

# HEALING THE RUPTURE BETWEEN “ISLAMIC” AND “WESTERN” HUMAN RIGHTS

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**H**uman rights are in danger in lesser or higher degrees in every nation in the world. Among these nations, majority-Muslim ones are regularly called out for a range of human rights violations, the most common perhaps being violations of gender equality and religious liberty. There is a range of reasons for this weak state of human rights. Authoritarian states—unfortunately common in the majority-Muslim world—too often manipulate religion to curtail rights. Supporting their cause is an entrenched philosophical and theological opposition to international human rights. According to this opposition, international human rights norms are inherently Western, Christian, or otherwise foreign to Islam, and might even be a colonizing tool used to control Muslims.

This dichotomy, however, is unnecessary and, more fundamentally, historically and philosophically false. There is nothing essentially “Western” about human rights, particularly if Western is meant to denote exclusivity. Existing scholarship demonstrates an Islamic foundation from which one can make a robust argument for human rights.

An early advocate of this idea of an inherent conflict was the Muslim journalist and activist Syed Abul A'la Mawdudi, who not only rejected the human rights standards at the United Nations (UN) as hopelessly Western, but also constructed a set of “Islamic” human rights based on the Quran and the traditions of the Prophet Muhammad.<sup>34</sup> This sort of rejection and proposal of a separate articulation of human rights is at the root of human rights declarations like the 1981 Universal Islamic Declaration of Human Rights and the 1990 Cairo Declaration of Human Rights. Both of these documents explicitly condition human rights on the sharia, though neither defines the scope, the framework, nor the methodology for understanding the sharia.<sup>35</sup>

Even those majority-Muslim states that have signed onto international human rights instruments like the International Covenant on Civil and Political Rights (ICCPR) still argue against the relevance and applicability of those rights in a Muslim context. The UN General Assembly adopted the ICCPR in 1966 as part of the International Bill of Human Rights, which also includes the Universal Declaration of Human Rights and another treaty protecting economic, social, and cultural rights. Countries that sign on to the treaty may state particular reservations, that is, they may specify aspects of the treaty that they will not comply with. Aside from such reservations, signatories are bound by the treaty’s terms, which provide broad protection for the right to life, freedom of religion, speech, and assembly, and the right to due process.

Indonesia is a signatory to the ICCPR and is bound by the treaty’s religious freedom provisions, which among other things states that “Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.” In other words, speech and actions reflecting religious belief can be circumscribed only where absolutely necessary. Despite being a signatory, Indonesia has failed to uphold those protections in its legal decisions, with judges expressing doubts about the religio-cultural relevance of the ICCPR to Indonesian society.

For example, in a 2010 case challenging the Indonesian Blasphemy Act, the Indonesian Constitutional Court largely disregarded the fact that ICCPR’s Article 18 pertaining to freedom of religion or belief is legally binding on Indonesia. The Blasphemy Act makes it unlawful to “intentionally, in public, communicate, counsel, or solicit public support for an interpretation of a religion . . . that is similar to the interpretations or activities of an Indonesian religion but deviates from the tenets of that

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34 Heiner Bielefeldt, “‘Western’ versus ‘Islamic’ Human Rights Conceptions? A Critique of Cultural Essentialism in the Discussion on Human Rights” *Political Theory* 28, No. 1 (Feb. 2000), <http://insct.syr.edu/wp-content/uploads/2013/03/Beilefeldt.2000.Cultural-Relativism-Critique.pdf>, 90-121.

35 “Universal Islamic Declaration of Human Rights,” Alhewar, September, 19, 1981, <http://www.alhewar.com/ISLAMDECL.html>; “Cairo Declaration of Human Rights,” fmreview, August 5, 1990, <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/Human-Rights/cairo.pdf>

religion.”<sup>36</sup> The purpose of the act is to protect against “deviant” interpretations of religion and to protect believers from offensive statements about their faith. The act is an obvious violation of the ICCPR’s broad protection for the right to interpret and speak freely about one’s faith free from state control, yet the Indonesian court had no qualms about deriding these aspects of the treaty. In particular, it stated that these protections are inherently in conflict with the ethos of a religious, and specifically Muslim, society.<sup>37</sup>

Other states enter reservations at the outset. Pakistan ratified the ICCPR in June 2010 but then entered reservations to a number of the provisions, including Article 3 on gender equality and Article 18 on freedom of religion or belief. For both, Pakistan insisted that the right was applicable only to the extent it was “not repugnant to the Provisions of the Constitution of Pakistan and the Sharia laws.”<sup>38</sup>

Many majority-Muslim states have also entered reservations to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), a treaty adopted by the UN in 1979 that is dedicated to eradicating discrimination against women. Of the fifty-four members of the Organisation of Islamic Cooperation that ratified CEDAW, only twenty-nine ratified it without reservations.<sup>39</sup> Not all of these reservations are based on sharia, but some are. Libya’s reservations encapsulate those: “[Accession] is subject to the general reservation that such accession cannot conflict with the laws on personal status derived from the Islamic Shariah.”<sup>40</sup>

Given this opposition to international human rights that is furthermore reflected pragmatically in religion-based reservations to human rights treaties and relevant judicial opinions, a central question to human rights advocacy and policy is how to break the impasse.

## Healing the Rupture

### Challenging Essentialist Conceptions of Human Rights

The solution is no doubt complex and multifaceted, but a first step is to question the foundational assumption of human rights as solely Western and therefore foreign to Islam. Human rights did not result organically from Occidental history and culture, nor is the Occidental tradition the exclusive basis for human rights. Human rights reformers must challenge the essentialist conception of human rights as Western and also highlight authentic Islamic bases for the same rights.

In his piece “*Western versus Islamic Human Rights Conceptions?*,” the United Nations Special Rapporteur on Freedom of Religion or Belief Heiner Bielefeldt disputes essentialist claims about human rights as Western. He argues that, while the “historic breakthrough” of human rights took place in North America and Western Europe, a multiplicity of motifs—“humanitarian, emancipatory, egalitarian, and universalistic”—led to the development of modern human rights. This multiplicity counters an idea of a monolithic Occidental tradition and reveals the different, at times antagonistic, movements that are part of that tradition.

Among the motifs typically credited as central to the development of international human rights is the idea of “spiritual unity of all humanity.” The Bible reflects this principle in its idea of all humans as created in the image of God. The principle can also be found in Stoic philosophy. Marcus Aurelius, the Roman emperor and prominent Stoic author, explained that all human beings are tied together not by physical bonds but by their common spirituality. The Protestant Reformation, too, emphasized spiritual equality.

But as Bielefeldt points out, none of these sources are without their contradictions. For example, St. Paul selectively interpreted the Biblical idea of human equality, actively upholding legal inequality, i.e., slavery: “Let every man abide in the same calling wherein he was called” (1 Corinthians 7:20). Thomas Aquinas justified

36 Blasphemy Act, art. 1.

37 Asma T. Uddin, “The Indonesian Blasphemy Act: A Legal and Social Analysis” in *Profane: Sacrilegious Expression in a Multicultural Age*, ed. Grenda Christopher S. Grenda, Chris Beneke, and David Nash (University of California Press, 2014), <http://www.jstor.org/stable/10.1525/j.ctt7zw3fb.13>, 223-48.

38 *Pakistan’s Reservations to the International Covenant on Civil and Political Rights*, Democracy Reporting International, July 2010, [http://democracy-reporting.org/newdri/wp-content/uploads/2016/02/dri\\_briefing\\_paper\\_4\\_-gop\\_reservations\\_on\\_iccpr.pdf](http://democracy-reporting.org/newdri/wp-content/uploads/2016/02/dri_briefing_paper_4_-gop_reservations_on_iccpr.pdf).

39 *Cedaw and Muslim Family Laws: In Search of Common Ground*, Musawah, April 2012, [http://www.musawah.org/sites/default/files/CEDAWMFLReport2012Edition\\_1.pdf](http://www.musawah.org/sites/default/files/CEDAWMFLReport2012Edition_1.pdf).

40 Ibid.

slavery as a necessary consequence of the original sin. Aurelius, too, failed to challenge slavery.

And while the Protestant Reformation emphasized spiritual equality, one of its major figures, Martin Luther, was “anxious not to conflate” spiritual equality with legal equality. Religious liberty was also a contested notion—until the 1960s, the Catholic Church and other Christian churches openly and harshly rejected religious liberty as one of the “grave errors of the modern era.”<sup>41</sup>

Moreover, other cultures can and have produced concepts akin to international human rights. Numerous scholars, for example, have found roots for human rights in Islamic sources. Mohammad Hashim Kamali, in particular, provides a detailed and compelling account in his book series, *Fundamental Rights and Liberties in Islam*. His *Freedom of Expression in Islam* volume presents evidence for a broadly construed freedom of expression, such as the Quranic encouragement of productive debate, the centrality of “freedom of opinion” in Islamic political thought, and hadith that teach that no one is beyond criticism and that an individual has the fundamental right to argue his or her concerns to religious and political leadership. Kamali’s scholarship also covers apostasy and blasphemy, making a compelling case from Islamic foundational texts that modern-day anti-blasphemy and anti-apostasy laws in several majority-Muslim states are not in any way essentially Islamic.

### Emphasizing Muslim Impact on Modern Human Rights Instruments

Another part of the narrative about human rights as a Western construct relates to the drafting process of human rights instruments such as the ICCPR and the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which was passed by the UN to outline the full scope of human rights specifically pertinent to freedom of religion.<sup>42</sup> Muslim actors were part of the process and their participation impacted the final draft of these human rights provisions. This fact must be remembered to effectively push back against allegations that modern human rights are entirely a foreign imposition on Muslim states.

One example of the impact of Muslim state representatives is Article 18 of the ICCPR, which, again, covers freedom of religion or belief. 18(1) reads:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

The “have or adopt a religion” is the direct result of a negotiation with majority-Muslim states, such as Egypt and Saudi Arabia; these states contested the unequivocal right to “change” one’s religion because they feared such language would encourage atheism and provide cover for missionary work. The vague “have or to adopt” language that is now in the ICCPR emerged as a compromise between majority-Muslim states on the one hand and, on the other, non-Muslim state representatives who wanted an explicit right to change one’s religion.

Muslim negotiators also impacted the final language of Article 18(2): “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.” Instead of focusing on the right to change religions, the provision emphasizes the prohibition on governments from coercing individuals to adhere or not to adhere to a particular religion.<sup>43</sup> Because this position is in line with Quran 2:256, “There is no compulsion in religion,” it was easily accepted by the representatives of majority-Muslim states.

In addition to the ICCPR, the 1981 Declaration on Religion or Belief also has the imprint of Muslim actors. Article 1(1) of the declaration reads:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

As with the original versions of Articles 18(1) and (2) of the ICCPR, the original version of Article 1(1) was more

41 Heiner Bielefeldt, “‘Western’ versus ‘Islamic’ Human Rights Conceptions?” *Political Theory* 28, No. 1 (2000), <http://insct.syr.edu/wp-content/uploads/2013/03/Beilefeldt.2000.Cultural-Relativism-Critique.pdf>, 90-121.

42 United Nations General Assembly Resolution 36/55, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, A/RES/36/55 (November 25, 1981), <http://www.un.org/documents/ga/res/36/a36r055.htm>.

43 Khaliq, U. 2012. Freedom of religion and belief in international law: a comparative analysis. In: Emon, A. M., Ellis, M. and Glahn, B. eds. *Islamic Law and International Human Rights Law*. Oxford: Oxford University Press, pp. 183-225.

explicitly protective of the right to change one's religion. The lack of express reference in the final, adopted language was necessary "to ensure the support of Muslim states . . . which was crucial to the Declaration's adoption."<sup>44</sup>

### Rooting Human Rights Activism in Sharia

As described briefly above, many majority-Muslim states enter reservations to human rights treaties on the basis of sharia. This practice is, however, becoming less frequent; changing politics in some states is making it more difficult for governments to hide behind religious law. Instead, they now point to domestic law that may or may not incorporate sharia elements.<sup>45</sup> To the extent sharia is even invoked, it is to make the point that Islamic law and international human rights are in consonance with one another.<sup>46</sup> A continued focus on this consonance is critical to moving the human rights conversation forward.

Compatibility between sharia and human rights is at the center of much human rights activism by Muslim groups in majority-Muslim states. Consider, for example, Musawah, a civil society organization founded in February 2009 in Kuala Lumpur, Malaysia. The group brings together "[nongovernmental organizations], activists, scholars, legal practitioners, policy makers and grassroots women and men from around the world" in what it calls a "global movement of women and men who believe that equality and justice in the Muslim family are necessary and possible."<sup>47</sup> Musawah's work is entirely premised on the promise of a robust conception of human rights that is authentically Islamic. There has also been important reform in Muslim family law, for example, in Morocco where activists have successfully used religious arguments to liberalize the law.<sup>48</sup>

In the religious liberty space, Islamic scholars like the India-based Maulana Wahiduddin Khan, Mauritanian scholar Shaykh Abdallah Bin Bayyah, and others are actively engaged in scholarship that roots the ICCPR

and the Universal Declaration of Human Rights in Islamic tradition. Among other issues, Khan has actively pushed back against narratives that punishment for blasphemy is Islamically justified: "It is tantamount to defamation of Islam to say that Islam cannot give a reason-based response, and that is why it endeavors to inflict physical punishment on those who make any kind of negative remark against the Prophet."<sup>49</sup>

Shaykh Abdallah bin Bayyah, on his part, convened a group of more than two hundred religious scholars in January 2016 to discuss the rights of religious minorities in majority-Muslim states. At the conclusion of the summit, the scholars issued the Marrakesh Declaration, which aligned the principles of the ICCPR with Prophet Muhammad's treatment of minorities, as reflected in his Charter of Medina. Bin Bayyah's engagement is ongoing, as he now holds conferences and roundtables across the world centered on the declaration and its effective implementation.

### Recommendations

Policy makers should help facilitate awareness of (1) Muslim involvement in the articulation of international human rights norms; and (2) viable Islamic scholarly arguments that support a robust conception of human rights. This awareness can be facilitated at the local, national, and international levels through educational curricula and media programming. To help translate the scholarship into concrete steps, policy makers can work with local human rights experts and religious scholars to identify problematic laws, the purported religious bases for the laws, and how traditional scholarship can be brought to bear in changing those laws. In working on these issues, policy makers must be careful to work with indigenous groups already engaged in relevant initiatives and to expand the range of participants to include youth, women, and others traditionally excluded from such work.

44 Ibid.

45 Ann Elizabeth Mayer, "Islamic Reservations to Human Rights Conventions: A Critical Assessment," *Recht van de Islam* 15 (1998), [http://www.verenigingrimo.nl/wp/wp-content/uploads/recht15\\_mayer.pdf](http://www.verenigingrimo.nl/wp/wp-content/uploads/recht15_mayer.pdf), 25-45.

46 Ibid.

47 "About Musawah," Musawah, <http://www.musawah.org/about-musawah>

48 John Hursh, "Advancing Women's Rights Through Islamic Law: The Example of Morocco," *Berkeley Journal of Gender, Law & Justice* (September 29, 2012): 257.

49 Maulana Wahiduddin Khan, "Blasphemy and The Islamic Way," *Times of India*, January 10, 2011, <http://www.cpsglobal.org/content/blasphemy-and-islamic-way>. See also Khan's response to violent protests against Salman Rushdie: Maulana Wahiduddin Khan, "A Conversation With: Maulana Wahiduddin Khan," *New York Times*, January 27, 2012, <https://india.blogs.nytimes.com/2012/01/27/a-conversation-with-maulana-w-khan/>.