

In Quests for Stronger Human Rights Protection: What Can We Learn from Islamic Social Contract Theory?

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Artikeln utvecklar argumentet, att svensk politik om kulturell mångfald och medborgarskap kan dra nytta av islamsk teori om samhällskontrakt. Syftet är att belysa betydelsen av universalism för mänskliga och medborgerliga rättigheter, och sambandet mellan betoning av 'nationella värderingar' och ojämlikhet mellan majoritet och minoriteter. Tre typer av samband analyseras. Först, sambandet mellan jämlikhet i ett mångkulturellt samhälle och kulturella minoriteters möjlighet att generera kulturellt, socialt och ekonomiskt 'kapital', i Pierre Bourdieus bemärkelse. För det andra, sambandet mellan jämlikhet i ett mångkulturellt samhälle och ett universalistiskt samhällskontrakt. För det tredje, sambandet mellan islamsk samhällskontraktsteori och europeiska moderna samhällskontrakt, som kan förklaras av att europeiska kontrakts- och toleransteoretiker, här John Locke, studerade arabiska och islam. Islamsk teori kan alltså ha bidragit till moderna rättighets- och toleransbaserade samhällskontrakt.

Nyckelord: Koranen, Ibn Ishaq, Tabari, Islam, samhällskontrakt, mänskliga rättigheter, multikulturalism, universalism, *ahl al-kitab*

INTRODUCTION: ‘SECTARIANISING’ PEOPLES, ‘RELIGIOSIFYING’ CONFLICTS
I would like to contribute to the topic of the *festschrift* for Håkan Rydving – Religion and Politics – with the otherworldly argument that Swedish policy on cultural diversity and citizenship could benefit from Islamic social contract theory. The starting point was a seminar in May 2015 about ‘the philosophy of law and society’, arranged by Swedish and Iraqi colleagues. My assigned topic was ‘multiculturalism and challenges to society’, which I approached through an argument involving three analytical relationships. Firstly, between equal opportunities and outcomes in a multicultural society, and the ability of individuals and groups to generate cultural, social and economic ‘capital’, in Pierre Bourdieu’s sense of the term. Secondly, between equal opportunities and outcomes in a multicultural society, and a universalistic social contract. Thirdly, between Islamic social contract theory, and modern rights- and tolerance-based social contracts. As we shall see, early modern European political thinkers, including John Locke, studied Arabic and Islam, and Islamic theory may have contributed towards European political theory. Here I will highlight the significance of universalism for recognition of human and civil rights, and argue that the ascendancy of ‘national values’ over ‘universal rights’ increases inequality. I draw inspiration from Roxanne Euben’s approach in *Enemy in the Mirror* (1999), but where she explores ‘foundationalism’ in modern western and Islamic political theory, I focus on universalism and social contract.

I set out by addressing the multipronged question posed to me in the seminar in 2015: should not ‘the majority’ determine what constitutes ‘Islamic cultural capital’, in terms of what interpretations of the Qur’an benefit co-existence in a multicultural society? And should we not agree that exclusive and intolerant interpretations are less valuable than inclusive and tolerant ones? Following E.D. Hirsch, Jr (1967), there are two ways to interpret a text: to define its meaning, or its current significance. Applied to the Qur’an: its meaning is defined by its historical and linguistic context of origins, while its significance is defined by its interpreters’ socio-political, ethical and doctrinal considerations. In both cases, human, civil and academic rights to freedom of religion, con-

science, expression, and research, commit us to free enquiry into the Qur'an's meaning and significance. I therefore ask: given that tolerance implies allowing intolerant interpretations, how can society benefit from interpretations deemed intolerant?

A pertinent Islamic case is *takfir*, 'to declare someone apostate', i.e. excommunicate someone from the faith. Excommunication can be purely doctrinal. However, it can also be a legal matter. Since the faith constitutes the bond between the law and the person as bearer of legal rights, including the right to protection of life, declaring a Muslim to have left the faith means, according to most pre-modern legal rulings, withdrawing the person's right to protection by the law. *Takfir* in this legal sense is used both by states and against states (Griffel 2007). In the conflicts in Iraq and Syria, ISIS referred to *takfir* to justify war against, among others, Shiite Muslims. According to the Saudi Arabian writer Al-Ibrahim (2015), without being a product of the Hanbali school of law, ISIS nevertheless echoes legacies associated with the Hanbali scholar and preacher Muhammad b. 'Abd al-Wahhab (d. 1206/1792). Together with the *amir* of the Al Sa'ud tribe, Ibn 'Abd al-Wahhab established the emirate of Dir'iyya in the Najd, from which they challenged and temporarily ended Ottoman rule over the Hijaz, taking control over the Prophet's cities Mecca and Medina. Indeed, the Wahhabi movement even claimed legitimacy by identifying with the Prophet's own mission. Thus, Ibn 'Abd al-Wahhab's *da'wa* was a call for return to true *tawhid*, i.e. the creed of divine Oneness, and excommunicating and fighting those considered to have lapsed into idol worship. *Tawhid* here equalled loyalty with the Wahhabi *da'wa*, i.e. 'One God' signalling a quest for 'one cause', and the political aim to fight an 'external' enemy – Ottoman authorities – actualising excommunication (Al-Ibrahim 2015: 413; cf. Lapidus 1988: 673–674). Another example from the period but in Moghul India is the *tariqa muhammadiyah*, within the Indian branch of the Naqshbandiyya brotherhood. As a Sufi method, *tariqa muhammadiyah* meant that the seeker should connect with the Prophet through mystical union, in a new way that downplayed the role of the Sufi *shaykh* as the path. Politically, *tariqa muhammadiyah*

involved the vision of uniting Indian Muslims around the Prophet’s spiritual guidance, and rallying them around the Ottoman Caliphate in order to withstand British encroachments upon the Mughal Empire (Schimmel 1985: 216–225; 1975: 227, 373–383). Hence, even though the Ottoman Caliphate played different roles in the Wahhabi movement and *tariqa muhammadiyah* – foe or friend – both used visions of the Prophet as symbols of unity based on ‘the true creed’, to fight off an external enemy.

In our time, according to Al-Ibrahim, ISIS conformed to a Wahhabi-like pattern of *da‘wa* for ‘political *tawhid*’ under its self-declared Caliphate, but in opposition to contemporary Saudi Wahhabism, which legitimises the monarchy and has no territorial claims beyond Saudi borders (Al-Ibrahim 2015: 411–12). It appears that doctrinal purity was not the driving force behind the call for unity. In Iraq in 2014–2017, ISIS rallied both local forces and international brigades of fighters, including from Scandinavia. Among the local forces were those who, consistently with international law, refused to accept the US-led invasion of Iraq in 2003, or, more problematically, the ensuing Iraqi constitution (2005) and internationally recognised government (2006). Some leading commanders of ISIS were officers and high-ranking members of the Baath party that ruled before 2003, and some of them formed a military command network through the Iraqi branch of the Sufi Naqshbandiyya brotherhood. Thus, it was ‘foreign enemies and their local allies’ who provided the target for ISIS’ *takfir*, including the old enemy Iran of the Iran-Iraq War 1980–1988 which after 2003 became a powerbroker on Iraqi territory, supporting a Shi‘ite party and militias (Natali 2015; MERIP 2015; Rohde 2010). Some analysts therefore conclude that ISIS would not have emerged without the invasion of Iraq in 2003 (MERIP 2015).¹ Its *takfir* should make us reflect on why international law is founded on territorial sovereignty.

¹ ISIS is comparable with the rise of the Taliban after decades of invasions and civil war in Afghanistan, and the Islamic Courts and al-Shabaab in Somalia in similar circumstances; see Hansen (2013) on al-Shabaab, its connection with Afghan veterans from the ‘defensive *jihad*’, and its strategy to unify tribes and fight off ‘foreign intrusions’ from Ethiopia and Kenya.

Through the international *jihad* brigades, and Swedish and Norwegian support of Iraq's government and national reconstruction, the fates of Iraq and Scandinavia intersect. Due to global migration, Scandinavian countries have a greater diversity of Islamic schools, brotherhoods, and movements than Iraq, representing over thirty different national backgrounds. The fact that the warring Iraqi parties are religiously and ethnically identified, as Sunni, Shia, Arab and Kurd, and are Scandinavian citizens at the same time as Scandinavian countries engage in the conflicts in Iraq and Syria, constitutes a challenge for the human and civil rights upon which multiculturalism depends.

Following the International Covenant on Civil and Political Rights (ICCPR, 1966/1976), which is an adaptation of the Universal Declaration of Human Rights (1948), paragraphs 18 and 19 – freedom of religion, conscience, opinion and expression – are both individual and collective rights. One has the individual and collective right to publicly practice and teach one's religion, and parents have the right to educate their children in accordance with their religious and moral convictions. Restrictions concern others' rights, e.g. parents' rights must not violate the rights of the child, according to the Convention on the Rights of the Child (CRC, 1989/1990. Freedom to manifest one's religion or beliefs

may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. (ICCPR, 18:3)

Freedom of expression is, in its turn,

subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals. (ICCPR, 19:3)

Freedom of religion and expression thus allows public teaching and expression of interpretations that do not threaten national security, public

order, health and morals, or the rights of others. Doctrinal excommunication, i.e. to posit a boundary of the faith and define who falls outside of it, does not in itself infringe the law and public order; it depends on the circumstances. Doctrinal excommunication is part of Christianity; e.g. the Catholic Church still excommunicates on grounds of divorce and abortion (Wilde 2001).

Legal excommunication, however, is problematic. Moreover, it is not limited to religion. European governments have started revoking citizenship from citizens of ‘foreign’ origins, in violation of human rights and putting individuals’ lives at risk (Lenard 2018). Scandinavian governments are part of this development. Their support of the Iraqi government has come with a public discourse that ‘religiosifies’ the political conflict, i.e. it explains ISIS primarily in terms of *Sunni Islamic extremism*, not the 2003 illegal invasion and ensuing national and regional meltdown. In 2014 the Norwegian government launched a new national plan to combat radicalisation and extremism, in response to ISIS and general ‘jihad-support’, requiring public servants and citizens to report suspect views, including in schools (Handlingsplan 2014:27–30). Sweden adopted a similar strategy in 2016. A study comparing the Nordic anti-radicalisation strategies concludes that they have serious negative implications for democracy and social trust, by transferring intelligence service responsibilities to the public, and giving ‘Islamists’ and Muslim immigrants disproportionate and stigmatizing attention (Sivenbring 2016). In Norway, Sunni communities who were *not* supportive of ISIS have been singled out in the media as prone to ‘radicalisation’, and confronted with demands to denounce ISIS (Aftenposten 2014; Rabås 2014). At the same time, Norwegians with Kurdish background travel to Iraq and Syria to fight, but that is unproblematic since they fight on the same side as the Norwegian government (Rabås 2014b). Nor is much political concern devoted to Iran’s mobilisation of Shiite ‘foreign fighters’ from Afghanistan for the wars in Syria and Iraq (Safi 2016; The Economist 2016). Simultaneously, in autumn 2014 western bombings of Iraq and Syria resumed on a massive scale in the campaign against ISIS. By summer 2017, Amnesty International con-

cluded that both ISIS and the internationally backed Iraqi government forces have committed war crimes and deliberately targeted citizens.² Swedish politicians' consent to destroying ISIS *at any cost* is legitimised by language that de-humanises these people; e.g., Swedish foreign minister Margot Wallström in a speech intended for the Arab League in March 2015 referred to ISIS as a 'scourge':

Together we face growing extremism and radicalisation. ISIL or Da'esh is an example in the extreme. We need to work together to fight this scourge, to identify and deal with its root causes and to do this while paying full respect to human rights and international law (Wallström 2015).

A 'scourge' is a torture instrument, or an animal infestation. Although most people agree that ISIS deserves such labels (or worse), politicians pledging allegiance to human rights and international law cannot refer to anyone as an animal infestation. The premise of the Universal Declaration of Human Rights is that each human being has inherent dignity and freedom, including war criminals and mass-murderers. 'Dealing with root causes' in a human rights-based way requires respecting all warring parties as dignified human beings with equal rights. Wallström's choice of words gives a lie to this, including her framing of the issue as

² The Norwegian news agency NTB reported that around 9000-11000 civilians died in the liberation of Mosul between October 2016 and July 2017 (*Klassekampen*, 21 December 2017, p. 16). Kurdish reports to the Independent journalist Patrick Cockburn estimate around 40.000 civilians dead in Mosul, and around 90% of the ancient city's infrastructure and buildings destroyed (*Independent*, 19 July 2017, <http://www.independent.co.uk/news/world/middle-east/mosul-massacre-battle-isis-iraq-city-civilian-casualties-killed-deaths-fighting-forces-islamic-state-a7848781.html>). The deaths were due to ISIS killing civilians fleeing the city and holding civilians hostage, and the western US-led and Iraqi government coalition aerial and ground bombardment. According to Amnesty International "a pattern of attacks in which US-led coalition and Iraqi forces appear not to have struck their intended military targets, instead killing and injuring civilians and destroying or damaging civilian objects. In some cases, civilian deaths and injuries appear to have resulted from a choice of weapons that was inappropriate for the circumstances or failure to take necessary precautions to verify the target was a military objective". (Lynn Maalouf, 11 July 2017, <https://www.amnesty.org/en/latest/news/2017/07/iraq-battle-between-us-led-coalition-iraqi-forces-and-islamic-state-creates-civilian-catastrophe-in-west-mosul/>).

one of ‘growing extremism and radicalisation’, which echoes the national security plans but glosses over the political issues.

The importance of policy is highlighted in the volume *Religion and Nationalism in Iraq: A Comparative Perspective* (Little and Swearer 2007). Case studies of the multi-ethnic and multi-religious countries Iraq, Bosnia, Sudan and Sri Lanka show that equal opportunities and the inclusion of all groups into public institutions is essential for social cohesion, and that success or failure depend on political management. Iraq’s 2005 constitution, crafted under US tutelage, is matched by a sect- and ethnicity-based coalition government, similar to Lebanon’s French-backed constitution and sect-based government. Ironically, while both the Lebanese and the Iraqi constitutions may appear ‘authentically Middle Eastern’ because of their sect-ethnicity-based structure for power sharing, they are products of French and US domination.³ In the post-2003 Iraqi political order, the Kurds and the Shiite Arabs hold the most powerful positions of presidency and premiership. The order may appear reasonable, given the numerical proportions of ‘Kurds’, ‘Arab Shiites’ and ‘Arab Sunnis’. However, it reflects problems with power sharing. Former Prime Minister Nouri al-Maliki (2006–2014) routinely dismissed as Sunni extremist and sectarian hostility political protests from citizens in the Sunni-dominated Anbar province against his redistributive policies, and against his detention orders and death sentences against Sunni government ministers on charges of terrorism (BBC 2012; Wicken 2012). The Anbar province suffers from severe draught and weapons-caused pollution of its dwindling water reserves, which has made life increasingly difficult for its inhabitants over many years (Chaudhry 2010). The water crises is caused by decades of war and infrastructural decline (Rohde 2010), but is also used as a war tool. When ISIS took control of the Anbar province in June 2015, in revenge it cut off water supplies for areas under the Baghdad government’s control, drying out the southern Iraqi marshlands (Paraszczuk 2015; Yacoub 2015).

³ On the role of modern Ottoman and European colonial politics in shaping the Lebanese ‘sectarian system’, see Makdisi (2000).

Part of the explanation for ISIS cruelty and vengefulness might be the policy adopted upon the invasion of Iraq in 2003. The conquering US force dispersed the Iraqi army and ruling Baath party, hunting down leading Baath officials through the notorious Deck of Cards. Capture meant execution (BBC 2010; Sissons and Al-Saeidi 2013). This left a large part of the Iraqi establishment with no choice but to fight. Still, it is predictable that the USA would disregard human rights. Executions within a culture of discrimination is part of the American legal system: the USA executes disproportionately many of its black citizens, and sometimes on false charges (Peffley and Hurwitz 2007). One can compare with US interventions in former Yugoslavia. The Serb leaders and other war criminals were brought to justice in the Hague Tribunal, and were never threatened with execution. Concerning Middle Eastern people, the USA have no qualms over facilitating executions. Neither do Swedish politicians, apparently. In April 2017, the then Minister of Interior Anders Ygeman (Labour) announced that Swedish citizens fighting for ISIS would be tried in Iraq, to stop them returning to Sweden. They would be executed.⁴ Since the re-conquest of Mosul from ISIS began in autumn 2016, the Iraqi government has been mass-executing ISIS captives, partly to silence popular demands for political reforms, while European governments deliberate what to do with their citizens captured in Iraq.⁵ Swedish politicians apparently agree to Swedish citizens being executed in Iraq, even though Sweden does not have capital punishment.⁶ Consequently, Swedish citizens associated with the group that the Foreign Minister Wallström called ‘scourges’, i.e. animals, may lose their right to protection by their own government, which all but ig-

- ⁴ Per Kudo, Sveriges Radio, 6 April 2017 (<http://sverigesradio.se/sida/artikel.aspx?programid=83&artikel=6664511>); ‘Kritik mot Ygemans uttalande att svenska IS-krigare ska dömas i Irak’, Aftonbladet 15 June 2017. (<https://www.aftonbladet.se/nyheter/a/aVP4A/kritik-mot-ygemans-uttalande-att-svenska-is-krigare-ska-domas-i-irak>).
- ⁵ Josie Ensor, *The Telegraph*, 13 September 2017 (<http://www.telegraph.co.uk/news/2017/09/13/iraq-sentences-russian-isil-fighter-death-hanging-first-ruling/>).
- ⁶ De-humanising language signals extraordinary treatment; Gardell (2008) warned of how the US administration after 9/11 justified torture, by framing ‘The Jihadist’ as a representation of non-human Evil.

nores war crimes the US-led coalition against ISIS have committed (see note 2, above). Mirroring ISIS' *takfir* of Muslims fighting on the 'wrong side', the Swedish government denies legal protection of those citizens fighting on the wrong side. It is a 'sectarianising' strategy, since the government defines the warring parties and security risks in religious terms.

CONCEPTS

After this long introduction, I will develop my argument that Islamic theory can serve as source of inspiration in developing a new Swedish social contract, through the concepts multiculturalism, equal opportunities, universalism, social contract, and capital.

Multiculturalism refers to 'a distinctive model for the management of cultural diversity', involving a political demand for recognition and equality for cultural groups. As a policy, multiculturalism thus recognises that the people consist of several ethnic and cultural groups, wherefore conformity to a 'majority culture' is not a requirement for equal opportunities (Bousetta and Jacobs 2006: 26 *passim*). Susan Moller Okin's essay 'Is Multiculturalism Bad for Women?' (1999) is the reference for the critique, that supporters of multiculturalism accept that some cultures limit especially women's rights. Consequently, multiculturalism furthers inequalities, both within communities and between 'liberal majorities' and minorities, since restricting women's life choices reduces a group's competitiveness. Referring to Canadian and American contexts, Okin argues that since *all* cultural minorities discriminate more against women than the 'liberal majority', no one who supports gender equality and the liberal principle of individual rights should grant minority groups the right to resources for preserving their religion and other cultural practices. Okin's main interlocutor is Will Kymlicka, liberal Canadian defender of multiculturalism. In a response to Okin (Kymlicka 1999), he argues that minorities do not have the collective right to break a non-discriminatory law, e.g. deny women their rights. However, minority cultures should receive public support because group cultures provide identity and the capacity to live a life of

one's choice, and deliberations about women's rights are carried out within groups, with reference to their own norms and terms. Hence, Kymlicka argues, culture provides freedoms and benefits that outweigh the downsides, for both individuals and groups.

Consequently, multiculturalism has implications for equality of opportunity and outcome. *Equality of opportunity* means 'the assignment of individuals to places in the social hierarchy (...) by some form of competitive process, and [the eligibility of] all members of society (...) to compete on equal terms' (Arneson 2015); and *equality of outcome* refers to individuals' actual achievements in education, labour market, politics, living standards, wages, health, etc. (Phillips 2004). Belonging to a minority culture may limit equality of opportunity and outcome, due to both internal norms and 'external' discrimination. Nevertheless, I follow Kymlicka. I define equality of opportunity and outcome for all members of society as the objective, but with support for cultural minorities to preserve their cultures and religions. The human right to freedom of conscience and religion, and parents' right to raise their children according to their religion and culture, makes such public support an obligation.

The third concept, *universalism*, refers to things that apply universally. There is tension between universalism and multiculturalism as recognition of cultural difference. France constitutes an interesting case. Generally, French left wing republicans define the French social contract as founded upon the universal values of the Enlightenment, which any citizen, regardless of cultural background, is expected to share. However, these universal values are granted only one public cultural expression, namely the majority's public culture, which is 'secular' in a way that excludes religious symbols that are not mainstream Catholic. The logic of this social contract and public culture is that "[t]he bond of citizenship would be eroded if society were fragmented into a collection of identity groups seeking recognition of their difference instead of working toward the public interest" (Laborde 2001:720). Consequently, France legislated in 2004 to ban the wearing of *hijab* and other 'ostensible' religious symbols, like the Jewish *yarmulke*, in public

schools (Benhabib 2010). In response to cases complaining this law, the European Court of Human Rights has ruled in favour of the law, referring to the ICCPR and the European Convention on Human Rights, which allows the French legislature to decide what public manifestations of religion challenge ‘public order, health or morals’.

The example brings out the tension between the *universal rights* that underpin human rights in the UDHR charter, and the identification of a *specific national public culture* as the authority that defines what those universal rights mean in practice, as in the international conventions (cf. Benhabib 2010; 2006). In the French case, minority cultures are not considered representative of the public, even though they may have deep historical roots in France. For Seyla Benhabib (2006), the universality of human rights, applied in a society with several cultural and religious groups, means that minorities have the civil right to democratically restate or ‘iterate’ definitions of national public culture. If citizens whose religion and conscience commits them to wearing *hijab* or *yarmulke* cannot engage in public politics due to the majority’s view that their religious practices threaten public order, their civil rights are limited. Consequently, the right to equal political opportunities for cultural minorities requires *more universalistic universalism* than one that limits public culture to majoritarian definitions.

Social contract refers to political theories that show ‘why and under what conditions government is useful and ought therefore to be accepted by all reasonable people as a voluntary obligation. These conclusions were then reduced to the form of a social contract, from which it was supposed that all the essential rights and duties of citizens could be logically deduced’ (EB 2015). The European social contract theories date to the early modern period and the Enlightenment, e.g. Thomas Hobbes (d. 1679), John Locke (d. 1704), and Jean-Jacques Rousseau (d. 1778). They share the premise of a ‘state of nature’, characterised by absence of a civil society, but which can be transcended through the agreement to convene around a social contract which curbs everyone’s freedoms enough to enable society, and from which the rights and obligations of citizens is deduced (EB 2015).

In the present, the European Union, of which Sweden is a member, represents a liberal democratic social contract, grounded in the European Convention of Human Rights and the international human rights conventions. In the 1990s the European Commission became concerned that minorities', especially Muslims', religious and cultural rights were not recognised, which threatens social cohesion (Silvestri 2009). A new policy recommendation of 'civic integration' was formulated and expressed in *The Declaration on Intercultural Dialogue and Conflict Prevention* (DIDCP), adopted in 2003 by the European Ministers of Cultural Affairs. Europe should aim at

the principle of equality between cultures, the value of cultural heterogeneity and the constructive dimension of dialogue and of peace. Differences and divisions must not therefore be viewed as harmful and obstructive to the devising of a collective project which requires differences to be taken into account and otherness to be respected (DIDCP 2004:10).

Thus, at EU-level, civic integration means mutual accommodation between the member countries and their national cultures, and between majorities and minorities within the countries. At the national levels, however, countries that had previously had multicultural policies, like the Netherlands and Sweden, from the late 1990s started defining 'national culture' in the terms of the ethnic majority, much like French assimilation. The civic values of liberal democracy and human rights were now defined as e.g. 'Dutch', but not 'Moroccan', implying that a Dutch citizen of Moroccan background can identify with democratic values only by assimilating into 'Dutch culture' (Stolcke 1995; Entzinger 2006; Verkaaik 2010; cf. Sivenbring 2016). While the EU-level represents a social contract that is universal enough to recognize cultural difference as positive assets, individual countries tend to construct 'national values' in intolerant terms that exclude minority cultures, in line with Okin's policy recommendation (1999).

The final concept is *capital*. The French sociologist Pierre Bourdieu (1986) defined 'capital' as three kinds of assets that individuals and

groups can generate in society. *Cultural capital* consists in education and family background. It is embodied as individuals' comportment, and transmitted through education, art, entertainment, religion, politics, law, etc. *Economic capital* is property and other financial assets. *Social capital* is networks, contacts, and class. The forms of capital are convertible. Cultural capital is both the precondition for and outcome of social and economic capital; and vice-versa. Especially relevant here is Bourdieu's analysis of how dominant classes protect their economic and social capital by enhancing the importance of culture:

Because the question of the arbitrariness of appropriation arises most sharply in the process of transmission – particularly at the time of succession, a critical moment for all power – every reproduction strategy is at the same time a legitimation strategy aimed at consecrating both an exclusive appropriation and its reproduction. When the subversive critique which aims to weaken the dominant class through the principle of its perpetuation by bringing to light the arbitrariness of the entitlements transmitted and of their transmission (such as the critique which the Enlightenment *philosophes* directed, in the name of nature, against the arbitrariness of birth) is incorporated in institutionalized mechanisms (for example, laws of inheritance) aimed at controlling the official, direct transmission of power and privileges, the holders of capital have an ever greater interest in resorting to reproduction strategies capable of ensuring better-disguised transmission, but at the cost of greater loss of capital, by exploiting the convertibility of the types of capital. *Thus the more the official transmission of capital is prevented or hindered, the more the effects of the clandestine circulation of capital in the form of cultural capital become determinant in the reproduction of the social structure. As an instrument of reproduction capable of disguising its own function, the scope of the educational system tends to increase, and together with this increase is the unification of the market in social qualifications which gives rights to occupy rare positions.* (Bourdieu 1986: 92–93; italics added)

Bourdieu's analysis might explain why EU member states enhance the majority culture as *the* national culture and norms that minorities must adopt: it is the majority's way of protecting and reproducing their capital, when faced with competition from new, culturally defined minority groups. One can thus view the assimilation-to-national-values-policy as a protectionist strategy stacked against equal opportunities and outcomes for cultural minorities.

Given the convertibility of capital, public recognition of minority groups' culture as 'valuable capital' is necessary for equal opportunities and outcomes. Since education is the main conduit for cultural capital, it follows that minority cultures can only become publicly perceived as valuable cultural capital if the national education system teaches religions and cultures as benefits to national culture. For example, Islam is both a religion and a civilisation with a history of ideas and a wide range of scholarly disciplines and schools. To appreciate this fact, beyond the study of Islam within Religious studies curricula, Islamic theology should be integrated into Theology departments; Islamic law into Faculties of Law; Islamic history and historiography into History departments; Islamic philosophy into Philosophy departments; Islamic banking and finance into Economy and Business studies; and so on. Such processes are underway, with the introduction of a chair of Islamic theology at Uppsala University's Faculty of Theology, and a lectureship in Islamic law at Uppsala's Faculty of Law. Their continuous development is potentially important part of enhancing the public value of Islam as cultural capital.⁷

I will now refer these concepts to studies from Europe, Sweden, and Iraq, and finally to Islamic social contract theory.

⁷ On the importance for multicultural recognition, academic advancement, and democratic citizenship, of including non-western philosophies in western Philosophy curricula, see van Norden (2017).

NATIONAL VALUES OR EQUAL OPPORTUNITIES

Assessing the claim behind the new European national discourses about national values and their difference from especially Muslims' values, the American social scientists Pamela Irving Jackson and Peter Doerschler (2012) decided to study Muslims' values in the UK, the Netherlands, France and Germany, using data from national surveys. Their findings show that the political discourse, that Muslims do not share the European values of liberal democracy and human rights, do not correspond with Muslims' actual values. Muslims report higher degrees of discrimination than the population averages, particularly regarding their religion and cultures, and they score below average on *participation and leadership in party politics*. Yet these experiences are not reflected in their *political values and engagement in political affairs at national and international levels*. In fact, Muslims report slightly *stronger* than average support for the democratic state and its authorities, for democratic values, for human rights, and engagement in national and international politics, *combined with stronger than average significance attributed to religion (Islam)*.⁸ They are also slightly more optimistic about their countries' futures than the average. The only group that stands out as distrustful of national authorities are young French Muslim men; Jackson and Doerschler (2012) attribute this to French policy of police raids and stop-search policy, targeting young men of North African and Middle Eastern backgrounds.

The discrepancy between stronger than average political engagement, democratic values, and significance attributed to religion, and lower participation and leadership in party politics, indicates that obstacles to participation are unrelated to Muslims' values and religion. Jackson and Doerschler (2012) therefore recommend that politicians abandon new citizenship regimes and discourses about Muslims' lack of civic values, and instead implement equal opportunities and out-

⁸ Cf. Ishaq (2017: 224–234), the first statistically valid study of Norwegian Muslims' political values, though not normalised against the population average: findings show strong support for democracy and human rights, combined with strong significance attributed to Islam for identity and daily life.

comes. Swedish studies support the recommendation. Strömblad and Myrberg (2013) show that political parties recruit significantly lower numbers of members from poor urban areas with high per cent residents of immigrant background, than from wealthy areas with majority ‘ethnic’ Swedes. The authors hypothesise that campaigners from the political parties anticipate low levels of political interest in immigrant-dominated neighbourhoods and therefore avoid them. Odmalm and Lee show that minority groups find the established Swedish political parties do not, and will not, engage in minority-related issues such as cultural rights (Odmalm and Lee 2006:8–14). Neither study explains lower participation and leadership rates. However, the political parties’ refusal to make minority cultures a legitimate issue reflects the generally ‘low capital’ attributed to minority cultures, which may discourage individuals of minority backgrounds.

Regarding social contract, Swedish policy mirrors developments within the EU. According to Schierup and Ålund (2011), the welfare state after 1945 was founded on a social contract where the state was obliged to provide each citizen with the means for education, professional development, political participation, childcare, and health (cf. Trägårdh 2010). In the 1970s, when growing numbers of migrants from Africa and the Middle East arrived, Sweden adopted a policy of multiculturalism with a citizenship contract founded on years of residence and equal political, social and economic rights for all. During the 1990s, however, a new citizenship contract emerged, aimed at ‘integration’ on the basis of ‘Swedish values’, identified politically as liberal democracy and human rights, and religious-culturally as ‘(Judeo-) Christian-Humanistic’ – but never ‘Muslim’ (cf. Mårtensson 2010). According to Schierup and Ålund (2011), the premise of the new integration policy is that immigrants are not well integrated, because their cultures conflict with ‘Swedish’ values. By focusing on culture and values, the discourse obscures the realities of the post-1980s neo-liberal economy, with increasing segregation along economic *and* cultural lines in the labour market and in living areas. Thus, Schierup and Ålund (2011) explain recurrent violent riots in suburbs among youth of immigrant back-

grounds as justified frustration and demands for economic solidarity, a value typically associated with traditional Swedish social democracy.

In fact, Sweden is experiencing faster rise in social inequality than other OECD countries. According to Fredlund-Blomst (2014), the reason is the combined effects of the 1990s economic downturn, and higher numbers of refugees without formal education than in other western countries. Viewed from this perspective, the new integration policy aims at facilitating employment, assuming that immigrants' assimilation into 'Swedish values' will help them acquire cultural capital and thereby access to employment or economic capital. However, as already le Grand and Szulkin (2002) show, even immigrants of African, Asian and Latin American backgrounds who do have adequate 'human capital' still suffer significant economic disadvantages compared with 'ethnic' Swedes, suggesting that rise in social inequalities is also related to systemic discrimination. Focusing integration policy on 'Swedish values' thus shifts responsibility from policy to 'culture'.

Yet, the 'knowledge economy' and increasingly automated industrial production is making education more important and reducing unqualified jobs. To counter unemployment, experiments with citizen wages have been tried in the Netherlands and Finland. Every citizen gets a baseline monthly wage from the state, with the possibility of increasing one's income through additional salaried work (Boffey 2015; Lillemets et. al. 2015). There are numerous foreseeable negative outcomes of citizen wage. It could entrench economic inequalities, if not everyone could get an additional paid job. Yet citizen wage could liberate the unemployed from humiliating benefit regulations, and the public servants from punishing the poor. It could also enable those who wish to develop cultural and religious activities, including education in languages, literatures, arts, religions, and so on, to do so. Currently, such activities either depend on state priorities and funding, or are limited to voluntary activities. But if cultural educational programs were made available to any interested member of the public, citizen wage could contribute to turning minority cultures into 'valuable capital' in a multicultural soci-

ety.⁹ Equal opportunities and outcomes monitoring would still be necessary, to ensure equal treatment, and to improve policy.

ISLAMIC POLITICAL PHILOSOPHY AND LEGAL THEORY

Were one to develop a new multicultural social contract based on human rights, Islamic social contract theory could provide inspiration. Historically, the Islamic social contract referred to a feudal and hierarchical society, mostly with Sunni Muslim dynastic rulers. The law granted and protected both individual and group rights, and the jurists as the law-making institution guaranteed the legitimacy of the state as protector of rights, and as just.¹⁰ The hierarchical and dynastic aspects of this social contract are clearly irrelevant for a liberal multicultural society. What is of interest here is its universalistic theory, which is more consistent with the principle of ‘human rights’ than the frame of ‘national values’. The key to its universalism is the Qur’anic concept of man as divine Creation, as I will show through some historiographical and legal examples.

The Arabic language is governed by polysemy, i.e. a word takes on different aspects (*wujuh*, ‘faces’) of meaning in different contexts (Rippin 1988). In the Prophet’s biography by Muhammad b. Ishaq (d. 150/767), edited by Muhammad b. Hisham (d. c. 213/828), the concept *kitab*, which often means ‘book’, refers to the Prophet’s written contract with the ‘faithful’, or more precisely ‘those who promote security’ (*al-*

⁹ See van Norden (2017), on difficulties in getting philosophies from Africa, China, India, ‘indigenous peoples’, even Islam and Judaism, included in university Philosophy curricula: all resources are claimed for modern western European and North American philosophy, deemed to be the real Philosophy.

¹⁰ On rule of law and separation of powers in the early Islamic states, Feldman (2012) argues that since the medieval states depended on tax revenue, and the jurists ensured that the taxation was just, and had the social power to declare a caliph illegitimate, the judiciary as legislative power was autonomous enough to subject the ruler to the law. Feldman’s analysis follows e.g. Heck (2004); Lowry (2008). Zubaida (2003) and Vikør (2005/2012), while not contradicting this picture, still rather perceive the jurists as subject to the state.

mu'minuna),¹¹ including the 'migrants' (*muhajiruna*) from Mecca and the 'helpers' (*al-ansar*) from Medina, and the Jewish tribes of Medina. The contracting parties have equal rights and obligations, including freedom of religion, stipulated in the written document (Arjomand 2009). This contractual aspect of *kitab* is attested in the Qur'an, alongside the other aspects 'scripture' and 'people of scripture' (*ahl al-kitab*). *Ahl al-kitab* is a technical term for the Jews and the Christians, as recipients of the same scripture that God sent down to the Prophet. However, when referred to the contractual aspect of *kitab*, *ahl al-kitab* takes on the aspect 'the parties to the written contract' (Mårtensson 2008, 2011; Radscheit 1996). One example is from the Qur'an, *sura* 3, verses 64–68. Here, the Jews and the Christians are persuaded to enter a contract of loyalty, on the grounds that they share Abraham with the speaker of the Qur'an and thus already have knowledge about the contract:

(64) Say: "O Parties to the Written Contract/Adherents of the Scripture! Arise and come to an equitable word between us and you: that we serve no one but God, and do not make anything partner with Him (*lā nushrika bihi shay'an*), and do not take each other as lords instead of God!" Should they turn away (*tawallū*), say: "Bear witness that we are promoters of peace (*muslimūna*)!"

(65) O Parties to the Written Contract/Adherents of the Scripture! Why do you argue about Abraham when the Torah and the Gospel were not sent down until after him? Will you not be bound by reason (*afalā ta'qilūna*)?

(66) Here you are: you have argued concerning that about which you have knowledge (*'ilm*), so why do you argue concerning that about which you have no knowledge? God knows and you do not know:

(67) Abraham was neither a Jew nor a Christian, but a *ḥanīf* and one who promotes peace, since he was not among those who take other partners!

(68) Indeed, the people who are most loyal allies of Abraham (*'awlā bi'I-brāhīm*) are those who followed him, and this Prophet and those who pro-

¹¹ *Mu'min* means, literally, 'one who promotes security, trust' (*'amn*), in accordance with the contractual frame; see the dictionary *Lisan al-'Arab*, entry '-m-n; also Mårtensson (2008: 378–379, 397); Eggen (2011).

mote security; and God is the Guardian (*walī*) of those who promote security!

Also from *sura* 3, verses 75–76 refer to *ahl al-kitab* in the context of contract:

(75) Among the Parties to the Written Contract there are those who, if you give them as security a heap of gold will return it to you, and there are those who, if you entrust them with one dinar, will not return it to you unless you keep on demanding it. That is because the latter say: “We have no obligations towards the ones devoid of writing!” knowingly uttering lies on behalf of God.

(76) Indeed, he who fulfils his contract meets his obligations: God truly loves the ones who meet their obligations!

Further on in *sura* 3, verse 81 describes how God binds Himself by the Covenant and contract that He enters with the prophets who preceded the Prophet Muhammad:

When God took the Firm Covenant (*mithaq*) from the prophets: “Now that I have brought you a written contract and wisdom, and a messenger comes to you confirming what you have (received), you must have faith in him and support him to victory! Do you affirm this and take upon yourselves my contract?” They said: “We affirm it!” He said: “Bear witness, and I will be a witness together with you!”

The paradigm for this Firm Covenant is *sura* 7, verse 172, where God binds Himself to the Covenant with Adam, the first human:

When God took from the backs of Adam’s sons their offspring and made them testify for themselves: “Am I not your Lord?” They said: “Indeed, we testify!” so that you will not say on the Day of Standing to trial: “But we were unaware of this!”

This verse grounds the principle of ‘contractual agreement’ in God’s Creation of man, i.e. not only Muslims but all men.

In al-Tabari’s (d. 310/923) *History of the Messengers and the Kings* (*Ta’rikh al-rusul wa’l-muluk*), which chronicles pre-Islamic and Islamic rulers and prophets from Creation to the year 915, *kitab* often appears in conjunction with a social contract (*mithaq* and *ahd*), which subjects the ruler to the law, and all individuals to the terms of the contracts they have entered (Mårtensson 2009; 2011). Al-Tabari provides the social contract with a universalistic frame, by describing how God established the principle of writing (*kitab*) in Creation itself, since the first thing He created was the Pen, which wrote down the terms of each individual, until Judgement Day. Then he described how God concluded *mithaq*, i.e. the Firm Covenant, with Adam and all his offspring, as the Qur’anic verse 7, 172 describes. On the basis of this contract theory, al-Tabari proceeded to write history. ‘The state of nature’ here is rule of law, through which God teaches man to promote peace. The antithesis is ‘Satanic temptation’, i.e. rejection of contract, with ensuing war and suffering. Through concrete examples from royal history, al-Tabari shows how *mithaq* and *kitab* was implemented as the contractual foundation of statecraft and law, first by the ancient Persian dynasties, then by all subsequent peoples and rulers, and eventually the Arabs, the Prophet, and the Caliphs. Any ruler, pre-Islamic or Muslim, as a creature of God is equally capable to rule by law or fall for temptation. It should be noted that ‘contract’ for al-Tabari is *not* enforced but a mutual agreement, and its violation means infringing upon the rights of individuals and groups, provoking rebellions that are justified in cause, if not effect (Mårtensson 2009, 2011).

Al-Tabari also wrote a Qur’an commentary (*Jami’ al-bayan ‘an ta’wil ‘ay al-Qur’an*). Here, he locates the principle of rights in Creation, e.g. in his exegesis of *sura* 4, verse 1, where he establishes a connection between the common origins and brotherhood of all humans and the fact of ‘human rights’, and God’s imposition of the universal obligation that the strong protect the rights of the weak:

God means by His speech (*O people, fulfil your obligations towards your Lord Who created you by cleaving asunder one person*; Q. 4:1): (...) He described Himself as the One Who has created all the diverse beings from one person to let His worshippers know how He issued forth (all) that from one individual. Thus He informs them that since they are all offspring of one man and one mother and are therefore all from one another, they are obliged to uphold each others' rights as brothers. (... They are obliged to) act kindly, not oppressively, towards each other, so that the strong uphold the rights of the weak, in accordance with what God has commanded them. (...)

The statement that 'the strong uphold the rights of the weak' reflects the fact that society was hierarchical and included e.g. slaves. In spite of hierarchy, however, all humans have rights. These universal rights pertain to the social contract theory, designed to transcend the community of Muslims because the contract included non-Muslims, as well.

For this reason, the contract theory posited a universal framework according to which all humans *a priori* possess the knowledge required for the contract. This makes the Islamic social contract theoretically similar to the universal human rights declaration, even though it is framed with reference to *divine* Creation. Consequently, in the Qur'an, the Prophet's biography and al-Tabari's history, *kitab* and *ahl al-kitab* refer to a social contract theory. In the Islamic polities and law, *ahl al-kitab* serves as a canonical theoretical concept, which legitimises the institution *ahl al-dhimma*, 'the people protected by the law', i.e. those non-Muslim religious communities, primarily Jews and Christians but also others in other contexts, such as Hindus and Buddhists in the Indian Sultanates, who enter into a contract with the Muslim rulers. *Ahl al-dhimma* enjoyed protection by the Islamic law of life, religion, and property, in exchange for tax and political loyalty. As concept, then, *ahl al-kitab* signifies not only that Jews and Christians possess 'scripture' as sacred canonical texts, but that they are contract parties with knowledge about *kitab* as a legally binding agreement. Presumably, it is this

contractual meaning-aspect of *kitab* that historically enabled its extension to other groups than Jews and Christians.

Within legal theory, the period from *ca.* 700 CE onwards saw the development of the theory that consideration of ‘public welfare’ (*maslaha*) should guide legislation and the finding of new laws through interpretation of the Qur’an and *sunna*.¹² By the 1100s, the Shafi’i jurist al-Ghazzali (d. 505/1111) formalised a set of legal objectives (*maqasid*) identified with ‘public welfare’, namely the individual’s right to life, religion, intellect, property, and progeny. These rights extended also to the ‘protected peoples’ (*ahl al-dhimma*) under Islamic law. The famous Hanbali jurist, Ibn Taymiyya (d. 728/1328), who used al-Tabari’s Qur’an exegesis, developed a concept of Sharia as the divine guidance that is identical with human ‘natural’ reason, law and morality (*fitra*). Ibn Taymiyya closely paralleled Mu‘tazilite rationalism, except that his inductive method of deriving rulings from scripture differed from the more deductive methods of the Mu‘tazila (Vasalou 2016). His corresponding political theory was *siyasa shar‘iyya*, ‘politics according to Sharia’. Ibn Taymiyya also developed *maqasid* from a fixed list of objectives of legislation into an open-ended one, depending on the requirements of the context (Kamali 2008), although never in violation of explicit scriptural rulings. Even in contemporary Europe, Islamic scholarly bodies define Sharia through a contractual loyalty with European states and laws. The European Council of Fatwa and Research (ECFR) is an example of an organisations using the *maqasid* and *siyasa shar‘iyya* methodology. For example, ‘Abd al-Majid al-Najjar in the essay *Tajdid fiqh al-siyasa al-shar‘iyya*, ‘Renewal of *fiqh* on politics according to Sharia’, argues that active Muslim participation in European politics should involve actualising and renewing Islamic political philosophy according to the European contexts, including human rights (al-Najjar 2014:6). This is perfectly in line with Jackson and Doerschler (2012) survey of European Muslims’ values (see above).

¹² On *maslaha* and *maqasid*, see Abdelkader (2003); Opwis (2010); Bin Sattam (2015). On rights and natural law theory, see Emon (2004-5; 2010).

The connection that the medieval Muslim jurists established between divine Creation and social contract resembles the significance of Deism for theories of ‘natural religion’ and ‘natural reason’, upon which European theories of religious tolerance drew, and there may even be historical connections. For example, John Locke (d. 1704) studied Arabic at Oxford University. As Denise Spellberg shows, Locke developed his ideas on religious tolerance by engaging with peers and colleagues, who lauded Islamic principles. Locke’s teacher in Arabic, the Orientalist Edward Pococke and his son Edward Jr., who Locke tutored, translated the Andalusian scholar Ibn Tufayl’s (d. 580/1185) ‘Enlightenment’ treatise *Hayy ibn Yaqzan*, from Arabic to English. Locke also read the works of his fellow student of Arabic, Henry Stubbe (d. 1676), who praised Islam as a tolerant religion (Spellberg 2013:65–69).¹³ Even though there is no evidence that Locke himself studied Islamic law, his social contract theory contains a *maqasid*-like concept of legal objectives:

The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions: for men being all the workmanship of one omnipotent, and infinitely wise maker. (‘Second Treatise of Government’, par. 6)

Here is a link between Islamic political and legal theory, and the Enlightenment universalism and natural law theory, which also underpins the Universal Declaration of Human Rights of 1948. The UDHR distinguishes itself for its radical sanctification of human life and dignity, which takes protection of individual freedoms to a new level; yet the universalistic theory of ‘human rights grounded in universal brotherhood’ is the same. Islamic social contract theory thus reminds us that universal rights require the *a priori* assumption that different culturally and religiously defined groups share political values.

¹³ On Enlightenment philosophers and translations of the Qur’an, see Elmarsafy 2009.

CONCLUSIONS

Multiculturalism offers equal opportunities and outcomes on the *a priori* assumption that cultural differences can coexist with cross-cultural agreement about political values. This was exemplified by Jackson and Doerschler (2012) study of contemporary European Muslims' values, and my analysis of pre-modern Islamic social contract theory. Moreover, people must be free to democratically contest laws perceived as discriminatory. ISIS and the Iraq war have made it clear that e.g. the Swedish government operates with two categories of citizens: those who can be executed by other states and stripped of their Swedish civil rights, and those who cannot. These discriminatory practices reflect the current integration policy's premise, that the 'national values' are 'ethnically Swedish' and not *a priori* shared with minorities.

I have also argued that turning minorities' knowledge into valuable 'cultural capital' is necessary because it converts into economic and social capital, enabling equal opportunities and outcomes for all cultural groups. Moreover, it enables the *a priori* assumption of shared political values, upon which multiculturalism depends. Currently in Sweden and Norway, school and university education about Islam belongs to the study of the world religions. Yet Islamic thought spans philosophy, theology, history, law, political theory, economics, pedagogics, literature, art, and religion, which requires integrating the academic study of Islamic and other non-western religions and scholarly disciplines into university curricula, beyond Religious studies. Once minorities' cultures become 'valuable cultural capital', it signifies a resilient and human rights-based liberal democracy.

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ABSTRACT

With reference to Scandinavian and Islamic cases, the article explores the significance of universalism for human and civil rights, and the connection between current emphasis on ‘national values’ and inequality between cultural minorities and ‘the majority’. The main argument is that current Swedish policy on cultural diversity and citizenship could benefit from Islamic social contract theory, which may even have informed early modern European theories on social contract and religious tolerance, e.g. John Locke, student of Arabic and Islam at Oxford University.

KEYWORDS: The Qur’an, Ibn Ishaq, Tabari, Islam, social contract, human rights, multiculturalism, universalism, *ahl al-kitab*