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Human Rights and Islam

Contesting Universal Truth Claims?

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Abstract

Building on Berger and Luckmann's social constructivism, this dissertation investigates human rights and Islam as two opposing meaning systems that both claim universal validity in their ability to define morality. By comparing the world perceptions that emanate from human rights and Islam as institutional entities, it finds that both of these universal truth claims are historical products, which both use similar methods of legitimation to authorize their truth claims. Implicitly, this constructivist approach challenges the universality that both human rights and Islam claim, and it poses the provocative question, whether human rights should be seen as a 'religion of modernity' that is essentially rooted in 'faith' or 'belief' in human dignity and not in rationality. It equally finds that Islam, as a mythological system, seems to be at odds with human rights in many underlying anthropological and cosmological fashions, but that their agreement on the existence of a universal moral code establishes strong possibilities for compatibility, why any claim of human rights and Islam as inevitably at odds with each other should be dismissed altogether.

Keywords: Human rights; Islam; universality; religion; relativism; social constructivism; history; modernity; cosmology; mythology; enlightenment

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Preface

This thesis is the final product of my Master's thesis in human rights and democratisation. It has been an intense and interesting journey, with many new perspectives added to my earlier acquainted knowledge from my studies in history of religion and anthropology. This also means, that writing a thesis related to human rights has been challenging, as my conceptual toolbox and my former academic experiences has been in need of a re-contextualisation to fit into a new field of study. The final result is in your hands now, and it expresses, to my conviction, the great strength of human rights as an academic discipline: their growing inter-disciplinary focus. Just as human rights apply to everyone they must also listen to everyone, for if human rights are to grow and to overcome the challenges they face in contemporary society, then they must necessarily be challenged from a multitude of perspectives. This thesis is just such a thing; not an adoration of their moral superiority but a provocative and challenging perspective from a comparative lens. It is my hope that this dissertation will prove thought-provoking and allow for an "I never thought of it that way" perspective. Now, before the reading starts, some preliminary information is necessary. First, a quick disclaimer regarding the conceptual use of human rights. During this thesis the reader will note that I will be referring to human rights with the singular verb 'is' as well as the plural form 'are'. The reason for this is that human rights is a matter of rights but it is equally a reference to a conceptual ideal. The verb use will therefore implicitly tell the reader, whether I am referring to the substantialised set of rights (plural), which can be found in human rights documents, or whether I am instead referring to the universal moral ideal that is human rights (singular). Secondly, the word 'secular' will be used at several occasions during the dissertation. As a concept, secularism has a long history where it was for a long time thought of as a continuous process of disenchantment, which would culminate with an entirely scientific worldview where religion would lose its place and value. Such an understanding of secularism is very far from my use of the concept, as references to secularism solely will relate to societal structures that separate religion from politics. With that said, I hope you, dear reader, will enjoy this dissertation. May it be thought-provoking and informative.

Part 1

Introduction

This dissertation takes up the topic of human rights and Islam but in a slightly different way than most other major works on the matter. As human rights are well established within international law and therefore also incorporated into domestic laws, a great deal of the significant works on Islam and human rights regards the legal issues of two contesting law systems. Whereas there are plenty of highly interesting legal issues residing in this topic, I will limit myself to referencing to other works on the matter, as the approach taken up in this dissertation will be a different contribution to the topic.¹ Instead of dealing directly with the legal issue of compatibility, this dissertation takes a constructivist sociological approach to the issue that is inspired by the academic study of religion, as it seeks an understanding of the social realities of people and the roles played by the institutions of human rights and Islam herein. This also means that this dissertation does not directly intend to carry out any normative arguments. Human rights as well as Islam and Islamic law are both worthy of criticism and admiration, yet this sort of normative debate will not be a direct concern for this dissertation. Instead of arguing how things ought to be, the goal is here to seek clarification and understanding concerning the question of how things are and why they are the way they are, as there are both elements of tension and compatibility between these knowledge systems. With this said I do not intend to offer any all-encompassing causal explanations with absolute validity, but rather

¹ Significant works in this respect are Abdullahi An-Na'Im's *Towards an Islamic Reformation, Civil Liberties, Human Rights and International Law* (1990); Abdullahi An-Na'Im's *Islam and the Secular State: Negotiating the Future of Shari'a* (2009); Ann Elisabeth Mayer's *Islam and Human Rights, Tradition and Politics 3rd ed.* (1999); M Monshipouri's *Islamism, Secularism and Human Rights in the Middle East* (1998) and Mashood A. Baderin's *International Human Rights and Islamic Law* (2003). The works by An-Na'Im, Mayer and Monshipouri all argue for incompatibility between the law systems with especially An-Na'Im as a big proponent for Islamic reformation and secularisation of Islamic states, Baderin takes another approach which he himself calls dialogical and argues that the incompatibility theory is flawed and that there are many commonalities between Islam and human rights.

to offer some valuable and enlightening perspectives on the historical formation and the social implications of human rights and Islam and Islamic law.

From a theoretical perspective, I have found inspiration in the sociology of knowledge with Peter Berger and Thomas Luckmann's *The Social Construction of Reality* (1966) as well as Peter Berger's *The Social Reality of Religion* (1967). The argumentation in these works establishes an epistemic work hypothesis that is essential to the underlying thinking in the whole of this dissertation. The strength of these theories is that they have a general character as they strive at explaining how knowledge is produced and maintained as such.² It will be this specific focus on knowledge production and social realities, which sets the agenda for the duration of the thesis. The focus will therefore be on analysing two separate meaning systems to understand how they function for societal reality production. For even though they are separate and entail different truth claims; it is my argument that their social function is comparative as both meaning systems serve an important role in establishing a social and moral reality. The value of this approach, I believe, also resides in the potential for shedding new light on the social and cultural implications of these different institutions; doing so by glaring back into history for an understanding of the contemporary. It is my conviction that this approach as well as the actual analytical examination of Islam and human rights will grant clarification regarding the tension between two opposing social realities. The ability to generate new perspectives and shed light on new angles is equally related to the theoretical constructivist approach, where analytical elements from the academic study of religion will be a part. One of the implications of this approach is that of relativism, hence the constructivist perspective argues that meaning is socially produced and without absolute substance.³ In the field of human rights, such an approach is often neglected and viewed as a vice, with relativism considered a threat to the universality of human rights.⁴ I cannot help but see this as a sort of struggle for power preservation that is somewhat naïvely founded, epistemically flawed and to some extent unnecessary. When glaring

² See Berger 1967: 14

³ Berger 1967: 13ff

⁴ See for example Donnelly 2003: 89-106

towards the field of anthropology, for instance, we encounter an academic discipline that has developed a highly reflective methodology and where cultural relativism is a virtue and a mere necessity for carrying out epistemically sound and academically valuable research. Dismissing relativistic viewpoints altogether is simply epistemically hard to justify in a postmodern world and it is my clear conviction that the field of human rights should incorporate this into its framework rather than leave it out. Moreover, I am utterly convinced that constructivist and relativistic viewpoints can contribute valuably to the human rights discourse rather than pose a threat to its legitimacy. Now, before I get too entangled in the embracing arms of opinion I will stir back on track. My point is simply that a constructivist approach is hard to dismiss in a postmodern world and that it has many valuable perspectives to bring to the table. I hope this dissertation will prove me right.

Regarding the structure of the thesis, it starts out with some initial methodological reflections. These will be followed up by a theory section, which sets the scene for the analysis to come. In this theory section, I will introduce Peter Berger and Thomas Luckmann's understanding of knowledge production and bring special attention to Berger's understanding of religion, as this will prove significantly important for the duration of the dissertation.⁵ When this theoretical framework has been established, I will move on to the actual institutional truth regimes of human rights and Islam. Here we shall initially encounter human rights, its content, historical background and its societal function in establishing a social reality with a unified moral community. The dissertation thereafter moves to Islam and Islamic law; doing somewhat the same thing but with another topic. In the duration of this analysis of human rights and Islam, the theoretical framework of Berger and Luckmann will be applied, with the agenda of viewing both of these truth systems as historical products and as meanings systems that play a part in generating and maintaining world order. The final part of the thesis ties the arguments from the analysis together in a finishing and comparative discussion, which takes up the question of compatibility. Here, the cartoon crisis of 2005 will serve as an example of

⁵ See Berger and Luckmann 1966 & Berger 1967

how these social realities professed by human rights and Islam entail contesting and differing universal world perceptions, which at some points are very far from each other but in other places quite similar. This discussion will not be legal, nor will it be directly normative. It will be a discussion based on the analytical findings of human rights and Islam as separate institutionalised producers of reality and their potential for agreement and compatibility regarding the ideas and world perceptions that they profess.⁶

Methodology

From a methodological perspective, what is most important is an understanding of the social constructivist approach that this dissertation takes. These questions, however, are so central to the theoretical framework that it makes much more sense to introduce them in the following section. For now, some other notes are instead necessary as preliminary methodological reflections. First, it is important to remember – as pointed out by anthropologist James Clifford – that academic works are to some extent works of fiction.⁷ This piece of work therefore cannot claim complete neutrality nor objectivity. What it offers is merely a perspective, a specific analytical view on human rights and Islam as two separate meanings systems. The reason for these limitations relate to the nature of knowledge, as knowledge is never absolute but instead produced contextually.⁸ Because of this, some reflections are necessary regarding my position as the author of this thesis. Writing with an academic background in religion studies and anthropology, I will be drawing on knowledge and perspectives from these fields of study. This means most importantly that I will investigate the issue from a comparative and constructivist perspective. I will bring forth analytical points from the material in question, but these analytical points will be a product of my thinking and my thinking will be a product of my overarching process of socialization, academic as well as non-academic. This does not mean, however, that there is no truth to be found in my argument and that there is no

⁶ For some very critical responses to the contesting issue between Islam and the West, see: Lewis 2002; Lewis 2003; Feldman 2012

⁷ Clifford 1986: 6

⁸ Ibid. 1-27

divergence in the quality of academic works. Instead, it means that there are contextual limits to the analytical examination and the perspectives it generates.⁹ The reader should therefore take this thesis for what it is: a comparative analytical examination from a social constructivist perspective. This entails that I am working from an epistemic hypothesis, which holds that knowledge and meaning is produced socially and that it is essential for the ability to be human.¹⁰ It is a perspective, which does not deal with ontological or normative questions as such, but instead investigates the socially communicated and established patterns of meaning. Applying this perspective will allow for certain perspectives, but there will also be blind spots. This is inevitable, as we human beings are finite beings and therefore epistemically limited. We are, in other words, limited to the social reality within which we engage and interact, and it is from within this viewpoint that we will try to understand the reality and meaning produced by the institutions of human rights and Islam. This, of course, is where we are confronted with the epistemic problem of postmodernity; hence, the author is caught up in this web of society that establishes boundaries for the analytical examination and for the observable. It is the immanent problem of postmodernity and one that I will not overcome but rather just ask the reader to keep in mind for the duration of the thesis.

Another aspect that deserves some attention is the approach to religion or rather, the approach to truth claims. The reason this is important, is that Islam takes a big part in this thesis, but as we shall see, this will equally prove relevant regarding human rights. When approaching religion I will rely on the academic study of religion. This means, that my approach is not theological but instead sociological and historical. Here, within the academic study of religion, there are two dominant approaches to the subject: The perspective of methodological atheism and that of methodological agnosticism.¹¹ What they have in common is that they perceive and analyse religion as a socially constructed phenomenon. Whatever truth a religion claims is not really of interest to us in an ontological sense. Rather, it is interesting in a social sense as it tells us something about

⁹ Ibid.: 1-27

¹⁰ Berger & Luckmann 1966: 69

¹¹ Hammer & Dyrendal 2011: 117ff

world perceptions and the social reality of people. Religion is in other words conceived of as a cultural phenomenon on the same premises as other cultural phenomena, but a phenomenon, nonetheless, which often holds a superior position in society as something utterly important and authentic. Methodological atheism is often criticised for taking an epistemological viewpoint that cannot be verified as it holds as a predisposed position that the truth-claims of religions are false and that there is no metaphysical reality whatsoever.¹² Methodological agnosticism therefore seems the more appealing approach as it basically holds that the truth-claims of religions have a non-verifiable and non-falsifiable character and are therefore beyond the scope of our epistemological capacities.¹³ Islam, religion in general and even human rights, will be approached from an agnostic perspective in the duration of this thesis. Their respective truth claims are simply not of interest concerning the truth and validity of their content, but merely with regards to their social and societal impact. This means that even though a philosophical inquiry into the moral validity of Islam and human rights would be significantly interesting, it will not be of relevance to this dissertation. The point of taking an agnostic approach to the matter is first, that a position of *unknowingness* is more legitimate as it takes into consideration the human finity regarding access to reality and second, that it approaches a sensitive topic with a larger degree of respect regarding the world perception of others.¹⁴ Another reason for taking this approach is that it allows us to treat normative subjects from a sociological perspective. When we bracket the truth claims of these two universal truth systems, what we are left with is discourse rhetoric and modes of legitimation. These elements are essentially important for the perspective of this dissertation.

Theory: A constructivist perspective

The theoretical foundation for this dissertation is to be found in Peter Berger and Thomas Luckmann's *The Social Construction of Reality* and in Peter Berger's *The Social Reality*

¹² Ibid.: 117ff

¹³ Ibid.: 119f

¹⁴ Ibid.: 117ff

of Religion. Both works situate themselves in sociological academia as that branch of thought, which we call sociology of knowledge and they both use the same theorisation of knowledge production and relies on the same epistemological foundation.¹⁵ As we shall see, and as I have already mentioned earlier, it is as much the epistemic work hypothesis from these works that establishes a basis for the arguments in this dissertation.

The Social Construction of Reality

Now, looking at *The Social Construction of Reality* first, the focus is here exactly on the processes by which knowledge is produced and maintained, with the argument that humans produce social realities within which they navigate and perceive the world.¹⁶ Their theory has obtained classical status in sociology, and due to its impact on academic thinking, Berger and Luckmann are often referred to as some of the founding fathers of social constructivism. Finding their inspiration in scholars like Marx, Weber, Durkheim and others, their theory places itself in natural extension of some of the major thinkers within the field of sociology, but they utilise these thinkers as building blocks for their own theorisation and incorporates the thinking of these classical scholars into their own framework.¹⁷ Where there is really a change in emphasis for sociological thinking, however, is in the change from focusing on ideas to focusing on common sense knowledge and everyday experience. They bring to attention, how each and every one of us, lives in unquestioned realities. We might be able, in contemplation, to question this reality, but our immediate impressions and our common-sense knowledge is what really, in their words, constitutes the fabric of meaning without which no society could exist.¹⁸ The attention is in other words not on the philosophical question of what is real, but rather on the sociological question of what is real for the members of society. It thereby also stresses that it perceives of itself, not as an epistemological endeavour, but rather as part of the empirical discipline of sociology.¹⁹ In other words, their theorisation has its basis

¹⁵ Berger & Luckmann 1966: 13

¹⁶ Ibid.: 13

¹⁷ Ibid.: 28-30

¹⁸ Ibid.: 27

¹⁹ Ibid.: 26

in empirical sociological data and poses a hypothesis or a theory, an *a posteriori* argument, of how to understand this empirical variety of social realities. Their methodological basis is therefore also to be found in phenomenology, as it poses a phenomenological analysis of the subjective experience of everyday life.²⁰ Bringing to attention here, that phenomenology and human consciousness are two sides of the same coin. Consciousness, they say, is always consciousness of something, it is intentional and directed towards objects be it an object of introspectivity or of outer reality.²¹ Different objects, however, represent themselves differently to the observer, as different spheres of reality. It is as if the world consists of multiple realities. When we are asleep and dreaming, we are in one reality and when we wake, we shift to another reality perception, which resembles a kind of shock for the consciousness.²² Among these multiple realities, they argue, one represents itself as the reality *par excellence* and that is the reality of everyday life. We perceive it as the unquestionable and paramount reality.²³ This is exemplified by the following quote:

The reality of everyday life is taken for granted *as* reality. It does not require additional verification over and beyond its simple presence. It is simply *there*, as self-evident and compelling facticity. I *know* that it is real. While I am capable of engaging in doubt about its reality, I am obliged to suspend such doubts as I routinely exist in everyday life. This suspension of doubt is so firm that to abandon it, as I might want to do, say, in theoretical or religious contemplation, I have to make an extreme transition. The world of everyday life proclaims itself and, when I want to

²⁰ Ibid.: 34

²¹ Ibid.: 34

²² Ibid.: 35

²³ Ibid.: 34f

challenge the proclamation, I must engage in a deliberate, by no means easy effort.²⁴

Moreover, when adding to this, we can say that the everyday life represents itself as an ordered reality with a multitude of prearranged patterns that we perceive with an immediate unquestioned independence as that which is ultimately there. It appears, in the words of Berger and Luckmann, as already objectified, which means, that the everyday reality has taken an appearance of objective reality prior to our existence in society.²⁵ We are, in other words, born into this objectified reality of prearranged and ordered patterns and these are predominantly constructed and maintained by language, which produces and reproduces a meaningful, objectified and ordered world in which we navigate.²⁶ The reality of everyday life therefore relies on language, social interaction and communication, making it first of all a social reality and a social construction.²⁷ Moreover, regarding the social reality of everyday life, Berger and Luckmann talks about intersubjectivity, as society consists of a multitude of individual social realities, yet at the same time, there is a correspondence between these, as I can be confident that my neighbour lives in a somewhat similar social reality with the same conceptualisations of its existence.²⁸ It is this correspondence that establishes social coherence and societal order and Berger and Luckmann refers to it as a process of habitualization.²⁹ Habitualization serves the function of establishing stability by narrowing down the variety of potential actions and world perceptions. We get accustomed to acting in certain ways and we thereby maintain and uphold the established patterns of meaning.³⁰

This brings us to the pivotal question, of how exactly this process of reality production takes place. What are the processes by which this social construction of reality occurs? Here, Berger and Luckmann points to a threefold dialectical process of

²⁴ Ibid.: 37

²⁵ Ibid.: 35

²⁶ Ibid.: 34-45

²⁷ Ibid.: 79

²⁸ Ibid.: 23-25

²⁹ Ibid.: 70-71

³⁰ Ibid.: 70

externalization, objectivation and internalization³¹. Their point is that as we are born into this world consisting of socially established meanings, we enter into a socialisation process of acquainting ourselves with the elements of this world. We do in other words internalise perceptions and understandings of the elements of this world; thereby giving them a sense of objective reality.³² Consequently, we equally take part in the maintenance and continuous production of this social reality, as we externalise the ideas once again. Their point is that this threefold process is dialectical, hence we cannot talk about the one thing happening before the other, but we must instead think of them as processes continuously occurring in a sense of mutuality.³³ The processes predispose each other. This may be best clarified with an example, so let us for instance imagine an object of some sort. A stone for example. According to Berger and Luckmann, this stone has form and the form we can obviously perceive, but the form in itself does not make it a stone. Rather, it becomes a stone as we, by means of these processes of socialisation, create it. We categorise it and classify it and internalise the idea of the stone in such a way that it obtains a sense of objective and unquestioned reality. By means of language and communication, we attribute the form with social meaning, which thereby gives it such a sense of reality that form and socially attributed meaning are no longer separable. At least not in our everyday perception of things. The stone in this way enters into this highly complex pattern of meaning and becomes part of the experienced reality of the individual. Now, working with the stone as an example, we are obviously confronted with a highly simple and empirical object, and there will be varying perceptions of how far to take this constructivism in such a case. We will, however, not dwell into a larger epistemological discussion hereof but rather remain within the framework set by Berger and Luckmann, as they pose this as an *a posteriori* argument founded in empirical data and the variety of cultural and social meaning. Let us therefore regard another example that, contrary to the stone, does not have the same empirical foundation. Let us take money for instance. Money clearly poses an abstract idea and does not have any substance or value in and of

³¹ Ibid.: 78 & 122ff

³² Ibid.: 122ff

³³ Ibid.: 145

itself. It becomes valuable as there is mutual social acceptance of its existence. If we put it into a larger ontological perspective, then some might argue that the stone is *more* real than money, but in a social sense of the experienced everyday reality, the stone and money has obtained equal and unquestioned reality. They are simply there as elements in the everyday life of the individual.

Two final elements that I wish to emphasise from their thinking are the potential reactions to encounters with outside social realities. Through this process of world building, a society creates social coherence through the habitualising processes of world construction, so the members of society live in somewhat similar social realities with similar concepts for universe maintenance. In situations where opposing world conceptions encounter an established and institutionalised social reality, there will typically occur one of two different reactions as to maintain the established social order. These processes are referred to with the concepts of therapy and nihilation.³⁴ Through therapy, the institutionalised social reality will react towards potential deviants through socialisation that seeks to maintain the established order and avoid “‘inhabitants’ of a given universe from ‘emigrating’”.³⁵ Think for instance of a heteronormative and homophobic construction of reality, which establishes ‘therapy’ through the institutionalisation of ‘conversion-therapy’, to assert social control and maintain these possible deviants in the socially established normative framework and world perception.³⁶ Besides the mechanism of social control through ‘therapy’, another tendency of universe maintenance works through ‘nihilation’, which contrary to the reaction of internal preservation seeks to de-legitimise the opposing social reality through denial of the validity of opposing world conceptions.³⁷ Through nihilation, adherents of a different social reality are dismissed as irrational people; ungodly deviants or simply as threats to society. It is a process of negative legitimation.³⁸

³⁴ Ibid.: 130

³⁵ Ibid.: 130

³⁶ Ibid.: 131

³⁷ Ibid.: 132

³⁸ Ibid.: 132

Criticism

A typical argument against this sort of constructivist thinking is that it does not account very well for its own position in the order of things that it stipulates. It does in other words not live up to its own premise, hence if everything is socially constructed, this theory in itself is equally just a product of a social reality, which to some extent corrupts its own foundation for argumentation. This problem is an immanent one and we can classify it as the overarching hurdle in a post-structuralist knowledge regime. For this reason, I do not pretend to pose a solution of any kind but will once again point to the fact that Berger and Luckmanns theory does not pose an *a priori* argument but rather follows as a hypothetical – and plausible – theory of knowledge production based on empirical sociological data.³⁹ Another criticism against this sort of theorisation is that it does not account very well for social change; hence, if we all internalize the same social reality how is it then possible for something new to arise. This criticism, however, is highly flawed and expresses a lack of understanding of the argumentation itself. What Berger and Luckman brings to the fore, is exactly that each and every individual goes through individual processes of socialisation and that we are historical products.⁴⁰ We are people of our time and as every process of socialisation differs, the natural conclusion is a contrary one, namely that society is never static but ever changing. Moreover, if we consider the social reality as that which infuses the world with meaning and order, then this process of socialisation is essential for the ability to be human.⁴¹ Without socialisation, there is no possibility for self-construction or any sort of sense of identity or belonging. We establish this reality collaboratively and in that sense, we are the producers of society, yet, at the same time we owe everything to society, let without society, we are nothing really.⁴² Society is what sets the frame for our thinking, but as every individual has personal biographies and thereby to some extent varying perceptions of the social reality; societal changes are inevitable. Yet, our ability to experience reality is still determined by society and the

³⁹ Ibid.: 30-31

⁴⁰ Ibid.: 42

⁴¹ Ibid.: 50

⁴² Ibid.: 69

societally established patterns of meaning are exactly what grants us the ability to think and understand the empirical reality in which we navigate.⁴³ We cannot seclude ourselves from the social reality of which we are part, as the social reality is that which sets up the boundaries of the thinkable. This equally implies that we can only understand people and their thinking in a context of history and the prevailing discourses and objectivated patterns of meaning. What this means is exactly that perceptions of morality, cosmological order and internalized elements of meaning, all of the overarching understandings of reality and all of the smallest of elements of interaction are all generated in contexts; bringing us to the importance of the history of ideas. Hence, in order to understand the contemporary social reality that individuals live in, we must look back into history to see how conceptions of reality have changed. Only in this view, is it possible to truly perceive the reality of today.⁴⁴

The Social Reality of Religion

For the following section, we will have a look at the concept of religion and Berger's theorisation hereof, as it will take a significant place in the duration of this dissertation. In his work from 1967, *The Social Reality of Religion*,⁴⁵ Berger relies on the same theoretical foundation as the one we have just encountered in *The Social Construction of Reality*. This means, that emphasis once again is on the threefold dialectical process of externalisation, objectivation and internalisation.⁴⁶ This process is the one by which all world production takes place. It is the specificity of the nature of man, hence if there can be said to be a nature of man, it relies on his/her ability to produce culture.⁴⁷ Culture is being continuously produced and reproduced as the individual continuously outpour himself in a process of externalisation, yet equally internalises the social world as it represents itself to him, in order to, not just grasp this reality but also to incorporate it in his own subjectivity. It is with this same orientation that Berger turns his attention to

⁴³ Ibid.: 73

⁴⁴ Ibid.: 72

⁴⁵ First published as *The Sacred Canopy*

⁴⁶ Berger 1967: 13-14

⁴⁷ Ibid.: 16-17

religion, where he initially draws attention to the notion of the sacred, as he argues that religion primarily is the production of a sacred cosmos within this frame of human world construction.⁴⁸ Berger's notion of the sacred is closely related to that of Emilé Durkheim, who differentiates between the sacred and the profane, but it also reverberates some notions from the German theologian and phenomenologist of religion, Rudolf Otto. Berger describes religion as "cosmization in a sacred mode" and the sacred as "[...] a quality of mysterious and awesome power, other than man and yet related to him, which is believed to reside in certain objects of experience."⁴⁹

Regarding Durkheim, who argues in his work, *The Elementary Forms of Religious Life* (1912), that religion sets things apart as sacred by dividing them from the profane, the function of religion then becomes the transferring of societal elements into the realm of the sacred, making the sacred a projection of society itself.⁵⁰ It is an idea that perceives religion as a significant element in society maintenance.⁵¹ As we shall see, Berger leans towards this perception quite closely. Regarding Rudolf Otto, however, the correlation hereto in Berger's conceptualisation, regards the reference to mysterious and awesome power, which seems to reflect the conceptualisation in Otto's *Das Heilige* (1917). The big difference, however, is that Otto took this mysterious character to reflect some ontological reality, whereas Berger perceives it as a social construction and a part of the human world building. It is an element in enveloping the social world in meaning, and here religion and the notion of the sacred, serves a significant purpose in terms of grounding the social reality in the absolute reality and thereby generating a certain degree of firmness and stability of the socially constructed cosmological order.⁵²

This brings us to the next argument by Berger, as he refers to the importance of legitimation as a process of establishing social order and stability. By legitimation, he means exactly socially objectivated knowledge, which serves to explain and justify the socially established order. Legitimations derive from all the 'why's?' that may arise and

⁴⁸ Ibid.: 34-35

⁴⁹ Ibid.: 34

⁵⁰ Furseth & Repstad 2007: 60-63

⁵¹ Ibid.: 61

⁵² Berger 1967: 41

often they not only state what *ought* to be, but rather what *is*.⁵³ In one sense, Berger argues: “*all socially objectivated knowledge ‘is’ legitimating*”, yet, *there is something special about religious legitimation. Whereas all legitimation serves to maintain reality, religious legitimation does so by relating the “humanly defined reality to ultimate, universal and sacred reality” that “transcends both history and man.”*⁵⁴ In this way, he argues that religious legitimation of world order functions in such a way that it protects the established world order by giving it a sense of absolute truth; arching the world with a sacred canopy. Berger puts it this way:

Let the institutional order be so interpreted as to hide as much as possible, its *constructed* character. Let that which has been stamped out of the ground *ex nihilo* appear as the manifestation of something that has been existent from the beginning of time, or at least from the beginning of this group. Let the people forget that this order was established by men and continues to be dependent upon the consent of men. Let them believe that, in acting out the institutional programmes that have been imposed upon them, they are but realizing the deepest aspirations of their own being and putting themselves in harmony with the fundamental order of the universe.⁵⁵

In this way, we can say that religion fixes the here and now in utmost and absolute reality and thereby establishes a structure of legitimation that serves to protect its own stipulation of the ontological order. It turns chaos into order and generates stability for the world perception of the individual as well as social cohesion and consensus in a social group.

⁵³ Ibid.: 38

⁵⁴ Ibid.: 42-44

⁵⁵ Ibid.: 42

Criticism

This now brings me to a conceptual criticism that is essential for the continuation of this thesis; hence, it is a contested issue whether religion functions as a transcultural category.⁵⁶ Sceptics will hold that religion is a problematic concept, as it does not correspond to an actual reality out there. It does not refer to one single cultural whole that represents itself in different variations in different cultural contexts.⁵⁷ Contrary to this perspective, however, was the notion by the phenomenologists of religion, most famously here, Rudolf Otto and Mircea Eliade. The perspective they applied had a positivistic epistemology, which theorised around the existence of the holy; assuming that it emanated through a variation of cultural representations.⁵⁸ Though culture varied, they argued that there were underlying phenomena that were transcultural and that the accumulation of these amounted to that of religion. This perspective is no longer accepted in most academic circles of the study of religion, yet many of their categories still function as useful tools for analysis, though the idea of a sacred core *sui generis* has lost its appeal. More recently, however, scholars have started arguing that we should abandon the concept of religion altogether, as it is a concept with a specific cultural genesis and therefore problematic as a transcultural category.⁵⁹ A significant problem here is that any conception of religion will inevitably be influenced by a predisposed understanding of the concept as it carries connotations that relate to its history and sociocultural use.⁶⁰ From an etymological perspective, the roots of the word *religion* are to be found in Latin and the Hellenistic period, where the word had widespread implications, but may be said to refer to something as ‘right conduct’.⁶¹ With Christianity, however, the word ‘religion’ has incorporated a great deal of conceptual baggage that relates it to individual notions of belief and personal faith and even more importantly, maybe, that we have come to talk about religion as a cultural element that is separated from other parts of the social reality.⁶²

⁵⁶ See for instance: Hinnells 2005; Schilbrack 2014; Taves 2009

⁵⁷ Schilbrack 2014: 85ff

⁵⁸ McCutcheon 2007: 38f

⁵⁹ Schilbrack 2014: 85ff

⁶⁰ *Ibid.*: 86

⁶¹ Rasmussen 2018: 25-27

⁶² Schilbrack 2014: 87

Hence, in order to talk about religion as a category on its own, there must implicitly be something that is not part of this religious reality; something that contests it. Therefore, the concept of religion as we understand it today seems to be the product of modernity and a sociocultural reality that distinguishes between different spheres of reality, i.e. religious, political, etc.

To illustrate this we may think of Hinduism as an example. Here we are confronted with a wide variety of cultural perceptions of cosmology, anthropology, morality etc. which all relate to mythology and conceptualisations of gods. Cultural notions that we would think of as religion. The interesting thing, however, is that the word 'hindu' was a Persian concept for an ethnic group residing east of the Indus river and it originally did not relate to a religious set of ideas and practices.⁶³ In fact, there was no word at all demarcating this 'religion' as an institutionalised entity, hence their language did not distinguish between these different types of knowledge. In fact, the whole concept of Hinduism is very much the product of outsiders trying to categorise a people and their cultural practices by one single encapsulating concept.⁶⁴ It is not a word generated from within a cultural tradition but instead by outsiders, and the question is then, whether Hinduism, as a word for a 'religion', really is suitable or instead a misleading conceptual understanding from an outside perspective that forces itself upon another social reality. The point I am trying to make with this exemplification is that the concept of religion is a social construct and the product of a certain kind of thinking. It is rooted in language and when applying the term, it unravels semantic connotations that derive from its cultural history. This is a problem for the transcultural validity of the term, but in the end, we will never be able to entirely overcome this issue, as words are historical in their very essence. We could try by establishing a new field of study with a new categorisation to substitute 'religion',⁶⁵ but this will not be a realistic or relevant endeavour for this dissertation. Instead, we will simply apply the term 'religion', but it is my hope and intent that the reader will take into account the limits and inherent problems regarding the concept and

⁶³ Jacobsen 2011: 404

⁶⁴ Ibid.: 404

⁶⁵ For such an example, see Taves 2009

try to bracket what one think one knows about 'religion', and simply understand religion through the theoretical lens presented by Peter Berger. In doing this, we can apply 'religion' as an analytical tool through which we can understand parts of society and the world construction that people engage in. Where the process of world construction and world maintenance is the general character of the socially constructed reality, religion becomes simply a piece in the puzzle of this cosmization, yet a very significant piece, as it seems a sociological fact, that many cultures entail this sort of world production that singularise specific elements in society; marking them out as sacred, henceforth also setting up what Berger calls religious legitimation by putting the constructed reality of things in disguise under reference to the ultimate reality of things.⁶⁶

⁶⁶ Berger 1967: 42

Part 2

Human rights

What are human rights? It is hard to know exactly where to start in order to answer this question, for human rights is a diverse concept. On the one hand, it is a matter of international law, treaties and declarations but on another hand, it is equally a matter of ideals and ideas of moral universals. It is a language and a rhetoric used by NGO's in advocating for societal change and thereby a part of what historian, Samuel Moyn, calls a utopian project.⁶⁷ Human rights is something that we strive for the 'full realization of', yet at the same time, it is somehow also a matter of minimum standards. At the core, however, human rights is a matter of entitlements⁶⁸. It is an idea that each and every individual human being is alike and entitled to a dignified existence, and, as we shall also see in the following historical examination, it is essentially an ideal emanating from a cultural revolution, which has later on been substantialised with laws and treaties where they have evolved from being a matter of citizen rights to entering a globalised scale where they now transgress the nation state and function as a moral watchdog that limits state sovereignty.

If we at first approach human rights as international law, then we encounter a concept of pivotal importance to international relations in the contemporary world. Human rights are at the heart of international affairs and they denote one of the corner stones of the United Nations as laid out in the UN charter of 1945.⁶⁹ The interesting thing here is that when the charter was formulated and the UN was established, there was no clear idea what exactly these Human Rights were. It was known that they were important, maybe even essential for the formation of a worldwide intergovernmental organization, but they did not have any real substantiality as international law and therefore remained an aspirational ideal. To change this, the UN charter stated in article 68 that the Economic

⁶⁷ Moyn 2012a

⁶⁸ Donnelly 2003: 7f

⁶⁹ Baderin 2003: 1

and Social Council (ECOSOC) should set up a commission for human rights, whose first job would be to formulate a document of universal validity.⁷⁰ It was therefore not until 1948 that the ideal of human rights really took shape as international law, when Human rights were substantiated with the creation of the Universal Declaration of Human Rights (UDHR).⁷¹ The document famously claims that: *“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”*⁷² In posting this and in outlining a variety of fundamental rights ranging from the civil and political spectrum to the economic social and cultural one, the UDHR stands as a milestone in international law and international relations. The fact that the UDHR was ratified by 48 votes in favour, 8 abstentions and 0 votes against, provides a high deal of legitimacy for its acclaimed universal validity.⁷³ At least in an agreed, legal and practical sense. For this reason and due to the simple passing of time, we are also seeing how the UDHR becomes ever more influential as its declaratory status is becoming increasingly substituted by a legally binding one due to international customary law. As a result of this, we can fairly say that the UDHR was an extremely significant accomplishment for human rights history and for the international society that we live in.

Besides the UDHR, there are several other international human rights treaties, which all serve their purpose of protecting specific fundamental rights. Most importantly here are the two covenants from 1966; the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Together with the UDHR these three documents form what is generally referred to as the ‘International Bill of Rights’.⁷⁴ The two covenants differ from the UDHR in the sense that they have legally binding value within international law, though it is an ongoing discussion whether they can claim an equal degree of universality and justiciability. There has in general been a larger degree of resistance against the economic,

⁷⁰ Isa 2009: 36

⁷¹ Ibid.: 163ff

⁷² UDHR 1948, Article 1

⁷³ Oraá 2009: 168f

⁷⁴ Whelan 2010: 2

social and cultural rights, with many not viewing them as rights in and of themselves, but rather as moral and social aspirations.⁷⁵ In this context, the Vienna Declaration of 1993 played a huge part in moderating these perceptions; as it was emphasized into international human rights discourse how all human rights are interdependent and equally important.⁷⁶ The general and overarchingly important aspect of human rights as international law is its applicability and use in a world society made up of nation states that claim absolute sovereignty. With international human rights law a system has been set up to deflate the balloon of absolute sovereignty, hence the idea is that there must be limits to sovereignty and such limits should be established with human rights and the protection of individuals.

This quickly leads us to the second aspect of human rights, namely the moral and philosophical one, as this in many ways is where justifications are sought for human rights documents and their legitimacy for intervening with the socially established sovereignty of nation states. One of the major questions arising from this perspective is that of human rights and their acclaimed universality; thereby playing into a wider philosophical debate of morality.⁷⁷ Is there such a thing as intrinsic value or is everything merely a matter of utility? Is morality something that we construct, or is it rather something that we realize? And, if it is something we realize, then where does it come from? When dealing with these questions we quickly realize that we are in fact unravelling immensely complex issues that really put the capabilities of our rationality to the test as these questions are neatly weaved into issues of epistemology. One of the first questions we need to ask ourselves is; what exactly is a right? And when we have established what a right is, then how can we justify it being connected to humanity? The major foundation in human rights discourse has in this respect been the concept of human dignity, stating that all human beings are born equal in dignity and rights. Once again, however, it is uncertain where exactly this dignity comes from, but a quite essential element to human rights thinking is the Kantian notion of absolute moral principles and the idea of not using people as means

⁷⁵ Eide 2001: 10

⁷⁶ Hastrup 2001: 3

⁷⁷ For debates on universality see: Donnelly 2003; Hastrup (ed.) 2001.

to an end.⁷⁸ As philosopher Alasdair Macintyre points out, however, this Kantian idea was but one amongst other ideas of morality that blossomed in the enlightenment period,⁷⁹ where for instance the utilitarian principle argued by Jeremy Bentham, took the opposing position; holding that rights thinking denoted nothing but ‘absurd and miserable nonsense’, as wanting something did not amount to having something.⁸⁰ From this utilitarian perspective, rights thinking was nothing but ‘nonsense upon stilts’.⁸¹ As we shall see in the following section, the idea of human rights does owe a lot to the enlightenment period and it is this idea of entitlements and absolute moral principles that has guided the human rights thinking.

Now, in the process of drafting the UDHR, there was a suggestion by Brazil, that instead of using the term *born*, it should be stated that all human beings were *created* free and equal in dignity and rights.⁸² The idea being here that this dignity was divinely endowed into us human beings. This proposal was dismissed, as such a formulation would be ethnocentric by favouring certain kinds of cosmological perceptions, and it therefore could not fully be viewed as universal.⁸³ It was important to maintain cultural neutrality, which entailed a favouring of a secularised human rights language. The reason for going in a ‘theological’ direction, however, seems quite appealing, for somewhere there must be a solid hook, if they truly claim universality. Something that they cannot derive from. A place from which this universality really stems. A religious or metaphysical argument of universality is therefore tempting and as we shall see, even though human rights discourse tries to avoid a theological justification, it may end up resembling one. The result of all this is that human rights end up with a floating and non-defined concept by saying that they all derive from inherent human dignity, which is given to us by birth and which is indivisible from the individual. You have them, because you are a human being and they cannot be taken from you, but truly, nothing is really said about *why* it is so. It

⁷⁸ Clapham 2015: 14

⁷⁹ Macintyre 2013 [1981]: 75ff

⁸⁰ Clapham 2015: 14

⁸¹ *Ibid.*: 13

⁸² Oraá 2009: 175

⁸³ *Ibid.*: 175-176

just is so. So the question then arises; if this inherent dignity truly does not come from God then where does it come from? Does it come from our intellectual and emotional capacities? Our ability to feel pain and suffering? As for these questions, and as for striving for establishing a solid foundation for the universality of human rights, an extensive and comprehensive amount of literature has been produced on the topic of human dignity.⁸⁴ From another perspective, we also have arguments for universality that completely leaves this aspiration of finding a single moral denominator from which these rights stem, but simply argues instead that human rights must find universality in universal agreement between states, and that this is the way in which they are universal.⁸⁵ Finally, there are also scholars who argue that we should completely stop focusing on this question of universality and simply dedicate our thoughts and efforts to the full realization of these rights in practice. The problem with such an approach, however, is, that as long as human rights entail a universal truth claim, they will be significantly weakened and lack a major deal of authority, if this universality is not solidly supported.⁸⁶

The third and final aspect of human rights that I wish to emphasize is that of human rights as rhetoric and discourse. As a rhetorical tool, human rights has become a significant contributor for NGO work worldwide and human rights based approaches provide a strong deal of authority and legitimacy when arguing for societal change.⁸⁷ This is clearly tied up on the other two aspects that we have seen, but it is also important, as it illustrates how human rights have entered the language in diverging places, as a rhetorical tool that implies an authority on its own. As pointed out by philosopher and existential writer, Milan Kundera, it seems that there is a risk of everything becoming a *human right*,⁸⁸ and this relates quite well to the argument that I will establish in the following, namely that human rights is more than just treaties, philosophy and human rights based approached NGO work. Human rights is also an ideal and a cultural product that

⁸⁴See for instance Benhabib 2011; Kateb 2011; Kretzmer 2002; McCrudden 2013; Rosen 2012 & Waldron 2015

⁸⁵ Baderin 2003: 2

⁸⁶ Ibid.: 2003: 2

⁸⁷ Seppänen 2017: 389ff

⁸⁸ Clapham 2015: 19ff

permeates our society and our cultural notions of right and wrong. They are latently present as unquestionable moral realities for individuals in the obscure 'west' as they guide our moral compasses and establish social coherence and homogeneity in our general anthropological conceptions. What is important in this respect, however, is that human rights easily becomes a floating concept where individuals ascribe personal meanings and understandings to it, which does not necessarily relate to the actual human rights documents or the underlying attempts of moral justification. As I will argue later on, much of this derives from the position that human rights has taken in western society, as their existence has been internalised by the individual as a paramount reality.

A brief historiography of human rights

As we have seen, it was the establishment of the United Nations in the post world war period that brought human rights to the scene of international relations, but to think that this was where the idea of human rights was invented is not true. In the following, we shall investigate the conceptual history of human rights and see how the idea of individual rights is very much the product of a cultural revolution.⁸⁹

It is a contested issue within the human rights regime, whether human rights even need a historiography. The critics of human rights history will argue that human rights are trans-historical. As a moral and political project they are in no need of a history, hence a history of human rights will situate them in place and time as a historical product and thereby implicitly challenge the universality that they claim. The critical response to human rights history will therefore find a historiography superficial and non-beneficial to the core of the project, which is the establishment of an international moral code that can transgress borders and be justiciable by international law. For this reason, there is no real need for a history of human rights, as the project and its necessary arguments are to be found in philosophy and reason. In a postmodern world, however, it has become increasingly difficult to adhere to such a position, as it seems highly questionable that there is such a thing as pure reason to rely on. As Berger and Luckmann has emphasized,

⁸⁹ Hunt 2007

every thinker is a product of society and therefore caught up in a web of socialization.⁹⁰ A web from which we cannot untangle ourselves. Because of this, it seems highly questionable that human rights should be trans-historical and more likely that they are in fact a historical product where they take part in generating a social reality of morality and the placement of the individual in society. I hereby place myself in accordance with historian of human rights, Samuel Moyn, who argues that: “*human rights have to be treated as a human cause, rather than one with the long-term inevitability and moral self-evidence that common sense assumes.*”⁹¹

To understand human rights and the social reality it generates and maintains, I will therefore argue that a historiography is necessary; hence, it is only through history that we can truly understand the present.⁹² And I am not alone in this opinion and in acknowledging the importance of history. In fact, questions of the origins of human rights has been asked for many years, with Georg Jellinek’s *The Declaration of the Rights of man and of Citizens: A Contribution to Modern Constitutional History* (1895), as one of the most important early works on the matter. More recently, however, the issue of human rights history has become increasingly popular, with especially Samuel Moyn as a prominent voice, but also other contributors such as Lynn Hunt and Hans Joas has produced valuable works on the matter.⁹³ In the following, I will synthesize the argumentation from these scholars in order to pinpoint the historical antecedents to the human rights system of today. This will be done with one clear intention in mind; to establish understanding regarding human rights as a meaning system with specific historical roots. Only by understanding these antecedents can we get a grasp of the world perception that human rights as an institutional entity professes and the role that notions of fundamental rights play in contemporary society.

⁹⁰ Berger & Luckmann 1966: 151

⁹¹ Moyn 2012a: 9

⁹² Berger & Luckmann 1966: 41-42

⁹³ See: L. Hunt (2007): *Inventing Human Rights*; H. Joas (2013): *The Sacredness of the Person*; S. Moyn (2012): *The Last Utopia - Human Rights in History*; S. Moyn (2014): *Human Rights and the Uses of History*; S. Moyn (2015): *Christian Human Rights*. For additional readings, see also: S. L. B. Jensen (2016): *The Making of International Human Rights – The 1960s, Decolonization, and the Reconstruction of Global Values*; (ed.) K. E. Tunstall (2012): *Self-Evident Truths? – Human Rights and the Enlightenment*.

Cultural changes in the Enlightenment period

One thing that springs to mind when encountering the literature of human rights history is the lack of consensus regarding their genesis. As Hans Joas states, it seems that “*success has many parents*” and it can therefore be hard to figure out exactly which narratives are closer to the truth and which historical antecedents that had the most significant impact for the formation of modern human rights.⁹⁴ The common narratives generally focus on the importance of stoic philosophy, natural law thinking, and religious ideas with especially Christian virtues and dogmas as an important factor, the protestant reformation, later on the enlightenment period and the Atlantic revolutions equally play a part in many arguments of the antecedents to modern human rights.⁹⁵ What is important for this dissertation, however, is not to generate an argument for the specific significance of one array of events or cultural movements. The truth probably is, as pointed out by Samuel Moyn, that all these narratives are valuable pasts to some extent, but that they equally entail the risk of generating more confusion than understanding as the picture becomes a bit obscure.⁹⁶ In the following section, I will try to create some clarity by presenting an argument that is based predominantly on the importance of the enlightenment thinking. I argue in no way, that this is the only valuable antecedent to modern human rights, but it seems to me, that the enlightenment period and the Atlantic revolutions are essential to an understanding of human rights as a social reality. In saying this, I also take a somewhat different path than Samuel Moyn, who brings to attention that recent history is of essential importance for an understanding of human rights as an international moral code. His argument is that human rights denote but one universalism amongst many, and that the cold war and the ideological collapse that it implied of both East and West - especially after the Vietnam War - allowed the human rights discourse to truly blossom and take shape in the 1970’s.⁹⁷ Whereas I do recognize and acknowledge

⁹⁴ Joas 2013: 9

⁹⁵ Moyn 2012a: 12

⁹⁶ Ibid.: 12

⁹⁷ Ibid.: 8

the comprehensiveness and quality of argumentation in Moyn's work, I still believe there are important lessons to be taken from a more distant past if we are to truly understand human rights as they are today. Moyn would not directly disagree with this.⁹⁸ His point is simply that contemporary history is essential to understanding human rights, as this was where the breakthrough truly happened for human rights as an international system that goes beyond national borders. He does not disregard the importance of earlier antecedents like the enlightenment period, but underlines the qualitative differences of these notions of human rights, as the *Droits de l'homme* of the French revolution were reserved certain citizens and were tied up on the nation state. It was a matter of nationalism and the citizens' place in the relatively recent construction of the nation state.⁹⁹ In Moyn's perspective, what truly defines human rights is therefore their international scope and their moral and legal transgression of the nation state. The enlightenment period and other antecedents may therefore have generated some raw material for the notion of human rights today, but the citizen rights of the French revolution were qualitatively different and must therefore be distinguished from the modern perception.¹⁰⁰ This is a valid point, I believe, yet at the same time, it seems convincing from a sociocultural perspective that the raw material provided by the enlightenment period is so significant to an understanding of human rights and contemporary western society in general that it must play a key part in any history thereof. Here, historian Lynn Hunt and her book *Imagining Human Rights* (2007) persuasively argues for the importance of enlightenment thinking and the French revolution.¹⁰¹ Her argument draws attention to the emotional appeal of human rights, which, to her conviction, is of much greater importance than that of reason.¹⁰² She argues, somewhat surprisingly for the importance of literary novels in generating this emotional appeal. With a growing degree of literacy amongst citizens, novels were an important media for the circulation of ideas, and works such as Samuel Richardson's *Pamela* (1740) and

⁹⁸ Joas & Moyn 2015: 9ff

⁹⁹ Moyn 2012a: 20

¹⁰⁰ *Ibid.*: 12

¹⁰¹ Hunt 2007

¹⁰² *Ibid.*: 26

Clarissa (1749) and Jean-Jacques Rousseau's *Julie* (1761) - which were all widely read and intensely debated in the period – played a part in generating a culture of empathy.¹⁰³ This is important, because empathy is not just an emotional capacity but also a cultural element in one's attitude to one's contemporaries. It relied on the idea that essentially we are alike, that we are all self-contained individuals with individual autonomy and a fundamental need for self-possession.¹⁰⁴ These notions of autonomy and individuality has deep roots and we see them expressed also in the individuality of Protestantism, which for instance Max Weber has showed with his notion of the protestant work ethic.¹⁰⁵ It is this sort of individualism that is essential to the social reality of human rights and in the enlightenment period, elements start adding to this cultural layer of individuality. This is what Hunt shows as she furthers her argument by referring to Norbert Elias and his theory of the civilizing process.¹⁰⁶ The point is here, that people showed an increasing sense of bodily integrity and a sharper line demarcating the separation of bodies, as fundamental cultural changes occurred regarding notions of socially acceptable behaviour.¹⁰⁷ This cultural emphasis on autonomy and individuality was essential to the cultural changes in the period and these notions were expressed and furthered through novels and art.¹⁰⁸ In these stories circling around female characters, the reader was confronted with the limitations to the self-assertion of the heroine. They appealed to the emotional and self-evidently unjust situation of the heroine who contains fundamental selfhood but is limited by the constraints of society.¹⁰⁹ Hunt puts it this way: "Novels made the point that all people are fundamentally similar because of their inner feelings, and many novels created a sense of equality and empathy through passionate involvement in the narrative."¹¹⁰

That literature did have an important impact in the period can be seen from the heated debates that it stirred, where not everyone had a positive stance on the impact of

¹⁰³ Ibid.: 29 & 48

¹⁰⁴ Ibid.: 29

¹⁰⁵ Weber 2010 [1905]

¹⁰⁶ Elias 2000 [1939]

¹⁰⁷ Hunt 2007: 29f

¹⁰⁸ Ibid.: 29 & 58

¹⁰⁹ Ibid.: 39 & 48

¹¹⁰ Ibid.: 39

novels. Amongst the critics were especially Christian priests who perceived novels as a corruption to morality and order and as a secular force eroding Christian virtues.¹¹¹ In that way, the enlightenment period was as much a cultural revolution as it was an intellectual one. It implied a new perception of morality, and it brought about a change that manifested itself in the French revolution, which was predominantly a political revolution and a power struggle that swirled around the issue of what the nation state should look like. In that respect, as mentioned earlier, the *Droits de l'homme* were a matter of citizen rights and they were not initially envisaged to extend beyond the citizen (and with the citizen, I mean the catholic man).¹¹² However, as I think that Lynn Hunt neatly shows, once the notion of human rights was implemented and articulated in the French Declaration it was quite evident that the idea of human rights entailed a logic of its own.¹¹³ It therefore did not last long before the *Droits de l'homme* of the French revolution extended beyond the catholic man to also include Protestants and Jews and later on black people, as they played a pivotal role in the Haitian revolution and the abolition of slavery.¹¹⁴

To clarify the point, let me stress that human rights surely are not solely the result of literary novels about tragic heroines. The point is rather, that these novels played a part in a bigger picture of cultural change, they had an impact in bringing about ideas of individuality and sameness across different societal groups and we may see them as expressions of the cultural changes of ideas and values that took place in the period. These changes were captured by the notion of Norbert Elias' civilizing process, where a growing degree of bodily self-containment and autonomy entered the attitudes and norms regarding socially acceptable behaviour; it was no longer acceptable to spit on the floor, people started using utensils when eating, and sleeping alone or with a spouse became ever more preferable.¹¹⁵ It was a process of individualisation that was essential to the formation of human rights ideas, and this came to show in novels that played a part in an

¹¹¹ Ibid.: 57-58

¹¹² Moyn 2012a: 20

¹¹³ Hunt 2007: 82-83

¹¹⁴ Ibid.: 139

¹¹⁵ Ibid.: 29-30

empathic revolution of what Hunt calls ‘imagined empathy’ as she draws on Benedict Andersons famous notion of the ‘imagined community’.¹¹⁶ It was imagined in the sense, that the empathic revolution of the enlightenment period implied an imagined sense of sameness, equality and mutual self-possession between autonomous citizens of the nation state.¹¹⁷

Religious or secular influence?

Another element that I want to emphasize in this brief recap of the historical formation of human rights is the contested issue of the importance of Christianity versus that of secularism. One argument holds that human rights is essentially a modern re-articulation of a Christian ethos, and thereby the fruit of Christianity, made possible due to the dogmatic conception of the sanctity of the individual and the immortality of the soul.¹¹⁸ Another perception sees human rights predominantly as the outcome of French enlightenment secularism, which culminated with the French revolution. From this view, human rights emerged from the power struggle of the revolution, where secular forces overcame the monarchy and its alliance with the Catholic Church, to substitute it with secular laws and conceptions of morality; expressed with the Declaration of the Rights of Man and of the Citizen.¹¹⁹ As it may resonate from my former arguments, I incline towards finding the latter of these two narratives more convincing, but as Hans Joas states, reality is, that neither of these narratives carry the sole truth.¹²⁰ There is no need to think of the one as excluding the other, but we must instead think them dialectically, as it may in fact be, that Christianity and especially the protestant reformation provided fertile soil for the blossoming of what we tend to understand as secularism. This is, for instance, what Georg Jellinek somehow argues in his work from 1895, where he shows that the idea of human rights and the French revolution was very much modelled on the American Declaration of Independence, which, he argues, was significantly influenced by

¹¹⁶ Ibid.: 32

¹¹⁷ Ibid.: 32 & 39

¹¹⁸ Joas 2013: 4-7

¹¹⁹ Ibid.: 4

¹²⁰ Ibid.: 27

Protestantism and ideas of religious freedom in North America.¹²¹ As Joas argues, this emphasis on the influence of religion in the American Declaration, needs a bit of correction. Protestantism clearly played a part, but so did deist perceptions. Thomas Jefferson, for instance, who was probably the most influential personality in the creation of the American Declaration, was himself a deist.¹²² And as he produced the first draft of the declaration he had to see several corrections to his work, as to include God into the language of the declaration as the supreme judge or final cause of legitimacy. The final result was therefore one that appealed to both sides, so to say. It appealed to secular and deist perceptions but equally to Protestant and Christian conceptions.¹²³

The way I see it, it seems rather plausible that there is an overlapping of ideas immanent herein. Take for instance Jean-Jacques Rousseau who was an extremely influential enlightenment thinker with his theory of the social contract as well as with his works *Emile* and *Julie*. Rousseau himself was equally a deist and is often said to have been anti-religious in his thinking, but if one looks at his position in *Profession of Faith of a Savoyard Vicar*, which is to be found in *Emile*. Then what he argues is against the authority of the church and the notion of revealed religion. It is not anti-religious in an ontological sense but professes instead a wish for religious reformation, as he is a proponent of natural religion.¹²⁴ The idea is here one, where the rationality and optimism of human intellect in the enlightenment period influences religious conceptions, as it becomes an intellectual possibility to reach the conclusion of a creator governing the order of things instead of something you would have to accept based on the dogmas professed by the church.¹²⁵ Religion thereby becomes an individual and personal matter where the idea at core is one of anti-authoritarianism. What Hans Joas then argues, is, that if we change our perspective a bit, then we may actually view the enlightenment period as a movement of religious reform rather than an attempt at overcoming religion as such.¹²⁶

¹²¹ Ibid.: 20

¹²² Ibid.: 26

¹²³ Ibid.: 27

¹²⁴ Rousseau 1889 [1762]

¹²⁵ Ibid.: 35ff

¹²⁶ Joas 2013: 15

In that way, he sees the rights thinking and the cultural changes of the enlightenment more as learning processes internal to Christianity than something exterior to it.¹²⁷ In saying this, it seems to me that he mistakenly seeks to make secularism Christian. Instead, I will argue that the notions of natural religion such as the one professed by Rousseau, were in no way learning processes internal to Christianity, but that these anti-authoritarian and ‘secular’ positions equally cannot separate themselves from the societally accessible knowledge offered by Christianity. In that way, the French revolution and the ideas that it entailed was clearly a counter movement, but it has relations to Christian dogmas and especially the concept of belief as well as the individuality that came along with the conception of the immortality of the soul.¹²⁸ Secularism is thereby the somehow unfortunate offspring of Christianity and especially Protestantism, as it was here that emphasis truly exploded regarding the sanctity of the individual. This brings me to the argument that I find most convincing by Joas, namely that of the sacredness of the person.¹²⁹ The argument here somewhat follows in line with that of Lynn Hunt and her argument that cultural changes placed the individual in a new situation during the enlightenment period. In Joas’ argument, he draws on Emilé Durkheim who saw human rights as a sort of ‘religion of modernity’, as the sacred moved from exterior objects to the interiority of the individual.¹³⁰ Joas for instance shows how criminal law changes its perception so that murder becomes the worst possible crime as he argues that that which society typically thinks of as criminal is that which violates the sacred core of community.¹³¹ The rise of human rights therefore becomes an expression of cultural changes in the period where the person increasingly becomes an object of sacralisation. In that way it goes hand in hand with the processes pointed out by Hunt under reference to Norbert Elias and his civilizing process. A larger concern for the individual’s autonomy, growing respect for self-possession and clearer lines demarcating the separateness of people. These processes all point to the somewhat same argument as Joas

¹²⁷ Joas 2013: 15

¹²⁸ Ibid.: 53

¹²⁹ Ibid.: 49

¹³⁰ Ibid.: 53

¹³¹ Ibid.: 49

emphasizes here, as the individual with his rational thinking and personal ability of realizing the absolute reality outside of revealed religion, becomes an object of sacredness. These are the cultural roots for the notion of inherent human dignity and according to Emilé Durkheim, they somehow derive from Christianity as they are modern articulations of the inward faith and introspectivity essential to Christian godliness.¹³²

Now, to sum up the argumentation of this brief historiographic argument, we can say that it is challenging to get a clear grasp on which perspectives were *most* important in the formation of human rights; leading us to the valid point by Samuel Moyn, that loosing ourselves in this search for antecedents might cause more confusion than understanding. At the same time it does seem convincing that the enlightenment period played out a cultural change that was significant for the formation of human rights as the inherent logics it entailed generated a somewhat ongoing force of rationality that has played its part ever since. That it is hard to point out the exact antecedents is therefore not really much of a problem, I believe, as the bigger picture exemplifies the same dominant lines. Much of it, really, is a matter of conceptualization and categorizations, but when looking beyond this, we see clearly that the bigger strokes paint a picture of individuality, autonomy and self-possession. These elements were furthered in this period and the individual somehow came to possess a degree of sanctity in and of itself, which was worthy of protection.¹³³ The rights thinking therefore seems to owe a lot to enlightenment thinking and human rights therefore cannot seclude itself from this historical period. The idea of human rights is the result of historical and cultural processes and it has now, in a globalized world, taken the position as a universal moral code that transgresses borders and is at the hub of international law. For a clearer understanding of these historical processes that turned human rights into an intergovernmental moral code justiciable via international law, Samuel Moyn's *The Last Utopia* is an essential work. For an understanding of the underlying cultural shift that lays at the foundation of human rights thinking, the enlightenment period is quintessential.

¹³² Joas 2013: 53

¹³³ Ibid.: 49ff

The social reality of human rights

*“Basic human rights lie right at the centre of our core values in Western society today. They are precious to us as the measure of right and wrong and as a dominant feature in our otherwise rather sparse and somewhat dismal moral landscape.”*¹³⁴ With these words, Historian Jonathan Israel describes the position of human rights in our contemporary society, and yes, he is right, human rights *are* right at the core of our values in Western society today, but as I will argue in the following, they are also more than that. Human rights transgress the border of being merely a matter of values as they enter the realm of unquestioned social reality. They take form of moral facticity that is unquestionably and self-evidently present to the individual with a dogmatic foundation that plays a pivotal role in establishing an ordered reality. Human rights thinking is culturally engrained and internalized into the everyday social reality of individuals in western culture as it guides our moral compasses and shapes our anthropological conceptions.

As we saw in the former section, the idea of human rights is rooted in the cultural revolution of the enlightenment where the individual obtained an increasingly independent and self-possessed position in society. These cultural changes in the period, with specific focus on the individual and his rational capacities were solidified with the Declaration of the Rights of Man and Citizen in 1789.¹³⁵ In this process, the human rights thinking of the enlightenment period, substituted the catholic power dominance with a new anthropological conception. It was secular in its form, we might say, but this secularism was not, as Hans Joas shows, anti-religious but rather an expression of religious reform.¹³⁶ It was in many ways, like the protestant reformation of the 16th century, a battle with the institutionalized power regime of the church. Here, if we think about a dominant feature of Catholicism and Christianity, one thing that is absolutely essential is the universal truth claim. The monotheism of Christianity holds the absolute truth and it extends to everyone. In order to overcome its laws and moral conceptions, it

¹³⁴ Israel 2012: 111

¹³⁵ Clapham 2015: 9

¹³⁶ Joas 2013: 15

therefore seems logical that a new universality was needed and this was offered with the human rights thinking. Now, clearly, a lot has happened to human rights thinking since the French revolution, as they have transformed from being a matter of citizen rights in the context of the nation state, to taking a globalized form as a universal moral codex that extends beyond national borders.¹³⁷ Moreover, they have transformed from being a matter of negative civil rights to also including positive economic social and cultural rights, and they are therefore, as Moyn pointed out, qualitatively different from the French revolution thinking.¹³⁸ The underlying anthropological conception, however, seems to stem from the same foundation. Therefore, even though human rights have changed, they still rely on the same notion of individual autonomy, liberty, sameness and self-possession, which truly saw its light in the enlightenment period. Now, if we are to think about the social reality professed by the institutionalized human rights regime as the well as the notion of human rights that flourishes through cultural exchange and social discourse, then what does this social reality look like? My argument in the following is that we can utilize the notion of religion, as theorized by Peter Berger, to understand the social reality of the human rights system. My argument in this case is not directly the Durkheimian one; that human rights *is* the religion of modernity, but rather, that human rights makes use of legitimation that resembles what Berger calls religious legitimation. In essence, here, whether we call it religion or not, is not really of much importance, hence religion, as we have seen, is a problematic concept. What is relevant is that we can use the notion of religion as presented by Berger, as an analytical tool to understand the social reality of human rights.

Human rights language and the unquestionable character

If we look first at the human rights language as it represents itself in human rights documents, then there is an ongoing rhetoric that repeats itself. What this rhetoric implies is primarily, that human rights have an unquestionable character. They are universal, they

¹³⁷ Moyn 2012a: 12-13

¹³⁸ Ibid.: 20

derive from inherent human dignity, they are inalienable, indivisible, interdependent, interrelated, mutually reinforcing and sometimes transhistorical. This specific human rights language, serves a legitimating purpose as they ground human rights content in human rights dogmatism. Human rights are universal, in the sense that they apply to everyone. They are inalienable, in the sense that they cannot be taken away from you under any circumstance. They are indivisible in the sense that there can be no hierarchy between them, as you cannot have one without the other. They are interdependent in the sense that every right relies on the existence of another. They are interrelated in the sense that they share the same characteristics and have the same foundation in inherent human dignity. They are mutually reinforcing, in the utopian sense that further realization of one right positively influences the realization of another, and finally they are said to be transhistorical in the sense that their validity goes beyond history, as they are realized as a moral flawlessness through the purity of reason. The essence of this language, however, is that it legitimizes human rights as an all-encompassing moral system under reference to absolute and unquestioned reality. Their metaphysical justification may not be rooted in God or any other divine being, but instead in the notion of inherent human dignity, which is a floating and non-essentialised concept. They do not derive from reason as much as they derive from an emotional appeal to empathy and sameness between individuals in society;¹³⁹ hence, they are in no real need for justification, but are instead ‘self-evident’, as the American Declaration puts it.¹⁴⁰ Moreover, if we think of the tripartite modern days’ formulation of human rights as being “indivisible, interdependent and interrelated”, then the United Nations equally declares this to be “beyond dispute” even though there is no actual definition of what these adjectives entail.¹⁴¹ The picture that this paints is one of human rights as a meaning system that generates a social reality of morality that is rooted in the utmost, absolute and undeniable fact of inherent human dignity. To understand this, we may turn to philosopher Alasdair Macintyre, who argues that the social function of morality is to establish a common ethos and moral guidelines for a

¹³⁹ Hunt 2007

¹⁴⁰ Moyn 2012b: 249f

¹⁴¹ Whelan 2010: 1 & 3

community to follow.¹⁴² He has been understood by some, as a moral relativist, but his project in *After Virtue* is in fact a revitalization of Aristotelian virtue ethics. His point, however, is that a common ethos is valuable for a society as it establishes coherence and order, and he argues in this respect, that the enlightenment period brought a wide variety of moral conceptions to the table and thereby created a fractured moral landscape of Kantianism, Utilitarianism and Contractarianism.¹⁴³ There was no longer moral solidity in a socially agreed sense and he therefore sees these contesting moral perspectives of the enlightenment thinking as reflecting an underlying disorder in the modern society.¹⁴⁴ His thinking is therefore, that the idea of fundamental rights is merely one moral conception amongst others. In this vein, we might understand human rights language as an attempt of overcoming this moral disagreement and social uncertainty, by enveloping the idea of fundamental human rights with an unquestionable authority. It is an overarching moral compass that strives for validity for the whole of humanity, yet it is a moral conception established in a culture of individualism, self-possession and personal autonomy and it is one that does not derive from coherent and unquestionable reason but rather from human rights dogmatism.¹⁴⁵ Now, this may make us recall the argument by Peter Berger, which we encountered in *The Social Reality of Religion*, as he stated that religious legitimation serves to hide the socially constructed character of things by generating an unquestionable firmness as it links the question in matter to the absolute reality as such.¹⁴⁶ Instead of being a reality conception dependent on consent, it takes a character as existing from the beginning of time and situates the individual in a meaningful cosmological order.¹⁴⁷ If we here think of the notion of transhistorical human rights, I will argue that this is the exact purpose of this rhetorical claim. The idea of transhistorical human rights grants them an authority that transgresses the socially produced. Human rights are thereby not the creation of man, though they are reliant on man. The function of this language is to blur

¹⁴² Gunnemann 1988: 161

¹⁴³ Macintyre 2013 [1981]: 61ff

¹⁴⁴ Ibid.: 67

¹⁴⁵ Ibid.: 83

¹⁴⁶ Berger 1967: 42

¹⁴⁷ Ibid.: 42

the constructed character of human rights by granting them absolute validity. Instead of being a creation of man, they become independent of man. As human rights are legitimated beyond history, they leave the realm of the socially produced and take part of a cosmological and ontological order. They profess an idea that establishes a social reality where rights are definite and inalienable. Through language, they are absolute in an overarching and ontological sense, even though the practical reality in legal documents acknowledges the necessary limitations to rights, as it is only prohibition of torture that is truly deemed absolute. This obviously is a paradoxical character, yet it equally illustrates, that the human rights language is predominantly legitimating, and this legitimation we can say, seems to resemble what Berger calls religious legitimation quite well. The purpose of this legitimation is to maintain a moral order that generates social coherence as it serves the purpose of habitualisation, as the idea of inherent human dignity and the unquestionable character of individual entitlements becomes internalized by the members of society. It becomes habitualised in the sense, that it establishes firmness and social homogeneity in an intersubjective way, where stability flows from the idea, that one's fellow beings have the same moral conception. The use of religious legitimation serves this purpose to perfection, as it states not what *ought* to be, but simply what *is*.¹⁴⁸

Now, the critical reader will say that I am getting close to a normative argument in this, as my argument implicitly challenges the truth claim of human rights, and this might be true. Arguing that human rights is a historical product clearly seems to undermine the idea that they should be transhistorical. However, that human rights is a historical product does not necessarily mean that they can't hold the absolute and universal truth. It might just be that it was in this historical period that humans were so lucky as to discover the absolute truth, but it does seem quite implausible we may say. Especially when considering that rights talk was not linguistically articulated until the 15th century.¹⁴⁹ Here, Alasdair Macintyre holds a very critical response to this plausibility, as he argues that dealing with the question of the philosophical validity of fundamental rights is a

¹⁴⁸ Ibid.: 38

¹⁴⁹ Macintyre 2013 [1981]: 83

waste of time.¹⁵⁰ Many have tried to prove them right and all have failed. He even goes so far as to compare belief in human rights with belief in witches and unicorns, as he sees human rights as nothing but moral fiction.¹⁵¹ Here, he references one of the big proponents of fundamental rights, Ronald Dworkin, who in *Taking Rights Seriously* argues that human rights might not be demonstrable as true, but that that does not mean that they necessarily are untrue.¹⁵² Macintyre emphasizes that such a viewpoint clearly cannot be denied, but that the same thing could be said about witches and unicorns, or God, for that matter, we might add.¹⁵³ In this perspective, it seems that human rights becomes some sort of metaphysical matter of belief, which presupposes a leap of faith, which philosopher and devoted Christian, Søren Kierkegaard famously expressed it.¹⁵⁴ In support of this claim is the work by Hénri Feron, as he argues that human rights seems to denote a world-wide secular religion as they are fundamentally based on ‘faith’ and not rationality.¹⁵⁵ As human rights are not rationally well founded, their acceptance and legitimacy resides on their emotional appeal, but as they blossomed in a culture where the concept of belief was essential, this self-evidency and unquestionable character of human rights, may have stirred no dispute. Just like the Christian dogma of the holy trinity, which theologians have discussed in ages, their legitimacy is completely dogmatic and devoid of logics. It is an ontological claim that one just have to accept, as the answer is predisposed and argumentation something that follows. In fact, that human rights does seem to be some sort of ‘belief’, can be supported by the argument by Jon Gunnemann. In his responding article to Alisdair Macintyre’s *After Virtue*. Here he acknowledges that human rights is a moral fiction, but argues that this is no ground for dismissing them. Human rights, he says, is essentially theological at the core of their legitimation, as it

¹⁵⁰ Whereas Macintyre presents a highly critical account of human rights in his *After Virtue*, where he dismisses human rights altogether, a less pessimistic account is to be found in Jon Gunnemann’s responding article “Human Rights and Modernity: The Truth of the Fiction of Individual Rights”, where he acknowledges the fictitious character of human rights but argues that this is no reason for dismissing them

¹⁵¹ Macintyre 2013 [1981]: 84

¹⁵² Dworkin 1977: 81

¹⁵³ Macintyre 2013 [1981]: 83-84

¹⁵⁴ Kierkegaard 2002 [1847]: 29 & 36

¹⁵⁵ Féron 2014: 181-182

implicitly denotes a theodicy.¹⁵⁶ Moreover, as human rights are rooted in the notion of inherent human dignity, it necessarily follows that this dignity must stem from somewhere if it should entail even the slightest of substance. In that way, it does seem theological as the end necessitates an underlying cause. Furthermore, as pointed out by Samuel Moyn, it seems that human rights scholarship ends up resembling that of church historians, as the premise (i.e. the existence of human rights) is given as an unquestionable reality and historical and philosophical legitimations sought for in the aftermath.¹⁵⁷ It resembles a Christian community in the perception of reality, he argues, where human rights activists are represented hagiographically and failures linked to outside evils whilst successes stem from the just cause and immanent good that human rights denote.¹⁵⁸ In that way, we may say that there is something ‘religious’ about human rights, both in terms of their language of legitimation, their underlying, unspoken and implicit theological truth claim and their self-perception of advocating the universally good and just cause. Now, if we here think of the Durkheimian argument of human rights as the religion of modernity, then Durkheim, just like Peter Berger, was interested in the social function of religion, holding essentially that religion establishes social coherence as it articulates, maintains and upholds necessary values through the worshipping of the sacred.¹⁵⁹ If the individual in this context becomes an object of sacralisation, the system of human rights serves the purpose of upholding a set of values by setting it apart and infusing it with sacred status. In that way, human rights become central to the project of modernity as their sacred status protects the modern society. Their unquestionable character and use of religious legitimation does in this sense make a whole lot of meaning, hence they serve the purpose of maintaining a social reality where civil liberties and personal freedoms are quintessential. An argument similar to this can be found in an article by Gert Verschraegen, where he draws on Niklas Luhmanns systems theory.¹⁶⁰ From this perspective, modernity is characterized by its functional differentiation between different

¹⁵⁶ Gunnemann 1988: 182

¹⁵⁷ Moyn 2012a: 6

¹⁵⁸ *Ibid.*: 6

¹⁵⁹ Féron 2014: 182

¹⁶⁰ Verschraegen 2002

subsystems of communication, which each entail their own inherent logics.¹⁶¹ What characterizes social systems is their autopoietic character, meaning that they are self-reliant and self-referential as they are functionally differentiated from other subsystems. Yet at the same time, they are interdependent, as they understand themselves in relation to each other.¹⁶² What Verschraegen argues as he draws on Niklas Luhmann, is that human rights serve the purpose of protecting the modern and socially differentiated society, by ensuring the separation of different subsystems.¹⁶³ An example of this is for instance the right to freedom of thought, consciousness and religion, which ensures a separation between religion and politics.¹⁶⁴ Here, human rights functions as a mechanism that entitles the individual to freedom of religion, yet asserts control over religion as it subordinates it to democracy, public order and political ideals of governance.¹⁶⁵ What is interesting about this is also that it maintains a certain perspective of religion that derives from the cultural traits we have encountered earlier. It is the protestant or secular notion of God, where God moves further away and does not interfere in society. Instead of being immanently present, God becomes an abstraction and a matter of personal belief. As we shall later see, this is one of the big challenges regarding the tension between human rights and Islam.

Cosmology and anthropology

Another thing that is interesting to investigate when we deal with the social reality of human rights is the cosmology and anthropology that emanates from the human rights thinking. What this refers to, is in other words the world perception and general composition of the ontological reality that human rights thinking entail as well as the understanding of the human being and its position in this cosmological world order. These questions are essential to any notion of what it means to be human and they are especially expressed through religious ideas. In the modern world, however, as Berger and

¹⁶¹ Ibid.: 261

¹⁶² Ibid.: 261f

¹⁶³ Ibid.: 261ff

¹⁶⁴ Ibid.: 262

¹⁶⁵ Ibid.: 262

Luckmann points out, the scientific worldview has won significant authority regarding the ability to define cosmological conceptions but in addition hereto I will argue that human rights thinking has an equal authority, at least in the west, to define the moral order. Human rights, however, does also implicitly tell us something about cosmology. Not directly but it lies as an implicit result of its historical genesis. Now, if we think here of the enlightenment period as a period of first of all, cultural revolution but also of a sort of religious reformation, as Hans Joas argued, then the change that occurred was very much a break with the institutionalised authority of the catholic church, with a new perception of religion that did not rely on the professed revelations by the church but were instead a matter of personal and rational realization of the existence of an intelligent creator. The cosmology that predisposed the human rights thinking was therefore one where God moved further away and lost any impact or possibility of intervention regarding the world order that was set in motion. In that way, the French revolution and the cultural changes happening in the period, implied a change in the perception of the sacred, as argued in the former section, as the individual came to possess a certain degree of sacrality.¹⁶⁶ God lost influence and the individual person became sacred as his rational abilities saw no limits. This process may best be exemplified through Kant's famous article "what is the enlightenment" where he argues that "*Enlightenment is man's emergence from his self-incurred immaturity*", as he understands immaturity as the inability to use one's own understanding.¹⁶⁷ In this process, the individual person thereby came to possess an unlimited potential. Recalling here Emilé Durkheim, who argued that human rights denote the religion of modernity, this specific emphasis on the individual has a significant social function. When Durkheim talks human rights into his conception of religion, we must recall the notion of religion that Durkheim adheres to, as the societal worship of itself. Religion is the symbolic manifestation of societal norms, morals and values, which attains a sacred form and thereby, via worship and adoration, upholds the established social community and maintains cohesion and social order. It is through this

¹⁶⁶ Joas 2013: 39ff

¹⁶⁷Hunt 2007: 60

perspective that Durkheim sees human rights as serving a significant social function, as the sacralization of the person as the sacred core of society, ties the society together to one single moral community.¹⁶⁸ In that way, we can say that the conception of the sacred in human rights thinking has transferred the sacrality from outside and up there, to inside and in here. Human rights is thereby tied up on individualism. If we furthermore think of this optimism regarding human intellect and the ability of reason and put it into the context of what we have seen earlier, as human rights somehow seemed to replace Christian conceptions of morality, then it is not unthinkable that the human rights universality is related to the Christian universality and idea of cultural superiority. At the heart of Christian mythology are notions of eschatology and the need of missionary activity. Salvation relies on the absolute extension of the Christian ethos, implying both cultural superiority and an idea of a universal civilisation. Human rights may be seen as an extension of this with its utopian character and desire of world-wide full realization of human rights documents, seeing them as the single universal moral code that is meant to unite the whole of humanity.¹⁶⁹

To summarise my argument, human rights are not transhistorical. They are in fact the result of cultural changes occurring especially in the enlightenment period, where the individual came to possess a sacralised position due to his 'rational' capacities. Moreover, rather than being based on rationality, human rights are instead based on faith and belief and seem to have won authority due to their emotional appeal in their sociocultural context of formation. They legitimise themselves, however, by extending beyond their socially constructed character and represent themselves as absolute moral reality and this conception seems to be engrained in 'western' culture at large, where human rights thinking is at the heart of people's moral compass. Human rights thereby attain a societal function as that which ties society together into one single moral community, and in that way, both with regards to their societal function and their language of legitimation, human rights resemble a religion.

¹⁶⁸ Joas 2013: 53

¹⁶⁹ Féron 2014: 183

Part 3

Islam

When it comes to religion and in this case especially Islam, one thing that we have to remain aware of, is the fact that Islam is a simple concept for something extremely complex and diverse. Religion is what we make of it and it is solely composed of the individuals who subscribe to these ideas and who continuously create and re-create religious concepts. Islam, as every other religion and any other cultural phenomenon, is therefore dynamic by necessity, always changing and never static.¹⁷⁰ When I will make generalizations in the duration of this section, it is therefore important to note that these generalizations are made in order to encapsulate some mainstream or dominant ideas within Islamic thought and theology. The reader is in these instances asked to remain critical and forever remember the inherent diversity that the concepts also entail. When I insist on making these simplifications, it is simply to try to pinpoint some dominant structures, which are of societal influence. This is to my conviction the only way to go about it, for if we insist on grasping the entire diversity of every single concept in question, we would quickly find ourselves in complete confusion, not being able to see the bigger picture and losing our purpose and sense of direction. Therefore, my intention is to highlight fundamental mythological and cosmological Islamic claims from within Sunni Islam to see what sort of world perception that resonates from this. It is an endeavour of painting with very wide strokes. The reason for doing this is that even though there are multiple Islamic social realities and different denominations, they all relate to some fundamental mythological and cosmological conceptions. What I refer to here, is especially the position of the Quran as well as the mythological figure of the prophet Muhammad.

¹⁷⁰ Hjärpe 2011: 329

Islam and its formative period

As Berger and Luckmann points out “*it is impossible to understand an institution adequately without an understanding of the historical process in which it was produced.*”¹⁷¹ Therefore, we shall here briefly encounter the religion of Islam as an institutionalised set of ideas, which arose in the area of the Arabian Peninsula in the beginning of the 7th century. Here, as the sources are sparse, it is limited what can be said with certainty, but all evidence points towards a sociocultural situation where a polytheistic religion was dominant in the area, but where more and more pressure arose from outside religious entities such as Judaism, Zoroastrianism and Christianity¹⁷². Here, the sources suggest that Judaism has asserted some influence in the region since the 4th century, whereas Christianity was not evident until the 6th century.¹⁷³ Islam arose in this context and as a response to the growing influence of monotheistic religions, but also in a milieu in which it incorporated traditional and living traditions of the area.¹⁷⁴

In the mythological claim from within Islam, the general narrative is that the prophet Muhammed established a break with the polytheistic religion of the region, as he received his first revelations. In Islamic discourse, this period is referred to with the concept of *jāhilīyya*, which is an important concept internally to Islamic self-identification as it strengthens the conception of the Islamic *al-ummah*¹⁷⁵ by generating a narrative of ‘before and after’.¹⁷⁶ It literally translates into something like unknowingness or ignorance as it refers to the pre-Islamic period and the unfortunate lack of knowledge regarding the unity of *Allah*. In that way, the concept of *jāhilīyya* situates the Islamic community in place and time, where the ‘now’ denotes the socially and cosmologically ordered reality as opposed to the chaotic past.¹⁷⁷ Now, this emphasis on time and the internal perception of a clear and distinct break with the past is essentially a narrative that

¹⁷¹ Berger & Luckmann 1966: 72

¹⁷² Rippin 2012: 10-11

¹⁷³ Ibid.: 12

¹⁷⁴ Ibid.: 24

¹⁷⁵ The Muslim community at large

¹⁷⁶ Rippin 2012: 13

¹⁷⁷ Ibid.: 13

strengthens Muslim identity.¹⁷⁸ From a historical perspective, however, it seems that the process of cultural change and institutionalization of Islam occurred much more gradually and took place over a couple of centuries.¹⁷⁹

Central to any understanding of Islam's formative period is the main mythological figure of the prophet Muhammad. Here, we must be aware of the differences between the historical person and the hagiographical representation and mythology attached hereto. When it comes to Muhammad and his life, the sources are once again sparse, but all evidence suggests that there are some elements that correspond between the mythological representation and the historical figure, and that he did exist can almost be claimed with certainty.¹⁸⁰ The historical figure of Muhammad, however, really is not of much interest to us, as it is the mythological figure that serves a role for Islam and for Muslim self-identification. It is said about him that he was born in 570 A.C. and the story goes that he at a very young age encountered an angel that purified his heart and filled his chest with goodness.¹⁸¹ Muhammad was chosen due to his desirable human qualities and readymade as a prophet due to divine intervention. Then, at the age of 40, he solitarily retreated to the hills near Mecca, where the archangel *Jibril* encountered him. It was here, that he received his first revelation, as *Jibril* demanded that he would recite or read aloud. The illiterate Muhammad objected in despair, that he was not capable, but then, suddenly, it was as if the words flowed from his mouth and the first Qur'anic *sura*¹⁸² was revealed.¹⁸³ It is in this way that the Quranic *sura*'s claim their authority. They are not created by man, but are instead divine perfection expressed through the medium of the prophet Muhammad. From an analytical perspective, it is interesting to see the overlapping of ideas from Jewish and Christian traditions, where especially the number of 40 has a special mythological position and the solitude of Muhammad's journey and the revealed message equally leads our minds to the narratives of Moses and Jesus. From an inside

¹⁷⁸ Ibid.: 13

¹⁷⁹ Ibid.: 7-8

¹⁸⁰ Ibid.: 42

¹⁸¹ Ibid.: 42

¹⁸² A *sura* is a 'chapter' in the Quran.

¹⁸³ Rippin 2012: 20ff

perspective, these commonalities strengthen the legitimacy and authority of the message, as it is essentially held in Islamic mythology that Moses and Jesus equally were prophets, but that Muhammad is the final one.¹⁸⁴ From an outside and sociological perspective, however, it seems more plausible that this rhetoric was adopted to utilize the authority from outside religions for self-preservation. Here, the relation to Jewish and Christian traditions is in fact a general theme in Islamic mythology, where the self-perception and authorization typically is constructed in opposition to, yet also in extension of, the other Abrahamic religions. This comes to expression as Islamic mythology continuously separates itself from Judaism and Christianity by having clear conceptions of what an Islamic society should look like. Conceptions that are generated in relation to these opposing religions, but at the same time utilizes the authority of Judaism and Christianity.¹⁸⁵ In that way, Islam in its formative period can only be understood in relation to Christian and Jewish mythology, as it constructs itself in relation to these. This is equally expressed through the many Qur'anic verses, which relate to the Biblical tradition, where emphasis is on the oneness of God, which may be understood as a polemic response the Christian dogma of the holy trinity.¹⁸⁶

The Quran

The Quran is completely essential to Islam and can in a somewhat generalized sense be said to hold a much more literal and pivotal status than the Christian counterpart of the bible. As a book, it consists of 114 chapters called *sura*'s, a total of which does not amount to a chronological narrative, but does instead compose an arbitrary picture where the chapters are, more or less, arranged by length following from *sura 2, al-Baqara*.¹⁸⁷ The first *sura, al-Fatiha*, is different in this respect, as it is fairly short and denotes a prayer that in itself holds an apotropaic function.¹⁸⁸ Now, this arbitrariness of the compositional picture is solely an observance from an outside perspective. From within Islamic

¹⁸⁴ Ibid.: 22ff

¹⁸⁵ Ibid.: 21

¹⁸⁶ Ibid.: 21

¹⁸⁷ Ibid.: 20

¹⁸⁸ Ibid.: 20

discourse itself, the Quran is said to be the perfect work composed and arranged by divine will. Being wholly divine, the scripture of the Quran is flawless and the failure to recognize this resides in the limited epistemic capacity of the human being.¹⁸⁹ The Quran is in other words sanctified, as it holds a sacred position, which infuses it with divine authority and sets it apart by protecting it with taboos.

Thematically, the Quran is concerned with three dominant and overarching topics: law, the previous prophets and the final judgment. Standing above all this is the figure of God, *Allah*, which is all-mighty, all-powerful and all-merciful.¹⁹⁰ He is the focal point of existence and he has sent the Quran as moral guidance for his creatures, so that we can live in accordance to divine will and thereby secure our place in paradise on the final day of judgement.¹⁹¹ The reason I am putting so much emphasis on these mythological claims of the Quran, is that they are influential regarding Muslim identity and Islamic culture broadly speaking, as they function as the underlying foundations for the rationality that guide ‘Muslim’ actions in the orthopractical sense of the religion. Here, Quran 4/136 proclaims:

O you who believe, believe in God and his messenger, and the book which He has sent down on His messenger as well as the book which He sent down previously. Anyone who disbelieves in God and his Angels, His books, His messengers and the last day has surely gone astray.¹⁹²

What emanates from this verse is first of all that the authority of the message incorporates the Christian and Jewish traditions, as it emphasizes the importance of earlier messengers and the scriptures he brought down previously. Moreover, we see that belief is essential, so there is a vital importance of the intellectual and personal relation to God. Yet, in

¹⁸⁹ Ibid.: 34

¹⁹⁰ Ibid.: 21

¹⁹¹ Ibid.: 21

¹⁹² Quran 4/136

comparison to protestant Christianity, for instance, Islam does in general emphasize conduct to a much larger extent.¹⁹³ Right conduct is seen as the representation and proof of authentic believe, hence Quran 19/60 emphasizes the reward “*for anyone who repents and believes and acts righteously.*”¹⁹⁴ Acting righteously is therefore also a prerequisite for achieving salvation and the Quran dedicates a whole lot of attention to defining the necessary practices of right conduct. This is where the concepts of *haram* and *halal* comes into play, which serve to categorize actions and distinguish between rightful performances that are in accordance with divine will and those which are in opposition thereto.¹⁹⁵ Another element that is essential to Islam regarding rightful practice is the notion of the ‘five pillars’, which refers to the crucial ritual practices in Islam of *shahada* (the witness to faith), *salat* (prayer), *zakat* (charity), *sawm* (fasting) and *hajj* (pilgrimage). Interestingly enough, however, these five duties of individual Muslim performance are not directly legitimated through the Quran but are instead more the result of lived tradition, which finds its authority through the *hadith* literature.¹⁹⁶ They are however of pivotal importance to the Muslim self-identification and notion of authentic Muslim practice.

Muhammad

Whereas the Quran emphasizes the unity of God in a polemic reference to the Christian and Jewish traditions, it is an important claim that Muhammad is fully human. Unlike the misunderstood conception of God that emanates from Christianity – which blasphemously have come to perceive Jesus as God – Islam stresses how Muhammad, as well as Jesus, was fully human. Though fully human, Muhammad nonetheless holds an essential position in Islam, as his function qua prophet places him as the purest and godliest of human beings.¹⁹⁷ Muhammad is therefore the ideal man and the perfect representation of what it means to be Muslim. Flowing from this notion of Muhammad

¹⁹³ Rippin 2010: 26

¹⁹⁴ Ibid.: 26

¹⁹⁵ Ibid.: 26-28

¹⁹⁶ Ibid.: 104-105

¹⁹⁷ Ibid.: 52

as the ideal Muslim comes the perspective of his moral superiority. This brings us to the *hadith* literature, which is scriptures of Muhammad's life and actions; serving the purpose of providing guidance for the Muslim *al-ummah*. It does this by adding layers to the narratives and understandings of moral conduct, by bringing insight to the *sunna* (conduct) of Muhammad. In Islamic law, it is primarily through these two main sources – the Quran and the *sunna* – that authoritative legal interpretations are derived.¹⁹⁸

That Muhammad holds such an important position in Islamic mythology and for Muslim identity can, from an analytical perspective, be seen as a result of his pivotal importance for the creation of Islam as a religious institution. From a religious insider perspective, Islamic mythology holds that the Christian God and the Jewish God are in fact the same as *Allah*. From an outside perspective, we must instead say, that these Gods are very differently constructed in vastly different sociocultural contexts. In that way, from the outside perspective of the scholar of religion, the existence of *Allah* as a trans-empirical entity relies very much on Muhammad, hence the whole conceptual framework of the monotheistic god of *Allah* stems from Muhammad's articulations thereof. Moreover, we can see Muhammad as the man of enlightenment. He is the source from which knowledge of the actual cosmological order stems, he is the leader of the Islamic *al-ummah* and he is the reason that Muslims are no longer caught in *jāhilīyya*.¹⁹⁹ As a result of this, Muhammad is completely inseparable from what it means to be Muslim. He is the collective symbolic representation of individual Muslim identity; hence, individual self-identification is inevitably attached to the Islamic *al-ummah* as such. We might even say that since the Muslim god, *Allah* is so distant from the human realm due to his divine perfection and absolutivity, Muhammad instead becomes the figure in which one can relate.²⁰⁰

¹⁹⁸ Vikør 2005: 31ff

¹⁹⁹ Rippin 2010: 14

²⁰⁰ *Ibid.*: 52

Islamic Law

For the following passage we shall have a look at Islamic law, hence law and the concept of sharia is so central to Islam as a religion that they can hardly be separated. The first thing we can say is that Islamic law is too often simplified in public western discourse.²⁰¹ The existence of an unjust and irrational law system called *sharia*, has taken a place in the discourse as that wholly other and suppressive regime, which in a totalitarian way undermines the human rights of its citizens.²⁰² The big misconception in this regard, is that sharia is often understood as a given and substantialised set of laws.²⁰³ This perception is very far from the truth so whereas there might be plenty of reasons to criticize Islamic law systems, sharia in itself, is simply just a misunderstood concept. Sharia, one might say, is a floating concept. It is a moral ideal and the name for a divinely existing moral codex by which human beings should lead their lives.²⁰⁴ In that sense, in terms of it being an ideal of the existence of a universal moral codex, it seems to have quite something in common with the idea of human rights on a conceptual plan. We will turn to this later. For now, it is important to grasp, that sharia is simply an ideal and not a set of laws or rules that are divinely given. The question in matter for Islamic law systems then, is how to try and realize sharia, how to bring this divinely existing law system down to earth so to speak, and this is where it becomes interesting, for then we are dealing with the methods of Islamic law. These are, with a general term called *Fiqh*. *Fiqh* are the methods by which *sharia* is realized. It is the ways by which the divinely given moral codex can be brought down to ground and implemented as a law system.²⁰⁵ This means, that whereas *sharia* is wholly divine, *Fiqh* is a product of man and the methods by which the Islamic search for divine law takes place.²⁰⁶ When I explain *sharia* like this, I refer to the concept from an emic perspective. How it is conceived of from within Islamic theology. The hurdle about the concept, however, is that it is often being used in diverging

²⁰¹ Vikør 2005: 1

²⁰² Otto 2010: 41

²⁰³ Ibid.: 23-24

²⁰⁴ Vikør 2005: 2

²⁰⁵ Ibid.: 2

²⁰⁶ Ibid.: 2

ways and it is therefore important to clarify what one exactly refers to when using the concept of *sharia*. In order to make sense of these differing conceptualizations, legal scholar, prof. Jan Michiel Otto, has valuably distinguished between four distinct concepts of *sharia*.²⁰⁷ *Divine, abstract sharia* is the most essential concept of *sharia*. It is the before mentioned philosophical ideal of a universally given moral code, which is known by *Allah*. It resonates another and transcended reality, which we by guidance of divine revelation and the capacity of our intellect and rational abilities can try to substantialize.²⁰⁸ *Classical sharia* or *historical sharia* is different in the sense that it refers to the actual writings and the corpus of laws and commentaries laid out during the first two centuries after the prophet Muhammad. It emanates from the idea, that the prophet Muhammad and his revelations somehow created a fix-point in time. A golden age, where everything was godlier and more divine. The classical scholarly interpretations of the Quran and the hadith literature by scholars of this classical era therefore compose a glimpse into Islamic law in the early post-Muhammad era.²⁰⁹ *Historically transferred sharia* is the vast and all-encompassing amount of literature, interpretations and commentaries that has been produced in the duration of time. From the time of Muhammad and up until now. It is a reference to *sharia* that encapsulates the extensive diversity of interpretations and ideologies to be found within the Islamic world. From traditionalist and conservative interpretations which rely on the works of the classical period to the modern and liberal perceptions of *sharia*.²¹⁰ *Contemporary sharia* is the fourth and final reference to the concept. It refers to *sharia* as the bodies of law that are contemporarily applicable in Muslim states.²¹¹ A concept, which is therefore also rather encompassing in its scope as there are significant diversities regarding the extensiveness and interpretation of Islamic law in contemporary Muslim states.²¹²

²⁰⁷ Otto 2010: 25

²⁰⁸ Ibid.: 25

²⁰⁹ Ibid.: 25

²¹⁰ Ibid.: 25

²¹¹ Ibid.: 26

²¹² See: Otto 2010

With these four concepts in mind, it needs to be stated that scholars have diverging opinions on whether or not *classical, historically transferred* and *contemporary sharia*, really should be referred to as *sharia*, or whether they are solely products of *fiqh*.²¹³ I will argue here, that the question posed in that regard is significantly one of whom we allow the power to define the concept. After all, concepts are nothing but the meanings we attach to them, so if we accept emic descriptions of the concept and perceive them as authoritarian conceptualizations, then we would say that *sharia* is simply the *divine, abstract sharia*. From an etic perspective one could also argue that *sharia* is simply what is embodied in practice and that the other three concepts are equally matters of *sharia*. What is solely important in this respect is clarity and consistency regarding the use of the concept and here, it is my conviction, from an academic perspective of the study of religion, that the emic perspective of *sharia* as a divine ideal must be regarded as authoritative. For that reason let me clarify that when I reference *sharia*, I will - unless otherwise stated – be referring to *divine, abstract sharia*.

Sources of Islamic Law

As mentioned earlier, Islamic law has *sharia* as a foundation for implementing a law system and the idea of theocracy is therefore deeply embedded in Islam as a religion, in the way that it is institutionalised and in its mythological formation. In order to realize it, however, one must turn to *fiqh*.²¹⁴ This process is closely related to Islamic dogmas. The first of these dogmas is the ineffability of *Allah* and his absolute existence. *Allah* is the creator and he has endowed us human beings with rationality. Our rationality is key but our knowledge is limited and exactly because of this finity, he has provided us with the Quran for moral guidance. This leads us to the next dogma, namely the perfection of the Quran. Given to humankind by *Allah*, via the archangel *Jibreel* to the final prophet, Muhammad, the Quran maintains a position in Islamic thought, as the perfect piece of work.²¹⁵ It is wholly divine and perfect in its entirety and for this reason; the Quran

²¹³ Ibid.: 26

²¹⁴ Vikør 2005: 2

²¹⁵ Rippin 2012: 30

denotes the first and most important source in Islamic law.²¹⁶ It is the initial and most important source for a recognition of the divinely established universal moral code that we call *sharia*.²¹⁷ Here, one might think, that as the Quran is perfect in its entirety, there should be no need for other sources from which Islamic laws should be derived. However, as we are finite in our understanding of the Quran, there will be answers that we cannot find or understand within it. In order to overcome this, the second most important source in Islamic law, is the prophet Muhammad.²¹⁸ Being the last messenger of Allah, he holds a position as, though only human, that human being who necessarily had to be closest to Allah. He is therefore depicted as a thoroughly moral and pious ideal to follow in Islamic thought.²¹⁹ The problem here becomes how to know which actions he performed and which things he instructed. The answers hereto are, as we have seen, to be found in the *hadith* literature, which is accounts of Muhammad's life. Here, it is important to note that not every telling about Muhammad's life has status of hadith. The hadiths are reports which hold heightened and authentic status in Islamic thinking. Once again, from an outside perspective the hadith literature seems to (at best) intertwine historical and anecdotal aspects, but from an inside perspective, the *hadith's* are valid and authentic claims of Muhammad's actual conduct due to the cogency of *isnad*.²²⁰ An *Isnad* is basically the chain of transmitters of a hadith and here there are different methods of verifying the authenticity of an *Isnad*. For example taking into account the moral integrity of the people cited in the *Isnad*.²²¹ Any *hadith* report therefore starts with an *isnad*, which verifies its validity before it moves on to the actual text or report, which is called *matn*.²²² This may be best illustrated with an example:

Ishaq told me that 'Ubayd Allah told him on the authority of
Shayban on the authority of Yahya on the authority of

²¹⁶ Vikør 2005: 32

²¹⁷ Ibid.: 32

²¹⁸ Ibid.: 38

²¹⁹ Rippin 2012: 52

²²⁰ Ibid.: 49

²²¹ Ibid.: 48

²²² Ibid.: 48

Muhammad ibn ‘ Abd al-Rahman, client of Banu Zuhra, on the authority of Abu Salama on the authority of ‘Abd Allah ibn ‘Umar that he said, “The messenger of God (may the prayers and peace of God be upon him) said to me, ‘Recite all of the Quran in one month.’ I said, ‘But I am able to do more than that!’ So (Muhammad) said, “Then recite it in seven days, but do not do it in less than that”²²³

As it follows from this, hadith literature clearly is not joyful or poetic reading, but the whole structure and the purpose of the initiating *isnad*, is to verify the validity of the report by situating it in the historical chronology of the Islamic *al-ummah*. It is through such reports, as well as readings of the Quran, that Islamic legal methodologies revolve. The authenticity of these *hadith* reports reached more and more consensus in the institutionalising years after Muhammad (around the 9th and 10th century), and disputes about genuineness is therefore fairly settled and no longer up for much dispute.²²⁴ It is interesting to note, however, that Islam does not have a centralised authority as does for instance the catholic church, and there were therefore various *hadith* collections flourishing at the time. Here, six of these collections came to hold more authoritative positions and are now considered canonical collections that are central to theological and legal discussions.²²⁵ It was also in this same period of institutionalisation that different schools of Islamic law started forming and these processes laid the foundation for the modern day’s schools of Islamic law, which can be divided between four major institutions with varying yet equally accepted methodologies. All of them leading back to their founders. These four schools are the Hanafi, Maliki, Shafi’I and Hanbali schools.²²⁶ All of them are Sunni and their contemporary importance can be separated much between different geographical regions, with the Maliki’s in the west, the Hanafi’s

²²³ Ibid.: 48

²²⁴ Ibid.: 47-49

²²⁵ Ibid.: 48

²²⁶ Vikør 2005: 89ff

in the north and east and the Shafi'i's in the southeast. The Hanbali School prevails in Saudi Arabia. These four schools agree on the basic guidelines but differ in specific and specialised issues with different sets of interpretations. They are, however, tolerant to each other and some speak of a sort of diversity within unity.²²⁷ Much more could be said about Islamic law and the various methodologies in different schools of thought. However, the specific legal questions of methodology are not really of interest to us for the argumentation of this dissertation. What concerns us is the fact that Islamic law is institutionalised in various forms and inseparably connected to Islamic mythology, the position of Muhammad as a moral ideal and the ineffability of *Allah*. In the following, we shall see how all of this paints into the theoretical picture by Peter Berger and the social reality of religion.

The social reality of Islam

Recalling now the notion of culture and religion as well as their societal function, as Berger and Berger and Luckmann has pointed them out. Culture is the immanent and necessary aspect of human activity. We produce social realities in which we live, serving the purpose of establishing meaning, social coherence and order out of what would otherwise be mere chaos. The world building activity of man is a stabilising endeavour which provides a degree of firmness which human life lacks biologically.²²⁸ This process of world production functions in a way, where it obtains an expression as existing prior and independently of us, but is in reality the production of our collective social enterprise. The social reality does in other words appear to us as objectified reality, though it relies on processes of externalisation and internalisation. Here, in this perspective, religion and in this case Islam, serves the purpose of rooting the socially constructed in utmost and sacred reality and thereby placing the individual in an ultimately meaningful cosmos.²²⁹

²²⁷ Baderin 2003: 32

²²⁸ Berger 1967: 16

²²⁹ Ibid.: 35

The function of Islamic mythology

If we here turn our attention to Islamic mythology and dogmatism, it is interesting to see what sort of reality conception that emanates from this. What are, in other words, the culturally stipulated conceptions of reality, which we must assume is therefore also to a large extent internalised as objectified reality by people identifying as Muslim. Either in an explicit and direct sense or in a more implicit culturally latent way. Most of it we have already encountered in the previous section, but let us now try to understand it in direct connection to the perception of Peter Berger. At first, we can say, that the essential dogma of *Allah* as all-powerful and all-merciful functions as the stabilising factor from which the whole of reality stems. It is the source of the ordered world in which the individual finds him/herself. From a theological perspective, it is a source of problem regarding the issue of theodicy, but in the unquestioned social reality of everyday life, it is a latently present and immanent source of order and meaning. Emanating from this absolute source of existence that transgresses the borders of time and history, is the *Quran*. The perfect literary work of divine origin, sent down to mankind for moral guidance.²³⁰ Through the *Quran*, the socially constructed normative moral code attains a sacred and absolute authority that hides its constructed character and establishes a homogenising effect for the members of society. In that way, it equally plays into important patterns of self-identification, as it has a strong community creating function. Here, the concept of *al-ummah* establishes an imagined community, creating a sense of belonging to an idealised and amorphous group of people. Categorising it as imagined, I draw on the famous notion from Benedict Anderson as he investigates the origins of nationalism.²³¹ I will argue, that it is the same function that the concept of *al-ummah* plays for self-identification, though this creation of belonging is not based on national identity but instead on religious identity. Anderson puts it this way: “*is imagined because the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear*

²³⁰ Rippin 2012: 30

²³¹ Anderson 1983: 6

of them, yet in the minds of each lives the image of their communion.”²³² A description that equally seems to be quite fitting for the personal sense of belonging that is essential to Islamic mythology. Moreover, we can recall here, how Berger and Luckmann spoke of habituation, as individuals become acquainted to certain patterns of thinking and performing as they internalise the social reality in which they navigate. Habituation serves a psychological purpose for the individual, as it narrows down the possibilities of personal agency, but it equally has a homogenising effect as it takes part in creating social coherence by granting a sense of certainty that fellow human beings live in the somewhat same social reality as oneself.²³³ The notion of *al-ummah* has such an effect, as it ties people together, creating social coherence and sense of individual belonging and self-construction in relation to an imagined group. Essential to this idea of belonging, is the moral superiority emanating from the concept of *Allah*. As the Muslim community is no longer caught in *jāhiliyya*, it is necessarily on the right track and in accordance with the ultimately desirable moral code.²³⁴ In that way, Islam as a moral system is the focal point of order that has pierced through time and space through divine revelation and thereby stands in stark contrast to the unknowingness of the past.²³⁵ Moreover, when we are talking about identity and self-construction, one thing that is essential to the process is construction of identity in opposition to someone or something else. In order to understand what ‘I am’, I must necessarily know what I am not. Here, the picture painted by the Quran is one of the Muslim identity constructed in opposition to especially Christianity, but essentially in opposition to every other religion. Islam holds the sole truth and everyone who is not Muslim has gone astray. Now, obviously, this is not a very solidary perspective and it surely is not one that every Muslim will adhere to. It is, however, from the mythological and dogmatic perspective, what is professed, and it is the result of monotheistic rationality. The same inherent logic is equally to be found in Christian and Jewish scriptures; hence, it is not something inherently special about Islam.

²³² Anderson 1983:6

²³³ Berger & Luckmann 1966: 70ff

²³⁴ Rippin 2012: 13-14

²³⁵ Ibid.: 13-14

The construction of self-identity in relation to something else, however, seems to be a general anthropological necessity for self-construction, and through the Quran, this construction of the Muslim *al-ummah* is to a very large extent created in opposition to the theological fall from grace that have occurred in Christianity.²³⁶ In that way, Islamic mythology places the Muslim practitioner in the 'right relationship with the sacred cosmos and thereby protects him against the nightmare threats of chaos, as Berger puts it.²³⁷

To further understand the social reality of Islam, we once again need to touch upon Muhammad as the moral ideal and the symbolic representation of the Muslim community at large.²³⁸ As mentioned earlier, it is a compelling thought, that due to the sheer distance between man and *Allah* in the Islamic world conception, Muhammad instead turns into the figure of relation. Moreover, in effect of his status as the perfect Muslim, having lived his life in a state of sinlessness, he is the embodiment of divine will and the mythological figure of Muhammad thereby becomes the single most important symbol of Islam and the sacred cosmization that it denotes.²³⁹ As a result of this, Muhammad is the most sacred of symbols within the social reality of Islam. A shared role model for the whole of *al-ummah*, set apart from the profane and sacralised through language and hagiographical literature. Flowing from the idea of Muhammad as a moral ideal is the Islamic focus on orthopraxia as Islam emphasises right conduct to a large extent. Being Muslim is, as we have seen earlier, a matter of genuine belief, but this belief must be expressed through actions. This is both in a ritualised sense, where it is important to perform the daily prayers, fast during the Ramadan, take part in the pilgrimage to Mecca etc.²⁴⁰ but it is also in a more immanent sense regarding everyday performativity, expressed for instance through the importance of wearing a *hijab*. These acts become habitualised and part of the everyday reality as they function as latent expressions of social belonging to the group of *al-ummah*. They are continuous productions of Islamic mythology and thereby

²³⁶ Rippin 2012: 21

²³⁷ Berger 1967: 36

²³⁸ Rippin 2012: 52

²³⁹ Ibid.: 52

²⁴⁰ Ibid.: 263ff

significant elements in world maintenance and self-construction, in the dialectical process between society and individual.

Cosmology and anthropology

The word Islam literally translates into submission. This fact has often been used by Islam critics to emphasise how Islam is medieval in its thinking and asserts an oppressive power that hovers over the unfortunate Muslims who are themselves not able to see how they are being tricked. Such a position is to my mind rather arrogant and tasteless, but I do believe that the word 'Islam' tells us something about the sacred cosmization occurring through its religious language. Here, we can draw attention to the German theologian, Rudolf Otto, who, in his famous work *Das Heilige*, talks about *mysterium tremendum et fascinans*.²⁴¹ The point being, that encountering the holy stirs feelings of attraction and fascination yet also and maybe more importantly of fear and trembling, as the Danish philosopher Søren Kierkegaard would put it.²⁴² Now, in Islamic cosmology, encountering *Allah* is typically regarded as a dogmatic impossibility, except for in circles of *Sufism*. It is still a valuable notion, however, as this element of fear and fascination encapsulates the relation to the mythological figure of *Allah*. The sacred cosmization in Islam is therefore one where the whole of existence relies on *Allah*, and where the human being is subordinate to this all mighty entity. It is also one, where *Allah* is significantly present and aware of individual human conduct, and it is as a result of this, that issues of law become so neatly weaved into the social reality of Islam. Responsible Islamic governance would therefore have to be in accordance with the divine moral code.

Now, with these things said, let me once again point to the diversity within Islamic thinking and world perception. This is especially important in an increasingly globalised world where traditional Islam increasingly encounters with modernity and secularist ideals of governance.²⁴³ Here, to encapsulate some of this diversity in a generalised sense, religious scholar, Andrew Rippin, differentiates between three overarching reactions

²⁴¹ Otto 1926: 12-13

²⁴² Hampson 2013: 32ff

²⁴³ Rippin 2012: 192

towards modernity as he distinguishes between traditionalist, Islamist and modernist approaches.²⁴⁴ The traditionalist approach holds to the genuine authenticity of the sources of the Quran and Muhammad's *sunna*. They are unchanging as they are fixed representations of divine will, but due to their perfect and divine nature, they are equally able to fit into modernity.²⁴⁵ The Islamist approach on the other hand reacts to modernity, with a desire of change that seeks to revive the golden age of Islam. Doing so by ignoring the traditionalist interpretations of the sources with their own and rather extreme and anti-intellectualist interpretations.²⁴⁶ Finally there is the modernist reaction, which accepts the changes of modernity with a desire of religious reformation, wanting to separate ritual performance and aspects of law, as Islam should put aside the traditionalist legal interpretations and instead turn towards independent legal judgements and reasoning, where the sources must be reinterpreted in a context of democratisation, equality and liberty.²⁴⁷ Significant is it under any circumstance that Muslim perceptions of the sources are in general fundamentalist in their relation to the mythological truth claims, hence also in stark contrast to for example protestant perceptions of the Bible as solely a symbolic scripture with no literal significance.²⁴⁸

²⁴⁴ Rippin 2010: 195ff

²⁴⁵ Ibid.: 196f

²⁴⁶ Ibid.: 197f

²⁴⁷ Ibid.: 199ff

²⁴⁸ Ibid.: 198

Part 4

Discussion - Contesting Universal Truth Claims?

The purpose of the former sections has been to show that human rights are much more than declarations and covenants. Besides being a matter of international law, human rights is also a cultural product and a perception of the individual, which arose in the west and especially gained influence during the enlightenment period. My argument was, that human rights ideas have been internalised in the west as unquestionable moral codes that exist latently in the everyday life of individuals where they have a homogenising effect due to their function of collective moral compass. My argument was further that in this process, there has occurred a sacralisation of the individual, where God has moved further away and where the person instead has become the sacred core of society. This process occurred in the enlightenment where there were contesting universal moral inventions, but the notion of individual entitlements has won significant influence and represents itself as the absolute and unquestionable moral reality. The authority here is won through legitimating processes, which to a large degree resembles religious legitimation as it roots human rights in the floating concept of dignity, which implicitly seems to have a theological implication. The perception of the individual that emanates from this has a universal and unquestionable character where we might be able to discuss what human rights are in practice, but as an ideal, their existence is beyond question and relies on a rather dogmatic foundation. Furthermore, I argued that we could see the human rights system as a sort of 'religion of modernity' in the Durkheimian sense of religion as a projection of the valuable core of society. Through the ideal of human rights, the individual becomes an object of protection and human rights thereby serve an important function regarding society maintenance. This equally fell in accordance with the argument by Verschraegen, that human rights is essentially a mechanism set up by modernity to protect its functionally differentiated and democratic character.²⁴⁹

²⁴⁹ Verschraegen 2002: 261ff

On the other hand, we have Islam, which is a set of institutionalised religious ideas that are being continuously produced and reproduced by the people adhering to them. My point in this respect was to show what underlying ideas the mythological collection of Islam professes. Here, there are obviously various different Muslim perspectives that we have to remain aware of, but my endeavour was to highlight some dominant mainstream ideas from within Sunni Islam. The purpose of doing this was to show what sort of social reality that emanates from the mythological claims of Islam. Especially concerning *Allah*, the Quran and the prophet Muhammad. Emanating from this was a somewhat similar notion of a universal moral code, where the idea of *sharia* denotes exactly such a universal law, yet in this case a divine one. The methods for reaching this law goes through the Quran and the *sunna* of Muhammad and in that respect it differs significantly from the universal truth claim of human rights, though their methods of legitimation seems to play on the same transhistorical and undeniable chords. The purpose of the following will be, first, to show that these differing truth claims are internalised into the social reality of individuals and secondly to discuss what possibilities there are for reconciliation between human rights and Islam on a deeper structural plan as opposed to the practical and legal plan.

The Cartoon Crisis – an illustrative example

To illustrate how human rights and Islam as separate meaning systems influence the moral compass of people and their perceptions of reality, an illustrative example will prove beneficial. The case I wish to bring to attention is from 2005 and has been classified as the cartoon crisis. It unravelled after the Danish newspaper, Jyllands-Posten, on September 30th 2005, published 12 caricatures of the prophet Muhammad, depicting him in various and unflattering ways. It took some time before the conflict caught fire, but with a quick gust, it turned into an international conflict. Danish embassies were burned and companies boycotted while Danish politicians and the public debate swirled around issues of freedom of speech and freedom of the press. One of the scholars taking up the debate was the French philosopher André Glucksmann who argued that Islam had been

taken hostage by fundamentalist fanatics who tried to control the political debate through turbulent riots.²⁵⁰ He therefore saw the cartoon crisis as a democratic problem where freedom of speech and freedom of the press had to be protected from the outside confrontation of theocratic and fundamentalist forces.²⁵¹ Here, we can partly say that Glucksmann had a point. It is obvious that fundamentalist forces caused havoc and strong reactions and that burning down embassies is very far from the typical Muslim reaction to such an issue. To accurately understand the case, however, we cannot rely solely on Glucksmann's account, which is excessively simplistic and seems to dismantle the conflict through what Berger and Luckmann would call a process of nihilation. By placing the conflict at the heart of fundamentalists, it may seem that Glucksmann protects the vast majority of Muslims, but at the same time, he equally dismisses the validity of the genuine frustration and indignation that many Muslims must have felt from the arrogant and condescending caricatures. Outbursts are nihilated and de-legitimised under reference to fanatic fundamentalism, but when we regard the social reality stipulated through Islamic mythology, the caricatures of Muhammad were direct and frontal attacks at the sacred core of the Muslim community.²⁵² What I am thinking of here, is the role of the prophet Muhammad as the moral ideal and the embodiment of the Muslim *al-ummah*.²⁵³ As Andrew Rippin notes, "*Attacking' Muhammad is [...] attacking the way of life of individual Muslims, for their way of life is understood to rest on the example of the founder of their religion.*"²⁵⁴ Considering this, the cartoon caricatures were distasteful attacks at the Muslim community and it surely was not only fundamentalists that felt a burning outrage regarding their publication. We may even go so far as to say, that the condescending depictions of Muhammad, for the individual Muslim, must have felt as a personal attack, as one's own moral compass and one's world conception at large relies on the mythological figure of Muhammad. He is the source of one's self-identification with the Muslim community. Especially when considering that the most controversial of

²⁵⁰ Rothstein & Rothstein 2006: 9

²⁵¹ Ibid.: 9

²⁵² Ibid.: 55

²⁵³ Rippin 2012: 52

²⁵⁴ Ibid.: 52

the cartoons clearly drew on connotations that equated the prophet Muhammad with terrorism; and thereby implicitly insinuated that Islam fundamentally equates terrorism and brutal murdering. According to Glucksmann, it was exactly this depiction – the one of Muhammad with a bomb in his turban – that caused the greatest outrage, as he argued that every fanatic Muslim with terroristic sympathies could recognise himself in this picture.²⁵⁵ In saying so, he implicitly states that fundamentalists react as the picture truthfully hit a nerve that caused a kind of authentic self-reflection of one's immoral world perception. If we turn things around, then maybe Glucksmann could not have been more wrong in his statement, as it may very well be, that this exact caricature caused havoc as self-identifying Muslims could not see themselves in the terroristic equation and that they felt downtrodden and undignified as a national newspaper equated the very core of their moral community with bombings and terrorism.

Whereas I will argue that this was the underlying basis that allowed for the controversy to explode as it did, a vast majority of the discussions came to circle around an Islamic dogma against depicting Muhammad. A dogma which really does not have an essential role to play in Islamic mythology and one that is not literally stated in the Quran.²⁵⁶ Instead, this prohibition is derived from a Quranic verse that prohibits idolatry.²⁵⁷ It is related to the unity and ineffability of *Allah*, the sole true God and can be seen as a response to the polytheistic tendencies that governed Islam's formative period. Besides this Quranic verse, there are also some *hadith*'s that insinuate that depicting soul-bearing creates is frowned upon or prohibited.²⁵⁸ A direct prohibition of depicting Muhammad, however, has never been a fully-fledged dogma in the Islamic history of ideas and in essence, this iconoclastic dogma is a side note in the Islamic mythological hierarchy.²⁵⁹ The debate did not explode due to a religious dogma disallowing for depictions of Muhammad, but exploded due to the condescending nature of the cartoons. Emphasising the prohibition of depicting Muhammad as the source of the conflict,

²⁵⁵ Rothstein & Rothstein 2006: 10

²⁵⁶ Hjärpe 2011: 263-264

²⁵⁷ Ibid.: 263

²⁵⁸ Ibid.: 264

²⁵⁹ Ibid.: 264

however, was a useful tool of nihilation as it implicitly portrayed the Muslim community as an irrational and overly sensible group of people that reacts dramatically due to a picture of a religious figure. The essence, however, is that the negative character of the caricatures violated the sacred core of Islamic society and the social reality that Islam professes. It was this direct attack that caused a reaction.

On the other side of the controversy we saw in the Danish media how discussions of freedom of speech exploded, where *Jyllands-Posten* itself proclaimed that everyone had to tolerate mocking and ridiculing and that they would not perform self-censorship on their freedom of expression.²⁶⁰ The Danish prime minister at the time, Anders Fogh Rasmussen, equally took part in the debate, also stressing how freedom of expression was unnegotiable and how he would not interfere in the matters of the media, as an independent press was of pivotal importance.²⁶¹ Both of these claims are normative of character, but the normativity is not of interest to us from this analytical perspective. What matters is, that these claims exemplify how the debate stirred reactions as the rationality of human rights, the ‘religion of modernity’, as Durkheim called it, experiences a cultural pressure on its sacred and inviolable core, individual entitlements, liberty and self-possessed autonomy. Human rights are deemed absolute and unnegotiable as they denote the sacred core of society. Compromising human rights, and in this case freedom of expression, would be to compromise the whole societal structure of modernity. By emphasising that freedom of expression is not to be compromised under any circumstance, we see how the inherent socially permeating conception of human rights is deemed sacred as they are set apart and forbidden. They are unquestionable exactly because their legitimacy transgresses the historical. This exemplifies, in other words, how human rights is the ‘religion of modernity’, and the protection of its sacred core then becomes essential to maintaining the established social order. The essential purpose is of world maintenance, we might say. In that way, I will argue that this example illustrates how the inherent and culturally engrained logics of human rights that are latently weaved

²⁶⁰ Rothstein & Rothstein 2006: 27

²⁶¹ *Ibid.*: 25

into the social reality of the west, clashes when it encounters with the opposing social reality of Islam, which has a different symbolic universe and different conceptions of the sacred.

Human Rights and Islam – Differences and Compatibilities

If I am right in my hypothesis that human rights as an ideal is culturally engrained in western societies and that Islam takes a dominant role in the socialisation processes in Muslim societies, then a comparison between these meaning systems might be able to illuminate why there is tension but also where there are elements of compatibility and agreement. Drawing on the argumentation of the previous sections, we can first of all say, that the social reality emanating from the human rights thinking is one that places the individual at the centre. This was emphasized with the notion of the sacralisation of the person and the value of individual autonomy.²⁶² These elements played into a larger picture of cultural change, where religion came to hold a new position in society, as God moved further away and attained a more transcendent position. God became with increasing dominance a matter of belief. The seeds here were initially planted with the protestant reformation, but were also expressed through notions of natural religion, as we saw with Jean Jacques Rousseau. It is a sort of individualism, which, according to Max Weber, flowed from the protestant, and especially Calvinist, conception of predestination. Weber's famous argument was that the dogma of predestination established a culture where worldly and individual success was a sign of one's predestined character.²⁶³ Along with Jesus imitational values of modesty and ascetic conduct, this planted a seed for capitalism, as the accumulation of wealth, which was initially a goal due to its symbolic value of salvation, turned into a goal in itself.²⁶⁴ It is however also a culture of individualism and personal achievements and this sort of individualism seems to be at the core of the culture in which the human rights idea blossomed. In opposition hereto stands the social reality of Islam, which in a somewhat stereotypical fashion can be said to entail

²⁶² Joas 2013: 49ff

²⁶³ Furseth & Repstad 2007: 66

²⁶⁴ Ibid.: 66

a stronger emphasis on collectivism. Obviously, there are also aspects of individualism present, as every individual stands before God with his actions, both in the eschatological sense but also when it comes to Islamic law where *Allah* is the ‘legislator’.²⁶⁵ The collectivism, however, becomes present through the emphasis on belonging to *al-ummah*, where Muhammad is the overarching symbol of relation, but also through ritual practices and common narratives. We may therefore say that the two social realities professed by these institutional entities, express different perceptions of sacrality. Through the human rights system, the sacred resides within the human person, whereas the Islamic mythological reality sees the sacred as something exterior to the person. Something that the collective community can relate to.

Another differentiation that we can point to is that between secularism and religion. As the idea of human rights blossomed in the enlightenment period it came to substitute the earlier catholic laws, hence there seems to reside a secular ideal of separation between church and state deep within it as a meaning system. This is not to say that human rights are anti-religious, but rather that they fit into a system where religion is understood through belief and faith and not in a totalitarian way where it equally encapsulates governance. In Islam, governance and law is weaved into the fabric of its mythology and should be lived and practiced due to the orthopractical nature of the religion. What this exactly entails can obviously be modified as it in the end solely rests on social consensus, but when we observe the mythological claims of the perfection of *the Quran* and the *hadith* literature, then any such modification would have to be justified accordingly. As a social system of meaning, we can therefore in a somewhat generalising sense say, that Islam expresses a desire for theocracy. Any argument of secularisation of the Islamic state would therefore also have to be justified from within, so that secularisation would be in accordance with divine desire. So that the theocratic ideal is democratic and secular in essence.

In relation to this distinction between secularism and religion, we might add that of modernity and traditionalism. This distinction easily sounds condescending and as

²⁶⁵ Vikør 2005: 3

reflecting moral superiority due to the semantic connotations attached to the concepts. Modernity has a positive ring to it whilst traditionalism has connotations of irrationalism and backwardness. Such insinuations, however, are by no means my intention. Instead, I use the concepts in lack of better words, with the argument that modernity, thought of here in a Luhmannian sense of functional differentiation, is the underlying societal structure that human rights seeks to protect.²⁶⁶ Human rights is moulded through the hands of modernity as it is intricately viewed into ideals of democracy, rule of law and the separation between church and state. Islam however, has a traditionalist approach in the sense that it is mythologically rooted in space and time, expressed through the concept of *jāhilīyya* but more importantly through its law system, which has Muhammad's *sunna* as an essential basis. In that way, the Islamic society, or rather, the amorphous ideal of *al-ummah*, is the societal continuation of the divine moral code and the perfect moral ideal, which pierced our existence with a fix point in time as *Allah* revealed his message to the prophet. Moreover, the religion of Islam seems to denote a unified whole rather than a functionally differentiated society. In sum we can therefore say that there are significant differences between the social realities that these contesting meaning systems profess. In arguing this, it may seem to resemble the famous argument by Samuel Huntington in his *Clash of Civilizations*. Huntington's thesis can in many ways be seen as a response to Francis Fukuyama's *The End of History and the Last Man*. Fukuyama's argument was that the end of the cold war brought about a collapse of communism where liberalism and liberal democracy would now assert its influence on a global scale and become a hegemonic and final form of governance.²⁶⁷ Huntington, on the other hand, equally wrote into the post-cold-war theme with predictions of the future of international relations, as he argued in 1996 that the conflicts of the future would be of cultural origin rather than the ideological ones of the cold war period. His underlying thesis is that world society is composed of 6-7 overarching civilisations that are fundamentally different and therefore inevitably will cause friction when they engage with each other.²⁶⁸ For that

²⁶⁶ Verschraegen 2002: 258-281

²⁶⁷ Fukuyama 1992 [2012]

²⁶⁸ Huntington 1996: 69-71

reason he sees the universal project of human rights as western imperialism that is outright counterproductive as it will stir hostile reactions and create tension between different civilisations.²⁶⁹ For that reason, civilisations should stick to themselves if we wish to establish a peaceful world society, and the west should keep its liberalism and democratic ideals to itself instead of wanting to outsource them to the rest of the world with moral superiority.²⁷⁰ In Huntington's perspective, human rights and Islam are therefore at odds with each other, at least in relation to the 'western' interpretations of human rights documents.²⁷¹ Drawing on his separation between civilisations as the overarching cultural denominator of identity construction, Huntington argues that the western civilisation is fundamentally different from the Islamic civilisation, where 'the west' values individualism, liberalism, constitutionalism, human rights, equality, rule of law, democracy, free markets and the separation between church and state, then the Islamic civilisation has different values, as he argues that these western concepts does not resonate much legitimacy in other civilisations.²⁷² Huntington's thesis can be criticized for being too generalising and static in its understanding of culture, and the whole notion of civilisations does seem rather speculative and monolithic in its perception of cultural entities. At the same time, it does seem that he somehow did hit a nerve with his predictions, as the conflicts of our contemporary society becomes increasingly nationalistic and sometimes outright Islamophobic. This at least seems a general theme in the European political landscape. The question, however, is how much these changes are caused by actual cultural differences and how much they are caused by 'imagined' differences that re-enforces individual identity perceptions. Moreover, the monolithic perception of Islam that Huntington adheres to is excessively simplistic and a good exemplification of what we must avoid under any circumstance if we wish to generate an enlightening picture. Hence, culture is never static but always dynamic and changing in its interplay with opposing realities. In that way, culture is not something we have, but

²⁶⁹ Mayer 1994: 310

²⁷⁰ Ibid.: 310-311

²⁷¹ Ibid.: 310

²⁷² Ibid.: 310-311

may be better explained as something we do. Culture is performative. This is also why, when I point to these generalising differences, which I did in the previous part, that we must remember the diversity inherent in Islam. What I have tried to encapsulate with the differences emphasised here is simply the very wide structural differences that are at the core of the tension between human rights and Islam as opposing meaning systems. This, however, is not the same as to say, that they are completely incompatible and that they should remain separate in order to avoid unnecessary friction. On the contrary, I will argue that there are also elements between these two universalities that are much alike and establishes fertile soil for compatibility. Most significantly here is the fact of their universal truth claims as they are both based on an ideal. Both human rights and Islam denote unified moral systems that rely on an ideal of a universal moral code. They may differ in their methods and ideas of how to reach this moral code but they both agree on the ideal and there is therefore a structural compatibility that is very significant. For this compatibility to move from a structural realm to a practical one, there are, the way I see it, three overarching possibilities. The first is compatibility and accordance between Islamic law and human rights, where Islamic jurisprudence, *Fiqh*, interprets the Quran and the *hadith* literature so the conclusions of law and morality amount to the same as those of human rights documents. The second possibility is a process of secularisation and religious reform where the religious scriptures are stripped from their mythological status as divine and perfect sources. Through such a process, Islam would simply leave the realm of governance and law and become instead a matter of personal belief or faith, as is the case in Lutheran Protestantism. The third and final possibility is the somewhat interesting middle way, which combines the process of secularisation with Islamic theology. This process is what declared Muslim and legal scholar, Abdullahi An-Na'Im argues in his culminating life work *Islam and the Secular State*. What An-Na'Im does is exactly to produce a theological argument for the necessity of a secular state for the ability to live in accordance with Islam.²⁷³ In sum, his argument is that in order to be Muslim, one must have authentic and genuine relations to *Allah*, and that such genuineness cannot

²⁷³ An-Na'Im 2009: 1

be achieved through a coercive state that rules through fear and punishment. To live in accordance with *sharia*, the state must therefore necessarily be secular, hence the secular state is the only state that can facilitate genuine religious piety out of honest conviction.²⁷⁴ According to An-Na'Im, *Sharia* principles are by nature in defiance with enforcement, and the idea of a sovereign state enforcing sharia principles therefore becomes a logical contradiction.²⁷⁵ What An-Na'Im's argument shows us is exactly that culture is ever changing and that nothing is fixed. The argument that human rights and Islam are incompatible simply does not fit into this dialectical picture of world construction. As we have seen, there obviously are structural challenges between these two meaning systems, but there are also measures of compatibility and here, I believe that An-Na'Im expresses the solution, namely that the necessary changes to Islamic Jurisprudence must come from within Islam itself. Especially because the whole moral conception of the social reality of Islam, is bound up on Muhammad as the perfect ideal and the leader of the Muslim *al-ummah*. Here, we must equally remember that *sharia* is just and ideal and that the sources for Islamic jurisprudence are up for a wide array of interpretations. An-Na'Im's theological argument is a great example of how religion is dynamic and will morph if necessary. In this vein, we may recall how Berger perceives religion as sacred world construction, which establishes social coherence. We may also recall the Durkheimian perspective of religion as generating a unified moral community. With modernity and the increasing interaction between these different social realities of human rights and Islam, frictions are inevitable and will cause different reactions, but if human rights thinking truly has an appealing aura of self-evident righteousness, then surely, Islam can and will incorporate it into its theological thinking. Any claim that human rights are incompatible with Islam should therefore be dismissed.

Conclusion

Through the lens of Berger and Luckmann and their theory of reality as a social construction, this thesis investigated human rights and Islam, as to separate

²⁷⁴ Ibid.: 1

²⁷⁵ Ibid.: 2

institutionalised systems. Finding here, that human rights thinking truly blossomed during the enlightenment period, where the Atlantic declarations implemented the notion of individual entitlements into the law system. With the French revolution, we saw the implementation of a secular moral codex that substituted the prevailing monarchical laws and their tight connection to the Catholic Church. This was a turning point for human rights thinking and it came very much from a cultural revolution in the period, where the individual came to hold an increasingly self-possessed position in society. A process which amounted to a new perception of the individual, where the person became sacred and where God moved further away from influence in the worldly. These processes were essential to our anthropological and cosmological conceptions of reality in the west where the social construction of human rights is at the heart of our notions of right and wrong. Human rights is therefore much more than law, as it is also a matter of a cultural perceptions of the individual and his/her place in the world. In fact, the notion of human rights is so deeply embedded in the west that it exist latently as part of the paramount everyday experience. Human rights constitute the moral fabric of society and they have an unquestionable character. A character that is especially expressed through human rights language, which emphasises their self-evident, indivisible, interrelated and transhistorical character. An argumentation that in many ways resembles what Berger calls religious legitimation, as it roots the socially constructed in utmost and absolute reality, thereby enveloping it with a degree of authority that is untouchable. Maybe human rights can even be classified as a religion of modernity as the individual becomes the sacred core of society, which society through its adoration seeks to protect.

Islam on the other hand equally makes use of religious legitimation as the Quran and Muhammad's *sunna* denote the foundational sources for religious conduct as well as for Islamic law. It was therefore my argument, that in Islamic societies, these sources are at the heart of conceptions of morality and that they are internalised as objectified and undeniable truths. Muhammad is the ideal person and the Quran is the perfect scripture, which provides guidance for the Muslim *al-ummah*. Religion thereby serves a significant societal function in terms of establishing social coherence and consensus amongst citizens on morally accepted behaviour. This implies that there are widely different conceptions

of the sacred between human rights and Islam as meaning systems, as the social construction of reality that emanates from human rights thinking entails a sacralisation of the person, whereas Islam, from a mythological perspective, constructs the sacred as a dominant force exterior to the individual. These differences between internalised conceptions of morality and sacrality lead to conflict and friction between two opposing conceptions of reality. Something that was exemplified with the cartoon crisis of 2005 where 12 caricatures of the prophet Muhammad caused a heated international conflict with riots and boycotts of Danish companies. In essence, this conflict circled around these two opposing culturally engrained perceptions the sacred, as the Danish debate swirled around issues of freedom of expression; nihilating the Muslim community through insinuations of irrationalism and extreme sensitivity. From both perspectives, however, the conflict denoted attacks on the sacred core of two opposing world conceptions. In Denmark, the conflict put pressure on the human rights thinking where individual entitlements and the sacredness of the person is at the core. In the Middle East, where the strongest riots occurred, reactions were caused due to the arrogant attack on the unifying symbol of Muhammad. A conflict such as this may lead to conclusions of two opposing and incompatible social realities, with different understandings of morality and order. Such a view was exactly what Samuel Huntington professed with his famous *Clash of Civilizations* from 1996, where he argued that the western notion of a universal civilization and its moral superiority asserted through western interpretations of human rights would only cause backfires and stir more conflict. To achieve world order, different civilisations should instead remain separate and avoid influencing each other, as they are fundamentally different in their normative conceptions of reality. In support of this, we saw how the social reality emanating from human rights thinking is different to that of Islamic mythology, where the simplified picture observes oppositions in emphasis regarding individualism vs collectivism, interior sacrality vs exterior sacrality, secularism vs religion and modernity vs traditionalism. The great structural compatibility, however, resides on the notion of an absolute moral code that represents itself as an ideal rather than something fixed. For that reason, there is no solid ground for claiming that human rights and Islam are incompatible with each other, but for Islamic jurisprudence to be in

accordance with human rights, the changes must necessarily come from within if they are to claim authority within the mythological reality of Islam. A great proposal in this respect is to be found in Abdullahi An-Na'Im's *Islam and the Secular State*, where he constructs a theological argument for the necessity of a secular state. Arguing on a basis of the Quran, that to be Muslim, one must necessarily relate to one's belief with authenticity and genuineness and that this is impossible through state enforcement. Leading him to the conclusion, that *sharia* can only be achieved through a secular state.

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