

Kant's Notion of Human Dignity in Dialogue with Islamic Thinking: For an Interstitial and Extra-National Account of Human Dignity

[A Noção Kantiana de Dignidade Humana em Diálogo com o Pensamento Islâmico: Por uma Explicação Intersticial e Extranacional da Dignidade Humana]

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DOI: 10.5380/sk.v%vi%i.92121

Abstract

Public international law is concerned with the relationship between human dignity and human rights. Concepts such as person, freedom and justice occur in legal texts, often without an accurate definition. To solve these ambiguities, thus contributing to developing a virtuous legal and political debate, a philosophical clarification might be helpful. In this article, my aim is to provide an analysis of the notion of human dignity in Kant's works and in Islamic thought and to evaluate how Kant's approach can offer tools that are relevant to the current debates on dignity in both Western and non-Western traditions.

Keywords: Dignity; Kant; Islamic philosophy; philosophy of right.

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Premise²

Uncountable accounts of human dignity (HD) have been given in ethics, politics and jurisprudence. On the one hand, everyone agrees on the acknowledgement of HD, but the lack of agreement on its theoretical and practical significance increases the conflictive character and lack of understanding in international relations.

In this text, I will defend an interstitial account which relates law, politics and morality in supporting an individual-oriented account of extra-national relations. I believe that Kant's account helps in defining HD as interstitial and normative and that this can open one path to engage philosophers in an inter-disciplinary and inter-cultural dialogue as I aim to show by clarifying Kant's concept of HD and challenge Kant's account of HD by facing modern accounts on HD in Islam to answer the question: can Kant's notion of HD be welcomed nowadays, in inter-cultural societies? I am interested in this question, because: a) in periods of crisis and clashes it is urgent to find out sharable grounds to overcome major conflicts; b) Kant has been already welcomed by some Arab thinkers (e.g. Al-Jabri, Azzi) facing the question of modernity and the possibility of an Enlightenment within the Islamic culture and can, thus, be a good starting point for such a debate.

The originality of this approach is proven by the lack of study on this specific topic, whose significance, however, is relevant not only for Kantian scholarship but also for philosophers of law as well as intercultural, social and Islamic studies.

1) An interstitial account of HD

The *Declaration of Human Rights* of 1948 states that: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." In the so-called Western World, the 1948 *Declaration* was followed by other domestic and international documents defending human dignity in very similar terms. Examples of this are the First Article of the *German Fundamental Law* of 1949, and the Preamble of the *International Covenant on Civil and Political Rights* (1966), which establishes that rights: "derive from the inherent dignity of the human person" and defends the: "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family [as] the foundation of freedom, justice and peace in the world."

In Islamic countries, however, the *Declaration* of 1948 was not welcomed by a general consensus: the declaration was approved on the 10th December 1948 by the United Nations Assembly without a dissenting vote, but Saudi Arabia abstained because the *Declaration* does not acknowledge God as the origin of the rights and permits the change of religion (see *Traer*, 1989). Differently, the foreign minister of Pakistan welcomed it because he saw no conflict with the *Qur'an*, in which there are passages which can be interpreted as permitting belief and disbelief (see *Gurewitsch*, 1973, p. 25).

This lack of agreement provides hints that there is no clear consensus in Islamic jurisprudence concerning the status of HD. However, it is a debated point which is worthy of being considered for philosophical inquiries. Concepts such as person, freedom and justice, occur in legal texts, often without a common definition, thus leading to a variety of interpretations which might lead to different political and legal positions, as demonstrated by the reaction of Pakistan and Saudi to the *Declaration* of 1948.

I will here not delve into the details of all the existing accounts on HD, but just address

² Citations to Kant will be to the *Akademie Ausgabe* by volume and page. English quotations will be from the *Cambridge* edition of the Works of Immanuel Kant.

the fact that it is used in at least three fields and in each of those with several senses.

In ethics, it is usually used to ascribe to human beings their status as autonomous agents and willing subjects (regarded as distinct-elevated over non-human animals not because superior to them, but because having the duty to act morally - see *Sensen, 2011*); in politics, it serves as a normative criterion to perfection political systems (*Boylan, 2004*), to preserve freedom and welfare (*Gewirth, 1998*) or it is associated to a theory on justice (*Rawls, 2009*). In jurisprudence, it remains undecided if it is foundational to human rights (e.g as criteria to give and clarify their normative force implied when confronted with tensions, and disagreements in practices and fields concerning international law) or if it is a sort of restrictive principle, prohibiting, for instance, “cruel and unusual punishment” (as it is stated in the Eight Amendment of US). Besides, on the one hand, HD seems to be related to agency and autonomy (this is the so-called ‘permissive reading’ of human dignity as protecting the individual and autonomous agency from state intrusion) but on the other hand, it is also used to impose limitations (this is the ‘conservative reading’ that allows the law to protect individuals from themselves)³. Moreover, as *Beitz* observes, HD seems to be applied at two levels of thought concerning human rights: as a characteristic of a system of norms and as a specific meta-value explaining and justifying why some ways of treating ourselves and others are not permissible (*Beitz, 2013, p. 283*).

A possible way to clarify these difficulties and preserve the variety of uses of human dignity is to regard it as interstitial:

The concept is closely associated with the commitment “never again” - that never again should there be atrocities of the kind in the Second World War - and we could see human dignity as a predominantly political idea focused on the impermissibility of widespread and systematic attacks on civilian populations and by extension fundamental limitations on states’ sovereignty. In this sense, there is credibility to an interstitial reading of human dignity that links international law, politics and morality in supporting a more individual-focused, less state-focused account of international relations. This, in turn, strengthens a link between human dignity and (moral and institutional) cosmopolitanism given that the value of individuals transcends state boundaries. (*Riley & Bos, 2019, p. 13*)

I believe that Kant’s account of human dignity helps in characterising this interstitial⁴ function of the notion, and can open one path to engage in a dialogue with non-Western accounts of human dignity.

In what follows, my aim is to provide: an elucidation of the notion of HD in Kant’s thinking; an overview of the Islamic interpretations of HD; some conclusions concerning how a local⁵ approach to HD – this being intended in a Kantian sense - can be helpful to guarantee its defence.

³ See *Beyleveld and Brownsword’s (2001)* contrast between the empowerment and constraint conceptions of human dignity.

⁴ *Habermas*, among others, saw that HD belongs to more than one field only, when he refers to human rights as a Janus face, in which one forehead is morality, the other law. He writes: “these normative claims themselves are grounded in universalistic moral notions that have long since gained entry into the human and civil rights of democratic constitutions through the status-bound idea of human dignity. Only this internal connection between human dignity and human rights gives rise to the explosive fusion of moral contents with coercive law as the medium in which the construction of just political orders must be performed” (*Habermas, 2010, p. 479*).

⁵ For this, I am in debt with Prof. *Kloc-Konkołowicz* and my colleagues from the LOR Project in Warsaw, where we investigated the notion of locality of reason. We do not understand the defence of the concept of reason as a simple revival of the classical concept of reason, which considers it as a universal capacity that stands above historical and cultural contexts. Rather, our hypothesis is that reason cannot be understood independently of several different strategies for its self-construction. This approach to reason is characterised by the notion of “locality”.

2) Human dignity in Kant

The notion of human dignity does not occur before the *Groundwork to the Metaphysics of Moral* and it appears 111 times in Kant's published works. Although sometimes 'dignity' is related to 'worth' (GMS, AA 04: 435; AA 04: 436) a detailed analysis of the passages of the text reveals that dignity cannot be regarded as worth in the sense of a fundamental value, but rather in a Stoic sense, i.e. describing a relationship where something is elevated above something else (RGV, AA 06: 57). In this sense, the use of the notion of human dignity in Kant has not the political, ethical and social backgrounds of our actual debates. However, we can relate to Kant's account to provide content to this notion which is highly central, as aforementioned, in our political and juridical discussions, but which is often unclear⁶.

Sensen (2011b) – criticised by Bojanowski (2015) for his perspectivism which does not appreciate enough the fact that the moral law is a form of practical cognition – considers HD a secondary concept in Kant's works because it does not play any role in the justification of ethics (it does not appear in the third section of the *Groundwork*, in the derivation of the formula of humanity, in the second *Critique*, nor the *Lectures on Ethics*). However, I hypothesise that there might be a sense in which the term should be regarded as highly significant, namely insofar as it holds a normative interstitial value.

But how can dignity be grounded? How can we find legitimation in referring to it?

The answer, from a Kantian perspective, cannot be but one: because reason demands it. The unconditioned, formal law which can determine the will is what provides humanity with dignity. As moral beings, humans possess a special standing (MS, AA 06: 434), i.e. dignity.

Reason accordingly refers to every maxim of the will as giving universal law to every other will and also to every action toward oneself, and does so not for the sake of any other practical motive or any future advantage but from the idea of the dignity of a rational being, who obeys no law other than that which he himself at the same time gives. (GMS, AA 4: 434)

Dignity has no price: it cannot be traded away for something else. It is incomparable and cannot be measured:

But a human being regarded as a person, that is, as the subject of a morally practical reason, is exalted above any price; for as a person (*homo noumenon*) he is not to be valued merely as a means to the ends of others or even to his own ends, but as an end in itself, that is, he possesses a dignity (an absolute inner worth) by which he exacts respect for himself from all other rational beings in the world. He can measure himself with every other being of this kind and value himself on a footing of equality with them. (MS, AA 06, 434-5)

In other words, as lawgivers, as capable of setting ends, human beings have dignity: "Now, morality is the condition under which alone a rational being can be an end in itself since only through this is it possible to be a law-giving member in the kingdom of ends. Hence morality, and humanity insofar as it is capable of morality, is that which alone has dignity" (GMS, AA 04: 435).

Dignity, then, describes the status of humanity insofar as it is capable of setting ends. If it is so, then dignity holds an ethical significance: the subject ascribes himself ends, and he does

⁶ As Habermas (2010) describe HD, it can still be identified with a status, i.e. the status of democratic citizenship. Membership in a constitutional community can grant equal rights and preserve HD. As he puts it: "After two hundred years of modern constitutional history, we have a better grasp of what distinguished this development from the beginning: human dignity forms the 'portal' through which the egalitarian and universalistic substance of morality is imported into law. The idea of human dignity is the conceptual hinge that connects the morality of equal respect for everyone with positive law and democratic lawmaking in such a way that their interplay could give rise to a political order founded upon human right". (Habermas, 2010, p. 469)

so, in the forms of maxims that might be in accordance with the categorical imperative, which should serve as the primary internal motive for the determination of the will. However, the pursuit of ends must be possible not only internally, but also externally, i.e. we must have the possibility of setting our ends in the world freely. In this sense, dignity has significance for the doctrine of right, whose fundamental law aims to preserve and defend the possibility of setting ends in the world. The notion of HD, consequently, seems central both in Kant's doctrine of ethics and rights.

But what is their relationship? The *Metaphysics of Morals* distinguishes morals into ethics and doctrine of right, however, it is not clear how the two are related to each other and further inquiries into the text are required. Critics differ on the clarification of the grounds for the universal principle of right, which establishes that: "Any action is right if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom" (MS, AA 06: 230).

According to the official view, this principle should be derived from the categorical imperative (Guyer, 2002; Bernd Ludwig 2002). This interpretation is contrasted with an alternative view (Willaschek, 1997, 2002; Flikschuh 2010), which focuses, among others, on three critical points: a) Differently from ethical duties, rights are a set of duties that do not depend on a pure incentive, but rather, by external coercion. The legislation of rights: "does not include the incentive of duty in the law and so admits of an incentive other than the idea of duty itself" (MS, AA 06: 218–19); b) The principle of right only tells which actions are right, but does not tell us or order us to perform them and only them (MS, AA 06: 231); c) The categorical imperative is synthetic, while the principle of right is analytic (MS, AA 06: 396).

I am convinced that, whatever might be our position on the relation between ethics, morality and rights in Kant, HD should be considered interstitial: it is dependent on the principle of autonomy; second, it is related to rights insofar as a just system should protect HD; third, it is relevant on a political-social dimension, because it ascribes to the individual the belongingness to a universal state of mankind, i.e. a realm of ends which is our aim to realise (Kaulbach, 1982). Therefore, HD is strictly related to cosmopolitanism: we are citizens of a world in which it is possible to interact with everyone⁷, thus implying that the significance of the individual is and cannot be limited to her membership in a state.

After achieving a definition of Kant's notion of HD I want to use it as an exemplary tool of dialogue between Western and non-Western philosophical theories, in this case, Islamic ones.

But first I must here spend a couple of words on a fundamental contextual difference between Western and Islamic systems of thought in general. In modern times, Europe underwent terrific growth in the division of sciences and the multiplication of fields and practices. This did not affect sciences solely, but social life in general. The division of powers (judicial, executive and legislative), and the independence of religious matters from political ones, came to define features that our society still owns. For sure, the borders between these domains are not always well defined and the attempt to distinguish areas of thinking is sometimes not successful nor helpful. But still, we can say that Europe and generally the so-called Western world is

⁷ "This rational idea of a peaceful, even if not friendly, thoroughgoing community of all nations on the earth that can come into relations affecting one another is not a philanthropic (ethical) principle but a principle *having to do with rights*. Nature has enclosed them all together within determinate limits (by the spherical shape of the place they live in, a *globus terraqueus*). And since possession of the land, on which an inhabitant of the earth can live, can be thought only as possession of a part of a determinate whole, and so as possession of that to which each of them originally has a right, it follows that all nations stand *originally* in a community of land, though not of a *rightful* community of possession (*communio*) and so of the use of it, or of property in it; instead they stand in a community of possible physical interaction (*commercium*), that is, in a thoroughgoing relation of each to all the others of *offering to engage in commerce* with any other, and each has a right to make this attempt without the other being authorized to behave toward it as an enemy because it has made this attempt. - This right, since it has to do with the possible union of all nations with a view to certain universal laws for their possible commerce, can be called *cosmopolitan right* (*ius cosmopolitanicum*)." (MS, AA 06: 352)

characterised by this tendency. In Islamic countries, in contrast, this is mostly not the case. *Kalam*, *fiqh* and *falsafa* are fundamentally interconnected. We can speak of ethics in Islamic thought but by doing so, we must approach texts which refer to religious matters and focus on their ethical aspects. The same for jurisprudence: the starting point is the *Qur'an* (and the *hadith*). So, while inquiring about the notion of *karamah* one should not ignore this context. This is and remains, perhaps, the most crucial and difficult reason why it can be so hard to engage in a dialogue between Western and Islamic traditions.

3) *Karamah*

3.1 *Karamah* in the *Qur'an*

The term *karam*, as the Latin correspondent *dignitas*, refers to someone who deserves to be honoured and esteemed. It addresses rank and position (*Dehkhoda*, 2011). The term, which has a pre-Quranic origin, is in the *Qur'an* attributed to God's generosity and good human behaviour, noble and appreciated things (cf. *Rahiminia*, 2007; *Mustafawi*, 1989). More specifically, the most explicit affirmation of human dignity [*karamah*] in Islam is found in the Quranic verse: "We have bestowed dignity on the children of Adam... and conferred upon them special favours above the greater part of Our creation." (17: 70)

Dignity seems here to be ascribed to all human beings without qualification of any kind (this is called the universalist approach). The *Qur'an* commentator, Shihab al-Din al-Alusi (d.1854) thus wrote that everyone and all members of the human race, including the pious and the sinner, are endowed with dignity and this cannot be made exclusive to any particular group of people.

This universalistic interpretation, spearheaded by the Hanafi school of thought (about 50 per cent of all Muslims), affirms that inviolability [*'ismah*] pertains to the fact of being a human and that this also provides legal justification for the defence of human rights (cf. *Kamali*, 2007). More specifically, Imam Abu Hanifah (d. 767), established a nexus between *adamiyyah* and *'ismah*, stating that being a progeny of Adam (no matter if Muslim or not), creates the legal basis for possessing both: *al-'ismah bi'l-adamiyyah*, inviolability inheres in being human.

Besides, autonomy and free adherence to religion are defended by al-Sarakhsi (d. 1090), according to whom: "A human's religious choice must also be honoured, even if it is contrary to the Islamic teaching" (*al-Sarakhsi*, 1986, p. 86) because the relationship between God and human beings is free and based on the recognition of moral autonomy (*Kamali*, 2007, p. 6). Examples of this are: "there shall be no compulsion in religion." (Q, 2: 256); "Let whosoever wills, believe, and whosoever wills, disbelieve." (Q, 18: 29); "anyone who accepts guidance does so for his own good, but one who wantonly goes astray, then tell him that: "I am only a warner." (Q, 27: 92).

Al-Marghinani, another Hanafi jurist, (who opposes the communalist view) states that considering religion as the criterion of *'ismah* is unacceptable, because protection and dignity are attached, not to Islam, but to the person. Freedom, namely, is the condition for giving a meaningful response to every kind of message (religious, legal, etc.), which means that it is the condition for responsibility and morality. For this: "*'ismah* inheres in all human beings" (*al-Marghinani*, 1989, II, p. 221). Similarly, Ibn Abidin (d. 1834 CE), who was also an Hanafi scholar, wrote that "a human being is honoured, even if he is a non-Muslim [*al-adami mukarram wa law kefiran*]" (*Abidin* 1386/1966, v. V, p. 58).

In contrast to Hanafi, communalists, believe that *'ismah* and its correlated notions⁸ are attached to Islam. The Imam al-Shafili (d. 820 CE) spread this interpretation and found support from the other imams, such as Ahmad Ibn Hanbal, (d. 855), Malik (d. 795) Daud al-Zahiri (d. 885) and the Shiite scholars such as al-Tusi.

Now, there is no consensus on this issue, however, most Sunni (e.g. *Tafsir Al-Jalalayn ma'a Al-Hawashi*, 2012) and Scii (*Tabatabai*, 1996) interpreters regard HD as inherent and belonging to all sons of Adams and: "it must be incorporated into Islamic jurisprudence and law as a rule of Islamic jurisprudence, so that such inherent quality is recognized and applied as a right in Islamic jurisprudence" (*Abedi & Vaziri*, 2014, p. 154). Moreover, some interpreters have quite ambiguous positions. For instance, Izzeddeen al-Khateeb al-Tameemi, the most prominent qadi in Jordan, states: "So, human dignity originates from Divine Will and the immortal law of God. Hence, human dignity is inseparable from a human being whether a male or female, irrespective of colour, time, place, social position, prestige among people, age, even if still a foetus, or dead lying in his grave" (*al-Tameemi*, 2003, p. 462). From these lines it seems that his position is universalistic, however, he declares that dignity's items concern the preservation of human life and those values that safeguard society from chaos and the damage of reputation (e.g. adultery), namely Islamic values. Dignity, namely, "does not emanate from universal declarations, international resolutions, regional agreements or inter-state conferences. Commitment to it from an Islamic standpoint is based on doctrine, not on accidental interest or temporal benefits" (*ibid.*). Thus, if the basis of HD is the Islamic religion, it seems that it is not possible to regard dignity as universal. Yet, many prominent scholars from different schools outside the Hanafi, including Abu Hamid al-Ghazali (Shafi'i), Ibn Rushd al-Qurtubi (Maliki), Ibn Qayyim al-Jawziyyah (Hanbali) support the universalist position on HD.

3.2 *Karamah* in jurisprudence

Among jurists, there is an open debate concerning if HD is innate or acquired⁹.

The majority of the theorists of Islamic jurisprudence stress that evidence of inherence of HD is provided by many verses of the Qur'an, according to which humans have a divine soul and nature, they have free will, angels prostrate human – the viceroy of Allah –. The firmest evidence, as already stressed, for regarding human dignity as an inherent rule¹⁰ is verse 70 of surah *Isra'*. The question is, then, how to regard dignity: is it a general rule or one among the others?

Abedi and Vaziri (2014) make 4 hypotheses: 1) the entitlement to dignity is a rule which prevails over all others and constrains the rules of shariah; 2) it is a general theory used as the basis for some rules but does not constrain shariah; 3) it is a rule among other rules, i.e., to respect human dignity, such as the rules forbidding slander; 4) it is something we presupposed till there is evidence for its contrary – as in the case of presumption of innocence.

There is no consensus¹¹ on which of these hypotheses is the most reasonable, however,

8 These are: humanity, personhood [*adamiyyah*] and the universal *maqasid* [purposes] of *Shari'ah*, which are called *al-danuriyyat* and include the preservation of life, intellect, religion, family, property and honour (see *Kamali*, 1999).

9 According to the doctrine of the acquisition of human dignity, dignity is provided through faith and righteous deed; whilst the pursuit of pleasures and ignorance keep humans away from dignity (cf. *Yadollahpur*, 2012).

10 There is a debate concerning the distinction between right and rule in Islamic jurisprudence: "Sunni Islamic jurisprudence has not provided any definition concerning the term "right", but Shiite Islamic jurisprudence has defined it as follows: right is a person's authority under the law with regard to another person, over property, or both, whether materially or intellectually (*Ja'fari Langerudi*, 2003). Right is something true and fixed, it is not an object to be possessed, but rather an authority itself (*Javad I Amoli*, 2009); whilst rule is a judgement concerning the accountable person or the relationships of an accountable person and others (*Al-Fayyumi*, 1984). Within this framework, dignity is a rule and it is left open to clarify which kind of rule it is.

11 For some scholars there is no incompatibility between Islam and human rights. Taha, moreover, who had great support in Sudan, stated that the Qur'an defends equal rights for women, the same was declared by an Iranian report

most Sunni (e.g. *Tafsir Al-Jalalayn ma'a Al-Hawashi*, 2012) and Shii (*Tabatabai*, 1996) interpreters regard human dignity as inherent and belonging to all sons of Adams and: “it must be incorporated into Islamic jurisprudence and law as a rule of Islamic jurisprudence, so that such inherent quality is recognized and applied as a right in Islamic jurisprudence” (*Abedi & Vaziri*, 2014, p. 154).

Now, not only in the Qur'an but also in the qanun, there are references to HD.

The *Cairo Declaration of Human Rights in Islam* is the best example of this. It serves as general guidance for the Member States in the field of human rights. The document, imitating western political language, speaks of human rights, which are derived from human HD.

Now, the first version of this document was ambiguous on HD. On the one hand, the first article stated:

All human beings form one family whose members are united by their subordination to Allah and descend from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, colour, language, belief, sex, religion, political affiliation, social status or other considerations. The true religion is the guarantee for enhancing such dignity along the path to human integrity. (CD 1990, art. 1a)

But the many references to *Shari'ah* seemed to suggest that the acknowledgement of Islam as true religion is a sort of condition for defending the aim of the declaration, i.e. to affirm mankind's freedom and right to a dignified life. It was openly stated, namely, that the success of this aspiration or right could not be achieved without taking into consideration Islamic Law, as is written in articles 24th and 25th: “All the rights and freedoms stipulated in this Declaration are subject to the Islamic *Shari'ah*.” (CD 1990, art. 24) and: “The Islamic *Shari'ah* is the only source of reference for the explanation or clarification of any of the articles of this Declaration” (CD 1990, art. 25).

In the new version of the *Declaration* (2020) there are no longer such ambiguities. For instance, article 1 changed into: “All human beings form one family. They are equal in dignity, rights and obligations, without any discrimination on the grounds of race, color, language, sex, religion, sect, political opinion, national or social origin, fortune, age, disability or other status” (CD 2020, art. 1) and articles 24th and 25th have been completely modified¹².

I consider these changes a great step forward towards the clarification and eventual advent of possible reforms. Still, much depends on the value ascribed to the *Declaration* by each member and in its relation to national legislation. Perhaps one should change the perspective, and try to look at those sources locally, thus going beyond communalist and universalist positions.

of 1968: “Islam, a religion based on equality, regarded women as equal to men in the political, economic, and social spheres.” (Iran and Human rights, 1968, p. 95) The report goes on to acknowledge that in Islamic society ideology resulted in unequal treatment of women. But the fact is that these positions must face opposition and a lack of support from the authorities.

12 “ARTICLE 24: Fair treatment during situations of war and armed conflict. a) International Humanitarian Law shall be applied in all situations of war and armed conflicts to safeguard the rights of all persons protected by its rules, including but not limited to non-combatants, older persons, the infirm, persons with disabilities, women, children, civilians, journalists, humanitarian workers and prisoners of war. b) During situations of war and armed conflicts, it is prohibited to desecrate holy places and places of worship, damage natural resources and environment and cultural heritage. ARTICLE 25: General Provisions a. Everyone has the right to exercise and enjoy the rights and freedoms set out in the present declaration, without prejudice to the principles of Islam and national legislation. b. Nothing in this declaration may be interpreted in such a way as to undermine the rights and freedoms safeguarded by the national legislation or the obligations of the Member States under international and regional human rights treaties as well as their sovereignty and territorial integrity” (CD 2020, art. 24, art. 25).

4) New approaches: locality and reform

My suggestion is that the discourse on HD should be treated locally. A universalistic perspective, as already stated, cannot be granted by mere religion (because the sources are ambiguous) or by mere international legislation whose impact and acceptance from the regional communities is unclear.

Aware of this, An-Na'im proposes an anthropological approach to Islam, stating that it is fundamental to inquiry Islamic sources that demonstrate agreement with human rights norms on its own terms (*An-Na'im*, 2000, p. 98). As he puts it:

The point I wish to emphasize here is the need for a variety of strategies to enhance the influence of human rights standards in both the domestic and the global context of each society. In relation to the role of religion in particular, it is imperative to engage in an internal discourse within the framework of the religious community in question, in order to overcome objections to human rights norms. [...] The way out of the vicious cycle of the "universality-relativity debate" is to go deeper into the local context of each issue in order to find sustainable points of mediation. As with other public policy issues, the legitimacy and efficacy of the protection of human rights must be promoted through deliberate strategies that combine a visionary belief in the possibilities of social and political change with a realistic appreciation of the difficulties. (*An-Na'im*, 2000, p. 101)

To engage in the debate and cooperate with a variety of regional contests, we need, then, a notion of human dignity which is sufficiently determined and enough flexible to work in different contexts. I believe that Kant's one – to treat everyone as capable and authorised to set ends for herself – can be used this way. I am not saying that one should impose above new concepts and new practices in a so-to-say colonialist way. Rather, we must take seriously the differences in our social lives and see if and how understanding and collaboration are possible. For this, philosophical work (but not only) is needed to improve our reciprocal understanding. Human rights or the defence of HD, namely, cannot be accepted by religious communities unless it is shown that it is consistent or at least compatible with the faith.

This is the approach followed by many reformers of the so-called Arab Awakening.

As Al Jabri, a scholar and politician from Marocco, states:

Since the modern Arab Awakening, which soon swept across the entire Muslim world, with the efforts of Jamal al-Din al-Afghani (d. 1897 CE) and Muhammad 'Abduh (d. 1905 CE), the Muslim masses have used the slogan of 'application of Islamic shariah' to propound to the masses, the alternative which they hoped would take them to the enjoyment of a free and honourable life. Every member of the Muslim masses, all over the world, aspires to the day when Islamic shariah will be applied in a manner that can remove political and social injustice, realize freedom and dignity for the human being [...] The Muslim ummah, and many Muslim intellectuals, have consciously realized that the ideal Islamic life cannot be achieved except under exceptional situations, and probably not before the end of human life on earth [...] the realization of the Islamic Utopia, will remain relative in worldly time [...] I believe this is the idea which guided the people of authority in Islam, since the time of the Prophet, whether they were caliphs, kings, jurists or any other personage who had a say in the application of alshariah. I am also of the opinion that they all believed that applying the divine shariah by humans over humans, who are inherently imperfect, cannot be done except in a relative manner. (*Al-Jabri*, 2009, p. 94)

Another example was the Sudanese scholar and reformer Ustadh Mahmoud Mohmed Taha (who later inspired Na'im), who did not propose to undermine the divine nature of the Qur'an but suggested that:

the verses emphasizing freedom of choice and individual responsibility for such choice before God should be the bases of modern Islamic law. To do that, Muslims

need to abrogate the verses of compulsion and discrimination against non-Muslims, in the sense of denying them legal efficacy in modern Islamic law. Such verses shall remain part of the holy Qur'an for all purposes except the purpose of legally binding rules. (*An-Na'im*, 1986, p. 59)

Taha, who was executed for apostasy, developed what he called the “Second Message of Allah”, according to which the verses revealed in Medina were appropriate in their time only while the verses revealed in Mecca represented the ideal religion.

A similar approach is shared by and the Neo-Mutazilite Soroush, who calls for a revival of philosophical and theological dialogue and considered that religion should be recognised as pluralist, reasoned religion. As he puts it:

By lighting the flame of reason, theologians rescue believers from the chilling aridity of mindless dogmas and contribute to the warmth of wisdom. Theological religion is a hundred times better and sweeter than common, emulative religiosity, and it nurtures within it a plurality of which there is neither sight nor sound in the parched desert of common religiosity. This is a plurality that is built on doubt, not certitude, and it is a pluralism that is negative, not positive. (*Soroush*, 2009, p. 150)

Besides, the Iranian Shiite scholar Kadivar, who wants to resize the boundaries between religion and jurisprudence to modernise Islam, takes a similar direction: he believes that human rights can be defended by a believing Muslim. The method of Kadivar consists in resizing the boundaries between religion and jurisprudence. More specifically, facing the question concerning modernity and Islam¹³, he states that Islamic jurisprudence must be reformed because as it is, it is in conflict with modernity - an essential part of which is human rights: the fatwas and the legal distinctions between Muslims and non-Muslims, man and women, slaves and free persons are not compatible with modern human rights. Therefore, he proposes to reform jurisprudence - as part of a larger proposal of exegesis of Islam - involving a reading of the verses of the Mekkan period as more central than those of the Medinan, i.e. to stress the “meaning and the spirit of the religion” [*ma'nā wa rüh-i dīn*], the “purpose of the Prophetic mission” [*hadaf-i ba that-i piy āmbar*], the “exalted objectives of shari'a” and, above all, the “exalted goals of the religion” [*ghāyāt-i muta'āli-yi dīn*]¹⁴. Kadivar named his exegesis “spiritual and goal-oriented Islam” and characterised it as a “new-thinker” (or an intellectual) narrative of Islam (*Matsunaga*, 2011, p. 371). Reason must exercise critique [*aql-i naqqād*]: it should look for the limits of validity and justifications of the claims. Religion, from this perspective, can answer only very specific needs, not all human needs: there are namely rights of human beings, independent from religion, as “subjects belonging to the reasonable people and prior to religion” [*umuri uqala i wa ma qabla dini*] (*Kadivar*, 2008, p. 10). According to this new approach one should distinguish the timeless divine religious message and the customs of the time in which this message arrived. The method of this new jurisprudence, the: “*ijtihād* in bases and principles” [*ijtihād dar mabāni wa usui*] has the task of “extracting once again the sacred message and push aside the sediment of [the revelation-era] customs” (*Kadivar*, 2008, p. 134, 137)¹⁵.

On the question concerning how this distinction between the “sacred message” and the “sediment” can be done, Kadivar answered that the precepts in the shari'a have to be divided

13 “The discerning religionists (*dīn-dārān-i basir*) realized that they could not be cut off from modernity; nor could they abandon [their] tradition and religion. [Then the question became:] how could they live in the modern world in the age of modernity while preserving the Muslim tradition?” (*Kadivar*, Haqq al-Nāsy, p. 17). Kadivar calls this orientation “the third thinking” [*andīshih-yi suwvurī*]. See *Kadivar*, Haqq al-Nās, p. 9.

14 *Kadivar* (2008, p. 16, 31, 33, 138f., 146).

15 On the Question concerning how this distinction can be done, Kadivar answers that the precepts in the sharia have to be divided into precepts whose Harms or Benefits are fixed (e.g.: Fairness) and those that regard actions whose value depends on circumstances. In this second category, most of the precepts concerning interpersonal Relations belong and it is Only at this Level that conflict between *shari'a* precepts and human Rights might occur. To decide if the precept of the second type is applicable or not, one must consider if it is in accordance with: being reasonable [*uqalā'i būdan*], being just [*ādilānih būdan*], and being better than alternative solutions offered by other religions [*hartar az rāh-hall-hā-yi digar-i adyān wa makātib būdari*] (cf. *Matsunaga*, 2011, p. 373-5).

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The three conditions, being reasonable, being just and being better than the alternative solutions offered by other religions, are not [exclusive to] the conditions of the arrival [of the divine revelation]. Rather, in any age, non-devotional precepts of sharia must conform to the custom of the reasonable people [*urfi 'uqalā*] of that age according to the three criteria above. The definite conflict [*mukhālafat-i yaqīnī*] of a precept with the manner of the reasonable people [*sīrah-yi uqalā*] of our age, the incompatibility with the yardsticks of justice in our age, or being surpassed by the solutions of the modern age is an indicator [*kāshif*] of the temporary and non-eternal and, in a sense, abrogated nature [*mansūkh shudan*] of that precept. (Kadivar, 2008, p. 145)

My suggestion is that these approaches should be taken together, combining Kadivar's new jurisprudence with An'naim local approach, checking in each and every case concerning the precepts for the second type if they are reasonable, just and if they are the best option available.

This approach is compatible with Kant's three maxims of the common human understanding:

The first is the maxim of a reason that is never passive. The tendency toward the latter, hence toward heteronomy of reason, is called prejudice; and the greatest prejudice of all is that of representing reason as if it were not subject to the rules of nature on which the understanding grounds it by means of its own essential law: i.e., superstition. Liberation from superstition is called enlightenment, since, although this designation is also applied to liberation from prejudices in general, it is superstition above all (in *sensu eminenti*) that deserves to be called prejudice, since the blindness to which superstition leads, which indeed it even demands as an obligation, is what makes most evident the need to be led by others, hence the condition of a passive reason. (KU, AA 05: 294)

This maxim remarks not only that we are and have to be autonomous, i.e. can determine our will independently from empirical motives, but also that our process of judging cannot but start from our individual position. The second maxim addresses the capacity to think from the standpoint of everyone else:

As far as the second maxim of the way of thinking is concerned, we are accustomed to calling someone limited (narrow-minded, in contrast to broad-minded) whose talents do not suffice for any great employment (especially if it is intensive). But the issue here is not the faculty of cognition, but the way of thinking needed to make a purposive use of it, which, however small the scope and degree of a person's natural endowment may be, nevertheless reveals a man of a broad-minded way of thinking if he sets himself apart from the subjective private conditions of the judgment, within which so many others are as if bracketed and reflects on his own judgment from a universal standpoint (which he can only determine by putting himself into the standpoint of others). (KU, AA 05: 295)

Through such a maxim "of enlarged thought" (KU, AA 05: 294), we can reflect on our own judgements by shifting from a private position to the standpoint of others (KU, AA 05: 295): this kind of reasoning, does not depend on a first instance on external conditions but is the result of an autonomous process delivered by (and possible for) the individual. Finally, the third maxim regards consistency:

The third maxim, namely that of the consistent way of thinking, is the most difficult to achieve, and can only be achieved through the combination of the first two and

after the frequent observance of them has made them automatic. One can say that the first of these maxims is that maxim of the understanding, the second that of the power of judgment, and the third that of reason. (KU, AA 05: 295)

This maxim is more difficult to achieve than it might appear because each change in the standpoint brings with it the possibility of new inconsistencies.

Now, a perfect application of the maxims should be regarded as a possible – although never-ending – task, through which we can increase our well-being, our communal life and reciprocal understanding.

There is a perhaps unavoidable inherent conflict characterising each community, i.e. a conflict between subjective needs, desires and representation of what is the content of a good life. Laws and practices should be carefully inquired about to find out if and how they are related to that subjective, conflictive level. This requires a lot of work to be done on several levels, one of these levels concerns precisely the grounds for the justification of the laws: if the justification is objective, i.e. it defends a sharable interest (as inclusive as possible of all the individuals of a society) or merely subjective, i.e. if it expressed the interest of a group of individuals.

Believers, atheists and agnostics, might have different subjective reasons to justify their moral claims: it is then highly important to stress the role of pluralism, without opposing it to a defence of HD and universal human rights. As Lindholm puts it, dialogue among representatives of different groups should be encouraged to find out which rights are well founded in a defensible way in each of the normative traditions, including their own:

the plural justification of the human rights system will be fully given at the moment when, in a reasonable way, competent and authoritative members of each of the groups of the competing normative traditions maintain that universally applicable human rights are well supported by the various normative traditions (Lindholm, 2007, p. 131, my transl.).

Once admitted a distinction between several levels of justification (belonging to one or more groups of a society; more or less generally sharable) it can be possible to dialogue and identify shared or sharable contents of those claims, i.e. human dignity – intended – in a Kantian sense as the human peculiar capacity to set ends or having moral and political authority (Forst, 2017). This definition of human dignity can be welcomed by those Islamic scholars who interpret the Israa 70 (among others) as ascribing to everyone reason intended not only as a capacity of understanding but also as moral power to make a decision – “man as rational being, however, always has a choice, on which his dignity rests” (Maroth, 2014, p. 157) – and “shape his own life with making laws that structure human life” (Babookani, Heydari, Abdaresfahani, 2020, p. 886). “Dignity”, namely: “involves human beings’ perception of one another as entities that deserve respect and honor, and special care and attention for others, in their capacity, as indicated by Immanuel Kant, as ends in themselves” (Azzi, 2017).

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