ADAMIYYAH (*HUMANITY*) AND 'ISMAH (*INVIOLABILITY*): HUMANITY AS THE GROUND FOR UNIVERSAL HUMAN RIGHTS IN ISLAMIC LAW

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1. **How would you describe the engagement between the Islamic tradition and the human rights discourse?**

A legal maxim in Islamic law states, "the right to inviolability (*Ismah*) is due for humanity (*adamiyyah*)." This right to inviolability includes inviolability of life, property, religion, mind (freedom of expression), family, and honor. All Hanafi (a rite of Islamic jurisprudence)[124] jurists uphold this perspective, as do "universalist" jurists in other rites of Islamic jurisprudence.

Thus, according to this perspective, simply being human is sufficient to possess human rights regardless of innate, inherited, and gained attributes such as sex, religion, race, and nationality.

2. **You have dedicated a lot of time to researching the farewell speech of the Prophet Mohammed. What lessons do you think exist for governments and communities (Arab communities, non-Arab communities, majorities, minorities) more generally, including civil society, in terms of that farewell speech, and the upholding of fundamental rights?**

The well-known farewell sermon[125] of the Prophet Mohammed (571–632) laid the foundation of universal human rights in Islam in 621 at the square of Arafat in the desert of Arabia near Mecca to a large of group of believers who gathered there for the annual pilgrimage. Three declarations in this sermon laid out the very foundation for freedoms as guaranteed by Islamic law, and are relevant to human rights today:

The first statement: "O People, just as you regard this month, this day, this city (i.e. Mecca) as inviolable (*haram*), so regard the life, property and honor of everyone as inviolable (*haram*)."

The second statement: "O People, it is true that you have certain rights with regard to your women, but they also have rights over you."

The third statement: "O People, all mankind is from Adam and Eve. An Arab has no superiority over a non-Arab, nor does a non-Arab have any superiority over an Arab; a white has no superiority over a black, nor does a black have any superiority over a white; [none have superiority over another] except by piety and good action."

The first statement is about the universality of human inviolability. The second and third statements are about an explanation of that inviolability and are about gender equality and racial equality respectively. They settle three major constitutional or legal principles for today's law and the policy makers in Muslim communities worldwide.

Islam recognizes the right to inviolability of life, property, and honor without any distinction based on inherited or innate qualities such as race, gender, class,

124 The Hanafi school (*Madhab*) is one of four schools of law or religious jurisprudence (*fiqh*) in Sunni Islam. It is considered the oldest and amongst the most liberal. The name is derived from its founder, Imam Abu Hanifa, and the madhab spread during the Abbasid Empire. The Sunni-Hanafi madhab is essentially non-hierarchical and decentralized.

125 Dr. Z. Haq, "The Last Sermon of Prophet Muhammad," E-books on Islam and Muslims, 1990, last accessed June 25, 2018, http://www.cyberistan.org/islamic/sermon.html.

or religion. Islam grants men and women equal fundamental rights; it sees them as equal before the law and accepts that they have rights with respect to each other. Islam strictly bans racial discrimination.

Muslims allude to the sayings of the Prophet Mohammed, or *hadith* (pl. *ahâdith*), which has binding power in Islamic law. Thus, the farewell sermon of Prophet Mohammed is not an ordinary speech or preaching. *Hadith* is considered to be the second source of Islamic law after the Quran.

The statements in the Farewell Sermon of the Prophet Mohammed are supported by his many antecedent and subsequent statements, and by actions recorded in the *hadith* literature. Furthermore, the first source of Islamic law, the Quran, also has many verses to the same effect. My purpose here is not to provide a survey of the Quranic verses and the relevant *ahadith* but merely to focus on the contemporary implications of the farewell sermon on human rights.

Muslim communities all over the world—Arab governments, non-Arab governments, minority communities and majority communities, in Europe, in Asia, all Muslim communities all over the world—should candidly identify these legal principles and attempt to actualize them in whatever way they can.

3. **Building on the former response, are there particular issues pertaining to gender rights that you think are particularly emphasized, and what sort of policies in different Muslim majority and minority communities ought to be implemented in that regard?**

Adamiyyah[126] is the foundation for human rights in Islam. The farewell sermon of the Prophet Mohammed testifies that humanity is not about any inherited, innate, or acquired qualities. Therefore, gender equality is well-established in Islam at the level of fundamental rights or human rights.

4. **Could you reflect on how the Ottoman experience—which was multicultural, multiethnic, multi-religious—has lessons for us today, worldwide, for Muslim majority communities and Muslim minority communities? Including the Arab world and non-Arab world?**

This legacy of Ottoman practice and reforms are forgotten by Muslims today, and the question of what to do with the old *dhimmi*[127] status and the *dhimmi* tax, or *jizya*, lingers in modern Muslim discourse. For contemporary Muslim thinkers and policy makers, there is a lot to learn from the late Ottoman legal reforms. In particular:

A. Slavery is not legitimate nor applicable: everyone ought to be free.

B. The *dhimmi* status is not legitimate nor applicable: all citizens are equal.

C. The *jizya* tax is not legitimate nor applicable: all citizens should pay equal amount of taxes regardless of their religion.

D. The constitutional system is entirely compatible with Islamic principles.

E. The parliamentary system is entirely compatible with Islamic principles.

F. The election of non-Muslims to parliament is entirely compatible with Islamic principles.

G. Electoral democracy is entirely compatible with Islamic principles.

The Ottoman Empire was a cosmopolitan empire. So was the Mughal Empire in India. Thus, these two experiences are excellent examples of the universalism of human rights in Islam.

The Ottoman experience—along with the Andalusian experience—provide us with admirable examples of how Jews and Christians were treated, and by extension, they provide an understanding of how they ought to be engaged with in the contemporary era, if genuine Islamic principles are applied. Likewise, the Mughal experience in India provides an example of how the Buddhists and Hindus were treated under Islamic regimes.

For example, the Mughal experience demonstrates beyond doubt the universalism of Islamic law and human rights in Islam. Hindus and Buddhists are not considered People of the Book, i.e., they do not belong to a monotheistic Abrahamic religion, yet they were given the same rights Christians and Jews were given in other parts of

126 *Adamiyyah* is literally humanity, derived from Arabic descendants of Adam, the first human.

127 Dhimmi is a person living in a region overrun by Muslim conquest who was accorded a protected status and allowed to retain his or her original faith.

the Muslim world at that time. Similarly, Zoroastrians in Iran were granted fundamental rights although they did not follow an Abrahamic monotheistic religion.

The Ottomans established a diversity "management system" called the millet system,[128] which may serve as a source of inspiration even today. In my opinion, in the age of globalization, the most pressing problem is diversity management. The millet system was based on semi-autonomous religious communities brought together under the Ottoman caliph sultan. During the classical period, 1520–1566, these religious communities included major millets: the Islamic millet under the caliph sultan in Istanbul, the Orthodox millet under the Orthodox patriarch in Istanbul, and the Jewish millet under the chief rabbi also based in Istanbul. The followers of the non-Muslim millets were called *dhimmi* and the tax they paid was called *jizya*.

In 1856, the millet system came to an end as the Ottoman Sultan abolished the *dhimmi* status and the *jizya* tax by a royal decree and introduced universal citizenship for everyone under Ottoman rule. The institution of slavery was abolished in 1847 by Sultan Abdul Majid. The reforms in Islamic law and the political system were based on policy advice by a group of scholars, headed by the Ottoman *Sheikh al-Islam*—the foremost scholar of Islamic law in the Ottoman domain during that time.

In 1879, the Ottomans adopted a constitutional and parliamentary system with the approval of Ottoman *ulama* (religious scholars) and had several elections prior to the military defeat of the Ottomans in 1918. The Ottoman parliament, which included Christian and Jewish members, was closed by the British army after it invaded Istanbul.

5. **What are the biggest challenges for Muslims as they seek to rejuvenate Islamic discourse, whether in the Arab world, Muslim minority communities, or elsewhere? How do those challenges relate to the human rights discourse?**

First, the long and rich conceptual and practical legacy of universal human rights in Islamic law and history are not known today to Muslim intellectuals and policy makers. This prevents the human rights discourse from being properly grounded in an Islamic worldview. The heritage of Hanafi jurisprudence is very valuable in this regard.

Second, there is no longer a middle class in some Muslim-majority countries. If there is no middle class in a society, there is no group that can then stand up for human rights. Therefore, Muslim communities across the world should develop that middle class.

Third, there is no rule of law or due process in some Muslim-majority countries, which is a challenge that we must overcome if we are to rejuvenate the Islamic discourse.

Fourth, some Muslim countries are economically and politically dependent on other countries and are not self-sufficient.

Last, some of the powerful Western countries at times disregard human rights violations and at times even support them in the Muslim world. By doing so, they make the human rights discourse lose its power and legitimacy in the eyes of Muslim populations and thus undermine any Muslim effort to promote them.

128 The millet system, derived from the Arabic word for "nation," was a form of decentralized governance utilized by the Ottoman Empire. It allowed non-Muslims, under Muslim rule, to use their own (religious) laws. The purpose was to allow minorities under the Ottoman rule a sense of autonomy.