Comparison of the Foundations and Sources of the Islamic Human Rights School and Other Legal Schools

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Abstract

The life of the individual in today's complex world is not feasible without the enjoyment of rights. In reality, the answers to many questions and ambiguities depend on the philosophical foundations that justify the existence of human rights. Human rights are not a collection of concepts, foundations, rules, and laws that exist independently of other areas of knowledge. These rights are epistemologically and logically subsequent to other bodies of knowledge. Among the types of knowledge that logically precede human rights are the foundations and sources from which rights are derived. Foundations are a set of principles and rules upon which human rights rely, such as principles related to justice, freedom, ownership, and human well-being. Sources, on the other hand, are the origins from which principles, rules, and rights are adopted, such as reason, revelation, custom, culture, history, and others. Those who engage in the codification of human rights draw upon the principles and sources accepted within their own intellectual framework. When these foundations, principles, and sources align and operate in harmony, a legal school emerges. This hidden yet compelling source of obligation is referred to as the "foundation of rights." One of the most complex issues in the philosophy of law is distinguishing this foundation. The central question arises: Why should these rights be obeyed? Each legal school has sought to answer this question from its own perspective. This article, through a descriptive-analytical method and utilizing library-based sources, explores the views of natural law theory, positivist law, Islamic law, and the perspectives of several scholars, comparing the foundations and sources of each school and thinker. The findings of this study indicate that the Islamic school occupies a significantly higher and superior level.

Keywords: legal schools, foundations and sources of law, human rights, Islamic human rights.

Received: 01 February 2025
Revised: 23 April 2025
Accepted: 01 May 2025
Published: 25 June 2025

Citation: Momeni Rad, A., & Hassan Rafigh, S. (2025). Comparison of the Foundations and Sources of the Islamic Human Rights School and Other Legal Schools. *Legal Studies in Digital Age,* 4(2), 1-11.

1. Introduction

The foundation, source, and purpose of legal norms can be considered the three essential pillars of any legal system. The formation of the concept of a legal system requires a form of connection and coherence among these pillars. In every legal system, the source or medium for articulating legal norms and the purpose of legal rules and institutions are influenced by the

foundational basis and source of the binding nature of these norms. In other words, any response to the question of what constitutes the source of the binding force of a legal norm—whether metaphysical or realist—affects the type and function of sources (such as whether the law has an instrumental or intrinsic role). The type of interaction and the relationship—whether horizontal or hierarchical—among the sources in both religious and non-religious legal systems depends on the nature and structure of the foundation and the origin of the binding force of legal norms (Momeni Rad & Rouzbahani, 2023).

Although in philosophical legal studies—and colloquially—the terms "source" and "foundation" of legal norms are sometimes used interchangeably, the concept of a source differs from what is precisely understood as the foundation of law. The foundation of a legal norm refers to the origin of its binding nature and essentially answers the question: why should one obey the legal norm? In other words, every legal norm restricts the free will of the individual and imposes obligations; the question is on what basis can this restriction be justified? The foundation of law is that hidden force and latent pull that compels obedience to legal norms and constitutes the underlying basis for all legal rules and the justification for their binding nature. In contrast, the source of legal norms refers to the instruments that articulate them, such as statutes or customs. Various philosophical schools, depending on their perspective on God, human beings, and society, have each chosen a specific foundation and built their ideal legal system upon it. They have also determined sources as instruments for articulating legal rules in accordance with their chosen foundations (Rahmatollahi & Yazdizadeh Alborz, 2017; Shahabi & Jalali, 2012).

In this paper, the influence of the source of legal norms on their foundation is first examined in the context of the natural law tradition. It then continues by exploring this relationship in realist legal perspectives and concludes with the same discussion as it pertains to the Islamic legal tradition.

2. Natural Law School

Some jurists believe that the origin of belief in natural rights can be traced back to the thought of Pythagoras, which later became foundational for Aristotle. Socrates was also a prominent figure who defended natural rights in their correct sense, asserting that natural laws must be discovered and that governance should be grounded in those laws. Plato, following his teacher, held the same belief. However, it was the Stoics who first formulated the concept of natural law in a coherent manner. They argued that above positive laws, there exists a natural law that governs all humans. Cicero, in Book III of *De Re Publica*, Chapter 32, states that there is only one natural law that remains unaffected by time or place (Danesh-Pazhouh, 2007; Phry, 1976).

From the 3rd and 4th centuries through the 13th century, Christian thinkers regarded natural law as subordinate to divine law. However, during the 16th and 17th centuries, anti-religious sentiment and the Renaissance led natural law to return to its earlier secular definitions—this time emphasizing that rights derive not from religion or nature, but from reason. Thinkers and writers of the 17th and 18th centuries disseminated their views on natural rights to the public with admirable persistence (Ghorban-Nia, 2004; Mohaqqeq, 2002).

Natural law theory is understandable through human nature and must be justified and established based on that nature—independent of any a priori or a posteriori belief systems. Proponents of the natural law school argue that the foundation of law lies in nature itself. Since the concepts of “natural law” are rooted in human reason, it follows that such rules cannot be confined to a particular nation or society. Within this view, individual rights are considered natural rights that cannot be stripped from a person by any rule or regulation. These are superior norms beyond legislative will—inalienable, undeniable, and inseparable from the human essence (Ghorbani, 2009; Maqami et al., 2021).

A key criticism of this view lies in its lack of definitional precision, making it heavily subject to individual interpretation. Philosophically, the question arises: what constitutes the standard of “naturalness”? What one theorist deems “natural” may differ from another. A classic example is the contrast between Thomas Hobbes and John Locke. Both advocated for natural rights, yet Hobbes described human nature as "nasty, brutish, and short" through the phrase "man is a wolf to man," whereas Locke viewed human nature as fundamentally good and became a founding figure of liberalism (Tebit, 2007; Troper, 2007). History, too, will not forget the atrocities of Nazism and fascism—ideologies rooted in the extreme devaluation of human dignity and precursors to World War II.

Natural law theories are essentially doctrines about law, particularly its relationship to morality. These theories posit the existence of fundamental and immutable rights that transcend legislative will, contractual agreements, and state authority. All humans, regardless of time or place, are inherently entitled to these rights. The rationale behind labeling these rights as "natural" is that they are coexistent with humanity across time and space, and they derive their legitimacy from human nature itself—not from any act of legislation or codification. No criterion other than being human, in the most general physiological and biological sense, is necessary to be entitled to such rights (Castellino, 2006; Cherif Bassiouni, 1990).

Natural law theories can be divided into two categories: traditional (or religious) and modern. In addition to early theorists such as Cicero, who represents the ancient natural law tradition, and Aquinas, the renowned Christian theologian of the Middle Ages, post-Renaissance thinkers such as Grotius, John Locke, and Hobbes have also drawn scholarly attention. Among contemporary philosophers, Lon Fuller and John Finnis are considered revivers of the traditional natural law school. Traditional natural law refers to values and liberties inherent in human nature. Its legitimacy stems from the belief that these rights originate in the essence of human existence, nature, or the Creator (Mousavi Zonooz, 2015; Rahdar & Rahdar, 2016).

In religious legal systems, sacred texts and tradition serve as the primary means of expressing divine will. Reason may also function as a source—alongside scripture and tradition—for formulating some legal rules. In other words, fundamental legal principles are derived, interpreted, and substantiated through reliance on sacred texts.

Laws of nature are necessary and unbreakable. Just as obedience to these laws results in natural reward and restitution, disobedience leads to natural punishment and calamity. Proponents of natural rights argue that it is essential to become aware of these natural laws because awareness and understanding allow one to “listen” to the language of nature. This awareness is sufficient to guide individuals toward the necessary path. Ultimately, human beings are compelled to obey the law, even if they did not create it themselves, as adherence to legal order ensures the security and survival of both individuals and society—and it is inescapable (Shahbazizadeh, 2010).

The modern natural law school shifts emphasis from nature to reason. It builds a shallow definition of natural law and human rights grounded in rationality—where human reason becomes the foundation of law. Reason is thus seen as the tool for assessing deficiencies and advantages. The principle is that everything must necessarily conform to its natural order to remain intact, and that humans possess the rational capacity to understand this nature. In modern natural law frameworks, law itself is considered the most important source (Keykhosravi et al., 2022; Sehorana, 2016).

Nevertheless, the evolution of thought regarding the source and aim of these superior norms has passed through three major phases: the religious era, the rationalist era, and the empirical era (Schachter, 1982; Simma & Alston, 1988).

2.1. The Religious Era

Prior to the 17th century, natural rights were understood as noble and ideal rules that reason commanded. During this era, sovereignty belonged to God, and good, evil, permissible, and forbidden matters were determined by His will. In other words, law and religion were intertwined, and every rule was implemented within the framework of religious beliefs. Consequently, the validity of legal norms derived from divine will and was therefore considered immune to criticism and debate (Danesh-Pazhouh, 2007; Ghorban-Nia, 2004).

2.2. The Rationalist Era

In the 17th and 18th centuries, natural rights gradually lost their religious and divine roots in Europe. The pioneer of this movement was the Dutch jurist Hugo Grotius. After him, German scholar Samuel von Pufendorf and the French philosopher Descartes argued that natural rights were the product of human reason and the nature of things. Kant, in his analysis of reason, considered law to be a command of practical reason (Mohaqqeq, 2002; Tebit, 2007).

The concept of natural law during this era—especially among rationalists—differed significantly from its religious predecessor in several ways:

a) The source of natural law became the human being, not God. Natural rights were perceived as so deeply rooted in human nature that no force could separate or transfer them to others.

b) The aim of natural law shifted to the protection of individual rights.

c) Freedom was considered the highest value. In much of the philosophical literature of this period, freedom was the essence of life, the highest human aspiration, and the most cherished value (Castellino, 2006; Cherif Bassiouni, 1990).

2.3. The Empirical Era

In the 19th and 20th centuries, humankind turned toward empirical approaches, and the pursuit of causal explanations began to replace idealism and rational analysis. Consequently, the natural law school came under critique from various angles, and the capacity of human reason to deduce optimal legal norms was questioned. Advocates of natural law in this period attempted to preserve at least a minimal concept of natural rights in defense of ideals and values against the power of the state. However, different groups pursued this objective in various ways.

Some thinkers reaffirmed the traditional concept of natural law but limited it to a few self-evident general principles, considering all other rules changeable and a product of the state's will or social transformation. Others completely abandoned the stability of natural law and viewed the subject matter of its rules as historically contingent. Another group argued that nature only shows the path toward justice. They equated the concept of natural rights with a sense of justice and regarded justice as the foundation of all legal and moral norms (Momeni Rad & Rouzbahani, 2023; Rahmatollahi & Yazdizadeh Alborz, 2017).

Therefore, the source of natural law is ultimately the will of God, and its goal is the implementation of divine will—namely the establishment of justice and compassion. Natural law is immutable and universal; changes in time or place do not affect its validity or authority.

The main point of contention between adherents of natural law and positivists lies in this: the latter regard law as nothing more than a system of rules tied to a specific society, whereas the former consider law to be a shared ideal of all human communities. While natural law theorists acknowledge the variance in human moral perception across different times and places, they assert that the ideal of law—establishing a just and good order—remains steadfast despite such changes.

Accordingly, the following three characteristics are consistently found in all interpretations of natural law: universality (its principles are the same at all times and in all places), necessity (its observance is a requirement of human rational nature), and permanence (it is independent of any human authority) (Ghorbani, 2009; Sehorana, 2016).

3. The Legal Positivist School

Legal positivism refers to a philosophical school that rejects metaphysical inquiry into origins or ends. The term was first coined by Auguste Comte. In Persian, it is referred to as "Isbat-garai" (positivism), "the school of empirical validity," or "empirical philosophy." This school arose as a reaction to natural law theory, with all its branches agreeing that legal rules must be based on tangible, empirical facts—not abstract, rational truths. Since natural rights cannot be empirically proven, they are considered meaningless in this view (Shahabi & Jalali, 2012; Troper, 2007).

According to positivist schools, the foundation of law lies outside pure reason. Legal phenomena must be understood through empirically observable realities, identifiable through practical rationality. The emergence of positivist perspectives in law was rooted in the development of philosophical positivism in the West, which arose alongside the empiricist wave in science and the devaluation of rational knowledge due to Comte's teachings (Mousavi Zonooz, 2015; Tebit, 2007).

Positivist thinkers believed that scientists, relying on their empirical knowledge, could determine what benefits or harms society. On this basis, individuals would be called to fulfill their social duties, while any notion of intrinsic rights would be strongly rejected. With the growing dominance of empiricism, ideological approaches were abandoned, and legal positivism rejected the idea of rights being grounded in foundations, instead making value formation subject to human preference.

Legal positivism also emphasizes the distinction between *is* and *ought*. It insists that legal description must focus on what *is*, not what *ought* to be (Schachter, 1982; Simma & Alston, 1988).

Legal positivists maintain that legal reasoning must exclusively relate to external reality. Therefore, to determine what counts as law, one need only examine what the official authorities have declared to be law. For them, law is defined by the sovereign's decree. Jeremy Bentham, a key proponent of legal positivism, mocked natural rights theorists and considered their

legal claims meaningless. In his view, everything is a creation of law, and no rights exist outside legal enactment (Akehurst, 1974).

Legal positivists have developed various schools, all under the umbrella of positivist legal thought, based on what they regard as the primary force behind the formation of law. Three major schools are briefly introduced here:

3.1. Pure Legal Positivism

In this school, the foundation of law is the will of the ruling state, and the state itself is a product of legal norms. According to Hans Kelsen, "law arises from the state, and the state is a collection of legal norms." He likens this to the theistic view of God as the creator and sustainer of the universe, but still within it. Similarly, the state is both the originator and protector of law and remains within the legal order. From this perspective, there is no distinction between *is* and *ought* since the state's will *is* justice, and there can be no conflict between law and justice. Law is subordinate to the state's will, and whatever the state wills is law (Momeni Rad & Rouzbahani, 2023; Troper, 2007).

3.2. Sociological Positivism

In this school, legal norms originate not from the will of the individual or the authority of the state but from social facts and collective will. The legitimacy of any legal rule depends on the degree of respect it receives within society. The source of legitimacy and validity is the general will, which either directly produces law or authorizes the state, as its representative, to legislate. Hence, the tangible reality in which law must be rooted is public opinion, and a law's legitimacy is tied to its conformity with societal consensus (Rahdar & Rahdar, 2016; Rahmatollahi & Yazdizadeh Alborz, 2017).

3.3. Socialist Legal School

Legal philosophers in socialist countries often draw from Marxist thought. Marx's legal and political philosophy centers on the idea that the economic base is the foundation of all social institutions, including law. From the Marxist perspective, legal and state institutions arise from specific economic relations, which are themselves shaped by the development of productive forces. According to Marxism, in the final stage of economic evolution—when material needs are fully met through increased production—there will be no further need for law or the state. Thus, law is seen as a temporary and conditional necessity. Socialist law is based on objective economic realities and cannot be detached from them. Since economic conditions are always in flux, legal norms must necessarily change with them (Bianchi, 2008; Parker & Neylon, 1989).

In the realm of legal sources, some scholars have emphasized the role of custom, while others have privileged statutory law or judicial precedent. In interpretation, certain camps stress uncovering the legislature's intent, whereas others view law as independent from its drafters and urge judges to apply scientific methods and interpret the law according to society's evolving needs (Keykhosravi et al., 2022; Phry, 1976).

The Universal Declaration of Human Rights was not constitutive in nature, but rather declarative—it affirmed rights that individuals naturally possess. Therefore, it cannot be considered a product of legal positivism. However, due to the necessity of securing these rights by states—on behalf of humanity—it was initially codified through two binding treaties: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. At one point, the Declaration was regarded as part of international customary law. Today, it can be argued that it has ascended to the level of *jus cogens*—peremptory norms of international law that sit atop the hierarchy of legal sources. (*Jus cogens* refers to non-derogable rules accepted and recognized by the international community as a whole, which bind all states.)

The essence of the positivist school's argument is this: a rule enacted by the state that is practically abandoned and lacks real effect in social life should not be regarded as law. Conversely, rules established through custom and followed in practice by the public are considered legal norms—even if the state played no role in their creation (Hannum, 1995; Simma & Alston, 1988).

4. Cicero

Cicero was the first to formulate and present natural law as a comprehensive legal model. He describes natural law in the following terms:

"True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting. It summons to duty by its commands, and averts from wrongdoing by its prohibitions. Its commands and prohibitions are not meaningless to good men, though they may be without effect upon the wicked. To invalidate this law is sinful; to attempt to amend it is sacrilege. No Senate or people can absolve us from its obligations, and we need not look outside ourselves for an interpreter of it. There will not be one law at Rome and another at Athens; nor will there be one today and a different one tomorrow. But one eternal and unchangeable law will be valid for all nations and all times, and there will be one master and ruler of all—God, who is the author of this law, its promulgator, and its enforcing judge. Whoever disobeys it, flees from himself and denies his human nature. Such a person will suffer the severest penalties even if he escapes the usual punishments" (Castellino, 2006; Mohaqqeq, 2002).

5. Thomas Aquinas

One of the foremost thinkers to integrate natural law into a religious framework was St. Thomas Aquinas, the eminent Christian theologian and philosopher, who is widely regarded as the most influential restorer of natural law during the Middle Ages. Aquinas presented natural law within a theological and doctrinal context. His primary concern was not merely the affirmation of natural law but rather the development of a theoretical structure regarding the role of revelation and divine law in the normative order of human society. His goal was to provide a comprehensive theory on the relationship between reason and revelation.

The outcome of this effort was a significant elevation of human reason within the domain of norm creation in social relations. According to Aquinas, divine or revealed law is supreme and must govern all human positive laws. Full access to this law is only possible through divine revelation, but human reason can comprehend parts of it. The segment of divine law that is accessible to reason is what constitutes natural law. These laws are universally binding across all nations and times. Aquinas maintained that what reason commands, divine law also commands, though human intellect may fall short in grasping the wisdom behind some religious decrees (Danesh-Pazhouh, 2007; Tebit, 2007).

Aquinas classified law into three categories:

1. **Divine Law:** This law is known only to God and His messengers and is revealed to the prophets through revelation. Human beings, with their limited intellect, cannot understand this law independently. It is recorded in sacred texts.
2. **Natural Law:** This law is eternal, immutable, and universal. It encompasses all human beings at all times and in all places. It is the result of rational intuition and can be understood by every person through reason, nature, and innate disposition. Every person, to the extent of their capacity, can become aware of it. It is rooted in God's will and is in perfect harmony with human nature and reason, such that all humans can recognize its validity without mediation. Because it is self-evidently just, no one can reasonably deny it.
3. **Human Law or Positive Law:** These are laws created by human thought and formulated through pragmatic reasoning to establish order in society. Since they originate from a lower source than natural law, their legitimacy depends on their conformity with divine and natural law. Even the justice of human laws is judged by their alignment with natural law. Human laws must be just, beneficial, necessary, clear, and benevolent. Although conflicts between these laws and natural law may be tolerated in cases of necessity to maintain order, opposition to divine law is intolerable. Aquinas believed that everything could ultimately be derived from natural law (Mousavi Zonooz, 2015; Shahbazizadeh, 2010).

6. Grotius

The modern approach to natural law is closely associated with the well-known statement by Hugo Grotius that "natural law would retain its validity even if God did not exist." This marked a pivotal shift in the conceptualization of natural rights—from

a theological domain into a humanistic and secular legal philosophy. Grotius was not necessarily attempting to secularize natural law, but rather sought to develop an independent and rational explanation of it. While his language may seem secular, Grotius, a devout believer, aimed to affirm the reliability and consistency of the laws of creation (Cherif Bassiouni, 1990; Rahdar & Rahdar, 2016).

He argued that natural law consists of rational judgments that assess actions based on their alignment with rational and social human nature. Accordingly, God, as the creator of nature, has permitted or prohibited these actions.

In Grotius's view, it is possible to imagine a rational legal system applicable worldwide, which is why he is often referred to as the father of international law. Reason dictates what humans should do and avoid. The dictates of reason transcend national borders, and they are not confined to ethnicity or race. The rulings of reason are equally applicable to all people across all societies (Momeni Rad & Rouzbahani, 2023; Simma & Alston, 1988).

7. Lon Fuller

If the inseparability of law and morality, and the insistence on denying the status of "law" to immoral norms, is taken as the central premise of natural law theory, then without doubt, Lon Fuller must be considered one of the most important contemporary theorists of natural law. In his influential book *The Morality of Law*, Fuller introduced the concept of the "internal morality of law" and sought to establish a link between morality and legal validity (Momeni Rad & Rouzbahani, 2023; Rahmatollahi & Yazdizadeh Alborz, 2017).

According to Fuller, a rule lacking the following eight conditions is not worthy of being called a law:

1. Generality and universality
2. Non-retroactivity
3. Consistency (non-contradiction)
4. Clarity and comprehensibility
5. Relative stability and avoidance of constant change
6. Possibility of compliance and avoidance of impossible or excessively burdensome duties
7. Official promulgation
8. Honest and faithful application by legal officials

In Fuller's view, any enactment that fails to meet these conditions cannot fulfill the primary purpose of law—ensuring social order—and thus, despite outwardly appearing to be law, is not truly law. He argued that the legitimacy of a legal system depends on the extent to which it aligns with these eight criteria. Fuller contended that internal morality is essential for the creation and functioning of law, and that a legal system must adhere to these standards to a certain degree. For Fuller, the principles of legality are inherently moral, and their observance ensures morality within the law. He concluded that law must have some moral content—or at least moral structure—to be valid.

Fuller emphasized that legal systems must reflect ethical consistency: similar cases must yield similar judgments; law must not be tailored to fit particular individuals or situations, but rather, cases must conform to general laws. Law should be made publicly available. These are moral values rooted in justice and fairness, which every legal system must uphold. The clearest example of injustice, in Fuller's view, is when a judge deviates in favor of one party at the expense of the other, delivering inconsistent verdicts in similar cases. Thus, for a legal system to be valid, most of its rules must comply with the internal morality of law (Danesh-Pazhouh, 2007; Tebit, 2007).

Fuller argued that an evil regime, such as that of the Nazis, could not possibly comply with all the eight principles of legality while simultaneously using law as a tool of oppression. Indeed, the fascist Nazi regime—whose legacy he witnessed firsthand—did not adhere to many of the basic requirements of legality. Therefore, he maintained that such regimes' enactments did not qualify as true laws. On this point, Fuller aligned with traditional natural law theorists such as Aquinas, who also denied the legal status of immoral laws.

However, Fuller differed in that while traditional theorists evaluated legality based on moral content, Fuller focused on the *form* and *structure* of law—its creation, dissemination, and implementation. His concern was procedural, not substantive. He sought to disarm oppressive regimes like Nazi Germany from cloaking their actions in the guise of legality.

Nevertheless, Fuller acknowledged that some regimes might formally comply with the eight conditions while still issuing fundamentally inhumane laws. He cited apartheid-era South Africa as an example: a regime that appeared legalistic, with laws that satisfied the eight criteria and were strictly enforced by its courts, yet the more effectively those laws were applied, the more oppressive the regime became. As H.L.A. Hart later observed, the eight principles make law effective, not moral. Therefore, these should be seen as principles of legal efficacy, not moral content (Shahabi & Jalali, 2012; Simma & Alston, 1988).

Ultimately, Fuller argued that only laws conforming to these eight principles could truly serve to protect human rights. Laws that fail to meet these conditions could easily become tools for violating those same rights. He did not consider these principles to have a divine or metaphysical origin; instead, his internal morality of law constitutes a procedural interpretation of natural law. Thus, Fuller's concerns were procedural and formalistic rather than substantive.

Later followers of this school even argued that human laws derive their authority from natural law, and if inconsistent with it, lose their legitimacy. That which natural or divine law prohibits cannot be justified by positive law (Cherif Bassiouni, 1990; Ghorbani, 2009).

8. Auguste Comte

According to positivist schools, the foundation of law lies in observable reality rather than abstract reason. Legal phenomena must be based on tangible facts that can be empirically identified. The rise of legal positivism was closely tied to the emergence of philosophical positivism in the West and to the empiricist wave in the sciences, which questioned rationalist knowledge traditions. This trend was directly influenced by the teachings of Auguste Comte (Parker & Neylon, 1989; Tebit, 2007).

Comte believed that all branches of human knowledge evolve through three fundamental stages: the theological stage, the metaphysical stage, and finally, the scientific or positive stage. Based on this view, law—once considered divine—entered a rational phase before finally becoming empirical. This historic shift displaced metaphysical and theological paradigms, and legal phenomena became subject to empirical validation. From then on, law lost its metaphysical character, and its divine origins were largely forgotten (Rahmatollahi & Yazdizadeh Alborz, 2017; Sehorana, 2016).

9. Ronald Dworkin

Ronald Dworkin stands among the most prominent legal theorists of the 20th century. While human rights fundamentally belong to the natural law tradition, Dworkin—like John Rawls, who formulated justice based on an "original position" and collective agreement—offered an interpretive approach that aimed to free rights discourse from overly broad interpretations. His model also better aligns with the realities of modern legal systems, state sovereignty, and diverse historical and cultural contexts (Momeni Rad & Rouzbahani, 2023; Troper, 2007).

From this intermediary perspective, Dworkin argued that legal reasoning does not merely describe or assess the history of law but rather *interprets* it. His theory aimed to reconstruct legal doctrines in a way that was both logically consistent with legal history and morally attractive. These historical facts include enacted laws, past judicial rulings, and the moral and political traditions of a society.

Dworkin's legal philosophy simultaneously challenged the foundations of both positivist and natural law theories while offering a compelling synthesis of the two. One of his most important contributions was the distinction between *rules*, *principles*, and *policies*. According to Dworkin, fundamental rights fall under principles rather than rules or policies. He prioritized legal principles—rooted in moral values and human rights traditions—which also function as legal sources in various legal systems (Castellino, 2006; Rahdar & Rahdar, 2016).

In his view, legal principles occupy the space between rules and policies: principles define rights, while policies define goals. Yet principles must prevail—rights take precedence over policy. Dworkin maintained that legal systems are not composed solely of rules expressed in legislation and precedent. Instead, they also encompass general principles that safeguard rights and are common across legal systems (e.g., the principles of justice, pacta sunt servanda, and good faith).

This intermediary position—possibly described as a "moderated natural law"—proves both theoretically and practically effective in defining the philosophical foundations and the operational framework of human rights law (Keykhosravi et al., 2022; Phry, 1976).

10. Islamic Legal School

Some have incorrectly claimed that Islam is a follower of natural law, while others have wrongly argued that Islam is entirely opposed to natural and innate rights. In truth, both views are mistaken. Islam respects the insights of human reason, yet considers divine commands to be obligatory. While reason may grasp certain universal principles through innate disposition, intellectual insight, and natural laws, these generalities alone cannot sufficiently fulfill human needs without the guidance of revelation. In essence, divine legislation completes and aligns with natural law; there is no contradiction between reason and revelation (Danesh-Pazhouh, 2007; Maqami et al., 2021).

Unlike positive legal systems, Islamic law does not derive solely from human intellect or conscience. Its source is the Creator of the universe—God—who alone possesses full knowledge of the interests and harms of human actions and social relations. When legislating, God considers the collective well-being of society, not personal or partisan interests. Therefore, legislative authority is exclusive to Him.

According to Shiʿi jurisprudence, four authoritative sources exist for deriving divine law:

1. **The Holy Qur'an**: The first and foremost source of legislation in Islam is the Qur'an. Approximately 500 verses, known as *ayat al-ahkam*, pertain directly to legal and practical rulings. Since the time of the Prophet Muhammad (peace be upon him), the Qur'an has been recognized as the principal legal source. Muslims have consistently turned to it for guidance on moral and legal matters. All Muslims believe that the Qur'an is the firm rope of God: whoever acts upon it will be saved; whoever judges by it acts justly; and whoever calls others to it invites them to the path of righteousness (Ghorbani, 2009).
2. **Sunnah (Prophetic Tradition)**: Given that human affairs exceed what can be addressed in 500 verses alone, the second legislative source—*Sunnah*—is essential for elaborating on legal details. The Qur'an serves as a constitutional text, focusing on core issues, but abstains from detailing every command. It is the Prophet and the infallible Imams who clarify these details in accordance with context and necessity. In Shiʿi thought, Sunnah includes: a. **Sayings of the Infallibles**: Statements by the Prophet or Imams on religious and legal matters. b. **Actions of the Infallibles**: Behaviors of the Prophet or Imams that demonstrate divine rulings. c. **Approvals of the Infallibles**: Acts performed in their presence that they neither objected to nor forbade, implying tacit approval. Thus, Sunnah explains ambiguities, specifies generalities, qualifies absolutes, and supplements areas not covered by the Qur'an (Rahmatollahi & Yazdizadeh Alborz, 2017; Shahabi & Jalali, 2012).
3. **Ijmaʿ (Consensus)**: The third source is *Ijmaʿ*, or consensus among Islamic jurists on a particular legal ruling. However, in contrast to Sunni jurisprudence, Shiʿi scholars do not treat ijmaʿ as an independent source. Instead, they believe that genuine consensus reflects the opinion of an infallible Imam, thereby granting it legitimacy. This interpretive consensus is accepted as a valid legal source due to its presumed connection to divine will (Momeni Rad & Rouzbahani, 2023).
4. **ʿAql (Reason)**: The fourth source is reason. The scope and role of reason in Islamic legal theory is a subject of significant debate between Sunni and Shiʿi scholars. While this article does not delve into those debates, it can be stated that sound reason, in addition to guiding behavior, is also capable of deducing legal rulings. Reason is thus recognized as a valid, though subordinate, legislative authority (Rahdar & Rahdar, 2016).

From an Islamic perspective, based on the aforementioned sources and foundations, human beings are inherently valuable. Islam views humanity as intelligent, willful, and dignified beings who deserve respect. The Qur'an refers to God as "the best of creators" (Qur'an, Al-Mu'minun 23:14) and describes humanity as His vicegerent on Earth (Qur'an, Al-Baqarah 2:30).

Islam emphasizes human liberty, dignity, and the intrinsic worth of every person—regardless of race, language, color, nationality, or other external attributes. The essence of the prophetic mission, especially that of the Prophet Muhammad (peace be upon him), was to liberate humanity from such superficial bonds and remind them of their inherent human nobility. The

Qur'an affirms that all people are equal in human value and dignity and treats differences in race, ethnicity, and nationality merely as identifiers—not sources of superiority (Qur'an, Al-Hujurat 49:13) (Ghorban-Nia, 2004).

It can confidently be asserted that nearly all the fundamental human rights enshrined in the Universal Declaration of Human Rights are not only acknowledged within the Islamic system but are implemented more effectively in many respects. Based on this framework, only God possesses the authority to legislate for human beings. As the Creator of human nature, He is uniquely aware of its needs. Furthermore, since divine laws are free from bias, they represent the most just and effective rules for society. Consequently, Islamic law—entirely rooted in divine instruction—comprises the most comprehensive legal system for human life, fully encompassing human rights in both principle and practice (Keykhosravi et al., 2022; Maqami et al., 2021).

11. Conclusion

Human rights, by their legal nature, are inalienable and inseparable from the human essence, belonging to every individual as a human being—regardless of gender, nationality, race, religion, belief, social class, or other distinguishing features. Philosophically and practically, these rights have been articulated in international instruments such as the Universal Declaration of Human Rights and the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights. Although their origin is rooted in natural law, the realities of the modern world, characterized by national sovereignty and diverse social and historical contexts, have necessitated a "moderated natural law" approach. This model attempts to reconcile the two prominent legal traditions—natural law and legal positivism—by bridging the conceptual and functional gaps between political authority and normative legal obligations.

Empirical global developments demonstrate that excessive reliance on natural law, due to its lack of definitional constraints, does not necessarily advance the cause of fundamental human rights and may, in fact, hinder their realization. In today's world, human rights—despite their natural law foundations—are increasingly developed through binding international treaties and legal obligations that assign rights to individuals and duties to states. The progress of societies, without imposing interventions that disrupt their historical and cultural evolution, facilitates the realization of human rights and the administration of justice.

To understand any legal system and its components, and to grasp how these components interact, one must examine the foundations and sources of normative authority within that system. Even the comprehension of the essence, nature, and purpose of legal norms is impossible without attending to the foundational basis of their binding force. This principle applies equally to the sources through which legal rules are articulated. The nature, function, and interrelation of these sources are significantly influenced by the foundational assumptions of the legal system.

Statutes, customs, judicial precedents, and scholarly opinions are all regarded as sources of legal norms. Depending on the underlying source of legal authority, each of these may function differently across legal systems. This influence can become so pronounced that sources may transcend their traditional role as tools for expressing legal norms and begin to serve as mechanisms for generating those norms themselves. In a system founded on divine will, for instance, statutory law and custom cannot be considered primary or independent sources, as this would contradict the foundational premise. This concern is not limited to religious legal systems; it is equally relevant in secular frameworks.

The nature of the relationship among legal sources, and the functional priority among them, varies depending on whether the legal system leans toward a natural law perspective or a realist one. For example, within a realist socio-legal approach, one should not expect statutory law to take precedence over custom in cases of conflict, as custom is more closely connected to the social conscience—the normative foundation in such systems—and may better reflect its spirit than state-created laws. Conversely, in natural law systems, it is equally inappropriate to expect custom or judicial precedent to supersede statutory law, since doing so would undermine the law's instrumental function in expressing foundational moral truths.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

Acknowledgments

Authors thank all who helped us through this study.

Conflict of Interest

The authors report no conflict of interest.

Funding/Financial Support

According to the authors, this article has no financial support.

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