

Review Essay

Ann Elizabeth Mayer

**Islam and Human Rights:
Tradition and Politics**

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The study of Islam and human rights is a challenging activity requiring immersion in a complex discourse of religion, law, culture, politics, postcolonialism, and comparative ethics, accessed both through texts and living contexts. The divide between traditional Islamic and modern Western sensibilities concerning such issues as individualist versus communal values, rights versus obligations, and human dignity as distinguished from human rights, provides ample opportunity for the testing of everyone's patience, empathy, objectivity, and simple courtesy. Although this essay primarily addresses a new edition of a significant book on Islam and human rights, it views the book as a kind of lens through which to observe many important aspects of the general subject.

Ann Elizabeth Mayer's work addresses her subject principally during the post-World War II period, more specifically since the 1948 ratification of the Universal Declaration of Human Rights which only Saudi Arabia among Muslim nations declined to approve. The book does not treat all possible aspects of the subject but focuses on specific human rights declarations and positions that Muslim bodies and selected prominent Muslim thinkers have propounded. Within that range, the discussion addresses Muslim reactions to human rights, Islamic restrictions on human rights, discrimination against women and non-Muslims, restrictions on the rights and freedoms of women, Islamic human rights schemes and non-Muslims, and freedom of religion in Islamic human rights schemes.

Mayer is both a scholar of classical and modern Islamic legal thought and a lawyer. Although her book contains much in the way of sources and analysis that will be unpalatable and even repugnant, for very different reasons, to secular (or religious) humanists on one side and traditionalist patriarchal thinkers, on the other, it is a largely dispassionate study of human rights records and human rights discourses, mostly in the Arab Muslim world.

There are several guiding principles that inform Mayer's coverage of her topic throughout the book. The first is an assumption, based on her reading of Islamic history and literature, that Muslims have generally been concerned about the sorts of ideals, values, and behavioral patterns that undergird modern notions of human rights. But Mayer rightly warns against anachronistic modern readings when treating Islamic or Western ethical and legal concepts in pre-modern times, because the discourses that have produced contemporary international human rights agreements are decidedly modern in spirit and secular by design so as to be as inclusive as possible of diverse peoples and traditions.

A second assumption is that Islam and the Muslim world have not previously and do not now constitute a monolithic entity, but exhibit a wide range of regional and local diversity, not only in customs and cultures but in theological, ethical and, particularly, legal temperaments and positions. Closely related to this assumption is the recognition that what contemporary Muslim human rights declarations call 'Shari'a', when qualifying their articles so as to keep them tightly reefed against the winds of Western style interpretations, is not the traditional field of sometimes widely diverse legal opinions but a simplistic modern

default notion that may unintentionally permit states and rulers to act absolutely and with impunity in all kinds of human rights abuses and challenges, rationalizing their behaviour as 'Islamic' in some sense.

A final assumption, or rather conclusion that has taken the form of an assumption until proven otherwise, based on careful analysis of human rights documents and declarations produced in the Muslim world, is that they are more focused on limiting than on guarding human rights.

This last point is really the key critical contribution of the book. It rests on the fundamental distinction between individual rights and state power. Whereas in Western democracies individuals are, in varying ways, protected from state absolutism, Mayer sees political orderings in the contemporary as well as traditional Arab world, whether Islamic or simply dictatorships, as entities against which individual persons have no real rights, although some citizens – mainly free adult males – may enjoy certain privileges. Closely related to the pre-eminence of state power is a long-standing distrust of human reason in defining and adjudicating human rights and duties and a strong preference for guidance based on scripture and juristic precedent and consensus.

The appearance of a variety of Muslim authored and ratified human rights declarations in recent years indicates a genuine concern for being connected with international discourses. It is not prudent, ethical or humane for a major population in today's international economic and political environment to absent itself from a movement that is, for many people and nations, as urgent and influential as human rights. Mayer contends that although many Muslims fully and enthusiastically support international human rights norms and agreements, official Muslim authored declarations seek to engage the subject from a carefully framed, conservative Islamic perspective, yielding as little as possible to secular, international, and pluralistic principles. The international order (including most Muslim countries) have their human rights declarations and agreements, and so now do Muslims in the sense of a separate community, and both deserve respect if not general acceptance.

Mayer summarizes and analyses several such declarations and comments on what she considers to be their sometimes diverging and even evasive shifts in meaning between the original language – usually Arabic – and translations into English and/or French. An example is Article III.a of the Universal Islamic Declaration of Human Rights of 1981, framed by members of the London-based Islamic Council of Europe. In English it reads: 'All persons are equal before the Law and are entitled to equal opportunities and protection of the Law.' The original Arabic term translated as 'Law' is *shari'a* and not some generic notion of civil law as understood in the West. Mayer contends that the uninformed reader might understand this article in a very different manner than one accustomed to Islamic legal meanings. 'That is, people are not being guaranteed the equal protection of a neutral law, but 'equal protection' under a law that in its pre-modern formulations is inherently discriminatory and thereby in violation of international standards' (90).

She refers particularly to women and non-Muslims who have a very inferior status under the Shari'a than that enjoyed by adult male Muslims.

An example of the shading of meaning with reference to the rights of men and women is Article 6.a of the Organization of the Islamic Conference's 'Cairo Declaration on Human Rights in Islam' of 1990 (and presented at the UN's World Conference on Human Rights in 1993 in Geneva as OIC's definitive statement at that time): 'Woman is equal to man in human dignity (*al-karama al-insaniyya*), and has rights to enjoy as well as duties to perform ...' Mayer remarks that Article 1.a, also of the Cairo Declaration, shares the evasiveness of Article 6.a: 'All men (sic, i.e. *jami' al-nas*, meaning 'human beings, people') are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the grounds of race, colour, language, sex, religious belief, political affiliation, social status or other considerations' (86). Mayer comments that 'one is alerted to the fact that the failure to stipulate equality in 'rights' is not accidental and that the equality in 'dignity' and 'obligations' is not intended to signify equality in "rights"' (*ibid.*). Mayer argues that the 'Islamic Shari'ah' is not as simple a reality as the Cairo Declaration, or other similar documents, appear to assume; but that, as a regulating concept, it should not generally be expected to conform with international human rights standards.

Mayer's critical readings do not always lead her to negative findings with respect to human rights in Muslim contexts. In the 'Constitution of the Islamic Republic of Iran of 24 October 1979 As Amended to 28 July 1989' is Article 3.14, setting forth the aims of the Islamic Republic which include: 'securing the multifarious rights of all citizens, both women and men, and providing legal protection for all, as well as the equality of all before the law [*qanun*]' (196). Mayer contends that 'the fact that this provision was retained, even though it expressed a philosophy of equality that was radically at odds both with the actual policies of the regime and with other provisions in the constitution, is highly significant, because it shows how much normative force international human rights concepts retain in Iran despite the attempts by conservative clerics to discredit them' (86). Mayer sees in such examples signs of hope for the futherance of international human rights norms in Muslim majority countries and looks for their definition and application in distinctively Islamic ways as a most healthy and potentially productive direction.

Although a cursory reading of her book might lead one to conclude that Mayer sees nothing positive in Islam and Muslim societies regarding human rights, a careful reading will show that her criticisms are directed almost entirely towards politically motivated clerics and others who detest Western thought and culture and want to maintain as much distance as possible from them or from what they are perceived to be. Mayer acknowledges that there are significant human rights theorists and activists in the Muslim world, some of whom appear to consider Islamic human rights schemes as largely irrelevant. A key problem, she contends, is that the Islamic human rights

schemes examined in her book all 'insist on the absolute perfection of the abstract Islamic ideals while ignoring altogether the myriad problems of institutionalizing and implementing human rights protections and democratizing closed systems of the Middle East' (190). There is nothing in Islam that is against human rights, she appears to be arguing. Rather, it is a prevalent selective reading and narrow interpretation of the tradition, from a strongly patriarchal bias, that results in weak, incoherent, and ineffective attempts towards defining and institutionalizing authentic human rights for Muslims in today's world.

Mayer's book, in its earlier editions, drew much hostile criticism as well as grateful praise. Her own very positive evaluation of some contemporary Islamic discourses on human rights centres on such figures as the Sudanese legal specialist Abdullahi An-Na'im. Mayer sees in An-Na'im's extensive scholarly explorations of human rights an authentic Muslim voice in harmony with the essentials of international human rights norms and discourses, making significant contributions to them. One of the areas of greatest concern is the practice of some thinkers and countries of relying on cultural relativism as a means of setting one's own people apart from otherwise universally held norms. This has been the practice, for example, of Saudi Arabia since its refusal to ratify the 1948 Universal Declaration of Human Rights.

Cultural relativism, ironically, accords in a certain manner with much maligned 'Orientalist' thinking by viewing, as Mayer puts it, 'the peoples of the Orient and the Occident as having inherently different natures' (12) and thus unable to adopt each others' ideas and institutions because it would be 'somehow incongruous and unnatural' (12). Highly sophisticated and nuanced anthropological theories of cultural relativism, when simplistically packaged and crudely used as a policy imperative, remind me of the oft repeated opinion that today's Muslims should embrace modernity but not Westernization, as if the choice were that simple or even an authentic choice instead of a confused and misleading shibboleth.

The publication of this third edition of Mayer's book is most welcome during a period of increased concern about the general subject of human rights in a stressed and fractured world that leaves no major region or people free from threats to and violation of their rights. Her well grounded, keenly analytical, and empathetic book provides a reliable and extremely clear overview of the subject with an appropriate amount of challenging technical legal analysis as well as an abundance of forthright, independent interpretation. ♦

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