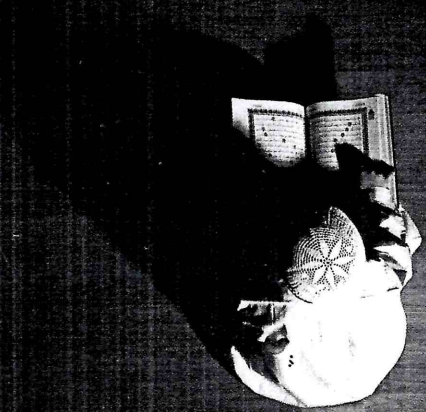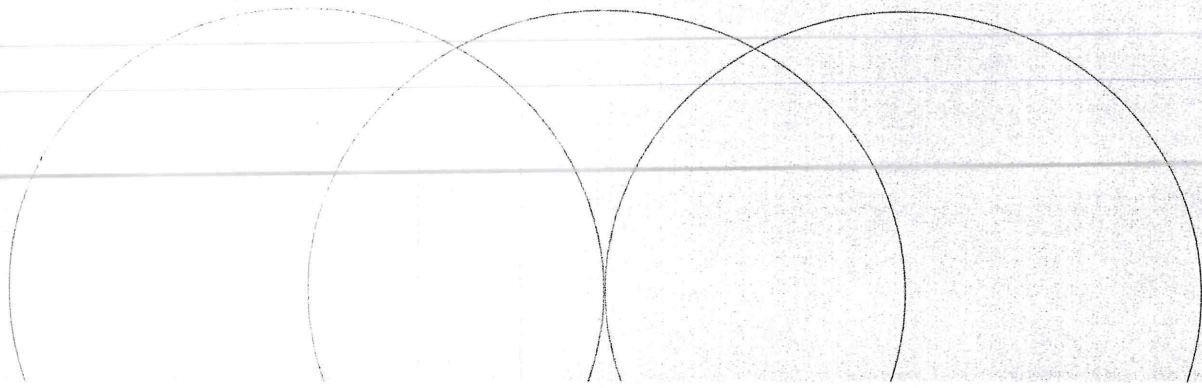# ISLAM AND THE SECULAR STATE

ABDULLAHI AHMED AN-NA'IM

NEGOTIATING THE FUTURE OF SHARI'A

But the varied positions in the debate cannot just be reduced to those opposed to or in favor of the term "secularism." Rather, there is a range of views about the relationship of Islam and the state that lie between the extremes of total fusion and total separation, perhaps itself pointing to the diverse understandings of secularism in Indonesia. In the final analysis, what is critically important is to keep the debate itself alive and constructive. It is profoundly problematic for Indonesia as a whole if either the Islamic state model or the secular state model is implemented in any way that diminishes the possibilities of debate and adaptation. Examples of these negative tendencies can be cited from the post-independence history of Indonesia, including recent so-called *fatwas* that brand concepts like pluralism and secularism as anti-Islamic. Constructive debate must avoid such inflammatory accusations and focus on substantive and mutually respectful arguments.

CHAPTER **7**

Conclusion: Negotiating the Future of Shari'a

The framework proposed in this book provides the normative and institutional parameters and safeguards for the negotiation and mediation of the role of Shari'a among Muslims and non-Muslims now and in the future. By negotiation and mediation I mean to emphasize that there is no categorical and permanent resolution of the paradox of how to secure the religious neutrality of the state within the reality of the connectedness of Islam and politics. The conception of the secular state I am proposing offers an alternative vision to perceptions of secularism and the secular state that many Muslims find objectionable. Instead of sharp dichotomies between religion and secularism that relegate Islam to the purely personal and private domain, I call for balancing the two by separating Islam from the state and regulating the role of religion in politics. This view combines continuity of histories of the secular realm in Islamic societies with reform and adaptation of these traditions to offer future possibilities for these societies. In particular, I argue that there is nothing "un-Islamic" about the concept of a secular state as the necessary medium for negotiating the organic and legitimate role of Islam in public life. The Qur'an addresses Muslims as individuals and community, without even mentioning the idea of a state, let alone prescribing a particular form for it. It is also clear that the Qur'an does not prescribe a particular form of government. As early Muslim leaders immediately recognized, however, some form of political organization is clearly necessary for keeping the peace and organizing the affairs of the community. This idea can be supported and legitimated from an Islamic perspective, since it is necessary for social life anywhere.

But whatever Muslims devise as a state to serve these vital purposes will necessarily be a human construction, which is inherently secular and not Islamic as such. The same is true about the system of government that will

rule through state institutions. The question for the future of Shariʿa is how to devise a state and a system of government, which are inherently secular, that can best serve the purposes of Shariʿa for Muslims as individuals and communities. Moreover, since Muslims must always coexist and collaborate with other communities, at local, national, regional, and global levels, non-Muslims are equally concerned about the states and governments they share with Muslims. Indeed, interdependence and cooperation among different human communities is explicitly stipulated in the Qurʾan (49:13). I will return later to the implications of this view for the audiences of this book.

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

As a Muslim, I need a secular state in order to live in accordance with Shariʿa out of my own genuine conviction and free choice, personally and in community with other Muslims, which is the only valid and legitimate way of being a Muslim. Belief in Islam, or any other religion, logically requires the possibility of disbelief, because belief has no value if it is coerced. If I am unable to disbelieve, I will not be able to believe. Maintaining institutional separation between Islam and the state while regulating the permanent connection of Islam and politics is a necessary condition for achieving the positive role of Shariʿa now and in the future.

In this final chapter, I will discuss and further elaborate some aspects of this proposed framework for the future of Shariʿa, including my emphasis on a process-based model of negotiated secularism and the rehabilitation of religion in public life. I will also examine the distinction between secularism and secularization, and illustrate how it is relevant to my particular concern with the future of Shariʿa rather than its history. Since this proposal for a positive role for Shariʿa involves multiple audiences and levels of discourse, I will begin with some reflections on aspects of the scope and methodology of this framework.

My primary audience is Muslims everywhere, but that is neither a monolithic, exceptional, nor static category of readers. Muslim intellectuals and professionals, who tend to be the ruling elite and opinion-makers in their societies, are largely shaped by European-style education, which enables them to appreciate philosophical concepts and terms that may not be known to those educated in the traditional Islamic schools (madrasas). Thus, even if this book were addressed exclusively to Muslims, that would still be a diverse and dynamic group. Ironically, Western media and some scholars tend to take an "orientalist" view of Islam and Muslims that is based on a narrow view of traditional interpretations of Shariʿa and medieval scholarship. Conversely, the views of liberal, Western-educated Muslims are assumed to be unauthentic and their values unrepresentative of "real" Islam. In this way, Western media and public opinion call upon Muslims to "modernize" and adhere to universal values of constitutionalism and human rights. Yet those who do that are dismissed in Western public discourse as "westernized" and not sufficiently Muslim, a view shared by traditional conservative Muslims. Part of the argument I am making in this book is that Muslims can be liberal in their own right, from an Islamic perspective, without having to satisfy preconceived notions of how they ought to be "sufficiently Muslim," whether in Western or conservative Islamic discourse.

In view of this concept of the state and the critical role of civic reason, the future of Shariʿa cannot be secured without due regard for the interests and concerns of those who are not Muslim; they must also be included in my intended audience, though not in the same way as Muslims. Focusing on a particular audience would mean selecting a certain methodology of argumentation and choosing terms and concepts that resonate with the intended readers. Since no audience lives in isolation from other human beings near and far, my mode of argumentation and choice of terms and concepts should also be comprehensible for non-Muslims. The issue is complicated by the fact that audiences tend to overlap, and terms and concepts have varieties of shades of meaning and implications for different readers. Some of the terms and concepts I use in this book, like "Shariʿa," "secularism," and "citizenship," evoke a range of meanings and associations among any group of readers.

It is true that my primary objective is to persuade Muslims to support and promote the proposed conception of the dynamic relationship among Islam,

the state, and politics. To this end, I have attempted throughout this book to support these propositions from an Islamic perspective, as explained in Chapter 1. Since this subject should be a matter of general concern because of its implications for human dignity and social justice at home and abroad, I am also calling on non-Muslims to participate in debating these issues in relation to public policy and state law. Muslims are also encouraged to participate in debates among other religious communities in relation to public policy and state law. Such debates regarding all relevant religious traditions should of course be conducted with civility, mutual respect, and discretion. They should also focus on matters of public policy and law and avoid questions of religious doctrine and ritual practices. These standards may often be difficult to maintain in practice, but consensus about the propriety, manner, and limits of internal debate and interreligious dialogue will evolve over time.

Part of this inclusive approach is the consideration of concepts and arguments from broader comparative perspectives, including Western political and legal theories and experiences, all as part of the civic reasoning process proposed in this book. The point here is not only that including non-Muslims in an Islamic discourse regarding public policy is expedient or tactical, but also that this is the way it has been done throughout Islamic history and should continue to be done in the future. It is neither possible nor desirable, in my view, to identify and deploy purely "Islamic" arguments, to the exclusion of non-Islamic arguments, as if the two forms of discourse can evolve in isolation or be separated from each other. The spectacular spread of Islam, which was sustained for a thousand years, has partly been the result of its ability to adapt to local conditions and adopt preexisting sociopolitical institutions and cultural practices. The philosophical and jurisprudential foundations of early Islamic social and political institutions evolved through active debate with Jewish, Christian, Greek, Indian, Persian, and Roman traditions during the seventh through ninth centuries. Moreover, Islamic discourse continued to adopt, adapt, and negotiate with preexisting religious and cultural traditions as Islam spread into central and Southeast Asia and sub-Saharan Africa over the following centuries.

These processes continued through the encounter with European colonialism from the sixteenth century up to the present. This phase is particularly important for the argument I am making in this book, because of the continuing and multifaceted impact of European colonialism and Western hegemony generally over Islamic societies and communities. As discussed in

Chapters 1 and 3 and illustrated with the cases of India, Turkey, and Indonesia, the adoption of European models of the state and positivist conceptions of law require the incorporation of corresponding concepts and principles of secularism, constitutionalism, human rights, and citizenship. This does not mean total and unquestioning incorporation of all things Western, but that Islamic societies are neither uniform nor exceptional. Indian Muslims, for instance, probably have more in common with their Hindu neighbors than they do with Nigerian or Senegalese Muslims. I am not suggesting that being Muslim is irrelevant, or that there are no differences between religious communities. My point is that Muslims and their societies are neither superior nor inferior simply because of their religious beliefs. This balancing of the normality and the specificity of Islamic societies is also relevant to some terms and concepts used in this book, in relation to their counterparts in Western experiences.

Any conception of the secular state is always deeply historical and contextual everywhere. Each of the Western systems that are commonly accepted today as secular evolved its own deeply contextual definition out of its own historical experience. Upon close examination of American, British, Italian, French, Swedish, Spanish, or any other Western European experience, we find that it is unique and specific to the history and context of the country. Whatever common features can be found among these systems are the product of comparative analysis in hindsight and not the result of the uniformity of preconceived models that were deliberately applied to produce specific results. Indeed, the meaning and implications of secularism in each of those situations are contested and contingent, varying over time, sometimes in different parts of the same country. As illustrated by continuing controversy over school prayers and public displays of religious symbols in the United States and religious education in France and Germany, secularism can have different connotations in different Western societies, sometimes across parts of the same society or over time.

These reflections apply to other central concepts and terms I have incorporated in my argument in this book, such as "constitutionalism," "civil society," and "civic reason." In all of these and other relevant ideas, there is a dialectic relationship between the local, deeply contextual experience of various societies and universal norms or principles that can be extrapolated from those experiences. There is no abstract or preconceived universally agreed-upon blueprint of what constitutionalism, citizenship, civil society, and civic reason must mean. Whatever generalizations we can make about

these and related ideas are based on comparative reflection upon actual experiences, after the fact and over long periods of time. No society or region of the world has the power or authority to define these concepts for others, though all societies can and do learn from each other's experiences, even when that is not realized or acknowledged. The balance of power and differences in resources, which are currently still in favor of Western over non-Western societies, may make it harder to appreciate these realities of the autonomy and interdependence of human societies. The point may be clearer when we consider the longer range of human history, and it can also be observed in our daily experiences of resisting coercive imposition while accepting friendly and respectful efforts to influence our views or behavior.

In this light, any relevant idea and argument in the debate about a secular state, constitutionalism, democracy, and so forth in Islamic settings should not be reduced to misleading and untenable dichotomies of "Western" versus "non-Western" concepts and institutions. These debates in any part of the world are about the achievement of shared visions of human dignity and social justice under similar conditions in the present local and global context. There is also a long history of exchange of ideas and experiences among a wide variety of religious and cultural communities, regardless of perceptions of internal or external origins or pedigree of those influences. While elites or ideologues may assert a fundamental difference between "them" and "us," there has always been profound dialogue and exchange across ancient and medieval civilizations and into the colonial and postcolonial era. There are and will be in the future some who will insist on the them-and-us dichotomy; indeed, confrontation and hostility tend to beget the same in response.

Focusing on such extreme positions on both sides can only lead to a senseless spiral of mutual violence and destruction. Instead of dwelling on parochial justifications of concepts and institutions deemed to be Western, or overlooking the unequal histories in which they were introduced to Islamic societies, I deliberately choose to seek mediation of conflict and cultural legitimization of concepts and institutions like constitutionalism, human rights, and secularism that are necessary for the realization of self-determination by all human beings everywhere (An-Na'im 2006). The greater challenge for Muslims in the future is not in living with the West but in living with ourselves, and securing human dignity and well-being for all. In my view, the human encounter is so deep and multifaceted everywhere, across religious, cultural, philosophical, and ideological boundaries, that we can always find

evidence of cooperation and service as well as of insult and injury by the other. For our purposes here, what is problematic is the claim that the origins or legacies of ideas, discourses, and institutions completely determine their meaning or impact in any and all contexts.

Despite the deep inequalities inflicted by colonialism and its varieties of violence, the West has been understood, received, resisted, and reworked in a number of ways by non-Western peoples. As explained by Ashis Nandy, one mode of engagement in colonial India was to locate the West as an aspect of an internal debate within the traditions of Indian society. From this perspective, the West is constructed to "make sense to the non-West in terms of the non-West's experience of suffering." This victims' construction of the West was different from the strategies of those who sought to "beat the West at its own game," which was another logic of engagement by colonized Indians (Nandy 1983, xiii). Such alternative constructions of the West confirm that "victims" should not only be seen as victims, nor do they necessarily see themselves as victims. Non-Western societies cannot simply be viewed as "the other" in relation to the West. They define themselves on their own terms, although the West may well be one of the elements in that definition. "India is not non-West; it is India" (Nandy 1983, 73). Postcolonial societies already have their own understanding of and experience with the institutions and concepts that are commonly called Western. Many of these theories deviate from the accepted paradigms of academic knowledge and can be seen as an implicit critique of the West. The point is neither to tame that dissent nor to accept or reject Western knowledge uncritically, but to foster a creative and productive engagement between the various perspectives. Indeed, concepts and institutions like secularism, constitutionalism, and human rights are already an important part of the postcolonial history of non-Western societies and are already subject to vibrant and ongoing evaluation and debate, regardless of what Western societies do or fail to do with these ideas.

In addition to affirming the human agency of non-Western societies in appropriating whatever concepts and institutions they find useful, I am opposed to what might be called a cultural/ideological counteroffensive from within those societies. This dimension reflects an anxiety on the part of Islamic reformers to develop a complete countermodel of modernity from what they believe to be an exclusively Islamic framework, to match that of the West. The outcome, it seems to me, tends to be a limited and static understanding of Islam and an inadequate model of modernity. This anxiety

about the West paradoxically reflects an obsession with the West, while seeking to deny the value of anything Western. This is what Boroujerdi, an Iranian scholar, calls "orientalism in reverse" and "nativism" (1996, 10, 14, 19). "Orientalism in reverse is a discourse used by 'oriental' intellectuals and political elites to lay claim to, recapture, and finally appropriate their 'true' and 'authentic' identity. This self-appropriation is almost invariably presented as a counterknowledge to Europe's oriental narrative" (11–12). Ironically, orientalism in reverse shares foundational assumptions with the Western orientalist discourse it seeks to challenge. Itself a product of colonialism, orientalism in reverse valorizes the West in constructing it as the reference point for defining the self, betraying "the infatuation with the dominating other (the West) . . . Even in their newly acquired capacity as speakers, authors, and actors the 'Orientals' continue to be overdetermined by the occidental listener, text, and audience" (12–13). The key difference between orientalism and orientalism in reverse is that the latter "is more concerned with representing (or 'big brothering') *its own domestic constituency* than with understanding and dominating the exotic other" (13; emphasis added). Orientalism in reverse in Islamic discourse seeks to intimidate and dominate Muslims, rather than liberate them by confronting the orientalism of the West.

As I see it, the challenge is to transcend this logic of opposition that is obsessed with what it seeks to oppose, to reach a proactive logic beyond the dichotomy of West and non-West. From this perspective, I have freely discussed whatever concepts, institutions, and discourses that I found relevant and useful for my argument, instead of avoiding any of these simply on the grounds that they are Western. In the final analysis, all aspects of the proposal presented in this book are premised on my belief in the possibilities of human solidarity in response to our shared human vulnerability to the dangers and risks to life and livelihood. In our present interconnected and globalized world, we must not underestimate the powerful possibilities of solidarity and dialogue across societies and civilizations, which can contribute to greater mutual understanding and celebration of both differences and commonalities.

Islam, the State, and Society

My core proposition for the future of Shari'a rests on the separation of Islam and the state, accompanied by the nurture and regulation of the organic re-

lationship between Islam and politics. It is not possible, nor desirable in my view, for people of any society to keep their religious beliefs, commitments, and concerns out of their political choices and decisions. Recognizing and regulating the role of religion as a legitimate source of guidance for political decisions is healthier and more practical than forcing religious reasoning into the domain of fugitive politics. It is also necessary, I believe, to challenge the superiority of an abstract notion of a purely secular rationale to a religious rationale, where the latter is presumed to be a less valid form of argument. The model of secularism I am proposing does not in any way accord less value to religious modes of being in the world, thinking, or arguing than to nonreligious modes. It is also premised on the belief that the categories of understanding that people employ in their everyday lives cannot neatly be parsed into the secular (as nonreligious) and the religious. My main point here is well made by Ashis Nandy in rejecting a view of secularism that excludes religion from politics:

> If you are seriously committed to democracy, you cannot in the long run stop people from bringing their entire self into politics. For no one consistently divides one's religious and political selves in the way the theory of secularism demands. That's not psychologically feasible. There is no empirical evidence—in psychiatry, psychoanalysis, or psychology—that a healthy, normal person can constantly live with a divided social and ethical self. At crucial moments, he or she has to bring his or her deepest beliefs into public life, to reduce cognitive dissonance. (2006, 103–104)

This is why I distinguish between Islam and the state, on the one hand, and Islam and politics, on the other, to insist on institutional separation in the first relationship and to encourage continued connectedness in the second. Securing institutional separation of Islam and the state is necessary for affirming and encouraging the interaction between Islam and politics. Indeed, as I have argued elsewhere, secularism and religion require each other in fundamental and deep ways (An-Na'im 2005). Some of this interdependence may be highlighted as follows.

On the one hand, the internal transformation of religions is critical for the survival of religious traditions and the legitimacy of religious experience. Every orthodox precept that believers take for granted today began as a heresy from the perspective of some other orthodox doctrine and may well continue to be considered heretical by some believers. The separation of religion and state is necessary for securing the legal and political space in which this

transformation can happen, as and when necessary. Without a secular state that enables freedom of belief and expression, there is no possibility of development (which is to say life) within the doctrine of any religion, and no possibility of peace within or between religious communities. The secular state also secures effective possibilities for preventing an exclusivist and authoritarian religious group from threatening the essential interests of any segment of the population. I speak of possibilities because the secular state will not itself achieve these objectives. Neither will the internal transformation and rejuvenation of a religious tradition happen without the human agency of believers; nor will protection against religious authoritarianism materialize in practice without the active engagement of citizens. But the secular state is essential for these possibilities to arise and remain accessible.

On the other hand, secularism needs to be subjected to a drastic limitation of its normative claims and scope if it is to achieve its own purpose, which is the safeguarding of political pluralism in heterogeneous societies. In other words, secularism is able to unite diverse communities of belief and practice into one political community precisely because the moral claims it makes are limited and thus unlikely to be the source of serious disagreement among citizens. In other words, the secular state is a necessary framework for negotiating ethical differences among citizens, but not for adjudicating and resolving such differences. Consequently, secularism cannot by itself justify for believers some of its own components, like constitutionalism, human rights, and citizenship. It may be necessary, indeed, to seek a religious justification for the principle of secularism itself, which is what I am trying to do in this book. For the moral underpinnings of these doctrines and their institutional expression, believers may need to refer to their own religious convictions. I am not saying that this is always necessary for all believers everywhere, but I do believe it is necessary to keep this possibility open at least for Muslims.

This symbiotic relationship of religion and secularism may be summarized in the following way. Secularism needs religion to provide a widely accepted source of moral guidance for the political community, as well as to help satisfy and discipline the needs of believers within that community. Religion needs secularism to mediate relations among different communities (whether religious or antireligious or nonreligious) that share the same political space. In other words, the vital function of the secular state in regulating the public role of religion itself requires religious legitimization for believers, which is unlikely unless traditional understandings of religion are

open to transformative reinterpretation. For that to happen, however, we need the safeguards of secularism, constitutionalism, human rights, and citizenship.

None of this is to suggest or imply that the religious convictions of the majority of the population should be imposed on the minority, or on dissidents within the religious community itself, except by their own free and voluntary acceptance through civic reason. This limitation on the power and rights of the majority is what I am referring to as safeguards of secularism, constitutionalism, human rights, and citizenship. These concepts and institutions may overlap in many ways, but each of them is essential in its own right and for purposes that cannot be served by the others, as discussed in Chapter 3. For instance, the democratic principle of majority rule is effectuated through state institutions but cannot mean that a particular political majority is allowed to take over the institutions of the state to the exclusion of other political forces in the country. This is the point of the distinction made in Chapter 3 between the state and politics. Moreover, the agreement of the totality of the population cannot override the human rights of a single citizen, even if those rights are not asserted in practice. This is why fundamental rights should be entrenched against constitutional amendment, even if approved by the entire population.

It is important here to emphasize what my proposal does not claim to cover or purport to do. This proposal does not advocate a programmatic model for *how* specific Shari'a principles should be reformulated in particular societies or across societies. I do believe that Islamic reform is necessary for the legitimacy and coherence of the proposed model among Muslims. I personally believe in a particular reform methodology, but I do not insist on it as a prerequisite for the proposed framework and can fully accept any reform methodology that can achieve the desired objective. Far from claiming to prescribe the meaning of Shari'a or what its principles should be, I am seeking only to secure conditions under which I can present my views on Islamic reform and debate those presented by others, subject to the safeguards of civic reason.

I am also not claiming to conclusively resolve long-standing debates about the nature of democracy, secularism, constitutionalism, and related matters. I do call for a rethinking of secularism, in particular for greater acceptance of a role for Islam in public life. But that is in no way a claim to conclusively resolve controversies about issues of public policy like abortion or religious education in state schools. In the case of India, for instance, I am not sug-

gesting that the state or the judiciary should redefine the scope of Muslim personal law once and for all by reinterpreting specific Shari'a principles in a particular manner. Rather, my objective is to offer a framework for negotiating a way to balance the need of Muslims for Islamic legitimacy of personal or family law with respect for the human rights and fully equal citizenship of women.

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

What about the free choice and religious conviction of Muslims who believe in the idea of an Islamic state to enforce Shari'a through the state's institutions? Does the proposed framework deprive them of the right to live in accordance with their own religious obligation? Are these Muslims required to abdicate, or at the very least suspend, this belief when entering the realm of civic reason? To be clear on the point, these Muslims are of course completely free to observe Shari'a principles in their own personal lives, provided that that does not violate the rights of others. What is at issue is the claim of some Muslims to impose their beliefs on others, a claim of a right to

violate the rights of others. This is the core claim that I have most strongly sought to challenge from an Islamic point of view throughout various parts of this book. I will now try to summarize my objections to this core claim.

At a most fundamental level, the separation of Islam and the state is necessary for any possibility of belief, as well as for its legitimacy and value over time. By protecting my freedom to disbelieve, a secular state, as defined in this book, is necessary for my freedom to believe, which is the only way belief has any meaning and consequences. The claim of some Muslims to have the religious right and obligation to enforce Shari'a through state institutions must be forcefully blocked because it constitutes an immediate and total repudiation of the right of all citizens to believe in Islam or another religion or opinion. Paradoxically, the belief of some Muslims in the obligation to enforce Shari'a through state institutions repudiates their own ability to hold and advocate that view. Even those who believe in an Islamic state to enforce Shari'a need the freedom to hold and advocate that view, which will be lost to them if they achieve their objective, because the individual Muslims who control the institutions of the state will decide what Shari'a means and how to implement it.

To elaborate briefly, once Shari'a is invoked as Shari'a and its binding force on all citizens is predicated on this fact, the domain of civic reason will be lost, because conversation, debate, and negotiation among interlocutors can no longer take place on equal footing. The essence of civic reason is that the significance of reasons cannot be separated from their rationale, and that the rationale for reasons must be framed in terms that are applicable and accessible to all. Civic reason also requires recognizing that the means are as important as the ends. But when the rationale of Shari'a principles is that they are simply what some believe to be the will and command of God, all other rationales are effectively silenced. It is true that people disagree about reasons and their rationales, but such differences would be beyond debate and contestation among citizens if they were presented as a transcendental and absolutist claim of an individual's religion. A Muslim who is arguing that charging interest (riba) should be illegal because it is prohibited in Shari'a (haram) may be able to present some general policy rationale to support the argument that other citizens can debate, accept, or reject without passing judgment on the religious belief of that Muslim. But if the religious prohibition itself is the rationale, there is nothing left to debate with other citizens. At the same time, a Muslim citizen will not be completely free to

choose to observe this religious prohibition out of genuine conviction, but rather will be compelled to comply in obedience to the coercive authority of the state.

The point to emphasize here is that any claim to have established an Islamic state or that the state is Shari'a is in fact a false claim. As discussed in Chapters 1 and 2, the notion of requiring an Islamic state to enforce Shari'a is a dangerous illusion: the state is a political institution that cannot be Islamic. There has never been agreement among Muslims on what "Islamic" means in this context. No state has ever been acknowledged by Muslims as a valid example of the concept. In the present modern context, the idea of an Islamic state is inherently inconsistent with the premise of constitutionalism and is not viable in practice. No state can successfully operate on the totality of what Muslims accept as Shari'a principles. I am making this point so categorically here in an effort to preempt claims that past failures of any "experiment," like those of Pakistan or Sudan, were the result only of bad implementation and not of flaws in the model of an Islamic state itself. The historical reality is that there has never been an Islamic state, from the state of Abu Bakr, the first caliph in Medina, to Iran, Saudi Arabia, and any other state that claims to be Islamic today. This obvious reality is due to the incoherence of the idea itself and the practical impossibility of realizing it, not simply to bad experiments that can be rectified in the future.

From a historical perspective, the polity of Medina during the time of the Prophet is of course an inspiring model of the sort of values Muslims should strive for in self-governance, transparency, and accountability. But that experience should not be discussed as an example of an Islamic state that Muslims can replicate after the death of the Prophet. Unless there is another prophet (and Muslims do not accept that possibility), that first polity or state cannot be replicated anywhere. For the rest of Islamic history, the state has always been a political, not religious, institution, though it has not, of course, fit the model of the secular state as defined here. As described in Chapter 2, the historical experience of Islamic societies in general has been one of differentiation of religious and political authorities. Rulers sought the support of Islamic scholars and religious leaders to legitimize their political authority, but religious authorities could not provide that legitimization if they were seen to be too closely identified with the state. In other words, the distinction between the state and religious institutions was historically both necessary and difficult to maintain in practice for both sides. This ambivalence meant that most political regimes in Islamic history fell in between

these two polar models. They never achieved the complete conflation or convergence of Islam and the state according to the ideal of the Prophet, yet they always claimed or sought to be closer to it than to its polar opposite, complete separation between religious and political authority. The way to clarify and mediate that historical ambivalence, I have argued in this book, is to distinguish between the state and politics, so that Islamic religious authority is separate from the institutions of the state while being legitimately active in the political life of the community.

Conversely, it is imperative for the success of the framework described above that the state does not itself become partisan to any specific position in the negotiation of the role of Islam and Shari'a in the community. This is what I referred to earlier as the religious neutrality of the state as an objective, precisely because complete neutrality is impossible for human beings to achieve. It should also be noted here that since the state and its institutions are not human agents, any action taken in the name of the state is in fact the action of the officials who control and operate the relevant organs of the state. This reality only emphasizes the imperative of neutrality of all state institutions and actors on matters of religious doctrine and practice in the community. The state should not intervene in the processes of civic reasoning, whether to support a secular or a religious rationale, except to uphold constitutional and other safeguards of free and fair debate and contestation. In other words, the role of state institutions should be limited to protecting civic reasoning and adjudicating disputes according to established constitutional and judicial criteria and processes.

Since, as noted earlier, those who rule through state institutions cannot be completely neutral, the objective is to promote the neutrality of the state through a variety of safeguards to ensure political and legal accountability. This critical and delicate role of the state is the reason that the distinction between "state" and "politics" is both necessary and difficult to maintain. As discussed earlier, the purpose of this distinction is to safeguard the integrity and continuity of state institutions, like the civil service and educational and health-care systems, and protect them from manipulation by an elected government, especially when it enjoys strong political support. The fact that this distinction will not be a permanently settled boundary in any society, as various political actors strive for greater power, confirms its critical importance for the proper functioning of state institutions and the political process in general. Since it cannot be entrusted to competing political actors, the distinction between the state and politics requires the proper functioning of

constitutionalism, human rights, and citizenship as the essential framework for civic reasoning, as discussed in Chapter 3.

The value of protecting the possibility of dissent and difference can be appreciated in terms of the relationship of heresy to the authenticity and rejuvenation of religious life. Obviously, many heresies simply perish and disappear, but there is no orthodoxy that was not a heresy when it started. From this perspective, every religious community should safeguard the psychological and social as well as political possibility of heresy and disagreement among its members, because that is the best indicator of the honesty and authenticity of the beliefs and practice within that community. Believers must always remain within their religious community completely voluntarily or leave by their complete free choice—there is simply no human or religious value in coerced religious belief or practice.

All the principles and processes outlined above are intended to protect and promote free and honest compliance with Shari'a by Muslims, which is the only way to be a Muslim at all. From my perspective, secularism, constitutionalism, human rights, and related concepts and institutions can all be rendered in the service of honest fidelity to Shari'a and genuine compliance with its commands. This is what I mean when I say that I need a secular state to be a Muslim. I am neither suggesting that Shari'a is inherently incompatible with constitutionalism, human rights, or democracy nor calling for it to be subordinated to these principles. In my view, it is counterproductive to see the issue as one of Shari'a *versus* constitutionalism, human rights, or democracy. On the one hand, as I have argued earlier and elsewhere (An-Na'im 1990), the legitimacy of these principles varies according to the cultural, religious, and philosophical belief or orientation of the individual. For Muslims, that will probably include belief in the compatibility of the principles with Shari'a as the normative system of Islam, which is the product of a long and complex process of interpretation and contextual practice. But if all of this is true, it may be asked, why am I opposing the enforcement of Shari'a as state law and policy?

There are at least two levels of response to this question. At one level, it is clear that there is no uniform and settled understanding of Shari'a among Muslims that can be enforced by the state. This is true even within the same school of Sunni or Shi'a jurisprudence, let alone across different schools and sects. It should also be emphasized at this level that since every understanding of Shari'a, even if universal among Muslims, is a human interpretation,

none should be enforced as state law in the name of Shari'a or Islam as such. At another level, because Shari'a is always the product of human interpretation of divine sources, any interpretation of it will reflect the human limitations of those who are interpreting it, despite the divinity of the sources they are working with. From this perspective, Shari'a will always remain open to reinterpretation and evolution, in response to the constantly changing needs of Islamic societies and communities in different times and places.

The gradual decline of Islamic civilizations and their consequent domination by European colonial powers over the past three centuries contributed to the growing rigidity, overdetermination, and trivialization of Shari'a among Muslims. Ironically, Muslims and others often blame Shari'a and Islam in general for the backwardness and underdevelopment of Islamic societies. This view is both inaccurate and unproductive. Since Shari'a and Islam are not independent entities that can do anything on their own, the decline of Islamic societies must be the consequence of what Muslims do or fail to do. To blame Shari'a or Islam is not productive because to do so shifts responsibility and the ability to change away from Muslims to abstract notions. If the problem is with Shari'a itself, then we have to wait for Shari'a to solve it, but if it is the failure of Muslims to correct what is wrong with their understanding of Shari'a, then it is their responsibility to correct that and implement it in practice.

From this perspective, I am proposing reinterpretation of specific aspects of historical interpretations of Shari'a, namely, male guardianship of women *(qawama)*, sovereignty of Muslims over non-Muslims *(dhimma)*, and violently aggressive *jihad*. Even if these principles of Shari'a are not enacted as state law and policy as such, their moral and emotional impact on Muslims will severely undermine the ethos of constitutionalism, human rights, and citizenship. Given the social and moral authority of Shari'a for Muslims, these principles are likely to translate into discrimination against women and non-Muslims, and to legitimize such discrimination with or without the endorsement of the state. Even if state officials were to intervene to stop discrimination against women and non-Muslims through the coercive and disciplinary power of the state apparatus, such intervention is likely to be seen as a violation of Shari'a. Moreover, the risk of this "popular" resistance to state action against discrimination can be cited by state officials to justify their failure to act. The persistence of these attitudes about gender and interreligious relations and about political violence more generally can also moti-

vate private persons to act on them directly to enforce their personal views of Shariʿa while claiming to be acting in the interests of Islam against an "irreligious" or "heretical" state.

As indicated earlier, the model of the secular state presented in this book is not contingent on acceptance of a particular Islamic reform methodology, but I do believe that the need for reform cannot be denied. One Islamic methodology that I find to be appropriate for achieving the necessary degree of reform is that proposed by Ustadh Mahmoud Mohamed Taha (Taha 1987). This book is not about issues of Islamic reform, which I have discussed in detail elsewhere (An-Naʿim 1990), but it may be helpful to note its main premise and methodology of juridical reasoning (ijtihad). As Ustadh Taha explained, the earlier universal message of Islam of peaceful propagation and nondiscrimination was contained in parts of the Qurʾan that were revealed in Mecca (610–622). But when the Prophet migrated with his few persecuted followers to Medina in 622, the Qurʾan had to provide for the concrete needs of the emerging community, which had to struggle for survival in an extremely harsh and violent environment. In this light, it is clear that traditional Shariʿa principles of qawama, dhimma, and violently aggressive jihad were in fact concessions to the social and economic realities of the time and not the message Islam intended for humanity at large into the indefinite future. Since those principles were developed by early Muslim jurists applying their own methodology of interpretation, which was not sanctioned as such in the Qurʾan or Sunna of the Prophet, different conclusions can be drawn by applying a new methodology. This analysis, I believe, provides a coherent and systematic methodology of interpretation of the totality of the Qurʾan and Sunna, in contrast to the arbitrary selectivity of some other modern scholars, who fail to explain what happens to the verses they choose to overlook. But since this or any other approach to Islamic reform must be implemented in the concrete context of present Islamic societies, a brief clarification of this situation may be useful here. Whatever future Shariʿa may have, it must evolve out of its recent past and current status.

Colonial Transformation and Postcolonial Inhibitions

As discussed earlier in this book, it is grossly misleading to speak of the enforcement of Shariʿa by the state in Islamic history, because the notions of state and law had very different meanings from our understanding of these institutions in the postcolonial era. During the first three centuries of Islamic

history, various aspects of Shariʿa, such as the sciences of jurisprudence (fiqh), the Qurʾan, the Sunna, and theology (kalam), were developed by independent scholars working outside the framework of the state. Since those fields constituted the substance and methodology of the education of rulers and their officials, Shariʿa principles would have influenced the administration of justice. But Shariʿa could not have been enforced by the state in the modern sense of systematic enactment of a legal system, simply because the state lacked the authority to enact Shariʿa. That authority was vested in ulama, who enjoyed the confidence of their communities. The imperial states of the time neither had the centralized political power of the modern state nor attempted to provide comprehensive administration of justice.

It is therefore incorrect to speak of the legal and public-policy role of Shariʿa as something that Muslims used to have and should reenact now that they have achieved political independence from colonial rule. On the one hand, it is not possible to return to the precolonial era, because of the drastic transformation of Islamic societies and their state formations. All Muslims now live under territorial (nation-) states, which are characterized by "a centralized and bureaucratically organized administrative and legal order run by an administrative staff, binding authority over what occurs within its area of jurisdiction, a territorial basis and a monopoly of the use of force" (Gill 2003, 2–3). On the other hand, the formation and development of Shariʿa by independent scholars outside the framework of the state defies codification and centralized enforcement by the European model of the state which Muslims inherited from colonial rule. As discussed earlier, the enforcement of Shariʿa as state law is inconsistent with its nature, because enactment requires selection of some views over others, whereas that choice is the right and responsibility of each Muslim as a matter of religious conviction. That is why the founding scholars of Shariʿa objected to the adoption of their views by the state and did not claim the exhaustive authority to determine the Shariʿa ruling on any issue for all Muslims (Weiss 1998, 120–122).

That tradition of early Islamic scholars was indeed pious and intellectually honest, and it provided valuable flexibility in local legal practices under highly decentralized imperial states. But when it is considered in relation to modern legal systems, the obvious question is, how and by whom can reasonable and legitimate differences of opinion among schools and scholars of Shariʿa be settled in order to determine what is the law to be applied by state courts and other authorities? The basic dilemma here can be explained as follows. On the one hand, there is the paramount importance of a minimum

degree of certainty in the determination and enforcement of state law for any society. The nature and role of state law in the modern state also requires the interaction of a multitude of actors and complex factors which cannot possibly be contained by an Islamic religious rationale. A religious rationale is key for the binding force of Shari'a norms for Muslims, yet given the diversity of opinions among Muslim jurists, whatever the state elects to enforce as law is bound to be deemed an invalid interpretation of Islamic sources by some of the Muslim citizens of that state. The imperatives of certainty and uniformity in national legislation are now stronger than they used to be, not only because of the growing complexity of the role of the state at the domestic and national levels, but also because of the global interdependence of all peoples and their states.

Moreover, it is not possible to reverse the colonial transformation of the administration of justice, which effectively displaced the institutional and methodological conditions under which Shari'a operated in the past (Hallaq 2004). As openly secular state courts applying European codes began to take over civil and criminal matters during the colonial era and after independence in the vast majority of Islamic countries, the domain of Shari'a became progressively limited to the family-law field. But even in this field, the state continues to regulate the relevance of Shari'a as part of broader legal and political systems of government and social organization (Coulson 1964, 218–225). However, an earlier, related development during the Ottoman Empire was the patronage of the Hanafi school, which eventually resulted in the codification of that school by the mid-nineteenth century. That was the first ever codification of Shari'a principles, which marked a significant shift to European models of the state and administration of justice and away from traditional approaches to the role of Shari'a in these fields. The symbolic significance of the Ottoman "capitulations" to European powers, which culminated in the abolition of the caliphate by 1924, marked the irreversible shift to European models of the state and its legal system, which came to prevail throughout the Muslim world.

European colonialism was spectacularly successful not only in its scale and scope but in transforming the global economic and trade system as well as the political and legal institutions of the colonized societies. The question for our purposes here is what impact these new realities had on the relevance and application of Shari'a among Muslims. This question is of course not new. During the era of the imperial states of the past, there was tension between these new institutional developments and the need for the daily

administration of justice to be legitimized in terms of Shari'a principles, which paradoxically required the state to respect the autonomy of scholars, because that was necessary in order for them to legitimize the authority of the state. Rulers were supposed to safeguard and promote Shari'a without claiming or appearing to create or control it (Imber 1997, 25). That traditional tension has continued into the modern era, in which Shari'a remains the religious law of the community of believers, independent of the authority of the state, while the state seeks to enlist the legitimizing power of Shari'a in support of its political authority. This ambivalence persists because Muslims are neither able to repudiate the religious authority of Shari'a nor willing to give it complete control over their lives, because it does not provide for all the substantive and procedural requirements of a comprehensive and practicable modern legal system (Gerber 1999, 29). These qualities came to be more effectively provided for by European colonial administrations throughout the Muslim world by the late nineteenth century. While this process unfolded in different ways among Islamic societies, the experience of the late Ottoman Empire has probably had the most far-reaching consequences.

The concessions made by the Ottoman Empire to European powers during the nineteenth century set the model for the adoption of Western codes and systems of administration of justice. Ottoman imperial edicts justified the changes in the name of strengthening the state and preserving Islam and emphasized the need to ensure equality among Ottoman subjects, thereby laying the foundation for the adoption of the European model of the state and its legal system. The Ottoman *Majallah* was promulgated over a ten-year period (1867–1877) to codify the rules of contract and tort according to the Hanafi school, combining European form with Shari'a content. It also included some provisions drawn from sources other than the Hanafi school, thereby expanding the possibilities of "acceptable" selectivity from within the Islamic tradition. The principle of selectivity *(takhayur)* among equally legitimate doctrines of Shari'a was already accepted in theory, as noted earlier, but not in practice in terms of legislation of general application. By applying it through the institutions of the state, the *Majallah* opened the door for more wide-reaching subsequent reforms, despite its initially limited purpose.

Those reforms had the paradoxical outcome of making the entire corpus of Shari'a principles more available and accessible to judges and policymakers by transforming their nature and role through formal selectivity and

adaptation so they could be incorporated into modern legislation. Shari'a principles began to be drafted and enacted into statutes that were premised on European legal structures and concepts. This was often done by mixing some general or partial principles or views from one school of Islamic jurisprudence with those derived from other schools, without due regard for the methodological basis or conceptual coherence of any of the schools whose authority was invoked. Another aspect of the paradox is that the emerging synthesis of the Islamic and European legal traditions also exposed the impossibility of the direct and systematic application of traditional Shari'a principles in the modern context.

The legal and political consequences of these developments were intensified by the significant impact of European colonialism and global Western influence in the fields of general education and professional training of state officials, business leaders, and other influential social and economic actors. Changes in educational institutions not only dislodged traditional Islamic education but also introduced a range of secular subjects that tended to create a different worldview and expertise among young generations of Muslims. Moreover, the monopoly of Islamic scholars on intellectual leadership in societies that had extremely low literacy rates has been drastically eroded by the fast growth of mass literacy and increasing higher education in secular sciences and the arts. Thus not only did Shari'a scholars lose their historical monopoly on knowledge of the sacred sources of Shari'a, but traditional interpretations of those sources are no longer viewed as sacred or unquestionable by ordinary lay Muslims. Regarding legal education in particular, the first generations of lawyers and jurists had advanced training in European and North American universities and returned to teach subsequent generations or to hold senior judicial office.

More generally, the establishment of European model states for all Islamic societies, as part of a global system based on the same model, has radically transformed political, economic, and social relations throughout the Muslim world. By retaining these models at home and participating in them abroad after independence, Islamic societies have become bound by the national and international obligations of membership in a world community of states. While there are clear differences in the level of their social development and political stability, all Islamic societies today live under national constitutional regimes (including countries that have no written constitution, such as Saudi Arabia and the Persian Gulf states) and legal systems that require respect for certain minimum rights of equality and nondiscrimina-

tion for all their citizens. Even where national constitutions and legal systems fail to expressly acknowledge and effectively provide for these obligations, a minimum degree of practical compliance is ensured by the present realities of international relations. These changes are simply irreversible, though their full implications are not sufficiently developed or observed in practice.

Another aspect of this modernization process has been the fossilization and distortion of the role of Shari'a in various Islamic societies, which began with the construction of static formations of identities and traditions by colonial administrators for their administrative convenience. Ironically, that colonial legacy has been perpetuated and reinforced as the logic of the state after independence and has resulted in devastating consequences for the integrity and dynamism of Shari'a. For example, the colonial codification of Hindu and Muslim laws in India, which privileged certain textual aspects of complex and interdependent traditional systems, froze some aspects of the status of women outside the context of constantly evolving social and economic relations (Agnes 1999, 42). The construction of personal law conflated religion and custom, thereby creating the legal fictions that Hindu and Muslim laws derived from scripture and that Hindus and Muslims were "homogenous communities following uniform laws" (Agnes 1999, 43). In Turkey, the history of the republic reveals another mode of fossilizing Shari'a through state control of Islam in order to keep it out of politics and the public sphere altogether. Implemented through a series of laws passed between 1922 and 1935, the model of Kemalist secularism controls and regulates all *public* aspects of Islam in Turkish life, thereby demarcating the private realm as the authentic domain of religious belief and commitment.

To summarize, whenever the state has been used to enforce Shari'a, the outcome has been a highly selective set of principles in total isolation from their legitimate methodological sources. Frozen in this manner, Shari'a has become a reified symbol of communal identity and a zone of contestation of political authority. In addition to being open to political manipulation, this appropriation of Shari'a by the state has made seizing the state itself the primary objective of those who advocate coercive enforcement of Shari'a through state institutions. Whether they succeed or not, that quest makes Shari'a the symbol of despotic and authoritarian rule among the population at large. At the same time, the creative and liberating possibilities of Shari'a are stunted and constrained by the bureaucratic inertia of state institutions.

Restoring the Liberating Role of Shari'a

For Muslims, Shari'a should be known and experienced as a source of liberation and self-realization, not a heavy burden of oppressive restriction and harsh punishments. No action or omission is valid from a Shari'a perspective unless it is completely voluntary, and there is no religious merit in coercive compliance. It is from this perspective that I hold the proposed framework to be necessary for restoring and securing the liberating role of Shari'a. The two legs of the proposed model are the institutional separation of Islam and the state, on the one hand, and regulation of the public and political role of Islam, on the other. As emphasized from the start, this framework does not preclude the application of some principles of Shari'a through state institutions, provided it is supported by civic reasons that the generality of the population can debate and accept or reject without reference to religious belief. Moreover, like all matters of public policy and legislation, the operation through state institutions of what some may believe to be Shari'a principles must be subject to constitutional and human rights safeguards. To be clear on this point, all citizens are free to observe their own religious or philosophical beliefs, provided that that does not violate the rights of others. But if Muslims or other believers wish to use state institutions to enforce any principle or rule that they believe to be decreed by their religion, they must show it to be consistent with constitutional and human rights safeguards and persuade other citizens through civic reasoning.

This combination of institutional separation and regulation of the political role of Islam is necessary to protect Shari'a from manipulation by ruling elites, and thereby enables it to play a stronger and more legitimate role in the public life of Islamic societies. Having originated and operated outside the framework of the state from the start, Shari'a can best be rejuvenated in the same way, in accordance with its genuine and necessary nature as the voluntary obligation of Muslims, which cannot be coerced. Shari'a values can provide a strong basis for a powerful and positive critique of political oppression and effective accountability for economic exploitation and social injustice, and it can support responsible environmental policies. Whatever social good the advocates of an Islamic state seek to achieve can be realized only when the necessary policies and strategies are launched and sustained from within civil society and liberated from the inhibitions and limitations of bureaucratic state institutions.

To advance this vision for the future of Shari'a, it is also necessary to ap-preciate and try to redress the serious apprehension of many Muslims that the proposed model will necessarily result in the secularization of society itself and diminish the role of Islam in public life. In my view, this apprehension is grossly exaggerated, as believers will always find ways of expressing their convictions through the political process and in social relations. As discussed earlier, if religious belief and piety are declining in any society, they cannot be restored through coercion or inducement through state institutions. To the contrary, state intervention in matters of religious belief and practice is deeply corrupting, by breeding hypocrisy (nifaq), which is repeatedly and categorically condemned in the Qur'an. It is also destructive of the efficacy and legitimacy of the state by entrenching religious discrimination and introducing vague and subjective factors in public administration.

It may also be helpful here to clarify the purpose of or rationale for insisting on a public role for Islam in present-day Islamic societies. The term "Shari'a" is often used in public discourse as if it is synonymous with Islam itself, as the totality of the obligations of Muslims both in the private, personal religious sense and in social, political, and legal norms and institutions. In fact, Shari'a is only the door and passageway into being Muslim and does not exhaust the possibilities of human knowledge and lived experience of Islam. There is therefore much more to Islam than Shari'a, though knowing and complying with the dictates of Shari'a are the way to realize Islam as the principle of monotheism (tawhid) in the daily lives of Muslims. It should also be emphasized that any conception of Shari'a is necessarily and always derived from human interpretation of the Qur'an and Sunna, reflecting what fallible human beings are able to comprehend and seek to comply with given the limitations of their own specific historical context. For me as a Muslim, it is clear that no conception of Shari'a can ever be the perfect or eternal representation of the divine command, simply because of the limitations of human comprehension and experience. It is equally clear, however, that human comprehension and experience are the only way the Qur'an and Sunna of the Prophet can be present in our lives and have their transformative impact on our attitudes and behavior.

There may well be good reasons for the anxiety of some Muslims about the secularization of their societies in the sense of declining religious conviction and piety, but that cannot be redressed by state intervention in the religious life of individual persons and their communities. The best response to this must be at the voluntary civil-society level, not through state institutions. Expecting the state to enhance religious belief and piety assumes that

the officials and bureaucrats who operate the various institutions at least share the faith we wish to promote, if not that they are able to inspire others to higher levels of piety. Hypocrisy and corruption are the inevitable consequences of making subjective factors like religious faith and piety criteria for appointment and promotion in bureaucratic positions. The same will be true of the work of state bureaucracies that are charged with promoting religiosity or morality among the public at large.

It is ironic that leading scholars of the call for an Islamic state, like Abul Aʿla al-Maududi and Sayyid Qutb, advocated a Soviet/fascist model of the totalitarian state, which is supposed to transform society in the image of the ruling party (Maududi 1980; Shepherd 1996). The fundamental defect of the idea of the Islamic state is that the logic of the invocation of religious or moral authority can very easily be inverted, so that instead of regulating political power by religious authority, religion itself becomes subordinated to power through the powerful technologies of the modern state apparatus. It is also impossible to distinguish cynical invocations of religion for political power from well-intentioned initiatives. As I have argued, the state by definition is an *amoral* institution and cannot possess or embody its own autonomous morality. Moral judgments and responsibility can be attributed to human beings, not to abstract institutions. To call the state Islamic can only shield the human beings who act through the apparatus of the state from responsibility for their actions.

As comparative reflection on the experiences of Islamic and other societies readily reveals, the public role of religion is being constantly negotiated and renegotiated among different actors. Since this process is deeply contextual, however, the complex role of religion in the political life of any society should be understood on its own epistemological, political, and cultural terms. Using words such as "secularism" and "secularization" may be helpful in distinguishing different approaches to the public role of religion, but such words cannot substitute for deeply contextual analysis of each situation on its own terms. There is simply no universal definition of secularism as separation of religion and the state, or of secularization as the diminishing role of religion in public life. Each society's experience with either or both is specific to that society and its religion(s), and cannot be transplanted or applied to another society. For our purposes here in particular, the separation of Islam and the state is required for the active and legitimate negotiation of the public role of Islam *in each society according to its own context.* Thus the model of the secular state I am calling for is in fact an *enabling* discourse for

promoting the role of Islam in public life. But as I have also repeatedly emphasized, this process of negotiation is subject to constitutional and human rights safeguards for the role of civic reason in setting public policy and legislation. A minimal secularism of separation of religion and the state is the precondition for a negotiated, richer, and deeper secularism, the substance of which will include religious discourse and which will necessarily be specific to each society in its historical context.

In the final analysis, I submit, the state can serve the ideals of an Islamic society for social justice, peace, goodness, and virtue by enabling and facilitating their realization through civic discourse and the fabric of political life. The proposed religious neutrality of the state is indeed required for the future development of Shariʿa itself. As emphasized earlier, consensus *(ijmaʿ)* is the most foundational source and methodology of Shariʿa. It is through the consensus of successive generations of Muslims that we have come to accept the text of the Qurʾan to be the accurate representation of divine revelation as received by the Prophet more than fourteen hundred years ago. The authenticity of the Sunna as an accurate representation of what the Prophet said or approved is also established through consensus. Whatever is accepted by any group of Muslims as being part of Shariʿa is established by virtue of their consensus, simply because there is no pope or other human person or group with the authority to establish any principle of Shariʿa. These and other vital functions of consensus among Muslims would be completely corrupted and distorted if state officials and bureaucrats were allowed to control or manipulate debate and disputation among Muslims. As noted earlier, since every orthodoxy started as a heresy, we must protect, indeed celebrate, the possibility of heresy in order to ensure the relevance and future development of Shariʿa. For every heresy we suppress, we miss the possibility of an idea or principle that future generations of Muslims may wish to establish as part of their orthodox Islam. I say that no human being should have that power to control what others may wish to believe or disbelieve. That is why I believe that Shariʿa will not have any future for me as a Muslim if some Muslims are allowed to prescribe for me what can or cannot be part of my religious experience in the name of a so-called Islamic state. There are many legitimate functions for the state, like keeping the peace, adjudicating disputes, and providing essential services, but its authority cannot and should not extend to determining what is or is not Shariʿa.

"Two debates pervade almost all discussions about Islam, Muslim societies, and the role of both in the twenty-first century. The first revolves around the Shari'a, a kind of comprehensive Muslim guide to good conduct, and its applicability within Muslim-majority states. The other frames capitalism, socialism, and secularism as antipodes to what Islam cannot or should not be.

This book engages both debates, arguing that secularism is not an unwelcome counterforce to 'true' Islam but the indispensable path to reclaiming Islam to advance pluralism, human rights, women's rights, civil society, and citizenship. Abdullahi An-Na'im is a public intellectual known far beyond the academy and the American continent. In Africa, in Asia, and throughout the Middle East his is a courageous voice for secular Islam. There is no other book like this one: brilliant, compelling, and optimistic."

---Bruce B. Lawrence, Duke University