

HUMAN RIGHTS AND ISLAM: AN ATTEMPT TO COMPARE THE FAREWELL ADDRESS OF THE PROPHET AND THE MAGNA CARTA

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ABSTRACT

The paper aims to explore thoughts on human rights comparatively in western and Islamic world. Different approaches to human rights will be critically evaluated. This paper will use the approach of historical survey and search for trace of human rights issues in historical texts of the western and Muslim world. Particularly, it will point towards methodological problems of these approaches. Specifically, two selected texts with regards to human rights, Magna Carta of the British and the Farewell Address of Prophet-as claimed to be the first documents of human rights in history- will be compared to some extent. Lastly it will be suggested that every historical concepts and documents must be understood and analysed within its contextual time and space, otherwise it will be inevitable to fall into a kind of anachronism.

Key Words: Human Rights and Islam, Farewell Address of the Prophet, Magna Carta of the British Isle.

1. Introduction

In this paper I will examine different approaches to human rights and then critically analyse some of the main approaches. Especially I will try to point out the methodological problems by dealing with this wide issue. Furthermore, it will examine both texts (the Farewell Address of Prophet and the Magna Carta) as human rights documents in history.

During the last two centuries, Muslims have been asking the same question continuously: what are the main reasons for the underdevelopment of the Muslim World. During these last two centuries, many answers have been offered but. This is still an ongoing debate amongst the Muslims and even amongst the non-Muslims intellectuals' circles.. In recent years the United States of America has taken it upon itself to establish human rights and

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democracy in the Arab/Muslim countries. It is thought that human rights and democratization movements will end the various problems of the Muslim countries. However, scholars are divided into two parts about evaluating human rights. The first faction is assuming that human rights can not be compatible with Islam. While the second group claims that human rights is not in opposition to Islam but in fact it corresponds with Islamic teachings. However, this paper argues that neither of these approaches is sound since they seem to be comparing two distinct concepts.

The Muslim world has usually accepted and assimilated many of the institutions and concepts which have come from West, without any critical analysis. Such a view concur with the now widespread perception of Muslims as backwards and that they are always in need of assimilating “western” cultures and values so as to keep pace with modernity and progress.

On the other hand, it is argued that Islam is a revealed religion and human rights form some of the basic principles of the revealed law. Therefore these two concepts can not be directly compared. Furthermore, human rights are not just an empty concept which does not contain a specific value. Consequently, if we want to speak about human rights in comparison to Islam, we must explain the concept of human rights, it’s meaning and historical background and try to understand its contextual western birth. Only after that can we begin to see the same or resembling principles within Islam.

In the current climate many publications entitled as “Islam and Human Rights”, “Islam and Democracy”, “Islam and so on” are very popular. These kinds of publications are therefore very much appreciated because these concepts are fashionable and in common every day use. These various approaches to the topic may be classified into various categories, primarily the accusing or refusing approach and the second being the apologetic approach.

According to the first group, Islam does not comply with these kinds of concepts and rejects all of them. In the second group Islam encourages this kind of concepts even more than Western culture and Islam had these rights long before the Western world came up with them.

Actually, it is not sound to make direct comparison of old human rights text from the point of today’s human rights development. On the other hand, human rights is considerably a recent formulation. This concept was first time introduced and developed among Western-European academics and intellectuals circles in the 18th century. It was the legal basis that was created by the American and French revolutions and given place in the new constitutions to emphasise their importance. But it should be kept in mind that these basic human rights were still in their rudimentary forms and basically valid only for the free white man and not for the women and the various indigenous people and the slavery of the black man and woman were still legal.

Consequently it will be meaningless to examine and criticise 18th century's human rights texts and their interpretations. Because today's human rights is the result of a human improvement, which is reached its definition after two hundreds years' of intellectual and judicial developments. Of course the same should be valid when one studies human rights developments within Islamic history. Any effort aimed to examine whether the Islamic law is suitable or not with modern human rights standards and to examine classical *fiqh* texts with modern international human rights instruments must take this into consideration. That kind of examination and comparison leads to anocronatism or abolition (ignoring) of classical *fiqh* heritage. Ignoring classical *fiqh* heritage leads to inconsistent quotations from Quran and Sunnah serving to prove that 'Islam has protected and recognised human rights. The results which are found out in Qur'an and *Sunnah* vary according to the writer's intention.

Before starting to discuss the point it is will be useful to explore the present different approaches.

2. Disapproved (Incriminating) Publications:²

There are many western publications that claims that Islamic human rights thought is not suitable with democracy and human rights. Their basic claim is that: those principles give epistemological grounds for the Muslim mind. Basic *shariah* principles are in conflict with those concepts, and the principles always keep Muslims mind under control. . From a point of view it seems that classical Islamic Law -which it's roots and essential are founded by Muslim jurists and scholar in 7th Century and completed in middle of the tenth century- does not consist of any modern human rights in formulation of today. It looks very easy to criticise Islamic Law from this perspective. This kind of approach is anachronistic. This kind of approach resembles the examination of the Roman law with standards of the modern international public law. On the other hand, this approach will fail to be aware of or recognise the varieties, and potentiality of change and development in Islamic law.

Whereas it may be rejected by argument that Islamic Law is used by many countries particularly, family law and law of succession and by some countries the penal law. These laws and regulations enacted by the state according to codification and legislation rules. If some laws are legislated in those countries which are against recognised basic human rights, then in that case the legislative organisation of that state should be blamed not the religion of Islam. That is because legislation of Islamic law in those states is carried out by selecting one opinion amongst many other opinions. In many Muslim states, family laws are re-formed to change certain rules. Essentially, new laws are also

² Ruud Peters, "Islamic Law and Human Rihgts: a Contribution to an Ongoing Debate", *Islam and Cristian-Muslim Relations*, Vol.10, No:1, 1999, p.6

regulated by Islamic Law. Islamic law may re-design according to new changes and therefore be re-formed according to context. For example in 1917, the Family Law Ordinance is a good example of this kind of codification and legislation. The 1917 dated Ottoman Family Law Ordinance settled a minimum age for marriage, and subjecting a second marriage to the first wife's permission, indirectly banning polygamy. Family Law Ordinance is also called Islamic Family Law but the difference seems to be that the code chooses opinions which are suitable with the time and space.

Apart from this there is another discussion point. Some scholars says that after codification and legislation *fiqh* is no longer *fiqh*, it is Islamic Law or something else but not *fiqh*, since codification and legislation process is not just a process but that it is a *sui generis* process by its known specialities and values. However for some other scholars, codification is just a formulation or choosing one amongst many opinions. So it is still *fiqh* or we may call it Islamic Law. On the other we should not forget *fiqh* in its uncodified form as it was practising by the hand of the judges (*qadi*). It means that the judge was selecting the fit, suitable opinion (*ijtihad*) amongst many other opinions.³

3. Apologetic Publications

The author of apologetic publications tries to show that human rights in Islam accepted and recognized these centuries before the west.⁴ Of course, by this approach the classical *tafseer* tradition and structure of classical Islamic Jurisprudence is ignored and this opinion is supported by Qur'an verses and *hadith*. According to this approach classical tradition is not rejected but ignored.

We will offer a typical example from writings of famous thinker such as al Mawdudi (d. 1979). We see an example of quotation for second group. It is the writing of Sayyid Mawdudi in his famous work *Human Rights in Islam*. He speaks about Islamic and Western approaches of human rights. Mawdudi, after mentioning two kinds of approach to human rights, firstly he speaks about the western and then the Islamic approach.

“The Western Approach: The people in the West have the habit of attributing every good thing to them and try to prove that it is because of them that the world got this blessing, otherwise the world was steeped in ignorance

3 For the analyses and debates of from *fiqh* to Islamic Law, or From Jurist' Law to the Statute law, see, Rudolps Peters, “From Jurists' Law to Statute Law or What Happens When Shariah Codified” 82-95, in *Shaping the Current Islamic Reformation*, editor: B.A. Roberson, London, 2003

4 For the analyses of the main themes discussed in these publications, see V. Rispler-Chaim, “Human Rights in Islam: the Literary Genre” in *BRISMES Proceedings of the 1991 International Conference on Middle Eastern Studies*, London, 10–12 July 1991 (Exeter, 1991), pp.478–490

and completely unaware of all these benefits. Now let us look at the question of human rights. It is very loudly and vociferously claimed that the world got the concept of basic human rights from the Magna Carta of Britain; though the Magna Carta itself came into existence six hundred years after the advent of Islam. But the truth of the matter is that until the seventeenth century no one even knew that the Magna Carta contained the principles of Trial by Jury; Habeas Corpus, and the Control of Parliament on the Right of Taxation.”

Mawdudi made a serious critique on western human rights understanding. It was refusing the Western approach and giving preference to Islamic by saying it had human rights seven hundreds years earlier than the West.

“The Islamic Approach: The second point which I would like to clarify at the very outset is that when we speak of human rights in Islam we really mean that these rights have been granted by God; they have not been granted by any king or by any legislative assembly. The rights granted by the kings or the legislative assemblies, can also be withdrawn in the same manner in which they are conferred. The same is the case with the rights accepted and recognized by the dictators. They can confer them when they please and withdraw them when they wish; and they can openly violate them when they like. But since in Islam human rights have been conferred by God, no legislative assembly in the world, or any government on earth has the right or authority to make any amendment or change in the rights conferred by God. No one has the right to abrogate them or withdraw them. Nor are they the basic human rights which are conferred on paper for the sake of show and exhibition and denied in actual life when the show is over. Nor are they like philosophical concepts which have no sanctions behind them.”⁵

Consequently this method is not ever lasting on the study of modern human rights thoughts for analysing of classical *fiqh*. I already mentioned in the introduction part that it is meaningless to examine classical Islamic Law according to the today’s values and understandings. So my aim is neither to declare that Islam is not suitable with human rights nor to declare that Islam completely and wholly accepts and recognise the human rights. But on the other hand it must be appeared that Islam has already recognised some basic inalienable human rights. These values may be seen against the environment and conditions in which Islam has raised and developed. But the real issue is that human rights basically are present. In Islamic Law we may find human rights of the past as well as today’s internationally accepted form.

As it has been said earlier, comparing 7th century classical text with modern human rights standards is anachronistic. But whenever I read and see a paper or book on human rights, it always starts human rights history with the

5 Abu al-A’la Mawdudi, *al-Tawhid Journal*, vol.1, No:3, Rajab Ramadan 1407

Magna Carta. The Magna Carta is mentioned as the first document of human rights in the history of mankind. Is it the first document of human rights? But recently many authors have begun to mention the Prophet Muhammad's farewell speech in his pilgrimage as the first document of human rights in the history of mankind.

Still we may study on the cultural, social, political interaction amongst different civilizations and traditions.⁶ Because civilization is a continuous phenomena which is transferred from one culture to another and so on. Regarding human rights many basic rights and inalienable rights concepts seen in the West in the 12th century came from Islamic Law its heritage. I will offer a few quotations on effects of Islamic Law western law in regard of human rights:

"In the field of human rights, early Islamic jurists introduced a number of advanced legal concepts before the 12th century which anticipated similar modern concepts in the field. These included the notions of the charitable trust and the trusteeship of property; the notion of brotherhood and social solidarity; the notions of human dignity and the dignity of labour; the notion of an ideal law; the condemnation of antisocial behaviour; the presumption of innocence; the notion of "bidding unto good" (assistance to those in distress); and the notions of sharing, caring, universalism, fair industrial relations, fair contract, commercial integrity, freedom from usury, women's rights, privacy, abuse of rights, juristic personality, individual freedom, equality before the law, legal representation, non-retroactivity, supremacy of the law, judicial independence, judicial impartiality, limited sovereignty, tolerance, and democratic participation. Many of these concepts were adopted in medieval Europe through contacts with Islamic Spain and the Emirate of Sicily, and through the Crusades and the Latin translations of the 12th century."⁷

"The concept of inalienable rights was found in early Islamic law and jurisprudence, which denied a ruler "the right to take away from his subjects certain rights which inhere in his or her person as a human being." Islamic rulers could not take away certain rights from their subjects on the basis that "they become rights by reason of the fact that they are given to a subject by a law and from a source which no ruler can question or alter." Islamic jurists also anticipated the concept of the rule of law, the equal subjection of all classes to the ordinary law of the land, where no person is above the law and where officials and private citizens are under a duty to obey the same law. A Qadi (Islamic judge) was also not allowed to discriminate on the grounds of religion, race, colour, kinship or prejudice. There were also a number of cases where

6 For discussion on effects of Islamic Law on Common Law see, John Makdisi, "The Islamic Origins of the Common Law", *North Carolina Law Review*, 77 (5), pp.1635-1739

7 Weeramantry, Judge Chiristopher G. (1997), *Justice Without Frontiers: Furthering Human Rights*, Brill Publishers, Leiden 1997 pp.129-132.

Caliphs had to appear before judges as they prepared to take their verdict. There is evidence that John Locke's formulation of inalienable rights and conditional rulership, which were present in Islamic law centuries earlier, may have also been influenced by Islamic law, through his attendance of lectures given by Edward Pococke, a professor of Islamic studies".⁸

"Early Islamic law recognized two sets of human rights. In addition to the category of civil rights and political rights (covered in the Universal Declaration of Human Rights), Islamic law also recognized an additional category: social, economic and cultural rights. This latter category was not recognized in the Western legal tradition until the International Covenant on Economic, Social and Cultural Rights in 1966. The right of privacy, which was not recognized in Western legal traditions until modern times, was recognized in Islamic law since the beginning of Islam.⁹ In terms of women's rights, women generally had fewer legal restrictions under Islamic law than they did under certain Western legal systems until the 20th century. For example, restrictions on the legal capacity of married women under French law were not removed until 1965".¹⁰

Count Leon Ostorog, a French jurist, wrote the following on classical Islamic law in 1927:

"Those Eastern thinkers of the ninth century laid down, on the basis of their theology, the principle of the Rights of Man, in those very terms, comprehending the rights of individual liberty, and of inviolability of person and property; described the supreme power in Islam, or Califate, as based on a contract, implying conditions of capacity and performance, and subject to cancellation if the conditions under the contract were not fulfilled; elaborated a Law of War of which the humane, chivalrous prescriptions would have put to the blush certain belligerents in the Great War; expounded a doctrine of toleration of non-Moslem creeds so liberal that our West had to wait a thousand years before seeing equivalent principles adopted."¹¹

I will try to compare two historical documents of human rights, of which both are claimed to be the first in the history of human rights. Before comparing both documents, I will offer a historical background of human rights in the West.

8 Ibid, pp.8, 135, 139–140

9 Ibid, pp.136-7

10 Badr Gamal Moursi (Spring 1978), "Islamic Law:Its Relation to Other Legal Systems", *The American Journal of Comparative Law*, 26, (Proceeding of International Conference on Comparative Law, Salt Lake City, Utah, February 24-25 1997), pp.187-198

11 Weeramantry, p.134

Human rights refer to "the basic rights and freedoms to which all humans are entitled." Examples of rights and freedoms which are often thought of as human rights include civil and political rights, such as the right to life and liberty, freedom of expression, and equality before the law; and social, cultural and economic rights, including the right to participate in culture, the right to work, and the right to education.

4. A Short History of Human Rights in West

The history of human rights covers thousands of years and draws upon religious, cultural, philosophical and legal developments throughout recorded history. Several ancient documents and later religions and philosophies included a variety of concepts that may be considered to be human rights. Notable amongst such documents are the Cyrus cylinder, a declaration of intentions by Cyrus the Great upon ascending the throne of ancient Persia, and the Constitution of Medina of 622 AD, a formal agreement between Muhammad and all of the significant tribes and families of Yathrib (later known as Medina), including Muslims, Jews, and Pagans. The English Magna Carta of 1215 is significant in the history of Western law, and is hence significant in international law and constitutional law of today.¹²

Human rights are rights possessed by people simply as, and because they are human beings. The term has only come into common application during the 20th century. The idea of 'human rights' is not universal - it is essentially the product of 17th and 18th century European thought. Even the idea of 'rights' does not necessarily exist in every society or advanced civilisation. Rights are not the same thing as standards of behaviour punishable or required by rules, which can be fundamentally unfair to individuals, or used to oppress minority interests.

The earliest rules about standards of behaviour among people dealt with prescribing or prohibiting conduct that experience proved was likely to lead to conflict. There were great lawmakers -the Roman, Justinian, for one, who published his great Codex of various laws in the early 6th century -who tried to establish a cohesive scheme of rights and duties. The great religions of the world -Judaism, Islam, Hinduism, Christianity, Buddhism, Taoism, Islam, and others- have all sought to establish comprehensive, coherent moral codes of conduct based on divine law. All contain profound ideas on the dignity of the human being, and are concerned with the duties and obligations of man to his fellow human beings, to nature and indeed to God and the whole of creation.

Until the 17th century such attempts to establish a framework for such rules, laws and codes, whether in social, legal, secular or theological debate, emphasised duties and privileges that arose from peoples' status or relationships,

12 http://en.wikipedia.org/wiki/Human_rights#History_of_human_rights

rather than abstract rights that, philosophically, preceded or underlay those relations or laws. Then, attention moved from social responsibilities to the individual's needs and participation. It was seen as fundamental to the well-being of society, under the influence of philosophers such as Grotius, Hobbes and Locke, then, these rights were called 'natural' rights, or 'the rights of man'. These natural or moral rights became part of the political agenda. They spread as the economic frontiers came down.

One of the first, and most important, battles was about politics. Could 'natural rights' be handed over to rulers? People in their 'natural' condition have unlimited freedom. If they choose to be ruled, they surrender either all, or some at least of this 'natural right' to their king or government, in exchange for civil society and peace. If they could surrender 'all', then people could be subjected to absolute government authority, and be under an absolute duty to obey. If only some could be surrendered, then the question is what part of those freedoms can be given up?

This issue became a tremendous cause in 17th century England. The protection of the people's rights (especially the right to political participation, and freedom of religious belief and observance) against an oppressive government was the catch-cry of the English Revolution of 1640 (which led to rebel leader Oliver Cromwell heading the government and the King being executed). It was also the main call for the rebellion against the civil administration -the 'Glorious Revolution'- of 1688 which saw another King on the throne, but also led to the English Bill of Rights, in 1689.

The Bill of Rights dealt with the fundamental concerns of the time. It made the King subject to the rule of law, like any citizen, instead of claiming to be the law's (divine) source of law. It required the King to respect the power of Parliament - elected by the people, with the power to control the state's money and property. It protected some basic rights to justice - excessive bail or fines, cruel and unusual punishments and unfair trials: it guaranteed juries, impartial courts and independent judges. It repeated some of royal promises made by King John, under duress, in the Magna Carta (though Magna Carta was intended to benefit the privileges of the aristocracy of the time, not the whole population). It also established the people's preferred Protestant religion, at a time when having a Catholic King was thought to endanger the sovereignty of England. The Pope, in those days, was still a relatively powerful ruler of a foreign country.

Towards the end of the 18th century, according to the philosopher John Locke, it was argued that it was part of God's natural law that no-one should harm anybody else in their life, health, liberty or possessions. These rights could never be given up. The existence of this natural law also established the right to do whatever was necessary to protect such rights.

This view limited the role of government. No-one could be subjected to another's rule unless they consented. A government's responsibility became the duty to protect natural rights. This limited what it could legitimately do and gave its citizens the right to defy and overthrow a government that overstepped its 'legitimate' authority.

This thinking underlay the American colonies' Declaration of Independence in 1776. This not only asserted that governments were established by the consent of the people to protect rights, but unforgettably expressed these rights in the terms that: 'all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are Life, Liberty and the pursuit of Happiness.

Governments that did not carry out their protective role could be overthrown.

Sadly, the Declaration did not, in fact, extend human rights to all human beings. The first US Constitution expressly preserved the institution of slavery and did not recognise the equal rights of women. Many 'rights' were added to the US Constitution over the next 150 years: the Equal Rights Amendment, designed to give women equality was defeated in a referendum just this decade.

In 1788, as a result of the French Revolution, the Declaration of the Rights of Man and of Citizens asserted the primacy of natural rights in similarly inspirational terms to the US Declaration of Independence.

Yet in the Terror that soon followed the Revolution, with all its hopes, thousands unjustly lost their lives or suffered greatly in the name of 'Liberty.

The doctrines of human rights that we now have are direct descendants of this thinking. The disparity in rights protection in practice reflected the society of the time.

A human right is 'natural' in that every one owns them, not because they are subject to any particular system of law or religious or political administration.

They can be asserted against individuals, but they express the political objective: those governments must respect, protect and promote them.

The greatest 20th century statements of 'natural' or human rights can be dated to 1948, the Universal Declaration of Human Rights. This preceded a range of international Conventions, Covenants, Declarations and other treaties that have followed the tradition. Most came from the United Nations. But other groups have also adopted human rights standards. The European community, for example, has adopted a Convention on Human Rights. Many nations have incorporated rights into their national constitutions - acknowledging that the rights exist, not that they are created by their laws.

The most common 'universal' rights are the right to life; to freedom; to own property (limiting where government may intrude); citizenship rights

(voting, nationality and participation in public life); rights to standards of good behaviour by governments (or protection of the rule of law), and social, economic and cultural rights. The latter have become important during the 20th century, and raise important and still controversial issues about social justice and the distribution of wealth.

It seems that human rights developments took place in form of restricting or sharing the power of the King. For example Manga is the sharing the power of the King with others. Geoffrey Robertson writes, "The appearance of 'rights' as a set of popular propositions limiting the sovereign is usually traced to the Magna Carta in 1215, although that document had nothing to do with the liberty of individual citizens: it was signed by a feudal king who was feuding with thuggish barons, and was forced to accede to their demands."¹³

The historical survey of human rights in Islamic world and history starts very early. But no one can find out the historical the same struggle as in the west for gaining human rights in Islamic History.

In A.D. 622 after migration of the Prophet from Makah to Medina the first thing done by Prophet is to make an agreement between all famous tribes, Muslims, and Jews. It is called as the first written constitution in the history.

In AD.632 Prophet Muhammad went to Makah for the pilgrimage. It was the first and last pilgrimage of the Prophet Muhammad. He addressed to his Companions during his pilgrimage, this speech called as the Farewell Address. Muhammad mentioned and referred many points in his famous speech. Most of them may be considered as human rights declaration.

When we look these both document (Manga Carta and the Farewell Address of The Prophet) we don't find them claiming themselves to be human rights documents. Some have looked at the historical origins of the Magna Carta to challenge its mythical status. But on the other hand Manga Carta is a document which King John was forced to sign with other social powers like the barons of the day. On the other hand, the Farewell Address of The Prophet is an advise or commands with regards to many issues. When we examine both texts by searching basic human rights we see in the Manga Carta article 39. Article 39 says that; "No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land".

On the other hand when we look at the Farewell Address, it is intentionally addressed by Muhammad to define, describe and settle down the issues which are thought by Prophet Muhammad as important. There was no reason to speak about these basic rights except the one's the Prophet chose.

13 <http://bostonreview.net/BR28.3/linebaugh.html>

Unlike Manga Carta it was not under the Law of God, Prophet, King or any other authority. Islam in general and Islamic Law in special has itself to some extent considered those rights as valid because of inherent dignity of being a human being and they are vested by God rather than being established by decree or by positive law.¹⁴ The Prophet was aware that he may not be alive for a long time after this address. Because he said: *Listen to me; I am going to give you some explanations. I do not know whether I will meet with you here again after this year*¹⁵

That is why we claim that historical background and the reasons which raised human rights movements in the West different from Islamic history. May be it is the answer for the question why “human rights movements” did not take place in the Muslim Countries

Now let us enumerate the issues mentioned by Prophet Muhammad related to the human rights are in his Farewell Address.

1. Right to life,
2. right to safety of life,
3. The security of life and property,
4. The protection of the bodily integration,
5. The protection of dignity and honour.
6. Right of dignity and honour

Those rights considered worthy of respect and protection by his following words:

*O people! Your blood, your lives, your right to live, your property, your decency, dignity and honour, your bodily integrity are worthy of respect and protection and are inviolable until the day you will meet your Lord, just as this month, this city and this day are deserving of respect and protection. However, punishments made based on decisions necessitated by the responsibilities Islam laid down are an exception.*¹⁶

In modern human rights documents are all legal rights or at least protected by law. But Prophet mentioned some rules or norms of ethic. Those are so supportive to construct of consciousness on human rights. These values are

1. To respect for trust
2. Abolition of interest

14 See for discussion on the philosophical side and discussion on the human rights: Leszek Kozakowski, in *Modernity or Endless Trial*, Chicago and London, 1990, pp.205–206

15 Muhammad Hamidullah, *Macma' al-Vasaiq as-Siyasiyyah li'l-Ahd an- Nabavi va al-Hilafeh ar-Rashidah*, 1985/1405, Beirut, p.360.

16 *Macma' al-Vasaiq*, p.360

3. Abolition of blood feud.

My Companions! Whoever has something in trust, let him give this trust to its owner. Reciprocate with gifts to those who give you gifts. Guarantor ship is like a debt. Your debts must be paid.

Usury from the Age of Ignorance has been abolished. Allah commanded that the first abolished usury be Abbas b. Abdulmuttalib's. However, the principal money is yours. Neither can you make injustice nor should you be subject to injustice. Allah has made the prohibition of usury absolute. The first usury I am going to remove is the usury in the trade of my uncle Abbas b. Abdulmuttalib.

My Companions! I want to indicate that all the blood, water and property feuds from the Age of Ignorance are under my feet until Doomsday.

The blood feuds from the Age of Ignorance have been abolished until Doomsday. The first blood feud we will abolish is Amir (Iyas) b. Rabia b. al-Haris b. Abdulmuttalib's blood feud. He was a child given to Sad b. Leysodul's wet nurse. Huzayl killed him.

The Prophet stressed on the points repeatedly. The he declared that no one shall be subjected to torture or to cruel, inhuman and degrading treatment prohibited by his saying that:

Hear me well, so that you may continue to live peacefully with dignity and honour. Do not make injustice and oppression. Do not be a tool for coercion, oppression and torture. Do not bow to oppression. Do not accept injustice. Have I explained myself clearly?

Women were subjected to torture and oppression during history. In the *cahiliyyah* period (Age of ignorance- pre-Islamic time) women had no right to be a free person or to own property and she had no right to hold a share of a bequest as a legal heir. Prophet touched these issues by saying that:

O people! Your women have rights on you, and you have rights on your women.

Farewell Address of the Prophet is earliest text of human rights in Islam. After the spreading of Islam to the world, new schools and understanding came out and they interpreted the text of the *Qur'an* and *Sunnah* by different tradition to some extent. One may reject that you are just quoting from *Qur'an* and *sunnah* and spiriting away classical heritage of *fiqh*.¹⁷ Human rights understanding in classical *fiqh* are not covered by our study. But just to mention general approach of classical *fiqh* school we will say a sentence with regards to the Hanafi, Shafi', Maliki and Hanbali approaches.¹⁸ The word human being

17 Ruud Peters, 6

18 For further discussions of four *fiqh* schools' debate on human rights see, Recep Şentürk, *İslam'da İnsan Hakları*, Etikleşim Yayınları, İstanbul, 2007

mentioned in the Farewell Address of the Prophet became the discussion by the four schools of *fiqh*. There are two different interpretation of the word. According to the first group generally (Shafi', Maliki, Hanbali) the word human being consists of Muslims and *Dhimmi* (non-muslim citizen of Islamic State) only. But in the second group (Hanafi)¹⁹ the word is referring to all human being without exemption. We will not go further into details. This may be another special subject of study.

5. Conclusion

Human rights as a concept are product of 17th and 18th century Western thought. Human rights were in its rudimentary form in the beginning, still slavery was legal, and human rights were valid for only the free white man but not for neither the native Indians, the black, nor the women of any race.

We have to mention that to compare classical *fiqh* literature with modern human rights standards leads to the pitfall of anachronism. It is like examining Roman law with today's developed international public law. On the one hand, all historical documents and phenomena should be assessed in its time and space conditions. On the other hand we have followed historical background and survey of human rights from the beginning up to now. Manga Carta of the British Isle in 1215 is mentioned as the first document of human rights in history of human being. Scientific approach ethic requires mentioning all documents from both east and west. Here we have to mention the Farewell Address of the Prophet (AD. 632) Muhammad as primary and old human rights documents.

If we compare the two historical documents from point of relating human rights we have to give preference to the second one. Even if we can not compare old human rights documents but considerably we can make comparison between these two historical documents to show similarities and differences. The comparison will help us to show the human rights stand and perception of past societies and culture. By comparing the Manga Carta and the Farewell Address of Prophet Muhammad we conclude that, Magna Carta was a document which regulated the share of power between King and other authorities. It is intrinsically limiting the power of the King. On the other hand the Farewell Address of the Prophet was a declaration of the legal, religious and ethic rights and responsibilities of all people.

However, it is imperative to point out the necessity for further studies on these topics to understand the wider subject of law. Especially the position of classical *fiqh* school regarding human rights need to be further studies.

19 Shams al A'immah Abû Bakr Muhammad b. Ahmad al-Sarakhsi, *Usul al-Sarakhsî*, I-II, ed: Ab al-Wafâ al-Afghânî, I-II, Dâr al-Ma'rifah, Beirut, n.d., II, p.334

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ÖZET

İnsan Hakları ve İslam: Hz. Peygamber’in Veda Hutbesi’ni Magna Carta ile Mukayese Etme

İnsan hakları, demokrasi gibi kavramlar üzerine İslam ve Batı dünyasında pek çok çalışma yapılmış ve yapılmaktadır. Ancak bu çalışmalar bazı metodik hataları da içermektedir. Esas itibarıyla insan hakları kavramı 17. ve 18. Batı dünyasında ortaya çıkmıştır. Daha sonra, insan haklarına, pek çok anayasada yer verilerek kuvvetlendirilmeye çalışılmıştır. Fakat 18. yüzyıl insan hakları kavramının doğrudan, bugünkü uluslararası modern kamu hukuku ile karşılaştırılması anakronizme düşmek demektir. Aynı husus ilk İslam hukuk

metinlerinin bugünkü modern insan hakları standartlarıyla karşılaştırılmasında da ortaya çıkar.

Çalışma, İslam dünyasında ve Batı'daki insan hakları düşüncesini mukayeseli olarak sunmaya çalışır. İnsan haklarıyla ilgili farklı yaklaşımların bir tasnifini yaparak değerlendirmeye ve kritik etmeye çalışır. Ayrıca insan haklarının tarihsel serüvenini ve tarihsel arkaplanını ortaya koymaya çalışır. Son olarak tarihin ilk insan hakları belgesi olduğu ileri sürülen İngiliz Magna Carta'yı ve Veda Hutbesini mukayeseli bir değerlendirme teşebbüsünde bulunur. Nihayetinde, medeniyetler arası etkileşimin ve değişimin kaçınılmaz olmasının yanısıra, tüm tarihsel metin ve kavramların incelenmesinde, içerisinde bulunulan ortam ve şartların dikkate alınması gerekliliği üzerinde durarak anakranizmden kaçınılmasını önerir.

Anahtar Kelimeler: İnsan Hakları ve İslam, Veda Hutbesi, Magna Carta.

Magna Carta Libertatum (Medieval Latin for "Great Charter of Freedoms"), commonly called Magna Carta (also Magna Charta; "Great Charter"), is a royal charter of rights agreed to by King John of England at Runnymede, near Windsor, on 15 June 1215. First drafted by Archbishop of Canterbury Stephen Langton to make peace between the unpopular king and a group of rebel barons, it promised the protection of church rights, protection for the barons from illegal imprisonment, access to swift justice, and Magna Carta was a document agreed to by King John of England and the magnates of the realm on June 15, 1215. Even though the document did not seem special at the time, Magna Carta came to be used throughout English history in both symbol and substance for the rule of law and the advancement of liberty. Although Magna Carta is seldom referenced in the law today, its importance throughout history is immense. It is not a document of "universal human rights" or other vaunted ideals. It did not even lament the use of power, only its abuse. Over time, Magna Carta became a symbol of English liberty and many of the rights contained in it were applied to all Englishmen. After John, the parliament confirmed the Magna Carta. Contemporary international human rights law and the establishment of the United Nations (UN) have important historical antecedents. Efforts in the 19th century to prohibit the slave trade and to limit the horrors of war are prime examples. The essence of these emerging human rights principles was captured in President Franklin Delano Roosevelt's 1941 State of the Union Address when he spoke of a world founded on four essential freedoms: freedom of speech and religion and freedom from want and fear (See Using Human Rights Here & Now). The calls came from across the globe for human rights standards to protect citizens from abuses by their governments, standards against which nations could be held accountable for the treatment of those living within their borders.