

Human Dignity in Islam*

This article explores human dignity through a reading of the Qur'an and hadith (sayings of the Prophet Muhammad), the two most authoritative and widely venerated sources of Islam. It is presented in four sections, beginning with a review of the textual evidence on human dignity, to be followed by a similar review of God-man relationship, then also a discussion as to how the Qur'an guides and depicts as to how the humans should relate to one another while observant of each other's dignity. The discussion proceeds to examine the juristic positions of the leading schools of Islamic law on the subject, and ends with a conclusion that underscores the effects of these guidelines on the realities of Muslim life.

I begin, however, with a note on the meaning of dignity and its implications on basic rights and duties, the two major components of justice in the Islamic tradition that evidently serve to provide a more substantive basis of commitment to human dignity. To discriminate against a person in terms of race and religion, before the law and before the courts of justice naturally compromises the human dignity of its victim. Dignity would similarly have little meaning when a person is subjected to acts of oppression and injustice without cause or when deprived of due process of justice.

Dignity is a composite concept that can embrace a variety of objective values and those which may be relative and subjective in the context of particular legal and cultural traditions. The values that dignity subsumes are also liable to change with new developments in science and technology as well as the mobility and interaction of peoples and cultures. Broadly speaking, from a legal perspective, human dignity connotes inviolability of the human person, recognition of a set of rights and obligations and guarantee of safe conduct by others, including the society and state. It has also implications on a global scale as to whether the world communities and cultures accord dignity and inviolability to the Other. The Qur'an extends an open and unqualified recognition of dignity to all human beings regardless of colour and creed. Outsider perceptions of this recognition are often unknown, ambiguous, or misrepresented, due to some extent perhaps to a certain level of internal disagreement in the Islamic juristic thought itself. The negative trends in the Muslim-non-Muslim relations have in recent years been exacerbated by persistent violence, militarism and disillusionments over the Israeli-Palestine conflict, Iraq and Afghanistan, Abu Ghraib and Bagram etc., that continue to pain human conscience and are affronts to human dignity in the guise of democracy and the so-called "war on terror."

1. Textual Evidence on Human Dignity

The most explicit affirmation of human dignity (*karamah*) is found in the Qur'an, in a general and unqualified declaration: "We have bestowed dignity on the children of Adam (*laqad karramna bani Adama*) ...and conferred upon them special favours above the greater part of Our creation" (Q. 17:70).

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The overall picture that emerges is summed up in the Qur'an commentator al-Alusi's observation that "everyone and all members of the human race, including the pious and the sinner, are endowed with dignity...."¹ Twentieth century Muslim jurists and commentators have also gone on record to note that dignity is not earned by meritorious conduct; it is established as an expression of God's grace; and also that dignity is a natural and absolute right which inheres in every human person as of the moment of birth. It is God-given and natural; hence no individual nor State may take it away from anyone. As for the question whether dignity also remains intact of a criminal, the general answer provided is in the affirmative with the proviso, however, that it is partially compromised to the extent that a court decision on punishment may be enforced, but beyond that the personal dignity of prisoners must also be protected and observed.² Prisoners are not to be subjected to humiliation nor be deprived of their right to the essentials of life.

The reference to the grant of special divine favours on humankind in the verse under review is explained elsewhere in places where the text elaborates on the manifestations of human dignity by declaring, for instance, the spiritual ranking of human beings above those of the angels (Q, 7:11). For in this verse, the angels and the Iblis (satan) were asked to "bow down to Adam and they (the angels) bowed down, not so the Iblis." Iblis asserted its own superiority, as the text recounts: "You created Adam from clay and created me from fire!" God's displeasure with this response was then conveyed in a question to Iblis: "what prevents thee from prostrating thyself to one whom I created with My Own Hand?" (Q, 38:75-76)

The subject is taken up again in another context where God declared His intention to the angels that "I am about to appoint a vicegerent in the earth." The angels protested, as the text goes, and said: "we extol and glorify Thee," whereas Man is prone to corruption and bloodshed. Then the angels were told: "surely I know what you know not." This is immediately followed by the affirmation: "And God taught Adam the names of all things..." (Q, 2:30-32), which would seem to suggest that knowledge and capacity to learn are relevant to the dignity and nobility of Man. A level of intimacy and closeness is also shown in the divine affirmation that "I created (Adam) with My own Hand." For in most other places where a reference occurs to God's creation, it is often said that God commands it or wills it so and it becomes. But more explicitly, this intimacy is shown in God's illustrious affirmation: "And I breathed into him (Adam) of My Own spirit" (Q, 38:72).

The spiritual superiority of humankind in the foregoing verses is then further supplemented by references to their physical constitution in places, for example, where God declares "Indeed, We created humankind in the best of forms;" and "We fashioned you in the best of images...."³ It is reported in a hadith that the Prophet stood one day in front of the Ka'bah, the holiest of all places known to Islam, and said in a symbolic language:

¹ Shihab al-Din al-Alusi, *Ruh al-Ma'ani fi Tafsir al-Qur'an al-'Azim*, Beirut: Dar al-Turath al-'Arabi, nd., Vol. XV, 117.

² See for a round up of opinion and references to Sayyid Qutb, Mustafa al-Siba'i, 'Abd al-Hakim Hasan al-'Ili, Ahmad Yusri, and Whbah al-Zuhaili Mohammad Hashim Kamali, *The Dignity of Man: an Islamic Perspective*, Cambridge: Islamic Texts Society, 2002, 1-2.

³ Qur'an, 95:12 and 64:3 respectively.

You are most pure and most dignified, but the One in whose hands Muhammad's life reposes, the sanctity and honour of a believer, his life and his property, is far greater in the eyes of God.⁴

The Qur'anic vision of dignity for the human race has also been upheld for the Muslim community, whom God has ranked in honour (*al-'izzah*) next to His own illustrious Self and His Messenger, Muhammad (Q, 63:8). The Qur'anic designation of the Muslim community (*ummah*) is also that of "a community of moderation (*ummatan wasatan*- Q, 2:143), committed to the promotion of good, and rejection of evil (Q, 3:110), dedicated to the vindication of truth and justice (Q, 3:103). To quote the Holy Book: "The believers, both men and women, are friends and protectors of one another; they enjoin good and they forbid evil." (Q, 9:71) This is given a more concrete manifestation in the following hadith: "If any of you sees something evil, he should set it right with his hand; if he is unable to do so, then with his tongue, and if he is unable to do even that, then (let him denounce it) in his heart. But this is the weakest form of faith."⁵ This is an evidently open address to all human beings. We find no evidence anywhere in the sources to say that non-Muslims may not participate in the promotion of good or prevention of corruption and evil that endanger individuals and societies.⁶ In two of his other sayings, the Prophet is also quoted to have said: "the best part of faith is to have beautiful manners,"⁷ and that: "I have been sent in order to perfect moral virtues (among you)."⁸

Rights and obligations are a manifestation of human dignity in all major legal traditions and the Shari'ah is no exception. There may be some differences of orientation among legal systems, but as far as Islamic law is concerned the emphasis is not so much on rights and obligations as it is on justice. A balanced approach to rights and duties is essential to the conception of justice in all major legal traditions. Yet legal systems are also shaped to some extent by the philosophical underpinnings of a society's vision of a balanced mix of rights and duties. The western liberal tradition and its strong advocacy of individualism is thus manifested in a greater emphasis on rights, whereas Islam's emphasis on spirituality and ethics, and how rationality and human interpretation understand the guidelines of the revealed text impact its conception of justice. The emphasis here tends to be more on duties and respect for the rights of the other more than that of one's own. Islamic law has consequently leaned more toward duties than rights.⁹ I have elsewhere elaborated on this and advanced the view that human dignity provides a more objective basis of a modern doctrine of human rights in Islam, in preference perhaps, to the rights-based approach of the human rights discourse that is articulated in the 1948 Universal Declaration of Human Rights. The latter places a much greater emphasis on rights compared to obligations, just

⁴ 'Abd Allah al-Khatib al-Tabrizi, *Mishkat al-Masabih*, ed. Muhammad Nasir al-Din al-Albani, 2nd ed. Beirut: al-Maktab al-Islami, 1399/1979, , vol.2, hadith no.2724.

⁵ Muslim b. Hajjaj al-Nishapuri, *Mukhtasar Sahih Muslim*, ed. M Nasir al-Din al-Albani, 2nd ed., Beirut: Dar al-Maktab al-Islami, 1404/1984, p.11, hadith 34.

⁶ For further detail on the principle of *hisbah* (promotion of good and prevention of evil) and the manner it is conducted see M. H.Kamali, *Freedom of Expression in Islam*, Cambridge: Islamic Texts Society, 1997, 28-34.

⁷ Tabrizi, *Mishkat*, vol.1, hadith no.46.

⁸ Id., vol.3, hadith no.5097.

⁹ See for details on the subject of rights and duties in Islamic law, M.H.Kamali, "An Analysis of Rights in Islamic Law," *The American Journal of Islamic Social Sciences* 10(1993),178-201. A summary of this discussion can also be found in idem. *Freedom of Expression in Islam*, 16-24.

as it also neglects collective rights of the community- subjects that have been widely discussed and to some extent rectified by the two subsequent treaties on economic rights, and on social and cultural rights that together with the UDHR constitute the International Bill of Rights.

My research further indicates, however, that a duty-based approach to human rights is also not in total harmony with the central theme and concern of the Qur'an on justice.¹⁰ If justice actually means a balanced mix of rights and duties, as it naturally does, then a lopsided approach and emphasis on one at the expense of the other would equally invoke our criticism. Furthermore, critics have voiced the concern that dignity is a moral rather than a legal concept, and that violation of human dignity is not the same as violation of an entrenched right. Thus according to Donnelly, "To violate a right goes well beyond merely falling short of some high moral standard."¹¹ A partial response to this is that the five universals of the Shari'ah, known as *al-daruriyyat* (to which a sixth, namely personal honour (*al-'ird*) was subsequently added), do take human dignity into a rights-based concept, but I shall have more to say on this in my discussion of the juristic doctrine below.¹²

2. God-Man Relationship

The Qur'an is expressive, in a variety of places and contexts, of God's love for humanity so much so that it becomes a characteristic feature of this relationship. This aspect of God-Man relationship is not, however, adequately treated in many of the Orientalist works I have seen, which are preoccupied with theological themes such as God's absolute power, God as an unrelenting judge, man as the servile servant of God and so forth. From generalities such as these the conclusion is often drawn that 'Islam is a system of duties' in which there is no recognition of rights, let alone fundamental rights, for the individual.¹³ Theology is thus taken to dictate juridical conclusions and the whole discourse neglects the more specific themes of *hukm*, 'adl, haqq, and wajib (law/value, justice, right, obligation respectively) and their relevance to individual rights. I have drawn attention to these in my analysis and have reached different conclusions.

A similar tendency is noted even among the Muslim commentators of the Qur'an, especially in the *tafsir bi'l-ma'thur* (precedent-based interpretation) genre of *tafsir*, such as those of Ibn Jarir al-Tabari (d.923), Jalal al-Din al-Suyuti (d.1505) and the works also of many Shari'ah jurists who envision a somewhat distant and impersonal God that accentuates His majesty, imperium and justice much more than His intimacy and love for the humankind.¹⁴ This tendency in the *tafsir* and

¹⁰ See my views on this and other aspects of the human rights discourse: Kamali, *The Dignity of Man*, xv-xvi.

¹¹ Jack Donnelly, "Human Rights and Human Dignity: An Analytic Critique of non-Western Conceptions of Human Rights," *The American Political Science Review* 76(June 1982),304.

¹² I shall not engage into details here but merely point out that textbook writers number the *daruriyyat* into five, hence the phrase *al-daruriyyat al-khamsah*, to which the seventh century jurist Shihab al-Din al-Qarafi added a sixth, namely *al-'ird* (honour). Since this is a valid addition and has a Qur'anic basis, I refer to them as the six universals, namely of life, intellect, religion, family, property, and honour. See for details M.H. Kamali, *An Introduction to Shari'ah*, Kuala Lumpur: Ilmiah Publishers, 2006, Ch. Six "Goals and Purposes(*maqasid*) of Shari'ah: History and Methodology," 115-133, at 118. A revised and enhanced edition of this book is due to be published by Oneworld Publication, Oxford, U.K (forthcoming, c. February 2008).

¹³ Cf., Dirk Bakker, *Man in the Qur'an*, Amsterdam: Drukkerij, 1965, 127 & passim. Bakker also quotes in support C. Snouk Hurgronje and Richard Bell. He has on the other hand discussed Montgomery Watt, H. Berkeland and others that variously characterized God-man relationship with mercy, guidance, creative power, and dominion etc.

¹⁴ For a comprehensive monographic study of 'love in the Qur'an' see Ghazi bin Muhammad bin Talal, *Al-Hubb fi'l-Qur'an al-Karim*, 2nd revsd ed. Amman: Dar al-Razi, 2010/1431, 432pp. See also Muddathir 'Abd al-Rahim, "Anmat al-Hubb fi'l-Qur'an

fiqh works has not remained unnoticed and has invoked criticism from many leading Sufi and mystics of Islam. The Sufis have taken the jurists and even the Qur'an commentators to task for their preoccupation with a rule-based religion, for downsizing of God's love (*mahabbah*) for Man, and Man's devotion to Him, that is so unmistakably present in the Qur'an and hadith. The Sufis are well-known for their rich and effusive expression of a profound devotion (*'ishq*) in which God and humankind relate to one another.¹⁵ A careful reading of the scriptural sources of Islam would show that as a governing principle of Islam, God's love for the humankind animates all aspects of His creation, and that the open conferment of dignity 'on the children of Adam' emanates from that love.

God's love is manifested in His often-repeated expression of mercy for the humanity in the Qur'an¹⁶, in His expression of trust in the nobility of Man, for the latter's faculty of reason and immense capacity to knowledge and understanding.¹⁷ God's expression of trust is also manifested in His appointment of humankind as His vicegerent in the earth (Q:2:30-32), and His recurrent affirmation on the subjugation of the heavens and the earth to the benefits of Man.¹⁸ Other manifestations of favour are found in the Divine providence of availing to humankind the enjoyments of this life and its adornments, espoused with reminders that they should not neglect their fair share in them.¹⁹ In an address to the Prophet Muhammad, God speaks in such terms: "When My servants ask you about Me, say that I am indeed close to them and I listen to the prayer of every supplicant when he calls on Me;" and "Surely We have created Man; We know the promptings of his heart, and We are nearer to him even than his jugular vein."²⁰ In a long Qudsi hadith (unlike other hadiths that originate in the Prophet's own words, in Qudsi hadith God speaks directly in the first person) that al-Bukhari has recorded, God the Most High said:

One who offends any of My friends is like declaring war against Me...and My servant gets closer to Me through good deeds until I love him, and when I love him, I become like his ear by which he hears, and like the eye by which he sees, like his hand by which he reaches out, and I walk with him; when he asks Me, I give, and when he seeks protection through Me, I protect him.²¹

These and similar other pronouncements may be seen as God's unconditional expressions of love and grace for the humanity, which may be distinguished from such other expressions that contemplate certain behaviour patterns- as reviewed below.

In numerous places the Qur'an is expressive of God's love, in its typical phrase, "*inn Allah yuhibbu*- God loves" which occurs frequently in the text, as in the case of those who are good to others (*inna Allah yuhibbu al-muhsinin*, Q, 2: 195); those who are just in their dealing with others

al-Karim: Nazrah Ijmaliyyah," Conference paper presented to the International Conference on " al-Hubb fi'l-Qur'an al-Karim," (Manifestations of Love in the Noble Qur'an), organized by the Royal Academy of Jordan, 4-6 September 2007, p.6f.

¹⁵ For further detail, and my own views, on this see Kamali, An *Introduction to Shari'ah*, 1-6.

¹⁶ Cf., Q. 2:263; 7:156; 15:56; 39: 53 and passim.

¹⁷ Qur'an, 2:164; 3:18; 4:162; 22:54;30:28; 58:11; 35:88;3843; 39:9 &18.

¹⁸ Cf., Qur'an, 31:20; 35:13; 67:15.

¹⁹ Qur'an. 7:10; 7:30; 14:34 and 28:77.

²⁰ Q. 2:186 and 50: 16 respectively.

²¹ Muhammad b. Isma'il al-Bukhari, *Sahih al-Bukhari*, Kitab al-Riqaq, hadith no.6502.

(*inna Allaha yuhibbu al-muqsitin*, Q, 5:42), those who remain patient in the face of adversity (... *al-sabirin*-3:146), those who are conscious of Him (*al-muttaqin*, Q, 9:4), those who observe purity and cleanliness (*al-mutatahhirin*, Q, 2:222), those who repent and return to Him (*al-tawwabin*, Q, 2:222), those who place their trust in Him (*al-mutawakkilin*, Q, 3:159) and so forth. In an unusually candid language, God has elsewhere addressed His beloved Prophet Moses in these terms: “And I cast My love over you in order that you may be reared under My eye” (Q, 20:39). This theme is pursued further in other places where God’s love is denied in the typical phrase “*inna Allaha la yuhibbu*” to the aggressors, to the unjust, to those who spread corruption, to the arrogant and the boastful, the deniers of faith in Him, the treacherous, the prodigals and so forth.²² Yet the Qur’anic dictum is varied in its expressions when it declares, for example, in another verse: “O My servants who have transgressed against their souls! Do not despair of the mercy of God, for God forgives all sins. He is most forgiving, most merciful.” (Q, 39:53). Further endorsement of this message is found in (Q, 7:156) where God says that “My mercy engulfs everything and extends beyond everything.”

Other manifestations of God-Man relations in the Qur’an are found in the affirmation and grant of freedom and moral autonomy for human beings (Q, 30:30); in its declaration that “there shall be no compulsion in religion.”(Q, 2:256); and again: “Let whosoever wills, believe, and whosoever wills, disbelieve.”(Q, 18:29). The Qur’an also declared in an address to the Prophet: “anyone who accepts guidance does so for his own good, but one who wantonly goes astray, then tell him that “I am only a warner.”(Q, 27:92)

3. Relations Among Fellow Humans

The Qur’anic vision of humankind is that of a single fraternity which is endorsed by the affirmation of unity and equality of all of its members. Thus in a reference to the creation of humankind, it is provided: “God created you from a single soul (*khalaqakum min nafs waahidatin*) and created its mate of the same (kind) and created from them multitudes of men and women....” Then they are all enjoined, in the same verse, to “observe the ties of kinship (*al-arham*) among yourselves” (Q.4:1).

It is significant that the text accentuates the bonds of fraternity among humans with the expression *al-arham* (ties of kinship), a term usually employed in the Qur’an in the context of family relations and inheritance.²³ Another point of note in this passage is its phrase “He created you from a single soul,” which also occurs identically elsewhere in the text (Q, 39:6), both implying that Eve was not created from Adam’s rib, as it is sometimes claimed, but created in a like manner of the essence of that single soul. This single soul partakes, it seems, in God’s own illustrious spirit, hence its dignified origin of the highest order. What is in common between Adam and Eve is this soul, implied by the reference to it in the female singular (i.e. *minha*- in the phrase *wa khalaqa*

²² The Arabic terms used in the Qur’an are “*al-mu’tadin*, *al-zalimin*, *al-mufsidin*, *al-mustakbirin*, *al-fakhr*, *al-kafirin*, *al-kha’inin*, *al-musrifin* (Q. 2:195;42:40;2:205;16:23;4:36,7:32; 8:58; and 6:141 respectively)

²³ Al-Qaradawi’s discussion of this and other related verses in the Qur’an leads him to the conclusion that Islam recognizes two levels of fraternity, namely human fraternity (*al-ikha’ al-insani*) and fraternity in faith (*al-ikha’ al-dini*). The latter does not weaken the former, rather it substantiates and endorses the wider fraternity of humankind: Yusuf al-Qaradawi, *al-Khasa’is al-‘Ammah li’l-Islam*, Cairo: Maktabah Wahbah, 1409/1989, 84.

minha zawjaha- and created from it its pair), which could not be a reference to Adam, but to that single soul. The Prophet Muhammad has endorsed this message of unity and equality in the following hadith: “O people! Your Creator is one; you are from the same ancestor; all of you are from Adam, and Adam was created from earth.”²⁴ In the matter of reward and punishment, the Qur’an places men and women on precisely the same footing,²⁵ and there is no notion of an original sin in the Qur’an either. In sum, since Islam subscribes to a broad human fraternity on an equal basis “there could be no affront to the human dignity of any single person without there being an affront to the dignity of all.”²⁶

The Qur’an views marriage as a basis of friendship and compassion (*muwaddah wa rahmah*) where the spouses find tranquillity and companionship and are a “protective garment” to each other’s dignity and honour.²⁷ The parents are elevated to a position almost of divinity, and the offspring is enjoined to treat them, in words and in deeds, with utmost dignity, in the spirit of benevolence (*ihsan*) and submission to them (Q, 17:23). The text places special emphasis on being grateful to one’s mother (Q, 31:14). The parents are also enjoined to observe the natural ties of love and affection with their children, who are “the adornment of one’s life” and also a test of one’s own success and failure. The most meritorious legacy anyone can leave behind is a virtuous offspring (Q, 18:46).

As for the dignified encounter and treatment of one’s fellow humans, the Qur’an in numerous places enjoins affection and fraternity with everyone, within and outside the family, especially to one’s neighbours. The believers are declared as brethren to one another (Q, 49:15) and enjoined, in an unqualified language, to speak to everyone with courtesy and fairness (Q, 2:83); and then again “when you speak, speak with justice; ...and in pursuit of righteousness.”²⁸ In numerous places, the text warns all people to avoid harbouring ill-feeling, rancour, suspicion, backbiting and espionage against one another.

In their dealing with non-Muslims and followers of other faiths, Muslims are enjoined to do justice and be good to them so long as they do not resort to acts of hostility and oppression. (Q, 60:8). In the matter of engaging in disputation and discourse with others, Muslims are further directed to “reason with them in the best manner possible,” and “argue not with the followers of Scripture except in the fairest manner.”²⁹ In a defensive sense, the Qur’an also lays down the basic guideline that “there shall be no hostility except against the aggressors” (Q, 2:193). An act of aggression may be punished with its equivalent but no more than that (Q, 2:194). The text, moreover, enjoins everyone to “avoid aggression, for God loves not the aggressors,” (Q, 2:190) but patience and forgiveness will have its rewards from God (Q, 16:126). The Prophet Muhammad has added his voice in confirmation to say: “people are God’s children and those dearest to God are the one’s who treat His children kindly.”³⁰ He also said: “whoever believes in God and the Last

²⁴ From the Prophet’s Farewell Sermon, Muslim, *Mukhtasar Sahih Muslim*, p.186, hadith 707.

²⁵ Qur’an, 3:195; 16:97.

²⁶ J. Weeramantry, *Islamic Jurisprudence: an International Perspective*, Basingstoke, U.K: Macmillan, 1988, 64.

²⁷ Qur’an, 21:20; 2:187.

²⁸ Qur’an, 6:52 and 33:70.

²⁹ Qur’an, 16:125 & 29: 46 respectively.

³⁰ Tabrizi, *Mishkat*, vol.2, hadith no.4998.

Day, let him speak when he has something good to say, or else remain silent.”³¹ In another hadith, the Prophet has been quoted to have said “God will punish (in the Hereafter) those who punish people in this world.”³²

Another manifestation of human dignity in Islam is the grant of moral autonomy to the people, as in the renowned hadith: “There is no obedience in transgression; obedience is due only in righteous conduct.”³³ The Prophet is reported to have further declared: “The best form of jihad is to tell a word of truth to a tyrannical ruler.”³⁴

4. Juristic Positions

Three inter-related concepts of Islamic law of relevance to human dignity that are featured in the scholastic jurisprudence of the leading schools are *‘ismah* (inviolability), humanity and personhood (*adamiyyah*) and the five (and later six) universal *maqasid* (goals and purposes) of Shariah, collectively known as *al-daruriyyat*, as previously mentioned. These are life, intellect, religion, family, property, and honour, which constitute the overriding goals and values of Islam that must be protected as a matter of priority by all concerned.³⁵ The two basic positions that are taken on these concepts may be labelled respectively as universalist and communalist. The universalist camp is spearheaded by the Hanafi school of law whereas the preponderant view of the other leading schools tends to take communalist postures on these concepts. The Hanafi school commands the widest following (about 50 per cent of all Muslims) in the present day Muslim countries compared to any of the other leading schools, namely the Shafi’i, Maliki, Hanbali and the Shi’ah. The universalists take an affirmative stance on the recognition of *‘ismah* for all humans regardless of religion, gender, race and the like. Human dignity is thus a natural endowment that obtains in everyone by the mere fact of being human. Everyone’s dignity, life, property and other rights are sacrosanct and inviolable without any discrimination. Full and equal protection is therefore extended to them all alike. The communalist position maintains, on the other hand, that *‘ismah* is established not by the fact of one’s being a human, but by being a believer in Islam. Non-Muslims are consequently not qualified for *‘ismah* unless they make a treaty with the Muslim state and secure their protection by virtue of a commitment (*dhimmah*). This view is spearheaded by the Imam al-Shafi’i (d.820CE) and found support with the other leading imams, namely Ahmad Ibn Hanbal, (d.855), Malik (d.795) Daud al-Zahiri (d.885) and the Shi’ite scholars such as al-Tusi and (d.1274) and his contemporary ‘Allamah al-Hilli. They advanced the argument that the injunction on fighting the disbelievers in the Qur’an and hadith is couched in a general language which supersede the grant of *‘ismah* to them.³⁶ Recep Senturk has drawn the conclusion from his

³¹ Muslim, *Mukhtasar Sahih Muslim*, p.476, hadith no.1794.

³² Muslim, *Mukhtasar Sahih Muslim*, p.484, hadith no.1833.

³³ al-Tabrizi, *Mishkat*, vol.II, hadith no. 3665.

³⁴ Muhammad ibn Yazid al-Qazwini ibn Maja, *Sunan ibn Majah*, .Istanbul: Cagri Yayinlari, 1401/1981, kitab al-fitan; bab amr bi’l-ma’ruf wa nahy ‘an al-munkar.

³⁵ For further detail on *daruriyyat* also see M. H. Kamali “Maqasid al-Shari’ah, the Objectives of Islamic Law,” *Islamic Studies* 38(1999), 193-209. On the concept of *‘ismah* see Baber Johansen, *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh*, Leiden: Brill, 1999. For the emergence and development of concepts see also Recep Senturk, “*Adamiyyah* and *‘Ismah*: The Contested Relationship between Humanity and Human Rights in the Classical Islamic Law,” *Turkish J. of Islamic Studies*, 8(2002), 39-70.

³⁶ Qur’an, 9:5 (a likely reference to the pagans of Makkah), and al-Anfal:8:39 (permits fighting to end mischief and oppression).

research that the category of a universal human rights that exists in the Hanafi concept of *adamiyyah* does not obtain in the legal thought of the advocates of the communalist position, who have generally relied on the religiously defined categories of Muslims and non-Muslims.³⁷ This is, in the present writer's opinion, a rather unwarranted qualification of the universal and unqualified language of the Qur'an. A general text ('aam), according to accepted principles of Islamic jurisprudence, is specified on grounds only of compelling reasons, and one sees no such grounds here to justify a departure from the strong and universal language of the text as it is.

Imam Abu Hanifah (d. 767), the leading advocate of the universalist position, established a nexus between *adamiyyah* and *'ismah* and maintained that being a progeny of Adam, whether Muslim or not, creates the legal basis for possession of both. His position is summarized in the phrase, *al-'ismah bi'l-adamiyyah*- inviolability inheres in being human. Abu Hanifah's understanding of the Qur'an and hadith on fighting the disbelievers maintains that they are on the whole contextual, often referring to warlike situations and active military engagement between the pagans of Makkah and the nascent Muslim community of the time.³⁸ "A human's religious choice must also be honoured," wrote al-Sarakhsi (d.1090), "even if it is contrary to the Islamic teaching." Sarakhsi further observed that everyone's life must be protected because only a living person can respond to the Divine call of religion, and so must be his faculty of reason, as this too is the only way through which he can understand and determine values. Everyone's mind must be honoured and protected "even if they oppose the way we think."³⁹ Al-Sarakhsi went on to add that freedom and the right to own property are endowed in humans as of the moment of birth. The insane child and the sane adult stand on the same footing concerning these rights. This is how personhood is established in a human being to create in him the capacity to bear rights and obligations.⁴⁰ Another prominent Hanafi jurist, al-Marghinani, criticized the communalist view and wrote that the argument of al-Shafi'i to take the religion as the criterion of *'ismah* is unacceptable. This is because "protection is attached, not to Islam, but to the person," as it is the person who is the audience of religion and the carrier of obligations imposed by the law. People would be unable to receive the message and give a meaningful response to it unless they were immune from aggression in the first place. The person is, therefore, the original locus of protection, which means that *'ismah* inheres in all human beings.⁴¹

Ibn 'Abidin (d.1834 CE), another leading voice in the Hanafi school, confirmed the universalist position of the school of his following and wrote that "a human being is honoured, even if he is a non-Muslim--*al-adami mukarram wa law kafiran*".⁴² We are required to protect the sanctity of all humanity. Muslims must therefore defend the *'ismah* and human rights of non-Muslims. Each individual, community and state bears the responsibility to protect the *'ismah* of all human beings.

³⁷ Recep Senturk, "Sociology of Rights," (see the next f.n), 16.

³⁸ Cf., Abu al-Hassan Burhan al-Din al-Marghinani (d. 593 H/1296C.E), *al-Hidayah Sharh Bidayat al-Mubtadi*, ed. Muhammad Tamir et al. Cairo: Dar al-Salam, 1420/2000, II, 852; see also Recep Senturk, "Sociology of Rights: I Am Therefore I Have Rights: Human Rights in Islam Between Universalistic and Communalistic Perspectives," produced by the Berkeley Electronic Press, 2005: <http://www.bepress.com/mwjhr/vol.12/iss1/art11>.

³⁹ Abi Bakr Muammad b. Ahmad al-Sarakhsi, *Usul al-Sarakhsi*, ed. Abu'l-Wafa al-Afghani, Istanbul: Kahraman Yay, 1984, 86.

⁴⁰ Id., 333-334.

⁴¹ Abu al-Hassan Buhan al-Din al-Marghinani, *The Hedaya or Guide: a commentary on the Mussulman laws*, tr. Charles Hamilton, Karachi: Daru'l- Ishaat, 1989, II, 221.

⁴² Muhammad Amin ibn 'Abidin, *Hashiyah ibn 'Abidin*, Cairo: Mustafa al-Babi al-Halabi, 1386/1966,

vol.V, 58.

The universalist position crossed the boundaries of the Hanafi school of jurisprudence and gained followers from other schools. Many leading figures, including Abu Hamid al-Ghazali from the Shafi'i school, Ibn Rushd al-Qurtubi, Ibrahim al-Shatibi, and Ibn 'Ashur from the Maliki school, Ibn Taymiyyah and Ibn Qayyim al-Jawziyyah from the Hanbali, and Javad Mughniyyeh from the Ja'fari Shi'ite school have supported the universalist position on human dignity and 'ismah.⁴³

The Hanafi school remained influential until early 20th century, but European colonialism and the role it played in the fall of the Ottoman state, as well as the subsequent rise of the contemporary "Islamic" states have negatively impacted the universalist doctrine. The communalist position consequently found renewed support in the views of many prominent scholars in the Arabian Peninsula, Egypt, North Africa and Iran. The universalist position suffered a steady decline and it remains conspicuously absent in the modern discourse of human rights in the Muslim world.

Concluding Remarks

If one were to broadly characterize the Islamic and Western cultures, the Arab culture, one might say Islam generally, accentuates human dignity whereas Western culture tends to emphasize liberty. It is a question obviously of relative emphasis as Western culture also puts a high premium on dignity. Bedouin culture in the history of the Arabs had a highly developed sense of personal honour and customary methodology that revolved around the preservation of dignity. Manliness and nobility of character (*murū'ah*), hospitality and honouring one's guest and also a greater stress on one's obligation to others than on one's own rights characterized Arab culture and to a large extent also the teachings of Islam. These dignitarian concepts also penetrated other Muslim communities and cultures outside the Arabian Peninsula and had enormous consequences on the gender question and issues of war and peace. In cases where Muslims were in rebellion against the *status quo*, a substantial cultural reason for the rebellion has been a perceived collective dignity. Ali Mazrui has rightly alluded, in a 2002 interview, to the relevance of this factor in the rebellion of Muslims in Chechnya, Palestine, Macedonia, Kashmir, Kosovo and even Nigeria.

Without wishing to embrace Huntington's articulation of 'clash of civilizations', nor to condone the draconian methods of the Taliban, a certain clash of cultures did occur perhaps when the tone of communication was reduced to an ultimatum: Thus when addressing the Taliban in 2001, who then ruled Afghanistan, the former US President Bush told them: "just hand over Usama bin Laden and his thugs. There is nothing to talk about." He did not give the Taliban a line of dignified retreat, and the rest is a chronology of escalating violence, civilian killings and unending tragedies of defenceless villagers, women and children of Afghanistan we are witnessing to this day.

The Muslim public is also anxious to know whether the West accepts the dignity and inviolability of the different other. The aftermath of the 9/11 tragic events and divergent voices emerging in the United States and Europe has not helped provide the needed assurance. What seems certain, however, is that neither side can give that assurance unilaterally. Yet a sense of realism over the configuration of economic and military power would suggest that the initiative and the burden of rectifying the deficit in understanding fall more heavily on the US and its allies in these unjustified

⁴³ Cf., Senturk, "The Sociology of Rights," 16.

military adventures. There is a need for wider recognition of the best values of each civilization to provide a fresh impetus to the prospects of a more peaceful world, and for the Muslims to give reality to the Qur'anic address (Q, 49:13) where diversity and pluralism of peoples and nations should be used as bases of better understanding and recognition among themselves and the wider reaches of human fraternity.