

Revealing and Concealing: Islamist Discourse on Human Rights

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Historically as well as contemporarily, the relationship between religion and democratic pluralism in the Muslim world has been problematic. In the Muslim world, both governments and popular movements are using religious documents (the Qur'an and the hadith) to inspire political and social change. In the process, the fusion of religion and politics that characterizes revivalist Islam has impeded the development of both democracy and religious pluralism. An area of particular concern has been the reluctance of Muslim countries to implement international standards of human rights as defined in the United Nation's Universal Declaration of Human Rights (UDHR). Since the adoption of the UDHR in 1948, there has been disagreement in the Muslim world about the relevance of this document for Islamic countries. The reactions have ranged from an angry rejection of human rights as destructive to Islam to claims that Islamic law guarantees the same rights as those embodied in the United Nation's documents. The two most influential international Islamic statements on Human Rights (the Universal Islamic Declaration on Human Rights and the Cairo Declaration on Human Rights) attempt to reconcile Islamic law and modern norms of human rights. These documents claim that human rights are an inherent part of Islam. Such arguments are cause for concern because since the adoption of the Universal Declaration of Human Rights in 1948, documents proposing regional alternatives to international law almost always entail the weakening of international standards. The incorporation of the Cairo Declaration into the UN corpus means that what were once informal, regional obstacles to implementing the protections guaranteed by the UDHR have become formal, regional norms that legitimate Islamist restrictions on rights.

Since the adoption of the United Nation's Universal Declaration of Human Rights (UDHR) in 1948, there has been a profound ambivalence in the Muslim world about the relevance of this document for Islamic countries. The two most influential international Islamic statements on human rights, the Universal Islamic Declaration on Human Rights (UIDHR) and the Cairo Declaration on Human Rights (the Cairo Declaration) claim that *shari'a* guarantees the same rights as those embodied in United Nations' documents. At the same time, the UIDHR and the Cairo Declaration express reservations about the principles of equality and freedom enshrined in the UDHR. Equality and freedom have gained such international respect that the framers of these Islamic documents hesitate to condemn them openly. They rather seek to circumvent these principles by a variety of artifices. Moroccan sociologist

Fatema Mernissi writes, “‘Amendments’ and ‘reservations’ multiply to camouflage all the legal texts that come into conflict with *ta’a* (obedience to authority).” These “reservations and amendments” are loopholes that allow Islamic nations “to be seated at the United Nations as a signatory of all the conventions, while its officials . . . make restrictive interpretations of principles that don’t admit of restriction—equality and freedom.”¹ In their uncritical fusion of traditional *shari’a* and international standards of human rights, Islamist human rights formulations artificially harmonize the differences between the two traditions. In the process, the emancipatory content of human rights is compromised, if not completely nullified.

Human Rights: Islamist Perspectives

Religious resurgence and the spread of democratic pluralism are among the most important developments of the late twentieth century. In many areas of the world, movements of religious revival have coincided with and reinforced the development of democracy. In other places, these two movements have collided. In Southern Europe, South America, Eastern Europe, and East Asia, Roman Catholic churches played such a crucial role in transitions to democratic pluralism that Samuel Huntington and Jose Casanova have called the third wave of democratization a “Catholic wave.” Since Vatican II, the discourse of human rights has been central to papal encyclicals and to the pastoral letters of national Conferences of Bishops throughout the world. Pope John Paul II, in particular, made “the sacred dignity of the human person” a cornerstone of his global preaching.²

In the Muslim world, the relationship between religion and democratic pluralism is much more problematic. In the last decades of the twentieth century, the post-independence drift along a Western, secular path of development has been challenged if not rejected altogether. Islamists have also downplayed the Mu’tazilite tradition of enriching religious reflection through the study of Greek philosophy. In the Muslim world, both governments and popular movements are appropriating the Qur’an and the *hadith* to inspire political and social change. In the process, the fusion of religion and politics that characterizes revivalist Islam have impeded the development of both differentiated structures of modernity and of the privatization of religion.

An area of particular concern has been the reluctance of Muslim countries to implement international standards of human rights as defined in the United Nation’s Universal Declaration of Human Rights (UDHR). Since the adoption of the UDHR in 1948, there has been disagreement in the Muslim world about the relevance of this document for Islamic countries. The reactions have ranged from an angry rejection of human rights as destructive to Islam to claims that the *shari’a* law guarantees the same rights as those embodied in United Nation’s documents. Ayatollah Khomeini, for example, asserts “what they call human rights is nothing but a collection of corrupt rules worked out by Zionists to destroy all true religions.” Iranian President Khamenei stated, “When we want to find out what is right and what is

wrong, we go not to the United Nations; we go to the Holy Koran. For us, the UDHR is nothing but a collection of mumbo jumbo by disciples of Satan.”³

More common than this outright rejection of rights language is an effort of the part of Muslim countries to claim an Islamic heritage for human rights. Both Iranian Sultanhussein Tabandeh and Pakistani Abu'l A'la Mawdudi take this approach. Tabandeh argues that the Qur'an anticipated all of the Declaration's provisions, asserting that the UDHR “has not promulgated anything that was new nor inaugurated innovations. Every clause of it, indeed, every valuable regulation needed for the welfare of human society . . . already existed in a better and more perfect form in Islam.”⁴ In his influential book *Human Rights in Islam*, Mawdudi echoes Tabandeh's argument. He blames the West for claiming that human rights have an Occidental heritage. He writes, “The people of the West have the habit of attributing every good thing to themselves and trying to prove that it is because of them that the world got this blessing, as if the world was steeped in ignorance and completely unaware of all its benefits.”⁵ Both Tabandeh and Mawdudi proceed to develop a synthesis between human rights and traditional *shari'a* that conceals the conflicts and tensions between the two.⁶

The two most influential International Islamic statements on Human Rights (the Universal Islamic Declaration on Human Rights and the Cairo Declaration on Human Rights) follow Tabandeh and Mawdudi's lead in attempting to synthesize *shari'a* law and modern norms of human rights. These documents claim that human rights are an inherent part of Islam. The preamble of the UIDHR, for example, proclaims that “Islam gave to mankind an ideal code of Human Rights fourteen centuries ago.” In the uncritical fusion of traditional *shari'a* and international standards, the differences between the two traditions are artificially harmonized.⁷

Ann Mayer, professor of legal studies at the Wharton School, explains this process: “Reliance on rules of the premodern *shari'a* to determine the permissible scope of modern human rights could open the way to nullification of rights in areas where the *shari'a* calls for restrictions on rights and freedoms, such as relegating women and non-Muslims to subordinate status or prohibiting conversions from Islam.”⁸ As Moroccan sociologist Fatema Mernissi writes: “The majority of Muslim states have signed [the UDHR], and thus find themselves ruled by two contradictory laws. One law gives citizens freedom of thought, while the *shari'a*, in its official interpretation based on *ta'a* (obedience), condemns it.”⁹

The United Nations and the Universal Declaration of Human Rights

Heiner Bielefeldt defines human rights as (1) political and legal claims; (2) to equal freedom; (3) in a universal perspective.¹⁰ Human rights constitute basic normative political and legal standards as embodied in the UDHR. As political and legal standards, their scope is limited. Unlike religion, which claims to shape the whole lives of adherents, human rights do not represent an all-encompassing *weltanschauung* (way of life). They do not seek to replace religious demands of

sacrificial love and compassion, nor can they provide those things that people find in faith communities: warmth, charity, significance, atonement, forgiveness, and relationships of trust.

Although most Western constitutions and declarations on human rights call human rights “universal,” individuals had no *international* legal status until 1945. Before World War II, the sole possessors of rights under international law were sovereign states. There was much talk about the benefits of liberalism and much sympathy for people in foreign lands who were denied its blessings, but the principle of national sovereignty prevented government and private organizations from promoting human rights outside of their domestic jurisdiction. National sovereignty prevented the development of an international legal system that would bind governments to obligations concerning their citizens.

The monstrous violations of human rights during the 1930s and 1940s dramatized the failure of the ideology of national sovereignty and the policy of non-intervention. Despite widespread concern for the victims of Nazism and Stalinism, governments took little action to protect human rights. Governments deplored and denounced totalitarianism and racism, but they also treated these matters as the sole responsibility of the legal government in question. They were not matters against which foreign individuals or governments could legitimately take action.¹¹

After World War II, two events completely changed the status of individuals under international law. The first was the punishment of war criminals at Nuremberg and Tokyo. The second was the adoption of the Universal Declaration of Human Rights in 1948. The war crimes tribunals made it clear that international law was not solely concerned with the actions of sovereign states, but “imposed duties and liabilities upon individuals.” The Nuremberg Court rejected the defense that Nazis committed atrocities not as individuals but on behalf of their country: “Crimes against international law are committed by [humans], not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.” Therefore, “the official position of defendants, whether as heads of state or responsible officials in government, shall not be considered as freeing them from responsibility or mitigating punishment.” The court also rejected the defense of following orders: “The fact that the defendant acts pursuant to orders . . . shall not free him from punishment, but may be considered in mitigating punishment.”¹²

The work of the United Nations reinforced the work of the tribunals by codifying human rights law and by binding nations to it through treaty obligations. This codification took place in three stages: the inclusion in the UN Charter of human rights provisions (1945), the explication of those provisions in the Universal Declaration of Human Rights (1948), and the elaboration of these rights in the International Covenant on Civil and Political Rights (1966) and in the International Covenant on Economic, Social, and Cultural Rights (1966). This group of documents has become “an international bill of rights much more detailed than its French and American counterparts.”¹³

The preamble to the United Nations Charter binds all members of the United Nations to affirm “faith in fundamental human rights, in the dignity and worth of the human person, [and] in the equal rights of men and women of nations large and small.” The obligations of the United Nations and its member states in achieving these purposes are set out in Articles 55 and 56:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based upon respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

(a) higher standards of living, full employment, and conditions of economic and social progress and development;

(b) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

(c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

All members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

These articles severely restrict the doctrines of national sovereignty and non-intervention. Members of the United Nations can no longer claim that the maltreatment of their own nationals is a matter of domestic jurisdiction.¹⁴

The Universal Declaration of Human Rights¹⁵ clarified and amplified the obligations imposed by the human rights provisions of the charter.¹⁶ The Declaration begins with this emancipatory principle: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood.”

The Universal Declaration mandates two broad categories of rights: (1) civil and political rights (Articles 3–21); and (2) economic, social, and cultural rights (Articles 22–27). Its catalogue of civil and political rights includes the right to life, liberty, and security of person, the prohibition of slavery and torture; the right not to be subjected to arbitrary arrest; the right to a fair trial and the presumption of innocence. The Declaration also recognizes the right to privacy and to private property.¹⁷ It mandates freedoms of speech, religion, assembly, and movement. The Declaration proclaims the principle that the “will of the people shall be the basis of the authority of government.” This means that the individual has a right “to take part in the government of his [or her] country, directly or through freely chosen representatives.” This requires “periodic and genuine elections” by universal suffrage.

Article 22 introduces the catalogue of social and cultural rights: each person is “entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his [or her] dignity and the free development of his [or her] personality.” The articles that follow proclaim the individual’s

right to social security, work, “protection against unemployment,” “equal pay for equal work,” and “just and favorable remuneration ensuring for [the person] and [the person’s] family an existence worthy of human dignity.” The Declaration proclaims the right to “rest and leisure, including reasonable limitations of working hours and periodic holidays with pay.” It mandates “a standard of living adequate for the health and well-being of [oneself] and of [one’s] family.” It also recognizes the individual’s right to security in the event of “lack of livelihood.” The Declaration mandates that education shall be free “at least in the elementary and fundamental stages.”

Although the Universal Declaration of Human Rights is not officially a treaty, it has evolved into a “set of customary legal principles.”¹⁸ In the decades following its adoption, the Declaration was frequently utilized to define the human rights obligations of members of the United Nations. When governments, the United Nations, or other international organizations wished to condemn the violation of human rights norms, they would refer to the Declaration as the “common standard of achievement for all peoples and all nations” (preamble). In this way, the Declaration has become part of the “constitutional structure of the world community,” a “basic component of international customary law, binding all states, not only members of the United Nations.”¹⁹

***Shari’a* Law and the Universal Declaration on Human Rights**

The emancipatory principle of human rights presents a challenge to Islam because the emancipatory principle is a product of the modern era. By comparison, the Islamic *shari’a*—the normative tradition known as Islamic law—is a product of the first three centuries of Islamic history. Contemporary Islamists reject the Mu’tazilite tradition of informing religious studies with (Greek) philosophical reflection. For Islamists, the gates of *ijtihad* (individual interpretations of Islam) were closed in the ninth century, and *shari’a* law is based upon traditions that have not changed in a millennium.²⁰ For Islamists, The *shari’a* rests partly on the Qur’an and partly on the *hadith* and the *sunna*, the sayings and patterns of behavior of the prophet Muhammad. *Shari’a*; the closing of the gates of *ijtihad*; and the precedence in Islam of duties over rights all work to prevent the full implementation of human rights in Islamist political culture.²¹

A general area of divergence between Islamist conceptions of human rights and international human rights treaties is the question of whether the needs of the individual or of society take precedence. The UDHR’s overwhelming concern is for protecting the individual from the whims of government. Several critics of Islamist human rights formulations have shown that human rights in these schemes are really obligations.²² Muslims do not face God as individuals, but rather as a community (*ummah*), and a Muslim can best lead an Islamic life in a state governed by *shari’a*. Consequently, the government that enforces *shari’a* is to be obeyed because it is facilitating a society that will lead to the perfection of mankind. Indi-

viduals benefit not from having certain rights against the government but by obeying the government and following the law.²³ Ann Mayer writes: "The relationship of the individual and the state is not an adversarial one in which the weaker party, the individual, needs ironclad guarantees of civil and political rights to offset the tendencies of governments to assert their powers at the expense of individuals. . . . There is fear that the individual may attempt to assert excessive rights that could harm the authority of the state or undermine the moral order of society."²⁴

Because Islamic law developed in response to social conditions of 1,000 years ago, Islamist legal systems tend to be based on conditions of an authoritarian and traditional society. Two areas of particular concern are the status of women and the rights of non-Muslims. Ann Mayer's in depth study of Islamic law and international human rights law concludes that traditional interpretations of *shari'a*, in these areas, are incompatible with UDHR. In legal systems based on *shari'a*, women and non-Muslims are second-class citizens. In matters of marriage and family life, inequality of rights between men and women is inherent to Islamic law. Islamic law values a woman's testimony at half the worth of a man's; allots a woman half the inheritance of her brother; and permits polygamy and the beating of disobedient wives.

In the *shari'a*, Jews and Christians (people of the book) have traditionally had the status of *dhimmi* (protected minorities). They are to be treated according to the Qur'anic precept: "Fight against those who do not forbid what God and his Prophet have forbidden or practice the true religion, among those who have been given the Book, until they pay the *jizya* from their hands, they being humbled."²⁵ Christians and Jews are free to practice their religion and to regulate their internal affairs if they pay a tributary tax (*jizya*) and live in a state of humility (*dhull*). They are not allowed to hold political office, serve in the military, or to evangelize Muslims. Also, their testimony in court proceedings is not of equal value to that of a Muslim. *Dhimmi*s are prohibited from marrying Muslim women and from conducting certain forms of business. In *shari'a* law, pantheists, pagans, and atheists have no rights at all.

A serious obstacle to religious liberty stems from the *shari'a* ban on apostasy. James Piscatori describes the context in which this tradition was developed: "The Qur'an vigorously denounces those who renounce Islam, for the 'devil hath seduced them' away from the true faith. The major historical example is the revolt of the tribes after Muhammad's death in AD 623. Abu Bakr, and jurists since then, condemned secession from Islam (*ridda*) as doubly heinous: it is not only a violation of the compact of submission made with Allah; it is also a breach of contract with his representatives on earth. It is, then, an offense both against Allah and against the state: it is apostasy and treason."²⁶

Rather than guaranteeing the right to become a non-Muslim, several verses in the Qur'an²⁷ call for the death penalty for apostasy from Islam:

The disbelievers wish that you should disbelieve as
 They disbelieve, and then you would be
 Equal; therefore take not yourselves friends of them, until they emigrate in
 The way of God; then, if they turn their backs,
 Take them, and slay them wherever you find them;
 Take not to ourselves any one of them as friend or helper (4:89)

This is the recompense of those who fight
 Against Allah and His messenger, and hasten
 About the earth, to do corruption there;
 They shall be slaughtered, or crucified, or their hands and feet shall alternatively
 Be struck off, or they shall be banished
 From the land. This is a degradation for them
 In this world; and in the world to come waits them a mighty Chastisement (5:33)

Fight those who believe not in Allah and the Last Day
 And do not forbid what Allah and his Messenger
 Have forbidden—such men as practice not the
 Religion of truth, being of those who have been given
 The Book—until they pay the tribute out of hand and have been humbled (9:29).

These passages are supplemented by certain statements of Muhammad, as reported in the *hadith*: “He who changes his religion must be killed,” and by other reports from the *hadith* that apostates were occasionally punished by losing hands and feet before being killed. Accordingly, apostasy has come to be included in Islamic law as a capital crime for men, along with adultery, slander, alcoholism, theft, highway robbery, treason, and armed rebellion.²⁸ Female apostates are to be imprisoned until they change their minds.

Islamist Human Rights Formulations

Abu'l A'la Mawdudi, influential Pakistani Sunni Muslim thinker who established the major South Asian Islamic revivalist organization, Jama'at-i-Islami, stated that the “political system of Islam has been based on three principles, viz: Unity of Allah (*tawheed*); Prophethood (*risalat*); and caliphate (*khilafat*).”²⁹ Mawdudi's book, *Human Rights in Islam*,³⁰ has been crucial to the development of Islamic alternatives to the UDHR since its publication in 1976.

In his section on “equality of human beings” Mawdudi precludes distinctions based on “color, race, language, or nationality” without mentioning gender or religion. International standards explicitly include equal rights between men and women and between adherents of different religions, but the Qur'an does not. Mawdudi holds a much more restricted view of equality than the UDHR and fails to address critically the ongoing discrimination against women and religious minorities in Muslim countries.³¹

With regard to religious liberty, Mawdudi makes reference to Qur'anic verse 2:256, which forbids compulsion in matters of religion. In accordance with traditional Qur'anic tolerance, he affirms "No force will be applied to compel [non-Muslims] to accept Islam. Whoever accepts it does so by his own choice." Mawdudi fails, however, to address the Qur'anic ban on conversion from Islam to another religion and restrictions on inter-religious marriages.³²

The Universal Islamic Declaration on Human Rights (UIDHR) was prepared by representatives from Egypt, Pakistan, and Saudi Arabia, and other countries under the leadership of the Islamic Council, a private, London based organization affiliated with the Muslim World League. The Muslim World League is an international non-governmental organization headquartered in Saudi Arabia that represents the interests of orthodox Muslims. In a widely publicized event, The UIDHR was presented to the United Nations Educational, Scientific, and Cultural Organization (UNESCO) in Paris. Ann Mayer writes: "In a casual reading, the English version of the UIDHR seems to be closely modeled after UDHR, but upon closer examination many of the similarities turn out to be misleading. In addition, the English version diverges from the Arabic version at many points."³³

The preamble to the English version of the UIDHR states that divine Revelation provides the "legal and moral framework within which to establish and regulate human institutions and relationships." The preamble also states: "By terms of our primeval covenant with God, our duties and obligations have priority over our rights."³⁴ The Arabic version of the preamble reads: "Each person is guaranteed security, freedom, dignity, and justice according to the dictates of what the *shari'a* of Allah has decreed in the way of rights for people."³⁵

Thus, in the UIDHR, human rights are limited by the *shari'a*. Because the UIDHR does not define *shari'a*, the document protects Islamist rejections of international standards. Ann Mayer writes, "It is obvious from the outset that the UIDHR will have the effect of denying rights, including ones that are guaranteed in international law, in the guise of establishing Islamic duties."³⁶ Should there be complaints that the document restricts rights, "the ready made defense will be that the Islamic sources must be deferred to because they represent the plan of Allah."³⁷

The UDHR places no limits on the right to marry. In the UIDHR, however, this "right" is carefully circumscribed. Article 16 of the UDHR states: "Men and women of full age, without any limitation due to race, nationality, or religion, have the right to marry and found a family." The comparable article (Article 19.a) in the UIDHR states, "Every person is entitled to marry, to found a family, and to bring up children in conformity with his religion, tradition, and culture." The phrase "in conformity with his religion" means that the rules of *shari'a* can impose restrictions. For example, Muslim women will be barred from marrying non-Muslims, and Muslim men will only be allowed to marry a person "of the book." Ann Mayer writes, "Therefore, the impact of this UIDHR provision is directly contrary to the principles of the UDHR that men and women should be allowed without any religious restrictions to choose their own spouses. The UIDHR provision is not designed to

protect the right of the individual to choose a spouse freely, but rather to deny the right according to Islamic criteria.”³⁸

In Article 10, the UIDHR addresses the status of non-Muslims. The article states that the religious rights of non-Muslims are governed by the principle of no compulsion in religion, which is based on the Qur’an (2:256). Under *shari’a* law, this means that *dhimmis* should not be forced to convert to Islam. It does not protect *dhimmis* and others from discrimination based on religion.

The UDHR allows no constraints on a person’s religious beliefs. Article 18 of the UDHR states: “Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.” The analogous UIDHR Article (12.a) states, “Everyone may think, believe, and express his ideas and beliefs without interference or opposition from anyone as long as he obeys the limits set by *shari’a*. It is not permitted to spread falsehood or disseminate that which involves encouraging abomination or forsaking the Islamic community.”³⁹ These restrictions on religious expression abrogate the freedoms guaranteed by the UDHR.

Article 13 of the UIDHR says that everyone has the freedom of belief and freedom of worship according to the Qur’anic principle, “you have your religion, I have mine” (109:6). The right to follow one’s own religion confers upon religious minorities (especially Jews and Christians) the status of protected subordination. But under Islamist interpretations of *shari’a*, Muslims can be executed if they convert from Islam. Moreover, the ban on conversion from Islam applies to Muslims who deviate from perceived standards of orthodoxy. Shi’ite and Sunni persecutions of each other, as well as persecutions faced by the Baha’is in Iran, the Ahmadis in Pakistan, and the Sufis in Saudi Arabia, suggest that the Islamic ban on apostasy not only limits the freedom of Muslims to convert from Islam but also limits the freedom of Muslims to deviate from state sponsored definitions of orthodoxy. In the case of the Iran, Baha’is are persecuted not because of personal conversions but because of the conversions of their ancestors.⁴⁰

The Cairo Declaration on Human Rights in Islam (CDHRI) was adopted in Cairo on August 5, 1990 by the Nineteenth Islamic Conference of Foreign Ministers of the 45 member states of the Organization of the Islamic Conference (OIC). The Cairo Declaration was presented at the 1993 World Conference on Human Rights in Vienna by the Saudi foreign minister, who asserted that it embodied the consensus of the world’s Muslims on rights issues. The Cairo Declaration was published in December 1997 by the office of the High Commissioner for Human Rights in a volume on *International Instruments*, thus giving it international legitimacy.⁴¹

The CDHRI establishes *shari’a* law as the “only source of reference” for the protection of human rights in Islamic countries, thus giving it supremacy over the UDHR. The CDHRI was written to “serve as a general guide for Member States in the field of Human Rights.” Its preamble states:

The member states of the Organization of the Islamic Conference, Reaffirming the civilizing and historic role of the Islamic Ummah which God made the best nation that has given mankind a universal and well-balanced civilization in which harmony is established between this life and the hereafter and knowledge is combined with faith; [and] . . . Believing that fundamental rights and universal freedoms in Islam are an integral part of the Islamic religion . . . as they are binding divine commandments, which are contained in the Revealed Books of God and were sent through that last of His Prophets to complete the preceding divine messages thereby making their observance an act of worship and their neglect or violation an abominable sin.⁴²

Articles 24 and 25 state:

All the rights and freedoms stipulated in this Declaration are subject to the Islamic *shari'a* and The Islamic *Shari'a* is the only source of reference for the explanation or clarification of any of the articles of the Declaration.⁴³

As does the UIDHR, the Cairo Declaration incorporates rights language into the structure of the *shari'a* in such a way that the *shari'a* cannot be challenged. On the contrary, the *shari'a* is the standard for evaluating the content of human rights. Because there is no definition of *shari'a* in the Cairo Declaration, conservative and restrictive Islamist interpretations of *shari'a* are protected under the terms of the Cairo Declaration.

Article 1 affirms the equal dignity of all human beings “without any discrimination on the grounds of race, color, language, sex, religious belief, political affiliation, or social status.” “Equal in dignity,” however, does not afford the protections conferred by “equal in rights.” Therefore, the document leaves unchallenged the discrimination against women and non-Muslims inherent in *shari'a* law.

The Cairo Declaration does not mention traditional *hadd* punishments. But Article 2, which deals with the right to life, makes an exception on behalf of the *shari'a*: “It is prohibited to take away life except for a *shari'a* prescribed reason.” The same caveat applies to “safety from bodily harm,” which is also granted only by allowing exceptions on a “*shari'a* prescribed reason.”⁴⁴ Therefore, the Cairo Declaration fails to effectively challenge the Qur'anic support for corporal punishment.

Article 5, which deals with marriage and family, states “Men and women have the right to marriage, and no restrictions stemming from race, color, or nationality shall prevent them from enjoying this right.” Non-discrimination on the basis of religion is absent from this list of restrictions on marriage. Accordingly, the traditional *shari'a*'s obstacles to inter-religious marriages remain unchallenged. Article 6, “Woman is equal to man in human dignity, and has rights to enjoy as well as duties to perform,” repeats the loophole in the preamble that provides women with equal dignity but not equal rights. Even more problematic is Article 10, which gives Islam a privileged status above all other religions. It reads: “Islam is the religion of unspoiled nature. It is prohibited to exercise any form of compulsion on man or to exploit his poverty or ignorance in order to convert him to another religion or to atheism.” This serves to prohibit conversions from Islam while allowing for any

method that is applied to convert people to Islam. A ban on conversion from Islam and on all missionary work among Muslims conflicts with religious liberty as enshrined in the UDHR. Hence, the Cairo Declaration serves to annul the basic international human right to freedom of religion.

Article 12 states that everyone shall have the right, “within the framework of *shari‘a*, to free movement.” This provision permits Islamic restrictions on women’s mobility, such as forbidding women to leave home without their husband’s permission and from traveling unaccompanied by a male relative. Article 13 states that everyone “shall be free to choose the work that suits him best and which serves his interests and those of society.” Under this provision, conservative social interests may restrict a citizen’s employment options, especially for women and non-Muslims. Article 23 states that “Everyone shall have the right to participate, directly or indirectly, in the administration of his country’s public affairs. He shall have the right to assume public office in accordance with the provisions of *shari‘a*.” Because *shari‘a* has traditionally forbidden the participation of women and non-Muslims in public life, this provision restricts rather than advances public participation in government.

Taken together, the UIDHR and the Cairo Declaration reveal a profound ambivalence that conservative Muslims feel about the principles of equality and freedom enshrined in the UDHR. Equality and freedom have gained such international legitimacy that Islamic regimes are in general reluctant to condemn them openly. They rather seek to circumvent these principles by a variety of artifices. Moroccan sociologist Fatema Mernissi calls the “rejection of the principle of equality” a “grave malady the Arab states suffer from.” “For Arab countries, the United Nations, with its charter and conventions, is an arena for manipulation and hypocrisy ‘Amendments’ and ‘reservations’ multiply to camouflage all the legal texts that come into conflict with *ta‘a*.” These “reservations and amendments” are loopholes that allow Islamic nations “to be seated at the United Nations as a signatory of all the conventions, while its officials manipulate the texts to make restrictive interpretations of principles that don’t admit of restriction—equality and freedom.”⁴⁵

Conclusion : Political Islam and the Problem of Rights

Samuel Huntington describes the contemporary Islamic resurgence as a critical historical event, which, in its political manifestations, bears resemblance to both Communism and to the Protestant Reformation. It has scriptural texts; a vision of a perfect society that transcends the nation state; a commitment to fundamental change; and an emphasis on work, order, and discipline. Today, Muslims in massive numbers are turning to Islam as a source of identity, meaning, and legitimacy, all epitomized in the slogan “Islam is the answer.”

This Islamic resurgence entails a rejection of Western culture and a recommitment to Islam as the guide to life in the modern world. Huntington writes:

On occasion in the past, Muslim leaders did tell their people: 'We must Westernize.' If any Muslim leader has said this in the last quarter century, however, he is a lonely figure. Indeed, it is hard to find statements by any Muslims, whether politicians, officials, academics, businesspeople, or journalists, praising Western values and institutions. They instead stress the differences between their civilization and Western civilization [and] the superiority of their culture.⁴⁶

One of the goals of the contemporary Islamic resurgence is to assert Islamic superiority to the West by showing that the achievements of the modern West derive from Islamic sources. A credible case can be made for the Islamic origins in many philosophical and scientific fields, but there is overwhelming historical evidence that modern concepts of human rights originated in the West in the sixteenth and seventeenth centuries. As Bernard Lewis writes, "The notion that religion and political authority, church and state, are different and that they can or should be separated is, in a profound sense, Christian."⁴⁷

Several factors in the West provided the philosophical and political foundations for the development of human rights. Its origins may be traced to the distinction between church and state in the famous passage in Matthew 22:21: "Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's." This notion was confirmed by the experience of the early church, whose persecutions forced Christians to place their hopes in a kingdom "not of this world." St. Augustine, Christendom's first political theorist, explained the body politic (secular government) not as divinely instituted, but as a human construct to remedy original sin. It was Cain, after all, who founded the first city. Throughout the Middle Ages, *sacerdotium* and *regnum* represented the realms of God and Caesar, each with its own structures and hierarchy, its own laws and jurisdictions (ecclesiastical law and civil law). After the internecine wars of religion following the Protestant Reformation, a separation between church and state became normative for European Christians. This ideal was expressed in 1689 in John Locke's *Letter Concerning Toleration*: "Neither Pagan nor Mahometan, nor Jew, ought to be excluded from the civil rights of the commonwealth because of religion."⁴⁸

This tradition of distinguishing between church and state, so deeply rooted in Christendom, has never existed in Islam. In classical Arabic, there are no words corresponding to spiritual and temporal, lay and ecclesiastical, religious and secular.⁴⁹ Whereas Christian reflection on politics was forged in the crucible of political defeat and disappointment, Islamic political theory accompanied the rise of empire. For early Muslims, political authority was a divine good, ordained by Allah himself to promote His faith and to maintain and extend His law. At the present time, the very notion of a secular jurisdiction and authority—of a sphere of life that lies outside the scope of religious law—is seen as the ultimate betrayal of Islam. In almost all of the sovereign states with a clear Muslim majority, Islam is the state religion; and many of them have clauses in their constitutions establishing the Holy Law of Islam as the basis of law. The only exception to this rule is the Turkish republic, whose first president, Ataturk, adopted a series of laws in the 1920s to

disestablish Islam, repeal *shari'a* law, and to formally separate religion and state. In Islamist writings, Atatürk is often cited as the archenemy of Islam.

Islamists write as if Muslim alternatives to the UDHR are a product of Islamic history. But this is not the case. Both the UIDHR and the Cairo Declaration falsify intellectual history by projecting human rights back into the seventh century. These documents depend for their formulations of rights upon the UDHR and from the ideas and language of Western constitutions. Ann Mayer writes, "In presenting human rights principles that purportedly correspond to authentic Islamic criteria, the authors in fact reach beyond the confines of the Islamic tradition, using a variety of terms and concepts that are patently appropriated from international and Western models. The frequent borrowing [which is never acknowledged] and the use of principles as 'equal protection under the law' are without precedence in the [pre-modern *shari'a*] and are puzzling in terms of Islamic jurisprudence, according to which all rules are to be established by Islamic sources."⁵⁰

The UIDHR and the Cairo Declaration allow for limitations on rights protected in international law, but they are written in formats and with language drawn from the UDHR and other international documents. These similarities in style suggest substantive similarity, but careful analysis reveals sharp differences between Islamic declarations and international norms. Both the UIDHR and the Cairo Declaration adopt rights language from the UDHR while restricting the scope of its protections. As Mayer writes, "Where Islamic human rights provisions diverge from international norms, they are designed to dilute, if not altogether eliminate, civil and political rights protected by international law."⁵¹

Jon Gunnemann calls rights language a "secular equivalent of the protestant principle" that serves to critique and transcend the exclusiveness and parochialism of traditional societies.⁵² Since adoption of the Universal Declaration of Human Rights in 1948, documents proposing regional alternatives to international law almost always entail the weakening of international standards. Soviet, East Asian, and Islamic alternatives to international norms led to massive, systemic violations of human rights throughout much of the twentieth century. Literature that gives governments an Islamic authority for restricting rights protected under the UDHR sets back the development of human rights in Muslim countries. Once embodied in law, Islamic criteria that limit rights prevent the adoption of international standards of human rights. The incorporation of the Cairo Declaration into the UN corpus means that what were once informal, regional obstacles to implementing the protections guaranteed by the UDHR have become formal, regional norms that legitimate Islamist restrictions on rights.

Notes

1. Fatema Mernissi, *Islam and Democracy* (Cambridge: Perseus Books, 2002), 67.
2. Jose Casanova, "Civil Society and Religion: Retrospective Reflections on Catholicism and Prospective Reflections on Islam" in *Social Research*; see also Samuel Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Touchstone, 1997).

3. Quoted by Edward Mortimer "Islam and Human Rights" in *Index on Censorship* (October 1983), 5.
4. Sultanhussein Tabandeh, *A Muslim Commentary on the Universal Declaration of Human Rights* (London: F.T. Goulding and Company, 1985), 85.
5. Abu'l A'la Mawdudi, *Human Rights in Islam* (1976), 13.
6. Ann Mayer, "An Assessment of Human Rights Schemes" in *Islam and Human Rights* (Westview: Westview Press, 1999).
7. Heiner Bielefeldt, "Muslim Voices in the Human Rights Debate," [www. Muse.jhu.edu/demo/human_rights-quarterly/17.4bielefeldt.ht].
8. Mayer, 63.
9. Fatema Mernissi, *Islam and Democracy* (Cambridge: Perseus Books, 2002), 60.
10. *ibid.*
11. Evan Luard, *The International Protection of Human Rights* (London: Thames and Hudson, 1967), 21.
12. *The Nuremberg Trial*, 6FRD, 69, 110, 1946.
13. Louis Sohn, "The New International Law: Protection of the Rights of Individuals Rather than States" in *American University Law Review* 32:1, 1982, 12.
14. Louis Henkin, "Human Rights and Domestic Jurisdiction" in *Human Rights, International Law, and the Helsinki Accord*, ed. Thomas Buergenthal (Montclair: Allanheld, Osmun, 1977), 23, 25.
15. Eleanor Roosevelt insisted on substituting the expression "human rights" for the "rights of man." She feared that the latter expression would be used by Member States to justify the denial of equal rights for women. See Maurice Cranston, "Are There Any Human Rights" in *Daedalus* 12:4 (1983), 1.
16. The General Assembly adopted this Declaration by a vote of 48–0, with eight abstentions. Saudi Arabia, South Africa, and the Soviet Bloc abstained.
17. The right to private property was dropped from the International Covenant on Civil and Political Rights because Member States could not agree on its scope and definition.
18. Beth Anders, "The Universal Declaration" in *The Universal Declaration of Human Rights* (New York: Amnesty International, 1988), 4.
19. Sohn, "The New International Law," 16–17.
20. G.H. Jansen, *Militant Islam* (London: Pan Books, 1979).
21. Daniel Price, *Islamic Political Culture, Democracy, and Human Rights* (Westport: Praeger Pub, 1999), 161.
22. Ann Mayer, Daniel Price, David Littman, and Heiner Bielefeldt
23. Price, chapter 8.
24. Ann Mayer, *Islam and Human Rights* (Westview: Westview Press, 1999), 81.
25. Qur'an, XI, 29.
26. Quoted in David Little, John Kelsay, and Abdulaziz Sachedina, *Human Rights and the Conflicts of Culture* (Columbia: University of South Carolina Press, 1988), chapter 2.
27. *Al-Qur'an: A Contemporary Translation*, Ahmed Ali, trans. (Karachi: Akrash Publishing, Third Edition, 1995).
28. David Little, John Kelsay, and Abdulaziz Sachedina, *Human Rights and the Conflicts of Culture*, (Columbia: University of South Carolina Press, 1988), chapter 2.
29. Abu'l A'la Mawdudi, *Islamic Way of Life*, trans. Khurshid Ahmad (Delhi: Markazi Maktaba Islami, 1967), p. 40.
30. Abu'l A'la Mawdudi, *Human Rights in Islam* (Leicester, England: Islamic Foundation, 1980). English translation.
31. Bielefeldt, "Muslim Voices," p. 10.
32. *Ibid.*
33. Mayer, 21.
34. *Universal Islamic Declaration of Human Rights* (London: Islamic Foundation, 1981).
35. Mayer, 77.
36. Mayer, 54.
37. *Ibid.*
38. *Ibid.*, 106.
39. *Ibid.*, 161.

40. Mayer, 151; Bielefeldt, "Muslim Voices," 8; Bernard Lewis, *Islam and the West* (New York: Oxford University Press, 1993), 145.
41. *A Compilation of International Instruments. Volume II: Regional Instruments* (New York/Geneva: United Nations Office of the High Commissioner for Human Rights), December 1997, pp. 478–484.
42. Albert Blaustein and Gisbert Flanz, eds., *Constitutions of the Countries of the World* (Dobbs Ferry, N.Y.: Oceana, 1992).
43. Ibid.
44. Bielefeldt, "Muslim Voices," p. 11.
45. Fatema Mernissi, *Islam and Democracy*, 67.
46. Samuel Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Touchstone, 1997), 213.
47. Bernard Lewis, *Islam and the West* (New York: Oxford University Press, 1993), 179.
48. John Locke, *A Letter Concerning Toleration* ed., J.W. Gough (Oxford, 1946), 160.
49. Bernard Lewis, *The Political Language of Islam*, (Chicago: University of Chicago Press), 1988, 3.
50. Mayer, 176.
51. Mayer, 175.
52. Jon Gunnemann, "Human Rights and Modernity: The Truth of the Fiction of Individual Rights" in *Journal of Religious Ethics* 16:1 (Spring 1988), 172.