

An Inclusive Approach to the Mediation of Competing Human Rights Claims

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I. Introduction

My purpose in offering the following analysis of the mediation of competing human rights claims from an explicitly Islamic perspective is to reject framing the relationship between Islam and human rights in terms of whether Islam is inherently compatible or incompatible with human rights. I find this framing problematic because it assumes a verifiably identifiable monolithic "Islam" to be contrasted with a definitively settled preconceived notion of "human rights." That is, whoever is presuming to make such a compatibility assessment is claiming to 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 proposed human rights norms cannot qualify as universal standards 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 already accepted by people around the world, including Muslims. It is also difficult to accept any human rights norm as universal if it is inconsistent with the religious beliefs of Muslims, an estimated quarter of humanity living throughout the world today.¹

In my view, framing the inquiry in terms of the inherent incompatibility of any religion with human rights is simply unnecessary because people can have an equally strong commitment to human rights despite disagreement as to why they come to that commitment. Such framing is also counterproductive because, when faced with a choice between religion and human rights, any believer will probably choose religion over human rights, and would in fact find the question absurd. No conception of human rights can possibly compete with one's religion as such, and should not be expected to do so in the first place. At the same time, however, I believe how one's understanding and practice of Islam influence and are influenced by one's commitment to upholding the universality of human rights is a necessary and productive inquiry.

To be clear on the point, 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 do not see the possibility or need for any single foundation of human rights for all human beings everywhere, whatever that foundation may be. 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 a commitment to these rights.

Keeping this context in mind, I propose to discuss some human rights issues from an Islamic point of view, with special reference to competing claims of freedoms of speech and religion. Another aspect of my approach is the belief that various aspects of social and political organization of human societies, including the respect for and protection of human

rights, are not ends in themselves. Rather, these are necessary, though insufficient, means for enabling human beings to realize their individual and collective self-determination. For instance, freedoms of speech and religion are necessary means for each person to pursue what he or she holds as the ultimate purpose and meaning of her life. In other words, people tend to link the value of rights like freedoms of speech and religion to the purpose for which they are asserting those rights, rather than affirm rights for their independent abstract value.

This does not mean that the entitlement to these rights should be made conditional, such as upon satisfying some commonly held, preconceived purpose for of free speech or adhering to an authoritatively sanctioned meaning of a religion, as experienced by believers. But it does mean that freedoms of speech and religion are unlikely to have much meaning and relevance to the people who are supposed to exercise those rights if they are perceived to be inconsistent with the purpose for which one seeks to have the right in the first place. The point here is that we should appreciate the dialectics of ends and means in defining, justifying, and practicing freedoms of speech and religion in relation to other rights and to broader concerns of persons and their communities. This framing may be helpful in addressing questions, such as where does freedom of speech end and freedom of religion begin in various settings and for different purposes. I will illustrate how such an analysis might work in relation to the current debate over “defamation of religion” as a human right.

Another premise of this article regarding freedom of religion in particular is that the purpose and meaning of religion that one may seek to achieve and experience must be a matter of personal freedom and voluntary choice. Since there is no logical possibility of religious belief without the equal possibility of disbelief, denying the right to disbelief is denying the right to believe. In terms of the dialectics of ends and means emphasized above, the purpose and meaning of freedom *of* religion includes freedom *from* religion. Conversely, upholding freedom from religion should not be at the expense of freedom of religion. This balance calls for protection of the right to dissent within a religious tradition from being punished as heresy or apostasy, as well as respect for freedom to propagate one’s religion. Since there will always be the need to mediate and negotiate competing rights claims, the question is how to protect and facilitate that process in each context.

In light of these initial remarks, I will argue in this article for the secular state, defined as one that is neutral regarding all religions without being hostile or indifferent to any religion, as the necessary framework for mediating competing claims about freedom of speech and religion. Such mediation can be achieved through what I call “civic reason,” which requires engaging in reasoning processes in which one gives reasons for her or his positions that all citizens can debate, accept, or reject without reference to religious beliefs as such. I also propose that constitutionalism, human rights, and citizenship constitute the most conducive framework for the process of civic reason as the means for mediating competing rights claims.

Nevertheless, it is necessary to seek culturally and religiously legitimate means of transforming the attitudes of people in their communities in favour of greater respect for human rights. While insisting that state law and public policy must always be based on civic reason and not on any religious doctrine, I also call for concerted efforts to promote legitimacy and general acceptance of all human rights values, including freedoms of speech and religion, through public debate, education, and cultural activities. In relation to the subject of this article in particular, I advance an internal Islamic position that supports a human rights claim to freedom of religion and belief against certain problematic aspects of the traditional interpretations of Shari‘a. It is not possible to present this Islamic position here, not only because of space limitations but also because it would require arguing in terms of technical aspects

of Islamic theology and jurisprudence.² It may be helpful, however, to at least outline the main steps I recommend in this regard.

The first step I recommend taking in redressing problematic aspects of traditional interpretations of Shari`a is ensuring these interpretations are not coercively enforced by the state, as I have already indicated and will explain further below. Although this is no longer the case in the vast majority of Muslim-majority countries today, apostasy and related notions remain entrenched in Islamic jurisprudence, and persons found guilty of these offences can still be sentenced to death in countries like Pakistan and Sudan.³ The second step I recommend taking is to engage in an internal Islamic discourse to transform the attitudes of Muslims regarding apostasy and related notions to redress the social and psychological dimensions of these notions. Failure to take this second step can lead to the regressive imposition of harsh legal consequences for charges of apostasy and related notions. It is therefore necessary to combine these two approaches by clarifying the relationship between Islam and the state, while at the same time seeking to achieve the fundamental reform of certain aspects of Shari`a because of its powerful influence on Muslims everywhere, even when it is not enforced by the state as such.

To explain and illustrate the application of the various propositions highlighted in this introduction to issues of freedom of speech and religion, I will begin with a brief exploration of some key terms and concepts on which my argument is founded. In light of those working definitions, I will then propose and explain how the secular state (neutral toward all religions) is necessary for the mediation of competing claims of freedoms of speech and religion. In the conclusion, I will apply various elements of my analysis to mediating competing claims regarding "defamation of religion."

II. Islam and Freedom

The purpose of the following brief working definitions is limited to introducing and locating the subsequent discussion in its broader theoretical and hermeneutical context. For this limited purpose, Islam is the monotheistic religion that the Prophet Muhammad propagated between 610 and 632 CE, when he delivered the Qur'an and expounded its meaning and application through what came to be known as *Sunna* (or *Hadith*) of the Prophet. The Qur'an and Sunna are therefore foundational to any sense in which the term Islam and its derivative concepts and adjectives are used, especially among Muslims. They provide the articles of faith and doctrine, ritual practices, as well as moral and ethical precepts. The Qur'an and Sunna are also where Muslims look for guidance in developing their social and political relations, legal norms, and institutions.⁴

The premise of an Islamic discourse is that each and every Muslim is personally responsible for knowing and complying with what each believer accepts as required of him or her. The fundamental principle of individual personal responsibility that can never be abdicated or delegated is one of the recurring themes of the Qur'an (for example, 6:164; 17:15; 35:18; 39:7; 52:21; 74:38). When making reference to the Qur'an and Sunna, every Muslim adopts a particular structure and methodology. This process normally occurs within the framework of a particular school of Islamic jurisprudence (*madhhab*), which has its own established doctrine and methodology. In other words, when Muslims consider the Qur'an and Sunna on any issue, they cannot avoid the filters that the layers of experiences and interpretations of preceding generations of Muslims have added to it. Human reason, judgment, and experience are therefore integral to any approach to the Qur'an and Sunna at multiple levels, ranging from centuries of accumulated experience and interpretation to the current context

in which an Islamic frame of reference is invoked. What is commonly known as *Shari`a* (the normative system of Islam) is based on these scriptural sources, as understood by Muslims.

The structure and methodology through which Muslims have historically understood and applied Islamic precepts as conveyed in the Qur'an and Sunna is known as *usul al-fiqh*. It was developed by early Muslim scholars.⁵ In its early formulations, this field of human knowledge sought to regulate the interpretation of the Qur'an and Sunna in light of the historical experiences of early generations of Muslims. It also defines and regulates the operation of juridical techniques such as *ijma* (consensus), *qiyas* (reasoning by analogy), and *ijtihad* (independent juridical reasoning). As new interpretations of the Qur'an and Sunna texts are proposed by scholars and opinion leaders through their own *ijtihad*, some of those views may be affirmed by inter-generational consensus among Muslims at large and thereby become accepted in the corpus of Shari`a by future generations. This has always been the nature of the origin and development of Shari`a, as knowledge of the texts of the Qur'an and Sunna themselves was a result of inter-generational consensus since the seventh century. Intergenerational consensus has also been the basis of the authority and continuity of *usul al-fiqh*, as well as its principles and techniques, because this interpretative structure is always dependent on its acceptance as such among Muslims from one generation to the next.

But the challenge for participants in these debates is to apply a coherent and systematic methodology of discourse instead of selecting sources and historical evidence arbitrarily to support their views. It is not difficult to find verses of the Qur'an that seem to support various modern human rights principles, like freedom of religion and equality for women. But one can also quote verses that seem to support the opposite view. The real issue is therefore the "framework of interpretation" and not simply the availability of texts of the Qur'an that can be understood one way or another. Accordingly, it is the human judgment and experience of participants in an Islamic discourse that determines which texts are relevant to the issue at hand and how they should be interpreted. The question of which among competing interpretations should or could prevail at any point in time requires detailed analysis that is not possible or necessary to present here. The point I am emphasizing is that views can change, and what prevails today may be rejected in the future.

As a Muslim, I believe the ultimate purpose and meaning of religion itself, and therefore of social and political/legal arrangements that protect freedom of religion and speech, is to make liberation from all fear possible. This possibility, I believe, can be realized through knowing and being at peace with oneself, and with all beings and things. The Sunna (*Hadith*) of the Prophet Muhammad said, "*Mun 'arifa nafsahu faqad 'arifa rabahu*" (knowing ourselves is the means to knowing our God). To know God, I believe, is to be at peace with all of God's creation, which requires being at peace with myself. Islam is the means to that inner peace in belief and practice. Accordingly, my conception of freedom, which includes freedoms of speech and religion, is broader and more dynamic than the legal protection of human rights against and by the state. Although this protection is necessary for realizing that broader meaning, it is only one of the means necessary for the end of liberation from fear, which in turn allows us to strive to realize our full human potential.

There is much more to this framework than I can discuss here. But its relevance to the subject at hand is to show that we need to organize our social and political affairs in ways most conducive to the liberation of each and every human being from fear, the cause of all inhibition, the father of all moral perversion and behavioral distortion.⁶ Addressing external causes of fear through the rule of law and protection of human rights is necessary for creating conditions for human beings to strive to liberate themselves from other forms and sources of fear. But devices of social and political organization are only external means to the inner

processes of true and sustainable liberation, which in my belief is best achieved through religious experience and reflection, which in turn allow us to understand and come to peace with our social and physical environment. This makes freedom of religion of paramount importance for one's ultimate personal liberation, and freedom of speech is integral to that fundamental role of religion.

Yet, it is neither morally legitimate nor practically feasible for one to realize and enjoy these freedoms unless they are equally secured for all human beings. The significance of my freedom of religion and speech is dependent on guaranteeing the same rights to other people. For my religious belief to be the free choice that I need it to be, it must include both the freedom from religion as well as the freedom of religion for all human beings. Moreover, I need others to enjoy the freedom of speech so that I can exercise mine in communicating with them about matters of mutual interest and concern. I believe that all human rights are mutually interdependent and complementary. Furthermore, a right to education enhances freedom of speech and benefit from its exercise to enrich educational experiences. And people need to be secure in their persons and property under the law to enjoy any of their human rights.

I do not mean to suggest that this specific rationale for the freedoms of religion and speech as human rights (owed to all human beings because they are all equal and without distinction) is the only justification for these rights or that it should be universally accepted by all. Rather, it is simply the justification I personally find the most persuasive for the freedoms of religion and speech in particular because it incorporates the entitlement of all human beings to these same rights equally. The conception and rationale of these freedoms itself requires them to be protected for all human beings equally, if these freedoms are to serve their purpose for all human beings, whether they identifying as believers or not.

Moreover, I would also suggest that the proper and sustainable exercise of all freedoms require discretion and good judgment, self-discipline, sensitivity, and respect for the needs and feelings of other people. To have the freedom to do or refrain from doing – whether in exercising freedom of speech, religion, or any other right – does not mean that one must act or speak on every subject or in any manner one wishes without regard to the effects on others. On the contrary, a right or freedom exercised recklessly or carelessly is bound to be lost or denied to persons or communities that fail to hold abusers of rights and freedoms accountable.

Finally for my working definition of freedom, I believe that the duty and ability to use our rights and freedoms properly are better instilled, nurtured, monitored, and supervised through social relationships in the family and community more than through coercive enforcement or regulations by the state. The art of discretion, good judgement, self-discipline, responsibility, and sensitivity in exercising our rights and freedoms is acquired and promoted through socialization and social interaction. These qualities are necessary not only for the proper exercise of our rights and freedoms, but also for the possibility of effective regulation by the state if and when that becomes necessary. It is not possible or likely for state officials and institutions to engage in effective and sustainable coercive regulation of human behaviour unless there is sufficient consensus in the society about the values to be promoted by official institutions.

III. The Secular State as Framework of Mediation of Competing Claims

I turn now to the role of the secular state (one that is neutral but not indifferent or hostile to religion) in mediating competing claims about freedoms of speech and religion. My argument here is that the idea of an Islamic state to enforce Shari`a as positive state law is incoherent

because once principles of Shari`a are enacted as positive law of a state, they cease to be the religious law of Islam and become the political will of that state. In view of the wide diversity of opinion among classical scholars and schools of thought, to enact any of those principles as the positive law of the state would have to select among competing views that are regarded as equally legitimate from an Islamic perspective. Since that selection will be made by whoever happens to be in control of the state, the outcome will be political, rather than religious as such. Any attempt to coercively enforce Shari`a as state law will also be counterproductive because it will necessarily deny some Muslims their religious freedom to choose among different views. I am therefore calling for the institutional separation of religion and the state while recognizing and subjecting the unavoidable connectedness of religion and politics to the limitations of fundamental constitutional rights. For instance, a political party should not be allowed to promote an agenda of gender discrimination in the name of religious doctrine.⁷

There are many aspects of the state and politics that are not possible to discuss here.⁸ My focus in this article is on the secular state, and not secularism, secularization, or any other related concepts and terms. By the secular state, I mean one that is neutral regarding religion in particular, rather than neutral about all issues or matters of public policy. The secular state, I mean, is always deeply contextual and historical to each society. I also appreciate that the expansive and coercive powers of the state can oppress minorities and vulnerable groups. In short, in proposing the secular state as a framework for the mediation of competing claims, I am not idealizing the state as a panacea for all the problems of a society. On the contrary, I am calling for the full range of constitutional safeguards and protection of human rights to enable and facilitate struggles for social justice and political participation. It is with due regard to all these factors that I propose the secular state for the mediation of competing claims of human rights.

The modern state is a centralized, bureaucratic, and hierarchical organization which is composed of institutions, organs, and offices that are supposed to perform highly specialized and differentiated functions through pre-determined rules of general application.⁹ Moreover, the state should be distinct from other kinds of social associations and organizations in theory, while remaining deeply connected to them in practice for its own legitimacy and effective operation. For instance, the state should work with various groups 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 with various non-state actors (civil society organizations, businesses, political parties, and pressure groups) who have competing views of public policy and its outcomes in the daily life of societies. These working relationships are not only necessary for the ability of the state to fulfill its obligations, but in fact are required by the principle of self-determination.

The critical need to separate state and religion while regulating the connectedness of religion and politics requires that proposed policy or legislation must be founded on what I call civic reason. Civic reason consists of two elements.¹⁰ First, it means the rationale and purpose of public policy or legislation must be based on the sort of reasoning that the citizenry in general can accept or reject and to which they can make counter-proposals through public debate. Second, these reasons must be publicly and openly debated by the citizens – it should not simply be assumed that a particular line of reasoning emerges out of the the personal beliefs and motivation of citizens or officials. It is not possible, of course, to control the inner motivations and intentions of the political behavior of people, 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 operation of civic reason in the negotiation of the relationship of religion 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 grounds of religion or belief, and so forth. With the protection provided by these safeguards, citizens will be more likely to contribute to the formulation of public policy and legislation, including objection to proposals made by others in accordance with the requirements of civic reason. Religious believers, including Muslims, can make proposals emerging from their religious beliefs, provided they are also presented to others on the basis of reasons they can accept or reject.

It should also be noted that the ability of citizens to effectively participate in debates in terms of civic reason will vary according to the differences in their socioeconomic status, their political experience, and their ability to maximize the use of resources and build alliances, and so forth. But such factors are reasons for ensuring a fair and inclusive application of the principle of civic reason rather than abandoning it. With greater appreciation for the value and credibility of the civic reason process itself, religious believers will have more opportunities to promote their religious beliefs through the regular political process without threatening those citizens who do not share their religious beliefs.

The role of the secular state in mediating competing claims of human rights and other public policies issues may be briefly described as follows. The model I propose combines the regulation of the relationship between Islam and politics with the separation of Islam and the state. I see this combination as the necessary medium for negotiating the relevance of Shari`a to public policy and law. In this gradual and tentative process of consensus-building through civic reason, various combinations of persons and groups may agree on one issue but disagree on another, and consensus-building efforts may fail on one issue and succeed on another, but none of that will be permanent and conclusive. Whatever happens to be the *substantive* outcome on any issue at any point in time is the product of a process of civic reason based on the free participation of all citizens. And this outcome can change. For this process to continue and thrive, it is imperative that no particular view of Shari`a is coercively imposed in the name of Islam because that would inhibit free debate and contestation.

The ability of the secular state to mediate competing claims is also enhanced by the need of the state to discharge its own obligations. The religious neutrality of the state is essential for the mediation of the tension between the competing roles of religious autonomy and authority on the one hand, and the political authority, legal powers, and material resources of the state on the other. This tension derives from the nature of the two types of institutions. Religious institutions need the cooperation of the state in order to fulfill their own mission, yet they are likely to come into conflict with the state because both institutions seek to influence the behavior of the population living within that same territory. For its part, the state has to seek some measure of control over religious institutions in order to limit the ways in which they can influence the public behavior of believers from their communities. In other words, the state cannot afford to grant particular religious or ideological segments of its population complete freedom to propagate whatever values or engage in whatever activities they wish in the name of freedom of religion and speech.

IV. Conclusions: Mediation of Competing Claims over Defamation of Religion

The position I presented in this article is premised on certain conceptions of the dynamics of the ends and means of human rights as well as the nature of religious faith and experience, as

briefly highlighted earlier. I also emphasized a combination of internal Islamic discourse to change the attitudes of Muslims about such problematic aspects of traditional interpretations of Shari'a, insisting on the secular state as a necessary framework for mediating competing claims about freedoms of speech and religion. Both strategies, I suggested, require religious justification if they are to succeed in transforming the attitudes of believers about relevant issues. We also need to appreciate the context within which mediation can happen, from the local to the global and we need to know the various actors and their agendas and limitations. To further clarify and illustrate the premises, thesis, and analysis, I will now conclude by highlighting how the mediation between freedoms of religion and speech can happen in the context of the debate about the "defamation of religion."

The "defamation of religion" issue was first brought before the United Nations' Commission on Human Rights (UNCHR) by Pakistan on behalf of the Organization of the Islamic Conference (OIC) in 1999 under the agenda item of "racism."¹¹ According to Pakistan, members of the OIC were growing increasingly concerned about widespread institutional and social forms of discrimination against Muslims and Islam. Pakistan argued that this intolerance was systemic, institutional, and very similar to the anti-Semitism associated with the Second World War era. These calls for protection against the "defamation of religion" were renewed with the dramatic rise in "Islamophobia" in Western Europe in the aftermath of 9/11.

The first version of this resolution was criticized by several delegates at the Human Rights Commission of the United Nations for concentrating entirely on Islam. In response, the OIC tried to make the document more inclusive of other religions although it still focused heavily on Islam. The Human Rights Commission initially adopted a resolution entitled "Defamation of Religions" that expressed concern over the frequent and often "negative stereotyping of religions" and was raised under the agenda of "racism." These issues were also debated in the context of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance of August 31 to September 7, 2001. The OIC continued to lobby for a separate resolution to protect religion against "defamation" that was not simply an addendum to the larger conversation on racism. Proponents of this separate resolution sought to establish an international ban on any speech that insults, criticizes, offends, or disparages any religion. The OIC has also suggested that national legislatures should enact laws to protect believers against the "defamation of religions."

In March 2008, the Human Rights Council (successor of the Human Rights Commission in the UN system) adopted Resolution 7/19, which urged all member states of the United Nations "to provide, within their respective legal and constitutional systems, adequate protection against acts of hatred, discrimination, intimidation and coercion resulting from the defamation of any religion."¹² Resolution 7/19 confirmed that everyone has the right to freedom of expression, while emphasizing duties and responsibilities in exercising this right that might result in subjecting freedom of speech to certain restrictions. Resolution 7/19 asserted that, although individuals have a right to free speech, it does not include the right to "defame" religions. In addition to the work of the UN Human Rights Council and Human Rights Commission, the General Assembly of the United Nations has adopted annual resolutions condemning the "defamation of religions" since 2005. Despite these repeated references, the expression "defamation of religion" remains vague and difficult to define. The final version of the Durban Review Conference document adopted in April 2009 did not use this expression but kept the reference merely to "negative stereotyping of religion."¹³ Debate about appropriate definitions will probably continue even if this claim is ultimately incorporated into some international treaty and/or national legislation.

Opponents of the notion of the defamation of religion argue that this initiative seeks to protect religious ideology and beliefs but not religious individuals, and is potentially dangerous for minority religious traditions all over the world. Specific concerns include problems of interpretation: what is offensive to one person may not be offensive to another. Another concern is over what the limits of “defamation,” are and which legal body (local or international) should decide what kind of speech is “acceptable” and what defames religion?

The case of the Ahmadiyya community of Pakistan illustrates the ongoing relevance of these concerns as well as the serious consequences that result from confusion over these issues. The Ahmadiyya community suffered criminal punishment under Pakistani blasphemy law just for expressing their own views about their faith, in addition to being subjected to severe restrictions regarding marriage, divorce, and the inheritance of property.¹⁴ There are similar concerns about the situation for Shi'i, Parsi, and Christian minorities in Pakistan. Paradoxically, the UN Resolutions on the defamation of religion sometimes provide enough legitimacy and support to regimes that allow them to further discrimination against minority sects within their religious traditions or unaffiliated religious minorities. For example, Dalits in India who convert from Hinduism not only suffer the loss of “affirmative action” benefits reserved for low-caste Hindus but are also subjected to violence and discrimination from radical Hindu groups. Critics of the “defamation of religion” resolutions are concerned about the abuse of these resolutions to justify further persecution of Dalits under the pretext that they have engaged in defaming the Hindu religious tradition.

Other objections to the “defamation of religion” initiative include its inhibiting impact on possibilities of religious and cultural pluralism. Under pluralism, groups should have the right to peacefully and respectfully disagree with each other theologically. Yet inter-religious dialogues between groups might suffer if communities are fearful of repercussions for expressing their own theological point of view or disagreeing with others. Moreover, defamation laws in general should protect individuals from slander or libel that might negatively affect their livelihood. When these rights are extended to “truth claims,” there is a conflict with the concept of freedom of religion which is designed to protect belief in different truth claims that may not be accepted by other people and may be in direct conflict with other truth claims. The notion of defamation of religion may therefore lead to a situation where belief in one set of truth claims is automatically taken to constitute the “defamation” of others. Those opposed to the UN resolution argue that the language should be adjusted to focus on the equal protection of all persons to believe, disbelieve, or abstain from any religious belief.

It is not possible or necessary to present here an exhaustive review of these debates, let alone attempt to offer some conclusions on what their outcome should be. Rather, the point to emphasize here is the need for mediating competing claims about freedoms of religion and speech. As noted at the beginning of this article, tensions among and within human rights norms reflect competing priorities, not inherent contradictions. This basic process of balancing and mediating competing claims applies to all levels, from the local to the national to the international, whether in terms of ordinary legislation, constitutional fundamental rights, or international human rights norms. At all levels, I am suggesting, the religious neutrality of the secular state is necessary for this mediation, whether in establishing and applying constitutional and legal norms at home, or in determining national policy to be advanced by official delegates at inter-governmental organizations like the United Nations.

To mediate such tensions, we must first understand and appreciate the perspectives of various participants in the debate. We should also appreciate historical and contextual factors relevant to the particular issue, including economic and political interests of the various

actors, and the impact of colonial and neocolonial power relations on perceptions of the underlying issues. For instance, those concerned about national security in the aftermath of the terrorist attacks of 9/11 should take into account the apprehensions of Muslims and other “suspect” communities about the risks of religious profiling and negative stereotyping.

It is also particularly important to avoid the perception that one side of the debate has the power or authority to decide and the other side is obliged or expected to accept that determination. In the defamation of religion debate, for instance, we should approach mediation in the belief that both sides have legitimate interests and concerns in the matter. To assume that either side has weaker commitment to human rights or a higher authority by which to determine the issue would doom the whole process of mediation to failure and defeat the purposes of both freedoms of religion and speech. To assume that Western officials and civil society actors are more genuinely committed to human rights than their non-western counterparts would only provoke resentment and resistance by those on the other side of the issue. It is counterproductive to assume or imply that Muslim proponents of the defamation of religion resolution are defending oppression while Western opponents of the resolution are the true and legitimate guardians of both freedoms of religion and speech.

This is not to naïvely ignore the possibility that some actors on either or both sides of the debate may seek to exploit the issue to their own advantage. Rather, the challenge is how to deal with that possibility in a constructive manner that will help rather than hinder the mediation of competing claims. To begin with, it may be helpful to consider that whoever is exploiting this issue is tempted to do so because of the plausibility of the concerns she or he is claiming to represent. The challenge is how to respond to the concerns of the affected people without conceding the manipulative aims of those who claim to speak on their behalf. The worst thing we can do in this context, I believe, is to dismiss these underlying concerns because we distrust the motives of those voicing them.

As a Muslim advocate of both freedoms of religion and speech, I am also concerned with transforming the views of Muslims on these issues, as I briefly explained earlier. This transformation is both necessary and possible because every interpretation of the Qur’an and Sunna, in the past, present, and future is necessarily a product of a human interpretation within the historical context of a Muslim society. In view of the radical transformation of the context of Islamic societies today, as compared to what used to prevail when traditional interpretations of Shari’a were established, modern interpretations of the Qur’an and Sunna must respond by producing modernist formulations of Shari’a. This internal transformation of attitudes is required to legitimize and advance any possibility of mediation of competing claims of rights in the first place. It is equally imperative, however, that no interpretation of Shari’a, whether traditional or modernist, can or should be enforced by the state. Islamic reform is necessary for the sociological dimension of Shari’a, not its possible enforcement as the law by the state.

NOTES

1. According to a study by the Pew Forum on Religion and Public Life, the total Muslim population of the world today is approximately 1.57 billion. 60.9% of them live in Asia and the Pacific, 20.1% in the Middle East and North Africa, 15.3% in Sub-Saharan Africa, 2.4% in Europe, and 0.3% in the Americas. Europe is home to 38 million Muslims – around 5% of its population. More than half of the 4.6 million Muslims in the Americas live in the US – however, they make up just 0.8% of the population there. The data also shows that there were more Muslims in Germany than in Lebanon and more in Russia than in Jordan and Libya combined.

BBC News, “One in four is Muslim, study says,” October 8, 2009, http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/in_depth/8296200.stm.

2. See, for example, Abdullahi Ahmed An-Na'im. "Islamic Foundations of Religious Human Rights," in *Religious Human Rights in Global Perspectives: Religious Perspectives*, eds. John Witte, Jr. and Johan D. van der Vyver (The Hague: Martinus Nijhoff Publishers, 1996), 337–59.

For further elaboration and application of this approach to a range of human rights concerns see Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law* (Syracuse, N.Y.: Syracuse University Press, 1990).

3. Martin Lau, *The Role of Islam in the Legal System of Pakistan* (Leiden: Martinus Nijhoff Publishers, 2006), 112–19. Section 126 of the Sudan Penal Code of 1992 expressly imposes the death penalty for apostasy. In fact, the death penalty for apostasy was enforced in Sudan before this section was added. See Abdullahi Ahmed An-Na'im, "The Islamic Law of Apostasy and its Modern Applicability: A Case from The Sudan," *Religion*, 16 (1986): 197–223.

4. For an overview of Islamic doctrine and early history, see Marshall G. S. Hodgson, *The Venture of Islam: Conscience and History in a World Civilization*, Vol. 1 (Chicago: University of Chicago Press, 1974) and Fazlur Rahman, *Islam* (Chicago: University of Chicago Press, 1979).

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

6. Mahmoud Mohamed Taha, *The Second Message of Islam* (Syracuse, NY: Syracuse University Press, 1987), 84.

7. For this argument in detail see Abdullahi Ahmed An-Na'im, *Islam and the Secular State* (Cambridge, MA: Harvard University Press, 2008), chaps. 1 to 3.

8. See generally, for example, Graeme Gill, *The Nature and Development of the Modern State* (New York: Palgrave Macmillan, 2003).

9. *Ibid.*, 2–4.

10. On my concept of "civic reason" and how it relates to John Rawls' "public reason", see, *Islam and the Secular State*, 92–101.

11. According to its website, the OIC is a 57 member inter-governmental organization and is the collective voice of the Muslim world and it works to safeguard and protect the interests of the Muslim world in the spirit of promoting international peace and harmony among various people of the world. *Organisation of Islamic Cooperation*, accessed April 25, 2010, http://www.oic-oci.org/page_detail.asp?p_id=52.

12. "Resolution 7/19: Combating Defamation of Religions," *Human Rights Council* March 27, 2008, available at http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_19.pdf.

13. "'Defamation of Religion' and the Durban Review Conference Final Draft," Religion Clause, last modified April 23, 2009, <http://religionclause.blogspot.com/2009/04/defamation-of-religion-and-durban.html>

14. Lau, *The Role of Islam in the Legal System of Pakistan*, 112–19.

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