

September 11 and the Search for Justice and Accountability

Abdullahi Ahmed An-Na'im

People scarred by violence and injustice tend to turn to vigilante justice or other nonlegal means to address an intolerable situation. The current Islamic jihad, or holy war, declared by Osama bin Laden and al-Qaeda, is one example of an aggressive attempt at “self-help” that spurns legal remedies. Because this view of jihad and vigilante justice is morally repugnant and pragmatically untenable, we must invest in structures to support viable and sustainable reconciliation. I am calling in particular for the development of the necessary normative and institutional resources for continuing reconciliation.

Terrorism's Past and Future

What concerns me most as a Muslim advocate of peace and reconciliation is the “Islamic dimension” of the terrorists’ attacks of September 11, 2001, although I do not at all suggest that this is the only, or even primary, feature of those tragic events. The atrocities of September 11 are commonly attributed to a terrorist network known as al-Qaeda, under the leadership of Osama bin Laden (who claimed responsibility for similar attacks on American embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania, in August 1998). The reality of an international terrorist network that claims an Islamic rationale for its activities calls into question the nature and implications of the doctrine of jihad under Shari’a (the normative law of Islam).

The Arabic term *jihad* simply means self-exertion or special effort, and is used in the Qur’an to refer to a variety of senses, including combating one’s illegitimate desires, and to activities undertaken in

peaceful propagation of the faith.¹ But the term is also used in the Qur'an and in Islamic jurisprudence in general to signify religiously sanctioned use of force either in self-defense or to propagate or "defend" the faith. This latter sense of jihad clearly conflicts with the principles of reconciliation because it sanctions direct and unregulated violent action in pursuit of political objectives at the risk of harm to innocent bystanders.

The relationship between Shari'a and direct violent action in pursuit of what someone deems to be legitimate objectives has been a highly contested subject among Muslims since the first civil war (*al-Fitnah al-Kubra*) following the rebellion against Uthman, the third Caliph, and his murder in 656 C.E., only twenty-four years after the death of the Prophet Mohammed.² On one hand, the personal obligation of every Muslim to uphold justice and combat injustice, regardless of what the wider community or state is willing or able to do, can have obvious social and political merit. On the other hand, there would be total chaos if each Muslim were simply to act on his or her own initiative in redressing what he or she deems to be injustice, without resort to lawful authorities charged with maintaining public peace and order. This profound ambivalence to political violence cannot be resolved on purely theological grounds, as Islamic scriptural sources can be cited in support of each side of the controversy. As I have argued elsewhere, however, these competing textual sources can only be understood and reconciled with reference to a contextual framework for their meaning and practical application at different times in history.³

The ambivalence of Shari'a about the use of force in national politics and international relations is understandable in the harsh and violent context of its origins and early development in the seventh to ninth centuries, where use of force was the unquestioned norm. In fact, Shari'a represented an improvement in that context by limiting the legitimate use of force to self-defense and propagation of Islam, though the latter rationale was in fact used to achieve territorial expansion of Islamic states throughout history. Shari'a also regulated the conduct of hostilities, including the requirement of what might be called a formal declaration of war in modern usage and the strict prohibition of killing children, old men, women, and noncombatants.⁴ In this light, it can fairly be concluded that the attacks of 9/11 violated Shari'a principles on the legitimate use of force in international relations. But it is also true to say that there is an underlying ambivalence in those prin-

ciples that may lead some Muslims to believe themselves justified in the use of such arbitrary and unregulated violence in pursuit of political objectives or under an expansive notion of self-defense. If and when those Muslims believe that there is no redress to grave injustice under the rule of law—what I call here normative and institutional resources for reconciliation—they may invoke a religious justification for direct violent action against what they regard as corrupt governments at home or perceived enemies abroad.⁵

Turning to the American side, I find that one of the clear lessons of the atrocities of 9/11 is a fundamental sense of shared vulnerability, in that all human beings everywhere are vulnerable to arbitrary violence. This point was tragically illustrated by the crude manner in which nineteen determined terrorists were able to inflict the horrendous carnage and destruction of 9/11 in the heartland of the most powerful country in the world. The trauma of the attacks was compounded by the scale and speed by which the terrorists managed to shatter the illusion of security and predictability of daily life where that was most certainly taken for granted. It is imperative to appreciate the wide variety of ways in which all human beings everywhere experience this shared vulnerability. For some, it is the threat of terrorism and other forms of political violence; for others it is political oppression, religious or ethnic persecution, or poverty and disease. The challenge is to see the connections between all these forms of vulnerability so that we can realize that addressing one form can help alleviate another. In relation to 9/11 in particular, we need to realize that addressing the grievances of the terrorists over the Israeli/Palestinian conflict or perceptions of American complicity in the political and economic frustration in some countries can reduce the risk of terrorist attacks. To say this is not to condone terrorism in the least, but only to acknowledge the rationality of the terrorists, though we disagree with their logic, conclusion, and methods.

The strength of the fallacy that one nation could be exempt from this universally shared vulnerability of human beings is reflected in the profound loss of personal security many people feel in the post-September 11 environment in United States. Paradoxically, in the aftermath of that tragedy, many citizens of the United States seemed to cling to the illusion of invulnerability by granting their government extraordinary powers to do whatever it deems necessary against this new, amorphous, and invisible danger. In addition to failing to critically evaluate the relationship between such excessive powers and the achievement of the desired

objective, this attitude raises the serious risk of severe and irreversible loss of the same liberties and values it seeks to safeguard. On one hand, the limitations of human and material resources and time constraints, as well as inevitable complacency and bureaucratic inertia, would tend to limit the practical efficacy of such measures in combating terrorism. On the other hand, in monitoring and tracking the movements and activities of potential terrorists within the United States, the government will necessarily harass and intrude on the privacy of countless innocent citizens and lawful residents.⁶

Such a simplistic approach to the threat of terrorism, and abdication of responsibility by citizens of the most powerful nation in the world, fails to appreciate that events like 9/11 always have a past and a future. Again, without in the least condoning those atrocious attacks, an appropriate response to them would attempt to understand the motivation of the terrorists, however unjustified one may believe it to be, as well as take into consideration the likely consequences of the actions of the government of the United States in retaliation. As former President Jimmy Carter has said:

We have ignored or condoned abuses in nations that support our anti-terrorism effort, while detaining American citizens as “enemy combatants,” incarcerating them secretly and indefinitely without their being charged with any crime or having the right to legal counsel. This policy has been condemned by the federal courts, but the Justice Department seems adamant, and the issue is still in doubt. Several hundred captured Taliban soldiers remain imprisoned at Guantanamo Bay under the same circumstances, with the defense secretary declaring that they would not be released even if they were someday tried and found to be innocent. These actions are similar to those of abusive regimes that historically have been condemned by American presidents.⁷

An understanding of the history and consideration for the future would clearly indicate the futility of lawless unilateral retaliation at the presumed source of harm, without addressing the underlying causes that apparently prompted the perpetrators to commit their heinous crimes and may persuade others to condone or facilitate similar violence. The fact that a hard-core group of religious, ideological extremists like those who perpetrated the terrorist attacks will probably harbor aggressive designs without justification does not mean that their grievances should never be taken seriously, since some of them may indeed be shared by

more reasonable people who can be influenced by appropriate action. Since hard-core elements cannot act out their aggression without the support, or at least acquiescence, of a larger number of people who are open to reason and humanitarian concern, the sensibilities and grievances of those wider constituencies must be seriously addressed. Recalling the coincidence of moral and pragmatic considerations noted earlier, addressing the grievances of that wider constituency is both morally required and pragmatically necessary in order to deny terrorists that source of moral and material support.

Twin Pillars of Reconciliation: Justice and Accountability

Reconciliation is a constant process whose outcome is contingent upon various factors but always requires building consensus across cultural and ideological boundaries. The twin pillars of a successful and sustainable process of reconciliation, in my view, are justice and accountability. Justice addresses the underlying causes of that desperate and lawless behavior, and accountability addresses the violation of the rule of law in international and national affairs. Both elements, however, require consensus on the normative and institutional resources that undergird the rationale of the process of reconciliation.

My analysis rests on three propositions about the process of reconciliation. First, it is neither possible nor desirable to permanently eliminate difference or conflict in human relationships at all levels, from the personal to the national and international. Instead of assuming that the core of the conflict is in its immediate expression, it should be seen as a natural phenomenon, which “transforms events, the relationships with which conflict occurs, and indeed its very creators.”⁸ Conflict facilitates social, personal, and communal transformations and growth, which, in turn, modify the immediate expression of conflict, as well as the people, context, and relationships involved. Thus, “neither social forces [like entrepreneurs, workers, students, women, and peasants] nor social movements [whether ethnic, religious, national liberation, etc.] can be presumed to have an internal consistency and coherence, or be the agent of realizing a trans-historical agenda.”⁹ It is therefore important to build on possibilities of agreement across presumed dividing lines, instead of assuming total homogeneity on either side of a conflict.

Second, all human beings, as individuals or in groups, live by the moral and pragmatic choices they make, whether made actively and

consciously or passively and subconsciously. Failing to make a choice for change is a choice by default that tends to support the status quo, whatever it may be. Moreover, while individual choices are often made in response or reaction to choices made by others, each actor at every stage has the possibility and ability to make a different response. For example, the fact that X hit Y does not necessarily compel or require Y to hit back in retaliation, as Y may well decide that self-restraint is in his own best interest in view of his personal assessment of the situation and its consequences.

Third, it is futile to expect people to make the moral and pragmatic choices in favor of reconciliation without securing their vital interests or addressing their own concerns and apprehensions. In the simplified example above, Y is less likely to hit back in retaliation if there are alternative means for holding X accountable for the initial attack, or for protecting Y against further aggression by X or any other person. Consequently, the viability and sustainability of reconciliation in continuing, multifaceted conflicts needs to draw upon normative and institutional resources for justice and accountability. The existence of fair and credible norms and mechanisms of accountability reduces the risk of self-help and vigilante justice. Conversely, resorting to self-help in retaliation against aggression tends to undermine the possibility of establishing a normative and institutional basis for fair and credible accountability. In other words, direct retaliation tends to perpetuate a vicious cycle of attack and counterattack, which diminishes the prospects of viable and sustainable reconciliation among the parties to conflict. But since a different choice is always available to all sides in a conflict, each side can seek to break that cycle anytime, which is more likely to happen when there are prospects of justice and accountability.

To briefly elaborate on these three propositions, I would first emphasize that the maxim noted in the Introduction of this volume—"there can be no peace without justice"—immediately raises at least two questions about the meaning and practical implementation of justice and accountability. Since people tend to have different conceptions of justice in any given context, the first question is how to promote consensus on understandings of justice. Moreover, since such consensus is unlikely to be achieved without a framework for dialogue among competing perspectives, and cannot be sustained over time without credible accountability for violating its precepts, the second question is how to regulate these necessary processes. As I see it, reconciliation requires an institu-

tional framework for dialogue to develop normative agreement among the parties about a just mediation of their differences, as well as mechanisms for the constant adjudication of disputes. This framework must also ensure accountability for violations of the agreed norms for regulating their relationship.

One point to emphasize about this vision is that the institutional framework for consensus-building, as well as accountability for its violation, must be founded on the same principles of justice agreed upon among the parties to a given conflict. The relationship between these ends and means should be seen as a continuum, from the structural forms and processes of institutions to the substantive outcomes of those forms and processes. This organic and dialectic relationship between procedural and substantive justice means that neither can be achieved without the other.

Furthermore, the need for normative and institutional resources for justice and accountability should be both prospective and reactive—reaching toward the future as well as the past. Assurances against future violations of the agreed norms of justice are probably more important to the continuing process of reconciliation than the satisfaction a victim may draw from exacting vengeance or punishment for past wrongs. This is not to say that one should never pursue accountability for past wrongs, as that may indeed be necessary and conducive to reconciliation in some cases. Rather, my point is that making reliable arrangements for future accountability is critical in all cases, regardless of whether or not accountability for past wrongs is sought or achieved. Moreover, this accountability may take the form of a wide variety of responses: truth-telling, acknowledgement of and apology for wrongdoing, appropriate restitution and reparation measures, and/or punishment of the offender.

Finally, the analysis and conclusions of this essay are not intended to disregard or underestimate the difficulties and complexities of mediation and reconciliation of conflict. As the tragic events in the former Yugoslavia and Rwanda during the 1990s illustrate, there is often an atmosphere of distrust and misunderstanding that is heightened by memories of historical or recent atrocities. With charges and counter-charges about past events, there seems to be no constructive space in the history of the conflict for effective negotiations to occur. Yet, favorable conditions must somehow be established for the process to occur. Difficulties to be dealt with include: opposition or backlash from some factions on

both sides, persistence of incompatible goals and lack of political progress, re-politicization of peace-building initiatives, and lack of human and material resources for implementing various strategies and programs. Moreover, there is always the question of how to make the whole process of reconciliation sustainable, by moving it from creating a conducive environment to maintaining human relationships, and generally building on the momentum of the conflict transformation. Giving due regard to such difficulties and complexities requires the recognition of reconciliation as a “process” rather than an event. For the same reason, we should realize that institutional and normative arrangements are only resources that may or may not result in the actual achievement of sustainable reconciliation on the ground.

International Law and Human Rights as Resources for Justice

These reflections on 9/11 and its aftermath lead me to the same conclusion about the imperative need for consensus on normative and institutional resources for reconciliation. On the Muslim side, there is need for an authoritative and principled rejection of any religious justification for unilateral preemptive or retaliatory violence, which will only legitimize a similar response by the other side. This transformation will require courageous and visionary leadership to advance the theological, social, and political case for change, in addition to confidence in the possibilities of peaceful and effective redress for the grievances of those Muslims who may be tempted to engage in terrorist attacks or to condone and support such conduct. On the American side, an appropriate response to the threat of international terrorism must be firmly grounded in a clear and profound appreciation of the multifaceted, universally shared vulnerability of all human beings. That appreciation would clearly exclude resort to unilateral preemptive or retaliatory violence, which will only legitimize the arbitrary lawlessness of the terrorist. In view of the understandable outrage and strong demands for retaliation for the 9/11 attacks, a reconciliatory approach would require courageous and visionary leadership at home, and the realistic prospect of redress and safeguards against further attacks abroad.

In other words, both sides need to engage in an internal process of transformation of their positions. This process cannot be initiated and sustained in the absence of normative and institutional resources for

reconciliation of conflict. Proponents of reconciliation on both sides of this conflict need to rely on the plausibility of that process in the concrete realities of international relations. Muslim advocates of peaceful coexistence and reconciliation need to rely on the plausible reality and efficacy of the process of reconciliation according to agreed normative and institutional arrangements in their opposition to the negative and regressive notion of jihad that is manipulated by the terrorists to legitimize their unilateral and arbitrary direct violence. Similarly, American advocates of self-restraint and peaceful reconciliation cannot succeed politically without realistic prospects of securing accountability for 9/11 and credible safeguards against future threats to the security of their population and the sovereignty of their country.

Fortunately, we do have the necessary normative and institutional resources, namely, the principles and mechanisms of international law and human rights. I will now briefly review the principles and institutions that are relevant to each side of this conflict, as they may work in a possible process of reconciliation. However, the following review is not intended to be exhaustive or authoritative, but merely illustrative of the sort of normative and institutional resources that are available for reconciliation in this case. In particular, this review is subject to two caveats:

1. I am concerned here with establishing a general framework for the process of reconciliation, rather than the precise terms of legal responsibility of individual persons or states. Accordingly, I would readily concede that the relevance or application of some of the principles I am citing below can be disputed as a technical matter under international law. My objective is to make the case for getting the parties to a stage where such technical issues can be properly debated or adjudicated, rather than claiming to settle those issues in this limited space. For example, the definition of “crimes against humanity” I am relying on draws on sources that may not apply to the 9/11 situation, in a strict legal sense, but can be taken to be evidence of customary international law that would be applicable. Thus, the fact that the Rome Statute of the International Criminal Court does not apply to the terrorists in this case does not preclude citing that statute as indicating a definition of this crime under customary international law that is binding on all states, regardless of the coming into force of a particular treaty or that it has not been ratified by the states concerned.

2. The fact that the principles and institutions indicated below sound idealistic, perhaps even far-fetched, is part of my thesis in this essay. That is, a commitment to the process of reconciliation in international conflicts like 9/11 should include full acceptance of these principles and institutions as a matter of course. At the same time, however, I would not expect the concerned parties to immediately act in full accordance with these principles or submit to the jurisdiction of relevant institutions. As with the first caveat, the object here is to get the parties to the point where they would debate these issues in a peaceful and orderly manner, instead engaging in unilateral and arbitrary violence.

Based on publicly available news reports and media analysis,¹⁰ I suggest that the attacks of 9/11 were committed by individuals and do not constitute an act of war by any state. As such, those attacks constitute crimes against humanity under international law,¹¹ in addition to any crimes committed under the federal and state jurisdictions of the United States. However, any state that harbors individuals responsible for committing, instigating, or aiding and abetting the commission of those crimes is responsible for either prosecuting those persons or handing them over for trial by a state that has jurisdiction.¹² Moreover, any persons arrested or detained on suspicion of being implicated on those crimes must receive the full protection and benefits of due process of law and requirements of a fair trial.¹³

In pursuing its legitimate right to justice and accountability for those crimes against humanity, the United States was and is bound by relevant principles of customary international law and the provisions of the Charter of the United Nations. These would include, for example, the obligation to refrain from the use of force against the territorial integrity or political independence of any state, and to settle international disputes by peaceful means in such a manner that international peace and security and justice are not endangered.¹⁴ Moreover, the United States was and is bound by customary international law principles and specific treaties that regulate its treatment of any persons detained in the course of military operations or arrested on suspicion of commission of crimes. These would include provisions for the treatment of prisoners of war, as well as due process and fair trial requirements for criminal suspects.¹⁵

Drawing on this small sample of relevant principles of international law and human rights, a “best-case scenario” might have been for Islamic countries to strongly support the United States in pursuing a law enforcement model in seeking to identify and prosecute those individual

persons who are responsible for the terrorist attacks of 9/11.¹⁶ Given the necessary political will, I believe that enough normative and institutional resources exist to hold criminals accountable under international law, as illustrated by authoritative precedents, such as the successful prosecution in the Netherlands of Libyan nationals accused of the destruction of a Pan Am flight over Lockerbie, Scotland, in 1988.

If that option seemed too unrealistic in view of the political situation in the United States at the time, or if it was tried and failed, it would have been better to secure the authorization of the Security Council of the United Nations for U.S. military operations in Afghanistan (regardless of the possibility of the technical legality of that intervention, such as the pretext of being “invited” by the Northern Alliance as the nominal government of country). Unfortunately, the Security Council apparently seemed to abdicate its responsibility at the time by neither sanctioning nor condemning the military campaign of the United States in Afghanistan.¹⁷ Space does not permit further examination of what has actually happened since 9/11. But as I emphasized earlier, it is never too late to try to initiate a reconciliation process. With this possibility in mind, I will now briefly summarize the current situation and its implications for reconciliation among the parties to this conflict.

Breaking the Cycle of Violence

To imagine the possibility of reconciliation and its requirements, one has to start at some point in the cycle of violence and counterviolence to consider what it would take to bring the parties to appreciating the need for reconciliation and having confidence in its viability and sustainability. To recall the main relevant elements of the aftermath of the 9/11 terrorist attacks, the United States launched a massive military campaign in Afghanistan on October 7, 2001, with the declared objective of destroying al-Qaeda, a network of international terrorists lead by Osama bin Laden, and overthrowing the Taliban government for having harbored and supported that network in its repeated attacks against the United States and its citizens. As noted earlier, although the United States was supported in that campaign by a number of allies, including several predominantly Muslim countries in Southern and Central Asia, that military action was neither sanctioned nor opposed by the Security Council of the United Nations.

The Taliban regime was overthrown by a combination of American

and Northern Alliance forces within weeks of the initiation of that campaign, and a new government was instituted in Afghanistan by the end of 2001. However, with escape of the leadership and an unknown number of the members of al-Qaeda, including bin Laden himself and his main lieutenants, according to media reports, the U.S. military campaign in Afghanistan does not appear to have been as effective as hoped in achieving its primary goal of destroying the terrorist network.

Several months into that process, however, the United States suddenly shifted its main focus from the campaign against al-Qaeda and its affiliates to plans for a military invasion of Iraq, with the purported rationale shifting between the need to dismantle the country's weapons of mass destruction and removing the regime of Saddam Hussein in order to bring democracy to the Iraqi people. Whatever one may think of the reasons or basis of that action, Iraq was in fact invaded and occupied by the United States and the United Kingdom by April 2003. This happened not only without the sanction of the Security Council of the United Nations, but with the globally publicized knowledge that authorization for the invasion of Iraq was being authoritatively rejected by the Security Council. The strong majority of the members of the Council, including China, France, and Russia, who have the power to veto a resolution, insisted on granting weapons inspectors more time to search for weapons of mass destruction in Iraq.

Several aspects of the invasion and occupation of Iraq made it inevitable that it would be perceived as an effort to colonize the country. The United Kingdom, the primary partner of the United States in this invasion and occupation, was in fact the last European colonial power in Iraq, following the collapse of the Ottoman Empire after the end of World War I. The recent occupation is in effect colonization because it is the usurpation of the sovereignty of the country through military conquest, hence the rush, as this essay goes to press, by the United States to restore the "sovereignty" of Iraq by the end of June 2004. Like earlier episodes of colonialism in Africa and Asia, this occupation was rationalized in the name of establishing democracy, the current version of the "white man's burden" of nineteenth century colonialism. The perception of motives of colonial exploitation are further strengthened by the complete failure of the United States and the United Kingdom to either find weapons of mass destruction in Iraq or establish evidence of links between the regime of Saddam Hussein and al-Qaeda, the purported justifications for the invasion in the first place.

On the positive side, however, this colonial misadventure has clearly failed not only because of growing resistance by Iraqis, but also because of a continued and categorical rejection by international public opinion, including the opinion of some citizens of the United States and the United Kingdom. The occupying powers are clearly unable to maintain basic law and order or to provide essential services in many parts of the country, let alone promote democratic government in the face of continuing civil protests and mounting political complexity. In the end, the United States and Britain have had to resort to the United Nations to negotiate the “restoration” of Iraqi sovereignty, thereby reaffirming the supremacy of the same international legal body they undermined in their unilateral and unjustified invasion. I am therefore heartened and encouraged by the recent developments that support the thesis and analysis I have argued here.

As these developments continue to unfold, the original “war on international terrorism” in response to 9/11 is apparently receding into the background, except for various legal, diplomatic, and sometimes military actions being taken against suspected terrorists who are assumed to be affiliated with al-Qaeda. At the same time, news reports indicate that members of the network have regrouped in various countries in South and Southeast Asia and begun issuing new threats of violent attacks against American targets. Recent violent attacks on citizens of the United States and its Western allies, from Bali, Indonesia, to Riyadh, Saudi Arabia, are widely assumed to be perpetrated by al-Qaeda or its affiliates in various parts of the world.

The object of the preceding brief summary of the state of the conflict between the United States and the al-Qaeda network at the time of writing is not to settle the facts beyond dispute or allocate responsibility. Rather, my purpose is to use this outline to illustrate how a possible application of the principles of reconciliation discussed above might apply to this conflict. The underlying thesis of those principles, as emphasized at the beginning of this short essay, is that reconciliation should be seen as a continuous process that draws on normative and institutional resources for justice and accountability. This thesis is premised on the following propositions:

- Conflict is a permanent feature of all human relationships.
- All human beings live by the moral and pragmatic choices they make or fail to make, but a different choice is always possible.

- To assist people in opting for reconciliation, their vital security and concerns must be addressed through fair and credible norms and mechanisms of accountability.

Applying this thesis and its premise to 9/11 and its aftermath, the United States is clearly entitled to accountability for the terrorist attacks, in addition to effective measures to ensure respect for its sovereignty, protection of the security of its territory, and safety of its citizens. As suggested earlier, however, those objectives could have been pursued through a law enforcement approach, instead of the massive military attacks against Afghanistan and Iraq, which resulted in the deaths of several thousand civilians and the radicalization of the mainstream Muslim public opinion. Such negative consequences not only entrench the position of the Islamic terrorists, but also give them the sympathy and support of many who would have otherwise condemned terrorism as inhumane and counterproductive.

Even if the law enforcement approach was politically impossible or practically ineffective in this case, military action under the auspices of the UN Security Council would have been more consistent with a process of reconciliation. But since that course of action was not taken either, as noted earlier, the question now is, how can reconciliation work? Here is how I believe it possible to move the process forward:

It is clear that the leadership and membership of the al-Qaeda network will not submit to accountability under international law, or under the domestic law of any country that may have jurisdiction over them. But it is equally clear that al-Qaeda and other terrorist organizations cannot exist, let alone effectively operate, without the substantial material and moral support of a much larger number of sympathetic Muslims. Reconciliation efforts should therefore address that much wider network of support, rather than the hard-core terrorists who will never listen to reason or be moved by humanitarian concerns. But that wider Muslim public may now be further alienated by the conduct of the United States in Afghanistan and Iraq, in addition to traditional concerns about the legitimate rights of the Palestinians and U.S. support of oppressive regimes in the region.

In my view, the most effective way to move the majority of Muslims toward reconciliation is for the United States to declare its complete commitment to observe international law and respect human rights in its pursuit of accountability for 9/11 and security against future terrorist

attacks. Without such a categorical affirmation of the rule of law in international relations, reasonable and fair-minded Muslims would have no conceptual or political reasons for renouncing the traditional doctrine of jihad that is used by terrorists to gain public support for their actions. But the United States may also be unwilling to make this commitment and prefer to wait for Muslims to take the first step.

Such a deadlock is typical of such situations, in that parties in an active and confrontational conflict are unlikely to take the initiative in seeking reconciliation, or instead may demand too much of the other side before they accept participation in a process initiated by others. To break the cycle and gradually push those on both sides who are most invested in the conflict toward a serious engagement of the process of reconciliation, one should look to other forces and institutions in society. That role could be played by enlightened religious or community leaders, but it is often young people who take the lead in such efforts.

I would therefore call for engaging institutions of higher education in the processes of reducing tensions and encouraging dialogue. These institutions are best suited for this task for several reasons. For example, the diversity of the student body in colleges and universities is conducive to cross-cultural and inter-religious dialogue. As students of different ethnic, religious, and cultural backgrounds get to know each other, they tend to realize and appreciate that they have more in common as human beings than what appears to divide them. The academic environment is also conducive to dialogue because it exposes students to different cultures and ideologies and challenges their assumptions about their own societies and its institutions. Such influences are usually most productive in the minds and souls of young people who have not yet become invested in narrow self-interest or tied down by obligations of family and community.

However, higher education is unlikely to play such a useful role in breaking the deadlock of conflicts like 9/11 and its aftermath without strong and visionary leadership from the faculty and administration of its institutions. That leadership is critical for encouraging and guiding students in the direction of reconciliation. However, unlike their young and fresh students, faculty and administration personnel can themselves be part of the problem because of their own bias or experiences, or at least be distracted by different considerations. But that tendency can be countered by a strong vision of the educational mission that has to be developed over time, rather than expected to suddenly emerge in a time of crisis.

This necessary vision of the educational mission in the service of reconciliation at all levels should include a commitment to integrate international perspectives in the curricular and extracurricular activities so as to better prepare students for life in this age of intense and accelerated globalization. It is particularly important in this regard to encourage and support students and faculty to integrate a commitment to positive social change in academic and scholarly work. A good example of this approach to scholarship in the service of positive social change can be seen in the work of the Law and Religion Program of Emory University throughout the 1990s, and more recently under the auspices of the Center for the Interdisciplinary Study of Religion.¹⁸ With the strong support of those programs, the Ford Foundation, and the university administration, the Religion and Human Rights Project implemented a series of projects over the next six years to address issues of women's access to and control over land in Africa and questions of Islamic Family Law.¹⁹ The current work of this project is a Fellowship Program in Islam and Human Rights, which consists of training and support for human rights advocates in Islamic societies and establishing a permanent web-based resource for scholars and activists in this field.²⁰ As these activities clearly illustrate, a university can develop and support initiatives for positive social change with scholarly vigor and political independence.

In Sudan, my country of origin, there is a proverb that can be translated as saying: "You should feed your donkey all the time, not only when you need to ride it." In the same way that we need to invest in the normative and institutional resources for justice and accountability to support the process of reconciliation in general, we need to invest in enlightened and responsible education that includes faculty and administrators as well as students.

Notes

1. Al-Kaya al-Harasiy, *Ahkam al-Qur'an* (The Precepts of the Qur'an) (Beirut: al-Muktabah al-'ilmiya, 1983), vol. 1, pp. 78–89.

2. Several parties to that civil war claimed religious justification for their political positions, until one side prevailed and established the Amaway dynasty, which ruled from 661 to 750. The rebellion that succeeded in overthrowing that dynasty and established the Abbasy dynasty also claimed a religious rationale. On that period in Islamic history, see, for example, Wilferd Madelung, *The Succession of Muhammad: A Study of the Early Caliphate* (Cambridge: Cambridge University Press, 1997), chapter 4.

3. Abdullahi Ahmed An-Na'im, "Islamic Ambivalence to Political Violence: Islamic Law and International Terrorism," *German Yearbook of International Law*, vol. 31 (1988), pp. 307–336.

4. Muhammad Hamidullah, *The Muslim Conduct of State* (Lahore, Pakistan: Sh. M. Ashraf, 1966), pp. 305–309.

5. Khaled Abou El Fadl, *Rebellion and Violence in Islamic Law* (Cambridge: Cambridge University Press, 2001), pp. 337–342.

6. See, for example, John W. Whitehead, "Anti-Terrorism Legislation and the Domestic Protection of Human Rights," *American University Law Review*, vol. 51 (August 2002), pp. 1081–1133; and Amnesty International, "United States of America: Amnesty International's concerns regarding post September 11 detentions in the USA," AI-index: 51/044/2002, 14/03/2002, available at www.web.amnesty.org, viewed October 4, 2002.

7. *The Washington Post*, September 5, 2002, p. A31.

8. John Paul Lederach, *Preparing for Peace: Conflict Transformation Across Cultures* (Syracuse, NY: Syracuse University Press, 1995), p. 17.

9. Mahmood Mamdani, "Introduction," in Mahmood Mamdani and Ernest Wamba-dia-Wamba, eds., *African Studies in Social Movements and Democracy* (Dakar, Senegal: CODESRIA, 1995), pp. 9–10.

10. See, for example, www.nytimes.com/ref/nationchallenged/text-index.html for major news stories and analysis on the first anniversary of 9/11.

11. Article 7(1) of the Rome Statute of the International Criminal Court of 1998. U.N. Doc. 32/A/CONF. 183/9, 37 I.L.M. 999.

12. Principles of International Co-Operation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity, adopted by the UN General Assembly, on December 3, 1973. G.A. Res. 3074, 28th Sess. Supp. No. 30, at 78.

13. Article 14 of the International Covenant on Civil and Political Rights of 1966. 999 U.N.T.S. 171, 6 I.L.M. 368 (1967).

14. Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations of 1970. G.A. Res. 2625 (XXXV) 25 GAOR, Supp. (No. 28) 121; reprinted in 9 I.L.M. 1292 (1970). These principles are also provided for by Article 2(3) and (4) of the Charter of the United Nations.

15. In addition to sources cited in the preceding paragraph, see, for example, "Fundamental Rules of International Humanitarian Law Applicable in Armed Conflicts," *International Review of the Red Cross* 248 (Geneva: International Committee of the Red Cross, 1978).

16. For further elaboration and documentation of this possibility, see, for example, Laura A. Dickinson, "Using Legal Process to Fight Terrorism: Detentions, Military Commissions, International Tribunals, and the Rule of Law," *Southern California Law Review*, vol. 75, pp. 1407–1492.

17. The Security Council adopted two resolutions prior to the beginning of that campaign on October 7. In Resolution 1368 of September 12, 2001, the Council simply condemned the attacks of 9/11, and "decided to remain seized of the matter," without making any other decision. Resolution 1373 of 28 September 2001 affirmed the right of self-defense in its preamble, but did not sanction any use of force under Chapter VII of the Charter of the United Nations.

18. For an overview of these groundbreaking scholarly and educational initiatives, see, for example, www.law.emory.edu/cisr.

19. These studies are available at www.law.emory.edu/WAL and www.law.emory.edu/IFL. Three books have already been published in 2002 and 2003 by Zed Books, London, out of these studies: Abdullahi A. An-Na'im, ed., *Cultural Transformation and Human Rights in Africa*; L. Muthoni Wanyeki, ed., *Women and Land in Africa: Culture, Religion and Realizing Women's Rights*; Abdullahi A. An-Na'im, ed., *Islamic Family Law in a Changing World: A Global Resource Book*.

20. See www.law.emory.edu/IHR.