Human Rights under the Crescent Moon: The Political and Economic Motivations for Reservation Behavior in International Law

by

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INTRODUCTION

Cultural relativism has often been invoked as a justification for societies abusing the basic rights of their citizens, on the grounds that the international human rights regime is simply a form of Western imperialism. Arguments along these lines have sometimes been presented when predominantly Muslim states submit reservations to international human rights conventions. Reservations are exceptions that a state submits to an article in a convention because it conflicts with some fundamental aspect of its domestic culture, or its economic or political system. Islamic states and countries that establish Islam as the official religion of the state often submit reservations to human rights convention with Shari’a law offered as the justification for the alleged incompatibility. In this thesis I analyze and contest such claims using an interdisciplinary approach drawing on political theory, Islamic legal theory, international law, and political science.

Research Question and Hypothesis

My overriding research question is Why do Islamic states submit reservations to basic human rights norms (specifically the International Covenant on Civil and Political Rights, the Convention on the Rights of a Child, and the Convention on the Elimination of All Forms of Discrimination Against Women)? My hypothesis is that the answer is not that these norms conflict with the tenets of Islam but rather that the states are responding to political and economic factors specific to the countries in question. Understanding these factors will allow us to gain a better understanding of
the issues these nations face and to separate those issues from religion. I thus take issue with scholarship that blames Islam for the problems that plague Islamic states and their relations with other countries.

Cultural relativists assert that Muslim society is incompatible with “Western” democracy, human rights, and modernity generally, thereby accounting for the supposedly common and distinctive patterns of rejection that Islamic societies display of human rights norms. This sort of a claim is put forward by both Western scholars such as Samuel P. Huntington1 and by scholars originating from Muslim societies as well such as Sultanhussein Tabandeh and Abul Ala Mawdudi.2 The manner by which this sort of a claim may be tested is by way of an in-depth examination of the reservations that Muslim-majority societies put forward to human rights treaties and determine if there are common and distinct patterns among them. However, prior to the testing of this theory in my thesis it is important to establish the theoretical framework within which these reservations occur; in order to do that we must evaluate the cultural relativist and cultural universalist rhetoric regarding Islamic human rights and their role in the international legal continuum.

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At this point I would like to point that I use the plural, Muslim societies, and not the singular, Muslim society, because cultural relativists often succumb to a category error in their assumption that Islamic society is static and monolithic when in truth it is intensely diverse and very dynamic. Ernest Gellner puts forth this notion in his work entitled *Muslim Society*.3 The title itself is already an issue because it assumes an Islamic totality. As his work progresses it only gets more problematic as he attempts to fuse social structure, religious belief, and political behavior all into one pattern, claiming that the Qur’an is a blueprint for a Muslim social order.4 Because no deviation can occur and only a singular interpretation of the text exists, therefore the society itself must be static as well.5 This argument is fundamentally flawed because it is based on the assumption that there is a singular interpretation of Islamic religious texts when there self-evidently is not. Prophet Muhammad never used written diacritical marks as a guide for the vocalization of the Qur’an and for each word there were two readings, for instance “either to use ‘ya’ or ‘tah’ in such words as ‘they do’ or ‘you do.’” In many cases, neither meaning was favored over the other, which suggests that multiple meanings of the Qur’an were accepted by Prophet Muhammad and a singular meaning was imposed only after his death.6 This also means that what exists now, as the Qur’an is most likely not the direct Word of Allah as certain fundamentalist Muslim scholars claim. It is ironic that there is inconsistency among the

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4 Ibid., 17, 171
interpretations offered by these fundamentalist scholars about the meaning of the Qur'an, Hadith, and Shari'a law, especially on the topic of human rights, when each claims his view as immutable and explicit.7

Gellner’s assessment is flawed, not only for the aforementioned misconceptions about Islam, but also for assuming that Islam has always existed as a discrete entity independent of all other societal development. In fact, as Fred M. Donner illuminates, there must have been contortions of the Qur'an and Islam for political purposes in history after Prophet Muhammad’s death because the community of believers during Prophet Muhammad’s time contained both Jews and Christians.8 One of the main tenets of Donner’s narrative of Early Islam is that there is a difference between “those who submit,” muslim(s), and those who believe, mu'min(s) and that the initial community consisted of believers which included Christians (from whose religious traditions cultural relativists claim the current international human rights regime emerged).9 Donner asserts that the final form of Islam was distorted by individuals’ political ambitions and that what we know as “fundamentalist Islam” greatly strays from Prophet Muhammad’s ambitions and goals. Prophet Muhammad’s intention was to create a more devout group of people from the existing groups of believers, which included Jews and Christians; the believers did not view themselves as a separate religion but

9 Ibid., 57-60
rather a union of the Abrahamic ones. Donner’s work is relevant in illustrating modern misconceptions about the exclusivity of Muslim societies and how those misconceptions have fed the notion that Islam has been and is historically intolerant. According to this misconception, throughout history Islam has had a fate distinct from all other societies whereas in actuality it emerged as a coalition of a variety of societies.

Gellner’s account also does not distinguish between principles set forth in the Islamic sources and the historical patterns of interpreting these sources according to criteria set by various schools of law or sects. It is necessary to make this distinction because there are often discrepancies between what is said in the Qur’an and Hadith and how this has been used by those with political power. Accounts such as Gellner’s do not address evolution and reforms in interpretations of texts that have taken place over time. If the meaning of the Qur’an and Hadith were so explicit and clear, with no room for a variety of interpretation, then there would be no need for the Ayatollahs and the ulama, the diverse and chaotic body of scholars of Islamic law and theology. The failure to differentiate between the moral values or ideal prescriptive norms of Islam and the actual laws and legal institutions in place in Muslim countries derives from the tendency of Western scholars to accept at face value “Islamic” rationales for denying human rights.

The idea that Islam is peculiarly hostile to human rights overlooks the fact that many countries have entered reservations to human rights treaties.

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10 Donner, 69-70
Islamic human rights schemes are only products of the political context in which they emerge; this is not exclusive to Islamic states but is rather true of all nations-states. Despite the fact that the United States is a western liberal democracy, it has entered just as many reservations, and at times more, than some Islamic states.\textsuperscript{11} In the nineties, both Iraq and Iran petitioned for the United Nations Human Rights Council to accept the Cairo Declaration as the Islamic alternative to human rights.\textsuperscript{12} These countries at the time were dominated and controlled by two opposed sects of Islam and their main commonality was in depriving their citizens of their due rights and freedoms. Saudi Arabia was also officially asserting that the "Western" notion of human rights is incompatible with Islamic society; meanwhile devout Muslims within all these nations have been demanding more freedom and greater recognition of their rights, as one could have observed in the 2011 wave of protests termed by scholars as the “Arab Spring.”\textsuperscript{13}

Ann Elizabeth Mayer and Abdullah An-Na’Im counter claims put forth by scholars like Gellner, Huntington, Tabandeh, and Mawdudi. The logical conclusion of claims put forward by cultural relativists is that Islamic states are incapable of modernizing and thus the international human rights regime must be “relaxed” for them to be able to engage in it. Muslims as a whole do

not have a common belief about the Islamic position on human rights or where negative rights stand in the Islamic human rights continuum. One of the most important reasons for this is because Muslims encompass a multitude of societies and nations and there exists no monolithic Islamic cultural standard.\textsuperscript{14} Given this and the fact that they have set up different political systems to fit their local framework of Islam, it would be impossible to define a single Islamic standard because these standards emerge from the political structures that are using Islam as an excuse to bypass certain human rights restrictions.

Orientalists view Islamic states which support human rights like equal pay for women within the international sphere as having been “Westernized”. As Elizabeth Ann Mayer demonstrates, this is a very problematic viewpoint to adopt because it assumes, as previously mentioned, that no progress within Muslim societies can occur and that any change represents a compromise of Islamic ideals. This sort of cultural relativism turns into elitism with respect to non-Western states in the context of human rights. Not only does it imply that certain states simply cannot reach complete human rights compliance but it also implies that it is acceptable for a certain group of individuals’ human rights to be violated.\textsuperscript{15}

Human rights, especially our most fundamental human rights, are not negotiable. The Bible allows slavery yet certain Judeo-Christian societies have

\textsuperscript{15} Mayer, 11-12
come to realize that such an infringement of an individual’s bodily autonomy and agency is unacceptable. At the point that a society can move past such a strongly embedded societal norm in history then societies can also progress to a point where they also respect the rights of women equally to those of men. It is important to realize that it is not Islam itself that is inhibitive because there are many states with a majority Muslim population that allow women the right to vote and participate fully in civil society. This is in stark contrast to another Muslim society, Saudi Arabia, which still hasn’t granted women the right to drive cars. Indeed, the three largest Muslim countries, Indonesia, Pakistan, and Bangladesh, have all had female heads of state. This is precisely why cultural relativism is unacceptable: it assumes a dichotomy between two monolithic behemoths, the Occident and the Orient, but that distinction does not exist in practice. It is the relativist dialogue of Orientalists that has created such deeply embedded misunderstandings about Islamic states and where they fall on the human rights continuum.  

At the global and local level there exists a plurality of religious and moral views, which should not be dismissed. We have a duty to respect and tolerate such differences but this toleration and respect is limited by the universality of basic rights. Cultural relativism becomes deeply problematic when, as a result of this concept, societies and cultures become essentialized and exoticized due to our own lack of understanding of their nuances. This in turn leads us to misunderstand the origins of human rights abuses. Cultural relativists “are opposed to claims of absolute criterion of values, i.e., that any

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given set of values should be absolute criterion for judging the validity of the values of other cultures.” There is a fundamental problem with this idea, because while cultures can choose how to build their places of worship, how to eat their food, which national holidays to hold, it is not acceptable to choose what rights to violate. Our basic human rights are not negotiable; there can be extracted a historic universal account of human rights from the fundamental values of most societies.

Many of the Arab states that experienced the “Arab Spring” had in the past frequently cited Islam in offering reservations to international human rights conventions. Although signing these treaties allowed the countries to gain international standing, the reservations allowed them to continue to politically oppress their domestic populations, which of course only led to greater problems in the long term. The reason for focusing on Islamic states partially derives from the wave of Islamophobia that swept the world after 9/11; in doing this project I will show that Islam is compatible with what I will call basic human rights, as long as we separate the Islam as the religion that is practiced by peoples from the Islam that is manifested in political states and politicized discourse.

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Research Methods

In order to determine the role of Islam in explaining states’ reservations to human rights treaties I will use a set criterion to select the countries that I will be analyzing. The criteria are: a) all of the states must be parties to the Cairo Declaration on Human Rights in Islam; b) all of the countries must have ratified the Convention on the Elimination of Discrimination against Women, the Convention on the Rights of the Child, and the International Convention on Civil and Political Rights; c) their population must be over 90% Muslim; d) the self-described role of Islam in the state had to be fundamental in that it was either the state religion or it was incorporated into the constitution, making the country a self-proclaimed Islamic State.

The reason why the countries must be signatories to the Cairo Declaration on Human Rights in Islam is because their participation is a public acknowledgment of what they see as the “Western” biased UN Conventions. It symbolizes their ideologically opting out of a “Western” system and supporting instead a supposedly more balanced human rights framework. If I can show my hypothesis that political factors explain why states enter reservation to be true for states that make this ideological claim then the likelihood it will hold true for states that enter reservations, but that are less professedly religious, should be quite high. The necessity for all of the countries to have ratified CEDAW, CRC, and ICCPR is practical. It allows me to assess the relationships between religion, economics, politics and
international human rights reservations, but if a country is not a signatory to a certain convention then there is no way to assess whether that relationship exists or not.

I have chosen ICCPR, CEDAW, and CRC because those conventions are meant to protect the most vulnerable and discriminated against: political and religious minorities, women, and children. These conventions, also, in total, have the most signatories and thus they provide the most material for assessing dialogue between Muslim and non-Muslim states regarding the reservations that Islamic states submit. Reservations must be justified and they are often objected to by other states, which forces a dialogue on every reservation that has been filed. The population needs to be almost entirely Muslim as a way of controlling for other religious factions gaining a stronghold and changing the reservations being submitted and withdrawn which might not show up on the political and economic factors section of my data analysis. Last, Islam must play a fundamental role in government in that the state must either be an Islamic State or it must have accepted Islam as the state religion. This makes my task of proving the minimal role of Shari’a in the reservation calculus harder but it would also strengthen my findings. The following countries fulfill these criteria:
Table 1.1 Case Studies

<table>
<thead>
<tr>
<th>Countries that are signatories to the Cairo Declaration on Human Rights in Islam</th>
<th>CEDAW, CRC, ICCPR</th>
<th>Over 90% Muslim population</th>
<th>Role of Islam in state, indicated regime change/reform since 1970</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>√</td>
<td>99% Sunni/Shi’α</td>
<td>Islamic State</td>
</tr>
<tr>
<td>Algeria</td>
<td>√</td>
<td>99% Sunni</td>
<td>State Religion</td>
</tr>
<tr>
<td>Egypt</td>
<td>√</td>
<td>90% Sunni</td>
<td>State Religion</td>
</tr>
<tr>
<td>Libya</td>
<td>√</td>
<td>97% Sunni</td>
<td>State Religion</td>
</tr>
<tr>
<td>Mauritania</td>
<td>√</td>
<td>99% Sunni</td>
<td>Islamic State</td>
</tr>
<tr>
<td>Morocco</td>
<td>√</td>
<td>99% Sunni/Sufi</td>
<td>State Religion</td>
</tr>
<tr>
<td>Pakistan</td>
<td>√</td>
<td>97% Sunni/Shi’α</td>
<td>Islamic State</td>
</tr>
<tr>
<td>Syria</td>
<td>√</td>
<td>90% Sunni/Shi’α</td>
<td>State Religion</td>
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<tr>
<td>Tajikistan</td>
<td>√</td>
<td>97% Sunni</td>
<td>State Religion</td>
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<tr>
<td>Tunisia</td>
<td>√</td>
<td>98% Sunni</td>
<td>State Religion</td>
</tr>
<tr>
<td>Yemen</td>
<td>√</td>
<td>99% Sunni/Shi’α</td>
<td>Islamic State</td>
</tr>
</tbody>
</table>

The second part of my thesis will require analysis of data from the chosen countries. I believe these data will show that political and economic factors lead to reservations being introduced or withdrawn. The factors I will be measuring are regime type, political party in power, level of political competition, whether it is a secular or religious party in power, level of democracy/autocracy (polity), export/import trade agreements/developments, grassroots movements, freedom of the press and resulting access to information, civil liberties, religious freedom, and human insecurity. The significance of these factors is explained in detail in Chapter Five. But to contextualize them briefly, they are meant to measure potential gestures towards the significance of internal domestic political factors, economic pressures and social movements. These factors are measured for five years prior to the submission of a reservation and five years prior to its withdrawal.
Chapter Introductions

The first chapter of the thesis seeks to establish the existence of basic rights; human rights cannot remain an assumption this thesis takes as given, but rather, they must be proven. A Rawlsian associationist framework is used to determine what rights are basic and so are universally valid. The second chapter outlines the system of international law within which rights function. Additionally, the second chapter distinguishes between basic rights and the full panoply of rights that the international conventions set forward. In particular, it distinguishes the articles of CEDAW, ICCPR and CRC that focus on basic rights that are the main concern of this thesis. They are the primary focus because it is these basic rights that are essential to the independent functioning and development of individuals within society.

The third chapter describes the reservations submitted by the states identified above and any withdrawals of those reservations. In this context I analyze the justifications that these states submit to accompany the reservations and what sorts of objections the international community raises to the reservations. The reservations are analyzed based on madhhab (Islamic schools of jurisprudence) and by more general groups of Islamic States versus States that recognize Islam as the state religion. This is done to determine if there is any consistency amongst either of the two groupings in the reservations submitted. This is essential because if Shari’ā law is submitted as the main justification for a reservation, then ideologically similar states should have similar reservations. The fourth chapter challenges the
justifications made by states involved in this study by analyzing Shari‘a law and the role of human rights in Islamic legal discourse. The fifth chapter refutes the claim that Islam explains reservation behavior by setting out the secular motivations that exist in these states for submitting these reservations. In this chapter I will show that we do not face a clash of civilizations but rather that Muslim states, like all states, are guided by a range of considerations, making it possible for them to be participants in a negotiated international order.

Conclusion

This thesis presents the reasons behind Islamic nations submitting reservations to human rights. Current scholarship offers varied answers, from invoking the “backwardness” of Islam to the extreme opposite, claiming the human rights regime itself is merely a Western imposition, thus forcing nations to submit reservations to international conventions to protect themselves from Western domination. Studies that have attempted this subject have often relied on legal justifications and circumstantial correlations that were lacking any methodical precision and presentation. This is one of the main areas where this thesis hopes to distinguish itself from existing scholarship. I not only plan to outline the theoretical and legal basis for refuting claims of incompatibility between Shari‘a and Islam but I hope to prove these claims through thoroughly analyzed data and elucidating the existing economic and political patterns that coincide with reservation submission and withdrawal.
CHAPTER ONE: HUMAN RIGHTS

The theoretical framework from which I am approaching this thesis is that of “qualified particularism”; in this theory, the individuality of societies can be preserved without undermining universal norms regarding human rights. The starting point for this altered form of universalism is the idea embedded in the idea of a well ordered society that all humans have basic rights. Liberal societies are premised on the idea that people are free and equal, and their system of justice requires a wide range of equal rights that protect individual freedom and equality. But a non-liberal society may be based on a common good conception of justice, in which one’s rights are determined by the social roles that one occupies and not on some other overriding universal principal. Such a society need not include the full panoply of liberal rights, since fulfilling different roles may require different powers, immunities and duties. But any society that can be said to be cooperative is a society in which people accept its basic principles, rather than having its principles forcibly imposed on its members. Thus, any cooperative society must guarantee certain basic rights, for without such rights as the right to life, physical security, and subsistence there is no sense in which an individual can be said to accept the society’s organizing principles.

As David Miller contends, everyone is linked beyond their “own humanity.”\(^\text{18}\) Even ethical particularists (Kwame Anthony Appiah and Michael Walzer especially) accept that there are “generic and basic rights of

living a decent life” and that these rights are “expressed in terms of rights to bodily integrity, personal freedom, a minimum level of resources, and so forth.”¹⁹ These basic rights are not (and must not) be restricted to peoples based on the kind of government their self determination and right to autonomy has lead them to; this point is essential to any case study that deals with human rights. This brings us to some of the fundamental points of the theoretical framework of my thesis that I will be solidifying in this chapter. I will begin by outlining an account of what entails basic human rights, drawing mainly on John Rawls and Thomas Nagle to do so and contrasting Rawls’s account with the much more expansive and liberal notions of human rights proposed by Charlotte Bunch and Charles Beitz.

**Justification of rights**

Prior to discussing what basic rights one is entitled to it is necessary to substantiate the concept that rights exist; the most compelling justification for these rights is provided by the associationist model. Even non-liberal societies aspire for a degree of structure and coherency in their framework and their legal systems often taken on an associationist form. A legal system itself is a set of rules that society has decided must govern the behavior of its members. It is this sort of a consensus that is also applied to the discussion of basic rights in the associationist model.

In this model, individuals are viewed as members of groups that play a specific role in the processes of political and social cooperation as members

¹⁹ Miller, 74
they are entitled to rights that are necessary to fulfill the responsibilities allotted to them by the society. For example, parents do not receive parental rights simply because they have children but rather because society expects parents to function as guides for children until they reach adulthood. If in a society rights are not recognized then individuals will not have the capacity to fulfill their obligations.

In addition to these “associationist” rights any cooperative society must recognize certain basic rights that protect individuals’ capacity for at least minimal agency because otherwise, they could not be seen as willing participants in the fulfillment of their obligations and responsibilities in society.20 If individuals are no longer willing participants in the societal system then that community’s model becomes more reflective of slavery than a well-ordered society. A slave society is not well ordered because the individuals being enslaved cannot be said to be in any sense cooperating with others, or to accept the principles on which the society is ordered. In a well-ordered society, groups and individuals have responsibilities and to be able to discharge those responsibilities they must have the right to bodily integrity and to a certain degree of freedom to exercise their agency.

Rawls argues that for a society to respect the basic rights of its citizens it need not be entirely just.21 The institutions of decent societies may be structured around a single religion or restrictive social or political philosophy that might be undemocratic in nature and which might entail things like

21 Rawls, 74
women being excluded from public office. These groups need not have political equality as long as equality before the law is insured and their rights are not infringed upon. There might be differences in the rights that different individuals have, but there will not be any differences in the way individuals’ basic rights are protected. This is necessary for a society to be well ordered because otherwise, it will degenerate into an internally unstable community.

**Basic Rights**

It is important to delineate the differences between basic human rights and the rights of citizens in constitutional democratic regimes. I will not be taking an expansive view of human rights and while all of these basic rights are supported by liberal governments, liberal regimes incorporate not only a wider range of rights but are also committed to equality of rights.

Basic rights include the right to life, which must include a degree of subsistence and security; protection against phenomena such as famines and indiscriminate warfare. All beings are also entitled to a degree of freedom of conscience, which includes liberty from slavery, serfdom, forced occupation, and a sufficient freedom of religion and thought. The final right is the right to personal property.

John Rawls deliberately distinguishes these fundamental rights as a “special class of urgent rights,” and by this he means freedom from things such as slavery or serfdom, and liberty of conscience along with security for

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22 Rawls, 74
23 Ibid., 65
24 Ibid., 65
25 Ibid., 65
groups from mass murder and genocide: rights that are not exclusive to constitutionally liberal regimes.  

Furthermore, when defining liberty of conscience it is important that this does not necessarily mean equal liberty because that would no longer be a fundamental right that is necessary for the preservation of one’s autonomy and agency along with bodily integrity. He specifies ethnic groups but I am going to expand that to any group, whether it is religious, ethnic, or cultural, as being protected from mass murder and genocide.

Because these rights are fundamental and are not specific to any particular political theory, their violation should be condemned by all societies that claim to be ordered by some conception of justice. When a society does not condemn such violations it is not reflect a mere culture clash but rather that it is neither a just nor decent society. There have of course been societies that have not respected basic rights but have had institutions such as slavery, but they e would not qualify as well ordered. There may be minor differences in how these rights are understood, but they cannot be entirely vitiated. For example, while there need not be total equality in terms of access to resources for minority religious groups, there does need to be a sufficient degree of liberty and security for these groups to be able to practice their religions “in peace and without fear.” This liberty need not extend to equal access to public office, which is a liberal right.  

And although it is recognized that “the significance of national and regional

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26 Rawls, 78-79
27 Ibid., 74
particularities...must be borne in mind,” the United Nations, based on general consensus, declared that “it is the duty of states, regardless of their political, economic, and cultural systems, to promote and protect all human rights and fundamental freedoms.”

Beitz has a more expansive view of human rights as compared to Rawls but it is useful as a contrast in highlighting what basic rights do and do not entail. According to Beitz, basic human rights claim the following five categories:

1) Rights of the person refer to life, liberty, and security of the person; privacy and freedom of movement; ownership of property; freedom of thought, conscience, and religion, including freedom of religious teaching and practice “in public and private”; and prohibition of slavery, torture, and cruel or degrading punishment.

2) Rights associated with the rule of law include equal recognition before the law and equal protection of the law; effective legal remedy for violation of legal rights; impartial hearing and trial; presumption of innocence; and prohibition of arbitrary arrest.

3) Political rights encompass freedom of expression, assembly, and association; the right to take part in government; and periodic and genuine elections by universal and equal suffrage.

4) Economic and social rights refer to an adequate standard of living; free choice of employment; protection against unemployment; “just and favorable remuneration”; the right to join trade unions; “reasonable limitation of working hours”; free elementary education; social security; and the “highest attainable standard of physical and mental health.

5) Rights of communities include self-determination and protection of minority cultures.

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29 Charles Beitz. Human rights as a common concern, Cambridge Univ Press, 2001, 271, 190
Below, I outline which of these are not fundamental rights according to the Rawlsian theoretical framework of this thesis so as to be able to clarify what fundamental rights we will be looking at in the international legal arena.

One right that has not yet been discussed here is the freedom of movement. While this is not in itself a necessary right in that tourism is not a right, freedom of movement to escape persecution is, and it places a burden on the country that is receiving immigrants in cases where a denial of immigration might constitute “a failure to respect human rights or the universal duty of rescue.”\textsuperscript{30} Efforts to halt suffering and cruelty are, he says, the “elemental priority of all human rights activism: to stop torture, beatings, killings, rape and assault to improve, as best as we can, the security of ordinary people.”\textsuperscript{31} In this sense, in the framework of this thesis it is not a right on its own that is active at all times but rather is applicable to refugees in situations where the restriction of their movement will lead to degrading abuses of their rights.

The right to take part in government and periodic and genuine elections will also be removed from our framework of human rights because they are more indicative of liberal aspirations rather than fundamental individual human rights. This logic also applies to things like the right to join trade unions or social security. The protection of minority cultures is a right but the rights of communities to engage in self-determination, which in this

case implies secession, is contestable because it relies on the notion that this secession will not lead to harms vis-à-vis the society they are seceding from. I will abstain from discussion of this right because it is not relevant to the main concerns of this thesis.

Unless they are severely harming their own citizens, states are for the most part to be left to their own devices. Interventions tend to be more disruptive, destabilizing institutions, which expose citizens to more abuses instead of protecting those citizens. Furthermore, interventions assume a single trajectory and continuum of modernity and this trajectory is very often defined in the Kantian sense where the ultimate goal is to be a liberal society.

An argument for this is best presented by Severine Autesserre, whose assessment of humanitarian interventions notably in the Congo, concludes that there must be a focus on local level politics and tensions as opposed to a national initiative such as an election because national initiatives tend to get reinterpreted into liberal initiatives. The author bases her discussion on the idea that there is a “postconflict peacebuilding frame that shapes the peacebuilders’ understanding of violence, peace, and international intervention—an understanding that makes local conflict resolution appear to be an inappropriate and illegitimate action.”\(^\text{32}\) The frames that Autesserre refers to are concepts that shape our understanding of what is qualified as a problem and what is not. This illustrates what hinders peacebuilders from recognizing, for instance, that medium or even low levels of violence are not

normal for the Congo during peacetime. Unfortunately, this belief is what hindered “international actors from constructing continued conflict in the eastern provinces [of the Congo] as a problem.”33 Because these frames have become entrenched in the international bureaucracies they constrain the behavior of international organizations to macro level initiatives (such as elections), which prevent humanitarian interventions from becoming effective. Her argument offers a sound framework that transcends the Congo because democracy is thought to be the hallmark of a stable society, elections are viewed as the obvious road to this.

What Autesserre is pointing out is the potential Orientalist bias that can exist when Western states assess non-Western societies. Orientalists view Islamic states that support human rights like equal pay for women within the international sphere as having been “Westernized.” As Elizabeth Ann Mayer demonstrates, this is a very problematic viewpoint to adopt because it assumes, as previously mentioned, that no progress within Muslim societies can occur and that any change represents a compromise of Islamic ideals. I accept that there exist societies, which are not on the liberal trajectory of modernity, but in accepting this I acknowledge that while this may excuse them from the rights that carry within them liberal aspirations, this does not excuse them from protecting basic rights. This is related to a symbiotic relationship where the state makes unique demands on the will of its members and the members of that state also make unique demands on their societies. Through the institution of the state, they also make unique

33 Autesserre, 251
demands on each other and “those exceptional demands bring with them exceptional obligations, the positive obligations of justice.” These obligations “reach no farther than the demands do and that explains the special character of the political conception.”\textsuperscript{34} This relationship does not require us to make the ends of other societies and the people who inhabit those societies our own but it does behoove us “to pursue our ends within the boundaries that leave them free to pursue theirs, and to relieve them from extreme threats and obstacles to such freedom if we can do so without serious sacrifice of our own ends.”\textsuperscript{35}

\textit{Women’s Rights}

The human rights account as presented by Charles Beitz, John Rawls, and Thomas Nagle is incomplete because it excludes women’s rights. As one of the purposes of this chapter is to create a comprehensive account of basic human rights, this necessitates a discussion of women’s rights and where they fall on the human rights continuum since the dominant image of the political actor in modern political theory is male. Even the Universal Declaration of Human Rights which was adopted in 1948 only has one article that explicitly addresses the rights of women and that is Article 2: “the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”\textsuperscript{36} This also ties into the greater

\textsuperscript{34} Nagel, 130
\textsuperscript{35} Ibid., 131
purpose of my thesis, since by injecting women’s rights into basic human rights one can illustrate the illegitimacy of reservations to human rights conventions that deny women proper treatment. Women’s rights are also fundamental and thus can’t be written off in the cultural relativist standard; this is especially true in the associationist framework because women, by virtue of being a part of the family group, need basic rights and liberties similar to those of their husbands because their responsibilities are quite similar in terms of providing for children and being functioning members of society. It is up to individual units how responsibilities are distributed, which influences whether women work outside the home or not, but either way, they must have rights because they have responsibilities that they need to be able to fulfill, and these responsibilities should be agreed upon rather than imposed on women.

Protection from degradation and violation of women must also be included in the basic human rights account because women, along with children, are the two most susceptible groups to abuses due to their disenfranchised status in many political institutions. Cultural relativists and political actors often claim that the “abuse of women, while regrettable, is a cultural, private, or individual issue, and not a political matter requiring state action.”\textsuperscript{37} This reasoning is precisely why women’s rights must be included in fundamental rights because otherwise the abuse of women, which can even lead to death, would be excused. However, the rights women are allotted in the basic rights framework are not limitless.

\textsuperscript{37} Bunch, 488
While Charlotte Bunch makes a persuasive argument for women’s basic rights to include things like abortion because in areas like “Latin America, complications from illegal abortions are the leading cause of death for women between the ages of fifteen and thirty nine,” her account exceeds the parameters of basic rights. The right to abortion is not a necessary right for a woman to be a functioning member of society as long as the pregnancy will not cause physical or intense psychological harm and thus render the individual incapable of exercising her rights.

According to Bunch, violence against women is tolerated publicly and some acts are not even crimes in law while others seem to be validated in custom or court opinions where shockingly, most are blamed on the victims themselves. Perhaps, this is why “violence against the female sex,” “far exceeds the list of [all other] Amnesty International victims” in total.38 This sort of violence is not cultural but rather is very much political and results from “the structural relationships of power, domination, and privilege between men and women in society. Violence against women is central to maintaining those political relations at home, at work, and in all public spheres.”39 Considering that domestic battering percentages range from “40 to 80 percent of women beaten, usually repeatedly,” this indicates that what is viewed as one of the safest places in society, one’s home, is actually a frequent “site of cruelty and torture.”40 It is important to mention that these numbers do not begin to address the full extent of the problem of violence against

38 Bunch, 490
39 Ibid. 491
40 Ibid., 490
women. The failure to deal adequately with women’s rights is reflected in the very structure of the international human rights system. For example, the Human Rights Commission of the United Nations, “has more power to hear and investigate cases than the Commission on the Status of Women, more staff and budget, and better mechanisms for implementing its findings.”

Sexual persecution and violence against women are often not viewed as sufficient justification for granting affected women refugee status. This had very severe consequence in the case of the Pakistan-Bangladesh war where raped women subsequently faced death at the hands of their male relatives to cleanse the families of the dishonor that had been brought by the rape after Western states had failed to grant them asylum.

So, how would attending to women’s rights restructure the Rawlsian basic human rights framework? The changes would be seen in the institutional and legal aspects of the model. It would be important for issues like the sexual abuse and rape of women or the mistreatment of female political prisoners to become as much of a concern as the political confinement of males. The treatment of women can no longer be written off as a cultural symptom because no abuse of a human being is justifiable. Furthermore, women are entitled to economic rights as well because without economic resources they cannot exercise their other rights. This would also require an in-depth look into property clauses because it is not enough for a

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41 Bunch., 490
42 Ibid., 492
43 Ibid., 493
44 Ibid., 494
nation to allow men of minority groups to own private property; there needs to be a reasonable degree of gender equality so that there is no requirement for a woman to be attached to a man for her sustenance. As members of society who are tasked with raising children, women should be granted enough rights to be able to raise those children if the man begins to fail at his responsibilities. This does not necessarily mean an equal wage but it does mean a reasonable degree of access to resources for a sustainable lifestyle beyond the protections of a man. Human trafficking and disappearances and sexual slavery along with forced female mutilation would fall under the this framework as well because they infringe on the bodily integrity of the female and cause significant biological harm through a ritual the female does not consent to.

**Conclusion**

As this last discussion regarding women’s rights implies, it would be “impossible to fulfill even our minimal moral duties to others without the help of institutions of some kind short of sovereignty.”\(^{45}\) While we do not need institutions to prevent us from violating the rights of others, institutions are necessary to enable us to fulfill our duties of protecting people who are not within our society against the violation of their basic rights. Without an institution with some degree of enforcement the latter would be impossible to implement.\(^{46}\) These institutions emerge from community consensus. This same community consensus also sets parameters for what is fair and what is

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\(^{45}\) Nagel, 131

\(^{46}\) Ibid., 131
just and these institutions are tasked with the responsibility of making sure that society is functioning within community set standards. Unfortunately, sometimes institutions (governments) exceed their limits and defile the rights of the same community members from whom they initially derived their power.
CHAPTER TWO: INTERNATIONAL HUMAN RIGHTS LAW

History

Because “human rights norms are the legal expression of the essential rights that every person is entitled to as a human being,” there must be institutions that can enforce these rights. That responsibility falls mainly on individual states, but when a state fails to fulfill its responsibility, or even violates those norms itself, another institutional system is essential. Because states have sovereignty, which severely limits the engagement of another state within their borders, the best institutions through which these rights can be protected when states fail to do so are international ones.\textsuperscript{47} Not only international institutions but also an international legal standard is called for.

Over the last several centuries there has been a sweeping movement in the development of centralized states that facilitate economic growth, technological innovation, and “lasting cultural and other forms of achievement.” Unfortunately, this increasing state power has at times been directed against individuals and “Wars between states or struggles for power within states have cost at least 100 million lives in the last 60 years alone.”\textsuperscript{48} This abuse of power has led to the rise of an international legal standard, human rights conventions, which are designed to protect individuals by clearly specifying their rights. However, this legal standard is not only for

\textsuperscript{48} Ibid., 437
individuals to be aware of their rights but also for states so that they may be able to evaluate their own behavior.

This development represents a break with traditional international law, which focused on the rights of states; under traditional international law the rights of individuals were determined by their particular state of nationality.\textsuperscript{49} The individual was not always a legal personality under international law. In the seventeenth and eighteenth century there was no “sharp distinction between international and national law” and thus “individuals possessed legal personality and with it the ability to assert legal rights.”\textsuperscript{50} For example, as early as the seventeenth century, states entered into treaties designed to provide limited protections to religious minorities in other states. However, this practice changed with the appearance of the positivists in the nineteenth century. They claimed that international law was only applicable to “sovereign states in their interactions with each other as distinct from the law that applied to individuals.” In the view of the legal positivists, “only states could possess and assert rights under international law.”\textsuperscript{51}

This situation lasted until immediately after World War I, when the victorious powers became concerned with the possible destabilizing influence of national minorities in the newly formed countries of Central and Eastern Europe, carved out of the collapsed Austro-Hungarian and Russian monarchies. For that reason the victors imposed treaties on some of these states that were meant to “guarantee fair treatment to members of ethnic,

\textsuperscript{49} Dunoff et al., 437.
\textsuperscript{50} Ibid., 442.
\textsuperscript{51} Ibid., 442
linguistic or religious minorities.” This endeavor was associated with the League of Nations minorities treaty system, which, for myriad reasons, did not last for long and was resurrected in a modified form after World War II with the United Nations system.

The atrocities of World War II forced a further reassessment, just as the horrors of World War I had, of the position of individuals under international law. Reliance on state responsibility as a doctrine was obviously inadequate when dealing with abuses committed by a state against its own nationals, and in some cases these abuses were horrific; some minority groups within states had been almost totally destroyed. In response, the Allied Powers took on the responsibility of prosecuting individuals who were responsible for the crimes committed during the war, including most famously the Nuremberg Trials. This policy also had significant long-term effects.

Thus, the status of the individual in international law began to change once the abuse of power by states became egregious, manifested in mass violence, genocide, famines, etc. One branch of the law, international humanitarian law, deals with human rights and their protection during wartime. A legally codified semblance of this existed prior to even World War I. The focus of this thesis is on a second branch of international human rights law that deals with the rights of individuals during peacetime. For peacetime human rights the important year to note is 1948, just after the close of World

52 Dunoff et al., 442
War II. In 1948 the United Nations General Assembly adopted the Universal Declaration of Human Rights, which is the *dies a quo* from which peacetime human rights started to “crystallize in international law.”\(^{53}\) Human rights law seeks to not only protect the individual, but also to aid the individual in his/her development in society, making sure that certain basic resources such as state security and a minimum level of healthcare and food are available to them. It seeks to prevent abusive behavior by states that may lead to wars where international humanitarian law would need to be invoked.

The mechanisms by which human rights are monitored vary extremely.\(^{54}\) An individual, a group, or another state may bring a complaint. The complaint is then assessed by the appropriate regional human rights body, such as the European Court of Human Rights, and if that body finds that human rights have been violated then an obligation is placed on the state to rectify the situation in a way that would bring them back into compliance with the Convention. The international human rights regime does have clauses that authorize the suspension of certain rights but those never include fundamental rights, such as those I outlined in the previous chapter.

Some were so disgusted by the Holocaust that they called for the inclusion of an international bill of rights in the UN Charter.\(^{55}\) Although that did not happen, the UN Charter did include Article 68, which “contemplates the formation of a UN Commission on Human Rights to conduct research on

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\(^{53}\) Dunoff et al., 437


\(^{55}\) Dunoff, 443
human rights and to draft treaties and other instruments for the articulation and promotion of human rights.” In the years that followed, individual states along with the United Nations and various other regional organizations such as the Organization of African Unity and Organization of American States began to work together with expert individuals to craft human rights treaties and declarations, and the necessary institutions to enforce them. These institutions are composed of regional human rights tribunals, treaty bodies, overseeing experts and many more aspects.

The rights that nations sign on to and thus pledge to uphold are now codified in a variety of human rights conventions. Because this thesis is concerned with the basic rights of especially vulnerable groups including women, children, and political, religious, cultural, and ethnic minorities, I will be focusing on the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of a Child (CRC). These conventions have the most state ratifications and signatories and thus have been recognized as the foundation of the modern human rights regime. Given that my research is concerned with assessing the reasons behind reservations submitted by Islamic States, in order to answer this question I need data to analyze. Data, in the context of human rights law, comes in the form of reservations to human rights conventions and the

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56 Dunoff, 443.
57 Ibid., 443
justifications that states submit to legitimize their taking exception to a treaty’s provisions.

The first chapter offers a justification of the idea of human rights by invoking the Rawlsian model of a well-ordered society. Only reservations for those provisions in these conventions that involve basic rights will be explored in the context of this thesis because its purpose is to understand how a society chooses to justify intentionally disturbing its stability. Why does a community leader undermine rights and thus introduce the potential of internal chaos?

Reservations are a mechanism through which states that wish to become party to a multilateral treaty but reject one or more of the treaty’s provisions can still do so by limiting the applicability of the treaty by means of the reservation. However, reservations may not be submitted to “non-derogable” rights. Non-derogable rights are rights that may not be undermined or restricted no matter the situation, including times of war and national emergencies. The consequence of an unacceptable reservation is that it will generally be severed and the treaty will be operative for the body submitting the reservation without the benefit of its implied protection. However, the process for deciding on the validity of a reservation can last years because there is no set legal standard by which a reservation’s legitimacy may be assessed. The existence of the potential of reservations has blurred the line between what it is that states can actually be held accountable for, especially when the contestation over whether or not a country’s

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58 Dunoff, 481
reservation is valid can go on for years. During that period of debate there remains no valid or plain metric for assessing the behavior of that state. An explicit legal standard that outlines which articles it is impermissible to submit reservations to and to which it isn’t will provide a better understanding for both the individual of what their rights are but also a better understanding for states of what their limits are. Furthermore, given the “special character of human rights” treaties, the compatibility of a reservation with the purpose of a treaty needs to be established by invoking legal principles and precedents. This is further outlined in the Vienna Convention on the Law of Treaties, which is the standard for reservations that is used, by CEDAW, CRC, and ICCPR (APPENDIX D).

The ICCPR, CEDAW, and CRC provide a comprehensive sample for a database that covers most oppressed political groups. However, it is important to recognize that these conventions and declarations do not exclusively address basic human rights; rather, many of their provisions go beyond the requirements of basic rights as delineated in Chapter One.

Given that the full panoply of human rights codified in human rights conventions features a significant amount of liberal aspirations and much more demanding rights than are necessary for the survival and development of an individual, it is necessary to remove those articles from the study. By extracting from CEDAW, ICCPR and the CRC only those articles that address basic rights it removes any “Western” or liberal bias of the study. After all, this alleged bias is one of the main defenses that is used by Islamic states to justify their reservations. If I can show that they are submitting reservations to
articles that are not exclusively “Western” then any conclusions I draw from that will be much more valid. In such cases the claim that a provision reflects a “Western” bias is not valid because these provisions codify only basic human rights. Thus there must be other reasons for their submitting reservations, which will be set out in later chapters.

*Convention on the Elimination of Discrimination Against Women*

The Committee on the Elimination of Discrimination Against Women to the *Convention on the Elimination of All Forms of Discrimination Against Women* found that Articles 2 and 16 fall under *impermissible reservations*: they are considered core provisions of the convention, and involve the protection of basic rights. They are the only ones that guarantee basic rights to women and so cannot be undermined by a reservation without subverting the point of the CEDAW (see Appendix A). 59 In addition, Articles 5, 6, 9, 11 also address basic rights that should not be undermined even though they were not designated as non-derogable.

Article 2 concerns itself with governing the behavior of the state in relation to women:

> States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women60

60 The text of the article is reproduced in Appendix A; in general, I will cite the Appendix in which the article appears rather than the convention itself in the rest of this chapter.
It holds that women and men should have constitutional and legal equality so that legal decisions are not based on the gender of the individual. The article further requires that the state take all appropriate measures to abolish existing laws that discriminate against women, especially within the legal sphere.

Article 5 focuses on States taking all the appropriate measures to

...modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary discrimination and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.61

While it is up to the internal domestic sphere to determine which roles women or men should fulfill, that decision should not be based on the believed inferiority or superiority of one sex over the other. If a society assigns roles based on gender, it should do so based upon the biological and physical differences between men and women which enable them to perform certain functions more effectively, rather than a judgment that one sex is intrinsically inferior to the other. For example, a cultural understanding of maternity as a social function could include shared but differential types of responsibility between men and women in the raising and development of a child.62 Article 6 concentrates on the suppression by means of legislation and proper physical enforcement of all forms of trafficking of women and all forms of exploitation of women through unlawful prostitution.63 One of the most important rights

61 Appendix A
62 Appendix A
63 Appendix A
that must be granted is outlined in Article 9, whereby women get equal rights with men

...to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.64

This right presupposes all the other rights because it is through the security of the state and one’s participation in society that claims to these rights can be made given the well-ordered society framework. Article 11 stresses the necessity of women having access to income through employment given that marriage and monetary support by a male figure is not a sufficient guarantee; thus women must have other avenues through which they may support themselves aside from familial or marital affiliations. Of course, if there is the equivalent of family allowances to support the woman that are mandated by a culture and there is therefore an avenue for her to support her livelihood if she isn’t married, then the right to work is no longer essential.

Article 16 focuses on governing relations of women and men within the marital sphere. It requires that women have the same right as men to participate in a fully consenting marriage. Even arranged marriages can fall under this umbrella as long as the individual is comfortable with the arranged marriage, but if she are being forced to participate in a union with another person or if she is forced to have sex with this person then it is the state’s obligation to protect the woman. There is also an attempt to protect children by suggesting that states specify a minimum age for marriage; however, the

64 Appendix A
provision does not dictate what this age should be and leaves it to the state to figure out what is appropriate given cultural norms.

These are rights that are not in any manner exclusive to women but can be applied to men as well; indeed, their applicability across genders is a testament to their necessity. The idea that a woman should have a say in her future and not be subjected to slavery masked as marriage is not a novel idea. The articles state that equal rights within the household must be allotted to men and women to determine their roles within the community. This means that if a husband and wife decide that she must stay home and have children and the husband must be the one who brings income, that is acceptable, as long as this is a choice that the woman participates in.

However, it is not up to the state to legislate customary practice as long as that customary practice does not pose a physical or substantial psychological harm and is dictated by the idea that roles and responsibilities in society are legislated according to biological capabilities and is not (avoid contractions) based on some other oppressive notion. This gets us back to the idea discussed in the first chapter which explicates that as long as the society is legally within the basic human rights framework, how they conduct themselves internally is not up to the international community to legislate. The state needs only to make sure that there is enough protection of women’s and men’s rights that the individuals are, to a degree, opting into their social roles and not simply being coerced into them.
In the Convention on the Rights of the Child, the rights fundamental to the survival of a child are not ones of education or the granting of nationality but instead address threats to the bodily integrity of the child, including protection from trafficking, sexual exploitation, and a requirement that children have an adequate standard of living. These rights are codified in Articles 2, 6, 9, 11, 19, 20, 22, 27, 34, 37, 38, 40 (Appendix B).

Article 2 of the CRC is quite similar to the spirit of the ICCPR in that it insists:

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.\textsuperscript{65}

This is an implication of the principle that a child has an inherent right to life (Article 6) or that states should not allow children to be trafficked (Article 11) no matter their particular group affiliations. These rights are the bare minimum requirements for a child to be able to become a fully functioning adult.

Since the family unit is the developmental bloc of a child’s physical and psychological stability, Article 9 also holds that

States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where

\textsuperscript{65} Appendix B
the parents are living separately and a decision must be made as to the child's place of living.

If a child is temporarily or permanently “deprived of his or her family environment” it must be in the best interest of the child and an effort must be made to find a proper and permanent caregiver (Article 20).66 State parties must find an alternative option for the child in the context of their national law and this could include foster placement, adoption, or kafalah of Islamic law.67 The state is obligated to do this because it is its responsibility, as outlined in Article 19, to protect “the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse,” whether the child is in the care of her parents, legal guardians, or anyone else who has been tasked with providing for this child, including the state.68 The physical safety of children is further reflected in Article 22, which outlines that state parties must take all appropriate measures to guarantee the safety of a child who is seeking refuge or is considered a refugee according to national and international standards.69

The reason why international bodies have an interest in making sure that children are always in the care of a community or people competent enough to take of them is because of the fundamental right of subsistence. CRC accounts for this right in Article 27, which states that parties to the convention must “recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral, and social

66 Appendix B
67 Kafalah is the notion in Islam that an individual (in an adoption context) cannot accept to guarantee or take responsibility for the duty of another individual.
68 Appendix B
69 Appendix B
development.” 70 Both the parents and the state are responsible for ensuring this because if the parents, due to financial limitations, cannot provide conditions of living “necessary for the child’s development” then the state is responsible for helping the parents. 71

It is not only subsistence that the state must make sure children have along with a proper home, but also physical security beyond the home. Children cannot be subject to torture or any other sort of inhuman or degrading treatment (Article 37). The latter includes sexual exploitation (Article 19, 34, 37). Children are unable to make mature decisions for themselves when it comes to sexual conduct and thus must be protected against being exploited and abused physically whether in the private sphere or in the more public sphere of sexual activity, e.g. pornography (Article 34). 72 One of the ways to conceive of this is that these similar articles can apply to any age group and any religion and any group, be it a citizen or a stateless person. The fact that people should not be sexually abused and exploited or that they have an inherent right to life is not exclusive to children and is entirely related to the treatment of people as morally equal to one another.

This contrasts with some of the other articles within the CRC that are more liberal, going beyond basic rights. Although it is a fundamental right that children should not be subjected to starvation, it is not a fundamental right that children should be instructed in a manner that would “develop

70 Appendix B  
71 Appendix B  
72 Appendix B
respect” for their surrounding “natural environment” since that this is not necessary for their survival, even though it might be necessary for long term sustainable development for the state as a whole (Article 29). 73 It is also unnecessary that States Parties “assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child” (Article 12). 74 Once again, the article makes assumptions about the concerns of a society and assumes that the opinion of a child matters as much as it does in liberal societies, or that it hold as much weight as it does in Western states such as the United States.

International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights is the last convention I will be looking at; it concerns itself with minority groups independent of age or gender. Adherence to this convention is monitored by the Human Rights Committee; they are also the group that brings to light any abuses that are occurring or any states that are violating the spirit of the convention with their reservations. The articles within this convention that deal with basic rights are Articles 2, 6, 7, 8, 15, and 16 (Appendix C). 75

First, the convention requires each state party to the ICCPR to take responsibility for the rights of all individuals within their respective territories “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other

73 Appendix B
74 Appendix B
75 Cohen, 190
status” (Article 2). As a result of this provision, all individuals have “a right to recognition everywhere as a person before the law” (Article 16).

It also presents a notion introduced in the previously discussed convention: the idea that all individuals have an inherent right to life that must be protected by the law and that there should not be any arbitrary deprivation of that life (Article 6). Individuals shall not be subjected to torture, inhumane or degrading treatment, slavery, slave trade, or human trafficking (Article 7 and 8).

Articles 11, 15, and 16 deal mainly with safeguarding an individual’s personhood before the law. Under Article 11, “no one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.” Though individual financial responsibility is important for the stability of society, being imprisoned for the inability to fulfill a contractual obligation only further hinders an individual from being able to repay his or her debts. The violation itself is rarely a direct, deliberate, and malicious act meaning to undermine another’s individual’s basic rights. Lastly, for all of these rights to be protected adequately, under the constitution, “everyone shall have the right to recognition everywhere as a person before the law” (Article 16).

These articles do not outline a liberal or other elaborate system of rights but rather specify only the basic rights necessary to protect human life, human dignity, and representation and security before the law. Without protecting

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76 Appendix C
77 Appendix C
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79 Appendix C
these rights a society cannot be well ordered. In any well-ordered society, individuals would need to be able to exercise these basic rights in order to be moral agents, to have and fulfill any obligations to others, including the state. Protecting minorities from slavery and from arbitrary killings by the state is necessary to provide the security for individuals so that they could genuinely affirm their roles in society, rather than simply being forced into those roles. That is why provisions on self-determination (Art. 1), rights of peaceable assembly and freedom of association (Art. 21, 22), political participation (Art. 25), and equality before the law (Art. 26) are not included in the rights necessary for individuals to be willing members of society. Political participation is not a basic human right as long as the lack of participation does not cost the individual equality before the law and as long as the lack of access to the political sphere does not deprive them of their livelihood and life. As long as they are provided access to the resources that would allow them to develop and progress within their society, the state does not have a further obligation to provide an equal amount of resources to every individual for this development.

**Conclusion**

Determining which articles address basic rights and which do not is not the purpose of this thesis; rather, making this distinction is a tool to test the hypothesis of this thesis, the hypothesis being that Islamic states enter reservations to basic human rights article for reasons other than their stated cultural or religious ones. To understand why Islamic states submit and withdraw reservations to human rights conventions it is necessary to focus on
the articles that address the necessities of surviving and developing a capacity for agency, which is a universal value, rather than articles enunciating rights that are culturally specific. In the next chapters I set out the specific reservations that Islamic states have offered to the articles discussed here, and explain the sources of these reservations.
I distinguished between human rights and other rights claims in the previous chapter to make it possible to study the motivations behind reservations submitted to basic rights by Islamic states. Basic or human rights in this study refer to rights that are recognized by a wide range of cultural and religious traditions to be necessary for members of society to fulfill their social responsibilities. If Islam were the true reason behind the submission of reservations, then we should observe uniformity among Islamic states in submitted reservations. I will test for such uniformity at three levels. First, I will ask whether predominantly Muslim states enter similar reservations. Second, I will examine whether self-proclaimed Islamic States enter similar reservations, since we might expect that by proclaiming themselves to be Islamic states they would signal that their policies would be based on or at least consistent with Islamic precepts. Third, and this is a much more localized investigation of the hypothesis, I will determine whether there is any similarity amongst states within each madhhab in the reservations submitted.

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by each country to CEDAW, ICCPR and the CRC. Madhhabs are religious schools of though and legal jurisprudence within Sunni Islam.

The method of this analysis relies on a delineation of all the reservations and explanations of Islamic States and states with Islam as the official religion submitted to CEDAW, ICCPR, and CRC. Their justifications and subsequent objections by states party to the convention will be set up at the country level. The focus of this thesis is on reservations and not understandings or declaration. Declarations and understandings are not a reservation but simply a comment to the international community of how a certain provision will be applied given the domestic constitution. Understandings and declarations do not change the provisions of a treaty the way that reservations do and thus do not alter the obligations imposed by the treaty. As a result, they are not strong legal claims that nations make to either their own public or to the international community and are therefore, outside the core scope of this thesis.

The countries have been grouped by affiliation with a particular madhhab; the first group is predominately of the Maliki madhab, the second group is Shafi‘I and the final group is Hanafi and/or combinations of Hanafi and other madhhabbs that are dominant in the respective country. Given that undermining the assumption of uniformity is requisite in proving that there are other motives which dominate reservation submission, the

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81 Sheikh Muhammad Sultan, Should a Muslim Follow a Particular Madhhab? (Hal Al-Muslim Mulzam Bi-ittibā‘ Madhhab Mu‘ayyan?) Riyadh: Darussalam & Distributors, 1998, 16
chapter has been organized in this way so that any consistencies in the reservations between the countries that practice the same form of Islamic jurisprudence will be clear to the reader.

Madhhab are groups united by specific interpretations and methods of interpreting the Qur’an and by how those understandings must be applied to everyday life, in the form of laws that guide behavior. Thus, each jurisprudence school has a vision of which moral codes must be enforced to guide the quotidian engagements of its subjects. Based on its interpretation of the Qur’an and Sunnah, each jurisprudence school also has its own understanding of Shari’a. For example, while homosexuality is illegal under Shari’a the prescribed penalties differ from one jurisprudence school to another. Another example would be the rigidity of the Hanbali school in its approach to religious freedom and the practice of Islam contrasted with the more open Hanafi school, which allows women to serve as qadis (judges of Islamic law). The data in this chapter will conclusively establish the first line of argument – that there is no uniformity in rights reservations that would be expected were the operative variable simply religious values or traditions, as some cultural relativists have argued. I examine each country in my sample in the rest of this chapter, beginning with a table reporting the proportion of the total population that is Sunni or Shi’a, the country’s madhhab, and whether it is an Islamic state or if the role of Islam is confined to State Religion.82

82 An Islamic state is one where the primary basis for government is Islamic Law. The term “Islamic State” was conceived in the 20th century by Abul Ala Maududi, the founder of Jamaat-e-Islami. An Islamic state is one that combines democratic principles of electoral politics with socialist concerns for caring for the poor in the
Algeria

<table>
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<tr>
<th>99% Sunni</th>
<th>Madhhab: Maliki</th>
<th>Islam is State Religion</th>
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Algeria acceded CEDAW on May 22, 1996 with reservations to articles 2, 9.2, 15.4, 16, 29, 41, 43. From all of the reservations submitted by Algeria, the articles of most concern are 2, 9, and 16 since they deal with basic rights. The reservation to article 2 is quite broad and simply states that the sections of the article apply only as long as they do not conflict with provisions of the Algerian Family Code. In article 16, the reservation is much more pointed. It emphasizes that it is objecting to the equal rights of men and women in all matters relating to marriages and their dissolution. There were objections by Germany, the Netherlands, and Norway to the reservations submitted by Algeria.


84 CEDAW was open for signatures beginning March 1st, 1980 so the lack of ratification by states of CEDAW until several years after its composition will be just as important a topic of discussion for the study of motivations in Chapter 5 as submissions and withdrawals of reservations.

About twelve years after the initial objection, on July 15, 2009 Algeria decided to withdraw the reservations made upon accession to articles 9.2, 41, and 43. Most important of these, it withdrew the reservation submitted to article 9, paragraph 2. The initial reservation had been that a child might take the nationality of the mother only when the father is unknown or stateless. If the child was born to an Algerian mother and a foreign father the child would be able to achieve nationality only if the foreign father was born in Algeria. Lastly, if the father was stateless and not born in Algeria then the child might be able to acquire nationality only if the Ministry of Justice did not object. Given that states function, in general, to protect individuals from harm, a stateless individual has no protection and no privileged access to resources of employment or for providing for their growth and development. This reservation was therefore unacceptable to the international community and its withdrawal by Algeria implies a willingness to provide for all children born to an Algerian parent.

Algeria had no reservations to the ICCPR or the CRC and only submitted interpretive declarations to both stating that rather than viewing the restrictions of the ICCPR and CRC as absolute, it was going to view them as parameters within which the Algerian Constitution could function. It signed the ICCPR on December 10, 1968 but did not ratify it until September 12, 1989. It signed the Convention on the Rights of the Child on January 26, 1990 but did not ratify it until April 16, 1993.

*Libya*
Libyan Arab Jamahiriya acceded to CEDAW on May 16, 1989. When it initially ratified the treaty, Libya submitted reservations to article 2 and article 16 (c) and (d). Both of these articles are important for the preservation of women’s basic rights. Libya’s reason for its reservation to article 2 was that the country would “implement with due regard for the peremptory norms of the Islamic Shari’a relating to determination of inheritance portions of the estate of a deceased person, whether female or male.” This is an interesting reservation given that article 2 is very general and only requires nations to eliminate any legal discrimination against women in the constitution. This reservation elides the fact that under Libyan law, women inherit about half of what men inherit, because they are not viewed to have any financial responsibility towards their spouses or children. Furthermore, according to a Freedom House study on women’s access to inheritance in Libya, housing and property ownership is quite often determined by one’s family support systems, economic system, access to legal information, and education level. The more educated a woman and the higher her family in the socioeconomic ladder—the more likely she is to receive her due inheritance. Otherwise, women disadvantaged by a lack of education are often abused in this respect.

87 As previously mentioned, evidence regarding reservations, understandings, declarations, and objections, including quotes, has been acquired from the previously noted online database provided by the UN documenting reservation dialogue on CEDAW, ICCPR, and CRC.
As a consequence of this, some women, especially those in rural areas, do not even get half of their share (which is already a half of the male’s share).

Additionally, non-Muslim women cannot inherit any matrimonial property.

The reservation to article 16 once again is one difficult to understand given the context of the article itself. Article 16 (c) and (d):

(c) The same rights and responsibilities during marriage and at its dissolution;
(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

Libya’s reservation is that neither section (c) nor (d) shall be implemented with any “prejudice to the rights guaranteed to women by Islamic Shari’a.”

Although on the face of it this reservation appears to protect women, it is difficult to interpret because it does not state specifically which rights guaranteed by Islamic Shari’a law to women might be in conflict with the equality that sections (c) and (d) attempt to guarantee. What it appears to mean is that in any potential conflict between human rights law and Shari’a law, Libya will simply define the “equality” and “rights” of women in terms of its own domestic practices, effectively denying fair treatment for women. The final reservation submitted by Libya is a general reservation to CEDAW stating that its “[accession] is subject to the general reservation that such accession cannot conflict with the laws on personal status derived from the Islamic Shari’a.”

Libya acceded to ICCPR on May 15, 1970. It submitted a general reservation to ICCPR as well which once again lacked specificity, appearing to protect Libya’s political priorities rather than the human rights of its people. The reservation reads as follows:

The acceptance and the accession to this Covenant by the Libyan Arab Republic shall in no way signify a recognition of Israel or be conducive to entry by the Libyan Arab Republic into such dealings with Israel as are regulated by the Covenant.

Libya clearly abuses The International Covenant on Civil and Political Rights in this reservation for its own political purposes. By declaring that it does not accept the statehood of Israel, Libya refuses to use the Covenant in its intended purpose: as a forum for finding a comfortable medium between what it views as western imposition and Shari’a, so that the civil and political rights of its people can be protected. The denial of Israel’s statehood has no direct relation to the issues of fair trials and freedom of conscience. Libya acceded the CRC on April 15, 1993 without any reservations.

Mauritania

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<th>99% Sunni⁸⁹</th>
<th>Madhhab: Maliki</th>
<th>Islamic State</th>
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Mauritania acceded CEDAW on May 10, 2001. It submitted a general reservation stating that it approved CEDAW on all its parts except where it conflicted with Shari’a without specifying if there were any provisions that did pose such conflicts. France objected to the general reservation stating that a reservation with such an indeterminate scope “gives the other States parties


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no idea which provisions of the Convention are currently affected by the reservation or might be affected in future.” Ireland agreed with France’s objection, stating that such a general reservation, in allowing any portion of the treaty to be undermined, therefore undermines it in its entirety.

Mauretania acceded to ICCPR on November 17, 2004 with reservations to articles 18 and 23.4. Mauritania’s reservation to Article 18 was very general, stating that while it supports the spirit of religious freedom, the provision of Article 18 that set out the steps necessary to protect an individual’s religious freedom will be applied only as long as they do not conflict with Islamic Shari’a. Such a general reservation does not specify what exactly within the concept of religious freedom conflicts with Shari’a and when will the government see it fit to obstruct religious freedom for the purposes of preserving its Islamic values. The reservation to article 23.4 is quite similar in nature: “The Mauritanian Government interprets the provisions of article 23, paragraph 4, on the rights and responsibilities of spouses as to marriage as not affecting in any way the prescriptions of the Islamic Shari’a.” Several countries, including Finland, France, Germany, Latvia, Netherlands, Poland, Portugal, and Sweden, objected to these reservations. Finland echoed what Ireland had said in its objection to Mauritania’s reservations to CEDAW: general reservations that do not specify the conflict between national and international law do not define clearly to other Parties the extent to which Mauritania intends to fulfill its obligation to the Convention. Finland also claimed that a party could not invoke the “provisions of its domestic law as justification for a failure to perform its treaty obligation.” This can be looked
at as less of a matter of Mauritania invoking its domestic law, but rather that it is doing so with no clear reasoning to justify why that law is valid for its people. Clearly the issue is not a matter of Mauritania invoking its domestic law but rather, that it is doing so with no clear explanation of its concerns or reasoning makes it impossible to determine what rights will be respected and which will be restricted. Mauritania signed the CRC on January 26, 1990 and ratified it May 16, 1991 with the same general reservation as it had submitted to CEDAW.

Morocco

| 99% Sunni/Sufi⁹⁰ | Madhhab: Maliki | Islam is State Religion |

Morocco acceded CEDAW on June 21st, 1993. It submitted several reservation initially to Articles 2, 9.2, 15.4, 16, and 29. Articles 2, 9, and 16 were outlined as basic rights articles in Chapter Two. On April 2, 2011 the Kingdom of Morocco sent a notice to the Secretary General withdrawing its reservations made upon accession to Articles 9.2 and 16. One of Morocco’s objections to Article 2 is very specific and it is tied to the succession to the throne of the Kingdom of Morocco. Article 20 of the Moroccan constitution holds that the Moroccan Crown and the constitutional rights that the Crown encompasses are hereditary and are to be handed down from father to eldest son unless the King should, in his lifetime, designate a successor apart from his the eldest son. If there are no descendants in the direct male line to the

Throne then the succession moves to the closest “collateral male consanguinity under the same conditions.”

This narrowly framed reservation obviously does not affect women’s rights generally but there are other articles that do. Morocco imposes a general limitation of women’s rights in the marriage realm, for the purposes of striking a “balance between the spouses in order to preserve the coherence of family life.” Despite these reservation, Morocco has made great progress in terms of increasing the rights of women in marriage and ensuring that a divorced wife gets a home, alleviating what had been an epidemic of divorced homeless women. It has also enacted other legislation that advances the rights of women. Netherlands was the only country to express its objection to Morocco’s reservations formally in writing. Given that the reservation by Morocco is quite broad on the topic of preserving “coherence” in family life it is difficult to comment on what specifically within it contradicts with basic human rights.

Morocco signed the ICCPR on January 19, 1977 and ratified it on May 3, 1979; it did so without any reservations. The Kingdom signed the CRC on January 26, 1990 and ratified it on June 21, 1993. Upon ratification it submitted a reservation to Article 14, banning children’s right to religious freedom. It withdrew the reservation on October 19, 2006.

Tunisia

Tunisia signed CEDAW on July 24, 1980 and ratified the treaty on September 20, 1985. Initially, it submitted a General Reservation along with its ratification stating that any provision conflicting with the Tunisian Constitution would not be observed. This is different from what has been found in the previous countries where the conflict being emphasized was with Shari’a rather than the domestic constitution. It submitted reservations to article 9.2, 16 (c)(d)(f)(g)(h), article 29.1, and a declaration to article 15.4; both articles 9 and 16 are basic rights reservations. Germany, the Netherlands, and Sweden objected vehemently to Tunisia’s reservations on Article 9, Article 15 and Article 16. On August 16, 2011 the Tunisian Council of Ministers drafted a decree removing all specific reservations submitted to CEDAW. This is more progress than any nation in the region has made toward advancing and preserving the rights of women. The next step in such

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93 Ratification or accession signifies an agreement to be legally bound by the terms of the Convention. Though accession has the same legal effect as ratification, the procedures differ. In the case of ratification, the State first signs and then ratifies the treaty. The procedure for accession has only one step—it is not preceded by an act of signature... Both ratification and accession involve two steps. First, the appropriate national organ of the country—Parliament, Senate, the Crown, Head of State or Government, or a combination of these—follows domestic constitutional procedures and makes a formal decision to be a party to the treaty. Second, the instrument of ratification or accession, a formal sealed letter referring to the decision and signed by the State’s responsible authority, is prepared and deposited with the United Nations Secretary-General in New York. "Legally Binding Obligations." UNICEF - UNICEF Home. United Nations. Web. 18 Nov. 2011. <http://www.unicef.org/crc/index_30207.html>.
cases is to begin reforming domestic institutions to reflect this legal obligation and mentality, if they do not do so already. Tunisia is also “one of only two countries in the Middle East/North Africa...to adopt the Optional Protocol to CEDAW, which entitles individuals or groups of individuals to submit complaints on women’s rights violations to the CEDAW Committee.”

Tunisia signed ICCPR on April 30, 1968 and ratified it on May 18, 1969. It submitted no reservations to the convention. It signed the CRC on February 26, 1990 and ratified the treaty on January 30, 1992. It submitted a declaration to article 6 clarifying that the article would not be interpreted in such a way as to allow voluntary termination of pregnancy. It had also initially submitted reservations to article 40.2 (b) (v) as well as articles 2 and 7. Tunisia withdrew its reservations to CRC on March 1, 2002.

**Yemen**

| 99% (54-59%) Sunni / (35-40%) Shi’a | Madhhab: Shafi’i/Zaidi | Islamic State |

Yemen acceded CEDAW on May 30, 1984. During accession it submitted reservations to article 29.1. However, on a daily basis it violates many of the rights accorded to women in CEDAW; this matter will be explored in Chapters Four and Five. Yemen’s actions are representative of the alternative side of this thesis, where nations claim to abide by all the regulations of a convention by not submitting reservations but, for instance,

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endorse marriage at the age of 12. Yemen acceded to the ICCPR on February 9, 1987 with a reservation similar to that of Libya whereby it proclaims that its accession to the treaty should not be misinterpreted as “recognition of Israel” or willingness to work with groups “for the establishment of relations with Israel.” Yemen signed the CRC on February 13, 1990, and ratified the convention on May 1, 1991.

**Egypt**

| 90% Sunni, 4.7% Shi’a⁹⁷ | Madhhab: Shafi’i | Islam is State Religion |

Egypt signed CEDAW on Jul 16, 1980 and ratified it on September 18, 1981 with reservations to articles 2, 9, 16 and 29. The reservation to article 2 is general in nature, simply stating that Egypt will comply with the content of the article as long as the content does not conflict with Islamic *Shari’ā*.

Egypt’s reservation to article 16, which concerns itself with the equality of men and women in all matters relating to family relations and marriage, is very specific and thorough. Egypt’s claim is that it cannot allot equality as defined by CEDAW in matters of marriage and divorce given the duties and obligations that *Shari’ā* places on the husband and wife. According to Egypt’s vision of *Shari’ā* as submitted to CEDAW:

> that the husband shall pay bridal money to the wife and maintain her fully and shall also make a payment to her upon divorce, whereas the wife retains full rights over her property and is not obliged to spend anything on her keep. The *Shari’ā* therefore restricts the wife’s rights to divorce by making it contingent on a judge’s ruling, whereas no such

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restriction is laid down in the case of the husband.\textsuperscript{98}

Equality in this case, as defined by Egypt, is only achieved by having rights being allotted to individuals complementary to the duties that they have in society. Thus, the woman’s rights are limited in the Egyptian model because her duties are different from those of her husband. However, rights do not only exist as acts we are allowed to commit but also rights of inaction that protect us from harm. Restricting divorce to only one side limits justice for the gender that most often suffers from this limitation in this context. On January 4, 2008, Egypt withdrew its reservation to Article 9 upon ratification.

Egypt signed ICCPR on August 4, 1967 and ratified it on January 14, 1982. It only submitted a general declaration claiming that the Convention was being ratified with the understanding that it does not conflict with Islamic \textit{Shari’a}. Egypt signed the CRC on February 5, 1990 and ratified it on July 6, 1990. Upon signing, it submitted reservations that were confirmed upon ratification in respect to articles 20 and 21. Egypt withdrew these reservations on July 31, 2003.

Jordan

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<th>95% Sunni</th>
<th>Madhhab: Shafi’i</th>
<th>Islam is State Religion</th>
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Jordan signed CEDAW on December 3, 1980 and ratified the convention on July 1, 1992. Upon ratification it submitted reservations for articles 9.2, 15.4, and 16.1(c)(d)(g). On May 5, 2009 Jordan withdrew its reservation to Article 15.4. The text of the reservation had read as follows: “a woman’s residence and domicile are with her husband.” This reservation was not simply about dictating a woman’s residence location but it also restricted her freedom of movement.

Jordan signed the ICCPR on June 30, 1972 and ratified it May 28, 1975, without any declarations, understandings, or reservations. It signed the CRC on August 29, 1990 and ratified it on May 25, 1991. It submitted reservations to articles 14, 20, and 21 of the Convention because they grant the child the right to freedom of choice of religion and engage the question of adoption, which is not allowed under Islamic Shari’a. Finland was the only country to submit a written complaint with regards to Jordan’s reservations to the CRC while others informally recorded their concerns.

Maldives

<table>
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<tr>
<th>100% Sunni</th>
<th>Madhhab: Shafi’i</th>
<th>Islam is State Religion</th>
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Maldives acceded to CEDAW on July 1, 1993 with a reservation to article 16. It went on to modify a general understanding on January 29, 1999, which states that it did not feel itself bound to any portion of the Convention which required it to change its constitution and laws. On March 31, 2010 the Government of the Republic of Maldives submitted another reservation, to article 7(a) of the Convention. Several states objected and Germany and Finland submitted formal complaints. Germany’s complaint is interesting given that it sheds light on a procedural matter relating to reservations:

The Government of the Federal Republic of Germany notes that reservations to treaties can only be made by a State when signing, ratifying, accepting, approving or acceding to a treaty...After a State has bound itself to a treaty under international law it can no longer submit new reservations or extend or add to old reservations. It is only possible to totally or partially withdraw original reservations, something unfortunately not done by the Government of the Republic of the Maldives with its modification. 101

The Maldives acceded to the ICCPR on September 19, 2006 with a reservation to article 18. The main objection to this reservation was that it subjected the international convention to the domestic constitution, thus inherently undermining any value the international convention may have on protecting citizens from abusive states. Interesting to note is that the Maldives, on CEDAW, ICCPR and the CRC, received more objections and attention than any of the other states mentioned in this study, despite the lack of prominence of the Maldives in the international arena. This can be read as strategically convenient in that nations can make their perceptions of politicized Islam

known without risking any tension in political and economic relations with strategically important countries such as Pakistan. The Maldives signed the CRC on August 21, 1990 and ratified it on February 11, 1991. They submitted a general reservation along with reservations to articles 14.1 and 21.

**Pakistan**

<table>
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<tr>
<th>97% (82-87%) Sunni/(10-15%) Shi'a&lt;sup&gt;102&lt;/sup&gt;</th>
<th>Madhhab: Hanafi</th>
<th>Islamic State</th>
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</table>

Pakistan acceded CEDAW on March 12, 1996 with a sole reservation to article 29. It signed the ICCPR on April 17, 2008 and ratified it on June 23, 2010. It ratified the convention with reservations to articles 3, 6, 7, 12, 13, 18, 19, 25, and 40. Pakistan also submitted a novel reservation, designed to protect itself from objections such as those levied by Germany on the Maldives upon the Maldives’s attempt to modify their reservation, which states that Pakistan “reserves its right to attach appropriate reservations, make declarations and state its understanding in respect of various provisions of the Covenant at the time of ratification.” The Netherlands strongly objected to all of the reservations made by Pakistan and questioned the nation’s dedication to any aspect of the Convention, since they were felt to undermine its spirit, and purpose, and because there were such a significant number of them. In response, on September 20, 2011, the Government of Pakistan partially withdrew its reservations to articles 3, 6, 7, 12, 13, 18, 19, 25, and 40 of the Convention. Only their reservations to articles 3 and 25 remain.

Pakistan signed the CRC on September 20, 1990 and ratified it November 12, 1990. Pakistan had submitted a general reservation upon signing. On February 6, 1996, the Government of the Netherlands filed a formal objection to the reservation. On July 23, 1997, Pakistan withdrew its general reservation.

**Syria**

| 92% (72-77%)Sunni/(15-20%)Shi'a\(^{103}\) | Madhhab: Hanafi (74%), Shafī'I, Jaafaris, Druze, Ismailis (18%)\(^{104}\) | Islam is State Religion |

The Syrian Arab Republic acceded CEDAW on May 28, 2003. They signed on to it with reservations to articles 2, 9.2, 15.4, 16.1(c)(d)(f)(g), 16.2, and 29. Furthermore, they added a general statement similar to that of Libya’s, stating that Syria’s accession to the convention did not signify recognition of Israel or imply any consent to enter dealings with it. Austria, Denmark, Estonia, Finland, France, Germany, Greece, Italy, the Netherlands, Romania, Spain, Sweden, and the United Kingdom, all objected to all of the reservations submitted by Syria because they were either a) in conflict with the object and purpose of the Convention or b) too general and failed to clearly outline the extent of the reservation, thus raising doubts about the

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commitment assumed by Syria in becoming a party to the Convention. Syria never withdrew its reservations to CEDAW.

Syria acceded the ICCPR on April 21, 1969. It did so with a general reservation stating that its accession did not signify its acceptance of the state of Israel and did not imply a willingness to enter into dealings with Israel. It signed the CRC on September 18, 1990 and ratified it on July 15, 1993, doing so with reservations to articles 14, 20, and 21. The focus of the reservations to these articles is the right of the child to the freedom of religion and the issue of adoption. Germany vigorously objected to the reservations on articles 20 and 21 (concerning adoption). Syria’s response was that it would ensure the protection of children through care institutions or foster care (where the child is not assimilated into the blood lineage), but that adoption in its full degree was simply not an option given Shari’a law.

**Tajikistan**

| 97% Sunni, 2 Shi’i<sup>105</sup> | Madhhab: Hanafi | Islam is State Religion |

Tajikistan acceded CEDAW on October 26, 1993 with no reservations. It acceded to the ICCPR on January 4, 1999 and to the CRC in October 1993. Once again, it submitted no reservations to either convention.

**Afghanistan**

| 99% (84-89%)Sunni/(10-15%) Shi’i<sup>106</sup> | Madhhab: Hanafi/Jafari | Islamic State |

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Afghanistan signed CEDAW on August 14, 1980 and ratified it on March 5, 2003. It did not submit any reservations upon signing or ratifying the convention. It acceded the ICCPR on January 24, 1983 with reservations to articles 48.1, and 48.3. By doing so Afghanistan was seeking to decrease any barriers to the entrance of new parties to the Covenant because it believed that such restrictions undermined the international character of the Treaty itself. Afghanistan signed the CRC on September 27, 1990 and ratified it on March 28, 1994. It only submitted a declaration stating that it reserved the rights to express its reservations on any issues within the Covenant that are incompatible with the Islamic *Shari'ā*.

**Conclusion**

As the explication of the justifications behind reservations illustrates, most are quite unclear and cite *Shari'ā* as the source of conflict without any specificity as to what within Islamic law conflicts with the rights affirmed in either CEDAW, the CRC, or the ICCPR. This leads one to question the validity of such claims, especially where reservations have nothing to do with specific articles at all and are merely political claims such as those made by Syria and Libya regarding their lack of recognition of Israel’s legitimacy as a state.

Below are tables of documenting reservation behavior organized by the *madhhab* and the Islamic constitutional state of each country.\(^{107}\)

\(^{107}\) R. stands for submitted reservation and W is the column symbol for withdrawn reservations.
### Table 3.1: Madhhab Grouping

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<tbody>
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<td>2, 9.2, 15.4, 16, 29, 41, 43</td>
<td>9.2, 41, 43</td>
<td>ID(^{108})</td>
<td>-</td>
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<td>-</td>
<td>18, 23.4</td>
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<td>-</td>
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<td>-</td>
<td>2, 7, 14, 20, 21</td>
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<td>-</td>
</tr>
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<td>S</td>
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<td>GR</td>
<td>-</td>
<td>D, 20, 21</td>
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<td>14, 20, 21</td>
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<td>-</td>
<td>18</td>
<td>-</td>
<td>GR, 14.1, 21</td>
<td>-</td>
</tr>
<tr>
<td>Pakistan</td>
<td>Hanafi (H)</td>
<td>29</td>
<td>-</td>
<td>GR 3, 6, 7, 12, 13, 18, 19, 25, 40</td>
<td>3, 6, 7, 12, 13, 18, 19, 25, 40</td>
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<td>GR</td>
</tr>
<tr>
<td>Syria</td>
<td>H /Alevi</td>
<td>GR 2, 9.2, 15.4, 16.1(c)(d)(f)(g), 16.2, 29.</td>
<td>-</td>
<td>GR</td>
<td>-</td>
<td>14, 20, 21</td>
<td>-</td>
</tr>
<tr>
<td>Tajikistan</td>
<td>H</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<td>-</td>
</tr>
<tr>
<td>Afghanistan</td>
<td>H /Jafari</td>
<td>-</td>
<td>-</td>
<td>48.1, 48.3</td>
<td>-</td>
<td>D</td>
<td>-</td>
</tr>
</tbody>
</table>

\(^{108}\) ID: Interpretive declaration, this is not a reservation but simply a comment to the international community of how a certain provision will be applied given the domestic constitution. D stands for Declaration. GR: General Reservation, not specific to any article but stating a general noncompliance with any article that may conflict with Shar‘īa law.
Table 3.1 is a grouping of the countries based on madhhab affiliations.

Table 3.2 shows the same countries and results but grouped based on whether the nation is an Islamic State or if Islam is only proclaimed as the state religion. The first table is a much more specific analysis of potential

<table>
<thead>
<tr>
<th>Country</th>
<th>(IS)v. (SR)</th>
<th>CEDAW R.</th>
<th>ICCPR R.</th>
<th>CRC R.</th>
<th>W.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Algeria</td>
<td>SR</td>
<td>2, 9.2, 15.4, 16, 29, 41, 43</td>
<td>(2009) 9.2, 41, 43</td>
<td>ID</td>
<td>-</td>
</tr>
<tr>
<td>Libya</td>
<td>SR</td>
<td>GR, 2, 16(c)(d)</td>
<td>GR</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Morocco</td>
<td>SR</td>
<td>2, 9.2, 15.4, 16, 29</td>
<td>9.2, 16</td>
<td>-</td>
<td>GR 14</td>
</tr>
<tr>
<td>Tunisia</td>
<td>SR</td>
<td>GR 9.2, 15.4, 16(c)(d)(f)(g)(h, 29.1)</td>
<td>9.2, 15.4, 16(c)(d)(f)(g)(h, 29.1)</td>
<td>-</td>
<td>2, 7, 40.2 (b)(v) D: 6</td>
</tr>
<tr>
<td>Egypt</td>
<td>SR</td>
<td>GR 2, 9, 16, 29</td>
<td>9</td>
<td>GR</td>
<td>D, 20, 21</td>
</tr>
<tr>
<td>Jordan</td>
<td>SR</td>
<td>9.2, 15.4, 16.1(c)(d)(g)</td>
<td>15.4</td>
<td>-</td>
<td>14, 20, 21</td>
</tr>
<tr>
<td>Maldives</td>
<td>SR</td>
<td>GR 7(a),16</td>
<td>18</td>
<td>-</td>
<td>GR, 14.1, 21</td>
</tr>
<tr>
<td>Syria</td>
<td>SR</td>
<td>GR 2, 9.2, 15.4, 16.1(c)(d)(f)(g), 16.2, 29.</td>
<td>-</td>
<td>GR</td>
<td>14, 20, 21</td>
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<tr>
<td>Tajikistan</td>
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<tr>
<td>Afghanistan</td>
<td>IS</td>
<td>-</td>
<td>-</td>
<td>48.1, 48.3</td>
<td>D</td>
</tr>
<tr>
<td>Mauritania</td>
<td>IS</td>
<td>GR</td>
<td>-</td>
<td>18, 23.4</td>
<td>GR</td>
</tr>
<tr>
<td>Yemen</td>
<td>IS</td>
<td>29.1</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<tr>
<td>Pakistan</td>
<td>IS</td>
<td>29</td>
<td>-</td>
<td>GR 3, 6, 7, 12, 13, 18, 19, 25, 40</td>
<td>GR</td>
</tr>
</tbody>
</table>

Table 3.2: Islam State v. Islam as State Religion Grouping
reservation consistency along accepted and proclaimed interpretations of 
*Shari‘a*. The results illustrate that there is no consistency amongst countries 
with any *madhhab* in reservation submission. A level of consistency would be 
indicated by states of the same *madhhab* submitting similar reservations to 
similar articles. Instead, what we observe is ideologically similar countries 
such as Mauritania and Tunisia behaving very differently. Tunisia recently 
withdrew most of its reservations submitted to CEDAW, while Mauritania had 
only submitted two to begin with. Tunisia has no reservations to ICCPR while 
Mauritania objects to two articles. The situation with CEDAW also applies to 
the CRC with these two countries. Mauritania had only submitted a general 
reservation while Tunisia submitted several specific reservations to basic 
human rights articles. It subsequently withdrew all of the reservations to basic 
human rights while Mauritania has kept its general reservation. The available 
evidence suggests no relationship between the reservations one country 
submits to an article and the reservations another country of the same 
*madhhab* might submit.

The second table takes a much broader view and looks for any 
consistency at all amongst Islamic states and states that proclaim Islam as the 
official religion; but consistency here also proves to be absent. Tajikistan, a 
state where Islam has been proclaimed as the official religion has more in 
common with Afghanistan, an Islamic state, than it does with any of the other 
states who too have left Islam out of their constitution but have proclaimed it 
to be the official cultural standard. Clearly, we see reservation consistency 
neither among nations of the same *madhhab* nor among those whose
constitutions are based on Islam. Rather, as the next chapter will demonstrate, reservation submission and withdrawal is consistent within types of political regimes and economic systems—having little to do with Islam and much more to do with the system of governance.
The analysis of state submitted reservations, understandings, and declarations, as well as the justifications for these actions, reveals that Shari’a law is often invoked as a monolithic and uncontested system. But if Shari’a did provide clear answers to questions about the rights that all humans should enjoy, then we should expect that societies that claim to base their policies on Shari’a would be very similar in the objections they would have to particular formulations of human rights. But, as the evidence presented in Chapter Three shows, there is no such uniformity among countries that are majority Muslim, or countries that identify themselves as Islamic states or countries in which Islam is the state religion, or even among countries that subscribe to a particular understanding of Islamic jurisprudence. And that is not surprising because, in reality, Shari’a is not a monolithic and uncontested system. In fact, it is not a set and defined system at all, and thus does not have clear answers to questions about human rights. Instead, Shari’a was meant to set parameters for interpretations and provide guidance for individual interpretation by jurists. Table 3.1 illustrates the litany of reservations submitted by states claiming a grounding in Shari’a. The variety of these reservations in itself should be indicative of the many understandings that exist of Shari’a law. In this chapter I will delineate the conceptual and historical foundations of Shari’a law, illustrating that it is and was meant to be open to interpretation and discussion by Muslim communities. This malleability of the system is why countries have had such varied responses to CEDAW, CRC, and ICCPR. The openness of Shari’a illustrates that there is no
particular response that can be required of states when it comes to the full panoply of human rights. However, there are limits to Shari‘a’s flexibility, for the Qur’an does grant basic rights.

I will first discuss Shari‘a’s etymological and theoretical meaning: the role that it is meant to play in everyday life and its relation to the divine word of Allah. Next I will explain how Shari‘a is derived. This is one of the most crucial sections of this chapter. Since Shari‘a law is not the divine word of Allah but rather is a human interpretation of the divine revelation, it is necessary to understand how Shari‘a became a legal system (or more precisely, a multitude of legal systems given that there are different interpretations of Shari‘a). One of the most significant elements of this discussion with respect to this thesis is the analysis of the procedural element of Shari‘a, which requires a historical outline of the development of Shari‘a and the ways in which colonialism deformed the standard method of deriving Shari‘a. This historical discussion will end with the relationship of Shari‘a law to modernity, leading us to the discussion of international human rights. The latter will be examined in relation to Shari‘a law and the understanding that exists between the two legal systems. Finally, there will be a brief Qur’anic case study on the role of women to elucidate some of the methods and concepts discussed in this chapter.

*Shari‘a: An Etymological and Conceptual Introduction*

Shari‘a in Classical Arabic means “the way.” This meaning is derived from the Qur’anic verse 45:18, “’Then we put thee on the (right) Way of
religion so follow thou that (Way), and follow not the desires of those who
know not."\textsuperscript{109} The term was specifically used to refer to the way to a watering
hole in the desert. It came to be applied metaphorically to the way to God
because water is viewed as the physiological lifeline and God’s grace is viewed
as man’s spiritual lifeline.\textsuperscript{110} Once these two meanings became conflated,
water itself came to be viewed as a gift from Allah to man. In application to
everyday life, \textit{Shari’a} is defined as the rules that regulate and govern the lives
of all Muslims.

\textit{Shari’a} has become a fundamental tenet of Islam, but it did not even
exist in Prophet Muhammad’s time. It is a “historically conditioned
interpretation of the fundamental sources of Islam,” mainly the Qur’an (the
final revelation by Allah to Prophet Muhammad) and Sunna (\textit{Hadith}).\textsuperscript{111}
Sunna is a compilation of the deeds of the Prophet and \textit{Hadith} is the utterance and
silent approval of the Prophet. Islam, as the totality of the Qur’an and Sunna, is
perfect—a direct revelation from Allah but limited by the human ability to
understand Allah’s word as transmitted to Prophet Muhammad. That is why
\textit{Shari’a} is open to “competing theoretical interpretations and practical
policies” which inevitably reflect the moral and intellectual capability of its
followers and “their need to adapt to changing material and political conditions.”

Even though it is not a formally enacted legal code, all normative discussions surrounding Islam since the development of *Shari’a* are guided by its content. There is significant variety in its interpretation, not only among the various jurisprudence schools but also among the jurists of a particular school. This is not surprising given that *Shari’a* simultaneously guides the spiritual (the most significant) and the most quotidian sectors of a Muslim’s life. It governs method of prayer, interpersonal relations (including marriage, divorce, inheritance, taxation, and war) and matters concerning appropriate type of clothing, conduct among spouses, etc.

*The Derivation of Shari’a*

*Shari’a* was not developed during Prophet Muhammad’s time and though it is based on divine revelation, it itself is a product of man. It was not developed as an ethical and legal system until the third century of Islam. *Shari’a* emerged as “a result of difference in opinion concerning the meaning and how to implement a certain Hadith of the Holy Prophet.” While all jurists accepted and still do accept the Hadith, it is in its implementation and proper analogical interpretation that differences arose. At the time *Shari’a*

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was being developed, this was even further complicated by the lack of
diacritical marks. Diacritical marks, which determine in the Arabic language
the variety of ways a single word can be interpreted, were added to the Qur’an
years after the Qur’anic revelation and Prophet Muhammad’s death. “The
companions did not vocalize or provide diacritical points for the letters of the
Qur’anic copies which they wrote” and it was later on that diacritical marks
were added and an interpretation was imposed on the Qur’an.”

*Shari’a* relies on the interpretations of the Qur’an, *Hadith*, *Qiyas*
(understanding and application of divine revelation through analogy), and
*Ijma* (creation of law through juridical and community consensus on a matter
[community meaning the total available Islamic scholarly works]). In *fiqh*
(Islamic jurisprudence) most scholars “place the Qur’an and the practice of
the Prophet Muhammad at the center of Muslim jurisprudence and differ only
regarding the balance between these two sources” and the weight of Qiyas,
Ijma, and commonly practiced law. The latter concepts are necessary
because not all situations, especially those of the 21st century, are covered by
the Qur’an and *Hadith*.

*Shari’a* is viewed as a form of *ijtihad*, existing for the purposes of
bettering man. As a result, certain Muslim scholars have come to view *Shari’a*

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used the diacritical marks for the vocalization of the Qur’an and so each word could
have multiple readings and neither one was favored over the other which means that
compound meanings of the Qur’an were accepted by Prophet Muhammad and a
singular literal meaning was imposed only after his passing.

117 Amanat and Griffel, 3
as not man-made laws but as the laws of Allah.\textsuperscript{118} This claim is a problematic one that is further compounded by the notion that no one is in a position to explain the word of God “except the one to whom it was revealed.”\textsuperscript{119} Shari‘a is very much a human construct and not the literal word of Allah. The claim that Shari‘a is the law of Allah appears to be a way by which certain scholars attempt to bypass the notion in the Qur’an that no one is to interpret the word of God except the Prophets. Because there have been no Prophets since Muhammad, the only way to legitimize Shari‘a is to claim it is the literal word of God manifested in human interpretation, which seems to be logically flawed. Islamic States attempt to assert the impermeability of Shari‘a based on its divine nature; however, as demonstrated in this section, it is not divine and thus can be changed to accommodate basic human rights.

Aside from using the Qur’an, Hadith, Qiyas, and Ijma, the ulama (religious scholars) and fuqaha (jurists) also rely on the principles of Maslaha (something that is of public benefit), Darura (a situation of complete necessity that justifies breaking a law e.g. lying to Infidels to protect the faith or eating pork when starving), Urf/Adat (custom/tradition), Istishab (presumption of continuity of a fact unless factually disproven), and Istishan (juristic preference) to derive Shari‘a.\textsuperscript{120} These principles and procedural elements were derived from the consensus of the Muslim community at the inception of Shari‘a. The availability of a multitude of tools for interpreting

\begin{itemize}
  \item \textsuperscript{118} Gwarjo, 15
  \item \textsuperscript{119} Ibid., 24
\end{itemize}
Shariʿa was instituted precisely for the purposes of protecting individuals subject to it. As a result, there is considerable room in Shariʿa for interpretation. This allows scholars to search for formulations that can apply best to their contemporary society and social systems. The imminent need for contemporary application is the foundation many Muslim scholars offer in calling for a reformulation and reinterpretation of Shariʿa today. This process of evolutionary change in Shariʿa was constant until the dawn of colonialism, which destroyed the systems by which the law was made to accommodate existing social conditions.

History of Shariʿa and its Procedural Element

The dawn of Westernized modernity in Egypt occurred after the defeat of the Egyptian-Ottoman army by Napoleon’s forces in 1798. Although the subsequent occupation was brief, this event marks the beginning of colonialism in the Middle East and North Africa, which would lead to the destruction of the interpretive practices through which Islamic law applied to new settings. During this period, and similar ones in other Islamic states, colonizers viewed Shariʿa and its practice and development in madrasas as an obstacle to progress and antithetical to modernization and modernity. They initiated reforms that sought to break down the institutions on which Shariʿa was based in order to rebuild a more “modern” society. Mainly, they focused on madrasas because they were religious schools that were not in line with the rising Western vision of secular learning and the scientific method. In
consequence, there was a “decline of fiqh.” Instead of madrasas, Western dominated governments opened secular schools excluded Shari‘a from official legal systems of states. This is not to say Shari‘a jurists lost all influence. Even though they were removed from the practice of law they were still a part of the moral discourse in Muslim communities. These jurists, deprived of their official authority, “issued their views in the form of fatwas, nonbinding legal opinions that carried a moral weight equivalent to the authority of their authors.”

The early twentieth century is the root of today’s distorted understandings of Shari‘a. Those few decades saw the full implementation of 19th century legal reforms. Continuing to use Egypt as the primary example, Shari‘a courts, along with the previously mentioned madrasas, were also abolished, as was parallel legislation by colonizers. In some areas, they were merged with the civil courts. While surprisingly, there was not heavy opposition from the public, there was resistance from such groups as the Muslim Brotherhood. For the most part though, fiqh came to be treated as an academic discipline divorced from its religious and legal bearing.

While these dramatic changes were being implemented, the limited but raucous opposition resisted the societal overhaul. In the 1920s, reformers like Muhammad Rashid Rida and ‘Abd al-Razzaq al-Sanhuri argued that French law was culturally unfit and inappropriate for implementation in Islamic states. Abd al-Qadir Awda further fueled the discourse by stating that it was

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not simply that French law was culturally inappropriate, but that it was the duty of all Muslims to actively denounce French law and not follow it. These figures and their discourse gave rise to scholars such as Sayyid Qutb and Abul A’ala Mawdudi whose role in Shari’a was one of introducing a strict, unprecedented, fundamentalist interpretation.

In the second half of the 20th century emerged a Shari’a that was removed from its traditional madrasa and fiqh system. This new Shari’a had “little to do with the law that was taught at the madrasas of old and practiced at the premodern Shari’a courts.”122 The individuals advancing this form of Shari’a were self-taught and had developed it themselves. As a result, in their call for Shari’a they sought to implement a system that was removed from the proper forms of interpretation. This was done deliberately as a way of atoning for the Westernizing changes Muslim societies had undergone and as a way of expediting the purification of Islam in modernity. This new form of Shari’a consisted of literal interpretations of paragraphs from the Qur’an and Hadith.

The reason why the system of interpretation that existed prior to this was in place was to guard humans from their own misunderstanding of divine revelation. To do this, safeguards such as community consensus and analogical interpretation had been set in place. This new school undermined the centuries-old established tradition, which has had profound consequences for Muslim society and for the understanding of Islam. In the “pre-modern” period, Shari’a law (as practiced by Muslim jurists) contextualized the sayings and life of the prophet. Procedural elements played a very important role in

122 Amanat and Griffel, 13
the application of the law to society. As opposed to directly applying a Hadith to law, “every Hadith was surrounded by interpretation that suggested or demanded how the law that derived from it was to be practiced.”\textsuperscript{123} Consider the example provided by Frank Griffel, responding to Prophet Muhammad’s statement that all apostates must be killed.\textsuperscript{124} “Jurists in the early period of Muslim law agreed this was harsh and found a legal loophole of the invitation to repent.”\textsuperscript{125} However, when Islamic law was applied in Sudan and Egypt, all premodern injunctions of this sort were discarded and no invitation to repent was recognized. In the late twentieth century implementation of Shari‘a, the new fundamentalist Islamist movements discarded any ambiguities and limits that were set, not simply by prior juridical rulings, but also by the Qur’an itself, and applied the revelation literally. For example, in Nigeria the punishment for adultery was determined to be one hundred public lashings based on verse 24.2 of the Qur’an. This legal application of the Qur’an ignores verses 4.15-4.16 which qualify the charges of verse 24.2 by allowing room for leniency and a system of escalation based on the severity and strength of proof against the accused. As a result, fundamentalists came to have a “pick and choose” mentality, applying the most absolute forms of legal rulings presented in the Qur’an and Hadith to the neglect of an older and established tradition that aimed to synthesize different sources and voices to reach legal decisions.\textsuperscript{126}

\textsuperscript{123} Griffel and Amanat, 13
\textsuperscript{124} Ibid.,13
\textsuperscript{125} Ibid., 13
\textsuperscript{126} Ibid., 14
Thus, notions of Western modernity arriving with colonialism froze the development of Muslim law and completely transformed it to the previously mentioned visions of Qutb and Mawdudi. Bureaucratic processes replaced the previously existing legal framework for the purpose of making Islamic states more compatible with Western notions of modernity. These changes “transformed conceptions of time, space, property, work, identity, marriage, body, and the state.”\textsuperscript{127} This, “coupled with the inability of Muslim jurists and lawyers (fuqaha) to renew fiqh in accordance with the changing realities of the socio-cultural lives of Muslims,” crippled Muslim law.\textsuperscript{128}

**Human Rights and Shari’a Discourse**

To reiterate the claim made in Chapter One, basic human rights are being understood in this thesis as the rights of life and bodily autonomy, protection from harm, the right to subsistence and several others, including the notion that all human beings are equal in worth and dignity, regardless of gender, religion or race. This position is one that can and has been sustained in relation to the Qur’an by various schools of Islamic thought. The Qur’an contains verses that support the equal treatment of humans in a dignified manner. One of the most famous verses in this spirit is the 70\textsuperscript{th} verse of the Al-Isra Surra which states, “verily we have honored the children of Adam. We carry them on the land and the sea, and have made provision of good things for them, and have preferred them above many of those whom We created.


\textsuperscript{128} Yilmaz, 35
with a marked preferment.” There is no difference emphasized amongst the “children of Adam.”

There are many more Qur’anic verses that counter the notion that Shari‘a excludes a human rights account similar to that of a “Westernized” one (I say this rejecting either’s superiority over the other, and am simply commenting on societal perceptions). The Qur’an, and thus Islam, also honors the freedom of individuals to behave as they see fit as long as they does not undermine the authority of Allah, given that the authority of Allah is ultimate and there is no other authority on earth. This claim is exemplified in Az-Zariyat, verse 56, that states, “I created the jinn and humankind only that they might worship Me.” In context, this verse makes the claim that no single individual has superior standing over another and that, under Allah, all are the same. No man should therefore be anybody’s slave or captive, because their shared worship of Allah makes them equals. In the post-9/11 world, Islam has often been characterized as a religion of violence. However, The Al-Mumtahinah Surrah in verse 8 states that, "Allah forbiddeth you not those who warred not against you on account of religion and drove you not out from your homes, that you should show them kindness and deal justly with them. Lo! Allah loveth the just dealers." Allah discourages the use of violence against nonbelievers as long as they too come peacefully. There is no encouragement of violence against the so-called “Infidel” in the Qur’an and thus there can be (and has been) a peaceful coexistence of various religious groups in Islamic states or states where Islam is the official religion.
Women’s Rights: A Brief Qur’anic Case Study

In Muslim theological theory women’s legal personality is complete, but in practice their “access to opportunities for making that personality meaningful are restricted.”\textsuperscript{129} For example, jurists often prize the concept of \textit{qawama} (man’s might over women given his physical superiority).\textsuperscript{130} This excuse for their inferiority becomes untenable in the context of women being able to attain an education, secure a job, and thus provide for themselves in a way that does not require pure physical strength. This is true even in conservative Islamic states like Saudi Arabia.\textsuperscript{131}

Though, there are \textit{madhhab}s that limit the rights of women to hold and dispose of property, thus limiting their economic independence, this is a regulation that is not sanctioned by the Qur’an, but rather is a societal (human) intervention being masked as the word of Allah. The Maliki school that is dominant in West Africa does not allow married women to enter contracts or to dispose of their own property. Similarly, women hold a right to vote in most Islamic states but are discouraged from participating in public affairs and from exposing themselves to criticism by the community and dishonoring the family, limiting the practical use of their voting capability.

Fundamentally, according to the Qur’anic verses 4.1 and 16.72, both men and women were created from the “same soul (\textit{nafs}) and have the same

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{130} Abdullahi An-Na’Im, "Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives - A Preliminary Inquiry," 47
\item \textsuperscript{131} Ibid., 47
\end{itemize}
\end{footnotesize}
obligation toward God.”132 This is in stark contrast to the social differentiation of social roles of men and women based on their presumed emotional and physical qualities. Although different social roles are in and of themselves not problematic, it is the consequent demeaning and belittling of women that is unfounded and unacceptable; different legal rights and obligations must not necessarily create institutional inequality. The roles of women and men need not be identical for them to be equal in value in the context of the Qur’an, because they are equal halves of nafs. The purpose of this analysis is to comment on the fact that where it is found to be politically convenient, contextual social interpretation is applied to Qur’anic verses by elites at the cost of human rights (in this case, women’s rights) and where there is no benefit to social contextualization, then it is left out. The conflation of the pick and choose system with this abuse of Shari’a interpretive methods has led to an unpredictable system of Islamic jurisprudence

Conclusion

The arrival of figures such as Sayyid Qutb and Mawdudi froze fiqh in a utopian past. The emergence of Western notions of modernity and their intervention in Muslim society disrupted the continuity of Shari’a and its development. “Traditional Muslim educational systems were displaced” and they were the foundation of fiqh.133 So, the arrival of a Western notion of modernity and Western states (which is to say colonialism) disrupted the methods through which Shari’a was developed and evaluated, leading to a

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132 31 Gudun Kramer justice in modern islamic thought
133 Moosa 1999, 164
freeze in its development. This became especially problematic with figures such as Sayyid Qutb and Mawdudi who advocated an interpretation of Islamic law the treated specific paragraphs in the Qur’an as Shari’a, abandoning the appropriate methods of interpretation used by the ulama and fuqaha for centuries prior to colonialism.

They began to use a pick and choose approach to determining Shari’a combined with selective literal interpretations of the Qur’an has skewed the potential full participation of Islamic states in the international human rights regime. Instead of a Shari’a that is informed by the totality of the Qur’an and Sunna, what has passed as Shari’a in certain schools of thought is not Shari’a at all, given that it bypasses all historically established fiqh methods. Initial stages of Shari’a were developed in a society laden with violence in the moments of an expanding political empire. Thus, the Qur’an and Sunna were interpreted in a manner befitting the turbulent times.

There is in fact a procedural element in Shari’a that allows for contextual development and understanding of divine revelation. However, the destabilization of institutions that engaged in fiqh and the subsequent perversion of Shari’a interpretive methods during the colonial period stalled Islamic legal development and led to new Islamic schools of thought that sought to revert to the legal interpretations of the Muslim communities that preceded them or to abandon interpretive methods as a whole and simply use the literal meaning of the Qur’an as Shari’a. Neither method is consistent with Shari’a tradition and neither method allows much practical guidance for
Muslims attempting to negotiate a dialogue between their faith and the twenty-first century. The problems that individuals face have changed and their historical solutions have ceased to be valid; new answers to these new questions must be developed.\textsuperscript{134}

\textsuperscript{134} Abdullahi An-Na’Im. “Religious Minorities under Islamic Law and the Limits of Cultural Relativism,” 11
CHAPTER FIVE: THE POLITICAL AND ECONOMIC MOTIVATIONS OF RESERVATION BEHAVIOR

The culturalist argument that there is no place for human rights in Islam, and that Islamic doctrine explains why Muslim majority states enter reservations on human rights treaties, is clearly inadequate. Different Muslim states enter different reservations, which demonstrates that a common religious doctrine – Shari’a -- cannot explain their reservations. And as we have seen in Chapter Four, in Islamic teaching and practice Shari’a has always been understood as open to human interpretation in light of changing conditions. Once we understand Islam in its own terms, it is no surprise that Shari’a does not by itself require particular reservations to basic human rights conventions. Indeed, there is good reason to believe that a plausible understanding of Islamic doctrine actually supports basic human rights.

Why, then, do some Muslim states enter reservations to human rights conventions? My hypothesis from the Introduction is that the answer to this question lies in the sphere of elite behavior. This Chapter will directly comment on the validity of that hypothesis. I argue that the motivating factors behind the submission of reservations are political or economic and not religious (my argument is supplemented by the data of Table 5.1, p. 130). This is especially true when the reservation is to an article that codifies basic rights (including those outlined in Chapter Two). Political factors are guided by elite goals to consolidate power or to liberalize their regime for the purpose of sustaining the status quo of their position. Economic factors are often driven
by elites seeking greater foreign investment or seeking to sign new trade agreements that will bolster the nations level of prosperity. In attempts to accomplish these various goals countries withdraw or submit reservations depending on how that action will contribute to their being able to control their domestic populace or signal to an international actor that they are a reliable trading partner with a political and economic structure not unlike their own.

To measure this reservation behavior it is necessary to observe patterns of political and economic behavior during the time of reservation submission and withdrawal. In the first section of this chapter I will define and explain the variables I coded: regime type; political party in power; level of political competition; whether it is a secular or religious party in power; level of democracy/autocracy (polity); export/import trade agreements/developments; grassroots movements; freedom of the press and resulting access to information, civil liberties; religious freedom; and human insecurity. The codes given to these factors measure possible political and economic variables that can influence reservation behavior.

To understand why these factors are considered to be the likely forces influencing reservation behavior, it is important to note that reservations in this context are being viewed not as reflections of cultural beliefs but as strategic political tools that can be used to either control the population or to signal to Western trade partners a level of desirable “liberalization.” The inverse is true as well, as will be especially seen in the case of Mauritania: a
nation will signal to potential Islamic trade partners its level of fundamentalism through the submission of reservations before the signing of an agreement. The misery index, which defines grievances through economic disadvantages as the root for future grassroots movements, is not coded here because the data on unemployment levels for most of these states is severely lacking. Though it can therefore not be used as a predictor of social movements, they themselves are coded as potentially able to cause elites to change their behavior in the interest of retaining their power. Following the explication of the analyzed variables, I will cover the results obtained for each country that withdrew reservations in the coded variables. This discussion will focus on variables that I deemed significant at the point that a nation signed on to a treaty and submitted reservations and the point at which it withdrew its submitted reservations. The variables were observed for a five-year period before the submission of a reservation and before the withdrawal of reservations.¹³⁵

It is important to note that even the submission of reservations can indicate liberalization. Signing a treaty is a major political step and the choice to adhere to a treaty is just as important to the advance or preservation of human rights as the choice to withdraw reservations to articles, since it commits the nation to internationally recognized standards of human rights. This too must be viewed in a positive light even if the accession is overshadowed by the negativity of reservations.

¹³⁵ The submission of reservations is only allowed at the point of ratification and not at any other point in the future
Because my central claim is that basic rights are so fundamental to human society that their validity is universally accepted in spite of deep cultural differences, I only analyze reservations or withdrawals of reservations concerning basic human rights. The order of the countries discussed will follow the same madhhab grouping of Chapter Three.

Only countries that submitted reservations and then withdrew them will be analyzed as independent case studies (though ones that did not withdraw them are still included in Appendix E). As I will show, their withdrawal of reservations can be explained by reference to political factors, specifically the political and economic objectives of ruling elites. I will also show that these factors were not present in nations that did not withdraw reservations.

**Coded Variables**

**Regime type:** This factor codes for the ruling system of government. It does not refer to the party or King that is in power, since this is coded in the next variable, but instead establishes whether the ruling form of state governance is, for example, a constitutional monarchy or a republic. It signifies the body of individuals who control and exercise political decision-making, including the legislation, enforcement and adjudication of laws. If the regime type changes and a reservation is submitted or withdrawn simultaneously, while all other factors stay static, it is more likely than not that the new system of government finds an article either compatible or incompatible with its system of governance. If, on the other hand, regime type does not change but a
reservation is withdrawn then it means that it is not a change in the political structure that explains the change in reservation behavior.

**Change in Political party in power**: A political party is an organization that is united by some goals or program (that could reflect an ideology) that it seeks to realize by influencing government policy. A regime type need not change for the nature of a nation-state’s human rights behavior (or other policies) to change. Indicating which political party is in power and the nature of its program may explain a change in reservations.

**Level of political competition**: This factor was coded with the aid of the Polity IV index.\(^{136}\) It measures the degree to which alternate policy and leadership choices can be pursued in the political arena. The polity data set indexes the scale 0–5. “0” indicates that the level of political competitiveness could not be measured due to a lack of domestic political stability. “1” indicates a repressed environment; it is frequently assigned to totalitarian party systems, authoritarian military dictatorships, and despotic monarchies (basically meaning, any regime where oppositional activity is not permitted outside of the ruling party). These regimes carry out systematic repression of opposition. “2” illustrates a suppressive government which tolerates some limited political competition; however, this often is happening outside of the official political process and a majority of the population is excluded from it. “3” implies factional polities, meaning the governments “contain parochial ethnic-based

political factions that compete for influence in order to promote agendas that favor the interests of group members over common interests.”

“4” indicates transitional arrangements in the government that attempt to accommodate competing interests, although parochial interests are still present in the system of governance. Lastly, “5” indicates a competitive political field where groups are stable and politically enduring. This includes voluntary transfers of power, and while certain parties or political groups might still be restricted from the political system, this cannot be endemic in a nation coded having a political competitiveness level of 5. -77 indicates a total collapse of government and -66 marks an interruption in government due to foreign occupation.

The significance of this factor lies not in the number a nation is coded as in a given year but rather in any shifts that may occur that result in reservation changes. This will illustrate that a suppression of rights was a deliberate decision made by a single party that was invalidated by the introduction of competition, meaning that once more of the populace’s voice was represented in the political sphere, rights abuses decreased, indicating that reservations were not a cultural factor but rather a political one. This variable is also significant to check the consequences of a regime change because the latter may not always result in reform.

Religious nature of party: The distinction of whether the political party in power is secular or religious elucidates whether or not the Shari’a law

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exception provided by nations upon accession is valid. This is most telling in cases where a religious party comes to power and chooses to withdraw a reservation that had been submitted by a secular party especially since the initial justification for these cases was religion. However, if a religious party instead submits a reservation and no other factor shifts then this thesis will be forced to admit that its hypothesis of political and economic motivations being the main influencing factors in reservation behavior is not universally applicable. “1” indicates the party has a strong religious rhetoric attached to its ideology and “0” indicates a secular political party.

**Level of democracy/autocracy:** The level of democracy and/or autocracy is indexed on a scale from -10 to +10. This information was derived from the Polity IV index. A fully democratic government, exemplified by a +10 has a) fully competitive political participation, b) institutionalized constrains on executive power, and c) a guarantee of civil liberties to all citizens in their daily lives and in political participation. This is set in contrast to a fully autocratic system, represented by a -10, which restricts and suppresses competitive political participation. Individuals in power are chosen by an elite group and exercise their given power with few to no institutionalized constraints. This variable provides a more nuanced description of the political atmosphere during a specific regime or after the change of one.

**Export and import trade agreements and developments:** In this section of the compiled data there is no coding but rather analysis of new trade partners or

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trade agreements set into motion. Note that this does not necessarily mean there is accession to an agreement or the finalization of a trade relationship; there may rather be as little as the beginning of talks. The significance of this lies in the demands that trade agreements and trade partnerships may place on the elite to change reservation behavior which, once again, pertains no relevance to domestic cultural movements and has everything to do with elite interests.

**Social movements:** Social movements codes for the presence of any significant protests, boycotts or riots that may be occurring in the nation. “Significant” is coded as a movement that lasts for longer than a week and has a total participation of over 1,000 individuals. This does not imply that the protests need to be occurring consistently for seven days but rather that the spirit of the movement is sustained, be it through pamphlets, private gatherings amongst the leaders of the movement, or general planning for a specific goal; the ideology of the movement and its purpose must be prominently visible in society through communication mediums such as the news, the radio, or posters/flyers in public spaces.

**Freedom of the press and resulting access to information:** Access to information was a variable that was extremely difficult to code for most of the cases under consideration in this thesis because many governments were so repressive that there is a lack of information on what behavior individuals may or may not have engaged in, in the privacy of their homes. However, freedom of the press and the restrictions placed on it by the government was
not as difficult to code and this variable implies the degree to which individuals en masse were able to access information that was not dictated by the government. If the press is limited in the information it is allowed to release, and only government-sponsored mediums of communication are allowed while all the rest are repressed, then this implies significant limitation in access to information (even if samizdat sources are available, their distribution is most certainly bound to be limited and suppressed). “0” indicates no freedom, “.5” indicates some freedom on either certain mediums or on all mediums of news from the government, depending on what they publish or air, and “1” indicates total freedom of the press.

Civil liberties: For the acquisition of this variable I relied on the Civil Liberties index made available by Freedom House. The index measures freedom of expression, assembly, association, and religion.139 Civil liberties are rated on a scale of 1 to 7, with “1” representing the most free and “7” representing the least free environment. Countries that are rated as “1” “generally have an established and equitable rule of law with free economic activity.”140 “2” indicates systems with some deficiencies but that are, for the most part, relatively free. Ratings of 3, 4, and 5 indicate partial compliance in all of the elements of civil liberties; they may also indicate complete freedom in some areas with complete suppression in others. Countries rated as “6” allow partial

rights to their citizens with few social and religious freedoms; business activity is somewhat restricted, and there is a significant level of political terror and a noted presence of political prisoners. A “7” indicates no freedom, thought it is important to note that government intention is not always at fault; rather, it may indicate the presence of imposed restriction on liberty which is sparked by non-governmental terror.

Religious freedom: This factor is also coded as the freedom of press was, as 0, .5, or 1. For this index I used a combination of Freedom House data, along with information from the Center for Religious Freedom, U.S. State Department reports on religious freedom, the constitutions of the countries being studied and news reports produced internally and externally on cases involving violations of religious freedom. This factor codes for the presence of persecution where the grounds for the persecution are themselves religious and religion is the main component of the discrimination an individual may face. This might include inhibitors to marrying an individual of another religion, the permission to build religious structures that are not of the state-recognized religion, and other factors of a similar nature. Countries with a .5 are ones that are characterized by some restrictions on religious freedom, often in the context of corruption, weak rule of law, or ethnic strife/civil war.141

**Human insecurity:** For the human insecurity index I relied on information provided by the Political Terror Scale, corroborated by available news sources on the cases being analyzed. This variable exists to check whether elites were more likely to submit reservations or withdraw them at the onset or end of a conflict. Furthermore, it also allows the data to observe whether or not reservations were submitted to a convention immediately before extreme repression, which would indicate long term planning on behalf of the government, with the reservations being means of protecting themselves from international prosecution for planned rights violations.

The information that was acquired from data sets such as the Polity IV index was at times lacking in respect to certain countries. In those cases I used their methodology and criteria and coded the conflict myself.

**Algeria**

Algeria acceded to CEDAW on May 22, 1996 with reservations to articles 2, 9.2, 15.4, 16, 29, 41, 43. In 2009 it withdrew its reservations to articles 9.2, 41, and 43. When the reservations were submitted, Liamine Zéroual was in power, and at the time of reservation withdrawal, the president was Abdelaziz Bouteflika; this case study takes them to be the elite because of the autocratic nature of the presidential power in Algeria as opposed to the transient and ephemeral nature of the Prime Minister’s seat. Though the regime does have elections, which are in any case decried as being exceptionally corrupt, it is coded as having been authoritarian since the military junta of 1991, which ousted and banned the Islamic Salvation Army.
and replaced it with the National Liberation Front party, which has since dominated the Presidency.\textsuperscript{142}

At the time of reservations being submitted, in 1996, and then withdrawn, in 2009, the political competition was ranked at a level of 3. That is to say, the government “contain[ed] parochial of ethnic-based political factions that compete for influence in order to promote agendas that favor the interests of group members over common interests.”\textsuperscript{143} At the time that Algeria signed CEDAW it had just ended a period of internal strife with the Islamic Salvation Front and was looking to stabilize itself internally and enter into the realm of foreign relations. The party in power at the time and to date is the National Liberation Front, which is secular. The level of democracy has remained at a level of -3 since the end of the Civil War in 1994.

In 2004, five years prior to the withdrawal of reservations, Algeria began fostering an economic relationship with the United States, and in 2002 it began aggressively developing its EU association. Through these relationships, it seeks to render tariff-free imports and exports with the European Union and the United States. A final treaty has yet to be negotiated, partly due to the internal state of the rule of law in Algeria. The conclusion of those trade negotiations and Algeria’s accession to the World Trade Organization, which it is seeking, relies on “trade liberalization, customs modernization, deregulation, and banking reform” and a greater respect for

human rights.\textsuperscript{144} The latter is mainly used as a signal of domestic stability within Algeria to potential international partners.

The protection of civil liberties for five years prior to the withdrawal of reservations was coded at 5 as opposed to the level of 6 and 7 when Algeria initially signed CEDAW. Furthermore, there was a higher level of religious freedom than when CEDAW was signed than at the time of the withdrawal, especially with the passing of Executive Decree 07-158, which came into effect in early 2009, the same year in which reservations were withdrawn. The decree deals with the composition of the National Commission for Non-Muslim Religious Services and the regulations that govern it. It established a governing body—the National Consultative Commission for the Promotion and Protection of Human Rights (CNCPPDH)—to which individuals or groups who, on the basis of religion, do not believe they are being treated fairly can now appeal.\textsuperscript{145} Furthermore, in the year that the reservations were withdrawn, human insecurity was at its lowest.

What does the data tell us? The party remained the same and so did the demographics of the country; however, new economic opportunities arose which were contingent on Algeria’s domestic behavior. Given this incentive, President Abdelaziz Bouteflika began a policy of internal liberalization as a


form of presenting a more appealing vision to potential trade partners. There was no religious movement and no social movement calling for a greater preservation of rights. That occurred later, at the end of 2010 and at the beginning of 2011, and was in line with the Arab Spring phenomenon.

**Morocco**

Morocco ratified CRC and CEDAW on June 21st 1993. It submitted reservations to both conventions and withdrew those reservations on October 19, 2006 and April 2, 2011, respectively. The country has had a constant constitutional monarchy since its 1956 independence from France and the creation of the modern state of Morocco. I find it important to mention here that the French violated the basic rights of Moroccans more than the Moroccan King violates those rights of his own people. Under the French protectorate, Moroccans were denied the freedom of speech, the freedom of association and the right to travel in their own country. Education, too, was extensively limited to the upper echelons of the socio-economic stratosphere. Although the Moroccan king is responsible for many human rights violations, France’s actions dispute the notion that West is superior to the “Orient” in its understanding of human rights.

The Moroccan king has been marked as the elite actor due to not only his extensive executive powers, which include the power to issue decrees, called *dahirs*, that carry the force of law, but also to his power to dissolve the parliament, the only other major political institution that carries power that can even approach his. In 2011, the Constitution was amended to limit the
king’s powers. There is also a head of government, the prime minister, but he is appointed by the king and viewed as an extension of his policies, thus the King is the main elite coded.

As a result of the constitutional monarchy in Morocco, political competition has remained at a level of 2 from 1988 to 2011. The monarchy remains Islamic in nature, thus that variable also has remained static. There was a shift in the level of polity from the period of five years prior to the submission of reservations and to the ten-year period within which reservations to two different conventions were withdrawn. While from 1988 to 1993 polity was at -8 and then -7, from 2001 to 2011 it was at -6. This two-point difference suggests that the nation has moved towards a more open and democratic system. All other factors including civil liberties, freedom of the press (or lack thereof) and human insecurity have remained static, but there have been significant economic changes since the reservations were submitted that led to a withdrawal of those reservations.

Since 2000, Morocco’s economy has become much more robust, putting the country on a path of economic development and accession to new economic treaties. It had a yearly growth of 4-5% from 2000-2007, which includes a 4.9% year-on-year growth from 2003-2007. As a result of this and of its alignment of rhetoric with the West, it was granted “advanced status” from the EU in 2008.\footnote{\textit{The Report: Morocco 2009: Country Profile}. Rep. Oxford Business Group. Web. 11 Mar. 2012. <http://www.oxfordbusinessgroup.com/full_content/report-morocco-2009>}. This shored up bilateral trade relations with Europe. During this period of reservation withdrawal, Morocco ratified the Euro-
Mediterranean Free Trade Area Agreement with the EU, doing so with the objective of integrating the European Free Trade Association in 2012. The Agadir Agreement was signed with Egypt, Jordan, and Tunisia within the framework of the Greater Arab Free Trade Area. The US-Morocco Free Trade Agreement came into force in 2006, which is the same year Morocco withdrew its reservations.

While the proof of causation is quite difficult to achieve in this set of circumstances, I do not think it would be out of line to make the claim that the coincidence of a US-Morocco trade agreement in 2006 and the promise of an EU-Morocco trade agreement that ensures further economic prosperity coincide with the dates of reservation withdrawal, especially as all other relevant factors have remained static. Morocco is signaling its willingness to engage substantively with international institutions. By allowing itself to be held liable for violations by international institutions, it is establishing itself as a secure political actor for trade and economic engagement.

_Tunisia_

Tunisia ratified CEDAW in 1985 and withdrew its submitted reservations in 2011. It ratified CRC in 1992 and withdrew its reservations to the treaty in 2002. When CEDAW was ratified, Habib Bourguiba was in power and when CRC was signed, Zine El Abidine Ben Ali had taken over. These two presidents together comprised 54 years of autocratic rule in Tunisia, which during these years operated as a de facto single party state, and were both part of the secular Constitutional Democratic Rally. The 2011
revolution in Tunisia removed this party from power; given that it had dominated governance from the local to the national level, this necessarily included a complete overhaul of the domestic political structure.

When Tunisia signed on to CEDAW, its regime type was a republic and the party in power was secular. Political competition was non-existent and the polity level was at -9, just one point away from total autocracy. Freedom of the press was at 0 and civil liberties were at a static 5 for five years. Religious freedom was partial, with repression of Islamic fundamentalism and the prosecution of Christians and other minority religions for displays of sectarian garb, such as the Islamic hijab. Converts from Islam to any other religion faced social and economic ostracism. The government subsidized the building of mosques, but other religious buildings required government approval prior to construction. Marriages between Muslim women and non-Muslim men were forbidden. Despite all of this, there was no active persecution of minority religious groups, which were for the most part able to prosper.

In 2011, when the reservations to CEDAW were withdrawn, drastic changes were made to the regime. While the former level of political competition represented a highly repressed plane, the competition level increased to 3, which is factional. The polity level went down from -9 to -4, a decrease of over 50%. In 2011, the Arab Spring revolution in Tunisia ushered in elections that brought the Islamic Ennahda Party to power. This political party, despite being Islamist, withdrew the reservations that the previous government had submitted to CEDAW. Given that a party representative of
the dominant religion withdrew reservations that were originally justified through religion, and the country’s religious demographics had not changed, this must lead one to question the validity of those justifications. An Ennahda spokesman said:

> We do not want a theocracy. We want a democratic state, that is characterized by the idea of liberty. The people are to decide themselves how they live. ... We are not an Islamist party, we are an Islamic party, that also gets its bearings by the principles of the Koran.\(^{147}\)

Tunisia ratified the Convention on the Rights of a Child with reservations in 1992; the reservations were withdrawn in 2002. Throughout the period of five years prior to the signing of CRC and five years prior to reservation withdrawal, Ben Ali’s regime ruled over a constitutional republic. With respect to freedom, however, some internal changes had occurred. The political competition level increased from 2 to 3 as some independent, instead of just government-approved, opposition movements entered the political field. The level of democracy improved from -5 to -2 by the time the reservations were withdrawn. Human security and religious freedom, on the other hand, remained static, and civil liberties have remained at level 5 since 1991. Important to note at this point are the wide-ranging effects of the 9/11 attacks in the United States. In the aftermath of the attacks, several countries, including Jordan, made an effort to emphasize their solidarity with Western values as a way of distancing themselves from what the Western media

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described as violence derived from Islam. However, there are reasons beyond this for Tunisia’s transformation. Political liberalization introduced challenges to the rigid government which, in turn, attempted to illustrate its tolerance not only through the CRC but also through other treaties such as the Crime, which it signed in 2000. In 1998 Tunisia’s Association Agreement with the EU and France came into effect.

More local factors could have influenced the behavior of the elite as well. For example, Tunisia withdrew its reservations to article 2 of the CRC, which discusses the government’s jurisdiction over children without discrimination to the child’s or the parent’s or legal guardian’s race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. In 2002 there was a rise in violence against Jews, the most prominent anti-Semitic event being the Ghriba Synagogue bombing.148 This event put pressure on the party in power to show their support, not specifically for Jews, but for minority groups in Tunisia, and withdrawing their reservation to the CRC was one way they had of doing so. Since Al Qaeda operatives were found guilty of the bombing, this action was also a strong way for the government to distance itself from violent Islamic fundamentalist movements.149 Internal political liberalization and serious concern for internal peace have fashioned Tunisia as the ideal version

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of a predominantly Muslim states that is constantly making progress towards protecting more and more rights of its people.

*Egypt*

Egypt ratified CEDAW in 1981 with several reservations, which it withdrew on January 4, 2008. The reservations to the CRC that it submitted upon signing on July 6, 1990 were withdrawn on July 31, 2003. When Egypt signed onto CEDAW and CRC, Hosni Mubarak had just come to power. His reign continued until early 2011, when the wave of Arab Spring revolutions reached Egypt and he, after much struggle, was forced to resign. The National Democratic Party, which is secular in nature, was in power throughout this entire period. After Mubarak came to power in 1981, human insecurity remained, on average, at level 3; it was straddling 1 and 2 prior to that. Religious freedom during his reign was consistent, at .5, as well.

In spite of these continuities, there were major changes in other indicators. The level of democracy was at -7 at the time of ratification, and it was less than half of that (-3) by 2008 when the reservations were withdrawn. Also, in the years preceding the withdrawal of reservations, the Egyptian Movement for Change, popularly known as *Kefaya*, was launched. *Kefaya* opposed the Mubarak regime and called for the establishment of democratic reforms and greater civil liberties. In response to this, the regime relaxed the restrictions placed on the press, so the freedom of press went from a rating of 0 to .5 in 2008. As opposed to what happened in Algeria and Morocco, where
external foreign trade agreements drove reservation withdrawal, in the case of Egypt withdrawal was prompted by an internal call for liberalization.

Foreign investment, sparked by Egypt’s move toward a more market-oriented economy, was also beginning to increase by 2008. This was achieved through structural reforms, which included fiscal and monetary policies, new business legislation and privatization. That is to say, a liberalization of domestic economic systems led to greater foreign involvement. In additional, internal political stability made the country seem more secure for investment. The majority of the economic reforms such as reduced tariffs and taxes and transparency of the national budget were begun in 2004.\textsuperscript{150}

Similar trends of internal liberalization can be seen between the time when reservations were submitted to the CRC and when they were withdrawn. Despite the downward turn in civil liberties from level 5 to 6, what is notable about the year during which the reservations were withdrawn is the emergence of the previously mentioned \textit{Kefaya} movement. Despite the movement’s failure to depose Mubarak it did considerably influence the rhetoric to which the government had to respond in the media. This liberalization is consistent with the reasons that, from the Committee’s perspective, Egypt had for withdrawing its reservations: “There [are] different interpretations of some aspects of the application of Shari’a (Islamic law),”

\textsuperscript{150} Ministry of Finance and Central Bank of Egypt, as analyzed in Abdel Hameed Nawar, Anti-Inflation Policy Array in Egypt (April 1, 2008). Available at SSRN: http://ssrn.com/abstract=1115642 or http://dx.doi.org/10.2139/ssrn.1115642
and Egypt chose to adopt an attitude “consistent with the spirit of human rights in that regard.”

The reservations were submitted on a premise of Shari’a law and once again, we see no change in the government system or the demographic makeup of the country aside from the emergence of the Kefaya movement and its call for a greater respect of human rights. In 2003 Egypt also signed the Agreement in the form of an Exchange of Letters concerning the provisional application of the trade and trade-related provisions of the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, for the one part, and the Arab Republic of Egypt, of the other part. It is important to mention that Egypt withdrew its reservations prior to signing this agreement. Tunisia, which did so as well in its withdrawal of reservations submitted to the CRC, followed a very similar timeline to Egypt and saw quite similar results.

Jordan

Jordan ratified CEDAW on July 1, 1992. On May 5, 2009, Jordan withdrew its reservation to article 15.4. For five years prior to the submission of reservations to CEDAW and the year during which they were submitted, King Hussein was in power and Jordan was (and still is) under a rule of a constitutional monarchy. The political competition was then around 3 and at the time of withdrawal it had been consistently at 4 for several years. The

political competition level in this case refers to the parliament since the kingdom is hereditary and not elected. The level of democracy had been straddling between -3 and -2 during the time of both submission and withdrawal. Civil liberties also went from being around 5 when reservations were submitted to an average of 4, implying that there was a much freer environment at the time of withdrawal.

What changes led to the withdrawal of reservations submitted to CEDAW? Freedom of expression and civil liberties were more prominent at this point. The level of democracy in the Jordanian parliament increased, meaning the people’s interests were much more broadly represented. In 2006 there was a call by the government for major political reform that asked for equal rights for women, removal of all forms of legal discrimination against women, and increased freedom of association. This plan for internal liberalization passed and was put underway immediately.152 To supplement this call, Jordan has received aid from the United States under the U.S.-sponsored Middle Easter Partnership Initiative, which provides assistance for projects in the political, economic, education, and women’s fields.153 Withdrawing CEDAW reservations was a great way for Jordan to illustrate its move towards liberalization without having to institute significant domestic changes comparable to the money it received. It is also likely that Jordan wanted to allow for money to continue flowing in from the United States. That

is not to say Jordan has not made an effort to respect women’s equality, however. After all, it has a greater proportion of women with a voice and seat in its parliament than the United States does in Congress.\textsuperscript{154}

\textit{Pakistan}

Pakistan acceded to CEDAW on March 12, 1996 with a sole reservation to article 29. It ratified ICCPR on June 23, 2010 with reservations it withdrew on September 20, 2011. Pakistan also ratified the CRC on November 12, 1990, and had submitted a general reservation upon signing on to the Convention, which the Government of the Netherlands filed a formal objection to on February 6, 1996. On July 23, 1997, Pakistan withdrew its general reservation. This places the case study period for Pakistan from 1985 to 2011, and the rhythm of reservation submissions and withdrawals requires coverage of almost every single year in that period. It should be noted that the overlap in reservations being withdrawn from the CRC occurring the same year Pakistan ratified CEDAW and submitted reservations is not contradictory in nature. As briefly mentioned earlier in the chapter, the ratification of a new treaty is just as much a sign of adherence to human rights as the withdrawal of a reservation. In fact, the withdrawal of reservations indicates a shift in the elite’s approach to their consolidation of power. This shift allowed not only for reservations to be withdrawn, but for CEDAW to be ratified as well.

The first event in Pakistan’s dialogue with the human rights conventions is the ratification of and submission of reservations to the Conventions on the Rights of the Child. When it was signed, political competition was at an average of 2; it had reached a consistent level of 3 by the time the reservations were withdrawn. Both when the treaty was signed and when the reservations were removed, Prime Minister Benazir Bhutto was in power. The level of democracy had increased from a 4 to an 8. In 1996, the Taliban movement emerged in the neighboring country of Afghanistan.

Pakistan has often been viewed as Afghanistan’s strategic backyard, which is to say it is within its sphere of influence. Amid allegations of cooperation with the Taliban, a group infamous for the use of child soldiers, a claim of full adherence to the convention could have been another show of support for human rights and a manner by which Pakistan could officially distance itself from the Taliban despite the continued existence of a strong connection between the Taliban and Pakistan’s security intelligence apparatus.

Furthermore, Pakistan became a participant of the WTO in 1995. To sustain its new position it could not be viewed as immediately backtracking from the progress and stability it had illustrated; the issue of Afghanistan only intensified this.

Pakistan withdrew its reservations to ICCPR in 2011, a year after it had submitted them. There were extensive objections its reservations on the part of European states, given that almost half the convention was marked with reservations by Pakistan. In early 2011, the status of Pakistan in the WTO and its trade agreements was up for review by the European Union, of which the
main objecting parties to its reservations are members, so the country had an extra incentive to appear West-friendly and cooperative with international conventions.\textsuperscript{155}

\textit{Conclusion}

While economic liberalization has been observed in Tunisia, Egypt, Algeria, Jordan, Morocco, and Pakistan, along with the stabilization of internal politics in the interest of opening up these nations to foreign trade, these trends have not been observed in the countries that have not, at this time, withdrawn their reservations: Libya, Mauritania, Yemen, Maldives, Syria, and Afghanistan.

Afghanistan has been plagued by civil war and has been under frequent foreign occupation since the 1980s. Given the complete economic ruin in which the nation stands, hopes of economic liberalization are decades away; indeed, a coherent and functional economic system to liberalize does not yet exist. Its political situation has also not progressed. The country was in civil war from 1992 to 1996 and has since been plagued by constant foreign interventions. The fact that it is a failed state and has yet to have a stable government that has a monopoly on the rule of law and arms means it is quite far from any of the reforms that propelled the previously mentioned states into reform.

Libya is at the opposite extreme from Afghanistan. Muammar Gaddafi ruled Libya since 1967 up until early 2011, at which point the country erupted into a civil war from which it has just emerged. However, prior to this civil war it had a stable regime for four decades but it was an oppressive one. That is not to say it was without reform. The per capita income during the time of Gaddafi rose to the fifth highest in Africa. The literacy rate went up from 10% to 90% and life expectancy rose from 55 to 77 years.\textsuperscript{156} A welfare system was introduced that allowed access to free education and free healthcare. These changes propelled Libya to ratify CEDAW, ICCPR and CRC; however, the regime type did not change at any point. The level of political competition and autocracy remained almost entirely stagnant. There was no increase in economic relations with nations outside of Africa.

Mauritania, despite a constitutional ban, still engages in the practice of slavery. Syria and Libya use international forums as their playground for stock rhetoric such as proclamations against the State of Israel in completely inappropriate situations, such as their reservations to Convention on the Rights of the Child. The declarations regarding Israel do not concern any basic rights but it does illustrate the political approach that these countries have taken to the human rights regime.

Yemen, has not had a shift in its level of autocracy in over three decades: both it and the Maldives have stagnated at -8. The Maldives selected

a foreign minister who had not made the effort to become versed in the Vienna Convention on the Law of Treaties prior to submitting a reservation, as made evident in its attempt to submit a reservation twenty years after ratifying CEDAW even though they are only allowed to do so at the time of ratification. The Maldives, Yemen, and Syria are struggling with recent waves of protests that call for a respect of the citizens’ human rights. They have become isolationist economically when it comes to Western powers and politically have violently stopped any forms of domestic social and political reform. The most recent Nobel Peace Prize Winner is a conservative Muslim woman from Yemen who has campaigned for the rights of women in the Islamic world. These are all factors that point to the role of repressive governments, and not some fundamental shortcomings of Islam or the cultures that espouse its supposed rejection of human rights.

Elites in power in these states have used Shari’ā as a way to mask the expansion of their margin of power. However, it is important to remember that Shari’ā, as I explained in Chapter Four, is the human interpretation of divine revelation and is not itself divine in nature. Although it is derived from the Qur’an and Sunna, it was constructed by Muslim jurists. Governments and despots have chosen to cover up their human rights abuses by using religion as an excuse. These two concepts are not mutually exclusive; in fact, Islam supports the preservation of rights and it is derogatory to Islam itself for Shari’ā to be used as an excuse for human abuse.
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Note: EP stands for Economic Policy, PC for People's Congress, RNP for Revolutionary People's Party, LD/A for Loya Jirga/Assembly, SM for Social Movements, AI/FP for Anti-Imperialist Front, CL for Civil Leaders, RF for Religious Leaders, and PTS/H1 for Political Threats/Human Rights.
CONCLUSION

When I first began my research on this topic, I completely misunderstood Islam and its engagement with human rights discourse. My initial intent in early September 2011 was to analyze the extent to which human rights conventions discriminated against non-Western, particularly Islamic states. My purpose was to discover whether it would be possible to formulate a conception of human rights in a way that was not subject to cultural variability, thereby engaging the nations of this world in effective human rights discourse. However, the more research I did, the more I found out how wrong I was about all of my assumptions, especially the most fundamental ones.

I had initially thought that reservations by states were indicators of articles in human rights treaties that were inconsistent with the practices of certain cultures. But after reading those articles thoroughly, I realized that these articles enshrined fundamental rights concerning human life and dignity, rights that are not up for compromise, no matter the claims a culture makes. “How can these fundamental basic rights be negotiable?” I thought. That led me to develop a theory of basic or human rights, drawing on the work of John Rawls, which is presented in Chapter One. In Rawls’s account, for a society to be well organized it must be based upon a system of justice. A well-organized society is a cooperative society, one in which people play their roles because they accept them as fair or just. In such a society all the members agree on a conception of justice. In this model of justice rights are determined
by the roles that individuals occupy in society. Thus, even in non-liberal societies, individuals have basic rights, though these rights do not encompass the full panoply of rights that Western states purport to espouse.

This brought me to one of the fundamental questions that has guided this thesis: did Islam really endorse the abuse of these basic rights? If so, how could it justify such an endorsement? But if Islam does not endorse the violation of basic rights, how can we explain the reservations Muslim states make to basic human rights? What was motivating these governments to submit these reservations and why were they masking them behind Islam? After further research I found that Islam does not support or protect the abuse of basic human rights. What has allowed Islamic states to successfully misrepresent _Shari’a_ law is at least in part the limited understanding of Islam that exists outside of Muslim communities, whose representations of Islam are often caricatures of reality. Even within Islam there is a significant degree of misunderstanding of the history and meaning of _Shari’a_.

The legacy of colonialism is largely to blame for the misconceptions that surround _Shari’a_. It destroyed the Islamic schools that had for centuries helped Muslim communities understand and function within Islam and _Shari’a_. These findings led to two questions: first, how to show that what is guiding this behavior is not Islamic doctrine and second, to determine what, if not Islam, is influencing reservation behavior. These questions led to the development of my hypothesis, that political and economic factors motivate reservation behavior.
As described in Chapter Three and Four, Shari’a law does not justify violations of basic human rights. To show that Islamic doctrine does not explain why Muslim countries enter reservations against basic human rights provisions, I compiled all of the reservations submitted and analyzed them for any doctrinal consistency. I based my analysis on the role of Shari’a in Islam generally, states’ self-proclaimed status as an Islamic state or that Islam is the state religion, and even their madhhab affiliations, which is to say their acceptance of a particular school of Islamic law and legal interpretation (Madhhab are Islamic schools of jurisprudence and each country is associated with a distinct form of Shari’a law). The results of this study are reported in Chapter Three and Table 3.1, which show that a religiously-rooted causation cannot explain reservations because all states adhering to a state religion of Islam, or even particular schools of Islam, do not enter similar reservations to the same articles in human rights treaties. This consistency should be expected because if each madhhab is associated with a specific conception of Shari’a law then every country that is a part of that madhhab should have an almost identical approach to Islamic law. This is obviously not the case, at least not when it comes to basic human rights.

In Chapter Four I show that there is nothing surprising in this finding, since Shari’a is not a single body of doctrines or precepts that all competent interpreters must accept. Indeed, according to past and present Islamic scholars, a basic human rights account can be derived from Islamic religious discourse. This is not only evident in past scholarly interpretations of the Qur’an but within the Qur’an itself. There are verses that grant equality of
men and women along with the freedom of conscience and region. By
destroying madrasas, imperialist powers insured the schools, which analyzed
and preserved Islamic laws were destabilized and with them, so were Muslim
communities. It is difficult to lay all the blame for misunderstanding the
construction of Shari’ā on individuals such as Sayyid Qutb and Abul Ala
Mawdudi. When they rebuilt Shari’ā mid-20th century they used direct
excerpts from the Qur’an to compile a comprehensive Islamic legal system.
This ignored many other principles of interpretation involved, which, have
been thoroughly discussed in Chapter Four. These two figures are part of a
much larger group of scholars who desperately tried to re-establish Islam and
its significance in Muslim communities after the withdrawal of colonialist
powers. However, in this process they introduced a faulty system for deriving
Shari’ā that is at the heart of the abuses that exist today.

The new system that Qutb, Mawdudi, and Tabandeh introduced is
based on a pick-and-choose system of verses within the Qur’an. It does not
approach the Qur’an holistically. By picking one verse while completely
ignoring another which might influence it, and not being forced by tradition
to take into account community consensus, parallel use of the verse in the
Sunna and Hadith, thoughts of past scholars on the matter, and other
accepted means of interpretations, nations have devised an arbitrary legal
systems that they call Shari’ā law. These arbitrary legal systems allow elites in
power to hide their human rights abuse behind a veil of cultural relativism. As
the West itself has paralyzed itself with concerns over Orientalist
representations, Islamic states have been able to play into misconceptions
about themselves to shield elites from criticism and deflect any attacks
directed at them and their repressive governments.

Since Shari’a law is not the primary justifying factor, as my hypothesis
predicted, then there must be other factors influencing reservation
submission and withdrawal. The analysis of this question is found in the fifth
Chapter and it is what differentiates this thesis from the literature on the
topic. I compiled data on a variety of factors for five years prior to the
submission of a reservation and five years prior to its withdrawal. I tracked
these variables to see if there were any shifts that consistently coincided with
reservation shifts.

Though there were many variables reviewed, it would be most useful to
review the findings by grouping them into the following three categories:
internal democratization/regime change, internal regime
consolidation/liberalization, and economic liberalization. The first is
epitomized by nations like Tunisia, which experienced regime overhaul. The
new regime is less repressive and more representative of the public’s needs
than the previously abusive one. The next trend that the data illustrates is
internal regime consolidation/liberalization as a factor that influences
reservation behavior. This phenomenon concerns itself not with matters of
regime change, as was the case in Tunisia, but the same elites strengthening
their power base and securing their position through liberal reforms as a way
of pacifying public discontent. Countries such as Jordan and Egypt have
experienced this most prominently. Economic factors reign much more
prominently in countries like Algeria. In these states, an increase in engagement with foreign states (often, treaties) motivates nations to withdraw their reservations. It is often promises of tariff-free imports and exports from the European Union and the United States that cause nations to engage in economic liberalization.

There are, of course, states that do not neatly fit either one of these phenomena but rather, overlap several. Morocco signed a trade agreement with the United States and held talks with the European Union that promised the possibility of furthering economic prosperity and cooperation through trade. This was supplemented with a backdrop of constant low-level regime liberalization as the monarchy tried to introduce amendments into the constitution that increased political competition. Withdrawing reservations made Morocco appear more Western friendly politically, which opened up doors to economic foreign trade.

Nations that did not withdraw reservations did not experience of these factors to a significant extent, nations such as Libya, Mauritania, Yemen, Maldives, Syria, and Afghanistan. Libya was mired under a dictatorship. Though it experienced some significant economic growth, this was exclusively internal and a matter of reallocation resource management, rather than reflective of growing trade relationships with the West. Mauritania and Yemen, along with the Maldives and Syria still suffer from repressive regimes that will not succumb to any external economic or political pressure to stop human rights abuses. Syrian President Bashar al-Assad has been massacring
his own people for over a year and refuses to relinquish power. If his concern were to politically reflect the will of the people, as the government claimed the reservations to human rights conventions were doing, then the slaughter would have stopped long ago.

The greater purpose of this thesis was not to simply suggest that elites have politicized Islam as a way of protecting their own repressive behavior. Rather, the idea that underpinned this thesis was to battle misrepresentation of Islam in an effort to increase dialogue between cultures. By demonstrating that, though cultures might be unique, the fundamental needs (and thus rights) of human beings are not, I hope to contribute to discourse that seeks to break down barriers that contribute to and protect human rights abuses. It is not Islam that cannot allow human rights, but petty tyrants.

Conceptions of cultural relativism espoused by the likes of Bernard Lewis and Samuel P. Huntington have allowed human rights abuses to be masked with Islam. Lewis, in a 1990 article published in the *Atlantic Monthly* comments on the “mood of hatred and violence” that is “dominating Muslims” by setting up an us versus them mentality.1 He states in his article titled “The Roots of Muslim Rage”, “…we are facing a mood and a movement far transcending the level of issues and policies and the governments that pursue them. This is no less than a clash of civilizations—the perhaps

irrational...reaction of an ancient rival against our Judeo-Christian heritage, our secular present...” This clash of civilizations rhetoric implies that Muslim communities are drastically different from any that we know, seeking to destabilize Judeo-Christian societies, a culture so alien that it is impossible to relate to them on any significant level. It is this sort of language that has led to the gross and dangerous misunderstandings of other cultures that exist today. The public is quick to accept stock stereotypes, especially when they are proposed by scholars, individuals that we expect to be above this sort of rhetoric. The clash of civilizations concept leaves no room for humanizing the other. Huntington’s and Lewis’s ideas imply a drastic difference between the West and the rest of the world, and leave no expectation for the respect of human rights.

According to Huntington, emerging nations, to reach progress, must rebuild themselves in Western terms to reach modernity. These assumptions of one continuum of modernity and one form of being “civilized” have deformed understandings both of our own and of other societies. The West is not as civilized as it would like itself to believe. Western states submit more reservations to human rights conventions than most Islamic states. The United States continues to punish people with the death penalty, a core violation of an individual’s right to life. And yet, Western news coverage continues to emphasize the barbarism of hanging criminals in Iran. How does execution by way of lethal injection demonstrate superior moral reasoning? The purpose of this thesis was to illustrate that human rights are not abused
by cultures or religions. Human rights are abused by government elites who are willing to trade their humanity, for political power.
APPENDIX A

CEDAW

Article 2
States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: Constitution, legislation, , sanctions, legal protection,

Article 5
States Parties shall take all appropriate measures:
(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6
States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

Article 9
1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

Article 11
1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
   (a) The right to work as an inalienable right of all human beings;
(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

Article 16
1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
   (a) The same right to enter into marriage;
   (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
   (c) The same rights and responsibilities during marriage and at its dissolution;
   (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
   (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
   (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
   (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
   (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.²

APPENDIX B
CRC ³

Article 2
1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.

Article 6
1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 9
1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child’s place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family

with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

**Article 11**

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

**Article 19**

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

**Article 20**

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

**Article 22**

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other
international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;
(b) The exploitative use of children in prostitution or other unlawful sexual practices;
(c) The exploitative use of children in pornographic performances and materials.

Article 37
States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38
1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavor to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 40
1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's
sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
   (i) To be presumed innocent until proven guilty according to law;
   (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
   (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
   (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
   (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
   (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
   (vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence. 4

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APPENDIX C
ICCPR

**Article 2**

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:
   (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
   (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
   (c) To ensure that the competent authorities shall enforce such remedies when granted.

**Article 6**

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

5 Cohen, 190
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8
1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.

Article 11
No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.

Article 15
1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.
2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16
Everyone shall have the right to recognition everywhere as a person before the law.
APPENDIX D
Vienna Convention on the Law of Treaties

Article 20
Acceptance of and objection to reservations
1. A reservation expressly authorized by a treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.

2. When it appears from the limited number of the negotiating States and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.

4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:
   (a) acceptance by another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those States;
   (b) an objection by another contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State;
   (c) an act expressing a State’s consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.

5. For the purposes of paragraphs 2 and 4 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

Article 21
Legal effects of reservations and of objections to reservations
1. A reservation established with regard to another party in accordance with articles 19, 20 and 23:
   (a) modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and (b) modifies those provisions to the same extent for that other party in its relations with the reserving State.
2. The reservation does not modify the provisions of the treaty for the other parties to the treaty inter se.

3. When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation related do not apply as between the two States to the extent of the reservation.  

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