

FROM TRANSCULTURAL RIGHTS TO TRANSCULTURAL VIRTUES:  
BETWEEN WESTERN AND ISLAMIC ETHICS

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*Some kind of transcultural consent is strongly needed between Western and Islamic societies. Human rights can provide such consent but their traditional Western foundation remains alien to a large part of Muslim sensibilities. In address of this we must first turn our attention to the Islamic concept of 'maqasid'. By drawing upon Martha Nussbaum's list of basic capabilities and Tariq Ramadan's extensive reading of maqasid, we can prepare a sounder grounding for human rights within Islamic societies. Maqasid and capabilities call attention to the tradition of Islamic virtues. These so greatly overlap the Western ethics of virtues that they raise hope of transcultural cohesion.*

**Keywords:** Islamic Ethics, Virtues, Human Rights

**TABLE OF CONTENTS**

I. PREMISE .....	251
II. THE EVOLUTION OF HUMAN RIGHTS .....	260
III. ISLAM AND HUMAN RIGHTS.....	262
IV. FROM RIGHTS TO MAQASID AL-SHARIAH .....	267
V. FROM MAQASID AL-SHARIAH TO THE VIRTUES.....	273
VI. THE ROLE OF REASON IN THE ISLAMIC TRADITION .....	277
VII. HARD AND SOFT NATURAL LAW IN THE ISLAMIC TRADITION .....	282
VIII. THE VIRTUES IN THE ISLAMIC TRADITION: A SHORT ACCOUNT .....	291
IX. CONCLUSION.....	297

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## I. PREMISE

Most theoretical discussions in the area of ethics – both private and public – raise concepts which range amongst those such as rights, utility, social contract, personal autonomy and the like. These discussions are typically Western insofar as all those concepts belong to the Western philosophical and legal tradition. They are concepts that are deeply embedded in our culture and in which, as in the case of the outstanding example of 'human rights', we clearly see a strong influence of the Christian religion. Through natural law theory we can trace back the origins and first development of human rights to the work of the canonists between the 12th and 13th century: the *ius naturale* is understood as a power, faculty and subjective capacity inherent in the human person. It is an idea that expresses a need for the protection of the autonomy of men and women, for all their practical interests.<sup>1</sup>

As is well-known, the idea of human rights (HR) has grown from this culturally specific origin – located in the philosophical, religious and legal culture of Western Europe – to become an international standard, applied all over the world through documents which have found general consent, even beyond Christian culture, such as the Universal Declaration of Human Rights of 1948 (UDHR). However, a global consensus towards HR is confronted in particular by those in Islamic countries, who can adhere to very different and sometimes conflicting perceptions of HR and their compatibility with Islamic culture. Positions about HR can range from a

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<sup>1</sup> See B Tierney, *The Idea of Natural Rights* (Scholars Press 1997), p 65. With regard to the large domain of ethics, a cautionary note should be put in place at the start: the general assumption underlying this paper is that there is only one ethics that works similarly for all human beings, despite their social, political and religious differences. I believe the ethics of virtues of classical Greece is what best embeds that core of ideas that has been transmitted through the centuries in the West by the natural law tradition and that we also find in Islamic ethics, thanks to the legacy of the Greeks. By contrast, the idea of 'rights' seems to be partially biased by modern Western individualism and misses the ideas of excellence and solidarity which, among others, are central to Islamic ethics. Evolution in the Islamic culture, as many contemporary voices show, may find a stronger place for HR, but so far my argument is that it is not yet a transcultural concept to the same extent that an ethics of virtues is.

claim that Islam invented rights already in the seventh century<sup>2</sup> to a rejection of rights because they are inextricably connected with Western values and in opposition to Islamic traditional priorities and values. For example, in the Preamble to the UDIHR (Universal Declaration of Islamic Human Rights 1990) 'the authors proclaim in the Arabic version that they believe that human reason (*al-'aql al-bashari*) is insufficient to provide the best plan for human life, independent of God's guidance and inspiration.<sup>13</sup> I believe it is correct to say that it is especially the second pole of opposition that gathered more supporters in recent times, in which radical Islamist views seem to have often had the upper hand against moderate Muslims. A balanced understanding between HR and Islamic values can be found in the 1990 Cairo Declaration of Human Rights, although a careful reading may show some ineliminable differences with Western values and priorities.

It is important to emphasise that there is no unanimous agreement about the role and position of reason in Islam, with Islam referring here to both Islamic religion and Islamic ethics. Some recent commentators argue in favour of the Islamic tradition within the scheme of political liberalism Rawls provided. Muhammad Fadel has developed an interesting argument according to which:

(1) fundamental theological and ethical doctrines in the Islamic tradition privileged rational inquiry and deliberation as the preconditions to establishing political life, living a moral existence, and obtaining religious salvation, commitments which are either consistent with or require a political commitment to freedom of thought; (2) as a result of the centrality of rational inquiry in the quest for salvation and conceiving the basics of the ethical good life, Islamic theology and ethics placed relatively greater emphasis on the procedural integrity of inquiry rather than its substantive conclusions, and as a result Muslim ethical theory produced a system of normative pluralism that expressly recognized the burden of judgment; and (3) as a result of this normative pluralism, Islamic jurisprudence grew to recognize the legitimacy of rule-making based on arguments whose premises – while consistent with revelation – were non-revelatory and therefore that

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<sup>2</sup> See, for example, Abu'l A'la Mawdudi, *Human Rights in Islam* (Islamic Foundation, 1980).

<sup>3</sup> A Meyer, *Islam and Human Rights* (Westview Press 1991), p 58.

Islamic law, as a historical matter, recognized the legitimacy of public reason arguments.<sup>4</sup>

Fadel holds that the political commitment implicit in various pre-19th century Islamic doctrines is consistent with the 'constitutional essentials' of a politically liberal regime. What is most interesting, in my view, is the tradition of rational enquiry and debate, highlighted by Fadel, that characterises scholastic theology, moral theology and law. The Arabic term for the first is *ilm-al-kalam*, the science of speech or disputation in which Muslim theologians developed their metaphysical, ontological and epistemological doctrines. The object of *kalam* was to discover truth about being, about how humans obtain knowledge and about religious dogma through the use of reason. Moral theology or *usul al-fiqh* is centered on how God judges human acts. It is concerned with questions regarding the nature of moral enquiry and other questions on moral judgement: how both true and probable moral judgements are reached. *Usul al-fiqh* has many important tasks such as distinguishing between legitimate and illegitimate ethical disagreement or identifying the 'data' that is relevant for ethical inquiry.<sup>5</sup> Finally, Fadel recalls *fiqh* or positive law whose contribution to our purposes is noteworthy because legal rules were developed within negotiable political commitments – rather than non-negotiable moral and theological commitments – and, so, they were reasonable rather than true rules.<sup>6</sup> In short, he argues that because of the prominent role that reason played in the theological and legal discourses of Islam, we can plausibly derive a commitment to a society that provides space for free normative enquiry. Further, according to Fadel, the centrality of individual enquiry in Islamic salvation theory leads a committed Muslim to endorse openly liberal constitutional essentials, 'as they clearly provide sufficient political space for her to discover those truths necessary for her salvation'.<sup>7</sup>

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<sup>4</sup> M Fadel, 'The True, the Good and the Reasonable: the Theological and Ethical Roots of Public Reason in Islamic Law' University of Toronto Legal Studies Series, Res.Paper n. 977206, pp 4-5.

<sup>5</sup> See Fadel (fn 4), pp 32-3.

<sup>6</sup> See *ibid*, pp 39-40.

<sup>7</sup> *ibid*, p 98.

'Rights discourse' is very clearly a field where confrontations between Western and Islamic culture have been continuous in time and explicit on contents.<sup>8</sup> However, I want to argue that there are other conceptual areas in which exploration might yield riper fruits. One such area worth-exploring may be that of the ethics of virtues (EV) whose revival in the last decades has introduced many elements of innovation in a moral debate that was so far just a battlefield between utilitarian and Kantian theories. In my view, the move toward human development and excellence – which is the core of EV – is congenial to the proposal of looking at it as an area of potential transcultural consent, as a set of ethical values that are good for people belonging to different cultures.<sup>9</sup> In a nutshell, the basic idea of my claim is that of looking for an area of transcultural ethical consent, setting temporarily aside the rights discourse because, notwithstanding certain declarations of allegiance to HR from the Muslim world, their rationalist and individualistic core flies in the face of the Islamic emphasis on God's guidance and inspiration.<sup>10</sup> For this sort of reason a contractualist philosophy, such as Rawls', remains alien to most of Islamic culture although, if interpreted according to different lines, it might enjoy a better reception.

I say 'temporarily setting aside' the rights discourse because I maintain that we cannot help thinking and acting in terms of rights: their influence on our liberal morality is pervasive also because of their legal counterpart. Legal rights give a crucial position to the rights discourse in liberal societies also at

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<sup>8</sup> I want to use the term 'discourse' rather than alternative terms such as 'framework' because I believe it gives a better rendition of that lively exchange of ideas and discussion that is common within – and outside – liberal societies with regards to 'rights'. 'Discourse theories', including an important status for rights, have acquired a well-known standing after J Habermas's *Facts and Norms* (MIT Press 1996).

<sup>9</sup> I believe that EV may contribute a relevant set of values for constructing a more integrated 'overlapping consensus' (in Rawls's terms), but across cultures as diverse as Islamic and Western culture (see section V).

<sup>10</sup> Notwithstanding the limits of rights I am trying to describe here, we have to acknowledge the flexibility of the concept of rights that in recent decades has been incorporating many emerging social values, such as the so called rights of second and third generation (the former including especially economic and social rights, while the third generation includes, e.g., group and collective rights, rights to self-determination, rights to intergenerational equity, etc.).

the political level.<sup>11</sup> However, rights-based moralities, to use Raz's expression, are impoverished moralities which cannot make room for ethical concepts such as the virtues or supererogation.<sup>12</sup> So, we have an exhortation to go beyond rights-based moralities and towards EV from a liberal thinker that can find a parallel in my attempt at retrieving ancient Islamic ethics of virtues to show its significant overlap with contemporary Western EV.

What is the reason for such retrieval? The easy answer would be to consider the common roots of Western EV and Islamic EV in Greek ethics through the work of Avicenna, Averroes, Al-Farabi and Al-Ghazali, among others. As is well-known, Western culture has retrieved classical philosophy in the Middle Ages (from the 12th century onwards), after a long 'dark age', thanks to translation from the Arabic sources. Arabic philosophers had preserved and cherished the legacy of classical Greece and Western culture has benefitted much from this effort of preservation. As we shall see in some detail, the Arabic culture experienced in the Middle Ages a flourishing EV that was in the first place relying on the philosophy of great masters such as Plato and Aristotle but also, in the second place, synthesizing elements of the Islamic religion. Thus, it is easy to conclude that the common roots of Western and Islamic EV lead to a stronger area of consent than the rights discourse.

Is this a satisfactory and persuasive answer to the problem of identifying an area of transcultural consent? There are various charges against such an easy solution because it seems to ignore the religious elements that have gained the upper hand in Islamic ethics. Therefore, if we want to give pride of place to the EV within Islamic culture, we need a fresh start. We need to find out whether there is a stronger connection between the virtues and Islam. I believe this connection can be found in the concept of *maqasid* (goals or purposes) whose development occupies a growing space in Islamic doctrine. We can rely on it for a two reasons: first, it is a teleological concept as much as the classical virtues; second, working through the *maqasid* we can weave a

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<sup>11</sup> I should emphasize how the discourse on human rights is one place where sharp distinctions between legal and political philosophy waters down, because of the strong interconnections between legal and political issues.

<sup>12</sup> See J Raz, *The Morality of Freedom* (Clarendon Press 1986), pp 195-6.

thread of continuity from the age of Al-Ghazali, who introduced the concept, to our age. Another more general reason to take the *maqasid* as a reliable concept in our path towards an Islamic EV can be derived *a contrario*, in my view, from the place of HR in Islamic thought. Notwithstanding some general declarations (that we shall consider shortly) on the role of HR in Islamic society, it is plausible to hold that what is crucial in Islamic ethics is the traditional tenet that Islam provides a scheme of duties not of individual rights.

In reading documents such as the Preamble to the UIDHR what is worth emphasizing is the centrality attributed to human duties over human rights: insofar as the Islamic sources of principles and rules represent the divine will, they secure rights less than they ensure obedience to divine commands. To make things even clearer, some authors point out that while the Western perspective is anthropocentric, the Islamic one is theocentric. According to the latter there are no HR in the modern sense, but only rights that stem from man's primary duty to obey God.<sup>13</sup>

If the argument for setting aside the rights discourse looks sound enough, my reasons for inquiring into the *maqasid* may be helpful in leading us in the direction of the virtues. The five foundational goals (*maqasid al-Shariah*) are: faith, life, property, intellect, and progeny. However, contemporary authors such as Tariq Ramadan emphasize that the Shariah calls for the cultivation and protection of 36 further *maqasid* among which there are dignity, welfare, knowledge, autonomy, etc.<sup>14</sup>

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<sup>13</sup> See A K Brohi, *Islam and Human Rights* (PLD 1976), pp 151-2.

<sup>14</sup> See T Ramadan, *Radical Reform: Islamic Ethics and Liberation* (OUP 2009), pp 138-9. Ramadan builds his large 'pool' of *maqasid* with a reasoning that starts from the sacred text and includes a few passages: first, Sharia is based on two co-equal purposes, protection of religion and protection of welfare (*maslaha*); second, protecting these two founding pillars depends on protecting three further fundamental objectives: life, nature and peace; from here he introduces a third level based on the protection of 13 *maqasid* directed at promoting human wellbeing (dignity, welfare, knowledge, creativity, autonomy, development, equality, freedom, justice, fraternity, love, solidarity and diversity): finally, he says that the Sharia calls for the protection and promotion of 23 further *maqasid* concerning the inner being (education, conscience, sincerity, contemplation, balance and humility), the life of

My argument, in short, is that, it is through the retrieval of all human purposes included in the Shariah that we can focus – again – on the EV developed by classical Islamic philosophers. In other words, I believe we can make sense of the virtues in the Islamic tradition not only because of their crucial place in the ethics of great philosophers and theologians of Islam, such as Averroes, Avicenna, Al-Farabi and Al-Ghazali – to cite only the most well-known – but also because the virtues may be taken as a concretization of the *maqasid*, as the purposes of the Shariah that become concrete through the exercise of the virtues. What I shall try to show is that there is a significant overlap between the classical virtues – as described by classical philosophers of Islam – and a large number of *maqasid* as they can be retrieved in the Shariah. I also find an important overlap in the interpretation of *maqasid* between contemporary authors such as Ramadan and traditional authors such as Al-Ghazali. Of course, I cannot claim that there is a perfect overlap between classical virtues – deriving from Greek philosophy – and the *maqasid*: an explicative case would be that of 'humility'. Humility is both a virtue for many Muslim philosophers and a *maqasid* included within the Shariah, but its core of self-denial runs against the characteristic self-centeredness of classical Greek virtues. In turn, humility finds its place also in Christian catalogues of virtues, such as Augustine's, that leave to the human being a secondary place with regard to God's guidance and commands. These few hints may lead us to the conclusion of the argument: although there is a large room for transcultural consent between Western and Islamic culture in the area of EV and *maqasid*, we should not forget that there is a gap between secular and religious catalogues of virtues that can be found both in the Western and in Islamic culture. Humility, for example, is praised as a central virtue both by Augustine and by Al-Ghazali, but it is unrecognized by secular

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the being or the individual (physical integrity, health, subsistence, intelligence, progeny, work, belongings, contracts and neighborhoods) and the welfare of societies and groups (rule of law, independence, deliberation, pluralism, evolution, cultures, religions and memories). Ramadan is aware of the farfetched nature of his list: 'Contemporary times compel us to return to the texts and extract objectives that may have appeared secondary in the past' (p 140). This list, he says, must be considered as a provisional elaboration, always open to further openings depending on new scientific knowledge.

catalogues. Therefore, while finding a common path in the area of EV, we should bear in mind that, as we shall see, there is a larger area of consent between Christian and Islamic religious ethics than between Western secular and Islamic EV.

In the new ethical picture that seems available according to my previous considerations one may wonder about the space left for the rights discourse that is so much on the banners in our times. I anticipate that, while its individualistic thrust clashes with the deep core of Islamic ethics – religious and community-oriented – there is still an important role to play for HR with regard to the virtues and *maqasid*. From this perspective, HR may be considered as spheres of protection that warrant the project of human development embedded in the virtues and in *maqasid*. In this way, rather than depending on deontological foundation, as it traditionally happens in liberal theories of rights, these would rely teleologically on considerations of wellbeing. As we shall see, this new ethical picture will attempt to overcome two typical liberal boundaries by, first, proposing a view of rights not only as individualistic, but also as community-oriented guarantees and, second, by setting human wellbeing in a religious context where virtues and *maqasid* may lead beyond the usual threshold.

My quick hints should not give the impression that my approach may dispel all problems that the concept and the practice of rights raise in the Islamic culture. Rather, I believe that there are some difficulties that can hardly be entirely bypassed. In my view the two most relevant difficulties are the following. First, it is difficult to accept the idea that rights can only exist in relation to human obligations towards God, fellow humans and nature, as defined by the Shariah.<sup>15</sup> Second, it is similarly difficult to accept the idea that the individual can neither be considered apart from society, nor can his rights be considered in conflict with those of the community.<sup>16</sup> These are barriers against a transcultural understanding between the West and Islam that the ethical approach of virtues may at least help to reduce.

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<sup>15</sup> See Abdul Aziz Said, 'Precept and Practice of Human Rights in Islam' (1979) *Universal Human Rights* 1, p 73.

<sup>16</sup> See Cherif Bassiouni, 'Sources of Islamic Law and the Protection of Human Rights', in *The Islamic Criminal Justice System* (Oceana 1982), pp 13-4.

From my introductory remarks the first steps of the agenda ahead of us are quite clear. First, I want to address the problems of the rights discourse with regard to central declarations of Islamic rights, such as the UIDHR and the Cairo Declaration on Human Rights in Islam. I will focus on some of the most important rights included in these declarations in order to test their compatibility with the standard international view of HR and, alternatively, with the ethical approach of the virtues (section 2-3). Of course, this second comparison will be postponed to a later stage, after an exploration of *maqasid al-Shariah* and of the Islamic EV. Thus, as the third step we need to consider carefully the concept of *maqasid al-Shariah*, keeping in mind the goal of human development that is common to the virtues. I shall consider not only the five foundational goals of the Shariah already mentioned, but also the other *maqasid* enumerated by Ramadan. My assumption is that Ramadan's extensive interpretation of *maqasid al-Shariah* covers most of the area of values usually attributed to the EV, including also some other political principles (section 4). Finally, the second stage of this inquiry will be devoted to a thorough analysis of Islamic EV. I anticipate that insofar as we read important past philosophers of Islam, such as Alfarabi, Avicenna and Averroes, we find explicit references to Plato and Aristotle. Although they tend to neglect the major theoretical differences between Plato and Aristotle, we may find references to the 'end of human perfection' and to the employment of theoretical and practical wisdom which take this Islamic ethics very close to Western EV through the common roots of Greek philosophy (section 5-6-7). However, in inquiring into Islamic virtues we should always remember that a relevant part of Islamic ethics rejects to a certain extent the influence of the 'philosophers' – including not only Greek philosophers, but also some Muslim authors I have just quoted. As we shall see, in the work of Islamic thinkers, such as Al-Ghazali, 'revelation' takes a central position, but without excluding rational inquiry and, so, leaves wide room to argue for the compatibility of the concept of *maqasid* with that of the virtues to argue from *maqasid* to the virtues and opens the way for a sounder transcultural consent.

## II. THE EVOLUTION OF HUMAN RIGHTS

The rights discourse and particularly HR have a pervasive and influential appeal in the contemporary world, overcoming cultural and religious barriers. It is well-known that both in post-communist countries and in Islamic countries claims of freedom and equality are raised in the name of HR. The recent events of the so called 'Arab Spring' have shown the strength of the appeal of HR against tyrannical governments that violated the principles of freedom and equality of their citizens in many Mediterranean countries of the Islamic world. However, as the development of events seems to show, the push of HR was first accompanied and then overcome by the rise of Islamic traditional values. Those governments were charged not only with not respecting HR, but also with violating Islamic values whose hold on individual conscience seems, by now, stronger than the appeal of HR.

In order to verify whether this is really so and why it is so, we need to inquire into the foundations of HR: What do they stand for in Western societies? Can those foundations be exported to a radically different culture such as Islam? In attempting to respond to these questions, I will develop an argument in three steps. First, I shall consider the birth and evolution of HR in the West as a sign of moral and social progress. Second, I will consider how HR have grown as an international standard capable of imposing transculturally its normative criteria. Finally, I shall tackle two important Islamic declarations of HR: the UIDHR (1981) and the Cairo Declaration (1990). From their examination we shall see how HR are understood in the Islamic context dominated by the Shariah. My conclusion here will point to the necessity of re-interpreting HR in the Islamic context according to the basic presuppositions of Shariah.

The first point that deserves our attention is that HR belong to a modern Western tradition which first dates back to the growth of rationalist and humanist thought in European Renaissance and later to the culture of the Enlightenment. The protection against State's infringements and the development of individual freedom was the main concern of British and French thinkers whose ideas found expression at the end of the 18th century in the American Declaration of Independence (1776) and in the *Déclaration*

*des droits de l'homme et du citoyen* (1789). Thus, the historical evolution of HR was marked by the rise of American and European constitutions protecting individual – mostly negative – rights that granted people basic freedoms such as freedom of expression. It seems evident that at their core these concepts were 'individualistic', protecting the individual against the state.<sup>17</sup> They also carried the important legacy of natural rights, addressed to the development of human personality, as a legacy of the Middle Age canonists.<sup>18</sup>

Natural rights are ideal claims that can be invoked against other people or against the community as a whole to protect the human individual from infringements of their liberties. As is well-known, the evolution of natural rights has taken place in Europe in the last three centuries with a historical development described by T.H. Marshall<sup>19</sup> as a path toward citizenship that goes from civil to political and, finally, to social rights.<sup>20</sup> What should be noted with regard to Marshall's theory of the evolution of rights is that it was

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<sup>17</sup> A different position is developed by Samuel Moyn who takes human rights to have become the leading concept that we now know only from the 1970s on. Even in 1968 other vindications were brought about by students and protesters demanding a better world. It is only in the 1970s that human rights were looked at as a kind of international law capable of stewarding utopian norms and the mechanism of their fulfillment. See S Moyn, *The Last Utopia: Human Rights in History* (Harvard University Press 2010). But consider also Rainer Forst's views according to which human rights are founded upon a Kantian idea of dignity: it is a moral foundation that down-scales all internationalist defences of rights. See R Forst, *The Right to Justification* (Columbia University Press 2011).

<sup>18</sup> A reconstruction of the history of human rights as directed at favouring the development of human personality is offered by Lynn Hunt who uses 18<sup>th</sup> century novels (such as Rousseau's *Eloise*) to explain how the experience of reading raised individual autonomy in readers who identified themselves in the protagonists: 'Human rights could only flourish when people learned to think of others as their equals, as like them in some fundamental fashion'. L Hunt, *Inventing Human Rights* (Norton Company 2008), p 58.

<sup>19</sup> See T H Marshall, *Citizenship and Social Class*, (CUP 1950), pp 28-9.

<sup>20</sup> Marshall's scheme of the evolution of human rights should not lead us to forget that the rights discourse is much richer than what is possible to show in my sketchy summary: for example, so called rights of second and third generation give new impulse to the guarantees offered by human rights and especially the idea of 'collective rights' included in the rights of third generation seems to go much beyond the usual 'individualistic' understanding of rights (see n 6).

directed by an ideal of substantive equality and aimed at legitimising an increasing degree of redistribution of resources. By contrast, our interest in the Islamic context is still only focused on the ideal of equal political rights within the Muslim community on the one hand and, on the other, equality between Muslims and religious minorities. The ideals of freedom and equality are central in all declarations of HR and can be considered among the major obstacles to the acceptance of HR within the Islamic culture. However, a quick look at the recent history of this acceptance may be helpful in our path towards the Islamic virtues, towards focusing on what may be proposed as a new ethical approach for transcultural consent between Western and Islamic culture.

### **III. ISLAM AND HUMAN RIGHTS**

As is well known, after World War II HR have grown as an international standard with enormous influence on different cultures. Documents such as the UDHR of 1948 or the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 and the International Covenant on Civil and Political Rights (ICCPR) also of 1966 gained widespread consent. Not all Muslim states ratified these Conventions,<sup>21</sup> but at least HR documents became a standard of values widely accepted or criticized. It is not my point here to follow the wide and lively debate about the extent of acceptance of HR in Muslim countries.<sup>22</sup> Rather, I want to make a few points about the present situation of HR with regard to the Islamic culture. My few general points will then be tested against well-known declarations of Islamic rights such as the UIDHR and the Cairo Declaration of HR.

A first point that should be emphasized for the understanding of all discussions about Islam and HR is the following: basically, where the Western man's perspective is anthropocentric, the perspective of Islam is theocentric. Man's only task is to serve His Maker.<sup>23</sup> Typical principles of Western legal philosophy, such as humanism, individualism and rationalism are rejected by most Islamic authors insofar as they are taken to give rise to

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<sup>21</sup> See Meyer (fn 3), p 24.

<sup>22</sup> A helpful, though not updated account can be found in Meyer (fn 3), ch 2.

<sup>23</sup> See A K Brohi (fn 13), p 151.

all the rights without making any reference to God. Conservative Islamic authors start from the subordination of man to God and the Islamic law to justify the rejection of individual rights in favour of an emphasis on the concept of duties. Sometimes the rejection of individualism is also grounded on a model of communal solidarity that is premodern and does not confront the problems of modern nation states.

The duty to respect rules of communal solidarity when the addressee is a modern nation state, with all its technological devices of control and possible repression of individual dissent, risks leaving individual freedom unprotected. Against the danger of oppressive government practices, Islamic authors either tend to think in terms of an idealized relationship between the ruler and the ruled in which the rulers just follow God's mandate. Or, in case of abuses by the ruler, they believe proper to appeal to the Shariah, if official action has violated some of its principles. However, it often happens in Islamic States that political government and religious authority are concentrated in the same hands, so there is no point in appealing to the latter against the former.

Second, previous considerations lead us to think that there are good reasons for an independent standard of evaluation, such as HR, also in Islamic states, notwithstanding their differences of cultural heritage. However, HR have to confront not only the declared hostility of those Muslim positions which take HR as a concept coming from an alien culture, but also the more insidious challenge from cultural relativists. Cultural relativism was born in Western theory, but it has been quickly picked up by some Muslim authors. It maintains that comparisons among cultures on the grounds of an alleged universal standard of evaluation such as HR are impermissible. The so called UDHR only shows 'moral chauvinism and ethnocentric bias'.<sup>24</sup> Islamic norms and values, relativists say, cannot be judged by the criteria of international law because these belong to the alien Western culture.

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<sup>24</sup> A Pollis, P Schwab, 'Human Rights: A Western Construct with Limited Application' in A Pollis, P Schwab (eds), *Human Rights: Cultural and Ideological Perspectives* (Praeger 1979), p 14.

Whatever the stance of cultural relativism in the general debate – and it should be emphasized that it is a concept developed in anthropology and moral philosophy rather than used in the field of law – one should consider the status of HR in Muslim countries according to the real extent of their acceptance or rejection. Even a quick survey may show that HR exercise some appeal in Muslim countries, despite their supposed conflictuality with Islamic values.

Third, we should consider Islamization programs that have been carried forward by the governments of Iran, Pakistan and the Sudan between the end of the 1970s and the 1980s. They represented revolutionary upheavals controlled by conservative clerics, as in Iran, or autocratic leaders, as in Pakistan and Sudan. President Nimeiri and President Zia, of Sudan and Pakistan respectively, assumed the role of pious leaders, declaring that the tenets of Islam justified military dictatorship and the suppression of individual freedoms.<sup>25</sup> Central in Zia's programme of Islamization was his undermining of the integrity and independence of the judiciary through the appointment of new judges with a religious education but deficient in professional qualifications. In Iran, after overthrowing the corrupt and despotic regime of the Shiah Reza Pahlavi, the clerics imposed a return to the roots of Islamic values, rewriting the constitution in order to insert a number of vague Islamic qualifications that changed the meaning of original rights provisions. Being vague enough to be always interpreted by clerics for application, HR were destined to be subject to Islamic principles in each and every case of conflict.<sup>26</sup> Grass-root movements vindicating individual freedoms and HR in those years and later on (e.g. the so called 'Arab Spring') show the variegated perception of HR vis-à-vis the Islamic law in Muslim countries. Many observers, including some Muslim intellectuals, have denounced the abuses of rights and denials of freedom that characterized those regimes at that time. The lack of respect for human rights seems to go

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<sup>25</sup> Ironically, learned scholars from Sudan argue that the state should not attempt to enforce Sharia because that is contrary to the principles of Islam. Muslims should be left free to live according to the principles of Islam because Sharia involves a religious obligation for individuals rather than public coercion. See Abdullahi, Nahmed An-Na'im, *Islam and the Secular State* (Harvard University Press 2008).

<sup>26</sup> See Meyer (fn 3), pp 30-42.

hand in hand with a political regime unrespectful of democratic consent. Current developments of the so called 'Islamic state' in the Middle East only confirm a strict relationship between Islamization, on the one hand, and violence and denial of freedom, on the other.

Notwithstanding the difficulties of reception of HR that were already pointed out, the international standard has met some degree of acceptance in Muslim countries. The UIDHR of 1981 and the Cairo Declaration of 1990 show, on the one hand, the desire of many Muslims to come to terms with standards of evaluation which enjoy a widespread allegiance all over the world. On the other hand, many 'Islamic provisions' inserted in the articles on rights show the extent to which rights can be effectively protected and implemented. Just by way of exemplification, we may notice that many rights commonly belonging to HR catalogues, such as the right to liberty (article 2a), right to justice (article 4a), right to freedom of expression (article 12a), right to disseminate information (article 12d), right to protest and go on strike (article 12 c) and others are all granted within the limits of Shariah requirements. In the English version of the UIDHR rights are qualified 'according to the Law' and in the Explanatory Notes it is made clear that by the term 'Law' it is meant the Shariah, defined as 'the totality of ordinances derived from the Qur'an and Sunnah and other laws that are deduced from these two sources by methods considered valid in Islamic jurisprudence'.<sup>27</sup> The vagueness of the reference to Islamic jurisprudence leaves significant leeway in the interpretation of rights. If we also consider that in Islamic countries authorities in charge of interpretation do not have a standing independent of government, as it happens in Iran, we may conclude that the possibilities for an individual to demand protection against government abuses are minimal.<sup>28</sup>

One could wonder whether almost ten years later the Cairo Declaration can mark any clear progress with regard to the international standard of HR. I believe we can identify a progress with regard to the treatment of women: women's subordination to men in the Islamic culture has been one of the most common charges put forward against declarations such as the UIDHR

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<sup>27</sup> UIDHR, <http://www.alhewar.com/ISLAMDECL.html>, eng vers, p 16.

<sup>28</sup> See Meyer (fn 3), pp 86-9.

which did not have any clear provisions to protect women's rights. In the Cairo Declaration, after article 5 which confirms (as in UIDHR) the importance of the family as foundation of society, we find article 6 that states that: '(a) woman is equal to man in human dignity and has rights to enjoy as well as duties to perform'; however, it also adds that: '(b) the husband is responsible for the support and welfare of the family.' So, it seems that equal dignity is not paralleled by equal responsibility in taking care of the family. Notwithstanding this limitation, article 6 may be considered an attempt to meet the requirements of the international standard.

Many standard rights provisions are aligned with the international standard, such as free movement (article 12), work (article 13) and property (article 15) but 'within the framework of Shariah'. Special attention is dedicated to the rights of the child (article 7) whose education is to be promoted 'in accordance with ethical values and principles of the Shariah.' The right to freedom of expression was guaranteed in the UIDHR (article 12) so long as it remains within the limits prescribed by the Law. These limitations are expressed even more clearly in the Cairo Declaration in which article 22 states that 'everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shariah.'

If one may have had the impression that at some point the Cairo Declaration left more leeway for interpretation in favour of the international standard of HR, the provision of article 24 comes to dismantle any illusion: 'all the rights and freedoms stipulated in this Declaration are subject to the Islamic Shariah.'

Whatever individual freedoms and rights have been established in the Declaration, its authors want to emphasize the supremacy of the religious law, the Shariah. Their difficulties in finding a compromise are further illustrated in the *Resolution n. 41/42*, attached to the Cairo Declaration where we read that human rights are recognized as universal in nature, but they must be considered in an evolving context and taking into account the various historical, cultural and religious backgrounds (point 5). This appeal to contextualization is at odds with the recognition that it is necessary to achieve universality, objectivity and non-selectivity in the application of

human rights standards and instruments (point 4). In my view it is possible that this contradiction speaks in favour of further progress towards reaching the international standard of HR in the next years, at least in terms of declarations. Unfortunately, we all know that HR are also violated in countries which have thoroughly subscribed to the UDHR.

To conclude my remarks on HR and Islam, it seems clear that, on the one hand, HR are a standard of evaluation that many Muslims find appealing as a protection against government abuses. On the other hand, however, the international standard of HR now in use is a Western conception that does not suit well Islamic sensibilities. A different proposal should try to remain grounded in HR, while integrating them with other values, coming close to the roots of Islamic values rather than pushing on the uncritical reception of Western values.

#### **IV. FROM RIGHTS TO MAQASID AL-SHARIAH**

These considerations leave us with the impression that Muslim countries and Islam as a religious culture are far from being alien to the rights discourse because rights are considered by appealing to large numbers of people – possibly even majorities – in many Muslim countries. HR and democracy are considered an important option for people who often come from a past of denial of individual freedoms. However, as noted already, Western emphasis on individual rights seems to remain foreign to the conscience of many Muslims whose ethical development is deeply rooted in Islamic religion. By contrast, the instances of individual freedom and human dignity that are embedded in HR are deeply rooted in the Shariah, according to many Muslim thinkers. Therefore, my strategy is that of considering carefully the *maqasid al-Shariah* in order to find in these fundamental purposes of Islam better ground for HR. What is proposed is a straightforward teleological foundation for HR that grounds the idea of rights on human wellbeing and development. Such a foundation on *maqasid* seems also to dovetail quite nicely with the proposal of emphasizing the Islamic EV in order to find a sounder basis for transcultural consent.

I have already gestured towards the idea that the EV is a more promising area of transcultural consent between Western and Islamic ethics than HR. The reasons for this view can be easily explained. While rights in Western ethics have a typical deontological foundation that defines their status as individual guarantees, the virtues, by contrast, have a typical teleological foundation that goes back at least as far as Aristotle.<sup>29</sup> As it is well-known, the virtues make sense because they are exercised within an ideal of human wellbeing and development. Islamic philosophy of the past, as we shall see, accepts entirely classical EV not only because they are deeply infused in Greek culture, but also because they perceive the affinity between the virtues and the *maqasid al-Shariah*: the former are more 'Islam-friendly' than rights are because the orienting idea of 'end' or 'purpose' is common both to virtues and to *maqasid*. Once the ideas of virtues and *maqasid* are discussed, we need to make clear what is left in terms of rights: their pervasiveness in contemporary society is such that no ethical approach can neglect them entirely.

At this point I need, first, to introduce the concept of *maqasid al-Shariah* and the way it has developed through time; second, I want to stress how the interpretation of *maqasid* is grounded on *ijtihad* as personal reasoning that follows the teaching of Qur'an and Sunnah; finally, I will follow Tariq Ramadan's proposal to interpret extensively the idea of *maqasid al-Shariah*. What derives from this reading, I shall maintain, is a view centered on human wellbeing and development that overlaps with the gist of the virtues and identifies a legitimate ground for transcultural consent.

The *maqasid* approach to Islam, as it is defined by some commentators,<sup>30</sup> is taken by many contemporary political parties in Muslim countries as a potential for reforming Islamic laws in areas where changes are widely demanded, such as, for example, the status of women.<sup>31</sup> The question is

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<sup>29</sup> However the literature is not unanimous: for a review of deontological and teleological foundations of virtue ethics see: G Trianosky, 'What Is Virtue Ethics All About?' (1990) 27(4) *American Phil Quart.* 335.

<sup>30</sup> See H Rane, 'The Relevance of a Maqasid Approach for Political Islam Post Arab Revolution' (2012-3) 28 *J.L. And Relig.* 489.

<sup>31</sup> However, it should not be forgotten that there is still a large gap between inspiring ideals such as *maqasid al-Shariah* and the practices of violence and extremism that are

whether there is enough room in the concept of *maqasid* for this extensive interpretation. It was developed by the twelfth century theologian Al-Ghazali by reference to five fundamental objectives of the Islamic law: life, religion, property, progeny and intellect. In the 16th century Ibn Taymiyyah and others developed a more open-ended list of values, understanding *maqasid* in terms of promoting benefit and preventing harm.<sup>32</sup> The new list included fulfillment of contracts, preservation of kinship ties, honoring the rights of one's neighbours, sincerity, trustworthiness and moral purity.

After many centuries and dramatic changes in the conditions of life of Muslims, many authors have tried to develop an approach to Islam relevant to the operations of the state and society. Ibn Ashur, for example, discusses the preservation of the family system, freedom of belief, orderliness, civility, human rights, freedom and equality.<sup>33</sup> Other recent works, such as Jasser Auda's, offer interpretations of the evolution of *maqasid* from pre-modern to modern times. The old concepts have now evolved into family care, pursuit of scientific knowledge, upholding human rights and dignity, freedom of belief, and economic development.<sup>34</sup>

It is to be emphasized how the thrust of the concept lends itself to an evolution in the Shariah interpretation that is centered on public interest and wellbeing (*maslaha*), rejecting literal readings of sacred texts and giving priority to the spirit of the message of Qur'an and Prophetic traditions.<sup>35</sup> Rather, it is well-founded to say that the evolutive interpretation of *maqasid* can be taken as an essential form of *ijtihad*, independent reasoning.

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so frequent in Islamic countries. See M Bohlander, 'Political Islam and Non-Muslim Religions: A Lesson from Lessing for the Arab Transition, Islam and Christian-Muslim Relations', (2014) 25(1), 27-47.

<sup>32</sup> See Mohammad Hashim Kamali, *An Introduction to Shari'ah* (Ibniah 2006), pp 116-8.

<sup>33</sup> See Muhammad Al-Tahir Ibn Ashur, *Treatise on Maqasid al Shari'ah* (Int.l Inst. Islamic Thought 2006), pp 142-60, 233-63.

<sup>34</sup> See Jasser Auda, *Maqasid Al-Shari'ah as Philosophy of Islamic Law: A System Approach*, (Int.l Inst. Islamic Thought 2008). According to Auda – and Ramadan – as we shall see, the *maqasid* lend themselves to an evolutionary interpretation that incorporate the many of the contents protected by human rights.

<sup>35</sup> See Kamali (fn 32), pp 128-30.

The concept of *ijtihad* is the second point I want to emphasize. I take it as a central aspect in the ethical approach I am trying to sketch here. Addressing *ijtihad* requires a shift of focus toward the area of interpretation, meaning both legal interpretation and interpretation of sacred texts. As it is well-known, Western hermeneutics was born in the first place from the exercise of interpretation of Christian sacred texts, such as the Bible.<sup>36</sup> Similarly, with the Islamic faith we find debate among different approaches to interpretation. While literalism claims that knowledge of the Shariah can never go beyond what is explicitly documented in the sources, other commentators rely on *ijtihad* as the principal instrument of maintaining harmony between Revelation and reason in the Shariah.<sup>37</sup> The theory of the *ijtihad* has received contributions from scholars such as Al-Ghazali, Al-Amidi and Al-Shirazi. Al-Amidi defined *ijtihad* as 'the total expenditure of effort in the search for an opinion as to any legal rule in such a manner that the individual senses (within himself) an inability to expend further effort.'<sup>38</sup> Other important secondary sources of Islamic law are said to represent different forms of *ijtihad*: consensus of opinion (*ijma*), analogy (*qiyas*), juristic preference (*istihsan*) and consideration of public interest (*maslahah*).

Then, it is plausible to say that *ijtihad* expresses a canon of interpretation conducive to *maqasid al-Shariah*, to define those broader aims and objectives of the law that literalism can only fail to achieve. However, we should note that not all variants of literalism work in the same way. So called 'juristic induction' works on the aggregate of a number of texts, literally interpreted, that point to a meaning that transcends each text individually. The meaning derives from the whole and goes beyond the individual texts. It was through the process of juristic induction or *istiqra* that pre-modern jurists such as Al-Shatili or Al-Ghazali vindicated the *maqasid al-Shariah*. According to the latter, justification has to rely not on any single source but on the cumulative

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<sup>36</sup> Gadamer, *Truth and Method* (Crossroad 1988), p 295 ff.

<sup>37</sup> See Mohammad Haskim Kamali, *Principles of Islamic Jurisprudence* (Islamic Texts Society 1991), p 366.

<sup>38</sup> B Weiss, 'Interpretation in Islamic Law: The Theory of *Ijtihad*' (1978) Am. J.Comp.L. 26, pp 199-207.

strength of proofs that are too many to enumerate.<sup>39</sup> *Ijtihad*, some commentators conclude, should include also an effort of 'creative imagination' in interpreting new contexts such as those of contemporary HR and democracy, but still within the bounds of the Shariah. A 'purposive approach' to legal interpretation, based on *maslahah* (public interest) and on the five basic *maqasid* of Islam, is recommended. This approach would preserve the ethical and moral precepts underlying the spirit of the Shariah.<sup>40</sup>

Finally, my third stage in this quick discussion of the concept of *maqasid* addresses Ramadan's extensive interpretation. I have already noted how some scholars have proposed an extensive view of *maqasid*, multiplying their number and thrust. Tariq Ramadan is an innovator who makes, first, a radical shift in methodology by grounding Islamic ethics in nature and inclining unambiguously toward a theory of natural law.<sup>41</sup> He takes the frequent invocations of the universe and the natural world in the Qur'an as 'signs' of God's creation. They show the dignity of nature as a foundation of values, according to the sacred text.<sup>42</sup> In Ramadan's proposed 'radical reform' the objective is the persuasion of multiple communities – Muslim and non Muslim, progressive and conservative alike – that a new and extensive understanding of *usul al-fiqh* is possible. The latter is usually understood as the system of methodological principles that 'provides criteria for the correct deduction of the rules of *fiqh* from the sources of Shariah.'<sup>43</sup> In these sources Ramadan wants to integrate 'the Universe and social and human environments into the formulation of the ethical finalities of Islam's message.'<sup>44</sup> In advocating such integration, Ramadan has the illustrious precedent of Al-Ghazali who believed that 'the noblest knowledge is where

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<sup>39</sup> See quotation and comment in Sherman H Jackson, 'Literalism, Empiricism, and Induction: Apprehending and Concretizing Islamic Law's Maqasid Al-Shari'ah in the Modern World' (2006) Mich.St.L.Rev., p 1477.

<sup>40</sup> Nazeem MI Goolam, '*Ijtihad* and Its Significance for Islamic Legal Interpretation', (2006) Mich.St.L.Rev., p 1465 ff.

<sup>41</sup> It is quite likely to argue from these premises – without considering other works by Ramadan – that his natural law approach may endorse a language of natural rights in tune with his argument from *maqasid*.

<sup>42</sup> See T Ramadan, *Radical Reform: Islamic Ethics and Liberation* (OUP 2009), p 88.

<sup>43</sup> See Mohammad Haskim Kamali, *Principles of Islamic Jurisprudence* (fn 37), p 2.

<sup>44</sup> Ramadan (fn 42), p 5.

Reason and Tradition are coupled, where rational opinion and the Shariah are in association.<sup>145</sup>

Ramadan's metaethical effort to integrate the sciences of the Text (Revelation) and the sciences of the Universe is coupled with his wide understanding of *maqasid*. Experts in the Revealed Book and in the Book of the Universe, 'each with their own methods and standards of proof, have to collaborate, first, on identifying higher ethical principles and objectives and, then, on elaborating specific applied ethical norms expressed as *maqasid* for individual areas of human activity.<sup>146</sup> His multidimensional scheme of *maqasid* starts from two co-equal purposes; namely, the protection of religion and the protection of welfare. The protection of these two founding pillars requires three more fundamental objectives: life, nature and peace. The third level introduced by Ramadan consists of the protection and promotion of 13 further *maqasid*, such as: dignity, welfare, knowledge, creativity, autonomy, development, equality, freedom, justice, fraternity, love, solidarity and diversity.<sup>147</sup> However, he further argues that the Shariah calls for the promotion of other 23 *maqasid*, related to the inner being, the life of the individual or social life. Just by way of example, the list includes education, conscience, sincerity, health, subsistence, intelligence, rule of law, independence, deliberation, etc.<sup>148</sup> This list has a wide thrust that encompasses both individual ethics and politics. Ramadan's reformist attitude engages with conservative clerics on a vast scale, as Andrew March emphasizes in his review. I want to borrow from Ramadan's lists and dwell particularly on personal rather than public ethics.<sup>149</sup> In what follows, I shall try to present an integrated sketch of the relations among *maqasid*, rights and

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<sup>145</sup> See Al-Ghazali, *Mustafa min Ilm al-Usul* (English translation: Mansur Hammad, Ahmad Zaki, Doctoral Dissertation (University of Chicago 1987).

<sup>146</sup> A March, 'The Post-Legal Ethics of Tariq Ramadan: Persuasion and Performance, in "Radical Reform: Islamic Ethics and Liberation" – A review of T Ramadan (2010) *Middle East L. and Governance Journ.* 2, p 261.

<sup>147</sup> T Ramadan (fn 42), pp 138-9.

<sup>148</sup> See *ibid*, p 143.

<sup>149</sup> I take the ethics of virtues discussed in section V as an approach concerned with individuals without being individualistic: this is the reason why I prefer to use the term 'personal ethics' with regard to the ethics of virtues.

virtues: they all hinge on a central idea of human development that may represent a potential focus of transcultural consent.

## V. FROM MAQASID AL-SHARIAH TO THE VIRTUES

The first point to start with is the ideal of human development that seeks to encompass the sense of much of Ramadan's lists. 'Dignity, welfare, knowledge, autonomy, education', just to name a few, can be clearly summed up in the above mentioned ideal. Those values belong to the ethical spirit of the Shariah – as we shall see by inquiring into the work of the great theologian of the Islamic tradition Al-Ghazali – and will surely raise less controversy than the political and legal values proposed by Ramadan: 'rule of law, independence, deliberation, pluralism, evolution, cultures'. I will set aside the political discussion that would probably lead us to the well-known antithesis of liberal/non-liberal principles. This discussion, often framed in Rawlsian terms, notwithstanding its importance, misses, in my view, part of its ethical relevance because it neglects individual ethics. Even some careful liberal thinkers recognize that 'rights-based moralities' are impoverished, if they do not take into account concepts such as the virtues. As already noted, Raz holds that the virtues are among the most important candidates for filling in that loss of ethical meaning that we experience, if we rely only on rights.<sup>50</sup>

In my view, there is an ideal of human development in Ramadan's list that also overlaps with many liberal perfectionist positions in the Western debate. Although the enlarged list of *maqasid* presented by Ramadan is explicitly drawn from the Shariah, it seems not farfetched to say that at least the values concerned with individual ethics encompass a perfectionist programme. Political and ethical perfectionism are theoretical positions recently advocated by a few authors in the liberal debate, but often criticized by many other orthodox liberals.<sup>51</sup> At the political level, perfectionism entails an effort of the State to promote some kind of conception of the good life of its

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<sup>50</sup> See J Raz, *The Morality of Freedom* (Clarendon Press 1986), pp 196-8.

<sup>51</sup> W Galston, *Liberal Purposes* (CUP 1991); R Dworkin, 'Foundations of Liberal Equality', in *The Tanner Lectures on Human Values* (University of Utah Press 1991); T Hurka, *Perfectionism*, OUP 1993; J Raz, *The Morality of Freedom* (fn 12); G Sher, *Beyond Neutrality* (CUP 1997); S Wall, *Liberalism, Perfectionism and Restraint* (CUP 1998).

citizens. At the ethical level, each citizen is committed to improve his/her good life according to certain objectively valid criteria. In my view, Ramadan's lists amount to an ethical and political perfectionist program and it may be very helpful to verify its overlappings with Martha Nussbaum's Aristotelian conception, expressed in 'Aristotelian Social Democracy' (ASD) and 'Non-Relative Virtues' (NRV).<sup>52</sup> While the first essay concerns more the political level, the second claims to propose an objectivist conception of human ends across societies. From both points of view, HR remain an important sphere of protection for human beings but, in Nussbaum's view, rights are coherently justified on the grounds of a conception of good human functioning. In my view this appears as a much sounder foundation than what happens in many contemporary catalogues of HR.

A first important point that Nussbaum stresses in ASD<sup>53</sup> is that of calling her proposal a 'thick vague conception of the good'. 'Thick' comes in opposition to Rawls' 'thin theory of the good': it has to deal not only with all-purpose means to good living but also with 'human ends across all areas of human life'.<sup>54</sup> I believe that this outline, proposed by Nussbaum, but drawn from Aristotle's reflections, even if it is somewhat controversial for its universalist character, can be subscribed to by people such as Ramadan and other Islamic authors, concerned with human welfare, as the Shariah prescribes. The thick conception wants to get at an account of human functioning that can be shared in diverse societies, but without imposing an objectivist conception of the human good which may raise big controversy. In NRV Nussbaum proposes a hermeneutical account of what it is to be a human being that is not based on any 'metaphysical biology' (as Aristotle is often charged with), but on the commonness of myths and stories from many times and places, stories explaining to both friends and strangers what it is to be human, rather than something else. These stories define many characteristics of the human being that make it what it is, rather than another creature: for example, the human being, differently from the gods (of the ancient Greeks), lives a mortal life

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<sup>52</sup> M Nussbaum, 'Non-Relative Virtues', in *Midwest Studies in Philosophy Vol. XIII*, (Notre Dame University Press 1988); M Nussbaum 'Aristotelian Social Democracy' in H Richardson, G Mara and R Douglass (eds), *Liberalism and the Good* (Kegan 1990).

<sup>53</sup> M Nussbaum, 'Aristotelian Social Democracy' (fn 52), p 217.

<sup>54</sup> *ibid.*

and, differently from the Cyclopes, shows sensitivity to the needs of others and a sense of commitment and affiliation.

The kind of myths and stories that are told in every society from generation to generation represent features of our common humanity that can also be plausibly considered shared in Islamic societies. I believe each of us can recognize the general features of his/her life in the list presented by Nussbaum: mortality, capacity for pleasure and pain, cognitive capabilities of perceiving, imagining and thinking, early infant development, practical reason, affiliation with other human beings, relatedness to other species and nature, humour and play and separateness. Such a list, Nussbaum says, is open-ended because some items can be added or subtracted and is also evaluative in having already made some choices.<sup>55</sup> What is most important to us is that from these circumstances Nussbaum derives a list of basic capabilities such as being able to live to the end of a complete human life, to have good health, to avoid unnecessary and non-useful pain, to use the five senses, etc.<sup>56</sup> According to Nussbaum's interpretation of Aristotle's ethics, this list expresses what counts most for human well-functioning.

Ramadan's list of *maqasid* appears at one time larger and narrower than Nussbaum's list. It is larger insofar as it includes political values, such as the rule of law, pluralism, evolution, cultures, religions and memories. Some of them attain the organization of political institutions, others emphasize the necessary plurality of certain concepts (e.g. 'religions'). Ramadan's list is also narrower, however, insofar as it covers things such as physical integrity, health, subsistence, intelligence, progeny but forgets, for example, the capability to form a conception of the good or to live with concern for nature. However, these slight differences should not hide the fact that the purposes (*maqasid*) included in the Shariah are aimed at public interest and human welfare. With regard to human development, Nussbaum's list seems only to offer a more complete and coherent set of purposes, articulated as capabilities. Insofar as Ramadan wants to persuade traditional religious scholars in Islam he should better consider Nussbaum's list of capabilities

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<sup>55</sup> *ibid*, p 224.

<sup>56</sup> *ibid*, p 225.

grounded in a plausible conception of the human being. Although he may object that his own lists of maqasid traced in the Shariah range also at a political level, Ramadan may be willing to admit that his move to ground Islamic ethics in nature nicely meets a list of capabilities grounded in a conception of the human being.

Now, it is time to go back to the EV that I introduced as the 'innovative' feature of my approach to Islamic ethics. Of course, the long tradition of EV, covering both Western and Islamic ethics, gives an almost paradoxical flavour to the idea that EV be innovative in Islamic ethics. I can comment that, on the one hand, most Muslim authors seem to have lost track of the secular tradition of EV in their culture, probably as a consequence of the pervasiveness of Western 'rights discourse'. On the other hand, a slight element of innovation consists in using Nussbaum's Aristotelian approach to capabilities and virtues to find common ground with Islamic ethics. On these presuppositions I will proceed, first, by giving a quick summary of Nussbaum's proposal concerning 'non-relative virtues' and, second, by offering, to some extent, a detailed account of the views of the major classical Islamic philosophers on the virtues.

First, we should consider Nussbaum's proposal with regard to non-relative virtues.<sup>57</sup> Following Aristotle, Nussbaum lists a number of spheres of experience the most important of which are: fear of important damages, especially death, bodily appetites and their pleasures, distribution of limited resources, management of one's personal property where others are concerned, attitudes to slights and damages; association and living together, and others.<sup>58</sup> All these spheres define necessary circumstances of our human life and we would generally recognize a life lacking in one of these as defective, as missing something specifically human. To give a couple of examples: we could hardly recognize the life of an immortal being as a human life (literary cases of this kind strike us just because they fuel extraordinary possibilities), while social bonds, although only empirically founded, seem to constitute a

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<sup>57</sup> She has often come back to the issue of EV, although her non-relative proposal remains the one formulated in NRV. See also her 'Virtue Ethics: A Misleading Category' (1999) 3 *The Journal of Ethics* 1989.

<sup>58</sup> Nussbaum, 'Non-relative Virtues' (fn 52), p 35.

part of a specifically human life, whatever theoretical approach we want to choose.

There is a general and elastic correspondence between these spheres and the list of virtues sketched by Nussbaum.<sup>59</sup> Courage seems in play when mortality is involved, temperance for bodily appetites and their pleasures, justice for the distribution of scarce resources, generosity in dealing with one's own property, friendliness in one's social bonds, etc. Of course, there are virtues such as magnanimity which, taken as attitudes and actions regarding one's own worth, seem culture-bound to ancient Greece, and we could think of others, such as the attitude to our natural environment, which are 'progress-bound' and are still nameless in our culture.

By and large, however, the list of basic spheres and corresponding virtues is justified by their acceptance independently of differences in time and place. We can still recognize what is good and bad in literary cases from the past or from very foreign cultures because their virtues and vices still correspond to our 'thin' descriptions. Thin descriptions of what courage or justice are need to be filled in accordance to specific circumstances of place and time, as we already mentioned, but holding that the right response is courage rather than cowardice or rashness is inescapable from the human condition. When fear of severe harm to our body and even death are concerned, we admire the courageous person rather than the coward or the rash one. There is no personal intuition here to identify what is virtue and what is vice, but a large convergence of shared opinions through time and space.<sup>60</sup>

## **VI. THE ROLE OF REASON IN THE ISLAMIC TRADITION**

In order to assess the Islamic position on EV and verify the possibilities of finding a common ground with the capabilities approach proposed by Nussbaum, we need to travel a certain distance both theoretically and

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<sup>59</sup> *ibid*, pp 35-6.

<sup>60</sup> It is worth-mentioning here that the idea of virtue has a higher degree of universality than the competing conception of 'fundamental rights' which is so often on the banners now.

historically. I believe we should take our inquiry back to the first centuries of Islamic thought because in that period we find a well-known divide whose exploration can give precious hints for a correct understanding of the present situation.

I shall try to proceed by showing how a sharp distinction between the two schools of thought which struggled for supremacy in the Islamic field from the eighth to the eleventh century A.D., the Mu'tazalite and the Ash'arite schools of theology, would not give the correct sense of the nuances of thought that differentiated early Islamic schools. The debate rotates around the relationship between Sharia and reason: it is such an important issue that it influences the pre-modern and the modern period alike. Muslims confront the role, scope and authority of reason with a religious tradition in which the Qu'ran refers God's word, as revealed to the Prophet Muhammad.<sup>61</sup> In inquiring into the possible roles of reason in Islamic ethics and law, I want to depart from the major opposition between the Mu'tazilite and the Ash'arite school. However, I acknowledge the necessity of accounting for more nuanced distinctions concerning the ontological authority of reason in Sharia and, also, concerning the extent to which 'reasoned deliberation about the good and the bad can assume sufficient normative authority to result in Sharia's norms that reflect what God desires or wills.'

I want to start by describing a few basic aspects which characterize the Mu'tazilite, rationalist position. Historically this position developed its set of views earlier than the traditionalist, Ash'arite school. The latter can be said to have developed as a reaction against rationalist views. The ethical tenets that sum up into the Mu'tazalite ideal seem to encourage in the human beings a measure of freedom and power to act in opposition to the faith in a divine omnipotence crushing human free will.<sup>62</sup>

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<sup>61</sup> See A Emon, *Islamic Natural Law Theories*, Oxford University Press, Oxford, 2010, p II.

<sup>62</sup> For my reconstruction of the Mu'tazalite views I am largely in debt to G F Hourani, 'Divine Justice and Human Reason in Mu'tazalite Ethical Theology' in R G Hovannisian (ed), *Ethics in Islam*, (Undena Publ 1985), pp 73-83.

The Mu'tazalite method of research can be characterized as a method of *kalam*, dialectic within theology. In other words, they dealt with a selective interpretation of the Qu'ran which takes certain principles as fundamental and derives extensive inferences. It seems particularly relevant to the Mu'tazili *kalam* dealing with the notion of justice. They do not take justice to depend on God's will but, rather, believe that God always acts in ways consistent with justice. This has a few other implications, but now it is worth emphasizing that, according to the Mu'tazili's view, even God's acts can be measured against justice.

The logically prior tenet from which most of the Mu'tazili reflection started is the metaethical thesis according to which ethical attributes such as 'just', 'obligatory', 'good' and 'evil' have an objective existence. The 'definitions of these objective terms were worked out in terms of what deserves to be approved, tolerated or disapproved.<sup>63</sup> What is approved or disapproved is independent of God's will and cannot be reduced to what is commanded, permitted or forbidden by God. However, even though it is logically possible for God to be unjust, it is inadmissible on rational and moral grounds, as some Mu'tazilites held.

The second tenet of the rationalist school that deserves attention is that human beings have power to act independently of the divine will. Rewarding and punishing, the Mu'tazilites argue, would only make sense, if men had a chance of being just or unjust on their own responsibility. With regard to rational and religious grounds to establish the principle of human responsibility, on the one hand the Qu'ran states several times that God does not impose on anyone duties beyond his power (notwithstanding the fact that other passages state the principles of predestination). On the other hand, on rational grounds the Mu'tazilites argued that capacity is a condition of obligation, as it is declared also by Sharia law. Thus, the power to choose freely is a precondition for any attribution of responsibility.

The third and basic principle put forward by the rationalist school is epistemological: they hold that 'human beings also have the power to know

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<sup>63</sup> See Hourani (fn 63), p 75.

objective ethical truths and make ethical judgments to some extent by direct thought or reason.<sup>64</sup> The objective existence of terms such as 'justice, obligation and evil' entails that man can have knowledge of these meanings. An important consequence of this position is that anyone can know the main obligations and prohibitions of life by his reason: not only Sharia lawyers can give answers on what obligations we have. However, the doctrine of rational ethical knowledge does not entail that we can know all our obligations by natural reason because this has to be supplemented by revelation on details. Revelation is not made useless by reason, according to the Mu'tazilites because it still preserves the important function to motivate right conduct and thought.

The account I have offered of the metaethical frame of the Mu'tazilite position describes views that are familiar to Western thought insofar as they are the direct legacy of Greek ethics. However, over time this account has been overwhelmed by the traditionalist ethical view: the Ash'arite school which reacted to the rationalism of Mu'tazilites. Ash'arite theology can be summarized under a few principles which are in direct opposition to the three Mu'tazili tenets we have just identified. On the first metaethical position, in contrast with rationalist objectivism of values, the Ash'arite held 'that values are not just "objectively" present in human actions and readily available to reason, but that they are the result of the divine will.'<sup>65</sup> This position is a kind of theistic subjectivism centered on the divine will that cannot be known by reason, but only approached through sources such as the divine scripture and prophetic saying. Ash'arite theology establishes the superiority of 'tradition' or 'revelation' over reason not *per se*, but because tradition and revelation lead to faith and its unity in the fellowship of believers, the *umma*.

A second important point of dispute had to do with the second tenet of the Mu'tazilite school: the Ash'arites wanted to deny that human beings have power to act independently of God's will. The central term for them was *kasb* or 'acquisition'. The idea is that man 'acquires the responsibility of his acts, even though, according to the Ash'ari, man's power to perform his acts is not

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<sup>64</sup> *ibid*, p 74.

<sup>65</sup> S Stelzer, 'Ethics' in T Winters (ed), *The Cambridge Companion to Classical Islamic Theology* (CUP 2008), p 166.

his own.<sup>166</sup> They held that it is God to set in motion the power of choice in men and, thus, 'creates' man's behaviour. In this doctrine, there is not much room left for the attribution of responsibility to human beings. The idea of acquisition makes little progress in terms of free choice: it entails simultaneity of man's power and will with God's creation of the act, but man is no more than a receptacle for it. However, the doctrine of secondary causes made some steps in the direction of distinguishing between the agent and the Creator: when the former receives an attribute or an act, 'its qualification relates to that receptacle, not to any other.'<sup>167</sup>

It is worth-emphasizing that about three centuries after the dispute between the two Islamic schools in the Christian West Aquinas tried to devise a theory of the virtues which went beyond the Augustinian position that virtue is a gift of God. Augustine did not ascribe any important role to human effort because in his view the infused virtues are produced in us 'without us' and prepare the way to receive the cardinal virtues from God. Aquinas left more room to human effort through the doctrine of 'acquired virtues'. These direct a person's action with regard to his highest good in the worldly life, but they also prepare the person to receive its 'infused' counterpart, realizing in this way a harmonious transition.<sup>68</sup>

I believe Aquinas's move has been crucial toward the affirmation of freedom of choice in the Western philosophy, while the Mu'tazilites were not given the same opportunity because of their suppression through the decrees of the caliph Qadir in 1017 and 1041. Probably most of the *ulama* showed hostility toward the Mu'tazili rationalistic methodology of inquiry into questions of law and ethics. The majority of the Islamic clergy, well-known on the positive sources of Qu'ran and *hadith*, felt it much easier and uncontroversial to tackle theological questions on the grounds of those sources rather than recurring to the controversial and difficult rationalistic methodology.

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<sup>66</sup> G Makdisi, 'Ethics in Islamic Traditionalist Doctrine', in R G Hovannisian (ed), *Ethics in Islam* (fn 63), p 52.

<sup>67</sup> *ibid*, p 54.

<sup>68</sup> See J Inglis, 'Aquinas's Replication of the Acquired Moral Virtues', (1999) 27 *Journal of Religious Ethics* 11, pp 3-27.

The general thrust of Ash'arite theology is shown clearly also by their rejection of the third Mu'tazili tenet: they denied that human beings have the power to know objective truths and make ethical judgments to some extent by reason. The traditionalist school held that Islamic theology had to concentrate on God's commands and prohibitions in order to know what is good to do. If it is God who indicates what is good and what is evil, we can also derive ethical obligations from these indications. It is all in the scriptures, according to the traditionalists: there is no need of rational reflection. However, a centuries long debate between the schools has produced a more nuanced understanding of the determination of good and evil. Philosophical theology – *kalam* – and juridical theology – *usul al fiqh* – confront each other on the problem of the legitimacy of ethical knowledge. What is at stake is not so much a radical alternative between reason and revelation, but whether the determination of knowledge is 'made by reason unaided or by reason aided by the data of revelation.'<sup>69</sup>

## VII. HARD AND SOFT NATURAL LAW IN THE ISLAMIC TRADITION

The account I have just offered of the Mu'tazilite and Ash'arite views shows a sharp contrast that may be useful for the reader who wants to grasp a basic sketch. However, as it often happens, real historical positions present a much more nuanced picture of the relations between Sharia and reason. Anver Emon offers a useful key of understanding by centering his discussion on natural law jurisprudence. He says that 'the question of whether human moral enquiry into the good (*busu*) and the bad (*qubb*) can be an authoritative basis for assessing a rule of law consonant with the divine will when source texts are silent' remains an open question for us.<sup>70</sup>

He distinguishes two models of natural law theory, called Hard Natural Law and Soft Natural Law. The first relied on the theological presumption that God only does what is good: God wants X *because* X is good. In short, the argument is that God is only just and created the world to benefit humanity. We can discern these benefits through the use of our reason and develop norms of behaviour based on the divine will. The central point of this view

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<sup>69</sup> Makdisi (fn 67), p 63.

<sup>70</sup> Emon (fn 61), p 24.

that marks the difference from the crude Mu'tazilite position I have referred to earlier is that 'hard naturalists fused the value arising from God's justice and will with the facts of a natural order to invest nature with both objectivity and value.'<sup>71</sup> From the fusion of fact and value we can understand how hard naturalists thought that by observing the natural world they could reason about the good and the bad and transform empirical assessments into normative ones.

By contrast, it is no surprise that the voluntarist jurists that can be gathered under the label of Soft Natural Law sided with the Ash'arite in rejecting the theology of Hard Natural Law as potentially undermining God's omnipotence: God's will cannot be limited by only doing the good as discovered by human reason. So, how to deal with those cases in which no source text addresses the issue? Is there any other way out than suspending judgment? The crucial move of Soft Natural Law theories is that of balancing nature as a benefitting source with God's grace. The argument of grace both allows for the fusion of fact and value in nature – natural reason remains authoritative – and preserves a theological commitment to God's omnipotence.<sup>72</sup> We human beings can rely upon God's creation of nature, because he did it out of grace, but He is not limited in His power to alter His creation at any time.

What is most important for our purposes in this paper is that Soft Natural Law theories designed models of practical reasoning centered around concepts such as *maslaha* (perceived general good that speaks to the perfection of the polity) and *maqasid al-Sharia* (the five fundamental values of life, lineage, property, mind and religion). However, Soft Naturalists ironically did not employ those concepts to answer the challenge of modernity, as some contemporary reformers do (as referred in section 4). Rather, a *maslaha* argument was called on by some of these jurists to justify a rule of law in the absence of a source-text. *Maqasid* and *maslaha* were taken as devices to limit the operation of reason in the law. If contemporary reformers

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<sup>71</sup> *ibid*, p 26. He refers to authors such as al-Jassas, Qadi Abd al-Jabbar and Abu al-Husayn al-Basri.

<sup>72</sup> *ibid*, p 32.

can look at them as sources of progress, this may be taken as a sign of proximity between reasoned deliberation and God's grace.

The first important author who shows clearly all the main tenets of soft natural law is Al-Ghazali whose theory shows both the fusion of fact and value and the element of divine grace that preserves God's voluntaristic omnipotence. The latter is at the origin of all our reasoning through the jurisprudence of *maslaha*: this is reliable because we as humans can count on what results from God's gracious creation. Al-Ghazali offers the clearest example of a connection between *maslaha* and *maqasid al-Sharia* and the kind of reasoning that can derive from them. *Maqasid* are the basic aims of Sharia but are not derived from scriptural source-texts: they are, rather, intuitively known.<sup>73</sup> The *maqasid* provide the values to which any *maslaha* must pose a nexus to contribute to the development of particular rules of law. The nexus between the *maslaha* and a particular rule is identified by Al-Ghazali as *munasaba*: it is a rationale that cannot be rejected unless by showing its illegitimacy. A typical classical example is developed by Al-Ghazali's reasoning from the prohibition on wine consumption. He inferred from the prohibition that its *munasaba* or rationale had to do with wine's intoxicating effect and the necessity of protecting the integrity of the mind (one of the *maqasid*).<sup>74</sup>

These few hints may give the impression that Al-Ghazali spouses entirely the position dubbed as Soft Natural Law and its understanding of reason. However, we would be misled by not paying attention to the different periods of Al-Ghazali's life. His most clearly ethical work, the *Ihya' Ulum al-Din*, dates to his mature age, his Sufi period. This work requires more attention with regard to the ethics of virtues which offers but a few hints that may be put forward with regard to the role of reason.

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<sup>73</sup> In Ibrahim Muhammad Ramadan (ed), *al-Mustafa min 'Ilm al-Usul*, (Beirut: Dar al-Arqam, D), pp 636-37 al-Ghazali illustrates the five values of *maqasid* by referring to scriptural examples.

<sup>74</sup> See Al-Ghazali, *Shifa al-Ghalil*, Muhammad al-Kubaysi (ed) (Baghdad: Ra'asa Diwan al-Awqaf 1971), p 146.

With regard to knowledge of good and evil, reason can help only by the understanding of what the prophets communicate to us, but insofar as the truth is conveyed to us through revelation we do not need reason at a higher level. We can walk along the way of the prophets only through revelation.<sup>75</sup> According to one view, the mystical element remains dominant within Al-Ghazali's ethical theory, notwithstanding the presence of philosophical and religious elements. By contrast, according to another view, the conjunction of reason and revelation allows the achievement of moral perfection or moderation.<sup>76</sup>

However, if we look at previous works such as *al-Mustasfa* and *Shifa al-Ghalil* there is plenty of room to identify a sounder basis for practical reasoning in al-Ghazali. He wants to legitimize 'silent *maslaha*' as authority to justify Sharia rules only when it poses the strongest nexus to the basic values. This nexus has to be carefully scrutinized and shown to serve necessary interests for the benefit and perfection of society at large.<sup>77</sup> Al-Ghazali employs, among others, the example of Muslims used as human shields by unbelievers waging war. The question is whether to strike, killing innocent Muslims, or refrain from striking, letting the unbelievers conquer the land of Islam. In the

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<sup>75</sup> See M A Quasem, *The Ethics of Al-Ghazali* (Selangor Malaysia 1975), p 28.

<sup>76</sup> See Fakhry *Ethical Theories in Islam* (Brill 1991), p 199. It is interesting to notice that the reception of the *Ihya* in the centuries that followed was more than controversial, arising dispute and burning. By that work Al-Ghazali wanted also to promote the otherworldly sciences over the worldly ones, leaving little role to *fiqh* (jurisprudence) and *kalam* (theology). He advocated Sufism among the religious sciences as the one that may lead to certainty but, notwithstanding the success of Al-Ghazali's book in later centuries, the radical religious implications were gradually lost sight of. The success of the *Ihya* in the Islamic West (the Maghribi Sufi movement) depended on its collecting and rationalizing the fruits of centuries of Eastern Sufi thought that was presented as a package to emerging Western Sufis. However, the *Ihya*'s attack against worldly scholars, those *fuqaha* (experts of *fiqh*) who were dominant in Al-Andalus (Islamic Spain) in the 12<sup>th</sup> century led eventually to the burning of the book. But not many years later the process of acceptance of the *Ihya* was underway in the Maghrib as elsewhere. See K Garden, *Al-Ghazali's Contested Revival* (University of Chicago, Ph.D. Dissertation 2005), available at [https://www.academia.edu/438972/Al-Ghazalis\\_Contested\\_Revival\\_IhyaUlum\\_Al-Dinand\\_Its\\_Critics\\_In\\_Khorasan\\_and\\_the\\_Maghrib\\_Morocco\\_Tunisia\\_Algeria\\_Spain\\_](https://www.academia.edu/438972/Al-Ghazalis_Contested_Revival_IhyaUlum_Al-Dinand_Its_Critics_In_Khorasan_and_the_Maghrib_Morocco_Tunisia_Algeria_Spain_).

<sup>77</sup> See *al-Mustasfa* I, p 640.

second case, he argues, they will kill all the Muslims and also the prisoners used as shields. Al-Ghazali thinks that the second option poses a tighter nexus to the aim of the law which is to reduce killing and, in more general terms, to contribute to the perfection of society.<sup>78</sup> This kind of reasoning also seems quite compatible with contemporary utilitarian-like styles of reasoning and certainly shows an allegiance to reason that may have been reduced in later works.

It is important to emphasize that al-Ghazali's line of understanding of Sharia found other influential followers in later centuries, such as Fakr al Din al-Razi. He is prominent among those who proposed a reasoned deliberation based on the use of *maslaha* where Sharia is silent. In his major work, *al-Mabsul*, al-Razi argued that God legislates rules for the benefit (*maslaha*) of the people: when a connection between rules and *maslaha* can be identified, we have an acceptable justification even if Sharia is silent. However, al-Razi shows his legal capacities in not being content of proposing the ontological authority of natural reason through the concept of *maslaha*. Similarly to al-Ghazali, he is concerned with identifying the *ratio legis* of a rule: he uses the concept of *munasib* to identify the rational nexus between a given rule and the five basic goals of the law or *maqasid*.<sup>79</sup> A final, but eloquent appeal to reason may be found in the proposed hierarchical connection between *maslaha* and the basic aims of the law: it is only the first, *darura* or necessary interest (not a simple *need* or a *perfectionist value*) that can justify the creation or extension of the law.<sup>80</sup>

Al-Razi's theoretical moves that I have quickly referred to show, as Emon holds, his intention to fuse fact and value in nature, similarly to Hard Naturalism. But, as in the case of al-Ghazali, he wants to reject the view that there is a permanent quality of the natural order that *obligates* God to do good. So, we see here the element of divine grace to come back to grant God's omnipotence. However, this element does not undermine our reasonable reliance on the regularity of nature and the benefits it presents.<sup>81</sup>

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<sup>78</sup> See Emon (fn 61), pp 139-40.

<sup>79</sup> See al-Razi, *al-Mabsul*, 5, p 160.; see also Emon (fn 61), p 154 ff.

<sup>80</sup> See al-Razi, *al-Mabsul*, 6, p 163.

<sup>81</sup> See Emon (fn 61), p 159.

The red thread offered by the Soft Natural Law framework gives us a clear sense of how the Islamic landscape of the Middle Ages was far less black and white – Mu'tazilite v. Ash'arite – than what it might appear at a first look. Most acute writers on the voluntarist side such as al-Ghazali and al-Razi did not neglect at all the role of rational inquiry in extending the application of the Sharia. Something more and particularly noteworthy can be said with regard to other two famous names militating respectively in the philosophical and in the theological camp. In the philosophical camp, Miskawayh is noteworthy on the issue of reason: he holds that the intellectual perfection of wisdom can and should be overcome in a higher spiritual realm in which man can receive the illumination of the divine light. In this way man can partake of the divine perfection, overcoming all worldly desires and anxieties.<sup>82</sup> Miskawayh tends to locate the idea of happiness in an intellectual, spiritual and divine realm where it cannot be marred by terrestrial or bodily events. The connection with the divine will can be described in 'mystical' terms which seem to draw away from the Aristotelian framework of thought, notwithstanding Miskawayh's confidence that it can be fitted into the latter's scheme.

In turn, in the theological camp we find a thinker usually considered as an icon of extremist Islamism, Ibn Taymiyya whose project, once carefully assessed, can be described as an attempt to draw a sort of '*via media*', carrying forward a message of moderation.<sup>83</sup> It should be emphasized that Ibn Taymiyya, notwithstanding his popular perception as a prominent religious figure throughout Islamic history, 'was regarded with an attitude of "fluctuating scepticism" within the Damascene Hanbalite circles.'<sup>84</sup> Sophia Vasalou emphasizes how the explicit theme of Ibn Taymiyya's most relevant works was that of identifying dialectically a balance between opposing extremes, elements of truth contained in different views aiming at the final claim of harmony between reason and revelation.

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<sup>82</sup> See Miskawayh, *Tabdhib al Akhlaq* (English translation by C K Zurayk, *The Refinement of Character* (Beirut 1966), p 77.

<sup>83</sup> Laoust, *Essai sur les doctrines sociales et politiques de Taqi-d-Din Ahmad b. Taymiya* (Le Caire 1939), p 221.

<sup>84</sup> S Vasalou, *Ibn Taymiyya's Theological Ethics* (OUP 2015), p 13.

It would be senseless to try to sketch here all the main lines of reflection put forward by Ibn Taymiyya in his huge and non-systematic production. It may be helpful to recall that most of the questions we are concerned with in Taymiyya's work can be grasped under the rubric of *al-Tahsin wa'l-taqbih* or 'the determination of good and bad' or 'right and wrong'. With regard to his focal issue, Ibn Taymiyya states clearly his proposal of drawing a *via media* that encompasses both the Mu'tazilite position, according to which an act contains benefit or harm and it would do so even if the Law did not report it, and an Ash'arite position, according to which the Lawgiver commands something that becomes good and forbids something that becomes bad. He finally allows for a third category of acts that the Lawgiver commands only to put his servants to test.<sup>85</sup>

What seems most characterizing of Ibn Taymiyya's views for our purposes is his ontology of value that takes distance from the Ash'arite's rejection of reason: he openly embraces the objectivity of values, though leaving the door open to other categories of acts, as we have just seen.<sup>86</sup> With his doctrine of God's determination of human acts Ibn Taymiyya wants to re-balance the conflict between God's justice and God's power that had been settled by the Mu'tazilite in favour of the former. However, the place where we really find a declaration of his objectivism of values is where he says that 'an act contains benefit of harm (*maslaha as-mafsada*) even if the Law had not come to report that.'<sup>87</sup> Notwithstanding the importance of deontological considerations, Vasalou states clearly that 'it is the notion of utility, [...] that appears to carry moral ultimacy within Ibn Taymiyya's scheme.'<sup>88</sup> He states, similarly to Western utilitarians, that 'every living being strives for what brings it enjoyment and pleasure.'<sup>89</sup> Elsewhere we find that there are things beneficial

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<sup>85</sup> See Ibn Taymiyya, 'Majmu Fatawa shaykh al-Islam Ahmad ibn Taymiyya', in Abn al-Rahman ibn Muhammad ibn Qasim and Muhammad ibn 'Abd al-Rahman ibn Muhammad (eds), *Mas'alat tahsin al-'aql wa-taqbihuhu* (Riyad: Matabi, al-Riyad 1961) 37 vol, vol 8, pp 428-36; and see Vasalou's comments (fn 85), p 21 ff.

<sup>86</sup> See Vasalou (fn 85), pp 27-8.

<sup>87</sup> Ibn Taymiyya, 'Mas'alat tahsin al-'aql wa-taqbihuhu' (fn 86), vol. 8, pp 434-5.

<sup>88</sup> Vasalou (fn 85), p 34.

<sup>89</sup> Ibn Taymiyya, *Qa'ida fi'l-mahabba*, p 112.

and agreeable to human beings and things contrary and harmful: the first give them pleasure, the second pain.<sup>90</sup> Often we find, Sophia Vasalou observes, Ibn Taymiyya gliding from psychological descriptions to more normative tones, from stating that 'every living being strives for what brings it enjoyment and pleasure' to 'living beings should attain what benefits them and gives them pleasure.'<sup>91</sup> What is most striking in Ibn Taymiyya's presentation of ethical issues is the union of two different claims: first, an objective claim about benefit as an ethical value and, second, an ascription of subjective emotive states according to which we experience love for those who show justice, knowledge, beneficence, etc. and desire to praise them and wish them well.<sup>92</sup> This approach, Vasalou notes, reminds us of Hume's sentimentalist analysis of moral notions by which he takes an action or character to be vicious or virtuous, if we have sentiments of blame or praise 'from the constitution of our nature'.<sup>93</sup>

In concluding my non-systematic remarks on the role of reason in the Islamic tradition, I want to emphasise the extent to which reasoned deliberation about the good and the bad results is important in determining the interpretation of Sharia. The weight and influence of Middle Ages thinkers on the Islamic tradition is paired and renewed by those contemporary Muslim thinkers, such as Muhammad Fadel, who try to find elements of compatibility between John Rawls' liberal scheme of public reason and the tradition of rational inquiry that Fadel retrieves in Islamic theology and law (cf section 1).<sup>94</sup>

It is important to remember how Fadel is not alone in proposing a liberal, Rawlsian scheme as a solution able to encompass and find room for Islamic values. Andrew March is a liberal, non-Muslim political theorist who proposes a 'compatibility view', arguing that Islam may be interpreted as a strong moral commitment, a 'comprehensive doctrine' in Rawls' terms, that

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<sup>90</sup> See Ibn Taymiyya, *Majmu Fatawa*, (fn 8), pp 308-9.

<sup>91</sup> See Vasalou (fn 85), p 35.

<sup>92</sup> See Ibn Taymiyya, *ar-Radd 'ala al-Mantiqiyyin*, p 423.

<sup>93</sup> Vasalou (fn 85), p 38.

<sup>94</sup> See M Fadel, 'The True, the Good and the Reasonable: the Theological and Ethical Roots of Public Reason in Islamic Law (fn 4).

can be shown at least not in conflict with those political values that are specified by a liberal-democratic conception of justice.<sup>95</sup> March takes his search for an overlapping consensus as an exercise in 'comparative ethics', meaning liberalism, on the one hand, and Islamic ethics, on the other, understood as the tradition of Islamic law, including Qur'anic exegesis (*tafsir*), *hadith*, commentary, jurisprudence (*usul al-fiqh*) and substantive legal-ethical rulings (*furn' al-fiqh*).<sup>96</sup> March aims at a point of equilibrium that requires the least amount of revision of traditional Islamic commitments in order to require the least amount of departure from traditional and widely held beliefs.<sup>97</sup>

I would only comment on March's and Fadel's attempts that in order to maximize their possibilities of success they should consider whether to enlarge Rawls' scheme of overlapping consensus so that also a selection of the classical virtues that receive allegiance from Islamic and Western quarters alike can be included.<sup>98</sup> A stronger foundation of values would be better

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<sup>95</sup> See A March, *Islam and Liberal Citizenship: The Search for an Overlapping Consensus* (OUP 2009), pp 12-3.

<sup>96</sup> *ibid*, p 14.

<sup>97</sup> *ibid*, p 14.

<sup>98</sup> The push to reform Islam from the inside is not peculiar to the contemporary authors I have just presented – and to many others who work in the same direction in our days. We would not have a clear picture of present day situation without recalling the modernist Islamic movement that emerged in many Islamic countries between the 19<sup>th</sup> and the 20<sup>th</sup> century. People such as Rashid Rida (Lebanon), Rafi' al-Tahtawi (Egypt) and Khayr al-Din (Tunisia) have strongly supported the argument for freedom of expression. First, they realized the degree to which Islamic countries fared backward with regard to European civilization and progress and recognized that progress in the governance of mankind relied primarily on respect for personal and political rights (See Khayr al-Din, *The Surest Path*, in Kurzman, *Modernist Islam 1840-1940* (OUP 2002), p 40 ff.). Some of them – in particular Rida – remarked that there is continuity between social progress and religious evolution because a *hadith* says that 'God sends to nation at the beginning of every century someone to renew its religion.' (Kurzman, p 6) Second, scholars belonging to the modernist movement had first to argue against *aqlid* – following established scholars – in order to defend their right to make innovative arguments. For example, Tahtawi and Rida – along many others – appealed to *ijtihad* as rational interpretation but so long as it supported the principles of religion (see Kurzman, p 13). Third and last, with regard

received in my view by Muslims who traditionally have in their cultural background concepts such as *maqasid* and *maslaha* that make reference to valuable purposes to realize in a Muslim community. The work ahead of political theorists would be, according to this program, that of defining a strong common ground in which virtues, *maqasid*, and *maslaha* could find their place and compatibility with classical liberal principles.

### **VIII. THE VIRTUES IN THE ISLAMIC TRADITION: A SHORT ACCOUNT**

Following this sketchy description of the role of reason in different streams of Islamic ethical theory, we should now approach the core interest of our inquiry: the virtues. In parallel with the previous step, I want to start my account with those Islamic authors such as Al-Farabi, Ibn Sina and Ibn Rushd who show most clearly the Greek legacy. For each of these philosophers, I want to focus in detail upon a few points which show very clearly their connection with Aristotle's and Plato's EV.

First, we should notice how Al-Farabi distinguished between moral and intellectual virtues, following a well-established tradition that gives a special place to practical wisdom among those belonging to the latter category. Its place depends on its capacity of determining the right kind of action in each kind of situation. Similarly to the Western tradition, the person of practical wisdom is designated as 'reasonable'.

Second, among the moral virtues a special mention is reserved to friendship which is treated along Aristotelian lines, but with some religious element which helps to design what virtuous men hold in common. According to Al-

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to the direction of the progress inspired by the European model Khayr al-Din notes that Muslims should not ignore values that are correct and come from other cultures, but that were formerly possessed by Muslims (often these writers emphasize how Europeans have drawn from Islamic countries knowledge that they have later developed (see Kurzman, pp 17-8). Among the new conquests of the European culture to be implemented by Islamic countries Tahtawi counted and praised 'constitutionalism' founded on equality, taken as sharing the same laws and being equal before the state: a view that also the sacred text dictates (see Kurzman, p 20).

Farabi, they have to represent a community of belief or action, focused on beliefs regarding God, spiritual entities, the origin of the world. These common beliefs, in turn, make possible a community of virtue and mutual advantage.

In Ibn Sina's short tract on ethics (*Fi 'Ibn-al-Akblaq*) we find more attention being dedicated to single classical virtues, such as temperance, justice and wisdom. They correspond to the three powers of the soul: the concupiscent, the irascible and the rational respectively. Each of the general virtues has subdivisions which specify aspects of temperance, courage and wisdom according to the plurality of ways in which they can be manifested in practical life. It is also worth mentioning that Ibn Sina shows more clearly than Al Farabi and Ibn Rushd the influence of Islamic religion on his view of the virtuous man and his performing religious duties. In his view, the religious man of virtue 'will be assisted by God to achieve success in whatever he undertakes.'<sup>99</sup>

In Ibn Rushd (Averroes) we find, with regard to the virtues, an approach clearly deriving from the Platonic division of the soul into three parts corresponding to three parts of the city. Wisdom, courage and temperance lead each its own sphere of conduct, while justice famously has an ordering role among the three parts of the soul (It is worth-mentioning that this Platonic account of justice is later supplemented by an Aristotelian notion of universal 'common justice').<sup>100</sup> The only distinctive feature of Averroes's conception of the virtues that needs to be emphasized is his conviction that virtues can also be inculcated by coercion.<sup>101</sup> It should be made clear that virtues, according to Aristotle's view, can be only taught to young people of well-born character who are naturally disposed toward what is fine and good. By contrast, the many obey, fear and avoid what is bad and antisocial only to achieve some share in virtue and show some degree of decency.<sup>102</sup> However, it is a milestone of the Aristotelian EV that virtues can be exercised only on

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<sup>99</sup> *ibid*, p 87.

<sup>100</sup> See Averroes, *Moralia Nicomachia*, fol. 65 b.

<sup>101</sup> See Fakhry (fn 77), p 90.

<sup>102</sup> See Aristotle, *Nicomachean Ethics*, 1179 b 5-19.

the grounds of an autonomous choice: coercion leads the agent beyond the realm of virtue.

Miskawayh focuses his attention on virtue as the perfection or excellence of the rational part of the soul. He seems strongly driven towards an intellectualist conception in which virtue belongs with knowledge and cognition, while the activities proper to the body are shunned. Miskawayh also follows the traditional Platonic tripartition of the soul between wisdom, courage and temperance; while, in an Aristotelian fashion, each virtue is described as a means between two extremes. It is to emphasize that from each of the cardinal virtues he derives, in a non-Aristotelian fashion, a table of intellectual and moral virtues which seem to mark some distance from their Greek predecessors.<sup>103</sup>

A special mention is deserved by Miskawayh's treatment of two virtues as pre-eminent over all others: justice and friendship. The first is conceived in Platonic terms as an equilibrium resulting from the virtues of wisdom, temperance and courage. It is a mode of unity, in Platonic terms the 'perfection of being'. In turn Miskawayh appears influenced by Aristotle in designing other distinctions within the concept of justice – we can find a heterogeneous element in his conception of 'divine justice'. This idea is located in the realm of metaphysics, according to a Platonic and Pythagorean view and Miskawayh goes on also to assert that in the *Nicomachean Ethics* the highest form of justice is that emanating from God.<sup>104</sup>

As to friendship, this is taken by Miskawayh as the ideal condition of the human relationships. Justice comes in only when this noble disposition cannot be achieved. Most of what he says about forms and varieties of friendship is of Aristotelian inspiration but for his consideration of divine love (friendship) which has a clear neo-Platonic derivation – as in the case of divine justice. The love for his Creator entails obedience for and glorification

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<sup>103</sup> See Miskawayh, *Tabdhib al-Akblaq*, 19 ff.

<sup>104</sup> The Aristotelian source of this alleged statement is uncertain. See Fakhry (fn 77), p 115 .

of God and it is a prerogative especially of the man of 'divine learning' because one can love deeply only what one knows.<sup>105</sup>

We should now go back again to Al-Ghazali's ethics and consider his views on the virtues as a position which, although stemming to some extent from the classical conception, makes a few steps aside in the direction of a religious understanding of the virtues. A few points deserve explicit mention in Al-Ghazali's EV. First, more than other Islamic thinkers, he locates the virtues within the context of the good character which is taken as an established state of the soul from which good actions – i.e. those which are praised by reason and the *Sharia* – proceed.<sup>106</sup> This definition by Al-Ghazali marks a relevant difference with classical ethics insofar as the faculties of anger and desire have to yield to the dictates of reason *and* the *Sharia*. Following the previous presentation of the place of reason in Al-Ghazali's ethics, we should notice how its role is less crucial in comparison to classical EV. However, the inclusion of Sharia as a criterion of evaluation and judgment seems to help the work of reason rather than contrasting its determinations, as it happens in determining the mean for each virtue in different circumstances.<sup>107</sup>

Second, 'the mean', the correct state of realizing each virtue, according to an Aristotelian doctrine that is also entirely endorsed by the Aquinas, is emphasized by Al-Ghazali for at least two reasons. The first reason is that it keeps the virtues in their worldly dimension because the state of the mean is determined by practical reason that mediates between two extremes, as in the case of courage that is a mean between a state of defect (cowardice) and a

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<sup>105</sup> See Miskawayh, *Tabdhib al-Akblaq* (fn 83), p 147 ff; and the comment in Fakhry, (fn 77), p 118.

<sup>106</sup> See Al-Ghazali, *Ihya Ulum ad-Din*, III, p 46. According to Al-Ghazali it is through 'the conjunction of reason and revelation (*al-aql, wa'l-shar*) that the moral perfection of 'moderation' is achieved. Fakhry (fn 77), p 199. Fakhry correctly emphasizes the analogy with Aristotle's ethics. Al-Ghazali strongly emphasizes the process of struggling against passions (*hawwa*) and the condition of overcoming and subduing them is the 'present heaven' of mankind. See *Mizan al-Amal*, p 48. This view appears as a clear remind of the Aristotelian harnessing of passions.

<sup>107</sup> See *ibid*, III, pp 84, 147.

state of excess (bravery): the same procedure applies in each sphere of conduct in which a virtue – e.g. temperance or generosity – comes in.<sup>108</sup>

By contrast, the second reason that leads Al-Ghazali to emphasize the importance of the mean takes the mean towards the otherworldly dimension: keeping to the mean entails remaining as far as possible from the grasp of desires and, thus, achieving the greatest possible resemblance to the angels.<sup>109</sup> Good character can be achieved through the state of the mean as this results in the virtues of wisdom, courage, temperance and justice. In particular, Al-Ghazali considers justice as the state of balance in which 'reason, desire and anger are kept in their proper place and given their due'.<sup>110</sup> It is worth-mentioning that, notwithstanding several resemblances with the classical conception of the virtues, the virtues just enumerated find their highest realization when getting close to the way of the Prophet.<sup>111</sup>

Third, I believe it necessary to emphasize Al-Ghazali's view on the possibility of changing character through effort and appropriate moral training. It is a distinctive feature of his ethical thought and marks a point of difference with regard to classical EV. In acquiring good character Al-Ghazali mentions divine gift – for people who are good by nature – mortification and self-training. The latter can be equated with 'habituation' which is the method of acquisition of the virtues most in line with the tradition of classical thought. By contrast, the idea of mortification is unknown to classical EV and derives from Al-Ghazali's conviction that it is possible to correct an evil character through the help of a spiritual guide. Such work of self-correction requires as

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<sup>108</sup> See *ibid*, III, pp 85-86, 199.

<sup>109</sup> See *ibid*, pp 50, 83.

<sup>110</sup> M A Quasem, *The Ethics of Al-Ghazali* (fn 76), p 85; see. Al-Ghazali, *Al-Arba in fi Usul ad-Din*, p 73. It is very clear that these hints about the structure of virtue resemble Aristotle's conception of virtues to a large degree. For example, *Nicomachean Ethics* 1106 a 26- b 7 (about the mean); 1102 a 14 ff (about rational and non-rational parts of the soul).

<sup>111</sup> However, the general division of virtues among wisdom, courage, temperance and justice – and the further subdivision of each of these principal virtues – follows roughly the Aristotelian virtues, as laid down in NE, V, chaps. 1-2-6-7. In particular, it is Al-Ghazali's treatment of justice that corresponds to the Aristotelian scheme. See Fakhry (fn 77)), p 201.

first step the awareness of one's evil traits and a search for spiritual guidance. Second, the general method for healing diseases of the soul is by removing its causes. In other words, every vice should be removed by its opposites through knowledge and action.<sup>112</sup> Once the man of vice is made aware – through his spiritual guide of the nature of his vice, its causes and its power of harming in this life or in the next – it is necessary to treat the vice through action. The action should be of a nature opposite to that of the vice in order to start the operation of removal of the latter. This 'practical remedy' of removal, as Al-Ghazali calls it, requires a high degree of patience.<sup>113</sup> Although the removal of evil character traits is accomplished through a man's conscious efforts, there is a supernatural element of divine grace. The purification of the soul is only accomplished by the grace of God and through his help.<sup>114</sup>

In my view, there are two features in Al-Ghazali's account of the possibility of changing character which are worth-emphasizing. Both of them mark a difference between his ethics and the classical tradition. The first is the same idea of the change of character for adults which is unknown to writers such as Aristotle. He discusses the way to make young people virtuous through habituation, argument and the law. The latter and its sanctions are necessary for the many who cannot be stimulated towards what is fine and good. The many, Aristotle says, can obey for fear of sanctions and can at best become decent because it is unlikely to alter by argument what has long been absorbed by habit.<sup>115</sup> In other words Aristotle does not believe in the possibility of transforming vicious people into fine and virtuous characters. Classical, worldly EV cannot propose such a move because it is a transformation which goes beyond its potentialities. Rather, it is the second distinctive feature in Al-Ghazali's views on this issue that makes the transformation possible. It is the appeal to divine grace, to the otherworldly element to mark the main difference with Aristotelian (and, generally, classical) EV.

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<sup>112</sup> See Al-Ghazali, *Ihya Ulum ad-Din*, III, p 129.

<sup>113</sup> See *ibid*, III, pp 173; IV, p 50.

<sup>114</sup> See *ibid*, IV, p 368.

<sup>115</sup> See *Nicomachean Ethics*, 1179 a 33- b 19.

That element finds full realization in the *mystical virtues* which Al-Ghazali takes as a necessary second stage after the purification of the soul through self-training and mortification. Most important among the mystical virtues are repentance, fear, ascetism, patience, gratitude, sincerity, truthfulness, trust, love and satisfaction. The seeker after God looks at a path that he has to ascend step by step toward the top where he finds love. The nature of a mystical virtue is at bottom that of a basic virtue in human nature. It is a disposition of the soul to which Al-Ghazali adds the element of knowledge and that of action. He takes knowledge of the benefit of a virtue to be the cause of the disposition and, in turn, this gives way to action.<sup>116</sup> The acquisition of these mystical qualities is identified by Al-Ghazali as the enlightenment of the soul, the state which is most near to God and which can be attained only by the highest category of men: the mystics. They are qualities which lead to salvation, the highest form of happiness.<sup>117</sup> It is quite plausible to recognize some degree of similarity between Al-Ghazali's mystical virtues and the Christian conception of the virtues, elaborated by philosophers (and doctors of the church) such as Augustine and Thomas Aquinas.

## IX. CONCLUSION

The often harsh conflictuality between Western and Islamic culture is surely grounded in a plurality of causes. My short inquiry has not taken into consideration political and economic causes of conflict. This would entail an entirely separate reflection. By contrast, I have dwelled on the ethical differences between the two cultures, focusing on three basic concepts: human rights (HR), *maqasid al-Shariah* and the virtues. My argument about HR basically consists of three points: first, notwithstanding their birth in a Christian and individualistic Western context, HR preserve their appeal also for large numbers of Muslims; second, a large part of the appeal of HR as an international standard relies on the general demand of some limits on government abuses against individual freedoms; third, what remains a point of divide between Western and Islamic culture is the ultimate submission of any human right to the evaluation according to Shariah criteria.

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<sup>116</sup> See *Ihya Ulum ad-Din*, IV, p 59.

<sup>117</sup> See *ibid*, IV, pp 29, 213.

At this point the idea of *maqasid* comes in as a necessary supplement that may bring HR closer to Islamic culture. The argument about *maqasid* departs from the idea that if we accept an extensive reading of the concept that understands it as a core of human welfare and development, we may also define a better foundation for HR. In order to found the *maqasid* argument we do not rely only on Ramadan's proposal, but also, as I tried to show, on a tradition that goes back to al-Ghazali and al-Razi. On the grounds of the large range of Ramadan's *maqasid* we can establish a teleological foundation for HR. In turn, Nussbaum's Aristotelian approach to ethics defines a list of basic capabilities that, on the one hand, largely overlaps with the list of *maqasid* and, on the other, prepares the ground for the virtues as correct answers in the spheres of experience defined by the capabilities. Nussbaum proposes a list of virtues which follows closely Aristotle's classical virtues. They identify correct ways of choosing in the basic spheres of human experience.

The third stage of the argument could not help being concerned with a summary examination of the major virtues. I tackle two main issues: first, the role of reason in ethical thought and the well-known debate between Mu'tazilite rationalist positions and the Ash'arite theistic views. This is a methodological issue that I have presented not only in the form of the crude opposition between Mu'tazilite and Ash'arite views, but also in the form of the more nuanced opposition between Hard Natural Law and Soft Natural Law. Each of these two theories is strictly connected respectively to Mu'tazilite and Ash'arite positions, but they are both offering an understanding of fact and value as a fusion that, in the case of Soft Natural Law, is tempered by the element of divine grace that leaves God free to alter his creation at any time. This approach also allows us to read an author usually enlisted on the voluntarist side, such as Al-Ghazali, as supporting rational inquiry in extending the application of the Sharia. He founds much of his work of interpretation on concepts such as *maqasid* and *maslaha* that give content and form to the ideas of rational purposes in the law and public good. Another important author that is discussed with regard to the issue of reason is Ibn Taymiyya, often considered as a banner of religious extremism. Following Vasalou's careful inquiry, it emerges that it is the notion of 'utility' that carries moral ultimacy, according to Ibn Taymiyya. It has an objective

ethical value that is paired by a Hume-like sentimentalist analysis of subjective emotive states and their value for us.

The methodological dispute over the role of reason reflects also on the other issue that is tackled in this paper, that of the virtues. The virtues are examined through the work of philosophers such as Al Farabi, Ibn Rushd and Miskawayh, among others. Their theories are inclined mostly towards Aristotelian and Platonic virtues. Their appeal to fundamental virtues such as wisdom, courage, temperance or justice and friendship shows, in my view, that Nussbaum's overall reconstruction would not be foreign to their understanding of the virtues. Further, also in the work of a religious thinker such as Al-Ghazali, we find a basic Aristotelian scheme of virtues to which the religious element of the mystical virtues is added. The religious element remains an evident mark of difference with classical virtues but, it is worth-emphasizing, no more so than what the religious element of Christianity led Aquinas's ethics to diverge to some degree from the Aristotelian view of the virtues. In concluding on this point, I consider it plausible to hold that insofar as the virtues can be taken as concepts whose thrust is largely overlapping with *maqasid*, they define some fundamental feature of the good life that can be accepted transculturally, both among Westerners – Christians and non-Christians alike – and among Islamic devotees. Thus, it seems sound to some extent to hold that the virtues can be subsumed and integrated within a more flexible scheme that goes beyond HR: something similar to an enlarged 'overlapping consensus'.

Finally, one might wonder whether in the end this paper wants to offer a competitive approach to the mainstream one of human rights or, rather, whether it wants simply to *integrate* some classical idea in a liberal/modernist approach to Islamic ethics. The latter alternative makes more sense, in my view, because of the large number of Islamic writers that have taken seriously the possibility of an Islamic political regime based on liberal concepts, such as human rights. I should emphasize how an understanding compatible with some degree of liberalism already underlies what was already at work with many writers of the modernist Islamic movement of the 19<sup>th</sup> and 20<sup>th</sup>

century.<sup>118</sup> However, in order to have the integration of the virtues in the liberal framework to work effectively I believe we should find some room for the virtues in a scheme of 'overlapping consensus' that takes them not as a 'comprehensive conception' but as a crucial element of that (trans)cultural consent that allows a society to function correctly, even with strong degrees of cultural difference.

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<sup>118</sup> see n 99.