

---

Abdullahi Ahmed An-Na'im

---

# Islam and the Secular State

Negotiating the Future of Shari'a

---

**HARVARD UNIVERSITY PRESS**

Cambridge, Massachusetts, and London, England 2008

---

# Contents

Preface	<i>vii</i>
<b>1</b>	Introduction: Why Muslims Need a Secular State 1
<b>2</b>	Islam, the State, and Politics in Historical Perspective 45
<b>3</b>	Constitutionalism, Human Rights, and Citizenship 84
<b>4</b>	India: State Secularism and Communal Violence 140
<b>5</b>	Turkey: Contradictions of Authoritarian Secularism 182
<b>6</b>	Indonesia: Realities of Diversity and Prospects of Pluralism 223
<b>7</b>	Conclusion: Negotiating the Future of Shari'a 267
References	295
Index	311

## Introduction: Why Muslims Need a Secular State

---

In order to be a Muslim by conviction and free choice, which is the only way one can be a Muslim, I need a secular state. By a secular state I mean one that is neutral regarding religious doctrine, one that does not claim or pretend to enforce Shari‘a—the religious law of Islam—simply because compliance with Shari‘a cannot be coerced by fear of state institutions or faked to appease their officials. This is what I mean by secularism in this book, namely, a secular state that facilitates the possibility of religious piety out of honest conviction. My call for the state, and not society, to be secular is intended to enhance and promote genuine religious observance, to affirm, nurture, and regulate the role of Islam in the public life of the community. Conversely, I will argue that the claim of a so-called Islamic state to coercively enforce Shari‘a repudiates the foundational role of Islam in the socialization of children and the sanctification of social institutions and relationships. When observed voluntarily, Shari‘a plays a fundamental role in shaping and developing ethical norms and values that can be reflected in general legislation and public policy through the democratic political process. But I will argue in this book that Shari‘a principles cannot be enacted and enforced by the state as public law and public policy solely on the grounds that they are believed to be part of Shari‘a. If such enactment and enforcement is attempted, the outcome will necessarily be the political will of the state and not the religious law of Islam. The fact that ruling elites sometimes make such claims to legitimize their control of the state in the name of Islam does not mean that such claims are true.

The fact that the state is a political and not a religious institution is the historical experience and current reality of Islamic societies. From a theoretical point of view, Ali Abd al-Raziq, for instance, conclusively demonstrated the validity of this premise from a traditional Islamic perspective more than

## 2 Islam and the Secular State

eighty years ago (Abd al-Raziq 1925). In the 1930s, Rashid Ridda strongly affirmed in *al-Manar* that Shari‘a cannot be codified as state law. My purpose in this book is not only to support and substantiate this view, but also to contribute to securing its practical benefits for present and future Islamic societies. In particular, dispelling the dangerous illusion of an Islamic state that can enforce Shari‘a is necessary for legitimizing and implementing the principles and institutions of constitutionalism, human rights, and citizenship in Islamic societies.

Since, as I will explain, Shari‘a principles by their nature and function defy any possibility of enforcement by the state, claiming to enforce Shari‘a principles as state law is a logical contradiction that cannot be rectified through repeated efforts under any conditions. In other words, it is not simply a matter of improving upon a bad experience in any country, there or elsewhere, but an objective that can never be realized anywhere. Yet this does not mean the exclusion of Islam from the formulation of public policy and legislation or from public life in general. On the contrary, the state should not attempt to enforce Shari‘a precisely so that Muslims are able to live by their own belief in Islam as a matter of religious obligation, not as the outcome of coercion by the state. I will explain and discuss this view of Islam and the secular state in this first chapter, and elaborate various aspects of my argument in subsequent chapters.

An initial issue in this regard is whether the success of my proposal is contingent on substantial reform in the way Muslims understand certain aspects of Shari‘a. As I will explain later, this reform is indeed necessary, and I believe that it can best be realized through the methodology proposed by Ustadh Mahmoud Mohamed Taha (Taha 1987). This does not, of course, preclude the possibility of alternative approaches that are capable of achieving the necessary degree of reform. But in this book I will not debate various approaches or elaborate on my own preference for the methodology proposed by Ustadh Mahmoud, which I have done elsewhere (An-Na‘im 1990). My primary concern this time is to promote normative standards and institutional conditions for free and orderly public debate and contestation of various approaches to personal choices and responsibility for them. In this regard, the point to emphasize is that there are competing methodologies for the development of Shari‘a, which will always remain the total obligation of Muslims to observe in their daily lives.

It may be helpful, however, to distinguish between Shari‘a as a *concept* and the particular methodology for determining the normative *content* of

Shari'a. As a concept, this term refers to the religious law of Islam in general, which is derived from human interpretations of the Qur'an and Sunna of the Prophet, as briefly explained later. The methodology applied in practice will of course determine what interpretations come to be accepted as authoritative formulations of Shari'a in a particular time and place. Since any methodology of interpretation is necessarily a human construction, the content of Shari'a can change over time, as alternative methodologies come to be accepted and applied by Muslims. This constant process is part of what I mean by "negotiating the future of Shari'a," namely, the elaboration and specification of the concept of Shari'a into particular content that Muslims will voluntarily comply with in their own context. Other aspects of this process of negotiation relate to promoting the spirit of independent inquiry and supporting personal responsibility for the moral and religious choices Muslims make.

The premise of my proposal is that Muslims everywhere, whether minorities or majorities, are bound to observe Shari'a as a matter of religious obligation, and that this can best be achieved when the state is neutral regarding all religious doctrines and does not claim to enforce Shari'a principles as state policy or legislation. That is, people cannot truly live by their convictions according to their belief in and understanding of Islam if rulers use the extensive coercive powers of the state to impose their view of Shari'a on the population at large, Muslims and non-Muslims alike. This does not mean that the state can or should be completely neutral, because it is a political institution that is supposed to be influenced by the interests and concerns of its citizens. Indeed, legislation and public policy should reflect the beliefs and values of citizens, including religious values, provided this is not done in the name of any specific religion, since that would necessarily favor the views of those who control the state and exclude the religious and other beliefs of other citizens. While this proposition may at one level appear obviously valid to many Muslims, they may still be ambivalent about its clear implications because of the illusion that an Islamic state is supposed to enforce Shari'a. I am therefore concerned with challenging the core claim of an Islamic state as a postcolonial discourse that relies on European notions of the state and positive law. But I am equally concerned with mounting this challenge in ways that are persuasive to Muslims in particular.

The primary objective of this book is to promote voluntary compliance with Shari'a among Muslims in their communities by repudiating claims that these principles can be enforced through the coercive powers of the

#### 4 Islam and the Secular State

state. By its nature and purpose, Shari‘a can only be freely observed by believers; its principles lose their religious authority and value when enforced by the state. From this fundamental religious perspective, the state must not be allowed to claim the authority of implementing Shari‘a as such. It is true that the state has its proper functions, which may include adjudication among competing claims of religious and secular institutions, but it should be seen as a politically neutral institution performing necessarily secular functions, without claiming religious authority as such. It is also true that the religious beliefs of Muslims, whether as officials of the state or as private citizens, always influence their actions and political behavior. But these are good reasons for keeping a clear distinction between Islam and the state while regulating the connectedness of Islam and politics. As I will emphasize later, Islam is the religion of human beings who believe in it, while the state signifies the continuity of institutions like the judiciary and administrative agencies. This view is fundamentally Islamic, because it insists on the religious neutrality of the state as a necessary condition for Muslims to comply with their religious obligations. Religious compliance must be completely voluntary according to personal pious intention (*niyah*), which is necessarily invalidated by coercive enforcement of those obligations. In fact, coercive enforcement promotes hypocrisy (*nifaaq*), which is categorically and repeatedly condemned by the Qur’an.

My purpose is therefore to affirm and support the institutional separation of Islam and the state, which is necessary for Shari‘a to have its proper positive and enlightening role in the lives of Muslims and Islamic societies. This view can also be called “the religious neutrality of the state,” whereby state institutions neither favor nor disfavor any religious doctrine or principle. The object of such neutrality, however, is precisely the freedom of individuals in their communities to accept, object to, or modify any view of religious doctrine or principle.

This does not mean that Islam and politics should be separated; their separation is neither necessary nor desirable. Separating Islam and the state while maintaining the connection between Islam and politics allows for the implementation of Islamic principles in official policy and legislation but subjects them to the safeguards explained below. This view is premised on a difficult distinction between the state and politics, despite the obvious and permanent connection of the two, as explained in Chapter 3. It may therefore be helpful to speak of the deliberate and strategic mediation of this tension by striving to separate Islam and the state, as well as regulating the con-

nection between Islam and politics to sustain that separation, instead of attempting to impose a categorical resolution one way or the other.

The state is a complex web of organs, institutions, and processes that are supposed to implement the policies adopted through the political process of each society. In this sense, the state should be the more settled and deliberate operational side of self-governance, while politics serves as the dynamic process of making choices among competing policy options. To fulfill that and other functions, the state must have a monopoly on the legitimate use of force: the ability to impose its will on the population at large without risking the use of counterforce by those subject to its jurisdiction. This coercive power of the state, which is now more extensive and effective than ever before in human history, will be counterproductive when exercised in an arbitrary manner or for corrupt or illegitimate ends. That is why it is critically important to keep the state as neutral as humanly possible. The establishment of this neutrality requires constant vigilance by the generality of citizens acting through a wide variety of political, legal, educational, and other strategies and mechanisms.

The distinction between the state and politics therefore assumes a constant interaction among the organs and the institutions of the state, on the one hand, and the organized political and social actors and their competing visions of the public good, on the other. This distinction is also premised on an acute awareness of the risks of abuse or corruption of the necessary coercive powers of the state. The state must not be simply a complete reflection of daily politics. For it to mediate and adjudicate among competing visions and policy proposals, it must remain relatively independent from varying political forces in society. However, since complete autonomy is not possible, because the state cannot be totally independent of those political actors who control its apparatus, it is sometimes important to recall the state's political nature. Paradoxically, this reality of connectedness makes it necessary to strive to separate 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 excessive use or abuse of power by state officials.

Consider what happens when a single ruling party takes complete control over the state, as in Nazi Germany, the Soviet Union, and many states in Africa and the Arab world during the last decades of the twentieth century. Whether it was Arab nationalism in Egypt under Nasser or the Ba'ath Party in Iraq under Saddam Hussein and in Syria under Hafiz al-Assad, the state became the immediate agent of the ruling party, and citizens were trapped

## 6 Islam and the Secular State

between the state and the party, without the possibility of any administrative or legal remedy from the state or of lawful political opposition outside its sphere of control. Failure to observe the distinction between the state and politics tends to severely undermine the peace, stability, and healthy development of the whole society. Such disintegration occurs when those who are denied the services and the protection of the state, or effective participation in politics, either withdraw their cooperation or resort to violent resistance in the absence of peaceful remedies.

The question should therefore be how to sustain the distinction between the state and politics, instead of ignoring the tension in the hope that it will somehow resolve itself. This necessary though difficult distinction can be mediated through the principles and institutions of constitutionalism and the protection of the equal human rights of all citizens. But as I will discuss in Chapter 3, these principles and institutions cannot succeed without the active and determined participation of all citizens, which is unlikely if people believe them to be inconsistent with the religious beliefs and cultural norms that influence their political behavior. The principles of popular sovereignty and democratic governance presuppose that citizens are sufficiently motivated and determined to participate in all aspects of self-governance, including organized political action to hold their government accountable and responsive to their wishes. This motivation and determination, which is partly influenced by the religious beliefs and cultural conditioning of the citizens of the state, must be founded on their appreciation of and commitment to the values of constitutionalism and human rights. This is why it is important to strive to justify my proposal from an Islamic perspective for Muslims, without denying the right of others to support the same position from their respective religious or philosophical positions.

Stated differently, this book is an attempt to clarify and support the necessary but difficult mediation of the paradox of institutional separation of Islam and the state, despite the unavoidable connection between Islam and politics in present Islamic societies. As a Muslim, I seek to contribute to this process in Islamic societies without implying that the issues I am discussing here are peculiar to Islam and Muslims alone. I challenge the dangerous illusion of an Islamic state that claims the right to enforce Shari'a principles through its own coercive power. But I also challenge the dangerous illusion that Islam can or should be kept out of the public life of the community of believers. The wide diversity of opinions among Muslim scholars and schools of thought (*madhahib*) in practice means that state institutions



would have to select among competing views that are equally legitimate from one Islamic view or another. Since there are no generally agreed-upon standards or mechanisms for adjudicating among these competing views, whatever is imposed by the organs of the state as official policy or formal legislation will necessarily be based on the human judgment of those who control those institutions.

In other words, whatever the state enforces in the name of Shari'a will necessarily be secular and the product of coercive political power and not superior Islamic authority, even if it is possible to ascertain what that means among Muslims at large. The categorical repudiation of the dangerous illusion of an Islamic state that can coercively enforce Shari'a principles is necessary for the practical ability of Muslims and other citizens to live in accordance with their religious and other beliefs. The notion of an Islamic state is in fact a postcolonial innovation based on a European model of the state and a totalitarian view of law and public policy as instruments of social engineering by the ruling elites. Although the states that historically ruled over Muslims did seek Islamic legitimacy in a variety of ways, they were not claimed to be "Islamic states." The proponents of a so-called Islamic state in the modern context seek to use the institutions and powers of the state, as constituted by European colonialism and continued after independence, to regulate individual behavior and social relations in ways selected by the ruling elites. It is particularly dangerous to attempt such totalitarian initiatives in the name of Islam, because they are far more difficult for Muslims to resist than initiatives sought by an openly secular state. At the same time, the institutional separation of any religion and the state is not easy, because the state must necessarily regulate the role of religion to maintain its own religious neutrality, which is required for its role as a mediator and an adjudicator among competing social and political forces.

The separation of Islam and the state does not prevent Muslims from proposing policy or legislation stemming from their religious or other beliefs. All citizens have the right to do so, provided they should support such proposals with what I call "civic reason." The word "civic" here refers to the need for policy and legislation to be accepted by the public at large, as well as for the process of reasoning on the matter to remain open and accessible to all citizens. By civic reason, I mean that the rationale and the purpose of public policy or legislation must be based on the sort of reasoning that most citizens can accept or reject. Citizens must be able to make counterproposals through public debate without being open to charges about their religious

## 8 Islam and the Secular State

piety. Civic reason and reasoning, and not personal beliefs and motivations, are necessary whether Muslims constitute the majority or the minority of the population of the state. Even if Muslims are the majority, they will not necessarily agree on what policy and legislation should follow from their Islamic beliefs.

The requirement of civic reason and reasoning assumes that people who control the state are not likely to be neutral. Not only is this requirement essential, but it must also be the objective of the operation of the state, precisely because people are apt to continue to act on personal beliefs or justifications. The requirement to present publicly and openly justifications that are based on reasons which the generality of the population can freely accept or reject will over time encourage and develop a broader consensus among the population at large, beyond the narrow religious or other beliefs of various individuals and groups. Since the ability to present civic reasons and debate them publicly is already present at some level in most societies, I am calling only for its further conscious and incremental development over time.

It is difficult in practice to ensure that people comply with the requirements of civic reason in making choices within the realm of inner motivation and intentions. It may be difficult to understand why people vote in a particular way or how they justify their political agenda to themselves or to their close associates. But the objective should be to promote and encourage civic reason and reasoning, which over time will diminish the exclusive influence of personal religious beliefs over public policy and legislation. This view does not apply to personal and communal religious experience outside the realm of the state, because protecting freedom of religion and belief from state intervention is in fact one of the objectives of the whole approach.

I am calling for the state to be secular, not for secularizing society. I argue for keeping the influence of the state from corrupting the genuine and independent piety of persons in their communities. Ensuring that the state is neutral regarding religious doctrine is necessary for true conviction to be the driving force of religious and social practice, without fear of those who control the state or desire for the power and wealth they may claim to bestow. This combination should address the apprehensions of Muslims about secularism as secularization of society or hostility to religion. The common negative perception of secularism is due to a failure to distinguish between the state and politics, as discussed later. By failing to recognize this distinction, many Muslims take the separation of Islam and the state to mean the total

relegation of Islam to the purely private domain and its exclusion from public policy. I use the term “secular state,” instead of “secularism,” to avoid this negative perception. The question for me is how to transform the attitudes of Muslims regarding the inherently secular nature of the state and the critical role of the principles of constitutionalism, human rights, and citizenship in mediating the permanent tensions among Islam, the state, and society.

I am also concerned with clarifying how the constant negotiation of these relationships in present Islamic societies is shaped by profound transformations in their political, social, and economic structures and institutions as a result of European colonialism and, more recently, global capitalism. This context is also shaped by the internal political and sociological circumstances of each society, including the internalization of externally inspired changes, whereby Islamic societies have voluntarily continued to follow Western forms of state formation, education, social organization, and economic, legal, and administrative arrangements after achieving political independence. I am not suggesting that Muslims should accept these realities because they have no choice. Rather, I argue that adaptation to these realities is in fact more consistent with historical Islamic traditions than are the totalitarian post-colonial claims of an Islamic state.

### **Islam, Shari‘a, and the State**

Since the subject of this book is the relationships among Islam, the state, and society, it is important to briefly clarify the manner in which I am using these terms to avoid any misunderstanding that might arise from false or unwarranted assumptions. This is particularly important since I am attempting to influence the attitudes of other Muslims as a Muslim, rather than in a detached or impersonal manner.

Let us begin with the general understanding of Islam as the monotheistic religion (*Din al-Tawhid*) that the Prophet Muhammad propagated between 610 and 632 CE, when he delivered the Qur’an and expounded its meaning and application through what came to be known as the Sunna of the Prophet. These two sources are therefore foundational to any sense in which the term “Islam” and its derivative concepts and adjectives are used, especially among Muslims. They provide the articles of faith and doctrine that Muslims espouse, including the ritual practices they are supposed to observe and the moral and ethical precepts they are bound to respect. The Qur’an and Sunna are also where Muslims look for guidance in developing

their social and political relations, legal norms, and institutions. In this foundational sense, Islam is about realizing the liberating power of a living and proactive confession of faith in an infinitely singular, omnipotent, and omnipresent God. This is the sense of Islam that the vast majority of Muslims experience in everyday life, and from which they seek spiritual and moral guidance. My proposal should therefore be judged by its utility in enhancing the ability of Muslims to live by the dictates of their religion.

The term “Shari‘a” is often used in present Islamic discourse as if it were synonymous with Islam itself, as the totality of Muslim obligations both in the private, personal religious sense and vis-à-vis social, political, and legal norms and institutions. As indicated earlier, however, it is important to distinguish between the concept of Shari‘a as the totality of the duty of Muslims and any particular perception of it through a specific human methodology of interpretation of the Qur’an and Sunna. But even as a concept, Shari‘a is the door or passageway into being Muslim and does not exhaust the possibilities of experiencing Islam. There is more to Islam than Shari‘a, though knowing and complying with the dictates of Shari‘a is the way to realize Islam as the principle of *tawhid* in the daily lives of Muslims. It should also be emphasized that Shari‘a principles are always derived from human interpretation of the Qur’an and Sunna; they are what human beings can comprehend and seek to obey within their own specific historical context (Ibn Rushd 2001, 8–10). Striving to know and observe Shari‘a is always the product of the “human agency” of believers—a system of meaning that is constructed out of human experience and reflection, which over time evolves into a more systematic development according to an established methodology.

The premise of an Islamic discourse is that each and every Muslim is personally responsible for knowing and complying with what is required of him or her. The fundamental principle of individual personal responsibility that can never be abdicated or delegated is one of the recurring themes of the Qur’an (for example, 6:164; 17:15; 35:18; 39:7; 52:21; 74:38). Yet when Muslims seek to know what Shari‘a requires of them in any specific situation, they are more likely to ask an Islamic scholar (*alim*, plural *ulama*) or a Sufi leader they trust than to refer directly to the Qur’an and Sunna themselves. Whether done personally or, more usually, by a scholar or a Sufi leader, reference to the Qur’an and Sunna necessarily happens through the structure and methodology every Muslim has been raised to accept. This process normally occurs within the framework of a particular school

(*madhhab*) and its established doctrine and methodology. But this never happens in a totally fresh and original manner, and certainly not without preconceived notions of how to identify and interpret the relevant texts of the Qur'an and Sunna. In other words, whenever Muslims consider these primary sources, they cannot avoid the layered filters of the experiences and interpretations of preceding generations of Muslims and the elaborate methodology that determines which texts are deemed to be relevant to any subject and how they should be understood. Human agency is therefore integral to any approach to the Qur'an and Sunna at multiple levels, ranging from centuries of accumulated experience and interpretation to the current context in which an Islamic frame of reference is invoked.

The state is not an entity that can feel, believe, or act by itself. It is always human beings who act in the name of the state, exercise its powers, or operate through its organs. Thus, whenever a human being makes a decision about a policy matter, or proposes or drafts legislation that is supposed to embody Islamic principles, this will necessarily reflect his or her personal perspective on the subject and never that of the state as an autonomous entity. Moreover, when these policies or legislative proposals are made in the name of a political party or organization, such positions are also taken by the human leaders speaking or acting for that entity. It is true that specific positions on matters of policy and legislation can be negotiated among many actors, but the outcome will still be the product of individual human judgment and the human choice to accept and act on a view that is agreed upon among those actors.

For instance, a decision to punish the consumption of alcoholic drinks as a *hadd* crime or to prohibit charging interest on loans (*riba*) is necessarily the view of individual political actors taken after weighing all sorts of practical considerations. Moreover, the formulation, adoption, and implementation of legislation to achieve that objective are all always matters of human judgment and choice. The whole process of formulating and implementing public policy and legislation is subject to human error and fallibility, which means that it can always be challenged or questioned without violating the direct and immediate divine will of God. This is part of the reason that matters of public policy and legislation must be supported by civic reason, even among Muslims, who can and do disagree in all such matters without violating their religious obligations.

The methodology known as *usul al-fiqh*, through which Muslims have historically understood and applied Islamic precepts as conveyed in the Qur'an

and Sunna, was developed by early Muslim scholars. In its original formulations, this field of human knowledge sought to regulate the interpretation of these foundational sources in light of the historical experiences of early generations of Muslims. It also defines and regulates the operation of juridical techniques such as *ijma'* (consensus), *qiyas* (reasoning by analogy), and *ijtihad* (juridical reasoning). These techniques are commonly understood as the methods for specifying Shari'a principles rather than as substantive sources. However, *ijma'* and *ijtihad* have had more foundational roles beyond their limited technical meanings. It is that broader sense that can form the basis of a more dynamic and creative development of Shari'a now and in the future.

### *Islam and Shari'a*

The foundational and continuing role of consensus among generations of Muslims is important not only for historical interpretation of Shari'a but for its constant reform and evolution over time. The critical role of consensus is clear from the fact that it is the basis of the acceptance of the text of the Qur'an (*al-Mushaf*) and records of Sunna as authentic content of the fundamental sources of Islam and Shari'a among countless generations of Muslims. The belief that the text we are reading today in Arabic is in fact the actual text of the Qur'an as delivered by the Prophet is based on the fact that it has been handed down from one generation to the next since the time of the Prophet. The same is true of Sunna, which most Muslims accept as the authentic report of what the Prophet said and did. The fact that some controversies continue among Muslims about the authenticity of certain texts of Sunna reflects the weakness of the consensus basis of those particular texts. But in general, our knowledge of the Qur'an and Sunna is the result of intergenerational consensus since the seventh century. Moreover, consensus is the basis of the authority and continuity of *usul al-fiqh* and all of its principles and techniques, because this interpretative structure is always dependent on its acceptance as such among the generality of Muslims from one generation to the next. In this sense, consensus is the basis of the acceptance of the Qur'an and Sunna themselves, as well as of the totality and the details of the methodology and content of their interpretation.

For Muslims, the significant difference between the Qur'an and Sunna and the techniques of *usul al-fiqh* is that there is no possibility of new additions to either of these texts. The Prophet Muhammad was the final prophet

and the Qur'an is the conclusive divine revelation. In contrast, there is nothing to prevent the formation of a fresh consensus around new interpretative techniques or innovative interpretations of the Qur'an and Sunna, which would become a part of Shari'a, just as the existing methodologies and interpretations came to be a part of it in the first place. The safeguards of separating Islam from the state and regulating the political role of Islam through constitutionalism and the protection of human rights are necessary to ensure freedom and security for Muslims so that they can participate in evolving new techniques and proposing and debating fresh interpretations of the Qur'an and Sunna. As to concerns about the validity of such innovations, the safeguard is the same as it used to be with what is now "established" Shari'a, namely, acceptance by generations of Muslims. In other words, a new interpretative methodology or new substantive principles will not become part of Shari'a unless they are accepted by most Muslims over time. This is the same way any methodology or principle became part of Shari'a in the first place. The challenge is to ensure the freedom to propose and debate so that consensus can freely evolve among Muslims, either in support of or against whatever is being proposed.

Any understanding of Shari'a is always the product of *ijtihad*, in the general sense that reasoning and reflection by human beings are ways of understanding the meanings of the Qur'an and Sunna of the Prophet. But in the process of the development of Shari'a during the second and third centuries of Islam, this term was defined and limited by Muslim scholars in two ways. First, they determined that *ijtihad* can be exercised only in matters that are not governed by the categorical texts (*nass qat'i*) of the Qur'an and Sunna. This is a logical proposition, but it not only assumes that Muslims agree on which texts are relevant to a particular issue and on how to interpret those texts, but also deems that whatever consensus was achieved over these matters in the past is permanent. Second, early Muslim scholars specified detailed requirements for a person to be accepted as qualified to exercise *ijtihad* (*mujtahid*), as well as the manner in which *ijtihad* can be exercised. But even the very definition of the term or qualification needed by the scholar who can exercise this role is necessarily the product of human reasoning and judgment. So why should that human process preclude subsequent reconsideration?

Determinations about whether or not any text (*nass*) of the Qur'an or Sunna applies to an issue, whether or not it is categorical (*qat'i*), and who can exercise *ijtihad* and how are all matters that can be decided only through

human reasoning and judgment. It therefore follows that imposing prior censorship on such efforts violates the premise of how Shari'a can be derived from the Qur'an and Sunna. It is illogical to say that *ijtihad* cannot be exercised regarding any issue or question, because that determination itself is the product of human reasoning and reflection. It is also dangerous to limit the ability to exercise *ijtihad* to a restricted group of Muslims who are supposed to have specific qualities, because in practice that will depend on those human beings who set the criteria and select a person as a qualified *mujtahid*. To concede this authority to any institution or group, whether it is official or not, is dangerous, because that power will likely be manipulated for political or other reasons. The fact that knowing and upholding Shari'a is the permanent and inescapable responsibility of every Muslim means that no human being or institution should control this process. The power to decide who is qualified to exercise *ijtihad* and how it is to be exercised is part of the religious belief and obligation of every Muslim. Any restriction of free debate by entrusting human beings or institutions with the authority to decide which views are to be allowed or suppressed is inconsistent with the religious nature of Shari'a itself. This reasoning is one of the main Islamic foundations I propose for safeguarding constitutionalism, human rights, and citizenship for all.

Another relevant point to note here is that the systemic development of Shari'a began during the early Abbasid era (after 750 CE). This view of the relatively late evolution of Shari'a as a coherent and self-contained system in Islamic history is clear from the time frame for the emergence of the major schools of thought, the systematic collection of Sunna as the second and more detailed source of Shari'a, and the development of the juridical methodology. All these developments took place in the second and third centuries of Islam. The early Abbasid era witnessed the emergence of the main schools of Islamic jurisprudence, including those still known today. The surviving schools are attributed to Ja'far al-Sadiq, the founder of the main school of Shi'a jurisprudence (died 765), Abu Hanifa (died 767), Malik (died 795), al-Shafi'i (died 820), and Ibn Hanbal (died 855). Al-Shafi'i is commonly acknowledged to have laid the foundations of *usul al-fiqh* to regulate the interpretation of the Qur'an and Sunna, but the process of collection and authentication of Sunna reports continued beyond his time. The most authoritative compilations of Sunna for Sunni Muslims are attributed to Bukhari (died 870), Muslim (died 875), Ibn Majah (died 886), Abu Dawud



(died 888), al-Tirmidhi (died 892), and al-Nasa'ī (died 915). For the Shi'a, the most authoritative compilations also emerged during that general time frame, namely, those attributed to al-Kulayni (died 941), Ibn Babawayh (died 991), and al-Tusi (died 1067). The subsequent development and the spread of the various schools have been influenced by many political, social, and demographic factors, which have sometimes resulted in shifting schools from one region to another, thus confining them to certain parts, as is the case with Shi'a schools at present. Such factors may have also contributed to the total extinction of schools, like those of al-Thawri and al-Tabari in the Sunni tradition.

The principle of consensus apparently acted as a unifying force during the second and third centuries of Islam by drawing the substantive content of Sunni schools together, diminishing the scope of creative new thinking through *ijtihad*. The commonly held view is that there was a gradual decrease in the role of creative juridical reasoning (the so-called closing of the gate of *ijtihad*) on the assumption that Shari'a had already been fully and exhaustively elaborated. Whether there was a closing of the gate of *ijtihad* or not is the subject of debate among historians (Hallaq 1984). But it is clear that there has not been any change in the basic structure and methodology of Shari'a since the tenth century, although practical adaptations continued in limited scope and locations. That rigidity was probably necessary for maintaining the stability of the system during the decline, and sometimes breakdown, of the social and political institutions of Islamic societies. However, from an Islamic point of view, no human authority was or is entitled to declare that *ijtihad* is not permitted, though there may have been consensus on this matter among Muslims. There is nothing, therefore, to prevent the emergence of a new consensus that *ijtihad* should be freely exercised to meet the new needs and aspirations of Islamic societies. The purpose of the proposal presented here is to secure the political, social, and intellectual space for debate and reformation, not to prescribe a particular approach to that debate. The essentially religious nature of Shari'a and its focus on regulating the relationship between God and human believers mean that believers can neither abdicate nor delegate their responsibility. No human institution can be religious in this sense, even when it claims to apply or enforce principles of Shari'a. In other words, the state and all its institutions are by definition secular and not religious, regardless of claims to the contrary.

*Shari'a and the State*

Another aspect of the legal history of Islamic societies that is associated with the religious nature of Shari'a is the development of private legal consultation (*ifta*). Scholars who are independent of the state can issue legal opinions (*fatwa*) at the request of provincial governors and state judges, in addition to providing advice for individual persons, as they have done from the very beginning of Islam. But the individual responsibility of each and every Muslim can be neither abdicated nor delegated through the institution of *fatwa*. The person seeking such an opinion remains responsible, from a religious point of view, for whatever action he or she takes or fails to take under the *fatwa*, while the person expressing the opinion (*mufti*) is also responsible for that opinion. The practical need for administration and adjudication will of course continue, as will the need to seek to benefit from the knowledge and views of scholars. My point is simply that such efforts are secular, since they cannot displace the religious responsibility of each individual Muslim.

This can be illustrated with reference to the Ottoman Empire, the last major state ruled by Muslims before European colonial rule and the current postcolonial era. As explained in Chapter 5, the Ottoman sultans represent one of the best examples of how worldly rulers negotiated a balance between pragmatic politics and administration, on the one hand, and invocation of religious authority to legitimize their rule, on the other. The Ottoman sultans never attempted to implement the totality of Shari'a and preferred to apply the Hanafi school in specific and limited jurisdictions. When they eventually decided to codify some Hanafi principles, by the mid-nineteenth century, that marked the first time in Islamic history in which Shari'a principles interpreted by a single school were codified and enacted as the uniform official law of the land. That innovation, which became the norm in the postcolonial Muslim world, at least on family-law matters, legitimized and institutionalized state selectivity among the competing views of Shari'a without genuinely opening the basis of family-law legislation to debate as a matter of public policy. Similar displacement of Shari'a and local customary systems by colonial codes, while isolating a so-called family-law field to be governed by Shari'a principles, occurred in Islamic parts of Asia and Africa.

However, there was a tension between the reality of state sponsorship of a particular school and the need to maintain the traditional independence of Shari'a, as rulers are supposed to safeguard and promote Shari'a without creating or controlling it. This tension has continued into the modern era,

when Shari‘a remains the religious law of the community of believers, independent of the authority of the state, while the state seeks to enlist the legitimizing power of Shari‘a in support of its political authority.

Moreover, the concessions made by the Ottoman Empire to European powers set the model for the adoption of Western codes and systems of administration of justice. Ottoman imperial edicts justified the changes not only in the name of strengthening the state and preserving Islam but also in order to emphasize the need to ensure equality among Ottoman subjects. That rationale probably laid the foundation for the adoption of the European model of the nation-state and its legally equal citizens. A brief review is instructive, because the late Ottoman experience became the model for the whole Muslim world in the twentieth century.

The Ottoman codification of some aspects of Shari‘a as represented by the Hanafi school, known as *Majallah*, acquired the position of supreme authority soon after its enactment, partly because it represented the earliest and most politically authoritative example of the authority of the state to promulgate Shari‘a principles officially, thereby transforming them into positive law in the modern sense of the term. Moreover, that legislation was directly applied in a wide range of Islamic societies throughout the Ottoman Empire and continued to apply in some parts into the second half of the twentieth century. The success of the *Majallah* was also due to the fact that it included some provisions drawn from sources other than the Hanafi school, thereby expanding the possibilities of selectivity from within the broader Islamic tradition. The principle of selectivity (*takhayur*) among equally legitimate doctrines of Shari‘a was already accepted in theory, as noted earlier, but was not used in practice on such a formal and general scale. By applying it through the institutions of the state, the *Majallah* opened the door for subsequent reforms, despite its initially limited purpose. At the same time, however, the codification of the views of a single school, even with some selectivity and inclusion of some other views, precluded access to other schools and scholars. The whole process was the product of the secular political authority of the state, not the religious authority of Shari‘a as such.

This trend toward increased eclecticism in the selection of sources and the synthesis of Islamic and Western legal concepts and institutions not only became irreversible but was also carried further, especially through the work of the French-educated Egyptian jurist Abd al-Razziq al-Sanhuri (died 1971). The pragmatic approach of al-Sanhuri was premised on the view that Shari‘a cannot be reintroduced in its totality and cannot be applied without

strong adaptation to the needs of modern Islamic societies. He used this approach in drafting the Egyptian Civil Code of 1948, the Iraqi Code of 1951, the Libyan Code of 1953, and the Kuwaiti Civil Code and Commercial Law of 1960–1961. In all cases, al-Sanhuri was brought in by an autocratic ruler to draft a comprehensive code that was enacted into law without public debate. It is therefore difficult to tell whether that model could have worked if those countries had been democratic at the time. What is clear, however, is that irrespective of the alleged inclusion of Shari‘a principles, the process itself was clearly one of secular legislation and not a direct enactment of the divinely ordained law of Islam.

Paradoxically, those changes also made the entire corpus of Shari‘a principles more available and accessible to judges and policymakers in the process of selecting and adapting aspects to be incorporated into modern legislation. The synthesis of the Islamic and European legal traditions also exposed how impossible it was to apply Shari‘a principles directly and systematically in the modern context. The main reason for that is the complexity and diversity of Shari‘a itself, owing to its evolution through the centuries. In addition to the strong disagreement between and within Sunni and Shi‘a communities that coexist within a single country (as in Iraq, Lebanon, Saudi Arabia, and Pakistan), various Muslim communities may follow different schools or scholarly opinions, though those schools or opinions are not formally applied in the courts. In addition, judicial practice may not necessarily be in accordance with the school that the majority of the Muslim population in the country follows. For example, state courts in Egypt and Sudan inherited the official Ottoman preference for the Hanafi school, even though the popular practice in that region adheres to the Shafi‘i and Maliki schools. Since modern states can operate only on officially established principles of law of general application, Shari‘a principles cannot be enacted or enforced as the positive law of any country without being subjected to selection among competing interpretations, which are all deemed to be legitimate by the traditional Shari‘a doctrine. This legislative process is as unavoidable for a purported Islamic state that is supposed to enforce the totality of Shari‘a as it is for secular regimes that claim to enforce Shari‘a principles only in the family-law field.

The legal and political consequences of these developments were intensified by the significant impact of European colonialism and global Western influence in the fields of general education and professional training of state officials. Curricular changes in educational institutions meant that Shari‘a

was no longer the focus of advanced instruction in Islamic knowledge, and Shari'a was displaced by a spectrum of secular subjects mostly derived from Western models. In legal education in particular, the first generation of lawyers and jurists undertook advanced training in European and North American universities and returned to teach the subsequent generations or to hold senior judicial offices. Moreover, in contrast to the extremely limited degree of literacy in traditional Islamic societies of the past, in which the scholars of Shari'a monopolized the intellectual leadership of their communities, mass basic literacy is now growing rapidly throughout the Muslim world, thereby opening the door for much more democratic access to knowledge.

Thus, not only have the *ulama* lost their historical monopoly on the knowledge of the sacred sources of Shari'a, but the traditional interpretations of those sources are gradually being questioned by ordinary Muslims. This opportunity should motivate Muslim advocates of a secular state and the protection of human rights to learn more about Islamic sources, history, and the methodology of Shari'a in order to be more effective in challenging traditional interpretations. But this does not mean that there should be a formal certification process by an institution whereby a Muslim becomes qualified to exercise *ijtihad*. On the contrary, all Muslim men and women have the religious obligation to learn enough to decide for themselves and to express their views on matters of public concern. It is just that those with the most knowledge of the Islamic sources and methodology will be more authoritative and persuasive than those who lack such knowledge.

The transformation of the nature of the state itself in its local and global context is particularly significant for our purposes here. Although established under colonial auspices, the European model of the state for all Islamic societies has radically transformed political, economic, and social relations throughout various regions. By retaining this specific form of state organization after political independence, Islamic societies have chosen to be bound by a minimum set of national and international obligations of membership in the world community of territorial states. While there are clear differences in their level of social development and political stability, Islamic societies today live under domestic constitutional regimes and legal systems that require respect for certain minimum rights of equality and nondiscrimination for all of their citizens. Even where national constitutions and legal systems fail to expressly acknowledge and effectively provide for these obligations, the present realities of international relations ensure a minimum degree of practical compliance. These changes are simply irrevers-

ible, though stronger and more systematic conformity with the requirements of democratic governance and human rights remains uncertain and problematic for many countries and societies throughout the world.

In conclusion of this brief overview of Islam, Shari'a, and the state, it is clear that there is an urgent need to continue the process of Islamic reform to reconcile the religious commitment of Muslims with the practical needs of their societies today. It is also clear that the main premise of a viable reform process is that the meaning and the implementation of the Qur'an and Sunna in everyday life are always the product of human interpretation and action in a specific historical context. It is simply impossible to know and apply Shari'a in this life except through the agency of human beings. Any view of Shari'a known to Muslims today, even if unanimously agreed upon, had to emerge from the opinion of human beings about the meaning of the Qur'an and Sunna, as accepted by many generations of Muslims and the practice of their communities. In other words, opinions of Muslim scholars became part of Shari'a through the consensus of believers over many centuries, and not by the spontaneous decree of a ruler or the will of a single group of scholars. Accordingly, as I will further clarify, what I am proposing is in fact the true continuity of historical Islamic traditions. In contrast, the advocate of an Islamic state to enforce Shari'a as state law is in fact promoting a European, positivistic view of law and a totalitarian model of the state that seeks to transform society into its own image.

### **The Framework and Processes of Social Transformation**

One aspect of the transformation of the relationship among Islam, Shari'a, and the state relates to the domain of the state, while the other operates at the civil-society level. These two dimensions of transformation through official institutional and civil-societal changes are in fact interdependent and mutually supportive. Each objective may require different strategies and action, which may vary from one social and cultural context to another, but the two kinds of transformations are deeply connected in that each is both the cause and the outcome of the other. For this dynamic transformation to happen in Islamic societies, we also have to clarify and transform the permanent and desirable relationship between Islam and politics, as suggested earlier.

The proposed approach, therefore, recognizes the multiple levels of relevance of Islam to Muslim communities across the globe: as a religion, as a

political ideology for some Muslims, and, more broadly, as a culture and the basis of social practice. This indicates a third dimension of my proposal, which is the question of how to root social change in culture or endow it with cultural legitimacy. Cultural transformation or social change cannot be achieved as a purely external initiative that is indifferent to history, culture, or social practice. Rather, social change and cultural transformation must be grounded in the culture of communities themselves to be legitimate, coherent, and sustainable. This in turn indicates the role played by the communities and their members as participants, subjects, and actors of social change—in other words, the role of human agency in the process. I will now discuss the various dimensions of this framework of social transformation in terms of the dynamics of culture and identity, the imperative of cultural legitimacy for social change, and the role of human agency.

### *Culture and Identity*

Cultures may seem identifiable and distinguishable from each other, but each of them is characterized by internal diversity, propensity to change, and mutual influence in its relationship with other cultures. We may speak of particular local, national, and regional cultures, or communal culture defined by language, ethnicity, religion, or economic and security interests. Shared norms, customs, and histories within a group bring coherence to the notion of a common culture even when there are overlaps with other groups. While recognition of such commonality should not come at the expense of the recognition of diversity and contestation within each culture, seeing cultures as different should not lead us to believe that they defy cross-cultural or comparative analysis. Internal diversity and contestation, as well as cross-cultural dialogue and mutual influence, can in fact facilitate the development of an overlapping consensus on certain values and practice, such as constitutionalism and human rights, despite persistent differences about the foundations and rationale of such agreement.

Islamic societies are subject to the same principles of social and political life that apply to other human societies, because Muslims, like all human beings, strive to meet their basic needs for food and shelter, security, political stability, and so forth. Muslims seek to meet those needs, and also to change and adapt their culture to work under new circumstances, in ways that may be similar to or different from those of other societies, but that is not necessarily determined by Islam. While the characteristic features of Islam as a re-

ligion shape the ways in which it is understood and practiced by Muslims in different settings, that understanding is not so exceptional as to defy the principles of social and political life of human societies in general. Some Islamic communities in the Indian subcontinent may have more in common with Hindu or Sikh communities of the same region, because of shared history, colonial experiences, and present context, than with Islamic communities of sub-Saharan Africa, whose culture and practices may similarly be closely related to those of neighboring non-Muslim communities.

The term “identity” is often invoked to indicate something that is clearly defined, stable, and fixed. However, it is also clear that people organize their lives to be open and flexible enough to take advantage of alternative options, which they can justify in terms of their cultural or religious value system and meaning. We all make choices every day about which aspects of our identity to emphasize or deemphasize so as to promote or protect our short- or long-term interests. As a Muslim, I may assert an exclusive Islamic identity or emphasize Islamic tolerance and acceptance of religious differences, depending on whether I am a member of a majority or minority and the prevailing political relations among the religious communities of my country.

In other words, identity formation and transformation is a dynamic process involving deliberate choices, not an immutable or inevitable condition. Individuals construct meanings and values through cultural codes that are shared by particular groups. However, it is not uncommon for a person to switch between the codes as he or she moves among a variety of socio-cultural identities. These codes include “primordial attachments,” such as language and religious affiliations, which are learned or formed at an early age, as well as new codes that are learned later in life. We also sometimes switch codes in an “instrumentalist” or calculated manner, which may not necessarily be consistent with the publicly declared or assumed objectives of the original codes. Moreover, each set of processes and interactions combines elements of adjusted and/or retrieved preexisting identities, together with newly created or situation-specific identities. For example, to be a Muslim in a specific context includes what being a Muslim has meant to me in the past, which necessarily includes previous negotiation with others about that meaning as well as the purpose of Islamic identity in the situation at hand. In other words, the determination of identity at any given point or in any specific situation is a product of the actors, context, and purpose. The broader meaning or content that different actors associate with their own



identity in relation to the identity of another person or community whom they are dealing with is also a relevant factor.

One aspect of the process of identity formation and transformation is the need for acceptance or recognition of the assumed or claimed identity of others. While internal self-identification is important, success even at that personal and private level is dependent on the response of the external “other” against whom an independent identity is being asserted. Since we do not have much control over how others perceive us, we need to negotiate with them about their perception of our identity and how they relate to that identity from their perspective. It is therefore misleading to speak of isolated or self-contained identities, for the nature and the outcomes of the process of defining these identities are contingent and uncertain. I may walk into a situation assuming that others will regard my identity as a Muslim with hostility, which may lead me to hide or understate this aspect of myself. However, if I realize that my identity as a Muslim may in fact be irrelevant to others, or even to my advantage, then I may reveal it, but then the question becomes what sort of Muslim I am expected to be or am accepted as—liberal or conservative, pious or not. Engaging in such tactical or instrumental expression of cultural or religious identities is so common and spontaneous that we are often unaware that we are doing it, or at least we do not wish to acknowledge it openly.

The concept of identity can be broadly or narrowly defined, depending on the actors, context, and purpose. It is often a code for moral and political discourse or a proxy for a wide variety of declared and undeclared objectives. It includes how we define ourselves—where and when, to what ends—as well as how others perceive and relate to us, and, finally, how they react to one aspect of our identity or another. Whether collective or personal, identity encompasses a range of actions, motivations, substantive commitments, and instrumental affiliations. For instance, does being an Indian Muslim presuppose or require hostility toward a Hindu Indian or acceptance of that person as an equal human being and citizen of India? How about the way a Pakistani Sunni Muslim is supposed or expected to feel about a Shi‘a or Ahmadi Muslim in Karachi, an Iranian Shi‘a Muslim about a Baha’i in Tehran, or a Turkish Sunni about an Alavi in Istanbul? None of these relationships is uniform or inevitably determined one way or another, since members of each community differ or change the way they perceive of or relate to each other.

It is precisely because notions of self and the other, as well as the mean-

ings of values and construction of cultural memories, are all open to contestation and reformulation that I emphasize the critical importance of safeguarding the space in which that process can take place. The fact that proponents of the dominant interpretations of the presumed or perceived aspects of cultural or religious identity would represent them as the *only* authentic or legitimate positions of the culture on a given issue simply emphasizes the importance of ensuring every possibility for dissent and freedom to assert alternative views or practices. The existence of overlapping cultures and shared identities between persons and groups does not mean that there are homogenous or monolithic cultures or identities, or that such visions should be imposed across groups or societies. The equally true reality of diversity within cultures indicates the need for tolerance and acceptance of the differences within as well as among cultures. This perspective on the processes of cultural and identity formation and transformation emphasizes the need to protect the space and processes of contestation and reformation through which an individual can affirm his or her own identity. The process also includes the ability to contest the meaning and implications of one's identity as the individual deems necessary or desirable. Such space is necessary for internal debate and cross-cultural dialogue, for individual as well as collective self-expression.

I am arguing for a secular state, constitutionalism, human rights, and citizenship from an Islamic perspective because I believe that this approach is indispensable for protecting the freedom of each and every person to affirm, challenge, or transform his or her cultural or religious identity. My right to be myself presupposes and requires me to accept and respect the right of others to be themselves too, on their own terms. This principle of reciprocity, or the Golden Rule, is the ultimate cross-cultural foundation of the universality of human rights, as I will argue in Chapter 3. But for now I will turn to the question of why I believe it is so important to affirm these principles from an Islamic perspective.

### *Cultural Legitimacy for Social Change*

These same realities of diversity among and within cultures and the need to secure the possibilities of contestation as well as consensus within and among them emphasize why social change needs to be culturally legitimate, comprehensible, and coherent within the existing framework. A normative system cannot be culturally neutral. Virtually everything human beings do,

from mundane everyday activities and interactions to what is profoundly religious or symbolic, is culturally rooted. If we do not realize this, it is simply because our own culture has been so deeply internalized as the norm. Once we realize that our ways of being and doing things are not in fact the universal norm, sometimes not even for everyone within our own community, we will appreciate how difficult it is to speak of universal values or norms without dealing with the reality of permanent and inherent cultural diversity.

A culturally legitimate norm or value is respected and observed by the members of the particular culture because it satisfies certain needs or purposes in the lives of those individuals and their communities. The proponents of change must not only have a credible claim to being insiders in the culture but also use internally valid arguments to persuade the local population. In this way, the presentation and the adoption of alternative perspectives can be achieved through a coherent *internal discourse* in the culture. The internal criteria of validity of any initiative to secure cultural legitimacy for change will vary from issue to issue within the same society and across societies, but that too can be questioned and reformulated.

The authority and relevance deriving from internal validity for any change are crucial for several reasons that are inherent to the dynamics of social relations and social interaction. First, society may retrospectively perceive change as positive and beneficial, but such changes are likely to face initial resistance by the guardians of the previous order. Neither the proponents nor the opponents of social change are necessarily malicious or inherently oppressive people. Indeed, the proponents of change may serve the legitimate needs of their evolving society, while the opponents may serve the needs of the same society by resisting change until the case for it has been made. After all, upholding human rights and equal citizenship for all, as I argue in Chapter 3, must include the rights of those who oppose us or those we dislike. We must pay even more careful attention to respecting the rights of those who oppose us than to those of people who agree with us or whom we like, because we are more likely to violate the rights of our enemies than those of our friends. Such consistency is critical for the credibility of the human rights principle itself.

Second, since the individual is dependent on his or her society, public policy and action are more likely to accord with ideal cultural norms and patterns of behavior than private actions are. Open and systematic nonconformity gravely threatens those in authority over society—the elites who have a vested interest in the status quo. In suppressing nonconforming behavior,

those elites assert the imperative of preserving the stability and the vital interests of society at large, rather than admitting the reality that it is their own interests which they seek to protect. The question thus becomes, who has the power to determine what encompasses the public good? The substance of the issue being debated becomes a proxy for that permanent struggle. These factors emphasize the desirability of seeking the support of the cultural ideal for any proposition of public policy and action, because that ideal is less likely to be successfully resisted by the self-appointed guardians of the stability and well-being of society.

My emphasis on the role of internal actors and discourse for the cultural legitimacy of social change does not preclude the role outsiders can play in promoting acceptance of change. But outsiders can best influence an internal situation by engaging in discourses within their own societies about the same values, thereby enabling participants in one culture to point to the similar processes taking place elsewhere. Outsiders can also help support the rights of the internal participants to challenge the prevailing perceptions but should avoid overt interference, which can undermine the credibility of internal actors. Advocates of change in various societies should also engage in a cross-cultural dialogue to exchange insights and strategies of internal discourse and to promote the global acceptance of their shared objectives. Cross-cultural dialogue can also seek to promote the universality of shared values at a theoretical or conceptual level by highlighting shared moral and philosophical positions.

### *The Role of Human Agency*

As already emphasized, for any initiative of social change to become established practice, it must be interwoven with the fabric of the everyday lives and social practices of the people. The broad and far-reaching nature of this process clearly indicates that there is need for action at the state as well as the societal level, and that these two dimensions of change should be complementary and mutually reinforcing. The need to secure cultural legitimacy for social change emphasizes this dual strategy at the level of law and policy and makes those policy changes meaningful in terms of the social and cultural lives of communities. However, this approach assumes a certain type of relationship between the state and its citizens.

The state may be the agent of the desired kind of institutional change, but it should also be noted that the state is not a completely autonomous entity

that can act independently of the social and political forces within its populations or be free from the constraints of its resources or other factors. In fact, the nature and structure of the state and its willingness and ability to act at all are the products of primarily internal sociological, economic, and political processes as well as external and international influences. Whatever material resources and coercive powers are available to the elites who control the state, they depend on the willingness of the general population to accept or at least acquiesce to the state's actions. Those in control of the state are a tiny fraction of those who accept its authority, and their ability to enforce their will through direct force is untenable in the face of persistent large-scale resistance. To retain control and achieve their objectives, those who control the state must persuade or induce the vast majority to submit to their power and authority, which they tend to do by claiming to represent the will of the majority or acting in their best interest. This is not to suggest that hegemony and dominance cease to be oppressive, but only to note the underlying need for persuasion, which opens some possibility for change.

To have any hope of success, the proponents of social change must motivate the human agency of the population at large in favor of the proposed change. The methodology of cultural legitimacy, therefore, emphasizes the central role of human agency by firmly locating the impetus for change within the social and cultural lives of communities and individuals, rather than viewing persons and communities as passive subjects of change. At the same time, human agency operates in the context of networks of social action and interaction, which emphasizes the need for collaboration and cooperation. Nothing happens in human relationships except through the agency of some persons or groups who act or fail to act. But this conception of the role of human agency must be inclusive of all human beings, especially in today's globalized world, and cannot be limited to elites alone. Consequently, the outcome of human agency in any society is contingent on what else is happening in the world around us and not only on what happens within our societies or communities.

Once the centrality of human agency is recognized, whether in the interpretation of Shari'a or in general social change, many creative possibilities for reform and transformation will emerge. Times of severe crisis, as experienced by Islamic societies and communities today, should lead Muslims to question prevalent assumptions and challenge existing institutions that have failed to deliver on the promise of liberation and development. These crises are opening new opportunities for people to take control of their own

lives and realize their own objectives, thereby becoming the source and cause of the sort of transformation I am hoping for. But we cannot sit back and expect desired outcomes to materialize by themselves simply because societies are experiencing a deep and profound crisis. We must also apply our human agency, through both theoretical reflection and practical implementation, to advance our initiatives for the social change we desire. A good theory is necessary to direct strategies and action, but any theory must be practical to be good. It is from this perspective that I now turn to an explanation of what I hope is a good theory that can mobilize and motivate Muslims everywhere to action in favor of positive social transformation.

### **Elements of a Theory of Islam, the State, and Social Relations**

Various understandings of Shari‘a will remain, of course, in the realm of individual and collective practice of freedom of religion and belief. What is problematic is for Shari‘a principles to be enforced as a state law or policy on that basis alone, because once a principle or norm is officially identified as “decreed by God,” it is extremely difficult for believers to resist or change its application in practice. Since Islamic ethical principles and social values are indeed necessary for the proper functioning of Islamic societies in general, the implementation of such principles and values is consistent with, and indeed required by, the right of Muslims to self-determination. This right however, can be realized only within the framework of constitutional and democratic governance at home and of international law abroad, since these are the legal and political bases of this right in the first place. That is, the right to self-determination presupposes a constitutional basis that is derived from the collective will of the totality of the population and can be asserted against other countries because it is accepted as a fundamental principle of international law.

The paradox of separation of religion and state despite the connection of religion and politics can only be mediated through practice over time, rather than completely resolved by theoretical analysis or stipulation. This means that the question is how to create the most conducive conditions for this mediation to continue in a constructive fashion, instead of hoping to resolve the paradox once and for all. The two poles of this necessary mediation can be clarified as follows. First, the modern territorial state should neither seek to enforce Shari‘a as positive law and public policy nor claim to interpret its doctrine and general principles for Muslim citizens. Second, Shari‘a princi-

ples can and should be a source of public policy and legislation, subject to the fundamental constitutional and human rights of all citizens, men and women, Muslims and non-Muslims, equally and without discrimination. In other words, Shari'a principles must be neither privileged nor enforced, nor necessarily rejected as a source of state law and policy, simply because they are believed to be the will of God. The belief of even the vast majority of citizens that these principles are binding as a matter of Islamic religious obligation should remain the basis of individual and collective observance among believers. But that cannot be accepted as sufficient reason for their enforcement by the state, because they would then apply to citizens who may not share that belief.

Since effective governance requires the adoption of specific policies and the enactment of precise laws, the administrative and legislative organs of the state must select among competing views within the massive and complex corpus of Shari'a principles, as noted earlier. That selection will necessarily be made by the ruling elite. When the policy or law is presented as mandated by the "divine will of God," it is difficult for the general population to oppose or resist it. For example, there is a well-established principle of Shari'a, known as *khul'*, whereby a wife can pay her husband an agreed amount (or forfeit her financial entitlement) to induce him to accept the termination of their marriage. Yet this choice was not available in Egypt until the government decided to enact this Shari'a principle into law in 2000. The fact that this principle was a part of Shari'a did not make it applicable in Egypt until the state decided to enforce it. Moreover, although this legislation gave Egyptian women a way out of a bad marriage, they could not contest the condition that this is possible only at a significant financial cost for the wife. Such a limitation existed because the legislation was made in terms of "enacting" Shari'a rather than simply as a matter of good social policy. Thus, the diversity of Shari'a principles means that whatever is enacted and enforced by the state is the political will of the ruling elite, not the normative system of Islam as such. Yet such policies and legislation are difficult to resist or even debate when presented as the will of God.

To avoid such difficulties, I am proposing that the rationale of all public policy and legislation must always be based on civic reason, as explained earlier. Muslims and other believers should be able to propose policy and legislative initiatives emanating from their religious beliefs, provided that they can support them in free and open public debate by reasons that are accessible and convincing to the generality of citizens regardless of their reli-

gious or other beliefs. But since such decisions will in practice be made by majority vote in accordance with democratic principles, all state action must also conform to basic constitutional and human rights safeguards against the tyranny of the majority. This is because democratic government depends not only on the rule of the majority view but also on the fact that the will of the majority is subject to the rights of the minority, however small.

It is ultimately a question of degree and quality of implementation, of course, but these propositions are already accepted as the basis of legitimate government in the vast majority of present Islamic societies. Although practice is far from satisfactory anywhere, the theoretical acknowledgment of the need for constitutional democratic government opens the way to improving implementation, because it allows those principles to be invoked in challenging their violation. At the same time, however, the legitimacy and popular acceptance of those principles need to be reinforced by showing their consistency with Islamic doctrine. This Islamic legitimacy may not be readily or easily established in different parts of the Muslim world, but the proposal advanced in this book is intended to contribute to that process by clarifying some relevant issues, such as the nature of the state and its relationship to religion and politics.

### *The State Is Territorial, Not Islamic*

A necessary consequence of the inevitability of human interpretation of Islamic texts, as emphasized earlier, is that alternative views of Islam and formulations of Shari‘a principles are always possible and can be equally valid if accepted by Muslims. Since it is impossible to know whether or not Muslims would accept or reject any particular view until it is openly and freely expressed and debated, it is necessary to maintain complete freedom of opinion, belief, and expression for such views to emerge and be propagated. The idea of prior censorship is therefore inherently destructive and counterproductive for the development of any Islamic doctrine or principle; hence, maintaining the possibilities of dissent is the only way for the tradition to remain responsive to the needs of believers. As I will argue, the necessary space for dissent and debate is best secured now through constitutional democratic governance and protection of human rights. In other words, these modern concepts and institutions are necessary not only for the religious freedom of Muslim and non-Muslim citizens of any present territorial state but for the survival and development of Islam itself. Indeed, freedom



of dissent and debate was always essential for the development of Shari'a, because it enabled consensus to emerge freely and evolve around certain views that matured into established principles through acceptance and practice by generations of Muslims in a wide variety of settings. After all, every orthodox view that comes to prevail was a heresy to the previous view, including Islam itself in relation to the religious and social beliefs of Arabia before the Prophet. (This is not to say that every heresy should or will become the orthodox view.)

It is from this Islamic perspective that I oppose the idea of an Islamic state that can enforce Shari'a as positive law and official state policy. To live up to this claim, a state would be required to implement traditional Shari'a principles like the *dhimma* system because there is no Shari'a-based justification for failing to do so. According to the *dhimma* under traditional interpretations of Shari'a, when Muslims conquer and incorporate new territories through *jihad*, People of the Book (mainly Christians and Jews) should be allowed to live as protected communities upon submission to Muslim sovereignty but cannot enjoy equality with Muslims. Those who are deemed to be unbelievers by Shari'a standards have not been permitted to live within the territory of the state at all, except under temporary safe conduct (*aman*). The pretext of necessity (*darura*) is often cited to justify the failure to enforce such Shari'a principles, but the rationale for that notion is limited and short-term. Those who claim that justification must also strive to remove whatever conditions force them to fail to observe what they believe to be Shari'a obligations. They cannot invoke necessity as a permanent justification for their failure to enforce the *dhimma* system.

I am not, of course, suggesting that this system should be applied today, but I wish to show that it is now so untenable that even the most ardent advocates of an Islamic state do not seriously consider applying it in the present local and global realities of Islamic societies. The recent case of the Taliban in Afghanistan is perhaps the exception that proves the rule. Though even that regime did not attempt to implement the *dhimma* system to its full extent, its limited effort to apply it in the late 1990s resulted in the almost total isolation of the Taliban and its condemnation by Muslims everywhere. It should be recalled here that only four out of more than forty-four Muslim-majority countries in the world were willing to recognize the Taliban regime as the legitimate government of Afghanistan.

Any and all proposed possibilities of change or development must therefore begin with the reality that European colonialism and its aftermath have

drastically transformed the basis and nature of political and social organization within and among territorial states where all Muslims live today. A return to precolonial ideas and systems is simply not an option, and any change and adaptation of the present system can be realized only through the concepts and institutions of this local and global postcolonial reality. Yet many Muslims, probably the majority in many countries, have not accepted some aspects of this transformation and its consequences. This discrepancy seems to underlie the apparent acceptance by many Muslims of the possibility of an Islamic state that can enforce Shari‘a principles as positive law; it also underlies the widespread ambivalence about politically motivated violence in the name of *jihad*. Significant Islamic reform is necessary to reformulate such problematic aspects of Shari‘a but should not and cannot mean the wholesale and uncritical adoption of the dominant Western theories and practices.

To illustrate the sort of internal Islamic transformation I am proposing, I will briefly review how the traditional Shari‘a notions of *dhimma* should evolve into a coherent and humane principle of citizenship in view of the following considerations. First, human beings tend to seek and experience multiple and overlapping types and forms of membership in different groups. These include ethnic, religious, and cultural identity; political, social, and professional affiliation; and economic interests. Second, the meanings and implications of each type or form of membership should be determined by the purpose of belonging to the group in question, without precluding or undermining other forms of membership. That is, multiple and overlapping memberships should not be mutually exclusive, as they tend to serve different purposes for different persons and communities. Third, the term “citizenship” is used here to refer to a particular form of membership in the political community of a territorial state in the global context. It should therefore be related to this specific rationale or purpose without precluding possibilities of membership in other communities for different purposes. People are not always consciously aware of the reality of their multiple memberships, nor can they always appreciate that those memberships are mutually inclusive, each being appropriate or necessary for its unique purpose or rationale. On the contrary, it seems that there is a tendency to collapse different forms of membership, as when ethnic or religious identity is equated with political or social affiliation. This is true of the coincidence of nationality and citizenship in Western political theory that was transmitted to Muslims through European colonialism and its aftermath.

Thus, official or ideological discourse regarding the basis of citizenship as membership in the political community of a territorial state did not necessarily coincide in the past with a subjective feeling of belonging or an independent assessment of actual conditions on the ground. Such tensions used to exist in all major civilizations and continue to be experienced in various ways by different societies today. The development of the notion of citizenship in the European model of the territorial “nation-state” after the Peace Treaty of Westphalia (1648) tended to equate citizenship with nationality. This model defined citizenship in terms of a contrived and often coercive membership in a “nation” on the basis of shared ethnic and religious identity and political allegiance that was both required by and assumed to follow from residence within a particular territory. In other words, the coincidence of citizenship and nationality was not only the product of a peculiarly European and relatively recent process but was often exaggerated in that region itself at the expense of other forms of membership, especially of ethnic or religious minorities. I prefer to use the term “territorial state” to identify citizenship with territory, instead of “nation-state,” as that can be misleading, if not oppressive to minorities.

The term “citizenship” is used here to denote an affirmative belonging to an inclusive, pluralistic political community that accepts and regulates the possibilities of various forms of difference among persons and communities to ensure equal rights for all, without distinction on such grounds as religion, sex, ethnicity, and political opinion. This term is intended to signify a shared cultural understanding of equal human dignity and effective political participation for all. In other words, citizenship is defined here in terms of the principle of the universality of human rights as “a common standard of achievement for all people and nations,” according to the Preamble of the 1948 United Nations Universal Declaration of Human Rights. That is, human rights determine the meaning and implications of citizenship everywhere.

There is a dialectical relationship between domestic and international conceptions of citizenship, whereby the agency of subjects at each level seeks to ensure human dignity and social justice everywhere in the world, whether at home or abroad. Citizens acting politically at home participate under the fundamental understanding of universal human rights, which in turn contributes to the definition and protection of the rights of citizens at the domestic level. The relationship between citizenship and human rights is therefore inherent to both paradigms, which are mutually supportive.

The desirability of this understanding of citizenship is supported by the Islamic principle of reciprocity (*mu'awada*), also known as the Golden Rule, and is emphasized by the legal and political principles of self-determination. Persons and communities everywhere have to affirm this conception of citizenship in order to be able to claim it for themselves under international law as well as domestic constitutional law and politics. In other words, my right to citizenship is dependent on my recognition of the other's equal right to citizenship. That is, acceptance of this understanding of citizenship is the prerequisite moral, legal, and political basis for its enjoyment. Muslims should strive toward this pragmatic ideal from an Islamic point of view, regardless of what other people do or fail to do in this regard.

These reflections clearly emphasize the importance of creative Islamic reform that balances the competing demands of religious legitimacy and principled political and social practice, which can best be achieved under a secular state. Still, one should also specifically challenge the notion of an Islamic state, which seems to be so appealing to many Muslims in the current domestic and global context. For example, it is sometimes suggested that the idea of an Islamic state should stand as an ideal while citizens seek to control or manage its practice. But as long as this notion is accepted as an ideal, some Muslims will attempt to implement it according to their own understanding, with disastrous consequences for their societies and beyond. It is impossible to control or manage the practice of this ideal without challenging its core claims of religious sanctity for human views of Islam. Once the possibility of an Islamic state is conceded, resisting the next logical step—seeking to implement it in practice—would be regarded as a heretical or an “un-Islamic” position.

Maintaining this ideal is also counterproductive because it precludes debates about more viable and appropriate political theories, legal systems, and development policies. Even if one overcomes the psychological difficulty of arguing against what is presented as the divine will of God, charges of heresy may lead to severe social stigma, if not to prosecution by the state or direct violence by extremist groups. As long as the idea of an Islamic state is allowed to stand, societies will remain locked in stale debates about issues such as whether constitutionalism or democracy is “Islamic” and whether interest banking is to be allowed or not, instead of working to secure constitutional democratic governance and pursuing economic development. These fruitless debates have kept the vast majority of modern Islamic societies locked in a constant state of political instability and economic and social

underdevelopment since independence. Instead, Muslims need to accept that constitutionalism and democracy are the ultimate foundation of the state itself and to engage in the process of securing them in practice. To establish authoritatively that the state will not and cannot enforce any religious view of charging or paying interest on loans (*riba*) is to ensure the freedom of all citizens to choose to practice or avoid interest banking as a matter of personal religious belief. Moreover, citizens who wish to avoid such practices can establish their own banking institutions, subject to appropriate regulation by the state and general public supervision, like any other business venture. These are examples of the real issues facing Islamic societies today, which cannot be resolved by futile debates about an incoherent and counterproductive notion of an Islamic state to enforce Shari'a as the automatic basis of public policy and law.

Another argument in support of the notion of an Islamic state is based on the distinction between Shari'a and *fiqh* (Islamic jurisprudence), namely, the claim that since *fiqh* is a human interpretation, it can be amended and adjusted to fit the current circumstances of Islamic societies, whereas Shari'a should remain immutable. In fact, both Shari'a and *fiqh* are the products of human interpretation of the Qur'an and Sunna of the Prophet in a particular historical context. Whether a given proposition is said to be based on Shari'a or *fiqh*, it is subject to the same risks of human error, ideological or political bias, or influence by its proponents' economic interests and social concerns. For example, a person may claim that the prohibition of *riba* is decreed by Shari'a, but this claim cannot be meaningful without a clear definition and application of this term, which is the subject of *fiqh*. Since human interpretation of relevant texts of the Qur'an and Sunna is unavoidable in both aspects of this issue, it is difficult to distinguish between the two.

A modified version of the same argument asserts that all that is required is to observe the basic objectives or purposes of Shari'a (*Maqasid al-Shari'a*), while *fiqh* principles are subject to change from one time or place to another. But the problem with this view is that the so-called basic objectives of Shari'a are expressed at such a high level of abstraction that they are neither distinctly Islamic nor sufficiently specific for the purposes of public policy and legislation. As soon as these principles are presented in more specific and concrete terms, they will be immediately implicated in the familiar controversies and limitations of *fiqh*. For example, "the protection of religion" is one of the objectives of Shari'a, but this principle has no practical utility without a clear definition of what "religion" means in this context; nor is it

useful without specifying the necessary conditions and limitations of the protection of religion as a matter of state policy and legislation. Does “religion” include non-theistic traditions like Buddhism and atheism? Can a Muslim adopt another religion or belief? When can freedom of religion be limited in the public interest of the state or the rights of others? Addressing such questions immediately takes the subject into the realm of *fiqh* principles, which raise a number of serious human rights and political objections, as we have seen.

If the notion of an Islamic state is incoherent and unworkable, what alternative model of the state am I proposing, and how different is it from the so-called Western secular state that many Muslims oppose? To challenge the basis of this hostility to secularism, by which I mean a secular state as defined from the beginning of this chapter, I will now attempt to show that this necessary political doctrine in fact promotes possibilities of honest piety and diminishes the risks of hypocrisy among believers.

### *Secularism as Mediation*

The word “secular” in the English language derives from the Latin word *saeculum*, meaning “great span of time” or, more closely, “spirit of the age.” In time the meaning changed to “of this world,” which implies the presence of more than one world. Eventually the term came to be understood as reflecting a distinction between secular (temporal) and religious (spiritual) concepts. The term also evolved in the European context from “secularization” as the privatization of church lands to the secularization of politics and, later, art and economics.

Secularism does not mean the exclusion of religion from the public life of a society, though the misconception that it does is one of the reasons many Muslims tend to be hostile to the concept. It is of course possible to define secularism as a totally hypothetical notion of strict and systematic separation in all aspects of the relationship between religion and the state, and then to assert this narrow and unrealistic definition in rejecting any form of regulation of that relationship. That purely theoretical and polemical definition of secularism is not valid even for those Western countries commonly assumed to be secular. Instead of chasing such an illusory notion, it is more productive to discuss secularism as it is actually understood and practiced by different societies, each in its own context. All societies are in fact negotiating the relationship between religion and the state over many issues at different

times, rather than applying a specific or rigid definition or model of secularism. A conception of secularism as a product of deeply contextual negotiation in each society does not mean that there are no unifying principles among these various experiences, or that the meaning and implications of this concept are totally relative to each society. It is indeed possible and useful to develop a shared understanding of the meaning of the concept and its implications through comparative analysis of different experiences. But there is no universal preconceived definition that can be imposed or transplanted from one society to another.

The ability of a mediating secularism to unite people despite religious and philosophical differences depends on its making minimal moral claims on the community and its members. It is true that secularism is not morally neutral, as it must encourage a certain civic ethos to achieve its own objective of separation of religion and state. It is also possible for minimal neutrality to evolve into stronger consensus on the values of pluralism and acceptance of difference. But the ability of secularism to unite diminishes to the degree that it is taken to require certain resolutions of some morally difficult issues. In fact, the more morally charged an issue is, the greater its impact on the credibility of secularism will be if the proponents of one position or the other attempt to impose their view on others. For example, secularism should be asserted to prevent the direct enforcement of religious doctrine about abortion or euthanasia on the sole basis that such doctrine constitutes the religious beliefs of some people. But denying those believers the right to express their views on such matters in religious terms would undermine the principle of secularism. The secular state must protect the right to express religious views on such issues while ensuring that public policy and legislation on abortion or euthanasia are based on civic reason, as discussed elsewhere in this book. This paradoxical balance is difficult to establish and maintain, but there is no alternative to striving to achieve it.

Thus asserting strict separation without accounting for the public role of religion is both unrealistic and misleading. It is unrealistic because it is a negative view of the relationship between religion and public policy, emphasizing the exclusion of religious ethics without providing an alternative, and thereby failing to take into account the moral or ethical foundations of public policy. It is misleading because it assumes a partially religious morality in the culture of every society without specifically stating it. Questions of public policy, such as whether or not to legalize abortion or how to adjudicate the custody of children after a divorce, necessarily draw on moral and ethi-

cal reasoning, which is influenced, if not significantly shaped, by religion in any society. Secularism, defined to mean only the separation of religion and state, is therefore incapable of meeting the collective requirements of public policy. Moreover, such separation by itself cannot provide sufficient guidance for individual citizens in making important personal choices in their private lives or public political participation.

In addition, secularism as simply the separation of religion and state is not sufficient for addressing any objections or reservations believers may have about specific constitutional norms and human rights standards. For example, since discrimination against women is often justified on religious grounds in Islamic societies, this source of systematic and gross violation of human rights cannot be eliminated without addressing the commonly perceived religious rationale. The mediation aspect of secularism is relevant to how to balance protection against discrimination with freedom of religion or belief. This is simply an aspect of how the scope of fundamental rights is determined by balancing competing claims, since these rights are not absolute. For instance, it is obviously reasonable to limit freedom of speech to protect the rights of others—for instance, freedom of speech does not mean that one can shout “fire” in a crowded theater—or to defame the reputation of other people.

The principle of secularism, as I am defining it here, includes a public role for religion in influencing public policy and legislation, subject to the requirement of civic reason. This acknowledgment of the public role of religion can encourage and facilitate debate and dissent within religious traditions, which can overcome religion-based objections to equality for women. When a society ensures that the state is neutral with regard to religion, the coercive power of the state cannot be used to suppress debate and dissent. But citizens need to use that safe space actively to promote religious views that support equality for women and other human rights. In fact, such views are required to promote the religious legitimacy of the doctrine of separation of religion and state itself, as well as other general principles of constitutionalism and human rights.

Allowing Shari‘a principles to play a positive role in public life without permitting them to be implemented through state institutions simply because that is the belief of some citizens is a delicate balance that each society must strive to maintain for itself over time. For example, matters such as dress style will normally remain in the realm of free choice, so that women can neither be forced to wear the veil nor be prevented from doing so if they



wish to wear it. But style of dress can be an issue for public debate, including constitutional litigation, to balance competing claims when, for instance, it relates to safety concerns in the workplace. Religious education should normally be a matter of private choice for parents but can involve public-policy considerations regarding the need for comparative and critical religious education to enhance religious tolerance and pluralism. I am not suggesting that the context and conditions of free choice of dress or religious education will not be controversial. In fact, such matters are likely to be complex at both the personal and the societal level. My concern is with ensuring, as far as humanly possible, fair, open, and inclusive social, political, and legal conditions for the negotiation of public policy in such matters. These conditions, for instance, are to be secured through the entrenchment of such fundamental rights of individuals and communities as the rights to education and freedom of religion and expression. Considerations of legitimate public interests or concerns are also relevant, for instance, in ensuring complete and equal access to education for girls as well as boys. There is no simple or categorical formula to be prescribed for automatic application in every case, although general principles and broader frameworks for the mediation of such issues will emerge and continue to evolve within each society. This notion of secularism as mediation will become clearer when applied to specific situations, as I will attempt to do in relation to India, Turkey, and Indonesia in later chapters.

It is critically important for Islamic societies today to invest in the rule of law and protection of human rights in their domestic politics and international relations. This is unlikely to happen if traditional interpretations of Shari'a that support principles like male guardianship of women (*qawama*), sovereignty of Muslims over non-Muslims (*dhimma*), and violently aggressive *jihād* are maintained. Significant reform of such views is necessary because of their powerful influence on social relations and the political behavior of Muslims, even when Shari'a principles are not directly enforced by the state. One premise of my approach is that Muslims are unlikely to actively support human rights principles and effectively engage in the process of constitutional democratic governance if they continue to maintain such views as part of their understanding of Shari'a.

Religion is an important force that competes with other life philosophies in the sphere of civic reason to influence policy, whether operating through organized groups or in the domain of personal views and beliefs. This can

be observed in relation to personal concerns about quality of life, educational policy, abortion and other aspects of family policy, religious freedom, immigration and naturalization policies, and so forth. The underlying notion of secularism as mediation is that such issues are debated and negotiated among social and political actors through consensus-building and compromise rather than total victory for one side and utter defeat for another. This should be as true for Muslims regarding Shari'a as it is for other societies and their religious traditions. In all cases, issues of public policy and legislation should be the subject of negotiations within the imperatives of constitutionalism, human rights, and citizenship. To be clear on the point, no state is authorized to violate constitutionalism, human rights, and citizenship; failure to comply with these principles is simply *ultra vires*, beyond the capacity of state institutions. But within those parameters, there is still room to negotiate and seek compromise among competing perspectives.

The ability of religious actors to influence public policy is influenced by historical relations of religion and state and by current conditions such as urbanization, demographic changes, level of religiosity in the society, and relations among religious communities. Since such historical and current conditions themselves tend to shift and change over time, the impact and outcome of religion on public policy must adjust to such changes. Moreover, while religion has the potential to operate as a hegemonic discourse in civic reason, nonreligious forces or ideologies can play a similar role. The separation between religion and state is compromised when the dictates of a particular religion, as interpreted by religious authorities or the ruling elite, are made into a prerequisite condition for participation in civic reason.

But this can also happen from a nationalist or so-called secular perspective. It is seen, for example, in the controversy over recent French legislation that prohibits Muslim girls from wearing headscarves in school. The decision to ban the use of the Islamic headscarf in the name of *laïcité*, the French conception of secularism, reflects the higher priority given to the assimilation of immigrants into French cultural citizenship as a policy goal than to the possibilities of ethnic or cultural identity within a national framework of multiculturalism like that which prevails in northern European countries and Canada. The French republican conception of secularism that was invoked functioned as a tool of coercive cultural uniformity among French citizens, especially among immigrant populations.

The debate over the headscarf and French secularism must be located in a wider context of postcolonial relations, including the ambivalent relation-

ship of France with its former colonies, as well as in the context of stereotypical perceptions and anxieties about Islam and Muslims. Often the victims of racism and discrimination, Muslims are uniformly perceived and treated as outsiders in French society, although a significant number of them have French citizenship. This raises important questions about the extent to which Muslims in France have representation in and access to civic reason through French state and nonstate institutions.

The French case also illustrates how secularism can be invoked as a hegemonic idea of national culture to the exclusion of other identities, thereby violating the requirements of civic reason. The exclusion of persons and groups from the scope of civic reason is always objectionable, whether done in the name of nationalism, secular ideology, or religion. In other words, the French case illustrates how the principles of secularism itself can be violated in the name of its protection. The country's public policy regarding the headscarf is rationalized as required by *laïcité*, when in fact it is driven by irrational fear of the Muslim alien, even if legally a citizen, instead of being founded on civic reason. Ironically, the citizenship of Muslims, their right to be Muslims and citizens, is sacrificed to appease the guardians of *laïcité*, regardless of the demands of civic reason.

As noted earlier, secularism as the separation of religion and state is the basic and minimal condition for participation in the sphere of civic reason. But the relationship between secularism and religion can also have deeper significance, especially in the domain of civic reason. Religion may provide an important framework in which many social actors can present their respective claims, as long as these are formulated in the mode of publicly accessible reason. The relationship between religion and secularism can also be viewed as mutually sustaining. Secularism needs religion to provide a widely accepted source of moral guidance for the political community, as well as to help satisfy and discipline the nonpolitical needs of believers within that community. In turn, religion needs secularism to mediate relations between different communities (whether religious, antireligious, or nonreligious) that share the same political space or space of civic reason.

Secularism is able to unite diverse communities of belief and practice into one political community precisely because the moral claims it makes are minimal. It is true that all varieties of secularism prescribe a civic ethos on the basis of some specific understanding of the individual's relation to the community. Such an ethos may indeed be sufficiently complex and deeply entrenched so as to address some major moral issues facing the society in

question. But the ability of secularism to achieve the degree of consensus needed to enable and sustain political stability in religiously diverse societies means that it cannot tackle fundamental ethical and moral questions on which there is serious disagreement among different communities.

To be clear on the point, secularism cannot replace religion for believers, nor provide cross-cultural foundations for universal norms of human rights. Indeed, some believers may need a religious justification for the principle of secularism itself. I am not saying that a serious engagement of religion is essential for secularism to be legitimized everywhere and always, but such engagement is necessary to obtain the consent of most religious believers, who constitute the clear majority of all human beings. In particular, secularism by itself is unable to address objections or reservations that religious believers may have about specific principles of secular governance. A purely secular discourse can be respectful of religion in general, but its ability to rebut religious justifications of certain policies is unlikely to convince believers. For example, an assertion of equal citizenship for non-Muslims is unlikely to persuade Muslims unless there is an Islamic justification for that principle. In other words, the minimal normative content that makes secularism conducive to interreligious coexistence and pluralism and supportive of a space of civic reason diminishes its capacity to legitimize itself as a universal principle without reference to some other moral source.

Secularism precludes any specific understanding of religious doctrine from being directly enforced as state policy, but that is not enough to address the need of religious believers to express the moral implications of their faith in the public domain. That is why I have emphasized that secularism as separation of religion and state is necessary but insufficient without acknowledging and regulating the political role of religion. Both elements of this broader definition of secularism can be enhanced by insisting on a contextual understanding of the rationale and functioning of secular government in each location.

And it is here that religion can play a vitally important role. The condition of secularism is likely to be seen as merely expedient and temporary by religious adherents unless they are also able to find secularism consistent with (or, preferably, implied or stipulated by) their religious doctrine. It is also clear that the dichotomy of demanding a choice between religion and secularism has already failed, as shown by the dramatic rise of religious affiliation and practice throughout the territories of the former Soviet Union after

decades of state-sponsored atheism and suppression of religion. Politics and religion do not operate in distinct realms, because each continually informs and is informed by the other. The concept of the secular lacks independent motivating power for believers, who tend to understand it in a dialectical relationship to their religious beliefs rather than in isolation from the religious realm.

Shared concerns facing all human societies, which must necessarily struggle with the relationship between religion and the state, include the question of the constitutional and legal status of religion. As can be seen from the experiences of various Western countries, secularism allows a great variety of options for the constitutional status of religion. One possibility is for religious leaders to participate in state institutions and legislative bodies and attempt to promote their religious values as any other democratically elected representative would. Another possibility suggested by the European experience is the system of special bilateral agreements between the state and religious entities, as is the case in Spain and Italy today. This can be a third alternative—to theocracy and strict state neutrality—that permits flexibility in reconciling competing claims and reassuring minority religions or sects. The realities of religious diversity facing all Islamic societies can also be addressed through a variety of mechanisms to promote genuine pluralism and acceptance of religious differences. To recall the point about secularism as mediation within the parameters of constitutionalism, human rights, and citizenship, temporary or limited solutions for contentious issues may be applied while longer-term negotiations continue.

In the final analysis, there is a permanent paradox in the competing roles of religious autonomy and authority, on the one hand, and the political authority, legal powers, and material powers of the state, on the other. This paradox derives from the inherent nature and interdependence of the two types of institutions. Religious communities need the cooperation of the state in order to fulfill their own mission. However rich and well-organized a religious community may be, it cannot avoid conflict with the state, because both sides seek to influence, if not control, the behavior of the same population living in the same territory. But the state has to seek some measure of control over religious institutions in order to limit the ways in which they can influence or shape the public behavior of believers in their communities. In other words, even when the state is not required or allowed to provide material and administrative support for rich and well-organized reli-

gious communities, it cannot afford to grant them complete freedom to propagate whatever values or engage in whatever activities they wish to pursue independently in the name of freedom of religion and belief.

The framework I am proposing in this book would first acknowledge this paradox and then seek to mediate its consequences through a range of mechanisms, rather than claim to impose a categorical and final solution. To begin with, this paradox must be acknowledged through a consistent commitment to the combination of religious neutrality of the state and acceptance of the role of religion in the public life of the society. This combination is more applicable to the history of Islamic societies, and more consistent with the nature of Shari'ā, than are postcolonial notions of an Islamic state that can enforce Shari'ā as the official law and policy of any country today. However, this difficult combination cannot be sustained in the context of the modern territorial state without a clear legal and political framework for mediating inevitable tensions and conflicts. For this, I am proposing the principles of constitutionalism, human rights, and citizenship, which can work only when they enjoy sufficient cultural and religious legitimacy to inspire and motivate people to participate in organized and sustained political and legal action. An Islamic discourse is essential for legitimizing the necessary strategies for regulating the public role of Islam. At the same time, that discourse cannot emerge or be effective without the security and stability provided by the secular state.