

Some Reflections on Human Rights and Clerical Claims to Political Power

M.H.A. Reisman[†]

The Iranian revolution. American hostages in Iran. Hezbollah takes hostages in Lebanon. Terrorists bomb an American marine compound in Beirut. Hamas conducts a terror campaign in the West Bank and Gaza. Ayatollah Khomeini sentences Salman Rushdie to death for his novel *The Satanic Verses*. Terrorists bomb the World Trade Center.

Common to these events is an alleged Islamic religious inspiration. All these events have stirred considerable interest in the West about the nature of Islam as a religion and a political doctrine, and the impact it can have on international law and politics and on individual lives in the West.

Many human rights organizations have reported violations of human rights in some Islamic states. Violations of human rights are hardly unusual, but perpetrators of these violations have justified them as required by and consistent with Islamic law, culture, and values. Islam, they tell us, prescribes unequal treatment of women and minorities and limitations on the freedom of expression. Things have gone so far that the fate of millions of people in Islamic states is beginning to be viewed as a *per se* human rights problem.¹

A disengaged observer who intends to appraise the action or policy of any government, political elite, or group cannot simply examine whether that particular act or policy is compatible with the “true” or “fundamental” values, religious or cultural, of that group. Such an exercise may be useful as religious guidance for members of that particular group, but is irrelevant to international appraisal. As one scholar put it recently:

The legal and political practices of any group — majority or minority, state or non-state,

† The author is a legal scholar with an interest in international and comparative law. This Comment is adapted from a speech delivered at the Yale Law School on November 6, 1993 for a conference entitled Law, Culture, and Human Rights, sponsored by the Orville H. Schell, Jr. Center for International Human Rights. The author gratefully acknowledges the comments of Michael Reisman.

1. See generally AMNESTY INTERNATIONAL, ANNUAL REPORT: 1988 (1988); MIDDLE EAST WATCH, GUARDIANS OF THOUGHT: LIMITS ON FREEDOM OF EXPRESSION IN IRAN (1993); see also *Report of the Committee on the Elimination of Racial Discrimination*, U.N. GAOR, 48th Sess., 18th mtg. at 57-62, U.N. Doc. A/48/18 (1993); *Final Report on the Situation of Human Rights in the Islamic Republic of Iran by the Special Representatives of the Commission on Human Rights*, U.N. ESCOR, 49th Sess., Agenda Item 12, U.N. Doc. E/CN.4/1993/41 (1993) [hereinafter *Final Report*]; E.S.C. Res. 62, U.N. ESCOR, 49th Sess., Supp. No. 3, at 192-94, U.N. Doc. E/1993/23 (1993); *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Comments of the Human Rights Committee*, 48th Sess., 1260th mtg. at 2-5, U.N. Doc. CCPR/C/79/Add.25 (1993) [hereinafter *HRC Comments*]; *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights*, U.N. ESCOR, 8th Sess., 20th mtg., U.N. Doc. E/C.12/1993/7 (1993).

territorially or non-territorially based, whether it be the United States, China, or Iran, Christian, Islamic, Jewish or Hindu fundamentalist . . . — can no longer be insulated from appraisal simply and exclusively by invoking talismanic terms like “sovereignty,” “domestic jurisdiction,” “tradition,” “history,” the supposed wills of assorted divinities, “the way we have always done things,” “nonpollution,” “autonomy,” or as alleged preconditions for “group continuity.” . . . [T]he practices of all groups *must* be appraised in terms of the international code of human rights. Deviations from that code do not signal the termination of the group, but will lead to the insistence that the discrepant practices be adjusted to conform with international standards.²

This Comment concerns the clergy’s claim to political power; it concerns the *étatisation*, or collectivization, of religion. The question is, may a group claiming to exercise the international human right of freedom of religion engage in practices that violate other human rights? The answer is relevant for dealing with cults and fundamentalist groups in the United States as well as in Iran, Egypt, Sudan, Algeria, or India.

A word of caution: it is difficult and perilous to generalize Islamic, Christian, Jewish, Hindu, or Buddhist values.³ Scriptures of all the great religions contain broad language and lend themselves to various or even contradictory interpretations. And as with any type of interpretation, any serious discussion of religion and religious values must take into account the aspirations of the communicator and the elite who propagate and advocate those values.

Any ideology that uses coercive or persuasive means is ultimately about “who gets what, when and how” and falls within the realm of politics. There is no reason that religious ideologies should be treated differently. Human rights function as a critical theory for appraising how power is used. From the human rights perspective, what counts is the treatment of individual human beings, regardless of the origin of the authority sanctioning the treatment. There is nothing in human rights law, whether or not codified, that justifies the violation of human rights based on an alleged divine revelation. If anything, the human rights movement has historically sought to protect the dignity of individuals from unreasonable claims by those exercising power, whether under the name of the King, the Church, some self-appointed junta, or a secular ideology.

One of the great accomplishments of the contemporary human rights movement has been to confer on the international community the competence to determine whether a human right violation has occurred. The international community makes such determinations in accordance with international standards, standards that transcend national, cultural, and religious boundaries. The substantial attenuation of the domain reserved to the domestic jurisdiction of states is essential to any guarantee of human rights. Since the

2. W. Michael Reisman, Comment, *Autonomy, Interdependence, and Responsibility*, 103 YALE L.J. 401, 416 (1993).

3. See EDWARD SAID, *COVERING ISLAM* x (1981) (warning that one should not have “single” view of Islam and project it over 800 million people who happen to be Muslim).

adoption in 1948 of the Universal Declaration of Human Rights, numerous international instruments have codified human rights norms. The rights embodied in the International Bill of Rights are generally considered basic human rights. These are the rights that are claimed by individuals against their governments and are supported by the international community.

In 1948, the entity to be controlled was government because it was the only apparatus that had at its disposal the power to implement or violate human rights norms. The focus on government still dominates human rights law, but the situation is beginning to change. Governments, confronted by armed opposition operating from within or outside the state and waging guerrilla or civil war, increasingly contend that their opponents' behavior should also be measured against human rights norms. Such claims, which are gaining credence and sympathy, begin to acknowledge that governments are no longer — if they ever were — the only entities with the power to violate human rights. Some groups that espouse religious ideology like the Hamas or Hezbollah, and some others that embrace a secular ideology like the Shining Path, can do an awfully good job at violating human rights. I submit that claims to power by the clergy of any religion, like the elite of any other group, be judged by basic international human rights standards. Allowances should not be made for cultural pluralism. Accepting justifications based on cultural pluralism would deny the universality of claims of all human beings to dignity. It would conflict with the premise of the international human rights movement: that there are certain human values demanded by all human beings, regardless of their cultural or religious heritage, race, or gender. In the rest of this Comment, I will apply this general premise to claims to power by the so-called fundamentalist Muslim clergy.

I

The notion of church and state as distinct and independent institutions with their own laws is essentially a late Christian development.⁴ Islam views life in its totality and purports to provide guidance for every aspect of human life. It recognizes no divisions among the spiritual, social, economic, and political sectors of life. No aspect of life is any less important to enhancing the worship of God. Islam thus cannot leave outside its domain the affairs of the state and the exercise of official power. Those who claim that Islam does not recognize a separation between religion and government often invoke the following passage from the Koran:

O ye who believe! Obey Allah, and obey the messenger and those of you who are in authority; and if ye have a dispute concerning any matter, refer it to Allah and the messenger if ye are (in truth) believers in Allah and the Last Day. That is better and more

4. BERNARD LEWIS, *ISLAM AND THE WEST* 179 (1993).

seemly in the end.⁵

Thus, classical Islam does not distinguish between godly matters managed by Muslim clergy and earthly matters managed by others with no credentials to interpret the divine revelation.⁶ The Christian injunction, "Render unto Caesar those things that are Caesar's and unto God those things that are God's,"⁷ is alien to classical Islam. Theoretically, a Muslim political leader must qualify as a religious leader.⁸ This philosophical basis of Islam was important in the early formation of Islamic constitutional theory. The political power of caliphs who built the Islamic empire after Mohammed lacked legitimacy unless it was thought to be sanctioned by God and in furtherance of compliance with divine commandments. In this system, constitutional authority is derived from God and not from the people. Predictably, those with the power to interpret God's messages have enjoyed great power.

This classical Islamic theory of legitimacy and authority is essential to grasping the political theory and practice of Islamic fundamentalism. The theory was first used by some of the conquered territories to break away from the authority of the caliph. Under Islamic law, the territories could not wage war simply to gain power, or in this case, independence. Any claims against the caliph — whether inspired by nationalism, political rivalry, or demand for social change — had to be justified on the ground that the caliph had violated the true spirit of Islam.⁹ Religion thus became the cornerstone of many nationalistic and other political movements in the Islamic world.¹⁰

The second fundamentalist movement in Islam, which occurred at the turn of this century, was also inspired by nationalism and the demand for decolonization. Again, Islam was used in its political form — this time to justify the ousting of Christian infidels from Muslim lands, to demand decolonization from Western colonial powers. This movement, like its predecessor, used symbols familiar to the masses and invoked the preservation and return to "true Islamic" values to justify the revolt.

Contemporary Islamic fundamentalism is also inspired by nationalism, but

5. KORAN IV:59, *translated in* THE GLORIOUS KORAN 109 (Muhammad Marmaduke Pickthall trans., 1976) [hereinafter PICKTHALL].

6. See M.H.A. Reisman, *Islamic Fundamentalism and Its Impact on International Law and Politics*, in THE INFLUENCE OF RELIGION ON THE DEVELOPMENT OF INTERNATIONAL LAW 111 (Mark W. Janis ed., 1991).

7. *Matthew* 22:21.

8. In practice, the Islamic empire after Mohammed's death was built by caliphs — supreme political and religious leaders. Some caliphs, however, were considered usurpers of power. Their authority initially remained unchallenged because in Islamic dogma, there is a direct relationship between God and the individual Muslim: a Muslim does not need the assistance of a clergyman to worship God. As a result of this direct relationship, there was no need for the establishment of a church hierarchy, which in turn might have determined whether or not the behavior of the caliphs was compatible with divine commandment.

9. These claims against the caliph as well as those of separatist movements, could be characterized as claims to "decolonization," as that term is used in contemporary political and legal parlance. The Islamic empire was indeed experiencing decolonization; references to the "true" Islam and "true" Islamic values were simply justifications, façades.

10. I have developed this view more extensively elsewhere. Reisman, *supra* note 6, at 112-13.

it is distinct from the previous two movements. While the first two movements used the claim of compliance with and return to a true Islam to justify their defiance, they were not truly inward-looking: they sought a break from the present, but aspired for a future in which the newly independent Islamic governments would adopt key values more or less similar to those for which the central colonial power purported to stand. In contrast, third generation Islamic fundamentalism is inward-looking: it demands a return to a distant utopian past. This is a material change with, perhaps, considerable consequence. Contemporary fundamentalism not only considers technical, socio-economic, and political changes as a direct threat to Islam and the Islamic way of life, but also assumes that these changes have been designed with an intention to so threaten Islam.

One must be careful not to equate fundamentalist political ideology with all of Islam. Although theoretically no separation exists between church and state in Islam, in reality and particularly in the last century, the main orthodoxy — sometimes with uneasiness — has reconciled itself to remaining at least partially outside the state apparatus. The Muslim clergy, however, never withdrew their claim to what they believed to be their rightful authority; rather, they have used that claim to bargain with the state. Fundamentalists¹¹ find that bargaining unsatisfactory and refuse to compromise. However, their views do not fall within the mainstream of Islam, nor are they consistent with the general beliefs held by ordinary Muslims or preached by many Muslim scholars and theologians.

Fundamentalism is not unique to Islam, nor does Islam uniquely encourage fundamentalism. It is the economic, social, and political environment that encourages the formation of forces for change — sometimes minor and at other times radical. Islamic fundamentalism is like any other form of mystical or secular religion that can be used as a force for the political mobilization of people and as an instrument of socio-economic and political change. Nevertheless, it would be delusory or deceitful to minimize the authentic indigenous character of Islamic fundamentalism. Islam is more than Islamic fundamentalism, but Islamic fundamentalism is one authentic expression of Islam.

II

Muslim fundamentalists select the values they advocate from among the authoritative sources of Islamic law and culture. The most sacred text in Islam is the Koran. The Koran is the primary source of holy law and, like any other great constitutional document, it is replete with ambiguous and general

11. By fundamentalism, here, I refer to the insistence, as a religious duty, on the exclusive exercise of political power for religious ends. For a different view of fundamentalism, see MARTIN RIESEBRODT, *PIOUS PASSION* 15-20 (Don Reneau trans., 1993).

statements subject to various interpretations. It contains statements that could be interpreted to sustain the view that Islam is a tolerant and adaptable religion, compatible with change and consistent with international human rights standards.¹² The Koran also contains statements that can lead to the conclusion that Islam is a rigid and unforgiving religion, built on intolerance of diversity.

The second source of Islamic law and tradition is *Sunna*, or accounts of experiences of Mohammed and his companions. Even here one encounters nuances that could lead to conflicting interpretations. To organize and interpret this immense body of traditions, the concept of *Ijma*, or consensus, was developed. *Ijma* allows the pious, the learned, and the politically relevant to interpret Islamic law and formulate standards of behavior for situations not directly covered by the law. Some Muslim scholars contend that *Ijma* did not exist during early stages of the development of Islam. Rather, the principle of *Ijtihad* required all Muslims, in situations for which there were no explicit rules, to familiarize themselves, through personal inquiry, with the core of Islam and to decide, through logical reasoning, on the appropriate course of conduct. It was only after Islam expanded to distant territories and cultures that the principles of *Ijma*, limiting the democratic competence of interpretation to a small group, replaced *Ijtihad*.¹³

The fundamentalist vision of government is theocratic. The authority of an Islamic government does not derive from popular support of the governed people, but from God. Humans do not have the authority to change God's laws. In executing the laws, humans must take great care to maintain their purity. Only those individuals who have dedicated their lives to worshipping God and studying his wishes are capable of so executing God's laws. Thus, the wishes of a people — even its majority — if inconsistent with God's laws, are theoretically irrelevant to social planning. Fundamentalist governments are separated into three branches, not to maintain a system of checks and balances, but simply to facilitate management of affairs. Indeed, fundamentalists recognize no separation of functions in godly matters. Checks and balances are unnecessary, perhaps impossible, given that God's wishes supersede everything else.

12. For example, some Islamic Shi'a scholars have argued that the institution of temporary marriage is a more progressive way to deal with the sexuality of young people than the Western "free love." See AYATOLLAH MURTIZA MUTAHHARI, HOUGHOUZ ZAN DAR ISLAM [THE LEGAL RIGHTS OF WOMEN IN ISLAM] (1974) (Farsi), quoted in Shahla Haeri, *Temporary Marriage and the State in Iran: An Islamic Discourse on Female Sexuality*, 59 SOC. RES. 201, 219-21 (1992). See generally SAYID H. AMIN, ISLAMIC LAW AND ITS IMPLICATIONS FOR THE MODERN WORLD 51-81 (1989); GHASSAN MAÂROUF ANAOUT, ASYLUM IN THE ARAB-ISLAMIC TRADITION (1987); ANN ELIZABETH MAYER, ISLAM AND HUMAN RIGHTS: TRADITION AND POLITICS (1981); JOSEPH SCHACHT, AN INTRODUCTION TO ISLAMIC LAW (1964); Cherif M. Bassiouni, *Protection of Diplomats Under Islamic Law*, 74 AM. J. INT'L L. 609 (1980); Aryn Sajoo, *Islam and Human Rights: Congruence or Dichotomy?*, 4 TEMP. INT'L & COMP. L.J. 23 (1990).

13. The other important source of Islamic law is *Qiyas* for Sunnis and *Aql* for Shi'as. *Qiyas*, or comparison, is the application of the norms drawn from a case to another similar case by analogy. *Aql*, or reason, is rational argument.

Fundamentalists admit, with a certain uneasiness, that their system of government is not democratic.¹⁴ The basis of democracy rests on the will of the majority of a people; the basis of an Islamic government rests on divine authority. A majority vote or some other indication of the people's approval is, theoretically, unnecessary and irrelevant to establishing or maintaining the legitimacy of an Islamic government. Many fundamentalist leaders share this theory of government. For example, one Islamic scholar, Abu-Ali Modoudi, sees the people's only role as interpreting laws during their application and deciding on matters for which there are no divine laws.¹⁵ When there is a clear and direct order from God, not even all the Muslims on earth can modify or change the law. Modoudi restricts even the limited competence to interpret laws to those Muslims who have reached the level of *Ijtihad*. Ordinary Muslims or minority religious people cannot participate in the affairs of an Islamic government. To justify this interpretation, Modoudi points to the inability and weakness of the human soul. He argues that human beings often submit to short-term desires because they cannot appreciate their own interest in following divine orders. They therefore need a political regime that protects their interest and well-being and ultimately saves them from their worst enemy, themselves.

Ali Shariati, another Islamic scholar, has expressed the same view. He does not speak of the weakness of human nature or invoke so explicitly the supremacy of divine law, but he reaches similar conclusions about the political nature of government. He sees people as basically divided into two political groups: those who guide the way to understanding and *tawheed*, or monotheism,¹⁶ and those who follow. Each of these two groups has its own responsibilities within the larger category of leaders and followers. Ayatollah Khomeini and his followers have a comparable vision of an Islamic government.¹⁷ The Khomeinist Iranian constitution establishes a *Vali-Faghih*, or maximum leader. The *Vali-Faghih* is not directly elected by the people but has the ultimate power over the three branches of government. His authority under the constitution is not ceremonial but actual. The constitution institutionalizes the influence of the clergy over the affairs of the state in other

14. See, e.g., ABU-ALI MODOUDI, *TEORI SIASI ISLAM [THE POLITICAL THEORY OF ISLAM]* 3-5 (Mohammad Mehdi Hydarpour trans. from Arabic, 1978) (Farsi).

15. *Id.*

16. See ALI SHARIATI, *HAJI 27* (Ali A. Behzadnia & Najla Denny trans., 1977).

17. In his book *Islamic Government*, Ayatollah Khomeini states:

We [the clergy] must benefit from people with scientific and technical specialization in connection with statistical, administrative and organizational works. As for the supreme state administration and for spreading justice, providing security, establishing just social relations, for judiciary affairs and for dispensing justice among the people, this is the jurisdiction of the jurispudent and the thing on which the jurispudent spends all his life. The jurispudent possesses that which safeguards the people's freedom, independence and progress within a straight policy in which foreigners have no influence and which does not swerve to the right or to the left.

AYATOLLAH RUHOLLAH KHOMEINI, *ISLAMIC GOVERNMENT* 105 (1979).

respects as well.¹⁸

III

Fundamentalists have selected their professed values from early Islam. Those values, to the extent that they have been articulated and are identifiable, are not all inconsistent with those accepted in the present global community. Fundamentalists are not necessarily anti-scientific. They do not prohibit the intervention of science to save, improve, or extend human life. They do not advocate a primitive lifestyle. Fundamentalist values, however, conflict in important respects with modern Western values, in particular, those reflected in international human rights standards: fundamentalism demands, and constantly tests, the total commitment of individual Muslims to God and to the community of Muslims. The scope and the extent of individual rights, then, is conditioned upon the welfare of the community of Muslims.

Muslim governments, even those that are not fundamentalist, have long held the view that the Universal Declaration of Human Rights,¹⁹ the International Covenants,²⁰ and other human rights instruments do not adequately take into account the principles of Islamic law, culture, and values. In 1948, delegates from Saudi Arabia and Egypt expressed doubts about the universality of the human rights norms articulated in the Declaration on Human Rights. Although seven out of the then-eight Muslim states ultimately voted in favor of the Universal Declaration, they never withdrew their reservations regarding universality.²¹ Even those states that have ratified the International Covenants, when pressed on non-compliance with their terms, quickly resort to the contention that the covenants do not take into account Islamic custom and culture. Ostensibly in response to this lapse, in 1990, the Islamic Conference of Foreign Ministers adopted the Cairo Declaration on Human Rights in Islam.²² Although unquestionably inspired by the Universal

18. Under the Iranian constitution, the Guardianship Council, a group composed of twelve individuals, oversees all the laws adopted by the parliament and tests their compatibility with Islamic principles and the constitution. IRANIAN CONST. art. 91. The parliament has no legal validity without the Guardianship Council, *id.* art. 93, which must approve all laws adopted by the parliament, *id.* art. 94. Half of the Guardianship Council are members of the clergy selected by the *Vali-Faghih*, and the other half are Muslim lawyers selected by the parliament. The former, however, have supremacy: the compatibility of proposed laws with Islamic principles is determined only by majority vote of the six religious members, while the compatibility of the same laws with the constitution is determined by majority vote of the entire Guardianship Council. *Id.* art. 96.

19. Universal Declaration on Human Rights, G.A. Res. 217A, U.N. Doc A/810 (1948) [hereinafter Universal Declaration].

20. International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 19, 1966, 994 U.N.T.S. 3.

21. U.N. GAOR, 3d Sess., pt. 1, 183d mtg. at 933, U.N. Doc. A/777 (1948). Saudi Arabia abstained from voting and since then has not participated in the negotiation of human rights instruments.

22. Cairo Declaration on Human Rights in Islam, in *Letter Dated 19 September 1990 from the Permanent Representative of Egypt to the United Nations Addressed to the Secretary-General*, U.N. GAOR, 45th Sess., Provisional Agenda Item 11 et al., at 200-07, U.N. Doc. A/45/421 (1990).

Declaration of Human Rights, the Cairo Declaration departs significantly from the declaration through the use of religious language; it expressly links individual rights to the Islamic *Shari'ah*.²³

Islamic fundamentalists have already encountered great difficulty with the corpus of international human rights norms, for key parts of it are inconsistent with their demands.²⁴ Fundamentalists resolutely resist policies that would accord equal political rights to Muslims and non-Muslims.²⁵ Although Islam recognizes certain other religions and tolerates their coexistence with Islam, it does not allow the assignment to non-Muslims the power of policymaking and the management of important Muslim affairs — both of which are deemed to require deep Islamic conviction and divine authority. Indeed, fundamentalists are not alone in rejecting the basic human rights principle²⁶ of equality of political rights: most Muslim states have granted only limited political rights to non-Muslims, and in many Muslim states, some government posts can only be held by Muslims.²⁷

Non-Muslim minorities are not the only ones suffering incursions on their human rights. Muslims themselves face sharp limits on their individual freedom. The limits are determined by the compatibility of any freedom with Islamic principles. The limits, already considerable, are potentially expandable, for there is no unanimity in Islamic jurisprudence on the exact scope and content of all Islamic principles.²⁸ Hence, individual freedom is subject to vague and untested concepts, the content of which can change significantly depending on the views of the person making the decision.

The dominance of community welfare over individual rights became apparent last year in the U.N. Human Rights Committee's examination of Iran's periodic report submitted in accordance with the International Covenant on Civil and Political Rights.²⁹ When asked to explain Iran's non-compliance with several provisions of the covenant, Iranian representatives answered that the government was complying with a constitution that a majority of the people had approved. They seemed to believe that the minority's rights were limited to what the majority permitted. Government officials further assumed that the majority, since they were Muslims, wanted compliance with Islam. They thereby equated the upholding of Islam with the protection of majority

23. *Id.* pmb1. para. 2.

24. For example, the Sudan's Minister of Justice recently stirred controversy by describing a U.N. human rights monitor's report as "satanic" and apparently threatening the monitor as an "enemy of Islam" for criticizing laws based on the Koran. *U.N. Aide and Sudan Clash on Islamic Law*, N.Y. TIMES, Mar. 8, 1994, at A12.

25. Indeed, Khomeini projected that Iranians, because of their lax attitude towards Islam, would one day awaken to see themselves ruled by a Jew or a Christian.

26. See, e.g., Universal Declaration, *supra* note 19, art. 2.

27. In Pakistan, which has a moderate Islamic government, only Muslims can hold the post of the president and the prime minister. CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, arts. 41(2), 91(2).

28. Furthermore, the views of fundamentalists about Islamic principles do not, in many cases, coincide with the majority view in Islam.

29. ICCPR, *supra* note 20, art. 40.

rights, and justified limiting individual freedoms to ensure their compatibility with Islamic principles.³⁰

Atheists and non-recognized religious minorities face the harshest discrimination. Atheists are generally considered hopeless souls; those of Muslim origin are criminals. The Iranian representative to the U.N. Committee on Economic, Social and Cultural Rights stated that an essential aspect of Iran's cultural policies is to "purify[] the human environment to eliminate the causes of atheism."³¹ In less diplomatic language, Sheik Mohammed al-Ghozali, Egypt's model of the mainstream Muslim cleric, when asked whether people who espouse secular views should be punished, answered: "[A] secularist represents a danger to society and the nation that must be eliminated. . . . It is the duty of the government to kill him."³²

For non-recognized religious minorities, the situation is even worse. The persecution of Baha'is in Iran is well documented. In 1990, when asked about the Baha'is before the Committee on Economic, Social and Cultural Rights, Iran denied that the Baha'is were a religious minority or even a minority.³³ By 1993, government representatives modified that view and tried to explain the maltreatment of the Baha'is in historical terms. Because the Baha'is were the leftover of foreign domination, they were looked upon by ordinary people with suspicion. This has led to maltreatment and government intervention to maintain public order.³⁴

IV

Equality of sexes poses a particular dilemma for fundamentalists. Even under the majority jurisprudence of Islamic law, men and women do not enjoy equal rights. The basis for the inequality is derived from the Koran, which states: "Men are in charge of women, because Allah hath made the one of

30. See *Second Periodic Report of the Islamic Republic of Iran*, U.N. Human Rights Comm., 46th Sess., 1193d mtg. at ¶ 6, U.N. Doc. CCPR/C/SR.1193 (1992) (stating that "in an Islamic country, protection of Islamic morals was in line with the protection of public morals allowed as a restriction in the Covenant").

31. U.N. ESCOR Comm. on Economic, Social and Cultural Rights, 8th Sess., 7th mtg. ¶ 13, U.N. Doc. E/C.12/1993/SR.7 (1993) (summary record of meeting).

32. Youssef M. Ibrahim, *Egypt Fights Militant Islam with More of the Same*, N.Y. TIMES, Aug. 18, 1993, at A3. The Sheik was testifying for the defense in the murder trial of some of the members of an Islamic militant group accused of gunning down Farag Fodah, a well-known Egyptian writer. This group apparently takes spiritual leadership from Sheik Omar Abdel Rahman, the Egyptian Muslim cleric who was charged with conspiracy in the bombing of the World Trade Center. Tim Weiner, *Blowback from the Afghan Battlefield*, N.Y. TIMES, Mar. 13, 1994, § 6, at 53.

33. U.N. ESCOR Comm. on Economic, Social and Cultural Rights, 5th Sess., 43d mtg. ¶ 17, U.N. Doc. E/C.12/1990/SR.43 (1990).

34. *Final Report on the Situation of Human Rights in the Islamic Republic of Iran by the Special Representative of the Commission on Human Rights*, ESCOR, 49th Sess., Provisional Agenda Item 12, ¶¶ 308-11, U.N. Doc. E/CN.4/1993/41 (1993). A representative of Morocco expressed a similar view in the Human Rights Committee. He stated that Islam recognizes revealed religions only; "[t]he Baha'i faith did not qualify as such and was considered as a heretical sect of colonial origin." The Moroccan penal code strictly prohibits all acts of proselytism: Baha'i services can only be held in private. U.N. GAOR, 47th Sess., Supp. No. 40, ¶ 67, U.N. Doc. A/47/40 (1992).

them to excel the other, and because they spend of their property (for the support of women). So good women are the obedient”³⁵ Women and men symbolize different aspects of human life and have separate rights and obligations. Women are viewed as complimentary to men, but not as equal to them. Incidentally, this view of women is not unique to Islam or Muslim fundamentalists. It is common in non-Muslim Third World states and even in some industrialized Western democracies.

But Muslim fundamentalists, without apology, find their justification in the divine design of creation: they do not have much trouble justifying their gender bias in religious terms. Even under traditional Islamic law, women are generally viewed as worth half their male counterparts:³⁶ only a man has the right to initiate divorce; a man has the right to marry four permanent wives and maintain an infinite number of “temporary wives”; and a woman must secure her husband’s permission to work or travel abroad. The so-called Islamic dress code in Iran obliges women “to dress in a manner which might not be to their liking, to go to places where they might not wish to go and to lead a life which they had not chosen.”³⁷ Those who refuse to comply with the rules are arrested. In 1991, in the space of a few days, 800 Iranian women were arrested for breaching the dress code and another 375 for not being properly veiled.³⁸ Despite the magnitude of non-compliance, Iranian officials claim that Muslim women prefer to wear traditional clothing, that the dress code is a moral and religious choice that they had freely made.³⁹ When pressed why the government then needed militia to impose the dress code on women, one government representative stated:

The rules regarding dress code and conduct reflect[] and [are] intended to ensure respect for the country’s traditions and religious beliefs. . . . A parallel could be drawn with the regulations against indecent exposure in a number of countries of Europe and the Americas. The ultimate purpose of the regulations [is] to preserve society’s order.⁴⁰

Here again, one notes the underlying philosophical justification for restricting individual rights for the sake of an unspecified common welfare of the Muslim public order.

Gender discrimination is common among all contemporary Muslim fundamentalists, not only in Iran but also in Egypt, the West Bank and Gaza, and Algeria. Under fundamentalist pressure, most of the Islamic governments

35. KORAN IV:34, translated in PICKTHALL, *supra* note 5, at 104.

36. Thus the testimony of two women is equal to the testimony of a man, KORAN, II:282; compensation paid for the murder of a man is double that for the murder of a woman; and a woman’s share of inheritance is half that of a man. See generally Abdullahi Ahmed An-Na’im, *Islamic Law, International Relations and Human Rights: Challenge and Response*, CORNELL INT’L L.J. 317 (1987).

37. U.N. GAOR, Hum. Rts. Comm., 46th Sess., 1194th mtg. ¶ 15, U.N. Doc. CCPR/C/SR.1194 (1992) (comments of Professor Higgins).

38. *Id.*

39. *Id.* ¶ 48.

40. U.N. GAOR, Hum. Rts. Comm., 46th Sess., 1195th mtg. ¶ 15, U.N. Doc. CCPR/C/SR.1195 (1992) (comments of Prado Vallejo).

that ratified the 1979 Convention on the Elimination of All Forms of Discrimination Against Women,⁴¹ did so with a reservation: they would comply with the convention's provisions only to the extent that they conformed with Islamic principles and *Shari'ah*.⁴²

Fundamentalists who are not yet in power also practice gender discrimination. During the 1991–92 Muslim uprising in Algeria, Ali Belhaj, one of the leaders of the Islamic Salvation Front, is reported to have said that the primary duty of women was to “bear good Muslims.”⁴³ Another Islamic Salvation Front leader, Sheik Abkelkader Moghni complained about women working and taking jobs away from men; women he said, just “spend their salaries on make-up and dresses, they should return to their homes.”⁴⁴ Variations of gender bias are characteristic of other religious fundamentalist movements, such as the Sikhs, Hindus, Sinhalese,⁴⁵ and certain Christian sects.⁴⁶

Some Muslim scholars disagree with the thesis that Islam is gender biased. They believe that the rights provided for women in Islam should be considered in historical perspective and should be compared to the rights that women enjoyed in the Arabian peninsula or in other parts of the world at Islam's inception. Women's rights under Islamic law were superior to those granted by the Romans or in the Arabian peninsula. Those rights, they argue, should not be compared with contemporary rights of women.⁴⁷

V

Islamic fundamentalists have a simple conception of right and wrong. In general, any disagreement with them puts one in the category of wrong. This is partly because of their conviction of rectitude: they know the divine truth and see no reason for compromise or even for tolerance of freedom of expression in any form. Quite simply, they will not tolerate political opposition to the fundamentalist program; freedom of the press is unnecessary as is the freedom of assembly.

Denial of the freedom of expression in Iran has been amply

41. Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 180, U.N. GAOR, 34th Sess., Supp. No. 46, U.N. Doc. A/34/46 (1980).

42. Denmark, Finland, Germany, the Netherlands, and Sweden have stated that this reservation is incompatible with the fundamental object and purpose of the convention. *Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 1992*, at 170-72, U.N. Doc. ST/LEG/SER.E/11 (1993).

43. MARK JUERGENSMEYER, *THE NEW COLD WAR? RELIGIOUS NATIONALISM CONFRONTS THE SECULAR STATE* 169 (1993).

44. *Id.*

45. *Id.*

46. See, e.g., JOAN DELFATTORE, *WHAT JOHNNY SHOULDN'T READ: TEXTBOOK CENSORSHIP IN AMERICA* (1992).

47. See, e.g., Gamal M. Badr, *Forward to MONA MIKHAIL, IMAGES OF ARAB WOMEN: FACT AND FICTION* 2 (1979).

documented.⁴⁸ The practice is not unique to Iran; it can be found in other countries coming under the influence of Islamic fundamentalists. For example, last summer fundamentalist professors at Cairo University denied tenure to a professor of Arabic, claiming that his writings were heretical. A fundamentalist lawyer then filed suit to force a divorce between the professor and his wife, on the grounds that a Muslim woman could not be married to a heretic.⁴⁹ In another case, Al Azhar University, Islam's oldest theology school, has banned novels by the Nobel Prize winner, Naguib Mahfouz, as disrespectful of Islam.⁵⁰ A fundamentalist group put the novelist at the top of its death list because he refused to alter his views or apologize.⁵¹

The death sentence imposed by Ayatollah Khomeini on Salman Rushdie is perhaps the most disturbing of all, because it indicates that fundamentalists see no territorial limits when an issue concerns Islam. When pressed in the United Nations on the incompatibility of Ayatollah Khomeini's *fatwa* with Iran's obligations under the International Covenants, Iranian officials tried to dissociate Khomeini's *fatwa* from the government. They tried to characterize it as the view of a *Mojtahed*, or religious scholar.⁵² They acknowledged, however, that the practice was permitted in Islam and that, once issued, nothing could be done about it. They denied that the Iranian government had an obligation to denounce the *fatwa* and make every effort to ensure that its citizens do not interfere with the domestic affairs of another state.

VI

The theory and practice of the use of military power in Islamic fundamentalism may prove to be its most disruptive feature to the present system of international law. Under classical Islam, *Jihad*, or holy war, was a defensive war. Many religious leaders have long held that the wars fought by Mohammed during his lifetime were defensive. Without condemning Islamic rulers, they conceded that most of the wars after Mohammed were offensive. These wars were deemed to be for expansion for a "just cause." Fundamentalists rely primarily on the just cause basis for *Jihad* and not so much on whether the purpose is in preservation of justice or its expansion. This ambiguity in their view about *Jihad* may derive from their revolutionary perception of life and their messianic goals.

Even those fundamentalists who view the purpose of *Jihad* as non-military force see the doctrine in an active and interventionist fashion. In its non-

48. See, e.g., *Final Report*, *supra* note 1, ¶¶ 175-88.

49. The court dismissed the case for lack of standing. Terri Theiss, *Cairo Divorce Case*, CHRISTIAN SCI. MONITOR, Jan. 28, 1994, at 24.

50. Ibrahim, *supra* note 32, at A3.

51. *Id.*

52. U.N. GAOR, Hum. Rts. Comm., 47th Sess., 1230th mtg. ¶ 9, U.N. Doc. CCPR/C/SR.1230 (1993).

military aspect, *Jihad* encourages people to do good deeds and avoid wrong deeds. To march on God's path, a Muslim must be active, attempt to get involved in other people's lives, and suffer and face danger for that purpose.⁵³

A war for "just cause" does not have a territorial limit. Therefore, when an action or a person is presumed to pose a threat to Islam, irrespective of territorial location or nationality, that action or person becomes subject to the jurisdiction of fundamentalists, as did Salman Rushdie. Moreover, those who wage a just war are not limited in the methods they may utilize: under the concept of just war, the legality of the use of power is tested by reference to the purpose for the use rather than the methods in which that power is used. Such discretion is inconsistent with international humanitarian and human rights standards.⁵⁴

The use of violence is not limited to Islamic fundamentalists but is characteristic of any revolutionary movement. Religious movements may find it easier to justify violence; they can furnish moral sanction and thereby more easily release any social and personal inhibition in the candidate selected to perform the violence. Sanctioning great violence for "just war" in Islam has analogues in Christian, Jewish, and other traditions.⁵⁵ Religious radical movements apparently can always find something in their religious tradition to justify and sanction violence. The late Rabbi Meir Kohane, calling on the people of Israel to rise up and reclaim the West Bank in a just war, argued that defense was not the only religious basis for warfare: "National pride was also a legitimate reason."⁵⁶ A right-wing Jewish leader reportedly stated, "We believe in collective justice."⁵⁷ Such a concept would sanction indiscriminate violence against individuals belonging to the so-called enemy group. Palestinians in the *intifada* have also justified the use of violence by expanding the Islamic legal concept of self-defense.⁵⁸ Even Buddhist activists, despite their strong aversion to killing, have found a religious sanction for violence.⁵⁹

53. SHARIATI, *supra* note 16.

54. Fundamentalists' approach to the use of power is shaped by their belief that they represent a minority: like other radical revolutionary movements, they fear that their survival depends upon who destroys whom first. Thus, when someone errs, fundamentalists use whatever force they feel necessary. In punishing offenders, they show little compassion and, predictably, develop very poor records on due process. See *HRC Comments*, *supra* note 1, ¶ 12 ("The committee also deplores the lack of respect for due process of law, particularly before the revolutionary courts, where trials *in camera* tend to be the rule and where apparently no real possibility is provided to the accused to prepare a defence. The lack of an independent Bar Association also has an adverse effect on the administration of justice, in the view of the Committee.") (on Iran).

55. JUERGENSMEYER, *supra* note 43, at 164.

56. *Id.* at 165.

57. *Id.*

58. *Id.* at 166.

59. The Prime Minister of Sri Lanka was killed by a Buddhist monk. *Id.* On the use of violence committed in the name of religion, see generally JAMES A. HAUGHT, *HOLY HORRORS: AN ILLUSTRATED HISTORY OF RELIGIOUS MURDERS AND MADNESS* (1990).

VII

History can teach and help us avoid costly mistakes. Ample painful examples show that mixing religion and politics creates great misery. These examples are not limited to Islam, but are found in nearly all the religions of the world. In fact, the experiment of Christian government led to bloody revolts to take religion out of government. There is no reason to believe that Islamic, Hindu, Buddhist, or Sikh governments will fare differently. Indeed, in historical perspective, the views and actions of current Islamic movements and governments seem very familiar. Alas the consequences, too, will be familiar. Religious governments will marginalize international standards on human rights and subordinate them to religious values as enunciated by particular political elites. One of the first casualties will be the achievements of decades of painstaking efforts of humanists and human rights advocates.

