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Abdullahi An-Na'im's Philosophy on Islam and Human Rights

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Introduction

Abdullahi An-Na'im's Philosophy on Islam and Human Rights[1]

> "I am proposing the principles of constitutionalism, human rights and citizenship, which can work only when they enjoy sufficient cultural and religious legitimacy to inspire and motivate people to participate in organized and sustained political and legal action. An Islamic discourse is essential for legitimizing the necessary strategies for regulating the public role of Islam. At the same time, that discourse cannot emerge or be effective without the security and stability provided by the secular state."
>
> - Abdullahi An-Na'im.[2]

The relationship between Islam and human rights forms an important aspect of contemporary international human rights discourse. Current international events and the increasing public role of Islam in modern Muslim states have made the subject more relevant than ever. Many international human rights courses around the world now cover issues relating to Islam and human rights. Some universities and academic centres have specific postgraduate courses or modules on the subject. The importance of the subject as a specific theme in general human rights discourse is portrayed by the volume of literature currently available on its different aspects. Professor Abdullahi Ahmed An-Na'im is one of the leading scholars and contributors on the subject. In fact, he remains one of the most cited authorities in the subject area. His contributions on the subject span more than three decades during which he has engaged with almost every topical issue on the subject. He has been described as one of the non-Western jurists from "the South" "who have made substantial contributions to the theory and practice of human rights" generally.[3] It is therefore a great honour to be commissioned to compile and write an introduction to a selection of his

1   This introductory chapter and revision of manuscript for this volume was completed during my professorial visit to the Faculty of *Syariah* and Law, Islamic Sciences University of Malaysia, Malaysia in December 2008. I thank the University for the opportunity and for the facilities provided, which enabled me to complete this work during the period. I particularly express my gratitude to the Dean of the Faculty, Professor Dr. Abdul Samat Musa, and to Mohammad Nizam bn Awang and Ahmad Anis bn Muhammad Fauzi for their kind hospitality during the period.

2   A.A. An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a* (Cambridge: Harvard University Press, 2008) p. 44.

3   W. Twining, "Human Rights: Southern Voices; Frances Deng, Abdullahi An-Na'im, Yash Ghai and Upendra Baxi" (2007) 1 *Law, Social Justice & Global Development Journal* (*LGD*) http://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2007_1/twining at p. 3. (Last accessed 16 December 2008)

scholarly essays on the subject. This single volume brings together, coherently, his thoughts as developed on the subject over the years. It will provide easy access and convenience to students, academics, researchers, practitioners, policy-makers and all those interested in this important subject area.

The quotation at the top of this introductory chapter is taken from An-Na'im's latest book, *Islam and the Secular State: Negotiating The Future of Shari'a*, which he describes as "the culmination of my life's work, the final statement I wish to make on issues I have been struggling with since I was a student at the University of Khartoum, Sudan, in the late 1960s".[4] While the quotation summarises, succinctly, his ultimate standpoint on Islam and human rights in modern Muslim states, the evolution of that standpoint can only be better appreciated and understood through the reading of his scholarly writings over the years. Thus, for a comprehensive insight into his general philosophy on the subject, this volume presents sixteen of his scholarly journal essays published between 1986 and 2006 illustrating the progression and consistency of his arguments over a period of twenty years. The essays are presented herein, not chronologically, but coherently, in a way that takes the reader on a scholarly journey through An-Nai'm's general philosophy on Islam and human rights in a consistent way. In essence, this volume cuts across twenty years of An-Nai'm's expressed thoughts on a complex subject before his ultimate arrival at the standpoint portrayed in his quotation cited at the beginning of this introductory chapter.

It is important to state that this prologue is not intended to be a critical analysis or a critique of An-Na'im's work contained herein. Rather, it presents the work "as it is", providing a brief summary of each of the essays contained in the volume and identifying in the process, what I consider to be the main elements of his general philosophy on the subject. Based on their content, the essays are grouped into four parts as follows.

I.   Islam between Universalism and Secularism

Universalism is considered to be at the heart of human rights today, while the modern nation-state is considered more often in secular terms. This literally puts Islam between universality of human rights and secularity of the modern nation-state particularly in modern Muslim states. Read together, the five essays in this part reflect An-Na'im's perception of the position of Islam in relation to the considered universality of human rights and secularity of the modern nation-state.

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4   A.A. An-Na'im, *supra*, note 2 above, at vii.

The usual starting point of human rights discourse is the question of its universality. The first United Nations (UN) human rights instrument adopted in 1948 is called Universal Declaration of Human Rights (UDHR), which clearly indicates that the international human rights agenda was meant to be a universal one from the beginning. Yet, there have been two persistent questions in that regard since the concept of universal human rights was mooted under the UN system. The first question is, what do we mean by universality of human rights?, and the second is, how can that universality be achieved? It is on record that one of the earliest questions posed to the UN Commission on Human Rights, then drafting the UDHR, was the statement submitted to the Commission by the American Anthropological Association (AAA) on 24 June 1947 about the proposed universality of human rights and how that would be achieved. The AAA had observed then that:

> Because of the great numbers of societies that are in intimate contact in the modern world, and because of the diversity of their ways of life, the primary task confronting those who would draw up a Declaration on the Rights of Man is thus, in essence, to resolve the following problem: How can the proposed Declaration be applicable to all human beings, and not be a statement of rights conceived only in terms of the values prevalent in the countries of Western Europe and America? …Today[5] the problem is complicated by the fact that the Declaration must be of world-wide applicability. It must embrace and recognize the validity of many different ways of life. It will not be convincing to the Indonesian, the African, the Indian, the Chinese, if it lies on the same plane as like documents of an earlier period. The rights of Man in the Twentieth Century cannot be circumscribed by the standards of any single culture, or be dictated by the aspirations of any single people. Such a document will lead to frustration, not realization of the personalities of vast numbers of human beings.[6]

Although the UDHR has, today, established itself as an instrument of great influence globally, those questions have not been fully subdued in international human rights discourse and, in relation to the socio-cultural and politico-legal influence of Islam in Muslim societies, they remain part of the fundamental questions in the Islam and human rights discourse.

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5   That was in 1947 when the statement was issued, but this question has not fully disappeared from international human rights discourse even today.

6   *See* American Anthropological Association, 'Statement on Human Rights' (1947) 49 *American Anthropologist,* pp. 539–43, at pp. 539 and 542–3. Cf. the 1999 AAA Declaration on Anthropology and Human Rights available at: http://www.aaanet.org/stmts/humanrts.htm [29/12/08] and K. Engle, "From Scepticism to Embrace: Human Rights and the American Anthropological Association from 1947–1999" (2001) 23 *Human Rights Quarterly,* No.3, pp. 536–59, for an analysis of the two Statements.

This volume thus opens with an essay first published in 1994 by An-Na'im entitled "What do we mean by universal?" in which he articulates his views on the universality of human rights in relation to Islam. The essay was written in the context of the 1990 Salman Rushdie affair and the consequent *fatwa* of Iran's Ayatollah Khomeini against Salman Rushdie. An-Na'im is certainly a universalist and a staunch believer in the universal nature of human rights as is reflected in the first paragraph of this essay where he states that "[h]uman rights ought, by definition, to be universal in concept, scope and content as well as in application: a globally accepted set of rights or claims to which all human beings are entitled by virtue of their humanity and without distinction on grounds such as race, gender or religion" (p. 120). He also notes, however, that "[y]et there can be no prospect of the universal application of such rights unless there is, at least, substantial agreement on their concept, scope and content" (p. 121). Thus, his philosophy on the universality of human rights, as he manifests in this essay and consistently restates at appropriate points in all his other writings, is what may be described as a philosophy of cross-cultural universality. I identify this as the first element of his general philosophy on Islam and human rights. In relation to Islam, he reflects this philosophy of cross-cultural universality in the last paragraph of the essay wherein he concludes that "There are potentially powerful and vigorous constituencies for universal human rights worldwide – including the Islamic world. But those constituencies can never be mobilised in a global project on purely Western liberal notions of individual civil and political rights. Along with other rights and new formulations of familiar rights, all human rights will only command genuine universal respect and validity through discourse and dialogue" (p. 128). Between the first paragraph earlier quoted and this last paragraph of the essay, An-Na'im clearly articulates his views on the different paradoxes raised by the question of universality in theory and practice. He emphasises throughout the essay that the dialogue for cross-cultural universality must be "undertaken in good faith, with mutual respect for, and sensitivity to, the integrity and fundamental concerns of respective cultures, with an open mind and with the recognition that existing formulations may be changed – or even abolished – in the process" (p. 122).

But what kind of contribution can Islam bring to this dialogue towards the realisation of a cross-cultural universality of human rights? An-Na'im identifies that in "[r]eading the Qur'an and *Sunna*, one will find authority for liberalism as well as conservatism, and Muslim history gives clear examples of both tendencies". This matter, he argues "is determined by the choices Muslims make, and the struggle they wage in favour of their choices, in their own historical context" (p. 125). Thus, for Islam to be able to make a meaningful contribution to the dialogue for cross-cultural universality of human rights,

Muslims must, in the view of An-Na'im, choose liberal interpretations of Islamic sources to make Islamic law amenable to modern international relations and human rights. He develops this point further in the next essay, which serves as the basis for the second element of his general philosophy on Islam and human rights.

The second essay, "Islamic Law, International Relations, and Human Rights: Challenge and Response", was first published in 1987. In it An-Na'im proposes "solutions to the drawbacks of historical *Shari'a* from a religious rather than secular perspective, because Muslims do not separate the religion of Islam from the law of Islam" (p. 318). He argues here that a reformation of Islamic law through a modern interpretation of the *Shari'a* would work better for the advancement of human rights in Muslim states than a secular approach. He observes, *inter alia*, in that regard that "because *Shari'a* signifies the positive law of historical Islam, its general principles continue to bind and motivate Muslims" (p. 319) and that the appeal of the *Shari'a* amongst the majority of Muslims makes it imperative for it to be "authoritatively reformed from within the Islamic traditions and in ways acceptable to Muslims themselves, [o]therwise, such reform would lack legitimacy and practical viability" (p. 319). He also notes, however, that "although Muslims will not accept secular reforms to their religious law and practice, they have made some concessions to the demands of constitutionalism and the rule of law in national and international relations" (p. 319). He summarizes his arguments in this essay to the effect that "for Islamic states, smooth and successful transition to complete secularism is neither likely nor desirable because Muslims are obligated to live in accordance with Islamic law" (p. 320). However, in his view, "[f]ulfilling that obligation by re-introducing historical *Shari'a* would be disastrous for international relations and human rights" (p. 320). He therefore proposes that "the Muslims' religious duty may be satisfied by applying a modern version of Islamic law that is consistent with peaceful international relations and respect for human rights" and that "[t]his modern version will [still] be Islamic *Shari'a* because it will be derived from the fundamental sources of Islam, without being identical in every respect to historical *Shari'a*" (p. 320).

An-Na'im then goes on, in this essay, to analyse the historical *Shari'ah* and the Medina model of the Islamic state, arguing at the end of that analysis that "[m]odern jurists must not confine Islam to [historical] *Shari'a*", noting that if they do so it would unjustifiably condemn Islam "to *Shari'a*'s contextual limitations and deem it incapable of responding to changes in the physical and social environment that are, according to Muslim belief, willed and manifested by God Himself" (p. 323). He also critically examines the theory of international relations under the *Shari'a*, discussing the traditional concept of *jihad* and its implications to modern theory of international relations and human rights. He

emphasises in the end that while "*Shari'a*'s [historical] view of civil liberties compared favourably with civil rights under Roman and Persian law prevailing at the time…criticism and strong objection must be raised to any attempt to reintroduce historical public *Shari'a* today because it is inconsistent with prevailing human rights standards" (p. 331). But he also argues conversely that "[w]hile this Article criticizes historical public *Shari'a* as being inconsistent with prevailing human rights standards, it does not unqualifiedly endorse those standards that originated with the western liberal tradition" (p. 332). Rather he proposes solutions from within Islam, stating that a "legitimate and lasting constitutional and legal order that can address modern international relations and domestic human rights must develop from within Islam" (p. 333), for which he argues that the best solution must be based on the methodology of his late mentor *Ustadh* Mahmoud Mohamed Taha, who was executed in Sudan in 1985 for the alleged offence of apostasy under Sudanese law then.[7] An-Na'im consistently proposes *Ustadh* Mahmoud Taha's methodology as the best means of transforming Islamic law to meet the standards of modern human rights and international relations in all the essays contained herein as well as in his other major works on the subject. This may be described as the philosophy of internal reformation of Islamic law based on the methodology of his mentor *Ustadh* Mahmoud Mohamed Taha, which I identify as the second element of his general philosophy on Islam and human rights.

An-Na'im's proposition for the internal reformation of Islamic law is taken further in the third essay, "A Kinder, Gentler Islam?" first published in 1991. In this essay, he argues essentially for a kinder, gentler interpretation of the Islamic sources. The essay is framed in the context of right to self-determination and principle of reciprocity. Here, An-Na'im focuses on "the need to transform the historical traditions of Muslim peoples in ways that would enable them to exercise their legitimate rights to self-determination without violating the rights of others" (p. 4). He identifies with the fact that Muslim peoples have the right to choose an Islamic definition of their self but argues that this should not be by reference to what he calls "historical *Shari'a*"; a point he made in the previous essay and consistently reiterates in other essays contained in this volume and throughout his writings. He proposes here that self definition by Muslims must be properly clarified and updated, for which he asserts again that "the Islamic tradition must undergo its own reformation and develop a modern conception of *Shari'a* that can be implemented today" (p. 8). He again acknowledges that the norms of "historical *Shari'a*" were far more enlightened and humane than corresponding principles and conceptions of its time, but argues that most of those norms cannot stand up to the minimum standards of

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7   *See* Chapter 11 "The Islamic Law of Apostasy and its Modern Applicability: A Case from The Sudan" in this volume.

modern human rights, which are universal and must be enjoyed by everyone including Muslims. He therefore makes it clear that his "criticisms are not … addressed to *Shari'a* in its own proper historical context but rather against those who wish to resurrect dated concepts and principles and implement them under radically transformed domestic and international conditions" (p. 11).

In An-Na'im's view it is possible, indeed imperative, "to develop a new version of *Shari'a* based on a modern interpretation of the sources of Islam" (p. 11) in ways that would promote a kinder, gentler Islam. He states: "Far from advocating the abandonment of the Islamic tradition, I am calling on Muslims to achieve their own 'reformation' in order to transform their tradition into a viable and just ideology for their modern exercise of their right to self-determination" (p. 11). He then goes on to elaborate on his proposed methodology of transforming this tradition, which is again the methodology of his late mentor *Ustadh* Mahmoud Mohamed Taha. He argues "In the Muslim belief that I share, Islam is perfect and eternal from God's point of view, but in the affairs of the world, it is open to competing interpretations and practical policies reflecting the moral and intellectual capabilities of its adherents and their need to adapt to changing material and political conditions" (p. 11). He continues, "In the formula I propose, the constant part of the Islamic tradition is the texts of its divine sources while the interpretation and implementation of those sources must now be transformed" (p. 11). To illustrate his arguments against the application of "historical *Shari'a*" he cites Sudan as an example of where "efforts on behalf of a misconceived Islamic identity seeking to implement historical *Shari'a* … led to a total deadlock politically and contributed to the militarization of the entire country" (p. 15). He asserts that the ideal would be to ensure the right of Muslims "to self-determination in terms of an Islamic identity without violating the right of self-determination of others" (p. 16). Failing that, he states in conclusion that he "as an Arabized Muslim whose loyalty is to the cause of justice and peace for all Sudanese, would rather live in a secularised Sudan than in one ruled by totalitarian Islamic *Shari'a*" (p. 16), thereby introducing a refined argument for secularism which appears to be a departure from his previous position that secularism may lack legitimacy and practical viability for his proposed reforms in Muslim societies.[8] This refined position of secularism is pursued further by him in the next essay.

The fourth essay, "Re-affirming Secularism for Islamic Societies" was first published in 2003. His argument in this essay is against the background of the debate "about whether a new system of government that is both Islamic and democratic can be built as some kind of model for the [Middle East] region" (p. 36) after the overthrow of Saddam Hussein's Ba'athist regime in Iraq. He first identifies that "the central issue that must be debated among Iraqis

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8   *See* Chapter 2 in this volume.

– as among modernizing Muslims everywhere – is the relationship between Islam and secularism in any new political system" (p. 36). He then proceeds to provide his reflections on that point from an Islamic perspective.

In addressing the issue of Islam versus secularism, An-Na'im first argues that "[t]he commonly presumed incompatibility between Islam and secularism needs to be re-evaluated" (p. 36). He observes that there is both a definitional and terminological as well as substantive confusion about the presumed incompatibility between Islam and secularism, which needs to be deconstructed. In trying to deconstruct the traditional understanding of secularism he argues that the traditional equation of secularism with complete disregard for religion, or a diminishing role for religion in public life is problematic. He criticises "the tendency to limit secularism to the experiences of west European and North American countries with Christianity since the 18th century", pointing out that in its west European and North American sense the term secularism "has come to Africa and Asia in the suspect company of colonialism". In his view "secularism should be understood in terms of the type of relationship between religion and the state, rather than a specific way in which that relationship has evolved in one society or another". After that terminological deconstruction of the concept of secularism, he then proceeds to argue for the re-affirmation of secularism in Muslim states and proposes that "the most compelling argument for an Islamic rationale for secularism is its necessity for pluralistic nation states that are able to safeguard the freedom of religion and belief of believers and non-believers alike" (p. 37), meaning that "the freedom of religion and belief of Muslims as well as non-Muslims is more likely to be violated by a state that seeks to promote a particular religious doctrine than one that is neutral on the matter". He illustrates his points by citing examples of Muslim intellectuals and political dissidents who have sought refuge in Western countries "because they enjoy more freedom of belief and political action in "secular" states that are more or less neutral on issues of religion" (p. 38). He further argues that the notion of an Islamic State is a contradiction in terms and that the diversity of opinion among Islamic schools of thought and scholars makes it impossible for the state to enact the *Shari'a* into positive law as that would lead to the selection of some opinions over others by the state and consequently deny Muslims the freedom to follow other equally legitimate Islamic opinions of their choice. In his view, Muslims actually "need the protection of human rights, and political and social space secured by secularism to live up to the ideals of their own religion" and asserts that such "protection and space cannot be sustained among Muslims without an internal transformation of their own understandings and practice of Islam" (p. 39). This may be described as his philosophy of re-affirming secularism for Muslim states, which I identify as the third element of his general philosophy on Islam and human rights.

It is important to bear in mind An-Na'im's redefinition of secularism in this context.

To drive his arguments home, he gives some examples of the issue of women's rights in Egypt and of Islamic identity in the Sudan and Iran to illustrate that a "secular space" is necessary for the realisation and enjoyment of human rights in Muslim states. Based on those three identified elements of his general philosophy of Islam and human rights, An-Na'im then introduces in this essay, a theory of "synergy and interdependence" of religion, human rights and secularism by arguing that: "The synergy and interdependence of religion and human rights enable Muslims to observe their own understanding and practice of Islam through an assertion of human rights, while using their Islamic identity to promote their human rights within their own Muslim communities. By ensuring that minority and dissident voices within a religious tradition are able to challenge dated and regressive understandings and practices of Islam, human rights and secularism help Muslims avoid the difficult choice of either rejecting their religion entirely or abandoning their own human rights" (p. 41). His conclusion in this essay is to the effect that "[m]aintaining a dynamic synergy and interdependence among human rights, religion and secularism will enable all citizens to live by their religious convictions while respecting the right of others to do the same, instead of expecting people to choose between competing religions or religious interpretations" (p. 45). He elaborates further on this theory of synergy in the concluding essay in this volume.[9]

The essay, "Islam and Human Rights: Beyond the Universality Debate", first published in 2000, rounds up the part on Islam between universality and secularism and takes us back to the issue of universality. Certainly, universality of human rights is only a means to an end and not an end in itself. An-Na'im begins the essay by acknowledging that the "implementation of international human rights norms in any society requires thoughtful and well-informed engagement of religion (broadly defined) because of its strong influence on human belief systems and behaviour, regardless of the formal characterization of the relationship between religion and the state in any society" (p. 95) and that "religious considerations are too important for the majority of people for human rights scholars and advocates to continue to dismiss them simply as irrelevant, insignificant, or problematic" (p. 95). In relation to the universality debate, he then raises the question of "whether the secular Western origin of human rights, as defined by the UDHR, necessarily mean that these rights are not (or cannot be) truly universal" (p. 96). He then proceeds to try and answer that "key question" in relation to Islam and Islamic societies. He restates his theory of synergy by indicating the need to understand the synergy between internal discourse and cross-cultural dialogue in the universality debate and

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9   See Chapter 16 in this volume.

concludes, *inter alia*, that "universality of human rights must be realized through the implementation of deliberate strategies that are likely to attract popular support, instead of on the basis of assumptions that such universality already exists, or can be achieved by proclamation in international documents" (pp. 100–101) alone.

II.   Islam and Human Rights in the Muslim World

Today, the Muslim world may be perceived narrowly in the geographical sense of modern Muslim states or broadly in a diasporic sense to include Muslim peoples living as minorities in different non-Muslim states worldwide. In either case, the relationship between Islam and human rights is often an issue. In the five essays in this part An-Na'im addresses, respectively, some of the problems regarding Islam and human rights in the Muslim world both in relation to Muslim states and in relation to Muslim minorities living in non-Muslim states.

This part starts with the essay, "Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives", which was first published in 1990. In this essay An-Na'im presents a preliminary enquiry on the practice of human rights in the Muslim world in the geographic sense. The essay starts by defining the *Shari'a* as a historical formulation of Islamic religious law and acknowledges its legitimising role in Muslim states. An-Na'im reiterates his argument on the need for the cultural legitimacy for human rights stating that human rights violations in a particular society is often a reflection of "the lack or weakness of cultural legitimacy of international standards in [that] society" and that as long as "these standards are perceived to be alien to or at variance with the values and institutions of a people, they are unlikely to elicit commitment of compliance". He therefore asserts that the "underlying causes of any lack or weakness of legitimacy of human rights standards must be addressed in order to enhance the promotion and protection of human rights in that society" (p. 15).

With regard to Islam and human rights in Muslim states, he observes that Muslims have recently been challenging "the gradual weakening of *Shari'a* as the basis for their formal legal systems", which has led to "mounting demands for the immediate application of *Shari'a* as the sole, or at least primary, legal system of the land" in many Muslim countries (p. 20). He however identifies that there are obvious conflicts between historical *Shari'a* and certain human rights, especially women's rights and the rights of non-Muslims, and indicates the need to focus on how those areas of conflict could be resolved. He emphasises that "a modern version of Islamic law can and should be developed", which would be the modern *Shari'a*, arguing that such "a modern "*Shari'a*" could

be … entirely consistent with current standards of human rights" (p. 21). However, part of the problem, in An-Na'im's view, is that only a tiny minority of Muslims appreciate this, and that the overwhelming majority of Muslims today, still view "historical *Shari'a*" as the sole valid interpretation of Islam that ought to prevail over all other laws and policies. He also points out the fact that the relationship between Islam and human rights in Muslim states is not only influenced by the historical scriptural imperatives of the *Shari'a* but also by political and sociological considerations in most Muslim states. He illustrates the political factors with examples of Muslim countries such as Pakistan, Indonesia, Iran, Saudi Arabia, Egypt and Morocco. With regard to the sociological factors, he provides examples on the different classes of Islamic activists in different Muslim states and how they influence social attitudes and behaviour and also states the relevant counter-arguments and counter-methods against the approaches of the different activists. Against that background, he again presents case studies on the *Shari'a* and women's rights in its different contexts citing practical examples from some of the Muslim states earlier discussed in the essay.

Finally, An-Na'im addresses the issue of Islamic reform and highlights again his preference for the reform methodology of his late mentor *Ustadh* Mahmoud Mohamed Taha in that regard. He argues that "the proposal is not as radical as it may seem because the proposed new rule would also be based on the Qur'an and *Suuna*, albeit on a new interpretation of the text" (p. 49). He however notes that "the proposed reform will probably be resisted because it challenges the vested interests of powerful forces in the Muslim world and may upset male-dominated traditional political and social institutions". He therefore states that "the acceptance and implementation of this reform methodology will involve a political struggle within Muslim nations as part of a larger general struggle for human rights". Based on his conviction of "the extreme importance of Islamic legitimacy in Muslim societies" he not only urges "[Muslim] human rights advocates to claim the Islamic platform and not concede it to the traditionalists and fundamentalist forces in their societies" but "also invite[s] outside supporters of Muslim human rights advocates to express their support with due sensitivity and genuine concern for Islamic legitimacy in the Muslim world" (p. 50).

The seventh essay, "Civil Rights in the Islamic Constitutional Traditions: Shared Ideals and Divergent Regimes" was first published in 1992. In it An-Na'im presents "an internal critique of civil rights in the Islamic constitutional tradition in the modern context" (pp. 267–8). He restates his previous conviction from the beginning that "Muslim people have the right to conduct their constitutional and legal affairs in conformity with the principles of Islam" but also emphasises that this must be "subject to the obligation of respecting

the legitimate rights of all individuals and groups within Islamic countries". He then asserts that his task "as a Muslim" is "to seek ways of fulfilling this obligation from an Islamic point of view" (p. 268). While he argues that "various normative traditions may legitimately pursue different approaches to realizing the shared ideals of human dignity, liberty and well-being" he notes that "these approaches must remain open to criticism and reform in order to ensure and improve their practical ability to realize these ideals" (p. 269). In relation to the Muslim world, he suggests that the "key to conducting constructive discourse about civil rights in the Islamic constitutional tradition …is the candid admission of the historical contradictions and ambivalence inherent to the subject itself, and an appreciation of the underlying causes thereof" (p. 270). He then proceeds to address the challenge of realizing the shared ideals, commencing with the observation that "the pursuit of the ideals of dignity, liberty and well-being is universal to all human societies" but that the matter is, however, complicated "by the fact that perceptions of dignity, permissible limitations on liberty and the conditions believed to be conducive to well-being vary from one society to another" (p. 271). Thus, in his view this challenge can be addressed "only if the proposed approach is appreciative of, and sensitive to, global cultural diversity in relation to the precepts, institutions and mechanisms of civil rights". He therefore reiterates that "the need for a civil rights regime in a given state society must be legitimized and rooted in the local culture(s) of that society" (p. 272).

An-Na'im then examines the origins and development of Islamic constitutional theory through a critical analysis of the constitutional theory of the Medina state, the evolution and present status of Islamic constitutional theory, and Islamic constitutionalism in the modern context. He also discusses the issue of civil rights in modern Islamic constitutional theory under which he addresses the issue of *Shari'a* and civil rights, highlighting the issue of women's rights, the rights of non-Muslims, and civil rights in the present Muslim world. He illustrates his arguments in that regard with examples from different Muslim states to ultimately show that the relationship between [historical] *Shari'a* and civil rights is negative, especially in relation to the civil rights of women and non-Muslims. He however notes that despite the "apparently poor status of civil rights in Islamic countries" he does "not believe that the situation is hopeless" (p. 292). He maintains "that Islam can and should still be used as a valuable cultural resource to legitimize and enhance civil rights in Islamic societies" (p. 291) reiterating that "the struggle for civil rights in Islamic countries should utilize the processes of internal discourse and cross-cultural dialogue to realize the shared ideals of dignity, liberty and well-being for all" (p. 292). His conclusion in this essay is that: "While it is true that modern formulations of civil rights emerged from the Western liberal tradition, their underlying values

of dignity, liberty and well-being are shared by Islamic societies" and that "[i]n adopting modern civil rights regimes, and adapting them to their own cultures and circumstances, Islamic societies are merely responding to the challenge of realizing ideals they already share in the modern context" (p. 293).

The eighth essay, "Human Rights in the Arab World: A Regional Perspective" was first published in 2001. Here, An-Na'im argues that "the wide variety of strategies for the effective and sustainable protection of [human] rights should always be determined and implemented in specific local, regional and global context" (p. 701). He notes that his particular concern in this essay is "with identifying and promoting ways of diminishing, and eventfully breaking" what he calls "human rights dependency" (p. 702) of developing countries on international pressure for the protection of human rights of their own people. He identifies the different problems associated with "human rights dependency" of developing countries and proceeds to engage with those problems. He restates his consistent position that "moral or philosophical justifications for the universality of human rights can be found in all major religious and cultural traditions of the world, which should be emphasized through an internal discourse within each tradition that also addresses those features of the religion or culture which are negative or hostile to human rights norms" (p. 703).

In relation to the Arab world, he observes that "[w]hile Islam is often assumed to be a major factor in the presumed unity of 'Arab culture', there are some strong differences in the way it is understood and practiced in various parts of the region, especially in terms of its relationship to the state and public life, from Tunisia to Saudi Arabia, and from Somalia to Syria and Iraq" (p. 707). He therefore observes the need for a "clear appreciation of the complexity of interests, as well as the diversity of factors and contexts, that condition the policy and practice of each Arab state, especially regarding the protection of human rights" and more particularly in respect of "the impact of the Arab-Israeli conflict, Arab nationalism(s), and political Islam on the current status and future prospects of the protection of human rights in this region". He notes that "since these factors have been cited as justification or explanation of human rights violations at various times in different Arab countries, they should be taken into account in any analysis of the current status, and assessment of future prospects" (p. 708). The essay then proceeds to address relevant issues such as governmental action, the Arab League, and non-governmental organizations (NGOs). In respect of the latter, he observes that "Arab human rights NGOs are consistently denied official registration and face systematic harassment by the majority of the governments of the region" and that this is true both of "traditionalist purportedly Islamic governments like those of the Gulf states and Saudi Arabia or so-called secular governments

like those of Iraq, Syria and Libya" (p. 723). In analysing the conceptual difficulties, he notes that a particular troubling difficulty to the Arab human rights movement is "the strong emergence of Islamic activism during the last two decades" (p. 729) and the consequent problem of "how to deal with Islamist and other militant ideological groups which seek to manipulate the processes of democratization and protection of human rights in order to seize political power without genuine commitment to these values" (p. 724). He notes also that "the personal background of the secular Arab intellectuals who became leaders of human rights organizations is not conducive to open dialogue with the leaders of the Islamic groups" and that "these leaders of human rights organizations find it difficult to openly challenge calls by Islamic groups for the application of Islamic Law (*Shari'a*) for fear of being branded as 'anti-Islamic' despite the obvious fundamental contradictions between [historical] *Shari'a* principles and international human rights norms on such issues as the rights of women, non-Muslims and freedom of belief among Muslims" (p. 729). An-Na'im concludes this essay philosophically with the observation that the challenge that ultimately confronts human rights in the Arab world "is how to be 'visionary yet realistic', because there are no 'magic solutions' that can materialize immediately for any of the obstacles and problems facing the protection of human rights in the Arab world. Because one has to take the world as it is, not as one would like it to be, strategies for promoting the protection of human rights must take into account the deep-rooted nature of the problems in devising incremental solutions that address immediate short term needs, while seeking to achieve long term ends" (p. 732).

The ninth essay, "Human Rights and Islamic Identity in France and Uzbekistan: Mediation of the Local and Global" was first published in 2000. It relates to the Muslim world in the diasporic sense, in relation to the human rights problems raised by Muslim minorities living in non-Muslim states and trying to maintain their identity as Muslims in those states. Here, An-Na'im discusses "current expressions of Islamic identity in Western Europe and Central Asia" as part of his "wider and continuing concern with issues of cultural transformation in Islamic societies and communities" (p. 906). The importance of the Muslim world in the diasporic sense, is reflected in An-Na'im's reference to the fact that some "Muslim scholars, like late Fazlur Rahman and Zaki Badawi, have suggested that Islamic renewal may come from Muslims in the West", with Zaki Badawi adding that "the most profound formulations will come from France, where Muslims will be challenged by the hardness of life, the deeply held convictions of Republican secularism, and the depth of racism" (p. 917). The essay focuses specifically on "the role of the human rights paradigm in the dynamics of the formation and transformation of Islamic identity in France and Uzbekistan today". An-Na'im notes, in that regard, that "despite differences in

their historical experiences and specific present context, both types of complex Muslim communities face the question of the relationship between Islam and the state" (p. 908).

In relation to France, he identifies that local "Muslim communities are currently negotiating with the wider national French identity and culture about the meaning and relevance of their Islamic identity in the context of a highly developed and effective national and regional European human rights framework" (p. 908). He observes in that regard that major issues of contestation include education, religion, language, political participation, and immigration policies. On the other hand he notes that "Uzbekistan is struggling with the meaning and relevance of an Islamic identity in the context of a post-Soviet-state society that is only beginning to discover the possibilities and benefits of a human rights framework" (p. 909). Thus, An-Na'im asserts the need for Muslims to "adopt a human rights paradigm (including its norms and institutions and its popular advocacy) in order more effectively to assert their Islamic identity" (p. 940) but in doing so he argues that "Muslims in France and Uzbekistan *may have to modify aspects of their understanding of what an Islamic identity means in the process of claiming that identity in the modern context*" (emphasis not mine). He reiterates again in this essay that "for the universalist human rights project of the second half of the twentieth century to succeed …it needs to engage possibilities of internal discourse and cross-cultural dialogue in promoting its own normative legitimacy as well as its political and legal efficacy" (p. 910). He also discourses the complexities of identity formation and transformation, Islamic identity and nationality and citizenship in France, and the politics of transformation in Uzbekistan, respectively. With regard to France he argues that "the human rights paradigm precludes the coerced assimilation of migrant populations into French culture and nationality in the traditional sense", which he notes "forces an adjustment of dominant understandings of what it means to be French". He also notes, however, that "immigrant Muslims will also have to adjust their understandings of what it means to be a Muslim precisely in order to be able to claim an Islamic identity in France" (p. 917). With regard to Uzbekistan he analyses the "role of Islam in the social and political transformation of the country in the post Soviet era, while highlighting some features that may be relevant to an assessment of the possibilities and limitations of using the human rights paradigm in mediating Islamic identity in that country" (p. 922). The essay then examines the relationship between Islam and culture and considers the "possible role of the human rights paradigm in the transformation of Islamic identity in these two countries" (p. 933).

In conclusion An-Na'im appreciates that "it may appear paradoxical to say that Muslims, or any other religious or ethnic group for that matter, will have

to accept the incorporation of an external normative system, namely, universal human rights standards and institutions, into their own identity in order to claim that identity. However, the paradox is resolved or mediated to the extent that Muslims are active actors in (not merely subjects of) the articulation, interpretation, and implementation of human rights" and that the "human rights paradigm is necessary for the formation and transformation of Islamic identity". He closes his arguments by stating that "Muslims have a choice in either rejecting this imperative paradigm as 'alien' to their cultures or accepting it as integral to those cultures in today's interdependent world" (p. 941).

Often, when discussing the relationship between Islam and human rights in Muslim societies, the important role of human agency is often not well highlighted or is forgotten completely. This is what An-Na'im addresses in the tenth essay, "The Best of Times and the Worst of Times: Human Agency and Human Rights in the Islamic Societies". This was first published in 2004 during very difficult times for Islam and Muslims generally, principally as a consequence of reactions to the September 11 terrorist attacks in the United States of America in 2001. An-Na'im begins this essay with the premise that "there are good reasons for 'pragmatic optimism' about human rights in all Islamic societies, precisely because they are experiencing multiple and profound crises of unprecedented scale and magnitude" (p. 1). He argues that the crises confronting Islam and Muslims "are opening new opportunities for creative human agency, which is the ability of people to take control of their own lives and realize their own objectives, thereby becoming the source and cause of transformation", meaning that the best of times can "materialize out of the worst of times through human agency of persons, acting individually, collectively or institutionally". He states however that "outcomes are contingent upon what Muslims and others make of these opportunities, hence the qualification of my optimism as pragmatic, drawing on realistic prospects in the real world to inspire appropriate action, rather than simply assuming that respect for human rights will necessarily improve as a matter of course" (p. 1). An-Na'im emphasises that we "should be concerned about human rights in Islamic societies generally in view of the fact that Muslims are estimated at 19.6% of the total world population, living in every continent and region, and constituting the clear majority of the population in 44 states, a quarter of the total membership of the United Nations" which "represent[s] too large a proportion of the field to be overlooked by any systematic study or monitoring of the status of human rights around the world" (p. 2).

With regard to the role of human agency, he notes that the question of the relationship between Islam and human rights "can be meaningful only when it is about Muslims not Islam… because "the question is always about people's understanding and practice of their religion, not the religion itself

as an abstract notion, and about human rights as a living and evolving body of principles and rule, not as a theoretical concept". He argues further that "[w]hether regarding religion or human rights, reference to states, countries or international organizations like the United Nations is really to people who control the state apparatus, inhabit a country or work through international institutions", and that "[w]hether institutions and organizations are religious, political or diplomatic, the question about their relationship to human rights is always about how people negotiate power, justice, and pragmatic self-interest, at home and abroad" (p. 2). Thus, in relation to Islam, he argues on the one hand that through a proper use of human agency, "the attitudes and practice of Muslims … can change in favour of the equal human rights of women and non-Muslims through internal debate within present Islamic societies", but on the other hand he also notes importantly that "the manner in which Muslims are likely to interact with human rights will be conditioned by such factors as what other societies are doing about the same issues". In his view, "Muslim responses are likely to be affected by whether they perceive that they are required to 'prove' their allegiance to the human rights paradigm while others are not expected or required to do so" and that "Muslims are more likely to resist commitment to these rights when they are presented as being alone in struggling with the principle, while the commitment of other cultural or religious traditions is taken for granted" (p. 4). He then strongly condemns both the terrorists attacks of September 11 2001 as well as the unilateral military retaliation by the United States describing the United States' occupation of Iraq in 2003 as a "colonial venture" which by definition is "the usurpation of the sovereignty of a people by military conquest without legal justification" as well as a "reckless and unaccountable invasion and occupation was neither justified by self-defense principles nor authorized by the Security Council of the United Nations" (p. 5). He however raises a challenge to Muslim societies arguing as a Muslim himself that a "critical part of that process in the present global context is to confront terrorism within our own societies, as it is ultimately a challenge to our human decency and responsibility for what we do, or is done on our behalf or in our name, with our approval or acquiescence". He adds that "Terrorism could not exist or thrive as it does at present if we have not somehow supported or encouraged it, at least by our indifference to the broader phenomenon of political violence and its underlying causes" (p. 7). He argues further that "[n]either the terrorist attacks nor the American retaliation could have happened without the support of a wider constituency on each side, a much wider circle of complicity for having justified, condoned or facilitated those acts of violence" (p. 9).

In relation to human rights, he asserts that "Muslims must exercise their human agency in choosing peaceful co-existence and mediation of conflict

over the arbitrary and indiscriminate use of violence to achieve political
objectives" (p. 8). Thus he notes that despite the "worst of times" scenario
confronting Muslim societies, "this is also the 'best of times' for a positive
engagement of international legality and peaceful co-existence" and that
among the many lessons and insights that can be drawn by all societies from
the atrocities of September 11 is what he describes as "our shared human
vulnerability – the recognition that all human beings everywhere are vulnerable
to arbitrary violence" (p. 8). Against this background, An-Na'im then notes
that the relationship between Islam and human rights "is open to engagement
and transformation precisely because it is contingent on an interactive web of
internal and external factors and forces" and that "[l]ike other major religious
and cultural traditions, Islam provides a basis for upholding human rights and
dignity through its own account of what it means to be human". He however
contends that "these dimensions of the Islamic traditions (in the plural) should
be seen as open to critical reflection and reformulation among the believers
themselves, because of the inherent and permanent diversity of the tradition
itself. There are not only similarities as well as variations in perceptions and
practices of human rights and dignity among Muslims and Islamic societies,
but also possibilities of change in relevant attitudes and practices" (pp. 9–
10). He concludes *inter alia* that the point "is simply to say that the practical
relevance and utility of the social order of Islam are contingent upon human
understanding and practice, which testifies to its ability to provide for the
practical needs of its adherents. This point is critical for the theological basis of
the relationship between Islam and human rights today" and that "these are the
best of times and the worst of times for Muslims, with infinite possibilities in
either direction, dependent on the way we all use or abuse our human agency"
(p. 12).

III.   Some Topical Issues in Islam and Human Rights Discourse

Within the general theme of Islam and human rights, there are specific
substantive topical issues that usually feature prominently in the discourse. In
the five essays contained in this part of the book, An-Na'im addresses some
of those topical substantive issues, namely, the questions of apostasy, religious
minorities, women's rights, freedom of expression and *jihad,* respectively.

The part opens with the eleventh essay, "The Islamic Law of Apostasy and
its Modern Applicability: A Case from The Sudan", first published in 1986.
The traditional Islamic law on apostasy is a very controversial issue in relation
to the right to freedom of thought, conscience and religion under international
human rights law. Article 18 of the UDHR provides that the right to freedom of
thought, conscience and religion "includes freedom to change [one's] religion

or belief", which was one of the reasons for Saudi Arabia's abstention from the adoption of the UDHR in 1948 on the ground that this contradicts the prohibition and punishment of apostasy under traditional Islamic law.[10] An-Na'im notes that the tension between faith and legalism is most obvious in the classical *Shari'a* ruling on apostasy. He addresses this tension against the background of the execution of his mentor *Ustadh* Mahmoud Muhammad Taha by the Sudanese military regime under President Ja'far Numeri on 18 January 1985 for the alleged offence of apostasy among other charges under Sudanese state law. He argues that the "real importance of *Ustadh* Mahmoud's trial and execution is in the questions it raises about the place of [historical] *Shari'a* in the modern world" especially "the relation between sincere Muslim belief and compliance with laws purporting to be derived from that belief". In his view, a candid admission by Muslims of this element of religious intolerance under [historical] *Shari'a* is "an essential prerequisite for the success of any attempt to secure complete respect for freedom of religion under Islamic law and in Muslim states". Through this essay, he hoped to contribute "to the building of a theological, philosophical and legal case for religious freedom in Islam" (p. 197).

The essay starts with a detailed legal, political and religious background to the Mahmoud Taha case in the Sudan before analysing the traditional Islamic law of apostasy. An-Na'im then argues that it is a "fact that the traditional Islamic law of apostasy is not only liable to be abused, but that it is a also inherently in contradiction with more universally accepted standards of constitutional civil liberties and international human rights". He asserts strongly that the "case of *Ustadh* Mahmoud in the Sudan cannot, unfortunately, be dismissed as an isolated and curious example of despotic and oppressive brutality" but a genuine question of Islamic law that "confronts Muslims all over the world with very real and fundamental questions" (p. 211). He then analyses the traditional legal basis of the offence under Islamic law and its civil and human rights implications in modern times. He examines and critiques the different approaches advanced by different modernist Muslim scholars and identifies what, in his view are the shortcomings of each of those approaches. In the end he again proposes *Ustadh* Mahmoud Taha's approach as a new approach and best method for dealing with the issue of apostasy under traditional Islamic law in relation to the right to freedom of religion under modern international human rights law.

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10 The prohibition and punishment of apostasy under traditional Islamic law is currently a hotly debated issue amongst contemporary Muslim scholars. *See e.g.* M. Baderin, *International Human Rights and Islamic Law* (Oxford: OUP, 2003) pp. 123–125; S. El-Awa, *Punishment in Islamic Law* (Indianapolis: IIIT, 1982) pp. 50–56; M. H. Kamali, *Freedom of Expression in Islam* (Cambridge: ITS, 1997) pp. 87–107.

The twelfth essay, "Religious Minorities under Islamic Law and the Limits of Cultural Relativism" was first published in 1987. In it An-Na'im addresses the issue of religious minorities under Islamic law within the context of cultural relativistivism in human rights discourse. He begins with the argument that, "Non-Muslim minorities within an Islamic state do not enjoy rights equal to those of the Muslim majority". He also notes that "although most of the constitutions of modern Muslim states guarantee against religious discrimination, most of these constitutions also authorize the application of *Shari'ah*" which, he argues is contradictory and raises important questions for urgent and candid discussion. He first anticipates and counteracts what he identifies as "possible arguments which may be used to justify or rationalize the inferior status of religious minorities under *Shari'ah*" (p. 1). The article then provides an extensive analysis of cultural relativism and human rights, whereby he discusses the importance of cultural considerations to the development of human rights, thereby restating his erstwhile philosophy that "the implementation of the international human rights standards will improve if they can be shown to be the natural and legitimate evolution of the cultural tradition of the particular community", on grounds that the genesis of human rights norms "can be found in almost all major cultural traditions" (p. 3). He however notes, importantly, that emphasizing "the need for cultural contribution and legitimacy... does not mean that we should concede the claim to extreme cultural relativism that there are no universal standards of human rights", arguing that to do so "would defeat the purpose of cultural relativism itself" (p. 4). He then goes on to discuss the universal nature of the rights of religious minorities by analysing relevant human rights instruments and constitutional provisions, including those of Muslim states, that guarantee this right.

Against that background, An-Na'im then discusses the issue of religious minorities under *Shari'ah*, observing that traditional *Shari'ah* must be understood in the context of the prevailing period of its development and that "now that the problems have changed, and the historical answers ceased to be valid ... new answers must be developed out of the Qur'an and *Sunnah*", which are the main sources of Islamic law, and that those new answers "would be the Islamic *Shari'ah* of today" rather than the historical *Shari'ah*. To find new answers to the issue of religious minorities in Muslim states, he first outlines the historical *Shari'ah* positions on the issue and argues that were we to apply those historical *Shari'ah* principles "to a modern nation-state, such as Sudan, we [will] find that the human rights implications are very serious indeed" (p. 12). He also cites the constitutional provisions of Iran and points out that the "constitutional manifestations of *Shari'ah* [therein] are obviously radically inconsistent with the universal human rights of religious minorities outlined" earlier in the essay (p. 13). He also mentions other Muslim states

that constitutionally declare Islam as the religion of the state and *Shari'ah* as a main source of legislation. He states that the argument of cultural relativism can never be allowed to go so far as allowing for the discrimination against religious minorities sanctioned under historical *Shari'ah.*

He however states clearly in this article that he believes "Islamic *Shari'ah* can be reformed from the fundamental sources of Islam to fully accommodate and even contribute to the further development of the current universal standards" and then proceeds to outline "one way in which *Shari'ah* can be brought into full accord with universal human rights" particularly the rights of religious minorities (p. 14). He argues in the end that "it is my firm conviction that *Shari'ah* has developed in the only way it should, and could possibly, have developed in that historical context" and that the "early jurists…did an excellent job and succeeded in serving the needs and aspirations of their community for centuries" but that "by the same token … it should be open to modern Muslim jurists to state and interpret the law for their contemporaries even if such statement and interpretation were to be, in some respects, different from the inherited wisdom" (pp. 16–17). He then makes propositions for such new interpretations based, again, on the work of his mentor *Ustdah* Mahmoud Taha. He asserts in his conclusion that "[s]ince the Muslims cannot, and should not, be allowed to justify discrimination against and persecution of non-Muslims on the basis of Islamic cultural norms, the Muslims themselves must seek ways of reconciling *Shari'ah* with fundamental human rights" (p. 18).

The thirteenth essay, "The Rights of Women and International Law in the Muslim Context" was first published in 1987. In it, An-Na'im discusses "some aspects of the relationship between [historical] *Shari'a* and current international standards on the rights of women" (p. 492). The essay first analyses the main principles of *Shari'ah* on the rights of women both in the historical context and in view of the "likely re-establishment of *Shari'a* in the public domain" of modern Muslim states (p. 492). He starts with an analysis of the theory of the rights of women under the *Shari'ah,* identifying that "[f]rom its very beginning in the seventh century, *Shari'a* guaranteed all Muslim women an independent legal personality, including the capacity to hold and dispose of property in their own right, a specific share in inheritance, access to education… and some participation in public life" (p. 495). He notes that while "[t]his level of achievement may not appear impressive by some modern standards, … it has made very significant improvements in women's rights when viewed in historical perspectives", thereby reaching the conclusion that "*Shari'a* on the rights of women, … compares very favourably with any other legal system until the nineteenth century" (p. 495).

He however argues that "A historical perspective is a poor excuse for the current inferior status of women under *Shari'a* when compared to other contemporary

legal systems or when judged by the emerging international standards"
(p. 495). He thus points out that this needs to change, arguing that "the provisions
of the Qur'an and *Sunna* on women's rights can be interpreted differently"
and that we should in fact, "now rely on this alternative interpretation of the
Qur'an and *Sunna* in the reformation of *Shari'a* on the rights of women". He
warns however that "[t]he possibility of an alternative interpretation … should
not be confused with the current authoritative view of *Shari'a* as accepted by
the vast majority of Muslims" (p. 497). In relation to the question of equality,
An-Na'im states notably that "I do not believe, however, that complete legal
equality between men and women is achievable and must be our objective
in the Muslim world today" but rather it is the ideal of substantive equality
between men and women that must be realistically pursued. He further argues
in that regard that complete emancipation of women in the Muslim world
cannot be fully achieved through secular movements and that the best way
to achieve women's rights "is through what may be described as alternative
Islamization through the reformation of *Shari'a*" (p. 500), by which he means
"the assumption of an Islamic platform in advocating fundamental reform
of *Shari'a* on the rights of women and the provision of Islamic foundations
for these rights". He notes that "Islam is too powerful a political and cultural
force to abandon to fundamentalists" and that "Islamic movements can easily
mobilize mass support for their agenda by appealing to the religious sentiments
and allegiances of the vast majority of Muslims", and that the "best way … is
to show that the rights of women are Islamic and not alien western notions,
albeit they may find expressions in other cultural and religious traditions, both
western and non-western". He says this must be done internally through the
adoption of imaginative reform techniques for the evolution and reformation
of *Shari'a* rules relative to women's rights" (p. 501).

The essay then provides an analysis of women's rights under international
law and Muslim reactions to those international standards. He illustrates his
arguments with examples of the practices of some Muslim states and concludes
with a discussion of his proposed approach to solving the problem of the rights
of women in Islam in modern times.

The fourteenth essay, "The Contingent Universality of Human Rights: The
Case of Freedom of Expression in African and Islamic Contexts" was first
published in 1997. An-Na'im starts by citing example of incidents on freedom
of expression in relation to Islamic law and Muslim states to establish the
effect of the interplay of the domestic and the international on the realisation of
universal human rights generally. He states that the main premise of the essay
"is that freedom of expression (and other human rights) possess a contingent
universality" (p. 30) which he then goes on to elaborate. He "explores the nature
and dynamics of internal and external variables in relation to the normative

and empirical standing of freedom of expression at both the domestic and international levels", the understanding of which he argues is "necessary for the development of appropriate strategies for promoting the universality of freedom of expression" (p. 31). He then proposes that "African and Islamic societies… should seek to promote universality of human rights as a necessary response to the realities of hegemonic neo-colonial designs of the developed world" and that "the needs of Islamic and African societies to attain and sustain national unity, political stability, and economic development, even as they safeguard their cultural and religious integrity, are all better served by a greater protection and promotion of freedom of expression than by its violation" (p. 32). He also addresses the issue of universality of freedom of expression before discussing freedom of expression in African and Islamic contexts. With regard to the African and Islamic contexts, he observes that "[t]he post-independence experiences of almost all African and Islamic countries … clearly show that decades of bad planning and poor implementation of economic policies, corruption and incompetence were sustained in part through systematic denial of freedom of expression" (p. 46). He, among others, discusses the Egyptian case of Nasr Hamd Abu Zaid, which, he observes, "brought additional concerns about Islamic *Shari'a* law as personal law for Muslims in Egypt" (p. 52). The essay further examines freedom of expression in Kenya and Sudan, using the latter to illustrate how a Muslim state could, through its implementation of Islamic law, acutely limit the right to freedom of expression in ways that had contributed to the continuation of the civil war in the Sudan. In conclusion, An-Na'im proposes specific strategies for integrating the protection of freedom of expression in the political and legal systems of African and Islamic countries based on the earlier analysis of its contingent universality.

The fifteenth essay, "Why should Muslims abandon *jihad*?: Human Rights and the Future of International Law" was first published in 2006. An-Nai'm's intention here is to, realistically and rhetorically, question "the basis of prohibitions of *jihad* and upholding the universality of human rights in ways that can reaffirm the commitment of Muslims to international legality". The essay starts by first addressing the different meanings of *jihad* and indicates that it is used here "to refer to the unilateral use of force by Muslims in pursuit of political objectives and outside the institutional framework of international legality and the rule of law in general". He argues that "[s]ince the framework of legality and rule of law is lacking in 'the real world', there would be no basis for expecting Muslims to abandon *jihad*, as defined" in the essay. He notes that "human beings everywhere are responsible for protecting each other against the risks of our shared vulnerability to arbitrary violence, poverty and injustice generally" and argues that the important question, in his view, is "how can we

all fulfil this mutual responsibility, instead of seeing the issues in terms of an 'Islamic threat' to human rights or to the security of some Western countries?" (p. 785). However this objective of protecting our shared vulnerability, he notes, "would neither be coherent nor politically viable in the absence of consistent observance of these norms and mechanisms of the rule of law in international relations". To achieve such observance and mechanisms of the rule of law in international relations, he states that Muslims should be called upon to abandon *jihad* in the sense of unilateral use of force in pursuit of political objectives, in conformity with the provisions of international law. However he notes the need to "realise that such calls will not be heeded in practice if those principles are not also honoured by other societies [and that] these principles cannot be true to their underlying rationale if they are not inclusive of all of humanity, including Muslims" (p. 786).

The essay also addresses the issue of how international and lawful is international law, wherein he tries to "affirm and promote the legitimacy and efficacy of international law as the indispensable means for realising universal ideals of peace, development and the protection of human rights everywhere". He notes that "For international law to play its role in realising shared ideals of justice and equality under the rule of law for all human beings it must be both truly international and legitimately lawful. It has to be equally accepted and implemented by all human societies, not something that some may choose to ignore while others are required to observe it". He asserts that under international law "the use of military force is not allowed except in accordance with the Charter of the United Nations, namely, in strict self-defence under Article 51 of the Charter, or when sanctioned by the Security Council under Chapter VII. There cannot by any possibility of lawful use of force beyond these two grounds, whether claimed as 'pre-emptive self-defence', 'just war' or Islamic *jihad*" (p. 787). He then states that "It is incoherent and futile to prohibit aggressive Islamic *jihad* without doing the same for any use of force outside the ambit of the UN Charter in the name of national self-interest. From this perspective, there is no moral, political or practical difference between international terrorism in the name of Islamic *jihad*, on the one hand, and so-called pre-emptive self-defence or humanitarian intervention claimed by the USA in Iraq, on the other. Both are instances of 'self-regulated' use of force outside the institutional framework of the UN, and are so inherently arbitrary and unaccountable that they undermine the very possibility of international law". He further emphasises the fact that "it is futile for state actors to demand observance of international law principles by non-state actors when they are unwilling to abide by those principles themselves" (p. 788). The essay then discusses the terrorist act of 9/11 and the American response to it in relation to the universality of human rights. He states that "[t]he Islamic tradition at large

is basically consistent with most human rights norms, except for some specific, albeit very serious, aspects of the rights of women and freedom of religion and belief" (p. 791).

Finally, the essay addresses the issue of the mutual responsibilities for shared vulnerabilities, which, An-Na'im argues depends largely on "how to develop the necessary institutions and global culture of the rule of law in international relations and the protection of human rights throughout the world". He states that "[o]n the Islamic side of the issue, the persistent failure of Muslims to respond effectively enough to the responsibilities of sovereignty at home and peaceful international relations abroad is as damaging for the prospects of international legality and universality of human rights as the unilateral invasion of Iraq by the USA" (p. 795). He concludes that "[c]onfronting terrorism would therefore include combating this underlying culture of political violence, as well as the immediate causes and consequences of the use of arbitrary and indiscriminate violence in the furtherance of political ends, whoever the perpetrators and however we may feel about their alleged justification" (p. 796).

IV.   Conclusion: A Theory of Interdependence

The sixteenth and last essay in this volume harnesses all three elements of Abdullah An-Na'im's general philosophy on Islam and human rights. The essay, "The Interdependence of Religion, Secularism, and Human Rights", was first published in 2005. In it, An-Na'im argues that the apparent tensions between or among religion, secularism and human rights "can be overcome by their conceptual synergy" (p. 56). He notes that he is "not suggesting the collapse of all related ideas, institutions, and policies into [this] framework" but that his purpose "is to highlight the dynamics of one complex process that might contribute to individual freedom and social justice" for all (p. 56). While he believes that his proposition of synergy was applicable to various religious and political contexts, his "primary concern as a Muslim is the prospect for this approach in Islamic societies" and "would like to encourage the determined promotion – the strengthening – of this synergy in the interest of legitimizing human rights, regulating the role of religion in public life, and affirming the positive place of secularism in Islamic societies" (p. 57). He then analyses the moral and philosophical foundation of human rights as well as its universality, the exclusivity of religion and specificity of secularism. As earlier noted in Chapter 4, this is a slight departure from, or modification of, his earlier position adduced in Chapter 2, where he had initially asserted, *inter alia*, that: "Muslim belief precludes a purely secular approach to law and the state" and argued therefore that "the benefits of western secularism in the Muslim world are temporary" (p. 333). The current position should however be understood in

the context of his deconstruction and redefinition of the concept of secularism in Chapter 4 as well as in the present essay, where he states, *inter alia*, that "[w]idespread confusion and suspicion are attendant on the term *secularism* especially in Islamic societies, which regard it as a European, Christian concept imposed by colonial and neo-colonial forces" and then tries to redefine it in a way that "is deeply contextual and dynamic" to be consistent with an Islamic and human rights perspective (p. 61).

In this essay, he re-emphasises the important role of human agency in every society as well as in his proposed synergic process by arguing that each of the three paradigms, i.e. religion, secularism, and human rights, is an enabling factor of human agency and equally susceptible to be influenced by it". The question therefore is "how to secure the best conditions for human agency to achieve the transformations required" (p. 64). While he notes the fact that "[h]uman agency is always integral to the interpretation and implementation of every doctrine" he also acknowledges that "the guardians of orthodoxy everywhere claim eternal validity for their own interpretation and practice" (p. 65) so he argues that it is the principles of human rights that can guarantee the conditions that will facilitate the atmosphere to challenge such orthodox claims from within. He then analyses how human rights depend on both secularism and religion on the one hand, and how religion depends on both secularism and human rights on the other, and finally how secularism also depends on both religion and human rights. He proceeds to analyse this interdependence in Islamic contexts with examples again from the issue of women's rights in Egypt, and the negotiation of identity and politics in the Sudan and in Iran. He ends this essay with a strong assertion that "peoples and individuals need make no choice among religion, secularism, and human rights". In his view, "[t]he three can work in synergy" (p. 80). He therefore urges "both scholars and policymakers to take responsibility for that mediation rather than permit further damage to be done by belief in the incompatibility of religion with secular government and human rights", a human choice, he argues, that will be made by individuals.

From these selected essays, I have endeavoured to identify Abdullahi Ahmed An-Na'im's general philosophy on Islam and human rights as a three-angled philosophy, namely: (i) the philosophy for cross-cultural universality of human rights, (ii) the philosophy for internal reformation of Islamic law based on the methodology of his mentor *Ustadh* Mahmoud Mohamed Taha, and (iii) the philosophy for re-affirming secularism for Muslim states. Based on this three-angled philosophy, An-Na'im advocates a theory of interdependence between Islam, human rights and secularism through which he believes that Muslims should be able to practice their religion faithfully and at the same time enjoy the guarantees of human rights without hindrance.

Whether one agrees, or not, with every aspect of An-Na'im's three-angled philosophy on Islam and human rights and his theory of interdependence, there is no doubt that he is a great scholar whose views make significant contributions to human rights discourse generally and to the topic of Islam and human rights particularly. The factual point is that the questions he raises and engages with regarding the relationship between Islam and human rights in the modern world generally and in modern Muslim states particularly, are very valid and complex questions, which he himself acknowledges could be addressed from many different perspectives. He states, for example, in Chaper 4 that "I am not suggesting the collapse of all related ideas, institutions, and policies into the framework I am describing. My purpose here is to highlight the dynamics of one complex process that might contribute to individual freedom and social justice". As the discourse continues and as Muslims and human rights advocates continue to seek answers to these complex but valid questions, there is no doubt that Abdullahi Ahmed An-Na'im's thoughts as expressed in these essays will continue to be relevant to the debates on the subject for a very long time, which indicates the importance of this volume. Happy reading!

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