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Liberal Islam and 'Islam and Human Rights': A Sceptic's View

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Abstract

Liberal Islam has become increasingly prominent in academic discourse with its argument that Islam is the essential foundation to human rights in the Muslim world. This article argues that this theoretical premise is misguided. Instead of whether or not the rights regime makes sense given political, economic, and social context in Muslim-majority states, in a liberal Islam paradigm the question becomes whether or not there are convincing doctrinal arguments regarding the place of human rights in Islamic law. This accepts, in essence, the need for literalist religious justifications for human rights, making an argument for rights a dispute over religious doctrine: a dispute that takes place on an elite, juristic field on which reformers have little claim to institutional authority, human rights scant normative power, and that is disconnected from everyday political and normative realities. More dangerously, it risks reifying the notion that Islam monopolizes the Muslim public sphere, rather than leaving space for normative diversity. Human rights foundations must be based in the theoretical premise that political change flows out of inherently pluralistic normative environments, and that this is as true in the Muslim world as it is elsewhere.

Are human rights compatible with Islam? Are they compatible with predominantly Muslim societies? While in both cases I would suggest the answer is 'yes', the subtle difference in the phrasing of these two questions is significant to one of the pressing issues of our time: the foundation for human rights relevance to those living in Muslim-majority states. Should this foundation be theological, as in the former question, or political, as in the latter?

This article argues for recognizing the political sources of both rights violations as well as movements for rights protections. These sources are not religiously based, per se, even if religious discourses can intermingle with justifications for either. Liberal Islam posits human rights as only justifiable in the Muslim world on the basis of a singular metaphysical foundation, and hence focuses on Islam rather than the diversity of Muslim societies. Putting Islam and human rights into this sort of dependent relationship neglects the Muslim world's pluralistic normative environment, an environment informed by heterogeneities, hybrid identities, diasporas, local, regional and international networks, satellite television, cyber spaces and transnational networks and spaces. This normative pluralism considerably complicates the foundations of human rights relevance and ensures that these foundations will be inevitably political—i.e., subject to interchange and flux. It is necessary, therefore, to avoid theoretical assumptions—as in liberal Islam—that ignore the

possibility of normative plurality by too narrowly focusing on just one possible source.

A pluralistic understanding of the foundation of human rights helps in moving analysis beyond a distorting religious-secular binary. This binary, in terms of the Muslim world, on the one hand distorts Islam into an all-defining monolith that excludes non-Islamic norms or, on the other hand, sees the alternative as the sort of secularism that entirely excludes religion from the public sphere. One can both recognize how religion has an inescapable impact on how people define themselves in the public sphere, but also keep analysis from a parochialism that sees the Muslim world's public sphere as monopolized by religion. In this light, the liberal Islamic insistence on a theological foundation for rights is problematic insofar as it reifies this assumption of a religiously monopolized Muslim public sphere.

There is both consensus and contention in academic discussions of this issue. There is consensus that human rights status is generally poor in the Muslim world, particularly in the Middle East (predominantly Muslim states in South East Asia, for example, tend to have better human rights records, though there is considerable variation in the Middle East as well). There is also broad agreement that this generally poor record should not be taken as an excuse to homogenize the Muslim world or assume that Islam is itself the inherent source of rights violations. 'Exoticizing' the Muslim world as the only locale unable to generate internal articulations of human rights is the equivalent of blaming the victim—a victim that, apparently, masochistically refuses even the attempt to construct a regime to hold states accountable for torture, denial of access to food, discrimination, or other rights violations. To the contrary, however, in fact one can easily identify historical and contemporary movements for human rights among Muslims.[1] The problem—as with human rights violations in all parts of the world—is not Muslim (or Christian, or Buddhist, etc.) cultural traditions, but rather state elites that use violence, discrimination, and other rights violations as a means to monopolize power.

Where there is contention is in the question of how to rectify human rights violations and, more specifically, how to justify human rights in the Muslim world. Among the cultural, philosophical, and legal approaches to this question are those that can be broadly termed liberal Islamic—i.e., that find the basis for human rights in a liberal, reformist reading of Islamic law. This article will outline a liberal Islamic approach and note its theoretical and strategic shortcomings, even while being sympathetic both to its normative goals and specific theological readings.

It is true that Islamic law's diversity and changeability opens the path to readings of Islam that are in accord with human rights. The Islamic grounding of this

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[1] *See* Chase & Hamzawy (eds.), *Human Rights in the Arab World: Independent Voices* (University of Pennsylvania Press, Pittsburgh, 2006). *Note* chapters by Carapico on Yemen, Waltz & Benstead on Morocco and, more generally, Megally.

approach has quite understandably gained resonance as a retort to political Islam's reactionary readings of Islam's place in the public sphere. Tariq Ramadan, for example, argues for the internal reform of Islamic law so Muslims can coexist with human rights norms.[2] Khaled abu el Fadl differs in many respects from Ramadan, but along with other Islamic reformists shares a methodological emphasis on internal legal reform as the foundation for greater respect for human rights in the Muslim world, and as the way to rebut what he calls Islam's "puritanical" element.[3] What el Fadl terms "moderate" Islam is theologically valid and a fair representation of Islamic jurists' historically restrained claims; these have, indeed, most often been far from the political Islamist demand that Islamic law be the foundation of state and the public sphere.

The very restraint in the domains over which the Islam el Fadl describes has asserted authority, however, is the very reason it is not an appropriate basis for the establishment of human rights. The moderation el Fadl chronicles is not so much dependent on 'liberal' interpretations of specific issues as it is on abstaining from being, precisely, the basis of all manner of public sphere domains, including human rights. It is contradictory, therefore, to put Islam into the position of being the necessary basis of human rights. Structurally, such an assertion—no matter how liberal or human rights-friendly the intention—is anti-pluralist insofar as it implicitly assumes an Islamic monopoly on the public sphere. Thus, as the theoretical foundation for human rights, there is reason for scepticism. To the degree that a liberal Islamic approach monopolizes the framing of rights discourses in the Muslim world it is likely to be, at best, unproductive. At worst, it is a potentially harmful project in that it risks reifying the same assumptions as political Islam, i.e., that Islam inevitably monopolizes the public sphere and drawing from other sources is somehow irrelevant.[4]

This returns us to the two questions that started this article. The phrasing of the first question poses human rights as a theological issue—does it correspond with Islam? The second phrasing poses it as a political issue—does it correspond with normative demands in predominantly Muslim societies? The latter question

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[2] Tariq Ramadan, *Western Muslims and the Future of Islam* (Oxford University Press, New York, 2004).

[3] Khaled abu el Fadl, *The Great Theft: Wrestling Islam from the Extremists* (HarperCollins, New York, 2005).

[4] For example, Ramadan claims that in the 'West' thought regarding human rights "spanned from liberation theology to conservative Christianity"; by analogy, he argues, a span from reformist to traditional Islam is relevant to Muslim thinking about human rights. This is a false analogy, but it is revealing of his underlying anti-pluralism. Historically, of course, in the West just as in the Muslim world (and virtually all parts of the globe), non-religious forces have been at the heart of debates around human rights. Ramadan's narrow vision, however, would implicitly limit this foundation to Islam, thus denying the possibility of pluralistic foundations for human rights in the Muslim world. Tariq Ramadan, 'Keynote speech', *Reframing Islam: Politics into Law* conference, Irish Centre for Human Rights, NUI Galway, Ireland, September 10th 2005.

acknowledges the multiplicity and changeability of discourse in Muslim societies. For much of the last century voices from Muslim societies have spoken the language of human rights, sometimes in a religious vernacular, sometimes in a secular vernacular, and most often in voices that move beyond such false binaries as religious vs. secular or Islamic vs. human rights. To deny these voices their place in public debates because they have not necessarily been based in Islamic law is to assume static, monolithic societies that can speak in no tongue except that of Islam. Human rights can be briefly defined as a political, legal, normative and institutional structure that seeks to expand human agency and insulate individuals and social groups from the power of the modern state. If the essential aim of human rights is an expansion of human agency, this cannot be accomplished by narrowing the basis for activity in the public sphere to a religious discourse. Recognizing the ideological diversity of Muslim soceities, transnationally informed public spheres, hybrid identities, and continuous normative flux is a more practically grounded basis for discussing human right's relevance to the Muslim world.

The first question's conceptualization of Islam and human rights as necessarily in a direct relationship to each other is an abstract diversion from the real issues defining human rights. Islam and human rights can be constructed as oppositional or supportive, but are not inevitably one or the other. In other words, Islam and human rights as a binary relationship must be problematised if debate is to move beyond a simplistic opposition between Islam and human rights or an equally misleading conflation (based on similar assumptions) that sees Islam as inherently supportive to human rights. Islam is neither responsible for rights violations nor the core basis for advancing rights; for better or for worse, other factors explain the status of human rights.

Focusing on the context in which Muslim societies and human rights interrelate, moves away from essentialised notions of how Islam and human rights inherently conflict or correspond and toward a historically informed recognition of the variability in Muslim societies' relationship to human rights and, more broadly, the public sphere. Human rights will only be advanced when debate focuses on their political, economic and social aptness, rather than irrelevant theological justifications that are abstracted from the contemporary context. It is, in short, the underlying politics that explain current realities and their alternatives, not an Islamic meta-narrative.

Both those who see Islam as oppositional or as supportive to human rights are privileging a theoretically distorted meta-narrative at the expense of on-the-ground political dynamics. The shared theoretical assumption is that Islam is the defining discourse in the Muslim world, that human rights is a direct challenge to that discourse and that, therefore, rights either conflict or must be reconciled by being constructed as definable via an Islamic discourse. In terms of the latter, by conceding that human rights have to be justified on Islamic terms, non-religious arguments for human rights are abandoned—even by those who are rights advocates.

This retreat returns us to an assumption that non-Islamic norms are irrelevant because Islam is all defining and all controlling—the pernicious Orientalist stereotype. Therefore playing on Islamic turf is not only a transparent, losing strategy, as I will argue, but, more dangerously, it also delegitimises non-Islamic norms in predominantly Muslim societies and implicitly accepts their marginalisation. This is critical at a time when political Islamists are, similarly, pushing for this same type of marginalisation. This push comes despite the fact that the history of Muslim societies and the contemporary existence of diverse political movements in the Muslim world explicitly contradict this project of marginalising the importance of non-Islamic norms. It is for this reason that asking if human rights and Islam are compatible is the wrong question, and leads into a theoretical diversion away from the essential questions regarding the foundations for advancing greater respect for individual and group rights.

I. Islamism

The first distinction to make is between Islam and the political project that goes under the name of, variously, Islamism, fundamentalism, political Islam, and/or integralism. In regard to the former, as a social force Islam inevitably has a political impact, just as do other powerful religions such as Christianity, Buddhism, or Judaism. But Islam's history is, contrary to stereotype, predominantly a discourse that has kept a certain distance from politics. At times some have argued that either Sunni or Shia Islam are inherently more political or more quiescent. In reality, however, such analyses of which is more 'political' have oscillated depending on historical context, indicating their variability. Only rarely have either Shias or Sunnis advanced the Islamist claim to monopolize the public sphere of law, society, and politics. Islam as an evolving and differentiated set of religious beliefs and social practices has a historical pattern of coexistence with multiple political structures and ideologies. In regard to the latter, Islamism does, indeed, have a history of conflict with human rights and conflating Islam with Islamism is one reason for the misperception that Islam clashes with human rights. Thus, before directly addressing Islam, it is worth pausing a moment to address the Islamist political movement that mobilizes one construct of Islam in apparent opposition to human rights.

In power, the record of Islamists shows how distinct—and modern—their construct of Islam is from what has predominated throughout the Muslim world's history. Islamism is a political project defined by assumptions that contradict the human rights regime's foundation in non-discrimination, toleration, and human agency (as a generality, Islamism, too, has its variations). Empirically, this contradiction has become apparent when Islamists have taken state authority. Sudan, for example, has had the Arab world's only Islamist regime and, as with Islamist regimes

in Iran and Afghanistan, the results were starkly contrary to democracy and human rights. Power was seized in Sudan in collaboration with leaders of a military coup and maintained thereafter by non-democratic means. Repression against minorities has included genocidal campaigns against animists and Christians in the south, and black Muslims in Darfur. Dissent has met with retribution, including death or asylum for many—such as, for example, the hanging of liberal Islamic reformer Mahmoud Taha. This repression of democracy, minorities, and dissenters has exact parallels in the practice of Islamist regimes outside the Arab world-Taliban Afghanistan and Iran's Islamic Republic being notable examples of precisely this same pattern of flagrant abuses.

In opposition, as well, Islamists have had a markedly negative effect on human rights in the Muslim world. In particular, they have frightened, intimidated, and physically attacked public figures that dare to critically engage in the civic sphere of culture or politics. In Egypt, for example, a revered literary figure such as Naguib Mahfouz and an imaginative scholar such as Nasr Hamid abu Zeid have both been subject to physical and legal attacks that have had the broader effect of chilling the country and the region's general intellectual environment. This is not to mention, of course, more egregious acts of terror—transnationally by an *al-Qa'ida*, or domestically by groups such as Egypt's Islamic Jihad.

This pattern of repressive practice does not flow out of Islam, but rather out of the theoretical foundations of religious nationalist ideologies—be they putatively based in Islam or in the power of some other set of religious symbols. The identification of power with a religious ethnic group and, within that ethnic group, with a privileged elite with access to defining God's law, is inherently anti-democratic and impels violations of human rights, including the repression of minorities, dissidents, and democracy.[5] Regimes that ideologically legitimise rule based on exclusivist religious identity cannot theoretically tolerate affirmations of equality of other ethnic communities, as evidenced by the status of Muslims in BJP (Hindu nationalist) India, Palestinians in Israel, or non-Muslim minorities in the Sudan, Iran, and Afghanistan. 'Outside' groups may be more or less tolerated but, by definition, if national identity is made coterminous with a particular religious identity, non-members are not full citizens. This is the conundrum of nationalist politics, in general, one that is exacerbated when the national community is defined in emotively powerful religious terms.

This is even more problematic in cases where the ideological justification for rule moves beyond religious identity to the political Islamist project of applying a literalist construction of that religion's sacred texts as temporal law. In this case,

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[5] *See* Abdolkarim al-Soroush, *Reason, Freedom and Democracy in Islam* (Oxford University Press, New York, 2000). *Also*, Anthony Chase, 'Islam and Democracy' in David Lesch (ed.), *History in Dispute: The Middle East Since 1945* (St. James Press, Farmington Hills, 2003).

rule according to sacred texts means that even within the privileged community dissent is not easily tolerated. Such dissent contradicts not just a political position, but a position that constructs itself as representing a transcendental truth. A religious nationalist ideology such as Islamism inherently implies violations of human rights by theoretically defining its hold on power as justified by religious identity and faithfulness to a literalist interpretation of religious texts. It rules according to an elite's construction of eternal truth, not a participatory democratic process; minorities are implicitly disenfranchised as foreign to the dominant cultural community; and dissent is a challenge to religious dogma rather than merely a competing policy preference, and is therefore intolerable. This theoretical opposition has been seen by Islamism's practice both in opposition and in power.[6]

II. Islam, Liberal Islam, and Human Rights

Positing a theoretical opposition between human rights and religious nationalism, including political Islam, does not imply that human rights are incompatible with Islam or Muslim societies. While acknowledging that Islamist religious nationalism is problematic for human rights—both empirically and theoretically—this must be kept distinct from an argument that Islam is incompatible with rights. More broadly, it should be kept distinct from the temptation to conceptualize Islam and human rights as being in a direct relationship.

Islam is often seen as controlling the content of politics and law in the Muslim world—the core Islamist assertion—while human rights tends to be inflated both in terms of its ambition and impact, and seen as blocked or in need of reconciliation because it is contradicted by an all-defining Islamic monolith. Disentangling Islam and human rights from intellectual conceptions and political ideologies that simplify them into competing dichotomies is essential to understanding their interrelation. Just as a cultural system's dynamism ensures that it does not *a priori* delineate and define acceptable constructs of law and politics, Islam does not place a box around the political-legal possibilities which exist in Muslim societies. It is imperative not to assume intellectual constructs that superimpose such boxes.

One side of this dichotomous debate is epitomized by Jean Baudrillard's statement that "Islam is the quarters of the centered Absolute, the ultimate face of the

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[6] There is some hope that this theoretical foundation will not always be so literally applied. Playing the game of political opposition, particularly in arenas that are more democratic, may encourage greater acceptance of pluralism by Islamists. In Egypt, for example, *Kifaya*—the liberal opposition movement—worked in tandem with the Muslim Brotherhood during the run-up to the 2005–2006 elections. Similarly, during this same period in Yemen the Islamist *Islah* has cooperated with human rights groups in developing common agendas. Amr Hamzawy argues that such cooperation may be fruitful in integrating Islamists into pluralist politics.

anti-modern".[7] Islam is here starkly designated the role of opponent to all which an equally undifferentiated modern 'West' supposedly represents, including human rights. The portrayal of Islam as fundamentally opposed to human rights depends on this type of essentialist, ethnocentric view of the Muslim world as alien to modernity, and is at the heart of conceptions such as that in Benjamin Barber's *Jihad vs. McWorld* in which Barber directly counterpoises Islamic and human rights norms and portrays them as mutually exclusive.[8] This conception leaves Muslims—ignoring what they might say themselves—voiceless as they suffer the oppressions of their governments. They are theoretically unconcerned with international standards regarding issues such as the right not to be tortured or not be denied the opportunity to work, or the right to education or self-determination—all issues prominently featured, in fact, by populist and human rights groups in the Muslim world which have sought to integrate these international norms into domestic practice. This sort of rhetorical caricature of the relationship of Islam and the international human rights regime as a simple clash sets up a false opposition that is destructive of understanding their political dynamics, which are shaded with far more subtlety and variety than these harsh oppositions allow.

Fuad Zakariya summarizes a common response by those critical of viewing Islam as a clashing retrograde by saying, simply, that "Islam is what Muslims make of it".[9] This critical response (cited here in the grossest possible shorthand, of course) emphasizing the constructedness of Islam is undoubtedly more theoretically sophisticated than Baudrillard or Barber's[10] opposition between Islam and the modern world, and is the bedrock position of many who argue that Islam can be reconciled with human rights norms. What Muslims make of Islam is, indeed, quite changeable, but that does not mean Islam is so malleable that it can always be reconciled to other normative structures. Nor, more to our point, does it mean that Islam *needs* to be malleable in order for Muslim societies to accommodate norms from non-Islamic sources. Islam does not need to be malleable in this manner because it is not necessarily an obstacle directly counterpoised to human rights, thwarting their implementation and surmountable only by re-making Islam in a human rights-friendly manner. This conception of Islam and human rights as direct counterparts is the basic theoretical framework that, despite their different conclusions, a Zakariya shares with a Baudrillard or Barber. This common theoretical premise is troubling in its privileging of a monolithic conception of Islam's political role.

Many liberal Islamic reformers work within this same framework. In terms of human rights, this framework results in arguments that rights can only resonate in

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[7] Jean Baudrillard, 'Untitled', (spring 1992) 9, 2 *New Perspectives Quarterly*.
[8] Benjamin Barber, *Jihad vs. McWorld* (Times Books, New York, 1995).
[9] Fuad Zakariya, (July-August 1993) 183 *Middle East Report*.
[10] Or of Samuel Huntington, et al.

the Muslim world by being reconciled with Islam and advanced in religious, cul-
turally appropriate language. For example, perhaps the best-known and most sophis-
ticated reformer of Islamic law is Abdullahi an-Naʿim. Many of an-Naʿim's premises
are akin to those of other liberal Islamic reformers, but he works specifically within
a human rights framework, attempting to reconcile it to Islam. It is fair to say that
an-Naʿim is among those who have most contributed to breaking down stereotypes
of Islam and highlight its historic diversity and textual openness. Nonetheless, there
is one element in his early writings that epitomizes a liberal Islam trope that, I
would argue, is problematic. An-Naʿim argues that human rights will only be applied
in the Muslim world if rights are made to coalesce with Islamic public law (his term
for a reformed *Shariʿa*), as *Shariʿa*-based law is the only legitimate form of law to
Muslims. This seems to implicitly accept a vision of the Muslim world as governed
by religion. An-Naʿim surmises that public law "will have to be Islamized in recog-
nition of the Muslim right to self-determination." An-Naʿim's reform project is
entirely informed by and committed to international human rights, but he accepts
the axiom of the centrality of Islamic edicts to Muslim political life—i.e., that there
is no other comparably legitimate form of political or legal discourse in the Muslim
world. While An-Naʿim is critical of any notion that Islam and human rights clash,
he accepts their juxtaposition and that human rights can only be implemented via
an Islamic channel. Thus the necessity that his envisaged "version of public law
would be as Islamic as *Shariʿa* has ever been because it will draw on the same basic
sources of Islam from which the relevant principles of *Shariʿa* were constructed by
the early jurists."[11] This radical reform is done in an Islamic context because, in An-
Naʿim's words, "unless such challenges and modifications have religious legitimacy,
they are unlikely to change Muslim attitudes and practice."[12]

   An-Naʿim does assert the ability to re-read Islamic law and it is, of course, his
aim to reform the *Shariʿa* such that it corresponds with human rights. While his
methodologies are ingenious, the danger is that privileging Islam as the basis of
action in the public sphere implicitly reaffirms the same basic paradigm as Islamists
and Orientalists: that Islam defines the Muslim world's politics and that Islam and
human rights are competing and in need of reconciliation if rights are to be imple-
mented. Islam is a determining monolith in *both* conceptions, albeit a more flexi-
ble monolith in the liberal version. Even in the liberal version, however, if Muslims
hope to advance human rights, they need to construct an Islam that can be a ves-
sel for human rights: it is this that is problematic.[13]

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[11] Abdullahi Ahmed an-Naʿim, *Toward an Islamic Reformation: Civil Liberties, Human Rights,
and International Law* (Syracuse University Press, Syracuse, 1990), 9–10.
[12] *Ibid.*, p. 2.
[13] Indeed, An-Naʿim's more recent work on secularism in the Muslim world seems to implicitly
problematise an overstatement of Islam as the controlling discourse in the Muslim world. Comment
based on draft working papers kindly provided by Professor An-Naʿim.

One need not deny the importance of Islam in the Muslim world to also point out how this can lead to reductionist conclusions. Not reductionist because Islam is unimportant; indeed Islam plays a prominent role in many Muslim societies. It is reductionist because, contrary to an assertion "of the interdependence between [Islam and human rights],"[14] the respect and protection of human rights is not interdependent with Islam. Is Islam stopping Palestinian self-determination, or impelling torture in Egyptian prisons and genocidal campaigns against black Darfuri Muslims? Of course not. Most rights violations have no plausible basis for even referring to Islam as a justification. To assume as fundamental the interdependence of human rights and Islam and hence the need for their reconciliation diverts attention from the real causes and solutions to the vast majority of rights violations in the Muslim world. Only rarely are these directly connected to Islam. In this sense, the 'human rights justified via Islam' paradigm is a theoretical excursion that avoids facing the central issue: the political structures that explain most human rights violations.

So, in short, Islam has little relation to human rights—human rights being a legal-political discourse that responds to the power of the modern state, not a religious-spiritual discourse. At the same time, most rights violations have little or no relation to Islam. Even those rights violations that are justified by an interpretation of Islam need to be understood in the context of the shifting, constructed nature of Islam, epitomized by the current rise of political Islamist movements that insist on Islam (or their interpretation of Islam) monopolizing the Muslim public sphere.

In regard to the public sphere in the Muslim world, the *Shariʿa* has never been as all defining as is often assumed. The place of religious norms in the Muslim world's public sphere is historically quite ambiguous, opening space—depending on historical context—for references to human rights. For legal and political structures to change, a change in normative context has often been sufficient. In the course of the twentieth century, for example, a variety of non-Islamic based ideological trends have been dominant in the Muslim world, including variants of Marxism, social democracy, monarchism, and nationalism. While human rights are a very specific legal regime, the language of human rights can be and is invoked by many ideological trends, from secularists and socialists to liberal Muslims and, as noted in footnote six, more radical religious nationalist trends which, it is worth remembering, are often most directly faced with the sort of arbitrary state repression to which human rights is meant to respond.

Nathan Brown has documented wild swings in Islam's role in the public sphere. Brown notes that the de-emphasis on *Shariʿa*-based law during the first part of the twentieth century occurred with remarkably little opposition or protest.[15] In fact, it is worth reflecting on the fact that this process went virtually unremarked at the

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[14] Abdullahi an-Naʿim, 'Islam and Human Rights: Beyond the Universality Debate', (2000) *ASIL Proceedings*, p. 95.

[15] Nathan Brown, *The Rule of Law in the Arab World* (Cambridge University Press, Cambridge,

time. This points to the importance of political context in defining Islam's impact and contradicts clichés of state and religious institutions being united in Islam.[16] Indeed, even in those cases where *Shari'a*-based law is currently applied beyond a very narrow range, this is done with politicized selectivity.[17] There is such a bewildering diversity of political movements justified by reference to Islam that it is clear that, although political motifs and imagery may be Islamicized, there is no defined Islamic basis of politics. Thus, even in those cases where there is an intersection between Islamic and human rights norms, it is up to Muslim political societies to negotiate this in terms of their internal political dynamics. The sole requirement from a human rights perspective is that this be done via participation and with the consent of concerned individuals and groups, rather than imposed by the state.[18] Despite the protests of Islamists and Huntingtonian neo-Orientalists, and the demurrals of liberal Islam reformers, there is little evidence that this is problematic for most Muslims—in fact it is the historic norm that the state is not the arbiter of traditionally quite decentralized Islamic legal structures.

The most important objection to the reformist methodology is that its use of Islam is not just a diversion but that it actually undermines rather than legitimises human rights norms. It is neither theoretically necessary—as discussed above—nor strategically promising to justify human rights via Islam. The move from a political to a religious justification (making rights a "theological question," in An-Na'im's appropriate phrase)[19] is also counterproductive—indeed, I would argue that its privileging of Islam has already been damaging in distorting discourse on this subject.

It is strategically counterproductive to a human rights project in that liberal Islamic reformers change the paradigm for a consideration of the relevance of rights. Instead of whether or not the rights regime makes sense given political, economic, and social context in Muslim-majority states, the question becomes whether or not there are convincing doctrinal arguments regarding the place of human rights in

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1997). Without delving into Islamic legal history, it is important to note that it has a decentralised form and throughout its history it is rare that the state has been its arbiter.

[16] Anthony Chase, *Islam and Human Rights, Clashing Normative Orders?*, Ph.D. dissertation, Tufts University, 2000.

[17] Those claiming to apply the *Shari'a* in its totality—such as the Taliban did in Afghanistan—do so in a politicized, distorted manner, as when women are executed for walking without a male escort. *Shari'a*-justified acts such as this have more to do with local customary practices or hierarchies of power than any historically recognized conception of the *Shari'a*. Regarding human rights violations by the Taliban, *see* Physicians for Human Rights, *The Taliban's War on Women: A Health and Human Rights Crisis* (Physicians for Human Rights, Boston, 1998).

[18] Governments can simply not make controversial elements of constructs of *Shari'a* law part of top-down, state-enforced policies, leaving it to individual Muslims to decide if, from the bottom-up, they will choose to adhere to such provisions by their consent. Freely consented to, such provisions would not be human rights violations—any woman, for example, is free to accept an inheritance arrangement which grants her or her female legatees half of what a man would receive if she feels that is her religious obligation. Imposed by the state, this is a human rights violation.

[19] An-Na'im, *supra* note 14, p. 100.

Islamic law. This accepts, in essence, the need for literalist religious justifications for human rights, making an argument for rights a dispute over religious doctrine: a dispute which takes place on an elite, juristic field on which reformers have little claim to institutional authority, human rights scant normative power, and which is disconnected from everyday political realities.

Rights arguments made in Islamic language lack institutional authority, and hence do not resonate as legitimate Islamic interpretations; they are sometimes contradicted by explicit Qur'anic verses, and hence are not theologically decisive; and they are often delegitimised by appearing to be deployed strategically as a pragmatic ploy rather than being religiously based, and hence lack political weight. Attempting to justify rights via Islam has not been a success, and will not be a success for logical reasons. While there are strong political and normative justifications for human rights in the Muslim world, the religious-theological argument is a losing position for those endowed with neither conclusive doctrinal arguments, nor religious authority. Justifying rights in the language of Islam is usually irrelevant to rights violations core causes, and is not only a theoretical diversion but an inconclusive one at that. The arguments for human rights are political, legal, economic, social, and cultural and must be justified on their own terms and on the basis of their relevance to the Muslim world, not on the basis of a 'theological' argument.

III. Islam, Human Rights, and Sociopolitical Praxis

Human rights and Muslim societies can (and do) co-exist, but not in a manner that equates culture to legal rights and insists that to be justifiable rights must be Islamicized for the Muslim world. This exclusivist conception runs contrary to everyday political realities. We have already noted the irrelevance of Islam to most rights violations and the political basis of both rights violations and arguments regarding the relevance of rights. For a complementary analogy from a different sphere that illustrates how Islam is not all defining, one can note the preeminence of non-Islamic economic models in the Muslim world. This is not doctrinally justified by detailed, sophisticated reformist theories in which 'Western' and 'Islamic' economics are reconciled. To the contrary, it simply flows from trends set in place by economic realities that make no pretense of being Islamic. In fact, it is the 'Islamic' economic model pushed by some political Islamists that still remains peripheral, even in Islamist states themselves. Co-existence (or, more precisely, the irrelevance of a notion of co-existence) has taken place due to economic and political context, not some sort of theoretical reconciliation. Similarly, in the course of just this century, Muslim family law has fluctuated widely depending on particular historic context, region, country, locality, custom, and political and normative pressures.[20]

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[20] For one example of the variations in Muslim family law, or Personal Status Law, *see* Fati Ziai,

An even simpler example can again illustrate the manner in which social, political, and economic circumstance can override law embedded in Islamic justifications, even in quite conservative social contexts. The Saudi ban on women drivers has attracted a great deal of attention. Leaving aside the question of whether such a ban is valid in Islamic law, the reality is that it was validated—in a country that claims the Qur'an as its constitution—as a stipulation of Islam.[21] Over the last decade, however, there have been repeated whispers that the ban would be overturned. Among the first of these, for example, was a report that noted "a powerful rumour spawning hopes and fears that women in the conservative kingdom may soon be allowed to drive." And why would such a change be made?

> Economic concerns make the move—which would end the need for half a million foreign chauffeurs—credible . . . With weak oil prices slicing some $15 billion off the income of the world's top producer this year and unemployment put near 20 percent. . . . 'The average Saudi family finds it pretty hard to afford a driver,' a top diplomat said. 'Men often leave work to take kids to the doctor or school.'[22]

There have been recurrent renewals of this rumour, though as of yet no change has been made and, at the time of this writing, much higher oil prices have reversed the economic dynamic that was pushing movement toward change. Nonetheless, both discussion of this point in Saudi Arabia and, simultaneously, the inconceivability in most Muslim countries of laws banning women from driving concisely affirm two key points. One, the variability of *Shari'a* interpretation and, two, the manner in which political, social, or economic context can quickly affect such interpretation. A change in Saudi Arabia's driving statute, if it ever comes to pass, would undoubtedly be given some sort of *Shari'a*-based justification, just as was the law's original promulgation. The reason for this law's existence, however, lies in Saudi Arabia's tremendously conservative social structure, which is far more severe than that of most Muslim countries (also explaining why these laws don't exist in other Muslim states), and was reinforced by the defensive political position Saudi authorities found themselves in after allowing the presence of U.S. troops during the Gulf War.[23] If this law is overturned, it will be, again, for non-Islamic reasons—this time

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'Personal Status Codes and Women's Rights in the Maghreb' in Mahnaz Afhami & Erika Friedl (eds.), *Muslim Women and the Politics of Participation: Implementing the Beijing Platform* (Syracuse University Press, Syracuse, 1997).

[21] Ann Elizabeth Mayer, "Islam and Human Rights: Different Issues, Different Contexts. Lessons from Comparisons" in Tore Lindholm and Kari Vogt (eds.), *Islamic Law Reform and Human Rights: Challenges and Rejoinders* (Nordic Human Rights Publications, Copenhagen, 1992).

[22] *Reuters*, 2 November, 1998. *See also* Steve Liebman, 'Driven to Distraction, Saudi Women May Soon Take the Wheel', *Wall Street Journal*, 1 March 1999, 1.

[23] It is worth noting that in the Palestinian Authority—an area with far less severe social structures—there was also a controversy over women driving. Despite the religious argument that was made during negotiations over the first Palestinian draft Basic Law in the mid-1990s, restrictions were dismissed due to a normative context that made this proposal unthinkable for most.

economic and technological.[24] In other words, for all the invocation of *Shari'a*, the determining factors have little to do on either side with religious arguments.

Be it in driving laws, economics, family law, or in human rights, political, economic, social and normative context is the primary variable. In regard to human rights, if they are perceived as relevant and necessary, they will consequently become contestants in public debate—indeed, they already have in many parts of the Muslim world. Arguments to be made regarding rights should be waged around their relevance and aptness. It is this, not elaborate Islamic justifications, which will or will not lead to greater integration of human rights norms into the Muslim world's politics. As Afshari elegantly states, "one may argue that the ways of the future will appear through the exigencies of sociopolitical praxis and not necessarily by means of persuasive theory."[25] To focus on theoretical justifications as if they will impel change is to focus on the tail wagging the dog. The place of human rights will not be established by reforming or transforming Islam, but rather by opening state-societies to political change that reflect normative realities within those states and the participatory demands of Muslim and non-Muslim populations. Such openings as one has seen—for example in Indonesia or Iran in the mid-90's (before being largely repressed by Iran's clerical elite)—reflect societal demands, not a movement for a re-reading of Islamic theology.

This is not to argue that placing rights concepts in culturally diverse language is unhelpful to gaining greater currency for human rights. Rights are not an autonomous legal system, imperially above culture and society. There does need to be societal legitimacy for rights as they are not simply an abstract, apolitical legal concept. While rights neither flow from nor attack culture (though they do provide specific protections of certain cultural rights, including language, religion, and traditional practices of indigenous peoples), opportunities for their expansion are certainly greater if they can be justified in a manner that coalesces both with local political concerns and cultural language. The essential requirement, as this article has argued, is the possibility of a pluralistic foundation.

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[24] Recent hikes in oil prices may mean the *Shari'a* can remain 'sacrosanct' for now.

[25] Reza Afshari, 'An Essay on Islamic Cultural Relativism in the Discourse of Human Rights' (May 1994) 16, 2 *Human Rights Quarterly* p. 245. LaRoui puts this distinction is slightly different terms when he speaks of the "confusion between religious reform and political revolution." Abdallah LaRoui, 'Western Orientalism and Liberal Islam: Mutual Distrust?' (July 1997) 31, 1 *MESA Bulletin* p. 10. As the transcript of a speech, LaRoui's thoughts in this piece are necessarily elliptical. It is, however, extraordinarily rich and suggestive. Liberalism expressed in religious terms as deism, secularism, individualism, moralism, may well be shallow and weak, and it may lose every battle in the classroom—in the "Madrasa" I should say—and still triumph outside, in the marketplace." This is the distinction, according to LaRoui, between "topical reforms without touching the dogma" and "a situation in which society is set free to operate according to its own rules." Despite the denials of Islamists, Orientalists, and liberal Islamic reformers, underlying sociological realities are ultimately more fundamental than religious norms. If a political society engages in free debate on its own future according to "its own rules" and not distorted by authoritarian governments, these realities will determine political choice more than reactive, defensive and artificial nationalisms.

The challenge to those who discuss the place of human rights in the Muslim world is to show how human rights respond to the political situations and structures of its diverse and particular locales, not to dress human rights up in a false Islamic suit of armour. Islam is neither the source of human rights nor (usually) the cause of rights violations. The variability of *Shariʿa* does not mean that lonely reformist interpretations are likely to overturn established norms, rather it means that as context changes, so too can the manner in which *Shariʿa* is (or is not) applied, and human rights is (or is not) integrated into politics, norms and law. The important point is making clear the relevance of rights to issues of day-to-day concern (i.e., the right to work to those Palestinians denied access to a livelihood, the right to political participation for disenfranchised minorities, the right to education for those women systematically denied that right, etc.), rather than the focus one too often finds on abstractions such as human rights' cultural DNA.

IV. Conclusion

Three points must be kept in mind that summarize misconceptions in liberal Islam's 'Islam and human rights' paradigm. The first of these points is the paradigm's tacit overemphasis on Islam's centrality in Muslim societies, reflecting a common tendency in commentary on the politics and law of the Muslim world. Islam is the subject of almost obsessive academic and media focus which affirms its place—despite the caveats which are sometimes made—as *the* defining aspect of predominantly Muslim states.[26] This has its roots in the much-criticized Orientalist model, but continues even among many critics of Orientalism. It is this sort of stereotype that has led to a degree of attention on Islam that risks drowning out discussion of other normative currents. It is important to place political Islam in perspective by remembering that it is a minority phenomenon—often a rather small one—in most parts of the Muslim world.[27] The danger is that a discourse of a 'resurgent'

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[26] *See* Alison Dundes Renteln, *International Human Rights: Universalism versus Relativism* (Sage, Newbury Park, 1990) and Adamantia Pollis, 'Towards a New Universalism: Reconstruction and Dialogue' (March 1998) 16, 1 *Netherlands Quarterly of Human Rights* pp. 5–23. These represent cultural relativist perspectives that also insist that Islam is *the* defining factor in Muslim societies and, therefore, in conflict with the 'alternative' norms of human rights.

[27] Popularity is, of course, hard to judge in states without elections or some form of popular representation. In those Muslim states that have held fair elections, Islamist parties have usually remained a relatively small minority. In Turkey, Welfare and Justice and Development did win pluralities, but is not an Islamist nationalist party (it is more akin to a European Christian Democrat party) and, in any case, has never won more than 30% of the popular vote—and this in a country whose other major parties have been continuously embroiled in corruption scandals. Algeria is the only case where an Islamic party swept an election, but polls showed that even among its supporters only half were in favor of an Islamic state being established. In the Palestinian Authority, Hamas recently won a plurality and came to power on the basis of divisions in the Fatah vote. Polls showed this was not based

political Islam and a totalist Muslim political culture reinforce and legitimise trends that share these traits and de-legitimise other trends. The political impact of an Islamic heritage is quite diverse, often indefinable, and demonstrably of fluctuating impact, both in terms of its impact on internal politics and international relations. Islam is neither necessarily an obstacle nor a foundation to rights; in fact it is essentially indifferent as a factor in comparatively analysing state records of human rights abuse.[28]

So, without dismissing the presence of an Islamic meta-narrative, it is equally important to bear witness to the evident historic and contemporary normative diversity in the Muslim world that makes clear that there is no singular cultural construct decisively determining political-normative outcomes. Simply put, within any state (including 'Western' states, which have mixed human rights records and regularly face the same culturally-justified opposition to rights) there is a plurality of cultures and sub-cultures and ideological diversity within these cultures. Identifying one single culture with a particular form of discourse is historically untenable, theoretically implausible, and empirically unsustainable. Culture is not a unified 'thing', it is a field of meaning that helps define and redefine particular worldviews in an environment impacted by numerous factors. It is never static and never fixed. This is particularly true in the face of the contemporary world's increasingly fluid, interconnected normative interchanges.

Accepting at face value the claims of Islamists and cultural relativists that Islam represents the sum total of the values of these societies is to uncritically accept a corporatist conception of Muslim societies which insists on a monolithic construct of culture. A critical perspective on Islamist movements must cast a wary eye on stereotyping their members as 'fanatics'. It must also, however, be equally wary of a corporatist, communitarian perspective that reifies them as the only culturally authentic representatives of a political society and, therefore, stereotypes those who might dare disagree as inauthentic or unrepresentative. If the repetitive invocation of Islam and human rights is a distraction from insightful dialogue on key intellectual and political issues, and if this distraction is also a practical impediment to

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on positive support for an Islamicizing agenda (from which Hamas distanced itself during the campaign), but rather a negative blowback against Fatah corruption. *See also* Giles Keppel, *Jihad: The Trail of Political Islam* (Harvard University Press, Cambridge, 2002).

[28] For example, a sampling of Amnesty International reports on three governments in the Arab-Muslim world, spanning the spectrum from secularist Syria, mixed secular-religious Egypt, and Qur'an as constitution Saudi Arabia show similar practices of torture by the security services of each of the three states—just as they occur in many non-Muslim states. *See* http://www.amnesty.org/. Ann Mayer emphasizes the common political factors which at the heart of most human rights abuses, factors which have little to do with Islam. For her able comparative analysis, *see* Mayer, *supra* note 21, pp. 117–134. Mayer's most interesting comparison is to opposition to granting women the right to drive in the United States. As is so often true, culturalist defenses of rights violations are strikingly cross-cultural.

intellectual thought on forms which better reflect contemporary social realities, then it is an urgent task to critique this paradigm.

The second point regarding this paradigm is that human rights, too, are quite often exaggerated in the scope of their ambition and impact. Critics of international human rights law, for example, sometimes portray it as an enormous instrument designed to impose uniform cultural and political practice on the world, attacking indigenous normative systems such as Islam to which it is unsuited. An example of this is Pereira's misinformed caricature of human rights as a "huge and gargantuan structure [that is part of] a universal culture proposed during the past fifty years [that] was nothing more than an elaborate Westernisation proposal."[29]

There is no doubt that invoking solidarity with anti-Western politics has an understandable political resonance in regions that have suffered under colonialism and the continued imbalance of global power, and thus have felt the need for ideological unity against the West. Unfortunately, this all-too-easily flows into intellectually reductionist assumptions about human rights as a Western projection. This helps sustain the nationalist claim that there is an absolute opposition between a particular cultural tradition—such as Islam—and international norms, caricatured as alien and invasive. Not only is this reductionism objectionable on purely scholarly grounds, but it also has the political effect of justifying insular, xenophobic political practices and ideologies that thrive on notions of a cultural clash.

The flip side of this is the invoking of human rights on behalf of all manner of causes that have little or no relation to the texts of human rights instruments. In reality, human rights are a relatively circumscribed band of international law, with a quite specific scope and restricted implementation and enforcement procedures—far from the fantasies of both uninformed opponents and exponents. Human rights instruments provide an increasingly important fora for monitoring actions that arbitrarily violate restrictions on the use of state power, are a legal-political authority which can be invoked to supersede state-defined legal norms, and are—in short—

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[29] Winin Pereira, *Inhuman Rights: The Western System and Global Human Rights Abuse* (The Other India Press, Mapusa 1997), p. ii. In the Muslim world, this distrust has led to the charge that those who invoke human rights in the face of state abuses are "anti-Islamic" or beholden to foreign, imperialist values. See, for example, the Egyptian Organization of Human Rights' Secretary General Hafez Abu Se'da's arrest in the wake of EOHR's release of a report on Egyptian state human rights abuses in the predominantly Coptic Christian village of Al-Kosheh. Of interest here is not that Se'da was arrested, but the actual charges brought against him: disseminating information harmful to Egypt's national interests and "accepting funds from a foreign country for the purpose of carrying out acts harmful to Egypt." This is a classic example of stigmatizing oppositional ideas by ignoring their substance and taking refuge in the rhetoric of embattled cultural purity. Indirect intellectual support to the defensive protests of authoritarian regimes that human rights are a Western construct applicable only in the North American and European cultural-political context is supplied by claims such as that made by Pereira. This dodge from internal and international criticism is an obviously cynical ploy. While it may be ludicrous to rationalize, for example, electric shock torture by evoking Islamic vs. Western values, this is, in effect, what some governments and their cultural relativist defenders do.

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a powerful tool to inject protections of individual and group rights into international law and international relations.[30] As such, they can play a positive role in defending individuals and groups from the powerful, intrusive modern state, and for this reason local, regional and transnational groups expend considerable energy seeking to have rights implemented at the domestic level. They are, in essence, a legal regime that reacts to post-colonial modernity's political structures, far from a project for a 'universal culture', as opponents claim.[31] In the Muslim world, they can play a role in establishing structures that permit the sort of participatory politics and economics that can facilitate the emergence of alternatives to the status quo.

A reductionist perspective on 'Western' human rights appears in both the Muslim world and Europe and the United States, but in conflating rights with a history of Western imperialism the harm falls predominantly on the Muslim world. A focus on the Western 'Other' can be all defining, risking constructing the Muslim self as a mere echo of the West. One of Mohammed Arkoun's central themes is that colonialism brought supposedly 'Western' values to the Muslim world in the context of aggression.[32] The dilemma of the Muslim world is how to get beyond this negative association of 'Western' human rights and 'Western' imperialism that risks a form of entrapment in a never ending colonial discourse. This negative association is intensified when it is identified with countries such as the United States and France which have the habit of not allowing human rights rhetoric to interfere with support for states which are prominent for their rights violations, or grossly violate human rights (or humanitarian law) themselves. Accepting or rejecting a rights discourse because of its cultural pedigree or because of the hypocrisy of that pedigree, however, is to simply play the echo to another's tune.

The fundamental question is not if the genesis of human rights is the Magna Carta, Declaration of Independence, Declaration of the Rights of Man, the U.N. General Assembly's Universal Declaration of Human Rights, or the expanding body of hard law treaties acceded to by a broad range of states. Nor is the fundamental question whether states such as the United Kingdom, the United States, and France

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[30] Human rights as they have been elaborated in U.N. General Assembly Declarations and Conference Resolutions, and U.N.-sponsored hard law treaties need to be understood as defined and limited by their state-centric foundation. They arose in response to the development of the modern state system, and became a global regime with the post-World War II decolonization process which extended the modern state system around the world. The rights regime is meant as a system of self-regulation by which states—with their explicit consent in all but the most extraordinary of circumstances—protect themselves from their own excesses, and the destabilizing effects of other states' excesses—as seen most recently in Rwanda and the former Yugoslavia. Human rights are not a panacea for all ills, just as they hardly serve as a front for the leveling ambitions of Western imperialism. They serve state interest in maintaining internal and international stability and can be seized on by non-state actors to advance their own interests.

[31] Pereira, *supra* note 29.

[32] Mohammed Arkoun, *Rethinking Islam* (Westview Press, Boulder, 1994).

have double standards. They do. As do all states. The question, however, that may be more productive is of what utility human rights as an international legal regime may be to the states of the Muslim world, and more particularly the individuals and groups who live under the political rule of these states.

The third point, consequent to these exaggerations of both Islam and the human rights regime, is that the 'Islam and human rights' paradigm's assumption of human rights dependency on Islam is overstated, as previously outlined. Just as often—if not more often—Islam and human rights function on distinct religious-cultural and political-legal planes that make talk of clash or reconciliation an irrelevant diversion from the true issues of importance. One way to ameliorate the self-perpetuating perception of such a clash is to place discussion of their relationship on a theoretical basis—as described above—that avoids overly monolithic conceptions of both Islam and human rights, and which makes reference to political realities in the Muslim world—particularly the power of the state. It is these realities that put the empirical lie to theories that privilege a clash between Islam and human rights, or assert their need for reconciliation.

The motor of change in the Muslim world is ever shifting the political and social context—in driving laws as in family law, in economics as in human rights. A dynamic, cross-cultural justificatory strategy that brings states and peoples to rights out of a sense of self-interest is what has allowed for the global consensus on rights to form. This has been pushed forward by transnational networks and, more generally, the transnational diffusion of norms that define our globalized era. It is this context that internal voices may find the space to articulate rights concerns and advance a rights agenda in places where such political space has been rare.

The importance of both transnational Islamic and human rights norms in contemporary Muslim societies is quite real, as are some particular complications of their interrelationship in specific areas. What is also clear, however, is that these complications do not signify a direct clash between two monoliths. Islam is not a discrete entity that must either dominate, be reconciled, or be excluded from the political world. It is entangled in social and political structures in a complex, differentiated manner. At times it is of paramount importance, at times of no importance, and most often somewhere between these two extremes. It is primarily a religious discourse, but its impact on politics and society is indeterminate—defined in historical context rather than by eternal essence.

Exploration of these practical imbrications is crucial if debate around topics that implicate human rights and Islamic law are to escape their current stalemate. More importantly, dialogue on these issues can open up points-of-view on alternative models which more realistically reflect the Muslim world's complex, interwoven normative fabric, more properly appreciate the scope and limits of both Islam and human rights within that fabric, and are theoretically based in the possibility of normative change.