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Ann Elizabeth Mayer

Introduction

My interest in clashing views on the relationship of Islam and human rights came about as a result of unplanned encounters in Sudan. When I went to Sudan to conduct research on Islamization of the economy in 1984-85, I had no idea that discussions with Sudanese lawyers and human rights activists were about to change the course of my research. Discussions both during Nimeiri's Islamization program and following his overthrow exposed me to the nefarious impact that Islamization as conceived by a thuggish dictator could have on human rights. In large measure, the Sudanese whom I encountered regarded Nimeiri's version of Islamic law as a perversion of Islam, believing that Islam, correctly understood, supported their aspirations to enjoy the human rights set forth in international law. I was impressed that courageous opponents of Nimeiri's Islamization were ready to risk their own lives to speak out to denounce the resulting injustices. One of the bravest was Mahmud Muhammad Taha, an Islamic reformer, whom Nimeiri executed shortly after my first trip to Khartoum, officially consigning him to death for "apostasy" but in reality retaliating for his bold condemnation of the human rights abuses being perpetrated in the guise of applying Islamic law. Widespread outrage over the judicial murder of Taha was one of the factors mobilizing the populace to revolt and overthrow Nimeiri in 1985. Having confronted the gap between popular support for human rights and a dictator's campaign to crush a restive citizenry under the rubric of applying Islamic law, I wanted to share what I had learned with others.

I made an initial effort to explain the Sudanese human rights situation and how it confirmed the premises of human rights universalism in a 1986 talk criticizing Nimeiri's Islamization program at one of the major U.S. centers of Middle Eastern studies. I amplified the discussion by comparisons with developments in other Middle Eastern countries. I also critiqued the diluted rights set forth in the Universal Islamic Declaration of Human Rights. I called for differentiating Muslims' religious beliefs from the political uses of Islam to rationalize oppression.

I encountered incomprehension and hostility from the U.S. audience, most of whose members were convinced that criticizing a military dictator who claimed to be implementing Islamic law necessarily reflected attitudes that were Orientalist, neo-Imperialist, and disrespectful of the Islamic religion. Exacerbating the hostile reactions was the fact that my approach violated the canons of cultural relativism, then treated by most U.S. academics concerned with the Middle East as unimpeachable dogma. (The hold of cultural relativism has since then somewhat weakened.) As applied to human rights issues, proponents of cultural relativism classified international human rights law as an artifact of Western culture -- with the consequence that its application to Muslim societies involved judging them by inappropriate, alien criteria.

There was also an understandable tendency to refer back to the history of Imperialist incursions in the Middle East, in which complaints about the oppression of local rulers could be opportunistically invoked as a pretext to legitimize European invasions. Thus, the ideal of human rights universalism was being reflexively - and incorrectly -- associated with the old Western colonialist project and a mentality that saw Western domination of Muslim societies as both natural and beneficial. Since international law was assumed to be infected by a Western hegemonic ideology - a highly dubious assumption about a law that harshly and unequivocally condemns colonialism and that sanctifies the right of self-determination, any Westerner like myself who called for applying it in Muslim countries was imagined to be furthering neo-imperialist designs.

Furthermore, in the reactions of the audience members, one could perceive the influence of the binary vision of "the West" versus "the Orient" that is so typical of Orientalism, without their being conscious that treating these as oppositional pairs was tied to their own Orientalist tendencies. They were ready to hurl "Orientalist" as an epithet to denigrate those making negative assessments of the human rights situations in Muslim countries, regardless of the quality and accuracy of the assessments. At the same time, those accusing me of Orientalism were themselves caught in Orientalist stereotyping, imagining that "the natives" should not be covered by standards aimed at ensuring justice and equality - thereby aligning themselves with the colonialist mentality that likewise denied "the natives" justice and equality. The eminent Syrian philosopher Sadiq al-`Azam has decried the Orientalism inhering in such attitudes, in

which Westerners imagine that Muslims cannot appreciate democratic freedoms and human rights, presuming that, as Muslims, they must be "eternally sealed within their own cultural totalities and/or permanently condemned to live lives within the confines of their 'most authentic' systems of beliefs and values."¹

In any event, support for human rights universalism was confused with the Orientalist mentality dissected by Edward Said, without people taking into account the fact that Said himself was a human rights universalist who appreciated the emancipatory potential of human rights. The possibility of differentiating the cynical appropriation of human rights rhetoric for neo-Imperialist designs and the principled struggles of human rights activists to end oppression was not conceded, and the capacity of peoples around the globe to collaborate on the basis of their shared concern for the wellbeing of humanity was ruled out in advance.

I noticed that not one of my critics could go beyond uninformed preconceptions and charges; none of them spoke on the basis of personal experience investigating human rights issues in Muslim countries, and none could explain with specific examples and logical reasoning why it was appropriate to strip people in Muslim countries of the human rights that they aspired to enjoy. A lack of familiarity with the U.N. human rights system was much in evidence in the comments made. Not realizing how U.N. human rights documents were constructed with input from countries around the world or how estranged the United States was from the international human rights system, these academics imagined that the Universal Declaration of Human Rights (UDHR) and other instruments embodied distinctive U.S. values and priorities. Based on their preconceptions, they could not accept the fact that Middle Eastern Muslims figured among the more important contributors to formulating the International Bill of Human Rights.²

¹ Sadik [sic] al-`Azm, "The Importance of Being Earnest About Salman Rushdie," *Die Welt des Islams*, vol. 31 (1991), 30-34.

² A recent study of Muslim input into the UN human rights principles has made an important contribution to expanding awareness of the debt that U.N. human rights system owes to delegates from Muslim countries. See Susan Waltz, "Universal Human Rights: The Contribution of Muslim States," *Human Rights Quarterly*, vol. 26 (2004), 799-844.

Since I did have background in international law and since I was talking about what I had actually witnessed in Khartoum and was reflecting discussions with knowledgeable Sudanese, I was confident that my perspectives were on firm ground. I felt moved to correct the misapprehensions that stood in the way of grasping the politics of human rights in Muslim countries. I committed myself to what I originally assumed would be a short-term project of explaining the implications of the arguments that Muslims necessarily stood outside the international human rights system and that their rights had to be set according to distinctive "Islamic" standards. I sought to encourage people to examine more critically the political uses of Islam to justify oppression. I aimed to draw attention to how Muslims supportive of human rights found congruity between Islamic values and the principles of international law, believing that as Muslims they did not have to choose between their religion and human rights.

I realized that I needed to counter the tendency to treat Islam as a monolith. I had to explain how Muslims' wildly differing stances on whether Islam constituted an obstacle to human rights might reflect a variety of competing strains in Islamic thought and how they often tied in directly with local politics. Using examples from official statements and actual human rights records, I sought to demonstrate how in cases where Islam was controlled by governments, the official "Islams" had to be understood as expressions of state policy, not as expressions of immutable Islamic doctrine. Feeling that people too often overlooked the central role of the nation-state, a Western model of government adopted by all Muslim countries, I stressed that national politics - not Islamic culture -- lay behind state sponsored deviations from international human rights law. All this meant that the cultural relativists' conviction that attacking governmental rights policies was the same thing as attacking Islamic culture was misguided.

Although my own research has concentrated on the politics of human rights in the Middle East, because of my interest in how local particularisms are invoked to resist international law, I have extended my work to critique U.S. policies affecting international human rights law, which leave the United States deeply estranged from the

international system. U.S. official views on many human rights issues exhibit the same insistence on the proposition that local law overrides international human rights law that one finds in many Muslim countries, and certain U.S. policies are becoming increasingly aligned with those of Muslim countries.³

Knowing that my work was in a controversial area, I tried to make sure that it was based on a firm foundation of careful investigation and analysis. I sought to learn as much as I could about all sides of the issues I was covering, doing extensive research in a wide variety of relevant sources. I did not allow my initial preconceptions to dictate my conclusions; I second guessed my own assumptions as I expanded my knowledge of the subjects that I was researching. (I had already shown my readiness to rethink my positions when, after discussions in Khartoum, I myself corrected some cultural relativist misconceptions that I had initially harbored.) I exerted myself to provide in depth and fully documented scholarly assessments and comparisons of the ways that governments, politicians and diplomats, ideologues, lawyers, religious leaders and institutions, intellectuals, and academics had addressed the significance of Islam in relation to human rights issues. Recognizing that people tended to make casual generalizations about human rights without actually studying carefully the applicable provisions of international human rights instruments, I decided to remedy this by including detailed examinations and comparisons of international human rights provisions with the significantly altered versions offered in so-called Islamic human rights schemes.

Distinctions between the Islamic tradition and the way it is reworked by the modern nation state for its political objectives are essential to understanding my work on Islam and human rights. The modern nation state is now ubiquitous in the Middle East, and it has had great impact on the way laws ostensibly derived from Islam are

³ See the publications listed below in note 35-37 and the forthcoming chapter on how the second Bush administration has allied itself with Muslim countries in fighting human rights dealing with children, women, and sexuality -- Ann Elizabeth Mayer "The Internationalization of Religiously Based Resistance to International Human Rights Law," to be published in a volume entitled *Global Justice and the Bulwarks of Localism: Human Rights in Context*.

formulated. My analyses of human rights issues build on my earlier studies assessing state-sponsored Islamization programs, concluding that they produced selective and highly politicized versions of Islamic principles. As I compared various Islamization programs, I noted a pattern of the vast and complex Islamic jurisprudential heritage becoming winnowed into a few principles reflecting the agendas of ruling elites.⁴ I found that the results of state-sponsored Islamization programs were more a function of politics than the revival of Islamic tradition. How Islam is being used as a governmental rationale for human rights violations similarly turns out to be a function of state-centric politics.⁵ This political dimension of my assessments and my focus on state policy - easily distinguishable from the Islamic tradition per se -- are regularly ignored by polemicists who are determined to depoliticize the way Islam is deployed to serve the agendas of those in control of the state.

My objective was to make my philosophical orientation in support of human rights transparent, the steps in my reasoning carefully outlined, and my documentation comprehensive. (On this last, have sometimes been thwarted by editors who insist on cutting out many of my examples and quotations and require me to excise most footnotes, finding the scope of my documentation excessive.) My hope was that, regardless of whether readers decided to agree

⁴ See e.g., Ann Elizabeth Mayer, "Libyan Legislation in Defense of Arabo-Islamic Sexual Mores," *The American Journal of Comparative Law*, vol. 28, no. 2 (Spring 1980), 287-313; "Islam and the State," *Cardozo Law Review*, vol. 12, nos. 3-4 (1991), 1015-56; "The Shari`a: A Methodology or a Body of Substantive Rules?" in *Islamic Law and Jurisprudence*, Nicholas Heer, ed. (Seattle: University of Washington Press, 1990), 177-198; "The Fundamentalist Impact on Law, Politics, and Constitutions in Iran, Pakistan and the Sudan," in *Fundamentalism and the State: Remaking Politics, Economics, and Militance*, Martin Marty and Scott Appleby, eds., (Chicago: University of Chicago Press, 1993), 110-51.

⁵ See e.g., Ann Elizabeth Mayer, "Shifting Grounds for Challenging the Authority of International Human Rights Law: Religion as a Malleable and Politicized Pretext for Governmental Noncompliance with Human Rights," in *Human Rights with Modesty: The Problem of Universalism*, Andras Sajó, ed., (Leiden: Martinus Nijhoff, 2004), 349-74.

with my final conclusions, they could trust my expositions and not worry about being misled by the kinds of disinformation that one finds in shoddy or tendentious accounts masquerading as scholarship.

My perspective was, as I frankly acknowledged, that of a supporter of the international standards and a member of groups committed to the proposition that human rights must be universally applied and respected. I know that this means that some will object that, in consequence, I cannot claim the objectivity that they think is called for. In my defense, I can say that, since I have been candid about my belief in human rights universality, if there is a bias, it should be one that readers can readily take into account. Moreover, there are problems with insisting that scholars should be neutral on sensitive contemporary human rights issues. Should we really demand that, as a precondition for writing about human rights, people be neutral on issues like torture of detainees, massacres of innocent civilians, harsh persecutions of dissidents, or laws treating adult women as children subject to male chastisement? Do people perform better as scholars in the human rights domain if they lack consciences or if they have no empathy for the plight of the oppressed? I think that for human rights scholarship to be valuable, it need not eschew a point of view on contested issues; what it should do is to try to provide valid insights into problems that come from thorough research, sound methods, and thoughtful analysis.

In any event, I was pleased over the years to see some of the scholars who had been my harshest critics at that initial 1986 talk subsequently change opinions and become strong supporters of human rights for people in the Muslim world. Alas, I was later to encounter a whole new phalanx of critics in the form of polemicists who were prepared to deploy any tactics, regardless of how dishonest and unsavory these might be, in their efforts to discredit any analyses that supported human rights universalism and discredited policies of Islamic exceptionalism.

Characteristics of frivolous and polemical human rights critiques

Those of us who dedicate ourselves to producing serious scholarship on human rights issues in Muslim societies have every reason to want to be meticulous. When we see peoples' welfare and even their survival

jeopardized, we feel a powerful incentive to work hard to ensure that our assessments can stand up to critical scrutiny. Since we inevitably confront hostile forces that are determined to discredit our analyses, we struggle to ensure their soundness -- in the hope that, over time, our careful work will lead to our analyses being given proper weight. Our task grows harder with the emergence of a contingent of polemicists determined to muddle analyses of human rights by disseminating frivolous, pseudo-scholarly "critiques," misrepresenting the nature of the issues in the controversies about Islam and human rights and misleading readers about the character of the secondary literature. Like email spam clogging one's in boxes, this pseudo-scholarship takes up a great deal of space and creates the need for people to devote time to the evaluations needed to distinguish what is valuable from what is spam.

The people characterized here as polemicists are not scholars who engage in the normal disputation about real controversies and who criticize publications based on their problematic contents, which would be entirely legitimate. One expects and should welcome criticisms that expose flaws and problems and that can lead to improvements and advances in knowledge. However, no benefit whatsoever comes from "critiques" launched by persons who merely hope to score political points with certain constituencies by irresponsibly making accusations that they know are unfounded. (I am assuming those being designated as polemicists are not so dim, so confused that they cannot actually distinguish accurate statements from ones having no basis in fact.) Certain polemicists are so addicted to launching aggressive attacks that they invent battles based on utterly specious pretexts. In their modus operandi, they are much like the second Bush Administration, which attacked and invaded Iraq on the completely spurious pretext that Iraq possessed weapons of mass destruction that it was about to use, repeating this lie many times in many forums, heedless of its falsehood. Obviously, President George W. Bush and the neo-con contingent calling for military aggression were eager to attack Iraq for other reasons, but the supposed threat posed by Saddam's WMDs was relied on as the official rationale. In much the same way, the polemicists' attacks on my human rights scholarship do not relate to what I have ever written or said, but rest instead on the basis of allegations as far-fetched as the official U.S. charges that Saddam harbored WMDs.

Understanding the relationship between Islam and human rights is an important topic, but the prospects for such understanding are set back when polemicists insist on operating on their own rigid, ill-founded preconceptions and stubbornly refuse to adjust their thinking on the basis of evidence showing their deficiencies. Unsettled by propositions that challenge their often naïve stereotypes, they deploy distortions, counterfactual assertions, and base insinuations to discredit scholarship that cannot be squeezed into their intellectual procrustean beds. Unable to produce reasoned analyses, they resort to unfounded accusations and distortions - or even to outright lies - in order to "prove" their points. The "critiques" coming from such polemical ventures may masquerade as human rights scholarship, but they represent its antithesis. Since these polemicists rely on spurious pretexts for taking the offensive, their "critiques" are obviously motivated by reasons other than the advancement of knowledge. Since I do take the advancement of knowledge to be the whole purpose of scholarship, I think it worth spending some time to cast light on their tactics.

In the areas that I write on, I observe that the hostility of polemicists tends to be provoked by analyses that pass negative judgments on the human rights deficits in Muslim societies, using international human rights law to judge these. Such analyses are categorized - wrongly -- as the misuse of quintessentially Western standards to denigrate Islamic culture. Criticism coming from a non-Muslim in the West will be said to involve using inappropriate Western standards to judge Muslim societies; if coming from a Muslim, criticism will be dismissed as a manifestation of cultural alienation or the author's mindless aping of Western attitudes. Thus, I have had to become accustomed to being slurred by polemicists, who insist that my calling for protecting Muslims' human rights means I am using Western standards to cast aspersions on Islam and am engaging in a blameworthy attempt to establish Western superiority.

A classic example of this kind of polemical attack can be seen in a supposed "critique" of my work authored by one Shamsheer Ali, which is replete with false accusations. As with most other such pseudo-scholarly "critiques" of my publications, Ali's is studded with footnotes in hopes that readers will believe that it has documentary support. In

reality, the footnotes are specious, mere decorative elements adorning a tirade lacking any research basis.⁶ Alas, he has many emulators.

The Significance of the Assault on Human Rights Universalism

In some milieus attacking human rights universalism offers a respectable way for pressing opinions that, upon inspection, turn out to be reactionary. Where women's international human rights are concerned, polemicists opposed to allowing Muslim women equality in rights have a field day. Unwilling to make candid acknowledgments of their own hostility towards women's equality in rights, they re-imagine Muslim societies as feminism-free zones -- as if being Muslim was tantamount to having an abhorrence of feminism. They refuse to acknowledge the voices of the growing contingent of Muslim feminists, who have outspokenly and courageously fought for equality. They lump Muslim women together, treating them as a species of subhumans united in their willingness to being denied basic freedoms, all in the guise of fidelity to "Islam." A mindset that treasures preserving an Islamic identity over all other values and a natural hostility to the supposedly alien "Western" values of human rights are imputed to all Muslim women - except, of course, for those women deemed to be cultural traitors.

⁶ See Shamsheer Ali, "Review Article: Misguided Theorizing and Application," *Journal of Muslim Minority Affairs*, vol. 19, no. 2 (1999), 299-320. Among other things, Ali accuses me of extolling secular liberal culture as being superior to other cultures (p. 300) when I make no claims whatsoever about any such cultural superiority, of being "boastful that human rights are a unique product of Western liberalism" (p. 301) - citing to a publication where no such claim is being made, and of treating human rights law as practiced in U.S. courts as normative (p. 313) - when U.S. courts fail to apply international human rights law, a failing that I have repeatedly deplored. I was afforded an opportunity to respond in Ann Elizabeth Mayer, "Misguided Interpretation: Ann Elizabeth Mayer's Response to Shamsheer Ali's Review Article," *Journal of Muslim Minority Affairs*, vol. 20 (2000), 181-84.

Among supporters of the Islamist project one finds ideologues who combine elements of Marxism, traditionally hostile to civil and political rights, with Islamist apologetics. In a quixotic decision, the feminist journal *SIGNS*, which would hardly publish an article by a Christian fundamentalist like James Dobson demanding that U.S. women's rights be determined by Biblical standards, felt comfortable publishing an article by Anouar Majid, who calls for Muslim women to defer to Islamic tradition and who portrays Iran's Islamization program in the most favorable light.⁷

As part of his support for Islamist strictures affecting women, Majid denounces women's international human rights as a Western imperialist plot that can have no legitimacy in Muslim societies, linking this to his condemnation of the predations of global capitalism. Denying the legitimacy of concerns for setbacks to women's rights under Iran's Islamization program, which he sees as having "liberated" Iranian women, Majid scoffs at concerns for women's human rights as "a new form of orientalism" that equates "re-Islamization" with a retreat "into a medieval obscurantism."⁸ He speaks of a failure to chronicle the "female affirmation" by Islamist groups such as the Muslim Brothers, suggesting that this is the fault of "dominating currents of Western feminism," "orientalist legacies," and liberal bourgeois values such as "a deshistoricized notion of human rights and an implicit acceptance of the bourgeois political apparatus as a reliable mechanism for negotiating the grievances of the exploited."⁹ The actual records of discriminatory treatment of women after "re-Islamization" in countries like Afghanistan, Iran, Pakistan and Sudan are conveniently ignored.

Although indicating his negative assessment of my positions on human rights, Majid is more offended by the idea that a Muslim woman would dare appeal to international human rights law. Having noted that the prominent Moroccan feminist Fatima Mernissi is a strong supporter of women's human rights, Majid admonishes her that a feminist movement that calls for civil rights "in the Islamic world today dismisses the weight of tradition and culture," and he also faults it for discouraging resistance to Westernization.¹⁰

⁷ See Anouar Majid, "The Politics of Feminism in Islam," *SIGNS*, vol. 23 (Winter 1998), 321-61.

⁸ *Ibid.*, 340.

⁹ *Ibid.*, 339.

¹⁰ *Ibid.*, 345.

That is, a feminist like Mernissi, a Muslim woman raised in a traditional Moroccan harem environment, who rebels against what supporters of patriarchy claim are sacred rules requiring women's submission, is no more than an agent of Western influence. Unlike the doctrines fashioned by male interpreters who preach women's duty to defer to discriminatory rules - something that Majid implicitly accepts as truly Islamic, Majid does not bother to examine Mernissi's enlightened feminist readings of Islamic requirements, these being effectively dismissed as mere kowtowing to Western ideas.

Deploying Marxist concepts in his attempts to defend Iran's reactionary policies on women, Majid associates Iran's rules enforcing Islamic dress for women with the struggle against Westernization and the global neocolonial order. That is, as Majid portrays it, the regime's policies of stripping women of rights is not a case of reactionary clerics imposing hejab as part of a regime of stripping women of rights and freedoms; the *hejab* is a weapon in the struggle against global capitalism. He does not try to explain how Iranian women wearing chadors would keep global capitalism at bay when the same clerics who impose such dress on women are fighting determinedly to gain Iran's entrée into the WTO, the centerpiece of the global capitalist system.

I have critiqued Majid's attempts to make his endorsement of reactionary Islamist policies on women seem to be animated by progressive concerns, pointing out among other things how he ignores the manifestations of hunger for human rights among the populations of Muslim countries, how he writes around and suppresses the negative implications of Islamist policies affecting women, and how his insistence that women must defer any claims for human rights until the achievement of self-determination for "peoples" at some uncertain future date means that women are being consigned to having their aspirations for equality endlessly deferred.¹¹

¹¹ See Ann Elizabeth Mayer, "Comment on Majid's 'The Politics of Feminism in Islam'," *SIGNS*, vol. 23 (Winter 1998), 369-77. Regrettably, my response was written to an earlier draft of his article than the one actually appearing in print. At the last minute, an altered version of Majid's original article was inserted, allowing him to tone down his effusions of enthusiasm for Islamism and Iran's Islamic Revolution. In consequence of the last minute alterations and the shortness of the time I had to rewrite, my page

The Iranian human rights lawyer Shirin Ebadi represents the kind of Muslim woman who - according to the world views of people like Majid -- should not exist. Ebadi, a believing Muslim and a feminist, is an outspoken critic of U.S. policies at the same time that she condemns Iran's discriminatory treatment of women. She is a perfect exemplar of how Muslims in Muslim countries can insist that Islam is consonant with human rights, rejecting the policies stripping their fellow Muslims of human rights because they do not accept that Islam requires deviating from international human rights. Thus, Ebadi has fought hard to roll back the discriminatory laws affecting women that Iran's clerical rulers insist are mandated by Islamic requirements. These included laws that removed Ebadi from her judgeship on the grounds of sex-stereotyping that proposed that all women were unfit for holding judicial office. Barring women from all judicial offices embodies the kind of blatantly sexist and reactionary views that polemicists like Majid prefer not to discuss in their attempts to rehabilitate the image of Iran's ruling theocracy.

Ebadi's case proves that human rights universality is a two-edged sword; it can be used to critique human rights violations whether they occur in East or West under an Islamic rubric or in Western countries. Ebadi dislikes wearing the "Islamic" uniform imposed by Iran's ruling clerics and dresses in Western style when she leaves Iran. Thus, she was bare-headed when she received the news of her Nobel Prize in Paris in October 2003 and also when she went to Oslo in December for the Nobel Prize ceremony. However, as a true supporter of human rights universality, Ebadi did not limit herself to fighting against Iran's discriminatory treatment of women, like its coercive official Islamic dress rules. Having a mastery of international human rights law and following a coherent universalist model of human rights, Ebadi used her time in the spotlight to insist that women should be free to choose whether or not to cover their hair - and that this principle applied not only in Iran but in Europe, as well. During her October stay in Paris, Ebadi noted the debates on the French plan to ban Muslim students from wearing headscarves in schools. Believing in freedom of religion as a principle that crosses national frontiers, Ebadi sided with the Muslim women who protested the ban on headscarves in French

references and quotations do not always correlate with the altered text.

schools, asserting that she was equally opposed to the French ban on the headscarf and to the Iranian imposition of the headscarf, that both were unacceptable from a human rights perspective.¹² It is cases like hers that demonstrate how believing Muslims who are versed in international human rights law do appreciate the need to have consistent standards and how they press universalist positions that will be anathema to those preaching the doctrine that human rights are "too Western" and "too secular" for Muslims.

Discussing Human Rights in an Era of Islamophobia

Given the current international situation, there is a great deal of ambient "noise" that interferes with successful communication on issues of Islam and human rights. It is vital to distinguish well-documented and fair criticisms that reflect rigorous and consistent applications of international standards from a very different phenomenon -- the selective appropriation of human rights by Western governments to justify their political and economic encroachments or the cynical deployment of human rights rhetoric by Islamophobes. The motives behind scholarship that endeavors to render intelligible complex developments in Middle Eastern societies can be confused with the motives of actors in the drama of expanding U.S. hegemony in the Middle East. U.S. ambitions to impose a Pax Americana on the Middle East have mushroomed since September 11, 2001, raising the "noise" level, which was already confusing for many observers. Today one sees Western politicians -- like members of the second Bush administration -- who cynically exploit human rights as a tool to bludgeon uncooperative countries into submission or to justify neo-imperialist crusades. The blatant double standards of the Bush Administration, in which a country like Iran is demonized and more cooperative or subservient countries that are human rights hells -- like Libya, Saudi Arabia, Sudan, Tunisia, and Uzbekistan -- are treated leniently, naturally provoke disgust.

Those perceiving the outlines of a neo-colonialist plot in efforts to secure the universality of human rights might

¹² See e.g., Pierre-Henry Deshayes, "Laurels but no head scarf: Shirin Ebadi in Oslo to receive Nobel Peace Prize," *Agence France Presse*, Dec. 8, 2003.

point to statements like those made on September 26, 2001, by Italy's Prime Minister Berlusconi, a strong supporter of U.S. intervention in the Middle East. This neo-fascist official proclaimed Western civilization superior to that of Islam - in part based on the West's advances in human rights - and called for the West to "occidentalize" the globe, as if this would be to the benefit of non-Western societies. Among his comments were:

We should be confident of the superiority of our civilization, which consists of a value system that has given people widespread prosperity in those countries that embrace it, and guarantees respect for human rights and religion. This respect certainly does not exist in Islamic countries.¹³

However, the neo-fascist Berlusconi has no stature whatsoever in the human rights domain, and his enthusiasm for Western Imperialist ventures in Muslim countries is irreconcilable with fundamental principles of international law supporting self-determination and anti-colonialism. Wrongly assuming that ideas like Berlusconi's are typical of human rights activists, persons skeptical about claims of human rights universality may envisage a grim outcome of the struggle on behalf of human rights universality and may project that, when non-Western societies lie prostrate after being overwhelmed by the ravages of Western culture, they will be incapable of resisting Western economic and military predations. In reality, it is the lack of human rights that, in combination with other factors, makes so many Muslim countries particularly vulnerable to outside pressures.

More "noise" is engendered by Western religious leaders like Franklin Graham and political pundits like Ann Coulter who demonize Islam and call for Muslims to be converted to Christianity, assuming that Islamic civilization is barbaric and backward. One also encounters journalistic proponents of rank Islamophobia, like the Italian journalist Oriana Fallaci, who authors poisonous diatribes against Muslims and their faith. To their "noise" is added the babbling of supposed "experts" on Islam like the pseudonymous "Ibn Warraq" who is furiously hostile to

¹³ Stephen Erlanger, "West superior to Islam world, says Italian PM," *NY Times News Service*, Sept. 28, 2001. http://www.geocities.com/dapat_tapatt/west.html

Islam and who wages campaigns to defame it, blaming Islam for the ills of Muslim societies - including the dismal human rights situations that one finds there.¹⁴ I need not dwell on my quarrels with "Ibn Warraq," since the person hiding behind this pseudonym has given the world ample reason to question his evaluative capacities via his writings, most particularly his recent assault on the deceased Edward Said, whom he accuses of being "the most influential exponent" of the philosophical trend that produced "Islamic terrorism."¹⁵ In an interesting twist, the Islamophobic "Ibn Warraq" attacks me, expressing disgust at what he calls my "desperate attempts to exonerate Islam."¹⁶ That is, while polemicists with apologetic and cultural relativist agendas condemn me for negative characterizations of Islam, a polemicist on the opposite side who is aiming to denigrate Islam finds the distinctions that I draw between Islam and the political uses of Islam objectionable.

Such background "noise" frequently disposes people to make too casually the assumption that all critical appraisals by Westerners of human rights deficits in Muslim societies must be animated by hostility towards Islam

¹⁴ See Ibn Warraq, *Why I Am Not A Muslim* (Amherst, NY: Prometheus, 1995).

¹⁵ See Ibn Warraq, "The man who gave us the intellectual argument for Muslim rage dies," *Wall Street Journal*, September 29, 2003. In hurling this outrageous accusation at Said, Ibn Warraq reveals perfectly both his level of intelligence and the nature of his political engagement. Blaming Said for creating the philosophical basis for Islamic terrorism is patently absurd. However, this has not deterred U.S. neo-conservatives, who have reasons for wanting to discredit Said's tough critiques of U.S. policies, from smearing him as "the Profesor of Terror." An important essay by Tony Judt has reminded us of Said's actual views, which precluded recourse to political violence. See Tony Judt, "The Rootless Cosmopolitan," *The Nation*, July 19, 2004, <http://www.thenation.com/doc.mhtml?i=20040719&s=judt>

¹⁶ Not greatly concerned with coherence, "Ibn Warraq" has endeavored to persuade his readers that my work supports his view that Islam is the great obstacle to human rights in Muslim countries while at the same time decrying my supposedly "bad arguments." See Ibn Warraq, *Why I Am Not a Muslim*, 190-91.

and/or by support for the designs of Western neo-imperialism. It is vital to differentiate well-founded critical evaluations of the ideologized Islam that is deployed both by governments and by reactionary Islamists as the pretext for oppression from a different phenomenon, Islamophobia - attacks on Islam per se and diatribes designed to establish that Islamic civilization is defective and barbaric in comparison with its Western counterpart. The latter approach entails denigrating Islamic religion and culture on the basis of hostile stereotyping and ethnocentric presumptions of Western superiority, whereas the former condemns specific political programs for their non-conformity with international law, using standards that likewise apply to judge Western shortcomings. Without the right distinctions, discussions of human rights issues in Muslim countries become hopelessly confused, with non-issues becoming elevated to the status of *the* issues, diverting attention from human rights problems that cry out for attention.

A Human Rights Critique out of Lewis Carroll's World

The following dissection of John Strawson's grossly misleading "critique" of my work should serve as an instructive illustration of how what I write is traduced by people who are committed to discrediting scholarship that conflicts with their convictions that human rights do not belong in Muslim societies. I have singled John Strawson out for particular attention, because he has been most assiduous in purveying gross mischaracterizations of my work in one publication after another, all the while maintaining the pretense of being engaged in scholarship. I propose here to account for John Strawson's bizarre "reading" by assuming that he owes an intellectual debt to Lewis Carroll, although one might well suspect that other motives are at play. Strawson's criticisms seem animated by the Mock Turtle's version of Arithmetic - "Ambition, Distraction, Uglification and Derision." I have already published one short response to some of Strawson's outlandish charges.¹⁷ Although I can only respond here to a fraction of his strange accusations, I hope that, once alerted to Strawson's tactics, readers will be prepared to

¹⁷ See Ann Elizabeth Mayer, "A Rebuttal," *Arab Studies Quarterly*, vol. 20 n.1 (Winter 1998), 95-97.

dissect other dimensions of his oeuvre and to enjoy his faux-scholarly "critiques" in the manifestly unserious spirit in which they were written. By grasping the patterns in Strawson's misrepresentations, they will also be prepared to identify the spam-like disinformation being purveyed by other authors sharing the same mindset.

Strawson, operating in his through-the-looking-glass mode, pretends that my *Islam and Human Rights* book has a thesis that is diametrically opposed to the one that it actually puts forth, writing: "Mayer concludes her book with an explanation of her thesis that Islam contains a 'culture based resistance to rights.'"¹⁸ Readers should contrast Strawson's fabrication with the book's actual conclusion, emphasizing that, despite the regular recourse to Islam as a cover, *political* factors - not culture - lie behind state-sponsored Islamic human rights schemes. I stress that Islam and its associated culture are *not* the problem:

Their Islamic pedigrees are dubious . . .the pattern of diluted rights in the Islamic human rights schemes examined here should not be ascribed to peculiar features of Islam or its inherent incompatibility with human rights. Instead, these diluted rights should be seen as part of a broader phenomenon of attempts by elites -- the beneficiaries of undemocratic and hierarchical systems -- to legitimize their opposition to human rights by appealing to supposedly distinctive cultural traditions.¹⁹

In John Strawson's gross misrepresentation of my conclusion one sees his "method" for composing a "critique" in a nutshell: Deliberately ignore what another scholar has written, invent obnoxious or ignorant stances that conflict with the points of view actually expressed, falsely attribute these stances to the scholar, and then proceed to

¹⁸ John Strawson, *Encountering Islamic Law*, www.geocities.com/paklawreview/strawson1.html [hereinafter Strawson, EIL, Pakistan]

¹⁹ Ann Elizabeth Mayer, *Islam and Human Rights, Tradition and Politics*, 2d ed. (Boulder: Westview, 1995), 177. I should note that Strawson refers to both the first edition, Ann Elizabeth Mayer, *Islam and Human Rights, Tradition and Politics* (Boulder: Westview, 1991), and second edition of this book, not to the third edition, Ann Elizabeth Mayer, *Islam and Human Rights, Tradition and Politics*, 3rd ed. (Boulder: Westview, 1999).

"critique" the scholar for the false imputations. One also sees the characteristics that mark his "critiques" as exercises in pseudo-scholarship. Rather than confess that he is engaged in a polemical endeavor, Strawson includes some quotations, offers some footnotes, and writes in the tone of an academic perturbed by the deficiencies that he pretends that he has discovered. John Strawson's scholarly masquerade is one reason why a riposte is called for; unwary readers, particularly unwary students, could be deceived into thinking that there actually are factual bases for his Mock Turtle-style disquisitions on my human rights publications.

Being disinclined to consider the importance of political dynamics *within* Muslim countries, John Strawson acts mystified by analyses that focus on these dynamics. Unwilling to examine the political motives and objectives lurking behind oppressive regimes' appeals to Islam to justify policies violative of rights, he harps on a binary world in which a beleaguered monolithic "Islam" faces off against an arrogant, secular "West." Imagining that this is a struggle in which an *external* force, the West, deploys human rights in a strategy for cultural domination, Strawson's outlook closely resembles that of the famous political scientist Samuel P. Huntington - whom Strawson in a Lewis Carroll-ish twist renames "Patrick P. Huntington."²⁰ In his "clash of civilizations" essay, Huntington claimed that the West engenders conflicts by inappropriately pressing "Western" human rights on resisting Muslims, who find them culturally alien. John Strawson shares the Huntingtonian perspective but adds a conspiratorial dimension, treating calls for respecting international human rights law as part of a Western plot against Islamic culture. Thus, if I use international human rights law in critical assessments of how Islam has been deployed as a pretext for denying human rights, I am, in Strawson's view, serving as an agent for a pernicious Western campaign to undermine Islamic culture.

John Strawson insists on a Huntingtonian East-West split on human rights -- as if the International Bill of Human Rights were a product of "the West," when in reality the historical record amply demonstrates that many Muslim countries -- as well as other non-Western countries -- played vital roles in the difficult work of shaping human

²⁰ See John Strawson, "A Western Question to the Middle East: Is There a Human Rights Discourse in Islam?" *Arab Studies Quarterly*, vol. 20, n. 1 (Winter 1997), 51.

rights principles.²¹ The major Western countries like the United States largely remained on the sidelines -- when not impeding the process of drafting the International Bill of Human Rights. Far from sharing Huntington's views, I object to Huntington's thesis so strongly that I was prompted to write a ninety-seven page article debunking it,²² an article that innumerable Muslims have told me that they have appreciated as a corrective to Western preconceptions about human rights being distinctively Western and about Islamic culture being inherently opposed to human rights.

In his determined campaign to portray me as a person infected with bigotry and anti-Islamic animus, John Strawson insistently presses a polemic based on the notion that I am deeply prejudiced against Islamic law and dedicated to proving the superiority of Western law. In a passage replete with grave accusations that he does not even attempt to substantiate, Strawson accuses me of representing Islamic law as "an essentially defective legal system," "incomplete and inadequate." He also pretends that I am claiming that European law is "superior," "legitimate," "fully developed," "a complete, established and definite legal system"²³ - ideas that run directly counter to what I have written and taught over several decades. He goes even further, asserting: "*Her entire standpoint is 'western (sic) superiority.'*"²⁴ He does not - and cannot -- offer one shred of evidence buttressing his outlandish assertions.

²¹ See, e.g., Waltz, "Universal Human Rights."

²² See Ann Elizabeth Mayer, "Universal versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct?" *Michigan Journal of International Law*, vol. 15 (Winter 1994), 307- 404.

²³ John Strawson, Encountering Islamic Law.

www.wponline.org/vil/Articles/shariah/jsrps.html

[hereinafter Strawson, EIL, wponline] On the Internet, I have switched back and forth in horrified fascination between the startling disinformation being purveyed on the website already cited in footnote 18 (referred to as EIL, Pakistan) and on the website cited here. I shall refer to both sites interchangeably. Strawson's "encounters," as chronicled in the two websites may have minor differences. However, given the Mock Turtle spirit in which they were composed, they hardly merit scholarly line by line cross-comparisons.

²⁴ Ibid.

Not only am I free of the ugly Western triumphalism that John Strawson glibly and falsely imputes to me, but, not sharing Strawson's binary vision, I do not use the kinds of stereotypes about "the West" and "Islam" or about "European law" and "Islamic law" that one finds in Strawson's own work. Although in the course of longer discussions, I have as a matter of convenience often been obliged to resort to short hand terms like "the West," "Islam," or "the Muslim world," any reader who peruses my arguments will see that I consistently stress that one cannot fairly generalize about "Islamic law," which has always encompassed complex and diverse strands and which presently also morphs into many national variants - as well as variants reflecting numerous competing trends in contemporary Islamic thought. In contrast, John Strawson often writes of two simple entities that might be compared with a view to establishing that one of the two were superior. Then, in a tactic that belongs at the Mad Tea Party, Strawson ascribes to me what are *his* stereotypes about "the West" and "Islam" as an oppositional pair and pretends that *I* use *his* stereotypes - stereotypes that I despise -- to establish the inferiority of Islam!

Far from adopting European/Western law as a standard of perfection, I use international human rights law as my standard - a law in which inputs from Muslim delegates were significant and a law that the United States has largely refused to accept. Furthermore, I condemn laws and policies that fail to conform to international human rights law, regardless of whether these come from governments in Africa, Asia, or the Americas. For example, I have lectured extensively about U.S. non-acceptance of international human rights law, I have critically assessed the Vatican's and the U.S. government's stances on international human rights, and I have contributed to critiques of the *U.S. Department of State's Country Reports on Human Rights Practices*.

Alas, the stark distortions that John Strawson purveys feed common misconceptions about human rights being inherently "Western" and also suit the designs of those who appeal to Islam as the means to defend Muslim countries from charges of perpetrating massive human rights violations. People are ready to accept at face value claims that confirm their stereotypes. The intellectual pollution caused by Strawson's pseudo-scholarship, which pretends to dissect my publications while actually resorting to egregious misrepresentations, is, apparently, spreading.

An ambitious recent book on human rights and Islamic law by Mashood A. Baderin reveals the imprint of Strawson's distortions. Although his work is far better researched than Strawson's and is generally more respectful of the canons of scholarship, Baderin does resort to similar tactics to "prove" his contentions that supporting human rights universalism is simply a facet of Western cultural imperialism.²⁵ In advancing his theme that calling for Muslims to enjoy the full human rights guaranteed under international law means imposing Western cultural values on resisting Muslims, Baderin explicitly cites Strawson's views.²⁶ Apparently influenced by Strawson, Baderin imagines that, when I talk about the need for universalism in the human rights domain, I am arguing that, in his words, "Western culture should serve as the universal normative model for the content of international human rights law,"²⁷ a glaring misrepresentation that is later repeated.²⁸ Following Strawson's model of taking words out of context and then twisting them to "prove" a point, Baderin offers a mangled and misleading "quotation" from my Islam and human rights book to support the false insinuation I posit that "universalism" entails agreeing that "Islamic law has no normative value and enjoys little prestige."²⁹ In the actual text, when using the language last quoted, I am not positioning Islamic law vis-a-vis "universalism" but speaking of writings of specialists on international law, who work within the framework of "the Western legal heritage, within which Islamic law has no normative value and enjoys little prestige."³⁰ The actual passage deals with my characterization of the parochialism of the Western scholarly tradition; it is not presented as my own opinion, nor do I endorse it. Thus, one can see that Baderin - presumably inspired by Strawson's "critique" - ignores what I have actually written in his efforts to establish that, when I treat the human rights provisions in international law as authoritative, this must be the same as denigrating Islam and demanding that Muslim countries defer to the alien Western tradition.

²⁵ See e.g., the discussion in Mashood A. Baderin, *International Human Rights and Islamic Law* (Oxford: Oxford University Press, 2003), 28-29.

²⁶ See *ibid.*, 11.

²⁷ See *ibid.*, 10.

²⁸ See *ibid.*, 26.

²⁹ See *ibid.*, 12.

³⁰ See Mayer, *Islam and Human Rights*, 3rd ed., 41.

Significantly, in addition to replicating aspects of Strawson's "critique," Baderin exhibits a philosophy regarding rules of Islamic dress that resembles that of Anouar Majid, not conceding that women should have any choice in deciding what Islamic modesty requirements entail. According to Baderin, Muslim women have only two options: they may choose either to be completely covered (as in the model of the Afghan *burqa* or Saudi *abaya*) or to conform to the Iranian style of *hejab*, which allows them to uncover their faces, hands, and feet while concealing everything else.³¹ Like Majid, he seems unconcerned by the reality that such restrictions on women's dress are coercively imposed by states or vigilantes against the wishes of many of the affected women. One can infer that a person who demands that Muslim women defer to his notions of correct Islamic dress would have reason to want to delegitimize Muslim women's aspirations to enjoy the protections that international law would afford them. One could also presume that he would want to discredit the attitudes of a Muslim woman like Shirin Ebadi, who is a staunch supporter of international human rights law and sees it as protecting Muslim women's right to veil or not to veil, whether in Europe or in Muslim countries. In these connections, one of the easiest gambits would be to announce that international human rights law is "too Western" for use in Muslim milieus and that Muslim women who demand that their rights be protected according to universal standards are cultural traitors whose opinions can be disregarded.

In connection with Strawson's charges that I am insisting on the superiority of Western law, in an assertion that Strawson probably imagined would be blistering, he trumpets: "France, the home of the Enlightenment, did not grant women the right to vote until after the Second World War."³² Apparently, John Strawson hopes to convey to readers the idea that *I* would never have realized that the situation of women's rights in France has even been anything but optimal! However, in reality, I have written an article demonstrating how some discriminatory rules that are too casually associated with Islam have exact counterparts in French laws, at least as these stood until very recently. I have explained that North African countries are really not far behind France in the pace at which their family laws are evolving. I have

³¹ Baderin, 65-66.

³² Strawson, EIL, Pakistan.

also pointed out how, in borrowing Swiss law in the 1920s, Turkey adopted a Western law with some of the same patriarchal features that are found in Islamic law. Far from singling out Islamic law as a special barrier to women's rights, I have demonstrated how closely related are the patterns in legal developments relating to women's rights issues on both sides of the Mediterranean. I have also suggested that, when looking at aspects of women's rights around the Mediterranean, we might dispense altogether with the category of "Islamic law," employing a different category, "Mediterranean law."³³

Moreover, I have argued that, in discussing the current transitional phase in the evolution of legal systems in Muslim countries, we should adopt the Italian comparativist Ugo Mattei's classifications of the three historical stages that all legal systems pass through - precisely because I see strong parallels between this transitional phase and the stages of development that European systems have passed through.³⁴ Now, why would I be pointing out the striking similarities between patterns in legal evolution in European and Muslim countries if I espoused the prejudiced stereotypes that Strawson imputes to me or if I believed in "othering" Islamic law?

Demonstrating more parallel developments, I have discussed the striking similarities in the resistance to women's international human rights on the part of various Muslim countries, the Vatican, and the United States, all of which have had difficulties absorbing the principle of women's equality in the Women's Convention. My critical analysis of how closely related the supposedly "Islamic" and "Catholic" positions are and how they, in turn, closely correlate with the U.S. Government's stance resisting

³³ See Ann Elizabeth Mayer, "Reform of Personal Status Laws in North Africa: A Problem of Islamic Law or Mediterranean Law?" *Middle East Journal*, vol. 49 (1995), 432-46, republished as *Women Living Under Muslim Laws Occasional Paper* no.8, July 1996 (Grabels, France).

³⁴ I have proposed that a central problem for legal systems in contemporary Muslim countries is that they are afflicted by the symptoms of what Mattei calls "political law," a problem that Islamists have naively tried to cure by recourse to Islamic law rather than by instituting the systemic reforms needed to establish the rule of law. See Ann Elizabeth Mayer, "Islamic Law as a Cure for Political Law: The Withering of an Islamist Illusion," *Mediterranean Politics*, vol. 7 (Autumn 2002), 116-42.

women's equality, has won an appreciative audience in the Arab world, where it has been republished in both English and in Arabic.³⁵ I have also specifically compared the U.S. deployment of constitutional pretexts for refusing to adhere to women's international human rights to Muslim countries' use of Islam in the same connection, demonstrating the analogies in the strategies involved.³⁶ Why would I be writing about how Muslim countries, the Vatican, and the United States have taken closely related stances in resisting women's international human rights if I believed in Western superiority and the inferiority of Islamic law?

I have shown how the Saudi prohibition on women driving cars was foreshadowed by events in the United States at the dawn of the automobile era. I have reminded readers that research shows that, so threatening was women's automobility to the U.S. status quo in the early twentieth century, that men strongly resisted allowing women to drive, offering a variety of rationales for why women did not belong behind the wheel.³⁷ That is, I have tried to help Western readers understand that they need to look beyond "Islam" when analyzing a problem like why the Saudi government bars women from driving, demonstrating that in situations where the use of cars by women threatens to undermine male control - whether it be in the United States or in Saudi Arabia, rationalizations are devised for keeping the privilege of driving for men. If I am encouraging people to appreciate that, regardless of what

³⁵ See Ann Elizabeth Mayer, "Rhetorical Strategies and Official Policies on Women's Rights: The Merits and Drawbacks of the New World Hypocrisy," in *Faith and Freedom: Women's Human Rights in the Muslim World*, Mahnaz Afkami, ed. (New York: I.B.-Tauris, 1995), 104-32, republished in Arabic in 15 *Al-Raida* (a journal published in Beirut by the Institute for Women's Studies in the Arab World) (Winter/Spring 1997) and in a shorter version Damascus in Arabic in *al-Nahj*, vol. 11 (Autumn 1995).

³⁶ See Ann Elizabeth Mayer, "Where Does the U.S. Stand on Women's Human Rights? Reflections in a Jaundiced Eye," *ASIL Human Rights Interest Group Newsletter*, vol. 6 no. 1 (Winter 1996), 18-21.

³⁷ See Ann Elizabeth Mayer, "Islam and Human Rights-- Different Issues, Different Contexts. Lessons from Comparisons," in *Islamic Law Reform and Human Rights: Challenges & Rejoinders*, Tore Lindholm and Kari Vogt, eds. (Oslo: Nordic Human Rights Publications, 1993), 121-25.

the Saudi Minister of the Interior may say, it is simplistic to assert that "Islam" bars Saudi women from taking the wheel, is it reasonable to accuse me of portraying Islam as defective?

I am as critical of the rationales that U.S. officialdom offers for non-compliance with human rights as I am of the Saudi rationale for barring women from driving. For example, in the course of a tough assessment of how and why the United States has used its Constitution as a pretext for non-compliance with international human rights law, I have pointed out how a worshipful attitude towards antiquated constitutional doctrines has been a factor leading to the United States lagging behind the standards of international human rights law.³⁸ Why would I be discussing U.S. backwardness in assimilating international human rights if I were trying to present Western law as being "superior" and "fully developed," as John Strawson charges?

One of John Strawson's favorite gambits is critique-by-epithet, and he hurls epithets with casual abandon. According to him, I am, among other things, a "positivist." Now, in the legal domain, people use "positivist" in a variety of senses, so it would behoove someone who apparently thinks that positivism is a very bad thing to explain precisely how and why it applies to a given author's work. However, offering clear explanations is not Strawson's style, so one is left to speculate why he would paste the "positivist" label on a scholar like myself who highlights how political interests shape what is presented as "law." I shall not lose any sleep worrying about what basis Strawson might fancy that he has for this accusation, because he so regularly attacks me as *if* I had written precisely *the opposite* of what I have written. Thus, given Strawson's proclivities, it is fair to assume that his accusations that I *am* a positivist reflect the reality that I am *not* a positivist, which puts one in mind of Lewis Carroll's king, who says: "If there's no meaning in it . . . that saves a world of trouble, you know, as we needn't try to find any."

However, there is another aspect to glib accusations of "positivism." Over the years I have witnessed a pattern on the part of persons eager to jumpstart their careers who fling about denunciations of "positivist" scholarship. In

³⁸ See Mayer, "Reflections on the United States Reservations to CEDAW," 727-823. See also Mayer, "The Internationalization of Religiously Based Resistance."

this context, "positivist" scholarship often turns out to be scholarship that is fully documented and extensively researched. As far as I can tell, blasting "positivism" serves the goal for many "anti-positivists" of implicitly downgrading the importance of accuracy and a solid research basis, thereby rehabilitating (at least in their own eyes) the quality of their own writings. If scholars who take pains trying to make their assessments well-grounded and accurate can be dismissed as "positivists," so the accusers' attenuated logic would seem to run, then they themselves cannot be faulted for making careless and inaccurate allegations. In this "anti-positivist" schema, making unresearched counterfactual assertions can be elevated to a virtue.

If one is committed to operating in an "anti-positivist" mode, why not be "creative" about changing important historical dates? No slouch in this regard, John Strawson coins a new, imaginary date for the 1979 post-revolutionary Iranian Constitution, which he dates to 1980.³⁹ In a perfect illustration of the level of John Strawson's qualifications, not only does he give readers the wrong date, but he attacks *me* in the associated footnote, asserting "Mayer refers to the Constitution that emerged after the Islamic Revolution as dated 1979, in fact it was adopted in May 1980."⁴⁰ This example embodies Strawson's "anti-positivist" attempt to lure unwary readers into his through-the-looking-glass world. I did not invent the 1979 date; there is ample evidence in the historical record supporting it.⁴¹ In another instance of "anti-positivism," John Strawson boldly makes up out of whole cloth a new - and false -- date for the 1993 Vienna Human Rights Conference; Strawson moves in back one year to 1992.⁴²

In another example of his "anti-positivist" *modus operandi*, John Strawson pretends that I harbor the illusion

³⁹ See Strawson, "A Western Question," 41.

⁴⁰ Ibid., p. 55.

⁴¹ See for example Asghar Schirazi, who notes in his treatise on the Iranian constitution that the final version of the Iranian constitution was approved on November 15, 1979. Asghar Schirazi, *The Constitution of Iran: Politics and the State in the Islamic Republic* (New York: I.B. Tauris, 1997), 1. He records that the final referendum approving the Constitution took place on December 2-3, 1979. Ibid., 52.

⁴² See Strawson, "A Western Question," 41.

that I can channel a late Pakistani Islamist! He maintains that I have had the astounding presumption when discussing Tabandeh and Mawdudi, two figures prominent in the reaction against human rights, to assert that I can be "certain that what the former (the more conservative of the two), said in print was what Mawdudi *really thought*, but for political reasons *would not write*."⁴³(emphasis added) In reality, on the page that Strawson refers to, one can see that, far from presuming that I possess the psychic capacity to intuit what were Mawdudi's *unwritten* ideas, I am expressly relying on *texts* -- Mawdudi's own publications, which are cited with references to the relevant pages.⁴⁴ Thus, far from claiming that these are positions that Mawdudi "for political reasons *would not write*,"(emphasis added) I am steering readers to textual sources, where they can find what Mawdudi *did* write. And, no, I do *not* indicate that Mawdudi adheres to the *same* positions as Tabandeh; I make a more nuanced assertion, noting that his positions "are similar to Tabandeh's, with the exception that Mawdudi believed that women should be able to sue for divorce on liberal grounds."⁴⁵ That is, far from saying that what Tabandeh said "was what Mawdudi really thought" as John Strawson alleges, I highlight an important area where, based on consulting texts, I have noted that the two differ. Reading John Strawson's far fetched assertions, one recalls a line from Lewis Carroll: "Contrariwise," continued Tweedledee, "if it was so, it might be, and if it were so, it would be; but as it isn't, it ain't. That's logic!"

In a further "anti-postivist" gambit, John Strawson attacks me for insisting on *my* version of Islam: "Mayer still seems dissatisfied that the texts that she chose do not measure up to *her* Islam, and therefore she imputes even more conservative meanings to them."⁴⁶(emphasis added) *My* Islam? Apparently, Strawson wants to convince readers that, although a non-Muslim, I take positions on Muslims' doctrinal quarrels! In reality, I consistently position myself as an outsider observing inter-Islamic disputes about law and doctrine. I have repeatedly refused invitations to write and speak about Islam in any normative or prescriptive sense, my position being that Muslims alone should do this. If there is something to which I *do* refer

⁴³ See *ibid*.

⁴⁴ See Mayer, *Islam and Human Rights*, 2nd ed., 100.

⁴⁵ *Ibid*.

⁴⁶ See Strawson, "A Western Question," 41.

as normative is definitely *not* any religion; it is international human rights law. I have never tried to conceal that I support international human rights law or that I am gratified to see religious thought -- and not only Islamic thought -- evolving in directions that bring religious teachings and human rights into harmonious coexistence. However, my admitted sympathies for progressive interpretations of religious traditions, including Islam, is *not* the same thing as my presuming that I should or could impose my opinions on persons of other faiths wrestling with *their* doctrinal disputes!

It is especially ironic to have John Strawson complaining about *my* deploying what is supposedly *my* version of Islam when in Strawson's work *he* keeps pressing a version of Islam that one might fairly call "Strawson's Islam." Strawson seems to have drunk deeply from the well of Islamist cliches and to have absorbed typical stereotypes that one finds in Islamist tracts. He implies that there is *one* Islamic outlook that leads to Muslims *all* thinking that they *must* be governed by their religious law, because for Muslims secular systems are unnatural. "From *the* Islamic standpoint, Islamic law is a system of regulation that . . . is itself created by God . . . As a consequence, within *the* Islamic outlook, it is difficult to conceive of a secular state or a secular legal system."⁴⁷ (emphasis added) Strawson could potentially correct his stereotypes about Muslims having difficulty conceiving of a secular state or legal system by consulting the thoughtful analyses of secularism and Islam offered by Sami Zubaida.⁴⁸ But, actually learning about the secular dimensions of the Islamic heritage would be the concern of a scholar, not a task for a polemicist seeking to spin a particular line.

Endorsing "*the* Islamic outlook," John Strawson reveals that he shares Islamists' bitterness over the displacement of Islamic law by Western law, which he sees as being imposed on unwilling Muslims by hostile Western forces determined to undermine Islamic culture. His misconceptions about earlier legal history tie on with his mistaken belief that demands for respect for the human

⁴⁷ Strawson, EIL, wponline.

⁴⁸ See for example, Sami Zubaida, "Religious Authority and Public Life," *ISIM Newsletter*, December 2002, 19, and *Islam, the People and the State: Essays on Political Ideas and Movements in the Middle East* (New York: I.B. Tauris, 1993).

rights developed under U.N. auspices entail imposing a "Western" law inimical to Islamic culture. Embracing typical Islamist views, he seems to think that Islamic law constitutes a viable system suitable for immediate implementation in contemporary Muslim countries -- despite the fact that in almost all countries Islamic law has fallen into desuetude. He fails to consider that, having long been in abeyance, Islamic law has not been comprehensively streamlined and updated and has not been expanded to cover numerous new areas of law that have emerged in the last century. Arduous work would have been invested to rework the Islamic legal corpus in order to distill from the enormously complex sources and jurisprudence of the past the foundations for a viable modern legal system. Even Saudi Arabia has in recent years had to adjust to a vastly expanded role for secular regulation, finding insufficient guidance in Islamic law for the many new issues that are coming up.

John Strawson seems to believe that Iran's Islamization program has already proven his thesis that Islamic law can easily be picked up and applied in all areas without further ado. He quotes with approval Chibli Mallat's encomium to "the success and durability of the Islamic Revolution in Iran."⁴⁹ Strawson's warm enthusiasm for Iranian Islamists' project of reimposing Islamic law is suggestive of an ideological rigidity that precludes taking into account Iranians' overwhelmingly negative reactions to having to endure rule by a corrupt and oppressive theocratic clique.⁵⁰

John Strawson discounts Iranians' alienation from the official Islamic system and their mounting demands for

⁴⁹ Strawson, EIL, wponline.

⁵⁰ Even Khomeini's own grandson, who fled to Iraq to escape the kind of lethal retribution that is meted out to high profile critics of Iran's Islamic government, proclaimed Iran's Islamic Revolution to be a failure. Rather than backing his grandfather's Islamization project, Sayyed Hossein Khomeini lamented the tyranny that followed in the wake of the Islamic Revolution and called for separation of religion and state. See Neil MacFarquhar, "A Khomeini Breaks With His Lineage to Back U.S.," *The New York Times*, August 6, 2003, A9; "Khomeini grandson denounces religious 'dictatorship' in Iran," *Agence France Presse*, August 4, 2003. He was quoted in *al-Sharq al-Awsat* as saying that Iran "needs a democratic regime which does not use religion as a means to oppress people and stifle society." Ibid.

secularization. The clamor for secularization is particularly strong where human rights are concerned.⁵¹ This clamor has grown so loud that, in an effort to cater to the surge in pro-secular sentiment, the ambitious former President Hashemi-Rafsanjani (himself a cleric) in January 2005 publicly tried to win popularity by recasting Iran's system as a basically secular democratic one.⁵² Strawson also apparently assumes that Iran's "success" in Islamization went much further than it actually did. The fact that a clique of clerical hardliners holds the reins of power in the wake of the Islamic Revolution is politically significant, but it has not led to Iran's repudiation of the French foundations of the legal order. As those who know the Iranian situation can attest, the secular foundations of the Shah's legal and governmental system remain, although these are obscured by superimposed elements of the official ideology like the rule by the *faqih* and clerical domination of crucial institutions and the incorporation of elements from the medieval Islamic heritage like penalties of stoning and amputations, and floggings of women not wearing proper Islamic dress.

Iran's heritage of French law has recently been augmented by new laws enacted by the Majles, most of which have no derivation from Islam - a fact that is publicly acknowledged even by Iran's ruling clerics.⁵³ With perceptions shaped by Islamist literature, John Strawson is ill-prepared to accept this; he, after all, insists that Islamic law offers comprehensive coverage, addressing "all areas of social regulation, in Western categories, from criminal law to family law, from constitutional law to public international law."⁵⁴ It is high time for Strawson to redirect his pique and to start scolding Iran's theocratic leaders for failing by such a wide margin to rely on Islamic law, which he knows suffices for all their needs, even though Iranians - including Iran's ruling clerics -- have concluded that it does not.

Mired in rigid preconceptions about a gulf separating "the West" and "Islam," John Strawson is impeded from recognizing that the hybrid legal system that antedated the

⁵¹ See Ann Elizabeth Mayer "Islamic Rights or Human Rights: An Iranian Dilemma," *Iranian Studies*, vol. 29 (Summer/Fall, 1996), 269-296.

⁵² This statement was made on Jan. 30, 2005, to the Iranian Students News Agency.

⁵³ See e.g., Schirazi, *The Islamic Constitution*, 162-72.

⁵⁴ Strawson, EIL, wponline.

Islamic revolution continues. (This hybridity is typical of contemporary Middle Eastern legal systems where official Islamization has been undertaken.) Iran's approach to human rights, in which the regime's "Islamic" restrictions are superimposed on borrowed human rights principles, is a quintessential model of such hybridization -- an unstable compromise between secular law and what hardline clerics would say are mandatory Islamic norms curbing rights and freedoms.

Presumably, John Strawson's refusal to acknowledge this hybridity - a real world fact that is hard to reconcile with his belief in "the success" of the Islamic revolution -- is a factor impeding him from following my discussions of Islamic human rights schemes and prompting him to imagine that my criticisms of Iran's "Islamic" human rights formulations amount to attacks on Islam per se. Those familiar with Strawson's "anti-positivist" style will not be surprised to see that, after insisting on the polarity of the West and "Islam" and after displaying a lack of awareness of the significance of hybridity for "Islamic" human rights formulations, Strawson laments that Western scholars are guilty of underestimating the hybridity of legal cultures⁵⁵ - as if he himself were not a prime culprit in this regard.

John Strawson's idiosyncratic vision of Middle Eastern legal history plays a part in his mischaracterization of my work on human rights and his insistence that it serves an Orientalist/Imperialist agenda. Thus, one needs to examine Strawson's preconceptions about legal history. What does Strawson imagine caused Western law to be adopted? Islamists routinely blame European Imperialism for this, and Strawson follows their line.⁵⁶ More specifically, Strawson blames a sinister Anglo-American axis for the decline of Islamic power and the displacement of Islamic law. (Presumably, he imagines that I am tied to this sinister axis.) He opines: "A critical consequence of the Anglo-American construction of Islamic law is the destruction of the legitimacy of Islamic power within

⁵⁵ See Strawson, "A Western Question," 39.

⁵⁶ See, for example, his claim that "The influence of European powers during the nineteenth century reshaped the scope of Islamic law by both narrowing its jurisdiction and through a process of modernizing the legal system and introducing European law." Strawson, EIL, wponline.

Islamic society and within the wider world . . . Islamic principles are replaced with European ones."⁵⁷

Many unanswered questions are prompted by this claim, which seems to reflect an ethnocentric perspective, one that places the British legal system at the center of the legal universe. John Strawson cannot, of course, reconcile his claim that the "destruction of the legitimacy of Islamic power" occurred via the "Anglo-American construction of Islamic law" with the reality that few Muslim countries have any links to the Anglo-American tradition. True -- certain Muslim countries such as Bangladesh, Malaysia, Pakistan, and Sudan were colonized by Britain long enough for the common law to take root, but most Muslim countries have been oriented towards the overwhelmingly dominant model of Continental European law. If "the Anglo-American construction of Islamic law" had had the portentous impact that John Strawson ascribes to it, why and how did it lead to the replacement of Islamic law by laws alien to the Anglo-American world, like the codified laws of countries such as France, Germany, Italy, and Switzerland?

In his lectures on websites about legal history, John Strawson completely ignores a global phenomenon -- that during the nineteenth and twentieth centuries there was a near-universal consensus among the countries of the world that codified Continental European law was the most efficient and appropriate system for use by the modern nation-state, with the countries forcibly colonized by Britain long enough for the common law system to take root remaining the exceptions. Contrary to the way that Strawson prefers to depict developments, although European colonization was one means of transplanting laws, European domination was *not* essential when the merits of codified Continental European law were so obvious. Thus, for example, Japan, a country never colonized and certainly not under Teutonic domination, decided in the nineteenth century to adopt German law. Far from being overwhelmed by Strawson's imaginary Anglo-American juggernaut, governments in the Middle East were often independently engaged in the process of legal reform and, like Japan, preferred borrowing Continental European codes. After evaluating the modern civil law and its archaic Anglo-American counterpart, these governments dismissed the latter as distinctly inferior and unworthy of emulation.

⁵⁷ Strawson, EIL, Pakistan.

In this connection John Strawson presents what is meant to be an historical account of Egyptian law in the nineteenth century, concentrating on the deprecatory attitudes of the British towards Islamic law and Islamic courts, *as if* the negative attitudes of British Imperialists would have been *the* determining factor in displacing Islamic law in Egypt.⁵⁸ From Strawson's account, a reader with no knowledge of Egyptian legal history would assume that Egypt under British Occupation must have been forced to adopt British law. But what does history tell us actually happened?

In a crucial development - one ignored by John Strawson -- members of the Egyptian elite, during the period when Egypt was still independent and *prior* to the British Occupation, adopted French law in many areas, a law that Egyptians refused to abandon during the decades of the British Occupation *despite* pressures from the British colonial authorities, who wanted them to adopt British law. As Nathan Brown accurately observes in his assessment of how Egypt's rulers unsentimentally discarded most of Islamic law in the nineteenth century, they replaced Islamic law by French law because the latter was better suited to their objectives. "What attracted such elites was not the Western nature of the legal systems they constructed but the increased control, centralization and penetration they offered."⁵⁹ The actual story of Egyptians choosing to import French law on their own and scorning British appeals to adopt the common law does not fit within Strawson's preconceptions, according to which Muslim societies are passive victims of encroaching Westernization, as helpless as the hapless Dormouse at the Mad Tea Party.

Given the active role played by governmental elites in Middle Eastern countries in transplanting Continental European laws, it is bizarre to blame Westerners and their smug belief in the superiority of Western law for the desuetude into which Islamic law has fallen. John Strawson should redirect his energy to convincing *governments* of Middle Eastern countries that they need to follow Islamic law and that it was a terrible mistake to borrow Continental European law and/or to retain their Westernized legal systems after achieving independence. These *governments*, after all, are the decision-makers in this

⁵⁸ See *ibid.*

⁵⁹ Nathan Brown, *The Rule of Law in the Arab World* (Cambridge: Cambridge University Press, 1997), 57.

regard, not the proponents of his "Anglo-American construction" or the Western Colonialist/Orientalist scholarly cabal to which Strawson attributes such decisive impact.

Refusing to acknowledge this reality and rejecting the possibility that internal political dynamics could lead Muslim countries to abandon Islamic law, John Strawson lectures that: "Even within the Islamic world, by the time Kemal Attaturk(sic) came to power, the West had won the legal argument, Islamic law was backward and European law modern. The establishment of a secular republic in Turkey, and with it the abolition of the Caliphate, was a logical result of the pressure of the West on Islamic culture."⁶⁰ In this comment, Strawson reveals how his thinking flows in the Islamist groove, Islamists being inclined to romanticize the last Ottoman rulers as being stalwart defenders of the independence of Muslim societies against Western inroads. Refusing to consider the actual historical background of Ataturk's reforms, Strawson presses the idea that the *only* relevant factors in the secularization of the laws in Muslim countries could be *external* Western pressures aimed at destroying "Islamic culture," a culture that he imagines would flourish if only these *external* Western pressures would cease.

One notes how John Strawson converts Mustafa Kemal's honorific title "Ataturk" into "Attaturk," thereby changing "father Turk" into "(nonsense word) Turk." (This kind of misspelling of "Ataturk" is extremely common among English speakers who read little about Turkey.) In Strawson's case, it seems that he has paid as little attention to crucial elements in Ataturk's biography as he has to his name. In 1911 Ataturk had been sent to Libya where he sought to organize Libyan Muslims to fight for the Sultan against the invading Italians - finding scant support for the Ottoman cause. Near the end of World War I he was stationed on the southern front, where the Turks were forced to retreat by the advance of the combined forces of the British and the Arabs, who were fighting a *jihad* -- a *jihad*, be it noted, that was being waged by Arab Muslims against Turkish Muslims and against the Ottoman Sultan. Not surprisingly, Ataturk was unimpressed by romantic notions of pan-Islamic solidarity!

Besides, in the aftermath of the war, the Ottoman Sultan, with support from many in the religious establishment, turned out to be a willing tool of European

⁶⁰ Strawson, EIL, Pakistan.

powers, which were bent on carving up Turkey and putting the straits under European control. Infuriated by Ataturk's spearheading the nationalist resistance to this plan, the Sultan proclaimed that killing the nationalists was a religious duty, and the highest Ottoman religious authority called for killing Ataturk. Not surprisingly, the Turkish nationalists drew the conclusion that these old Ottoman institutions were inimical to the cause of Turkish independence. After the 1923 nationalist triumph in driving out the invading Europeans and establishing favorable peace terms, which included ending the humiliating regime of capitulations that had signaled European superiority, Ataturk devoted himself to reforms designed to strengthen Turkey. The days of the Caliphate were numbered - and *not* because of "the pressure of the West on Islamic culture," as those who follow the Islamist line would have it, but because of the Caliphate's demonstrated willingness to ally itself with the European invaders, a rank betrayal of the Turkish nationalist cause.

The year 1926 saw the Turkish importation of the Swiss Civil Code. Contrary to what John Strawson imagines, this was not a result of external pressures from European powers, but was an initiative undertaken by Turkey's young, Swiss-educated Minister of Justice, who had been impressed during his studies in Switzerland by Swiss democracy and who found it desirable to borrow a codified law for which the needed commentaries had been already worked out.⁶¹ If Strawson's students take seriously his admonition that Turkish secularization had to come about as the result of the "pressure of the West on Islamic culture," they must imagine that hordes of fierce Swiss mercenaries imbued with an anti-Islamic animus encircled Ankara at a vulnerable moment and forced the personage whom Strawson calls "(nonsense word) Turk" to defer to the standards in use in Geneva and Zurich.

That the only radical, complete secularization undertaken in an independent Muslim country occurred in Turkey *after* the Turkish nationalists had triumphed, achieving one of the rare, ringing military defeats that Muslims have been able to inflict on predatory European forces in recent centuries, handily disproves John Strawson's thesis that Muslims' abandonment of Islamic law and borrowing of Western law occur as a result of Muslim

⁶¹ The episode is described by a direct observer. See Leon Ostrororg, *The Angora Reform* (Westport: Hyperion Press, 1927), 87-88.

weakness and Western domination. But, the actual history of Turkey's adoption of European civil law is not the kind of thing that would deter a person with Strawson's mindset from portraying this development as a consequence of Turkey's will to stand by Islamic law being overborne by pressures from Western Imperialism, especially of the Anglo-Saxon kind.

John Strawson's misapprehensions about how Turkey's secularization occurred are linked to his misperceptions of how international human rights law relates to problems in Muslim societies. To his way of thinking, the Swiss Civil Code adopted under Ataturk could only be an alien imposition, and so is international law - including international human rights law. He cancels out the agency of people within Muslim societies and discounts the possibility that Muslims might choose to resort to European codes or international law after concluding that these provide useful solutions to the actual problems facing their societies.

John Strawson cannot conceive of a situation where Muslims would assess their needs in starkly practical terms, deciding that protections for their human rights were needed and concluding that international human rights law was well designed to curb prevailing abuses -- like tyrannical governments, rampant discrimination, draconian censorship, arbitrary and politicized justice, and cruel and inhuman treatment of detainees. Just as Swiss law could *only* come into Turkey as a result of Western pressures, so, according to Strawson's imaginings, international human rights law could *only* come into Muslim societies as a result of Western threats and predations.

Like the scholar whom he calls "Patrick P. Huntington," John Strawson associates calls for human rights, democracy, and pluralism with outsiders, not conceding the fact that they also are voiced - often urgently - by denizens of Muslim societies. Strawson maintains that those who call for "human rights, democracy, and pluralism" are carrying out a new version of the old the colonialist project.⁶² Now, as applied to President George W. Bush and his circle, Strawson's charge that expressed concern for human rights, democracy, and pluralism should be seen as linked to neocolonialism would have merit. However, he can have no basis whatsoever for associating *me* with the U.S. neo-conservatives who seek to advance U.S. hegemonic designs under the rubric of

⁶² See Strawson, EIL, wponline.

advancing rights and freedoms. Among other things, I call for universal respect for international law, a law that applies as much to the United States as it does to other countries, and, like other principles supporters of international law, I deplore the way that the current Bush administration cavalierly disregards and violates international law.

In John Stawson's view, Muslims should eschew the U.N. system of international law as alien and should instead be using their own international law. Not content with accusing Western colonialism of displacing Islamic law within Muslim countries, Strawson claims that Western power also unfairly sidelined Islamic law in the international arena. For example, he indignantly protests that ash-Shaybani's treatise *as-Siyar* "contains detailed codes on the Law of War"(sic) and that many of its "propositions on the Law of War(sic), would not seem unfamiliar to the modern student of international law."⁶³

The invocation of *siyar* brings on John Strawson's disquisition on what he calls "siyrat"(sic) -- a particularly revealing example of his "anti-positivist" methods.⁶⁴ Now, readers should note that by "siyrat"(sic) Strawson intends to refer to the Arabic noun *sira*, a singular noun, which is *siyar* in the plural form. Strawson identifies "siyrat"(sic) -- his garbled version the Arabic singular *sira* -- as being the plural of what Strawson claims is a singular noun, *siyar* -- in reality, the Arabic plural.⁶⁵ That is, Strawson misspells the singular noun *sira* -- there being no word "siyrat" in Arabic -- and confuses it with the plural form of the noun. Strawson also concocts an "anti-positivist" way of deriving Arabic words, asserting that *siyar* "comes from the plural siyrat(sic)."⁶⁶ This derivation scheme is, of course, totally spurious. Arabic words derive from their roots, the root in this case being *sara*.

The concentrated disinformation contained in this "lesson" that Strawson offers about the Arabic language merits consideration. It should wave a red warning flag for readers who might not otherwise be attuned to the Humpty-

⁶³ Ibid.

⁶⁴ See Strawson, "A Western Question," note 28, p.52.

⁶⁵ Ibid.

⁶⁶ Ibid. Of course, *sira* converts to *sirat* in the specific context of a construct phrase, which is not the context in which Strawson uses it, but Arabic rules preclude *sira* from turning into *siyrat*.

Dumpty-ish character of John Strawson's lectures. This nonsense is accompanied by a neat pseudo-scholarly twist; in connection with his disquisition on *siyar*, Strawson stresses his concern for accuracy lest he "convey the wrong cultural metaphor and be construed as Orientalist."⁶⁷ Thus, at the same time that, following the model of Lewis Carroll's *Jabberwocky*, he fancifully invents and twists Arabic, he pretends to have a scholarly concern to respect the canons of Arabic and thereby to avoid the dreaded pitfalls of Orientalism.

As part of his complaints directed at the supposed Western determination to sideline the Islamic version of international law, John Strawson complains "Islamic law has as much claim as any other system to be included."⁶⁸ Now, those of us who examine developments in the real world would point to an obvious problem in John Strawson's claim that it is Westerners who are to be blamed for sidelining Islamic law: Islamic international law has long been abandoned *by Muslim countries*. Even the members of the Organization of the Islamic Conference have elected to follow the U.N. system of international law *in their dealings with each other* rather than to apply Islamic law. If members of the OIC had found Islamic international law adequate and appropriate for governing their interactions, it would have been perfectly feasible for them to select Islamic law as their governing law, just as European Union countries have elected to be governed by European law. That they have not done so is one indication that Islamic international law is not viewed by Muslim governments as being suited for use in contemporary circumstances. If Strawson ever stepped outside his through-the-looking-glass domain, he might also note that some of the rules devised over one thousand years ago necessarily contain certain features that are ill-suited for contemporary use -- not only in the opinion of the "Orientalists," but also in the opinion of contemporary Muslim states.⁶⁹ Instead of blaming people in the West for imagining the unsuitability of Islam's version of international law, Strawson should logically be directing his ire at OIC member countries,

⁶⁷ Ibid.

⁶⁸ Strawson, EIL, wponline.

⁶⁹ Among other things, in its traditional formulations, Islamic law assumed a united Muslim community engaged in tense confrontation with the non-Muslim world, and it did not envisage a system where nation states were the actors.

demanding that they cease and desist using conventional international law and agree to be governed by Islamic law.

Because John Strawson is determined to situate me in the company of Orientalists who would not recognize that Islamic law could be of any relevance for international disputes, he naturally refuses to acknowledge what I have published in this area. In an example of his "anti-positivism" run amok, Strawson charges that, due to my "positivist methodology" I *cannot* understand that the ICJ can refer to Islamic law.⁷⁰ However, in reality I have discussed how Islamic law was factored into the ICJ's analysis of the issues in the Western Sahara case, which was decided in 1982. In the course of my discussion, I demonstrated how Islamic law *can* provide decisional guidelines for judges dealing with a contemporary international case.⁷¹ With a blithe disregard for accuracy, John Strawson chooses to write *as if* I had not discussed how the ICJ has used Islamic law and perversely insists: "For Mayer, Islamic law confronts the international legal order. It is not part of it, it is the 'other.'"⁷² Strawson waxes indignant about "committed orientalists"(sic) who see Islamic law "as conservative, aberrant and to be kept out of power-defining relationships . . . as a defective legal system," and sniffs disdainfully: "Mayer continues this methodology. . ."⁷³

To establish that I am infected by misbegotten Orientalist prejudices, John Strawson thinks it useful to distort what I have said about Edward Said. It seems that Strawson has no interest in researching Edward Said's belief in human rights universality, which resembles my own. Strawson chooses instead to imagine that Said shares his convictions that human rights universalism is a Western colonialist project. He is not alone in refusing to admit that Said was a human rights universalist. As Tony Judt, Said's distinguished colleague and friend, has rightly observed, Said became "the idolized hero of a generation of cultural relativists in universities" who went on to denounce "Western Culture" as part of "career building

⁷⁰ See Strawson, "A Western Question," 39.

⁷¹ See Ann Elizabeth Mayer, "War and Peace in the Islamic Tradition and International Law," in *Just War and Jihad Historical and Theoretical Perspectives on War and Peace in Western and Islamic Traditions*, James Johnson and John Kelsay, eds. (Westport: Greenwood Press, 1991), 213-15.

⁷² Strawson, EIL, wponline.

⁷³ Ibid.

exercises in 'postcolonial' obscurantism ('writing the other')."⁷⁴ In reality, as Judt points out, Said was imbued with a "deeply felt humanistic impulse" and insisted that human rights are not "cultural or grammatical things, and when they are violated . . . they are as real as anything we can encounter."⁷⁵

I could go on at much greater length in cataloguing the way that John Strawson misrepresents the relationship between Said's positions and my own, but one illustration will have to suffice. In this connection, Strawson resorts to one of his more extreme "anti-positivist" claims, pretending to have discovered that I am wrong about how Said's *Orientalism* pertains to legal issues. He warns readers: "This also demonstrates that Mayer's strictures that Said's *Orientalism* . . . is mainly confined to 'anthropology and philosophy' would seem to be erroneous."⁷⁶ In reality, I have never uttered the proposition that Strawson attributes to me, never made the ludicrous claim that Said's book is mainly confined to anthropology and philosophy. Instead, in a passage that John Strawson has mischievously altered, I do assert that: "*cultural relativism* . . . is a term that was developed for use in anthropology and moral philosophy."⁷⁷ (emphasis added) That is, John Strawson substitutes "Said's *Orientalism*" for the original subject, "cultural relativism," and then pontificates that the passage as he has rewritten it "would seem to be erroneous" - a flourish worthy of Humpty Dumpty himself. In reacting to this nonsense, I might echo Lewis

⁷⁴ Judt, "The Rootless Cosmopolitan."

⁷⁵ Ibid.

⁷⁶ Strawson, EIL, wponline.

⁷⁷ See Mayer, *Islam and Human Rights*, 1st ed., 10. The passage, in a section of the book expressly headed "Cultural Relativism," reads:

Taking a cultural relativist stance to deny the universality of human rights and to challenge the validity of comparative examination of international and Islamic versions of rights is problematic for several reasons. An initial point that needs to be made is that cultural relativism, like Said's idea of Orientalism, is not a concept developed for application in the field of law or for evaluating whether governments of nations are adhering to international legal norms. Instead, it is a term that was developed for use in anthropology and moral philosophy. Ibid.

Carroll, characterizing John Strawson as being like Humpty Dumpty, "sitting with his legs crossed, like a Turk, on the top of a high wall." This characterization makes no sense - but, then, neither does Strawson's vacuous "critique."

Conclusion

What one sees in John Strawson's work is an approach that places him at the very opposite end of the scale from what animates meaningful scholarship on human rights, like Ronald Dworkin's *Taking Rights Seriously*. As entertaining as it might be to see pseudo-scholarship in some areas carried out in the spirit of Lewis Carroll, when it comes to the subject of human rights in the contemporary Middle East, the issues are far too portentous for such tactics to be acceptable - at least for those of us who *do* take human rights seriously. Alas, publications that grossly mischaracterize the secondary literature on this subject are becoming all too typical. This means that, in order to ensure that they do not become dupes of disinformation campaigns, readers need to approach the relevant literature with wariness. Undocumented claims need to be treated with great skepticism, and claims that purport to rest on documentation need to be cross-checked by consulting the originals. But, this entails time-consuming efforts that distract people from examining the actual human rights problems in Muslim societies, problems that have in some cases escalated to an even more acute crisis levels in the wake of unilateralist interventions of the second Bush Administration. For those of us who care about the human rights problems afflicting contemporary Muslim societies - many of which are now connected to U.S. neo-cons' policies of reshaping the Middle East, having to address and correct the disinformation being deliberately disseminated by such frivolous "critiques" rankles.

At a time when many Muslim societies are in agony, how can we account for the dedication on the part of some would-be "experts" on Islam and human rights to purveying travesties of the secondary literature? At a time when governments are oppressing and abusing people while disseminating specious propaganda about their supposed support for human rights, what explains the dedication of people posing as scholars to putting forward "critiques" designed not to elucidate human rights issues but to obfuscate and mislead? One is drawn to troubling

speculations about the possible inducements that have motivated people to produce such travesties, which cannot possibly serve any constructive purpose.

I mentioned at the outset my preoccupation with the suffering caused by human rights violations in Sudan; a little lesson in human rights universalism taken from that same unhappy country deserves to be mentioned in this conclusion. When I went to Sudan over two decades ago, I was appalled by the torments suffered by its inhabitants under a brutal military dictatorship - one that was backed by the United States. To my distress, although the names of the military dictators have since changed, the miseries inflicted on the Sudanese population have altered little in the intervening years. The toll of deaths from the devastating civil war, provoked by the Islamization program launched in 1983, has in the interim mounted to at least two million. So severe has the repression been that the valiant Sudanese human rights activists whom I met in 1984-85 have since been forced to move to lives in exile. Humanitarian crises in the eastern and western parts of that country have also burgeoned. And, in the wake of Sudanese moves to propitiate the United States, this horribly misgoverned country is likely to again be included in the list of U.S. friends in the region.

One of the great villains in the tale of the woes of Sudan in this period is the prominent Islamist ideologue Hassan al-Turabi, once a cheerleader for Nimeiri's reactionary and destructive Islamization program. Unable to win power in free elections held in the brief period of democracy after Nimeiri's overthrow, Turabi gained a dominant position after the 1989 coup by Omar Hassan al-Bashir, which replaced Sudan's elected leaders by another military dictatorship committed to Islamization.

Turabi and his party worked comfortably in a Sudanese system where human rights violations were legion and political repression was the norm.⁷⁸ Turabi participated in the cover up of rights violations. As Sudanese were detained and savagely tortured in Sudan's notorious "ghost houses," Turabi persisted in denials that serious abuses were occurring.⁷⁹ In 2001 after many years in which Turabi seemed to be in control -- notwithstanding Bashir's formal

⁷⁸ See e.g., Biography of Hassan al Turabi, Human Rights Watch, 2002

www.hrw.org/press/2002/03/turabi-bio.htm

⁷⁹ See e.g., Edward Mortimer, "The real face of Sudan - Hassan Turabi, the Islamic leader, presents a picture of his country unfamiliar to the west," *Financial Times*, April 29, 1992, 23.

leadership, the two fell out, and Bashir established the upper hand, arresting Turabi.

When allied with local dictatorships, Turabi showed callous indifference to the sufferings of victims of rights violations perpetrated by the Sudanese Government. Where the Sudanese who were oppressed, imprisoned, tortured, persecuted, and slaughtered in the course of Turabi's Islamization programs were concerned, he refused to recognize the legitimacy of challenges to rights violations based on the criteria of international human rights law. As long as he was in the power elite and in a position to press his ambitious Islamist agenda, Turabi's sole commitment was to amass the power to lead an aggressive Islamization campaign. However, he discovered the hard way what pervasive disregard for human rights and democratic values can lead to. Turabi seems not to have calculated that he might some day wind up on the losing end of a power struggle among Sudanese Islamists. Once this occurred, instead of continuing his previous line that Islamization was all that mattered, he suddenly acted as if Sudanese Muslims could legitimately make claims against Bashir's Islamist regime on the basis of the U.N. human rights system, as if oppression in the cause of Islamism were not above challenge.

Angry over his protracted detention, Turabi demanded to have the protections of precisely those principles of international human rights law that he and his Islamist allies had shredded in the course of their campaign forcibly to impose an Islamic system on the Sudan and to crush all dissent. Turabi tacitly came around to the proposition that Islamist regimes had to respect international human rights standards, a position that at least on its surface resembles that of the Sudanese human rights activists who had been persecuted by Sudan's Islamist regimes since 1983. In hopes of winning international backing for his claims that his human rights had been violated and obtaining his release from detention -- an extremely comfortable detention in comparison with the terrible conditions in which Sudanese have typically been held, Turabi's defense committee appealed to international organizations that employed international human rights law to judge abuses.⁸⁰ (One wonders if the

⁸⁰ See "Turabi's allies to appeal to international rights groups over detention," *BBC Monitoring International Reports*, Aug. 21, 2003, available in Lexis, News Group file. His wife had earlier made a complaint to a U.N. human rights representative about Turabi's being denied freedoms. See "Sudanese opposition complain

coterie of foes of human rights universalism who have shown themselves so eager to condemn Muslims who endorse the U.N. system will ever decide that a prominent Islamist like Turabi must likewise be denounced for appealing to standards that they characterize as alien, Western, and utterly unsuitable for use in Muslim societies!)

As much as I deplore his vile record, I concur that, like all human beings, Turabi is entitled to the protections of international human rights law.⁸¹ However, it is a tragedy for his country that, when this influential Islamist was a powerful figure on the Sudanese political scene, he did not recognize that his fellow Sudanese deserved to enjoy the same kinds of protections that he would later invoke when his own interests were at stake. When Turabi had been at or near the center of power, the Sudanese Government had done all that it could to block scrutiny of its human rights performance and had terrorized Sudanese who attempted to report human rights violations to U.N. observers.⁸²

Had Turabi tried to convince his fellow Islamists that it was essential to respect democratic freedoms and to incorporate firm guarantees for human rights in their program, his subsequent efforts to obtain for himself the benefit of international human rights protections would not seem so much a product of crass selfishness and gross double standards. Given his track record, Sudanese had to assume that Turabi actually did not have any belief that human rights applied universally. They had reason worry whether, if this ambitious Islamist again had the opportunity, Turabi would try once more to impose a ruthless Islamization agenda that would torpedo the compromises envisaged under the tentative peace accords reached in 2005 between North and South.

to UN over alleged rights abuses," *Agence France Presse*, Oct. 4, 2001, available in Lexis, News Group file.

⁸¹ It was fitting and proper that Human Rights Watch, which had condemned the egregious human rights abuses perpetrated under Turabi, should have written a letter protesting the human rights violations involved in Turabi's protracted detention. See HRW denounces year-long detention of Turabi, Press Release/Commentary by HRW posted on March 19, 2002
<http://www/sudan.net/news/press/postedr/105.shtml>

⁸² See e.g., "Sudan. In the Name of God: Repression Continues in Northern Sudan," *Human Rights Watch*, vol. 6, no. 9, Nov. 1994.
www.hrw.org/reports/1994/sudan

Unlike Turabi, whose appeals to the U.N. human rights system have been cynical and opportunistic, Shirin Ebadi, Iran's Nobel Laureate, has followed a coherent philosophy of human rights universalism. In fighting to advance respect for international human rights law in the dangerous and oppressive Iranian environment, Ebadi has repeatedly put her own life on the line to stand up for the human rights of others. However, as already mentioned, she is also ready to condemn Western violations, speaking out to decry U.S. non-compliance. In her tough Nobel acceptance speech she denounced the lack of respect for international human rights law on the part of both Iran and the United States. Among other things, she said:

The concerns of human rights advocates increase when they observe that international human rights laws are breached not only by their recognized opponents under the pretext of cultural relativity, but that these principles are also violated in Western democracies, in other words countries which were themselves among the initial codifiers of the United Nations Charter and the Universal Declaration of Human Rights. It is in this framework that, for months, hundreds of individuals who were arrested in the course of military conflicts have been imprisoned in Guantanamo, without the benefit of the rights stipulated under the international Geneva conventions, the Universal Declaration of Human Rights and the [United Nations] International Covenant on Civil and Political Rights.⁸³

Even more embarrassing for the second Bush Administration, which tries to convince a skeptical world that its interventionist policies in the Middle East are driven by its altruistic devotion to human rights ideals, Ebadi publicly denounced the projected U.S. attack on Iran as one that would degrade rather than enhance Iranians' rights.⁸⁴ Her outspoken condemnations of U.S. policy show the wrong headedness of charges that upholding the universality of human rights necessarily correlates with backing for Western plots to subjugate Muslims.

Reinforcing the logic of strong support for universalism and underlining the fallacious nature of

⁸³ The Nobel Lecture given by The Nobel Peace Prize Laureate 2003, Shirin Ebadi (Oslo, December 10, 2003)
http://www.nobel.no/eng_lect_2003b.html

⁸⁴ Shirin Ebadi and Hadi Ghaemi, "The Human Rights Case Against Attacking Iran," *New York Times*, Feb. 8, 2005, A25.

appeals to Islamic exceptionalism, a new book of haunting images drawn by Sudanese torture victims depicting the horrific abuses in the Bashir regime's torture chambers has appeared.⁸⁵ For all who have seen the stomach-turning photographs of the tortures inflicted on Iraqi prisoners in Abu Ghraib and the drawings that detainees recently released from Guantanamo have made of the abuses that they were forced to endure, the similarities in the horrors depicted will be striking. Whether carried out by the minions of Sudan's Islamist dictatorship or inflicted by the U.S. military in prisons in Iraq and Cuba, these cruel assaults on human dignity help us to appreciate how the religious affiliations and nationalities of the perpetrators and the victims count for nothing.

Another factor to consider as one considers the judgments passed on U.S. mistreatment of detainees is how credibility depends on the consistent use of human rights standards. Human rights NGOs like Human Rights Watch that follow policies of human rights universalism have the ability to make credible critiques of the human rights violations attendant on the U.S. "war" on terrorism.⁸⁶ Conversely, parties like Turabi or Iran's ruling theocrats, who are not consistent in their own applications of human rights standards, cannot expect their critiques to carry any weight.

Like the authors of the UDHR, those of us who feel genuine concern for the sufferings of our fellow humans need to move from our revulsion at "barbarous acts which have outraged the conscience of mankind" to upholding "a common understanding" of the rights and freedoms needed to protect human rights and the rule of law. And we need to take the UDHR's message of universality seriously.

⁸⁵ See *Coping with Torture: Images from the Sudan*, Osman Fadl and Ann M. Lesch, eds. (Trenton: The Red Sea Press, 2004).

⁸⁶ See e.g., Human Rights Watch, *Guantanamo: Detainee Accounts* <http://hrw.org/backgrounder/usa/gitmo1004/>

