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## THE THIRD MESSAGE OF ISLAM?

Upendra Baxi\*

### ABSTRACT

*Professor Abdullahi Ahmed An-Na'im makes a spirited call for reformation of the Shari'a human rights, democracy, and constitutional compliance. He does so not as the problem of any metaphysical framework, or everydayness of the "fatigue of the Sharia," but as accentuating a moral duty of non-humiliation itself as a human right to live with dignity as the core of Islam and all other religions. He crafts Islamic traditions of dialogue in a world that increasingly only knows the demagogic soliloquies of power. An-Na'im follows the "moderate revolutionary" Ustadh Mohamad Taha, who offered the Second Message of Islam, espousing the Mecca school over the Medina school in, at the least, ameliorating practices of discrimination against women and non-coreligionists. But An-Na'im is best understood as offering a Third Message, showing how the traditions of pious interpretation can be further deployed creatively in making religious thought and practices compliant with the ideas of democracy, contemporary pious interpretation, and classical liberal constitutionalism. His favorite strategy for this is "dialogue," defying the world of power and propaganda relentlessly pursuing monologues. Indeed, "dialogue" glides into accommodation, mediation, and institutionalization. However, it never embraces theocratic state formations. This Essay generally explores: (1) the multifaceted aspects of spiritual and reformist legacies of An-Na'im; (2) the role of theopolitics in promoting cross-cultural dialogue concerning Shari'a, constitutional secularism, and human rights (non-hegemonic human rights thought and practice); (3) the role of "civic reason;" and, very briefly, (4) the tasks ahead.*

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## ESSAY

That there are worlds before and beyond the West is the non-Eurocentric message of a handful of truly postcolonial law academics—and one hopes their tribe will continue to grow even in neoliberal human futures. For, even in a world where power is unaccountable to people, bereft of core human rights of masses, and remains above the calls for justice, there at least stands a duty of non-humiliation serving as a claim of justice.<sup>1</sup> Professor Abdullahi Ahmed An-Na'im<sup>2</sup> makes a spirited call for reformation of the Shari'a human rights, democracy, and constitutional compliance. He does not do so as the problem of any particular metaphysical framework, or everydayness of the “fatigue of the Shari'a,”<sup>3</sup> but as accentuating a moral duty of non-humiliation itself as a human right to live with dignity as the core of Islam and all other religions.

Given the pattern of new racism—prolific hatred of the other and their culture and religion—Jacques Derrida speaks of the same duty as the universal duty of hospitality to the other,<sup>4</sup> which Emmanuel Levinas, uncannily straddling cultures, earlier addressed as “the face of the other[.]”<sup>5</sup> Abdullahi exemplifies the sane voice and craft of Islamic traditions of dialogue in a world that

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<sup>1</sup> The fundamental human right to non-discrimination against women and non-religionists entails equality, dignity, and decency as ingredients of international human rights. See Upendra Baxi, *Humiliation and Justice*, in *HUMILIATION: CLAIMS AND COUNTER-CLAIMS* (Gopal Guru ed., 2009); DORIS SCHROEDER & ABOL-HASSAN BANI-SADR, *DIGNITY IN THE 21ST CENTURY: MIDDLE EAST AND WEST* (2017) (insightfully seeking to harmonize the “Western” approaches to dignity with the Quranic ways of interpretation); see also AVISHAI MARGALIT, *THE DECENT SOCIETY* (Naomt Goldblum trans., 1996).

<sup>2</sup> Hereinafter called “Abdullahi,” as known to his colleagues, friends, and students.

<sup>3</sup> See AHMAD ATIF AHMAD, *THE FATIGUE OF THE SHARI'A* (2012). Ahmad begins his book by providing some tentative answers to questions such as: “Could God’s guidance, available to previous generations as religious histories tell us, simply cease to be accessible at some point? Has this already happened; is it about to happen? Assuming these questions are clear enough, at least the following potential answers can be given to them: (1) yes, this has already happened—the revelations of ‘prophets’ such as Abraham, Moses, and Muhammad are already irrelevant to modern life; (2) no, knowledge and adherence to divine revelations has not faded away, but this might happen soon, in the near future, that is—or some may want to put it this way—we will soon be unable to access or make sense of any of these ‘divine revelations’; (3) no, this will never happen, because God will never abandon humanity.” *Id.* at 1.

<sup>4</sup> See generally JACQUES DERRIDA, *ON COSMOPOLITANISM AND FORGIVENESS* (Mark Dooley & Michael Hughes trans., 2005) (discussing the right to asylum and the duty to hospitality). One wonders whether the dimension of “forgiving the unforgivable,” or in the diction of Hannah Arendt, “the modern history of minorities, of those ‘without a State,’ the *Heimatlosen*, of the stateless and homeless, and of deported and ‘displaced persons’” features strongly in Islam. *Id.* at 6.

<sup>5</sup> EMMANUEL LEVINAS, *On the Rights of Man and the Rights of Others*, in *OUTSIDE THE SUBJECT* (Michael B. Smith trans., 1994). This work remains a germinal text not only because it articulates a fuller understanding of this “original right” of the other but because it also furnishes some terminal bases of critique of both the “modern” and the “contemporary” paradigms of human rights. *Id.*; see also Upendra Baxi, *Judging Emmanuel Levinas? Some Reflections on Reading “Levinas, Law, Politics”*, 72 *MOD. L. REV.* 1 (2009) (reviewing MARINOS DIAMANTIDES, *LEVINAS, LAW, POLITICS* (2009)).

increasingly only knows the demagogic soliloquies of power. He stands tall in relation to Islamic law reform, comparative studies in law and religion, and the relationship of human rights to constitutionalism.<sup>6</sup> In this Essay, I generally explore: (1) the multifaceted aspects of spiritual and reformist legacies of Abdullahi; (2) the role of theopolitics in promoting cross-cultural dialogue concerning Shari'a, constitutional secularism, and human rights (non-hegemonic human rights thought and practice); (3) the role of "civic reason;" and 4) the tasks ahead.

Similar questions remain pertinent in a Godless world, where social responsibility is imagined to be owed to a degree of piety toward the text, canon, and intended and implied communities of readers. However Godless or secular the world, we need to revisit traditions. Urgent, too, remain the issues raised concerning reading the practices of power and domination, often expressed in the languages of the social responsibility of multinational enterprises, or now in terms of business ethics. These networks create mass toxic disasters; the violated humanity often experiences the "normative" languages of corporate responsibility as those of *irresponsibility* or *impunity*.<sup>7</sup>

Abdullahi inherited and improvised the tradition of pious interpretation. That tradition requires immersion into the sacred and holy, a deep and abiding faith in the Prophet (PBUH), and the acts of prophecy. Interpretation also entails a responsibility to Allah, his messenger, and the community (a congregation of co-believers). In this respect, while he is a close follower of Ustadh Taha, Abdullahi goes far beyond in showing how religion and democracy go together, and how human rights, constitutionalism, and various core freedoms are essential for the believers. In this respect, Abdullahi emerges as no mere Islamic modernist.

Although I suspect that Abdullahi would not accept the honor, I characterize his corpus as the Third Message of Islam. His works speak to us now at the end of the second decade of the twenty-first century, in the zodiacs of global awareness and experience of accelerating anthropogenic harm, authoritarian

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<sup>6</sup> Perhaps, the best vignette introduction is by William Twining in the chapter on Abdullahi in *HUMAN RIGHTS, SOUTHERN VOICES: FRANCIS DENG, ABDULLAHI AN-NA'IM, YASH GHAI, AND UPENDRA BAXI* 53–58 (William Twining ed., 2009).

<sup>7</sup> One hopes that aside from practices of discrimination forbidden by law and religion, Abdullahi will more searchingly examine other concerns such as human rights law and business. See, e.g., Upendra Baxi, *Keynote Address—Does Life Indeed Begin at Sixty? Revisiting the UDHR as a "Single Garment Of Destiny" in a Hyperglobalizing World*, 23 *EMORY INT'L L. REV.* 25 (2009); Upendra Baxi, *Human Rights Responsibility of Multinational Corporations, Political Ecology of Injustice: Learning from Bhopal Thirty Plus?*, 1 *BUS. & HUM. RTS. J.* 21 (2015).

legality,<sup>8</sup> and new forms of algorithmic governmentality.<sup>9</sup> The Third Message speaks to us, Muslims and non-Muslims alike, about the pertinence of human rights-based limited governmentality and against theocratic state formations. It is worth always listening to his wise words:

I speak as a Muslim in this book because I am accountable for these ideas as part of my own religion and not simply as a hypothetical academic argument. But the focus of my proposal is the public role of Shari'a, not matters of religious doctrine and spiritual practice in the private, personal domain. While Muslims are my primary audience, non-Muslims should also participate in debating the public role of because what Muslims think and do about these issues affects human beings everywhere.<sup>10</sup>

As is well known, Abdullahi came to learning and teaching about human rights by knowing and practicing Islam, with Ustadh Mahmoud Mohamed Taha, in the Sudan. The Ustadh broadcasted to a small congregation his rather unorthodox teaching of the “Second Message of Islam.” It postulated that the verses revealed in Mecca expounding freedom and equality formed the ideal religion, to be realized only when humankind proved capable of accepting it and reached an appropriate stage of development. He was martyred and executed for

<sup>8</sup> See THE POLITICS OF LEGALITY IN A NEOLIBERAL AGE (Ben Golder & Daniel McLoughlin eds., 2018); WENDY BROWN, UNDOING THE DEMOS: NEOLIBERALISM'S STEALTH REVOLUTION (2015).

<sup>9</sup> See Patrick Crogan, *Bernard Stiegler on Algorithmic Governmentality: A New Regimen of Truth?*, 98 NEW FORMATIONS: J. CULTURE, THEORY, POL. 48 (2019); Antoinette Rouvroy & Thomas Berns, *Algorithmic Governmentality and Prospects of Emancipation: Disparateness as a Precondition for Individuation Through Relationships?*, 177 RÉSEAUX 163 (Elizabeth Libbrecht trans., 2013); Antoinette Rouvroy, *Technology, Virtuality and Utopia: Governmentality in an Age of Autonomic Computing*, in LAW, HUMAN AGENCY AND AUTONOMIC COMPUTING: PHILOSOPHERS OF LAW MEET PHILOSOPHERS OF TECHNOLOGY (M. Hildebrandt & A. Rouvroy eds., 2011).

<sup>10</sup> See ABDULLAHI AHMED AN NA'IM, ISLAM AND THE SECULAR STATE: NEGOTIATING THE FUTURE OF SHARI'A xvii (2008) [hereinafter ISLAM AND THE SECULAR STATE]. I have replaced “Shariāa” in quotes that follow the standard English usage “Shari'a.” While Abdullahi will certainly agree with Gustav Landauer, who observed that “there is no creation without community, spirit, and love” and that the “[g]eneral Idea of the Revolution in the Nineteenth Century Socialism is the attempt to lead man's common life to a bond of common spirit in freedom, that is, to religion,” quoted in SAMUEL HAYIM BRODY, MARTIN BUBER'S THEOPOLITICS 34 (2018), he would not have fully endorsed the view of Pierre-Joseph Proudhon. Proudhon wrote:

To be governed is to be at every operation, at every transaction, noted, registered, enrolled, taxed, stamped, measured, numbered, assessed, licensed, authorized, admonished, forbidden, reformed, corrected, punished. It is, under the pretext of public utility, and in the name of the general interest, to be placed under contribution, trained, ransomed, exploited, monopolized, extorted, squeezed, mystified, robbed; then, at the slightest resistance, the first word of complaint, to be repressed, fined, despised, harassed, tracked, abused, clubbed, disarmed, choked, imprisoned, judged, condemned, shot, deported, sacrificed, sold, betrayed; and, to crown all, mocked, ridiculed, outraged, dishonored. That is government; that is its justice; that is its morality.

*Preface* to BRODY, *supra* (quoting PIERRE-JOSEPH PROUDHON, THE GENERAL IDEA OF THE REVOLUTION IN THE NINETEENTH CENTURY (1851)).

apostasy for his religious preaching at the age of seventy-six by the regime of Gaafar Nimeiry.<sup>11</sup>

I will not elaborate on what Ustadh Taha, the “moderate martyr,”<sup>12</sup> conveyed in any grand detail. As Meir Hatna writes, it is true that:

In many respects, Sudan was the outer edge of the Arab world, so that Taha represented the geographic periphery of Arab thought. Nevertheless, his career and work became widely known beyond Sudanese borders, especially after his execution in 1985. Some of Taha’s methods and principles even trickled down into liberal discourse, providing further evidence of Arab liberalism as a lively community discourse that crossed geographic and political borders.<sup>13</sup>

But it must be said that Ustadh Taha proposed an Islam of the future which radically related it to modern conditions and contexts. His search was not for a utopia, but for a quickening of present conditions of people living under Islam in ways that will at least ameliorate discrimination against women and non-coreligionists. This profoundly transformative quest has been carried forward, enriched, and innovated by Abdullahi with a gentle but firm vehemence.

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<sup>11</sup> See MAHMOUD MOHAMED TAHA, *THE SECOND MESSAGE OF ISLAM* (Abdullahi Ahmed An-Na’im trans., 1986). The absence of any mention of apostasy in the penal codes of some Islamic countries in no way implies that a Muslim is free to leave his religion. In reality, the lacunae in the penal codes are filled by Islamic Law, as in the case of Mohamed Taha, executed for apostasy in the Sudan in 1985. See Comm’n on Hum. Rts., Rep. on the Work of Its Sixtieth Session, U.N. Doc. E/CN.4/2004/127 (Mar. 15–Apr. 23, 2004). However, as Abdullahi notes, in a posthumous appeal, the Supreme Court of Sudan held the entire trial and punishment “null and void[.]” stressing “faults of the whole episode, including clear violations of fundamental, constitutionally guaranteed safeguards and violations of the 1983 ‘Islamic’ laws themselves.” Abdullahi Ahmed An-Na’im, *Introduction to THE SECOND MESSAGE OF ISLAM* 18. See *Generally*, Erfan Efendi et. al., *The Logic of Ibn Warraq’s Islamic Apostasy*, 492 *ADVANCES SOC. SCI., EDUC. HUMAN. RSCH.*, 217 (2020) (being the proceedings of Raden Intan International Conference on Muslim Societies and Social Sciences, held on 19–21 November 2019).

<sup>12</sup> George Packer, *The Moderate Martyr: A Radically Peaceful Vision of Islam*, *NEW YORKER* (Sept. 11, 2006), <https://www.newyorker.com/magazine/2006/09/11/the-moderate-martyr>. Packer writes, “[T]he real drama in Islam is the essential dilemma addressed by Taha: how to revive ancient sacred texts in a way that allows one to live in the modern world.” *Id.* Abdullahi’s “quandary over Islam was an intensely personal conflict—he called it a ‘deadlock.’” *Id.* What Abdullahi heard at Taha’s lecture resolved it. Taha said that the Sudanese constitution needed to be reformed to reconcile “the individual’s need for absolute freedom with the community’s need for total social justice.” *Id.* This political ideal, he argued, could be best achieved not through Marxism or liberalism, but through Islam—that is, Islam in its original, uncorrupted form, in which women and people of other faiths were accorded equal status. “As Na’im listened, a profound sense of peace washed over him; he joined Taha’s movement, which came to be known as the Republican Brothers, and the night that had begun so idly changed his life.” *Id.*

<sup>13</sup> See Meir Hatina, *Dismantling the Sacred in the Name of Humanity: Mahmud Muhammad Taha’s Cultural Revolution*, 27 *J. POL. IDEOLOGIES* 1, 37 (2021).

The way in which he carries this new message is important. In his most definitive work, *Islam and the Secular State*, Abdullahi is not talking about “dialogue” but “negotiation.”<sup>14</sup> At times, he also uses the term “mediation.” He is also thinking of cross-cultural dialogue between Muslims and Muslims, non-Muslims, and others. He would let the meanings of these different terms emerge in various contexts rather than generalize them in one stipulative definition. But Abdullahi is very clear on two things (with which I fully agree). First, we must oppose the “domineering visions of a universal history and future in which the ‘enlightened West’ is leading all of humanity to the secularization of the world, in which the secularity of the state is the logical outcome.”<sup>15</sup> Second, we cannot separate “negotiation” from “mediation” because “there is no categorical and permanent resolution of the paradox of how to secure the religious neutrality of the state within the reality of the connectedness of Islam and politics.”<sup>16</sup> This steady gaze on mutual accommodation among contesting principles and a “process-based model of negotiated secularism and the rehabilitation of religion in public life”<sup>17</sup> takes us away from the rather esoteric theological discourse—say, the paradigmatic theology in Buber’s *I and Thou*.<sup>18</sup> It also risks the neglect of other kindred notions such as the prolix theoretical discourse regarding dialogue—be it about discursive autonomy, dialogical equality, or discursive coalitions.<sup>19</sup> Clearly, Abdullahi is at home in deploying the notion of *negotiation* among rival positions (or a Habermasian way of enlightened self-interest as

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<sup>14</sup> See *Islam and the Secular State*, *supra* note 10.

<sup>15</sup> ISLAM AND THE SECULAR STATE, *supra* note 10, at 268.

<sup>16</sup> *Id.* at 267.

<sup>17</sup> *Id.* at 268.

<sup>18</sup> MARTIN BUBER, *I AND THOU* (Ronald Gregor Smith trans., 1937).

<sup>19</sup> See generally PEOPLE’S MOVEMENT FOR HUMAN RIGHTS LEARNING, HUMAN RIGHTS LEARNING: A PEOPLE’S REPORT (Upendra Baxi et al. eds., 2006), <https://www.pdhre.org/report>. Abdullahi has lots to say about interpretation but not much about norms at the levels of social theory, where the major problem is both to be determined and yet also has a determinative effect. NEGOTIATING NORMATIVITY: POSTCOLONIAL APPROPRIATIONS, CONTESTATIONS, AND TRANSFORMATIONS (Nikita Dhawan et al. eds., 2016). Abdullahi, of course, emphasizes discursive equality (although he is averse to high theories and models). For example, he maintains that:

[C]omparative reflection upon actual experiences, after the fact and over long periods of time. No society or region of the world has the power or authority to define these concepts for others, though all societies can and do learn from each other’s experiences, even when that is not realized or acknowledged.

ISLAM AND THE SECULAR STATE, *supra* note 10, at 272. However, it must be said that while concepts may be distinctive, and may vary across time and space, holding them as unique may thwart any comparison among human cultures. In this context, it must be said that conspicuous by absence is thinking about deliberative democracy, which looks similar to Islam and Shari’a as unfolding in *ijtihad*. See DELIBERATIVE DEMOCRACY: ESSAYS ON REASON AND POLITICS (James Bohman et al. eds., 1997); Joshua Cohen, *Democracy, in DELIBERATION, PARTICIPATION AND DEMOCRACY: CAN THE PEOPLE GOVERN?* 219 (Shawn W. Rosenberg ed., 2007).

“taking interest in one’s interests”<sup>20</sup>) in a work-a-day sense as a give and take relationship.

Nevertheless, what does one have, and what does one give away, while negotiating? While issues of “self-perception, location, and context in present Islamic societies” are important,<sup>21</sup> Abdullahi is very empathic in stressing the fundamental axiom of Shari’a which by its “nature and purpose . . . can only be freely observed by believers; its principles lose their religious authority and value when enforced by the state.”<sup>22</sup> He asserts that as a matter of fundamental religious perspective, “the state must not be allowed to claim the authority of implementing Shari’a as such.”<sup>23</sup> This strikes a death-blow to the very idea of a theocratic state, and also by a creeping theocracy, recently called “stealth theocracy.”<sup>24</sup> It is a “dangerous illusion”<sup>25</sup> that the legitimacy of a Muslim state depends on Shari’a being the grundnorm of the state and law implementation.<sup>26</sup>

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<sup>20</sup> See JÜRGEN HABERMAS, KNOWLEDGE AND HUMAN INTERESTS (1968); Axel Honneth, *Is There an Emancipatory Interest? An Attempt to Answer Critical Theory’s Most Fundamental Question*, EUR. J. PHIL. 908, 909 (2016).

<sup>21</sup> ISLAM AND THE SECULAR STATE, *supra* note 10, at vii; see also Turan Kayaoglu, *Constructing the Dialogue of Civilizations in World Politics: A Case of Global Islamic Activism*, 23 ISLAM & CHRISTIAN–MUSLIM RELS. 129, 129 (2012), <http://dx.doi.org/10.1080/09596410.2012.655064>; Anicée Van Engeland, *Bridging Civilizations: Public Policy and Western-Muslim Intersections: The New Hermeneutics of Islamic Law*, in ENGAGING THE OTHER 116 (Karim H. Karim et al. eds., 2014). Kayagolu identifies a “tripartite requirement” stressing “(1) the value of a plurality of civilizations; (2) the necessity for an international order that accommodates the plurality of civilizations; and (3) that dialogue and goodwill among people who identify with different civilizations are essential in order to achieve peaceful coexistence.” *Id.* at 130. These capture the “discourse and activities of the diverse groups that define themselves and their efforts as part of the dialogue of civilizations.” *Id.*

<sup>22</sup> ISLAM AND THE SECULAR STATE, *supra* note 10, at 4.

<sup>23</sup> *Id.*

<sup>24</sup> See Yvonne Tew, *Stealth Theocracy*, 58 VA. J. INT’L L. 32, 33 (2018). Abdullahi elaborates the voluntariness of Shari’a as follows: it plays a decisive role in “socialization of children and the sanctification of social institutions and relationships[.]” Shari’a plays a “fundamental role in shaping and developing ethical norms and values that can be reflected in general is legislation and public policy through the democratic political process.” ISLAM AND THE SECULAR STATE, *supra* note 10, at 1. However,

Shari’a principles cannot be enacted and enforced by the state as public law and public policy solely on the grounds that they are believed to be part of Shari’a. If such enactment and enforcement is attempted, the outcome will necessarily be the political will of the state and not the religious law of Islam.

*Id.*

<sup>25</sup> ISLAM AND THE SECULAR STATE, *supra* note 10, at 2; see also *id.* at 271 (“There is a dialectic relationship between the local, deeply contextual experience of various societies and universal norms or principles that can be extrapolated from those experiences. There is no abstract or preconceived universally agreed-upon blueprint of what constitutionalism, citizenship, civil society, and civic reason must mean.”).

<sup>26</sup> *Id.* at 2.



A corollary of this axiomatic aspect of Shari'a is that a secular state which respects all religions is a pre-condition for Islamic belief and practice. Abdullahi insists that a secular state is thus "fundamentally Islamic, because it insists on the religious neutrality of the state as a necessary condition for Muslims to comply with their religious obligations. Religious compliance must be completely voluntary according to personal pious intention (*niyah*), which is necessarily invalidated by coercive enforcement of those obligations."<sup>27</sup> It follows that any "coercive enforcement promotes hypocrisy (*nifaaq*), which is categorically and repeatedly condemned by the Qur'an."<sup>28</sup>

Moreover, all basic doctrines sustain legality in ways not specifically known to Western pioneers of political theory. But now, it is almost normatively commonplace to acknowledge that the rule of law, separation of powers, and contemporary human rights constitute basic axioms of democratic law and governance.<sup>29</sup> One may say that Islam not merely anticipates, but also presupposes these values. These accord well with Islam and Shari'a—which also rest on the broad principles of modern law. "Determinations about whether or not any text (*nass*) of the *Qur'an* or *Sunna* applies to an issue, whether or not it is categorical (*qat'i'*), and who can exercise *ijtihad* and how[.]" says Abdullahi, "are all matters that can be decided only through human reasoning and judgment."<sup>30</sup> Additionally, interpretation cannot occur in the condition of censorship.<sup>31</sup> Therefore, it is "illogical to say that *ijtihad* cannot be exercised regarding any issue or question, because that determination itself is the product of human reasoning and reflection."<sup>32</sup> Abdullahi also notes that it is "dangerous to limit the ability to exercise *ijtihad* to a restricted group of Muslims who are supposed to have specific qualities, because in practice that will depend on those human beings who set the criteria and select a person as a qualified *mujtahid*."<sup>33</sup> Abdullahi finds consensus of the community embedded in Shari'a:

The power to decide who is qualified to exercise *ijtihad* and how it is to be exercised is part of the religious belief and obligation of every Muslim. Any restriction of free debate by entrusting human beings or

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<sup>27</sup> *Id.* at 4.

<sup>28</sup> *Id.*

<sup>29</sup> See UPENDRA BAXI, THE FUTURE OF HUMAN RIGHTS 38–67 (3d ed., 1993).

<sup>30</sup> ISLAM AND THE SECULAR STATE, *supra* note 10, at 14.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* "Further, the requirement of "knowing and upholding Shari'a" as the "permanent and inescapable responsibility of every Muslim means that no human being or institution should control this process." *Id.*

<sup>33</sup> *Id.*

institutions with authority to decide which views are to be allowed or suppressed is inconsistent with the religious nature of Shari'a itself.<sup>34</sup>

Further, assuming that the gates of *ijtihad* were properly closed in the seventh century AD, subsequent generations—the future community of believers—commit no wrong or sin in reopening them. “From an Islamic point of view, no human authority was or is entitled to declare that *ijtihad* is not permitted,” writes Abdullahi, “though there may have been consensus on this matter among Muslims. There is nothing to prevent the emergence of a new consensus that *ijtihad* should be freely exercised to meet the new needs and aspirations of Islamic societies.”<sup>35</sup> “[P]rofound dialogue and exchange across ancient and medieval civilizations and into the colonial and postcolonial era,” have existed and animate understanding of “shared visions of human dignity and social justice[.]”<sup>36</sup> Any hasty diagnosis of its absence in the past and “in the future” will mark “them-and-us dichotomy; indeed, confrontation and hostility tend to beget the same in response.”<sup>37</sup>

Abdullahi's deeper sense that secularism is critical is manifested in his statement that “[b]elief in Islam, or any other religion, logically requires the possibility of disbelief, because belief has no value if it is coerced. If I am unable to disbelieve, I will not be able to believe.”<sup>38</sup> Therefore, “[m]aintaining institutional separation between Islam and the state while regulating the permanent connection of Islam and politics is a necessary condition for achieving the positive role for the Shari'a in future.”<sup>39</sup> A secular state is “a necessary framework for negotiating ethical differences among citizens, but not for adjudicating and resolving such differences,”<sup>40</sup> because it “is able to unite diverse communities of belief and practice into one political community

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 15; see also Van Engeland, *supra* note 21; Kayaoglu, *supra* note 21.

<sup>36</sup> ISLAM AND THE SECULAR STATE, *supra* note 10, at 272.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 268. This observation relates “secularism” with phenomenology of belief. But as Daniel Philpott says: “What is interesting about these arguments is that they ground the case for the secular state not in the Quran, not in claims about the presence of the imago *Dei* in the person or in some other source of the person's intrinsic dignity, not in natural law, some closely similar type of practical reason, or universal moral precepts, but rather in what might be called ‘second order’ observations about the phenomenology of belief, the character of government, the lessons of history, and the like. To be sure, good reasons for the secular state lie therein. But are these arguments sufficient to ground an Islamic case for constitutionalism, human rights, and the secular state? I doubt it.” Daniel Philpott, *Arguing with An-Na'im*, IMMANENT FRAME (July 14, 2008), <https://tif.ssrc.org/2008/07/14/arguing-with-An-Na'im>.

<sup>39</sup> ISLAM AND THE SECULAR STATE, *supra* note 10, at 268.

<sup>40</sup> *Id.* at 276.

precisely because the moral claims it makes are limited and thus unlikely to be the source of serious disagreement[.]”<sup>41</sup>

It is in his various writings on human rights that we find Abdullahi’s visions of linkages between Islam and human rights.<sup>42</sup> He speaks of “global justice” as comprising “globally inclusive conceptions of justice to be realized by human beings for themselves, everywhere, through their own self-determination” and the “focus on Muslims as believers seeking justice for themselves and other human beings, in solidarity and cooperation, rather than speaking of Islam as a religion.”<sup>43</sup> One sees here at play, though not noted, some basic ideas of what was chastened earlier by Wolfgang Friedmann as “international law of cooperation” and by Sir Wilfred Jenks as “common law of mankind.”<sup>44</sup> Moreover, one is constantly reminded of John Rawls’ *The Law of Peoples*, which foregrounds five types of societies and eight principles of justice.<sup>45</sup> The tasks of “reimagining global justice” entail shifting “focus from the present statecentric view of international law and relations to a people-centered approach to human rights and constant self-determination of persons and communities.”<sup>46</sup> What distinguishes Abdullahi’s approach from John Rawls is the emphasis on “inclusive and uncensored dialogue among religious and cultural traditions of the world[.]” without “the imposition of specific theological or philosophically conditioned conceptions of justice by some societies on others.”<sup>47</sup>

We limit our discussion only to one aspect, namely the principle of Liberal Responsible Pluralism (LRP, also called at times the “left liberalism”<sup>48</sup>). The LRP, as primarily enunciated by Rawls, speaks to us in terms of normative exclusion (even outlawry) of any “compressive” view from the public sphere.

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<sup>41</sup> *Id.*

<sup>42</sup> ABDULLAHI AHMED AN-NA’IM, MUSLIMS AND GLOBAL JUSTICE (2011) [hereinafter MUSLIMS AND GLOBAL JUSTICE].

<sup>43</sup> *Id.* at 1.

<sup>44</sup> WOLFGANG FRIEDMANN, THE CHANGING STRUCTURE OF INTERNATIONAL LAW (1964); C. WILFRED JENKS, COMMON LAW OF MANKIND (1958). Of course, Jenks wrote the work before the replacement ‘humankind’ was considered more politically correct.

<sup>45</sup> See JOHN RAWLS, THE LAW OF PEOPLES: WITH “THE IDEA OF PUBLIC REASON REVISITED” (2001)(proposing five types of international society and eight principles of the law of peoples); Upendra Baxi, *Some Notes on John Rawls, The Law of Peoples*, <https://www.ica-nantes.fr/rtefiles/File/Ateliers/20140619-Huri/baxi-some-notes-on-john-rawls-lop.pdf> (last visited Mar. 27, 2022); see also Jane Mansbridge, *A Citizen-Centered Theory*, 162 J. DELIBERATIVE DEMOCRACY 15 (2020).

<sup>46</sup> MUSLIMS AND GLOBAL JUSTICE, *supra* note 43, at 3 (alteration in original).

<sup>47</sup> *Id.* at 3–5 (describing some basic principles).

<sup>48</sup> See KATRINA FORRESTER, IN THE SHADOW OF JUSTICE: POSTWAR LIBERALISM AND THE REMAKING OF POLITICAL PHILOSOPHY (2019).

The principle is justified because there abound a “diversity of reasonable comprehensive . . . doctrines” and to achieve the “unity” of any political order without “repression” (the avoidance of the use of coercion and force), we must adopt this public political conception of arising from the reality of diversity.<sup>49</sup> Rawls argues:

We honor public reason and its principle of legitimacy when three conditions are satisfied: (a) we believe public reason is suitably complete, that is, for at least the great majority of fundamental questions, possibly for all, some combination and balance of political value alone reasonably shows the answer; and finally (c) we believe that the particular view we propose, and the law or policy based thereon, expresses a reasonable combination and balance of those values.<sup>50</sup>

While some support the LRP, some may still wish to say that this formulation of LRP is not sufficient or viable to achieve a state of properly justified legal violence in a liberal democratic order.<sup>51</sup> However, I do not rehearse their anxieties. Nor do I here look at some important deistic Christian, new natural law literature which try to ground reason in faith, and even revelation, and return to the role of religion in public square.<sup>52</sup>

Rather, I look closely at Abdullahi’s substitution of “political reason” with “civic reason” in an essay that speaks of “friendly amendment.”<sup>53</sup> Abdullahi agrees with Rawls about “reliance on religious beliefs as the basis of public policy and legislation, and his call for the articulation of reasons that are equally

<sup>49</sup> JOHN RAWLS, *POLITICAL LIBERALISM* 36 (1993).

<sup>50</sup> *Id.* at 241.

<sup>51</sup> See Jürgen Habermas, *Reconciliation Through Public Reason: Remarks on John Rawls’s Political Liberalism*, 92 J. PHIL. 109 (1995); Gerald F. Gaus, *Reasonable Pluralism and the Domain of the Political: How the Weaknesses of John Rawls’s Political Liberalism Can Be Overcome by a Justificatory Liberalism*, 42 INQUIRY 259 (1999); Gerald F. Gaus, *Reason, Justification and Consensus: Why Democracy Can’t Have It All*, in DELIBERATIVE DEMOCRACY, *supra* note 19, at 205–42; David Estlund, *The Insularity of the Reasonable: Why Political Liberalism Must Admit the Truth*, 108 ETHICS 252 (1998); Michael J. Perry, *Is the Idea of Human Rights Ineliminably Religious?*, 27 U. RICH. L. REV. 1023 (1993).

<sup>52</sup> See REASON, REVELATION, AND THE CIVIC ORDER: POLITICAL PHILOSOPHY AND THE CLAIMS OF FAITH (Carson Holloway et al. eds., 2014); PAUL R. DEHART, UNCOVERING THE CONSTITUTION’S MORAL DESIGN (2017); NATURAL LAW AND EVANGELICAL POLITICAL THOUGHT (Jesse Covington et al. eds., 2012); see, e.g., Robert J. Joustra, *The Coordinates of Covenantal Pluralism: Mapping Pluralist Theory in the 21st Century*, 18 REV. FAITH & INT’L AFFS. 18 (2020).

<sup>53</sup> Rawls cites Abdullahi’s work on Sharia as a perfect example of what he calls “overlapping consensus.” This is the only time he cites a post-colonial Islamic scholar. When I excitedly shared this with Abdullahi, his initial response was that he did not fancy himself as a close student of Western theorists. I am glad to find now a long essay by him proposing a “friendly amendment” to Rawls. See Abdullahi Ahmed An-Na’im, *Islamic Politics and the Neutral State: A Friendly Amendment to Rawls?*, in RAWLS AND RELIGION 242 (Tom Bailey et al. eds., 2015) [hereinafter *Islamic Politics and the Neutral State*].

accessible to all citizens without reference to religious belief as such.”<sup>54</sup> But he differs from Rawls in thinking that “it is neither possible nor desirable to exclude religion from *politics*, although religion should nonetheless be kept out of the *state* by various mechanisms and strategies.”<sup>55</sup> Abdullahi seeks to clarify that “politics” would “encompass all public deliberations over policy, whether by officials or private citizens, as distinct from the more settled, operational aspects of the state.”<sup>56</sup> In other words, the “state is the institutional continuity of sovereignty, while politics refers to the government of the day.”<sup>57</sup> This being the case, it is simply unfair, or discriminatory, to “reject a view or discourse because it is deemed to be religious,” and doing so is also “a form of anticipatory censorship, which blocks the exercise of the fundamental human rights of freedom of belief and to expression before a presumed harm is proven.”<sup>58</sup> One may not deploy a religious and secular dichotomy to disallow comprehensive view or reason from entering the public arena.

Only framework restrictions provide a significant caveat:

[T]he freedom to express religious and other ‘comprehensive’ reasons in politics and to organize politically to promote them should be limited only if it violates the constitutional rights of others, as enforced by the state, and not on the grounds of the kinds of reasons involved, as Rawls’s theory insists.<sup>59</sup>

It is clear that the distinction, sought to be made by Abdullahi, between “civic reason” and Rawlsian public reason is far from merely semantic. Civic reason enlarges the public sphere by allowing in comprehensive doctrines, whereas public reason shuts these out in the name of secularism. Civic reason also not merely contests the colonial presentation of the religions of non-Euro others as monolithic but insists on the heterogeneity of all religions. The deep pluralist in Abdullahi comes alive when he insists that we non-essentialize the term “religion” by talking only of religious traditions in their interaction. He understands that multiple interpretations may exist of what Rawls meant by forms of exclusion of religion. The search for the best interpretation of Rawls, most apt within the framework of what Rawls said and may have meant, is important for Rawlsian theory. But Abdullahi remains more interested in

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<sup>54</sup> *Islamic Politics and the Neutral State*, *supra* note 54, at 261.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 262.

<sup>59</sup> *Id.*

proving a more general point that all religious traditions are many-sided and based on continuing interaction with others.<sup>60</sup>

This Article is an exercise in the retrieval of some basic aspects of Abdullahi's thought and an invitation for contemporary and future generations of teachers and learners to take the second message and the third message of Islam seriously. He illustrates how the pursuit of the Mecca pathways of *ijtihad* (which are non-discriminatory (for believers of Islam, followers of other religions, and others), fully human rights friendly, and constitutionalism compliant) shall remain infinitely open. Other faiths have now made similar inroads on LRP exclusion of comprehensive reason and in support of core human rights and constitutionalism. What remains distinctive to Abdullahi's analysis and action is the emphasis on dialogue and respect for (to pinch Paul Ricoeur's expression) "Oneself as Another."<sup>61</sup> The tasks ahead are not easy to summarize but even when the second order postulates may be developed in some fine detail, a total rejection of theocratic rule in any form ought to remain a primary postulate.

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<sup>60</sup> Abdullahi Ahmed An-Na'im, *The Synergy and Interdependence of Human Rights, Religion and Secularism*, POLYLOG, <https://them.polylog.org/3/faa-en.htm> (last visited Apr. 7, 2022).

<sup>61</sup> PAUL RICOEUR, ONESELF AS ANOTHER 3 (Kathleen Blamey trans., 1992); see Edi Pucci, *Review of Paul Ricoeur's Oneself as Another: Personal Identity, Narrative Identity and "Selfhood" in the Thought of Paul Ricoeur*, 18 PHIL. & SOC. CRITICISM 185, 185 (1992).