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Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives

A Preliminary Inquiry

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To hundreds of millions of Muslims, the historical formulations of Islamic law known as Shari'a determine the boundaries of legal and ethical conduct. In this Article, Professor An-Na'im explores the implications of Shari'a for Muslim observance of international human rights standards. Part I addresses the legitimacy of these standards in Muslim countries, focusing on the international legal principles of equality and nondiscrimination. Part II traces the development of Shari'a in Islamic history and its influence on Muslims. Professor An-Na'im discusses several conflicts between Shari'a and human rights standards, rejecting the contention that such inconsistencies do not exist. Part III explores the political and social forces associated with Islamization in Muslim countries. Professor An-Na'im argues that such pressures heighten the need to examine critically the effect of Shari'a on human rights violations. Part IV presents a case study on Shari'a and Muslim women's rights. Finally, in Part V, Professor An-Na'im offers a methodology for human rights advocates in the Muslim world: to reexamine the scriptural imperatives in the Qur'an to make the dictates of Shari'a consistent with international human rights norms.

INTRODUCTION

Historical formulations of Islamic religious law, commonly known as Shari'a,[1] include a universal system of law and ethics and purport

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1. In Islamic literature, the term Shari'a is used to refer to Divine Law based on the Qur'an and Sunna (traditions of the Prophet Muhammad), while the term *fiqh* (jurisprudence) refers to the opinions and commentaries of Muslim jurists. Some Muslim authors emphasize this distinction in order to suggest that they are criticizing merely *fiqh* and not Divine Law itself. *See, e.g.*, K. FARUKI, ISLAMIC JURISPRUDENCE 12–19 (1962); A. FYZEE, OUTLINES OF MUHAMMADAN LAW 14–24 (4th ed. 1974).

I use the term Shari'a because the aspects of Islamic law I discuss are directly based on the Qur'an and Sunna and not upon personal opinions and commentaries of jurists. As a Muslim, I am not challenging the divine nature of the Qur'an and Sunna. Rather, I am challenging the failure of contemporary Muslims to appreciate the impact of historical context upon the interpretation and application of those fundamental sources of Islam. I argue that given the historical

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to regulate every aspect of public and private life. The power of Shari'a
to regulate the behavior of Muslims derives from its moral and reli-
gious authority as well as the formal enforcement of its legal norms.
As such, Shari'a influences individual and collective behavior in Mus-
lim countries through its role in the socialization processes of such
nations regardless of its status in their formal legal systems. For
example, the status and rights of women in the Muslim world have
always been significantly influenced by Shari'a, regardless of the degree
of Islamization in public life. Of course, Shari'a is not the sole deter-
minant of human behavior nor the only formative force behind social
and political institutions in Muslim countries.

   In this Article, I explore the implications of Shari'a for the status
of human rights[2] in the Muslim world.[3] After briefly discussing my
methodological choice in Part I, in Part II I explain Shari'a and the
human rights violations which result from the dominant interpretation
of Shari'a. In Part III, I describe some of the political and social forces
which translate this scriptural interpretation into action. In Part IV,
I analyze in some detail the impact of Shari'a and Islamization on the
status and rights of women in Muslim communities. And in Part V,
I argue that human rights reform requires reinterpretation of Shari'a
and I offer one possible reformulation.

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contexts of both initial revelation and subsequent interpretations of the texts of the Qur'an and
Sunna, some texts are no longer applicable while others need to be interpreted differently. I
believe that divine revelation must be understood and applied in historical context because it
addresses us in our human condition and circumstances which change over time.

   2. This Article is not concerned with the origins and philosophical meaning of the term
"human rights" and does not detail contemporary human rights standards. Rather, I take the
International Bill of Human Rights as the source of international human rights standards. *See
infra* note 7.

   3. It is not possible in a work of this nature to offer extensive surveys and analyses of the
situation in even a selected group of countries. I therefore focus on a number of broad human
rights issues while illustrating my arguments with reference to conditions prevailing in repre-
sentative Muslim countries. I have chosen Egypt, Indonesia, Iran, Morocco, Pakistan, and Saudi
Arabia as reflecting varying degrees of secularization, fundamentalism; and traditionalism. The
analysis is applicable to other Muslim countries provided, of course, that factors and conditions
peculiar to each country are taken into account.

   For the purpose of this Article, a "Muslim country" is one in which the majority of the
population perceive themselves to be Muslims. Because I do not believe that it is within the
realm of human discourse to agree on an objective conception of Islam, I must accept a people's
self-perception. It should be borne in mind during the discussion that variation in the conception
of Islam is inevitable.

   As to the size of the Muslim majority which qualifies a country as a "Muslim country," 80%
appears to be reasonable because such a majority normally would be large enough to significantly
influence public policy and action. In other words, I assume that if 80% of the population is
Muslim, then Islam is a significant factor in the life of that society regardless of whether the
state is constituted as an "Islamic state" or whether Shari'a is the formal legal system of the
land. All six countries selected for this discussion satisfy my criteria. *See, e.g.*, MUSLIM PEOPLES:
AN ETHNOGRAPHIC SURVEY 887, 891, 893, 900–902 (R. Weeks ed. 1984); D. PIPES, IN THE
PATH OF GOD: ISLAM AND POLITICAL POWER 338–39 (1982).

I conclude that human rights advocates in the Muslim world must work within the framework of Islam to be effective. They need not be confined, however, to the particular historical interpretations of Islam known as Shari'a. Muslims are obliged, as a matter of faith, to conduct their private and public affairs in accordance with the dictates of Islam, but there is room for legitimate disagreement over the precise nature of these dictates in the modern context. Religious texts, like all other texts, are open to a variety of interpretations. Human rights advocates in the Muslim world should struggle to have their interpretations of the relevant texts adopted as the new Islamic scriptural imperatives for the contemporary world.

A. Cultural Legitimacy for Human Rights

The basic premise of my approach is that human rights violations reflect the lack or weakness of cultural legitimacy of international standards in a society. Insofar as these standards are perceived to be alien to or at variance with the values and institutions of a people, they are unlikely to elicit commitment or compliance. While cultural legitimacy may not be the sole or even primary determinant of compliance with human rights standards, it is, in my view, an extremely significant one. Thus, the underlying causes of any lack or weakness of legitimacy of human rights standards must be addressed in order to enhance the promotion and protection of human rights in that society.

Some commentators have focused on this lack of cultural legitimacy of international standards in the non-Western world to challenge the basic validity of international human rights standards. In fact, conduct which would amount to human rights violations under existing international standards has been justified precisely because these standards were perceived to be culturally illegitimate. This cultural illegitimacy, it is argued, derives from the historical conditions surrounding the creation of the particular human rights instruments. Most African and Asian countries did not participate in the formulation of the Universal Declaration of Human Rights[4] because, as victims of colonization, they were not members of the United Nations. When they did participate in the formulation of subsequent instruments, they did so on the basis of an established framework and philosophical assumptions adopted in their absence. For example, the preexisting framework and assumptions favored individual civil and political rights over collective solidarity rights, such as a right to development, an outcome which

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4. *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. GAOR Res. 71, U.N. Doc. A/810 (1948) [hereinafter *Universal Declaration*].

remains problematic today. Some authors have gone so·far as to argue
that inherent differences exist between the Western notion of human
rights as reflected in the international instruments and non-Western
notions of human dignity.[5] In the Muslim world, for instance, there
are obvious conflicts between Shari'a and certain human rights, espe-
cially of women and non-Muslims.[6]

Concern for the lack of universal participation in formulating in-
ternational human rights instruments does not lead me to invalidate
those existing instruments. On the contrary, for the purposes of this
study, I take the International Bill of Human Rights as the source of
these standards.[7] It is true that not all Muslim countries have endorsed
or ratified these instruments, but neither have they publicly repudiated
them.[8] The human rights idea is too powerful and popular now for
any government to oppose openly. The governments of Muslim coun-
tries are no exception to this general rule. In this discussion, I focus
on the principles of legal equality and nondiscrimination contained in
many human rights instruments.[9] These principles relating to gender
and religion are particularly problematic in the Muslim world.

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5. *See, e.g.*, Donnelly, *Human Rights and Human Dignity: An Analytic Critique of non-Western
Conceptions of Human Rights*, 76 AM. POL. SCI. REV. 303 (1982); Panikkar, *Is the Notion of
Human Rights a Western Concept?* 120 DIOGENES 75 (1982).

6. *See infra* notes 101–137 and accompanying text.

7. The term "International Bill of Human Rights" refers to a collection of three United
Nations instruments: *Universal Declaration, supra* note 4; *The International Covenant on Economic,
Social and Cultural Rights*, G.A. Res. 2200 (XXI), 21 U.N. GAOR Supp. (No. 16) at 49,
U.N. Doc. A/6316 (1966) (entered into force Jan. 3, 1976); and *International Covenant on Civil
and Political Rights*, G.A. Res. 2200 (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc.
A/6316 (1966) (entered into force Mar. 23, 1976).

8. During the first few years after the Iranian revolution, official representatives of the Islamic
Republic of Iran expressed reservations toward international human rights standards, favoring
what they believed to be Islamic standards. *See* E. MORTIMER, INDEX ON CENSORSHIP 5 (1983).
Nevertheless, Iran remains a party to the International Covenant on Economic, Social and
Cultural Rights and the International Covenant on Civil and Political Rights, *supra* note 7. *See*
INTERNATIONAL HUMAN RIGHTS INSTRUMENTS 170.42, 180.18 (R. Lillich ed. rev. 1988).

9. Article 1 of the Universal Declaration states that "all human beings are born free and
equal in dignity and rights." Article 2 specifies that "everyone is entitled to all the rights and
freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex,
language, religion, political or other opinion, national or social origin, property, birth or other
status." *Universal Declaration, supra* note 4, at arts. 1, 2.

Article 2.2 of the International Covenant on Economic, Social and Cultural Rights obliges
state parties to guarantee that the rights enunciated in the Covenant will be exercised without
discrimination on grounds such as race, color, sex, language, and religion. Article 3 of the same
Covenant creates the obligation to ensure the rights of men and women to the equal enjoyment
of all economic, social, and cultural rights set forth in the Covenant. *See International Covenant
on Economic, Social and Cultural Rights, supra* note 7, at arts. 2.2, 3.

Articles 2.2 and 3 of the International Covenant on Civil and Political Rights create similar
obligations to ensure nondiscrimination and equality in relation to rights set forth in that
Covenant. *See International Covenant on Civil and Political Rights, supra* note 7, at arts. 2.2, 3.
The same principles underlie numerous specific rights set forth in both Covenants.

I realize that formal equality before the law and the implementation of nondiscrimination
policies are necessary but insufficient conditions for the realization of substantive economic,

I adopt a constructive approach[10] to the problem of the cultural legitimacy of human rights norms. This approach posits that such problems can be overcome through a process of reinterpreting the fundamental sources of the Islamic tradition. The proposed new interpretation will have to be undertaken in a sensitive, legitimate manner, and time will be required for its acceptance and implementation by the population at large. The availability of such reinterpretation is a vital prelude to the political struggle which is integral to the whole process. The reformulation I offer in the final part of this Article is but a brief presentation of my arguments for a reinterpretive approach which I have explored in more detail elsewhere.[11] In the final part of this Article, I offer a brief presentation of the thesis and the prospects of its implementation in the Muslim world today.

II. ISLAM, SHARI'A AND HUMAN RIGHTS

In this part, I first discuss the formation of the Shari'a and address the impact which Shari'a has had upon the thinking and conduct of Muslims. I conclude with a discussion of recent mounting pressure in Muslim countries to adopt the Shari'a as their formal legal systems.

A. The Development and Current Application of Shari'a

To the over nine hundred million Muslims of the world, the Qur'an is the literal and final word of God and Muhammad is the final Prophet. During his mission, from 610 A.D. to his death in 632 A.D., the Prophet elaborated on the meaning of the Qur'an and supplemented its rulings through his statements and actions. This body of information came to be known as Sunna.[12] He also established the first Islamic state in Medina around 622 A.D. which emerged

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political, and social equality. Questions remain of systemic discrimination and issues of affirmative action, as well as debates about equality of opportunity as opposed to equality of result. Nevertheless, these questions and issues must be discussed in the context of particular societies and mediated through the political and social processes of each society. An exploration of these questions and issues, even with respect to the countries selected, is outside the scope of this Article. With respect to India, see generally M. GALANTER, COMPETING EQUALITIES: LAW AND THE BACKWARD CLASSES IN INDIA (1984).

10. For a detailed discussion of this approach, see An-Na'im, *Problems of Universal Cultural Legitimacy for Human Rights*, in HUMAN RIGHTS IN AFRICA: CROSS-CULTURAL PERSPECTIVES (An-Na'im & Deng eds. forthcoming 1990); An-Na'im, *Religious Minorities under Islamic Law and the Limits of Cultural Relativism* 9 HUM. R. Q. 1 (1987).

11. A. AN-NA'IM, TOWARD AN ISLAMIC REFORMATION: CIVIL LIBERTIES, HUMAN RIGHTS AND INTERNATIONAL LAW (1990) [hereinafter TOWARD AN ISLAMIC REFORMATION]; An-Na'im, *The Rights of Women and International Law in the Muslim Context*, 9 WHITTIER L. REV. 491 (1987); An-Na'im, *Islamic Law, International Relations and Human Rights: Challenge and Response*, 20 CORNELL INT'L L. J. 17 (1987).

12. On these formative stages of Islam, see M. HODGSON, I THE VENTURE OF ISLAM, 146–230 (1974); I. LAPIDUS, A HISTORY OF ISLAMIC SOCIETIES, 21–80 (1988).

later as the ideal model of an Islamic state.[13] In addition, the practices of the first four caliphs, successors of the Prophet, are also binding or at least highly authoritative for the ninety percent of Muslims commonly known as Sunnis.[14] In contradistinction, the Shi'a minority insists that the fourth caliph Ali (the Prophet's cousin and son-in-law) and his descendants from Fatima, the Prophet's daughter, were the only rightful *imams*, leaders of the Muslim community.[15]

While the Qur'an was collected and recorded soon after the Prophet Muhammad's death, it took almost two centuries to collect, verify, and record the Sunna. Because it remained an oral tradition for a long time during a period of exceptional turmoil in Muslim history, some Sunna reports are still controversial in terms of both their authenticity and relationship to the Qur'an.[16]

Because Shari'a is derived from Sunna as well as the Qur'an, its development as a comprehensive legal and ethical system had to await the collection and authentication of Sunna. Shari'a was not developed until the second and third centuries of Islam.[17] The concept itself, in the sense of a unified body of law, was a relatively late development.[18] The first generation of Muslim legal scholars worked independently in various centers, discussing their views on the meaning of the Qur'an and Sunna and issuing individual opinions upon request.[19]

Shari'a, therefore, was constructed by Muslim jurists over a long period of time and did not become a comprehensive legal and ethical

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13. For a detailed account and analysis of the Mecca and Medina phases of early Islam, see generally W. WATT, MUHAMMAD AT MECCA (1953); W. WATT, MUHAMMAD AT MEDINA (1956).

14. It should be noted, however, that those early caliphs enjoy authority among Muslims by virtue of their religious standing and not their political role. In fact, their political role is seen as a result of their religious learning and piety. Many other early companions of the Prophet share in those qualities and would therefore be accepted as authoritative jurisprudential and theological figures in Muslim history. *See* F. RAHMAN, ISLAM 79 (1979).

15. Upon the Prophet's death, the majority of Muslims accepted Abu Bakr as the first caliph, and they subsequently selected Umar and Uthman as the se ond and third caliphs before Ali became the fourth caliph. To a minority group, known at the time as *Shi'at* Ali, or the partisans of Ali, the first three caliphs were usurpers of the rightful position of the Prophet's cousin and son-in-law. This group eventually developed into a separate sect of Islam, following their line of "rightful" *imams* and developing their own schools of Islamic jurisprudence. At the present time, the main Shi'a groups are the Twelvers of Iran; the Isma'ilis of the Indian sub-continent, central Asia, Syria, and the Persian Gulf region; and the Zaydis of southern Arabia. *See* Fyzee, *Shi'i Legal Theories*, in LAW IN THE MIDDLE EAST 113 (Khadduri & Liebesny eds. 1955). For a theological account of these Shi'a sects see W. WATT, ISLAMIC PHILOSOPHY AND THEOLOGY, 122–28 (1985).

16. *See* Rahman, *supra* note 14, at 53–59; Vesey-Fitzgerald, *Nature and Sources of the Shari'a*, in LAW IN THE MIDDLE EAST 93 (Khadduri & Liebesny eds. 1955).

17. For explanations of this long and complicated process, see generally J. SCHACHT, AN INTRODUCTION TO ISLAMIC LAW 28–68 (1964); N. COULSON, A HISTORY OF ISLAMIC LAW 9–74 (1964).

18. *See* RAHMAN, *supra* note 14, at 101–09.

19. *See* A. HASAN, THE EARLY DEVELOPMENT OF ISLAMIC JURISPRUDENCE 20–21 (1970).

system until well into the third century of Islam. The jurists who founded the main schools of Islamic jurisprudence that are followed by the vast majority of modern Muslims did their founding work between the middle of the eighth century and the middle of the ninth century, one to two hundred years after the Prophet's death.[20] In fact, the techniques and methods for the derivation of general principles and specific rules of Shari'a, such as *ijma* (consensus) and *qiyas* (analogy), were not settled until the time of Shafi'i who died in 819.[21]

Shari'a is not a formally enacted legal code. It consists of a vast body of jurisprudence in which individual jurists express their views on the meaning of the Qur'an and Sunna and the legal implications of those views. Although most Muslims believe Shari'a to be a single logical whole, there is significant diversity of opinion not only among the various schools of thought, but also among the different jurists of a particular school.[22] The original founding jurists themselves were not attempting during the second and third centuries of Islam to establish permanent opinions of general application.

Furthermore, Muslim jurists were primarily concerned with the formulation of principles of Shari'a in terms of moral duties sanctioned by religious consequences rather than with legal obligations and rights and specific temporal remedies.[23] They categorized all fields of human activity as permissible or impermissible and recommended or reprehensible.[24] In other words, Shari'a addresses the conscience of the individual Muslim, whether in a private, or public and official, capacity, and not the institutions and corporate entities of society and the state.[25] Each Muslim is in theory entitled to follow whatever view

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20. These were, for Sunni Muslims, Abu Hanifa, d. 767; Malik, d. 795; Shafi'i, d. 819; and Ibn Hanbal, d. 855. The majority of Shi'a Muslims follow the school attributed to Ja'far Al-Sadiq, d. 765.

21. For a detailed discussion and substantiation of this conclusion, see TOWARD AN ISLAMIC REFORMATION, *supra* note 11, at 14–27.

22. *See* N. COULSON, *supra* note 17, at 47–51; K. FARUKI, *supra* note 1, at 166–94 (1975).

23. *See* N. COULSON *supra* note 17, at 82–83.

24. *See id.* at 83–84; A. HASAN, *supra* note 19, at 34–39.

25. It is true that Muslims are required to constitute an Islamic society, *Umma*, and enforce the positive law aspects of Shari'a that entail the establishment of what might be called in modern terminology the executive and judicial organs of an Islamic state. But the relevant provisions of Shari'a are inherently matters of individual conscience. For example, the selection of the chief executive, caliph, is supposed to be based on subjective individual evaluation of his piety and religious knowledge as expressed through a religious oath of allegiance, *by'a*. Appointment to judicial office by the caliph or his representatives is also supposed to be based on similar subjective evaluation of piety and religious knowledge. Given its historical context, it is not surprising that Shari'a did not provide for an "institutionalized" executive and an independent judiciary. Such institutions may be developed today on the basis of some historical sources and practices, but they did not exist in Shari'a.

For detailed discussion of these issues and citation of sources, see TOWARD AN ISLAMIC REFORMATION, *supra* note 11, at 75–100.

is acceptable to his or her private conscience.[26] As a general rule, Muslims to the present day tend to identify themselves as observers of one or another of the established schools of thought.[27] One is entitled to choose not only from among the various views available within his or her school of thought, but also from those views available within other schools. In accordance with this principle, modern official legal reforms in the Muslim world have employed a technique known as *talfiq*: constructing a composite general principle or specific rule from a variety of sources regardless of whether they belong to the same school of thought.[28]

Shari'a, as a religious and moral body of principles and directives, has had and continues to have a significant impact on the thinking and behavior of Muslims. It forms an integral part of the socialization of every Muslim child and is one of the primary forces behind the institutions and customs of the vast majority of Muslim societies.

Whatever may have been the historical status of Shari'a as the legal system of Muslim countries, the scope of its application in the public domain has diminished significantly since the middle of the nineteenth century. Due to both internal factors and external influence, Shari'a principles had been replaced by European law governing commercial, criminal, and constitutional matters in almost all Muslim countries. Only family law and inheritance continued to be governed by Shari'a.[29] Even countries such as Saudi Arabia which claim always to have maintained Shari'a as their sole legal system have enacted numerous "regulations" based on European law and practice in the commercial and public administration fields.[30]

Recently, many Muslims have challenged the gradual weakening of Shari'a as the basis for their formal legal systems. Most Muslim countries have experienced mounting demands for the immediate application of Shari'a as the sole, or at least primary, legal system of the land. These movements have either succeeded in gaining complete control, as in Iran, or achieved significant success in having aspects of Shari'a introduced into the legal system, as in Pakistan and the Sudan. Governments of Muslim countries generally find it difficult to resist these demands out of fear of being condemned by their own populations as anti-Islamic. Therefore, it is likely that this so-called Islamic

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26. *See* J. SCHACHT, *supra* note 17, at 68 n.1.

27. Most Sunni Muslims identify with the Hanafi, Maliki, Shafi'i, or Hanbali schools while the majority of Shi'a Muslims follow the Ja'fari school of thought.

28. *See* J. SCHACHT, *supra* note 17, at 106; N. COULSON, *supra* note 17, at 197–201.

29. *See generally* H. LIEBESNY, THE LAW OF THE NEAR AND MIDDLE EAST 46–76, 77–117, 118–25 (1975).

30. *See* Seaman, *Islamic Law and Modern Government: Saudi Arabia Supplements the Shari'a to Regulate Development*, 18 COLUM. J. TRANSNAT'L L. 413 (1980).

fundamentalism will achieve further successes in other Muslim countries.[31]

The possibility of further Islamization may convince more people of the urgency of understanding and discussing the relationship between Shari'a and human rights, because Shari'a would have a direct impact on a wider range of human rights issues if it became the formal legal system of any country.[32] To my mind, however, this need is urgent regardless of the official status of Shari'a. As a Muslim, I appreciate the extralegal power that Shari'a has on the minds and hearts of Muslims. Given this power, it is difficult to see how Muslim governments can honor their obligations to promote and protect human rights, even if they wish to do so, where those obligations are perceived to be contrary to Shari'a.

The above survey of the development and nature of Shari'a clearly indicates that Shari'a, as a unified body of moral and legal principles derived from both the Qur'an and Sunna, reflects specific historical interpretations of the scriptural imperatives of Islam. Other interpretations are possible and were in fact anticipated by the founding jurists of Shari'a themselves. Although modern Muslim reformers have expressed some support for this proposition, usually in more moderate terms, very little has been done to develop an adequate reform technique.[33] I believe that a modern version of Islamic law can and should be developed. Such a modern "Shari'a" could be, in my view, entirely consistent with current standards of human rights. These views, however, are appreciated by only a tiny minority of contemporary Muslims. To the overwhelming majority of Muslims today, Shari'a is the sole valid interpretation of Islam, and as such *ought* to prevail over any human law or policy.

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31. *See generally* 10 THIRD WORLD QUARTERLY (1988) (a special issue on Islam and politics); Haddad, *Muslim Revivalist Thought in the Arab World: An Overview* 76 MUSLIM WORLD 143 - 66 (1986). *See also* sources cited *infra* note 53.

Some authors object to the use of the term "fundamentalism" in relation to the Muslim world. *See, e.g.,* Munson, Jr., *The Social Base of Islamic Militancy in Morocco,* 40 MIDDLE E. J. 267 (1986). Others find the term appropriate. Dessouki, for example, adopts the term "fundamentalism" to refer to "the affirmation, in radically changed environment, of traditional modes of understanding and behavior". Dessouki, *The Resurgence of Islamic Organizations in Egypt: An Interpretation,* in ISLAM AND POWER 107, 108 (Cudsi & Dessouki eds. 1981).

Whether one adopts the term "fundamentalism" or the term "Islamic activism" used in this study, the important thing is to be clear on the nature and context of the phenomenon under discussion. What are the world view and objectives of Islamic fundamentalists/activists? What are the likely consequences for Muslim countries? In particular, what is the probable impact on human rights? To the extent that the activists' objectives reflect a desire to expand and consolidate certain aspects of existing social realities, how do those realities affect human rights today?

32. This relationship has already been noted and discussed. *See, e.g.,* Note, *Human Rights Practices in the Arab States: The Modern Impact of Shari'a Values* 12 GA. J. INT'L & COMP. L. 55 (1982).

33. For a survey and critique of modern Islamic reforms, see TOWARD AN ISLAMIC REFORMATION, *supra* note 11, at 35–51.

B. *Shari'a and Human Rights*

In this part, I illustrate with specific examples how Shari'a conflicts with international human rights standards. Specifically, I will focus on discrimination against women and non-Muslims. Some contemporary Muslim authors have claimed that Shari'a is fully consistent with and has always protected human rights. Ali A. Wafi, for example, contends that "the most important human rights" can be classified into five principal rights relating to five kinds of liberty: "religious liberty; liberty of opinion and expression; liberty of work; liberty of instruction and culture; and civil liberty."[34] Wafi cites general Islamic sources in support of each liberty and concludes that "Islam" provided for that particular liberty.[35] I find this approach to be both simplistic and misleading. It is simplistic in its classification of human rights and failure to consider conceptual and structural aspects of the modern human rights movement. According to Wafi, civil liberty is the right to conclude contracts, shoulder civil obligations and to dispose freely of property.[36] This is hardly an adequate description of civil liberty as a human right even in the most formal and minimal sense. Wafi's approach is also misleading because it is highly selective and fails to mention other Islamic sources which contradict his contentions in relation to each of the five liberties. He fails to mention the ways in which jurists of Shari'a interpreted these sources and the manner in which Muslim states applied those interpretations through the ages.

The claim that Shari'a is fully consistent with and has always protected human rights is problematic both as a theoretical and a practical matter. As a theoretical matter, the concept of human rights as rights to which every human being is entitled by virtue of being human was unknown to Islamic jurisprudence or social philosophy until the last few decades and does not exist in Shari'a. Many rights are given under Shari'a in accordance with a strict classification based on faith and gender and are not given to human beings as such. As a practical matter, fundamental inconsistencies exist between Shari'a as practiced in Muslim countries and current standards of human rights. For example, many aspects of Shari'a discriminate against women and violate their fundamental human rights. I will discuss this further in Part IV. Three other specific examples of human rights violations can be cited here to illustrate the point.

Although slavery was formally abolished in all Muslim countries through secular law, the institution itself remains lawful under Shari'a

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34. Wafi, *Human Rights in Islam*, 11 ISLAMIC Q. 64 (1967).
35. *See id.*
36. *See id.* at 69.

to the present day.[37] It is true that Islam originally discouraged slavery by restricting the "legitimate" sources of slaves and encouraging their emancipation, but it did not directly prohibit slavery and the institution of slavery has never been abolished under Shari'a. In fact, treatises on Shari'a discuss at length contractual and other arrangements relating to slaves.[38] In my view, the original intention of Islam was to eliminate slavery in due course, but that intention has never been realized through Shari'a.[39]

The second example is the Shari'a law of apostasy. According to Shari'a, a Muslim who repudiates his faith in Islam, whether directly or indirectly, is guilty of a capital offense punishable by death.[40] This aspect of Shari'a is in complete conflict with the fundamental human right of freedom of religion and conscience. The apostasy of a Muslim may be inferred by the court from the person's views or actions deemed by the court to contravene the basic tenets of Islam and therefore be tantamount to apostasy, regardless of the accused's personal belief that he or she is a Muslim.

The Shari'a law of apostasy can be used to restrict other human rights such as freedom of expression. A person may be liable to the death penalty for expressing views held by the authorities to contravene the official view of the tenets of Islam. Far from being an historical practice or a purely theoretical danger, this interpretation of the law of apostasy was applied in the Sudan as recently as 1985, when a Sudanese Muslim reformer was executed because the authorities deemed his views to be contrary to Islam.[41]

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37. *See* S. TABANDEH, MUSLIM COMMENTARY ON THE UNIVERSAL DECLARATION OF HUMAN RIGHTS 27 (1970).

38. *See* N. COULSON, *supra* note 17, at 32–33, 44–46, 50; J. SCHACHT, *supra* note 17, at 127–30, 162, 166, 170, 174, 177–78, 186–87, 193.

39. *See* TOWARD AN ISLAMIC REFORMATION, *supra* note 11, at 172–75.

40. *See* M. EL-AWA, PUNISHMENT IN ISLAMIC LAW: A COMPARATIVE STUDY 43 (1982).

41. *See* An-Na'im, *The Islamic Law of Apostasy and its Modern Applicability: A Case from the Sudan*, 16 RELIGION 197 (1986).

The Salman Rushdie affair illustrates the serious negative implications of the law of apostasy to literary and artistic expression. Mr. Rushdie, a British national of Muslim background, published a novel entitled, *The Satanic Verses*, in which irreverent reference is made to the Prophet of Islam, his wives, and leading companions. Many Muslim governments banned the book because their populations found the author's style and connotations extremely offensive. The late Imam Khomeini of Iran sentenced Rushdie to death *in absentia* without charge or trial.

There are obvious procedural objections to that sentence from a Shari'a point of view, namely, that Mr. Rushdie was not subject to the jurisdiction of Iran and was not formally charged and allowed to defend himself. But beyond this formal objection remains the basic fundamental objection to the law of apostasy itself as a violation of freedoms of belief and expression. If Shari'a procedural requirements can be satisfied, an author can be sentenced to death under Shari'a for his views.

For a fuller discussion of this case and its implications, see TOWARD AN ISLAMIC REFORMATION, *supra* note 11, at 182–84.

A third and final example of conflict between Shari'a and human
rights relates to the status and rights of non-Muslims. Shari'a classifies
the subjects of an Islamic state in terms of their religious beliefs:
Muslims, *ahl al-Kitab* or believers in a divinely revealed scripture
(mainly Christian and Jews), and unbelievers.[42] In modern terms,
Muslims are the only full citizens of an Islamic state, enjoying all the
rights and freedoms granted by Shari'a and subject only to the limi-
tations and restrictions imposed on women. *Ahl al-Kitab* are entitled
to the status of *dhimma*, a special compact with the Muslim state
which guarantees them security of persons and property and a degree
of communal autonomy to practice their own religion and conduct
their private affairs in accordance with their customs and laws. In
exchange for these limited rights, *dhimmis* undertake to pay *jizya* or
poll tax and submit to Muslim sovereignty and authority in all public
affairs.[43] Unbelievers may be granted *aman* or safe conduct which
secures their persons and property for the duration of the *aman* pe-
riod.[44] Moreover, unbelievers that are permanent residents of an Is-
lamic state may be recognized as *dhimmis*.   ·

According to this scheme, non-Muslim subjects of an Islamic state
can aspire only to the status of *dhimma*, under which they would suffer
serious violations of their human rights. *Dhimmis* are not entitled to
equality with Muslims. Their lives are evaluated as inferior in mone-
tary terms as well: they are not entitled to the same amount of *diya*
or financial compensation for homicide or bodily harm as Muslims.[45]
The reputation of a *dhimmi* is not protected by Shari'a on equal terms
with that of a Muslim since the *hadd* of *qadhf*, the special criminal
penalty for an unproven accusation of fornication, does not apply unless
the victim is a Muslim.[46] In the private law of Shari'a, discrimination
against non-Muslims includes the rule that a Muslim man may marry
a *dhimmi* woman but a *dhimmi* man may not marry a Muslim woman.[47]

Some of these restrictions against non-Muslims have not been en-
forced in most Muslim countries for some time, but they all remain

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42. "Unbelievers," as defined by Shari'a, are those who do not believe in one of the recognized
heavenly revelations. Originally, this category was taken to include all non-Muslims except
Christians, Sabi'is, and Jews, but some jurists have argued that adherents of other religions such
as Zoroastrians and Hindus should be included on the assumption that they have revealed
scriptures. *See* SHORTER ENCYCLOPAEDIA OF ISLAM 16–17 (Gibb & Kramers eds. 1974); A.
YUSUF, KITAB AL-KHARAJ 128–30 (1302 Hijri) (Arabic). Animists would not qualify as
believers regardless of their own view of their belief in God.

43. *See* verse 9:29 of the HOLY QUR'AN. *See also* M. AL-SHAFI'I, 4 KITAB AL-UMM 172 *passim*
(1961) (Arabic); M. KHADDURI, WAR AND PEACE IN THE LAW OF ISLAM 177, 195–99 (1955).

44. *See* M. KHADDURI, *supra* note 43, at 166–69.

45. See AL-SHAFI'I, 6 KITAB AL-UMM 105–6 (1961) (Arabic).

46. See I. RUSHD, 2 BIDAYAT AL-MUJTAHID WA NIHAYAT AL-MUQTASID 330 (Arabic);
Safwat, *Offences and Penalties in Islamic Law*, 26 ISLAMIC Q. 149, 159 (1982).

47. *See* AL-SHAFI'I, 5 KITAB AL-UMM 6–9, 44, 50. (Arabic).

part of Shari'a, and consequent violations of the human rights of non-Muslims recently have occurred in some modern Muslim countries.[48] Not only are these human rights violations committed against those who identify themselves as non-Muslims, such as the Copts of Egypt,[49] but they are also committed against minority Muslim sects which are deemed by the majority to be apostates from Islam, such as the Ahmadis of Pakistan.[50] Members of these minorities are not only persecuted by governments, but are also frequently attacked and murdered by mobs unfettered by legal restrictions.[51]

The broader implications of the law of apostasy are also relevant to understanding the status and rights of other minority sects, such as the Shi'a of Pakistan and Saudi Arabia, who do not conform to orthodox Sunni beliefs dominant in those countries. Serious human rights violations are committed against these minorities by official and private actors.[52]

III. THE POLITICS AND SOCIOLOGY OF ISLAMIZATION

To appreciate the likely impact of Shari'a on human rights it is important to understand not only its historical formulations, but also the socio-political context of what has often been called the process of Islamization in various Muslim countries. Although there appears to be an obvious development toward greater Islamization in many Muslim countries, it is a process of fits and starts, backward and forward movements, reflecting general trends and the peculiar experience of

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48. See, for example, the evaluation of Sudan's application of Shari'a since 1983 in TOWARD AN ISLAMIC REFORMATION, *supra* note 11, at 125–33.

49. *See generally* An-Na'im, *Religious Freedom in Egypt: Under the Shadow of the Dhimma System*, in RELIGIOUS LIBERTY AND HUMAN RIGHTS IN NATIONS AND RELIGIONS 43 (L. Swidler ed. 1986).

50. In Pakistan, the government of Z. Bhutto yielded to pressures to declare the Ahmadis a non-Muslim minority and as such exclude them from important official positions. J. ESPOSITO, ISLAM AND POLITICS 163 (rev. ed. 1987).

The Baha'is claim to be adherents of an independent religion and specifically state that they are not a sect of Islam. Iranian authorities reject this claim, because Islam does not accept the possibility of revelation after the Qur'an. The Baha'i faith cannot therefore qualify as an independent religion according to Shari'a. The Baha'is of Iran have been subjected to severe persecution since the founding of their faith during the nineteenth century. *See generally* G. NASH, IRAN'S SECRET POGROM (1982); D. MARTIN, THE PERSECUTION OF THE BAHA'IS OF IRAN, 1844-1984 (1984).

51. Government officials often instigate violence against members of these groups. Former President Zia ul-Haq of Pakistan, for example, said that "Ahmadis will not be tolerated. There is no place for infidels in Pakistan. If a man's honor is attacked he does not even hesitate from committing murder." Parker, *Pakistani sect's death sentence*, San Francisco Examiner, May 25, 1986, at A14 col. 4.

52. *See, e.g.*, Ziring, *From Islamic Republic to Islamic State in Pakistan*, 24 ASIAN SURV. 931 (1984); Ahmed, *The Shi'is of Pakistan*, in SHI'ISM, RESISTANCE AND REVOLUTION 275 (M. Kramer ed. 1987); Goldberg, *The Shi'i Minority in Saudi Arabia*, in SHI'ISM AND SOCIAL PROTEST 230 (Cole & Keddie eds. 1986).

each society.[53] Consequently, Shari'a-inspired impact on human rights varies significantly from Islamic nation to nation.[54] Governments facing mounting pressure to implement Islamic laws and policies, however, have tended to enunciate policies that have a differential impact upon the weaker segments of society. These governments adopt policies which restrict the rights of women and minorities, who have minimal influence and voice in society, rather than taking measures that challenge the status quo or effect vested interests.[55]

A. Political Context and Developments

The complexity of the politics of Islamization is illustrated by the recent history of almost any Muslim country. The dynamics of domestic politics and personalities, together with regional and international geopolitical factors, often render the whole process seemingly unpredictable and paradoxical. For example, the supposedly secular socialist regime of Zulfikar Ali Bhutto was the first to substantially advance the cause of Islamization in Pakistan's history. On the other hand, General Suharto in Indonesia, who came to power to counter a communist coup d'etat in 1965, has proven to be most resistant to Islamization in that country. Yet each situation has its own internal logic.

Bhutto was attempting to respond to a crisis in national identity caused by the secession of Bangladesh, to seek Muslim Arab financial support, and to dispel domestic charges of being un-Islamic.[56] This led him to implement policies that had drastic long-term human rights consequences, such as the persecution of the Ahmadi minority. Ironically his efforts to appease Islamic activists failed and opposition to his regime from Islamic groups eventually contributed to Zia ul-Haq's coup of July 1977. According to one author, Bhutto's introduction of Islamic measures and promise of more Shari'a law, rather than defusing the Islamic revival movement "served to reinforce the Islamic character

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53. The literature on this subject is extensive. *See generally* D. PIPES, IN THE PATH OF GOD: THE POLITICS OF ISLAMIC REASSERTION (M. Ayoob ed. 1981); RELIGION AND POLITICS IN THE MIDDLE EAST (M. Curtis ed. 1981); ISLAM IN THE POLITICAL PROCESS (J. Piscatori ed. 1983); VOICES OF RESURGENT ISLAM (J. Esposito ed. 1983); J. ESPOSITO, *supra* note 50.

54. This does not mean that a greater role for Islam in public life will necessarily lead to more violations of human rights. In fact, it may well be the case that resistance to such demands leads to more human rights violations where the government is willing and able to oppress Islamic activists.

55. The regime of General Zia ul-Haq in Pakistan, for example, was unwilling to heed demands by Islamic activists to lift martial law or conduct national elections, but was prepared to introduce a range of Islamic measures, including restrictions on women's rights. *See* J. ESPOSITO, *supra* note 50, at 167–70, 175; Faruki, *Pakistan: Islamic Government and Society*, in ISLAM IN ASIA 68–70 (J. Esposito ed. 1987).

56. *See* Richter, *The Political Dynamics of Islamic Resurgence in Pakistan*, 19 ASIA SURV. 547–57 (1979); Faruki, *supra* note 55, at 57–58.

of the conflict. Most importantly, a turning point had been reached. Islam and Pakistan's Islamic identity had re-emerged as the dominant theme in Pakistani politics in a manner and to a degree that had not been seen since Pakistan's establishment."[57]

Islam's dominance of Pakistani political discourse has been reinforced by more than ten years of Zia ul-Haq's rule. This dominance probably will continue unabated despite the return of democratic government and the election of Ali Bhutto's daughter, Benazir Bhutto, as Prime Minister. The paradox, however, continues: despite previously implemented Islamization measures, which included the drive to exclude women from public office in accordance with Shari'a provisions, a woman was elected as Prime Minister of Pakistan.

In contrast to Pakistan, Indonesia presents a different picture of Islamization. One author has suggested that the restriction of Islam under the New Order of General Suharto

> reflects, on the one hand, the proclivities of state leaders influenced by both technocratic and pre-Islamic ideas and fearful of any institutions they do not control. It also, however, continues the experience of Indonesian Islam over a far longer time . . . . The ambiguity of Islam's political strength and role has been mirrored in the ambivalence of Indonesia's rulers towards it; by and large, while trying to use it as a source of legitimacy, they have held it at arm's length.[58]

While Islam currently plays a fairly minimal part in Indonesian politics, the situation is far from static. The present regime's policies on the role of Islam in Indonesian politics may change in the near future. Islamic activists may either achieve some moderate success with the present government by modifying their strategies or perhaps they will contribute to the regime's overthrow.[59]

The impact of the international Islamic dimension affects in different ways the internal politics of Islamization in Indonesia and other parts of south and southeast Asia.[60] While international Islam tends to affect the situation in Pakistan and Bangladesh by influencing government policies, it offers support for the Islamic opposition to

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57. J. ESPOSITO, *supra* note 50, at 166.

58. McVey, *Faith as the Outsider: Islam in Indonesian Politics,* in ISLAM IN THE POLITICAL PROCESS 199, 201 (J. Piscatori ed. 1983).

59. *See* Liong, *Indonesian Muslims and the State: Accommodation or Revolt,* 10 THIRD WORLD Q. 869 (1988); McVey, *supra* note 58, at 212–21.

60. *See* Gunn, *Radical Islam in Southeast Asia: Rhetoric and Reality in the Middle Eastern Connection,* 16 J. CONTEMP. ASIA 30 (1986).

the government in Indonesia.[61] For example, the Iranian Revolution has had more than a purely inspirational impact on the politics of Islamization in Indonesia.[62]

Currently, the politics of Islamization in Indonesia are apparently producing human rights violations from official as well as private sources. The situation in Indonesia is a paradigmatic example of the demand for greater Islamization leading to gross violations of the human rights of Muslim activists at the hands of official authorities.[63] In the private arena as well, Islamic politics appear to be associated with some of the sectarian violence in Indonesia giving rise to many human rights violations.[64]

Other Muslim countries present their own surprising developments and peculiar politics of Islamization. In Iran, Muslim activists achieved their most spectacular success this century when one of the most secularized countries in the Muslim world was transformed into a totalitarian Islamic state in 1979. The stages and personalities of that "unexpected" development are well known and need not be described here.[65]

The Kingdom of Saudi Arabia may appear to most outsiders as the embodiment of Islam itself. In fact, the Saudi dynasty endeavors to cultivate this image and to manipulate Islam as the primary source of its legitimacy.[66] But, as dramatically evidenced by the seizure of the Great Mosque of Mecca in 1979, and by repeated Shi'a riots in eastern

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61. *See* von der Mehden, *The Political and Social Challenge of the Islamic Revival in Malaysia and Indonesia*, 76 MUSLIM WORLD 219, 225, 231 (1986).

62. *See* Gunn, *supra* note 60, at 45–46.

63. *See id.* at 43–44. Of course, Islamic activists are not the only ones having to bear the brunt of the Indonesian government policies. The persecution of communists and other political activists of the 1960s is a continuing source of human rights violations in Indonesia. *See* Budiardjo, *The Abuse of Human Rights in Indonesia*, III CASE STUDIES ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS: A WORLD SURVEY 211 (1976); AMNESTY INTERNATIONAL, INDO-NESIA: AN AMNESTY INTERNATIONAL REPORT 1 *passim* (AI PUB 77/00/77 1977) "Tens of thousands of political prisoners in Indonesia are held captive without trial, or used as servants by local military commanders, or exploited as forced labour, or subjected to an archaic policy of transportation to penal colonies." *Id.* at 9; *Indonesia in the 1980's*, 16 ASIAN AFFAIRS 125 (1985). Events in East Timor, which has been occupied by Indonesian troops since 1975, present another gruesome chapter of human rights violations unrelated to the politics of Islamization in that part of the world. *See generally* ASIA WATCH, HUMAN RIGHTS IN INDONESIA AND EAST TIMOR (1989).

64. McVey, *supra* note 58, at 202–3. Neither of the above-mentioned sources of human rights violations, however, are peculiar to Indonesia. Syria presents an example of an official source while recent events in Northern Nigeria illustrate the operation of a private source of human rights violations.

65. Literature on the subject is extensive. *See, e.g.,* R. RAMAZANI, REVOLUTIONARY IRAN: CHALLENGE AND RESPONSE IN THE MIDDLE EAST (1986); THE IRANIAN REVOLUTION AND THE ISLAMIC REPUBLIC (Keddie & Hooglund eds. 1986); A. HUSSAIN, ISLAMIC IRAN: REVO-LUTION AND COUNTER-REVOLUTION (1985); S. IRFANI, REVOLUTIONARY ISLAM IN IRAN (1983).

66. J. Piscatori, *Ideological Politics in Sa'udi Arabia*, in ISLAM IN THE POLITICAL PROCESS 57–63 (J. Piscatori ed. 1983).

Saudi Arabia, Islam can also provide a significant source of challenge to the Saudi regime.[67]

As a result of rapid modernization in Muslim countries, a new technocratic middle class has emerged, which has, somewhat surprisingly, espoused Islamic fundamentalist positions rather than an enlightened Islamic interpretation or a secular ideology. It may appear paradoxical to speak of "modernized" segments of society adopting a fundamentalist posture; however, as indicated by studies in countries such as Egypt[68] and Morocco,[69] young, educated, urbanized Muslims often opt for Islamic fundamentalism. Moreover, the victimization of significant numbers of the population as a result of rapid modernization likely will cause the Saudi regime to confront challenges from both the left and right—"the secular radicals and the religious conservatives."[70] The dilemma facing the Saudi regime—which would trouble any ruling elite attempting to balance the push and pull of such conflicting forces—is that whatever measures it takes to satisfy one source of dissent will necessarily antagonize the other.

Accomodation may be particularly difficult for the Saudi regime given their Islamic ideology, namely the Hanbali school of Islamic jurisprudence as interpreted by Muhammad ibn Abd al-Wahab in the eighteenth century.[71] Western scholars differ in their evaluation of the central feature of Saudi ideology. Whereas most scholars perceive the Hanbali school as strict and rigid, others argue that it has proven to be particularly flexible, at least in Saudi hands. In espousing the latter view, Piscatori has argued that the former "misinterprets Hanbali conservatism: there must be faithful adherence to the Qur'an and the *hadiths* (the traditions of the Prophet), but when these have nothing to say on a subject, there are no rigid guidelines."[72]

I tend to agree with the first evaluation and disagree with that of Piscatori. The Hanbali school is generally the most strict of all Sunni schools in its interpretations of the Qur'an and Sunna, and the least likely to accept that these sources have nothing to say on a subject. The Hanbali school is therefore more likely to hold that the sources of Islam are explicit on a given subject—and more likely to adopt the stricter interpretation of these sources—than any of the other three

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67. *See id.* at 66–67.

68. *See, e.g.,* Ibrahim, *Anatomy of Egypt's Militant Islamic Groups: Methodological Note and Preliminary Findings,* 12 INT'L J. MIDDLE E. STUD. 438, 439–40 (1980); Altman, *Islamic Movements in Egypt,* 10 JERUSALEM Q. 87, 96, 100 (1979).

69. *See* Munson, *The Social Base of Islamic Militancy in Morocco,* 40 MIDDLE E. J. 267, 269, 276, 278 (1986).

70. Piscatori, *supra* note 66, at 68.

71. *See* SHORTER ENCYCLOPEDIA OF ISLAM, *supra* note 42, at 20–21; H. WAHBA, JAZIRAT AL-'ARAB FI AL-QARN AL-'ISHRYN 324–31 (1961) (Arabic).

72. Piscatori, *supra* note 66, at 62.

schools of Sunni jurisprudence. In political terms, the severity of the
Hanbali school, especially under Wahabi interpretations, probably will
increase the tension between conflicting forces in Saudi Arabia today,
making it harder for the Saudi dynasty to maintain the necessary
balance between the conservative and modernized segments of its
population.

Despite apparent differences from the Saudi case, and between
themselves, Egypt and Morocco are open to similar analyses. Both the
republican regime of Egypt and the Moroccan monarchy are trying to
maintain Islamic legitimacy of their rule while containing the fun-
damentalist threat posed by Islamic activists.[73] The Moroccan govern-
ment initially favored the growth of Islamic activism for the same
reason Sadat initially supported similar movements in Egypt, namely,
to curb Marxist and leftist groups. Both governments eventually re-
alized that Islamic activism could pose a greater threat to their re-
gimes.[74] The difficult balance these regimes are attempting to maintain
is having negative consequences for human rights in both countries.[75]

B. Sociological Considerations

In this part, I consider the role of sociological factors in this analysis,
which are important not only for their influence on political devel-
opments and impact on the accessibility and efficacy of legal remedies,
but also because they underlay private or nonofficial human rights
violations. This section puts forward some observations about who
makes up the class of Islamic activists, how these activists influence
social attitudes and behavior, what social forces counter their influence,

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73. On Egypt see, *e.g.*, Hanafi, *The Relevance of the Islamic Alternative in Egypt*, 4 ARAB STUD.
Q. 54 (1982); Ajami, *In the Pharaoh's Shadow: Religion and Authority in Egypt*, in ISLAM IN THE
POLITICAL PROCESS, *supra* note 53, at 12. In relation to the situation in Morocco, see Munson,
Islamic Revivalism in Morocco and Tunisia, 76 MUSLIM WORLD 203 (1986).

74. *See* Munson *id.* at 205.

75. These problems are extensively documented by human rights monitoring organizations,
such as Amnesty International, Human Rights Internet, Middle East Watch, and the Arab
Human Rights Organization. *See, e.g,* AMNESTY INTERNATIONAL, EGYPTIAN GOVERNMENT
MUST ACT URGENTLY TO END TORTURE (Bulletin, MDE 12/03/88, 1988) ("Many reports of
torture had followed the arrest of thousands of political suspects after the attempted assassinations
in May and August last year of the former Interior Ministers . . . . The alleged victims [of
torture] were mostly supporters of Islamic groups."); AMNESTY INTERNATIONAL, ARREST OF
CHRISTIANS IN EGYPT (Bulletin, MDE 12/02/86, 1986) ("Amnesty International is concerned
by reports it has received of the arrest of four converts from Islam to Christianity in Cairo in
January 1986. The organisation believes that the detainees may be prisoners of conscience,
detained for practising the Christian religion."); *see also* AMNESTY INTERNATIONAL, URGENT
ACTION, UA 313/85 (1985) (Amnesty received reports that 37 people were arrested in Morocco
for exercising freedoms of association and expression, held incommunicado, and ill-treated in
prison.); MIDDLE EAST RESEARCH AND INFORMATION PROJECT (MERIP), HUMAN RIGHTS IN
THE MIDDLE EAST (No. 149, Nov.-Dec. 1987).

and what arguments and methods are available to those who would counter the activists.

In Morocco, the overwhelming majority of Islamic activists are university and high school students. The movement also appeals to other segments of the "new middle class," as well as to some members of the traditional strata of society.[76] Studies of other Muslim societies generally confirm a similar composition of such Islamic fundamentalist movements.[77] Furthermore, the numbers of students and other youths who passively support the goals of Islamic activists are far greater than the numbers who become actively involved.[78] For example, while fewer than fifteen percent of Moroccan university students surveyed in a 1976 study were actively involved in protests and demands for reform, thirty-two percent favored the reestablishment of Islamic law (Shari'a), and thirty-eight percent saw a sincere return to Islamic values as the sole way for Morrocans to free themselves.[79] Despite their numerical insignificance, students in most Muslim countries tend to be much more politically active than the peasantry which constitutes the majority of the population.[80]

Another characteristic of student Islamic activists is that most of them come from the poorest strata,[81] which constitutes the vast majority of the population. They can therefore be presumed to be representative of the majority view or at least expected to receive its support.

The basic message of Islamic activists—a genuine return to Islam and outrage at moral and political decay and economic injustice—is deeply rooted in the Islamic tradition. The current cycle of Islamic activism draws on the long-established belief in the universality and centrality of Islam in the lives of Muslims, as the essential basis and focus of their identity and loyalty.[82] As explained by Smith, throughout the modern period, almost every Islamic movement has been, in some way, a variation on the double theme of protest against internal

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76. Munson, *supra* note 69, at 267, 269, 276, 278 (1986). By the "new middle class" Munson refers to people who are neither extremely poor nor extremely rich and who have had considerable exposure to Western culture, usually in basically secular public schools. *Id.* at 276.

77. *See, e.g.*, Ibrahim, *Anatomy of Egypt's Militant Islamic Groups: Methodological Note and Preliminary Findings*, 12 INT'L J. MIDDLE E. STUD. 438, at 439–40 (1980); Altman, *Islamic Movements in Egypt*, 10 JERUSALEM Q. 87, 96, 100 (1979).

78. *See* Munson, *supra* note 69, at 272–75.

79. *See* Munson, *supra* note 69, at 275 (reporting on a study for a doctoral thesis by Mohamed Tozy, *Champ et contre champ politico-religieux au Maroc* 248, 250–52. Université de Droit, d'Economie et de Sciences d'Aix-Marseille, 1984).

80. *See* Munson, *supra* note 69, at 271.

81. *See id.* at 275–76; Kupferschmidt, *Reformist and Militant Islam in Urban and Rural Egypt*, 23 MIDDLE E. STUD. 403 (1987).

82. *See* Lewis, *The Return to Islam*, in RELIGION AND POLITICS IN THE MIDDLE EAST, *supra* note 53, at 11.

deterioration and external encroachment.[83] Islamic activism can there-
fore be seen as a response to a protracted crisis of political, economic,
and military dimensions, presenting Islam as "a practical political
alternative as well as a secure spiritual niche and psychological anchor
in a turbulent world."[84] Muslims are reminded of the Golden Age of
thé Islamic civilization, an age of political power, economic prosperity,
and social justice as well as religious piety and spiritual well-being.
Current political, economic, and social problems are attributed to a
departure from Islam and the failure to implement Shari'a. The cure,
obviously, is a return to Islam and the reestablishment of Shari'a.

In delivering this powerful message, Islamic activists enjoy two
main advantages. First, they share with their audience a common
belief, language, and history which enables them to draw on easily
appreciated and highly effective symbols from the Islamic tradition.
Second, they are delivering a message which their audience wants to
accept, a single cause for all their problems and an apparently simple
solution. Instead of looking for reasons or causes of Islamic activism,
one should perhaps ask why it is not as successful as the power of its
message and the nature of its methods would indicate.

One author has observed that the message of Islamic activists should
be particularly appealing to the more traditional and less privileged
strata of Muslim societies.[85] Yet, there is little evidence of widespread
support for Islamic activists from these strata in Morocco and elsewhere
in the Muslim world, notwithstanding the activism of Islamic students
from these same strata.[86] Although many Islamic activists originate
from among these less privileged sectors of society, they seem to have
had little success in mobilizing the poor masses in support of their
cause. The causes of this apparent lack of support can best be appre-
ciated in the context of a particular society, but a few rather speculative
general observations may be illustrative.

In the first place, the lack of evidence of support does not necessarily
mean the support itself is lacking. The lack of evidence of popular
support may be due to political factors, such as the suppression of
freedom of expression or the lack of technological and other means of
communication. There is usually little inclination and opportunity for
conducting opinion polls in the Muslim world. Very few observers

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83. *See* W. SMITH, ISLAM IN MODERN HISTORY 47 (1957).

84. Dekmejian, *The Anatomy of Islamic Revival: Legitimacy Crisis, Ethnic Conflict, and the Search
for Islamic Alternatives*, in RELIGION AND POLITICS IN THE MIDDLE EAST, *supra* note 53, at 39.
Many authors in the field offer similar analysis. *See, e.g.,* Dessouki, *supra* note 31, at 110–16;
Esposito, *Introduction: Islam and Muslim Politics*, in VOICES OF RESURGENT ISLAM 11–13 (J.
Esposito ed. 1983); Munson, *supra* note 69, at 215–18.

85. *See* Munson, *supra* note 69, at 279.

86. *See id.* at 279.

saw evidence of widespread support for Khomeini in 1979, yet Khom-
eini had enough support to overthrow a regime which was generally
believed to be one of the most stable and durable in the Muslim
World. As one author concluded in relation to Morocco, "it would be
a mistake to assume that militant Islam will remain as politically
impotent as it now appears to be."[87] I believe this conclusion is
generally true of other Muslim countries as well.

Furthermore, the aspiration of Muslim peoples to establish an Is-
lamic state has been dormant for so many centuries that it is no longer
taken seriously as a realistic prospect by the lower, unsophisticated
strata of society. Their hopes have been frustrated so many times and
manipulated by their leaders for so long that ordinary Muslims have
simply resigned themselves to postponing the idea indefinitely.

A related consideration is that the present rulers of the Muslim
world are successful in claiming Islamic legitimacy. King Hassan II
of Morocco, for example, is venerated by the majority of his subjects
as a descendent of the Prophet and accepted as *Amir al-Mu'minin*,
Commander of the Believers or the legitimate ruler of an Islamic state.
In addition, the Saudi dynasty seems to have succeeded in cultivating
the image of an Islamic state. Why should the people demand the
establishment of an Islamic state, at considerable risk to their personal
safety and well-being, if they are led to believe that they already have
one?

My own hypothesis is that, despite their assumed or declared belief
in the desirability of an Islamic state based on Shari'a, the majority
of Muslims know instinctively that such a state is not really workable
and may not be desirable in practice. I believe that it is this almost
subconscious knowledge, more than colonialism and external influ-
ence, which caused the role of Shari'a in the public domain to diminish
so drastically in modern times.

Nevertheless, I realize that Muslims find it extremely difficult to
admit this fact even to themselves. So long as they are not forced to
make an open decision on the matter, they will continue believing or
pretending to believe in the myth of an Islamic state based on Shari'a.
Consequently, they will probably remain passive to the demands of
Islamic activists until they are forced to decide. Demographic, cul-
tural, and other factors and forces may influence their decision. While
these factors exist in all Muslim countries, the Indonesian case may
provide better insights into the complexity and specificity of the issues.

The manner of the initial Islamization of Indonesia and the demo-
graphic composition of the country seem to be significant factors in
the present status of Islamic activists there. It is generally accepted

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87. *Id.* at 284.

that Islam was brought to that part of the world by Muslim merchants during the fourteenth and fifteenth centuries, or earlier.[88] Islam was consolidated on the main islands of Java and Sumatra and on other islands between the fifteenth and seventeenth centuries. Other developments followed which need not be detailed here. The point to emphasize is that the

> Muslim community in what is now Indonesia, then, is the heir to a variety of modalities by which Islam achieved a presence at particular points in Southeast Asia. In some, it remained simply a presence, in others, it disappeared and, in still others, it developed as the opportunities of time and place allowed.[89]

The interplay of local factors and external Dutch encroachment produced a complex mixture of Islamic and non-Islamic cultures in the region. For example, in Javanese society,

> [the term *santri*] denote the religiously observant orthodox Muslims as a group in society, in contradiction to the *abangan* (those who followed the old Javanese folk religion, intermingled with Islam) and the *priyayi* (the Javanese aristocrats and their descendants) who followed an Islam which had strong admixture of Hindu-Buddhist elements.[90]

Moreover, there are too many animist, regional, and ideological variations in perceptions of Islam to allow for unified or even vaguely allied action by Islamic activists.[91]

There has never been a real Muslim state in Indonesia in the sense experienced by Muslims in the Middle East, North Africa, and the Indian sub-continent.[92] This "has left a deep impact on Indonesian politics, particularly on the role of Muslim political as well as religious organizations."[93] The representatives of the Muslim community have consistently been assigned an outsider's role throughout Indonesian

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88. Soebardi & Woodcroft-Lee, *Islam in Indonesia*, in The Crescent in the East 180–82 (R. Israel ed. 1982).

89. Johns, *Modes of Islamization in Southeast Asia*, in Religious Change and Cultural Domination 61, 62 (1981).

90. Soebardi & Woodcraft-Lee, *supra* note 88, at 186. *See generally* C. Geertz, The Religion of Java (1960).

91. Johns, *Indonesia: Islam and Cultural Pluralism*, in Islam in Asia 202, 226 (J. Esposito ed. 1987).

92. Some states of the past, such as Acheh, could probably come close to full fledged Islamic states. *See* Johns, *supra* note 89, at 69.

93. Utrect, *Religion and Social Protest in Indonesia*, 25 Soc. Compass 395, 398 (1978).

history.[94] Therefore, ordinary Indonesian Muslims have difficulty relating to a total political Islamic experience or envisaging the application of Shari'a in the public domain, despite the intellectual efforts of elites to supplement this deficiency.

Another factor relevant to the status of Islamic activism in Indonesia today is the sheer distance between that country and the majority of Muslim countries. This inhibits communication between Indonesian and Middle Eastern Islamic activists and also reinforces the barriers of language and culture in general. Distance may not overly hamper elites in this age of jet travel and electronic communications, but it certainly diminishes the impact of religious and intellectual influences from the Middle East and North Africa on the majority of ordinary Indonesian Muslims.

Despite these factors, Islam does have a political role in Indonesia, although somewhat weak in comparison to its role in other Muslim countries. There is so much spiritual, intellectual, and organizational Islamic activism that some observers were led to suggest that Indonesia might be close to an Islamic revolution.[95] Paradoxically, although Islam was the banner of Indonesian nationalism during the struggle for independence, its political role declined after independence, especially during the last three decades.[96] The influence of Islam in that country is strongest, however, on human relations, especially in family law and inheritance.[97] The human rights implications of this aspect of Shari'a will be discussed later.[98]

The nature and rationale of factors and forces opposing the reestablishment of Shari'a are, in general, secular education and cross-cultural interaction. These forces have raised the consciousness and expectations of some segments of the population. Many women, for instance, have had the benefits of secular higher education and have travelled abroad or otherwise been exposed to external feminist influences. These women have also experienced some degree of equality and have had access to opportunities in public life through the somewhat secularized political regimes and legal systems of most Muslim countries. They have learned how to organize and lobby for their rights and how to establish networks with other women's rights groups. These women's organizations have engaged in some forms of resistance to Islamization

94. *See* Wertheim, *Islam in Indonesia: A House Divided*, in TEN YEARS' MILITARY TERROR IN INDONESIA 75 (M. Caldwell ed. 1975).

95. *See, e.g.,* G. JANSEN, MILITANT ISLAM (1979).

96. *See* Utrecht, *supra* note 93, at 408–11; Soebardi and Woodcroft-Lee, *supra* note 88, at 189–204; Johns, *supra* note 89, at 209–20. *See also* von der Mehden, *supra* note 61, at 222–25.

97. Utrecht, *supra* note 93, at 407.

98. *See infra* notes 102–38 and accompanying text.

in Pakistan and protested against measures which affected their status
and rights during Zia ul-Haq's era.[99]

Although I appreciate the apprehensions of these groups about the
strict application of Shari'a, I can see that they face a deep dilemma.
Because what they are protesting is perceived by the Muslim popu-
lations of their countries to be the law of Islam, they can expect little
sympathy and political support from those populations. These groups
are therefore faced with a difficult choice: on the one hand, if they
submit to the strict application of Shari'a they would be accepting the
institutionalization of the violation of their human rights. Yet, resis-
tance would lay them open to charges of being anti-Islamic, making
it easy for the proponents of Islamization to mobilize public opinion
against their cause. Moreover, to the extent that members of these
vulnerable groups are Muslims themselves, they also face a strong
psychological barrier against criticizing Shari'a, the embodiment and
authoritative voice of their faith. Thus, the socio-political forces en-
couraging greater Islamization will exacerbate the difficulty of this
dilemma faced by women in Muslim countries.

IV. A CASE STUDY: THE ISLAMIC DIMENSION OF THE STATUS OF WOMEN

Given the rising tide of Islamization in Muslim countries and its
call for wider recognition of Shari'a as the primary legal basis of
Muslim nations, concerns about Shari'a's conflict with human rights
standards must be addressed. Such conflict and tension between his-
torical formulations of Shari'a and modern standards of human rights
is readily illustrated by the situation of women in Muslim countries
today. The status and rights of women are a major human rights
concern in all parts of the world: women are consistently oppressed,
discriminated against, and denied their rightful equality with men.
Although the situation has recently improved in some developed
countries, I believe that it is by no means satisfactory anywhere in the
world today. The present focus on Muslim violations of the human
rights of women does not mean that these are peculiar to the Muslim
world.[100] As a Muslim, however, I am particularly concerned with the

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99. *See, e.g.*, 32 INT'L COMM'N OF JURISTS REV. 19, 19–21 (1984) (a brief survey on the
activities of the Women's Action Forum).

100. It is difficult to distinguish between Islamic, or rather Shari'a, factors and extra-Shari'a
factors affecting the status and rights of women. The fact that women's human rights are violated
in all parts of the world suggests that there are universal social, economic, and political factors
contributing to the persistence of this state of affairs. Nevertheless, the articulation and operation
of these factors varies from one culture or context to the next. In particular, the rationalization
of discrimination against and denial of equality for women is based on the values and customs
of the particular society. In the Muslim world, these values and customs are supposed to be
Islamic or at least consistent with the dictates of Islam. It is therefore useful to discuss. the
Islamic dimension of the status and rights of women.

situation in the Muslim world and wish to contribute to its improvement.

The following discussion is organized in terms of the status and rights of Muslim women in the private sphere, particularly within the family, and in public fora, in relation to access to work and participation in public affairs. This classification is recommended for the Muslim context because the personal law aspects of Shari'a, family law and inheritance, have been applied much more consistently than the public law doctrines.[101] The status and rights of women in private life have always been significantly influenced by Shari'a regardless of the extent of Islamization of the public debate.

A. Shari'a and the Human Rights of Women

This part begins with a brief survey of general principles and rules of Shari'a which are likely to have a negative impact on the status and rights of Muslim women.[102] This includes general principles which affect the socialization of both men and women and the orientation of society at large as well as legal rules in the formal sense. The most important general principle of Shari'a influencing the status and rights of women is the notion of *qawama*. *Qawama* has its origin in verse 4:34 of the Qur'an: "Men have *qawama* [guardianship and authority] over women because of the advantage they [men] have over them [women] and because they [men] spend their property in supporting them [women]."[103] According to Shari'a interpretations of this verse, men as a group are the guardians of and superior to women as a group, and the men of a particular family are the guardians of and superior to the women of that family.[104]

This notion of general and specific *qawama* has had far reaching consequences for the status and rights of women in both the private and public domains. For example, Shari'a provides that women are disqualified from holding general public office, which involves the exercise of authority over men, because, in keeping with the verse

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101. The private/public dichotomy, however, is an artificial distinction. The two spheres of life overlap and interact. The socialization and treatment of both men and women at home affect their role in public life and vice versa. While this classification can be used for analysis in the Muslim context, its limitations should be noted. It is advisable to look for both the private and public dimensions of a given Shari'a principle or rule rather than assume that it has only private or public implications.

102. For a more detailed discussion of these issues, see generally An-Na'im, *The Rights of Women and International Law in the Muslim Context, supra* note 11.

103. HOLY QUR'AN 190–91 (A. Ali trans. & commentary).

104. I. KATHIYR, 1 MUKTHASAR TAFSIYR IBN KATHIYR 385 (M. Al-Sabuniy ed. 1400 a.h.) (Arabic).

4:34 of the Qur'an, men are entitled to exercise authority over women and not the reverse.[105]

Another general principle of Shari'a that has broad implications for the status and rights of Muslim women is the notion of *al-hijab*, the veil. This means more than requiring women to cover their bodies and faces in public. According to Shari'a interpretations of verses 24:31,[106] 33:33,[107] 33:53,[108] and 33:59[109] of the Qur'an, women are supposed to stay at home and not leave it except when required to by urgent necessity.[110] When they are permitted to venture beyond the home, they must do so with their bodies and faces covered. *Al-hijab* tends to reinforce women's inability to hold public office and restricts their access to public life. They are not supposed to participate in public life, because they must not mix with men even in public places.

In addition to these general limitations on the rights of women under Shari'a, there are a number of specific rules in private and public law that discriminate against women and highlight women's general inferiority and inequality.[111] In family law for example, men have the right to marry up to four wives and the power to exercise complete control over them during marriage, to the extent of punishing them

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105. A. AL-QURTUBI, 5 AL-JAMI LI AHKAM AL-QUR'AN 169 (n.d.) (Arabic).

106. And say to the believing women that they should lower their gaze and guard their modesty; that they should not display their beauty and ornaments except what (must ordinarily) appear thereof; that they should draw their veil over their bosoms and not display their beauty except to their husbands, their fathers, their sons, their husband's sons, their brothers or their brother's sons, or their sister's sons or their women, or the slaves whom their right hand possess, or male servants free of physical needs, or small children who have no sense of shame of sex, and that they should not strike their feet in order to draw attention to their hidden ornaments. And O ye Believers! turn ye all together toward God, that ye may attain Bliss.

HOLY QUR'AN, *supra* note 103, at 904–5.

107. [O Consorts of the Prophet . . .] And stay quietly in your houses, and make not a dazzling display, like that of the former Times of Ignorance; and establish regular prayer, and give regular charity; and obey God and His Apostle. And God only wishes to remove all abomination from you, ye Members of the Family, and to make you pure and spotless.

Id. at 1115–16.

108. [O ye who believe . . .] And when ye ask (his ladies) [the Prophet's wives] for anything ye want, ask them from before [behind] a screen: that makes for greater purity for your hearts and for theirs.

Id. at 1124–25.

109. O Prophet! Tell thy wives and daughters, and the believing women, that they should cast their outer garments over their persons (when abroad): that is most convenient, that they should be known (as such) and not molested. And God is Oft-Forgiving, Most Merciful.

Id. at 1125–26.

110. Although some of these verses refer to the wives of the Prophet, they were taken to apply to all Muslim women.

111. For a general comparison between Shari'a and current standards of human rights in relation to the status and rights of women, see TABANDEH, *supra* note 37, at 35–67.

for disobedience if the men deem that to be necessary.[112] In contrast, the co-wives are supposed to submit to their husband's will and endure his punishments. While a husband is entitled to divorce any of his wives at will, a wife is not entitled to a divorce, except by judicial order on very specific and limited grounds.[113] Another private law feature of discrimination is found in the law of inheritance, where the general rule is that women are entitled to half the share of men.[114]

In addition to their general inferiority under the principle of *qawama* and lack of access to public life as a consequence of the notion of *al-hijab*, women are subjected to further specific limitations in the public domain. For instance, in the administration of justice, Shari'a holds women to be incompetent witnesses in serious criminal cases, regardless of their individual character and knowledge of the facts. In civil cases where a woman's testimony is accepted, it takes two women to make a single witness.[115] *Diya*, monetary compensation to be paid to victims of violent crimes or to their surviving kin, is less for female victims than it is for male victims.[116]

The private and public aspects of Shari'a overlap and interact.[117] The general principles of *qawama* and *al-hijab* operate at the public as well as the private levels. Public law discrimination against women emphasizes their inferiority at home. The inferior status and rights of women in private law justify discrimination against them in public life. These overlapping and interacting principles and rules play an extremely significant role in the socialization of both women and men. Notions of women's inferiority are deeply embedded in the character and attitudes of both women and men from early childhood.[118]

This does not mean that the whole of Shari'a has had a negative impact on the status and rights of women. Relatively early on, Shari'a granted women certain rights of equality which were not achieved by women in other legal systems until recently. For example, from the very beginning, Shari'a guaranteed a woman's independent legal per-

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112. Polygamy is based on verse 4:3 of the Qur'an. The husband's power to chastise his wife to the extent of beating her is based on verse 4:34 of the Qur'an. *See* HOLY QUR'AN, *supra* note 103, at 179, 190–91.

113. *See talak* in SHORTER ENCYCLOPEDIA OF ISLAM, *supra* note 42, at 564–67.

114. Verses 4:11 and 4:176 of the Qur'an. *See* HOLY QUR'AN, *supra* note 103, at 181, 235–36.

115. This is based on verse 2:282 of the Qur'an. *See* HOLY QUR'AN, *supra* note 103, at 113–14.

116. A. AUDA, AL-TASHRI AL-JANA'IY AL-ISLAMIY paras. 155, 214 (n.d.) (Arabic).

117. *See supra* note 101.

118. *See, e.g.*, Vieille, *Iranian Women in Family Alliance and Sexual Politics*, in WOMEN IN THE MUSLIM WORLD 451 (Beck & Keddie eds. 1978) [hereinafter WOMEN IN THE MUSLIM WORLD]. *But cf.* Dwyer, *Women, Sufism, and Decision-Making in Moroccan Islam*, *id.* at 585 (suggesting that in the social reality of Sufi, Islamic mystic, traditions, women may have a stronger role than envisaged by Shari'a).

sonality to own and dispose of property in her own right on equal
footing with men, and secured for women certain minimum rights in
family law and inheritance long before other legal systems recognized
similar rights.[119]

These theoretical rights under Shari'a, however, may not be realized
in practice. Other Shari'a rules may hamper or inhibit women from
exercising these rights in some societies. According to one author,
"while legally recognized as 'economic persons' to whom property is
transmitted, Muslim women are constrained from acting out economic
roles because of other legal, as well as ideological, components of
Muslim female status."[120] Customary practice in certain rural Muslim
communities in Iran and Indonesia denies women their rightful in-
heritance under Shari'a.[121] While the strict application of Shari'a would
improve the status and rights of women in comparison to customary
practice in these situations, the position of women under Shari'a would
nevertheless fall short of the standards set by international human
rights instruments.[122]

This is Shari'a doctrine as it is understood by the vast majority of
Muslims today. Significant possibilities exist for reform, but to un-
dertake such reforms effectively, we must be clear on what Shari'a *is*
rather than what it can or ought to be. Some Muslim feminists
emphasize the positive aspects of Shari'a while overlooking the negative
aspects. Others restrict their analysis to the Qur'an, and select only
verses favoring the status of women while overlooking other parts and
failing to take into account the ways in which the parts they select
have been interpreted by the Shari'a jurists.[123] Neither approach is
satisfactory. Shari'a is a complex and integrated whole and must be

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119. *See generally* Smith, *Islam*, in WOMEN IN WORLD RELIGIONS 235 (A. Sharama ed.
1987).

120. Pastner, *The Status of Women and Property on a Baluchistan Oasis in Pakistan*, in WOMEN
IN THE MUSLIM WORLD, *supra* note 118, at 434. Another author has noted that the financial
activities of Saudi women take place behind the scenes, and often through the intermediary of
hired male assistants. Furthermore, these activities were curtailed due to pressure to observe
Shari'a more strictly after the seizure of the Grand Mosque of Mecca in 1979. *See* Ramazani,
Arab Women in the Gulf, 39 MIDDLE E. J. 258, 260–61 (1985).

121. *See* Friedle, *State Ideology and Village Women*, in WOMEN AND REVOLUTION IN IRAN
217, 220 (G. Nashat ed. 1983) [hereinafter WOMEN AND REVOLUTION IN IRAN]; Cederroth,
Islam and Adat: Some Recent Changes in the Social Position of Women Among Sasak in Lombok, in
WOMEN IN ISLAMIC SOCIETIES 160, 164–66 (B. Utas ed. 1983).

122. Although these customary practices are inconsistent with the letter of Shari'a, they are
reinforced by general notions of Shari'a that signify the inferiority of women and their subjection
to men under the principle of *qawama*. Reform of these aspects of Shari'a through the reinter-
pretation of Qur'an and Sunna may therefore contribute to the eradication of those customary
practices. The reformulation of Shari'a can then be used in specific educational programs and
social policies designed to combat discriminatory practices in these Muslim communities.

123. For an example of this approach, see Hassan, *On Human Rights and the Qur'anic Perspectives*,
19 J. ECUMENICAL STUD. 52 (1982).

perceived as such. The status and rights of Muslim women are affected by the negative as well as the positive aspects of Shari'a. In fact, its negative aspects may receive greater emphasis than its positive aspects in some Muslim societies today. Moreover, Shari'a jurists have developed specific jurisprudential techniques which control and limit the prospects of reform within the framework of Shari'a. As will be explained in the final section on Islamic reform and human rights, modernist Muslims may need to challenge and change those techniques before they can implement significant reforms.

B. Muslim Women at Home

The human rights of Muslim women have been directly and continuously affected within the family by Shari'a, because its relevant aspects have remained in force under the legal systems of the vast majority of Muslim countries. This control which Shari'a exercises over the private realm of home and family is so entrenched, and its violation of human rights so clear, that it may explain in part why some Muslim countries refuse to ratify the relevant human rights instruments or at least entered reservations on their obligations under certain human rights treaties. For example, Egypt is one of the very few Muslim countries to have ratified the Convention on the Elimination of All Forms of Discrimination Against Women of 1979.[124] It entered, however, a reservation to Article 16[125] of the Convention which provides for the equality of men and women in all matters relating to marriage and family relations during the marriage and upon its dissolution. The Egyptian reservation specifically stated that since these matters were governed by Shari'a, Egypt had to derogate from its obligations under the Convention.[126]

The Shari'a personal law enforced in Iran is not significantly different from that prevailing in Sunni countries like Egypt except for the additional affront to the human dignity of women and the serious violation of their human rights caused by the institution of *mut'a*, or temporary marriage, peculiar to Shi'a jurisprudence.[127] According to this type of marriage, a man is entitled to take as many "temporary wives" as he can afford in addition to his four "permanent wives." In contrast to regular marriage which is contracted theoretically for life, *mut'a* marriage is contracted for a specific period of time, in terms of

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124. Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46 (1979).

125. *Id.* art. 16.

126. For the text of this Egyptian reservation, see INTERNATIONAL HUMAN RIGHTS INSTRUMENTS, *supra* note 8, at 220.13.

127. *See* SHORTER ENCYCLOPEDIA OF ISLAM, *supra* note 42, at 418–20.

years, months, days, or perhaps even hours. In addition to the dis-
crimination and humiliation this type of "marriage" causes to the
unfortunate temporary "wife," it demeans all women and degrades the
institution of marriage itself. Despite these and many other extremely
serious social and human rights implications of this type of "marriage,"
it is still practiced in Iran today.[128]

Some Muslim countries have introduced limited reforms in the
family law field. These appear to be more likely to survive traditionalist
and fundamentalist backlash than the Iranian ones discussed above,
because of their modest nature. The 1979 amendments to the personal
law of Egypt "were carefully formulated to forestall any unnecessary
confrontation with conservative religious elements."[129] These amend-
ments maintained the husband's rights of unilateral divorce and po-
lygamy while seeking to balance those rights by some procedural and
financial guarantees for the wife.[130] In Pakistan, the Muslim Family
Laws Ordinance of 1961[131] introduced some reforms. Among other
measures, it instituted a network of Arbitration Councils to deal with
divorce, polygamy, and maintenance of wives. Now, the written per-
mission of the Arbitration Council is required before a married man
can take another wife.

These reforms are only small steps toward redressing human rights
objections to the status and rights of women under Shari'a, and yet
they are criticized by traditionalist and fundamentalist groups as un-
Islamic. The repeal of the Iranian reforms and the threat of revision
of the Egyptian and Pakistani reforms suggest to one author the need
to use legitimate Islamic methodology in rendering such reforms.[132] I
agree with this recommendation and add that the reforms must also
go far enough to guarantee the full human rights of women in family
and inheritance law.

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128. Nashat, *Women in the Ideology of the Islamic Republic*, in WOMEN AND REVOLUTION IN
IRAN, *supra* note 121, at 205–6.

The previous regime of the Shah introduced a number of limited improvements in the status
and rights of women in Iran through the Family Protection Law of 1967 (amended in 1975).
For example, the legislation required the consent of the first wife before a husband could take
a second wife, and placed restrictions on the husband's right of unilateral divorce. For a discussion
of these and other improvements see Bagley, *The Iranian Family Protection Law: A Milestone in
the Advance of Women's Rights*, in IRAN AND ISLAM 47, 47–64 (C. Bosworth ed. 1971).

These limited gains have now been lost with the repeal of the Family Protection Law and the
return of strict Shari'a provisions. *See generally* Higgins, *Women in the Islamic Republic of Iran:
Legal, Social, and Ideological Changes*, 10 J. WOMEN IN CULTURE AND SOC'Y 477 (1985).

129. Hussein, *Recent Amendments to Egypt's Personal Status Law*, in WOMEN AND THE FAMILY
IN THE MIDDLE EAST, 229 (E. Fernea ed. 1985) [hereinafter WOMEN AND THE FAMILY IN THE
MIDDLE EAST].

130. *Id.* at 231–32.

131. PLD 1961, CS 209; CP Mar. 3, 161.

132. J. ESPOSITO, WOMEN IN MUSLIM FAMILY LAW 131 (1982).

C. Muslim Women in Public Life

A similar and perhaps more drastic conflict exists between reformist and conservative trends in relation to the status and rights of women in the public domain. Unlike personal law matters, where Shari'a was never displaced by secular law, in most Muslim countries, constitutional, criminal, and other public law matters have come to be based on secular, mainly Western, legal concepts and institutions. Consequently, the struggle over Islamization of public law has been concerned with the reestablishment of Shari'a where it has been absent for decades, or at least since the creation of the modern Muslim nation states in the first half of the twentieth century. In terms of women's rights, the struggle shall determine whether women can keep the degree of equality and rights in public life they have achieved under secular constitutions and laws.

In Pakistan, for example, the 1973 Constitution dealt with fundamental questions in relation to the role of Islam in constitutional and other public affairs.[133] However, such issues are rarely finally resolved by constitutional provisions. In fact, constitutional guarantees clearly did little to settle questions pertaining to the status and rights of women in Pakistan.

Article 25(2) of the 1973 Constitution prohibits discrimination based solely on gender.[134] Article 27(1) outlaws discrimination against qualified candidates for federal service solely on the basis of gender. Among the Principles of State Policy, Article 34 states that: "Steps shall be taken to ensure full participation of women in all spheres of national life."[135] The 1973 Constitution also provides for universal adult suffrage and reserves a certain number of seats for women in the National Assembly and regional assemblies in addition to their right to compete for non-reserved seats. Unfortunately these provisions have been contested and their practical value diminished in a variety of ways.[136]

The Council of Islamic Ideology was one of the institutional mechanisms that tended to diminish the value of constitutional protections for women's rights. According to Article 230(1)(c) of the 1973 Constitution, this Council is authorized to "make recommendations as to

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133. For a brief survey of the debate at the time, see Rahman, *Islam and the New Constitution of Pakistan*, VIII J. ASIAN & AFR. STUD. 190 (1973).

134. For the text of the 1973 Constitution of Pakistan, see CONSTITUTIONS OF COUNTRIES OF THE WORLD: PAKISTAN (Blaustein & Flanz eds. 1986) [hereinafter CONSTITUTIONS OF COUNTRIES OF THE WORLD].

135. *Id.* art. 34.

136. *See generally* Carroll, *Nizam-I-Islam: Processes and Conflicts in Pakistan's Programme of Islamisation, with Special Reference to the Position of Women*, 20 J. COMMONWEALTH & COMP. POL. 57 (1982).

the measures for bringing existing laws into conformity with the Injunctions of Islam and the stages by which such measures should be brought into effect."[137] This mandate was taken seriously throughout the Zia ul-Haq period during which the Council played an active role in the implementation of policies of Islamization.[138]

One component of the New Education Policy adopted by Zia's regime in 1978 was the progressive segregation of men and women in higher education and the establishment of separate women's universities. As one observer commented:

> Such an eventuality could not but have disastrous repercussions on both women's higher education and their career opportunities. At a time when women were breaking ground in new fields—for instance, engineering, town planning, architecture, aeronautics—a women's university could not possibly offer these subjects to the few pioneers then undertaking them in a co-educational institution.[139]

Pakistani women have been concerned with the implications of the policy of Islamization for their careers and successfully have protested against encroachments on their role in public life. Zia ul-Haq's regime did show some sensitivity to protests and demands by women's organizations. He appointed the first female cabinet secretary in Pakistan's history, and later appointed a female minister of state.[140] In 1979 he established a Women's Division within his cabinet whose activities included cosponsorship of a conference which recommended the elimination of stereotyping of women in textbooks, the projection of a more responsible and positive image of women in national life, and greater representation of women in educational administration and policy-making. In response to protests by the All Pakistan Women's Association and seventeen other women's groups against instructions by the Minister of Information restricting the appearance of female models in commercial advertising, Zia's regime declared that it "had no intention whatsoever to debar them [women] from taking an active part in national affairs."[141]

With the election of Benazir Bhutto as the first female Prime Minister of Pakistan, one can expect more action in support of women's

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137. CONSTITUTIONS OF COUNTRIES OF THE WORLD, *supra* note 134, art. 230(1)(c).
138. *See* Carroll, *supra* note 136, at 66.
139. *Id.* at 75. *See also* Hussain, *The Struggle of Women in the National Development of Pakistan*, in MUSLIM WOMEN 198, 210 - 11 (F. Hussain ed. 1984).
140. *See* Carroll, *supra* note 136, at 82.
141. *Id.* at 83–84; Hussain, *supra* note 139, at 213–14.

rights in public life. Nevertheless, one must not underestimate the power of the proponents of Shari'a in Pakistan or any other Muslim country. Neither women's organizations nor political parties and politicians can afford to disregard or downplay the Islamic factor.[142] Numerous studies show that a variety of economic and social factors contribute to the current status and rights of women in the Muslim world, and to their own perceptions of and reactions to their situation.[143] But these studies also emphasize, in one way or another, the Islamic dimensions of these same factors.

The Islamization slogan appears to have aroused considerable excitement and enthusiasm in Pakistan. Even the Pakistan People's Party, presently in power after the death of Zia ul-Haq, has declared its commitment to Islamization policy and continues to compete with the Islamic parties in this regard. But there are problems, as one observer noted:

> The matter, however, becomes complicated and contentious when an attempt is made to translate the slogan into actual policies. Not much imagination is required to realise that the vision of an Islamic social order entertained by the Ulema [Ulama, traditional religious scholars] differs radically from that envisaged by educated and articulate women. But even Sunni politicians of the religious-orientated parties are by no means unanimous in their conception of an Islamic state.[144]

This comment applies throughout the Muslim world, including Iran where differences exist among Shi'a politicians. Educated women and other modernist segments of society may not be able to articulate their vision of an Islamic state in terms of Shari'a, because aspects of

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142. *See, e.g.*, the analysis and evaluation of the All Pakistan Women's Association in Chipp, *The Modern Pakistani Woman in a Muslim Society*, in Asian Women in Transition 204 (Chipp & Green eds. 1980). For a similar analysis of a group of Indonesian women organizations see Douglas, *Women in Indonesian Politics: The Myth of Functional Interest, id.* at 152.

143. On Egypt and Morocco see, *e.g.*, Maher, *Women and Social Change in Morocco*, in Women in the Muslim World, *supra* note 118, at 100; Davis, *Working Women in a Moroccan Village, id.* at 416; El-Messiri, *Self-Images of Traditional Urban Women in Cairo, id.* at 522. *See also* Rugh, *Women and Work: Strategies and Choices in a Lower-Class Quarter of Cairo*, in Women and the Family in the Middle East, *supra* note 129, at 272; Hatem, *Egypt's Middle Class in Crisis: The Sexual Division of Labor*, 42 Middle E. J. 407 (1988).

In relation to Iran see Friedle, *supra* note 121; Nashat, *supra* note 128; Bauer, *Poor Women and Social Consciousness in Revolutionary Iran*, in Women and Revolution in Iran, *supra* note 121, at 141.

On the situation in Saudi Arabia see Ramazani, *supra* note 120; Allaghi & Almana, *Survey of Research on Women in the Arab Gulf Region*, in UNESCO, Social Science Research and Women in the Arab World 14 (1984).

144. Carroll, *supra* note 136, at 85.

Shari'a are incompatible with certain concepts and institutions which these groups take for granted, including the protection of all human rights. To the extent that efforts for the protection and promotion of human rights in the Muslim world must take into account the Islamic dimension of the political and sociological situation in Muslim countries, a modernist conception of Islam is needed.

V. ISLAMIC REFORM AND HUMAN RIGHTS

I have referred several times in this Article to the need for Islamic reform to protect and promote human rights in the Muslim world. Such reform must be *sufficient* to resolve human rights problems with Shari'a while maintaining *legitimacy* from the Islamic point of view. On the one hand, reform efforts which fall short of resolving the serious human rights problems indicated earlier may not be worth pursuing. On the other hand, it is futile to advocate reforms which are unlikely to be acceptable to Muslims as satisfying the religious criteria of Islamic reform.

Islamic reform needs must be based on the Qur'an and Sunna, the primary sources of Islam. Although Muslims believe that the Qur'an is the literal and final word of God, and Sunna are the traditions of his final Prophet, they also appreciate that these sources have to be understood and applied through human interpretation and action. As I have pointed out above,[145] these sources have been interpreted by the founding jurists of Shari'a and applied throughout Muslim history. Because those interpretations were developed by Muslim jurists in the past, it should be possible for modern Muslim jurists to advance alternative interpretations of the Qur'an and Sunna.

A. An Adequate Reform Methodology

I have elsewhere argued extensively for this position and advanced a specific reform methodology which I believe would achieve the necessary degree of reform.[146] The basic premise of my position, based on the work of the late Sudanese Muslim reformer *Ustadh* Mahmoud Mohamed Taha,[147] is that the Shari'a reflects a historically-conditioned interpretation of Islamic scriptures in the sense that the founding jurists had to understand those sources in accordance with their own social, economic, and political circumstances. In relation to the status and rights of women, for example, equality between men and women

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145. *See supra* notes 12–28 and accompanying text.
146. *See generally* TOWARD AN ISLAMIC REFORMATION, *supra* note 11.
147. *See generally* M. TAHA, THE SECOND MESSAGE OF ISLAM (A. An-Na'im trans. 1987).

in the eighth and ninth centuries in the Middle East, or anywhere else at the time, would have been inconceivable and impracticable. It was therefore natural and indeed inevitable that Muslim jurists would understand the relevant texts of the Qur'an and Sunna as confirming rather than repudiating the realities of the day.

In interpreting the primary sources of Islam in their historical context, the founding jurists of Shari'a tended not only to understand the Qur'an and Sunna as confirming existing social attitudes and institutions, but also to emphasize certain texts and "enact" them into Shari'a while de-emphasizing other texts or interpreting them in ways consistent with what they believed to be the intent and purpose of the sources. Working with the same primary sources, modern Muslim jurists might shift emphasis from one class of texts to the other, and interpret the previously enacted texts in ways consistent with a new understanding of what is believed to be the intent and purpose of the sources. This new understanding would be informed by contemporary social, economic, and political circumstances in the same way that the "old" understanding on which Shari'a jurists acted was informed by the then prevailing circumstances. The new understanding would qualify for Islamic legitimacy, in my view, if it is based on specific texts in opposing the application of other texts, and can be shown to be in accordance with the Qur'an and Sunna as a whole.

For example, the general principle of *qawama*, the guardianship and authority of men over women under Shari'a, is based on verse 4:34 of the Qur'an quoted earlier.[148] This verse presents *qawama* as a consequence of two conditions: men's advantage over and financial support of women. The fact that men are generally physically stronger than most women is not relevant in modern times where the rule of law prevails over physical might. Moreover, modern circumstances are making the economic independence of women from men more readily realized and appreciated. In other words, neither of the conditions— advantages of physical might or earning power—set by verse 4:34 as the justification for the *qawama* of men over women is tenable today.

The fundamental position of the modern human rights movement is that all human beings are equal in worth and dignity, regardless of gender, religion, or race. This position can be substantiated by the Qur'an and other Islamic sources, as understood under the radically transformed circumstances of today. For example, in numerous verses the Qur'an speaks of honor and dignity for "humankind" and "children of Adam," without distinction as to race, color, gender, or religion.[149]

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148. *See supra* text following note 103.
149. For instance, verse 17:70 speaks of how God "honoured the children of Adam." Yusuf

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By drawing on those sources and being willing to set aside archaic
and dated interpretations of other sources, such as the one previously
given to verse 4:34 of the Qur'an, we can provide Islamic legitimacy
for the full range of human rights for women.

Similarly, numerous verses of the Qur'an provide for freedom of
choice and non-compulsion in religious belief and conscience.[150] These
verses have been either de-emphasized as having been "overruled" by
other verses which were understood to legitimize coercion, or "inter-
preted" in ways which permitted such coercion. For example, verse
9:29[151] of the Qur'an was taken as the foundation of the whole system
of *dhimma*, and its consequent discrimination against non-Muslims.[152]
Relying on those verses which extoll freedom of religion rather than
those that legitimize religious coercion, one can argue now that the
dhimma system should no longer be part of Islamic law and that
complete equality should be assured regardless of religion or belief.
The same argument can be used to abolish all negative legal conse-
quences of apostasy as inconsistent with the Islamic principle of free-
dom of religion.[153]

Reference has been made to the possible need to challenge some
jurisprudential techniques of Shari'a in order to implement the nec-
essary degree of reform.[154] One of the main mechanisms for develop-
ment and reform within the framework of Shari'a is *ijtihad*—indepen-
dent juristic reasoning to provide for new principles and rules of Shari'a
in situations on which the Qur'an and Sunna were silent. By virtue
of its rationale and textual support, *ijtihad* was not supposed to be
exercised in any matter governed by clear and categorical texts of
Qur'an and/or Sunna because that would amount to substituting jur-

Ali translates the Arabic term *"baniy* Adam" as "the sons of Adam," *see* HOLY QUR'AN, *supra*
note 103, at 714, although the word *"baniy"* means "children," both male and female. Yusuf
Ali may have intended the word "sons" to include both sexes, but it is important to use a
gender neutral term in this context. Verse 49:13 of the Qur'an may be translated as follows:
    O, humankind, We [God] have created you into male and female, and made you into
    peoples and tribes so that you may be acquainted [and cooperate] with each other; the
    most favored by God among you are those who are righteous and pious.
    150. See, for example, verse 2:256 of the Qur'an which provides: "Let there be no compulsion
in religion: Truth stands out clear from error . . . ." In verse 18:29 God instructs the Prophet:
"Say, the Truth is from your Lord. Let him who will, believe, and let him who will, reject [it]
. . . ." HOLY QUR'AN, *supra* note 103, at 103, 738.
    151. Fight those who believe not in God and the Last Day, nor hold that forbidden
    which hath been forbidden by God and His Apostle, nor acknowledge the Religion
    of Truth, [even if they are] of the People of the Book [*Ahl al-kitab*], until they pay
    Jizya with willing submission, and feel themselves subdued.
HOLY QUR'AN, *supra* note 103, at 447.
    152. *See supra* notes 42–51 and accompanying text on the *dhimma* system and its human
rights implications.
    153. *See generally* A. RAHMAN, PUNISHMENT OF APOSTASY IN ISLAM (1972) (a strong
argument for abolishing the death penalty for apostasy in Islamic law).
    154. *See supra* text following note 123.

istic reasoning for the fundamental sources of Islam.[155] According to the prevailing view in Shari'a, *ijtihad* should not be exercised even in matters settled through *ijma*, consensus.[156]

Some of the problematic aspects of Shari'a identified in this Article, however, are based on clear and categorical texts of Qur'an and Sunna. To achieve the necessary degree of reform, I would therefore suggest that the scope of *ijtihad* be expanded to enable modern Muslim jurists not only to change rules settled through *ijma*, but also to substitute previously enacted texts with other, more general, texts of Qur'an and Sunna despite the categorical nature of the prior texts.[157] This proposal is not as radical as it may seem because the proposed new rule would also be based on the Qur'an or Sunna, albeit on a new interpretation of the text. For example, the above-mentioned categorical verse 9:29 regulating the status of non-Muslims would be superseded by the more general verses providing for freedom of religion and inherent dignity of all human beings without distinction as to faith or belief.

I believe that the choice of texts to be implemented as modern Islamic Shari'a is systematic and not arbitrary; it is based on the timing and circumstances of revelation as well as the relationship of the text to the themes and objectives of Islam as a whole. Moreover, I maintain that the proposed reinterpretation is consistent with normal Arabic usage and apparent sense of the text. It is neither contrived nor strained. The ultimate test of legitimacy and efficacy is, of course, acceptance and implementation by Muslims throughout the world.

B. Prospects for Acceptance and Likely Impact of the Proposed Reform

In addition to this methodology's own Islamic legitimacy and cohesion, at least two main factors are likely to affect the acceptance and implementation of this or any other reform. It must be timely, addressing urgent concerns and issues facing Muslim societies, and it must be disseminated and discussed in Muslim countries. I believe that my proposal will be acceptable to Muslim peoples if offered in an effective and organized manner. Paradoxical as it may seem, I suspect that the proposal may face difficulties of dissemination and discussion precisely because it is timely.

This proposal is timely because Muslims throughout the world are sensitive to charges that their religious law and cultural traditions permit and legitimize human rights violations; hence the efforts of

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155. *See* D. MacDonald, Development of Muslim Theology, Jurisprudence and Constitutional Theory 86 (1903); Vesey-Fitzgerald, *supra* note 16, at 93.

156. N. Coulson, *supra* note 17, at 60.

157. For a full explanation and substantiation of this position, see Toward an Islamic Reformation, *supra* note 11, at 17–33, 53–68.

contemporary Muslim authors to dispel such allegations.[158] Govern-
ments of Muslim countries, like many other governments, formally
subscribe to international human rights instruments because, in my
view, they find the human rights idea an important legitimizing force
both at home and abroad. Moreover, as explained earlier, many emerg-
ing women's organizations and modernist forces are now asserting and
articulating their demands for justice and equality in terms of inter-
national human rights standards.

Nevertheless, the proposed reform will probably be resisted because
it challenges the vested interests of powerful forces in the Muslim
world and may upset male-dominated traditional political and social
institutions. These forces probably will try to restrict opportunities
for a genuine consideration of this reform methodology. It is equally
likely that they will attempt to obstruct its acceptance and imple-
mentation in the name of Islamic orthodoxy. Proponents of Shari'a
will also resist it because it challenges their view of the good Muslim
society and the ideal Islamic state.

Consequently, the acceptance and implementation of this reform
methodology will involve a political struggle within Muslim nations
as part of a larger general struggle for human rights. I would rec-
ommend this proposal to participants in that struggle who champion
the cause of justice and equality for women and non-Muslims, and
freedom of belief and expression in the Muslim world. Given the
extreme importance of Islamic legitimacy in Muslim societies, I urge
human rights advocates to claim the Islamic platform and not concede
it to the traditionalist and fundamentalist forces in their societies. I
would also invite outside supporters of Muslim human rights advocates
to express their support with due sensitivity and genuine concern for
Islamic legitimacy in the Muslim world.

As I have tried to show throughout this Article, the problematic
aspects of Shari'a are not the sole underlying causes of human rights
violations in the Muslim world. Other extra-Islamic structural and
socio-economic factors also contribute to human rights problems. But
the primary objectives of this Article have been: (1) to address the
extent to which Shari'a-related factors contribute to human rights
violations in the Muslim world; and (2) to propose a way of overcoming
that particular dimension of the status of human rights in the Muslim
world.

VI. CONCLUSION

This Article began with the general premise that human rights
violations reflect the lack or weakness of cultural legitimacy of inter-

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158. *See, e.g.*, Wafi, *supra* note 34; Hassan, *supra* note 123; Ishaque, *Human Rights in Islamic
Law*, 12 INT'L COMM'N OF JURISTS REV. 30 (1974); Al-Faruqi, *Islam and Human Rights*, 27
ISLAMIC Q. 12 (1983); A. ZAHIR, HUQUQ AL-INSAN (1988) (Arabic).

national standards in a particular society. In accordance with this premise, because Shari'a, as the accepted version of the law of Islam, is inconsistent with certain human rights, those rights probably will be violated in the Muslim world, regardless of formal participation in international human rights instruments. This is likely to occur even if Shari'a is not constituted as the formal legal system of the country in question. As a religious and ethical code, Shari'a has far-reaching political and social influence, irrespective of its official legal status in Muslim countries. The evidence reviewed above from case studies of several Muslim countries illustrates Shari'a's extensive influence under very different cultural and legal conditions.

Therefore, because Muslim countries are more likely to honor those human rights standards which have Islamic legitimacy, human rights advocates should struggle to have their interpretations of the scriptural imperatives of Islam accepted as valid and appropriate for application today. Authority for this reinterpretive activity comes from the fact that contemporary majority perspectives on Shari'a are not necessarily the only valid interpretations of the scriptural imperatives of Islam, a fact which has been recognized by some modernist Muslim reformers.[159] Unfortunately, little has been done so far to develop a comprehensive reform methodology. In terms of human rights concerns there has been little effort to reconcile Islamic law with fundamental human rights, especially in relation to women and non-Muslims. Reform efforts have so far been confined to the family law area, and even there they have tended to be inadequate and open to reversal. A much more comprehensive and effective reform methodology is required to provide genuine and lasting Islamic legitimacy for human rights in the Muslim world.

In the final part of this Article, I have explained briefly what I believe to be an adequate Islamic reform methodology aimed at achieving greater legitimacy for human rights in the Muslim world. As indicated in that section, however, this methodology does not offer an easy or quick solution to all human rights problems. In fact, strong resistance can be expected not only from those with vested interest in the status quo, but also from some of the beneficiaries of the proposed reforms. For example, some educated women are Islamic fundamentalists. Nor do I suggest that reformulating Shari'a alone will alleviate all human rights violations. Economic and other factors and forces must also be addressed. Yet, the extent of observance of human rights standards in any country is affected by prevailing attitudes and conceptions regarding who is a human being entitled to the full range of

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159. *See, e.g.,* F. RAHMAN, ISLAM AND MODERNITY: TRANSFORMATION OF AN INTELLECTUAL TRADITION (1982); IN QUEST OF AN ISLAMIC HUMANISM: ARABIC AND ISLAMIC STUDIES IN MEMORY OF MOHAMED AL-NOWAIHI (A. Green ed. 1984).

human rights. In the Muslim context, these attitudes and conceptions are significantly influenced by commonly held views concerning what are the scriptural imperatives of Islam. Rethinking these scriptural imperatives is therefore one critical strategy for advancing human rights in Muslim countries. Human rights advocates have few allies in most parts of the world, including almost all Muslim countries. They need to enlist the support of powerful cultural and religious forces. Support will come if they look for it in an intelligent and sensitive manner.