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Reforming Islam: Sudan and the Paradox of Self-Determination

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Source: *Harvard International Review*, Spring 1997, Vol. 19, No. 2 (Spring 1997), pp. 24-27, 64

Published by: Harvard International Review

Stable URL: <https://www.jstor.org/stable/42764027>

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# Reforming Islam

## *Sudan and the Paradox of Self-Determination*

ISLAM RAISES A FUNDAMENTAL PARADOX FOR ALL predominantly Muslim societies. An Islamic identity and world view are central to Muslim conceptions of self-determination, yet the application of *shari'a*—the historical formulations of Islamic law and ethics, and the conceptions of state that accompany it—would repudiate the right of self-determination for women and non-Muslim citizens, as well as restrict the right of Muslim men to political opposition. The majority of the population of even a predominantly Muslim country would be denied the right to self-determination, including

cal participation, nor equal protection of the law, nor equal opportunity to earn an independent living. The legal limitations women face under *shari'a* are derived from either a literal interpretation of certain texts in the Qur'an or the *sunna* (traditions of the Prophet), or through use of the Qur'anic verse 4:34 to establish the principle of *qawama*, the general guardianship of men over women. Laws of marriage, divorce and custody over children, and inheritance—as applied in the vast majority of Muslim countries, from Morocco to Malaysia—discriminate against women. In addition, women are denied testimonial competence in prosecutions for criminal offenses: the 1979 Pakistani Offense of Zina Ordinance (on fornication) makes a woman's testimony inadmissible as evidence even when is the alleged victim of rape.

Non-Muslims suffer even more in the denial of political participation, protection of the law, and the other rights of citizenship under *shari'a*. Jews and Christians are considered "People of the Book," and granted the status of protected minorities under a charter of *dhimma*, or mutual obligation, within an Islamic state. Their communities have limited autonomy to practice their religion and apply their religious or customary law, but subject to the overriding sovereignty and public jurisdiction of the Islamic state. They cannot hold any public office that would entail exercising authority over Muslims; their testimony in criminal prosecutions against Muslims is held unequal to that of Muslims; and they are entitled to less monetary compensation for homicide or bodily injury. Furthermore, while Christians and Jews are granted *dhimmi* community rights, those designated unbelievers by *shari'a* fall outside the protection of the law altogether.

It is true that throughout history, most Islamic states have relaxed rather than enforced legal restrictions against non-Muslims, largely

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all non-Muslim men and women, Muslim women, and those Muslim men who disagreed with the application of *shari'a*.

As a Muslim human rights advocate, I assert and uphold the right of Muslims to exercise their right to self-determination in Islamic terms. But it is morally and politically untenable for Muslims to exercise a collective right to self-determination by applying *shari'a*. This paradox can be resolved through the drastic reform of Islamic law to achieve full equality for women and non-Muslims, and secure the fundamental citizenship rights of all. But Muslims have to acknowledge the existence of this paradox before they can begin seeking its resolution.

### ***Shari'a Formation and Reformation***

Muslim jurists and schools of thought differ on some points of detail regarding the status and rights of women and non-Muslims, as evaluated from the modern perspective of citizenship and self-determination. But all schools of thought, Sunni and Shi'i alike, agree in their denial of the full rights of citizenship to these groups. All established jurists of *shari'a* agree that Muslim women can have neither full politi-

for political, economic, or security reasons. It is also true that different views of shari'a regarding Muslims, as well as different interpretations regarding women, can and should be advanced. But in light of current calls for the application of shari'a, it is important to be clear first on what shari'a is, regardless of whether Muslims applied it in the past, before we discuss its possible reform. In a state governed by shari'a, even Muslim men lose their political rights: opponents of the regime in power can be prosecuted as apostates for opposing the implementation of shari'a as the divinely ordained way of life.

As I have argued in my 1990 book, *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law*, shari'a, as Muslims know it today, was constructed by Muslim jurists who interpreted the Qur'an and Sunna in the historical context of eighth and ninth century Arabian, Iraqi, Syria, and Egyptian Muslim communities. From Abu Hanifa (d. 767) to Ibn Hanbal (d. 855), the founding jurists of the four schools of interpretation followed by all Sunni Muslims today lived between the second and third centuries of Islam. Jafar al-Sadiq, generally acknowledged as the founding jurist of the main Shi'i school of present-day Iran, died in 765. In addition, while Sunna narratives were known and applied as oral traditions of Muslim communities during the first two centuries of Islam, the scholars who actually verified and recorded those reports also lived between the second and third centuries of Islam. Shari'a evolved through human agency over several centuries following the Prophet's death in 632. In other words, shari'a is not divine law, but a human understanding of divine sources.

At the time when shari'a was developed, discrimination on the grounds of sex and religion were the norm in all major religious, philosophical and legal traditions. In fact, such discrimination under shari'a compared very favorably with corresponding provisions in Western and other legal systems until the end of the last century. For example, and despite limitations in other matters, Muslim women had independent legal personality and the right to own and dispose of property in their own name for many centuries under shari'a while European and North American women lacked similar rights until the early twentieth century. But at the end of the twentieth century, shari'a has lost its "comparative advantage" and fallen much behind the humane and enlightened ideal its founders had envisaged and sought to provide in their own historical context. Muslims today can reinterpret the same divine sources used in the original formulation of shari'a—the Qur'an and sunna—to construct a modern version, which would validate their right to self-determination in Islamic terms without violating the rights of others.

First, however, Muslims must appreciate the moral and political untenability of a modern state based on traditional shari'a; creative and vigorous debate and reformulation on Islamic jurisprudence and political philosophy cannot begin until the false prophets of Islamic self-determination through shari'a are exposed and discredited. Perhaps the case of Sudan can help achieve this initial task.

### **The Case of Sudan**

The case of Sudan is instructive in the present context for two main reasons. First, the National Islamic Front (NIF) regime now in power is violating the fundamental citizenship rights of all Sudanese, Muslims as well as non-Muslims, in the name of exercising the national right to self-determination through the application of shari'a. Second, an understanding of the root causes of the developments leading to the present catastrophe is important not only for the recovery and reconstruction of Sudan itself, but also for the benefit of many Islamic societies which risk a similar fate. Beyond the specific details of Sudanese history and politics, the tragedy of Sudan today is clearly and simply a local manifestation of the paradox of claims of Islamic self-determination. Other Islamic societies can go down the same road, unless appropriate strategies are implemented to resolve this paradox.

Most northern Sudanese opposed to the present NIF regime see it as an aberration—a cancer that has in some inexplicable way managed to take hold of the country and its people. Many foreign observers often express surprise and dismay at the fate of the country and its people. The NIF and its regime bear immediate responsibility for the present collapse and devastation, but the root causes and dynamics of this tragic outcome must be traced back not only to the time of independence in the 1950s, but also to the beginnings of the modern nationalist movement in the 1930s, and even earlier in Sudanese history. That is, the present NIF regime, and its destructive role, are not sudden or alien phenomena, but predictable consequences of earlier malcapitulation.

### **The Shifting Meaning and Role of Islam**

As in other parts of sub-Saharan Africa, Islam initially spread into the middle Nile valley and neighboring areas to the east and west through the peaceful and very gradual migration of Muslim peoples from North Africa. The resulting Islamization by assimilation, consolidated by the work of Sufi (Muslim mystic) masters spreading their faith and building communities of followers, peacefully interacted with traditional religious beliefs and practices of the region, such as those of Orthodox (Coptic) Christianity which prevailed in northern Sudan for many centuries. Various kingdoms and traditional polities coexisted throughout the region, exercising minimal control over primarily nomadic populations.

Despite the scarcity of reliable historical sources about the mechanisms of governance and administration of justice by those highly mobile and autonomous communities, it is clear that there was neither systematic knowledge of shari'a nor popular or official commitment to its enforcement. To the extent that any aspect of shari'a was applied at all, it was implemented as part of the customary law of the community and heavily modified by local practice. But it was never the official legal system of a centralized political authority, except for some fourteen years at the end of the last century. Despite the fact that this period, to be discussed next, was an interlude, not the norm, the NIF now claims to recover for Sudan an Islamic



*Islam spread in Sudan and much of Africa without the systematic application of Islamic law.*

history that never happened.

In due course, the region was united through an Ottoman-Egyptian conquest in the 1820s and the establishment of an authoritarian colonial administration. The oppressive and exploitative policies of Ottoman-Egyptian rule eventually resulted in a revolt led by a Sufi master. That Sudanese leader, Muhammad Ahmed, claimed to be al-Mahdi, the divinely guided Muslim leader who is expected to emerge at the end of time to rid humanity of all injustice and unbelief in God. Al-Mahdi succeeded in defeating the colonial administration by the end of 1884, and established what he claimed to be an "Islamic state." The Mahdist state lasted under al-Khalifa (Caliph) Abdullahi, the successor of Muhammad Ahmed, until it was destroyed by the Anglo-Egyptian conquest of 1898 and the establishment of a second colonial system. These fourteen years marked the first introduction of a purported Islamic state in Sudan.

The Mahdist state of the late nineteenth century was in fact an oppressive, totalitarian, and expansionist state. Under the authoritarian rule of al-Khalifa Abdullahi, it not only sought to mold the diverse population of the country according to al-Mahdi's own peculiar understanding of Islam, but also attempted to export that model by force to neighboring Ethiopia and Egypt. The policies and practices of the Mahdist state constituted a radical departure from the previous nature of Sudanese Islam and the wishes of the population at large. But today these fourteen years of Mahdist rule are taken to be the precedent for the NIF's Islamic fundamentalist model, including its suppression of all political and religious dissent among Muslims and its declaration of jihad (holy war to defend the faith) against non-Muslim Sudanese.

### ***Sudan's Politics of Islam***

It took several decades for the population to recover from the devastation and civil and external wars of the

Mahdist state, and to develop the political and social resources to begin resistance to Anglo-Egyptian colonial rule. But when a nationalist movement began to emerge in the late 1930s, its educated leaders sought political strength from the religious personalities of the main Islamic Sufi groups. The tension between the liberal ideals of constitutional government and civil liberties for all Sudanese espoused by the educated elites, on the one hand, and the Islamic conservatism of sectarian religious leaders and their mass followers, on the other, persisted through the struggle for independence in 1956. This tension also remained unresolved during a succession of three civilian and three military regimes that ruled the country since independence. The issue of the role of Islam and implementation of shari'a was raised soon after independence, but the major political parties, with their ambivalent liberal leadership and religious mass following, were unable to resolve the matter one way or the other. As a result, three "transitional" Constitutions (1956, 1964, and 1985) reflected the paradox of declaring Islam to be the official religion of the state while providing equal citizenship rights to all Sudanese.

Three other dimensions of Sudanese politics in the last forty years contributed to the development of the conflict over Islamism in Sudan today: the situation in southern Sudan, the role of the Numeiri regime (1969-1985), and the role of the NIF in Islamizing Sudanese society and state. First, since independence, devastating civil war has raged between the northern Muslim and southern non-Muslim parts of the country, fed by gross disparities in political participation and economic and social development between the regions. The only period of relative peace and development that southern Sudan has experienced since independence was that of autonomous self-government following the Addis Ababa agreement of 1972 and the relatively more secular Constitution of 1973. Those were the achievements of the regime of former President

Numeiri, who came to power through a military coup d'état in 1969 and ruled until 1985.

Yet the Numeiri regime actually exacerbated the contention over Islam and government. Numeiri repudiated both the Addis Ababa agreement and the 1973 Constitution in an attempt to outmaneuver his opponents by playing the Islamic card. By the late 1970s, Numeiri began gradually to enforce elements of shari'a, seeking to acquire "Islamic" legitimacy for his regime. That process culminated in the wholesale enactment of so-called shari'a statutes beginning in September 1983.

When Sudan achieved independence from Anglo-Egyptian rule in 1956, the country had emerged with a small but highly competent civil service and administrative structure. Its judiciary and legal profession were well-trained in English common law as adapted to conditions in British colonies, especially India. Those principles of common law were further adapted and supplemented by a large body of Sudanese statutory law, and interpreted and applied by Sudanese courts. But most of the predominantly rural population lived by their own customary laws applied by traditional authorities or by informal mediation. State law reform initiatives were undertaken from time to time to update and streamline, rather than change, the nature and development of what by the 1980s was a thoroughly "Sudanized" legal system.

But the statutes enacted by presidential decree and approved by Numeiri's rubber-stamp parliament in 1983 replaced all major aspects of existing law with statutes based on shari'a law. Within a few weeks, for example, the 1983 legislative "coup d'état" produced a Penal Code and Code of Criminal Procedure, a Civil Transactions Act (Civil Code), a Civil Procedure Code, an Evidence Act, a High Judiciary Council Act (governing appointment and dismissal of judges at the president's pleasure), and an Advocates Act (regulating the legal profession). When the judiciary and legal profession resisted the changes for their violation of established principles of the rule of law, Numeiri installed a parallel system of "Prompt Justice/Emergency Courts" by early 1984, staffed by army and police officers and lay magistrates, to enforce his views on shari'a.

Those courts were abolished when Numeiri was overthrown by a popular uprising in April 1985, but the shari'a legislation remained. The government of Prime Minister Sadiq al-Mahdi, elected in April 1986, declared its opposition to Numeiri's "September Laws" as un-Islamic, but did nothing to change or replace the legislation. Finally, in June 1989, a NIF military coup overthrew Sadiq Al-Mahdi's government.

The third relevant dimension of Sudanese politics is the role of the Muslim Brotherhood in the Islamization of politics, especially over the last two decades. The Sudanese branch of the Muslim Brotherhood, a social movement active in many Muslim countries and modeled on the Egyptian Brotherhood founded in the 1920s, started in the 1940s and underwent several stages of changes in name and alliance. During one period, it collaborated with the Numeiri regime as part of his single-party state. From 1985 to 1989, the Muslim Brotherhood called itself the

National Islamic Front and claimed commitment to the democratic process. But in June 1989, it seized total power through military coup, dissolved the Parliament, dismissed the elected government, suspended the constitution, banned all political parties, trade unions, and professional associations, and declared any political opposition punishable by death.

Despite a few minor changes in its military leadership, periodic ministerial reshuffling, and "non-party" presidential and parliamentary elections in March 1996, the essential nature of the NIF regime remains the same since it came to power in 1989. Through all of its shifting alliances, name changes and alternations between "democratic" and military methods, the NIF pursued its primary objective of establishing an Islamic state and implementing shari'a as the sole ideology and legal system of Sudan. To this end, this regime continued and intensified efforts to enact shari'a, through the modification and reenactment of Numeiri-era statutes to entrench the Islamic nature of the state and all of its institutions and policies.

### **Repudiation of Self-Determination**

The NIF has achieved what might be seen as remarkable political success under the leadership of Hasan al-Turabi, its Secretary General since 1964. Turabi usually engages in a "double discourse," telling Western journalists and diplomats what he thinks they like to hear about his desire for Islamic reform on the status of women and non-Muslims, while promising his NIF constituency the rigorous application of traditional shari'a. It is sad that some Western scholars of Islam appear to be taken with Turabi's "charismatic" leadership without any scholarly critique of his intellectual dishonesty or human concern for the tragic consequences of his ruthless and unscrupulous politics.

The NIF regime constitutes a total repudiation of the right of all Sudanese to self-determination because it seized power by military coup and maintains it by force and intimidation, to the exclusion of all other political forces in the country, including the major parties and their Muslim leaders. For non-Muslim Sudanese in the South and Nuba Mountains, the loss of self-determination is compounded by the destruction of their lives and livelihood. In addition to using indiscriminate bombing and other terror tactics on civilian populations in its campaigns against the rebel Sudan People's Liberation Army in those regions, the NIF regime fails to provide basic relief and essential services for the more than two million Sudanese displaced within the country because of the civil war. These massive and gross violations of human rights and humanitarian law are of a different nature than those committed by any other oppressive state because the official organs of the NIF regime justify and rationalize them in the name of Islamic jihad. A government cannot declare holy war against its own non-Muslim population and still claim to exercise the national right to self-determination for all Sudanese.

The NIF regime has now added an extremely difficult

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religious dimension to the complex dynamics of the civil war, thereby eradicating prospects for peace, political stability, and economic development. Having declared Sudan an Islamic state in 1991, the NIF regime is now presenting its military campaigns in southern Sudan as jihad in defense of the Islamic faith, and refusing to discuss the application of shari'a in any peace negotiations. In other words, non-Muslim Sudanese are now expected to accept becoming second class citizens, or worse, in their own country.

The status of second class citizen— "dhimmis"—under shari'a is available only for Christian Sudanese; the several million Sudanese who still adhere to their traditional (animist) religious beliefs are deemed "unbelievers," and therefore denied dhimmi status in the land of their birth and permanent residence. Southern Sudanese cannot be expected to negotiate a settlement that would permanently assign them a humiliating status in a Sudanese state, especially not after decades of massive devastation.

In addition to depriving Sudanese people the right of self-determination and the opportunity for peace and development, the NIF regime has completely destroyed the rule of law through purging the judiciary and legal profession of members deemed by the NIF to be uncooperative in implementing its Islamization program. According to estimates by the Arab Lawyers Union and the American Lawyers Committee for Human Rights, up to 80 percent of the judges in office at the time of the 1989 coup lost their positions within the first two years. All dismissed judges were replaced by junior, often professionally unqualified, supporters of the NIF. Many senior attorneys have left the country as a result of harassment by state security agents or the drastic decline in the quality of legal practice.

Some may argue that the mistakes of this "Sudanese Islamic experiment," however serious they may be, should not be held against the concept of an Islamic state itself, or against the implementation of shari'a in other countries. This is a disingenuous response for two reasons. First, the most seriously flawed policies and practices of the NIF regime can indeed be justified under shari'a: the application of shari'a inherently and necessarily repudiates the right to self-determination. Second, no Islamic political party or government anywhere in the Muslim world has ever condemned the NIF regime in Sudan as un-Islamic. On the contrary, the leadership of Islamic groups like Al-Nahda of Tunisia and Hamas of Palestine, as well as proponents of shari'a within governments like those of Malaysia and Pakistan, have endorsed and supported the NIF regime in Sudan. In other words, there is no indication whatsoever from any Islamic political movement or government that the policies and practices of the present NIF regime of Sudan are contrary to their own vision of an Islamic state or views on the application of shari'a.

### **Resolving the Paradox**

To resolve the paradox of Islamic self-determination—the right of Muslim societies to create a system of govern-

ment that expresses their beliefs without denying the right of self-determination to women and non-Muslims—all Muslims need to establish a process of open discussion about all aspects of an Islamic right to self-determination. The state must first secure and guarantee freedom of expression and association in this debate, against violation by private as well as state actors, so that different perspectives on the issues can emerge and engage each other. State officials themselves, however, should not participate in substantive discussions because the authority of their office will probably give them undue advantage. This process must ensure that Muslims and non-Muslims alike enjoy the right to expression; as the case of Sudan clearly indicates, non-Muslims have the same need and right as Muslims to engage in these debates because they are equally affected by the outcome.

The Sudanese reformer, Ustadh Mahmoud Mohamed Taha, proposed in the decades following World War II a concrete and comprehensive methodology for resolving this paradox through the reformation of Islamic law. Spelled out in 1967 in his book *The Second Message of Islam*, Taha argued that in their formulation of shari'a, early Muslim jurists selected certain texts as legally binding (*muhkamat*), and excluded others as inapplicable (*mansukat*), in a historical context when discrimination on sex and religion were the universal norm. Since that was a human choice, Taha argues that Muslim jurists today should reverse the selection of scriptural sources by early jurists to better respond to the present circumstances and needs of Muslim communities. Every aspect of inequality before the law and discrimination on grounds of sex or religion can now be reversed based on alternative Qur'anic and sunna texts that were excluded by early jurists as inappropriate for legal enactment. Many Muslim scholars since the last century have called for modern reforms, but Taha's methodology is the most developed and practical to date. While these ideas will require further technical elaboration and substantiation in terms of Islamic juridical techniques, the basic religious authority for them already exists. What is lacking is the political will to proceed with necessary reforms.

It is ironic that Sudan, where this visionary Islamic reformer articulated and propagated a theory for the full resolution of the paradox of Islamic self-determination, now provides such a clear example of the repudiation of the rights of all Sudanese to self-determination, Muslims and non-Muslim alike. But perhaps the failure of the present disastrous Sudanese "experiment" will permanently and categorically discredit the shari'a model, leading Muslims in Sudan and elsewhere to begin the serious and creative process of reinterpretation. But the human costs of the Sudanese tragedy are truly horrendous, and will continue to mount until the present totalitarian state of the NIF in Sudan is replaced. The restoration of democratic government, and the full protection of fundamental rights for all citizens is an essential prerequisite for the realization of the right to self-determination in any meaningful sense of the term. •