

# *Overcoming the Religious-Secular Divide: Islam's Contribution to Civilization*

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**L**ANGUAGE is a powerful dimension of social existence and interaction. It facilitates communication among individuals, and helps create agreement and consensus. It is, as such, an essential tool for advancing both knowledge and society. Nevertheless, language can be also a source of antagonism, misunderstanding, and confusion, and therefore has the power to undermine social harmony and to close the human mind. The impact of language on thinking and behavior is particularly noticeable when communication and exchange take place across cultures. Under such circumstances, the question of commensurability becomes relevant. The question can be posed as thus: Can peoples with different historical experiences have a meaningful exchange of ideas, given the fact that understanding the meaning of a term presupposes an experience of a sort of the object to which the term refers? The relationship between knowledge and experience gives rise to a series of questions with regard to understanding the grand concepts of “religion,” “secularism,” and “liberalism,” and the way each relates to the others. Such terms are not easily and fully interchangeable across cultures and civilizations, and misunderstanding results from extrapolating one’s experience across cultures. Thus, superimposing the experience of a historically determined being on another – be it an individual or a community – is bound to stifle or even destroy the latter’s chance to develop and mature.

While realizing the above difficulty, I do believe that scholars in general

and Muslim scholars in particular are duty-bound to explore meaning across cultures and civilizations, and to stimulate the exchange of ideas and experiences. As a Muslim intellectual who has had the opportunity to experience both Muslim and Western cultures, I do think that the two cultures stand to benefit greatly by learning from each other. I do also think that the future of human civilization is directly linked to our ability to learn from the historical experiences of Islamic and Western civilizations, and our willingness to build on the accomplishments of both.

Although Islamic and Western civilizations appear to be far removed from each other at the level of structure and organization, both seem to share a common commitment to the universal values of social justice, equality, common good, social welfare, political participation, religious freedom, and a host of other common principles and values. Western civilization has perfected the structural elements of social life so as to allow a better integration of the above universal values into social organization. Western successes were, however, achieved by overcoming two major historical forces that are peculiar to the West: feudalism and organized religion. This fact has contributed to the erosion of the very moral basis in which Western Renaissance is rooted – Enlightened religiosity.

Islam, on the other hand, is a tremendous spiritual force in search of modern forms. Historically, Islam is credited with building an outstanding world civilization in which science and religion, and the secular and religious, worked in harmony to advance human life. Can Islam play a similar role in restoring the moral core to modern life and arresting the increasingly immoral and irrational tendencies of the post-modern world? Many Muslim intellectuals would answer this question in the affirmative. The challenge of course is to reinstitute Islamic values and ethos into modern forms. However, for that to happen, Muslim scholars must reconceptualize the various spheres of knowledge and society in relation to Islam and its fundamental principles and underlying ethos. The efforts advanced in this chapter fall within the framework pointed out above, for I will focus, in particular, on the notions of religion, secularism, and liberalism.

My basic argument is that a political order rooted in Islamic norms shares with the modern secularist orders its desire to liberate the body politics from narrow religious and cultural interpretations. Unlike the secularist order, the Islamic political order, however, encourages the fostering of moral values in accordance with the overall scheme of moral autonomy.

I conclude by emphasizing the priority of the institutions of civil society over those of the state, and the inevitability of invigorating inter-communal action to ensure the autonomy of both the individual and community, and to limit the power of the modern state.

#### RELIGION-POLITICS INTERPLAY

Although a deep understanding of the interaction between the political and religious spheres requires a systematic and elaborate examination of their meaning, I will limit my statement to delineating their boundaries and identifying a few areas of friction between the two.

Religion refers to those aspects of life which relate to the determination of the total meaning of existence. It is concerned, in particular, with three grand questions about human existence: its origin, its purpose, and its destiny. Although the above three questions can be raised from a philosophical point of view, the religious response to them is distinguished from the philosophical by the degree of conviction that one enjoys over the other. That is to say, a religious conclusion to these grand questions is not only supported by rational arguments, but by emotional attachment as well. This difference gives religion an advantage over philosophy in that it makes religiously based convictions a better springboard for action. It is a fact of history that people with deep religious convictions are willing to endure greater difficulties and make greater sacrifices in pursuit of their religious ideals than those whose attachment to their ideals is based on purely rational demonstration.

Paradoxically though, religion's source of strength is also its source of weakness. It is always easier to dissuade people from erroneous convictions when the latter are based on theoretical arguments rather than religious convictions. Although shared religious convictions can create more harmony in the public sphere, the possibility of interpersonal and inter-communal conflicts are bound to increase in multi-religious societies.

The question that we need to address here is not whether religion and politics stand in a conflictual or harmonious relationship, but rather how and under what conditions religious commitment can strengthen and improve the quality of social life.

## DEGREES OF SECULARISM

Politics is about organizing the public sphere, that is, regulating action and deciding direction. As such, both the convictions and interests of a people influence public regulations. In its drive to develop a social order in which religion and politics strengthen one another without suppressing individuality and creativity, Europe went through two interrelated processes: religious reformation and secularization. Reformation entailed a struggle to liberate the individual from the control of religious authorities, viz. the Catholic Church. Secularization consisted of the liberation of the state from control by particular religious groups, so as to ensure that public policy was based on rational arguments, rather than religious injunctions.

However, although religion ceased to have a visible influence in the public sphere, it continued to be an important force in shaping public policy and public life. This is true because rational arguments about the nature of public order have to start from a transcendental understanding of the meaning of public life and social interaction. The notions of right and wrong, good and evil, and the tolerable and the intolerable are the result of both religious conviction and political compromise.

It is important to realize that secularization is a multi-faceted phenomenon. One facet of secularization, and the one that was initially intended by its early advocates, is the separation of State and Church. However, because it was achieved by negating history and tradition, it gradually led to the “death of God,” the erosion of religious values and convictions in Western society by the turn of the twentieth century, and to the “death of man” at the dawn of the twenty-first century. The secularism of the post-modern age is ruled by the ideas of self-interest, self-indulgence, and excess.

## THE ORIGIN OF SECULARISM

Secularism refers to complex and multifaceted attitudes and practices that cannot be easily captured in a brief description or rendered into a simple definition. While one may find certain similarities between modern secularist attitudes and practices and those which existed in pre-modern societies, it is fair to say that secularism as we know it today is a modern phenomenon that grew in the modern West, and later took root in different societies.

In its essential sense, secularism denotes a set of notions and values whose aim is to ensure that the state neither engages in promoting specific religious beliefs and values, nor uses its powers and offices to persecute religion. To prevent state officials from using their political authority to impose a narrow set of religious attitudes and values on the larger society, and to prevent the use of religious symbols to provoke strife among religious communities, Western intellectuals embarked on a project that aimed at separating political authority from religious affiliation. To that end, the Enlightenment scholars embraced a set of concepts and principles, and used them as the basis for reconstructing modern European consciousness. The new political ideology advanced by Enlightenment activists and thinkers emphasized concepts such as equality, freedom of conscience and conviction, and the supremacy of law, all of which were advocated by the Religious Reformation that put an end to the ancient regime of Europe.

The underlying socio-political morality advocated by the pioneers of the secular state in Europe was derived from the religious tradition delineated by the religious reformists of fifteenth-century Europe, though argued in rational terms and common-good logic. Early advocates of the separation of State and Church, such as Descartes, Hobbes, Locke, and Rousseau, had no intention of undermining religion, or faith in the Divine, but rather predicated their reformist ideas on the notion of God and civil religion. Descartes, for instance, argued: “the certainty and truth of all knowledge depends uniquely on my awareness of the true God, to such an extent that I was incapable of perfect knowledge about anything else until I became aware of him.”<sup>1</sup> Similarly, Rousseau, while critical of the way religion was traditionally taught and practiced, recognized the need, even the necessity, of religious commitment and faith for the modern state to function properly. He therefore identified a number of “dogmas,” and argued for their inclusion in the “civil religion” that he advocated:

The existence of an omnipotent, intelligent, benevolent divinity that foresees and provides; the life to come; the happiness of the just; the punishment of sinners; the sanctity of the social contract and the law – these are the positive dogmas. As for the negative dogmas I would limit them to a single one: no intolerance.<sup>2</sup>

Even Kant, who limited the notion of truth to empirical experience and

labored to set morality on a rational foundation, insisted that “without a God and without a world invisible to us now but hoped for, the glorious ideals of morality are indeed objects of approval and admiration, but not springs of purpose and action.”<sup>3</sup> However, by denying the possibility of transcendental truth, and as a result of the relentless attack on the authority of revelation as a source of ethical and ontological knowledge, secularist scholars have been able to successfully marginalize religion and undermine morality. The efforts to ground morality in utility and cost-benefit calculation, rather than truth, have proved to be counter-intuitive and futile, and have given rise to egoism and moral relativism.

There were, of course, intellectuals who have less sympathy for religion, particularly among the French. Nevertheless, they did not represent the general sentiments of the great majority in Europe. Although the French revolution displayed a clear anti-religious sentiment, it was not, as Nietzsche was to discover later, directed against religion *per se*, but against organized religion, represented primarily by the Catholic Church. “Modern philosophy, being an epistemological skepticism, is,” Nietzsche argued, “covertly and overtly, anti-Christian – although, to say this for the benefit of more refined ears, by no means anti-religious.”<sup>4</sup>

The original secularist sentiment was, therefore, rooted in the religious Reformation; more specifically, it was rooted in the Protestant revolt against religious hierarchy and centralized religion. Secularism was not originally intended as a way to separate religion from society or religious consciousness from political action, but only to isolate the state from the Church structure and to separate religious and political authorities.

The tone started to change, however, a century later among progressive European intellectuals, who saw in religion a negative force whose elimination, they believed, was essential for further emancipation and progress. Karl Marx, while agreeing that the secular state had successfully neutralized religion and banished it from the public sphere, still saw a great danger in religious life. This was because, he argued, secularism reduced religion to a private matter only in so far as the state was concerned. However, the privatization of religion gave it in effect more influence in the organization of civil society. Even in the United States, where religion has been domesticated and individualized to the greatest extent, it continues to divide society into distinct religious communities, thereby allowing for the formation of internal solidarity with a clear bearing on

economic life. Religion, Marx further thought, was an instrument in the hands of privileged classes to justify social misery and economic inequality. In *The Jewish Question*, Marx had the following to say about the need to emancipate humanity from religion:

The decomposition of man into Jew and citizen, Protestant and citizen, religious man and citizen, is neither a deception directed against "citizenhood", nor is it a circumvention of political emancipation; it is political emancipation itself, the political method of emancipating oneself from religion. Of course, in periods when the political state as such is born violently out of civil society, when political liberation is the form in which men strive to achieve their liberation, the state can and must go as far as the abolition of religion, the destruction of religion. But, it can do so only in the same way that it proceeds to the abolition of private property, to the maximum, to confiscation, to progressive taxation, just as it goes as far as the abolition of life, the guillotine.<sup>5</sup>

Nietzsche, like Marx, condemned religion as a negative social force responsible for preserving the meek and the weak, and hence weakening the human race. By praising poverty and glorifying the taming of the natural instinct, Nietzsche insisted, religion contributed to delaying the refinement of the human species. By giving "comfort to the sufferers, courage to the oppressed and despairing, a staff and support to the dependent," Christianity, he contended, "preserved too much of what ought to perish."<sup>6</sup> Unlike Marx, who saw religion as an obstacle to achieving universal equality, Nietzsche's rejection of religion in general, and reformed Christianity in particular, was anti-democratic, directed against the egalitarian spirit it promoted, and hence against its failure to promote the order of rank, a hierarchical social order which he believed to be both intrinsic to humanity and desirable for social life.<sup>7</sup>

#### RELIGION AND THE STATE IN MUSLIM SOCIETY

Many Muslim intellectuals insist today that Islam is an integral part of the state. The state in a society committed to Islam, they stress, is by definition an Islamic state since political authorities are bound to Islamic Law, which has a direct bearing on constitutional law. This has created confusion about the nature of the Islamic state, and has given rise to apprehension on the part of modernist scholars, who fear that remarrying Islam and the state is bound to give birth to theocracy.

The confusion is, of course, not limited to outside observers and commentators who tend to extrapolate in their analysis from the historical experience of Western society, but also affects those who advocate the formation of a political state on the basis of Islamic values. The difficulty arises from the efforts to combine the principle of popular government with that of a state bound by the rules of Islamic Law. This confusion is, in my opinion, the result of equating the political structure of the Ummah with the political structure of the state, and consequently, confusing the functions of the Shari‘ah with those of the state. This confusion is not restricted to obscure works. Rather it is found in the works of influential contemporary Islamic thinkers. In his book, *Nazariyat al-Islam wa Hadyihi*, Sayyid Abu al-Ala al-Mawdudi, for one, points out two kinds of objectives to be assigned to the Islamic state: negative objectives “like deterring the aggression and preserving the freedom of people and defending the state,”<sup>8</sup> and positive objectives such as “banning all forbidden things which have been condemned by the Qur’an.”<sup>9</sup> Mawdudi concludes by affirming the totality of the state’s objectives on the basis of the comprehensiveness of the Shari‘ah objectives.

He writes:

Obviously, it is impossible for such a state to limit its framework, because it is a totalitarian state encompassing the whole human life, and painting every aspect of human life with its moral color and particular reformist programs. So nobody has the right to stand up against the state and exempt himself from the liability by saying that this is a personal matter, so that the state does not intrude. In brief, the state encompasses the human life and every area of civilization according to its particular moral theory and particular reformist program. So, to some extent, it is similar to the communist and fascist state. But despite this totality the Islamic state is free from the color that dominates the totalitarian and authoritarian states of our age. Thus the Islamic state does not curtail the individual freedom nor has it much room for dictatorship or absolute authority.<sup>10</sup>

The above statement reflects the state of confusion that we have just pointed out. In a single paragraph the author characterizes the Islamic state as totalitarian, likens it to the communist and fascist states, and stresses that no one has the right to stand up against the state and resist its intrusion into personal life. He then contradicts himself, two sentences later, denying that the Islamic state may curtail individual freedom.

Certainly the assertion about the totalitarian character of the state is the result of mixing state functions relating to the Shari‘ah’s legal dimension with the functions of the Ummah concerning moral and educational dimensions. The distinction between these two kinds of objectives is, thus, of vital importance to prevent the state from imposing on the general public a normative order based on a narrow interpretation of the law. The Islamic state, it should be emphasized, is not an institution devoted to advancing the interests of the Muslim community, but a political system based on universal principles, and one committed to maintaining peace, security, and welfare for all citizens, irrespective of their doctrines, religions, nationality, race, or gender.

As will be shown below, the Islamic system in the past did not lead, nor should it lead in the future, to imposing a narrow and limited concept or a particular opinion on society. This is because the principle of religious and doctrinal plurality has been considered, since the very inception of the Ummah, a cardinal political principle. Here the Qur’anic verses, both the Makkan and Madinan, clearly stress the centrality of the principle of religious freedom in the Islamic concept.

Lately, there has been concern about the relationship between religious commitments and the exercise of power among the ranks of Islamists. Mainstream Islamic groups have been gradually moving away from the concept of a centralized Islamic political order envisaged by early leaders, such as Hassan al-Banna and Taqiyuddin al-Nabhani. Leaders of the major Islamic movements in Egypt, Jordan, Pakistan, Syria, Turkey, and Tunisia, to name a few, have come out openly in favor of a democratic, pluralistic political system, in which freedom of speech and association is guaranteed for citizens, regardless of their political orientation or religious affiliation.<sup>11</sup>

#### THE FORMATIVE PRINCIPLES OF THE MADINAN STATE

The notion of the Islamic state advanced today by populist writers is, as I have tried to show above, a mixture of the nationalist structure of the modern state with the communal structure of historical Shari‘ah. The concept of the state that emerges as a result is in complete contradiction to the nature and purpose of the polity founded by the Prophet, (SAAS)<sup>12</sup> or developed historically by successive generations of Muslims. A quick

review of the guiding principles of the first Islamic polity reveals the disparity between the two. The principles and structure of the early Islamic polity are epitomized in the Covenant of Madinah (*Ṣahīfat al-Madinah*), which formed the constitutional foundation of the political community established by the Prophet.<sup>13</sup>

The Covenant of Madinah established a number of important political principles that, put together, formed the political constitution of the first Islamic state, and defined the political rights and duties of the members of the newly established political community, Muslims and non-Muslims alike, and drew up the political structure of the nascent society. The most important principles included in this Covenant are as follows:

1. The Covenant declared that the Ummah is a political society, open to all individuals committed to its principles and values, and ready to shoulder its burdens and responsibilities. It is not an exclusive society, whose membership rights and security are restricted to a select few. The right to membership of the Ummah is specified in: (a) accepting the principles of the Islamic system, manifested in the commitment to adhere to the moral and legal order; and (b) declaring allegiance to the system by practical contributions and struggle to actualize the objectives and goals of Islam. Thus, allegiance and concern for public good are the principles determining the membership of the Ummah as defined by the first article of the document: “This is a Covenant offered by Muhammad the Prophet, [governing the relations] among the believers and the Muslims of Quraysh and Yathrib [Madinah], and those who followed, joined, and labored with them.”<sup>14</sup>
2. The Covenant delineated a general framework that defined individual norms and the scope of political action within the new society, but preserved the basic social and political structures prevalent then in tribal Arabia. The Covenant of Madinah preserved tribal structure, while negating tribal spirit and subordinating tribal allegiance to a morally based legal order. Since the Covenant declared that the nascent political community is “an Ummah to the exclusion of all people,” it approved a tribal division that had already been purged of the tribal spirit epitomized by the slogan “my brethren right or wrong,” subjecting it to the higher principles of truth and justice. The Covenant therefore

declared that the emigrants of the Quraysh, Banū al-Ḥārith, Banū al-'Aws, and other tribes residing in Madinah, according "to their present customs, shall pay the blood wit they paid previously and that every group shall redeem its prisoners."<sup>15</sup>

Islam's avoidance of the elimination of tribal divisions can be explained by a number of factors that can be summarized in the following three points:

(a) The tribal division was not based merely on politics but also social differentiation, thus providing its people with a symbiotic system. Therefore, the abolition of the political and social assistance provided by the tribe before developing an alternative would have been a great loss to the people affected.

(b) Apart from its being a social division, the tribe represented an economic division in harmony with the pastoral economy prevalent in the Arabian Peninsula before and after Islam. The tribal division is the ideal basis of pastoral production, for it provides freedom of movement and migration in search of pasture. Any change in this pattern requires taking the initiative to change the means and methods of production.

(c) Perhaps the most important factor that justified the tribal division within the framework of the Ummah after the final Message had purged the tribal character of its aggression and arrogance, is the maintenance of the society and its protection from the danger of central dictatorship. Such a situation might arise in the absence of a secondary social and political structure and the concentration of political power in the hands of a central authority.

Hence Islam adopted a political system, based on the concept of the one Ummah, as an alternative to the divisional tribal system, while upholding the tribal division now cleansed of its aggressive elements. Islam left the question of changing the political structure to the gradual development of economic and production structures. Although Islamic Revelation avoided any arbitrary directives aimed at immediate abolition of the tribal division, it criticized openly tribal and nomadic life.<sup>16</sup>

3. The Islamic political system adopted the principle of religious tolerance based on the freedom of belief for all the members of society. It conceded to the Jews the right to act according to the principles and

rulings in which they believed: “The Jews of Banū ‘Awf are one community with the believers. The Jews have their religion and the Muslims theirs.” The Covenant emphasized the fundamentality of cooperation between Muslims and non-Muslims in establishing justice and defending Madinah against foreign aggression. “The Jews must bear their expenses and the Muslims their expenses. Each must help the other against anyone who attacks the people of this Covenant. They must seek mutual advice and consultation.” It prohibited the Muslims from doing injustice to the Jews or seeking revenge for their Muslim brothers against the followers of the Jewish religion without adhering to the principles of truth and goodness. “To the Jew who follows us belong help and equality. He shall not be wronged nor shall his enemies be aided.”<sup>17</sup>

4. The Covenant stipulated that the social and political activities in the new system must be subject to a set of universal values and standards that treat all people equally. Sovereignty in the society would not rest with the rulers or any particular group, but with the law founded on the basis of justice and goodness, maintaining the dignity of all. The Covenant emphasized repeatedly and frequently the fundamentality of justice, goodness, and righteousness, and used various expressions to condemn injustice and tyranny. “They would redeem their prisoners with kindness and justice common among the believers,” the Covenant stated. “The God-conscious believers shall be against the rebellious, and against those who seek to spread injustice, sin, enmity, or corruption among the believers; the hand of every person shall be against him, even if he be a son of one of them,” it proclaimed.<sup>18</sup>
5. The Covenant introduced a number of political rights to be enjoyed by the individuals of the Madinan State, Muslims and non-Muslims alike, such as (a) the obligation to help the oppressed, (b) outlawing guilt by association, which was commonly practiced by pre-Islamic Arab tribes: “A person is not liable for his ally’s misdeeds;” (c) freedom of belief: “The Jews have their religion and the Muslims have theirs;” and (d) freedom of movement from and to Madinah: “Whoever leaves is safe, and whoever stays in Madinah is safe except those who have wronged [others], or committed sin.”<sup>19</sup>

RELIGION AND THE STATE  
IN HISTORICAL MUSLIM SOCIETY

Adhering to the guidance of Revelation, the Ummah respected the principle of religious plurality and cultural diversity during most of its long history. The successive governments since the *Rāshidūn* period preserved the freedom of faith and allowed non-Muslim minorities not only to practice their religious rituals and proclaim their beliefs, but also to implement their religious laws according to an autonomous administrative system. Likewise, the Ummah as a whole respected the doctrinal plurality with both its conceptual and legal dimensions. It resisted every attempt to draw the political power into taking sides with partisan groups, or into preferring one ideological group to another. It also insisted on reducing the role of the state and restricting its functions to a limited sphere.

Anyone who undertakes to study the political history of Islam will soon realize that all the political practices which violated the principle of religious freedom and plurality were an exception to the rule. For instance, the efforts of the Caliph al-Ma'mūn to impose doctrinal uniformity in accordance with the Mu'tazili interpretations, and to use his political authority to support one of the parties to the doctrinal disputes, were condemned by the 'alims and the majority of the Ummah. His efforts to achieve doctrinal homogeneity by suppression and force eventually clashed with the will of the Ummah, which refused to solve doctrinal and theoretical problems by the sword. This compelled al-Wāthiq Billāh, the third Caliph after al-Ma'mūn to give up the role assumed by his predecessors and abandon their oppressive measures.

Obviously, Muslims have historically recognized that the main objective of establishing a political system is to create the general conditions that allow the people to realize their duties as moral agents of the Divine will (*Khulafā'*), not to impose the teachings of Islam by force. We therefore ascribe the emergence of organizations which aim to compel the Ummah to follow a narrow interpretation, and which call for the use of the political power to make people obedient to the Islamic norms, to the habit of confusing the role and objectives of the Ummah with the role and objectives of the state. The Ummah aims to build Islamic identity, to provide an atmosphere conducive to the spiritual and mental development of the individual, and to grant him or her the opportunity to fulfill his or her role in

life within the general framework of the law. Meanwhile, the state makes the effort to coordinate the Ummah's activities so as to employ the natural and human potential and possibilities to overcome the political and economic problems and obstacles that hinder the Ummah's development.

Differentiating between the general and particular in the Shari'ah and between the responsibilities of the Ummah and the state, is a necessity if we want to avoid the transformation of political power into a device for advancing particular interests. We must also ensure that state agencies and institutions do not arrest intellectual and social progress, nor obstruct the spiritual, conceptual, and organizational developments of society.

#### DIFFERENTIATING CIVIL SOCIETY AND THE STATE

Historically, legislative functions in Muslim society were not restricted to state institutions. Rather, there was a wide range of legislation related to juristic efforts at both the moral and legal levels. Since the major part of legislation relating to transactional and contractual relations among individuals is attached to the juristic legislative bodies, the judicial tasks may be connected directly with the Ummah, not with the state. It must be emphasized that the differentiation between civil society and the state can be maintained only by dividing legislation into distinct areas that reflect both the geographical and normative differentiation of the political society.

The importance of the differential structure of the law is not limited to its ability to counteract the tendency to centralize power, which characterizes the Western model of the state. Rather, it is also related to guarantees extended to religious minorities. The Islamic model should maintain the legislative and administrative independence of the followers of different religions, for the sphere of communal legislation does not fall under the governmental authority of the state. On the other hand, the majoritarian model of the democratic state deprives religious minorities of their legal independence, and insists on subjugating all citizens to a single legal system, which often reflects the doctrinal and behavioral values of the ruling majority.

The early Muslim community was cognizant of the need to differentiate law to ensure moral autonomy, while working diligently to ensure equal protection by the law of fundamental human rights. Thus early jurists recognized that non-Muslims who have entered into a peace covenant with Muslims are entitled to full religious freedom and equal protection by

the law of their rights to personal safety and property. Muḥammad ibn al-Ḥasan al-Shaybānī states in unequivocal terms that when non-Muslims enter into a peace covenant with Muslims,

Muslims should not appropriate any of their [the non-Muslims'] houses and land, nor should they intrude into any of their dwellings. [This is because they have become party to a covenant of peace, and because on the day of [the peace of] Khaybar, the Prophet's spokesman announced that none of the property of the covenanter is permitted to them [the Muslims]. [It is also because they [the non-Muslims] have accepted the peace covenant so as they may enjoy their properties and rights on a par with the Muslims.<sup>20</sup>

Similarly, early Muslim jurists recognized the right of non-Muslims to self-determination, and awarded them full moral and legal autonomy in the villages and towns under their control. Therefore, al-Shaybānī, the author of the most authoritative work on non-Muslim rights, insisted that the Christians who entered into a peace covenant (*dhimma*) – hence became *dhimmis* – had all the freedom to trade in wine and pork in their towns, even though this practice was considered immoral and illegal among Muslims.<sup>21</sup> However, *dhimmis* were prohibited to do the same in towns and villages controlled by Muslims.

Likewise, early Muslim jurists recognized the right of *dhimmis* to hold public office, including that of a judge or a minister. However, because judges had to refer to laws sanctioned by the religious traditions of the various religious communities, non-Muslim judges could not administer law in Muslim communities, nor were Muslim judges permitted to enforce Shari‘ah laws on the *dhimmis*. There was no disagreement among the various schools of jurisprudence on the right of non-Muslims to be ruled according to their laws; they differed only over whether the positions held by non-Muslim magistrates were judicial in nature, and hence the magistrates could be called judges, or whether they were purely political, and therefore the magistrates were indeed political leaders.<sup>22</sup> Al-Māwardī hence distinguished between two types of ministerial positions: *plenipotentiary* minister (*wazīr tafwīd*) and executive minister (*wazīr tanfidh*). The two positions differed in that the former acted independently from the Caliph, while the latter had to act on the instructions of the Caliph, and within the limitations set by him.<sup>23</sup> Therefore, early jurists permitted

*dhimmis* to hold the office of the executive, but not that of the *plenipotentiary* minister.<sup>24</sup>

However, while early Shari'ah Law recognized the civil and political rights and liberties of non-Muslim *dhimmis*, its rules underwent drastic revision, beginning in the eighth century AH. This was a time of great political turmoil throughout the Muslim world. It was during that time that the Mongols invaded Central and West Asia, inflicting tremendous losses on various dynasties and kingdoms, and destroying the seat of the Caliphate in Baghdad. This coincided with the Crusaders' control of Palestine and the coast of Syria. In the West, the Muslim power in Spain was being gradually eroded. It was under such conditions of mistrust and suspicion that a set of provisions attributed to an agreement between the Caliph Umar and the Syrian Christians were publicized in a treatise written by Ibn al-Qayyim.<sup>25</sup> Although the origin of these provisions is dubious, their intent is clear: to humiliate Christian *dhimmis* and to set them apart in dress code and appearance. Their impact, however, was limited, for the Ottomans, who replaced the Abbasids as the hegemonic power in the Muslim world, continued the early practice of granting legal and administrative autonomy to non-Muslim subjects.

#### ISLAM, CIVIL SOCIETY, AND THE STATE

The modern state emerged to foster individual freedom from arbitrary rule, and to ensure that the members of the political society assumed full control over public institutions. To do so, the modern state found it necessary to free public institutions from the control of all exclusive groups, including organized religions. However, despite the clear desire of the pioneers of the secular state to replace religious morality with civic virtue as the moral foundation of the state, secularism gradually developed anti-religious tendencies, leading to the steady erosion of the moral consensus. The continual erosion of morality and the rampant corruption in modern politics threatens to turn the state into an instrument in the hands of corrupt officials and their egoistic cronies.

This has prompted calls for the return of religion and religiously organized groups into the political arena. Nowhere are these calls louder and clearer than in Muslim societies where Islamic values have historically exerted great influence on the body politic. Unfortunately, the reunion envisaged by the advocates of the Islamic state is often presented in crude

and simplistic terms, for it fails to appreciate the great care that was taken by the early Muslims to ensure that the state incorporated, both in its objectives and structure, the freedom and interest of all intra- and inter-religious divisions.

This calls upon Muslim scholars to engage in new thinking that aims at redefining political principles and authority. In doing so, Muslim scholars should be fully aware of the need to transcend the historical models of political organizations in Muslim society. Political structures and procedures adopted by early Muslim societies are directly linked to their social structures, economic and technological developments, and political experiences. While historical Islamic models provide a mine of knowledge for contemporary Muslims to utilize, any workable formulation of the modern Islamic model of the state that is true to Islamic values and ethos must emerge from fresh thinking that takes into account the structure of modern society.

Islamic political thought, I believe, can make a profound significant contribution toward reclaiming the moral core of social life and preserving religious traditions, without sacrificing the principle of freedom and equality promoted by the modern state. The hallmark of Islamic political experience is the limitations that historical Muslim society was able to place on the actions of rulers, and the presence of a vigorous and robust civil society. Many of the functions that the secular state assumes today were entrusted to civic institutions, including education, health, and legislation. The state was mainly entrusted with questions of security and defense, and was the last resort in questions relating to dispensation of justice. This understanding of state power would potentially free religious communities from intervention by the state and state officials, who tend to enforce their religiously based values and notions on the members of society, including those who do not share with them some of those values and beliefs.

The notions of individual freedom and equality are intrinsic to Islamic political thought, and those principles require that individuals have the basic civil liberties offered by the modern state. However, by freeing civil society from the heavy hand of the state, and by extending individual liberties to the community and recognizing the moral autonomy of social groups, social and religious groups under the Islamic conception of law (Shari'ah) would have the capacity to legislate their internal morality and affairs in their communities. While the new sphere of freedom acquired

under this arrangement would allow for differentiation among citizens, equality would have to be maintained as the criterion of justice in the new area of public law, and in access to public institutions – that is, in matters relating to shared interests and inter-communal relations.

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