

Life, Liberty and the Pursuit of Happiness

By Imad-ad-Dean Ahmad, Ph.D.
Minaret of Freedom Institute

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The phrase “Life, liberty and the pursuit of happiness,” used by Thomas Jefferson in the Declaration of Independence, is a twist on John Locke’s “life, liberty and property.” What these men were aiming to say about human rights, the role of these rights in the American experience, and the Islamic take on the themes they invoke are of special interest to Muslims in America.

The immigrant community in America came to this country, as did the other immigrant groups in this country’s history, in pursuit of the fruits of these rights. The African-American reverts whose forefathers were brought here by force, on the other hand, were denied these rights for generations, and fought hard to secure them. Finally, in stark contradiction to the “conflict of civilizations” worldview, the notion that such rights exist as God-given owes its genesis to Islam.

Life, liberty and property are the central human rights in Locke’s analysis. In traditional Islamic thought the *Huqûq al insan* are five: life, religion, intellect, lineage, and property. The first and last correspond to the first and last of Locke’s trinity, but Locke has replaced religion, intellect and lineage with “liberty.” Jefferson, in turn, replaces property with “the pursuit of happiness.” Before I discuss these three perspectives, let me mention the pertinent question as to what degree the sources of these ideas influenced one another.

The influence of Locke on Jefferson is well-established, and the reasons for his dropping “property” for “the pursuit of happiness” I shall explore later. The influence of Islamic thought on Locke is debatable, but it is a fact that when in exile from England he was sheltered by Quakers who had both the Qur’an and Sufi writings in their libraries. More to the point, G.A. Russell in his book *The “Arabick” Interest of the Natural Philosophers in Seventeenth Century England* has provided strong circumstantial evidence that Locke abandoned his early pragmatic philosophical views for a philosophy of natural rights endowed by God due to his exposure to the ideas of Ibn Tufail, the mentor of Ibn Rushd. In his diary, Locke professed that he changed his mind in 1671 after attending a party given by a professor whom Russell identifies as Ewin Poecocke who in that same year published the *Philosophicus Autodidactus*, a translation of Ibn Tufail’s Robinson Crusoe-like story of a self-taught reasoning being who lives alone on an island where his superior intellect derives all the God-given laws of nature. After being introduced to human society, he concludes that God-given “natural” laws must govern human intercourse as well. Subsequently Locke makes his arguments in favor of God-given laws that govern man in the state of nature, and that civil authority is justified not by any inherent right or power to invent law, but by the simple fact that individuals cannot be the objective arbiters of their own disputes.

It is, then, unsurprising that Locke would adopt the notions of life and property as human rights. Without the right to life, no other rights are conceivable. Because of the nature of man, he lives not by superior speed or strength of body but by the intellect with which he is able to fashion

tools to adapt himself to the world around him and adapt it to him, property is also an indispensable human right. It is by the use of property than man is able to survive and even prosper. These ideas were spelled out in great detail over two centuries before Locke by the Muslim historian Ibn Khaldun in his famous introduction to history, the *Muqaddamah*.

Less obvious is why Locke would replace “religion, intellect and lineage” with liberty. The notion of liberty is broader than the specifics of religion, intellect and lineage (or heritage) and should be understood to include them. Yet the choice of the term “liberty” for these human rights or a broader conception of God-given rights remains an innovation of modern Western thought that has given rise to an interesting debate.

In the Arab culture in which Islam was first introduced, the term liberty referred to the status of a freeman as opposed to a slave. One might speak of a slave’s desire for liberty from his master, but one spoke of the freeman’s desire for liberty from an oppressive ruler only by way of analogy. Some Western writers have chosen to interpret this to mean that liberty was not a value to Muslims. I think the opposite. In pre-Islamic Arab society, there was no strong central state from which one might seek liberty. Rule was tribal and the authority of the tribal chiefs in no way resembled that of the head of modern nation state. It is true that the neighboring empires had kings and princes, but the Arabs held people who lived in such a system in contempt.

In Arab culture liberty was taken for granted. When Islam paved the way for the Arab culture to be integrated into the greater world culture with its emperors and princes, the initial resistance to tyranny would consider the status of the oppressed to be analogous to that of a slave. That is why the Prophet (*saws*) is reported to have said, “there is no king but Allah” even as he took pride in the title “slave of Allah.” I believe that the early Europeans, too, took the term liberty in a metaphorical sense and that its modern use as a technical term for a matrix of human rights that the state must respect was an evolutionary development. When one reads Ibn Khaldun’s critique of the oppression of government in his day, he is concerned with violations of life, property, religion, and intellect because those were the rights which oppressive governments in his day violated. If a government in that day deprived a man of his liberty it would literally enslave him, not subject him to a set of authoritarian rules that dictated every aspect of *every* subject’s life as modern totalitarian governments do. Ibn Khaldun is concerned with the citizen’s liberty, as can be seen in his denunciation of labor conscription, but such abuses in his day were of limited duration, unlike the feudal systems of Europe that tied people to a particular job and place for their entire life by accident of birth.

By Jefferson’s time, the modern nation state had developed and the threat it posed to liberty became even more pronounced, yet the metaphorical origins of the term “liberty” remain obvious even in such rhetoric as Patrick Henry’s famous diatribe against King George: “Is life so dear or peace so sweet as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take; but as for me, give me liberty or give me death!” King George had put no literal chains on Patrick Henry. It was the founding fathers who had put chains on the African-American slaves they purchased. The metaphorical use of the terms slavery and its antithesis liberty is clear. The distinction between the man free from an individual slaveholder and one free from the oppression of the state is beside the point. For Ibn Khaldun, as much as for Patrick Henry, as much as for Muslims seeking freedom in modern America, one is

no more free when denied human rights by the state than by the individual slaveholder. Only Allah knows the motives of those who make a great deal over this distinction, but my own suspicion has always been that they wish to grant to the state a right they would deny to individuals. Thomas Jefferson, to the contrary, wrote to James Madison, “What is true of every member of the society, individually, is true of them all collectively; since the rights of the whole can be no more than the sum of the rights of the individuals.”

Once we appreciate the evolution of the term liberty from a mere assertion of a state on non-slavery into a catch-phrase for those human rights that demarcate the free man from the slave, we can address the question of what particular rights make up that matrix. For example, why did Jefferson replace “property” with “the pursuit of happiness?” It was not that Jefferson did not believe in the right of property. Rather, he wished to focus on a subset of human rights, the *inalienable* (he used the peculiar form “unalienable”) rights. Property is by definition alienable. If you do not have the right to alienate your property, you cannot claim it is your property. For example, I may live in my home as I please, but if I can’t sell it because I am renting it from you, then it is not my property but yours, even though you may have contracted some of your other rights (such as the right of habitation therein) to me. Thus the first right in Jefferson’s inalienable triumvirate, the right to life, is not a property right since one cannot legally and morally sell it. My life is mine, but I cannot make it yours by selling it to you. This is not to say that I cannot lose my right to life by, for example, denying the right to life of another through murder. But this is the forfeit of a right by tort not by contract, a completely different matter. So, by Islamic law, and by most other legal systems, I cannot enter into a contract with you in which we agree that in exchange for \$1,000,000 to be paid to my heirs you may kill me at the time and place of your choosing.

Similarly, I cannot sell my liberty. Again, I can lose my liberty by committing a criminal act that puts me into a state of servitude or imprisonment, as I may forfeit my life, but by Islamic law and most other legal systems cannot sell myself into slavery. I cannot enter a contract with you where in exchange for a sum of money to be paid to me I would forfeit all my liberty. Of course one can contractually enter a state of temporary servitude, whether a labor contract or a longer-term indentured servitude, under many legal systems, but this is not the same thing as slavery, which is a permanent loss of one’s liberty.

We now understand why Jefferson dropped property, which is not inalienable, but why did he add “the pursuit of happiness?” Does the right to liberty not include the pursuit of happiness? If not, why not? And if so, then why make special mention of it? I believe that Jefferson made special mention of the right to the “pursuit of happiness” in order to distinguish it from happiness itself, which is NOT an inalienable right. The pursuit of happiness is a goal obviously compatible with liberty, while a guarantee of happiness is not. This is because liberty is about the right to make choices while attaining happiness is about making the correct choices. Others must respect your right to make choices, but if they only respect your right to make the correct choices then they do not respect your rights at all.

Liberty allows for the pursuit of happiness. (It also allows for the pursuit of misery, an objective a surprising number of people seem to cherish.) Choosing Islam brings happiness itself, but first you need the liberty to choose it. Understanding this principle opens one’s perspective to the

fact that liberty in general is merely an expansion of the right to freedom of religion into all aspects of life. For a Muslim this should not be a difficult leap. We are all well aware of the Qur'anic commandment "*lâ ikraâha fî-dîn;*" "Let there be no coercion in religion." Yet, I occasionally meet Muslims who take a very narrow interpretation of this verse, insisting that it means only no one should be forced to convert to Islam. Yet these same people usually admit that Islam is not religion in the sense of mere ritual and doctrine, but rather a complete way of life. How then can one escape the logic that if there is no compulsion in our religion and if our religion is a complete way of life, then there can be no compulsion in our way of life?

Only Allah can compel the Muslim. The declaration of the faith that there is no god but Allah is a liberation not only from the superstition of a pantheon of capricious gods of polytheism, but from human tyranny as well. Submission to the rule of law is liberation from the rule of men. Unlike the non-existent gods and goddesses of mythology, human tyrants are all too real, but they lack authority to contravene the will of God. As our Prophet Muhammad (*as*) said (and as was said before him by Prophets like Moses (*as*) and great thinkers like Sophocles, and after him by great minds like Ibn Tufail and John Locke), the legitimate authority of the ruler is to enforce the divine law.

Some call this law the natural law, being unaware of, or unconvinced of, its divine origins. Failure to appreciate its source makes it no less binding. One may not appreciate that the law that gravity is a consequence of the will of God, yet one will suffer the same as the believer if one ignores it. Jefferson appealed to the divine origin of human rights in the Declaration of Independence when he wrote that "all men are created equal, [and] that they are endowed by their Creator with" the rights that are the subject of this article. When he asserts that the independent status he seeks for Americans is a "station to which the Laws of Nature and of Nature's God entitle them," he broadens the argument so that only those who reject both God and His laws could dismiss them.

The great attraction Muslims find in America is the role of natural rights in its conception of the rule of law. Some have gone so far as to say that when Americans say "liberty" they mean what Muslims do when they say "justice." There is merit in this observation. Americans distinguish between liberty and license. They do not consider liberty to be the right to do *anything at all*. Particular Americans may differ on what the proper limits of individual liberty are. All would agree that one limit is the equal liberty of others. Most would agree no one has the right to violate the rights of others, although they may differ as to what those rights are. There are others who have argued that it permissible for liberty to be further limited by arbitrary man-made civil law, but they have really abandoned the concept of liberty in favor of popular rule. That is a slippery slope into tyranny as was demonstrated by the fall of the Weimar Republic and the rise of Nazi Germany.

For example, most Americans do not consider the fact that heroin is illegal to be an abridgement of liberty. To the contrary, Americans are quick to blame the Afghans as being soft on opium production. Yet, at the same time, most would readily cite prohibitions of alcohol in Muslim countries as violation of liberty. Apart from the logical inconsistency, this is remarkable from a pragmatic point of view since alcohol and tobacco (another legal drug) are responsible for 99% of all drug deaths in America while heroin and all other drugs combined account for only 1%.

Cultural acceptability seems to trump liberty. In Islamic law all intoxicants are prohibited to Muslims (by analogy to wine), but wine itself is not prohibited to Christians and Jews whom the Qur'an requires be judged by their own laws. Since wine is used by Christians in sacraments, and by Jews in their Passover celebrations, it would constitute an abridgement of their freedom of religion to ban it for them. There is no infringement in banning Muslims from drinking of wine because Muslims have entered the religion of their own free will and bound themselves to the a Qur'anic prohibition which is uncontested. The right in question is the "pursuit of happiness." While Muslims may understand that strong drink does not lead to happiness, we cannot impose our insight on those not a party to the contract between us and our *ummah*.

There is a dark hypocrisy in accusing Muslims of wanting to prohibit Christians for drinking wine. I am unaware of any Muslim country that ever attempted to prohibit a Catholic from celebrating their communion ritual (in which they eat bread and drink wine in the belief that they respectively "transubstantiate" into the body and blood of Christ). In American, however, the Supreme Court ruled that a law that prohibited the Native Americans (the indigenous people) from using a tiny symbolic amount of peyote in a religious ritual was constitutional.

The inter-relationship between liberty and justice is well demonstrated by Henry David Thoreau in his essay on civil disobedience. In his opening paragraph, he expresses his concern about the ease by which government can be perverted, citing the Mexican War as an example of "the work of comparatively a few individuals using the standing government as their tool..." The analogy to the Iraq War, started by a relatively small group of politically savvy neoconservatives is apparent. Thoreau correctly observes that the reason the majority is allowed to rule "is not because they are most likely to be in the right, nor because this seems fairest to the minority, but because they are physically the strongest. But a government in which the majority rule in all cases cannot be based on justice, even as far as men understand it. Can there not be a government in which majorities do not virtually decide right and wrong, but conscience? — in which majorities decide only those questions to which the rule of expediency is applicable?"

Thoreau gives the institution of slavery as another example of the injustice of democratic rule. Slavery antedates America and, until recently, it was found all over the world, including the Muslim world. The American pattern of slavery was coupled to racism. Slaves in the Muslim world achieved their status by war against the Muslim society. Once enslaved, they still retained certain basic rights Islamic law rendered to prisoners of war, as the Geneva Conventions render such rights to such prisoners under modern International Law. Freeing of slaves was strongly encouraged, and once freed a slave had the same rights as anyone else. The Mamluks rose from being slaved in Egypt to its rulers. Most importantly, a matter of justice in Islam, no one merits the status of slave because of skin color.

This racism was the Achilles heel of the American experiment. When Jefferson said that all men are created equal he was equating the rights of white Americans with those of the British, not those of immigrants from Africa with those from Britain. The Constitution would attempt to sidestep the issue, prohibiting the banning of slave trade until after 1808. This only encouraged the breeding of slaves, further deepening the association of the status of slaves with their genetic heritage. The looming threat of eventual abolition of slavery through constitutional amendment and the related explosive issue of expansion of slavery into new states led to the Civil War. The

racism rampant in American society remained a problem with the abolition of slavery after the war as various legal devices were used to keep the former slaves in an inferior position in society. A century after the Civil War ended, America still needed Martin Luther King to march on Washington demanding that the word “all” in the phrase “all men are created equal” be taken seriously, and Malcolm X had to declare “our right on this earth ... to be a human being, to be respected as a human being, to be given the rights of a human being in this society, on this earth, in this day, which we intend to bring into existence by any means necessary.”

Americans have taken great pride in the symbolic significance of the election of a black man as President. We all hope and pray that we have reached a watershed point in getting past that Achilles heel of racism. Can we now move forward on the premise that in their purest form, stripped of biases towards special interests and group loyalties, the target at which American and Islamic ideals, universal ideals, aim is “liberty and justice for all.” If we can begin with the common ground of wanting to establish liberty and justice, the question that remains is how do we secure the rights of “life, liberty, and the pursuit of happiness” in America and in the Muslim world?

As American Muslims I believe we have a duty to advance the cause of liberty both in our current homeland of America and in our ancestral homelands, indeed in the entire Muslim *ummah*. We should not let the fact that most of the accusations leveled against the Muslim world are false or distorted prevent us from recognizing and seeking to act against the real oppression that exists there.

I think that some Muslims are immobilized from action because they fear that they will be suspected of a lack of piety if they speak out in favor of liberty. My own take is that you display a lack of piety if you fail to speak out for justice. Indeed, we should be the first to take action against injustice, or at least to speak against it, or at the very least to hate it in our heart:

“O you who believe! Stand firmly for justice as witnesses to God even as against yourselves or your parents or your kin and whether it be (against) rich or poor: for God can best protect both. Follow not the lusts (of your hearts) lest you swerve and if you distort (justice) or decline to do justice verily God is well-acquainted with all that you do.” (Qur’an 4:135)

Too often we allow the Islamophobes to define our agenda. A video has been circulated showing the Taliban brutally beating a young woman. Muslims responded as if the central issue is the harshness of the penalty for adultery, completely ignoring the fact that this poor woman was subjected to a beating without a trial, without witnesses, and without evidence that she had done anything wrong, let alone adultery. Subsequent reports suggested that the woman had been targeted for declining to marry a Taliban fighter. After this video was circulated I saw a newspaper article about an American non-Muslim who had killed his children after discovering that his wife was going to leave him for another man. Would any American allow the enemies of America to turn this tragedy into an issue of whether killing the children of an adulteress is an appropriate penalty for adultery? They would be the first to denounce the man’s behavior as a criminal act that in no way reflects upon the American legal system whatsoever. Fortunately, as this article goes to press, the recently restored chief justice of Pakistan, Iftikhar Chaudhry, has demanded to know why the government did not file a complaint and initiate an investigation into

this scandalous incident immediately instead of waiting until it became an embarrassment to the nation.

At the other extreme, when unIslamic punishments are imposed under the color of due process, Muslims too often rely on technicalities to spare the victims. We have seen this in the case of rape victims who have been first convicted of adultery and then released on a technicality. Rather than rely on technicalities, we should be clear that punishing the victim rather than the perpetrator of a rape is an affront to Islamic law. Those who cannot tell the difference between a rape and consensual, albeit illicit, act bring shame upon our community. The principal victim of adultery is the innocent spouse. The victim of a rape is the one who was raped. Just as we would not dream of punishing a woman whose husband cheated on her, we should not tolerate punishment of a woman who was raped.

This confusion between rape and illicit consensual sex seems to be rooted in an unhealthy influence of Western law on the Muslim world. It was British law that categorized rape as a sex crime rather than a crime of aggression. In classical Islamic law rape was not considered a sex crime (like homosexuality or adultery) but rather a crime of aggression like armed robbery. Islam put higher standards on the rules of evidence in the matters of sex crimes because of concern for the privacy and honor of the accused, especially women. This is one reason why such crimes require four witnesses. Prosecution of rape, however, like armed robbery, does not require four eyewitnesses and can be proven by other means such as physical evidence.

Following on the above considerations of the importance of the right of privacy to Muslims, it is interesting that the U.S. Constitution doesn't enumerate such a right. Nonetheless, the Supreme Court has recognized this right in matters such as contraception and abortion. Although the classical Islamic scholars did not enumerate it among the *huqûq-al-insân*, it has been part of Islamic jurisprudence at least since Umar ibn al-Khattab refused to punish a Muslim man for drinking wine in the privacy of his own home on the grounds that conviction would require the acceptance of evidence obtained through spying.

That humans have an inalienable right to life is clearly part of both American and Islamic law. The Qur'an and the Torah both condemn one who takes an innocent life as if he had taken the life of an entire people. That people have an inalienable right to liberty and the pursuit of happiness is also clear once we properly understand that the pursuit of happiness is not a guarantee of happiness and that liberty has proper limits to it that are determined by reason and cultural norms. My right to swing my fist ends where your nose begins. The nudist's right to be free of clothing ends in the public space where others are forced to choose between their standards of decency and their rights to travel or engage in public life.

Islam avoids conflict between differing cultural norms by acknowledging the rights of non-Muslim communities under Islam to be judged by their own laws in their internal affairs. This principle was usually observed in Muslim history, but today we must be vigilant over those in our community who would violate it by imposing laws specific to Muslims on non-Muslims.

While most American Muslims understand this, too many fail to understand that forcing people to remain Muslims when they have lost their faith is also a form of compulsion in religion. I have

never met a Muslim who thought it was acceptable to force a non-Muslim to convert to Islam, yet too many Muslims, on the basis of a single hadith, want to forcibly prevent anyone who was ever raised in a Muslim family or country from converting to another religion. The claim that apostasy is a crime punishable by death undermines the contractual nature of the *ummah* of which I spoke earlier in this article.

Any Muslim claim to liberty or justice conflicts with the claim that mere apostasy is punishable by human beings. I say “mere” apostasy to distinguish the act from treason, that is, leaving Islam to fight for the enemies of Islam. No society ever tolerates traitors and the only opponents of capital punishment for traitors are those who oppose capital punishment for anything, but there are many reasons one would leave Islam besides treason. The right of people to enter Islam requires a right that they be free to leave Islam. Some people do not grasp this because they feel that it somehow implies that Islam is not the true religion. They do not understand that the freedom to be right requires the freedom to be wrong. The uncompromising belief in *tawhîd* that makes Islam superior to other religions itself requires that its adoption *or continuation* must be voluntary.

Non-Muslims must be excused for believing that apostasy is punishable by death when so many Muslims have made assertions to that effect. Non-Muslims are not in the position to appreciate, as Muslims should, that legal opinions based on debatable interpretations of traditions attributed to the Prophet Muhammad (peace be upon him) cannot abrogate the teachings of the Qur’an that are clear and unambiguous upon the following relevant points: (1) that a person’s choice of religion cannot be coerced and that (“Let there be no compulsion in religion...” 2:256) and (2) capital punishment applies only to acts of murder or waging war against society (e.g., terrorism, “... if anyone slew a person unless it be for murder or for spreading mischief in the land it would be as if he slew the whole people...” (5:32)). We Muslims, who by definition believe that the Qur’an is the word of God, must submit to the Qur’anic commandment, “Leave Me alone (to deal) with the creature I created (bare and) alone” (74:11).¹

A growing number of scholars are calling for the rejection of death for apostasy (see <http://apostasyandislam.blogspot.com/>). Among them is the President of the Fiqh Council of North America, Dr. Taha Jabir al-Alwani, who has said that “if one leaves a religion without causing harm to others or engage[ing] in treason, then there is no punishment.”

For hundreds of years the Muslim world was the place to which those seeking life, liberty and the pursuit of happiness fled—among them the Jews whom Christians expelled from Spain. In recent centuries America has been the place of refuge of the oppressed. If we are to restore the Muslim world to its former place as a divine sanctuary from oppression, it is appropriate that American Muslims should light the way.

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¹ Abridged from a Q&A on apostasy on the Minaret of Freedom Institute website (www.minaret.org):