

Muslim World Journal of Human Rights

Volume 4, Issue 1

2007

Article 4

THE TRANSNATIONAL MUSLIM WORLD, HUMAN RIGHTS, AND
THE RIGHTS OF WOMEN AND SEXUAL MINORITIES

The Islam and Human Rights Nexus: Shifting Dimensions

Ann Elizabeth Mayer*

*Wharton School of the University of Pennsylvania, mayera@wharton.upenn.edu

Copyright ©2007 Berkeley Electronic Press. All rights reserved.

The Islam and Human Rights Nexus: Shifting Dimensions*

Ann Elizabeth Mayer

Abstract

The Islam and human rights nexus is too often viewed as being static. In reality, the relationship is complex and mutable. In an era of unsettling changes to the status quo, perceptions of the Islam and human rights nexus have also proven to be sensitive to shifting political dynamics. In these circumstances, the position that Islam and human rights are inherently in conflict, which assumes two settled entities in a stable relationship, is becoming hard to sustain – as is the position that human rights are ineluctably tied to Western civilization. Many Muslims are arguing that Islam and human rights are harmonious, and human rights contain principles that address some of Muslims' most pressing concerns. However, there are also factors – such as certain U.S. policies - that could work in the opposite direction, energizing Islamist hostility to human rights and confirming Muslims' suspicions that human rights are part of a nefarious Western plot. We must recognize that the Islam and human rights relationship is regularly readjusting in response to a changing environment, so that the issues addressed over the next decades will not likely be the same ones that Muslim societies and Islamic thinkers have been wrestling with to date.

KEYWORDS: Islam, Iran, human rights

* Ann Elizabeth Mayer is an Associate Professor of Legal Studies in the Department of Legal Studies and Business Ethics at the Wharton School of the University of Pennsylvania. She has written extensively on issues of Islamic law in contemporary legal systems, comparative law, international law, and the problems of integrating international human rights law in domestic legal systems. A major portion of her scholarship concerns human rights issues in contemporary North Africa and the Middle East. She has published widely in law reviews and in scholarly journals and books concerned with comparative and international law and politics in contemporary Middle East and North Africa. Her book *Islam and Human Rights: Tradition and Politics* (Boulder: Westview, 2007) is now in its fourth edition.

Islam and Human Rights – Changing Subjects and Evolving Perspectives

Hoping to convert my advancing years into an asset, I offer a perspective on the mutability of the Islam and human right nexus that exploits the long period during which I have explored the topic. For over two decades I have observed the relationship of Islam and human rights evolving, this coinciding with a period during which both Islam and human rights were themselves accommodating new strains and adjusting to fresh challenges. In the following, I offer assessments of the dynamics that affect this relationship and discuss some actual situations that have prompted adjustments or that will likely promote future evolution.

In addition to the Islam and human rights nexus evolving, over the last decades scholarly attitudes towards examinations of this relationship have also undergone a sea change. These days the pairing “Islam and human rights” and the comparisons that such pairing inspires seem to strike people as normal. In contrast, two decades ago I found that any mention that I was working on that relationship tended to be greeted with scowling objections to such an incongruous pairing or accusations that I had lapsed into “Western hegemonic discourse.” A human rights framework, so the conventional wisdom had it, could not/should not be applied when the subject was Islam. Behind such objections lay some stereotyping. In the main, Islam was viewed as a self-contained entity that was impervious to external influences, having its own unique system of authority dating back to seventh century Arabia, with sources elaborated according to a distinctive internal logic. International human rights law was viewed as being located a world away, being tied to a United Nations system that was inaugurated in San Francisco in 1945. This system was seen as being closely tied to the Western heritage and dominated by Western nations. The scholarship that would later remind the world of the constructive contributions that Muslims had made to the creation of international human rights law had yet to appear.¹

I grew interested in learning more about how Muslims thought about human rights during research trips in 1984-1985 to Sudan, where a brutal and arbitrary Islamization program was underway. I was exposed to the phenomenon of Muslims engaging in intense wrangling over how their religious heritage related to human rights. As my Sudanese experience taught me, many Muslims who were committed to their faith were ready to use human rights as the appropriate criteria for critiquing governmental Islamization measures. They differentiated what they regarded as the authentic teachings of Islam from newly enacted Islamic laws sponsored by undemocratic regimes that wielded Islam as a tool of politics and as part of their quest for legitimation. Muslims supportive of human rights confronted other Muslims who were ready to applaud any efforts to

¹ See the significant study published in 2004, Susan E. Waltz, *Universal Human Rights: The Contribution of Muslim States*, 26 *Human Rights Quarterly* 799 (November 2004).

implement Islamic law – including those made by dictatorial regimes -- regardless of the suffering or inequities that applying such laws in seriously flawed legal systems might entail. The latter denounced as apostates Muslims who critiqued Islamization measures using what were supposedly Western human rights standards.

After my return to the United States, I tried to explain to skeptics that there was good reason for investigating a topic regarding which Muslims were deeply divided. I argued that the reasons for these disagreements merited study, urging that we needed to identify how stances on human rights correlated with the proponents' own interests and their positions on the contemporary political spectrum -- mostly to encounter incredulous and even hostile reactions. Among other things, most of my interlocutors in the West insisted that Islam was inherently opposed to the values expressed in human rights. They were confident that human rights embodied quintessentially Western ideas that could not be exported to or successfully implanted in the landscape of the Muslim Middle East and North Africa, the parts of the Muslim world on which I conduct research. "You obviously need to learn about cultural relativism" was a common, scornful rejoinder when I mentioned my research.

I am very conscious of a dramatic expansion of the study of Islam and human rights, because when I started writing on this topic in the mid 1980s, useful source material was scant. In that era, I was delighted when assiduous research succeeded in locating the occasional pertinent document or a rare cogent analysis. In contrast, in 2005 when I worked on updating the fourth edition of my book *Islam and Human Rights: Tradition and Politics*,² a major problem was trying to sort through the staggering volume of relevant material to select the small percentage that my page limits would allow me to include. A topic that had been an orphan only two decades previously had become a preoccupation -- not only among people living in Muslim societies, but also among the academics churning out the burgeoning scholarly literature in Europe and North America. A belated consciousness of Islam and human rights as encompassing a relationship eminently deserving of examination has led to the spawning of innumerable articles, books, websites, conferences, institutes, university courses, official pronouncements, and other activities, all testifying to how widely its importance has become recognized.

Attitudes have changed greatly over the last decades, and therein lies an important lesson. Today when people learn that I work on Islam and human rights, the reaction tends to be along the lines of commenting that it is a timely and important topic. Younger academics need to bear in mind the significance of this turnabout, appreciating that what academic bien-pensants today disallow as a

² Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics*, 4th ed, (Boulder: Colorado, 2007).

legitimate field of scholarly inquiry may actually turn out to be a vein worth mining. There are topics that barely attract notice and then expand explosively. If one looks for studies of Orientalism, meaning Orientalism as Edward Said used the term in his famous 1978 book, one will not discover much evidence suggesting that people recognized the usefulness of his mode of analysis before Said's provocative study. Similarly, if one looks for studies of feminism and international law that appeared before 1991, one will find little indication that the potential of this topic was recognized before the publication of a seminal article in that year by Hilary Charlesworth, Christine Chinkin, and Shelly Wright.³

I understand how people can miss the potential rewards of venturing down an unexplored path, because I myself was initially blinkered in my reactions to the latter topic. I recall that at a conference in the 1980s someone made a general suggestion that feminist analysis should be applied to international law. At that time, I felt no disposition to investigate further, because I failed to predict how productive such application could be – except in a few areas like international human rights law, where the applicability of critical feminist perspectives was already obvious to me. However, when I watched as Charlesworth, Chinkin, and Wright presented the findings of their research at an annual meeting of the American Society of International Law, I could sense currents of excitement pulsing through the audience. Some reacted with hostility at seeing old verities challenged, whereas others were quickly convinced that a significant scholarly breakthrough had occurred. Sharing the latter reaction, I chided myself for not appreciating earlier what their research established, that many dimensions of international law could be illuminated by critical feminist analyses. I belatedly recognized that my own previous thinking about international law had been rather complacent and static.

Now, of course, scholarship reflecting the critical perspectives of these innovative scholars proliferates everywhere one looks. Indeed, it seems that some academics are attracted to write on topics like Orientalism or feminism and international law simply because they have become very fashionable. But, current fashion should not dictate what issues are deemed worthy of study or block people from pursuing any paths of scholarly inquiry.

Problematic Stereotyping of the United States and Islam

At the same time that the field has progressed, I have noticed how often discussions of the Islam and human rights nexus remain affected by the misconception that human rights are grounded in values endorsed by the United States. Some confusion may be accounted for by the regularity with which the

³ See Hilary Charlesworth, Christine Chinkin, & Shelly Wright, *Feminist Approaches to International Law*, 85 *American Journal of International Law* 613 (1991).

U.S. Government publicly touts its commitment to human rights and lambastes other nations for what it claims are their shortcomings. However, the international human rights system is certainly not a creature of the United States. Instead, investigation reveals a longstanding U.S. estrangement from international human rights law both in terms of the U.S. refusal to be bound by international conventions and in terms of U.S. practice, which increasingly evinces a proclivity to flout international human rights law even where fundamental principles like the ban on torture are involved.⁴

Disregarding this reality, people frequently cling to the image of a natural polarization in which the West, led by the United States, espouses human rights, creating conflicts with Muslim societies, which reject human rights. The hypostasized Islamic hostility to human rights is often portrayed in ways that reflect the cultural stereotyping perpetrated by Samuel P. Huntington in his notorious article on the clash of civilizations.⁵ Although this article has been roundly criticized, many in the West embrace Huntington's depiction of a monolithic Islamic culture being besieged by demands that it conform to an antipathetic Western cultural model that affronts Muslims' values. On the other side, Huntington's Muslim counterparts have made analogous arguments, appealing to an Islamic cultural particularism that, it is claimed, makes Muslims reject "Western" international human rights models and excuses Muslim countries' non-compliance with human rights. For example, in a recent book Mashood Baderin espouses this thesis, demanding that allowances be made for Muslim countries' non-compliance with international human rights law on the basis that international law is infected with "a strict and exclusive Western perspective."⁶ Baderin generalizes from his own doctrinal opinions, writing as if his fellow Muslims all shared his call for upholding traditional Islamic rules where these clash with human rights, with the main clashes as he sees it lying in the areas of equality between men and women, freedom of religion, the

⁴ Regarding recent developments confirming the U.S. failure to respect international human rights law, see the statement of Kenneth Roth, executive director of Human Rights Watch, who in the introduction to the Human Rights Watch *World Report 2007* asserted that in the previous five years the United States had forfeited its credibility in the human rights domain and called for the European Union to take up the task of human rights advocacy. See Human Rights Watch, *World Report 2007*, available at <http://www.hrw.org/wr2k7/essays/introduction/index.htm>

For general background on the U.S. resistance to international law and to international human rights law see Harold Hongju Koh, On American Exceptionalism, 55 *Stanford Law Review* 1479 (2003); Louis Henkin, U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker, 89 *American Journal of International Law* 341(1995).

⁵ Samuel Huntington, The Clash of Civilizations? 42 *Foreign Affairs* 22 (1993).

⁶ See Mashood A. Baderin, *International Human Rights and Islamic Law* (Oxford: Oxford University Press, 2003) at 27.

prohibition of inhuman and degrading punishments, and “some death penalty cases.”⁷

To convey a sense of the kinds of exceptions from international human rights that are involved in such schemes, one might consider some of Baderin’s positions on how Islamic law affects women’s rights. Where women are concerned, Baderin favors upholding traditional gender roles, citing conservative contemporary ideologues who endorse the patriarchal ideas of Islam’s medieval jurists and who insist that women and men have been assigned different functions.⁸ Disregarding the intense controversies currently raging about women’s rights in Islam, Baderin speaks as if Muslims concurred in restricting women’s rights. He writes approvingly of “the Islamic appreciation of role differentiation within the family,” and treats the husband’s superior rights within the family as a natural consequence of his greater responsibilities.⁹ Baderin accepts the ban on Muslim women marrying non-Muslims.¹⁰ He believes that this ban is defensible on the grounds that it “hinged mainly on wanting to protect the religious beliefs and rights of Muslim women.”¹¹ Obviously, “protecting” women in this case involves curbing their freedoms to keep them under the tutelage of Muslim men. Although Muslims are deeply divided about Islamic dress rules affecting women, Baderin writes as if these rules were settled. He presents, as if it were firm doctrine, the view that Muslim women have only two options: they may choose to be completely enshrouded (as in the model of the Afghan *burqa*) or may elect what he calls the “moderate” rule that allows them to uncover their faces, hands, and feet while keeping everything else enshrouded (as in the officially approved Iranian *hejab*.)¹²

The impression that Islam is inherently incompatible with human rights has been encouraged by the reservations that many Muslim countries have continued to enter when they ratify human rights conventions. These reservations invoke supposedly unchangeable Islamic rules that are said to bar accepting any human rights that contravene them. Thus, for example, in 1996 when ratifying the Convention on the Rights of the Child, Saudi Arabia entered “reservations with respect to all such articles as are in conflict with the provisions of Islamic law.”¹³ In similar fashion, Saudi Arabia in reserving to the Convention on the Elimination of All Forms of Discrimination Against Women in 2000 warned:

⁷ Id. at 167.

⁸ See, e.g., id. at 60-62.

⁹ See id. at 135-136, 153.

¹⁰ Id. at 144-46.

¹¹ Id. at 144.

¹² Id. at 65-66.

¹³ See Convention on the Rights of the Child. Declarations and Reservations, available at http://www.unhchr.ch/html/menu3/b/treaty15_asp.htm

In case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention.¹⁴

Recourse to Islamic culture, conceived of as a bulwark against noxious “Western” freedoms, can provide a convenient rationale for governments’ reluctance to comply with international human rights law. Besieged by criticisms of their poor human rights records, regimes like the Saudis’ absolute monarchy were placed on the defensive by the growth in credibility of international human rights law, to which both international and domestic human rights NGOs appealed when criticizing oppressive and discriminatory policies. Seeking strength in a coalition of like-minded states and working in consort to codify principles that restrict international human rights law by superimposing conflicting Islamic criteria, officials in Muslim Middle Eastern countries have sponsored more than one version of what purport to be Islamic human rights. In diluting, when not eliminating, important civil and political rights, Islamic human rights strengthen the hands of autocratic regimes and defenders of traditional hierarchies. It is no coincidence that governments like those of Iran and Saudi Arabia, which have particularly deplorable human rights records, are prominent sponsors of initiatives like the 1990 the Cairo Declaration on Human Rights in Islam put forward by the Organization of Islamic Conference,¹⁵ nor is it surprising that those who adhere to interpretations of Islamic requirements that are at odds with human rights should treat this declaration as an authoritative statement. Thus, the idea that Islam should be classified as a religion that rejects the values of the UN human rights system has been fostered by some governments as well as some individual Muslims. But, this is only one part of a more complex picture.

In the 1980s, when I started critiquing such efforts to concoct Islamic alternatives to international human rights, I was often heatedly denounced for what was characterized as my cultural insensitivity; I was accused of using external criteria to pass judgment on a phenomenon that was presumed to be legitimate in Islamic terms. Now I can point to initiatives that come from the region that reject the legitimacy of invoking a supposed Islamic particularism to justify stripping Muslims of human rights. One example is the Beirut Declaration on the Regional Protection of Human Rights, which was produced in June 2003. This declaration issued from a conference organized by the Cairo Institute for Human Rights Studies with the participation of regional and international NGOs

¹⁴ See Convention on the Elimination of All Forms of Discrimination Against Women. Reservations, available at

<http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>

¹⁵ See Cairo Declaration on Human Rights in Islam, available at

<http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.htm?tbl=RSDLEGAL&page=research&id=3ae6b3822c>

and various legal, academic and media experts. More representative of Muslim opinion than are principles imposed by Iran's theocrats or the Saudi royal family, the declaration unequivocally denounces the kind of tactics utilized in documents like the Cairo Declaration. Principle 3 stipulates:

Civilization or religious particularities should not be used as a pretext to cast doubt and to question the universality of human rights. The "particularities" that deserve celebration are those which make a citizen have a sense of dignity, equality and enriches his/her culture and life, and promote his/her participation in their own country's public affairs. Assuring the tolerant principles of Islam and religions in general should not be put in a false contradiction to human rights principles. The conference [rejects the authority] of aged interpretations of Islam that distort Islam and insult Muslims and leads to violations of human rights, particularly when excluding women and not allowing freedom of thought, belief, creative art, literature and scientific research.¹⁶

That is, the declaration called for a drawing a clear distinction between Islam and what amounts to the political use of a supposed Islamic cultural particularism to justify discrimination and oppression.

Pressures for Rethinking Islam and International Human Rights Law

Those positing an essential incompatibility of Islam and human rights consistently tend to reify Islam, treating its doctrines as set in concrete. In reality, human understandings of the complex and enormously rich Islamic heritage are varied, fluid, and responsive to political developments. Opponents of change tend to overlook or deliberately disregard the lively contention that is going on within Muslim communities regarding controversial contemporary issues like human rights, with some Muslims at the conservative end of the spectrum denouncing human rights as part of a nefarious Western plot to undermine Islam and to corrupt Muslim societies and other Muslims at the opposite end of the spectrum comfortably embracing human rights as reaffirming the values that they cherish in their own heritage and affording remedies for the ills besetting their societies.

The versions of Islamic doctrine that reject human rights constitute only one part of a larger pattern of resistance to fresh modes of thinking about Islam that are already threatening to undermine old verities and entrenched hierarchies. Any signs of evolution distress reactionary ideologues and Muslims committed to the rules set forth in medieval jurisprudence. Debates over Islamic doctrines pertaining to human rights are thus linked to a broader contemporary

¹⁶ Beirut Declaration on the Regional Protection of Human Rights Towards an Effective Regional Protection of Human Rights: "Which Arab Charter on Human Rights?" available at http://www.cihrs.org/prog_Activity_en.aspx?prog_id=8&prog_name=Other%20Activities

phenomenon, in which many Muslims are reconceiving their religion and are daring to critique ossified jurisprudential methodologies and narrow mindsets. Muslims of varied backgrounds, who include philosophers, jurists, political scientists, sociologists, and human rights activists, are speaking up to demand a role in articulating Islamic precepts. Learned jurists have in effect forfeited the monopoly of authority that they exercised in the old days, when they alone explicated Islamic requirements.

It is in this context that the battle over Muslim women's quest for equality goes on, touching on one of the most sensitive areas in the debates about Islam and human rights. In resisting feminists' demands for recognition that Islam blesses women's empowerment, conservatives have their work cut out for them. Whereas it used to be secular nationalists who predominated in the fight for women's equality, now Muslims working within their religious tradition are emerging as particularly assertive proponents of women's rights. One of the most important developments to have undermined the authority of conservative male jurists has been the surge in the last decades of dynamic Islamic feminist currents that find support in the early Islamic sources for women's rights. A relatively small movement until the 1990s, Islamic feminism has gained momentum, doing much to advance the idea that human rights complement the original vision of Islam, a vision that was subsequently corrupted and distorted by biased male interpreters. Not only do Islamic feminists criticize what they see as patriarchal biases infecting traditional interpretations of the Islamic sources pertaining to women, but by issuing their bold proposals for rethinking the Islamic heritage, they have created shockwaves that have destabilized sclerotic modes of analysis more generally, opening doors to fresh approaches to the Islamic sources. Both men and women have made significant contributions to Islamic feminism, but contributions by women stand out as having special revolutionary potential. Aided by expanded access to the Internet, exegeses informed by gender consciousness are being widely disseminated, facilitating the exploration of Islam's potential to be conceived of as a religion supportive of women's equality.

At the same time that fresh intellectual currents are reshaping Muslims' understandings of their religion, we see that human rights concepts are evolving. The new feminist critiques of international law have already been mentioned. Meanwhile, international human rights have been reconfigured and expanded, as a comparison of the skeletal 1948 Universal Declaration of Human Rights with the vast panoply of subsequently developed instruments reveals. Even a brief listing of selected recent developments can indicate how human rights concepts and institutions continue to respond to quests to enunciate the right rights and to find mechanisms to make them enforceable. Consider, for example, the innovations constituted by the 1999 ILO Worst Forms of Child Labour Convention, the establishment in 2002 of the International Criminal Court, the Right to Water

enunciated in 2002 by the Committee on Economic, Social and Cultural Rights in General Comment 15, the 2003 Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, and the 2006 Convention on the Rights of Persons with Disabilities. These cover problems that people in Muslim societies must care about and where they will see the benefits of overarching international standards.

Moreover, factors that are transforming the international landscape like rapid and disruptive globalization, global warming and ecological destruction, the AIDS pandemic, and large scale human migrations cry out for initiatives to redesign human rights. Regardless of whether one is Muslim or non-Muslim, one can appreciate that the human rights policies and initiatives that the world requires to cope with urgent problems of this magnitude must reflect a sound global vision, one that does not admit of separate strategies with particularistic biases. That is, the dire predicament of humankind is making it essential to buttress the universality of human rights and to rebut arguments in favor of opting out -- whether on a national, regional, or cultural basis, irrespective of whether excuses for opting out are being put forward by the United States or by governments of Muslim countries. Critical global problems that militate in favor of expanding the purview of international law may prompt many to rethink their former support for an Islamic particularism that erects a "cultural" wall between Muslims and international human rights law.

Muslims' assessments of the merits of opting out of international human rights law may also be affected by the way that the United States has been pursuing what it calls the "war on terror." The U.S. Government often acts in this war as if its expansively-defined national security needs justify overriding international law in general and international human rights law in particular. Due to the way that Washington officialdom links Islam with terrorism, all Muslims are exposed to being treated as subhumans and presumed terrorists. Conversely, Muslims can appreciate the vigor with which serious advocates of international human rights law have denounced the way that Muslims have been targeted and victimized. It should make an impression that world's most important human rights NGO, Amnesty International, is now headed by Irene Khan, a Muslim woman from Bangladesh. Khan has infuriated the Bush Administration and its apologists with her outspoken condemnations of the U.S. violations of international human rights law perpetrated in the course of the "war on terror" and has courted vituperative attacks from those quarters for daring to call the Guantanamo Bay detention camp "the gulag of our time."

An insightful article by the late Joan Fitzpatrick assesses the potential of the U.S. "war on terror" to undermine human rights -- often with particularly harsh consequences for Muslims, who find themselves especially vulnerable to

abuse. Her article proposes that developments in the wake of the attacks on September 11, 2001, portend changes in international norms, including the increased legitimacy of pre-emptive defensive action, which would comprise actions of the kind exemplified by the U.S. attack on Iraq, an attack that was claimed to be a defensive response to a threat posed by Iraq's possession of weapons of mass destruction. In her article Fitzpatrick also foresees counterterrorism producing new rules that could displace human rights law and international criminal law; the weakening of standards regarding arbitrary detention and the right to fair trials; and the undermining of bans on discrimination in connection with the targeting of non-citizens, Muslims, and Arabs as likely subversives or terrorists. In institutional terms, she views the pursuit of the "war on terror" as being likely to add more fuel to the U.S. campaign against the International Criminal Court, as promoting the growing tendency to assert a U.S. exceptionalism, and as sharply reducing official U.S. criticisms of rights violations perpetrated by governments of Muslim countries in exchange for their cooperation in fighting terrorism.¹⁷

Those wedded to the notion that Islam bars compliance with "Western" international human rights law will need to think hard about the implications of insisting on Islamic exceptionalism at a juncture when the United States is essentially trying to rewrite international human rights law, creating new standards that aim to strip Muslims of many of its fundamental protection on the basis of this same sort of exceptionalism.¹⁸ Muslims should question the benefits of adopting a stance that effectively makes them allies of a U.S. project that dismisses Muslims' claims to possess human rights on a par with other human beings. This situation might move some Muslims to mobilize in support of international human rights law – before it is irretrievably compromised.

Thus, the way people think about Islam and human rights continues to evolve at a juncture when around the world we observe many of the props of our familiar status quo eroding, raising the question for both religious thinkers and international lawyers about what constitute the appropriate principles for coping with our rapidly changing environment. This means that the nexus between the two cannot be expected to attain a stable equilibrium but will have to be renegotiated as understandings of Islam and human rights continue their metamorphosis. Many of these negotiations will take place at the level of governments of states that operate under the auspices of the UN system. They

¹⁷ Joan Fitzpatrick, *Speaking Law to Power: The War Against Terrorism and Human Rights*, 14 *European Journal of International Law* 241 (2003).

¹⁸ A stimulating assessment of how post-September 11 dynamics affect perspectives on human rights controversies is afforded in Shadi Mokhtari, *Human Rights in the Post-September 11th Era: Between Hegemony and Emancipation*, 3 *Muslim World Journal of Human Rights* (2006) Iss. 1, Art. 1.

also will also take place within Muslim communities around the globe, as well as in the arena of scholarship.

Iran as an Arena of Contestation

The Iranian case offers a practical illustration of Muslims operating at different levels who are engaged in formulating stances on human rights in the context of a tense and conflict-ridden environment. In countries like Switzerland it may be possible for positions on human rights to congeal around a stable middle, but in a volatile country like Iran, the politics of human rights are polarizing and also subject to major shifts. Even the theocratic rulers of the Islamic Republic find it hard to enunciate consistent, coherent human rights policies. An analysis of Iran's official positions regarding how Islam affects human rights over the last decades reveals noteworthy twists and turns.¹⁹

The grim history of Iran's government-sponsored Islamization program, which has to date correlated with egregious and pervasive violations of civil and political rights carried out in the name of enforcing Islamic law, has prompted hard questions. Life under harsh theocratic rule has engendered far-reaching skepticism about the official Islamic ideology and a great hunger for human rights. Uniting Islam and government, a cause that at the time of the 1979 revolution was associated in the popular mind with democratization and liberation, is now widely associated with clerical tyranny. Despite the harsh penalties that dissent courts, Iranians outspokenly decry official "Islamic" pretexts for suppressing democracy, persecuting critics, and reinforcing hierarchy and patriarchy. Many Iranians who originally believed in the reassertion of an Islamic identity and the cultural revolution that was pursued at the outset of the Islamic Revolution have since moved away from their former views, deciding that upholding universal standards of human rights is beneficial both for Muslims and for the integrity of their faith.²⁰ A new literature has been emerging in Iran that argues that, properly understood, Islam shares the same goals as international human rights law. Articulate Iranian religious thinkers, including distinguished Islamic clerics, now figure prominently among supporters of human rights universality.

¹⁹ See Ann Elizabeth Mayer, *Shifting Grounds for Challenging the Authority of International Human Rights Law: Religion as a Malleable and Politicized Pretext for Governmental Noncompliance with Human Rights*, in Andras Sajó, ed. *Human Rights with Modesty: The Problem of Universalism* 349-74 (Leiden: Martinus Nijhoff, 2004).

²⁰ See Ann Elizabeth Mayer, *Islamic Law as a Cure for Political Law: The Withering of an Islamist Illusion*, 7 *Mediterranean Politics* 116 (Autumn 2002) and *The Universality of Human Rights: Lessons from the Islamic Republic of Iran*, 67 *Social Research* 519 (Summer 2000).

Since the 1990s, the scope of Iranian women's participation in debates about how international human rights law pertains to contemporary controversies affecting women has dramatically expanded. Some, like the courageous Iranian human rights attorney Mehrangiz Kar, now forced to live in exile, have kept women's international human rights as their central point of reference, leaving it to religious thinkers to explicate the Islamic dimensions of the issues. Others, like her sister attorney Shirin Ebadi, feel comfortable referring both to Islamic authority and to international law, asserting their belief that authentic Islam backs their human rights work. Ebadi's winning the Nobel Peace Prize and her emergence as an internationally acclaimed advocate of human rights universality naturally affects conversations about human rights, whether in Muslim countries like Iran or in the West.

Ebadi's interventions in the headscarf controversy in France in 2003 and her support for the right of all Muslim women to choose whether to cover or not to cover their hair linked the controversies about the Iranian *hejab* requirement and the contemporaneous debates about the French ban on headscarves in schools. Ebadi denounced both the French government and the Iranian government for constraining Muslim women in their dress. Ebadi held that, whether in Europe or in Iran, what counts is the right of the individual Muslim woman to decide what her faith requires in the way of a head covering. Her position turned out to be more coherent in human rights terms than the positions advocated by either the French or the Iranian officials. The French imposed a policy of prohibiting students from wearing in schools any conspicuous signs of religious affiliation, which meant stripping Muslim women of their head coverings in disregard of their religious convictions -- all in the name of preserving a rigidly conceived national policy of *laïcité*. Iran's government used harsh police tactics to impose head coverings -- as well as other draconian restrictions on women's dress -- on all women, Muslim and non-Muslim alike, in the name of preserving an arbitrarily-defined concept of morality. Neither policy respected the right of the individual woman to determine what her religion called for in terms of covering or not covering her hair.

In this connection, Ebadi spoke like the typical committed human rights advocate, appreciating that human rights in the domain of civil and political rights protect the rights of the individual against governmental intrusions and recognizing that the principle at stake was women's freedom, including women's religious freedom. Of course, her prominence in these controversies amounted to another sign of how the human rights domain had altered over the decades. That in 2003 an Iranian Muslim woman could have achieved sufficient international stature to be awarded the Nobel Prize and to be in a position to be taken seriously when she admonished France regarding deficiencies in its domestic human rights policies was a sign of how Muslims had gained traction in the field of

international human rights. (In contrast, when Iran's ruling clerics protested that in banning headscarves in school France was failing to respect Muslim women's freedom of religion, their own history of egregiously trampling on Muslims' freedom of religion stripped their protests of any credibility.) Ebadi was also ready to use her international prominence to condemn other measures in the West that she judged would violate human rights. For example, in June 2005 Ebadi publicly opposed the controversial Canadian plan to introduce special Islamic tribunals that would adjudicate Muslim family law cases according to Islamic law. She warned that many interpretations of Islamic requirements clashed with democracy and human rights.²¹ That is, the strength of the human rights movement in Iran and Muslims' growing stature in the human rights field was leading to spillover effects in Western societies that had their own problems dealing with human rights issues involving Muslims. Those determined to present human rights as closely linked to Western culture and inherently alien to Muslims would be hard pressed to account for developments showing that Muslims are taking leading roles in defining how human rights standards should be applied to controversies in the West.

In July 2003 Iranian feminists succeeded in one of their goals, which was to get parliament – then still dominated by reformists – to vote to ratify the Convention on the Elimination of All Forms of Discrimination Against Women, known as the Women's Convention. However, in August 2003 the unelected Council of Guardians overrode the parliamentary vote on the grounds that the Women's Convention violated both Islamic law and Iran's constitution, the latter document calling in article 4 for all laws to be based on Islamic law and providing in article 20 that Iranians enjoy human rights subject to Islamic law. The nature of Iranians' disagreements on the issue of women's equality was epitomized by this event, with council members appealing to Islamic principles to thwart the wishes of the democratically elected representatives of the people. Faced with such diametrically opposed views, one had to ask: Would many Iranians still believe that Islam per se stood in the way of women obtaining greater equality, or would they see in the way that the council overrode the parliamentary vote to ratify the Women's Convention the peculiar prejudices of misogynist clerics and supporters of the old patriarchal order? From the votes of their elected representatives, one could infer that most Iranians would probably be drawn to the latter characterization.

Although Iranian women campaigning for equality were disappointed at seeing the ratification blocked, one could contrast the progress that they had achieved working against daunting odds with the dismal picture in the United

²¹ See Canada: Shirin Ebadi decries Islamic law for Canada, *Women Living under Muslim Laws*, June 19, 2005, available at [http://www.wluml.org/english/newsfulltxt.shtml?cmd\[157\]=x-157-244132](http://www.wluml.org/english/newsfulltxt.shtml?cmd[157]=x-157-244132)

States, which has chosen to pose as the advocate of greater equality for Middle Eastern women – using this, for example, as a rationale for toppling the Taliban regime in Afghanistan. To date the United States, the same country that vaunts its support for women’s equality when lecturing Middle Eastern countries about the need to roll back discriminatory laws, remains the only Western democracy not to have ratified the Women’s Convention. U.S. women have been unable even to force a Senate vote on ratifying the convention. The U.S. failure to ratify is due to the mobilization of conservative Christian groups with attitudes very similar to those of Islamic conservatives in Iran.²² Members of the Religious Right have energetically fought against what they see as the “radical” idea of equality for women. That religious conservatives in both Iran and the United States have successfully blocked the ratification of the Women’s Convention illustrates the fallaciousness of assumptions that human rights amount to expressions of U.S. culture. In the United States, women’s international human rights are as controversial as they are in Iran.

Iranian women activists have continued to stage public demonstrations protesting Iran’s discriminatory laws and demanding reforms, despite the dangers that such activism involves in a country where the police and security forces do not hesitate to resort to violent tactics to quell public protests by women.²³ A Tehran protest demonstration on June 12, 2006, was broken up by aggressive police tactics, only to be followed by arrests of some protesters. In April 2007 six of the protesters who had been charged in connection with the June 2006 demonstration were sentenced to prison terms after being convicted of various crimes, including endangering “national security.”²⁴ Of course, peaceful demonstrations demanding expanded rights for women did not threaten national security in any conventional sense; what Iranian women’s ongoing demands for equality did threaten was the authority of the discriminatory rules endorsed by Iran’s hardline clerics. These clerics’ own hold on the reins of power was tied to maintaining deference to their particularly retrograde version of Islamic morality – along with upholding the fiction that Iranians willingly embrace this morality. Unable to offer any persuasive defenses of their dress policies, all they could

²² On how the United States has wound up in an alliance with conservative Muslim countries opposed to women’s international human rights, see Ann Elizabeth Mayer, *The Internationalization of Religiously Based Resistance to International Human Rights Law*, in Christopher L. Eisgruber and Andras Sajo, eds. *Global Justice and the Bulwarks of Localism: Human Rights in Context* 223-255 (Leiden: Martinus Nijhoff, 2005).

²³ On Iranian women’s agitation for equality, see Mahsa Shekarloo, *Iranian Women Take On the Constitution*, *MERIP*, July 21, 2005, available at <http://www.merip.org/mero/mero072105.html>

²⁴ See Human Rights Watch slams Iran for convicting six women's rights activists, *International Herald Tribune*, April 26, 2007, available at <http://www.iht.com/articles/ap/2007/04/26/africa/ME-GEN-Iran-Womens-Rights.php>

think of doing was to criminalize and harshly penalize any public manifestations of dissent.

Apparently unnerved by the common practice of subverting official rules on *hejab*, or Islamic dress, via recourse to minimal head coverings in bright colors, in April 2007 the regime ordered the police to clamp down with great severity on women's non-conformity. Hundreds of women were arrested for bad *hejab*, and vehicles were impounded if the women drivers answered back to the police carrying out the crackdown.²⁵ In the same period the Tehran prosecutor Said Mortazavi warned that Tehran women who repeatedly flouted Islamic dress rules could be banned from the capital for up to five years, complaining that women who dressed "like decadent models endanger the security and dignity of young men."²⁶

Of course, in so describing the situation, the prosecutor merely offered up another example to the regime's critics of the misogynist official mentality, which it cloaked by appeals to "Islamic" rules. The more that the regime tried to justify punishing women by making strained assertions that the security of the male population was being jeopardized by women wearing headscarves that were too small or the wrong color and the more that it resorted to criminal sanctions to enforce its stringent rules on *hejab*, the more unpopular and discredited the rules became. In these circumstances, the popularity of Ebadi's position that Muslim women should be left free to dress according to their own religious convictions could be expected to grow.

Meanwhile, Iran's clerical leadership seemed to want to stanch the flow of damaging publicity that accusations of human rights violations were causing, prompting proposals for a new Islamic human rights initiative. Apparently judging the Cairo Declaration deficient, the head of Iran's judiciary, Ayatollah Hashemi Shahroudi, in May 2007 publicly called for Muslim scholars and jurists to develop a charter of Islamic human rights that would provide an outstanding model for the world. He stated that the charter should adopt a positive rather than a defensive approach and that it should be elaborated so that it could withstand what he called a campaign by the Western media against Islam and the Muslim world.²⁷ The quality of "rights" that the new charter would be providing was suggested when Shahroudi commented that restrictions that Western societies – and France in particular -- had placed on wearing Islamic head scarves constituted

²⁵ Dress code: Hundreds of women held in Iran, *Times of India*, April 28, 2007, available at http://timesofindia.indiatimes.com/World/Rest_of_World/Dress_code_Hundreds_of_women_held_in_Iran/articleshow/1969127.cms

²⁶ Tehran women who flout dress code could face exile, *Reuters*, April 24, 2007, available at http://in.today.reuters.com/news/newsArticle.aspx?type=worldNews&storyID=2007-04-24T203211Z_01_NOOTR_RTRJONC_0_India-295487-1.xml&archived=False

²⁷ See Shahroudi calls for Islamic rights charter, *Press TV*, May 2, 2007, available at <http://www.presstv.ir/detail.aspx?id=8309§ionid=351020101>

the most blatant form of rights abuses.²⁸ From the comment of this high-ranking official, one could infer that the ruling theocrats would ensure that Iran's practice of arresting, prosecuting, imprisoning, flogging, and exiling from Tehran women who were guilty of "bad *hejab*" would be accommodated in any new Islamic charter of human rights – but that the principle of freedom of religion for women would be precluded. Yet again one could see that the attempts of Iran's clerical leaders to coopt the language of human rights without having any willingness to respect the fundamental values enunciated in the Universal Declaration of Human Rights would be likely to produce a document in which any invocations of "human rights" would be immediately contradicted by provisions emanating from a mentality that was inherently hostile to rights and freedoms. The fact that in 2007 Iran's leaders were continuing to wrestle with the problem of how to define the relationship of Islam and human rights long after the 1979 Iranian Constitution had set the two on a collision course was a sign that they recognized the importance of devising a more plausible policy on the relationship of Islam and human rights. However, with built-in contradictions, the proposed charter was unlikely to solve the human rights conundrums facing Iran's theocracy.

In Iran's 2005 elections one saw hints of what could be an emerging trend in Muslim societies of according priority to social justice measures that correlate with human rights principles in the economic and social sphere. The stalwarts of Iran's Islamic revolution had originally been preoccupied with Islamization, not with improving the economy. After all, upon ascending to the leadership of the country, Ayatollah Khomeini had famously dismissed complaints about inflation by proclaiming that the Islamic revolution had not been fought about the price of melons. As the heady days of revolution faded into dull memory, the masses who found themselves left behind as Iran's elite accumulated huge fortunes grew angry and restless, which some candidates campaigning in 2005 for the presidency seemed to grasp. True, any lessons from Iran's 2005 elections had to be derived tentatively since the elections were hardly free. Nonetheless, it seemed significant that ambitious politicians recognized that continuing to make appeals to the need to uphold Islamic morality and denouncing behavior that evinced Western decadence was no longer a way to win elections. Candidates generally steered away from any statements that would make the electorate worry that they contemplated aggressive enforcement of strict Islamic law, obviously gauging that this would fatally alienate voters.

The surprise victory of Mahmoud Ahmadinejad over the powerful and famously rich establishment candidate, Ali Akbar Hashemi-Rafsanjani, proved the popularity of his promises to solve problems afflicting the poor. To convey

²⁸ Id.

his commitment to the downtrodden, Ahmadinejad presented himself as a model of abstemious living and homespun Islamic piety. Since becoming president, he has continued living in a modest house near his Tehran office and driving the same old Peugeot 504 that he drove before becoming president. When in Tehran, he eats a lunch brought from his home, consuming only bread and cheese at dinner. Even on official occasions he appears in cheaply made, poorly fitted, unfashionable clothes. Courting the favor of Iran's have-nots, he conveys the image that he is one of them.

To consolidate his image as the friend of the poor, President Ahmadinejad takes pains to reach out to his constituencies in remoter areas and has visited most of Iran's provinces, from whence he receives a flood of petitions from citizens pleading for him to address their needs and complaints. An April 2007 visit to southern Fars province, during which wildly enthusiastic crowds welcomed him, showed that he retained a loyal following among Iranians with social and economic grievances. The president himself was not blamed for Iran's weak economic performance and maldistribution of wealth but was seen instead as the people's champion who was waging a battle against a corrupt elite, a man who could be trusted to expand employment opportunities, ensure provision of soft loans, and foster prosperity. Thus, in the provincial town of Khorrambid, he faced a crowd of 10,000 who had waited five hours in the blazing sun to acclaim him. An accompanying journalist reported that when the president appeared, members of the crowd chanted "Brave president! Justice! Justice!"²⁹

Obviously, for this crowd of have-nots justice meant reforms to achieve a more equitable order in which all would be guaranteed jobs and a decent living standard. The Iranians who clamored for justice may not have studied documents like the International Covenant on Economic, Social, and Cultural Rights, but they demonstrated an intuitive affinity for its principles, even as President Ahmadinejad demonstrated an intuitive sense of how to convince them that he was on their side. Iranians' preoccupation with economic deficiencies and social inequities is likely to grow, especially since Ahmadinejad does not seem actually to possess the economic skills needed to produce the prosperity and development that his supporters want. Nonetheless, the shift in the direction of emphasizing social justice concerns could presage a broader reorientation in many Muslim countries towards demands for solutions to economic and social problems. Few Muslims perceive any conflicts between Islam and international human rights law in the areas of economic and social rights or the right to development. Because these rights reinforce Muslims' aspirations for a more just order, Muslims – whether inside Iran or elsewhere -- may also increasingly discover an affinity for

²⁹ Najmeh Bozorgmehr, On the road with a populist president, Maverick president shuns political elite, *The Financial Times*, April 23, 2007, available at <http://www.ft.com/cms/s/5ed75b10-f0f9-11db-838b-000b5df10621.html>

human rights. However, pointing out that social justice concerns can be one pathway leading towards appreciating what human rights offer is not to say that one can safely assume that economic and social development can proceed optimally in societies that fail to address serious deficiencies in the area of civil and political rights. Indeed, recent studies of the problems of lagging development in the Middle East suggest otherwise.³⁰

Perceptions of U.S. Policies and their Implications

Leaving Iran aside and surveying Muslim societies more generally, one realizes that changed circumstances could make the familiar preoccupation with the tensions between Islam and human rights in the area of civil and political rights eventually seem passé. Many factors are encouraging a reorientation towards what humankind needs to survive. The fact that U.S. policy on issues of economic and social rights is so at variance with the international human rights principles in this area may actually help disabuse people of the notion that human rights are tied to U.S. values.

Among the issues that are likely to preoccupy the world over the next years is the global water crisis – involving problems like grievous water shortages and gross disparities in access to safe drinking water.³¹ Increasingly, the idea is catching on that the human right to water – a right that no one bothered to enumerate back in 1948 -- might be one of the most crucial human rights, as well as being a right that must be addressed on a global basis for the world to find a viable solution to the water crisis. Showing how human rights law constantly evolves, a proposed new convention dealing with the human right to water is currently under discussion. Since most Muslim countries suffer from acute water deficits, which are predicted to worsen over the next decades, a new preoccupation with water as a human right may diminish interest in arguments regarding a supposed Islamic religious or cultural particularism that stands in the

³⁰ In this regard, the Arab Human Development Reports that have been produced by the UN Human Development Program in 2002, 2003, 2004, and 2005 deserve consideration. Although focused on development in Arab countries, they have broader implications. The reports have offered insights into the interrelationship of civil and political rights, economic and social rights, and the right to development in countries that are currently struggling to catch up with the dramatic economic progress being made by successful Asian countries. For example, the 2005 report documented how the subjugated status of Arab women impeded development. See *Human Development Reports*, available at

http://hdr.undp.org/reports/view_reports.cfm?type=2

³¹ A multi-agency United Nations report examines the world water crisis, surveying its causes and proposed solutions. See *World Water Assessment Programme, UNESCO, The UN World Water Development Report : Water for People, Water for Life (2003)*, available at http://www.unesco.org/water/wwap/wwdr/table_contents.shtml

way of human rights. Meanwhile, the United States has been promoting the notion that water resources should be privatized, treating water not as a human right but like any other commodity in the marketplace that can be controlled and marketed by transnational corporations. At the same time, the United States is insisting that human rights law does not apply to corporations.³² Muslim countries may soon unite with a broader coalition of countries from the Global South that want to fight against projects to privatize water.³³ Instead of Muslim countries being placed on the defensive with regard to human rights, it may be the United States that will be pilloried for defying an emerging global consensus on the need to treat water as human right.

Water issues could help Muslims to realize new affinities for human rights, but other factors could aggravate Muslims' suspicions of human rights, such as the Bush Administration's interventions in the Middle East. These mean that U.S. human rights rhetoric keeps being associated with attempts to sugarcoat neo-imperialist projects that many Muslims claim have the goal of weakening Islam in order to dismantle resistance to U.S. domination. In this connection, the heavy-handed US efforts to reduce the role of Islamic law in the post-invasion Iraqi constitution are likely to provoke a backlash. After the 2003 invasion, U.S. officials, especially those in the United States Commission on International Religious Freedom (USCIRF), publicly pressed the urgency of enshrining provisions for religious freedom and protections for religious minorities – with the emphasis on Iraq's Christian minority – first in Iraq's 2004 Transitional Administrative Law and then in the 2005 constitution. In this connection, U.S. advisors campaigned to minimize if not eliminate provisions that could be used to uphold Islamic law, doing so with striking insensitivity to Iraqi attitudes.

When it was hectoring the Iraqis to adhere to U.S. instructions for how to draft the new constitution, the USCIRF invoked international human rights law, but in fact it only showed concern for a few rights that dovetailed with distinctive U.S. priorities, the few rights that the United States typically has in mind when it admonishes Middle Eastern countries to respect "human rights." Muslims'

³² See Statement by the U.S. Delegation to the 61st U.N. Commission on Human Rights, *Item 17: Transnational Corporations*, April 20, 2005, available at <http://geneva.usmission.gov/humanrights/2005/0420Item17TNC.htm>

³³ Regarding the drive to privatize water and the resistance to this see Maude Barlow and Tony Clarke, *Blue Gold: The Fight to Stop the Corporate Theft of the World's Water* (New York: The New Press, 2002). On how water privatization clashes with human rights, see Jennifer Naegele, What Is Wrong With Full-Fledged Water Privatization? 6 *Journal of Law & Social Challenges* 99 (2004).

concern for their right to self-determination does not figure in this customized U.S. menu of human rights, in which securing freedom of religion is paramount.³⁴

In public admonishments by the USCIRF, Iraqis were instructed that they needed to incorporate precisely the wording favored by U.S. authorities.³⁵ Despite the intense lobbying, Iraqis resisted, and Islam retains a larger role in the 2005 constitution than U.S. officialdom wanted to see. Even after the final constitution was issued, the USCIRF, dissatisfied with the compromises that accommodated Iraqis' determination to show respect for Islam and Islamic law, continued to pressure the Iraqi government to make the amendments that the USCIRF claimed were necessary to tighten guarantees for religious freedom and the rights of religious minorities.³⁶

What was at stake was not freedom of religion in the abstract but ensuring that Iraqi law protected religious freedom in a manner that served U.S. goals. These goals correlated with the ambitions of the Religious Right, which had seen its political potency mushroom since Bush replaced Clinton and for whose members converting Iraqi Muslims was a top priority. It was not difficult for Iraqis to ascertain the motives behind the calls for religious freedom. As one reads in the account by Ali Allawi, the former Iraqi Minister of Defense and Finance, Iraqis understood that the U.S. drive to secularize the Iraqi constitution and to provide guarantees for religious freedom was spearheaded by Christian activists.³⁷ Iraqis realized that would-be Christian missionaries were pushing for Iraq to adopt constitutional provisions that would forward their planned campaign to Christianize Iraq, a campaign that could be impeded by restrictive Iraqi constitutional provisions, such as ones that affirmed Iraq's identity as a Muslim country or that accommodated traditional Islamic rules barring apostasy. The aggressive U.S. deployment of human rights rhetoric as part of an endeavor designed to whittle down the role of Islam provided ammunition to Muslims who charge that human rights constitute a threat to Islam.

Viewed from a Middle Eastern vantage point, U.S. professions of solicitude for Muslims' human rights seem to reflect capricious politics and indefensible double standards. In the U.S. "war on terror," evidence of flagrant

³⁴ See Ann Elizabeth Mayer, *Clashing Human Rights Priorities: How the United States and Muslim Countries Selectively Use Provisions of International Human Rights Law*, 9 *Satya Nilayam: Chennai Journal of Intercultural Philosophy* 44 (2006), also available on my website at <http://lgst.wharton.upenn.edu/mayera/Documents/satyanilayam06.pdf>

³⁵ The record of the USCIRF's extensive interventions in post-invasion Iraq can be found on the USCIRF website, available at <http://www.uscifr.gov>

³⁶ See, e.g., Iraq: Human Rights in Jeopardy, in *The 2006 Annual Report of the USCIRF*, May 2006, at 9-17, available at <http://www.uscifr.gov/countries/publications/currentreport/2006annualRpt.pdf>

³⁷ Ali Allawi, *The Occupation of Iraq* (New Haven: Yale University Press, 2007), at 226.

U.S. disregard for Muslims' human rights has provoked dismay and anger, which exposés of the vile abuse of prisoners in Abu Ghraib and the barbaric conditions at the Guantanamo detention camp can only intensify. In the background, resentment over the continued U.S. indifference to the denial of Palestinians' right to self-determination still festers, and U.S. backing for Israeli measures that have aggravated Palestinians' suffering intensifies Muslims' disgust at U.S. professions of support for democracy, which are seen as hypocritical if not mendacious. The way that human rights are opportunistically exploited to serve U.S. political objectives but otherwise disregarded can aggravate disenchantment with human rights on the part of those who fail to differentiate the consistent and universal principles of human rights from the vagaries of U.S. politics.

A related factor making Muslims associate appeals to human rights with nefarious U.S. policies is the humanitarian catastrophe that spread in the wake of the U.S. invasion and occupation of Iraq. It is hard to overestimate the negative impact that reports of Iraqis' acute misery since the 2003 U.S. takeover are having on Muslims' attitudes. Of course, U.S. leaders had set the stage for particularly bitter alienation by promising the world that Iraqis would enjoy vibrant democracy and prosperity once Saddam Hussain was overthrown -- only to leave Iraqi society staggering under the impact of destructive military initiatives, rampant criminality, escalating sectarian violence, a collapsing infrastructure, shortages of essential commodities, and other ills that prompted millions of Iraqis who possessed the means to seek refuge in other countries.

At the same time, beleaguered apologists for the Iraq invasion intensified their insistence that the cause of human rights was being served, as is illustrated by the case of Fouad Ajami, a prominent professor at the School of Advanced International Studies in Washington who is of Lebanese Shi'i origin. His political evolution shows how people's self-positioning vis-à-vis the merits of U.S. foreign policy can shape their perceptions of human rights issues in the Middle East. In the course of a few decades, Ajami's ideological reorientation has led him to abandon his formerly tough critical evaluations of the U.S. practice of presenting its overseas interventions as part of carrying out the mission of advancing universal human rights. He has sufficiently changed course to bond with officials engaged in this practice, emerging as a close ally of neo-conservatives like former Deputy Secretary of Defense Paul Wolfowitz (who was for a time dean of the School of Advanced International Studies) and as one of Vice President Dick Cheney's most trusted advisors, Wolfowitz and Cheney being two of the main architects of the U.S. invasion of Iraq.³⁸

³⁸ For an account of his transformation, see Adam Shatz, *The Native Informant*, *The Nation*, April 28, 2003, available at <http://www.thenation.com/doc/20030428/shatz>

Among the items that I uncovered when researching the first edition of my book on Islam and human rights was an essay by Ajami that had been published in 1978.³⁹ Read today, the essay reminds one how significantly the political climate has altered since the 1970s, when advocacy of Third World concerns was having a real impact on the international scene and when the presence of the Soviet bloc provided a strong counterweight to the United States and encouraged the circulation of socialist ideals. Ajami's essay dates back to a decade when he still remained grounded in his region of origin even though he had since settled into a U.S. academic career. The Ajami of that era displayed sympathies for socialist ideals and the then fashionable Third World perspectives, offering vigorous criticisms of the U.S. deployment of a narrow menu of civil and political rights as part of its arsenal of foreign policy tools. In his earlier incarnation, Ajami denounced as a cheap world-order logic the U.S. practice of ignoring the pervasive grinding poverty in Third World countries, treating poverty and starvation as domestic problems for local governments to solve, and choosing to intervene only in selected cases where it identified objectionable "mischief of Third World regimes."⁴⁰ Suspicious of the U.S. agenda in the Third World, Ajami perceived in the relatively modest initiatives then being pursued under President Jimmy Carter the very type of neo-imperialist adventure that the United States would later engage in on an infinitely more ambitious scale when it overthrew Saddam Hussain. He presented a caustic assessment of Carter's human rights policy, in which he specifically denounced the idea that U.S. interference could create just societies in the Third World. Criticizing the U.S. tendency to recast its ideology as an expression of universal norms, he recorded his observations, which included:

The current campaign for human rights reflects an unmistakably ethnocentric and 'imperial' mentality. America is the center of the world, radiating goodness and universal norms. The rest of the world, the Third World in particular, is but a mere periphery. America calls the tune, while others are expected to follow... Another is an irony that derives from America's own failure to ratify some of the major human rights conventions . . . US self-righteousness is particularly problematic in cases involving Third World regimes. Westerners may forget – but non-Westerners should not be expected to do so – that a human-rights [sic] rhetoric of sorts was very much a part of the mythology and the ideological baggage of Western colonialism. Even when colonizing others, Europeans were found of justifying their alien rule as a way of promoting human rights . . .⁴¹ No amount of external meddling can construct just and equitable social arrangements in a particular society, create the foundation for a just state, or

³⁹ See Fouad Ajami, Human Rights and World Order Politics, *World Order Model Project, Occasional Paper* no. 4 (New York: Institute of World Order, 1978).

⁴⁰ *Id.* at 31.

⁴¹ *Id.* at 9.

decree fair ways of distributing the social project. Vigorous indigenous forces must themselves promote such goals . . .⁴²

Over the last decades as the influence of socialist ideals has faded and as the power of the U.S. neo-conservative movement has dramatically expanded, Ajami has shifted to the right. Today as an acclaimed Middle East expert whose pronouncements can be relied on to back U.S. policies and confirm neo-conservative tenets, he is invited to serve as a regular commentator in the U.S. media. In this capacity, he became a public cheerleader for projects like the ambitious Bush administration plan to use Iraq as a stepping stone to remake the Middle East in the U.S. image, speaking as if the U.S. commitment to spreading the blessings of freedom to the Arabs was not open to doubt. Adopting the mindset of many others in the U.S. establishment, he acts as if Arab condemnations of U.S. human rights policies were childish and unreasonable.

To illustrate his metamorphosis, one could consider his reactions to torture. At the time of his 1978 essay, Ajami had stressed the universal quality of the ban on torture, which he treated as “morally compelling,” expressing the view that “(t)here is something particularly repugnant about torture, about one man inflicting suffering on helpless beings who cannot resist.”⁴³ By the time of the 2004 exposes of the sickening abuses of detainees held in Abu Ghraib, Ajami’s attitude had changed to the point that he could speak patronizingly of Arab reactions in a televised interview with Jim Lehrer:

Well, Jim, we were not loved in the Arab world the day before yesterday, the day before these pictures were made available, and we saw these horrific scenes. This just simply plays into the stereotypes people have. This has become for many of these Arabs watching us and watching our war in Iraq, it's a referendum for them on the war on Iraq.⁴⁴

As a result of his transformation, Ajami could distance himself from “these Arabs watching us and watching our war in Iraq,” becoming someone who viewed the Abu Ghraib tortures from the perspective of Washington’s neo-conservative elite and classifying these as a public relations problem, not a human rights atrocity that should fatally tarnish the U.S. democratization project.

Whereas the Fouad Ajami of 1978 had seemed to possess a clear picture of how negatively people in Arab societies would respond to U.S. invocations of universal human rights when these were coupled with neo-imperialist ventures, in a book published in 2006 Ajami seemed to be peering at the Middle East through

⁴² Id. at 29.

⁴³ Id.

⁴⁴ Online News Hour: Arab Reaction to Iraqi Prisoner Photos, May 5, 2004, available at http://www.pbs.org/newshour/bb/middle_east/jan-june04/prisoners_5-5.html

a distorting lens. He lamented the sorry outcome of the 2003 U.S. invasion of Iraq, which he had confidently predicted that Iraqis would welcome and celebrate. According to his assessment, the United States had benevolently endowed Iraqis with liberty and a chance for democracy. Ajami laid the blame for the ensuing debacle at the feet of the Arabs, including local religious leaders, who had rejected what he called “the foreigner’s gift.”⁴⁵ Regarding the U.S. Iraq project, Ajami maintained that “there is nobility in what is being attempted.” Completely ignoring the actual reasons that opponents had given for denouncing the U.S. attack on Iraq, which had included a hardly trivial concern for upholding international law and the central principle of non-aggression, Ajami expressed scorn for the negative assessments on the part of “American liberalism” and “the multitudes of America's critics in Arab and European intellectual circles.”⁴⁶ Unwilling to concede that there were ample grounds for questioning the bona fides of claims by the Bush administration to be engaged in an altruistic quest to bring democracy to Iraqis, Ajami chose to imply that the critics were racists, which was peculiar at a juncture when he spoke of “these Arabs” as he did. Adopting the pose of a supporter of human rights universality, Ajami indignantly assailed foes of the Iraq invasion as people who divided the world into a democratic West and a despotic East, asserting that “it is they today who propagate a view of peoples and nations fit -- and unfit -- for democracy.”⁴⁷ Writing as if it were a given that U.S. neo-conservatives who called for invading Iraq were genuine human rights universalists, he also noted how, at least according to his personal scheme for classifying the two sides in the controversy, the respective alignments of conservatives and liberals had switched. Ajami declared that:

Iraq today represents the odd spectacle, a veritable reversal of intellectual galaxies, of a conservative American president proclaiming the gospel of liberty while liberals fall back on a surly belief that liberty can't travel, can't spread to Muslim lands.⁴⁸

That is, he presented critics of the Bush administration’s Iraq policies as being people who had pretended to believe in universal human rights but who had been exposed as elitists who conceived of democracy as the sole prerogative of Westerners. In so doing, Ajami joined the legions of academics writing on human rights who in the course of making problematic arguments about the politics of human rights have twisted and distorted what upholding human rights universality

⁴⁵ Fouad Ajami, *The Foreigner’s Gift* (New York: Free Press, 2006).

⁴⁶ Fouad Ajami, A New Iraq, *Wall Street Journal*, January 26, 2005, available at http://www.sais-jhu.edu/pubaffairs/SAISarticles05/Ajami_WSJ_012605.pdf

⁴⁷ Id.

⁴⁸ Id.

entails. In reality, opposing the U.S. attack on Iraq was not an indication of having “a surly belief that liberty can’t travel,” nor did it correlate with racist notions that Arabs were unfit for democracy. Far from engaging in an intellectual reversal, as Ajami charged, the critiques of the Iraqi adventure by “liberals” could find ample foundation in the principle of maintaining a consistent respect for international law. For example, former President Carter, whose commitment to advancing human rights through less aggressive means Ajami had formerly assailed, excoriated the Bush doctrine of preemptive war that had been utilized to justify attacking Iraq, condemning “the overt reversal of America's basic values.”⁴⁹ Having once discerned neo-imperialist dimensions in Carter era policy, Ajami now seems determined to brush aside any intimations that hegemonic designs could lie behind the U.S. military conquest of Iraq. In 1978 he had refused to take at face value U.S. protestations to be advancing the cause of human rights universality, warning that this rhetoric could be a cover for colonial projects – but his mind had subsequently executed a galactic reversal.

Human minds are malleable, and it is not unusual for attitudes to adjust in response to the shifting political fortunes of contending factions. Where human rights controversies are concerned, one can find academics who prove to be distinctly political animals who test which way the wind blows and adjust their stances accordingly. Ajami’s intellectual metamorphosis illustrates how aligning oneself either with critics or supporters of U.S. foreign policy can shape one’s assessments of human rights policies in the Middle East. In the 1970s Ajami displayed a keen sensitivity to how Arabs’ historical experiences had shaped their worldview and how these experiences would make them resist U.S. attempts to impose U.S. values and priorities. In contrast, today, having found a comfortable niche in the camp of powerful U.S. neo-conservatives, he is prepared to belittle Arab protests against U.S. military aggression and occupation. Ajami is certainly not alone in shifting his allegiances, but one might be excused for sensing an element of perversion in the particular direction in which Ajami’s attitudes towards the official U.S. deployment of human rights have moved.

It seems fair to predict that, where U.S. human rights policies like those conjoined to the fateful U.S. takeover of Iraq are concerned, typical Middle Eastern Muslims’ attitudes will tend to evolve in a direction precisely opposite to Ajami’s. Rather than imagining that the United States has been altruistically engaged in bestowing “the foreigner’s gift,” they are likely to make negative assessments that will approximate those made decades ago by the younger Ajami. Harsh critiques of the U.S. misadventure in Iraq may provide ammunition for those in Muslim societies who argue that human rights are an instrument of Western hegemonic designs. However, in the contemporary Middle East, those

⁴⁹ See Carter Blasts Bush on His Global Impact, *Guardian Unlimited*, May 20, 2007, available at <http://www.guardian.co.uk/world/latest/story/0,,-6646247,00.html>

who are angered by U.S. policies are unlikely to resort to the leftist Third World ideology that Ajami deployed in his critique of U.S. human rights policy back in the 1970s – and that in updated form still holds sway in leftist circles in Latin America. Instead, with the decline in secular ideologies like Arab socialism and the ascendancy of Islamism, hostile reactions to the U.S. deployment of human rights as part of its interventions in the Middle East may take on an Islamist coloration. Muslims who are outraged by the sufferings that their coreligionists have endured at the hands of U.S. forces in Iraq, Guantanamo, and elsewhere may be increasingly drawn to combinations of Islamism and nationalism that serve to mobilize resistance to U.S. diplomatic pressures and military and economic predations. This, in turn, could play into the hands of regimes and political movements that instrumentalize Islam as part of schemes to mobilize popular support and that also resort to retrograde readings of Islam to crush human rights. Angry reactions to what are seen as U.S. manipulations of human rights to advance hegemonic designs could not only potentially discredit human rights but could also spill over into attacks on indigenous human rights NGOs and their critiques of repressive Islamist policies. That is, in lieu of fostering progress towards integrating human rights in the fabric of Muslim societies and a harmonization of Islam and human rights, U.S. policies, ones that are ostensibly aiming to enhance Muslims' rights, may have reverberations that portend serious setbacks.

Conclusion

At the same time that people in Muslim societies and in Western milieus have been arguing about the relationship of Islam and human rights, both Islam and human rights have been evolving. The relationship is complex and mutable, and I can report that the current status is far from where matters stood back in the early 1980s. In an era of unsettling changes to the status quo, perceptions of the Islam and human rights nexus have proven to be politically sensitive. In these circumstances, the position that Islam and human rights are inherently in conflict, which assumes two settled entities in a stable relationship, is becoming even harder to sustain – as is the view that human rights are ineluctably tied to Western civilization.

At a time when Muslims have been struggling to define where they stand vis-à-vis international human rights law, the United States has been an obtrusive factor and a disruptive influence. As U.S. connections to the international human rights system become more attenuated and as official U.S. human rights rhetoric becomes progressively more discredited, it should become easier for at least some Muslims to differentiate U.S. policies from the actual principles set forth in international human rights documents and to evaluate the latter based on what

they actually offer to Muslim societies. Some recent developments are encouraging Muslims to conceive of the relationship of Islam and human rights as harmonious and to promote an appreciation of the merits of human rights universality. Thus, a potential shift lies before us; we may be facing decades in which the United States will be moving farther away from the international human rights system while Islamic thinkers and people in Muslim countries more generally will be growing more attracted to international human rights law, seeing in it principles that acknowledge the legitimacy of their most pressing concerns and complaints. However, as noted, there are also factors on the current scene that could work in the opposite direction and that could energize Islamist hostility to human rights, confirming suspicions that human rights are part of a nefarious Western plot. Taking stock, we must recognize that the Islam and human rights relationship is regularly readjusting in response to a changing environment, so that the questions that will be being addressed over the next decades will not likely be the same ones that Muslim societies and Islamic thinkers have been wrestling with to date.