

CILE 10th International Conference

The Interplay of Islamic Ethics and Human Rights at

Doha, 15-16 March 2023

Day 1	Wednesday March 15, 2023
10:00- 10:30	Opening Remarks Ibrahim Zain (Acting Dean - CIS) Mohammed Ghaly (CILE Acting Director) Samer Rashwani (CILE Senior Researcher)
Session 1	Moderator: Mustafa Osman I. Elamin (CIS)
10:30- 11:00	<i>Human Rights Versus Public Morals: An Islamic Ethico-Legal Perspective</i> Mashood A. Baderin (SOAS University of London)
11:00-11:30	منظومة الحقوق في الفقه الإسلامي: التداخل بين الأخلاقي والقانوني Mutaz Alkhatib (CILE)
11:30- 12:00	Discussion
12:00- 13:30	Break
Session 2	Moderator: Mohammed Ghaly (CILE)
13:30- 14:00	<i>Ethical Pluralism in Early Arab Human Rights Activism</i> Catherine Baylin Duryea (St. John's University, School of Law)
14:00-14:30	<i>The Universality of Islamic Human Rights Ethics and Human Rights Ethics</i> Niaz Shah (University of Hull)
14:30- 15:00	Discussion

15:00- 15:30	Coffee Break
Session 3	Moderator: Ahmet F. Aysan (CIS)
15:30- 16:00	<i>Women's Rights as Human Rights: Categories for an Islamic Ethical Reply</i> Zara Khan (West Chester University, Rutgers University)
16:00-16:30	<i>Can Islamic ethics demonstrate a right of self-governance for religious communities</i> Paul McDonough (Cardiff University)
16:30- 17:00	Discussion

Day 2	Thursday March 16, 2023
Session 4	Moderator: Alexandre V. Caeiro (CIS)
10:00- 10:30	<i>Is Making Money from the Body a Right? Islamic Jurisprudence, Ethics and Human Rights on the Problem of Commercialization of the Body</i> Merve ÖZAYKAL (Istanbul University)
10:30-11:00	<i>Islamic Discussions on Human Dignity and the Right (not) to be Born</i> Ayman Shabana (Georgetown University Qatar)
11:00- 11:30	Discussion
11:30- 13:00	Break
Session 5	Moderator: Mutaz Alkhatib (CILE)
13:00- 13:30	<i>Maqasid Al-Shari'a, Human Rights and Judicial Ijtihad under Islamic Constitutionalism: The Supreme Constitutional Court in Egypt</i> Moataz El Fegiry (Doha Institute for Graduate Studies)
13:30- 14:00	<i>Human Rights and Relativism</i> Ray Jureidini (CILE)
14:00- 14:30	Discussion

14:30- 15:00	<u>Concluding Remarks and Publication</u>
---------------------	--

The Research Center for Islamic Legislation and Ethics (CILE)

Islamic Ethics is one of the emerging scholarly fields with promising growth potential in academic research and with great appeal among the general public. The Research Center for Islamic Legislation and Ethics (CILE) has been contributing to this emerging field in various ways. Besides organizing international conferences and research seminars, CILE also contributes to the field through pioneer academic initiatives. In collaboration with the world renowned publisher Brill, CILE established the [*Journal of Islamic Ethics*](#), indexed by Scopus, and the book series [*Studies in Islamic Ethics*](#). Additionally, the first-of-its-kind M.A. program “[Applied Islamic Ethics](#)” was established in the 2019-2020 academic year, through the College of Islamic Studies at Hamad Bin Khalifa University, with which CILE is affiliated. The program addresses how Islam, as a world religion with a rich moral tradition, engages with and contributes to the global moral discourse. Its strong interdisciplinary character combines in-depth knowledge of both theoretical and applied ethics rooted in the Islamic moral tradition.

Opening Remarks:

Dr. Ibrahim Zain

Acting Dean, CIS



Dr. Ibrahim Zain is a Professor of Islamic Studies and Comparative Religion at the College of Islamic Studies, Hamad Bin Khalifa University (Doha, Qatar). His various academic postings include Dean of the Kulliyah (Faculty) of Islamic Revealed Knowledge and Human Sciences (KIRKHS) and Dean of the International Institute of Islamic Thought and Civilization (ISTAC) at the International Islamic University Malaysia (IIUM). He writes extensively on the history of religions and reform of Islamic education and has authored over 50 publications, including several books, in English and Arabic. Dr. Zain is a leading scholar on the study of the Covenants of the Prophet Muḥammad.

Dr. Mohammad Ghaly

Acting Director, CILE



Dr. Mohammed Ghaly is professor of Islam and Biomedical Ethics at the Research Center for Islamic Legislation & Ethics (CILE) at Hamad Bin Khalifa University in Doha, Qatar. He has a B.A. degree in Islamic Studies from Al-Azhar University (Egypt) and M.A. and PhD degrees in the same specialization from Leiden University (the Netherlands). During the period 2007-2013, Ghaly was a faculty member at Leiden University.

The intersection of Islamic Ethics and biomedical sciences is Ghaly's main specialization. He is the editor-in-chief of the *Journal of Islamic Ethics* (published by Brill). Since 2011, Ghaly has been a faculty member at the Erasmus Mundus Program; the European Master of Bioethics, jointly organized by a number of European universities. Ghaly lectured on Islamic (bio)ethics at many universities worldwide including Imperial College London, Oxford University, University of Oslo, University of Chicago, and Georgetown University.

Ghaly was affiliated as Visiting Scholar/Researcher with a number of universities including the Kennedy Institute of Ethics at Georgetown University, USA (academic year 2014-2015), School of Anthropology and Museum Ethnography at the University of Oxford (academic year 2017- 2018) and School of Philosophy at the Erasmus University Rotterdam (academic year 2018- 2019).

Besides his book *Islam and Disability: Perspectives in Theology and Jurisprudence* (Routledge, 2010) and the edited volumes *Islamic Perspectives on the Principles of Biomedical Ethics* (Imperial College & World Scientific, 2016) and *Islamic Ethics and the Genome Question* (Brill, 2019), Ghaly is the single author of more than thirty peer-reviewed publications and serves on the editorial board of a number of academic journals. He is also the Lead Principal Investigator (LPI) and research consultant of a number of funded research projects. His publications can be accessed via <https://cilecenter.academia.edu/MohammedGhaly>.

Dr. Samer Rashwani

Senior Researcher, CILE



Dr. Samer Rashwani is a scholar of Quranic studies and Islamic intellectual history. His teaching and research concentrate on the trajectories of the Islamic scholarship on the Quran from the early centuries of Islam on, and investigate new hermeneutical approaches to the Quran. He was a lecturer at the faculty of Sharia (Universities of Damascus and Aleppo), 2007-2011, and a EUME (Forum Transregionale Studien) fellow in Berlin 2011-2013. He is since 2013 a post-doc at the center of Islamic theology, University of Tübingen.

Participants:

Dr. Mustafa Osman Ismail Elamin

Professor of Islam and Global Affairs, CIS



Dr. Mustafa Osman Ismail Elamin specializes in dentistry, biochemistry, and international relations. His work experience includes being a lecturer in many universities and he has also worked as the Foreign Minister of Sudan, and the Ambassador of Sudan to the United Nations (UN) and to Switzerland.

He was a special envoy of the Arab League to Iraq, Lebanon, and Palestine. He is now a Senior Advisor to the Director-General of the UN-DNCD partnership, a member of the Arab Crisis Team (ACT) in Jordan and Oman, and a member of the executive board of the Global Forum for Moderation. He has participated in and chaired many national regional and international conferences; and published 15 books, mainly in international affairs.

Dr. Mashood A. Baderin

Professor of Laws, SOAS University of London



Mashood Baderin is currently Professor of Laws at the School of Law, SOAS, University of London. He holds a Diploma in Arabic and Islamic Studies with Distinction from the University of Maiduguri, Nigeria, and a First Class LLB (Hons) Double Majors Combined Degree in Common Law and *Shari'ah* Law from Usmanu Danfodiyo University, Sokoto, Nigeria. He also obtained his PhD from the University of Nottingham with his thesis titled: "Modern Muslim States between Islamic Law and International Human Rights Law". He was Head of the SOAS School of Law from 2009-2012; Director of the Centre of Islamic and Middle Eastern Law (CIMEL) from 2012-2015; Member of the

Board of Trustees of the International African Institute from 2012-2016; and Chair of the SOAS Centre of African Studies (CAS) from 2014-2018. He earlier taught at different universities in the UK before joining SOAS as Professor of Laws in 2007. He was appointed as the UN Independent Expert on the situation of human rights in Sudan by the UN Human Rights Council at its 19th Session in March 2012 and served in that role for two and half years before stepping down in November 2014. He was also appointed by the then UK Foreign Secretary to serve as a Member of the Foreign Office Human Rights Advisory Group in 2013, and as a Member of the Foreign Office Advisory Group on Freedom of Religion and Belief in 2014. He is founding co-editor of the *Muslim World Journal of Human Rights* and is on the editorial and advisory boards of a number of academic legal journals and research bodies.

Abstract

"HUMAN RIGHTS VERSUS PUBLIC MORALS: AN ISLAMIC ETHICO-LEGAL PERSPECTIVE"

Generally, ethics is the basis for the theoretical justification of human rights. Amartya Sen notes in that regard that: "Human rights can be seen as primarily ethical demands. Even though human rights ... inspire legislation, this is a further fact, rather than a constitutive characteristic of human rights". Thus despite its being entrenched in law, it is well acknowledged by most leading human rights theorists that ethics constitute the normative basis for advancing the concept of human rights. This ethical justification for human rights is well reflected in the preambles of different human rights instruments.

The practical indication of ethics as a fundamental characteristic of human rights is reflected in the legal recognition of protection of public morals as a possible limitation on the scope of application of certain human rights in different human rights instruments. For example, article 29(2) of the UDHR provides generally that the rights guaranteed in Declaration may be limited "by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and

the general welfare in a democratic society". Also, some specific rights such as fair trial, privacy, freedom of religion, expression, assembly, association, liberty, and movement are subjected to the limitation of public morals in different human rights treaties and in the constitutional bill of rights of different countries. However, in explaining the scope of public morals, the UN Human Rights Committee has stated in its General Comments 22 and 34 that: "the concept of morals derive from many social, philosophical and religious traditions; consequently, limitations ... for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition". This begs the question of whether there can be universally accepted morals for regulating human rights, and if so, how do we identify such morals. That is the main theoretical question that this paper aims to interrogate in relation to Islamic law and ethics and the application of human rights particularly in the Muslim world.

While ethics serves as the general justification for human rights, it is also usually advanced as the basis for disagreement on the scope of some specific human rights, due to the variations in ethical values and practices amongst different civilizations. As Islam is a major civilization of the world that influences the practices of Muslims and Muslim-majority states globally, this paper aims at examining the prospective role of Islamic law and ethics in enhancing the global quality of human rights, with reference to the scope of specific human rights such as freedom of religion, freedom of expression, and gender rights, globally and in Muslim-majority states particularly.

Dr. Mutaz Alkhatib

Associate Professor of Methodology and Ethics (CILE, CIS)



Dr. Mutaz Alkhatib is Associate Professor of Methodology and Ethics, and the coordinator of the MA Program in Applied Islamic Ethics at the College of Islamic Studies (CIS) and the Research Center for Islamic Legislation & Ethics (CILE). He was a visiting fellow at Zentrum Moderner Orient (ZMO) in Berlin (2006), and a visiting scholar at the Forum Transregional Studien, Berlin (2013-2012). Al-Khatib was a visiting lecturer at the American University of Beirut, the Islamic University of Beirut, and Qatar University. He has delivered lectures and participated in conferences at Oxford University, University of Cambridge, Princeton University, Florida University, Berkeley School of Law, Tubingen University, University of Ludwig-Maximilians, Osnabruck University, and other universities worldwide. He is an editorial board member of the *Journal of Islamic Ethics* and the book series *Studies in Islamic Ethics* both published by Brill. He is Principal Investigator (PI) of a large-scale project on genomics and Islamic ethics funded by the Qatar National Research Fund (QNRF). Al Khatib is the author of *The Textual Critical Approach to Ḥadīth: a Study of the Methods of Traditionalists and Jurists* (Beirut: Arab Network for Studies and Publishing, 2011), and *The Justified Violence: Shari'a versus the People and the State* (Cairo: Dar Almashriq, 2017). He also edited several books and published over 30 academic articles in Arabic and English, some published by Brill and Oxford.

Abstract

انشغلت الكتابات الإسلامية الكثيرة حول حقوق الإنسان بهاجس الغرب والمقايضة عليه، إما بقصد التوافق معه أو التمايز عنه أو لإثبات الأسبقية عليه، ومن ثم شكل المنظور الغربي لحقوق الإنسان الموجه الرئيس لتلك الدراسات مع الاستثمار الجزئي والانتقائي للموروث الفقهي. ولكن التفكير بالحقوق - كمنظومة - لم ينفصل عن بنية الفقه الإسلامي أصولاً وفروعاً؛ فقد توزعت فكرة الحقوق على كتب فقهية متنوعة كتبت الفقه العام، والفروق والقواعد الفقهية، والقضاء، والأحكام السلطانية والسياسة الشرعية، وأحكام البنين والعمران، وغيرها. وفي هذه المناقشات الثرية نجد الجمع بين المنظورين الأخلاقي والقانوني، أو بين نوعين: الدياني والقضائي.

تسعى هذه المحاضرة - على مستوى المنهج - إلى تقديم قراءة داخلية لمنظومة الحقوق في الفقه الإسلامي؛ بغرض استشفاف المنظور الفقهي للحقوق بمعزل عن هاجس التفوق أو التطابق مع المنظور الغربي للحقوق. وعلى مستوى المرجعية والغايات، توضح أن الحق والواجب متداخلان في المنظور الفقهي، وأن هذا التداخل بين حقوق الله وحقوق الآدميين يجعل من إنسان الفقه مفارقاً لإنسان الرغبات والشهوات من جهة، ويجمع بين إنسان التكليف والإنسان صاحب الحقوق من جهة أخرى.

Dr. Catherine Baylin Duryea

Assistant Professor, St. John's University School of Law



Catherine Baylin Duryea joined the Law School in 2019 as an Assistant Professor of Law. Professor Duryea is a legal historian who researches human rights, comparative constitutional development, and administrative law. She is particularly interested in institutional constraints on executive power during emergencies, including specialized courts and non-governmental actors. Her work on Arab human rights movements is forthcoming in

the *Berkeley Journal of International Law* and has been featured in two edited volumes. Her writing has been featured in the *New York Daily News* and the *History News Network*. She teaches Administrative Law, Legal History, and Introduction to Law.

Prior to coming to St. John's, Professor Duryea was the Charles W. McCurdy Fellow in Legal History at UVA Law and a Fulbright-Hays scholar in Morocco and Kuwait. She clerked for the Honorable Edwin Cameron of the Constitutional Court of South Africa. Before law school, she designed international service-learning programs in Cairo in coordination with refugee services organizations and Egyptian community-based networks. Professor Duryea holds a Ph.D. in History and a B.A. with honors in Political Science from Stanford University, as well as a J.D. from Stanford Law School and an M.A. in Middle East Studies from the American University in Cairo.

Abstract

"Ethical Pluralism in Early Arab Human Rights Activism"

Islam and human rights are often set up in opposition to one another. At first glance, the early history of human rights activism in the Arab world does little to challenge this conception. The early rights organizations were avowedly secular, and many activists viewed themselves in conflict with Islamists. Human rights and political Islam were often positioned as rival political ideologies, with states intervening to support or suppress one or the other to keep either one from threatening state hegemony.

This oppositional framing presupposes that both human rights and Islam provide complete—but incompatible—frameworks for the organization of political and social relationships. This article challenges one element of that assumption: that human rights, as practiced in many Arab countries, constituted a holistic ideology of social organization. Instead, early human rights activists in the 1970s and 1980s engaged in human rights activism alongside other forms of political organization. They found human rights compatible with socialism, Arab nationalism,

and Palestinian nationalism. Though they were committed to human rights and international law for their own sake, they used rights to advance political goals that were consistent with, and informed by, other worldviews. They did so by prioritizing certain rights, framing various political claims in rights language, and participating in international and regional rights networks. Their way of practicing human rights left space for other values and systems of ethics.

With some notable exceptions, however, early human rights activists did not find common cause with Islamists, despite their shared interests in advancing civil, political, and economic rights. Both groups supported challenging autocratic regimes, ending state-sponsored torture and arbitrary detentions, and protecting freedom of speech and association. This article suggests that the explanation does not lie in the nature or “compatibility” of Islam and human rights, but instead in the politics of a particular moment that pitted political Islam against international law. Dismantling that framework is a necessary step in developing an Islamic rights-based theory of morality or a rights-based approach to political Islam.

Dr. Niaz Shah

Professor in Law, university of Hull



Professor Niaz A Shah joined the Law School as a lecturer in 2006 and after successive promotions, became Professor in Law in 2018. In 2006, he was a Visiting Fellow at the Lauterpacht Research Centre for International Law, University of Cambridge. In 2004, he did internship in the Division for the Advancement of Women, United Nations, New York. In 2001, he worked as a Protection Assistant for United Nations High Commissioner for Refugees, Islamabad. He attended a short course in International Human Rights Law at the University of Nottingham in late 2001 and in 2005 obtained PhD from Queen's University Belfast, UK.

Professor Shah is an Advocate High Court in Pakistan and a Life Member of the Islamabad Bar Association. Professor Shah was Called to the Bar (Lincoln's Inn) in 2014 and is practicing law from Nexus Chambers, London. Professor Shah has worked for / advised governments (e.g. Pakistan and the UK) and international organisations such as the United Nations (UN New York; UNDP; UNODC; UN Women; UNICEF; UNHCR); European Union; NATO; The Commonwealth and the United States Institute of Peace. He has appeared as a Counsel and expert witness in large number of cases in the UK courts. Since 2014, Professor Shah is training Pakistani judges on human rights and the rule of law at various judicial academies in Pakistan and Hull.

Niaz Shah is a recognised expert on Pakistan and Afghanistan and regularly appears as expert witness in asylum and human rights cases before courts in the UK.

Abstract

“The Universality of Islamic Human Rights Ethics and Human Rights Ethics”

Many Muslim States parties have entered vague and sweeping reservations to some core human rights treaties. Non-Muslim States parties consider these reservations to be against the ‘object and purpose’ of those treaties and cast doubt on their commitment to human rights obligations. Scholarly works also argue that some principles of Islamic law, e.g., gender equality, penal sanctions etc. are incompatible with human rights law. I argue that Islamic law and human rights law are, to a greater extent, compatible and further compatibility, to a desirable extent, may be achieved by adopting the contextual interpretive approach to both legal regimes.

I am working on a broader project aiming to design a framework for conducting compatibility assessments of human rights treaties and Islamic law. Muslim States parties and scholars may employ the framework using the contextual interpretive approach to eliminate and/or narrow down the incompatibility to a desirable extent. I start by comparing the universality of human

rights ethics and Islamic human rights ethics. I focus on two universal aspects of Islamic human rights ethics and human rights ethics: foundations (human equality and dignity) and objectives and purposes. I call this foundational compatibility and compatibility of higher objectives of Islamic law and human rights law. In this conference, I intend to discuss an aspect of my broader project: the universality of Islamic human rights ethics and human rights ethics on the above two points. I argue that the foundations of Islamic human rights ethics and human rights ethics are compatible. I also argue that the higher objectives and purposes of Islamic law and human rights law are compatible. This compatibility paves the way for harmonious and purposive interpretation of Islamic law and human rights treaties in Muslim States parties. My ultimate aim is to contribute to the maximisation of the enjoyment of human rights in Muslim States parties.

Dr. Ahmet Aysan

Professor of Islamic Finance and Economy and Program Coordinator of PhD and MS programs in Islamic Finance, CIS



Dr. Ahmet Aysan is a professor at the College of Islamic Studies (CIS) and the Program Coordinator of the PhD and MS programs in Islamic Finance and Economy. He has been the Board Member and Monetary Policy Committee member of the Central Bank of the Republic of Turkey and served as a consultant at various institutions such as the World Bank, the Central Bank of the Republic of Turkey, and Oxford Analytica.

Dr. Aysan's fields of specialization are Islamic finance, Fintech, macroeconomics, political economy, banking, and finance; and he is a member of the editorial and advisory boards of several prestigious international journals. He received grants from various international funds including the ERF, Newton Fund, and TUBITAK. Dr. Aysan has also served on the advisory board of the Contemporary Turkish Studies at the London School of Economics and Political Sciences (LSE) European Institute. In 2020, Dr. Aysan was listed as being among the top influencers in Islamic banking and finance by an academic article published in the Pacific-Basin Finance Journal.

Dr. Zara Khan

Adjunct Professor, West Chester University & Rutgers University



Dr. Zara Khan, an American Muslim educator and researcher, holds a doctorate with distinction in Political Science from the City University of New York Graduate Center. Under the mentorship of Susan Buck-Morss and with guidance from the late Young Kun Kim, she studied Western political thought, political economy, questions pertaining to religion in the public sphere, and the universality claims of human rights as viewed from the freedom of religion norm. Khan teaches undergraduate courses in Political Science at West Chester University and Rutgers University, including *Western political theory*, *politics of development*, and *the international War on drugs*. She has taught graduate courses at Respect Graduate School in conjunction with Charles Sturt University including *Islam in the modern world* and *women in Islamic civilization*, as well as *global capitalism* at Lehigh University. She is a Senior Research Fellow at Yaqeen Institute for Islamic Research, where she previously held the Director of research position in Contemporary thought and politics. Khan is author of "Morally Reimagining the Waqf: Using a Classical Islamic Institution to Dismantle Structural Injustice," *Journal of Muslim Philanthropy and Civil Society* (Vol. V, No. I, 2021).

Abstract

"Women's Rights as Human Rights: Categories for an Islamic Ethical Reply"

In the interplay between Western political thought and human rights as a moral framework, there are many sites where Islamic ethics can offer fresh and profound perspectives. Specifically, in the area of women's rights as human rights, we see that personhood as a legal category can clash with arguments for cultural and religious pluralism. In the United States, contemporary debates pertaining to human sexuality that have built upon feminist notions of embodiment show that liberal societies continue to struggle with the problem of difference.

The Swedish philosopher Tage Lindbom began his short exposition on virtue and morality with the following observation:

"Every crisis in human existence—religious or moral, social or political—is, at root, a rupture of the equilibrium between man and the created order; for when the individual strives to enhance his freedom of action, to emancipate his ego, he comes into conflict with the created order, and this means leveling an attack against Almighty God, no matter how marginal it may seem." (1975)

Thinkers working in the field of Islamic ethics today espouse a similar sentiment when they underscore the *urgent need to (re-)approach the Islamic tradition and its overall system (Sharia)*

*as an indivisible whole and with ethics as its central core.*¹ In this paper I hope to intersect the areas of politics, gender and human rights with foundational ethical principles in Islamic life and thought.

Specifically, I offer four conceptual comparisons as sites where universal human rights discourse (including about women) would benefit from an Islamic ethical reply. These are: 1) the morally autonomous human of human rights (one who is not neutral but aims at a teleology of progress); 2) privatized religion (in the disembodied sense); 3) metaphysics of the modern state (*a la* Hallaq); and 4) the (im)possibilities of a *foundationless* rights regime.

I will aim to oscillate between the *text* of women's rights as human rights in the doctrine's moral foundations, and its *context* as secularization and postmodern episteme.

¹ Mohammed Ghaly, The Journal of Islamic Ethics: A Pressing Demand and a Promising Field, *JIE* 2017.

Dr. Paul McDonough

Lecturer in Law, Cardiff University

Dr. Paul McDonough is a lecturer in law at Cardiff University, where he teaches contract and EU law. His main research area is international and comparative law, often related to human rights. Particular interests include Islamic law, refugee law, EU fundamental rights law and constitutionalism.

He holds a JD from the University of Michigan and a PhD in law from Trinity College, Dublin. In between, He worked for the European Council on Refugees and Exiles (Brussels), the Max Planck Institute for international and comparative law (Heidelberg) and UNHCR (Valletta). Following his PhD he completed a Max Weber postdoctoral fellowship at the European University Institute, where he was a visiting researcher in 2020-21.

Abstract

“Can Islamic ethics demonstrate a right of self-governance for religious communities within a state?”

ICCPR article 1 provides that ‘All peoples have the right of self-determination’. The idea that a community may collectively choose its own path is deeply embedded in Islamic ethics, finding expression in several verses of the Quran and in *ahadith* of the Prophet, and demonstrated in the early political history of Islam. Expressing political rights and duties in communal terms rather represents one of the main ways in which Islamic understanding diverges from western views of political human rights. Might it, therefore, be possible to look to Islamic ethics to enliven the international understanding of rights such as the right to self-determination that speak predominantly in community, rather than individual terms?

This paper examines the contours of internationally recognised political rights of communities through the lens of Islamic ethics. It first sets out the international understanding of the right of self-determination, which usually arises in the context of a geographical or ethnic minority population seeking a degree of independence from a state. Its second section re-examines this right by drawing first on principles of Islamic ethics, as drawn from the canonical texts and elucidated by classical scholars such as Al-Ghazali and modern writers such as Sachedina. Section three addresses the idea of a community – how large of a community should enjoy a right of self-determination, and could this right extend to matters of religious self regulation while still being subject to a higher, purely political authority? The final main section of the paper analyses how the international understanding of self-determination might evolve, if revisited from the point of view of Islamic ethics. The paper concludes by arguing that Islamic ethics can potentially inform a common understanding that would help to achieve a more inclusive understanding of this right as propounded in international jurisprudence.

Dr. Zeina Jallad

J.S.D. graduate at Columbia Law School



Zeina Jallad is the first female J.S.D. graduate at Columbia Law School from the Arab region. She completed her J.S.D. with the Highest Distinction. Zeina is a legal consultant, researcher, and educator with over 15 years of experience providing services to major international and academic institutions, including United Nations agencies (IIIM, UNDP, UN Women, UNHCR, OHCHR and UNICEF), Amnesty International, Open Society Foundations, International Center for Transitional Justice (ICTJ), Public Interest Law Network (PILNET), and the European Commission. With an intersectional focus on the law, her body of work reflects her wide-ranging experience in the fields of international law, human rights, international criminal law, minorities rights, rule of law and gender justice. Recognized as the youngest Law graduate by the University of Jordan (2004), Zeina also holds an LL.M from Columbia University (2008). She is a member of both the Palestinian Bar Association (2004) and the New York City Bar (2012). She is a recipient of the Palestinian Presidential Golden Medal (2021).

Abstract

“Islamic Perspectives to Enshrining Ethical Implementation of Victims and Survivors Centered-Based Approaches to International Accountability”

In a move towards growing from previous mistakes in the ICTY and ICTR court proceedings by including victims in judicial proceedings and delivering them meaningful reparations, the past two decades have witnessed tremendous efforts to amplify the voices of survivors in various international accountability mechanisms. Ranging from victims-based and survivor centered approaches to international accountability to witness protection efforts, international bodies are utilizing modalities that seek to shift from traditionally retributive justice models to reparative or restorative frameworks placing the priorities and needs of survivors at the heart of criminal accountability. Despite the progress made by such efforts, this article argues that the current foundational concepts and understandings of human rights and victims’ protection as envisioned in International Human Rights Law (IHRL) and International Criminal Law (ICL) are limited and therefore fundamentally unable to capture the nuanced experiences of victimhood and the complex, multi-faceted identities of survivors. In its place, it contends that in order for victims’ participation to be meaningfully prioritized at the heart of international criminal and human rights law, there is a need not only to grant victims recognition, protection, support measures, the right to reparation and the right to participate in court proceedings, but also to provide an intersectional social, cultural, religious and gendered understanding of their backgrounds, priorities and needs. It suggests that the limits of IHRL and ICL’s victim-survivor-centered approaches are a result of the lack of priority accounted to the various essential cultural, religious and social considerations for the subjects in question.

In light of the current situation, this paper posits a meaningful alternative in the form of Islamic law; by considering the ethical dimensions and perspectives offered by the various, nuanced and highly debated Islamic interpretations of the concepts of victimhood and survivor-hood, a more ethical framework may be set forth which is poised to leave if not “no one behind” certainly far fewer than are left behind today. Towards this purpose and in contrast to most current mainstream understandings of Islamic legal frameworks and practices, this paper highlights the strengths of the ethical dimensions of justice, equity and equality enshrined in particular manifestations of contemporary Muslim religious law in supporting and uplifting the most vulnerable amongst wide strata of societies to reclaim their agency as survivors instead of victims. By providing timely examples from current and past international accountability mechanisms, it uses this context as a touchstone for a nuanced comparison of normative IHRL and ICL perspectives of ethics and those of the Islamic legal schools, while highlighting the central limitations of the former and the solutions they may witness within the system of the latter. Moreover, the paper advances this comparison in order to advance a broader argument in favor of a largely modified survivor-centered approach. It is one that will be fundamentally based in an exploration of the ways in which the religious, cultural and gendered considerations rooted in contemporary jurisprudence on Islamic ethics does indeed provide the more utile, applicable, operationalized and just framework to justice and accountability that international organizations have long prioritized but hereto forth fell short of actualizing within a strictly secular legal context.

Dr. Alexandre Caeiro

Associate Professor of Islamic Studies, CIS



Dr. Alexandre Caeiro is Associate Professor at CIS. He was trained in sociology and in Islamic studies in France, the Netherlands, and Egypt. His research deals broadly with the transformations of Islamic law in modern contexts. He is currently working on the legal history of Gulf sheikhdoms, focusing on the interaction between emirs, shari'a judges, merchants, and British agents in the context of the development of an oil economy and modern state institutions.

Dr. Merve ÖZAYKAL

Assistant Professor, Istanbul University



Merve Özakal got her BA from Ankara University Faculty of Theology (2008) and her MA from the Islamic law department of the same university (2010). After she started her PhD at Marmara University, she moved to Sakarya University Faculty of Theology by virtue of an assistantship (2011). She has worked as a visiting researcher at The Kennedy Institute of Ethics (Georgetown University) for a year, where she studied bioethics, and has also been to Egypt, Syria and Jordan at various times for the purposes of education. She studied medical history and ethics at Istanbul University Institute of Health Sciences by completing a second master's program (2016). In 2017, she got a PhD from the Islamic Law department of Sakarya University Faculty of Theology with her doctoral dissertation titled, "Utilization of the Human Body and Organ Transplantation According to Islamic Law". Dr. Özakal is currently an assistant professor at Istanbul University Faculty of Theology. Her main areas of interest are Islamic bio-medical ethics (*bio-fiqh*), the methodology of Islamic jurisprudence, and contemporary Islamic legal problems.

Abstract

"Is Making Money from the Body a Right? Islamic Jurisprudence, Ethics and Human Rights on the Problem of Commercialization of the Body"

With developments in medical technology, many ethical issues have come to the fore. Perhaps the most striking of these are issues regarding the commercialization of the human body. The protection of bodily integrity is one of the basic human rights that Islam safeguards within the framework of the principle of "*hifz al-nafs* (protection of life)". From this point of view, there is a consensus among the Muslim jurists that it is forbidden to destroy the physical integrity of a person's body by outside intervention and without the person's consent. Likewise, different legal systems and ethical approaches seem to agree that such an act is illegal and immoral. However, as in the examples of surrogacy or organ sales, the subject of using one's body voluntarily and in return for a material price is controversial in various religious, ethical and legal aspects.

Today, in a country like India where Muslims live as a minority, but where the population is very high, the practice of surrogacy is common. Similarly, a system is currently operating in the Islamic Republic of Iran, where the donor receives a certain fee from the recipient in exchange for the organ(s). This system has been praised by some writers both from the West and the Islamic world on the grounds that it reduces organ waiting lists. However, it has been subject to criticism by the majority of commentators. This paper discusses the problem of commercialization of the body in relation to *fiqh* (Islamic jurisprudence) and human rights by focusing on two issues (surrogacy and organ sales) in which the human body is instrumentalized for material benefits. For this purpose, I discuss whether it is a religious and moral right to receive a monetary price in exchange for organs and to be paid

to carry someone else's baby, using the discussions on the ownership of the body in classical fiqh works, the limits of benefiting from organs and body parts such as hair, milk, teeth, and blood, and their sale. Finally, by evaluating the attitudes of today's *ulama* and fatwa committees on these issues, I reveal how the religion of Islam, which takes into account the right of the servant on the body as well as the right of Allah, protects the person regarding their own body. Also, I evaluate proposals from religious, legal and moral perspectives that the person whose body was utilized can be given a monetary fee as a gift, reward or compensation, which is raised as an alternative to selling organs or surrogacy for money.

Dr. Ayman Shabana

Associate Research Professor, Georgetown University Qatar



Dr. Ayman Shabana is Associate Research Professor at Georgetown University in Qatar. He received his Ph.D. from the University of California, Los Angeles, his MA from Leiden University in the Netherlands, and his BA from al-Azhar University in Egypt. His teaching and research interests include Islamic legal and intellectual history, Islamic law and ethics, and religious studies and moral philosophy. He is the director of the Islamic Bioethics Project, which has been supported by three consecutive grants from Qatar National Research Fund's National Priorities Research Program. In 2012 he received the Research Excellence Award at the Qatar Annual Research Forum and during the academic year 2013-2014 he was a visiting research fellow at the Islamic Legal Studies Program at Harvard Law School. He is the author of *Custom in Islamic Law and Legal Theory* in addition to several book chapters and academic journal articles, which appeared in *Islamic Law and Society*, *Journal of Islamic Studies*, *Journal of Islamic Ethics*, *Journal of Religious Ethics*, *Journal of Qur'anic Studies*, *Zygon*, *Hawwa*, *Religion Compass*, *Sociology of Islam*, *The Muslim World*, and *Medicine Health Care and Philosophy*. He contributed to several reference works such as *Encyclopedia of Islam III*, *Encyclopedia of Islam and the Muslim World*, *Oxford Encyclopedia of Islam and Law*, *Oxford Handbook of Islamic Law*, *Routledge Handbook of Islamic Law*, and *Oxford Handbook of Religious Perspectives on Reproductive Ethics*. He is also the chief editor of the forthcoming *Oxford Encyclopedia of Islamic Bioethics*.

Abstract

"Islamic Discussions on Human Dignity and the Right (not) to be Born"

The right to life is considered one of the fundamental rights in both religious and secular normative systems. Emphasis on this right is reiterated in most legal and ethical codes. Most notably, the Universal Declaration of Human Rights indicates in its third article that: "Everyone has the right to life, liberty, and security of person." This right is often justified and predicated on a conceptualization of inherent human dignity that translates into sanctity of human life. The Islamic foundational sources are replete with references that underscore both human dignity and sanctity of human life. These references have inspired extensive discussions across the extended Islamic normative tradition, especially in connection to several theological and juristic debates. This principle features prominently in numerous discussions in the Islamic ethical-legal corpus, especially in topics relating to the beginning or end of human life. Ultimately, preservation of life is almost always counted among the essential values of sharia.

Recent advances in medical technology have not only resulted in more accurate means to monitor and screen embryos from the earliest stages of pregnancy but also allowed more

invasive interventions to end undesired pregnancies. With in vitro fertilization (IVF), intervention begins even at an earlier stage with the screening of the most viable (pre-) embryos. The IVF procedure often involves the existence of surplus embryos and this also raises questions about the proper treatment of these embryos. One of the thorniest moral questions associated with stem cell research is whether these surplus embryos can be used for the purpose of research, even if this means that they will be destroyed in the process.

These examples raise important questions about the value of human life and the inherent dignity associated with it. Most importantly, these questions address the time when human life begins and the human person acquires this inherent dignity. This presentation/paper examines Islamic discussions concerning human dignity and distinguishes two main approaches within these discussions. The first, concentrates on the juristic (ethical-legal) dimensions and is mainly concerned with delineating the boundaries of (im)permissibility. The second situates human dignity within the broader and deeper view of divine creation and is mainly concerned with the conscientious attitude of individual believers.

Dr. Moataz El Fegiry

Assistant Professor, Doha Institute for Graduate Studies



Dr. Moataz El Fegiry was a senior teaching fellow of law at the School of Oriental and African Studies (SOAS), University of London. He has extensive experience in human rights research and advocacy in the Middle East and North Africa and represented key international human rights NGOs including International Centre for Transitional Justice (ICTJ) and the International Foundation for the Protection of Human Rights Defenders. He was the executive director of the Cairo Institute for Human Rights Studies (CIHRS) and is currently a member of its board of directors. El Fegiry is also the treasurer and member of the executive committee of the Euro Med Rights and founder of the Egyptian Human Rights Forum. He served previously as an associate researcher at the International Foundation of International Relations and External Dialogue (FRIDE).

Abstract

“Maqasid Al-Shari’a, Human Rights and Judicial Ijtihad under Islamic Constitutionalism: The Supreme Constitutional Court in Egypt”

An increasing attention has been given in recent decades to the theory of the goals and purposes of Sharia (Maqasid al-Shari’a) and its potentiality to ensure the flexibility and adaptability of the incorporation of Islamic law in the legal system of Muslim states. This paper investigates the impact of Maqasid reasoning on judicial review in the context of Islamic constitutionalism. Existing literature shows how the theory of Maqasid underlines common ethics and purposes shared by Shari’a and human rights. According to this view, the overall purposes of Shari’a should always be kept in mind when interpreting and applying Islamic law. Islamic constitutionalism can provide a legal space for the interplay between Maqasid al-Shari’a, constitutional rights and international human rights. The analysis in this paper draws on the rich case law developed by the Supreme Constitutional Court (SCC) in Egypt over the past 30 years on the interpretation of Article 2 of the Constitution, which says that ‘the principles of Islamic sharia are the principal source of legislation’. Throughout a systematic analysis of the Court’s judicial precedents, this paper argues that the reference to Maqasid in the Court’s Islamic legal theory has enabled it to legitimise in Islamic terms key legal reforms in the area of rights of women. The Court has also utilised Maqasid reasoning in its response to emerging constitutional litigation which invoked Islamic law in conjunction with constitutional rights and human rights. By mainstreaming the use of Maqasid in its Islamic legal theory, the paper argues that the Court can further accumulate dynamic and evolutionary Islamic jurisprudence on rights without being constrained by the dominant views of Muslim jurists.

Dr. Ray Jureidini

Professor of Migration Ethics and Human Rights (CILE)



Dr. Ray Jureidini is Professor of Migration, Human Rights, and Ethics at CILE and the first-of-its-kind Master of Arts program in Applied Islamic Ethics at CIS. He grew up in Australia, completing his studies in industrial and economic sociology at Flinders University, South Australia. He completed his Bachelor of Arts degree in 1977, majoring in sociology and psychology; First Class Honors in Sociology with a thesis on producer cooperatives; and a PhD thesis on Moral Values in Economic Life: a Case Study of Life Insurance and Superannuation.

In the 1990s, he was Co-founder and Vice-chairman of the Australian Arabic Council, established to counter anti-Arab racism in Australia, as well as Founder and Editor of the Journal of Arabic, Islamic and Middle East Studies. After teaching sociology at five universities in Australia, he spent six years at the American University of Beirut, where he began researching and publishing on human rights abuses of migrant domestic workers in Lebanon. At the American University in Cairo, he became Director of the Center for Migration and Refugee Studies and conducted a number of research projects on migrant and refugee issues. In 2011–2014, he returned to Lebanon at the Institute for Migration Studies at the Lebanese American University. In 2012–2013, he served one year as consultant to the Migrant Worker Welfare Initiative at Qatar Foundation, contributing to the QF Standards for Migrant Worker Welfare for contractors and sub-contractors and completing a report on labor recruitment to Qatar.

Abstract

“Human Rights and Relativism”

In the social sciences, much has been written about the contradiction, or tension, between cultural relativism and ethnocentrism. Cultural relativists take the view that values are defined by local culture and should be evaluated only from each culture’s perspective. By contrast, ethnocentrism is the evaluation of other cultures based upon the values and customs of one’s own culture. Generally, the social sciences insist upon taking a cultural relativist position, at least partly to avoid imperial or racist positions that are located in extreme applications of ethnocentrism. Human rights are akin to the ethnocentric perspective because they have been formulated in universalistic terms – like the Universal Declaration of Human Rights. Much is to be learned and understood from cultural relativism and deep contextual understanding of different cultural beliefs and practices, typically as in ethnographic methods of Anthropology. It is argued, however, that this is not compatible with human rights concerns and perspectives which were established as universal standards in order to transcend disparate cultures and nation states.

The presentation will offer at least one example of how this difference has been applied to research analysis on rights and migrant labour. In this case, some scholar/activists have argued that human rights researchers observe and analyze the migrant recruitment process as “outsiders”, and: a) falsely blame and demonize local recruitment agents for misleading and illegally charging prospective migrants; and b) characterizing migrant workers as “victims” without giving them a voice or understanding the cultural context of their recruitment and placement for jobs abroad. It is argued that perhaps identifying migrant workers as victims (in a number of areas) is actually useful in identifying the labour and human right violations against them. Migrant workers no doubt understand that they have to pay large amounts of money to procure a job in the GCC. The bribery and corruption linked to these payments are culturally understood and accepted in the countries of origin – workers expect to pay, even though the GCC countries of destination forbid recruitment costs and fees to be charged to migrant workers. However, this does not mean that seeing them as victims is problematic. On the contrary, by assuming their complicity in the payment of bribes (as a cultural practice and ritual) suggests that their rights are not being violated – and thus there is no need for human or labour rights advocacy on their behalf. Seeing them as victims of fraud and corruption, of human rights violations, is more likely to prompt institutional action to stop and prevent further violations. It is concluded that issues such as religion, dress, language, food and other beliefs and traditions, etc. are quite variable and cultures should have the freedom to practice them. However, practices such as slavery, sexism, corruption (bribery), human trafficking, and forced labour among other human rights violations should be judged by universal standards.