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International Workshop
国際ワークショップ

Islamic Law and Ethics in Multi-Religious World
多宗教世界におけるイスラームの法と倫理

CISMOR

同志社大学一神教学際研究センター

Hartford Seminary

ハートフォード・セミナリー

日本学術振興会・頭脳循環を加速する若手研究者戦略的海外派遣プログラム
「多文化共生時代における一神教コミュニティ間の相互作用と対話」

JSPS Strategic Young Researcher Overseas Visit Program for Accelerating Brain Circulation:
Interrelations and Dialogue among the Communities of Monotheistic Religions in the Multicultural Age

国際ワークショップ

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ハートフォード・セミナリーにて

International Workshop

Islamic Law and Ethics in a Multi-Religious World

At Hartford Seminary

On October 10-11th 2013

主催：同志社大学一神教学際研究センター

協力：ハートフォード・セミナリー

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(ジョージ・メイソン大学教授)

Held by the Center for Interdisciplinary Study of Monotheistic Religions
(CISMOR), Doshisha University, Kyoto, Japan

With the cooperation of Hartford Seminary, Connecticut, USA

Guest Speaker: Dr. Abdulaziz Sachedina (George Mason University)

浜本一典（編）

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同志社大学一神教学際研究センター

Center for Interdisciplinary Study of Monotheistic Religions (CISMOR)

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巻頭言

本冊子は、日本学術振興会・頭脳循環を加速する若手研究者戦略的海外派遣プログラムの採択事業「多文化共生時代における一神教コミュニティ間の相互作用と対話」(平成 23-25 年度)の一環として同志社大学一神教学際研究センター(CISMOR)が主催した国際ワークショップ「多宗教世界におけるイスラームの法と倫理」の成果報告書である。

このワークショップは 2013 年の秋、編者の派遣先研究機関であるハートフォード・セミナーにおいて、同志社大学とハートフォード・セミナーの研究者に加え、ジョージ・メイソン大学のアブドゥルアズィーズ・サチェディナ教授をゲストに迎えて行われた。イスラームと他宗教の共存をテーマとするワークショップを催すにあたり、この分野における最も重要なムスリム思想家の一人であるサチェディナ教授の力を拝借できたことは幸甚であった。

サチェディナ教授の法・倫理思想の真髄は、個々の信仰共同体に下される啓示と、万人が神から賦与された理性を通して認識できる自然法を区別した上で、両者を神からの二種類の導きとして位置づけ、矛盾なく統合する点にある。サチェディナ教授によれば、イスラーム的自然法論につながる自然神学的視点を持つことにより、道徳をめぐる論争の多くは解決されるという。啓示と自然法を区別するのは、信仰を受け入れるかどうかは個人の自由に委ねられるのに対し、自然法は個々人の恣意的選択を許さない憲法的枠組みを通して普遍的に適用されるべきであるという考えに基づく。そして、信教の自由はクルアーンにも記されているが、信教の自由の不可侵性は自然法に刻み込まれた普遍的道徳の一内容であり、それゆえ何人たりとも他人からこの自由を奪うことはできない、とサチェディナ教授は説く。

ワークショップの参加者にとって、信教の自由と並ぶもう一つの関心事がイスラームにおける女性の権利の問題であった。諸宗教の共存を論じる上で、ジェンダーの問題は信教の自由の問題ほど直接に関連する事柄ではない。しかし、イスラームにおけるジェンダーの問題は、グローバル化の進展によって異文化との接触が増えるに従い、活発に議論されるようになった。これら二つの問題は、国際人権法と伝統的なシャリーア解釈が対立する領域と重なっている。

サチェディナ教授以外の参加者も多士済々であった。イスラームはもとより、キリスト教にも通曉し、世界的に尊敬されているマフムード・アイユーブ教授、ユダヤ教徒の立場で一神教間の平和的共存に尽力するイエヘズケル・ランダウ教授、イスラーム法とジェンダーの分野で名高いイングリット・マツソン教授、現代イランの専門家であり、日本での編者の指導教官でもある富田健次先生、優秀なジャーナリストであり、国際平和構築プログラムの学生としてイタリアからハートフォードに遊学中のエレーナ・ディニ氏が討論に加わって下さった。この他、サチェディナ教授の講演会には多数の聴衆が詰めかけ、講演に引き続き、ランダウ教授の司会の下、実り多い質疑応答を楽しんだ。とりわけダイア

ログとダイアプラクティスに関する議論—対話を通して得られたものを実践することがいかに必要か—が印象に残った。

编者自身は、現代のイスラーム人権思想において重要な理論であるマカーシド・シャリーア（シャリーアの目的）について研究発表を行い、四人のコメンテーターから有益なコメントと助言を賜った。富田先生からは、マカーシド・シャリーアに関連して、ホメイニーがマスラハ（公共の福利）を理由に発した超法規的ファトワーをどう理解すべきかという問題提起を頂いた。これに関連し、サチェディナ教授は、シーア派とスンナ派の法理論においてマスラハの役割に違いがあることを指摘された。サチェディナ教授によれば、シーア派においては、一定の資格を満たす法学者に啓示法を上回る権威が認められ、そのような法学者はマスラハの原則に依拠して法規範を導くことができるという。アイユーブ教授は、ムスリムの背教に関する伝統的学説の根拠とされてきたハディースに含まれる問題点—「宗教を変えた者」という表現が死刑の根拠としては広範に過ぎること、また処罰の理由は宗教を変えること自体ではなく共同体からの離反であったこと—を指摘された。また、ムスリムの男女の相続分が異なるという問題に関し、シーア派の遺言のルールに基づいてレバノンで行われている興味深い慣習を紹介された。マットソン教授は、子孫を増やすことを優先するなら重婚も良しとされるように、伝統的なシャリーア解釈においては必ずしも男女間の平等は徹底されていないこと、また、人間が生まれつき有する性差を考慮するなら、男女間における機会の均等を保障することは必ずしも両性の真の平等につながるとは限らないことを示唆された。その一方で、イスラームにおいて女性は労働を免除されているという言説に対しては、現実にはイスラームの誕生以降も多くの女性が働いてきたという反対の事実を指摘された。

ワークショップの最後にディニ氏がサチェディナ教授にインタビューを行い、多元主義と共存の問題について掘り下げた。包括主義、世俗主義、公的領域と私的領域の区別など関連する諸問題についても論じている。このインタビューの内容は、サチェディナ教授の講演や编者の研究発表と共に、本冊子に収められている。

富田先生には、大変お忙しい中、強行軍で京都からお越し頂いた。素晴らしい人々との出会いとニューイングランドの美しい紅葉に満足して頂けたことを嬉しく思う。また、マットソン教授にはスカイプで参加して頂いた。编者の渡米後まもなくカナダへ移られたのは実に残念であったが、それでも编者のために時間を割いて下さったことに感謝している。さらに、マットソン教授が编者をハートフォード・セミナーの研究員として受け入れて下さらなければ、このワークショップ自体が生まれなかったということも忘れてはならない。

上に記した参加者の方々に加え、ハートフォード・セミナーでのワークショップの開催を許可して下さったハイジ・ハッドセル学長、広報と会場設営を担当して下さったスーザン・シェーンバーガー氏、参加者の送迎を快く引き受けて下さったジャワード・バヤト氏、軽食を用意して一同をもてなして下さったリン・フィナ氏、编者の派遣期間を通じて事務

的な面でサポートして下さった同志社大学一神教学際研究センターの池田登貴子氏と川面なほ氏にお礼を申し上げます。

浜本一典

Preface & Acknowledgements

This booklet is proceedings of an international workshop, *Islamic Law and Ethics in a Multi-Religious World*. It was held under the sponsorship of the Center for Interdisciplinary Study of Monotheistic Religions (CISMOR), Doshisha University, as part of its three-year project (2011-2013), *Interrelations and Dialogue among the Communities of Monotheistic Religions in the Multicultural Age*, which was adopted for the JSPS *Strategic Young Researcher Overseas Visit Program for Accelerating Brain Circulation*.

This workshop took place at Hartford Seminary, to which I had been sent as a researcher, in the fall of 2013, having as participants not only scholars from Doshisha University and Hartford Seminary but also Dr. Abdulaziz Sachedina from George Mason University. He is one of the most distinguished Muslim thinkers discussing how Islam can coexist with other religions, which was the central concern of the workshop. As the organizer, I am grateful to Dr. Sachedina for graciously accepting my invitation and sharing his wisdom.

The quintessence of Dr. Sachedina's legal-ethical thoughts is to distinguish divine revelation, which is addressed to a specific faith community, from natural theological perspective that allows for Islamic theory of natural law to become the catalyst for arguing about the universal morality that all humans can perceive through their divinely endowed intuitive reason. He regards both revelation and reason as two kinds of God's guidance and integrates them without contradiction. According to Dr. Sachedina, while it is left to one's freedom of choice whether to accept revelation, natural law is universally applicable through human constitution leaving no choice to human free will. Although the inviolability of religious liberty is prescribed in the Qur'ān, it is part of the universal morality deeply ingrained in natural law and, therefore, no one can deprive people to enjoy this freedom.

Besides freedom of religion, another issue which interested the participants was women's rights in Islam. Although not as directly related to the possibility of coexistence of religions as the issue of religious liberty, women's rights have been more intensely discussed as globalization has made interfaith contact more common. These two issues are also where international human rights law conflicts with the traditional interpretation of Shari'ah.

The workshop was blessed with wonderful participants: in addition to Dr. Sachedina; Dr. Mahmoud Ayoub, a universally respected Muslim scholar well versed in Christianity as well as Islam; Dr. Yehezkel Landau, a thoughtful Jewish scholar endeavoring to achieve peaceful coexistence among Abrahamic religions; Dr. Ingrid

Mattson, a Canadian Muslim scholar acknowledged especially in the field of gender issues in Islamic jurisprudence; my supervisor, Prof. Kenji Tomita from Doshisha University, an expert on contemporary Iran; Ms. Elena Dini, an Italian efficient journalist studying at Hartford Seminary as an International Peacemaking Program student. There was also a large audience at Dr. Sachedina's lecture, after which they enjoyed a fruitful Q&A session moderated by Dr. Landau; particularly impressive was a discussion on interfaith dialogue and diapractice – the need to put into practice what is achieved at the dialogical level.

I myself gave a presentation on *maqāṣid al-Sharī'ah* (the objectives of *Sharī'ah*), an important theory for resolving issues of practice in contemporary Islamic thoughts on human rights, and received instructive comments and helpful advice from four commentators. Prof. Tomita raised a question about how to understand an extra-revelatory *fatwā* that Khomeini issued based on *maṣlaḥah* (public interest). In this connection, Dr. Sachedina pointed out the difference in the role of *maṣlaḥah* between Sunni and Shii legal theories in that the authority to go beyond the revelatory guidance rested with a well-qualified jurist who can undertake to deduce further rulings based on the principle of public good. Dr. Ayoub shared his view on the *ḥadīth* on which the traditional Islamic law of apostasy has been based. According to him, the expression “whoever changes his religion” is too broad to be a ground for capital punishment, and, on top of that, the very reason for punishing apostates is abandoning their community rather than changing their religion. As for the inheritance rule giving sons the double portion of daughters, Dr. Ayoub mentioned an interesting practice that some Lebanese are following based on the Shii rule of bequeath. Dr. Mattson suggested that gender equality has not necessarily been a top priority in the classical *fiqh*; polygamy, for instance, aimed for multiplication of descendants rather than equality between spouses. She also pointed out that given the difference between the genders, to provide men and women the same opportunity of working does not necessarily lead to true equality between them. As for the idea that women in Islam are exempted from earning a living, however, Dr. Mattson casted doubt on it, revealing the fact that a great number of Muslim women have been working through the long history of Islam.

Ms. Dini interviewed Dr. Sachedina at the end of the workshop, delving into his thought on pluralism and coexistence. She also discussed inclusivism, secularism and the distinction between public and private spheres. Ms. Dini's interview with Dr. Sachedina, along with his lecture and my presentation, is contained in this booklet.

To attend the workshop Prof. Tomita made a trip from Kyoto despite his hectic work schedule. I am glad, though, that he was very happy with the people whom he came to

know in this event and the beautiful autumn of New England. Dr. Mattson, who had to move to Canada unfortunately a few months after I came to Hartford, took part in the meeting through Skype. I am, however, thankful to her for having tried to listen to my presentation. I also should note with gratitude that had she not accepted me for research at Hartford Seminary, this workshop would not have materialized.

Finally, I would like to express my appreciation not only to the aforementioned participants but also to Dr. Heidi Hadsell, the president of Hartford Seminary, who permitted and encouraged me to have the workshop at the seminary; Ms. Susan Schoenberger, who publicized the event and helped me in other practical matters; Mr. Jawad Bayat, who drove his car for some of the participants; Ms. Lien Fina, who arranged a lovely lunch; Ms. Tokiko Ikeda and Ms. Naho Kawazura of the CISMOR, who helped me during the whole period of my visit to Hartford.

Kazunori Hamamoto

プログラム Program

International Workshop <i>Islamic Law and Ethics in a Multi-Religious World</i>	
October 10th	
19:00	Welcoming Words by Dr. Yehezkel Landau
19:05	Lecture by Dr. Abdulaziz Sachedina <i>The Political Theology of Pluralism in Islam: Religious Ethics of Coexistence</i>
20:00	Questions and Answers
20:55	Closing Words by Dr. Yehezkel Landau
21:00	
October 11th	
10:00	Presentation by Mr. Kazunori Hamamoto <i>A Change in the Theory of Maqāṣid al-Sharī‘ah: Thinking Human Rights</i>
10:30	Comment by Prof. Kenji Tomita
10:45	Comment by Dr. Abdulaziz Sachedina
10:50	Comment by Dr. Mahmoud Ayoub
10:55	Comment by Dr. Ingrid Mattson
11:00	Discussion
11:30	Interview with Dr. Sachedina by Ms. Elena Dini <i>Pluralism in Islam and the Ethics of Coexistence</i>
12:00	

参加者一覧 **Participants**

Dr. Abdulaziz Sachedina	Professor and Endowed IIIT Chair in Islamic Studies, George Mason University
Dr. Mahmoud Ayoub	Faculty Associate in Islam and Christian-Muslim Relations, Hartford Seminary
Dr. Yehezkel Landau	Associate Professor of Interfaith Relations, Hartford Seminary
Dr. Ingrid Mattson	London and Windsor Community Chair in Islamic Studies at Huron University College at the University of Western Ontario (Formerly, Professor of Islamic Studies, and Director of the Macdonald Center for Islamic Studies and Christian-Muslim Relations at Hartford Seminary)
富田健次 Prof. Kenji Tomita	同志社大学神学研究科教授 Professor at the School of Theology, Doshisha University
Ms. Elena Dini	Journalist, International Peacemaking Program student at Hartford Seminary
浜本一典 Mr. Kazunori Hamamoto	同志社大学神学研究科博士後期課程 Doctoral Student at the School of Theology, Doshisha University, Research Scholar at Hartford Seminary

The Political Theology of Pluralism in Islam: Religious Ethics of Coexistence

Abdulaziz Sachedina

In the recent decades, especially following the Islamic revolution and the establishment of religious authority as the head of government in a modern nation-state of Iran, the public role of religion in general and the role of Islam in particular has been revisited by social scientists. With the American intervention in Afghanistan and Iraq, constitutional debates have as yet to tackle the role of religious convictions and values in the development of democratic institutions to guarantee basic freedoms and rights in those countries. The major stumbling block to democratization appears to be the way the role of religious values is defined in developing an inclusive sense of citizenship without insisting upon doctrinal/theological uniformity. In both these countries religious leaders have insisted to make the religious law of Islam, the Shari'a, as the principle source of defining freedoms and rights in the national constitution. While it is acknowledged that in the personal status of a Muslim man and woman the Shari'a could continue to provide judicial decisions in the area of personal law, there is also a major concern in the way traditional juridical formulations define a woman's social and political rights. More importantly, religiously pluralistic nature of Muslim societies require to take into consideration not only Sunni-Shi'ite but also interfaith relationships. The need to search for inclusive religious values has assumed urgency.

The challenge that faces the community today is this. There is a deeply held belief among religiously oriented Muslims that as a comprehensive guide to human life Islam must not only guide but also govern a modern state with Muslim majority. Is this conceivable? Are there within the classically inherited tradition resources that can be tapped for the creation of a nation-state that is also a member of the international public order? While the latter question is beyond the scope of the present paper, I want to explore the conceivability of a religious-minded demand in light of the changed circumstances under which modern nation-states conduct their affairs. In order to do that I will begin my search in the foundational sources of Islamic political discourse in the context in which this discourse shaped the political underpinnings of the Muslim empire. My reflections on the foundational sources like the Koran and the Tradition that continue to be held in high estimate by the community will provide me the opportunity to offer my thesis and its ramifications for the democratic governance based on some sort of functional secularity (*sifa madaniyya*). I will return to this

secularity later. But let me say this from the outset that I am not imposing this concept on Islamic tradition; rather, separate jurisdictions (*nitaq sulta*), and not the separation of church and state, are acknowledged in the sacred law of Islam, the Shari'a.

Let us examine the interaction between religion and history in Islam. Considering the historical development of Islamic tradition, and contrary to our modern perceptions of the role of religion, one is struck by a religious tradition that has been a source of a public project founded upon the principle of coexistence, recognizing self-governing communities free to run their internal affairs under a comprehensive religious and social political system. Of all Abrahamic religions based on the biblical ethos of shaping its public culture Islam has been from its inception the most conscious of its earthly agenda. Islam has been a faith in the realm of the public. The Shari'a regulates religious practice with a view to maintaining the individual's well being through his or her social well being. Hence, its comprehensive system deals with the obligations that humans perform as part of their relationship to the Divine Being and duties they perform as part of their interpersonal responsibility. Public order must be maintained in worship, in the market place, and all other arenas of human interaction. Social transactions based on an ethical standard of conduct in the Shari'a deal with enforcing the law by taking into account only what appears in the public sphere of human interaction. Muslim courts have no jurisdiction over private acts unless infringement of rights occurs and is brought to judiciary's attention without prying.¹

In searching for the guiding principles of a civil society, one must ask whether a faith community can accept the idea that other religious communities have autonomous, self-governing existences. This is the most challenging aspect of one's religious commitment that affects a public order. The essential point to consider is whether religious communities are willing to recognize one another as spiritual equals, each entitled to its distinctive path of salvation. The reason is that in a democratic pluralistic public order political consensus in the public square is dependent upon an each group's commitment to inclusive religious convictions.

Here I take religious pluralism to mean the acknowledgement of the intrinsic redemptive value of competing religious traditions. It is expected, however, that

1. Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), pp. 189-90 discusses procedure in Muslim courts observing: "No action is possible without a claimant... This principle is limited by the competence of the kadi to take action in matters of public welfare... It is not compulsory to apply to the kadi ...as long as no party applies to the kadi he takes no notice."

beliefs and values essential to one community will contravene those of others; here in lurks the potential for conflict and violence, if religious teachings are not articulated with necessary acumen and practical wisdom in the public square.

The fundamental problem, as reflected in the classical formulation of Muslim political identity, is religious authoritarianism founded upon an exclusive salvific claim, which runs contrary to the emerging global spirit of democratization through acknowledgment of religious pluralism. At the very core of emerging democratic pluralism is respect for the human rights of the non-Muslims living in Muslim societies. Since the beginning of this century, Muslim religious and social thinkers have wrestled with the issue of Islam's capacity to create a political society that would transcend the traditional boundaries between believers and non-believers and thus allow for the human dignity to emerge as the sole criterion for social and political entitlements.

From its emergence in the seventh century as a tradition in which a prophet is sent as a lawgiver and an organizer of the community to lead it to its ideal existence, Islam has provided its followers with a vision. This vision has something to do with a possibility -- a potential -- in the public domain of human existence, the possibility of an ideal polity that would shape a Muslim identity for citizens who actively "submit" to the will of God as members of a human community. It is primarily the possibility of appropriating the earth for creating a God-centered multicultural and multiethnic society that animates the Koranic vision of interpersonal relations.

It is important to underscore the significance of the Koranic universal discourse calling upon humanity to respond to its original nature capable of discerning rightness and wrongness. No human endowed with reason can fail to understand this moral language. More importantly, as a source of unity that transcends religious differences, this language establishes the necessary connection and compatibility between private and particular spiritual, and public and universal moral guidance. Hence, the Koran binds all of humanity to its natural predisposition not only to be aware of the meaning of justice but also to will its realization. In this universal idiom, no human being, then, can claim ignorance of the ingrained moral sense of wrong and right; it follows that none can escape divine judgment of a failure to uphold justice on earth.

The Koran allows the non-believers 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. Human relationships at the horizontal level provide us with a framework for defining the religious or cultural other in terms of

"we" and "them." Islamic self-identification as a process of self-understanding becomes accessible to the outsider through its conceptual description of the other.

Such a description of the other is situated in the realm of law, the realm of revelation-based religious and moral activity. Islamic law as an expression of the human endeavor to carry out the divine will on earth is actually identical to the belief that faith is an instrument of justice. When law and faith merge in an individual's life, they create a sense of security and integrity about the great responsibility of pursuing justice for its own sake. And when this sense of security and integrity is projected onto the collective life of the community, it conduces to social harmony. Peace, then, is belief translated into action. It is not sufficient merely to believe in justice for peace to come about. Rather, peace is the outcome of justice maintained at each stage of inter-human relations. The separation of law and faith, on the other hand, results in the lack of commitment to justice that leads to chaos, violence, and even war. Hence, the Islamic prescription for avoiding carnage is to respond to God's revelation, which calls for sincere God-human and inter-human relations. In other words, submission to the will of God becomes a kind of conduit for the creation and maintenance of justice and equity on earth. Ultimately, the vision of inter-communal relations in Islam is firmly founded upon the diverse communities' sharing in cross-religious moral concern with egalitarianism, peace, and justice.

But the interaction between this faith and history has not fostered an interreligious vision of spiritual egalitarianism. In fact, part of the Muslim self-understanding has led to intolerance, even to the exclusion of the other from the divine-human relationship. Such an exclusivist theology can envision a global human community only under Islamic hegemony; Islamic tradition, so interpreted, becomes an instrument for the furthering of Muslim political and social power over other nations.

However, in a diverse inter-communal society, insistence on agreement on matters of belief as a precondition for social organization is highly problematic. The solution offered by secular liberal theory is that effective governance arises not from shared belief but from a system of government incorporating the principle of religious pluralism. International relations today are conducted without any reference to the substantive beliefs of the member states because religious beliefs are considered "non-public". Whatever their irreconcilable differences in matters of faith, all communities are legally bound to do their part in maintaining peaceful social relations. The resolution of conflicts does not require people to uphold certain religious beliefs; nor does it mean that they do not or cannot share vision of a future community that is inspired by the belief in transcendence. According to this line of thinking maintained

by the political liberalism, judgments based on religious morality are "inaccessible" because "some of the crucial premises that underlie such judgments are not subject of general acceptance or of persuasive demonstration by publicly accessible reasons."² As I shall demonstrate in this paper, Abrahamic traditions in general, and Islam in particular, have much to contribute to a discourse about the desirability of including universal religious argument calling for human cooperation in establishing a just public order. As a Muslim educated both in the traditional seminary and the modern secular university, I face the unique opportunity and special responsibility of taking up the challenge of a self-critical assessment of current Muslim thought and practice to demonstrate the "accessibility" of religious reasons for developing a necessary "overlapping consensus" in a democratic society for the purposes of just governance.

To begin with the purpose of revelation is to guide rather than govern humankind. Accordingly, the Koranic valuation of human beings is not limited to honoring humankind as the vicegerent of God. It is about believing in the abilities and potential of humankind, the value of time, the authority of the human mind in pursuing the truth, and the future of humankind. The critical evaluation of inequalities between men and women, the degradation of human resources, and the disregard of human experiences provides the Muslim thinker with an opportunity to restate human values in an Islamic context and to restore the balance with other considerations such as national interest, priorities, and traditions.³

By virtue of explicit recognition of a common ground shared between Muslims and the people of the Book, Islam has never harbored a widespread belief that Jews and Christians are to be denied salvation and hence reduced to *persona non grata* status if

2. Kent Greenawalt, *Religious Convictions and Political Choice* (New York: Oxford University Press, 1988), p. 68.

3. It is not an easy task for any conscientious Muslim intellectual in the Muslim world or in the West to undertake this critical task without endangering his/her life. The intolerance exhibited by the religious establishment in some Muslim countries and more recently in Muslim communities in Europe and North America, which feels threatened by the rational assessment of religious texts in their historical context in the universities, has forced these scholars to abandon their religious and moral responsibility to their own community. In some cases these scholars have been forced to go underground and seek asylum in the West. As is well known, both Jewish and Christian academicians have, in the early part of their entry in the academic world, have encountered similar reaction from their respective religious authorities and congregations around the world. For Muslims in general, and their communities in the West in particular, academic study of Islam is a new phenomenon that causes their deep felt insecurities in faith to react strongly against anything that appears to challenge their long-held belief system.

they do not first convert to Islam.⁴ Unlike the early Christians, the early Muslims felt no need to establish their socio-political and religious identity at the expense of another community.⁵

Moreover, Muslims, unlike the Jews, did not regard their own community as uniquely selected to receive divine guidance in a world otherwise bereft of it. Muslims thought of their community as one among many divinely guided communities, all at their beginning equally blessed. Furthermore, as acknowledged in K. 5:48, the Muslims, like various other religious communities, are also an autonomous social organism with their own law for their own members.

Can Religion Become a Source of Democratic Pluralism?

Exclusion of religion as a source of democratic pluralism has been a common tendency in many societies that foster secular values and a clear demarcation between the public and private spheres of human activity. Religion is to be tolerated and even abstractly supported without affording it a clear voice in the public arena because it lacks the ability to communicate with those outside the community.

All world religions, at one time or other, have succumbed to secular pressure and have subordinated their core spiritual-moral message to the political ambitions of their particular communities. Such marriages of convenience between exclusive faith communities and political power have actually led to the disestablishment of the universal ethical and legal foundations of various religious traditions. Abrahamic religions include among their theological doctrines of divine justice and human moral agency concepts of individual and collective responsibility to further a divinely ordained ethical public order.

Thus arises the concentration of comprehensive religious-secular power in the hands of an exclusivist leadership whose views of private morality are divorced from the communalistic vision of society, with the attendant mistreatment of those within and outside the community who reject that community's religious exclusivist claims. Monotheistic communities have from time to time denied their individual members a

4. Karl-Josef Kuschel, *Abraham: Sign of Hope for Jews, Christians and Muslims* (New York: Continuum, 1995), p. 190.

5. Mark R. Cohen, *Under Crescent and Cross: The Jews in the Middle Ages* (Princeton: Princeton University Press, 1997), p. 26; Marcel Simon, *Versus Israel: A Study of Relations Between Christians and Jews in the Roman Empire (Ad 135-425)* (New York: Oxford University Press, 1986), especially chapter 3.

right to dissent from or to reject the communalistic interpretation of their respective traditions because of the fear that such internal dissension (usually labeled apostasy) is potentially fatal to the collective identity of the faith community and its social cohesiveness.

There is a strong desire among the people of various religions to prevent any form of internal dissension. The conflicting and even incommensurable theological positions on freedom of religion in different world communities has led to the oppressive use of force to ensure adherence to a single comprehensive religious doctrine. The ensuing intolerance has manifested itself in intra-faith relationships as well. Whereas Muslims treated other religious communities with relative tolerance, they often treated their own dissenters with extreme cruelty. Thus, for instance, under various powerful Muslim dynasties the Shi`ite or Sunni minority suffered more oppression than did the Jews and the Christians.⁶

The Iraq-Iran war in the 1980s and the Gulf War in the 1990-91 brought home a realization that even secularly based imported ideologies like nationalism and socialism could not advance the cause of pluralistic, tolerant political culture. The imported ideologies, to be sure, were enforced from above without people's rational consent or political participation. Hence, they flagrantly failed to generate the necessary consensus for change in conservative Muslim societies.

The Koran does not teach that humanity has fallen through the commission of original sin. But it constantly warns human beings about the egocentric corruption that can weaken the determination to carry out divine purposes for humankind. Human pride can infect and corrupt undertakings in politics, scholarship, everyday

6. The Shari'a treated the non-Muslim minorities as a special legal category of *ahl al-dhimma*, giving them a status of "protected minorities." And, even when it discriminated against these minorities, their autonomous status as self-governing community was well-established. On the contrary, there is nothing in the law to guarantee the protection of the life and property of a `dissenter' within the community. A Shi`ite minority was viewed as a `heretical' group by a Sunni majority in power. The situation changed when a Shi`ite dynasty was in power. However, the sheer majority of the Sunni Muslims ruled out the treatment they meted out to the Shi`ite minorities that lived among them. Muslim sources are replete with reports about the execution of the "heretics" (that is, Shi`ite Muslims) who posed a threat to the Sunni governments in power and who openly dissented from the official majority view of Islam. M. G. S. Hodgson, *The Venture of Islam*, 3 vols. (Chicago: University of Chicago Press, 1974) at various points brings out the state policy of the Muslim rule governing its religious minorities. For instance, see: vol. 1, pp. 242-251; 305-308; vol. 2, pp. 536-539; vol. 3, pp. 33-38. The oppressive treatment of Shi`ites continues to this day in a number of Arab and Muslim countries.

conduct, and theology. The last is the most sinful aspect of egocentric corruption because it is done in the name of God.

Besides stressing the "noble nature" (*fitra*) that promotes human sociability and positive bonds between people because of the common ethical responsibility towards one another, the Koran emphasizes the mutual expectations and relations fostered by universal parentage. The Koran commands people to honor their parents:

Thy Lord has decreed you shall not serve any but Him, and to be good to your parents, whether one or both of them attains old age with thee; say not to them 'Fie' neither chide them, but speak unto them words respectful, and lower to them wing of humbleness out of mercy and say, 'My Lord, have mercy upon them, as they raised me up when I was little. (K. 17:26)

The importance given by the Koran to interpersonal relationships evidently points to the institutions and culture that promote the creation of a spiritual-moral community made up of individuals willing and able to take up the challenge of working for the common good. It is for this reason that the moral performance of an individual in society is to be measured not so much by reference to some ingrained "noble nature" as by the religious-moral institutions through which history has shaped the community's ethical aspirations. The doctrine of the "noble nature" (*fitra*) in the Koran is properly anchored in history of human struggle toward discovering what it is to be properly human.

What of the claim that tolerance leads to a compromise of religious truth? By encouraging tolerance among its members, the community might claim that its transcending quality and its unique relation to truth are sacrificed to pragmatism. Theological differences about any matters in the revelation are difficult, perhaps impossible to resolve. Yet, the spirit of accommodation and tolerance certainly demands that a common ground should be sought for implementing the common good in society. Working for the common good without insisting on imposing the beliefs and desires each holds most dear can result in a legitimate public space for diverse human religious experience.

Can this public space be realized without considering ideas about the highest end of human existence on the earth? Can they be accomplished through communal cooperation for the collective good or widely different and even irreconcilable individual interests? How can a religious community remain neutral and non-interventionist on ethical issues that from the individual's point of view might run counter to one's sense of

the highest end in life?

The secular prescription of Western democracies seems to suggest that religious toleration can be achieved only when the idea of freedom of conscience is institutionalized in the form of a basic individual right to worship freely, to propagate one's religion, to change one's religion, or even to renounce religion altogether. In other words, the principle of toleration is equated with the idea of individual freedom of conscience.⁷ Moreover, it restricts the role of conscience to the domain of private faith, which is clearly demarcated from the public realm – hence the separation of church from state. Whereas one has the freedom to choose between competing doctrines and pursue one's belief in private religious institutions, one is linked in common citizenry in public state institutions. This is the secularist foundation of a public order in which, in pursuit of freedom of conscience, all considerations drawn from belief in God or other sacred authority in one's private life are excluded from the administration of public life.

Abrahamic traditions are characteristically founded upon the scriptures that locate justice in history through community. This ideal of justice in a divinely ordained community is a natural outcome of the belief in an ethical God who insists on justice and equality in interpersonal relations as part of the believer's spiritual perfection. The indispensable connection between the religious and ethical dimensions of personal life inevitably introduces religious precepts into the public arena. In other words, church and state are closely linked, requiring the involvement of the religious community in taking responsibility for law and order.

Freedom of Conscience and Religion in the Koran

Freedom of conscience and religion has been correctly recognized as the cornerstone of democratic pluralism.⁸ Any pluralistic social order requires the active articulation of rational as well as revelational sources of protection for individual autonomy in matters of personal faith within society as part of the divine-human covenant. The question of individual autonomy and human agency might seem peculiar to the modern vision of a public order in which a group of individuals share core ideas, ideals, and values geared

7. John Rawls, "The Priority of Right and Ideas of the Good," in *Philosophy and Public Affairs*, Vol. 17 (4), pp. 251-76.

8. John Rawls, "The Priority of Rights and Ideas of the Good," *Philosophy and Public Affairs*, Vol. 17, No. 4, p. 260, 265.

towards maintaining a civil society;⁹ yet living together in a society requires mutuality not only in matters of commerce and market relations, but it also presupposes a shared foundation of morality and binding sentiments that unite autonomous individuals who are able to negotiate their own spiritual space --and these criteria apply to all societies in all eras.

In general, by virtue of the natural human urge to social interaction, diverse groups fall back on their religious teachings to derive and articulate the rules affecting public life. The recognition and implementation of the religious values of sharing and mutuality creates a civil religion that encourages coexistence with those who, even when they did not share the dominant group's particular vision of salvation, can share in a concern for living in peace with justice. Hence, as I shall contend, the concern for human autonomy, especially freedom of worship (or not to worship), is as fundamental to the Koranic vision of human religiosity as it is to that of other civilizations. The Koran requires Muslims to sit in dialogue with their own tradition to uncover a just approach to religious diversity and interfaith coexistence. Moreover, a rigorous analysis of the Koran will demonstrate that, without recognition of freedom of religion, it is impossible to conceive of religious commitment as a freely negotiated human-divine relationship that fosters individual accountability for one's acceptance or rejection of faith in God, commitment to pursue an ethical life, and willingness to be judged accordingly.

The difference between a moral and religious response to God's guidance is critical here. In relation to the divine purposes for humanity, according to the Koran, God provides two forms of guidance: universal moral guidance that touches all humans qua humans, and particular revelatory guidance that is given to a specific faith community. On the basis of universal guidance, it is conceivable to demand uniformity because an objective and universally binding moral standard is assumed to exist that guarantees true human well-being. In enforcing that basic moral standard, resort to compulsion through legitimate enforcement is justifiable. However, on the basis of particular guidance through scripture, it is crucial to allow human beings to exercise

9. Adam B. Seligman, *The Idea of Civil Society* (New York: Free Press, 1992), Chapter 1 and 2 trace the development of the idea in Europe and the United States. The work is not comparative in any sense and therefore does not deal with similar development in other societies. But, as pointed out in this work, Muslim societies are heir to both biblical and Greek ideas of individual, private and public realms of human activity. Hence, some of the characteristics that are now identified as being consonant with a civil society have been present in all cultures where people had to learn to live in harmony.

their volition in matters of personal faith because any attempt to enforce religious conviction would lead to its negation. And although the comprehensive nature of scriptural guidance provides a detailed description of ideal human life on earth that is consonant with the historical and cultural considerations of community life in Islam, it removes the God-human relationship from human jurisdiction.¹⁰ So construed, the aspect of revelatory guidance that regulates the God-human relationship is concerned with "reminding" and "warning" people to heed the divine call through "submission" to God's will. As the head of the community, the Prophet could not use his political power to enforce a God-human relationship that is founded upon individual autonomy and human agency. In fact, the Koran repeatedly reminds the Prophet that his duty was simply to deliver the message without taking it upon himself to function as God's religious enforcer (K. 17:54; 50:45).

This clarification regarding the two forms of guidance that the Koran speaks about provides us with a scriptural basis for freedom of religion. Not only does it maintain the idea of universal and objective moral values that are cognitively accessible to human nature without any distinction between believer and non-believer; it also upholds the notion of a fallible conscience that might fail to respond to God's call. This notion of the possibility of rejecting religious guidance results in the toleration of human autonomy in matters of religious choices.

Freedom of Religion in the Context of Islamic Public Order

But the tension begins as soon as the Koran speaks about the just order. There are numerous prescriptive propositions that deal not only with individual religious freedom, but also with the creation of a just social order. I have shown elsewhere how under certain conditions the Koran 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

10. Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame: University of Notre Dame Press, 1994) pp. x-xi uses "thick" to designate the detailed reference to the "particularist stories" across different cultures, which also possess "a thin and universalist morality" that they share with different peoples and cultures. The "thickness" and "thinness" of the moral tradition of particular peoples and cultures also lead us to recognize the "maximalist" and the "minimalist" meanings, respectively, in that tradition, with a clear understanding that "minimalist meanings are embedded in the maximal morality, expressed in the same idiom, sharing the same . . . orientation" (p. 3). I have introduced "universal" and "particular" guidance in the Islamic tradition in a similar conceptual framework, where the universal provides the minimalist and thin description of the moral principles; whereas, the particular, provides the maximalist and thick description of culturally integrated moral language that responds to specific purposes.

against the established Islamic order.¹¹ The eradication of corruption on earth, taken in the light of the Koranic principle of instituting good and preventing evil, is a basic moral duty to protect the well being of the community. In the Islamic polity, where religion is not divorced from the public agenda, leaving adherents of competing doctrines free to pursue their beliefs engenders an inherent tension between religious communities that has to be resolved through state regulation.

The "millet system" in the Muslim world provided the pre-modern paradigm of a religiously pluralistic society by granting each religious community an official status and a substantial measure of self-government. The system based on the millet, which means a "religiously defined people"¹² was a "group rights model"¹³ that was defined in terms of a communitarian identity and hence did not recognize any principle of individual autonomy in matters of religion. And, this communitarian identity was not restricted to identifying non-Muslim "protected minorities" (*dhimmis*);¹⁴ the millet's self-governing status allowed it to base its sovereignty on the orthodox creed officially instituted by the millet leadership. Under the Ottoman administration this group status entailed some degree of state control over religious identification, overseen by the administrative officer responsible to the state for the religious community.¹⁵ In addition, the system allowed the enforcement of religious orthodoxy under the state patronage, leaving no scope for individual dissent, political or religious. Every episode of the individual exercise of freedom of conscience was seen as a deviation from the accepted orthodoxy maintained and enforced by the socio-religious order.

Such evaluation of the dissent within the Muslim community was also treated with much intolerance that was thoroughly institutionalized in the laws dealing with apostasy and religious rebellion. Juridical studies have shown with ample evidence that Muslim jurists have not engaged in a conceptual investigation of the ethical-legal

11. Abdulaziz Sachedina, "Justifications for Violence in Islam," *War and Its Discontents: Pacifism and Quietism in the Abrahamic Traditions*, ed. J. Patout Burns (Washington, D.C.: Georgetown University Press, 1996), pp. 122-160.

12. Benjamin Braude, "Foundation Myths of the Millet System," *Christians and Jews in the Ottoman Empire: The Functioning of a Plural Society* (New York: Hoes & Meier Publishers, Inc., 1982), p. 69.

13. Will Kymlicka, "Two Models of Pluralism and Tolerance," in *Toleration: An Elusive Virtue*, ed. David Heyd (Princeton: Princeton University Press, 1996), p. 82.

14. Braude, "Foundations...," *Christians and Jews*, pp. 69-72.

15. Ibid.

presuppositions of certain commandments in the Koran. In particular, the absence of a thorough analysis of the Koranic ethical-legal categories on the one hand, and the ethical-religious on the other, has generated rulings that fail to recognize separate jurisdictions for God-human from human-human relationships. For instance, the Koran assigns Muslim public order the obligation of controlling "discord on earth." This phrase is part of a long verse that prescribes the most severe penalties for rebellion:

The punishment of those who fight against God and His Messenger, and hasten to do corruption, creating discord on earth: they shall be slaughtered, or crucified, or their hands and feet shall alternately be struck off, or they shall be banished from the land. This is degradation for them in this world; and in the world to come awaits them a mighty chastisement, except for those who repent before you lay your hands on them. (K. 5:33-34)

That the Koran presents comprehensive commandments in which moral, religious and civil are not always easy to distinguish is demonstrated by the equal gravity under civil law accorded to moral and religious transgressions by Muslim jurists.¹⁶ Moreover, Islamic law treats these transgressions as affecting not only humans, but also God. There is a sense in which both humans and God may have claims in the same infringement, even if the event seems to harm only one of them. Although punishment of crimes against religion are beyond human jurisdiction, the juridical body in Islam is empowered to impose sanctions only when it can be demonstrated beyond doubt that the grievous crime included an infringement of a human right (*haqq adami*, or private claim). The supreme duty of the Muslim ruler is to protect the public interest, function for which the law afforded him an overriding personal discretion to determine how the purposes of God might best be achieved in the community.

Since criminal law in Islam was a system of private law that fell under the ratifying and enforcement powers of the established political regime, prosecutions for offenses like false accusation of unlawful intercourse or theft, crimes that offend against both God's will and just human relations, take place only if initiated by the victim, and the plaintiff must be present both at trial and the execution.¹⁷ In the case of unlawful

16. Schacht, *Introduction*, pp. 175-176.

17. *Ibid.*

intercourse the witness plays a crucial role. There must be four witnesses to the actual act of intercourse. Moreover, at the time of punishment, if the witnesses are not present (and, if the punishment is stoning, if they do not throw the first stones) the punishment is not carried out. If the thief returns the stolen object before an application for prosecution has been made, the prescribed punishment lapses; repentance for highway robbery before arrest causes the punishment to lapse; and if an offense is treated a misdemeanor (*jinayat*) and the complainant is willing to pardon, blood-money may be paid instead or the punishment remitted altogether. In the cases of offenses against religion that are not sanctioned by specific punishments — apostasy, for example (for which there is no defined punishment in the Koran) — the effects of repentance are even more far-reaching.

Determining the role for Islam in Iraq

I do not wish to leave my subject at the level of theory without relating it to the concrete situation dealing with defining the role of Islam in the development of democratic constitution in Iraq. Off and on there has been a call for integrating the Shari‘a in the new constitution in Iraq. At different times, religious leaders, mainly Shi‘ites, but also some Sunnis, like the professor of the Shari‘a and the imam of the Friday prayers in Baghdad, Dr. al-Qubaisi, have indicated the Islamic nature of the Iraqi society and the need to make Islamic social and political values part of the overall new political system of Iraq. To assess the seriousness with which this call is made one needs to identify the authority that gives the statement. It is not far-fetched to assert that the religious leadership in Najaf is interested in seeing that the Iraqi constitution reflects the majority view wishing to fulfill the religious dream of situating the Shari‘a law at the heart of the political governance.

However, such a call needs to take into consideration fundamental problems that arise in the Iraqi situation as a modern nation-state. First is the fact of ethnic pluralism that exists in developing a sense of national identity. This has also implications for the development of a democratic constitution in which the notion of citizenship becomes the principle for power distribution. Second is the fact of sectarian plurality that informs religious identities within the broad national culture. This latter identity has gained a heightened sense in the context of enforced Ba‘thist, secular ideology, during the last three decades. In fact, with favored status of the Sunni community under Saddam, a sectarian identity assumed the source of prime identity in terms of claims and rights that were in many instances denied to the Shi‘ites by the Ba‘thist government. This entrenched sectarian identity might also become the

source of the derailment of any progression towards democratization of political institutions transcending ethnic and sectarian divide today.

The new democratic constitution will be impossible to draft without addressing some of the issues that were raised above and which arise out of religious convictions. The question of guaranteeing the rights of non-Muslim minorities has come up quite often in the present deliberations. While it is important to make sure that the new constitution guarantees the fundamental human rights of all citizens, the major issue that needs even more immediate attention is the treatment of women as a “minority”. There is a strong possibility that both political as well as religious leaders can disregard the Iraqi women’s rights. Cultural obstacles are imposed by patriarchal traditionalism that prevails in the religious center like Najaf; whereas discriminatory evaluation of a woman’s personal status is enshrined in the inherited juristic law, the Shari‘a. Both these elements can result in the irreparable damage to the status of a woman in new Iraq, which can deny giving a clear and legitimate voice to women who constitute over half of the Iraqi population.

Nevertheless, attention must be paid to the cultural sensitivity to anything Islamic in Iraq. Even the atrocious secularism of the Ba’athists could not suffocate this connection of the people with Islamic values. The moderates or reform-minded intellectuals in Iraq, mostly the product of the secular education, tend to ignore the popular voices whose loyalty to their religious leaders is unquestioning. The bridge to this connection with the populace today is to provide authentic information on how Islam or Islamic law can or cannot become the source of governance in modern Iraq. Ignoring this important ingredient in building the necessary consensus on how the political system will evolve can actually lead to the rise of militant responses, flared by some of the politically opportunist religious leaders, intent to fill the power vacuum today.

There is little doubt that a fresh understanding of the Shari‘a in the public arena should be in place to further its gradual acceptance by the people. Secularism with its insistence on the separation of “church” and “state” (“seminary” and “state” in Iraqi context) is not responsive to the culture that demands keeping religious values at the core of the emerging national culture. To put it differently, “disestablishment” of Islam will not work. In fact, not responding to such demands will actually backfire and will be seen as intentional marginalization of religious institutions and leaders, who are now actively demanding to be heard after a long period of their suffocation by the state. At the same time, the main problem that haunts any religious system, including the Shari‘a, in a multi-faith situation is its claim to exclusive loyalty. It is worth keeping

in mind that, as discussed above, the Shari‘a does not advance a concept of egalitarian citizenship - the core of civil rights and responsibilities in a modern nation-state. It simply divides the people as “Muslim members” with full privileges, and “non-Muslim minorities” with protected status under its divinely ordained system. Furthermore, it ordains laws for both the religious and the social-political aspects of everyday life. Herein lies the main cause for its incompatibility with the modern democratic system that conceives of its nationals as equal citizens, with equal rights and obligations. More importantly, in the area of gender relationships, the traditional system has instituted inequalities between men and women that could derail the democratic system built on equal rights of all its citizens, regardless of their gender or any other differentiations.

Hence, Islamic heritage has no paradigm at this time that can offer realistic solutions to the Iraqi situation that are demanded by its ethnically, culturally and religiously pluralistic population, unless, as demonstrated above, a fresh reading of this heritage is undertaken. Since the majority of the population is Muslim, one can begin to explore the possibilities of retrieving the core values of Islamic system to offer this fresh Islamic paradigm. This paradigm is actually derived from the religious law of Islam, the Shari‘a itself. Let us consider this in the context of Iraq’s need for a democratic constitution.

To begin with, we need to search for freedom of religion to enforce an individual’s right to adhere to any or none of the confessional communities, without the interference from the state. In other words, this is the foundation stone of a democratic Muslim state in which religious freedom to forge one’s spiritual destiny is offered to all citizens without any coercion or discrimination. Is it possible to speak about human-God relationship in which the state has absolutely no right to intervene or to impose uniformity?

The Shari‘a provides the paradigm of a civil religion by separating the jurisdictions (*nitaq sulta*) in all its laws. I call this a principle of “secularity” (*sifa madaniyya*). This principle allows religion to manage God’s relationship with humanity without interference from any human institutions, including the mosque and the seminary. All those laws that regulate God-human relationship are beyond any adjudication by human courts. There are no penalties for missing the obligations that one performs as part of his/her relationship to God. Only God reserves the right to demand an explanation for such a breach between individual believer and God. This area of the law covers the *‘ibadat* – that is all those actions that are done clearly with the intention of pleasing God.

The second major area of the Shari‘a deals with inter-personal social transactions. All laws regulating human relationships are covered under this section. This area of the law is known as *mu‘amalat* – that is, social transactions that must be conducted between individuals and groups, including the state, in keeping with the demands of justice in all areas of human existence. In this area, human courts have jurisdiction to enforce its decisions and to demand obedience. More pertinently, it is in this area of the law that reforms affecting social issues have taken place through the reinterpretation of the religious sources. Hence, the theoretical immutability of the sacred law does not get extended to this area.

This separation of jurisdictions is the closest the Shari‘a can come to the secularism adopted in the western constitutions. It allows for functional secularity that can generate civic equality and mutual responsibilities at the human-human level of relationship, while maintaining the particularity and independence of the religious tradition from state administration. In other words, the separation of the jurisdictions in the Islamic law can respond to the needs of the modern nation-state, where the state must adopt non-interventionist policies in the matter of religious convictions of its citizens, but guarantee civic equality on the basis of human-human relationships, as required by the Shari‘a. More importantly, this aspect of interpersonal relationships could be advanced for the improvement of women’s moral and political equality with men, especially when the law concedes that the women have sufficient capacities to enter contracts as equals. In the traditional formulations there is an inconsistency in the law regarding men-women inequalities, which needs to be addressed in terms of the needs of a nation-state committed to democratic values.

Is it reasonable to expect that the fresh adoption of the classical formulations about separate jurisdictions might help carve for Islam an important place in public arena as the ethical-religious voice of guidance rather than governance? In the Iraqi culture it is ultimately the religious authority trusted by the people that can make such a meaning of the Shari‘a acceptable. Without the cooperation of religious scholars at this time, it is hard to sell even democracy to the people who are conditioned to political and religious authoritarianism that prevails in Baghdad and Najaf, respectively. The fear is: Will secular form of authoritarian politics replace prone to authoritarian religious politics? It is certain that without the cooperation of moderate religious leadership, Islam in Iraq, especially the version that is heard at the present time, will retain its classical grip of claiming a total control over all the spheres of human activity ushering the rule of the uncharted sacred realm. Herein lies the danger to the core democratic values of civic equality of all citizens under a modern nation-state. Islamic

heritage must guide rather than govern a modern nation-state. Iraq can benefit from its religious heritage provided it treats all its citizens as “equal in creation.” Without this foundation no political system can claim to be democratic and pluralistic.

Concluding Remarks

The role of religion in creating the dichotomous relationship between two senses of loyalty – loyalty to one’s nation and loyalty to one’s religious tradition – is important in Muslim political culture. The divided loyalty is also a source of two identities in Muslim consciousness, the identity generated by one’s relation to God, consolidated by observance of the sacred law of the Shari‘a, and the identity created by one’s experience of living as a member of a corporate body. The tension arises when the two sources of identities, revelation and reason, make incompatible and incommensurable demands upon an individual to hold exclusive and inclusive membership in the community and modern nation-state, respectively. The solution is provided in the recognition of a principle that can serve as the foundation for a civil society. This principle can lead the two identities to converge on a common goal – the overlapping consensus – about what is the common good in society. Regardless of one’s religious affiliation, the principle, enunciated in one of the administrative documents of classical Islam, recognizes humans as “equal in creation” and in need of guidance and not governance from religion to inculcate values that will sustain a meaningful life. The document was written by the caliph ‘Ali (d. 660) at the time when he appointed his governor for Egypt and its provinces. It is important to bear in mind that Muslim conquerors were in minority in Egypt. Egypt had a large Christian population, to whom a proper status had to be granted for administrative purposes. To reduce the majority to a “non-Muslim” tolerated people was detrimental to the development of a sense of civic responsibilities to the conquering Muslim army. In this context, the idea of civic equality was introduced in the following document written by the caliph himself to underscore the fact that the communitarian membership was not incompatible with the civic equality based on human dignity. As long as the role of faith was to instill moral and spiritual awareness leading to responsible behavior in society, the governance could be founded upon a more universal principle of recognizing other human as one’s equal in creation. In other words, the real concern of religion was to generate respect for all humans as sharing the dignity and honor as God’s creation:

Infuse your heart with mercy, love and kindness for your subjects. Be not in face of them a voracious animal, counting them as easy prey, for they are of two kinds:

either they are your brothers in religion or your equals in creation. Error catches them unaware, deficiencies overcome them, (evil deeds) are committed by them intentionally and by mistake. So grant them your pardon and your forgiveness to the same extent that you hope God will grant you His pardon and forgiveness. For you are above them, and he who appointed you is above you, and God is above him who appointed you. (emphasis added)¹⁸

The recognition of non-Muslims as “equals in creation” is certainly a status that can be accorded to a citizen regardless of his/her religious affiliation. The role of religion, then, is to foster norms, attitudes, and values that can enhance peaceful relations among different ethnic and religious communities. The norms like “your brothers in religion or your equals in creation” can and should serve as the founding principle of governance through the creation of a civil society.

The question that needs to be addressed is whether a modern society with its pluralistic and diverse citizenry in terms of religious and cultural affiliations can afford to ignore such valuable guidance in matters of its governance of a paradigmatic city of humans “brother in religion or equals in creation”? The response is very clear in the Koran 5:48:

For every one of you [Jews, Christians, Muslims], We have appointed a path and a way. If God had willed He would have made you but one community; but that [He has not done in order that] He may try you in what has come to you. *So compete with one another in good works.* (emphasis added)

It all depends on how the religious communities begin to institutionalize the culture of inclusiveness realizing that it is truly the divine mystery to allow pluralism in matters of faith and law to exist in human society. What matters ultimately is the common moral responsibility that humans share in order to advance common good.

18. This instruction is part of the famous collection of sermons and letters by ‘Ali b. Abi Talib under the title *Nahj al-Balagha*. This translation is rendered by William Chittick in *A Shi’ite Anthology* (London: Muhammadi Trust of Great Britain and Northern Ireland, 1980), p. 69.

A Change in the Theory of Maqāṣid al-Sharī‘ah: Thinking Human Rights

Kazunori Hamamoto

Introduction

Maqāṣid al-Sharī‘ah is translated as objectives of Sharī‘ah, but it also means a methodology of which the most notable characteristic is deriving universals or universal principles of Sharī‘ah, such as the inviolability of life, through induction from all revealed texts, Taking into consideration the situation in which they were revealed. Although discourse on maqāṣid al-Sharī‘ah was far from monolithic even in the past, it is becoming more and more various nowadays. Let us look at the famous thesis that there are five essentials whose protection is the most important purpose of Sharī‘ah: namely, religion, life, intellect, offspring, and property. The first jurist to clearly state these five was Ghazālī, who refined his teacher Juwaynī’s idea on this subject. In the Middle Ages Ibn Taymiyyah and a few others went against this thesis¹, but most proponents of maqāṣid basically followed Ghazālī in this regard. Since the last century, however, while some scholars are content with this classical thesis, others have felt a need for change, facing modern and contemporary legal and ethical issues. Pointing out that medieval advocates of maqāṣid paid too much attention to punitive sanctions when deriving those essentials, a number of scholars in modern times have explored revealed texts more fully and thus have found new essentials of Sharī‘ah. For example, Ibn ‘Ashūr introduced equality and freedom into maqāṣid al-Sharī‘ah². ‘Allāl al-Fāsī discussed human rights, freedom and equality at length in his book on maqāṣid³. Muḥammad Ghazālī added freedom and justice to five essentials⁴. Yusuf Qaraḍāwī maintains

¹ Majdī Muḥammad Muḥammad ‘Ashūr, *al-Thābit wa al-Mutaghayyar fi Fikar al-Imām Abī Ishāq al-Shātibī*, Dār al-Buḥūth li al-Dirāsāt al-Islāmiyyah wa Ihyā’ al-Turāth, Dubai, 1423/2002, pp.126-127.

² Muḥammad al-Ṭāhir bn ‘Ashūr, *Maqāṣid al-Sharī‘ah al-Islāmiyyah*, Dār al-Saḥnūn, Tunis, 1428/2007, pp.93-97, 126-132.

³ ‘Allāl al-Fāsī, *Maqāṣid al-Sharī‘ah al-Islāmiyyah wa Makārim-hā*, Dār al-Gharb al-Islāmī, 1993, pp.225-274.

⁴ Gamal Eldin Attia, *Towards Realization of the Higher Intent of Islamic Law: Maqāṣid al-Sharī‘ah A Functional Approach*, International Institute of Islamic Thought, Herndon, VA, 1428/2007, p.83.

maqāsid should include freedom, equality, human rights and so on⁵. Mohammad Hashim Kamali proposes to add protection of the fundamental rights and liberties as well as other things to the structure of maqāsid⁶. Tariq Ramadan suggests replacing the old set of essentials with a new one, which includes equality and freedom⁷.

Then a question arises: what kind of human rights, freedom, and equality will be derived from pursuing maqāsid al-Sharī‘ah? In this presentation I am going to focus on a couple of issues that are controversial concerning how to interpret revealed texts. My interests here are issues related to international human rights law and Muslims’ reaction to it. Studies have shown that there are striking differences between the West and some Muslim states in understanding freedom of religion and rights of women and religious minorities⁸. In this presentation, however, I cannot cover all these issues, so I am going to deal with only two small issues included in them: first, capital punishment for apostasy, and second, the difference of share between the genders in inheritance.

Another question I have about these various discourse on maqāsid al-Sharī‘ah and human rights is how different they are in terms of methodologies for interpreting the revealed texts. I am interested in whether some modern thinkers have started to use a new methodology that no one could imagine in the middle ages or whether even the most progressive thoughts of today can be regarded as going in the same direction as some medieval ones. I do not mean that today’s Muslims should follow classical fiqh. But given the fact that many Muslims like referring to their tradition, it is worthwhile to study the past. First I am going to show various understandings of human rights among advocates of maqāsid al-Sharī‘ah, and then I am going into the question of methodology.

1. Freedom and Equality in Modern Discourses on Maqāsid al-Sharī‘ah

1-1. Capital Punishment for Apostasy

In classical fiqh, legal schools had different views as to whether this punishment should

⁵ Yūsf Qaradāwī, *Dirāsah fī Fiqh Maqāsid al-Sharī‘ah: Bayna al-Maqāsid al-Kulliyah wa al-Nuṣūṣ al-Juz‘iyyah*, Dār al-Shurūq, Cairo, 2008, p.28.

⁶ Mohammad Hashim Kamali, *Shari‘ah Law: An Introduction*, Oneworld Publications, Oxford, 2008, p.127.

⁷ Tariq Ramadan, *Radical Reform: Islamic Ethics and Liberation*, Oxford University Press, 2009, p.139.

⁸ Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics*, Westview Press, Boulder, CO, 2013, cc.5-9.

be applied to women or not, whether apostates should be given time to repent or not, and whether this punishment should be regarded as a divinely prescribed punishment or not. But they agreed that adult male apostates should be killed unless they changed their mind. The strongest evidence for their arguments is the hadīth, “If anyone changes his religion, kill him⁹.” Also, some jurists quote the hadīth which forbids killing Muslims except in the following three situations: adultery, apostasy and murder¹⁰.

In modern times, however, quite a few advocates of maqāṣid maintain that apostates who discard Islam individually but do not fight against the Muslim community should not be killed. Among them, Qaraḍāwī suggests imposing a discretionary punishment on apostates, but even he admits that apostates should not be killed simply for changing his religion¹¹. One of the reasons that contemporary scholars can boldly go against traditional views in this issue is, I think, that Rashīd Riḍā paved the way for them. In a fatwā, he explains why peaceful apostates should not be killed¹². What he says can be summarized as follows:

While the Qur’ān condemns apostasy repeatedly, it never mentions any criminal punishments for apostasy. Rather, there are several verses that distinguish those who are not hostile to Muslims from those who fight against Muslims¹³. On top of that, at least two verses of the Qur’ān forbid compulsion in the religion¹⁴. It is true that there is authentic hadīth prescribing a death penalty for apostates, but Qur’ānic verses cannot be abrogated by hadīth, though many jurists think mutawātir hadīth can abrogate Qur’ānic verses. Therefore, we should reconcile these hadīth with the Qur’ānic principle of tolerance so that the hadīth will be interpreted as referring to only apostates in a political sense, not in a religious sense (summarized by the present author) .

In my view, it does not matter here whether or not hadīth can abrogate Qur’ānic verses. Since some Muslims insist that peace-oriented verses in the Qur’ān were abrogated by

⁹ “Man baddala dīn(a)-hu fa (i)qtulū-hu.”

¹⁰ Taha Jabir al-Alwani, (tr.) Nancy Roberts, *Apostasy in Islam: A Historical and Scriptural Analysis*, International Institute of Islamic Thought, Herndon, VA, 1432/2011, pp.100-114.

¹¹ <http://www.qaradawi.net/library/53/2503.html>, accessed on September 15th, 2013.

¹² Muḥammad Rashīd Riḍā, *al-Manār*, vol.23, 1340/1922, pp. 187-191.

¹³ Qur’ān 2:190, 4:90, 9:7 etc.

¹⁴ Qur’ān 2:256, 18:29.

the verse of sword, if we touched the question of abrogation, we would also have to discuss the priority between Qur'ānic verses. The point is, however, what the most important principle is in the issue at hand. The Qur'ān repeatedly stated the principle that killing is not allowed simply for religion so that it will never be violated. Then, I wonder how medieval jurists understood this principle? It seems that some legal schools which treated men and women differently in this issue, such as the Hanafis, were well aware of it. That is why they dealt with apostasy as a war-related issue and forbade killing women, although they applied the same rule to all male apostates. The other schools, however, did not pay attention to this principle, and this was also true of advocates of maqāsid in these schools. I am coming back to this question later.

Before moving to the next issue, I should make a brief comment on Qaraḏāwī's suggestion that peaceful apostates should be punished with a discretionary penalty. It is true that his suggestion does not contradict the above principle, but it still contradicts God's words "no compulsion in the religion."

1-2. Gender Equality in Inheritance

The issue of inheritance seems to me more controversial and challenging than the previous one. The Qur'ān stipulates that a son has the same portion as two daughters in inheritance. Despite the apparent inequality in this rule, Many Muslim scholars observe that it seeks for gender equality. Qaraḏāwī explains that if a man inherits 100 thousand riyal and a woman 50 thousand riyal, both will be 75 thousand riyal after they got married, because the man has to pay 25 thousand riyal as dowry and the woman receives 25 thousand riyal¹⁵. Muḥammad Ghazālī criticized classical fiqh concerning marriage and divorce, claiming that it did not fully realize Islamic justice¹⁶. But as far as the issue of inheritance is concerned, he does not seem to have raised any objection to classical fiqh. According to him, by assigning men heavier financial responsibility, Islam relieves women of the burden of earning money and thus preserves their dignity and honor¹⁷.

However, social situation has greatly changed since the prophet's time. Accordingly, some contemporary scholars observe that the traditional inheritance

¹⁵ Yūsuf Qaraḏāwī, *op. cit.*, pp.22-23.

¹⁶ Muḥammad al- Ghazālī, (tr.) Ashur A. Shamis, *A Thematic Commentary on the Qur'ān*, International Institute of Islamic Thought, Herndon, VA, 1433/2011, pp.20-25, 57, 658-660.

¹⁷ *Ibid.*, p.58.

system does not fit the present situation. For example, Abdulaziz Sachedina¹⁸, as well as Tariq Ramadan¹⁹, emphasizing the need to interpret the text according to the context, implies that classical rules of inheritance are outdated. There might be many other Muslim scholars who think equal distribution would be more suitable today, but I feel most of them have not clarified their own position on this issue.

According to a recent study, a number of Muslim activists for women's rights base their claims on *maqāsid al-Sharī'ah* and international human rights law. However, they are not monolithic as to whether or not *maqāsid al-Sharī'ah* accord with international human rights law in every detail; for international human rights law demands that women should have the same inheritance share as men, and this contradicts the Qur'ānic injunction. Some activists claim that even clear injunctions of the Qur'ān are subject to contextual interpretation, while others think Qur'ānic injunctions are eternal and thus hesitate to put the issue of inheritance on their reform agenda²⁰.

In my view, there are two types of contextual interpretation, and 'Umar bn Khaṭṭāb did both of them. He did not cut thieves' hands in the year of famine, and stopped spending money for those whose hearts were inclined to Islam. Both decisions are contrary to the literal meanings of particular verses, though many scholars explain that 'Umar preserved *maṣlahah* that is known from the whole Revelation. The first case can be understood as a temporal decision. 'Umar did not abolish the punishment for thieves but just overlooked crimes temporarily. It is similar to the rule that eating pork is allowed when no other food is available. In the second case, however, the rule implemented during the prophet's time was no longer considered suitable to the social situation. That is to say, he did not spend money for people inclined to Islam since Islam had already been established²¹. The difference between the two cases is that in the former case the normal situation should be restored as soon as possible, but not in the

¹⁸ Abdulaziz Sachedina, *Islam and the Challenge of Human Rights*, Oxford University Press, 2009, p.123.

¹⁹ Tariq Ramadan, *op.cit.*, p.228

²⁰ Marwa Sharafeldin, "Egyptian Women's Rights NGOs: Personal Status Law Reform between Islamic and International Human Rights Law," (ed.) Ziba Mir-Hosseini, Kari Vogt, Lena Larsen and Christian Moe, *Gender and Equality in Muslim Family Law: Justice and Ethics in the Islamic Legal Tradition*, I.B. Tauris, London, 2013, pp.61-69.

²¹ Wahbah al-Zuhaylī, *Uṣūl al-Fiqh al-Islāmī*, 2vols., Dār al-Fikr, Damascus, 1431/2010, vol.1, pp.79-80.

latter, in which we can see the idea that Sharī‘ah allows Muslims to choose a social system most suitable to the situation.

Then, which type does the case of inheritance belong to? Are proponents of this reform suggesting that the social system during the Prophet’s time is the one and only ideal for Muslims and that we should do our best to restore it? If that was the case, it would be more acceptable to everyone. But it does not appear that they want to return to the past. Rather, some of them think desirable today’s situation in which a great number of women have a job. According to them, it was extremely hard for women to earn a living in the Arabian Peninsula 14 centuries ago because of the harsh natural environment and lack of female education, which is why men had greater financial responsibility and inheritance share than women, but today there is no longer need such discrimination and we can have a more egalitarian system. In short, they think that the social system can vary according to the time and place, as long as they do not contradict essentials of Sharī‘ah, such as equality. This is the most striking difference between the reformist and conservative views.

I do not judge which is right; it is not the purpose of this presentation. But as we saw, ‘Umar suspended Qur’ānic injunctions not only temporarily but also based on irreversible social changes. Then, how did medieval advocates of maqāṣid cope with social changes?

2. Comparison of Pre-modern and Modern Maqāṣid Discourses in Terms of Methodology

Now I am going into the question whether there is any difference in methodology between pre-modern and modern maqāṣid theories. As I have discussed, there are various understandings of human rights even among proponents of maqāṣid al-Sharī‘ah. However, the similarity among them is that they derive universal principles through induction from all particular stipulations of Sharī‘ah. In doing so, they try to make sure that there is no contradiction between particular stipulations and universal principles. In the case of apostasy, they derive from a number of particular Qur’ānic verses and Prophetic traditions the principle that nobody should be killed simply because of their religion. Then they need to reconcile this principle with the hadīth “If anyone changes his religion, kill him.” In the Middle Ages, many scholars gave precedence to this hadīth, which means the case of apostasy is an exception to the principle. I think that was probably because they had in mind another principle that religion is more important

than life. Shāṭibī clearly states this principle when he put the five essentials in order²². Moreover, Ṭūfī²³ mentions the permissibility of killing apostates when he discuss five essentials. However, this was not firmly established. In fact, Qarāfī writes life first and religion second²⁴. Āmidī, although he himself gave religion priority, had to dispute with his opponents, who maintained that religious matters belong to God, who is tolerant and mild²⁵. In addition, even if religion is more important than life, there is a room to overlook peaceful apostates. Therefore, when some modern and contemporary scholars gave precedence to the principle that nobody is killed simply for their religion, they did not go very far from classical fiqh. Rather, I would say, they did induction and reconciliation more completely than medieval jurists.

In the case of inheritance, they derive the principle that men and women enjoy equal status. To my knowledge, medieval jurists did not clearly realize this principle, but I think they could have recognized it at least as a very abstract general principle, if they had paid more attention to this matter. In this connection, Ibn ‘Ashūr, although admitting many gender differences like medieval jurists, brings forward the traditionally acknowledged principle that divine injunctions applicable to men are also applicable to women and vice versa²⁶, which implies that medieval jurists basically accepted the principle of gender equality concerning application of law. The question about which scholars differ most strikingly is, as I pointed out, whether or not we can consider the traditional inheritance system to be out of date when it no longer fits the social situation. As I mentioned, ‘Umar bn Khaṭṭāb suspended Qur’ānic injunction not only temporarily but also based on irreversible social change. Then, how did medieval maqāsid theorists deal with social changes? In my understanding, medieval jurists after the formation of legal schools did not depart from revealed texts as boldly as ‘Umar bn Khaṭṭāb and some contemporary scholars did. But I am going to show a few facts which reveal that they sometimes limited applicability of divine prescriptions, taking account of social conditions.

²² Abū Ishāq al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharī‘ah*, Dār al-Kutb al-‘ilmiyyah, Beirut, 1425/2004, p.398.

²³ Najm al-Dīn Ṭūfī, *Sharḥ al-Arba’īn al-Nawawīyyah*, Dār al-Baṣā’ir, Cairo, 1430/2009, p.393.

²⁴ Shihāb al-Dīn al-Qarāfī, *Sharḥ Tanqīḥ al-Fuṣūl fī Ikhtisār al-Maḥṣūl fī al-Uṣūl*, Dār al-Fikr, Beirut, 1424/2004, p.304.

²⁵ ‘Alī bn Muḥammad al-Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, 4vols., Dār al-Ṣumay‘ī, Riyadh, 1424/2003, vol.4, pp.338-340.

²⁶ Muḥammad al-Ṭāhir bn ‘Āshūr, *op. cit.*, p.94.

Najm al-Dīn Ṭūfī is said to have given precedence to maṣlaḥah over revealed texts, but he did so except in ‘ibādāt, devotional acts, and muqaddarāt, matters related to numbers or amounts²⁷. Since the inheritance rule belongs to muqaddarāt, if we take Ṭūfī’s words at face value, it is not subject to interpretation. I guess this is why Wael Hallaq writes that pre-modern legal theories cannot change the proportion of inheritance share²⁸. However, I doubt if Ṭūfī categorically denied rational reasoning in these two fields. Talking about the famous question whether or not fasting, instead of emancipating a slave, can be imposed on wealthy people who had sexual intercourse in ramadān, which belongs to ‘ibādāt, Ṭūfī answers in the affirmative²⁹, although the Prophet gave priority to freeing a slave, following the Qur’ān³⁰. Therefore, I do not think that Ṭūfī categorically forbade taking account of social conditions in muqaddarāt, either.

In contrast to Ṭūfī, Shāṭibī is basically loyal to revealed texts. Shāṭibī takes social changes into consideration only when there is no clear text related to the question at hand or when there is a dire need to depart from divine prescriptions. This reasoning could be explained as considering maṣlaḥah mursalah (unwritten interest), ‘urf (custom) or istiḥsān (juristic preference), but whatever term we may use, Shāṭibī does not approve social practices contrary to Sharī‘ah unless there is a need to do so. Then, in my view, there are two types of need. Shāṭibī says that prostitution is allowed if it is the only way to survive³¹. In this case, Muslims must do something so that nobody will have to prostrate themselves. This is an example of one of the two types, which is similar to ‘Umar’s suspension of amputation. On the other hand, in a fatwa on several people mixing milk to make cheese, Shāṭibī approves this practice based on the social need, although this contract entails gharar, or uncertainty, which is prohibited by the Prophet³². In this case, Shāṭibī does not seem to think that Muslims should try to do away with such a practice. This is an example of the other type, which is similar to ‘Umar’s decision about those whose hearts are inclined to Islam. It might be relevant to

²⁷ Najm al-Dīn Ṭūfī, *op. cit.*, pp.369, 377.

²⁸ Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh*, Cambridge University Press, 1997, p.207.

²⁹ Najm al-Dīn Ṭūfī, *Sharḥ Muḥtaṣar al-Rawḍah*, 3vols., Mu’assasah al-Risālah, Beirut, 1409/1989, vol.3, p.216.

³⁰ Qur’ān 58:3-4.

³¹ Abū Ishāq al-Shāṭibī, *op. cit.*, p.398.

³² Abū Ishāq al-Shāṭibī, *Fatāwā al-Imām al-Shāṭibī*, Muḥammad Abū al-Ajfān, Tunis, 1406/1985, pp.156-160.

point out that it was not very difficult for Shāṭibī to give this fatwa since the Prophet approved several contracts which entail gharar, such as ‘ariyyah (changing dates on the tree for dried dates), ijārah (lease) and salam (forward buying). But even so, it cannot be denied that Shāṭibī gave priority to public interest over revealed text in this fatwa.

Shihāb al-Dīn Qarāfī classified Prophet’s conducts into three categories: first, conducts as a political leader, such as dispatching the army; second, conducts as a judge, such as arbitrating between two people; and third, conducts as a muftī. According to Qarāfī, most of the Prophet’s conducts are ones as a mufti. Then Qarāfī said that while conducts as a mufti bind all Muslims, others should not be imitated without any instruction to do so³³. The reason why I refer to this classification is that I think this classification among the Prophet’s conducts distinguish what is binding universally from what is dependent on the time, place and situation. In this connection, Ibn Qayyim Jawziyyah, talking about a hadīth in which the Prophet told a buyer to give a seller an amount of dried dates, observed that dried dates can be replaced with the staple food of the region³⁴. This opinion might not fit Qarāfī’s classification, but it too implies that even the Prophet’s legal instructions can be interpreted differently according to the context. And if we apply this logic to the Qur’ān as well, it might be possible to give women more than half the share of men in inheritance.

Conclusion

I have discussed whether or not there is a methodological discrepancy between pre-modern and modern theories of maqāṣid al-Sharī‘ah. For this purpose I took capital punishment for apostasy and gender equality in inheritance as examples. As far as the first issue is concerned, I do not see any big methodological difference between medieval and modern discourses. Medieval jurists who upheld capital punishment for apostasy gave priority to religion over life, but there were a number of jurists who opposed this even in the Middle Ages. As for the second issue, I think most scholars can agree the principle of gender equality in a general sense. They disagree, however, when it comes to the question of inheritance. Above all, some will strongly oppose the idea of limiting applicability of divine prescriptions. Yet, as we have seen, medieval advocates of maqāṣid al-Sharī‘ah as well as ‘Umar bn Khaṭṭāb departed from revealed texts, accepting irreversible social changes. I admit that medieval jurists did not do that in

³³ Shihāb al-Dīn al-Qarāfī, *al-Furūq*, 4vols., ‘Ālam al-Kutb, Beirut, n.d., vol.1, pp.205-209.

³⁴ Ibn Qayyim al-Jawziyyah, *I‘lām al-Muwaqqi‘īn*, 4vols., Maṭba‘ah al-Sa‘ādah, 1374/1955, Cairo, vol.3, pp.24-25.

such a bold manner as contemporary scholars do. But even so, it cannot be said that cotemporary scholars have started what medieval could not imagine.

Pluralism in Islam and the Ethics of Coexistence*

Abdulaziz Sachedina talks to Elena Dini

“It is not secularization pushing us to think about coexistence. We already have enough material about it in our traditions”. On October 10th, this is how Professor Abdulaziz Sachedina introduced his efforts on the roots of pluralism and coexistence within Islam to his audience at Hartford Seminary, an institution whose motto is “Exploring Differences, Deepening Faith.” A clearly energetic, dynamic and charismatic man Abdulaziz Sachedina is a professor of Islamic Studies at Virginia’s George Mason University. Born in Tanzania, he may boast an international academic background having studied in India, Iraq, Iran and Canada. His main fields of interest are related to social and political ethics, interfaith relations and human rights in Islam.

In the conference you held at Hartford Seminary about *Political Theology of Pluralism in Islam: Religious Ethics of Coexistence*, you discuss the difference between inclusivism and pluralism, explaining that *inclusivism* acknowledges the presence of other traditions which have some truths while saying that there is a superior one while *pluralism* focuses not only on tolerance but also on accepting the claim of truth in other traditions. Supporting the pluralist opinion, would you then say that Islam is not a superior truth, or better way, for humanity?

I think we have to learn how to be pluralist rather than being simply inclusive. If you are inclusive then you do see yourself as possessing the truth and having a superior claim to the truth. At the same time you are devaluing the truth of the others. To sum up, you are saying: “I respect you for what you are but I am better than you”. Inclusiveness is better than exclusiveness but my fear is that the generality of the believers are exclusivists rather than inclusivists. The masses are not necessarily looking at themselves as simply superior; sometimes they end up looking at themselves as the saved ones, as those having the complete truth.

Therefore, my struggle on the ground is to teach this inclusiveness which allows you to be yourself while not devaluing the other at such an extent that you say, “I can tolerate you but I do not accept you”.

* This article has already been published on www.resetdoc.org.

But right now we are talking about inclusiveness, not about pluralism. I am wondering where this transition from inclusiveness to pluralism takes place.

Pluralism in Islam is possible because God sent pluralism. However, we are really dealing with a complex situation and I do not want to draw down the tensions since tensions do remain. In my book on *Islam and the Challenge of Human Rights*, I make quite clear that ultimately religious communities are psychologically exclusivists while in modern times we need a pluralistic attitude to accept other human beings as equal partners in the citizenry. We live in modern nation states where people are citizens and they have equal human rights and responsibility. This is why religious communities, especially the majority faith communities, need to learn how to respect the others. To believe that one has the truth does not imply that one needs to dehumanise the other. The other is a human being and has the right to believe what she or he believes in. This attitude requires respect, mutuality and reciprocity.

Citizenship is different from the membership in the faith community. Faith communities often build a wall around themselves and they are very clear about what are their rituals, their practices and their beliefs. However, what we have to look for are intersections of concentric circles and not circles with a fence surrounding them. Belonging to a different faith community does not imply fighting and hating each other. The idea of concentric circle aims at showing that me, a Muslim, and my Catholic neighbour we share some values and it is where we find our common ground.

In a society where a good number of people do not share a traditional religious understanding of life, how can the concept of religious pluralism be implemented?

I think this is where my intellectual struggle and striving goes on. When I go to India, I see Hindus and Muslims living peacefully. Differences are still obviously there but there is a way in which Muslims and Hindus create a culture of cooperation. Today many Christians, Muslims, Jews do not want to be part of confessional communities. Many Muslims that I know do not go to the mosque anymore: they do not like organized religion and they think it is too narrow-minded. Probably many people in the Church are going into the same kind of struggle.

There are cultures where many faiths are living together but the kind of religiosity is not the same for everyone. We disagree on spiritual and theological matters but we are

all members of this human society and we need to create an understanding in which we all fit without causing fear or difficulties among us. The culture of cooperation today is built around citizenry.

This is why multi-cultural and multi-religious societies have an advantage. Take the example of Saudi Arabia: religions other than Islam are not recognized and, clearly, there are no institutions for other religions. Thus, Saudis have a difficult time when they come to North America because they have a very different mentality. But if we think about Iran, there we have Jewish Iranians, Christian Iranians, we have Shi'i and Sunni Muslims. This is not to say that there are not discriminations among themselves but, at the level of citizenship, in the business world or in the bazaar they are cooperating, they work together.

Religious differences today may not matter much in my identification. There was a time, 50 or 60 years ago, in which my religious identity was a very important part of me. Now it does not matter.

We often hear the distinction made between private and public sphere in religion. In your book *The Islamic Roots of Democratic Pluralism* you state that depriving a believer of his/her ability to bring faith into the public sphere would mean “depriving religion of its ethical foundation” (p.10). What do you think secularists are worried about when they talk about religious interference in public life and how can this conflict be solved?

Secularists think that if religion is allowed to have a louder and aggressive voice in the public sector then we might have to face more problems. Secular political philosophy considers its function to build consensus and here we need overlapping consensus. We want to bring together people with different understandings and worldviews in the name of a common cause. In fact, there is something we all agree upon and that pertains to the field of ethics, like for instance dealing with poverty. In the secular worldview, people need an orderly life so that they can prosper, live peacefully, and have basic freedoms. Secularists fear that at the moment religious people come to the public sphere, they want to control these freedoms; they may not want to recognize the homosexuals, they may not want to recognize women's rights.

On one hand, I think that secularists' fears are well founded but, on the other hand, there is another dimension that secularists are missing. Making a common cause

becomes possible because there is a common moral terrain that unites people showing them the importance to cooperate. People should be ready to come together and to say: “I know that I will not be as religious as you are and you do not need to be as secular as I am or as atheist as I am, but we do need to cooperate”. Partnerships are really needed in our societies.

Let us make an example of Iran. There, religionists and secularists have been talking to one another but liberal secularists may still consider religionists as “troublemakers,” willing to control the rest of the society and limit freedoms. This fear is somehow well founded because when religious people come to the public sphere, they bring a morality infused by religious values which encroaches upon the neutrality of the public space. It then results in imposing a woman to cover her hair or to tell people what to wear. In the last days I heard for example that Hassan Rohani, the new president of Iran, said that *hijab* should not be made compulsory. Women should wear well respectful clothes in public areas but they should have a choice if they want to cover or not. The moment religions start compelling the people doing something then we run the risk of creating hypocrites. We are not helping people to become religious or spiritual at all.

There is a saying, “My freedom ends where your freedom begins”. How do you agree or disagree with this statement?

My exercise of freedom should not impinge upon your exercise of freedom. I can talk about my rights of saying anything I want to you but the moment I, for example, use hate language for you and I insult you or your religion in the public, I am encroaching upon your freedom. You have the right to believe in anything you want to believe. My freedom has its own limits. I cannot use hate language because I do not like you or in order to put you down. There should be reciprocity in the claims and entitlements that we ask from each other. If I ask you to respect me then you also ask me to respect you. Reciprocity is an important tool of maintaining balanced freedoms. I cannot exercise freedom without taking the other into consideration.

国際ワークショップ

多宗教世界におけるイスラームの法と倫理

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