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# Islam and Human Rights

### I

This chapter examines the issues involved in thinking about Islam and human rights at an abstract level, divorced – for the moment – from any social and historical context. One of the principles underlying this discussion (and the study as a whole, as I argued in Chapter 1), is that in considering human rights and liberal principles in general we must shed the assumption of a sharp distinction between liberal Western and other non-liberal cultures. Concealed behind this popular view is the identification of liberalism with a strict secularism. It is more fruitful in thinking about human rights to draw the dividing line elsewhere: not between a secular and non-secular world-view but between one that respects the inherent worth of the individual and his or her inalienable rights, *even if that is encompassed in a metaphysical or religious framework*, and a world-view that does not, be it religious or secular. Only thus can we begin the analysis of the links between Islam and human rights, and the rival discourses they give rise to, with a more open mind. Showing that some interpretations of Islam make room for human rights principles will reinforce the argument that it is *not* necessary to reject religion altogether – and Islam in particular – in order to secure human rights.

A second preliminary point that follows closely upon the first derives from the *problematique* of ‘Orientalism’ as defined by Edward Said.<sup>1</sup> Said’s concern has been to illustrate that knowledge about the

'Orient' in European society has been used as a covert means of subjugation. He analyses in detail the ways in which European literature and science have promoted a distorted and biased view of Arab society and a stereotypical picture of Islam. Said traces the development of the 'discourse' of Orientalism and unveils its ulterior motives which are connected with power and political domination through misrepresentation and – crucially – through the use of cultural terms of reference which are Western and, therefore, inappropriate to the study of Muslim societies.

Said's critique is directly relevant to the subject of this study which is concerned both with human rights (in origin a Western concept) and the interaction between cultures. Chapter 1 attempted to disconnect human rights from power and cultural imperialism, through breaking the link between human rights and a rationalism which, Said agrees, has been used in some of its interpretations as a vehicle for domination by colonising states.<sup>2</sup> Furthermore one aim of this book as a whole is to dispense with stereotypes surrounding Islam and posit a particularist, socio-political approach to problems facing Muslim societies. But if the points that Said makes on imperialism and cultural stereotypes are taken, and have informed this study, it is difficult to address some of the other issues he raises, because – as Aijaz Ahmad has illustrated<sup>3</sup> – they are unclear and contradictory. Said is vague on whether a true representation of Islam or indeed of anything else is feasible (his approach as a whole relies on Michel Foucault). Yet, despite viewing the distinction between representation and misrepresentation as 'at best a matter of degree',<sup>4</sup> he praises the work of a number of students of the Middle East who have eschewed the distortions of Orientalist discourse. Furthermore he is ambivalent on liberalism and humanism. On the one hand, he applauds them. On the other, he condemns their underlying philosophy as a set of references used for the subordination of Muslim societies.

We need therefore to reiterate the approach adopted here by using Said solely as a starting point (because his ambivalence on liberalism and representation do not permit either agreement or disagreement). The critique of Orientalism, and doubts about the possibility of representation, are useful in cautioning us against our own cultural presuppositions and biases. But they must not provide a barrier to an

attempt (at least) of communication and understanding. Cultures are not impenetrable worlds to all who were not born and socialised in them. Inter-cultural dialogue is always possible, if extremely precarious. Furthermore the condition of modernity provides common concerns that facilitate this dialogue – as this and later chapters will illustrate – one of these being universal structures of authority as exemplified in the modern nation-state. The concept of human rights in particular, although of European origin, is not exclusive to Western cultures but binds together people from disparate backgrounds. In other words, if terms and concepts that are seemingly ‘Western’ are used here in the context of another culture this is because they are not alien to that culture but have become part of its concerns, whatever their initial origin and uses may have been.

This chapter will provide the first part of a central argument of the book, by showing that the religion of Islam is not inherently illiberal and that it can be reconciled, at an abstract level of ideas, with the principles of human rights. The remaining chapters will provide the complementary part of the argument, which is that if we want to understand why it is that illiberal interpretations of Islam frequently predominate in historical reality, we have to examine the social and political conditions of Muslim societies, not Islamic doctrine or tradition. In other words, the aim is to defend the proposition that respect or disrespect for human rights is a matter of political will and choice, not of a cultural authentic ‘essence’ which necessarily shapes and constrains societies.

Section II is a somewhat simplified examination of the basic precepts of Islamic religious doctrine and Islamic law. It is not about traditional Islam *per se* but about how it is conceptualised in our contemporary period. The difficulties these precepts present in allowing for a reconciliation with human rights principles will be contrasted with the ways in which they can be harmonised with them. I will argue that this harmonisation is possible on the basis of a reinterpretation of Islam. Section III is a discussion of various schemes which *purport* to conciliate Islam with human rights but in fact reinforce its authoritarian interpretation. They will be contrasted, in Section IV, with attempts at genuine resolution in order to show that it is, indeed, a feasible option. The texts selected for examination are

recent (mostly from the 1970s onwards), because it is during this period that human rights have increasingly become a debated issue in Muslim societies. The chapter will conclude with a clarification of terminology and of vital distinctions.

What we must bear in mind, especially for Section II, is that even if the very broad and generally agreed on principles of the religion are selected for examination, they are not espoused by all Muslims either universally or across time. Also, that the exercise attempted here is not useful except as part of a more general argument because Islam, as such, is not 'something' independent of the societies which give expression to it.<sup>5</sup> The other use which this exercise serves is to explore the intellectual issues which will be subsequently discussed in the context of the politics of Egypt and Tunisia. That discussion will therefore be facilitated.

## II

Religion and politics are one: this is the first powerful myth with regard to Islam. It is true that Islam – in some historical periods and in some of its interpretations – has sought to reorganise society by providing guidelines for public as well as private life. But in other instances it has not. It is not the aim of this section to discover to what extent the bond between Islam and politics is historically real or whether Islam is exceptional among religions in this respect.<sup>6</sup> Rather, the argument in this section rests on what is currently *assumed* to be true with regard to the major precepts of the Islamic religion.

The reasons for the close link between Islam and politics are to be found, it is believed, in the story of Muhammad, who combined the roles of political and religious leader for the Arabs, and in the subsequent history of Islam in the Middle East and elsewhere, in which the fortunes of religion and empire were often closely linked. If a religion contains the belief that justice is to be achieved through the institution of an Islamic state (which is what many Islamists maintain), its influence on law and the concept of authority must be considerable and it must also contain a viewpoint on rights, positive or negative. This viewpoint will be examined in subsequent paragraphs.

For the purpose of organising Islamic authority, a set of laws was developed in the early centuries after Muhammad's death, the *sharia*. This was necessary because neither the Prophet in his lifetime nor the divine revelation, the Koran, offered detailed guidance on a range of practical social and political issues. In the event, it was left to political authority and most of all to legal experts to expound the legal doctrine. The emphasis that was placed on the revelation, and its sacred and timeless nature, required that this was done without greatly diverging from the Koran. But at the same time, considerable leeway was allowed in its interpretation. The jurists could appeal to the traditions of what the Prophet did or said (the *hadith*), and use 'independent reasoning' (*ijtihad*) and the consensus of the jurists (*ijma*), in order to construct a workable law.<sup>7</sup>

By the ninth century, however, it was agreed, by the Sunni community at least, that all the necessary interpretation of the Koran had been completed and that the law had acquired its final form. The Shia community dissented, but although *ijtihad* remained central in Shia legal thought in theory (having the status of a separate source of law) in practice it was much limited by the requirement not to stray from the example of the sinless and infallible imam.<sup>8</sup> Over time then, the *sharia* became rigid and unresponsive to social reality.

This is the second major myth with regard to Islam – that the door of *ijtihad* was closed in the ninth century. But the reality was very mixed. Through history a number of ways have been devised to use the law for a variety of social and political purposes and needs. The door of *ijtihad* was never really shut. The law was often pragmatically revised and its unclarified points subject to much debate and interpretation, while the myth that it could not be subject to change was simultaneously upheld.<sup>9</sup>

The above points are important and need to be kept in mind when discussing questions of Islam and human rights. The first of such questions are about the individual. It must be made clear at the outset that the idea that human beings have rights *qua* human beings is absent, in *explicit* form, from the Koran and the *sharia*. Only God has rights, not people.<sup>10</sup> Only God has absolute freedom, human freedom consisting in the complete surrender to divine will.<sup>11</sup> In the Koran submission to God is repeatedly stressed as a cardinal value. The

individual's due is not universally the same. It depends on a man's acts and on his relationship with God, on his behaviour and faith, not on his mere being. Rather than rights, it is more appropriate in the Koran and in traditional Islam to talk of man's privileges.<sup>12</sup> Rights, so far as they exist, are ensured through networks of social obligation<sup>13</sup> and duty, not right, is at the centre of traditional Islamic justice.

At the same time, however, Islam stressed the dignity and elevated the status of the individual.<sup>14</sup> In pre-Islamic Arabia, the individual was totally subsumed to the tribe but in the new religion the individual became the vicegerent of God on earth, defined by faith and in reference to Allah, not to the social group. The relationship with Allah was to be direct and intermediaries, such as the clergy, were not considered necessary. The absence of the doctrine of original sin and the conception of death as a natural occurrence – not punishment for sin – meant that a person was not considered inherently evil in Islam.<sup>15</sup> Furthermore the notion of *fitra* (the 'innate disposition created by Allah as a necessary medium to universal guidance'), strengthened the idea of the existence of a common humanity.<sup>16</sup>

If Islam stressed the notion of individual responsibility towards God, there was an ambivalence on this point, which stemmed from the Koran itself. Similar to the Christian belief in predestination there was a tendency to view the course of human existence as determined by God, and a destiny from which the individual could not escape. The tension between predestination and free will has never been resolved in Islam. But despite this ambiguity the individual does have a central place in the Islamic world-view, as in the other monotheistic religions, and this can provide a foundation for the concept of human rights. So can the doctrinal insistence on the equality of all believers. The major distinctions in Islam are between the faithful and the non-faithful and between men and women and they both present major problems for the concept of human rights as we shall see. But, at least between male believers, differences of race, colour, class or nationality are believed to be irrelevant to individual worth.

The position of the individual, the centrality of duty in traditional Islamic justice and the equality of believers, inform the relationship between authority and society. The ruler in traditional Islam holds a sacred trust. He is the one who, by protecting the Islamic order,

guarantees the spiritual welfare of the people in this world and the next. The ruler is responsible for the enforcement of the Islamic law and is subject to the law himself. Men are obligated to obey only the good.<sup>17</sup> So the ruler's position is not inviolable, but subject to certain conditions, and this is obviously important for the notion of rights. The ruler is not all-powerful or divinised in any way.

For a number of reasons, however, these prescriptive rules about authority, contained in the law itself, were ultimately thwarted by the very same law. Precisely because a properly constituted authority was supposed to guarantee the welfare of all, the interests of authority and community, not of the individual, became supreme. Because the first centuries after the death of Muhammad were ridden with discord and civil strife (*fitna*), later jurists encouraged allegiance to whatever government was in power, even if it were tyrannical. The ruler was supposed to obey the law and be deposed if he did not, but no institution could really enforce this and no exact legal procedures were worked out to that effect. In extorting confessions the ruler was allowed to use corporal punishment and imprisonment. Outside the *hadd* punishments he had complete discretion over meting out sentences (although it was stressed that the punishment must fit the crime and that he had to be merciful). Authority, in short, was allowed to become absolute by the very law that was meant to restrict it.<sup>18</sup>

None of this is surprising or unexpected in a traditional system of authority. Nor is it exceptionally Islamic. What is important to understand from this discussion on authority, however, is that elements of restricting the ruler do exist in Islamic thought, albeit submerged by a non-democratic historical reality.

Having briefly examined the position of the individual and the relationship between authority and society, we can turn to another set of problems in Islam with regard to human rights: attitudes towards 'unbelievers', religious minorities, women, slavery, the *hadd* punishments and apostasy.

The Koran states unequivocally that unbelievers (or 'idolaters') must be slain.<sup>19</sup> The *sharia* did not contemplate their permanent residence within Islamic society and in theory they could only feel secure there when they were under temporary safe conduct (*aman*). Furthermore,

one tradition of *jihad* or holy war was in favour of aggressive expansion and the forcible conversion of unbelievers. But, again, the issue is ambivalent. The same Koran also states that 'there is no compulsion in religion'.<sup>20</sup> Another strand in the religious tradition is in favour of peaceful coexistence so long as Islamic society is not threatened.<sup>21</sup> The ambiguity is revealed by the various meanings of *jihad*. It can be taken to mean aggressive war; purely defensive war; or it can even refer to the personal struggle of the individual to enhance his or her virtue.<sup>22</sup>

The position of Christian and Jewish minorities is different from that of 'unbelievers' due to their categorisation as 'People of the Book'. Within Muslim society they are ensured certain rights, such as security of person and property, freedom of worship and a degree of communal autonomy. But they are also restricted in many ways. They are subject to a poll-tax (*jizya*), they are not allowed to preach openly and proselytise and are forbidden from holding the highest political offices. Being a non-Muslim in an Islamic state entails the status of a second-class citizen. Minorities enjoy religious tolerance rather than religious freedom.<sup>23</sup> Yet it must be noted that in the history of Islamic empire these minorities have enjoyed relative security during long periods.<sup>24</sup>

The inequality between the sexes is flagrant in traditional Islamic law and doctrine.<sup>25</sup> Certain women's rights are secured. The woman has a right to inheritance; to be a party to a contract in marriage and not an object for sale; to manage her own property; and some rights to divorce. But these, even though important, are only limited rights. A man is allowed to use physical violence against his wife; he can divorce her without explanation; he can be polygamous if he so chooses; he has exclusive rights of custody over the children in case of separation; and the testimony of one male witness is equal to that of two women. Attitudes to women are shaped by the belief that their sexuality poses a threat to social order and must therefore be concealed and controlled.

The issue of women, perhaps more than any other, confirms the view that 'Islam' is not an independent entity but is shaped by social and historical factors. Nowhere does the Koran clearly say that women must be veiled; that stoning is the punishment for adultery; or that women must be secluded or circumcised. As many have persuasively

argued, the Koran was either conveniently interpreted or completely ignored, to fit the needs of patriarchal society.<sup>26</sup> In the modern period many liberal and feminist thinkers have gone back to the Koran and tried to interpret it differently or show that many of the restrictions on women are not contained therein. As we shall see, they argue that the 'spirit' of the Koran points towards ultimate equality between the sexes, partly on the grounds that the Koran improved the position of women in many ways, compared to pre-Islamic Arabia.

Arguments of this latter type are today almost universally accepted as regards slavery. The Koran endorsed slavery as an institution, as of course did Islamic law.<sup>27</sup> But today very few would argue in its favour, even among the most conservative Islamic thinkers. The Koran's restrictions on slavery are seen as pointing, quite clearly, towards its ultimate abolition.

The *hadd* punishments constitute a major problem for human rights. These punishments are prescribed by the Koran and are said to fit a particular set of crimes, those committed 'against God' (unlawful intercourse, highway robbery, alcohol consumption, false accusations). No human legislator is supposed to abolish these laws. But again the issue is ambiguous. There are those who argue that the Koran does not explicitly say that 'the hand of the thief must be cut off' – only that 'it must be stopped'. But even among those who do not question the prevalent interpretation of the Koran the *hadd* punishments are, in our time, largely abhorred and many ways are devised to avoid their implementation.<sup>28</sup>

Islam encourages private property but limits it by strictly prohibiting usury. The law could provide the ground for economic and social rights through the obligation to pay an alms tax (*zakat*) for the poorest members of society. The notion that natural resources ultimately belong to God and that people are merely their custodians could encourage respect for the environment.

The freedoms of conscience and religion, finally, are explicitly denied by Islamic doctrine. Apostasy is punishable by death, and is in fact a double crime, against God and against political authority. But what about the Koranic verse 'there is no compulsion in religion'? One writer can claim, as we shall see, that it is 'inconceivable' that God would prescribe death in matters which pertain to the human

conscience and that the tradition that apostates must be killed originated in the wars of tribal rebellion after Muhammad's death.<sup>29</sup>

To summarise, Islamic religious doctrine and the *sharia* law, in their traditional understandings, do not contain or uphold the concept of human rights. The notion of right is not at the centre of Islamic justice. Rather, submission to God and duty are emphasised. The position of non-Muslims and of women is inherently unequal. In the law, procedures for the protection of the individual against authority and controls on the government are not worked out.

There are, however, some ideas in the religious doctrine and even in the *sharia* which can provide building blocks for a conciliation of Islam and human rights, among which are the equality of believers, respect for minorities and the belief that the ruler must obey the law. Duties can imply correlative rights. The position of the individual is central and the human being is valued, to a degree, for his or her humanity. Even the slave is considered a person in Islamic law, albeit not a fully responsible one.

It was important to examine these issues because they provide the staple for many of the contemporary discourses on Islam and human rights. I do not claim that this has been an examination of traditional Islam. Rather, it was a glance at how 'Islam' (which often, in effect, means traditional Islam) is conceptualised in our time. Why does the past have such a hold in Islamic thought? Here we come to the third major myth surrounding Islam: that the Koran, being the word of God, is in its totality unquestionable and lays down the law on everything. This indeed may be so. But, as any examination of Islamist and generally Islamic discourse makes clear, there are many, sometimes contradictory, readings of the Koran. This means that we are not really constrained by the text, even though it and the injunctions it contains cannot be set aside. Which interpretation we adopt is a matter of *choice*, not predetermined by the text itself. This section has shown that, on every issue which is related to the question of human rights, there is profound ambivalence in Islam. The next section will concentrate on those who have interpreted this ambivalence in an illiberal fashion.

## III

During the 1970s and 1980s human rights became a more prominent subject in the Middle East, among governments, political activists, intellectuals and ordinary people. This development is not new – like the rest of the world, Muslim societies have engaged with the notions of democracy and constitutionalism since the nineteenth century – but it does represent a renewed interest in those issues, its reference point now being the Universal Declaration of Human Rights. As such it testifies to the increasing prestige of the notion but does not necessarily imply that respect for rights or – what is equally important – a proper understanding of what they mean has also grown. The idea of human rights has been disseminated and has been picked up by various groups in the service of various causes, some pernicious to rights. As for the compatibility of human rights and Islam, the views expressed range from the assertion that Islam was the first historically to introduce the notion of rights and is therefore their best guarantee, to the claim that Islam is absolutely incompatible with rights and always will be.

The position of Chapter 1 was that the concept of human rights is an absolute, even though its conception may change and develop *over time*. The pertinent question now is whether the conception of human rights can vary *among cultural settings* and still retain its substance. The answer is that it can, but we must guard against the following. First that the notion of human dignity may be confused with the notion of human rights.<sup>30</sup> Second that, in facile attempts to transpose the notion of human rights in a particular cultural setting, which do not really resolve the relevant contradictions, the notion will be distorted. This is what occurs in the various schemes which purport to reconcile Islam and human rights which will be examined next.

Three texts have been selected in the first instance:<sup>31</sup> the ‘Universal Islamic Declaration of Human Rights’ issued by the Islamic Council in 1981; Abul A’la Mawdudi’s *Human Rights in Islam*; and Sultanhussein Tabandeh’s *Muslim Commentary on the Universal Declaration of Human Rights*.<sup>32</sup> Each represents a different strand of thought. The first is a declaration of semi-official status, enjoying governmental approval. The second is the work of an Islamist thinker

who has inspired opposition movements in the Middle East and beyond. The third has been written by a traditionalist religious thinker. The first and second have much more in common in their approach than the third. Governments and opposition compete with one another for the definition and appropriation of a 'modern' Islam while the traditionalist opinions Tabandeh stands for are those of a dwindling minority.

The tone of the 'Universal Islamic Declaration of Human Rights' is set in the first sentence of the foreword: 'Islam gave to mankind an ideal code of human rights fourteen centuries ago.' The preamble states a belief in the 'Vicegerency (*Khilafah*) of man who has been created to fulfil the Will of God on earth'; that 'rationality by itself without the light of revelation from God can neither be a sure guide in the affairs of mankind nor provide spiritual nourishment ...'; and that '... our duties and obligations have priorities over our rights ...'. The Declaration calls for an Islamic order, wherein the *sharia* would be respected.

In the list of 'inalienable' rights that follows the term 'the Law' refers to the *sharia* law. This is a major source of difficulties for the compatibility of the Declaration with the concept of human rights. Article 1, for example, states that human life is sacred and inviolable and that 'no one shall be exposed to injury or death, except under the authority of the Law'. What this – or the injunction that 'the sanctity of a person's body shall be inviolable' – mean in relation to the *hadd* punishments is left unclear. The rights to freedom, equality, justice, a fair trial and protection against torture are affirmed. The Koranic principle 'there is no compulsion in religion' guarantees the rights of minorities, but the Koranic injunctions that contradict this are not mentioned. The next article (11), states that 'every individual in the community (*Ummah*) ... 'is eligible to assume public office – therefore excluding non-Muslims. People have 'the right to choose and remove their rulers in accordance with this principle [process of free consultation (*shura*)]' but no explicit mention is made of the exact mechanisms of this process, a serious omission given the contested meaning of *shura*.

Articles 12 on the 'Right to Freedom of Belief, Thought and Speech' and 13 on the 'Right to Freedom of Religion' are also indicative of the problems. 'Every person has the right to express his thoughts and

beliefs so long as he remains within the limits prescribed by the Law'. The issues of apostasy and blasphemy, however, are not openly confronted. Economic and social rights are secured, as is the right to property. But the next stumbling block is article 19 on the 'Right to Found a Family and Related Matters'. Among other problematic statements are the following: 'Every spouse is entitled to such rights and privileges and carries such obligations as are stipulated by the Law', 'Motherhood is entitled to special respect ...' and 'Within the family, men and women are to share in their obligations and responsibilities according to their sex, their natural endowments, talents and inclinations ...'. The problems of inequality between men and women are clearly avoided or papered over and this becomes more evident in the following article 20, on the 'Rights of Married Women' (not, note, of women as a whole). A married woman can 'seek and obtain dissolution of marriage (*khul'a*) in accordance with the terms of the Law'. She also has the right to seek divorce through the courts and she can 'inherit from her husband, her parents, her children and other relatives according to the Law'. Given that the *sharia* gives extensive rights of divorce to the husband and not to the wife and imposes unequal distribution in inheritance between men and women, it is obvious that the matter is wilfully avoided.

Mayer has pointed out that the Arabic text, which is the original and therefore the more authoritative version of the Declaration, suffers even more from omissions and inconsistencies than the English translation.<sup>33</sup> The Declaration glosses over the most thorny issues of Islam and human rights: apostasy, equality between Muslims and non-Muslims, and between men and women. The problems with Mawdudi's text are similar.

Mawdudi begins by analysing the concept of *tawhid*, unity of God and creation, which 'negates the concept of the legal and political sovereignty of human beings'. He next explains the concept of *khilafa* which refers to man as the representative of God on earth. Democracy in Islam begins here and this concept makes it 'abundantly clear' that 'no individual or dynasty or class can be *khilafa* but that the authority of *khilafa* is bestowed on the entire group of people, the community as a whole, which is ready to fulfil the conditions of representation after subscribing to the principle of *tawhid* and *risala*

(prophethood).<sup>3</sup> Further, 'Every person in an Islamic society enjoys the rights and powers of the caliphate of God and in this respect all individuals are equal'; 'In this respect the political system of Islam is a perfect form of democracy.' What distinguishes it from Western democracy, according to Mawdudi, is that it is not based on popular, but on divine sovereignty. This, what the author describes as 'the essence of Islamic political theory', opens the way for his analysis of human rights principles.<sup>34</sup>

Mawdudi's text, as Mayer has pointed out, is most telling in what it omits.<sup>35</sup> In the section on 'fundamental rights' the author states that 'every Muslim is to be regarded as eligible and fit for all the positions of the highest responsibility in an Islamic state without distinction of race, colour or class' – the distinctions based on sex or religion are not mentioned. The *sharia* would not be modified in such a polity but 'an advisory council comprising men learned in Islamic law' will 'ascertain the real intent of the *sharia*' in cases where two or more interpretations of the injunctions are possible.<sup>36</sup> The contradiction with the principle of majority rule is blatant. By denying popular sovereignty and identifying the law of the land with the *sharia*, supreme power is automatically handed over to 'learned men'.

Mawdudi's assertion that all citizens have the same rights, be they believers or unbelievers, is belied by his own list of rights. The right to life is treated in a superficial and patchy way, through a mixture of Koranic injunctions and polemical counter-examples of the West's abuses – which permit the author to maintain that 'only' Islam guarantees the right to life. It is followed by 'respect for the chastity of women' (a circumscribed notion of a right), which is also allegedly solely guaranteed by Islam. The 'right to freedom' is relevant to slavery only. After an attack against Western slave practices, Mawdudi claims that 'the problem of the slaves of Arabia was solved in a short period of thirty or forty years' and the 'only form of slavery which was left in Islamic society was the prisoners of war'. He does not condemn slavery in principle.<sup>37</sup>

Mawdudi distinguishes basic human rights from the rights of citizens in an Islamic state which he then discusses. Are these human rights? The categorical confusions are constant. The rights to life and property are followed by 'the protection of honour' and the 'right' not

to be insulted by nicknames. Under the 'right to protest against tyranny' (which is a partial right) there is a sudden reference to the Pakistani Penal Code, a parochial slip. Freedom of expression is limited by the condition that 'it should be used for the propagation of virtue and truth', as is the right of association. A brief reference to freedom of conscience and conviction wholly evades apostasy. Equality before the law does not, apparently, mean full equality for non-Muslim citizens. Their lives and properties may be protected but it is not plainly stated whether they are equal in all rights. The 'right to avoid sin' is baffling. It turns out that it refers to the obligation of citizens to disobey the law of the state if it contravenes divine law. Finally democracy is to be expressed through *shura* – but no attempt is made to reconcile this institution with the functions of 'learned men' mentioned above.<sup>38</sup>

In contrasting Mawdudi with Tabandeh, a traditionalist Islamic thinker, it will become evident that the latter is quite unequivocal about the irreconcilable points between Islamic law and the Universal Declaration of Human Rights. On article 1, for example (Tabandeh takes the articles of the Declaration one by one and comments on them), he states that although Islam does not recognise distinctions based on race or class it does recognise those based on religion, faith and conviction. Details of the inequality between Muslims and non-Muslims before the law are expounded in his commentary on article 2 and they are quite stark, to the point that the punishment for murder is different depending on whether the victim is a Muslim or not. On slavery he is more circumspect. The conditions that permitted the existence of slavery at the time of the Prophet no longer exist and the aim of Islam was clearly to limit slavery. He therefore states his opposition to it without, however, condemning it outright in principle. He is forced to admit that if the conditions for slavery did exist today it would have to be legalised, but takes great pains to prove that this cannot be so. Tabandeh's views, although seemingly less progressive than Mawdudi's, are in fact more conducive to human rights principles because he does not deny the contradictions but tries to reconcile them with his belief that 'freedom is an innate principle of humanity'.<sup>39</sup>

In his comment on article 16 he is explicit, men and women are unequal. A Muslim woman is not allowed to marry a non-Muslim

because that would mean subordinating Islam to other religions (since women are inferior to men); a woman does not have equal rights to divorce, because she is unreliable by nature; the consent of her parents is necessary for her marriage (although her consent is needed also); and she is not allowed to take part in politics (here Switzerland, 'one of the most civilised countries and most perfect societies of the world' according to Tabandeh, is brought in as living proof of the benefits of this policy). He affirms the need for chastity and veiling. Finally he lists the rights of husband and wife. As many other writers on Islam and human rights he translates 'right' as the 'other's duty'. He also asserts that because women are to be protected and supported by men their welfare is more secure, thereby implicitly denying the need for women's rights. He affirms the inequality of women in inheritance and in legal testimony, as well as polygamy, although he disapproves of the latter given that men cannot treat all wives equally.<sup>40</sup>

On freedom of conscience and religion, Tabandeh states that only Muslims can hold public office and that apostasy is unacceptable. He accepts freedom in political but not in religious thought.<sup>41</sup> He concludes by reiterating the view that the Universal Declaration of Human Rights 'had not promulgated anything that was new nor inaugurated innovations' and that 'every clause of it, indeed every valuable regulation needed for the welfare of human society ever enacted by the lawgivers, already existed in better and more perfect form in Islam'.<sup>42</sup>

All the elements of the above three works on Islam and human rights recur in various contexts, governmental, oppositional or among ordinary people. Some additional examples will help to elucidate the problems. The frequent assertion by Muslims, who may even be apolitical, that their religion has best safeguarded human rights since its inception, is similar to governmental declarations to the same effect. Former President Rafsanjani of Iran stated, for example, that 'human rights are among the most important jurisprudential/historical issues inspired by the verses of the Holy Koran' and 'That which the international community is trying to draw up nowadays has been under discussion in Islam for a long time, and in the Islamic country of Iran, many of the individual and social rights from which the Muslims benefit also hold good for [religious] minorities; a clear example of this is the presence of deputies representing those minorities in the *Majlis*

with the same rights as the deputies of the Islamic *ummah*.<sup>43</sup> In a similar vein, the Foreign Minister of Iran in 1993, Ali Akbar Velayati, contrasted Islam's respect for rights with the Western equation of human rights with 'unbound freedom' [sic]. He claims that 'Westerners endeavour to impose their own beliefs and Western values on the world' whereas human rights are variously implemented in different countries.<sup>44</sup> The Islamic Republic is quite aggressive in propounding 'Islamic' human rights against the West.

Popular literature and propaganda reflect similar views. A recent translation, in booklet form, of *The Treatise on Rights* by Imam Zayn al-Abidin Ali ibn al-Husayn, who lived in the early period of Islam, illustrates the confusion surrounding the term 'right'. Although the translator does note in the introduction that the term '*haqq*' might better be translated as duties, obligations or responsibilities, he nevertheless proceeds to translate the word as 'rights' in order to show that 'in considering human rights primarily in terms of responsibilities, Islam diverges profoundly from most modern Western views'. The argument is as a result nonsensical at various points. It states, for example, that acts have rights against the person; that 'the right of him who asks your counsel is that you give him your counsel' or that (in addressing the ruler) 'the right of your subjects through authority is that you should know that they have been made subjects through their weakness and your strength'.<sup>45</sup>

In another booklet on *Women's Rights in Islam*, the author claims that 'The role designated for a Muslim woman by Islam is the clearest proof of the equality and rights that she enjoys within the faith.' She repeats a frequent argument of Muslim apologists in relation to women (and religious minorities), that because the roles of men and women are different this does not mean that they are unequal. She refers to Allah's 'natural division of labour' which is part of the 'natural balance' and according to which 'the male is obliged to bear a greater part of the economic responsibilities, whilst the female is equipped to shoulder the greater part of the childbearing and rearing responsibility'. The booklet is a tortuous attempt to prove that unequal rights and responsibilities, which cannot be doubted because 'to find fault with this natural ordering of things is to question God's wisdom', in fact corresponds to equality between the sexes.<sup>46</sup> In similar though

cruder form, the pamphlet entitled *Why Two Women Witnesses?*, which defends the Koranic principle that the testimony of two women is equal to one man's, asserts that 'the intellectual status of a Muslim woman is neither marred nor degraded by the Commandment'.<sup>47</sup>

Scholarly research is not immune from such arguments. Abdul Aziz Said's 'Islamic Perspectives' on human rights fails to come to grips with theoretical problems and contradictions. He states for example that 'the Islamic state combines elements of theocracy with democracy', a perplexing proposition on which no light is shed by the subsequent attempt to elucidate: 'The state is democratic since the right to govern derives from counsel among the believers ... However the rights of the people to change the law and the state are limited' and 'In the Islamic state, sovereignty belongs to God alone'.<sup>48</sup> In another article the same author makes comments such as 'While in the liberal tradition freedom signifies the ability to act, in Islam, it is the ability to exist or, more accurately, to become' – and leaves it at that.<sup>49</sup> A semi-scholarly article entitled 'Human Rights: Towards an Islamic Framework', claims that 'What is at issue is not whether or not human rights should be respected in the Arab world – this is not questioned – but rather the form which these human rights should take.' It proceeds to make a case for human rights based on the *sharia* law which safeguards the rights of all, including women, as exemplified in the Saudi Arabian Basic Law.<sup>50</sup> *The Iranian Journal's* special issue on human rights is similarly replete with evasions and distortions.<sup>51</sup> One instance is the argument that, in contrast to Christianity, Islam has not suffered from a struggle between church and state because it recognises no clergy. This suggests that in Islam secularism and secularisation are not an issue.<sup>52</sup>

Finally, Hassan Turabi of Sudan, claims that in the whole of Islamic history, the attempt has been to limit the powers of government; that despite anti-Muslim prejudices plurality and diversity is an ideal in the Islamic civilisation; and that Islam respects sexual equality.<sup>53</sup> In his analysis of the Islamic state, he states that 'an Islamic order of government is essentially a form of representative democracy' – in which, however, the majority/minority pattern would not be appropriate,<sup>54</sup> the role of the legal profession would be minimised and in which 'Christians in particular who now, at least, do not seem to have a public

law, should not mind the application of Islamic law as long as it does not interfere with religion.<sup>55</sup>

The problems with the proposed solutions for a conciliation between Islam and human rights described above are fairly evident but can nevertheless be listed here for the sake of clarity. First, in arguing that Islam from its inception introduced human rights, they make an ahistorical claim which fails to distinguish between ‘having a right’ and ‘what is right’ and between human rights and human dignity. The Koran contains, as I argued in section II, some general principles that may be conducive to respect for the human person and his or her rights but it does not explicitly propound the notion of inalienable rights, as no traditional text would. Rather, it stresses duties. This is the second point, the confusion, in the texts described above, between rights and duties. The question whether the notion of duty contains within it the notion of right is complex. A right does imply a duty, but it is of crucial importance to the idea of human rights that the right exists independently of and prior to its correlative duty. The centrality of duty in Islam is not a mere difference in emphasis but a judgment that rights are less important than duties. This, and the categorical confusion that stems from too close an attachment to the literal Koranic word, is evident in some publications where, under the heading ‘the rights of’ children, women and so is found a list of the duties others have towards them.<sup>56</sup>

The third problem in some of these texts is that ‘the community’ is exalted above the individual. There is a failure to distinguish between atomism and individualism and to see individual rights and the well-being of the community as complementary. This is usually the result of a desire to distance Islam from the West and its excessive individualism. Fourthly, and crucially, there is confusion between people having equal rights yet different roles, and people having different and therefore unequal rights. In this context, which is relevant particularly to women and non-Muslims, exhortations for ‘protection’ and special ‘respect’ are a means for the diminution of rights.<sup>57</sup>

Last, but not least, these texts betray a serious misunderstanding of the notion of freedom. On the grounds that freedom does not mean license for everything and anything but needs guidelines and rules – an obvious point for anyone who cares to think about liberty in society

– they define freedom, perversely, as restriction. The preoccupation is not to impose rules that will allow individuals to be protected from abuse by authority and their fellow citizens (therefore allowing them to participate freely in social and political life), but rather to protect people from themselves and from each other, through separation and stringent moral prohibitions. This lack of faith in the innate goodness of the human person and in his or her capacity for responsibility and freedom is typical of a traditional religious ethic which – as in other interpretations of monotheistic religions – relies for its proper functioning on the fear of God and the threat of punishment. In this respect this ethic is profoundly anti-humanistic.

It is evident that the concern of these authors is to defend Islam, not human rights. With the growing prestige of the concept of human rights internationally during the twentieth century and particularly from the 1970s onwards, many thinkers and political activists have felt compelled to take the notion on board.<sup>58</sup> This may or may not be a positive development. What is certainly negative is the facile incorporation of rights into an interpretation of Islam which is profoundly inhospitable to any notion of human rights.

It is the purpose of this chapter to show that this negative development is not inescapable and to produce evidence of the compatibility of Islam and human rights. This means a redefinition of what Islam consists of, not a reinterpretation of the concept of human rights that will render it an empty shell. Section II briefly described the points of difficulty but also of potential compatibility between Islam and human rights. What will now follow is an examination of how some thinkers have used this potential to argue for a true and valid conciliation, or the beginnings thereof. They achieve this only by raising the level of discussion from the detailed and particular points, of what the Koran says here and there, to broader concerns.

#### IV

Let us start from a brief and concise text entitled ‘Human Rights in Islam’ by Majid Khadduri. Its author notes that inequality of men and women and the institution of slavery stand in opposition to the

concept of equality and brotherhood of man propounded by Islam. His explanation is that the Prophet preferred gradual over revolutionary methods but that 'his ultimate purpose was clear: he intended to eliminate slavery and put women on an equal footing with men'.<sup>59</sup> On apostasy, he claims that its punishment by death originated in the wars that followed the prophet's death; and claims that 'in matters which pertain to human conscience, it is *inconceivable* (my italics) that God would prescribe death'.<sup>60</sup> Islam and human rights are compatible because the author's conception of the religion is *tantamount* to a respect for human rights principles.

Abdulaziz Sachedina, who will be used as a second example, confronts the question of freedom of conscience in the Koran. He starts by discussing the two opposed schools of Koranic exegesis, the 'Mutazilite and the Asharite'. The former argued that 'human beings, as free agents, are responsible before a just God' and that 'good and evil are rational categories which can be known through reason, independently of revelation'. The Asharites believed the opposite, concluding that 'God alone creates all actions directly, but in some actions a special quality of "voluntary acquisition" is superimposed by God's will that makes the individual a voluntary agent and responsible'.<sup>61</sup> The latter set of views have predominated in Islamic history, though the influence of the former has not been completely eradicated. The author also discusses the idea of *fitra* and, through an analysis of the Koran, concludes that the 'fundamental moral equality of all human beings at the level of universal guidance' has parallels to the notion of natural law.<sup>62</sup>

Sachedina tackles the ambiguities of the Koran on responsibility and conscience and uses the views of various Muslim theologians to illustrate his points. He then takes up apostasy and states – as Khadduri – that there are no Koranic passages that specifically prescribe the execution of apostates. By disentangling matters of conscience from politics and bringing out the ambiguities of the Koran on this, he proposes a fresh understanding of Islamic precepts and concludes that they are not categorical on this matter. He does not, in contrast to authors examined in section III, deny that the contradictions do exist, but attempts to resolve them; he does not discard the opposite point of view but constructively engages with it, and he does not try

to project on to the Koran the notion of human rights, only to find therein ideas that would be potentially conducive to it.

Another author who can be considered an Islamic liberal is Asghar Ali Engineer. In his book on the *Rights of Women in Islam* Engineer points out that nowadays no one invokes the scripture to justify slavery and that the question of women is comparable to that of slavery.<sup>63</sup> He discusses the influence of sociological and historical factors upon Koranic interpretation and the *sharia*. He claims that 'there is a general thrust towards equality of the sexes in the Quran' and that 'Biological otherness, according to the Quran, does not mean unequal status for either sex. Biological functions must be distinguished from social functions'. He says that 'when the Quran gives man a slight edge over woman it clarifies that it is not due to any inherent weakness of the female sex, but to the social context'.<sup>64</sup>

Engineer carefully examines the language of the Koran and the verses from which each particular ruling regarding women has been derived. He disputes traditional understandings and contrasts them with the Koranic text seen in a different light. His method is typical of an important trend in Muslim feminist writings, which he draws on extensively (as he does on medieval theologians and jurists). He finds fault in all the points of inequality between men and women which have been justified by the Koran and various traditions. He concludes that women 'enjoy all their rights as individuals, not merely by virtue of being a mother, wife or daughter though such status would be considered for purposes of their inheritance'.<sup>65</sup> He attempts, in short, to separate Islam from patriarchy and enjoins Muslims to reform Islamic law by breaking the links between the two.

His account is not altogether without problems. He does not, for example, stress that even though the Koran may have shown a disapproval of certain institutions such as polygamy it did not prohibit them in principle. He also underplays the blatant inequality between the sexes that the Koranic verses – whatever one's understanding of the spirit of the holy book – in fact propound. This discredits his cause. In general, however, his methodology is convincing, and useful in defending women's rights and human rights in general in the context of Islam, because it is rooted in the historicity of the text of revelation and in the distinction between what may be perceived as the 'essence'

of the religion as opposed to its particular injunctions.

A major contribution to the debate over reformism is by Abdullahi Ahmed An-Naim. He states, succinctly: 'Although it can easily be shown that certain aspects of *Shari'a*, traditional Islamic law, are inconsistent with some universal human rights, the purpose [of this chapter] is to illustrate that Islam itself can be consistent with and conducive to the achievement of, not only the present universal standards, but also the ultimate human right, namely the realisation of the originality and individuality of each and every person.'<sup>66</sup> The author here brings into the debate the concept of authenticity (on a personal level), and also makes the distinction between historical tradition and the Koran, which provides the framework for his analysis. The *sharia* 'violates most of the crucial civil and political rights provided for by the Universal Declaration of Human Rights.'<sup>67</sup> Even if *ijtihad* is applied, the problem of inequality of women and non-Muslims will not be solved because some texts in the Koran and *hadith* are explicitly discriminatory. The solution which An-Naim suggests is that of the Sudanese Ustaz Mahmud Muhammad Taha (executed by the Nimeiri regime in 1985): the Koran was revealed in two stages, the first, in Mecca, dealing with general moral and religious principles and the second, in Medina, being more specific and legalistic, because it was responding to a concrete situation. Only the first, according to An-Naim, must be taken as authoritative for all time. Apart from this most crucial point, which is the cornerstone of his argument, he states, secondarily, that the *sharia* was not expounded until the second and third centuries of Islam and was therefore influenced by the practices of generations of Muslim. It needs therefore to be reinterpreted to fit new circumstances.<sup>68</sup>

An-Naim develops his arguments in his major work *Towards an Islamic Reformation* by taking each of these issues in turn. First, he shows that 'the public law of *Shari'a* is not really divine law in the sense that all its specific principles and detailed rules were directly revealed by God.'<sup>69</sup> He restates his doubts about the adequacy of *ijtihad* in achieving reform within the framework of the *sharia* and describes this attempt as 'wishful thinking' for 'given the fundamental conception and detailed rules of the *Shari'a*, it is clear that the objectionable aspects cannot possibly be altered through the exercise of *ijtihad* as

defined in historical *shari'a* for the simple reason that *shari'a* does not permit *ijtihad* in these matters because they are governed by clear and definite texts of the Qur'an and Sunna'. He is, however, concerned to find 'an Islamic way out of this deadlock', and his answer is the distinction between the two messages of Islam. It is urgent that this be done because, he argues, 'the founders of Islamic modernism [Afghani and Abduh] are somewhat disappointing in their attempts to generate concrete results for public law purposes'. He gives examples of the unconvincing methodology of attempts at reform pointing out that their fundamental methodological flaw is that they refer to those aspects of the Koran which are conducive to rights and ignore its opposite injunctions. He proposes taking these opposite injunctions into account and explains their existence by the need to serve the conditions of the time of the Prophet and of early Islam.<sup>70</sup> This author, in short, does not prescribe, like Engineer, a rereading of the Koran in its totality on the basis of a liberal spirit but suggests distinguishing between two parts of the Koran (the general and the particular), and accepting the perpetual legitimacy only of the former. This, he maintains, will give the force of law to reformed precepts (banning polygamy for example), because they would not be a matter of opinion in interpretation but of fact.

An-Naim proceeds to examine, on the basis of his proposed methodology, constitutional issues, criminal justice and international law and concludes by considering basic human rights. He bases his belief in the universality of human rights on the principle of reciprocity – a principle which, in his opinion, is shared by all major cultural traditions – which implies equal rights for all members within a society and in relations with other societies. The *sharia* did not apply this principle and 'denies women and non-Muslims the same degree of honour and human dignity that it guarantees to Muslim men'.<sup>71</sup> It should therefore be discarded. He emphasises this again in his discussion of Ayatollah Khomeini's *fatwa* against the writer Salman Rushdie: 'Although I know this [punishment, possibly by death, of apostasy] to be the position under the *Shari'a*, I am unable *as a Muslim* to accept the law of apostasy as part of the law of Islam today' [italics in the original].<sup>72</sup>

Various other thinkers have confronted the question of reform in

Islam, with similar aims and mixed results. Mohammed Arkoun's paper *Rethinking Islam Today* attempts to deal with the connections of Islam and modern culture. He asserts that 'historicity is the unthinkable and the unthought in medieval thought'<sup>73</sup> and argues that these boundaries, which still exist, must be brought down and a new exegesis attempted, on the basis of new knowledge. Jacques Berque, in his book *Relire le Coran*, discusses a broad range of issues in rereading the text of revelation – his comments on *fitra* and its relationship with human freedom being particularly pertinent to our subject.<sup>74</sup> I will refer to other such reformist thinkers in the chapters on Egypt and Tunisia, and must postpone further discussion until then.

This examination of thinkers who attempt a genuine resolution of the contradictions between Islam and human rights principles indicates that such an exercise must not concentrate narrowly on the Koranic text or the *sharia* but take on board broader issues. We need to summarise these essential prerequisites for a liberal Islam.

First is the distinction between two perspectives on Islam. One, of the religion as a sacred, unchanging, eternally determined body of rules. The other, of Islam as capable of development and transformation through time without this incurring a violation of its essential 'spirit'. The tension between the two approaches runs through Islamic thought in modern times (the consciousness of 'change' being inherent in the very definition of modernity). Without adopting the latter view Islam cannot be reconciled with international human rights principles. If the literal word of the Koran and the traditional *sharia* are accepted as prescriptive, there is no room for conciliation. Similarly, if society at the time of the Prophet is posited as the ideal, the outcome is sterility in liberal thought, even if that ideal is described as democratic. In general terms, despite being anathema to many Muslims, the historicity of Islam and of the revelation must be accepted if a convincing conciliation of Islamic and human rights principles is to be achieved. This means a recognition that the revelation was appropriate for the time of the Prophet and not, in its literal form, for all time.

It in turn necessitates a reinstatement of the right to interpret the Koran and the recognition that the 'door' of *ijtihad* was never really closed. *Ijtihad*, however, is a necessary but not sufficient condition for

a liberal interpretation of Islam. Some of the world's most ardent Islamic fundamentalists – Hassan Turabi primary among them – have endorsed it and proceeded to interpret Islam in an illiberal way.<sup>75</sup> For *ijtihad* to result in a liberal interpretation of the Koran it must be coupled with a liberal impulse.

A third crucial prerequisite for a liberal interpretation of Islam is that the law must have the purpose of serving humankind and must therefore be adaptable to its needs. This is very different from the traditional view of the law as existing in order to 'serve God' so to speak, through realising the divine will on earth. But, again, this condition is necessary but not sufficient for a liberal interpretation because serving the public interest can be used as means of control. Khomeini, for example, argued in 1988 that the state has the right to 'destroy a mosque' if the public interest (*maslaha*) requires it.<sup>76</sup>

Intolerance does not principally stem from the details of Islamic law and the Koran – whether this point is compatible with that universal human right or not; nor from the domain and scope of Islamic law – whether it should cover some or all aspects of life, personal and public.<sup>77</sup> Rather, it hinges on the perceived *purpose* and *source* of law. If the law is seen as an immutable divine imperative – serving God, not man, and coming from God directly, without human intervention – the law becomes intolerant, whatever its particular rules, partly because those who execute the law cannot be held accountable. This is what happened in Iran after 1979.<sup>78</sup> Once respect for an Islamic humanism becomes the driving force, however, Islamic law can be vested with divine sanction without becoming intolerant.

The Manichean way of thought that juxtaposes 'Islam' and 'human rights' as two opposing absolutes is only one viewpoint. An alternative consists of human rights principles being encompassed in and informing the understanding of the *essence* of Islamic religion (given that human rights principles are indeed absolutes). This eliminates the juxtaposition between the divine and the human being by resting on a belief in the innate goodness of the individual (the absence of the notion of original sin in Islam, noted above, could strengthen such a conception). The latter becomes the true vicegerent or *khilafah* of God on earth. Adopting such a viewpoint would place the debate on authenticity, which is currently raging in the

Muslim and especially the Arab world, on quite a different basis. Because of the historical connection between Islam and Arab civilisation, the concept of authenticity often involves the defence of Islamic and/or Arabic identity in opposition to the West, and the values it represents. Once these values (among which are human rights) are dissociated from the West, the debate can assume quite a different form. Authenticity in the Muslim world can be reconceptualised once a humanist Islam provides its foundation.

Chapter 1 argued that belief in human rights – in the sanctity and freedom of the individual – involves an indemonstrable set of principles which either one shares or does not share. Chapter 2 argues that these principles do not necessarily contradict a faith in the God of Islam, but only some understandings of this faith and of this God. If my argument is persuasive, and if such conciliation is a possibility at an abstract level, our next question must be what has happened to it in the historical reality of Muslim societies – and why. In other words, what we must look for is the existence – or not – of a *liberal impulse* in specific Muslim societies, that would inform the understanding of the Islamic religion. One of the cornerstones of this book is that the causes for the existence of this liberal impulse, or lack thereof, must be sought, not in the text of the Koran or in the *sharia*, but elsewhere. This will be the purpose of Chapters 3 to 5.

## V

Before proceeding to those chapters, however, we need to clarify some key terms. One argument that is often brought to bear in discussions on Islam and liberalism concerns the weight of the religious and political intellectual tradition in the Muslim world. More specifically, it is argued that the reason why illiberal interpretations of Islam have been the rule rather than the exception in the Muslim (and in particular the Arab) world is because ‘reason’ did not become predominant over revelation at any time during Islamic intellectual history.<sup>79</sup> The marginalisation of the Mutazila is seen as the result (or cause), of the banishment of reason in religious matters and is often lamented as a lost opportunity for a rational culture to arise from within the

Islamic world. Similarly, the lack of a tradition of constitutionalism in Islamic societies is believed to be the reason why a liberal political culture has not developed.

These developments were important but they only beg the question. If that was the way legal, religious and political thought did develop, it must have served a purpose and constituted a necessary 'rationality' for the proper function of Muslim societies. We cannot judge whether a particular legal system or set of religious rules served a society well through the lenses of our own time.<sup>80</sup> Such a view would be quite irrelevant because it would mean transposing our terms of reference and our concerns to a pre-modern age, whose links with and influences on the present time are quite indirect.

In seeking answers to modern concerns, especially on the individual and his or her rights, we must focus on the period from the nineteenth century onwards, when the advent of modernity presented an inescapable challenge to Islamic thought and to Muslim societies as a whole. Through colonisation, wars, trade, its increasing incorporation into a world capitalist system, the emergence of the nation-state and, crucially, the spread of ideas, the Middle East was tightly integrated into a global network.<sup>81</sup> It was forced to respond and engage with the two principal, defining notions of modernity: the inescapability of change and the centrality of the individual.<sup>82</sup> As the aspects of life defined by tradition narrowed, the intellectual heritage underwent transformative permutations.

In modern times insistence on respect for 'tradition' and its prescriptions is often not the direct outcome of a continuum with a pre-modern world which weighs heavily upon Muslim societies and determines their thought and institutions. Rather, 'tradition' is reconceptualised and reinvented and only as such does it play a central role in current debates. Its centrality in such debates is not, that is, evidence of the potency of a traditional world but rather one of the many elements which define modernity. Pre-modern history has a role but is mediated through current societal concerns. It may therefore be more useful to refer to 'traditionalist' rather than 'traditional' political or religious thought<sup>83</sup> – and even that is being increasingly displaced and marginalised (as in the case of Tabandeh's ideas). Centre stage in twentieth-century Islamism belongs increasingly to two

prototypical trends: Islamic modernists and later liberals – and Islamic fundamentalists.<sup>84</sup>

The two are closely connected and this is why the central figure of Islamic modernism, Muhammad Abduh, is seen also as a precursor of fundamentalism. Both trends seek to reform Islam. Both are scripturalist, in the sense of advocating a return to the text of revelation to answer all questions – therefore by-passing tradition. Both advocate *ijtihad* (and *ijtihad*, as I stressed above, can be both a reactionary and a progressive tool). Both, that is, engage with the notion of change and perceive the individual as the medium for a redefinition of Islam.

Where they diverge is on the purposes they seek to serve. Islamist liberals, feminists, modernists – all the terms are relevant here – accept the need for change and view it as a positive development: change means progress. They also seek, in tune with a liberal impulse, to liberate the individual and give him or her a central place in religious and political thought. They view the law as a means of serving the needs of humankind and of society and divine revelation as accessible to human reason. The fundamentalist impulse is the reverse. Change is seen as a negative development and there is an urge to reverse it. The individual must be subsumed to the collectivity or to the will of God even though he or she is the vehicle of reform (in the sense that social reform comes through personal regeneration).<sup>85</sup> This is different from a traditional outlook which has no conception of or interest in either the notions of change or the individual.

Nothing exemplifies more clearly the profound ambiguity of modernity. For the fundamentalists' reaction to it, their anti-modernism, is as much a modern phenomenon as its approval.<sup>86</sup> It can be placed in a universal context of Christian, Jewish, Hindu and other fundamentalisms. It is part of a global response, even revolt, against modernity, rather than an inevitable outcome of Islamic history.<sup>87</sup> The two Islamist trends battling over the fate of society and Islam in the Middle East constitute the parallels to the two children of modernity in the Western world: liberalism and totalitarianism.

The ambiguities between the two trends and their close links have been illustrated in Leonard Binder's reading of Sayyid Qutb, the Islamist writer who provided the inspiration of extremist

fundamentalists in Egypt and beyond.<sup>88</sup> According to Binder, Qutb advocates the anarchy of believers. For him the individual is the medium of a reformed society and has a direct relationship with the text of revelation through an aesthetic rather than legalistic experience. But Binder, in arguing that a convergence of fundamentalism and liberalism may be Qutb's eventual contribution, forces his point and fails to grasp the deep gulf separating Qutb from Islamic liberalism. Qutb's idealism, which discards the practical working out of individual freedom, is more conducive to a repressive than to a liberating ideology.

Section V has made these distinctions for their own sake but also as a prelude to the discussion of Egyptian and Tunisian politics. They provide a justification for the choice of historical periods for this study and explain the choice of nation-states as case studies. The response of the Middle East to the advent of the modern world has been chaotic, as it has been in all cultures and societies. Everything is up for grabs, including the definitions of Islam and human rights, modernity and authenticity. New groups and individuals continuously add their voices to the debate, each pronouncing a different opinion on what these terms entail. The outcome of this debate is open-ended. Political and social change ensures that the views that predominate at any one time are constantly shifting. To understand this process and its implications will be the aim of subsequent chapters.

### Notes

1. Said, E., *Orientalism* (London: Penguin Books, 1978).
2. *Ibid.*, pp. 122–3.
3. Ahmad, A., *In Theory: Classes, Nations, Literatures* (London: Verso, 1992), Chapter 5.
4. Said, *op.cit.*, p. 272.
5. See Geertz, C., *Islam Observed: Religious Development in Morocco and Indonesia* (Chicago, IL: University of Chicago Press, 1968) and Rodinson, M., *Islam and Capitalism* (London: Allen Lane, 1974, translated by B. Pearce), for cogent examples of the malleability of Islamic doctrine and evidence of the transformations and permutations religion undergoes when adopted by particular societies.
6. For examples of contradictory views on this issue compare Lewis, B.,