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Human Rights in Islamic Civilization and in the West.
International Morality as a Cross-Cultural Foundation.

by Bassam Tibi, University of Göttingen

The basic contention of the following presentation is that Islamic and Western civilizations have different worldviews, on the one hand, while they, on the other hand - in our age of globalization -, are under pressure to come to terms and find ways of peaceful coexistence. The means for this end is the inter-cultural dialogue and the framework should be the concept of international morality. In my view as a Muslim scholar living in the West, human rights are the substance of international morality. In addressing the issue in this manner, we have to raise questions regarding the differences and then ask in what way would it be possible to bridge the gap between the West and Islam.

Cultural diversities are not a novelty. They are as old as humanity itself. The history of mankind is equally a history of clashes and exchanges between cultures and civilizations. It is impossible to figure out any human civilization which ever existed in an isolated manner, i.e., only in its own terms without cultural borrowing from the others. This is equally true for the West and Islam as well. In a way of introductory remarks to my assignment in this dialogue project let me clarify what is meant by culture and civilization and then address the issue in point.

The pertinence of the dialogue between Islam and the West for world peace after the end of the Cold War revolved around the issue that with the demise of the artificial umbrella of world politics, i.e. bipolarity and the East-West-Conflict, the true dividing lines among humanity have come to the fore. The clash of civilizations is not an invention of the Harvard professor Samuel Huntington, but a real issue that has to be dealt with, however, in a different way than the one suggested by Huntington himself. We need to acknowledge that civilizations have different worldviews and then search for models and frameworks of peaceful coexistence. An international morality of human rights based on cross-cultural foundations promises to be the best avenue.

We live in an age of overwhelming globalization. The international system of nation states, the world economy and the shrinking of the world through global communication and transportation systems underlie the globalization processes addressed. Some people argue that modern popular culture does function as a world-culture. I contest this view. Videos and other items of the culture of consumption do not bring people with different worldviews and outlooks any closer. To reach the goal set in this presentation for bridging between cultures people need to pursue dialogue, not to drink Coca-Cola and enjoy American television soap operas. To elucidate my approach I need to outline what I mean by culture and civilization and then to relate these issues to our endeavor in question.

Cultures are always local. They are an expression of the social production of meaning which is ultimately local and could never assume a global framework. It is for this reason that there can be no world culture; consumption manners do no create a world

culture! In the world of Islam as well as in the West there exist a great diversity of cultures. These local cultures can group in civilizations on the basis of similar worldviews and outlooks. In this meaning there exists only one Islamic civilization that unites all Muslim cultures, despite their great diversity. Islam in Indonesia and Morocco are different cultures. However, despite the locality of the many Islamic cultures and their diversity notwithstanding, they, to a certain extent, share some essentialities of this cultural system and are for this reason cultures related to one another to the extent of forming an Islamic civilization.

The very same can be said about Western civilization that unites a variety of European and North-American cultures. The difference between the West and Islam is that Western civilization has undergone processes of secularization leading to the separation of religion, politics and society. This is not the place to discuss whether this process can take place in Islam as well. For approaching my inquiry into human rights as the substance of an international morality to be shared by Islam and the West, I want to restrict myself to discussing the divisive as well as the uniting elements in both civilizations.

1) Among the leading seven civilizations in our current world only Islam and the West have universal outlooks and therefore do clash with one another. How can we limit their universalism to the point of making them live together peacefully?

2) In the medieval period Islamic civilization was able to accommodate a major source of Western civilization, i.e. Hellenism and develop out of it one segment of its own legacy. Moreover: it was the Islamic civilization itself which passed Hellenism to

Europe at the eve of the Renaissance and thus made it possible for Europe to change its orientation from Rome to Athens, i.e. from the authority of the pope to the authority of human reason as taught by Aristotle. By then, Muslims and Europeans shared the enthusiasm for the primacy of agl/reason and the high regards for Aristotelian rationalism. Can this legacy be revived for a new encounter between the West and Islam? I believe human rights do provide an opening for this new encounter.

3) For a fruitful dialogue it is imperative to determine those issue areas that split, and those others that unite. Political religion, i.e. fundamentalism on the side of the Muslims, and cultural and political hegemony on the side of the West do separate both civilizations. On the contrary, cultural borrowing and dialogue on the grounds of rationality and international morality do unite rival civilizations.

4) The most pivotal issue in this respect revolves around the idea of international morality based on a minimal consensus shared by all civilizations. In my view, the idea of human rights and the ethics related to it lie at the hub of this morality.

In addressing an international morality based on human rights I want to focus my pondering on Islam. My first point is that an international morality accepted by all civilizations has to be secular in the restricted meaning of a separation between religion, as an ethical belief, and politics. In my work I make a distinction between secularism and secularization. While the first can be an ideology, the latter refers to a social process related to the functional differentiation in society, thus being something real, unlike the ism of secularism. As an avowed Muslim who, however, is critically minded about the shari'a, thus committed to

the separation of religion and public life, my presentation reflects a secular position vis-à-vis the Islamic challenge. In assuming the task I rather speak of secular morality while relating this commitment to the global context. To be sure, the Muslim community I belong to is only a part of the entire humanity. In acknowledging this, I refuse the imposition of an unreformed shari'a, be it on Muslims or on non-Muslims. To establish common grounds for bridging the gaps dividing humanity, we need an international, non-religious morality. In my article published in the Spring 1994-issue of Human Rights Quarterly, I argue that this morality must be based on human rights. I further argue that the traditional understanding of the shari'a is in conflict with individual human rights. There are Muslims, who believe that there are specifically Islamic human rights. In response I, as a Muslim myself, ask: Are we Muslims not human beings like all other humans? Human rights are not restricted to one religious community. As Muslims we have our distinct religion, but as humans we are like all others. For this reason rights are secular human rights on the grounds that they are for the entire humanity. There is a need that all religious communities consent to join a cross-religious morality and develop a consensus on secular human rights.

For the sake of a clear inquiry it strikes me imperative to outline the meaning of the terms employed and to place them historically. On these grounds we then may proceed to ask in what way we can determine the modern concept of human rights as universally acclaimed rights as a shared international morality in a culturally plural world.

I

In the scholarly literature on human rights it is clear that this term refers to an utterly modern concept of individual rights in so far as these are entitlements of the individual defined as a right-holder. Thus human rights are understood to be claims, not obligations. This concept is based on the central ideal of European Enlightenment that man is an autonomous subject and thus is the master of his fate. This concept is the underpinning of the Declaration of the Rights of Man and of the Citizens adopted by the French National Assembly on August 26, 1789 at the beginning of the French Revolution. In this declaration human rights are defined as natural rights of man. These rights were not restricted to French people inasfar as the declaration addresses the entire humanity.

A prominent Muslim scholar who teaches at the Sorbonne, Mohamed Arkoun, concedes that this concept of human rights is a Western concept alien to Islam. In an interview published in Le Monde he clearly states:

"la perception des droits de l' homme dans une pensée occidentale ... renforce le malentendu avec l' Islam, qui a pensé ces droits de l' homme dans le cadre ... de droits de Dieu".

Since the Universal Declaration of Human Rights is based on this secular concept of human rights as natural rights, the focal problem to grapple with in this presentation is related to the issue as to whether this concept of human rights in the understanding of natural rights of man is compatible with Islam. Given that there is a conflict, the question for which I as a Muslim seek an answer is whether we Muslims can speak the language

a universal reading of European history into Islam. This pondering is rather a contribution to placing Islam in the context of the entire humanity of a culturally and religiously plural world. Political Islam and other varieties of fundamentalism stand in the way of cross-religious values and also impede a cross-cultural foundation of human rights. Fundamentalism and exclusiveness are two sides of the very same coin and they place Islamic civilization in a ghetto of global society. The embracing of secular human rights facilitates placing Muslims in their proper place: humanity. It is important for us Muslims to underline the open-mindedness of Islamic civilization and to draw a clear line between tolerant Islam and the opposite fundamentalism.

Having outlined my secular options I proceed on the assumption that establishing a tradition of individual human rights requires a cross-cultural consent regarding acknowledged values as well as the unfolding of an institutional setup that guarantees the legal enforcement of these rights. To reach these ends we need to explore into the avenues for establishing a synthesis between Islam as an open-minded ethics and the secular concept of individual human rights. Early Muslim secularists wanted to put Islam aside. Secularity cannot be imposed on Muslims. It has to be introduced on Islamic grounds and be made compatible with Islamic ethics. To be sure, compatibility is not meant as a different term for imposition. The target is rather how to make us Muslims speak the language of secular human rights in our own tongue.

of human rights in our own tongue, that is to practice a secular concept not imposed on our civilization and so to share it with the rest of humanity.

The focus on the cultural aspect of the issue addressed notwithstanding, I want to make clear at the outset that human rights are basically political and institutional, not religious. Human rights are not restricted to a cultural concept based on norms and values, thus confined to whatever Weltanschauung. Human rights are a practice which requires institutional enforcement as a basic element of their existence. Without this underpinning these rights may keep to exist in the sense of being a claim of man. However, there can be no material human rights in a society which denies the exercising of these rights. Nonetheless, the point of dealing with human rights as a cultural concept and in cultural terms is that norms and values that justify these rights in a specific cultural context contribute to establishing these rights culturally.

In Islam the umma, the community, i.e. the collectivity comes before the individual and it has the highest ranking. The individual is bound to the umma within the framework of the doctrine of religious obligations/al-fara'id. In the Islamic cultural heritage there is no tradition comparable to the Western theory of natural rights in the sense of a concept of natural rights as individual entitlements of an individual vis-à-vis a community, and of their institutional enforcement. Though it is true that in historical terms this modern concept of human rights originated in Europe, the name of it implies that the concept is a universal one. The universality of human rights is the universality of humanity as such. Saying this is not tantamount to

II

Methodologically, Islam can be dealt with in two different ways: One can employ either scriptural or social scientific methods. Social scientists study Islam, as any other religion, in the scholarly tradition of the French sociologist of religion, Emile Durkheim, as a fait social, i.e. as a social fact. Thus, they focus on how Muslims act and place social actions into existing social structures. Scripturalists, in turn, focus on religious texts and address the question of whether or not Muslims act in line with Islamic precepts. They believe that the revealed text is ahistorical, i.e. valid for all times and places. They thus overlook the issue of meaning. Social scientists, who go beyond the mere empirical-descriptive study of religion and hence deal with the problem of meaning in employing an interpretative approach, realize that believers socially produce historically different meanings and impute to them the same symbols implied in the respective texts. Being a social scientist, the latter will be professedly the method that I will be employing in the present paper. Secularity embodied in human rights represents a new meaning related to the social context for which I use the term "World Time" as shared by the entire humanity. By world time I mean the global framework establishing networks interlinking diverse civilizations to one another.

In the first place I want to state that human rights are an outcome of cultural modernity. Before modern times they did not exist in any civilization. It is unfortunate that - contrary to this fact - apologetic Islamic writers argue in a very unspecific way that human rights have always existed in Islam. The scriptural reference to the Qur'an and to the sayings of the prophet serves

as the ground for the needed evidence. The Islamic sources are, however, referred to in the light of our age. Old symbols are filled with a new meaning. The choice between scriptural understanding of Islam and a social science analysis also applies to the legal discussion of Islamic law and to its compatibility with human rights. Thus, the discussion of human rights in Islam encompasses the interpretation of Islamic cultural values concerned as well as the legal tradition. The values of secular human rights require an institutional underpinning for their enforcement. We know from the work of the German sociologist Max Weber that there are three types of rule: traditional, charismatic and legal. The last one is based on an institutional system of law providing the legal body that ensures basic rights, which are at the core of human rights. Without acknowledging this modern concern some Muslim authors interpret Islamic shari'a as the underlying legal structure of political rule and thus project a modern understanding into Islamic law. This is obviously a reading of modernity into Islam. These authors further refer to the shura concept that occurs in two passages of the Qur'an and reinterpret it as a legal concept that calls for political participation in an Islamic system of government. It is not my intention here to discuss the notion of the nizam al-Islami (Islamic system of government) presented as a fundamentalist challenge to secularity. I rather want to examine the relevance of this legal debate to the topic of this paper. In my conclusion I will assess these efforts with regard to their contribution towards developing a truly Islamic tradition of human rights consonant with the universal one. An Islamic understanding of human rights not exclusive for Muslims is needed which does not lapse with apologetic concerns,

i.e. with the self-congratulatory claim: "We Muslims had everything, including a human rights tradition, before the Europeans did." The need to establish human rights on cross-cultural grounds as a substance of international morality is not consonant with any culturally exclusive attitudes. To state the issue again: Individual human rights are secular because they are designed for the entire humanity, not exclusively to one religious community. To state that religious criteria separate humanity is not an anti-religious statement but rather an insight into the need for establishing tolerance and individual rights on non-religious grounds for the entire humanity.

III

The interaction between different local cultures and grouping civilizations is a process that we can observe throughout most periods of history of mankind. It is difficult to find in history a pure culture or civilization in the meaning that it was not affected by others in its environment. Prior to our modern age processes of interaction were, however, restricted to a local or regional setting. There are a few notable exceptions which demonstrate that a culture can generate dissemination processes far beyond its own boundaries. Islamic civilization belongs to these rare exceptions. Widely disseminated as it is, Islam has not constituted a global framework for the simple reason that the globalization is a contemporary issue related to modernity.

In the following I want to relate this argument of cultural borrowing and exchange to the focal point of this paper. We must frankly acknowledge that our understanding of human rights is inexorably linked to the basic rights of the French Revolution and

to the earlier articulated concepts in the European philosophy of Enlightenment. It would be dishonest to overlook the fact that values of human rights as secular rights originate in this European tradition of Western civilization and are deeply affected by it. However, these rights are no longer confined to the West. This tradition has become a part of the general human heritage as the term human rights suggests. At issue is not the validity of human rights but rather their basing on an international morality compatible with the norms and values of non-Western civilizations. Abstract individualism, mere political rights devoid of social justice, and formal participatory politics are flaws of liberal Western theory that have been discussed by many scholars in their reassessment of liberalism in our age. In arguing that our modern understanding of human rights is based on the globalization of the secular understanding of democracy and goes back to the liberal values of this tradition, I definitely do not subscribe to a liberal Western approach for understanding the modern world, nor do I read liberalism into non-Western history. My concern is how to establish a cross-cultural international morality shared among others by the individuals of Muslim and Western civilizations.

IV

Having outlined the core argument of my inquiry, I want to emphasize my awareness that the European expansion did not contribute to the global dissemination of the heritage of the French Revolution and the political culture of the Enlightenment. This expansion was rather directed at constituting an international framework for Western hegemony. This fact makes clear the understandable unwillingness of Muslims to accept the

foreign standards imposed on them. No prudent scholar can assess cultural impact favourably if it takes place to the detriment of the other. Despite the context of imposition, it is conspicuous that non-Western intellectuals reassess their own cultural heritage in the light of the effects of the "World Time" generated by European expansion. They read a new meaning into the inherited indigenous norms and values greatly affected by Western civilization. To be sure, European colonialists did not conquest Asia and Africa in order to disseminate their humanitarian heritage, nor to establish a world-wide tradition of human rights. They were looking for raw materials and markets rather than aiming at universalizing the values of human dignity. The side effects of the conquest were, to put it in the Hegelian term "List der Vernunft" (cunning of reason), the dissemination of the European cultural heritage to which human rights are a crucial meaning. Except Khomayni, who once did this, no prudent Muslim would dismiss human rights because the concept is European by origin.

The late eminent Oxford scholar of the discipline of International Relations, Hedley Bull, made the observation that the shrinking of the world into an international system (means of communication and density of transportation) is accompanied by conspicuous cultural fragmentation. It is clear

"that the shrinking of the world, while it has brought societies to a degree of mutual awareness and interaction that they have not had before, does not in itself create a unity of outlook and had not in fact done so ... Humanity is becoming simultaneously more unified and more fragmented ...".

It is sad to observe that this cultural fragmentation also applies to the addressed issue of human rights. In the tradition of the

age of Enlightenment, however, with an awareness of the effects of its globalization, scholars ought to simultaneously acknowledge cultural pluralism and to dismiss cultural relativism when it comes to human rights. The understandable lacking unity of outlook should not affect the search for a cross-cultural foundation of human rights on an international morality acceptable to all civilizations.

In keeping this world time context in mind while turning to the World of Islam we can observe the exposure of this civilization to the modern Western political, economic as well as cultural impact, positive and negative alike. This exposure has generated different responses. The recent call for a return to pure Islam, underlying the repoliticization of Islam, has followed earlier efforts at adjustments and reconciliation. The Islamic declaration of human rights of December 1981 is aimed at establishing specifically Islamic human rights and thus, unwittingly, divorces Islamic civilization from the rest of humanity.

It is sad to observe that the increasing structural unity of the present international system is parallel to the intensification of cultural fragmentation. From this observation I infer the necessity to accept cultural pluralism, however, while rejecting cultural relativism. For those who are concerned with human rights as universal rights cultural pluralism could not be stretched to the extent of becoming tantamount to cultural relativism. Thus, the admission of practices related to the violation of human rights (for instance torture as suppression of freedom of expression) as being an expression of a different culture cannot be tolerated.

The pluralism of cultures is a supposition which refers to the means but not the ends. In particular with regard to human rights there can be no compromise as far as these ends are concerned. In this sense we may speak of the universality of human rights coexisting and consonant with cultural varieties of how to create these rights on cross-cultural foundations. We may go further and argue that cultural pluralism in the realm of human rights cannot mean more than a cultural indigenization of basic individual human rights in local cultures.

With regard to Islam the "Islamic Declaration of Human Rights" declared and published in Paris and London, though flawed, can be considered as a progress as far as it imparts all basic human rights an Islamic character. The emphasis on the authentically Islamic character of these rights, i.e. the denial of their secular origin is regrettable, however, tolerable with a somehow stretched reference to the norm of cultural pluralism as a ground for creating different foundations of the same values. By the same token, the most recent Islamic debate on Islamic law as a legal system which should bind the behavior of the political rulers to legal norms can in principle - however subject to specification - be admitted as an Islamic contribution to the establishment of legal rule. However, without a system of legal rule being a system of institutional control there can be no guarantee for the practice of human rights. The proponents of the Islamic challenge cannot give us any clue in this regard. Their call for the implementation of shari'a does not take any account of historical facts. To these facts belong the following findings by the late Muslim Oxford scholar Hamid Enayat, that in Islamic history

"the shari'a was never implemented as an integral system, and the bulk of its provisions remained as legal fictions".

Islamic law was not related to the state, but rather to religious societal communities. The binding of selectively and arbitrarily fixed religious rules presented as law to the state makes me, as an intellectual, fear a new variety of religious intolerance. The records of Sudan and Iran make it abundantly clear that secular individual human rights can only be guaranteed in a secular, not in a religious setup. However, there is always a place for true Islamic ethics in an international morality based on a cross-cultural foundation. This morality, if developed, promises to close the gap between Western and Islamic civilization.

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