2 Sociology of Rights

Inviolability of the Other in Islam between Universalism and Communalism

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All religious known in the world are founded, so far as they relate to man, on the unity of man, as being all of one degree.

Thomas Paine

The world is anxious today to know how Muslims would treat the Other. But ironically, at the height of the so-called information age, a straightforward answer is difficult to obtain. Does Islamic law accord inviolability to the Other? Does Islam grant equal rights to all human beings at the universal level, regardless of their religion, or only to the co-believers? The perception of the non-Muslim public is divided on this question. The Other expects Muslims to offer assurances of inviolability from the perspective of Islam. But why cannot they get it?

Like the broader world community, the Muslim community is also anxious to know whether the West accepts the inviolability of the Other. They expect a clear, unanimous and permanent assurance from the Western countries about their inviolability. Yet, in the cacophony of disparate voices emerging from America and Europe, Muslims fail to find this assurance and this divides the Muslim public and the non-Western world into a range of competing perceptions of the West. Why can this community not find the assurance it seeks either?

Neither side can give or get such an assurance in unanimity. This is because, I argue, neither the Self nor the Other – from whichever perspective any one of us represents – speaks with a single voice. None is homogeneous and unified. Each Self is divided into multiple avenues of approach to the Other and so has no unambiguous response to offer to the Other about inviolability. Not only the general population but also scholars, experts and policy makers, be they Muslims or non-Muslims, are at odds on this issue. The question thus remains one of the most puzzling ones for today's Muslims and non-Muslims specializing in the fields of religion, politics, international relations and human rights law.

Below, instead of taking one side, I will shed light on the origin of this divide in the classical Islamic legal theory and trace its evolution until modern times prior to offering my own view on why all human beings (should) have inviolability on the basis of their humanity. I then summarize my approach, which I ground in the tradition of the Universalistic School of Law in Islam, through the expression I am therefore I have rights. In other words, all human beings are sacred and inviolable by virtue of their existence irrespective of gender, race, religion and nationality.

Inviolability and Interconnectedness at the Age of Globalization

A symbolic border separates each society from the rest of the world and bestows upon it its social identity. These borders may not always converge with the geopolitical borders. It is the cleavage between the Self and the Other which I call the we/they line. The terms of relationship between the Self and the Other is crucial for a concept of universal human rights which stipulates that the Self respect the inviolability of the Other and vice versa. Yet the distinction between the Self and the Other is not so clear-cut. Instead, it is, as Figure 2.1 illustrates, produced by a complicated matrix of relations within and between societies.

The line between the Self and the Other is fluid, contested, and constantly negotiated and redrawn. Both the Self and the Other, as well the terms of their relationship and the line between them, all constantly shift. It is a political process. Political power demonstrates itself in its ability to redraw these boundaries and redefine the terms of relationship between different sides. Those who enjoy more power are the ones who decide where the borders should be drawn and how the terms of relationship should be defined.

The same is true for the internal cleavages in a society concerning the approach to the Other. Neither side (the Self and the Other) is united. As Figure 2.1 illustrates, the cleavage between the universalists and the communalists divides both the Self and the Other. Although they belong to different societies, the universalists from both sides constitute a single group because they share the same universalistic values in their approach to the Other. Likewise, the communalists from different societies also constitute a category because they share the same exclusionist or communalistic approach to the Other.

For a universalist standpoint, a state of peace is taken as the default relationship between the Self and the Other. However, from a communalist perspective, the de facto relationship between them is war or contention unless otherwise proven. The universalists may easily relate themselves to the Other while the communalists would face serious problems in this regard because of their adversarial approach to the Other.

As Figure 2.1 illustrates, the two lines (the Self-Other line, and the Universalist-Communalist axis) that mark intersecting cleavages, give rise to a fourfold matrix of relations. This matrix has critical importance for the issue of the Other and their inviolability. Below I will illustrate how this matrix bears on the inviolability of the Other. The density or the volume of the relations between the Self and the Other has exponentially increased at our age which is characterized by interconnectedness, flatness, and death of distance. Yet, ambivalence prevails on whether the increasing interconnectedness in the world has been paralleled by increasing inviolability and human rights.

Therefore, our investigation must pay attention to diverse and divergent views in Islam. There is no one among Muslims who can speak with God's voice and answer
Consequently, in all societies, it is possible to find opposing exclusionist and inclusive views concerning the inviolability of the Other. Similar to the rest of the world in their approach to the Other, the cleavage between universalism and communalism divides Muslims as well. This divide is reflected in law as the dichotomy between two rival paradigms: human rights at the universal level and civil rights at the national level. This enduring tension between universalist and communalist perspectives in Islamic culture is far from being peculiar to Muslim community. Instead, it is a commonly observable aspect of all major cultures in the world.

Besides the common patterns between Islamic and Western laws emanating from universal patterns, one should also bear in mind more specific communalities emanating from common origins and historical experiences. Islam is a Western religion, historians of religion unanimously agree, emanating from Abraham as Judaism and Christianity, which is common knowledge for the specialists, even if it remains a surprising discovery for the general public. So are Islamic law, science and philosophy. They reflect striking parallels because of a common history. Islamic discourse may be seen as a continuation of the Judeo-Christian legacy. Furthermore, Islamic law inherited some aspects of Jewish law.

Islamic philosophy and science heavily derived from Greek philosophy and science through state-sponsored translations from Greek into Arabic during the eighth and ninth centuries. Muslim scholars preserved the Greek heritage against the religious bigotry prevalent in the West during the Middle Ages until the rational thinkers of early modern Europe reclaimed it through translations from Arabic to Latin. The legacy of such Greek thinkers as Socrates, Plato and Aristotle traveled to Europe through the Middle East. Islamic philosophy revered Aristotle as the First Teacher (al-maulim al-aqwa) who was followed by al-Farabi (339/950), the Second Teacher (al-maulim al-thani). Ibn Rushd or, as known in the West, Averroes, the "Commentator of Aristotle," is yet another renowned follower of Aristotle. Not only the rationalist Aristotelian but also Plato had prominent Muslim followers such as Ibn Sina, the most prominent representative of illumination (ishbaha) in Islamic philosophy.

Yet, Islam also internalized a broader cultural base especially during the first centuries of its history. Muslims were eager to claim the legacy of the entire humanity during the formative period of Islamic civilization. Not only the Greek classics but also the products of the Egyptian, Iranian and Indian cultures were also translated into Arabic – contributing to the creation of a highly cosmopolitan discoursce which came to be known as Islamic culture. While some Muslims extended their interest endlessly, the others concentrated only on the core, the Qur'an and the Hadith, and blamed the former group with heresy. However, neither approach had been definitive on the fate of Islamic culture. Rather, they coexisted in tension, competing to gain more intellectual and social ground.

Since the axis of universalism and communalism divides all societies, peace is considerably contingent upon or best served by the coalition of universalists from the Self and the Other joining in a sense of common cause. Otherwise, if the communalists prevail, societies would find themselves on a collision course. For a sustainable world peace, the universalists who act with "value rationality" from
different societies should ensure each other about their respect for the Other's inviolability, but more importantly, try to curtail the propensity towards communalism inside their own society from reaching extremes.

For the universalist effort to succeed against communalists, the universalists in each society need the collaboration of the universalists from other societies. This is highly critical because one of the most important factors that triggers and feeds communalism is feeling threatened by the Other — which is the fuel of the communalistic ideologies, and the only way to overcome it is the insurance needed from the Other. Even if there is not such a threat, the communalists may on occasion try to invent it, or even fictively construct it, to increase their popularity because they need an outside enemy and an imminent external threat to compete against universalists. Consequently, forestalling international conflict depends on the triumph of universalists over communalists within each society more than anything else.

Communalism in a society feeds communalism in its neighbors while universalism feeds universalism. If communalism is on the rise in one society, the Other cannot say this is its problem — it has to overcome it by itself. This is because there is a great possibility that the actions of the communalists in one society might have spurred communalism in its neighbors. For this reason, the neighbors should check whether or not their own society, knowingly or unknowingly, contributed to the rise of the communalists in their neighbor.

Communalism may gain power in a society to an extent that it begins threatening or attacking its neighbors. In such a political and psychological context, universalism in the neighboring societies has little or no chance to survive until external attacks and threats disappear. No one would listen to intellectual arguments — regardless of how convincing they are — for the inviolability of the Other while they are violated by the same Other. The last two centuries of Muslim societies, as I will explain below in greater detail, testify to that. The TwoUniversalities of School of Law in Islam lost ground in Muslim societies as a result of colonization by Western powers. Each time Muslim society has been attacked or felt threatened, communalism gained ascendancy. In response, some of the communalist intellectuals blamed Muslims for it and claimed that this was a Muslim problem which can only be solved by them. In today's interconnected and flat world, this may be a misplaced focus and an unrealistic expectation. The same applies for the efforts of the universalists in the West who cannot succeed if the Muslim extremists continue attacking or threatening their societies.

Thus it is the actions of both sides that together determine whether the west/east line favors the upper hand by universalists or communalists. For the same reason, the communalism on one side can only be controlled by the collaboration of both sides. This is more so at the age of globalization, which successfully earned the globe into a small village but has yet to discover how to foster neighborly relations and the inviolability of the Other in that village.

Human Rights Versus Civil Rights

A society usually recognizes the inviolability of its members yet the inviolability of the Other is a divisive question for the society under consideration. In the process of addressing this question, societies usually break up into two rival camps by what I call the west/east line. The west/east line is a line of exclusion and inclusions that separates the Self from the Other by distinguishing a society from the rest of humanity. Some of us would like the west/east line to be unbreakably thick and high while some want it to be transparent, thin and low. Consequently, the west/east line brings about a cleavage almost in every society based on its approach to the Other: the west is usually divided because of its approach to the east.

Hence originate the differences between the advocates of universal human rights and civil rights. The universalist jurists argue that the west/east line is incommensurable as far as basic human rights are concerned; therefore all human beings (should) have equal rights. In contrast, the communalist jurists assert that the west/east line has consequences on rights and thus the people on the "west/east" are not qualified for equal rights as those who are on the "east/west" of the line. The former group is concerned with the well-being of humanity as a whole while the latter group is concerned primarily, if not exclusively, with the well-being of the citizens of its own society. Here lie the roots of the cleavage in Islamic and modern jurisprudence, in Europe and in the US, between the advocates of universal human rights and those of civil rights at the national level.

How to draw the "west/east" line has divided Muslims, as it did the rest of the world, in their approach to the Other. How thick should be the "west/east" line separating Muslim and non-Muslim societies? The answer divides Muslims into two camps between those who see no difference and those who see the Other as unqualified for equal rights with Muslims. The cleavage between universalism and communalism has also been a feature of Islamic thought and law.

A universalist position, from my perspective, is characterized by two features. First, it accords equal rights to all human beings on the basis of their humanity alone, by making no distinction between Us and the Other as far as human rights are concerned. Second, it acknowledges that the Other also stands for universal human rights and cares for us no less than we care for them.

From this perspective, all universal cultures in the world make some provision for universal human rights (albeit in their own terms), and the emanating discourses and paradigms are incomparable. It would be contrary to universalism to claim that only our culture provides for the guarantee of universal human rights, and that all remaining world cultures cannot. Claiming monopoly on human rights discourse is but another form of suborning the rest of humanity to our cultural superiority with the very claim that we are all equals — which our culture, but not theirs, establishes. That is just another subtle way of saying we are still not equals.

Highlighting, at the outset, the duality between human rights and civil rights perspectives in the classical Islamic and modern secular legal systems is vital for the ultimate objective of this chapter: exploring the compatibility and the possibility of the synthesis between the universalist strands of legal thought concerning human rights in Islam and the West. If we compare the universalistic tradition on one side with the communalistic tradition on the Other, we are destined to arrive at the wrong conclusions. Both cultures house exclusionist and inclusive worldviews and the structure of their legal discourse reflects the tension between the same duality.
Therefore, we should be attentive to comparing the inclusive or universalist traditions from each culture. This is a crucial prerequisite for a viable attempt for understanding how compatible they are and if a synthesis is possible between the two. But if we contrast the universalist approach from one culture with an exclusivist approach from another – as most of the polemical and ideological literature does – then our attempt would certainly be bound to fail.

Muslim jurists since the eighth century CE have been divided on these issues – as I will elaborate below. Some jurists, led by Abu Hanifa (699–767), argued that all human beings are inviolable, regardless of their innate, inherited or gained qualities, for the sake of their humanity. The followers of Abu Hanifa postulated this as: 

\[ \text{al-'imāh bi al-adāmiyyah} \]

In English, the term ‘imāh means inviolability and the term adāmiyyah means humanity, personhood or adamah. From this perspective, inviolability arises on account of one's humanity. Abu Hanifa and his followers from Hanafi and other schools envisioned a world law based on a universal normative system. The subject of law for them was the human being, but not the citizen of a particular state. As I will explain below in further detail, the Universalist School solidified its claim by rational and scriptural arguments from the Qur'an and the Hadith.

Not all Muslims have agreed with this universalist approach. The communalsists also formulated their arguments deriving from the same Islamic scriptures, the Qur'an and the Hadith, sayings of Prophet Muhammad. They claimed that the jurisdiction of Islamic law cannot be extended towards non-Muslims who do not believe in it. Nor can Islamic law be enforced outside the Islamic state. They argued that if the non-citizens do not accept the authority of our legal system and we do not have the power to enforce our laws, then why should we make laws for them? They argue that a law must be made by the authority that can enforce it.

Here we observe a dialectical relationship, rather than a linear evolution from one to another, between two strong forces influential on the society. Societies oscillate between universalism and communalism and between exclusion and inclusion.

Important historical events in the history of nations trigger either tendency in societies. The Muslim society swinging from a predominantly universalistic culture to a predominantly communalistic one – owing to the colonization during the last two centuries – provides an excellent example for this process. American history also reflects an instructive example where it is possible to trace the enduring tension between the universalists and the communalsists since the time of the founding fathers, whose universalistic legacy has not always been maintained as carefully by the leadership from subsequent generations. The civil war and later the civil rights movement may be seen as manifestations of this latent and enduring tension.

Similarly, once dominant in Islamic theology, law and mysticism, the universalist interpretations of Islam are no longer officially adopted by the so-called Muslim states. Nor are they represented and advocated by any Muslim intellectual or scholarly community except for scattered solitary voices here and there in the large geography of Islam.

Recognizing inviolability of the Other is not the only difference between the concepts of human rights and civil rights. Instead, there are other underlying philo-

sophical and procedural differences. Universal human rights are based on a notion that there are certain rights that are "natural," "born," "God-given," and "inalienable." From this perspective, since they are inherent in every human being, human rights cannot be taken away by any authority. In contrast, the civil rights are constitutional in the sense that they are granted by the state to its citizens and can be taken away by it. One of the main purposes behind the idea of inalienable human rights is to protect the individual human being from the oppression of the omnipotent state by limiting its authority on its subjects.

Since human rights are thought to exist independent of the state and against its possible intrusion, a different procedure is required to protect and enforce them. The creation of the United Nations with its relevant arms was a response to the need for an international organization, whose authority is accepted by the member nation states, to enforce the universal human rights. However, the UN has never had the enforcement power the nation states have had. Consequently, without sufficient enforcement at the international level, the Universal Declaration of Human Rights faces the risk of becoming a merely "moral," rather than a "legal," document.

Multiple Grounds for the Justification of Human Rights

Those who accept the universality of human rights are further divided over the question of justification: Why is the Other inviolable? What is the reason why all human beings (should) have equal rights on the sole basis of their humanity? This conceptual discussion about the justification of human rights is different than the purely legal issues in the practical law. This distinction may be indicated, following Perry, by calling the issue of justification the "morality of human rights." There have been countless attempts in the world for the justification of human rights. Almost every one of them makes an exclusive claim that only it can provide a coherent and logical justification for the universal human rights and refutes the intelligibility of the other attempts for justification. Yet, from the perspective outlined here, for me to be right in my justification, the Other does not have to be wrong all the time. Therefore, in order to prove my own justification, I do not always need to disprove the rest of the arguments for the justification of human rights. There is a possibility that our arguments may complement each other.

I argue that there is not a single way of justification for human rights. Nor does it have to be. There is no reason for us to exclude the possibility that human rights can be justified in a myriad of ways by arguments originating from different levels and dimensions of analysis. As long as they all conform to the same normative rules, there can be multiple and multiplex grounds for human rights, emanating from East and West, from religious and secular thought. Each universal culture and religion offers the universal human rights within a language of its own. Furthermore, we should also be aware about the diversity within the universalist camp in each culture, rather than taking it as a monolithic entity. In each culture there may emerge several ways of justifying human rights.

These paradigms that are used by different cultures to justify the inviolability of human beings for their humanity are incommensurable. We cannot judge the
intelligence or plausibility of one based on the other. Plausibility is cultural and relative. Consequently, the mechanisms of justification are also diverse. What looks sensible for a religious person may look nonsensical to an atheist and vice versa. What is most plausible for a Buddhist may look implausible to a Christian or a Jew.

In such a situation, the advocates of a paradigm may easily be tempted to discredit the other's attempt for the justification of human rights and attempt to make an exclusionary claim that the sole justification emanates from their paradigm. Alternatively, as I call for here, each paradigm may refrain from the temptation of claiming monopoly over the terrain and acknowledge the legitimacy of the other attempts of justification as long as their advocates find it convincing for themselves and their communities.

These differences between cultures and within them add to the strength of the universal human rights paradigm and create a global synergy. However, conventionally, each universalist school of law claimed the exclusive honore of justifying human rights, which is self-defeating for the cause of human rights and counterproductive. For our human rights law to be universally acceptable and applicable, it should be open to different narratives and terminology used for the justification of human rights.

Islamic culture provides an instructive example to how universal human rights can be justified differently within the same culture. For instance, the rationalist Mu'tazilite scholars cannot be expected to use the same language as Mystic Sufis. The same is true for the theologians and jurists.

A survey of Islamic universalist discourse demonstrates that there have been multiple grounds for the inviolability of all human beings regardless of gender, religion, race and color. Numerous arguments have been advanced by different universalist schools of thought in Islam: all human beings are inviolable (1) for being created by God; (2) for being loved by God; (3) for being honored by God as the best of creation; (4) for being vassals of God on earth; (5) for God's plan to try human beings on earth cannot be realized otherwise; (6) for the principle of reciprocity – do unto others what you like them do to you – requires so; (7) for God commands so; (8) for it is good in itself to do so.

Some of these arguments belong exclusively to a particular school of thought while some are commonly shared. For instance, the first and the second arguments are typically Sufi arguments. The third, fourth and the fifth arguments are generally used by the rationalist jurists. The sixth and seventh arguments are advanced by the traditionalist scholars who support their claims by evidence from the Qur'an and the Hadith. The eighth argument reflects the view of the Mu'tazilites, the rationalist theologians, on what is good and bad. Our purpose here is only to demonstrate the multiple grounds in Islam for the justification of universal human rights; therefore, I will leave the task of further elaboration to another study.

From this perspective, the right to inviolability is thus a universal and inalienable right in Islam founded on multiple grounds by diverse schools of thought represented by theologians, Sufis, jurists, traditionalists and rationalists. Some Muslims appealed to law while some appealed to love while trying to justify universal human rights. Since intelligibility of arguments has been seen as incommensurable in the classical Islamic thought, all have been considered valid.

Furthermore, Islamic law makes no claim to be the sole protector of humanity – instead it acknowledges that at the very basic level it serves the same goal as other legal systems in the world. This approach instructs Muslims on two principles: they should care for the Other and know that the Other also cares for humanity.

It is unanimously agreed in Islamic theology that the objective of religion since Adam – not only Islam but all religions – is to protect these six sacred rights. Covered by the right to inviolability in Islamic law are: (1) sanctity of life; (2) sanctity of property; (3) sanctity of religion; (4) sanctity of mind; (5) sanctity of honor; and (6) sanctity of family.

From an Islamic perspective, these rights constituted the permanent core of perennial human law and morality. Muslim scholars assert that all universal normative systems share these values which serve as the common ground among them. Furthermore, expectedly, each of these normative systems relies on different mechanisms, discourses and narratives of justification.

Each one of these arguments advanced by different world cultures to justify universal human rights is characterized by a common feature: they are all founded on a concept of universal human rights. Universal human rights are accorded to that abstract subject the construction and emergence of which precede the rise of universal human rights. The existence of such a concept makes human rights possible in a culture because otherwise there would be no subject to which human rights can be attributed.

The rights to be human or a person precede, both logically and chronologically, all other rights. If a person does not have the right to legal personhood, they are by definition disqualified for any right because rights are accorded to persons. Since Aristotle, the law focused on citizens who enjoyed legal personhood while the rest of the people were considered below the level of citizens. Because they lacked the right to personhood, non-citizens did not qualify for rights or duties defined by law.

One may expect a linear evolution in the human thought but here we have an example of the opposite. While Abu Hanifa served as the voice of the propensity towards universalism, Malik, Ahmad bin Hanbal and ash-Shafi'i adopted the role of serving as the voice of the propensity towards exclusion. The idea of universal human rights evolved out of communalism but it could never completely replace it. Abu Hanifa lived before some of the above mentioned advocates of the Communitarians School, who came later, and yet opposed him. The same is true in Western legal thought where universalism and communalism still coexist as two rivals.

Why do we need multiple grounds for the justification of the inviolability of the Other and universal human rights? No justification in the world is – and would possibly be – convincing for all human beings. Different arguments may be more effective in convincing different people to refrain from violating the Other. Since intelligibility and plausibility are relative and incommensurable, one argument may look reasonable and convincing for a group while it may have no impact on another group. What works is different in each social and cultural milieu.
Inviolability of the Other in Islamic Law: Who has the Right to 'Immah?

Now, we can have a closer look at the debates in Islamic law concerning the inviolability of the Other. All Muslim jurists in the classical era agreed on what rights should be protected under the coverage of 'immah, but there was a question that divided them: Does the Other have the right to 'immah? Is the entirety of humanity qualified for 'immah or citizens of the Muslim state alone? Has Islamic law legislated for non-citizens to grant them human rights? Does all of humanity or the citizenry of the Islamic state alone, composed of Muslims and non-Muslims, fall under the jurisdiction of Islamic law? To what extent are Muslims allowed to intervene on legal traditions under their rule and on what grounds?

There emerged two positions in Islamic law as to the relationship between 'immah and adamiyyah or, more plainly put, as to who possesses the six basic rights covered under the title of 'immah. Abu Hanifa and his followers from Hanafiite and other schools attached 'immah with adamiyyah, while al-Shafii and his followers from his own and other schools attached it to iman (declaration of Islamic faith) or aman (making a treaty of security).

The divide between those who accord inviolability to humanity, which I call the Universalistic School, and those who accord it to the citizens of Muslim state, which I call the Communalistic School, has yet to be explored in Islamic law. Below, I will try to expose this enduring tension which has thus far remained latent. This may be seen as just another example of how the approach to the Other divides a community.

The Universalist School: The Other is Invincible

Ibn Abidin, a prominent Hanafi jurist who lived during the nineteenth century, stated that “a human being is inviolable legally even if he is a non-Muslim” (Al-Adami mukarrem shar’an wa lah kuffram). When he stated this principle, he was not making a new revolutionary statement as his counterparts had done at that time in Europe and America. Instead, he was simply reiterating a basic principle in the Universalist School of law in Islam.

The Universalistic School in Islamic law can be traced back to Abu Hanifa, the founder of the Hanafi School. Abu Hanifa’s close circle of students recorded his lectures on Islamic law and disseminated them after his death. He authored a few small books on theology, but none on law. Abu Yusuf (182/798) and Muhammad al-Shaybani (189/805), two of Abu Hanifa’s leading students, played a key role in transmitting the doctrines of their mentor in writing to subsequent generations. Tahawi (321/933), Quduri (428/1037), Dubisi (430/1039), Sarakhsi (483/1090), Kasani (587/1191), and Marghinani (559/1167), among many others, systematized these views in encyclopedic works. Sarakhsi’s magnum opus, al-Mahbub, has occupied a significant role in the development of the early Hanafi literature. Later generations of Hanafi jurists expanded, modified and interpreted the legacy of Abu Hanifa and his prominent students. Among the prominent Hanafites from subsequent generations are Zaylai (762/1360), Fanari (834/1431), Molla Khursaw (885/1481), Ibn Humum (860/1457), Ibn ‘Abidin (1252/1836) and Ibn Nujaym (970/1563). Babbari (786/1384), Tirmurazi (1004/1596), Haskafi (1088/1677) and Khadiim (1176/1762) are also among prominent Hanafite jurists. The work of the Ottoman reformist jurists during the second half of the nineteenth century, mainly led by Ahmed Cevdet Paşa (1312/1895), represents the first attempt to codify and enact the Ottoman civil law. Majallat-i-Akbam al-‘Adliyya is a product of that period and reflects the universalistic Hanafi approach.

It would be misleading, however, to see the universalistic approach to the inviolability of the Other as the exclusively Hanafite perspective—despite the fact that it originates from Abu Hanifa—because the followers of the Universalistic School expands well beyond the Hanafi School. There are scholars from the other major schools of law, such as Malik, Hanbali, Shafii, and also Shiite, who subscribe to the universalistic principles. Among these non-Hanafite scholars from the Universalistic School of Law are Ghazzali (d. 505/1111) from the Shafi School, Ibn Taymiyya (d. 728/1328) and Ibn al-Qayyim al-Jawziyya (d. 751/1350) from the Hanbali School, Ibn Rushd (d. 595/1198), Shari’i (d. 790/1388) and Ibn al-Ashur (d. 1394/1973) from the Malikite School, and Muhammad Jawad Maghtyiyah from the Ja’fari Shiite School. This list is far from being exhaustive.

For the Universalistic School of Law in Islam, humanism (adamiyyah) constitutes the subject of human rights law. At this level, non-Muslims are not the Other for Muslims. On the contrary, humanity as a whole is considered as one and equal with respect to the right to inviolability. The right to inviolability (of life, property, religion, mind, honor, and family) is considered dawri — literally translated, necessary, self-evident, axiomatic or given. The aforementioned six basic rights are termed dawriyyah, or the axiomatic rights, indicating that they are self-evident and also that they serve as the foundation or justification of other rights. From the perspective of the Universalist School in Islamic law, since the basic human rights are axiomatic, all human beings, be they Muslims or non-Muslims, enjoy them without any question.

For a universalist Muslim jurist, who is the Other at one level becomes the Self at another. Non-Muslims are the Other for Muslims at the level of religious beliefs but not at the level of humanity and human rights. Figuratively speaking, there are two converging circles: the circle of humanity and the circle of Islam. The latter is smaller than the former but a part of it. From this perspective, humanity as a whole is seen as the ummah of Prophet Muhammad; some have already responded (ummah al-jibril) while some are still being invited (ummah al-‘adl al-salih).

The root of the term adamiyyah is Adam, the name of the first human being God created—according to the Torah, the Bible and the Qur’an. It is one of the rare common words in Jewish, Christian and Islamic cultures and languages. In Hebrew, adama means “earth,” similar to Latin humana, human, which is related to humus, earth. The connotation is that human beings are created from earth and live on the earth. The name Adam occurs in the Qur’an 208 times.

Abu Hanifa and his followers found a universalistic concept of human being already offered by the teachings of Prophet Muhammad, which is reflected in the Qur’an and the Hadith. Otherwise, if their cultural repertoire had not been tolerated and facilitated them to develop and construct the abstract concept of humanity.
(adamiyyah) as a universal category, it would have been impossible for them to make such a concept the foundation of their legal reasoning. Now we can look closely at the concept of human being in the teachings of Prophet Muhammad.

The Qur’an is addressed to the children of Adam, as were other sacred scriptures before it. According to the Qur’an, God created all human beings with perfect souls and bodies and bestowed upon them the haramah, honor and dignity. God privileged all the children of Adam by assigning them as His viceroy on the earth to promote good and to prevent evil, by speaking to them, by granting them intelligence, knowledge and ability to express themselves and communicate with Him and each other. God created human beings so that they know Him and each other because He loves to be known and He loves His creatures to know each other for this would increase their knowledge about Him. He put differences among human beings such as gender, color and language so that they know each other. Yet He declared that the superiority belongs to those with a higher moral conduct and piety. God looks at the hearts and deeds, said Prophet Muhammad, but not at appearances and wealth. God commanded repeatedly that His creatures also look at each other with God’s eye.

God’s love, grace and providence are universal, embracing all human beings as the sunlight. Therefore, all human beings, including the infidels who deny God, have haramah, inviolability and dignity. Human beings are required to treat each other with dignity — the way God treats them. Human beings should treat others the way God treats them and the way they want God to treat them. Human beings are not allowed to punish others for denying God or going against His will. God made it explicit in the Qur’an that “Iby duty is to make (the Message) reach them: it is our part to call them to account.” God loves human beings. He also puts love between them to enable them to love one another — which is what they are repeatedly commanded to do in the Qur’an and the Hadith.

It is, the Qur’an states, a sign of God that He created human beings as two sexes and put love and compassion between them. The gender difference is a means God created to try people. Eve is not the sole responsible for the Fall from Paradise. God forgave both Adam and Eve as they repented from their sins after the Fall. Consequently, all human beings are born with equally pure souls, free of sins, and each one is judged according to their own deeds. Both men and women are charged with the same moral and religious duties, except for minor differences due to their physical differences.

Similarly, it is a sign of God that He created people in different colors and divided them into different races, nations, tribes and religious communities. This applies to the class difference or the difference between the rich and the poor. The poor have a legal right in the wealth God granted to the rich.

None of these natural or God-given differences may be used to justify different treatment of a human being before law. If God had wanted, the Qur’an states, He could have made all human beings one race and one faith but the divine wisdom required otherwise. These differences are signs of God’s art and a means to test people to see whether they would discriminate against each other. Human beings are invited to realize that the variable qualities — over which one has no or little control — are not what make a human being who they are, but the heart which one is required to, and able to, purify and reform.

This brief illustration demonstrates what Abu Hanifa and early universalistic jurists found at their disposal — which reflects many commonalities with other universalistic traditions, in particular Judaism and Christianity — to build upon. The adamiyyah as a term does not occur in the Qur’an but the notion is there. The universal category of adamiyyah is the contribution of the Universalistic School to the Islamic legal thought. Since it does not exist verbatim in the scriptures of Islam, the traditionalists who concentrated on the letter of the scripture refused to adopt it. Instead they used religiously or politically defined categories such as Muslim versus non-Muslim or citizen versus non-citizen. (I should note that citizenship is an evolving concept and did not have the same meaning in the Middle Ages as it has today.)

The existence of the construct of universal humanity is the most important prerequisite for the rise of universal human rights in a culture. The right to be human, as I stated earlier, precedes all other human rights. Having shed some light on the conceptual sources of the universal category of humanity, with which the Universalistic School is distinguished, now we can explore the arguments for the justification of a universalistic position towards the Other from the perspective of Islamic law. More specifically, we will be searching for an answer why Abu Hanifa and his followers to the Universalistic School of law thought that all human beings (should) have the right to inviolability. Simply put, why should a Muslim accept that the Other is inviolable?

The scholars from the Universalistic School used rational and scriptural arguments to prove that all human beings are inviolable for their humanity. Islamic theology does not condemn — nor does it hold suspect — secular rationality and reason. On the contrary, it is an indispensable part of the Islamic jurisprudence, especially the methodology the so-called Peoples of Opinion (ahl al-ra’y) developed and used. Rational arguments are intended to convince all human beings while the scriptural arguments are intended only to Muslims who believe in them. Sometimes both approaches are combined. I will provide a brief survey of these arguments.

God’s purpose in creating humanity is to try them to see how they will relate to their Creator, their fellow humans and the rest of the world. Being tried by God (siyada) is both the honor and the burden human beings have to carry (takallif) in this life. This purpose of God in creating humanity cannot be achieved unless every human being has the right to inviolability and basic freedoms. If human beings are not inviolable and free, it would be impossible to try them, an important prerequisite of which is allowing them to use their free-will and mind. Otherwise, either they will be forced to accept Islam — which is neither allowed nor considered a virtue because it is not out of free-will — or their life will be terminated — which is not what God intended when He created them. Consequently, the mind and religion of every one must be respected even if it is completely different from what we believe as the true religion of God. Using reason and free-will is the only way to make moral choices which entitles one to the reward of God. Freedom of thought is necessary to ensure that people study and understand the divine message prior to
accepting or rejecting it. The great Hanafi jurist, Sarakhsi (483/1090), summarized this line of argument as follows:

Upon creating human beings, God graciously bestowed upon them intelligence and the capability to carry responsibilities and rights (person-hood). This was to make them ready for the duties and rights that God determined. Then He granted them the right to inviolability, freedom, and property so that they can perform the duties they have shouldered. Therefore, these rights to carry responsibility and enjoy inviolability, freedom and property exist with a human being when he is born. The insane person (like the child) and the same person (or adult) are the same with respect to these rights. This is why proper person-hood is given to him when he is born for God to charge him with the rights and duties when he is born. In this regard, the insane/child and sane/adult are equal. 31

In the above citation, Sarakhsi, following the Hanafi tradition, reiterates that human beings are born with basic rights and freedoms. These are God-given rights which are necessitated by His plan to test them which is His purpose in creating them. Consequently, violation of these rights amounts to violating the broader divine order in the world and disrupting God's plan. Because all human beings enjoy the same status, violating the rights of non-Muslims would be a great sin and no different than violating the rights of Muslims. It is also important to draw attention to a striking feature in the writing of Sarakhsi where he makes no reference to the state or judiciary – instead he grounds these rights on a higher plane in which the state cannot intervene.

The writings of scholars like Sarakhsi did not remain only on paper. Consequently, not only the People of Book, comprising Christians and Jews, but also Zoroastrians in Iran, Hindus and Buddhists in India were allowed to enjoy inviolability as they continued to practice their religion under Islamic rule for centuries. The category of adamiyyah, which is the legal ground for inviolability, is much broader than the category of the People of the Book, including polytheists and idol-worshippers, the minorities who have also been granted sanctity under Islamic rule. 34

Another argument used to prove the inviolability of the non-Muslims can be summarized as follows: Disbelief, the Universalist School argued, will be punished by God, not by human beings. Human beings are not required to punish all the sins committed against the will of God. Law is required to punish crimes that violate other people's rights or disrupts social order, but not the sins that are harmless to other individuals and to the social order.

Since adamiyyah never ceases to exist, the right to inviolability also never ceases to exist with human beings. Al-Miṣṣādī (d. 1881), a Syrian scholar from Damascus, wrote at the end of the nineteenth century that the person has sanctity by virtue of their existence (al-Harr maʿṣum bi naṣīfah). 35 The only exception to this rule is when one violates another person's inviolability in which case they jeopardize their own inviolability in turn, and deserve punishment for their crime. Even then, the right to inviolability is not completely lost. Instead, it is conditionally suspended in the area where the punishment, which is required to be determined through due process, will be applied. Consequently, the suspects cannot be penalized until a legitimate court issues a verdict about them. Even then, the violability must be limited to the exercise of the legally determined penalty.

In conjunction with this, there is another line of argument why all human beings are inviolable from an Islamic perspective. Every human being has dignity and sanctity for being created and loved by God who would not like His creation to be unduly mistreated or devastated. As I explained above, all human beings have karamah (honor, sanctity) which God equally bestowed upon them all. Violating the sanctity of the Other amounts to violating the divine karamah.

In addition to these rather rational arguments for justifying the inviolability of the Other, the scholars from the Universalist School used arguments derived verbatim directly from the Qurʾan and the Hadith. From this perspective, all human beings are inviolable because there are many verses and sayings in which God commands so. Killing, stealing, sacrilege of one's religion or sacred symbols, and dishonoring family is prohibited by the Qurʾan and the Hadith. Similarly, the Qurʾan explicitly prohibits imposing one religion on people. Even during the war, the innocent civilians, in particular women, children, elderly men and the clergy who do not take part in war – the teachings of Prophet Muhammad make it explicit – are inviolable.

The Communalist School: The Citizenry Alone is Inviolable

Similar to the advocates of the civil rights paradigm who oppose the advocates of the universal human rights paradigm, the majority of the Shafiʿi, Malikī, Hanbali and Shiʿite jurists opposed the Universalist School. It is important to remember that, as I pointed out above, some scholars from the above-mentioned schools subscribed to the views of the Universalist School regarding the inviolability of the Other. Consequently, it would be misleading to perceive this divide as a divide between the Shafiʿi and the rest of the schools of law in Islam. Instead, it would be more precise to think of it as a network of scholars from different schools who have formed a hidden consociation. Among the most important representatives of the Communalist School are Malik (712–795) the founder of the Malikī School, Ahmad bin Hanbal (780–853) the founder of the Hanbali School, and al-Shafīʿi (767–820) the founder of the Shafiʿi School. Numerous scholars followed them during the subsequent centuries such as Daud al-Zahiri, Ibn Hajar al-Asyʿarī, Ibn Manṣūr, Qanātī, Bajuyiri, Qāḍī Abu Bakr Ibn Abī Amr, and Khalil. The majority of the classical Shiʿite scholars, such as Tusi and Ḥilli, also adopted the same approach.

Like the concept of humanity, the concept of born right is also absent in the thought of the Communalist School. These scholars commonly argue that inviolability is due by virtue of faith in Islam or compact of security with a Muslim state (al-isnād bi al-ṭaʾwīl wālī bi al-ṣanād). From this perspective the right to inviolability or basic human rights is not born, innate or inalienable. On the contrary, it is a gained right. One is entitled to the right to inviolability through their actions, namely believing in Islam or making a treaty of security with Muslims.
The Communalistic School argues that the Other, the non-Muslims (kuffar) who are not the citizens of the Muslim state, is not qualified to have the right to inviolability. They defend their position by the following arguments. Disbelieving (kufir), the communalistic scholars argue, is a rebellion against God and should not be tolerated. Believers should do their best to erase disbelief from the face of the earth because it is the biggest sin.

However, the Universalist School asserts in its rebuttal, this argument does not hold given the fact that the non-Muslims who accept the authority of the Islamic state (the dhimmis) by making a treaty of security with it are still non-Muslims which demonstrate that the disbelief cannot be seen as a reason for their inviolability. If disbelief had been the reason for not having inviolability, the dhimmis would have never had the right to inviolability. However, it is unanimously accepted in Islamic law that the dhimmis enjoy the right to inviolability.

From the perspective of Communalistic scholars, the disbelief is the reason for the absence of the right to inviolability. As a result, the de facto status of the Other is not inviolability. This status can be changed only by one of two ways: voluntarily embracing Islam or accepting the citizenship of the Muslim state. In other words, from a communalistic perspective, the Other is the foe unless they prove otherwise.

The communalistic jurists use verses from the Qur'an and the sayings of the Prophet Muhammad as evidence to defend their position. They argue that the divine command in the Qur'an to fight against the infidels is eternal and unconditional. The most commonly cited Hadith in this literature is “I am commanded to fight against people until they say: there is no deity but God.”

Another line of argument the Communalist School uses to support their position is that people who are not citizens of the Muslim state are outside its jurisdiction. Therefore, Muslims cannot make any law concerning their inviolability. Even if they do, they will not be able to enforce it. Based on this, the Communalist School argue that there is no point in making law concerning the rights and duties of non-citizens.

**Two Rival Root Paradigms in Islamic Jurisprudence**

The above described divide on the inviolability of the Other between Universalist and Communalists Schools of Islamic law is founded on some deeper philosophical and methodological differences. I will try to briefly highlight some of these differences between these two rival root paradigms in Islamic law.

First of all, the primary identity of the subjects of law for the universalist Muslim jurists was not the citizenship of a particular state but the citizenship of the world where they are sent by God for a brief period of time. The universalist scholars were aware that they were not only a member of the Muslim Ummah but also humanity. They combined brotherhood in religion with brotherhood in humanity. They were human beings before they were citizens. Their thinking was distinguished by incorporating the universal category of humanity.

In contrast, the primary identity of the subjects of law for the communal jurists was based on the citizenship of the Muslim state. They emphasized brotherhood in faith and the citizenship of a particular state. Humanity was the Other which remained outside these two categories. The Other was neither the co-believer nor the co-citizen. Their reasoning was distinguished by the absence of the universal category of humanity. Instead, they relied on non-universal categories such as citizenry and religious community, the Ummah.

Briefly put, the subject of law for the universalist jurists was the human being regardless of their faith, nationality, or innate, inherited and gained qualities, whereas for communalists jurists the subject of law was the citizen of a particular state. The Communalistic School is characterized by the nascent absence of a concept of universal human being. Instead, it relies on identities defined by membership in political and religious communities.

The refusal to use the abstract concept of humanity by the Communalist School is in conformity with their traditional methodology which focuses on the letter of the scriptures. These scholars are commonly called the People of Tradition, abh al-hadith. In contrast, the Hanafis are called the People of Opinion, abh al-na‘ay. The former group of scholars strictly follow the text of holy scriptures, the Qur'an and the Hadith, while the latter group try to capture the general meaning conveyed by diverse verses concerning a particular issue, and postulate them as universal principles. These general principles would then serve as reference points, along with the actual texts of the verses from the Qur'an and the Hadith, which jurists use in solving legal conflicts.

Another important philosophical difference that lies beneath the different approaches adopted by Universalist and Communalist Schools in Islamic law was conveyed in the construction of the authority to legislate and enforce laws. The universalist jurists constructed the laws and normative principles and dealt with the issue of enforcement separately. In contrast, the communalist jurists did not accept that these kinds of laws, which are impossible to enforce, should be made even if they are correct morally at the abstract level. Yet, the universalist jurists argued that the enforcement of laws rely primarily on the morality of human beings while enforcement by state plays the secondary role. In addition, since the ultimate justice will be realized in the Day of Judgement, it is not pointless to state the rules even if the state is not going to be able to enforce them. Today, with the rise of international organizations to enforce universal human rights, we can say, with hindsight, that the vision of the Universalist School has proven to be far reaching.

**Inviolability as the Foundation of a Universal Law and World Order**

Using the rational methodology of jurisprudence and putting a distance between themselves and the state, the universalistic jurists in the classical era made the concept ʿisbaḥ the foundation of a universal law, applicable in the cosmopolitan Millet system. The concept behind the system of Millet is based on a metajurisprudence; a legal philosophy intended to embrace all legal systems globally. It is a self-reflexive activity by the jurists about their own profession worldwide. What do jurists from all nations and religions stand for? What do all legal systems stand for? What is the common ground among divergent legal systems? Why should all
legal systems be granted legitimacy? Where does legitimacy come from? Is there a limitation to the right to legal self-determination? These are some of the questions the universalistic jurists from the classical period tackled.

Therefore, 'ismah is a key concept not only to understand Islamic law per se, but also the way Muslims looked at the legal systems of the world and the way they incorporated them within their own social order. Then, what is law for Muslims? This question cannot be answered without reference to the theory of 'ismah. The paradigm of 'ismah plays a role in the way one looks at himself/herself and relates to others. This is true on the individual, communal and global levels: the I, the we and the We, as well as their interrelationships, are defined based on the concept of 'ismah.

All legal systems serve the purpose of protecting human sanctity, the classical jurists observed. Therefore, they concluded, every legal system is legitimate so long as they serve this objective. Hence, the legal tradition of each community should be protected and those who adhere to it should continue practicing it. Islamic law was not imposed on the conquered lands and communities during the Middle Ages. Instead, each society was allowed to maintain its laws. Yet if there was a practice in contradiction with the sanctity of human beings it was to be abolished forcefully. For this reason, practices like sati in India or virgin sacrifice to the Nile in Egypt were not allowed under Islamic rule. Each community was allowed to enjoy legal autonomy but not to the detriment of human sanctity.6

One should bear in mind that the concept of 'ismah emerged in a political structure which was not characterized by nation states. Nor was it characterized by positive law or a monolithic system of law. In contrast, the term human rights emerged in the West at the age of nation states and positive law. The difference in the circumstances in which these two theories emerged must be taken into account when comparing them.

The concept of 'ismah is not only a legal one in classical Islamic thought; it is at the same time a moral and religious concept. One is not allowed to violate their own 'ismah and the 'ismah of others. One should protect their own 'ismah and the 'ismah of everyone else on the earth. But why? Not only because one may suffer legal consequences, but more importantly, for moral and religious reasons. Violating 'ismah or failing to protect it is a major sin; God will punish for it in the Hereafter. Protecting 'ismah, however, is a moral and religious virtue; it will be rewarded by God in the Hereafter.

According to Islamic theology, God may forgive sins committed against Himself, but not against other human beings. If a sin involves violation of a person's 'ismah, the victim is the only one who is entitled to forgive. God does not forgive the violation of human rights (buqya al-'ihtilad) because these rights belong to their bearers. Consequently, if one commits a sin by violating the right of another person, he/she is required to compensate the damage before repenting for his/her sin. Repenting without compensating the harm is not acceptable. A robber must return the stolen property or pay reparation before standing in the presence of God to apologize for his/her sin. Likewise, the person who damaged the honor of another must repair the damage and make the victim content prior to turning to God for forgiveness.

Some of the rights covered by 'ismah are considered "the rights of the persons" (buqya al-'ihtilad) while some are considered "the rights of law" (buqya al-shar) or "the rights of God" (buqya Allāh). The reasoning behind the latter category is that their violators cannot be forgiven by the victim since it involves causing damage to the public, not only to an individual victim. If the crime involves violation of a personal right, the victim is entitled to reach a settlement, accept reparation or forgive unconditionally. Rights of the person comprise right to life and property. Rights of the law include protection of religion, mind, honor and family.

Reparation is acceptable if the crime involves the violation of one of the rights of a person and can be monetarily assessed and compensated. Otherwise, if the crime involves the violation of one of the rights of law, which cannot be monetarily assessed and compensated, reparation is impossible. Punishment must be applied in these cases. The victim may forgive injury or theft. The family of the victim can also forgive murder. But a raped or slandered woman cannot uplift the punishment from the rapist or the slanderer by forgiving him. The latter is considered a violation of public order, not only the violation of individual sanctity.

From the perspective of universalistic jurists, the rights 'ismah embraces are universally granted, in an indivisible, non-contingent, non-reciprocal and inalienable manner. They serve the most basic needs of a human being to lead a decent life. These needs are called the "axiomatic needs" (dararayyata). The concept "darar" means given, axiomatic, self-evident, inevitable, beyond discussion, and absolutely necessary. Classical jurisprudence recognizes three types of need: axiomatic or self-evident needs (dararayyata), required needs (harkiyat), and the accessories or embellishments (hasanayyata). The first category alone is protected universally as human rights. The others are also emphasized in varying degrees.

The objective of all political and legal systems (masaqati al-shari'ah) is to ensure the protection of human inviolability and provide the needs for a decent life for each human being. This is how the classical jurists defined it. Therefore, they stipulated, the implementation of a particular law in a particular setting may be revoked, suspended or even reversed, if it is going to be counterproductive. The "axiomatic needs" have the power to override all laws. A legal maxim stipulates: "the axiomatic needs turn the unlawful into lawful" (al-durarayyata takhrib al-makruh). For instance, drinking alcoholic beverages is prohibited but in the absence of any other drink one must drink them to maintain one's life; in that case, it is no longer a sin but an obligation. The jurists in the classical era tried to determine the borders of the axiomatic needs clearly and strictly, to prevent misuse of the permissions emanating from them.

Although they have the power to override all laws, the axiomatic needs of a person do not have the power to override the rights of others. For instance, if one consumes the food owned by another, out of dire necessity to maintain his/her life, he/she must compensate for it, because his/her need does not negate the sanctity of another's property. The needy person has the right to take this property, but he/she is at the same time obliged to compensate for it at a later time.

The above example can be used to explore the hierarchy among rights and needs. Right to life is considered the most prominent above all other rights. In the case of
a conflict, priority is always given to it. For instance, if circumstances dictate so, one has to take the property of another person to protect his/her life because right to life overrides the right to property. In a similar way, if the axiomatic need of a person conflicts with the required need or an accessory of another, the priority is given to the first one.

The legitimacy of a political and legal system, universalistic jurists argued, depends on whether it effectively fulfills the functions expected from it (al-Masalih al-Mursalah), which is the protection of 'izmah. Protecting inviolability is the most fundamental benefit expected from a political system, or it otherwise loses its legitimacy. "The legitimacy of political authority is contingent upon providing basic human rights" (al-Ma'sul manatu 'alai al-masalah). The theory of masalah (function, utility) to classical Islamic jurisprudence features prominently. A law can be based solely on that principle. Furthermore, existing laws can be suspended on that principle in some circumstances if their implementation is going to function counterproductively by causing harm, rather than protection to human sanctity.

Each of the six basic human rights constitutes a source of law, al-usul, on which laws can be built. For this reason, they are called the governing principles or sources of law (al-usul al-thumah). Again, this goes back to the methodology of Islamic jurisprudence. The root principles of law or the legal maxims, al-usul, which had been produced through induction from scattered teachings in the Qur'an and the Hadith, summarize the common rationale in the laws and, in turn, serve as grounds for new legislation.

The 'izmah of a person remains intact under all conditions. No authority has the right to usurp it from a person. Nor does the individual have the right and power to voluntarily abandon it. The only reason that causes the 'izmah of an individual to fall is their violation of the 'izmah of others. As explained above, violating sanctity brings about punishment or reparation, according to the Hanafi jurists, while the Shafi'i jurists claimed both are required. Inflicting a punishment, which is a harm, is impossible before one's 'izmah becomes suspended through one's own fault. This is how the 'izmah is legally enforced through punishment and reparation. The violator loses their 'izmah, but not completely. Hanafi scholars are stricter on the extent to which a criminal's sanctity falls. They advocate that only the segment where the punishment is going to be implemented (mudall al-jaza) loses its sanctity. On this ground, they refuse coupling punishment with reparation. However, the Shafi'i jurists extend the fall of 'izmah in such a way that it includes both punishment and reparation at the same time.

Islamic law charges every individual, community and state to protect their own 'izmah and the 'izmah of others. One is responsible for the entire world. This is a moral, religious and legal duty. Dying for one's own sanctity or others' is considered martyrdom, to be rewarded by Paradise. If a state fails in protecting the 'izmah of a citizen, it is required to pay reparation to the victim's family. For instance if a prisoner is murdered in a state prison, the state has to pay blood money to their family. The family of the victim is not even required to prove that there was negligence on the part of the state. Since it is the responsibility of the state to protect the sanctity of life in prison, it has to compensate for its failure. Likewise, if a person is murdered in a neighborhood the entire neighborhood is required to pay blood money if the criminal is not found.

The theory of 'izmah had thus served as the foundation of a cosmopolitan legal system during the Middle Ages up until the collapse of the Ottoman State, peacefully embracing the diverse and contradictory laws of Jews, Christians, Zoroastrians, Buddhists and Hindus, along with different schools of Islamic law. The universalistic Muslim jurists stipulated the principles regarding the protection of human sanctity to be applicable worldwide, across all legal systems, irrespective of the faith behind it. The legitimacy of Muslims granted to non-Islamic legal systems can also be observed in the way they remained open to receiving laws from them. The Methodology of Islamic Jurisprudence (Usul al-Fiqh) lists among the sources of Islamic law "the laws of the previous peoples" (chara'man quluma). If the Islamic law is silent on an issue, this rule stipulates, Muslims are allowed to adopt the laws from other cultures. It may be seen as yet another sign that the openness of classical Islamic law is for universal cooperation and exchange.

Conclusion: I am Therefore I have Rights

Building upon the universalistic approach to human rights, I argue that the very existence of a human being in society qualifies them for inviolability. Yet my approach to human existence in this context is a sociological and relational one, not a metaphysical and essentialist one. If a human being exists as part of a society, they must have rights for the sake of their existence. I must have rights because I exist: *I am therefore I have rights*. If you accept that I exist - which you cannot deny - you must also accept my right to inviolability. If I accept that you exist - which I cannot possibly deny - I must also accept your right to inviolability. The first one is an "is" statement while the second is an "ought" statement. The former logically requires the latter.

Did Robinson Crusoe have rights? No. This is because one can only have rights when one exists as part of a social network, which we call society. Rights are not inherent in human beings from an essentialist perspective; instead, they are inherent in them from a relational perspective because they are connected to each other via social relations. More existence in a completely solitary manner is only a hypothetical case as far as human beings are concerned.

A human being who is born in a society is also born into many relations within that society. And each relationship comes with its own rights and duties. Therefore, the concept of right is a relational but not an essentialist one. I am born with relations and thus with rights and duties. Likewise, I continue to exist with relations and thus with rights and duties. When a relationship is terminated, the rights and duties it brought also ends. Be it love or war, each relationship is characterized by rights and duties.

Neither the relationships, nor the rights and duties emanating from them, are reified. Instead, they are all fluid and constantly refugured along with the identities of social actors on both sides. Two cleavages dynamically shape the rights and duties: the we/they line between societies which separates the Self from the Other.
and the universalist-communalist line within each society. These two cleavages are dynamically linked to each other and constantly reconfigured by the matrix of relations within and between societies under concern. It takes two sides to fight or to make peace.

However, some believe that there is a fixed set of rights which we have come to call "human rights." Yet, the unfolding events after WWII have proved otherwise. Since the declaration of the Universal Declaration of Human Rights (UDHR), human rights have been constantly redefined and expanded. The second generation of rights followed the first generation of rights and now we have at our doorstep what is called the third generation of rights. These changes in the understanding of human rights may be seen as evidence that human rights constantly redefined as the relations are constantly reconfigured in the social networks.

Consequently, human rights are not just a legal but also a sociological issue. Their emergence and evolution cannot be understood fully without taking into account the social nature we call human being, the creator, interpreter and the bearer of human rights, and their dynamic relations within a fluid social network. The matrix of relations within and between societies determines who we are, and who the Other is to us. The Other may be seen as an extension of the Self at a broader level, or it may be seen as the enemy. From the first perspective, we grant inviolability to the Other; while from the second perspective the Other has no right to inviolability. The Other divides the Self as the Self constantly tries to redefine the terms of their relationship with the Other. This universal pattern repeats itself in Muslim societies as well. Yet the terms of justification for each position vary as the societies oscillate between universalism and communalism in their history.

The close connectedness we enjoy today at the age of globalization, if combined with threats, attacks and counterattacks, may cause humanity, including Muslims, in the East and the West, to swing towards more communalism. Intellectual arguments in defense of universalism would have little impact in such a context of fact and suspicion. Yet, the closely connected and interconnected global society, if combined with a coalition of universalists from all sides, may establish, more than ever, the inviolability of the Other. It is crucial in this vague process that the universalists speak up for their own society and culture which offers, as I tried to demonstrate above, a multitude of arguments with which they can arm themselves. Who speaks for the majority of the Other with an authentic voice – this is also equally important to discern.

Notes


2 One may also call this the "third line." The nationalist interprets it as "we and they," whereas the communist interprets it as "we and they," whereas the communist interprets it as "we and they.
