

The conference was held at the Yale Law School, New Haven, CT, from November 5-6, 1993. The conference was organized by the Islamic Law Center at Yale Law School. The conference was held in a room that was not well suited for a conference of this size. The room was small and the chairs were uncomfortable. The conference was held in a room that was not well suited for a conference of this size. The room was small and the chairs were uncomfortable. The conference was held in a room that was not well suited for a conference of this size. The room was small and the chairs were uncomfortable.

Seminars, Conferences, Addresses

Law, Culture, and Human Rights: Islamic Perspectives in the Contemporary World

20–21 Jumādā al Awwal 1414 / 5–6 November 1993
 Yale Law School, New Haven, CT

This conference, unfortunately, lacked focus and direction. The conference brochure and posters were the first indication that distressing leaps of association were going to be made. One wondered why, for example, Malcolm X, Yasser Arafat, and Saddam Hussein were pictured on the brochure when their actions and ideas were in no way related to anything discussed in the conference. And why was a picture of a jubilant

Hanan Ashrawi set beside a miserable looking woman in a black chador? This crass visual melange of "Islamic" figures would not have been so significant if the conference had been more focused, but this was not the case. Still, there were a number of interesting debates and discussions.

The inclusion of a panel of medievalists was one strange feature of the conference. While Joseph van Ess's paper on the role of the individual in medieval Islamic culture was interesting, it was anachronistic in a conference on contemporary human rights. As I listened to Michael Cook's talk on "*al 'Amr bi al Ma'rūf* and Human Rights" (from a medieval perspective), I recalled a statement by an Exeter scholar that orientalist realize fundamentalists' wildest dreams when they leap back a thousand years to explain current events. It is hard enough to deal with Muslims who want to reinstate a medieval political order without having Cook offer a few of his own suggestions.

The conference began on Saturday with lectures by Abdullah an-Naim (Human Rights Watch) and Abdelwahab el-Affendi (London). The two Sudanese scholars presented very different visions of the ideal incorporation of human rights codes into Muslim societies. An-Naim began from the premise of the universality of human rights, saying that the norms embodied in the Universal Declaration of Human Rights (UDHR) should take precedence over the Shari'ah when the two conflict. An-Naim argued that the Shari'ah is a human construct and thus can be reconstructed to accord with human rights norms. This does not mean that all human rights laws will be interpreted identically throughout the world, for such terms as "cruel and unusual punishment" will be interpreted differently by states. As a result, an-Naim believes that the Islamic *hudūd* laws should not necessarily be forbidden by the UDHR, although traditional concepts of mitigating circumstances and procedural limitations must be enforced or extended. An-Naim recognized that any human rights code must enjoy cultural legitimacy in order for it to work as a normative system. Historically, calls for *ijtihād* may be seen as attempts to ground human rights norms in Muslim societies, but an-Naim is frustrated that serious institutional reform has not been attempted by Muslim leaders. An-Naim also criticized the "double discourse" practiced by Muslim leaders: they appear to support human rights when addressing non-Muslims but speak differently when addressing their circle of supporters. He was particularly critical of Hasan al Turabi whose theoretical writings and public lectures seem to support human rights. Yet, since gaining political power, he has supported increasing restrictions on freedom of speech and the dismantlement of civil organizations in Sudan.

El-Affendi responded in his lecture to some of an-Naim's statements by saying that he cannot be accused of "double discourse" as his views

have been made clear in scholarly publications. Saying that he had been invited to speak about the view of the modern Islamic reform movement on human rights, he declined to speak about the situation in Sudan, as that would require another complete lecture. However, he referred implicitly to the suspension of civil rights in Sudan when he said that loyalty to the state is a precondition for any democracy. He argued that Muslim reformers have continued to develop their views in response to their disappointment with developments in Iran and with Sudan during the Numeiri period. He also said that human rights have a strong and legitimate basis within the Shari'ah. The principle of reciprocity can be used, for example, to provide full citizenship rights to non-Muslims in Islamic countries.

The response to El-Affendi's lecture was very heated. Rhoda Howard (McMaster) accused him of "cynicism," saying that, as a diplomat working for the present Sudanese government, he must take a stand on current developments in the country. David Little (US Institute for Peace) also was not impressed with the restrictions he saw imposed on Sudanese Christians in 1993. El-Affendi protested that the situation of Sudan must be put in the context of the civil war that has raged in the country since 1983. He also stressed that an-Naim's approach is not acceptable to most Muslims, because he denies explicit Qur'anic instructions. In response, an-Naim said that the debate is not about rejecting explicit Qur'anic statements but about what they mean. An-Naim expressed hope that a historical deconstruction of the Shari'ah will lead to a more humane order of law in Muslim societies. He admitted that he is arguing for a secular political society, based on Islamic justifications and argued that since all revelation is interpreted and implemented by human beings, even a society that presents itself as based on the Shari'ah is really based on human authority.

In another session, Mahnoush Arsanjani (UN Office of Legal Affairs) gave a clear presentation of the relativist/universalist sides of the human rights debate. Coming down squarely on the side of universal human rights, Arsanjani argued that if special concessions are given to Islamic cultural values in order to override international human rights norms, then any government violating human rights on the basis of religious grounds must be given concessions. She said that if there is to be an international body like the United Nations monitoring human rights, then all states must agree to abide by the same principles. Unfortunately, Arsanjani's vision of the United Nations as an impartial international body applying the same human rights standards worldwide is as idealistic as the so-called "Islamic" human rights codes that she and others have criticized. While Muslims are aware that any modern state has the power to greatly

violate human rights, they still are not convinced that the involvement of the United Nations in their countries will improve their situation. Most Muslims want constitutional protections against rights violations by their own governments, but they have no confidence that the United Nations will enforce such protections fairly. Just ask the Bosnians about the United Nations' record in upholding human rights.

Responding to Arsanjani's talk, Frank Vogel (Harvard, Cambridge, MA) argued for a less belligerent tone in human rights discussions. Vogel said that the "universalist" versus "relativist" debate was a red herring. What was needed, rather, was detailed study of the implementation of various legal codes. He said that Donald Horowitz (Duke, Durham, NC) was on the right track when he examined the practice of Islamic law in Asia and showed how it converged with common law. Vogel tried to reorient the discussion by outlining the direction law has taken in the Muslim world. He pointed out that, while medieval theory gave near absolute power to the ruler, various institutions—especially the 'ulama—served as checks on that power. In modern times, however, these checks were swept away by colonialists who knew where their real opposition lay. This has left the Muslim world with three choices if it wants to limit state control over individuals: to return to medieval institutions (which is virtually impossible), to accept a theocracy (which is a deviation from Islamic history, for state and religious power was, as a rule, separate), or to create new institutions and systems. Vogel said that the future is open for new interpretations of Islamic law; the only serious limit is the breadth of the imaginations of Muslim thinkers.

Abdulaziz Sachedina (University of Virginia, Charlottesville, VA) discussed "The Crisis of Male Epistemology in Islamic Jurisprudence." He argued for a greater inclusion of women in legal discourse on the basis of the requirements for determining *mawḍū'āt* ("objects" or "situations"). He pointed out that legal theory does not place knowledge of *mawḍū'āt* under the realm of *taqlīd*, but rather, has prescribed that individual investigation of *mawḍū'āt* must be undertaken. Given this requirement, Sachedina concluded that women must have the right to assess their particular social situations and to determine legal applications in accordance with their sense of priorities.

Another speaker on "Women's Rights in Islam" was Fedwa Malti-Douglas (Indiana University, Bloomington, IN), who presented a comparative study of two books by members of the "Islamist movement." The first text, *Rifqān bi al Qawārīr*, was written by Kariman Hamza, a prominent activist who has appeared on Egyptian television. The other book, *Mahlān ... Yā Sāhibat al Qawārīr: Radd 'alā Kitāb Rifqān bi al Qawārīr*, was written by Yusriyya Muhammad Anwar in response to

Hamza's book. Malti-Douglas illustrated how Hamza's approach to male-female relations stressed the emotional factors in attraction. Deemphasizing the notion of exposure and covering, Hamza's narratives imply that danger comes from emotional vulnerability followed by physical proximity. In this scheme, Malti-Douglas says, women are not reduced to "a collection of parts to be covered," but are active participants in a "world of middle-class temptations." Anwar responded to Hamza's book with a reinvocation of the traditional view of women which relegates the entire body of women to *'awrah* and places them in a category with Satan. Like medieval male writers, Anwar invoked the Qur'anic story of Joseph to "prove" the essential nature of "women's guile." Malti-Douglas' exposition of Anwar's attack on Hamza's book highlighted important trends among various groups in the Islamist movement. If we cannot get beyond the medieval misogynic views of women and their "nature," there is little hope that we can extend the legal rights and political participation of Muslim women.

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