Religion and Human Rights: Towards a Better Understanding

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Abstract:
This article affirms the complex relationship between religious teachings and human rights principles in today's world, and is aimed at contributing approaches towards a better understanding of the relationship. It attempts to explore and promote necessary means of realising a harmonious co-existence between them. The article provides a general analysis of the different theoretical perspectives of the relationship between religion and human rights, highlighting the key framework that could facilitate a better understanding between the two systems. It commences with a brief analysis of both religion and human rights as interdependent forms of social ordering, followed by an analysis of the theoretical conceptualisations of the relationship by suggesting three relevant theoretical models: the separationist, the accomodationist and the double-edged conceptions. Indicating preference for the second, this article demonstrates the possibility of a healthy and productive symbiosis between religion and human rights.

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Introduction

The relationship between religion[1] and human rights is a very important aspect of contemporary human rights discourse as is reflected, on the one hand, by the increasing volume of literature on different aspects of the subject;[2] and, on the other hand, by the many controversies that have occurred and continue to occur between advocates of human rights norms and advocates of different religious norms in different parts of the world today. More often than not, the relationship is portrayed in very tensile and negative terms, which thus calls for the need to continue exploring and promoting necessary means of realising a better understanding and harmonious co-existence between the two, owing to the obvious inevitability of both phenomena in contemporary human society. In that regard, this article is aimed at contributing to a better understanding of the relationship and the promotion of a

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1   The term "religion" is used in this article in a very generic sense.
2   See e.g. L. Giaron, ed., *Human Rights and Religion: A Reader* (Brighton: Sussex Academic Press, 2002); C. N. Nathan, *The Changing Face of Religion and Human Rights* (Leiden: Martinus Nijhoff Publishers, 2009); L. S. Rouner, *Human Rights and the World's Religions* (Notre Dame: University of Notre Dame Press, 1994); J. Runzo et al., eds., *Human Rights and Responsibilities in the World Religions* (Oxford: One World Publications, 2003); W. H. Brackney, ed., *Human Rights and the World's Major Religions*, 5 vols. (Westport: Praeger Publishers, 2005); N. Ghanea, ed., *Religion and Human Rights*, 4 vols. (Routledge Publishers, 2009); N. Ghanea et al., eds., *Does God Believe in Human Rights?* (Leiden: Martinus Nijhoff Publishers, 2007); C. Gustafson and P. Juviler, eds., *Religion and Human Rights: Competing Claims?* (New York: M. E. Sharpe Inc., 1999); L. Henkin, "Religion, Religions and Human Rights," *The Journal of Religious Ethics* 26, no. 2 (1998): 229-239; E. M. Bucar and B. Barrnet, eds., *Does Human Rights Need God?* (Cambridge: Wm. B Eerdmans Publishing Co., 2005).

harmonious co-existence between the two.

From an international human rights perspective, the prospective tension between religion and human rights had been manifested from the very beginning of the United Nations (UN) human rights venture during the early debates on the draft provisions of the Universal Declaration of Human Rights (UDHR)[3] in 1948. The example often cited in that regard is the religious objection raised by Saudi Arabia against the scope of the draft provisions of what eventually became articles 16 and 18 of the UDHR during the UN General Assembly's Third Committee article by article consideration of the draft provisions of the UDHR in November 1948, and the country's subsequent abstention from voting for the adoption of the Declaration on that ground.[4] Nevertheless, Saudi Arabia and other Muslim States are, today, States Parties to different international human rights treaties adopted after the UDHR, albeit sometimes with reservations entered still on religious grounds.

Certainly, the relationship between religion and human rights is a complex one, which has been understood or interpreted in different ways by different commentators, sometimes in ways that are detrimental and impedimental to the realisation of the general humane ideals advanced by both religion and human rights. While the relationship between religion and human rights now constitute an important aspect of the debates on universalism and cultural relativism within international human rights discourse, it is disappointing that the potential strength of religion in contributing to achieve full

3   GA res. 217A (III), UN Doc A/810 at 71 (1948). Adopted by the UN
     General Assembly on 10 December, 1948.
4   See UN Doc. A/C.3/SR.125-7 (1948). See also generally J. Kelsay, "Saudi
     Arabia, Pakistan, and the Universal Declaration of Human Rights," in
     D. Little, J. Kelsay and A. A. Sachedina, eds., *Human Rights and the
     Conflict of Cultures: Western and Islamic Perspectives on Religious Liberty*
     (South Carolina: University of South Carolina, 1988), 33-52; M. Ganji,
     International Protection of Human Rights (Geneva: Droz, 1962), 145.

universalisation of human rights has not been fully explored and religion is still mostly considered as part of the problem than part of the solution. For example, the potential strength of Islām and Islamic Law in helping to realise human rights in Muslim States still remains to be fully explored by the human rights community and is not fully demonstrated in practice by the governments in most Muslim States.

I will, in this article, give a general analysis of the different theoretical perspectives of the relationship, with the aim of highlighting what I consider to be the key framework that could facilitate a better understanding between the two systems. I must, however, state that my specialisation is in human rights and Islamic Law which is a specific aspect of the more general subject of this article, religion and human rights. Thus, while I will be referring to religion, meaning religions generally, I will most often be making specific references to Islām and Islamic Law to illustrate and provide context to my arguments where necessary. However, it is very assuring to find, from my general reading of materials on human rights and the other major religions, that most of my contextual arguments would equally be applicable, *mutatis mutandis*, to other religions too.[5]

To demonstrate why we need to continue engaging in discussions for a better understanding between religion and human rights, I will commence with a brief analysis of both religion and human rights as interdependent forms of social ordering in today's world. This will then be followed by an analysis of the theoretical conceptualisations of the relationship between religion and human rights using three relevant theoretical models I have used in an earlier article on the relationship between religion and international law generally, titled "Religion and International Law: Friends or

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5   See e.g. W. H. Brackney, ed., *Human Rights and the World's Major Religions*, 5 vols. (Westport: Praeger Publishers, 2005).

Foes?" published in the *European Human Rights Law Review* in 2009.[6] I will end the article with a short concluding remark.

Religion and human rights as interdependent forms of social ordering

Rather than simply taking it for granted that there was a need to have a better understanding between religion and human rights, a pessimist or sceptic would probably confront the subject with annihilative questions such as: Why is it, at all, necessary to promote a better understanding between religion and human rights?; Why should each one not be left to compete against the other and possibly force the other out of the discourse? As a matter of fact, in a 2005 article titled "Rights and Religions at the Crossroads," James Roberts referred to suggestive arguments from the human rights advocacy community for a deliberate "universal human rights agenda that is in conflict not only with Islām but with the Catholic and other Christian Churches."[7] That is what I have referred to as the "discordant view"[8] or the "adversarial perspective"[9] elsewhere on the subject. One may however counter such annihilative questions by considering two other

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6   M. A. Baderin, "Religion and International Law: Friends or Foes?," *European Human Rights Law Review* 5 (2009): 637-658. Available online at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1638162 (Unless otherwise indicated, all the internet references in this article were last accessed on 18 November 2010).

7   J. Roberts, "Rights and Religions at the Crossroads," *The Tablet*, 22 January 2005. Available online at: http://www.thetablet.co.uk/article/1698. Roberts was referring in that regard to J. Marthos and J. Saunders' article on "Religion and the Human Rights Movement" published in the *Human Rights Watch World Report 2005*, 40-69. Available online at: www.hrw.org/wr2k5/wr2005.pdf.

8   M. A. Baderin, "Human Rights and Islamic Law: The Myth of Discord," *European Human Rights Law Review* 2 (2005): 165-185.

9   M. A. Baderin, "Islam and the Realization of Human Rights in the Muslim World," in S. Joseph and A. McBeth, eds., *Research Handbook on International Human Rights Law* (Cheltenham: Edward Edgar Publishing Ltd., 2010), 440-466.

insightful questions posed by Clement Nathan with regard to the relationship between religion and human rights. He asked:

> Would human rights be best served by the disappearance of all religions [and conversely, would religion be best served by the disappearance of the human rights mission]? Or is the inter-relationship between religion and human rights necessary for the promotion of worldwide human rights [and conversely, also for the promotion of the humane ideals advanced by all religions]?[10]

In my view, the annihilative argument is not sustainable because both religion and human rights are here to stay and neither is likely to disappear for the other, at least not in the predictable future. Thus, the reasonable and sustainable position to pursue would be that a positive relationship between the two is necessary for the realisation of universal human rights as well as the humane ideals promoted by all religions. In my view, both the advocates of religious norms and advocates of human rights must, as a matter of necessity, promote a harmonious co-existence between the two.

In essence, it is of fundamental importance for us to appreciate that both religion and human rights constitute, respectively, very important and interdependent forms of social ordering across the world today. Each one functions as a moral or normative system and semi-autonomous social field that influences socio-cultural and politico-legal conduct in different ways in relation to both human and State relations globally.

On the one hand, religion has been associated, in one form or ano-ther, with human existence from time immemorial and has thus influenced human behaviour and social order

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10 C. N. Nathan, *The Changing Faces of Religion and Human Rights: A Personal Reflection* (Leiden: Martinus Nijhoff Publishers, 2009), 1. (The converse questions in square brackets are mine).

in different ways through the ages. It is obvious that religion has a powerful influence in the individual and collective lives of billions of people, both privately and publicly around the world. Even in the West, the idea of confining religion strictly to the private sphere has turned into a mere theoretical fallacy as highlighted by Graham Ward and Michael Hoelzl that, today, "[r]eligion is permeating western culture in many different forms from contemporary continental philosophy... to the rhetoric of international politicians."[11]

As a form of social ordering, religion has demonstrated incredible tenacity, which is evidenced by its continual defiance of sociological predictions of its disappearance from the public sphere for centuries. For example, Daniel Bell has observed that "At the end of the eighteenth to the middle of the nineteenth century, almost every Enlightened thinker expected religion to disappear [from the public sphere] in the twentieth century" and that "From the end of the nineteenth century to the middle twentieth century, almost every sociological thinker . . . expected religion to disappear [from the public sphere] by the onset of the twenty-first century."[12]

Contrary to such predictions there has been a continual international surge in the public visibility of religion in most parts of the world, including the West, especially in the last two to three decades. It is a trend that has been described by Peter Berger as a "desecularization of the world." Berger argues that "the presumption that we live in a secularized world is false [and that] [t]he world today . . . is as furiously religious as it ever was, and in some places more so than ever."[13] Thus, despite

11   G. Ward and M. Hoelzl, eds., *The New Visibility of Religion: Studies in Religion and Cultural Hermeneutics* (London: Continuum, 2008), back cover.

12   D. Bell, "The Return of the Sacred?: The Argument on the Future of Religion," *British Journal of Sociology* 28 (1977): 420-422.

13   P. L. Berger, "The Desecularization of the World: A Global Worldview," in P.L. Berger, ed., *The Desecularization of the World: Resurgent Religion and World Politics* (Washington: Ethics and Public Policy Centre, 1999), 2.

any tendencies of our wanting to view contemporary national and global orders and issues from strictly secular perspectives, it is very obvious that religion remains an important system of social ordering in many societies and thus an important factor in global issues including the promotion and protection of human rights.

On the other hand, the concept of human rights has, since the adoption of the UDHR, become, in our modern world, a global ideal that cannot be ignored, not only by States but also by individuals and communities all over the world. Today, the concept of human rights is very familiar to the world's population, whatever their culture or religion and wherever they may be living. "Human rights" has therefore become a language and popular normative concept that is often advanced as a catalyst for some form of justice by individuals, groups and communities throughout the world, particularly against the State. Almost all actions of States as well as that of individuals, groups, communities, organisations and other non-State actors are continually subjected directly or indirectly to human rights scrutiny. The UDHR has been followed by many other substantive human rights instruments guaranteeing different rights of individuals, groups, the vulnerable, and advancing the protection of human dignity generally.

Today, all nations generally acknowledge the concept of human rights, and there is no single State that would unequivocally accept that it is a violator of human rights. Remarkably, as religion continues to permeate the public realm, human rights have also conversely crept into the private domain of human relations, which, consequently, continues to blur any supposed private/public divide between religion as a private affair and human rights as a public affair. The concept of human rights is, therefore, also fully established as a formidable form of social ordering, to which States,

individuals, groups and communities strive to measure up to universally, not only within the public sphere of affairs, but also extending to the private spheres.

Thus, in most parts of the world today, both religion and human rights constitute parallel forms of social ordering, which must necessarily interact with one another. It is in that context that Abdullahi An-Na'im has observed that both religion and human rights need each other for each one "to fulfil its own rationale and to sustain its relevance and validity for its own constituency."[14] Advancing an argument of necessary interdependence between the two, he noted, *inter alia*, that "Human rights need religion as the most widely accepted source of moral foundation of political community, and for the mobilization of believers in particular" and conversely "Religion needs human rights not only to protect human dignity and rights of believers themselves, but also to ensure freedom of belief and practice, as well as the general development and relevance of each religion to its own adherents."[15]

This necessary interdependence of religion and human rights is not only theoretically sound but empirically meaningful and can only be better enhanced through a better understanding of the relationship between the two. While it is true that both religion and human rights do sometimes confront one another with formidable moral challenges, one cannot but agree with An-Na'im's observation that the implementation of human rights norms in most societies today "requires thoughtful and well-informed engagement with

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14 A. An-Na'im, "The Interdependence of Religion, Secularism, and Human Rights: Prospects for Islamic Societies," in M. Baderin, ed., *Islam and Human Rights: Selected Essays of Abdullahi An-Na'im* (Farnham: Ashgate Publishing Ltd, 2010), 345.

15 A. An-Na'im, "The Synergy and Interdependence of Human Rights, Religion, and Secularism," in J. Runzo et al., eds., *Human Rights and Responsibilities in the World Religions* (Oxford: Oneworld Publications, 2008), 37-38.

religion" because "religious considerations are too important for the majority of people for human rights scholars and advocates to continue to dismiss them simply as irrelevant, insignificant, or problematic."[16] Similarly, human rights are so appealing to a vast majority of religious adherents in today's world for religious scholars and advocates to want to dismiss it as simply superfluous.

Having established both religion and human rights as relevant forms of social ordering that must necessarily inter-relate to meet their respective objectives and global relevance, I will now turn to examine the theoretical perceptions underpinning the discourse about their relationship.

Conceptual understandings of the relationship between religion and human rights

In my view, the conceptual understanding of the relationship between religion and human rights is underpinned by three main theoretical models. The framework is that the relationship between religion and most other terrestrial concepts such as international law, constitutionalism, democracy and human rights can be conceptualised from three broad theoretical perspectives, namely, the separationist, accomodationist and double-edged perspectives, respectively.[17] Each of the three perspectives is briefly analysed below.

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16 A. An-Na'im, "Islam and Human Rights: Beyond the Universality Debate," *ASIL Proceedings* 94 (2000): 95.

17 Apart from employing the same theoretical framework to examine the relationship between religion and international law generally as stated earlier above (see footnote 6 above and main text thereof), I have also employed it to examine Islam and constitutionalism in M. A. Baderin, "Islam and Human Rights in the Constitution of African States: Agenda for Good Governance," in H. Elliesie, ed., *Islam and Human Rights* (Frankfurt: Peter Lang Publishers, 2010), 123-153.

A. Separationist conception of the relationship between religion and human rights

The separationist theoretical conception of the relationship between religion and human rights underlies the position that religion and human rights should tenuously occupy their separate realms of the divine and the secular, respectively. This reflects a positivist perception of human rights foundations purely based on positive law, and promotes a strictly secular approach to the human rights objective without any intermingling with religious or moral norms. With that perception the relationship is usually conceptualised in dichotomic and sometimes opposing terms and often addressed from a strict "either/or" (i.e. religion or human rights) perspective, structured sometimes on parochialism on both sides of the divide.

On that basis, human rights is conceptualised as a strictly secular concept based on a secular humanistic ideology committed only to promoting the autonomy, freedom and liberty of the individual human being. Although freedom of religion is recognised as a human right under this conception, religion itself is not considered as a source or basis for human rights norms. Rather, human rights are considered as a social or political practice arising purely from human worldly or secular action which has nothing to do with the spiritual or the divine.[18] This conception is mostly predominant in the West, where, until very recently, the approach has been to strictly separate the two spheres. This is based largely on the Western liberal concept of separation between church and state and hinged mainly on the need to ensure neutrality in the promotion and

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18 See e.g. J. Donnelly, J., *Universal Human Rights in Theory and Practice* (London: Cornell University Press 1989), 16-19; and See also D. Little, "Religion - Catalyst or Impediment to International Law? The Case of Hugo Grotious," *American Society of International Law Proceedings* (1993): 323, for the view that human rights has to be secular.

protection of human rights without discrimination on grounds of religion and belief.

The neutrality argument for the separationist conception and strictly secular approach to human rights has however been challenged as inherently subjective and that it may lead to secular intolerance of religion where pushed to its extreme.

One apparent danger of the separationist perception is the tendency to represent human rights as a "complete alternative ideology"[19] that is in contest with religion. This is especially so as human rights itself is now considered by some commentators, ironically, as the new worldwide "secular religion."[20] In fact, many religious adherents tend to see human rights from that perspective as a contest between secularist ideology on the one hand and all religions on the other, which, in my experience, is not very healthy for the promotion of human rights in many Muslim States.

The separationist conception perceives that the foundation of human rights is in positive secular law, and reference is often made, for example, to the fact that a proposal to include a reference to God in the UDHR was rejected during the drafting of the Declaration in 1948.[21] For example, Louis

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19 See L. Henkin, "Religion, Religions and Human Rights," *Journal of Religious Ethics* 26, no. 2 (1998): 239, where the author argues that "Human Rights are not a complete, alternative ideology" but must be seen as "a *floor*, necessary to allow other values—including religions—to flourish."

20 E. Wiesel, "A Tribute to Human Rights," in Y. Danieli et al., eds., *The Universal Declaration of Human Rights: Fifty Years and Beyond* (Baywood Publishing. Co., Inc. 1999), 3; A. Julius, "Human Rights: The New Secular Religion," *The Guardian*, 19 April 2010. Available online at: http://www.guardian.co.uk/commentisfree/2010/apr/19/human-rights-new-secular-religion.

21 See e.g. Abu-Sahlieh, S. A., "Muslims and Human Rights: Challenges and Perspectives," in W. Schmale, ed., *Human Rights and Cultural Diversity* (Goldbach: Keip, 1993), 242. See also D. Little, "Religion - Catalyst or Impediment to International Law? The Case of Hugo Grotious," *American Society of International Law Proceedings* (1993): 323, where it is observed that "The legislative history of the Universal Declaration, in fact, clearly indicates that the drafters, after considerable controversy,

Henkin observed, in that regard, the fact that:

> . . . in its contemporary articulation, the human rights ideology, aiming at universality . . . has eschewed invoking any theistic authority . . . .The human rights ideology does not see human rights as integral to a cosmic order. It does not derive from any sacred text. Its sources are human, deriving from contemporary human life in human society.[22]

This raises the question of whether the non-reference to God or theistic authority in contemporary human rights instruments makes the concept inherently sacrilegious. I do not think so. Louis Henkin did not appear to suggest so as well in his article from which I have quoted above, as he observed towards the end of his article that:

> Despite abiding differences, convergence, *approchement* of religion and human rights is not an idle dream but a justifiable hope. . . . It is important, therefore, to recognize and to affirm that the two worlds have, on the whole, a common commitment to a moral code, even if not to its source [and that there was] an urgent need for dedicated men and women in both camps to enlarge the "agenda-overlap" and to join forces in its pursuit [which, he argued] will be possible, however, only if both communities can give up their claims to provide a total and exclusive ideology.[23]

Riffat Hassan had also observed earlier in that regard that ". . . even though many charters of human rights . . . do not make direct reference to God, it does not necessarily follow that God-centred or God-related concepts . . . are excluded from them."[24]   Similarly, the former UN Secretary General,

deliberately refrained from including references to a deity . . . ."

22   Henkin, "Religion," 231. See note 19 above.
23   Ibid., 238.
24   R. Hassan, "On Human Rights and the Qur'anic Perspective," in *Hu-*

Kofi Annan, had observed in his statement to commemorate the fiftieth anniversary of the UDHR that "[t]he principles enshrined in the Universal Declaration of Human Rights are deeply rooted in the history of humankind. They can be found in the teachings of all the world's great cultural and religious traditions."[25]

In my view, the tension between religion and human rights is not really in, and should not be held down to, whether or not direct reference is made to God in human rights instruments, but rather in the capacity to interpret the religious into the secular and the secular into the religious. Actually, a historical review of the development of earlier human rights legal instruments in different parts of the Western world reveals that reference to the divine or theistic authority was not actually alien to the idea of human rights from the very beginning. For example, the preamble of the *Magna Carta Libertatum* (The Great Charter of Liberty) of 1215, which is considered as the legal foundation of English, and perhaps Western, constitutional and civil liberties, states that the Charter was issued "out of reverence for God and for the salvation of our soul."[26]

Also, the formulators of the American Declaration of Independence of 1776 recognised in its preamble that the unalienable rights it proclaimed were endowed unto Men by "their Creator,"[27] and in its conclusion they appealed to

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man *Rights in Religious Traditions*, ed. A. Swidler (New York: Pilgrim Press 1982), 52.

25 See Para. 15, "Universal Declaration of Human Rights Illuminates Global Pluralism and Diversity," statement by Secretary-General, Kofi Annan, on the Fiftieth Anniversary Year of the Universal Declaration of Human Rights. Available online at: http://www.unhchr.ch/Huricane/ Huricane.nsf/60a520ce334aaa77802566100031b4bf/82ed5e4c1f33163 cc125662e00352f62?OpenDocument.

26 See the preamble of the Magna Carta (1215). See e.g. J. C. Dickonson, *The Great Charter* (London: Historical Association, 1955), 17.

27 See the preamble of the American Declaration of Independence (1776). Henkin argued that this only meant "that God, by giving us life, gave us

the "Supreme Judge of the world for the rectitude of (their) intentions"[28] in declaring those rights. Similarly, the rights contained in the French Declaration of the Rights of Man and the Citizens of 1789 were considered to be "*sacred*" and were declared "in the presence of the Supreme Being, and with the hope of His blessing and favour."[29]

The supposed alienation of the divine or the theistic from the concept of human rights developed mostly during the Enlightenment period in the West around the eighteenth century when strong faith was placed in the power of human reason as a tool not only for technological development but also for legal and moral values. Due to earlier conflict, in the West, between religion and scientific advancement, and the political use of religion for destruction of opponents and divergent views, religion came to be perceived as stifling, repressive and illiberal. The Church and religious institutions were considered as enslaving the human mind. Thus, through philosophical scholarship, human aspiration was motivated towards worldly happiness based on rationality and against religious orthodoxy. It was argued that human beings must take control of their own temporal actions by separating religion and God from the public sphere of governance and public authority. Both political and legal authorities were therefore freed of any consideration of religious principles to avoid its abusive use in that regard.

However, it could be argued that the atrocities of both the first and second world wars and continued human rights violations under secular authority prove that it is not religion

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rights," which I think is still significant in the religion and human rights debate. See Henkin, "Religion" (note 19 above).

28 See the conclusion of the American Declaration of Independence (1776).

29 See the preamble of the Declaration of the Rights of Man and of Citizen reproduced in T. Paine, *Rights of Man* (New York: Penguin Books 1985), 110.

or God that is really atrocious. Rather, it is human beings themselves who could be very atrocious in the use of authority, whether secular or religious.

To nourish the separationist argument, reference is often made to deplorable human rights violations of governments in Muslim States, especially when such governments try to justify their human rights violations by reference to Islamic religious norms or Islamic Law. It must be emphasised however that most of such violations are more political than religious, as rightly observed by John Entelis in relation to women's rights, that "[t]he claim that Islamic culture, as influenced by *sharīʿa* law, cannot accommodate modern human right doctrine is simply a means by which conservative Islamists in Government strive to preserve the patriarchal societies in place."[30]

In my view, the best way to ensure compliance in such circumstances is to counter such arguments with relevant Islamic evidences showing that neither Islām as a religion nor Islamic Law as a legal system supports human rights violations. The fact that there continues to be violations of human rights in both religious and secular societies of today's world indicate that the fault lies with us, human beings ourselves. Having a religious conception of human rights therefore does not necessarily accommodate the violation of human rights more than a secular conception does. As noted earlier, the violations are more often political than religious. They are the evils of human beings against their fellow humans. From the Islamic religious perspective, this can be corroborated with reference to the Qur'ānic verse that says: "Verily, God will not deal unjustly with mankind, it is mankind that deal unjustly with themselves."[31] The concept of human rights does not therefore

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30   J. Entelis, "International Human Rights: Islam's Friend or Foe?: Algeria as an Example of the Compatibility of International Human Rights Regarding Women's Equality and Islamic Law," *Fordham International Law Journal* 20 (1997): 1294-5.

31   *Yūnus* (10): 44.

have to be unconditionally and exclusively secular. An appreciation of this in human rights discourse would facilitate the needed universal harmony in human rights values and can go a long way in creating a theoretical balance upon which a realistic universal application of human rights can be achieved, especially in societies where religion still plays a significant role in the public sphere.

The possible negative impact of an absolute secular understanding of human rights in relation to the relationship between religion and human rights is well reflected in Elizabeth Hurd's observation that:

> [i]n an interdependent world in which individuals draw from different sources of morality, an indiscriminate secularism leads to three risks. There is the potential of a backlash from proponents of non-secular alternatives who are shut out of deliberations on the contours of public order. There is a risk of shutting down new approaches to the negotiation between religion and politics, in particular those drawn from non-Western perspectives. Finally, there is a risk of remaining blind to the limitations of secularism itself.[32]

The separationist conception also underlies the perception of some religious adherents who often conceptualise religion as strictly celestial and thus must be totally separated from any secular or so-called "man-made" laws or rules such as human rights. This presents similar problems to the strictly secular perception of human rights analysed above. The truth is that there are no rules or laws that are exclusively divine. While a religious system may be based on a divine source, it must necessarily imbibe some "man-made" rules for it to be understood and applicable intelligibly in human society. This is well reflected in the concept of the *Sharī'ah* (meaning the

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32   E. S. Hurd, "The Political Authority of Secularism in International Relations," *European Journal of International Relations* 10 (2004): 240.

Qur'ān and the *Sunnah*) as the divine source of Islamic Law and *Fiqh* (Islamic Jurisprudence) as the "man-made" method of its intelligible understanding and application.[33]

Indeed, the divine and the secular need not be imperatively conflicting. They must of necessity interact. In matters of human welfare, to which the concept of human rights belong, there cannot really be a total separation between the divine and the secular. Thus, for the well-being of humanity, the harmonisation of the religious and secular views on human rights is as essential as inhaling and exhaling[34] is for the sustenance of life. In essence, people should not be compelled to make a choice between religion and human rights but should be able to enjoy both accommodatingly. The need for this accommodation was, perhaps, well reflected in Franklin Roosevelt's observation in 1941 that "In modern civilization . . . religion, democracy and international faith–complement and support each other."[35] This brings us to the examination of the accomodationist conceptualisation of the relationship.

B. Accomodationist conception of the relationship between religion and human rights

In contrast to the separationist conception, the accomodationist conception of the relationship between religion and human rights perceives religion as a relevant and important normative factor that can be accommodated for the promotion and protection of human rights, particularly in religious-oriented

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33 See e.g. M. A. Baderin, *Interna* and *Fiqh* as the method of Islamic Law.
34 This simile is borrowed from P. Manzoor, "Faith and Order: Reclaiming the Islamic Theory of Practice," *The Muslim World Book Review* 10, no. 2 (1990): 3.
35 J. G. Hunt, ed., *The Essential Franklin Delano Roosevelt: FDR's Greatest Speeches, Fireside Chats, Messages, and Proclamations* (New York: Random House Value Publications, 1995).

societies or communities. This is based generally on a naturalist perception of human rights linking its foundations with the concept of natural rights, which was traditionally underpinned by religion. The main argument of this theory is that since human rights is mainly underpinned by the need for humaneness, considerations of morality and human dignity, religious traditions and norms can make positive contributions in that regard and must therefore be normatively accommodated. Proponents of this view assert that religious considerations are too important for the majority of the world's population to be considered irrelevant or problematic for accommodation with human rights.[36]

The accomodationist conception is a responsive one that seeks to develop positive ways through which religious principles and human rights norms can be harmonised as far as possible and thereby operate in synergy. Advocates of this perspective perceive religion as dynamic enough to be able to respond to the dynamics and realities of human existence and thus reconcilable with human rights norms. Contrary to the separationist conception, the accommodationist conception does not perceive the relationship between religion and human rights as a competition of values but rather encourages understanding, constructive engagement and dialogue between the two.

In relation to Islām, I have consistently argued that the accommodationist perception is the best way to encourage harmonisation between Islamic principles and human rights norms in Muslim States rather than approaches that tend to place a wedge between Islām and human rights or present human rights as an alternative ideology to Islām in

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36 See e.g. C. G. Weeramantry, *Universalising International Law* (Leiden: Martinus Nijhoff Publishers, 2004), 368, where the learned author observed that more than four billion of the world's population are inspired by religious beliefs and norms.

Muslim societies.[37] It is in that vein that I reiterate the need to advance this perception in relation to human rights and religions generally. From an Islamic perspective, religion must not be seen or projected as totally exclusionist but equally humanitarian and must, therefore, be accommodative of the secular perspective of human rights. Parvez Manzoor eloquently observed, in that regard, that "(t)he logic of Islām is to conjoin the paradigmatic truth of faith with the pragmatic order of the Community. Holding fast to the transcendence of truth, Islām does not allow the world to slip out of its hands."[38]

The underlying principle here, as reflected in the practices of the Prophet Muḥammad, the early Caliphs after him and the early Muslim jurists, is that although secular principles cannot robotically override Islamic moral and legal values, yet valuable human ideas, such as human rights, which aim at the betterment of humanity cannot be prejudicially rejected, simply on grounds that they are "man-made" or secular. It is a Qur'ānic injunction upon Muslims to always co-operate for the attainment of the common good of humanity.[39] Thus, Adel Khoury has rightly pointed out that the contemporary Muslim world must, without losing its religious identity, be able to contribute

> [t]owards the realization of the universal solidarity of all people and towards the realization of a social order in which all [human beings] are essentially equal before the law and enjoy equal rights in their

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37 See e.g. M. A. Baderin, "Establishing Areas of Common Ground between Islamic Law and International Human Rights," *The International Journal of Human Rights* 5, no. 2 (2001): 72-113; idem, "Identifying Possible Mechanisms Within Islamic Law for the Promotion and Protection of Human Rights in Muslim States," *Netherlands Quarterly of Human Rights* 22, no. 3 (2004): 329-346; and idem, "Islam and Human Rights: The Myth of Discord," *European Human Rights Law Review* 2 (2005): 165-185.

38 See Manzoor, "Faith and Order," (note 34 above).

39 See e.g. *al-Mā'idah* (5): 2 which says: ". . . *And co-operate in virtue and righteousness and not in sin and transgression . . .* "

daily life, and where tolerance is not only practised, but the irrevocable human rights of all are unreservedly recognized.[40]

This clearly demonstrates the accommodating nature of Islām, which does not encourage blindly shutting the door against everything emanating from secular human thought.

This conception has been advanced from the perspective of other religions too. For example, in the message of Pope Benedict XVI in his address before the UN General Assembly in April 2008, he observed from the Christian Catholic perspective that

> the *Universal Declaration of Human Rights* . . . was the outcome of a convergence of different religious and cultural traditions, all of them motivated by the common desire to place the human person at the heart of institutions, laws and workings of society. . . . the rights recognized and expounded in the *Declaration* apply to everyone by virtue of the common origin of the person, who remains the high-point of God's creative design for the world and for history. They are based on the natural law inscribed on human hearts and present in different cultures and civilizations. Removing human rights from this context would mean restricting their range and yielding to a relativistic conception, according to which the meaning and interpretation of rights could vary and their universality would be denied in the name of different cultural, political, social and even religious outlooks. This great variety of viewpoints must not be allowed to obscure the fact that not only rights are universal, but so too is the human person, the subject of those rights.[41]

Also, in her keynote address delivered at the Conference

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40 A. Th. Khoury, *Toleranz im Islam* (1982), p. 185, cited in M. Zakzouk, "Cultural Relations between the West and the World of Islam: Meeting Points and Possibilities of Co-operation on the Academic Level," trans. M. Walpole, *Islam and Christian-Muslim Relations* 3, no. 1 (1992): 74.

41 Available at: www.vatican.va.

held in Soesterberg, The Netherlands, in September 2005, on "Religion: A Source for Human Rights and Development Cooperation," jointly organised by Cordaid, ICCO, an inter-church organisation for development cooperation, and the Institute of Social Studies of the Erasmus University of Rotterdam, Professor Gerrie ter Haar observed as follows:

> The phrase "human rights" consists of two words: "human" and "rights", but in modern human rights discourse the "rights" dimension is often exclusively highlighted, at the expense of the "human" dimension that is integral to it. It suggests that the first element of the composite term "human rights" is self-evident and self-explanatory, and thus needs no further elaboration. This is precisely where the shoe pinches from a religious perspective and where the issue of worldview comes into the discussion. In many cultures and societies . . . people attach great importance to the spiritual dimension of a person in the belief that this is what makes him of her truly human . . . . Hence, there is a general need to look closely at the role of religion in regard to human rights, since an exclusive rights approach that fails to take into account the question of what human being actually is, will not yield the desired results . . . .
>
> Religion and human rights . . . share common ground that can be successfully explored . . . . For a successful human rights policy that is an integral part of development strategies, the two dimensions must be in balance. This can be done by applying cross-connections on both sides, with secularists being prepared to tap into existing [religious] resources and the religious people being prepared to appreciate and link up with secular approaches.[42]

That aptly encapsulates the accommodationist conception

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of the relationship between religion and human rights. The contention is that, through the accomodationist theory, religions can contribute positively to the development of human rights law in a way that makes its principles much more universally persuasive to all peoples and communities globally.

However, the accomodationist theory must not be advocated without acknowledging that there are traditional provisions within all religions that could be contrary to some principles of modern human rights law in one way or another, especially when applied in their historical rather than evolutionary context. There are contemporary examples of violations of some fundamental human rights principles by States and non-State actors alike who invoke traditional religious principles and viewpoints to justify their actions. It is important that such violations in the name of religion should be addressed within an evolutionary context of the respective religions. I have analysed the Islamic methodologies in that regard elsewhere.[43] This brings us to the double-edged conception of the relationship.

C. *Double-edged conception of the relationship between religion and human rights*

The double-edged conception lies between the separationist and accomodationist conceptions of the relationship between religion and human rights. It reflects a realist conception of the relationship and perceives religion as a double-edged sword that could be utilised either positively or negatively in its relationship with human rights and also human rights as a double-edged sword that could be utilised either positively or negatively in its relationship with religion.

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43   See e.g. M. A. Baderin, "Understanding Islamic Law in Theory and Practice," *Legal Information Management* 9, (2009): 186–190; and idem, "Historical and Evolutional Perceptions of Islamic Law in a Continually Changing World," *The Middle East in London* 6, no. 2 (2009): 7-8.

In relation to humanitarian law, Carolyn Evans observed that "[s]ome writers focus only on the positive aspects of a particular religious tradition and dismiss any negative role played by that religion as a misinterpretation of its true meaning," while "[o]ther writers choose only to focus on the more dangerous and divisive aspects of religion"[44] without acknowledging the positive aspects. That is also common in relation to human rights whereby a one-sided approach is often adopted, which does not present a full and accurate perception of the relationship. The double-edged conception remedies that by acknowledging, on the one hand, the important need to recognise that there are religious traditions and norms that are very human rights friendly and can be utilised positively to enhance the promotion and protection of human rights, but, on the other hand, it acknowledges also that there are traditional religious principles and norms that are apparently conflicting with contemporary human rights norms, and which must be addressed by respective religions.

In relation to Islām and Islamic Law for example, there are certainly some traditional interpretations of the religious sources, which, although may have been considered quite egalitarian and ahead of the times 1000 or 500 years ago, would clearly be behind the times today from a human rights perspective. For example, some of the traditional *fiqh* rules of evidence and judicial procedure under classical Islamic Law, though very sophisticated for the time they were established, fall short of the standards of requirements of fair trial and due process under contemporary human rights law. That is an example of the human rights challenges that the double-edged conception throws up and which, not only Islām, but all religions need to face up to and engage candidly with.

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44 C. Evans, "The Double-Edged Sword: Religious Influences on International Humanitarian Law," *Melbourne Journal of International Law* (2005): 2.

This, in my view, should not be problematic for Islām to resolve because most of such situations usually relate to the mutable jurisprudential interpretations of the sources by the classical jurists, rather than to the immutable divine sources themselves. Within Islamic jurisprudence, there is often a variety of legitimate jurisprudential views on any particular issue, which provides the flexibility to adopt human rights-friendly positions amongst different existing legitimate jurisprudential views in Islamic Law, based on the practice of *ijtihād* by qualified jurists. Similarly, even the immutable divine sources are applicable within well established classical legal methods and principles that can be utilised for contextual application of the sources in an evolutional manner to meet contemporary and future needs and human welfare. Much depends on our interpretive approaches of the sources, i.e. whether we adopt a historical or evolutional approach to the interpretation of the sources.[45]

Similar to religion, human rights can equally have a double-edged effect in its relationship with religion. On the one hand, while human rights can positively facilitate the flourishing of religion through its guarantee of international religious freedom and prohibition of religious discrimination, it could, on the other hand, also be negatively interpreted to restrict religious beliefs and norms by indiscriminately or prejudicially considering particular religious norms as being incompatible with human rights provisions. A strict and prejudicial secular interpretation of human rights norms may sometimes have negative impacts on personal religious beliefs and practices of individuals and groups, which could diminish their confidence in the concept of human rights. This is apparent, for example, in the jurisprudence of the European Court of Human Rights that supports the prohibition, by

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45   See Baderin, "Understanding Islamic Law ," 186–190; and idem, "Historical and Evolutional Perceptions," 7-8, (note 43 above).

some States, including Turkey, a Muslim majority State, of the wearing of headscarves by Muslim women in public places against their belief that such is required by their religion.[46] The good thing is that this has been well critiqued by different human rights scholars and commentators as being inconsistent with human rights ideals.[47]

The double-edged theory provides an important perceptive tool for a critical evaluation of the relationship between religion and human rights. It serves as a realist and objective analytical process for understanding and managing that relationship in a manner that can lead to a mutually beneficial interaction between the two and thereby facilitate the realisation of a more humane world where human dignity is respected in equality. This is where the importance of "human agency"[48] comes into play in this relationship between religion and human rights. How the relationship turns out in the end would largely depend on deliberate choices made by

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46 See the case of *Layla Sahin v Turkey* ECHR 44774/98 (2005).
47 See e.g. T. Hoopes, "The Leyla Sahin v Turkey Case Before the European Court of Human Rights," *Chinese Journal of International Law* (2006): 719-722; U. Ali, "The Islamic Headscarf Problem before Secular Legal Systems: Factual and Legal Developments in Turkish, French and European Human Rights Law," *European Journal of Migration and Law* 9, no. 4 (2007): 419-433; A. Vakulenko, "Islamic Headscarves and the European Convention on Human Rights: An Intersectional Perspective," *Social and Legal Studies* 16, no. 2 (2007): 183-199; M. Ssenyonjo, "The Islamic Veil and Freedom of Religion, the Rights to Education and Work: A Survey of Recent International and National Cases," *Chinese Journal of International Law* 6, no. 3 (2007): 653-710; K. Boyle, "Human Rights, Religion and Democracy: The Refah Party Case," *Essex Human Rights Review* 1 (2004) : 1-16; C. Moe, "Refah Revisited: Strasbourg's Construction of Islam," paper presented at the Conference of Experts at Central European University, Budapest, Hungary, 12-15 June 2003.
48 The idea of "human agency" in this context is borrowed from Abdullahi An-Na'im's theory of interdependence between religion, secularism and human rights. See A. A. An-Na'im, "The Interdependence of Religion, Secularism, and Human Rights: Prospects for Islamic Societies," *Common Knowledge* 11, no. 1 (2005): 56-80, wherein he notes that: "[h]uman agency is always integral to the interpretation and implementation of every doctrine" (p. 64).

us, human beings, i.e. both religionists and secularists. Our choices in that regard would determine how both our religious and human rights objectives turn out to be for the future. Thus, the double-edged conception calls for good faith, humaneness, pragmatism as well as political and legal dynamism on the part of both religious advocates and human rights advocates in negotiating the relationship between religion and human rights into the future.

Concluding remarks

While this short theoretical analysis does not pretend to have addressed all the issues that may be raised about the relationship between religion and human rights, it has, I hope, demonstrated the possibility of a healthy and productive dialogue between the two from which may emerge an inclusive universalism of human rights in relation to the world's religions. This however depends largely on human beings as agents for both religion and human rights and on which conception of the relationship the respective advocates choose to accentuate.