

# Evangelical Review of Theology

EDITOR: DAVID PARKER

Volume 30 · Number 4 · October 2006

Articles and book reviews reflecting global evangelical  
theology for the purpose of discerning the obedience of faith

Published by



for  
WORLD EVANGELICAL  
ALLIANCE  
Theological Commission

# Human Rights and Islam—Is the ‘Clash of Civilizations’ already pre-programmed?

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**KEYWORDS:** *United Nations, Magna Carta, Bill of Rights, liberty, revolution, Enlightenment, Sharia Law, Wahbi, Crusades, conscience*

THE case of the Christian Abdul Rahman has created quite a stir in Europe. It has made the public keenly aware anew of the question of the preservation of human rights in Islamic countries. Abdul Rahman, who converted to the Christian faith in Germany, was threatened with the death penalty according to the Islamic Sharia law in his native Afghanistan. Yet, according to western understanding, the freedom to change one's religion is one of the most fundamental, basic human rights. It is totally different, though, in the legal tradition of Islam, where, according to all the traditional schools of Islamic law, apostasy from Islam must be punished by the death penalty. How

are human rights adhered to in Islamic-dominated countries? Is the Declaration of Human Rights signed by the United Nations in 1948 universally valid for people of all cultures and continents, or are we dealing with an open ‘clash of cultures’ with regard to the acceptance and preservation of human rights?

## 1. The Declaration of Human Rights as an Outcome of Modern European History

On December 10, 1948 the United Nations General Assembly announced the ‘Universal Declaration of Human Rights’. It consists of 30 articles and contains the important rights and basic liberties to which every citizen is entitled. The first article states: ‘All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should

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act towards one another in a spirit of brotherhood.' The new and unique part of this legal declaration of the United Nations is that here, for the first time, global rights are preserved to protect every individual against government or the state and society. Thus, almost every article begins characteristically with the words: 'Every human being has the right to...' or 'No person may...' Human rights strengthen the resolve of the individual against inhumane treatment by government despotism. It is crucial that, through the United Nations, human rights are also thereby anchored in international law.

### **The History of Political Liberties in England**

The origins of human rights go back to Medieval England. On July 15, 1215, King John Lackland issued the so-called 'Magna Charta Libertatum' on a piece of meadow property between Windsor and Staines. While not all subjects were granted individual liberties in this document, nevertheless the privileges of the nobility guaranteed by the Magna Carta were later developed into liberties for the Parliament. Finally, in the course of the further history of the law, every individual citizen gradually came to enjoy personal civil liberties. The equality of all before the law, the protection from arbitrary arrest, as well as the right to a fair court trial and legally authoritative rules for levying and collecting taxes are these kinds of basic rights. In connection with the so-called 'Habeas Corpus Acts', this development finally led to the 'Bill of Rights' in the year 1689.

### **The Important Impetus Given By the Reformation**

The Lutheran as well as the Reformed parts of the Protestant Reformation had a vitally important influence on the achievement of religious freedom and freedom of conscience. Luther gave an impressive example of what a single individual can accomplish in questions of faith and religion against a world church with the pope as its head and against the representative of political rule, namely, the Emperor of the Holy Roman Empire of the German Nation.

At first, the division of the Roman Western Church caused major religious wars. The Thirty Years' War (1618-1648) brought immeasurable suffering upon Germany through the intolerant conflict between the religious confessions (churches) and the political power blocs allied with them. The so-called Augsburg Religious Peace Accord of 1525 was only a temporary solution in this context. Each respective princely ruler was granted the possibility of choosing between one or the other of the two large religious faiths (Protestantism or Catholicism) as the official religion of his territorial dominion-region. Citizens were left only with the right to emigrate from their homeland for religious reasons. In a long and painful process, Europeans have had to learn that religious questions cannot be decided by political power.

### **The First Implementation of Human Rights in the U.S.A.**

As a fundamental part of English Law, the Anglo-Saxon tradition of the 'Bill of Rights' had a profound effect on the

creation of the Constitution of the United States of America and its culture of human rights. Through this, the Declaration of Independence of the United States, proclaimed in Philadelphia on July 4, 1776, was influenced by the spirit of the European Enlightenment. It combined the call for tolerance with the Reformation understanding of religious freedom and freedom of conscience and the Puritan yearning for individual life expression. Thus, in the New World we find the first democratic constitution of the Modern Age with the establishment of basic civil rights from the spirit of Christian enlightenment.

### Human Rights Under an Atheistic Sign in Revolutionary France

Only thirteen years after the American colonies broke away from the British kingdom, the French Revolution broke out in 1789. The newly-founded Republic of France also placed the 'Basic Human Rights and Rights of Citizens' at the beginning of its constitution. While the American Revolution was basically characterized by a Christian-based Enlightenment, the fight of French revolutionaries against the 'ancien régime' of the nobility and the clergy as well as against the absolute monarchy of Louis XVI proved itself to be influenced increasingly by atheistic ideologies.

When Louis XVI was executed four years later, the royal families of Europe all became enemies of the new republic. The state churches of Europe were turned upside down as well by the fact that in France, the veneration of a 'higher being', namely, that of reason,

was declared as the new religion. But, German Protestantism had been, in fact, closely tied to the royal families since the Reformation. Often, the prince also served as the bishop of the respective regional state church. Therefore, it is easily understandable that the shocking attendant circumstances of the French Revolution discredited the human rights ideas propagated with it. As a result, the freedom movements in Europe were able to achieve human rights only gradually over a very difficult and arduous process in the 19th and 20th centuries.

### The Central Ideas of the Philosophy of Enlightenment Philosophy

Historically and philosophically crucial for political freedom in Europe was the belief that man, as an autonomous subject, was the master of his own destiny. This enlightened conviction was combined with the idea of a civil society which had made the state, as the Leviathan monster, to be the problem. In opposing the predominance of the state against the overabundant power of the state, the political philosophy of English philosopher Thomas Hobbes sought to achieve and to guarantee individual liberties against the state through social contracts.

Present-day European culture feeds on these sources. With this, the strict separation of church and state or religion and politics has become the foundation of modern, democratic states. In view of cultural and societal pluralism, the ideal of tolerance is combined, with respect to content, with these legal and constitutional foundations.

## 2. The Islamic Understanding of Human Rights and Its Problems<sup>1</sup>

Islamic culture, which experienced a flourishing period of intellectual development between the 9th and the 12th centuries, did not take part in the struggle of European peoples in the Modern Age for the development of human rights.

In the present day, there are three Islamic schools of thought which take very different positions on the matter of human rights.

For one, there is the traditional-conservative positive of the Ulema, the position of the Islamic legal scholars who reject human rights as western thought. They stabilize the rule of Islamic dictatorships. Secondly, there are fundamentalist groups that appeal to human rights for Islam for propaganda purposes. They claim that human rights are not an achievement of the European Enlightenment, but of Islam. In their legal practice, they stand for a rule of law and government oriented strictly to the Sharia, in spite of all formal appeals to human rights.

Finally, there is the numerically small 'Arab Organization for the Defense of Human Rights' whose adherents are tolerated only in a few Arab countries like Egypt and Morocco. In general, they have little other choice but to leave their native

countries in order to actively pursue their aims from abroad.

### The Strict Rejection of Human Rights on the Part of Islamic Orthodoxy

The Wahbi-sanctioned oil monarchy of Saudi Arabia represents a Medieval form of Islam. It has not signed the UN Declaration on Human Rights, justifying this stance on the grounds it would contradict Islam. Instead, proponents of this view presuppose Islamic categories for the entirety of humanity and their goal is to make the world Islamic ('Islamize') either through 'peaceful Saudi jihad with oil dollars' or, in extreme cases, to accomplish it through the 'jihad of terrorism'. An important basic assumption for this is the belief that, through the revelation of Allah to Mohammed, which is fixed for all eternity in the Qu'ran, political questions are to be decided not by using reason, but by divine law.

Islamic Shiites also argue from this position. As the Iranian Ayatollah Khomeini once declared: 'What the Europeans call human rights is none other than a collection of corrupt rules worked out by Zionists to destroy the true religion of Islam.' His successor, Ali Khanei, disparaged the UN Declaration of Human Rights as 'Satan's hocus-pocus'. Behind this polemic lies the radical Islamic division of the world into good and evil, believers and unbelievers, into the Dar Al-Islam (House of Islam) and the Dar Al-Harb (House of War).

What makes it so difficult for Muslims to recognize and to practise universal human rights? First of all, the Islamic world understands itself as the

<sup>1</sup> The basic ideas of the Islamic understanding of human rights outlined here are explained in depth in Bassam Tibi's German work, *Im Schatten Allahs. Der Islam und die Menschenrechte* (Ullstein-Taschenbuch 36388, Düsseldorf, 2003).

'*khair umma*' (Surah 3,110), that is, as the best society on earth. From this standpoint, there are great inner barriers to recognizing the cultural achievements of non-Muslims and to learning from them. But, this is necessary for the Islamic world with regard to the European-influenced tradition of human rights. Instead, all non-Muslim influenced civilizations are devalued as *djahiliyya*, that is, as 'the age of ignorance without knowledge of the revelation of God to Muhammed'. Cultural achievements such as the Declaration of Human Rights are therefore considered of less value compared to Islam.

From this, specific areas of conflict result between Islamic culture and the European tradition of human rights. Even today, the Islamic understanding of government is still based on the thinking of Ibn Taimiyya, a Medieval Islamic legal scholar who held that the political ruler as religious leader (imam) is alone responsible before God, even when he is unjust. He is considered to be 'Allah's shadow'. Because political rule is granted by God alone and not by the people, no human institution can remove a political leader from office.

Therefore, the typically democratic control of political power never takes place and the principle of the separation of powers also does not exist. Instead, Islamic fundamentalists base their government on the system of the shura according to surah 37, which says: 'And they perform their duties by mutual consent.' This concept of mutual consent or advice is declared by orthodox Muslims to be the real form of democracy without having to consider the modern legal structures of democracy.

Another basic point of conflict is the lack of religious freedom. The person who falls away from the faith (apostatizes: '*murtad*') is threatened with the death penalty unless the apostate Muslim shows regret and returns to Islam. Apostasy is considered the worst 'offense against Allah's law'. It is not human rights, then, which are in the centre, but the law of God as the Sharia defines it. No human being is authorized to question the punishment laid out by Allah in the Qu'ran. In this context, when Islamic apologists quote the Qur'anic verse surah 2,256: 'no compulsion in religion', this has nothing to do with the free choice of religious affiliation. This context simply deals with a limited right to discuss the source texts of Sunni Islam, namely, the Qu'ran and the Hadith, that is, the legal tradition of the words and deeds of the prophet, in a prescribed format.

A further important contradiction to the modern understanding of human rights relates to the question of the equality between man and woman, which does not exist in Islam. Women may inherit only half of what men are entitled to and they may not get a divorce. Basically, they are considered below men. Surah 4,11 states: 'Men are above women because Allah honored (distinguished) them, i.e., men (by nature above them, i.e., women).' In verse 34 of this surah, it says: 'If you fear that (some women) rebel, then warn them. If this doesn't help, then shun them in the marriage bed and beat them.' These kinds of ordinances of the Sharia are fundamentally irreconcilable with the understanding of individual human rights.

## The Sharia in Contradiction to Human Rights

Of course, it is conceivable that a philosophical tradition could have arisen during the Islamic Middle Ages between the 9th and the 12th centuries that could have led to similar results to those of the European Enlightenment. If rationalist theologians influenced by Greek philosophical traditions, who saw no contradiction between reason and faith and between the subjectiveness or human free will and the sovereignty of Allah, had been able to assert themselves, then Islamic history would have taken a very different course. But, Sufi Muslims, that is, Islamic mystics, as well as rationalistic thinkers were accused of *kuf'r* (unbelief) and some of them were even executed. Even in our day, Sheikh Al-Ghazali declared before the Supreme Court of Egypt: 'Anyone who publicly stands against the application of Sharia law is guilty of apostasy and must be put to death...; anyone who puts this kind of apostate to death will not be punished!'

One is completely justified in asking what kind of understanding of human rights is behind it when the same Islamic fundamentalists publicly declare: 'We Muslims possess the final revelation and with it we have had everything, including the tradition of human rights, before the Europeans even began to have anything at all.' From this, the question may be raised concerning the nature of the Sharia, which stands in principal conflict with the European understanding of human rights.

The average viewer of the western media typically associates the word 'Sharia' with spectacular measures of

punishment, such as the amputation of the right hand of a thief or the stoning of an unfaithful wife. But, no such law book with the title 'Sharia' actually exists. Rather, the Sharia is a post-Qu'ranic legal system which is, in principle, subject to interpretation. This interpretation is done by religious jurists of different schools of law who each claim that their interpretation of the Sharia has divine character. On the contrary, the califs of classical Islam well understood how to distinguish between Sharia and the tasks of the *siyasa*, that is, of the public business of government. In practice, they did not act according to the doctrinal principles of the Sharia, but, more pragmatically, oriented to the exigencies of government (decisions based on reason), that is, the *siyasa*.

In Sunni Islam, the legal schools have the status of confessions or denominations. Thus, the law is tied to the faith and to the adherence to a school of Islamic law, but not to a political institution. The construction of modern states in the Islamic world necessarily had to bring with it the introduction of a codified system of law and, therefore, it stands closely connected with the introduction of national states. Islamic fundamentalists today interpret the national state order with its institutions as an expression of cultural imperialism and see in their return to the Sharia an important step towards a lessening of western influences.

In Islamic history, the Sharia was very quickly interpreted and expanded as a code of civil and criminal law beyond the general obligation to morality. Today, the Sharia is even considered as the basis for the political order

of an Islamic state and its economic structure. Every Muslim, regardless of the culture in which he lives, is required to observe the morality prescribed by Sharia. Of course, as soon as there is an Islamic-governed state, the Sharia is also considered as the basis of modern penal law and government order.

Because of this, we must question whether the loyalty of Muslim immigrants to the German constitution can be limited to the time in which they constitute a minority. If a Muslim majority came into being, then the Basic Law would logically have to be replaced by the Sharia.

### The Universal Claims to Validity by Human Rights and the Self-Understanding of Islam

Do human rights have universal validity from the Muslim point of view? The announcement of an 'Islamic Declaration of Human Rights' by Islamic groups in Paris and London brings the deep tension here to full expression. On the one hand, they explain that there is a genuine Islam origin of these rights, but these are basically not valid for all people, but only for Muslims.

Philosophically and historically, this is a contrast to the European concept of natural rights that state that these rights are granted to each individual person based on his individuality as a human being, regardless of religious and political convictions, social status, race, gender, etc. This understanding of human rights presupposes a global context for its validity, without calling, at the same time, the cultural and societal diversity of humanity into question. Furthermore, under the sign

of the universal validity of human rights, it is possible carefully to respect particular cultures. However, as long as Islam understands itself as the universally valid standard by which humanity is defined at all in terms of its humanness, human rights will present themselves as an unfriendly rival.

A further difficulty is the a-historical self-understanding of Islam. People do not want to admit that the present situation of Muslim countries affects and changes them anew. As long as one onesidedly defines Islam only from the study of the primary source texts, namely, the Qu'ran and the Hadith, important religious and sociological questions are passed over and one comes to the construct of a *homo islamicus* (the idealized Islamic view of man). As documents at the first publication of the Islamic Declaration of Human Rights in 1981 show, this leads, then, to an a-historical idea of the original Islamic background of human rights. 'Fourteen hundred years ago Islam laid the legal basis for human rights in their entirety. With these rights, Islam combined all necessary guarantees for their protection. Islam created society according to these rights and thereby offered the basis for their realization.'

Here, a construct is presented by Islamic orthodoxy as reality, something that never existed as such in the 1400-year history of Islam. The modern European ideas that stand behind human rights, such as the principles of reason and subjectivity, are eliminated in this way. This is clearly presented by the Islamic Declaration of Human Rights as follows: 'We proceed from the assumption that, without divine leading, human reason is incapable of



finding the right way for a good life.' Instead of admitting that their own religion and culture are also changed by the respective conditions of history and society, they construct an Islamic ideal, which is ultimately based on a projective interpretation of Islamic source texts, which pretends to anticipate the ideas of human rights.

### Obligations (Duties) Instead of Rights

Giving lip service to human rights while quietly still assenting to the Sharia-based concept of *faraid* (duties, obligations) is self-delusion. The European understanding of civil rights speaks of natural rights that guarantee every individual personal freedom over against the state and society. But, the Islamic definition of human rights implies a further, critical area of conflict. The collective, the *umma*, always takes precedence over the individual.

### 3. Cultural and Political Consequences for the Western World

Structural globalization in the modern world is increasing, but this has not led to greater international solidarity. On the contrary, fragmentation is only getting worse. The diversity and efficiency of current means of communication and transportation only enhance the cultural fragmentation of humanity. We are edging up to a situation where cultures must now be clearly recognized in their distinctiveness. The regional and cultural contrasts, by their explosive nature, even lead to hate.

### The Moral and Political Disaster of the Balkan Wars for Europe

In view of the long historical memory of Muslims, the genocide committed against their fellow Muslims by Serb ethnofundamentalists during the Balkan wars of 1992 to 1995 has proven to be very disastrous. Since that time, Islamic fundamentalists have warned immigrants to Europe that similar things could happen to them at the hands of Christians as happened to Bosnian Muslims. This creates resistance rather than willingness to integrate. In Muslim understanding, Bosnian Muslims are considered part of the worldwide Islamic community (*umma*). The fate they suffered could lead to collective vengeance according to the principle of 'a life for a life, an eye for an eye, a tooth for a tooth...' (cf. Surah 5,45). One could view the terrorist attacks on Washington and on the World Trade Center in New York on September 11, 2001 as evidence for this kind of an act of revenge.

With respect to the massacre in the Balkans, the European Union was not able to take care of their geopolitical business of protecting the human rights of Muslim Bosnians. Now, Islamic extremists point out that western governments make only a rhetorical appeal to human rights, but do the exact opposite of it. In doing so, the term human rights is degraded in their eyes to the level of pure political opportunism. Even the U.S prison camp at Guantanamo on the island of Cuba and the demeaning acts of American and British soldiers on Muslim prisoners in Iraq understandably fuel this resentment.

## No Special Rights for an Islamic Ghetto, but a Strong, Defensible Democracy

In the face of the serious and manifold offences to human rights in the world-wide context, a consensus that goes beyond cultures and an institutional safeguard of human rights should be worked out. While human rights are universal rights, this does not mean demanding a multi-cultural society. The model of a multi-cultural society leads to cultural relativism and the cheapening of life. Rather, a basic consensus for human rights is needed in view of contradictory claims to truth and the ever-increasing acute, ideological danger to humanity in the 21st century. It must be clear here that world peace can be realized only as a democratic peace, while political theocracies only lead humanity permanently into ideological and, ultimately, military confrontation.

Human rights are, in principle, indivisible as universal rights. One cannot, as happens time and again among the European Islamic diaspora, make practical and one-sided use of civil rights, in order at the same time then to criticize the values that stand behind these rights. One may not also stand for the slogan that, for Islamic states, there is freedom for 'different development' when the use of torture and the disregard for freedom of expression are meant. The Sharia as a collective special law for Islamic minorities is not acceptable anywhere in the world. An Islamic ghetto where the Sharia is law means existential danger for Europe.

Indeed, in view of the ever-increasing pressure of immigration and a modern mass exodus from North Africa to

Europe, a strong democracy which is able to protect and defend itself is necessary with respect to Diaspora Islamism. Here, even Germans are too easily pushed into a defensive position by Islamists, who appeal directly to the guilty conscience of Christians because of the Crusades. It is also not enough to fight rightist extremism in Germany, as is evident, for example, in hostile prejudice against foreigners, and, at the same time, avoid confrontation with Islamic fundamentalists.

The French and the English, who are more self-confident, are seen as much more offensive and courageous than Germans. They proudly appeal to the ideas of the American and the French revolutions to oppose Islamism (radical Islamic fundamentalism). The cultural roots of the modern European age do not lead our neighbors to ignorant nationalism, but, instead, to a self-confident and constitutional patriotism that knows that political and cultural modernity cannot co-exist side by side with the Islamic Sharia because they are simply incompatible. Therefore, Europeans must promote globally the process of democratization and stand for the universal recognition of human rights.

The dialogue with Islam must, then, be perceived as a two-fold strategy: namely, as a way to strengthen liberal and democratic tendencies among Muslims and, at the same time, as a rejection of totalitarian, Islamic fundamentalism. There is no freedom for those who would do away with freedom, no tolerance for those who misuse western freedoms and values to preach intolerance. In the Muslim countries of Africa, it is evident that there are indeed cultural convergences

between local traditions and Islam. The West must stand for the genuinely European form of an enlightened Islam in a much broader sense. Muslims can practise their religion unencumbered in free Europe, build mosques, and preserve cultural institutions. But, these institutions may never be misused as instruments of Islamic indoctrination.

#### 4. Human Rights from a Biblical, Theological Perspective

Muslim legal scholars derive their understanding of the Sharia directly from the Qu'ran and the Hadith, the primary sources for Islam. It is evident in this that the Sharia's dogma of duties is not compatible with human rights in the sense of enlightened Europe. But, what is the relationship between Christianity and human rights? Even in the history of Christianity, there have been terrible violations of human rights in the form of the Crusades, the Inquisition, and religiously-motivated wars. Old Testament divine law, the tradition of Israel's 'holy wars', and theocracy in general were appealed to as justifications.

But, in this context, it was overlooked that, with Jesus Christ and the New Testament, which tells us about his life and his teachings, an entirely new situation has arisen. With Jesus, the political understanding of theoc-

racy, in particular, Old Testament theocracy, has come to an end. Standing before Pontius Pilate, the representative of Roman imperial power, Christ emphasized that his Kingdom is not of this world. He is the King of truth, yet he categorically rejects using violent means to spread faith in him. Jesus respects the freedom of conscience of every person. Inner convictions arise from the Word. They cannot and may not be forced from the outside. Thus, Jesus is fundamentally different from Muhammed in his preaching and practice.

Although the Church in Europe has had an intense and continuous conflict with the goals and ideals of the Enlightenment, which cannot be related in further detail here for lack of space, it is still clear that the primary source of Christianity, namely, the New Testament, speaking for itself, not only tolerates the call for human rights, but also, in fact, itself demands it.

In following Jesus Christ, his church stands for personal tolerance, that is, it respects the free decision of conscience and promotes the rights of free assembly, freedom of speech, and religious freedom, including the possibility of changing religions. With respect to universal human rights, a Christianity strictly oriented to Jesus is, in fact, in inner agreement with the Enlightenment. Moreover, with the commandment to love one's enemy, it even goes well beyond it.