

AN EXAMINATION OF THE COMPATIBILITY OF ASPECTS OF
SHAR'IA LAW AND ITS INTERPRETATIONS WITH VALUES
DEFINED IN THE 1948 UNITED NATIONS *UNIVERSAL*
DECLARATION OF HUMAN RIGHTS.

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PREFACE

As the world becomes smaller through advances in communication and travel, people of different faiths and cultures are forced to live among one another. This can cause clashes in traditions between immigrants and host countries. Examples of points of conflict between traditions are the Muslim burqa, Sikh Kirpan, Hindu caste system, and certain Voodoo rituals. Often these conflicts involve Islamic, or Muslim, traditions that seem incompatible with the secular laws and cultures of Western host countries.

The focus of this paper will be on the potential of certain aspects of Islamic law (*Shar'ia*) being in conflict with the *Universal Declaration of Human Rights* (UDHR) as ratified by the United Nations in 1948. Special attention will be given to women's civil liberties. The rights embodied in the *Declaration* have been adopted by the majority of democracies and other U.N. members and articulate the values expressed in their legal systems. This fact was decisive in the use of the Document in this study. Still, the desire for Muslims to live under the legal guidelines of *Shar'ia* law while residing in various democratic host countries may be contrary to specific outlines of legal rights and standards set forth within the *Declaration*.

In order to evaluate this situation a general understanding of Islam, its sacred writings, and the practice of *Shar'ia* law is necessary. A glossary of Islamic terms is available at the end of the text. Second, an outline of the *Universal Declaration of Human Rights* and its place in democracies will be summarized. The UDHR will be examined, in part, by comparing it with other United Nations writings and individual discussions. The *Universal Islamic Declaration of Human Rights* and the *Cairo Declaration of Human Rights in Islam* will be used as a base for Muslim views of human rights. These Documents are available in Appendixes A-C. Third, the demand of Muslim immigrants to follow tradition and the conflict between religious laws and

values of the UDHR used in host countries will be reviewed. Fourth, Muslim, non-Muslim, and various critical and apologetic views concerning these issues will be examined.

In conclusion, after discussing the above, it will be possible to determine whether or not the legal demands of Muslim immigrants are well-suited for life in a western democracy that recognizes the rights of all citizens with the *Universal Declaration of Human Rights*.

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Selected Review of Literature

Shar'ia law is divine doctrine followed by many Muslims that supersedes any secular rules created by man. These socio-religious mandates justify actions and beliefs by Muslims seen as contentious to human rights by a divisive global population. For this study doctrinal texts are used whenever possible.

The *Universal Declaration of Human Rights* (UDHR) is considered a cornerstone of human rights by many of the host countries in question. Texts that have covered the development of the Document, embracing the controversy between Islamic and non-Islamic views, include Glen Johnson and Janusz Symonides' *The Universal Declaration of Human Rights: a History of its Creation and Implementation*. Also, *Human Rights and Social Policy in the 21st Century*, by Joseph Wronka, focused on social policy concerning the *Declaration* in the same unprejudiced style. The analyzed issues include religious apostasy and women's rights.

Writings concerning *Shar'ia* law involve a range of research spanning centuries. Much pre-nineteenth-century work was done with a positive outlook toward the issue. This is in part due to negative criticism of Islam being a crime for Muslims. Non-Muslims mostly have had free reign of publishing their views. Nevertheless, modern literature by Muslims has become split on the issue.

John L. Esposito provides in his book, *The Oxford Dictionary of Islam*, basic definitions which are accepted by the academic community. Though judged an apologist, Esposito's positive descriptions are not done in a penitent fashion. Additional history of pre-Islamic Arabia, creation of Islam, and its maintenance are found in Frederick M. Denny's book, *An Introduction to Islam*. This important study has been used by The University of Findlay faculty.

Concerning *Shar'ia* law itself, Ahmad ibn Naqib al-Misri's *Reliance of the Traveller*, is a

popular guide to pious actions for the Muslim. This work has justified conservative views not as a comparison to other outlooks, but through its direction of the proper use of general *Shar'ia* law for the Muslim individual. Mohmoud M. Ayoub's text, *The Crisis of Muslim History*, centered on the authority vacuum within the *umma* (Muslim community) after the death of Mohammad. He argued that the eschatological view of Islam's Prophet caused non-definitive answers to common inquiries until the third century of the faith (147). This caused divisions in Islam's view of human rights that remain today.

Dr. Mohammad H. Kamali has addressed issues of hermeneutics in his paper, *Maqasid al Shariah: The Objectives of Islamic Law*. The author shows how the broad purpose of divine directives affect contemporary issues, including women's rights and apostasy, over the times of revelation. Louay M. Safi has also supported current development of *Shar'ia* law through *maqasid* in his work, *Tensions and Transitions in the Muslim World*.

Arguments for pro-Islamic actions concerning said controversies are covered by such authors as Riffat Hassan in her article "Are Human Rights Compatible with Islam?" She has focused on the plight of pious Muslim women in the West. Hassan has concentrated on the modern Muslim female's struggle to maintain religious identity and personal autonomy in the face of uncompromising Islamic culture and imposing Western customs (Hassan). John Kelsay has made a case for the integrity of pro-*Shar'ia* actions in *Arguing the Just War in Islam*. He has explained the endurance and contemporary significance of human rights views behind certain Muslim aggressors through obedience to Islamic doctrine (44-45).

There are those in Islam who believe *Shar'ia* law needs to be brought up to date. Michael Mumisma and Ishrad Manji have offered courses of action for bringing *Shar'ia* law into global acceptance while maintaining tradition. Mumisma argued in his book, *Islamic Law*:

Theory and Interpretation, that the *Qur'an* addressed situations of the times during Islam's inauguration (41). He has stated that governing Muslims through *ijma'*, or consensus of agreement, can bring internal equality and global acceptance to the faith (85). Manji's publication, *The Trouble with Islam Today*, has focused on the maintenance of individual human rights in Islam through *ijtihad*, or independent reasoning. She sees the privilege of interpretation being reserved for the *uluma* (learned ones) as a hindrance to progression and *ijtihad* as the resolution (60). Each view has proposed potential solutions to the issues discussed that would be acceptable to all faiths. Sultanhussein Tabandeh's book, *A Muslim Commentary on the Universal Declaration of Human Rights*, justifies the position of *Shar'ia* law with an orderly association to the UDHR.

In contrast to the hagiography of the *Sira* (Biography of Muhammad) are various modern authors. Nonie Darwish's *Cruel and Usual Punishment*, and Ibn Warraq's *Why I am not a Muslim*, were written in contrast to the idealizing of the *Sira*. Both authors were raised as Muslims and have written critical texts of the faith and its origins, including the Prophet Muhammad. Robert Spencer's academic career focused on Islam, the *Qur'an*, and *Shar'ia* law. This outspoken critic has published several books on these subjects. His works include *The Myth of Islamic Tolerance*, *Religion of Peace?*, and *The Complete Infidel's Guide to the Koran*. Spencer's critical view of human rights in Islam maintain an equilibrium with Esposito's positive stance from a non-Muslim perspective, as both authors were raised as Catholics. Raymond Ibrahim's text, *The Al-Qaeda Reader*, has investigated motivations of violent *jihad* and conservative views (196).

Islam and Human Rights, the analytical work by Ann Elizabeth Mayer, claims to show the potential intent to deceive the West within Muslim writings such as the *Universal Islamic*

Declaration of Human Rights. She has shown that the persistent dependence on *Shar'ia* law to meet the criteria of human rights is less apparent in the English version than the Arabic (76). This was done through comparing and contrasting her translations. The author has also argued against international human rights standards reflecting a racist assumption of Western superiority, but that people of both East and West share a common humanity and deserve the same rights and freedoms (7).

The sacred texts of Islam and development of various schools of thought provide the basis for the Muslim perspective. The combination of approaches by both Muslim and non-Muslims who have been affected by *Shar'ia* law brings the reality of the current situation to light. The grouping of these resources provided the necessary information to complete this study.

Chapter 1

Influence of Pre-Islamic Arabia on Islam and *Shar'ia* Law

Before a person can begin to understand the development of *Shar'ia* law, knowledge of Bedouin tradition is necessary. The heritage and values of this nomadic, desert dwelling people of the Arabian Peninsula live on in Islamic law. As monotheistic Islam developed within this culture, many indigenous traditions carried over into the faith (Denny 38-41).

The native people of Arabia are considered Semites, a linguistic group derived from the name Shem, one of the sons of Noah who emerged from the ark following the Great Flood (Gen. 9:18-19). This language group includes Syriac, Hebrew, Aramaic, and Arabic. The area the Arabs inhabit, the “island of Arabs,” is over a million square miles in area. The western section in the south of the peninsula is called Hejaz. This area is also known as “the cradle of Islam,” as it is where the faith was born and where it matured. The people of Hejaz are believed to have descended from Adnan, an offspring of Ishmael, son of Abraham (Denny 29-30).

Reading materials passed down from pre-Islamic Arabia are few. Most of the area's history was transmitted in oral fashion. However, the late nineteenth century saw the uncovering of thousands of early Arabian inscriptions. The majority of these are on stone. Some have been found on bronze, as well as on various other materials. In recent years many inscribed wooden sticks in Yemen have created new interest in pre-Islamic writings (Maraqten). Luckily many of the discussed incidents were celebrated in the poetic chronicles of *ayyam al-'Arab* or *Days of the Arabs*.

The unsympathetic desert environment determined the nature of survival for the nomadic culture. Continued existence depended upon one's family and tribal structure, methods of battle, clothing, and gathering of provisions (Darwish, *Cruel* 6). The Arabic word *Shar'ia* translates as

“the path worn by camels to water” (Bowker 866). This unites the necessities of temporal survival to eternal salvation. Pastoral life revolved around maintaining a supply of scarce water resources.

Due to a lack of rivers and fresh water lakes within the peninsula, water holes and hand dug wells provided the necessary means of survival. Tribes of families would protectively gather around these sources because their lives depended on them. This survival gave the tribes a collective feeling of achievement. A sensation of power in a tribe is known in Arabic as *asabiya*, which also made the tribe or clan to be of highest importance (Denny 32). The necessity of fidelity to the supremacy of the tribe is described in a poem as: “Be loyal to thy tribe, its claim upon its members is strong enough to make a husband give up his wife” (Hitti 25).

Bedouin structure began with the nuclear family, which usually resided in its own tent. The clan, or family, represented by a tent, was the foundation of the social system. It is at this stage where commonality is at its strongest, as every clan (*quam*) has a single chieftain leader (*shaykh*). Each *quam* is under a solitary identifying name such as Banu Hashim, or “the sons of Hashim.” This was the Prophet Muhammad’s *quam*, which continues to exist today in the Hashemite Kingdom of Jordan (Denny 32). A community of related *quams* is called a *qabilah* or tribe (Esposito 251). Though adopted *quam* members were eventually accepted, maintaining family through tribal purity and honor remained most important. This shows the magnitude of and the value of genealogy because to insult a man’s family or honor was among the greatest of offenses.

The Bedouin Arab not only coddled his relatives, but he also treated outsiders or non-relatives as an enemy. Pride in one’s *quam* was (and is) considered a definition of personal

honor. This sense known as *'ird*, is exclusive to men, and is considered one's most prized possession. A key way to dishonor a man's *'ird* is through his women. A woman was (and is) considered naturally weak. Therefore, she is deemed likely to fall to various temptations, including sexual (Denny 33).

The importance of a man's honor is handed down in Arabic literature and poetry, where his reputation is said to be protected by one's *muruwah* or "manliness." This combination of good qualities includes bravery, generosity expressed through hospitality, sensible wisdom, and honor (Esposito 217). Consequently, it was an enormous disgrace to have a female affiliate of one's *quam* compromised in any manner, including through rumor, as happened to Muhammad's wife Aisha. Such an offense was justification for retaliation. The law of retaliation was rigorously practiced in pre-Islamic Arabia. Being dishonored by a fellow *quam* member sparked intra-tribal feuds. Such actions from outside the *quam* could establish a vendetta between clans. Both internal and external disputes were known to have lasted for years (Denny 33).

An additional serious crime requiring retaliation in Bedouin society was murder. A murder within the *quam* left the offender defenseless. He was immediately marked by the entire community. A slaying from outside the *quam* would cause a blood feud between clans or, on a larger scale, between *qabilahs* (communities). An unjustified death left any member of the offending group fair game for the "law of retaliation" by the aggrieved (Denny 33). Such a style of justice was carried into *Shar'ia* law. The Prophet Muhammad's words recorded in *hadith*: "whoever sees something wrong and accepts it is as though he committed it" rationalizes street justice in Islam for many believers (al-Misri 384).

Even without conflict, life in the Arabian Desert was extremely taxing. Plant life was scarce and natural shade in short supply. The only protection from the harsh elements was the

tent and a person's clothing. Hot sun, wind, and sand storms brought about the standard of dress, which entailed covering oneself from head to toe. This tradition rose from necessity generations before the advent of Islam (Darwish, *Cruel* 6-7).

Living in such intimate proximity was especially difficult for women. Their only means of modesty and dignity (*haya*) lay within their tents and clothing (Esposito 203). Living in such close immediacy required a firmly controlled social environment. Nearness was unavoidable as a high level of dependency on the tribe was crucial to obtain the scant resources. Such reliance was not overlooked when bestowing punishment.

Disloyalty to one's people could mean banishment. An ejected individual or family could only anticipate either death from the elements, being killed, or being captured and enslaved by a contending tribe (Darwish, *Cruel* 7). The preciousness of the basic elements was observed in the Paradise Muslims are promised in the *Qur'an*. Even though *sura* 5:90 disallows alcohol for Muslims on earth, Allah guarantees "Therein shall flow rivers of water undefiled, and rivers of milk for ever fresh; rivers of wine delectable to those that drink it, and rivers of clarified honey. There shall they eat of every fruit..." (47:15). Still, in order to maintain self-preservation, members of the *qabilah* often had to venture out to unfriendly territory.

The entire *qabilah* was dependent on the young warriors who provided the goods for which the people were anxious. This was done through exploration as well as battle. Since the majority of water sources were claimed and protected, all groups were willing to go to war over life's staples. This included not only food and water, but also physical goods and merchandise of rival clans. Beyond a war party attacking a settlement, caravans were considered prime targets. Trade between the East and West had been important in pre-Islamic Arabian commerce (Denny 29). Successful raiding of caravans (*ghazwa*) was considered a noble profession among one's

people. Such accomplishments meant survival (Darwish, *Cruel* 8). Goods could also be amassed by *qabilah* armies which were hired as mercenaries and protective escorts for caravans (Denny 31).

The Bedouin culture used a system of rewards to show their respect and admiration for the young warriors who defended the *qabilah* and brought it prosperity through raiding. Warriors were given a chief share of the spoils of conflict. However, the most revered prize was women. Not only were all captured-in-battle females given to the combatants as slaves, but brides from within the *quam* (clan) were also given to combatants. Women were passionate for and happy to wed a successful warrior. This meant esteem and wealth. It was better to be one of the many brides of a strong clansman than the only wife of a poor man. Sexual gratification with the youngest and most attractive girls was offered as a token of appreciation for one's success on the battlefield (Darwish, *Cruel* 8). Such privileges of the successful male are reflected in Islam. The *Qur'an* contains a passage that hails the Bedouin raid in the poetic style handed down through the centuries: "By the snorting war steeds, which strike fire with their hoofs as they gallop to the raid at dawn and with a trail of dust cleave a massed army;..." (100:1). Nevertheless, things were not as glorious for the feeble.

If a tribal male was of weak stature or disabled, his only chance of sexual gratification was wealth, as a bride price to the relatives of a female was necessary for marriage. Hence, if a man were not wealthy through his immediate family, a life without the companionship of a woman was the norm. Acquiring a large number of female slaves and brides exhibited a man's masculinity, strength, and social standing. The history of success in the culture of Arabia was overwhelmingly male dominated. This trait of accomplishment is shown by acquiring power through women, sex, violence, battle, and wealth. Though officially modified, these

characteristics were carried into Islam.

Preservation of the gender roles was important to both males and females because they were reciprocal. A female who became the bride of a warrior was assured of survival. Also, her chances of becoming a sexual slave in a competing tribe were greatly reduced. This outlook allowed the male to retain admiration, power, and sexual gratification. For a female, survival took precedence over autonomy and human rights. Therefore, tribal women competed over becoming the bride of a successful man who returned from combat. This was considered an honor and far from shame as women related their well-being to their surrender to male supremacy (Darwish, *Cruel* 10).

A Bedouin woman was well aware of her fate if her husband were defeated or killed in battle. Not only would she become a sexual tool for the conquerors, but she would also serve the women of the opposing tribe. This knowledge created a climate of women wanting to please men in all ways possible. Such accepted positions of the submissive female and the dominating male would become a root of *Shar'ia* law. These issues especially affected the regulation of the association between men and women (ibid. 10-11).

Along with the status of the sexes, relationships and treatment between tribes became a defining source of *Shar'ia* law as well. Justice was only administered and expected within one's *quam*. A person's rights did not exist outside the *qabilah*. This created a double approach of fairness. The level of that equality depended upon your *quam*. Men of conquered tribes were killed, and the women and children were made slaves (ibid. 9). *Shar'ia* law later replicated this type of jurisprudence. Under Islamic law, if one is a Muslim, there is a firm set of rules for protection. Reflecting tribal customs, outsiders are treated as subordinate.

Later, those who did not follow Islam within Muslim lands might receive partial

protection. However, this is true only if they were a Christian, Jew, or Zoroastrian, and paid the *jizya* or extra poll tax (Bowker 503). The divine authority for this treatment is outlined in the *Qur'an*: “Fight against such of those whom the Scriptures were given as believe in neither God nor the Last Day, who do not forbid what God and His apostle have forbidden, and do not embrace the true Faith, until they pay tribute out of hand and are utterly subdued” (9:29).

Sura 9:29 is often quoted as the basis for paying the *jizya* tax. However, the verse is also used as justification and condemnation of aggressive Muslim actions against other faiths. *Sura 3:113* expands the definition of monotheistic individuals: “There are among the People of the Book some upright men... who enjoin justice and forbid evil and vie with each other in good works.” Non-monotheistic outsiders were viewed more harshly.

Pagans, to Muslims, consisted of idol worshipping Arabs, Hindus, and any other philosophy not derived from Zoroastrianism or the religions of Abraham. Complete expulsion was the lot of non-monotheists. Pagans who refused to leave after the four sacred months outlined in the revelation of *sura 9* were subject to “arrest, imprisonment, and death” unless they “repent and take to prayer and render the alms levy” (*Quran 9:5*). Such strict adherence to the communal requirements of Islam became necessary for the faith to survive.

The pre-Islamic period in Arabia became known to Muslims as *jahiliyyah*. *Jahiliyyah* means “ignorance” and is applied in juxtaposition to a time of lack of knowledge of monotheism and/or divine Islamic law. This term outlines the domination of humans over humans as an alternative to the submission of mankind to God. To this day, any government, philosophy, or institution based on principles not referring to God and his laws are considered *jahiliyyah*. To correct the condition of *jahiliyyah*, philosophers propose the implementation of *Shar'ia* law and its values. Many acts of violence and terrorism by Islamic militants are justified as struggle

(jihad) against *jahiliyyah* (Esposito 154).

Maintaining the identity, values, and honor of the Arabian traveler became an obligation within Islam. The advent of the final prophecies of God includes instructions on proper worship, etiquette, laws, and punishments. These rules govern the entire Muslim existence, both public and private, with no distinction between crime and sin. Strict adherence to a combination of tradition and divine law is not only mandatory, but also a sin if disobeyed by the Islamic faithful. Others who disobey this combination within Muslim-controlled lands face potential expulsion, financial burden, or worse.

Chapter 2

Schools of *Shar'ia* Law and *Hadith*

As time progressed and Islam's geographical influence spread, it was deemed necessary to have *hadith* documented for reference purposes. *Hadith*, or reports on the words and actions of the Prophet Muhammad, is considered authoritative. The *Sunna*, which also refers to the example of Prophet, consists of the *Qur'an*, *Hadith*, and biography of Muhammad, or *Sira* (Esposito 305).

Against *caliph* (successor to the Prophet) 'Umar's desires, many companions had written down familiar *hadith*, as Muhammad had commanded them to always remember his words and actions (Denny 151). However, there was no official system to follow these traditions. The accepted science of *Hadith* did not come about until two to three centuries after the Prophet's death (ibid. 156).

Over the centuries several schools of law (*madhhab*) have developed among the Muslims of the world (Esposito 183). Initially these divisions came about due to regional differences within the Islamic empire. Over time the majority Sunnis acknowledged four main schools of law while the Shiites (followers of Ali) have recognized three. Sunni and Shiite laws are not dramatically different from each other. Each system compels the believers to follow Muslim views and traditions concerning common life (ibid. 195).

One rigid difference between Sunni and Shiite law is the perception of political and religious influence. Sunnis believe in a predetermined law. This binds every Muslim from the highest political leader to the lowest commoner with the same rules. Though there is space for compromising certain issues, often new solutions are shunned for replications of past decisions (*taqlid*) (Esposito 314). This follows the instructions of the *Qur'anic* verse: "Question the

people of remembrance if you do not know” (21:7).

Shiites generally believe that the succession of *imams* (spiritual and secular role models) was divinely guided in their legal decisions (Esposito 135-36). To various degrees they are revered and their teachings and opinions are considered infallible. This leaves no room for consensus style decisions accepted in Sunni law (Denny 197). Still, future jurists found room for development of *Shar'ia* law in both sects.

The *caliphate* (dynastic rule) was taken over and made hereditary by the Umayyads in 661 C.E. (Bowker 2). Before this time a method of flexible personal decision making concerning jurisprudence (*ra'y*) was utilized (Esposito 262). The Abbasid dynasty came to an end with their defeat by the Mongols in 1258 (Bowker 2). This brought the end of *ra'y* being utilized by the Sunnis. This is not to say that the *Qur'an* was ever compromised. The scripture remained the quintessence of Islamic law. However, there are no instructions on how to deduce judgments on a convenient level. This created the need for a methodical system.

The necessity for a concrete form of legislation brought on a system of analogical reasoning known as *qiyas* (Esposito 254-55). *Qiyas* became almost unanimously accepted as the third source of law within Islam behind the *Qur'an* and *Sunna*. Built on the personal judgment accepted within *ra'y*, *qiyas* were held to a stricter sense of logic which led to fewer possible deductions. This brought the “understanding” of Islamic law to a “science of jurisprudence” labeled *fiqh* (ibid. 87).

With the Sunni decision to follow *taqlid* (imitation), the use of independent reasoning to reach a legal decision came to a close. *Ijtihad*, “to exercise one’s intellect based on revelation” is used when the *Qur'an* and *Sunna* are mute on a concern. This system was often exercised in conjunction with *qiyas* (analogical reasoning) (Esposito 134). In history, *ijtihad* (independent

reasoning) gave way within the majority to the idea of *ijma'* (consensus of agreement).

The *umma* is the Muslim version of the all important Arab community (ibid. 327). *Ijma'* loosely follows the general idea of the *umma* as it is based on “the consensus of the community” (ibid. 133). *Ijma'* is not the consent of an entire population, but that of men considered learned and respected (*uluma*) within the affected *umma*. *Ijma'* has become the strongest instrument of assessment for the four accepted schools of Sunni law as it determines how and when older views may be used (Denny 189-190).

Ijma' went through four major stages of development. First was the consensus of the companions that lasted through the death of Ali in 661 C.E. (ibid. 81). Second was the consensus of the successors. This became complicated as Muhammad’s lack of instruction in naming his successor caused a rift between those who accepted Abu Bakr and the followers of Ali (Ayoub 147). There was no officially sanctioned Islamic government to ratify decisions between the followers of various companions. To augment the disunity, many scholars from Medina began to travel throughout the Arabian Peninsula to compare results. These various social interactions created diverse views among the learned during the Umayyad Dynasty (661-750 C.E.) (Esposito 326).

Next came the time of *ijtihad* (independent reasoning). It was during the developmental stage of the Abbasid dynasty that the science of law reached the pinnacle of its maturity (Khan 8). This firm use of *ijma'* (consensus) was reserved for the *mujtahid*. Official *mujtahid* qualifications included education in recognized *madhhab* (school) and widespread comprehension of the *Qur'an* and *hadith*. *Ijtihad* was deemed necessary by the scholarly. They believed the disarray of permissible thought passed down from the successors needed to be abandoned for a unified legal view. This time period saw the beginning of the major divisions in

observation of *Shar'ia* law. Believers began distinguishing between the first four *caliphs* (successors of the Prophet), the companions, and regional divergence. The ideology of these schools were (and remain) largely the same. Differences tended to be only in matters of detail. This includes the Shiite and Sunni schools whose variance was mainly political and related to the standing of the *caliphate* (ibid.).

Last came the “blind following” of *taqlid*. This development of jurisprudence was used to undermine popular control of the *umma* (community) as the jurists became dominant (Mumisma 79-80). With the death of Imam Ahmad Ibn Hanbal (855 C.E.), the period of sovereign clarification of Islamic law came to an end (Khan 8). During the times of *taqlid* many students and followers began supporting the teachings of their specific religious leaders with a new declaration of *ijma'* (consensus). Through this period the general claim to *ijma'* was no longer relied upon. Consensus was only reached through the known *ijma'* of the companions. Re-emphasizing the views of the companions also helped stamp out heresies developing throughout the faith. Therefore, a secure and conclusive force of law was developed. Legal views from divine sources did not change.

All Sunni and Shiite schools maintain the basic Islamic understandings of the rules of apostasy and women's rights. In spite of this, each *madhhab* (school of legal thought) developed a distinctive outlook towards doctrine and maintenance of Islamic law. The *Qur'an* and *Sunna* (Muhammad's example) remain the origin of all *Shar'ia* law. However, it can be argued that these methods in conservative form are not complete. The founders of each *madhhab* died roughly fifteen to one hundred years before the authoritative *hadith* (words and deeds of Muhammad) collectors Bukhari and Muslim (Denny 153). Still, the various approaches to the use of *hadith* remain an essential differentiating factor in schools of law.

The oldest Sunni *madhhab* was established by Abu Hanifa (d.767) in Mesopotamia during the early period of Abbasid rule, and preserves many older traditions of the area. *Ra'y* (free reasoning) was essential to the development of this school of thought. Hanifa was considered liberal in his thinking. This has been shown in the school's flexibility over time. Abu Hanifa is credited with utilizing and perfecting the analogy of *qiyas* (analogical reasoning) (Denny 195). Such developed methods of reaching judgment within *Shar'ia* law are used as tools by modern liberal thinkers in their efforts to update Islamic law.

The Hanifa school of law is used today among Sunnis in the Middle East and dominates large areas such as Turkmenistan and Afghanistan ("Hanafi"). The majority of the world's Muslims follow Hanifa's views and his influence on current developments in *Shar'ia* law remains dominant. The simplicity of argumentation in the Hanifa school gives understandable proofs and moral reasoning (Khan 76). Such views can be seen as justification for pressure by the conservative Taliban. Hanifa preferred *qiyas* based on *Qur'anic* passages over *hadith* much more than the other jurists. His strict instruction on tradition resulted in the exclusion of many *hadith* once accepted by the *umma*. His extensive knowledge of tradition allowed him to firmly legitimize his relatively infrequent use of the *hadith* (Khan 63-64)

Second in prominence is the Maliki school. This *madhhab* is followed by approximately twenty-five percent of the world's Muslim population and is dominant in North and West Africa. Malik ibn Anas (d.795) was dedicated to the traditions of Medina ("Maliki"). Known as a collector of *hadith*, he published *Al-Muwatta' (The Beaten Path)* (Esposito 222). These significant writings not only contained Malik's judgments and views towards *Shar'ia* law, but an adequate list of sources used to come to those influential (and non-negotiable) conclusions ("Maliki").

Though scrupulous in verifying his sources of *hadith*, it is his use of tradition that sets him apart from other schools. Malik believed that traditions from Medina were transmitted directly from the Prophet. This led him to accept their validity without cross reference. Though the Hanifa and Shafi'i schools normally accept analogical change through *qiyas*, Malik's direct findings have not been repealed (Khan 82-83). Because Malik considered the practices of the people of Medina living *Sunna*, he allowed this form of legal doctrine to supersede other *hadith* ("Maliki"). The school's minimal acceptance of change limits the influence of Malik on modern developments in Islamic law.

Next came standardization of the core issues of jurisprudence (*usul al-fiqh*) (Esposito 329). These core issues were systemized by Al-Shafi'i (d.819). The Shafi'i school developed the organization of powerful issues used within Sunni schools to this day. Though the Shafi'i techniques have been adopted globally, it is in East Africa, Bahrain, and Indonesia that his school of thought remains most prominent ("Shafi'i"). His combination of the *Qur'an* and *Sunna* began the turning away from *qiyas* (analogical reasoning) as a resolution within *Shar'ia* law. This led to *ijma'* (consensus) becoming the base of future Sunni jurisprudence (Denny 195-96).

Though influence of both the Hanafi and Maliki schools is evident, Shafi'i took the middle ground in his approach of tradition. He claimed *Sunna* can only be established through the traditions connected to the Prophet. This eliminated practice and consensus of the companions and successors. When the *Qur'an* and his accepted *Sunna* are mute on a questioned issue, consensus of agreement, or *'ijma*, is taken into account (Khan 95-97). There remains substantial debate concerning whose opinions are relevant in *'ijma*. Some believe that only scholars' opinions are significant. Others argue that the agreement of the affected *umma* is also

legitimate (Esposito 133). Either way, the Shafi'i system of agreement has been adopted by all Sunni schools and is widespread throughout the world today.

In order for *ijma'* to be established, there must be consultation of *shura* (ibid. 293-94). This is based upon a ruling of the *Qur'an*. Muhammad was ordered in connection with his followers to "Take counsel with them in the conduct of affairs..." (3:159). This approach is extended into the laity with the decree that "more enduring is God's recompense to those who believe and... conduct their affairs by consent" (*Qur'an* 42:37-38). Once *ijma'* is founded on a given issue, it performs as a standard for future decisions that concern the issue (Esposito 133).

For reform minded Muslims seeking change in divisive issues such as women's rights and freedom of religion, *shura* (consultation) is seen as a course of action. *Shura* underscores the liberal argument of the authority of the people to elect representative leaders to democratic associations designed to act for public benefit. For conservative thinkers, *shura* must be founded on the standard of the ultimate sovereignty of God and geared toward execution of traditional Islamic law (ibid. 294). However, freethinking views of democracy through *shura* have no place in the fourth school of Sunni jurisprudence.

Shafi'i's belief in *Hadith* (sayings and actions of Muhammad) was to be carried further by Ahmad Ibn Hanbal (d.855). Produced in ninth-century Baghdad, Hanbali's thought became the official *madhhab* of Arabia. Along with the *Qur'an* and *hadith*, legal opinions of the companions are acknowledged as basis for law. Also, *hadith* with weaker chains of transmission (*isnad*) are used when necessary. Ahmad Ibn Hanbal also encouraged the independent reasoning of *ijtihad* through study of the *Qur'an* and *hadith*. This line of thought is considered extremely conservative and religiously combative among the Sunni schools of law. His rejection of *ra'y* (free reasoning) and *qiyas* (analogical reasoning) make Hanbali ritualistically the most hard-line

and traditionalist Sunni school, yet it is regarded as most broadminded in commercial matters (ibid. 107-08).

While Christians and Jews of Europe were experiencing Enlightenment and Haskalah during the eighteenth century, a Hanbali scholar, Abd al-Wahhab (1703-1792), founded a movement of socio-moral reform in Arabia. While some religions were breaking with tradition through the Enlightenment, Wahhab sought to bring Islam back to its dogmatic origins. His proposal to reject medieval understanding of Islamic law and reassert the sovereignty of the *Qur'an* and *Hadith* was fueled by his sense of moral decline and political weakness in Islam. Wahhab was known for violent opposition to those against his version of traditional Islam. In 1747 C.E., Wahhab developed a partnership with Muhammad ibn Saud which served as the starting point for the consolidation of politics and religion in the contemporary kingdom of Saudi Arabia (Esposito 333). This elevated the Hanbali school to the influence and dominance it enjoys today: it is dominant in Saudi Arabia, the United Arab Emirates, and Qatar (“Hanbali”). Because the sources used in Hanbali’s line of thought are considered divinely inspired the school makes a claim of infallibility. Deviations are not generally accepted. Hanbali style thought is also a base of Islamism.

Islamism is a collection of ideologies that seek to implement *Shar'ia* law to its full extent. This means any secular form of government is unacceptable (“Islamism”). Several courses of Islamism can be found within the same society and they rarely cooperate. Nevertheless, they all push for return to the golden age of Islam enjoyed under the Abbasid dynasty (749-1258). Modern Islamists follow the pragmatism of Abbasid era Muslims by borrowing solutions from other cultures only when it comes to modern technology. Cultures and attitudes of non-Muslim societies are generally viewed negatively.

Many countries have seen minor level welfare institutions created in the name of Islamism. Developed in rural areas and poor urban communities, Muslims left out of the state system have received healthcare and unemployment support. Their success reflects the positive use of the obligatory charity *zakat*. Still, not all views of Islamism are respected across the globe.

Radical Islamists hope to bring old values back to all of Islam. The ideal structure in an Islamist *umma* (community) is a system of *shura* (consultation) (Warraq 44). In many Western societies Islamists have used the freedom of speech and assembly to define radical views. Many Islamists, such as al-Qaeda's al-Zawahiri, follow the Prophet's advice and request foreign leaders to accept and rule under Islamic law before waging war against them. With few democratic channels to pursue and minimal results, violence is sanctioned as a last resort (Bukhari, vol.4, book 56, no. 2941). However, over recent years hostility has seemed to become an inherent part of Islamism. Legitimate provocation for aggression need only be minimal if it exists at all. Any criticism of such actions is rejected with *sura* 9:29: "Fight against such of those... who do not forbid what God and his apostle have forbidden, and do not embrace the true faith, until they pay tribute out of hand or are utterly subdued." This worldwide phenomenon shows the use of revelation and tradition in a manner found unacceptable by many Muslims and non-Muslims alike.

Though the Hanbali school does not leave room for advancement, its influence continues to grow within modern Islam. As more and more Muslims drift towards Islamist ideals for various reasons, hard-line traditional thought grows as well. Despite the different levels of conservatism and liberalism within Sunni schools, they are all considered to uphold a commonality within the requirements of Islam. Shiites however, have a different understanding

of the creation of their laws.

In all three schools of Shiism the *imam* (role model) is the perfect leader. Zaydis are the smallest group and closest to the Sunnis as they do not consider *imams* being more than human. The Isma‘ilis have maintained a string of *imams* to the present. However, their focus of adoration is centered on the seventh of the line. The Imamis, or Twelvers, believe there were twelve legitimate *imams*. The last disappeared in 874 C.E. but remains alive and beyond the realm of human comprehension. The Imamis await his return (Denny 197).

These views have no room for *ijma*’ style consensus and can be seen as authoritarian where the Sunni versions of leadership can be looked upon as consensual. In both sects, power is handed down to the *qadi* (judge), who is an executor of justice concerning issues of religious law (Denny 193). All Shiite law schools use the *Qur’an* and *Sunna* as a basis for jurisprudence. However, unlike the Sunnis, no *hadith* is typically acknowledged unless related or transmitted by an *imam* descended from the Prophet. *Hadiths* of the companions are also accepted if they deal with the words and deeds of the Prophet and will not conflict with *hadith* of the Prophet’s household. The schools follow this basic pattern yet differentiate themselves from one another according to the division of Shiism they represent.

Due to the political situation *fiqh* (human attempt to understand divine law, according to Shiism, was not widely taught until the end of the Umayyad dynasty (749 C.E.). With Shiite jurisprudence focusing on the privilege of the *imam*, the method of allegorical interpretation known as *tawil* is used to verify legislation within the *Qur’an* (Esposito 316). This essentially says they “interpret the same *Qur’an* as the orthodox, while affirming that it does not represent the first version” (Khan 126). This view remains an influence among modern Shiites while they await the hidden *imam* to reveal the original transcript to the world.

Collectively the Shiites agree with Sunni beliefs concerning such traditional issues as apostasy and the standing of Muslim female testimony. Despite this unified belief, fourteen hundred years of demanding and producing complete submission to Allah has not stifled a growing call for rethinking among individuals and various schools of thought.

Chapter 3

Necessity, Creation, and Maintenance of *Shar'ia* Law

630 C.E. saw the relatively bloodless takeover of Mecca by Muhammad and Islam. Mecca and Medina had had a standing treaty of peace between them. The murder of a Medinan by a Meccan nullified the agreement. This gave the Prophet a reason to attack. A Medinan force of ten thousand warriors was met by Muhammad's father in law, Abu Sufyan, who approached to submit the people of Mecca. This surrender was accepted by the Prophet. Apart from a few dissidents, who were put to death, the majority of the population was allowed their freedom, provided they converted to Islam. Muhammad's first order of business was to destroy all pagan idols and rededicate the *Ka'ba* (House of God) to the monotheism of Abraham. The city was then considered Muslim and placed under an Islamic government (Denny 66).

Following this success the Prophet wished to secure the loyalty of the Bedouin tribes. The nomads had mixed feelings about their conversion. Despite their dislike of losing their regional freedom for the life of the *umma* (community), required by Islam, Muhammad was successful in bringing them into the fold (Denny 63).

In March, 632 C.E., Muhammad led the Medinans on his final pilgrimage (*hajj*) to Mecca. It was here he gave his last public sermon on a hill overlooking the sacred plain of 'Arafat. Quoting the *Qur'an* he stated "This day I have perfected my religion for you and completed my favor to you. I have chosen Islam to be your faith" (5:3). The unification of the heart of Arabia under Islam was absolute. It was now time for Muhammad to strengthen and enlarge his position.

In June, 632 C.E., while planning expansion, the Prophet of Islam fell ill (Denny 70).

Muhammad had received a brief revelation some months before this event that he considered to be the foretelling of his demise (Spencer, *Truth* 163). The Angel Jibril (Gabriel) said to him “When God’s help and victory come, and you see men embrace God’s faith in multitudes, give glory to your Lord and seek his pardon. He is ever disposed to mercy” (*Qur’an* 110:1-3). This prediction was accurate.

In June of that year the Prophet died in the arms of his favorite wife, Aisha. By this time much of Arabia was unified under the banner of Islam. Muhammad’s life ended with the success of his mission. However, this idea of unification did not hold throughout the land. Firm leadership was necessary to maintain the strength of the *umma*.

Muhammad left no male heir upon his death. Furthermore, he left no instructions for a successor or proper governance of the *umma*. In a hasty effort to maintain stability throughout the community, an inner circle of the Prophet’s companions elected Abu Bakr as the first *caliph* (successor to Muhammad) of the Islamic community (Esposito 49). Despite controversy, the majority of Muslims accepted this appointment.

This action defied the Arabian tradition of tribal leadership. Previously, a *shaykh* (leader) was elected by wide consensus as a first among equals. This agreement allowed tribal leaders to obtain a vote by consensus against decisions deemed unproductive. This course changing decision created a schism between the majority Sunni Muslims and the Shiite followers of Ali. Also, several Arab tribes chose to dissolve their relationship with Islam by breaching their treaties upon the death of the Prophet (Denny 72-73).

This situation of apostatizing tribes posed a problem for Abu Bakr. The clans outside the subjugated areas of Mecca and Medina had to be kept loyal to maintain legitimacy of the faith, military strength, and financially beneficial caravan contracts. This meant Yemen, Eastern

Arabia, and various distant tribes had to be re-incorporated (ibid. 73). Abu Bakr chose to bring the rebellious peoples to reconciliation through military force. These events became known as the “wars of apostasy” (*al-ridda*) (Bowker 816).

Not only did this drive reclaim the territories and followers lost after the Prophet’s death, it developed into the initial Muslim military occupations of the Near East. Abu Bakr’s brief *caliphate* (632-634) was mainly taken up by *al-ridda*. His political mechanism was a combination of tribal custom and reference of *Sunna* (example of Muhammad). The difficult task of maintaining loyalty of the increasing *umma* was approached with stern implementation of socio-religious rule. Moral imperatives and religious principles were found to be more persuasive with military moves than political interests alone (Ayoub 26).

The *umma* continued to expand rapidly after the death of Abu Bakr. The economic gains from the spoils of these conquests were enormous. By 640 C.E., the Byzantine army in Egypt had surrendered to the Muslim advance, ending their dominance of the area. The new control of Constantinople’s main agricultural producer further increased the wealth of the *umma*. ‘Umar, the second *caliph* (634-644) also realized the difficulty in sustaining a widespread and diverse population. The example of Abu Bakr forcefully augmenting an early version of *Shar’ia* law to maintain loyalty and harmony of non-Muslims was copied and expanded. This led to the “Covenant of ‘Umar.” Zoroastrians, Jews, and Christians were often the only accepted non-Islamic factions in Muslim controlled lands (Denny 74).

The Zoroastrian faith was of royal Persian creed. Though the belief declined after it lost its noble essence, believers remained unmolested. However, they were treated more unsympathetically than Jews and Christians (ibid. 75). Since the last two groups followed the faith of Abraham they received special status among conquered peoples (Spencer, *Religion* 167).

If the offer to accept Islam was refused, these monotheists were not forced to abandon their faiths. However, they were required to pay *jizya* (poll tax). The lives of the Zoroastrians and *Ahl al-Kitab* (People of the Book) depended on this tax. The increased revenue is believed to also be a factor in the lack of emphasis on conversion. Kings were informed “He who pays that [*jizya*] to God’s apostle has the guarantee of God and his apostle, and he who withholds it is the enemy of God and his apostle” (Ishaq 643).

Such situations were supported by Muhammad’s example. The kings of Himyar (Southern Arabia) informed him that they had adopted Islam and fought in the name of Allah against those who had not. The Prophet taught that Jews and Christians within their territories should be invited, but not coerced, to convert to Islam. This view was a strategic advantage for Muslim imperialist goals. By allowing religious minorities to practice their own faith there would be less likelihood of resistance. This not only increased revenues through *jizya*, it enhanced the Muslim effort to seize terrain (Manji 52-53). Polytheists, on the other hand, were offered conversion to Islam or death. The indigenous people of Egypt generally did not contest the Arab conquest as the rule of Islam seemed less tyrannical than Constantinople’s (Denny 74). This led to Arabian Muslim migration to Egypt.

Arab-Muslims quickly began to spread to the freshly conquered lands. They relocated in military garrisons and also became administrators and common settlers. The religious conversion of Egypt did take place but it was an ongoing process. There is no question that the young religion brought a new outline of monotheism to the area. Still, in a move to maintain harmony and profitability, ‘Umar continued to encourage the indigenous people to maintain many of their traditional ways. This scenario remains today as Egypt maintains a Coptic Christian minority (Denny 73-74).

‘Umar’s system for controlling the Muslim regimes during his reign was a success. A group of Muslim administrators, supported by an Islamic military presence, oversaw a fixed territory. The pre-Islamic residents were charged a tax for their land to support the local government as well as the greater Islamic cause of expansion (Kelsey 45-46). Nevertheless, as *Shar’ia* law developed, the benefits became reciprocal between the ruler and the ruled. Islamic law has been known to be used by the lower Muslim classes to shield them from infringement by the privileged. Local *muftis* (jurists) have been apt to speak out when confronted by a government wrong. Hearing the cry “We want shariah” was known throughout the Ottoman Empire when the people wanted ordinary justice from their leaders (Akyol).

Such protection could work for non-Muslim minorities as well. The early sixteenth-century Ottoman *sultan*, Selim the Grim, decided to forcefully convert his realm to Islam. This political move was obstructed by his top Islamic scholar who maintained municipal concerns. He defined the move as unlawful as it conflicted with tradition. This dissuaded the *sultan* and *dhimmis* (non-Muslim under protection of Muslim law) maintained their status (ibid.).

However, during the development of *Shar’ia* law under the early *caliphs*, supremacy of Islam was established within each territorial administration. The priority of Islamic values was the basis of legitimacy for the new political authority. Many natives converted to Islam. Along with conversion came religious instruction. Prayers and lessons were taught to the converts in the fashion developed within the Arabian Peninsula. This created a special group of Muslims known as *mawali*, from the Arabic word for master, *mawla*. These non-Arab Muslims were gradually assimilated into membership of the new organization and placed above non-converts (Denny 76).

The desire for Islamic purity spread with the newcomers. In early times the *Qur’an* was

the authority that regulated the deeds of Muslims. However, despite the fact that compilation of the *Hadith* (report of words and deeds of Muhammad) was centuries away, the *Sunna* (example of the Prophet) was intact via word of mouth. When the *Qur'an* was unclear on an issue, the history of the Prophet's words and actions was consulted. Questions of legal actions according to Islam were referred to local "learned ones" (*uluma*) (Kelsey 45). *Shar'ia* law began and has remained theocratic. There is no distinction between crime and sin as defined within Islam (Darwish, *Cruel* 5).

Doctrines that maintained the hierarchy of human value were already established in Arabia. Paying *jizya* (poll tax) and accepting protection of the Muslims placed that individual in a second class situation (*dhimmi* status). Along with guarantees of life and worship, restrictions and regulations of dress, occupation, and residence were often applied (Esposito 68). *Dhimmi*s were also (and still are) refused the right to construct new places of worship, express their faith, recruit, carry weapons, ride horses, or serve in the military. Also, it was mandatory for any *dhimmi* to treat all Muslims with deference and respect (Denny 74-75). Even more controversial was the absence of equality in jurisprudence between Muslims and non-Muslims as *Shar'ia* law developed during the Umayyad and Abbasid dynasties. Non-Muslims received harsher sentences than Muslims. Crimes against Muslims were treated more seriously than crimes against others. Also, the testimony of a *dhimmi* was less influential than that of a Muslim ("Non-Muslim").

With the backing of divine revelation which told Arabian Muslims "You are the noblest community ever raised up for mankind" (*Qur'an* 3:110), the chain of command within Islam stood as follows: At the apex was the free Arabian Muslim male, followed by non-Arabian Muslim males and Muslim male slaves. Then were free Muslim females ahead of Muslim slave

women. This was followed by free Christian and Jewish men above free Christian and Jewish women. The lowest of the “People of the Book” were Christian and Jewish slaves with males higher than females (Spencer, *Religion* 167). This elevation of the male over female was an Arabian institution far before the advent of Islam.

As noted in chapter 1, women were considered naturally weak and dependent on men for survival. The limitations and low value placed upon a woman are supported in the *Qur’an* by “Yet when the birth of a girl is announced to any of them his countenance darkens and he is filled with gloom” (43:18). Such shame in the birth of a female is further outlined with the tradition of burying the unwanted infant alive: “On account of the bad news he hides himself from men: should he put up with the shame or bury her in the earth?” (*Qur’an* 16:59). These old tribal characteristics were officially eliminated by Islam. Males and females who “accept the true faith” hold equal status before God (*Qur’an* 33:35).

As a man’s honor was often judged by his control of the women within his family, strictness was the norm. The extent of this control, to the alarm of western ways of thought, is expressed in the *Qur’an*:

Men have authority over women because God has made one superior to the other, and because they spend their wealth to maintain them. Good women are obedient... As for those from whom you fear disobedience, admonish them, forsake them in beds apart, and beat them. Then if they obey you, take no further action against them (4:34).

Modern author Nonie Darwish, a Muslim female who lived under the harsh conditions of *Shar’ia* law in Egypt for thirty years, describes how the Islamic treatment of women came to be in her publication *Cruel and Usual Punishment*. Because women were long looked upon in the Arabian tradition as a form of chattel, a prized spoil of war, and given as a gift to successful warriors as brides from within the clan, the entire well being of the female rested in the objectives of the male (8-10). This traditional way of thinking transferred into Islam and can be

found in both the *Qur'an* and *hadith*. Several issues of the treatment of women within Islam have been hotbed topics both within and outside the faith. The stance of male superiority is perhaps most powerfully confirmed in a woman's legal status within the *umma*.

When discussing a general contract of debt, the *Qur'an* states that if a person is unable to dictate a written agreement himself for whatever reason, "Call in two male witnesses from among you, but if two men cannot be found, then one man and two women whom you judge fit to act as witnesses; so that if either of them make an error, the other will remind her" (2:282). The difference of value of a female versus a male is seen in other aspects of the faith as well.

Reliance of the Traveller by Ahmad ibn Naqib al-Misri is a classic manual of *Shar'ia* law according to Sunni *fiqh* (human attempt to understand divine law). The detailed work is considered a living reference and often referred to by Sunni Muslims. Al-Misri verifies that blood money damages from the death of a woman is worth half that of a man (o4.9). Some Muslim legal philosophers have curtailed female testimony even further to where they can only bear witness in "cases involving property, or transactions dealing with property, such as sales" (ibid. o24.8). In this case, only a male can legally testify on any other issue. This includes the female's inability to witness in a case of her own rape.

Despite being considered archaic by many in modern society, the legal status of women is maintained in *hadith*. Muhammad makes their second class status evident in his words. A saying of the Prophet declares:

Once Allah's Apostle went out to the Musalla (to offer prayer)... Then he passed by the women and said, "O women! Give alms, as I have seen that the majority of the dwellers of Hell-fire were you (women)." They asked, "Why is it so, O Allah's Apostle?" He replied, "You curse frequently and are ungrateful to your husbands. I have not seen anyone more deficient in intelligence and religion than you. A cautious sensible man could be led astray by some of you." The women asked, "O Allah's Apostle! What is deficient in our intelligence and religion?" He said, "Is not the evidence of two women equal to the witness of one man?" They replied the affirmative. He said, "This is the deficiency in her intelligence. Isn't it true that a woman may neither pray nor fast during her menses?" The women applied in the affirmative. He said, "This is the deficiency in her religion" (Bukhari, vol. 1, bk. 6, no. 301).

While all women of faiths of Abraham were demeaned by Islam, both male and female members of beliefs considered pagan were often treated worse.

The ninth *sura* of the *Qur'an*, titled “Repentance” but nicknamed “The Verse of the Sword,” summarizes the eternal and temporal fate of the idolater with: “God and his apostle are under no obligation to the idolaters. If you repent [accept Islam], it shall be well with you; but if you pay no heed, know that you shall not be immune from God’s judgment” (9:3). On earth, Muhammad held truces with surrounding non-Muslim tribes such as “The Treaty of Hudaibiyya” described in the *Sira* (Ishaq 504). The *Qur'an* commanded taking into consideration pagans that hold agreements with Islam: “keep faith, until their treaties have run their term. When the sacred months are over slay the idolaters wherever you may find them” (9:4-5). It should be noted that this was not always the case. Before Muhammad moved from Mecca to Medina and gained power, he showed more tolerance to other faiths. With the later Muslim invasion of Hindu India, the vast population and economic benefits led the intruders to concentrate on the revelation:

“Say: Unbelievers, I do not worship what you worship, nor do you worship what I worship. I shall never worship what you worship, nor will you ever worship what I worship. You have your own religion, and I have mine” (*Qur'an* 9:1-6).

Nonetheless, the dogmatic view of the primacy of Islam remains fundamental in many Islamic cultures. In countries such as Saudi Arabia and Iran, where *Shar'ia* law is inclusively enforced, the inequality of Muslims and non-Muslims is rampant. An example is the assertion of Iran’s United Nations delegate, Sa’id Raja’i-Khorassani in 1985: “the very perception of human rights was a Judeo-Christian invention and inadmissible in Islam” (in Spencer, *Religion* 167). Another comes from Sheikh Sultanhussein Tabandeh, an Iranian Sufi leader. In his 1970 book *A Muslim Commentary on the Universal Declaration of Human Rights*, he argued for the death penalty if a Muslim is killed. However, he argues against this if the murderer is a Muslim and

the victim non-Muslim:

“Since Islam regards non-Muslims as on a lower level of belief and conviction, if a Muslim kills a non-Muslim... then his punishment must not be the retaliatory death, since the faith and conviction he possesses is loftier than that of the man slain. A fine may only be exacted of him” (18).

Such beliefs made remaining a Muslim of the utmost importance. This was made apparent through the *Qur'an*. The eternal penalty for apostasy from Islam is outlined with such declarations as: “whoever of you recants and dies an unbeliever, his works shall come to nothing in this world and the world to come. Such men shall be the tenants of the Fire” (2:217).

Temporal judgment for leaving the faith once converted is stated thus: “But if, after coming to terms with you, they break their oaths, and revile your faith, make war on the leaders of unbelief... (9:12) and “if they desert you, seize them and put them to death wherever you may find them” (4:88). Such judgment legitimized Abu Bakr’s *al-ridda* (wars of apostasy).

Many Islamist apologists argue that apostasy is not directly addressed in the *Qur'an* and therefore the death penalty for the crime is not ingrained in Islamic law. However, John L. Esposito, editor of *The Oxford Dictionary of Islam*, explains that though the Arabic terms (*ridda*, *irtidad*) are not used in the *Qur'an*, it promises “dire consequences... for those who disbelieve after having believed (3:8; 5:61; 9:66; 4:137; 16:106).” It is the tradition of the *hadith* that makes the draconian punishment universal within the faith.

Esposito goes on to define apostasy and its punishments:

Hadith reports introduce the teaching that renunciation of Islam is punishable by beheading, burning, crucifixion, or banishment. Some traditions allow an apostate to repent. Islamic legal codes agree on the death penalty (usually by the sword) for an adult male usually in possession of his faculties who has renounced Islam voluntarily. Thus apostasy was included among the crimes for which there were punishments believed to be divinely mandated (22).

This position stretches back to the teachings of the Prophet. These lessons were retained by the *uluma* (learned ones) through the *Sunna* (example). Made a principle of law, it was later recorded as a sound tradition in *hadith*. Muhammad is quoted as simply saying “Whoever

changed his Islamic religion, then kill him” (Bukhari, vol. 9, bk. 84, no. 57). This statement solidified the justice in killing an apostate. The act is considered “a punishment fixed in the Quran and hadith for crimes to be considered against the rights of God” or *hadd* (Esposito 101). Such an example shows the importance of the memory of Muhammad in the history of Islamic law and current Muslim behavior patterns. This fact can be verified within the *Qur'an*, “You shall not kill any man whom God has forbidden you to kill, except for a just cause” (17:32). These harsh penalties come with solid references.

Chapter 4

Muslim Criticism of Sources and *Shar'ia* Law

Ibn Warraq is an apostatized Muslim who openly speaks against several aspects of the faith, including *Shar'ia* law. For this reason he keeps his true identity secret. He does however admit to growing up in a now Islamic republic and his first memories are circumcision and being forced to learn the *Qur'an* in Arabic, a language he still does not understand. Currently he denounces all organized religions but focuses his self-described amateur evaluations on Islam.

Warraq has attacked sources used to justify developed laws within the faith. He has openly criticized the earliest biography of Muhammad's life which came from Ibn Ishaq in 750 C.E. With 120 years passing after the Prophet's death before the *Sira* (biography) was compiled, he considers accuracy unlikely. Also, the authenticity of the history is further marred by Ishaq's original works having been lost and copies only being available through Ibn Hisham (d.834) who passed away 202 years after Muhammad. Warraq has acknowledged the importance of *hadith* (recordings of the Prophet's example) within Islamic law. He has noted the efforts made to preserve the trail of authenticity through the chain of transmission (*isnad*) (Warraq 66-67). Nevertheless, he has found holes in these efforts as well.

The basis for Warraq's criticism of *isnad* is the late nineteenth-century examination by Wellhausen, Caetani, and Lammens. It was widely believed that many of these traditions originated from party motives and were developed to provide historical basis for clan interests. Proof of this was believed to have been found when Wellhausen brought "one after another of the data of Muslim tradition into question" (in Warraq 68).

The core of these discoveries came when Wellhausen divided traditions as found in the

ninth and tenth centuries into two categories. One he found authentic and primitive (ibid.). He also found a second corresponding version written by such authors as Sayf b. Umar, who was considered “eminently reliable” concerning Muslim history (“Sayf”). This second version was found to be purposely falsified in order to challenge the original. Warraq’s criticism goes on to state that biographers were far too removed from Muhammad’s time to have legitimacy. It seems, in Warraq’s eyes, the writers’ goal was not to accurately portray things as they occurred, but rather an ideal view of how things should have been (Warraq 68). Such inadequacies lead one to question the truthfulness of portions of the *Hadith*. This is a serious claim as *nass* sayings by Muhammad have been considered partially divine and extremely influential in the creation of Islamic law (Mumisma 110).

Warraq has gone on to attack the character of the Prophet himself. Many Muslim laws and traditions were molded after a single man who Warraq has found less than pious. Warraq’s judgment of this “split” character is nothing new. Sir William Muir’s four volume *Life of Mahomet* (1856-61) inspired Warraq. Muir, an Englishman who spent 1837-1876 as an administrator in India, wrote extensively about the history of pre-Islamic Arabia, Muhammad, and Islam (Arbuthnot). His examination detailed the Prophet’s magnanimity as well as his savagery. Both men have divided Muhammad’s life into two sections, Meccan and Medinan (Warraq 86-87).

During Meccan times Muhammad was inspired by religious motivation and sought truth. It is within the period of Medina that the Prophet began to reveal messages from heaven that justified his conduct in a new position as a political, as well as religious, leader. Suddenly battles that were fought, raids being reinstated, lands forcefully annexed, and various executions were all sanctioned by Allah for the good of the *umma*.

The *Sira* (biography) shows the timeframe it took Muhammad to use divine validation for his actions as he became a political and spiritual leader. According to tribal tradition the companion Abdullah had taken a caravan and presented the booty to the Prophet. Not only had revelation made plunder justifiable in Islam, Allah and his Prophet was to receive one-fifth of all goods acquired. Within eighteen months of the *Hijra* to Medina, the Muslims had captured their first spoils of war, taken their first prisoners, and killed their first man, all in the name of Allah (*Sirat*, ch.12, para. 9-10). Also interesting and widely noted is the revelations of self-justification the Prophet received. Known as *khassah al-nabi*, these divine laws were specifically for the Prophet's advanced welfare (Esposito 171, 225).

According to the *Qur'an* Muslim men were allowed no more than four wives (4:3). However, the Prophet of God had no limit (*Qur'an* 33:50-51). Also, justification of his affair with Mary the Coptic bond maid is found in *sura* 66:1. In addition, there was the divinely sanctioned marriage to his daughter in law (*Qur'an* 33:37), which was considered incest by Arabian tradition (Warraq 87). Warraq continued by describing the Prophet and author of *Shar'ia* law as "cruel, sly, dishonest, and untrustworthy in Medinan times; he was a bad man who demanded total obedience with a guiding principal that the ends justify the means" (ibid. 89). Muhammad's special treatment also increased, by divine favor, to his inner circle.

While returning from a raid on B. al-Mustaliq, Muhammad's wife Aisha was separated from the caravan and returned by a faithful male Muslim, Safwan b. al-Mu'attal (Dawood 246). This event brought slander against Aisha and her fidelity. The episode ended with a revelation favorable to Aisha received by the Prophet: "Those that defame honorable women and cannot produce four witnesses shall be given eighty lashes" (*Qur'an* 24:5). The revelation went on to directly address Aisha's accusers: "Those who concocted that slander were a band of your own

people” (24:11). This good fortune for Aisha has had a reverse effect for Muslim women under *Shar'ia* law. For a female to prove herself innocent of sexual misconduct she must produce four male witnesses on her behalf.

In Aisha's case her innocence was immediate as the two accused were alone and no witnesses could possibly come forward. Sadly, it is often the case that a female victim of sexual assault is tried for infidelity after the fact, due to a lack of male witnesses. On the other hand: “If a man accuses his wife but has no witnesses except himself, he shall swear four times by God that his charge is true, calling down upon himself the curse of God if he is lying” (*Qur'an* 24:6). For the believer this is serious. For others, such one sided legal lines of reasoning can be considered irrational.

Ibn Warraq also rebuked the divine authenticity of the *Qur'an*. Some believe that companion of the Prophet and *Qur'an* authority Ibn Masud rejected the opening prayer, or *Fatihah*. Masud claimed these are Muhammad's words to God asking for guidance and not a passage from God himself. Masud was also said to reject *suras* 113 and 114. He had understood the use of the words “I take refuge in the Lord” as not being the words of God. These are roots for Warraq's argument. Warraq pointed out additional contradictory statements too numerous to cover here. However, all his criticisms claimed Muhammad “The Lawgiver” was “an opportunist preacher and politician” over a “systematic theologian” (Warraq 106). Such a narcissistic attitude and the power to create doctrine could explain the violation of basic human rights in the self-preservation of the Prophet.

Ishrad Manji is a critic of Islamic law. The Toronto journalist, lecturer, and human rights advocate continuously speaks out against human rights violations within Islam hidden under the name of God. Her 2003 publication, *The Trouble with Islam Today*, has won her several awards.

Such honors include the Simon Weisenthal Award for Valor as well as the Chutzpah Award, given by Oprah Winfrey, for “audacity, nerve, boldness, and conviction” (Manji jacket).

Manji is an admitted lesbian who, notwithstanding, claims to remain loyal to Islam. Homosexuality is condemned within the *Qur'an* in *suras* 4:16 with “If two men among you commit a lewd act, punish them both.” This is followed by 27:55, a description of Lot saying “Do you commit lewdness with your eyes open, lustfully seeking men instead of women? Surely you are an ignorant people.”

Manji has used her knowledge of Islam and the *Qur'an* to forward her core focus of women’s rights within the faith. She has often quoted *sura* 4:135 in defense of her position: “Believers, conduct yourself with justice and bear true witness before God, even though it be against yourselves, your parents, or your kinfolk.” Such a call to the defense of the faith is an appeal to justice for the human rights of all persons affected by Islam and to bring harmony to the *umma* as well as its neighbors.

Manji’s goal is to erase the duplicity found within Islam. Her key example of the role of women being oppressed can be traced back to the comments of Aisha when she claimed: “I have not seen any woman suffering as much as the believing women” (Bukhari, vol. 7, bk. 77, no. 5825). Manji’s “Operation *Ijtihad*” has focused on supporting female Muslim entrepreneurs. She has based this effort on history which shows the good relations created by trade between Muslims, Jews, and Christians. She also has noted the *Qur'an* has no prohibition of women becoming business people (Manji 158-59). This is evident as Muhammad’s first wife, Khadija, was owner of a caravan (Denny 50). Still, her argument for liberal reformation within Islam has shown potential for wider acceptance of *Shar'ia* law in the global community.

Manji discovered the term *ijtihad* in her post Islamic school (*madrassa*) readings.

Discovering this idea of independent reasoning sparked Manji's interest in the legitimacy of individual rationalization. After analyzing her impression of the mandatory necessity of thorough knowledge of theology, revealed texts, and *usul al-fiqh* (roots of law) to interpret the *Qur'an*, she began to question authority (Manji 50).

She came to the conclusion that the *Qur'an* does not recognize a formal clergy. She has also decided that the wild mood swings of the *Qur'an* make any interpretations of the writings selective and prejudiced. She has considered several *suras* to be self-preservation interests of the Prophet as well. By appropriating the right of interpretation to them, Manji has called the follow-my-fatwa (authoritative legal opinion) ayatollahs the real heretics.

Manji has fought for the official return of the character of inquiry that enlivened intellectual Islam's golden age during the Abbasid dynasty (ibid. 51). The encroachment of the West on Muslim territories is often the scapegoat for issues ranging from disunity of the *umma* to the terrorist attacks by radical Islamists in contemporary times. However, she continues to see Muslims themselves as being at fault for various regressions resulting from the freezing of legal debate within the faith (ibid. 59).

With the right of legal debate limited to the *muftis* (jurist) the representation of Islamic ideals within *Shar'ia* law is compromised. The greater part of *Shar'ia* law is the legal outlook of classical jurists who imitate each other. Legal reference manuals of *fatwas* are maintained for the less creative or able *muftis* of today. Manji has asked if a jurist is considered unable to reach his own conclusions, why the privilege of inquiry is denied the average Muslim. Also, if the jurist is not up to the task, how can the average Muslim "inquire?"

By Islam's disallowing trailblazing in legal thought, Manji has argued that regressions remain inevitable through reversions to past verdicts. For women, the consequences of retaining

this thousand-year old approach are the preservation of their subjugation. She has seen the lack of social advancement for Muslim women and free religious thinkers as being caused by the restriction of interpretation by Muslims themselves (ibid. 60).

Nonie Darwish spent the first thirty years of her life in Egypt. As a female Muslim she described her life as “a bird in a cage; a second-class citizen who had to watch what I said even to my closest friends.” She claimed under her gender-segregated environment there loomed the constant awareness that the legal and social penalty for “sin” could end her life. No matter how harshly or unjustly women were treated they were programmed to view it as God’s will and Allah’s law. To openly doubt any remark from the *Qur’an* or *Hadith* is considered *haram*, a sin. Death awaited those who questioned Allah’s law (Darwish, *Cruel* ix).

Darwish moved to the United States in 1978, in order to escape Islamic marriage laws which forbade her to wed an Egyptian Coptic Christian. After the terror attacks on the United States on September 11th, 2001, she was moved to speak out against the Muslim *Shar’ia* goals against freedom she had silently watched gain momentum. She sees the finest gift America has given her is to be free from the “most oppressive system of laws in the world.” She has feared not terror attacks from the outside, but attack on democracy from within (ibid. x-xi).

Darwish believes that many Muslims are convinced that Islam is not sustainable without the draconian punishments of *Shar’ia* law. This view drastically hampers support of the issue of modernity. Islam and *Shar’ia* law have been intertwined ever since it was necessary for Muhammad to enforce his faith through force. According to Darwish, this necessity continues in order to preserve the seventh-century Arabian traditions, culture, and politics.

The Muslim leaders who have kept their cultures detached from modernity see a fundamental danger in a new threat to their preserved ways. No longer do Jewish tribes or

foreign religions migrating from the East and West pose a danger. Today such things as satellite television, the internet, and commercial travel have allowed ideas such as those of various schools of Islam, democracy, loose sexual conduct, and other religions to infiltrate Muslim thought. The keepers of the Islamic faith have been quick to accept Western technology but reject the culture that produced it.

Darwish has seen the simple existence of democratic values coming from the West as a menace to the Islamists and their human rights violating seventh-century Arabian mindset. Their view is that bringing harsh *Shar'ia* law to the rest of the world will preserve and elevate Islam through absolute triumph, a victory that will be maintained through oppression and fear. The early covenant breaching that led to Abu Bakr's *al-ridda* define Islam's response to apostasy. Darwish believes if it was not for the harsh blasphemy laws and death sentences for apostasy, Islam would not have united the Arabs. Instead it would be among the forgotten religious movements in history (ibid. 253-254).

Chapter 5

The Universal Declaration of Human Rights

In 1948, in the wake of the world's most devastating war that witnessed some of the most barbaric crimes in history, the United Nations General Assembly approved *The Universal Declaration of Human Rights*. This safeguard against discrimination and oppression was the first international recognition of the rights and freedoms of the individual. Never before had these fundamental freedoms been outlined in detail for every person without variation. This attitude is firmly entrenched within Article 2:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self governing or under any other limitation of sovereignty (Johnson 12).

A shared vision of a universal just society based on impartiality was organized by representatives from different regions of the world. The eight member drafting committee was chaired by Eleanor Roosevelt, human rights activist and widow of the former United States president. The group consisted of representatives of France, Lebanon, China, Chile, the Soviet Union, the United Kingdom, Australia, and Canada ("Human Rights").

As a result, multiple religious and cultural backgrounds in various stages of industrial and economic maturity were reflected in this visualization of common values. The representation widened as the draft was revised. Member states responded to multiple revisions before the document was submitted to the General Assembly. At the time of the composition of the UDHR thirty-seven member states of the U.N. were of Judeo-Christian origin, eleven Muslim, six Marxist, and Four Buddhist (Morsink 21).

The document covered multiple aspects of general rights. Such issues as recognition

before the law, security of person, and the right to life and liberty are among them. Other concerns such as the right to leave any country, to have a nationality, and equal access to public service were addressed. The topic of right to work, equal pay, and rest and leisure were also discussed. The majority of articles outlined rights of the individual as they should be granted. Still, some issues were restricted in a direct manner. Slavery and servitude were specifically banned, as were subjection to torture and cruel or degrading treatment, and the interference of privacy, home, and family (Johnson 11-15).

After presentation for ratification, the document was dissected and inspected, with the General Assembly voting a total of fourteen hundred times on every aspect of the text (“U.N. Priority”). Several disputes by various states were addressed during this period. Such differences of opinion raised the question if there is such a thing as universal values. Disagreements ranged from economic, to social, political, and religious issues.

Certain communist nations led by the USSR argued against human rights being conceived outside the state. Nevertheless, it was the Marxist push for nondiscrimination that left a communist mark on the final document. Vladimir Koretsky, the Soviet delegate, argued the principle of nondiscrimination should be used as “a moral judgment of which the performance of nations could be legitimately measured.” His case against the treatment of Indians in South Africa, blacks in the United States, and women in all areas of life rallied the representatives to include “the right to be protected against incitement to discrimination” in Article 7. However, the Soviet delegation also attempted to add the word “class” in defining a citizen, an attempt to implement their view of social hierarchy. The Soviet text was amended to “birth” as an apposite rendition (Wronka 98).

The USSR had such strong feelings against the document limiting the sovereignty of the

state that they abstained from voting on its adoption. The *United Nations Yearbook Summary* explains the situation:

The representative of the USSR considered that the draft Declaration did not satisfy three conditions which were, in the opinion of the USSR delegation, indispensable to the completion of the Declaration, namely: a guarantee for basic freedoms for all, with due regard to the national sovereignty of States; a guarantee that human rights could be exercised with due regard to the particular economic, social and national circumstances prevailing in each country; and a definition of the duties of citizens to their country, their people and their State. He regretted that fascism was nowhere condemned in the draft. He declared that the rights specified in the draft were illusory as they lacked effective guarantees (Chapter V).

The representatives of the Byelorussian SSR and the Ukrainian SSR noted similar objections.

The Marxists were also opposed to Western liberals concerning economic rights.

Financial access and security, such as a right to work, were considered requirements for efficient gratification in civil and political rights (Johnson 43). The Soviet Union viewed the situation of human rights as the social and economic rights for the masses (Wronka 97). The West, led by the United States and the United Kingdom, wished to focus on such personal rights as freedom of thought, speech, religion, and property (ibid. 93). Where economic guarantees, such as assuring employment, can come with a price tag, Western supported personal rights were free of charge.

Several countries registered their disagreement over the *Declaration* arguing that it countered their cultural heritage. In the forefront of non-Muslim countries doing so was South Africa. Their representative claimed that the document should only refer to certain essential rights that were recognized all over the world. It was argued that human dignity would not be hampered if a person was not allowed to reside in a particular area. (“U.N. Yearbook”).

Privileges excluded would also consist of direct participation in government. This right was not seen as universal. Instead it was believed that representatives should be formed by nationality and qualifications concerning the charter (Johnson 49). The South African delegation felt the document offered a hypothesis that would “destroy the whole basis of the multi-racial structure

of the Union of South Africa” (Wronka 98). In addition to racial issues, there was another subject that knew no borders.

A suggestion for a specific article for women’s rights was debated and rejected. The all inclusive clause “everyone” in Article 2 was deemed sufficient. The post-war period regarded the preservation of women’s rights as putting them on an equal playing field with men (Johnson 61). It was the issue of marriage that upset the Islamic states.

Led by Saudi Arabia, the Muslim states claimed that marriage composed a social contract as defined by *Shar’ia* law. Without female representation on the issue, it was claimed this process had been successful for some fourteen-hundred years. The success of the detail covered in Islamic law towards marriage was summed up in two arguments. First, a Muslim woman could: “own, inherit, and dispose of property,” without her husband’s consent. Also, in the event of a divorce, the female would be granted an amount of funds to which the husband had consented before the wedding event (ibid. 52). This was seen as a precursor to the contemporary pre-nuptial agreement. The fact that Muslim women cannot marry non-Muslim men was never addressed. This is a serious infraction of Article 16 where “men and women of full age” can marry without limitations of such issues as religion (ibid. 14).

The Saudis claimed the article only considered the westernized version of marriage (Wronka 104). Such traditions were often in conflict with the cultures of Eastern states. However, this does not mean that the *Declaration* contradicted such traditions, despite not conforming to them. Still, the Saudis believed this ignored the ancient institutions that had proven themselves over the ages and were beyond the experimental stage. Also raised was the issue that marriage laws were not parallel across the globe. The Prophet Muhammad: “married Aisha when she was a girl of six years of age, and he consumed [consummated] that marriage

when she was nine years old” (Bukhari, vol. 5, bk. 63, no. 3896; vol. 7, bk. 67, no. 5158).

Timelines suggest Muhammad to have been fifty-two years old at the time (Dawood 7). Because of this religiously sanctioned tradition, clearly defined as pedophilia in many parts of the world, Muslims unsuccessfully argued that the wording to be changed to “legal matrimonial age” (Wronka 104). Despite this setback for Islamic states, progress continued.

December 10, 1948, saw the unanimous acceptance of the UDHR. This milestone outlined one of the primary functions of the United Nations, to sponsor global adherence and respect for human rights. The acceptance of the document received much fanfare, including from the members of the Organization of The Islamic Conference (OIC) such as Pakistan. Their representative noted that “it was imperative that the peoples of the world should recognize the existence of a code of civilized behavior which would apply not only in international relations but also in domestic affairs” (U.N. Yearbook).

Lebanon, also a current OIC Member State, pointed out the fact that eighteen articles of the UDHR had been approved with zero opposition. Out of the individual 1,233 final votes, 3.73 percent had been negative, 88.08 percent positive, and 8.19 percent abstentions. This overwhelming acceptance of the document gave it all the more authority as it was presented to the world. The accepted work did not portray any specific point of view of one people or any single group of people. The representative of Chile noted “fifty-eight civilized nations had succeeded in overcoming ideological differences, and had agreed on a joint proclamation of human rights.” The representative of France emphasized “it was impossible to attain complete agreement on doctrine,” nevertheless “an agreement based on the practical as well as the ideal had been achieved” (ibid.). Such praise resonated throughout the signatory states.

It is important to reiterate that no country voted against the document as a whole.

However, eight countries abstained from signing the *Declaration*. The largest, a communist bloc led by the USSR, also included Belorussia, Czechoslovakia, Poland, Ukraine, and Yugoslavia (Morsink 21). South Africa refused to endorse the UDHR as well.

The only Muslim state withholding a vote was Saudi Arabia. Islamic countries that signed the document included Afghanistan, Egypt, Iran, Iraq, Pakistan, Syria, and Turkey (“U.N. Yearbook”). The *Declaration* did not contain any obligation as would a treaty (Morsink xii). Still, the conservatively religious Saudi government could not look past the tradition of *Shar’ia* law, the rules to which they had adhered for fourteen centuries.

Aside from women’s rights and marital issues, the observance of the right to change one’s religion was a major concern with Muslim countries. This is firmly outlined in Article 18 of the *Declaration*:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in a community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance (Johnson 14).

This clearly gives the right of an individual to apostatize from any religious faith. The article was noted by the Saudi delegate as “an infringement upon the cultural principals of Islamic States” (ibid. 52-53). Several amendments to remove this stipulation were defeated by a significant majority. This matter was seen as so momentous to the Saudis’ Wahabbist view that they choose to withhold their vote rather than publicly sanction apostasy from Islam.

As noted in Chapter 2, the validity of female testimony in a *Shar’ia* court is fifty-percent of that of the Muslim male. The right to equality and full respect before the law is covered by more than one article in the UDHR. Legal and equal rights between men and women were outlined in the Preamble with recognition of “equal and inalienable rights of the human family.” This was immediately followed by “All human beings are born free and equal in dignity and rights” within Article 1. Article 6 stated “Everyone has the right to recognition everywhere as a

person before the law.” Article 7 reinforced this with the western expression “All are equal before the law and are entitled without any discrimination to equal protection of the law” (Johnson 12-13).

Despite pro-*Shar'ia* arguments, Islamic tradition and religious law can be seen to be in opposition to various issues included in the *Universal Declaration of Human Rights*. This can be found in scripture, tradition, contemporary international guidelines, as well as pro and con arguments by Muslims and non-Muslims alike.

Some critics also take issue with how the West has disregarded the UDHR in the past. The Document is a statement of ideals that is not always adhered to by democracies. When sovereignty and nationalism are interfered with, the statement of ideals in the *Declaration* tends to be ignored. A recent example would be the invasion of Iraq led by the United States. Multiple human rights violations cited by opponents of the war show how democratic powers also shun portions of the UDHR.

Chapter 6

Islamic Declarations of Human Rights Cairo Declaration of Human Rights in Islam

There are admissions by the Muslim community that *Shar'ia* law can be incompatible with the *Universal Declaration of Human Rights*. One comes in the form of public statements denouncing the *Declaration*. Another is the creation of additional *Declarations* in an effort to offset the inclusive view of the United Nations.

Iran was one of the seven Islamic countries signing the 1948 UDHR. Within two years after the 1979 Iranian revolution the new theocratic government made its stand on the Document clear. This came at the thirty-sixth U.N. General Assembly session. As noted in Chapter 3, their representative, Raja'I-Khorassani, claimed the document symbolized human rights in the Judeo-Christian tradition. The delegate also declared the statute conflicted with Islamic law to such a degree that it could not be implemented by Muslims. Given a choice between the provisions of the UDHR and the divine law of Iran, the latter would always be chosen. A general view of the attitude of several Islamic states towards the UDHR was already in the works for publication in 1981.

Iran's statement coincided with the presentation of the *Universal Islamic Declaration of Human Rights* (UIDHR) to the United Nations in 1981. This was supported by representatives of such countries as Algeria, Mauretania, Pakistan, and Saudi Arabia. The document was prepared by the London based Islamic Council in partnership with the international non-governmental Muslim World League (Spencer, *Myth* 322-323). Though it received accolades throughout the Muslim world, it did not impress the global community. However, this first official political statement of Islam's social superiority over certain Western ideas was applauded

by Muslims. By the mid-1980s a regular feeling of opposition to the U.N. human rights agenda was established by Islamic leaders.

Additional issues concerned the substance of the UIDHR itself and the quality of translation from Arabic to English versions. Professor Ann Elizabeth Mayer holds a Ph.D. in Middle Eastern History, a Certificate in Islamic and Comparative Law, and a M.A. in Near Eastern Languages and Literatures (Arabic and Persian). Her writings cover topics of Islamic law in contemporary legal systems, comparative and international law, as well as the difficulties of incorporating international human rights law in domestic legal systems (“Ann”). Her well respected analysis is given in her detailed publication *Islam and Human Rights*. She states “In a casual reading, the English version of the UIDHR seems to be closely modeled after the UDHR, but upon closer examination many of the similarities turn out to be misleading. In addition, the English version diverges from the Arabic version at many points” (27). Within a decade, the Muslim community would come out with a more powerful and straight forward version of human rights in Islam.

On August 5, 1990, the *Cairo Declaration of Human Rights in Islam* (CDHRI) was adopted by the foreign ministers of the forty-five member Organization of the Islamic Conference (Spencer, *Myth* 324). Established in September, 1969, the OIC is the second largest inter-governmental organization after the United Nations (“About OIC”). The current fifty-seven member states include the eight Islamic countries involved with the UDHR in 1948 (“Member States”).

The UN has accepted the OIC in a spirit of consultation and cooperation. The group also emphasizes among other issues “the promotion of human rights in the Muslim world, especially with regard to the rights of children, women and elderly and the family values enshrined by

Islam.” In order to realize these objectives: “Member States shall uphold and promote... human rights and fundamental freedoms, and the rule of law” (“About OIC”). Both of these statements in the OIC charter assert that these rights are based on Islamic understanding and consist of those rights accepted by Islam. However, the CDHRI is much more assertive on the issue of adherence to *Shar’ia* law, and an early forewarning of negative implications came from within the Muslim community itself.

Adama Dieng, a well-known Senegalese lawmaker, was the Muslim secretary general for the Geneva based International Commission of Jurists. Dieng identified what he saw as “dangers of the CDHRI.” This was detailed in a press release and a joint statement to the U.N. Commission on Human Rights. Addressing the Commission in 1992, his announcement included, among other issues:

It gravely threatens the intercultural consensus on which the international human rights instruments are based;
It introduces, in the name of the defense of human rights, an intolerable discrimination against both non-Muslims and women;
It confirms, under cover of the Islamic Sharia, the legitimacy of practices, such as corporal punishment, which attack the integrity and dignity of the human being (in Spencer, *Myth* 324-325).

This claimed that the contents of the CDHRI were actually a restriction on fundamental rights and brought this into global view.

In order to promote acceptance of the CDHRI, the Islamic community portrayed the Document as a gracious addition to the UDHR. It is considered a general guideline in the discipline of human rights for OIC Member States. When human rights are mentioned in the OIC Document, it makes a condition that those rights must be put into effect in accordance with *Shar’ia* law. This seeks to discredit the argument that individual rights are restricted by radical Islam, and shows these rights to be in accordance with tradition.

The use of the death penalty concerning apostasy is covered and disguised early in the CDHRI within Article 2. The right to life is acknowledged and followed by the reminder that:

“it is prohibited to take away life except for a Shari’ah prescribed reason” (*Cairo*). As explained by John Esposito, all major schools of Islamic jurisprudence accept capital punishment for leaving the faith (101).

The reasoning behind this is found in Article 10, where the supreme view of Islam is clearly outlined. The Document claims “Islam is the religion of true unspoiled nature. It is prohibited in Islam to exercise any form of pressure on man or exploit his poverty or ignorance to force him to change his religion to another or to atheism.” This summary however does not address recruitment of other faiths into Islam. This fundamentally locks a person into the faith in place of religious freedom. Following a common trend found in many Islamic documents to the West, the inequality of religions other than Islam is simply “overlooked.” The same approach may be found in the legal rights of women.

The opening Article of the CDHRI states “All men are equal in terms of basic human dignity, and basic obligations and responsibilities, without any discrimination on the basis of race, colour, language, belief, sex, religion... or other considerations [not explained].” Not only is equal rights not mentioned in the text, it is not found in the definition of dignity either.

There is no mention throughout the document concerning the value of a woman’s legal testimony. Whenever a comparison of man and woman is noted the dignity issue is addressed. This is summarized in Article 6 with “Woman is equal to man in human dignity, and has her own rights to enjoy as well as duties to perform...” The only mention of legal equality needs thorough scrutiny to make sense.

It can be said that impartiality is noted by Article 19: “All individuals are equal before the law...” However, the sentence continues: “without distinction between the ruler and the ruled” (*Cairo*). In Professor Mayer’s methodical view “this might seem to be an affirmation of equal

rights, but in the context of a document that carefully avoids guaranteeing equal rights or equal protection of the law for women and non-Muslims, it should be read as meaning only that the law applies equally to rulers and ruled” (102). The pattern of evading the questions of equal rights is apparent throughout the document. The legitimacy of these views is legally covered by Articles 24 and 25.

The CDHRI unmistakably recognizes only the human rights that are in agreement with *Shar'ia* law. Article 24 asserts “All rights and freedoms stipulated in this Declaration are subject [required to adhere] to Islamic Shari’ah.” This has created broad criticism of the Document for falling short of international human rights standards, showing it not to be a compliment to the UDHR, but a separate guideline for Islamic states.

The deliberate restrictive character of the CDHRI does not protect the individual Muslim. Instead it protects the state and its representatives, government bodies that combine religious beliefs and laws with secular rule to oversee their populations. The individual was already safeguarded under the UDHR, giving the believers protection, not the beliefs. Therefore, the reason for additional documentation is to legitimize actions seen by some as incompatible in such issues as freedom of religion and legal status of the female. It is impossible for a document or leader to legitimately claim to protect rights while simultaneously restricting them.

A dissenting consensus of the non-Muslim world does not see the CDHRI as spreading equality. Furthermore, it is apparent that citizens as a whole within Islamic states are not “protected.” The *umma* is the sole intended full beneficiary of *Shar'ia* law. Non-Muslims who have not accepted or who have no desire to live under *Shar'ia* law’s guidelines face serious consequences.

It is clear that Islamic religious law holds pre-eminence over secular law. Therefore, the

universal beliefs democratically accepted by the United Nations hold no authority under the Cairo provisions. Article 25 of the CDHRI commands “The Islamic Shari’ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration” (*Cairo*).

Chapter 7

Muslim Commentary and Actions for Islam's Compatibility with the *Universal Declaration of Human Rights*

Shar'ia law is considered “the outward discipline of complete obedience to the ethical and ritual requirements of the canon, in behavior and worship” (Tabandeh viii). The majority of Muslims tend to accept these moral obligations as just and fair to all. The *Universal Declaration of Human Rights* is regarded as a masterpiece of moral statement by many humanitarians. Muslims see numerous provisions of the Document as espousing inherent characteristics of Islam.

As outlined in the Preamble, the UDHR continuously referred to identifying members of the human family as “equal.” Sufi author Sultanhussein Tabandeh claimed this is inherent in Islam. Mystical Sufism is considered an “internalization and intensification” of Islamic beliefs and rituals. Sufis are not linked to the Sunni / Shiite division and have been both opposed and supported by various Islamic states. Therefore, this group maintains association with popular beliefs and traditional manifestations of Islamic instruction (Esposito 302).

Sultanhussein Tabandeh was a revered teacher among the Sufi population whose theological studies and travels had exposed him to wide varieties of the Islamic faith. He had studied Islam in Iran, Iraq, Syria, Afghanistan, Pakistan, Lebanon, Jordan, and Europe (Tabandeh ix). His 1966 Persian publication *Islam and Human Rights* was widely accepted among the religious leaders of Islamic countries. The text addressed comparison issues of the United Nations Document and Islamic beliefs.

Article 1 of the UDHR claimed “all humans are born free and equal in dignity and human rights.” Also, that one should use reason and conscience to act towards others in a spirit of

“brotherhood” (Johnson 13). This attitude of brotherhood is noted in the *Qur’an* where: “God enjoins justice, kindness and charity to one’s kindred...” (16:90). Though kindred is not specifically defined in this verse, the view of brotherhood is well understood by the Muslim community (*umma*) and was focused on by Tabandeh.

Tabandeh showed that this insistence on equal rights and liberty reflects *Qur’anic* passages where: “...none of us shall set up mortals as deities besides God” (3:64) and “We have created you from a male and a female” (49:13). As Tabandeh stated, these “totally exclude all barriers of class and race, and admit no difference between people of different colored skins.” However, the issue of faith was silently passed over. He comments “Islam has ordained brotherhood and fraternity between the community of believers...” Clearly the “community of believers” refers exclusively to the *umma*. He supported this with: “Muslims are all brothers of one another: and there is no difference between them from the aspect of their individual worth and dignity as human beings” (Tabandeh. 15-16).

The author seems to have overlooked those who refuse to accept Islam. Where the UDHR speaks of the entire human race, Tabandeh espoused a general outlook that differentiated between religious beliefs. This was confirmed as acceptable when he discussed Article 2.

Tabandeh claimed that various articles of discrimination in the UDHR are also condemned by Islam. Nevertheless, he verified the superiority of the believers of Allah and his Prophet. The UDHR stated in Article 2 that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind...” (Johnson 13). Tabandeh again pointed to *sura* 16:90 and the “kindness and charity to one’s kindred” when he referred to the Muslim community. This time he elaborated on the advantages of being “kindred.”

He said that any dispute between members of the *umma* give equal right to both sides.

Again he did not distinguish between male and female. However, this can be explained by the *Qur'an's* hierarchy of human worth: “Women shall with justice have rights similar to those exercised against them, although men have status above women” (2:228). Tabandeh did make clear that one may exact retaliation equal to the evil committed despite social or economic status. Whether a Muslim enjoys wealth or suffers from penury, he has no right to claim a higher recompense due to power or prosperity.

Tabandeh admitted that Article 2 cannot be fully accepted by Islam. It is difficult not to see the difference between a Muslim and a non-Muslim as outlined in Islam’s canon. This superiority of standing was summarized by Tabandeh with thus:

Some may object that certain provisions imposing fines and penalties make differences between people. Thus if an incontinent Muslim commits adultery his punishment is 100 lashes, the shaving of his head and one year banishment. But if the man is not a Muslim but commits adultery with a Muslim woman his penalty is execution. And if the adulterer and adulteress are both slaves, each of them must be punished with 50 strokes. Similarly if a Muslim deliberately murders another Muslim he falls under the law of retaliation and must by law himself be put to death by the next of kin. But if a non-Muslim who dies at the hand of a Muslim has by lifelong habit been a non-Muslim, the penalty of death is not valid. Instead the Muslim murderer must pay a fine and be punished by the lash (17).

He went on to state that a Muslim must only pay the slave’s value for a non-Muslim since he is of higher status. These clauses were clearly based on an individual’s faith and conviction. Tabandeh claimed “it is obvious that a person who is possessed of a more perfect creed and conviction has a higher rank of nobility than those whose tenets are inferior” (ibid. 19-20). Such skewed views in acceptance are a reason for many Muslim apostates to keep their allegiances to different faiths silently in their hearts.

A recent and highly publicized example of this is the case of Fathima Rifqa Bary. The seventeen-year-old Sri Lanka native fled her home in New Albany, Ohio, after her Muslim father learned she had secretly converted to Christianity four years earlier. The young apostate confirmed to ABC News that her father threatened to kill her and she fled in fear of being the victim of an honor killing (Netter).

Tabandeh explained that Islam guarantees “justice and rights” to slaves. Nevertheless, the act is noted as illegal in Article 11 of the later released *Cairo Declaration*. Tabandeh claimed slavery is not forbidden within Islam and that such persons are protected as the religion governs such transactions.

Tabandeh lumped together UDHR Articles 5-11 concerning fairness before the law. He claimed that these items: “conform fully to Islamic law.” Once again he highlighted *sura* 16:90 that “God commanded justice and virtue.” The author claimed this makes it “perfectly plain” that no one may treat another in a manner divergent from justice or humanity. As well, a person should never: “do violence to or wrong to any other individual.” As Tabandeh had made apparent, this applies only to the *umma*. Article 6 stated “Everyone has the right to recognition everywhere as a person before the law.” Tabandeh’s examination focused on the duty of the judge versus the status of the accused or witness. An arbitrator must deliver his judgments without respect of person or distinction of class (Tabandeh 28). This is true and followed in *Shar’ia* courts concerning the accused. The *Qur’an* clearly commanded: “The adulterer and adulteress shall each be given a hundred lashes” (24:2). Here there was equal protection against any discrimination as required by Article 7 of the UDHR. Despite a woman’s testimony equaling half of a man’s, the punishments doled were equal to a man’s.

Article 10 claimed: “Everyone is entitled in full equality to a fair and public hearing by an independent and partial tribunal” (Johnson 15). Such fair and equal hearings under *Shar’ia* law often leaves a woman in a terrible spot of representation concerning sexual matters. This is due to such laws as the 1979 Zina [adultery] Ordinance in Pakistan. Here female testimony was disallowed in charges of a sexual nature. This example of *ijma’* (consensus of agreement) included cases of rape where the woman is the victim. As noted in Chapter 4, tradition requires

that a female prove that she was an unwilling participant in the act through the testimony of four sound Muslim males (*Qur'an* 24:4). The Pakistani Ordinance outlined witnesses as those who can “give evidence as eye-witnesses of the act of penetration necessary to the offence” (“The Offence”).

Despite the removal of archaic Taliban rule, such legal standards are currently reflected within the prisons of Afghanistan. Two-thirds of the women in Lashkar Gah’s jail in 2009 had been convicted of illegal sexual activity. The disturbing part of this is that most were victims of rape. The system, based on *Shar'ia* law, does not distinguish between willful and forced intercourse. This remains legally acceptable. Controversy on the matter of sexual rights within the country has gone as far as a law recently being passed (and later revised under international pressure) that allowed Shiite men to deny their wives food and sustenance if their sexual demands were not met (Boone). Shiites count for roughly twenty-percent of the Afghan population. There has been no conformity within the four schools of Sunni law on the definition or penalty concerning *zina*. This continues to leave a victim at the mercy of a local *qadi's* (judge's) decision.

Despite the reasoning behind a verdict, punishment remains officially assigned. An upper ranked official in the regional security department, Colonel Ghulam Ali, defended this view. He forcefully declared that the authorities have the right to convict female victims of forced intercourse outside of wedlock. Behind his argument that diseases can be spread through illegal sexual activity, he simply claimed “it is a crime because the Islamic rules say that it is” (“Afghan Women”). Such situations are blatantly discriminatory against Muslim women.

Many Muslim women today do not feel they are being treated in a merciful manner under *Shar'ia* law. These voices of dissatisfaction are increasingly being heard. Over fifty-percent of

Muslim women polled by the Pew Research Center in Britain, the United States, and France believe life is better for Muslim women in their host countries than in Islamic ones (“Differing”).

Tabandeh’s view of Article 18 was two-fold. Concerning the statement “Everyone has the right to freedom of thought, conscience, and religion...” (Johnson 16), he agreed that non-Muslim faiths that follow the one true God “enjoy complete freedom within limits of their own faith” (Tabandeh 70). It can be argued that one cannot have “complete” freedom while under restrictions.

Concerning apostasy from Islam, Tabandeh said no person in his right mind would consider it. He considered Islam’s objection to the freedom to change religion (from Islam) as fundamental. His reasoning:

No man of sense, from the mere fact that he possesses intelligence, will ever turn down the better in favor of the inferior. Anyone who penetrates beneath the surface to the inner essence of Islam is bound to recognize its superiority over other religions. A man, therefore, who deserts Islam, by that act betrays the fact that he must have played truant to his moral and spiritual truths in his heart earlier. If he pleads doubt as his reason, he must be saved from uttering falsities by a calm discussion. Other motives may in fact be operative: e.g. another religion has been bribing him with material gain or with false promises; or he may feel that some wrong or injury has been done to him within Islam and drop his religion out of spite against the man who he fancies is the cause; or he may have been led astray by carnal lusts into actions which he knows Islam forbids.

These are all possible motives. Their very nature makes it plain that they should not be given encouragement of any kind, let alone by international law. Such a pronouncement as this clause permitting freedom of choice can only result in confusion both in the individual’s mind and the moral and spiritual stability of society (71-72).

Again the superiority of the Islam mindset overshadowed something considered a basic human right by much of the world. In maintaining the double standard Tabandeh utilized through the majority of his explanations, it was actually acceptable to change religion: “Of course a person who gives up some religion other than Islam in order to accept Islam’s sound faith is received and respected.” Much like Christianity in the Middle Ages, it does not matter for a Muslim if you were born into or converted to Islam, leaving the faith was (and is) not an accepted option. A person born to Muslim parents enters into the Islamic Tradition at birth.

Once coming of age, if a birth Muslim apostatizes, there is no hope or repentance for them. “He is a diseased member of the body politic, gangrenous, incurable, fit only for amputation, and must be executed.” A Muslim convert is reasoned with for three days to win him back. If all hope of his re-conversion is lost “he must be executed” (ibid. 72-73).

Tabandeh showed Muslims have complete freedom within the *umma* and this freedom is a right. However, this right is immediately revoked if it threatens public order or runs counter to government or Islam (ibid. 73). This concerned UDHR Article 20 where “No one can be compelled to belong to an association” (Johnson 15). This is another article fully allowed in Islam. According to Tabandeh, all was well as long as the government maintained its duties towards individuals and vice versa. Results of leaving the harmony of the *umma* have been made clear.

This was again supported when Article 30 is scrutinized. The Article stated that no group or person may engage in activities aimed at destruction of any of the rights and freedoms summarized in the *Declaration* (ibid. 17). Tabandeh disclosed that every effort must be made to reform any individual or society that does not follow civil or canon law placed upon them. Anyone who upsets another’s peace has no part of Islam in him. “The Muslim preserves the peace of Muslims with hand and tongue” (Tabandeh 84).

Tabandeh remained silent concerning the women of the *umma* outside of their part in illegal sexual relations. They were under the umbrella of Muslim society. In closing he claimed the UDHR has brought nothing new to Islam as: “Every clause of it, indeed every valuable regulation needed for the welfare of human society ever enacted by the lawgivers, already existed in a better and more perfect form in Islam. Islam is the summit and nothing excels it” (ibid. 85).

Therefore, any action that went against *Shar'ia* law was considered mischief towards the harmony of established Muslim society. Tabandeh ended his overview on the UDHR with a warning to anyone who would dare go against the basis of Islam, and who is therefore considered an enemy. The punishment for anyone who strives to create mischief within the Muslim lands is execution, the amputation of an opposite hand and foot, or exile (ibid.). Despite exile sounding like the preferred choice, it went against Article 15 of the UDHR where “No one shall be arbitrarily deprived of his nationality” (Johnson 14). Despite Tabandeh’s generalizations, other apologists were willing to expand their definition of the *umma*.

Some Muslim activists not only include women’s rights in their ideals, they focus on them. Pakistani Muslim Riffat Hassan received her Ph.D. in philosophy from the University of Durham, England, in 1968. She has been a leader of feminist theology in Islamic custom ever since and continues to teach today (Hassan). Her writings have included topics of inter-religious dialogue, females in Islam, educating peace in Islam, and Islam and human rights.

Hassan believes that the conception of human rights and religion in general, specifically one as complex and diverse as Islam, requires examination in a balanced manner. This belief stemmed from the Western origin of the UDHR. She claims the “universality” assumed in the UDHR is incompatible with Islam due to the incongruity between its concept of human rights and basic religion. Many advocates of human rights from Western and Muslim countries believe these civil liberties can only exist in the material world and not within the structure of religion. For this reason various thinkers in Muslim countries claim it is improper to discuss human rights in Islam. Muslim faith supports values and traditions which are incompatible with the UDHR’s assumed definitions. Hassan has argued that the value of a woman’s legal testimony under *Shar'ia* law is irrelevant to her status of equality within the law.

Hassan blames Western media and popular literature for causing vast negative stereotyping of Islam in the West. She stated that since the collapse of the Soviet Empire, the West needs a new enemy, and the world of Islam suits their “collective unconscious.” Though this accusation is a possibility it remains unproven. Islam was thrust onto the world stage by notorious violent acts from individuals referring to the *Qur’an* and *jihad* for their justification. The author claimed the habitual description of Muslims as being backward and explosively violent barbarians is the cause of ever increasing “Muslim-bashing.” The flood of sympathy in the West towards the plight of Muslim women remains a concern to Hassan. She claims this to be a serious contradiction as many Muslim women are also devoted to Islam. This makes Muslim females the victims of such “bashing” as well.

There is no doubt Muslim women can find sympathy and encouragement in the West. However, Hassan believes that the female individual must be portrayed as a rebel or deviant within the faith to do so. The majority of female Muslims who support human rights in a Western context believe that women are continuously discriminated against in Islamic society, as in Afghanistan. This causes the individual to become estranged from their culture. After doing so, they then find it hard, if not impossible to adjust to Western norms. With media focus on the poor and oppressed of the faith, no attention is given to the emotional catastrophe felt by self-aware Muslim females, those who are struggling to maintain their religious identity between an uncompromising belief and the imperialistic secular culture of the West.

Concerning the individual’s right to justice, Hassan began by explaining that worth is not determined by such factors as wealth, sex, temporal success, or religion, but by righteousness. She went on to define righteousness as constant with proper belief and just action (ibid.). The *Qur’an* narrows down proper belief by stating righteousness is found in those who “believe in

God and the last day.” This would seem to include Jews, Christians, and Muslims. However, the definition of proper belief goes on to apply righteousness to those believers “who attends to his prayers and renders the alms levy” in Islamic fashion (2:176-77).

This referred to two of the five Pillars of Islam, or principle categories of worship, namely *salat*, or “prayer service” five times daily, and *zakat*, or “legal alms” (Denny 408). Only a Muslim may participate in *salat*. Even prayers of “People of the Book” do not stand as justifiable worship in Islam. Also, no one but a Muslim can pay *zakat*, as it is traditionally “to practicing Muslims, a path to purity.” (Esposito 345). This not only excludes all other faiths, but distinguishes between “passive Muslim believers and those who strive in the cause of God” (Hassan).

Hassan was also quick to note the equality of punishments doled out for both men and women. Her statement recognized a general equality of sentence but failed to mention the strength of one’s testimony. Her reference to *sura* 24:2 specifically outlined equal punishment for adulterers. She went on to justify privileges of the *umma*, especially the female, by explaining God’s compassion for the different classes. In apparent contradiction of her earlier claim of equality, the penalty differentiates between different classes of women for the same crime. A slave woman would receive half, and the Prophet’s consorts double, the punishment given to a free Muslim woman.

Hassan maintained that in order to understand God’s compassion for the disadvantaged, it is necessary “to understand the nature of the ideal society or community envisioned by the Qur’an.” In support of the Prophet’s *ird* (honor), his wives’ inequality surpasses the common Muslim female. This was made clear in *sura* 33:30 when God said “Wives of the Prophet, you are not like other women.” On the other hand, the fifty-percent punishment for slave women is

considered to show “God’s compassion for women slaves who are socially disadvantaged.” According to the rules of intercourse, which are outlined in *sura* 4:24, Muslim men were commanded not to have sexual relations with married women: “except those you own as slaves.” Any testimony against such a matter in *Shar’ia* court would be baseless.

Hassan accurately reported how the ideals of the *Qur’an* were to raise the status of women above their previous station during the times of *jahiliyyah* (ignorance). No doubt the *Qur’an* elevated women above the inferior creatures they were considered to be before Muhammad’s revelations. Hassan claimed it was societies of *jahiliyyah* that undermined the *Qur’an*’s basic intentions. By existing among the *umma* in the early years of Islam, societies such as Jewish, Christian, Hellenistic, and others penetrated Islamic tradition. Hence the undermining of the intent to liberate women and make them equal to men (Hassan). Again, the equality was outlined within *Shar’ia* law, and not current human consensus.

Concerning Islamic jurisprudence, Hassan and Tabandeh’s descriptions of equal consideration between parties stands firm. Each testimony is given identical deliberation without regard to prejudice. It is the weight, or acceptance of witness testimony, which determines the outcome that is ignored in these explanations. The infallible word of God places female testimony at fifty-percent of a male’s in *sura* 2:282. There is no moral argument for change. There is the wiggle room concerning apostasy with banishment as being a lesser infraction on rights understood by the UDHR. Also, one may overlook Muhammad’s call for death to apostates as God has reserved his personal punishment for unbelievers in the afterlife (*Qur’an* 18:29).

Both authors agreed that attempting to place regulations of one culture onto another is not promising. Tabandeh’s analogy: “to take a political system which proved effective in one land

where it grew organically, and transplant it to another bodily, is like taking a duck's egg, boiling it hard and giving it to a hen to hatch!" (Tabandeh xii). However, demands for certain changes in the Muslim world are being heard.

The recent demonstrations and calls for reform in Iran have received much international press coverage. The unrest among much of the general population began after the alleged fraudulent re-election of hard-line President Mahmoud Ahmadinejad. Just as leaders in Afghanistan and Iraq have been accused of fraud, Ahmadinejad has been accused of stuffing ballot boxes in his victory over reformist candidate Mir Hussein Musavi on June 12, 2009. Despite unauthorized gatherings by the public being illegal in this Islamic nation, citizens came out in droves to be heard. Huge rallies were held in several major cities with a passion not seen since the 1979 Revolution.

Though Supreme Leader Ayatolla Khamenei maintained the election results by force, minor protests continued over time. Recently, the Shiite religious holiday of *Ashura* brought large scale unrest within Iran (Addis). This celebration commemorates the martyrdom of Muhammad's grandson, Husayn (the third Imam of Shiite Islam), in 680 C.E. He is honored for his struggle against subjugation, injustice, and cruelty (Esposito 27).

The theme of this holy day re-ignited the reformist population's anger against the very things their model suffered centuries ago and to which they are exposed today. In the face of arrest, beatings, and reported killings, the reform seekers have made their voice heard internationally. A firm realization of the enormities they are up against comes from the official response that violated this traditional day of peace. The fact that the violent reaction came from a Shiite Islamic government body says much about the current leadership.

The leadership of Iran owes its success to the support of the *umma* during the 1979

Islamic revolution. The complete religious dogma used to gain authority has become secondary to their quest to maintain absolute power (Daftari). Nevertheless, the opponents of tyranny continue to sacrifice their freedom, employment, and lives for reform of draconian Islamic rule that restrains their basic human rights. However, some forms of rebellion within (and without) the country is much less dramatic.

The traditional wearing of Islamic female dress has been an issue of international controversy in recent years. Many Islamic countries such as Iran require the *hijab*. Other Islamic nations merely request non-Muslim female foreigners to dress with respect to their customs. In countries such as Pakistan and Afghanistan, female travelers note the importance of women covering as much of their body as possible with loose fitting *burqa* clothing. Also, locals show respect for visitors who wear traditional dress (“What Should”).

Iranian women have discovered the art of expressing their individuality through loosely worn and colorful headscarves with form fitting clothing and makeup. Despite crackdowns by the conservative leadership, Iranian females continue to defy tradition to support their individual rights. In Iran, a young girl in heavy makeup and contemporary fashion dress told BBC News concerning the recent ban “If we want to do something we will do it anyway, all this is total nonsense.” Even the local females who choose the complete traditional *hijab* were noted as saying that dress is a personal choice and should not be forced on people (“Crackdown”). However a Muslim female chooses to dress, Benazir Bhutto is an inspiration for change and modernization.

On June 21, 1953, Benazir Bhutto was born to the future Prime Minister of Pakistan, Zulfikar Ali Bhutto. She left Pakistan at age sixteen to receive her undergraduate degree from Harvard’s Radcliffe College. She then completed her second degree at England’s Oxford

University in 1977. She returned to Pakistan where her father was elected prime minister. Later that year he was imprisoned after a military coup. He was hanged by General Zia Ul Haq in 1979, and Bhutto became a political activist (“Benazir”).

After several arrests and three years of detention she resettled in London where she maintained active resistance from afar. She returned to her native country in 1985 and was elected co-chairwoman with her mother of the Pakistan People’s Party. Upon free elections in 1988, at age thirty-five, she was elected the first female prime minister of an Islamic country (ibid.). Her platform promised reform and improvements in women’s rights. This stance was in conflict with hard-line *Shar’ia* law inspired decrees such as 1979 Zina Ordinance of Pakistan.

In the face of hostility from the Islamic fundamentalist movement for her progressive views, she was re-elected in 1993. She was celebrated for bringing electricity to rural areas and constructing schools throughout the country (“Benazir”). Her government was removed by President Farooq Leghari in 1996, two years before her term was to end. She was accused of steering the country towards economic collapse, siphoning billions from the national treasury, and using police squads to kill a member of the Mohajir Qami Movement, a rival political group. Many blamed these accusations on Bhutto’s husband of political convenience, Asif Ali Zardi, the investment minister for her government. His attackers called him “Mr. forty-percent,” in referral to his command for kickbacks in order to do business with the government (“High Court”).

After being removed from office, she lost a re-election attempt in 1997. She returned to London with her children when the government was again overthrown by the military. Though she denied all allegations, the charges of corruption would continue to plague her throughout her life (“Benazir”).

General Musharraf, the military ruler of Pakistan who was considered a vital ally by the

United States, had agreed to cooperate with the Western driven war on terror. With his domestic support waning due to internal turmoil, the United States successfully pushed for a power sharing deal between Musharraf and Bhutto (Mohammed). Despite death threats from Muslim extremists she returned to Pakistan in 2007.

Within a day of her arrival a suicide bomber killed in excess of one hundred people in an assassination attempt. Nevertheless, the Pakistan People's Party was preparing for a victory with the nation's "most popular democratic leader" in January, 2008. It was not to be. Benazir Bhutto was killed by a bullet from the gun of an Islamic extremist on December 27, 2007 ("Benazir").

Bhutto is remembered as the Muslim woman who defied the odds in education and leadership in the face of tyranny. She had consistently emphasized the empowerment of women, urged support of concerning health issues, and advocated their protection from war and domestic violence. She remains a prime example of the capacity for human rights and change within Islamic leadership and *Shar'ia* law. Whether concerning government, freedom of expression, or jurisprudence, many efforts by Muslims continue to look at widening human rights while maintaining *Shar'ia* law's guidelines. For some, even the guidelines need to press forward in an effort to live in harmony with the global community.

* Attempts to contact Imam Farooq of the Toledo mosque to discuss these issues were unsuccessful.

Chapter 8

Arguments Against the Compatibility of *Shar'ia* Law with the *Universal Declaration of Human Rights*

The compatibility of *Shar'ia* law with certain basic human rights as understood in the *Universal Declaration of Human Rights* remains controversial. This study has discussed several views arguing for and against aspects of *Shar'ia* law being utilized throughout the world. The range of disagreement is as apparent as it is broad.

Often Islam is criticized in general for being unable to live with democracy and its version of entitlements concerning human rights. Islam contains a collection of specific legal decrees for individuals outside the faith. Any directive found in Islam's sacred texts is incorporated into *Shar'ia* law (Spencer, *Religion* 178).

A large population of Muslims does live under democracies today in countries such as Bangladesh, Malaysia, Nigeria, and India. One must also consider the Muslims living in Western nations as well. This is not against *Shar'ia* law as there is no ban on living outside of Muslim controlled areas in the *Qur'an* or *Sunna* (ibid. 166). However, democracy and human rights in the UDHR are often tied to Judeo-Christian philosophy by Muslim intellectual leaders. The legitimacy of such claims varies with individual assertions. However, it is clear that a Judeo-Christian majority sat on the UDHR committee.

Religion in democracy's evolution can be traced back to Christianity supporting the separation of church and state with Jesus' statement "Then give to the emperor the things that are the emperor's, and to God the things that are God's" (Luke 20:25). This was reaffirmed in the fifth-century when Pope Gelasius I wrote the philosophy into traditional doctrine (Spencer, *Religion*, 173). However, not all popes since have agreed. Pope Pius X (1903-1914) makes this

clear in his first pastoral letter claiming “God has been driven out of public life by the separation of Church and State” (Duffy 321). This reflects the importance of the eighteenth-century Enlightenment on religious viewpoints. Despite the blurring of the separation of Christianity and government over time, one would hope that basic human rights would be recognized by all.

Muslims, such as Sa’id Raja’I-Khorassani, claim that the United Nations’ version of human rights reflects a Judeo-Christian bias and gives an impression some traditions of other cultures and religions (i.e. Islam) are not completely endorsed (Spencer, *Religion* 167). In democracies such as England this affects close to two million Muslims (Sciolino). Here a person is given the right to worship freely under the traditional and Biblical teachings of man’s equality before God (Spencer, *Religion* 175). As mentioned in Chapter 7, suffering the death penalty for apostasy has not been isolated to Islam. Such practice in Christianity added to the tensions leading to the Reformation, and beyond. Still, there have been well publicized Muslim attitudes calling for rejection of all non-Islamic secular powers and conflicting rights despite one’s geography, which has led to discord.

A political leader and author from Pakistan, Sayyid Abul A’la Maududi, claimed that “the purpose of Islam is to set up a state on the basis of its own ideology and programme” (in *ibid.* 174). Promotion of such action has been encouraged with violence. Egyptian revolutionary and author Sayyid Qutb, an important influence on radical Islam, regularly supported achievements in this manner. He encouraged Muslims to “strike hard at all those political powers which force people to bow before them and which rule over them, unmindful of the commandments of God,... after annihilating the tyrannical force... Islam establishes a new social, economic, and political system, in which the concept of the freedom of man is applied in practice” (in *ibid.* 176). Once more the “freedom of man” is according to Islamic law, the same

law that supports a version of human rights not completely acceptable in democracies such as Great Britain.

When Foster Friess interviewed a British Imam in Hyde Park's Speaker's Corner the question of assimilation was met with "As Muslims we have fully integrated into British society, but we have no desire to assimilate to an inferior culture" (Friess). Here the issue of marriage is a matter of concern as well.

Polygamy is a male right supported by the *Qur'an* with "...you may marry other women who seem good to you: two, three, or four of them" (4:3). Sheikh Faiz ul-Aqtab Siddiqi of the Muslim Arbitration Tribunal spoke of the need for English law to recognize polygamy in the following manner, "In a jurisdiction where rights are afforded to a mistress, or many mistresses, and where there are same-sex marriages... polygamous marriages should not be such an alien concept" (Freedman). Rosa Freedman counters:

The main problem with using this argument in favor of recognition of polygamous marriages both inside and outside this country is that of proof to whether these marriages have been entered into willingly and freely of the women involved. No one forces a person to have an extra-marital affair, or to enter into a civil partnership, but there is widespread evidence of the forcing of women into polygamous relationships in many religions and in many parts of the world. To compare consensual relationships with forced ones, whether physical or emotional coercion is used, is completely misguided (ibid.).

Here multiple wives (and the subject of potential welfare fraud) become a back burner issue to the encroachment of the UDHR. Article 16 clearly stated "Marriage shall be entered into only with the free and full consent of the intending spouses" (Johnson 14). The nature of multiple wives itself can put the woman at a disadvantage. Whether the number of wives is one or many, she can still be at a disadvantage under *Shar'ia* courts, despite geography.

Along with Islam's views of marriage being successful for centuries, Muslims continue to argue that polygamy is divinely sanctioned. On behalf of the rights of the bride: "If a woman fears ill-treatment or desertion on the part of her husband, it shall be no offence for them to seek a mutual agreement, for agreement is best" (*Qur'an* 4:128), and "Try as you may, you cannot

treat all of your wives impartially. Do not set yourself against any of them... If they separate, God will compensate both out of his own abundance..." (*Qur'an* 4:130). These *suras* blanket the right to polygamy in the *Cairo Declaration* as Article 6b states "The husband is responsible for the maintenance and the welfare of the family."

Elaine Sciolino of the *New York Times* described the scene of a typical divorce proceeding in a *Shar'ia* court held in London. Here Article 16 of the UDHR was breached as the couple was "entitled to equal rights as to marriage, during marriage and at its dissolution." It is clear that the female's testimony held minimal influence over the *qadi's* (judge's) decision. The female described to Islamic Scholar Suhaib Hasan, who was adjudicating the case, that her husband "hit her, cursed her and wanted her dead." Her husband was against the dissolution and the judge appeared to have decided on the continuation of the union. This caused the desperate bride to call in her father as a witness.

The traditionally dressed and groomed Muslim elder claimed that his son-in-law was "a hot-tempered man who had duped his daughter, evaded the police and humiliated his family." With this testimony the judge overturned his view and supported a divorce (Sciolino). Clearly the lack of merit in the female's testimony would have doomed her to a life of abuse. Administrative issues have been a stumbling block for progress as well.

The "courtroom" where the described divorce trial was held had minimal office furniture, staff, and equipment. There were no lawyers, stenographers, or record keepers of any kind available. Computers and recording devices were absent as well. All partial record keeping was done by the *qadi* in longhand. The inability for all forms of the indigenous government to keep track of legal proceedings within their borders can be disastrous. This fuels the argument that *Shar'ia* courts are guarded, have zero accountability, and no standards for the training or

decisions of a judge. Despite disagreements in documentation and human rights, Muslims have attempted to force the British government to accommodate them through comparing their rights with those of other faiths.

Western societies such as Britain have been familiar with and accepting of the Jewish legal system and Anglican courts working outside state courts. Muslims have argued that this should allow them to judge under their religious laws as well. However, Jewish offices of jurisprudence come nowhere near the totalitarian legal and political system found in *Shar'ia* law. Where Islamic courts decide, for example, a couple's fate, Bet Din courts merely guarantee their approval when an acceptable solution is reached by the couple (ibid.). Certain missionary attitudes also come into play. The Jewish and Anglican courts only wish to proceed over members of their faith who desire such. It is in Islam's sacred doctrines that it is a Muslim duty to seek the application of *Shar'ia* law over everyone (cf. *Qur'an* 9:29). British law has been having none of that.

Jack Straw, Britain's Justice Minister in 2008, stated "There is nothing whatever in English law that prevents people abiding by Shar'iah principles if they wish to, provided they do not come into conflict with English law." He went on to say that British law would "always remain supreme," and "regardless of religious belief, we are all equal before the law" (Slack). To the dismay of Muslims, this attitude has spread not only to *Shar'ia* law in some places, but to other symbols of Islamic power as well.

Oskar Freysinger is a local leader of the largest political party in Switzerland, the Swiss Peoples Party (SVP). The party has had visible success in fighting to control the huge influx of immigration threatening to distort the country's distinctive character. In July, 2008, the party amassed enough signatures (100,000) to legitimize a national referendum. The referendum this

petition was to vote upon was whether or not Switzerland should ban the construction of minarets (West). A minaret is the cylindrical tower, or beacon, used to call faithful Muslims to prayer five times a day. A mosque may have up to six of these towers (Esposito 201). These structures, that alter the skyline of any small town, are considered by many Swiss citizens a sign of authority (West).

This concept is not unheard of as Recep Tayyip Erdogan, the Prime Minister of Turkey, has publicly noted “The minarets are our lances, the mosques our helmets, and the believers our warriors” (in *ibid.*). Freysinger and supporters of the ban are not concerned with the religion itself, but with the ideology and *Shar'ia* legal system that they believe is incompatible with democracy. Similar problems have arisen in France and Spain, as well, all democracies that have reflected the UDHR concerning equal representation before the law and freedom of religion.

Freysinger says they have been attacking the minarets because “it’s always about symbols because symbols have a big truth behind them.” He goes on: “You are welcome in our country, but there is one law, and one constitution for every person in this country. And there is no special law for an Islamic girl, or an Islamic man. There is no sharia. Nothing” (*ibid.*). The majority of his countrymen have agreed.

Fifty-seven percent of the population voted to ban minaret construction (“Swiss Voters”). The government opposed the ban citing international opposition and internal Muslim unrest. Nevertheless, voters stated to BBC News their concerns about mounting immigration and the corresponding rise of Islam. Supporters of the vote maintain “allowing minarets would represent the growth of an ideology and a legal system - Sharia law - which are incompatible with Swiss democracy” (*ibid.*). Still, it is not only non-Muslims, apostates, or the random faithful individual speaking against current *Shar'ia* law policies.

Qur'anic scholar Saida Keller-Messahli has created an organization of moderate Muslims in Switzerland. Keller-Messahli notes that there are various Muslim associations. However, no groups exist for Muslims who do not practice their faith. Her goal has been to unite progressive Muslims to discuss controversial topics, including “draconian punishments meted out to criminals under Sharia law.” She wishes to “show that Islam can be interpreted in a way that is compatible with human rights.” A firm sign is five members of the seven seat committee are female, and not all are Muslims (“Moderate”). Muslims in other parts of the world have united to be heard in unison as well.

Concerning the use of *Shar'ia* courts for domestic cases in Canada, the Muslim Canadian Congress is against the idea. This group of unofficial individuals has claimed that *Shar'ia* law is defective because it does not place women on equal footing with men. Therefore all participants do not receive equal justice in domestic concerns such as division of property and child custody during divorce proceedings. Tarek Fatah, the leader of the estimated two hundred member congress, notes a familiar argument on the issue. He has stated “The weakest within the Muslim community, namely the women, will be coerced (into participating) by their community” (Kamlani). Legal debates over the universal acceptance of *Shar'ia* law within Islam exist as well.

Rocco Galati, lawyer for the Congress, claims there is no monolithic Islamic law and *Shar'ia* law is “racist and unconstitutional.” He argues there has been no official claim to what *Shar'ia* law should be. Galati has told the Ontario Attorney General “there is a confusion here between religious freedom and injecting religion into public disputes” (ibid.). As Islam concerns itself with one’s personal life, so does the Muslim Canadian Congress.

The Congress sees the complete covering of a female’s face as a medieval misogynist

custom that is not required in the *Qur'an*. They believe forcing one to do so is a violation of individual human rights. The group has presented legislation to prohibit the wearing of the face covering *burqa* and masks. They have noted multiple points to support their endeavor.

First, the Congress observed the numerous bank robberies that have taken place with face coverings in Canada and overseas. They have gone on to note that the full *burqa* is a Saudi inspired political symbol of Islamic extremism (“Muslim Canadian”). This is supported by John Esposito’s *Dictionary of Islam* (47,52). However, where this view can be considered ineffectual when made by laypersons, public statements by religious authorities hold more intensity and validity.

Sheikh Mohamed Tantawi is the dean of al-Azhar University and, in 2009, one of the highest Muslim authorities in Egypt. He has claimed covering the face was purely a tradition of culture and there is no connection with Islam or the *Qur'an* (“Muslim Canadian”). He has stated willingness to sign a *fatwa* (legal opinion) against the practice. Holding even more power for this argument is the tradition of the holiest site in Islam itself.

The Grand Mosque, which houses the *Ka'ba* (House of God) in Mecca, is believed by Muslims to be the original and only House of God. For almost fourteen-hundred years faithful Muslims have come there to pray. For that same period of time the Muslim females in attendance have been strictly prohibited from covering their faces. This takes away support for those who treat the veiling of the face as if it were a pillar of the faith and treat those who do not as lesser Muslims (ibid.).

Ibadat is an action considered by some an incumbent duty in worship. For whichever reason, the exposure of a female’s head during *hajj* (pilgrimage to Mecca) is in relation to *‘ibadat*, and classified among rituals that must be fulfilled whether or not their immediate

advantages are clear (Esposito 123). This explanation has not been acceptable to all critics. Still, where individuals and groups like the Muslim Canadian Congress have used legislation to advance their views, other Muslims and groups have used a more aggressive approach.

Muslim extremists have received far more press than their moderate counterparts. Perhaps this is because conflict sparks media ratings in addition to the widespread effect dreadful events resulting from conflict have had on society as a whole. The most famous modern Islamic fundamentalist group is Al-Qaeda. Led by Osama bin Laden, they have officially used terror to spread their ideology across the globe since “The World Islamic Front’s Declaration to wage Jihad Against the Jews and Crusaders,” was issued February 23, 1998, and printed in the Arabic newspaper *Al-Quds Al-Arabi* (Ibrahim 14). Bin Laden’s number two man and ideological mentor, also a signatory of the Declaration, is Ayman al-Zawahiri (ibid. xxvii).

Al-Zawahiri joined a radical Egyptian group, the Muslim Brotherhood, at age fourteen. He later left the group due to changes in their views and actions. In al-Zawahiri’s eyes the Brotherhood abandoned their faith and duties when they dropped their calling to wage *jihad* against the elected Egyptian government of the time. Around 1991 al-Zawahiri’s book *The Bitter Harvest: The [Muslim] Brotherhood in Sixty Years* began circulating. The book does not focus on or criticize the Brotherhood for what he saw as errors, but outlined how the group had lost their way through proclaiming a *jahiliyyah* style of government (elections, parliaments, and democracies) legitimate (Ibrahim 116). His disregard for basic human rights has been apparent in his violent actions as well as his reasoning.

Al-Zawahiri bases his views on two points: 1) the Islamic obligation to fight and overthrow any leader who does not govern according to the *Shar’ia* of Allah, and 2) the belief that democracy and Islam are not compatible and thus can never coexist (ibid. 117). He has

believed and preached that the true call of Islam is to implement Allah's rule throughout the earth by whatever means necessary.

He has clearly noted his preference of *jihad* over elections, despite the fact that the once partially banned Brotherhood has since won seats in Egypt's parliament (ibid.). Concerning reform within Islam, Al-Zawahiri made his analysis clear in an interview on the fourth anniversary of the attacks of September 11, 2001. The leader stated "There is no reform without *jihad* in the path of Allah. And every call seeking reform without *jihad* condemns itself to death and failure" (Ibrahim 186).

Again, where many faiths find the separation of church and state inherent in their religion, Islam's origins had no such division of mosque and state. This is in spite of an individual Muslim's location or the governing body of the state in which he resides. In such perspective, every form of man-made government that does not bow to the will of Allah is *shirk*. *Shirk* is considered the gravest of sins in Islam because it puts "association [i.e. competition] of someone or something with God" (Esposito 293). Such leaders as Benazir Bhutto are therefore considered an antagonist towards God himself with their calls for reform and secular law. This is the same Deity some Muslims believe support aggressive actions against non-believers through revelations.

There is no question that Muslims believe that the *Qur'an* is the seal of God's disclosures to man. These eternal and unchangeable directives remain the foundation of their faith and religious law. As noted in this study, Muslims are taught their beliefs are the pinnacle of righteousness. Their divine commands supersede any other religious or temporal orders. This is in spite of what is accepted by the majority of the world's population as collective human rights.

In order for Islam to live under *Shar'ia* law in most democratic or non-Muslim countries

a dual legal system is called for. One legal system is for Muslims, a system of jurisprudence directed by Muslims and their tradition's view of religious law. The second is for the infidel (*kaffir*). A *kaffir* is "one who does not believe in Allah, or in the content of the *Qur'an*, or in the prophetic status of Muhammad" (Bowker 521). In Islam the rule is straightforward despite geography: if you are not a Muslim you and your beliefs, laws, and convictions of human rights are second class and irrelevant.

Often Islam is blunt about its beliefs in practices which are seen by some as disgraceful to basic human rights. Other times one must be more observant to become aware of this. As noted, the *Universal Islamic Declaration of Human Rights* and the later *Cairo Declaration of Human Rights in Islam* show a double standard for women, apostates, and non-Muslims. Substandard treatment exists for both women and apostates. Moreover, one must ask why "People of the Book" do not qualify for equal human rights and justice given to the Muslim male. They are allowed to worship "freely" within Muslim countries. Also, Muslims claim they qualify as worshipping the same God.

The *Qur'an* claims that all Christians and Jews who have not accepted Islam are guilty of *shirk* (association). This is maintained by Allah's infallible words in *sura* 9:30 with "The Jews say Ezra is the son of God, and the Christians say the Messiah is the son of God... God confound them. How perverse they are." Another verse teaches that such individuals "will surely find that God is the enemy of the unbelievers" (2:98). Any individual who has not unequivocally accepted the teachings of Islam is considered to have unsound faith. The *Qur'an* goes on "We have sent down to you clear revelations: none will deny them except evil doers" (2:99). This can be disheartening information for any non-Muslims on earth expecting equality in human rights from *Shar'ia* law. However, the future afterlife for some Jews and Christians is much worse:

“The unbelievers among the People of the Book and the pagans shall burn forever in the fire of Hell. They are the vilest of creatures” (98:6).

For Muslims, since their inception, God has shown mercy. This also can be found in the *Qur'an*: “I will show mercy to those that keep from evil and give alms...” (7:156). Even now, this would seem to encompass almost any righteous living individual. However, following the translations and definitions show otherwise.

“Alms” in Arabic is *zakat / zakah*. As noted in chapter 6, *zakat* is a pillar of Islam that can only be paid by Muslims. The word “sign” in Arabic is *ayah / ayat*. The word is also used for “verse,” and refers to divisions of *suras*, or chapters in the *Qur'an* (Esposito 30). Despite the *Old Testament* and *New Testament* being understood by the majority of Muslims as holy, Islamic scripture can be used to show that one who does not believe in the *Qur'an* is doomed to eternal damnation and does not deserve temporal justice. This demonstrates the extent of belief many Muslims continue to have in *Shar'ia* law. A contemporary example of this law being taken to extremes can be found in the land of the Prophet himself. In Saudi Arabia, the heart of Islam, *Shar'ia* law has full reign over any outside version of human rights. (Darwish, *Cruel* 255).

Many believe a main purpose of Islam is to eradicate all *kaffir* societies and replace them with Muslim and Arab culture (ibid.). The name Islam itself translates into the English word “submission” (Denny 406). Governments that have refused to submit to the will of Allah and follow Islamic law have been deemed an enemy from the beginning of the faith. Islam has always seen the world divided into two categories, *Dar al-Islam* and *Dar al-Harb*. *Dar al-Islam* is simply the “Territory of Islam.” The region of Muslim sovereignty where Islamic law prevails.” *Dar al-Harb* is the “Territory of War,” whose non-Muslim leaders have been called upon to follow Islam. This concept has been traced by Islamic scholars back to Muhammad’s

communications with the Abyssinian, Byzantine, and Persian emperors, offering them either conversion or war (Esposito 62). A contemporary emulation of this attitude has been found in Osama bin Laden's letter to America *Why We Are Fighting You*. The second of the two questions he replied to was: "What we are calling you to?" His answer:

The religion of the Unification of God; of freedom of associating partners with Him, and rejection of this; of complete love of Him, the Exalted; of complete submission to His Laws; and of the discarding of all of the opinions, orders, theories and religions which contradict with the religion He sent down to His Prophet Muhammad... (Ibrahim 201-202).

Justification for violent action if the invitation to Islam is rejected is found within the *Qur'an*. *Sura* 8:39 testifies "Tell the unbelievers that if they mend their ways their past shall be forgiven; but if they persist in sin, let them reflect upon the fate of bygone nations." If foreign administrations: "revile your faith, make war on the leaders of unbelief" (9:12). This outlook has been a basis for external *jihad* with "enemies" of Islam.

Tactics for overpowering the beliefs of the world by force have been made clear within Islam. Maintaining this submission seems to come in few ways. One has been to be an individual who reaps the full benefits of Islam, a dedicated free Muslim male. A traditional Islamic state run under *Shar'ia* law ensure these individuals hold the places of power, and in turn maintain their superiority. One who has had both tradition and law on their side rarely wishes or acts for change. Also, many Muslim females remain dedicated to their faith out of piety, despite what westerners have seen as an oppressed position.

Additionally, whether one has been a half-hearted, or freethinking Muslim, or a second-class citizen of *dhimmi* status, self-preservation can be quite the motivator in acceptance. It is fair to note that an officially government sanctioned execution for apostasy has been rare in recent times. However, local *fatwas* that have initiated street justice is another issue. When given the option of living under a law seen as oppressive or facing execution, subjugation may

seem the better choice. As summarized by Nonie Darwish, Islam uses a biased legal system. This is topped by fear and force to maintain submission through *Shar'ia* law. This ritual practice of triumph through control found in the *Qur'an*, *Sunna*, and *fiqh* is a chief example of aspects of *Shar'ia* law being incompatible with the *Universal Declaration of Human Rights*.

Chapter 9

Muslim Calls and Ideas for Change in *Shar'ia* Law

Michael Mumisma is a South African Islamic conservative with training in Islamic sciences and classic Arabic literature. Mumisma has demonstrated that he is a modern thinker with a traditional background in his book *Islamic Law: Theory and Interpretation*. He claimed that there are two versions of Islamic law that compete: Traditional versus Rethinking. The author has seen traditionalism as having no room for rethinking, i.e. a line of thought that can provide solutions for Islam in the modern world. Both Renaissance humanism and the later occidental outlook of westerners that began with the Enlightenment had been considered a serious departure from orthodoxy by Muslim conservatives (4). As demonstrated by al-Wahhab of Saudi Arabia, many Muslims have no desire to pursue that path.

Mumisma's theory was that it is possible to bring Islam into alignment with western world view without seriously deviating from tradition. The author has noted that *sura* 14:4 confirms that Allah sent his prophets only in the language of that prophet's people. Therefore, Muhammad spoke to his people of issues that concerned them for their time. That is what is meant by sending a prophet in that language (Mumisma 41). This shows a basic problem where the principles of law are contextually based and reflect the historical, political, and cultural conditions under which they were inspired. This antecedent causes the *Qur'an* to fail in addressing new questions arising due to modernity and religious pluralism. The *Qur'an* does not address Muslims living in a minority because it was believed that they would always be the dominant force (ibid. 42). As a result, a non-Muslim living in an Islamic state as a *dhimmi* (non-Muslim under protection) is expected to follow Islamic laws. However, when a non-Muslim violates certain *Shar'ia* laws it is considered a civic infraction as well as a religious one in an

Islamic state. Nevertheless, a Muslim who resides in a non-Islamic state is not expected to follow the laws of the host country if those rules conflict with *Shar'ia* law. This lack of guidance has created friction as it is necessary for a religion to conform to the modern context in order to be recognized.

Mumisma has agreed that the *Qur'an* and *hadith* are the cornerstones of *Shar'ia* law (ibid. 2). He also believes that *fatwas* (legal opinions) and interpreted *fiqh* (human understanding of divine law) texts are the only compliments to Islamic law outside these two. Mumisma has been a strong supporter of the use of the general consensus of *ijma'* (consensus of agreement) when creating the *fatwas* that give expression to *Shar'ia* law. Where traditional *ijma'* is the consensus of learned representatives, he believes in a broader agreement among the community.

Ijma' has been used (and challenged) as far back in Islamic history as when the *umma* “selected” Abu Bakr as the first *caliph* in 632 C.E. If the entire senior community of companions had been present a more generally accepted decision may have been reached and the Sunni / Shiite schism avoided. As Mumisma implies, if a thorough representation of all voices in the community had been addressed early in the faith, critical decisions could have been more easily accepted throughout the religion's history.

After the development of *ijma'* and the standardization of *taqlid* (conformity to precedent) style imitation, *Shar'ia* law became a political tool as the leader had to be obeyed at all times, since he was elected by the consensus of *ijma'*. This resulted in a new position for the common Muslim from the tribal structure inherited from Arabia. The freedom of the individual within the community had been reigned in and the demise of the democratic spirit was soon to follow (Mumisma 81). The use of the mutual consultation of *shura* had been swept aside.

This raised the question of who can be trusted to choose a qualified candidate to represent

a group within the legislature. History has shown that individuals tend to view humanity with bias. Often women, blacks, and the poor are deemed sub-human, including within Islam (ibid. 51). Because of this, Mumisma claims in a society where certain people have been considered inferior, those groups should be given the entitlement to elect an individual to represent their (human) rights within the religious administration (ibid. 84-85).

The importance and ability of all groups to be represented is ever increasing as modern technology in communications and travel advance. This allows the most remote areas to be heard concerning *ijma'* that is to affect a Muslim population. Sadly, this is not always seen as the case by Islamic state leaders. An example is the late King Fahad of Saudi Arabia who stated “The democratic system that is predominant in the world is not a suitable system for the peoples of our region. The system of free elections is not suitable for our country” (in Warraq 172). This is a far cry from the liberation theology sought by Muslim free thinkers of today.

Mumisma has identified liberation theology as “theology of protest against oppression and social injustice.” This view has attempted to identify the religious significance of socio-political struggles, labors in which people of color, women, and the poor are engaged to free themselves of oppression and economic exploitation. Though this theology of liberation was born in Christian Latin America, comparable developments have sprung up in other parts of the world, including Muslim countries. Such views were immediately met with skepticism from conservative Islamic scholars. Islam itself is considered liberating and therefore held no need for such a theology (Mumisma 43-44).

The social sciences were developed to gain precise knowledge of our civilization as it is. Mumisma is an advocate of using this modern tool as a bridge between traditional Islam and the necessity for the religion to peacefully exist in modern times. In Mumisma’s view, it is

universally understood socio-political thought that can bring Islam into having a modern view through mutual consultation and fair representation within the faith.

The idea of using *shura* (consultation) in choosing legislators would bring more balance in the field of *Shar'ia* law for the oppressed. Nevertheless, interpretation of a female's rights in Islamic court remains a troublesome issue with fifty-percent testimony value found in the *Qur'an* and supported by *hadith*. This leaves no re-interpretation of the issue as both the *Qur'an* and the Prophet Muhammad are deemed infallible within Islam. However, with consensus, an apostate may receive a penalty short of execution.

Hassan Saeed has contributed to the belief that freedom of religion is a fundamental principal of Islam and the death penalty violates this right. He defined the view of the Islamic state towards apostasy in his 2004 book *Freedom of Religion: Apostasy in Islam*:

To convert out of Islam is to clearly abandon its world order which is the Islamic state. That is why Islamic law has treated people who have converted out of Islam as political traitors. No state can look upon political treason directed to it with indifference. It must deal with the traitors, after due process of the law, with either banishment, life imprisonment, or capital punishment. The Islamic state is no exception to this (92).

If this is truly the case, the option for banishment over death could be regularly invoked if a majority wished so under *shura* guidelines. Though still against human rights as dictated by democracy, it would be a step in the direction of universal acceptance of punishments for apostasy under *Shar'ia* law guidelines.

Louay M. Safi, a Muslim who received his Ph.D. in political science from Wayne State University, Detroit, Michigan in 1992, has focused his energies on socio-political development issues concerning modernization, democracy, human rights, and Islam and the West. He has published eleven books to date covering these issues, has served on several committees for modernization of Islam, and is the founding director of the Center for the Study of Islam and Democracy (1999-2007) ("Biography: Louay").

Safi believes that a consensus between Islam and democracy can be reached through reforming *Shar'ia* law in “ways that help retain the universal, and transcend the particular in historical Muslim experience.” He has centered on human rights as a fundamental model for ensuring that future Muslim legal systems are receptive to these rights and a self-respect of all, including those who have not accepted Islam as their faith.

In agreement with many Muslim critics, Safi has claimed that *Shar'ia* law stopped developing when *shura* was removed and strict imitation of the companions was set as the standard. He has viewed this legal stagnation as the beginning of the “intellectual decline and social decadence” of the *umma*. Safi also has seen this continuing tendency as a “part of the individual consciousness and collective experience of Muslims” (Safi 89). This is due to jurists no longer being able to consult the original sources of law to attempt to meet current social norms. All new rules must be drawn from legal policies developed by the Abbasids in the fifth century of the faith and romanticized and systemized by the major schools of law (ibid. 103).

Safi has stated that for progressive human rights beliefs to find root in contemporary Muslim culture, an appeal to the conception of human dignity in the *Qur'an* must be imposed (ibid. 106). A shift from focus of the superiority of Islam would therefore be necessary. This would, no doubt, be a tall order, especially for those living in an Islamic nation where *Shar'ia* law is the norm. Also, large scale Muslim immigration into democracies such as England, Germany, and France is a relatively new phenomenon. Therefore, breaking from the tradition of such native Muslim countries as Saudi Arabia, Iran, or Libya can be difficult. Even for generations born in the West, when being raised in established Islamic homes, social education may focus on the out-of-date rulings of the companions. However, *suras* (chapters of *Qur'an*) that lean to what could be more widely accepted as social norms do exist.

The order of the *Qur'an* has been acknowledged by the majority of Muslims from longest *sura* to shortest. This has ignored chronology. Several *suras* believed to have been revealed to Muhammad in Meccan times showed a desire for cooperation among the faiths. As his influence and strength grew in Medina, superiority centered revelations were considered the norm. Many of these later revelations have been judged to abrogate earlier ones. With no evidence of a timeline, non-abrogation can be argued.

Concerning apostasy, there is evidence within the *Qur'an* that an individual should be able to recognize or decline any religion based on their conviction. *Sura 2:256* clearly says “There shall be no compulsion in religion.” This has revealed that despite one’s choice in the matter external pressure should be disallowed (Safi 118). This is supported with “Had your Lord pleased, all the people of the earth would have believed in him, one and all. Would you then force people to have faith?” (*Qur'an* 10:99).

Relating to Bukhari *hadith* (records of Muhammad’s example) that support death for apostasy, Safi has claimed they cannot stand as credible evidence because they contravene the *Qur'an*. This is per the *maqasid* method, which claims “a *hadith* can limit the application of a general *Qur'anic* statement, but can never negate it” (Safi 118-119).

Maqasid al-Shar'ia, or the goals and intentions of Islamic law, is considered by many modern thinkers an important yet often ignored premise. Frequently *Shar'ia* law has been based on maintaining the temporal benefits of the Muslim individual and the *umma*. These laws are meant not only to preserve these advantages but help advance the conditions of human existence on earth (Kamali). This also can be supported by the *Qur'an* telling Muhammad “We have sent you forth but as a blessing to mankind” (21:107). This goes on with the *Qur'an*’s self-characterization of: “You people! An admonition has come to you from your Lord, a cure for the

mind, a guide and a blessing of true believers” (10:57).

Safi has supported developing *Shar'ia* law through *maqasid* using the following principles:

1. Rights and obligations can not be established on the basis of individual statements of the Qur'an and Sunnah, but have to accord with the totality of relevant statements. Therefore, a jurist is required, according to this principle, to consult all relevant texts before rendering a specific ruling.
2. The multiplicity of Qur'anic rules must be reduced into a coherent set of universal principles. The universal principles should be used to ensure the systematic application of Shar'ia in modern context. Such systemization should prevent an application of a specific rule in violation of a general, or particular in violation of a universal.
3. Because a generalization of a rule presupposes that the reason for its enactment is clear, no rule should be generalized unless its reason has been explicated. This principle requires that Qur'anic rules relating to social actions and interactions should be understood fully, and systemized with other rules. If this requirement is met, the literalist application of Shar'ia would be eliminated.
4. Because the universalization of principle requires that the conditions of its applications be identical, regardless of time and space, no principle can be declared universal if the particularity of the context for which it was intended is evident. This principle compliments principle 3 by requiring the jurist to examine the extent to which a specific statement or rules is directly connected with the sociopolitical context in which it was revealed.
5. Qur'anic statements take priority over prophetic ones. Hence, in the case of conflict and real contradiction, Qur'anic precepts override prophetic ones (Safi 117).

Generalizing rules to a set of universal principles could greatly enhance female status throughout Islam. The equality of women can be outlined by such descriptions as *sura* 4:1 “Have fear of your Lord, who created you from a single soul. From that soul He created its spouse, and through them He bestrewed the earth with countless men and women” and “I will deny no man or woman among you the reward for their labours” (*Qur'an* 3:195).

Females have been given merit in such *Qur'anic* statements as “Men shall have a share in what their parents and kinsmen leave; and women shall have a share in what their parents and kinsmen leave: whether it be little or much, they shall be legally entitled to a share (4:7-8). Character has been summarized with: “The true believers, both men and women, are friends to one another” (9:71), and “We have created you from a male and a female, and made you into nations and tribes, that you might get to know one another. The noblest among you in God's

sight is he who is most righteous” (49:13).

Despite advancement possibilities for females through collective principles, inheritance has been summarized as a “share,” which leaves argument for the percentages firmly outlined elsewhere in the Islamic Scripture: “A male shall inherit twice as much as the female” (*Qur’an* 4:11). Concerning the equality of men and women in God’s eyes, there does not seem to be any discrimination concerning his eternal justice and reward. The *Qur’an* stated “Those who have faith... shall be given their reward in full” (3:57), and “The unbelievers shall be sternly punished in this world and the world to come” (3:56). Temporal rewards have tended to be in following God’s bidding to avoid agony in this world (*Qur’an* 3:22, 3:56).

An additional idea for progressive reform has been to restrict the extended use of *fatwas*. This has been argued by the current grand *mufti* of Egypt, Ali Gomaa. He claimed that administrations worried over Islamic extremism should unify and accept that the answer is: “more Islam.” Gomaa has called for “deeper, sounder, more careful readings of the Muslim faith, from scholars who could use the weight of collective experience, accumulated over fourteen centuries, to solve the dilemmas of the modern age” (“Islam’s Authority”).

Gomaa, in unison with former British Prime Minister Tony Blair, has praised the idea of Islamic schools respecting one another. This deference could end certain schools claiming others to be infidels. The proposal could begin by ensuring only qualified individuals issue *fatwas*. This idea would lean towards *ijma’* (consensus) in determining allowance of older views. This would not guarantee a full representation of *shura* (consultation). However, Gomaa has believed that consolidating the creation of new rules by promoting some theologies over others is the first step to contemporary reform.

Gomaa declared that Muslims who support violent *jihad* and harsh political Islam are

ignorant to the gradations of theology and susceptible to amateur *fatwas*. An advantage for the Muslim layperson has been they can shop for a ruling that suits their desire. A great many voices have been competing to influence Muslims and modern technology has been allowing them to do just that. For example, issues concerning certain matters have been answered outside the mosque or state employed *muftis* used by many *Sunni* countries. An Egyptian firm has offered a phone service known as “Dial-a-*fatwa*.” One has also been able to call into local radio or television performances featuring a trendy preacher for answers. Several websites, including the English speaking efatwa.com, muftisays.com, and askimam.com have proposed various rulings, claiming inspiration, on various subjects.

Saudi Arabian petrodollars have been behind much of today’s funding for electronic spiritual guidance in Islam. This attitude has reflected the conservative traditions of the country with which democracy is at odds. With state clerics regularly being viewed as puppets or stooges, many pious and faithful Muslims have searched elsewhere for decisions compliant enough to suit their needs. Gomaa has seen control and unification of these decisions as the first step in using scholarly Islam as a counterweight to the radical views found disturbing by the West (*ibid.*).

As has been observed, there is wide variance in support of modifying *Shar’ia* law. Saudi Arabia has minimal desire to bring Islamic law into harmony with views of human rights seen as acceptable by other parts of the world. Also, any serious follower of the Hanbali school of law, despite location, would support maintaining a strict conservative approach. As seen in chapter 6, concerning women imprisoned for adultery, countries such as Afghanistan, where female situations can be extraordinarily bad, have publicly promoted a view of human rights that is not necessarily supported by the population. Other states, such as Iran, use legal persecution.

Techniques include accusing progressives of being opposition leaders against the country and “enemies of God” (“Iranian”). Still, it can often be the attitude at the community level that dictates a desire for change.

Vigilante justice has been an occurrence in Muslim communities throughout the world. Honor killings of women who bring shame upon the family have been a serious concern. The United Nation Commission on Human Rights shows such actions reported in countries like Egypt, Great Britain, Pakistan, Italy, Uganda, Turkey, and the United States. Though these reports are not all officially tied to the Muslim community, the practice, which reflects old tribal values, was condoned under the Taliban, as well as unofficially reported in Iran and Iraq (Mayell).

Street justice in Islam is both called for at the layman level as well as in *fatwas*. This has been shown by Nonie Darwish in her article “If You Convert You Die.” She cited multiple cases where such action is used against not only apostates but anyone deviating from the dictates of Islam and *Shar’ia* law. Therefore, often it has not been the official observation that determines human rights, but the local view of the accepted school of Islamic jurisprudence. Nevertheless, the call for change has continued to be heard.

Despite a variety of support and technique, all of these ideas for progression in the structure of Islamic law are efforts to bring the faith into harmony with principles seen as universal by much of mankind. All points of view that concern modifying *Shar’ia* law would require great effort and cooperation throughout the faith, a major task. Nevertheless, the proposals are on the table, success is now a matter of *shura* style support.

Chapter 10

Conclusion

It is hard to judge *Shar'ia* law as a general matter for multiple reasons. One is a lack of a unified government to define *Shar'ia* law. This leads to a variety of opinions on a range of issues by differing sects of the Islamic faith. Such diversity can lead to numerous differing decisions on a single issue. Luckily for the observer, the basic tenets of Islamic law are found in the faith's sacred writings. The hierarchy of the *Qur'an* followed by the *Hadith* and *Sira* give a solid base for Muslim jurisprudence. These historical documents are not permitted to be changed from what is believed to be their original format. Though interpretation of some issues may vary, many fundamental concerns are outlined within the *Sunna*. These solid directives are accepted by all major schools of Islamic jurisprudence.

This study has focused mainly on regulations found in the *Qur'an*, the highest and infallible authority in Islam, as interpreted through *Shar'ia* law. Much of the tradition found in the *Qur'an* is developed from pre-Islamic Arabian tribal culture. Religious issues vary from unequivocal directives from the *Sunna* geared toward the faith to customs and beliefs of surrounding religions integrated into Islam. Muslims believe these final instructions are the will of God. These commands range from the use of the name Allah, denoting the Arabian creator god over all lesser gods, to the stories found in Jewish and Christian writings. One must note that the versions of Biblical stories told in the *Qur'an* often deviate from the older accounts. Muslims believe the original revelations to Jews and Christians were perverted by man. This can also come from a need for the stories to be changed to suit the desires of Muhammad and his *umma*, such as the near sacrifice of Ishmael over Isaac, denial of Jesus' crucifixion, etc. As some critics claim, it may also come from a lack of biblical knowledge by Muhammad. Either

way, Muslims defend the anchor text of their religion. Any variations in the *Qur'an* can be explained with God contrasting what he wills.

The *Universal Declaration of Human Rights* was compiled and ratified by countries representing almost every demographic on earth. This included several Muslim states. Saudi Arabia, the only Islamic country abstaining from the vote, remains a conservative hard-line nation to this day. Ruled entirely by *Shar'ia* law, history shows there is no place for any sort of reform in the eyes of their leaders. Human rights violations being forced on populations by such governments as Saudi Arabia and Iran are not the only cause for concern. *Fatwas*, vigilante style justice, and individuals being compelled and coerced by their communities to adhere to *Shar'ia* law creates dissent among the world social order. Nevertheless, Saudi Arabia rarely receives negative press in the United States and students from the Arab nation regularly study in American institutions like The University of Findlay. This exposure to western culture could potentially generate change in Saudi Arabia.

Both the liberal and conservative views of Muslims have been addressed. It is clear that following customary forms of *ijma'* hinders progress by only allowing answers from the consensus of the companions of the Prophet. This source of Islamic law, popular with the majority of Sunni schools, relies on ancient decisions made in the seventh century. Not only were these rulings made with no foresight to the future, they focused on an Islamic Arab dominated society, which leaves many contemporary Muslims in a quagmire between faith and secular issues.

Several Muslim and non-Muslim assessments focus on these laws from either experience or intense study. Many look forward to advancing *Shar'ia* law to bring Islamic practices into acceptance on the world stage. This can be done through legal *fatwas* issued under the approval

of general consensus through *shura*. Such actions would represent independent reasoning from the *Sunna*, a style of *ijtihad* that every Muslim experiences on a regular basis when making socio-religious decisions in their personal lives.

For Islam and *Shar'ia* law to move forward the use of *taqlid* style imitation needs to be abandoned. As noted by Michael Mumisma in chapter 9, the incorporation of the social sciences is key to western agreement. The Muslim population does not have to completely integrate into society, but maintain identity on a peaceful plane of co-existence. This could lead to harmony on a scale from international governments to local neighborhood levels. It is normal for a human to contend the beliefs to which he has been exposed through life are superior to other beliefs, especially when it is spelled out in a faith's doctrine. However, a view of superior conviction can be maintained without sustaining recruiting and loyalty by fear and force.

No matter what the reason a source was cited in this study, many pointed to one common theme. Certain aspects of *Shar'ia* law are currently in conflict with collective human rights, as summarized within the UDHR. Such things as Muslim female testimony or inheritance will require serious consideration to be brought in line with social norms, as their values are concretely defined within the *Qur'an*. Other significant issues such as apostasy may see easier progression in terms of the variety of outcomes available. Smaller concerns, like the covering of the *hijab*, can quickly be addressed at a local level and work its way up to a faith-wide *fatwa* by consensus.

The various schools of Islamic jurisprudence, both Sunni and Shiite, are currently locked in the legal views outlined in this study. At this time, the revelations and traditions of Islam lead certain official consensuses of agreement to a position seen in contrast with certain values of the UDHR. This not only disallows any school to completely accept the Document as it is, it

maintains controversy with Islamic demands to live under *Shar'ia* law outside of Muslim controlled territories.

The answer is, largely, for either Islam to compromise with the western intellectual (social science) outlook, or for the West to accommodate Muslim demands. It will take unity within the *umma* to begin to bring *Shar'ia* law into compliance with general human rights as stated within the *Universal Declaration of Human Rights*. However, as examples and suggestions in this study indicate, it may be a possibility.

Appendix A.

The Universal Declaration of Human Rights

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights has resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples in the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.

Everyone has the right to life, liberty and security of person.

Article 4.

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.

Everyone has the right to recognition everywhere as a person before the law.

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9.

No one shall be subject to arbitrary arrest, detention or exile.

Article 10.

Everyone is entitled in full equality to a fair and public hearing by an independent and

impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

(1) Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

(2) No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offense was committed.

Article 12.

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13.

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of persecutions generally arising from non-political crimes or from acts contrary to the purpose and principles of the United Nations.

Article 15.

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to

marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 18.

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19.

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interferences and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one can be compelled to belong to an association.

Article 21.

(1) Everyone has a right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22.

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.

- (1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for work.
- (3) Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and join trade unions for the protection of his interests.

Article 24.

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right of security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26.

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27.

(1) Everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28.

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29.

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subjected only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purpose and principles of the United Nations.

Article 30.

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms set forth herein.

(Johnson 11-17)

Appendix B.

Universal Islamic Declaration of Human Rights

PREAMBLE

WHEREAS the age-old human aspiration for a just world order wherein people could live, develop and prosper in an environment free from fear, oppression, exploitation and deprivation, remains largely unfilled;

WHEREAS the divine mercy unto mankind reflected in its having been endowed with super-abundant economic sustenance is being wasted, or unfairly or unjustly withheld from the inhabitants of the earth;

WHEREAS Allah (God) has given mankind through His revelations in the Holy Qur'an and the Sunnah of his blessed Prophet Muhammad an abiding legal and moral framework within which to establish and regulate human institutions and relationships;

WHEREAS the human rights decreed by the Divine Law aim at conferring dignity and honour on mankind and are designed to eliminate oppression and injustice;

WHEREAS by virtue of their Divine source and sanction these rights can neither be curtailed, abrogated or disregarded by authorities, assemblies or other institutions, nor can they be surrendered or alienated;

Therefore we, as Muslims, who believe

- a) in God, the Beneficent and Merciful, the Creator, the Sustainer, the Sovereign, the sole Guide of mankind and the Source of all Law;
- b) in the Vicegerency (Khilafah) of man who has been created to fulfill the Will of God on earth;
- c) in the wisdom of divine guidance brought by the Prophets, whose mission found its culmination in the final Divine message that was conveyed by the Prophet Muhammad (Peace be upon him) to all mankind;
- d) that rationality by itself without the light of the revelation from God can neither be a sure guide in the affairs of mankind nor provide a spiritual nourishment to the human soul, and, knowing that the teachings of Islam represent the quintessence of Divine guidance in its final and perfect form, feel duty-bound to remind man of the high status and dignity bestowed on him by God;
- e) in inviting all mankind to the message of Islam;

f) that by the terms of our primeval covenant with God our duties and obligations have priority over our rights, and that each one of us is under a bounden duty to spread the teachings of Islam by word, deed, and indeed in all gentle ways, and to make them effective not only in our individual lives but also in the society around us;

g) in our obligation to establish an Islamic order:

i) wherein all human beings shall be equal and none shall enjoy a privilege or suffer a disadvantage or discrimination by reason of race, colour, sex, origin or language;

ii) wherein all human beings are born free;

iii) wherein slavery and forced labour are abhorred;

iv) wherein conditions shall be established such that the institution of family shall be preserved, protected and honoured as the basis of all social life;

v) wherein the rulers and the ruled alike are subject to, and equal before, the Law;

vi) wherein obedience shall be rendered only to those commands that are in consonance with the Law;

vii) wherein all worldly power shall be considered as a sacred trust, to be exercised within the limits prescribed by the Law and in a manner approved by it, and with due regard for the priorities fixed by it;

viii) wherein all economic resources shall be treated as Divine blessings bestowed upon mankind, to be enjoyed by all in accordance with the rules and the values set out in the Qur'an and Sunnah;

ix) wherein all public affairs shall be determined and conducted, and the authority to administer them shall be exercised after mutual consultation (*Shura*) between the believers qualified to contribute to a decision which would accord well with the Law and the public good;

x) wherein everyone should take in obligations proportionate to his capacity and shall be held responsible pro rata for his deeds;

xi) wherein everyone shall, in case of infringements of his rights, be assured of appropriate remedial measures in accordance with the Law;

xii) wherein one shall be deprived of the rights assured to him by the Law except by its authority and to the extent permitted by it;

xiii) wherein every individual shall have the right to bring legal action against anyone who commits a crime against society as a whole or against any of its members;

xiv) wherein every effort shall be made to

(a) secure unto mankind deliverance from every type of exploitation, injustice and oppression,

(b) ensure to everyone security, dignity and liberty in terms set out and by methods approved and within the limits set by law;

*Do hereby, as
servants of Allah
and as members
of the Universal
Brotherhood of
Islam, at the
beginning of the
Fifteenth Century
of the Islamic
Era, affirm our
commitment to
uphold the
following
inviolable and
inalienable
human rights that
we consider are
enjoined by Islam.*

I Right to Life

a) Human life is sacred and inviolable and every effort shall be made to protect it. In particular no one shall be exposed to injury or death, except under the authority of the Law.

b) Just as in life, so also after death, the sanctity of a person's body shall be inviolable. It is the obligation of believers to see that a deceased person's body is handled with due solemnity.

II Right to Freedom

a) Man is born free. No inroads shall be made on his right to liberty except under authority and due process of the Law.

b) Every individual and every people has the inalienable right to freedom in all its forms -

physical, cultural, economic and political - and shall be entitled to struggle by all available means against any infringement or abrogation of this right; and every oppressed individual or people has a legitimate claim to the support of other individuals and/or peoples in such a struggle.

III Right to Equality and Prohibition Against Impermissible Discrimination

- a) All persons are equal before the Law and are entitled to equal opportunities and protection before the Law.
- b) All persons shall be entitled to equal wage for equal work.
- c) No person shall be denied the opportunity to work or discriminated against in any manner or exposed to a greater physical risk by reason of religious belief, colour, race, origin, sex or language.

IV Right to Justice

- a) Every person has the right to be treated within accordance of the Law, and only in accordance with the Law.
- b) Every person has not only the right but the obligation to protest against injustice; to recourse to remedies provided by the Law in respect to any unwarranted personal injury or loss; to self-defence against any charges that are preferred against him and to obtain fair adjudication before an independent judicial tribunal in any dispute with public authorities or any other person.
- c) It is the right and duty of every person to defend the rights of any other person and the community in general (*Hisbah*).
- d) No person shall be discriminated against while seeking to defend private and public rights.
- e) It is the right and duty of every Muslim to refuse to obey any command which is contrary to the Law, no matter by whom it may be issued.

V Right to Fair Trial

- a) no person shall be judged guilty of an offence and made liable to punishment except after proof of his guilt before an independent judicial tribunal.
- b) No person shall be adjudged guilty except after a fair trial and after reasonable opportunity for defence has been provided to him.

c) Punishment shall be awarded in accordance with the Law, in proportion to the seriousness of the offence and with due consideration of the circumstances under which it was committed.

d) No act shall be considered a crime unless it is stipulated as such in the clear wording of the Law.

e) Every individual is responsible for his actions. Responsibility for a crime can not be vicariously extended to other members of his family or group, who are not otherwise directly or indirectly involved in the commission of the crime in question.

VI Right to Protection Against Abuse of Power

Every person has the right to protection against harassment by official agencies. He is not liable to account for himself except for making a defence to the charges made against him or where he is found in a situation wherein a question regarding suspicion of his involvement of a crime could be *reasonably* raised.

VII Right to Protection Against Torture

No person shall be subject to torture in mind or body, or degraded, or threatened with injury either to himself or to anyone related to or held dear to him, or forcibly made to confess to the commission of a crime, or forced to consent to an act that is injurious to his interests.

VIII Right to Protection of Honour [sic] and Reputation

Every person has the right to protect his honour and reputation against calumnies, groundless charges or deliberate attempts at defamation and blackmail.

IX Right to Asylum

a) Every persecuted or oppressed person has the right to seek refuge and asylum. That right is guaranteed to every human being irrespective of race, religion, colour and sex.

b) Al Masjid Al Haram (the sacred house of Allah) in Mecca is a sanctuary for all Muslims.

X Rights of Minorities

a) The Qur'anic principle "There is no compulsion in religion" shall govern the religious rights of non-Muslim minorities.

b) In a Muslim country religious minorities shall have the choice to be governed in respect of their civil and personal matters by Islamic Law, or by their own laws.

XI Right and Obligation to Participate in the Conduct and Management of Public Affairs

a) Subject to the Law, every individual in the community (*Ummah*) is entitled to assume public office.

b) Process of free consultation (*Shura*) is the basis of the administrative relationship between the government and the people. People also have the right to choose and remove their rulers in accordance with this principle.

XII Right to Freedom of Belief, Thought and Speech

a) Every person has the right to express his thoughts and beliefs so long as he remains within the limits prescribed by the Law. No one, however, is entitled to disseminate falsehood or to circulate reports which may outrage public decency, or to indulge in slander, innuendo or to cast defamatory aspersions on other persons.

b) Pursuit of knowledge and search after truth is not only a right but a duty of every Muslim.

c) It is the right and duty of every Muslim to protest and strive (within the limits set out by the Law) against oppression even if it involves challenging the highest authority in the state.

d) There shall be no bar on the dissemination of information provided it does not endanger the security of the society or the state and is confined within the limits imposed by the Law.

e) No one shall hold in contempt or ridicule the religious beliefs of others or incite public hostility against them; respect for the religious feelings of others is obligatory on all Muslims.

XIII Right to Freedom of Religion

Every person has the right to freedom of conscience and worship in accordance with his religious beliefs.

XIV Right to Free Association

a) Every person is entitled to participate individually and collectively in the religious, social, cultural and political life of his community and to establish institutions and agencies meant

to enjoin what is right (*ma'roof*) and to prevent what is wrong (*munkar*).

b) Every person is entitled to strive for the establishment of institutions where under an enjoyment of these rights would be made possible. Collectively, the community is obliged to establish conditions so as to allow its members full development of their personalities.

XV The Economic Order and the Rights Evolving Therefrom

a) In their economic pursuits, all persons are entitled to the full benefits of nature and all its resources. These are blessing bestowed by God for the benefit of mankind as a whole.

b) All human beings are entitled to earn their living according to the Law.

c) Every person is entitled to own property individually or in association with others. State ownership of certain economic resources in the public interest is legitimate.

d) The poor have the right to a prescribed share in the wealth of the rich, as fixed by Zakah [*sic*], levied and collected in accordance with the Law.

e) All means of production shall be utilized in the interest of the community (*Ummah*) as a whole, and may not be neglected or misused.

f) In order to promote the development of a balanced economy and to protect society from exploitation, Islamic Law forbids monopolies, unreasonable restrictive trade practices, usury, the use of coercion in the making of contracts and the publication of misleading advertisements.

g) All economic activities are permitted provided they are not detrimental to the interests of the community (*Ummah*) and do not violate Islamic Laws and values.

XVI Right to Protection of Property

No property may be expropriated except in the public interest and on payment of fair and adequate compensation.

XVII Status and Dignity of Workers

Islam hounors work and the worker and enjoins Muslims not only to treat the worker justly but also generously. He is not only to be paid his earned wages promptly, but also entitled to adequate rest and leisure.

XVIII Right to Social Security

Every person has the right to food, shelter, clothing, education and medical care consistent with the resources of the community. This obligation of the community extends in particular to all individuals who cannot take care of themselves due to some temporary or permanent disability.

XIX Right to Found a Family and Related Matters

- a) Every person is entitled to marry, to found a family and to bring up children in conformity with his religion, traditions and culture. Every spouse is entitled to such rights and privileges and carries such obligations as are stipulated by the Law.
- b) Each of the partners in marriage is entitled to respect and consideration from the other.
- c) Every husband is obligated to maintain his wife and children according to his means.
- d) Every child has the right to be maintained and properly brought up by its parents, it being forbidden that children are made to work at an early age or that any burden is put on them which would arrest or harm their natural development.
- e) If parents are for some reason unable to discharge their obligations towards a child it becomes the responsibility of the community to fulfill these obligations at public expense.
- f) Every person is entitled to material support, as well as care and protection, from his family during his childhood, old age or incapacity. Parents are entitled to material support as well as care and protection from their children.
- g) Motherhood is entitled to special respect, care and assistance on the part of the family and the public organs of the community (*Ummah*).
- h) Within the family, men and women are to share in their obligations and responsibilities according to their sex, their natural endowments, talents and inclinations, bearing in mind their common responsibilities toward their progeny and their relatives.
- i) No person may be married against his or her will, or lose or suffer diminution of legal personality on account of marriage.

XX Right of Married Women

Every married woman is entitled to:

- a) live in the house which her husband lives;
- b) receive the means necessary for maintaining a standard of living which is not inferior to

that of her spouse, and, in the event of divorce, receive during the statutory period of waiting (*iddah*) means of maintenance commensurate with her husband's resources, for herself as well as for the children she nurses or keeps, irrespective of her own financial status, earnings, property that she may hold in her own rights;

c) seek and obtain dissolution of marriage (*Khul'a*) in accordance with the terms of the Law. This right is in addition to her right to seek divorce through the courts.

d) inherit from her husband, her parents, her children and other relatives according to the Law;

e) strict confidentiality from her spouse, or ex-spouse if divorced, with regard to any information he may have obtained about her, the disclosure of which could prove detrimental to her interests. A similar responsibility rests on her in respect of her spouse or ex-spouse.

XXI Right to Education

a) Every person is entitled to receive education in accordance with his natural capabilities.

b) Every person is entitled to a free choice of profession and career and to the opportunity for the full development of his natural endowments.

XXII Right of Privacy

Every person is entitled to the protection of his privacy.

XXIII Right to Freedom of Movement and Residence

a) In view of the fact that the world of Islam is veritably *Ummah Islamia*, every Muslim shall have the right to freely move in and out of any Muslim country.

b) No one shall be forced to leave the country of his residence, or be arbitrarily deported therefrom without recourse to due process of Law.

Explanatory Notes

1 In the above formulation of Human Rights, unless the context provides otherwise:

a) the term 'person' refers to both the male and female sexes.

b) the term 'Law' denotes the *Shari'ah*, i.e. the totality of ordinances derived from the

Qur'an and the Sunnah and any other laws that are deduced from these two sources by methods considered valid in Islamic Jurisprudence.

2 Each one of the Human Rights enunciated in this declaration carries a corresponding duty.

3 In the exercise and enjoyment of the rights referred to the above every person shall be subject only to such limitations as are enjoined by the Law for the purpose of securing the due recognition of, and respect for, the rights and the freedom of others and of the meeting the just requirements of morality, public order and the general welfare of the community (*Ummah*).

(www.alhewar.com/ISLAMDECL.html)

Appendix C.

The Cairo Universal Declaration of Human Rights in Islam

Article 1:

a) All human beings form one family whose members are united by their subordination to Allah and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, colour, language, belief, sex, religion, political affiliation, social status or other considerations. The true religion is the guarantee for enhancing such dignity along the path to human integrity.

b) All human beings are Allah's subjects, and the most loved by him are those who are most beneficial to His subjects, and no one has superiority over another except on the basis of piety and good deeds.

Article 2:

a) Life is a God-given gift and the right to life is guaranteed to every human being. It is the duty of individuals, societies and States to safeguard this right against any violation, and it is prohibited to take away life except for a Shari'ah prescribed reason.

b) It is forbidden to resort to any means which could result in genocidal annihilation of mankind.

c) The preservation of human life throughout the term of time willed by Allah is a duty prescribed by Shari'ah.

d) Safety from bodily harm is a guaranteed right. It is the duty of the state to safeguard it, and it is prohibited to breach it without a Shari'ah-prescribed reason.

Article 3:

a) In the event of the use of force and the case of armed conflict, it is not permissible to kill non-belligerents such as old men, women and children. The wounded and the sick shall have the right to medical treatment; and prisoners of war have the right to be fed, sheltered and clothed. It is prohibited to mutilate or dismember dead bodies. It is required to exchange prisoners of war and to arrange visits or reunions of families separated by circumstances of war.

b) It is prohibited to cut down trees, to destroy crops or livestock, to destroy the enemy's civilian buildings and installations by shelling, blasting or any other means.

Article 4:

Every human being is entitled to human sanctity and the protection of one's good name and honour during one's life and after one's death. The State and society shall protect one's body and burial place from desecration.

Article 5:

- a) The family is the foundation of society, and marriage is the basis of making a family. Men and women have the right to marriage, and no restrictions stemming from race, colour or nationality shall prevent them from exercising this right.
- b) The society and State shall remove all obstacles to marriage and facilitate it, and shall protect the family and safeguard its welfare.

Article 6:

- a) Woman is equal to man in human dignity, and has her own rights to enjoy as well as duties to perform, and has her own civil entity and financial independence, and the right to retain her name and lineage.
- b) The husband is responsible for the maintenance and the welfare of the family.

Article 7:

- a) As of the moment of birth, every child has rights due from the parents, the society and the State to be accorded proper nursing, education and material, hygienic and moral care. Both the fetus and the mother must be safeguarded and accorded special care.
- b) Parents and those in such like capacity have the right to choose the type of education they desire for their children, provided they take into consideration the interest and future of the children in accordance with ethical values and the principles of Shari'ah.

Article 8:

Every human has the right to enjoy a legitimate eligibility with all its prerogatives and obligations in case such eligibility is lost or impaired, the person shall have the right to be represented by his/her guardian.

Article 9:

a) The seeking of knowledge is an obligation and provision of education is the duty of the society and the State. The State shall ensure the availability of ways and means to acquire education and shall guarantee its diversity in the interest of society so as to enable man to be acquainted with the religion of Islam and uncover the secrets of the Universe for the benefit of mankind.

b) Every human being has the right to receive both religious and worldly education from the various institutions of teaching, education and guidance, including the family, the school, the university, the media, etc., and in such as integrated and balanced manner that would develop human personality, strengthen man's faith in Allah and promote man's respect to and defence of both rights and obligations.

Article 10:

Islam is the religion of true unspoiled nature. It is prohibited to exercise any form of pressure on man or to exploit his poverty or ignorance in order to force him to change his religion to another religion or to atheism.

Article 11:

a) Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them, and there can be no subjugation but to Allah the Almighty.

b) Colonialism of all types being one of the most evil forms of enslavement is totally prohibited. Peoples suffering from colonialism have the full right to freedom and self-determination. It is the duty of all States peoples to support the struggle of colonized peoples for the liquidation of all forms of and occupation, and all States and peoples have the right to preserve their independent identity and control over their wealth and natural resources.

Article 12:

Every man shall have the right, within the framework of Shari'ah, to free movement and to select his place of residence whether within or outside his country and if persecuted, is entitled to seek asylum in another country. The country of refuge shall be obliged to provide protection to the asylum-seeker until his safety has been attained, unless asylum is motivated by committing an act regarded by the Shari'ah as a crime.

Article 13:

Work is a right guaranteed by the State and the Society for each person with capability to work. Everyone shall be free to choose the work that suits him best and which serves his interest as well as those of society. The employee shall have the right to enjoy the safety and security as well as other social guarantees. He may not be assigned work beyond his capacity nor shall he be subjected to compulsion or exploited or harmed in any way. He shall be entitled - without any discrimination between males and females - to fair wages for his work without delay, as well as to the holiday's allowances and promotions which he deserves. On his part, he shall be required to be dedicated and meticulous in his work. Should workers and employers disagree on any matter, the State shall intervene to settle the dispute and have the grievances redressed, the rights confirmed and justice enforced without bias.

Article 14:

Everyone shall have the right to earn a legitimate living without monopolization, deceit or causing harm to oneself or others. Usury is explicitly prohibited.

Article 15:

a) Everyone shall have the right to own property acquired in a legitimate way, and shall be entitled to the rights of ownership without prejudice to oneself, others or the society in general. Expropriation is not permissible except for requirements of public interest and upon payment of prompt and fair compensation.

b) Confiscation and seizure of property is not permitted except for a necessity dictated by law.

Article 16:

Everyone shall have the rights to enjoy the fruits of his scientific, literary, artistic or technical labour of which he is the author; and he shall have the right to the protection of his moral and material interests stemming therefrom, provided it is not contrary to the principles of the Shari'ah.

Article 17:

a) Everyone shall have the right to live in a clean environment, away from vice and moral corruption, that would favor a healthy ethical development of his person and it is incumbent upon the State and society in general to afford that right.

b) Everyone shall have the right to medical and social care, and to all public amenities provided by society and the State within the limits of their available resources.

c) The States shall insure the right of the individual to a decent living that may enable him to meet his requirements and those of his dependents, including food, clothing, housing, education, medical care and all other basic needs.

Article 18:

a) Everyone shall have the right to live in security for himself, his religion, his dependents, his honour and his property.

b) Everyone shall have the right to privacy in the conduct of his private affairs, in his home, among his family, with regard to his property and relationships. It is not permitted to spy on him, to place him under surveillance or to besmirch his good name. The State shall protect him from arbitrary interference.

c) A private residence is inviolable in all cases. It will not be entered without permission from its inhabitants or in any unlawful manner, nor shall it be demolished or confiscated and its dwellers evicted.

Article 19:

a) All individuals are equal before the law, without distinction between the rulers and the ruled.

b) The right to resort to justice is guaranteed to everyone.

c) There shall be no crime or punishment except as provided for in the Shari'ah.

d) A defendant is innocent until his guilt is proven in a fast trial in which he shall be given the guarantee of defence.

Article 20:

It is not permitted without legitimate reason to arrest an individual, or restrict his freedom, to exile or to punish him. It is not permitted to subject him to physical or psychological torture or to any form of maltreatment, cruelty or indignity. Nor is it permitted to subject an individual to medical or scientific experiments without his consent or at the risk of his health or his life. Nor is it permitted to promulgate emergency laws that would provide executive authority for such actions.

Article 21:

Taking hostages under any form or for any purpose is expressly forbidden.

Article 22:

- a) Everyone shall have the right to express his opinion freely in such a manner as would not be contrary to the principles of Shari'ah.
- b) Everyone shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Shari'ah law.
- c) Information is a vital necessity to society. It may not be exploited or misused in any such a way as may violate sanctities and the dignity of the Prophets, undermine moral and ethical values or disintegrate, corrupt or harm society or weaken its faith.
- d) It is not permitted to excite nationalistic or doctrinal hatred or to do anything that may be an incitement to any form of racial discrimination.

Article 23:

- a) Authority is a trust; and abuse or malicious exploitation thereof is explicitly prohibited, in order to guarantee fundamental human rights.
- b) Everyone shall have the right to participate, directly or indirectly in the administration of his country's public affairs. He shall have the right to assume public office in accordance with the provisions of Shari'ah.

Article 24:

All rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah.

Article 25:

The Islamic Shari'ah is the only source of reference for the explanation or clarification of any of the articles in this Declaration.

(Cairo)

Glossary of Terms

Abbasids - Great dynasty of classical Islamic civilization (749-1258 C.E.) The name is derived from al-Abbas, the uncle of Muhammad (Bowker 2).

Ahl al-Kitab - “‘People of the Book.’ Quranic term referring to Jews, Christians, and Sabians as possessors of books previously revealed by God... The books associated with Jews and Christians are the Torah, Psalms, and Gospels, all of which are recognized by the Quran as God’s revelation, although the Quran declares they were abrogated and superseded by Muhammad’s book since they were corrupted. The Quran recognizes the special relationship of Jews with God and grants both Jews and Christians a special legal status in Muslim communities as dhimmis (protected scriptural minorities)” (Esposito 10).

Allah - “God... Revealed himself in the Quran, which is self-described as His book. Defined in the Quran as creator, sustainer, judge, and ruler of the material universe and the realm of human experience” (Esposito 16).

Asabiya - “Strong group feeling, as of Arab tribes” (Denny 403).

Ashura - “Commemoration of the martyrdom in 680 of Husayn, Muhammad’s grandson and the third imam of Shii Islam” (Esposito 27).

Ayah / ayat - “Usually translated to ‘verse’ or ‘sign.’ Refers to divisions within surahs (chapters) of the Quran” (Esposito 30).

Ayyam al’Arab - *Days of the Arabs*, ancient Arabian poetic chronicles of Bedouin life (Denny 33).

Beth-din (bet-din) - “(Heb. ‘house of judgment’). Jewish court of law” (Bowker 138).

Burqa (Chador) - “Persian. Veil. Full-length garment covering a woman from head to foot, typically black in color. Not mandated in the Quran, although it symbolizes modest dress in Islamic culture” (Esposito 52).

Caliph (Caliphate) - “Term adopted by the dynastic rulers of the Muslim world, referring to the successor to the Prophet Muhammad as the political-military ruler of Muslim community” (Esposito 49).

Dar al-Harb - “Territory of war. Denotes all territories bordering on dar al-Islam (territory of Islam), whose leaders are called upon to convert to Islam... Jurists trace the concept to Muhammad, whose message to the Persian, Abyssinian and Byzantine emperors demanded that they choose between conversion and war. When the leaders of dar al-harb territory accepts Islam, the territory becomes a part of dar al-Islam, where Islamic law prevails... An Islamic territory taken by non-Muslims becomes dar al-harb when Islamic law is replaced” (Esposito 62).

Dar al-Islam - “Territory of Islam. Region of Muslim sovereignty where Islamic law prevails” (Esposito 62).

Dhimmi - “A member of the ‘People of the Book’ (*Ahl al-Kitab*), who is protected in his or her minority status when living under Muslim rule, in exchange for certain obligations such as paying the ‘head tax’ (*jizya*). From *dhimma*, a covenant of ‘protection’” (Denny 404).

Fatihah - “‘The Opening,’ title of the first surah of the Quran... It is regarded as the essence of the Quran and sums up the relation of humans to God” (Esposito 84). “In the Name of God the Compassionate the Merciful. Praise be to God, Lord of the Universe, The Compassionate, the Merciful, Sovereign of the Day of Judgment! You alone we worship, and You alone we turn for help. Guide us to the straight path, The path of those whom you have favoured, Not of those who have incurred your wrath, Nor of those who have gone astray” (*Qur’an* 1:1-7).

Fatwa - “Authoritative legal opinion given by a mufti (legal scholar) in response to a question posed by an individual or a court of law. A fatwa is typically requested in cases not covered by the fiqh literature and is neither binding or enforceable” (Esposito 85).

Fiqh - “Conceptually, the human attempt to understand divine law (*Shar’ia*). Whereas *Shar’ia* is immutable and infallible, *fiqh* is fallible and changeable. *Fiqh* is distinguished from *usul al-fiqh*, the methods of legal interpretation and analysis” (Esposito 87).

Ghazwa - “‘Raiding,’ as in pre-Islamic Arabia. The chief object was camels” (Denny 404).

Hadd - “Limit or Prohibition; pl. *hudud*. A punishment fixed in the Quran and hadith for crimes considered to be against the rights of God. The six crimes for which punishments are fixed are theft (amputation of the hand), illicit sexual relations (death by stoning or one hundred lashes), making unproven accusations of illicit sex (eighty lashes), drinking intoxicants (eighty lashes), apostasy (death or banishment) and highway robbery (death)” (Esposito 101).

Hadith - “Report of the words and deeds of Muhammad and other early Muslims; considered an authoritative source of revelation, second only to the Quran... Hadith (pl. ahadith; hadith is used as a singular or collective term in English) were collected, transmitted, and taught orally for two centuries after Muhammad’s death and then began to be collected in written form and codified. They serve as a source of biographical material for Muhammad, contextualization of Quranic revelations, and Islamic law” (Esposito 101).

Hajj - “The annual pilgrimage to Mecca during the month of Dhu al-Hijjah... Performance of the hajj is one of the five pillars of Islam, and all adult Muslims are required to perform it at least once in their lives if they are physically and financially able” (Esposito 103).

Halakah - (Heb. From *halak*, ‘he went’). A particular law or the whole Jewish legal system. The halakah is traditionally believed to go back in its entirety to Moses” (Bowker 404).

Haram - “Legal term for what is forbidden or inviolable under Islamic law. Also describes the area around the three holy cities, Mecca, Medina, and Jerusalem, indicating their role as sanctuaries where no one may be killed. Hunting, uprooting trees, harvesting grain, violence

towards humans except in self defense, and carrying weapons are forbidden in these areas. Entry of non-Muslims in Mecca or Medina is also forbidden” (Esposito 109).

Haya - Modesty. “Islam calls for freedom from vanity. Muhammad is reported to have said a person with vanity in his or her heart will not enter paradise. Muslims are not to be arrogant in attitude, posture or behavior. This includes a prohibition on racism, gender bias, and classism, as well as conspicuous consumption. Muslim men and women are enjoined to dress modestly, avoiding costly clothing and clothing that reveals a human figure. Some jurists demand that Muslim women veil their faces and avoid public life despite the fact that women in the time of Muhammad were not required to do so” (Esposito 203).

Hijab - “Traditional women’s head, face, or body covering, of numerous varieties across time and space, often called the ‘veil’” (Esposito 112).

Hijra - “Migration or withdrawal. Typically refers to migration of Muhammad and his Companions from Mecca to Medina in 622 C.E., the first year of the Islamic calendar” (Esposito 112).

Hudud - See *hadd*.

Ibadat - “Worship; acts of devotion; service... The religious duties of worship incumbent of all Muslims... They include the pillars of Islam... (Esposito 123).

Ijma’ (ijma) - “Consensus or agreement. One of four recognized sources of Sunni law. Utilized when the Quran and Sunnah (the first two sources) are silent on a particular issue. There is considerable debate concerning whose opinions are relevant for *ijma*. Some argue that only the opinions of scholars are relevant. Others contend that *ijma* includes consensus of the laity. Most agree that the consensus of Muhammad’s Companions, the people of Medina, of the family of the Prophet is authoritative. Once *ijma’* is established, it serves as a precedent” (Esposito 133).

Ijtihad - “Islamic legal term meaning ‘independent reasoning,’ as opposed to *taqlid* (imitation). One of the four sources of Sunni law, utilized when the Quran and Sunnah (the first two sources) are silent” (Esposito 134).

Imam - “One who stands in front; a role model for the Muslim community in all its spiritual and secular undertakings. The title is used interchangeably with the word *khalifah* for the political head of the Sunni Muslim state. In legal writings the term is applied to the leader of congregational prayers in the mosque... In Shii Islam the imam is the divinely appointed successor of Muhammad and is regarded as infallible, with the ability to make binding decisions in all area of human activity” (Esposito 135-36).

Ird - Honor. “Culturally understood as a sign of God’s pleasure and part of one’s Muslim identity. May be displayed by the ownership of land and resources, family solidarity, the chastity of women, and personal characteristics...” (Esposito 117).

Irtidad - “Apostasy. Renunciation of one’s religion. The Arabic terms (*riddah, irtidad*) are not

used in the Quran, but it promises dire consequences in the afterlife for those who ‘turn from’ or ‘renounce’ (*yartaddu*, 2:217; 5:54) and ‘those who disbelieve after having believed’ (3:81ff; 5:61; 9:66; 4:137; 16:106). Hadith reports introduce the teaching that renunciation is punishable by beheading, burning, crucifixion, and banishment. Some traditions allow an apostate to repent. Islamic legal codes agree on the death penalty (traditionally by the sword) for an adult male in full possession of his faculties who has renounced Islam voluntarily” (Esposito 22).

Isnad - “Chain of authority. Refers to the line of transmitters of a particular saying or doctrine, particularly with respect to hadith. Developed as a science in *hadith* study, since the chain of transmitters indicates the authority of given hadith” (Esposito 151).

Jahiliyyah - “Pre-Islamic period or ‘ignorance’ of mono-theism and divine law. In current use, refers to secular modernity... The term denotes any government system, ideology, or institution based on values other than referring to God” (Esposito 154).

Jihad - “From the Arabic root meaning ‘to strive,’ ‘to exert,’ ‘to fight;’ exact meaning depends on context. May express a struggle against one’s evil inclinations, an exertion to convert unbelievers, or a struggle for the moral betterment of the Islamic community” (Esposito 159-160).

Jizya - Compensation. “Poll tax levied on non-Muslims as a form of tribute and in exchange for an exemption of military service, based on Quran 9:29” (Esposito 161).

Ka’ba (Kaaba) - “Cube shaped ‘House of God’ located in Mecca, Saudi Arabia. Focal point of the hajj pilgrimage and a world spiritual center that all Muslims face during prayer. Muslims believe that it was built by Abraham and Ishmael; some believe that Adam built it and Abraham (Ibrahim) and Ishmael (Ismail) rebuilt it” (Esposito 165).

Kaffir (Kafir) - “Unbeliever, first applied to Meccans that refused submission to Islam, the term applies the active rejection of divine revelation. All unbelievers are believed to face eternal damnation in the afterlife... Islamic fundamentalists in the twentieth centuries have applied the term to Muslims who do not follow their strict interpretations of the Quran” (Esposito 165).

Khassah al-nabi - “Specific. Refers to passages from the Quran believed to apply to specific persons (171). *Nabi* - “Prophet” (Esposito 225).

Madhhab - “School of legal thought (pl. *madhabib*)” (Esposito 183).

Madrassa - “Establishment of learning where the Islamic sciences are taught; a college for higher studies” (Esposito 184).

Maqasid - Purposes. The purpose for which a divine directive was revealed and the purpose of actions. A category of Islamic law which focuses on the goals and purposes and not so much the words (Kamali, Web.).

Maqasid al-Shar’ia - The goals and objectives of Islamic Law. Integrates a degree of versatility

into the reading of *Shar'ia* and rises above the vicissitudes of time and circumstance. Not burdened with the technicality and literal reading of the text (Kamali, Web.).

Matn - Main text of a *hadith*, containing the story. Second half importance with *isnad* (Denny 152).

Mawla - "Protector, master. From Arabic 'to be close to,' 'to have power over.' Can have reciprocal meanings depending on whether it is in the active or passive voice: master or slave, patron or client, and friend" (Esposito 197).

Mawali - "Non-Arab Muslims" (Esposito 197).

Mufti - "Jurist capable of giving, upon request, an authoritative although non-binding opinion (fatwa) on a point of Islamic law. These opinions are generally based on precedent and compiled in legal reference manuals... In some contexts, *muftis* are appointed by the state and serve on advisory councils" (Esposito 210).

Mujtahid - "One who exercises independent reasoning (ijtihad) in the interpretation of Islamic law. Qualifications include training in recognized schools of Islamic law and extensive knowledge of the Quran and hadith. In Sunni Islam, the title is reserved for the founders of the four official schools of Islamic law, although modern Islamic reformers call for the revival of ijtihad as a means of accommodating new ideas and conditions" (Esposito 214).

Muruwwah - "Virility. Connotes a cluster of virtues - bravery, generosity, practical wisdom, and honor, all highly valued in both pre-Islamic and Arab tribal culture and literature" (Esposito 216).

Al-Muwatta (*The Beaten Path*) - "The oldest surviving compendium of religious law by Malik ibn Anas al Asbahi (d. 795), eponymous founder of Maliki school of law" (Esposito 222).

Nass - Sunna (sayings) of the Prophet considered divinely inspired but not part of the *Qur'an* (Mumisma 110).

Qabilah - "Tribe. Basis for the type of social organization typical of the premier world and dominant in regions where state or other civil organization has not taken effect" Esposito 251).

Qadi - "A judge" (Esposito 251).

Qiyas - "In Islamic law, the deduction of legal prescriptions from the Quran and Sunnah by analogical reasoning. Qiyas provided classical Muslim jurists with a method of deducing laws on matters not explicitly covered by the Quran and Sunnah without relying on unsystematic opinion (ray or hawa). According to this method, the ruling of the Quran and Sunnah may be extended to a new problem provided that the precedent (asl) and the new problem (far) share the same operative or effective cause... (i.e. operative cause for prohibition against alcohol is that it intoxicates the mind, therefore, anything that intoxicates the mind, such as narcotics, are prohibited by use of analogy)" (Esposito 254-55).

Quam - a clan or family group pitching tents in close proximity (Denny 32).

Qur'an - "The book of Islamic revelation; scripture. The term means "recitation." The Quran is believed to be the word of God transmitted through the prophet Muhammad" (Esposito 256).

Ra'y (ray) - "Expedient and free reasoning in the field of Islamic law. Practiced as a means of exercising *ijtihad* in the early years of Islam but was soon replaced by emphasis on careful analogical or syllogistic reasoning (*qiyas*) (Esposito 262).

Ridda - Apostasy, especially from Islam (Denny 409).

Salat - "Prayer, worship. The second pillar of Islam is the prayers required five times daily." (Esposito 275).

Shar'ia - "God's eternal and immutable will for humanity, as expressed in the Quran and Muhammad's example (*Sunnah*), considered binding for all believers; ideal Islamic law. The *Qur'an* contains only about ninety verses directly and specifically addressing questions of the law. Islamic legal discourse refers to these verses as God's law and incorporates them into legal codes. The remainder of Islamic law is the result of jurisprudence (*fiqh*), human efforts to codify Islamic norms in practical terms and legislate for cases not specifically dealt with in the Quran and *Sunnah*. Although human legislation is considered fallible and open to revision, the term *Shariah* is sometimes applied to all Islamic legislation. This was supported by formal structures of juristic literature and many specific statements from the tenth through the nineteenth centuries. Modern scholars have challenged this claim, distinguishing between *Shariah* and *fiqh* and calling for reform of *fiqh* codes in light of modern conditions" (Esposito 287-88).

Shaykh - "A pre-Islamic honorific title. Meaning embraces concepts such as 'leader,' 'patriarch,' 'notable,' 'elder,' 'chief,' and 'counselor'" (Esposito 290).

Shiite - (Shii Muslims) "The followers of the party of Ali, believe that Muhammad's religious leadership, spiritual authority, and divine guidance was passed on to his descendants, beginning with his son-in-law and cousin, Ali ibn Abi Talib, his daughter Fatima, and their sons" (Esposito 292).

Shirk - "Association. Theological term referring to the association of someone or something with God, that is, putting someone or something in the place of God, thus deviating from monotheism" (Esposito 293).

Shura - "Consultation. Based on the Quranic injunction to Muhammad to consult with his followers (3:159) and to Muslims to consult with each other in conducting their affairs (42:38). Modern scholars consider *shura* to be the basis for the implementation of democracy. Liberal scholars argue that *shura* declares the sovereignty of people in electing representative leaders to democratic institutions designed to act in the public interest. For conservative thinkers, *shura* must be based on the principle of the ultimate sovereignty of God and geared toward implementation of traditional Islamic law" (Esposito 293-94).

Sira - (sirah) - “Literary genre that developed out of narrative histories of Muhammad’s life, activities... showing Muhammad’s life and work as the fulfillment of divine revelation and providing a basis for Muslim views of history. Sirah has been expanded to encompass the lives of Muhammad’s Companions and of saints, treated in similar format” (Esposito 297).

Sirat Rasul Allah - *Biography of the Prophet of Allah* (Ishaq).

Sufi - Wearer of coarse woolen frock; adept of the Islamic mystical path (Denny 409).

Sultan - “Arabic term denoting possession of power, might, or authority” (Esposito 304).

Sunna (Sunnah) - “Established custom, normative precedent, conduct, and cumulative tradition, typically based on Muhammad’s example. The actions and sayings of Muhammad are believed to complement the divinely revealed message of the Quran, constituting a source for establishing norms for Muslim conduct and making it a primary source of Islamic law” (Esposito 305).

Sunni - The *Sunnis* are the largest branch of the Muslim community (at least eight-five percent). The name is derived from the Sunnah, the exemplary behavior of the Prophet... Sunni life is guided by four schools of thought - Hanafi, Malaki, Shafi’i, and Hanbali - each of which strives to develop practical applications of revelation and the Prophet’s example.” Despite a variety in schools, Sunnis unanimously believe in the legitimacy of the first four successors of the Prophet, Abu Bakr, ‘Umar, Uthman, and Ali (Esposito 306).

Sura (*Surah*) - “Usually translated as ‘chapter.’ The Quran is divided into 114 suras, arranged by descending length rather than chronological order” (Esposito 307).

Taqlid - “Imitation. Conformity to legal precedent, traditional behavior, and doctrines. Often juxtaposed by reformers with *ijtihad*, independent reasoning based on revelation. Traditionally, legal precedent is considered binding within Islamic law, but *taqlid* has acquired a negative connotation among modern reformers, who use the term to refer to cultural and intellectual stagnation and unwillingness to experiment with new ideas” (Esposito 314).

Tawil - “Interpretation or allegorical interpretation... Historically, from the seventh century on, scholars were divided into those who rejected interpretation in any guise or form and those who were willing to apply the discursive methods of reading the text [*Qur’an*] to varying degrees. The former or literalist group included such scholars as Malik ibn Anas (d.795), Ahmad ibn Hanbal (d.855)...” (Esposito 316).

Uluma - “Sunni men of knowledge. Refers to those that have been trained in religious sciences” (Esposito 325).

Umma (Ummah) - “Muslim community. A fundamental concept in Islam, expressing the central unity and theoretical equality of Muslims from diverse cultural and geographical settings” (Esposito 327).

Usul al-fiqh - “Roots of law. The body of principles and investigative methodologies through which practical legal rules are developed from foundational sources. The primary base of law is the *Qur’an*. The second source is the *Sunnah*... The third source is the consensus (ijma) of all Muslim interpretive scholars in a specific age on a legal rule not covered in the Quran or Sunnah... The fourth source is analogy (qiyas), or rule by precedent” (Esposito 329).

Zakat (Zakah) - “Required alms giving that are one of the five pillars of Islam. Muslims with financial means are required to give 2.5 percent of their net worth annually in zakah. To practicing Muslims, zakah connotes the path to purity... The obligation is used for the needy, to propagate the faith, and various charitable issues” (Esposito 345).

Zina - “Unlawful sexual intercourse; fornication or adultery. A criminal offense in Islamic law for which the Quran prescribes three possible punishments: stoning to death, whipping, or exile” (Esposito 348).

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