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NATURAL LAW AND UNIVERSAL HUMAN RIGHTS

David F. Forte*

ABSTRACT

Abdullahi An-Na'im has set his life's quest on attempting to find a way that Muslim society can be attuned to the moral commands of the Universal Declaration of Human Rights, a Western creation. At present, the Shari'a and the Declaration are in obvious tension, if not conflict, in areas such as freedom of religion and the rights of women. An-Na'im finds that the Shari'a is a creation of man derived in history from an interpretation of Islamic sources. Muslims today can legitimately develop their own interpretation relying on the root sources of Islam, but only so long as those sources are distorted by the doctrine of Naskh. With a genuine interpretation of norms from the Qur'an, the principles of Islam, articulated through regional and historical experiences, can engage the values of the Declaration in synergetic enterprise. On the other hand, Professor An-Na'im notes that the Declaration is itself the product of Western history and experience. How then can we be confident that a relationship between variable Muslim experience and the Declaration be successful? The answer, this Essay suggests, lies in the norms of natural law accessible by reason by all peoples. Those norms provide for the "universality" of many parts of the Declaration, and they are in harmony with Islam, properly understood, as well as with Judaism and Christianity.

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INTRODUCTION

Abdullahi Ahmed An-Na'im's life's work has been to free the Qur'anic-based spirituality of Islam from the constraints of a man-made Shari'a, and thereby to demonstrate the intrinsic compatibility of Islam with human rights, particularly as articulated in the Universal Declaration of Human Rights (UDHR).¹ It is a great quest undertaken by a great soul. But in his quest, he has had to address two issues of fundamental concern: how Islamic is the Shari'a and how universal is the Universal Declaration of Human Rights? It is that imperfect duality around which his work revolves.

I. FOUNDATIONS

A. *The Shari'a*

We begin with the foundations of Islam and of the Shari'a. The Qur'an (the revelation granted to Prophet Muhammad) and the Sunna (collections of sayings and deeds of the Prophet) constitute the unchangeable corpus of authoritative revelation in Islam.² These sources cannot be altered or added to. The Shari'a is the compilation of the rules and interpretations developed by Muslim thinkers practicing *fiqh* (the science of jurisprudence).³ They developed their opinions

¹ ABDULLAHI AHMED AN-NA'IM, *ISLAM AND THE SECULAR STATE: NEGOTIATING THE FUTURE OF SHARI'A* (2008) [hereinafter *ISLAM AND THE SECULAR STATE*].

² ABDULLAHI AN-NA'IM, *Islamic Law, International Relations and Human Rights: Challenge and Response*, in *ISLAM AND HUMAN RIGHTS: SELECTED ESSAYS OF ABDULLAHI AN-NA'IM* 16 (Mashood A. Baderin ed., 2010) [hereinafter *ISLAM AND HUMAN RIGHTS*].

³ *Id.* at 11–12.

and conclusions based on primary sources of obligation as found in the Qur'an and the Sunna.⁴ Using analogical and casuistical reasoning from these texts (a process termed *ijtihad*), they produced a series of moral and legal commands.⁵ Over the early centuries of Islam, the scholars and their works concentrated into a number of "schools of law." Supposedly—though some scholars dispute this—the "gate to *ijtihad*" was closed in Sunni Islam when the schools of law had coalesced towards the end of the tenth century. The collections of rules, called the Shari'a, became concretized around that time. After that time, the doctrine of *taqlid* (pious following of authoritative leaders) took hold, and the Shari'a itself was claimed to be unchangeable.⁶

Since that time, the religious leaders—the *ulama*—have been a major faction advocating for the Shari'a to determine or influence the policies of the political leadership of various Islamic empires and principalities. At the same time, the political leadership—the caliph or the sultan—has always possessed legitimate independent legal authority apart from and, in some instances, over the *ulama*. Nonetheless, the adherents and supporters of the Shari'a claim that a "true" Islamic State would rule by the Shari'a or at least, create laws that are not contrary to or in derogation with the Shari'a.⁷ Many of these rules, as many persons including An-Na'im have observed, are contrary to modern articulated norms of human rights, particularly as applied to minority religions and to women.⁸ Thus, Professor An-Na'im is deeply concerned about those who advocate a "Shari'a state."⁹

Professor An-Na'im's argument is that human interpretation from divine sources created the Shari'a. The Shari'a itself is not divine, and it is perfectly legitimate for humans today, using their powers of reasoning, to develop systems of Islamic law from the canonical sources that are different from the historical Shari'a and just as—or perhaps even more—Islamic.¹⁰ A secular reform of the

⁴ *Id.*

⁵ *Id.* at 12–15.

⁶ ABDULLAHI AHMED AN-NA'IM, TOWARD AN ISLAMIC REFORMATION: CIVIL LIBERTIES, HUMAN RIGHTS, AND INTERNATIONAL LAW 12–29 (1990) [hereinafter TOWARD AN ISLAMIC REFORMATION] (summarizing more fully the development of the Shari'a).

⁷ ABDULLAHI AN-NA'IM, *What Do We Mean by Universal?*, in ISLAM AND HUMAN RIGHTS, *supra* note 2, at 9.

⁸ *Id.* at 26–29.

⁹ ABDULLAHI AN-NA'IM, *Reaffirming Secularism for Islamic Societies*, in ISLAM AND HUMAN RIGHTS, *supra* note 2, at 50 [hereinafter *Reaffirming Secularism for Islamic Societies*].

¹⁰ ABDULLAHI AN-NA'IM, MUSLIMS AND GLOBAL JUSTICE 61 (2010) [hereinafter MUSLIMS AND GLOBAL JUSTICE].

Shari'a is not sufficient for Muslims, he asserts. The reform must spring from Islam's own divinely inspired sources.¹¹

One option, espoused by those who see the classical Shari'a at odds with contemporary norms of human rights, is to reform the Shari'a by reopening the "gates of *ijtihad*,"¹² but An-Na'im offers little hope for that to be successful. Opening the gate to *ijtihad* does not give access to all the sources within the Qur'an and the Sunna, for those sources themselves have been constrained within bounds constructed by the doctrine of *naskh*, or abrogation. By the doctrine of *naskh*, the foundational verses of the Qur'an as revealed at Mecca were delegitimized in favor of the verses revealed at Medina, since the Medinan verses came later in time. By *naskh*, verses proclaimed as military necessities when the followers of Muhammad were in critical danger of being overwhelmed and extinguished have been raised from the status of temporary exceptions to that of doctrinal imperatives at odds with modern views of fundamental human rights. Instead of being a religion of spiritual liberation, Islam has come to be seen as an intolerant suppressor of human rights and human individuality.

Following his mentor, *Ustadh* Mahmoud, An Na'im argues that is illogical to hold that the Medinan verses permanently abrogated the Meccan verses, for "there would have been no point in having revealed the earlier texts."¹³ Therefore, in order to have a true reform of the Shari'a, through reasoning from the canonical sources of the Qur'an and the Sunna, the doctrine of *naskh* needs to be reexamined and "reversed."¹⁴ Instead of abrogation, *naskh* should mean a "suspension" of verses because of particular circumstances. Moreover, it is the character of the verses, not their placement in time, that determines what is the fundamental norm of the Qur'an, and what are the exceptions.¹⁵ Clearly, the universalist message of Islam proclaimed at Mecca is its identity and grounding, and the Medinan events can only be seen as temporary exceptions. What An-Na'im does here is "constitutionalize" the early universal message of Islam, allowing for only limited later exceptions because of dire circumstances.

¹¹ ABDULLAHI AN-NA'IM, *A Kinder, Gentler Islam?*, in ISLAM AND HUMAN RIGHTS, *supra* note 2, at 35 [hereinafter *A Kinder, Gentler Islam?*].

¹² TOWARD AN ISLAMIC REFORMATION, *supra* note 6, at 25.

¹³ *Id.* at 56.

¹⁴ *Id.* at 158–59.

¹⁵ *Id.*

B. *The Universal Declaration of Human Rights*

It is significant that although An-Na‘im sees the UDHR as the lodestone of the human rights objectives that Muslim states should accommodate (though through their own cultural experiences), he shows some ambivalence towards the UDHR. He sees it as an expression of the European Enlightenment, but at the same time, the Enlightenment originated from the same civilization that produced colonialism under which many Muslim cultures and peoples suffered.¹⁶

The UDHR had many parents and forbears. Some language came from the French Declaration of the Rights of Man; some from American legal protections.¹⁷ The primary draftsman was René Cassin, who wanted to free the individual in international law from the sovereignty of the state.¹⁸ Additionally, due to the influence of Jacques Maritain, a debate existed as to how much natural law norms informed the substance of the UDHR.¹⁹

It is the objective of this Essay to give an exposition of the natural law origins of human rights and to recognize that the UDHR reflected these permanent moral attributes and commands derivable from human nature, though often in an attenuated form. This is not to deny that the UDHR is also cast in a particularly European voice, derivable from the eighteenth century and the political upheavals therefrom. However, natural law offers a more robust description and sense of the origin and content of human rights, even though the positive law application of those principles, as in the UDHR, may be in some ways more parochial and less complete. Natural law holds that rights have always existed so long as humans have existed, but they have only been variably recognized or enforced over time and place.

¹⁶ ABDULLAHI AN-NA‘IM, *Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives*, in ISLAM AND HUMAN RIGHTS, *supra* note 2, at 69; ABDULLAHI AN-NA‘IM, *The Interdependence of Religion, Secularism, and Human Rights: Prospects for Islamic Societies*, in ISLAM AND HUMAN RIGHTS, *supra* note 2, at 348 [hereinafter *Interdependence of Religion, Secularism, and Human Rights*].

¹⁷ Compare G.A. Res. 217 (III) A, art. 1 Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR] (“All human beings are born free and equal in dignity and rights.”), with Declaration des droits de l’Homme et du citoyen de 1789 [Declaration of the Rights of Man and of the Citizen] art. 1 (“Men are born and remain free and equal in rights.”); compare UDHR, *supra*, art. 7 (“All are equal before the law and are entitled without any discrimination to equal protection of the law.”), with U.S. CONST. amend. XIV (“No state shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws.”).

¹⁸ JAY WINTER & ANTOINE PROST, RENÉ CASSIN AND HUMAN RIGHTS 224 (2013).

¹⁹ See William Sweet, *Jacques Maritain and the Universal Declaration of Human Rights*, in CHRISTIANITY AND GLOBAL LAW (Rafael Domingo & John Witte eds., 2020).

This Essay also notes the affirmation of these natural law human rights in the message of the three revealed religions. The benefit of natural law is that it is universal: its moral norms apply to all persons and to all regimes, giving security of right to every person, regardless of castes or religious beliefs.²⁰

II. NATURAL LAW

Eschewing the traditional reporting of the development of the theory of natural law,²¹ let us begin with what I hope is an accessible, commonsensical understanding of natural law.

We start by looking at the term itself: natural law.

“Nature,” we may say, is the root of why something is what it is, and why it is different from other things. The nature of a giraffe is different from the nature of a red-tailed hawk. Even inanimate objects have natures. For example, a “chair” is a four-legged piece of furniture with a back and seat that is designed for sitting. There are different kinds of chairs: easy chair, recliner, Windsor chair, kitchen chair, and folding chair. A chair without a back is a stool. A chair that can seat two or more side by side is a bench. These variations are what Aristotle called “accidents.”²² Each chair still shares the same nature of being a chair; they share “chairness,” if you will. A warning label might say: “Don’t stand on the chair.” In other words, the manufacturer—obviously seeking to avoid legal liability—declares, “treat a chair as a chair,” or, as we might say, “treat a chair according to its nature.”

A “law” is a rule of behavior. We are used to thinking of laws as coercive commands from a government, or government agency or agent. “Law is a command backed by sanction” is attributed to John Austin.²³ Regardless of whether a law is descriptive (as in “the law of averages”) or imperative (as in “no parking”), it still remains a rule of behavior.

²⁰ See MUSLIMS AND GLOBAL JUSTICE, *supra* note 10, at 223–24. Abdullahi An-Na’im is well aware of the natural law tradition in Western legal thought, and its likely parallels in the history of Islamic jurisprudence, but I am suggesting that natural law is not simply an “element” in various legal traditions, but that it undergirds a universal conception of humanity and human rights. *See id.*

²¹ *See generally* Frederick Pollock, *The History of the Law of Nature*, 1 COLUM. L. REV. 11 (1900) (giving a summary view of the origin and development of the Law of Nature doctrine); A.P. D’ENTRÈVES, *NATURAL LAW: AN HISTORICAL SURVEY* (1965).

²² Paul Studtmann, *Aristotle’s Categories*, STAN. ENCYC. PHIL. (Edward N. Zalta ed., 2021), <https://plato.stanford.edu/archives/spr2021/entries/aristotle-categories>.

²³ JOHN AUSTIN, *THE PROVINCE OF JURISPRUDENCE DETERMINED* 6 (1832) (“A command is distinguished from other significations of desire, not by the style in which the desire is signified, but by the power and the purpose of the party commanding to inflict an evil or pain in case the desire be disregarded.”).

Thus, we can easily understand how “natural laws” apply to objects that we observe scientifically. What are the phases of the moon, one might ask? In other words, what are the rules of behavior that govern the nature of this satellite we call “the moon” in proximity to another planet? Or more contemporaneously, we try understanding the mechanisms (i.e., the biological “laws”) of mutation that are inherent in the COVID-19 virus.

But what of man? What is man’s nature? What is human nature? Aristotle is reputed to have thought of man as an animal, that he is rational, and that he is political (or social).²⁴ From others, we understand that humans are sentient, that is, self-aware, and that their rationality and sociability are mediated through language.²⁵ We observe that humans make choices through rational deliberation,²⁶ and that they develop standards of self-judgment, which is conscience.

We know what scientific laws apply to the orbits of the planets. But what laws and what rules of behavior apply to man? Here is what is unique about the human: the human person can choose what behaviors to engage in. We also know that whatever course of action a person chooses, it is always towards that which the person defines as good. I may choose to take a certain route to work because it is faster or I can choose another route because it is scenic. I can choose to have a dessert because of the taste, or I can choose to forego the dessert for health reasons. In any event, the will opts for what is good according to what a person’s rational faculty defines as good in a time and place.

The majority of “goods” that we choose are instrumental goods; they are good because they help us to accomplish a desirable end. I may choose to place my earnings in a savings account so that I can purchase a house in a few years. The phrase “so that” is the beginning of a justification for most of our choices. I choose to read a book “so that” I can pass my examination. I can choose to exercise “so that” I can live longer. I may take on an extra job “so that” I can provide better for my family.

But are there goods that we choose without a “so that”? Are there things that we pursue because they are good in themselves and that my very humanity affirms that they are good in themselves? In his seminal work, *Natural Law and*

²⁴ ARISTOTLE, *THE POLITICS* bk. I, at 54 (T.A. Sinclair trans., Penguin Books 1992) (1962).

²⁵ See ST. THOMAS AQUINAS, *SUMMA THEOLOGIAE*, PT. I, Q.81 (ebook) (Fathers of the English Dominican Province trans., 2017) (1920), <https://www.newadvent.org/summa/1081.htm>; GIORGIO DEL VECCHIO, *JUSTICE: A HISTORICAL AND PHILOSOPHICAL ESSAY*, PT. VII; ARISTOTLE, *ON INTERPRETATION* (ebook) (E.M. Edghill trans.), <http://classics.mit.edu/Aristotle/interpretation.1.1.html>.

²⁶ ARISTOTLE, *ETHICS* 188–19 (J.A.K. Thomson trans., 1976).

Natural Rights, the philosopher John Finnis has illustrated how we can arrive at apprehending what are “goods in themselves.” “There is a [] set of basic practical principles which indicate the basic forms of human flourishing as goods to be pursued and realized”²⁷

III. KNOWLEDGE

“*Conjecture has no value whatsoever against the truth*” – *Qur’an (53:28)*

Developing from Aristotle’s observation that “[a]ll men desire by nature to know,” John Finnis elucidates, in particular, knowledge as a fundamental good-in-itself.²⁸ There are some things we wish to know simply to know them. We call this curiosity, where the good in knowing something is simply in the knowing of it.²⁹ We exclaim to ourselves “isn’t that interesting?” We share and delight in trivia, which, in its very definition, is good for nothing except in the knowing of it.

What is at the bottom of this hunger to know about things, or simply, to know? Obviously, it is truth. Humans are drawn by their very nature to seek the truth, to look for what really is the state of things. Under natural law theory, rights develop from fundamental ineluctable goods. A person has a *right* to pursue the truth (i.e., freedom of press, speech, expression, opportunity for education) because truth is a fundamental *good* to his human nature.³⁰

The Catholic Church, at the Second Vatican Council (Vatican II), explained,

It is in accordance with their dignity as persons—that is, beings endowed with reason and free will and therefore privileged to bear personal responsibility—that all men should be at once impelled by nature and also bound by a moral obligation to seek the truth, especially religious truth. They are also bound to adhere to the truth, once it is known, and to order their whole lives in accord with the demands of truth. However, men cannot discharge these obligations in a manner in keeping with their own nature unless they enjoy immunity from external coercion as well as psychological freedom.³¹

²⁷ JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* 23 (1980).

²⁸ *Id.* at 59–80; ARISTOTLE, *METAPHYSICS* (W.D. Ross trans. 2009), <http://classics.mit.edu/Aristotle/metaphysics.1.i.html>.

²⁹ *Id.* at 60.

³⁰ See LEE C. BOLLINGER, *THE TOLERANT SOCIETY* 45 (1986); FREDERICK SCHAUER, *FREE SPEECH: A PHILOSOPHICAL INQUIRY* 15 (1982); THOMAS I. EMERSON, *THE SYSTEM OF FREEDOM OF EXPRESSION* 6–7 (1970) (describing freedom of speech as necessary to the pursuit of truth).

³¹ *DIGNITATIS HUMANAE, DECLARATION ON RELIGIOUS FREEDOM* § 2 (Dec. 7, 1965), www.vatican.va/

In his *Areopagetica*, John Milton demonstrated that the book is more eternal than the man. “[W]ho kills a man kills a reasonable creature, God[']s Image; but he[] who destroy[']s a good book[], kills reason [itself], kills the Image of God, as it were in the eye.”³² Moreover, observes Milton, not only does freedom of inquiry lead to truth, it is essential in developing virtue: “I cannot praise a fugitive and cloistered virtue, unexercised and unbreathed, that never sallies out and sees her adversary but slinks out of the race, where that immortal garland is to be run for, not without dust and heat.”³³

Similarly, when representatives of the American colonies met in Philadelphia in 1774 at the First Continental Congress³⁴ to voice their grievances against the acts of the British, they turned to John Dickinson (known later as “the penman of the Revolution”)³⁵ to draft a letter to the French residents of Quebec to invite them to join the British colonists in their struggle. In the *Letter to the Inhabitants of the Province of Quebec*, Dickinson laid out the rights that the American colonists were defending.

At the end, he comes to the most important one of them all.

The last right we shall mention regards the freedom of the press. The importance of this consists, besides the advancement of truth, science, morality, and arts in general, in its diffusion of liberal sentiments on the administration of Government, its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed or intimidated into more honorable and just modes of conducting affairs.³⁶

Not only does freedom of speech and expression advance “truth, science, morality, and arts,”³⁷ it brings about a community, and it forces governmental officials to seek the common good and to practice the art of public virtue.

John Dickinson’s insights reveal that freedom of speech is a right not just of the speaker or of the author, but of the listener and the reader. For how can one achieve the truth without the ability to hear and consider others’ points of view?

archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html.

³² John Milton, *For the Liberty of Unlicenc’d Printing*, AREOPAGETICA, https://milton.host.dartmouth.edu/reading_room/areopagica/text.shtml (last visited Mar. 25, 2022).

³³ *Id.*

³⁴ See JACK M. GREENE, *THE FIRST CONTINENTAL CONGRESS: A DOCUMENTARY HISTORY* (1975).

³⁵ See Richard M. Gummore, *John Dickinson, The Classical Penman of the Revolution*, 52 CLASSICAL J. 81 (1986).

³⁶ Letter from John Dickinson to the Inhabitants of the Province of Quebec (Oct. 26, 1774), in 1 J. CONT’L CONG. 105 (1774).

³⁷ *Id.*

The right to listen is the correlative of the right to speak. Freedom of speech is meaningless without some other one to hear the speech. Moreover, where speaker and listener engage in mutual conversation, it often creates a bond between them, as Dickinson astutely observed.

It, therefore, is not surprising that the word spoken and listened to is the heart of the revealed religions. As scripture of the Old Testament, the New Testament, and the Qur'an respectively declare: "Speak, your servant is listening."³⁸ "Lord, to whom shall we go? You have the words of eternal life."³⁹ "Those who listen to the word, then follow the best of it; those are they whom Allah has guided, and those it is who are the men of understanding."⁴⁰

We can conclude that Article 19 of the UDHR, which declares "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers,"⁴¹ is not simply the result of a consensus of twentieth-century moral opinion, nor even the product of the Enlightenment. Rather it is a moral command of the natural law, rooted in the nature of man himself. It has particular salience in the interpretive debates within contemporary Islam. "Since it is impossible to know whether or not Muslims would accept or reject any particular view until it is openly and freely expressed and debated, it is necessary to maintain complete freedom of opinion, belief, and expression for such views to emerge and be propagated."⁴² That position, I aver, is only the practical application of the natural law norm that truth is a fundamental good of all humans. Such is recognized by Abdullahi An-Na'im, even though the actual observance of this good is inevitably modified (distorted—I might add) by the interplay between domestic law and international law.⁴³

But our investigation into the good of truth and its pursuance leads to this conclusion: Under natural law, rights are derivative of the good.

Let us pursue this principle in relation to the UDHR with further specifics.

³⁸ 1 *Samuel* 3:10.

³⁹ *John* 6:68.

⁴⁰ QUR'AN 39:13 (Sahih International).

⁴¹ UDHR, *supra* note 17, art. 19.

⁴² ISLAM AND THE SECULAR STATE, *supra* note 1, at 30.

⁴³ ABDULLAHI AN-NA'IM, *The Contingent Universality of Human Rights: The Case of Freedom of Expression in African and Islamic Contexts*, in ISLAM AND HUMAN RIGHTS, *supra* note 2, at 291.

IV. MEANING

The pursuit of truth and the reference to the word in Scripture brings us to consider another of the “goods-in-themselves,” namely, what Finnis calls “religion,”⁴⁴ or what could better be termed “meaning.” It is in the nature of the human person to seek a reason for being, a meaning to his existence, a sense of place in the scheme of time and space. Man is the only animal to ask the question “why?,” especially in moments of suffering. The answer, for many, is religion. As St. Augustine says in discovery, “[t]hou hast made us for Thyself and our hearts are restless until they rest in Thee.”⁴⁵ For others, it may be a naturalistic explanation. But it is revealing that for persons who fail to obtain a sense of meaning for their lives, the result is often despair. One psychologist notes that “[c]linical despair is primarily a spiritual crisis.”⁴⁶

Thus, we see Article 18 of the UDHR, which states: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”⁴⁷ In his entire corpus of works, Abdullahi An-Na‘im demonstrates, under “the fundamental principle of reciprocity,”⁴⁸ how a passionate love for God and for one’s religion is compatible with the freedom of all to pursue their own religion. It was true at the founding moments of the United States. In his famous *Remonstrance*, James Madison describes how essential freedom of religion is to the human person:

Because we hold it for a fundamental and undeniable truth “that Religion or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence[.]” The religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it, as these may dictate. This right is in its nature an unalienable right. It is unalienable because the opinions of men, depending only on the evidence contemplated by their own minds, cannot follow the dictates of other men. It is unalienable, also, because what is here a right towards men is a duty towards the Creator. It is the duty of every man to render to the Creator such homage, and such only,

⁴⁴ FINNIS, *supra* note 27, at 89–90.

⁴⁵ ST. AUGUSTINE, *CONFESSIONS* 3 (F.J. Sheed trans., 2d ed. 2006).

⁴⁶ Stephen A. Diamond, *Clinical Despair: Science, Psychotherapy and Spirituality in the Treatment of Depression*, *PSYCH. TODAY* (Mar. 4, 2011), <https://www.psychologytoday.com/us/blog/evil-deeds/201103/clinical-despair-science-psychotherapy-and-spirituality-in-the-treatment>.

⁴⁷ UDHR, *supra* note 17, art. 18.

⁴⁸ *A Kinder, Gentler Islam?*, *supra* note 11, at 35.

as he believes to be acceptable to him. This duty is precedent, both in order of time and in degree of obligation, to the claims of Civil Society.⁴⁹

An-Na‘im put the same thought in these words: “In order to be a Muslim by conviction and free choice, which is the only way one can be a Muslim, I need a secular state.”⁵⁰

In words that might well be a precursor to An-Na‘im’s support for a “secular” state,⁵¹ George Washington declared in his visit to the congregation in Touro Synagogue in Newport, Rhode Island:

It is now no more that toleration is spoken of, as if it was by the indulgence of one class of people, that another enjoyed the exercise of their inherent natural rights. For happily the Government of the United States, which gives to bigotry no sanction, to persecution no assistance requires only that they who live under its protection should demean themselves as good citizens, in giving it on all occasions their effectual support.⁵²

Though many nations are in violation, Articles 18 and 19 of the UDHR together vouchsafe a right not only to practice one’s religion, but to proselytize it.⁵³ Many Muslim states are within that intolerant category, as Professor An-Na‘im has both experienced and written about.⁵⁴ Unfortunately, contemporary research demonstrates that governmental constraints against religion remain high worldwide.⁵⁵

⁴⁹ *Memorial and Remonstrance Against Religious Assessments*, [ca. 20 June] 1785, FOUNDERS ONLINE, <https://founders.archives.gov/documents/Madison/01-08-02-0163> (last visited Mar. 25, 2022) (quoting VIRGINIA DECLARATION OF RIGHTS, Art. 16 (1776)).

⁵⁰ ISLAM AND THE SECULAR STATE, *supra* note 1, at 1.

⁵¹ “[T]he most compelling argument for an Islamic rationale for secularism is its necessity for pluralistic nation states that are able to safeguard the freedom of religion and belief of believers and non-believers alike.” *Reaffirming Secularism for Islamic Societies*, *supra* note 9, at 48.

⁵² *From George Washington to the Hebrew Congregation in Newport, Rhode Island, 18 August 1790*, FOUNDERS ONLINE, <https://founders.archives.gov/documents/Washington/05-06-02-0135> (last visited Mar. 25, 2022).

⁵³ UDHR, *supra* note 17, arts. 18, 19. A number of states in India have passed “anti-conversion” laws. Aneesha Mathur, *Anti-conversion Laws in India: How States Deal with Religious Conversion*, INDIA TODAY (Dec. 23, 2020), <https://www.indiatoday.in/news-analysis/story/anti-conversion-laws-in-india-states-religious-conversion-1752402-2020-12-23>.

⁵⁴ See, e.g., ABDULLAHI AN-NA‘IM, *Religious Minorities Under Islamic Law and the Limits of Cultural Relativism*, in ISLAM AND HUMAN RIGHTS, *supra* note 2, at 247.

⁵⁵ Samirah Majumdar & Virginia Villa, *Globally, Social Hostilities Related to Religion Decline in 2019, While Government Restrictions Remain at Highest Levels*, PEW RSCH. CTR. (Sept. 30, 2021), <https://www.pewforum.org/2021/09/30/globally-social-hostilities-related-to-religion-decline-in-2019-while-government-restrictions-remain-at-highest-levels>.

Where religion relies upon the power of the state (or of the prince, king, sultan, or caliph), not only are other religions less free, but the state-supported religion is also less free, for the religion inevitably becomes parasitic upon the secular power and loses its own independent integrity and vibrancy. We can see that in the history of the Russian and the Ottoman Empires, and in the attitude of the Catholic Church towards the liberal revolutions that swept Europe in the nineteenth century. At that time, in 1832, Pope Gregory XIII declared in his encyclical, *Mirari Vos*:

This shameful font of indifferentism gives rise to that absurd and erroneous proposition which claims that **liberty of conscience** must be maintained for everyone. . . . We must include that harmful and never sufficiently denounced **freedom to publish** any writings whatever and disseminate them to the people, which some dare to demand and promote with so great a clamor. . . . Nor can We predict happier times for religion and government from the plans of those who desire vehemently to **separate the Church from the state**, and to break the mutual concord between temporal authority and the priesthood.⁵⁶

But once the Papal States were lost in 1870, and the Church realized that it was freed from having to depend on the support and approval of state leaders and governments, it began to speak to the whole world on principles of economic and social justice.⁵⁷ By the time of Vatican II, the Church could unashamedly proclaim the moral necessity of religious liberty.

This Vatican Council declares that the human person has a right to religious freedom. This freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits.⁵⁸

Once the Catholic Church was freed from needing to be a sovereign political player jousting for influence among secular states, it could affirm the centrality of religious freedom for all peoples. It is that kind of liberation of Islam from a “Shari’a state” mentality that Abdullahi An-Na’im pleads for. Today, governments need to take more seriously that kind of religious liberty as affirmed by the UDHR.

⁵⁶ Pope Gregory XVI, *Mirari Vos: On Liberalism and Religious Indifferentism*, PAPAL ENCYCLICALS ONLINE (Aug. 15, 1832) (emphasis in original), <https://www.papalencyclicals.net/greg16/g16mirar.htm>.

⁵⁷ Pope Leo XIII, *Rerum Novarum: On Capital and Labor*, PAPAL ENCYCLICALS ONLINE (May 15, 1891), <https://www.papalencyclicals.net/leo13/113renum.htm>.

⁵⁸ DIGNITATIS HUMANAE, *supra* note 31, § 2.

V. FRIENDSHIP

A third fundamental good-in-itself is friendship. We all know what a true friend is. We love to be in the presence of our friends. Even if we see each other but once a year or less, seeing a true friend is, experientially, a good in itself. In the 1930s, Dale Carnegie wrote a book, *How to Win Friends and Influence People*, that sold millions of copies.⁵⁹ The text of the book is much less manipulative than the title suggests, as it is full of advice that can be subsumed under sympathy, consideration, and good manners. Nonetheless, if one made a friend as a means of aggrandizing one's influence, that would not be true friendship. As Aristotle put it, "friends must be well disposed to one another, and recognized as wishing each other's good."⁶⁰ For ourselves and our own character, we want a friend so that we can *be* a friend.

Though articulated in a weaker form, and in political language, the UDHR recognizes this fundamental good of human nature in Article 20: (1) "Everyone has the right to freedom of peaceful assembly and association[;]" (2) "No one may be compelled to belong to an association."⁶¹ Yet political friendship (association) creates harmony in a state. "Concord," Aristotle writes, "is evidently . . . friendship between the citizens of the state, because it is concerned with their interests and living conditions."⁶² And Augustine notes that "[a] people is a large gathering of rational beings united in fellowship by their agreement about the objects of their love."⁶³

Of the three forms of love for the Greeks, eros (passion), philia (friendship), and agape (self-sacrifice), philia is the most stable upon which to build community, for eros is outside of reason, and agape is supererogatory. The real source of human friendship and solidarity inheres to what Georgia Del Vecchio describes as "inter-subjectivity."⁶⁴ It is the root of the human sentiment of sympathy as seen by Adam Smith: "How selfish soever man may be supposed, there are evidently some principles in his nature, which interest him in the fortune of others, and render their happiness necessary to him, though he derives nothing from it, except the pleasure of seeing it."⁶⁵ The most intimate and enabling for the individual form of friendship is marriage and family. A

⁵⁹ See Dale Carnegie, *HOW TO WIN FRIENDS AND INFLUENCE PEOPLE* (1936).

⁶⁰ ARISTOTLE, *supra* note 26, at 203.

⁶¹ UDHR, *supra* note 17, art. 20.

⁶² ARISTOTLE, *supra* note 26, at 140.

⁶³ ST. AUGUSTINE, *CITY OF GOD: BOOKS 18.36–20 bk. XIX, § XXIV* (William Chase Greene trans., Loeb 1960).

⁶⁴ DEL VECCHIO, *supra* note 25, at 54.

⁶⁵ ADAM SMITH, *THE THEORY OF MORAL SENTIMENTS* 3 (1759).

successful marriage combines all three forms of love in due proportion. Indeed, a successful marriage is one of the triumphs of any person's life. We see here, then, another principle of the UDHR that is grounded in natural law:

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.⁶⁶

In sum, friendship is evidenced most particularly in marriage and family, “the natural and fundamental group unit of society.”⁶⁷ Beyond that, friendship, writ large, is the political community. Forging a political community, the government, which is dedicated to the common good, has been the quest of political philosophers from the time of Plato to the present day. The UDHR recognizes this aspiration in Article 15: “1. Everyone has the right to a nationality. 2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”⁶⁸ Nationality, of course, can be perverted into xenophobic nationalism. Nonetheless, the UDHR recognizes the right, deriving from natural law, of peoples to associate in a common shared identity. The problem with contemporary Islam is that colonial boundaries have established nation-states that divided religions, tribes, ethnic peoples, and religious adherents. Yet this very diversity within the nation-state creates opportunities for dialogue and true community building, or what An-Na'im calls “synergy.”⁶⁹

VI. BEAUTY

One listens to an expertly played Beethoven symphony. One gazes upon the Waterlilies painted by Monet. One is entranced by the poetry of Emily Dickinson. One meditates on Michelangelo's *Pietà*. One is lifted by the ethereal spaces in the Blue Mosque. We all have seen, heard, and experienced a beauty that is purely itself. It is, like truth, meaning, and friendship, a good in itself. But is beauty objective or subjective? If objective, we ought to be able to define it.

⁶⁶ UDHR, *supra* note 17, art. 16.

⁶⁷ *Id.*

⁶⁸ *Id.* art. 15.

⁶⁹ *Interdependence of Religion, Secularism, and Human Rights*, *supra* note 16, at 345.

If subjective, it becomes no longer a good-in-itself, but simply a matter of individual taste, a utilitarian pleasure at best. Chacun à son goût.

Plato and Aristotle conceived beauty as fully objective. Through the words of Diotima in *The Symposium*, we find that beauty for Plato was one of the forms, objectively real and true.⁷⁰ For Aristotle, “The chief forms of beauty are order and symmetry and definiteness, which the mathematical sciences demonstrate in a special degree.”⁷¹ On the other hand, the skeptical Hume declared that “[b]eauty is no quality in things themselves: It exists merely in the mind which contemplates them; and each mind perceives a different beauty.”⁷² But, clearly, subjectivism does not adequately describe the experience of beauty. As Roger Scruton puts it, “When I describe something as beautiful I am describing *it*, not my feelings towards it—I am making a claim, and that seems to imply that others, if they see things aright, would agree with me.”⁷³

The distinction between the objectivity of beauty and the subjective appreciation of it can perhaps be better understood when we consider the mediating element of style. Style is the language of beauty. If we are not conversant with the style of an artistic expression—if, for example, we have difficulty comprehending Shakespearean language, we may not be able to plumb the depths of his drama. We are, in some way, stylistically illiterate. The same would be true, at least to some degree, to Westerners comprehending the elegance of Arabic calligraphy, or of Chinese design, or of Indian coloration. But we can be educated as to style, or language, and “have our eyes opened” to the beauty that was always there in the object.

Mastery of style, however, does not mean the object is truly one of beauty. *Technê* does not necessarily lead to *arrêté*. Sometimes, style and facility become mere fads, and we wind up living with artistic sophistry. We watch talent discovery productions on television, or, having the money, we purchase trendy “art” in New York City.

Presuming then, the something is truly beautiful—the Taj Mahal, for example—and presuming we understand its stylistic language, how then to resolve the issue of the objectivity and the subjectivity of beauty: the dichotomy between objective beauty and subjective taste? Ralph Waldo Emerson attempted

⁷⁰ PLATO, THE DIALOGUES OF PLATO, VOLUME 2: THE SYMPOSIUM 155–157 (R.E. Allen trans., Yale Univ. Press 1993).

⁷¹ ARISTOTLE, *supra* note 28, bk. XIII, pt. 3.

⁷² David Hume, *Of the Standard of Taste*, ¶ 7 (1757), <https://home.csulb.edu/~jvancamp/361r15.html>.

⁷³ ROGER SCRUTON, BEAUTY: A VERY SHORT INTRODUCTION, 26–27 (2011).

a reconciliation this way: “This love of beauty is Taste . . . The creation of beauty is Art.”⁷⁴ But that still separates the artist from the beholder as performing two distinct functions.

Natural law, however, neatly solves the problem of the objectivity and subjectivity of beauty by participation.⁷⁵ When one is entranced by a sunset, or by the glorious colors of a New Hampshire autumn, one does not just stand by it and nod in appreciation. One finds oneself drawn into the beauty itself, as we experience beautiful music. We can understand that beauty is a non-instrumental fundamental good of our human nature by the way that we approach it: we want to be part of it. Sometimes we see something that is “achingly beautiful” because our desire to be one with it cannot, in our material world, be truly realized.

When a man falls in love with a woman, he sees her beauty in so many ways—her face, her voice, her humor, her intensity, her sympathy—he wants in the deepest sense, not to possess her, but to be one with her.⁷⁶ But even at the “lower” level of the desire to possess the beautiful, we see people of great and lesser wealth seeking to have as their own a great work of art, or perhaps only a print of it, or just a lovely vase. In a way, such collectors “marry” their objects to their aesthetic desire. It becomes part of their physical space. Even the popularity of the decorative arts today, in the drive to create homes of aesthetic delight, points unmistakably to the human desire to be part of that which is beautiful - to “marry” it in a way that becomes part of oneself. The dividing line between philosophers who thought of beauty as objective or subjective is artificial. In beauty, the subjective wants to meld, as best as one humanly can, with the objective. That is the root of all mystical experience. As Saint Augustine cried out, “Late have I loved Thee, O Beauty so ancient days and so new.”⁷⁷ Or as Rumi writes,

At times we flow toward the Beloved
Like a dancing stream.
At times we are still water
Held in His pitcher.
At times we boil in a pot

⁷⁴ THE WORKS OF RALPH WALDO EMERSON: NATURE, ADDRESSES, AND LECTURES 28 (1909).

⁷⁵ FINNIS, *supra* note 27, at 96.

⁷⁶ 1 *Genesis* 2:24 (King James) (affirming the same point). “Therefore shall a man leave his father and his mother, and shall cleave unto his wife: and they shall be one flesh.” *Id.*

⁷⁷ ST. AUGUSTINE, *supra* note 45, bk. 10, pt. XXVII, at 210.

Turning to vapor—
That is the job of the Beloved.⁷⁸

And thus, Article 27 of the UDHR proclaims, albeit more prosaically,

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.⁷⁹

VII. LIFE AND PEACE

The UDHR briefly mentions the fundamental goods of life and of peace.⁸⁰ Other instruments, such as the Convention on Genocide and the United Nations Charter, treat those goods more extensively, but they still deserve an acknowledgment here as elements that are necessary to a flourishing human life.

Peace and harmony are goods essential to the accomplishment of most other goods in life. All social contract theories from Plato to Rawls understand that. Peace and harmony, however, are also endemic goods of what it is to be human. A man may fear death, but he cannot abide chaos. In nearly all of the founding sagas from the Babylonian, to the Judeo-Christian, to the Islamic, God (or the gods) set the world aright by bringing to it an order. He creates order and peace out of primeval chaos, and, in Judeo-Christian scripture, he finds it “good.”⁸¹

Yet Hobbes actually gets something right. He posits that in the state of nature, there is a state of war. That state of war is paralyzing to human endeavor.

In such condition, there is no place for industry, because the fruit thereof is uncertain: and consequently no culture of the earth; no navigation, nor the use of the commodities that may be imported by sea; no commodious building, no instruments of moving, and

⁷⁸ Rumi, *One Whisper of the Beloved*, POET SEER, <https://www.poetseers.org/the-poetseers/rumi/one-whisper> (last visited Mar. 25, 2022).

⁷⁹ UDHR, *supra* note 17, art. 27.

⁸⁰ *Id.* art. 26, ¶ 2 (“Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.”); *id.* art. 3 (“Everyone has the right to life, liberty and security of person.”).

⁸¹ 1 *Genesis* 1:26 (King James).

removing, such things as require much force; no knowledge of the face of the earth; no account of time; no arts; no letters; no society.⁸²

Yes, peace is necessary and instrumental for all these things of civilization.

But Hobbes sees what is evil at its root, “which is worst of all, continual fear, and danger of violent death; and the life of man is solitary, nasty, brutish, and short.” It is chaos. It is a state of social disintegration. But what is key here is Hobbes’ understanding of the psychology of people trapped in chaos, as he writes “the nature of war, consisteth not in actual fighting; but in the known disposition thereto, during all the time there is no assurance to the contrary.”⁸³ It is terror. Man in the state of nature is terrorized by uncertainty of his very existence. Here, we see the tactic of terrorists throughout history. The terrorist intentionally brings about a state of chaos, which he knows people cannot abide. Terrorism paralyzes the will. People will seek order from any source, for to live in terror is to be bereft of all those fundamental goods of which it is to be human. The terrorist, whether it be Lenin, Pol Pot, Stalin, Mao, or the men of Isis, create the predicate for their own tyrannical reordering.⁸⁴

Hobbes knows that disorder is unacceptable to the human mind, and consequently, he calls seeking peace a fundamental law of nature: “[I]t is a precept, of general rule of reason, that every man, ought to endeavor peace, as far as he has hope of obtaining it.”⁸⁵ For that, man would (or should, as Hobbes declares) be willing to give up his liberty—and this, every terrorist knows.

But in one fundamental point, we must differ from Hobbes in this: war is not the natural state of man and peace the creation of an (artificial) contract. Peace is the natural state of human society, and that which disturbs the peace is the exception that calls for law. Peace and harmony are goods in themselves. They are so essential to the experience of living as a person that we are impelled, when things go drastically awry, to seek after it. Again, the revealed religions testify to the grounded-ness of peace. The greatest blessing and greeting in Judaism is *shalom*; in Islam, it is *as-salaam alaikum*; from the Apostle Paul in the New Testament, *Grace and Peace to you from God*.

Peace is undoubtedly both an instrumental good and a good-in-itself. Instrumentally, Cicero counseled:

⁸² THOMAS HOBBS, *LEVIATHAN: THE MATTER, FORM, AND POWER OF A COMMONWEALTH, ECCLESIASTICAL AND CIVIL* 84 (A.R. Waller trans., 1904).

⁸³ *Id.*

⁸⁴ See MUSLIMS AND GLOBAL JUSTICE, *supra* note 10, at 30–42 (discussing this kind of issue).

⁸⁵ HOBBS, *supra* note 82, at 87.

[W]e ought to follow Nature as our guide, to contribute to the general good by an interchange of acts of kindness, by giving and receiving, and thus by our skill, our industry, and our talents to cement human society more closely together, man to man.⁸⁶

Giorgio Del Vecchio saw most astutely that peace in pre-civil society is the norm among persons, and the “command back by a sanction” is only a corrective of the pre-existing order:

[P]unishment, like the wrong to which it corresponds, supposes a preceding state of normality or of equilibrium The transgression, that is, the disturbance of the balance, which the punishment seeks to redress, represents in reality an *exception*, and logically a *consecutivium*. Penal or criminal law, in short, presupposes a series of juridical values already defined and recognized.⁸⁷

Peace is that state of being so hungered for by man as a good in itself that it becomes the fondest greeting and affirmation one person can give to another. The state’s duty in preserving peace, then, is a foundational and existential good for all persons.

CONCLUSION

Abdullahi Ahmed An-Na‘im’s great plea was that there be a “synergy” between notions of human rights, a neutral “secular” state, and the cultural, historical, and religious norms of a people.⁸⁸ In this article, I have argued that human rights are indeed universal as they derive from a universal natural law.

By grounding a human rights regime on the fundamental goods of human nature as elucidated by natural law, one can achieve a universal basis for rights, while keeping various cultural articulations of those rights. As every culture can express itself artistically in a different vocabulary, so too can cultures, Muslim and Western, articulate rights in a different form more attuned to their respective histories and cultures. But at the bottom, recognizing the universality of natural law provides mankind with the respect for human rights that we all owe to one another.

⁸⁶ CICERO, *DE OFFICIIS* bk. I, ¶ 22 (Walter Miller trans., 1975).

⁸⁷ DEL VECCHIO, *supra* note 25, at 104.

⁸⁸ *Interdependence of Religion, Secularism, and Human Rights*, *supra* note 16, at 345.