Islam and the Challenges of Modernity

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Since the end of World War II and the institutionalization of the international community under the United Nations framework, Western-style norms of human rights, democracy, and sound governance have been increasingly accepted as universal. Nevertheless, one cultural group has consistently lagged behind in adopting these norms: the Islamic world. Given the growing interconnectivity and interdependence of the world, Islamic governments have maintained economic, diplomatic, and strategic relations with Western states and signed numerous international conventions. Yet, these regimes operate systems of government and law that starkly contradict the norms outlined in these conventions.

Until now, the West has largely overlooked the obvious contradictions separating governance in Islamic states from universal norms. However, the West can no longer ignore this situation. Large-scale terrorist attacks against the West—especially the United States—drove home the point that lack of respect for human rights, democracy, and sound governance in other countries can directly and negatively affect the West. While Islamic legal norms are often still ignored with impunity, there is reason to expect the 21st century will witness the emergence of a systematically-enforced regime of sanctions for their violation. Such a development would render untenable

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the continuation of many aspects of the legal and governmental systems in force in most Islamic countries. Their friends in the West find it embarrassing to close their eyes to such a state of affairs.

Of graver concern to the West, however, is the present threat to its own peace and security. The recent terrorist attacks leveled at Western, and especially American, installations and individuals have been perpetrated by Muslim organizations in the name of Islam, and the West is now grappling with an entirely different and more threatening security environment. These security challenges are bound to give rise to a systematically-enforced regime of sanctions for violating universal norms of human rights and gover

interpreting Islamic law. The current system is dominated by traditional scholarly thought that largely ignores calls in sacred texts for moderation and compassion in meting out punishments under Islamic law in favor of a system of penalties that runs counter to international human rights standards.

The lack of basic freedoms and liberal democracy, as well as the tensions within the Islamic world and with the West, is largely a consequence of Muslims' failure to determine the quintessential message of Islam. The Koran contains an abundance of verses that exhort compassion, mercy, and tolerance, while shunning cruelty, intolerance, injustice, and oppression. Some view these norms as

The lack of basic freedoms and liberal democracy results from a misreading of Islam's quintessential message.

nance. Such a regime would condemn many defining elements of the governmental and legal systems in most Islamic states today. Yet, the West cannot succeed alone in enforcing change in Islamic nations, especially because of its deeply-rooted tradition of separation between church and state. Although secular governance has worked well in the West, history has shown that it is far more difficult to separate religion from governance in the Islamic world.

A factor far more pivotal than Western involvement will be the role of moderate Muslims in encouraging respect of universal norms through interpretations of Islamic law that are consistent with these norms. Moderate Muslims must initiate a deep reform of the prevailing system of

the transcendental objectives of Islam and, consequently, of eternal validity. Others, however, maintain that these general principles were repealed by later verses that prescribe cruel punishments, relegate women to a low social status, declare Islam as the only proper faith, and urge *jihad* against non-Muslims.

The key challenge Islamic states face today is to find a way to integrate into the modern world on Islamic terms. This must be accomplished by encouraging Islamic states to interpret Islam's divine texts in a manner consistent with good governance, rather than by making them merely calibrate their system of governance to Western standards. This is the only way to prevent fundamentalist views from coming to the fore of Islamic

thought and practice, and it is the responsibility of modern Muslim scholars to accept this challenge.

Development of Islamic Law.

Muslims consider the sacred texts of the Koran and the *hadith* to be of incontestable authority. The *hadith* is a body of literature that interprets the deeds and words of the Prophet Mohammed as passed down through oral tradition. Its importance and authority are considered to be second only to the Koran. This legal text contains proscriptions derived from interpretations of the Prophet's words and actions. Some thirty of the Koran's sixty-two hundred verses have positive law content. A handful deal with punishment of crimes, while others address family law, succession, and evidence. Meanwhile, about six hundred are dedicated to norms and general principles, such as: compassion for the poor, the orphan, the destitute, and the mendicant; promotion of justice and moral rectitude; encouragement of righteous deeds; and the condemnation of cruelty, injustice, tyranny, mischief, intolerance, and compulsion in matters of belief. Indeed, there is hardly a verse about prayer or other rituals that is not followed by a verse setting forth one of these norms.

The authenticity of the Koran has never been doubted because all its verses were converted to writing as soon as they were revealed, and various compilations were already in circulation during the Prophet's lifetime. By contrast, the first compilation of the *hadith* appeared about a century and a half after the death of the Prophet, and several came into existence three centuries later.[1] Extensive research by oriental scholars since the nineteenth century has led some members of the scholarly community to conclude that many of the *hadith* contained in these compilations are spurious—studies have shown that some were forgeries dating to Islam's fourth and fifth centuries.[2] While most modern Muslim scholars reject this claim, a few admit to it with reservation.[3]

Nevertheless, the earliest Muslim jurists spoke of the *sunna*, not of the *hadith*, as necessarily reflecting the purpose and spirit of the Prophet. The *sunna* is the oral tradition recounting the words and deeds of the Prophet Mohammed from which the *hadith* originally drew its material. These early jurists relied on their general understanding of what would be consistent with Koranic norms in enunciating rules to address new situations, instead of citing chapter and verse. It was only in the next generation of Islam that scholars began to view reference to the *hadith* as necessary. Thereafter, jurists would only derive new rules from existing rules by a tradition of reasoning by analogy.[4] This tradition could be compared to that of modern-day Western courts that apply reasoning from previous rulings to subsequent cases. Thus, what the twentieth-century Islamic scholar Noel Coulson described as the "almost untrammeled freedom of juristic reasoning"[5] of the first 150 years of Islam came to an end. Jurists indulged in rigid, formalistic scholarship resulting in hundreds of volumes and an enormous mass of legal rules with no bearing on the practical problems of daily life. This effort reflected more energy than originality. By the beginning of Islam's fourth century, this exhaustive endeavor pushed jurists to agree that the gates of *ijtihad*, the exercise of personal judgment, should be closed.

Modern Muslims and the West.

As the modern era of Western Islamic relations began in the nineteenth cenutry, the Islamic legal precepts that had prevailed for more than a millenium became increasingly inadequate for the purposes of a modern Muslim society.[6] Although the Islamic world welcomed Western technological developments, the traditional clerical elites dismissed Western concepts of social reform as un-Islamic.

Many thinkers throughout the Islamic world, however, viewed such social reforms as necessary and consistent with Islam. Reformists such as Sayed Ahmad Khan in India, Muhammad Abduh in Egypt, and Namik Kemal in Turkey based their work on the general spirit of Islam and the ethical norms and princi ples of justice that are abundant in the Koran. However, reformists have yet to expound a consistent worldview that suc cessfully challenges the fundamentalist claim that modern Western concepts of governance are inconsistent with and wholly alien to Islam. In the absence of moderate interpretations, the funda-mentalist camp espousing literal inter-pretations of Islamic texts has succeeded in dominating the juridical systems of important Islamic states, not the least of which is the Sudan.

Islamization of the Sudan.

The three decades following the end of World War II witnessed a remarkable extension of the traditional jurisdiction of interna-tional law. No longer solely concerned with relations among states, international law now included norms of basic rights that states are expected to observe in dealing with their citizens, thereby limit-ing the otherwise exclusive jurisdiction of states over their domestic affairs. These norms are now distilled in three interna-tional instruments: the Universal Decla ration of Human Rights; the Interna-tional Covenant on Civil and Political Rights; and the International Covenant on Economic, Social, and Cultural Rights, together known as the Interna tional Bill of Rights. The most important rights set forth in these instruments are: the sanctity of human life; protection from cruel, inhuman, or degrading punishment; personal freedom and abolishment of all forms of slavery; equality; and religious freedom, includ-ing the right to change one's religion. Adopting traditional literal interpreta-tions of divine Islamic texts has inevitably led to the violation of these fundamental rights in certain cases.

The Sudan's Islamization experiment, begun in the early eighties and continued in a somewhat attenuated form until the present day, demonstrates the far-reach-ing consequences of basing a modern-day legal system on a literal interpretation of Islamic texts. Until the eighties, the Sudan had had a legal system designed to accommodate the exigencies of modernity without challenging religious sentiment or starkly contravening basic Islamic tenets. Criminal law was based on a shorter, modified version of the Indian Penal Code. Although it did not prescribe the *hudud* and *qisas* punishments that respec-tively include amputation or capital pun ishment, its substantive content was largely consistent with the Islamic con cept of criminality. Indeed, it penalized almost all acts that constituted offenses under Shari'a, or Islamic law. Shari'a courts were vested with exclusive jurisdic-tion over personal issues such as disputes relating to marriage, divorce, marital relations, inheritance, and *wakfs*, dona tions to social and charitable causes.

The Sudanese government adopted provisions that paid homage to English Common Law, but did not preclude reference to Shari'a or other systems of jurisprudence.[7] All civil transactions fell within the jurisdiction of the Civil Division, a simplified version of English rules

tion, severe punishments were now based on the *hadith*—a body of literature that, as noted earlier, contains some spurious elements. This system metes out severe punishments even in cases in which the Koran would actually encourage lenient and discretionary use of punishment. For

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of pleadings. Aside from a few English-style ordinances, legal practitioners' daily tools of contract—the sale of goods, tort, and evidence—were not covered by legislation. The Civil Justice Ordinance was to fill this enormous gap by discretionary recourse to "justice, equity, and good conscience." On the eve of independence in 1956, the Parliament adopted a "secular," Westminster-style transitional constitution that continued to regulate the country's system of government for the next thirteen years.

In 1969, a military regime seized power. Originally secular, this regime approved a constitution in 1973 that stated, for the first time in the country's history, that Islamic law and custom "shall be the main source of law."[8] Over the next decade, this provision was not acted upon. In 1983, however, the government embarked on a course of Islamization of the state and the legal system. During this process, the regime adopted an interpretation of Islam that prescribes death for murder, armed highway robbery, adultery, and apostasy.

After 1983, the Sudanese government adopted a conservative interpretation of the Koran. Under the new penal legisla-

example, while the Koran recommends the death penalty for murder, it also urges the deceased's next of kin not to insist upon its implementation.[9] Also, although the Koran does not offer a set punishment for either apostasy or adultery, the Sudan has prescribed capital punishment for these acts, in accordance with interpretations of Islamic law derived from traditional classic scholarly thought.[10] Moreover, this penal legislation allows the Sudan's fundamentalist regime to legitimize alleged slave-oriented practices in its conflict with Southern rebels, although the regime denies such practices.

The Fundamentalist View of Islam.
By adopting a narrow and literal interpretation of Shari'a, fundamentalist Islamic states deny their people political rights and internationally-recognized personal freedoms taken for granted in the West. These states use, with trivial modifications, the Koranic prescription of *shura,* or a system of consultation with elites with a deep knowledge of sacred Islamic texts.[11] In this manner, they hope to emulate the perfect, model government that existed during the Prophet's time. This denies their people anything

that resembles representative govern-ment and liberal democracy. Such an approach has far-reaching international implications. By sponsoring traditional theological education, some Islamic states have unwittingly turned into havens for international terrorism. It was in the religious schools, or *madrassas*, of Pakistan and Saudi Arabia, for example, that many al Qaeda members were indoctrinated into a version of Islam that views the West as an enemy and compels its followers to engage the West in a war of *jihad*.

The incompatibility of Islamic justice based on literal interpretations of classic thought with modern international legal norms raises two important questions. First, can the Muslim people be con-vinced that Islam should be limited, as Christianity in the West, to matters of worship and personal conduct, and con sidered inconsequential to governmental and legal affairs? Or, alternatively, is

ernized politicians who sought to mod ernize Turkey according to secular principles by reforming education, administration, and society to emulate European models. Later, between 1924 and 1926, Kemal Ataturk scrapped all religiously-based laws, shut down *madrassas*, and declared Turkey a secular state. It became clear, however, that the Turkish people were not all pleased with this mandated secularization. Seven decades later, a wave of Islamic resur-gence brought two Islamic-oriented parties to power. If considered in isola-tion, the Turkish example seems to indicate that separating Islam from gov-ernance by imposing a secular political system may not be the most attractive option.

Nevertheless, the hundreds of mil-lions of Muslims who have chosen to live in liberal democracies indicate that many Muslims not only tolerate, but even enjoy

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there some way that the divine text of the Koran and the sacred oral tradition of the *sunna* could be interpreted in a liberal manner consistent with international human rights standards?

In considering these questions, it is useful to turn to historical examples. The nineteenth-century political reform in Turkey, known as the *Tanzimat*, illustrates how Muslim masses refused to accept limiting Islam to a role outside of governmental and legal affairs. The main criticism of this failed top-down secularization was that it largely ignored Islam. The effort originated with west

the benefits of liberal democracy. Unlike Muslim fundamentalists and some ori entalists, most present-day Muslims reject the notion that Islam is incompat-ible with modern norms and that a "clash of civilizations" is inevitable.[12] This is evi denced through the sheer number of Muslims living in democratic societies.

The history of several key Islamic states demonstrates that Islam is indeed com-patible with democracy. In Egypt, during the 1930s and 1940s, ordinary people participated in polling for "one man, one vote" democracy. In the Sudan, civilian uprisings in 1964 and 1985

attempted to wrench rule from military dictatorships in order to establish democracy. In Senegal, the government has been democratic since independence in the early 1960s. In Turkey, experiments with modernization in the nineteenth and twentieth centuries have resulted in an admittedly frail, but nonetheless democratic, form of government. If Muslims truly considered democracy and the Islamic faith incompatible, few Muslims would live in liberal democratic societies and none of the above events would have occurred.

Nevertheless, it is a common belief that most Muslims would not sacrifice their faith for the sake of embracing a modern institution like liberal democracy. Given the choice between Islam and democracy, Islam would prevail. Modern Muslims, in fact, are not likely to welcome any international institution that seems incompatible with basic Islamic tenets.[13] This issue has long fueled debates on Islam's place in modern society. In a 1915 lecture on the history of religions, the Dutch orientalist Snouk Hurgronje maintained that "both the Muslim World and the West are equally concerned in the question, whether a way will be found to associate the Muslim world in modern civilization, without obliging it to empty its spiritual treasure altogether."[14] Considering that many indicators point to the need for Islam to play some role in governance, this raises the question: are divine Islamic texts amenable to a broad liberal interpretation that renders them compatible with modernity?

Future Challenges. Ultimately, it

will be the duty of Muslim scholars to determine whether Islamic texts are amenable to liberal interpretations. The challenge that these scholars face is to draft laws that enforce internationally-recognized human rights while also respecting basic Islamic tenets. This would not be the first time that Islamic scholars venture into these waters. Jurists from the early years of Islam onward have adhered to moral and quasi-legal principles of social justice found in the Koran. The eighth century Imam Malik and succeeding jurors of the Maliki School epitomized these principles in their works elaborating the concept of *al-masalih al-mursala*, or attention to the public welfare.[15] They used this concept to articulate rules, some of which varied with the generally accepted practices of the time.[16] Al-Shatibi, a fourteenth century Maliki jurist, viewed *al-masalih al-mursala* collectively as setting forth the overall transcending objectives of the Koran. Accordingly, he did not consider such concepts amenable to repeal by later verses.[17] Nevertheless, with few exceptions, no systematic attempt has tried to ascertain whether, and to what extent, these efforts have substantive legal effect.[18] While some recent scholars have all but recognized the legal potential of these verses, others disagree.[19]

Present-day Muslim reformists need to consider these insights and conceive these norms as having legal implications beyond their moral exhortations. Some twentieth-century scholars were on the right track. For example, Noel Coulson saw in them "the basic notions underlying civilized society," while Fazlur Rahman, also an expert in Islamic law, viewed them as extra-historical principles whose relevance was not diminished by changes in socio-economic context.[20] The persistent repetition and ubiquitous presence of legal norms in the Koran shows that they are meant to extend to the entire fabric of

society and government; they do not simply regulate one's personal life. These Koranic norms must therefore play a substantial role in the development of modern Islamic jurisprudence. Their role must be greater than that of natural justice featured in Western legal systems.[21] It is only by embracing this challenge that modern Muslim scholars can devise a judicial system that corresponds to modern legal norms.

One historical figure that both legal scholars and those administering Islamic justice should emulate is the second Caliph, Omar Ibn Al Khattab, who ruled for twelve years starting in 634. On several occasions, Omar refrained from enforcing Koranic law when its application would have resulted in public hardship. For example, during a year of famine, he suspended the application of the *hadd* punishment of amputation for theft. And, upon the conquest of Iraq,

when warriors demanded a share of the fertile lands as war plunder in accordance with a Koranic verse observed by his predecessors (including the Prophet Mohammed), Omar denied their claim.[22]

The important role of Islam in Muslim societies and the potential for the Koran to be interpreted in a manner more compatible with modern democratic norms leads to the conclusion that new interpretations of sacred texts must play a role in judicial structures in Islamic countries. Ultimately, it is only through the development of a systemic exegetical methodology that develops Koranic norms of tolerance, freedom of conscience, equality, and justice into positive rules of full legal effect that today's Muslim scholars will convince both fellow Muslims and the rest of the world that Islam is in perfect harmony with modern norms of human rights and liberal democracy.

NOTES

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2 C. Snouck Hurgronje, *Muhammedanism* (New York: G.P. Putnam's Sons, 1916), 66–68; Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1953), 149; Gibb, 72–82.

3 Ali Hassan Abd al-Gadir, *An Overview of the Development of Islamic Jurisprudence* (Cairo: Cairo New Press, 1947), 126; Asaaf Fayzee, *Outlines of Muhammadan Law* (Delhi: Oxford University Press, 1974), 28–9; Fazlur Rahman, *Islam & Modernity* (Chicago: University of Chicago Press, 1982), 24–5.

4 Noel J. Coulson, *Conflicts and Tensions in Islamic Jurisprudence* (Chicago: University of Chicago Press, 1969), 4–5.

5 Ibid., 4.

6 Joseph Schacht, *A History of Islamic Law* (Edinburgh: University Press, 1964), 75.

7 Akolda M. Tier, "Mixed, Civil, Shari'a and Customary Jurisdictions and Laws" in *Religion and Conflict in Sudan*, (Nairobi: Paulines Publications, 2002), 76–9; Mohamed I. Khalil, "The Legal System of the Sudan," *International and Comparative Law Quarterly* 20 (1971).

8 The Constitution of the Sudan, 1973, Art. 9.

9 Koran, V.5: 33; V.24:2; V.2: 187.

10 Muhammad Ibrahim al-Tuwaijri, *Mukhtasar al-Fiqh al-Islami* (Riyadh: Bayt al Afkar , 2002).

11 Koran, V.2: 159; V.42: 38.

12 Hurgronje,149.

13 Hamid Enayat, *Modern Islamic Political Thought* (Austin: University of Texas Press, 1982), 13.

14 Ibid., 13; Hurgronje, 149.

15 Dutton, 117.

16 Ibid., 5, 117.

17 Mohamed I. Khalil, "Human Rights and Islamization of the Sudan Legal System," in *Religion and Conflict in the Sudan,* May 1999; Akolda M. Tier where he cites *al Shatibi's al-Mawaefaqui*

18 Muhammad Khalid Masud, Brinkley Messik, David Powers, *Islamic Legal Interpretation: Mftis and their Fatwas* (Cambridge: Harvard University Press, 1996), 123-7.

19 Rahman, 5; Noel J. Coulson, *A History of Islamic Law* (Edinburgh: University Press, 1964); Malcolm Kerr, *Islamic Reform* (Berkley: University of California Press, 1966), 106.

20 Coulson, 11; Rahman, 5.

21 Percy Winfield, "Ethics in English Case Law," *Harvard Law Review* 45 (1931):"Public Policy in the English Common Law," *Harvard Law Review* 42 (1928).

22 Koran V.8:41; Rahman, 24.