# Human Rights and Contemporary Islamic Thought: An Analysis of John Rawls' Political Conception

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**Abstract**

The article begins with an emphasis on the distinction between justice and human rights requirements. To clarify this distinction, two dominant positions on human rights, namely, humanitarianism (minimalist) and cosmopolitan egalitarianism (maximalist), are presented as unreasonable and unacceptable perspectives. To offer a more reasonable view, the article explores the ethical and political ideas that form the conception of human rights presented by John Rawls in his *The Law of Peoples*, which is more encompassing than what minimalists suggest and less extensive than maximalists argue for. Rawls' political conception of human rights, the rights he considers as human rights, and the reasoning behind this conception are elucidated. Furthermore, the article scrutinizes contemporary Islamic thought and investigates the possibility of reaching an overlapping consensus on a political conception of human rights. The article proceeds to explain three essential ideas that necessitate Islamic support of human rights: the distinction between the law of God and human interpretation, the acceptance of religious diversity as a divine will, and the preeminent importance of justice in Quranic discourse.

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## Introduction

Since the end of World War II, there has been a significant shift in moral perspectives regarding war and sovereignty. The acceptable means and ends of warfare, as well as the extent of a regime's internal autonomy, are now heavily influenced by the framework of human rights. However, what is commonly referred to as the "Human Rights revolution" has resulted in a mixture of progress and confusion. Although it is widely acknowledged that everyone has the right to certain basic rights, there are fundamental disputes concerning their justification, nature, and content. To clarify this point, let's examine two dominant positions on human rights—namely, humanitarianism (or minimalist) and cosmopolitan egalitarianism (or maximalist)—that are well-known in philosophical literature.

## 1. The Humanitarianism

According to humanitarianism, human rights should be understood as the "negative rights" that individuals could claim against one another even in a world without social and political institutions. For example, John Simmons defines human rights as follows:

*Human* rights are rights possessed by all human beings (at all times and in all places), simply in virtue of their humanity. ... [They] will have the properties of universality, independence (from social or legal recognition)... (Simmons 2001, 185)

Humanitarianism holds that claims for human rights that rely on institutions, such as the right to political participation, education, and health care, are better communicated as a reference to interests rather than a statement of rights. Therefore, human rights are limited by humanitarianism to maintain bodily security (See Ignatieff 2003, chap. 1). This is why we refer to it as being minimalist on human rights.

However, as Charles Beitz argues, rights rooted in natural rights theories and human rights found in international law do not belong in the same conceptual category. The doctrine of natural rights was developed to limit the use of a government's coercive power in the face of religious diversity. But, the international declarations on human rights have a broader scope; they define and establish social conditions for a thriving human life (Beitz 2004). Furthermore, "the content of natural rights, for their non-institutional setting, is necessarily restricted." This fundamental distinction can be seen in various rights stated in the Universal Declaration of Human Rights (UDHR) and subsequent Covenants, such as the "right to a fair hearing" and the "right to political participation," both of

which presupposed institutional arrangements. None of these rights can be realized in a "pre-institutional state of nature" (Cohen 2006, 227).

## 2. The Cosmopolitan Egalitarianism

The dominant attitude among contemporary political philosophers is cosmopolitan egalitarianism, which is the most commonly held human rights perspective. According to cosmopolitan egalitarianism, human rights are equivalent to rights derived from justice. This "monistic" conception of morality, believe a single set of principles of justice always applies to individuals everywhere, regardless of background conditions.

In other words, cosmopolitan egalitarians assert that "people everywhere" have the same rights and opportunities as members of a liberal democratic state. Thus, human rights require a liberal democratic state. Simon Caney describes "the *principal cosmopolitan claim*" as follows: "given the reasons we give to defend the distribution of resources and given our convictions about the *irrelevance of people's cultural identity to their entitlements*, it follows that the scope of distributive justice should be global" (Caney 2001, 977).

The cosmopolitan egalitarians consider all of the rights specified in the Universal Declaration of Human Rights and subsequent treaties to be legitimate human rights. As a result, we refer to it as a maximalist approach to human rights. The cosmopolitan egalitarians argue in favor of global application of the two principles of Justice as Fairness, the conception of justice which John Rawls presents in *A Theory of Justice*. For example, Charles Beitz states that, "it is wrong to limit the application of contractarian principles of social justice to the nation-state; instead, these principles ought to apply globally" (Beitz 1999, 128).

The principles of distributive justice, according to cosmopolitan egalitarians, should exist in a global context, analogous to the conception of justice as fairness in domestic society. They assert that a worldwide basic structure, equivalent to a domestic basic structure, exists, with political and economic institutions incorporating citizens of different countries —as global citizens— in a global scheme of social cooperation. On the contrary, Rawls emphasizes that "justice as fairness" is framed for a democratic society and its primary subject is the basic structure (that is, the major social and political institutions) of a domestic society. A just basic structure is a cooperative scheme among free and equal democratic citizens (Rawls 2001, 39, see also, Wenar 2006).

## 3. The Political Conception of Human Rights

In contrast to these commonly held views, I will analyze a conception of human rights that argues that human rights are both wider than what humanitarianism

asserts and more limited than the rights claimed by cosmopolitan egalitarian-ism. This conception is based on John Rawls' idea of global normative order, which he established in his book *The Law of Peoples* (Hereinafter LP).

This conception of human rights as a part of the Law of Peoples should be understood as resting on the ideas of Rawls' later political philosophy. Both the *Law of Peoples* and *Justice as Fairness* are political conceptions of justice, and to-gether they constitute "political liberalism." The Law of Peoples, as defined by Rawls, is "a political conception of right and justice" (LP, 3). To understand what this means, I will first look at the idea of political conception of justice, as formu-lated in Rawls' *Political Liberalism*, and then explain the idea of political concep-tion of human rights in *LP*, and how Rawls relates it with the idea of "decency."

## 4. The Idea of Political Liberalism

Rawls proposed an ideal of a well-ordered democratic society in *A Theory of Jus-tice* (hereinafter, *Theory*) based on agreement on a conception of justice embed-ded in the virtue of fair cooperation among citizens as free and equal persons. Rawls realized in his second book, *Political Liberalism* (hereinafter, *Liberalism*), that he had not taken the fact of reasonable pluralism seriously enough in *Theo-ry*. The conception of justice as fairness (In *Theory)* was dependent on a com-prehensive liberal philosophy of life that only citizens who affirm it would have reason to endorse Justice as Fairness.

However, Rawls asks In *Liberalism,* whether Justice as Fairness can be re-leased from this dependence; can views that do not agree on the fundamental moral principles, nevertheless agree on a political and not metaphysical concep-tion of justice? *Liberalism* defends this idea by arguing that it is very possible to achieve an overlapping consensus on the political conception of justice in the face of ethical, religious and philosophical disagreement. Rawls says, political liberalism proceeds by "the method of avoidance:" it leaves aside controversial topics in theology, philosophy of mind, epistemology, and moral philosophy. He argues that the ideas which Justice as Fairness constructed are widely shared by those who live in a democratic culture (Rawls 1999b, 394).

Let us briefly explain the three fundamental ideas of *Political Liberalism*, namely, the idea of a political conception of justice, the idea of an overlapping consensus, and the idea of public reason.

### 4-1. The idea of political conception of justice

The foundation of a just and well-ordered liberal democratic society is its regu-lation by a political conception of justice. Rawls defines a political conception of justice as having three essential features: First, it concerns the basic structure of a society. Second, it is presented as a freestanding notion, and the third is that

"its content is expressed in terms of certain fundamental ideas seen as implicit in the public political culture of a democratic society" (Rawls 1993, 13).

A political conception of justice is established in a freestanding manner, meaning that it is "expounded apart from, or without reference to," any particular comprehensive doctrine. A comprehensive doctrine refers to a ethical doctrine that applies to a wide range of moral subjects, not just the basic structure of society, and includes ideals of personal character and a variety of relationships, while encompassing all the virtues and values of human existence. Rawls assumes that "all citizens [in a well-ordered liberal society] affirm a comprehensive doctrine to which the political conception they accept is in some way related," and he views the political conception of justice they accept as "a module, an essential constituent part, that fits into and can be supported by various reasonable comprehensive doctrines that endure in the society regulated by it" (Rawls 1993, 12).

A freestanding conception of justice is based on Rawls' assumption that, within a constitutional democracy, citizens share some deeply rooted beliefs and norms regardless their conceptions of the good. Nevertheless, Rawls underestimated the varieties of reasonable ethical and religious perspectives in *Theory*. In light of reasonable pluralism, it is improbable that individuals in a well-ordered society will ever reach a consensus on any particular conception of good. So "if the role of a conception of justice is to be practically conceived —as aiming to supply a basis for public arguments all can accept— then other bases for agreement must be found" (Freeman 2003, 34).

Rawls thus argues that justice as fairness is a conception founded on what he calls "fundamental intuitive ideas" about freedom, equality, and fairness latent "in the public culture of a democratic society" (Rawls 1993, 13, see also, Rawls 1999b, 429). So political ideas and conceptions do not presuppose the truth of and do not belong to any single comprehensive doctrine; instead, they may be found in a democratic society's public political culture.

## 4-2. The idea of overlapping consensus

Given the fact of reasonable pluralism, the idea of overlapping consensus aimed at explaining how the political conception of justice can remain stable over time. How is it possible for the political conception of justice to win support from different reasonable ethical and religious doctrines, so that adherents to those doctrines can be morally motivated to do what the political conception requires?

The idea of overlapping consensus assumes that reasonable citizens in a well-ordered society can endorse the political conception in accordance with the ideas and values latent in their comprehensive doctrines (Rawls 2001, 32). For example, Kantians may endorse the political conception of justice as a precondition of the autonomous moral agency, while Christians, Jews and Muslims may

support the same political conception as a precondition for fulfilling of divinely imposed obligations. When all the reasonable comprehensive doctrines fulfill this stage, then there is an overlapping consensus.

Rawls illustrates the development of an overlapping consensus on the political conception of justice with a brief discussion of how Catholics and Protestants achieved an overlapping consensus on the principle of toleration. The principle of religious toleration, which was primarily accepted in order to put an end to religious conflict, gradually came to be accepted by Protestants and Catholics for moral reasons. Although in sixteenth century the acceptance of the principle of toleration was a mere modus vivendi, not an overlapping consensus: since "both faiths held that it was the duty of the ruler to uphold the true religion and to repress the spread of heresy and false doctrine" (Rawls 1993, 148).

Rawls thinks that the long experience of social cooperation with those of other religions ultimately diminished hostility between Catholics and Protestants and removed the obstacles to moral acceptance of the principle of toleration. Similarly, we might conjecture that different reasonable religious and ethical traditions that have long flourished in a democratic culture will come to embrace the basic intuitive ideas and political values on which Justice as Fairness is founded (See Rawls 1999b, 441).

## 4-3. The idea of public reason

If a conception of justice functions as a basis for the public political deliberation, therefore it should be interpreted in accordance with the "principles of reasoning and rules of evidence" available to the common reason of democratic citizens. Rawls states that,

Our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason (Rawls 1993, 137).

Rawls argues that public reason specifies an ideal conception of citizenship for a constitutional democratic regime. It is a normative ideal: it imposes on citizens "a moral, not a legal duty —the duty of civility" that restrains the way in which citizens should deliberate about the fundamental questions of their political life (Rawls 1993, 217).

The idea (ideal) of public reason reflects *the criterion of reciprocity.* Rawls refers to the criterion of reciprocity as expressing the "intrinsic (moral) political ideal" of justice as fairness. The criterion of reciprocity holds that,

our exercise of political power is proper only when we sincerely believe that the reasons we offer for our political action may reasonably be accepted by other citizens as a justification of those actions. (Rawls 1993, xliv)

How can citizens support the ideal and fulfill the duty? One of the obligations of all democratic citizens is that they should try to "be ready to explain the basis of their actions to one another in terms each could reasonably expect that others might endorse as consistent with their freedom and equality" (Rawls 1993, 218; See also Quinn 2006, 189).

When citizens appeal to comprehensive doctrines to make political decisions that are not acceptable by a reasonable political conception, other citizens are manipulated for reasons they could not accept on the basis of their shared view as democratic citizens. Therefore, citizens are treated as subjects and not as free and equal persons. The idea of public reason, thus, specifies *shared moral and political values* in order to generate public deliberation and to make constitutional democratic government work.[1]

## 5. The Idea of Political (freestanding) Conception of Human Rights

In *LP,* Rawls says that his Law of Peoples "is developed within political liberalism and is an extension of a liberal conception of justice for a domestic regime to a Society of Peoples" (*LP*, 9). Thus, he attempts to provide "a particular political conception of right and justice that applies to principles and norms of international law and practice" (*LP,* 3). The question that this conception seeks to answer is as follows:

how can the conception of Justice as Fairness, elaborated in *Political Liberalism* for a liberal democratic society, be plausibly "extended" to the global level —to an international society comprised of different "peoples" with different values and traditions? (*LP*, 31, 128.)

*In LP* Rawls aims to present a "freestanding conception of human rights" —as a part of an idea of global normative order— for a culturally plural world. This conception of human rights implies the normative standards that must be met by any "decent" society. In other words, the freestanding conception human rights is minimal and necessary (but not sufficient from the point of view of liberalism) requirements of justice that apply to the basic structure of any well-ordered society (*LP*, 61). These rights are fundamental to any "common good idea of justice" and so are not "peculiarly liberal or special to the Western tradition" (*LP*, 65). As Rawls argues "political (moral) force" of *human rights* "extends to all societies and they are binding on all peoples" (*LP*, 80). But it does not require that they must be enjoyed everywhere in virtue of the common humanity

or as citizenship rights in the sense of "rights as trumps" common to liberal legal theories (See, for example, Dworkin 1984, 153-67).

Instead, Rawls argues that human rights are common to all peoples, since they are compatible with all reasonable political morality, including those of both "liberal" and "decent hierarchical" peoples. Human rights are "a special class of urgent rights, such as freedom from slavery and serfdom, liberty (but not equal liberty) of conscience, and security of ethnic groups from mass murder and genocide." These rights "play a special role in a reasonable Law of Peoples: they restrict the justifying reasons for war and its conduct, and they specify limits to a regime's internal autonomy" by setting "a necessary, though not sufficient, standard" for the decency of a society's political institutions and legal order.

Although having a government that protects human rights is not sufficient to make a society decent, it suffices to render any attempts by governments of other societies to use diplomatic, economic, or military force to change its domestic institutions morally unjustified. As a result, human rights take on roles that differ from the constitutional rights of democratic citizenship in a liberal democracy. (*LP*, 78-81). According to Rawls, the idea of human rights serves three fundamental roles in the Law of Peoples:

1. Their fulfillment is a necessary condition of the decency of a society's political institutions and of its legal order.
2. Their fulfillment is sufficient to exclude justified and forceful intervention by other peoples, for example, by diplomatic and economic sanctions, or in grave cases by military force.
3. They set a limit to the pluralism among peoples (*LP*, 80).

Rawls conceives human rights as "a proper subset of the rights" (*LP*, 81) founded on justice, and particularly are distinct from the conceptions that "simply expand the class of human rights to include all the rights that liberal government guarantee" (LP, 78). He specifies these rights as follows:

Among the human rights are the right to life (to the means of subsistence and security); to liberty (to freedom from slavery, serfdom, and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought); to property (personal property); and to formal equality as expressed by the rules of natural justice (that is, that similar cases be treated similarly) (*LP*, 65).

This list of human rights should not be construed as exhaustive, but rather as a concise description of "human rights proper," as distinct from certain purported human rights asserted in international declarations. Rawls believes that Articles 3 to 18 of the 1948 United Nations Universal Declaration of Human Rights

(UDHR) could be assigned under the category of human rights proper, "pending certain questions of interpretation." (*LP*, 80, n.23).

Rawls did not include all moral rights of individuals among "human rights proper" because of the specific significance he attributed to human rights in ensuring social cooperation within the Law of Peoples (the society of nations). Societies that protect only human rights and not all liberal rights satisfy a decency requirement, even if they are not just from a liberal moral perspective (LP, 78, 83). However, decency is an important subject of political morality for Rawls since it is sufficient for a people to enjoy the rights to self-determination and non-intervention (LP, 83).[2]

An implication of Rawls' idea of global normative order is that the Society of Peoples can be deemed just, even if not all of its members conform to liberal standards (LP, 70). Thus, the Society's primary duty is to ensure the fundamental human rights of all peoples, rather than impose democratic citizenship rights on each and every member (LP, 61, 85). The pursuit of democratic justice should be relegated to the discretion of each autonomous people. The *LP*'s main concern revolves around the crucial issue of minimizing war while simultaneously protection basic human rights through the implementation of law and upholding representative governance. Rawls posits that global peace can only be attained if all societies adhere to a political conception of justice suitable for global order that meets certain standards of social justice, referred to as the criterion of decency. In accordance with the law of peoples, these societies would form a Federation of well-ordered societies (a Society of Peoples). Additionally, Rawls asserts that a reasonable law of peoples is necessary to resolve any dispute regarding which rights ought to be recognized as human rights.

Rawls' account of human rights follows his Justice as Fairness' main focus on social and political cooperation. Human rights are "recognized as necessary conditions of any system of social cooperation," whether liberal or non-liberal (*LP*, 68). In other words, human rights are defined as the bare minimum of freedoms and protections that the members of any society require in order to exercise of "the moral powers necessary to engage in social cooperation" and participate —as a member— in a political society (Rawls 2001, 20).

Peoples who are denied human rights are not cooperating in any way; instead (like slaves) they are compelled or manipulated:

A social system that violates these rights [i.e. human rights] cannot specify a decent scheme of political and social cooperation. A slave society lacks a decent system of law, as its slave economy is driven by a scheme of commands imposed by force. It lacks the idea of social cooperation. (*LP*, 65).

So far we can conclude that a decent society is a system of political and social cooperation in which its laws are not mere commands imposed by force, but ra-

ther "impose *bona fide* moral duties and obligations on all persons" within the territory of the society, which all the members of the people recognize as fitting with their common good idea of justice (*LP*, 65, 66). In contrast with a slave society, a decent society's common good idea of justice assigns and protects human rights to all members of the society. According to Rawls, the decency of a society's political and legal system is the necessary conditions for social justice; therefore, any society structured according to an idea of justice, whether liberal or non-liberal would recognize and secure human rights (*LP*, 87-88).

## 6. The Idea of Political Conception Human Rights and Contemporary Islamic Thought

The fundamental assumption in Rawls' account is that a conception of human rights should be freestanding, that is, it should be independent of any incommensurable philosophical, ethical, or religious doctrines (*LP*, 68). This conception could be the subject of overlapping consensus among several ethical and religious traditions; each could provide a different line of argument. In order to achieve this aim we should assume that "there are many reasonable comprehensive doctrines that understand the wider realm of values to be congruent with, or supportive of, or else not in conflict with, political values as these are specified by a political conception of justice," and human rights (Rawls 1993, 169).

In this respect, Rawls' account reflects the Universal Declaration of Human Rights (UDHR) remark that human rights are "a common standard of achievement for all peoples and all nations." According to Jacques Maritain (1882-1973), who took part in the discussions that led to the UDHR, the aim of developing an idea of human rights to be shared by adherents of different traditions, was to make agreement "not on the basic of common speculative ideas, but on common practical ideas, not on the affirmation of one and the same conception of the world, of [humanity] and knowledge, but upon the affirmation of a single body of beliefs for guidance in action" (Maritain 1948).

Given the practical significance of the idea of human rights and the impact of diversity, we must avoid justifying human rights by resorting to a "particular comprehensive religious doctrine or philosophical doctrine of human nature." The arguments that "human beings are moral persons and have equal worth in the eyes of God; or that they have certain moral and intellectual powers that entitle them to these rights" are not used in Rawls' conception (*LP*, 68).

According to Rawls, "still, the Law of Peoples does not deny these doctrines" (*LP*, p. 68). Arguing along these lines, that is, linking the idea of human rights entirely to a single, ultimate ethical foundation could hinder its capacity to be justified for those who believe in a different comprehensive doctrine. Therefore,

a freestanding conception of human rights seeks to build consensus, given the fact of reasonable pluralism in ethical and theological traditions. The consensus, however, does not rely on knowledge of the contents of these traditions. The point is not that existing comprehensive doctrines embody a freestanding conception of human rights.

Instead, Rawls argues, there are ways to revise or elaborate an ethical and religious doctrine that is non-liberal in its conception of the person and political society but is still consistent with a reasonable conception of standards to which political societies may reasonably be held. To avoid misrepresenting the political conception of justice and human rights, "we do not look to the comprehensive doctrines that do exist and then draw up a political conception that strikes some kind of balance of forces between them." As a result, determining that different ethical and religious traditions can support the conception of human rights may necessitate the revision of such traditions by their adherents. Rawls maintains that "these adjustment or revisions we may supposed to take place slowly over time as the political conception shapes comprehensive views to cohere with it" (Rawls 2001, 188, 193).

To illustrate the necessity of reforming or revising a tradition in order to support a freestanding conception of human rights, I will briefly examine a reasonable approach to the challenge of human rights in contemporary Islamic thought. Many contemporary Muslim intellectuals have attempted to domonstrate the compatibility of Islamic doctrines with the idea of human rights. They have employed various methods, such as referencing the Objectives of Sharia, emphasizing the importance of human dignity, and highlighting the centrality of justice within the Quran. All of these strategies acknowledge and empower human agency.

## 7. Two Opposing Views on the Idea of God's Sovereignty

The concept of human rights in an Islamic context presents a complex challenge due to how one interprets God's legislative sovereignty and its correlation to claims of rights. A widely-held interpretation suggests that God is the only lawmaker who governs all human interaction, with the *Sharia* serving as the all-encompassing moral code that determines all potential outcomes.

It has been argued that because the contents of good and evil are given principally by God's firm and defined rules (as represented in *Sharia*), the faithful Muslim should obey *Sharia's* authority firmly and unconditionally and seek the fulfillment of God's rules. This particular perspective of God's sovereignty prompts a denial of any normative perspective that is derived from human reason or socio-historical experiences, instigating hostility towards it. It only deems normative principles derived from divine commands, as found in the Di-

vine text, to be acceptable. The application of God's legislation is crucial for humanity, requiring them to abstain from forming any normative principles of what is deemed right or wrong, independent of His commands. Consequently, society must solely be governed by the fundamental principles of the Islamic *Sharia*, which is an eternal and unchanging phenomenon, dictating individuals and state's duties and rights. Proponents of this view argue that, as the legislation of fundamental principles encompassing government and personal morality remains elusive to human intellect, God's laws remain the only acceptable basis for any legitimate moral and political system. This interpretation of God's sovereignty assumes that individuals have unrestricted access to God's will. This interpretation can be exploited to undermine people's agency in managing their political affairs. As a consequence, only an exclusive group will govern while pretending to implement God's will.

This view of the sovereignty of God creates a formidable challenge regarding any belief in human rights. In fact, there are certain figures and movements within the Muslim world that adhere to this outlook that denies the necessity of securing basic rights for all individuals in Muslim societies. This view seems to support fundamental rights only for those who conform to the prescribed norms of behavior. Accordingly, freedom of thought and expression is only granted to those with "correct" beliefs, and freedom of assembly is extended only to those who are willing to forbid the wrong.[3]

However, a different conclusion can be drawn from the alternative interpretation of the idea of God's sovereignty. This interpretation posits that God endowed human beings with intellectual and moral capacities that enable them to comprehend God's laws, and conferred upon them a privileged position as vicegerents tasked with promoting justice. This duty extends beyond mere adherence to the laws; it entails the obligation to "commanding right and forbidding wrong." To fulfill this responsibility, individuals require certain fundamental rights such as freedom of expression and association, and access to health care, education, and security. Without these provisions, it would be impossible to discharge their duties as required.

Thus, it is posited that moral obligation may be derived from divine commands, whereas corruption and benefit are subject to rational inquiry. This progression represents a significant stride towards establishing a conception of human rights within the Islamic tradition. However, the question arises as to what precisely an Islamic formulation of a conception of human rights entails. The answer to this question requires that such a formulation be both acceptable to global public reason (i.e., an affirmation of the freestanding conception of human rights) and adequately Islamic (i.e., to provide that tradition with its most compelling statement). In essence, it requires a delicate equilibrium,

where Islamic principles are integrated into an overlapping consensus on human rights. Achieving this equilibrium is an ongoing effort.

Three ideas are essential to this formulation. The first idea indicates a conceptual distinction between the true and eternal statements of law as set down by God (i.e., *Sharia*) and the human understanding of the law, which is theory-laden, contextual, and fallible. According to this epistemological-hermeneutical theory, the meaning of the sacred text is always obtained through the reader's dialogue with the text. Related to this idea is the premise of the compatibility between God's sovereignty and human responsibility. The sovereignty of God is to render final judgment on the sincerity of faith and righteousness of acts, while human responsibility is to provide instructions on moral right and wrong. So, the idea of the sovereignty of God does not provide grounds to escape from the burdens of human agency. Acknowledging and giving sufficient weight to this distinction between *Sharia* and its human interpretation creates spaces for the disagreement and error which are unavoidable in human interpretive activities, and also for endeavours to improve understanding of *Sharia* and reinterpreting it under changing conditions.

The idea of acknowledging epistemological disagreement within the Islamic tradition, which is even recognized by classical jurisprudence through the doctrine of *Ikhtilaf*, can be viewed as a justification for certain human rights provisions, like the principle of fundamental freedoms. Nonetheless, the mere acknowledgement of Islamic traditions that recognize epistemological pluralism does not automatically legitimize an Islamic approach to pluralism in a modern context. Clearly, we need additional justifications to accept and tolerate non-Muslims, regardless of their religious beliefs.

The second idea is that the plurality and diversity of religious communities not only is a natural human condition but also is a will of God. Religious pluralism is not a product of the misunderstanding and antagonism of a group of a religious community; rather it is a consequence of the multilateral structure of reality meeting the demand of human perception. Moreover, the diversity of religious traditions has manifested itself that God may favor this pluralism. It is clearly stated in the Quran that,

We have assigned a law and a path to each of you. If God had so willed, He would have made you one community, but He wanted to test you through that which He has given you, so race to do good: you will all return to God and He will make clear to you the matters you differed about (5:48).[4]

While the previous two ideas offer a promising start to extending fundamental rights to all members of an Islamic community, they alone do not provide a sufficient foundation to support a reasonable conception of human rights as a cru-

cial element of the global normative order. Core values such as recognition of others, respect, and tolerance are undoubtedly key components of the human rights doctrine, yet more values and moral obligations are required to fully develop and defend it in a compelling manner.

The third idea is the centrality of social justice in Quran. According to the Quran, the pursuit of justice and the establishment of a just society was a main objective of the various prophets sent by God: "We sent Our messengers with clear signs, the Scripture and the Balance, so that people might uphold justice" (57:25). As Angelika Neuwirth states, "there was a vivid image in the Quran of the Ideal City —the City of God— long before al-Farabi's famous reworking of Plato's Politeia" (Neuwirth 2014, xxiv).

Numerous contemporary Muslim scholars argue that the Quran's ethico-legal content must be perceived in light of the Quran's "social justice" ideals, which form the foundation of this content (See, for example, Fazlur Rahman 1994, spec. 42-43; Saeed 2004, 37-67; Abu Zayd n.d.; Hallaq 2012; Harvey 2017). For example, Fazlur Rahman argued that the entire Quranic teachings could be seen as "directed towards the creation of a meaningful and positive equality among human beings" (Saeed 2004, 51). As stated in the opening of the chapter of *Women*, God created all of mankind "from a single soul, and from it created its mate, and from the pair of them spread countless men and women far and wide…" (4:1).

The concept of equality at the core of this doctrine is not a matter of human choice, but rather a divine honor bestowed upon all people: "We have honoured the children of Adam and carried them by land and sea; We have provided good sustenance for them and favoured them specially above many of those We have created" (17:70). Justice is asserted as an obligation we owe to both God and one another. Although the Quran does not provide a conception of justice, it emphasizes the ability to achieve justice as a unique human responsibility.

Murtaza Mutahhari was one among the theologians who highlighted the importance of reevaluating the place of justice as a jurisprudential maxim. In his *Barrasi-e ijmali-e mabani-e iqtisad-e Islami (An Overview of the Basics of Islamic Economics)*, he defended the greater extent of justice within the framework of Islamic law. He claims that justice is not simply a legal principle, but also the foundation upon which all other principles are built:

One of the tenets of Islam is the idea of justice… justice resides in the chain of the causes of laws, not in the chain of their results. It is not correct to claim that what religion teaches is justice; rather, religion directs [itself] to what is just. (Mutahhari 1982)

While justice is explicitly mentioned in Islamic foundational texts and is considered the foundation of creation, Mutahhari criticized the failure of many con-

temporary jurists to understand or appreciate its significance as a jurispruden-tial maxim and *fiqh* principle.

On the other hand, Khaled Abou El Fadl develops on Muslim jurists' argu-ments for justice based on the concept of social cooperation. According to the jurists, "God created humans weak and in need of cooperation with others to limit their ability to commit injustice." They maintained that people cannot de-feat injustice or establish justice without social cooperation. The jurists stated that "God created human beings diverse and different from each other, so that they will need each other." This need will increase their natural tendency to co-operate in the endeavor to achieve justice (Abou El Fadl 2004, 19).

Thus, human beings' relative weakness and their remarkable variety of abili-ties will encourage people to engage in fair social cooperation. This juristic dis-course is partly based on the Quranic statement that God created people differ-ent from one another and made them into Nations and tribes so that they will come to know one another (Quran, 49:13). Muslim jurists argued that the phrase "come to know one another" indicates the need for social cooperation in order to achieve justice. The important point here is that justice requires that every member of society have at least some basic rights which must be protect-ed. "A society that fails in this task is neither merciful nor just." This point sug-gests the possibility of fundamental human rights in Islamic doctrine (Abou El Fadl 2004, 19).[5]

The celebration of human equality, diversity, and individual responsibility in the Quran, encourage the pursuit of social justice. This can lead to new possibili-ties for a moral commitment to human rights in modern Islamic political morali-ty. The central point is that for justice to prevail, every member of society must be afforded certain fundamental rights that are protected. Along with asserting the preceding two ideas, there may be a case for more extended guarantees of basic rights as requirements of social cooperation and the fulfillment of all indi-viduals' responsibility. Bringing these two ideas together with the third, the cen-trality of justice in Qurnic discourse —connected to the idea that "God does not will injustice for His creatures" (3:108)— proposes a strong basis to support a political conception of human rights as an essential component of global norma-tive order.

## 8. Concluding Remarks

I analyzed John Rawls' political conception of human rights as well as the capac-ity of a given comprehensive religious doctrine to achieve overlapping consen-sus on it. Rawls has shown that human rights, as he perceives them, have a strong foundation: they can be justified by means of the analysis of idea of a well-ordered society. Rawls conceives human rights as minimal, but necessary

requirements of justice —although not sufficient from a liberal point of view—that can be satisfied by various political morality, not only by a constitutional democracy. Human rights here are understood as a "proper subset" of the rights of members recognized and secured in any society that is (at least) decent. Therefore, he argued that human rights are common to all peoples, since they are compatible with all reasonable political moralities, including those of both "liberal" and "decent hierarchical" peoples. His arguments do not presuppose any particular comprehensive doctrine, nor do they presuppose any particularly liberal conception of justice. Rawls argues that the justification of human rights must be expressed in terms that are plausibly shared; this clearly suggests a conception of human rights and its content cannot be expressed through reference to a particular religious or secular ethical worldview.

Given the fact of reasonable pluralism, the idea of human rights cannot meet the agreement of all reasonable peoples if it draws on ethical or religious traditions that they do not share. Thus, Rawls' account does not obstruct the affirmation of a conception of human rights by tying its formulation to a particular religious or secular comprehensive doctrine. It was the central idea of Rawls' account that diverse reasonable traditions, each with complex dynamical structures and incompatible patterns of argument, might form the ground for a shared view of human rights with their own rational. As Abdullahi An-Na'im argues,

If international human rights standards are to be implemented in a manner consistent with their own rationale, the people (who are to implement these standards) must perceive the concept of human rights and its content as their own. To be committed to carrying out human rights standards, people must hold these standards as emanating from their worldview and values. (An-Na'im 1992, 431)

However, it is necessary to emphasize that the content of a human rights idea cannot be determined through an empirical survey of the values that different traditions happen to share and looking for inherent compatibility. This can lead to the apologetic approaches that are prevalent in contemporary Islamic thought. Instead, affirming of a freestanding conception of human rights, as a normative inquiry, requires reformation or revision of the ethical and religious traditions by their adherents.

As I argued, even if some historically dominant formulations of Islamic doctrine do not embrace an idea of human rights, the most plausible interpretations of it do. Several notable intellectual tendencies among contemporary Muslim thinkers have emerged, which have led to thoughtful and analytical Islamic responses to the problem. As my analysis of contemporary Muslim intellectuals'

endeavors would indicate, Islamic fundamentals can be construed in ways that are compatible with a political (or freestanding) conception of human rights.

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## Notes

1. See Rawls' discussion on the idea of public reason as an essential element of deliberative democracy in "The Idea of Public Reason Revisited," in *LP*, pp. 138-140.
2. Rawls defines two criteria of decency as follows:

   First, the society does not have aggressive aims, and it recognizes that it must gain its legitimate ends through diplomacy and trade and other ways of peace" (*LP*, p.64).

   A society meeting this first criterion is one that "respects the political and social order of other societies." Either it does not seek to increase its power relative to other societies, or if it does, "it does so in ways compatible with the independence of other societies, including their religious and civil liberties."

The second criterion of decency has three parts:

(a) The first part is that a decent hierarchical people's system of law, in accordance with its common good idea of justice, secures for all members of the people what have come to be called human rights.
(b) The second part is that a decent people's system of law must be such as to impose *bona fide* moral duties and obligations (distinct from human rights) on all persons within the people's territory.
(c) Finally, the third part of the second criterion is that there must be a sincere and not unreasonable belief on the part of judges and other officials who administer the legal system that the law is indeed guided by a common good idea of justice… (LP, 65-67).

3. For example, Sayyid Quṭb (1906-1966) and Abū al-ʿAlā al-Mawdūdī (1903-1979) —two leading revolutionary ideologists— clearly expressed that the people either follow divine sovereignty or follow human autonomy. Quṭb not only encourages Muslims to avoid learning from non-Muslims, but also suggests that Muslims have a duty to "fight all the polytheists and unbelievers." Quṭb argues that "man-made" and "self-devised" systems of human organization "place impediments in [Islam's] way" (Quṭb 2000, 234, 243). Particulary, Quṭb's view on liberty of conscience is one of the best examples of this kind of interpretation. According to Quṭb, liberty of conscience is an issue of freedom from false worship and false social values (See Quṭb 1970, 53-68). Similarly, Abū al-ʿAlā al-Mawdūdī states that, "there must exist a God-fearing community devoted to the sole purpose of establishing and maintaining the sovereignty of God on earth" (Mawdudi 1984, 80).

4. "The Quran: A new translation by MAS Abdel Haleem" (*Oxford, UK. Oxford University Press*, 2008).

5. It is worth mentioning that the Muslim jurists' arguments for justice and social cooperation are remarkably similar to medieval and early modern thought in the Christian tradition. See Waldron (2004, 55-58).