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ON CENSORSHIP

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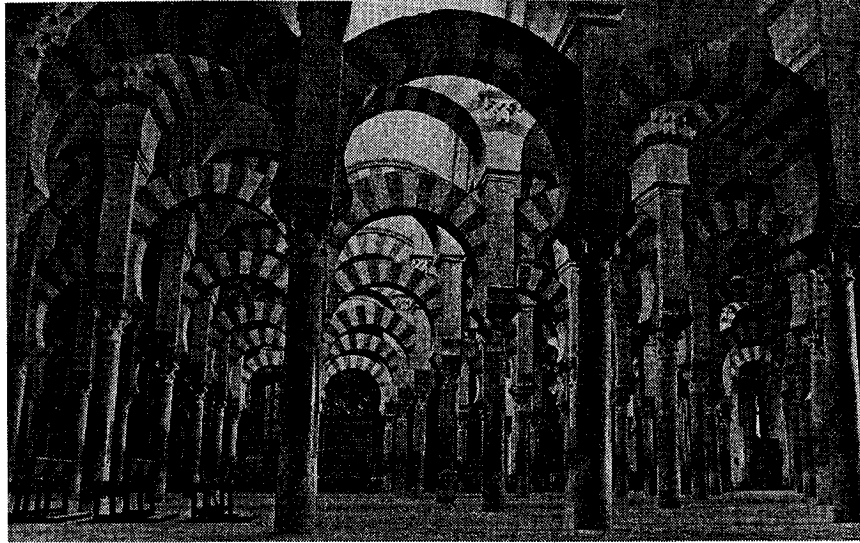
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RAY ROBERTS: CAMERA PRESS

The Mosque in Córdoba, Spain: the glory of Islam in Europe

ABDULLAHI AN-NA'IM

What do we mean by universal?

**Any concept of human rights that is to be universally accepted
and globally enforced demands equal respect and mutual
comprehension between rival cultures**

Human rights ought, by definition, to be universal in concept, scope and content as well as in application: a globally accepted set of rights or claims to which all human beings are entitled by virtue of their humanity and without distinction on grounds such as race, gender or religion. Yet there can be no prospect of the universal application of such

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rights unless there is, at least, substantial agreement on their concept, scope and content.

What is at issue — between those who support a universal concept and those who argue for a relativist approach — is how and by whom these rights are to be defined and articulated. Universality requires global agreement, a consensus between different societies and cultures, not the application of one set of standards derived from the culture and context of a particular society to all other societies. The normative system in one society may not necessarily be appropriate for other societies who need to elaborate their own systems based on their particular cultural context.

Hence the paradox in which the international human rights movement is presently caught: the concept and essential characteristics of currently accepted international standards on 'universal' human rights have been primarily conceived, developed and established by the West; they cannot be accepted and implemented globally by the peoples of other parts of the world unless they are seen to be valid and legitimate from their perspectives. If they are to be more widely accepted and implemented, they must be premised on a genuinely universal model rather than the universalisation of a certain culturally specific, 'Western', model. To attempt to deny or disguise the dilemma only plays into the hands of those who may wish to manipulate it and undermines the credibility of those who attempt to uphold the contested human rights norms by making them appear to reject what their own constituency sees as obvious and important.

The paradox can only be resolved by first acknowledging the historical facts and then by arguing that although the universal validity of these standards cannot be assumed or taken for granted, they are not necessarily or inherently invalid from the perspective of other cultures. The question of whether and to what extent there is fundamental and irreconcilable difference between a particular international human rights standard and the norms, values and institutions of any other culture, can then be debated internally and across cultures.

All cultures have an element of ambivalence and contestability in the sense that prevailing practices and institutions are open to constant challenge and change. Not only is this essential for the survival of the culture as a whole, it provides a range of debatable options, any one of which may prevail at a particular time. While a particular interpretation or perception of certain cultural norms and institutions may appear to be

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in fundamental conflict with existing international human rights standards, this does not make it impossible to articulate an alternative interpretation which may begin to resolve the conflict.

If dialogue is to broaden and deepen global consensus it must be undertaken in good faith, with mutual respect for, and sensitivity to, the integrity and fundamental concerns of respective cultures, with an open mind and with the recognition that existing formulations may be changed — or even abolished — in the process. Ideally, participants should feel on an equal footing but, given existing power relations, those in a position to do so might seek ways of redressing the imbalance.

Where the Islamic world is concerned it is important to appreciate the profoundly defensive and reactive mode of internal discourse and cross-cultural exchange. Following the failure of secular liberalism or national socialism in the post-independence era, Muslims are now channelling their frustration and powerlessness into radical and militant Islamic revivalism as an assertion of their right to self-determination. The insistence on one universally valid set of human rights, therefore, risks the sort of confrontation we have seen in the Rushdie affair and forces debate under the worst possible circumstances.

The value and validity of a given concept of human rights is neither necessarily diminished nor validated by the fact that it is historically or geographically specific. It may well be that the 'democratic way of life' which presupposes the existence and acceptance of a certain concept of individual human rights is superior to other forms of political life. However, there are many parts of the world in which Western conceptions of democracy and human rights have not taken root. Instead of simply asserting the inherent superiority of those conceptions in the abstract, it would be more constructive to examine the reasons for this failure in regions that might be more receptive to their own equivalent or corresponding concepts.

Individual civil and political rights are integral to fundamental human rights, as are economic and social rights and collective rights to development and self-determination. Support for this holistic and interdependent concept of human rights includes efforts to promote their legitimacy in all cultures of the world as well as the need to protest their violation by exerting pressure on offending governments to respect them.

The present dynamics of the international protection of human rights operates primarily through the monitoring by Northern organisations of

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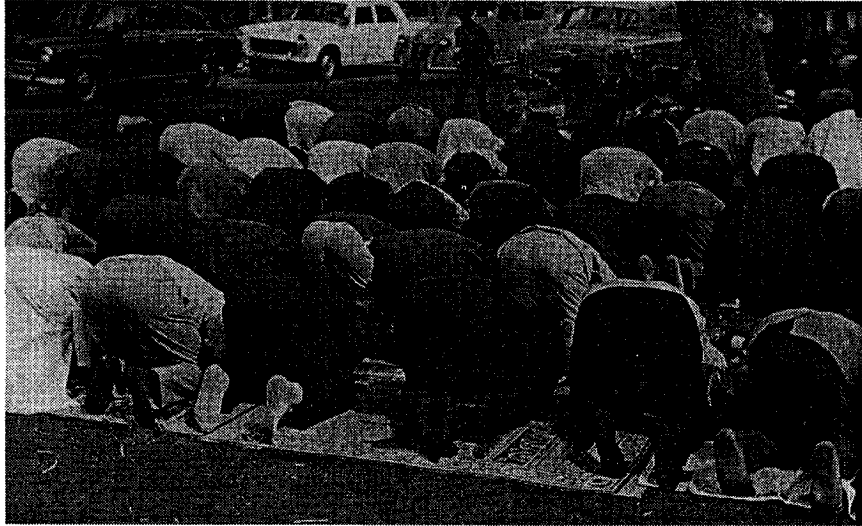
violations in the South in order to lobby Northern governments to pressure Southern governments to respect the human rights of their own populations. A truly universalist dynamic of protection would rely on monitoring and advocacy by local constituencies within the South, such as those that exist in the North, as well as in both directions across the North-South divide. I am not suggesting the abandonment of international monitoring and advocacy as we know it today, but rather seeking to enhance its genuinely global nature by multiplying and diversifying its centres and axes through rooting and legitimating it in the cultures and experiences of all peoples.

Given general agreement that freedom of expression can be limited, by law, to protect the rights of others, we must then ask, which rights, when and how? Who is to articulate and enforce such limits, to what end and on what basis? Since I purport to present an 'Islamic' perspective, the basis and nature of claims of Islamicity is the key to the present discussion. Not only do such claims determine the conceptual framework which informs and conditions responses to the sort of questions raised here, they are the criteria by which others, whether insiders or outsiders, can understand and evaluate the substance, content and implications of the claim.

Religion is not excluded from the ambivalence and contestability that characterise all cultures. Even when a religion is, like Islam, believed to be founded on divine scripture and the traditions of the Prophet and other significant communities or personalities, the human interpretation of those sources remains significant. Given unavoidable differences in interpretation of textual sources in historical context, what the religion is believed to be at any given point in time, or to say on any specific matter, is the product of competing human perceptions and prevailing socio-economic factors and forces that have become the prevailing view.

To believers, Islam is primarily and essentially defined by the Quran and Sunna of the Prophet, but, historically, the interpretation and application of these has always been conditioned by the understanding of the Muslim community at any given time or place. While the traditions of early Muslim communities are believed to be authoritative, those who subsequently seek to invoke this authority are themselves similarly conditioned. What Islam means or says on any given matter is therefore what the Muslims of the time and place believe it to be. There is no

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Senegal: the community will decide

other way for any religion, to have relevance to the lives of believers.

The dominance of a particular theological interpretation at any time is determined by a variety of factors. Historians may debate the relevance or relative significance of one factor or another, or speculate about the possibility of alternative results given a different set of factors, but the existence and nature of the process itself is beyond dispute.

During the second and third centuries of Islamic history, for example, there was a major debate between the so-called textualists and rationalists (*Ash'ariya* and *Mu'tazila*) on some fundamental issues of theology and politics which ended with the dominance of the former and suppression of the latter. One may debate why one view prevailed, or what might have happened under different circumstances, but the facts of the debate and its outcome are accepted by all historians of Islam. It is also clear that, although the *Mu'tazila* may not subsequently have won the day, elements of their approach and thought have survived and continue to be reflected in internal Muslim debates to the present day.

Whichever group or position a modern Muslim may support in that debate, the need to protect the freedom of expression which allows this sort of debate to take place cannot be denied. The same is true for any set

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of competing views in the past, present or future of Islamic experience. It is equally true that the winning side would want to curtail the freedom of expression of its opponents in the name of protecting and preserving the integrity of tradition and the stability of religious doctrine.

But since it is the totality of the community of Muslims of the time and place who have the legitimate right to decide which conception of the tradition is to be protected and preserved, and which religious doctrine should be maintained, freedom of expression remains of paramount importance. This conclusion does not yield definitive answers to the questions above — who is to articulate and enforce its limits, to what end and on what basis — but it does provide a clear presumption and orientation in favour of wider freedom of expression, and generally indicates by whom and how limitations may be set in practice.

This may sound exactly like a liberal justification of freedom of expression, but that does not make it necessarily non-Islamic. It is fully and coherently Islamic by virtue of its frame of reference, theological rationale and historical substantiation. This is perhaps the sort of overlapping consensus suggested by Jacques Maritain in a 1949 UNESCO study on the bases of an International Bill of Human Rights whereby different cultures come to a common understanding of the concept and its content, despite their disagreement on its justification.

The issue is not whether Islamic cultures, or any other cultures, are either inherently restrictive or tolerant of relatively greater freedom of expression. Such orientations tend to change over time. Neither is it a matter of citing textual sources or historical experiences as 'evidence' of greater or lesser 'Islamic' restriction or tolerance since texts are open to competing interpretations and historical experiences are susceptible to shifting characterisations. Reading the Quran and Sunna, one will find authority for liberalism as well as conservatism, and Muslim history gives clear examples of both tendencies. The matter is determined by the choices Muslims make, and the struggle they wage in favour of their choices, in their own historical context.

Secularism came to the Islamic world in the suspect company of colonialism, and is often confused with a particular experience of Western Christianity. Most Muslims believe there is a strong, organic link between Islam and politics since several verses of the Quran clearly instruct them to implement its dictates in their public as well as private affairs. The Quran and Sunna of the Prophet are also explicit in requiring

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Muslim communities to enforce certain principles regarding taxation, commercial and financial dealings, penal sanctions and so forth.

Although Muslims have in fact lived under varying degrees of secularism for most of their history, the ideal of an Islamic state in full accordance with the *sharia* (Islamic law) has always been kept, even invoked, by secular rulers to legitimise their power. Nevertheless, if confronted today with a categorical and immediate choice between an Islamic *sharia* state and an openly and unequivocally secular state that relegates *sharia* to the purely personal and private domain, most Muslims would probably opt for the former since most find it extremely difficult openly to oppose the application of *sharia* in public affairs.

Without ruling out the possibility altogether, it seems highly improbable, given the present predilection for majority rule and self determination, that a strictly secular state could be sustained in the Islamic world today, at least in countries with an overwhelming Muslim majority. Whatever degree of secularism earlier authoritarian rulers like Ataturk of Turkey or Bourguiba of Tunisia were able to construct, the prospects of open secularism appear to be diminishing: the failure of post-independence secularism and nationalism gave Islamic fundamentalism its impetus. Using the tools of 'modern' political organisation, international finance and the technology of mass communication, Islamic fundamentalism is now confronting an increasing number of Muslims with a stark choice between the 'divine' law of God and the 'anti-religious' law of man.

In the present context, I see more hope in trying to expose the fallacy of that formulation and in constructing an alternative modern version of *sharia* based on a radical reinterpretation of Islamic sources — something I have tried to do in my book *Toward an Islamic Reformation* — than in openly arguing for Western secularism. *Sharia* is neither as divine as its advocates claim nor secularism as anti-religious as its opponents allege. Should that exercise fail, even on its own terms, it might still make a useful contribution to the development of a modernist Islamic moral philosophy fully consistent with the concepts and principles of constitutionalism and universal human rights. A modern Islamic moral philosophy is unlikely to achieve its desired objectives, however, unless it succeeds in fulfilling the dual function of presenting Muslims with a justification for setting *sharia* aside and providing them with sound foundations for a political and legal order they can accept as Islamic.

The Rushdie affair in perspective

While I would maintain that the West has not overreacted to the *fatwa* on Salman Rushdie as a result of its own prejudices, I cannot agree that the Muslim response is the act of a small minority of Shia fundamentalists. The Western reaction to a serious challenge to what most people around the world, Muslims and non-Muslims alike, hold to be fundamental and universal human rights is perfectly normal. And even though few non-Shia Muslims have spoken out in condemnation of the *fatwa*, the Shia response is shared by many Sunni Muslims.

The model can also operate through an alternative scenario whereby Islamic fundamentalism seizes power in a number of Islamic countries, is seen to have failed, and is replaced by a renewed drive for open secularism legitimised by a reconstruction of Islamic moral philosophy. I am convinced, however, that moral rights cannot be 'constitutionalised' in Islamic countries without some form of religious legitimacy.

Muslim responsibility goes much wider. Formalistic objections to the *fatwa* should not be allowed to hide the fact that its underlying justification in the *sharia* has not been challenged even by Muslims who would oppose this use of apostasy for procedural reasons. At the same time, simplistic condemnations of the Muslim failure to uphold universal norms of freedom of expression are equally inadequate and unlikely to succeed in mediating and resolving the issues.

The ultimate importance of the Rushdie affair is that it confronts the proponents of both sides with a serious challenge to their convictions. It casts individual freedom of belief and expression in global terms because of totally novel circumstances in human history. Whereas such issues have always been debated, mediated and resolved in relative privacy within relatively homogenous settings, they are now cast, and demand resolution, at a global, public and publicised level. This is happening at a time when global power relations are shifting away from gunboat diplomacy and the more recent superpower rivalries towards attempts to resolve conflict by mediation.

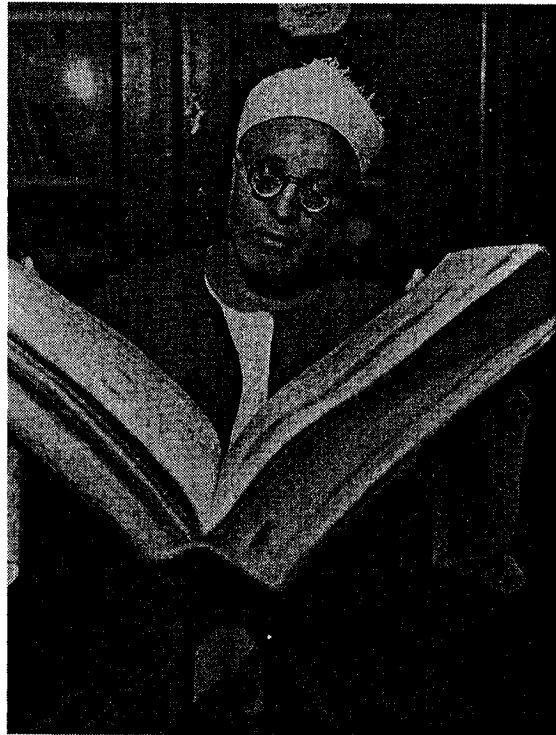
In this global and public confrontation, Muslims are required openly either to defend their belief in the validity of the *sharia* law of apostasy

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and its wider implications for freedom of belief and expression, or uphold the latter and thereby concede the invalidity of a law they believe to be divine. The 'Rushdie Defence Committees' and their constituencies, in turn, face the challenge of how to achieve their objective without frustrating the universality of human rights to which they claim allegiance.

I began with a discussion of relativity and universality, emphasising the need for discourse and dialogue to promote a global culture of human rights and break the current dependency of the South on Northern initiatives, priorities and resources. The course of the international advocacy of human rights will never be secure and consistent with its own rationale as long as 'Rushdie Defence Committees' are only set up in the North to pressure governments in the South.

There are potentially powerful and vigorous constituencies for universal human rights worldwide — including the Islamic world. But those constituencies can never be mobilised in a global project on purely Western liberal notions of individual civil and political rights. Along with other rights and new formulations of familiar rights, all human rights will only command genuine universal respect and validity through discourse and dialogue.



RACHAD EL MOUSSY: CAMERA PRESS

Al-Azhar, Egypt: the inviolate word