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Human Rights

Common Traditions, Varieties of Translations and Possibilities for Convergences in Secular, Christian and Muslim Discussion

Christoph Elsas

Machtdenken ... findet auch statt, wo Gott zu einem theistisch-weltanschaulichen Prinzip von Macht und Herrschaft gemacht wird, die konkret doch immer nur von fehlerhaften Menschen ausgeübt werden kann.

(Carsten Colpe, *Zu einigen islamischen und westlichen Wert- und Weltvorstellungen*, in: Ders., *Problem Islam*, Frankfurt a.M. 1989, 85)

No person is perfect enough to be entrusted with the liberty and dignity of others.

(Mahmoud Mohamed Taha, quoted dedication in: Abdullahi Ahmed an-Na'im, *Toward an Islamic Reformation*, Syracuse 1990)

Inspired by my teacher and friend Carsten Colpe who, among other things, worked on the cultural and political interrelations of the monotheistic religions¹, Islam in Europe became one of my fields of research. It became clear with the conflicts in former Yugoslavia that there is a great need for considerations, at least on a common European level, for the living together with different religious traditions,

¹ Cf. besides C. Colpe's book cited above his collected articles to that theme „Zu den kulturellen und politischen Verflechtungen der monotheistischen Religionen“, being his: *Kleine Schriften II/C*, ed. H.-M. Haussig and U. Schlott, Berlin [Universitätsbibliothek der Freien Universität Berlin] 1993; 1979-81 he was the leader of the research project „Zur Wahrung der religiösen und kulturellen Identität im Prozeß der Integration von deutschen und türkischen Bewohnern Berlins“, which gave me the possibility for my publications: *Ausländerarbeit*, Stuttgart 1982; and: *Identität. Veränderungen kultureller Eigenarten im Zusammenleben von Türken und Deutschen*, ed. Ch. E., Hamburg 1983. On the other hand, this article is a certain prolongation of my article in the *Festschrift* in honour of Carsten Colpe on his 60th birthday. That article dealt with antiquity, which I also learned from him: *Argumente zur Ablehnung des Herrscherkults in jüdischer und gnostischer Tradition*, in: *Loyalitätskonflikte in der Religionsgeschichte*, FS C. Colpe, hg. v. Ch. E. u. H.G. Kippenberg, Würzburg 1990.

therefore considering the authors and readers of this volume standing in international contexts, I treated this theme in English as the language of UNO's Universal Declaration of Human Rights and of its main discussion in the communication of Christians and Muslims².

Very important for that communication are the common traditions, the varieties one can ascertain and how one estimates the tendencies to approach each other in meetings in spite of these differences. As a historian in comparative religion I try to select phenomena one can compare and examine for possible convergence: I ask myself whether such phenomena could be adjusted to become almost identical even if their foundation is and continues to be different, in our case the secular, Christian, or Muslim background in understanding human rights. Though there is a lasting distinction between whales and fishes, for example, science ascertains the phenomenon of convergences of their shapes in order to live in water. In this way religious studies can also ask for convergences in secular, Christian, and Muslim understanding of human rights, though there is a lasting distinction between the preliminary conditions for their understanding: convergences of people with different cultural and religious background in order to live in a world with increasing mutual dependance.

(1) My first point is to show the common ground of biblical monotheistic tradition both in Christianity and Islam with regard to sanctuary and asylum³. For you can see a continuation of their arguments in favour of asylum on a secular level in the various declarations of human rights. There is the current question whether asylum depends on an act of mercy by an institution, if it admits the principle of asylum or not, especially if this institution is a foreign sovereign state. Or is it a natural human right?⁴ Asylum means to dissociate yourself from the community of which you were a member till now, and to turn to another power to seek its protection against your old community.

One root of the secular concept of asylum is the sacral and contractual tradition of Ancient Egypt and Greece which persisted in the Roman Empire. In the temples of Egypt people found sanctuary from desperate economic straits. In the shrines of Greece they found sanctuary

² In German cf. my articles, *Menschenrechte für Fremde. Religionswissenschaftliche Überlegungen zur interkulturellen Begegnung am Beispiel Islam*, *EvTh* 53, 1993, 38-55; and, *Bosnien. Religionsgeschichtliche Analyse einer balkanischen Grenzlandtragödie*, in: *Tor und Riegel. Zur Literatur und Theorie der Grenze*, ed. R. Faber and B. Nauermann, Würzburg 1994 (in print).

³ Cf. my article *Asyl*, in: *HRWG* 2, 1990, 91-96.

⁴ Cf. *Asylrecht als Menschenrecht*, ed. Th. Veiter, Wien/Stuttgart 1969.

from blood feud. But the sovereigns of the territories with their gods increasingly limited asylum to a privilege guaranteed by the state under the terms of a contract. In that way asylum changed from the right of the persecuted person into the right of the group granting it by contract. And that marked the start of the modern outlook which accepts legal reasons for asylum and does so in relative terms.

But the second root of the secular concept of asylum is the biblical monotheistic tradition: God's election made the »Holy Community« in Israel into God's territory. And that meant protection of the person seeking asylum up to legal examination and also giving her or him freedom from desperate economic straits.

Referring to the »Communion of Saints«, created by faith in Christ, the Church then on principle made all its premises places of asylum. So it came about, though time after time some people were excluded, for example Jews, that everybody enjoyed the protection of asylum by the Church. For in this way Christian mercy could work towards reformation in a case of a criminal and let people experience the Gospel. Also in Islamic history before the emigration of the prophet Muhammad to Medina to found the Islamic state, there was the emigration of a part of the Muslim community seeking asylum in the Christian state of Ethiopia. The Islamic sources report that in Christian Ethiopia the Muslims could practise their religion without fear of anybody and with the assurance: „He who curses you will be fined.“⁵

That kind of hospitality, which has its roots in God's absolute rule, is echoed in Sura 9,6 of the Qur'an: „And if any one of the idolaters seeks protection with you, protect him until he hears the words of God, then let him reach his place of safety.“⁶ But it goes on: „This (is), because they are people who do not know (the truth)“.

In the final development of Islamic theocracy there was no right to asylum, if the punishment was imposed by the head of state. But where the word of God did not have a determining influence on public life, the community of the mosque gave asylum to those flying from the secular power. For it had to be possible to hear the word of God in order to follow it, because that is the foundation of the dignity of every human being as God's *ḥalīfa*. Sura 2,30ff. and 33,72 interpret *ḥalīfa* as God's representative on earth, into whom he has breathed life and

⁵ Ibn Ishaq, *Leben des Propheten*, Tübingen/Basel 21979, 63-68.73f., engl. A. Guillaume, *The Life of Muhammad. A Translation of Ibn Ishāq's Sīrat Rasūl Allāh*, Oxford 81987, cit. p. 152.

⁶ Cit. *The Bounteous Koran. A Translation of Meaning and Commentary* by Dr. M.M. Khatib, Authorized by al-Azhar 1984, London 1986.

to whom he has given a pledge of trust (*amana*). Where the will of God the sole creator, the beginning and end of all what exists, is proclaimed every human being has a claim on protection from any attack whatsoever.

(2) Next some remarks on the western Christian development of the concept of the secular state⁷. Both Christianity and Islam were in the systems which they helped to create on one hand the heirs of the Roman empire and on the other hand they strove to subordinate that society and culture to the revelation of the only true God and lord of the world. But for Christianity the earthly order, even if Christian, is not and never can be completely in accordance with God's will due to the tendency of the human will to sin. Thus the state is seen as an earthly community responding largely to its own rules, while the church in contrast has the unchanging duty to bring about the community inspired by God's revelation. In that way secular political concepts of order could be developed.

It was thus an atmosphere of »Christian enlightenment«, when for the first time the human rights of western tradition were formulated programmatically: that was in the Bill of Rights of Virginia 1776. The proclamation in Europe 1789 during the French Revolution however had a clear anticlerical tendency, because the Church was part of the old establishment. Accordingly there was a defensive reaction from of the Church. But in view of the assault on basic human rights during World War II there was a deep and growing desire for the universal validity of those rights. That led in 1948 to UNO's Universal Declaration of Human Rights. And it led in 1963 to the papal encyclical *Pacem in terris*, which gave reasons for that declaration on the basis of the dignity of human person, and to Vatican II's declaration on religious freedom and freedom in general, which it interpreted as carrying out one's own responsibility. *The Message on Human Rights and Reconciliation* of the Roman episcopal synod of 1974 also dealt with the international pacts of 1966 on economic, social and cultural rights and on civil and political rights. In 1975, the non-Roman churches at their general meeting of the World Council of Churches adopted a list of basic human rights: that meant the basic right to life, the corresponding socioeconomic rights and the rights to keep up one's cultural identity, to participate in the processes of decision in the community and to express a different opinion, the rights to personal dignity and to

⁷ Cf. W. Huber/H.E. Tödt, *Menschenrechte*, München ³1989; K. Hilpert, *Die Menschenrechte*, Düsseldorf 1991, esp. 174-236.

decide for oneself, and the right to profess publicly one's religion or faith.

That corresponds to the concept, that every person without regard to gifts or position has her and his own dignity, which stands in the secular tradition for the transcendent aspect of the immanent human being. The dignity of the person is sacrosanct, for it transcends all temporal conditions.

But nowadays the discussion between Christians on reasons for these basic human rights⁸ provides an opportunity also to establish a dialogue especially with Islam. For Reformed Christians the human rights derive from the covenant of God's faithfulness to humankind and therefore from his rights over them. Catholic Christians refer to man and woman as the image of God in ruling the earth as his representatives. And they base their argument for freedom, especially in religion, on the fact, that it is God's will that every human being should search for the truth. Lutheran Christians derive their belief in human rights from the analogy and difference in the relation of the state to the Kingdom of God. And they refer to God's grace, which justifies men and women without regard to gifts or position and thus establishes a basic freedom, which is an integral element in being human.

From all these Christian arguments one can see the importance of the monotheistic concept of God, constituting an absolute transcendence with regard to all the conditions, which are inherent in human existence. In Islam, too, you find the same criterion in this absolute transcendence, established by the world's creator and judge. For Jews, Christians, and Muslims that is the necessary starting-point in their attempts to deal with the right to freedom, equality and participation in power, which human beings should grant to one another.

Besides this convergence there is a general one: Both, speaking in defence of asylum and the declarations of human rights in America and France, go back to experiences of real distress, not to euphoric belief in progress and superiority⁹. Accordingly the claim to universality of human rights is based on those elementary experiences of injustice, which nowadays humankind has in common: World Wars, totalitarian world powers, worldwide misery caused by hunger and the force to flee, as well as the struggle for political and economic emancipation from colonialism. Especially in the Muslim countries, the distress

⁸ Cf. Huber/Tödt, *Menschenrechte* (above n. 7), 66-72.86-88.

⁹ Cf. J. Schwartländer/H. Bielefeldt, *Christen und Muslime vor der Herausforderung der Menschenrechte*, Bonn [Wiss. AG für weltkirchliche Aufgaben der Deutschen Bischofskonferenz] 1992, 22-24.

caused by hunger and by the force to flee, and the struggle for independence has been the reason for the acceptance of the western declarations of human rights, the majority of the Muslim countries declaring themselves in favour of human rights in their constitutions and entering into the UNO's 1966 pacts.

(3) I come to my third point: to the Islamic discussion of human rights¹⁰, not based on western secular arguments, but on the legislation, founded on the law of God, the only lord of all men and women, tribes, nations, races. Human rights in Islam are a kind of privilege, granted by God to men and women as his representatives, and in essence human rights are seen as responsibilities corresponding to this privilege. The rights of the individuals are defined according to their position and duties in the community; their contribution to the protection and maintenance of the community is the basis for their rights.

In so far as men and women have different responsibilities in the family, they have different legal rights, too. But as the differences in the responsibilities of men and women in the family are decreasing in modern society, there is today also an Islamic argument for their equal rights as the best thing for the community in changed circumstances. For connected with God's will for his creation are God's eternal rights over humanity, as in Sura 2,229: all that is for the benefit of the community, which is living according to God's revealed will. Likewise, in so far as Muslims and Christians have different responsibilities in the state, they have different legal rights, too. But as differences in their responsibilities in the state are decreasing in a modern society there is a similar Islamic argument for their equal rights:

In the time of prophet Muhammad there were a very lot of enemies for the Muslim community, the *umma*. Therefore the state of Medina ruled by the prophet and those loyal to his rule was a necessary political form to preserve it. That goal to preserve the *umma* by a solid political protection was already reached before the death of the prophet. From that time dates the ideal of the Islamic state. Thus historically the Islamic state was founded to protect and maintain the Islamic community. And as counterpart to *tauḥīd*, the central article of faith, that God is absolute and omnipotent, it was claimed that the Islamic state must be absolute and omnipotent¹¹. Because this state has

¹⁰ Cf. L. Kühnhardt, Die Universalität der Menschenrechte, Bonn [Bundeszentrale für politische Bildung] 21991, 142-157.

¹¹ A.A. Mawdudi (Human Rights in Islam, Leicester 1976, 11-31; Menschenrechte im Islam, in: Al-Fadschr 8, 1991, 50, 11-16) as a spokesman of Islamism even proclaimed that every Muslim should have the right to become citizen in every Islamic state, and

to make God's right come true, it is expected to respect human dignity and to work for the distribution of wealth, so that everyone can enjoy a decent standard of life. But ending the conflict between the power of the ruling class and the request for freedom of those who are ruled would require an ideal state of affairs¹².

Nowadays, Muslims even in journals, wellknown in many Arab countries, can argue in favour of that dignity of all humankind and deny that Muslims as such have priority in society. For according to Sura 49,13 only the upright without regard to anything else, can favour with God, and then it must be the same in the community. For the conditions changed with the growing of the *umma* to a huge Muslim community no longer needing the protection of that political form of the Islamic state for its preservation. Therefore the historical function of the Muslim state, where power was concentrated in Muslim hands and Jews and Christians were only protected under their rule, was to safeguard the Islamic religion against its many enemies. But Sura 5,51 and 3,28.118, which insist that only active enemies should become excluded from the complete community, are seen now to be in harmony with a modern democracy, in principle involving all in responsibility and granting protection to all¹³.

The conflict about Salman Rushdie then shows the necessity of balancing human rights to freedom of speech and to a basic protection of cultural identity in the case of an insult to religious or other cultural

that every Islamic state is obliged to protect the life, the honour and the property of the *Dhimmi*, that means of tolerated non-Muslims such as Jews and Christians. Mawdudi complains, that there is no such an Islamic state. But the objection can be made that in trying to achieve this ideal, freedom of speech is very strongly restricted because he holds the view, that the main duty of human beings is to obey God's commands by proclaiming the values and aims of Islam — in the form, in which they are proclaimed by its spokesmen. For — according to Mawdudi — the Islamic law in any case does not allow anybody to express what he considers as „bad ideas“. That is an argument for the powerful to prohibit not only blasphemies as in the case of Salman Rushdie, but every expression of a different opinion.

¹² Cf. Ch. Lienemann-Perrin, Anmerkungen zum Verständnis der Menschenrechte im Islam, CIBEDO 1991, 162-178, stressing for example that the mode of punishment often is decided by governments' interests: As a rule there is a tendency to regard actions offending the rights of both, God and men, as offences which are to be punished by the political power (*siyāsa*) because it has the right to do so in the public interest of the Islamic religious community.

¹³ That is what the Egyptian professor for political sociology Fahmi al-Huwaydi proclaimed in seven articles in the journal *Al-'Arabi* 1981, issue 2-8. It was stated in some detail by R. Caspar in the publication of the III^e Rencontre Islamo-Chrétienne des Centre d'Études et de Recherches Économiques et Sociales (CERES) of the University of Tunis 1982.

feelings¹⁴. The original meaning of Shari‘a is the way to the source of life. But in the Salman Rushdie conflict many Muslims became convinced that regimes often insist on applying the Shari‘a now in the form of the traditional Islamic law on purely political grounds and in order to take people's mind off their actual autocratic rule. For example Muslims can argue, too¹⁵, that state should suspend the punishment, laid down in that Shari‘a for infringement of more than merely personal rights, as long as society is not really living according to the Islamic ideals. For based on the sentence of Sura 2,185 „God desires for you ease, and desires not for you privation“¹⁶, there is a long Islamic tradition of »pragmatic humanity«¹⁷.

And that God alone is the lord and the guardian of the law can be seen as just the opposite to »theocracy« and today to demand secular states, in order to avoid the ideologization of political power in their religion¹⁸. Thus it becomes possible, from the basic Islamic principles, to give reasons for refusing the state's absolute power over the individual; this refusal is the basis of the ideal of freedom as a human right.

It is just that the concepts of equality and freedom acquire their special character in the Islamic context¹⁹. For equality is then based on the equal closeness of all human beings to the only God, including those

¹⁴ Cf. O. Kimminich, *Religionsfreiheit als Menschenrecht*, Mainz/München 1990, 154, where you will find general considerations of the European Commission for Human Rights on the basis of art. 9,2 of the European Convention on Human Rights of 1950 and art. 2 of 1st supplementary minutes of 1952 concerning the freedom of worship and the right on education in respect of the religious convictions of the parents: is it a duty for the state just in a religious pluralistic country to secure the maintenance of religious peace by institutionalizing a legal protection against an insult of religious traditions? That considerations should not be confused with approval of a death penalty which is acceptable in only one culture, in this case only in the opinion of the followers of Ayatollah Khomeini.

¹⁵ Cf. Abdoljavad Falaturi (Cologne) in the discussion „Die Menschenrechte im Islam“, in: *Islam — Herausforderung an West und Ost*, ed. by G. Schult, Altenberge 1981, 68-98, esp. 94f.

¹⁶ Cit. as in note 6.

¹⁷ Cf. Schwartländer/Bielefeldt, *Christen und Muslime* (above n. 9), 42f., stressing this variability esp. for the Ḥanafī as the most important Islamic school of law.

¹⁸ Cf. Schwartländer/Bielefeldt, *Christen und Muslime* (above n. 9), 31-33, referring for example to Mohammed Arkoun (Paris).

¹⁹ Cf. T. Nagel, *Politische Ordnungsvorstellungen im Islam*, in: *Islam* (above n. 15), 45-67; M. Forstner, *Islam und Demokratie*, CIBEDO.T 9-10, 1981; M. Forstner, *Zur Diskussion über die Menschenrechte in den arabischen Staaten*, in: *Christen und Muslime in der Verantwortung für eine Welt- und Friedensordnung*, 3. St. Georgener Symposium, ed. by L. Bertsch and H. Messer, Frankfurt a.M. 1992, 49-94.

whose function is to rule. And freedom is then based on the equal duty of all human beings to obey God's laws only. Correspondingly the Islamic concept of democracy is determined by the principle of the faithfuls' consultation with one another according to Sura 42,38. The decisions of that kind of democracy have to agree with God's laws, if they are not to be an arrogant overestimation of human abilities.

But even here convergences seem to be possible. For Islam recognizes not only Muhammad as prophet and ambassador, bringing and confirming God's laws, but also Noah as prophet and ambassador for all humankind after the Flood (Cf. Gen 9,9 and Sura 11,48), Moses for the Jews, Jesus for the Christians. Therefore Islam can accept or also include besides the Islamic Shari'a, as the major way to follow God's will, those traditions of Noah, Moses, Jesus as possible, but less valid ways. Therefore Sura 9,7 demands that contracts even with pagans should be honoured, as long as they keep their side. And in the records of the constitution, which the prophet drew up for the first Islamic state in Medina, it is evident that it was a confederation of the different tribes which always followed common consultation among them including those who held their Jewish faith, political loyalty to the Muslim community provided²⁰. In Western Europe even so-called fundamentalistic Muslim scholars and leaders as Mohammed Hamidullah, Said Ramadan or Mehdi Razvi stress that this example given by the prophet corresponds with important Qur'an's principles: that each individual is fully responsible for him or herself (Sura 74,38), that believers in the (true) religion must not exert pressure on anybody (Sura 2,256) and have to respect all sincere seekers after God (Sura 6,52)²¹.

(4) I come to my next point now, evaluating the significance of the actual meeting in secular European contexts. All those references play an important role in the actual Islamic examination of the Western Human Rights Conventions. Even the so-called Islamic fundamentalists or Islamists in Western Europe stress that here are starting points for a defence of a basic right to participate in political decisions and for a defence of freedom, consistent with the dignity of a human being,

²⁰ Cf. M. Hamidullah, *Der Islam*, Genf/Paris 1968, 416f. according to the variants of both Ibn Hišam and Abū 'Uбайд („a community with the believers“ / „a community as part of the believers“); quoted by S. Ramadan, *Das islamische Recht*, Wiesbaden 1980, 111-113.

²¹ Cf. Ramadan, *Recht* (above n. 20), 131-134; M. Razvi, *Gerechtigkeit, Menschenrechte und Weltfrieden aus der Sicht des Islam*, in: *Abrahams Kinder. Juden — Christen — Moslems*, ed. by M. Stöhr, *ArTe* 17, 1983, 149-159: 153f.

to give her or his opinion and to choose her or his religious belief. Therefore possibilities of convergences with Jewish-Christian and secular arguments for human rights do not appear limited to the so-called cultural Muslims, who want to preserve Islam in an extremely secularized way only as a cultural tradition. Those can argue strictly by the socioeconomic view²²: the Muslim countries have to transform their social structure by industrialization and at the same time to guarantee human rights in a reformed Islam, binding the law to the formal norms of a state by separating religion and politics.

The more official discussion is about traditional Islamic views between those starting points of Islamism on the one side and Muslim secularism on the other. In 1981 an »Islamic Council for Europe« presented a *Universal Islamic Declaration of Human Rights*²³. It started a discussion — although hardly within the Muslim world. Yet in 1990 it was followed by the *Cairo Declaration of Human Rights in Islam*²⁴, semiofficially published by the combined Islamic states. Both declarations are intended to confirm the human „freedom and right to a life of dignity in accord with Islamic Shari‘a“ (thus the Cairo preamble). Article 1 of Cairo stresses that the true faith is the guarantee of such dignity. But at the same time it holds, all persons to be equal in dignity, because they were created by God and to be included in the covenant which honours humankind in our ancestor Adam (Sura 17,70; 7,172).

It is obvious here that in Islam there are both aspects. The one aspect is, that the true Islamic community in the Qur‘an is called the „best community“ (Sura 3,110), as it is best orientated to God's will. That claim was often made by Muslims²⁵, in order to rule, as they had

²² B. Tibi, *Der Islam und das Problem der kulturellen Bewältigung sozialen Wandels*, Frankfurt a.M. 1991, 244; cf. his discussion with A. Falaturi and M. Muranyi, in: *Islam* (above n. 15), 68-98: 70f. and 84-87; F. Kandil, *Fundamentalismus und Politisierung des Islam: Überlegungen aus der Sicht einer angestrebten Weltfriedensordnung*, in: *Christen und Muslime* (above n. 19), 5-28.

²³ Commented translations of the one version for western readers and the other for the Arabic world you find in: M. Forstner, *Allgemeine Islamische Menschenrechtserklärung*, CIBEDO.D 15-16, 1982; cf. *Droits de l'Homme/Human Rights, Islamochristiana* 9, Rom [Pontificio Istituto di Studi Arabi e d'Islamistica] 1983; O. Schumann: *Einige Bemerkungen zur Frage der Allgemeinen Menschenrechte im Islam*, in: *ZEE* 30, 1968, 155-174; C. Bouma, *Christian and Islamic Valuation of Human Rights. Consequences of Minorities*, in: *Journal Institute of Muslim Minority Affairs* 11/1, 1990, 30-49; M. Borrmans, *Les Droits de l'Homme en milieu musulman*, *StMiss* 39, 1990, 253-276.

²⁴ Cf. Lienemann-Perrin, *Verständnis* (above n. 12) and M. Forstner, *Das Menschenrecht der Religionsfreiheit und des Religionswechsels als Problem der islamischen Staaten*, in: *Kanon* 10, 1991, 105-186.

²⁵ The 1979 constitution of the Islamic Republic of Iran proclaims that this state should be founded on the preeminence of righteousness alone and that all its citizens should

done when their power were at its greatest, with the traditional Shari‘a, excluding unbelievers and including Jews and Christians only with an inferior status as inferior believers. That concept implies from Qur’an’s words to act for justice and good community life according to God’s will. But from the situation first of threat and then of proud establishing the political power of the Muslim community sanctions were imposed on those who harmed it — at least in the view of the powerful. This went so far that even the religious freedom to leave the Muslim community by apostasy or heresy was denied.

This kind of graded tolerance²⁶ had some structural equivalents in medieval Christianity and appeared in modified form in the Roman Church up to the sixties of our century. As the view changed with Vatican II, it is possible in Islam, too, with the other aspect, implied in Islam that every human being has dignity, given by his creator and lord. This dignity therefore being inherent, divine law absolutely forbids robbing any human being of her or his basic dignity²⁷.

(5) That is exactly the starting point for some Muslim scholars of our time, who argue for a reformed Shari‘a, the traditional Shari‘a’s definition of apostasy as crime being a constant infringement of the freedom of worship and of speech²⁸. They ask for a new hermeneutics, leading to a new exegesis of the Qur’an, starting from its basic intention. Because the purpose of punishment according to Qur’an is to enable the criminal to live a life of justice and equality, it would be its intention to reach this goal with the most suitable means according to the changing situations. Similarly because the purpose of the Qur’an with regard to woman is that she must be recognized primarily as a person in her own right, this intention has to govern the exegesis of the concrete form of the laws of family and inheritance, formulated in those days to attain this goal²⁹.

be equal in the eyes of Islamic law and should be equal in human dignity; Falaturi (above n. 15), 76 refers to that constitution.

²⁶ Cf. Schwartländer/Bielefeldt, Christen und Muslime (above n. 9), 25-31.

²⁷ Cf. the argument of Said Ramadan, Recht (above n. 20), 113.117-124 concerning Sura 9,29 in connection with a version of the contract of the prophet Muhammad with the Christians of Nağran concerning the special tax to be payed by the protected non-Muslims. This contract states: „they must never be humiliated“; in the same way Ramadan, Recht 148f. argues against the so-called decree of the second Khalif Umar.

²⁸ Mohamed Charfi and Abdullahi Ahmed an-Na‘im in: Schwartländer/Bielefeldt, Christen und Muslime (above n. 9), 29-31.

²⁹ Ali Merad and Mohamed Talbi in: Schwartländer/Bielefeldt, Christen und Muslime (above n. 9), 44-46.

The problem remains that with the Shari‘a, as traditionally understood, certain historic forms seem to be established for ever. The most significant change of view will be to reverse with the Sudanese Mahmoud Mohamed Taha and Abdullahi Ahmed an-Na‘im the kind of exegesis, valid up to now. This former exegesis used to replace older parts of the Qur‘an, regarded as not quite clear or contradictory to younger parts, by the later revealed verses. But the new hermeneutics stress the earlier ones. For the basic intention you will find especially in the early basic message, and that preaches the freedom of worship and equality of all persons independent from gender and denomination. Though this view is still suspected of being a heresy³⁰, you can see here a possible way for Islam to reach some form of understanding and later convergence with Christian and secular views.

In support of his argument that the message of Islam was adjusted to the needs and capabilities of its audience, Taha often quoted Sura 16,44: „We have revealed (*anzallna*) to you *al-dhikr* (the Qur‘an) so that you may explain to people what has been brought down (*nuzila*) to them and that they may reflect.“³¹ An-Na‘im quotes Taha:

„God said: »When ever we abrogate any verse ... or postpone it ..., We bring a better verse, or a similar one ...« (the Qur‘an 2,106) ... The phrase »We bring a better verse« means bringing one that is closer to the understanding of the people and more relevant to their time than the postponed verse“ — „postponed until their appropriate time comes. When it does, they become the suitable and operative verses and are implemented, while those that were implemented in the seventh century become abrogated ... This is the rationale of abrogation“ (*nash*)³².

With this new hermeneutics of Taha an-Na‘im is attempting to transform the understanding of the very foundations of traditional Islamic law, not to reform them³³. His criteria are interesting enough to be cited here in some detail:

„My analysis would exclude the secularist approach in the Muslim context from the renewal-reform tradition because secularism is not an *Islamic* re-

³⁰ That interpretations became famous with M. Taha, accused of heresy and executed in the Sudan in 1985 with the approval of Islamic representatives from al-Azhar. It is now proclaimed esp. by his disciple A.A. an-Na‘im: *Koran, Schi‘a und Menschenrechte. Grundlagen, Defizite und zukünftige Perspektiven*, in: *Conc(D)* 26, 1990, 129-134; an-Na‘im, *Toward an Islamic Reformation. Civil Liberties, Human Rights, and International Law*, Syracuse 1990.

³¹ Cit. an-Na‘im, *Reformation* (above n. 30), 55.

³² M.M. Taha, *Second message of Islam*, Syracuse 1987, 40f., cit. an-Na‘im, *Reformation* (above n. 30), 59f.

³³ That is J.O. Voll’s commentary in the foreword to an-Na‘im’s book.

sponse ...³⁴. „It is my thesis that since the technique of *naskh* has been employed in the past to develop Shari‘a which has hitherto been accepted as the authentic and genuine Islamic model, the same technique may be employed today to produce an authentic and genuine modern Islamic law.“ (AN 49) „If they implement historical Shari‘a, Muslims cannot exercise their right to self-determination without violating the rights of others.“ (AN 161) „The criteria I would adopt for identifying universal human rights is that they are rights to which human beings are entitled by virtue of being human ... Applying the principle of reciprocity among all human beings rather than just among the members of a particular group, I would argue that universal human rights are those which a cultural tradition would claim for its own members and must therefore concede to members of other traditions ...: the will to live and the will to be free.“ (AN 164)

„Shari‘a was constructed by the founding jurists of the eighth and ninth centuries out of the original sources of Islam. In that historical context, it was natural for the Muslim jurists to restrict the »other person« in the reciprocity rule to other Muslim men ... An enlightened construction would extend the »other person« to all human beings, regardless of gender, religion, race, or language ... The proposed broad construction of the other person has to be valid and credible from the Islamic point of view. This can be done only through Islamic arguments that repudiate the historical restrictive construction and support the alternative broader construction. Second, other cultural and religious traditions must undertake a similar process of enlightened construction.“ (AN 165)

„Slavery is one of the most serious impediments on both the will to live and the will to be free ... The abolition of slavery may well be the first example of the acceptance of an international human right as a limitation on domestic jurisdiction ...“ (AN 166). „The only effective approach to achieve sufficient reform of Shari‘a in relation to universal human rights is to cite sources in the Qur‘an and Sunna which are inconsistent with universal human rights and explain them in historical context, while citing those sources which are supportive of human rights as the basis of the legally applicable principles and rules of Islamic law today.“ (AN 171) „It is obvious that Shari‘a did not introduce slavery, which was the norm throughout the world at the time. Shari‘a recognised slavery as an institution but sought to restrict the sources of acquisition of slaves, to improve their condition, and to encourage their emancipation through a variety of religious and civil methods. Nevertheless, slavery is lawful under Shari‘a to the present day.“ (AN 172) „Though Shari‘a implemented the transitional legislative intent to permit slavery, subject to certain limitations and safeguards, modern Islamic law should now implement the fundamental Islamic legislative intent to prohibit slavery forever.

³⁴ An-Na‘im, Reformation (above n. 30), 48. [Henceforth referred to in the text by AN plus number of the page.]

When slavery was eventually abolished in modern Muslim states ... that result was achieved through secular law and not Shari'a. Given the formal abolition of slavery in all Muslim countries, some may argue that it is no longer an issue. I disagree and believe that slavery is a fundamental human rights issue for Muslims until it is abolished in Islamic law ..."(AN 175) „In continuing to recognize slavery as a lawful institution, even if only in theory, Shari'a is in complete violation of a most fundamental and universal human right.“ (AN177)

„The traditional techniques of reform within the framework of Shari'a are inadequate for achieving the necessary degree of reform“.(AN 179) „To achieve that degree of reform, we must be able to set aside clear and definite texts of the Qur'an and Sunna of the Medina stage as having served their transitional purpose and implement those texts of the Meccan stage which were previously inappropriate for practical application but are now the only way to proceed ... In view of the vital need for peaceful coexistence in today's global human society, Muslims should emphasize the eternal message of universal solidarity of the Qur'an of the Mecca period rather than the exclusive Muslim solidarity of the transitional Medina message. Otherwise, Muslims would ... provoke counter exclusive solidarity by non-Muslim, thereby repudiating the prospects for peaceful coexistence and cooperation in promoting and protecting universal human rights.“ (AN 180)

„The obligation to respect human rights is an integral part of the right to self-determination and a perfectly justified limitation on national sovereignty. The right to self-determination is the right of a state to assert and realize the human rights of all its population, without distinction on grounds of race, gender, language, or religion ... What is suggested here is that mechanisms should be developed to enable the international community to ensure that every state respects the human rights of its own nationals.“ (AN 169)

(6) That means the development of some form of collective intervention for the case that the state is hurting basic human rights of its nationals or is not able to defend these rights. At the moment Bosnia-Herzegovina is a test for the non-Muslims in and around that state to be ready to defend the rights of her Muslims in distress. In that situation we need at least symbolic actions by individuals both secular and Christian and also their institutions to make it perfectly clear, that human rights must not depend on belonging to a certain nation and religion. For from the secular as well as from the Jewish³⁵-Christian³⁶

³⁵ Cf. E.B. Barovitz, Die schriftliche und mündliche Überlieferung der Tora und die Menschenrechte. Grundlagen und Defizite, in: Conc(D) 26, 1990, 105-112: 106f.

³⁶ Cf. Huber/Tödt, Menschenrechte (above n. 7), esp. 164 and M. Honecker, Das reformatorische Freiheitsverständnis und das neuzeitliche Verständnis der »Würde des Menschen«, in: Modernes Freiheitsethos und christlicher Glaube, ed. by J. Schwart-

view, the guarantee of human rights is not to be linked with responsibilities. You have to grant them without regard to gifts or position, but then to emphasize that human rights also entail human responsibilities³⁷. This view is not consistent with the understanding of human rights based on the concept of asylum as a result of particular contract, but it is based on its other concept in the monotheistic tradition.

Monotheism will not allow Jews, Christians and Muslims to give up the right to let their religious views have an effect on public life. But the modern constitutional state's declaration of belief in freedom of worship also means always the freedom of practicing religion publicly. In order to be a social and cultural state, the constitutional state has even to support actively the religious communities' effectiveness in public life, admittedly also that it must support the effectiveness of religious minorities and other social and cultural groups³⁸. Realizing this background, it should then be possible from an Islamic starting point, as from a Christian one, to see the convergences connected with their root in God.

Already in the diaspora there are such signs. For example, in Germany in the last years representatives of Muslim organisations admitted the secular model of integration in interaction: The partners in interaction organize themselves in groups and join with other members of society in the open process of an integration in which the religious and cultural identities are preserved in its decisive parts and are developed in other parts in a dynamical proceeding.³⁹ These Muslims stress that in the secular state of the German Federal Republic, its fundamental law (Grundgesetz), with the preamble's declaration „in responsibility to God“ („in Verantwortung vor Gott“), admits the transcendent aspect in a way that Muslims have less problems to agree to

länder, München/Mainz 1981, 266-284: 275-279; Chr. Elsas, Nachbar Muslim — zur Bedeutung der Allgemeinen Religionsgeschichte für den Gegenwartsbezug von Theologie, CIBEDO 1992, 161-175, referring to „The Presence of Muslims in Europe and the Theological Training of Pastoral Workers“, Birmingham [»Islam in Europe« Committee of the Conference of European Churches and the Council of European Bishop's Conferences], 1991.

³⁷ Cf. P. Saladin, Menschenrechte und Menschenpflichten, in: Menschenrechte und Menschenwürde, ed. by E.-W. Bockenförde and R. Spaemann, Stuttgart 1987, 267-294.

³⁸ Cf. Schwartländer/Bielefeldt, Christen und Muslime (above n. 9), 34f. with Mohamed Charfi.

³⁹ Cf. on identity developed dynamically in interactional integration my „Identität“ (above n. 1) and now a similar view in: M.S. Abdullah, Der Islam will in Deutschland heimisch werden, in: Islam im Abendland (special issue 1 of journal „Die Brücke“), Saarbrücken 1992, esp. 32-35.

the whole of this secular fundamental law and to develop their Islam anew within its frame. For in these contexts the Islam is exempt from being exposed to the ruling class in Muslim countries and from the often rigid cultural traditions of that region⁴⁰.

Even in Sudan, where the quoted Muslim reformer, Taha, was condemned and killed in 1985 with the approval of Hassan Tourabi, one of the important leaders of the Muslim Brothers with great political influence on the now ruling military, one notices a certain tendency to stress the possibilities for convergences: from April 26th to April 30th 1993, its government invited representatives from 32 countries, especially Muslims and Christians, to a „Conference for Multireligious Cooperation on the Way of Renaissance“⁴¹, working on regaining peace and national unity. Since 1955 there has been a civil war in the southern parts of Sudan, and the refugees, many Christians from the South, moved to the traditionally entirely Islamic North. On the other hand, the Islamic central government in the South made Arabic the language for the schools, instead of English.

Now the invited general secretary of the Near Eastern Christian Council, Gabriel Habib, asked the conference in his speech: Is it possible that Muslims will admit Christians to finally be entitled to the same right to God and therefore will be at liberty to acquire citizenship of the same quality as Muslims in an Islamic state as well? Some verses of Qur'an declare that Christians, because of their vivid piety, must not have fear in the Last Judgement. In other verses Christians are criticized as „*kāfirūn*“ (unbelieving regarding Muhammad's prophethood), and „*mušrikūn*“ (joining others gods to the one God), for whom there is no forgiveness. The Christian representative called up to acknowledge both possibilities and to be willing to find an intensive meeting of faithes, remembering the one God of Abraham and his care for the world, which is a common tradition for both, Christians and Muslims⁴². The answer of Hassan Tourabi on the conference criticized

⁴⁰ Abdullah, Islam (above n. 51), 35.

⁴¹ Cf. the documents collected for example by CIBEDO, Guiollettstr. 35, Postfach 170427, D-60325 Frankfurt, or Selly Oak Colleges, Bristol Road, Birmingham B29 6LQ, UK.

⁴² Cf. for the common traditions on the God of Abraham and possibilities to approach each other in interpreting in dialogue the varieties of translation in the special traditions of Jews, Christians and Muslims, my article „Theologische Ausbildung angesichts der Präsenz von Muslimen. Eine Konkretion der Empfehlungen der CCEE und KEK vom Mai 1991 anhand der Themen »Bosnien« und »Ismael'« im Blick auf christliche Identität“ , in: Pluralismus und Identität, VIII. Europäischer Theologenkongreß Wien 1993, ed. by J. Mehlhausen , Gütersloh 1994 (in print).

that the international law is mixed with elements of Christian tradition and that Christians, on the other hand, retire from politics, whereas the Muslims have the model of Medina. But declaring that there is no justice in managing with the wealths of the Earth without religion, Tourabi called for the common feeling of responsibility to save humanity in spite of the distinction in religious traditions. For the Sudanese Christians until and during the conference there were often experiences of unequal treatment which could be articulated only by pressure of other Christian representatives considering the international credibility of Sudan's intention: to be the African model for an Islamic state with application of the Shari'a in a multireligious society, caring for equal rights for non-Muslims and their participation in governing their country.

Time will show if and how that intention may realize without the new hermeneutics of Taha and an-Na'im. Nevertheless you can see in the interest of the Sudanese government in this conference a tendency for convergences on a less high, but important level considering the political realities. The Sudanese Taha and an-Na'im and to another degree the Sudanese conference show that there is an undubitable possibility to translate the concept of human rights developed in a culture with Christian and secular traditions into a culture with Muslim tradition and that the result can be nevertheless a distinctive Muslim response with tendency for convergences with the secular and Christian challenges, at the same time: to save humanity with the Islamic law in this or that interpretation for a world with more and more mutual dependence of people with different cultural and religious background.