



Haytham Manna Child Rights in Arab Islamic Culture



Translated by **Wassim Wagdy**

Language Editing by: **Nebras Dalloul**

The Scandinavian Institute for Human Rights

Haytham Manna Foundation

Rue Richard Wagner, 1

Case Postale 128 1211 Genève 20

<http://sihr.net/> Email: sihr.geneva@gmail.com T: +41 229 10 47 12

Introduction

Can a society that alleges respect for human dignity shut its eyes to child rights? Though Arab governments master the rhetoric of defending and protecting childhood, the reality of childhood in the Arab world is too cruel to be beautified by speeches. How can we speak about the right to life while the infant mortality rate of Arab children is higher than in Bangladesh? How can we speak about education when there are more than ten million Arab children deprived of it (fifteen million according to some sources)? Can we ignore malnutrition in the Arab world, and overlook the twenty million handicapped children, only 25% of whom don't receive any care (38% With 5 wars in the 21st century)? Can we not be affected by the great discrepancy between Arab children in the countries of "black gold" and their siblings in the Arab shanty towns? How can. Unfortunately, we deal with Children's rights without touching on the absence of opportunities for food, medical care, and education, and on such adult crimes as familial and social domination, gender discrimination, child-fighters phenomena and economic sanctions which mostly affect children and rarely affect the rulers?

This is not an attempt to escape from the living reality to the "cultural," but rather an endeavour-to entrench the enlightenment cultural capital of people, which is one of the main tools for escaping such a swamp, with the belief that the solution will not come down from the sky nor the palace of the ruler. It is a matter that concerns all individuals in society. In this way the convergence of collective consciousness constitutes one of the means of defending child's rights.

Methodological Premises

Enlightenment ideas remind us of the relation between beauty and the human subconscious: they cannot be enjoyed except by an admirer who can and wants to experience some sort of pleasure in tackling them. Therefore, these ideas cannot take their due status by arbitrariness or come about by violence. In the same vein, a prisoner of presuppositions cannot breathe the whiff of freedom within the intricacies of progress if he cannot reorder the cultural reservoir which brought about and entrenched these presuppositions. For twenty years, I have believed in the necessity of the exploration of the "self," its riches and disgraces, as an indispensable passageway to self-liberation.

However, the attempt to explore remains danger-ridden and surrounded by the fences of other forms of treating history and indigenous culture. The first of these dangers is the feeling of the superiority of the past over the present. The second is of opportunistic intellectuals on this feeling, under the pretext of defending the identity. The third is counter posing to the latter approach a nihilistic vision commanding that the whole lot should be-buried history.

Away from these approaches, the writer tries to compose a tetra-logy to link the private and the public; the past, the present and the future. This tetra-logy consists of:

- 1) Child in the Arab Islamic culture.
- 2) Human Rights in Arab Islamic culture.
- 3) Citizenship in the Arab Islamic history.
- 4) Rights and Freedoms in the *Nahda (Arab Renaissance)* Thought (1).

It is not an encyclopaedic work; it only aspires to open windows onto new horizons. It is neither an attempt at a modern understanding of religion nor a human rights interpretation of our heritage. Worth to mention, that I am not, by any means, a supporter of verifying a certain matter by establishing the presence of a certain quotation on it, whether by the Prophet Mohammed or "Uncle Marx."

Moreover, I have no desire to establish anything except that, like other histories, Arab history is a non-romantic process. It is just the outcome of certain intellectual and social struggles which produced valuable as well as regretful results that form a necessary lesson and an indispensable cognitive accumulation, and constitute a part of our contemporary struggle. I also aspire to prove that the future needs to transcend the past in the way that international critical thought defines transcending philosophy, not to negate it by the scratch of a pen.

In this tetra-logy, the term "Arab Islamic culture" covers the cultural cognitive, religious, and popular spheres. Thus, in the survey of history and the history of thought, the following coexist: al-Sa'alik (the Vagabonds) and the Hanifites, Ghillan al Demashky and the Murjeites, Ibn al Rawendy the atheist and al-Hallaj the Sufi, Abu Bakr al-Razi the philosopher and Abu Nawwas the profligate, Abu Haneifa the official jurispudent and the Kharidjites.

The methodological starting points are the following:

- 1) My sincere belief that human rights are universal in the full sense of word, as the concept of progress that rose in the East which no single serious researcher can call Eastern. Although the term "human rights" is of Western origin, it is-like computers- no more restricted to the ones who invented it. In my opinion, the question is not how many Arabs witnessed the preparation or the signing of the Universal Declaration of Human Rights, but rather the answer to a simple and naive question: Do these rights fulfil actual needs and requirements of our peoples, or does our society have a greater need to master the arts of amputating hands, legs, and necks in reverence of an old legal tradition?
- 2) Since 1980, when I have started my early critical writings about our heritage, I have been examining the major struggles within this heritage between the supporters of reason and the supporters of imitation; between temporal knowledge and ancestral wisdom; between the supporters of the dominant and the obsolete and the pioneers of renovation.

The more we probe into some peoples culture, the more we discover the backgrounds of its perspective on the major humane concepts such as equality, liberty, and tolerance, and the more we feel the importance of tracing, the roots of (Death) tree of freedoms and rights in all human cultures, considering its contribution to the cultural formation of Francis Bacon and Jean-Jacques Rousseau, or — if it did not do that directly — its capacity to enrich and develop what they have produced. In respect to rights, as with the sciences, accumulation is the necessary condition for the generation of knowledge. And although *al-Khawaresmy did not invent the computer, algebra had its indirect contribution to this invention.*

3) Exploring the different aspects of history is not a problem, but one of the most important contemporary cultural problems is bounding to the past as the master of the present, and the reading of 'this Past, at the "me time that critical and inductive perspectives are wanting. Hence was our insistence on rehabilitating the factors of the Eastern renaissance: innovation and reason as uncompromising adversaries of imitation and copying, the humanism of, the "Us"; denouncing the cancellation of the "In to the benefit of the social or doctrinal "Us"; and the emphasis on the first lesson of the epoch of Western enlightenment: "treating history as an event, not a judge." (2)

Thus this endeavour does not seek, or consider as one of its tasks, to search for support or authority for this or that article of the Universal Declaration of Human Rights or of the Bukhari collection of prophetic traditions. It aspires to delve into a cognitive jungle whose nectar has contributed to, the production of the cultural honey of humanity. In my opinion, for the passive break with the past is a reaction to its hallowing which allows the supporters of sanctification of the past to monopolize the discussion of an essential component of the human personality: the civilizational factor and dimension, i.e., the giant moments in the cultures and experiences of peoples, and their role in inter-civilizations interaction, in contradistinction to that identity which comprises female circumcision, the despotism of Bani Othman, and clannishness as basic factors of specificity.

The Pre-Islamic Arab Society

People have noticed — for thousands of years according to our knowledge -that children need tranquillity, protection, love and play. However, many ancient societies have laid over these considerations, or through them, some practices that annulled their content. For example, fear that a foe would en has led some tribes to sacrifice their children to the gods or bury their baby girls alive to protect the tribe's honour. Also, we find among combatant groups some traditions of dishonouring their enemies through their children and wives.

Although the parental instinctive impulse has always reflected a love which can reach an excessive level of possessiveness and protectiveness, human beings have known some tribal and religious ideologies which associated children with the group and its interests and beliefs even more than with this instinctive impulse.

There are many accessible texts about the status of children in the pre-Islamic Eastern~ cultures in – Egypt, Iraq, Syria, Lebanon, and Palestine. However, this article will limit itself to the period which extends immediately from before Islam to the time of Arab/Islam-renaissance, considering that those four centuries still, to date, have their extensions in minds and traditions — and even in laws — in more than twenty Islamic countries.

The definition of a “child” in any culture is linked to the elements of duties and rights, whether directly or indirectly. In the Arabic language, we find that the definition of a “child” is related to the “tender and soft body and the little of anything” as stated in the *Lissan al-Arab* (The Arab’s great dictionary) and the *Mohkam* (the Exact) dictionaries (3). Abul Haytham, the linguist, gives a concrete definition: “The boy is called a child from the moment he is born until he ejaculates.”(4)

Guardianship was turned to the lineage of the father because traditions stipulate that the child is reared in the house of the father (or whoever takes his position if he is deceased: his son, father or brother) until the child can fully exercise the activities, duties and rights of the tribe and family. (4). In pre-Islamic times, Arabs founded orphanages for children whose fathers were lost, dead or killed in war. Tribes’ chiefs and notables supervised the upbringing of those children and supported them from a solidarity fund made up by donations from notables and the spoils of war, as was the case, for example, with the orphans of *Ghatfan*.

The Arabs concern with children could be shown, as Dr. Adel Gasseem al Bayaty mentions - by the fact that “when they reconciled and joined in alliance after a war, they’ used to exchange rearing children as a symbol of goodwill and also as hostages to be used against anybody who would break the reconciliation and the alliance. This proves the depth of their affection towards children, for their alliances were not assured by money, or any other worldly goods, for in that case someone might have betrayed the terms of the alliance. Children, however, were the firm tie which bound them to the alliance and kept them away from treachery. Therefore, anyone who treacherously harmed his hostage children was severely punished — killed.” (6) The Arabs of *Dawmatil Jandal* used to sacrifice a child every year to the planet Venus, which was represented by a statue of a naked child. The idea of sacrificing animals was one of the first signs of discarding such practice. There are many stories similar to the story of Abraham and the sacrificing of his son Ismail, the latest of which is the story related to Al-Hutai’a and his sacrificing of a wild cow instead of his son.

In poetry, we can find splendid expressions of the affection towards children, as for examples the following verses by Hattan Ibn al-Mu’alla:

Our children are our hearts walking on earth

If the wind blows on them, my eyes would know no rest.

Or the pride poem of Amr Ibn Kalthoum:

When a boy of ours reaches ablactate

The mighty fall on their knees for him.

Like the boy-child, the girl-child enjoyed a high status in many tribes. Also, we can find rich poetic material dealing with the intimate relationship between fathers and daughters. Probably the best expression of such a powerful emotion can be found in the poetry of Malek Ibn al Raib. Once he was leaving for travel and his daughter stopped him, saying that she was afraid his travel would last too long or that death would separate them so he wept and said (7):

When my daughter wept from deep sorrow with a grieved heart,

And from the pain of separation she shed her tears,

That almost wounded where they crossed,

Or left what they passed over scarred,

Fearing that her father might die,

Or that he would find new home elsewhere,

I told her: stop! Your, tears have cut into my heart.

Many a time daughters' tears have excruciated hearts.

Would God ward off what you fear until I return?

Arabs allowed girls to dance as they allowed boys. It is related that al-Zobair Ibn Abdel Muttaleb used to let his daughter dance and say:

My daughter is noble and highborn.

She would not deny the needy fire or tinder.

There were also tribes and towns that surnamed the parents after either their daughters or sons, such as Yathreb where parents were surnamed after their first child regardless of sex.

"The History of S'as'a ben Najj b. Akl" stills a great legend in the Arab history. This man spent all his wealth to free the baby girls whom families decided to buried alive, because of extreme poverty.

Early Islam

The Koran prohibited killing children for whatever reason, and stated: “And kill not your children for fear of poverty. We provide for them and for you. Surely, the killing of them is a great sin” (al-Isra-verse 31).

The Koran also censured the practice of burying girl-child alive by some tribes, stating: “And then the female infant buried alive shall be asked” (al Takweer, verses 8-9)”

Many sayings of Prophet Mohammad emphasize justice between children- boys and girls, elder and younger. For example the Prophet said: “Equate between your children in expenditure as you like them to equate between you in filial devotion and kindness”. (Al-Tabari). Anass related that a man was in the presence of Mohammad when his son has arrived, so the man kissed him and made him sit on his lap. Then a daughter of the man has also arrived and he made her sit in front of him. The Prophet told him: “Would you not equate between them?” (8)

The Koran enhanced the notion of the equality of children regardless of sex or age, and thus it stated: “And when the news of the birth of a female child is brought to any of them, his face turns black and he becomes grieved. He hides away from the people because of the evil he was told. Should he keep her with disgrace or should he bury her in the earth. Indeed, wrongful is their judgment.” (Al-Nahl, verses 58 – 59.). About linking the sex of the child to the will of God, the Koran states: “He bestows female children upon whom He wills, and bestows male children upon whom He wills.” (Al-Shura, verse 49.) The order in this verse has made some Muslims regard the birth of a female child before a male child as a good omen.

As al-Zobair used to dance and sing with Prophet Mohammed when a child, the Prophet himself used to play with children. Jaber Ibn Sumrah narrated that the Prophet once saw some boys racing and ran with them, and that he used to let boys ride with him on his camel and jest with them to make them happy (9). Dr. al-Shatty cites the following prophetic saying: “He who has a child should act childishly with,” explaining that this means that parents should “be humble, friendly and genial in word and in acts with their children. And the child means both the boy and the girl.”(10) It is also related that one of the governors under the Caliph Omar Ibn al-Khattab visited him and found him Lying on his back while his children were playing around him. The governor criticized Ibn al-Khattab for tolerating the children’s play, The Caliph asked him: “How are you with your family?” The governor answered: “When I enter the house everyone becomes silence” The Caliph said: “You are deposed. You are not kind to your family and children, so how would you be kind to the nation of Mohammed!” (11)

The first thing to be noticed about the Prophetic sayings which reflected the spirit of that age and of the Koran is, that they stressed the humanness of the relationship between the child and the adult, and prohibited any injustice that could be committed against the child in the name of the

sacred or otherwise (Indeed lost are they who kill their children, from folly, without knowledge"- al-An'am, verse 140). Children according to the Koran are the "ornament of life."

On another level, Prophetic sayings vary, greatly as regards, the way of raising children. On one hand, there are sayings that grant the child a margin of independence and freedom, and on the other hand there are those that delineate the way of upbringing — step by step, and stage by stage — commanding that the child should be obliged to practice the worship rituals, and favouring imitation to judgment and compulsion to choice, expressing the totalitarian ideology which took shape, gradually reaching its zenith in the epochs of degeneration.

We could find some very advanced remarks on children's education and how adults should treat them, as for example Ali Ibn Abi Taleb's words emphasizing the importance of time in child-rearing: "Do not rear your children according to your customs, for they are created for different times than yours." And also what is narrated about Mu'awiyeh, Ibn Abi Sufian when he got angry at his son Yazid and sought the advice of al-Ahnaf Ibn Qais who answered him: "They are the souls of our hearts and the bone of our back. We should be to them like soft ground and shady sky. If they ask you something give them, and if they are angry appease them, for they give you their sincere affection and do love you to their utmost. You should not be heavy-handed with them, or they will become weary of your life and hope for your death".

Children's Pain and Divine Justice

Surveying the status of the child leads us to discern the social and cultural differences between societies. In this regard it is noteworthy that the most important debates and thoughts confrontation in history of Arab Islamic society were over the issues of tormenting children and divine justice on one hand and the freedom of the child and the concept of responsibility on the other. Examining the historical intellectual struggles, we can notice the significant place occupied by the issue of children's pain and its purpose as understood by the different Islamic sects and trends.

Since the second century (AH), several opinions have come to prominence in answer to the important question— if the child is not responsible, what is the divine purpose in making him suffer pain? The orthodox trends answered that God could torment children, and if he did it would be just, basing their answer on the Koran verse: "No calamity befalls on the earth or in yourselves but is written before we bring it into existence. Verily, that is easy for Allah." (al-Hadid, 22.) However, the Mu'tazellite rationalists denounced this notion. al-Nazzam argued that in essence God cannot commit evil and cannot do injustice to anybody, adding that "Allah cannot blind somebody who sees, or sicken a healthy person, if He knows that eyesight and health is better for them." (12) While al-'Allaf argued that, "Allah is capable of doing both good and evil, but He does not do evil and does not want to because of its ugliness". And on another level, Bishr al-Mutammer said, that, "Allah created neither might nor weakness, neither death nor life, neither health nor sickness. Such indications are the doings of the bodies where they exist." (13). Ibn

Hazim answered al-Mutammer by saying, "Know that this profligate has excluded half the world from God's creation".

Abdullah Ibn Eissa expressed the opinion of many of the *Kharidjites* on children's pain by saying, "Lunatics, beasts, and children under the age of puberty do not feel pain from whatever afflicts them, for Allah does not do injustice to anybody." (14) The holders of this opinion relied on the verse: "And they say that it is from Allah, but it is not from Allah" (Al-'Imran, 78). And, needless to say, the rationalist atheistic trend went into the battle, where Ibn al-Rawendy devoted his book "*al-Tadeel Wal Tajweer*" (Modification And Falsification) to discussing the sickness, pain and poverty that afflict those who are not responsible and the people of good deeds, where, as al-Khayatt narrated, he wrote, "He who sickens his slaves is not wise in what he does to them, nor is he their guardian, nor merciful with them, and the same applies to he who impoverishes and afflicts his slaves."

The *Rafedites* (Shiites) were divided between saying that the child suffers pain by the direct action of God, by the instrumentality of material means, by the act of God in some instances, and by other causes in others. The last is the opinion of the *Imamites*.

The different positions of the *Mu'tazelites* can be summarized as follows:

- 1) Children suffer pain. God is the source of pain. God does not recompense pain but He will not punish children in the hereafter.
- 2) Children suffer pain. God is the source of pain. It is intended as a warning lesson for adults. God recompenses children for the pain they suffered, because He is not unjust.
- 3) Children suffer pain. God is the source of pain. Without pain children would be better, but God is not obliged to do what is better.
- 4) Children's pain is the making of nature, not the act of God.
- 5) Injuries and pain can occur to children by the act of God, because they are figurative and not actual. This is the opinion: of Wassel Ibn 'Atta'a, and Qasem al-Demashky. .

On the other hand, the *Kharidjites* were divided between two opposing opinions:

- 1) God judges a child by the deeds of his parents. What afflicts the child is because of the parents. It is a warning lesson for adults.
- 2) The child is not judged. The child is not related to his parents' deeds. The child does not suffer pain because Allah is not unjust. In case the child suffers pain, God will recompense him for this.

Sunnis, Ismaili Shiites and Asha'irites were of the opinion that the fate of children is in God's hands: if He wants he torments them, and if He wants otherwise he does, and if He inflicts pain and disease on a child it is just of Him and for a purpose of His. al-Ash'ary said, "the life of everybody contains both graces and ordeals. There are ordeals that should be withstood, such as the calamities of disease and malady, and the calamities which befall one's children and money or the like. And there are those which should not be tolerated such as disbelief and all other sins." (15) Elsewhere he added, "If someone asks whether God will cause pain to children in the hereafter, he should be answered. God could, and if He does that, then it is just." (16) Although the external sense of this official stance is concordant with the notion of the omnipotent God, this simplistic theme, as Nasr Hamed Abu Zeid wrote, ascribes "all the manifestations of injustice and evil to the divine will as it is considered the proponent will." (17) For their part, physicians divested the causality of children's pain of any dimension beyond the "nullity or deficiency of the functions of the organs, aches in the organs, or the turbulence of the mood." (18)

The keenness of the different trends, each according to its viewpoint, on linking the concept of justice to childhood, shows the emphasis on the principal of child protection in Eastern cultures. This protection, which exceeds its limits for the ancestors with their tendency towards possessiveness and forcing children to reproduce the parents' image, is evident in the agreement of temporal and religious knowledge in the sixth article of the contemporary Convention on Children's Rights, i.e., the inalienable right of every child to life. In contradistinction to the position of ancient Greek philosophy and medicine on the right to life of the psychologically or physically disabled, according to the positions that reached us from the epoch of the Arab Islamic flourishing, none of the symbols of secular knowledge (philosophers, physicians, writers, etc.) or of religious scholarship (Christian, Jewish, and Islamic) has tolerated any exception that would allow for the disposing of children's right to life.

Responsibility and Freedom

The issue of responsibility (of and towards the child) constitutes one of the basic elements of the inter-Islamic controversy on the child, his legal status and doctrinal position. For on this issue of responsibility depend what is known as the religious succession (the child of a Muslim father is Muslim) on one hand, and the legal status of the child on the other.

Opposite to the predominant idea about the self-evidence of the child's belonging to the same religion as the father's, we could read even in such conservative writings as *al-Tawdih Liltankih* (Exposition for Emendation) what follows (19):

Juvenility, though a natural state of human beings at the outset of their lives, is considered a contingency because it is not an exigency of the essence of humanity — the essence of humanity does not require juvenility. By contingencies barring competence we mean the same, a state that is not inescapable and nullifies competence. And because God created the human being to undertake the burdens of His orders and to recognize Him, thus in accordance He should create people in a state that is conducive to achieving the goal of creation, that is to be from the

beginning of their lives judicious, competent and able. Juvenility is a condition which negates these capacities; therefore it is considered a contingency barring competence.

We should not be surprised by the opinions of some Islamic sects which granted children the freedom to choose their belief, when the Koran states: 'There is no compulsion in religion.' Perhaps the *Ajaridah of Kharidjites* was the first and most outspoken of these sects, for it is established that they maintained that "when a child reaches puberty, he should be called on to embrace Islam, and he is not judged as a Muslim before." (20) Also, Ibn Hazm narrated that they said, we do not coerce children before puberty, nor forsake them. But we respite them until they declare their Islam after puberty." (21)

Early *Sunnis* held that children "should not be punished, and performing worship rituals is not incumbent upon them. For some of them, practicing religious rituals is a must as a way of precaution." (22) This matter contradicts a flood of sayings and admonitions with which so many books dealing with al-kaba'er (the grave sins) overflow.

One of the most expressive texts on the relationship between growth, need and reason is what al-Jahez narrated about a wise-man who was asked, 'When did you begin to reason?' He answered, "The moment I was born." When the wise-man noticed that his inquirers did not approve of his answer, he added, "I cried when I was in fear, sought food when I was hungry, sought the breast when I needed, and was quiet when I was appeased... That was the range of my needs, and whoever recognizes the measure of his needs – if he is given or denied them – needs no more reason." (23)

Responsibility towards the child can be divided into the responsibility incumbent upon his parents and the responsibility of the state. The early Islamic Caliphate – at least in the capital – offered a sort of allowance for children, which grew into a more comprehensive health and economic protection in the eras of flourishing. The highest form of social insurance was a salary decreed for every Muslim infant born in the land of Islam who reaches ablactate. After that decree people hasten to wean their infants in order to collect the salary, and thus Omar Ibn al-Khattab said: "Do not rush your children to ablactate, we decree [a salary] for every Muslim newborn." (24)

For most jurists, custody means the upbringing and nurturing of the child, as well as carrying out all the necessities of his life from birth until he becomes able to dispense with the assistance of his mother in procuring his necessary needs. The Koran thus spoke of custody: "The mothers shall breastfeed their children for two whole years that is for those who desire to complete the term of suckling, but the father of the child shall bear the cost of the mother's food and clothing on a reasonable basis. No person shall have a burden laid on him greater than he can bear, No-mother shall be harmed on account of her child, nor father on account of his child. And on the heir is incumbent the like of that [which was incumbent on the father]." (al-Baqara, verse 332.)

There is **no** one Prophetic saying that specifies the custody of a child after the guardianship of his mother ends. Al-Sahfei said that the child should stay with his mother until he reaches seven years of age, then the child should be given the choice between the parents, and this is the highest of interpretative judgments concerning the right of the child. Malek supports this opinion in one of two narratives related about him. Abu Haneifa was of the opinion that the child should be turned over to his father or to his paternal lineage (this is the judgment followed by the Syrian, the Egyptian, and most of the Arab countries' legislators). However, in another instance, Malek linked the right to custody to the sex of the child: the girl should remain with her mother until she gets married, and the boy should be with the father until he dispenses with his assistance. In devotion to their totalitarian reputation, the disciples of Ibn Hanbal hold that the choice should be made by the ruler. Ibn Taimiyah narrates a story about two parents who contended for their child and litigated with the ruler. The ruler gave the boy the choice and he chose the father. The mother told the ruler: "Ask him for what reason he chose his father!" When the ruler asked him the boy said: "My mother sends me every day to the religious scholar and the scholar beats me. And my father lets me play with the boys." And so the ruler ordered that the boy should be entrusted to his mother (25).

Regarding the responsibility of the child, there is a generally accepted division into two phases: first, the stage where the child cannot make proper judgments (the pre-discernment phase), which extends from the child's birth until he turns seven. During this stage, the child cannot be punished for any religious responsibility; there is only a civil responsibility for his wealth because of lest those others would be harmed. The second stage is the "discernment phase," where the child can make some judgments. It extends from seven years of age until puberty. The child in this stage is responsible for undertaking the duties related to harming others but not to those of a contractual nature. The child is not to be punished nor obliged to practice religious rituals. For some, practicing religious rituals is necessary as a precautionary measure, but the Prophetic sayings which mention such an obligation are dubious, inconsistent, and contradict the Koranic principle denouncing any compulsion in religion (26).

There is no Koranic verse which orders that a child should be disciplined by beating. There are some dubious Prophetic sayings that have been sanctioned as jurisprudential rules whereby is a near consensus among traditionalists that the father, the grandfather, the custodian, the elder brother, the tutor (whether a school teacher or a trade master) have the right to discipline the child by beating. There is another opinion which argues that the child cannot be beaten by anybody other than his father or guardian except by their permission.

Believing that punishment should be the means of discipline of the last resort, Ibn Sina (also known as Avicenna) wrote (27):

"It is necessary to start by edifying the child and accustoming him to the best of virtues starting from abstinence, before the ill-favoured habits – which are difficult to eradicate if they become deep-rooted in the soul of a child – are infused. But if it is necessary to resort to punishment, one

should be cautious, for the child should not at first be treated with violence but with gentleness, and then desire should be mixed with fear. At times frowning or what scolding is required should be used, and at some other times praise and encouragement are more viable than scolding, and this is according to each individual case. However, if the resort to beating has become incumbent, the educator should not hesitate to make the first strokes painful”.

The same opinion is held by Ibn al-Jazzar in his “Handling and Managing Children.” Both emphasize the link between the methods of upbringing and the different personality of each child.

There is “an advanced educational opinion, held by many physicians, that concentrates on non-violent methods in upbringing children, as for example using gentleness, frowning, encouragement and praise, and does not prescribe anything beyond verbal scolding. Physicians since Abu Bakr al-Razi have emphasized the necessity of taking children during the period of their Progress towards puberty, which in our contemporary terminology is called adolescence. It suffices here to cite the opinion of Avicenna:

The greatest attention should be given to taking care of the child’s manners, so that he grows up right. And that is by protecting him lest he is afflicted by severe anger, fear, grief or amnesia. One should at all times discern what the child likes and longs for to bring it near to him, and what he hates to put aside from him. There are two benefits in this: one for the child’s soul – to grow up from childhood with good manners that become a part of his character -and the other for- his body, for in the same way that shabby manners bring about bad temperament, if these manners are of one’s character they entail bad temperament... Thus, rectifying manners secures the health of both the soul and the body (28).

The Right to Care

In the Arabic medieval writings, one finds an important place given to the child’s right of care by physicians, philosophers, and a number of jurists. It is known that Abu Bakr al-Razi was the first to separate paediatrics and gynaecology, while the child had been always studied and dealt with in relation to the mother. Thus the attempts of dealing with the child by himself began. The first of these attempts was the treatise of Abu Bakr al Razi on paediatrics around the year 900 AD, which is available today in Hebrew, Latin, English, and Italian, although the Arabic original is lost.

Also, among the most important writings is the book, “Handling and Managing Children,” by the physician Ahmad Ibn al-Jazzar al-Qairawany. We find also that in that period instructions for care started with the embryo: pregnant women were instructed to sing for their babies and to caress their bellies. Also, Ali Ibn Habal al-Baghdady had advised pregnant women to “avoid severe exhaustion and long stay in baths. Delicate sports are beneficial, and the pregnant woman should enjoy the breezes of air, delights, promenading and all that gratifies the soul and enlivens the spirit. If a disease befalls pregnant women, she should be treated with care, and she should avoid haemorrhage and diarrheic.” (29)

Gharieb Ibn Sa'ad devoted a chapter of his "The Creation of the Embryo and the Handling of Pregnant Women and New-borns" to the care of the mother and its, impact on infants. He warned of anything that might annoy the pregnant women, and he prohibited them from fasting: "Pregnant women should not get hungry and should not be obliged to fast for that harms her and the unborn young."

Addressing the issue of psychological health care, Ibn al-Jazzar stated (30) that a child "should not cry a lot or else he could be afflicted by 'apolempisia.' So [the child] should be quieted in the manner mentioned earlier, and by anything that is known to divert his attention and stop him from crying, as for example by carrying him in the arms gently and delicately and moving him, and also by making, nice sounds for him and chanting nice tunes. This is so because pleasant sounds delight the soul, and thus if a pleasant tune is chanted for children – giving them pleasure – they hush, calm down and sleep quickly. Also, a child should be brought the things which are known to make him happy, and he should be brought together with his peers. A child should be guarded against things with loud voices and against scary faces that frighten children as for example faces with veils on them, and also against horrific things, for all of that and the like make the child acquire a stern look."

Ibn Sina (Avicenna) held that "in order to refine the temper [of a child] two things are imperative. One is gentle rocking and the other is the music and intonation customary for inducing children to sleep. According to the child's predilection, he should be prepared for sports and music, one for his body and the other for his soul." (3 1)

Physicians have made comments regarding walking, talking, running, sleep, as well as other educative advice. Thus, for example, we find Ibn Sina advising that the child should be in the company of well-behaved children because he acquires, a lot from his peers, and emphasizing the importance of children's mingling (32): "Conversing helps broaden the mind and makes the incomprehensible clear, because each [child] speaks- of sweetest of what he saw and the sweetest of what he heard, and the oddity of his words is a cause for wonderment and thus a cause for memorizing, and also a reason for others to talk. Also, their companionship refines their manners and animates their spirits."

Scholars have differed regarding the age at which children should begin their education; some, like al-Abdary, specified it at seven, and some others left it for parents to decide. Also some scholars define the years of education and others leave it open. Regarding the choice of vocation, al-Razi and al-Qayrawany emphasize the necessity of developing the dispositions of the child and of respecting his choices. The latter wrote: "When the child reaches twelve, he should be satisfied coming what he needs of education and knowledge." (33) Ibn Sina, however, had a different opinion: "Not every vocation that a child might desire is suitable and convenient, [the suitable vocation] is that which corresponds and to his character. And thus the guardian of the child should study his character, examine his faculties and intelligence, and accordingly decide on a vocation for him."

All scholars emphasize the necessity of amusement, play and entertainment for children. Imam al-Ghazaly supported this general view of philosophers and physicians. In his "The Revival of the Religious Sciences," he wrote that "after finishing his studies [the child] should be permitted to play nice games to ease off the fatigue of studying, and he should not be fatigued by play. Denying a child play and exhausting him by incessant studying debases his heart and nullifies his brain and embitters his life, making the child try every intrigue to escape studying."

Physicians, along with a number of religious scholars, concede that the most important phase of upbringing is the first seven years. In his "Spiritual Medicine" Ibn al-Jozi writes: "The best conditioning is that which takes place in childhood. Otherwise, if the boy is left to grow up with a certain character, its rectification will be difficult." This opinion is shared by Imam al-Ghazaly, Ibn al-Jazzar, and Ali Ibn Abbas al-Majoussy.

In the time of Omar Ibn al-Khattab, elementary schools were founded, and (according to several narratives) the treasury used to remunerate the tutors and the students. Later, elementary schools became widespread; some of them were established by philanthropists for poor children and orphans, and some were founded by the al-Daywahji mentions the existence of segregated and mixed elementary schools (34).

Instruction was entrusted to both men and women. Ibn Hazm al-Andalussy mentioned that he had been a student of women, who taught him the Koran, poetry, calligraphy, and sciences till the age of twenty. There were prominent women instructors as, for example, al-Shaffa'a Bint Abdullah alAdawiyah, Karima Bint al-Miqdad, Um-Kalthoum Bint Uqba and 'Aisha Bint Sawad. Mawlat Abi Imamah was known to teach women voluntarily in the mosque of Hams. With the civilizational deterioration of the Arabs and Muslims, mixed schools started to disappear, and prominent women came to supervise all-women associations for the education of poor and handicapped women in Baghdad, Najaf, Damascus and Cairo.

Preliminary Conclusions

It might be easy to reduce the Arab Islamic experience using expressions such as "the rules of Shari'a" and "the position of Islam," but in this case we would not only be negating the accumulated wealth of the Islamic experience and heritage, but also the richness of the products of the struggle between it and the secular experience in the Islamic countries. This article provided evidence that the right to difference was the locomotive of ideas and the dynamo of enlightenment: al-Ghazaly was not ashamed of drawing on the heretical physicians in his comments on socialization, and likewise Ibn Sina appropriated some of the positions of Abu Haneifa and al-Shafei. Although some fanatics find fault with Arab paediatrics because it introduced music to hospitals as well as story-tellers to entertain children, it is a source of pride to every Arab today that the infirmaries treatment by music and by entertainment with story-telling.

It is certain that this article would frustrate anyone who had awaited a comprehensive historical reading of the contents of the UN Convention on Child Rights, or else what is the meaning of

progress? And although there were some leaps here and there, is it possible to compare a condition where the judgment of slave-girls before the law is different than that of free women to a world where all forms of slavery (through trade, capture in war or inheritance) has been abolished? And can we forget that the door of independent judgment had been closed centuries before the opening of the human rights file?

Our culture made its contributions to the attempt to answer to the needs of the child and the requirements of the child's development and care as did others. It sanctioned a number of child rights that could not but be a source of pride for ails of humanity, and to a great extent it succeeded in this because it opened its heart to the knowledge of Greece, Rome, Persia, India and China, without fear, and tried to assimilate their treasures without bigotry.

If there is a task to be shouldered, it would be to escape the logic of comparison which loses all its meaning when situated beyond time and place, and to embrace the logic and spirit of our times, in order to answer the fundamental questions that face us, and respond to the existential challenges that confront us, in the manner of the renaissance tree which knew how to absorb from the waters of history and contemporaries and how to be enriched by the fertilizers, of the great human cultures in order to produce new fruits for new generations.

Notes and References

1. The tetra logy is published by the Cairo Institute for Human Rights Studies (1995-1997) and the Arab Commission for Human Rights for the last one. Reedited by SIHR.
2. Haytham Manna , *Alkam, al-Noqta* Publishers, Paris, 1994.
3. Ibn Manzour, *Lissan al-Arab* (The Arabs' Tongue), Sadler Publishers, Beirut See: Child.
4. Ibid.
5. Haytham. Manna , *Intaj Alinsan Sharkil Mutawasset, al-Usba, al-Kabila, alDawla* (The Production of Man in the East of Mediterranean: Agnat, Tribe and State), al-Nidal Publishers, Beirut, 1986. p. 53.
6. Dr. Adel Jassem al-Bayaty, *alToffoula Wa Mashqhiduhq al-Mutaghaira Fil Turath Wal Adab* (Childhood and its Changing Scenes in the [Arabic] Heritage and Literature), Arabic Perspectives, Baghdad, Number 4, 1979.
7. "Shir Malek Ibn Uraib" (the poetry of Malek Ibn Uraib), edited by Dr. Noury al-Qaisy, in The Magazine of the Institute of Arabic Manuscripts, Cairo, Volume 15, part One.
8. Jadul Haq Aly Jadul Haq, *al-Toffoula Fi Zil, al-Shari'a al-Islamyia* (Childhood Under Islamic Sharia), al-Azhar, September, 1995, p.3 1.
9. Dr. Shawkat al-Shatty, *al-Islam Wal Tibb* (Islam and Medicine), University of Damascus, 1960, p.73.
10. Ibid., p.74.
11. Dr. Mahmoud al-Hajj Qassem Ma hammad, *Tarikh Tibb al-Atfal*(History of Arab Paediatrics), the try of Culture and Arts, Baghdad, 1978

12. Abdel Qader al-Baghdady, *al-Farq Baynal Firaq* (Differences between the Sects), New Horizons Publishers, BC-11th Print, 1978, p. 166.
13. Ibn Hazm al-Andalussy, *al-Fasl Fil Millal Wal Ahwaa Wal Nihhal* (The Sound Judgment on Sects, Dispositions/Creeds'), Muhammad Ali Sobeih Bookshop and Publishers, Cairo, Part 4, p.35.
14. Ibid., pp. 32-33.
15. al-Ash'ary, *Kitab al-lum'a Fil Radd Ala Ahlil Ziyagh Wal Bida'a* (Book of Splendour in Response to the People of perversities and Heresies), Beirut, 1952, p.45.
16. Ibid., p.71.
17. Dr. Nasr Hamed Abu Zeid, *al-Itijah al-Akly Fil Tafseer* (The Intellective Approach in Interpretation), al-Tanweer Publishers, Beirut, 1st Print, 1993, p.20.
18. Haytham Manna, Islam and Disease. Ph.D. Thesis submitted to the Higher Institute of Social Sciences, Paris, 1983. The chapter on the causality of disease.
19. Ahmad Fathi Bahnassy, *al-Mas'uliya al-findiya Fil Fiqh al-Islami* (Criminal Liability in Islamic Jurisprudence), Beirut, 3rd Print, 1988, p.270.
20. Abul Muzaffar Taher Ibn Muhammad al-Asfaniyeeti, *Kitab al-Tabseer Fil Deen Wa Tamyyz al-Firka al-Najiyah 'An Firaq al-Halekeen* (The Book of Explaining the Belief and Distinguishing the Saved Sect from the Perished Sects), Paris Manuscript Number 1452, Paper Number 26.
21. Ibn Hazm, op. cit., Part 5, p.32.
22. Bahnassy, op. cit., p. 223.
23. al-Jahez, *al-Hayawan* (Living Creatures), Cairo, 1943, Part Seven, p. 56.
24. Abu Ubaid al-Qassern Ibn Salam, *Kitab al-Amwal* (The Book of Finance), al-Azhar and Dar al-Fikr, Cairo, 1976, pp. 203-303.
25. Ibrahim Fawzy, *Ahkam al-Usra Fil Jahiliya Wal Islam* (Family Codes in Pre Islamic Times and Under Islam), al-Kalima, Beirut, 1983, p.82.
26. As, for example, the Prophetic saying which is often cited by the Islamists when dealing with raising children: "Order your children to pray when they are seven, and beat them for it when they are ten, and separate their places of sleep" (cited by Jadul Haq, op. cit, p.32), as well as. "On the seventh day of his birth, a lamb should be slaughtered for the sake of the boy, he should be named, and protected from dangers. When the boy reaches six, he should be disciplined, and when he reaches even his bed should be separated. At thirteen he should be beaten for prayer and fasting, and at sixteen his father should marry him off and then help him out." (Cited by Muhammad Attiya al-Ebrashy, *Islamic Upbringing and its Philosophy: The Stages of Upbringing*, p.52.)
27. Ibn Sina, *Kitab al-Siyasah* (The Book of Politics) cited in Muhammad, op. cit., p. 150,
28. Ibn Sina, *al-Qanoun Fil Tibb* (Canon of Medicine), al-Muthanna Publishers, Baghdad, p. 1571.
29. Edited by Dr. Muhammad al-Habeeb al-Hayla and published in 1968.
30. Aly Ibn Hubal al-Baghdady, *alMukhtarat Fil Tibb* (An Anthology of Medicine). See the first part.
31. Ibn al-Jazzar, op. cit., pp. 68-69.
32. Ibn Sina, the Book of Politics, cited in Muhammad, op. cit., p. 137.

33. Ali Ibn Abbas al-Majoussy, *Kamel al-Sin'a* (The Comprehensive in Art of Medecine), Part Two, p.58.
34. Sa'id al-Daywahji, "*al-Ta'aleem alizami Fil Islam*" (Mandatory Education in Islam), Arab Horizons, Issue 6, 1979.

Published for the first time : *Riwaq Arabi* – Cairo 1997.