

# **HUMAN RIGHTS AND CULTURAL REFORM IN CONTEMPORARY MUSLIM SOCIETY: FROM HEGEMONIC DISCOURSE TO CROSS-CULTURAL DIALOGUE**

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Cross-cultural dialogue is a recurring theme in international human rights literature. Some human rights scholars underscore the need for a cross-cultural discourse for transmitting human rights concerns and practices to non-Western societies, while others dismiss the call for engaging non-Western cultures in a dialogue as counterproductive, since it can only lead to compromising the universality of human rights.<sup>1</sup>

The purpose of this paper is to point out inconsistencies in the work of some leading human rights scholars, involved in assessing human rights trends in the Middle East, who advocate a cross-cultural approach to understanding human rights in non-Western cultures. I argue that a close examination of what is referred to as a cross-cultural dialogue reveals unmistakable elements of hegemonic discourse. It is quite evident that many human rights scholars specializing in the study of Islam and the Middle East are not engaged in a two-way communication with Islamic reformers, so that a better understanding of the context and direction of Islamic reform may be attained, but rather in a hegemonic discourse whose effect has been the overshadowing of a reformist discourse rooted in Islamic worldview.

I stress, however, that the distorted picture that comes out of this hegemonic discourse does not stem out of any malicious intent to mislead, but rather is due to conceptual and methodological reasons. Methodologically, the approach to studying human rights situations in the Middle East is ahistorical and static, failing to detect actual developments in discourse and practice, and unable hence to reveal the vigorous cultural reform currently underway in the Muslim world. Conceptually, the distortion in the picture of the human rights debate in the Middle East is due to the fact that observations are filtered through an absolute-universalistic outlook, oblivious to the importance of the notions of culture, cultural variation, and cultural dynamism on understanding human rights situations.

I further contend that while Islamic reform has a long way to go before it can ensure individual liberty and equality for all, it has been moving slowly but consistently toward a vision of an open, egalitarian, and tolerant society, and that it has already embraced international human rights as defining principles of its vision of future society. I conclude by identifying the preconditions for a genuine cross-cultural dialogue, and cautioning against attempts to subvert human rights by employing human rights as a tool to justify imposition of external values and choices, rather than an instrument for fighting coercion and imposition.

## **THE MAKING OF A HEGEMONIC DISCOURSE**

The value of scholarship derives from its ability to bring meaning and enlightenment to the lives of people, and to sharpen their understanding of the complex world in which they live. All scholars realize that in order to bring about clear understanding, and to explain actions and events in the complex world of humans, this world must be reduced into a manageable set of concepts. However, for a complex world to be reduced without distortion, scholars must take special care to maintain balance among the various elements and components that constitute it. The failure to maintain balance, say by failing to reflect the size and significance of the various forces locked in an intellectual or political struggle, is bound to bring about misunderstanding rather than understanding, and to create an ugly image out of the most beautiful object of understanding. Distortion is thus the most fatal act a scholar can commit.

The importance of human rights lies in the instrumental role they play to protect the weak against the powerful, and to liberate the oppressed from their oppressors. It is widely

accepted by human rights scholars that the right to free speech is needed not to protect those who celebrate the praise of the established power, but to make room for dissenting views and opinions. It is therefore embarrassing, even disheartening, to see human rights scholars siding with oppressive regimes against their oppressed subjects by ignoring the actual abuses of the former, while condemning the latter on the ground of an imaginary legal system they supposedly intend to resuscitate as soon as they shack off their yokes, and obtain commanding power.

Now, combine the above two scenarios in the discourse of human rights scholars who are, wittingly or unwittingly, involved in distorting reality and using human rights to justify cultural imperialism and penetration, and you end up with a potentially devastating discourse entitled “Islam and human rights”. To be fair to the participants in this discourse, the debate over the compatibility of Islam with human rights is still far from reaching the state of affairs described above, and it is not difficult to see that there are few hopeful signs, which, if pursued seriously, could shift the direction of the current debate towards more fruitful and promising ends. Among the promising signs are the notion of cross-cultural dialogue on human rights, and the notion of human rights based on international morality. But unless such notions are pursued seriously, it is only a matter of time before we arrive at the dreadful scenario described above, whereby scholarship and human rights become instruments for subjugation and control, and the hope of a more caring world in which might is truly restrained by right is completely dashed.

Indeed, even at this relatively early stage of the discourse on Islam and human rights, one can see that a *strategic formation* of an essentially hegemonic discourse is already in the making. Central to any hegemonic discourse – or strategic discursive formation – is the recasting of the subject of the study (in this case the attitudes and values of the adherents of Islam) in such a manner that the strategic interests of the hegemonic culture is advanced vis-à-vis other cultures. That is to say, the main effect of the formation of a hegemonic discourse is not understanding the other, but justifying actions that aim at its subjugation or elimination. The other is presented in such a negative image that the discourse recipients resign to the idea that it is utterly useless to listen to it, or engage it in any meaningful dialogue.<sup>2</sup> As I argue below, the negative presentation of the other does not necessarily stem from a malicious intent to distort the facts. Rather, distortion is often the outcome of the strategic positioning of the scholar in a particular culture, which makes him or her more susceptible to the particular interests and historical experiences of the social group to which he or she belongs, and the tendency to evaluate other cultures and groups through notions and theories derived from these particular experiences and interests.

While there is no shortage of academic works that display a clear pattern of hegemonic discourse, I have made a careful decision to exclude the works of scholars who have openly advanced a prejudicial arguments,<sup>3</sup> and to focus my analysis on examples taken from the writings of moderate scholars who have presented relatively more balanced views on the subject. One such an example can be found in Ann E. Mayer’s highly acclaimed work on Islam and human rights. The main thesis in her work is that contemporary Islamic human rights schemes borrow their substance from international human rights, but use shari’a to limit human rights applications. Since historical shari’a discriminates, she argues, against women and non-Muslims, limiting human rights by shari’a rules is tantamount to cancelling out the protections they intend to ensure.

To demonstrate her thesis, Mayer examines four documents (the Iranian Constitution, the Universal Islamic Declaration of Human Rights, al-Azhar’s model constitution of an Islamic state, and the Cairo Declaration on Human Rights) and two works by Muslim traditionalists (Mawdudi and Tabanda). Mayer discusses in detail the views of Muslim traditionalists, and shows that they have wholeheartedly accepted historical shari’a, opposing any efforts to reinterpret Islamic sources in ways that would lead to recognizing the right of all people — regardless of their religious, gender, or ethnic distinctions — to equal freedom. She rightly

concludes that Islamic human rights schemes are effectively undermined when read through the eyes of traditionalist spokesmen of Islam. By relying extensively on the traditionalist interpretations of shari'a Mayer is, therefore, able to make a persuasive case to support her thesis. Her persuasiveness is attained, however, at the expense of sacrificing clarity, and omitting crucial facts. One such a crucial fact missing in Mayer's work is the intense debate currently underway between Islamic reformers and traditionalists on the relevance of pre-modern shari'a to modern Islamic society. Indeed, Mayer herself realizes, in the context of criticizing the use of shari'a for defining the scope of individual freedom in the Iranian Constitution, the slippery nature of her arguments, and poses an important question that goes into the heart of her contention:

Could it not be the case, one might ask, that the Islamic qualifications on rights might be narrower than the ones permitted under international law, that these clauses could be interpreted to mean that the government would have to produce much stronger justifications for curbing human rights than it would under secular criteria? That is, one might say that the assumption that broad Islamic qualifications on rights imply the erosion of rights protection is only that — an assumption.<sup>4</sup>

Mayer immediately dismisses the doubts raised in the above question, insisting that “[a]lthough in the abstract this question might seem justified, there are indications that warrant the assumption that these qualifications are designed to dilute rights.”<sup>5</sup> She goes on to cite three grounds for her contention: (1) that the Iranian government excludes “[l]iberal Muslims with strong commitments to human rights, like Mehdi Bazargan and Muslim clerks like Taleghani, who believe that Islam protects individual rights and freedoms....,”<sup>6</sup> (2) that Middle Eastern governments in general are “hostile to claims on behalf of individual liberties and the rights of the citizens,”<sup>7</sup> and (3) that there is “no developed tradition of Islamic human rights protections.”<sup>8</sup>

Yet it is not difficult to show, on a closer examination, that the grounds cited by Mayer are fragile, and do not warrant her assumption. Thus the first point she advances supports the contention I raised earlier that she is relying on traditionalist interpretations of shari'a while obscuring the role of Islamic reformers in bringing about profound sociopolitical change to Muslim society. For Mehdi Bazargan is himself a leading figure in the Islamic reform movement that contributed to the demise of the authoritarian regime of the Shah. He was a member of the committee that drafted the Iranian Constitution, and the first prime minister in post-revolution Iran. He continued to work toward the creation of an open, egalitarian, and tolerant Islamic society after he was pushed to the opposition by the traditionalist policies of the Ayatollahs until his death. His efforts, and those of other Islamic reformers, gave rise to a vibrant reform movement, opposing the conservative regime in Iran. The movement has recently succeeded in dislodging the conservatives from the executive branch, bring more moderate government under Khatami.

Similarly, to argue that Middle Eastern governments are “hostile to claims on behalf of individual liberties” is to miss the point. For one needs only to remember that these regimes embrace the ideologies of developmentalism — in their both nationalist and socialist forms — which justify forced assimilation and cultural imposition, the very ideologies that gave rise to Islamic reform movements. These governments are, by and large, avowedly antagonistic to Islamic reform, and have rejected in the past all attempts to base social development on Islamic values or ethos. The recent efforts on the part of some Muslim governments to incorporate certain elements of historical shari'a into the law are aimed at gaining the support of traditionalist jurists in their struggle against Islamic reformers.

Finally, Mayer's contention that there is “no developed tradition of Islamic human rights protections” is perplexing, and illustrative of a legalistic approach that lacks sensitivity to cultural dynamism. For while it is true that historical shari'a does not support a full-fledged system of human rights protection in modern society, Islamic reformers have been actively engaged, since

Afghani and Abduh, in efforts to reform traditional shari'a, as it is shown below. Still, it is inaccurate to suggest that one cannot find principles, laws, and doctrines that can provide strong foundation for Islamic human rights tradition. Indeed, as early as the second century of Islam (eighth century) Muslim jurists have recognized the rights of non-Muslims to equal protection of the law as far as their personal safety and property are concerned, as well as their right to full religious freedom. Thus Muhammad bin Hassan al-Shaybani, the author of the most authoritative classical work on non-Muslim rights, states in unequivocal terms that when Muslims enter into a peace covenant with non-Muslims, "Muslims should not appropriate any of their [the non-Muslims] houses and land, nor should they intrude into any of their dwellings. Because they [have become] party to a covenant of peace, and because on the day of the [peace of] *Khaybar*, the Prophet's spokesman announced that none of the property of the covenanters is permitted to them [to Muslims]. Also because they [non-Muslims] have accepted the peace covenant so as they may enjoy their properties and rights on par with Muslims."<sup>9</sup> Similarly, al-Shaybani concedes that Christians who have entered into a peace covenant with Muslims have the right to practice their religion and maintain their Churches, and are entitled to trade freely in wine and pork in their own towns, even though trade in, and consumption of, the two items is prohibited to Muslims under shari'a rules.<sup>10</sup>

Evidently, Mayer's assumption that shari'a rules are bound to effect excessive restrictions on Islamic human rights schemes rests solely on reading these schemes through the eyes of the traditionalists, while keeping the views of reform-minded Muslim scholars and activists in the background. Indeed, leaving crucial facts and evidence out, while conveniently focusing on radical and traditionalist elements of Islamic resurgence are characteristic of those human rights scholars who have been quick to dismiss the profound Islamic reform currently underway in Muslim societies, and to overlook its anti-traditionalist stance and liberal tendencies and ethos.

Similarly, scholars engaged in hegemonic discourse often water down the negative impact of the self-serving foreign policies of major Western powers on cultural reform, and on the maturation of human rights traditions. Thus Bassam Tibi dismisses the selective application of human rights by Western powers as irrelevant to the debate on human rights practices in the Middle East, and rejects the complaint of non-Western critics against selective application as mere polemics.<sup>11</sup> He goes further to denounce non-Western opposition to Western hegemony as unwarranted resistance "disguised as a claim to cultural authenticity".<sup>12</sup> Tibi does not stop even once to ask: whence comes this hostility? Nor does he seem interested in finding out whether the non-West is resisting the principles of human rights themselves, or only Western interpretations of the mode and scope of their application. In fact Tibi seems to be completely oblivious to the possibility that non-Western hostility might have to do with the support Western powers lend to oppressive non-Western regimes, ruled by hated dictators. The hegemonic nature of the intellectual discourse in which Tibi is engaged is so pervasive that it turns out that even the notion of "cross-cultural consensus" he vigorously advocates does not involve a dialogue among autonomous cultures engaged in rational persuasion, but a coercive discourse that takes the form of monologue through which non-Western cultures are expected to learn the manners and habits of a presumably morally superior West.<sup>13</sup>

## **THE PURPOSE OF HUMAN RIGHTS: FROM AUTONOMY TO PATERNALISM**

Can international human rights, which borrow their moral and intellectual strength from natural rights tradition — a tradition that places great emphasis on human dignity and individual autonomy — be used as an instrument to patronize and control other cultures? The answer to this question can be found in an article written by a human rights scholar and Middle East specialist, under the title "An Essay on Islamic Cultural Relativism in the Discourse of Human

Rights”.<sup>14</sup> The article begins by pointing out certain oppressive practices of the Iranian Islamist regime, and rightly identifies as the source of these practices the regime’s failure to recognize the incompatibility of nation-state structures with the historically based Islamic legal system. However, the author turns, in the second part of his article, to direct his moral indignation of the Iranian regime at the practice of *hijab* (Islamic dress) by Muslim women. Rejecting the assertion by Muslim women that their voluntarily adoption of the *hijab* signifies a self-expression of their idea of Islamic decency, and an “affirmation of female autonomy and subjectivity”, Afshari insists that the assertion is

illusory, more a symptom of a deeply rooted sociocultural malady than a sign of female autonomy. It is illusory because the precondition that necessitates the adoption of the *hijab* is set by the patriarchal reinvigoration of control and dominance, a new bay’a (oath of allegiance) to male autonomy and subjectivity. It is illusory because the wearer’s notions of propriety and modesty have internalized the androcentric norms of the culture.<sup>15</sup>

The above argument is unmistakably paternalistic, even presumptuous, as it in effect accuses Muslim women of false consciousness. Because Muslim women have internalized the “androcentric norms of the culture”, Afshari contends, their assertion of moral autonomy is an empty claim. He further goes on to claim that in addition to being sub-consciously misguided, Muslim women have another reason for wearing *hijab*, viz. to avoid “those sanctioned practices that permit harassment of women in public, forcing them to comply with repressive norms and rewarding them by according them a marked difference in the ways men treat women in public”.<sup>16</sup> The problem of this second argument is not that it has not been substantiated by facts, but that it is totally contrary to actual practices in most Muslim societies that have experienced Islamic resurgence. Afshari seems completely oblivious to the fact that in countries, such as Syria in the early eighties, and Turkey today, the harassment is indeed practiced against those who wear *hijab*, rather than those who choose otherwise.<sup>17</sup>

Afshari’s appeal to human rights as the ground to condemn those who voluntarily assert their moral autonomy is troubling, not only because of its peculiar logic, but more so because it draws its strength from the strategic positioning of its author within a hegemonic culture, and from the strategic formation of a hegemonic discourse on which the author’s arguments feed. Indeed, Afshari is clear as to the intellectual source that gives him the philosophical ground to deny to Muslims any claims to cultural authenticity. The philosophical ground, he tells us, is furnished by Rhoda Howard’s conception of human dignity.<sup>18</sup> The question arises, therefore, as to what conception of human rights and human dignity that drives someone to boldly deny to Muslims the capacity of experiencing cultural authenticity, and to use international human rights to prevent Muslim peoples from enjoying their moral autonomy?

Howard has consistently defined dignity in such a way so as to denote submission to “society values, customs, and norms”.<sup>19</sup> Thus Howard’s conception of dignity – reads community’s respect of the individual – stands at odd with the notion of human rights, and is no more the ground for its justification. As she puts it: “Dignity frequently means acceptance of social rules and norms: human rights implies challenge to precisely those norms. Dignity is often associated with social constraint, whereas human rights are associated with autonomy and freedom”.<sup>20</sup> According to the above conception, human rights are not an expression of human dignity, but its negation. No more does dignity rest on the subjective feeling of self-respect and moral autonomy which motivate a person to demand that others respect his or her moral choices, but has become completely dependent on the acknowledgement and respect of others.

Howard’s conception of human dignity, which places it at odd with the notion of universal rights, strikes us as being disingenuous. For the very notion of individual rights, advanced

first by natural rights scholars, is derived from the notion of human dignity. Kant thus argues that human beings may claim dignity because they are the origin of all values. Unlike the objects of the natural world which serve as means, and hence have a relative value (or price), human beings are ends in themselves and have “an intrinsic value – that is, dignity”.<sup>21</sup> Human dignity derives from the fact that the human being is a “rational being who obeys no law other than that which he [or she] at the same time enact himself [or herself]”.<sup>22</sup> The rational volition individuals possess, which impute relative values to all objects, and enacts universal laws to guide action, is the source of dignity the moral person may claim. Human rights thus represent mutual recognition among rational, and morally autonomous, human beings, and affirm the capacity each of them has for moral self-determination.

Because human dignity denotes the moral autonomy of the individual, it can be best observed not under favorable social circumstances, when the individual’s moral choices are agreeable to the established power, but under adverse conditions, when the individual choose to stick to his/her moral choices even at the peril of invoking the wrath of the power that be. A person who refuses to change his testimony against corrupt authorities despite a serious threat to his/her life, or a promise of substantial monetary reward, acts with dignity because he/she choose to act pursuant to moral principles and universal laws, rather than succumbing to the arbitrary will of others, or agreeing to sell themselves to the highest bidder. To say that human dignity “is often associated with social constraint,” as Howard does, is to miss the point. The *respect* society shows to those who abide by its moral code signifies *reciprocity* rather than dignity. That is, people tend to reciprocate by respecting those who show respect to their moral choices, and by showing contempt to those who disregard and violate their moral code. Of course different moral systems demand different levels of conformity, and tolerate varying degrees of dissent.

In homogenous societies ? such as a tribe or a religious community ? the moral autonomy of the individual is subsumed in the moral autonomy of the group to which he/she belongs, and hence his/her dignity lies in observing the tribal or communal norms, and their refusal to deviate from them under pressure of an arbitrary will of a powerful individual or group. Reciprocity here lies in ensuring the uniformity of action, and in treating with respect those who respect the established norms, and with disdain those who ignore and violate common morality. However, as soon as we move from a homogenous to heterogeneous societies, where different moral communities live side by side, it becomes obvious that moral differences have to be normalized and incorporated into the normative system that govern the heterogeneous whole. Under such circumstances individual autonomy cannot be obtained unless the moral autonomy of the group to which one belongs is ensured. Under heterogeneous conditions, which are the conditions of postmodern society, human rights should aim at protecting the moral autonomy of weaker moral groups against the possibility of forced moral penetration by powerful groups. Similarly, reciprocity requires that each moral group recognize that the other groups are entitled to the same moral autonomy they wish to enjoy, and that they should not insist on imposing their own moral principles, even when they truly believe that these principles are universally valid, as they would naturally dread that such imposition be directed against them. The danger of Afshari’s argument that Muslim women who voluntarily choose to express their notion of Islamic modesty are guilty of having unconsciously succumbed to “the androcentric norms of the culture”, is that it can be easily turned against the self-expression of women of any culture, including Western culture.

It should not be difficult, then, to see why the arguments of those who fail to recognize the autonomy of non-Western moral communities, and who insist to use international human rights to impose their moral vision on others run contrary to the spirit, if not the letter, of international human rights, enshrined in the Universal Declaration of Human Rights (UDHR).<sup>23</sup> If human rights are meant to protect the human dignity and moral autonomy of individuals, one

cannot appeal to human rights to force Muslim women to abandon their voluntarily adopted *hijab* under the pretext of false consciousness, as Afshari does.<sup>24</sup> I am sure that the Turkish generals and secular fundamentalists would be glad to adopt the argument of false consciousness to justify their authoritarian and anti-democratic decree to prevent Muslim women from adopting their dress style in accordance with their religious conviction, a decree that is tantamount to religious persecution.

While it is quite legitimate for individuals to advocate their moral views so as to persuade others of their value and their enriching effects on social life, it is contrary to dignity and justice for one moral point of view to justify its legal enforcement on the ground of moral superiority. In the absence of a universally acceptable moral authority, moral superiority can only be established by moral persuasion. Such persuasion can take place through cross-cultural dialogue.

## **CULTURAL DYNAMISM AND THE LOGIC OF ISLAMIC REFORM**

The recent interest in studying the compatibility of Islam with human rights came as a result of the increasing reassertiveness of Islamic beliefs and values in Muslim societies in the last three decades, a phenomenon widely studied under the rubrics of Islamic resurgence, Islamic revivalism, or Islamic fundamentalism. The reawakening of religious consciousness in Muslim societies has been most visible in the political sphere, and has led to the increasing demand by Islamist groups throughout the Muslim world for the reconstruction of the political and legal systems so as to bring them into accord with the rules of Islamic law (*Shari'a*).

But while the various groups and individuals advocating the return of Islam as a source of public norms, are united in advancing this common goal, they are disparately divided in their varying visions as to what constitutes an Islamic public order. The diversity in orientations and visions of Islamic advocates complicates the task of scholars and writers interested in examining the phenomenon of Islamic resurgence and assessing its social impacts and political ramifications. Faced with the overwhelming complexity of Islamic reassertiveness, some scholars chose to ignore the differences that separate various Islamic groups, opting for a simplistic approach in which the more radical views are taken as representative of Islamic resurgence. This approach is more popular among international-relations specialists because, it seems, it coincides with the-worst-scenario analysis favored by national security analysts.<sup>25</sup> The problem of this approach, though, is not only that it reinforces prejudices and distorts realities, but it also prevents the development of effective foreign policy and undermines the ability of American policy makers to influence developments in the Muslim world.

The bulk of scholars devoted to studying Islam and the Muslim world have managed, however, to convey the complexity of Islamic resurgence by grouping the variety of views and positions into a number of major trends. A wide range of terms have been used by various authors. The classification list includes such terms as traditionalists, radicals, fundamentalists, modernists, moderates, liberals, etc.<sup>26</sup> Still, the picture which emerges out of an honest and faithful efforts to depict reality at a specific historical moment can be as misleading and deceptive as the picture of an acrobat taken few moments after hitting a springboard. The acrobat appears forever suspended in the air. A person unfamiliar with the gravity force, say a citizen of an eternal spaceship, would fail to realize that what he observes is a rare moment in the life of human beings; even a person familiar with the law of gravity would be at loss to determine whether the framed acrobat is moving upward or downward. Determining the dynamism and direction of cultural reform in Muslim society, and the positioning of Islamic forces in the course of societal change, is essential for understanding whether an Islamic political and legal reform is compatible with human rights.

Unfortunately, most of what has been written by human rights scholars on Islam's compatibility with human rights overlooks the question of cultural dynamism and reform direction. Thus we find that an insightful and penetrating work as *Mayer's Islam and Human Rights* succeeds only in revealing the tension over the issues of political reform and human rights, but not its direction. Her conclusion, therefore, appears ambivalent, if not perplexing. "[T]he diluted rights in Islamic human rights schemes examined here," she argues, "should not be ascribed to peculiar features of Islam or its inherent incompatibility with human rights."<sup>27</sup> Islam seems to be the source of both liberation and restriction, of both reformation and stagnation. The question thus arises as to where does Islam stand in the context of cultural change?

To begin with, we should recognize that the drive for Islamic reform has intensified as a result of the realization by Muslim intellectuals that developmentalism ideologies, advocated by Muslim ruling elites, have not led to any meaningful political or social progress in Muslim societies, but have instead resulted in the entrenchment in power of a self-serving ruling class whose main goal is to maintain a lavish lifestyle. In post-colonial Muslim societies, ruling elites have worked hard for, and succeeded in, creating for themselves and their cronies islands of plenty in the midst of oceans of poverty. Many Muslim intellectuals, alienated by the high-handed strategies of developmentalism, became convinced that the only viable political and legal reform is one rooted in the moral commitments of the Muslim community.

Since its inception in the middle of the nineteenth century, Islamic reform movement has rejected the traditionalist interpretations of Islam, and embarked on an ambitious reform project, aiming at relating Islamic beliefs and values to modern life.<sup>28</sup> The works of Afghani, Abduh, and Redah — the founders of what has been termed the reform school — present us with an unmistakably egalitarian and liberal discourse, emphasizing openness and tolerance. Early reformists rejected the anti-intellectual approach of traditionalist jurists, and advocated a rational and critical reading of the works of classical Muslims. They rejected, for instance, the restrictive role assigned by traditionalist jurists to women, emphasizing the importance of women's education and social participation. Indeed, as early as the 1930s, Muhammed Rashid Ridah not only did advocate the right of women to education and social participation, but also their right to political participation.<sup>29</sup> Similarly, al-Kawakibi attributed cultural decline of Muslim society to denial to women the right to education, and stressed the importance of their public involvement for their ability to provide proper guidance and sound upbringing for children.<sup>30</sup>

While reformist scholars were, and continue even today to be, outnumbered by their traditionalist counterparts, they have exerted a profound and far-reaching influence on contemporary society. Their impact can be seen in the increasingly more open views adopted by leading figures within the traditionalist schools. Several influential and widely respected jurists within traditionalist circles are on record in supporting democracy, human rights, including the right of women to compete equally with men for public office.<sup>31</sup> The views they express today, and teach in public, and in shari'a departments of traditional Islamic colleges, would have been sufficient for them to be branded as heretics just a century ago. Leading scholars of the Azhar University, such as Muhammad Abu Zahra, Mahmoud Shaltout, Muhammad al-Ghazali, and Yusuf al-Qardawi, have been emphasizing equality between men and women, and between Muslims and non-Muslims.

The views of reformers continue to mature in the direction of recognizing human dignity and reciprocity in society. Most recently, Fahmi Huwaydi, a leading journalist in the Arab World and respected Muslim reformist, addressed the question of equality between Muslims and non-Muslims in a book entitled *Muwatinun La Dhimiyyun* (citizens not *dhimmi*s). Huwaydi rejected the *dhimmi* classification of non-Muslims as a historically relevant concept, and demonstrated, by referring to Islamic sources, that non-Muslims in a Muslim political order enjoy full citizenship rights on par with Muslims.<sup>32</sup> The views advanced by Huwaydi is supported by the views of the

founder and leader of the main Islamic opposition in Tunisia who stresses that non-Muslims enjoy equal citizenship with Muslim majority.<sup>33</sup> Al-Ghanoushi also advocates the right of women to participate on equal footing with men in public life. “There is nothing in Islam,” he writes, “that justifies the exclusion of half of the Muslim society from participating and acting in the public sphere. In fact, to do this is to do injustice to Islam and its community in the first place, and to women [afterward].”<sup>34</sup> Similar arguments for gender equality can be seen in the writings of leading Shi’i jurists including Murtada Mutahiri, Muhammad Khatami, and Muhammad Mahdi Shamsuddin.<sup>35</sup>

Given the continuous expansion and maturation of Islamic reformist views, focusing on the views of the traditionalists, or on “middle-ground positions” is bound to distort the reality of cultural reform in the Muslim society, and obscure the direction and dynamism of social change. To doubt the potential of Islamic reform ? despite the overwhelming evidence of gradual change of views toward a more liberal and egalitarian position advocated by reformists ? because of the shortcomings of current reality is tantamount to doubting the liberating ethos of the declaration of independence at the time of its promulgation because the American society did not include women and blacks in the notion of “the people”. It took almost two centuries, and a lot of struggle on the part of countless individuals who strongly believed in human dignity, to bring these ethos to bear on the reality of social practices.

Again, despite the breathtaking cultural changes that took place in the twentieth century Muslim societies, we still find scholars who want to convince us that there is such a thing as a never-changing “Islamic culture”. Thus Tibi is able to make sweeping generalizations on Islam and Muslim cultures; he writes:

If Muslims are to embrace international human rights law standards full-heartedly, they need to achieve cultural-religious reforms in Islam ? not as faith but as a cultural and legal system. In fact, Islam is a distinct cultural system in which the collective, not the individual, lies at the center of the respective world view. The concept of human rights, as Mayer rightfully stresses, is “individualistic” in the sense “that it generally expresses claims of a part against the whole.” The part pointed out by Mayer is the individual who lives in a civil society and the whole is the state as an overall political structure. Islam makes no such distinction. In Islamic doctrine, the individual is considered a limb of a collectivity, which is the *umma*/community of believers. Furthermore, rights are entitlements and are different from duties. In Islam, Muslims, as believers, have duties/*fara'id* vis-à-vis the community/*umma*, but no individual rights in the sense of entitlements.

We are told in one breath that (1) Muslims are in need for cultural-religious reform, (2) Islam is not a set of values and beliefs that ? like other religions ? give rise to various cultural forms, but a “distinct cultural system,” and (3) Muslims have only duties towards the community, but “no individual rights in the sense of entitlements.”

Tibi is not the first to argue that the emphasis in Islam is on duty rather than rights. Donnelly advances similar arguments when he contends that, “Muslims are regularly and forcefully enjoined to treat their fellow men with respect and dignity, but the bases for these injunctions are divine commands that establish only duties, not human rights.”<sup>36</sup> Yet these assertions only reflect the lack of awareness, and possibly access, to the hundreds of voluminous works in Islamic law which elaborate various rights, and judicial procedures for protecting those rights, in the historical Muslim society. Suffice it here to give one example from the work of the classical Muslim jurist al-Mawardi (d. 450 A.H./1086 A..C.). Recognizing people’s right to form their own views, and to disagree with the prevailing views and dominant social and political beliefs, he stresses that “if a group of Muslims rebelled by disagreeing with the views of the community, and forged their own ideology, they are to be left alone and should not be fought,

and the rules of justice should be applied to them in accordance with their rights and obligations.”<sup>37</sup> Further, Muslims were able always resort to the numerous courts of law established to enforce the rules of law in the areas of family, commercial, and criminal laws. They were also able to appeal to a high court, the court of *maḥalim*, whenever they were not satisfied with ordinary courts rulings, or their rights were violated by governors or public officials.<sup>38</sup>

Tibi’s statement that “Muslims ... have duties ... but not rights in the sense of entitlement” is a true description of contemporary Muslim society, but not “Islamic culture” throughout Muslim history. Contemporary Muslims do not enjoy rights not because these rights are not on the books, but very often because they are ruled by authoritarian regimes and police states that have very little respect to the idea of the rule of law. The “Islamic culture” in which the individual is lost in the crowd of the collectivity is that of authoritarian Muslim regimes who have entered into an unholy alliance with contemporary Islamic traditionalists against Muslim reformers. Authoritarian Muslim rulers have found it more convenient to cooperate with traditionalist jurists, whose agenda does not include such items as political participation, or constitutional and legal reforms, in their fight against reform ideas and their advocates.

## **UNIVERSALISM AND THE IMPERATIVE OF CULTURAL MEDIATION**

I have argued so far against a static and ahistorical approach to understanding the Islamic position on international human rights adopted by many human rights scholars critical of views held by Islamic traditionalists. I have maintained that such an approach inevitably distorts reality, since it fails to uncover the dynamism and direction of cultural reform currently underway in Muslim society. My contention is not that Muslim cultures have already achieved the desired political and legal reforms, or that they have already brought about effective protection of individual rights and social justice. For from it. I rather contend that Islamic reform has been a positive force in liberating Muslim consciousness from both the crushing and oppressive ideologies of developmentalism, and the limiting practices of Islamic traditionalism. I turn in this section to explore the relationship between moral universalism and cultural relativism, and to underscore the need for, even the imperative of, cultural mediation of any meaningful legal reform. The argument in this section paves the way for introducing, in the subsequent section, a slightly modified approach to cross-cultural dialogue.

Since the adoption of the Universal Declaration of Human Rights in 1948 by the UN General Assembly, and the subsequent empowerment of the UN Human Rights Commission to monitor and ensure compliance of state members in 1976, the question of the universality of international human rights has been hotly debated. Two main positions can be clearly distinguished: absolute universalism and absolute relativism. The former holds that culture is irrelevant to the moral validity of human rights, while the latter insists that culture is the only source of moral validity.<sup>39</sup> Both positions fail to capture the full scope of the intercourse between culture and universal values, and both have been used to advance self-serving interests.

Absolute (or radical) cultural relativism cannot be theoretically maintained, given the fact that one can hardly find today a society which still maintains a homogenous culture. Besides, considering the dynamic nature of culture no community can claim that the cultural tradition it espouses is either eternally static, or is not involved in a process of cultural exchange with outside cultures. Absolute cultural relativism is often advanced by authoritarian regimes to shut off external criticism of the excessive use of power to silencing internal opposition. Absolute moral universalism, on the other hand, is oblivious to the fact that moral values and legal systems are the outcome of the rationalization of a specific charismatic vision or worldview.<sup>40</sup> Practically, radical universalism could be turned into an instrument in the hands of hegemonic

cultures, and could be used for imposing the morality of one culture on another, as Donnelly explains:

The dangers of the moral imperialism implied by radical universalism hardly need be emphasized. Radical universalism is subject to other moral objections as well. Moral rules, including human rights, function within a moral community. Radical universalism requires a rigid hierarchical ordering of the multiple moral communities to which individuals and groups belong. In order to preserve complete universality for human rights, the radical universalist must give absolute priority to the demands of the cosmopolitan moral community over all other (“lower”) moral communities.<sup>41</sup>

The radicalism of the two positions discussed above can be avoided by recognizing that for legal reform to succeed, it must coincide with cultural reform. That is, one must recognize that culture is the only mediating milieu for restructuring individual and social consciousness so as to make them receptive to, and supportive of, international human rights. Yet even when cultural reform results in acknowledging the universal validity of human rights, a reasonable degree of cultural relativism must be allowed so the universal principles are interpreted from within the specific socio-political context of society, and are brought to bear on the particular circumstances of the various communities.<sup>42</sup> An absolute universalism which ignores the essential role played by culture for the moral development of the individual suffers from “normative blindness” and is detrimental for both the dominant cosmopolitan culture, and the indigenous cultures it intends to reform. The devastating effects of the experimentations undertaken in Australia, Canada, and the United States to assimilate the aborigines illustrate the impossibility of achieving moral development apart from the cultural tradition to which an individual belong. They also illustrate the arrogance of the developmentalist outlook which equates moral superiority with economic and technological advancement.

The devastating consequences of the “normative blindness” of absolute universalism advocated by numerous human rights scholars is not limited to non-Western traditions, but extend to the tradition of modernity itself. That is, by attempting to globalize Western modernism in the name of international human rights, the West runs the risk of preventing, or at least delaying, the development of alternative cultural forms which could enrich the culture of modernity itself, and help it overcome some of the acute problems it currently confronts, including the problem of “normative blindness”. It seems, though, that for the latter problem to be overcome, a major reform in the dominant Western schools of jurisprudence is needed. As Richard Falk notes, neither in positivist nor in naturalist jurisprudence “does culture enter into the deliberative process of interpreting the meaning, justifying the applicability, and working for the implementation of human rights.”<sup>43</sup>

A cultural reform aiming at liberating the individual from traditionalist interpretations of Islam is already underway, as noted earlier. Reformers are appealing to the values and ethos embodied in the Islamic sources to restore the moral autonomy of the individual, and to develop an egalitarian political culture. The reform is therefore Islamic in nature and intent, and cannot be otherwise. All reform movements that have brought about profound cultural reform have been religious. The essentially secularist and individualistic modern West owes its genesis, as Weber reminded us in his *Protestant Ethic*, to the Religious Reformation that took place in the Occident at the dawn of the modern West. The Orient should be allowed to undertake its own reformation, which would inevitably result in the reorientation and rationalization of the religious values and beliefs of the people of the orient, and must hence take the form of a Confucian, Hindu, or Islamic Reformation.

Islam is a religion which has historically given rise to a variety of cultural forms. Like all divine revelations, it emphasizes individual responsibility, and admonish its followers to adhere to its moral code even if that would dismay the larger society to which they belong. While it

values social cooperation, it by no means places the collectivity above the individual. Historically, Islam has given rise to unmistakably individualistic forms of philosophical, literary, and artistic expressions. It has in the past inspired individual creativity that can be seen in the work of eminent figures, such as al-Farabi, Averros, Avesina, and Ibn Khadun, to cite just a few names well known for their contribution to Western scholarship. What is described as collective orientation of the “Islamic Culture”, is a relatively new phenomenon in Muslim society, resulting from the rational and moral decline of Muslims in the last two centuries, and effected by the ascendancy in the post-colonial era of authoritarian regimes, demanding total individual conformity in the name of developmentalist ideologies.

Despite a heightened interest in the notion of cross-cultural dialogue, there are very few Western scholars who are engaged in a real dialogue with the advocates of Islamic reform. There are many reasons for this, including the legalistic orientation of the two dominant schools of legal jurisprudence in the West, and the defensive and apologetic approach of Islamic traditionalism. But a true and meaningful dialogue is a must if human rights scholars, who are strategically based in the West, were to have positive influence on the growth and maturation of human rights reform in Muslim societies. It might be worthwhile to quote in this regard the insightful words made by Leonard Binder little over a decade ago:

It may nevertheless be questioned whether any sort of exchange between Western scholarship and the current Islamic movement is actually taking place, since the development specialists seem to be talking to one another while the leading exponents of the Islamic revival have decided to break off the dialogue. In point of fact, the dialogue has not yet been broken off, and most of the present work is devoted to an analysis and critique of some of the more interesting texts in which this cultural conversation is still being pursued. This is not a completely open and reciprocal form of discursive interaction, if only because Western intellectuals read very little of what Muslim intellectuals write. Still, insofar as these [Muslim] thinkers explore Western ideas and confront them with the hegemonic forms of Muslim thought, they carry out the dialogue in their own works. I believe that the further strengthening of Islamic liberalism and the possibility for the emergence of liberal regimes in the Middle East is directly linked to the invigoration and wider diffusion of this dialogue.<sup>44</sup>

The words of Binder are as true today as they were little over a decade ago when he uttered them. Still, it might not be too late for the advocates of Western universalism to abandon their radical universalist position, which has ironically strengthened the radical relativist position taken by Muslim traditionalists, and to embark on a meaningful dialogue with Muslim reformers. However, for a meaningful cross-cultural dialogue to take place, a number of conditions must be observed; the elaboration of these conditions is the main concern of the next section.

## **PRECONDITIONS OF A TRUE CROSS-CULTURAL DIALOGUE**

Proponents of absolute universalism premise their arguments on either of the following two presuppositions: (1) that the notion of culture ? i.e. a normative system supported by a set of values and beliefs commonly accepted by a group of people ? is irrelevant to the debate on the meaning and desirability of human rights, or (2) that human rights are compatible with a set of moral values commonly shared by all cultures. I argue in this section that the first premise is erroneous, and contend that for the common values to be universally valid, a non-hegemonic cross-cultural dialogue must take place among representatives of various moral communities.

Scholars who deny the relevance of culture to the human rights debate usually favor a unilinear view of history that equates moral with technical superiority. According to this view,

human cultures form a continuum in which primitive cultures represent one extreme while modern culture represents the other. Primitive cultures are seen to be lacking not only in technology, but in morality as well. Primitive cultures are described as barbaric and savage, while modern culture is seen as refined and civilized. History, from a unilinear viewpoint, is nothing but the movement from the primitive to the modern which forms the end of history.<sup>45</sup> The logical conclusion of the conception of history as modernization is that modern culture is the measure of all cultures. The problem with this conception, though, is that it fails to account for important historical events. The unilinear conception of history fails, for instance, to explain why the European culture was more vibrant and developed ? politically, philosophically, and artistically ? during the Roman civilization than in medieval times. From the modernization perspective, culture is not relevant to the debate on human rights because there is nothing for modern culture to learn from other cultures. Modern culture should set the standards for both moral and technical action, and then pass them on to less developed cultures.

This is in essence the conclusion of a leading advocate of radical universalism in a chapter published as part of an edited book entitled *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*. Taking exception to the idea of a cross-cultural consensus on human rights, she writes:

In this chapter I have argued against the enterprise of surveying world cultures and religions in order to establish consensus on human rights that would answer charges that such are a Western Creation.

To look for an anthropologically based consensus on the content of human rights is to miss the point. There may be aspects of agreement worth noting among what many societies take to be fundamental to a life of dignity and what the modern notion of human rights includes as its content. The concept of human rights is not universal in origin, however; and it cannot be located in most societies.<sup>46</sup>

Granted that an elaborate set of rights, purporting to protect the individual against an excessive or arbitrary use of power by the state, was first articulated by the modern West, one should not dismiss cross-cultural consensus as irrelevant. For even if we were to assume that the West could learn nothing from non-Western cultures, a cross-cultural dialogue would still be needed to understand the implications of applying a set of extremely abstract rights in various socio-political milieus. Such an understanding should help expand the margin of tolerance for cultural differences, and the appreciation of the complexity of cultural reform and the need to allow this process to run its natural course.<sup>47</sup>

Other proponents of absolute universalism concede that human rights is a cultural concept, and acknowledge the need for a cross-cultural basis for the claim of universal validity. One interesting proposal has been advanced by Bassam Tibi in the form of international morality to be “shared by all civilizations.”<sup>48</sup> Noting Huntington’s warning against an impending “clash of civilizations”, Tibi underscores the vitality of international morality for binding the various “civilizations” in a peaceful pact. He rightly points out that “human rights cannot be established internationally on the basis of overall universalism but rather on such cross-cultural foundations for a universal morality.”<sup>49</sup> He further emphasizes the importance of “unbiased cultural dialogue and inter-cultural communication,” freed from the limiting concerns of foreign policy and national interests.<sup>50</sup> It turns out, however, that the cross-cultural dialogue he envisaged does not involve a true cross-cultural exchange, but rather a one-sided intellectual exercise that aims at addressing the question of “what ought to be done to make Muslims speak the language of human rights in their own tongue?”<sup>51</sup>

It is obvious that an absolute universalistic stance is incompatible with “unbiased cultural dialogue,” even when the proponents of such a stance truly desire this dialogue. A coercive discourse in which the proponents of one of the contending points of view feel justified by their

strategic positioning to dictate on others their own morality cannot be called a cross-cultural dialogue, but rather a hegemonic discourse. A true and meaningful dialogue requires that the parties involved be truly interested in understanding the opposing views, and are involved in “a completely open and reciprocal form of discursive interaction.”<sup>52</sup> The transition from a hegemonic discourse to a cross-cultural dialogue requires, therefore, more than the manipulation of linguistic usage. The transition requires change in attitude and approach, from one that relies on power relationship to one that depends on rational interaction, or, to use Habermasian categories, a transition from a strategic speech act whose aim is to advance the interests of the powerful actor, to communicative speech act, whose goal is to influence the actions of others by appealing to their rational sense.<sup>53</sup> Put more precisely, for the transition from a hegemonic discourse, denoting a strategic interaction, to a true cross-cultural dialogue, signifying a communicative interaction, to take place, three preconditions must be met: (1) the universalism of human rights must be established objectively, (2) the moral autonomy of the various national and cultural communities that form the world community must be recognized and respected, and (3) the self-righteous claim by any cultural group of the superiority of its moral system must be rejected.

Arguments for the universality of human rights invoke, more often than not, the subjective rather than the objective dimension of universalism. Subjective universalism is monological because it takes “the form of a hypothetical process of argumentation occurring in the individual mind.”<sup>54</sup> Subjective universalization process follows the pattern set by Kant in the form of the Categorical Imperative: “Act only on that maxim through which you can at the same time will that it should become a universal law.”<sup>55</sup> From a Kantian point of view, a rule can be universal if it passes the test of the *reciprocity principle*, viz. if the person who adopts the rule as a maxim for his/her action is willing to be treated by others according to the same rule. The principle of universalization as formulated by Kant is a subjective principle that can have a universal validity only in so far as others share the same moral subjectivity with the moral actor. Put differently, the Kantian principle of universalization, which takes the form of a subjective process of generalization, can work only in a homogenous culture in which people share common intersubjectivity. However, as soon as one moves into a world characterized by cultural pluralism, say a world which resembles the international society, a different principle of universalization would be needed. Here, a new version of the Categorical Imperative, such as the one formulated by Thomas McCarthy, would be more relevant:

Rather than ascribing as valid to all others any maxim that I can will to be a universal law, I must submit my maxim to all others for purposes of discursively testing its claim to universality. The emphasis shifts from what each can will without contradiction to be a general law, to what all can will in agreement to be a universal norm.<sup>56</sup>

McCarthy’s reformulation of Kant’s Categorical Imperative, inspired by Habermas’s Communicative Action, reflects an implicit realization of the increasing cultural fragmentation of modern consciousness. If the stipulation of explicit agreement for the fulfillment of communicative action is relevant to cultures that share common intersubjectivity, it is more urgent in a cross-cultural dialogue. Needless to say that agreements and disagreements in the context of rational dialogue requires rational justification, and not simply the assertion of preference and choice.

A cross-cultural dialogue has two aims. First, it helps reduce apprehension, which may result from excessive speculation and extrapolation from one culture to another, and clarify cross-cultural misreading and misunderstanding. Secondly, it enriches internal debates in a particular culture by communicating different experiences, and the critical insights of outsiders. The value of a Tocqueville’s critical insight into democracy in America, or a

Schacht's critical analysis of Islamic law cannot be overstated. However, for a true dialogue to take place and to be maintained with a reasonable degree of objectivity, the interlocutors should recognize the moral autonomy of other cultural groups. This means that the solidarity of external groups with the substantive views of one of the internal groups locked in moral and political struggle should not be allowed to take priority over the principle of justice.

## **HUMAN RIGHTS, CULTURAL REFORM, AND POLITICAL PARTICIPATION**

For human rights principles to take hold in the social and political practices of a political community, these principles must be rooted in the cultural outlook and moral commitments of its members. In societies where human rights violations are rampant, such violations may partially be attributed to the lack of cultural sensitivities and commitments, and partially to authoritarian regimes which have little or no respect to human rights. In these societies enforcement of human rights requires a vibrant cultural reform and vigorous political struggle. It follows that human rights, cultural reform, and political participation are locked forever in a three-sided dialectical relationship.<sup>57</sup> Each of the constituting components of the above relationship does influence, and is in turn influenced by, the others. This process has been working slowly but surely in Western societies since the Protestant Reformation took place few centuries ago. The democratization process should go hand in hand with cultural reform and increased sensitivity to human rights.

As I argued earlier, a similar process has been going on in Muslim societies for little over a century now. However, the reformation process in Muslim societies has been complicated by both direct and indirect influences of the outside world. Intervention of Western powers in the internal affairs of Muslim countries, whether in the form of colonialism and direct military intervention, or in the form of unlimited support to authoritarian regimes, has disturbed the historical process of cultural reform and political liberalization and democratization. During the Cold War, military dictators received tremendous financial and military support allowing them to become completely independent from the influence of internal politics and popular support. And as long as these regimes cooperated to advance the national interests of their respective patrons they could act with impunity against their people. The human rights of the people were considered secondary to the interests of superpowers. They were invoked only insofar as they could be used to advance the national interests of the power that be.

In the Muslim world, cultural reformation is facing stiff resistance from authoritarian regimes, intent on suppressing the egalitarian and liberating ethos of reform movements. The suppression of freedom of expression and association by authoritarian regimes in the Muslim world is responsible, not only for the stifling of cultural debate essential for reform, but also for the rise of Islamic radicalism. It is not uncommon for radicals to point to the selective application of human rights — popularized as double standards — to justify their rejection and to foster public cynicism.

International human rights are articulated as a means for protecting individual dignity against an arbitrary power, and to allow a distinct minority to exercise self-determination. Any attempt by external powers to bring about legal change contrary to the moral values of a people through the agency of an authoritarian regime in the name of human rights amounts to a coercive act of moral imperialism, and would make mockery of the very notion of human rights. Human Rights scholars who are concerned about cultural practices which are in contradiction of human rights should engage indigenous cultures through an open dialogue to both effect change and understand the source of limitations. It should also, and perhaps in the first place, focus on

exposing efforts by external powers to maintain authoritarian regimes so long as the latter are willing to protect their “national interest”, even when the support extended to anti-democratic regimes amounts to inflicting great pain and suffering on countless human beings crushed under the abusive schemes of their rules.

## NOTES

- 1 The works of Abdullahi A. An-Na’im represent the views of the proponents of cross-cultural dialogue, while the writings of Rhoda Howard represent those of its opponents.
- 2 For an excellent discussion on strategic formation, see Edward Said, *Orientalism*, (N.Y.: Vintage Books, 1979).
- 3 One such example of an openly prejudicial argument against Islam’s capacity to recognize human rights can be found in the following argument by the eminent Italian scholar Lurgi Bonanate, who suggests that a non-Muslim is automatically considered an enemy in an Islamic state: “That the state may recognize other states as different from itself is one thing: the protection of the wellbeing of a human being who, regardless of his flag, is entitled to the same guarantees that the state offers its nationals is another. (*The only exception to this idea of the state in the contemporary world is the Islamic one, in which the foreigner is an enemy in so far as he is an infidel, not because he was born under a different sky!*)” See Lurgi Bonanate, *Ethics and International Politics*, trans. John Irving (Cambridge, UK.: Polity press, 1995), p. 108. Emphasis added.
- 4 Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Practice*, 2<sup>nd</sup>. Ed. (Westview Press, 1995).
- 5 Ibid. p. 70.
- 6 Ibid.
- 7 Ibid.
- 8 Ibid., P. 11.
- 9 Muhammad bin Ahmad al-Sarakhsi, *Sharh Kitab al-Siyar al-Kabir* (Pakistan: Nasrullah mansur, 1405 A.H.), Vol. 4, p 1530.
- 10 Ibid. p. 1531.
- 11 Bassam Tibi, “Islamic law/Shari’a, Human Rights, Universal Morality and International Relations”, *Human Right Quarterly* 16 (1994) p. 284.
- 12 Ibid, p. 286.
- 13 I return to examine Tibi’s arguments more closely in subsequent section.
- 14 Reza Afshari “An Essay on Islamic Cultural Relativism in the Discourse of Human Rights”, *Human Rights Quarterly* 16 (1994) pp. 235-276.
- 15 Ibid., p. 254.
- 16 Ibid., p. 253.
- 17 See John O. Voll, *Islam: Continuity and Change in the Modern World*, 2<sup>nd</sup> ed. (Syracus University Press, 1994), p. 339.
- 18 Ibid., p. 256.
- 19 Rhoda Howard “Dignity, Community, and Human Rights”, in Abdullah An-Na’im, ed., *Human Rights in Cross-Cultural Perspectives* (University of Pennsylvania Press, 1992), p. 83.
- 20 Ibid., p. 94.
- 21 Immanuel Kant, *Groundwork of the Metaphysic of Morals* (London: Routledge, 1991), p. 96.
- 22 Ibid.
- 23 Haward, “Dignity, Community, and Human Rights”, p. 94.
- 24 Afshari, “An essay on Islamic cultural relativism in the Discourse of Human Rights”, p. 256.
- 25 Daniel Pipes, Oliver Roy, and Fuad Ajami are well-known representatives of this approach.
- 26 See Fuzlur Rahman, *Roots of Islamic neo-Fundamentalism*, Fred Halliday, *The Politics of Islamic fundamentalism*, John Eposito, *Islam and Politics*, Lineard Binder, *Islamic Liberalism*.
- 27 Mayer, *Islam and Human Rights*, p. 177.
- 28 See, for instance, Muhammad Abduh, “Islam, Reason, and Civilization”, in John J. Donohue and John L. Esposito, *Islam in Transition* (New York: Oxford University Press, 1982), pp. 24-8.
- 29 Muhammad Rashid Rida, *Huquq al-Nisa’ fi al-Islam* [women rights in Islam] (Beirut, Lebanon: Dal al-Hijra, 1987), pp. 12-4.
- 30 Abdul-Rahman al-Kawakibi, *Um al-Qura in Al-a’mal al-Kamila*, ed. Muhammad ‘Imarah (Cairo, Egypt: al-Hay’ah al-Misriyah al-ammah, 1970), p. 261-4. For discussion of the views of early contemporary Muslim reformists, see Louay M. Safi, *The Challenge of Modernity* (Leham; Maryland: University Press of America, 1994), pp. 111-132.

- 31 See for example, Muhammad Al-Ghazali, *Huquq al-Insan fi al-Islam*.
- 32 Fahmi Huwaydi, *Muwatunum La dbimiyyun* (Cairo: Dar al-Shuruq, 1985).
- 33 Rashid al-Ghanoushi, *al-Huriyyat al-Ammah fi al-Dawah al-Islamiyyah* [Public Rights in the Islamic State (Beirut, Labenon: Markaz Dirasat al-Wihdah al-Arabiyyah, 1993), p. 135.
- 34 Ibid., p. 132. The list of eminent Muslim scholars and leaders who have adopted reformist views includes, just to cite few highly influential people, Fahti Osman, Muhammad Salim al-Awwa, Tariq al-bishri, Ridwan al-Sayyed, Ishaq Farhan, Anwar Ibrahim, Khalisnur Majid, and Chandra Muzaffar.
- 35 See Zaki Milad, “al-Fikr al-Islami wa Qadayyah al-Mar’ah” *al-Kalimah* 21 (1998), pp. 9-24.
- 36 Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca, NY: Cornell University Press, 1989), p. 51.
- 37 Al-Mawardi, *Al-Ahkam al-Sultaniyyah*, (Cairo, Egypt: Dar al-Fikr, 1983) p. 53.
- 38 Ibid., p. 71-2.
- 39 See Ann Belinda S. Prais, “Human Rights as Cultural Practice”, *Human Rights Quarterly* 18 (1996) 288; Also Donnelly, *Universal Human Rights*, p. 109-12.
- 40 See Max Weber, *Economy and Society* (University of California press, 1978) , Vol. 1, pp. 1121-1156; also Alasdair MacIntyre, *Whose Justice? Which Rationality?* (London: Duckworth), 1990.
- 41 Donnelly, *Universal Human Rights*, p. 110.
- 42 See Ibid, pp. 117-8; also Abdullahi An-Na’im, “Toward a Cultural Approach to Defining International Standards of Human Rights,” in A. An-Na’im (ed.), *Human Rights in Cross Cultural Perspective* (Philadelphia: University of Pennsylvania Press, 1992), p. 25.
- 43 Richard Falk, “Cultural Foundation for the International protection of Human Rights,” in Abdullahi An-Na’im (ed.), *Human Rights in Cross Cultural perspectives* (University of Pennsylvania, 1992), p. 44.
- 44 Leonard Binder, *Islamic Liberalism* (The University of Chicago Press, 1988) p. 9.
- 45 The unilinear conception of history derives its intellectual force from Hegel’s *Philosophy of History*.
- 46 Haward, “Dignity, Community, and Human Rights,” in Abdullahi An-Na’im (ed.), *Human Rights in Cross-Cultural Perspective*, p. 99.
- 47 For an excellent discussion on the impact of social context on the implementation of human rights, see Daniel A. Bell, “The East Asian Challenge to Human Rights: Reflection on an East West Dialogue, “*Human Rights Quarterly*” 18 (1996) 641-667.
- 48 Bassam Tibi, “Islamic Law/Shari’a, ...”, p. 280.
- 49 Ibid., p. 280.
- 50 Ibid.
- 51 Ibid., p. 293.
- 52 Binder, *Islamic Liberalism*, p. 9.
- 53 See Jurgen Habermas, *Moral Consciousness and Communicative Action*, trans. Christian Lannardt and Shierry Weber Nicholzen (Cambridge, U.K.: Polity press, 1990), P. 58.
- 54 In stipulating objective universalism as a precondition of a true dialogue, I am drawing on Habermas’s argument for Discourse Ethics. See Habermas, *Moral Consciousness*, p. 68.
- 55 Immanuel Kant, *Groundwork of the Metaphysics of Morals* (London: Routledge, 1993), p. 84.
- 56 Thomas McCarthy, *The Critical Theory of Jurgen Habermas* (Cambridge, mass., 1978), p.326.
- 57 Richard Falk, “Cultural Foundations for the International Protection of Human Rights”, p. 57-9.