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1 Framing the debate on Islam and human rights

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Is Islam compatible with human rights? This fundamental question has generated a large body of literature addressing the question from different, often opposing, positions. The literalist reading of Islam emphasises the gaps between the limits of tolerance and acceptability in the Qur'an and Hadith on the one hand, and internationally-sanctioned standards for human rights. The status of women and religious freedom are often the two key areas of contention. This approach, for example, highlights specific passages in the Qur'an that articulate the position of women in matters of legal judgment, inheritance and in the family setting. The impression of an unequal standing for men and women in these matters is inescapable. What is more, inequality can turn into something much graver as issues relating to religious freedom bring into question the physical safety of Muslims who may wish to leave Islam (Saeed & Saeed 2004). Leaving the faith is condemned as apostasy and is punishable by death. Taking away life is the ultimate punishment, and in direct violation of the right to life. In a literalist reading of Islam, there is little room to negotiate human rights, as clear injunctions contravene the normative framework of the international human rights regime.

It is perhaps ironic that the literalist reading of Islam has been adopted by two very distinct groups. On the one hand some traditionalist Muslim leaders, as well as Islamists, have taken up a hostile attitude toward the idea of a human rights regime because that is seen as nothing more than a cover for a neo-colonial attempt at regaining domination over the Muslim world by Western powers. The fact that the normative framework of the human rights regime emerged in the halls of the United Nations where Western powers tend to set the agenda is seen as proof by the human rights sceptics of a Western conspiracy. And the principles enshrined in the Universal Declaration of Human Rights were seen as contravening the Shari'a. Accordingly, this Declaration (adopted in 1948 by the United Nations)
was rejected by Saudi Arabia as un-Islamic (Morsink 1999; Mayer 1999). This perspective is shared by groups like the Taliban in Afghanistan, or the trans-national Islamist group Hizb ut-Tahrir which argue that Islamic injunctions in the text are perfect and eternal. Adopting anything that contradicts or deviates from them, therefore, is forbidden.

The above position rests on the belief that the Qur'an and Hadith are immutable. Emphasising the timeless and eternal nature of Islamic injunctions presents a challenge for its application in the contemporary era, some fourteen centuries after their articulation. In the literalist approach, this challenge is dismissed as irrelevant while insisting that holy injunctions cannot be continuously modified to suit changing times. Doing so, they may argue, would devoid Islam of its content and leave an empty shell. Indeed some Islamists use the very point regarding the temporal modification of Islam to criticise ruling regimes. For example, the famous father of Islamism Sayed Qutb, rejected the Egyptian regime for allowing society to astray from the path of Islam and permitting Islam to be contaminated by contemporary influences (Khatab 2002).

In a mirror image of this literalist approach to Islam and human rights, critics have presented the two as poles apart and insisted on the incapacity of Islam to reform itself. Authors such as Bernard Lewis and Daniel Pipes have argued that Islam contradicts modern human rights norms and conventions as it reflects the norms and conventions of the seventh-century civilisation of Arabia. In an ironic twist, they add their voice to the literalist Islamic approach by insisting on the static nature of Islam. For instance, Lewis has argued that there is an inherent resistance to democratic governance as the notion of a ‘corporate or majority decision’ through electoral means is an ‘alien’ concept in many Islamic societies, with violent contestations, in this view, seen as the norm (2005: 36). Echoing the literalist approach to Islam, Lewis insists on the incompatibility of Islam and modernity.

Resonating such a theme, Daniel Pipes, former appointee by the Bush Administration to the United States Institute of Peace, leads the charge in seeking to highlight what he claims is the ‘historically-abiding Muslim imperative to subjugate non-Muslim peoples’ (2006). The conclusion Pipes draws is that ‘ultimately, there is no compromise’ with Muslim communities and what he sees as the inherent absolutist drive of the religion, one that, in his own words, asks the question of whether ‘the West [will] stand up for its customs and mores, including freedom of speech, or will Muslims impose their way of life on the West? ’ (Pipes 2006). The literalist correlation between these two groups is a profound irony, however, one that appears lost on such ideologues.
The literalist approach to Islam has not gone unchallenged. Abdullah Saeed, among others, has argued that there is nothing certain and undeniable about the literalist approach. The text, the holy book of Qur'ān, is a compilation of disparate versus that where revealed to Prophet Muhammad over more than two decades. Often they referred to specific cases and could be seen as contradictory. How is one verse to be given precedence over the next? Reading the text invariably involves a certain degree of interpretation and choice. According to Saeed, there is nothing certain in the certainly claimed by the literalist readers of the text (2006: 153). In recognising that, Saeed advocates recognition of human agency and an acknowledgment of the context to help give meaning to the text. Such contextualisation offers new opportunities for exploring the relevance of Islam to contemporary conditions and the challenges faced by Muslims today.

The above recommendation holds significant promise on the question of compatibility between Islam and human rights. An increasing number of Muslim thinkers in modern times have tried to move away from ideological rigidity, emphasising instead the essence and core values embedded in the holy text. In this perspective, restrictions on women and religious freedom which are conventionally applied in most Muslims societies, are challenged as contradictory to the essence of Islam. Accordingly, Islam is seen to be founded on the principle of unity between God and the humankind; piety and personal devotions are key to the ideal Islamic state. This approach places the individual, the Muslim believer, as the conscious actor on the centre stage, and may therefore be called the humanist approach. In this vein Ali Abootalebi, a former associate of the Iranian President Muhammad Khatami, has argued in favour of ‘freedom of thought and expression, including freedom from government control and suppression’ (1999). In this approach, state-imposed gender segregation and dress code policing which directly affect women in Iran and Saudi Arabia are dismissed as over-zealous interpretations of the faith.

Similarly, authors such as Abdullah Ahmed An-Na’im have argued for the religious neutrality of the state in Muslim communities. For An-Na’im, Islamic thought can be injected with renewed vitality and flexibility through the process of *ijtihad* as a means to maximise the ability of Muslims to exercise their human agency (2000: 96). In other words, this perspective focuses on the need for Muslim communities to reconcile with the human rights regime, not to manipulate the concept of human rights to further particular social interests. This allows for Muslim communities to engage with the human rights regime on their own terms. This also helps undermine the view of human rights as a ‘Western’ concept imposed on Muslim communities. This approach contains significant implications for
the idealised Islamic state. In the words of Khaled Abou El Fadl, the Quràn ‘does not specify a particular form of government’ (2004: 5). In a direct challenge to the literalist reading of Islam, especially that adopted by Islamist groups, El Fadl insists on the importance of values: justice, consultative government, mercy and compassion are essential values for Muslim policy.

The humanist approach in Islam offers significant promise, not only in Muslim majority societies enthused by the prospects of establishing an Islamic state but also for the Muslim diaspora. One of the challenging features of globalisation in the latter part of the twentieth century has been the movement of a significant number of people from the Muslim world to territories that have traditionally been regarded as foreign. Muslim settlements in Europe, the United States, and in subsequent years Canada and Australia, have presented difficult questions to migrant communities and their hosts regarding the precedence of one rule over another. In other words, to what extent should Muslim minorities in the West follow and obey secular law? In the literalist perspective, the dichotomy of Shari’ā versus secular law is absolute. But the humanist approach to Islam moves beyond the apparent dichotomy and questions the assumed contradiction between the two. Tariq Ramadan, perhaps the best known author on this matter, has argued that the Western-style secular law is very much inspired by the same core values that rest at the heart of Islam. Writing on the question of being a good citizen and a Muslim in Europe, Ramadan has emphasised the principles of fairness, equity and justice as common to Islamic jurisprudence and secular law (which is ironically inspired by Judea-Christian traditions). Consequently, he sees no contradictions between the two (Ramadan 1999, 2002).

In this approach, Muslims in the West can abide by secular rules that govern their country of adoption without fear of violating Islamic principles. The liberal and tolerant nature of European states facilitates this interpretation because it allows significant freedoms to individuals to pursue their interests, beliefs and traditions. In other words, individual liberties enshrined in liberal democracies offer sanctuary to the Muslim diaspora. It is important to note here that Western liberal democracies meet the qualifications set out by El Fadl for legitimate political authority. In some cases, however, the humanist position on the compatibility of secular law and Islamic principles faces serious challenges, as became evident in France under the new law banning hijab at schools. This ban, which came into force in 2004 appeared to reverse the tolerant traditions of France and put Muslim girls wearing hijab and their families in a difficult dilemma: either remove the hijab to attend school or keep the hijab and be excluded
from public education. Some French Muslims have responded by weighing the costs and benefits of the alternatives and opted to stay in the education system, even if that means removing the hijab. For most French Muslims, however, that is not an acceptable compromise.

Islamic reformism which is at the heart of the humanist approach is still in its infancy and stumbling from one challenge to the next (Piscatori 2002). An ongoing issue that is still to be addressed by reformist thinkers in Islam is the position of non-Muslims in Muslim societies. To what extent does the humanist interpretation of Islam, which emphasises the intrinsic values of individual piety and freedom to pursue a personal path to divinity may be applied to non-Muslim individuals and minority groups? More specifically, what role is set aside for non-Muslims in Muslim majority states?

The question of compatibility between Islam and human rights in Muslim majority states is an urgent and topical issue, partly because most such states in the Middle East suffer under the yoke of authoritarian rule while the United States has made democracy promotion and protection of human rights its top mission in this oil-rich region. The most immediate beneficiaries of any move towards greater freedoms tend to be Islamist groups in opposition, which might explain why the latter has adopted a conciliatory (sometimes enthusiastic) position towards human rights, freedom and democracy.

Appeals to values of liberalism and human rights by Islamist groups have precipitated a debate in policy and academic circles about the relationship between political expediency and principles. Are Islamists using human rights as a pretext to push their own agenda that is inherently intolerant and totalitarian? Or in the words of Neil Hicks, Director of the Human Rights Defenders’ Protection Initiative at the Lawyers Committee for Human Rights in New York ‘is it conceivable that we might have human rights activists who are Islamists, that is to say Islamist human rights activists?’ (Hicks 2002: 362). There are no easy answers to these questions, which helps explain why the debate appears to go round and round with no end in sight. One response that is often favoured in Western policy circles is that Islamist groups such as Hamas and Hizbullah or the Muslim Brotherhood are only interested in human rights because they draw immediate benefits from them. There is no doubt that an effective protection of human rights, which entails the promotion of individual liberties, offers direct benefit to Islamist groups that have been pushed to the margin by authoritarian regimes. The Muslim Brotherhood in Egypt is ready to burst out on the political scene the minute Hosni Mubarak’s regime loosens its grip on power. Observers witnessed a taste of things to
come if Egypt opted for political openness and protection of civil liberties when the banned Muslim Brotherhood managed to register strong results in the 2006 municipal elections. Egypt's flirtation with contested elections, however, appears to have been short lived - especially when faced with the embarrassing prospects of electoral defeat. In this, Hosni Mubarak has the tacit approval of the US Administration.

The Palestinian experience of 2006 has served as a reminder of the risks political openness could pose to ruling regimes. The surprising Hamas victory in the January 2006 parliamentary elections brought to office an Islamist group that was more known for its zeal against Israel than a commitment to human rights and democratic principles. Hamas was the obvious beneficiary of two related processes in the Palestinian society: a record of nepotism and incompetence by the Palestinian Authority and a broad desire among Palestinians for international recognition through a public demonstration of commitment to democracy. The landslide victory of Hamas, however, presented the international community with a difficult choice. The decision to break off ties, and more importantly aid to, the Hamas-dominated Palestinian Authority by the United States and the European Union was justified in terms of not-dealing with terrorists. As far as Western policy makers were concerned, the fact that Hamas had gained power through the ballot box was immaterial. What was critical was the belief that Hamas was genocidal towards Jews and had no interest in promoting democracy and human rights (Akbarzadeh, 2006).

The international boycott on Hamas had a devastating impact on the livelihood of the Palestinian population, which in turn intensified the rivalry between Hamas and Fatah culminating in the June 2007 take over of Gaza Strip by Hamas militia and the collapse of the faltering coalition government. The critics may have been right in arguing that Hamas would not play by the rules, and not respect the imperatives of popular will. But Hamas did not get a chance to prove them right.

The presumption that Islamists value the ballot box only once, ie. when they gain power through elections, has led some analysts to dismiss them as political charlatans who deserve to be kept out of the democratic system. In relation to Muslim Brotherhood, Katerina Dalacoura suggests, they defend human rights 'because they are concerned with protecting their own rights, as individuals and as an organisation. They also defend rights because they are intent on presenting a picture of a moderate and respectable movement' (2007: 128). In contrast, other observers have pointed to the modifying effects of participation in the open political process of winning votes. Respect for rule of law, human rights and civil liberties may not be the primary motivating factor for Islamists. Indeed, these
principles may be of peripheral interest to Islamist groups that are driven by a utopian desire to institutionalise an Islamic state. Yet the fact that the idealised Islamic state remains a ‘work in progress’, and Islamists often find themselves facing the constrains and imperatives of government once in power suggest that they are not as closed to democratic rule as they are assumed to be. In fact as Olivier Roy has pointed out, Islamists and conservative Muslims feel compelled to use the language of human rights to justify their political ambitions (Roy 2004: 32). The key question is whether this practical adoption of human rights discourse translates into a conceptual rethinking of the relationship between Islam and human rights.

Reconciling Islamic rule with the principles of human rights and democratic governance cannot be an overnight achievement, especially when it involves fundamental questions about the worth of the individual. As it turns out the conceptual realignment to reconcile Islam and human rights tends to lag behind empirical cases. The Turkish experience, for example, offers a sustained case where religiously-inclined politicians continue to conduct themselves with due respect for human rights and democratic rule. In the 1990s, under the leadership of Necmettin Erbakan the Refah Party managed to secure an electoral victory in 1995 (Yavuz 1997). For the first time in modern Turkish history an Islamic party won power. Although this electoral victory was short-lived, because the Turkish military stepped in to curb what it viewed as a direct threat to Atatürk’s heritage of secularism, it did signify a major development. Refah’s performance was later emulated by a successor party. The Justice and Development Party which won office in 2002 and again in 2007 has tried to remain faithful to the Islamic heritage of Turkey and bring back Islam into the public domain without violating rule of law and democratic conventions. These practical steps towards uniting Islam and democratic governance and human rights, however, have yet to be digested and conceptualised by observers.

Addressing the gap between the reality of diverse Muslim experiences with human rights and the conceptualisation of these experiences governs this volume. Starting with the lived experiences, contributors to this volume explore the relationship between Islam and human right devoting special attention to key issues of gender equality and freedom of religion.

The intense examination of women’s rights in Islamic thought has given rise to a vibrant debate that is challenging to previously entrenched modes of thought. Such dynamism, according to Ann Elizabeth Mayer, has led to the reformulation of the bases of enquiry into women’s rights and their relationship to the sources of Islamic law, a shift away from a reliance on juristic interpretations to define and determine rights and privileges in
Muslim communities. This is reflective of a broader trend whereby discussion on women’s rights in Muslim communities is accommodating a diversity of voices, most notably Muslim women’s voices. In this milieu, new alliances are emerging between women’s rights activists, intellectuals and Islamic scholars and jurists who are contesting and reformulating the very bases of Islamic thought on the rights and roles of men and women in Muslim communities.

An illustration of this can be found in the challenge to established gender norms in the Islamic Republic of Iran. In particular, resistance to the officially-sanctioned discriminatory regime pertaining to gender rights in Iran, one largely based on a conflation of biological differences and social roles, has not only persisted since the 1979 Islamic Revolution, but gained ground in recent years. Here, Rebecca Barlow outlines both a religious and secular-oriented approach to securing equal, universal and inalienable rights for Muslim women. Religious-oriented feminists in Iran argue for a review of the sources of Islamic law that is consciously women-centric as a means to balance to the prevailing patriarchal understandings present in Iran and many other Muslim communities.

However, according to Barlow, this endeavour is inherently limited as it has not been able to meaningfully alter Iran’s prevailing status quo in terms of gender-based and broader political and social norms in Iran. Alternatively, secular-oriented feminists present a more “anti-systemic” approach to women’s rights, seeking to operate apart from the touchstones of legitimacy in the Islamic republic, namely, focussing not on reform of Islamic doctrine per se, but looking at global debates and the development of universal norms related to human rights as the basis from which to develop equitable gender rights and roles in Muslim communities. This is illustrative of the diversity of voices from within Muslim communities and how approaches to key questions related to human rights are tackled in a myriad of ways.

Gender rights, alongside religious freedom, are crucial elements in the discussion over the possibilities for synergy or divergence between Islam and human rights. These issues are often presented as examples of a potential mutual exclusivity between Islam and prevailing global human rights norms. The modes of engagement examined above belie this assertion. However, what is also essential is the active support of these issues by effective social and political organisations. This is a highly problematic task in situations of political and social turmoil. Here, Iraq is particularly vulnerable to these pressures, particularly since the 2003 US-led invasion and occupation where the state and society has been in a caught in a cycle of violent social discord.
The new political space that was opened after the removal of the Saddam Hussein regime raised the possibility for new and inclusive approaches to the questions of gender rights and religious freedom to be enshrined in the new Iraqi constitution. In spite of this, the volatile political and security situation has put the prospect for this in real jeopardy. In particular, Benjamin MacQueen and Shahram Akbarzadeh highlight how the new Iraqi constitution has fallen victim to the sectarian tensions that now characterise the political landscape of the country and its new political institutions. This has affected the status of gender rights and religious freedom in the new Iraq constitution in terms of an abandonment of universal personal status law in favour of the implementation of community and sectarian legal codes as a means for keeping the various sectarian leaders involved in the political process.

This highlights the vulnerability of human rights and human rights activists in Muslim communities as they not only face entrenched forces resistant to such change, but also the volatilities of regional and global political influences that tend to have an amplified affect in Muslim communities, particularly in the context of the post-11 September global environment. A corollary of this relates to the lack of political freedoms in a number of Muslim states, particularly those in the Middle East and North Africa region. Despite its questionable intellectual basis and selective application, the democracy promotion policy of President George W. Bush has thrown the spotlight on the lack of democratic freedoms and traditions in this largely Muslim region. The squeezing of political space by autocratic regimes has seen the emergence of new political alliances, drawn together in opposition.

The alliance between Egypt’s Muslim Brotherhood, the single largest opposition movement to the regime of Hosni Mubarak, and human rights NGOs is representative of such a movement. However, Benjamin MacQueen illustrates how this relationship currently exists primarily as one of functional cooperation, where the Muslim Brotherhood draws on the considerable legal assistance of human rights NGOs in their on-going struggle with the Mubarak regime, whilst the NGOs seek to use their relationship with the Brotherhood to buttress their negligible domestic popularity and support. This functional relationship, whilst potentially one that could mount a serious frontal challenge on Mubarak’s grip on power, has not fully engaged with key ideological divisions between the two movements. The ability of both Islamist movements such as the Muslim Brotherhood and human rights NGOs to forge deeper relationships in crucially important Muslim communities such as Egypt will be telling as to the potential for the development of movements that cannot only lever
open sorely needed political space, but do so in such a way that is both legitimate and inclusive.

As the cases of Iran, Iraq and Egypt highlight, the presence of a robust rule of law backed by key institutions such as an independent judiciary and a functioning and representative state apparatus alongside social movements championing human rights are key elements in ensuring the enshrinement of civil, political and social rights as well as promoting dialogue, understanding and synthesis with Islamist movements and Islamic doctrine. It is the substance of this interaction which is crucial however, not merely the existence of rhetorical statements on co-operation between human rights movements and Islamist organisations.

William Maley amply illustrates such a need in his examination of the discrepancies between the human rights protections enshrined in the new Afghan constitution and the lack of human rights protections for Afghan citizens. The violence and political vacuum faced by Afghanistan over the past three decades, issues exacerbated by consistent patterns of external intervention and invasion, have undermined the rule of law in the country. This situation persists today, where despite the commitment to a highly progressive form of human rights established in the new Afghan constitution (Qanun-e asasi), the human rights situation on the ground is uncertain at best. Indeed, Maley points to deeper difficulties of seeking to establish a human rights regime in post-conflict communities, a situation relevant to Afghanistan as it is to Iraq, Sudan, Somalia, even Lebanon and Algeria, where the need for political stability may require overlooking human rights abuses of figures and movements deemed vital for the establishment of a functioning state.

Apart from the legacies of internal or regional conflicts, many Muslim states also have to contend with their colonial heritage; one that has left a legacy of multifaceted social divisions and states compelled to create, forcibly if needs be, forms of social and political unity. In this context, Shamsul A.B urges observers to take note of the context in which particular debates concerning state formation, human rights, and Islamic identity compete and co-exist. This is not a claim of cultural relativism, quite the opposite. Instead, Shamsul A.B. uses the example of Malaysia’s complex legal landscape, highlighting how a range of different legal systems have become embedded in various parts of this South-East Asian nation, affecting the way Malaysian citizens interact with ethnic identity, political authority, human rights, and claims to legitimacy referential to Islam.

The issue of community diversity, particularly that of religious freedom and its enshrinement in the Malaysian constitution, is one of immense complexity and division, as revealed by Patricia Martinez. Indeed, a detailed
examination of the Malaysian case reveals how discussions over human rights and their relationship to Islamic doctrine, specifically through the lens of religious freedom in Malaysia, is one that is largely confined to elites who, whether defined as reformist or conservative, have been reticent to engage in a thoroughgoing dialogue. Outside elites, “ordinary” people’s perceptions vis-à-vis human rights issues are largely framed by personal experience, a mix of place, position, and heritage.

Taking note of the specificity of context and its impacts on Islam and human rights, Greg Fealy examines the attitudes of Indonesian Islamist movements. Such an endeavour, whilst seemingly counter-intuitive, is an essential task in terms of fleshing out any discussion of Islam and human rights, particularly in light of the growth in support for such movements in recent decades. What is evident in the Indonesian case, particularly in reference to movements which seek a comprehensive implementation of the Shari’a in Indonesia, is the shaping of their views by feelings of threat and persecution. This has driven many of these groups to take a hard line on human rights issues, particularly those of religious freedom and gender equality. However, Fealy contends, this is a view that is lacking in intellectual depth and historical awareness, particularly in reference to Indonesia’s rich tradition of religious pluralism and social organisation.

As James Piscatori has noted the contribution of Islamic reform is inconclusive. There certainly are very clear indications that groups committed to an Islamic vision view the protection of human rights and aspects of liberal democracy to their advantage and would, therefore, promote them. To what extent is this opportunistic? Only time can tell. Meanwhile, it is important to avoid deterministic conclusions about Islam and human right and acknowledge that Islam is a living and flexible religion that is (re-) interpreted by each generation. This vibrancy can only be a source of hope for the future.

Notes
1 It is interesting to note that the United States of America has also refused to join the international human rights regime. Washington’s failure to sign the Universal Declaration of Human Rights is linked to the reluctance of US leadership in recognising any authority to judge American citizens over and above US laws.
2 This is also a view echoed in the Universal Islamic Declaration of Human Rights issued by the Organization of the Islamic Conference on 19 September 1981 and the Cairo Declaration on Human Rights in Islam on 5 August 1990.
3 Interestingly, the Grand Imam Sheikh Mohamed Sayed Tantawi of Al Azhar University in Egypt endorsed this position (Rakha 2005).