

"Ijtihad" and 'Relevance of Sharia' to Contextualize Universal Human Rights Discourse

Post-print version of the following publication: | Versione post-print della seguente pubblicazione:

Original Citation/Citazione:

Corrao, Francesca Maria. (2013). "Ijtihad" and 'Relevance of Sharia' to Contextualize Universal Human Rights Discourse. GLOBAL POLICY, (ISSN: 1758-5899), 4:4, 409-410. Doi: 10.1111/1758-5899.12094.

Availability/Disponibilità:

This version is available at: [11385/95393](https://iris.luiss.it/handle/11385/95393) since: 2017-12-06T17:11:28Z - Questa versione è disponibile alla pagina: [11385/95393](https://iris.luiss.it/handle/11385/95393) dal: 2017-12-06T17:11:28Z

Publisher/Casa editrice:

University of Durham John Wiley & Sons Ltd

Published version/Pubblicato:

DOI: <https://dx.doi.org/10.1111/1758-5899.12094>

License/Licenza:

Tutti i diritti riservati

Availability/Termini d'uso:

The terms and conditions for the reuse of this version of the manuscript are specified in the publishing policy. Works made available under a Creative Commons license can be used according to the terms and conditions of said license. For all terms of use and more information see the publisher's website. | I termini e le condizioni relativi al riutilizzo della presente versione della pubblicazione sono disciplinati dalla politica editoriale. Le opere messe a disposizione con licenze Creative Commons possono essere utilizzate conformemente ai termini e alle condizioni previste da tali licenze. Per l'insieme delle condizioni di utilizzo e per ulteriori informazioni si rinvia al sito web dell'editore.

This item was downloaded from IRIS Luiss (<https://iris.luiss.it/>). When citing, please refer to the published version. | Questo documento è stato scaricato da IRIS Luiss (<https://iris.luiss.it/>). Per la citazione, fare riferimento alla versione pubblicata sul sito dell'editore.

(Article begins on next page | Il contributo inizia nella pagina successiva)

'Ijtihad' and 'Relevance of Sharia' to Contextualize Universal Human Rights Discourse

Francesca M. Corrao

LUISS 'Guido Carli', Libera Università Internazionale degli Studi Sociali, Rome

Special Section Article

A response to 'Human Rights, Universality and Sovereignty: the Irrelevance and Relevance of Sharia' (Abdulah An-Na'im*)

This article provides a useful paradigm to re-conceptualize the debate on global justice in terms of a dialogue between a universal notion of human rights and the particularity of Islamic societies. It shows that Sharia can be adapted to modern societies, but also that, because Muslims comply with a distinct source of moral justification and plural sources of legality, this process can be accepted by part of the Islamic community and refused by another – or even rejected by one and the same community.

As the author suggests, Sharia norms reflect an ongoing process of interpretation of the Quran, which started in the 8th and 9th centuries CE. Scholars developed a methodology (*usul al-fiqh*) for the classification of sources and the derivation of specific rules from general principles that did not change the basic structure of Sharia for 1000 years. Some aspects of the historical Sharia can therefore be reconsidered through the application of a similar process of interpersonal, unofficial reinterpretation, which is *human* and not sacred, of its norms in the light of modernity. This clearly applies to those social and political aspects of Sharia (*muamalat*) that can change over time, without questioning matters of faith (*aqida*) and worship practices (*ibadat*).

A first consideration concerns the role of the state and the relationship between Sharia norms and state authority. An-Na'im argues that the application of Sharia norms in the settlement of disputes was voluntary and community-based, in a context where Sharia norms and state regulations were relatively independent of each other. However, I would recall that Sharia was interpreted and applied by independent scholars, in an age when states did not comply with the model of a modern nation state as they are today. Furthermore, in the 20th century

Muhammad 'Abdu emphasized the necessity to open the gate to '*ijtihad*', promoting a process of reform and reinterpretation of Sharia in the light of modernity. Among his several reforms, he promoted the creation of the first modern bank in the Islamic world, which allowed and regulated interest charges on loans (forbidden by the Quran) in such a way as to manage not to create a strong opposition.

In spite of this promising theoretical background, the acceptance and implementation of the human rights regime in Islamic societies is still controversial. One major issue in both the conceptualization and the practice of human rights in Islamic countries is surely related to the tension between the alleged universal validity of these standards and the limits of internal state sovereignty. For the author this paradox may be avoided by educating people to adhere to human rights values from within their tradition. He proposes to reframe the notion of universality into a more fluid and dynamic conception that incorporates the 'contextual' and 'particular' even while accepting the moral universal validity of these rights.

The author proposes a peculiar strategy to reconcile or 'mediate' between the context and the universal, which configures a possible role of Sharia in the public discourse on legal norms. Sharia can be 'irrelevant' to this process when a specific Sharia norm is implemented by the state as a legal obligation that is valid for all within the state boundaries. Sharia norms enforced by the state cease in fact to be religious in nature. On the other hand, he argues that Sharia is 'relevant' because it 'influence(s) the legitimacy and practical efficacy of the protection and implementation of human rights norms in Islamic societies and communities'. This perspective shows that the religious doctrine can indeed change, as it did under the Ottoman Empire and during the Nahda in the 20th century. Similarly, I believe that some elements can be improved according to the urgency of a global and inclusive framework of justice. The problem remains how to develop a democratic debate between the supporters of this possibility and its opponents, who consider Sharia as a 'divine and eternal' doctrine.

*An-Na'im, A. (2013) 'Human Rights, Universality and Sovereignty: the Irrelevance and Relevance of Sharia', *Global Policy*, Vol. X, No. X, pp. xx–xxx. DOI: XXXXXXXXXXXXX

As the authors suggests, both the doctrine and ethos of early Muslim scholars can offer grounds for an encounter between human rights and the Islamic normative system. However, human rights' overall acceptance in Islamic societies requires a further effort in terms of the cooperation of external and internal activists. Islamic societies have increasingly shown an ambivalent attitude towards the conceptualization and practice of the human rights regime as emerged in the aftermath of the Second World War. A comparison of the charter of the Organization of the Islamic Conference (OIC) and the charter of the Arab Center for International Humanitarian Law (ACIHL) can illustrate such ambivalences. While the former refuses some of the principles of the UN Universal Declaration of Human Rights (UDHR), the latter replicates most

of them. In particular, although the ACIHL charter incorporates principles like gender equality and the right to form trade unions, the OIC charter prohibits these principles in the name of Sharia. According to this document, the right to form trade unions is presupposing an idea of class struggle that reflects a conflicting understanding of social interactions (*fitna*), which contrasts the Islamic principle of harmony within community. The same occurs with reference to gender equality, which is perceived as contrary to the principle of male guardianship over women (*qawama*). These ambivalences call for an approach to human rights debate that is more sensitive to the social and cultural particularities but firmly grounded in the respect of the normative content of human rights standards.

Author Query Form

Journal: GPOL
Article: 12094

Dear Author,

During the copy-editing of your paper, the following queries arose. Please respond to these by marking up your proofs with the necessary changes/additions. Please write your answers on the query sheet if there is insufficient space on the page proofs. Please write clearly and follow the conventions shown on the attached corrections sheet. If returning the proof by fax do not write too close to the paper's edge. Please remember that illegible mark-ups may delay publication.

Many thanks for your assistance.

Query reference	Query	Remarks
1	WILEY: Please add the volume/issue numbers, page number and DOI to the footnote.	
2	Author: Othman Empire has been changed to Ottoman Empire. Is this ok?	

MARKED PROOF

Please correct and return this set

Please use the proof correction marks shown below for all alterations and corrections. If you wish to return your proof by fax you should ensure that all amendments are written clearly in dark ink and are made well within the page margins.

<i>Instruction to printer</i>	<i>Textual mark</i>	<i>Marginal mark</i>
Leave unchanged	... under matter to remain	Ⓟ
Insert in text the matter indicated in the margin	⋏	New matter followed by ⋏ or ⋏ [Ⓢ]
Delete	/ through single character, rule or underline or ⌞ through all characters to be deleted	Ⓞ or Ⓞ [Ⓢ]
Substitute character or substitute part of one or more word(s)	/ through letter or ⌞ through characters	new character / or new characters /
Change to italics	— under matter to be changed	↙
Change to capitals	≡ under matter to be changed	≡
Change to small capitals	≡ under matter to be changed	≡
Change to bold type	~ under matter to be changed	~
Change to bold italic	≈ under matter to be changed	≈
Change to lower case	Encircle matter to be changed	≡
Change italic to upright type	(As above)	⋈
Change bold to non-bold type	(As above)	⋈
Insert 'superior' character	/ through character or ⋏ where required	Y or Y under character e.g. Y or Y
Insert 'inferior' character	(As above)	⋏ over character e.g. ⋏
Insert full stop	(As above)	⊙
Insert comma	(As above)	,
Insert single quotation marks	(As above)	Y or Y and/or Y or Y
Insert double quotation marks	(As above)	Y or Y and/or Y or Y
Insert hyphen	(As above)	⌞
Start new paragraph	⌞	⌞
No new paragraph	⌞	⌞
Transpose	⌞	⌞
Close up	linking ○ characters	○
Insert or substitute space between characters or words	/ through character or ⋏ where required	Y
Reduce space between characters or words		↑