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Islamic Human Rights: Islamic Law and International Human Rights Standards

¹ Whereas the term *Islamic* is used to designate matters pertaining to the religion of Islam, the term *Muslim* is used to designate its adherents.

² Peter J. Riga, "Islamic Law and Modernity: Conflict and Evolution" 36 *American Journal of Jurisprudence* (1991), 103 at 103.

³ *Fatwa* refers to a religious decree, such as that issued by the Iranian head of state, Ayatollah Ruhollah Khomeini on February 14, 1989 ordaining the death penalty for the author, Salman Rushdie. Khomeini rallied the support of fundamentalist Muslim groups throughout the world to condemn Rushdie's novel, *The Satanic Verses* on account of its blasphemous nature. On March 7, 1989, Iran cut its diplomatic ties with Britain when Britain did not condemn the book. Although the Iranian government officially lifted the *fatwa* in an attempt to repair relations with Great Britain, other prominent Iranian *imams* (leaders) have reinforced the *fatwa*. A British citizen, Salman Rushdie continues to live in hiding.

⁴ Constance Neyer, "Equal in the Eyes of God: Koran Gives Genders Same Status, Muslim Women Say, Despite Stereotypes", February 7, 1997, *The Hartford Courant*.

The Islamic faith has been a source of considerable international interest and debate in the latter part of the twentieth century. Today, Muslims make up one fifth of the world's population and Islam is presently the fastest growing religion in the world.¹ Tens of thousands of Islamic immigrants from abroad have settled in Canada and the US in the past 35 years and there are at least 35 countries in the world where Islam is the majority religion.² Images of Islam pervade the Western world. The bombings of American embassies in Kenya and Tanzania allegedly by Saudi terrorist, Osama bin Ladin and the US' subsequent retaliation, the Persian Gulf War and the recent US air strikes on Iraq, are among the many recent world events involving Islam that have been profiled in the media. Other incidents, such as the *fatwa* issued on Salman Rushdie, the revival of fundamentalism in Algeria forcing all women to veil themselves, and the struggle in the Middle East between Israel and Palestine, are perpetual sources of international contention and international media coverage.³

It is rarely noted that many of these incidents involve the actions of radical groups that are no more representative of Islam than the actions of David Koresh, who died in the confrontation between law enforcement authorities and the Branch Davidians in Waco, Texas, are representative of Christianity.⁴ The Western media often obscures the line between common practice and extremism by being selective in the publicity given to incidents involving Muslims and Islams. The media's portrayal of Islamic law as being restrictive of individual rights, patriarchal and demeaning to women is consistently shrouded by political strategizing, inherent bias and the fear that Islam will threaten the current global power structure. The media has accordingly responded to the revival of Islam by pushing Islam to the forefront of international human rights dialogue. This has allowed the West to suppress the Islamic revivalist movement and the rise of radical Islamic fundamentalism by rallying the international human rights community, which itself is largely grounded in Western rights and values, to assert its abhorrence for the human rights violations taking place in parts of the Islamic world. Because human rights in these Islamic



countries are rooted in Islamic theology but are also tempered by political and economic relations with the West, the West has used this means to assert its power in the international community, and to protect its secular, socio-democratic power structure.⁵

Human rights violations in Islamic countries have become a legitimate and pressing issue in interstate relations and are based on fundamental discrepancies between Islamic law and the universally accepted standards of our international human rights instruments. The resolution of this issue requires an examination of Islamic law, including its tenets and historical foundations, and an evaluation of the defences forwarded by Islamic countries to legitimize their actions and defend their faith. Most importantly, it is necessary to correct the inaccuracies and misconceptions promulgated by the media about Islam, or at least to recognize that they colour the human rights debate.

I have chosen to write this paper in order to expose the breadth of misinformation

5 Donna Arzt, "The Application of International Human Rights Law in Islamic States", 12 Human Rights Quarterly (1990) 202 at 204.

and misguided opinions surrounding this issue. My intention is to provide an informed overview of the different perspectives and factors at play in this complex debate. As any debate involving religion usually is, the legal and academic sources that I have canvassed are sometimes grounded in personal or ethnocentric bias, and often go to the defensive or offensive extreme. However, by adopting a moderate cultural relativist perspective and considering the range of the vested interests and ideologies of the international human rights community, the Western media and the Islamic world, I have found some means of reconciling Islamic law with international human rights standards. I recognize both that change is usually gradual, and must be achieved with the cooperation of the Islamic world, and that the Western countries which champion universal standards must also apply them in practice. To date, the West's failure to consistently apply these human rights standards in its own countries has weakened the legitimacy of the standards themselves, and has rendered the force of our international human rights instruments questionable.

This paper will highlight the tension between Islamic law and international human rights standards with particular reference to the role of politics and the Western media. It will also discuss the cultural relativist perspective as a possible means to resolve this tension and will examine the inherent reluctance of Islamic countries to compromise their adherence to divinely ordained law and the liberal reform movement's resolution to that impasse.

The Tension: Islamic Law and International Human Rights Standards

1. The Foundations of Islamic Law

In Islam, there is only one reality, ruled by Islamic law, under which the government must rule and the faithful must live.⁶ *Shari'a*, the Arabic word for Islamic law, literally means "the way to follow." The *Shari'a* developed as a universal system of law and ethics in the second and third centuries of Islam.⁷ Its purpose was to direct Muslims, in their daily lives, to live in accordance with God's law as it is revealed in the *Qur'an*. The *Shari'a* distinguishes itself from most of the world's other legal systems by imposing legal and religious obligations on its adherents. Islamic law:

both articulates the transcendent Will of God, and provides an opportunity for righteous action in every occasion faced by human. Not merely a framework in which life is conducted, or solely a bound for permissible action, the *Shari'a* itself is an expression of divine truth. Submission to *Shari'a* – following the path of God – is Islam.⁸

Therefore, any Muslim who lives in an Islamic state who deviates from the *Shari'a* is not only subject to legal reprobation, but also to spiritual damnation.

Islamic law derives from four main sources. These include the *Qur'an*, the literal and final word of God; the *Sunna*, or the traditions based on the life of the Prophet Muhammed which describe model behaviour; the *giyas*, or juristic reasoning by analogy; and *ijma*, or consensus of Muslim scholars.⁹ These sources work in conjunction with one another to create a comprehensive moral and legal ordering.

As with other legal systems, the scope and interpretation of Islamic law has been a

6 See note 2, at 105.

7 The Prophet Mohammed began to propagate the Islamic faith in approximately 560 AD.

8 Kimberly Schooley, "Cultural Sovereignty, Islam and Human Rights: Toward a Communitarian Revision" (1994), 25 Cumberland Law Review 652 at 660.

9 See note 5 at 204.

contentious issue for centuries. At the time of the Prophet "differences of opinion within the community were recognized as a sign of the bounty of Allah,"¹⁰ and were used as a starting point from which to assert critical reasoning and dialogue. During the early years of Islam, critical writings on the four main religious sources were considered integral to the evolution and establishment of *Shari'a*. Legal jurists supplemented the four primary sources by expressing their opinions on how various aspects of the *Qur'an* and the Sunna should be interpreted and applied in practice (*ijtihad*). By the tenth century, the jurists had completed the development and institutionalization of the *Shari'a* and the *ijtihad* as a source of Islamic law that was considered exhaustive.¹¹ Independent interpretation or critique was subsequently discouraged, as any attempt at modification or innovation was viewed as an unwarranted deviation from the established sacred norms.¹² In fact, today, judges are still limited in their authority to engage in *ijtihad*, and must adhere almost exclusively to the established interpretations of ancient jurists.

The scope of application of Islamic law has therefore diminished considerably since the middle of the nineteenth century; today, the *Shari'a* has been replaced in most countries with European law governing commercial, criminal and constitutional matters. International concern for human rights largely focuses on those countries that have retained or reintroduced Islamic penal law and the traditional *Shari'a* principles governing family law and inheritance matters.

2. International Human Rights Standards

Human rights constitute political and legal standards which require both effective implementation and thorough monitoring mechanisms.¹³ The Charter of the United Nations indicates that the UN was created:

To save succeeding generations from the scourge of war;

To reaffirm the faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women, and of nations large and small; and

To practice tolerance so that we may live together in peace with one another as good neighbours.¹⁴

In addition to ensuring international security and peace, one of the UN's key mandates is to ensure that all human beings are equal in worth and dignity, regardless of gender, religion, or race.¹⁵

The UN established itself a little more than 50 years ago in the aftermath of World War II, as a global institution to, among other things, promote and enforce human rights by investigating political and legal claims to freedom and equality. Legal concepts such as "crimes against humanity" were litigated for the first time during the Nuremberg Trials, and had begun to permeate the international dialogue concerning human rights.¹⁶ The United Nations reacted to the new human rights rhetoric by putting forth the Universal Declaration of Human Rights ("UDHR").¹⁷ When the UDHR was approved by the United Nations General Assembly in 1948, its principles were incorporated into public international law, and its standards were set as primary normative rules for the human community to follow.

10 See note 8 at 665.

11 See note 5 at 204.

12 See note 8 at 664.

13 Heiner Bielefeldt, "Muslim Voices in the Human Rights Debate", (1995), 17 Human Rights Quarterly 58 at 588.

14 Sami A. Aldeeb Abu-Sahlieh, "Human Rights conflicts Between Islam and the West" (1990), annual 1990 Third World Legal Studies 257 at 275.

15 Abdullah Ahmed An-Na'im, "Human Rights in the Muslim World" (1990), 13 Harvard Human Rights Journal 210 at 217.

16 See note 8 at 653.

17 Universal Declaration of Human Rights, UNGA Res. 217(III), UN Doc. A/810 (1948). Today, the UDHR is only one part of the International Bill of Rights ("Bill of Rights") which is the UN's conglomerate human rights instrument. The Bill of Rights also consists of the International Covenant on Civil and Political Rights [UNGA Res. 2200 A (XXI), 21 U.N. GAOR, Supp. (No. 16) 49, U.N. Doc. A/6316 (1966)] and the International Covenant on Economic, Social and Cultural Rights [UNGA Res. 2200 A (XXI), 21 U.N. GAOR, Supp. (No. 16) 49, U.N. Doc. A/6316 (1966)]. The three documents can be ratified individually and many countries have been reluctant to accept it in its entirety. The UDHR is a declaration and as such is not legally binding. However, the UDHR has evolved to become customary international law which binds states through "opinio juris."

The international community eagerly accepted the UN's initiative, celebrating it as championing the most basic rights of all human beings, making individuals the world over conscious not only of their own rights but of the rights of other people as well."¹⁸ The international community now had a vantage point from which to evaluate the state practices of other countries, and a universal measure from which to aspire to a basic level of moral, political and legal obligation.

3. Establishing the Tension

The resistance to the UDHR and its counterparts and the broader tension between Islamic law and international human rights standards has resulted in the widespread popular condemnation of Islamic state practice. The tension stems from different philosophical and spiritual conceptions of human rights and freedoms. While Western countries may suggest that the countries applying traditional or conservative Islamic law have no regard for human rights, the Islamic world asserts itself as a champion of the human rights provided for by God, in the *Shari'a*. It is difficult to determine whether there is a means of reconciling the two positions as they both operate on different principles.

Much of the Islamic world is firm in its belief that *Shari'a* law, in its true form, addresses the fundamentals of human rights. Majid Khadduri, a leading Islamic law scholar, identifies the most important human rights principles in Islam to be: dignity and brotherhood; equality among members of the community without distinction on the basis of race, colour, or class; respect for the honour, reputation, and family of each individual; the right of each individual to be presumed innocent until proven guilty and individual freedom.¹⁹ This position suggests, at least superficially, that Islamic law encompasses the basic principles of human rights. However, upon closer examination these same human rights appear to be limited by the very nature of the Islamic philosophy.

Although concepts such as "freedom," "dignity," and "brotherhood" are essential to a discussion of human rights, they can be culturally differentiated, as philosophical ideologies vary between countries depending on their reliance on Euro-Western or Islamic philosophy. Each philosophy bases itself on particular assumptions which can work to limit or enable one another. For example, the Western philosophical and political notion of free will is inherently limited by the Islamic presupposition that all human acts are subject to God's will. The *Shari'a* prescribes a finite freedom that is much narrower in its scope than the European-based, secular notion of free will. This example epitomizes the tension between human rights in Islam as they exist in relation to obligations toward God, fellow humans and nature, and the human rights adopted by international human rights institutions which are devoid of any religious coercion.²⁰

Perhaps the most publicized tension between Islamic law and international human rights norms concerns the allegedly unequal treatment of women. Muslims who denounce this inequality defend the *Shari'a* by attesting that women are given a "special rank" in the Islamic order. They argue that the *Shari'a* makes special provisions for women to provide them with the financial security and stability that they were historically unable to achieve on

18 See note 5 at 215. Taiwan delegate to the UN General assembly at the time of the inception of the UDHR.

19 See above., at 205.

20 See above.

their own. They base their position on *Qur'anic* provisions which state that:

Men have *qawama* [guardianship and authority] over women because of the advantage that they have over them [women] and because they [men] spend their property in supporting them [women].²¹

For many Western human rights advocates, it is precisely this type of advantage allegedly given to men, that threatens the fundamental right to equality for all people.

Further examples that fuel the tension include Islamic restrictions on family law and inheritance matters. In this area, women lack the capacity to initiate a marriage contract or to obtain a unilateral divorce and their legal right to inherit property entitles them to only one half the share that a man is entitled to. In addition, a woman's testimony in a court of law must be corroborated by male testimony to the same effect²² and women are legally disqualified from holding general political or judicial office, because that would require them to exercise authority over men.²³ Human rights advocates particularly emphasize the restrictions on women's access to public life as one of the greatest injustices under Islamic law.

Finally, the most glaring conflict between Islamic law and Western ideals of equality is manifested in the *Shari'a* provision that allegedly gives husbands the right to chastise their wives for "disobedience" which includes "light beating."²⁴ Prominent Western human rights institutions have used this *Qur'anic* provision to conclude that the existence of gender inequities implies that women are inferior to men in Islam. Unfortunately though, the justification or legitimization of these contentious Islamic provisions is consistently treated with indifference or complete disregard by the international human rights community. The treatment of women has accordingly become the most celebrated inequality in Islam and the primary source of tension between Islamic law and internationally accepted human rights principles.²⁵

The Legitimization: A Muslim Perspective

The Islamic world has responded to the obvious tension between the *Shari'a* and international human rights standards by attempting to legitimize the contentious practices of its countries. Islamic reformers, scholars and fundamentalists have challenged the existence and validity of our universal human rights standards. These challenges are largely bound to notions of cultural relativism as it relates to the liberal reform theory, the perception of the *Shari'a* as divine law, and the roles that politics and the Western media play in this debate.

Many Muslims use the concept of cultural relativism to legitimize their adherence to *Shari'a* law. These Muslims believe that it is difficult, if not entirely impossible, to create universal human rights standards that will apply equally to all members of the human community. Their position generally suggests that given the diversity of cultural traditions, political structures, and levels of development in the world, it is virtually impossible to define a single distinctive and coherent human rights regime.²⁶ Cultural relativists may vary in terms of the degree to which they find the universal ideal to be an impossible feat. For example, strict cultural relativists view the world in relative terms. They believe that it is

21 *Qur'an* 4:34--
Abdullah Ahmed An-Nai'm, See note 15, at 212.

22 *Qur'an* 24:31, 33:53, 33:59.

23 *Qur'an* 4:34.

24 *Qur'an* 4:34.

25 See note 5 at 208.

26 Bilhari Kausikan, "Asia's Different Standard" (1993), 92 *Foreign Policy Journal* 224 at 227.

impossible to attain a universal human rights standard that would meet the needs of the world's diverse cultural scheme, without imposing ethnocentric biases. Moderate cultural relativists also maintain a relative perspective of the world but recognize the need for some minimal standards of protection. These standards are to be evaluated and implemented without completely abandoning cultural considerations. Finally, the universalists value Western concepts of rights and fundamental ideas of autonomy, equality and freedom and believe that the entire global community should adopt standards based on these ideals.²⁷

The moderate cultural relativist position is the only one that may realistically serve to legitimize some contentious Islamic state practices. The strict cultural relativist position is strong in its conviction but pragmatically weak. The fact that the international community, including Islamic nations, has already recognized the merits of the UN and its human rights monitoring mechanisms implies an obvious acceptance of universal human rights standards. Therefore, to effectively deny the UN's function in this regard and adopt a completely opposite approach seems paradoxical and counter-productive. The universalist position is at the other extreme as it frequently expresses ethnocentric bias. Universalist ideals are often a blatant affront to cultural diversity and bear the marks of colonial attitudes of Western superiority.

Modern Islamic reformers have also attempted to legitimize contentious *Shari'a* principles by advocating a contemporary and liberal interpretative approach, consistent with the moderate cultural relativist perspective. These reformers argue that the sources of *Shari'a* law should be examined from a strictly historical perspective, and that much of the literal interpretation of *Qur'anic* scripture should be contextualized, and in some cases abandoned. Many leading Islamic reformers agree that contextualizing the *Shari'a* is necessary for a fair assessment of its treatment of human rights. They advocate a new understanding of *Shari'a* law, "informed by contemporary social, economic and political circumstances in the same way that the old understanding was informed by the then prevailing circumstances."²⁸ Furthermore, they encourage a perusal of pre-Islamic mores and the prevailing Roman and Persian laws of the period. This approach reveals that the Islamic treatment of human rights was revolutionary. For example, historical evidence affirms that the *Shari'a* disposed of the practice of infanticide and blood feuds which were prevalent in the 6th century, and relatively improved the status of women.²⁹ The liberal reform movement, therefore, opens the door to interpretation of the *Shari'a* which has been closed since just after the death of the Prophet and encourages enlightened re-interpretation and re-evaluation of the writings of ancient Islamic jurists.

The reformers legitimize Islamic law by selectively highlighting aspects of the *Shari'a* that were progressive and revolutionary for its time. To do this, the reformers index some of the same provisions that Western critics index as celebrating inequality. By employing a historical perspective, the reformers depict the contentious provisions as innovative *Qur'anic* concessions made with the noble intention of protecting women in the event of marriage

27 See note 8 at 678.

28 See note 15 at 217.

29 See note 5 at 209.

breakdown while Western critics counter with the suggestion that the provisions reflect unfounded gender inequity. The reformers use the example that, under pre-Islamic custom, the bride was regarded as an object to be purchased, but explain that with the advent of the *Qur'an*, a woman's status was altered so that a bride was to be considered a person whose consent must be obtained to validate a marriage contract.³⁰ They also bring attention to other *Qur'anic* concessions which include improving the financial status of women in the event of divorce or widowhood through the alteration of the dower concept.³¹ In pre-Islamic times the dower was owed to the father, but the *Qur'an* changed things by mandating that the dower be paid to the bride. This would entitle the woman to dispose of her own property, and in turn provide herself with some independence and basic social security.³²

Another attempt by liberal reformers to defend contentious aspects of the *Shari'a* centred around the fact that it is virtually inconceivable that there could have been complete equality between men and women during the 8th and 9th centuries in the Middle East, when the idea of complete equality had not yet been introduced anywhere. It should be understandable, therefore, that the jurists initially formulating the *Shari'a* would be more apt to confirm the existing power relationships of the day, rather than repudiate them completely.³³

Although the liberal position provides an interesting perspective and is historically informative, it does not effectively resolve the glaring conflicts between the *Shari'a* and modern conceptions of human rights. The fact that the *Shari'a* was progressive 1,400 years ago and that it was revolutionary in its treatment of human rights at the time of its inception does little to eradicate the current discrepancies with international human rights standards. At best, this position loses itself in a game of semantics by selectively de-emphasizing certain tenets and by emphasizing others. Further, although it superficially reconciles Islamic law and international human rights standards, it is unlikely to meet with enough support from the Islamic world to remedy the actual tension. Given the resurgence of traditional conceptions of Islam and the recent politics surrounding this rise in fundamentalism, it is unlikely that a liberal approach will be embraced by the world's Islamic authorities.

1. The *Shari'a* as Divine Law

Muslims attempt to legitimize their contravention of international human rights principles by asserting their belief that Islamic law is universal and that God is considered to be the sovereign ruler of the universe. Therefore "to break the law is a transgression against both society and God, a crime and a sin; the guilty are subject to punishment in this life and the next."³⁴ However, applying the moderate cultural relativist perspective and granting the Islamic world this difference in spiritual mentality negates any possibility of imposing universal human rights standards. The universal standards encompass Western legal conceptions of freedom and justice. These Western conceptions defy and offend Muslims who view the imposition of international standards as interference with a divine ordinance. The threat of international reproof is insignificant in the face of spiritual condemnation and

30 *Qur'an* 4:4.

31 The dower refers to money paid by the husband to either the father of the bride or to the bride herself. The money was historically provided as security, in the event of the husband's death, so that the woman would be financially provided for. Western critics have interpreted the dower to be indicative of a woman's worth in monetary terms, viewing it as a "price" for the "sale" of their daughter.

32 See note 15 at 596.

33 See note 15 at 216.

34 See note 8 at 671.

allows many Muslims to unabashedly justify their actions.

There is also a strong contention by Islamicists that Islamic law does protect human rights, but according to its own set of values. These values are fixed in divine law and are considered to be superior to any law that has been created by humans and established by international institutions.³⁵ King Fahd of Saudi Arabia was quoted in Jeddah, speaking on the issue of Western condemnation of Saudi human rights violations:

Our people's make up and unique qualities are different from those of the rest of the world. We cannot import methods used by people in other countries and apply them to our people. Amnesty officials are secularists and atheists. They could not infiltrate into the Kingdom to spread their venomous ideas. Now they want to tarnish the image of the *Shari'a*. Let the enemies of Islam die of rage.³⁶

Although this view is particularly extreme, it represents the difficulty many Muslims have with contravening the Word of God, even in the face of international reproach.

2. The Role of Politics and the Media

Many Islamic countries have responded to the need to justify their actions to the international community by adopting an extreme, defensive attitude towards the Western world. Although international attention or pressure can be facilitative in provoking change, it often works to the opposite effect, suggesting that the West deplores Islam not only for the actions of its adherents, but also for its political clout and its fervent support.

For example, the Western media has used its power in the international community to rally international outcry for the alleged mistreatment of women in Islam. The western media is often calculative and exploitative in its effort to confuse the uninformed public. The media is not subtle in its negative portrayal of this issue and is often quick to pin the blame associated with human rights violations on the religion itself, rather than on the misogynists who use it as a pretext for persecution.³⁷ The media conflates the contentious issue of the treatment of women in Islam by actively highlighting images of rape, polygamy, genital mutilation, the beating of girls and women, and the segregation of the sexes.³⁸ Westerners then equate these violations of human rights with one another so that the segregation of men and women or the requirement for women to veil is viewed equally as horrific as female genital mutilation and rape. Western critics are often guilty of the same faulty analysis and adopt an arithmetical means of universalizing the subjugation of Muslim women. They argue that the greater the number of women who wear the veil, the more universal is the sexual segregation and control of women. The media's ability to persuade the public to make this analytical leap and "assume that the mere practice of veiling women in a number of Muslim countries indicates the universal oppression of women through sexual segregation, is...analytically reductive."³⁹ Unfortunately, the media's strategic focus on particular aspects of Islamic practice and incidents of oppression, often taken out of context, has precluded the development of a legitimate means of reconciling Islamic law with international human rights standards on the basis of educated and informed attitudes and ideas.⁴⁰

35 Ann Elizabeth Mayer, "Universal Versus Islamic Human Rights: A Clash of cultures or A Clash with a Construct?" 15 Michigan Journal of International Law 307, at 316.

36 See above at 319.

37 Leila P. Sayeh and Adriaen M. Morse Jr., "Islam and the Treatment of Women: An Incomplete Understanding of Gradualism" (1995) 30 Texas International Law Journal 311 at 333.

38 Fran Hosken, "Female Genital Mutilation and Human Rights", (1981) Feminist Issues 1, no.3 at 15.

39 Ann Deardon, *Arab Women*, (1975) London: Minority Rights Group Report No. 27 as cited in C.T. Mohanty, "Under Western Eyes: Feminist Scholarship and Colonial Discourses," in Power Representation and Feminist Critique 52 (1984) at 66.

40 See above at 67.

Relieving the Tension: Questioning our Universal Standards

The Islamic requirement that women dress modestly, sometimes to the extent of veiling themselves in public by donning a *hijab*, *burqa* or *chador* epitomizes the onerous task of reconciling the Islamic human rights debate and provides a useful means of testing the legitimacy of our human rights instruments.⁴¹ Recently, Muslim women in Canada, the US and the United Kingdom have exercised their freedom to wear the veil, in the face of institutional restrictions. The ensuing court actions have called into question the application of international human rights norms and the political motivation fuelling the broader debate over the treatment of women under Islamic law. In November of 1994, Emily Ouimet was sent home from her high school for wearing a *hijab*, because it offended the school's dress code, which prohibits attire that allegedly marginalizes students. The school rationalized this policy out of a fear that distinctive clothing would polarize aggression among young people.⁴² A year before, a Quebec municipal court judge had expelled a woman who was wearing the Islamic head-covering from his courtroom. And a few months later, two Montreal school boards allowed schools to ban the *hijab* along with all other religious headgear. Civil libertarians, multicultural organizations and Muslim groups denounced these events as the product of racism, discrimination and an outright violation of Canada's Charter of Rights and Freedoms.⁴³ Jewish and Sikh groups similarly protested the ban on religious headgear in anticipation of the impact that it would have on their children's right to wear skull caps and turbans in schools. On the other hand, the same school boards who banned the wearing of the *hijab* by students, also prohibited Muslim school boards from instituting a requirement that all teachers wear the *hijab*. In fact, Quebec Deputy Premier Bernard Landry addressed the challenge that these events were clear denials for fundamental freedoms, by stating that: "Religious freedom, like all others, has its limits. Our role is not simply to allow the exercise of these freedoms but also to establish limits."⁴⁴

At first glance, these statements represent the provincial government's position that the state must have some control over human rights – both in upholding them and in maintaining them within the Canadian socio-democratic governmental structure. However, Islamic advocates looked beyond the surface of the government's position, asserting that it was the product of political strategizing in the face of Islamic revivalism. Muslim groups suggested that the prohibition on Islamic religious garb in schools was a disguised attempt to suppress Islamic revivalism and promote assimilation to Western values in Canadian society. Jean Pare, editor of the bi-weekly magazine *L'Actualite* went so far as to defend the government's actions by characterizing the *hijab* as "a rallying symbol for Muslims in their struggle against the Western Satan."⁴⁵ He further justified his position by relying on Western notions of freedom and equality. He said that the wearing of the *hijab* was perceived by most Quebecois to clearly represent the oppression of women.

The issues surrounding the Montreal school board incident represent religious discrimination in its truest form. Although there was a furore among domestic human rights organizations, Western governments and international human rights institutions were hard

41 A *chador* is usually a long black cloth covering the whole female body. A *burqa* is also a long black manteau and attached scarf with covers the figure from head to toe, leaving only a slit or crudely poked holes for the eyes to see through. *Hijab* is the Arabic word for "covering" (most common and is just a scarf which covers the hair). For the purposes of this paper, I will use *hijab*, as it is most common in the Muslim world.

42 Barry Came, "Veiled threats in Quebec," (28 November 1994) *Maclean's*.

43 Part 1, Constitution Act, 1982 enacted as schedule B to the Canada Act 1982 c. 11.

44 See note 43 at 112.

45 See above.

pressed to show their concern for the Muslim women being denied their right to freely practice their religion. The failure of the international human rights community to condemn Western governments for their violation of international human rights standards is questionable.

Conclusion

Exploring the values behind the contentious practices and considering the various factors at play is the best means of developing an informed opinion on the Islamic human rights issue. Adopting a moderate cultural relativist perspective as it works in conjunction with the ideals of the liberal reform movement is a particularly effective means of relieving the tension. As these advocates suggest, an enlightened interpretation of Islam is one that would enable Muslims to "speak the language of human rights in their own tongue."⁴⁶ Furthermore, questioning the legitimacy or universality of our international human rights instruments is not only effective in the quest to reconcile the debate, it challenges the meaning of freedom.

The notion of freedom is consistently tempered by the role of the Western media and its political strategizing. In turn, the media often controls the degree of misinformation about human rights issues propagated in the international community by selectively highlighting world events involving Islamic terrorist groups or Islamic fundamentalist rhetoric. With this in mind, the task of reconciling Islamic law and our international human rights norms is not impossible. There may be an opportunity for international dialogue beyond the impasse by working with our existing human rights enforcement mechanisms.⁴⁷ Working within the existing framework and employing the universal standards set by the international human rights community, as already indexed in the UN human rights documents, is likely the most efficient means of resolving this issue.

But the ultimate test of legitimacy and efficacy is, of course, acceptance and implementation by Muslims throughout the world.⁴⁸ The results of this test however will probably not materialize for some time. Just as the Western world struggled in the sixteenth and seventeenth centuries to adapt its social and economic theories to accept innovation and change, the Islamic world may follow a similar pattern by incorporating the West's secular conception of human rights within its legal systems. To do this, the realm of religious interpretation and Islamic political culture needs to reach a level of modernity where a modified approach to human rights can be extracted from the ancient wisdom of religious jurists. Because it appears that the Islamic world is content with the strength of its position as an emerging international force, a firm belief in gradualism is the only hope for resolution of this debate. As the global power-play changes to meet the challenges of the twenty-first century, the fundamental human rights of all people must not be abandoned. International human rights advocates should continue to work with Islamic governments and Islamic countries should continue to put forth their own initiatives to resolve the tension between the traditional interpretation of the *Shari'a* and international human rights

46 Reza Afshari, "An Essay on Islamic Cultural Relativism in the Discourse of Human Rights" (1994) 16 Human Rights Quarterly 235 at 272.

47 See note 8 at 714.

48 See note 15 at 218.

standards. Islam does contain within it the genesis for change and it is from within Muslim society itself that change ultimately will come.⁴⁹ But change is often gradual, especially if it is to endure.

⁴⁹ See note 38 at 332.