

Islamic Politics and the Neutral State

A FRIENDLY AMENDMENT TO RAWLS?

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It may be helpful to begin with a brief explanation of two aspects of my title. First, by “Islamic politics,” I refer simply to the Islamic dimension in the politics of various communities of Muslims, whether these constitute a so-called majority or a minority of the population. All politics is of course specific and contextual to the time and place, socioeconomic conditions, and so forth of a particular population. The term “Islamic politics” refers to how Islamic values and concepts are deployed in the political discourses, negotiations, and strategies of local or national Muslim communities in their particular contexts. I do not believe that there is a distinctively “Islamic politics” that is peculiar to Muslims and shared by all of them, historically and across the world today. In my view, the Islamic politics of Muslims in India today may have more to do with the “Hindu politics” of their neighbors than with Islamic politics in Senegal. It is in relation to this conception of Islamic politics that I discuss the need for a religiously neutral state in this chapter.

The second aspect of my title to explain is that what I am proposing is a real “amendment” to John Rawls’s view of religion and not simply a shift in terminology. When Rawls and other North American and

European political theorists speak of religion, they mean Christianity as they know it. This is appropriate and necessary for them, but it is wrong to assume or expect their thinking to apply to other religions in drastically different contexts. With all due respect, the issue is not one of simply waiting for believers in other religions to “catch up” with North American and European Christians in framing the issues of religion, state, and politics in the terms that Rawls or other theorists of those regions propose. Whatever Muslims need to do, they must do it in terms of their own religion and context.

Yet, my proposed amendment is nonetheless friendly in that it respects and draws upon Rawls’s theory and related ideas in examining the issues regarding Islamic politics *on its own terms* and *in its own context*. In making my claims, however, I do not engage with or refer to critics of Rawls who adopt a North American or European view of Christianity similar to his, for the same reason that I think his theory must be amended in relation to Islamic politics. Instead, I seek to develop and apply a theory of Islam, state, and politics that draws on Rawls’s thought without being bound or limited by it or its critics.

With these clarifications in place, I now turn to my argument. The question famously posed by John Rawls is, “How is it possible for those affirming a religious doctrine that is based on religious authority . . . also to hold a reasonable political conception that supports a just democratic regime?”¹ However, as I expect Rawls would have accepted, it is not reasonable to raise this question without considering the nature of the religion and doctrine in question, that is, without understanding the nature and formation of religious authority and how a view comes to be a “religious doctrine” for those who affirm it. Reasonable answers to these questions vary from Christianity to Islam, for instance, as well as within each of these two sets of religious traditions. The manner in which certain religious doctrines become entrenched in Catholic Christianity—like those regarding contraception or abortion, for instance—differs from the corresponding doctrines in one Protestant denomination or another. Differences in the nature and formation of religious authority are also found in the Islamic traditions—religious authority in the Sunni traditions (in the plural) is different from that among Shia traditions (also in the plural).² In my view, it is unreasonable to assume that one understands what “a religious doctrine that is based on religious authority” is for all

religious traditions, or how believers in any religion in every context would react to political authority on the basis of their religious belief. And as I will briefly explain, even the distinction between the so-called religious and secular domains does not apply to all religious traditions.

My underlying concern about Rawls's view of religion, then, is that it adopts an essentialist understanding of religion and religious discourse. Regarding Islam, for instance, there is already a lot of what Rawls would qualify as "public reason" in Islamic religious reasoning, unless that is automatically deemed to be disqualified because it comes from a "comprehensive doctrine." To begin with, the Qur'an always gives accessible and comprehensible reasons for its normative claims and encourages Muslims to reflection and rational reasoning.³ Indeed, the Qur'an states that reflection and understanding are the purpose of the revelation of the Qur'an itself.⁴ Early Muslim scholars and jurists did not simply postulate that some conduct is a sin or not, but gave reasons for their ruling that are comprehensible and reasonable to any person, believer or not. One may not agree with an Islamic jurist's conclusion, but that would not be for lack of effort on the part of the jurists to be persuasive beyond simply asserting a religious rationale.

What Rawls is concerned about—and with this I fully agree—is that purely and categorically religious reasons ought not to be the primary justification of public policy or legislation, as, for example, when a state penalizes conduct simply because it is a sin. The same conduct may be a sin and a crime (for instance, theft), but being a sin should not be the reason for its being a crime. The reasons and process of reasoning for the two are entirely different and should not be conflated into a single process: the reasons and reasoning for penalizing some conduct should never be simply "because God said so," since other citizens may not accept my God or may disagree with me about the meaning of what God said. As I will explain, this is the rationale of my call for the religious neutrality of the state, and also the reason for my fundamental agreement with Rawls's premises and theory.

In this light, what I mean by "a friendly amendment to Rawls" in my title is that the meaning of Rawls's question and the range of reasonable responses to it are relative to a particular religious tradition (not "religion" in the abstract) and to the context in which believers are responding to the question. Part of that context is the postcolonial

predicament that African and Asian Muslims share with their non-Muslim neighbors in former colonies, including a profound suspicion of universalizing assertions emanating from North Atlantic societies—about the conception of political authority in this instance—that are supposed to apply to all human societies. Assertions about what is required for any democratic model of governance, anywhere in the world, are too reminiscent of the “civilizing mission” of European colonialism to be taken at face value. This deep and complex suspicion makes Rawls’s notion of arguing from conjecture from what other people believe—to show them, as he puts it, that “despite what they might think, they can still endorse a reasonable conception that can provide a basis for public reasons”⁵—totally unpersuasive. Since persuasion is the aim of public reason, the question should be how to achieve that in practice and in terms of a shared view of political authority, which is difficult to imagine succeeding with me, as a religious believer, if my religious discourse is excluded from the domain of public reason.

The question mark in my title is intended to indicate the possibility that what I am proposing may not be an amendment to Rawls after all, if he did allow for what I am stipulating. It may be true, as Tom Bailey and Valentina Gentile indicate in their introduction to this volume, that Rawls accepts the possibility of reasons based on comprehensive doctrine being employed in support of a shared conception of political authority, and also that such reasons may be employed in public deliberations.⁶ But, whether this is a correct reading of Rawls’s views or not, my purpose is to uphold the right of each member of the relevant community to support a shared conception of political authority for whatever religious, secular, or other reasons he or she chooses. What I find objectionable is the stipulation of what qualifies as “public” reason in one setting or another. Whether citizens have a shared conception of political authority is a legitimate concern, but it is not a requirement that they must have or develop for preconceived, stipulated reasons. If the reasons that citizens advance and their manner of reasoning actively undermine a shared conception of political authority, then that is a separate inquiry to pursue, without insisting on a blanket rejection of one type of reason or another.

So, I am not suggesting that Rawls’s question should not be raised in a Muslim context, but only that the meaning of this question and

the reasonable response to it are significantly different from what Rawls and his critics have conceived in their respective contexts. In particular, the normative system of Islam, Sharia,⁷ is an integral part of the common understanding of Islam among Muslims, and its implications for political life are complex and contingent. On the one hand, although Sharia norms cannot be enforced as positive law of the state as such, as I will explain, they are binding on Muslims in great detail and with very strong religious sanction. A pious Muslim must justify at a personal religious level any departure from what Sharia prescribes, whether it is an obligation to act or to refrain from action. On the other hand, there is a wide diversity of opinion among Muslim jurists on every conceivable issue and each Muslim has a choice among competing views, as his or her individual consciousness dictates. It may be true that the majority of Muslims prefer to conform to the practice of their local communities rather than exercise individual choice in practice. Still, for Muslims maintaining the right and duty to seek Sharia justification is integral to their right to religious self-determination.

Still, Muslims everywhere share their states with non-Muslim citizens, and share the world with the rest of humanity. Muslims' views and behavior regarding Sharia, the state, and politics affect people around them, and are subjects of legitimate concern for non-Muslims. Even among Muslims, whether they constitute a majority or a minority of the population, there is much disagreement on what Sharia means and entails for public affairs. One aspect of this is what I call the "contingency" of the role of Islam in the politics of any Muslim society, even within the same region.⁸

As can be seen in the cases of Northern Nigeria and Senegal, for instance, there can be significant differences in the role of Islam in public life, even in societies that identify with the same school of legal thought—in these cases, the Maliki School of Sunni jurisprudence.⁹ Whatever one may think of the relationship of Islam to the state and politics in one place or another, there is no doubt that it is contingent and contested everywhere. With such a wide range of possible outcomes of dynamic factors, and in view of the nature of Sharia and its relationship to state law, for any theory to be appropriate in an Islamic context, it must account for Sharia in ways that Muslims accept as legitimate. This is one dimension that Rawls did not and could not have considered properly.

In my view, there are ways of benefiting from Rawls's views in theorizing the relationship between Islam and the state in Africa and Asia, provided the application of those views in an Islamic context is not expected or assumed to be the same as in a North American or West European context. Whenever I present my model of a secular state for a religious society, I frequently get questions or comments to the effect that since my concept of "civic reason," as I will explain, is so similar to Rawls's concept of "public reason," my proposal must mean this or that or suffer from this or that weakness, depending of what the person thinks of Rawls's theory. My plea is that what I am proposing in the Islamic context may be good or bad, fail or succeed, but that will not be because I am faithfully following or departing from Rawls's theory. This is not the case not only because Islam is not Christianity and the Muslim world is not Christendom, but also because there are too many theological, historical, and contextual differences within each religion and region to speak of any of them in monolithic terms.

In the first and second parts of this chapter, I will first present an overview of my understanding of the relationship between Islam, the state, and politics. This is an understanding that attempts to take Sharia seriously on its own terms, and can be summarized in the following propositions.¹⁰ First, the premise of my argument is that any understanding of Sharia is the product human interpretation and as such is not immutable. Since what Muslims of any community accept as a Sharia norm is the product of human interpretation, it can change through human interpretation, as internalized by Muslims through an internal discourse to promote consensus around the new interpretation, as happened with the earlier norm-formation process. Second, the notion of an Islamic state to enforce Sharia as state law is a postcolonial idea that has no basis in Islamic political thought or practice prior to the 1940s. Third, while Islam and the state should be institutionally separated, Islam and politics cannot and should not be separated. Since Muslims will act politically according to their religious beliefs, it is better to acknowledge and regulate that reality than to ignore or exclude it. Fourth, the tensions raised by separating Islam from the state while acknowledging its impact on politics can be defused through what I call "civic reason,"¹¹ which is a nonprescriptive view of what Rawls calls "public reason."

In the third part of this chapter, I will briefly consider this view of Islamic politics in relation to common perceptions of Rawls's theory on political authority, public reason, and related views. What I suspect a possible "friendly amendment" might relate to is the difference between the theological history and political context of Rawls's thinking and that of Islamic politics in postcolonial Africa and Asia. I will then conclude with some reflections on whether these two perspectives can accept or support a general theory of religion, the state, and politics.

ISLAM, SHARIA, AND THE MODERN STATE

Early Muslim scholars developed the structure and methodology known as *usul al-fiqh*, through which Muslims can comprehend and implement Islamic precepts as conveyed in the Qur'an and Sunna (also known as Hadith: reports of what the Prophet is believed to have said or did). In its original formulations, this field of human knowledge sought to regulate the interpretation of these foundational sources in light of the historical experience of the first generations of Muslims. It also defines and regulates the operation of such juridical techniques as consensus (*ijma*), reasoning by analogy (*qiyas*), and juridical reasoning (*ijtihad*). Although these techniques are commonly taken simply as methods for specifying Sharia principles, rather than substantive sources as such, consensus and juridical reasoning in fact had a much more foundational role. Indeed, in my view, it is this role that can form the basis of a more dynamic and creative development of Sharia now and in the future.

It can also be said that the consensus of generations of Muslims from the beginning of Islam that the text of the Qur'an is in fact accurately contained in the written text known as *al-Mushaf* is the underlying reason for the text's acceptance by Muslims. The same is true of what Muslims in general accept as authentic reports of what the Prophet said and done—namely, the Sunna—although that took longer to establish and is still controversial among many Muslims. In other words, our knowledge of the Qur'an and Sunna is the result of intergenerational consensus since the seventh century. This is not to say or imply that Muslims manufactured these sources through con-

sensus, but simply to note that we know and accept these texts as valid because generation after generation of Muslims has taken them to be so. Moreover, consensus is the basis of the authority and continuity of *usul al-fiqh* and all its principles and techniques because this interpretative structure is always dependent on its acceptance as such among Muslims in general from one generation to the next. In this sense, consensus is the basis of the acceptance of the Qur'an and Sunna themselves, as well as the totality and detail of the methodology of their interpretation.

Furthermore, Muslims refer to the Qur'an and the Sunna for religious guidance through the structure and methodology that they have been raised to accept, and normally within the framework of a particular school of thought (*madhhab*) and its established doctrine and methodology. Muslims do not normally approach religious texts in a fresh and original manner, without preconceived notions of how to identify and interpret the relevant texts. In other words, whenever Muslims consider the Qur'an and Sunna, they do so through the filters not only of layers of experience and interpretation by preceding generations, but also of an elaborate methodology that determines which texts are deemed to be relevant to any subject and how they should be understood. Human agency is therefore integral to any approach to the Qur'an and Sunna at multiple levels, ranging from centuries of accumulated experience and interpretation to the seeking of religious opinion on specific issues (*fatwa*) from local religious leaders or via the Internet. As Bernard Weiss puts it, "Although the law is of divine provenance, the actual construction of the law is a human activity, and its results represent the law of God *as humanly understood*. Since the law does not descend from heaven ready-made, it is the human understanding of the law—the human *fiqh* [literally, understanding] that must be normative for society."¹² There is consequently an underlying paradox in Muslims' treatment of authority. On the one hand, being a Muslim is founded on the strict individual responsibility of each and every Muslim to know and comply with what is required of him or her by Sharia. That this fundamental principle of individual and personal responsibility can never be abdicated or delegated is one of the recurring themes of the Qur'an.¹³ On the other hand, Muslims have always tended to seek and rely on the advice of scholars and religious leaders they trust, which means that both the advisor and the

advisee are responsible for the advisee's actions. Over time, the individual tendency to seek advice has in some cases evolved into some degree or form of institutionalization of religious authority, contrary to the original theological premise of individual responsibility.

The lack of theological support for institutionalized religious authority in Islamic traditions may sometimes lead to problematic outcomes, as when extremist groups challenge the traditional authority of established scholars and institutions of learning to propose radical views of aggressive jihad. This risk not only is unavoidable in view of the nature of Islamic religious authority, but is in my view preferable to limiting that authority to certain designated persons or institutions, which would thereby cause the right of other believers to disagree with their views to be forfeited. Legitimate Islamic religious authority cannot be monopolized or institutionalized because it is premised on religious knowledge, piety, and interpersonal trust that cannot be quantified or verified for institutional application.

The separation of Islam from the state and the regulation of its political role through constitutionalism and the protection of human rights that I propose are necessary to ensure freedom and security for Muslims to participate in proposing and debating fresh interpretations of those foundational sources. For any understanding of Sharia is always the product of juridical reasoning in the general sense of reasoning and reflection by human beings as ways of understanding the meaning of the Qur'an and Sunna of the Prophet. Since determinations about whether or not any text of the Qur'an or Sunna applies to an issue, as well as whether or not it is categorical, who can exercise *ijtihad*, and how, are all matters that can only be decided by human reasoning and judgment, imposing prior censorship on such efforts violates the premise of how Sharia principles can be derived from the Qur'an and Sunna.

It is illogical to say that *ijtihad* cannot be exercised regarding a specific issue or question because that determination itself is the product of human reasoning and reflection. It is also dangerous to limit the ability to exercise *ijtihad* to a restricted group of Muslims who are supposed to have specific qualities, because that will depend in practice on those human beings who set and apply the criteria of selecting who is qualified to exercise *ijtihad*. To grant this authority to any institution or organ, whether it is believed to be official or private, is dangerous

because that power will certainly be manipulated for political or other reasons. Since knowing and upholding Sharia are the permanent and inescapable responsibility of every Muslim, no human being or institution should control this process for Muslims. The process of deciding who is qualified to exercise *ijtihad* and how it is to be enjoyed by every Muslim, as a matter of religious belief and obligation, cannot be subject to any prior censorship or control. In other words, any restriction of free debate by entrusting human beings or institutions with the authority to decide which views are to be allowed or suppressed is inconsistent with the religious nature of Sharia itself.

The founding jurists and scholars of Sharia exercised a profound acceptance of the diversity of opinion, while seeking to enhance consensus among themselves and their communities. This was done through the notion that whatever is accepted as valid by consensus (*ijma*) among all jurists—or, according to some jurists, the wider Muslim community—is deemed to be permanently binding on subsequent generations of Muslims.¹⁴ Once again, however, the many practical difficulties of applying this notion were clear from the beginning. For those who wanted to confine the binding force of *ijma* to consensus among a select group of jurists, the problem was how to agree on the criteria for identifying those jurists and how to identify and verify their opinions. If one is to say that the authority of *ijma* is to come from the consensus of the Muslim community at large, the question still remains of how to determine and verify that this has happened on any particular matter. Regardless of whether the consensus is supposed to be of a group of scholars or of the community at large, there is also the further question of why the view of one generation should bind subsequent generations. And, whatever solutions one may find for such conceptual and practical difficulties, these solutions will always themselves be *the product of human judgment*. In other words, Sharia norms cannot possibly be drawn from the Qur'an and Sunna except through human understanding, which necessarily means both the inevitability of differences of opinion and the possibility of error, whether among scholars or the community in general.¹⁵

In this light, the question becomes that of how and by whom such differences of opinion can be properly and legitimately settled in practice in order to determine which positive law is to be applied in any

specific case. The basic dilemma here can be explained as follows. On the one hand, there is the paramount importance of a minimum degree of certainty in the determination and enforcement of positive law for any society. The nature and role of positive law in the modern state also serve to regulate the interaction of a multitude of actors and complex factors in ways that cannot possibly be fully accounted for by an Islamic religious rationale alone. This is particularly true of Islamic societies today, due to their growing interdependence with non-Muslim societies around the world.

On the other hand, a religious rationale is necessary for the binding force of Sharia norms for Muslims. Precisely because Sharia is supposed to be binding on Muslims out of religious conviction, a believer cannot be religiously bound except by what he or she personally believes to be a valid interpretation of the relevant texts of the Qur'an and Sunna. Yet, given the diversity of opinions among Muslim jurists, whatever the state decides to enforce as positive law is bound to be deemed an invalid interpretation of Islamic sources by some of the Muslim citizens of that state. The strong traditional view has always been, as Noel Coulson puts it, that "each individual Muslim was absolutely free to follow the school [of jurisprudence] of his choice and that any Muslim tribunal was bound to apply the law of the school to which the individual litigant belonged."¹⁶ Accordingly, an individual also had the right to change his or her school of law on a particular issue.

This situation continued throughout the Muslim world until the introduction of *Al-Majalla* by the Ottoman Empire during the period 1867–77, and more widely through the enactment of family law codes in most Islamic countries during the first half of the twentieth century. In Coulson's words, "The principle underlying the codes is that the political authority has the power, in the interest of uniformity, to choose one rule from among equally authoritative variants and to order the courts of his jurisdiction to apply that rule to the exclusion of all others; . . . the codes [embody] those variants which were deemed [by the political authority of the state] most suited to the present standards and circumstances of the community."¹⁷

The drastic transformation in the nature of the states under which Muslims lived, as well as the nature of law and the administration of justice, began with the decline of the Mogul Empire in the Indian

subcontinent and the Ottoman Empire in the Middle East.¹⁸ European models of the state were imposed through European colonial rule across the Muslim world, from West Africa to Southeast Asia, and continued through the Russian domination of Islamic Central Asia. Thus, for the first time in the history of Muslims, the state became the exclusive and explicit authority for the making and enforcement of law through the centralized administration of justice.¹⁹

The European model of the state that has been imposed on Islamic societies through colonialism was a centralized, bureaucratic, and hierarchical organization that comprised institutions, organs, and offices that are supposed to perform highly specialized and differentiated functions through predetermined rules of general application.²⁰ Moreover, while the state is distinct from other kinds of social associations and organizations in theory, it remains deeply connected to them in practice for its own legitimacy and effective operation. For instance, the state must seek out and work with various constituencies and organizations in performing its functions, such as maintaining law and order and providing educational, health, and transport services.

Therefore, state officials and institutions cannot avoid working relationships with various constituencies and groups who have competing views of public policy and its outcomes in the daily life of societies. These constituencies include nongovernmental organizations, businesses, political parties, and pressure groups, which may or may not be religious and may be so in different ways. These working relationships not only are necessary for the ability of the state to fulfill its obligations, but are also required by the principle of self-determination. The autonomy and distinctive nature of the state are a means to the end of enabling all citizens to participate in their own government, not an end in itself. The state incorporates the participation of such nonstate actors through formal mechanisms of negotiation and representation as well as through informal means of communication and mutual influence.²¹ These dynamic interactions between state and nonstate actors raise the risks of conflict and competition on all sides, and can also compromise the autonomy of state actors as each nonstate actor seeks to maximize its influence on state policy and administration. These processes should be moderated and checked through the development of stronger state institutions that can keep their relative autonomy in dealing with diverse groups and their competing demands.

ISLAM, POLITICS, AND CIVIC REASON

In practically every society, religious groups are an important policy constituency on fundamental matters of social life, from education to taxation and from issues of public and private morality to charitable social functions. The negotiations between religion and state with regard to these issues can be viewed as arrangements whereby religious groups are acknowledged as an important political constituency, which is neither taken over by the state nor allowed to take over the state itself or any of its institutions. The religious neutrality of the state as the principle of separation of state and religion helps achieve this delicate balance by providing a framework for securing the legitimacy of the state among religious communities while regulating how their concerns are reflected in public policy with due regard to the concerns and interests of other communities and citizens at large.

Since citizens who are not religious or who do not organize to lobby the state as religious communities are entitled to equal respect for their views and interests, the state and its organs must not fall under the control of one religious community, however large it may be. In fact, the neutrality of the state regarding all religious and non-religious perspectives is more important in relation to dominant groups because the risks of state bias in their favor are greater than in the case of minorities. It should also be noted that perception in such matters can be as important as reality because the appearance of bias tends to undermine public confidence in the neutrality of the state, even if it is not true in fact. The religious neutrality of the state provides a basic structure whereby the state is neither partial nor perceived to be partial to any one religious or nonreligious perspective, while giving due regard to all relevant and legitimate perspectives in the formulation and implementation of public policy.

Moreover, the imperatives of certainty, uniformity, and neutrality in national legislation are now stronger than they used to be in the precolonial era. This is not only due to the growing complexity of the role of the state at the domestic or national level, but also because of the global interdependence of all peoples and their states. Regardless of the relative weakness or strength of some states in relation to

others, the realities of national and global political, economic, security, and other relations remain firmly embedded in the existence of sovereign states that have exclusive jurisdiction over their citizens and territories. For Islamic societies, this point has recently been painfully emphasized by the eight years of the Iran-Iraq war of the 1980s and by the composition of the international alliance of Muslim and non-Muslim countries that forced Iraq out of Kuwait in 1991. The governments of Islamic countries on both sides of the latter conflict were acting (and continue to act) as nation-states and not as part of a uniform or united global Islamic community or on behalf of the totality of Muslims at large.

Of course, the nature of the state is not identical in all societies, because the processes of state formation and consolidation vary from one country to another. But there are certain common characteristics that all states need to have in order to be part of the present international system, since membership is conditional upon recognition by other members. For the states of Islamic societies to be and remain accepted as members of the international community, they must comply with a recognizable set of minimum features of statehood in the present sense of the term. In particular, the ability to determine and enforce the law in everyday life is central to the existence of any state, whatever its philosophical or ideological orientation may be. Moreover, as I will now proceed to show, the nature of the state and its present global context preclude the possibility of the application of Sharia as historically understood and as still commonly accepted among Muslims.

I will now reflect on the religious neutrality of the state within the framework of what I call “civic reason,” the means for facilitating and regulating the relationships between state, politics, and religion. My view is that the state should be institutionally separate from Islam while recognizing and regulating the unavoidable connectedness of Islam with politics. Despite their obvious and permanent connections, I take the state to be the more settled, operational side of self-governance, while politics is the dynamic process of making choices among competing policy options. The state and politics may be seen as two sides of the same coin, but they cannot and should not be completely fused into each other. It is necessary to ensure that the state is not simply a complete reflection of daily politics because it must be able to mediate

and adjudicate among competing views of policy, which require it to remain relatively independent from different political forces in society. Yet, the total independence of the state from politics is not possible because officials of the state will always act politically in implementing their own agenda and maintaining the allegiance of those who support them. This reality of connectedness makes it necessary to strive for the separation of the state from politics, so that those excluded by the political processes of the day can still resort to state institutions for protection against the excesses and abuse of power by state officials.

This balance is achieved through direct as well as indirect negotiations. On the one hand, more or less *direct* negotiations and agreements between the state and the dominant religious tradition (and, to a lesser extent, other religious traditions) reflect historical precedent, the importance of a particular religious tradition as part of a cultural heritage, or the socially beneficial role of religious institutions. It is true that the state may not be entirely impartial in the degree of support it extends to different religions and that state policies may contradict the imperative of neutrality toward religion. But in such direct negotiation, the general principle of separation between religion and state is largely affirmed while the value and role of a dominant religion in public life are also acknowledged. The principle of religious neutrality of the state also operates, within the framework of constitutionalism and human rights safeguards, to enable *indirect* negotiations whereby religious as well as nonreligious actors can play a role in shaping public policy. This possibility is ensured by the state protection of freedoms of association and expression, the right to organize and protest, the right to legal redress, and the use of instruments of commerce, media, and communication, which enable citizens to present their point of view and mobilize resources and public support for their perspective. The freedoms and rights that organize and regulate these processes of indirect or mediated influence on state policy are themselves enshrined as secular principles and protected within secular legal and political frameworks.

In these direct and indirect negotiations between state and religious actors, all sides clearly accept in practice the distinction between the state, religion, and politics. But as the idea of negotiation itself clearly indicates, there are tensions in these interactions and relations between state and religious actors, as well as in the assumptions and

implications of their respective positions. The realities of such tensions and the need to maintain the autonomy of both the state and religion emphasize the importance of a framework that enables all social actors, whether individuals or groups, to address the state for policy objectives without compromising the separation of state and religion. This framework must enable the widest range of social actors to compete with one another on a free and fair footing in presenting their views on policy issues. While there are many requirements and aspects of these processes, here I would like to focus on the “civic reason” dimension and how it operates within this framework.

The critical need to separate state and religion while regulating the permanent interconnectedness of religion and politics requires that proposed policy or legislation must be founded on civic reason. This comprises two elements. First, the rationale and purpose of public policy and legislation must be based on the sort of reasoning that citizens generally can accept or reject, and it must be possible to make counterproposals through public debate without being open to charges of apostasy (heresy) or blasphemy as crimes punished by the state. Second, such reasons must be publicly and openly debated, rather than being assumed to follow from the personal beliefs and motivations of citizens or officials. It is not possible of course to control the inner motivations and intentions of people’s political behavior, but the objective should be to promote and encourage civic reasons and reasoning, while diminishing the exclusive influence of personal religious beliefs, over time. The requirements of civic reason are critically important because it cannot be taken for granted that the people who control the state will be neutral. On the contrary, these requirements must be the objective of the state’s operations precisely *because* people are likely to continue to act on personal beliefs or justifications. These requirements are also desirable because they encourage and facilitate the development of a broader consensus among the population at large, beyond the narrow religious or other beliefs of various individuals and groups.

The operation of civic reason in the negotiation of the role of religion in public policy and the state should be safeguarded by principles of constitutionalism, human rights, and citizenship. The consistent and institutional application of these principles ensures the ability of all citizens to equally and freely participate in the political process

protects them against discrimination on such grounds as religion or belief. With the protection provided by such safeguards, citizens will be more likely to contribute to the formulation of public policy and legislation. Muslims and other believers can make proposals emerging from their religious beliefs, provided they are also presented to others on the basis of reasons these others can accept or reject. I believe that with such possibilities for expressing religious values through the democratic political process, subject to the safeguards of constitutionalism, human rights, and equal citizenship for all, it is more likely that Muslims (and other believers) will support this model of religious neutrality of the state.

However, I should also emphasize the practical difficulties of maintaining this delicate balance of ensuring the separation of Islam and the state while regulating the connectedness of Islam and politics. I am calling for both aspects of this model not only because it is more likely to motivated Muslims to accept it as legitimate, but also because of the practical difficulty of keeping religion out of politics in any case. Since it is neither possible nor desirable to control the way people make their political choices, it is better to acknowledge the public role of religion while deliberately striving to cultivate people's willingness and ability to provide civic reasons for their choices as much as possible. Civic reason, I believe, can and should be cultivated rather than assumed to be practiced sufficiently or abandoned as too difficult to realize.

To summarize, contestation in the sphere of civic reason can legitimize and regulate social and political pluralism, and protect the capacity of religious dissent to facilitate Islamic reform in response to whatever challenges a society faces at any given point. Such contestation may also reflect increased access to civic reason through processes of democratization, developments in communication, and the like. As access to civic reason becomes more widely available and fairer, public policy choices are likely to be more the product of negotiated consensus than impositions of the majority or ruling elites. The wider consensus that can be achieved around public policy choices through this process is likely to promote the legitimacy of the state among its population and thereby enhance political stability in the country. With greater appreciation for the value and credibility of the civic reasoning process itself, religious believers will have more opportunities to promote their religious beliefs through the regular political process without threatening the human

rights and freedoms of those citizens who do not share these beliefs. This balance is likely to be achieved precisely because religious views can be neither coercively enforced by the state nor excluded from any consideration because they are religious. The uniform process that applies to any proposed public policy or legislation is mediated through fair and transparent political contestations and subject to constitutional and human rights safeguards. In this way, any proposed public policy or legislation *stands or falls on whether or not it is constitutional*, not because of its perceived religious or secular origin.

IS THIS AN AMENDMENT TO RAWLS?

The reason for my query about whether what I am proposing entails an amendment to Rawls's theory is that his thinking about religious doctrine and related matters is undertaken from a North Atlantic Christian perspective, even when thinking *for* Muslims through "conjecture." Two significant factors noted above to be recalled here are the impact of Sharia on how Muslims think about these questions and the postcolonial context in which Muslims are considering the issue. My query may therefore be directed to Rawls's definition of public reason and how it is supposed to work in practice: in which settings does public reason apply? to whom? and how is it to be monitored or policed?

But first, I am honored that Rawls cites my book *Toward an Islamic Reformation* as a "perfect example of overlapping consensus,"²² which was my deliberate strategy also for promoting the universality of human rights from a cross-cultural perspective.²³ But I would argue that what I am proposing should simply be seen as the practice of public reason in an Islamic context. The difference is perhaps in my insistence on the primary role of believers in any religion (Muslims in my case) as equal participants in the practice of what Rawls presents as the purpose of public reason.²⁴ What Rawls calls a "comprehensive doctrine" may simply be the way Muslim citizens come to consent to political authority and ground their "mutual respect," fairness, reasonability, reciprocity, and other values that Rawls invokes.²⁵ To indicate this difference, I have opted for the term "civic reason."

To briefly elaborate on the reasons for amending Rawls's position, I first recall here the point I made at the beginning of this chapter,

namely, that the relationships between religion, the state, and politics should always be considered in terms of a specific religion in a particular society. It is extremely difficult to conceive of “religion” in terms that are sufficiently inclusive to be applied to all human societies in their varied contexts, and it is only to be expected that, consciously or not, any theorist will develop his or her theory of the relationships between religion, the state, and politics with reference to a specific religion in a particular sociopolitical context. I also noted that differences in the nature and formation of religious authority among and within various religious traditions influence how believers perceive religious authority.

Even the distinction between the so-called religious and secular domains does not apply to all religious traditions. In my experience, Muslims have a positive comprehension and experience of the secular, in the sense of the material and this-worldly, and take it to be integral to their worldview rather than distinct or opposed to it. This inherent consistency and complementarity of the secular and the religious induce Muslims to think of both as entwined: life is all at once religious and secular, spiritual and material, and Islam takes each side of the human experience and both of them combined equally seriously. Defining the secular and religious as opposites or as mutually exclusive is therefore not a workable solution for Muslims. As I have put it elsewhere, “it is misleading to contrast the religious and secular in such binary terms because they are in fact mutually interdependent.”²⁶

Another definition that has been given for the term “secular” is “the assumption that everything material or abstract derives from human endeavor.”²⁷ While this definition avoids a dependence on the religious that is present in many other definitions, it also omits any indication of the relationship between what is secular and what is religious. From an Islamic perspective, a more serious objection to this notion of the secular is that it simplifies a complex theological and philosophical question of predestination and free will in the relationship between divine and human agency. What does it mean to say something “derives from human endeavor”? Does that necessarily deny any role for divine agency, even for those who believe that divine agency works through human agency?

Noting these differences is not to suggest that Rawls’s theory is irrelevant to Muslims in their postcolonial context, but only to raise

the question of what such differences entail for that theory. Indeed, in my view, the facts of deeper religious diversity, combined with the realities of an increasingly interdependent world, intensify rather than diminish the need for Rawls's theory. Therefore, while I think that Muslims need to mediate the tensions of Islam, state, and politics in ways that take Sharia seriously on its own terms, as I have attempted to do, this also needs to be done in the intimate company of other believers and nonbelievers, as noted above.

Briefly put, Rawls's basic claim in this regard is that since citizens are unlikely to agree in solving basic political questions, political agreement should be reached by means of "public reason," despite strongly felt moral disagreement. For him, public reason is an exercise of deliberation in conditions of deep moral disagreement, and it relates specifically to "constitutional essentials and questions of basic justice." In other words, it specifies at the deepest level the basic moral and political values that are to determine the relationship of a constitutional democratic government to its citizens and the relationships among citizens themselves. And, crucially, Rawls excludes religion, along with all other "comprehensive doctrines," from public reasoning over these matters.²⁸

I share Rawls's concerns about reliance on religious beliefs as the basis of public policy and legislation, and his call for the articulation of reasons that are equally accessible to all citizens without reference to religious belief as such. But I believe it is more realistic and fruitful to acknowledge and regulate the connectedness of religion and politics through the requirements of constitutionalism, human rights, and citizenship than to attempt to separate religion and politics. In my view, it is neither possible nor desirable to exclude religion from *politics*, although religion should nonetheless be kept out of *the state* by various mechanisms and strategies. The political actions of religious believers will always be guided by their religious beliefs, whether this is acknowledged or not, and recognizing and regulating these beliefs as legitimate sources of political reasoning is healthier and more practical than forcing them into a fugitive political domain, thereby constraining or distorting believers' participation in politics. I take this approach to embrace religions in a much broader "political" realm than Rawls's "public" realm allows—indeed, as I have indicated, I take "politics" to encompass all public deliberations over policy, whether by officials or private citizens, as distinct from the more settled, operational aspects of the state.

In particular, I consider Rawls's exclusion of religions from public reason to be mistaken in a number of specific ways, and particularly so when applied to the "constitutional essentials and questions of basic justice" that he focuses on. First, it is simply unfair, or discriminatory, to reject a view or discourse because it is deemed to be religious, regardless of what it actually has to say on the issue at hand. Second, this is also a form of anticipatory censorship, which blocks the exercise of the fundamental human rights of freedom of belief and expression before a presumed harm is proven. Such censorship is not only unjust in principle, but also unfeasible: for how are we to know in advance which claims qualify as "religious" before they have been heard? Third, on my view, all citizens should be encouraged to engage in political debate, on all issues and in all contexts, so as to develop and maintain their civic reasoning over time. It seems to me that Rawls's exclusion of religions would constitute a substantial obstacle to this. Fourth, by excluding religions and other "comprehensive doctrines" from public reasoning, Rawls treats them as if they were isolated and closed and not open to internal contestation, and also as if they could be neatly compartmentalized into "religious" and "secular" categories.²⁹ Yet, this would be a serious misrepresentation of the nature of Islamic political thinking, which develops by both "internal" and "external" criticism and in complex relations to the nonreligious. Rawls's exclusion of religion thus denies the reality of competing rationalities within comprehensive doctrines, and limits the possibilities of persuasion among believers. Finally, and more generally, Rawls's attempts to accommodate religions in public debate are inadequate. In particular, to emphasize the limited scope of "constitutional essentials and questions of basic justice" is still to exclude religions from debate over these fundamental political questions, and however far Rawls's "proviso" and his notion of "conjecture" accommodate religious reasoning in public debate, they still require it to be ultimately translated into the nonreligious, "public" terms that he thinks citizens ought to share.

In my view, then, the freedom to express religious and other "comprehensive" reasons in politics and to organize politically to promote them should be limited only if it violates the constitutional rights of others, as enforced by the state, and not on the grounds of the kinds of reasons involved, as Rawls's theory insists. By thus distinguishing between the state and politics, as I have proposed from an Islamic

perspective, I think that the requirements of civic, or “public,” reason can be operationalized more effectively.

To briefly recall that distinction, the critical and delicate role that I attribute to the state is the reason why the distinction between “state” and “politics” is both necessary and difficult to maintain. The state is the institutional continuity of sovereignty, while politics refers to the government of the day. Governments are entitled to use the institutions of the state to implement the policies for which they were elected, but should not do so in ways that diminish the autonomy and continuity of state institutions. In that way, the institutions of the state, such as the Ministry of Education or the Ministry of Foreign Affairs, continue to serve the next government, which may be elected to implement different policies than the preceding one. Admittedly, the distinction between state and politics in any society will not be permanently settled, and will vary depending on the political will of the people to uphold the distinction (not a dichotomy) between the state and politics. This can be done, I believe, through institutional and normative safeguards like constitutionalism, human rights, and citizenship, which provide the essential framework for what I understand as civic reason.³⁰

In closing, let me try to briefly describe the practice of what I call “civic reason” in the normal course of life of communities everywhere, as opposed to its being artificially limited to certain subject matters or applicable only in certain segregated functions of government officials and candidates for public office. In the normal course of life of a society, children are socialized within their families, at school, and in various other settings to uphold certain values of social interaction and political behavior. The adult population of the same society not only has been socialized in those ways, but is also constantly reminded of the moral integrity and practical utility of underlying values. Those values are likely to include being truthful and trustworthy in social and economic interaction with others, being respectful of the human dignity of others, and accepting their racial or ethnic identity, as well as their religious and political beliefs, because we need them to respect our dignity, identity, and beliefs. This is not to say that any society is perfect or can ever be perfect in promoting and living by these values, but our experience also confirms that these are “survival” skills for all societies and communities.

My main point is that what Rawls calls “comprehensive doctrines” not only are integral to these processes, but in fact play a leading role in our socialization into the superior humane values we need to promote. Our experience clearly shows that we cannot monitor and police what sort of discourse is conducted in which setting and by whom. Religion, culture, social interaction, and economic activities all prepare us for a healthy, productive, peaceful life, although sometimes we also engage in pathological, destructive, and violent encounters. Whatever it is we are, religion for those who believe in it is integral to who we are and how we live.

Notes

1. *PL* (pbk.) xxxvii.
2. I speak here of Sunni and Shia traditions in the plural to acknowledge the profound historical and contemporary diversity within each of these Islamic traditions.
3. See, for example, the Qur’an, 2:173, 242, 219, 266; 6:50, 151; 16:11, 44; 57:17. The Qur’an is cited by chapter and verse numbers.
4. See, for instance, the Qur’an, 12:2; 43:2.
5. *IPRR* 156.
6. See, in particular, the text accompanying note 7 on page 4 in the introduction.
7. The term “Sharia” refers to God’s law in its divine and revealed sense. There is a transcendental dimension of Sharia that is, like God, unknowable and a dimension that is accessible to human understanding (*Fiqh*). As Gordon D. Newby puts it, “[Sharia] is said to be the source from which all properly Islamic behavior derives.” Newby, *A Concise Encyclopedia of Islam* (Oxford: Oneworld, 2002), 193–94.
8. Abdullahi Ahmed An-Na’im, *African Constitutionalism and the Role of Islam* (Philadelphia: University of Pennsylvania Press, 2006), 16–27.
9. *Ibid.*, 139–47.
10. For more extended discussion, see An-Na’im, *Islam and the Secular State: Negotiating the Future of Sharia* (Cambridge, Mass.: Harvard University Press, 2008); An-Na’im, “The Future of Shari’ah and the Debate in Northern Nigeria,” in *Comparative Perspectives on Shari’ah in Nigeria*, ed. P. Ostien, J. M. Nasir, and F. Kogelmann (Ibadan: Spectrum Books, 2005), 327–57; and An-Na’im, “The Compatibility Dialectic: Mediating the Legitimate Coexistence of Islamic Law and State Law,” *Modern Law Review* 73, no. 1 (2010): 1–29.
11. An-Na’im, *Islam and the Secular State*, 7–8.
12. Bernard Weiss, *The Spirit of Islamic Law* (Athens: University of Georgia Press, 1998), 116 (emphasis in original).

13. See, for example, the Qur'an, 5:105; 41:46; 4:79–80; and 53:36–42.
14. Weiss, *The Spirit of Islamic Law*, 120–22.
15. Averroës, *The Decisive Treatise Determining the Connection Between the Law and Wisdom and Epistle Dedicatory* (Brigham: Brigham University Press, 2001), 8–10. This is a translation of Ibn Rushd, *Fasl al-Maqa bayn al-Shar'a wa al-Hikmah min Itsal*.
16. Noel J. Coulson, *Conflicts and Tensions in Islamic Jurisprudence* (Chicago: University of Chicago Press, 1969), 34.
17. *Ibid.*, 35–36.
18. See An-Na'im, *Islam and the Secular State*, 140–50 and 182–96, respectively.
19. See Knut Vikor, *Between God and Sultan: A History of Islamic Law* (Oxford: Oxford University Press, 2005).
20. See Graeme Gill, *The Nature and Development of the Modern State* (New York: Palgrave Macmillan, 2003), 2–4.
21. *Ibid.*, 17.
22. *IPRR* 151n46.
23. See An-Na'im, ed., *Human Rights in Cross-Cultural Perspective: Quest for Consensus* (Philadelphia: University of Pennsylvania Press, 1992).
24. *IPRR* 129–80.
25. *PL* (pbk.) 38, 223.
26. Abdullahi Ahmed An-Na'im, "Islam and Secularism," in *Comparative Secularisms in a Global Age*, ed. L. E. Cady and E. S. Hurd (New York: Palgrave Macmillan, 2010), 218.
27. Lilly Weissbrod, "Religion as National Identity in a Secular Society," *Review of Religious Research* 24, no. 3 (1983): 189.
28. See *PL* (pbk.) 212, 214, and 227–30, and *IPRR* 132–33.
29. See Ashis Nandy, *Talking India: Ashis Nandy in Conversation with Ramin Jahanbegloo* (Delhi: Oxford University Press, 2006), 103–4.
30. See An-Na'im, *Islam and the Secular State*, 89–97.

