

THE INTERDEPENDENCE OF RELIGION, SECULARISM, AND HUMAN RIGHTS

Prospects for Islamic Societies

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Religion, secularism, and human rights are interdependent, and the apparent tensions between any or among all of them can be overcome by their conceptual synergy. Given the obviously problematic features of their relationships, however, the interdependence of the three should be deliberately reinforced and stressed now; indeed each of the three should undergo an internal transformation to strengthen the already existing synergy. I am using the term *synergy* to indicate that the internal transformation of each paradigm or discourse (religion, secularism, human rights) is not only necessary for promoting relationships among the three but is also facilitated by it: each of the three tends toward transformation in favor of the other two. Each needs the other two to fulfill its own rationale and to sustain its relevance and validity for its own constituency.

I hasten to add that I am not suggesting the collapse of all related ideas, institutions, and policies into the framework I am describing. My purpose here is to highlight the dynamics of one complex process that might contribute to individual freedom and social justice. Moreover, while I believe that what I am proposing is potentially applicable to various religious and political contexts, my

primary concern as a Muslim is the prospect for this approach in Islamic societies. That is, I would like to encourage the determined promotion—the strengthening—of this synergy in the interest of legitimizing human rights, regulating the role of religion in public life, and affirming the positive place of secularism in Islamic societies. Being from Sudan myself, I am acutely aware that hundreds of thousands have died, and millions continue to endure untold suffering, because of widespread confusion over just these issues. Some politicians manipulate that confusion for their own purposes and thus we require a framework that minimizes it.¹ While attempting to outline a theoretical framework that could be of use in Islamic societies, I hope that others may seek to use it in their own religious and political contexts.

This task might be approached from a variety of perspectives, but I prefer to begin by considering the moral and philosophical foundation of human rights since it most clearly highlights both the reality of tension and the possibilities of mediation among the three paradigms. Article 1 of the Universal Declaration of Human Rights (UDHR), issued by the United Nations in 1948, asserts that “all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” No specific foundation for the equality of human beings in dignity and rights, whether religious or secular, is stated, and the omission was apparently designed in the interest of achieving consensus. But more than fifty years later, the question—what is the moral or philosophical foundation of universal human rights?—remains difficult to answer, and answering it remains crucial for the practical implementation of those rights.

The difficulty in achieving agreement—agreement among all communities—on a single foundation for human rights indicates that we should promote instead an overlapping consensus among multiple foundations. Each community could then subscribe to a global agreement on the validity and application of universal rights without concluding that the agreement was an alien imposition. I hope to show that an overlapping consensus is best achieved by encouraging and even exploiting the interdependence of religion, secularism, and human rights.

Working Definitions

The term *human rights* is often used, in a rough and intuitive way, to signify the objectives or the implications of historic struggles for freedom and justice. But the term can also refer, more particularly, to the conception of individual free-

1. One such politician is Dr. Hassan Al-Turabi who led the National Islamic Front (NIF) in Sudan from 1964 until 1999, when he lost an internal struggle for power. The NIF took control of the state in the military coup of

June 1989. See, e.g., John L. Esposito and John O. Voll, *Makers of Contemporary Islam* (Oxford: Oxford University Press, 2001), 118.

dom and social justice articulated in the UDHR and further specified in subsequent treaties that enable its implementation. In this latter sense of the term—the sense in which I use it here—human rights are due to all human beings by virtue of their humanity, without distinction on grounds such as race, sex, religion, language, or national origin. The key feature of human rights, by this definition, is universality.² When the definition was first made in the wake of World War II, it was viewed by some and opposed as a pretext for imposing the values of one culture on others, and the definition continues to be opposed from this and related perspectives.³ The idea of overlapping consensus that I will explore takes into account the conceptual and practical difficulties associated with universality and seeks to resolve them.

The working definition of religion that I use here must focus, obviously, on those aspects of religion that have special relevance to human rights and secularism. For this limited purpose, religion can be defined as a system of beliefs, practices, institutions, and relationships within a community that distinguishes itself from other communities. The key feature of religion in this sense is the exclusivity of any community of believers, but that is not to say that understanding some religious traditions in more inclusive terms is impossible. In fact, I am counting on just that possibility to enable an overlapping consensus about universal human rights. But initiatives like the one I am proposing should be founded on a realization that some form or degree of exclusion (at least moral—and often material—exclusion) seems necessary for vindicating the faith of one religious community and distinguishing it from that of all others. “The denial of other views,” as William Paden has written, “is typically a consequence of the need to protect or affirm one’s own. We reject other views when the truth of our own does not appear to be acknowledged in them.”⁴ In contrast, human rights, by the UDHR definition, are by nature inclusive of all human beings, irrespective of membership in any social group.

For the limited purposes of this discussion, secularism may be defined as a principle of public policy, applied variously in distinct contexts, for organizing the relationship between religion and state. Historical experience shows that religious exclusivity tends to undermine solidarity and even peaceful coexistence among differing communities of belief, and secularism apparently evolved as a means of encouraging pluralism in the state. In any case, my concern with secu-

2. Abdullahi Ahmed An-Na'im, “What Do We Mean by Universal?” *Index on Censorship* 4/5 (September–October 1994): 120.

3. See American Anthropological Association, “Statement on Human Rights,” *American Anthropologist* 49.4 (1947): 539.

4. William E. Paden, *Interpreting the Sacred: Ways of Viewing Religion* (Boston: Beacon Press, 1992), 126.

larism here is its ability to safeguard political pluralism, though I will argue that the principle can be applied differently under various regimes of government.

The Universality of Human Rights

The modern concept of human rights has emerged from European and American experiences since the eighteenth century. Those rights were premised, as is commonly acknowledged, on principles of the Enlightenment rather than on Christian or Jewish theologies, though the latter have tended to reconcile themselves with the former over time.⁵ In view of the “universalization” of the European model of the nation-state through colonialism, the basic purpose of the UDHR appears to have been to put protections of individual freedoms in place and thus safeguard against abuse by the expansive powers of new states. While initially limited by Western experience, the rights that have emerged since 1948 are broader in scope than those guaranteed under the constitutional system of any Western country. The Western origins and immediate antecedents of human rights have been overtaken by developments reflecting the experiences and expectations of other peoples of the world.

Given that they are intended to protect individuals and groups against the contingencies of national politics, human rights are supposed to be the product of international agreement. But the claim of the international community to act as arbiter in safeguarding minimum standards is not plausible without the corresponding commitment of each member state to encourage and support each other in the process. That encouragement and support is crucial in view of significant differences in degrees of political will and in institutional capacity and material resources for the application of these rights in different parts of the world. It thus follows that one cannot rely on a horizontal enforcement mechanism for human rights among states without a broader cooperative framework of implementation among a variety of actors. The universal recognition of a single set of rights is not likely to be useful in practice without international cooperation in implementing it.

Moreover, it is important to recognize that, since the vast majority of African and Asian peoples still suffered under European colonialism in 1946–48, the process by which the UDHR was drafted and adopted was not globally inclusive and so the universality of the rights it proclaimed was contingent on subsequent developments.⁶ It can be argued that genuine universality was to some extent attained through the affirmation of the UDHR by African and Asian states upon

5. Hilary Charlesworth, “The Challenges of Human Rights Law for Religious Traditions,” in *Religion and International Law*, ed. Mark W. Janis and Carolyn Evans (The Hague: Martinus Nijhoff, 1999), 401–15.

6. See Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, and Morals*, 2d ed. (Oxford: Oxford University Press, 2000), 136–46.

achieving political independence and through their participation in the drafting and adoption of subsequent treaties on human rights. But it is also clear that the challenge of relevance and efficacy remains and will continue: serious cultural and ideological differences—differences that have significant practical consequences—are obscured by the consensus that presently obtains. While problems in non-Western cultures with respect, for example, to the rights of women are well known, there is little awareness of Western cultural or ideological problems with economic, social, and cultural rights (such as the right to housing and education) that many societies take to be as fundamental as the civil and political rights (such as freedom of belief and expression) so valued in the West. Widely ratified treaties provide for both sets of rights. Still, Western governments and public opinion alike find it difficult to accept that economic, social, and cultural rights are human rights in the current sense of the term. Western and non-Western societies face the same challenge—that of accepting the universal validity of one or more rights established as pertaining to every culture.

The problem of self-exemption from certain rights is doubtless related to the process by which the relevant treaties were negotiated. Agreement on international standards of human rights was only possible on the understanding that they be implemented through the agency of sovereign states. Given prevalent understandings of national sovereignty and international relations at the time, it was imperative for the United Nations Charter (1945) and the UDHR (1948) to strike a balance between international protection for human rights and respect for the domestic jurisdiction of nation-states.⁷ That individual states regulate their own performance with regard to universal criteria is paradoxical, and to make the system work demands understanding of the local, national, and international actors and processes that influence the conduct of states, including the roles of the various religious communities and their views of secularism. The limitations of the system by which human rights are enforced are unlikely to be overcome without solidarity among religious communities. Since that degree of cooperation is not readily available within current understandings of religion (understandings that are exclusive and excluding), the enforcement of human rights and the introduction or strengthening of secularism are needed to help along an internal transformation of religious doctrine.

The Exclusivity of Religion

It may be useful to distinguish between the universalizing normative claims of some religions and the universality of human rights. The universal normative

7. David J. Bederman, *International Law Frameworks* (New York: Foundation, 2001), 96.

claims of Christianity and Islam, for instance, call for all human beings to accept the one true faith. In contrast, the universality of human rights represents, or is meant to represent, a convergence of differing traditions on a set of universal commitments to all human beings without regard to particularities of (for example) religion. The former is premised on the superiority of one religion; the latter, on the equality in principle of differing religious (and cultural) traditions. In other words, the rationale of religious solidarity is an exclusive one, while that of human rights is inclusive—though the potential for universality of the latter remains to be fully realized. The premise of equality requires that no religious or cultural tradition claim to be the sole foundation for the universality of human rights. Accordingly, when the foundations for human rights differ across cultures, we should view them as interdependent and mutually supportive, not antagonistic and mutually exclusive. The existence of varying foundations for human rights is intrinsic to the enterprise.

The question is whether, and if so how, religious traditions—which are of necessity exclusive—can participate in an overlapping consensus on a set of universal human rights. Since religions divide rather than unite human beings, so the argument goes, it is better to avoid religion altogether when seeking common ground. But to concede this argument is problematic because the more religious perspectives are excluded from the conversation, the less likely are religious adherents to accept the universality of human rights. Still, religions are unlikely to play a positive role until each undergoes an internal transformation. Fortunately, that transformation is possible as well as necessary because of what might be termed the secular dimension of religions. Since the transcendental dimension of religions is supposed to address the experience of their communities in the phenomenal world, interpretations of religious doctrine (along with the behavioral implications of each) are bound to be in competition and to reflect extant power relations. For the fair and sustainable mediation of these competing claims, secularism and the enforcement of human rights are critical both within each community of believers and between communities at odds. It is the very place of particularist religions in the world that makes secularism and human rights essential: the opposition of particularist religions to secular “encroachments” and to human rights (as defined internationally) is more apparent than real.

The Specificity of Secularism

Widespread confusion and suspicion are attendant on the term *secularism*, especially in Islamic societies, which regard it as a European, Christian concept imposed by colonial and neocolonial forces. It is thus necessary to clarify and substantiate a definition that is deeply contextual and dynamic. Etymologically, the word *secular* derives from the Latin *saeculum*, meaning “great span of time” or

perhaps “spirit of the age.” Later, *secular* came to mean “of this world” (a conception presuming more than one world), and eventually the distinction between secular and religious came to overlap with that between the temporal and the spiritual.⁸ In the European context, secularization initially meant privatization or nationalization or confiscation of church lands, but eventually the gerund was applied to politics and then to art and economics.⁹ This evolution is reflected in the common definition of secularism as “indifference to or rejection or exclusion of religion or religious considerations.”¹⁰ Equally common is the definition of secularism as “the doctrine that morality should be based solely on regard to the well-being of mankind in the present life, to the exclusion of all considerations drawn from belief in God or in a future state.”¹¹

Larry Shiner has identified, and distinguished among, five definitions of secularism as (1) the decline of religion, (2) conformity to the norms of the present world, (3) disengagement and differentiation of society from religion, (4) transposition of religious beliefs and institutions (the shift in focus, for example, from divine to human power and creativity), and (5) the desacralization of the world and the sacralization of rationality.¹² Yet all these views are at best reflections of how the concept has evolved in various European and North American settings. Secularism is multidimensional and reflects elements of the historical, political, social, and economic landscape of individual nations.¹³ In the United States today, secularism requires a wall between church and state (a permeable wall, albeit: sessions of the Supreme Court open with the proclamation, “God bless this honorable Court”). Mexican secularism requires a separation of religion and politics so strict that Catholic priests are not allowed to vote, and secularism in France is if anything even more jealously guarded (Islamic and Jewish headcoverings are, as of this writing, to be proscribed in public schools). But in the secular Republic of Ireland, the Catholic Church wields so much power politically that abortion remains illegal on the grounds that it violates church doctrine. Essentially, as Asghar Ali Engineer has argued, “each country has its own specificity as far as the concept of secularism is concerned. This specificity depends on its historical evolution as well as on contemporary social conditions.”¹⁴

Secularism in Islamic societies will not succeed if based on preconceived

8. Uday Mehta, “Secularism, Secularization, and Modernity: A Sociological Perspective of the Western Model,” in *State Secularism and Religion: Western and Indian Experience*, ed. Asghar Ali Engineer and Mehta (Delhi: Ajanta, 1998), 24–25.

9. Hugh McLeod, *Secularisation in Western Europe, 1848–1914* (New York: St. Martin’s, 2000), 1.

10. *Merriam-Webster’s Collegiate Dictionary*, 10th ed., s.v. “secularism.”

11. *Oxford Short Dictionary*, as cited in Engineer and Mehta, *State Secularism*, 2.

12. Larry Shiner, “The Concept of Secularization in Empirical Research,” *Journal for the Scientific Study of Religion* 6.2 (fall 1967): 207–20.

13. Mehta, “Secularism, Secularization, and Modernity,” 25.

14. Engineer, “Secularism in India—Theory and Practice,” in Engineer and Mehta, *State Secularism*, 202.

Western notions of the concept and thus understood locally as an imposition. In particular, I believe (and as I have written before) that “it is grossly misleading to speak of complete separation or total union of any religion and the state. Any state, as well as its constituent organs and institutions, are conceived and operated by people whose religious or philosophical beliefs will necessarily be reflected in their thinking and behavior.”¹⁵ Entire separation of religion and state is not possible, nor in my view desirable, because religion is not separable from politics. How can citizens be prevented from acting politically according to their most basic beliefs? Even were such a requirement established, how could it be enforced in a way consistent with the integrity and legitimacy of the political process?

There is, theoretically, a continuum of “secularisms” from the extreme of fusion to that of absolute separation between religion and state. The question is therefore which forms are more consistent with the rationale of secularism adopted here. Drawing on the premise that secularism is dynamic and deeply contextual, a recent study of the relationship between religion and state in Britain, Germany, the Netherlands, the United States, and Australia has concluded that the minimum requirement for a positive relationship is neutrality: “that people are neither advantaged or [sic] disadvantaged by their adherence to their secular or faith-based tradition.”¹⁶ The state should neither favor nor disfavor one particular religious tradition over another.¹⁷ The problem with this minimum requirement, however clearly it is necessary, is that no public policy is ever completely neutral: citizens are always believers (in something). The question, then, is how people can exercise free democratic choice in accordance with their own beliefs (religious or otherwise) while the neutrality of the state is maintained. Again, my conclusions are that (a) the possibility exists only if belief systems are internally transformed and that (b) belief systems will be transformed only where the interdependence of religion, secularism, and human rights is well established.

But belief systems—religions—are not the only paradigm that requires transformation in this dynamic. Secularism suffers from a basic limitation or, rather, a need for limitation: it must confine its normative content to a minimum if it is to achieve its purpose—safeguarding political pluralism in heterogeneous societies. In other words, secularism is able to unite diverse communities of belief and practice into one political community precisely and only because the moral claims it makes are minimal. All secularisms, it is true, prescribe a civic ethos on the basis of some specific understanding of the individual’s relation to the com-

15. An-Na'im, “*Sharia* and Positive Legislation: Is an Islamic State Possible or Viable?” in *Yearbook of Islamic and Middle Eastern Law 1998/1999*, vol. 5, ed. Eugene Cotran (The Hague: Kluwer, 2000), 40. See also Harold J. Ber- man, *Faith and Order: The Reconciliation of Law and Religion* (Atlanta, GA: Scholars, 1993), 1–20, 35–52.

16. Stephen V. Monsma and J. Christopher Soper, *The Challenge of Pluralism: Church and State in Five Democracies* (Lanham, MD: Rowman and Littlefield, 1997), 209.

17. Monsma and Soper, *Challenge of Pluralism*, 209.

munity. But my point here is that the content of most varieties of secularism is so narrow that it cannot serve as an interreligious and cross-cultural foundation for human rights as a universal norm. From a pragmatic or political viewpoint, this limitation is serious because religious believers will fail to be inspired by the doctrine of human rights if founded solely on secular grounds. It may be necessary, indeed, to seek a religious justification for the principle of secularism itself. I am not saying that a serious engagement of religion is essential for either human rights or secularism to be legitimized (everywhere and always) but rather that that engagement is necessary to obtain the consent of most religious believers. And religious adherents constitute the clear majority of all human beings.

A related concern is that secularism is unable to address the objections or reservations that religious believers may have about particular standards of human rights or specific principles of secular governance. For instance, since discrimination against women is often justified on religious grounds (in many societies throughout the world), these systematic and gross violations of human rights cannot be eliminated without addressing their allegedly religious rationale. To do so, however, risks violating freedom of religion, a fundamental human right as well. A purely secular discourse can be respectful of religion in general, but its rebuttal of one religion's justifications for discrimination against women is unlikely to convince that religion's adherents. In other words, the minimal normative content that makes secularism conducive to interreligious coexistence diminishes its capacity to support human rights as a universal principle without reference to some other moral source. Likewise secularism by definition fails to address the need of religious believers to express the moral implications of their faith in the public domain. Secularism alone, then, is a necessary but insufficient condition for realizing the political stability that forms part of its own rationale. But secularism can be enhanced by insisting on a contextual understanding of the rationale and functioning of secular government in each location.

The Role of Human Agency

When I say that every society can insist on change—on the sorts of change that I suggest—I am referring to the individual members of those societies. I do not discount the impact of cultural, structural, and environmental factors in the processes of social change. Neither do I disregard religious, ideological, and other motivations that people have in acting or in refraining from action. Nor do I suggest that people are all equally able and willing to play an active role in demanding and effecting change. But each paradigm under discussion—religion, secularism, human rights—is both enabling of human agency and susceptible to influence by it. The question is how to secure the best conditions for human agency to achieve the transformations required: the decisions that individuals must reach will not

follow as a matter of course. The agency of some actors will tend to diminish the social and political “space” for the agency of others, and moreover the outcome of every act is likely to be objectionable from some other actor’s point of view. Each negative result of human agency will need to be ameliorated by further acts on the part of individuals.

Most people will consider taking such steps only when conditions enable them to believe in the possibility of deliberate change. When religious doctrines (and, for that matter, the doctrines of secularism) are open to free interpretation and thus renewal, those conditions flourish best. Human agency is always integral to the interpretation and implementation of every doctrine. Yet the guardians of orthodoxy everywhere claim eternal validity for their own interpretation and practice. While such claims can only be challenged from within the given tradition of belief and practice, and while there are always believers able to play that role, the process requires a level of security and stability for dissidents to make their case and for the body of believers to hear and make up their own minds without fear of retaliation. Those conditions are more likely to be guaranteed from outside than from inside any given tradition—guaranteed, that is, by the principles of human rights. Again, each element in the tripartite relationship I have been describing can be called upon to support the other two. They paradoxically, but reliably, depend upon one another.

Prospects for Interdependence

The first step in promoting the interdependence of human rights, religion, and secularism is to understand how each paradigm depends upon the other two for achieving its own objectives—to understand that this interdependence is already operative but also how it might be improved and promoted deliberately. The second step is to appreciate fully the role of human agency (as well as the obstacles to its exercise) in promoting the transformations necessary within each paradigm to support an increasing interdependence and synergy among the three.

The relationships among human rights, religion, and secularism should be methodically summarized before I elaborate on each of them further:

1. Human rights need religion to validate their moral foundation and to mobilize religious adherents (the vast majority, globally) in support of universal rights.
2. Religion needs human rights to protect the dignity and rights of religious adherents within any political system, but human rights also ensure freedom of belief and practice within each religion itself and thus ensure the evolution and continuing relevance of each religion to its own membership.

3. Human rights need secularism to provide the political stability and peace among communities of believers and nonbelievers that are necessary for the protection of those rights.
4. Secular governments need human rights for normative guidance in the daily protection of people against the abuse of state power.
5. Secularism needs religion to provide a widely accepted source of moral guidance for the political community, as well as to help satisfy and discipline the nonpolitical needs of believers within that community.
6. Religion needs secularism to mediate relations between different communities (whether religious or antireligious or nonreligious) that share the same political space.

However reasonable and clear these and other possible dimensions of interdependence may seem, one should not expect them to be appreciated or acted upon readily. Once again: human agency is crucial. It is individuals who must address the challenge that faces each of the three paradigms—the challenge to remain true to its own purposes. The overall advantage of each paradigm's remaining true is that those purposes make beneficial change inevitable for all three. Examples follow.

Human Rights Depend on Both Secularism and Religion

Human rights as defined in the UDHR are the current expression of ancient struggles for social justice and human dignity. The validity and sustainability of human rights in the former (the current and specific) sense depend on their vindication in the latter (the more general and historic) sense. The specifics embodied in the UDHR are appropriate for our time: they respond to the extensive powers of the state over every aspect of life and provide safeguards and mechanisms to protect rights and promote justice. But the adoption of the UDHR does not mean that its paradigm for human rights has achieved legitimacy in all states, for all peoples; and the paradigm must respond continually to difficult challenges.

The essence of the paradigm is that the entitlements spelled out in the UDHR be provided as of right, not as an incidental outcome of social policy: rights are not subject to the contingencies of political process. The political and civil rights defined in the declaration are not, in this respect, different from—they are not prior and superior to—the social and economic rights listed there. Rather, these two sorts of human rights depend on and are reinforced by one another. I said that people are more likely to accept the specific terms of the UDHR definition of rights to the extent that it corresponds to their understanding of human rights in the more general sense of social justice and human dignity. What I meant is that the political and civil rights enshrined in the declaration will be attractive

to the extent that they are understood as means for realizing higher claims upon the state. For example, freedom of expression has traditionally been understood as a negative freedom: the state should refrain from action that infringes on the right of people to express their opinions. But taken as an affirmative obligation, this right would do more than allow for the passive consumption of others' free expression. The state would implement this right by providing educational and other public facilities enabling all segments of the population to pursue knowledge, exchange information, and formulate independent views. But the people for whom that education, that expansion of the right to free expression, would be most meaningful tend to be those who lack shelter and food or are ravaged by disease. It is therefore sensible and imperative to abandon efforts to classify human rights or to establish some categories as superior to others. Moreover, this evolution in the meaning and implications of each right would make the UDHR relevant and useful for the majority of the peoples of the world, not only for privileged elites, and would thus make human rights at last universally human.

It is also accepted by now that the so-called individual human rights can be achieved only in the context of family and community. This consensus is clearly reflected in the text of more recent UN treaties like the Convention on the Elimination of All Forms of Discrimination against Women (1979) and the Convention on the Rights of the Child (1989), as well as in regional documents like the African Charter on Human and Peoples' Rights (1981) and its subsequent development in other instruments. Even for so-called traditional human rights, it is clear that respect for freedom of expression is dependent on a contextually appropriate education that draws on the cultural traditions of a community. Language is obviously fundamental to freedom of expression as well as to education, but language is anything but individual and private. Thus it would be useful to transcend the conventional distinction between so-called civil and political rights, on the one hand, and economic, social, and cultural rights, on the other hand. It would be equally wise and useful to accept at least the possibility of collective or group rights as integral to the protection of individual rights. If human rights are about protecting human dignity, and human dignity is defined for some in their relation to others, then human rights may also be about protecting collective dignity.¹⁸ I am not suggesting that every claim to a collective right should be accepted, but rather that such claims should be given serious consideration rather than dismissed as simply inconsistent with the individual focus of human rights doctrine.

I have already indicated that the main challenge for human rights law is to

18. See Rhoda Howard, "Dignity, Community, and Human Rights," in *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*, ed. An-Na'im (Philadelphia: University of Pennsylvania Press, 1992), 81.

reconcile the international respect for state sovereignty with the international commitment to protect human dignity. Even a state that refuses to commit to a positive obligation, as embodied in a treaty, may still in international law be bound to uphold that obligation if it is held to be *jus cogens*, an overriding general principle. These principles include proscriptions of slavery, genocide, torture, and apartheid. State sovereignty is subordinated to *jus cogens* in these instances; but with respect to most human rights, sovereignty takes precedence in international law. It is principally this problem that mandates transformation of the UDHR paradigm for human rights: if state sovereignty is regarded in international law as above most concerns for rights, then human agency must operate resourcefully to ensure enforcement of the UDHR within recalcitrant states. I do not believe that sovereignty should be minimized and human rights enforced by the international community. While intellectuals and governments alike are beginning to regard human rights enforcement as the humane side of globalization, there is also evidence that powerful states will further their own foreign-policy objectives by claiming to enforce human rights in developing countries. Still, the dynamics associated with globalization—economic and security interdependence—can be used to redress these drastically negative consequences. The global nature of political coercion and economic deprivation calls for correspondingly global strategies of response, and these are facilitated by the same mechanisms and technologies that make the negative consequences possible.

I do not mean to suggest that human rights provide the answer to all problems of differential power relations, whether locally or beyond. Rather, my point is that human rights need to be “owned” by different peoples differently, otherwise they will be perceived as simply another mode of Western coercion. In other words, legitimating human rights in local cultures and religious traditions is a matter of vital importance for the survival and future development of the human rights paradigm itself. Religions must also be encouraged, from within, to provide moral underpinnings for fresh development of the paradigm in order to address emerging issues in differing contexts. The contribution of secularism to these critical developments must be to provide the political stability and communal security essential for negotiating a unique and dynamic relationship between human rights and religion in every setting internationally.

Religion Depends on Both Secularism and Human Rights

Shifting to the role of religion, I want immediately to stress that the internal transformation of religions is critical not just for the flourishing of human rights and secular government but also for the survival of religious traditions and the legitimacy of religious experience. Every orthodox precept that believers take for granted today began as a heresy from the perspective of some other orthodox

doctrine and may well continue to be considered heretical by some believers in a major branch of the same religion. Without such human rights as freedom of belief and expression, there is no possibility of development (which is to say, life) within the doctrine of any religion, and no possibility of peace within or between religious communities. This same need is served by secularism: as a principle of public policy, it ensures that an exclusivist and authoritarian religious group, while it could dominate the government of the day by majority will, would be unable (at least in theory) to threaten the essential interests of any segment of the population.

I hope it is clear that I am not urging the development of liberal or liberation theologies within the framework of each major world religion. What I am saying is that problems of authority and representation often frustrate the circulation of such views among believers. If a community defines itself to the exclusion of others, it is unlikely to listen to outsiders defining or contesting its religious doctrine or its behavioral precepts. The dilemma is how to encourage credible agents of internal religious change when the critique that they would undertake is believed to serve the interests of alien religions, cultures, powers. The more a religious community feels threatened by internal instability or external domination, the less likely will it be tolerant of religious dissent. Questions are raised about any dissenter's piety and authority in order to discredit his or her views. Moreover, when dissidents are defended from outside the religious community, upholders of the status quo often take that defense as proof that dissidents are intent on undermining the community of believers from within. This tendency of orthodox communities limits the utility of both human rights and secularism in protecting the rights of religious dissidents. But the tendency is less problematic where religious justifications have been found for human rights and secular government.

The scope of human agency has always been contested: this generalization has resonance for secular ideologies, as illustrated by recent experience with Marxism and nationalism, but is probably most valid in religious contexts because of the transcendental (superhuman) nature of most religious doctrine and the consequent reluctance to permit change. Given these tendencies, a prerequisite to the internal transformation of a religion is to emphasize the social and political implications of religious doctrine for the everyday lives of individuals and communities. Since an exclusively religious frame of reference for assessing those implications is likely to do no more than reinforce orthodox views, human rights and secularism can provide some commonly agreed criteria for the purpose. Dissidents, in other words, can point to international consensus on the universality of human rights and describe the experience of other societies with secularism in support of their own critique of religious hegemony. But these are issues of structure and not of content: where dissidents rely on what is thought an external

justification for an inauthentic innovation in religious doctrine or practice, their views are naturally rejected by their communities. Arguing effectively for human rights and secularism, on the other hand, ensures that minority voices can compete on their own merits, rather than be suppressed because they disagree with prevailing views. Arguing on intercultural terms for the toleration of dissent is not the same as arguing on intercultural terms for the reform of local theology and religious practice, but the former can help protect the latter from persecution. This protection is especially important where there is a need for fundamental change (short of founding a new religion). What is required is a contextual critique of the basic assumptions (including assumptions about methodology) of currently orthodox doctrines without reference to those of other religious traditions—a critique unlikely to occur without the extracontextual safeguards that are enhanced by secularism and human rights.

Secularism Depends on Both Religion and Human Rights

On the other hand, the capacity of secularism to offer dissidents the protection to operate more freely in religious discourse is dependent on secularist doctrine maintaining a minimal normative content. On the positive side, secularism precludes any specific understanding of religious doctrine from being enforced consciously as state policy. This feature conduces to internal religious transformation because believers are less threatened by views that, while unorthodox, are not forced on them through organs of the state. Moreover, novel ideas have a better chance of consideration on their own merit when there is no chance of their being declared official state policies. What is known as “separation of church and state” is necessary for the health of individual religions (though that is not all that their health requires).

To play this constructive role in national politics, secularism depends on the normative guidance supplied by human rights doctrine and on the moral justification provided by religion. The importance of human rights standards is obvious because secularism on its own may not be enough for safeguarding individual freedoms and social justice—as illustrated by recent experience with secular totalitarianism in Russia, Germany, and elsewhere. What is not sufficiently appreciated is the importance of a religious rationale for secularism. While the material conditions of coexistence may force a level of religious tolerance and diversity, this situation is likely to be seen as merely expedient and temporary by religious adherents unless they are also able to find tolerance and diversity consistent with (or preferably, implied or stipulated by) their religious doctrine. This requirement is not as difficult to achieve as it may superficially appear: the dichotomy demanding a choice between religion and secularism has already failed because, as Talal Asad writes, the “concept of the secular cannot do without the

idea of religion.”¹⁹ Politics and religion do not operate in distinct realms; the one continually informs and is informed by the other. The concept of the secular lacks motivating power and lives off that of the religions it checks and balances. As Harold Berman puts it: “people will not give their allegiance to a political and economic system, and even less to a philosophy, unless it represents for them a higher, sacred truth. People will desert institutions that do not seem to them to correspond to some transcendent reality in which they believe—believe in with their whole beings, and not just believe about with their minds.”²⁰ Secularism cannot motivate individuals to uphold its own basic principles; it paradoxically requires religious motives to energize it.

Interdependence in Islamic Contexts

My test case for the generalizations I have offered thus far is that of theology and politics in Islamic contexts. Religious transformation in Islam requires a theological argument for change and a political and social context within which that change may be realized in practice. On the theological side, it is necessary to first recognize the role of human agency in Islam through understanding of the Qur’an and Sunna (traditions of the Prophet) in historical context. Wide recognition of the centrality of human agency in Islam is critical for appreciating that secularism is in fact integral to the religion, rather than opposed to it, and for accepting human rights as a framework for the transformation of Islamic doctrine and practice. But for either of the two to play its role, secularism and human rights themselves must be open to their own internal transformations in response to the various challenges that Islam presents.

I must preface this discussion with two sets of general remarks about the place of religion in Islamic communities today. First, while many Muslims may claim that Islam is definitive in their private and communal lives, it is not the sole determinant of their behavior or the sole basis of social and political organization, even in purportedly Islamic states like Iran, Saudi Arabia, and Sudan.²¹ In fact, some Islamic communities (in India, for instance) may have more in common

19. Talal Asad, “Religion, Nation-State, Secularism,” in *Nation and Religion*, ed. Peter van der Veer and Hartmut Lehmann (Princeton, NJ: Princeton University Press, 1999), 192.

20. Harold Berman, *The Interaction of Law and Religion* (Nashville, TN: Abingdon, 1974), 73.

21. A Saudi newspaper editor, for example, recently described a “split” between what he called “virtual Saudi Arabia” and the “real Saudi Arabia.” “The virtual Saudi Arabia actually exists in its rules and in the minds of the people. . . . For instance, in virtual Saudi Arabia there is

no satellite television. In principle, and by law, you are not allowed to own a satellite dish. But in reality we are the biggest consumers of satellite television in the Middle East. Not only that, Saudi businessmen are also the biggest investors in satellites. In principle, and by law, Saudi Arabia is not supposed to have interest-based banking, but in fact 90 percent of our banking system is interest-based. And it goes on and on. The solution for Saudi problems is to bring the virtual world and the real world together.” Lawrence Wright, “The Kingdom of Silence,” *New Yorker*, January 5, 2004, 54.

with neighboring non-Islamic communities that share their ethnic and cultural affiliations, historical experiences, economic resources, and political and security concerns than they have in common with other Islamic communities (say, in sub-Saharan Africa). In other words, Muslims' understanding and practice of Islam are conditioned more by what may be regarded as "extra-religious" factors than they are by any abstract, settled, and in whatever way divinely sanctioned conception of the religion.

Second, there has always been a significant diversity of theological and jurisprudential views—and of political opinion and practice—within and between Islamic communities. Profound political and theological differences have divided Muslims from the beginning in the Arabia of the seventh century, leading to civil wars over issues of political power within three decades of the Prophet's death in 632. Serious disagreements over the interpretation and implementation of Islamic doctrine have long since resulted in the distinctive religious factions and schools of jurisprudence called *madhhab* (singular *madhhab*), as well as in wide differences of opinion within each school. Muslim scholars and communities at large routinely cite this diversity of opinions and beliefs as a positive feature of their faith. This diversity is likely to become more intense and widespread under modern conditions of education and communication. There are now greater opportunities for disagreement (as well as consensus) as more Muslims, women included, are educated enough to assess the Qur'an, Sunna, and Islamic history for themselves and to communicate with others around the world about theological and political issues of common concern. Disagreement is logically integral to religious experience because human beings do not truly *believe* where disbelief is not an option. This proposition may sound modern and liberal but is made in 114 verses of the Qur'an (and is rooted in Islamic theological and philosophical discourse since the eighth century). Verse 18 of chapter 29, for example, reads: "Tell them that Truth is revealed from God, and let those who wish to believe, do so, and those who wish to disbelieve, do so." But as I have argued elsewhere, the real issue is the "framework of interpretation" and not simply the presence of texts that can be variously understood.²² In other words, it is human agency that determines which texts are relevant to the issue at hand and how they should be interpreted.

Islamic life today is not guided solely by Muslim principles, and religious views within the Islamic world are and always have been very diverse: it is in light of these two recognitions that Islamic communities need to consider the relationship between Islam (under its various interpretations) and the global doctrines of secular government and human rights. First, it must be recognized that any

22. An-Na'im, "Toward an Islamic Hermeneutics for Human Rights," in *Human Rights and Religious Values*, ed. An-Na'im, Jerald D. Gort, Henry Jansen, and Hendrik M. Vroom (Amsterdam: Rodopi; Grand Rapids, MI: William B. Eerdmans, 1995), 229–42.

sharp distinction between the sacred and the secular in the Islamic world itself is misleading. Muslims believe that the Qur'an is the literal and final word of God and that Sunna is the second divinely inspired source of Islam. But the Qur'an was revealed in Arabic, a human language that evolved historically, and many normative parts of the Qur'an address situations in Mecca and Medina specific to the time that the Prophet conveyed them. Sunna, moreover, responded to immediate concerns that emerged in specifiable contexts, whatever the broader implications that Sunna may have for later times and different places. Human agency, in other words, was integral to the revelation, interpretation, and practice of Islam from its beginning in the seventh century. In any case, the Qur'an and Sunna cannot be understood except as applied by human beings temporally and in particular contexts. Religious precepts necessarily respond to the temporal, secular concerns of human beings and have practical relevance only because those responses are believed to be practically useful in the daily lives of the people they address. Some Muslims think that these propositions undermine belief in the divine source of Islam. They fail to appreciate, however, that the Qur'an and Sunna are not manifestations of divinity in the abstract; they are directed at human beings living human lives.

The presumed incompatibility of Islam and secularism derives from terminological as well as substantive confusions, and clarifying matters of definition should help frame the substantive issues in more precise terms. The main problem, from this perspective, is the tendency to limit understanding of secularism to the Western experience with Christianity since the eighteenth century. Whether viewed as "separation of church and state" or "disestablishment of religion," such definitions are specific to given settings and do not address the continuing social and political role of religion in public life even in those settings. For instance, efforts to sever institutional links between religion and the state cannot apply to the role of religion in politics: there is no way of knowing, much less disallowing, the motives of an individual's political action. It is also problematic to equate secularism with disregard for religion, or with a diminishing role for religion in public life, as some scholars have done.²³ To say that religion has no influence in societies with secular governments is obviously false, so the question becomes what sort of influence and, if the influence is diminishing, in what ways? It is time that we rethink secularism as a kind of relationship between religion and state that varies, religion by religion and state by state. The form that this relationship takes in a given setting is the product of organic development over time and needs, if it is to succeed, to be accepted as legitimate by the population at large; it cannot be expected to drastically change a political and religious situation instantaneously via constitutional enactment or political rhetoric.

23. See notes 10–12 and related text, above.

As a matter of terminology, secularism in its West European and North American sense came to Africa and Asia in the suspect company of other items of colonial vocabulary. Secularism is commonly associated, especially in Islamic societies, with the militantly antireligious attitudes of the French Revolution; and generally, non-Christians think of the concept as related to Christianity in particular. Nevertheless, the term is applicable to the experience of African and Asian societies, provided it is understood and applied in the specific context of each society, rather than as a feature of a supposedly global and context-free liberalism. The most compelling argument for developing a specifically Muslim rationale for secularism is the necessity of secular guarantees for the freedom of religion in pluralistic nation-states. The states of the Islamic world are simply not, as many in the West presume they are, religiously uniform. Whether it is the Shi'a of eastern Saudi Arabia, Sunni of Iran, or Shi'a of Pakistan, Muslims can suffer serious violations of the right to live by their belief in what they understand Islam to command and claim. It is worth observing that many Muslim intellectuals and political dissidents—including leaders of Islamist movements like Rashid Qanushi of Tunisia (as I write, he is living in the United Kingdom)—have taken or are seeking refuge in Western countries because they enjoy more freedom of belief when living in “Christendom,” which by now is mostly secular, than in states with large Muslim majorities.

But a Muslim rationale for secularism is not far to seek. It is commonly claimed that Islam mandates the establishment of an “Islamic state” to enforce Shari'a (the normative system of Islam) as the law of the land. But the notion of an Islamic state is a contradiction in terms. Principles of Shari'a enacted by the state as positive law cease, once enacted and enforced by the state, to be part of the normative system of Islam. Since there is so much diversity of opinion among Islamic schools of thought and among Islamic scholars, any enactment of Shari'a principles as law must accept some opinions over others, with the result that believers would be denied freedom of choice among the equally legitimate competing opinions on any legal question. Moreover, as even advocates of an Islamic state must concede, the only such state in Muslim history has been that of the Prophet in Medina, and it was in many ways too exceptional an entity to be useful now as a model. The implementation of Shari'a as state law is, as I have argued at some length elsewhere, untenable for any nation-state in the present economic and political context globally.²⁴

My basic points have been, in summary, (1) that Muslims need human rights to protect them from government abuse and (2) that every Muslim needs secularism to secure his or her freedom to be the kind of Muslim that he or she wishes to

24. For further elaboration on and substantiation of these views, see An-Na'im, “*Shari'a* and Positive Legislation,” 29–42.

be, but (3) that these two needs cannot be satisfied without transformation of the standard ways of understanding Islam. These three points make my theoretical case for the synergy and interdependence of Islam, secularism, and the modern doctrine of human rights. But the synergy I propose is already developing in a variety of Islamic societies, and what is needed are ways of facilitating these processes and overcoming the limitations and difficulties that such developments are bound to face. What follows, accordingly, are three very brief case studies to highlight this perspective.

Women's Rights in Egypt

The women's movement in Egypt is multifaceted or perhaps fractured, a characteristic often explained as a rift between Islamist conservatives and secular liberals.²⁵ According to one good survey, however, the "secular" branch of the women's movement is united not by an antireligious or anti-Islamic position, but rather by the view that Shari'a should not be the main or sole source of legislation in Egypt (1-4). The majority of women in the "secular" women's movement describe themselves as very religious (142).²⁶ Many of these women do not see religion as antithetical to feminism, and they perceive religious affiliation as integral to their struggle for human rights. It is simply, according to this survey, that "most secular women activists [recognize] that religion does not constitute the only source of values and axis of orientation in people's lives" (142). There are, however, some women activists who view Islamic tradition as inherently tainted by the patriarchal system in which it was created more than a thousand years ago, and they therefore reject the religious tradition (141). The best way, then, to conceive of religious and secular attitudes in Egypt is not as a dichotomy but as a continuum. Dichotomous conceptions sustain the Islamist notion of secularism as meaning "against religion" (147).

The case of the Egyptian women's movement supports the idea that religion needs both secularism and human rights. Muslim women, for one thing, believe in their own ability to promote understanding and practice of the three paradigms in tandem: in Egypt, they are reinterpreting and renewing their reli-

25. See Nadjie Al-Ali, *Secularism, Gender, and the State in the Middle East: The Egyptian Women's Movement* (Cambridge: Cambridge University Press, 2000), 3.

26. Al-Ali's study reveals that trying to categorize these women, as some other scholars have done, engenders artificial distinctions. The author argues that categorizing Egyptian feminists as Islamist, Muslim, or secular is misleading. Specifically, Al-Ali challenges the definition of secular feminists by Azza Karam in *Women, Islamisms, and the State: Contemporary Feminism in Egypt* (Basingstoke,

U.K.: Macmillan; New York: St. Martin's, 1998): Karam argues that secular feminists center their discourse in the language of international human rights rather than that of religion. To Al-Ali, "views and opinions about secularism and religion are extremely complex and variable even among members of the same group. Moreover, international conventions of human rights constitute only one reference point among many." *Secularism, Gender, and the State*, 140-41.

religious traditions in order to do so. And the Western origin of human rights doctrine does not prevent these women from claiming UDHR rights for themselves or from seeking to reevaluate and adapt those norms to suit their own cultural, religious, and political situations (142–48). Freedom of religion, a norm of human rights doctrine, gives these women the power to choose, among Islamic traditions, those most compatible with their own belief in other UDHR rights. Invoking global norms of human rights enables Muslims like these Egyptian women to challenge dated and regressive understandings and practices. Thus, human rights and secularism help such Muslims avoid the difficult choice of either rejecting their religion entirely or abandoning their own human dignity.

At the same time, the invocation of human rights, and also secularism, enables those who feel more completely alienated to leave the Muslim religion altogether, as some members of the secular women's movement in Egypt have indeed chosen to do. It is critical for the moral integrity of the religion itself that people be free to stay or leave the community at will—that they not be forced or intimidated into the pretense of belief and hypocritical practice. The relative neutrality of the Egyptian state in religious matters is important in maintaining peace and stability in a country that has a significant Christian minority as well as the usual diversity of beliefs among its Muslims.²⁷ Unfortunately, in attempting to respond to the threat of militant Islamic fundamentalism, the present Egyptian government tends to limit freedom of religion and other human rights for all segments of its population.²⁸ For example, in 1992 private mosques in Egypt were “nationalized” so that sermons promoting violent extremism could be censored. Ironically, while this state control of Islamic discourse tends to inhibit the exercise of human rights among the majority of Muslims, it is not always successful in suppressing Islamic militancy. The fact that the mosque has become a contested political arena undermines the secular nature of the state and its role as guardian of human rights. A better appreciation of the interdependence of religion, secular government, and human rights would enable the state and civil society to cooperate in upholding the integrity of all three paradigms as the foundation of political pluralism.

Negotiating Islamic Identity and Politics: The Case of Sunni Sudan

In view of the intense and long-standing religious diversity in all countries with Muslim majorities, secularism is, as I have argued, crucial for the good of both

27. Egypt is approximately 90 percent Muslim, mostly Sunni, with a tiny Shi'i minority, and 7 to 10 percent Coptic Christian. Denis J. Sullivan and Sana Abed-Kotob, *Islam in Contemporary Egypt: Civil Society vs. the State* (Boulder, CO: Lynne Rienner, 1999), 19.

28. Sullivan and Abed-Kotob, *Islam in Contemporary Egypt*, 122.

human rights and religion throughout the Islamic world. Recent developments in Sudan illustrate how ambiguities about the relationship between Islam and the state have figured in the political instability and retarded socioeconomic development of the country since it gained independence from colonial rule in 1956. These ambiguities are also among the causes of the civil war waged in the southern part of the country, first from 1955 to 1972, then again from 1983 to the present.²⁹ The main political parties in the northern part of the country, which is predominantly Muslim, are unable to dispute claims made by the National Islamic Front that the country must be governed by an Islamic state and Shari'a enforced as the law of the land.³⁰ This situation has given the National Islamic Front a grossly exaggerated influence in the country and has promoted a general belief that the "removal of Islam from public life in Sudan is not an option."³¹ On the other hand, the notion of an Islamic state is obviously untenable in view of the profound religious and cultural diversity of the country as a whole.³² The imposition of a particular understanding of Islamic law violates the human rights of Muslim as well as non-Muslim citizens of the country.³³ To the extent that Shari'a is taken to be of divine origin, any political opposition to the government of the day becomes tantamount to apostasy—a capital crime punishable by death under section 126 of the Sudan Penal Code of 1991.³⁴ And minority religious traditions will suffer serious violations of their most fundamental rights.³⁵

The benefits of secularism, and the protection of human rights, are in such a context obvious, but neither is achievable in a sustainable manner until the role of Islam in national politics is clarified. That is, given widespread belief in the necessity of a role for Islam in public life, human rights cannot be secured, and secularism cannot be established as a guarantor of human rights, until both obtain credible justifications in Islamic terms. Yet the process by which those justifications could be developed depends itself on the protection offered by the

29. For a comprehensive history and analysis, see, for example, Francis M. Deng, *War of Visions: Conflict of Identities in the Sudan* (Washington, DC: Brookings Institution, 1995).

30. According to the National Islamic Front in Sudan, an Islamic state "is an ideological movement that seeks comprehensive reform of Muslim society for the establishment of a just social order centered on faith." This formulation means that the tenets of Islam would dictate all religious, social, political, economic, and legal aspects of life. See Lawyers Committee for Human Rights, *Beset by Contradictions: Islamization, Legal Reform and Human Rights in Sudan* (New York: Lawyers Committee for Human Rights, 1996), 84.

31. A. H. Abdel Salam, "Constitutional Challenges of Transition," in *The Phoenix State: Civil Society and the Future of Sudan*, by Abdel Salam and Alex de Waal (Trenton, NJ: Red Sea, 2001), 21.

32. As of 2001, 70 percent of Sudanese adhere to Islam, while 20 percent are Christians. Abdel Salam and de Waal, *Phoenix State*, 53.

33. Abdel Salam and de Waal, *Phoenix State*, 22–23.

34. Donna E. Artz, "The Treatment of Religious Dissidents under Classical and Contemporary Islamic Law," in *Religious Human Rights in Global Perspective: Religious Perspectives*, ed. John Witte and Johan D. van der Vyver (The Hague: Martinus Nijhoff, 1996), 405–6.

35. Abdel Salam and de Waal, *Phoenix State*, 22–23.

right to freedom of belief and dissent.³⁶ Sudan is thus a clear case of the need for us—for the individuals involved—to nurture the existing synergy of Islam, religiously neutral governance, and UDHR rights.

Negotiating Islamic Identity and Politics: The Case of Shi'a Iran

The condition of Iran under the Islamic Republic proclaimed in April 1979 supports the same conclusion. The Iranian state since that time has been fused with one particular interpretation of Islam—an interpretation exceptional even within the distinctive Shi'a tradition of Iran itself—under “guardianship by the clergy” (*vilayat-i faqih*).³⁷ The Iranian constitution is a complex of paradoxes and contradictions.³⁸ For example, article 2 states that “the Islamic Republic is a system based on belief in . . . One God . . . His exclusive sovereignty and right to legislate, and the necessity of submission to His commands.” Article 4 states that “all civil, penal, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria.” But contradicting these assertions, article 6 states that “the affairs of the country must be administered on the basis of public opinion, expressed by means of elections.” While establishing Islam as the “eternally immutable” religion of Iran, the constitution bestows recognition on Zoroastrianism, Judaism, and Christianity (though only those three) as religious minorities, allowing their adherents freedom of religion “within the limits of the law.” An “absolute religious Leader and the Leadership of the Ummah” have ultimate authority in the executive branch of government, but the Islamic Assembly contains guaranteed seats for non-Muslims: “the Zoroastrians and Jews will elect one representative; Assyrian and Chaldean Christians will jointly elect one representative; and Armenian Christians in the north and in the south of the country will each elect one representative.” Further, the constitution ensures equal rights for women but only “in conformity with Islamic criteria.”

Mixing notions of divine authority (exercised fallibly by the “absolute religious Leader”) with modern ideas of popular sovereignty and democratic elections has resulted in suffering for all segments of the population, including the Shi'a majority itself. Political struggles among competing religious and civic authorities have locked the state in unworkable policies and forced the country into a devastating international isolation. Reports of the United Nations' Special

36. See An-Na'im, “Islamic Foundations of Religious Human Rights,” in Witte and van der Vyver, *Religious Human Rights*, 341.

37. Michael M. J. Fisher, “Legal Postulates in Flux: Justice, Wit, and Hierarchy,” in *Iran in Law and Islam in the Middle East*, ed. Daisy Hilse Dwyer (New York: Bergin and Garvey, 1990), 115. This notion of a Shi'a state was

based on Khomeini's ideas (see, for example, Ayatollah Ruhollah Khomeini, *Islamic Government*, trans. Joint Publications Research Service [New York: Manor, 1979], which represented a break from the traditional view of the “Twelvers Shi'a” school that prevails in Iran today).

38. Steiner and Alston, *International Human Rights*, 459–62, quoting *Constitution of Iran*, 1979 (as amended).

Representative on Iran in 1991 and 1998 documented horrendous violations of human rights throughout the country.³⁹ Yet the fact that the second UN report also documented some improvement indicates a possibility of recovery from the disaster of the 1980s and early 1990s. What is clear from the sad, yet hopeful, experience of Iran with the project of creating an Islamic state is that a secular space between religion and state is indispensable for the political stability, social and economic development, and general well-being of Islamic societies. From an internal point of view, the well-documented, daily violations of human rights by a purportedly Islamic state undermine not only the notion of Islamic government but, for some, even the validity of Islam. When government is identified with religion, both are blamed for the social and political problems of the country.

Some Implications for Policy

Religion, secularism, and human rights are not autonomous concepts or paradigms; they exist in constant interaction with each other and with political, economic, constitutional, and governmental processes and institutions, both locally and globally. Given this reality of interdependence, neither the ratification of international treaties nor the adoption of national legislation can guarantee progress of the kind that I am hoping may ensue. Neither secular government in Sudan nor the rights of women in Egypt and Iran will be made real simply by proclaiming them or even by amending national constitutions. In each case, the success or failure of any initiative will depend on the development and wide comprehension of clear principles, on consistent practice in accordance with them, and on a well-informed and active civil society intent on holding its government officials accountable for their acts. The model that I have drawn and advocated here, if found plausible and useful, must be further developed, adapted, and applied on a case by case basis in order to clarify the relationships among religion, secularism, and human rights in any given society. This much, however, may be said, across the board, with confidence: a constitution that reflects particular religious beliefs will be static (a grounding in divine authority can sanction little change) and therefore doomed in a changing world. States that adopt religious law as national law and allot political positions according to religious affiliation discover eventually that religious adherents do not necessarily act politically in terms of their religious beliefs and that religions suffer by their association with the exigencies of politics. Religion and politics are not well mixed—and Muslim history offers ample evidence of that generalization.

39. UN Doc. E/CN.4/1991/35, and UN Doc. E/CN.4/1999/32. See Steiner and Alston, *International Human Rights*, 624–29.

I have tried to underscore that peoples and individuals need make no choice among religion, secularism, and human rights. The three can work in synergy. But there is a related choice that does need to be made: whether or not to attempt mediating tensions among the three paradigms. I would myself urge both scholars and policymakers to take responsibility for that mediation rather than permit further damage to be done by belief in the incompatibility of religion with secular government and human rights. Whether we should adopt, develop, and implement any given approach to this mediation (the one that I have outlined here or any other approach) is not a foregone conclusion, imposed by impersonal forces. It is a human choice and will be made by individuals.