

EXPERIENCES IN FREEDOM OF RELIGION IN THE AFRICAN CONTEXT

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Since my task is to discuss issues of freedom of religion in the African context at large, with its extensive diversity among and within more than fifty countries, I propose to advance a contextual approach to the subject, instead of attempting a detailed discussion of the practice of this right in one particular African country or another. In other words, this lecture is about *how* to understand and evaluate the protection of freedom of religion as a human right in Africa today. For this limited objective, I will discuss the implications of the post-colonial context, broadly speaking, for the protection of human rights in Africa. Next, I will highlight the need for mediating competing claims of self-determination and freedom of religion in particular. To illustrate my approach, I will conclude with a brief case-study on promoting freedom of religion from an Islamic perspective.

To begin with, however, let me first offer some reflections on the nature of the modern human rights paradigm in general to emphasize the need for such a contextual approach. Although I am concerned in this lecture with freedom of religion in particular, it is better to approach the subject in term of the human rights paradigm because it is an external standard for evaluating constitutional and legal norms and practice. Otherwise, we would have to accept whatever degree or form of protection, or lack thereof, a state grants this or other human rights. For the human rights paradigm to serve as arbiter of national standards, however, it needs to be globally accepted as legitimate among the relevant populations. There is also little point in affirming a universal standard without regard to its practical application.

Human rights, like freedom of religion and belief, are universal by definition because they are due to all human beings by virtue of their humanity. This humane and ambitious vision is challenging to all human societies, especially when human rights norms are believed to be in conflict with apparently superior or more compelling concerns with protecting general social security and stability, or safeguarding the rights of others. The idea of equal rights for all human beings is challenging because it contradicts the common human tendency to either discriminate among people in terms of these attributes, or expect them to conform to our own ethnocentric and uniform notion of a universal human being. Universal values, like those

affirmed by human rights norms, do not exist in the abstract to be discovered or proclaimed through declarations and treaties, as we all tend to perceive such values through the relativity of our own cultural and contextual world view and experience. If universal values are to exist at all, we have to construct them through debate and action.

The universality of human rights is a product of a process, and cannot mean the assertion of the relativist values of one society or group of societies over the rest of humanity. Since our perception of human rights is necessarily relative to our own cultural/religious traditions, consensus on any set of norms must be developed over time, and not simply proclaimed or taken for granted. As I have argued elsewhere,¹ this process of promoting consensus over the universality of human rights should occur through an internal discourse within different cultures, and dialogue among them. The question is therefore how to create conducive conditions for an effective internal discourse within and among cultures to promote consensus and cooperation on the protection of human rights.

It is also important to ensure that the means we use in promoting and protecting human rights does not defeat the end of protecting individual freedom and social justice for all persons in their communities on the ground everywhere in the world. For instance, an underlying paradox of the international protection of human rights is the expectation that any state would clearly articulate and effectively implement these safeguards against the excess or abuse of power by its own officials and policies. The similar paradox of constitutional protection against abuse and excess of power by national governments is mitigated by strong local civil society organizations and the public at large acting through national legal institutions and political processes to force governments to comply. In the absence of international enforcement mechanisms, however, human rights are supposed to be protected by monitoring, documenting and publicizing human rights violations in the hope of generating sufficient moral and political pressure to force offending governments to stop violating the rights of their own nationals. But the unavoidable consequence of the whole scenario is that it makes the protection of the right of the local population of one country dependent on the good will and commitment of external actors. Indeed, the fact that offending governments tend to comply because they are dependent on economic aid and security assistance by rich donor

¹ See, for example, 'Introduction', in Abdullahi Ahmed An-Na'im, editor, *Human Rights in Cross-Cultural Perspectives: Quest for Consensus* (University of Pennsylvania Press, 1992).

countries is itself the product of colonial and neo-colonial power relations, structural unfairness in global trade relations, and related aspects of the present, capitalist international economic order.

Other limitations of the present approach include the fact that it can only work in a piecemeal and reactive manner, responding to human rights violations after they occur, rather than pre-empting them or preventing their occurrence in the first place. The present approach also needs to focus on specific cases or some limited issues to be effective, without attempting to address structural causes of human rights violations or investing in institutional mechanisms for sustainable respect for and protection of these rights. This approach is also arbitrary and inconsistent, as it tends to focus on weaker and poorer countries because they are more likely to yield to pressure, than on stronger and richer ones, even when they are guilty of more gross and systematic violation of human rights.

I am not calling for an immediate end to this approach to the protection of human rights around the world because that is not a realistic possibility in the short term. Rather, I am calling for building local constituencies and promoting local institutions for the protection of human rights. The following reflections are therefore intended to enhance and support this more 'people-centered' approach to the protection of human rights, in order to diminish dependency on the ambiguities and contingencies of inter-governmental relations.

From this perspective, the protection of human rights should be achieved as part of a broader strategy for social and economic development of the country. Indeed, human rights and human development are complementary and mutually reinforcing processes. Neither can be realized in a comprehensive and sustainable manner without the other. Moreover, this integrated process should be followed with due regard to local and regional context, as well as consideration of the impact of patterns of global economic and political conditions and power relations. In relation to both development and the protection of human rights, special attention must also be given to the role of the state as the essential mediator of local, regional and global factors and processes in these interrelated fields. Another point to bear in mind is that one should consider the root causes and structural factors in the persistence of human rights violations and frustration of development initiatives. This does not of course mean disregarding the immediate symptoms of any problem, but it is only to say that one should also address underlying causes.

Development in general and the protection of human rights in particular anywhere in the world is a process, not an event that occurs once and

for all. While the state has the international obligations and domestic jurisdiction to protect human rights in daily life, the government of many countries is unlikely to have the necessary resources and institutions, even if it was committed to fulfilling those obligations. I am not seeking to excuse the state from fulfilling its national constitutional and international legal obligations to respect and protect human rights, but simply insisting that that cannot happen without the provision of necessary resources. This takes time and effort, but the determination to take the necessary action also requires generating and sustaining sufficient political support for these objectives within the country. For that to happen, we need to clarify and engage a wide range of issues, including questions about the legitimacy of international human rights norms among the general public, the nature of the state and its relationship to civil society, the ability of civil society actors to accept and struggle for human rights, and the availability of human and material resources for local advocacy of human rights.

It may also be helpful to note that the Universal Declaration of Human Rights avoided identifying any particular philosophical or religious justifications in an effort to find common grounds among believers and non-believers. But this does not mean that human rights can only be founded on secular justifications, because they need to be accepted as valid and legitimate from the perspectives of the wide variety of believers, as well as non-believers, around the world. The underlying rationale of the human rights doctrine itself entitles believers to seek to base their commitment to these norms on their own religious beliefs, in the same way that others may seek to affirm the same on their secular philosophy. All sides are entitled to require equal commitment to the human rights doctrine by others, but cannot prescribe the grounds on which others may wish to found their commitment.

The debate around these issues has very serious practical implications, and should not be dismissed as simply a pretext to justify human rights violations or excuse for avoiding these international obligations. The widest possible acceptance of the universality of human rights is essential for generating the political will to implement or enforce these rights at home, and for supporting their enforcement abroad. On the first count, a government is unlikely to allocate the necessary resources for the implementation of human rights, or ensure the accountability of its officials for violating these rights, without political pressure from within the country. Even if a government is somehow committed to upholding human rights norms which limit its own powers, it is unlikely to insist on enforcing any of these rights against the wishes of its own population. By the same token, a government is unlikely to risk its national economic, security or other interest in pres-

sureing other governments to respect the human rights of the population of those countries without either internal political pressure to do so, or at least a willingness among its own population to accept the consequences. It is clear that local populations are unlikely to pressure their own government to give high priority to the protection of human rights in the country's foreign policy, or accept the material or other costs of doing so, unless they accept the universal validity of human rights.

Human rights in the post-colonial context in Africa

The contextual approach I am emphasizing here includes what might be called the post-colonial condition, which signifies a complex web of power relations, institutional arrangements, socioeconomic structures both within formerly colonized societies and in their relationship to former colonial European powers, and other parts of the world. This perspective is of course a familiar theme in a wide range of studies, especially in relation to African and Asian societies, politics, cultural studies, and law. The post-colonial condition can be seen not only in individual formerly colonized countries long after they have achieved formal political independence, but also as a broader principle that affects all of them collectively. While this condition can be elaborated and illustrated in relation to different parts of the world, I am primarily concerned here with its nature and manifestations in Africa today.

By the post-colonial condition in Africa I am referring to a predicament whereby the colonial legacy endures in former colonies through the persistence of the inherited apparatus of colonialism and its political, social, economic, and legal consequences. This legacy continues to strongly influence structural and institutional developments in African countries long after independence. Another aspect of the post-colonial predicament relates to the ways in which colonial exploitation and post-colonial hegemony are perpetuating conditions of dependency by former colonies on their respective European colonial states and other developed countries in general. The post-colonial predicament sustains a sense of profound ambiguity among former colonies who are struggling to incorporate and reconcile contradictory histories and political visions. On the one hand, the post-colonial state is shaped by the colonial vision that subjugated and exploited its population, without sufficiently preparing them for the responsibilities of sovereign independent statehood. On the other hand, the post-colonial state is also shaped by the visions that have resisted the colonial apparatus and still sustain the intellectual and political legacies of anti-colonial resistance and struggle. The post-colonial state is therefore being contested among

competing constituencies of leaders and populations at large by the pull of colonialism and the push of liberation.²

This profound ambiguity also relates to an underlying paradox of formal juridical sovereignty in contrast to empirical realities on the ground. To briefly explain, present states in Africa are direct successors of the colonies established by agreements among European powers (especially the Berlin Conference of 1884–85), regardless of the wishes of local groups. The borders of the colonies that African states came to inherit were established by European continental partition and occupation rather than by African political realities or geography. Colonial governments were organized according to European colonial theory and practice; their economies were managed with imperial and local colonial considerations primarily in mind; and their legal systems reflected the interests and values of European imperial powers. The vast majority of the African populations of those colonies had little or no constitutional standing in their own countries.³

When independence came, it usually signified the transfer of control over authoritarian power structures and processes of government from colonial masters to local elites.⁴ With few exceptions, the post-colonial state in Africa was 'both overdeveloped and soft. It was overdeveloped because it was erected, artificially, on the foundations of the colonial state. It did not grow organically from within civil society. It was soft because, although in theory all-powerful, it scarcely had the administrative and political means of its dominance. Neither did it have an economic basis on which to rest political power'.⁵ Since independence, the primary concern of the African post-colonial state has been more with the preservation of juridical statehood and territorial integrity, than their ability and willingness to live up to their obligations to their own people.

To make matters worse, the vast majority of first constitutions were either suspended or radically altered by military usurpers or single-party states within

² Crawford Young, *The African Colonial State in Comparative Perspective* (Yale University Press, 1994), pp. 2–12.

³ Jackson, Robert H., and Carl G. Rosberg, 'Sovereignty and Underdevelopment: Juridical Statehood in the African Crisis', in *The Journal of Modern African Studies* no. 24 (1986), pp. 5–6.

⁴ John A. Ayoade, 'States without Citizens: An Emerging African Phenomenon', in Rothchild and Naomi Chazan, editors, *The Precarious Balance: State and Society in Africa*, (Westview Press, 1988), p. 104.

⁵ Patrick Chabal, 'Introduction: Thinking about Politics in Africa', in Patrick Chabal, editor, *Political Domination in Africa: Reflections on the Limits of Power* (Cambridge University Press, 1986), p. 13.

a few years of independence.⁶ For decades after independence, successive cycles of civilian and military governments in the majority of African countries maintained the same colonial legal and institutional mechanisms to suppress political dissent to their policies and to deny accountability for their own actions. Lacking control over and ability to influence the functioning of their state, or expectation of its protection and service, African societies often regard the post-colonial state with profound mistrust. They tend to tolerate its existence as an unavoidable evil but prefer to have the least interaction with its institutions and processes.⁷ Nevertheless, the post-colonial state is supposed to be firmly in control of the formulation and implementation of public policy at home and the conduct of international relations abroad. This is the context in which freedom of religion, and human rights in general, are supposed to be protected and promoted by the state.

In other words, the underlying paradox of the African post-colonial state is in its existing as a legal fiction, in contrast to empirical realities on the ground. On the one hand, the African post-colonial state continues to be a legal fiction in the sense that it is neither quite in control of its own territory, nor sufficiently sovereign in dealing with other entities, including the major transnational corporations which continue to exploit the human and material resources of the country. Yet, the same state controls the life of people in a wide variety of serious and far reaching ways. As far as its own populations are concerned, however weak and artificial it may be, the state is a fundamental and effective reality through its monopoly of the use of force, its legal institutions, its ability to enforce its will in a range of fields, from taxation to education and economic policies, control of international trade, and so forth. Indeed, one of the urgent tasks at hand is how to bring this awareness of the far-reaching and all-pervasive power of the state to the consciousness of African populations.

With due regard to these realities, I believe that the protection of human rights and promotion of related values of constitutionalism and democratic governance are not failing in African countries, but only taking the time necessary for its incremental success. By this I mean the accumulation of experiences that are conducive to stronger and sustainable implementation

⁶ H.W. Okoth-Ogendo, 'Constitutions without Constitutionalism: Reflections on an African Political Paradox', and Issa G. Shivji, 'State and Constitutionalism: A New Democratic Perspective', both in Issa G. Shivji, editor, *State and Constitutionalism: An African Debate on Democracy*, (Harare, Zimbabwe, Southern African Political Economy Series (SAPES) Trust, 1991), pp. 3-25 and 27-54, respectively.

⁷ Young, *The African Colonial State in Comparative Perspective*, p. 5.

of the principles, institutions and mechanisms over time, even though some experiences may be negative in the short term. This positive view of African experiences does not mean accepting the status quo uncritically, or assuming that every setback or crisis is necessary or unavoidable. Rather, it is a matter of clarification and application of appropriate standards of assessment and improvement in each case in its own context. Accordingly, the apparent failures and serious set-backs in the protection of human rights in various African countries are to be expected as integral to the necessary processes of adaptation and indigenization of this concept and its necessary principles and institutions. Moreover, the success of this process should not be expected to happen on its own. A sober and critical analysis of the experiences of each African country in light of a clearer understanding of the meaning and implications of the protection of human rights in each country in particular is necessary for developing and implementing practical strategies for improving practice in that country.

The promise of human rights can only be realized to the extent that these rights are integrated into national legal systems, and implemented through their norms, institutions and practice. The fact that human rights violations, and therefore their remedies or protection, always happen to actual people in a specific time and place is the reason why I emphasized earlier the critical importance of shifting focus to empowering local constituencies to protect their own human rights. There is also a dialectical relationship between these two aspects of the local protection of human rights. The integration of human rights into national legal systems will help empower local communities which, in turn, will use such empowerment to achieve more integration of human rights into national legal system. This is of course already happening, to varying degrees and in deeply contextual ways in various countries throughout the continent.⁸

This emphasis on strategies and resources for the local protection of human rights does not mean that regional and international efforts in this regard are irrelevant or useless. Indeed, the present mechanisms and processes of international protection of human rights are necessary, despite their limitations and constraints. The question is simply what else needs to be done to diminish dependency over time, instead of perpetuating it in the name of protecting the human rights of helpless communities. For example, international non-governmental human rights organizations, like

⁸ See, generally, Abdullahi Ahmed An-Na'im, editor, *Human Rights under African Constitutions: Realizing the Promise for Ourselves* (University of Pennsylvania Press, 2003).

Amnesty International and Human Rights Watch, should strive to promote the monitoring and advocacy skills of local organizations, instead of simply using them to collect information about human rights violations and to gain access to local communities.⁹ The development aid and technical assistance provided by rich donor countries should deliberately seek to promote the ability of local communities to protect their own rights, in addition to continuing to provide the needed degree of external support for the protection of rights.

To conclude this section, I am proposing a dynamic and dialectical synergy of local, regional and global efforts both to empower local communities to protect their own rights, as well as acting on their behalf whenever they are unable to act for themselves. There is a clear and most significant difference between an approach to international protection that seeks to perpetuate itself because it perceives the local communities it is working with as permanently helpless and powerless and one that strives to make itself redundant over time because it respects and trusts the human agency of those communities. The difference is between a conception of law, including protection of fundamental rights like freedom of religion, that is a poor copy of the codes and institutions left behind by colonial administrations, and one that promotes the self-reliance and true independence of African communities. The latter cannot be realized immediately and all at once, but it will never materialize if it is not clearly conceptualized and actively sought by African communities and their friends everywhere.

Mediation of competing claims of religious freedom and self-determination

One premise of this lecture is that various aspects of social and political organization of human societies, including respect for and protection of human rights, are not ends in themselves. Rather, these are necessary though insufficient means for enabling human beings to realize their individual and collective self-determination. In terms of the specific subject of this lecture, freedoms of religion is necessary for each human person to pursue what she holds as the ultimate purpose and meaning of her life. In other words, people tend to link the value of rights like freedom of religion to the purpose for which they are asserting that right, rather than affirm it in the abstract or out of context. This does not mean that entitlement to the right

⁹ Abdullahi A. An-Na'im, 'Human rights in the Arab world: A regional perspective'. *Human Rights Quarterly*, volume 23 (2001), pp. 701-732.

should be made conditional upon satisfying some commonly preconceived or authoritatively sanctioned meaning of the religion that is to be experienced by believers. Rather, the point is that one is unlikely to uphold a principle of freedom of religion that he or she believes violates the same religion he wishes to have the freedom to believe in and practice.

For our present purposes, religion can be defined as a system of belief, practices, institutions, and relationships that provides the primary source of moral guidance for believers. Religion also commonly serves as an effective framework for political and social motivation and mobilization among believers. If the necessary inter-religious and intra-religious consensus and solidarity can be generated and sustained, these general features of at least the major religious traditions make them good candidates for promoting consensus around freedom of religion itself, as well as other human rights norms and institutions in general. In other words, freedom of religion and other human rights are both a means and end of societal solidarity and cooperation among believers and non-believers.

That will not happen, however, unless the values of pluralism and toleration are actively promoted within religious traditions as well as among different communities. Conversely, hegemonic and exclusive tendencies must be resisted within and among different traditions and communities. As I attempt to illustrate with reference to Islam later, it is possible and desirable to interpret religious traditions in more inclusive ways that enhance possibilities of inter-religious solidarity and cooperation. But the possibility of contesting dominant religious doctrine, through the proposal of alternative understandings of each tradition, is contingent on a variety of factors, both internal and external to the religion in question. This process of contestation is what I call the 'politics of religion', which can have different outcomes, including the possibility of bringing moral restraints to bear on economic globalization. It is helpful to emphasize in this context that religion everywhere is *socially constructed*, dynamic, and embedded in socio-economic and political power relations, always in the particular context of specific religious communities. This premise is clearly indicated by the diversity of interpretations within each religious tradition and of the ability of each tradition to adapt to changing social, economic and political conditions at various stages of its history or in different settings during the same historical period.

Another important factor in these processes of contestation and adaptation is that the purpose and meaning of religion which one may seek to achieve and experience must be a matter of personal free and voluntary choice. Since there is no logical possibility of religious belief without the

equal possibility of disbelief, denying the right to disbelieve is denying the right to believe. In other words, the purpose and meaning of freedom of religion includes freedom *from* religion. Conversely, upholding freedom from religion should not be at the expense of freedom of religion. This mandate applies to dissent within religious traditions as well as between them, to protect heresy, apostasy and freedom to propagate one's religion, all subject to appropriate safeguards. Granted that there will always be the need to mediate and negotiate competing claims, the question is how to protect and facilitate that process.

While all human rights, including freedom of religion, are essential values, there are tensions within and among these rights. We should therefore candidly identify competing claims over the meaning and scope of freedom of religion, and seek normative and institutional ways of mediating those claims, instead of ignoring them or asserting our conceptions of any of these rights as absolute non-negotiable values. Accordingly, it is imperative that there should be no negative or restrictive *religiously mandated* legal consequences whether under penal or civil law, for exercising freedom religion. In the Islamic context in particular, for instance, there should be no criminal charges or civil law consequences for so-called apostasy, heresy, or related notions. It is true that there can be legitimate limitations on freedom of religion for public policy reasons or in order to protect the rights of others. But that should be mediated through 'civic reason' that all citizens can share and debate as explained later and not on a so-called religious mandate that one community claims to be non-negotiable.

To conclude this section, the strategy I am recommending for negotiating such difficulties in situations where that is necessary is premised on the view that the role of religion in politics, culture and society is always contingent on context and circumstance. Instead of assuming that Islam, for instance, is inherently or necessarily antagonistic to or supportive of freedom of religion, I propose viewing this relationship in terms of competing currents of Islamic thinking and practices, or visions of Islamic identities and their political, constitutional and legal consequences. Such possibilities of alternative initiatives and outcomes of the politics of Islamic identity make the impact of Islam on political and cultural institutions the subject of politics, not its rigid limitation. Accounting for the Islamic dimension of the legacies of some African societies also includes questioning a common assumption that religion is necessarily and permanently problematic in this regard. Recalling earlier remarks about the universality of human rights in general, I am suggesting that freedom of religion requires legitimacy and credibility in terms of the frameworks of specific communities, in their particular context, and not in abstract or purely

theoretical terms. I will now try to illustrate the proposed contextual approach to freedom of religion with reference to Islam because of the particular relevance of this perspective to recent events in Sudan, my country of origin, and other parts of the region.

An Islamic perspective on freedom of religion

To begin with a caveat, I am not suggesting that Islam is the sole or even primary determinant of the status of freedom of religion, or any other human rights, in Muslim-majority countries or communities. Indeed, it is integral to my argument that the present status and future prospects of these rights should be assessed in terms of the historical experience and present context of each country, even where Muslims constitute the predominant majority. The role of Islam in that experience and context would necessarily vary from one country to another, but always as only one among many factors and forces that may influence the course of developments in each setting. At the same time, however, the role of Islam should not be underestimated because of its implications for the legitimacy and efficacy of freedom of religion and other human rights in those societies. In other words, the role of Islam in this connection should be taken seriously, without either exaggerating or underestimating it. As I have argued elsewhere, it is better to think of the relationship between Islam and politics as contingent and negotiated, rather deterministic and rigid.¹⁰ For our purposes here this means that the outcome of the interaction of Islam and freedom of religion can vary according to a variety of factors, rather than being permanently settled one way or the other.

If this is true, it should be possible to influence this relationship by addressing the various factors that shape its outcome in any given context. This is not to underestimate the difficulty of this relationship since Islam is commonly taken to be synonymous with historical understandings of what is commonly known as Sharia. Whereas the term Sharia refers to the normative system of Islam in general, the specific content Muslims have given to this system is necessarily a product of the history of their own societies. This point is extremely important for our purposes here that the term Sharia always refers to human interpretation of the Qur'an and Sunna (traditions of the Prophet), and as such is neither divine nor immutable. The understanding of the content of Sharia prevalent among Muslims today

¹⁰ Abdullahi Ahmed An-Na'im, *African Constitutionalism and the Role of Islam* (University of Pennsylvania Press, 2006).

contains some principles that are incompatible with some aspects of freedom of religion and the human rights of women in particular. However, this does not mean that Sharia as such is incapable of being understood by Muslims in ways that are consistent with these human rights, but the contradictions must first be acknowledged before the reinterpretation can begin. In accordance with my emphasis on a contextual approach to freedom of religion in Africa, the relevant question is how to facilitate possibilities of debate about re-interpretation, rather than focus on a particular methodology of reform that may or may not be adopted by Muslims.¹¹

In my view, a secular state (i.e. one that is neutral but not indifferent or hostile to religion) is one of the necessary requirements for mediating competing claims of freedom of religion. I believe that I need a secular state and the protection of my freedom of religion and other human rights in order to be a Muslim by choice and conviction, which is the only valid way of being a Muslim. My argument for this proposition is premised on the view that the idea of an Islamic state to enforce Sharia as positive law is conceptually untenable and practically counter-productive from an Islamic point of view. The idea of an Islamic state is untenable because once principles of Sharia are enacted as positive law of a state, they cease to be the religious law of Islam and become the political will of that state. Moreover, in view of the wide diversity of opinion among Muslim scholars and schools of thought, to enact a principle of Sharia as positive law the state will have to select among competing views to the exclusion of other views which are equally legitimate from an Islamic point of view. Since that selection will be made by whoever happens to be in control of the state, the outcome will be political, rather than religious as such. This selective process will be counterproductive because it will necessarily deny some Muslims their religious freedom of choice among those views.¹²

I am calling for the institutional separation of religion and the state while recognizing and regulating the unavoidable connectedness of religion and politics not only because religious values influence political behavior but also to enable them to do so through the democratic process, just as non-believers may seek to advance their philosophical or ideological views. The mediation of this tension between the need to separate religion from the state despite

¹¹ For a possible theological approach see, for example, Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law* (Syracuse University Press, 1990).

¹² I have presented this argument in detail in, Abdullahi Ahmed An-Na'im, *Islam and the Secular State*, (Harvard University Press, 2008).

the connectedness of religion and politics can be mediated through the distinction between the state and politics. The state should be the more settled and deliberate operational side of self-governance, while politics is the dynamic process of making choices among competing policy options. The state and politics may be seen as two sides of the same coin, but they cannot and should not be completely fused into each other. It is necessary to ensure that the state is not simply a complete reflection of daily politics because it must be able to mediate and adjudicate among competing views of policy, which require it to remain relatively independent from different political forces in society. Still, complete independence of state and politics is not possible because those who control the state come to power and keep it through politics, whether in a democratic process or not. In other words, officials of the state will always act politically in implementing their own agenda and maintaining the allegiance of those who support them. This reality of connectedness makes it necessary to strive for separating the state from politics, so that those excluded by the political processes of the day can still resort to state organs and institutions for protection against the excesses and abuse of power by state officials.

There are many other relevant aspects of the state and politics that are necessary for good constitutional governance, achieving social justice and protection of human rights that are not possible to discuss here. My focus in these brief remarks is on the secular state in the hope of contributing to clarifying its relevance to issues of freedom of religion anywhere in the world, regardless of whether Muslims are the majority or minority of the population. One caveat to note here is that I mean the secular state, and not secularism, secularization and related concepts and terms. Another caveat is that I mean a state that is neutral regarding religion in particular, and not neutral about all issues or matters of public policy. The secular state I mean is always inherently contextual and historical, and every society has its own experience unique to itself. The historical contextual development of the secular state as well as persistent controversy about its meaning and implication in practice continue to the present day in many parts of the world, including countries where the state is commonly acknowledged to be secular.

The critical need to separate state and religion while regulating the interconnectedness of religion and politics requires that proposed policy or legislation must be founded on what I call 'civic reason', which consists of two elements.¹³ First, the rationale and purpose of public policy or legisla-

¹³ On my concept of 'civic reason' and how it relates to 'public reason' according to John Rawls, see my book, *Islam and the the secular state*, 92-101.

tion must be based on the sort of reasoning that the generality of citizens can accept or reject, and make counter-proposals through public debate. Second, such reasons must be publicly and openly debated, rather than being assumed to follow from personal beliefs and motivation of citizens or officials. It is not possible of course to control inner motivation and intentions of the political behavior of people, but the objective should be to promote and encourage civic reasons and reasoning, while diminishing the exclusive influence of personal religious beliefs, over time.

I would also emphasize that the operation of civic reason in the negotiation of the relationship of religion and the state should be safeguarded by principles of constitutionalism, human rights and citizenship. The consistent and institutional application of these principles ensures the ability of all citizens to equally and freely participate in the political process, protect themselves against discrimination on such grounds as religion or belief, and so forth. With the protection provided by such safeguards, citizens will be more likely to contribute to the formulation of public policy and legislation, including objection to proposals made by others, in accordance with the requirements of civic reason. Religious believers, including Muslims, can make proposals emerging from their religious beliefs, provided they are also presented to other on the basis of reasons they can accept or reject.

Since every society needs to negotiate the relationship between religion and the state in its own specific context, it is not possible, or desirable in my view, to predict policy outcomes according to a preconceived view of that relationship. Instead, we should try to identify relevant factors and actors, and how to regulate their interaction to improve the prospects for genuine and sustainable neutrality of the state. 'Neutrality by the state should not be seen in an abstract way, but in a continuous dialogue with individual identity and individual religious freedoms'.¹⁴ The basic tension in such negotiations is about the degree and form of autonomy of religious authority from the political and legal authority of the state. On the one hand, the territorial state seeks to control religious institutions in order to fulfil its obligations to keep the peace, maintain political stability, and achieve social and economic development. On the other hand, religious institutions need to maintain their autonomy against the coercive powers of the state in the interest of the legitimacy of religious doctrine and practice. These matters

¹⁴ Rik Torfs, 'New Liberties and Church-State Relationships: Synthesis', in Dott. A. Giuffrè, editore, *New Liberties and Church and State Relationships in Europe* (Milan: European Consortium for Church-State Research, 1998), p. 10.

must be determined in accordance with the internal frame of reference and independent authority of religious institutions, without interference by state officials who will tend to impose their own views.

This paradoxical relationship can be understood with reference to the mode in which the state is rooted in the political life of society yet also preserves its autonomy from the latter. The modern state is a centralized, bureaucratic and hierarchically organization which is composed of institutions, organs and offices that are supposed to perform highly specialized and differentiated functions through pre-determined rules of general application.¹⁵ Moreover, the state should be distinct from other kinds of social associations and organizations in theory, while remaining deeply connected to them in practice for its own legitimacy and effective operation. For instance, the state must seek out and work with various constituencies and organizations in performing its functions, such as maintaining law and order, providing educational, health and transport services. Therefore, state officials and institutions cannot avoid working relationships with various constituencies and groups who have competing views of public policy and its outcomes in the daily life of societies. These constituencies include non-governmental organizations, businesses, political parties and pressure groups, and any of them can be religious or not in different ways. These working relationships are not only necessary for the ability of the state to fulfill its obligations, but in fact required by the principle of self-determination.

The access of citizens to civic reason debates will vary according to the differences in their socioeconomic status, political experience or ability to maximize use of resources and build alliances, and so forth. But such factors are reasons for more fair and inclusive application of the principle, rather than for abandoning it. Marginalized actors can resort to a range of strategies to secure a greater degree of influence over the policy-making process. For example, groups which possess little resources or political influence may adopt moderate positions or be open to compromise in order to have access to civic reason at all. Alternatively, such groups may seek the assistance of the courts or other institutions of the state to ensure access on constitutional or human rights principles that supplement their lack of resources or influence.

With greater appreciation for the value and credibility of the civic reason process itself, religious believers will have more opportunity for promoting their religious beliefs through the regular political process without

¹⁵ Graeme Gill, *The Nature and Development of the Modern State* (New York: Palgrave Macmillan, 2003), pp. 2-4.

threatening those citizens who do not share their religious beliefs. This balance is likely to be achieved precisely because religious views will not be directly enforced through the coercive power of the state without being mediated through fair and transparent political contestations and subject to constitutional and human rights safeguards as noted earlier. In the final analysis, religious beliefs are neither granted special privilege nor suppressed, which make the relationship between religion and the state more dynamic.

My purpose is to affirm that the secular state, as defined here, is more consistent with the inherent nature of Sharia and history of Islamic societies than are false and counter-productive assertions of a so-called Islamic state or the alleged enforcement of Sharia as state law. This view of the secular state neither depoliticizes Islam nor relegates it to the so-called private domain. My proposal is opposed to domineering visions of a universal history and future in which the 'enlightened West' is leading all of humanity to the secularization of the world, of which the secularity of the state is the logical outcome. In the conception of a secular state I am proposing, the influence of religion in the public domain is open to negotiation and contingent upon the free exercise of the human agency of all citizens, believers and unbelievers alike.

In essence, the proposed framework seeks to establish a sustainable and legitimate theoretical and institutional structure for an ongoing process, where perceptions of Sharia and its interaction with principles of constitutionalism, secularism, and democratic governance can be negotiated and debated, among different interlocutors in various societies. In all societies, Western or non-Western, constitutionalism, democracy, and the relationship between state, religion, and politics, are highly contextual formations that are premised on contingent sociological and historical conditions, and entrenched through specific norms of cultural legitimacy. The model proposed here combines the regulation of the relationship between Islam and politics with the separation of Islam and state as the necessary medium for negotiating the relationship between of Sharia to public policy and law. In this gradual and tentative process of consensus-building through civic reason, various combinations of persons and groups may agree on one issue but disagree on another, and consensus-building efforts on any particular topic may fail or succeed, but none of that will be permanent and conclusive. Whatever happens to be the *substantive* outcome on any issue at any point in time, it is made, and can change, as the product of a process of civic reason based on the voluntary and free participation of all citizens. For this process to continue and thrive, it is imperative that no particular view of Sharia is to be coercively imposed in the name of Islam because that would inhibit free debate and contestation.

Concluding remarks

To advance a contextual approach to understanding and evaluating the practice of freedom of religion in African societies, I started this lecture with a brief exploration of the paradoxes of the human rights paradigm, and tensions within and among human rights. I also emphasized that the protection of human rights, like freedom of religion, should be achieved as part of a broader strategy for social and economic development of the country. I then explained the continuing influence of colonialism and the post-colonial condition on the protection of human rights in Africa today. With due regard to this and other limitations, I still believe that the protection of human rights and related values of constitutionalism and democratic governance are not failing in Africa, but only taking the time they need to succeed. In the conclusion of the first part of this lecture I called for a dynamic and dialectical synergy of local, regional and global efforts to empower local communities to protect their own rights, in addition to efforts by external actors to assist Africans in this process.

In the second part of this lecture I discussed the need for mediating competing claims of religious freedom and self-determination. The necessary mediation is unlikely to happen unless the values of pluralism and toleration are actively promoted within and among religious traditions and communities. As explained in that section, the fact that religion everywhere is socially constructed, dynamic and embedded in socioeconomic and political power relations supports the need for and facilitates the mediation of competing claims. Citing the example of Islam, I emphasized the contingency of Islamic views of freedom of religion. I also explained the contingency of the role of Islam in different parts of Africa. Both contingencies indicate the internal diversity and possibilities of re-interpretation as means for promoting the universality of human rights among Muslims.

This focus on Islam, also continued in more detail in the last part of this lecture, is due to the fact that it is one of the main religions in Africa. Though Islam is commonly associated with the Middle East, there are probably as many Muslims in sub-Saharan Africa, in addition to the predominantly Muslim societies of North Africa. Moreover, African Islam is not only as old as the religion itself, but has also adapted and interacted well with pre-existing local religious and cultural traditions. From this perspective, I followed the contextual mediation of Islam and freedom of religion by examining the challenges of this process by arguing for the separation of Islam and the state, while engaging in internal transformation of Muslims' understanding of Islam in the modern context.

The ultimate message of this lecture can be summarized as follows. First, freedom of religion and other human rights in Africa, as everywhere else,

should be understood in local context. Second, the most effective and sustainable way of protecting human rights like freedom of religion is to empower local actors to protect their own rights. Third, local actors will be more motivated to struggle for human rights when they believe these rights to be legitimate from their own religious and cultural perspectives. In the final analysis, my purpose is to emphasize and facilitate the role of the human agency of human beings in conceiving, articulating and realizing their own human rights, in solidarity and cooperation with other human beings throughout the world.