

How Just Is Islamic Justice?

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If it were not for injustice, men would not know justice.

Heraclitus (540 BCE)

1. INTRODUCTION

Islam is a monotheistic religion and its followers believe that the oneness of God is manifested in the totality of His creation. They also believe that God's creation is harmonious. The "balance" is an important symbol in Islam since life is created in balance: good and evil, pleasure and pain, and any other opposing entities are parts of life; however, they are created in balance to form a harmonious equilibrium.

Muslims, like all Abrahamic traditions, believe that God is just and His creation represents justice. As a result, injustice is manmade and disrupts the harmony and balance that God has created. Therefore, there are rules and laws to regulate and govern the totality of Muslims' lives to reward those that interact with each other in justice and punish those that are unjust in their relationships with others.

Historically, there have been opposing views regarding predestination and "free will" in Islam. However, individual freedom is quite limited in Islam. For example, there is no freedom to exit Islam for Muslims. Therefore, for Muslims, life is totally planned by God (Muslims use of the expression "God's will" implies the limitation of "free will"). Therefore, what seems to be chance and coincidence are parts of the grand plan that cannot be totally understood by man. As a result, Muslims live in equanimity and resigned to their fate that is God's will.

As far as justice is concerned, one observes a circular pattern (circular reasoning is a logical fallacy in which the conclusion of the argument is among its premises) in Islam that repeats itself. God is just and his creation represents justice. As a result, natural inequalities are just since God is just.

Islam is a law-based religion and Islamic law regulates Muslims' lives. Islamic law exists to preserve justice and equilibrium in the society. Muslims are instructed to deal with each other in just form and manners. Any deviation from this equilibrium will cause injuries. Islamic law prescribes remedies for these injuries to reestablish God's justice and equilibrium.

The notion of justice and human rights has been the focus of philosophers for a long time. Since the time of the Enlightenment, reason rather than faith has been the focus of philosophical enquiries. Muslims are resigned to God's will and total submission to God's will brings them rewards after life. However, modern theories of justice require compensation for natural and manmade misfortunes instead of leaving them to God and wait for

recompense after life. In light of these developments, this article intends to review Islamic concept of justice and evaluate it using reason and the modern social and philosophical tools and models. It is often useful to subject an established belief system to opposing ideas to understand it better. As a result, this article will focus on the rules of logic and reason to evaluate the concept of justice in Islam.

2. ISLAMIC CONCEPT OF JUSTICE

Islam is a way of life with an established legal system that is based on the Qur'an and the Prophet Mohammad's tradition (Sunnah). It is important to note that God has ninety-nine names that are described in the Qur'an and the Sunnah. "Al-Adl" which means "just" is one of them. Here are a couple of verses from the Qur'an that codify justice for mankind.

"Allah enjoins justice, kindness and charity to one's kindred, and forbids indecency, wickedness and oppression. He admonishes you so that you may take heed." (Qur'an, 16:90)

"He raised the heaven on high and set the balance of all things, that you might not transgress it. Give just weight and full measure." (Qur'an, 55:7-9)

So, justice and balance are ordered and injustice, transgression, and indecency are forbidden in Islam.

It is also important to notice that although equality has a central place in Islamic teachings, equality is not the aim of Islamic justice, since God has created mankind in justice and not equal to each other. Men are not equal to women; free men and women are not equal to slaves, etc.

"Men have authority over women because Allah has made the one superior to the others, and because they spend their wealth to maintain them. Good women are obedient. They guard their unseen parts because Allah has guarded them. As for those from whom you fear disobedience, admonish them and send them to beds apart and beat them. Then if they obey you, take no further action against them. Allah is high, supreme." (Qur'an, 4:34)

"Let those who cannot afford to marry live in continence until Allah enriches them. As for those of your slaves who wish to buy their liberty, free them if you find in them any promise and bestow on them a part of the riches which Allah has given you." (Qur'an, 24:33)

God's creation is in balance (equilibrium) and not totally equal. God has created men to have authority over women; free men and women have authority over slaves, etc. This is God's creation and must be just by faith. Therefore, it seems that justice can sometimes be achieved through inequality. So, justice in Islam is focused on equal treatment (within each class) of unequal individuals.

"Women shall with justice have rights similar to those exercised against them, although men have a status above women. Allah is mighty and wise." (Qur'an, 2:228)

There are many examples of social transactions in the Qur'an where justice is prescribed:

"Believers, fulfill your duties to Allah and bear true witness. Do not allow your hatred for other men to turn you away from justice. Deal justly; justice is nearer to true piety. Have fear of Allah; he is cognizant of all your actions." (Qur'an, 5:8)

"Do not tamper with the property of orphans, but strive to improve their lot until they reach maturity. Give just weight and full measure; We never charge a soul with more than it can bear. Speak for justice, even if it affects your own kinsman. Be true to the covenant of Allah. Thus Allah exhorts you, so that you may take heed." (Qur'an, 6:152)

The concept of justice in Islam has to do with social and business transactions among individuals. Different groups of individuals must be treated in justice specific to that group. In fact, this is similar to the doctrine of "separate but equal" confirmed in the *Plessy v. Ferguson* decision by the U.S. Supreme Court in 1896 [1]. Despite this similarity Muslims are reluctant to subject Islamic doctrines to exogenous models. For that reason, it is very difficult to evaluate Islamic justice using Western models and criteria. Nonetheless, the rest of this article tries to do exactly that.

3. JUSTICE WITHIN, INJUSTICE WITHOUT

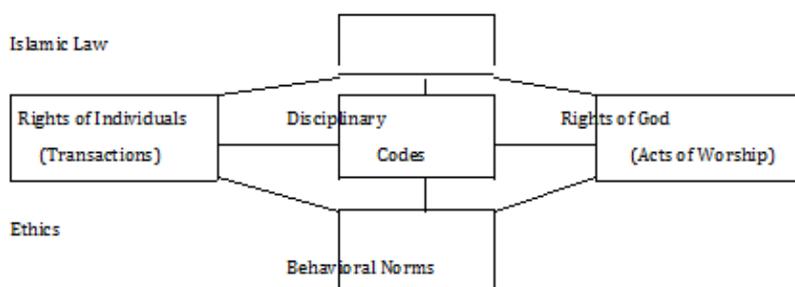
“People’s democratic dictatorship” is a concept that was incorporated in the Chinese Constitution by Mao Zedong. The phrase indicates that the Chinese government represents the people of China and hence it is democratic. However, the government will use dictatorship against reactionary forces. Similarly, Islamic justice creates a just society for the believers. However, the matter is different if you are a member of a minority or simply a non-believer. To discuss this matter further, we need to briefly review the concept of Islamic law.

As mentioned, Islam is a way of life. Islam is a non-hierarchical religion without an official church and clergies. However, Islam clearly intended to create a transnational community of Muslims (ummah) out of individual Muslims.

“We have made you a just nation, so that you may testify
against mankind and that your own apostle may testify
against you.” (Qur’an, 2:143)

Muslims are supposed to create a just society. The creation of a just society requires active participation by all Muslims in political, social, and economic issues of their community. Therefore, Islam promotes social engagement and requires Muslims to live in a certain way prescribed by the religion. Shariah is the Arabic term for Islamic law and it means “the path.” Hence, Islamic law (shariah) delineates the path and sets the behavioral norms for individual Muslims and classifies their responsibilities towards God and other members of the ummah (community) for the creation of a just society. As a result, Islamic law and its implementation are necessary conditions for the creation of a just Islamic society. In a sense, Islamic law was necessary to replicate the establishment of an ideal society that Prophet Muhammad had created in Medina – an undeniable historical period of social progress and increased justice under his leadership.

The following figure shows the sphere of Islamic law [2].



Islamic law deals with the rights of God and the rights of the individual. It also deals with the duties and responsibilities of individuals to God and to each other. Finally, it prescribes a code of ethics and behavioral norms for Muslims. Islamic law also covers a set of sanctions and punishments for individuals who violate the norms or shirk their duties.

Islamic jurists have used four sources to compile Islamic law: the Qur’an, Prophet’s tradition, qiyas (reasoning by analogy), and ijma (consensus of the community). In practice, local customs (urf) have also influenced Islamic law in different societies. This integration might be necessary to reflect specific ways that people do perform their social function in different social settings.

A. The Qur’an

Muslims believe that the Qur’an is the word of God.

“It was We that revealed the Koran, and shall Ourselves preserve it.” (Qur’an, 15:90)

The Qur’an delineates the standards of human conduct and contains relatively few (about 80 verses) legal codes. Most of the legal sanctions commanded in the Qur’an existed among the tribes of Arabia prior to Islam. The Qur’an reaffirmed them and gave them legitimacy. However, since the Qur’an is the direct word of God and reflects God’s

will, and God protects the Qur'an from any errors, Muslim scholars have used it as the first and primary source of the Islamic law.

A major theological issue regarding the Qur'an is the immutability of God's word and God's will. A related issue is whether the Qur'an was created and gradually revealed to Prophet Muhammad or the Qur'an has always existed and hence it is eternal.

“Surely this is a glorious Koran, inscribed on a preserved tablet.”

(Qur'an, 85:21-22)

This is a major area of disagreement between the Sunnis (majority of Muslims) and the Shiites (minority of Muslims). Most of Sunni Muslims believe in the doctrine of eternal Qur'an while the Shiites believe that the Qur'an is created to address the needs of the Muslim community and delivered by Prophet Muhammad. The assertion that the Qur'an is eternal limits the degree to which reason can be applied to Qur'anic interpretation, the doctrine of eternal Qur'an specifically and explicitly disallows for the contextualization of the Qur'an as regards its historical and cultural origins, especially as it pertains to limiting the authority of the Qur'an on certain topics such as slavery as the product of the time and not actually specific eternal teachings of Islamic tradition.

B. Prophet's tradition

Prophet Muhammad acted as a political leader, a judge and a jurist in Medina and interpreted the Qur'an for legal cases. The Prophet's tradition consists of reported oral statements of Prophet Muhammad (hadith) and reported deeds and practices of the Prophet (sunnah) as a religious leader and a jurist. The Prophet's tradition became a legal precedent and the secondary source of Islamic law.

C. Qiyas

Muslim scholars considered qiyas (reasoning by deduction for Shi'ite Muslims and reasoning by analogy for Sunni Muslims) the third important source of Islamic law. Therefore, the rules of reason had an important role in the development of Islamic law. Qiyas is, after all, analogous with constitutional reasoning among lawyers and judges in the American legal system. As a matter of fact, since Islam is a non-hierarchical religion without an official church, individual Muslims who were knowledgeable in religious matters (mujtahid) could have used independent reasoning (ijtihad) when it was needed to modify or change the law gradually. However, Sunni scholars used the completion of Islamic law as an excuse to declare the closure of the gates of ijtihad (independent reasoning) and required the application of the Islamic law from then on.

Some authors argue that the closure of the gates of ijtihad is a myth rather than reality. Nevertheless, one can argue that the closure of the gates of ijtihad is a matter of degree. For instance, the Muslim puritan movement founded by Muhammad ibn Abd al-Wahhab in the eighteenth century that was adopted by the Saudis in 1744 emphasizes literal belief in the Qur'an and the Tradition of the Prophet as the only acceptable sources of Islamic law and condemns all innovations. So, for Wahabi Muslims and its offshoots the gate of ijtihad is clearly closed. Therefore, the Sunni world, through this self-imposed closure, required Muslims to imitate and emulate past-established tradition (taqlid) after the completion of Islamic law. This hostility to independent reasoning had no historical precedent and was a political decision that was not derived from the Qur'an or the prophet's tradition. However, the closing off of ijtihad had many consequences including the reinforcement of the idea of inseparability of “church” and state in Islam that proved to be problematic for future generations of Muslims.

Concordance between reason and religion has been a ubiquitous problem in every religion. Thomas Aquinas (1225-1274) is credited for reconciling Christianity and rationality that influenced political philosophers and theologians who were responsible for the Reformation of the church and promotion of understanding and reasoning in the matters of religion and state.

Islam also followed the same path in its early years. Muslim scholars translated the Greek masterpieces into Arabic and gave birth to Islamic philosophy. Different schools of philosophy like the Mutazilites (9th century) and the Asharites (10th century) integrated the rules of reason into the development of Islamic theology. However, the Persian Sunni theologian Ghazali in his *Incoherence of the Philosophers* argued against the rules of reason in

understanding transcendental truth and substantially dampened this trend [3]. Historically speaking, Ghazali was fundamentally referring to matters of metaphysics, not legal or ethical reasoning, while the closure of the gate of ijihad stopped the application of the rules of reason in all matters of religion and state.

Additionally, the combination of the doctrine of eternal Qur'an and the closing of the gate of ijihad is quite problematic for the application of reason in Islamic law. For example, if we were to assert the eternity of the Qur'an, but left alive ijihad, then through ijihad we could reinterpret the nature of what it means for the Qur'an to be eternal. Or, if ijihad were closed off, but the Qur'an were not understood to be eternal in the normal sense, then it would not be an extreme idea (within the constraints of Islamic reasoning, for example, in qiyas) to recognize that certain Qur'anic statements need to be limited to the scope of 7th century Mecca and Medina. But the two in combination put a stranglehold on interpretation that leads to extremely rigid, conservative, and oppressive doctrines.

D. Ijma (consensus of the community)

According to a prophetic hadith, a Muslim community will not agree on error.

“My ummah will never agree upon an error.” [4]

Therefore, the final source of Islamic law is Ijma. Gradually, the consensus of the entire community was replaced by the consensus of the community of jurists or religious scholars.

Islamic laws were perhaps quite advanced when they were originally developed. However, the closing of the gate of ijihad (rational and analytical approach to interpreting religious matters) and the doctrine of eternal Qur'an have frozen Islamic laws in their original forms and have prevented much needed reformation in Islam. The Enlightenment thinkers of Europe and America established a firm demarcation between the church and state, which resulted in a division between religious morality and secular issues. The closure of the gate of ijihad (rational and analytical approach to interpreting religious matters) has prevented much needed reformation in Islam. As we have seen, women are at best second-class citizens in Muslim countries. Islam has not prohibited slavery outright. Islam provides legal protection for a few religious minorities that are considered to belong to the “People of the Book,” but not for other minorities. Islamic forms of punishment such as cutting the hands of thieves, or stoning adulterous women are clearly not acceptable according to modern norms and values.

4. ISLAMIC JUSTICE UNDER A MAGNIFYING GLASS

Justice is a central issue for all societies. Justice by nature must deal with social issues such as gender equality and the equality of rights under the law. Therefore, a just society must provide social justice for the people under its protection. Justice is also concerned about economic issues or economic justice (distributive justice.) A just society must provide answers and solutions to issues such as distribution of wealth, rights, and duties. The fairness of the political, economic, and social institutions is also of utmost importance in modern societies. Therefore, the theories of justice are the products of philosophy, economics, and politics.

As was mentioned, the argument regarding Islamic justice depends on an act of faith. The issue before us is the standards that one should use to judge the fairness of Islamic justice. Cultural and moral relativism claim that right and wrong are relative to particular people, regions, and cultures. If one stays within the cultural norms of Islam and Islamic countries, then Islamic justice is perfectly fine. On the other hand, Universalists believe that concepts such as human rights and justice are universal and should be independent from cultural norms. The United Nations adopted the Universal Declaration of Human Rights in 1948 and yet many argue that the adopted principles are specific only to Western history and culture. Without getting entangled in the debate between cultural and moral relativism versus universalism, this article allows reason to play its part in evaluation of Islamic justice. To that end, this article uses a few exogenous models of justice to judge the fairness of Islamic justice.

A. Utilitarianism: The Greatest Happiness Principle

Jeremy Bentham (1748-1832) is the founding father of Utilitarianism. The opening to Chapter 1 of his *Principles of Morals and Legislation* describes utilitarianism.

Nature has placed mankind under the governance of two sovereign masters, *pain* and *pleasure*. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think: every effort we can make to throw off our subjection, will serve but to demonstrate and confirm it. In words a man may pretend to abjure their empire: but in reality he will remain subject to it all the while. The *principle of utility* recognises this subjection, and assume it for the foundation of that system, the object of which is to rear the fabric of felicity by the hands of reason and of law. Systems which attempt to question it, deal in sounds instead of senses, in caprice instead of reason, in darkness instead of light [5].

Bentham believed that his utility (welfare) model is a comprehensive model that can be used by individuals to maximize their utilities (happiness or welfare) as well as the society to maximize the greatest good for the greatest number. His model can be classified as a consequentialist doctrine. Bentham is interested in the results (end) and not the action. So, one can see a potential face-off with morality and moral rules here. For example, Cuba established a utilitarian policy and decided to put the AIDS victims in quarantine to prevent the spread of the disease to the rest of the society. The end result is desirable and therefore the action is justified.

Bentham was also obsessed with the concept of efficiency- getting the most utility out of available resources to a society. In a sense, he was interested in maximizing the wealth of a society and only indirectly was interested in redistribution of wealth by recognizing the law of diminishing marginal utility. According to this law, every additional dollar generates less utility for a person. Therefore, redistribution of wealth is theoretically justified; however, Bentham did not believe in unequal distribution of wealth for practical reasons. So, utilitarians, in general, are interested in maximizing the size of the pie for the society regardless of its distribution among the members of the society.

John Stuart Mill (1806-1873) is another important utilitarian philosopher. His remarks in *Utilitarianism* make the matter quite clear.

On the present occasion, I shall, without further discussion of the other theories, attempt to contribute something towards the understanding and appreciation of the Utilitarian or Happiness theory and towards such proof as it is susceptible of [6].

He has a lot in common with Bentham. However, he has a much broader concept of happiness that goes beyond material goods and includes happiness of other individuals. He also made Utilitarianism more presentable by synthesizing rights and utility via his *harm principle*.

The object of this Essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used by physical force in the form of legal penalties, or the moral coercion of public opinion. The principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others [7].

From this passage, one can see that Mill is much more moderate than Bentham. The *harm principle* states that the only action that can be prevented is the one that causes harm to others. So, if one harms himself/herself using drugs, tobacco, or alcohol, then the society cannot prevent such actions. Furthermore, note the adjective "civilized" in this passage. So, one can assume, the *harm principle* is not applicable in "uncivilized" societies. For example, he believed in *benevolent despotism*

for the colonial world and had racist views of India.

Despotism is a legitimate mode of government in dealing with barbarians, provided the end be their improvement [8].

It appears that even Mill's version of Utilitarianism leaves much to be desired. In general, the pursuit of utilitarian morality (maximizing happiness) results in grave injustice.

B. Islamic Justice and Utilitarianism

Bentham considered Utilitarianism as a scientific and amoral doctrine. As such, Utilitarianism was outside the realm of religion. Utilitarianism is also a consequentialist doctrine. What matters in this case is the result that increases total happiness of an individual or the society as a whole. Utilitarianism and other Enlightenment theories emerged in large measure because of the desire among Enlightenment philosophers to escape from the ways in which theology had imprisoned reason. So, they attempted to determine modes of ethical and moral reasoning that could be based on reason and observable evidence alone, and not on revelation. This has important implications for understanding the possible effects of *ijtihad* within Islam, and how Western philosophy can make a contribution within Islam. Therefore, the arguments from the West have their own merit regardless of revelation, and can provide guidance on how to interpret scripture.

As mentioned, Mill presented a more appealing version of utilitarianism. He also directly addressed the issues of justice and utility in chapter 5 of his book, *Utilitarianism*.

In most, if not all, languages, the etymology of the word which corresponds to Just, points directly to an origin connected with the ordinances of law [9].

According to Mill, conformity to law constitutes the *primitive element* of justice. He and many later philosophers also argued the term “justice” is at best ambiguous- justice, like beauty, is in the eye of beholder.

Finally, he argued that the core of justice requires rules of conduct and legal sanctions to punish those who violate the rules. To him, Utilitarianism is compatible with these core principles.

This version of Utilitarianism’s justice has noticeable similarities with the Islamic concept of justice. It is clear, by now, that utilitarianism belongs to teleological models by insisting on the importance of the results that actions must promote. Whether one can classify Islamic jurisprudence as a teleological model or not, it is impossible to ignore the fact that Islamic rules are meant to create a desirable end. The means are often sanctioned by the Qur’an or the tradition of the prophet and hence are justified intrinsically and are not subject to question. Therefore, compliance with the means will guarantee the desirable ends.

Furthermore, if one assumes that majority of people living in an Islamic society are faithful Muslims, then one can argue that the greatest good for the greatest number is achieved by total submission to God’s will.

Finally, similar to Utilitarianism, the greatest good of the greatest number is achieved at a cost to minorities and non-believers. The harsh Islamic disciplines for apostasy, adultery, and homosexual practices are not issues for faithful Muslims since they are sinners and these means are sanctioned by the religion to create a desirable outcome and they are undoubtedly unjust consequences of the greatest good for the greatest number.

C. Liberal Theories of Justice

The liberal theories of justice are rooted in Kantian tradition. Like the utilitarians, Kant is trying to establish arguments without reference to metaphysical faith claims and revealed truths. Kant and his followers belong to deontological moral philosophy. Deontological morality is a rule-based tradition that binds an individual to his/her duty or obligation based on reason and evidence alone. As such, these theories are in contrast with teleological models of morality that focus on end results. Deontological theorists are generally interested in developing standards that are universal in application and compatible with human dignity and rights.

Kant believed that a universal formula could be developed using practical reason that helps us to establish the framework for discussing matters of ethics and morality in a rational mode. Kant had a certain humanistic bias; he saw moral systems as governing all people equally, unlike the ethics of, for example, the ancient Israelites, who saw their moral obligations differently as regards how they treated other Israelites or foreign people. Double standards were perfectly allowable for them, such that Israelites treated each other with a higher standard than the ways that they treated foreigners. But Kant’s humanism abandoned this approach and established the basic rules of fairness. To him, no system, which is unfair, can be moral or just. His first and second formulations of the categorical imperative (unconditional universal command of morality) is a good example of this approach:

Act only on that maxim whereby you can at the same time will that it should become a universal law [10].

Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end [11].

According to the first formulation, everyone, regardless of time and place, is required to act the same way. What's good for the goose, is good for the gander. Or, as the Bible would say, "Do unto others as you would have them do unto you." This principle is indispensable for moral reasoning in general, and it renders slavery or sexism inherently immoral. For what rational person would say, "I'll beat my slaves, and if the tables were turned I'd want him to beat me."

This rational point can be made as well within Islam because it applies to all moral systems. Furthermore, no Muslim would ever need to object to it, that is as long as Islamic discussion is not held in the grips of "the eternal Qur'an" and the absence of *ijtihad*. It is not difficult to argue

that even though the Qur'an may allow in some general sense that slavery was an acceptable institution during Prophet Muhammad's time, the principles that undergird the Qur'an should move in the direction of eradicating slavery, because slavery violates fundamental Qur'anic principles, as well as fundamental and universal moral principles.

5. JOHN RAWLS: JUSTICE AS FAIRNESS

Rawls's seminal book, *A Theory of Justice*, has been a game changer since its publication in the 1970s. As a liberal political philosopher, he defined society as a fair system of cooperation among free and equal citizens [12]. This fair system of cooperation is the result of an agreement or a social contract among citizens in an imaginary (not historical) original position.

What, then, are the terms and conditions for this social contract? In order to guarantee the fairness of the results, the citizens must agree on the principles of justice under a veil of ignorance. In order to be fair, no one should know anything about his/her arbitrary genetic or social position in the society. In a sense, everyone has an equal chance to be rich or poor, smart or not, beautiful or not, etc. Under these conditions we can agree on a set of principles to create a fair society.

Consequently, Rawls suggests two principles of justice – equality of liberty and equality of opportunity [13].

- a. Equality of liberty: "Each person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all." [14]

These liberties are the ones that constitutional laws usually guarantee them- the right to vote, freedom of speech, freedom of thought, freedom of religion, etc. These types of liberties will enable individuals to compete for social and political amenities on a fair basis.

- b. Equal Opportunity: "Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle)."[15]

The second principle has two parts. In the first part, the society must provide equal and meaningful opportunities to all. The term "meaningful" is quite important here. An ordinary person cannot compete against a professional runner meaningfully. To make such competition fair, the society should perhaps give the first person some advantages in times and/or distance.

As to the second part of this principle, one should ask himself/herself what if he/she is the loser in the lottery of birth. What principle of justice should be adopted to provide remedy for this misfortune? The answer is the difference principle. Social and economic policies should be rearranged to benefit the least advantaged member of the society.

6. ISLAMIC JUSTICE UNDER RAWLSIAN SCHEME

The Rawlsian model of justice is a human construction as opposed to Islamic justice that is the result of divine construction. This article attempts to evaluate the purposeful Islamic justice using the Rawlsian concept of justice.

a. Accident of birth is undeserved

As mentioned, one has no control over his/her birth. One may be born in a rich family, another in a poor family. One may be born as a girl and one may be born as a boy. A just society must remedy the misfortunes that have befallen on individuals as a result of birth.

- Gender Issues in Islam

The Qur'an clearly positions women as an inferior gender.

"Men have authority over women because Allah has made the one superior to the others, and because they spend their wealth to maintain them. Good women are obedient. They guard their unseen parts because Allah has guarded them. As for those from whom you fear disobedience, admonish them and send them to beds apart and beat them. Then if they obey you, take no further action against them. Allah is high, supreme." (Qur'an, 4:34)

"...Call in two male witnesses from among you, but if two men cannot be found, then one man and two women whom you judge fit to act as witnesses..." (Qur'an2: 282)

One can list many other inequalities between men and women in Islam and Islamic societies. These inequalities clearly are against the first principle of Rawlsian justice. Islam treats half of the humanity as second-class citizens and subjects them to arbitrary will of men. Muslim women are supposed to be devoted and submissive. Their role is to please men.

- Polygamy in Islam

Islam did not invent polygamy but it affirmed it and regulated it.

"...you may marry other women who seem good to you: two, three, or four of them. But if you fear that you cannot maintain equality among them, marry one only or any slave girls you may own." (Qur'an 4:3)

This verse clearly indicates that one may take multiple wives only when they can be treated fairly. In practice, equal treatment is almost impossible. Therefore, the institution of polygamy tends to violate the Qur'anic principle that regulates it. Furthermore, Polygamy is an inegalitarian and class institution that causes multiple social ills. Polygamy clearly violates both principles of Rawlsian justice- equal liberty and equal opportunity. So, it is unfair and unjust. Furthermore, when rich men marry multiple wives in a society with 50%-50% gender distribution, then there will not be enough women for the lower-class men in the society to marry. As a result, polygamy indirectly promotes prostitution as the only method of sexual gratification. In this case, polygamy will also violate the difference principle.

- Heavenly reward for men

Devoted men are promised the company of virgins in Heaven.

"But for those that fear the majesty of their Lord there are two gardens (which of your Lord's blessings would you deny?) Planted with shady trees. Which of your Lord's blessings would you deny? Each is watered by flowing spring. Which of your Lord's blessings would you deny? Each bears every kind of fruit in pairs. Which of your Lord's blessings would you deny? They shall recline on couches lined with thick brocade, and within their reach will hang the fruits of both gardens. Which of your Lord's blessings would you deny? **They shall dwell with bashful virgins whom neither man nor jinn will have touched before.** Which of your Lord's blessing would you deny?" (Qur'an 55:46-57)

So, there will be brand new virgins ready to join devoted men in Paradise. It should be noticed that these virgins are new virgins who have not been touched before. As a result, they (new virgins) cannot be devoted women in Heaven who join men in their next life. So, what would the devoted women do in Heaven? It seems the unequal treatment of women is also continued in the next life. The Rawlsian "equal opportunity" principle points to the inherent sexism of Islamic culture that is a product of history and time and yet sanctioned by the Qur'an.

- Slavery

Islam is a religion that deals with the totality of life from its inception until the end of the world. Religious rules are normative rules dealing with how institutions ought to be rather than how they are. Similar to polygamy, Islam did not invent slavery but it tolerates slavery as an institution and certainly did not abolish it outright. Islam prohibited many things outright such as adultery, bribery, wine, and usury. Is it possible that Islam does not consider slavery as bad as usury?

The case will become even worse when one considers the case of female slaves.

"It shall be unlawful for you to take more wives or to change your present wives for other women, though their beauty please you, except where slave-girls are concerned."(Qur'an 55:46-57)

"...You shall not force your slave-girls into prostitution in order that you may make money, if they wish to preserve their chastity. If any one compels them, Allah will be forgiving and merciful to them."(Qur'an 24:34)

This is another area of similarity between Islamic justice and Utilitarianism. Islamic tolerance of this exploitative institution is the reason for terrorist organizations such as ISIS to take Yazidi women as sex slaves even at the present time [16]. The so-called "slave" is a human being and no human being should be used as a means towards an end.

- Crime and punishment in Islam

The figure in section III shows that the Islamic disciplinary code deals with acts that are against the rights of God (crime against God) and acts that are against the right of individuals. Disciplinary acts for crimes against God are specified in the Qur'an or in the Hadiths (Prophet's sayings) and hence they are immutable. These crimes include drinking alcohol, theft, sexual intercourse out of the bounds of marriage, apostasy, etc. This is a large topic that deserves expanded discussion. For that reason, this article will focus only on punishment of theft.

"As for the man or woman who is guilty of theft, cut off their hands to punish them for their crimes." (Qur'an 5:38)

This is a categorical discipline regardless of the seriousness of the crime. Justice demands that punishment should fit the crime. Let's assume a person is hungry and steals food. Cutting off someone's hand for such a crime seems to be excessive. An Italian court recently ruled that theft is not a crime if the person is hungry [17].

A thief is also a person who deserves to live his/her life with dignity and should be considered an end in himself/herself. A just society should establish institutions and distribute economic resources in such a way that there will be no need for stealing food or similar crimes. Cutting off a thief's hand is at best a utilitarian solution, which means using a person as a means for a desirable end.

7. JUSTICE: CAPABILITIES APPROACH

What kind of life is worthy of human dignity? Amartya Sen and Martha Nussbaum both employ the idea of human capacities to answer this question.

The economist and philosopher Amartya Sen developed the capability approach - a broad normative approach to well-being, development and justice. The capabilities approach is a move away from pleasure-seeking utilitarianism towards the achievement of well-being, which is a sense of individual vitality.

Sen defined capabilities as freedom "to choose a life one has reason to value" [18]. Therefore, choosing and freedom to choose are important parts of the capabilities approach. To choose freely, one has to have real opportunities. As a result, expansion of opportunities and empowering individuals to choose freely are also important components of this approach to justice.

A just society should remove injustices (sources of capability deprivation) that can be identified, promote individual liberty through democratic institutions, and expand the capability set of alternatives for its members. Here is one example of injustice that needs to be addressed by public reasoning:

Women in traditionally sexist societies come to accept that women's position has to be standardly inferior to men, then that view – shared by individual women under social influence- is not, in any sense, independent of social conditions...the capability approach demands more public engagement on such subjects [19].

This is a good example of limited capabilities of women in sexist societies. A just society should remove these impediments and empower women to achieve what they are capable of becoming.

Another example of capability deprivation is poverty. Among many alternatives in addressing the issue of poverty is economic development. In his book, *Development as Freedom*, Sen argued that economic development is an important method of poverty reduction and hence expanding capabilities. Economic development has a secondary benefit of pushing a society towards additional freedom and ultimately establishment of democratic institutions.

Sen's approach linked capabilities to justice. However, it did not develop measures by which one can gauge if a society is just. Martha Nussbaum took Sen's model and added a list of important capabilities required for a life with dignity. Her list includes the following capabilities [20]:

- Life. Being able to live to the end of a human life of normal length; not dying prematurely . . .
- Bodily health . . . Being able to have good health, including reproductive health; being adequately nourished . . . ; being able to have adequate shelter . . .
- Bodily integrity. Being able to move freely from place to place; being able to be secure against violent assault, including sexual assault . . . ; having opportunities for sexual satisfaction and for choice in matters of reproduction
- Senses, imagination, thought. Being able to use the senses; being able to imagine, to think, and to reason-- and to do these things in . . . a way informed and cultivated by an adequate education . . . ; being able to use imagination and thought in connection with experiencing, and producing expressive works and events of one's own choice . . . ; being able to use one's mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech and freedom of religious exercise; being able to have pleasurable experiences and to avoid nonbeneficial pain
- Emotions. Being able to have attachments to things and persons outside ourselves; being able to love those who love and care for us; being able to grieve at their absence, to experience longing, gratitude, and justified anger; not having one's emotional developing blighted by fear or anxiety. . . .
- Practical reason. Being able to form a conception of the good and to engage in critical reflection about the planning of one's own life. (This entails protection for liberty of conscience.)
- Affiliation. Being able to live for and in relation to others, to recognize and show concern for other human beings, to engage in various forms of social interaction; being able to imagine the situation of another and to have compassion for that situation; having the capability for both justice and friendship. . . . Being able to be treated as a dignified being whose worth is equal to that of others.
- Other species. Being able to live with concern for and in relation to animals, plants, and the world of nature.
- Play. Being able to laugh, to play, to enjoy recreational activities.
- Control over one's environment. (A) Political: being able to participate effectively in political choices that govern one's life; having the rights of political participation, free speech and freedom of association . . . (B) Material: being able to hold property (both land and movable goods); having the right to seek employment on an equal basis with others . . .

For a state to be just, it must guarantee this list above a certain threshold. By such standards, one can conclude that Islamic justice does not meet the criteria set and formulated by the capabilities framework.

8. CONCLUSION

In the preface of his book, *The Idea of Justice*, Sen advocated the importance of reasoning in creating a more just society.

Reasoning is central to the understanding of justice even in a world which contains much ‘unreason’; indeed, it may be particularly important in such a world [21].

Public reasoning is the elixir much needed in Islam. This is true as regards how Kant’s thinking would apply to intra-Islamic discourse, but also how the thinking of Mill, Bentham, Rawls, and others would apply. Rational thinking and independent reasoning are very difficult with the twin doctrines of the eternal Qur’an and no-ijtihad in place, but in the absence of these doctrines Islam can be reformed and the purer light of Islam shows through. In order for Islam to come into the modern world it is necessary to acknowledge the presence of historical-cultural institutions of the Prophet’s time in the Qur’an that cannot be embraced in the modern time. The treatment of women and slavery are two obvious examples. The problem for Islam is really no more serious than the same issues that plagued Judaism and Christianity as regards the Bible. It took a couple of centuries for the theologians and biblical scholars to solve these problems. In fact, the same struggle is taking place in Islam at the present time. There are within Islam, particularly in the United States and in Western Europe, Muslim leaders who reject some reactionary elements of Islam, and adopt a very progressive agenda towards women’s rights and other issues.

Justice does not have to be an “all-or-nothing” proposition. An incremental approach to justice is much more practical and achievable. Ijtihad is the instrument by which this aim can be realized. Muslim scholars are capable of reforming Islam and creating a better world for all. As we have seen, Islamic jurisprudence embodies the rights of God and the rights of individuals. Even if the rights of God are immutable, ijtihad can reform the rights of individuals. For example, it is quite possible to banish slavery in Islam, improve women’s rights, and protect the rights of minorities without violating the basic tenets of the Islamic faith.

At a societal level, the governments of Islamic countries must do a much better job in addressing the presence of injustice and inequality in their countries. For example, Islam relies much on charity to address the issue of poverty. Charity is not a substitute for real justice and is not an effective instrument to address Rawls’s difference principle.

The Islamic governments also should develop their economies. As discussed, development is an effective instrument to address poverty, to enhance freedom, and augment individuals’ capabilities. To the extent possible, Islamic countries should leave divine rewards and punishments to the next life and focus on improving life for Muslims in this life. Suffering here, rewards in the next life, is not an acceptable alternative.

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