3 Islam and Human Rights

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Who is raising the question of religion/Islam and human rights, to whom, and to what end? Is the question raised for both sides of the equation, or only for the religion or the human rights side? There is a significant difference if the issue is raised by a religious believer who supports the universality of human rights, in contrast to a believer who opposes the universality of human rights, or an atheist who challenges the ability of religion (rather than religious believers) to support the universality of human rights. There is also a significant difference between raising the issue as a judgment about Islam or about human rights, as opposed to an inquiry about the implications of the universality of human rights for the integrity of a religious community.

Framing the question of whether Islam is inherently compatible or incompatible with human rights is problematic. The question assumes that there is a verifiably identifiable monolithic "Islam" to be contrasted with a definitively settled preconceived notion of "human rights." But who can definitively and exhaustively *know* what Islam is and what human rights are? No human being, whether self-identifying as a Muslim or not, can definitely and exhaustively "know" Islam, and no proposed human rights norms can qualify as universal standards unless and until they are accepted as such by their human subjects. The most anyone can legitimately speak of is his or her view of Islam, never Islam as such, and of human rights as they are already accepted by people around the world, including Muslims.

I also find it difficult to see how any conception of human rights can be "universal" by any definition of this term if it is inconsistent with the religious beliefs of Muslims at large. If universality is a normative claim that these rights *ought* to be universally accepted and applied, a believer will not voluntarily accept that claim if it is incompatible with her religious beliefs. To attempt to impose this notion on Muslims is not only imperialist, which is by definition a total negation of the concept of human rights itself, but also unsustainable in practice because it cannot be coercively enforced. Universality as an empirical assertion, that these human rights are actually accepted by the vast majority of people around the world, cannot be true if it is rejected by Muslims, an estimated quarter of humanity today.[1]

Framing the inquiry in terms of the inherent incompatibility between religion and human rights is also counterproductive. Speaking for myself as a

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Muslim advocate of human rights, if I am faced with a choice between being Muslim or a commitment to human rights, I will choose being Muslim without any hesitation, and would in fact find the choice absurd. No conception of human rights can possibly compete with my religion as such, and should not be expected to do so. A more productive inquiry concerns how my understanding and practice of Islam influence and is influenced by my commitment to upholding the universality of human rights. On both sides of the issue, the inquiry would be about Islam as I know and believe in it, and human rights as I understand and uphold them. In other words, I am unable to see how one can speak of an "objective" or abstract experience of religion, apart from its believers, or a conception of human rights that is independent of the ethical sensibilities and material context of the human beings who claim to uphold that conception.

I am not suggesting that religion is the only way to justify or uphold human rights, but I am saying that a Muslim, or any other believer, is as entitled to found his or her commitment to these rights on a religious foundation as others are entitled to found their commitment on secular or atheistic beliefs. Moreover, I don't see the possibility of or need for any single foundation of human rights for all human beings everywhere, whatever that foundation may be. As I will explain later, self-determination, including the right to decide the foundation of human rights one finds acceptable, is integral to the "human" in human rights. The foundation of human rights we accept are specific to who we are, in our own context, which need not be, and is unlikely to be, accepted by all other human beings who share the same commitment to these rights.

It may be helpful here to clarify my position in relation to how David Little describes it in his contribution to this volume: "Nevertheless, he [An-Na'im] has in some of his writings explicitly opposed the idea of religious neutrality as a basis for human rights."[2] In fact, my objection to all claims of neutrality is not limited to religious neutrality. I made this point in the chapter cited by Little: "It is not possible, or desirable, in my view to identify a set of neutrally formulated human rights. Any normative regime, which justifies a set of rights and determines their content, must necessarily represent a commitment to a particular value system."[3] Since no foundation of human rights can be neutral, whether philosophically, ideologically, religiously, culturally or otherwise, none can or should be binding on all of us simply because some of us find that foundation acceptable. For instance, Dr. Little seems to favor a secular human rights language as the drafters of the Universal Declaration of the Human Rights understood them in relation to John Rawls' idea of public reason, subject to Little's own modification. While I am grateful to the drafters of the Declaration for their splendid work, and respect Little's and Rawls' view of the justification of human rights *to them*, I see no reason why that should necessarily be binding on me or any other person.

In light of these remarks, the appropriate framing of the general subject of Islam and human rights should be about how to promote the practical application of human rights among Muslims. In my view, this endeavor is more likely to succeed

when human rights are presented to Muslims as consistent with their belief in Islam, rather than as a moral or political claim that is binding on them regardless of inconsistency with their religious beliefs. This is what I mean by the "framing" of the inquiry about Islam and human rights in the title of this chapter.

As I have suggested elsewhere, there are two aspects to this approach; one is an internal discourse among Muslims, the second is a cross-cultural dialogue between Muslims and non-Muslims.[4] The internal Islamic discourse, I believe, will include reinterpretation of certain aspects of Sharia (the normative system of Islam), especially issues of equality for women and freedom of religion.[5] Such reinterpretation is possible because any human conception of what Sharia means is necessarily a product of interpretation of its sacred sources (the Quran and Sunna of the Prophet) in the first place.[6]

The reference to "reframing" in the title is about transforming attitudes in social and religious life, and not about the application of the principles of Sharia as state law.[7] This reframing will not by itself resolve the problematic aspects of traditional interpretations of Sharia because of their social and personal consequences, but it will diminish the negative consequences of state enforcement of those aspects in practice, and facilitate resolution of the issues from an Islamic perspective. I am proposing a dual approach for promoting respect for human rights in Islamic societies and communities: challenging claims that Sharia can be enforced as state law, regardless of whether Muslims are the majority or minority of the population, while still striving to transform the social and personal understanding and practice of Sharia by Muslims outside the framework of state institutions.

The premise of both strategies is an appreciation that Islam is foundational for the commitment of Muslims to human rights, but that role is neither exclusive nor legal as such. The Universal Declaration of Human Rights (UDHR) of 1948 did not make any explicit reference to the foundations or sources of human rights to facilitate consensus over these rights. But this does not mean the issue of foundations is irrelevant or that human rights can only be founded on secular justifications. Believers have the right to found their commitment to human rights on their own religious beliefs, provided they are willing to concede the same right to others, each according to their own religious or philosophical convictions.

■ WHO IS THE "HUMAN" IN HUMAN RIGHTS?

By human rights, I mean moral and political entitlements that are due to all human beings equally by virtue of their humanity, and without any distinction on such grounds as race, sex, religion, or national origin. In other words, a human is entitled to these rights simply by being human, without any other requirement or qualification. The concept, normative content, and practice of human rights may perhaps be clarified by exploring the nature and implication of the mutual linking of the "human" and "human rights." This linkage, I suggest, helps us understand how perceptions of the human influence the scope, content, and methods of the

protection of human rights, and the quality of being human is enabled and realized through the protection of human rights.

Human rights are by definition universal, but it may be helpful to consider what this means at three levels: the concept (idea), the content (norms or standards), and the context of defining and implementing these rights. First, as a *concept*, human rights are necessarily universal, because they are supposed to be the rights of every human being, yet the "human" in this concept of human rights is particular to her or his identity, beliefs, experiences, and context. Second, assuming acceptance of the concept, there is then the question of its *content*: what are these rights and what makes them universal in the reality of permanent and profound adversity among human beings, individually and collectively? How can people of different cultural, religious, or philosophical orientations, different social and economic classes, education, and so forth, agree on what is due to every human being by virtue of his or her humanity? Third, there is also the role of *context* in the definition as well as the implementation of human rights in the reality of deeply rooted and structural differences in power relations among and within societies.

Each of these three aspects raises a paradox that may be mediated through practice over time, but cannot be theoretically resolved conclusively and permanently. For instance, does the claim that human rights are universal imply or require the existence of a "universal human being," and if so, who is that person or how do we identify her or him? As I see it, the paradox is that it is problematic either to affirm or to deny the notion of a universal human. Regarding specific human rights norms, even if we concede the fiction that international human rights are binding on one generation because they were negotiated and adopted by their state representatives, why should subsequent generations remain bound by those same norms? Moreover, the rationale of taking context seriously itself means that there are bound to be disagreements about the nature and implications of that for different people and locations at different times. By mediation of paradox at each level of analysis I mean that it is better to "negotiate" consensus than to assume it exists or attempt to impose theoretical uniformity from one perspective or another.

There is paradox in the process of mediation itself. The human in human rights is a self-determining person who should have the right and ability to decide to accept or reject the concept of human rights itself, and contribute to defining its content and participate in the implementation of these rights. But how can any person be self-determining when the "self" is socially constructed, and all possibilities of "determination" are themselves pre-determined by factors and forces beyond the choice or control of the person? We have no choice regarding when or where we are born, which class, race, or sex we belong to, or which parents, families or communities we are raised in. We have no effective control over the psychological, social, economic, and other factors that influence our attitudes and behavior. Paradoxically, the conception, content, and implementation of human rights are all shaped by the same conditions they seek to challenge in the sense that

it is difficult to imagine a right and how it can work in practice without imagining the violation of that right.

Moreover, the premise and rationale of self-determination is that the person should defend and protect her or his own rights, yet it is difficult to see how a victim of a human rights violation can have the ability and resources to protect her or his own rights. Whether it is arbitrary detention, suppression of freedom of speech and association, or denial of education, health care, or housing, the rights violation in fact hampers our ability to protect our rights. We need external resources and actors to protect our rights when we are actual victims of violations, yet reliance on external protection of rights is likely to perpetuate our dependency instead of enhancing our self-determination. Whoever provides the resources and acts to protect the rights of others will do so on his or her own terms which are, by definition, not those of the victims whose rights we purport to protect. When my rights are protected by others, they are the ones who decide what my rights mean and how they should be protected, and I become the "object" of their advocacy and charity, not the autonomous human subject who is protecting his own rights.

This paradox of "human rights dependency" can be mediated through the promotion of the cultural legitimacy of human rights in various societies in order to motivate and mobilize people to protect their own rights.[8] But the paradox continues, as dependency on external protection can only be diminished over time through the cooperation of internal and external actors. The difficulty here is not only that external actors are unlikely to appreciate the need to submit to internal initiative and leadership, but also that internal "beneficiaries" are unable to compel external actors to act against their view of which rights they wish to protect and how they wish to do that. Moreover, to require external actors to submit to internal leadership can be problematic when it means requiring external actors to accept attitudes and behavior within the community that they believe to be in violation of, for instance, the rights of women or children.[9] Yet, there is no alterative course of action to the constant mediation of these various levels and types of paradox within different cultural and political contexts.

Self-determination is primarily about an internal life, within each person, before it can be about interaction with external factors and actors, whether local or global. It is in that inner life that the people can find the moral courage to stand by their convictions about human rights, to be willing to endure hardship and risks to life and livelihood in protecting these rights for themselves. This inner moral resource will not only sustain victims of human rights violations when external help is not forthcoming, but also enable them to ensure that any external assistance that is forthcoming suits their own priorities and sensibilities. In other words, the moral courage from within enables people not only to resist oppression but also to negotiate on their own terms with those who claim to help them in doing so. A well-known example of what I mean is how Mahatma Gandhi's insight and ability to stand by his convictions and motivate other Indians to do the same

launched a massive and sustained non-violent resistance movement that ultimately compelled the British Empire to leave India.

The purpose and rationale of the international human rights system (its norms, institutions, and processes) and movement (its non-governmental activities) are to protect all of us precisely because very few of us have the level and sustainability of moral courage that Gandhi was able to achieve in his own lifetime. But in my view, we all need to have a little of Gandhi within ourselves if we are to realize the true potential of the human rights system and movement. I would further argue that we all have that potential, which is what I mean by "the human in human rights," but that potential can be realized within each of us in terms of our own moral frame of reference. This is my understanding of the expression attributed to Gandhi: "be the change you want to see in the world,"[10] that we should realize the value of human rights within ourselves in order for it to be realized in the world around us. This is a causal relationship, whereby internal transformation within the person is the means for the desired external change, which is the practical protection of human rights in this case.

To relate this perspective to the subject of this chapter: for people to protect their own human rights, as the self-determining human in human rights, we must have the courage to uphold these rights, regardless of the apparent lack of prospects of relief. Paradoxically, the less chance of immediate relief, the more important it is that we are morally strong enough to stand up for our own human rights. If we fail to uphold human rights within ourselves and suffer the consequences, whatever others do to help us will not be "true" protection of our human rights, even if external intervention succeeds in stopping violations in the short term. Moreover, there is also the need to promote our convictions and moral courage to stand up for our own rights, rather than expecting that strength and that courage to suddenly materialize in times of crisis simply because we need them then. I am calling for the deliberate use of the "space" provided by short-term relief to strengthen our convictions and enhance our moral courage to stand by our human rights for ourselves.

The question I will now turn to is, where is this courage going to come from? With due respect and appreciation for the answer each of us may have for this question, for me, the source I can and should cultivate for this purpose is my religion. My belief in Islam as my own religion is the source and methodology of cultivating my inner life as a self-determining human being who is capable of upholding his human rights. I would accept assistance to avoid violations of my rights, but my religion is the source I draw on to uphold my human dignity and self-determination beyond that immediate relief. Islam for me is where my humanity comes into being, and where human rights are anchored. I am not saying that this must be the way all others, including other believers, must perceive the issue, but only that this is the way I feel. Being a member of a community of Muslim believers should enable me to bring the collective will and power of that community to support the cause of human rights in solidarity with others who share that

commitment to human rights for their own reasons, too. But my ability to enlist the support of my community of believers to support and promote human rights depends on my ability to use arguments that are persuasive to them—in other words, through an Islamic discourse. To be able to make that argument, however, I need the protection of my human rights.

As suggested earlier, the appropriate *framing* of the subject of Islam and human rights is how to promote the practical application of human rights among Muslims as consistent with their belief in Islam. While this process calls for a variety of approaches, such as strategies of political and civil society mobilization and enhancement of institutional capacity, I will limit my remarks here to the role of Islamic discourse on human rights. The *reframing* I am proposing is that the question should relate to the religious and social realm and not in terms of enforcement of Sharia as state law. I will explain and support that side of the analysis in the next section of this chapter. For now I will focus on Islamic discourse on human rights.

■ CURRENT ISLAMIC DISCOURSE ON ISLAM AND HUMAN RIGHTS

In view of the history and current realities of Islamic societies around the world, we should expect a significant diversity of views about human rights, rather than uniformity or consistency of such views with preconceived notions of Islam and Muslims. Profound political and theological differences have divided Muslims from the beginning in the Arabia of the seventh century, leading to civil wars over issues of political power within a few decades of the Prophet's death. What came to be known as Sharia gradually evolved during the first three centuries of Islam through human interpretations of the Quran and Sunna of the Prophet.[11] That process was characterized by diversity of opinion among various schools of Islamic jurisprudence (*madhahib*) of the Sunni and Shia traditions, each according to its own methodology of *usul al-fiqh* (the science of sources or foundations of Islamic jurisprudence).[12] The established methodology of *usul al-fiqh* in that formative stage applied such techniques as reasoning by analogy (*qias*) and consensus (*ijma*) to develop a systematic corpus of Sharia principles out of the texts of the Quran and Sunna. When those textual sources were silent on a specific issue, the founding jurists of Sharia exercised their independent juridical reasoning (*ijtihad*).

Space does not permit explanation of the ways in which Sharia was implemented by communities, in contrast to the manner and extent it used to be applied or enforced by state institutions in the pre-modern era.[13] Whatever the situation may have been in various parts of the Muslim world through the centuries, Sharia principles were effectively displaced by European legislation and enforcement of positive state law during the colonial period in all fields except family law. Those colonial legal systems were generally continued by the new "nation states" with Muslim-majority populations after independence, with minor adjustments along

similarly secular lines. There was certainly no general return to pre-colonial administration of justice anywhere in the post-colonial Muslim world in any field except in family law. Matters of marriage, divorce, custody of children, and inheritance remained governed by Sharia principles throughout the colonial and post-colonial era. Since the 1970s, however, there have been mounting demands for the enforcement of certain principles of Sharia as the official law of the State, commonly known as the rise of "political Islam." This tension between the reality of secular national legal systems, on the one hand, and popular demands for the enforcement of Sharia by the State, on the other, is the general background and context of current debates the relationship of Islam to state law, democratic governance, human rights, and related concepts. For our limited purposes here, I will now present a brief review of different perspectives on Islam and human rights in particular.

At one end of the spectrum, proponents of an Islamic state (hereinafter called Islamists) tend either to reject openly the idea of universal human rights as an imperial Western imposition, or to engage in an apologia for conflicts between Sharia and human rights. Some Islamists, like Abu al-Ala al-Mawdudi (d. 1979),[14] assert a competing notion of what he calls "human rights in Islam," which is neither consistent with the concept of human rights as such, nor accurately Islamic in the sense of conformity with Sharia. Mawdudi represents a clear and instructive example of this perspective not only as probably the most influential Islamist ideologue of the twentieth century, but also because he expressly addressed human rights and related issues in his work.[15] I will briefly discuss this particular aspect for our purposes here, but will try to quote him here as much as space permits to avoid the risk of distortion of his view, which I criticize as a dangerous combination of contradiction, intellectual dishonesty, and romantic naïveté.

Mawdudi criticized what he called Western human rights as limited in theory and hypocritical in practice, and asserted that Islam established human rights many centuries before the West and according to a much superior conception. In his view, "human rights in Islam" are conferred by God, and cannot be withdrawn, amended, or changed by any government or legislative assembly in the world. Such a romantic notion, however, was never true in the history of Islamic societies, up to and including the so-called Islamic states in Iran, Pakistan, and Saudi Arabia today. There is no practical or realistic way of forcing governments to uphold rights simply because some scholars say God has decreed those rights. If governments are made to do this out of fear of political opposition, then how is that different from the model of "Western democracy" that Mawdudi rejected?

Moreover, Mawdudi's claims about particular "human rights in Islam" are untenable not only for their excessive ambiguity and intellectual dishonesty, but also because they are not about human rights as the rights of human beings as such. For instance, according to Mawdudi, "Islam gives the right of freedom of thought and expression to all citizens of the Islamic State on the condition that it should be used for the propagation of virtue and truth and not for spreading evil

and wickedness. … Under no circumstances would Islam allow evil and wickedness to be propagated."[16] But to speak of "Islam" at large is misleading in view of the permanent and profound diversity of opinions among Islamic schools of jurisprudence. Born and raised in India and then migrating to Pakistan after partition, Mawdudi must have been aware of that diversity at least among and between Sunni and Shia Muslims of the Indian sub-continent. Moreover, who is to determine what can be used "for the propagation of virtue and truth" and how and by whom can that issue be adjudicated and enforced in practice? Who is to decide what is "evil and wickedness" in order to disallow its propagation on behalf of Islam?

A striking illustration of Mawdudi's contradiction, intellectual dishonesty and romantic naïveté can be seen in his views on the status of non-Muslims in his ideal Islamic state. On the one hand, in his commentary on verse 2:29 of the Quran, which instructs Muslims to subdue non-Muslims, Mawdudi says:

> The purpose for which the Muslims are required to fight is not as one might think to compel the unbelievers into embracing Islam. Rather, their purpose is to put an end to the sovereignty and supremacy of the unbelievers so that the latter are unable to rule over men. The authority to rule should only be vested in those who follow the true faith; unbelievers who do not follow this true faith should live in a state of subordination. Unbelievers are required to pay *jizyah* (a poll tax) in lieu of the security provided to them as the *Dhimmis* ("Protected People") of an Islamic state.[17]

On the other hand, here is how he describes the status of non-Muslims in another publication:

> In an Islamic State, all non-Muslims will have the same freedom of conscience, of opinion, of expression (through words spoken and written) and of association as the one enjoyed by the Muslims themselves, subject to the same limitations as are imposed by law on the Muslims. Within those limitations they will be entitled to criticize the government and its officials, including the Head of the State.
>
> They will also enjoy the same rights of criticizing Islam as the Muslims will have to criticize their religion.
>
> They will likewise be fully entitled to propagate the good points of their religion, and if a non-Muslim is won over to another non-Islamic creed, there can be no objection to it. As regards Muslims, none of them will be allowed to change creed … and it will be perfectly within their constitutional rights if they refuse to act against their conscience or creed, so long as they do not violate the law of the land.[18]

The status of non-Muslims presented in the first statement is closer to the established status of non-Muslims under Sharia, but totally inconsistent with the rights granted to non-Muslims by Mawdudi in the second quotation. Contrary to what Mawdudi asserts, it is simply not true of any school of Islamic jurisprudence, Sunni or Shia, that "all non-Muslims have the same freedom of conscience … as the one enjoyed by the Muslims themselves." In fact this assertion is so obviously wrong according to Mawdudi's own interpretation of verse 2:29, quoted above, that it

cannot be explained as a simple oversight. Moreover, the term "non-Muslims" is misleading in this context because it covers all unbelievers, whereas Sharia makes a clear distinction between People of the Book (mainly Christian and Jews) and those deemed by Sharia to be unbelievers, such as Buddhists, followers of native tribal religions, polytheists, and atheists. While People of the Book enjoy limited communal rights short of full citizenship, Sharia does not acknowledge any legal personality or security of person and property of an unbeliever in the second group.

At the other end of the spectrum from Islamist ideologues like Mawdudi we find Muslim advocates of international human rights standards who have recently attempted to develop Islamic support for human rights through a critical examination of Sharia and calls for *ijtihad* (independent juridical reasoning) and reinterpretation of the Quran and Sunna of the Prophet.[19] Since space does not permit a sufficiently detailed presentation of views for critique or evaluation, I will simply offer a few examples and cite their works for reference.

Well-known scholars publishing in English who have made significant contributions to the *ijtihad* re-interpretation approach include Abdolkarim Soroush,[20] Asghar Ali Engineer,[21] and Khaled Abou el-Fadl.[22] Muslim feminist scholars focusing on gender and the human rights of women and particular include Leila Ahmed,[23] Amina Wadud,[24] Kecia Ali,[25] Riffat Hassan,[26] and Shaheen Sardar Ali.[27] The call for a critical study of the Quran and a reevaluation of human rights from an Islamic perspective is made by several scholars under the banner of "progressive Islam." To Omid Safi, one of the founders of this approach, being a Muslim means affirming the humanity of all human beings, regardless of their religion, race, gender, and other factors. He calls for the practice and positive use of *ijtihad* (independent juridical reasoning) in order to promote a critical and progressive interpretation of Islam that enforces justice and equality throughout the world.[28] Safi's colleagues on the progressive path include Ulil Abshar-Abdallah, Farid Esack, and Amir Hussain.[29]

I am unable to offer specific comments or critique on pro-human rights scholars without first reviewing their work in accurate detail. In general, however, I see that the challenge is how to develop and apply a systematic and effective methodology of reinterpretation of Sharia, instead of arbitrarily selecting sources and historical evidence to support one view or another on an isolated issue or subject. It is easy to find verses of the Quran that apparently support various modern human rights principles, such as freedom of religion and equality for women. But one can equally quote verses that seem to support the opposing view. The real issue is to establish a consistent "framework of interpretation," and not simply the availability of texts of Quran that can be understood one way or another.

In my view, *Ustadh* Mahmoud Mohamed Taha has provided a consistent framework of interpretation that addresses a wide range of reform issues in a systematic manner on the basis of the historical contingency of revelations of the Quran and reversal of the process of abrogation (*naskh*) applied by early scholars of Sharia.[30]

Whether through Taha's methodology or another adequate approach, the need for systematic revision of the methodology of Sharia (*usal al-fiqh*) remains the primary theoretical challenge. There is also the practical challenge of how to promote such methodology among the Muslim public at large in the present national and global context of human rights debates everywhere.

Moreover, there is some urgency in this quest for an appropriate reform methodology and its practical propagation. In between the two poles of the spectrum outlined above, there is a wide range of civil society actors who seem to be either unaware of the human rights concerns with traditional interpretations of Sharia or hope to continue their work without having to confront that issue. Beyond all these active groups, the vast majority of the Muslim public is probably open to being persuaded one way or the other. In my experience, Muslims in general tend to have a vaguely favorable view of human rights, but that could change if confronted with a claim that human rights are inconsistent with Sharia, unless that negative view is effectively countered in favor of human rights. Though I am unaware of empirical evidence on the point, it seems reasonable to expect that civil society groups as well as the general Muslim public can be ambivalent in their human rights commitments when faced by a concerted assault from Mawdudi's type of argument, unless they are able to reply on an "Islamic defense."

■ CONCLUSIONS

I seem to have managed to end up caught in a paradox by insisting on the right of Muslims to assert a religious foundation or justification for human rights, without being able to establish the existence of such foundation in current Islamic discourse on human rights. In conclusion, I would still maintain that there is no alternative to accepting people's own foundations for human rights, whether religious or secular. In other words, whatever difficulty may arise in grounding human rights in religion for believers who wish to assert that foundation must be acknowledged and addressed. If we insist on a total frontal confrontation, the human rights side will lose among believers. In my view, however, such a zero-sum game is unnecessary. In the case of Islam in particular, I would recall my plea for a framing and reframing of the inquiry on Islam and human rights as a means for progressively mediating this apparent paradox, without necessarily totally resolving the tension between Islam and human rights.

As noted earlier, by "reframing" I mean focusing on transforming the attitudes of Muslims (and other believers) regarding the social and religious meaning and implications of human rights, and not in terms of the application of the principles of Sharia as state law. The fact that Sharia principles cannot by definition be enforced as state law,[31] even where Muslims are the predominant majority of the population, Sharia objections to human rights standards cannot affect the legal enforcement of those standards by the State. In other words, from a strictly legal point of view, Sharia as such should have no bearing on whether or not a

Muslim-majority state adopts and implements human rights treaties or not. However, the sociological and political challenge to such adoption and enforcement remains if Muslim public opinion is opposed in the belief that human rights norms are contrary to Sharia or Islam in general.

The premise of my argument is that, by its nature and purpose, Sharia can only be freely observed by believers, and its principles lose their religious authority and value when they are enforced by the State. This religious dimension requires free reflection and choice by believers among equally accessible competing interpretations and religious authorities, independently from the coercive authority of the State. This free reflection and observance is lost when the State enforces Sharia. Since effective governance requires the adoption of specific policies and the enactment of precise laws for systematic general application, the administrative and legislative organs of the State must select among competing views within the massive and complex corpus of Sharia principles. Whatever principle of Sharia is enacted by the State as positive law ceases to be truly Sharia by the very act of enacting it as the law to be coercively enforced by the State. The inherent subjectivity and diversity of Sharia principles mean that whatever is enacted and enforced by the State is the political will of the ruling elite, not the normative system of Islam as such. Yet, such legislation will be difficult for the general population to resist or even debate when state law is presented as divine command.

To mediate the delicate relationship between religious norms and state law, I am proposing that the rationale of all public policy and legislation should be based on what might be called "civic reason." Muslims and other believers should be able to propose policy and legislative initiatives emanating from their religious beliefs, *provided* they can support them in free and open debate by giving reasons that are accessible and convincing to the generality of citizens, regardless of their religion or other beliefs. But since such decisions will in practice be made by majority vote in accordance with democratic principles, all state action must also conform to basic constitutional and human rights safeguards to protect against the tyranny of the majority. Accordingly, the majority would not be able to implement any policy or legislation that violates the fundamental constitutional rights of all citizens, women and men, Muslims and non-Muslims alike.

In this way, both the adoption of human rights norms as well as opposition to them must be founded on civic reason, without reference to the religious beliefs of any community. At the same time, however, since Sharia principles will remain binding on all Muslims in individual and collective practice outside state institutions, the need for reform through internal debate about the interpretation of Sharia will continue.

In the final analysis, however, the realistic prospects of such constant mediation in the social and sociological realm, without affecting the legal obligations of the State to uphold human rights standards, will depend on the credibility and moral authority of the human rights themselves, as reflected in the practice of all states, especially the major powers. As I have argued elsewhere,[32] if the human rights

project is to collapse, I believe, that would be as much the result of the failure of Western major powers to uphold these rights in their own domestic practice and international relations behavior, as the consequence of Islamic opposition to human rights.

■ NOTES

1 According to a study by the Pew Forum on Religion and Public Life, there are approximately 1.6 billion Muslims in the world today. 62.1%of the Muslims of the world live in Asia and the Pacific, 19.9% in the Middle East and North Africa, 15% in Sub-Saharan Africa, 2.7% in Europe, and 2.7% in the Americas. Europe is home to 44 million Muslims—around 6% of its population. More than half of the 5.2 million Muslims in the Americas live in the U.S.—however, they make up just 0.8%. of the population there. The data also showed that there were more Muslims in Germany than in Lebanon, and more in Russia than in Jordan and Libya together. See Pew Forum on Religion and Public Life, "The Future of the Global Muslim Population" (Washington, DC: Pew Research Center, 2011), accessible at: http://pewforum.org/The-Future-of-the-Global-Muslim-Population.aspx

2 See chapter by David Little herein in texts accompanying his notes 17 and 18.

3 Abdullahi Ahmed An-Na'im, "Toward an Islamic Hermeneutics for Human Rights," in *Human Rights and Religious Values: An Uneasy Relationship?* Abdullahi Ahmed An-Na'im, et al., eds. (Grand Rapids, MI: Wm. B. Eerdmans Pub. Co., 1995), 229.

4 Abdullahi Ahmed An-Na'im, ed., *Human Rights in Cross-Cultural Perspectives: Quest for Consensus* (Philadelphia: University of Pennsylvania Press, 1992).

5 See, for example, Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law* (Syracuse, NY: Syracuse University Press, 1990).

6 Abdullahi Ahmed An-Na'im, *Islam and the Secular State: Negotiating the Future of Sharia* (Cambridge: Harvard University Press, 2008), 12–15.

7 For a full statement and Islamic justification of this view see, generally, An-Na'im, *Islam and the Secular State*.

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11 See, generally, Noel Coulson, *A History of Islamic Law* (Edinburgh: University of Edinburgh Press, 1964); Wael Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005).

12 Fazlur Rahman, *Islam* (Chicago: University of Chicago Press, 1979), 79–83.

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14 On Mawdudi's life and work see, for example, jamaat.org, "A Short Biography of Syed Abul Ala Mawdudi" (2008) at http://www.abulala.com/about.aspx#ch2, viewed April 19, 2010; and *Encyclopedia of the Middle East* (MiddleEastWeb), "Abul Ala Maududi," http://www.mideastweb.org/Middle-East-Encyclopedia/abul-ala-maududi.htm, viewed April 18, 2010.

15 Mawdudi is reported to have written over 120 books, booklets and pamphlets and made over a 1000 speeches and press statements, of which about 700 are publicly

available now. His books have been translated into many major languages, including Arabic, English, Turkish, Persian, Hindi, French, German, Swahili, Tamil, and Bengali.

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19 For discussion of the major Muslim scholars working on these and related issues see, for example, Shireen Hunter, *Reformist Voices of Islam: Mediating Islam and Modernity* (Armonk, NY: M.E. Sharpe, 2009).

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22 Khaled Abou el-Fadl, *Speaking in God's Name: Islamic Law, Authority, and Women* (Oxford: Oneworld Press, 2005).

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29 See their respective chapters in Safi, ed., *Progressive Muslims*. See also, for example, Farid Esack, *The Quran, Liberation and Pluralism* (Oxford: Oneworld Publications, 1997).

30 Mahmoud Mohamed Taha, *The Second Message of Islam* (Syracuse, NY: Syracuse University Press, 1987).

31 An-Na'im, *Islam and the Secular State*.

32 See, for example, Abdullahi Ahmed An-Na'im, "Why Should Muslims Abandon Jihad? Human Rights and the Future of International Law," *Third World Quarterly*, 27(5) (2006): 785–97.

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