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REFRACTIONS THROUGH THE SECULAR:
ISLAM, HUMAN RIGHTS AND UNIVERSALITY

by

ZARA KHAN

A dissertation submitted to the Graduate Faculty in Political Science in partial fulfillment of the requirements for the degree of Doctor of Philosophy, The City University of New York
2016

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Islam, Human Rights and Universality

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This manuscript has been read and accepted for the Graduate Faculty in Political Science in satisfaction of the dissertation requirement for the degree of Doctor of Philosophy.

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ABSTRACT

Refractions Through the Secular:
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Zara Khan

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Universal human rights (HR) are often theorized as philosophically neutral. Because they do not espouse any particular theory of the human being, it is argued, they can be reasonably appropriated by all. In this thesis, I explore HR's universality claim, by focusing on the discourse's secular foundation. In the universal human right to freedom of religion, I find a distinctly modern grammar of 'religion,' one that separates 'religion' from politics and power, law from morality, and the public and private realms. The modern concept of religion also espouses a secular theory of the human, insofar as the human is defined as morally autonomous and self-sovereign.

To test my critique of human rights' universality claims vis-à-vis their secularity, I survey a number of theoretical engagements with human rights discourse from contemporary Muslim scholars. Positions in this literature range from full endorsement of the philosophical and moral foundations of HR, to trenchant critiques of their secular bases. I propose the Qur'anic term *din* as a conceptual alternative to 'religion' for understanding the tremendous variation in contemporary Islamic political thought on human rights. The absence of consensus among reasoned Muslim arguments about human rights significantly challenges HR's universality claims.

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Chapter 1: Introduction: The Rationality of Traditions

In the late evening of June 12, 2016, a twenty-nine year old man opened fire in a gay nightclub in Orlando, Florida. After several hours of deadly violence and a police standoff, Omar Mateen left forty-nine people dead and fifty-three more injured. In a phone call to 911 in the immediate aftermath, the perpetrator pledged allegiance to ISIL. The FBI ruled the event an act of terrorism and a hate crime.[1]

While the country and the world reeled from the massacre and as communities came together to mourn, make sense and comfort one another, a number of formidable and familiar political tensions rose to the surface, albeit in novel combinations. Questions such as: *Why do they [Muslims] hate us?; What resources can defeat homophobia?; Why aren't there stricter gun control laws to prevent guns from getting into the hands of the likes of Mateen; How many more mass shootings?; Can immigration restrictions prevent Islamic extremism from attacking on American soil?;* and *how can we reaffirm that Islamophobia is not the answer?* flooded news and social media, workplaces, schools, and faith and community groups.

As vigils were held across the country, American responses to the Orlando shooting covered a wide political spectrum. Islamophobic presidential hopeful Donald Trump immediately issued a statement amounting to *I told you so*;[2] his opportune rival Hillary Clinton, who changed her views on homosexuality only recently,[3] issued a statement of support for

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[1] See Lizette Alvarez and Richard Perez-Pena, "Orlando Gunman Attacks Gay Nightclub, Leaving 50 Dead." *The New York Times*, June 12, 2016. Avail: http://www.nytimes.com/2016/06/13/us/orlando-nightclub-shooting.html?_r=0. Accessed July 1, 2016.

[2] Trump tweeted "What has happened in Orlando is just the beginning. Our leadership is weak and ineffective. I called it and asked for the ban. Must be tough". Avail: https://twitter.com/realdonaldtrump/status/742096033207844864. Accessed July 1, 2016.

[3] Clinton opposed gay marriage as late as 2013. See Conor Friedersford, "Hillary Clinton's Gay-Marriage Problem." *The Atlantic*, June 13, 2014. Avail: http://www.theatlantic.com/politics/archive/2014/06/hillary-clintons-gay-marriage-problem/372717/. Accessed July 1, 2016.

America's LGBTQ community.[4] A homophobic Baptist pastor bemoaned that Mateen 'didn't finish the job.'[5] Many insisted that the principle problem is America's gun violence writ large.[6] Mosques and Muslim community groups issued statements of condolence, held vigils and conducted blood drives.[7] LGBTQ communities came out against the scapegoating of Muslims, as the tragedy brought Muslim and LGBTQ communities together (many for the first time) to jointly denounce homophobia and Islamophobia.[8]

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[4] Clinton tweeted "You have millions of allies who will always have your back. I am one of them." June 13, 2016. She subsequently tweeted, "Gay rights are human rights and human rights are gay rights. Being LGBT does not make you less human." June 19, 2016. Avail: https://twitter.com/HillaryClinton. Accessed July 1, 2016.

[5] Pastor Roger Jimenez of Verity Baptist Church in Sacramento, California said "I'm kind of upset he didn't finish the job — because these people are predators," Jimenez said. "Are you sad that 50 pedophiles were killed today? Um, no. I think that's great. I think that helps society. I think Orlando, Fla., is a little safer tonight." See Tobias Salinger, "Church whose pastor celebrated Orlando shooting to lose lease." *Daily News*, June 21, 2016. Avail: http://www.nydailynews.com/news/national/church-pastor-celebrated-orlando-shooting-lose-lease-article-1.2682475. Accessed July 1, 2016.

[6] See "The state of gun violence in the US, explained in 18 charts." *Vox*, February 22, 2016. Avail: https://youtu.be/bX4qUsgHa4Y. Accessed June 15, 2016. See also Zachary Crockett, "The Orlando massacre was one of 43 shootings yesterday." *Vox*, June 13, 2016. Avail: http://www.vox.com/2016/6/13/11923290/orlando-shooting-gun-violence-us. Accessed July 1, 2016.

[7] See Shanika Gunaratna, "Muslim Americans rush to condemn Orlando massacre." *CBS News,* June 13, 2016. Avail: http://www.cbsnews.com/news/orlando-shooting-pulse-nightclub-muslims-condemn-attack/. Accessed June 30, 2016; Kristina Cooke and Idrees Ali, "Muslim leaders condemn Florida massacre, brace for backlash." *Reuters,* June 13, 2016. Avail: http://www.reuters.com/article/us-florida-shooting-mosques-idUSKCN0YZ2K6. Accessed June 30, 2016; Carlos Lozano, "Several vigils are planned around Southern California for the Orlando shooting victims." *Los Angeles Times*, June 12, 2016. Avail: http://www.latimes.com/local/lanow/la-me-ln-vigils-20160612-snap-story.html. Accessed June 30, 2016; Sean Mooney, "Tucson mosque condemns shootings in Orlando." *KVOA*, June 13, 2016. Avail: http://www.kvoa.com/story/32205011/tucson-mosque-condemns-shootings-in-orlando. Accessed June 30, 2016; Niraj Warikoo, "Metro Detroit Muslims strongly condemn Orlando shooting." *Detroit Free Press (USA Today),* June 12, 2016. Avail: http://www.kvoa.com/story/32205011/tucson-mosque-condemns-shootings-in-orlando. Accessed June 30, 2016; Samantha Galvez, "Harrisburg mosque holds prayer vigil for Orlando victims." *WHTM-TV*, June 13, 2016. Avail: http://abc27.com/2016/06/13/harrisburg-mosque-holds-prayer-vigil-for-orlando-victims/. Accessed June 30, 2016; Whitney Leaming, "Orlando Muslims turn to prayer after shooting puts community 'on edge'." *The Washington Post*, June 13, 2016. Avail: https://www.washingtonpost.com/video/national/orlando-muslims-turn-to-prayer-after-shooting-puts-community-on-edge/2016/06/13/9c1c8aec-3134-11e6-ab9d-1da2b0f24f93_video.html. Accessed June 30, 2016; and Paradis Afshar and Michael Seiden, "Muslim community condemns Orlando attack, calls for blood donations." *WPLG*, June 13, 2016. Avail: http://www.local10.com/news/muslim-community-condemns-orlando-attack-calls-for-blood-donations. Accessed June 30, 2016.

[8] See Geoffrey Vendeville, "Muslim and LGBTQ communities stand together against hatred and prejudice after Orlando shooting." *Toronto Star*, June 26, 2016. Avail: https://www.thestar.com/news/gta/2016/06/26/muslim-and-lgbtq-communities-stand-together-against-hatred-and-prejudice-after-orlando-shooting.html. Accessed: June 27, 2016; Eman Idil Bare, "Muslim community joins Regina pride parade for 1st time." CBS News, June 25, 2016. Avail: http://www.cbc.ca/beta/news/canada/saskatchewan/muslim-community-joins-regina-pride-parade-1.3653094. Accessed June 27, 2016; and Jenna DeAngelis, "Muslim and LGBT community hold vigil for

I am especially interested in the variety of Muslim responses to the Orlando shooting for what these reveal about the Islamic tradition's current negotiations and developments in liberal socio-political ground. Afroz Ali, founding president of the Sydney-based Al-Ghazzali Centre for Islamic Sciences and Human Development, contextualizes the Orlando shooting in America's epidemic of mass shootings:

> "the massacre at the Pulse nightclub in Orlando represents [the] 173rd mass shooting by the 163rd day of 2016. And this is not just a bad year: there have been 994 mass shootings in 1004 days ¬ [that's] less than three years. Nearly one mass shooting per day. Since 1775, 1.2 million Americans have been killed in war, whereas 1.6 million have been killed domestically by guns since 1963. The fact is, we know more about the United States' gun problems than we know about what motivated Omar Mateen to kill 49 individuals from the LGBTI community who were partying at the Pulse nightclub on 12 June."[9]

Hamza Yusuf, president of the first Muslim liberal arts college in the United States (Zaytuna College, CA) and member of ISIS' kill-list, also points to our culture of violence. Yusuf had been googled by Mateen several days before the attack. He blames the violence in culture that attracts young men to the scourges of war, whether in video games, ISIS recruiting videos, or as signaled in Mateen's attraction to law enforcement and prison correction. He also points to the internet's role in "spreading the memes of mayhem to malleable young minds:"[10]

> "But in the chaotic tenor of our current culture, we lack an understanding the ancients deemed self-evident: the need for what the Japanese called *bushido*, the Arabs called *futuwwa*, and what we in the West once called *paideia* — a type of chivalrous education for young men, where they were challenged to 'tame the savageness of man and make gentle the life of the world,' as Aeschylus put it. This is what we lack. Youthful vigor should be channeled to engage in study of the normative Islamic tradition with an emphasis on the tools of learning. With knowledge to ground them, they can face the complexities and challenges of our time with wisdom, not rage. I wish Omar had called me; I like to think I could have dissuaded him or advised him to seek professional help, or at least helped him channel his anger and frustration into something productive and meaningful. Instead, surfing the Internet, he found a crypt full of contempt and hate that allowed him to clothe his naked aggression in a coat of religiosity."[11]

Orlando victims in Hartford." *WTIC-TV,* June 12, 2016. Avail: http://fox61.com/2016/06/12/muslim-and-lgbt-community-hold-vigil-for-orlando-victims-in-hartford/. Accessed June 30, 2016.

[9] See Afroz Ali, Opinion: "Guns, Gays and Muslims: Reflections after Orlando." Australian Broadcasting Corporation, Religion and Ethics, 20 Jun 2016.
Avail: http://www.abc.net.au/religion/articles/2016/06/20/4485499.htm. Accessed June 25, 2016.

[10] Hamza Yusuf, "The Orlando shooter Googled my name. I wish he had reached out to me." *Washington Post*, In Theory, June 24, 2016. Avail: https://www.washingtonpost.com/news/in-theory/wp/2016/06/24/the-orlando-shooter-googled-my-name-i-wish-he-had-reached-out-to-me/. Accessed June 25, 2016.

[11] Ibid.

But while the Muslim position on the Orlando shooting as murderous rampage is unanimously condemnatory, the picture is less clear with regard to the politics of sexual freedom that the occurrence brings up. Unlike Yusuf, who preaches a non-judgmental, non-interventionist stance with regard to people's life choices but who cannot from a traditionalist perspective condone homosexuality,[12] some Muslims responded to the Orlando shooting with equal parts of condolence and critique of Muslim homophobia. Junaid Jahangir, a regular contributor to the Huffington Post Canada, has authored many opinion pieces over the last several years dealing with Muslim homophobia. His staunch critiques of homophobia in the Muslim community can be found in such articles as: "Queer Muslims Get Straight Respect," "There is No Place for Homophobia in Islam," "Queer Muslims Deserve More Than Scriptural Zealotry,", "One Imam Teaching Homophobia Does Not Speak for All Muslims," "Homophobic Muslims Need to Grow Up," "Gay Muslim Men Shouldn't Be Pressured into Heterosexual Marriages," "Conservative Muslims Harm Themselves Through Heterosexist Outbursts," and "Straight Muslim Allies Must Work With LGBT Muslim Activists."[13] In a similar vein, gay Muslim activist and contributor to *Huffington Post Queer Voices* and *Patheos* Omar Sarwar, criticizes the American Muslim community for tolerating homophobia.[14]

After Orlando, especially strong allegations of homophobia were made against a statement by Abdullah bin Hamid Ali, professor of Islamic Law at Zaytuna College. Prominent Muslim American feminists Jerusha Tanner Lamptey and Amina Wadud conveyed dismay at

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[12] See Yusuf's interview with Fareed Zakaria on CNN, June 28, 2016. Avail: http://www.cnn.com/videos/tv/2016/06/28/exp-gps-0626-hamza.cnn. Transcript excerpts from another CNN interview, in which Yusuf is pressed to elaborate his views on homosexuality and gay Muslims, avail: http://blog.zaytuna.edu/a-joint-muslim-statement-on-the-carnage-in-orlando. Accessed June 27, 2016.

[13] See *The Huffington Post,* Canada Living. Avail: http://www.huffingtonpost.ca/news/muslim-homophobia/. Accessed June 25, 2016.

[14] See Omar Sarwar, "American Muslims Must Address Religiously-Sanctioned Homophobia." *The Advocate*, June 16, 2016. Avail: http://www.advocate.com/commentary/2016/6/16/american-muslims-must-address-religiously-sanctioned-homophobia. Accessed: June 27, 2016.

Ali's piece, entitled "The Homosexual Challenge to Muslim Ethics."[15] Ali sets out to ask whether there is a biological basis for homosexual tendencies, and if so, what this means for Islamic moral teachings. He states that feminist, liberation-theological and gay rights attacks on the Catholic Church are rooted in a shared critique of "notions of normalcy and nature as espoused by the historical patriarchs of the Church."[16] Islam, which also advances notions of human nature and normalcy, prohibits homosexuality:

> "There is no doubt that the Islamic law deems sodomy and other sexual acts between people of the same gender to be unlawful and utterly depraved — for Islam recommended the severest of punishments for public indecency of all sorts, including bestiality, fornication and adultery."[17]

Behaviors suggestive of a homosexual lifestyle, such as cross-dressing or transgenderism, are also harshly opposed.[18]

Further critique can be made of Ali's piece on account of his citing a researcher from NARTH, the National Association for Research and Therapy of Homosexuality. NARTH promotes and provides 'therapy' for those wishing to diminish their homosexuality and develop their heterosexuality.[19] NARTH and its 'ex-gay' symposiums are harshly criticized for being homophobic; Ali's citation of NARTH researcher Julie C. Harren can color his work as homophobic, even though his reference and her work advocate that homosexuality is rooted in complex, developmental processes that cannot be fairly represented in the biology vs. choice framing.

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[15] See Abdullah bin Hamid Ali, "The Homosexual Challenge to Muslim Ethics." *Lamppost Educational Initiative*. Avail: http://www.lamppostproductions.com/abdullah-bin-hamid-ali/. Accessed June 27, 2016. See Amina Wadud's facebook post strongly criticizing Ali's piece, including "At least they are coming back out of their closets and NOT pretending they give a shit…" See also Jerusha Tanner Lamptey's comment, "gross" in the comment section below the post. Both dated June 17, 2016. Accessed June 25, 2016.
Avail: https://www.facebook.com/permalink.php?story_fbid=1819740018253845&id=1542191152675401.

[16] Ali, "The Homosexual Challenge," 7.

[17] Ibid, 12.

[18] Ibid., 17.

[19] NARTH was founded in 1992, in reaction to the American Psychological Association's 1972 decision to remove homosexuality from its list of mental disorders. See http://www.therapeuticchoice.com/narth-institute, and https://www.truthwinsout.org/narth/.

But while Ali's piece can be read as homophobic, or at least heterosexist, there is another way of reading it that is not so. He acknowledges that homosexuality has always existed in every society.[20] In showing how gender obscurity and outwardly gay mannerisms were traditionally understood by Muslims, Ali points out the questions legalists asked and answered regarding pseudohermaphrodites.[21] The existence of these discussions:

> "is extremely revealing, because it has become a common understanding among non-Muslims and many Muslims alike that Islam never envisioned accommodating people of obscured gender or those who outwardly appear to be gay in their mannerisms. The very existence of such discussions, however, manifests the dynamism of both Muslim jurists and Islamic jurisprudence to deal with new social challenges and find workable solutions for them."[22]

Furthermore, canonical scholars differentiated between innate ("a natural disposition") and choice-based homosexual tendencies.[23] The former having been created by God is free from blame, censure, sin or punishment. The latter is pretentious, and blameworthy.

Ali points to the high-level of sophistication among classical Muslim scholars as indicative of a functional secularity with regard to social life, and this dynamism allowed them "to find ways to incorporate every living soul into life in Muslim society."[24] Ali enjoins Muslims to have more empathy and less prejudgment in engaging homosexuality as a legal norm. When differences can't be reconciled, tolerance is the enlightened response.[25] The difficulty lies in the belief held by Muslims and others "that 'secular' republics are justified in regulating the private space of its citizens."[26]

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[20] Ali, "The Homosexual Challenge," 8.

[21] These included: "the ways to determine the true gender of hermaphrodites, their designated prayer locations in cases when the gender remains obscured, the dangers involved in allowing a recovering sodomite to lead the congregational prayers, and the appropriate percentages to be allocated to them upon the demise of their family members." Ibid., 12.

[22] Ibid., 11-12.

[23] Ali cites the scholarship of At-Tabari (10th century), Al-Nawawi (thirteenth century) and Al-Asqalani (15th century). Ibid., 17-19.

[24] Ibid., 19.

[25] Ibid., 20.

[26] Ibid.

Jonathan Brown, chair and professor of Islamic civilization in the School of Foreign Service at Georgetown University and Director of the Alwaleed bin Talal Center for Muslim Christian Understanding, echoes a similar response to the Orlando shooting and its aftermath renewed questioning of Islam's stance on homosexuality. Brown has studied and researched across the Muslim world and authored several works on prophetic hadith, the Prophet Muhammad's legacy, Islamic law, Salafism, Sufism, Arabic lexical theory and pre-Islamic poetry. Brown states that same-sex attraction and activity has not been unusual in Muslim societies. Neither Islamic discourse nor Muslim societies conceived of homosexuality as an identity, but did acknowledge occurrence of same-sex attraction, often for 'natural' reasons. Rather, specific acts, such as sodomy, appear as sins in the shari'a.[27] Historically, there was "a widespread cultural acceptance of same-sex attraction in Muslim societies."[28] In premodern Islamic civilization, says Brown, the "guardians of the Shariah (judges, concerned scholars, market police, etc.) turned a blind eye to the private lives of the populace."[29]

Furthermore, the Qur'anic punishment regarding sodomy (which the legists classified as an extension of fornication and adultery) was/is almost impossible to enforce:

> "The Quran ordains that the punishment for fornication is 100 lashes, but it also requires four witnesses who saw penetration occur to prove it (the Quran adds that, if someone makes this accusation without four witnesses, s/he is punished with 80 lashes for slander) (Quran 24:2-4)."[30]

The jurists, following a prophetic enjoinder, always sought leniency by way of procedural safeguards:

> "…in a commandment that has been central to the application of justice in Islamic history, the Prophet ordered judges to "Ward off the Hudud [crime punishable through clear Qur'anic or prophetic speech texts] from the Muslims as much as you can, and if there is a way out for [the accused] then let him go. For it is better for the authority to err in mercy than to err in

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[27] See Jonathan Brown, "The Shariah, Homosexuality & Safeguarding Each Other's Rights in a Pluralist Society." June 18, 2016. Avail: http://almadinainstitute.org/blog/the-shariah-homosexuality-safeguarding-each-others-rights-in-a-pluralist-so/.

[28] Ibid.

[29] Ibid.

[30] Ibid.

> punishment." Muslim jurists encapsulated this rule in their maxim 'Ward off the Hudud by ambiguities (*shubuhat*),' compiling vast lists of all the procedural technicalities by which Hudud punishments could be set aside."[31]

Brown says that it is important to remember that one's personal morality is not the law of the land. In practice, Muslims in America accept and are willing to live amongst a plurality of lifestyles. There are plenty of aspects of American cultural practice that goes against Muslim beliefs – drinking alcohol, adultery and fornication, eating pork, etc. But Muslim don't seek to apply the shari'a to their neighbors. And this is hardly surprising given Islamic history:

> "In classical Islamic civilization, Muslim authorities allowed Zoroastrians to engage in brother-sister marriage, Jews to charge interest, and Christians to cultivate wine and pigs. Muslim judges could even hear such cases brought by non-Muslim litigants by applying the laws of their respective communities instead of the Shariah."[32]

While Brown shares much with Ali by way of how American Muslims should embody ethical norms in a liberal political culture, the two differ in one important way. Both take the traditionalist Islamic position opposing homosexual acts and transgender behavior, but where Brown supports civil marriages for same-sex couples because "every religious community" has the right "to advocate for its own vision of sexual propriety,"[33] Ali would not advocate same-sex marriage, and, for consistency's sake, would concede that the government also withdraw legal and financial benefits for heterosexual marriages.[34]

What do such diverse Muslim arguments about homosexuality in the wake of the Orlando shooting (an event discussed in the public intellectual space in conjunction with discourses of terrorism, religious extremism, immigration, etc.), reveal about: the secular liberal public space? Universal norms? Tradition-rooted arguments pertaining to human rights? Historian and feminist Joan Wallach Scott, who has authored and edited over seventy works on French history, the history of gender and intellectual history, has theorized that secularism structures how we think about religion, and can lead to cultural assaults. In *The Politics of the Veil*, Scott argues that the controversial Muslim headscarf ban in France in 2005 was part of a larger project of protecting the nation, where Muslim and Arab identity (collapsed into one) has historically been France's threatening 'other.'[35] French nationalist identity was constructed on a sense of universality, one which is threatened by hybridity and the public display of difference.[36]

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[31] Ibid.
[32] Ibid.
[33] Ibid.
[34] Ali, *Homosexual Challenge*, 20.

Judith Butler, gender theorist and philosopher who has authored over thirty works on feminism, gender, queer theory and performativity, supports the freedom norm but opposes how sexual freedom is coercively instrumentalized by states. Butler critiques how personal liberty and attitudes toward homosexuality are used to legitimate unfair immigration policies within a secular teleology that equates modernity with progressive sexual politics. [37] She explores how "hegemonic conceptions of progress define themselves over and against a premodern temporality that they produce for the purposes of their own self-legitimation."[38] Europe and the sphere of modernity is defined "as the privileged site where sexual radicalism can and does take place…[which] must be protected against the putative orthodoxies associated with new immigrant communities."[39]

For example, in the Netherlands' citizenship test, immigrants are asked to look at a picture of two men kissing, and are then asked if it is offensive, representative of personal liberties, and whether the applicant values open gay expression.[40] This protocol indicates that accepting homosexuality equals embracing modernity, and modernity equals sexual freedom, especially for gay people.[41] This causes a certain paradox to ensue, says Butler, "in which the coerced adoption of certain cultural norms becomes a requisite for entry into a polity that defines itself as the avatar of freedom."[42]

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[35] See Joan Wallach Scott, *The Politics of the Veil*. Princeton: Princeton University Press, 2007: 26-50.

[36] Ibid., 248.

[37] See Judith Butler, "Sexual Politics, Torture, and Secular Time." *British Journal of Sociology,* Vol . 59, No.1 (2008): 1-23.

[38] Ibid., 1.

[39] Ibid., 2.

[40] Ibid., 3.

Liberal freedoms rest on a hegemonic culture called modernity, says Butler.[43] She examines how this logic plays out in the torture chambers (i.e. Abu Ghraib and Guantanamo) in America's 'War on Terror.' There, "the scenes of sexual debasement and physical torture are part of the civilizing mission and, in particular, its efforts to seize absolute control over the construction of the subject of torture."[44] Butler sees in these relations of domination "a civilizational war…that casts the army as the more sexually progressive culture."[45] The army seeks to break down the prisoners' Muslim moral codes, which it constructs as premodern, subhuman, uncivilized. It affirms their status as such by performing sexually radical politics, i.e. homosexual and sexually open acts upon the prisoners. It is ironic, since the army is itself homophobic and misogynist:

> "Thus, we have to understand the torture as the actions of a homophobic institution against a population that is both constructed and targeted for its own shame about homosexuality; the actions of a misogynist institution against a population in which women are cast in roles bound by codes of honour and shame, and so not 'equal' in the way that women ostensibly are in the West."[46]

In everyday culture outside the torture chambers, when the norms of Islamic community are excluded because they are perceived as posing a threat to cultural, citizenship and humanization norms, the rationale for torturing those subjects is secured. For Butler, torture is a technique of modernization, not aberrant moments "but, rather, the cruel and spectacular logic of US imperial culture as it operates in the context of its current wars."[47]

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[41] Ibid.
[42] Ibid., 4.
[43] Ibid., 6.
[44] Ibid., 16.
[45] Ibid.
[46] Ibid., 17.

What these ruminations about the post-Orlando discursive terrain suggest is that the divide between a universal freedom norm and culturally Euro-American radical sexual politics is mitigated by secularism as epistemology and the variations on the theme of Muslim otherness. In this thesis I propose that universal human rights espouse a secular theory of the human being and operationalize a modern grammar of 'religion' that privatizes religion and serves discourses of othering. As such, universal human rights fit perfectly with certain historical traditions, but not all, i.e. human rights are *not* universal. Other than the secular as a field of power with institutional and discursive aspects and the modern definition of religion as proscribing traditional religious forms, my theoretical framework is built upon Alasdair MacIntyre's concept of the rationality of traditions. According to MacIntyre, rival accounts of justice and practical rationality may be irreconcilable by their very nature, and this, I argue, crumbles the universality claims of human rights. It is with this concept that I begin.

The Rationality of Traditions

Alasdair MacIntyre is a prominent contemporary moral and political philosopher. He is professor of philosophy at London Metropolitan University and the University of Notre Dame, and has authored and edited twenty-seven books on the history of philosophy and theology over a period spanning five decades. According to MacIntyre, who is often associated with communitarian philosophy alongside Michael Sandel, all rational enquiry takes place from within a tradition. A tradition:

> "is an argument extended through time in which certain fundamental agreements are defined and redefined in terms of two kinds of conflict: those with critics and enemies external to the tradition who reject all or at least key parts of those fundamental agreements, and those internal,

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[47] Ibid., 19.

> interpretative debates through which the meaning and rationale of the fundamental agreements come to be expressed and by whose progress a tradition is constituted."[48]

Such a definition of tradition accounts for both change over time (redress of inconsistencies, development of ideas, accommodation of new social realities, etc.) and continuity through it (fundamental agreements, key principles, the paradigmatic character or defining features of the tradition, etc.). Traditions order goods and generate values accordingly. What justice consists of and justificatory rationales are generated within a tradition. Traditions are marked by theorizing, and are always to some degree local. In addition to ordering goods, traditions also differ in "their catalogs of the virtues, in their conceptions of selfhood, and in their metaphysical cosmologies."[49]

MacInytre sketches the history of modern conceptions of justice and practical rationality, which he says are not part of:

> "a coherent way of thinking and judging, but one constructed out of an amalgam of social and cultural fragments inherited both from different traditions from which our culture was originally derived (Puritan, Catholic, Jewish) and from different stages in and aspects of the development of modernity (the French Enlightenment, the Scottish Enlightenment, nineteenth century economic liberalism, twentieth century political liberalism)."[50]

Without repeating his entire account, I will discuss two major stages in the development of justice and practical rationality – the Homeric/Platonic/Aristotelian and Augustinian/Thomist – to show contrast with modern renditions and establish that tradition matters and is conceptually determinative.

In the Homeric worldview, the universe was thought to be governed by a single order that structured nature and society alike. To enact *dike*, or justice, was to act according to *themis*, or that which is ordained by order.[51] Goodness (*agathos*) and virtue/excellence (*arête*) serve the dual function of fulfilling one's role and preserving order. In such a scheme, one's self-interest is not distinguishable from the interests of others.[52]

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[48] Alasdair MacIntyre, *Whose Justice? Which Rationality?* Notre Dame: University of Notre Dame Press, 1988: 12.
[49] Ibid., 349.
[50] Ibid., 1-2.
[51] Ibid., 14.

Contrast can be noted with modern reasoning's division of how nature and society are thought to be ordered, the division (antagonistic in some schools) between one's self interests and others' interests, and in the premises for action beginning with 'I want' rather than 'I ought to…in accordance with order.' Homer's poems show how:

> "the structures of normal life are understood as a local expression of the order of the cosmos…So the institutionalization of justice at Athens is in a very clear sense taken to be the local expression of the justice of Zeus."[53]

In the post-Homeric inheritance of ancient Greece, the goods of effectiveness became distinct from the goods of excellence. The polis was to be site where both goods would be mitigate and maximized, and all the life activities that the ancient Greeks valued (i.e. warfare, athleticism, poetry, agriculture, rhetoric, art, mathematics, philosophy, etc.) would be integrated. Politics was to be the knowledge of how to achieve this task according to the best ordering:

> "The constitution of each particular *polis* could therefore be understood as the expression of a set of principles about how goods are to be ordered in a way of life."[54]

Conceptions of justice were always therefore local, generated by each polis. Where groups aiming at the goods of effectiveness prevailed, justice resulted from contract and negotiation; where the goods of excellence prospered, justice was an integrating concept positioning individuals within a broader web of social inter-relations united by common allegiance to good(s).[55]

Conceptions of virtues, who should rule and practical reasoning also differed between the goods of effectiveness and the goods of excellence. For example, according to the goods of excellence:

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[52] Ibid., 20.
[53] Ibid., 26.
[54] Ibid., 34.
[55] Ibid., 34-42.

> "one is educated in the specific form of activity aimed at achieving a specific good – as well as in what those goods are. By contrast, where the goods of cooperative effectiveness are concerned, no consideration counts as a reason except in respect of its actually motivating a person."[56]

This shows how differently justice and practical rationality can be conceptualized in different traditions, as in the opening scene of Plato's *Republic* in which various answers are given to the question *what is justice?* Thucydides' analysis of the wars between the Greek city-states and the Athenian bid for empire espoused that "justice was entirely at the service of effectiveness" with "no appeal beyond the realities of power."[57] In the *Republic*, Thrasymachus continues this view: only limitations in strength of the powerful compel them to enter into agreements with others and uphold some sort of justice. Glaucon's contribution is that justice is the result of the practical need for mutual protection and survival against one another's arms and interests.

But Plato answers both of these. He answers Thrasymachus' account of the ruler, which rests on *techne* (craft) as a skill-set based on means-ends generalizations derived from experience, with the view that:

> "no one is master of a *techne* who does not understand how and in what way the end which that specific *techne* serves is a good, and that understanding requires a knowledge of goods and good in general."[58]

He answers Glaucon by arguing that justice is worth having for its own sake.

Aristotle, according to MacIntyre, sought to finish Plato's work.[59] In *Politics* he made a compilation of constitutions:

> "in order to discover what form of constitution could be treated as the paradigm in relation to which all deviations from it could be classified in terms of the various types of misunderstanding and failure which they embody."[60]

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[56] Ibid., 45.

[57] Ibid., 66.

[58] Ibid., 70.

[59] Ibid., 85.

[60] Ibid., 91.

For Aristotle, the polis and the broader order of the cosmos provide the context for understanding justice and rationality.[61] The polis aimed not only at political goods, but at all human goods, the highest of which was contemplative understanding, or *theoria*.[62] The proponents of the goods of effectiveness, however, reasoned that rational action was essentially a cost-benefit analysis in the service of one's aims. For Aristotle, being virtuous was necessary for rational judgment and action.[63]

These virtues were to be cultivated by performing just acts. It is a dialectical movement between aiming at the good without fully knowing it, and learning it through the practice of right judgment and action.[64] Education plays an important role in enjoining *phronesis*, or practical intelligence, upon the younger citizens.[65]

Aristotle's views on both justice and practical rationality embedded these in the polis' tradition. Again we can note the contrast with the modern appraisal of these:

> "That one's rationality should be not merely supported by but partly constituted by one's membership in and integration into a social institution of some one particular type is a contention very much at odds with characteristically modern views of rationality."[66]

Aristotle's account of practical rationality maintained that aimed-at goods will only be genuinely good if they are derived from the *arche*, that well of fundamental principles from which practical reasoning draws.[67]

The second example from MacIntyre I present here is from the Augustinian and Thomist traditions of justice and rationality. The backdrop to Augustine's thought was comprised of

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[61] Ibid., 101-102.
[62] Ibid., 107.
[63] Ibid., 109.
[64] Ibid., 113-118.
[65] Ibid., 121.
[66] Ibid., 123.
[67] Ibid., 121.

Stoic, Hebrew and Pauline conceptions of universal humankind and natural law.[68] For him, to know justice is to know its form, which is present in the mind already and not learned from sense perception. To be just is to give to each what is owed, with the qualification that it is of utmost importance to love one another:

> "Everyone can discover within his or her own mind that timeless form or conception of justice which is the measure of right action…[but] the full intellectual apprehension of the form of justice is not by itself sufficient to generate right action."[69]

Since mental knowledge is not enough, love must be directed "toward that form is something which we are only able to achieve when our love is directed toward a life which perfectly embodies that form in its actions, the life of Jesus Christ."[70]

Augustine added a new element to understanding the genesis of action: the will. The will distinguishes between those actions moved by a love of God (which alone will be just) from those moved by pride and self-love (which will be unjust).[71] His theory of the will formed the basis of his political theory, such that justice "exists only in that republic which is the city of God, of which Christ is founder and in which Christ rules."[72] While for Plato and Aristotle, reason had its own ends and failure to act for one's good was a defect of either education or controlling the passions, for Augustine reason itself was moved by the will, which explained wrong choices even when knowledge was present and passions controlled.[73] Divine grace was of utmost for Augustine in guiding the will to good, but the will also had to assent to divine grace. Justice was important to Augustine's scheme, but humility was even more so and determinative of whether one's character would be just.[74]

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[68] Ibid., 147-152.
[69] Ibid., 154.
[70] Ibid.
[71] Ibid., 155.
[72] Ibid.
[73] Ibid.
[74] Ibid., 157.

St. Thomas Aquinas was trained in the classical Greek rationalist and Augustinian theological traditions. His own work aimed to integrate the two into one. In Aquinas' understanding, there is an ultimate truth that is a terminus for all understanding. Each individual has within him or her the capacity for right answers to act in accordance with it, but this is achieved by discovering first principles dialectically. But unlike some modern proponents of practical rationality – which require neither the existence of reality external to their web of beliefs such that truth is "nothing more than an idealization of the concept of warranted assertability,"[75] nor the virtuous life for perfecting rational action – Aquinas argued that "good practical reasoning cannot occur without some development of the moral virtues and that in turn cannot occur without education."[76]

For Aquinas, the precepts of natural law "are the expression of divine law as apprehended by human reason."[77] Aquinas' practical rationality is Aristotelian in general structure while integrating central themes of Augustine's psychology.[78] For him, religion is a moral virtue: "requiring of us devotion, prayer, adoration, sacrifice, and offerings in support of the institutions of religious observance…what we owe to God is accompanied by a duty to others; piety, for example, involves proper respect not only for God but also for parents, family, and patria and observance similarly requires respect for excellence in others."[79] Such a socially embedded concept of religious life differs significantly from the modern grammar of religion, which renders religious essentially a private matter (a point I elaborate in chapter 3).

MacIntyre's history of the ideas of justice and practical rationality as they developed and changed in various stages illustrates his thesis on the rationality of traditions. One of his claims is that liberalism, despite being born in opposition to tradition, is itself a tradition in the aforementioned sense. One of the key principles at the foundation of the liberal tradition is that traditional structures of authority are not determinative for rational enquiry. One of the Enlightenment's *central aspirations* was to pose *standards and methods of rational justification* such that *reason would replace authority*.[80] In this context, the liberal subject is defined as a morally autonomous and self-sovereign subject. The liberal tradition has produced a number of discourses of universality, including Kant's universal rationality theory and Hegel's universal history thesis, implying that all traditions will eventually arrive at the summit of liberal freedom. Universal human rights is one contemporary manifestation of this.

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[75] Ibid., 169.
[76] Ibid., 177.
[77] Ibid., 181.
[78] Ibid., 181.
[79] Ibid., 201-202.

Talal Asad, professor of anthropology at the City University of New York Graduate Center, has authored several books and scholarly articles on the anthropology of religion, secularism and knowledge/power. His areas of specialization include postcolonialism, Christianity and Islam. Asad's recent theorizing on traditions compliments MacIntyre's definition. He characterizes traditions in two ways: 1) as theoretical locations for questioning authority, time, language use and embodiment; and 2) as empirical arrangements of everyday life connecting discursivity and materiality.[81] The discursive aspect of tradition is the language through which learning and relearning occurs, and is something passed down. Embodied practices cultivate sensibilities that can change the self (i.e. emotions, language, dispositions) and the environment.[82] What is learnt, says Asad, is not a doctrine but a mode of being, a capacity for experiencing that can't be renounced. Like MacIntyre, Asad affirms that disagreements are a constitutive part of traditions. In theory, traditions can accommodate rupture as well as continuity. There are entries and exits.[83]

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[80] Ibid., 6.

[81] Talal Asad, "Thinking About Tradition, Religion and Politics in Egypt Today." *Critical Inquiry,* University of Chicago: 2014. Available at: http://criticalinquiry.uchicago.edu/thinking_about_tradition_religion_and_politics_in_egypt_today/. Accessed: May 1, 2015.

[82] Ibid. See also Saba Mahmood, *Politics of Piety: The Islamic Revival and the Feminist Subject*. Princeton: Princeton University Press, 2005. Mahmood's famous treatment of the female pietists of Egypt's Islamic revival operationalizes this exact rendering of 'tradition,' as she demonstrates that the subjects' agentive motivations are

MacIntyre claims that the tradition of cosmopolitan modernity postulates a false notion:

> "the confident belief that all cultural phenomena must be potentially translucent to understanding, that all texts must be capable of being translated into the language which the adherents of modernity speak to each other."[84]

This belief in *universal translatability*, says MacIntyre, cannot register the fact that rival accounts of practical reasoning and justice emerge from within different conceptual frameworks, each with their own modes of argument. There is, in other words, no "neutral court of appeal."[85] Various attempts to establish a tradition-independent moral standpoint have all failed. This, precisely, "was and is the project of modern liberal, individualist society."[86] MacIntyre says the interminable debate over what the principles of shared rationality actually are has itself transformed liberalism into a tradition. This tradition has produced universal human rights, and in this thesis I will explore the ways in which Islamic arguments about human rights provincialize the discourse, i.e. unsettle its universality claims.

Statement of the Argument

Having argued in this introduction that all enquiry is rooted in a tradition, and therefore in a set of agreements over the good, values, the human being, etc., I argue in the following

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embodied and performed through the vehicle of piety and the pedagogy of religious instruction. I discuss her work in detail in chapter 5, "Muslim Approaches to Human Rights II: Islam as *Din*."

[83] Asad, "Thinking About…". See also Sherman A. Jackson, *Islam and the Blackamerican: Looking Toward the Third Resurrection*. New York: Oxford University Press, 2005. Jackson argues, in evaluating the inferior position afforded to Blackamerican Muslims by their immigrant counterparts (Arab and South Asian migrant Muslims to the U.S.), that failure to transfer religious authority in a timely fashion has resulted in the reification of Immigrant Islam's 'false universals.'

[84] MacIntyre (1988), 327.

[85] Ibid., 333.

[86] Ibid., 335.

chapters of my thesis that: 1) the concept of 'religion' at play in universal human rights inscribes a secular political negotiation; 2) contemporary Muslim political thought in the Western public intellectual space interacts with the freedom of religion norm in multiple ways, generating no consensus around argued Muslim commitments to human rights; and 3) as such, human rights are not universal.

In chapter 2, "Human Rights in Historical Perspective and Today," I survey the history of the freedom of religion norm as it travelled from Western European hostility towards the perceived secularist communist onslaught against Christian democracy, to contemporary European nationalist policies whose secular public space is offended by Muslim communities. I survey human rights theorists from three prominent approaches today – a moral autonomy approach, a Rawlsian minimal-standards approach, and a human dignity approach – and show that secularist universalism is a constant assumption. Human rights espouses what some have called 'liberal anti-pluralism,' a false universalism that cannot accommodate a wide range of difference but instead announces the authority of a global public law. I show how the language of freedom of religion in international rights covenants subjects the freedom to the discretionary power of the state – a secular negotiation.

In chapter 3, "Religion, the Secular and *Din*," I show how the universal human right of freedom of religion employs a secular grammar of 'religion.' I present arguments by Jonathan Smith, William Cavanaugh and Tomoko Masuzawa that the concept 'religion' is a modern invention, one that does not correspond to premodern or non-western understandings of *religio* (or *din;* see below), enables comparative religion and othering, and is implicated in imperial violence. I contend that the secular is a field of power with discursive and institutional aspects, as Talal Asad has argued. It enables a number of (historical, valued) binaries, i.e.

religion/secular, law/morality and public/private. These binaries, as well as secular grammars of concepts like ‘the social,’ ‘agency,’ and time/space, provide secular substance to human rights as a knowledge frame.

In the final part of chapter 3 I present a textual analysis of a Qur’anic concept – *din* – which is the descriptive noun that identifies Islam in the Muslim sacred text. The etymological web surrounding *din* within the broader epistemic system of the Qur’an provides a conceptual alternative to ‘religion’ for understanding human rights pertaining to religious life. *Din* is a concept being brought into the analysis of human rights universality from the Islamic tradition. In chapters 4 and 5, I test my critique of the provinciality of human rights vis-à-vis their secular rendition of ‘religion’ by surveying a wide spectrum of Muslim political thought in the Western public intellectual debate. The textual analysis of *din* provides necessary insight into some of the prior commitments adherents of the Islamic tradition bring to engagements with universal human rights. Through a deep conceptual survey of ten Muslim political thinkers on human rights, I show various configurations of how Islam, as either ‘religion’ or *din*, can fit with the universal human right of freedom of religion. What congruences can be articulated? What contradictions are generated?

Without aiming to forge binaries, I find that Western Muslim thinkers (i.e. those who live in Europe or North America and who write in English or else are widely available in translation in American academia) can be broadly mapped along two tendencies:

1. In chapter 4, “Muslim Approaches to Human Rights I: Islam as Religion in the Modern Sense,” I present thinkers who pose Islam as a religion in the modern sense. These thinkers promote full-scale adoption of universal human rights. People like Abdullahi An-Na’im, Abdolkarim Saroush, Fatima Mernissi, Abdulaziz Sachedina and Jerusha

Tanner Lamptey all endorse universal human rights. To differing degrees, they share the following values:

- the secular state is the best protector of the freedom of religion;
- rationality enjoys a privileged position in epistemology, and other ways of knowing should be subjected to it;
- the Islamic tradition should undergo theological, epistemological and legal reform according to universally rational human rights norms;
- traditional authoritative structures such as the *madhdhaahib* (schools of jurisprudence and their methodologies) should be cleared away as inherited, antiquated accretions;
- the primary Islamic texts – and in these they tend to favor the Qur'an over the prophetic example – should be reinterpreted from a clean slate, based again on universally rational HR norms;
- gender equality should be sought and achieved on the pattern of secular liberalism; and
- democracy is the most desirable political form, including for Muslim-majority nation-states.

2. In chapter 5, "Muslim Approaches to Human Rights II: Islam as *Din,*" I present arguments by thinkers who pose Islam as *other than* religion in the modern sense, i.e. as *din* (as explained in chapter 3). These thinkers engage human rights discourse more critically; they *do not* call for the wholesale adoption of human rights, but bring important challenges to its assumptions. People like Sherman Jackson, Naquib Al-Attas, Saba Mahmood, Abdulhakim Murad (also known as Timothy Winter) and Katherine Bullock present the following challenges:

- the liberal state espouses a false universalism;
- democracy, like all human institutions, should be neither automatically shunned nor adopted, but should be put through the “sieve” of scriptural principles;
- rationality is only one way of knowing among the human faculties of knowledge, and is neither free-standing nor the most important;
- liberal feminism with its liberatory/tradition-subverting definition of agency cannot compute other forms of female agency that Muslim women may desire to embody and enact;
- gender equality from a secular point of view pertains only to material social arrangements while gender equality in a more traditionalist perspective is ‘more meaningful’ and pertains to opportunities for God-consciousness and salvation. It is difficult to reconcile these two approaches since their theories of the human being are completely different (naturalist in the first, embodied spiritual in the second); and
- the inherited *madhdhaahib* and theological schools should not be wiped clean away, but themselves contain (like all traditions do, according to Alasdair MacIntyre and Talal Asad’s theories of ‘tradition’) the mechanisms for necessary renewal and change over time.

I examine these ten Muslim political thinkers’ treatments of Islamic human rights themes like *fitra*, the equality of women and men and the place of rationality in epistemology to gauge the limits and possibilities of human rights universality among Muslim settings. Since the Muslim political theorists I survey do not show a consensus on whether Islam is a religion in the modern sense or is better conceived as the conceptual alternative *din*, and conclude in various degrees of endorsement and problematization of human rights, freedom of religion and the broader human rights discourse that announces it may be less than universal after all.

In my concluding chapter, I explore the ways in which the emergent 'postsecular' turn can redress the false universality claims of human rights. I ask the question: what can postsecular feminist theory potentially contribute to the current state of the Islam-and-human-rights discourse in the Western public intellectual debate? What can a postsecular feminism that is both liberatory in its promise and attuned to secular hegemony offer a discourse that, in many ways, attempts to force the square peg of Islam into the round hole of human rights? I return full circle to MacIntyre's rationality-of-traditions approach. Incorporating this approach may have the effect of humbling and critically opening postsecular feminist theorists in their subject/object or intersubjective relations with non-secular women.

There is no consensus among contemporary Muslim political engagements with human rights as to whether Islam is a religion in the modern, privatized, disembodied (apolitical) sense or if it is something more comprehensive, social and rooted in the public good, like *din.* As such, applying a 'traditions' approach to encountering and interpreting Muslim commitments would help open up space for non-secular renditions (i.e. a *truer* respect for difference). Macalester College professor of Political Science David Blaney and Naeem Inayatullah, Ithaca College professor of International Relations and Economic History, have pointed out that even when some International Relations theorists temper cosmopolitanism with 'humane governance' and grassroots/'from below' voices, secular liberal values and norms are still positioned authoritatively:

> "Instead of something that emerges in a dialogical process and whose direction cannot be forecast readily, these world order values are taken as given. These values are then used to distinguish

> those agents fostering civility from those whose incivility must be purged to create a global order."[87]

Cosmopolitanism and human rights, according to these authors, perpetuate neo-modernization theory and an inability to deal with difference. Revisiting MacIntyre's insights from his rationality-of-traditions approach may contribute to an acknowledgement that human rights are less than universal, which in turn may improve and enrich the discourse on human rights and Islam and make more widely valuable and acceptable the international currency of human rights as a site of protection and liberation from political and economic excesses of various kinds.

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[87] David L Blaney and Naeem Inayatullah, "Neo-Modernization? IR and the Inner Life of Modernization Theory." *European Journal of International Relations*, Vol. 8(1), 2002: 103-137; 128.

Chapter 2: Human Rights in Historical Perspective and Today

Human rights discourse claims universal validity and applicability. The emergence of the Universal Declaration on Human Rights (UDHR) in 1948 is normally celebrated as a landmark accomplishment representing international solidarity. Jack Donnelly, professor of international relations and the philosophy of social science at the University of Denver, has authored several books on universal human rights. Donnelly argues that the UDHR model:

> "is rooted in an attractive moral vision of human beings as equal and autonomous agents living in states that treat each citizen with equal concern and respect…a certain kind of liberalism provides, if not the best, then at least a good justification for this system of rights."[1]

Donnelly states that the UDHR represents a consensus, despite the fact of "the considerable, at times profound, philosophical differences that exist between (and within) civilizations, cultures, and societies in the contemporary world."[2]

The immediate context of the emergence of the United Nations and the *Universal Declaration* was the Second World War. These institutions aimed to prevent future generations from the "scourge of war" which had dealt "untold sorrow" upon mankind.[3] By the criteria of the "conscience of mankind," the United Nations aimed to suppress "acts of aggression" and to affirm the equality of small and large nations.[4] To this end, the drafters of the UDHR aimed at a religiously neutral, philosophically 'foundationless' framework in the hopes of achieving the broadest possible consensus amidst the diversity of nation states. Since philosophical agreement could not be accomplished, it was thought, it would suffice to achieve the practicable political project of human rights.[5]

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[1] See Jack Donnelly. *Universal Human Rights in Theory and Practice* (second edition). Ithaca: Cornell University Press, 2003: 38.

[2] Ibid., 40.

[3] The United Nations Website, http://www.un.org/en/documents/charter/preamble.shtml. Accessed on December 19, 2014.

[4] Ibid.

The inclusivity of its secular framework was meant to be its strength. In this spirit, certain human rights theorists argue that because human rights bypass the complicated entanglements of philosophical differences to aim at a practicable concept of constraints against states, peoples of various religious and cultural beliefs can commit to human rights without having to forego their philosophical commitments. For example, James Nickel states that "today's human rights are not part of a political philosophy with an accompanying epistemology. They make philosophical assumptions, but they do not require acceptance of a particular philosophy or ideology."[6] Since the objective at the drafting of the UDHR was the creation of international law, normative foundations were neither sought nor identified.[7] Nickel maintains that because the language of human rights utilizes more than rights verbiage – i.e. prohibitions, requirements and general normative principles – these "alternative vocabularies offer both normative and philosophical flexibility."[8]

This conception of philosophical neutrality has been widely affirmed. Donnelly claims that the use of human rights affords a great deal of flexibility for universal application because it does not endorse any particular philosophical anthropology, or theory of the human being. Admitting of the variety of such theories, he states:

> "There are many well-developed and widely accepted philosophical anthropologies: for example, Aristotle's *zoon politikon*; Marx's human natural being who distinguishes himself by producing his own material life; Mill's pleasure-seeking, progressive being; Kant's rational being governed

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[5] The drafters articulated a vision of the basic rights and fundamental freedoms inherent in all human beings. The United Nations Website states, "Whatever our nationality, place of residence, gender, national or ethnic origin, colour, religion, language, or any other status, the international community on December 10 1948 made a commitment to upholding dignity and justice for all of us." Available at: www.un.org/en/documents/udhr/hr_law.shtml. Accessed on December 19, 2014.

[6] James Nickel, *Making Sense of Human Rights* (second ed.). Oxford: Blackwell Publishing, 2007: 7.

[7] Ibid.

[8] Ibid., 22.

> by an objective moral law; and feminist theories that begin by questioning the gendered conceptions of 'man' in these and most other accounts…
>
> "Given that philosophical anthropologies are so controversial, there are great dangers in tying one's analysis of human rights to any particular theory of human nature. The account of human rights I have sketched is compatible with many (but not all) theories of human nature."[9]

Donnelly believes this flexibility constitutes the strength of human rights. As such, human nature cannot be the foundation of human rights, and "there is no other foundation either."[10] But is this in fact the case? Are human rights truly foundationless, i.e. philosophically neutral? Some theorists answer 'no.'

According to Samuel Moyn, Harvard professor of law and history and author of several works on democracy, human rights and history, a small number of Western Europeans spoke of human rights in the aftermath of the Second World War as cosmopolitans seeking another mode past national-welfare contexts.[11] The nation-state had won as political form, and nationalism as political ideology, exiting the patriotic war.[12] Moyn claims that:

> "Only in Western Europe, in the era of conservative and Christian Democratic hegemony, did human rights survive as an idealistic slogan from wartime and were legalized on paper with supranational scope."[13]

These Western European elites soon took shelter under the United States during the Cold War. Moyn states:

> "Both the American and Soviet side were to fight the cold war in cosmopolitan terms or as, ultimately, a humanistic struggle with (where necessary) humanistic violence; and no international human rights movement emerged from this struggle immediately."[14]

Instead, the national welfarist consensus emerged as the significant feature of World War II's aftermath. The legacy of the rights of man was the mobilizational collective demand for a revolutionary nation-state. Rights-talk emerged in the twentieth century and was incorporated into constitutions as long as it didn't speak of rights above the nation-state.[15]

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[9] Donnelly, *Universal Human Rights*, 16-17.

[10] Ibid., 18.

[11] See Samuel Moyn, "The Universal Declaration of Human Rights of 1948 in the History of Cosmopolitanism." *Critical Inquiry*, Vol. 40, No. 4, Around 1948: Interdisciplinary Approaches to Global Transformation, edited by Leela Gandhi and Deborah L. Nelson (Summer 2014): 365-384.

[12] Ibid., 369.

[13] Ibid., 380.

[14] Ibid.

The discourse on universal human rights only became immensely popular in the 1970s, in the context of Cold War geopolitics:

> "international human rights politics originated in the 1970s by sticking, perhaps defensibly, to a minimal package of norms like free speech and integrity of the body. The problem is that this occurred as the more thoroughgoing dreams for national welfare of the 1940s were dropped, and no agenda of global welfare has followed in compensation."[16]

Until that time, the colonized subjects of European imperial states preferred subaltern internationalisms as alternatives to human rights, as indicated by the Bandung Conference in the 1950s and the New International Economic Order of the 1970s:[17]

> "…human rights in the contemporary sense were put off or left aside because the nation-state was not seen as an affirmation of particularity but as a highly idealistic vehicle of cosmopolitan humanity enjoying a modular nationalism with no provision for superordinate constraint. The 750 million people the United Nations left colonized voted with their feet for a cosmopolitanism that implied their collective emancipation with more assurance and with more practical meaning than international human rights did."[18]

Hence there was more support outside Europe for the Atlantic Charter of 1941 (which called for self-determination) than for the Universal Declaration on Human Rights of 1948 (which failed to condemn empire).[19]

Moyn's account of the history of human rights represents a revision to the usual narrative as represented by Donnelly and Nickel. For Moyn, the passage of the *Universal Declaration on Human Rights* was a relatively insignificant event achieved by a small number of international elites, which only gained currency decades later due to geopolitical interests during the Cold War and the failure of other, more meaningful forms of cosmopolitanism. Alison Renteln, professor of political science, anthropology, public policy and law, has authored several books and articles on comparative law, multiculturalism and international law, and global bioethics. Renteln claims, like Moyn, that while the UDHR was signed by nearly all states, "the role of government elites at international settings may not be indicative of the traditional value systems which they are supposed to represent."[20] Irene Oh, professor of religion at George Washington University and director of its Peace Studies program, cautions that the 1948 passage of the Universal Declaration was riddled with:

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[15] Ibid., 370-31.
[16] Ibid., 383.
[17] Ibid., 378.
[18] Ibid., 379.
[19] Ibid., 376-377.

> "Power imbalances…between colonizing nations and their former colonies…The norms that receive the label 'universal' may, in fact, not be universal at all…may have been forced as a result of systematically distorted communication."[21]

While the aims enumerated in the UN Charter are indeed desirable, they may not necessarily constitute universal purposes sufficient for imposing the entire catalog of universal human rights upon all traditions and societies. Critics of human rights' universality claims often point to the broader Western tradition of presuming moral universality. Renteln states that human rights reflect the views of Western philosophers and the political cultures in which they operate.[22] The theoretical definitions of human rights reveal that:

> "human rights are presumed to be universal in character. This would not in itself be problematic (indeed it is desirable), except that the philosophical foundations are never adequately demonstrated… Because they take the validity of the rights to be a self-evident proposition, there has traditionally been little room for debate."[23]

In practice, the universality-claims of the human rights discourse encounter much resistance. This is due to the fact that, whereas "natural rights were not widely contested because they were asserted in a universe of shared values, human rights have been highly controversial."[24] The central problem becomes how to prove the validity of any particular interpretation. And in "the absence of a satisfactory grounding for human rights, theorists are compelled to fall back upon mere assertions as to the self-evident nature of particular human rights."[25]

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[20] See Alison Dundes Renteln, "The Concept of Human Rights." *Anthropos*, Bd. 83, H. 4/6 (1998): 343-364: 351.

[21] See Irene Oh, *The Rights of God: Islam, Human Rights, and Comparative Ethics*. Washington D.C.: Georgetown University Press, 2007: 20.

[22] Renteln, 346-347.

[23] Ibid., 348.

[24] Ibid.

If we think of Moyn's historical revision of the usual human rights historiography in light of MacIntyre's claim (see chapter 1) that liberalism is a tradition in the local, argument-through-time sense, then "universal" human rights appear more provincial than universal. The transcendent air attached to human rights is replaced by a concrete political history. Human rights still retain a transcendent air insofar as they constitute the moral restraints of the nation-state, which supposedly *transcends* sectarian difference, rules by *transcendent* authority, and upholds *transcendently*-claimed rights. Nonetheless, identifying the uses of human rights within political historical contexts can call their universality claims into question.

Human rights discourse is emergent, and as such, is in the process of testing its assumptions through appropriations in various cultural and discursive contexts.[26] Since the early 1990s, there have been a number of critical challenges levelled against human rights' universality claims. One example is the Asian Values argument. The Bangkok Declaration of 1993 and 1995 draws attention to the peculiarly Western values inherent in human rights standards. This document was signed by nearly forty Asian and Pacific states. They claimed that human rights' emphasis on the individual clashes with Asian values that privilege the community. They also criticized HR's stress on civil and political rights, whereas Asian cultures place higher value on economic and social rights, which bear a more collective character.[27]

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[25] Ibid., 349.

[26] See Charles Beitz, *The Idea of Human Rights*. New York: Oxford University Press, 2009; 9. He states that human rights are "unlike more settled and longstanding normative practices such as might be found, say, in a mature legal system." And this, says Beitz, helps to explain the lack of widespread agreement on human rights.

[27] See David Little, "Rethinking Human Rights: A Review Essay on Religion, Relativism, and Other Matters." *The Journal of Religious Ethics*, Vol. 27, No. 1 (Spring, 1999): 149-177: 153.

Another example is the Cairo Declaration of 1990, which represents an attempt to alter and appropriate human rights norms in a manner acceptable to the particular requirements of Islamic tradition.[28] Renteln provides more examples that challenge human rights universality, with regard to property, political systems, and marriage:

> "Article 17 provides that 'Everyone has the right to own property alone as well as in association with others' and that 'no one shall be arbitrarily deprived of his property.' The value underlying this standard is hardly universal. One commentator refers to the problem with Article 17 as one of cultural imperialism because it '... seeks to impose free enterprise and capitalism on the rest of the world' (Zvobgo 1979: 95). Another human rights analyst rejects the universality of Article 17 (1): 'The community ideology does not admit of private property, except in consumer goods' (Sinha 1978: 144)…
>
> "Some of the articles concerning elections reflect a preference for a particular kind of political system. Articles 18, 19, and 20 provide for rights to freedom of thought, religion, and association. Article 21 guarantees the right to participate in government, equal access to public service, and free elections…these articles clearly embody the preferred set of political devices of Western liberal democratic regimes…it is ethnocentric to assume that Western electoral procedures are unanimously favored…"[29]

The same limitations are observed in areas of social life, as in norms pertaining to marriage and the general privileging of the nuclear family. Renteln states that the human rights requirement that marriage be entered into with full, free consent fails to account for norms of arranged marriages. The discourse's general preference for the nuclear family as the basic unit of society does not accommodate norms of extended kinship structures.[30] In these ways, human rights neglect to acknowledge family and social, as well as economic values foreign to the liberal Western tradition.

Proponents of human rights as foundationless, neutral and universal counter-argue that human rights can be reasonably accommodated in a diversity of cultural and national contexts. Donnelly argues in reference to the Asian Values challenge that while human rights are understood as fundamentally universal, substantial cultural space is permitted for implementing their norms.[31] Princeton University professor of politics and author of several works on political philosophy and international political theory Charles Beitz argues that, with regard to international toleration, a "progressive convergence" can be achieved across divergent cultures and religious worldviews.[32] International toleration can be conceived of as primarily societal (variations in the constitutions and cultural practices of states should be tolerated on analogy to individual liberties of self-choice) or individualistic (toleration as an extension of individual liberties, not by analogy).[33]

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[28] See "The Cairo Declaration on Human Rights in Islam," drafted by The Organisation of the Islamic Conference and submitted to the General Assembly of the United Nations on June 9, 1993. Accessible at: http://www.oic-oci.org/english/article/human.htm. Accessed May 15, 2015.

[29] Renteln, 350.

[30] Ibid.

Nickel states that cultural differences should not problematize acceptance of universal human rights because various factors lead to non-collusion of beliefs. These include psychological or practical compartmentalization (such that people place conflicting beliefs in different realms, like theory vs. practice), agreement on human rights without agreement on the grounds of human rights (i.e. a Rawlsian distinction between ideology and political institutions), and the often loose, non-systematized organization of people's religious beliefs.[34] Political theorist and radical feminist Zillah Eisenstein, who is professor of politics at Ithaca college and author of numerous works on women, war, race, and capitalism, advocates the liberatory, transnational potential of human rights for global activists and their networks. She argues that autonomy itself is not an exclusively liberal notion:

> "There are other locations for this thinking about woman's freedom. It is wrong-headed to assume that the notion of feminist individuality and autonomy is always an extension of liberal individualism. There are other notions of autonomy that are not simply liberal individualist at their core. As such, the notion of autonomous woman comes from other locations besides the West. There are varieties of autonomy besides liberal individuality that are liberatory."[35]

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[31] Donnelly, 107-123.

[32] Beitz, 93-95.

[33] Ibid., 145-146. Autonomy remains the central value in both conceptions (147-152), and as I argue in chapter 3, is part of HR's secular theory of the human being.

[34] Nickel, 175-178.

[35] Zillah Eisenstein, *Against Empire: Feminisms, Racism, and the West*. London: Zed Books, 2004: 184.

Despite these reasoned arguments for human rights applicability across cultures, some theorists remain unconvinced that the particular tradition responsible for HR's genesis can create a framework for truly universal participation. Joseph Massad, professor of Middle Eastern, South Asian and African Studies at Columbia University and author of several works on Arab and Israeli national identities and Arab intellectual history in Western representations, argues that the history of the governmentalization and internationalization of gender issues beginning in the 1970s was deeply implicated in Western hegemony.[36] The process of envisioning women's rights as human rights proceeded along the hegemony of Western interventionism in the Cold War political context. 'Transnational' and 'international' organizations and solidarity networks were often codes for the proliferation of Euro-American and European knowledge frames.[37]

Massad claims that the emergent human rights norms in this period issued from "white Euro-American middle class and Protestant culture," and that the international culture of modernity "is nothing less than the institutionalization of these cultural norms."[38] Women-focused world conferences since the 1990s (such as Vienna 1993, Cairo 1994 and Beijing 1995) reveal not only tensions and discrepancies of interests between North and South, but also that the woman question is posed in exclusively Western ways.[39] The liberal framing of global campaigns like the one to end violence against women is internal to a "technology of transnational governmentality."[40] In this context, focus on military humanitarianism, capacity-building, civil society and empowerment betrays human rights' relationship to a neoliberal world order:

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[36] See Joseph Massad, *Islam in Liberalism*. Chicago: University of Chicago Press, 2015: chapter 2.

[37] Ibid., 127.

[38] Ibid., 127-128.

[39] Ibid., 135-138.

[40] Ibid., 145.

> "Its imperial mission aside, the discourse (and organized campaigns) of human rights has more of a symptomatic relationship to neoliberal global capitalism: it broaches moments of critique; it attempts to inoculate against neoliberalism's worst excesses; sometimes it pretends to offer something almost like a counter-public, yet it continues to operate insistently outside the economic sphere, the most important of neoliberalism's theaters of operations."[41]

In what follows, I argue from the postulate that human rights are not philosophically neutral but advance specifically secular values – a disembodied and privatized definition of religion, the separation of law and morality, the public/private binary and the morally autonomous and sovereign individual subject. The chapter proceeds as follows. I begin by tracing the history of rights discourse in Western political thought. I then survey common philosophical assumptions across three prominent approaches to human rights today: a Kantian approach that focuses on moral autonomy, a human dignity approach, and a Rawlsian 'political'/minimalist approach. In all these approaches, human rights espouse a distinctly secular philosophical anthropology, or theory of the human being. Closer inspection of the universal human right of freedom of religion illustrates that 'religion' is also defined in secular terms. Freedom of religion implies that religion is essentially a disembodied matter pertaining principally to the private realm – distinct from politics and economics – and is subject to the supervisory jurisdiction of the state. I survey the history of the freedom of religion norm as it travelled from Western European hostility towards the perceived secularist communist onslaught against Christian democracy, to contemporary European nationalist policies whose secular public space is offended by Muslim communities.[42]

The History of Rights Discourse in Western Political Thought

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[41] Ibid., 133.

[42] See Samuel Moyn, "From Communist to Muslim: Religious Freedom in European Human Rights Law," *South Atlantic Quarterly* Vol. 113, No. 1 (Winter 2014): 63-86.

Because I adopt a MacIntyrian approach to traditions, namely that all enquiry is rooted in some tradition and a tradition is an argument extended through time that negotiates and renegotiates the meanings of key principles with both ‘insiders’ and ‘outsiders,’ I treat universal human rights as one such tradition. I also claim that the human rights tradition is not universal. In order to substantiate my claim, I will historically situate the discourse. In the previous section, I enumerated the immediate historical emergence of HR (i.e. its popularity in the 1970s as informed by failures of national welfarism and other cosmopolitanisms). Now, I briefly trace the genealogy of modern rights through historical Western discourse – and this, I suggest, argues against claims for the ‘foundationless’ or philosophically neutral character of human rights.

Anthony Pagden is professor of Political Science and History at the University of Califronia, Los Angeles. He has authored several works on the relations between Europe and the rest of the world, the political theory of empire, cosmopolitanism and nationalism. In researching natural rights, Pagden claims that neither Plato, Aristotle, nor Greek law used ‘right’ as distinct from justice.[43] He places the genesis of the modern conception of rights in the jurists of the Roman republic, from the second to the sixth centuries, claiming that “there is no autonomous conception of rights outside this culture.”[44] Initially in Roman law, rights and duties were correlative, the same word being used to indicate both (*ius*). Roman law did not assume that rights existed as a natural or universal category. While individuals could claim their rights under the law, it was not on the basis of their humanity, but their connection to civil rule. With the regime of the emperor Justinian in the sixth century, this understanding changed. He

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[43] See Anthony Pagden, “Human Rights, Natural Rights, and Europe’s Imperial Legacy.” *Political Theory*, Vol. 31, No. 2 (Apr. 2003): 171-199; 172.

[44] Ibid.

"introduced the notion of a natural law," which according to Pagden, "was a legalized version of the Stoic notion of a *koinos nomos*, that is, a 'common order' for the whole world."[45]

In the thirteenth century with St. Thomas Aquinas, Justinian's concept of natural law became Christianized. He transformed it into "a body of universal, and innate, principles which would act as a bridge between the human and the divine."[46] Human beings were imagined as belonging to a universal mankind governed in common by this natural law. But there was also, by historical necessity, customary law among nations. Later theorists would develop international law on the basis of the concept of natural law. Louis Henkin states that the modern conception of human rights "finds its authentic origins in the seventeenth century in the natural rights of John Locke."[47] In his *Second Treatise on Government*, Locke establishes security from aggression and the recognition (i.e. protection) of property as the basis of both civil society and the legitimacy of the Sovereign. His version of natural law, however, differed significantly from earlier accounts.

Pagden identifies two types of universalism which emerged within the natural law tradition. The first was the Aristotelian-Thomist vision, in which:

> "natural law (unlike positive law) was 'the participation in the Eternal Law by rational creatures'…[it was] made of the *ius naturae*, a body of innate, and thus self-evident, principles implanted 'in the hearts of men' by God at the creation."[48]

The second type of universalism was the modern version, espoused by Hobbes and the other social contract theorists as well as by Hugo Grotius. In this version, natural law was reduced to "simple principles of security."[49] Like Hobbes, Grotius was also "determined to dismantle the scholastic edifice of the Aristotelian natural virtues in favor of a set of simple irreducible moral concessions."[50] This modern version of universal natural law/rights had a distinctly secular effect:

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[45] Ibid., 174.

[46] Ibid. Also see chapter one above, for MacIntyre's treatment of Augustine and natural law.

[47] Louis Henkin, "The Universality of the Concept of Human Rights." *Annals of the American Academy of Political and Social Science*, Vol. 506, *Human Rights Around the World* (Nov. 1989): 10-16; 12.

[48] Pagden, 178.

[49] Ibid., 179.

> "The natural law which had once offered a complex argument for human sociability could now be reduced to a minimal moral core, upon which, in Grotius's view, no reasonable man, no matter what his religious convictions or his local customs and preferences, could fail to agree."[51]

Whereas for Aristotle and Aquinas, human conviviality was prior to the individual (i.e. man as political animal whose ultimate felicity could only be realized in society, and the universal brotherhood of humanity), for Grotius and the social contractarians, society was made purely by an act of will.[52] David Little, a research fellow at Georgetown University's Berkeley Center for Religion, Peace and World Affaris and author of several works on religion and human rights, maintains that Grotius' personal religious beliefs played an important role in his prescriptions for secular international cooperation:

> "The basic premise is that, since true Christian commitment is born exclusively of direct inner consent to God's sovereignty by each individual, and is thus subject to the 'law of the spirit' rather than the 'law of the sword,' it is contrary to the Christian Gospel to try to impose belief by civil means, or to deprive individuals of civil freedoms and privileges because of their religious convictions…
>
> "If, on this account, religion cannot serve as the foundation for making and enforcing human laws within as well as among nations, then that foundation must be sought elsewhere. This is, obviously, where Grotius's famous doctrine of natural law comes in…To call an obligation 'natural' in Grotius's sense is to assert that the obligation is accessible to and incumbent upon human beings, independent of specially revealed (religious) knowledge. Therefore, regardless of religious affiliation, human beings may be held universally accountable according to natural law. It is only because natural law has this logical status, prior to and independent of religious knowledge, that it can serve as a universal standard for resolving disputes among nations with different religious orientations…"[53]

Grotius' historical context, which had witnessed bloody religious warfare among Christian European monarchies, informed his religious beliefs as well as his theory of international law. As Timothy Samuel Shah (associate director of the Religious Freedom Project also at the Berkeley Center, and author of works on religious freedom) has put it, "Grotius' response to religious pluralism was to quell religious conflict by reducing 'orthodoxy' to 'morality.'"[54] In his *Meletius*, Grotius "sought to do nothing less than to give Christianity a new centre of gravity, replacing dogma and creed with a morality oriented to social peace…"[55] This move, says Shah, reversed the previous hierarchy of theology over ethics.

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[50] Ibid.

[51] Ibid.

[52] Ibid., 180.

[53] See David Little, "Religion – Catalyst or Impediment to International Law? The Case of Hugo Grotius." *Proceedings of the Annual Meeting (American Society of International Law)*, Vol. 87, Challenges to International Governance (March 31 - April 3, 1993): 322-327; 325-326.

In the brief conceptual history of rights that I am recounting here, Immanuel Kant's philosophy represents another significant milestone.[56] His thought is paradigmatic of the universalist and rationalist tendencies that emerged in the Enlightenment. Kant's *categorical imperative*, which maintains that one must act only in accordance with the possibility that one's action can be universalized, presupposes the existence of universal moral principles. In his moral theory, the "abstract rational process is presumed to bear a single and universal result, irrespective of cultural differences."[57] The French Revolution provided the rights tradition with yet a new chapter, where the specifically modern formulation of human rights is thought to have its origin.[58] Whereas natural law had been thought of as prior to and above human law, the *Declaration of the Rights of Man and the Citizen* confined the bases of such rights within citizenship to a society constituted as a nation.[59] The rise of the 'rights of man' signaled the end of natural law as it was previously understood:

> "The rights of man were no longer those rights which could be held against society, or across differing societies. They were those which could only be held in society, and furthermore only in a society of a particular kind, republican, democratic, and representative."[60]

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[54] Timothy Samuel Shah, "Making the World Safe for Liberalism: From Grotius to Rawls." In *Religion and Democracy*, David Marquand and Ronald L. Nettler, ed. Oxford: Blackwell Publishers, 2000: 122.

[55] Ibid., 126.

[56] I deal in detail with Kant's notion of moral autonomy below, in the section on the moral autonomy approach to human rights.

[57] Renteln, 349.

[58] Pagden, 189.

[59] Ibid.

[60] Ibid., 190.

As this brief genealogical sketch illustrates, contemporary human rights discourse that roots itself in the Western political tradition of rights has a history. It is a discourse – like all discourses – that has been shaped by historical contingencies and the values and assumptions of particular thinkers, committed to beliefs about human nature, the place/non-place of the Divine and religion in human/public life, the principles that should govern social and political interaction, etc. Claiming that human rights represent neutral ethical standards, or the "just requirements of morality" to use the phraseology of the *Universal Declaration*, is therefore questionable. Perhaps such universality claims only help identify human rights with the tradition that brought it into being, i.e. secular liberal modernity.

Contemporary Approaches to Human Rights

According to human rights theorist Sally Engle Merry, professor of anthropology at New York University and author of several works on human rights, gender and culture, various approaches to human rights share a particular modernist vision that privileges autonomy, choice, equality, and bodily protection.[61] She states:

> "This is the paradox of making human rights in the vernacular: To be accepted, they have to be tailored to the local context and resonant with the local cultural framework. However, to be part of the human rights system, they must emphasize individualism, autonomy, choice, bodily integrity, and equality, ideas embedded in the legal documents that constitute human rights law."[62]

I extend Engle's observation and argue that human rights approaches share a distinctly *secular* epistemological knowledge frame. Three prominent approaches to human rights today are: a Kantian approach that centers moral autonomy; a human dignity approach that bases human rights on the inherent worth of every human being, as in the works of Jack Donnelly and James

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[61] Sally Engle Merry, "Transnational Human Rights and Local Activism: Mapping the Middle." *American Anthropologist*, Vol. 108, No. 1 (Mar., 2006): 38-51.
[62] Ibid., 49.

Griffin; and a minimalist approach espoused by John Rawls and Charles Beitz that claims human rights are based on political, not metaphysical grounds.

The Moral Autonomy Approach

Immanuel Kant's moral philosophy is exemplary of the rationalizing, secularizing spirit of the Enlightenment. While the Enlightenment itself was polyvocal rather than monolithic, characterized by debates as much as by consensus, a certain 'critical attitude' can be identified with it. Nicholas Tampio states that while the Enlightenment was a "plural tradition – encompassing diverse ideas, authors, movements, and tendencies" and consisting of various rival Enlightenments,[63] it was nonetheless "united by its common goal of refusing the political-religious model that contributed to the devastation of the Thirty Years War."[64] Jack Donnelly similarly claims that, "'Liberalism' is a complex and contested set of orientations and values…rooted in a commitment to…individual autonomy."[65] Drawing on the French Enlightenment and British liberalism, Kant's moral formulation perpetuates the notion of the morally autonomous subject. Kant's concept of moral autonomy can be said to be one of the "fundamental agreements," to use MacIntyre's term, of the post-Enlightenment tradition of secular modernity.

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[63] These include: "Spinozist radical Enlightenment, which works to demystify religious orthodoxy and promote radical democratic politics, and the Lockean moderate Enlightenment, which seeks common cause with religious believers and traditional political authorities; or between the Pufendorfian civil Enlightenment, which employs natural law to desacralize politics, and the Leibnizian metaphysical Enlightenment, which aims to resacralize politics in a neo-Platonic manner; between the Humean Scottish Enlightenment, which bases morality on the human sentiments, and the Kantian German Enlightenment, which grounds morality on pure practical reason; or between the British Enlightenment's sociology of virtue, the French Enlightenment's ideology of reason, and the American Enlightenment's politics of liberty." See Nicholas Tampio, *Kantian Courage: Advancing the Enlightenment in Contemporary Political Theory*. Fordham University Press, 2012: 4-5.

[64] Ibid.

[65] Donnelly, 47.

According to Tampio, the concept of autonomy "expresses the key insight of modern moral philosophy that each person is capable of knowing and respecting the moral law (moral autonomy) or their own life plans (personal autonomy)."[66] Kant's concept of the absolute moral autonomy of the individual is based on his theory of the human being as a free agent with the potential to act in accord with a pure, good will. Human beings exist in two worlds, which are governed by two different sets of laws. In the sensible world, our bodies are governed by inviolable laws of nature. In the intelligible world, we are free agents, free to make decisions towards good or evil.[67] Morality consists in autonomy for Kant, when a free rational agent wills herself to abide by the laws of reason.[68] This formulation becomes evident in his doctrine of the categorical imperative. The categorical imperative, which is the universal, supreme principle of morality, states that:

> "I ought never to act except in such a way *that I can also will that my maxim should become a universal law*."[69]

Kant's categorical imperative is situated within the broader context of his critical philosophy as it deals with the antinomy between freedom and necessity (or causality). On one side of this *third conflict of the transcendental ideas*, freedom is defined negatively, as independence from causality, which is the series of successive conditions that define laws of nature.[70] Theodor Adorno summarizes the third antinomy as follows:

> "If causality rules absolutely, if, in other words, there is nothing but the law of cause and effect, this would make an absolute of the laws imposed by human beings on the things in themselves of which they actually know nothing, that is, of everything that is needed to control nature, both human and extra-human. This would confer on that absolute the same quality of blindness and externality which…is characteristic of causality in nature and knowledge in terms of the categories

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[66] Tampio, 188.

[67] Immanuel Kant, *Groundwork of the Metaphysic of Morals*. Trans. H. J. Paton. New York: Harper & Row, 1964: 118-121.

[68] Ibid., 107-108 and 114-115. 'Autonomy' is to live by reason alone, and 'heteronomy' is to live by any other consideration, which are private interests.

[69] Ibid., 70. Emphasis in original.

[70] Theodor W. Adorno, *Problems of Moral Philosophy*. Thomas Schroder, ed; Trans. Rodney Livingstone. Stanford: Stanford University Press, 2001: 34-35.

> as developed in the spirit of Kant. The domination of nature – and we might well say, as blind domination it means mere nature – would itself become an absolute. If, on the other hand, there were nothing but freedom, or as Kant puts it, 'freedom without guidance', without a law that could organize the phenomenal world, it would be a form of freedom that is quite devoid of any element of law, and hence it too would signify a relapse into a mere state of nature, namely into the natural chaos of a purely arbitrary state of affairs."[71]

Causality is necessary for experience; no experience is possible without this a priori condition. Freedom is also a prior necessity, if moral choice is to have any meaning. In his *Critique of Pure Reason*, Kant states:

> "Causality in accordance with the laws of Nature is not the only causality from which the appearances of the world can one and all be derived. To explain these appearances, it is necessary to assume that there is also another causality, that of freedom."[72]

To explain how a free rational agent can bring new causal series into being independent of natural causality, Kant arrives at a unique type of causality: causality through freedom. The categorical imperative is instrumental to moral philosophy and to addressing the third antinomy by explaining that human agents are moral insofar as they choose, through free choice, to behave in accordance with universal laws of reason. The third antinomy describes the fact that by reason alone we cannot know that we are free; but if we act 'as if' we are free, then we prove it through the doing of it. It is essentially a pragmatic argument. Morality, rationality, and freedom unite, in Kant, in the principle of autonomy.

In Kant's thought, the absolute moral autonomy of the individual as contextualized within his broader metaphysical framework has clearly secular implications. In *Critique of Pure Reason*, Kant develops his critical philosophy by sketching a new "metaphysics as science," as distinct from the old metaphysics which lay claims to theoretical knowledge of transphenomenal realities such as God, freedom of the will and immortality of the soul.[73] Kant does not dispense with the idea of God, but claims that God cannot be *known* as an object of empirical experience. In his second *Critique*, Kant denounces as one of the principles of heteronomy

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[71] Ibid., 56-57.

[72] Immanuel Kant, *Critique of Pure Reason*, trans. Norman Kemp Smith. London: Macmillan, 1928: 409. Quoted in Ibid., 36.

> “the theological concept which derives morality from a divine and supremely perfect will; not merely because we cannot intuit God’s perfection and can only derive it from our own concepts, among which that of morality is the most eminent; but because, if we do not do this (and to do so would be to give a crudely circular explanation), the concept of God’s will still remaining to us – one drawn from such characteristics as lust for glory and domination and bound up with frightful ideas of power and vengefulness – would inevitably form the basis for a moral system which would be in direct opposition to morality.”[74]

Part of Kant’s proposal for a rational metaphysics was the elimination of what he deemed dogmatic metaphysics. Kant could neither refute nor confirm God’s existence on the basis of empirical experience (which can only determine that people believe in God’s existence) or rational speculation. He did, however, refute the three classical speculative proofs of God’s existence:

1. The ontological argument, which is entirely *a priori*, states that God can’t *not* exist. This argument fails according to Kant because it poses existence as a ‘real predicate’ whereas ‘it is not a concept of something which could be added to the concept of a thing. It is merely the positing of a thing, or of certain determinations, as existing in themselves’;
2. The *First Cause*, or cosmological argument, states that the world exists, therefore God exists, the First Cause. This argument fails because the use of the causal category itself assumes a particular causal scheme. It also mistakenly assumes that the only way to avoid an actually infinite causal series is by posing a first cause. This argument also rests on the validity of the Ontological Proof; and
3. The argument from Design, which is based on the design of the universe. This argument

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[73] See Nishida Kitaro, *Last Writings: Nothingness and the Religious Worldview,* trans. David Dilworth. Honolulu: University of Hawaii Press, 1987: 7-10 and 13-14. Quoting Immanuel Kant, *Critique of Pure Reason*, trans. F. Max Muller. New York: Anchor Books, 1966: 17-18 and 530-540.
[74] Kant, *Groundwork*, 110-111.

> fails on account of the previous errors, but also because it proves only the existence of an architect of the universe, not a creator. Such an architect "would possess remarkable but not infinite powers."[75]

In the *Groundwork*, Kant provides a formal justification for the existence of God – as well as for the freedom of the will and the immortality of the soul – as useful postulates of pure practical reason, or the pure moral will.[76] God, freedom and immortality are not needed for theoretical knowledge, but are recommended by reason as working hypotheses for practical life; they are "cardinal propositions of ethics."[77]

For Kant, these concepts cannot be confirmed by experience, nor do they enter into the 'categories' – those *a priori* preconditions that allow experience in the first place, i.e. space and time.[78] In this way, by denying the existence of God any epistemological certainty or concrete truth value, and by positing the immortal soul and the human being's free will as postulates, Kant prepares the way for a secularly-based moral philosophy. I use secularism in the sense afforded by Cornelis van Peursen, as the "deliverance of man first from religious then from metaphysical control over his reason and language."[79] Freedom, and its supreme principle the moral law, are given independently of a sovereign God; in the categorical imperative, freedom is nothing but pure practical reason unrestrained by external factors. Kant's morally autonomous human being is a self-legislating agent, unrestrained in her reasoning by religion in any concrete way. Kant does not make any claims regarding actual human beings who may indeed act morally because they believe, but claims that human reason cannot prove the necessity of any particular religious belief as universally binding on all others.

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[75] "Kant, Immanuel" from *The Encyclopedia of Philosophy*, V. 3&4. Paul Edwards, ed. New York: Macmillan & The Free Press, 1967: 316.

[76] Kitaro, *Last Writings*, 7.

[77] Adorno, *Problems of Moral Philosophy,* 67.

[78] Ibid., 68-69. Referencing Kant, *Critique of Pure Reason* (MacMillan 1928), 630-632.

[79] Quoted in Syed Muhammad Naquib Al-Attas, *Islam and Secularism*. Lahore: Suhail Academy, 1998: 17. In chapter 3 below, I will attend to the secular in greater detail.

Emphasis on autonomy has been substantively criticized from various feminist and Marxist standpoints. Even *within* the secular tradition, Kant's moral autonomy has been critiqued because the individual subject appears as isolated from the determining force of social relations, collectivities and ideologies. Catriona Mackenzie and Natalie Stoljar's *Relational Autonomy*, for example, critically challenges conventional individualist renderings of autonomy.[80] In McLeod and Sherwin's chapter, relational, or contextual autonomy, is understood:

> "to involve explicit recognition of the fact that autonomy is both defined and pursued in a social context and that social context significantly influences the opportunities an agent has to develop or express autonomy skills. In relational autonomy, it is necessary to explore an agent's social location if we hope to evaluate properly and respond appropriately to her ability to exercise autonomy….By making visible the ways in which autonomy is affected by social forces, especially oppression, relational autonomy challenges assumptions…that autonomy be viewed as an achievement of individuals. We must, therefore, evaluate society and not just the individual when determining the degree to which an individual is able to act autonomously."[81]

The influence of an agent's social location and external social forces on autonomy is also the subject of criticism from certain Marxist standpoints. In a telling passage from his *Essays in Self-Criticism*, Louis Althusser defends Marx's emphasis on bourgeois ideology rather than beginning with (the bourgeois myth of) a theory of man. It is worth quoting at length:

> "Marx's theoretical anti-humanism, as it operates within historical materialism, thus means a refusal to root the explanation of social formations and their history in a concept of man with theoretical pretensions, that is, a concept of man as an *originating subject*, one in whom originate his needs (*homo oeconomicus*), his thoughts (*homo rationalis*), and his acts and struggles (*homo moralis*, *juridicus* and *politicus*). For when you begin with man, you cannot avoid the idealist temptation of believing in the omnipotence of liberty or of creative labour -- that is, you simply submit, in all 'freedom,' to the omnipotence of the ruling bourgeois ideology, whose function is to mask and to impose, in the illusory shape of man's power of freedom, another power, much more real and much more powerful, that of capitalism. If Marx does not start with man, if he refuses to derive society and history theoretically from the concept of man, it is in order to break with this

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[80] Catriona Mackenzie and Natalie Stoljar, eds. *Relational Autonomy: Feminist Perspectives on Autonomy, Agency, and the Social Self*. Oxford: Oxford University Press, 2000.

[81] Carolyn McLeod and Susan Sherwin, "Relational Autonomy, Self-Trust, and Health Care Patients who are Oppressed," in Ibid., 259-260.

> mystification which only expresses an ideological relation of force, based in the capitalist production relation. Marx therefore starts out from the structural cause producing this effect of bourgeois ideology which maintains the illusion that you should start with man." [82]

Althusser justifies Marx's elaboration of bourgeois ideology and structures of domination because to begin with the human being as a self-creating *autonomous* individual would be to entertain the bourgeois diversion. This stays within Marx's assertion that productive forces are the basis of all history.[83] Marx posited the causal chain as follows:

> productive faculties → patterns of commerce and consumption → social constitution, family, classes, civil society → political conditions → Ideas, categories.[84]

Beginning with concrete structures and relations rather than a theory of the human being does not abstract the human being needlessly, says Althusser, because in all his analysis, Marx refers back to the concrete effects such bourgeois structures of domination and their attendant ideology have on the concrete conditions of human beings:

> "Marx starts with the given economic formation, and in the particular case of *Capital*, with the capitalist production relation, and the relations which it determines in the last instance in the superstructure. And each time he shows that these relations determine and brand men, and how they brand them in their concrete life, and how, through the system of class struggles, living men are determined by the system of these relations. In the 1857 *Introduction* Marx said: the concrete is a synthesis of many determinations. We might paraphrase him and say: men in the concrete sense are determined by a synthesis of the many determinations of the relations in which they are held and to which they are parties. If Marx does not start out from man, which is an empty idea, that is, one weighed down with bourgeois ideology, it is in order finally to reach living men; if he makes a detour *via* these relations of which living men are the 'bearers,' it is in order finally to be able to grasp the laws which govern both their lives and their concrete struggles."[85]

His reference to the determining power of 'the relations in which' human beings are held resounds with feminist relational autonomy's emphasis on social location and contextual subject-formation. Both can be read as critiques of the overemphasis on concepts of personal or moral autonomy, to the exclusion of accounting for the interrelated effects of ideology, dominating relations and other social forces.

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[82] Louis Althusser, *Essays in Self-Criticism*. Translated by Grahame Lock. London: New Left Books, 1976, p. 205-206. Available at: http://www.marx2mao.com/Other/ESC76ii.html#s3. Prepared for the Internet by David J. Romagnolo, July 2003. Accessed May 15, 2015.

[83] Karl Marx, "Society and Economy in History," in *The Marx-Engels Reader* (2nd ed.) Robert C. Tucker, ed. New York: W. W. Norton and Company, Inc., 1978. Especially p. 137.

[84] Ibid., 138.

[85] Althusser, *Essays,* 205-206.

Peter Hallward makes a similar point in "The Will of the People: Notes Towards A Dialectical Voluntarism":

> "To affirm the primacy of a prescriptive will is to insist that in politics all external (natural, sociological, historical, unconscious, technical…) forms of determination, however significant, are nonetheless secondary, as are all forms of regulation and representation…The will of the people involves collective action and direct participation. A democratic political will depends on the power and practice of inclusive assembly, the power to sustain a common commitment."[86]

Hallward draws on Rousseau's concept of the *volonte general* to argue that while autonomous individuals are required for free action and moral causality, the 'will of the people' requires something more. Meaningful political action that reflects the will of the people needs collective action and direct participation, which in turn necessitate inclusive assembly and collective commitment. Such a formulation is more commensurate with socially constituted selves than with autonomous individuals.

While the Kantian notion of moral autonomy has its contemporary detractors, the concept still figures importantly in assumptions inhering in human rights discourse. Human rights are part of a broader system of international law established after the Peace of Westphalia. According to the Westphalian arrangement, public international law and public (national, constitutional) law both distinguish between public and private realms, and advance the notion of fundamental rights. The underlying push toward public law is that it establishes the preconditions of community and social order, by limiting the freedoms of legal subjects (whether these subjects are citizens or states themselves). Conversely, the drive toward the public/private divide and fundamental rights is to reduce the demands of the social order itself, by protecting the pre-existing liberties of legal subjects.[87] However, and this is where we move into the realm of Kantian moral philosophy (particularly its implications for a cosmopolitan world system), the Westphalian model no longer describes our modern condition. Normatively, it is critically challenged by cosmopolitan and global conceptions of justice and human rights.[88]

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[86] Peter Hallward, "The Will of the People: Notes Towards A Dialectical Voluntarism." Radical Philosophy, 155, 2009, p. 21. Available at: abahlali.org/files/hallward_will_of_the_people.pdf. Accessed May 15, 2015.

Human rights discourse assumes universal applicability as well as universal, objective rationality. Post-Westphalian international law doctrines are largely structured in keeping with Enlightenment critiques of Christianity. The freedom of religion as an international right, for example, is part of this history of the modernist turn to subjectivity.[89] Richard Bernstein has described the epistemic shift as follows:

> "The idea of a basic dichotomy between the subjective and the objective; the conception of knowledge as being a correct representation of what is objective; the conviction that human reason can completely free itself of bias, prejudice, and tradition; the ideal of a universal method by which we can first secure firm foundations of knowledge and then build the edifice of a universal science; the belief that by the power of self-reflection we can transcend our historical context and horizon and know things as they really are in themselves."[90]

Such self-critical, tradition-free, universally rational connotations often resound in human rights discourse. They are part of a broader "liberal prescription of a universal regime."[91] In this context,

> "Public international law no longer regulates relations between states only, but has extended its reach to regulate the rights and duties of individuals *within* states."[92]

The convergence thesis advanced by some liberal thinkers[93] celebrates that public international law increasingly treats not only states, but individuals. This undermines national sovereignty by converging it with human rights.[94] Peter Danchin is a professor of law and the co-director of the International and Comparative Law Program at the University of Maryland. Danchin, who has published numerous works on religious freedom, international law and collective security, problematizes the convergence thesis, arguing that it rests on what some theorists have termed 'liberal anti-pluralism.'[95] Liberal anti-pluralist accounts, while

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[87] See Peter G. Danchin's 'Use and Abuse of Religious Freedom,' May 7, 2009, in UCBerkeleyEvents, "Islamic Norms in Secular Public Spheres - Keynote Lecture." Available at: https://youtu.be/3Bt9LcvV6Ow. Posted May 20, 2009. Accessed March 15, 2015.

[88] Peter G. Danchin, "Whose Public? Which Law? Mapping the Internal/External Distinction in International Law." Publication of the University of Maryland School of Law, No. 2010 – 38. Available at The Social Science Research Network Electronic Paper Collection, http://ssrn.com/abstract=1662569. Accessed April 20, 2015: 28.

[89] See Peter G. Danchin, "The Emergence and Structure of Religious Freedom in International Law Reconsidered." *Journal of Law and Religion*, Vol. 23, No. 2 (2007/2008): 455-534. Especially p. 457.

[90] Richard Bernstein, *Beyond Objectivism and Relativism: Science, Hermeneutics and Praxis*. Philadelphia: University of Pennsylvania Press, 1983: 36. Quoted in Ibid., 458.

[91] Danchin, *Whose Public?*, 30.

[92] Ibid., 28.

> "relying on a contingent and thus contestable conception of individual autonomy…do not in fact seek to challenge the *rationale* for public law or public reason itself. On the contrary, such accounts advance a vision of 'universal' or 'global' social order governed by a 'neutral' public law that limits the freedom of its subjects pursuant to the single 'trumping' or 'covering' value of individual freedom itself."[96]

Kant had echoed a prototype of this formulation in both his moral philosophy and his *idea for a universal history with a cosmopolitan purpose*. For Danchin, however, this type of order itself becomes a peril to liberty and pluralism by undermining the law's established limits upon the international code. This it does by "effectively eliminating the public private distinction and by redefining fundamental rights to mean only, or ultimately, the rights of autonomous individuals."[97] Whereas national sovereignty, in the traditional Westphalian understanding, mediated between a multitude of (private) national ways of life and (public) international society,

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[93] See for example Charles Sampford, "The Potential for a Post-Westpahlian Convergence of 'Public Law' and 'Public International Law'" in Jeremy Farrall and Kim Rubenstein, eds., *Sanctions, Accountability and Governance in a Globalised World*. Cambridge: Cambridge University Press, 2009: 53-54.

[94] Danchin, *Whose Public?*, 28-29.

[95] See for example Gerry Simpson, "Two Liberalisms." *European Journal of International Law*, Vol. 12, No. 3, 2001: . 537-571. Simpson states: "Liberal anti-pluralism finds its most prominent manifestation in the recent work of Fernando Teson, Michael Reisman, Thomas Franck, John Rawls and Anne-Marie Slaughter where, in each case, the internal characteristics of a state has the potential to determine that state's standing in the family of nations." (p. 537). These internal characteristics can include regime type, the rights of individuals, and democracy, with an emphasis on popular sovereignty and civil rights. Liberal anti-pluralism, says Simpson, undermines sovereign equality and ontologically privileges individuals (539-542). See also Edward N. Megay, "Anti-Pluralist Liberalism: The German Neoliberals." *Political Science Quarterly*, Vol. 85, No 3 (Sep., 1970): 422-442. Megay argues that liberalism is not necessarily pluralist, nor is pluralism necessarily liberal. He indicates that German neoliberal views regarding social freedom and power are logically consistent with anti-pluralism, and can result in elitist governments led by technocrats.

[96] Danchin, *Whose Public?*, 29.

[97] Ibid.

the new cosmopolitanism of liberal anti-pluralists undermines this sovereignty and replaces it with a "universal global law."[98]

Moral autonomy is a central assumption of human rights, but it is framed in a variety of ways. Anna E. Galeotti is professor of political philosophy at the University of Piemonte Orientale (Italy) and senior research scholar at Harvard University's Edward Safra's Center for Ethics. Her work *Toleration as Recognition* terms the two approaches to liberalism neutralist and perfectionist approaches.[99] In the neutralist approach, the liberal order is posited as a hospitable, empty box in which any culture, tradition, way of life, worldview, etc. is welcome to pursue its dream. Pluralism consists of allowing competing visions and suspending judgment on their rightness; there is no imperative to produce better citizens. By contrast, the perfectionist approach holds that liberalism entails a distinct and concrete moral outlook. Pluralism is less valued than in the neutralist approach; producing better citizens is a direct interest. Those at odds with autonomy, secularism, self-development and freedom may be tolerated or coerced to comply, depending upon a number of pragmatic considerations.[100] Galeotti's thesis reflects the potentially hegemonic effect autonomy – secularly defined and ranked as a supreme value and organizing logic – can have on non-liberal constituents in a liberal order.

The interplay between the autonomy norm, national sovereignties and global public law (such as human rights) reveals several tensions pertaining to how difference is to be tolerated (or not). Human rights proponents who espouse procedural autonomy and a 'charter liberalism'[101] can be said to be neutralist in their liberal toleration, while those who espouse substantive autonomy can display perfectionist and liberal anti-pluralist tendencies. A substantive understanding of autonomy fits only with certain theoretical and political views, i.e. using one's autonomy towards fulfilling liberal goals of non-constraint. Donnelly poses it as follows:

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[98] Ibid. Danchin states: "On this view, sovereignty becomes a human right and thereby loses its traditional intersubjective and value-pluralist function in international law: that is, to maintain the conditions necessary for peaceful coexistence between different ways of life as opposed to their merging into that single form of life we have known since at least the late nineteenth century as 'civilization.'" The intersubjective nature of international law is important because it achieves reconciliations and reaches political settlements between "conflicting claims to freedom of differently situated subjects and the divergent assertions of right and justice to which they continually rise." (32)

[99] Anna E. Galeotti, *Toleration as Recognition*. Edinburgh: Cambridge University Press, 2004.

[100] Ibid., 27-52.

> "The core commitment to equality and autonomy…require[s] that the range of substantive positions within that consensus be strictly bounded by a shared commitment to equal autonomy for all. This is perhaps the essential insight in Rousseau's distinction between the general will and the will of all: there are some individual wills that simply cannot be allowed to be expressed in the general will if it is to maintain its moral character."[102]

A procedural understanding of autonomy would imply freedom with regard to the values, desires and actions for which autonomy is operationalized. Pennsylvania State University philosophy professor and moral theorist John Christman states:

> "In the western tradition, the view that individual autonomy is a basic moral and political value is very much a modern development. Putting moral weight on an individual's ability to govern herself, independent of her place in a metaphysical order or her role in social structures and political institutions is very much the product of the modernist humanism of which much contemporary moral and political philosophy is an offshoot."[103]

Autonomy today implies moral self-governance, the authenticity of desires and values, and a minimal sense of responsibility and self-representation. It also represents the capacity of self-government, its actual condition, a personal ideal, and a bundle of rights characterizing self-ownership.[104] These meanings imply individual freedom from constraint by others (as well as religion), and a basic competency to decide for oneself.

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[101] In Gerry Simpson's words; see *Two Liberalisms*. He states that "a charter-based liberal international law in its pluralist mode" emphasizes "the sovereign equality of states, their rights to domestic jurisdiction and their right to what I call existential equality, a subset of sovereign equality that allows states to choose their own form of government and that underpins the heterogeneity of the international legal order." (543)

[102] Donnelly, 52. In Rousseau's treatment of 'forcing people to be free,' Donnelly references Book II, Chapter 3, and Book I, Chapter 7 of *The Social Contract*.

[103] John Christman, "Autonomy in Moral and Political Philosophy," *The Stanford Encyclopedia of Philosophy* (Spring 2015 Edition), Edward N. Zalta (ed.). Available at: http://plato.stanford.edu/archives/spr2015/entries/autonomy-moral/. First published July 28, 2003; substantive revision January 9, 2015. Accessed February 10, 2015.

[104] Joel Feinberg, "Autonomy," in Christman, John and Joel Anderson, eds. *Autonomy and the Challenges to Liberalism: New Essays*. New York: Cambridge University Press, 2005: 27–53.

The late Alan Gewirth, professor of philosophy at the University of Chicago and author of several works on moral philosophy and human rights, claimed that autonomy and self-reliance for individuals was the ground and the goal of human rights beyond state aid and action.[105] Autonomy, for Gewirth, was the center of human rights:

> "The rational autonomy which is the aim of the human rights involves that each person is to be a self-controlling, self-developing agent, in contrast to being a dependent, passive recipient of the agency of others. Even when the rights require positive assistance from other persons, their point is not to reinforce or increase dependence but rather to give support that enables persons to be agents, that is, to control their own lives and effectively pursue and sustain their own purposes without being subjected to domination and harms from others."[106]

Similarly, James Griffin identifies the *personhood account* of human rights as the best substantive account thus far available. This account centers on human agency to choose one's own path, and consists of autonomy (including a basic education in order to make informed decisions), a minimum provision of resources for these ends, and basic liberty not to be impeded by others.[107]

As I argue in the following chapter, secularism forms the unstated epistemological base of human rights. Human rights theorists accept and applaud this. For example, Henkin states: "The human rights ideology is a fully secular and rational ideology whose very promise of success as a universal ideology depends on its secularity and rationality."[108] Little maintains that, based on the fact that the UDHR is taken as a common standard, and that Article 2 sets forward nondiscrimination, "it follows that human rights would have to be secular, at least in the sense of excluding religious identity as a criterion for citizenship."[109] John Garvey claims that the public/private distinction characteristic of modernity sets governmental jurisdiction over public behavior according to secular rules, while in private, religion can enjoy its influence:

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[105] Alan Gewirth, *The Community of Rights*. Chicago: The University of Chicago Press, 1996: 43-44.

[106] Ibid., 52.

[107] James Griffin, *On Human Rights*. Oxford: Oxford University Press, 2008: 32-34.

[108] Louis Henkin, "Religion, Religions and Human Rights." *The Journal of Religious Ethics*, Vol. 26, No. 2 (Fall 1998): 229-239; 238.

[109] Little (1993), 323.

> "There is a certain way of thinking about law and politics that is characteristic of modern industrial nations…I will call this habit of thought the public/private distinction. Its central premise is that social life can be divided into public and private realms. The function of government is to regulate behavior in the public sphere according to secular rules. Within the private sphere people are free to do as they like, in religious and other matters."[110]

The public-secular/private-religious distinction quoted above finds resonance in the 'philosophically neutral' aims of the UDHR's drafters, as well as in the human rights articulations of Henkin, Little and Garvey.

The Human Dignity Approach

Another prominent approach to human rights today that espouses a secular knowledge-frame is based on human dignity. James Griffin, philosopher and author of works on ethics, human rights and moral philosophy, defines human rights as the various interpretations of the protection of human dignity.[111] Donnelly expresses the core place of human dignity as intimately tied to autonomy. While any "plausible account of human dignity must include membership in society," says Donnelly,

> "[n]onetheless, a human rights conception of human dignity and political legitimacy rests on the fact that human beings have an essential, irreducible moral worth and dignity independent of the social groups to which they belong and the social roles that they occupy."[112]

This is an important reconciliation between individual autonomy and the socially constituted self. Donnelly posits 'human nature' as a "social project more than a presocial given," but arrives finally in the realm of self-creation (i.e. 'the buck stops' at the self-legislating agent):

> "Just as an individual's 'nature' or 'character' arises from the interaction of natural endowment, social and environmental influences, and individual action, human beings create their 'essential'

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[110] John Garvey, in Marty, Appleby, Garvey and Kuran eds., *Fundamentalisms and the State: Remaking Polities, Economies, and Militance*. Chicago: Chicago University Press, 1993. Quoted in Little (1993), 323.

[111] Griffin, 2.

[112] Donnelly, 27.

> nature through social action on themselves. Human rights provides [*sic*] both a substantive model for and a set of practices to realize this work of self-creation."[113]

This underlying tenet of individualism – that human rights are rights one has by virtue of being human alone[114] – is what leads Donnelly to severely narrow which conceptions of human dignity from around the world actually count as human rights. Traditional societies had and continue to have duties, he states, but these aim at achieving human good completely detached from human rights. He sees in such formulations and praxis substitutes for, rather than alternate articulations of, human rights.[115]

In excluding most non-Western cultural expressions of human dignity and rights, Donnelly claims that his argument is structural rather than cultural.[116] For example, in his treatment of Islam, Donnelly dismisses various works by Muslim thinkers proposing human rights models in religious conceptual vocabulary because rights in such schemes are either divinely commanded, duties in disguise, or are tied to some legal or spiritual status (i.e. *not* by virtue of being human alone).[117] The fatal flaw in clinging to traditional human dignity formulations in a modern world, says Donnelly, is due to:

> "the hazards to human dignity posed by modern markets and states. The political power of traditional rulers usually was substantially limited by customs and laws that were entirely independent of human rights. The relative technological and administrative weakness of traditional political institutions further restrained abuses of power. In such a world, inalienable entitlements of individuals held against state and society might plausibly be held to be superfluous

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[113] Ibid., 15.

[114] And also: that "human rights seek to specify domains of personal autonomy in which the values of others are legitimately held at bay, no matter how widely or deeply they are shared by the mainstream of society. The idea of human rights rests on the claim that there are important and substantial areas in the lives of individuals from which the state and society are legitimately excluded." Ibid., 121.

[115] Ibid., 71.

[116] See Ibid., chapter 5, "Non-Western Conceptions of Human Rights." He addresses the shortcomings of certain African, Middle Eastern, South Asian, and East Asian notions of human dignity and rights. Donnelly states, however, that the same critique would stand against premodern Western concepts: "…I argue that non-Western cultural and political traditions, like the premodern West, lacked not only the practice of human rights but also the very concept" (71). See also Griffin, 110-111, where he argues that philosophers who derived natural rights from human nature were deriving them from culturally-specific value judgments, and falling short of the criteria of 'by virtue of being human alone.'

[117] Donnelly, 73. He states that the Muslim claim that human rights are the privilege of God "is, quite literally, incoherent…"

> (because dignity was guaranteed by alternative mechanisms), if not positively dangerous to important and well-established values and practices.
>
> “Such a world, however, exists today in only in a relatively small number of isolated areas. The modern state, even in the Third World, not only has been freed from many of the moral constraints of custom but also has a far greater administrative and technological reach. It thus represents a serious threat to basic human dignity, whether that dignity is defined in ‘traditional’ or ‘modern’ terms. In such circumstances, human rights seem necessary rather than optional. Radical or unrestricted relativism thus is as inappropriate as radical universalism. Some kind of intermediate position is required.”[118]

Donnelly’s acknowledgement of the irreparable destruction leveled against traditional forms of life by modern markets and states is well-placed. However, he seems to arrive at the conclusion that modernization through the protections afforded by human rights is the answer. He does make space for cultural interpretation of human rights concepts and norms,[119] espousing a weak relativism/‘tempered universalism’.[120] In such a position the core concepts of human rights are considered invariant, but are subject to differing interpretations within the conceptual range. Implementation also has a wide range. However, Donnelly forecloses the possibility of a foundation for human dignity/rights other than ‘foundationless,’ by-virtue-of-being-human-alone rights. How does this limit those traditions in Donnelly’s own discussion whose foundations *cannot conceptualize a human being independent of*: social locations such as “age, sex, lineage, achievement, or community membership”[121] (as in traditional Africa – Donnelly does not specify an ethnicity or nation); a relationship to a common code of ethics, including paths to filial piety (as in traditional Confucian China); or servanthood to God (as in Islam)?

Donnelly warns of the dangers of extreme cultural relativism, recalling instead “the inherent universality of basic moral precepts…most evident in Kant’s deontological universalism."[122] But it may well be – and this is my overall question concerning the universality claims of human rights discourse – that Donnelly's own concepts of human dignity (as originating within the human subject herself) and the basis of rights (by virtue of being human alone) are themselves historical and cultural articulations. Perhaps a claim like "…if society is the source of all individual rights, such an individual has no human rights,"[123] is only coherent if one theoretically justifies civil society on the origin myth of the human in a Hobbesian or Lockean state of nature.

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[118] Ibid., 91-92.

[119] For Donnelly, there is considerable leeway in the substance of rights articulated by the UDHR (the ‘concepts’). It is implementation often causes controversy. Human rights are a common standard, such that the “ways in which these rights are implemented, however, so long as they fall within the range of variation consistent with the overarching concept, are matters of legitimate variation.” Ibid., 97.

[120] This is Andrew Nathan’s term. See ibid., 119.

[121] Ibid., 79.

The heart of the weakness of Donnelly's argument for foundationless human rights grounded in human dignity may be how he defines – or rather, *fails* to define – 'tradition.' Tradition is an argument extended through time, a set of discursive themes and lived practices which adherents and thinkers constantly reinvigorate in light of contemporary conditions.[124] Tradition is also a theoretical location for questioning authority, time, language, use and embodiment, as well as an empirical arrangement of everyday life connecting discursivity and materiality.[125] In such a formulation, tradition is neither empiricist theories of knowledge, nor relativist theories of justice; in theory, traditions can accommodate rupture as well as continuity, and are singular as well as plural.[126] Donnelly, on the other hand, takes a somewhat darker view of traditions. He characterizes as one of the fortes of human rights that they:

> "empower people to modify or reject parts of their traditional culture. Cultural traditions are socially created legacies. Some are good. Others are bad. Still others are simply irrelevant. And which is considered which varies among individuals and changes with time. Tradition legitimately governs and limits fundamental life choices covered by human rights guarantees only to the extent that individuals and groups choose to follow, and thus reproduce, that tradition."[127]

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[122] Ibid., 93.

[123] Ibid., 114.

[124] See chapter 1, in which I present MacIntyre's concept of 'tradition.'

[125] These are the two ways Talal Asad has used tradition. See chapter 1.

[126] Ibid.

[127] Donnelly, 122.

This type of positing suggests that traditions tend toward stasis, while dynamic human rights allow change, even historical process itself. Donnelly is correct to criticize the misuses of tradition (as when corrupt leaders appeal to it in order to veil their own violations), but he displays a strong bias when he castes traditions generally against critical thought 'by reason alone':

> "'Foundational' arguments operate within (social, political, moral, religious) communities that are defined in part by their acceptance of, or at least openness to, particular foundational arguments…But a skeptic cannot be compelled by reason alone to start here."[128]

Needless to say, traditionalists cannot reasonably expect 'outsiders' to accept their first premises; to do so would bring the outsiders 'into the fold.' However, it is Donnelly's endorsement of a universal code of human rights, formulated on the basis of a narrow rendition of human dignity (non-social, non-religious, etc.) that forecloses much communitarian, pluralistic collaboration. He states:

> "Human rights, as specified in the Universal Declaration and the Covenants, represent the international community's best effort to define the social and political parameters of our common humanity. Within these limits, all is possible. Outside of them, little should be allowed."[129]

The human dignity approach to universal human rights articulated by Jack Donnelly espouses a universalism that is distinctly secular in character. It posits rational (i.e. secular) foundations for human rights as diametrically opposed to religious ones.

Rawls' Political Conception of Human Rights

The third prominent approach to human rights today that advances secularism in its politics and theory of the human being is a minimalist, political conception of human rights articulated by John Rawls. Rawls underscores the importance of human rights in his theory of the law of peoples.[130] Not all states need be liberal, he states, but all states must honor basic human rights.[131] He claims that HR are a minimum standard, and can be adopted by all decent, well-ordered societies (even if they are traditional, religious, or based on an exclusivist comprehensive moral doctrine or philosophy of the good).[132] Rawls also posits the adoption of human rights by a society as a sufficient criterion for delegitimizing intervention by other states.[133]

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[128] Ibid., 19.

[129] Ibid., 123.

Rawls is adamant in maintaining that his conception of *justice as fairness* (which forms the backbone of his theory of the law of peoples) does not rest on any metaphysical or comprehensive philosophical/moral conception.[134] This is because:

> "Philosophy as the search for truth about an independent metaphysical and moral order cannot, I believe, provide a workable and shared basis for a political conception of justice in a democratic society."[135]

Justice as fairness avoids claims to universal truth and claims about the essential nature or identity of persons.[136] This is what is meant by a (purely) 'political,' or public conception of justice as the optimal conditions for social cooperation. Avoiding "controversial philosophical and religious doctrines" is key.[137]

Because 'first principles' are not appropriate to forming a political conception of justice, Rawls looks to:

> "our public political culture itself, including its main institutions and the historical traditions of their interpretation, as the shared fund of implicitly recognized basic ideas and principles."[138]

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[130] See John Rawls, "The Law of Peoples," *Critical Inquiry*, Vol. 20, No. 1 (Autumn, 1993): 36-68.

[131] Ibid., 37-38.

[132] Ibid., 57-61.

[133] Ibid, 60-61.

[134] He states that neither the original position nor the veil of ignorance have any metaphysical implications. See John Rawls, "Justice as Fairness: Political not Metaphysical," *Philosophy & Public Affairs*, Vol. 14, No. 3 (Summer, 1985): 223-251; especially 238-239.

[135] Ibid., 230.

[136] Ibid., 223.

[137] Ibid.

[138] Ibid., 228.

The assumption that animates this process of finding the foundation of just social cooperation is that society is comprised of free and equal persons.[139] Again, Rawls claims that this assumption "need not involve…questions of philosophical psychology or a metaphysical doctrine of the nature of the self."[140]

Coequal citizens conduct the mental exercise ('device of representation' as Rawls terms it[141]) of the original position with its veil of ignorance to arrive at the terms of social cooperation. Their analysis involves that they eliminate:

> "the contingencies of the social world…the bargaining advantages which inevitably arise within background institutions of any society as the result of cumulative social, historical, and natural tendencies. These contingent advantages and accidental influences from the past should not influence an agreement on the principles which are to regulate the institutions of the basic structure itself from the present into the future."[142]

Rawls continues:

> "We can use it [the veil of ignorance as a device of representation] to help us work out what we now think, once we are able to take a clear and uncluttered view of what justice requires when society is conceived as a scheme of cooperation between free and equal persons over time from one generation to the next."[143]

Rawls also rests this process on the freedom of political persons as "self-originating sources of valid claims."[144] Citizens are morally autonomous, and they enjoy this freedom independent of duties.[145]

In so positing, Rawls tacitly claims the ability to recognize and espouse universal rationality. Despite his claim that his 'method of avoidance' successfully circumvents metaphysics or philosophical assumptions about the human being, he nonetheless rests his arguments on premises that are valued and historically specific. As I show in the following chapter, ‘religion’ in the modern sense is a secular political concept that privatizes a disembodied version of religion. The public sphere, on the other hand, is the space of political, rational debate and action, and is not to be contaminated by divisive, particularistic religious conceptions.[146] He also posits the human as morally autonomous and independent of duties in her/his political character, which is more an Enlightenment naturalist conclusion than a universally held principle. Rawls’ schema rests on the divisibility of ‘religion’ from purely political concerns, something that is inconceivable in premodernity as well as in traditional religions and cultures outside the West in modernity.[147]

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[139] Ibid., 229.
[140] Ibid., 231.
[141] Ibid., 237.
[142] Ibid., 235-236.
[143] Ibid., 238.
[144] Ibid., 242-243.
[145] Ibid.

Rawls’ reliance on universal rationality to build his argument is notably problematic in his idea of the original position. In *The Racial Contract*, Charles Mills takes up the problem of Rawls’ conception of justice as well as the mental exercise of the original position.[148] In this work, Mills shows that social contractarian and Enlightenment theories of personhood were simultaneously (and explicitly) theories of racialized *sub*personhood. White supremacy, he states, is “the unnamed political system that has made the modern world what it is today.”[149] The domination of non-whites by whites is not mentioned in the history of political philosophy because it is the mute background on which political systems develop and operate, and is not itself seen as a political system.[150] The racial contract is a moral contract that underlies the expressly political social contract in both its classical (Hobbes, Locke, Rousseau) and modern (Rawls, Nozick) formulations.[151] According to Mills, the racial contract has an epistemological aspect – and this is where Rawls' original position becomes questionable. Mills identifies an *epistemology of ignorance* prescribed by the Racial Contract, as:

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[146] Ibid., 240-242.

[147] I will elaborate more on these arguments, made by William Cavanaugh in his *The Myth of Religious Violence* in the following chapter.

[148] See Charles W. Mills, *The Racial Contract*. Ithaca: Cornell University Press, 1997.

[149] Ibid., 1.

[150] Ibid., 2-3.

[151] He states: “The Racial Contract is that set of formal or informal agreements, or meta-agreements (higher-level contracts about contracts, which set the limits of the contracts' validity) between the members of one subset of humans, henceforth designated by (shifting) ‘racial’ [phenotypical/genealogical/cultural] criteria C1, C2, C3…as

> "a particular pattern of localized and global cognitive dysfunctions (which are psychologically and socially functional), producing the ironic outcome that whites will in general be unable to understand the world they themselves have made…Whiteness…is a cognitive model that precludes self-transparency and genuine understanding of social realities."[152]

Where Rawls prescribes the mental exercise of the original position with its veil of ignorance for coequal citizens to collectively agree on the terms of just social cooperation, Mills' analysis of the racial contract claims that norms of cognition can actually work *against* successful cognition:

> "Systems of domination affect us not merely in terms of material advantage and disadvantage, but also in terms of likelihoods of getting things right or wrong, since unfair social privilege reproduces itself in part through people learning to see and feel about the world in ways that accommodate injustice. 'Ignorance' is actively reproduced and is resistant to elimination. This is, of course, an old insight of the left tradition with respect to class. I was just translating it into a different vocabulary and applying it to race."[153]

From this point of view, Rawls' veil of ignorance, and with it the possibilities for generating principles of justice through the mental exercise of the original position, become untenable. How can a person – white or nonwhite – achieve a "clear and uncluttered view of what justice requires" when the political landscape and moral subjectivities of people are

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'white,' and coextensive (making due allowance for gender differentiation) with the class of full persons, to categorize the remaining subset of humans as 'nonwhite' and of a different and inferior moral status, subpersons, so that they have a subordinate civil standing in the white or white-ruled politics the whites either already inhabit or establish or in transactions as aliens with these polities, and the moral and juridical rules normally regulating the behavior of whites in their dealings with one another either do not apply at all in dealings with nonwhites or apply only in a qualified form (depending in part on changing historical circumstances and what particular variety of nonwhites involved), but in any case the general purpose of the Contract is always the differential privileging of the whites as a group with respect to the nonwhites as a group, the exploitation of their bodies, land, and resources, and the denial of equal socioeconomic opportunities to them. All whites are *beneficiaries* of the Contract, though some whites are not *signatories* to it." Ibid., 11. Ariella Azoulay makes a similar point. She argues that, in the French Revolution as in other revolutions, the use of universal language was not disturbed by the fact of differential governance. She states: "From the eighteenth century we inherited a universal political discourse established by means of differential mechanisms that created and allowed – and made obvious – differential domination of different populations made distinct on a changing basis of race, gender, or wealth." See Ariella Azoulay, "The Language of Revolution – Tidings from the East." *Critical Inquiry*, University of Chicago Press, 2011. Available at: http://criticalinquiry.uchicago.edu/the_language_of_revolution_azoulay/. Accessed May 13, 2016.

[152] Mills (1997), 18.

[153] Mills, Charles. "Lost in Rawlsland." Interview by George Yancy. Opinionator, *New York Times*. November 16, 2014. Available at http://opinionator.blogs.nytimes.com/2014/11/16/lost-in-rawlsland/?_r=0. Accessed February 3, 2016.

historically sedimented by the racial contract? In other words, how can a person ‘forget’ her social position and hope to escape the unfair social privileges that either oppress or benefit her? Rawls refers to social inequalities as (mere) “bargaining advantages” that “inevitably arise within the background institutions of any society as the result of cumulative social, historical, and natural tendencies.”[154] They are “contingent advantages and accidental influences from the past,” and as such should be slighted in deliberations about just social cooperation.[155] Mills disagrees; the epistemology of ignorance is:

> “a cognitive and moral economy psychically required for conquest, colonization, and enslavement. And these phenomena are in no way *accidental*, but *prescribed* by the terms of the Racial Contract, which requires a certain schedule of structured blindnesses and opacities in order to establish and maintain the white polity.”[156]

Rawls’ minimalist, purely political basis for universal human rights turns out to be: imbued with an exclusively secular definition of the human being (as morally autonomous and self-sovereign) and the public/private binary (i.e. disembodied ‘religion’ for the private realm of inner conscience, political rationality for the public realm);[157] colored by objectivity-pretentions of a universal rationality; and unreflective of the cognitive dysfunctions that can be required by deliberately achieved social inequalities – epistemological dysfunctions that would render the original position impossible to achieve even in theory.

Following John Rawls’ lead, Charles Beitz also espouses a minimalist, ‘purely political’ approach to universal human rights. Beitz wishes “to explore a different approach, one we might describe as practical."[158] Beitz's practical approach claims authority for the practice of human rights, on two accounts. First, human rights norms are regarded with great seriousness both politically and doctrinally. Second, human rights practice should be valued *prima facie* because it seeks to protect people from very real and potentially devastating violations.[159] To grasp the idea of human rights, says Beitz:

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[154] Rawls (1985), 235-236.

[155] Ibid.

[156] Mills (1997), 19. Emphasis in original.

[157] Rawls does note that justice as fairness is not a generalizable principle intended for every type of subject. Rather, it is intended for democratic societies (See “Justice as Fairness,” 225-226, 231-232 and 246). However, Rawls claims that even non-liberal societies of the well-ordered hierarchic variety will arrive at liberal conclusions after exercising the original position and veil of ignorance, and will thereby “accept the same law of peoples that well-ordered, liberal societies accept.” (See “The Law of Peoples,” 37). This includes honoring human rights, which as I argue in this thesis, is not necessarily a universally valid option.

> "we do not suppose that human rights must express or derive from a single basic value or that they constitute a single, fundamental category of moral concern. Instead, we treat international human rights as a normative practice to be grasped *sui generis* and consider how the idea of a human right functions within it."[160]

This supposed independence of politics from broader metaphysical assumptions is precisely the modernist secular negotiation.[161]

'Foundationless' human rights in the political thought of Donnelly, Griffin, Gewirth, Little, Henkin, Rawls and Beitz are secular insofar as they assume the distinction between human rights, social cooperation, and equality of citizenship on the one hand, and metaphysical or religious beliefs about the human being on the other. The moral autonomy, human dignity and minimalist political approaches to universal human rights differ in important theoretical ways (as I have outlined above), but nonetheless have a shared substrate of secular universalism. In the following chapter I will unpack the implications of this secular substrate.

Freedom of Religion as a Universal Human Right

Universal human rights seek to establish a set of restraints against states for the protection of basic rights that all persons are entitled to by virtue of being human alone. One of these sets of rights pertain to the freedom of religion. Article 18 of the Universal Declaration on Human Rights states:

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[158] See Beitz, 8.
[159] Ibid., 10-11.
[160] Ibid., 12.
[161] I will elaborate on this in the following chapter, "Religion, the Secular and *Din*."

> "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."[162]

The International Covenants on Civil and Political as well as Economic, Social and Cultural rights (the ICCPR and ICESCR respectively, both drafted in 1966 and effective 1976) also address the freedom of religion as a basic human right. The ICCPR further stipulates that no one shall be coerced with regard to adopting the religion of his choice (article 18.2) and that the

> "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."[163]

The ICCPR also maintains that States parties to the covenant will respect the right of parents and legal guardians to determine their children's/wards' religious upbringing.[164] Importantly, the covenant ensures the freedom of all persons to enjoy equal protection of the law, regardless of religion or other factors.[165] It also calls for the protection of religious minorities.[166]

The covenant on social, economic and cultural rights also addresses freedom of religion as a basic human right. Insofar as the ICSECR advances the right of all people to self-determine (politically, economically, socially and culturally), have access to technology for such development, and enjoy gender equity in these and other rights, it does so in a manner that doesn't discriminate on the basis of religion.[167] Like the ICCPR, the ICSECR also defines the limit of the rights it enumerates. States parties to the covenant may subject these rights to such limitations as:

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[162] See http://www.un.org/en/universal-declaration-human-rights/.

[163] Article 18.3. See full text of ICCPR at: http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.

[164] Ibid., ICCPR Article 18.4.

[165] Ibid., ICCPR Article 26.

[166] Ibid., ICCPR Article 27.

[167] Article 2.2. See full text of ICESCR at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx.

> "determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society."[168]

In 1981, the General Assembly of the United Nations passed the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.[169] This resolution lists the freedoms associated with freedom of religion in both the realm of the individual's conscience and the communal, institutional aspects of religious practice (i.e. confession, observance, producing literature and proselytization, observing holidays, congregating, establishing places of worship, parental rights in religious upbringing of children, etc.). The limits to such freedoms are to be found, again, in the State's discretionary power, corralled by the rule of law:

> "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."[170]

It is in the ambiguity of the space opened up for state power that human rights language pertaining to freedom of religion reveals its particular grammar of 'religion.' When human rights refer to freedom of religion, they are underscoring the strict separation of politics and religion, delineating the public and private realms (respectively) as the appropriate realms of each, and in so doing are operationalizing a modern definition of 'religion.'

Moyn shows that, in practice, the religious freedom norm is a device of discrimination in the European Court of Human Rights. Recent cases reveal that Muslim practices and symbols are litigated against while their Christian counterparts are treated more favorably.[171] In *Lautsi v. Italy*, the Court permitted crucifixes in Italian schools, while the same verdict was not passed in cases involving Muslim women's headscarves, such as *Dahlab v. Switzerland*, *Leyla Sahin v. Turkey* and *Belgin Dogru v. France*.[172] Moyn suggests that the partiality is explained as follows:

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[168] Ibid., ICESCR Article 4.

[169] Available at: http://www.un.org/documents/ga/res/36/a36r055.htm.

[170] Ibid., Article 1.3.

[171] See Moyn (2014b), 63-86.

> "…contemporary headscarf and related cases in the European Court draw not solely upon the exclusionary legacy of Western secularism but also upon the exclusionary legacy of Western hostility to secularism. One of the avatars of the contemporary Muslim, whose practices are viewed as inimical by the court to democracy's essentials, is the communist."[173]

As Scott had argued in relation to France's 2005 ban on headscarves in public schools (see introduction), something about Muslim identity and practices in the public space seem to offend the identity of the secular nation. Moyn traces the roots of Europe's present problem with Muslims to its experiences with the Soviet Union during the Cold War.

The religious freedom norm was internationalized with the *Universal Declaration* and Europeanized with the 1950 European Convention that brought the Court into being. Religious freedom was finalized, however, "when the Cold War created new circumstances for the ideological salience of religious freedom."[174] Religious freedom became central to European human rights because of the perceived need to protect Christian democratic societies from atheist communists. However, after the collapse of Christianity in European societies, the norm evolved to signify the need – "in the contemporary European imagination" – to protect European secularism from the religiosity of its Muslims.[175]

In the same vein as the UDHR, ICCPR and ICESCR articles on freedom of religion listed above, article 9 of the European Convention ensures freedom of religion within what's deemed 'necessary in a democratic society.' The ambiguity opens up space for state power, and indeed this is what the case law is showing. The European Court's decisions in the above-mentioned

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[172] Ibid., 65-66. For an analysis of Islam and Muslim women in the European Court, see also Carolyn Evans, "The 'Islamic Headscarf' in the European Court of Human Rights." *Melbourne Journal of International Law*, 4 (2006). Avail: http://www.austlii.edu.au/au/journals/MelbJIL/2006/4.html. Accessed July 4, 2016.

[173] Moyn (2014b), 66.

[174] Ibid., 64.

[175] Ibid., 67-70.

Muslim headscarf cases deferred to local interpretations and ingrained national traditions by invoking the controversial "margin of appreciation" principle, which essentially cedes to national policy.[176] Article 9.2 specifically allows abridgments of religious rights in "the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."[177] Moyn admonishes the bias of the European Court:

> "A minimum required in a democratic society should not simply provide high principles for a bias against Islam, even in self-declared secularist countries, especially when Christian practices are given a pass…The Muslim headscarf cases are troubling not because Europe should return to the public Christianity it has largely given up, so spectacularly and so quickly, but because its version of secularism is discriminatory rather than inclusionary. And some sources of the policing of Muslims may lie, surprisingly enough, in cultures, laws, and doctrines once crafted to stave off secularism."[178]

The European Court's inconsistent decisions in cases involving Christian v. Muslim religious symbols and practices shows that the language of universal human rights may be insufficient for redressing historical legacies, political realities and othering discourses of power. Human rights appears as the cultural-discursive production of the liberal secular argument extended through time, i.e. the liberal secular *tradition*, rather than the universal voice for human welfare, dignity and rights.

Conclusion

In this chapter I located the modern articulation of universal human rights in the overlapping histories of the Western natural law tradition, postwar geopolitics and secular universalism. I made the claim that human rights are secular, and attempted to substantiate this claim by surveying thinkers from three prominent approaches to human rights today. The moral autonomy, human dignity and political-minimalist approaches to human rights all build upon secular notions of the human being and religion, i.e. the separation of religion from politics/economics/etc., the distinction between law and morality, the public/private binary and the morally autonomous individual subject. In the following chapter, I draw on the works of Jonathan Smith, William Cavanaugh and Tomoko Masuzawa to argue that ‘religion’ as a concept – the same at work in the universal human right of freedom of religion – is a modern invention that proscribes non-secular understandings of religion and enables discourses of othering.

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[176] Ibid., 66.

[177] Ibid., 77.

[178] Ibid., 79-80.

Chapter 3: Religion, The Secular and *Din*

To gauge the utility and consonance of universal human rights for contemporary Muslims, I first unpack the implications of the particular grammar of 'religion' at work in the freedom of religion doctrine. I draw on the works of three prominent historians of religion to argue that 'religion' as a conceptual category is a modern invention. The idea of generic religion distinct from particular historical believing communities – religion in the sense of a privatized matter of conscience – only emerges historically with certain discursive shifts following the Enlightenment and colonial practices of othering. Premodern Christians and religious communities outside the West in modernity did/do not organize religious life and thought according to the parameters outlined by 'religion.' Rather, geopolitics and Western epistemological developments (i.e. the rise of secularized social/human sciences) account for religion's modern emergence and naturalization. This is the subject of the first part of the present chapter.

Next, the normative environment in which discussions and negotiations of human rights, freedom of religion and secularity take place cannot be taken for granted. The secular constitutes a field of power, according to Talal Asad's definition of modernity,[1] and constitutes the philosophical subtext of universal human rights. I contrast this with paradigmatic premodern *shari'a*, and examine the relation between human rights and the secular more closely in the second part of this chapter. In the final part of this chapter I show how certain interpretations of Islamic self-understanding bypass the religion/secular binary. The Qur'an identifies Islam with the term *din*, which I will argue is entirely distinct from 'religion' in the modern sense of the term in important ways. The distinction is to be found in the separation of religion from politics, economics, etc. and in the embodied vs. disembodied nature of belief. *Din* can potentially provide human rights theorists with an alternative conceptualization to address some of the tensions produced when Islam is refracted through the prism of the human right to freedom of religion.

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[1] See section on 'The Secular' below.

Religion

As discussed in the previous chapter, universal human rights address the freedom of religion. They do so in a way that grants religious freedoms of beliefs and practices to individuals and groups, so long as these do not offend the state's upkeep of public morality, safety, democratic minimums and other ambiguities.[2] It is in the ambiguity of the space opened up for state power that human rights language pertaining to freedom of religion reveals its particular grammar of 'religion.' When human rights refer to freedom of religion, they are underscoring the strict separation of politics and religion, delineating the public and private realms (respectively) as the appropriate realms of each, placing religion under the regulatory supervision of the state, and in so doing are operationalizing a distinctly modern definition of 'religion.'

In what follows, I draw on the works of three prominent historians of religion to unsettle the universal and natural aura surrounding the concept 'religion.' These thinkers argue that 'religion' is an invented category, an Enlightenment inheritance, integral to the discourse on othering and deeply instrumental to geopolitics.

William Cavanaugh, professor of theology at DePaul University, is author of several books on theology, politics and Christian history. His areas of specialization include political theology, economic ethics and ecclesiology. In *The Myth of Religious Violence,* Cavanaugh claims that it is a prevalent modern-day myth that there is such a thing as 'religion' in a transcultural, transhistorical sense.[3] He shows that both functionalist and substantive approaches to religion essentialize it. Substantive definitions of religion (as in the works of Bremmer 1994 and Fitzgerald 2001) are theoretically exclusivist, posing religion as beliefs and practices concerning gods or the transcendent. In this account, 'religion' is what world religionists believe and do. Functionalist definitions of religion on the other hand (as in the works of Durkheim, Durham and Sewell 2006, Solle 1984, Loy 1997 and Nelson 2001) are more inclusive and consist of ideologies and practices not commonly thought of as religious, such as Marxism, nationalism, free-market ideology, etc. Functionalist approaches look "not at content but at the way these ideologies and practices function in various contexts to provide an overarching structure of meaning in everyday social life."[4]

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[2] See chapter 2 above.

Despite these differences, however, both accounts are essentialist, treating religion as transhistorical and transcultural. The heart of the problem does not lie in the various theoretical weaknesses espoused in such arguments, but rather in the concept of 'religion' itself. This concept presupposes that there is such a thing as 'religion' that is "a transhistorical, transcultural feature of human life, essentially distinct from 'secular' features such as politics and economics."[5] What is meant by 'religion' in the modern sense indicates something "essentially interior, and essentially distinct from public, secular rationality."[6] Religion and secular are presented as timeless, universal and natural categories, but they are not.[7] Jonathan Z. Smith, historian of religions and professor of religious studies at the University of Chicago, has authored several books on the history of religions. His areas of research include the theory of ritual, discourses of othering and the stretching of language to accommodate new concepts. According to Smith, religion is not an empirical category but a second-order abstraction.[8] He states:

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[3] See William Cavanaugh, *The Myth of Religious Violence*. Oxford: Oxford University Press, 2009.

[4] Ibid., 58.

[5] Ibid., 3.

[6] Ibid., 59.

[7] Ibid., 6.

> "Religion is solely the creation of the scholar's study. It is created for the scholar's analytic purposes by his imaginative acts of comparison and generalization. Religion has no independent existence apart from the academy."[9]

The third historian of religion whose work I consider here, Tomoko Masuzawa, also maintains that religion was invented. Masuzawa, professor of history and comparative literature at the University of Michigan, has authored several books and contributed chapters to edited volumes on religious studies, origin, culture and colonialism. Her scholarly interests include religious studies, hermeneutics and psychoanalysis. In *The Invention of World Religions: Or, How European Universalism Was Preserved in the Language of Pluralism,* Masuzawa addresses the problem of the unexamined assumption that religion is a universal phenomenon found at all times and in all places.[10] She describes her work as follows:

> "The principal objective is a genealogy of a particular discursive practice, namely, 'world religions' as a category and as a conceptual framework initially developed in the European academy, which quickly became an effective means of differentiating, variegating, consolidating, and totalizing a large portion of the social, cultural, and political practices observable among the inhabitants of regions elsewhere in the world."[11]

Here we can begin to note the arc connecting discourse and theory to power and politics.

According to Cavanaugh, what counts as religious or secular in any given age is a function of power configurations[12] and this helps explain the lack of agreement on what is included/excluded from 'religion.' It is due to the constructed nature of the category:

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[8] See Jonathan Z. Smith, "'Religion and Religious Studies': No Difference at All." *Soundings: An Interdisciplinary Journal*, Vol. 71, No. 2/3, The Santa Barbara Colloquy: Religion within the Limits of Reason Alone (Summer/Fall 1988): 231-244.

[9] Ibid., 234-235.

[10] See Tomoko Masuzawa, *The Invention of World Religions: Or, How European Universalism Was Preserved in the Language of Pluralism*. Chicago: University of Chicago Press, 2005: 1.

[11] Ibid., 20.

[12] Cavanaugh, 4.

> "Religion is not simply an objective descriptor of certain kinds of practices that show up in every time and place. It is a term that constructs and is constructed by different kinds of political configurations…
>
> [The concept of religion] is a development of the modern liberal state; the religious-secular distinction accompanies the invention of private-public, religion-politics, and church-state dichotomies. The religious-secular distinction also accompanies the state's monopoly over internal violence and its colonial expansion."[13]

Historicizing the concept of religion, Cavanaugh states that 'religion' as a concept is "part of the history of Western power," but he is careful not to generalize or present the West as a monolith:[14]

> "The West has never been a monolithic reality, and what defines the West has always been contested both from within and without. The West, however, is a modernizing ideal, a project pushed forward by certain interests both within and without countries identified as Oriental. The production of religion took place in a context established by pressures, both external and internal, to modernize and Westernize."[15]

Let us take two examples from Cavanaugh's historiography of the uses of 'religion' in Western political history to note the difference marking modern 'religion.' The first example is ancient Rome's concept of *religio*. The modern term 'religion':

> "is derived from the ancient Latin word *religio*, but *religio* was only one of a constellation of terms surrounding social obligations in ancient Rome, and when used it signified something quite different from religion in the modern sense. *Religio* referred to a powerful requirement to perform some action. Its most probable derivation is from *re-ligare*, to rebind or relink, that is, to reestablish a bond that has been severed. To say *religio mihi est*—that something is '*religio* for me'—meant that it was something that carried a serious obligation for a person. This included not only cultic observances—which were themselves sometimes referred to as *religiones*, such that there was a different *religio* or set of observances at each shrine—but also civic oaths and family rituals, things that modern Westerners normally consider to be secular."[16]

In ancient Rome, *religio* was not about theology but about customs, traditions, social order, civil obligations and family relations – spheres of activity that are now secularly adjudicated.

The second example is the medieval Christian understanding of *religio. Religio* in Augustine is not opposed to some secular realm. Any human act can have its false *religio*, or type of idolatry. God is epistemic; the overarching organizing logic is 'enchanted,' to use the term of the post-Enlightenment naturalists:

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[13] Ibid., 59.
[14] Ibid., 7. He states: "The West is a construct, a contested project, not a simple description of a monolithic entity."
[15] Ibid., 99.
[16] Ibid., 62.

> "Augustine is aware that, in normal Latin usage, there is no realm of belief and practice called religion that can be separated out from merely mundane obligations like family and the oaths, cults, and obligations that bind Roman society together. Politics, culture, family obligations, devotion to God or gods, civic duties—all are bound together in one complex web of social relations. For Augustine, the right ordering of social relations must include worship of the true God; this is true *religio*. But *religio* as a general category is found in all manner of social relations, both rightly and wrongly ordered. For Augustine and the ancient world, *religio* is not a distinct realm of activity separate from a secular realm."[17]

Thomas Aquinas also used *religio* in the older sense, something akin to 'rites' and 'piety.'[18] In his *Summa Theologiae*, *religio* is one of the nine virtues of justice. However, it is a *moral*, not a theological virtue, because *religio's* object is rites and practices. Faith, by contrast, is a theological virtue whose object is God.[19]

For the medieval Christian then, *religio* was *not*: a universal genus; a system of propositions and beliefs (rather, moral excellence was produced by disciplining body *and* soul); a purely interior impulse (because body and soul form a single unity); or an institutional force separable from secular forces.[20] *Religio* "was not a separate sphere of concern and activity, but permeated all the institutions and activities of medieval Christendom."[21] Political reality was therefore embedded into such a universe of meaning without modern distinctions between political/religious and public/private spheres:

> "Medieval Christendom was a theopolitical whole. This does not mean, of course, that there was no division of labor between kings and priests, nor that that division was not constantly contested. It does mean, however, that the end of *religio* was inseparable from the end of politics."[22]

The second theme Smith, Masuzawa and Cavanaugh share regarding religion is that its invention is positioned within the Enlightenment and its inheritance. Smith claims that the academic study of religion is only possible from a post-Enlightenment perspective "in which man is defined as a world-creating being and culture is understood as a symbolic process of world-construction."[23] Elsewhere he goes further:

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[17] Ibid., 64.
[18] Ibid.
[19] Ibid., 64-65.
[20] Ibid., 65-67.
[21] Ibid., 68.
[22] Ibid.

> "Simply put, the academic study of religion is a child of the Enlightenment. This intellectual heritage is revealed in the notion of generic religion as opposed to historical, believing communities…religion was domesticated…religion was brought within the realm of common sense, of civil discourse and commerce…the Enlightenment impulse was one of tolerance and, as a necessary concomitant, one which refused to leave any human datum, including religion, beyond the pale of understanding, beyond the realm of reason."[24]

Masuzawa posits religion's invention in the Enlightenment inheritance with reference to theory of history. She cites the "underlying logic" present in the evolving variations of classifying religions:

> "Despite these incessant circumlocutions and the fine nuancing of the classificatory systems, there seems to be some underlying logic silently at work in all variations… that the great civilizations of the past and present divide into two: venerable East on the one hand and progressive West on the other. They both have been called 'historical,' but implicitly in different senses. In a word, the East preserves history, the West creates history. In contradistinction from both East and West, the tertiary group of minor religions has been considered lacking in history, or at least lacking in written history, hence its designation as preliterate. A corollary assumption is that the peoples of small-scale tribal societies may likely possess an unusually tenacious historical memory, but no historical consciousness."[25]

This theory of the variety of historical consciousness among the peoples of the world has clearly Hegelian teleological and evolutionary undertones. In Hegel's *Reason in History*, evolutionism is the first premise of universal history. According to Hegel, the march of history was a teleological ascension from humanity's infancy to its wise maturity. Universal Reason was a driving force which, through dialectical correspondence, moved from stage to stage towards realization. Civilizations and smaller-scale societies outside of Europe were akin to cannon fodder for the march of history.[26] Masuzawa's above description fits with such a teleological theory of history.

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[23] See Jonathan Z. Smith, *Map is Not Territory: Studies in the History of Religion*. Chicago: University of Chicago Press, 1993: 290.

[24] See Jonathan Z. Smith, *Imagining Religion: From Babylon to Jonestown.* Chicago: University of Chicago Press, 1982: 104.

[25] Masuzawa, 4.

Cavanaugh situates the invention of religion a bit earlier than Smith and Masuzawa (he begins with Renaissance humanism[27]), but also underscores the importance of Enlightenment thought. The epistemic context introducing John Locke's political thought was one which had, according to Talal Asad, laid the groundwork for "what later came to be called Natural Religion – in terms of beliefs (about a 'supreme power'), practices (its ordered 'worship'), and ethics (a code of conduct based on 'rewards and punishments after this life') – said to exist in all societies."[28] Cavanaugh points out that for Locke, religion was a state of mind. Locke underscored a sharp distinction between inner and outer, a position completely opposed to the understandings of early Christendom, "where the state of the interior soul was inseparable from the bodily disciplines and rituals that both formed and expressed the dispositions of the soul."[29] Locke maintained that the magistrate can't settle between controversies among churches, and that true religion is a private matter. One must distinguish between provinces and labors of church and civil government.

Furthermore, obedience to the commonwealth is not voluntary, and the commonwealth can use violence to secure civil interests. Obedience to the church, on the other hand, is voluntary. The church *cannot* use violence to advance true religion. Again, this is a decisive rupture from medieval Christian understanding:

> "The idea that a 'religious society' has no say over how civil and worldly goods are handled would be entirely foreign not only to the craft guilds whose work revolved around the liturgy, but also to the monastic communities whose vows were not merely a dispossession of all concern for worldly goods, but a recognition that the religious life is intimately entwined with how one

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[26] See G.W.F. Hegel, *Philosophy of Right*. Trans. S. W. Dyde. London: George Bell and Sons, 1896.

[27] See Cavanaugh, 69-78.

[28] See Talal Asad. "Anthropological Conceptions of Religion: Reflections on Geertz." *Man*, New Series, Vol. 18, No. 2 (Jun., 1983): 237-259; 245.

[29] Cavanaugh, 79.

> interacts with such goods…The new religious-secular dichotomy fit into the modern state's individualist anthropology, as typified by Locke."[30]

To cite Locke's own words:

> "[T]he church itself is a thing absolutely separate and distinct from the commonwealth. The boundaries on both sides are fixed and immovable. He jumbles heaven and earth together, the things most remote and opposite, who mixes these two societies, which are in their original, end, business, and in everything perfectly distinct and infinitely different from each other."[31]

Thus Smith, Masuzawa and Cavanaugh all argue in different ways that religion cannot be universal, since its Enlightenment heritage roots it in a particular discursive history and political moment.

One of the Enlightenment's preoccupations was with language. Smith states that the

> "Enlightenment interest in language is a by-product of its preeminent concern for thought and thoughtfulness…unity and uniformity were revalued universalism; difference was stigmatized as irrational. Their sometimes vision of an abstract, universal humanity required the imagination of the possibility of an equally abstract, universal language in which all would be transparent, in which decipherment would be superfluous…"[32]

It is this development in language that accompanied European discourses of othering. Smith claims that, despite the horrific human costs, the conquest of the Americas was primarily a linguistic event.[33] Otherness is "is a political and linguistic project, a matter of rhetoric and judgment."[34] Othering, the third theme these historians of religion engage, found its most massive instituonalization in anthropology. Smith characterizes the discipline as "cultural meditation on difference" and "a xenological endeavor" that is at bottom a project of language.[35] Difference being, more than anything, a political matter,[36] othering mitigated by language plays as constitutive a role in the study of religion as it does in anthropology:

> "With respect to practice, the history of religions is, by and large, a philological endeavor chiefly

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[30] Ibid., 80.

[31] From John Locke, *Concerning Toleration*, 27, quoted in Ibid., 81.

[32] See Jonathan Z. Smith, *Relating Religion: Essays in the Study of Religion*. Chicago: The University of Chicago Press, 2004: 366.

[33] Ibid., 274.

[34] Ibid., 275.

[35] Ibid., 260-261.

[36] Ibid., 252.

> concerned with editing, translating and interpreting texts, the majority of which are perceived as participating in the dialectic of 'near' and 'far.' If this is the case, then our field may be redescribed as a child of the Renaissance."[37]

Classification of religions by varying criteria of difference are automatically political and involve hierarchy, because difference is "seldom a comparison between entities judged to be equivalent…most frequently entails a hierarchy of prestige and the concomitant political ranking of superordinate and subordinate."[38]

Masuzawa likewise contends that the discourse on religion is at once a discourse of secularization and a discourse of othering.[39] The nineteenth century saw a rise of new social sciences appropriate for the study of European societies. These were political science, economics and sociology. For the study of non-Europeans, the disciplines of anthropology (for small-scale societies) and Orientalism (for the great civilizations of the East) emerged.[40] Religion was very important to these developments because European society was becoming secularized.[41] Meanwhile, religion was believed to hold sway over all of Europeans' 'others':

> "non-Europeans, Europeans of the premodern past, and among their own contemporary neighbors, the uncivilized and uneducated bucolic populace as well as the superstitious urban poor, all of whom were something of 'savages within.'"[42]

As languages and texts of East became available to scholars in the West, non-Europeans "no longer seemed to possess the power and the prerogative to represent their own legacy apart from this scholarship."[43] This also provided Europeans with occasion to contemplate their own identity, in the mirror of otherness. It was "endless speculation on the differences and similarities between religions" that enabled these philological, political endeavors.[44]

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[37] Ibid., 364.
[38] Ibid., 253.
[39] Masuzawa, 20.
[40] Ibid., 15.
[41] Ibid., 16.
[42] Ibid., 19.
[43] Ibid., 17.
[44] Ibid., 19.

The final theme shared by Smith, Masuzawa and Cavanaugh in their historicizing of the concept of 'religion' is the extent to which this category participates in and enables geopolitics. Smith claims that some traditions constitute 'world religions' while others do not due to geopolitical rankings; and again we note the attributing of various levels of history-making to different peoples:

> "A World Religion is a religion like ours; but it is, above all, a tradition which has achieved sufficient power and numbers to enter our history, either to form it, interact with it, or to thwart it....We recognize both the unity within and the diversity between the 'great' World Religions because they correspond to important geo-political entities with which we must deal. All 'primitives' by way of contrast may be simply lumped together as may the so-called 'minor religions' because they do not confront our history in any direct fashion. They are invisible."[45]

Masuzawa confirms this contention. She points out that 'lesser' traditions go by generic, lower-case names (as in shamanism, animism, etc.). Native American, Siberian and Aboriginal Australian religions are also problematically categorized:

> "This category in its entirety used to be uniformly called 'primitive religions' in the earlier days, but more recently it has been variously termed 'primal,' 'preliterate,' 'tribal,' or even 'basic religions.' The restless shifting of appellations may be a measure of the discomfort felt by contemporary scholars of religion in their effort not to appear condescending to those people who used to be referred to as savages."[46]

Cavanaugh connects the discourse on religion to geopolitics by focusing on the modern nation-state and embedding the concept in the history of Western power.

Specifically, Cavanaugh points to the church-state negotiations that led to the naturalization of the boundaries between religion and non-religion:

> "The very claim that the boundaries between religion and nonreligion are natural, eternal, fixed, and immutable is itself a part of the new configuration of power that comes about with the rise of the modern state…
>
> "The new state's claim to a monopoly on violence, lawmaking, and public allegiance within a given territory depends upon either the absorption of the church into the state or the relegation of the church to an essentially private realm. Key to this move is the contention that the church's business is religion. Religion must appear, therefore, not as what the church is left with once it has been stripped of earthly relevance, but as the timeless and essential human endeavor to which the church's pursuits should always have been confined."[47]

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[45] Smith (1993), 295.

[46] Masuzawa, 4.

[47] Cavanaugh, 83.

At the close of these complex, lengthy negotiations, the church came to possess jurisdiction over private conscience while the state came to control body disciplines.[48]

Having briefly reviewed some themes from the history of the concept of 'religion' and the discourse on 'world religions,' I ask the question: what do these themes and this history reveal about contemporary universal human rights discourse? In a way, universal human rights is an attempt to soften the contradictions between the Enlightenment vision of a universal humanity and the gaping inequality and violence generated by geopolitics. Masuzawa states:

> "The advent of 'world religions' as a dominant discourse is generally understood to mark an explicit turn away from the nineteenth-century obsession with the primitive and the original…By converting from the evolutionary, pseudotemporal, hierarchical order to a geographic, pseudosptial, decentralized order of representation, the emergent world religions discourse appears to have liberated itself from Eurocentrism of a certain kind, since it acknowledges the actual plurality of cultures and of civilizing processes."[49]

This characterization of the ethical-discursive shift between the nineteenth and twentieth centuries captures some of the spirit of the universal human rights moment. If the Enlightenment "vision of an abstract, universal humanity required the imagination of the possibility of an equally abstract, universal language in which all would be transparent, in which decipherment would be superfluous,"[50] then human rights aims to be that universal language. But not without complications and tensions posed by the themes brought to light by Smith, Masuzawa and Cavanaugh. Universal human rights language affirms universal humanity while affirming the discretionary powers of the state – and this arrangement is intercepted by vectors of the inventedness of the concept of religion, Enlightenment values, othering and geopolitics. The way in which freedom of religion is curtailed by the discretionary powers of the states parties to various human rights conventions confirms that these complications exist. What follows is an investigation of the twin of 'religion,' which forms the conceptual environment in which practices of human rights, world religion and freedom of religion take place. This twin disciplines the subjectivities of agents who perform these practices. I now turn to the secular.

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[48] Ibid., 84.

[49] Masuzawa, 13.

[50] Smith (2004), 366.

The Secular

The critical insights of Smith, Masuzawa and Cavanaugh on the denotations, connotations and political history of 'religion' and the 'world religions' discourse are only half the story. The other half is the secular. In *Formations of the Secular: Christianity, Islam, Modernity,* Talal Asad examines the secular and secularism from a number of discursive problems.[51] He investigates the concept of secularism from anthropology, because this discipline allows "the comparison of embedded concepts (representations) between societies differently located in time or space," focusing not on "their origin (Western or non-Western), but the forms of life that articulate them, the powers they release or disable."[52] Asad posits 'the secular' as enabling and the various types of knowledge, action and desire through new institutional and discursive spaces. I will focus on four particular aspects of the secular that are especially relevant to my critical examination of universal human rights. These are: secularism in relation to the modern discourse on (privatized) religion; secularism and the undermining of the political action of religion; secularism and the modern nation-state (and state power); and secularism in relation to the morally autonomous subject of liberal modernity and universal human rights.

Asad defines 'the secular' as constituted by a variety of concepts, practices, and sensibilities.[53] It is a concept that "brings together certain behaviors, knowledges and normative responses in modern life."[54] One such sensibility pertains to the discourse on religion. Asad looks at university syllabi for 'Anthropology of Religion' courses and finds the following common tropes:

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[51] Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity*. Stanford: Stanford University Press, 2003.

[52] Ibid., 17.

[53] Ibid., 16.

> "myth, magic, witchcraft, the use of hallucinogens, ritual as psychotherapy, possession, and taboo. Together, these familiar themes suggest that 'religion', whose object is the sacred, stands in the domain of the nonrational."[55]

Heavy reliance on the myth trope entails a number of conceptual binaries, such as: "*belief* and *knowledge*, *reason* and *imagination*, *history* and *fiction*, *symbol* and *allegory*, *natural* and *supernatural*, *sacred* and *profane*."[56] This state of religious studies, in which religion is likened to myth, developed historically in the high culture of early modern Europe. There, notions of myth represented "a cultivated capacity for delicate feeling – especially for sympathy – and an ability to be moved by the pathetic in art and literature."[57]

Mythology was a compulsory part of upper-class education. In political theories, it served as a characteristic of primitive peoples:

> "Mythology is on the side of the primitive, the inferior races, the peoples of nature, the language of origins, childhood, savagery, madness – always the *other*, as the excluded figure."[58]

In the natural religion frameworks espoused by much Enlightenment thought, myth was considered the apprehension of truth directly, such that religious faith was not needed.[59] This was part of the Enlightenment emphasis on universal reason and the profanation – or unmasking – of pretended power (i.e. doctrinal religious truth-claims).[60] Like Cavanaugh, Asad maintains that the sacred/profane binary affirmed during this time had no place in premodern epistemology.[61] Rather, concepts were reoriented and redefined. For example, the concept of 'inspiration' was secularized and modernized, transforming it:

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[54] Ibid., 25.
[55] Ibid., 22.
[56] Ibid., 23.
[57] Ibid., 28.
[58] Ibid., 30.
[59] Ibid., 52.
[60] Ibid., 35-36.

> "from an authorized reorientation of life toward a telos, into a psychology of artistry whose *source* is obscure – and therefore [it] becomes the object of speculation (belief/knowledge)."[62]

Secularism is one of modernity's principles. Asad defines modernity as:

> "a *project* – or rather, a series of interlinked projects – that certain people in power seek to achieve. The project aims at institutionalizing a number of (sometimes conflicting, often evolving) principles: constitutionalism, moral autonomy, democracy, human rights, civil equality, industry, consumerism, freedom of the market – and secularism. It employs proliferating technologies (of production, warfare, travel, entertainment, medicine) that generate new experiences of space and time, of cruelty and health, of consumption and knowledge."[63]

It is clear from Asad's definition of modernity that secularism is at once discursive and institutional, of subjective experience and political power, and is a modern organizing logic that itself generates new experiences.

On the power of secularism to transform discourse, Asad shows how conceptual categories like 'religion' and the 'social' are not timeless and universal but historically situated and changing. These concepts had very different grammars in the premodern and modern English contexts:

> "We should not say that the English nation was *shaped or influenced* by religion: we should see the established church…as its *necessary condition*. Nor, given that it was a necessary condition of the nation-state, should we speak of the *social location* of religion in the eighteenth century being different from the one it came to occupy in the late nineteenth and beyond. Rather, the very essence of religion was differently defined, that's to say, in each of the two historical moments different conditions of 'religion's' existence were in play. What we now retrospectively call *the social*, that all-inclusive secular space that we distinguish conceptually from variables like 'religion', 'state', 'national economy', and so forth, *and on which the latter can be constructed, reformed, and plotted,* didn't exist prior to the nineteenth century."[64]

This point is especially valuable for understanding the universal human right of freedom of religion, which operationalizes the modern concept of religion. Concepts like 'religion' and the

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[61] Ibid., 32.

[62] Ibid., 37.

[63] Ibid., 13.

[64] Ibid., 189-190.

‘social’ can only facilitate and organize practices “according to the historical formations in which they occur.”[65]

Secularism is not the universally rational epistemological ground that humanity arrived at during the Enlightenment, but builds on a historically particular conception of the world and its problems:

> “In the context of early modern Europe these problems were perceived as the need to control the increasingly mobile poor in city and countryside, to govern mutually hostile Christian sects within a sovereign territory, and to regulate the commercial, military, and colonizing expansion of Europe overseas.”[66]

While the institutions that affected the emergence of the secular included urban poverty, religious warfare and colonial economics, the concepts and values that informed the secular turn in the early modern European context included Renaissance humanism, Enlightenment naturalism and Hegel’s philosophy of history.[67] This history explains how the secular has come to be understood as:

> “the ground from which theological discourse was generated (as a form of false consciousness) and from which it gradually emancipated itself in its march to freedom. On that ground humans appear as the self-conscious makers of History (in which calendrical time provides a measure and direction for human events), and as the unshakable foundation of universally valid knowledge about nature and society.”[68]

In addition to affecting the discourse on religion, the secular also undermines the political action of religion. The first way is by way of the law/morality distinction. The modern state depends on a strict secular distinction between law and morality, corresponding to the public and private spheres respectively. In today’s liberal states,

> “The secularist concedes that religious beliefs and sentiments might be acceptable at a personal and private level, but insists that organized religion, being founded on authority and constraint, has always posed a danger to the freedom of the self as well as to the freedom of others.”[69]

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[65] Ibid., 190.

[66] Ibid., 191-192.

[67] Ibid., 192.

[68] Ibid., 192-193.

[69] Ibid., 186.

When taken together with the increasing scope of the state's power, which includes the juridifcation of all interpersonal relations, religion's moral suasion in public culture is extremely curtailed:

> "In that context, far from becoming a source of moral values that can enrich public debate, deprivatized religion (where religion has already been defined essentially as a matter of belief) becomes a site of conflict over nonnegotiable rights – for example the parent's right to determine his or her child's upbringing, or the pregnant woman's right to dispose of her fetus."[70]

Asad makes the point that all social activity requires the consent of the law.[71] Religion has two options with regard to the modern state's law/morality dichotomy: it can either accept the space of thoroughly privatized belief and worship, or else it can engage public talk that makes no demands on life.[72] The scope of the state's regulatory powers further exacerbates the requirement to depoliticize religion:

> "Because the modern nation-state seeks to regulate all aspects of individual life – even the most intimate, such as birth and death – no one, whether religious or otherwise, can avoid encountering its ambitious powers…all social activity requires the consent of the law…The way social spaces are defined, ordered, and regulated makes them all equally 'political'."[73]

For this reason it is difficult for religious duties – which are themselves performed through social relations – to avoid confronting the state and its monopoly over law.

The law/morality distinction characteristic of modern liberal states is very different from premodern/traditional articulations of the *shari'a*.[74] Wael Hallaq, professor of Islamic law at Columbia University, is considered by many scholars (i.e. Mohammad Hassan Khalil, David S. Powers, Anver Emon and Khalid Blankinship) to be the foremost authority in the English language of Sunni Islamic law. Hallaq has authored over seventy works on Islamic legal theory and history, including books, chapter contributions, scholarly articles and encyclopedia entries. His work has been widely translated and well-received. In *The Impossible State: Islam, Politics*

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[70] Ibid.

[71] Ibid., 199.

[72] Ibid.

[73] Ibid.

[74] Ibid., 241.

and Modernity's Moral Predicament, Hallaq shows that premodern *shari'a* "was regulated not only by technical Shari'i rules but also by pervasive Shari'i ethic."[75] The shari'a is best understood as "a system that in its day was at once moral, legal, cultural, and deeply psychological."[76] As such, filtering Islamic commitments through the law/morality dichotomy fails to capture the paradigmatic character of the faith.[77] Hallaq defines the shari'a as:

> "a colossal project of building a moral-legal empire whose foundational and structural impulse is summed up in the ever-continuing attempt to discover God's moral will…the dialectic between the sociological and the metaphysical, between the Community as a worldly society and its persistent attempts to locate itself in a particular moral cosmology. But this realism about the world was always placed in a metaphysical context, just as this metaphysics was constantly teased out in the realism of mundane existence…There can be no Islam without a moral-legal system that is anchored in a metaphysic; there can be no such moral system without or outside divine sovereignty…"[78]

Just as 'religion' and the 'social' cannot be taken as universal categories, so too 'law' and 'morality' must be qualified and specified.

Hallaq explains that Islamic governance – those aspects of the shari'a that pertain to issues of political administration – has been historically understood and practiced under the auspices of the overarching Islamic moral framework:

> "Islamic governance (that which stands parallel to what we call 'state' today) rests on moral, legal, political, social, and metaphysical foundations that are dramatically different from those sustaining the modern state. In Islam, it is the Community (Umma) that displace the nation of the modern state. The Community is both abstract and concrete, but in either case it is governed by the same moral rules…
>
> "Whereas the nation-state is the end of all ends, knows only itself, and therefore is metaphysically the ultimate foundation of sovereign will, the Community and its individual members are a means to a greater end. This implies that the Community itself neither possesses sovereignty nor does it have…an autonomous political or legal will…[but it] does have the power of decision…But this power is an interpretative one, bounded…by general moral principles that transcend the Community's control."[79]

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[75] Wael B. Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament.* New York: Columbia University Press, 2013: 10.

[76] Ibid., 12.

[77] Hallaq states that, according to its premodern articulation, the shari'a is paramount for Muslims "as the ruling ethic of human behavior. *There is no Muslim identity without this ethic.*" (Ibid., 70. Emphasis in original.)

[78] Ibid., 51.

[79] Ibid., 49.

In light of the paradigmatic character of historical shari'a, it becomes impossible to speak of the authority of 'Islamic law' as independent from 'Islamic morals,' or even as separate from the revelation or prophetic example. Nor was premodern Islamic law under the authority of either an executive authority or a court. The executive produced only a minute amount of law, pertaining mostly to constitutions or bureaucratic administration.[80] The courts had for their "ultimate reference" the authority of independent (i.e. private) legal experts:

> "the Shari'a-anchored, Shari'a-minded, and socially embedded muftis and jurists…[I]t was the *fatwas* rather than court decisions that were collected and published…Once edited, the *fatwas* became part and parcel of legal doctrine."[81]

The community itself produced these legal experts organically.[82] Their work was delineated by Qur'anic and prophetic norms and values.[83]

Another important aspect of historical shari'a is its legal pluralism. The model of Islamic law was a corporate one, consisting of various schools. In these jurisprudential schools, or *maddhahib*:

> "...the opinions are reasoned on the basis of a shared set of principles that in fact give the school its identity as a particular 'legal' method or way of thinking about the moral law…there is no single legal stipulation that has monopoly or exclusivity, as law is designed by the modern state (which is also to say that in this system it would have been impossible for the legislative to be 'unruly' and potentially 'tyrannical,' as the American framers had feared..) Islamic law is one of legal pluralism, not only because it acknowledges local custom and takes it into serious account but also because it offers an array of opinions on one and the same set of facts."[84]

For this reason the legal corpus of any particular school did not necessarily have to be codified throughout the jurisdiction of a political executive. The shari'a had a local character, and legists incorporated local custom (*urf*) as a matter of legal methodology.[85] The shari'a also legislated areas that cut across the public/private distinction, i.e. it legislated *mu'amalat*, or contractual relations, as well as '*ibadat*, or ritual worship practices.[86]

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[80] Hallaq states: "…administrative regulations did supplement some provisions of the Shari'a…[which] in their thin but diverse substance – were mostly seen and accepted as an integral part of the legal culture and as an extrajudicial element that was required.." Ibid., 67-68.

[81] Ibid., 54.

[82] Ibid., 52.

[83] Ibid. Hallaq states: "As a product of their own social environment, the legists' fate and worldview were inextricably intertwined with the interests of their societies. They represented for the masses the ideal of piety, rectitude, and fine education…guardians of religion, experts in religious law …the locus of legitimacy and religious and moral authority." (52-53)

[84] Ibid., 59.

The implications of a political/legal understanding that bypasses the law/morality divide are serious. Hallaq states that "Islamic governance was productive of subjectivities that were paradigmatically Shar'i based."[87] Where the liberal state assumes its subjects to be morally autonomous and self-inventing (within the confines of its law), the shari'a assumes the opposite:

> "If morality indistinguishably located itself within the habitat of 'law,' it was because the subject of this 'law,' in its individual and collective forms, was unqualifiedly assumed to be a moral agent. Otherwise, the Shari'a's overall injunctions would have had no meaning within the contexts of social relations and would have been no more than a figment of the jurists' imagination."[88]

This helps explain Asad's claim that the Muslim Umma (or community of believers) is not synonymous with either 'society' or 'nation':

> "The Islamic *umma* in the classical theological view is thus not an imagined community on a par with the Arab nation waiting to be politically unified but a theologically defined space enabling Muslims to practice the disciplines of *din* in the world…[it] presupposes individuals who are self-governing but not autonomous…[and] is ideologically not 'a society' onto which *state, economy*, and *religion* can be mapped. It is neither limited nor sovereign…"[89]

A telling illustration of the tensions inhering in grafting 'law' conceptions from one historical tradition onto another comes from colonial Egypt's reduction of shari'a to 'personal status' or 'family' law. Asad states:

> "It is often assumed that colonial governments were reluctant to interfere with family law because it was the heart of religious doctrine and practice. I argue, on the contrary, that the *shari'a* thus defined is precisely a secular formula for privatizing 'religion' and preparing the ground for the self-governing subject."[90]

In nineteenth century Egypt during the *tanzimat* progressive legal reforms, neither the Arabic word for society (*mujtama'*) nor the phenomenon to which it refers existed. This is because

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[85] Ibid., 57-59.

[86] Ibid., 115.

[87] Ibid., 111.

[88] Ibid., 114.

[89] Asad (2003), 197.

[90] Ibid., 227-228.

‘society’ is constituted by autonomous individuals. The theological concept of umma, on the other hand:

> “has the sense of a collective body of Muslims bound together by their faith in God and the Prophet – a faith that is embodied in prescribed forms of behavior. It is therefore quite different from the idea of a society made up of equal citizens governing themselves individually (through conscience) and collectively (through the electorate).”[91]

Colonial Egypt saw the emergence of the family as a legal category and, therefore, as an administrative object.[92] The secular, as a field of power with both institutional and discursive aspects, was central to this development. The legal formation of the family confirmed the idea of individual morality by establishing for it a private sphere. The shari’a curtailed into ‘family law’ was now understood as the law of personal status, or *qanun al-ahwal al-shakhsiyya*:

> “In this way it becomes the expression of a secular formula, defining a place in which ‘religion’ is allowed to make its public appearance through state law.”[93]

Institutionally, the secular forces of state and market benefitted from the reinscription of Egyptian legal subjects through family law. Forced labor, military conscription, economic decline of petty merchants and artisans due to the influx of foreign capital, and land reform were some of the channels through which ‘the family’ as a legal category was operationalized.[94]

Asad suggests that it is the state’s political power, the market’s freedom of exchange and the moral authority of the family that helped usher in secular modernity at the turn of the twentieth century in Egypt:

> “Central to this schema is the distinction between law (which the state embodied, produced, and administered) and morality (which is the concern ideally of the responsible person generated and sustained by the family), the two being mediated by the freedom of public exchange – a space that was restructured in Egypt by the penetration of European capital and the adoption of European law

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[91] Ibid., 229-230.

[92] As such, says Asad, the family became “a part of the management of the modern nation-state…(Paradoxically, the ‘family’ becomes salient precisely when modern political economy…begins to represent and manipulate the national population in terms not of ‘natural units’ but of statistical abstractions – economic sectors, consumers, active labor force, property owners, recipients of state benefits, demographic trends, and so forth…‘the individual’ becomes marginalized.)” Ibid., 230.

[93] Ibid., 230-231.

[94] Ibid., 232.

> of contract, a space in which debates about Islamic reasoning and national progress, as well as about individual autonomy, could now take place publicly."[95]

This led to another important aspect of Asad's thought, pertaining as I frame it here to the relation between secularism and the undermining of religion's political action: that the neutrality of the public sphere is a myth.

Asad states that the public sphere "is a space *necessarily* (not just contingently) articulated by power."[96] This has to do with the difference between the freedom to speak and the freedom *to be heard.* If one's speech has no effect on the political world or its practical decisions, then the liberal virtue of free public debate is not being fulfilled.[97] The obstacles in the public sphere to free speech are not necessarily to be found in formal codes of law or exercises of state power, but are more subtle:

> "They are also intrinsic to the time and space it takes to build and demonstrate a particular argument, to understand a particular experience – and more broadly, to become particular speaking and listening subjects."[98]

The modern secular definition of religion as an essentially private experience informs the subject-formation of those who inhabit the public culture.[99] This in turn provides the limits and possibilities of what can be articulated in that public sphere:

> "The public sphere is not an empty space for carrying out debates. It is constituted by the sensibilities – memories and aspirations, fears and hopes – of speakers and listeners…Thus the introduction of new discourses may result in the disruption of established assumptions structuring debates in the public sphere. More strongly: they may *have* to disrupt existing assumptions to be heard. Far from having to prove to existing authority that it is no threat to dominant values, a religion that enters political debate *on its own terms* may on the contrary have to threaten the authority of existing assumptions."[100]

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[95] Ibid., 235-236.

[96] Ibid., 184. Emphasis in original.

[97] Ibid.

[98] Ibid.

[99] Ibid., 185.

[100] Ibid. Emphasis in original.

Religions that enter the public sphere with an acceptance of the liberal division between law and morality are commended; but organized religion, being founded on authority and constraint, continually poses a threat to the mutual freedom enshrined in the public sphere.[101]

As mentioned in the previous section, the increasing scope of the state's monopoly over law problematizes religion's contribution to the public culture. Not all values are negotiable.[102] Asad urges that:

> "that 'the secular' should not be thought of as the space in which *real* human life gradually emancipates itself from the controlling power of 'religion' and thus achieves the latter's relocation. It is this assumption that allows us to think of religion as 'infecting' the secular domain or as replicating within it the structure of theological concepts."[103]

Through the nation-state's demarcation and regulation of spaces, religious (and other) spaces have to be continually redefined in the law "because the reproduction of secular life within and beyond the nation-state continually affects the discursive clarity of that space."[104] For a 'religion' like Islam that espouses a direct relation between religious duties and social relations,[105] the secular public space with its promise of free debate – mitigated by the limits of the state's ever-increasing legal scope – may prove inadequate.[106]

Another important aspect of secularism that contextualizes the universal human right of freedom of religion is secularism's relation to the modern nation-state and state power. As previously mentioned with regard to 'religion,' the 'social,' 'law' and 'morality,' conceptual and epistemological categories are not timeless and universal but are historically constructed and contextually valued and relevant. Asad's examination of the categories of human nature, normality, agency, space and time are relevant for understanding the relation of secularism to the modern state. The renegotiation of law and morality among early secularists in nineteenth century liberal society led to the idea that individual moral autonomy constitutes human agency:

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[101] Ibid., 183, 186.
[102] Ibid., 186-187.
[103] Ibid., 190.
[104] Ibid., 201.
[105] Ibid., 243.
[106] While Islam holds that one's relation to God is legally inviolable, judging right action is not so. It is not an inaccessible conscience, but embodied relations that allows an individual to judge good conduct. Ibid., 247.

> "A critical rearticulation was being negotiated between state law and personal morality. This shift presupposed the new idea of society as a total population of individuals enjoying not only subjective rights and immunities, and endowed with moral agency, but also possessing the capacity to elect their political representatives – a shift that occurred all at once in Revolutionary France (excluding women and domestics), and gradually in nineteenth-century England…quite different from the medieval conception of a social body of Christian souls each of whom is endowed with equal dignity – members at once of the City of God and of divinely created human society. The discursive move in the nineteenth century from thinking of a fixed 'human nature' to regarding humans in terms of a constituted 'normality' facilitated the secular idea of moral progress defined and directed by autonomous human agency."[107]

The historical situatedness of liberal agency unsettles the grammar of human agency at work in universal human rights discourse. It implies that references to the rights associated with 'religion' have prerequisitely subscribed to truncated, depoliticized, privatized accounts of religion. While this may make perfect sense in the organic development of early modern European theory and practice, it may be an imposition on traditions outside that trajectory – traditions who have mapped their own histories and discursive developments.

Asad's unsettling of concepts extends to epistemological categories as well. Asad shows that secularism as a sensibility and field of power organizes (through the modern state) experiences of space and time. National politics organize space through ideas of exclusive boundaries while critics speak of a borderless world. However, the idea of complex space is better suited for capturing alternative conceptions of space:

> "Unlike the modern, secular world of nation-states, medieval Christendom and Islam recognized a multiplicity of overlapping bonds and identities. People were not always expected to subject themselves to one sovereign authority, nor were they themselves sovereign moral subjects."[108]

Experiences of time are also subject to national organization. Instead of secular homogenous time, Asad urges that we think of heterogenous time and simultaneous temporalities:

> "because the temporalities of many tradition-rooted practices (that is, the time each embodied practice requires to complete and to perfect itself, the past into which it reaches, that it

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[107] Ibid., 24.
[108] Ibid., 179.

> reencounters, reimagines, and extends) cannot be translated into the homogenous time of national politics. The body's memories, feelings, and desires necessarily escape the rational/instrumental orientation of such politics [of the nation-state]…"[109]

Only if political identities (i.e. 'Europe') are articulated in terms of complex time and complex space can multiple ways of life (as opposed to multiple identities) hope to exist.[110]

The secular space of early modernity was animated by a number of values: nature as manipulable;[111] the political as sacralized;[112] philosophical profanation and the rise of theories of universal reason;[113] and the secular as *the* epistemological domain in which history exists.[114] It is possible to find vestiges of these trajectories in institutions and discourses of today's modern nation-states. Asad identifies liberal democracy as expressing:

> "the two secular myths that are, notoriously, at odds with each other: the Enlightenment myth of politics as a discourse of public reason whose bond with *knowledge* enables the elite to direct the education of mankind, and the revolutionary myth of universal suffrage, a politics of large numbers in which the representation of 'collective will' is sought by quantifying the *opinion* and *fantasy* of individual citizen-electors…
>
> "the formation of these secular projects…embrace a distinctive politics (democratic, anticlerical), they presuppose a different kind of morality (based on the sacredness of individual conscience and individual right), and they regard suffering as entirely subjective and accidental (as bodily damage to be medically treated, or as corrective punishment for crime, or simply as the unfinished business of universal empowerment)."[115]

In addition to these liberal values, the modern nation-state also embodies secularism in how it prioritizes citizenship. Asad cites in agreement Charles Taylor's ideas about secularism:

> "the modern state has to make citizenship the primary principle of identity…it must transcend the different identities built on class, gender, and religion, replacing conflicting perspectives by

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[109] Ibid., 179-180.
[110] Ibid., 180.
[111] Ibid., 27.
[112] Ibid., 32. See also Ernst H. Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology*. Princeton: Princeton University Press, 1957. Kantarowicz traces with great historical detail the transformation of political sovereignty, beginning in Europe's Middle Ages/medieval Christendom, from Christ and the Church as his *corpus mysticum*; to the King as the vicar of Christ who has two bodies – a Body Natural that is subject to infirmity and death, and a Body Politic that is not; to the King as vicar of Justice, with the Law and *patria* conceived as sanctified and haloed during the Age of the Jurists; to the State as a body politic and body ethical/moral that resulted from natural reason with its concomitant emergence of society as a *corpus mysticum* that was also a *corpus morale et politicum*.
[113] Asad (2003), 35-36.
[114] Ibid., 43.
[115] Ibid., 61.

> unifying experience. In an important sense, this transcendent mediation *is* secularism. Secularism is not simply an intellectual answer to a question about enduring social peace and toleration. It is an enactment by which a *political medium* (representation of citizenship) redefines and transcends particular and differentiating practices of the self that are articulated through class, gender, and religion."[116]

The modern nation-state also generates its own categories, such as equality, majority and minority. These concepts are "statistical concept[s] of representativeness [which] emerged in close connection with the construction of the welfare state…and the centralization of national statistics."[117]

Secularism also establishes the state's claim to a legitimate monopoly on violence. The liberal project is akin to *making a garden in a jungle that is continually encroaching*,[118] and as such requires a substantial amount of (legitimate) violence. This is because of liberalism's myth, or "imaginary construction:"

> "to assert human rights precisely because they are *not* built into the structure of the universe. The frightening truth concealed by the liberal myth is, therefore, that liberal principles go against the grain of human and social nature. Liberalism is not a matter of clearing away a few accidental obstacles and allowing humanity to unfold its natural essence."[119]

Liberal violence is therefore transparent, and is "the violence of universalizing reason itself."[120] In such a discourse, religious violence is necessarily gratuitous.[121] The modern state's monopoly over violence means not only that it has the force of legitimate violence, but also that it has the power to define other types of violence as illegitimate:

> "Violence required by the cultivation of enlightenment is therefore distinguished from the violence of the dark jungle. The former is to be seen as an expression of law, the latter of transgression."[122]

The secular state doesn't eliminate violence, since its aim is to regulate violence.[123]

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[116] Ibid., 5. Here Asad is paraphrasing from Charles Taylor, *A Secular Age*. Cambridge: The Belknap Press of Harvard University Press, 2007.

[117] Asad (2003), 173.

[118] Ibid., 59.

[119] Ibid.

[120] Ibid.

[121] Ibid., 11.

[122] Ibid., 60.

[123] Ibid., 8.

Returning to Asad's example of colonial Egypt, we can observe the relation between the secular state's increasing power and violence through how it secured liberal governance in political, moral and theological realms. Asad states:

> "the law had to acquire new substance and new functions and to employ new kinds of violence. For colonial punishment – the institution of a police force and a prison system – was central to the modernization and secularization of law in Egypt."[124]

Outside of the historical specificities of the colonial Egyptian example, the modern state employs a calculus of cruelty that treats pain as quantifiable "in accordance with the proportionality of means to ends."[125] Universal human rights discourse also subscribes to this logic, but given the ambitions of state power, restraints can be rendered meaningless without violating the letter of the norm. Pain as quantifiable and justified with relation of the proportion of means to ends:

> "is the principle supported by the Geneva Convention. The principle states that the human destruction inflicted should not outweigh the strategic advantage gained. Only *necessary* punishment of noncombatants should be used. But given the aim of ultimate victory the notion of 'military necessity' can be extended indefinitely. Any measure that is intended as a contribution to that aim, no matter how much suffering it creates, may be justified in terms of 'military necessity'. The standard of accessibility in such cases is set by public opinion, and that standard varies as the latter moves in response to contingent circumstances (for example, who the enemy is, how the war is going)."[126]

The modern state's monopoly over law and violence, combined with the strict separation of law and morality, enables the state to be the sole force maintaining the law's authority.[127]

The final point about secularism relevant to the present thesis – that the secular is a field of power with institutional and discursive aspects forming a historically particular value system couching 'universal' human rights – is secularism's shaping of the morally autonomous individualist subject. In the inviolable distinction between public and private realms, private reason constitutes the right to difference and "the immunity from the force of public reason."[128] Since law is the purview of the public realm and morality a private matter, the individual is subject to political restraints by the state publicly and enjoys moral autonomy in private affairs. But 'agency' as a category is not universal or essential. Asad states:

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[124] Ibid., 218.

[125] Ibid., 117.

[126] Ibid., 117-118.

[127] Asad states: "If traditionally embodied conceptions of justice and unconsciously assimilated experience are no longer relevant to the maintenance of law's authority, then that authority will depend entirely on the force of the state expressed through its codes." Ibid., 239-240.

> "agency is not a natural category…successive uses of this concept (their different grammars) have opened up or closed very different possibilities for acting and being. The secular, with its focus on empowerment and history-making, is clearly one of those possibilities."[129]

Secular agency assumes an "essential freedom" and "natural sovereignty" for the human subject.[130] Asad states that this leads to romanticizing resistance, such that the subject is assumed to move in a particular direction of opposing power and eliminating pain/maximizing pleasure.[131]

Agency is a complex term embedded in semantic and institutional networks that define particular ways of relating to people, things and oneself.[132] In this scheme, 'empowerment' "becomes a metaphysical quality defining secular human agency, its objective as well as precondition."[133] The modern conscience, says Asad, is a secular conscience that subsumes moralized religion.[134] A humanitarian calculus of pleasure and pain serves as a cross-cultural judge of ideas and practices.[135]

At this point I ask: How do Asad's critical insights on the secular complicate the universal human right of freedom of religion? Universal human rights assume a morally autonomous, self-sovereign subject-citizen of the state. Her freedom of religion is afforded within this secular philosophical anthropology, and only to the extent that religion is principally a matter of belief. Given Hallaq's characterization of paradigmatic premodern shari'a as an indivisibly moral-legal matrix whose subject is a *moral* agent, the secularity of human rights detracts from its universality claims. Given the political powers exercised by states and markets, human rights become "floating signifiers" that can be connected and disconnected to different subjects and groups/classes of subjects according to the interests of market activity and state power (recall Smith and Masuzawa on geopolitics).[136] The autonomous individual is itself a statistical object, to be targeted by electoral politics and modern market culture alike.[137]

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[128] Ibid., 8.

[129] Ibid., 73.

[130] Ibid., 71.

[131] Ibid. Asad refers to Hobbes' and Locke's equation of good with pleasure and evil with pain. Ibid, 133.

[132] Ibid., 78.

[133] Ibid., 79.

[134] Ibid., 106. He states: "For Kant, 'pure religion' is nothing more than conscious-based morality, and it stands apart from the dogmas of historical religion."

[135] Ibid., 109.

The Universal Declaration on Human Rights "implicitly accepts the fact that the universal character of the rights-bearing person is made the responsibility of sovereign states."[138] This creates a curious circularity such that the suffering a human undergoes as a citizen becomes distinguishable from the suffering s/he undergoes as a human.[139] The 'legitimate' violence of the nation-state does not count as human rights violations:

> "The use of excessive force against civilians through aerial bombardment is regarded differently from the use of violence perpetrated by particular officials against individual victims. It is not a matter of human rights abuse but of collateral damage…Financial pressures can have effects that are more far-reaching than many military adventures. But the devastation these pressures can cause…cannot be addressed as human rights violations."[140]

Asad cites examples in which International Monetary Fund or United States policies cause destructive violence in other states, but this violence is "presented as the promotion of economic restructuring necessary for development."[141]

The essentially national context of universal human rights is a point that was made notably by Hannah Arendt in *On Revolution*. She stated that human rights depend essentially on being the citizen of a nation-state.[142] In this same work, Arendt places secularism at the core of liberatory politics.[143] Secularization is the attempt to find other versions of the authority and sanction provided by the 'absolute' of religion. Revolution seeks not just liberty but secularity.[144] There is a connotation, or subtext, inherited from the French and American Revolutions with their rights-proclamations, that freedom comes from rejecting tradition.[145] The sensibility in universal human rights partially equates law with justice, such that "the authority of norms corresponds to the political force that supports them as law."[146]

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[136] Ibid., 226 and 158.
[137] Ibid., 153.
[138] Ibid., 137.
[139] Ibid., 129.
[140] Ibid., 128.
[141] Ibid.

For these reasons, human rights law, despite its tremendous good, also becomes:

> "a mode of converting and regulating people, making them at once freer and more governable in this world. The employment of cost-benefit analysis derived from neoliberal economics has the advantage of defining 'freedom' quantitatively ('objectively') for the consuming subject in terms of behavior. It also provides a pragmatic principle for deciding when and to what extent the government of a population requires the restriction or abrogation of particular individual 'freedoms.'"[147]

Asad criticizes the sacredness of the human subject connoted by human rights discourse, claiming that human beings are only 'sacred' in an abstract sense, through abstract participation in popular sovereignty. Real humans are subject to the violence of their states.[148]

The secular, to review, is a field of power with discursive and institutional aspects. It intersects with universal human rights through a number of vectors: in its (negative) discourse on religion, undermining the political action of religion and advocacy of the morally autonomous subject. The secular as a constitutive principle of human rights philosophy, and the modern, limiting rendition of ‘religion’ at work in the freedom of religion, generate specific questions for Muslims today. As Muslims perform conceptual translation across their faith tradition and universal human rights, they produce a variety of positions. In the next chapter, I reflect on arguments in favor of human rights made by five influential contemporary Muslim scholars in the Western public intellectual space. These thinkers adopt a working model of Islam as a religion in the modern sense indicated in this chapter.

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[142] Hannah Arendt, *On Revolution*. London: Penguin Books, 1963: 148-149. In *Philosophy of Right,* Hegel had also limited the individuality and ethical possibilities of human subjects to the confines of their states: "Since the state is mind objectified, it is only as one of its members that the individual has objectivity, genuine individuality, and an ethical life." Hegel (1896), 267-270.

[143] See Samuel Moyn, "Hannah Arendt and the Secular." *New German Critique*, No. 105, Political Theology (Fall 2008): 71-96.

[144] Ibid., 75-77; Arendt, 108-109 and 159-160.

[145] Asad (2003), 145.

[146] Ibid., 138.

[147] Ibid., 157.

[148] Ibid., 144.

According to Asad, modernity brings “a new kind of subjectivity, one that is appropriate to ethical autonomy and aesthetic self-invention – a concept of ‘the subject’ that has a new grammar.”[149] But universalizing this grammar is problematic, because different traditions (traditions in the sense argued by MacIntyre[150]) produce and perpetuate different ideas of what it means to be ‘human.’ Human rights is only one such language.[151] Multiple interpretive lenses do not recognize and espouse the secular assumptions and category of religion presented in this chapter. There is *other* Muslim scholarship on human rights that *does not* fit into the secular discourse on religion (as less rational, less developed, etc.), the strict separation of religion from politics and law from morality, or the moral autonomy and self-sovereignty of the individual. In chapter five, I examine the human rights-related arguments of five influential contemporary Western Muslim scholars, thematically contrasting their arguments with their modern-religion counterparts from chapter four.

Before comparing contemporary Muslim engagements with human rights, I identify an alternative conceptualization of Islam – one which avoids the reductive, secular implications of ‘religion.’ In order to understand the philosophical bases of the variety of Muslim thought on the relation between Islam and universal human rights, I propose that the Qur'anic term that identifies Islam, *din*, join the analysis. Examining the prior philosophical commitments and theorizing of divergent arguments about human rights – and not just their positive content – can not only enrich our understanding of how to make human rights more universal, it can also lead to appreciation for the contribution Muslim perspectives can make to public intellectual debate. For this I turn to a textual analysis of *din* in the Qur'an.

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[149] Ibid., 225.

[150] See chapter 1 above, “Introduction: The Rationality of Traditions.”

[151] Asad (2003), 140. Asad asks, how can human rights’ universality be defended? “For when nature is interpreted positivistically in terms of statistical norms, then different norms of behavior and sentiment can claim to be equally natural…a crippling relativism.” Ibid., 58.

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The Qur'an is the continually relevant founding text of Islam (i.e. its 'holy book'). Its transhistorical, transcultural relevance for Muslims can be understood by gleaning how the historical Islamic tradition is like a perpetually renegotiated elaboration of the Qur'anic worldview.[152] To take an example from Islamic jurisprudence of the Qur'an's continual primacy, Mohammad Hashim Kamali, former professor of law at the International Islamic University of Malaysia and author of sixteen books and over one-hundred scholarly articles on Islamic law, states:

> "It [the Qur'an] may be defined as the book containing the speech of God revealed to the Prophet Muhammad in Arabic and transmitted to us by continuous testimony, or *tawatur*. It is a proof of the prophecy of Muhammad, the most authoritative guide for Muslims, and the first source of the *Shari'ah*. The *ulema* are unanimous on this, and some even say that it is the only source and that all other sources are explanatory to the Qur'an."[153]

Islamic philosophy also centers the Qur'an. Seyyed Hossein Nasr, professor of Islamic studies at George Washington University, has authored fifty books and five hundred scholarly articles on comparative religion, traditionalist metaphysics, Islamic sciences, the environment and Sufism. Of the centrality of the Qur'an to the tradition of Islamic philosophy, Nasr states:

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[152] I am not suggesting, here or elsewhere, that Islam – its history, cultural manifestations, or interpretive debates – are in any way monolithic. In other words, specific interpretations over the true meanings of the Qur'an are not transhistorical or transcultural, but the relevance of and reverence for the book as a founding text considered divine speech for all humanity transcends time, place and history as a principal Muslim belief. The tremendous intellectual and material diversity of Islam is united under the broad proclamation of faith that enters one into the community of believers (that there is only one God and that Muhammad was the messenger of God). The perpetual relevance of the Qur'an is integral to this.

[153] See Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*. Islamic Texts Society, 1991: 22.

> "If seen…from its own perspective and in the light of the whole of the Islamic philosophical tradition which has had a twelve-century-long continuous history and is still alive today, it becomes abundantly clear that Islamic philosophy, like everything else Islamic, is deeply rooted in the Qur'an and Hadith. Islamic philosophy is Islamic not only by virtue of the fact that it was cultivated in the Islamic world and by Muslims but because it derives its principles, inspiration and many of the questions with which it has been concerned from the sources of Islamic revelation despite the claims of its opponents to the contrary…[it is] a type of philosophy in which a revealed book is accepted as the supreme source of knowledge not only of religious law but of the very nature of existence and beyond existence of the very source of existence…[The Islamic philosophers] almost unanimously accepted revelation as a source of ultimate knowledge."[154]

In his elaboration of traditions, MacIntyre also admits the distinctly important role that sacred texts play in religious traditions. He states that sources of authority deemed sacred will not be repudiated in the same dialectical process of reevaluation as the non-sacred:

> "Where a person or a text is assigned an authority which derives from what is taken to be their relationship to the divine, that sacred authority will be thereby in the course of this process exempt from repudiation, although its utterances may certainly be subject to reinterpretation."[155]

The Qur'an as continually central to Islamic intellectual and lived traditions performs a constitutive function in Islam's worldview. The word 'worldview' has a complex and, at times, controversial history. According to David Naugle, professor of philosophy at Dallas Baptist University and author of several works on Christianity and worldview, worldviews are "the silent, yet motive forces that shape the conflicted dynamics of human life."[156] While I do not agree with all of Naugle's thought,[157] I cite him here because his work *Worldview: History of a Concept* has been well-received for its historically and philosophically fair treatment of the concept.[158]

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[154] See Seyyed Hossein Nasr, "The Qur'an and *Hadith* as source and inspiration of Islamic Philosophy," in *History of Islamic Philosophy, Part I.* Seyyed Hossein Nasr and Oliver Leaman, eds. Qum: Ansariyan Publications, 2001: 27-28.

[155] MacIntyre (1988), 355. See chapter 1, "Introduction: The Rationality of Traditions," for my full treatment of MacIntyre's argument, and why I frame my investigation into human rights' universality claims vis-à-vis secular concepts pertaining to religion using MacIntyre's thesis on the rationality (and incommensurability) of traditions.

[156] See David Naugle. "Clashing Civilizations, Culture Wars, and the Academy: The Illuminating Role of 'Worldview'." Lecture delivered at Christian Leadership Ministries SMU Luncheon Lecture Series, September 30, 2003: 3. Available at: http://www3.dbu.edu/naugle/pdf/Clashing%20Civ,%20Cult%20Wars,%20Wv-lec.pdf. Accessed June 24, 2016.

Naugle traces the varying grammars of 'worldview' (*weltanschauung* in its original German) from Kant through German idealism and realism (in Fichte, Schelling, Schleiermacher, Hegel, Goethe and others).[159] By the nineteenth century, worldview's definition "as a basic outlook on life had become more or less fixed, and it soon became a popular companion word used alongside philosophy."[160] The word entered into American philosophy soon after, and was also appropriated by various Dutch, Scottish and American theologians "as a way of explaining Christianity as a comprehensive, holistic philosophy of life."[161]

Before arriving at his particular appropriation of the term for contemporary Christians, Naugle identifies the differences between the various articulations and uses of worldview among modern Western philosophers:

> "G. W. F. Hegel understood defined it as different and recurrent views of life, forms of consciousness, and world outlooks. Søren Kierkegaard, who preferred the term lifeview, understood it to express a particular understanding of the meaning of life and its purpose. Wilhelm Dilthey spoke about worldviews as explications of the enigmas of life, answers to the questions that comprise the riddle of the universe. Friedrich Nietzsche said that worldviews were nothing but reifications, fictive ways of seeing and knowing things from a particular perspective. Edmund Husserl argued that a worldview was a value system, an acquired wisdom, an infused consciousness, leading to an ideal humanity. Martin Heidegger said that worldviews were interpretations of natural things, a view or sense of life that shapes human affairs. For Ludwig Wittgenstein, it was a fusion of a form of life and a language game that he preferred to call a world picture. For postmodernists, they are, a la Nietzsche, reified metanarratives that need to be deconstructed."[162]

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[157] Naugle accepts the truth of theses of impending clash – both Samuel Huntington's clash-of-civilizations thesis and Huntington's student, James Kurth's clash-within-Western-civilization between secularist and Judeo-Christian outlooks thesis.

[158] See David. K. Naugle, *Worldview: The History of a Concept*. Grand Rapids: William B. Eerdmans Publishing Company, 2002. See reviews by: Dale Canon, "David Naugle on Worldviews." *Tradition & Discovery: The Polanyi Society Periodical*, Vol. 33, No. 1 (2006-2007): 27-31; and Brent G. Kyle, "Book Review: Worldview: The History of a Concept." *Direction: A Mennonite Brethren Forum*, Vol. 33, No. 1 (Spring 2004): 123-125.

[159] Naugle (2003), 3.

[160] Ibid.

[161] Ibid.

[162] Ibid., 4.

Naugle's own use of worldview is as "a vision of life rooted in and expressed through the human heart," where the heart, according to Biblical teaching, is the seat of the intellect, i.e. of ideas, sensibilities and choices.[163] For Naugle, a person's worldview is her *presuppositional basis of life* from which arguments are constructed and action taken. All knowledge is therefore perspectival.[164] Epistemic self-dispossession is impossible, as thinking "is always a function of the whole person."[165]

In what follows, I speak of the Islamic or Qur'anic worldview in the manner of Naugle's appropriation for 'the Christian worldview':

> "Though it sustains a variety of definitions and nuances, at the end of the day, it [a worldview] conveys a person's deepest conceptions and convictions about the basic make up of reality and the nature of life itself."[166]

Alparslan Acikgenc, professor of philosophy and history at Yildiz Technical University and author of several books and articles on the history, epistemology and sociology of science, and religion and science, defines worldview as an overarching mental organizing schema, "the only framework within which the human mind can fully operate in order to attain knowledge."[167] From this perspective, all human conduct is ultimately traceable to a worldview. The Qur'anic text encompasses and espouses a worldview in this sense. In the previous section I suggested that the modern concept 'religion' can have a secularizing and truncating effect on the life of religion. In what follows I explore the Qur'anic worldview (in its broadest sense) through a textual and semantic analysis and propose that *din* can be a more fitting concept for theorizing about Islam and human rights.

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[163] Ibid., 5.

[164] Ibid., 9.

[165] Ibid., 12.

[166] Ibid., 18.

[167] Alparslan Acikgenc, *Islamic Science: Towards a Definition*. Kuala Lampur: International Institute of Islamic Thought and Civilization, 1996: 9.

The Qur'an refers to the Islamic religion as *din*. To understand what *din* implies for Islamic self-understanding, I begin with its etymology. Arabic morphology, or word structure, is highly systematic, and Arab grammarians developed sophisticated analyses of it beginning in the late eight and early ninth centuries.[168] In its derivational or lexical morphology (i.e. how words are formed, as opposed to its inflectional morphology, which deals with how words interact with syntax), Arabic:

> "exhibits rigorous and elegant logic…It consists primarily of a system of consonant roots which interlock with patterns of vowels…to form words, or word stems…In Arabic, this root-pattern process has evolved extensively and very productively in order to cover a vast array of meanings associated with each semantic field…"[169]

All of the words and word stems derived from the root are directly related in meaning to that root. For my purpose here, the fullest possible meaning of *din* can only emerge when the entire family of words derived from its root are considered. For this I cite Syed Muhammad Naquib al-Attas' etymological summary of the term.

Al-Attas is a prominent contemporary Muslim philosopher who has authored twenty-seven works on Sufism, Islamic cosmology, metaphysics, philosophy and Malay language and literature. He has founded, chaired and reformed several institutions of higher education in Malaysia, and has guest-lectured internationally. According to al-Attas, the many uses of *din* in the Qur'an are as follow:

> "The primary significations of the term *din* can be reduced to four: (1) *indebtedness*; (2) *submissiveness*; (3) *judicious power*; (4) *natural inclination or tendency*…The verb *dana* which derives from *din* conveys the meaning of *being indebted*…In the state in which one finds oneself being in debt, that is to say, a *da'in* it follows that one subjects oneself, in the sense of *yielding* and *obeying*, to law and ordinances governing debts, and also, in a way, to the creditor, who is likewise designated as a *da'in*. There is also conveyed in the situation described the fact that one in debt is under *obligation*, or *dayn*. Being in debt and under obligation naturally involves *judgment*: *daynunah*, and *conviction*: *idanah*, as the case may be. All the above significations including their contraries inherent in *dana* are practicable possibilities only in organized societies involved in commercial life in *towns* and *cities*, denoted by *mudun* or *mada'in*. A town or city, a *madinah*, has a *judge*, *ruler*, or *governor*, a *dayyan*. Thus already here, in the various applications

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[168] See Karin C. Ryding, *A Reference Grammar of Modern Standard Arabic*. Cambridge: Cambridge University Press, 2005: 44.
[169] Ibid., 45-46.

> of the verb *dana* alone, we see rising before our mind's eye a picture of civilized living; of societal life of law and order and justice and authority. It is, conceptually at least, connected intimately with another verb *maddana* which means: to *build* or to *found cities*: to *civilize*, to *refine* and to *humanize*; from which is derived another term: *tamaddun*, meaning *civilization* and *refinement* in *social culture*."[170]

From this passage it becomes clear that, while Islamic belief necessarily encompasses the private space of an individual believer's conscience in her relationship with God and subsequent agentive pietistic motivation, *din* is *primarily* contractual, social, civil, economic and political in its meaning. In other words, Islam-as-*din* is *not* a religion in the disembodied, private-sphere-*only* sense. As such, not all Muslim interpretations of the universal human right to freedom of religion will filter through the private/public dichotomy required by the modern grammar of 'religion.'[171]

Islam-as-*din* is much closer to medieval Christian self-understanding (what Cavanaugh called the "theopolitical whole"[172]) than to religion in the modern sense. As Asad argues elsewhere, reflecting on the religion theory of the iconic anthropologist Clifford Geertz:

> "It is part of my basic argument that socially identifiable forms, pre-conditions and effects of what was categorized as religion in the medieval epoch were quite different from those so categorized in modern society. Religious power was differently distributed, and had a different thrust. There were different ways in which it created and worked through institutions, different selves which it shaped and responded to, and different categories of knowledge which it authorized and made available. A consequence is that there cannot be a definition of religion which is universally viable because and to the extent that the effects of these processes are historically produced, reproduced and transformed…
>
> "[Geertz makes] the bland suggestion that religion is ultimately a matter of having a positive attitude to the problem of disorder, of affirming simply that in some sense or other, the world as a whole is explicable, justifiable, bearable. This modest view of religion (which would have horrified the early Church Fathers or medieval churchmen) is a product of Geertz's recurrent desire to define religion in universal terms…"[173]

To understand the significance-giving extensions of Islam-as-*din*, I will explicate the single-most representative, or paradigmatic, concept of the Islamic/Qur'anic worldview. That is the concept of the oneness of God, or *tawhid*. Islam's strict monotheistic principle forms the underlying unity within the diversity of Islamic doctrines and discourse. Toshihiko Izutsu (d. 1993) was professor of cultural and linguistic studies at Keio University in Japan. Considered an intellectual giant by many, he taught in Iran and Canada, was fluent in over thirty languages, and published the first direct Japanese translation of the Qur'an. His areas of specialization included philosophy, linguistics and comparative metaphysics. Izutsu's work *God and Man in the Qur'an: Semantics of the Qur'anic Weltanschauung* demonstrates, in addition to the strictness and centrality of monotheism for the Islamic creed, the saturation of language with meaning – and the problems this can pose for translatability.[174] Vocabularies and individual terms are not merely isolated linguistic significations but convey the broader conceptual worldview of those who live and use them. Izutsu does this through a semantic study of Qur'anic terminology, a work which he describes as:

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[170] Syed Muhammad Naquib al-Attas, *Prolegomena to the Metaphysics of Islam: an Exposition of the Fundamental Elements of the Worldview of Islam*. Kuala Lampur: International Institute of Islamic Thought and Civilization, 1995: 44.

[171] See 'Religion' and 'The Secular' sections above.

[172] See my discussion of William Cavanaugh's work in 'Religion' section above.

[173] Asad (1983), 238 and 246.

> "an analytic study of the key terms of a language with a view to arriving eventually at a conceptual grasp of the *weltanschauung* or world-view of the people who use that language as a tool not only of speaking and thinking, but, more important still, of conceptualizing and interpreting the world that surrounds them…a study of the nature and structure of the world-view of a nation at this or that significant period of its history, conducted by means of a methodological analysis of the major cultural concepts the nation has produced for itself and crystallized into the key-words of its language."[175]

The ontological significations of language cannot be emphasized enough. In the Islamic tradition, the Qur'an and prophetic way represent two sacred sources of knowledge, inspiration and guidance for proper conduct. A metaphor proposed by Seyyed Hossein Nasr illustrates the nurturing role played by these two sacred texts in the lifeblood of Islamic sciences:

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[174] Toshihiko Izutsu, *God and Man in the Qur'an: Semantics of the Qur'anic Weltanschauung*. Kuala Lampur: Islamic Book Trust, 2002. According to one commentator, Izutsu's use of *weltanschauung* in the title of this work gives a clue to his understanding of semantics, "for it is semantics as *sprachliche Weltanschauungslehre*, as developed by Johann Leo Weisgerber, to which Izutsu subscribes. This type of semantics has much in common with the 'ethnolinguistics' associated with the names of Edward Sapir and Benjamin Whorf…a theory of the interrelations between linguistic and cultural patterns." See Harry B. Partin, "Review: Semantics of the Qur'an: A Consideration of Izutsu's Studies." *History of Religions*, Vol. 9, No. 4 (May 1970): 358-362; 358.

[175] Izutsu, 3.

> "The Holy Quran and Hadith…are like the roots and the trunk of the tree of the Islamic tradition. The arts and sciences, social institutions and the like are the branches of the tree, some located closer to the trunk and others farther away but all a part of its organism and nourished ultimately by the roots."[176]

Izutsu shows that there exist in any given language complex webs of interconnectedness, such that the meaning of a single term depends upon the meanings of many other terms within its (multiple, overlapping) conceptual webs. These networks of meaning exist within the broader system of relations a language maintains, and within them, nothing is casual. Every combination points back to some aspect of the worldview. The key point here is the contextual nature of word-meanings (contexts can be not only textual – i.e., the Qur'an – but also cultural/historical, and here change, not permanence, is the name of the game). In this case, the Qur'anic vocabulary in its entirety is a large conceptual system, which consists of so many overlapping smaller conceptual networks, or 'semantic fields'. The concept of *tawhid*, or Divine Oneness, enters into the Qur'anic semantic system as the highest ranking organizing principle, imbuing every single term with a significance connected to itself.[177]

Izutsu demonstrates this through an investigation of a number of Qur'anic 'focus-words.' A focus-word is "a particularly important key-word which indicates and delimits a relatively independent and distinctive…'semantic field'…within the larger whole of the vocabulary."[178] 'Allah', the Qur'anic proper name of God which is the content of the principle of *tawhid*, is "the highest focus-word in the Qur'anic vocabulary, reigning over the entire domain."[179] This includes reign over a number of dichotomies vital to religious life and thought, such as: the unseen and the visible, the present world and the hereafter, the Garden and the Hell Fire; as well as doctrinal and eschatological concepts required for belief, i.e. creation, destiny, the Last Day, the Day of Judgment, resurrection, etc.

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[176] Seyyed Hossein Nasr. *Islamic Life and Thought*. Albany: State University of New York Press, 1981: 1.

[177] Izutsu states: "not all words in a vocabulary are of equal value in forming the basic structure of the ontological conception underlying the vocabulary…" Izutsu, 17.

[178] Ibid., 22.

[179] Ibid., 24.

The covenant between human and God plays a central role,[180] and is the starting point of the Islamic concept of religion, or *din*. As Naquib Al-Attas explains, the religious vision and metaphysics (*shuhud*) is based on God as *Al-Haqq*, or 'The Real'. Only God's is Existence (*wujud*), while all others are existent (*mawjud*). God is One (*Al-Ahad; Al-Wahid*), while all others are multiplicity (*kathrah*). Islam admits of no dualism, since one of the two elements involved (i.e. God) is independent and self-subsistent, while the other dependent and relative. Nor does Islam admit of a dichotomy between sacred and profane, given the concept of the Unity of Creation. The prophethood is another vital part of Islamic metaphysics, weaving in and out of many doctrinal semantic fields (such as divine guidance and mercy, the Book, evidence against disbelievers, etc.). Eschatological concepts pertaining to Islam's account of the end of earthly time and Divine Judgment also comprise an essential part of the Islamic worldview in its broadest outlines.[181]

Izutsu elaborates the four major types of relation between God and human according to the Qur'an. These are:

1. *Ontological*: God as source and creator, human as representative and creature.
2. *Communicative*: From God to human, the verbal form is revelation, and the non-verbal form is signs (*ayat*). From human to God, the verbal form is prayer (*du'a*), and the non-verbal, ritual worship (*salat*).
3. *Lord-servant*: The Divine attribute *rabb* signifies God's majesty, sovereignty and absolute power, while the human being is slave, '*abd*: humble, modest and obedient.

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[180] Izutsu refers to this as the absolute slavehood of man before the absolute sovereignty of God. Ibid., 78, 96 and 246-248. While Izutsu uses the term "man" for human being, I have updated his terminology here for ease of readability, rendering "man" into "human" or "human being."

[181] Al-Attas (1995), 75-78.

4. *Ethical*: Two possibilities. On the one hand, God's goodness, mercy, forgiveness and benevolence and human's thankfulness (*shukr*) and fear of God (*taqwa*). On the other hand, God's wrath and severe justice, and human's disbelief (*kufr*).[182]

These aspects of God's relation to the human being are supplemented with other concepts vital to the Islamic worldview, corresponding in Izutsu's schema to important 'semantic fields' surrounding key 'focus words.' The concept of creation *ex nihilo*, to take an important example, imbues believers with the consciousness of creatureliness, which in turn cultivates the essential virtues of *shukr* and *taqwa* and wards away *kufr*. Human destiny as in the hands of God is another important example. The Qur'anic semantics reorient this concept from its previous grammar in pre-Islamic Arabia to one consistent with the implications of *tawhid*. The pre-Islamic Arabs had no notion of a hereafter, believing instead that human existence on earth was in the hands of the "tyrannical sway" of a "powerful master:" *dahr*, or time.[183] *Dahr* was understood as unpredictable, blind, and capricious, causing all manner of suffering and misery to all types of people from across social groups. It was understood more along the lines of Machiavelli's *Fortuna* than the monotheistic God of Islam.[184]

The Qur'anic semantics reconfigured the concept of human destiny completely. All human life comes under God's omnipotent will and control. The God of Islam makes concrete promises about the consequences of human actions, and God's promises, according to the Qur'an, always come true. Death and the afterlife in the semantics of the Qur'an are intimately connected to the aforementioned concepts (creation and human destiny), through the highest ranking focus word "God." This is true of all the other focus words which constitute the basic metaphysical worldview of the Islamic faith (i.e. signs, human faculties, warnings/glad tidings, belief/disbelief, divine guidance, the way, worship, revelation, the realms of existence, mercy, and justice, etc.).[185] *Tawhid* enjoys – conceptually, practically, spiritually, legally, discursively, institutionally, etc. – a defining position in the Islamic tradition.

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[182] Izutsu, 78.

[183] Ibid, 131-134. The pre-Islamic Arabian notion of time-as-destiny was also known by several other names, such as *zaman*, *'asr*, *ayyam*, and *'awd*. But the underlying conception was always the same.

[184] For Machiavelli, Fortuna controls half of our actions, and princely greatness consists half in the prince's great ability/half in receiving favor from Fortuna. These points form the basis of Machiavelli's metaphorical recommendation to be violent and audacious (rather than cautious) when dealing with 'her.' See Niccolo Machiavelli, *The Prince*, chapter 25 ("What Fortune Can Affect in Human Affairs and How to Withstand Her") in Quentin Skinner and Russel Price, eds. Cambridge: Cambridge University Press, 1988.

In light of the claims made by Smith, Masuzawa and Cavanaugh about the modern origins of the concept of 'religion,' *din* appears as something distinct. An understanding of Islam as *din* is incommensurate with Islam as a (privatized, disembodied) religion. It is consistent to follow the modern definition of religion to the conclusion that religion can be strictly separated from politics and economics, and that the secular state rightfully legislates the outermost limits and possibilities of social relations. However, when an alternative definition of Islam is taken, i.e. Islam as *din*, it is theoretically unfeasible to accept these conclusions. *Tawhid* reigns over the domain of life and thought and becomes the primary and ultimate source of legality and morality in an interconnected way. This does not preclude obedience to 'secular' 'political' authority;[186] but it *does* preclude the metaphysical pretensions of the modern state in its monopoly over law, violence and the power over life and death.[187] *Tawhid* is the necessary sieve through which the justness/unjustness of contingent socio-political realities are to be filtered. According to this interpretation, the Qur'anic worldview could not admit of Islam as a (sole) matter of (disembodied) conscience.

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[185] See Izutsu chapters 5, 6 and 7. I will not elaborate on these concepts in order to focus on *tawhid* and its relation to Islam as *din* (distinct from 'religion' in the modern sense). The illustrations above – pertaining to the four relations between God and the human, creation, and human destiny – should suffice to make the point that *tawhid* pervades the Islamic worldview and reigns over its metaphysical framework.

[186] Those who accept the Qur'an's authority are obligated, by Chapter 4 ('The Women'), verse 59, to obey the authority of God, the Prophet, and "those from among you who have been entrusted with authority." (All English translations of the Qur'an are from Muhammad Asad, *The Message of the Qur'an,* Gibraltar: Dar-al-Andalus, 1980). In the first centuries of Islam, this verse was interpreted as a sanction of the spiritual authority of pious people and the military authority of regionally appointed forces. See for example Asma Afsaruddin, "Obedience to Political Authority: An Evolutionary Concept," in M. A. Muqtedar Khan ed., *Islamic Democratic Discourse: Theory, Debates and Philosophical Perspectives*. Lanham: Lexington Books, 2006: 37-60. Afsaruddin examines Qur'an 4:59 in light of several "semantic expansions" of the verse that have occurred throughout Islamic history. She argues against modernist and Orientalist accounts of obedience to political authority in Islam as conducive to despotism. Additionally, it should be noted that the Qur'an posits a dialectic interaction between contingent political authority, which can be just or unjust, and Divine authority, which is paramount. The story of Moses being sent to

It should now be appreciable that Muslim engagements with universal human rights that operationalize an Islam-as-*din* perspective will produce different theory than those who espouse the modern concept of 'religion.' All of the engagements generate reasoned arguments pertaining to human rights norms in the language of the Islamic tradition, i.e. they all interpret the imperatives in the sacred sources from within the Qur'anic worldview (in its broadest sense), and translate those imperatives into the social, political, economic, etc. questions of our time. However, despite this shared rootedness in the Qur'an and the general Islamic worldview, Muslim thinkers are producing a variety of human rights arguments (the subject of the next two chapters). It is my argument in this thesis that human rights is not universal on account of the discourse's secular foundation, and that this can be seen through a survey of Muslim engagements with the subject. Though I have sampled only a small survey (five thinkers from each position, and this in order to treat their arguments in some detail), the scholars divide rather consistently across the 'religion'/*din* divide. That is, thinkers who espouse a modern definition of religion advocate human rights, while thinkers who see Islam as *din* challenge them.

Conclusion

Pharaoh is a potent example: "And exalt not yourselves against God: for, verily, I come unto you with a manifest authority [from Him];" (44:19); "And in [the story of Pharaoh and] Moses, too, [We left the same message: for] when We sent him unto Pharaoh with [Our] manifest authority," (51:38).

[187] See Wael Hallaq on premodern paradigmatic shari'a and the essential characteristics of the modern state, p. 91-94 and 103 above.

In this chapter I have demonstrated that the universal human right to freedom of religion employs a modern definition of 'religion,' one that is secular. Religion in the modern sense is a political category, insofar as it delineates the limits of religion vis-à-vis the state's authority and power. It is a psycho-social category, as it forms subjectivities and norms governing social relations according to the presumed moral autonomy of each individual. The modern concept of religion also has institutional aspects, to the extent that it mitigates what rights the family and organized religion can legitimately exercise over subject-citizens of a state. In all these mediations, we can read that the philosophical anthropology, or theory of the human being, at work in universal human rights is distinctly secular.

The secular, as Talal Asad has persuasively argued, is a field of power with discursive and institutional aspects. Our modern grammars of 'agency' and the 'social,' for example, are not universal, natural or essential. Rather, they are – like all configurations of power – situated within particular histories, and – like all knowledge – intimately connected to a particular worldview.

Asad has indicated that the liberal public sphere – important for my purposes because it is where debates over human rights norms take place – is constituted by power.[188] Certain arguments enjoy the force of norms, while other arguments are unfavorable, unpopular, villainized, and even prohibited. Smith, Masuzawa and Cavanaugh are able to stand at a critical historical distance from the colonial past and the nineteenth century's epistemic shifts to pronounce the connections between the invention of religion and the world religions discourse on the one hand, with Enlightenment values, discourses of othering and geopolitics on the other. But what about today? What discursive and political power does the concept 'religion' inscribe *today*? It would not be hard to imagine, according to liberal democratic principles, secular and religious arguments today possessing unequal citizenship in the society of public debate.[189] It is not difficult to be struck by the relative homogeneity of agenda-setting in human rights activism, despite the diversity of religious identities represented. For this reason, I have found it necessary to draw an alternative conceptualization of Islam (*din*) from its central textual source (the Qur'an), one that would bypass the power and secularity inscribed in 'religion' and allow dissenting Muslim political voices to participate in the project of human rights while challenging it. If the discourse can bear such an insult, it may be universal. If it cannot, then perhaps it is not.

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[188] See my discussion of Talal Asad in 'The Secular' above.

In this chapter I have not taken one position against another – whether Islam is a religion in the modern sense or is *din* – but have tried to unsettle the category 'religion' itself in order to challenge the universality claims of human rights. There are other ideas about what it means to be human, the scope of political authority, the place of morality in law and what Plato theorized as *the vision of the good*.[190] Only once we accept that alternative philosophical frameworks can legitimately discuss human rights – not alternative cultural or religious terminologies that nonetheless concede to the liberal semantic/logic implicit in secular human rights – can the universal potential of human rights be critically gauged. In the next two chapters, I apply the theoretical dislocations of this chapter to contemporary Muslim political arguments about human rights.

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[189] See chapter 2, "Human Rights in Historical Perspective and Today," for a discussion of Habermas and Rawls on the legitimacy of religious arguments in the public sphere.
[190] See Sheldon Wolin, *Politics and Vision: Continuity and Innovation in Western Political Thought*. Expanded Ed., Princeton: Princeton University Press, 2004: chapters 1 and 2.

Chapter 4: Muslim Approaches to Human Rights I – Islam as Religion in the Modern Sense

Many Muslim thinkers today mediate the relationship between Islam and universal human rights by posing Islam as a religion in the modern sense of the term. This involves defining Islam primarily as a set of beliefs, the proper domain of which is the individual's private conscience. In this way, the modern sense of religion is a disembodied concept, detached from the premodern emphasis (as for example in premodern Christianity) on habitus, disciplinary practices and the authority of the Church orders.[1] In the modern rendition, the aspect of communal control of religion is, at best, a secondary feature, addressed as the aggregate of individuals' contributions and often subsumed under identity politics. The religious individual is, at bottom, making a morally autonomous choice. Thinkers who characterize Islam as a religion in the modern sense call for epistemological reform of the Islamic tradition, pertaining to how – and by whom – religious sources are to be interpreted.

This approach to Islam and human rights prescribes a notably modern distinction between the public and private spheres, where religion's proper place is the latter. The state, as such, must not interfere in people's private religious beliefs, and people in turn must not coerce any aspect of the public sphere to accord with religion. To be religiously 'neutral,' the state must be secular. These thinkers argue that the secular democratic state is the best, most rational political configuration for Muslim societies, and the one best suited for the free, full practice of their faith. In such a scheme the universal human right of freedom of religion that is embodied in liberal democracies sufficiently addresses the rights of religious individuals. In the tension between national sovereignty and supranational norms, this approach takes a cosmopolitan approach to international public law, stressing the authority of supranational norms.[2]

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[1] See Cavanaugh, 62-69. See 'Religion' section above for my Cavanaugh's discussion of premodern *religio*.

In this chapter I will analyze the arguments of five prominent contemporary Muslim scholars participating in the Western public intellectual debate. Abdolkarim Saroush, Abdullahi An-Na'im, Fatima Mernissi, Jerusha Tanner Lamptey and Abdulaziz Sachedina advocate universal human rights, particularly with regard to secular democracy, religious pluralism and women's rights. Their arguments involve positing Islam as religion in the modern sense of the term. For each of the thinkers, there is an intimate connection between reconfiguring traditional Islamic epistemology and emancipatory politics – and both are mediated by universal human rights.

The Expansion and Contraction of Knowledge

Abdolkarim Saroush is a former professor of philosophy at Tehran University (Iran) and is considered the foremost thinker of Iran's religious intellectual movement. He has published over twenty books on Western, Persian and Islamic philosophy, ethics and science, and has guest-lectured in prestigious universities around the world. In *Reason, Freedom, and Democracy in Islam*, Abdolkarim Saroush expresses the desirability of secularizing the Muslim world without necessarily profaning its culture. This shows Saroush's desire to secularize along the European experience of *separation of church and state*, as a necessary and novel development to premodern institutionalizations of the shari'a that admitted of no such dichotomy.[3] His major contribution is the proposal to reform Islamic epistemology by distinguishing between perfect religion and necessarily imperfect human knowledge about religion. In this scheme, religious knowledge is:

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[2] See chapter 2 above, "Human Rights in Historical Perspective and Today," in which I present Peter Danchin's characterization of cosmopolitanism, liberal anti-pluralism, and supranational norms on the one hand, and traditional national sovereignty on the other, in the debate over the authority of public international law.

> "…like other forms of knowledge, subject to all the attributes of knowledge. It is human, fallible, evolving, and most important of all, it is constantly in the process of exchange with other forms of knowledge. As such, its inevitable transformations mirror the transformation of science and other domains of human knowledge… subject to change, exchange, contraction, and expansion."[4]

This is Saroush's theory of the expansion and contraction of religious knowledge. Saroush promotes the use of extrareligious concepts (such as human rights, democracy and liberty), which he says are "authentic and autonomously significant," and can "even affect the understanding of religion itself."[5] He characterizes the major epistemological difference between the traditional and modern viewpoints as follows. In traditional thinking, things have their natural places within the natural order, and this is the best ordering. Things tend back towards their natural places – remedies restore things back to their natural states – making humans like passive objects. Modern thinking, on the other hand, is architectural. It changes the ordering of things to improve it. The scientific worldview leads to ambition, which allows humankind to reshape the world in its own image. The human is an active subject. He illustrates the distinction between premodern and modern epistemology with the following example:

> "Modern surgery not only removes and replaces organs, but it stands ready to discuss a better design and order for the human body. The intervention is no longer purely medical but architectural…Modern humankind has assumed the role of an aggressive and active agent in the

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[3] For a characterization of premodern shari'a, see Hallaq, 48-69. See also p. 86-89 and 98 above. According to Hallaq, the shari'a in its premodern configurations was "a colossal project of building a moral-legal empire whose foundational and structural impulse is summed up in the ever-continuing attempt to discover God's moral will…the dialectic between the sociological and the metaphysical, between the Community *as a worldly society* and its persistent attempts to locate itself in a particular moral cosmology. But this realism about the world was always placed in a metaphysical context, just as this metaphysics was constantly teased out in the realism of mundane existence." (Hallaq, 51)

[4] See Mahmoud and Ahmad Sadri. *Reason, Freedom, and Democracy in Islam: Essential Writings of 'Abdolkarim Saroush*. Oxford: Oxford University Press, 2000: 16.

[5] Ibid, 22.

> world, whereas traditional humankind perceived itself as a guest in a ready-made house, in which the occupant had no opportunity or right to object or to change anything."[6]

Though Saroush states that his task is merely to describe and not evaluate the process from tradition to modernity, his own position clearly favors a secular modernity strengthened by science. He maintains that the "story of secularism is the story of nonreligious reason; a reason which is neither religious nor antireligious."[7] Saroush claims that the proof of material science's accurate reflection of reality lies in its mastery of manipulating nature,[8] being the very "mirror of reality and a guide to action."[9] Humanity should not neglect such a marvelous tool, which has "splashed novel colors over the worn-out mat of our existence."[10] Rejecting science betrays a narrow-mindedness reminiscent of the Dark Ages. Rather, we should accommodate science,

> "because the values that encourage science are the same values that encourage development. Nature-conquering, ambitious, truth-seeking…science has given skepticism a higher status than the ancients' certitude…mutinous and ambitious…because of its alliance with technology, it has become self-augmenting and self-developing, so that it cannot survive except through the medium of highly competitive and cooperative communities that are not only truth-seeking but skeptical, ambitious, and arrogant…Skepticism, tolerance, competition, and ambition should be revered as the four heavenly streams that keep the meadows of science and the orchards of development alive and green."[11]

Moral values adhere to Saroush's epistemology, wherein he seems to adopt the liberal premise of the evolutionary advance of universal reason in history. Taking Hegel's *Reason in History* as a paradigmatic example, evolutionism seems to become the first premise of universal history. According to Hegel, the march of history was a teleological ascension from humanity's infancy to its wise maturity.[12] Universal Reason was a driving force which, through dialectical correspondence, moved from stage to stage towards the final goal. Saroush, consistent with Hegel's notion of reason in history, posits traditional religious humanity as timid, fatalist subjects of religious despotism, and secular moderns as rationally active and self-ruling agents. The secularization of ethics brought about the demystification of the natural law of cause and effect, and a rearrangement of ethics such that spiritual perfection was redirected towards earthly happiness and traditional 'sins' (i.e. cupidity, ambition, materialism) became fuel for progress.[13] According to Saroush, this had great implications for human happiness:

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[6] Ibid, 55.
[7] Ibid, 68.
[8] He asks, "Can a totally subjective and instrumental pseudo-epistemology…be so successful in practice?" Ibid, 51.
[9] Ibid.
[10] Ibid.
[11] Ibid, 52.
[12] See G. W. F. Hegel, *Philosophy of Right*. Transl. S. W. Dyde. Kitchener: Batoche Books, 2001, p. 266-272.

> "…modern utilitarianism turned this wild beast of accidental and irrational happiness…into an obedient, domesticated animal. Ethical axioms were evaluated in terms of their ability to ensure public happiness, pleasure, and welfare. Rational calculation dispelled the chaos, insecurity, and lack of causality that dominated the world of ethics and happiness and kept the world in confusion and sorrows."[14]

The picture painted by Saroush of the premodern world is very bleak. Human beings were duty-bound, mired in religious and other obligations. But modern humanity became a class of liberated rights-bearers. Whereas world-flight was considered virtuous before, world-mastery became the new virtue. This transformation in values "removed the fetters from the hands and feet of humanity and prepared it to enter into the fields of development."[15] Here we come to Saroush's strong endorsement of modern science. While he criticizes positivism and claims that science is not synonymous with it,[16] he fails to give an accurate description of what modern science, *minus* positivism, would actually be. What we can take away from Saroush is that modern science is an instrument of acquiring truth, as are history and religion:

> "To paraphrase the late Iqbal Lahori, religion has now found two new rivals: human science and history. In other words, there are three sources of discovery of the truth now available to human beings. The difficult task for contemporary humanity is to reconcile these three sources."[17]

It is possible to argue that, historically, Islamic epistemology has always included correspondence with living history and specialized fields of inquiry (i.e. sciences).[18] The difference between the premodern norm and what Saroush is proposing would be whether *tawhid* constitutes the first articulated premise of every line of inquiry or not.[19] Saroush is restricting the 'truth value' of *tawhid* as a philosophical premise to the body of religious knowledge – separate from history and the physical sciences. According to Saroush, in the move from traditional thought to modern, "the essences of things" gradually "gained autonomy from God…God was no longer the creator of essences but the agent of their realization."[20] The implications of this metaphysical move for epistemology and science cannot be understated, and are worth quoting at length:

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[13] Saroush, in Sadri, 41.
[14] Ibid, 41-42.
[15] Ibid, 43.
[16] He states, "Positivism was rooted in two tenets: the denial of the historicity of science and reason and the belief in the possibility of unmediated, that is, non-theory-laden and naked observation… Positivism should be defeated, but not at the expense of overthrowing science and reason." Ibid, 50.
[17] Ibid, 71.

> "One must not underestimate the disenchantment that follows from the introduction of such concepts as 'essence' and 'nature' into the worldview of believers. If we assume an essence for something, we can not help but remove it from the universe of religion since it can not have two essences at once. Water, for instance, has a given essence. Thus we cannot have a religious water…and an irreligious one. The same would apply to justice, government, science, philosophy, and so on. It is as impossible to imagine an Islamic or Christian philosophy or sociology, as it is to conceive of an essentially religious government."[21]

For Saroush, then, there can be no 'Islamic political theory' per se. Only political theory, and religious knowledge of Islam. To this end, among the highest benefits of secularism was its "'scientification' and rationalization of social and political thought and deliberation," without which "humanity would have lingered in the traditional world…"[22] An important premise in Saroush's theory of the contraction and expansion of religious knowledge is that all truths are commensurate. This means that the truth value of a political theory will be evident when the judgment of history pronounces so, and may incidentally be confirmed by religious knowledge.

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[18] See for example Ziauddin Sardar, *How Do You Know? Reading Ziauddin Sardar on Islam, Science and Cultural Relations.* Introduced and edited by Ehsan Masood. London: Pluto Press, 2006. Particularly chapter 7, "Muslims and Philosophy of Science." For a more historically detailed account of medieval Sunni epistemology, see Osman Bakar, *Classification of Knowledge in Islam: A Study in Islamic Philosophies of Science*. Cambridge: Islamic Texts Society, 1998.

[19] See chapter 3 above, "Religion, the Secular and *Din*," for an exposition of the meaning of *tawhid* (Divine unity).

[20] Saroush, in Sadri, 65.

[21] Ibid, 66.

[22] Ibid, 57.

If there is contradiction – and there can't be contradiction between two truths as all truths are commensurate – then either the religious or scientific knowledge must be reformed.

Saroush's epistemological postulates lead him to constitutional democratic – though not necessarily liberal – politics, and a full endorsement of the mediating role of universal human rights. He aims to establish the validity of a political system for Muslim majority states that enjoys the freedoms of modern democratic governments, while not ignoring the existence of God in the way secular liberal societies do. Such a project would involve reconciling the people's satisfaction with God's approval, balancing religious and nonreligious spheres of life, and acknowledging the due of both human beings and religion. As such, a religious government's democratic worth would be measured by its partaking in collective wisdom and its respect for human rights.[23]

Religious democracy would entail, says Saroush, the coalescence of reason (*'aql*) and revelation (*shar'*). Scholars must balance knowledge of religion with other knowledge, particularly since many values are integral to nonreligious systems. Upholding rationality is a religious obligation, and must take the form of collective, public participation and experience – hence the need for democratic methods. Religion is to serve as the guide and arbiter of problems, while collective reason is to dictate the understanding of religion. The discourse on human rights, in such a context, would be among the necessary and intrinsically valuable extra-religious discourses.[24]

In this scheme, Saroush seemingly promotes the idea of a universal rationality, independent of religion or any other tradition. He states that "justice, as a value, can not be religious. It is religion that has to be just."[25] This statement, the promotion of an extrareligious value as the criteria for gaging religious understanding, can also be interpreted as a cosmopolitan endorsement of supranational norms above and beyond national sovereignty (in this case, the sovereignty of the religious community, or *umma*). The promotion of a religion must be rationalized so that "epistemological pluralism – the centerpiece of democratic action" – can be realized.[26] For Muslim societies, democracy and liberalism must be delinked so that democracy can be adopted without the baggage of the liberal rebellion against religion and metaphysics. In fact, according to Saroush, Islam lends itself to democracy, by way of common ground in areas of tolerance for other viewpoints and their advocates, and the inalienable freedom of faith.

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[23] Ibid., 122-126.
[24] Ibid. p. 126-129.

As further testimony of the Islamic tolerance, or even imperative, for democracy, Saroush underlines the private essence of faith, though it may be expressed publicly. His vision in this regard is as follows:

> "Like wild flowers in nature, faith will grow and flourish wherever it wishes and in whatever fragrance and color it pleases. The faithful community is more like a wild grove than a manicured garden. It owes the fragrance of its faith to this wild, independent spirit. To harness this spirit is to strangle it. It is in this sense that a religious society, based upon free faith, dynamic understanding, and individual presence before God, cannot be but democratic."[27]

To balance out the religious and nonreligious, the scales of religious democracy would be calibrated by the contraction and expansion of religious knowledge (in the spheres of jurisprudence, law, theology, etc.) along with changing historical needs. This is because:

> "Religious jurisprudence, however divine and ahistorical its origins, inevitably becomes historical and assumes a worldly application…[we must] establish independent moral standards (such as public interest and justice) in interpreting religious law…"[28]

Religion will continue, however, to enrich reason and democratic potential with values, moral precepts, and checks and balances.

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[25] Ibid. p. 131.

[26] Ibid. p. 133.

[27] Ibid. p. 143.

[28] Ibid. p. 150.

The Secular State and Shari'a

In contrast to Saroush's endorsement of a 'religious democracy' for Muslims is Abdullahi an-Na'im's emphatic advocacy for secular democracy as the best, most rational and only religious freedom-enabling political system. An-Na'im is professor of law at Emory University, and has authored and edited dozens of works on Islam, African politics, human rights and family law. In *Islam and the Secular State: Negotiating the Future of Shari'a*, An-Na'im calls on Muslims to take up the desirability – from an Islamic point of view – of a secular state that is neutral regarding religion and non-religion and which adheres to a constitution that protects human rights.[29] The methodological supports of his argument are "an eclectic set of sources: sociology of religion, Islamic history, his own conception of Islamic theology, liberal political philosophy, political science and the lived experience of Muslims and non-Muslims sharing the same political space over the last few hundred years."[30] These include arguments made by contemporary reformers and polling data. Resonating with Saroush's argument to secularize Muslim societies without profaning their culture, An-Na'im describes his proposal in the following terms:

> "My call for the state, and not society, to be secular is intended to enhance and promote genuine religious observance, to affirm, nurture, and regulate the role of Islam in the public life of the community. Conversely, I will argue that the claim of a so-called Islamic state to coercively enforce Shari'a repudiates the foundational role of Islam in the socialization of children and the sanctification of social institutions and relationships."[31]

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[29] Abdullahi An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a*. Cambridge: Harvard University Press, 2008.

[30] Mohammad Fadel. "Islamic Politics and Secular Politics – Can They Coexist?" *Journal of Law and Religion*, Vol. 25, No. 1, (2009-2010): 187-204; 192.

[31] An-Na'im (2008), 1.

Like Saroush's arguments in favor of the free flourishing of faith versus its suffocation in the manicured garden of institutionalized religion,[32] An-Na'im's proposal highlights the necessity of an unrestricted environment for the free operation of faith. An-Na'im's proposal implies four fundamental assumptions:

1. The modern state is given. Its monopoly over law and enforcement is given. Its regulatory power over religious institutions is given;
2. The state by definition cannot formally acknowledge different classes of people or favor one religion over others; its equal application of the rule of law is given;
3. A secular state allows shari'a to operate as an institution; the shari'a can be represented as a codified body of positive law within institutionalized limits and still retain the original concept or true meaning of shari'a; and
4. If allowed to operate at the state level, historical shari'a will violate basic liberal values, "such as male guardianship of women (*qiwama*), sovereignty over non-Muslims (*dhimma*) and wars of expansion (*jihad*) which are irreconcilable with the requirements of constitutionalism, human rights and citizenship."[33]

This last point is the reason why an 'Islamic' 'state' could never be. The contradiction is presented as the incommensurability of *qiwama*, *dhimma*, and military *jihad* on the one hand, with constitutionalism, human rights and citizenship on the other. In so positing, An-Na'im's account takes the modern state's toolkit for granted: formal equality amongst citizens, monopoly over law and force, and regulatory oversight into religious institutions. The conclusions of these premises for An-Nai'm's proposal for 'negotiating the future of shari'a' are that Islamic sources must be reformed to accommodate endorsement of the secular state, constitutionalism and human rights norms. An-Na'im expressly wishes to include non-Muslims in the negotiations about the future of shari'a.[34]

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[32] See p. 122 above.
[33] An-Na'im (2008), 39.

According to An-Na'im, since politics is the realm of interests, the state must be protected from capture by factional interest groups. Islamic political parties that respect constitutionalism, human rights and citizenship will advance policies in line with those norms. He distinguishes between the shari'a (in its essence?) and the political interpretations of the shari'a which, in factional politics, will vie with each other for domination over the others. In this way An-Na'im is providing a rationale for streamlining Islamic political life through the institutionalized avenues of what is called, in liberal contexts, political participation. His discussion of shari'a focuses on "the public role of Shari'a, not matters of religious doctrine and ritual practice in the private, personal domain."[35] Shari'a being simply "the religious law of Islam,"[36] its public role can and must be channeled through institutionalization and regulation by the state, which is for An-Na'im a neutral, rational, self-correcting apparatus.[37] In this way, An-Na'im promotes a modern conceptualization of Islam as religion, such that religion is a set of private beliefs, separate from politics except through the avenues sanctioned by the state (i.e. 'political participation'). His posting of a neutral state authority to oversee the institutions of religion implies that religion represents socially disembodied doctrines rather than the interplay of creedal doctrines with the lived historical experiences of believers.

An-Na'im holds that the shari'a must be observed voluntarily in order to enjoy a foundational role in influencing ethical norms and values. Through democratic participation, public policy can become imbued with the moral standpoint nurtured by shari'a observance. Shari'a principles, therefore, "cannot be enacted and enforced by the state as public law and public policy" because "the outcome will necessarily be the political will of the state and not the religious law of Islam."[38] In other words, the institutional separation of Islam and the state (as opposed to Islam and politics) is needed because the state *must* regulate religion in order to maintain its own neutrality above the sea of competing forces. An-Na'im relies for his proposal on a modernist definition of law, one that allows division between its ethical-moral philosophy and the translation of such principles into positive content. He claims that all historical attempts at codifying shari'a in which the state favors one *madhhab*, or jurisprudential school, over others, failed miserably.[39] An-Na'im's argument presumes that premodern *usul al-fiqh* (principles of jurisprudence) developed by the *madhhahib* (plural of *madhhab*) did not assign a role to extrareligious knowledge. It also characterizes the shari'a primarily by its institutional forms and outward manifestations – a privileging of positive law. This modernist emphasis on shari'a's legalism does *not* define the shari'a as a complicated moral-legal network, rooted in a metaphysic while produced in the community of faith, deeply psychological and wholly independent of political power.[40]

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[34] Tariq Ramadan also argues for the inclusion of non-Muslim scholars and experts in his Islamic epistemological reform proposal. See *Radical Reform: Islamic Ethics and Liberation.* Oxford: Oxford University Press, 2009. Particularly chapters 8, "The Context (*al-Waqi'*) as a Source of Law," 9, "The Growing Complexity of the Real," and 10, "Elaborating an Applied Islamic Ethics."

[35] An-Na'im (2008), vii.

[36] Ibid, 1.

[37] For an alternative understanding of shari'a, see chapter 3, specifically Hallaq's account.

An-Nai'm proposes that the secular state is necessary for *all Muslims*, even where they constitute the majority. Given that all state laws and constitutions are based on some foundational understanding of the human being, the social contract, rights and duties, etc., An-Na'im condemns the shari'a's inability to be fair across the diversity of citizens (again, pointing to principles of *qawama* and *dhimma*).[41] His line of reasoning characterizes the modern state as neutral. An-Na'im accepts that maintaining neutrality in the state is a difficult task, but he has confidence in the mechanisms of a constitutional democracy to self-correct and mediate this tension. When appropriated and exercised by the citizenry with conviction and rigor, democratic participation will help check the interests of those who administer the state. One example An-Na'im poses to illustrate the shari'a's incompatibility with the vehicle of the state is as follows:

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[38] An-Na'im (2008), 1.

[39] Ibid, 16-17. An-Na'im claims that the Ottoman experiment in *Majalla*, in which Hanafi jurisprudence was codified in conjunction with elements outside the Hanafi range, was the earliest and most politically authoritative example of a success story. Success was due to the eclectic nature of the sources of law.

[40] This is how Hallaq has characterized premodern shari'a; see chapter 3, 'Separation of Powers – Rule of Law or Rule of State?' in *The Impossible State.*

> "To establish authoritatively that the state will not and cannot enforce any religious view of charging or paying interest on loans (*riba*) is to ensure the freedom of all citizens to choose to practice or avoid interest banking as a matter of personal religious belief."[42]

More so, people wishing to avoid it can establish their own systems, under regulatory oversight and public scrutiny.

Upon closer examination of this claim, there appears a strong endorsement of the public/private distinction that relegates religion to the latter. It restricts religious conviction from having any legitimately authoritative transformative power in the public realm, and therefore belongs to the modern conception of religion. In other words, if the system of interest banking in its totality (beyond personal participation or avoidance) has results which are serious violations of individual and communal religious obligation, Muslims (or any other citizen groupings) may frame their decision to partake or eschew interest banking in religious arguments. But they may

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[41] For a contrasting view, see Azizah Al-Hibri, "Islamic Constitutionalism and the Concept of Democracy." *Case Western Reserve Journal of International Law*, Vol. 24, No. 1 (1992). Al-Hibri claims that there is no contradiction between a democracy in a Muslim-majority state and having the Qur'an as it's constitutional basis: Societies "historically coalesce around some basic sets of deep values and beliefs that define them as a group. These sets of shared values and beliefs are usually memorialized in a most basic document, like the Constitution of the United States or the Magna Carta. As time passes these documents are reinterpreted and supplemented to highlight an issue or resolve a problem. But through all the decades, the essential character of these documents remains the same and best reflects the values of the society that created it…The case is no different in Islam. The Qur'an is the core of the Muslim constitution…Since the Qur'an provides mostly general laws, a Muslim legislature needs to promulgate a multitude of laws in the process of governance, just as the U.S. legislature. And, just as the U.S. legislature sometimes discovers, some of these promulgated laws may be 'unconstitutional', i.e. they may run contrary to the Qur'an. The Muslims who would have the power of 'judicial review' in the Muslim state would be those of a judicial *majlis shura*…Other *mujtahids* outside the *majlis*, like their American counterparts, i.e. the constitutional scholars, can contribute to the discussion." (17-18)

[42] An-Na'im (2008), 35.

not religiously organize any coercion around their criticism of the institution or its role in national and global economies. The state that decides to economically operate under the terms of neoliberal economics – presumably on the decision of the majority of its constituents who share (i.e. participate) in the political decision-making process – is presumed neutral. The rival bids of politics to dominate the state structure, according to An-Na'im, represent its built-in self-correcting mechanism, maintaining its delicate and elusive neutrality.

Whether interest banking as a whole, systemically, violates certain individual and communal Muslim obligations, and whether Muslims may frame their opposition to the institution in a religious perspective, is not specifically taken up by An-Na'im. The only answer that can be inferred is that religion's role will be institutionalized – regulated, limited and bureaucratized – by a neutral and self-correcting state that will heed to articulations of justice, fairness and equality.

On the idea of the shari'a at the state level, An-Na'im states that neither shari'a nor *fiqh* (jurisprudence) can form the basis, since both are articulations of human understanding. The implication here is that constitutional law and process, also products of human understanding, are protected from the inadequacies of religious thought. In this way, An-Na'im resounds Saroush's praise for scientific, rational thought. His argument seems "to assume the existence of an intermediate set of state institutions that do not reflect perfectly normative liberal doctrines regarding constitutionalism, citizenship and human rights, but nevertheless create enough space for genuinely competitive and pluralistic politics."[43] This seems to enact a neutralist approach to liberalism, which posits the liberal order as a hospitable, empty box in which any culture, tradition, way of life, worldview, etc. is welcome to pursue its dream.[44]

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[43] Fadel, 195.

In a subsequent work, An-Na'im devotes considerable attention to Muslim participation in American democratic politics.[45] Muslims must reform their understanding of the relationship between their overlapping identities as Muslims and American citizens. In order to secure benefits and advance their priorities, American Muslims must move beyond minority politics to take full advantage of the politics of equal citizenship. He states:

> "To American Muslims, then, here is my charge: Recognize that it is possible to engage in deliberate integration into the social, political, and cultural life of the United States at large, rather than retreating into helpless and passive assimilation."[46]

An-Na'im enjoins fellow American Muslim citizens to become proactive agents of social change. This involves reconfiguring the relationship between shari'a and American law. Because legal pluralism would not offer a viable arrangement,[47] the solution is instead to be sought in normative pluralism. In such an arrangement, various normative systems are neither oppositionally posited nor hierarchically arranged, such that "state law and religious norms are *two different and separate types* of normative systems; we should not create confusion by labeling all of them 'law'…Normally they operate in different spheres…"[48] What this would mean for American Muslims, as for all other religious adherents, is that "believers should be free to live by their own understanding of Sharia, as long as that understanding is practiced voluntarily in the communities, including community-based mediation and arbitration of disputes, without invoking the coercive authority of the state."[49] For An-Na'im, this specifically involves revamping *ijtihad*, which is jurisprudential reasoning independent of direct precedent, to broaden the pool of people who can perform it by relaxing the traditionally accepted qualifications required to do so.

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[44] See chapter 2 above, 'Human Rights in Historical Perspective and Today,' for Galeotti's work on the neutralist and perfectionist approaches to liberal toleration.

[45] Chapter 1, "Identity and Citizenship: Beyond Minority Politics" and chapter 5, "What is an American Muslim? Looking Forward" in unpublished manuscript, shared by Samira Haj.

[46] Ibid, 22.

[47] An-Na'im proposes that the problems with legal pluralism are twofold: "communal autonomy through legal pluralism does not work for those who lack an institutionalized hierarchical organization that can speak on their behalf. This risk is particularly relevant to the case of American Muslims, because of their internal religious diversity and lack of centralized hierarchical religious leadership." Secondly, legal pluralism "does not distinguish between a binding, authoritative system that one cannot opt out of – which is the case with the territorial jurisdiction of the state - and a religious or cultural normative system, which one may or may not choose to comply with." Ibid., 39.

[48] Ibid., 40.

The epistemological reform proposed by An-Na'im in this and other works is not tangential but central to his secular democratic and human rights-focused politics. In "Islam and International Law: Toward a Positive Mutual Engagement to Realize Shared Ideals," An-Na'im states that his purpose "is to affirm and promote the legitimacy and efficacy of international law as the indispensable means for realizing universal ideals of peace, development, and the protection of human rights, everywhere."[50] Because every Islamic position is necessarily contingent – contextual, interpretative – Muslims "can fully engage international law as an integral aspect of the context and experience of those societies."[51] Elsewhere, An-Na'im contends that since human rights reflect "the positive and normative side of what globalization offers," Muslims should utilize its norms to gage their social and political realities as well as focus their activism.[52]

In yet another earlier work, An-Na'im directly indicates that human rights reform among Muslims must begin with a reinterpretation of the shari'a.[53] The basic problem areas he identifies Muslims face with regard to human rights, as indicated in *Islam and the Secular State*, are equality and nondiscrimination across gender and religion. He identifies the shari'a as reflecting specific historical interpretations of Islam's scriptural imperatives.[54] A modern shari'a can and must therefore be developed, one that is in line with human rights. He bases his proposal for a reform methodology on the thought of Mohamed Taha, the twentieth-century Sudanese religious scholar whose thesis in *The Second Message of Islam* claimed a new Qur'anic exegesis that would characterize Meccan verses as timeless and Medinan verses as historically specific and therefore abrogated in the present day. (Taha was executed by the Sudanese government in 1985 on charges of apostasy.) An-Na'im calls for an interpretation of primary sources within their historical contexts. In so doing, modern Muslims can reconfigure emphases within sources.[55] He calls for *ijtihad* to be expanded in scope to allow certain Qur'anic verses to be enacted over others, despite the categorical nature of all verses.

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[49] Ibid., 42.

[50] Abdullahi Ahmed An-Na'im and Lama Abu Odeh. "Islam and International Law: Toward a Positive Mutual Engagement to Realize Shared Ideals." Proceedings of the Annual Meeting (American Society of International Law), Vol. 98 (MARCH 31-APRIL 3, 2004): 159-168; 160.

[51] Ibid, 164.

[52] Abdullahi An-Na'im, "Problems of Dependency: Human Rights Organizations in the Arab World." *Middle East Report*, no. 214, Spring 2000: 20-23 and 46-47; 22.

[53] Abdullahi Ahmed An-Na'im, "Text-Human Rights in the Muslim World," in Patrick Hayden, ed., *The Philosophy of Human Rights*. St. Paul: Paragon House, 2001.

For An-Na'im, the community of Islam must conduct epistemological reform – particularly through new understandings of the practice of *ijtihad* – to arrive at norms that are consistent with human rights, particularly secular constitutional democracy and women's rights. He frames this reform as reform of the shari'a. An-Na'im also advocates for secular constitutional democracy to be the choice political arrangement among Muslim-majority states. In his argument for why this is optimal – that is, only such a state would allow the freedom of faith necessary for meaningful belief and practice – he puts forward Islam as a religion in the modern sense of the term, specifically in the sense of strictly separating the religious life from the authority of the state, subjecting the former to the tutelage of the latter, while trusting the state to be fair and neutral and provide adequate institutional channels for redress.

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[54] Ibid., 319-323.

[55] Ibid., 331.

Democracy and Women's Rights at the Hands of Male Elites

The late feminist writer and sociologist Fatima Mernissi addressed issues of democracy in the Muslim world and Muslim women's rights with a strong advocacy of human rights. Mernissi taught at Mohammed V University (Morocco) and published over a dozen works on gender, Islamic feminism and democracy. Like Abdullahi An-Na'im, Fatima Mernissi positively values human rights as a normative model for reforming Muslim attitudes toward democracy and women's rights. Like Abdolkarim Saroush, Mernissi employs a modernist historical approach to characterize the progressive advances scientific modernity has made over traditional worldviews.[56] She distinguishes between textual Islam – namely the Qur'an and the life of the Prophet of Islam – and the Islamic tradition, which she describes as having been co-opted by a male elite for fifteen centuries.[57] Mernissi characterizes the Islamic religious heritage as one of censorship.[58] In a subsequent work, she speaks of the historical struggle between the pen and the sword as epic:

> "…that is, the struggle between, on the one hand, the intellectuals, the *qadis* (judges) thirsting for justice, the Sufis thirsting for freedom, and the poets who tried to express their individuality; and, on the other hand, the caliphs and their *shari'a*, their very authoritarian reading of divine law."[59]

This is part of the broader characterization in Mernissi's thought of the imams as despotic and self-interested. She goes as far as to claim that:

> "Islam is probably the only monotheistic religion in which scholarly exploration is systematically discouraged, if not forbidden, since rational analysis would not serve the purposes of the despots."[60]

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[56] My analysis of Mernissi's thought and its relationship to positing Islam as a religion in the modern sense of the term is noticeably more detailed than my treatment of Saroush and An-Na'im. This is because unlike the other two thinkers discussed thusfar in this chapter, Mernissi addresses the issues of women's rights in Islam at great length. For this reason, I believe the discrepancy is qualified.

[57] Mernissi states that women's rights are problematic for some Muslim men, not because of the Qur'an and Sunna (example, way) of the Prophet Muhammad, but because of the interests of a male elite. See Fatima Mernissi, *The Veil and the Male Elite: A Feminist Interpretation of Women's Rights in Islam*. Reading: Perseus Books, 1991: viii.

[58] Ibid., 16.

[59] Fatima Mernissi. *Islam and Democracy: Fear of the Modern World*. Translated by Mary Jo Lakeland. Reading: Addison-Wesley Publishing Company, 1992: 19.

Without providing specific historical examples, Mernissi goes on to speak of the Islamic tradition as mired in fifteen centuries of rejecting foreign ideas.[61] With the banning of the Mu'tazila in the tenth century, two roads emerged for Muslims: the violence and killing espoused by the Kharijites, or the advocacy of rational thought represented by the Mu'tazila.[62] The general disdain for reason (*'aql*) explains, according to Mernissi, the anti-modern spirit of Islam, which tends away from change and toward stagnation.[63]

In this way, Mernissi espouses a modernist historical approach, much like Saroush.[64] This entails positing a sharp epistemological distinction between premodern and modern ways of thinking and viewing the world and the human being's position in it. Mernissi states that after the *hijab* (the ordaining of the veil during the Prophet's lifetime) cut short a brief burst of freedom and democracy, fifteen centuries would go by before the West would force Islam to "reopen the question of the rights of the individual and of women."[65] Such stagnation also affected 'the Arabs,' who until now thought only of boundaries and their own uniqueness. But now, "they are simply trying to see what the other is."[66] Where traditional Islam emphasized obedience, Muslims today must dig up the virtue of reason.[67] Much like Saroush, Mernissi seems to rely on notions of universal history and its stages, which lines up uncannily with Western history:

> "The majority of the colonized countries – that is, the non-Western countries – never experienced that phase of history so indispensable to the development of the scientific spirit, during which the state and its institutions became the means of transmitting the ideas of tolerance and respect for the individual…[resulting in] a virtual cutoff of the Third World from the advances of humanism in

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[60] Ibid., 24.
[61] Ibid., 26-27.
[62] Ibid., 32.
[63] Ibid., 95.
[64] See p. 116-122 above.
[65] Mernissi (1991), 188.
[66] Mernissi (1992), 14.
[67] Ibid., 19.

> the last centuries in both its aspects: the scientific aspect (promoting the use of government resources to invest in scientific research and encourage freedom to explore and invent), and the political aspect (establishing representative democracy, with citizens' exercise of the right to vote and to participate in political decision-making)."[68]

Mernissi's negative characterization of Islamic tradition – as distinct from Islamic textual sources – is also at work in her analysis of women's rights in Islam. While women enjoyed a critical voice in the early Muslim community during the lifetime of the Prophet, they were soon to be forced into silent obedience.[69] Women in Islam have been the traditional victims, says Mernissi, of re-establishing equilibrium during uncertain political times, mostly through shutting them out of public participation.[70] She elaborates on the traditional place of women in Islam:

> "The traditional enthronement of woman – of her who incarnates the very principle of inequality, the basic element of the hierarchy, the *alif*, the beginning of being, who only exists in terms of a relationship of submission to authority – has forced the Muslim in a few decades to face up to what Westerners took centuries to digest (and which they still have difficulty doing): democracy and the equality of the sexes."[71]

These oppressions are caused by male supremacy, specifically through male elites co-opting the scholarly tradition and religious texts. Men have used the sacred to legitimize their sexual and political privileges.[72] And since male supremacy "can only exist and be consolidated if the public/private division is maintained as an almost sacred matter,"[73] the hijab became a central mission of, and potent symbol for, male elitism.

Mernissi's valuation of the hijab in Islam is wholly negative. She refers to the hijab as: the attempt to veil women, an almost phobic attitude towards women stemming from positioning the Divine as at odds with the feminine;[74] a clung-to solution to complex socio-political problems;[75] shutting women out of the world[76] and even separating them from God;[77] confinement;[78] a retreat from initial equality promised by the Qur'an and the Prophet;[79] the opposite of internal control and the veiling of a woman's sovereign will;[80] representing the triumph of the Medinese Hypocrites who harassed the household of the Prophet;[81] marginalizing and mutilating;[82] a metaphor for much-needed boundaries required by modernity-fearing Muslims;[83] and sending women back to the kitchen.[84]

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[68] Ibid., 46.
[69] Ibid., 2. Also Mernissi (1991), 35-36.
[70] Mernissi (1992), 9.
[71] Mernissi (1991), 23.
[72] Ibid., 147.
[73] Ibid., 111.
[74] Ibid., 81.

One way to explain Mernissi's assessment of the hijab is to contextualize it in her purely political definition of 'Muslim.' She states categorically:

> "I define being a Muslim as belonging to a theocratic state. What the individual thinks is secondary to this definition…Being Muslim is a civil matter, a national identity, a passport, a family code of laws, a code of public rights."[85]

While this characterization may seem to oppose the modern conception of religion in that it points to the civil, the political and the state (i.e. the public), in fact it reinforces the secular modern distinction between public and private spheres. It is a distinction that already presupposes the modern state's authority over the public, and the private sphere as the proper location of disembodied religion. Mernissi's rendering minimizes the metaphysical, other-worldly and spiritual dimensions of Islam (what Seyyed Hossein Nasr has referred to as the 'cultic' aspect of Islam, as distinct from its historical aspect[86]) in favor of physical reality, historical developments and material conditions. Within material considerations, such a conceptualization also privileges the political over other realms. Mernissi refers to the Prophet of Islam as a genius,[87] a decision some would characterize as undermining the miraculous nature of prophethood.[88] She sums up the mission of Islam in a similar fashion, when she refers to "the genius of Islam as the most clever expression of Arab nationalism…"[89] Muhammad is said to have been laying the groundwork for an Arab nationalist ideology,[90] and he even changed his mind about the *qibla* (direction of prayer) as a political strategy.[91]

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[75] Ibid., 92-93.
[76] Ibid., 99.
[77] Ibid., 101.
[78] Ibid., 164.
[79] Ibid., 179.
[80] Ibid., 185.
[81] Ibid., 187.
[82] She asks: "How did the tradition succeed in transforming the Muslim woman into that submissive, marginal creature who buries herself and only goes out into the world timidly and huddled in her veils? Why does the Muslim man need such a mutilated companion?" Ibid., 194.
[83] Mernissi (1992), 8.
[84] Ibid., 165.
[85] Mernissi (1991), 20-21.
[86] See chapter 3 above, "Religion, the Secular and *Din*."

Mernissi's prioritizing of the political aspect of Islam and Muslim identity over the spiritual and metaphysical aspects leads her to a trenchant critique of the present dilemmas faced by Muslims.[92] She states that among Muslims/Arabs in modern times, religion serves as a refuge from fear of modern temporality,[93] and Muslims take to invoking their ancestors as an escapism from a frightening and confusing postcolonial present.[94] The experience of colonialism has feminized states, that is, it has veiled and obliterated them, rendering them non-existent.[95] It is in this context, and this anxiety about borders and the other, that veiling women is thought of as a solution to complex socio-political problems.[96]

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[87] Mernissi (1991), 139.

[88] See Ramadan Al-Buti, *Jurisprudence of the Prophet's Biography and a Brief History of the Orthodox Caliphate*. Transl. Nancy Roberts. Damascus: Dar al-Fikr, 2007: 54-62. Al-Buti states that the British colonization of Egypt created a discursive imperative for modernization and Westernization that penetrated the discipline of Prophetic biography. This included the drive to separate religion and science, subjecting the former to the latter. As a result, the "subjective method of writing history" appeared, replacing previous standards of measuring narrations and their transmissions with new criteria. He states: "In reliance upon this method, such writers began setting aside everything in the biography of the Prophet…that might conflict with the known and familiar by belonging to the realm of the miraculous and supernatural. At the same time, they began promoting the image of the Prophet…as a man possessed of the qualities of genius, greatness, heroism, and the like, thereby distracting their readers from reflection on those qualities which might open them to the unfamiliar, including the prophecy, revelation, and mission which made up the primary components of his persona." (59)

[89] Mernissi (1991), 66.

[90] Ibid., 67.

[91] Ibid., 67-68 and 70. Mernissi poses the change in the *qibla,* or direction of ritual prayer, to Muhammad's political strategy. Muslims traditionally consider this an act of divine revelation, not a political decision on the part of the Prophet. (The early community of Muslims under Muhammad's leadership initially prayed towards Jerusalem. However, in year 13 of his prophetic mission, after emigrating from Mecca to Medina, and in the midst of political tensions with the Medinese Jews, verses 143-144 of the Qur'an were revealed, changing the *qibla* from Jerusalem to Mecca.)

[92] In both *The Veil and the Male Elite* (1991) and *Islam and Democracy: Fear of the Modern World* (1992), Mernissi uses "Arab" and "Muslim" almost interchangeably. She does not qualify this equivocation – a problematic omission, since not all Arabs are Muslim, and not all Muslims are Arab.

[93] Mernissi (1991), 18.

Mernissi identifies the cause of all this confusion and backwardness as the “exile of ‘aql” since the banning of the Mu’tazila.[97] For this reason today, only violence poses a credible challenge to Muslim (political) leadership.[98] She claims that contemporary Muslims reject humanism on ethnocentric and xenophobic grounds,[99] in the broader context of “muzzling” reason, judgment and imagination.[100] Muslims take comfort in their cultural past in the face of colonization and its after-effects.[101] This leads Mernissi to a binary vision of contemporary Muslim political regimes: it’s either democracy or Saudi Arabia.[102] For her, there are only two types of government: those that are for and those that are against democracy. Furthermore, Mernissi presents and criticizes only one reason for rejecting democracy, and that is that democracy is viewed as contrary to cultural identity.[103]

For Mernissi, the desirability of democracy is given. She does not qualify it because it is obvious. She does, however, elaborate on the benefits of freedom of thought, which only democracy would fully enable. She asks:

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[94] Ibid., 19.
[95] Ibid., 21.
[96] Ibid., 99.
[97] The Mu’tazila were a rationalist political faction in Basra and Baghdad during the 8th-10th centuries. They were ostracized and criminalized by the majoritarian Muslim leadership during that time due to their theological divergences.
[98] Mernissi (1992), 34 and 37.
[99] Ibid., 41.
[100] Ibid., 150.
[101] Ibid., 42.
[102] Ibid., 52.
[103] Ibid., 53.

> "How is the principle of the equality of all believers (whatever their sex and ethnic or social origin) to be transformed into a practical political system which gives everyone the right to participate in the choice of the leader of the community?"[104]

Much like Saroush and An-Na'im, Mernissi believes Islam would thrive in a secular state:

> "As both Christianity and Judaism have done, Islam can not only survive but thrive in a secular state. Once dissociated from coercive power, it will witness a renewal of spirituality. Christianity and Judaism strongly rooted in people's hearts are what I have seen in the United States, France, and Germany. In those countries the secular state has not killed religion; rather, it has put a break on the state's manipulation of religion."[105]

And here we find the conclusion of Mernissi's endorsement of the modern definition of religion. Freedom of private thought and belief, politically granted and protected by a neutral state, enables the agency of the sovereign self. Mernissi maintains that the individual is a sovereign will, upon whom violence is illegitimate and supervision superfluous.[106] She advances a notably liberal definition of agency that consists of moral autonomy and history-making[107] when she locates the continued richness of the Islamic heritage:

> "It expresses the hope of the faithful and offers them two essential things: a sense of identity and the power to struggle."[108]

Mernissi's use of the concept of freedom is essential to her critique of Muslim crises today as well as her endorsement of democracy and human rights. Her definition of freedom, however, belongs to a philosophical anthropology that can arguably be interpreted as at odds with certain aspects of Islamic tradition (according to her detractors but also in her own admission; see below).

Specifically, Mernissi defines freedom as the balancing of restrictions placed on *ahwa* (plural of *hawa*, which she defines as individual desires and passions) and *rahma* (mercy) in the community.[109] The negative valuation of individual egoism must not continue to translate into a ban on free thought.[110] The exchange of peace and equality for the surrender of individualism was achieved early on in Islam, but today the advances of democracy should not be kept from the Muslim communities.[111] For this reason, Arab women want modernity because they want to be free.[112] She concludes her work on Islam and democracy with an interpretation of the twelfth-century Sufi Farid ad-Din Attar's poem *The Conference of the Birds*.[113]

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[104] Mernissi (1991), 43.
[105] Mernissi (1992), 65.
[106] Mernissi (1991), 185.
[107] See chapter 2 above, "Human Rights in Historical Perspective and Today," for my discussion of the moral autonomy approach to universal human rights.
[108] Mernissi (1992), 59.

In this tale, a group of birds are enticed by the hoopoe to journey in search of their true king, the Simorgh. The birds embark on the arduous journey, traversing seven valleys and inclement conditions. Along the way, the birds attempt to give up one by one due to their spiritual weaknesses, and are counseled back onto the journey by the hoopoe. For example, the finch gave the excuse of being weaker in body and courage than the others, to which the hoopoe answered, "You teasing little bird, this humble ostentation is absurd! If all of us are destined for the fire, then you too must ascend the burning pyre."[114] When another bird complains of her indecision, the hoopoe replies that this problem afflicts all: "If all of us could boast a spotless mind, why should the prophets mingle with mankind?"[115] And the same goes on for birds who suffer from love of Self, ostentation, and many other spiritual maladies. The hoopoe always responds with enjoinders to disengage the false ownership exercised by the Self, and submit wholeheartedly at the Simorgh's throne. At the close of their tremendous journey, the birds discover the Simorgh in a brilliant shining light, reflecting their own likenesses. Having discarded their selves for love of the king, they find themselves in Him and Him in themselves.

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[109] Ibid.
[110] Ibid., 90-91.
[111] Ibid., 110, 113.
[112] Ibid., 150.
[113] Farid ad-Din Attar, *The Conference of the Birds*. Translated with an introduction by Afkham Darbandi and Dick Davis. London: Penguin Books, 1984.
[114] Ibid., 60.
[115] Ibid., 103.

On closer examinations of Mernissi's take on this classic Sufi poem, the interpretive lens turns out to be more of liberal individualism than of traditional Sufi themes, such as polishing the mirror of the heart (i.e. removing stains of its earthly attachments) and self-annihilation in the Beloved (i.e. the Divine).[116] She states:

> "Farid al-din Attar, my favorite of the Sufis, dreamed nine centuries ago of a marvelous planet inhabited by fabulous birds that were much like us – who wanted to find themselves, who wanted to travel, but were afraid. Their desire for knowledge, however, was so strong that it transformed their lives."[117]

On the level of the text's narrative, the birds are in search of the king, not of themselves. They were indeed afraid of the journey, but when each bird struggled against and shed its particular weakness, its individual fault, it was able to soar toward the completion of the journey. There, the birds find their own collective image reflected, but shining brilliantly and blindingly. This is part of the poem's wordplay, where the King is *Simorgh,* a mythic Persian bird comparable to the Western motif of the Phoenix, but *si morgh* in Persian also means 'thirty birds.' They find 'themselves' in the Divine/the Divine in themselves only insofar as thy first lose their 'selves' through difficult striving against their lower faculties. Mernissi's conclusion in this work is entitled 'The Simorgh is Us!' She offers this final rejoinder:

> "Today the cry for pluralism no longer has to hide behind metaphysical allegories. We can bring a new world into being through all the scientific advances that allow us to communicate, to engage in unlimited dialogue, to create that global mirror in which all cultures can shine in their uniqueness."[118]

While students of Sufi thought might read in Attar's *Conference* that what shines brilliantly in the poem's conclusion is Divine light, upon the surface of the polished mirrors of the birds' hearts, Mernissi reads a celebration of the global mirror that can reflect cultural diversity. This interpretation is consistent with her full endorsement of the Universal Declaration on Human Rights. Mernissi ventures that if Islam had elaborated a system of fundamental principles rather than remaining trapped in empiricism and casuistry, it would have arrived as something like the UDHR.[119] She applauds the document's support for freedom of thought, but this support has the effect of conjuring up the forbidden in the minds of Muslims. Mernissi claims that the best translation for the UDHR's use of freedom is *shirk*.[120] *Tawhid,* or divine unity, being the central tenet of the Qur'anic worldview,[121] *shirk* is the most cardinal of all Islamic sins, as it means the assigning of partners to God.

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[116] Mernissi (1992), 171-174.
[117] Ibid., 171.
[118] Ibid., 174.

Mernissi's translation of the UDHR's use of 'freedom' into *shirk* is questionable and value-laden. She claims that both democracy and human rights are true parts of Muslim tradition,[122] but chooses a term that is not etymologically linked to 'freedom' for her translation. The Arabic word that would normally translate the 'freedom' connoted in the UDHR is *ikhtiyar*. *Ikhtiyar* is choice, emanating from the cognate *khayr* which means good and the verb form *khara* meaning to choose.[123] By contrast, *shirk,* meaning polytheism and idolatry, comes from the cognate verb *sharika* meaning to partner or share.[124] Nowhere in the significations of the *shirk* or *sharika* can any word implying freedom be found. Her decision to translate UDHR freedom into the term that conjures for Muslims violation of the central tenet of their creed is not so much a controversial lexical choice or even a metaphor, but is an expression of her position on the shari'a.

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[119] Mernissi (1991), 128-129.
[120] Mernissi (1992), 85-87.
[121] See chapter 3 above, "Religion, the Secular and *Din*," for an elaboration of the concept of *tawhid* and its central role in Islamic thought and practice.
[122] Mernissi (1991), vii.
[123] See Hans Wehr, *A Dictionary of Modern Written Arabic.* J. Milton Cowan, ed. London: Macdonald & Evans, Ltd., 1980: 266-267.
[124] Ibid., 468.

Mernissi treats the shari'a not as a moral-legal matrix representing the interplay between metaphysical principles and material development,[125] but as despotic, authoritarian, male-elite controlled juristic accretions (i.e. 'the tradition'). It is purely historical in its substance. She considers the shari'a accountable for Islam's anti-individuality.[126] Since the injunction to veil is reified in traditional jurisprudence, the shari'a opposes the individual's will.[127] The Muslim anxiety about democracy is explained by the contrast between democracy allowing people to choose their own path, and the shari'a restricting people to a prescribed path.[128] Endorsing a non-restrictive role for religion is congruent with positing religion as a private matter of individual conscience, un-coercive and socially and politically non-interfering.

Muslima Theology as Corrective for Intolerance

In *Never Wholly Other: A* Muslima *Theology of Religious Pluralism*, Jerusha Tanner Lamptey, professor of Islam at Union Theological Seminary, proposes a new theological scheme for interpreting Islamic sources to arrive at imperatives that are just toward women and non-Muslims. In her proposal of holistic, thematic exegesis of the Qur'an, she maintains a foothold in religion in the traditional (premodern) sense. Her discussions of religious difference, however, posit Islam as a religion in the modern sense of the term, where 'world religions' are understood as so many species of the genus of 'religion.' Lamptey's scheme is premised upon a critique of traditional Islam, which, like Mernissi, she characterizes as oppressive of women:

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[125] See my presentation of Hallaq's treatment of premodern shari'a in chapter 3, above.

[126] Mernissi states: "Our traditional identity hardly acknowledged the individual, whom it abhorred as a disturber of the collective harmony. In Islam, the idea of the individual in a state of nature, in the philosophical meaning of the word, is nonexistent. Traditional society produced Muslims who were literally 'submissive' to the will of the group. Individuality in such a system is discouraged; any private initiative is *bid'a* (innovation), which necessarily constitutes errant behavior. The traditional society tried to stop the development of individuality at a stage that did not threaten the authority of the leader, creating a ghost of an individual, who would not have autonomy (identified with rebellion)." Mernissi (1991), 22.

[127] Ibid., 185.

[128] Mernissi (1992), 25.

> "Muslim women – whether silent, silenced, or unheard – have generally suffered from an interpretive 'voicelessness' within Islamic history; the Islamic interpretive tradition has historically been dominated and controlled by men."[129]

This view is widespread among contemporary Muslim thinkers advocating for epistemological reform.[130] For example, Loyola University professor of theology and director of its Islamic World Studies Program Marcia Hermansen posits contemporary Muslim women theologians as "breaking new ground" when they interpret the religious tradition.[131] She states:

> "When contemporary Muslim women engage in scriptural interpretation and theology they are breaking new ground in a number of areas, not only as females, but also as interpreters of the religious tradition in the context of significant contemporary challenges. Their sources cannot be limited to pre-modern theologies of *ʿilm alkalām* and *ʿaqīda*, which tended to be scholastic in argumentation and to address matters that are no longer compelling or relevant to most Muslims."[132]

Ednan Aslan, professor of Islam at the University of Vienna (Austria) similarly claims that while women enjoyed freedom and equality with men in religious and political areas of life during the lifetime of the Prophet Muhammad, they were subsequently excluded from religious discourse and robbed of their social responsibility.[133] He asks:

> "How did a male-dominated theology, wherein women were robbed of their common sense, disenfranchised from their social responsibility, and reduced to a self-denying and masochistic experience of naive religiosity come to dominate?"[134]

Muna Tatari, professor of Islamic theology at the University of Paderborn (Germany) attributes a portion of Muslim women's awakening in twentieth century movements to "the recognition that the traditional disciplines of Islamic learning (ethics, law, theology, philosophy, and mysticism) were more or less male-dominated and therefore shaped by patriarchy."[135] These few brief examples do not exhaust the widespread notion that Islamic tradition – and religion in general – are oppressive of women, such that new methods and new positive content must be developed if women are to have equality in religious communities.

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[129] Jerusha Tanner Lamptey. *Never Wholly Other: A* Muslima *Theology of Religious Pluralism*. Oxford: Oxford University Press, 2014: 81.

[130] See, for example, An-Na'im and Sachedina above (this chapter).

[131] See Marcia Hermansen, "Introduction: The New Voices of Muslim Women Theologians" in Aslan, Hermansen and Medeni, eds. *Muslima Theology: The Voices of Muslim Women Theologians*. Frankfurt: Peter Lang Edition, 2013.

[132] Ibid., 13.

[133] See Ednan Aslan, "Early Community Politics and the Marginalization of Women in Islamic Intellectual History," in Ibid., 36-38.

[134] Ibid., 39.

In *Never Wholly Other,* Lamptey proposes epistemological reform at the theological level to redress two distinct but inter-related wrongs: women's suffering at the hands of patriarchal religious tradition, and theological and practical devaluation of non-Muslims under a hermeneutic that is difference-centered. She draws on three bodies of literature to craft a Muslima theology: contemporary Muslima theologians, specifically Amina Wadud, Asma Barlas and Riffat Hassan; feminist theologians from other religious traditions, such as Rosemary Ruether, Rita Gross and Jeannine Hill Fletcher; and the semantic Qur'anic analysis of Toshihiko Izutsu.[136]

Lamptey begins her schema with a holistic, thematic view of the Qur'an.[137] This textual holism is a *tafsir al-Quran bil-Quran*, or an internal hermeneutic so that verses of the Qur'an are understood and explained in lieu of other Qur'anic verses.[138] Lamptey cautions that both interpretive extremes – monovalency on the one hand and complete relativism on the other – must be avoided, lest the universal message of the Qur'an be lost.[139] Such an intratextual approach would serve as a system of checks and balances against unjust conclusions. For example, Lamptey cites the gender dualism that has taken root in the Islamic tradition, by which biological/sexual difference is extended to gender. This is problematic on several levels:

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[135] See Muna Tatari, "Gender Justice and Gender Jihad: Possibilities and Limits of Qur'anic Interpretation for Women's Liberation," in Ibid., 155.

[136] See chapter 3 above, "Religion, the Secular and *Din*" in which I explore Izutsu's *God and Man in the Qur'an: Semantics of the Qur'anic Weltanschauung* in considerable detail.

[137] Lamptey, 83.

[138] Ibid., 83-84.

[139] Ibid., 85.

> "First, it depicts one trait (biology) as determinative of all aspects – moral, social, ontological – of a specific group. Second, it not only conceives of the groups – men and women – as wholly distinct but more specifically also depicts the groups as being in opposition. Thus in this patriarchal conception that emphasizes difference only, men are the central human subjects, and women are everything that men are not. Difference is pervasive and situated in a static hierarchy."[140]

Asma Barlas, professor of politics at Ithaca College and director of its Center for the Study of Culture, Race and Ethnicity, similarly contends that the Qur'anic spiritual equality of men and women has not been extended historically to social relations.[141] Lamptey states:

> "Thus while women may be created with equal capacity for righteousness and may be held equally responsible before God, they are not equal in the context of human-to-human encounters."[142]

Barlas poses the sexual difference between women and men as *lateral*, that is, non-hierarchical. Values are not assigned in such a difference.[143] This points to the importance of relationality, so that capacity and responsibility are only actualized and can only have meaning in the relations a person has with others, oneself and God.[144]

However, sameness-only accounts that gloss over important epistemic differences should not replace difference-only valuations, for neither will suffice.[145] At this point Lamptey draws on the rich theorizing of feminist theologians emanating from other religious traditions. Lamptey aims to apply the approach developed to address sexual difference to the question of religious difference and pluralism. The feminist theologian thinkers Lamptey draws upon contend that there should be no hierarchy among religions, and this democratic evaluation of religious difference should be nuanced in its acceptance of diversity.[146] The link between the rights of women and non-Muslims is that both groups suffer marginalization and oppression at the hands of the universalization of particular norms within the Islamic tradition.

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[140] Ibid., 88.
[141] Ibid., 90.
[142] Ibid.
[143] Ibid., 91.
[144] Ibid., 92.
[145] Ibid., 95-96.
[146] Ibid., 97-98.

According to feminist scholar and Catholic theologian Rosemary Ruether, feminist theology is "an approach that aims to apply feminist critiques and reconstructions of gender to theological discussions."[147] The specific problems Ruether deals with include:

> "…exclusive male language for God, the view that males are more like God than females, that only males can represent God as leaders in church and society, or that women are created by God to be subordinate to males and thus sin by rejecting subordination."[148]

Theological symbols like these must be understood as socially constructed, not eternal or unchangeable, according to Ruether.[149] She maintains that human understanding and experience always brackets interpretation, echoing Saroush's concerns about the fallible and time-bound aspect of religious knowledge.[150] Not only the interpreter's subjectivity, but also the contextualizing social mediations and vicissitudes of power influence which interpretations are produced (and which foreclosed) and how canon and orthodoxy are established.[151] For these reasons, the Muslima theologians Lamptey draws upon, specifically Wadud and Barlas, emphasize situatedness and context.

Ruether argues that the Judeo-Christian heritage doesn't enjoy an automatically privileged position with God, truth, and authentic humanity. She seems to posit a perennial philosophical approach (although she does not name it as such), in which all religions have an equal portion of, or equal access to truth.[152] Other feminist theologians, like Marjorie Hewitt Suchocki and Rita Gross, state that ethics, not metaphysics or religious doctrines, should be the criteria governing a pluralism and diversity approach to interfaith relations.[153] This posits ethics as universal, or at least universally discernable. Religions are particular in comparison, and ethics are neutral (in the liberal sense[154]).

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[147] Ibid., 98.
[148] Quoting Ruether, in Ibid., 99.
[149] Ibid.
[150] See Saroush's theory of the expansion and contraction of knowledge, 121-124 above.
[151] Lamptey, 100.
[152] Ibid., 103-104.
[153] Ibid., 104-108.

Building on the arguments of these feminists, Lamptey wishes to replace oppressive truth-claims about sexual or religious superiority with her belief in the egalitarianism of women and men and the equal worth of different religions. After all, religious identities are themselves porous, shifting and boundary-dissolving.[155] The borders between religions are themselves imposed theoretical constructions.[156] A truly pluralist approach to religious diversity, one which benefits from rich feminist theorizing on relationality and mutuality, wouldn't privilege one religion over another. In espousing this Muslima theology of religious and sexual difference, Lamptey advances a modern definition of religion.[157] A democratic evaluation across religious traditions is only possible when one accepts that there is such a thing as religion in the modern sense, such that 'religion' is a genus to which belong all the various species of 'world religions.'

Fitra as Universal, Intuitive Reasoning

Abdulaziz Sachedina is professor and chair of Islamic Studies at George Mason University. He is fluent in nine languages and has written several works on Islam and political authority. Sachedina gives a sophisticated and engaging treatment of Islam and human rights in *Islam and the Challenge of Human Rights.*[158] Like Lamptey, he relies principally on the Qur'an to craft an Islamic system of universal toleration and respect for human rights. Sachedina does not endorse the purely instrumental and pragmatic human rights approach, for such an approach will not gain currency among Muslim societies for whom religion must play a public and justificatory role. Rather, he develops a strong critique of historical Islamic juridical tradition (as do Saroush, An-Na'im and Mernissi). In aiming to bypass the tradition as antiquated accretions, Sachedina poses the need for fresh and updated Qur'an-based interpretations that are both faithful to the holy book's original intent and consistent with modern human rights and democratic norms. He does so by enlisting a number of Qur'anic themes, which I will now elaborate. Through all of these themes one can find Sachedina's strong critique of traditional understandings, which he holds are historical, politically-motivated and outdated.

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[154] See chapter 2 above, "Human Rights in Historical Perspective and Today," for my discussion of Ana Galeotti's *Toleration as Recognition* thesis on the two types of liberal toleration.

[155] Lamptey, 109-111.

[156] Ibid., 111.

[157] See chapter 3 above, "Religion, the Secular and *Din*."

[158] Abdulaziz Sachedina, *Islam and the Challenge of Human Rights*. Oxford: Oxford University Press, 2009.

The principal Qur'anic theme Sachedina employs in developing what he deems a "minimalist Islamic universalism"[159] is *fitra*. Sachedina defines *fitra* as intuitive reasoning in the sense of conscience. This faculty leads to a universal ethical cognition that is an inherent moral capacity in all humans. It is universal, not particular, and as such can be understood as prior to religious affiliations as well as social, political and cultural conditions. In speaking of the lexicography of the term, Sachedina points out that:

> "Evidently, there is agreement among classical Arabic lexicographers that the essential meaning of the word *fitra* signifies something natural, native, innate, original, or another quality or property with which humans are created by God. As a connotative signification of the word, some lexicographers take the word to mean the 'faculty of knowing God,' with which God has created human beings. In other words, *fitra* is the source of natural religion."[160]

Since the implication of God-consciousness is connotative and secondary to the term, an unequivocal equality can be argued across Muslim/non-Muslim divides. In other words, *fitra* leads to an understanding that all human beings are equally moral agents, with equal say in religion (or non-religion) and are bearers of the rights to equal protection and treatment.

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[159] Ibid., 87.
[160] Ibid., 94.

Disbelievers don't suffer from a lack of moral worth according to Sachedina's interpretation of *fitra*.[161]

This, however, is not how traditional jurists interpreted *fitra*. Sachedina points to a theological unsoundness as responsible for traditional intolerance against non-Muslims. The Ash'ari theological school espoused a "predeterminist political theology"[162] such that acts were good or bad not according to universally discernable laws of reason, but by divine will alone. Such a theological position severely limited human moral accountability and capacity, according to Sachedina:

> "…the Ash'arite denial of human moral agency meant a radical change in the approach to morality as it applied to humans as human. The vindication of the absolute divine will over the intellect capable of cognizing good and evil led to the denial that ethical values could be discerned by unaided reason...
>
> According to the Ash'arite theologians, there was neither a natural constitution endowed with moral cognition nor natural law to function as the basis of ethics that directed human purposive existence."[163]

For Sachedina, the victory of Sunni Ash'ari theology over Mu'tazili and Shi'i strands more consistent with moral autonomy is a major factor in the problem Islam has had with human rights. The corrective, therefore, is in forging a new theology that draws on Mu'tazili and Shi'i positions regarding ethical responsibility, natural law and moral autonomy to be consistent with norms of human rights and democracy.

In his project to develop an Islamic system of universal human rights justification, Sachedina also operationalizes the Qur'anic theme of the functional secularity of the public sphere. The basis of this concept is the Islamic tenet of *no compulsion in religion,* which can serve today as doctrinal validation for the institutionalization of ethical consensus on public values needed in multifaith societies.*[164]* Sachedina reassures that he is not implanting a foreign understanding of secularity (i.e. the separation of church and state) onto Islamic terms, but is drawing on the indigenous Islamic concept itself:

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[161] Ibid., 105.
[162] Ibid., 104.
[163] Ibid.

> "Let me make it clear from the outset that, being fully aware of the problems of cross-cultural translation and terminology, I am not imposing a functional secularity on the Islamic tradition; rather, the organically Islamic idea of separate jurisdictions (*nitaq sulta*), and not the separation of church and state, is what is acknowledged in the sacred law of Islam, the Shari'a, and it is on this that my proposal is built."[165]

Like Saroush and An-Na'im, Sachedina emphasizes the difference between religious reflection and practice in Islam.[166] This difference is rooted in the Islamic distinction between acts of *ibada*, or ritual worship, and those of *mu'amala*, pertaining to interhuman interaction and transactions. According to Sachedina, since the human-God relationship is free from institutional or seminarian interference (i.e. an essentially private matter), all the laws regulating it "transcend adjudication by human courts."[167] The counterpart to this is that human courts have jurisdiction and enforcement with regard to inter-human relationships:

> "More pertinently, it is in this area of the law that reforms affecting social issues have taken place through the reinterpretation of religious sources. Hence, the theoretical immutability of the sacred law does not extend to this area."[168]

The distinction between *ibada* and *mu'amala* can be a source of liberty, pluralism and human rights,[169] as well as civil religion.[170] This, says Sachedina, provides an authentically Islamic congruence with the modern nation-state and democracy.

Democratic arrangements have established a workable framework for multi-faith societies, through the governance by pluralistic politics, not shared beliefs.[171] The shari'a should therefore be updated to accept democratic governance.[172] In his endorsement of democracy, Sachedina posits the modern state as somewhat universal, as can be seen in his observation that the "modern concept of citizenship is conspicuously absent in the traditional sources of Islam."[173] He also characterizes human rights in this way:

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[164] Ibid., 65.
[165] Ibid., 68.
[166] See *Foreword* by David Little, in Ibid., x. See also Sachedina, 65-68, 77-78, and 153.
[167] Ibid., 78.
[168] Ibid.
[169] Ibid., 44 and 74.
[170] Ibid., 77.
[171] Ibid., 69.

> "My thesis thus far has contended that religion and human rights norms are two solvents of human life, two interlocking sources and systems of values that have existed side by side in all human communities, regardless of time, place, and culture."[174]

Islamic sources that can be channeled for religious toleration, democracy and human rights include: the creation story, particularly in its positing of a single parentage for all humankind;[175] the *amana*, or trust, taken up by humanity that indicates moral responsibility across religious divides;[176] *fitra* as universal intuitive reasoning, in which intuitive precepts lead, through reason, to moral action;[177] the idea of human dignity, or *karama*, that universally imbues human beings with an intrinsic value;[178] and historical traditions of religiously-based pluralism.[179]

The historical Islamic politico-juridical tradition is authoritarian in comparison to the democratic potential of such textual sources. Sachedina states:

> "Like all other world religions, at one time or another, Islam has succumbed to the political ambitions of Muslim rulers; in doing so, it has sacrificed its core values of interfaith tolerance and coexistence…an alliance between an exclusive and hegemonic theology perpetrated by the court theologians and political power…"[180]

This is but one of the points in Sachedina's staunch critique of traditional Islam.

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[172] Ibid., 76.

[173] Ibid., 85.

[174] Ibid., 84.

[175] Ibid., 46-47.

[176] Ibid., 48.

[177] Ibid., 52-53 and 71.

[178] Ibid., 48, 62 and 71. In this context, Sachedina quotes 17:70 of the Qur'an: "We have endowed the Children of Adam with dignity [*karam*] and carried them on land and sea, and provided them with good things, and preferred them greatly over many of those We created."

[179] Sachedina, 66 and 68.

[180] Ibid., 70.

According to Sachedina, the Islamic juridical tradition is an outdated set of historical accretions. It is the result of concessions to political authoritarianism, and needs to be updated through fresh interpretations of the holy texts to arrive at an indigenously generated acceptance of citizenship and equal rights in national contexts.[181] As it stands, the juridical tradition is "a formidable obstacle to a number of articles of great consequence for the protection of individual rights that are enshrined in the Universal Declaration of Human Rights."[182] This is particularly problematic with regard to the rights of women and non-Muslims. Sachedina states that the shari'a doesn't have equal citizenship measures. Rather,

> "It simply divides the populace into Muslim members, with full privileges, and non-Muslim minorities, with protected status under its divinely ordained system."[183]

The new constitution in Iraq serves as an example of how "patriarchal traditionalism" persists through the "inherited juristic law," enforcing discrimination against women.[184]

Women suffer second-class status not only in the formulations of positive shari'i law, but also because of deeper structures in the religious scholarship:

> "…not only are the classical formulations discriminatory against women and in need of reform, there are epistemological obstructions in these formulations to bringing woman's status as a full person into accord with the articles of various international conventions."[185]

The same is also true for traditional treatments of non-Muslims.[186] Sachedina seeks out a natural law tradition in the ethical sources of Islam in order to overcome the relativity of historical Islam in the fields of these inequalities.[187] He finds that the Qur'an acknowledges a unity transcending religious difference, connecting private and public spiritual frameworks.[188] In this way, a universal ethical discourse exists across religious divides, such that:

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[181] Ibid., 57. See also 77, where Sachedina states unequivocally, "There is little doubt that a fresh understanding of the Shari'a in the public arena should develop in order to further pluralistic democracy's gradual acceptance by the people."

[182] Ibid., 41.

[183] Ibid., 77.

[184] Ibid., 76.

[185] Ibid., 120.

[186] Ibid., 113.

[187] Ibid., 115.

> "No human endowed with reason can fail to understand this moral language…The Qur'an allows nonbelievers to be 'other' in the sphere of ethics, where the natural knowledge of good and evil makes injustice in any form inexcusable. No matter how religions might divide people, ethical discourse focuses on human relationships in building an ideal public order."[189]

Plurality in faith and law among humans is a fact acknowledged in the Qur'an.[190] This can be seen in the fact that both humans in general and Muslims in particular are addressed in it.[191] Given the fact that the textual sources of Islam promote religious pluralism and toleration, Sachedina identifies the cause of the present oppressive condition as the Islamic tradition's failure to separate ethics from jurisprudence. The Islamic tradition derails democracy – particularly across gender and religious differences – because it has failed to separate religion from ethics;[192] in this formulation, Sachedina is identifying historical Islamic tradition primarily with its legalistic disciplines. The ethical aspect of Islam can easily foster an inclusive universality to accept the UDHR. But the tradition never forged ethics independent of God's law.[193] By tradition here, Sachedina is referring to the Ash'ari theological school, which early on rose to prominence over Mu'tazila and Shi'i theological positions that did allow for moral autonomy.

In fact, much of Sachedina's critique of 'Islamic tradition' is aimed directly at Ash'ari theology. According to Alasdair MacIntyre, the theological problem of human free will vs. divine determinism is one of the three philosophical problems ineliminable to theism.[194] In this debate, the Ash’ari position tipped over to the side of divine determinism, especially in response to Mu’tazila formulations. The Ash’ari denied the moral autonomy of individuals, since the rightness/wrongness of acts was understood to be unknowable outside of revelation.[195] Instead of moral autonomy, they emphasized God’s absolute will and humanity’s responsibility to submit. They did not therefore recognize any independent moral law outside of revelation:

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[188] Ibid., 69.
[189] Ibid.
[190] Ibid., 80.
[191] Ibid., 82 and 128-129.
[192] Ibid., 75 and 77.
[193] Ibid., 91.
[194] Alasdair MacIntyre, *God, Philosophy, Universities: A Selective History of the Catholic Philosophical Tradition*. Lanham: Rowman & Littlefield Publishers, Inc., 2009, p. 6-7.

> “There was no standard of good and evil, however minimal, available to all rational creatures. The notion of God as an unlimited and arbitrary power implied reduction of all moral laws to inscrutable manifestations of divine omnipotence.”[196]

There was, therefore, no natural law concept in the Ash’ari school:

> “…the Ash’arite denial of human moral agency meant a radical change in the approach to morality as it applied to humans as human. The vindication of the absolute divine will over the intellect capable of cognizing good and evil led to the denial that ethical values could be discerned by unaided reason…According to the Ash’arite theologians, there was neither a natural constitution endowed with moral cognition nor natural law to function as the basis of ethics that directed human purposive existence.”[197]

For Sachedina, this system facilitated an “absolutist political theology” when the jurists succumbed to the political pressures of absolutist rulers. He states:

> “Like all other world religions, at one time or another, Islam has succumbed to the political ambitions of Muslim rulers; in doing so, it has sacrificed its core values of interfaith tolerance and coexistence…an alliance between an exclusive and hegemonic theology perpetrated by the court theologians and political power…”[198]

Sachedina even goes so far as to credit Ash’ari theology with partial culpability for contemporary political jihadism:

> “This traditional, majoritarian Sunni position lacks any inclusive doctrine of human moral worth and denies inherent human dignity outside the faith’s communal boundaries. It is not far-fetched to suggest that religious extremism in the Muslim world today can be traced back to this hegemonic theology, which does not hesitate to treat dissenting groups within the larger community (like the Shi’ites, for example) as less than human and, hence, worth killing.”[199]

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[195] Sachedina, 59.
[196] Ibid., 86.
[197] Ibid., 104.
[198] Ibid., 70.
[199] Ibid., 60.

By contrast, the Mu'tazila and Shi'i understood reason as a divine gift, acknowledging human moral agency and espousing a truly universal view.[200]

Sachedina's critique of Islamic tradition is also versed in the language of a critique of the historical shari'a, with implications for his reform proposal. The shari'a must not continue to act like a comprehensive system:

> "The search for a human rights foundation must begin without presenting the historical Islamic juridical heritage as a comprehensive system that is to be maximally applied in the promulgation of universal morality derived from Islamic revelation."[201]

Sachedina's work is replete with calls for historical deconstruction of the Islamic tradition,[202] and a teasing out of Islam's universal ethical dimensions from its particularly Islamic message. This is the same need for which Sachedina criticizes the Cairo Declaration on Human Rights in Islam. This document, drafted by "Muslim apologists," is missing references to theological-metaphysical sources for an all-inclusive scheme.[203] It mistakenly assumes that historical Islam can be universalized.[204] For these failings of traditional Islam, Muslims today must not continue to espouse:

> "…an uncritical approach to the juridical decisions made by learned scholars in the past…by extending the immutability of the Qur'an to the rulings given by Muslim jurists in the area of interhuman relations, including the treatment of women, the community seems to be saying that it has inherited a perfect system that does not need any revision in the decisions that were made by the founding jurists."[205]

Rather, the only way out of Islam's present "epistemological crisis" and "crisis of irrelevance"[206] is to seek out an Islamic rendition of natural law, and from it to create a universally coherent idiom for Islam and human rights. To do so, Muslims must embark on the following two-step epistemological reform:

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[200] Ibid., 106.
[201] Ibid., 92.
[202] See ibid., 120, 123, 127, 129, 131 and 135.
[203] Ibid., 63.
[204] Ibid., 90.
[205] Ibid., 130.
[206] Ibid., 88-89 and 121, and 128 and 140-141, respectively.

> "The first hermeneutical move of necessity involved deconstructing the contextual aspects of the classical juridical heritage of Muslims, by looking at the way religion and politics in Islam interacted to distort the original universal intent of the relevant texts for exclusivist political reasons. The second move involved providing a fresh interpretation that is consonant with the inclusive intent of the religious discourse and relevant to modern discourse on human dignity and justice."[207]

After all, the fallible human dimension of *fiqh* (jurisprudence) is not to be confused with the sacredness and immutability of the Qur'an. Mirroring Saroush and Lamptey on this point, Sachedina wishes to contextualize and historicize the normative essentialism classical fiqh attached to human relations.[208] He also submits that there is consonance between the truths of revelation and reason.[209] It is not religion per se, but the interpretation of it that needs to be updated through fresh interpretations in line with human rights norms.[210]

In contrast to the traditional as particular and authoritarian, Sachedina presents the modern as universal and politically neutral (read *universally rational*). For example, Sachedina, exactly like Saroush, claims that Muslim culture focuses on responsibilities rather than rights.[211] This pits traditional (authoritarian) Islam directly against modern (liberatory) rights-based politics. As another example, the modern state is supposed to be universal and ahistorical. Sachedina claims that, under certain conditions:

> "…the Qur'an gives the state, *as the representative of society*, the power to control 'discord on earth,' a general state of lawlessness created by taking up arms against the established Islamic order."[212]

Given Wael Hallaq's argument in *The Impossible State*, Sachedina can be criticized here for anachronistically transposing the political form of the modern state onto earlier configurations. Hallaq identifies particular form properties with the modern state, which would not be found in premodern Islamic rule.[213] There is no reason to believe that premodern Islamic ruling regimes saw themselves, and were seen by the people, as representatives of society; they were likely framed as vicegerents of God, or something else. Medieval Sunni thought shows tremendous variety in justifications for political rule.[214] What one finds is "competing visions rather than agreement on religious and temporal powers."[215] The imamate (a shorthand term for the political structure embodied in the person of the caliph) was understood variably by scholars, as "a social utility (*maslaha*)…necessary for survival, social welfare, and cooperation."[216] Sachedina's picture of a theologian-jurist establishment as the handmaiden of political absolutism is challenged by scholarship that points to the:

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[207] Ibid., 111.
[208] Ibid., 42.
[209] Ibid., 44. Recall Saroush's postulate that all truths are commensurate; see p. 120 above.
[210] Sachedina, 56.
[211] Ibid., 12, 85-86, 108 and 149.
[212] Ibid., 74 and 109, emphasis added.

> "…domestic and external challenges that forced the ulema to rally behind the caliphate or any authority that respected religious law in instances of civil war, sectarian division, or rebellion or during outbreaks of violence…"[217]

To recapitulate, Sachedina's overall scheme is as follows. Muslims today must cast off the fetters of the inherited historical Islamic juristic tradition and the Ash'ari theological determinism upon which it is based. Muslims must update their understanding of the Islamic texts in light of the sociological contexts of multi-ethnic, multi-faith nation-states to facilitate citizenship, equality, toleration and other human rights norms. To do so, they should borrow elements from the Mu'tazila and Shi'i theological positions on human moral autonomy and the role of reason unaided by revelation (such as the capabilities approach[218]). With these elements, Muslims today should develop an Islamic natural law trajectory. This should be easy, because the Qur'an offers two types of guidance, "a universal moral guidance that touches all humans qua humans, and a particular scriptural guidance that is given to a specific faith community."[219]

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[213] See Hallaq (2013). See chapter 3 for my discussion of Hallaq's argument.

[214] See Hayrettin Yucesoy, "Justification of Political Authority in Medieval Sunni Thought," in Asma Afsaruddin, ed. *Islam, The State, and Political Authority: Medieval Issues and Modern Concerns*. New York: Palgrave Macmillan, 2011.

[215] Ibid., 10.

[216] Ibid.

[217] Ibid., 12.

[218] Sachedina, 135-137.

Since human rights assumes natural law,[220] this will lead to consistency between Islamic premises and human rights norms. In fact, according to Sachedina, it is already the case that:

> "The Islamic universal discourse conceives of a spiritually and morally autonomous individual capable of attaining salvation outside the nexus of the community-oriented Shari'a, with its emphasis on an integrated system of law and morality…Islamic universal discourse sought to define itself by legitimizing individual autonomy within its religiously based collective order by leaving individuals free to negotiate their spiritual destiny without state interference, while requiring them to abide by the public order that involved the play of reciprocity and autonomy upon which a regime of rights is based."[221]

In Sachedina's analysis, the Qur'an itself seems to pose a modern definition of religion:

> "…even when the Qur'an speaks about the entire nature having submitted to God's will, when it comes to humankind the revelation advances the freedom of human choice, for God permits the human to accept or reject the act of submission that God demands. This leaves human beings free to negotiate their religious affiliation in any given faith community, or none at all. But it does not permit them to deny the existence of the moral sensibilities necessary for them to undertake to perform their moral duties in relation to other human beings. Such a denial is construed by the Qur'an as the denial of the order of nature (*hukm takwıni*)."[222]

This passage shows that universal morality doesn't depend on revelation, and that while people are free to accept or deny revelation, they can't escape moral interactions with other people.[223] This is a modern definition of 'religion,' as explained in chapter three. Universal human rights grants freedom of religion in the sense that religion is essentially a private matter of internal belief. It is a disembodied and non-public/non-coercive rendering, because it simultaneously establishes an independent, secular code for regulating the public sphere and the limits of toleration.

While Sachedina poses religion in the modern sense of the term, he also poses, like Mernissi, a political definition of religion. He states:

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[219] Ibid., 74.

[220] Ibid., 91.

[221] Ibid., 150.

[222] Ibid., 97.

[223] See also ibid., 99-100.

> "Let me reiterate that the purpose of divine revelation is to provide norms and values that will guide humankind toward constructing a viable system of governance…In order to reach its final end, humanity will have to utilize all its divinely-conferred abilities and potentialities to assume the critical responsibility of exercising authority in order to establish a just political order."[224]

Interpersonal relationships are emphasized in the Qur'an in order to facilitate an inclusive public order.[225] The role of religion is to foster norms for peaceful interfaith/multiethnic relations.[226] While the purpose of creation is moral and spiritual perfection, the purpose of religion is more political.[227] Echoing Saroush, freedom of religion is itself religiously necessary in Islam.[228] Islam and human rights, then, are like long-lost cousins who must meet again in the reunion of theological and epistemological reform.

While I will critically evaluate the works I present in chapters four and five (Muslim Approaches to Human Rights I and II, respectively) in the conclusion, a glaring omission in *Islam and the Challenge of Human Rights* must be pointed out here. That is that Sachedina makes no mention of the Maturidi theological school. He posits the Ash'ari and Mu'tazila schools, along with Shi'i theology in general, as the sole actors in fourteen hundred years of Islamic traditional *kalaam.* The Sunni Maturidi theological school, formalized and codified between 1000 and 1200 CE, has held a middle-way position (between the Ash'ari and the Mu'tazila) on unaided human reason (specifically that it *can* discern major sins without revelation). It is followed in all regions where Hanafi jurisprudence is the majority shari'a methodology, which represent a sizable portion of Sunni Muslim communities even today (i.e. Turkey, Tatrstan, Bashortostan, the Balkans, the Caucasus, the Levant, Afghanistan, Central Asia, northwest China and south Asia).

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[224] Ibid., 70.
[225] Ibid., 72.
[226] Ibid., 80.
[227] Ibid., 93.
[228] Ibid., 73-74 and 98.

Sachedina also elides without qualification between theologians and jurists – even though these two groups belonged to distinct disciplines each with its own scientific methodologies – and treats the shari'a and 'Muslim culture' ahistorically, as monolithic. For example, in his lengthy discussion of women as equal rights bearers, Sachedina credits "the culture" with preserving entrenched prejudicial attitudes towards women.[229]

Conclusion

In this chapter I have reviewed the works of five contemporary Muslim thinkers whose engagements with human rights call for major epistemological reforms of the Islamic tradition. Abdolkarim Saroush, Abdullahi An-Na'im, Fatima Mernissi, Jerusha Tanner Lamptey and Abdulaziz Sachedina all espouse the need to bring contemporary Islam in line with universal human rights norms, including democracy and equality for women non-Muslims. They find fault with the inherited Islamic tradition, in its theological premises (Sachedina and Lamptey) and epistemological methodologies (Saroush, An-Na'im and Mernissi). These thinkers advocate historical deconstruction of the Islamic tradition, so that ethical principles can be separated from positive legal and normative content. They all believe that human rights norms, democracy and gender equality are espoused in the original intentions of Islam's sacred texts (Sachedina and Mernissi).

The thinkers examined in this chapter posit Islam as a religion in the modern sense of the term, such that they undermine communal and traditional interpretive authority over religious significations in favor of individual freedom to interpret (specifically An-Na'im, in his calls for expansion and relaxation of *ijtihad*). They also promote the internal nature of religious belief, disentangling it from public or political power. In this way, Islam is disembodied conviction. These reformists also frame their advocacy of religious pluralism in terms that understand ‘religion’ as a general genus of which ‘Islam’ is a species (particularly Lamptey and Sachedina). This characterization is most congruent with universal human rights’ structure of freedom of religion. They all hold universal human rights as the answer to the social and political – but also philosophical and epistemological – problems plaguing Muslim communities today.

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[229] Ibid., 144. Like Mernissi, An-Na'im, and Lamptey, Sachedina speaks of women's oppression in Islam as given. He does not provide concrete historical or sociological trends sanctioned by Islamic doctrine. Nor does he cite scholarship denigrating women. It is rather treated as a fact so obvious, that it needs no evidentiary backing.

Chapter 5: Muslim Approaches to Human Rights II – Islam as *Din*

In this chapter I will analyze the arguments of those Muslim theorists who wish to mediate the relationship between Islam and universal human rights using a conceptual alternative to the modern category of 'religion.' This involves finding the modern sense of religion – a private, socially disembodied set of beliefs that doesn't interfere with politics, economics, etc. and makes no demands on the public sphere – inadequate for addressing Muslim life. Rather, Islam is articulated with emphases on the inseparability of belief and practice, the communal nature, social embeddedness and reciprocity of rights and obligations, and the overarching moral law that holds private and public matters accountable. I will label the various articulations of Islam as distinct from religion in the modern sense as *din*.[1]

These thinkers advocate the continued perpetuation and renewal of the Islamic tradition – which includes premodern epistemology, jurisprudential methods and themes (though not necessarily the positive content of that jurisprudence), and esoteric practice. They advocate the penetrating nature of belief into the public sphere: being the space of interpersonal transactions, contracts and the interest of the public good, it ought to be governed by religious precepts of social and economic justice, the rights of families, neighbors, the poor, animals, land, etc. Individual rights, by virtue of being human alone, do not form the basis of a *din*-centered approach. Rather, such a rights-scheme is structured around the Islamic tradition's historical institution of *al-maqasid ash-shari'a*, or the higher intents of the law, and an other-worldly criterion for gain and loss.[2]

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[1] See chapter 3 for the meaning of *din* in the Islamic tradition generally, and in the Qur'anic semantics specifically.

[2] See chapter 3 for Hallaq's treatment of premodern shari'a.

The approach that posits Islam as *din* rather than as religion in the modern sense of the term is congruent with William Cavanaugh's claim about the modern invention of religion.[3] Cavanaugh argues that religion was invented as a category in modern times in order to establish the exclusion of religion from the public sphere without appearing to violate freedom of religion. According to the new concept, says Cavanaugh:

> "Religion is 'inward'; it is essentially about beliefs that cannot be settled publicly to the satisfaction of all by any rational method."[4]

A purely inward understanding of religion poses challenges for a *dini* understanding. The Arabic cognate of *din* signifies, at a basic etymological level: debt, debtor, creditor and the laws and ordinances governing debt. From this root, *din* further linguistically implies: judicious power, judgment and obligations and obedience to such; organized society and commercial life; town or city and governance; civilized life, social order, law, order, justice and authority.[5] Rendered as *din,* Islam doesn't easily accommodate the privatization implied by the modern term 'religion.'

When Islam is posed as *din,* the universal human right of freedom of religion (which relies on a modern definition of religion) falls short of addressing many needs of Muslim life. Other human rights may subsequently clash with certain Islamic articulations because the justificatory grounds of each are different.[6] In the tension between national sovereignty and supranational norms, the approach of Islam-as-*din* takes a more traditional understanding of sovereignty than the cosmopolitanism of the Islam-as-religion thinkers, albeit in a corporate/communal rather than strictly national configuration.[7] The thinkers I review in this chapter espouse a more positive relationship to historical shari'a than the thinkers of the previous chapter. From a *dini* point of view, the present group of thinkers privilege the Islamic traditional law in the lives of individuals and communities with only practical and national-legal considerations of good citizenship toward secular political authority.[8]

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[3] See chapter 3 above, "Religion, the Secular and *Din*." See also Cavanaugh (2009).

[4] Sachedina, 126.

[5] See chapter 3 above for Al-Attas' discussion of the root-cognate semantic field of '*din*.'

[6] See chapter 2, "Human Rights in Historical Perspective and Today," for my discussion of the neutrality claims of universal human rights theorists with regard to the discourse's philosophical anthropology.

[7] See chapter 2, "Human Rights in Historical Perspective and Today," for Peter Danchin's analysis of the tension between national sovereignty and supranational norms, or private (national) law and public international law. Also see below for Sherman Jackson's understanding of the *madhaahib* (Islamic jurisprudential schools) as corporate

In this chapter I will analyze arguments by Naquib Al-Attas, Sherman Jackson, Saba Mahmood, Katherine Bullock, Abdalhakim Murad and Seyyed Hossein Nasr. Their engagements of rights do not proceed along the universal human rights framework, but rather, in discussing rights-related concepts like democracy, women's status and modern consciousness, these thinkers posit Islam as a comprehensive action-enabling belief system, as private as it is public and focused on an other-worldly temporality (i.e. *not* religion in the modern sense of the term). The philosophical anthropology enabled by an Islam-as-*din* perspective differs markedly from the one advanced by the thinkers in the previous chapter. The Muslim subject is first and foremost God's slave; her moral autonomy is not articulated. The present group of thinkers does not propose radical epistemological reform like the thinkers discussed in the previous chapter. Instead, they advocate the renewed perpetuation of traditional Islamic jurisprudential methodology and theological categories, with refinement based on textual sources and traditional precedents as practically necessitated. These thinkers take a more critical attitude than the previous set of thinkers discussed toward liberal politics and assumptions of the human being, the modern state and feminist women's rights frameworks.

I will present the thinkers of an Islam-as-*din* approach to human rights in a thematic order, so that each of them can be read in conversation with one thinker from the previous

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models. See also chapter 3 for Wael Hallaq on the local character of premodern shari'a (and its regional authority), and its independence from centralized political authority.

[8] This differs from the arguments of Saroush, An-Na'im and Sachedina, who espouse (in different ways) that constitutional democracies have their own logic independent of religion, and that state-related matters can/must *only* be handled with a secular separation of private religion and public secularity.

chapter. For example, I will present Al-Attas's work first, on the faculties of knowledge. This juxtaposes his epistemological theorizing against Saroush's theory of the expansion and contraction of knowledge (as presented in chapter four). I will show that variances in knowledge theory can lead to divergent conceptions of nature and human freedom – issues with serious implications for human rights bases. Next I will present Sherman Jackson's work on scripture as a sieve through which democracy and human rights should be sifted – retaining beneficial elements and discarding those inconsistent with Islam – in conversation with An-Na'im's unequivocal endorsement of the secular state for Muslims. I will then elaborate on Katherine Bullock's proposal for alternative frameworks for understanding *hijab* to complicate Fatima Mernissi's rendering of Muslim women's singularly oppressed status under the hijab and male control of Islamic tradition. I will also present Saba Mahmood's critique of exclusively liberatory definitions of feminist agency, to question Lamptey's argued need for *Muslima* theological reform. Finally, I will posit Murad's argument for *fitra* as primordial slavehood to God (a 'radical authenticity' that he argues consists of turning away from the modern world's *brilliant series of distractions*), to question Sachedina's focus on *fitra* as universal intuitive reasoning in a natural law framework.

In this way, I hope to place thinkers from across the theoretical spectrum of Islam and human rights discourse into conversation around important contemporary political themes through various lenses of key Islamic concepts. At the least, this will demonstrate that there is tremendous scholarly variety among contemporary Muslim thinkers on questions of universal human rights. I hope that the Islamic discursive tradition, as a lived and constantly renegotiated tradition in modernity with deep philosophical roots in premodernity, will be enriched through these contests over the meanings of key Islamic concepts (i.e. knowledge, political authority, the female principle and *fitra*). At most, I hope that global discourse on universal human rights can benefit from authentic, in-depth investigation into Islamic sources for protection of human dignity.

The Faculties of Knowledge and the Intellective Organ of the Heart

Syed Muhammad Naquib Al-Attas is a philosopher and the co-founder of the International Institute of Islamic Thought (Malaysia). He was one of the senior founders of the National University of Malaysia, and has won numerous international recognitions, chairs and honorary positions. Al-Attas has published twenty-seven works on various subjects, including Islamic metaphysics, cosmology, Sufism and Malay culture and literature. Where Saroush advances a rationalist epistemology consistent with Kant's secularly based moral imperative, espousing toleration towards various religious beliefs and an agnosticism or indifference towards the existence of God, Naquib Al-Attas claims that Islam begins with God's existence as the only necessary trait of existence, truth and knowledge. Knowledge, in turn, is of two kinds: "that given by God to man; and that acquired by man by means of his own effort of rational enquiry based upon experience and observation."[9] The latter kind of knowledge, when systematized and maintained under the conceptual sovereignty of *tawhid*,[10] becomes *'ilm*. As Osman Bakar, scholar of Islam, science, and comparative philosophy and professor/director of the Sultan Omar Ali Saifuddin Center for Islamic Studies at the University of Brunei states, *'ilm* conveys a

> "comprehensive sense of an organized body of knowledge that constitutes a discipline with its distinctive goals, basic premises, and objects and methods of inquiry."[11]

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[9] See Al-Attas (1995), 69. Such a theory of knowledge differs substantially from the naturalist philosophy and scientific positivism that has come to constitute Western epistemology since the Enlightenment, and which constituted Kant's theory of nature.

[10] See chapter 3 above, "Religion, The Secular and *Din*," for an explanation of the concept of Divine Unity in the Qur'an, or *tawhid*.

[11] Bakar, 5.

Alparslan Acikgenc[12] conveys *‘ilm*/science as:

> “a body of knowledge (in the sense of discipline), which arises as a result of the process of determining a subject matter that is investigated by a scholarly developed method yielding theories.”[13]

The *‘uloom* (plural of *‘ilm*), or sciences, are of many varieties. Sciences are meant to express the truth of *tawhid*, through many types of discourses brought about by the variety of natures in the objects of knowledge. The type of knowledge is dependent on two: the importance of the object in the created order, or universal scheme, and the human faculty, or method, through which it is obtained. Both of these factors belong to a hierarchical scale within the Islamic metaphysical framework. The existing objects of knowledge are said to range in their importance from heaven to earth; this, too, is a science, based on the proximity of each object to the object of the necessary premise of *tawhid*, i.e. God. The corresponding sciences also range in the same way. The process of obtaining knowledge is what Al-Attas has called *adab*, which is “right action that springs from self-discipline founded upon knowledge whose source is wisdom.”[14] When *adab* is actualized in society, it manifests *‘adl* (justice). Among the objects of *adab* is also knowledge,

> “and its many branches and disciplines, some of which have more important bearing upon our life and destiny than others; if one grades them according to various levels and priorities and classifies the various sciences in relation to their priorities putting each one in its proper place, then that is *adab* toward knowledge.”[15]

Some contemporary thinkers who espouse this traditional epistemological hierarchy criticize the arrangement of disciplines in liberal academia in the Muslim world that follows “the modern educational system where theology, psychology and geology are placed horizontally alongside each other like so many drawers in a cabinet each containing a certain amount of information."[16]

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[12] See p. 104 above for Acikgenc’s credentials and his definition of ‘worldview.’

[13] Acikgenc, 35.

[14] Al-Attas (1995), 16.

[15] Ibid., 18.

Premodern Islamic epistemology based on the Qur'anic worldview is saturated with a *tawhidic* focus and is inseparable from concepts of wisdom and justice. *Tawhid* requires that the human knowledge scheme be arranged hierarchically, for since according to the Qur'anic worldview the created universe exists in a hierarchy, so too must knowledge of it. The importance of this "recurring theme" in Islamic scholarship, according to Bakar, has been "the concern with the means of preserving the hierarchy of the sciences and with the delineation of the scope and position of each science within the total scheme of knowledge."[17] Nasr explains:

> "In the traditional Islamic universe, both the subject and the object of knowledge are considered to be hierarchic. Object reality is not only the spatio-temporal world available to the senses. There is first of all the Absolute Reality, Allah, who alone Is in the absolute sense of the word. Then there are the angelic orders, the intermediate imaginal world (the *'alam al-khayal*), then the world of the *jinn* and the men and finally the natural world."[18]

In this way the classification of sciences and knowledge in traditional Islamic epistemology is an application of the Qur'anic worldview.[19] As mentioned above, knowledge depends on two factors: the object of study and the human faculty undertaking the investigation, or to put it another way, the knower and the known. This brings us to a third essential aspect of traditional Islamic epistemology: the human faculties of knowing and the states of the heart.

According to the Qur'anic worldview, the human being has been endowed with several distinct faculties of obtaining knowledge, as follows.

> "Man can know through the senses, through the imaginal faculty, through reason with its own several levels of activity, through the heart-intellect so often mentioned in the Qur'an and finally

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[16] Seyyed Hossein Nasr in Bakar, xiv. In this introduction, Nasr asks, "How can an Islamic education system accept a situation in which there is no hierarchy between the knowledge of the angels and of molluscs or between the method of knowledge based upon reason wed to the external senses and knowledge which derives from the certitude (*yaqin*) derived from heart-knowledge?" (xiv)

[17] Ibid., 1.

[18] Ibid., xi.

[19] See chapter 3 above, "Religion, The Secular and *Din*," for a summary of Toshihiko Izutsu's semantical study of God and the human being in the Qur'an, and my own discussion of the uses of 'worldview.'

> through revelation which is the objective counterpart of intellection with the eye of the heart (*'ayn al-qalb*)."[20]

Both 'external existence' and 'mental existence' are pervaded by the *tawhidic* hierarchy. The soundness or unsoundness of a scientific finding will be dependent upon how closely this hierarchy is maintained in the relevant parts of the theory, and more importantly on how pristine or sullied the human faculty that is leading the investigation. Regarding the major faculties of the human being, and going back to the two kinds of knowledge, that which is given by God and that which is arrived at through human's own rational capacity, the ways of arriving at each are different:

> "The first kind can only be received by man through his acts of worship and devotion, his acts of service to God (*ibadat*) which, depending upon God's grace and his own latent spiritual power and capacity created by God to receive it, the man receives by direct insight or spiritual savoring (*dhawq*) and unveiling to his spiritual vision (*kashf*). This knowledge (*ma'rifah*) pertains to his self or soul, and such knowledge…gives insight into knowledge of God, and for that reason is the highest knowledge…The second kind of knowledge *('ilm*) is acquired through reason, experience and observation; it is discursive and deductive and it refers to objects of pragmatical value."[21]

Put more succinctly, knowledge comes from God and "is acquired through the channels of the sound senses, true report based on authority, sound reason, and intuition."[22] The sound senses are five external and five corresponding internal senses of perception and observation. They perceive and arrange sensual impressions, storing them and using them for intellection. Sound reason refers to more than rational databasing, abstraction, law-giving and ordering. Reason does all this, but furthermore it acts in accordance with the intellect, which is a spiritual substance inhering in the heart (*qalb*). The *qalb* is the seat of intuition. Intuition includes apprehension of the self and the external world, but also of religious truths, God and existence itself.[23] True report consists of well-established continuity and sequence of trusted people, and the speech of a messenger sent by God.

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[20] Bakar, xii.

[21] Al-Attas (1995), 69.

[22] Ibid., 118.

The *qalb* intellective organ is one of the defining features of traditional Islamic epistemology. In the Qur'anic worldview, the creation of *al-insaan*, the human being, was a cosmically epic event. The entirety of the natural world was brought into being in order to test humans. The human being was made from a clay that sounds when struck, dust mixed with water and Divine breath. *Al-insaan* was given dominion over the earth and all its animals as God's delegate (the office of vicegerency, or *khilafah*), and was given the intellective organ *(*interchangeably *'aql*, *qalb*, and *nafs*) to achieve knowledge of all types. In this scheme, the human and the natural environment are governed by the same Divine law, but this does not mean they share the same constitution in the scale of creation.[24] As the esoteric Muslim poet Jalaluddin Rumi said, "the angel is free because of his knowledge, the beast because of his ignorance. Between the two remains the son of man to struggle."[25]

The human being in search of true knowledge who is governed by *tawhid* will also need to clean the instruments of her investigation (whether the senses, the reason or the heart) through belief, ritual worship and pious acts. She will also have to avoid the trappings of excess and sicknesses which afflict each of these organs, a task which is accomplished through the moral/positive law of Islam (the *shari'a*) and through the esoteric science of *tasawwuf*. As mentioned earlier, *adab*, or knowing the proper places of things within the *tawhidic* universe, becomes an important part of the methodologies of acquiring knowledge. The source of all true knowledge being God, the attainment of knowledge is the same as growing closer to God in degrees. Thus *tawhid* doesn't just penetrate discourse, but comprises the believer's agentive motivation through the vehicle of piety. Epistemology and piety go hand in hand. As stated by eighteenth-century hadith scholar and reformer Shah Wali Allah,

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[23] Ibid.

[24] The human soul is itself part vegetative, part animal, and part rational. But it is also something else. The human nature is not limited to or synonymous with any of these aspects. Al-Attas (1995), 118.

[25] Quoted in Kabir Helminski, *The Rumi Collection: An Anthology of Translations of Mevlana Jalaluddin Rumi*. Boston: Shambhala Publications, 1998: 16.

> "The most basic principle of piety and the mainstay of its various aspects is the doctrine of the unity of God. This is because humility before the Lord of the worlds, which is the greatest of the virtues in acquiring ultimate felicity, depends on this."[26]

The main difference between the epistemology expounded by Saroush and Al-Attas lies in the relative importance given to rationality, and the characterization of the human heart. For Saroush, human reason evolved from an immature, timid and obedient state in religious premodernity, to a mature, bold and history-making (architectonic) state in enlightened, secular modernity.[27] His only mention of the human heart pertains to the private essence of faith. He states that while faith can be expressed publicly, its essence is private: "The prophets founded a faithful-spiritual community, not a legal-corporeal society."[28] Islam, according to Saroush, started in faiths and hearts before preceding to rites and obligations, and now that humankind has evolved beyond religious control of the public space, religion should return to faiths and hearts.

Al-Attas, by contrast, posits human reason as useful and necessary, but does not epistemologically privilege it in the manner of the Enlightenment. Reason is one way of knowing among others, and furthermore, is not the primary vehicle of the intellect:

> "In the same way that we do not confine reason to sensational elements, we do not restrict intuition to the direct and immediate apprehension, by the knowing subject, of itself, of its conscious states, of other selves like itself, of an external world, of universals, of values or of rational truths. We understand by intuition also the direct and immediate apprehension of religious truths, of the reality and existence of God, of the reality of existences as opposed to essences – indeed, in its higher levels intuition is the intuition of existence itself…it is intuition that synthesizes what reason and experience each sees separately without being able to combine into a coherent whole."[29]

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[26] Shah Wali Allah, *The Conclusive Argument from God: Shah Wali Allah of Delhi's Hujjat Allah al-Baligha*. Trans. Marcia Hermansen. Islamabad: International Islamic University, 2003: 175.

[27] See chapter 4 above, "Muslim Approaches to Human Rights I: Islam as Religion in the Modern Sense."

[28] Saroush, in Sadri, 141.

[29] Al-Attas (1995), 119-120.

Where Saroush, consistent with post-Enlightenment positivist rationality, understands reason distinctly from spirituality, Al-Attas maintains that the intellect is a spiritual substance that resides in the heart:

> "In this way and through the mediacy of the intellect we have connected reason with intuition."[30]

The heart, *al-qalb,* is itself understood interchangeably with the intellect, *al-'aql*, as well as the spirit, *al-ruh*. In premodern Islamic philosophical anthropology, according to Al-Attas, the human being is a rational soul, indicated by its innate faculty of apprehending universals. This faculty, *natiq*, comes from the root *nutq,* from which is also derived *al-mantiq*, or the science of logic. The human being is a 'language animal' or a 'speaking animal' in this schema (*al-hayawan al-natiq*), such that:

> "the articulation of linguistic symbols into meaningful patterns is no other than the outward, visible and audible expression of the inner, unseen reality which we call the intellect (*al-'aql*). The term '*aql* itself basically signifies a kind of 'binding' or 'withholding', so that in this respect it signifies an active, conscious entity that binds and withholds objects of knowledge by means of words or symbolic forms; and it indicates the same reality that is denoted by the terms 'heart' (*qalb*), 'spirit' (*ruh*), and 'self' (*nafs*). This conscious, active entity or reality has many names such as identified by the four terms above because of its many modes in its relations with the various levels of existence. The intellect is then a spiritual substance by which the rational soul recognizes truth and distinguishes truth from falsity."[31]

We can see from this that the rational and spiritual faculties, pertaining to truths about the various levels of existence (i.e. Divine, heavenly, anthropological and natural), are inseparable in premodern Islamic epistemology. Al-Attas espouses a theory of knowledge that is closer to a *dini* conception of Islam than to Islam as a religion in the modern sense of the term, as Saroush does.

Saroush's epistemology mirrors the Enlightenment emphasis on reason alone – to the exclusion of other human faculties of knowing – such that ritual worship can neither aid nor desist scientific investigation. He does positively value religious belief, practice and knowledge, but in a way that separates the private world of faith from the public universe of scientific knowledge.[32] Such a point of view is at odds with Al-Attas' exposition of premodern (in his view the authentic Islamic position) Islamic commitments to the *qalb* as the intellective organ and seat of intuition, and the relation of *ibada* (worship) to the soundness or unsoundness of rational findings – not to mention the idea that all knowledge comes from God.

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[30] Ibid., 119.

[31] Ibid., 122.

Theories of nature and freedom are also intimately affected by epistemological and philosophical differences between a modernist tradition (one that draws from Kant's moral autonomy doctrine[33]) and a traditionalist focus on *tawhid*.[34] For Kant, nature was the *authoress of her own laws*,[35] and at the same time was a mere substance, to be dominated.[36] Saroush echoes this view of nature when he claims:

> "Everything that enters nature, including religion and revelation, bends to its ways. Everything that enters human society becomes social and human. This means that in the realm of nature and human society, there is no such thing as supernatural and metaphysical phenomena."[37]

This is very different from the premodern Islamic rendering of nature, which holds that the order of nature derives from "the prototype of all existence…the Pen (*al-Qalam*) and the Guarded

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[32] See chapter 4 above.

[33] See chapter 2 above, "Human Rights in Historical Perspective and Today," for an elaboration of Kant's moral autonomy tradition constituting one of three major approaches to human rights today.

[34] 'Traditionalist,' particularly when posed distinctly from 'modernist,' signifies premodern Islamic. See Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach*. London: The International Institute of Islamic Thought, 2008. In chapter 5, Auda conducts an in-depth survey of contemporary theories of Islamic law. He identifies the three 'classic' classifications of Islamic ideologies as traditionalism/fundamentalism, modernism and secularism. He then lists classification schemes in circulation today, such as the Rand corporation's typology and the schema used by script-based 'centrists' (the *wasatiyyah*). Auda's commentary on these various schemes reveals weaknesses in each (146-152). He then proposes his own classification, based on the differing levels of authority (sound, reinterpreted, supporting evidence, something spurious in it, and invalid) ascribed to various types of texts/norms (contemporary values/rights, rationality/rulings of traditional *madhaahib*, higher *maqasid*, prophetic traditions, and Qur'anic verses). I use 'traditionalist' in the sense ascribed by Auda in this scheme, in which he identifies three major tendencies of Islamic ideologies and theories of law today. He labels them traditionalism, modernism and postmodernism. Traditionalism includes scholastic traditionalism, scholastic neo-traditionalism, neo-literalism and ideology-oriented theories. Auda, 153-168.

[35] Kant (1964), 93.

[36] Adorno, 56-57 and 104-105.

[37] Saroush, in Sadri, 61.

Tablet (*al-lawh al-mahfuz*)."[38] Ordered nature is confirmed by the insistence "that everything is created according to measure."[39] Nature is not "an independent domain of reality with its own independent order," a notion "to which the Quran points constantly as outward proofs of God, His Wisdom and His Power."[40] A secular positivist framework could not accept a statement such as:

> "The very substance of the cosmos is the 'Breath of the Compassionate' (*nafas al-Rehman*) while cosmic forms and all that constitutes the order of nature emanate from the archetypal realities and ultimately the Divine Essence Itself…the order of nature is nothing but the Divine Reality manifesting itself on the plane of phenomenal existence."[41]

Disjuncture also exists between the rival epistemologies of Saroush and Al-Attas on the understanding of freedom. For Saroush, freedom is inextricably intertwined with our rationality.[42] This is consistent with Kant's categorical statement that the "concept of freedom is the key to explain autonomy of the will."[43] Freedom must be presupposed as a property of the will of all rational beings.[44] Kant maintains that the human being knows that pure reason independent of sensibility is the source of law.[45] However, for Saroush, proponents of freedom and democracy today needn't espouse atheism or make religion completely irrelevant for public life. While "liberal freedom was freedom from the fetters of religion and metaphysics,"[46] it is possible and desirable for contemporary Muslims to decouple liberalism from democracy and arrive at religious democracy.[47]

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[38] Seyyed Hossein Nasr. *Religion and the Order of Nature: The 1994 Cadbury Lectures at the University of Birmingham*. New York: Oxford University Press, 1996: 60.
[39] Ibid., 61.
[40] Ibid.
[41] Ibid., 61-62.
[42] Saroush, in Sadri, 90.
[43] Kant (1964), 114.
[44] He states: "And I maintain that to every rational being possessed of a will we must also lend the Idea of freedom as the only one under which he can act." Ibid., 116.
[45] Ibid., 121.
[46] Saroush, in Sadri, 137.
[47] Ibid., 138-141.

According to Nasr, the *tawhidic* notion of freedom is so far removed from Western humanist understandings of it, that it may first be necessary to forget the modernist definition of the term:

> "The discussion of the concept of freedom in the West today is so deeply influenced by the Renaissance and post-Renaissance notion of man as a being in revolt against Heaven and master of the earth that it is difficult to envisage the very meaning of freedom in the context of a traditional civilization such as that of Islam…It is meaningless to try to study the notion of freedom in Islam from the point of view of the meaning which has been attached to this term in the West since the rise of humanism."[48]

Whereas for Kant – and also for Saroush[49] – the autonomy of the will came from its submission to reason alone against the heteronomy of private interests, *tawhidic* personal freedom lies in surrender to the Divine Will, and in purifying the self from the pressures of the carnal soul.[50] As such, 'infinite freedom' exists only in proximity to the Infinite (i.e. God), while all lower levels of existence are conditioned by cosmic exigencies and the limitations imposed by the Ultimate Reality (i.e. God) upon humans.[51] Nasr explains the different meanings given to freedom in different traditional Islamic sciences: according to jurists, rights and freedoms are consequences of obligations (to God, nature, other human beings), and freedom in its most universal sense is aimed at by maximizing social equilibrium (hence the legislative role of the *shari'a*); according to the theologians, the antinomy of human freedom (*ikhtiyar)* and Divine determinism (*jabr*) constituted much debate;[52] and according to the esotericists (i.e. the Sufis), freedom is not individualistic, but consists in integration with the Universal (i.e. God) – a task of transcendence which is pursued through strict observance of the *shari'a*.[53]

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[48] Nasr (1981), 16.

[49] Saroush states that justice "as a value, cannot be religious. It is religion that has to be just." In Sadri, 131.

[50] Nasr (1981), 17.

[51] Ibid.

[52] Abdulaziz Sachedina focuses on the 'Ashari theological siding with divine determinism, and the Mu'tazila siding with individual autonomy. See chapter 4 above.

[53] Nasr (1981), 18-21.

To recapitulate, Naquib Al-Attas presents a distinctly premodern, or traditionalist Islamic epistemology. In it knowledge is attained through the spiritual substance of the heart-intellect, with help from the use of reason. The faculties of knowledge are arranged hierarchically (spiritual intuition, true report, rational intellection, sense perception) as are the objects to be known (God, the angelic orders, the human being, the natural world). *Tawhid* constitutes every truth-value, and is consistent with every true knowledge. The human being's faculties of knowing will be more or less accurate depending on how consistently (in both theoretical discourse, as first premise, as well as through practice, as lived belief) *tawhid* comprises the principle criterion of the knowledge sought. The modern sense of religion does not accommodate such a spiritually entangled temporal world of discourse. Rather, it delegates to religion the private sphere of personal belief, and organizes the public realm rationally (i.e. scientifically and secularly). In this way, Al-Attas' conception of knowledge extends the notion of Islam as *din*.

Scripture as Sieve and the Historicized Modern State

Sherman Jackson is the King Faisal Chair of Islamic Thought and Culture and Professor of Religion and American Studies and Ethnicity at the University of Southern California. He has authored several works on Islam, including on the constitutional jurisprudence of Al-Qarafi, the theological tolerance of Al-Ghazzali, the Sufism of Ibn Ata'Allah, and Islam and the problem of Black suffering in America. In his theorizing on liberalism and universal human rights, Sherman Jackson takes a critical, historicizing perspective. He finds both strengths and weaknesses in human rights discourse, and advocates for a partial adoption and partial reworking of human rights from a Muslim perspective. This leads him to propose an alternative framework for understanding universal human rights, a two-tier scheme in which rights are valued differentially. In his theorizing on the modern state, Jackson challenges its monopoly over law, calling for a limiting of its legal scope. He also examines the American state in racial-historical perspective, bringing to the surface a number of systemic issues pertaining to 'false universals' confronting American Muslims. In all these different works, Jackson espouses premodern traditional Sunni Islam (in its Qur'anic worldview, epistemology and importance of the *shari'a*) and evaluates political phenomena and discourses through the sieve of scripture.

In a lecture delivered at Duke University entitled "Western Muslims and Human Rights: an Alternative Framework?" Jackson, citing the work of University of Sussex (United Kingdom) law and anthropology professor Marie Benedict-Dembour, gives a brief survey of modern approaches to universal human rights.[54] Jackson's own position lies somewhere between all the schools surveyed by Benedicte-Dembour, but he cannot adhere to any one of them because they all place human rights on the same plane. Jackson agrees that freedom from torture, rape, murder, and unlawful confiscation can be termed human rights, but does not believe freedom from hijab, polygamy, and *shari'a* are human rights. Not even freedom from racism constitutes human rights, says Jackson, and if so, certainly not on the same plane as freedom from torture, etc.[55] Jackson cites human rights attorney Macawa Mauwa, who has argued that human rights conceal the hidden agenda of liberal democracy.

Elsewhere, Jackson has stated the need to disentangle liberalism and democracy, a point to which I return below with regard to Jackson's analysis of the modern state's monopoly over law. In his discussions of universal human rights, he proposes an alternative framework that is comprised of two tiers of rights. He bases his model on the work of the thirteenth century Maliki scholar Shihab al-Din al-Qarafi.[56] Al-Qarafi articulated a distinction between the 'rights' of God and the 'rights' of humans. He defined the rights of humans as everything we have the 'right' to forfeit, in contrast to the rights of God, which are human entitlements that can't be forfeited. The basis of all this is Divine dispensation, placing the shari'a in a determinative role. For example, a human can't choose to participate in usury, because he/she doesn't have the right to do so. A human can pardon the murderer of his/her family member, because he/she does have the right to do so.[57]

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[54] Based on Marie Benedicte-Dembour, "What are Human Rights? Four Schools of Thought." *Human Rights Quarterly*, Vol. 32, No. 1 (Feb. 2010): 1-20. Benedicte-Dembour identifies four main contemporary approaches to human rights. These are: the natural, deliberative, protest and discourse schools of human rights. See "Sherman Jackson Western Muslims & Human Rights: An Alternative Framework?" posted by FranklinCenterAtDuke. Available at http://youtu.be/IQAMUB2PiJA. Accessed May 1, 2013.

[55] Ibid.

The 'rights' of God in this scheme are inalienable human rights, while the 'rights' of human beings are alienable. In Jackson's scheme, these would correspond, respectively, to primary and secondary human rights. Among the primary rights of God, the most prominent is the sanctity of the public space, which has traditionally been responsible for enabling people's livelihoods and necessary social relations. The public space embodies such values as: freedom from genocide, torture, rape, murder, unlawful confiscation, etc. Jackson proposes that the rights of the religious practices and beliefs of Muslims and non-Muslims alike can easily be interpreted as rights of God based on the principle of the sanctity of the public space. Another right of God, human freedom from usury and exploitation, "addresses various ravages of modern capitalism," and also points to the extension of human rights concerns "beyond the exclusively political abuses of the state."[58] In this way, Jackson is proposing a new space for critiquing the limits of the present human rights discourse, as well as making the radical proposition that Islam, more than just needing to be tolerated, can contribute positively to the debates. He also provides a basis for establishing the rights of non-Muslim minorities in a Muslim human rights system that radically bypasses the freedom-of-religion paradigm of universal human rights.

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[56] See also Sherman A. Jackson, *Islamic Law and the State: the Constitutional Jurisprudence of Shihab al-Din al-Qarafi*. Leiden: E. J. Brill, 1996.

[57] "Sherman Jackson Western Muslims…"

[58] Ibid.

Jackson also gives mixed reviews to democracy as a political form. He neither privileges nor shuns the democratic state as a political form, but rather cautions theorists to question which background is given "priority…in terms of what we consider to be a normative discussion of the issue of Islam and democracy."[59] Articulations and histories of Islam always having been multiple, and democracy being distinct from liberal democracy, Jackson urges against theoretical conflations that blur specificities. He also maintains that scripture serves as a sieve through which existing institutions ought to be sifted by Muslims. Neither the democratic state nor Islamic political forms are ahistorical, and as such, are always open to evolutionary development.

To this end, Jackson challenges the modern state in at least two ways. First, he questions the state's monopoly over law. He does so by juxtaposing the scope of the interpretative authority of Muslim jurists according to the *shari'a*, and the ever-intrusive lawmaking monopoly of the modern nation-state.[60] Common misunderstanding of these two issues helps explain why Islam and democracy are often posited at odds. In fact, says Jackson, rethinking the scope of Muslim juristic authority and the reach of the modern nation-state would allow for democracy to flourish alongside Muslim legal settings.

Jackson shows that there is precedent within the Islamic legal heritage for separating law from fact. Jurists were to be trusted to generate law – rulings for new situations based on interpretation of the sacred sources – but not to establish the facts activating those laws. In other words, a jurist would rule on what the position of the sun must be for a particular prayer time to be in, but could not speak authoritatively on whether or not the sun was in such a position. This separation of authority – legal from factual – promoted a tremendous flexibility. Changing times and conditions necessitated changing legal rulings, and the people played the part of connecting the law to concrete reality. The other issue is that of the reach of the modern nation-state, with its tendency to regulate and legislate every detail of modern life. If law could be understood in somewhat of a plural sense, with regard to different communities, then religious pluralism and toleration could more likely be realized.[61]

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[59] See "Sherman Jackson on Islam and Liberal Democracy," posted by berkleycenter. Available at http://youtu.be/0w7g4FD-BhQ. Accessed June 13, 2013.

[60] Sherman Jackson, "Shari'ah, Democracy, and the Modern Nation-State: Some Reflections on Islam, Popular Rule, and Pluralism." *Fordham International Law Journal*, Vol. 27, Issue 1 (2003): 88-107.

The second way Jackson questions modern democracy is by historicizing it. In the particular case of democracy in the United States, he shows how the established tradition of white supremacy – historically and institutionally sanctioned by American liberal democracy – has helped shape Blackamerican and immigrant Muslim subjectivities and religious practice. In *Islam and the Blackamerican: Looking Toward the Third Resurrection*, he calls for Blackamerican and immigrant-American Muslims to disentangle themselves from the tyranny of false universals in both national and religious myths.[62] Blackamerican Muslims must caste off internalized white supremacy as well as the superiority complex purported by 'immigrant Islam.' Immigrant Muslims must free themselves from the mistaken belief in their own culture-free mastery over the intellectual legacy of Islam.

The Blackamerican Muslim must settle upon a self-definition which is both enabling and 'authentic.'[63] As such, this community must struggle on the one hand against institutionalized white supremacy in the United States, and on the other against the presumed authority of immigrant Muslims (mainly Arab and South Asian) over the religious tradition. Both immigrant

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[61] Ibid.

[62] See Jackson (2005).

[63] Ibid., 2-3.

Muslims in the US and native Blackamerican Muslims have been affected by particular historical processes, as well as by the institution of white supremacy.

Jackson argues that white supremacy, as a seminal force of the American sociopolitical order, shapes the context of American Islam in important ways. It makes Blackamerican Muslims complicit to the hegemonic presumptions of immigrant Muslims, as the two groups are processed differently by boundaries of American whiteness. Immigrant Muslims presume that Blackamericans are too cultural (i.e. not universal enough) when they try to express their cultural, social and political realities in the United States, and that their own collective vision of Islam in America is untainted by historical baggage. But in fact, argues Jackson, this is not the case. The virtual monopoly enjoyed by immigrant Muslims in directing Islam in America is actually weighed down by the particularity of *their own* historical experiences, of what Jackson terms *post-colonial religion:*[64]

> "And yet, the history of the modern Muslim world was far from either 'pure' or unadulterated. It included, *inter alia*, brutal Western colonialism, staggering poverty and economic backwardness, widespread illiteracy, artificial national boundaries and thus artificial nationalities, intransigent social and class stratification, gross scientific and technological dependency, an ossified and embattled religious and intellectual tradition, and the unprecedented centralization of state apparatuses presided over by autocratic, dictatorial rulers and corrupt, inefficient bureaucracies…These bitter experiences gave rise to a number of situation-specific responses, the majority of which were as informed by need-born pragmatism and Third World notions of anti-imperialism and national liberation as they were by Islam."[65]

In fact, argues Jackson, the classical Sunni tradition "rarely informs the actual substance of the doctrines of Immigrant Islam," at least not directly.[66] Among the effects of this false universalism on the part of immigrant Muslims is that 'the West' has emerged as American Islam's new 'counter-category,' replacing white supremacy.[67] Particularly American issues like police brutality, the mistreatment of blacks in media and entertainment, the 'war on drugs' and the prison industrial complex, unemployment, gross inequalities in education, inner-city violence and broken families, etc., were all replaced by a spotlight on the problems of the Muslim world (i.e. Palestine, Kashmir, Afghanistan, etc.).[68] As a result, Islam began losing its relevance and potential for the problems of American ghettoes. Whereas earlier epochs in the history of Islam in America endowed disadvantaged communities with "such values as manly pride, fiscal responsibility, or civic consciousness,"[69] the immigrant takeover of American Muslims' collective vision sacrificed these native exigencies (i.e. specifically American social and political problems) to more Middle Eastern and South Asian political concerns. Jackson's historical approach can be summed up in his contention that no doctrine or school is transcendent. Accordingly, "there is no 'real', 'true', or 'authentic' Islam apart from the historical instantiations (read interpretations) of the religion in the world."[70]

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[64] Ibid., 77-78.
[65] Ibid., 78.
[66] Ibid., 13.
[67] Ibid., 72.

Jackson's vision of a *third resurrection*[71] in Blackamerican Islam includes an endorsement of traditional Sunni epistemology. Specifically, the advantage offered by the tradition is to be found:

> "in certain *structural* features of classical Muslim ecumenicism whose function it was to reconcile the competing interests of interpretive integrity and intrareligious pluralism. Given the breadth of its geographical expansion and its conscious decision *not* to adjudicate doctrinal disputes through a centralized ecclesiastical authority, classical Sunnism was forced to develop alternative mechanisms for this purpose. These mechanisms provided the ability to adjust to changing circumstances as the religion moved through space and time. It is primarily these mechanisms, rather than any body of fixed medieval doctrines, that the Third Resurrection seeks to enlist into the cause of Blackamerican Islam…The synergy between the doctrine of Prophetic infallibility and the principle of Unanimous Consensus laid the foundation for intra-Muslim pluralism. As long as a jurist's view showed itself to be grounded in authoritative sources and based on

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[68] Ibid., 73.

[69] Ibid.

[70] Ibid., 11.

[71] The first and second resurrections refer to crucial historical junctures in the history of Islam in the United States, namely the proto-Islamic movements of the early twentieth century (i.e. Noble Drew Ali), and the subsequent spread of Sunni Islam among Blackamericans. Followers of Elijah Muhammad referred to the period before his death as the first resurrection because Blacks were delivered from the slave mentality, and the period after his death, under the divided leadership of W. D. Muhammad and Louis Farrakhan, as the second resurrection. Ibid., chapter 1.

> recognized principles of interpretation, no one could legitimately deny him the right to express it – regardless of substance – as long as it did not violate a pre-existing Unanimous Consensus."[72]

Jackson endorses perpetuation of the classical Sunni tradition as the means by which Blackamerican Muslims can transcend the false universalisms they suffer along with their immigrant sistren and brethren. He does so by analyzing two different strains of contemporary Sunni Islam in America, what he terms *modern* and *modernized* Islams.

According to Jackson, modern Islam consists of Islamists (adhering to the doctrines of the Muslim Brotherhood, the *Jama'at-i-Islami*, and to lesser extent, *Hizb al-Tehrir*) and neofundamentalists (the *Salafi* movement). The Islamists have a decidedly political orientation, while the neofundamentalists reject politicized agendas. The neofundamentalists reject what they perceive to be the 'intellectualism' of traditional Sunni ecumenicism and unity, focusing instead on vigilant practice and symbolic doctrines that set them apart from less scrupulous Muslims. They are literalist and reject Islam's mystical dimensions.[73] Jackson deems both Islamists and neofundamentalists 'modern' because both are products of the modern world. Both are characterized by two love-hate relationships: one with the West, the other with the classical tradition. He states:

> "Modern Islam also borrows from the modern West the latter's universalism, according to which only that which is universally true can be true at all, and that which is true (or useful) must also be 'Islamic'. Among Salafis, this is manifested in the surfeited and overinclusive use of the concept of 'unsanctioned innovation (*bid'a*),' as the proscriber of all that was not embraced and allegedly handed down by the Pious Ancestors. Among Islamists, it appears in the increased use of the neologism 'Islamic'…Both of these tendencies go beyond the simple preference for institutions that are based on scripture and/or authentic Tradition, a preference shared by all committed Muslims. These tendencies are, rather, mechanisms for converting the choices and preferences (including imported choices and preferences!) of the contemporary Muslim world into normative if not binding religious institutions for Muslims everywhere. At bottom, both of these conversion mechanisms mask a deep and abiding obsession with issues of identity, according to which the compromising or shedding of an Eastern identity (or the taking on or retaining of a Western one) is equated with a loss or compromise of religion."[74]

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[72] Ibid., 7-8.

[73] Ibid., 82-83. See also Roel Meijer ed., *Global Salafism: Islam's New Religious Movement*. New York: Columbia University Press, 2009: 4-25.

[74] Jackson (2005), 83-84.

This translates into the modernists' hostility towards culture. They embody "an extremely cramped aesthetic," between premodern Muslim accretions and Western hegemonic, corrupting culture.[75] "In its attempt to insulate itself from all of this," modern Islam experiences "the entire space between the home and the mosque – the space for leisure activity, recreation, cultural production, and social interaction" – as a threat.[76] The underlying cause of this approach is modern Islam's relation to traditional Sunni methodology. The Islamists and neofundamentalists are "driven by a results-oriented thinking by which the validity of the classical theory is judged and made subservient to their Post-Colonial 'vision of the truly Islamic.'"[77] This is precisely why, says Jackson, modern Islam "is incapable of transferring religious authority outside itself," why it "can neither promote nor accommodate the indigenization of Islam in America" but "can only function as an instrument of religion-based domination for Blackamerican Muslims."[78]

In contrast to modern Islam, modernized Islam seeks to perpetuate traditional Sunni epistemology, "ostensibly calibrated to the realities of modern times… a true genetic descendent of the classical schools of thought, the so-called *madhhabs*."[79] Modernized Islam draws on this highly sophisticated tradition of jurisprudence and hermeneutics for actualizing intrareligious pluralism. In distinguishing between essential and coincidental features, traditional *shari'a* can accommodate cultural specificity across various groups (i.e. bridging the impasse between Blackamerican and immigrant Islam). In premodernity, traditional *shari'a's* affinity for intrareligious pluralism prevented a conflation of unity with uniformity:

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[75] Ibid., 85.
[76] Ibid.
[77] Ibid., 86.
[78] Ibid.
[79] Ibid.

> "Having established an independent theory of interpretation (the so-called *usul al-fiqh*) upon which it conferred the authority to validate any view that could show integrity thereto, all views so validated were admitted, *ceteris paribus*, into the sanctum of 'orthodoxy.' And, because this classical theory was equally accessible to all Muslims, there was rarely a period in premodern Islam during which religious authority did not transfer in a timely fashion."[80]

The traditional view that all action is permissible until proven otherwise can alleviate the situation between Blackamerican and immigrant Muslims in the US, because it would allow for the validity of Blackamerican historical experiences, habits and customs, and for the transferring of religious authority from one group to another (rather than religious-based domination).[81]

Jackson hopes that both groups of American Muslims transcend their racial and ethnic essentialism to arrive at a shared historical consciousness. Such a *third resurrection* of Islam in America can occur only in conjunction with the methods and principles of a traditional Sunni outlook and methodology. Specifically, Blackamerican Muslims must appropriate and master the Sunni orthodox tradition, and thereby "emerge as self-authenticating subjects rather than dependent objects of and in this tradition."[82]

In one important way, Jackson neither privileges nor shuns the democratic state as a political form, but rather cautions theorists to question which background is prioritized in normative discussions of Islam and democracy.[83] This is markedly different from An-Na'im's unequivocal endorsement of secular constitutional democracy as the best political form for Muslim-majority states. An-Na'im disapproves of legally pluralistic proposals that would have secular constitutions coincide with institutionalized religious law.[84] He also advances secular governance as the most desirable type from the point of view of religious freedom, for only in a secular system could freedom of faith truly flourish. An-Na'im does not problematize the deficiencies or historicize the claims of secular democracy like Jackson does. For example, where Jackson identifies white supremacy as a historical American institution that processes identities and mitigates social relations and economic reality, An-Na'im accepts formal equality among citizens of liberal democracies as an unproblematic given. Where Jackson breaks down universal human rights into its liberal heritage and the storied values that would advance 'second-tier' alienable rights, An-Na'im speaks of human rights as truly universal, universally rational and culturally foundationless.

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[80] Ibid., 86-87.

[81] Ibid., 90.

[82] Ibid. 6.

[83] "Sherman Jackson on Islam and Liberal Democracy"…

[84] See chapter 4 above.

In these differences, Jackson and An-Na'im relate to the shari'a differently. For Jackson, the role of the shari'a is determinative. It contains within it sufficient mechanisms for necessary renewal over time and across cultural space, as well as for transfer of juristic authority. For An-Na'im, the shari'a as it has been passed down to contemporary Muslims is anachronistic to present needs. It represents an antiquated set of historical accretions which must be radically altered – in both content and method – to reflect the universally rational norms represented by human rights discourse. This is very different from Jackson's proposal, which calls for present norms to be sifted through the sieve of scripture. These two ways of relating to the shari'a help identify Jackson and An-Na'im with two different definitions of Islam: Jackson adheres to a *dini* definition of Islam, in its deep texture as publicly and privately relevant and transformative, while An-Na'im adheres to a modern definition of religion in its apolitical formulation.

A Positive Theory of the Veil and the Unnamed Subtext of the Women and Islam Discourse

Katherine Bullock is professor of political science at the University of Toronto at Mississauga. She co-founded the Tessellate Institute, an independent non-profit research institute that documents the lived experiences of Canadian Muslims in a number of media. In

Rethinking Muslim Women and the Veil: Challenging Historical and Modern Stereotypes, Bullock utilizes a multi-disciplinary approach to examine various discourses surrounding the Muslim woman's traditional headdress.[85] She begins with a historical approach in the first chapter to show that attacking the veil was essential to the colonial project. In so doing she hopes to establish the constructed nature of the anti-veil discourse. The next chapter presents interviews with numerous Canadian Muslim women on the veil and related issues. She employs a feminist methodology that allows women's experiences to be foundational for knowledge. The third chapter is a survey of sociological, anthropological and historical literature on why women are re-veiling in the Muslim world. The fourth chapter is a critique of Fatima Mernissi's work, particularly her anti-veil discourse. In this critique, Bullock shows that alternative readings of the veil – not based on Mernissi's personal experiences[86] – are possible. The fifth chapter focuses on Bullock's 'home discipline', i.e. political theory. In it she posits a positive theory of the veil: that that it is liberating vis-à-vis both capitalist exploitation and the oppressive aspects of the male gaze.

Bullock situates herself in the study as a believing, practicing, veiling Western Muslim woman.[87] Her underlying assumption:

> "that Islam as a political theory (a theory of political community) does not oppress women guides my critiques and formulation of a positive theory of the veil."[88]

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[85] Katherine Bullock, *Rethinking Muslim Women and the Veil: Challenging Historical and Modern Stereotypes*. London: The International Institute of Islamic Thought, 2002.

[86] Bullock acknowledges that Mernissi's experiences with veiling – growing up in postwar Morocco under French occupation – must have been very traumatic indeed. But the problem is that Mernissi conflates her experiences with the meaning of veiling *per se*. Bullock, 138.

[87] Bullock uses 'the West' as a discursive shorthand even while she advocates for an end to its usage. The duality of the East/West binary is problematic because it "simplifies global politics, and most importantly, erases areas of similarity between 'West' and 'East'." But because there is no agreed-upon alternative yet, she uses 'the West' and 'Western' in this limited, qualified sense. Ibid., xxxvi-xxxvii.

[88] Ibid., xl.

She does not deny that repressive practices and discourses exist amongst Muslims, pertaining to veiling and other matters affecting women. However, Bullock takes issue with competing renditions for what constitutes normative Islam, or the Qur'anic vision. The problem occurs when negative experiences of veiling become stand in for the meaning of veiling *per se*:[89]

> "Clearly some women experience covering as oppressive. My point is that the 'veil is oppressive' notion has become a paradigm in which the 'meaning' of the veil as oppressive assumes the status of a truth claim…I disagree with that interpretation."[90]

Her outline for understanding a normative Islam that doesn't oppress women encompasses traditional law and sacred text, as well as the legitimacy for producing new mechanisms as needed:

> "An assumption of this book is that 'Islam' does not oppress women, and that where 'Islam' finds its expression in law, that law should not oppress or discriminate against women; and that where such burdens are to be found in law, they should be amended or removed, and that the Qur'an and Sunnah provide the legitimacy and wherewithal so to do."[91]

Bullock emphasizes that the Qur'anic vision is not a static relic from ancient times, but an ongoing aspiration:

> "I understand that real Muslim communities may not reflect the positive normative outline that I describe. However, just as liberalism remains an ongoing aspiration for the creation of a good society that has not yet been achieved in reality – a society free of racism, poverty, sexism and so on – so I hold to a theory of Islam that is an ongoing aspiration for the creation of a good society."[92]

Bullock enumerates the sources of this normative outline, what she terms "what Islam requires."[93] She does this in a way that is consistent with standard traditionalist accounts of orthodox Sunni Islam. Normative Islam is constituted (hierarchically) by: the Qur'an, the prophetic utterances and agentive examples (i.e. the ahadith and Sunna), the shari'a law and local customs (where these don't contravene the higher sources).[94] The Qur'an and Sunna provide the mechanisms necessary for refining the tradition, law, practice, etc. to remove deleterious, oppressive elements. In this way, unlike Mernissi, Bullock does not suggest a radical epistemological break with premodern Islamic tradition for the purpose of improving Muslim women's situations. Rather, she believes that alleviation ought to be sought intra-traditionally.

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[89] According to Bullock, this is what Mernissi does. Ibid., 138.
[90] Ibid.
[91] Ibid., xxv.
[92] Ibid.
[93] Ibid., 154.
[94] Ibid., 154-157.

Before reading Bullock's alternative, positive theory of the veil, it is important to understand her critique of the unnamed subtext of the women-and-Islam discourse. The liberal feminist judgment that 'the veil = oppressive' is based on specifically liberal understandings of 'equality' and 'liberty.'[95] Because 'tradition' and 'modernity' are unstable categories, Bullock rejects the subsequent tenet that 'modernity = unveil.'[96] Bullock asks, how can we even measure and determine what counts as oppressive practices? She espouses a viewpoint similar to MacIntyre's argument regarding the rationality of traditions[97] when she states:

> "Our different judgments about veiling have to do with differences in our worldviews and in ideological and political commitments and contexts."[98]

In feminist religious studies, one finds a bias such that women's negative experiences are implicitly posited as the authentic ones, while their positive experiences are accounted for as products of false consciousness that reinscribe patriarchal norms. In the specific case of the women and Islam field, certain liberal assumptions about society and human nature play this part.[99] Bullock wishes to problematize the paradigmatic assumptions about the veil as oppressive by pointing to the constructed nature of the anti-veil discourse.

Bullock devotes a considerable portion of her work to critiquing Fatima Mernissi. This is because of the special place that Mernissi occupies in the women and Islam field:

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[95] Ibid., xii, xv. This point will be discussed in greater detail below, in the section on Saba Mahmood' work *The Politics of Piety*.

[96] Ibid., xxi.

[97] See chapter 1 above, "Introduction: The Rationality of Traditions."

[98] Bullock, xxviii.

[99] Ibid., xxxi.

> "Mernissi has codified for the academic world a popular cultural view of Muslim women as dangerous beings needing control. In so doing, however, she has failed to say that that is what she is doing."[100]

While Mernissi's characterization *does* correspond to certain instances and practices of Muslim women's subordination and oppression/seclusion,

> "The problem is her acceptance of those practices as truly Islamic ones, with no interrogation of them, and with no careful analysis of the complex relationship that exists between actual cultural practices and the Qur'an."[101]

Bullock's principal disagreements with Mernissi pertain to: "1) an ahistorical approach to the meanings of religious symbols that fails to contextualize how people react differently in different times and places; and 2) a reductive approach that does not acknowledge the multiplicity of discourses around veiling."[102] Bullock enumerates and rebuts many of the details in Mernissi's arguments pertaining to the veil. These include: Islam views women as a threat to the social order; Islam considers femaleness as anti-divine; women are a threat to men and male piety; women are excluded from the community of believers (the *ummah*) and subjugated by seclusion and the veil; the veil is a symbol for Islam's control of and contempt for women; defining Muslims as living in a theocratic state; and postcolonial Muslims being of only two types (fundamentalists or uncovering women).[103]

Mernissi's work is an important symbol for some shortcomings in liberal and poststructuralist feminist theorizing. Because many such theorists assume that human behavior and desire are socially constructed,

> "Any strategy, like *hijab*, that appears to cement traditional male-female differences is suspect…patriarchy has used false male/female distinctions to keep women subjugated, and…anything that looks like acceptance of fundamental male/female difference (that is, *hijab*) is oppressive for women. This critique of *hijab* relies on liberal assumptions about human nature, the meaning of sexuality, liberation, oppression and equality."[104]

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[100] Ibid., 181.
[101] Ibid.
[102] Ibid., 139.
[103] Ibid., 143, 160-170.
[104] Ibid., 200.

The unnamed subtext of certain feminist theorizing remains problematic when Muslim women and veiling become the objects of study. This can be seen in the debates about essentialism. Bullock considers the imputation of essentialism to be "one of the main feminist misinterpretations of *hijab* that lead to negative critiques of covering."[105] While essentialism can be dangerous when it enshrines the superiority of one group over another (i.e. men over women), the Qur'an posits that the male and female are of an *essential sameness*.[106]

Another unnamed subtext of the women and Islam discourse – which is, to be sure, a Western discourse[107] – is in its individual choice doctrine, which sometimes posits the superiority of Western ways.[108] Bullock also rebuts claims (by Mernissi and many others) that veiling secludes women,[109] negates femininity and female sexuality,[110] and absolves men of their moral responsibility to respect women (regardless of how they are dressed).[111] She does this by resorting to sources in her normative Islam outline, i.e. mainly by citing Qur'anic verses and prophetic sayings and precedents.

Once Bullock has completed the tasks of showing the historical colonial roots of anti-veil discourse, presenting (a small sample of) Muslim women's responses to questions about belief, gender and veiling, critiquing Mernissi's arguments against the veil, and identifying and situating the unnamed subtexts of some feminist theorizing on women and Islam, she constructs her own favorable political theory of the veil. Bullock's alternative, positive theory of the hijab posits it "as a gateway into a faith tradition that assists its adherents to withstand the corrosive effects of modern materialism."[112] Such corrosive effects have been addressed in feminist theory, and include: the objectification and commodification of women's bodies in capitalist culture, the harm done to women by the promotion of a beauty ideal, and women's internalization of the male gaze.

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[105] Ibid., 206.

[106] Bullock is referring to the Qur'anic concept of pairs, and how the *nafs* (soul) and its *zawj* (spouse) are used to explain the creation of male and female complementarity. Ibid., 201.

[107] Bullock states: "The women and Islam field as a whole [is] (a Western field of knowledge), despite reflexivity and despite the presence of the indigenous researcher…" Ibid., 225.

[108] Ibid., 221. This point will be elaborated in greater detail in my treatment, below, of Saba Mahmood's critique of liberal feminism's exclusively liberatory definitions of women's agency.

[109] Ibid., 200-201. On accusations of seclusion, Bullock maintains: "the Qur'an is arguing [in 33:59] that in the public arena there is something about male-female relations that can be harmful to women, and that wearing an outer garment might alleviate." Ibid., 201.

[110] Ibid., 194-199. She states that the veil "does not smother femininity or sexuality. Rather, it regulates where and for whom one's femininity and sexuality will be displayed and deployed." Ibid., 199.

[111] Ibid., 206-207.

Bullock cautions that her presentation of the Qur'anic vision as a normative ideal of Islam should not be misunderstood as romantic or uncritical/unreflective:

> "In presenting an argument that *hijab* frees women from the negative effects of the male gaze, I am not arguing that *hijab* is a magical device that halts all male aggression against women. That would be to deny the feminist insight that male aggression against women is often an expression of power (not sex). Male harassment of women is, sadly, a worldwide phenomenon, and Muslim men (also sadly) are no exception. However, these men are lacking the proper Islamic etiquette of male/female relations and are no more representative of the Islamic ideal than are Western men who harass women exemplars of a Judeo-Christian or secular-liberal ideal. For some reason, critics of *hijab* often misunderstand this point."[113]

The benefits of veiling are also religious and spiritual for the women who practice it willingly. *Hijab* is a barrier to unlawful sexuality, something every believing woman and man strives to avoid. Since women are acknowledged in the Qur'anic vision as sexual creatures – and this in a non-shameful way[114] – another benefit of veiling from an Islamic hermeneutic is that it helps women lower the gaze of their own desires.[115]

One of the important themes of Bullock's *Rethinking Muslim Women and the Veil* turns out to be a critical questioning of how we understand the relationship between a text and historical lived experiences in all their contextual diversity. The specificities and historical lived experiences of Muslims should not be ignored, whether to claim the backwardness (as

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[112] Ibid., 183.
[113] Ibid., 209-210.
[114] Ibid., 157, 167-169, 194, 199-200, 208, and 211-212.
[115] Ibid., 207.

Orientalists did and do) or the progressiveness (as apologetic Muslims do) of Islam.[116] When faced with the reality of Muslim women being often unduly restricted, Bullock asks, where do we place the blame? It isn't correct to equate Islam with the oppression of women; a religious text doesn't necessarily exert causal force on how people live. There are many other factors to take into consideration, such as textual interpretation, prevailing discourse, local customs, and political, social and economic factors.[117]

Lilah Abu-Lughod makes a very similar argument in *Do Muslim Women Need Saving?*[118] Abu-Lughod is professor of anthropology and women's and gender studies at Columbia University, and has published several works of ethnography dealing with issues of poetry, nationalism, media and gender politics. She states that when Muslim women are treated as an undifferentiated mass, "the sorts of debates and strategies they engage, and how frequently their experiences are misunderstood and the complexities of their situations ignored" all become eclipsed.[119] The multiple forms of oppression that women endure – from hunger to poverty to illness, state-sanctioned violence and war – independently of culture (i.e. Muslim culture), are not accounted for in most accounts of Muslim women's oppression.[120]

Bullock calls out the feminist tendency to present social science as 'objective.'[121] By keeping themselves out of the research on women and Islam, some feminists give the impression that their societies do not experience women's oppression.[122] Abu-Lughod makes this point as well. In her survey of the *pulp non-fiction* genre that increasingly focuses on fantastic tales of Muslim women's traumatic lives, she states:

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[116] Ibid., xxi.
[117] Ibid.
[118] Lila Abu-Lughod, *Do Muslim Women Need Saving?* Cambridge: Harvard University Press, 2013.
[119] Ibid., 16.
[120] Ibid., 20-42.
[121] Bullock, 226.
[122] Ibid., 225-226.

> "The strange thing that happens along the way is that women's rights issues become pertinent only elsewhere. The only American or European women who appear in the 280 pages of *Half the Sky* are altruistic high school students who raise money to build schools in Cambodia, or women who give up their jobs to devote themselves to working in health clinics in Africa…Gender injustice feels transcendent to them, I would suggest, because they do not ground it in the world they know…In order to make their (legitimate) case for concern about lethal sex discrimination, they trivialize gender issues in the United States and Europe…the overriding message of *Half the Sky*, like the other popular books discussed here, is that Westerners are the ones who must change the world…"[123]

Unlike Mernissi, who is at home with mainstream feminist theorizing on women and Islam, Bullock problematizes the discourse by identifying its unstated, universalizing assumptions. She places part of the responsibility for the falsities and generalizations of the anti-veil discourse on "the inability of the predominantly liberal-oriented mainstream from recognizing their own positionality with respect to their own culture and that of others."[124] This last point constitutes the main thrust of Saba Mahmood's work, to which I now turn.

Pietistic Female Agency and Islamic Tradition

As discussed in the previous chapter, Jerusha Tanner Lamptey proposes the development of a Muslima theology to redress present deficiencies in Islamic thought and practice. Particularly, the oppressions of patriarchy and religious chauvinism against women and non-Muslims could lessen if feminist and pluralistic/tolerant theories are brought to bear on Islamic theological understandings. In so proposing, Lamptey seems to accept the philosophical foundations behind universal human rights norms, and places all religions on a horizontal equality in the manner of the modern definition of religion. However, Saba Mahmood brings to question the assumptions about liberatory agency that underwrite many liberal and feminist rights formulations.[125]

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[123] Abu-Lughod, 62-63. She is referring specifically in this excerpt to Nicholas Kristof and Sheryl WuDunn's *Half the Sky: Turning Oppression Into Opportunity for Women Worldwide*. New York: Random House, 2009.

[124] Bullock, 226.

[125] See Mahmood (2005).

Mahmood is professor of social cultural anthropology at the University of California, Berkeley. In addition to *Politics of Piety*, she has authored several scholarly articles and co-authored *Is Critique Secular? Blasphemy, Injury and Free Speech* with Wendy Brown and Talal Asad (2013). Mahmood conducted fieldwork in Cairo, Egypt analyzing women's mosque participation in the piety movement that began in Egypt in the early 1980s. She argues that a liberally defined concept of agency is insufficient for understanding the logics, ethics, motivation, performativity and practices of the women she observed and interviewed. These women undertake technologies of the self (a la Foucault) in order to remake their subjectivities in keeping with Islamic virtues and forms of reasoning. This often entails performing embodied capacities within traditional norms, discourses and authority structures rather than subverting or resisting them. For this reason, the liberal feminist emphasis on resistance, history-making and subversion of traditional authority structures does not register the agentive work of the Egyptian female pietists. In liberal forms of analysis:

> "Agency…is understood as the capacity to realize one's own interests against the weight of custom, tradition, transcendental will, or other obstacles (whether individual or collective). Thus the humanist desire for autonomy and self-expression constitutes the substrate, the slumbering ember that can spark to flame in the form of an act of resistance when conditions permit."[126]

Mahmood argues that it is impossible to identify a universal category of acts (such as 'resistance') outside of the political, ethical contexts that inform their meaning. Rather, the concept of agency substantively imbued with the category of resistance imposes a teleological politics of progress upon its objects of study, blocking out those forms of being and reasoning that focus on the reinscription of norms.

Mahmood points out that not only has the liberal discourse of freedom and individual autonomy become "naturalized" in gender studies, but social scientific language in general claims a “transparent universalism” for itself.[127] This has been in part due to the Kantian tradition of viewing morality as a rational matter independent of context (i.e. social virtues, habit, character formation, etc.). This went against the Aristotelian notion of virtues, which tied the realization of virtues to outward forms and practices.[128] But for Kant, virtue was to be realized against the weight of inclinations and habit, not through them.[129] Mahmood prefers instead to operationalize Foucault’s concept of ‘positive ethics,’ in which ethical practices are performed within historically and culturally specific disciplinary techniques to yield agency. As such, the women in the mosque movement:

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[126] Ibid., 8.

> “analyze the movements of the body and soul in order to establish coordination between inner states (intentions, movements of desire and thought, etc.) and outer conduct (gestures, actions, speech, etc.)…[They display a desire to channel] rational and emotional capacities so as to approximate the exemplary model of the pious self.”[130]

Mahmood thus demonstrates that “the meaning of agency must be explored within the grammar of concepts within which it resides.”[131]

For the female mosque participants, concept-congruent agency involved teaching and attending regular lessons in the mosque. They emphasized practice for making religious doctrines, moral precepts and ritual worship relevant to everyday life. In doing so, they created new structures of learning and new pedagogical modes to address the absence of values previously present in Egyptian society. This is where one finds Mahmood’s criticism of the state. The postcolonial Egyptian state, following the European modernist template, “sought to establish itself as the sole and legitimate undertaker" of, in an Islamic context, *amr bil ma'ruf*.[132] *Amr bil ma'ruf* is an Islamic injunction, found numerous times throughout the Qur'an, to "enjoin the good." It is an individual as well as collective duty, and summarily captures the spirit of Islam's moral imperative. In Egypt's postcolonial politics, the secular modern state model that already increasingly regulated the privatized religious sphere, now "took over many institutions of religious learning and training…for its own nationalist project."[133] By the time of Mahmood's fieldwork, the Egyptian state was requiring a two-year training program and certificate license for preachers. If one was caught preaching without it, the penalty would be up to three months in jail or a fine of one-hundred Egyptian pounds. Government employees would also record mosque lessons.[134]

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[127] Ibid., 13, 16.

[128] Notice here the congruence, respectively, with premodern Christian self-understanding and the modern definition of religion (as analyzed by Cavanaugh). The Aristotelian conception is one of embodied virtue, whereas the Kantian decontextualizes, or disembodies morality.

[129] Ibid., 25. A point Kant makes in his discussion of duty and the good will. See chapter 2 above.

[130] Ibid., 31.

[131] Ibid., 34. I cited the same point made by Talal Asad in another context, in his treatment of ‘the social’/‘society’ in medieval Christian and European contexts. See p. 84 above.

Mahmood illustrates the context-specific meanings that broad concepts can take in the use of arguments from 'rights' and 'choice' by the mosque teachers. One teacher would often craft her enjoinders to the participants in the language of rights and choice, but these terms did not signify the same meanings as secular usages of the same terms. The teacher inflected:

> "these notions in ways that are quite different from their treatment within liberal humanism…[her argument] does not, for example, propose that personal preferences and inclinations be made the basis for how one chooses from among the juristic opinions. Rather, the form of reasoning one follows in exercising a choice must be guided by the requisite rationale and capacities that the jurists have deemed authoritative, thereby complicating the sovereign subject of liberal-humanist discourse."[135]

While the teacher maintained that there can be no discussion [*munaqasha*] when it comes to God's commands [*ahkam*], she reminded participants that they can choose from the interpretations offered by the *ulama* for the many issues left unresolved by the Qur'an. It was "within this space of nonresolution" that the teacher's emphasis on choice unfolded.[136]

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[132] Mahmood, 61.
[133] Ibid., 64.
[134] Ibid., chapter 2.
[135] Ibid., 90.

Mahmood's characterization of how women teachers and students in the Cairo mosques pedagogically related to historical Islamic understandings shows a similarity to how Jackson,[137] Azizah Al-Hibri[138] and Murad[139] – as well as Alasdair MacIntyre[140] – characterize the internal processes of a tradition. Mahmood operationalizes Foucault's concept of tradition (a discursive formation, made possible by a certain relation between past and present, outlining the limits and possibilities of what can be said and done) as well as Talal Asad's (a link through time by way of pedagogy and various types of knowledge – i.e. practical, scholarly, embodied, etc.). She arrives at the following:

> "Tradition, viewed in this way, is not a set of symbols and idioms that justify present practices, neither is it an unchanging set of cultural prescriptions that stand in contrast to what is changing, contemporary, or modern. Nor is it a historically fixed social structure. Rather, the past is the very ground through which the subjectivity and self-understanding of a tradition's adherents are constituted…"[141]

Such a conceptualization of discursive pasts has tremendous theoretical consequences for understanding agency. For example, in the liberal view, *sabr* (patience) would be seen as lack of action, or a failure to act under the weight of tradition. But for the mosque women, it was part of their "constitutive project: a site of considerable investment, struggle, and achievement."[142] Where for certain secular liberal notions, agency involves the undoing of tradition, for traditionalist Sunni thought agency involves walking the path laid down and well-trodden by tradition, albeit transforming the non-essential components to fit with contemporary conditions. This, in fact, is Mahmood's main point in *Politics of Piety*:

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[136] Ibid.
[137] See p. 176-186 above.
[138] See Azizah Al-Hibri, "Marriage Laws in Muslim Countries: A Comparative Study of Certain Egyptian, Syrian, Moroccan, and Tunisian Marriage Laws." *International Review of Comparative Public Policy*, Vol. 4 (1992): 227-244; "A Study of Islamic Herstory: Or How Did We Ever Get Into This Mess?" *Women's Studies International Forum*. Vol. 5, No. 2 (1982): 207-219; and Al-Hibri (1992).
[139] See below.
[140] See chapter 1, "Introduction: The Rationality of Traditions."
[141] Mahmood, 115.
[142] Ibid., 174.

> "Significantly, such a concept does not assume all-powerful voluntary subjects who manipulate the tradition for their own ends, but inquires into those conditions of discursive formulation that require and produce the kind of subjects who may speak in its name. The central question…[is:] how is the present made intelligible through a set of historically sedimented practices and forms of reasoning that are learned and communicated through processes of pedagogy, training, and argumentation?"[143]

The mosque participants were not blindly imitating past practices and doctrines in an anachronistic way. Rather, they were building discursive and performative continuities with the past while "refracting" these through contemporary reality.

Such a practice goes against the Kantian notion of ethics, which is understood abstractly (i.e. regulatory principles, norms, values, etc.) and does not concern the concrete manifestation that ethical acts take. Mahmood, following Foucault, prefers a model of positive ethics, such that "the particular form that ethics takes is not a contingent but necessary aspect of understanding its substantive content."[144] The Aristotelian notion of *habitus* also helps explain the pietists' mosque participation, in that external performative acts create corresponding internal dispositions. There's no liberal assumption at play here, that there exists a natural disjuncture between one's own true desires, and external culture or religion.

Prominent Turkish sociologist and director of Paris' School of Advanced Studies in the Social Sciences, Nilufer Gole, has made a similar observation with regard to the contemporary veiling revival in Turkey. In *The Forbidden Modern: Civilization and Veiling*, Gole posits the controversy surrounding Muslim women's wearing of headscarves in Turkish universities within the broader Western discourses of gender emancipation, the religion-secular and public-private binaries and universal progress with its unidirectional notion of evolutionary progress.[145] She argues that the terms of the discourse and controversy eclipses the agency of the individual Muslim woman in *hijab*:

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[143] Ibid., 116.
[144] Ibid., 120.

> "Typical social theories explain Islamist movements in general and veiling in particular by assigning priority either to sociopolitical factors or to the essence of religion itself, presumed to be alien to a series of transformations, such as reformism and secularism, that took place in the West."[146]

The first type of explanation points to the social, political and economic conditions in which Islamism grows, but fails to explain the appeal itself. The second explanation assumes an immutable Islamic essence and ignores the religion's historical and political context. For both approaches,

> "the veiled women are an extension of a wider phenomenon: either as subsidiary militants of the fundamentalist political movement or as passive transmitters of traditional values. Such analyses, giving priority to the determinism of the system and structure, ignore the questions of agency and the formation of an Islamic actor and their contribution to the (re)production of the Islamic social order."[147]

Gole and Mahmood's critiques of the gaze through which Muslim women's pietistic activity and veiling are often interpreted differ decisively from Lamptey's thought, although they all address Muslim women's agency and authority within the Islamic tradition today. Lamptey blanketly paints Muslim women as silenced and voiceless; Mahmood criticizes the assumptions behind such an interpretive lens that would fail to register non-liberatory forms of agency. Lamptey draws on the work of Muslim feminists like Asma Barlas, Riffat Hassan and Amina Wadud. These thinkers argue against Islamic truth-claims to men's superiority over women and Islam's superiority over other systems. However, Mahmood shows that it is possible for fully agentive Muslim women to arrive at non-egalitarian conceptions of the good. The female pietists surveyed by Mahmood assumed an embodied form of Islamic reasoning and action that did not attempt to subvert patriarchal practices in Cairo. Rather, the female teachers and students attempted to forge arguments rooted in traditional Islamic notions, values and lines of reasoning to create particular subjectivities of embodied virtues.

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[145] See Nilufer Gole, *The Forbidden Modern: Civilization and Veiling*. Ann Arbor: The University of Michigan Press, 1996.
[146] Ibid., 8.
[147] Ibid., 9.

It would seem that Lamtpey advances a modern sense of the term religion, insofar as she submits Islamic theology to universal human rights norms (i.e. religious and gender equality). Lamptey also frames religions (in the plural) on a horizontal plane of equality. According to Cavanaugh, Smith and Masuzawa, this type of ordering is characteristically modern, as one of the functions of the modern invention of 'religion' was to enable comparison. It also participates in the modern tendency to relativize extra-rational truth claims (i.e. if religion is essentially private and a mtter of conscience, then it is subjective). By contrast, Mahmood's fieldwork and analytical commentary shows us cases where Islam is understood in a premodern *dini* sense, deeply entangling belief and practice – public as well as private – as in the Egyptian women pietists. For the mosque participants, religious learning and knowledge were at once embodied and transformative of family and social relations.

Fitra as Primordial God-Consciousness

As elaborated in the previous chapter, Abdulaziz Sachedina draws on the Qur'anic concept of *fitra*, which he characterizes as universal intuitive reasoning, to propose Islamic theological reform in approximating human rights standards. Abdalhakim Murad, too, draws heavily on *fitra*, but paints it in a completely different way and arrives at conclusions very different from Sachedina's. Murad (formerly Timothy Winter) is the Dean of the Cambridge Muslim College, Director of Theology and Religious Studies at Wolfson College and the Shaykh Zayed Lecturer in Islamic Studies at Cambridge University. He has published and edited a number of scholarly works on Islam.[148] For Murad, *fitra* is the human being's primordial nature, and the seat of God-consciousness.

In identifying the major task of Muslims in the modern world, Murad calls for a return to 'radical authenticity.' Unlike Sachedina, who sees in modern philosophical developments the trajectories of rationalization, freedom and civility, Murad uses the term 'radical authenticity' in the context of analyzing the *crisis* of modern consciousness:

> "When we say 'modernization of Islam,' a phrase that is frequently heard, we have to make sure that what this means is the perpetuation of Islam in its radical authenticity in the modern context, not the injection of the anti-religious logic of the materialistic modern world within Islam."[149]

To embody and practice Islam in radical authenticity involves remembering and enacting the tradition's forgotten virtues. These include: *zuhd* (detachment; asceticism), in order to combat runaway consumerism; *dhikr* (remembrance, i.e. of God), to resist mental confusion; *ikhlaq* (practice of virtue, morality, and good manners), so that Muslim minorities conduct themselves with the proper etiquette of guests/minorities/neighbors; and *rifq* (gentleness), because according to one prophetic *hadith* there is nothing that it touches which it doesn't ennoble. The primary vehicle for accomplishing this type of agency is following the *Sunna*, or way, of the Prophet Muhammad; the prophetic perspective, according to Murad, is truly radical. Politically what this means for Muslim minorities is to embark on an internal *hejirah*, or migration, and to question the terms of the external *hejirah* that brought them to non-Muslim minority lands in the first place.[150]

Murad's prescription underscores a particular expression of politics within the Islamic created order. By emphasizing both the hierarchy of the various levels of existence, and the congruence between them in the overall unity of the created order, Murad questions some contemporary epistemic ideas. The task before the Muslim today ultimately involves focusing on the meanings God has put in creation, by emphasizing the interconnectedness of *haqiqah* (truth and reality; the inner dimension of religion), *tariqah* (the true spiritual path), and *shari'ah* (the outermost form, involving rituals and laws). These three aspects of the religion each provide a distinct perspective, but also form an inseparable unity.[151]

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[148] For the purposes of the present research question, I draw mostly from his online articles (the entire collection is available at http://masud.co.uk/authors/abdal-hakim-murad/) and lecture videos uploaded to www.youtube.com by various British host organizations.

[149] See "Shaykh Abdal Hakim Murad – Crisis of Modern Consciousness" posted by A Karim Omar. Available at http://youtu.be/RWOKaOb33K4.

[150] Ibid.

It is such a context that gives meaning to Murad's call for a true Islamic radicalism in our age, one that involves the Qur'anic focus on *aakhira* over *dunya* (the hereafter over the earthly life). The secret of the believer in this and any age is solitude in the crowd. This does not imply quiescence, nor a refusal to partake in worldly activity. In fact, the Muslim is commanded to partake in his/her share of the *dunya*. But the focus, and motivation, must ultimately be the life to come. Muslims must remember that not a leaf falls without God's knowledge, and that less-than-happy socio-political or economic circumstances are, nonetheless, in the best of hands. They must remember to have hope (despair and grief being signs of unbelief), and not concede to the logic of modernity.[152]

To be estranged from *dunya* is always a source of *irada* (joy), while to be intimate with *dunya* is always a source of *hazn* (grief). Of course the Muslim must partake in his/her share of the worldly life, but he/she mustn't regard its tools with a secularist mindset:

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[151] Osman Bakar states: "knowledge of the *Haqiqah* or the divine reality…is the most excellent of the three fundamental forms or levels of knowledge contained in the Qur'an. The other two divisions of the Qur'anic verses deal with the *Tariqah* and the *Shari'ah*, both of which reflect the *Haqiqah* at their own levels. The *Tariqah*, the esoteric spiritual path to God, is the qualitative and vertical extension of the *Shari'ah*, the divine law which is the general path to God…the hierarchic structure of the Qur'an reflects the structure of objective reality." In Bakar, 44-45.

[152] "True Islamic radicalism in our age does not mean envy and resentment because the other people have all the gadgets and the power and the weapons. That is a kind of radicalism that is a radical concession to the logic of modernity – which is always a zero-sum game, because those who compete for the *aakhira* know that, *aakhira* being infinite, has enough for everybody. But those who compete for *dunya have* to be in the grip of envy because the resources of *dunya* are always finite." See *Murad – Crisis*.

> "Human *sa'ada* [happiness] has to do with a state of the soul, with security, optimism, a sense of direction, a sense of meaning, a sense of the value of self-sacrifice that secularity, by its nature, can't really supply…[the] tsunami of gadgets…does not bring with it greater social stability, greater human happiness, a greater sense of self-worth. Instead we will find, at best, the possibility of being distracted from the central gap in our consciousness which is the gap where spirituality used to be. Increasingly that is the function of technology: to provide distraction and entertainment to prevent us from looking at the catastrophic reality which is that where there was once meaning and truth, now there is confusion and relativism."[153]

The modern world, says Murad, is a "brilliant series of distractions." Our technology blocks us from experiencing the "real world" of nature and the spirit within. It prevents us from realizing how unhappy we have become, and cannot catch up with the widening gulf that it itself exacerbates. By contrast, the believer is happier, and with less things, because his/her life genuinely has meaning and direction. This is why Muslims must return to the forgotten virtue of *zuhd* (detachment; asceticism).[154]

To illustrate his rendition of *fitra* within his broader thought, Murad recounts a story by the famous thirteenth-century Sufi poet Jalaluddin Rumi. In this story, a woman is growing distressed at the crying of her infant. She offers the baby morsels of kebab, but he refuses. She offers him bread, then apple, but nothing satisfies the screaming infant. Finally, when she gives him of her milk, he is quieted. Rumi says that each of us holds in our hands a crying baby, who can only be satisfied with true nourishment. That crying baby is our primordial nature, or *fitra*, and the authentic nourishment is *dhikr Allah*, the remembrance of God. Murad states that the human soul will not be satisfied with bits and pieces of distraction, but must recall God to be at ease. The vehicle for the practice of this radical authenticity is only the Sunna of the Prophet Muhammad. This Sunna, or way, involves recalling the Great Covenant, which is perfectly symbolized by the act of ritual prayer, or *salaat*. The Qur'an states:

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[153] Ibid.

[154] Ibid.

> "When your Lord brought forth from the Children of Adam from their reins, their seed, and made them testify of themselves, He said, 'Am I not your Lord?' They said, 'Yea! We testify!' That was lest you should say on the Day of Arising: 'Of this we were unaware.'"[155]

Other forms of ritual worship also embody "the ancient simplicity and dignity of the human condition."[156] Fasting is timeless, going back to the only commandment given to Adam and Eve in the Garden; daily ritual prayers require no paraphernalia ("just the human creature and its Lord"); and the pilgrimages require the pilgrim to "wear the simplest of garments."[157] However, Murad reminds, to be meaningful and bring the human worshipper to claim his/her status as *khalifah* (God's deputy on earth), these acts must be performed in sincerity. Only then do they have a transformative effect.[158] Inner devotion leads to the purification of outward acts, and vice versa – and to achieve both of these requires the Muslim to follow diligently in the example of the Prophet Muhammad, who was, after all, *al-insan al-kamil*, the prototypical, perfect human being.[159] In this intimate connection between inner belief and external manifestation, Murad echoes Mahmood's description of the Egyptian female pietists, espousing a *dini* rather than a modern rendition of Islamic religion.

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[155] Qur'an, 7:172.

[156] See Abdal Hakim Murad, "The Sunna as Primordiality." Available at http://www.masud.co.uk/ISLAM/ahm/sunnah.htm.

[157] Ibid.

[158] Murad states: "Poor manners, crude language, lack of compassion for others, are all sure signs that we are offering *salat* incorrectly…A besetting problem we face…is that of the mechanical prayer: we proclaim *Allahu akbar*, but immediately…turn on a kind of autopilot, awakening from a vague somnambulence some minutes later with the salaam." Instead, *salaat* must be performed with *khushu'*, or attentive humility, an awareness of the presence and majesty of God. Ibid.

[159] Murad states: "The road to the reclamation of our natural norm is open only in the form of the Sunna…We live in a time of 'lifestyle choices'…Modernity holds up to us a range of ideal types to imitate…There is a long menu of alternatives. But when set beside the radiant humanity of Rasulullah…there is no contest at all. For the Prophet is humanity itself, in its Adamic perfection. In him, and in his style of life, the highest possibilities of our condition are realised and revealed." Ibid.

Since Murad's vision of 'radical authenticity' consists of an inner as well as outer dimension, he enjoins British and American Muslims to observe proper etiquette, good manners, neighborliness and *rifq* (gentleness) as minorities in non-Muslim majority states.[160] He states:

> "The Sahaba [men, women and children companions of the Prophet Muhammad] converted millions of men and women, most of them devout Christians, Buddhists, Jews and Zoroastrians, even without speaking to them. The Qur'an was not translated, and few of them learnt the local languages. But the sheer radiance of their presence, and the natural beauty of the sunna, with its graciousness, dignity and poise, won over the hearts of those who saw them. Today it is possible to meet Muslims who follow the outward aspects of the Sunna, and yet do not cause hearts to incline towards them; but to be repelled. 'Had you been rough and hard of heart, they would have scattered from around you.' (3:159) We seem to have edited that verse out of the Holy Qur'an. If some of our activists, with their flak jackets, their Doc Marten boots, and their aggressive demeanour, could be taken back to the seventh century, it is unlikely that the Christians, Buddhists and others would have found them very impressive. They, and the Sahaba themselves, would have regarded them as religious failures, driven by anger and a sense of marginalisation into a religious form marked by aggressiveness, not the *hilm*, the gracious clemency which was the hallmark of the Prophet…and without which he could never have won so many hearts."[161]

In this and other instances, Murad directly speaks against the isolationist tendency prevalent among a growing minority of Muslims.[162] He insists that Muslims in these socio-political spaces, who may have emigrated for purely economic reasons,[163] *must* "engage in some form of cultural migration as well."[164] Host countries would be right to be suspicious of Muslims who fail to "acclimatize themselves to the ambient values and sense of collective purpose to their countries of citizenship."[165]

What is needed, therefore is a redefinition of Muslim selfhood in these minority settings:

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[160] See Abdal Hakim Murad, "Tradition or Extradition? The Threat to Muslim-Americans." Available at http://www.masud.co.uk/ISLAM/ahm/AHM-TradorExtradNew.htm.

[161] Ibid.

[162] According to Murad, it is true that "moderate reformists have produced many American Muslim communities that are sincerely American, and speak frankly against extremism. Yet it needs also to be recognised that a growing number of scriptural-literalist community leaders, particularly those funded by Middle Eastern states where the language of sermons is violently anti-American, are sceptical of the kind of versatility offered by traditional Islam or by the reformers. For them, we will always be a kind of diaspora, with roots in an Arab elsewhere." Ibid.

[163] Murad fails to distinguish between Muslim Americans of immigrant background, and Muslim Americans who are 'native', i.e. African Americans. Sherman Jackson (2005) sheds light on the little-spoken of phenomenon of the racially segregated state of American Islam. He also offers an excellent analysis as to *why* this problem has been so invisible – to both parties – through the present day.

[164] Murad, *Tradition.*

[165] Ibid.

> "It is this new generation that is called upon to demonstrate Islam's ability to extend its traditional capacities for courteous acculturation to the new context of the West, and to reject the radical Manichean agenda, supported by the extremists on both sides [Muslim extremists and Islamophobe extremists], which presents Muslim minorities as nothing more than resentful, scheming archipelagos of Middle Eastern difference."[166]

This is particularly urgent given the United States' long and sad history of violent nativism, whose current manifestation lies in the War on Terror and the PATRIOT Act. A radically authentic Islamic identity in the US, Britain and elsewhere would advance true *fitra,* consisting of the following:

> "Unless American Muslims can locate for themselves, and populate, a spiritual and cultural space which can meaningfully be called American, and develop theological and social tools for identifying and thwarting local extremism, they will be increasingly in the firing line."[167]

Muslim minorities in Europe and the United States must engage in an internal *hejirah* – in the sense of turning away from and cold-shouldering those qualities and practices which are at odds with Islam's 'forgotten virtues' – while at the same also critically re-examine their outer participation in these settings.

Murad again enjoins the interconnectedness and inseparableness of the inner and outer dimensions of the religion. He calls American Muslims to remember how the Muslims sent by the Prophet Muhammad to seek refuge with the Christian Negus king in Abyssinia from Quraishite persecution reported back on their experiences:

> "Umm Salama, another eyewitness, narrates the respect with which the Muslims attended upon the Christian king. They would not compromise their faith, but they were reverent and respectful to the beliefs of an earlier dispensation. Their choice of the annunciation story from the Qur'an was inspired, showing the Christians present that the Muslim scripture itself is not utterly alien, but is beautiful, dignified, and contains much in common with Christian belief. Stressing what they held in common with their hosts, they made a hugely favourable impression, and their security in the land was assured."[168]

Murad laments that Muslims have forgotten this attitude. Instead, many contemporary sermons, rather than praise the positive qualities of surroundings and neighbors, decry the dangers of

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[166] Ibid.

[167] Ibid.

[168] Ibid. Murad quoting Ibn Ishaq, *Sira*, tr. A. Guillaume as *The Life of Muhammad* (Oxford, 1955): 146-154. The 'annunciation story' is described in the Qur'an, chapter 19.

Westernization. He claims that the Companions' spirit of courteous conviviality must be recalled and lived. Muslims must show their neighbors faces full of joy and light. It is only once Muslims have "relearned the traditional science of the spirit" (i.e. *tasawwuf*, or Sufism, which is the traditional Islamic science of self-improvement and spirituality) that American Muslims will be able to "enrich America."[169]

Securing the community's safety and freedoms as minorities in liberal orders, as well as positively contributing to public space and debate, involves that Muslims forge alliances with the right groups. Whereas Tariq Ramadan has suggested that Muslims ally themselves with environmentalist and left-wing groups who oppose anti-immigrant sentiment and policies,[170] Murad claims such alliances would be "at best, a tempestuous marriage of convenience."[171] Muslims and leftists might converge on certain issues, but others would starkly divide them. And since, in Europe, the increasing pressure being brought upon Muslims relates to social – not doctrinal – beliefs, Muslims should instead forge alliances with socially conservative members of Christian and Jewish communities. Religious communities in Europe are all facing very similar challenges to their social visions, and so banding together would "deflate, in a non-sectarian and non-narrow way, the potentially xenophobic and increasingly Islamophobic possibilities which are implicit in current processes of European self-definition."[172]

This understanding of *fitra* as transformative primordial God-consciousness is a reaffirmation of the inherent interconnectedness of *haqiqah*, *tariqah* and *shari'ah*.[173] Each of these three aspects of the religion provide a distinct perspective, but also form an inseparable unity. Nasr defines religion as the Divine guidance which allows the human being to remember what he/she may have forgotten.[174] Consonant with Murad's depiction of *fitra*, Nasr's *dini* understanding of religion represents the primordial tradition of the human being, *al-din al-hanif*. The nature of tradition itself is that of "a whole and a totality, a unity within diversity, a circle with a center which itself is found everywhere and on every point of the circumference."[175] The analogy of the rim and the center in the wheel of existence is one which Nasr expands and explains in great detail elsewhere.[176] The meaning is to emphasize the totality and unity of existence, and the continuum which joins the exoteric law (*shari'ah*) and pure esotericism (*haqiqah*). In every facet of life can be found the principle of Unity by synthesis and integration.[177]

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[169] Murad, *Tradidion*.

[170] See Tariq Ramadan, *To Be A European Muslim*. Leicester: Islamic Foundation, 1999.

[171] Abdal Hakim Murad, "Can Liberalism Tolerate Islam?" *Oslo Litteraturhuset*, March 20, 2011. Available at http://www.masud.co.uk/ISLAM/ahm/AHM-Can-Liberalism-tolerate-islam.htm.

[172] Ibid.

[173] See p. 203 above (especially footnote 151). See also p. 209 and 215 below.

This principle of divine unity (i.e. *tawhid*)[178] can be found in an examination of how Muslims of different specializations – jurists, theologians, and Sufis – theorized freedom.[179] The traditionalist (premodern) understanding of shari'a in these multidisciplinary formulations of freedom directly connects the inner and outer dimensions of life and religion, producing a bridge between belief and action that transcends the modern definition of religion as disembodied, privatized belief. The law is understood to be "the embodiment of Divine Will," a "transcendent reality which is eternal and immutable, as a model by which the perfections and shortcomings of human society…are judged."[180] Reality, or *haqiqah*, constitutes the highest state of existence.[181] And the physical realm constitutes the lowest and furthest removed from the Divine essence. For

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[174] See Seyyed Hossein Nasr, *Islam and the Plight of Modern Man: Revised and Enlarged Edition*. ABC International, 2001. Especially chapter 1.
[175] Nasr (1981), 4.
[176] Nasr (2001b), chapter 1.
[177] Nasr (1981), 13-17.
[178] See chapter 3, "Religion, the Secular and *Din*," for an explanation of the Qur'anic concept of *tawhid*.
[179] See p. 175 above.
[180] Nasr (1981) 25.
[181] One of the Qur'anic names for God is Absolute Reality, or Pure Being (*Al-Haqq*).

"Islamic doctrine, like all other traditional metaphysics, is based on the belief that reality is comprised of multiple states of existence (*maratib al-wujud*)."[182]

Murad's vision of radically authentic Muslimness consists in the inner virtues and outer social and civic participation of Muslim minorities. In so proposing, Murad sets forth a different paradigm of what constitute 'human rights' than what Sachedina espouses. In Murad's work we find that the human being has the right to: be socially conservative, live free from a hyper-commercialized environment, be free of envy and the entanglements of the overarching logic of capitalist competition and avarice, maintain a livelihood for one's family without coercion from globalized agrobusiness, etc. In other words, a simple life of faith should be a human right. This type of piety-oriented theorizing is not to be found in the human rights discourse of Saroush, An-Na'im, Mernissi or Sachedina. In their thought, the focus is on bodily and political safety, the freedom of self-development (within the connotations of history-making as agency), and the promotion of moral autonomy and lifestyle pluralism. Freedom of religion takes on the form of the freedom of private, disembodied belief with no coercive power in the public realm. Murad's framework prefers rights that underscore the interconnectedness of belief and practice.

To give an illustrative example of Murad's *fitra* conception and how it frames human rights concerns, I will elaborate his position on gender equality. Murad explains that the Qur'an puts forth a completely different model of gender equity than those embodied in most secular feminist norms. He begins with a distinction: from a secular perspective, gender is all about society, but from the traditional Islamic understanding, every principle has a spiritual meaning. As such, the shari'a secures *real* equality, i.e. equality of the spirit. This is something secular modernity cannot accomplish since it has no religious project. The equality offered by secular modernity is illusory, unattainable equality in the life of this world, since it purports that "we are all lumps of flesh destined for the crematorium, with no higher glory at all."[183] It is the differing metaphysics behind the secular and Islamic conceptions of the human purpose, according to Murad, that distinguish each's conception of gender and rights.

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[182] Nasr (1981), 26.

Only by understanding that in Islam, every principle has a meaning, can the shari'a's agenda in allocating roles, spaces and ideals differently to men and women be understood.[184] Murad states that the Islamic definition of justice is "a thousand times more nuanced" than the secular modern conception of justice as equality.[185] He explains:

> "Our concept of justice means, ultimately, not the equal access of human beings to goods and services and to rights and responsibilities and to opportunities for personal enjoyment. Our definition of justice may incidentally encompass some of those things, in its own way. But our definition of justice really is about the guaranteeing of human equality in the issue that really counts, which is becoming luminous candidates for salvation…What we really care about is providing men and women with equal, maximized opportunities for becoming beings who are pleasing to Allah…equality of opportunity for salvation."[186]

This conception renders secular criticism of Islamic social arrangements irrelevant, according to Murad, because the two traditions don't share the same objectives.

Murad states categorically that nowhere in Islamic theology or spirituality can one find a privileging of the male principle over the female.[187] To the challenge that God is gendered in the masculine, Murad explains that it is "a central part of our *aqeeda* [Islamic doctrine] that we do not attribute gender to Allah."[188] Because God is absolutely transcendent, He is above any accident in human form, and has no gender, whether actual or metaphorical. God never describes Himself as 'father' in Islam, and as to the use of the male pronoun, Murad explains that theologians emphasize that this is not even a metaphor. Rather, Arabic routinely uses the third-person singular masculine pronoun to refer to neuter nouns. Similarly, Arabic also uses the sound feminine plural to refer to objects that may be neuter in the plural. It is merely a convention of the language.[189] All the prophets have been male according to majority opinion, while the dissenting opinion of a small minority of *ulama* (i.e. Ibn Hazm) includes Mary and the mother of Moses in prophethood on the basis that they were spoken to by God. Murad explains that a prophet is not God incarnate, and that the conditions for prophethood are largely pragmatic, designed to maximize the acceptance of the divine message. The prophet's male gender, therefore, is an accidental rather than essential factor.[190]

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[183] "What is Real Gender Equality?", posted by 'Islam on Demand' on September 26, 2011. Available at http://youtu.be/rDezfKMDFzA.

[184] "Answering Secular Feminism: Defining Justice," posted by 'Islam on Demand' on September 26, 2011. Available at http://youtu.be/ENAqnQfipkI.

[185] Ibid.

[186] Ibid.

[187] Murad, *What Is Real Gender Equality?*

[188] Abdal Hakim Murad, "Does God Have a Gender?" posted by 'Islam on Demand' on September 26, 2011. Available at http://youtu.be/YyexuVaWU8k.

In fact, if one finds the privileging of one of the genders over the other, maintains Murad, it is the female over the male. The evidence for this claim is to be found in *tasawwuf,* or the esoteric, mystical dimension of Islam which deals with the states of the *qalb.*[191] When Sufis reflect on the *meaning* of gender, they have traditionally invoked the prophetic *hadith* (utterance) transmitted by Tirmidhi which identifies that God has ninety-nine names. The Sufis point out that some of these names are names of majesty, or *jalaal*, and others are names of beauty, or *jamaal*. These are understood as predominantly masculine and feminine attributes, respectively. The male principle is associated with strength and rigor, and the female with beauty and compassion. Recalling that God is absolutely transcendent over *any* human quality (including gender), the important point is that these metaphorically 'gendered' names do not privilege one gender over the other. The Sufis, if anything, lean towards privileging the female principle, as the most conspicuous divinely revealed name is *Al-Rehman*, the Most Merciful. God begins His self-description with this name, and has prescribed for Himself *rahmah* (mercy). The semantic root of the word *rahmah* is *rahim*, which is the womb.[192] God's creative fecundity can be said to have strongly maternal resonances, without going beyond the clear meanings of the *hadith* on the subject themselves.[193] God's creation of the two principles, male and female, does not translate into inequitable social roles for Murad. The male and female principles are beyond measurement or comparison.[194]

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[189] Ibid.

[190] Ibid.

[191] The intellective heart-organ; see Al-Attas on p. 166-176 above.

Murad also addresses the history of female scholarship in the Sunni tradition. Islam doesn't only advocate education for women, but has a rich history of women as educators. He finds precedent in the *mothers of the believers*:[195]

> "The fact that they, during his [the Prophet Muhammad] lifetime and after his death, became educators is a sufficient indication of the intentions of the Lawgiver [God] with regard to the educational value of women…much of the edifice of Islam *depends* on these women scholars. Without people like Umm Salama, 'Aisha, Maymuna, Umm Habiba, and other very distinguished luminaries in the first generation of Islam, Islam as we know it would not exist."[196]

Through their insights from the prophet, *fatawa* (legal opinions) and *fiqh* (jurisprudence), these female scholars played a pivotal role in the perpetuation of the religion in its first generation. Female transmitters in *hadith* were judged on the same criteria of soundness and unsoundness as male transmitters (i.e. without regard to their femininity). According to Murad, this tradition continued through the classical period of Islamic scholarship, and began to wane in the thirteenth Islamic century (about two hundred years ago).[197]

Murad's arguments for true gender equity in Islam also cover the area of sexuality. As embodied creatures, human beings according to the Islamic tradition must engage body, mind and spirit in a harmonious way to bring about a holy, balanced individual. Islam, like most traditions, is very ‘sex-positive,’ admitting sexuality as part of the reality of human creatureliness.[198] The theoretical basis of Murad’s concept of women and gender is his emphasis on traditional Islamic metaphysics and its understanding of the human being’s substance, purpose and relation to God. He posits that abuses and confusion in understandings of gender and other issues stem from a turn away from tawhidic fitra. Unlike Sachedina, who identifies fitra as universal intuitive reasoning within a natural law framework that can form the basis of human rights appropriations, Murad identifies the major task of Muslims in the modern world as a cultivation of ‘radical authenticity,’ i.e. reconnection between belief in tawhid and the virtuous embodiment of this belief in outward acts of piety, public as well as private.

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[192] Murad, "Does God Have a Gender."
[193] Ibid.
[194] Abdal Hakim Murad, "Breaking the Two Desires: Part 1," posted by 'ByChoiceMuslim' on May 18, 2012. Available at http://youtu.be/TnsvV-s0kNc.
[195] The mothers of the believers in the Islamic tradition were the wives of the Prophet Muhammad.
[196] Abdal Hakim Murad, "Legacy of Female Islamic Scholarship," posted by Dawud Israel on January 6, 2012. Available at http://youtu.be/DO4bjD9JHTc.
[197] Ibid.

Concluding Remarks

In chapter 3 (‘Religion, the Secular and *Din’*), I argued that the category ‘religion’ is a modern invention, such that:

> “Religion in modernity indicates a universal genus of which the various religions are species; each religion comes to be demarcated by a system of propositions; religion is identified with an essentially interior, private impulse; and religion comes to be seen as essentially distinct from secular pursuits such as politics, economics, and the like.”[199]

The thinkers I surveyed in the previous chapter (Saroush, An-Na’im, Mernissi, Lamptey and Sachedina), in negotiating the relationship between contemporary Islamic praxis and universal human rights, all posit Islam as a religion in the modern sense.[200] By contrast, the thinkers presented in this chapter – Al-Attas, Jackson, Bullock, Mahmood and Murad – evaluate themes relevant for human rights in ways that *do not* pose Islam as a religion in the modern sense. Rather, they discuss Islam in alternative ways, which I have compiled under the label *din*.

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[198] Abdal Hakim Murad, “Sexuality: An Islamic Perspective, Session 5/5,” posted by ‘Islam on Demand’ on August 21, 2011. Available at http://youtu.be/TWbzI99LeD0.

[199] Cavanaugh, 69.

[200] See chapter 4 above.

In this alternative to the modern sense of religion, Islam: is not assumed to lack truth claims over and above other religions; is more than a doctrinal system of propositions, but is heavily embodied and involves disciplining the body/soul totality; is not an interior impulse but is of a social character and touches every 'mundane' or 'secular' aspect of human life, such as economic activity and political relations; and this includes a determinative role for the shari'a beyond strictly private matters.[201] Where Saroush claimed that, all truths being commensurate, each realm possesses its own logic (science and religion, for example), Al-Attas claims that the Divine Reality reigns supreme and unifies all lower orders of existence as well as human knowledge of these. Nasr adds that the shari'a is part of a continuum of *haqiqah* and *tariqah* (reality and spiritual path, respectively) – all three being consistent and manifestations of Divine dispensation on different levels of existence.

Where An-Na'im poses the secular democratic state as the only political form that will allow Muslims living in Muslim-majority nations to truly fulfill their faith – for only in the context of freedom of religion (in the modern sense of 'religion') can faith be freely exercised – and calls for Muslims to undergo an Islamic Reformation that would bring their religion under the standards of universal human rights norms, Jackson historicizes the modern liberal state (naming white supremacy as one of its organizing logics that conditions how Islam is socially and civilly embodied), questions the state's law-making monopoly, and proposes an alternative, two-tiered human rights framework that would operationalize traditional Islamic concepts (i.e. the rights of religious minorities as rooted in the sanctity of the public space, which is a right of God). An-Na'im calls for a nearly wholesale emptying of inherited shari'a, emphasizing the need for reasoning independent of precedent (i.e. *ijtihad*). Jackson, on the other hand, prescribes Muslim American agency *through* traditional shar'ia and Sunni orthodoxy.

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[201] The public/private distinction was itself part of the project of separating 'religion' from 'secular,' as were the binaries of internal/external and belief/practice. See Cavanaugh, 69-84 and 92.

Where Mernissi takes a full rejectionist stance to the *hijab* and calls on Muslims to cleanse the tradition of all such male elitist accretions, Bullock roots the veil within the broader Qur'anic vision (what she calls 'normative Islam') and develops a positive political theory of the veil. In so doing, she calls into question the terms and assumptions of the women-and-Islam discourse. Saba Mahmood also questions the underlying assumptions of certain liberal feminist tendencies when evaluating the agentive motivations of pietistic Muslim women. Both Bullock and Mahmood find that measuring and assessing Muslim women's choices and practices through the prism of secular values does not result in a fair representation. Instead, the teleology and ethical commitments of Muslim women must enter into analyses seeking to understand what may appear to be patriarchal realities. Where Mernissi and Lamptey take a negative approach (in differing degrees) to traditional Islamic theology and jurisprudence, Bullock and Mahmood find positive value in women's perpetuation of the tradition, for spiritual commitment to a normative Qur'anic vision (Bullock) and for the exercise of their agency within a paradigm of learning and authority (Mahmood).

Where Sachedina proposes theological and ethical reform in Islam today in keeping with universal human rights standards, Murad warns that Islam in modernity must not concede to the *logic* of modernity, which he states is essentially materialistic. Both of these thinkers ground their arguments in the Qur'anic concept of *fitra*, albeit in very different ways. Sachedina defines *fitra* in a natural law sense, as universal intuitive reasoning. Murad defines *fitra* as primordial God-consciousness. For Sachedina, *fitra* has the potential to lead all people (through dialog and negotiations) to a universal scheme of peaceful cooperation in which human rights are upheld and mutually repsected. For Murad, *fitra* is thoroughly *tawhidic*, and while it exists primordially in every human being, will only flourish if cultivated through the prophetic example. In other words, Sachedina's scheme is tradition-free, and Murad's relies essentially on the traditional path.

The *dini* thinkers reviewed in this chapter do not posit Islam as 'religion' in its disembodied, privatized and apolitical significations. Rather, the stress is on the interconnectedness of the inner and outer dimensions of religious life, where practice and belief cannot be disentangled. They allow traditional Islam's ethical, moral, legal complex of sensibilities, i.e. the shar'ia, to remain central and authoritative in informing Muslim praxis.[202] This includes legitimating that Islam make demands – in the embodied practices of believers as individuals as well as in collectivities – of political activity (Murad on Muslim minorities in Europe and the U.S.; Jackson on authentic and enabling self-definitions for Blackamerican and Immigrant Muslims), and economic activity (Bullock and Murad on how to interact with the ravages of capitalism, disabling the beauty industry and the male gaze, and *zuhd* or asceticism, respectively). *Din* presents itself as a sustainable alternative to 'religion' in the modern sense of the term for defining Islam. This, in turn, has serious implications for Islam's interface with universal human rights discourse.

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[202] See p. 86-89 and 98 above for Hallaq's description of premodern shari'a. It is impossible, based on such a characterization, to refer to shari'a in either its abstractly/spiritually moral or positively legal senses in isolation.

Chapter 6: Conclusion: Universal Human Rights, Empire and the Postsecular Turn

> *"Rights were the noblest institutional innovation of modernity, the 'man' of rights, the best crystallization of Enlightenment principles. And yet, endless exclusions have accompanied every statement of right. Rights are both protections used by people against a voracious state or intractable powers and, tools in the modern arsenal for creating and disciplining the subject."*[1]

> *"When we speak in a secular sense and in secular democracy about freedom…I would help them formulate, I think, their dialectic. And it becomes…actually freedom of the* nafs *from the* khalq. *Freedom is attained by disengaging the* nafs *from the* khalq *to whatever degree possible…But that philosophy is incomplete. Because the way it understands the human nature is this. There is a* khalq *outside and there is a* nafs*…when we rise, philosophically and epistemologically, to the level of the* qalb*, now we are attaining higher degrees of freedom: the freedom of the* qalb *from the* nafs.*"*[2]

I began in my introduction by examining various Muslim voices in the public debate that followed the June 2016 mass shooting in an Orlando nightclub. The public debate focused on two main issues: 1) mass shootings are an American epidemic and we need to legislate stricter gun control laws; and 2) to what degrees is Omar Mateen, a Muslim (homophobic?) killer, other/same? A corollary of the first issue was the democratic potential erupting in Congress by way of a direct action by certain of its members to demonstrate the legislation's urgency. A corollary of the second issue was how to prevent, detect and eliminate 'radical Islam' from infiltrating our country. When you add the two together, you see that among the consequences of the Orlando shooting was the disenfranchisement (withdrawal of permission to bear arms) of a certain raced population (those individuals under surveillance that are suspected of sedition and placed on a no-fly list). That homosexuality is a human right formed a background, uncontested assumption. Muslim voices participating in the public intellectual space contributed text- and tradition-based arguments both to their communities and congregations and to various public fora such as vigils and blood drives, editorials, public apologies and distantiations and social media. These arguments hinged on the atrocious and sinful nature of Mateen's act, and the permissibility/impermissibility of homosexuality in Islam.[3]

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[1] Costas Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism*. Routledge-Cavendish: New York, 2007: 111.

[2] Mokhtar Maghraoui, '*Dhunoob* and Freedom of the *Qalb,'* in "Purification of the Hearts," Vol. I. Zawiyah Productions, 2004, compact disc. *Nafs* means appetitive soul/volition; *khalq* means creation/the created world; and *qalb* is the intellective heart organ.

The shooting and its aftermath are also part of broader structures and discourses, i.e. how liberal states employ sexual rights to coercively instrumentalize the freedom norm, particularly against immigrants or tortured prisoners;[4] how the nation is scripted in relation to others/enemies; how religion, particularly Islam, is suspect politically and sexually; the increasing scope of law to investigate, determine and legislate what/who/where threatens the nation; etc.

I return full circle in the conclusion to bodies and populations, state power and torture. This time, I cast these problematics in the light of the intervening chapters that tried to disentangle politics, religion, secularism and competing moral traditions within universal human rights. It may appear at first glance irrelevant, emotion-provoking or misguided to bind a critique of secularly-premised human rights' universality claims with the leather of Sovereignty and death. But it is precisely in the most exterior, material and base extensions of freedom- and life-promising universal human rights that their contradiction unfolds; that human rights fold in upon themselves.

In this chapter I will discuss universal human rights and the argument from empire, and the (mis)uses of human rights in emergent 'postsecular' feminist discourse. These forays provide support for the argument I have tried to make thusfar – that human rights: advance a secular power configuration that scaffolds the state and privatizes religion, stripping the latter of its holistic character and political power; rest on a secular definition of the human being; are championed by some thoughtful Muslim arguments but critically challenged by others; and therefore are not universal. Based on the various challenges I level against human rights universality claims, I return in the closing section to MacIntyre's points that every tradition has its articulation of justice and its own rationality, and that liberalism, despite claims to the contrary, is one such tradition, valued and storied. The liberal project of universal human rights ought, then, in aiming for universality, begin by dropping its independent claims to such.

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[3] See chapter 1, 'Introduction: The Rationality of Traditions.'

[4] See Judith Butler's argument, presented in Chapter 1, above.

Human Rights and Empire

Aside from the limitation of human rights' exclusively secular premises, there is another argument to be made against their universality claims: the argument from empire. Costas Douzinas, Professor of Law at Birkbeck University of London, argues that despite numerous and meaningful gains made by petitioners who operationalize human rights language, human rights are a concession to the logic of empire. Rights are not universal, but created by politics.[5] In the case of torture, Douzinas points to the embarrassing way some liberal commentators have taken to justify and juridically regulate torture.[6] It is through the torture found in camps such as Abu Ghraib and Guantanamo Bay that the 'human' of human rights is outlined; the human is defined via the inhumane realities of biopower.[7]

As a matter of fact, if we glean the register of deadly violence, horrific and torturous wars that have decorated modern history, certain undeniable facts provisos are attached to the concept of 'humanity':

> "…a strange paradox accompanies increased humanitarian activism. Our era has witnessed more violations of human rights than any previous less 'enlightened' one. Ours is the epoch of massacre, genocide, ethnic cleansing, the age of the Holocaust. At no point in human history has

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[5] Douzinas, 99.

[6] Ibid., 6.

[7] Ibid., 120-121.

> there been a greater gap between the North and the South, between the poor and the rich in the developed world or between the 'seduced' and the excluded globally…
>
> "Some ten million Congolese died in the early twentieth century as a result of Belgian forced labour and mass murder. Millions died of avoidable famines in India under colonial rule. Up to one million Algerians died during their war of independence. These were crimes by humanity but not against humanity."[8]

For Douzinas, the colonial past and the 'nation-building', human rights-dominated new world order form a single continuum; indeed, nation-building is a new type of tutelage.[9]

Rights serve a vital function in present systems of power, domination and oppression. They "are not opposed to the exercise of power; they are one way through which the effects of power are distributed across the social body."[10] Increases in the number and scope of rights resulting from adjudication of competing claims map the social landscape and thereby replicate the existing order of power and subjugation.[11] Douzinas states:

> "The new world order is moral-legal. Human rights, freedom and democracy provide the justification for the new configuration of political, economic and military power and the just cause for war."[12]

As the "official ideology" of the post-Cold War new world order, human rights have become its *lingua franca*, a way of doing business and making friends in the global marketplace.[13] Rights at once acknowledge and conceal the gaps between idyllic justice and oppressive realities, and represent, in the spirit of contract, "entitlements of those who have accepted the established distributions."[14]

Like Moyn,[15] Douzinas historicizes the post-World War II rise of human rights, when "pre-war principles and institutions had failed."[16] Like Massad,[17] he shows that political beliefs color and constitute the supposedly neutral jurisprudence of human rights agendas; that governments champion human rights when it serves their political interests.[18]

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[8] Ibid., 71-74.
[9] Ibid., 83, 140.
[10] Ibid., 101.
[11] Ibid., 104.
[12] Ibid., 148.
[13] Ibid, 12, 32.
[14] Ibid., 93, 107.
[15] See chapter 2.
[16] Douzinas, 27.

Despite the lofty, often well-intended claims of governments and rights professionals and activists, human rights universality continues to be founded on exclusions: "adding a new right or right-bearer to the existing group does not eliminate exclusion; it only alters its shape and scope."[19] Rather, these transformations represent a politics of consensus.

> "The legal quest for the creation of new rights or for the extension of existing ones to new groups or individuals has become a prime example of the politics of consensus. Rights stabilise inter-subjective relations by giving minimum recognition to identity; they codify the liberal ideology of limited freedom and formal equality; they express and promote individual desire."[20]

This is how human rights embolden states and depoliticize conflict. *The French Declaration of the Rights of Man and the Citizen*, which substantively informed the universal human rights project, declares that all rights are natural, inalienable and equal, but must nonetheless rely on the nation, to whom belongs all sovereignty.[21] Douzinas states:

> "The declarations set out the universality of rights but their immediate effect was to establish the boundless power of the national state and its law…If the declarations ushered in the epoch of the individual, they also launched the age of the nation – the mirror-image of the individual."[22]

Huma rights "confirm the paradoxical principle that the national is the only persistent universal."[23] Douzinas acknowledges that:

> "Successful human rights struggles have undoubtedly improved the lives of people by marginal rearrangements of social hierarchies and non-threatening redistributions of the social product. But their effect is to de-politicise conflict…"[24]

Human rights proponents need to place the actions of sovereigns in socioeconomic and international contexts in order to avoid HR's "depoliticizing trap."[25]

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[17] See chapter 2.

[18] Douzinas, 25-26.

[19] Ibid., 97.

[20] Ibid., 107.

[21] Ibid., 92.

[22] Ibid., 97.

[23] Ibid., 98.

[24] Ibid., 108.

As a concession to power, human rights help fashion a particular type of subject.[26] Human rights divide people into three groups: "the suffering victim, the atrocious evil-doer and the moral rescuer."[27] In the discourse's emphasis on care for victims, pity replaces politics and even leads to an anti-politics, whereby causes and conditions of suffering are not investigated but only the alleviation of suffering is sought.[28]

> As a result, the complexity of history, the thick political context and the plurality of possible responses to each new 'humanitarian tragedy' is lost…Pity has replaced politics, morality reason, suffering progress. The universal exchange of suffering and market capitalism have finally become global currency."[29]

Such humanitarian activism proceeds "without the slightest interest in the collective action that would change the causes of poverty, disease or war."[30]

According to Douzinas, human rights also accepts power's partitioning of human beings into rulers, the ruled and the excluded:

> "The ruled are the seduced majority of the postmodern world. Rights are inducements or rewards offered to them for their acceptance of the balance of power. The excluded are the outsiders…populations considered surplus to the needs of capitalism and left to their 'natural' or 'man-made' fate from earthquakes and tsunamis, Aids and famines or, ethnic cleansing and small-scale genocides."[31]

HR also posit their subjects as mutually antagonistic, desire-pursuers moving always towards greater degrees of self-realization.[32] Both legal rights and autonomy promote "the value of desire or desire as ultimate value."[33] It is an arrangement where freedom has been replaced by choice; Douzinas claims that this is consistent with the fact that the "freedom to choose is the

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[25] Ibid., 295.

[26] See also chapter 3, in which I detail Talal Asad's argument, albeit from a different theoretical viewpoint, that human rights require a specifically history-making subject.

[27] Douzinas, 69.

[28] Ibid., 81-84.

[29] Ibid., 81-82.

[30] Ibid., 84.

[31] Ibid., 100.

[32] Ibid., 36, 84, 284.

[33] Ibid., 285.

way of late capitalism."[34] The subject of natural rights was assumed to be free-standing, stripped of history, tradition, religion, gender, race, etc.[35] In modernity, this autonomous subject is likewise non-social, with inter-relations based on self-interest or legal obligation only.[36] The subject shaped by human rights is the unencumbered self.

To draw another connection with the Pandora box of the Orlando nightclub shooting, let us turn to Rutgers University professor of Women's and Gender Studies Jasbir Puar, who has made an argument similar to Douzinas' with regard to the modern state's control of sexual normativity.[37] In his critique of human rights' complicity with empire, Douzinas posits the non-citizen 'alien' as "the gap between human and citizen."[38] Puar identifies *homonationalism* as the gap between the state's ascendant-whiteness and heteronormativity on the one hand, and its racializing/queering of the figure of the terrorist on the other. Homonationalism refers to the increased inclusion of queers into American and European national narratives, but this "benevolence toward sexual others is contingent upon ever-narrowing parameters of white racial privilege, consumption capabilities, gender and kinship normativity, and bodily integrity."[39] Not only does the path to queers' acceptability have to pass through whiteness and wealth, but terrorist bodies are specifically produced against such acceptable queer subjects.[40]

According to Puar, gay marriage in Europe:

> "justifies further targeting of a perversely sexualized and racialized Muslim population…who refuse to properly assimilate, in contrast to the upright homosexuals engaged in sanctioned kinship norms. Gay marriage reform thus indexes the racial and civilizational disjunctures between

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[34] Ibid., 128.
[35] Ibid., 93.
[36] Ibid.
[37] See Jasbir K. Puar, *Terrorist Assemblages: homonationalism in queer times*. Durham: Duke University Press, 2007.
[38] Douzinas, 99.
[39] Puar, xii.
[40] Ibid., xiii.

> Europeans and Muslims, while effacing the circuits of political economy (class, immigration) that underpin such oppositions."[41]

It is in this way that many queer activists codify the distinction between "us" and Muslims according to the war on terror's protocols, between barbarous Islam as especially homophobic and threatening and civilized, progressive homonationals.[42]

Resonating with Saba Mahmood's critique of liberal feminists' inability to respectfully register female Muslim piety,[43] Puar criticizes how queerness is defined in problematic terms privileging resistance as agency. Queerness is framed as freedom from norms, as can be seen in coming-out narratives. Queerness cast this way:

> "resonates with liberal humanism's authorization of the fully self-possessed speaking subject, untethered by hegemony or false consciousness, enabled by the life/stylization offering of capitalism, rationally choosing modern individualism over the ensnaring bonds of family. In this problematic definition of queerness, individual agency is legible only as resistance to norms rather than complicity with them, thus equating resistance and agency."[44]

Puar describes the situations of queer ethnics. To be acceptable on account of their queerness, they must be able to engage the ascendancy of whiteness. They must have access to capital for ownership and consumption, through which they:

> "reorient their loyalty to the nation through market privileges…that masquerade as forms of belonging to the nation and mediate the humiliation of waiting for national love."[45]

The market mitigates the ethnic's entry into acceptable homonormativity.[46] Just as Douzinas states that the suffering victim and barbarous evildoer is necessary for the formation of the savior humanitarian subjectivity,[47] so too according to Puar is homonationalism and increased liberal inclusiveness for queers a process that parallels the increased demarcation of populations slated for death, subjugation, surveillance, etc.:

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[41] Ibid., 20.

[42] Ibid.

[43] See chapter 5.

[44] Puar, 22.

[45] Ibid., 26-27.

[46] Ibid., 27-28.

[47] Douzinas states: "Human rights campaigns construct the post-political Western subjectivity: they promise the development of a non-traumatised self (and society) supported by our reflection into our suffering mirror-images and by the displacement of the evil in our midst onto their barbaric inhumanity." (84)

> "…it is precisely within the interstices of life and death that we find the differences between queer subjects who are being folded (back) into life and the racialized queernesses that emerge through the naming of populations, thus fueling the oscillation between the disciplining of subjects and the control of populations."[48]

Universal Human Rights and the Postsecular Turn

Emerging postsecular feminism attempts to transcend the falsification of secularization theory while redeeming and reaffirming liberal emancipatory politics. Secularization theory was falsified in light of the fact that religion has not disappeared from public life, that religiosity fails to wane in liberal states or elsewhere. Historian of British and American history J. C. D. Clark notes that historians of the sixteenth-eighteenth centuries who had generally shared confidence in the grand narrative of secularization must now unsettle the literature's classic narratives of modernization, secularization, urbanization and industrialization.[49] Not only has secularization theory been empirically falsified but 'postcolonial multicultural reflexivity'[50] tests the limits of European pluralism and American nativism.

Despite this commendable goal, since postsecular feminism is still operating on a liberal epistemological grid, that is, since it tries to accommodate the secular's 'other' without unsettling its own necessarily secular theory of knowledge, there are a number of trappings that can be discerned in even the earliest stages of the discourse. To begin, many postsecular emancipatory aspirations continue to uncritically rely on human rights as a 'neutral court of appeal.'[51] Unsettling the universality and neutrality claims of human rights would force a postsecular feminism to resort to tools *outside* the liberal political tradition to meaningfully engage difference among women of the world and their conditions.

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[48] Puar, 35.

[49] See J. C. D. Clark, "Secularization and Modernization: the Failure of a 'Grand Narrative'." *The Historical Journal* (Cambridge University Press), Vol. 55, No. 1 (2012): 161-194.

[50] I'm borrowing the term from Gregor McLennan, who states: "Yet this social imaginary and its meta-topics [Charles Taylor's idea of the public as a metatopical space and the people as a metatopical agency] are now, in an age of postcolonial multicultural reflexivity and apparently resurgent religiosity, being subjected to intense scrutiny. It is this gathering force of questioning that I am designating as the 'postsecular' moment." See Gregor McLennan, "Towards Postsecular Sociology?" *Sociology*, Vol. 41, No. 5, Special Issue on Sociology and its Public Face(s) (Oct. 2007): 857-870; 858.

Another important assertion among postfeminists is that the religion/secular binary is no longer sustainable.[52] However, the simple claim that the religion/secular binary is false and arbitrary does not receive further treatment. Absent theoretical elaboration of the terms of this claim, the unintended consequence may be to naturalize secularism as the mute backdrop upon which 'religion' can be rationally theorized. While it is true that 'religion' is a concept of modern invention, one that should be unpacked and problematized, this does not imply that secularism and secularity do not exist, issues I took up in chapter 3. There I argued that the modern concept of religion has 'the secular' as its epistemic context. The secular is a field of power that enables various types of knowledge, desire and action through new institutional and discursive spaces.[53] To claim that the secular is an arbitrary designation along with religion on account of their false binary pairing is akin to concluding, from the fact that 'race' is invented, that we live in a post-race America: it simply is not true.[54] Postsecular feminism may unintentionally reinscribe the invisible (i.e. normative) power of secularism by dismissing the false religion/secular binary.

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[51] A term used by Alasdair MacIntyre to describe liberalism's pretention of possessing a fictitious space where rival accounts of justice and competing rationalities can be evaluated according to some universal, tradition-free criteria. See MacIntyre (1988), 333 and 346.

[52] See for example Laura Levitt, "What is Religion, Anyway? Rereading the Postsecular from an American Jewish Perspective." *Religion & Literature*, Vol. 41, No. 3 (Autumn 2009): 107-118.

[53] See chapter 3, for Smith, Cavanaugh and Masuzawa on modern 'religion', and Talal Asad on 'the secular.'

[54] See for example Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Color Blindness*. New York: The New Press, 2010.

Another important feature of emerging postsecular feminism is its unequivocal affirmation of democracy. Across various theoretical approaches, postsecular feminists hang their hopes on democratic politics as the corrective to institutionalized patriarchy and gender injustice. National University of Ireland-Galway professor of Political Science and Sociology Niamh Reilly states that feminist approaches as disparate as the communitarian, postmodernist, global South and critical Enlightenment:

> "[a]ll emphasize 'democracy' and the values that underpin it as the larger discursive frame in which ideas of secularism and secularity can be redefined with emancipatory intent. This common ground in democracy is, I argue, at the heart of non-oppressive articulations of feminism that both retain a commitment to norms of gender equality and human rights and actively respect women's differences, including in relation to religious identity."[55]

There are a number of problems with this consensus around democracy. First, democracy as a political form is a package. Its conceptual bundle includes the modern state with its monopoly over law and violence,[56] the strict separation of law and morality and the dichotomy of the public/private realms. Second, some postsecular feminists place their faith in democracy because they believe the public sphere to be a neutral space amenable to equitable deliberation. However, Asad makes the point that the public sphere is necessarily, not just contingently, constituted by power.[57] Not everything can be said, because not all values are negotiable. The public space is inhabited by subjects who have learned to speak and listen according to the logic of privatizing religion in the first place. Organized religion, being understood as based on authority and constraint, is perceived as a threat to the mutual freedom promised by the public sphere.

Sociologist Jurgen Habermas recognizes the undue burden experienced by religionists in the public sphere. He states:

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[55] Niamh Reilly, "Rethinking the Interplay of Feminism and Secularism in a Neo-secular Age." *Feminist Review*, No. 97, Religion and Spirituality (2011): 5-31.

[56] See chapter 3 for my discussion of Wael Hallaq's work on the modern state and paradigmatic premodern shari'a.

[57] See chapter 3 above, for Asad on the public sphere.

> "Yes, religious cultures must adapt, with difficulty, to four inescapable conditions of modern secular life – the presence of other strong faiths, the authority of science, the universalist mode of positive law, and a pervasive profane popular morality. But they should not be subjected to unfair psychological or socio-cultural pressure in so doing. Postsecular culture must therefore openly recognize religion not just as a set of private beliefs but as an all-embracing source of energy for the devout, and, actually, for society in general too. Except at the highest institutional levels, the case goes, the demand that people cease to speak politically in religious terms must be dropped."[58]

But Habermas' faith in reasonable deliberation remains strong. His constructivist democratic model entails that the criteria for gauging the reasonableness of citizens' deliberations are universalizable norms.[59] Foremost among the norms is autonomy. While Habermas admits that the actual content of autonomy must be understood and realized in context-specific ways, the secular liberal values of self-invention and self-sovereignty[60] are reconstituted in the 'neutral' public sphere, severely curtailing the norm-altering capacities of religion. Asad states that religion has two options with regard to the modern state's law/morality dichotomy as enshrined in the strict separation of public and private realms: it can either accept the space of thoroughly privatized belief and worship, or else it can engage public talk that makes no demands on life.[61]

Another emergent theme in postsecular feminism is cosmopolitanism. While earlier families of feminist theorizing – radical, socialist, cultural, etc. – laid the groundwork for conceptualizing global sisterhood and international common cause,[62] the present cosmopolitan feminism with its global orientation may represent a political commitment to the convergence thesis. The convergence thesis advanced by some liberal thinkers celebrates that public international law increasingly treats not only states, but individuals. This undermines national sovereignty by converging it with human rights.[63] As I discussed in chapter 2, Joseph Massad has shown that the history of the governmentalization and internationalization of gender issues, beginning in the 1970s, was deeply implicated in Western hegemony.[64]

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[58] Jurgen Habermas, "Religion in the Public Sphere." *European Journal of Philosophy,* Vol. 14, No. 1 (2006): 1-25; 7-10.

[59] See Stefan Rummens, "The Semantic Potential of Religious Arguments: A Deliberative Model of the Postsecular Public Sphere." *Social Theory and Practice*, Vol. 36, No. 3 (July 2010): 385-408; 390-391.

[60] Rummens states: "Recognizing the autonomy of moral and political individuals implies that they are free to shape and reshape their own values and preferences in response to the changing circumstances of the historical society in which they are situated." Ibid., 395.

[61] Asad (2003), 199.

[62] See Josephine Donovan, *Feminist Theory: The Intellectual Traditions*. Third edition. New York: Continuum, 2000.

It may be argued that much feminist theory today goes against convergence, particularly the proponents of multiple modernities. The theory of multiple modernities developed to explain diversity among societies in light of modernization theory's emphasis on their similarities along the singular path to modernization. Modernization theory thus stresses convergence while multiple modernities stresses divergence.[65] It is also of course true that many feminists are conscious of earlier concessions to Western hegemony, and actively work against such tendencies. However, closer inspection of cosmopolitan feminism's constituent parts reveals that it sees secularism as suitable for being reimagined with emancipatory content for the religious. Secular dialogic public space is not anti-religious, but is tolerant of competing interpretations.[66] Removed as a normative principle from feminism, secularism would ensure human freedom, which would entail religious pluralism.[67]

But is such an account somewhat circular? In other words, what guarantees that the liberal definition of human freedom is non-abusive? What guarantees that democracy is non-abusive? Charles Mills has shown that accounts of personhood in the liberal social contractarian tradition were simultaneously and explicitly theories of racialized *sub*-personhood.[68] Subsequent elaborations of justice, democracy, equality, property law, etc. flourished while gross social inequalities were violently institutionalized and maintained against non-whites. Reilly claims: “Moreover, this cosmopolitan feminist perspective embeds feminism in democratic practice oriented towards the substantive realization of human rights and freedoms.”[69] I caution that this itself does not avert oppressive requirements for homogenization with a *secular* global public law, i.e. it is not necessarily *postsecular* in any substantive way.

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[63] See chapter 2 for my discussion of the convergence thesis, and Peter Danchin's work on the Enlightenment patter of secularity inscribed in human rights.

[64] See chapter 2; see also Massad (2015), particularly chapter 2.

[65] See Volker H. Schmidt, "Modernity and Diversity: Reflections on the Controversy Between Modernization Theory and Multiple Modernists." *Social Science Information*, Vol. 49, No. 4 (2010): 511-538.

[66] Reilly, 26-27. See also Oh (2007).

[67] Reilly, 25.

[68] See chapter 2 for my discussion of Charles W. Mills' *The Racial Contract*.

As I have suggested in the earlier chapters, universal human rights suffers a crippling limit to its universality. Human rights rely upon a secular definition of the human and a privatized rendition of ‘religion.’ These facts are celebrated by human rights thinkers, as secularism is considered the most neutral and tolerant arrangement. However, as I showed in chapters 4 and 5, the secular subtext and philosophical anthropology of universal human rights create very real contradictions and problematics for Muslims. Muslim political thinkers in the Western public debate produce a variety of positions vis-à-vis human rights. At the very least, the literature confirms a lack of consensus, and therefore the concept and framing of human rights cannot be said to be universal. This is extremely relevant for postsecular feminism because many feminist emancipatory aspirations today – including ‘postsecular’ ones – continue to uncritically rely on human rights as a ‘neutral court of appeal.’[70] They end up allying themselves with the ‘good Muslims’ who are on board with human rights norms, and cannot begin to dialog with ‘bad Muslims’ who question the connection between human rights and Western secularity and hegemony. Unsettling the universality and neutrality claims of human rights discourse would force a postsecular feminism to resort to tools *outside* the liberal political tradition to meaningfully engage difference among women of the world and their conditions.

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[69] Reilly, 26.

[70] A term used by Alasdair MacIntyre to describe liberalism’s pretention of possessing a fictitious space where rival accounts of justice and competing rationalities can be evaluated according to some universal, tradition-free criteria. See MacIntyre (1988), 333 and 346.

So do human rights represent a suitable framework for postsecular feminism's emancipatory aspirations? Asad has argued that the secular comprises our epistemological categories – how we know what we know, such as time and space.[71] Without legitimate non-secular complex time and complex space, multiple ways of life cannot exist. Only the multiple identities advocated for by cosmopolitan feminists and constructivist versions of dialogic democracy can exist in the homogenous time and space of the modern state – and that is not the same thing as multiple *ways of life*, i.e. a substantive respect for difference.

Given Asad's definition of the secular as a field of power with discursive and institutional aspects, the theoretical and philosophical problems universal human rights pose for the Islamic tradition become political problems as well, particularly in light of the discourse's liberal universalism and homogenization impulse. What does this mean for postsecular feminism? Postsecular feminism is committed to protecting Muslim women and Islam from the coercive instrumentalization of the freedom norm and state violence and imperialism.[72] But can it accomplish this noble task by uncritically naming human rights, as if the discourse was natural, ahistorical, philosophically neutral and universal? Or would such a reliance only mask and exacerbate liberal cosmopolitanism's secular proselytization impulse?

Conclusion: The Rationality of Traditions as Antidote

In chapters 4 and 5, I surveyed two bundles of contemporary Muslim theorizing on Islam and human rights. I have suggested that there may be a real connection between whether Islam is posited as a religion in the modern sense or as *din* (i.e. more akin to premodern *religio*) on the one hand, and whether universal human rights are fully endorsed or problematized on the other.

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[71] See chapter 3 above.

[72] See chapter 1, Introduction, for my discussion of Judith Butler and Joan Wallach Scott on these issues. See also Eisenstein (2004).

In other words, I propose that full, uncritical or enthusiastic endorsement of universal human rights (as can be found in the works of Abdullahi An-Na'im, Abdolkarim Saroush, Fatima Mernissi, Abdulaziz Sachedina and Jerusha Tanner Lamptey) requires that Islam be defined as a religion in the modern sense of the term. As William Cavnaugh has argued (see chapter 3), this means religion is essentially a private matter of personal belief, and is distinct from politics. This bundle of theorizing on Islam and human rights maintains that: the secular state is the best protector of the freedom of religion; rationality enjoys a privileged position in epistemology, and other ways of knowing should be subjected to it; the Islamic tradition should undergo theological, epistemological and legal reform according to universally rational human rights norms; traditional authoritative structures such as the *madhdhaahib* (schools of jurisprudence and their methodologies) should be cleared away as inherited, antiquated accretions; the primary Islamic texts – and in these they tend to favor the Qur'an over the prophetic example – should be reinterpreted from a clean slate, based again on universally rational HR norms; gender equality should be sought and achieved on the pattern of secular liberalism; and democracy is the most desirable political form, including for Muslim-majority nation-states.

The second set of Muslim theorizing on Islam and human rights that I have surveyed here (in chapter 5) relies on posing Islam as something *other than* religion in the modern sense. What I have termed "Islam-as-*din*," based on Al-Attas' etymology of *din* in the Qur'an, and Izutsu's semantic study of the Qur'anic worldview (see chapter 3), is a distinct methodological approach that unsettles human rights' strong conceptual currency. Thinkers like Sherman Jackson, Naquib Al-Attas, Saba Mahmood, Abdulhakim Murad (also known as Timothy Winter) and Katherine Bullock are more critical of universal human rights and do not advocate for their full adoption. Espousing a more holistic view of Islam that allowed by the modern concept of ‘religion,’ these thinkers bring important critical challenges to bear on human rights discourse and its philosophical grounds. These challenges include: the liberal state espouses a false universalism; democracy, like all human institutions, should be neither automatically shunned nor adopted, but should be put through the “sieve” of scriptural principles; rationality is only one way of knowing among the human faculties of knowledge, and is neither free-standing nor the most important; liberal feminism with its liberatory/tradition-subverting definition of agency cannot compute other forms of female agency that Muslim women may desire to embody and enact; gender equality from a secular point of view pertains only to material social arrangements while gender equality in a more traditionalist perspective is ‘more meaningful’ and pertains to opportunities for God-consciousness and salvation; and the inherited *madhdhaahib* and theological schools should not be wiped clean away, but themselves contain (like all traditions do) the mechanisms for necessary renewal and change over time.

Upon cross-examining these ten Muslim political thinkers’ treatments of Islamic human rights themes like *fitra*, the equality of women and men and the place of rationality in epistemology, I concluded that there are limits as well as possibilities to human rights universality among Muslim settings. The argument from empire, as in the works of Judith Butler (see chapter 1), Costas Douzinas and Jasbir Puar (see above, in this chapter), also unsettles HR’s universality claims, because human rights are historically imbricated in and officially affiliated with deadly imperial violence.

My final task in questioning human rights’ universality claims was examining the emergent field of postsecular feminism. I find that while postsecular feminism aims to transcend the falsification of secularization theory and reaffirm feminism’s liberatory aspirations, it does so in a way that uncritically relies on the human rights concept. Human rights are articulated as a politically neutral and universally moral ground upon which the liberal inability to deal with difference can resolve itself. In other words, postsecular theorists fail to name the liberal political values at the root of institutions like democracy and human rights, and propose that these ought to serve as the liberatory arbiter of oppressive and exclusionary practices. I propose that, in order to achieve its liberatory and inclusionary vision, postsecular feminism should begin with a critical self-reflection of the tradition it stems from and extends: secular liberal modernity.

Alasdair MacIntyre's 1988 work *Whose Justice? Which Rationality?* has new relevance today in this regard. According to MacIntyre, all enquiry is constituted by tradition, and is essentially historical. Every form of enquiry begins from the beliefs, institutions, and practices of some community, which authorizes particular texts and voices. Tradition is not universal, but always to some degree local.[73] One of the Enlightenment's central aspirations was to provide standards and methods of rational justification for debate in the public realm so that reason could replace tradition and authority. However, MacIntyre argues that all rational enquiry emerges from some tradition, which itself provides the standards of rational justification within its own history. MacIntyre's characterization of inquiry posits tradition as against "one of the central characteristics of cosmopolitan modernity: the confident belief that all cultural phenomena must be potentially translucent to understanding, that all texts must be capable of being translated into the language which the adherents of modernity speak to each other."[74] Postsecular feminists, proponents of empire and human rights professionals all seem to participate in this belief, specifically in their practices assuming *universal translatability*.

Together with Macintyre, Talal Asad's recent theorizing on traditions provides a useful toolkit for feminist thought aiming at transcending the trappings of secular (and secularizing) epistemology. Asad has used tradition in two ways: 1) as a theoretical location for questioning authority, time, language use and embodiment; and 2) as an empirical arrangement of everyday life connecting discursivity and materiality.[75] The discursive aspect of tradition is the language through which learning and relearning occurs, and is something passed down. Embodied practices cultivate sensibilities that can change the self (i.e. emotions, language, dispositions) and the environment.[76] What is learnt, says Asad, is not a doctrine but a mode of being, a capacity for experiencing that can't be renounced. Like MacIntyre, Asad affirms that disagreements are a constitutive part of traditions. In theory, traditions can accommodate rupture as well as continuity. There are entries and exits.[77]

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[73] See chapter 1 for my treatment of MacIntyre's 'rationality-of-traditions' thesis.

[74] MacIntyre (1988), 327.

The relevance of a rationality-of-traditions approach to postsecular feminist theory – and universal human rights more broadly – is that it may humble and thereby critically open proponents in their subject/object relations with non-secular women and communities. There is no consensus among contemporary Muslim political engagements with human rights as to whether Islam is a religion in the modern, privatized, disembodied (apolitical) sense or if it is something else.[78] As such, applying a 'traditions' approach to encountering and interpreting Muslim commitments would help open up space for non-modernist/non-secular renditions (i.e. a *true* respect for difference). As Blaney and Inayatullah argue, cosmopolitanism and human rights perpetuate neo-modernization theory and an inability to deal with difference. An important task that theorists of human rights and emergent postsecular feminism should commit to is critical self-reflection by way of a rationality-of-traditions approach. In this way, they may be able to enrich the discourse on human rights and Islam, as well as name and criticize liberal epistemological trappings – two tasks I have attempted in this thesis by way of a critique of human rights' universality claims on the basis of their secularity.

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[75] Asad (2014).

[76] Ibid. See also Saba Mahmood (2005). Mahmood's famous treatment of the female pietists of Egypt's Islamic revival operationalizes this exact rendering of 'tradition,' as she demonstrates that the subjects' agentive motivations are through embodied and performed through the vehicle of piety and the pedagogy of religious instruction.

[77] Asad (2014). See also Jackson (2005). Jackson argues, in evaluating the inferior position afforded to Blackamerican Muslims by their immigrant counterparts (Arab and South Asian migrant Muslims to the U.S.), that failure to transfer religious authority in a timely fashion has resulted in the reification of Immigrant Islam's 'false universals.'

[78] See chapters 4 and 5 above.

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