

MAHMUD MUHAMMAD TAHA AND THE
CRISIS IN ISLAMIC LAW REFORM:
IMPLICATIONS FOR INTERRELIGIOUS RELATIONS

Abdullahi Ahmed An-Na'im

PRECIS

Under historical Islamic Law, *shari'a*, non-Muslims and women living in pluralistic nation-states cannot expect legal equality with Muslim men, as required by contemporary principles of constitutionalism and established standards of human rights. Moreover, certain principles of *shari'a* are not conducive to positive interreligious relations and dialogue. It is, therefore, imperative that the relevant principles of *shari'a* be reformed in order to reconcile them with current standards of constitutionalism and human rights, as well as to enhance interreligious tolerance and understanding.

On close examination, *shari'a's* own reform techniques, as devised by the early jurists in the eighth and ninth centuries, are simply incapable of achieving such reconciliation. Nevertheless, *shari'a* has to be reformed from within the Islamic tradition itself if the outcome is to command respect and observance by Muslims throughout the world. This need for internal reform that cannot be achieved through traditional techniques presents Muslims with a genuine crisis. Besides explaining this crisis and illustrating its implications, this article introduces and assesses, tentatively, a revolutionary Islamic reform technique developed by the late Sudanese writer, *Ustadh* Mahmud Muhammad Taha.

Abdullahi Ahmed An-Na'im (Muslim) headed the Dept. of Public Law of the Faculty of Law at the University of Khartoum from 1979 to 1985, where he is an Associate Professor of Law, on leave from 1985 to 1989. During 1985-87, he was a Visiting Professor of Law at the School of Law, University of California at Los Angeles. From August, 1987, to July, 1988, he has been a Fellow at the Woodrow Wilson International Center for Scholars at the Smithsonian Institution in Washington, DC, and he will be a Visiting Professor of Law at the College of Law, University of Saskatchewan, Saskatoon, during 1988-89. He has been an attorney in the Sudan since 1977 and a member of the Sudanese Bar Association. He is a Board Member (1986-88) of the International Third World Legal Studies Association and a member of the Foundation for the Establishment of an International Criminal Court and International Criminal Law Commission, U.N. Affiliate Conferences. He holds an LL.B. from the University of Khartoum, both a graduate LL.B. and a diploma in criminology (M.A.) from the University of Cambridge, and a Ph.D. in law from the University of Edinburgh (1976). He also attended the International Institute of Human Rights in Strasbourg, France, in the summer of 1981. He has published in Arabic *Sudanese Criminal Law* (Omdurman: Huriyah Press, 1986), and the English translation and an introduction for Mahmoud Mohamed Taha's *The Second Message of Islam* (Syracuse University Press, 1987). He has published more than a dozen articles on legal and human-rights topics, including "Religious Freedom in Egypt: Under the Shadow of the *Dhimma* System," in L. Swidler, ed., *Religious Liberty and Human Rights in Nations and Religions* (Ecumenical Press, 1986); "Christian-Muslim Relations in the Sudan: Peaceful Co-existence at Risk," in K. Ellis, ed., *Vatican, Islam, and the Middle East* (Syracuse University Press, 1987); and "Islamic Law, International Relations, and Human Rights: Challenge and Response," in *Cornell International Law Journal*, vol. 20, no. 2 (1987). He has also participated in numerous conferences, symposia, and seminars in the Middle East and throughout the U.S.A., as well as lecturing in the U.S.A. and West Germany.

Introduction

A fundamental problem facing both Muslims and non-Muslims who wish to engage one another in serious interreligious dialogue has been the traditional Muslim position that all non-Muslims perforce will be second-class citizens in any state where the Muslims obtain political power. A similar domineering attitude prevailed until just a few decades ago in Roman Catholicism, making it almost impossible for Catholics to enter into dialogue with non-Catholics until Vatican II (1962-65).¹ Similarly, dialogue with orthodox Marxists from countries under Communist control today still suffers from a like disability. Clearly, an essential question for dialogue with Islam, then, is whether full equality between Muslims and non-Muslims can be reconciled with the major sources of Islam, the Qur'an and *sunna*. If so, how? It is these two extremely difficult but essential questions that will be addressed in this article.

Despite the apparent growing demand for Islamization—the total application of Islamic law to every aspect of public as well as private life—in many Muslim countries, and perhaps because of that, there is also growing awareness of the crisis in Islamic law reform that is explained and discussed in this article. As demands for Islamization force politicians to adopt supposedly “Islamic” policies and implement allegedly “Islamic” laws throughout the Muslim world, problems with these policies and deficiencies in these laws immediately come to the forefront. When we resort to the techniques of legislation and law reform within *shari'a* as developed by the early Muslim jurists, we find that those techniques are inadequate and incapable of resolving the problems or supplementing the deficiencies.

It is true that Muslims believe that Islam, as contained in its fundamental sources, namely the Qur'an and *sunna* traditions of the Prophet, is perfect and infallible. It does not follow from this belief, I submit, that the *shari'a*, which is in fact no more than the interpretation and application of those fundamental sources by the early Muslims, is also perfect and infallible. This basic distinction between Islam and historical *shari'a*, I believe, is vital to the success of the process of modern Islamization. If historical *shari'a* is to be held as sacred and permanent as Islam itself, Muslims cannot change those principles of *shari'a* that are no longer valid and viable.

For better and for worse, Muslims have already accepted the nation-state as the framework for their governmental organization and international relations.² This framework presupposes certain constitutional principles, especially the principle of equality of all citizens of the state in terms of their public civil rights.

¹See Leonard Swidler, *The Ecumenical Vanguard* (Pittsburgh: Duquesne University Press, 1965), for a detailed documentation and discussion of largely foiled pre-Vatican II Catholic attempts at intra-Christian—to say nothing of interreligious—dialogue.

²See, generally, James P. Piscatori, *Islam in a World of Nation-States* (New York: Cambridge University Press, 1987).

Moreover, as members of the international community and signatories to international human-rights instruments, Muslim states are bound to maintain such equality among their citizens without discrimination on grounds of gender, religion, or belief.³ Yet, as will be demonstrated in this article, *shari'a* does not conceive of women and non-Muslims as full citizens of an Islamic state. It is imperative, I believe, that the process of Islamization should not be allowed to violate these fundamental constitutional and human-rights obligations.

This article is concerned with the prospects of reconciling Islamic law with current standards of constitutionalism and human rights. In particular, we shall attempt an assessment of the reform methodology developed by the late Sudanese Muslim reformer, *Ustadh* (revered teacher) Mahmud Muhammad Taha, because it seems to offer the best prospects for humane and intelligent Islamization that satisfies the Muslim need for self-determination while fully guaranteeing constitutional and human rights.

In view of the common mistaken identification of *shari'a* with Islam itself, modern Muslim scholars tend to prefer to address their criticism to Islamic *fiqh*, the jurisprudence of the early Muslim jurists, rather than *shari'a*.⁴ As we shall see below, however, the problems are deeper, in that they pertain to the very nature of the Qur'an and *sunna* as sources of law to be understood in historical context. Superficial and apologetic treatment of the issues in terms of *fiqh* rather than *shari'a* may appeal to popular Muslim sentiments, but it does not resolve the problems authoritatively and finally for the purposes of concrete Islamization. During the previous historical Muslim experience, the problem may have been the rigidity of theory and, as a consequence, the divergence of subsequent practice from the early model and its theoretical articulation in *shari'a*. When we consider the prospects of the modern application of *shari'a*, argued *Ustadh* Mahmud, we find that there are very serious problems with the early model itself as well as with the basic assumptions of all former theoretical articulations.

With particular awareness of the need for reform and sensitivity to the serious implications of premature implementation, *Ustadh* Mahmud Muhammad Taha has proposed a comprehensive theory for modern Islamization. As a result

³Except for Saudi Arabia, all Muslim states that were independent at the time supported the Universal Declaration of Human Rights in 1948: G.A. Res. 217A (III), U.N. Doc. A/180, at 71 (1948). All Muslim states that have become independent since then have endorsed the Declaration. Moreover, Muslim states have also endorsed other relevant resolutions of the General Assembly of the United Nations, such as the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief: U.N. GAOR Supp. (51), U.N. Doc. A/RES/36/55 (1982). Furthermore, many Muslim states are signatories to specialized human-rights instruments, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights: G.A. Res. 2200 (XXI), 21 U.N. GAOR, Supp. (16) 52, U.N. Doc. A/6316 (1966), and G.A. Res. 2200 (XXI), U.N. Doc. A/6316 (1966), respectively. The principle of nondiscrimination on grounds of gender, religion, or belief is fundamental to all the international obligations that Muslim states have undertaken under these instruments.

⁴See, e.g., Kemal Faruki, *The Evolution of Islamic Constitutional Theory and Practice* (Karachi and Dacca: National Publishing House, 1971), pp. 81-82, 84-85.

of his opposition to what he perceived to be misconceived and premature Islamization in the Sudan, *Ustadh* Mahmud was executed in Khartoum on January 18, 1985.⁵ Although he believed that the public law of *shari'a* provided a comprehensive and satisfactory body of principles and rules for government in the early Islamic historical context, he also maintained that some of those principles and rules are no longer valid in the modern context. What distinguishes *Ustadh* Mahmud from other modern Muslim writers who call for reform and modernization, in my view, is his exceptional courage and conceptual clarity in facing the real issues and proposing sufficient, albeit novel and controversial, answers.

In order to appreciate his proposed methodology for safeguarding the constitutional and human rights of women and non-Muslims within any national Islamization process, we need to emphasize certain aspects of the nature and development of *shari'a* and to recognize the limitations of traditional Islamic law reform. This will be done in the first two sections of the article. The following three sections of the article will survey the life and work of *Ustadh* Mahmud, explain the main features of his proposed reform technique, and assess the realistic prospects of its implementation. In conclusion, the article will emphasize the significance of this man's work for interreligious relations, not only within any particular nation-state but also in the wider international context.

Aspects of the Nature and Development of Shari'a

Without going into a detailed discussion of the development and content of *shari'a* in general,⁶ we can briefly note the following. First, there is the historical context within which the first Islamic state, which came to be taken as the model state under *shari'a*, was established. For the first thirteen years of his mission, the Prophet propagated the faith and laid down the moral principles of Islam through divine revelation, the Qur'an, and his own personal example, which came to be known as *sunna*, in Mecca from 610 to 622. In the face of continuing persecution and mounting hostility, the Prophet and his companions had to migrate to Medina, another town in western Arabia, where the brotherhood of the migrants and their supporting hosts was welded into the first integrated Muslim community. The treaty or charter among the two segments of the Muslim community, on the one hand, and the Jewish and Christian tribes of the Medina area, on the other hand, constituted the basis of the first Muslim state.⁷

⁵On the circumstances of his trial and execution, see my article, "The Islamic Law of Apostasy and Its Modern Applicability: A Case from the Sudan," *Religion*, vol. 16 (1986), pp. 197-224.

⁶On this broad and somewhat controversial subject, see, e.g., Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964); N. J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964); and Ahmad Hasan, *Early Development of Islamic Jurisprudence* (Islamabad: Islamic Research Institute, 1970).

⁷Fazlur Rahman, *Islam* (London: Weidenfeld and Nicholson, 1966), pp. 11-19; and

The precedent of equality and security for the Jewish and Christian participants to that initial charter is, of course, very significant in terms of the future reform of the status of non-Muslims under Islamic law. Nevertheless, it must be noted that those communities had to pledge submission to Muslim sovereignty and to the Prophet as the absolute rule of the state.⁸

When the Jewish tribe of *Banu Qurayiza* violated the terms of that accord by siding with forces invading Medina, the Prophet repudiated the charter and severely punished that Jewish tribe.⁹ As a result of this development, the status of non-Muslims within the first Islamic state was drastically altered. Qur'anic revelation, *sunna*, and other practice subsequent to that incident came to be taken as the authoritative sources of *shari'a* on the status of non-Muslims in general. It is important for our purposes here to note the historical context of that change.

Second, we need to note the nature of the sources from which *shari'a* was developed by the founding jurists. The original sources of *shari'a* were the Qur'an and *sunna* of the Prophet. On the basis of *sunna* authority, *ijma'*, the consensus of the Muslim community, was also accepted as a source of *shari'a*. In their efforts to articulate and tabulate the law, the leading Muslim jurists of the eighth and ninth centuries applied *qiyas*, analogy, to resolve new problems according to established precedent. They also exercised *ijtihad*, independent juristic reasoning, according to their view of the best interest of the community. Due to the accumulation of precedents, including established interpretation of the Qur'an and *sunna*, room for innovation was gradually narrowing until it was deemed to have been exhausted around the beginning of the tenth century. This phenomenon, known as the closing of the gates of *ijtihad*, marked the end of the era of establishing distinctive schools of jurisprudence.¹⁰ Subsequent jurists such as the Ibn Taimiyya attempted to challenge some of the assumptions of the formative era of *shari'a* jurisprudence but only by reasserting the absolute authority of the interpretations and practices of the first few generations of Muslims (*as-salaf*).¹¹

With respect to the basic sources of *shari'a*, namely, the Qur'an and *sunna*, we need to note the following. Although the Qur'an was recorded very early,

Montgomery Watt, *Islamic Political Thought* (Edinburgh: Edinburgh University Press, 1968), p. 406.

⁸For an English translation of the Medina charter, see Watt, *Islamic Political Thought*, pp. 130-134.

⁹Ibn Hisham, *As-sira an-Nabawiyya* (The Biography of the Prophet), 2nd ed. (Cairo, 1955), pp. 214-233. The episode is also discussed in numerous works such as Sayyid Ameer Ali, *The Spirit of Islam* (London: Methuen and Co., 1922), pp. 72-82; Montgomery Watt, *Muhammad: Prophet as Statesman* (New York: Oxford University Press, 1961), pp. 166-175; and Bernard Lewis, *The Arabs in History* (New York: Harper and Row, 1960), pp. 40 ff.

¹⁰Schacht, *Introduction to Islamic Law*, pp. 69-75; Coulson, *History of Islamic Law*, pp. 62, 80-81, 84-85.

¹¹On the methods and views of Ibn Taimiyya, see Erwin I. J. Rosenthal, *Political Thought in Medieval Islam* (New York: Cambridge University Press, 1962), pp. 245-249; and Omar A. Farruk, *Ibn Taimiyya on Public and Private Law in Islam* (Beirut: Khayats, 1966).

leaving no room for significant controversy over its text, disagreement over the interpretation of that text has always been unavoidable. As to the *sunna*, which was recorded much later,¹² there has been controversy over the authenticity of its texts as well as disagreement over their interpretation and relationship to the Qur'an. Despite the efforts of leading compilers of the *sunna*, challenges to the authenticity of some reports of the Prophet's actions and words continue to the present day because of allegations of fabrication to support political and intellectual positions. The very fact that these compilations were prepared 200 years later out of oral traditions that were no doubt affected by political events and ideological and jurisprudential debates of the time seems to lend support to charges of fabrication.¹³ At best, the compilers must have run the risk of disregarding some authentic *sunna* for lack of appropriate corroboration—thereby, in some cases, as it were, throwing out the baby with the bath water. Nevertheless, the *sunna* is generally accepted as the second source of the law, often used to explain and restrict or extend the meaning of the first source itself, the Qur'an.

Thirdly, there is the role of *naskh*, abrogation, in the development of *shari'a*. Working out of the above mentioned sources, with an increasingly narrowing scope of *ijtihad*, the jurists employed the principle of *naskh*, the assumption that subsequently revealed verses of the Qur'an and subsequent *sunna* must have repealed or restricted the legal effect of earlier verses of the Qur'an and *sunna*.¹⁴ This was a vital and logical process for reconciling apparent contradictions and deducing integrated and coherent legal principles and rules. Since any reformative effort will have to deal with the problem of reconciling apparently contradictory texts of the Qur'an and *sunna*, especially in the realm of public and constitutional law, the question of *naskh* is a fundamental component of both the crisis in Islamic law reform and its proposed resolution.

Moreover, and of special interest for the purposes of the present article, we have to understand the role and limitations of *ijtihad* within the framework of *shari'a*. Given the established and fixed nature of the two basic sources, namely, the Qur'an and *sunna*, modern Muslim writers have demanded the reopening of the gate of *ijtihad*, that is to say, they call for the resumption of independent juristic reasoning.¹⁵ To understand why this approach will not achieve the desired objective of resolving some of the fundamental problems noted below, we now turn to a brief consideration of *ijtihad* and its limitations.

¹²The compilers of what are now accepted by the majority of Muslims as authentic *sunna* are Bukahri (d. 869), Muslim (d. 874), Ibn Da'ud (d. 888), Ibn Maja (d. 886), Tirmidhi (d. 892), and Nasa'i (d. 915).

¹³Rahman, *Islam*, pp. 63-66.

¹⁴On this technique and its application in *shari'a*, see, e.g., Mustafa Zaid, *An-Naskh fi 'l-qur'an al-karim* (Abrogation in the Glorious Qur'an), 2 vols. (Beirut, 1971); and K. I. Semann, "Al-Nasikh wa al-Mansukh, Abrogation and Its Application in Islam," *Islamic Quarterly* 5 (April-July, 1959): 11.

¹⁵See, e.g., Wael B. Hallag, "Was the Gate of Ijtihad Closed?" *International Journal of Middle East Studies*, vol. 16, no. 1 (1984), p. 3.

The Role of Ijtihad

Ijtihad is primarily based on several *sunna* in which the Prophet approved the use of this method in supplementing the Qur'an and *sunna* as sources of *shari'a*. According to a generally accepted *sunna*, for example, the Prophet is reported to have asked *Ma'adh ibn Jabal*, when he appointed him governor for Yemen in southern Arabia, "How would you govern?" *Ma'adh* replied, "According to the book of God [the Qur'an]." The Prophet then asked, "What if you find nothing on the particular issue (in the Qur'an)?" *Ma'adh* replied, "I will decide it in accordance with the *sunna* of the Messenger of God [the Prophet]." "What if you find nothing on the issue in the *sunna*?" asked the Prophet; and *Ma'adh* responded that he would then exercise his own independent judgment (*ajtihidu ra'iy*). The Prophet is reported to have approved this.¹⁶ Similar *sunna* texts are reported with reference to 'Ali Ibn 'Abi Talib and other provincial governors appointed by the Prophet.

The same order of sources is also supported by the logic of religious law, with the Qur'an as the literal word of God ranking at the top, followed by the *sunna* as the example set by the perfect Muslim, the Prophet. Only in the absence of a clear and definite ruling in both the Qur'an and *sunna* would it be open for the human reasoning of the believer to presume to supplement the rules of *shari'a*.

By the same logic, it seemed obvious to the leading jurists that *ijtihad* should not be open to every believer. To ensure that there is no applicable clear and definite text of the Qur'an and *sunna*, the purported *mujtahid*—one who claims to exercise *ijtihad*—must not only memorize the Qur'an and *sunna* but also master the established techniques of interpretation and deduction of principles and rules. To this end, the jurists sought to lay down, in great detail, the qualifications and requirements for practicing *ijtihad*. A *mujtahid* must therefore learn the Qur'an and *sunna* by heart, be well versed in the arts and techniques of the Arabic language in which those sources were expressed, and be knowledgeable in early Islamic history, etc. Moreover, since *ijtihad* was considered to be a religious function, the person must be a devout Muslim of impeccable character and moral standing.

However, although one concedes the reasonableness of these qualifications and requirements in the historical context of previous *ijtihad*, the following considerations should be taken into account in relation to the modern exercise of *ijtihad*. First, the requirement of memorizing the Qur'an and *sunna* may have been imperative in the largely oral tradition of early Islam, but it ceases to be compelling in the modern context with the wide availability of indexed sources

¹⁶A full translation of this *sunna* may be found in Duncan B. MacDonald, *Development of Muslim Theology, Jurisprudence, and Constitutional Theory* (Russell & Russell, 1965; orig. — London: Routledge, 1903), p. 86. See also Majid Khadduri, "Nature and Sources of Islamic Law," *The George Washington Law Review*, vol. 22, no. 1 (1953), p. 11.

and even computerized access and cross-reference. Second, personal piety and moral standing can hardly be verified by formal qualifications. It may have been possible to form a somewhat sound judgment on such subjective qualifications in the small and close-knit community of scholars in the few leading centers of learning of the Middle East in the eighth and ninth centuries. Such subjective judgment, I would submit, is neither possible nor desirable today, with the potential for manipulating the mass media to distort and misrepresent facts for the benefit of vested interest and political expediency.

For these and other related reasons, it would not be desirable, in my view, to designate certain individuals or institutions as having an exclusive monopoly on the exercise of modern *ijtihad*. It must remain open to every Muslim to offer her or his views and interpretations, leaving it to them to accept or reject such views and interpretations. Instead of prior censorship by official or formal institutions, which are liable to manipulation or abuse, the personal credibility of the particular person and the validity of her or his views are best left to popular judgment. This obviously presupposes freedom of thought and expression to facilitate scholarly debate and scientific investigation. Unfortunately, the *shari'a* notion of apostasy and its harsh penal and other consequences, to be explained below, severely restrict freedom of thought and expression.

Believers and ideologues of all traditions have always claimed the prerogative of defining the boundaries of their faith or ideology to the exclusion of people who claim commitment to, but express views which are perceived to be inconsistent with, the same belief or ideology. With the separation of state and church in the West, the consequences of apostasy in Christianity, for example, have been confined to the psychological and social spheres. Alleged apostates or heretics may suffer the psychological pressure of social isolation and spiritual deprivation, but their legal rights to personal safety and security of property are not affected. This is not yet the position under *shari'a*, as the fate of *Ustadh* Mahmud himself clearly illustrates. According to all the established schools of Islamic jurisprudence, as accepted by the vast majority of Muslims today, an apostate must be put to death, his property confiscated, and his Muslim wife divorced from him, regardless of her wishes.¹⁷ As recently as 1985, the ruling of a Sudanese Court of Appeal purported to apply *shari'a* not only by sentencing *Ustadh* Mahmud to death but also by ordering the burning of his books and prohibiting the propagation of his views in the future.¹⁸ A similar fate and consequences face anyone who expresses unpopular or unorthodox views in purported exercise of *ijtihad*. What is left of the freedom of thought and expression if a man who

¹⁷If apostasy is committed by a woman, she would suffer all the "civil" consequences under *shari'a*: her property would be confiscated and her marriage annulled. However, there is some disagreement among the jurists as to whether she may be executed for the offense. On this question, see Rudolph Peters and Gert J. J. DeVries, "Apostasy in Islam," *Die Welt des Islams*, vol. 17, nos. 1-4 (1976-77), p. 5.

¹⁸See An-Na'im, "Islamic Law of Apostasy," pp. 208 ff.

claims to be a Muslim is executed because his views are perceived by a court of law, or even the vast majority of Muslims, to be heretical!

In addition to this most serious obstacle facing freedom of thought and expression under *shari'a*, there remains the problem of the limitations of *ijtihad* itself. According to both its textual authority and original logic, orthodox *ijtihad* cannot be exercised in matters governed by clear and definite texts of the Qur'an or *sunna*. According to historical Islamic jurisprudence, jurists may have some room for interpretation within the limits of a clear and definite text of the Qur'an and/or *sunna*, but they may not exercise *ijtihad* to develop alternative rules in any matter on which clear and definite texts can be found. Thus, any rule of *shari'a* that is based on clear and definite texts of the Qur'an and/or *sunna*, as is the case with some of the rules discriminating against women and non-Muslims, cannot be changed or modified through the use of orthodox *ijtihad*.

Therefore, it would seem necessary that a revolutionary approach be developed and applied if the problems of *shari'a* explained below are to be resolved. As H. A. R. Gibb rightly said, "Every scientific argument must also take the same course and reach the same conclusion, unless you change the same postulates or invent new tools."¹⁹ Before discussing the basic premise of the particular revolutionary approach proposed by *Ustadh* Mahmud, it may be helpful to give some background information on his life and work.

The Man and His Movement

Ustadh Mahmud was born in the town of Rufa'a, on the Blue Nile in central Sudan, around 1909.²⁰ After the death of his mother in 1915, and his father in 1920, he was raised, together with his two sisters and one brother, by relatives in a nearby village. Since Rufa'a was one of the early centers of civil, as distinguished from traditional religious, education, *Ustadh* Mahmud went to modern civil schools until he graduated in civil engineering from the Gordon Memorial College (later to become the University of Khartoum) in 1936. Nevertheless, in accordance with the traditions of religious families at the time, the young *Ustadh* Mahmud received early instruction in the Qur'an, but he did not finish learning it by heart at that stage.

His professional career started with a short period of government service with the Sudan Railway Department. During the late 1930's and early 1940's, he became involved with the emerging nationalist struggle for independence from

¹⁹H. A. R. Gibb, *Muhammadanism: An Historical Survey*, 2nd ed. (New York: Oxford University Press, 1962), p. 91. Gibb made the same point in *Modern Trends in Islam* (Chicago: University of Chicago Press, 1947), p. 124.

²⁰This is the estimate of his date of birth given by *Ustadh* Mahmud himself. No official records of birth dates were kept at the time.

colonial Anglo-Egyptian rule. This led to difficulties with his employer, the colonial government, and resignation to go into private practice, with the intention of devoting more time and energy to political activities.

He was not happy, however, with the political activities of Sudanese intellectuals who were willing to act as mouthpieces for the traditional sectarian leadership of the time.²¹ In dissatisfaction with the available options, *Ustadh* Mahmud established, with some colleagues, *al-Hizb al-Jamhuri* (the Republican Party) in October, 1945. He was elected the Party's first leader. His political activities led to his imprisonment by the British colonial authorities in 1946 for refusing to sign a bond to cease publishing pamphlets demanding independence. After his release without signing that bond, he was rearrested in the same year, tried, and sentenced to two years' imprisonment for his leading role in the so-called Rufa'a revolt of 1946. It was during this second prison term, and the subsequent three years of self-imposed religious seclusion (*khalwa*) in the Muslim *Sufi* (mystic) tradition, that he underwent a profound religious experience and emerged, in 1951, with his integrated theory for what he described as the Evolution of Islamic Legislation (*tatwir At-tashri' Al-islami*).

From 1951 till his execution in January, 1985, *Ustadh* Mahmud continued to propagate his views, assisted by his growing circle of followers, who became known as *al-Jamhuriun* (the Republicans). Although retaining its name and most of its membership, the political party of 1945 was transformed into a religious-ideological organization following its general conference of 1951, with some of the founding members gradually opting out in favor of action with the main political parties of the time. Since its transformation, the organization centered around the figure of *Ustadh* Mahmud in the traditions of the classic *Sufi* fraternities rather than adopt the structure and methods of a political party or organization as such. Although feeling a special affinity and sharing a basic orientation with classic Islamic *Sufism*, *Ustadh* Mahmud and his followers were critical of what they regarded to be the degenerate contemporary successors of the early masters and their fraternities. Following the dissolution of all political parties by the *coup d'etat* of May 25, 1969, the organization adopted the name of *al-Ikwan al-Jamhuriun* (the Republic Brothers). They were able to continue to operate until 1983 because they were never a political party in the usual sense of the term.

Because of the novelty of his proposed methodology for reform and the challenge he posed to the traditional Islamic leadership in the Sudan, *Ustadh* Mahmud was often charged with apostasy by his political opponents. However, since the secular legal system that used to prevail in the country did not pro-

²¹Most intellectual activists joined the political parties established by the two main Islamic sects in the Sudan: the *Ansar* (Mahdists) and the *Khatmiya* sects. It is remarkable that the same two sects and their hereditary leadership continue to dominate Sudanese party politics to the present day. The current government is a combination of the two parties of these two sects.

vide for the punishment of this *shari'a* offense, these charges were ineffective in silencing *Ustadh* Mahmud and his followers. In 1968, for example, the *shari'a* High Court of Khartoum ruled that *Ustadh* Mahmud was an apostate from Islam. Because the court's jurisdiction was confined to family-law matters, and it had no power to enforce any criminal or civil sanctions, the ruling remained a dead letter until it was invoked to support *Ustadh* Mahmud's conviction and execution in 1985.²² This criminal trial and execution of *Ustadh* Mahmud for his views was only possible because of the 1983 transformation of the legal system under former President Numairi of the Sudan.²³

The revolutionary religious nature of the work of *Ustadh* Mahmud was reflected in his own lifestyle and organizational methods. While drawing from his civil education and knowledge of modern sciences, *Ustadh* Mahmud was a profoundly religious man. Living and teaching in the tradition of Islamic *Sufi* masters, he emphasized the values of simplicity of lifestyle and genuine humble piety. His organization of the Republicans also reflected private discipline, *adab*, and informal structure of the classic *Sufi* fraternities. Nevertheless, the group departed from that tradition in several ways that they regarded as significant in terms of the content and purpose of their approach. First, their activities were characterized by much greater involvement in the public and political affairs of the community and the country at large. To this end, they had very specific and highly publicized views on all the public issues of the day, whether local, national, or international. For example, their advocacy of peace and normal relations with the state of Israel since the 1950's was well known. Second, and in accordance with their advocacy of equality for women, the Republican sisters played a very prominent role in the leadership of the group and participated fully in all its activities.

As these two examples clearly show, the group was willing to live its views in day-to-day practice, however unpopular those views and the policies they generated may have been. In this regard, the group was trying to live up to the standards set by its founder and leader who took consistency of thought and action to be the essence of the religious life. As he repeatedly emphasized, a believer's obligation is to act in accordance with what she or he perceived to be her or his immediate duty, without worrying about the consequences. In accordance with the *Sufi* principle that God is the only real actor in the universe, *Ustadh* Mahmud took every single incident or encounter of the day, however minor or apparently insignificant, as a crucial test of his faith and religious integrity. As a believer in God's providence and mercy, he maintained, one should not

²²In January, 1985, the Special Criminal Court of Appeal relied on that 1968 decision in confirming the conviction for apostasy and the death sentence on *Ustadh* Mahmud. See An-Na'im, "Islamic Law of Apostasy," p. 209.

²³Former President Numairi was overthrown on April 6, 1985, seventy-six days after the execution of *Ustadh* Mahmud. However, the *shari'a* laws introduced by Numairi in 1983 remain in force in the Sudan to the present.

worry about the apparently or initially unpleasant consequences, because the real or ultimate consequences are bound to be good.

When the ultimate test came, *Ustadh* Mahmud stood firm on this principle and suffered death rather than recant his views.²⁴ In accordance with his best judgment, he felt bound to oppose Numairi's premature, misconceived, and distorted Islamization. It was therefore *Ustadh* Mahmud's immediate duty to oppose, without worrying about the consequences that, he believed, are bound to be good so long as he was true to the discipline of the immediate moment, *adab al-waqt*. This discipline also accounts for the more significant aspect of the life and work of *Ustadh* Mahmud, namely, the willingness and ability to live throughout his life in accordance with his convictions. His death may have provided a more dramatic illustration of his courage and the strength of his convictions, but it was his day-to-day living in accordance with this principle that was much more difficult and impressive.

The theological and philosophical aspects of the life and work of *Ustadh* Mahmud will no doubt receive the attention of more competent authors. For the purposes of the present article, however, we are concerned with some of the constitutional and human-rights implications of his reform methodology.

The Evolution of Islamic Legislation

As explained above, the crisis in Islamic law reform is due to the fact that the traditional reform techniques are no longer adequate. Since certain aspects of the problematic *shari'a* principles are based on clear and definite texts of the Qur'an and *sunna*, they are not open to reform through the exercise of orthodox *ijtihad*. The specific techniques of *ijma'*, consensus, and *qiyas*, analogy, are no more promising because they follow established precedents based on the same objectionable principles. In any case, these two techniques are also restricted by the same limitation of orthodox *ijtihad* because *ijma'* and *qiyas* are invalid if they contradict any clear and definite text of the Qur'an or *sunna*. More general arguments that seek to resolve the problems through reinterpretation and restriction of some of the texts or raising doubts with respect to certain *sunna* will also fail because they cannot avoid or circumvent some clear and definite texts of the Qur'an itself. To illustrate this point, we will take two examples here, the rights and status of women and of non-Muslims. It is with respect to these specific issues that the superiority of the evolutionary principle can best be appreciated.

Because of certain clear and definite texts of the Qur'an itself, aside from

²⁴Representatives of President Numairi's regime sought to spare *Ustadh* Mahmud's life in exchange for some token submission and withdrawal of opposition to Numairi's Islamization. *Ustadh* Mahmud rejected their mediation, preferring to die rather than compromise his principles. At the same time, capital charges against the Rev. Phillip 'Abbas Ghabush and over seventy of his supporters were dropped when they signed a letter of submission and apology to Numairi.

sunna that may, however unreasonably, be challenged by some scholars, women and non-Muslims can never be regarded as equal, *in every respect*, to Muslim males under *shari'a*. Any attempt to achieve such complete legal equality through traditional techniques will fail, I would suggest, in view of the following verses of the Qur'an.

In relation to the status of women, verse 34 of chapter 4 of the Qur'an has been translated as follows:²⁵

Men are the protectors and maintainers of women, because God has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what God would have them guard. As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (next) refuse to share their beds, (and last) beat them (lightly); but if they return to obedience, seek not against them means (of annoyance): For God is Most High, Great (above you all).

This verse sets two main principles in relation to the status and rights of women. There is, first, men's general *qawama*, translated above as protection and maintenance but also having the sense of general guardianship. The corresponding duty of devout women is to submit and be loyal and obedient. Secondly, men may discipline, to the extent of beating if necessary, women who are *nashiz*, disloyal and ill-behaved. These two main principles, and related *sunna* of the Prophet, have been taken as the basis for a wide variety of rules signifying women's inferior status and restricting their access to general high-ranking executive and judicial office. Other verses requiring women to be veiled and confined to the home are also used to support restrictions and limitations on women.²⁶

No argument would be allowed, within the framework of traditional reform techniques of *shari'a*, to change the basic status of women as subject to men's guardianship and discipline or release them of the duty to stay out of sight, whether at home or under the veil. These restrictions have already been the consensus, *ijma'*, of Muslims since the earliest times. As such, there is no precedent for analogy, *qiyas*, to the contrary. Again, since the question has been settled by clear and definite texts of Qur'an and *sunna*, there is no room for exercising *ijtihad*, in the traditional sense, in a way that would either abolish guardianship, with the consequent male power to discipline disobedient women, or release women from general confinement to the home.

²⁵This and the following translations of verses of the Qur'an are taken from Abdullah Yusuf Ali, *The Holy Qur'an* (Qatar National Printing Press, n.d.), except verse 106 of chapter 2, quoted below.

²⁶Such as verses 33 and 53 of chapter 33 of the Qur'an. The immediate context of these verses speaks of the Prophet's women, but it is obvious—and universally accepted—that what applies to the Prophet's women in this regard applies, *a fortiori*, to all other Muslim women.

The position of non-Muslims is similar in that their inferior status is entrenched by clear and definite verses of the Qur'an. Verses 5 and 29 of chapter 9, for example, have been translated as follows:

But when the forbidden months are past, then fight and slay the Pagans wherever ye find them, and seize them, beleaguer them, and lie in wait for them in every stratagem (of war); but if they repent, and establish regular prayers and practice regular charity, then open the way for them: For God is Oft-forgiving, Most Merciful.

Fight those who believe not in God nor the Last Day, nor hold that forbidden which hath been forbidden by God and His Apostle, nor acknowledge the Religion of Truth (even if they are) of the People of the Book, until they pay the *jizya* with willing submission, and feel themselves subdued.

On the basis of the second verse and early Muslim practice,²⁷ the People of the Book are offered the status of *dhimma*; that is, they are guaranteed Muslim protection and freedom to practice their own religion in private, in exchange for payment of *jizya* and submission to Muslim rule. As such, *dhimmis*, those living within the Muslim state under a status of *dhimma*, lack the basic competence to hold positions of authority over Muslims. Several verses of the Qur'an that provide that Muslims shall not take People of the Book as guardians and protectors, *awliya'*, have also been employed to support this basic principle.²⁸

The choices open to unbelievers, as defined by *shari'a*,²⁹ are more limited — either embrace Islam, or be killed unless granted temporary safe conduct, *aman*, to be within Muslim territory for a limited period of time and for a specific purpose.³⁰ Again, verses of the Qur'an which provide that Muslims shall not take unbelievers as guardians and protectors, *awliya*, are used to deny to an unbeliever who is permitted to stay within a Muslim state access to positions of authority over Muslims.³¹ As in the case of women, neither consensus nor analogy nor

²⁷For this early practice, see, e.g., Daniel C. Dennett, *Conversion and the Poll Tax in Early Islam* (Cambridge, MA: Harvard University Press, 1950).

²⁸E.g., verses 51 and 57 of chapter 5. See the *Ahl al-Kitab, Dhimma, and Djizya* in H. A. R. Gibb and J. H. Kramer, eds., *Shorter Encyclopedia of Islam* (Leiden: E. J. Brill, 1953), pp. 16-17, 75-76, and 91-92, respectively.

²⁹There is some controversy over whether Hindus, Buddhists, etc., are to be treated as believers or unbelievers. See Abu Yusuf, *Kitab al-Kharaj* (Cairo: Maktaba Salafiya, 1382 Hijri), pp. 128-132, 191-217; *Islamic Jurisprudence: Sharfi's Risala*, tr. Majid Khadduri (Baltimore: The Johns Hopkins Press, 1961), pp. 58-59, 265-266; and *The Islamic Law of Nations: Shaybani's Siyar*, tr. Majid Khadduri (Baltimore: The Johns Hopkins Press, 1966), pp. 142-154, 224, 275-283. See also Muhammad Hamidullah, *The Muslim Conduct of State*, 3rd ed. rev. (Lahore: Sh. Muhammad Ashraf, 1953), pp. 106-112, 322-331.

³⁰Ibn Rushd, *Bidayat al-Mujtahid*, vol. 1 (Cairo: Maktabat al-Khanji, n.d.), pp. 308-309; and Majid Khadduri, *War and Peace in the Law of Islam* (Baltimore: The Johns Hopkins Press, 1956), pp. 170-174. On the status of unbelievers in general, see *Kafir and Shirk* in Gibb and Kramer, *Shorter Encyclopedia*, pp. 205-206 and 542-544, respectively.

³¹Such as verse 28 of chapter 3 and verse 144 of chapter 4 of the Qur'an.

orthodox *ijtihad* can possibly change the fundamental status of non-Muslims established by these clear and definite verses of the Qur'an.

Modern Muslim traditional reform efforts have attempted to improve the status of women, especially in family law, and sought to rationalize and restrict the inferior status of non-Muslims. None of these efforts, however, has suggested a way for achieving the necessary degree of reform, namely, achieving *complete legal equality* for women and non-Muslims under *shari'a*. The uncircumventable barrier facing all traditional reform techniques of *shari'a* is the fact that the inequality of women and non-Muslims is entrenched by clear and definite texts of the Qur'an itself. This is, in my view, the genuine crisis facing Muslim law reform.

It is with reference to this particular crisis that the revolutionary technique proposed by *Ustadh* Mahmud is best appreciated. However drastic it may appear to be, this technique would seem to be the only way to break the deadlock. Briefly stated,³² this technique is based on the fundamental proposition that both the Qur'an and the *sunna* should be seen as containing two messages: the primary and permanent message of the Mecca stage, and the subsidiary and traditional message of the Medina stage. Both messages were revealed in the Qur'an to the Prophet Muhammad, who is the final Prophet in accord with Muslim belief. In view of persistent and violent rejection by the Meccans of the fundamental principles of justice and equality contained in the Mecca message, Islam implemented, as its First Message, the principles of relative justice and equality, which were more appropriate to the concrete circumstances of the seventh century. Now that humanity has achieved sufficient advances through human endeavor as guided by God, including the application of the First Message, it is now appropriate, argued *Ustadh* Mahmud, to implement the primary and permanent message, which would be, in chronological order of implementation, the Second Message of Islam. According to this logic, certain aspects of the Qur'an and *sunna*, revealed and uttered during the subsequent stage of Medina, should be seen as of transitional, *not* permanent, application. When it is appropriate to do so, the transitional aspects of *shari'a* should be replaced by the fundamental principles of the Qur'an and *sunna* of the earlier Mecca period. In other words, Islamic legislation should be elevated from one level of the Qur'an and *sunna* to another higher level of the same Qur'an and *sunna*.

On examining the Qur'an in these terms, one finds that all the verses quoted and referred to above as the basis of restrictions on women and non-Muslims were, in fact, revealed in Medina, not Mecca. The *sunna* simply reiterated and explained the Qur'an of both periods and may also be classified in the same way.

³²*Ustadh* Mahmud's views are best stated in his own publications in Arabic, which may be obtained from Mr. Abdel Mutalab Bala Zahran, P.O. Box 1151, Omdurman, The Sudan. An English translation of his main book, *The Second Message of Islam*, prepared and introduced by the present author, was published by Syracuse (NY) University Press in June, 1987.

In contrast, the Qur'an and *sunna* of the Mecca period provided for complete equality and freedom for both women and non-Muslims. In relation to women, the Qur'an in Mecca emphasized the equality of men and women as a matter of religion and in the sight of God.³³ For non-Muslims, the Qur'an revealed in the same period provided for complete freedom of choice and conscience.³⁴ If these Qur'anic principles are to have the force of law now, as suggested by *Ustadh* Mahmud, all discrimination against women and non-Muslims will have to be eliminated.

The same shift proposed by *Ustadh* Mahmud can also be used to reinterpret the above texts of the Medina period. For example, the verse of men's guardianship, *qawama*, over women will cease to have the force of law because the rationale for such *qawama*, as provided by the same verse, is no longer valid. The verse justified *qawama* and its consequences on the grounds that men protect and provide for women. Since women no longer need protection and provision by individual men, the rationale for *qawama* ceases to be valid. Protection for both men and women is guaranteed through the rule of law. As to material provision, we perceive the growing economic independence of women. It may be noted here that the technique of linking a legal principle to its rationale is well established in Islamic jurisprudence. The proposal of *Ustadh* Mahmud makes it possible to use the technique in a way that removes all legal restrictions on the legal rights of women and non-Muslims.

On the question of the future enactability of the Mecca texts, *Ustadh* Mahmud used to argue in terms of verse 106 of chapter 2 of the Qur'an: "None of Our revelations do We abrogate or cause to be postponed unless (until) We substitute something better or similar: Knowest thou not that God hath power over all things?"³⁵ He maintained that the "better or similar" revelation is that which is more appropriate for implementation in the concrete circumstances of the time. In this sense, that part of the Qur'an which was revealed during the Mecca stage, he argued, is now the better revelation in the same way that the part revealed in the Medina stage was the better one in the seventh century. In both cases, abrogation and enactment are done by God, acting through the Prophet. It is true that the Prophet is no longer with us in person, but his personal example and techniques for acquiring religious knowledge remain.

³³See, e.g., verse 164 of chapter 6, verse 17 of chapter 40, and verse 38 of chapter 38.

³⁴See, e.g., verse 29 of chapter 18 and verses 21-24 of chapter 88.

³⁵A key word in the original Arabic text of the verse is the one equivalent to the word "postpone" in this translation. In his own Arabic writing, *Ustadh* Mahmud wrote the word as "*nunsi'ha*"; in the Arabic alphabet, "*hamza*." When written in this way, the word is translated as "cause it to be postponed." See Taha, *Second Message*, p. 40. Some translators of the Qur'an, such as Yusuf Ali, cited in note 25, above, write the word as "*nunsi'ha*" and, in the Arabic alphabet, "*ya*." In this manner of writing, the word is translated as "cause it to be forgotten." I accept *Ustadh* Mahmud's manner of writing this word, because of the fundamental Muslim belief that the text of the Qur'an is secured by God against being forgotten or lost (verse 9 of chapter 15 of the Qur'an). The meaning must, therefore, be "cause to be postponed," not "cause to be forgotten."

The acquisition of religious insight through the imitation of the exact example of the Prophet is crucial to understanding *Ustadh* Mahmud's position. He claimed that he did not develop his methodology through purely rational and objective study of Islamic jurisprudence but, rather, through intuitive religious knowledge out of his profound religious experience of 1946-51. In other words, although he emphasized that he is not a prophet who received revelation—the Prophet Muhammad being the final Prophet—*Ustadh* Mahmud also claimed that his theory was derived from the Qur'an and from the living example of the Prophet as educational techniques and sources of original knowledge.

Moreover, *Ustadh* Mahmud argued that, if the Mecca period revelation had been abrogated permanently, Muslims would have lost the best part of their religion. Both messages had to be revealed in the Qur'an as the final revelation in Muslim belief, leaving human beings free to communicate with God directly through the Qur'an itself. Through God's word, the Qur'an, God is addressing each and every Muslim, provided that he or she approaches the Qur'an with the appropriate reverence and expectation. Anyone who claims to have acquired fresh insights from the Qur'an may proclaim his or her knowledge and support it by scriptural and rational arguments, leaving it to the other Muslims to accept or reject his or her claim. In this way, argued *Ustadh* Mahmud, Muslims will come to appreciate, and to implement in policy and legislation, that interpretation which is in best accord with *hukm al-waqt*, "the dictates of the time."

An Assessment

In assessing the theoretical validity of *Ustadh* Mahmud's proposal for the "Evolution of Islamic Legislation," we need to note the following. The Qur'an and *sunna* can, in fact, be classified in the way he suggested. Subject to a slight degree of overlap, which he admitted and explained in terms of the continuity of revelation,³⁶ the texts of Mecca do provide for fundamental principles of justice and equality, while those of Medina permit discrimination on grounds of gender and religion. Moreover, this dichotomy and its consequences can easily be appreciated in terms of historical context, in the sense that inferior status for women and non-Muslims was unavoidable in the concrete circumstances of the seventh century.

It seems reasonable to me to argue that the verses of the Mecca era were merely postponed and not permanently abrogated and that those verses should be enacted into law under the appropriate circumstances. Assuming that there is a Second Message of Islam designed for future implementation, how do we know that the present time is appropriate for its implementation? In response to this question, *Ustadh* Mahmud emphasized modern human achievements in both

³⁶See Taha, *Second Message*, p. 125.

technology and social sciences. He argued that the prevalence of notions of constitutionalism and human rights make it both morally undesirable and politically impracticable to relegate women and non-Muslims to the status of second-class citizens. He maintained that these notions subject all persons to the rule and protection of the law and deny Muslim men private, direct guardianship over women. He also used the rise of the international human-rights movement and concern for women's and religious minorities' rights as very significant factors in support of the proposition that the twentieth century is the appropriate time for the implementation of the Second Message of Islam.

He turned arguments pointing out human-rights violations and the use of force in national and international relations into arguments in support of his position, by saying that these events and policies in fact emphasize the urgency of peace and the rule of law. He regarded, for example, modern advances in the development of nuclear weapons as, paradoxically, signs of hope. Insofar as they make global war and conflict increasingly unthinkable, these apparently lethal advances force people to seek to maintain and reinforce peace and stability.

Although these arguments may seem convincing to the rational mind, especially one that is already committed to their underlying moral and philosophical underpinnings, it may be argued that the question of timing still remains one of value judgment and subjective belief. We may wish and strive for peace and stability and believe in the need for total respect for constitutionalism and human rights and yet fail in our endeavor. That possibility, however, does not relieve a modern Muslim from the duty of taking a position on what he or she believes to be in accord with the dictates of the time and acting accordingly. Fear of innovation, prejudice, and vested interest may delay the adoption of such a position, but, in the final analysis, he maintained, there is no viable Islamic alternative.

The practical opportunity to propagate the Second Message of Islam would seem to be an integral part of the theory itself as it presupposes the suitability of the present historical context. The execution of *Ustadh* Mahmud for apostasy and political offenses, however, seems to challenge this basic assumption. If the implementation of *shari'a* imposed by former President Numairi is to continue in the Sudan, and if other Muslim countries follow the examples set by the Sudan, Iran, and Pakistan in applying *shari'a*, there may be no future prospects for open propagation of the Second Message of Islam. In this way, the execution of the author of the theory and the founder of the movement may have far-reaching consequences for the practical viability of his approach.

Another dimension of the impact of the execution of *Ustadh* Mahmud is the apparent organizational confusion and leadership crisis currently suffered by his followers, *al-Jumhuriun*, the Republicans, in the Sudan.³⁷ Since the date of the execution of *Ustadh* Mahmud and the banning of the group's public activities in

³⁷Interview with Sa'id At-Tayyib Shaib, the highest ranking member of the group, published in the *Al-Ayyam* daily newspaper of January 6, 1986, p. 9.

January, 1985, the Republicans have not resumed their usual activism in propagating the Second Message of Islam. This inaction seems to persist despite the overthrow of Numairi and restoration of democratic liberties since April, 1985. It remains to be seen whether this is due to the initial shock and the magnitude of the loss of the founder and leader of the movement or a permanent phenomenon. In rational and material terms, however, it would seem to be imperative that someone must continue to propagate the theory if it is to reach and be accepted by the masses of Muslims who can bring about its eventual practical implementation.

Another possible, albeit seemingly irrational, scenario has been hinted at in the literature of the group, namely, the possibility of direct divine intervention. In his own metaphysical writings and through various pamphlets which he approved for publication in the name of the group, *Ustadh* Mahmud stated his belief in the imminent coming of the Messiah.³⁸ In one of his major books, for example, he argued that Resurrection and the Final Day in the Qur'an have a dual meaning.³⁹ In their first and closer meaning, these cosmic events will materialize in this life, he maintained, through the coming of the Messiah. In the second and ultimate sense, he added, Resurrection and the Final Day mean the end of this world and the beginning of the next life. The implication hinted at in this aspect of *Ustadh* Mahmud's writings, but never explicitly stated, is that the Second Message of Islam will be implemented by the Messiah. The present author is not competent to reflect on this matter of metaphysical knowledge and belief. In relation to the issue under discussion, however, it may be noted that, according to the logic of this cosmic event, there will be no need for propagation and gradual acceptance and implementation of the theory of the Second Message. Everything will be achieved in a single stroke in an overwhelming and compelling fashion, leaving no room for disagreement or delay.

The third logical possibility is, of course, that the work of *Ustadh* Mahmud may never be implemented through wide acceptance and total application by Muslims, whether gradually or immediately. What would remain to be considered in such a case is whether his work will have some impact short of total implementation. At one level, there will always be the impact that the man and his life's work have already had in his own immediate environment, the way in which he has affected his followers and influenced events in the Sudan. The precise implications of this dimension remain for the participants to assess and appreciate. *Ustadh* Mahmud's influence at this level, however great it may be, would be insignificant, in my view, when compared to the likely impact of the

³⁸Khalid Duran, "The Centrifugal Forces of Religion in Sudanese Politics," *Orient* 26 (December, 1985): 596. Cf. Riffat Hassan, "Messianism and Islam," *J.E.S.* 22 (Spring, 1985): 261.

³⁹*Al-qur'an wa Mustafa Mahmud wa l-fahm al-'asri* (The Qur'an, Mustafa Mahmud, and Modern Understanding) (Omdurman, 1971), especially chapters 9 and 10. Mustafa Mahmud is an Egyptian author who wrote on the subject of a modern understanding of the Qur'an.

man and his life's work on the future of Islamic thought. His contribution to this field may be appreciated when his writings are discussed, at the scholarly level, by students of Islam throughout the world.

Finally, is it possible that *Ustadh* Mahmud's work will be completely forgotten within a few years, without having any lasting impact? I do not think so. Whatever Muslims may think of the answers, he has no doubt raised fundamental and searching questions. I also believe that his basically rational and scientific approach will provide a good model for other Muslim scholars. More important, I would submit, is his personal example of commitment and courage. To have pursued his goals so selflessly and consistently for forty years, especially through his own personal lifestyle, is an exceptional achievement. The example of this single man's living for and by his convictions, more than dying for them, is truly inspiring not only to Muslims but also to all other people of the world.

Conclusion

Seen in this light, the life and work of *Ustadh* Mahmud are significant to all religion. In concluding this preliminary article, however, we need to emphasize the importance of his contribution to the relations between Muslims and non-Muslims. As clearly shown above, *shari'a* is inconsistent with the fundamental constitutional and human rights of non-Muslim citizens of an Islamic state. Consequently, on the one hand, Islamization through the application of *shari'a* would be disastrous for these citizens. It is largely in rejection of the implications of being non-Muslim citizens under *shari'a* that Sudanese non-Muslims have resorted to armed rebellion since 1983. Yet, there is no way for avoiding the above-noted objectionable aspects of the public law of *shari'a* through traditional law-reform techniques. On the other hand, the alternative position of living under a purely secular constitutional and legal order is also unacceptable to the Muslim majority that believes that it has a religious obligation to organize its public life in accordance with Islam. This does not have to be in accordance with *shari'a* which, as noted above, is the historically traditional, but not necessarily the only valid, interpretation of Islam.

Without an Islamic reform methodology that is capable of reconciling the legitimate demands and expectations of both segments of the population, violent confrontation is clearly unavoidable. The only possible outcome of such a confrontation is to force one segment of the population to abandon its current position, which is unlikely except as a temporary solution. The vanquished side will be waiting for the opportunity to impose its own solution. The Islamic reform methodology proposed by *Ustadh* Mahmud would achieve complete reconciliation between the two positions and, thereby, provide a lasting solution. Under his approach, Muslims would be able to live under a constitutional and legal system derived from the permanent and fundamental principles of Islam without violating the constitutional and human rights of non-Muslims.

Needless to say, such reconciliation is relevant and desperately needed by all Muslim countries facing this dilemma today. Moreover, *Ustadh* Mahmud's understanding of religion and its role in society is helpful to all societies, Muslim and non-Muslim alike. It would be helpful, I believe, even for countries that have sought to resolve the problems of reconciling religion with the requirements of pluralism through separation of church and state. Within these societies, it seems to me, there is a residue of tension between religion and pluralism that calls for innovative treatment of the issues. The historical model he provided for interpreting Islamic religious law might well be adapted by other religious traditions. However, the most immediate benefit to non-Muslims and their relations with Muslims, flowing from *Ustadh* Mahmud's Islamic solution reconciling full equality between non-Muslims and Muslims and the sources of Islam, is the providing of a solid Islamic religious basis for authentic dialogue to occur between the two, for full dialogue can take place only between equals—"equal with equal," *par cum pari*, as the Roman Catholic Church put it at Vatican II.⁴⁰

The life and death of *Ustadh* Mahmud Muhammad Taha have come to pass but not, I hope, the significant contribution he has made through both his life and his death. As one of his many close associates for several years, I can personally testify to his supreme courage and integrity. I can also testify to his exceptional humanity, humility, and compassion. Can all this come to pass without lasting effect? I believe not and hope not. It is the light and spirit of such persons as *Ustadh* Mahmud, not the power and wealth of the manipulators of people and events, that have, in my view, substantial and lasting impact on the advancement of the human experience.

⁴⁰See Leonard Swidler, "The Dialogue Decalogue: Ground Rules for Interreligious, Inter-ideological Dialogue," *J.E.S.* 20 (Winter, 1983): 3 (rev., September, 1984): "Seventh Commandment: *Dialogue can take place only between equals.*"