

«SHARI'A AND HUMAN RIGHTS FROM AN ENLIGHTENED, ISLAMIC PERSPECTIVE»

A Conversation with Prof. Abdullahi Ahmed An-Na'im

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Abdullahi Ahmed An-Na'im, Charles Howard Candler Professor of Law at Emory Law School, is an internationally recognized scholar of Islam and human rights. Born in Sudan, he moved to the US when his teacher, Mahmoud Mohammed Taha, was put to death by the Regime of the Sudanese President Gaafar Nimeiry. His most important publications comprise *Islam and the Secular State: Negotiating the Future of Shari'a* (Harvard University Press, 2008); *African Constitutionalism and the contingent role of Islam* (University of Pennsylvania Press, 2004) and *Towards an Islamic Reformation: Civic Liberties, Human Rights and International Law* (Syracuse University Press, 1990).

In recent years, classical *Shari'a* has been the object of reform on the part of conservative and liberal reformers alike. In which category would you place yourself?

I think if I had to make a choice I would choose the liberal-reformer, but I worry about these terms because they are very loaded. I mean when people say conservative, or liberal, it's often in a sort of European, or Western terms. Every term has always a history, and has associations, which may not be accurate. The critical point is that - following my teacher Ustadh Mahmoud Mohammed Taha - , I redefine the *usul-al-fiqh*, the theory of the sources of *Shari'a* from the Koran. So, in the second chapter of *Towards an Islamic Reformation*, I discuss this question of how *Shari'a*¹ is a human construction that was developed by jurists to understand and reconcile, by deciding that certain verses of Medina are to be applied and therefore inconsistent verses of Mecca are to be abrogated. The repeal notion. So Ustadh Mahmoud reverses the process. He says that abrogation was not a permanent repeal, but that it was a postponement, so that the principles of the Koran in Mecca are really the fundamental message of Islam. But it was too early to have it practically applied in VII century Arabia and in the Middle East which was very violent and very regressive about women and about freedom. So the message of Medina which was the first message to be applied is intended as a transitional phase until it is possible to apply the fundamental, permanent and universal message of Mecca.

There is also a fundamental principle according to *usul-al fiqh* as traditionally interpreted that says that any matter which appears to be governed by explicit and categorical verses of the Koran, it's not open to reason or interpretation in the sense of *ijtihad*. So Ustadh Mahmoud redefines *ijtihad* to say it 's not just simply applying what appears to be categorical but that certain categorical verses were transitional, they were not permanent part of the Message. Actually, his book *The Second Message of Islam* explains his methodology. So because it is a re-interpretation, his methodology of interpreting *Shari'a* – I think - is a matter of reason. But it is not human reason that is independent of religious experience.

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¹ In *Towards an Islamic Reformation* (1990), Abdullahi An-Na'im defines the set of juridical dispositions extrapolated by the classical theory of *usul al fiqh*, as «historical» *Shari'a*, to which he contraposes «modern» *Shari'a*.

So my teacher and I say that the insight regarding which verses are transitional and which verses are permanent is *not only* a matter of reasonable deduction, but *also* a matter of religious insight, of following the model of the Prophet in practice. So it is in a way more traditional than the tradition, in the sense that it goes back to the way the tradition was developed in the first place. And starting from there it comes to a different conclusion as to what the tradition was intended to be. So, that's why I don't like to choose between the two terms, but if I had to choose I would choose liberal-reformer over conservative reformer.

As a Muslim, how do you conceive the relationship between Faith and Reason? Do you think that it may be possible, for a Muslim, to come up to the same sort of solutions contained in the Koran, or Sunna, with the use of reason alone?

I think reason is relative. So the reason of someone living in the VIII century is not the same as reason of someone living in the XX century. And each would be reasonable, or consistent, with his or her reason, according to his or her historical context. So, the point I think my teacher makes is that the Koran and Sunna of the Prophet, relative to the Koran, are always understood in historical context. So the founders of the Sunni or the Shiites – like Abu Hanifa, or Imam Gia'far, for the Shiites – they were applying reason as they had it at the time. So they were not irrational or unreasonable. In fact, what they extrapolated as Shari'a was necessary for the time and was appropriate for the time. So it was reason of their time. And they were not purely sort of secular thinkers. They were religious practitioners. So the authority of the founders of the *Shari'a* in the first traditional way were pious people who followed the practice of the Prophet and applied their minds to the texts of the Koran and Sunna and came up with their elaboration of *Shari'a*. So I would rather be careful. I mean for myself, I would say: «It all has to be religious». So I don't seek guidance to override the Koran from outside the Koran.

So you don't think possible to speak of a natural law within Islam?

Again, the natural law term is a Christian term that came out of certain associations.

Well, it's not only a Christian term. In fact, the Greek philosophers already used the term.

Yes. The question is terminology maybe. Yes, definitely there are continuities. One point I should mention maybe is that my teacher speaks about the «messengers of reason» and the «messengers of revelation». So to him the Greek Philosophers were the «messengers of reason». So it is almost like inspired reason. Consistent with the history and time. So it was a necessary step in the process. So to him there are «messengers of reason» and «messengers of revelation»: in Arabic, *rosul al-'uqul* and *rosul al-wahi*, if you like to look up the terms.

Where does he speak about them?

I remember it in conversations. But I can look if I can find it in writing. But he speaks about that. And he speaks about how the insights of the philosophers like the Greek philosophers are not of the devil. They are part of the human experience. So to him, Prophethood, whether of reason or of revelation, are steps along the way to human Enlightenment. And the Enlightenment of every time is what is appropriate for that time. So his argument would be that the Second Message that

he is preaching now would not have been right for the earlier time. So, for example, there is a verse in the Koran which states: "(...) We have sent down to thee [Muhammad] the Remembrance that thou mayest make clear to mankind what was sent down to them; and so haply they will reflect."²

Ustadh Mahmoud explains that there are two levels here: what is revealed to the Prophet and what he is instructed to explain to humankind, which is the more appropriate level of revelation, which is best for the time and place. Not in the abstract. So to Ustadh Mahmoud contextual understanding is the best understanding, whatever that may be. And therefore reason is inherently part of that process but it is a reason that is guided by religious discipline and not reason that is sort of rebellious against religious discipline. I would put it in those terms.

Do you think that Taha's distinction between the «Messengers of Reason» and the «Messengers of Revelation» would be in some way similar to the distinction drawn by Averroes between the theologians, or «mutakallimun», and the philosophers?

I think so. I think definitely there is a continuity. Ibn Rushd whose work to me is one of the high points of Muslim intellectual history. Although he worked with Revelation, he worked with it in a way that it was in the *nature* of reason. So the question is always what is the frame of reference. That is, do I seek answers regardless of Revelation, or do I struggle with Revelation through my reason, to find what the best thing is? And of course individual responsibility and accountability is critical to the religious experience. Like, for example, the notion of *hudud*³, or punishments. Now, it is generally repulsive. And everybody would have a gut feeling that such punishment is too harsh and so on. But you can not just simply dismiss it and say: «Well, it does not make sense to me». It is not that simple. Because I am accountable for what I say, or what I fail to say. There is a *hadith* of the Prophet that says: «Someone who exercises *ijtihad* will get one reward if he gets it wrong; he will get two rewards if he gets it right». So even if you are wrong, if you do it in a right way, it's a religious experience. It's not a totally arbitrary sort of claiming what appeals to you. It should not be that simple, I think.

Regarding the *hudud*, don't you think that they may be conceived as contrary to reason, in that they reflect more the ancient law of retaliation, rather than the enlightened principle of reciprocity?

Taha did write about that and he says that *hudud* really are precise in their sort of knowledge and appeal to the human psyche. Of course you have to believe that inflicting the punishment is, in fact, the lesser harm, because the person will be absolved from responsibility in the next life. So if I commit a sin of *hudud* magnitude and I am punished for it in this life, I will not be punished for it in the next life. So in that light, for those who believe that, it is less harsh than letting the person go unpunished and face the punishment in the next life which is more severe and eternal, or long term.

Could you also say that *hudud* were in some way reasonable in the context of the time and place and can now be abrogated, like other verses of the Medina period? What I mean to say is that in the Medina period, the Arabs did perhaps use to respond to harm by way of unlimited retaliation. So, for instance, once a person was robbed, he might seek out the robber and kill

² Verse 44 of Sura 16 (The Bee, *al-Nahl*) translated by Arberry.

³ These include capital punishments by stoning, or crucifixion; flogging and amputation of hand or foot.

him. In that context, then, the Medina Revelation relative to the *hudud* did mitigate the violence, by prescribing that for theft a robber be punished 'only' by the amputation of the hand or foot. However, in the context of our time, they might appear outdated.

I think that's a good example of how my teacher's methodology is not purely reason in the sense of rationality as it appeals to us. He always insisted that I must be able to rely on other verses of the Koran to be able to abrogate a verse that is applicable. So it is shifting from one verse to the other. And for the *hudud* there is no verse that you can rely on to challenge the verse of *hudud*. So in his own writing and work, he says that there is no authority in the Koran for the repeal. And that *hudud* are for the benefit of the culprit who is punished as well as for the benefit of society.

Now, there was a long discussion in one of the seminars which he used to hold in his house, in a very popular part of Omdurman (the native city which is part of metropolitan Khartoum area). At the end of the discussion he asked: «Does anybody object to *hudud*?». I stood up and said «If there is a chance to object, I object». And he asked «Why? ». To which I replied: «Because they are too harsh and I think that God can achieve the benefit for the culprit in less harsh ways today than it was necessary in the past». He kept silent. He did not contradict me in that public session and when I walked into his room after, with my wife, to say goodbye before leaving, he said to me: «I am delighted that one of my students has objected to *hudud*». But he did not say it in public. I am the only one of his disciple who publicly opposed *hudud* in his presence and kept opposing them since then. Now my argument is more procedural. I say that these are so precise and so strict that no human institution is capable of imposing them justly. So I say that this is a matter of divine justice. Not a matter of human justice. And for me human justice is an approximation, it is an imitation of divine justice, but should not claim the same moral standard, or the same precision of divine justice. So I oppose *hudud*. Although my teacher did not oppose them in his own writings, I oppose them.

Do you think that the reason your teacher kept upholding them is because he was still influenced by the idea of the Islamic State, whereas you are thinking more in terms of the Secular State?

Not exactly that. You know, he makes a point about the break of the Second Message from the First Message. That the Second Message will be a sort of leap, a transformative leap in understanding Islam. I think in his eyes we were still living under the domain of *Shari'a* of the First Message. And the reason he did not oppose me or say that I was wrong is, maybe, because I anticipated a position of the Second Message, which was still unforeseen 30 years ago, in the late nineteen-seventies. As the founder of a methodology and school of thought, if he spoke in public about opposition, that would have become authoritative for his followers. But if my position was wrong, he would have corrected me in the same public session. So the fact that he allowed it to go, to me indicates that maybe he wanted to say: «You are right Abdullahi, but this is not the time yet for this to be the case». It could be that. And I am known among all the group of disciples as the only one who opposed *hudud* and still continues to oppose them. And I am also known as someone who was not corrected in public in the same session. So everybody was left wondering if Abdullahi is wrong, why didn't Ustadh correct him? And if he is right, why didn't Ustadh correct the rest of us?

Are many of his students still living?

Yes. Yes. And many of them were in that session, in that seminar. And many of them remember the situation exactly. So it is known to them. Even recently, last year, there was a debate again. I was in Sudan and I was giving a public lecture about my idea of the secular State. My belief is that what I am talking about is what Ustadh Mahmoud intended but did not use the terminology of the secular State. But the sort of State he is describing is the same sort of State I am describing.

You were very courageous to go back to Sudan and speak in public.

So, yes, there was a risk but it was never a risk that materialized. I started going back the last three-four years and every time I go I give public lectures. And I have not been harassed by the security⁴. I go with an American passport. And hundreds of people come to those lectures and they are published in the newspapers in Arabic. But of course these newspapers have limited circulation - only in the capital - and most people don't read and maybe because I am just there for only two or three weeks and I am not part of any movement or political party, the security of the regime in Sudan did not move against me. So because I am not a threat and being an American, I have contacts abroad, I might attract more negative attention and publicity. But the point is that in that lecture someone asked me: «What do you think about *hudud*? ». And I said: «To my knowledge, in his writing, Ustadh Mahmoud did not say that *hudud* are to be repealed, because he said there is no base in the Koran for repealing them». But I, Abdullahi Ahmed An-Na'im, I am opposed to *hudud*. And I am opposed to *hudud* because I don't believe it is for human beings to enforce them. They are too precise and too deep in their impact for human justice which is fallible and arbitrary and can be motivated also by wrong reasons. So I confirmed in public that to my knowledge I do not cite Ustadh Mahmoud as authority for my opposing *hudud*. On the contrary, I said that he did not, but I do that at my responsibility. And this responsibility is not just simply about the Sudan security forces, or what the regime might do. But it is responsibility before God. I will die and I will stand for judgement and I will be asked «why did I do this» and I will say «This is my belief», «This is my conviction». I hope it will be good enough. But that is where I stand.

In *Towards an Islamic Reformation*, you write that human rights may be grounded in what Taha defines fundamental human aspirations: the «will to live» and the «will to be free». So I went back to his *Second Message of Islam* where he speaks about those and found out that he also speaks in favour of determinism, *tasir*. How do you think it was possible for him to uphold both *tasir* and human freedom?

I think yes. It is a very subtle and very difficult point. We disciples of Ustadh Mahmoud had weeks and weeks of debate. We would go and come back again to it. And most people had the same difficulty. And as you know in Muslim intellectual history, the debate about determinism and free-choice, *tasir* and *tahir*, was one of the most controversial issues. Now, my understanding is that the view on determinism that Ustadh Mahmoud takes is not inconsistent with human freedom. Because the question is that it does not interfere with the responsibility of the person and the choice the person makes. That is: to know – as a believer – that God has predetermined my path, does not mean that what is predetermined is known to me. So when I take any decision, I am not deciding in the knowledge of what God intended. But deciding according to my understanding and my responsibility. So it is a way of conceptualizing it in terms of determination from the

⁴ It must be recalled that Ustadh Mahmoud Mohammed Taha was executed back in 1985 by the regime of Sudanese President Gaafar Nimeiry for the very views on Islamic reform that Abdullahi An-Na'im is now up-holding in public.

perspective of God but self-choice from the perspective of the human. The human is never aware at any time of what the predetermined destiny of that person is.

For example, when I received the invitation to this Summer School meeting, I looked at it and considered the occasion and the chance to speak. So I decided to come and I have come. I could also have decided to come and something prevent me from coming. But what actually happens is what is predetermined. So, for example, when I engage in committing a sin, I cannot say that God predetermined that I should commit it. Because I don't know that God did that. When I acted, I acted on my choice and my will. And I think that the point he explains is that God's way of providentially leading us to greater freedom is so subtle that we are not aware of God's will in our actions. So, it is always our will. I mean, as far as I know, if I do something or fail to do something, if I give charity or don't give charity, whatever I do, I have no way of knowing what is predetermined for me and I don't feel any external will intervening in my choice.

As you see from the excerpts from his writing, Ustadh Mahmoud has a passage about the «will to live» and the «will to be free»⁵. But to him, those are guided by God. So, it is God who took us into the «will to live» and God is the one who elevated us to the «will to be free». And we are going to be free. So to him, there is an end result that is known as a matter of conviction, not a matter of experience. In Muslim thinking there is a difference between knowing intellectually and knowing as a matter of experience. Knowledge through experience is true knowledge. Intellectual knowledge could be false, could be misguided and so on. And one should not strive to find an intellectually clever way. One should strive in the religious experience, and that religious experience will give the person the insights that the one needs. So, I think that if you really want to understand, I hope I can identify some passages, or some sources where he has discussed this more than in the *Second Message*, where you can get a sense of it. But I agree with you that all is a very tricky question. It sounds paradoxical that he speaks absolute individual freedom – that a person can be free from any constraint and act completely by choice - and yet that choice is divinely ordained, or predetermined. But that knowledge is not ours.

So when we act, we act according to our understanding of our situation. At the same time, if we trust in God, we will believe that what God determines for us is in fact in our best interest and for our benefit, even if we can't see that to be so when it first happens. Belief in God's goodness will therefore free us from worrying about outcomes. We should exercise our best judgement according to God's guidance in *Shari'a*, and know that the ultimate outcome will be what is best for us.

I see. In fact, even within our own Christian tradition – I especially think of St. Thomas of Aquinas - philosophers and theologians have struggled with the question of how to reconcile God's providential will with human free-choice.

Yes. And I think that people like Al-Ghazzali and Ibn-Rushd and the Mutazila struggled with this question. And they have also insights too. And of course Aquinas was contemporary, or after Ghazzali?

Well. He lived in the 13th century and he read Al-Ghazzali. So I think that he came right after him.

Al- Ghazzali died in 1111. So that was early in the 12th century. You know the irony is all this current misunderstanding and this misinformation. There is so much shared between the Christian

⁵ These can be downloaded in Arabic from http://www.alfikra.org/books_a.php, or found in English translation in *The Second Message of Islam*, Syracuse University Press, 1986, p. 81.

tradition and the Islamic tradition, having cohabited in the same land. In fact Medina itself was the city of Christians and Jews and Muslims. So obviously there is mutual influence which none of those communities saw as external to their faith. That was because Islam sees itself as the continuation of Christianity, and Christianity sees itself as the continuation of Judaism. Some Muslims tend to be very defensive and apologetic about it. They say «No, no, Muslims were not influenced by this or that». That could not have been the case. It is impossible not to be influenced by someone you lived with and you studied with. And you exchanged ideas with. It's not a question of ownership. It's a question of getting it right. And we are all trying to get it right. And if I can get it right with the help of anybody, I will take it. As one of the Prophet's *hadith* says: *Al-hikmatu dalatu al-m'umin, ayna wajadaha akhadha*. «Wisdom is the pursuit of the believer; he/she shall take it *wherever* he/she finds it». Note it says *wherever*. Another *hadith* also says: *Atlubu al-ilm wa lw fi h'l-sîn*, «Seek knowledge even in China». Obviously the question is not that knowledge or understanding is limited to believers of this, or that religion. That is, it belongs to the totality of human experience. China was clearly out of the domain of Christianity, Islam and Judaism, yet Muslims are instructed to seek knowledge there. Obviously the Prophet is talking about looking for insight and wisdom. The point is that nobody is capable of knowing a tiny fraction of what God's knowledge is. So we should be humble and modest in our claims.

One last question. In *Islam and the Secular State*, you speak of the notion of civic reason. Is there any relationship or similarity between this notion and your understanding of *ijtihad* (classical juridical reasoning)?

No. I think it is different. Because it is about the political realm. In *Islam and the Secular State*, I make a distinction between the State and Religion. And the State is a joint product of all its citizens, Muslims and non-Muslims, believers and non-believers. Therefore it should not be governed by the religious mandate of any religion. So I think *ijtihad* is about striving to understand the religious dimension of life. Whereas my notion of civic reason is a modality, it is an operational method of determining public policy. So, in fact, we have a moral community and a political community. The moral community will tend to be religiously based and maybe exclusive of those who do not believe. But the political community has to be inclusive of all the citizens of the State. And therefore the logic, or the rationale, for public policy cannot be religious, because religion is a matter of the individual and of the community of believers.

So for me civic-reason relates to the political domain, of how to choose public policies that apply to everybody, believers or not. Whereas *ijtihad* is struggling with interpretation, understanding and reason guided by religious accountability and anchoring and framing. It is used to come to religious insights that may or may not work themselves into public policy. If they come into public policy they can not come as religious. So, for example, if we decide that we want to ban interest in banking, I can not say «let's ban interest because it is *haram*⁶». I have to give reasons that are persuasive to other citizens without reference to my religious belief. If I succeed in persuading them, then the reason for banning interest is not my religious belief that «it is *haram*», but it is the public understanding shared through debate that charging interest for loans is bad for our society.

The point about this is that if we decide to enact something as law because it is a matter of civic reason and not a matter of religious conviction, we can change our mind about it. So the problem with Sudan, or Pakistan, which rushed into declaring *Shari'a*, or so-called *Shari'a* laws: once

⁶ Whatever is forbidden by *Shari'a*.

enacted they cannot be un-enacted, because that would then look like you are abandoning Islam and rejecting something that Islam mandated. To begin with there is no possibility for Islam to mandate anything for the State, because religious belief is not the realm of the State. It is the realm of the believer and of her own personal choice and responsibility. But the State is secular and everything the State does is secular, including its laws. And because it is secular, we can make it and un-make it, try this or try the other. But you cannot bring my religious conviction into that, because in that I cannot accept other people choices. But we have to accept other people's choices in the public policies. So, back to your question, *ijtihad* is an internal discourse among believers. So someone exercising *ijtihad* can come to an answer regarding the *hudud* punishment. It is for the believers of that religion to accept or to reject that effort. But it has no implications, or consequences, for anybody-else.

So, if Muslims are not able to justify the *hudud* punishments by civic reason, what would they do? Would they still practice them as a matter of personal religious belief?

No. *Hudud* are not to be applied as a matter of religious mandate because punishment requires the authority of the State to enforce criminal law. At the same time, *hudud* punishments cannot be the subject of personal enforcement. So you would be able to experience your religious conviction in ways that do not transgress on the freedom of others to experience their religious or other belief. So anything that has to do with the State and anything that has to do with public administration, including the administration of justice, must be a matter of civic reason. The point is that Muslims share the State with others, and even if a State is 100% Muslim, they are not going to be Muslim in the same way. Muslims have always disagreed and will always continue to disagree. Therefore there is no religious unanimity.

Since every understanding of religion is human, any understanding of *hudud* is not divine. It is a human understanding of what the divine sources say. And it could be wrong. And much of the *hudud* that we have in the *fiqh* traditional sources are human judgements. For example, the Koran says that for theft, the culprit should be punished with the cutting of his hand, but it does not define theft. It is Muslim scholars who came to define theft. All our understanding of theft is therefore human. So the so-called divine in the *hudud* is minimal and incapable of practical applications. When you find the *zina* (adultery), for example, the Koran establishes that there must be four witnesses to the actual act of intercourse who agree on every single detail – and if they disagree on any point, all four of them are to be punished. So, who is going to commit *zina* in that way, or how is it going to happen? To my knowledge, there has been no single time in Muslim history – 15 hundred years of it – where *zina* was proven by the testimony of four witnesses. The only incidents where *zina* punishment was – according to *Shari'a* sources - legitimately applied were by confession. And a confession that has to be maintained through the execution of the punishment. So if the culprit should retract his or her confession at any point, punishment must be stopped immediately.

Now contrasting that with what is going on in Iran today⁷, it has nothing to do with *Shari'a*. It is a total travesty of *Shari'a*. Last year agents of the State were killing young people in the streets of Tehran when they were in demonstrations. There have not even been investigations into those killings, as required by *Shari'a*. Every homicide must be accounted for, regardless of who the culprit is. So on the one hand the State takes the licence to kill its own citizens during peaceful demonstrations and there is no accountability. On the other, the State inflicts punishments on

⁷ Reference is made to the case of Sakineh Ashtiani, an Iranian woman accused of adultery and sentenced to death by stoning.

poor women and marginalized men. And you never hear of the mainstream or the powerful being punished in this way. So, I mean, the political manipulation is fundamentally problematic. Not to take too long. My point is that the nature of religious conviction and religious mandate is so subjective and so tentative that should not creep into public policy in the name of religion. Whereas public policy should remain openly a matter of human rational debate. If people can agree on a principle, they can make it law. If they change their minds, they can unmake it. But if they bring it in as a religious mandate, they are never going to be able to take it back.