

<sup>15</sup> Comp. Susan Waltz and Lindsay Benstead, *When the Time is Ripe: The Struggle to Create an Institutional Culture of Human Rights in Morocco*, in: *Human Rights in the Arab World. Independent Voices*, Anthony Chase and Amr Hamzawy (ed.), Philadelphia 2006, pp. 174f.

<sup>16</sup> Dennerlein 2006.

<sup>17</sup> Comp Bettina Dennerlein and Sonja Hegasy, *Die marokkanische Wahrheitskommission zwischen Politik und Geschichte*, in: *Bilder nach dem Sturm. Wahrheitskommissionen und historische Identitätsstiftung zwischen Staat und Zivilgesellschaft*, Christoph Marx (ed.), Berlin 2007, pp. 102f.; 105.

Critics have often argued that determinations have been made of the involved culprits but that they have not been called to account. Thus, individual guilt has not been made a topic. Additional points of critique were that solely the cases of unjustified imprisonment and forced disappearance were taken up but that “lighter” cases of human rights violations were not at all within the focus of the IER. Furthermore, neither redress nor the reforms introduced made an essential contribution to a lasting liberalization and democratization in Morocco. Nevertheless, the aspect of trust building, of publicly making a topic of human rights, and the admission of human rights violations is absolutely to be viewed as a potent agent and, moreover, as unique for the entire region. Victims of arbitrary measures during those times were able to publicly express themselves on the radio and on television and were allowed to organize public readings of their literary works<sup>18</sup>. Efforts made by the IER were complemented by the Moroccan Forum for Truth and Justice (*Forum Marocain Vérité et Justice*, or FVJ), which in various ways has made human rights violations a topic – also those which are less massive – and has stimulated a public social debate about human rights.

A foundational change in the political culture and separation of power has not yet been achieved through these steps. However, a large step was made on the way to the following development which came in subsequent years, at the preliminary end of which was the founding of a new, independent human rights council on March 3, 2011. A short time later, King Mohammed VI announced constitutional reforms in the course of which he gave up a portion of his power to the Parliament of Morocco, he henceforth waived naming the Prime Minister (the Prime Minister now has to come from the party which receives the majority of the votes), he allowed a continuation of the separation of powers, the social and civil equality of men and women was promoted, and the rights of Parliament, of the parties, and of civil society were strengthened. Indeed, the King did not transform the monarchy into a constitutional monarchy and has still remained the religious head of all Muslims as well as the top decision maker, but he no longer counts as holy and as the executor of the will of God on earth.

These constitutional changes, which went hand in hand with subsidies for staple foods and the creation of over 4,000 additional jobs for unemployed university graduates, not only rapidly curbed the Arab revolution protests in Morocco. Rather, it also made the King again appear to be a credible protagonist on the human rights stage to the majority of the 98% who voted for the new constitution. Despite all the criticism that the society had not moved far enough in the direction of progressive change, it cannot be disputed that there is progress in the direction of democratization and change in the political culture, whereby the topic of human rights has been conspicuously placed in the forefront.

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<sup>18</sup> Comp. Dennerlein 2006.

### 3. Human Rights in Egypt: The Egyptian Organization for Human Rights (EOHR)

The commitment to human rights in the Middle East does not always find such prominent support: In other countries, the authorization for such work has to be wrested from the regime in tenacious battles.

The *Egyptian Organization for Human Rights* (EOHR) is indeed the oldest human rights organization in Egypt, and its work is characterized by a high professional standard. The EOHR is one of the oldest non-governmental organizations with observer status at the United Nations, is a member of the *World Organisation Against Torture* (*l'Organisation Mondiale contre la Torture*, or OMCT), and is a member in additional international human rights forums. It had been founded in 1985 as a branch of the *Arab Organization for Human Rights* and on the basis of Law 32 regarding the establishment of associations in Egypt, which dates back to 1964. Activists who were involved in the founding of the EOHR came from various backgrounds and political camps. It included young people but also prior civil servants, nationalistically-minded protagonists such as those from the leftist-oriented political camp under the Nasser regime. As the General Secretary of the EOHR from 1993 to 1995 said in an interview, most of them had at one time been politically active but had become politically “disillusioned”<sup>19</sup>.

In its current efforts, the widely networked EOHR now exercises a watchman and documentation role relating to human rights in Egypt and campaigns equally for the implementation of expanded human rights for Egyptians and foreigners living in Egypt. The EOHR indicates that it has 2,300 members and 17 branches throughout all of Egypt's provinces.

The EOHR suffered for a long time under its lack of state recognition. Beginning in 1987, it made efforts to push through its official registration. In 1989 the EOHR fell into conflict with government authorities when it objected to the brutal crushing of a protest by iron and steel workers in state-owned companies. Upon the occasion of these events, two EOHR activists were arrested and mistreated. This action was prominently perceived by the public and led to significant awareness of the EOHR and to growth in its membership rolls during the years 1989 to 1993<sup>20</sup>.

Although it had already been founded in 1985, it did not receive its official registration number from the Egyptian Ministry of Social Affairs until June 24, 2003 and thus receive its status as a legally operating non-governmental organization. Prior thereto, the registration had been repeatedly denied. As a result, the EOHR had to fight through a number of official channels. It had to overcome the resistance demonstrated by the administration of the Ministry of Social Affairs against providing a favorable decision

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<sup>19</sup> Comp. Neil Hicks, *Transnational Human Rights Networks and Human Rights in Egypt*, in: *Human Rights in the Arab World. Independent Voices*, Anthony Chase and Amr Hamzawy (ed.), Philadelphia 2006, pp. 73f.

<sup>20</sup> *Ibid.*, pp. 76f.

regarding the registration. Finally, an official recognition became possible 18 years after the EOHR's founding.

The EOHR is dedicated to documenting human rights violations in Egypt, independent of the identity of the victim and the culprit. It also lodges complaints, and indeed it does so in those cases where the individuals responsible for the relevant human rights violations are representatives of the state as well as in those cases in which the violations have to do with private people. EOHR reports have documented several dozen cases of torture and mistreatment, which in a number of cases has led to the death of the victim. In connection with the cases of mistreatment, the EOHR has also recorded the involvement of security forces within Egyptian police stations as determined in their own investigations, by means of forensic reports, police reports, statements by witnesses, complaints, and court proceedings against involved police. The documented cases, which of course do not comprise a complete collection, have made it clear over the last two decades that in police stations all over Egypt torture has been used. An additional focus of EOHR's work has been the documentation of discrimination against women and support for refugees.

Not only are people provided assistance through the efforts of the EOHR. A taboo has also been broken by such sensitively considered information becoming the object of a public discourse and, moreover, by strongly calling for solidarity and aid for victims. Thus, through public relations the EOHR attempts to create public awareness of the problem at hand and to win supports for their cause through attracting partners from private institutions.

Goals of the EOHR are, among others, the establishment of the rule of law, independent courts, appropriate defense, and fair trials without prejudging. Further goals are the release of everyone who has been arrested for reasons of personal expression of opinion or discrimination as well as support for political prisoners and the victims of torture, inhumane prison conditions, the right of every citizen to be active in public regardless of his or her opinion, religion, gender and ethnic background and to see freedom of expression and religious freedom implemented in society. Thus, the goals of the EOHR are comprehensive and extend from consultation and public relations work to investigations into grievances and informing the public about protecting and defending involved individuals.

The EOHR mentions one of its goals to be the "reformation of Egyptian legislation and the constitution, respectively," up to the point that they can be brought into accord with universal human rights declarations. Furthermore, when the EOHR calls for the abolishment of discrimination owing to religious affiliation, that also shows just how categorically the EOHR approaches the issues.

However, for its part, the government hardly left anything untried in order to cause the downfall of organizations such as the EOHR. On January 22, 1995, the Justice Ministry issued an ordinance that said that every citizen's association which did not have itself registered according to the 1964 law regarding the establishment of associations would be viewed as illegal. In addition, individuals from the side of the state publicly disparaged human rights organizations through campaigns in the media and labeled them (owing to their protests against the repressive state course of action against Islamist groups)

terrorist supporters. An additional charge made was that EOHR activists, due to their Western support, were agents of colonial powers and had human rights concepts foreign to Egyptian society<sup>21</sup>. This form of argumentation intensified towards the end of the 1990s and, in particular, made it impossible to receive additional funds from overseas. This led to a dramatic curtailment in the amount of human rights work which was done<sup>22</sup>.

#### 4. Theological Positions Towards the Topic of Human Rights in the Middle East

Apart from the societal advocacy of human rights, there is the question as to the framework within which theological assessments of human rights questions occur. There are essentially three discernable positions. I would like to refer to these positions as a) the inclusive position, b) the pragmatic position, and c) the progressive position.

##### 4.1. The Inclusivist Position

I would like to use the term “inclusivist,” as a label for those voices which point to human rights declarations arising out of the Western context, such as, primarily, *The Universal Declaration of Human Rights*, the UN human rights charter dating from 1948, and flatly reject it as a Judeo-Christian concoction by Western authors with culturally imperialistic aspirations. For this reason, these declarations have no meaning whatsoever for the Middle East. Such a basic approach was chosen by the highest religious leader of Iran, Sayyid Ali Chamene’i, when he announced the following in 1997 at the “Fifth Conference on Islamic Ideology” in Teheran: “[...] the primary composers of the Universal Declaration of Human Rights and those who nowadays shamelessly claim for themselves to be supporters of this Declaration are the actual authors of people’s misery and unhappiness”<sup>23</sup>.

Of course, such a point of view makes it considerably more difficult to advocate and justify an expansion of human rights in the Middle East: “Yet the greatest challenge they face has to do with the perception that human rights is a foreign concept [...]”<sup>24</sup>.

Thus, one frequently finds among the representatives of this position the assertion that there are actually only “Islamic” human rights, which Western protagonists wrongly lay claim to: “The thesis that Islam knew about the concept of human rights long before the humanists and those of the Enlightenment in the Christian occident and, moreover,

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<sup>21</sup> Comp. *ibid.*, pp. 79–81.

<sup>22</sup> Comp. *ibid.*, pp. 84f.

<sup>23</sup> Imam Sayyid Ali Chamene’i, *Menschenrechte und Freiheit*, Bremen 2009, p. 9.

<sup>24</sup> Hanny Megally, *Human Rights in the Arab World: Reflections on the Challenges Facing Human Rights Activism*, in: *Human Rights in the Arab World. Independent Voices*, Anthony Chase and Amr Hamzawy (ed.), Philadelphia 2006, p. 107.

defined them more comprehensively and had them more firmly anchored is something which is part of the core of the Muslim self-portrayal<sup>25</sup>.

According to this understanding, God has original rights towards individuals. After that, humankind has duties over against God. Only at a third level do individuals have rights. These rights, however, are primarily rights as a collective<sup>26</sup>. Additionally, those items which can be set as human rights have to be definable through Sharia law. These human rights are thus not the natural rights of individuals. Rather, they are God-given, an expression of grace on the part of the Creator<sup>27</sup>. Frequently, these guaranteed “natural rights” found within Islam, including the right to life, the right to marriage, the right to work, the right to education, and the right to housing are, for instance, counted as essential human rights “in Islam”<sup>28</sup>.

With that said, these rights are indisputable because they are revealed but simultaneously only affirmed insofar as these rights can be brought into line with rights or “values” justified by Islam. Moreover, individuals receive certain rights “... first through the acknowledgement and fulfillment of duties,” as for instance Hashim Kamali emphasizes by way of example. This is due to the fact that “[the] Western tradition postulates freedom [...] while Islam emphasizes virtue as the goal of the individual as well as of society”<sup>29</sup>. With that said, this ties human rights to those texts which count as revelation and to preconditions situated in affirming the faith and producing religious duties on the part of people. By emphasizing the obligation upon people as believers, human rights according to this understanding cannot be claimed for members of other religions or members of no religion in the same way. Indeed, an individual’s claim owing to his or her being human cannot be derived from this. From this point of view, it is not humanity, religions, or worldviews which through dialog and in tandem promote the issue of human rights but rather Islam alone: “Islam has a major role to play in today’s world and can make a decisive contribution to the triumph of human rights”<sup>30</sup>.

#### 4.1.1. Human Rights According to the Definition of Political Islam

Representatives of this position from within the spectrum of political Islam or Islamism, respectively, essentially acknowledge human rights within the framework of a traditionally interpreted Sharia law and deny that there any points of conflict existing between a traditional interpretation of Sharia law and human rights. One of the most significant

<sup>25</sup> Gudrun Krämer, *Gottes Staat als Republik. Reflexionen zeitgenössischer Muslime zu Islam, Menschenrechten und Demokratie*, Baden-Baden 1999, p. 148.

<sup>26</sup> Comp. Mahmood Monshipouri, *Islam and Human Rights in the Age of Globalization*, in: *Islam Encountering Globalization*, Ali Mohammadi (ed.), London 2002, p. 97.

<sup>27</sup> Comp. Chamene’i, *Menschenrechte*, p. 20.

<sup>28</sup> Comp. Tuhani Negra, *A Delicate Balance: Rights, Responsibilities, Freedom*, in: *The Different Aspects of Islamic Culture. The Individual and Society in Islam*, A. Bouhdiba (ed.), Paris 1998, p. 67.

<sup>29</sup> Mohammad Hashim Kamali, *Die Würde des Menschen. Eine islamische Perspektive*, in: Mohammad Hashim Kamali and Saffet Köse, *Menschenrechte aus zwei islamtheologischen Perspektiven*, Frankfurt 2013, p. 20.

<sup>30</sup> ‘Abd al-‘Aziz Kamil, *The Promotion of Human Rights*, in: *The Different Aspects of Islamic Culture. The Individual and Society in Islam*, A. Bouhdiba (ed.), Paris, 1998, p. 378.

and influential representatives of this point of view is the Indian-Pakistani theologian and activist Abu l-A‘la Maududi (1903–1979). Maududi was active as a journalist, author, commentator on the Koran, theologian, and founder of the political movement and later Jama‘at-i Islami party as well as being an advisor to a number of Pakistani administrations. He counts as the most prominent pioneer of an Islamically-based political system.

In his writing entitled *Human Rights in Islam*, which he published in 1976, Abu l-A‘la Maududi mentions and substantiates a number of human rights with respect to their meaning and content by explaining them with reference to verses from the Koran and illustrations from Islamic history. Initially, these are for him the right to life (which in Maududi’s view has been neglected in the history of non-Muslims in wars of destruction and genocide but which has always been afforded by Islam), the right to assistance in life-saving and aid in every emergency situation, the right of a person of integrity to respect, and the protection of women.

Maududi also turns his attention to the question of personal civil rights and liberties of every individual, but he does not substantiate in any positive manner which civil rights and liberties people possess. Rather, using the heading “The Individual’s Right to Freedom”<sup>31</sup>, he initially goes into the slave trade in Western countries in an accusative manner in order to subsequently and extollingly depict the work of Islam and individual personalities from Islamic history. According to Maududi’s representation, the four rightly guided caliphs and their successors were responsible for the freeing of numerous slaves and exchanging them for prisoners of war – a practice which, according to Maududi, non-Islamic nations finally adopted from Islam. In early Islamic Arabia, however, the following applied: “[...] the problem of the slaves of Arabia was thus solved in under 40 years”<sup>32</sup>.

At no point in Maududi’s text is there any endorsement of equality for men and women, the equality of Muslims and non-Muslims, or equal rights for people of different religions. He says nothing about protection against discrimination. Likewise, he says nothing regarding the equal treatment of everyone before the law. Additionally, Maududi distances himself from the right formulated in the UN Human Rights Charter regarding changing religion, the right to the free choice of a religious confession, the right to public practice of whatever religion and worldview as well as the right to freedom of expression. At no point in this work on the topic of human rights does the author become concrete with respect to the question of which inalienable rights people possess independently of religious affiliation. In the end, all utterances remain vague and uncertain. For Maududi, being human is not the source of human rights. Rather, it is Islam, which concedes complete human rights to its believers and to its contractual partners, its “wards.”

Repeatedly, the superiority of Islam and the triumphalism of the author are expressed, for instance, when he maintains that non-Muslims also today recognize that Islam better

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<sup>31</sup> Abul A‘la Maududi, *Human Rights in Islam*, Leicester 1976, p. 19.

<sup>32</sup> *Ibid.*, p. 20.

cope with the difficulties of coexistence than all other religions<sup>33</sup>. In the process, he again and again allows the Sharia law framework to shine through as the absolute point of reference. An affirmation or justification for the equality of men and women or of Muslims and non-Muslims, an affirmation of complete religious freedom, and a renunciation of corporal punishment defined by the Sharia is sought for in vain in Maududi's publication.

#### 4.1.2. Islamic Human Rights Declarations under Review

Other authors draw upon counterdrafts in their rejection of Western human rights declarations like the UN Human Rights Charter. There are, for instance, the 1990 *Cairo Declaration of Human Rights* or the *Islamic Council in Europe's General Declaration of Human Rights in Islam* dating from 1981. There is also the 1994 *Arabic Charter of Human Rights*.

The first two declarations speak out for granting numerous human rights, but as far as content is concerned, they exclusively define human rights as those rights which can be reconciled with notions of Sharia law. Viewed in this manner, it is a matter of human rights declarations which contest more rights than they guarantee. None of these human rights declarations has experienced general acknowledgment in Muslim-majority countries or has been molded into concrete legal texts and has experienced a binding character under international law, such as has been the case with the 1948 UN Human Rights Charter. A number of Islamic human rights declarations have, however, achieved supra-regional importance, in particular the 1981 and 1990 documents.

The *Cairo Declaration of Human Rights* has emerged as a particularly prominent document. It has been adopted by the foreign ministers of all 57 member states of the *Organization of Islamic Cooperation* (OIC), which stands in close relationship to the *Saudi Islamic World League*. It was handed over to the United Nations High Commissioner for Human Rights<sup>34</sup>.

The Cairo Declaration asserts that the Sharia is the sole foundation for the granting of human rights. Beyond that, it rejects Western human rights declarations, such as the Universal Declaration of Human Rights, as Judeo-Christian constructs of secular and for that reason manmade laws. What is involved in the Cairo Declaration is not a matter of tolerance and recognition of non-Muslims on an equal footing. Rather, it is a claim of Islamic predominance substantiated by the revelation of Islam. This becomes clear in the preamble, which is modeled after Sura 3:110 and emphasizes "the civilizing and historical role of the Islamic Umma [Muslim world community, C. Schirrmacher] which Allah made as the best community and which gave humanity a universal and well-balanced civilization"<sup>35</sup>.

The preamble explains that the OIC would like to make its contribution to enabling mankind to have the "right to a dignified life in accordance with the Islamic Shari'ah."

<sup>33</sup> Ibid., p. 22.

<sup>34</sup> Comp. Anne Duncker, *Menschenrechte im Islam. Eine Analyse islamischer Erklärungen über die Menschenrechte*, Berlin 2006, p. 62.

<sup>35</sup> *Die Kairoer Erklärung der Menschenrechte, 05. August 1990*, „Gewissen und Freiheit“ 1991, 36, p. 74.

This immediately suggests the question as to whether a life which is not in line with the Sharia can likewise be a “dignified life.” The introduction closes by underscoring the divine, eternal character of the Sharia. In this way it is reminded that the rights and freedoms in Islam can neither be repealed nor violated nor disregarded, for this is an “abominable sin”<sup>36</sup>.

In Articles 24 and 25 of the Cairo Declaration, the highest principle regarding the interpretation of this human rights declaration is mentioned: “All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari‘ah” (24). In Article 25 it is stated in even a more general sense: “The Islamic Shari‘ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration.”

The principle of interpretation, which gives the Sharia a position of superordination, is made clear in every one of the remaining 23 Articles. Thus, in Article 1 it is indeed emphasized that all people “are equal in terms of basic human dignity and basic obligations and responsibilities.” It is conspicuous, however, that it does not mention the same rights as in the *Universal Declaration of Human Rights* from the United Nations. Additionally, the Cairo Declaration adds: “The true religion is the guarantee for enhancing such dignity along the path to human integrity.” The urgent question which arises is whether this dignity can only be reached if the “true religion” (of Islam) is accepted. This at least appears to be suggested by Article 1b) where one reads the following: “[...] no one has superiority over another except on the basis of piety and good deeds.” Piety and good deeds, however, are features of true (Islamic) faith and the fulfillment of the (Islamic) duties of faith<sup>37</sup>. Likewise, the protection and inviolability of life is limited via the Sharia by Article 2a): “[...] it is prohibited to take away life except for a shari‘ah prescribed reason.” In this way, the Sharia is lifted above any and all worldly legislation and ranked before it.

#### 4.1.3. Criticism of Islamic Human Rights Declarations

These Islamic human rights declarations are problematic due to the absoluteness of classical Sharia law and the elevation of Islam to the position of the sole, true religion and way of life. The vague formulations which present more of a declaration of intent than enforceable rights are also problematic. A person only receives rights on the basis of his religious confession, full rights only as a Muslim, and as a man more than as a woman. A Muslim woman, in turn, has more rights than a non-Muslim man. However, a Muslim man is also limited in accordance with the Sharia when it comes to freedom of opinion and freedom of conscience or the question of changing from one religion to another, for he also loses his documented rights if he were to inflict harm upon the society through “disloyal” behavior. Likewise, human rights, as they are defined, are not granted to their full extent to atheists or those believing differently.

<sup>36</sup> Ibid., p. 74.

<sup>37</sup> Comp., e.g. Sura 19:96.

Naturally, the Cairo Declaration is missing significant human rights such as the equality of all people and equality before the law for men and women. Likewise, there is a lack of a general and comprehensive confession of complete (also negative) religious freedom and freedom of conscience. There is a lack of freedom to the unhindered, public practice of a religion or worldview, to comprehensive civil rights and liberties, to building a political will and to the equality of all people beyond the borders of the “umma.”

What is also problematic with respect to this declaration is its silence regarding corporal punishment, such as the amputation of the hands and feet in the case of theft. There are also the lashings or stonings, respectively, in cases of adultery and fornication which are ordered in the Sharia. One can search in vain for a condemnation and distancing from this and not find one. Indeed, these corporal punishments are actually administered in only the fewest of Islamic countries, but the theoretical claims of validity are at least maintained up to this day by significant theologians at influential places of learning. As a rule, there is a limitation indicating that the punishments may only be administered in a truly Islamic state.

A justification for equal and free rights for women and men, Muslims and non-Muslims, the religious and atheists is not possible from this perspective, even if at the same time it is true that human rights in Muslim-majority societies are in no way only limited due to religious reasons. Undesirable political developments, economic underdevelopment, and a lack of rule of law, for example, also play important roles. Thus, the Cairo Declaration is not a document on the justification of universal human rights. Rather, it mentions rights which are dependent upon gender and above all are granted depending upon allegiance to Islam.

The inclusivist understanding thus considers human rights as being inherent to Islam and brought about by it “at a time when the world was plunged into ignorance and darkness”<sup>38</sup>. This understanding of the emergence of human rights in the context of Islam accompanies a clearly formulated superiority of Islam as the sole order doing justice to human rights. In this way, what occurs is an Islamization of human rights.

#### 4.2. The Pragmatic Position

The pragmatic position views Islamic values and human rights as essentially compatible and attempt from this position to bridge the gap between religious elements of Sharia law and liberal-democratic notions. Representatives of this position call for rational occupation with the fact that the early Islamic society on the Arabian Peninsula at the time of Mohammed in the 7<sup>th</sup> century A.D. differed fundamentally from the present day circumstances. Also, in their view the unexamined transmission of notions of law from that time to democratic and constitutional sentiments are not justified. As they see it, the command of the hour is the orientation towards a democratic-constitutional disposition

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<sup>38</sup> P.K. Shamsuddin, *Human Rights in Islam*, in: *Challenges to Religions and Islam. A Study of Muslim Movements, Personalities, Issues and Trends*, Part 3, Hamdi Nasseem Rafiabadi (ed.), New Delhi 2007, p. 1102.

and the protection of rights of minorities, women's rights, and human rights, for neither rationalism nor democracy are incompatible with Islam, such as is emphasized by the arguably most important contemporary Arab philosopher, Abed al-Jabiri from Morocco (1935–2010)<sup>39</sup>.

The tools, with the aid of which a compatibility between human rights and texts from the Koran and Tradition can be achieved, can be of various types: Either the timeless validity of the interpretation of Sharia law which developed in the early time of Islam can be scrutinized or else one exposes the problems of an interpretation defined by people and for that reason fallible. Other voices, such as Abdullah an-Na'im, represent the notion that only the time of the religious proclamations made by Mohammed from the early time in Mecca up to 622 A.D. may be seen as decisive for today's social activity. The time of politically legislative phase of governance in Medina beginning in 622 A.D. is not decisive. These voices declare that the Sharia punishments defined in Medina and after Mohammed's death have been abrogated and thus invalidated<sup>40</sup>.

Although at this point a promising approach regarding the reconciliation of Islam and human rights has emerged, one can argue against this position that up to now only a few theologians have followed this critical treatment of the validity of Sharia law. Thus, this view is of overall little importance, and that is even more the case in the heart of established theology. An additional objection could be that the traditionally largely prevailing traditional Sharia interpretation has not essentially been unhinged, and the existing conflicts are rather evaded instead of being essentially resolved. That is, for example, the case when the many limitations presupposing the application of the Sharia penal code or the conclusion of a polygamous marriage are emphasized. Such a stance does not, however, place into question the principle validity and existence of the Sharia and for that reason it arguably means a pragmatic attenuation of the corresponding provisions but no fundamental rapprochement with the standards of universal human rights.

This position illustrates the above explained conflicts between traditionally defined religious notions of law as practically insignificant and Sharia law as interpretable, and thus also as compatible and lined up with human rights.

### 4.3. The progressive Position

Representatives of the progressive position have formulated the conflict lines between universal human rights and Sharia-defined positions very clearly. They call for a fundamental reorientation among inclusivist representatives and essentially contest every justification made for applying Sharia punishments. The person of Mohammed is viewed as the binding role model in ethical questions. However, it also explains that the

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<sup>39</sup> Amr Hamzawy, *Globalization and Human Rights: On a Current Debate Among Arab Intellectuals*, in: *Human Rights in the Arab World. Independent Voices*, Anthony Chase and Anthony Chase (ed.), Philadelphia 2006, p. 60.

<sup>40</sup> Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation. Civil Liberties, Human Rights, and International Law*, New York 1990.

Koran and Islamic Tradition convey no terms of reference on the organization of a state, of a form of government, or of legislation.

Representatives of a progressive or secular position essentially advocate complete religious freedom, equality and civil rights and liberties, and a number of them represent the necessity of submitting Sharia law and tradition to a fundamental reevaluation. These progressive Reformers can be found around the world, and they are above all promoting their diverse approaches to a new interpretation of Sharia law from the forums of Western universities. And yet, they are frequently marginalized in their respective societies.

Included in the spectrum of reformed positions are those intellectuals who argue from a secular perspective and shift the universal validity of human rights into the center of their deliberations. They trace their rejection in Muslim-majority societies back to the traditional cultural values there<sup>41</sup>, which are to be overcome if increased human rights are to be able to be granted.

One representative of this progressive point of view is Abdullah Saeed (b. 1960), a theologian and professor for Arabic and Islamic studies as the holder of the Sultan of Oman Chair at the University of Melbourne in Australia. Saeed by all means advocates shedding more light on the historical circumstances surrounding the reception of revelation as well as the possible framework for the flexible interpretation and application of the message. He seeks to work with this as it relates to changing circumstances faced by Mohammed and the first generations of Muslims without abandoning the text itself. In Abdullah Saeed's opinion, given the premise of its divine authorship, the text can be freed to be reinterpreted without in the final analysis questioning its origin and inspiration<sup>42</sup>.

The basic orientation Saeed pursues is also demonstrated clearly in his discussion of the role of women in modern society. This is visible where Saeed discusses the view that men's roles of providing the means of living and of providing care, which many theologians draw from Sura 4:34, were priority roles for men. While that reflects a practice fitting for Mohammed's time, this needs to be reconsidered owing to today's cultural circumstances<sup>43</sup>. As far as Abdullah Saeed sees it, these instructions from Sura 4:34 on men's rights of determination and their duty to provide care come under the heading of "instructional teaching" in the Koran. These instructions are concerned with certain questions arising at that time in history but are items which cannot or should not necessarily be maintained nowadays.

Abdullah Saeed's approach along the way to human rights and civil rights and liberties justified by Islam is characterized by a rejection of a comprehensive and uncontested historical interpretation of the Sharia up to the 10<sup>th</sup> century, which he always characterizes as "pre-modern." Moreover, his approach is characterized by the attempt to reinterpret classical texts of the Koran and tradition through a revitalization of the independent legal reasoning (arab. *ijtihad*) and a call requesting the rejection of a sole interpretation.

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<sup>41</sup> Amr Hamzawy, *Globalization*, pp. 56f.

<sup>42</sup> Abdullah Saeed, *Rethinking "Revelation" as a Precondition for Reinterpreting the Qur'an: A Qur'anic Perspective*, in: "Journal of Qur'anic Studies" 1999, 1,1, p. 109.

<sup>43</sup> Abdullah Saeed, *The Qur'an. An Introduction*, Abingdon 2008, p. 170.

In particular, he does not favor blindly granting validity in the present age to historical directives found within tradition. Additionally, there is Abdullah Saeed's search for pragmatic and doable solutions in the service of freedom, in the service of humanity, and in the service of civil liberties and equal rights for all people in order to be able to harmonize Koranic guidelines with present circumstances. At a very basic level, Abdullah Saeed calls for a careful differentiation between text and interpretation.

Saeed's concern is not only to defensively explicate human rights as compatible with the foundations of Islam. Instead, it is also to offensively derive them from the center of established Islamic tradition. With that said, human rights can become the "lingua franca"<sup>44</sup> of coexistence between Muslims and non-Muslims. Saeed mentions four key terms from Islamic theology which represent independent justification for human rights and include theological foundations of Islam as well as the shaping of the interpersonal realm: "The Supreme Being, a common humanity, a common path to God and a set of universal ethical-moral values"<sup>45</sup>. In the process, Saeed implies that a part of the Sharia standards which has been considered by the majority of Islamic theologians as unchangingly valid since the 10<sup>th</sup> century is an expression of time-conditioned as well as culturally highlighted interpretation. Thus, it is of human origin and essentially correctable. He differentiates between revelation and human – fallible – interpretation which he particularly rejects if it is meant to be presented as a sole interpretation with an exclusive truth claim.

At the same time, he speaks out repeatedly against the unilinear interpretation of the Koran as conducted by literalists (and inclusivists, respectively, see 4.1.), which reduces every exegesis to a single allowable interpretation. It is opposed to Saeed's goal to free the timeless, obligatory ethical commands in the Koran from the baggage of history and the chains of its historically defined interpretation, to take social change into account, and thus to preserve the message of the Koran and its relevance for the 21<sup>st</sup> century. This practicable way between the essential acknowledgement of God's revelation in the Koran, on the one hand, and its being freed from what is in his view an illegitimate captivity to the past, is primarily found by Saeed to be through its being freed from the claim to an unquestionable tradition. It is not only tradition but also the text of the Koran which does not just have a singular meaning. The Koran, too, can be reinterpreted. This can according to Saeed be done by each generation according to the given circumstances and as far as it relates to the implementation of ethical obligations<sup>46</sup>.

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<sup>44</sup> Abdullah Saeed, "Muslims in Secular States: Between Isolationists and Participants in the West," Lecture dated November 30, 2003. Islamic Centre of Singapore. MUIS Occasional Papers Series: Majlis Ugama Islam Singapura/ Islamic Religious Council of Singapore: Singapore, 2005, pp. 1–14. <http://www.muis.gov.sg/cms/uploadedFiles/MuisGovSG/Research/MOPS1.pdf> [viewed: June 10, 2014].

<sup>45</sup> Abdullah Saeed, *Creating a Culture of Human Rights from a Muslim Perspective*, in: *Proceedings of the International Symposium Cultivating Wisdom, Harvesting Peace. Education for a Culture of Peace through Values, Virtues, and Spirituality of Diverse Cultures, Faiths, and Civilizations*, Swee-Hin Toh and Virginia F. Cawagas (ed.), Brisbane 2006, p. 123.

<sup>46</sup> Abdullah Saeed, *Interpreting the Qur'an. Towards a Contemporary Approach*, Abingdon 2006, pp. 19–20.

Abdolkarim Soroush (b. 1945) can be mentioned as an additional and very well known reformed voice. He was initially an active supporter of the Islamic Revolution. However, he increasingly distanced himself from the Islamic Republic over the course of the 1980s and has become one of its most prominent critics.

He counts as one of the most important representatives of the reformed wing in Iran who continues to occupy a religious standpoint and does not argue secularly. Nevertheless, he advocates human rights and civil rights and liberties. For Soroush, religion and its highest truths are divine, eternal, and unchanging, not, however, what people believe to possess from these truths as religious knowledge and how they interpret these truths. Nothing inhumane or insensible could in any event be true, for nothing which is insensible corresponds to God's will. Whatever is good from the perspective of reason cannot stand in opposition to Islam. "Truth is identified by reason."

For Soroush, God is not the author of the Koran. Mohammed is the author of the Koran. From his point of view there are, on the one hand, eternally valid truths and principles (such as God's justice or the teaching on life after death) which cannot be abandoned and are to be differentiated from time-conditioned directives. Not all statements are lined up next to each other with equivalent meaning. For example, Soroush considers following the Islamic penal code as time-conditioned and secondary. However, his call to reform the common a-historical way of looking at revelation and to reach a contemporary interpretation of the Sharia is not linked with an essentially secular criticism of Islam or of the Sharia as such. Instead, Soroush inserts religion into a system in which reason is the highest principle. His goal is the establishment of a religious democracy<sup>47</sup>, which is based upon reason and allows people to implement their religion according to their own convictions and not on the basis of coercion and law. In such a democracy, which respects human rights, religion is best protected from the misuse of power, thus being in the best hands. For Soroush, it is sensible and for that reason the order of the day to adopt human rights and democracy from other (non-Islamic) states. A necessary goal for Soroush is the establishment of a religiously justified democracy, thus a democracy in which every citizen can live out his faith without being forced to do so.

This approach, which differentiates between the eternally revealed word and law of God with interpretations and applications by people afflicted with failures, has been brought forward by theologians and intellectuals in the past. In this way an attempt has been made to find an alternative to the prevailing textual interpretation without simultaneously having to sacrifice the eternally valid divine claim of the Koran and the Sharia. If the Sharia in itself is not discussible but its interpretation is, then the contents of the Sharia are essentially defined as a historical and, with that said, changeable quantity. This principally opens the way to civil rights and liberties and human rights, without its advocates having to be placed before choosing for or against religion.

However, as Arash Sarkohi notes in his recently published dissertation based on an analysis of Soroush's writings, Soroush can be viewed as one of the most courageous

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<sup>47</sup> Mahmoud Sadri; Ahmad Sadri (ed.), *Reason, Freedom, and Democracy in Islam*, Oxford 2000, pp. 138ff.

critics of the Islamic Republic and its political system through his rejection of the absolute claims and claim of sole representation<sup>48</sup>. However, in many of his statements he remains so vague that the terms he employs, such as democracy, human rights, justice, and tolerance are not filled with clear content and are sometimes left to the speculations of his adherents<sup>49</sup>. In addition, there are times when he does not perform an essential break with the laws of the Islamic Republic, for instance the limitation on freedom of expression or the condemnation of homosexuality. Instead, he advocates the condemnation of the latter and a limitation on the former in the case of slandering Islam<sup>50</sup>. Nevertheless, Soroush doubtless makes a significant contribution to the formation of reformed Islam. His theses and the theses of other Iranian reformers are to be counted among “the most liberal and most radical [...] when measured against all the Islamic discussions,” even if they are not operating with an understanding of human rights and of freedom which is counted in the West as a *sine qua non*<sup>51</sup>.

Other Muslim intellectuals fundamentally reject the thought of compatibility between the Sharia and human rights and speak out for a fundamental departure from the Sharia as a precondition for the introduction of human rights and democracy. They are of the opinion that only an essentially new understanding of the Koran and tradition enable the unification of Islam and human rights. An example is the doctor, human rights activist and publicist, Taslimra Nasrin (b. 1962) from Bangladesh.

## Conclusion

There is intensive wrestling when it comes to human rights, and that in no way takes place only in Western countries. This is the case even if, as Baderin has commiseratively remarked, this discussion in Muslim-majority countries frequently takes place “high above the roots” and for that reason does not reach a lot of people there<sup>52</sup>. A special problematic is also presented by the fact, as Abdulaziz Sachedina explains, that Muslim advocates of secular approaches to the topic of human rights, who write in Arabic, Persian, or Indonesian have little influence in their own countries. Also, those who publish in Western countries are as much as unknown in their own countries. Due to this, the human rights debate is hardly touched there by these non-traditional notions, since they are viewed as the “product of ivory tower elitism”<sup>53</sup>. Due to the fact that there are virtually no encounters and no exchange between traditional and secular understandings, Sachedina recognizes

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<sup>48</sup> Arash Sarkohi, *Der Demokratie- und Menschenrechtsdiskurs der religiösen Reformen in Iran und die Universalität der Menschenrechte*, Würzburg 2014, p. 51.

<sup>49</sup> *Ibid.*, p. 65.

<sup>50</sup> *Ibid.*, p. 68.

<sup>51</sup> *Ibid.*, pp. 153; 168f.

<sup>52</sup> Mashood A. Baderin, *Islam and the Realization of Human Rights in the Muslim World: A Reflection on Two Essential Approaches and Two Divergent Perspectives*, “Muslim World Journal of Human Rights” 2007, 4,1, p. 13.

<sup>53</sup> Abdulaziz Sachedina, *Islam and the Challenges of the Human Rights*, Oxford 2009, pp. 20f.

that there is hardly any potential for an improvement in the human rights situation in Muslim-majority countries. The inclusion of traditional representatives in the human rights debate has, for that reason, the highest priority for him in order to bring about change.<sup>54</sup> To include these traditional representatives more intensively in these discussions and in the opinion-forming process regarding the deducibility of human rights from one's own tradition, and to have human rights take root, is one of the most urgent and present claims for Abdullahi Ahmed An-Na'im. In his view, this is to be done "instead of complaining about being helpless victims of oppression by their own governments at home and subjects of Western hegemony in international relations"<sup>55</sup>.

When it comes to the human rights debate, there are nowadays three main opinions which are dominant in Muslim-majority countries: There is the exclusivist position representing the majority and center of classical theology. It explicitly rejects civil rights and liberties as defined by the UN and puts Sharia-defined rights in their place. The pragmatic position can be labeled as co-opting insofar as it bluntly denies the fundamental difference between Sharia defined human rights and liberal concepts and attempts to depict human rights as originally coming from and justified in Islam. It does not consider a reinterpretation of the Sharia to be necessary. Only the reformed-progressive position offers a real possibility of justifying and reconciling comprehensive human rights with the Islamic tradition. Muslim representatives have expressed the hope multiple times that Islam could contribute decisively to improvements in the human rights situation in Muslim-majority countries<sup>56</sup>. However, this can hardly be the case for the Sharia-oriented traditional interpretation but rather at best in the case of the still highly marginalized and progressive interpretation of the Sharia.

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<sup>54</sup> Comp. *ibid.*, p. 22.

<sup>55</sup> Abdullahi Ahmed An-Na'im, *Islam and the Secular State. Negotiating the Future of Shari'a*, Cambridge 2008, p. 115.

<sup>56</sup> Baderin, *Islam*, p. 4.