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Human Rights and Islamic Legal Tradition: Prospects for an Overlapping Consensus

Abstract

Am Beispiel der islamischen Frauenbewegung „Musawah“ („Gleichheit“) wird die aktuelle Auseinandersetzung um das Verhältnis zwischen den Menschenrechten und islamischen Rechts Traditionen beleuchtet. Gegenüber der vermeintlichen Unvereinbarkeit der UN-Bestimmungen zur vollen Gleichberechtigung von Frauen (CEDAW) und Prinzipien der Shari'ah wird die Unterscheidung von Shari'ah als Sammlung fundamentaler Rechtsprinzipien und fiqh als ausgeführter Gesetzessammlungen ins Feld geführt. Letztere, so die Verfasserin, sind zeitbedingt und kontextbezogen und können nicht universale Gültigkeit beanspruchen. Aktuelle, patriarchalische Denkweisen überwindende Interpretationen auf der Basis islamischer Grundlagen sind angesagt, möglich und notwendig. Leider erschweren die Konfliktlagen zwischen dem „Westen“ und der islamischen Welt („Krieg gegen den Terror“ einerseits, Konjunktur des Islamismus andererseits) eine konstruktive Entwicklung. Um diese bemühen sich feministische Bewegungen im Islam wie Musawah und „Sisters in Islam“ in internationaler Vernetzung und beispielhaften Aktionen.

The encounter between Islam and human rights has been the subject of impassioned and tangled debate. This debate is nowhere more intense and polarized than in the area of women's rights, which in most Muslim-majority countries continues to be regulated by the patriarchal ethos of established interpretations of the *Shari'a*. With the expansion of human rights discourses in the 1970s and 1980s, and the concurrent rise of Islamist political movements, adherents of the two viewed each other with growing distrust and contempt; they seemed destined to clash. But was this clash inevitable? Can we find a way of reconciling these two polarized forces? Is there common ground on which they can engage in productive debate?

I want to explore the political and hermeneutical challenges faced by advocates of human rights in Muslim contexts, and their potential and promise for changing the terms of the debate between Islam and human rights law. I shall do this with particular reference to *Musawah*, which defines itself as a global movement for equality and justice in the Muslim family. *Musawah* – which means equality in Arabic – was initiated by the pioneering Malaysian pressure group, *Sisters in Islam*. Launched at a large gathering in Kuala Lumpur in February 2009, it is among the new reformist and feminist voices that are working within both Islamic and human rights frameworks. In *Musawah*, we (I was one of founding members) seek to link scholarship with activism

to bring fresh perspectives on Islamic teachings and to contribute constructively to the reform of family laws and practices.

My aim here is twofold. Firstly, to explore the work of these new reformist and feminist voices and the prospects of their success in forging an overlapping consensus between Islamic legal tradition and international human rights laws. Secondly, to show how the struggle for human rights in Muslim contexts is enmeshed in an intricate dialectic between religion and politics, which must be recognized if we are to find the common ground.

1. My Approach and Premises

But first, a word on my position: where I am coming from. My approach and analysis are those of a trained legal anthropologist, but I do not claim to be a detached observer. As a believing Muslim woman, I am a committed participant in the debates over – and the struggle for – gender equality in law; and those who are familiar with my publications know that my research has centred on the laws regulating sexuality in the Islamic legal tradition, i.e. family law, rulings on *hijab* (women's covering) and *zina* (sex outside marriage). I examine these laws from a critical feminist perspective, and attempt a kind of “ethnography” of the juristic constructs on which the whole edifice of gender inequality in Islamic legal tradition is built. So I speak to you today as an insider to the debates, as an advocate of women's human rights in Islam; but also, given my home discipline, anthropology, as an observer of my own participation in the debates.

I also want to make a plea for more clarity and honesty in these debates about Islamic and human rights law, and to point to their rhetorical and political dimensions, such that these debates have become a front, a battlefield, for unstated agendas and identity politics.

Thus, there is a plethora of literature and a host of arguments, both in the media and in academia, seeking to convince us that Islam and human rights are incompatible. The problem with such arguments is that both “human rights” and “Islam” are “essentially contested concepts”, a term that I take from the philosopher Bryce Gallie, who coined it for those concepts that have “disagreement at their core”, such as “religion”, “social justice”, “work of art” and “democracy”; these are evaluative concepts that involve endless disputes about their proper use on the part of their users (Gallie, 1956). In other words, they mean different things to different people and in different contexts, and are subject to multiple discourses and widely ranging perspectives that can be addressed at different levels. Proponents of both Islam and human rights, however, claim universality and the aim of ensuring justice and proper rights for all humanity. But, as anthropologists remind us, “the universal can never establish itself because it must be approached from the specific” (Dembour, 2001, p. 75). This is indeed the paradox of the universality of human rights; its universal values and norms can never free themselves from the specific contexts that shaped them and the struggle to achieve

them. In other words, the universal values of human rights always encompass the particular setting in which they are translated into action – and this dynamic tension between the universal and the particular is indeed necessary and healthy.

I use the notion of “human rights” in a relatively limited sense, as a framework that began in 1948 with the *Universal Declaration of Human Rights*, and has been developed by the United Nations in subsequent documents and instruments. These documents are the product of a specific political experience, the holocaust; they are the expression of a moral and political commitment to humanity against the coercive power of the state. In the words of Louis Henkin, a participant in the process of establishing international norms,

“Developed during the decades following the Second World War, international human rights are not the work of philosophers, but of politicians and citizens, and philosophers have only begun to try to build conceptual justifications for them. The International expressions of rights themselves claim no philosophical foundation, nor do they reflect any clear philosophical assumptions; they articulate no particular moral principles or any single comprehensive theory of relations of the individual to society. That there are ‘fundamental human rights’ was a declared article of faith, ‘reaffirmed by the peoples of the United Nations’ in the United Nations Charter. The Universal Declaration of Human Rights, striving for a pronouncement that would appeal to diverse political systems governing diverse peoples, built on that faith and shunned philosophical exploration” (quoted in Waltz, 2004, p. 801).

As human rights approaches are relatively well known, I shall devote more attention here to the legal tradition in Islam, and the crucial distinction between *Shari’a* and *fiqh*. *Shari’a*, literally “the way”, in Muslim belief is the totality of God’s will as revealed to the Prophet Muhammad in the Koran. *Fiqh*, literally “understanding”, is the science of jurisprudence, the process of human attempts to discern and extract legal rules from the sacred sources of Islam – that is, the Koran and the Sunna (the practice of the Prophet, as contained in *hadith*, traditions), as well as the “laws” that result from this process. What we “know” of *Shari’a* is only an interpretation, an understanding; *fiqh*, on the other hand, like any other system of jurisprudence and law, is human and mundane, temporal and local. Any claim that a specific law or legal rule “is” *Shari’a*, is a claim to divine authority for something that is in fact a human interpretation.

It is essential to stress this distinction and its epistemological and political ramifications. *Fiqh* is often mistakenly equated with *Shari’a*, not only in popular Muslim discourses but also by specialists and politicians, and often with ideological intent: that is, what Islamists and others commonly assert to be a “*Shari’a* mandate” (hence divine and infallible), is in fact the result of *fiqh*, juristic speculation and extrapolation (hence human and fallible).¹ In line with emerging feminist voices in Islam, I contend that pre-modern interpretations of the *Shari’a* can and must be challenged at the level of *fiqh*, which is nothing more than the human understanding of the divine will – what we

¹ Among current scholars of Islamic law, Kamali (2006, pp. 37-39) and El Fadl (2001, pp. 32-35) use this distinction; An-Na’im (2000, pp. 33-34) does not.

are able to understand of the *Shari’a* in this world at the legal level. In other words, so-called “Islamic law” consists of “man-made” juristic constructs, shaped by the social, cultural and political conditions within which Islam’s sacred texts are understood and turned into law. I suggest that it is more analytically fruitful and productive to speak of “Islamic legal tradition” rather than “Islamic law”.

I also suggest that we must be wary of statements beginning “Islam says ...” or “Islam allows ...” or “Islam forbids ...” Islam does not speak, rather it is people who claim to speak in the name (that is, with the authority) of Islam, selecting sacred texts, usually out of context, that appear to justify their claims, and repressing other texts that oppose them. Moreover, those who talk of *Shari’a*, or indeed of religion and law in relation to Islam, often fail to make another distinction now common when talking of “religion” in other contexts, namely, between faith (and its values and principles) and organized religion (institutions, laws, and practices). The result is the pervasive polemical and rhetorical trick of either glorifying a faith without acknowledging the abuses and injustices that are committed in its name, or condemning it by equating it with those abuses. Of course, faith and organized religion are linked, but they are not the same thing, as implied by conflating them in the labels “Islamic” or “religious”.

In short, we may talk about religion, law and culture as distinct arenas of human behavior, but in practice it is hard to separate them. Social reality is far too complex. Religious beliefs and practices not only are shaped by the cultural contexts in which they originate, function and evolve, but they also influence cultural phenomena. Law, too, not only controls behavior but is shaped by religious as well as cultural practices; and all these beliefs and practices are in turn subject to relations of power — rulers, governments, structures of inequality. The meanings of laws and religious practices also change with shifts in the power relations in which they are embedded, and in interaction with other cultures and value systems. The same holds true for international human rights laws and instruments; not only are they the products of culture and power relations, they also have produced a new culture of international rights. Merry (2003) discusses with insight the ways in which “culture” — and, along the way, anthropology as a discipline that studies culture — has been demonized in certain human rights discourses, which do not take into consideration the rethinking of the concept of culture in anthropology in recent decades. This has parallels with the demonization of religion by those unaware of theoretical developments in religious studies.

2. The Turning points

After this prolonged introductory note, let us now move to what I see as the first turning point in the encounter between Islamic legal tradition and international human rights laws. It is important to remember that Muslim states were participants in the process of constructing the key human rights standards and norms embodied in the three documents

that now form the bed-rock of international human rights law: the Universal Declaration of 1948; and two binding treaties of 1966, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Social, Economic, and Cultural Rights (ICESCR). Susan Waltz, in her study of the United Nations record of documents from 1946 to 1966, shows how Muslim and Arab diplomats participated in the process. These documents show not only the sharp difference of opinion and approach among the diplomats representing Muslim states, but also the role they played in shaping UN standards and instruments. There were tensions and disagreements, but there was also room for dialogue and consensus building. Significantly, with the exception of Saudi Arabia, these diplomats represented Muslim countries at a time when secular and liberal tendencies were dominant in those states.

But the 1967 Arab-Israeli war and the subsequent radicalization of Muslim politics changed everything; and two events in 1979 placed the advocates of Islamic legal tradition and international human rights law in two opposite camps. The first was the Iranian Revolution, which brought an end to a US-backed monarchy and introduced an Islamic Republic. This marked a zenith in the revival of Islam as both a spiritual and a political force. The second event was the adoption by the UN General Assembly of CEDAW (the Convention on the Elimination of all forms of Discrimination against Women). This gave a clear international legal mandate to those advocating equality between men and women, and to the notion of women's rights as human rights.

The decades that followed saw the concomitant expansion, globally and locally, of two equally powerful but opposed frames of reference. On the one hand, with the encouragement of CEDAW, in the 1980s the international women's movement expanded. CEDAW gave women's rights activists what they needed most: a point of reference, a language and the tools to resist and challenge patriarchy. By the early 1990s, a transnational movement coalesced around the idea that violence against women was a violation of their human rights, and succeeded in inserting it into the agenda of the international human rights community. In their campaigns, they made visible various forms of gender-based discrimination and violation rooted in cultural traditions and religious practices. Protection from violence became a core demand of women's human rights activists (Merry, 2006, pp. 19-24).

In Muslim contexts, on the other hand, in Iran and some other countries, Islamist forces – whether in power or in opposition – started to invoke Islam and *Shari'a* as a legitimizing device to reverse the process of reform and secularization of laws and legal systems that had begun earlier in the century. Tapping into popular demands for social justice, the Islamist rallying cry of “Return to *Shari'a*” led to the (re-) introduction of laws that conformed with traditionalist Islamic jurisprudence, notably regressive gender policies, with devastating consequences for women: compulsory dress codes, gender segregation, and the revival of cruel punishments and out-dated patriarchal and tribal models of social relations.

Political Islam's drive for “Islamization”, however, had some unintended consequences; the most important was that, in several countries, the classical jurisprudential (*fiqh*) texts were brought out of the closet, exposing them to unprecedented critical scrutiny and public debate. A new wave of Muslim reform thinkers started to respond to the Islamist challenge and to take Islamic legal thought onto new ground. Unlike earlier twentieth-century reformist thinkers, these new thinkers no longer seek an Islamic genealogy for modern concepts like equality, human rights and democracy. Instead, they place the emphasis on how religion is understood, how religion knowledge is produced, and how rights are constructed in Islamic legal tradition. They also use the conceptual tools and theories of other branches of knowledge to expand on the work of earlier reformers and develop further interpretive-epistemological theories. In this respect, the works of Mohammad Arkoun (Günther, 2004), Khaled Abu El Fadl (2001), Nasr Hamid Abu Zayd (Kermani, 2004), Mohammad Mojtahed Shabestari (Vahdat, 2004) and Abdolkarim Soroush (Sadri and Sadri, 2000) are among the most important. Meanwhile, attempts by Islamists in Iran, Pakistan and elsewhere to translate anachronistic patriarchal interpretations of the *Shari'a* into policy provoked many women to increasing criticism of these notions, and spurred them to greater activism. Increasingly, women came to see no inherent or logical link between Islamic ideals and patriarchy, nor any contradiction between their Islamic faith and their struggle for equality. By the early 1990s, there were signs of a new way of thinking about gender that is feminist in its aspiration and demands, yet Islamic in its language and sources of legitimacy (Badran, 2002, 2009; Mir-Hosseini, 1996, 2006). Some versions of this new discourse came to be labelled “Islamic feminism” – a conjunction that was unsettling to many Islamists and some secular feminists. This new discourse has been nurtured by feminist scholarship that is reclaiming the egalitarian message of the *Qur'an*, and developing a critique, from within, of patriarchal ethics of the *Shari'a* and of the gender biases of *fiqh* texts.

In short, these developments brought Muslim women onto centre stage and made them active participants in the production of religious knowledge and in the process of law making. At the same time, the idea of gender equality became inherent to global conceptions of justice, acquiring a clear legal mandate through CEDAW, which all Muslim states (except Iran, Somalia and Sudan) have ratified – though in most cases subject to “Islamic reservations” (Krivenko, 2009; Musawah, 2011).

The politics of the “war on terror”, in the aftermath of the 11 September 2001 attacks in the USA, brought another level of entanglement to the politics of human rights and Islam. The illegal invasions of Afghanistan and Iraq – both partially justified as promoting “human rights” and “women's rights” – combined with the double standards employed in promoting UN sanctions, showed that international human rights and feminist ideals, like the *Shari'a* and Islamic ideals, are open to manipulation, and that there is a wide gap between the ideals and the practices of their proponents (Mir-Hosseini, 2012).

3. A New Dialogue

Many of us, as scholars and activists, found ourselves in the crossfire. On the one hand, Islamists were denying us equality in the name of Shari'a, and on the other, hegemonic global powers were pursuing a neo-colonial agenda in the name of feminism and human rights. The way out of this predicament, for us, was to bring Islamic and human rights frameworks together. Otherwise, our century-old quest for equality and democracy would continue to remain hostage to the fortunes of domestic political groups and global agendas. In February 2007, Zainah Anwar, founder and director of the established Malaysia-based women's group *Sisters in Islam*, took the initiative to organize a workshop in Istanbul that brought together a diverse group of activists and scholars from different countries. *Sisters in Islam* is one of the few Muslim women's organizations that has no qualms in identifying as both Islamic and feminist. Since its inception in 1988 it has argued for women's rights and equality within an Islamic framework (Anwar, 2013). The Istanbul meeting led to the formation of a planning committee, charged with the task of setting out the vision, principles and conceptual framework of a new global movement with the aim of forging a new strategy for reform.

Given the close link between religious and political identity in Muslim contexts, if we wished to abolish patriarchal laws and customs among Muslims, we knew that it was not enough, and it is sometimes counterproductive, to dismiss them as anachronistic or attack them on human rights grounds only. To achieve sustainable and deep-rooted change we needed dialogue and consensus; we knew that we must demonstrate the injustices that arise from patriarchal customs and laws based on the classical *fiqh* notion of marriage; and, in this case, we must offer defensible and comprehensible alternatives within a framework that recognizes equality and justice in Islam. This is only possible by linking scholarship with activism and developing a holistic framework that integrates Islamic teachings, universal human rights law, national constitutional guarantees of equality, and the lived realities in Muslim contexts.

To this end, we commissioned a number of concept papers by reformist thinkers such as Amina Wadud, Khaled Abou El Fadl and Muhammad Khalid Masud. We used them as a way of opening new horizons for thinking, to show how the wealth of resources within Islamic tradition, and in the *Qur'anic* verses on justice, compassion and equality, can support the promotion of human rights and a process of reform toward more egalitarian family relations. These papers were published as the book *Wanted: Equality and Justice in the Muslim Family*, available in Arabic, English, and French, and became the basis of a wider discussion with a larger group of scholars and activists (Anwar, 2009). This discussion then shaped the *Musawah Framework for Action*, a document that took us two years to produce, in consultation with Muslim scholars and human rights and women's rights activists, and in the course of two other workshops in Cairo and London, followed by constant electronic communication among the members of the committee.

Drawing on the new wave of reformist thought and feminist scholarship in Islam, in the *Framework for Action* we grounded our claim to equality and arguments for reform simultaneously in Islamic and human rights frameworks. The distinction between *Shari'a* and *fiqh* gave us the language, the conceptual tools, to challenge patriarchy from within Islamic legal tradition. The genesis of the gender inequality inherent in Islamic legal tradition, we argued, lies in a contradiction between the ideals of the *Shari'a* and the patriarchal structures in which these ideals unfolded and were translated into legal norms. Islam's call for freedom, justice and equality was submerged in the norms and practices of Arab society and culture in the seventh century and the formative years of Islamic law. Patriarchal norms were assimilated into *fiqh* rulings through a set of theological, legal and social theories and assumptions that reflected the state of knowledge of the time, and were part of the fabric of society. This was done by the sanctification of existing marriage practices and gender ideologies and the exclusion of women from the production of religious knowledge.

The further we move from the era of the Prophet, we argued, the more we find that women are marginalised and lose their political clout; their voice in the production of religious knowledge is silenced; their presence in public space is curtailed; their critical faculties are so far denigrated as to make their concerns irrelevant to law-making processes. There is an extensive debate in the literature on this, which I will not enter. Some argue that the advent of Islam weakened the patriarchal structures of Arabian society, others that it reinforced them. The latter also maintain that, before the advent of Islam, society was undergoing a transition from matrilineal to patrilineal descent, that Islam facilitated this by giving patriarchy the seal of approval, and that the *Qur'anic* injunctions on marriage, divorce, inheritance, and whatever relates to women both reflect and affirm such a transition.

In February 2009, after two years of consultation with scholars and women's groups, *Musawah* went public with the *Framework for Action* at a gathering in Kuala Lumpur that brought together 250 Islamic scholars, human rights activists, policy-makers and women from 47 countries. For its first five years, *Musawah* and its small secretariat have been housed by *Sisters in Islam* in Kuala Lumpur, but it hopes to move elsewhere by the end of 2014. It has three inter-related areas of activities: knowledge building, international activity and outreach.

One of the main challenges that we face is that of bridging the gap between the conceptions of justice that underpin notions of gender in the classical *fiqh* texts that underpin Muslim family laws, on the one hand, and human rights documents such as CEDAW on the other. In 2011 we initiated a long-term and multifaceted project on rethinking the two central juristic concepts, rooted in the *Qur'an*, that lie at the basis of this discrimination. These are *qiwamah* and *wilayah*, which as understood and translated into legal rulings by Muslim scholars place women under male authority. There are two interconnected elements to the project. The first is the production of new feminist knowledge that critically engages with those concepts and redefines them in line with

contemporary notions of justice.² The second element of the project involves documentation of the life-stories of Muslim women and men in different countries with the aim of understanding how these two legal concepts are experienced, understood, and contested in their lived realities.³

For the project, we have commissioned eight background papers that expound and interrogate the construction of these two concepts in classical *fiqh* texts and their underlying religious and legal doctrines. These papers focus on the theological, jurisprudential, ethical, historical and sociological and legal aspects of *qiwamah* and *wilayah*; and naturally *Qur'anic* Verse 4: 34, from which the jurists derived the term *qiwamah*, is the centre of our inquiry. The Life Stories element of the project is revealing the extent of their disconnect from contemporary notions of justice and socio-economic imperatives. Our main objective is to bring insights from feminist theory and gender studies into the debates around Muslim family law, and to counter apologetic arguments based on ideology and hypothetical cases rather than on empirical evidence regarding women's experience and the lived realities of Muslim families.

International Advocacy is another area of *Musawah* activities, in which we engage with the International Human Rights treaties and instruments, with a particular focus on CEDAW. Our aim here is to break down the perceived dichotomy between "Islam" and "human rights" and to promote perspectives derived from the *Musawah Framework*. We have shared the Framework with the CEDAW Committee and other relevant actors, as an alternative approach that demystifies religious-based objections and constructs arguments based on Islamic teachings, human rights, constitutional guarantees of equality, and social realities. We have also submitted thematic reports on Article 16 of CEDAW, on which many Muslim states have placed reservations on the grounds of its incompatibility with "Islamic Shari'a".⁴ This article requires "state parties to take all appropriated measures to eliminate discrimination against women in all matters relating to marriage and family relations".

In order to understand the dynamics of interaction between these Muslim countries and the CEDAW committee, and to offer our egalitarian interpretation of the *Shari'a*, we conducted a study in which we reviewed the documents of 42 countries with a Muslim majority or significant Muslim minority populations that reported to the Committee between 2005 and 2010. Published as *CEDAW and Muslim Family Laws: In Search of Common Ground* (Musawah, 2011), the report consists of three parts. The first examines the justifications by Muslim states that failed to reform discriminatory elements of family laws in their countries. The second part examines the CEDAW committee's responses to such justifications. In the final part, we show how the *Musawah Framework of Action* can be used to respond to Muslim states' justifications for non-compliance and to open possibilities for more just and equal Muslim family laws.

² See <http://www.musawah.org/what-we-do/knowledge-building>

³ See <http://www.musawah.org/what-we-do/qiwamah-and-wilayah>

⁴ See <http://www.musawah.org/international-advocacy/thematic-reports>

The report reveals that the Muslim states and the CEDAW Committee have been talking across each other, and how the language and rhetoric of each side has hindered a meaningful dialogue. The justifications offered by states for their failure to introduce legal equality were either that the laws and practices in their respective countries are based on *Shari'a* and are therefore immutable, or that customs, traditions and culture prevent them from implementing the CEDAW Committee's recommendations. The CEDAW Committee, not being in a position to challenge the state's version of the *Shari'a*, reiterated its obligation to reform discriminatory laws and to comply with the Committee's recommendation. It is this dialogue of the deaf that we have aimed to break by introducing the *Musawah* framework, and in particular the crucial distinction between *Shari'a* and *fiqh*. Through training sessions and seminars, we have introduced the *Musawah* approach to women's human rights NGOs and activists who are involved in preparing CEDAW shadow reports and are engaging with CEDAW Committee members on key issues related to Islam and women's rights in their countries. Shadow reports, which are submitted by NGOs, provide activists with an opportunity to present their own narrative of the status of women's rights in their respective countries as distinct from that presented by their government.

In the area of outreach activities, *Musawah* aims to disseminate its approach and influence the public discourse on Islam and women. We do this through seminars and workshops, newsletters, our website and the new media (twitter and facebook) as well as organizing short courses on "Understanding Islam from a Rights Perspective" for women leaders and activities. The aim is to build the capacity of Muslim women leaders and activists, who are critically involved in working on the rights of women at the national, regional or international level, enabling them to respond the challenge of conservatism and extremism in their countries. Such courses are part of the process of reviving the lively legacy in the Islamic legal tradition of difference and diversity in *Qur'anic* interpretation and juristic opinion, a legacy that has become obscured in modern times with the instrumental use of Islam to serve the political interests of competing groups.

4. Concluding Remarks

Let me end by returning to the questions that I set out to explore in this talk. I sought to shift the focus from the impassioned and entangled debate on whether Islam and human rights are compatible, to the reality on the ground, that is, from theory to ethnography. I used the case of *Musawah* to show how new reformist and feminist voices in Islam are challenging from within the pre-modern conceptions of gender and rights in the Islamic legal tradition. The very existence of these voices is a clear indication that a "paradigm shift" in the Islamic legal tradition is well underway; pre-modern interpretations of the *Shari'a* that sanction discrimination on the basis of gender and faith are becoming irrelevant to the ethical values of many Muslims. We become aware of the old paradigm only when the shift has already taken place, when the old rationale

and logic, previously undisputed, lose their power to convince and cannot be defended on ethical grounds.

The tension between religious traditions and international human rights laws is not confined to Muslim contexts, rather it is ubiquitous, and shades into on-going animated debates between universalism and cultural relativism. In the case of Islam, however, this tension has a sharp political edge because of the unresolved issue of Palestine, and the rise of post-colonial Islamist movements in the last two decades of the twentieth century. In the new century, the "war on terror" has added a new layer of complexity to the situation. Rightly or wrongly, many Muslims perceive the war to be directed against them and their religion. This has not only increased their sense of insecurity and the appeal of traditional values, it has also, in their eyes, eroded the moral high ground of human rights law.

Recent developments in the Muslim world suggest that we are on the threshold of a new phase of relations between Islamic and human rights legal systems, which has been ultimately catalysed by reactions to both the Islamist slogan of "return to Shari'ah", and the US escalation of the "war on terror". Both "Islamic" and "international human rights" laws have been desanctified, and both have been discredited for their frequent manifest failures in practice to live up to their claims and promises. Advocates of both "Islam" and "human rights" have had to acknowledge that gross injustices have been carried out in the names of both; that we need to separate ideals from practices; that we must not compare the ideals of Islam with Western practices, nor the ideals of human rights with Muslim practices.

This new realism has changed the terms of the debate, and shifted the politics of "Islam" and "human rights" to a level where an honest and constructive dialogue has become possible. But a true dialogue is only possible when the two parties treat each other as equals and with respect; otherwise it is a dialogue of the deaf. And it is precisely this dialogue of the deaf that new feminist and reformist voices in Islam are aiming to end. In doing so, they are paving the way for an overlapping consensus between Islamic legal tradition and human rights law. This consensus can only come through education on both sides, and through engaging in an internal dialogue within Muslim communities, as well as cross-cultural dialogue to show how the principles and ideals of Islam reflect universal norms that have resonance in contemporary human rights standards. What is missing is the political will to see this dialogue take place, and put its agreements into practice.

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