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## Some Impediments to the Rule of Law in the Middle East and Beyond

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# Some Impediments to the Rule of Law in the Middle East and Beyond

Muhamad Mugarby

## **Abstract**

The geographic area that this Essay attempts to explore is the one generally known as “the Middle East” and includes the Levant, plus Arabia, Iran, and Pakistan, and is herein referred to as “the Region.” The Levant runs roughly from Egypt in the West to Iraq in the East. The Region is embedded in a wider area that runs from Morocco to India and even Bangladesh. This broad area will be referred to as “the Broad Region.” The main thrust is on the Region, but with frequent references to the Broad Region. All the countries of the Broad Region have something in common: the demise of democracy and the rapid decline of the rule of law. Undeniably, there are many exceptions, such as India. On further examination it is not difficult to establish that certain impediments to the rule of law, and thus, to democracy, are, to a lesser or greater extent, commonly shared among the countries and the peoples of the Region as well as the Broad Region. To be more precise, the rule of law and democracy, according to the Western tradition, were never fully realized in these areas. This Essay presents some of the reasons why.

# SOME IMPEDIMENTS TO THE RULE OF LAW IN THE MIDDLE EAST AND BEYOND

*Muhamad Muqraby\**

## INTRODUCTION

The concept of the rule of law has become one of the foundations of modern government. It signifies that government exists and functions under, and in accordance with, the law. The chief purpose is to put a limit on the free exercise of State power and to prevent its abuse.

The Preamble of the Universal Declaration of Human Rights ("UDHR") recognizes the rule of law as the main source of protection for human rights: "Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."<sup>1</sup>

In democracies, the rule of law is essential for safeguarding the ability and right of citizens to participate in the process of government. It provides security from and against unlawful interference by the government such as arbitrary arrest, curtailment of free speech and freedom of association, and similar abuses. Through such protection, the rule of law secures for the community the conditions that enable an individual to develop into a responsible person. Without the rule of law, there is little or no possibility for a defense by the individual against the power of the State. Hence, the accent of the rule of law, like human rights, is on the individual.<sup>2</sup> Thus, the rule of law is also about equality before the law and equal protection under the law. Article 7 of the UDHR states: "All are equal before the law and are entitled without any discrimination to equal protection of the

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1. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, pbml. (Dec. 10, 1948) [hereinafter UDHR].

2. See WOLFGANG FRIEDMAN, *LEGAL THEORY* 546 (4th ed. 1960); see also WOLFGANG FRIEDMAN, *LAW IN A CHANGING SOCIETY* 375, 384 (abridged ed. 1964).

law.”<sup>3</sup>

The aim is not to ensure that individuals are made equal, but to ensure equal treatment for them under the law. This means equal recognition, equal respect, equal rights, but mostly, equal opportunities. Each individual is entitled to his or her own personal merits in order to be free to be different from other individuals without fear of penalty or repression. It requires no exercise of freedom to be a conformist. Liberty is needed most by thinkers, dissenters, innovators, and reformists who have something to contribute, which may often run in opposition to generally accepted ideas or norms at the time. Without them, and without the room for innovation that the rule of law assures them, the community falls into stagnation and eventual decay.

The geographic area that this Essay attempts to explore is the one generally known as “the Middle East” and includes the *Levant*,<sup>4</sup> plus Arabia, Iran, and Pakistan, and is herein referred to as “the Region.” The *Levant* runs roughly from Egypt in the West to Iraq in the East. The Region is embedded in a wider area that runs from Morocco to India and even Bangladesh. This broad area will be referred to as “the Broad Region.” The main thrust is on the Region, but with frequent references to the Broad Region.

All the countries of the Broad Region have something in common: the demise of democracy and the rapid decline of the rule of law.<sup>5</sup> Undeniably, there are many exceptions, such as India. On further examination it is not difficult to establish that certain impediments to the rule of law, and thus, to democracy,

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3. UDHR, *supra* n.1, art. 7.

4. The term “*Levant*” was coined by French Orientalists and is widely used in Europe and the Middle East. It is roughly the equivalent of the English term “Near East.”

5. Nine of these countries are ruled by former military officers with a rubber-stamp “Parliament.” Seven are ruled by monarchs or princes with similar authority and mostly without the rubber-stamp “Parliament.” Two, Iran and Saudi Arabia, are openly theocratic. Two, Pakistan and Iran, have Islam as part of the name of the State. The flag of one, Saudi Arabia, consists of the Islamic testimony to the Unity of God and mission of His Apostle Muhammad. Rulers are mostly for life, unless earlier deposed by force or assassinated. International human rights organizations, such as Amnesty International, Human Rights Watch, and Federation Internationale des Ligues des Droits de L’Homme (“FIDH”), as well as the United States Department of State in its annual human rights report, have extensively reported on and provided evidence for, extensive cases and practices evidencing the persistent violation of democracy and the rule of law in the Region and the Broad Region.

are, to a lesser or greater extent, commonly shared among the countries and the peoples of the Region as well as the Broad Region. To be more precise, the rule of law and democracy, according to the Western tradition, were never fully realized in these areas. This Essay presents some of the reasons why.

### I. CONFLICT OF SOVEREIGNTIES

“Sovereignty” is generally defined as the supreme authority over a certain territory. The classical interpretation of sovereignty asserts the existence of a number of characteristics, such as internal and external independence, and personal supremacy, both over lands and persons. In the words of one authority:

Sovereignty is independence. It is *external* independence with regard to the liberty of action outside its borders in the intercourse with other [S]tates which a [S]tate enjoys. It is *internal* independence with regard to the liberty of action of a [S]tate inside its borders. As comprising the power of a [S]tate to exercise supreme authority over all persons and things within its territory, sovereignty is *territorial* supremacy (*dominium, territorial sovereignty*). As comprising the power of a [S]tate to exercise supreme authority over its citizens at home and abroad, sovereignty is *personal* supremacy (*imperium, political sovereignty*).<sup>6</sup>

The sovereign conflicts we are concerned with are not necessarily external or international in nature, such as those between the sovereignties of neighboring countries, although there are many. They are *related to* internal sovereignty. Every country in the Region has its national sovereignty violated internally through conflict with other forms of internal sovereignty, which constitute strong quasi-sovereignties. This conflict is the first and the most powerful impediment to the rise of the rule of law. It strongly manifests that, in the Region, a Nation is not really one Nation of equal citizens but rather, an accumulation of various co-existing *de facto* entities without geographic boundaries, such as those found in federations or confederations.

The primary cause for this state of affairs is that God is supreme, and to a large extent the highest sovereign authority in the Region. He speaks through the Holy Scriptures and the holy

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6. 1 L. OPPENHEIM, INTERNATIONAL LAW: A TREATISE 286 (H. Lauterpacht ed., 8th ed., 1963) (on file with author) (emphasis added).

men. This belief is strongly shared by most adherents of the Region's major religions including Islam, Christianity, and Judaism.<sup>7</sup>

One inquisitive legal practitioner in a country of the *Levant* recently searched for authority for the rule that in intestate inheritance, a daughter receives only half the share of a son.<sup>8</sup> Surprisingly, he could find no authority other than a verse in the Qu'ran.<sup>9</sup>

Islam recognizes the Qu'ran as the word of God and the last enactment of God.<sup>10</sup> Furthermore, Muslims share with Christians and Jews the belief that the Torah is equally the word of God.<sup>11</sup> While the law given by God under Islam is chiefly based on the Qu'ran, God's law under Judaism commences with the Ten Commandments, follows with the Torah, and is elaborated in the 613 Commandments of the Pentateuch and the codifica-

7. See KAREN ARMSTRONG, *A HISTORY OF GOD* 5-8 (1999).

8. The practitioner is none but the author at his Beirut law offices.

9. The Qu'ran, Sura IV, Verse 11: "God (thus) directs you as regards your Children's (Inheritance): to the male a portion equal to that of two females . . ." English translation of the Qu'ran by I ABDULLAH YUSUF ALI, *THE MEANING OF THE HOLY QUR'AN* 181 (3rd ed., 1938) (on file with author). The translation is also available at <http://www.uah.edu/msa/quranYusufali.html>. It is interesting to note that the Christian Maronite Church had inheritance rules that absolutely disinherited females. The Ottoman government interfered in the 1820s and, by way of reform, subjected Maronites to the Sunni Islamic law of inheritance that gives females half the share of what was given to a male. This caused major protest and could have been among the causes of the subsequent civil strife of the 1860s in Lebanon. See Hanna Alwan, *Il Diritto Civile Maronite Tra Il Diritto Romano E Il Diritto Musulmano*, in *IL DIRITTO ROMANO-CANONICO QUALE DIRITTO PROPRIO DELLE COMUNITA CRISTIANE DELL'ORIENTE MEDITERRANEO* 597-98 (Imprimeria Editrice Vaticana, Vatican City, 1994) (author's trans.) (on file with author).

10. This is one of the basic Islamic beliefs. See ALI, *supra* n.9, at 314. For example, the Qu'ran, Sura VI, Verse 92 states: "And this is a book which We have sent down, bringing blessings, and confirming (the revelations) which came before it . . . [t]hose who believe in the hereafter believe in this (Book). . . ." *Id.* Each time the Qu'ran is recited, Muslims start by saying: "In the name of God, the Most Gracious, the most merciful . . ." This is the recognition that what follows are the words of God.

11. See *id.* at 122. For example, the Qu'ran, Sura III, Verse 3 states: "It is He Who sent down . . . the Law (of Moses) and the Gospel (of Jesus) . . ." *Id.* The Qu'ran frequently makes reference to the scriptures of Abraham and Moses as the earliest revelation of God's words. Abraham is hailed by the Qu'ran as the first believer and the first Muslim. The Qu'ran recognizes Moses as one of the greatest prophets of God. See also EXODUS 20:1 (King James) ("And God spake all these words, saying, I am the Lord, thy God, which have brought thee out of land of Egypt, out of the house of bondage . . ."); DEUTERONOMY 31:24 (King James) ("And it came to pass, when Moses has made an end of writing the words of this law in a book, until they were finished . . .").

tion of the Talmud.<sup>12</sup> Islam also recognizes the Talmud as the word of God.<sup>13</sup> Hence, God is the supreme legislator through His supreme and unchallenged sovereignty. In the words of Bernard Lewis: "God is the true sovereign of the community, the ultimate source of authority, the sole source of legislation."<sup>14</sup>

At this point it is useful to distinguish between Western and Eastern religions. The Roman Catholic Church and the Protestant churches of various denominations chiefly represent the Western religions. Eastern religions include more than twenty Eastern-rite Christian churches, Islam in its various sects, and Judaism of different groups. The main difference between the two groups relevant to these comments is that the Western religions agree with the doctrine of separation of church and State, while the Eastern religions do not. This explains why God continues to be regarded in the Region as the highest sovereign in every sense of the word, both religiously and temporally.

Each of the Eastern religions interprets and applies God's sovereignty independently. In fact, each church and religious institution deems itself quasi-sovereign and derives its sovereignty from God. This sovereignty claim is old and can be dated to the Roman Empire and other ancient kingdoms where various religions were allowed the right of self-administration with strong authority over their parishes.<sup>15</sup> Hence, the adoption of the Roman Catholic faith as the religion of the Roman Empire led to schism and dissent within the numerous churches. The rise of Islam in the Region ended the schism, as churches and

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12. ARMSTRONG, *supra* n.7, at 79; *see also* JACOB NEUSNER ET AL., JUDAISM AND ISLAM IN PRACTICE: A SOURCEBOOK vii-ix (2000).

13. *See, e.g.*, ALI, *supra* n.9 (citing Qu'ran, Sura V, Verse 68, which states: "O People of the Book! ye have no ground to stand upon unless ye stand fast by the Law, the Gospel, and all the revelation that has come to you from your Lord.").

14. BERNARD LEWIS, WHAT WENT WRONG 113 (2002).

15. Upon the Arab Conquest, several conventions were entered into between the Islamic Caliphs and the leaders of Christian churches assuring their religious freedom and autonomy in applying Christian religious laws. Nineteen such conventions were reported under the Ummayyad and Abbaside Caliphates. The Ottomans inherited and upheld these conventions. Each church leader represented his own church before the Ottoman Sultan. *See generally* Gian Luigi Falchi, *Il Diritto Romano-Canonico Nell'Esperienza Giuridica Delle Comunita Cristiane Delle'Oriente Mediterraneo*, in *IL DIRITTO ROMANO-CANONICO QUALE DIRITTO PROPRIO DELLE COMUNITA CRISTIANE DELL'ORIENTE MEDITERRANEO* *supra* n.9, at 1-72; *see also* ATHANAS HAGE, LES EMPECHEMENTS DE MARIAGE EN DROIT CANONIQUE ORIENTAL 21-37 (1954) (author's trans.); YUSUF NAHRA, FAMILY LAW OF ALL RELIGIOUS COMMUNITIES IN LEBANON 16-27 (1986) (author's trans.).

similar religious communities were once more given the right of self-administration under the protection of the Islamic Caliphs or Sultans.<sup>16</sup> Presently, they all continue to enjoy this privilege. When new Nation States emerged in the Region during the twentieth century and after the collapse of imperialism, the privilege became a form of internal sovereignty that rivaled that of the State.

There are two ways by which religious sovereignty is manifested: in the constitution and in customary practice, with or without a specific statutory authority. For example, Article 3 of the Syrian Constitution makes Islamic jurisprudence the main source of law.<sup>17</sup>

Where the constitution makes no such reference, such as in Lebanon, internal law recognizes nineteen self-administered, independent religious communities, with the power to apply their own personal and family law and to run their own courts outside the framework of the national judiciary.<sup>18</sup> Acts of the self-administered authorities are mostly not subject to review by courts of law or overview by the government. The highest State courts cannot review rulings of religious courts unless they exceed the boundaries of their personal and subject-matter jurisdiction.

Throughout the Region, laws of inheritance are a mosaic of monstrous proportions. Islamic law of inheritance is applied to Muslims throughout the Region.<sup>19</sup> The Islamic Sunni rules apply only to Sunnis, as the Muslim Shiites have their own variations of these rules.<sup>20</sup> Jews are subject to their own inheritance

16. YOUSSEF COURBAGE & PHILIPPE FARGUES, *CHRISTIANS AND JEWS UNDER ISLAM* 3 (1998).

17. SYRIA CONST., art. 3 (1973). Text is available at <http://www.mideastinfo.com/>.

18. In Lebanon, the regime of autonomous religious communities was reconfirmed by Decree No. 60 of the French High Commissioner (while France had a mandate over Lebanon from the League of Nations), followed, after independence, by the Law of April 2, 1951.

19. The Islamic law of inheritance is mostly based on the text of the Qu'ran and elaborated by the tradition of the Prophet Muhammad and Islamic jurists.

20. The differences are matters of interpretation of the Qu'ran. For example, Shiite law allows daughters to inherit the whole of a father's estate while Sunni law allows certain distant male relatives from the father's side to take a sizeable share. Another example is that Shiites are permitted to will up to one third of their estate to statutory heirs, while the Sunnis do not permit that. See generally Mary F. Radford, *The Inheritance Rights of Women Under Jewish and Islamic Law*, 23 B.C. INT'L & COMP. L. REV. 135, 152 (2000).



laws.<sup>21</sup> Family law, including matters of marriage, divorce and child custody, is mostly religious law. Marriages outside the faith are a risky adventure that could end in disaster. This is all largely true even in officially secular India, but not in secular Turkey.

In Lebanon, the most secular country of the Region, although the most heavily encumbered by religious laws,<sup>22</sup> leaders of the officially recognized religious communities have formed an elite club with considerable political influence. Under the law establishing the constitutional court, called the "Constitutional Council," they are entitled to bring action to nullify any laws that invade their privileges.<sup>23</sup>

The autonomy and self-administration of churches has encouraged the rise of similar autonomous and privileged bodies for trade and professional organizations, such as the bar associations, which are modeled on the French *ordre* or order. The State and the national courts interfere little in the affairs of these bodies, which reserve the right to permit their members to practice their professions or vocations, to tax and discipline members, and to put them out of work if they do not conform or do as they are told. All of this has resulted in the consolidation of a caste system very similar to the Hindu model, which sometimes arises from religion, and other times from special franchise, but always results in privileges that normally go with sovereignty.

The impact of all this on the rule of law is obvious. Equality under the law or equal protection of the law is impossible. Individuals must conform or face the consequences. They have no

21. See generally MENECEM ELON ET AL., *JEWISH LAW (MISHPHAT IVRI): CASES AND MATERIALS* 37-40 (1999); see also Arye Edrei, *Halekhiic Responsibility of the Deceased: A Further Study of the Concept of Inheritance in Talmudic Thought*, 33 *ISR. L. REV.* 821, 822 (1999); Radford, *supra* n.20, at 160. In Lebanon, the Rabbinical Council of Beirut runs its own Family Court under two laws that the Council itself issued: Family Law for the Lebanese Jewish Community, a codification of Jewish law, and the Code of Court Procedure for the Jewish Community. Both laws were issued under the authority of the Law of April 2, 1951.

22. Nineteen autonomous religious communities are recognized by the State in Lebanon, the most recent of which was the Orthodox Coptic Church of Egypt. The Lebanese system mirrors, more or less, the status of the different religious communities in most countries neighboring Lebanon, near and far. The main difference is that there is no one community in Lebanon that enjoys a clear demographic plurality over all the remaining communities combined. See *supra* n.18.

23. See Law No. 250, of April 7, 1994, art. 19 (adopted pursuant to art. 19 of the *LEB. CONST.*, as amended) (author's trans.) (on file with author).

right of dissent or to be different in any significant way. They are enslaved to rules, which are either God-ordered or modeled on God's orders. When they become members of a religious community, which they generally do by birth, or by an order that they are forced to join to practice a trade or profession, very serious sanctions prevent them from changing their minds. These sanctions could be as severe as death in the event of renunciation, or be deemed renunciation of faith.<sup>24</sup>

Instead of being individuals of a Nation, bonded together by citizenship, they become subjects of sovereign or quasi-sovereign groups, which together comprise the Nation. They must look to the group, or the group's leadership, which is mostly undemocratic, for support and protection, and not to the rule of law under national sovereignty. Hence, the process of government is not open to them as individuals. When they are abused by their own alleged protectors, there is no one to come to their aid in the name of national sovereignty.

## II. *BUILT-IN INEQUALITY AND INTERNAL DISCRIMINATION*

Various forms of discrimination thrive in the Region and the Broad Region that make the rule of law difficult to recognize. The most damaging of these forms is the ironclad discrimination against women that is attributed to the will of God. It is an unpleasant fact that most women, though victims of this discrimination, hardly resist it because such resistance will be interpreted as a defiance of God. Women are not equal to men under family law and the laws of inheritance.<sup>25</sup> They have unequal opportunity in employment and in access to government. In Saudi Arabia and Iran, they are subject to a harsh dress code.<sup>26</sup> Saudi women may not drive a car or travel alone.<sup>27</sup>

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24. See 5 ABDEL RAHMAN HARIRI, *THE BOOK OF JURISPRUDENCE ACCORDING TO THE FOUR SCHOOLS* 422-23 (1932) (author's trans.) (on file with author). The renunciation of the faith could be open and explicit, or implicit through denying or doubting any of the beliefs or dogmas. Two qualified witnesses must testify to the fact. According to the unanimous opinion of recognized leaders of all schools of Islam, the penalty is death, but the culprit must first be offered the chance to repent.

25. See Adrien Katherine Wing, *Custom, Religion and Rights: The Future Legal Status of Palestinian Women*, 35 *HARV. INT'L L.J.* 149, 158 (1994); see also Radford, *supra* n.20, at 152; Marlise Simons, *Cry of Muslim Women for Equal Rights Is Rising*, *N.Y. TIMES*, Mar. 9, 1998, at A1.

26. See Ann Elizabeth Mayer, *A Benign Apartheid: How Gender Apartheid Has Been Rationalized*, 5 *UCLA J. INT'L L. & FOREIGN AFF.* 237, 253, 280 (2000-2001); see also Jo

As individuals are identified by their castes, and not by their citizenship, their ability to receive or claim their rights depends on the power position of their caste and their own ranking within the caste. As a result, an individual is raised to be more loyal to the caste than to the Nation. Members of each caste discriminate against members of other castes.

The inequality becomes a built-in foundation of the political order. Where there are elections, electoral laws and districting serve the need to perpetuate the order.<sup>28</sup>

### III. BUILT IN ADVERSITY AND EXTERNAL DISCRIMINATION

Ancient laws discriminated against outsiders. Jews distinguished themselves and their descendants from the *goyim*. The Romans distinguished between the *cires/romani*, the *latini*, the *peregrini*, and the *barbari*. The *barbari* had a status equal to that of slaves and would be enslaved when captured.

Islamic law simply divides the world into two zones, the zone of peace and the zone of war.<sup>29</sup> Between the two is the zone of covenant, also known as the "zone of truce." The zone of peace consists of areas governed under Islamic law. The zone of war consists of countries that do not recognize Islam. Nationals of those countries in the zone of war that enter into treaties or a simple truce with Islamic governments, are as secure as every one else within the zone of peace, but other individuals from the zone of war are not.

Within the zone of peace, there is a distinction between Muslims and non-Muslims as to rights and duties. Non-Muslims are under the protection of Muslims, and hence they are referred to as "*Dhimmis*," an Arabic term which means that Muslims owe an obligation to protect them. However, non-Muslims are more severely taxed and would not be conscripted or given the right to enlist in the armed forces. What little access they have to government is mostly available via their respective castes.

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Lynn Southard, *Protection of Women's Human Rights Under the Convention on the Elimination of All Forms of Discrimination Against Women*, 8 PACE INT'L L. REV. 1, 76 (1996).

27. See Ann Elizabeth Mayer, *Universal Versus Islamic Human Rights: A Clash With Cultures or a Clash With a Construct?*, 15 MICH. J. INT'L L. 307, 332 (1994); see also Mayer, *supra* n.26, at 254.

28. See generally James Yahya Sadowski, *Prospects For Democracy in the Middle East: The Case of Kuwait*, 21 FLETCHER F. WORLD AFF. 57, 65-66 (1997).

29. COURBAGE & FARGUES, *supra* n.16, at ix, 2.

There is no equality in marriage or inheritance. Until this day, religion, whether liberally or strictly interpreted, is a bar to intestate inheritance, but not to succession by will, in the Broad Region. The rule that a Muslim woman may only marry a Muslim man continues to be enforced, but many such marriages are performed before civil authorities abroad. While conversion to Islam from other religions is welcome, a Muslim who explicitly or implicitly converts from Islam, should be stripped of all civil rights and his or her marriage deemed dissolved. Not only that, but some zealous believers believe it is their duty to kill the ex-Muslim or encourage others to do so.<sup>30</sup>

Secular India has at least a dozen federal statutes that apply to marriage and divorce.<sup>31</sup> They apply separately to Muslims, Hindus, Christians, Jews, Parsi, Kazis, foreigners, and others. The Hindu Marriage Act is a codification that also applies to Buddhists but not to Muslims, Christians, or Jews, where religious law continues to be recognized.<sup>32</sup>

Roman law changed long ago and there are no more *barbaris*. All the countries of the Broad Region joined the United Nations ("U.N.") and signed the UDHR.<sup>33</sup> All, with the exception of Saudi Arabia, have adopted legal systems modeled on those of Europe. But the law of God has not changed a bit, and no government dares to declare it null. When governments are reluctant to adhere to the law of God, zealous believers find it to be their sacred duty to enforce it vigilantly.

30. A case in point is the famous Iranian Fatwa to kill the author Salman Rushdie for his deemed renunciation of Islam as evidenced by his best-selling book, *THE SATANIC VERSES*. See Anthony Chase, *Legal Guardians: Islamic Law, International Law, Human Rights Law, and the Salman Rushdie Affair*, 11 AM. U. J. INT'L L. & POL'Y 375, 403-04 (1996); see also M.M. Slaughter, *The Salman Rushdie Affair: Apostasy, Honor, and Freedom of Speech*, 79 VA. L. REV. 153, 179-80 (1993).

31. Among those statutes are: The Converts' Marriage Dissolution Act (1866), The Dissolution of Muslim Marriage Act (1939), The Hindu Marriage Act (1955), The Indian Christian Marriage Act (1872), The Kazis Act (1880), The Muslim Women (Protection of Rights on Divorce) Act (1986), The Parsi Marriage and Divorce Act (1936), and The Special Marriage Act (1954).

32. Hindu Marriage Act, Sec. 2 (1955).

33. Member States of the United Nations ("U.N.") include: Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, India, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Oman, Pakistan, Qatar, Saudi Arabia, Syrian Arab Republic, Tunisia, Turkey, United Arab Emirates, and Yemen. List of U.N. Member States is available at <http://www.un.org/Overview/unmember.html>. The following Nations adopted the UDHR in 1948: Afghanistan, Egypt, India, Iran, Iraq, Lebanon, Pakistan, Syria, and Turkey. The list is available at <http://www.unhchr.ch/udhr/miscinfo/carta.htm>.

One of the worst phenomena of this state of affairs is that under the cover of the law of God, external discrimination feeds internal discrimination and vice versa.

#### IV. IN THE NAME OF STABILITY AND REASON OF STATE

The rule of law obviously serves to pull every Nation together. Universally, it serves to unify the family of Nations under international law and the U.N.. The resulting fragmentation caused by the built-in inequality and internal adversity could provide a powerful argument in favor of the rule of law. Instead, it is often used as a false justification for a strong and oppressive central government that pulls the fractured Nation together by force of the police, the army, and the intelligence services, without any respect for the rule of law. Such a government exercises all forms and measures of repression in order to preserve the stability of the order based on inequality and inter-communal adversity. Violation of human rights is explained as being dictated by the reason of State. The built-in inequality and internal and external adversities are preserved and encouraged for as long as they provide the *raison d'être* of the oppressive regime.

Dictatorships rise and thrive under the banner of stability. They exercise unrestricted powers on a case-by-case basis in order to assure the goal of stability, which, in reality, is the goal of self-perpetuation.

#### V. IMPUNITY AND CORRUPTION

Where the citizens' loyalty is to the caste and not to the Nation, and where the government is not democratically elected by the people based on citizenship and equality, it follows that there is no accountability to the Nation. This insures impunity among government officials, judges, police and intelligence officers, leadership of the castes, and anyone within the caste under their protection.

Consequently, government consists in real practice of only one branch, the executive, and that branch usually consists of one man, a small family, clan, or junta. All other branches of government become subservient to the executive. Judges become major defenders of the regime and its constituents, rather than of the law.

As such conditions are corrupt in structure they, necessarily,

induce further and unlimited corruption in every sphere of national life. Dictators, kings, princes, government officials, and caste leaders steal and plunder national wealth and national income, and illicitly amass fortunes in countries that grow poorer and more desperate by the day. Nobody is forced to account for this because the authorities that are responsible for such accounting have much to account for themselves. Conditions of impunity are firmly established and can only change through major upheavals.

#### VI. *THE VALUE SYSTEM*

Religions were supposed to be instruments of God, to enlighten mankind and provide people with a better life based on faith in teachings and values, not through coercion. The lack of separation of church and State, and the continued recognition of God as both the supreme lawmaker and the object of worship, results in the corruption of the original religious values, which are more or less the same in all human religions. What is moral and what is immoral is exactly the same under the basic and original teachings of Christianity, Judaism, Islam, Hinduism, Buddhism, and the other great religions and religious denominations of East and West.

When God is recognized as the supreme sovereign and lawmaker, and when laws are interpreted in accordance with the dictates of preserving the order built on inequality, discrimination, and internal and external adversity, the original faith-based value systems are severely damaged.

The Muslim Shiite doctrine of *takyat* represents similar doctrines flourishing since times immemorial to gain security against persecution. An individual who is threatened because of his beliefs is encouraged to hide them and outwardly profess allegiance to the State-sanctioned doctrine. Many Jews and Muslims saved themselves from the Spanish inquisition through the practice of *takyat*.<sup>34</sup> The effect of this practice in modern times, in the face of an oppressive government, is to decimate any sign of dissention, and to provide false evidence of near-unanimous support by the people, often expressed in terms of a 99% plurality in general public referendums.

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34. NABILA DAWOOD, *THE RISE OF IMAMI SHIISM* (1994) (author's trans.) (on file with author).

Under such conditions, the damage to values can be much greater. A crime is not a crime when committed to advance the cause of government or a loyal caste, to enforce the God-given laws as interpreted by the zealous believers, or when committed by a member of the government to defend his own political or selfish interest. Lesser crimes are justified when greater crimes go unpunished. The right of tribal revenge, sanctioned by God's law under the rule of "an eye for an eye and a tooth for a tooth" — equally recognized as divine law by many religions including Christianity, Judaism, and Islam — is exercised. It even becomes acceptable to hurt others who have never harmed anyone. In conditions of adversity, and based on narrow and small-minded loyalties, one's caste is always right and all others are wrong.

In the age of human rights, some value systems exist that deny humanity status to many human beings along the old Roman classification of "*barbari*." Mass media worldwide propagates and reinforces such twisted values, and feeds them daily to frustrated, scared, hungry, misinformed, and repressed people. For as long as the political values of governments continue to be mixed with the faith-based values of religious origin, the values of governments will continue to be corrupt and the faith-based values will be subjected to similar corruption.

## VII. *THE TIME DIMENSION*

According to the theory of relativity, time is the fourth dimension. Individuals, peoples, and territories of the Broad Region are not all living in the same age. The overall level of development is not on par with the West. Hence, the U.N. practice of referring to these Nations as "developing," in contrast to the developed Nations of the West.

The flow of ideas and information from West to East, regions that are ages apart, has a tremendous and dramatic impact on the Broad Region in every lifestyle, including human rights and democratic ideals. At times, this achieves tremendous results. But when it comes to human rights and democracy, the fantastic contrast leads to tremendous tension. The leap to new fashion, pop music, and more modern healthcare, proves to be much easier than progress to good governance based on the rule of law.

## CONCLUSION

It is clear that the impediments to the rule of law in the Region and the Broad Region are numerous and formidable in strength. It is also clear that such impediments are also adverse to human rights, democracy, and modernity. Hence, it is undeniable that the rule of law is a precondition to human rights, democracy, modernity, and progress in the Broad Region. Consequently, the establishment and protection of the rule of law must be universally recognized as an urgent priority in every way.

It is not easy to bring the Broad Region closer to the twenty-first century, in accordance with the standards chiefly recognized and cherished in the West. As a precondition, it requires the acceptance and strict enforcement of the basic doctrine of separation of church and State. Countries of the Broad Region should come to the conclusion, best stated in the words of Bernard Lewis, that:

[O]nly by depriving the churches of access to the coercive and repressive powers of the [S]tate, and by depriving the [S]tate of the power to intervene in the affairs of the church, could they achieve any tolerable coexistence between people of differing faiths and creeds.<sup>35</sup>

Separation of church and State would make it possible to achieve the other condition for the desired coexistence, not mentioned by Lewis, which is the rule of law. Furthermore, the achievements of the West should not be recognized as Christian in character, but universal in nature.

Separation of church and State and rule of law are diametrically opposed to the status quo and the huge interests in protecting it. Unfortunately, much of these interests often reside in the West and may be influenced by selfish and narrow politics, or fueled by commercial considerations and simple prejudice.

Education, both conventional and through the media, is the most influential tool in promoting such values as are essential to the rule of law. Other values that are indigenous to each society, but not impediments to the rule of law, should be respected and safeguarded.

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35. LEWIS, *supra* n.14, at 115.