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Cultural Legitimacy and Human Rights in Bangladesh: Strategies for Effective Advocacy

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Abstract

This essay addresses the "cultural legitimacy" of human rights norms in Bangladesh and suggests some strategies for Bangladeshi human rights advocates to effectively disseminate and strengthen human rights standards among their constituents. Abdullahi An-Na'im argues that human rights will never be secure in a country until they are seen as culturally legitimate, and consequently "human rights advocates in the Muslim world must work within the framework of Islam to be effective" (1990, 15). Taking this idea as its starting point, this article draws on the idea of public reason and the development of politics in the West to suggest some ways that An-Na'im's imperative might be realized in practice.

KEYWORDS: human rights, Islam, public reason, politics, rhetoric, advocacy

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Introduction

According to Amnesty International, Bangladesh has experienced "a cycle of cumulative disregard for human rights" ever since its inception (2005, 1). And some commentators have argued that the human rights situation has been deteriorating in recent years, in part due to a rise of fundamentalist Islam and an environment of corruption that offers immunity to human rights violators (AI 2005; Amin and Hossain 1995, 1338-39).

While the true causes of this situation are difficult to discern, one thing that commentators appear to agree on is that human rights norms and values are weak among the general population. Bangladesh is a multicultural country with a strong Muslim majority: approximately 90% of the population is Muslim, 9% is Hindu, and the remaining 1-2% is Buddhist, Christian or animist. Furthermore, many of its citizens are intensely religious—religious norms and institutions play a direct role in regulating their lives (Shehabuddin 1999). Within the Islamic community this fact has engendered tensions between human rights, which are associated with a secularizing agenda, and Islamic values. For example, it is commonly thought that the human right of women to be treated equally comes into conflict with some provisions of *Shari'a* law, which, according to some established interpretations, holds that women and men are not equal and should not be treated as such (Amin and Hossain 1995). A brief look at the context of Bangladesh shows that the introduction of human rights norms has upset traditional ideas of gender roles and ruffled the feathers of established religion (Shehabuddin 1999). The perception of a fundamental conflict between Islam and human rights has given rise to a volatile situation, in which human rights advocates publicly clash with Islamists (Moniruzzaman 2004). Moreover, that perception has done much to contribute to scepticism about human rights on the part of many Bangladeshi citizens.

The general scepticism, and consequent weakness, of human rights norms among the Bangladeshi citizenry significantly undermines the ability of international human rights law to protect vulnerable people. There is a large body of international law that is binding on Bangladesh, including the UN Declaration of Rights, the Covenant on Social and Political Rights, and the Convention on the Elimination of All Forms of Discrimination Against Women. Yet international law contains few enforcement mechanisms, leaving individual states to give effect to human rights standards through their incorporation into national legislation. But the likelihood of human rights standards being given expression in legislation, and the likelihood of such legislation actually being enforced, depends largely on the existence of sufficient political will to motivate governments to make it happen (Farrior 1997, 213-14). Furthermore, while the government of Bangladesh has been known to directly violate its citizens' human rights, probably the most

common violators are private actors. For reasons such as these a number of scholars have argued that human rights will never be secure in a country until they become integrated into the local normative frameworks and are seen as part of the moral and legal culture (Merry 2003; An-Na'im 1990). Only then will the public demand that its government respect human rights, and only then will the behaviour of private citizens be inflected by human rights values.

Following Abdullahi An-Na'im, a starting premise of this essay is that "human rights violations reflect the lack or weakness of cultural legitimacy of international [human rights] standards in a society" (An-Na'im 1990, 15). 'Cultural legitimacy' refers to the degree to which the justifications and ideas that constitute human rights norms are either consonant with or rooted in local normative frameworks, such as religious, legal and moral systems of thought. Given the relationship between cultural legitimacy and respect for human rights, fostering the cultural legitimacy of human rights among the citizenry of Bangladesh should be a top priority for Bangladeshi human rights advocates. This essay addresses the question of how that goal might be effectively pursued.

With this in mind, I will draw on the Western experience of working out shared norms in a context of diversity to suggest some parallels with Bangladesh and offer insights for furthering the human rights agenda. The problem of the cultural legitimacy of human rights can be viewed as a manifestation of the more general problem of how to justify law in a context of deep disagreement over the moral and religious truth. In any given society there will be a plurality of views regarding what the best society is—what is truly just or good. When different groups adhering to different conceptions of the moral truth are all vying for power in order to use the state to implement their vision of the best society, you have the conditions for significant civil strife. In Europe during the wars of religion of the 16th and 17th centuries, the various religious sects fought each other in protracted civil wars over the moral basis of society and the justification of law (Stout 2004; Rawls 2005 xxiii). While Bangladesh today is clearly not experiencing the same kind of strife or sectarian division as 17th century Europe, some of the human rights violations we see there are rooted in a similar moralistic sectarianism. Further, the same question confronts actors in both instances; namely, how do we work out shared norms in spite of deep disagreement? In Europe, the conflict was over the nature of religion and authority. Tailored to the context of Bangladesh this question becomes, how can human rights norms gain legitimacy in a society where they often appear to be starkly at odds with the local normative frameworks?

The nations of the West responded to the fact of religious and moral disagreement in two related ways:[1] with the development of the idea of 'public

[1] This may seem too simple. Of course, these are not the only two ways that the West has responded to diversity. Nevertheless, they are two ideas that have had great influence.

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reason,' which holds that good public reasons are ones that citizens of all religious and philosophical outlooks can accept; and with the development of a particular idea of politics, according to which rhetoric and persuasion are the means of securing agreement and collective action.[2] For the purposes of this essay, the key insight common to both of these ideas is that in public life it is not always appropriate to pursue the full moral truth (as we see it) and thereby make the *truth* the final standard for evaluating our reasons and actions, *irrespective of the opinions of others*; rather, in politics we should let our reasoning be conditioned by the perspectives of our fellow citizens and therefore we should offer reasons that are *persuasive* to them, even if those reasons and our conclusions do not perfectly accord with our personal beliefs about the moral truth. I will argue that the Western experience of politics and the development of public reason could be instructive of how human rights advocates in Bangladesh might engage the opponents of human rights in a manner that builds on locally accepted norms and bolsters the cultural legitimacy of human rights discourse.

This essay is divided into three parts. In Part I, I canvass some examples of human rights violations in Bangladesh that are apparently rooted in Islam. I argue that it would be a mistake to suppose that the violations are the product of a fundamental conflict between Islam and human rights. On the contrary, progress in human rights advocacy requires engagement with those elements in society that think human rights are incompatible with Islam, with a view to fostering their cultural legitimacy. In Part II, I discuss the West's experience with religious and ethical diversity and the development of the ideas of public reason and politics in response. In Part III, I look at the human rights debate in Bangladesh through the lenses of public reason and politics to suggest some strategies for how to foster the cultural legitimacy of human rights.

Part I: Human Rights And Islam

The Human Rights Situation in Bangladesh

The following examples of human rights abuses in Bangladesh are meant to give the reader some sense of the human rights situation there and how Islam is sometimes implicated in rights violations. Though they showcase some of the most egregious abuses and are not necessarily representative of society at large, they are indicative of how some religious elements view human rights norms and illustrative of a general weakness of human rights norms in Bangladeshi society, especially in rural areas.

[2] I emphasize that I am using 'politics' in a technical and somewhat normatively laden sense.

(*i*) *Shalish* and *Fatwa* to Control Women: A *shalish* is a community-based, informal process of dispute resolution, where small panels of influential local figures convene to resolve community members' disputes and sometimes impose sanctions on them (Golub 2003). They are the centrepiece of Bangladesh's non-sate justice system. According to Stephen Golub, there are three basic varieties of *shalish*: traditional; government-administered "village courts" (which are partially incorporated into the state's legal system); and NGO-modified. In some instances, a traditional *shalish*, which is not state sanctioned, can amount to a *de facto* criminal court, inflicting judgment and punishment on individuals who may not have voluntarily submitted to its jurisdiction.

At a traditional *shalish*, members often seek to apply *Shari'a* law. Typically one of the *shalish* members will be a local *mullah*, who will issue a *fatwa* in support of the panel's decision (Golub 2003). A *fatwa* "refers to a clarification of an ambiguous judicial point or an opinion by a jurist trained in Islamic law" (Shehabuddin 1999, 1012). It is a powerful tool in Bangladeshi society. *Fatwas* are seen by some to express the demands of God's law, and as such they can be used to encourage a *mullah*'s followers to undertake certain actions. They are used in a variety of ways to regulate the social, economic and political behaviour of Muslims, especially rural women (Shehabuddin 1999, 1015; Shehabuddin 2008). For example, *fatwas* are sometimes issued to condemn what is seen as adulterous or illicit behaviour. The punishments for such cases have included the accused, often the woman, being whipped, stoned, and in at least one documented instance burned at the stake (Shehabuddin 1999, 1012; AI 1993). *Fatwas* have also been used to express disapproval of schools run by NGOs on the grounds that they inculcate Christian values, make girls "shameless," inform children of "un-Islamic" legal rights and cause them to be irreverent towards religious authorities. Following one such *fatwa*, 25 NGO schools were set on fire (Shehabuddin 1999, 1021). They have also been used to express objection to women's employment, education, voting and access to credit through NGOs (Shehabuddin 1999, 1019). According to Shehabuddin, the incidents have in common that "the targets are predominantly women from the poorest stratum of rural society; the fatwa-issuers are the elite men of their villages, often local landowners or religious leaders; and the state has been slow to take action" (1999, 1012).[3]

(*ii*) Persecution of the Ahmadi Minority: In 2005, Human Rights Watch issued a report documenting an escalation in the persecution of Bangladesh's minority Ahmadiyya community. The report speaks of "an unprecedented climate of fear"

[3] It should be pointed out that these examples represent some of the most offensive uses of *fatwa* and *shalish* in Bangladesh and are not representative of a typical case. Most Bangladeshis accept a relatively moderate interpretation of their scriptures (Golub 2003, 19).

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that pervades the community and in which "Ahmadis have been the target of deadly violence and organized and widespread intimidation" (2005, 2).

The Ahmadis are followers of Mirza Ghulam Ahmad, who in the 19th century claimed to be a prophet and preached the renewal of Islam (HRW 2005, 3). Ahmadis consider themselves to be part of the larger Muslim community; yet, most other Muslim sects believe that, by proclaiming himself to be a prophet, Ahmad rejected a fundamental tenet of Islam, the finality of the prophet Mohammed.[4] Ahmadis have faced persecution ever since the group's founding in 1889 because many Muslims consider them to be non-Muslims (HRW 2005, 3-4).

The right to freedom of religion is protected under the constitution of Bangladesh; and the rights to freedom of religion and expression, and the right to be free from religious discrimination are protected under international law, including the International Covenant on Civil and Political Rights, to which Bangladesh is a signatory. In spite of this, the state has done little to protect the Ahmadis and has even played a direct part in their persecution.

Many of the attacks on the Ahmadi community have been perpetrated by the *Khatme Nabuwat*, which is an organization of Islamist groups dedicated to the preservation of "the finality of the prophethood" and which has links to the *Jamaat-e-islami* and the *Islami Okye Jote*, two political parties then part of the ruling parliamentary coalition. In one incident the *Khatme Nabuwat* gathered a mob and marched on an Ahmadi mosque brandishing sticks, machetes and darts. They wanted to hang a sign on the mosque that read: "This is a place of worship for Kadianis;[5] no Muslim should mistake this for a Mosque." When the Ahmadi congregation resisted, the mob attacked, injuring dozens. Following the incident, the mob went on a rampage, looting nearby Ahmadi homes (HRW 2005, 2). In other incidents, members of the *Khatme Nabuwat* and other fundamentalist groups have attacked parishioners at their prayers, killed an Ahmadi *imam*, damaged mosques, destroyed crops, threatened members of the group, confiscated Ahmadiyya publications and prevented Ahmadi children from going to school (HRW 2005, 20-21; AI 2006). Occasionally the police have participated in the violence (HRW 2005, 22).

The anti-Ahmadi activists call "for an official declaration that Ahmadis are not Muslims and for a ban on their publications and missionary activities" (HRW 2005, 2). In 2004, the government banned all Ahmadiyya publications, though they have so far resisted the calls for a declaration that Ahmadis are not Muslims. Far from mollifying the activists, government concessions appear to

[4] Most Muslims believe that Mohammed was the last in a line of prophets going back through Jesus, Moses and Abraham. Ahmadis claim not to reject this tenet, on the grounds that Mirza Ghulam Ahmad was a non-law-bearing prophet and was thus subordinate in status to Mohammed (HRW 2005, 7).

[5] *Kadiani* refers to a member of the Ahmadi community.

have emboldened them, as anti-Ahmadi activities intensified across Bangladesh after 2004 (HRW 2005, 3).

Human Rights Watch expressed concern over the sectarian nature of the violence, saying:

> Given the alarmingly high levels of communal violence in Bangladesh directed against other minorities, including Hindus and indigenous peoples, further government concessions to extremist religious demands would set a particularly dangerous precedent. In the overheated, sectarian atmosphere of contemporary Bangladesh, with the country's government more religiously intolerant than any other government since the country's founding, Ahmadis fear that even a tiny spark could unleash a serious and perhaps uncontrollable wave of violence against members of their community (HRW 2005, 4).

(*iii*) The Struggle Over Women's Reproductive Rights: The UN Convention on the Elimination of All Forms of Discrimination Against Women, to which Bangladesh is a State Party, protects women's reproductive rights: Article 10 provides a right of access to educational information, "including information and advice on family planning"; Article 12.1 imposes an obligation on States Parties "to ensure access to healthcare services including those relating to family planning"; and Article 16.1 guarantees the right "to decide freely and responsibly on the number and spacing of...children" and "to have access to the information, education and means to enable them to exercise these rights."

The primary means by which reproductive rights have been advanced in Bangladesh has been through its family planning program, which was instituted to address the problem of overpopulation and focused on contraceptive use.[6] Early on the program floundered, but after important strategic changes were made in the late 1970s Bangladesh experienced a very rapid rise in contraceptive use (Amin and Hossain 1995, 1327).

According to a study by Sajeda Amin and Sara Hossain, in its early days the family planning program saw significant opposition from some religious authorities. Some women who used birth control faced ostracization, lashings, the denial of religious services such as a religious burial on death, and other sentences imposed by traditional *shalish* courts. Over time the religious opposition to contraceptive use within marriage subsided (for reasons discussed in Part III (*i*)) to the point where it is now widely accepted; however, Amin and Hossain's 1995 study indicates that opposition remains in relation to the use and distribution of contraceptives among unmarried women (1335).

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[6] Bangladesh is one of the most densely populated countries on earth.

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Among the concerns voiced by Islamist groups is the supposition that education regarding reproductive rights and contraceptive use would result in a breakdown of the traditional family. In a paper presented at a conference held in Dhaka on population and development, Abdur Razzaq argued that reproductive health initiatives would create

> a society in which extra marital sex will be socially and legally permissible. Parents will have no control over their children. This has been prevalent in the West for the last half century and this has led to immoral behaviour, sexual anarchy, sexually transmitted diseases, more crimes, and more particularly sexually related crimes.

And he concluded:

> As far as Bangladesh is concerned these offending clauses of the [UN Draft Programme on Women, Empowerment and Health] offend our religious feelings, our culture and above all our civilization... [T]o agree to such a proposal would be...unconstitutional (Razzaq, qtd. in Amin and Hossain 1995, 1337-8).

Amin and Hossain note that in their opposition to women's reproductive rights, "fundamentalist groups have sought to impose a monolithic and repressive interpretation of religious laws and religious views" (1336). Further, in this effort and in their denial of any form of diversity "fundamentalists reveal their essentially autocratic agenda" (1338).

The (In)compatibility of Islam and Human Rights

In response to these examples it is tempting to conclude that there is a fundamental conflict between Islam and human rights. After all, it is in the name of preserving "the finality of the prophethood" that the Ahmadis are persecuted. And the traditional *shalish* courts, which have administered some of the most shocking punishments against vulnerable women, often arrive at their decisions by applying *Shari'a* law. An-Na'im takes it as an inescapable fact that the dominant interpretations of *Shari'a* today, which were largely solidified in the 9th century and which continue to hold powerful sway over the consciences of individual Muslims, do offend many basic human rights (An-Na'im 1990, 14, 19). It seems fair to say that in the context of Bangladesh, there is little point in turning a blind eye to the tension between Islam and human rights.

Yet it would be a mistake to posit an insuperable conflict with human rights. Firstly, the role of religion in the above mentioned examples is ambiguous.

Even when violations appear to be clearly inspired by Islamic law, a closer look reveals that the situation is often more complex (Mayer 1994, 325). Shehabuddin remarks that many of the *fatwas* issued in Bangladesh to control women's behaviour and impose severe punishments are in fact "issued by men who, by the standards of Islamic jurisprudence, are not qualified to do so" (1999, 1017). She further points out that not just secularists but Islamists themselves have been known to decry the use of *fatwas* and *shalish* courts to impose harsh punishments on allegedly deviant women. One senior *Jamaat-e-Islami* leader in an interview about the punishments meted out in response to *fatwas* said: "Those crimes are being committed by people who don't know everything that they need to about Islam. A man puts on an *alkhella* [a long shirt, usually worn by an *imam*] and people start calling him *huzur*. The only way to stop this is by spreading knowledge of Islam" (Shehabuddin 1999, 1031).

Secondly, some commentators have noted that apparently religion-based opposition to human rights is often better understood in terms of power struggles among political and sectarian groups rather than as an expression of unmixed religious sentiment. Affirming that the opposition to reproductive rights has been fuelled by extremist groups, Amin and Hossain say:

> Such opposition appears to be based, not on religious considerations, but rather on purely political considerations. Thus, fundamentalists are unable to provide any clear or comprehensive theological justifications for their position. They are compelled to whip up fears of a disintegration of social and moral order resulting from the application of reproductive rights (1343).

Even the persecution of Ahmadis documented by Human Rights Watch is in part motivated by political considerations.

> [The Ahmadis] make easy targets in times of religious and political insecurity. For those pursuing populist political goals, such as Islamist and conservative parties in Bangladesh, raising the bogey of Ahmadi subversion and persecuting them, ostensibly in order to preserve the faith, provides a fast track to political power (4).

Indeed much of the communal violence in Bangladesh appears to be largely political, where the political factions happen to be divided on roughly religious lines. Having said this, however, I believe it is still important to consider the religious elements of these communal conflicts. The abuses discussed above happened in the justificatory context of Islam—religion plays its role by

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providing the background normative and communalist framework. And the effectiveness of cynical appeals to religion by opportunistic politicians to galvanize the public and build support indicates the importance of religion in these political conflicts.

Thirdly, it makes little sense to posit a fundamental conflict between Islam and human rights because Islam is not a monolithic entity and *Shari'a* does not refer to a single, unified system of law (Otto 2008, 12). Among Bangladeshi Muslims there is a variety of perspectives on *Shari'a*. Many Muslims find the persecution of the Ahmadi communities to be abhorrent (AI 2005, 19). And many of the human rights activists and secularists who have been targets of Islamist intimidation are themselves committed Muslims and would deny that a proper understanding of Islam conflicts with human rights. It is worth exploring this point in greater depth.

According to Jan Michiel Otto, manifold difficulties arise in discussing *Shari'a* because of ambiguities in the various ways that the word is used (2010, 23). To clear up some of the confusion, Otto suggests a taxonomy in which he distinguishes between divine *Shari'a*, classical *Shari'a* and contemporary *Shari'a*.[7]

'Divine' or 'abstract' *Shari'a* refers to "God's plan for mankind and as such contains the rules for good order and human behaviour that should guide his religious community" (Otto 2010, 25). Ziba Mir-Hosseini says that this divine *Shari'a* "is the totality of God's will as revealed to the prophet Muhammad." As God's will it is "sacred, universal and eternal," and it cannot be equated with a legal code developed by humans (2006, 632). In this sense, divine *Shari'a* cannot be equated even with the *Qur'an* and *Hadith*,[8] which are the revealed evidence of God's will. In a similar vein, Al-Azmeh writes:

> Islamic law is not a code. This is why the frequently heard call for its 'application' is meaningless, most particularly when calls are made for the application of sharia – this last term does not designate law, but is a general term designating good order, much like nomos or dharma [...] (1993, 12).

Before divine *Shari'a* can be applied it must be discerned, interpreted and elaborated upon by scholars (Otto 2010, 25). This project is undertaken by Muslim jurists who draw on the revealed evidence of God's will in the *Qur'an* and *Hadith* to develop a corpus of rules, principles and precedents that are

[7] Otto's taxonomy also includes "historically transferred *Shari'a*," which I have chosen not to discuss here.

[8] *Hadith* refers to a record of the sayings and living habits of Muhammad, according to the accounts of his followers. Muhammad's example is also known as *Sunnah*.

intended to give legal expression to God's will in a process called *fiqh* (Mir-Hosseini 2006, 632).

As Islamic jurisprudence evolved, the process of *fiqh* became increasingly complex. A number of well established schools of jurisprudence developed in the first three centuries of Islam, each offering its own account of what God's law required (An-Na'im 1990, 19).[9] Otto calls the culmination of their writings, judgments and commentaries 'classical' *Shari'a* (2010, 25). The diversity of views found within classical *Shari'a* is the result of the open and discursive character of *fiqh* (Otto 2010, 24). Classical *Shari'a* continued to develop in the dialogue among scholars in accordance with *ijtihad*, which was a convention that allowed for "independent juristic reasoning to provide for new principles and rules of Shari'a in situations on which the Qur'an and Sunna were silent" (An-Na'im 1990, 48). This period of the development of *Shari'a* ended two centuries after the death of Muhammad with the closing of the "gate to free interpretation," or the collective decision by jurists to end the practice of *ijtihad* (Otto 2010, 23).

Finally, in Otto's suggested taxonomy, 'contemporary' *Shari'a* refers to "the whole of principles, rules, cases, and interpretations that are actually in use at present throughout the Muslim world" (2010, 26). Since Muslim scholars reopened the gates of interpretation in the 19th century (Otto 2010, 25, 42), new work on *Shari'a* has given rise to a staggering diversity of views, from Wahabi fundamentalism, which originated in Arabia and inspires fundamentalist movements around the Muslim world, to Islamic feminism and other reform movements that challenge the patriarchal and, in their view, antiquated elements of many interpretations. Today Muslim theologians, intellectuals and activists of all stripes continue to formulate new interpretations of *Shari'a*. While it is largely common ground that all Muslims are obliged to live according to *Shari'a*, there is no consensus on what this entails and no authority or formal church to settle the issue. In the words of Khaled Abou El Fadl: "No single institution can formulate a single comprehensive view for all Muslims to adopt. Every Muslim must discharge God's covenant by living according to his or her personal understanding of the *Sharia*[,]" which each ought to develop consciously, reflectively and in consultation with other Muslims (1996, 1527).

The supposition that Islamic law *per se* is incompatible with human rights often presupposes a monolithic view of Islam, which is lamentably popular both among secularists in the West and fundamentalist in the Muslim world (Mir-Hosseini 2006, 631). This essentialist perspective conceives of *Shari'a* as a single logical whole (An-Na'im 1990, 19) and its proponents like to make statements beginning with 'the *Shari'a*' or 'Islam is' or 'the Qur'an says' (Mir-Hosseini 2006, 632). Yet, in light of the great diversity within the Islamic tradition, it

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[9] The jurists who founded the main schools of jurisprudence are, for Sunni Muslims, Abu Hanifa, Malik, Shafi'i, and Ibn Hanbal; and for Shi'as, Ja'far Al-Sadiq (An-Na'im 1990, 19).

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makes no more sense to say, 'Muslims believe such and such' than it does to say 'Jews or Christians believe such and such' (Abu-Lughod 2002, 784). Such generalizations paper over important complexities. Any declaration that *Shari'a* conflicts with a given human right must necessarily contemplate some particular interpretation of *Shari'a*, which will be contradicted by other interpretations. Furthermore, assertions of such a conflict generally appear to presuppose some variation of classical *Shari'a* (Otto 2010, 12). Yet, while its abiding importance should not be minimized, it is not helpful to focus exclusively on classical *Shari'a*, since to do so can create a distorted impression of its role in actual Muslim nations. In fact, in most Muslim nations there appears to be little support for introducing classical *Shari'a* into most areas of law (Esposito 2007, 47-51). The influence of *fiqh* on national legislation in Muslim countries tends to be limited to family and inheritance law (Otto 2008, 19).

Lastly, positing a conflict would be counterproductive, from the standpoint of human rights advocacy. According to An-Na'im, "Muslims throughout the world are sensitive to charges that their religious law and cultural traditions permit and legitimize human rights violations" (1990, 49). When human rights advocates speak as if there is an irreconcilable conflict it can imply that they believe that Islam is a hopelessly antiquated religion with irredeemably immoral dogma, and that for human rights to triumph it must be eradicated from the laws and public culture of all Muslim countries. Modirzadeh writes: "Such a boldly secularizing recommendation, without a stated methodology or an eye to reform, implicates human rights language in an arrogant anti-*Shari'a* agenda" (2006, 226). This in turn can alienate potential allies, such as reformist jurists, whose influence is indispensible in the effort to strengthen human rights in the Muslim world (Modirzadeh 2006, 229). Moreover, positing a conflict while advocating respect for universal human rights, which it should be pointed out are generally articulated in the language of Western liberal justice (An-Na'im 1990, 15), can raise the spectre of neo-colonialism and puts many Muslims on the defensive, making them more likely to cling to religious traditions and take a position that is defiantly contrary to 'Western neo-imperialist values' (Mir-Hosseini 2006, 645). Indeed the only ones who profit from the supposition of an incompatibility between Islam and human rights are the fundamentalist Islamists. "When the choice is framed as an either/or, many Muslims may believe that they have no option but to choose God's law" (Modirzadeh 2006, 230-31; see also An-Na'im 1995, 55). When human rights are pitted against God, God will always win.

None of the above discussion, however, should cause us to lose sight of the fact that many aspects of classical *Shari'a* and the most well-established contemporary versions of *Shari'a* do conflict with some basic human rights. Yet in spite of this, I have argued that it is neither warranted nor prudent to posit an

essential conflict between Islam and human rights. To the contrary, human rights norms will never be strong in the Muslim world until divine *Shari'a* is conceived as being in harmony with those norms.

Cultural Legitimacy

The human rights agenda will not succeed in Bangladesh until human rights norms have been integrated into Bangladesh's public culture. Bangladesh is a State Party to numerous human rights instruments that, if enforced effectively, would be sufficient to secure a broad panoply of human rights for Bangladeshis. But international laws contain few enforcement mechanisms; it is left to individual states to pursue their realization. States, however, are often not inclined to pursue compliance with those laws unless motivated to do so by their citizens. Furthermore, human rights violations within states are not always the direct result of discriminatory legislation or other acts of government. Many violations are perpetrated by private actors or individuals acting as agents of the state. Respect for human rights in a society depends on more than simply bringing its laws into compliance with international obligations; it also requires a culture in which human rights values have the normative power to condition how people act. Consequently, the regulatory strength of human rights law depends in large measure on its cultural legitimacy—its embodiment in the local cultures and their legal consciousness (Merry 2003, 941). For the purposes of this essay, cultural legitimacy is defined loosely as the degree to which the justifications and ideas that constitute human rights norms are either consonant with or rooted in local normative frameworks, such as religious, legal and moral systems of thought. According to An-Na'im: "[H]uman rights violations reflect the lack or weakness of cultural legitimacy of international standards in a society. Insofar as these standards are perceived to be alien or at variance with the values and institutions of a people, they are unlikely to elicit commitment or compliance" (1990, 15).

This raises the question of *how* human rights advocates might foster cultural legitimacy. Without underestimating the complexity of this issue, An-Na'im suggests that one of the most important strategies is to "translate human rights values into popular discourses" (2000, 23); to build support for those values by building them into local beliefs, customs and normative frameworks. "[T]he nature and dynamics of internal discourse would suggest that the most effective strategy is to promote change through the transformation of *existing folk models* rather than seeking to challenge and replace them immediately" (An-Na'im 1994, 69, emphasis in original). This, he suggests, accounts for some of the success of the fundamentalist movement in Muslim countries: although Islamists are often seeking to, sometimes quite radically, transform the beliefs and practices of their constituents, they have skilfully hidden this agenda in the rhetoric of 'continuity

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of tradition' and presented their views in a manner that appears to confirm the existing beliefs and practices of their communities. "In contrast, the liberal intellectuals of Islamic societies appear to be, or are presented as, challenging the folk models of their societies and seeking to replace them by alien concepts and norms." As a matter of strategy in social transformation, "the more one is perceived to be confirming existing beliefs and practices rather than challenging them, the better would be the prospects of wide acceptance and implementation of one's proposals" (1994, 69). In apparent vindication of this maxim, Haleh Afshar reports that the most successful women's rights groups advocating in Iran "have been those who have located their political action in the context of Islam and its teachings" (1996, 197).

For human rights advocates to be effective in the Muslim world, including Bangladesh, they must work within the framework of Islam (Mir-Hosseini 2006, 644; An-Na'im 1990, 15).

Part II: Politics and Public Reason

The problem of the cultural legitimacy of human rights can be seen as a manifestation of the general problem of how to justify law and public norms in a diverse society. When there is deep disagreement over the moral truth it can be very difficult for public actors to find common ground as a basis for collective action. The different groups with their different conceptions of the moral truth tend to want to fashion society in conformity with their own views. And when they are unable to convince the others that theirs is the best vision for society, and when those others resist their ideas, they find themselves tempted to use force to impose their vision on the rest. This phenomenon is common throughout history and across the world. In Europe during the wars of religion, the different reformist sectarian groups fought each other over the moral basis of society. And in Bangladesh, which is characterized by a high degree of sectarianism, we see some extremist Muslims persecuting Ahmadi Muslims in part because they refuse to conform to the former's vision of true Islam. This sentiment is well illustrated by the jeers of one such extremist at an anti-Ahmadi rally in front of a worshiper's home: "If you want to live in our community, you have to do prayers the way we do!" (HRW 2005, 37).

The West responded to the fact of moral disagreement in two primary ways: with the development of politics, which in this instance I use in a technical sense,[10] and the idea of public reason. Each of these ideas offers a way of shaping society through public action that does not require using undue coercion. Each

[10] Properly speaking, what I refer to as politics is one particular type of politics, not politics as such. For convenience, however, I will henceforth omit that qualification.

idea offers a different method of dialogue as the way to achieve this goal. I will explore each in turn.

The Idea of Politics

Politics is not a phenomenon unique to the West. It is clear that other cultures have developed the techniques of rhetoric and political rule. My discussion of politics will, however, focus on one account of the Western experience of politics to see, in the spirit of intercultural dialogue, if anything helpful comes from it for the human rights agenda in Bangladesh.

Politics, as I am using the word, is perhaps best summed up by Hannah Arendt, who traces the idea back to the time of the ancient Greeks. The meaning of politics, she writes, "is that men in their freedom can interact with one another without compulsion, force, and rule over one another, as equals among equals…managing all their affairs by speaking with and persuading one another" (Arendt 2005, 117). Crucial to this understanding is that politics is the contrary of coercion: where coercion compels action through the application of force or threats, politics is a way of compelling, or better encouraging, action on the part of others by securing their agreement through persuasion. In ancient Athens, a stark divide existed between the private and the public realms. In the private realm, the land owning male citizens ruled over their wives, children and slaves as the masters of their households. But in public, the male citizens found themselves among other citizens who were politically free and equal. According to Arendt, politics for the ancient Greeks was tied essentially to the persuasive form of speaking because the public realm, which was defined in contradistinction to the private realm (a 'realm of coercion'), was a space of *freedom* where men could interact as equals among equals. It is this political equality that made coercion of all kinds improper in public affairs. Because equality and freedom were seen as incompatible with coercion, public action had to be secured through persuasive speech and agreement.

The supposition that politics is essentially bound up with the persuasive form of speaking is nicely illustrated in Bernard Crick's book *In Defence of Politics*. Crick takes it as fundamental that a society under political rule is, just like the ancient Greek *polis*, an aggregate of many members, with a diversity of visions of the good life and the best society (Crick 2005, 3). Such diverse societies present a challenge to their leaders. "The method of rule of the tyrant," says Crick, "is quite simply to clobber, coerce, or overawe all or most of these other groups in the interest of their own" (4). They try to reduce all things to a single unity, such that all in society are organized around their own conception of how things should be. Bangladesh has laboured under many such tyrants in its past. On the other hand, "[t]he political method of rule is to listen to these other

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groups so as to conciliate them as far as possible" (4). Politics arises from a recognition of the diversity of groups, interests and traditions within a society under common rule, and from the conviction that order in such a society cannot be maintained by violence and coercion without destroying that diversity. On the contrary, order can be achieved only by seeking conciliation and compromise through persuasive dialogue (7). Such political dialogue preserves the freedom of all citizens, since it grounds collective action in the compromise and consent that comes by means of the persuasive form of speaking. Thus, echoing Arendt, Cricks affirms that "[p]olitics are the public actions of free men" (4).

The tool of politics is persuasion; the politician knows how to use speech, rather than force, as a means of influence and a technique of rule (Garsten 2006, 1). A brief look at the rhetorical arts will further flesh out the conception of politics that I am working with here. To persuade someone is to induce them to accept a conclusion. But, paradoxically, rhetoricians have long known that the most effective way to change someone's mind is to make it seem like your proposal rests on beliefs they already have and is thus something that they are, in a sense, already tacitly committed to (Garsten 2006, 152). We do this by linking our position to the other's existing opinions and emotions and making use of arguments, images and a vocabulary that are most likely to appeal to our particular audience (Garsten 2006, 2). In consequence, rhetoricians have always taught their students to treat different audiences differently, tailoring their speech to the different commitments, sentiments and beliefs of each one (Garsten 2006, 5). It would not do to address an atheist as if she were a Christian, or a fundamentalist Muslim as if he were a secularist. To take a simple example, one would not try to convince an atheist to accept a pro-life position for theological reasons. If a theist wants to convince a committed atheist to accept a pro-life position, then she should offer a secular account of her position. In general terms, someone who does not accept the values or premises that an argument presupposes will not be convinced of the conclusion. In this way persuasive argumentation is always relative to its audience (Manin 1987, 352-53).

This exercise may seem like pandering, manipulation, or a disingenuous engagement with another's beliefs. Yet while cruder attempts at rhetoric are certainly prone to such vices, in the context of politics the persuasive way of speaking brings with it some important moral goods. Firstly, to persuade someone is not to brainwash or trick them into believing a conclusion; true persuasion preserves the other's independence, its goal being voluntary and lasting acceptance of new ideas (Garsten 2006, 7). It is premised on the other's active engagement and encourages them to reflect on the consequences of their beliefs in relation to the new ideas for which you advocate. Furthermore, the brief account of persuasion that I have offered here seems to envision a single orator convincing a passive audience. Yet in public, citizens are generally trying to persuade *each*

other, with the result that all participants in the dialogue find their own views evolving in light of considerations brought out by their peers and adversaries alike. Conversations are a dynamic give and take, and this is true also of political wrangling. Most importantly, though, because persuasion involves some deference to the existing opinions of others, it displays a certain respect for their points of view and judgements (Garsten 2006, 3). It requires attentiveness to others as the foundation of effective political dialogue.

The Idea of Public Reason

In contemporary Anglo-American political philosophy, public reason is generally conceived of as a particular way for citizens in religiously and ethically diverse societies to offer each other persuasive reasons in spite of their deep disagreements over the moral truth. Most accounts of public reason advocate for a public discourse that transcends controversial philosophical, ideological and religious doctrines and proceeds solely in terms of reasons that all reasonable citizens can accept. The theory is often associated with the secularization of public discourse, in the sense that public reasons are generally not grounded in controversial religious or ideological assumptions. There are various competing accounts of this idea; I will focus on the account offered by John Rawls in his influential book *Political Liberalism*. But first I will consider briefly the historical evolution of public reason, as one way that the West responded to the problem of diversity, following Jeffrey Stout's discussion in his *Democracy and Tradition*.

Stout argues that in the decades following the Treaty of Westphalia in 1648, which marked the end of the European wars of religion, the role of the Christian Bible in political discourses changed dramatically. Following the protestant Reformation, Europe saw a proliferation of new Christian sects, each espousing its own version of the truth and its own vision for how a society should be ordered. In England during these times there were numerous groups competing for influence, as they debated moral and political questions in parliament and other public forums. All but the most radical fringe groups believed that the Bible was an infallible source of moral knowledge that could answer these questions; but they disagreed over what biblical passages meant and who had the authority to interpret them (Stout 2004, 93). As a consequence of this, appeals to the Bible were not able to resolve their ethical and political differences, as had been the case earlier in the century (Stout 2004, 95). A study by Christopher Hill reveals that early in the seventeenth century the Bible occupied a prominent place in English political debate, being cited by virtually all political parties. This situation, however, was reversed by the 1650s, by which time the Bible had essentially been "dethroned" from its position as a source of authority in public matters. It is not that political actors at that time came to doubt the Bible as a

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source of moral knowledge. Rather, says Hill, "Twenty years of frenzied discussion had shown that text-swapping and text-distortion solved nothing: agreement was not to be reached even among the godly on what exactly the Bible said and meant" (1993, 421). As appeals to scripture declined, appeals to broader premises increased, which did not rely on securing agreement on the meaning of scripture. In this manner public discourse became increasingly secularized, not in the sense that the participants in the dialogue themselves adopted a non-religious worldview, but in the sense that public discourse was no longer framed by a theological perspective that could be taken for granted by all (Stout 2004, 93).

Since early modern times the range of views extant in Western societies has only increased, and the common ground among citizens has correspondingly decreased. This has led to an increasingly secular public discourse, proceeding, ostensibly, in terms of 'common human reason.' Stout writes:

> [I]n most contexts it will simply be imprudent, rhetorically speaking, to introduce explicitly theological premises into an argument intended to persuade a religiously diverse public audience. If one cannot expect such premises to be accepted or interpreted in a uniform way, it will not necessarily advance one's rhetorical purposes to assert them. ... When people want to exchange reasons with others who differ from them theologically, [a secularized discourse] is likely to increase dramatically in significance (98-99).

On Stout's account, "secularization concerns what can be taken for granted when exchanging reasons in a public setting" (2004, 97). The fact of diversity compels us to reason in public using premises that have the broadest possible appeal. And this marks the emergence of public reason—reason that is intended to be persuasive to people from various moral, religious and ideological traditions.[11]

John Rawls also finds the historical origin of public reason in the Reformation and subsequent wars of religion. With Europe divided by competing and apparently incompatible variants of Christianity, the question arose, "How is society even possible between those of different faiths?" After all, each group knew, "with the certainty of faith," the truth about salvation and "the basis of moral obligation in divine law." For many groups, there could be no compromise

[11] While there is little doubt that the kind of secularization of public discourses that Stout documents has been fairly widespread in Western democracies, one should not overestimate the movement away from religion-based politics. The abolitionist movements in both Britain and America, the speeches of Abraham Lincoln and others on the question of emancipation, and, in the next century, the highly religious overtones of the civil rights movement headed by M. L. King Jr. all show that religion did not cease to have a strong presence in public debate.

with respect to truth, "for it meant the acquiescence in heresy about first things and the calamity of religious disunity" (Rawls 2005, xxiv). The civil wars that resulted could be "moderated only by circumstance and exhaustion, or by equal liberty of conscience and freedom of thought" (xxxix). The exhaustion of war eventually led to a *modus vivendi* centered on religious toleration. And the emerging conventions of equal liberty of conscience and freedom of thought, says Rawls, suggest the possibility of an overlapping consensus on constitutional essentials that all groups in society can embrace, as a foundation for social cooperation in spite of deep disagreement over the moral truth.

With this history setting the scene, Rawls articulates the fundamental question of *Political Liberalism*: "How is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical, and moral doctrines" (xviii)? His answer to this question is that there must be a normative consensus on what he calls a 'political conception of justice,' which provides a public ground of justification on fundamental political (meaning primarily constitutional) matters in diverse societies. The theory he constructs is sweeping and complex; I will merely introduce some of its key elements to explain the idea of a political conception of justice, which is central to his vision of public discourse, and which I later argue could be strategically useful for human rights advocacy.

Rawls begins by noting the fact that modern constitutional regimes are characterized by the presence of a plurality of religious and philosophical views, which he refers to as 'comprehensive doctrines' because they offer a more or less complete account of the nature of reality and the good life. Each person in society has a worldview that is informed by at least one such doctrine. Further, they are all reasonable to accept or reject. Rawls writes: "Different conceptions of the world can reasonably be elaborated from the different standpoints and diversity arises in part from our distinct perspectives. It is unrealistic...to suppose that all our differences are rooted in ignorance or perversity" (58). On the contrary, reasonable disagreement and reasonable pluralism are the natural outcomes of the application of human reason under free institutions in conditions of epistemic uncertainty (xxiv). Furthermore, history has shown time and again that this diversity can be overcome, if at all, only through the oppressive use of state power (54).

As the fundamental question of *Political Liberalism*, stated above, indicates, a central concern of Rawls' theory is stability. Rawls recognises that stability in a diverse society requires the existence of a *normative*, and not merely a strategic, consensus on the constitution.[12] If citizens can agree on the constitution, which forms the rules of law-making, then they have a normative

[12] For simplicity I will focus merely on constitutional consensus, though Rawls is concerned with both "constitutional essentials and matters of basic justice" (442).

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reason to accept laws as legitimate when they are duly enacted in accordance with the constitution, even though they would have preferred different laws. However, if the consensus on the constitution were merely strategic, or a *modus vivendi* resulting from the balance of power between competing groups, it would not be stable. Once one group gained in power it would have neither a normative nor a prudential reason to uphold the constitution; and it would thus be tempted to break with the consensus and impose its own interests on the rest, leading to a new *modus vivendi* and a new consensus (xliii-xliv).

The question for Rawls is, how do you achieve such a normative consensus in a society characterized by a plurality of incompatible, yet reasonable, conceptions of the moral truth? The truth about justice cannot plausibly become the subject of an overlapping consensus, given the fact of reasonable pluralism. There are multiple reasonable but incompatible accounts of true justice supplied by the different comprehensive doctrines. Rather, for fundamental political matters Rawls suggests that we need "a *reasonable* [(as opposed to a *true*)] basis of public justification," which can only be supplied by a reasonable political, as opposed to comprehensive, conception of justice (xix, emphasis added). A political conception of justice is a theory of justice constructed specifically to fill the need for a public basis of justification.

In order to achieve its purpose, the political conception of justice must be one that the plurality of reasonable comprehensive doctrines in society can endorse (Rawls 2005, xviii).[13] Consequently it must not attack or criticize any reasonable doctrine, and it must abstain from making truth claims of its own. Judgements of the full moral truth are made from within the various comprehensive doctrines and are not the concern of a political conception of justice (xix-xx). Its subject matter is much narrower, having only to do with establishing a basis for stability and fair social cooperation in a diverse society. This marks the key difference between a political conception and a comprehensive conception of justice. Comprehensive conceptions of justice aim to be true. But instead of referring to a political conception as true, we refer to it as reasonable, if it is able to command an overlapping consensus among reasonable comprehensive doctrines.

In constructing a political conception of justice, Rawls says, we must not appeal to any comprehensive and controversial premises. For example, it would not do to ground it in a theological account of moral obligation, since such a justification would be incompatible with some comprehensive doctrines. Instead it must be a "freestanding" conception of justice, in the sense that it is independent

[13] Rawls' overlapping consensus only needs to be a consensus among reasonable doctrines that accept the need for a political conception of justice and the fundamentals of a democratic regime. Unreasonable doctrines, on Rawls' theory, will reject the need for consensus at all and thus will reject any proposal that is not in line with their view of the moral truth.

of any particular comprehensive view, appealing only to values and principles that are implicit in the political culture of a democratic regime and that all reasonable people can be expected to accept (43). Thus, to ensure that it will be acceptable and persuasive to all it starts from premises that all reasonable people in a constitutional democracy endorse and from there it constructs a freestanding account of those basic ideas, such that, if its reasoning is correct, it will be consistent with all of the reasonable views in society.

In place of truth, the standard for evaluating a political conception of justice is reasonableness, which in this instance is defined by "the criterion of reciprocity":

> [O]ur exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light principles and ideals acceptable to their common human reason. This is the liberal principle of legitimacy (Rawls 2005, 137).

The criterion of reciprocity functions as the ideal by which a political conception is to be judged. In practice, it may prove to be impossible, or at least extremely difficult, to satisfy. But the closer a conception of justice comes to meeting the standard, the more effective it will be in providing a public basis for social cooperation in a stable and politically legitimate society, in spite of religious, philosophical and ideological diversity.

> It is only in this way, and by accepting that politics in a democratic society can never be guided by what we see as the whole truth, that we can realize the ideal expressed by the principle of legitimacy: to live politically with others in the light of reasons all might reasonably be expected to endorse (Rawls 2005, 243).

I will offer a simple example to illustrate the role of a political conception of justice in Rawls' theory and how it is related to the comprehensive doctrines in a society. See Figure 1 on the next page for a visual representation.

Imagine a society with a number of incompatible comprehensive doctrines ("CD" in Figure 1). Various religious and secular/nonreligious doctrines are present, including Christian, Muslim and atheist comprehensive doctrines. Each provides a different account of reality and the supreme good. And each has a different idea of how society should be ordered based on their different accounts of the moral truth. For this society to be a stable constitutional regime there must be some normative consensus over the basic terms of social cooperation and the constitution, in spite of their disagreement over truth. This ground of public

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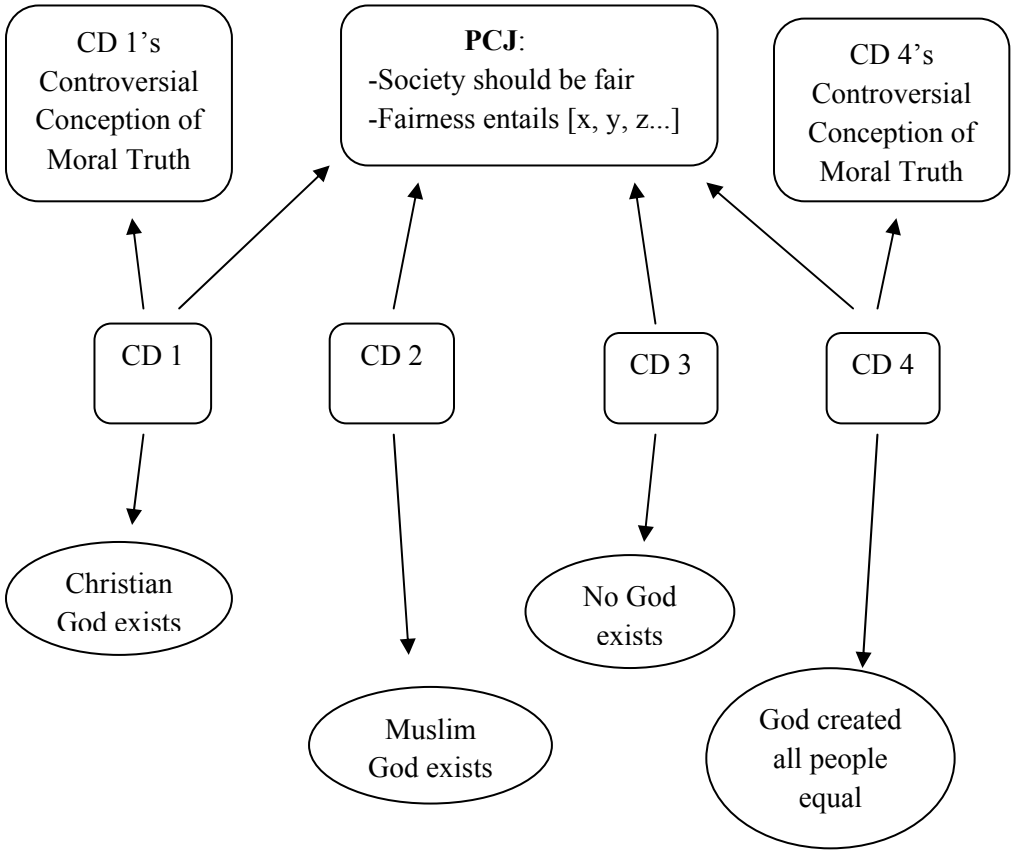
justification is provided by a political conception of justice ("PCL" in Figure 1).

After long years of dialogue, the citizens of this hypothetical society have managed to construct a political conception of justice that commands an overlapping consensus of the various comprehensive doctrines. The political conception begins with the premise that the terms of social cooperation should be fair. This minimal requirement has, after many years of debate, proven to be a tenet that all reasonable citizens can endorse. Next the political conception specifies a basic scheme of rights and liberties, such as are familiar to most modern democratic regimes: freedom of conscience, freedom of religion, freedom of the press, freedom of movement, etc. Last, the political conception of justice elaborates on the idea of fairness in a manner that avoids wading into controversial philosophical terrain, to specify a duty on the part of the state to provide for certain of the basic needs of its citizens through social services.[14] Because the political conception is the subject of an overlapping consensus among the comprehensive doctrines, it is able to provide a public basis of justification for fundamental political matters without challenging any of the reasonable comprehensive views. It satisfies the criterion of reciprocity and is thus reasonable, without making any claim to represent the truth about justice.

[14] Readers familiar with Rawls will recognize this as a very rudimentary approximation of his theory of justice as fairness, which is the political conception of justice that he thinks is most adequate to the American context. See Rawls 2005.

Figure 1:



Incompatible Worldviews

Each comprehensive doctrine will have its own way of situating the political conception of justice within its unique view of the world. They all agree that the basic structures of society and the constitution should be fair. But they may not all accept that premise for the same reasons. For example, members of a theistic group might uphold the political conception because they believe that God created all people equal and so all are equally deserving of respect and fair treatment. This would be a non-public justification because it is incompatible with other reasonable views and so could not form a part of the political conception itself. Yet it is important in that it anchors the political conception in the comprehensive tradition of that particular group and may offer further motivation for them to accept it. In this way, each comprehensive doctrine accepts the political conception of justice because it accepts the public value of fairness; and

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also the adherents to the different doctrines might find further motivation to honour the overlapping consensus on the basis of reasons that are unique to their respective traditions.

My aim here is not to argue that Rawls' theory of public reason is without flaw, or that the reader should accept Rawls' conclusions. I am not interested in getting mired in arcane controversies over the best account of public reason. Instead, the aim of this essay is more pragmatic—to suggest effective strategies for human rights advocacy. Consequently for our purposes, the point of this discussion of public reason is primarily to understand the concept of a political conception of justice as a neutral (or freestanding) conception of justice that is not rooted in a comprehensive view of the world and that is thus supposed to be reasonable, with no special pretension to being true. It is a conception of justice constructed for the political purpose of speaking persuasively to diverse groups and securing a consensus on the basic constitutional and quasi-constitutional structures of society. In the last section of this essay I will explain why I think this idea may be useful for human rights advocates.

The Unity of Politics and Public Reason

This completes my discussion of the Western experience of politics and the idea of public reason, as two important responses to the fact of philosophical, moral and religious diversity. They each offer a way of shaping society through public action, without recourse to force. The two ideas have in common that they recommend a public discourse that does not get hung up on controversies over the moral truth. This does not mean that truth is unimportant; and it does not require citizens to be sceptical about truth. Rather, these two methods of dialogue simply encourage citizens to also take the opinions of others into account in their public deliberations. They recommend that the reasons that citizens offer one another be conditioned, or inflected, by the opinions of others in addition to being concerned with honouring the truth as they see it. In short, politics and public reason both recommend reasons oriented to persuasion, to respect the freedom and equality of all citizens and make possible social cooperation on the basis of consent rather than coercion.

They differ, however, in how they pursue this goal. The political, or rhetorical, method homes in on the particularity of others and tries to use their pre-existing commitments, sentiments and tastes to induce them to accept a proposal. It offers an ethos of dialogue and techniques for effective engagement. Conversely, public reason abstracts from the particularities of the various competing perspectives in society and addresses citizens with arguments that are meant to be persuasive to all reasonable people. It offers a framework for constructing a conception of justice that will have broad appeal in spite of deep

disagreement over the moral truth, as well as standards for evaluating public reasons.

Part III: Strategies for Effective Advocacy

In this final section I will look at the human rights project in Bangladesh through the lenses of public reason and politics to suggest some strategies for effective human rights advocacy. One must be careful when attempting to apply insights from one cultural context to another. I do not contend that the ideas from Part II have direct application in Bangladesh, but merely that they may prove helpful in some respects. The following proposals should be viewed as tentative and offered in the spirit of intercultural dialogue. I will group my suggestions under the two rubrics of public reason and the politics of persuasion. Some of them arise directly out of the analysis in Part II and some are only indirectly related. Many will be old hat for experienced human rights advocates, but I think worth exploring in this context nevertheless.

Advancing Human Rights through a Variegated Discourse

A fundamental premise of this essay is that human rights norms will not be strong in Bangladesh until they enjoy greater cultural legitimacy. I defined cultural legitimacy as the degree to which the justifications and ideas that constitute human rights norms are either rooted in or consonant with local normative frameworks, such as religious, legal and moral systems of thought. This suggests two goals that human rights advocates should pursue; namely, (*i*) *rooting* human rights norms directly in the various normative frameworks found in Bangladesh, and (*ii*) making those norms *consonant* with the various frameworks. These goals correspond nicely to the two methods of dialogue discussed above.

Regarding (*i*) political rhetoricians show us that the most effective way to change someone's mind is to link your proposal to beliefs, commitments and sentiments that they already hold. Their methods speak to the goal of rooting human rights norms in local normative frameworks. They would recommend that advocates tailor their attempts at persuasion to the various different groups that make up their local constituencies—as Garsten says, treating different audiences differently. In Bangladesh that means especially linking human rights to Islamic frameworks. Nevertheless it is important to engage the other comprehensive doctrines in society, as well.

It would be a mistake, however, to focus exclusively on such particularized efforts. The effectiveness of the method of persuasion is limited by the sheer number of comprehensive doctrines present in nearly all modern

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societies. We should not forget that Bangladesh is a multicultural country, with Muslims, Hindus, Buddhists, Christians, animists, agnostics and atheists, all of various stripes, found within its borders. It is simply not feasible to address each group separately. Furthermore, exclusively pursuing such a diversified strategy risks creating a human rights discourse that is too fragmented to be effective. Thus there is also need for a common, or 'public,' discourse of human rights that can unite the various groups around (roughly) the same moral vocabulary. This could be supplied by a 'public conception of human rights,' analogous to Rawls' idea of a political conception of justice. Such a thing would, in accordance with (*ii*), provide a conception of human rights that is consonant with the various normative frameworks extant in Bangladesh; and it would have the advantage over the method of rhetorical persuasion of being able to address many diverse groups at once.

Employing these two methods together would produce a highly variegated, and I think effective, discourse on human rights.

(*i*) Advocacy and the Politics of Persuasion: Human rights advocates should foster the cultural legitimacy of human rights norms by building them into local normative frameworks. Many human rights NGOs specialize in exposing human rights violations and publicizing them in order to pressure their governments into compliance. Other groups advance their cause by pursuing litigation against their governments, in the hope that the courts will hold the government to its obligations. These are important strategies and should continue. Yet these kinds of efforts do not appear to address the issue of cultural legitimacy head on. At least some human rights NGOs should concentrate their efforts on that problem.

Human rights advocates who choose to address the issue of cultural legitimacy should research, develop and propagate Islamic justifications for human rights. Contemporary *Shari'a* is not a unified or immutable set of rules. There is a great diversity of interpretations, and with the resurgence in the last two centuries of *ijtihad*, the practice of reinterpreting *Shari'a* in light of new circumstances, there is plenty of opportunity for Muslim human rights advocates to work out and disseminate interpretations of divine *Shari'a* that they believe better articulate God's will, and which, I presume, are able to support a conception of human rights.

Exactly what a reformed interpretation of *Shari'a* might look like is not something that I can address in this essay. According to An-Na'im "the proponents of change must...have a credible claim to being *insiders* to the culture in question," or else the reforms run the risk of being rejected as secularist and alien (1994, 67, emphasis in original; see also An-Na'im 1987, 501). He does, however, suggest a reform methodology that recognizes *fiqh* as historically conditioned and open to further evolution, where the realization of divine

Sharia'a is the abiding and ever elusive goal (1990, 46; see also Mir-Hosseini, 2006, for a similar proposal).

This is a project for committed Muslims to pursue; especially, but not exclusively, reformist Islamic jurists and Muslim academics. Human rights advocates who do not fall into these categories still have an important role to play in encouraging and making effective use of human rights honouring interpretations of Islam. Such conceptions of Islam will not take root if they are not disseminated and discussed in Muslim countries (An-Na'im 1990, 49).

Nevertheless, I think it is safe to say that human rights advocates do not need to wait for the discovery of the best possible theological account of a reformed Islam to engage in effective advocacy. Effective advocacy is primarily a political, rather than merely an academic, endeavour. Sophisticated theologies may not have as great an influence over lay people's behaviours as one might think. In practice, the norms that structure people's lives have various sources, including but not limited to customary and religious sources. "At [the] grassroots level, people often do not know or mind the precise normative foundation of their behaviour, as long as it is part of 'our tradition'" (Otto 2010, 613). The key thing for advocates operating at a local level is to be responsive to the people in their immediate vicinity, allowing the opinions of their constituents to condition their efforts at persuasion.

In giving effect to a variegated human rights discourse, advocates should make use of a variety of public forums. For example, one promising venue for advancing a conception of human rights grounded in Islamic values is the *shalish*. *Shalish* courts form the centrepiece of Bangladesh's non-state justice system (discussed in Part I (*i*)). They are the most accessible dispute resolution processes for Bangladesh's most vulnerable citizens. In fact, pioneering work is currently being done with NGO-facilitated *shalish* courts to address gender and class discrimination in the *shalish* system (Golub 2003).[15] Furthermore, there is no reason in principle why human rights advocates could not also establish dialogue with local community leaders, to bring an Islamic conception of human rights to bear in traditional *shalish* and village courts.

Campaigns of direct engagement with religious leaders have in the past proven effective in surmounting religious opposition to efforts at progressive change. Amin and Hossain conclude that Bangladesh's family planning program successfully "addressed religious opposition through education programs for religious leaders." This included "concerted efforts to motivate religious leaders to make public pronouncements endorsing the use of family planning...based on

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[15] Stephen Golub's excellent study of Bangladesh's non-state justice system documents some of the ways that the *shalish* system is being used to effect progressive change. However, Golub doesn't indicate the extent to which Islamic frameworks are used alongside secular ones in this effort.

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liberal interpretations of the Quran" (1332). Human rights advocates should explore similar possibilities for partnering with Mosques and Madrassas to work out and disseminate Islamic justifications of human rights. In a related vein, Shehabuddin records that the influence of human rights violating *fatwas* issued by extremist *mullahs* can be successfully counteracted by seeking alternative *fatwas* from more moderate *mullahs* (1999, 1016). *Fatwas* are not binding, and an individual is always free to seek a second opinion.

These examples of successful engagement with religious elements provide a good template for further efforts at political advocacy. Other such opportunities to harness the power of Islam for the human rights cause should be explored. In short, "because Muslim countries are more likely to honour those human rights standards which have Islamic legitimacy, human rights advocates should struggle to have their interpretations of the scriptural imperatives of Islam accepted as valid and appropriate for application today" (An-Na'im 1990, 51). And similar strategies should be employed to engage with the other groups in society, especially the Hindu community.

So far my analysis has focused on using local belief sets, customs, commitments and biases to persuade members of a community to accept human rights norms, in essence by hooking those norms into existing normative frameworks. If the analysis were left off here one might object that this method amounts to little more than techniques to inculcate human rights norms in a community.[16] Yet true persuasion aims at lasting acceptance on the part of one's interlocutor of new ideas and is predicated on the other's active engagement. It takes the other's opinions seriously, not simply as material to make use of but as a source of inspiration in developing one's arguments and conclusions. The difference between inculcation and genuine non-coercive political engagement is that the later requires a deeper, more serious engagement with the other's perspective; so serious, in fact, that one's arguments and conclusions are as much conditioned by the other's opinions as they are responsive to one's own cherished views on the moral truth. Furthermore, as I have argued above, conversations are a dynamic give and take in which interlocutors try to persuade *each other*; and when things are going well all participants will find their own views evolving in light of new considerations.

For the present purpose, this means that human rights advocates should not treat human rights norms, or better, their own understandings of the implications of those international standards, as final or conclusive (An-Na'im 1994, 64). Of course it is to be expected that advocates will approach their work with a preconceived idea of what the framework of international human rights law means. Yet they should remain open to changing their views and ready to

[16] I am grateful to an anonymous reviewer at the Muslim World Journal of Human Rights for bringing this concern to my attention.

appreciate the possibilities for insight and human flourishing latent in other traditions as well (Abu-Lughod 2002, 788).

This raises a question as to which aspects of the human rights framework are open to debate and revision. When I say that advocates should not treat human rights norms as fixed I am aware that the norms that they seek to advance are by and large recorded in international legislation and that advocates have little or no control over the words of those instruments. International laws are constructed by delegates of the signatory nations and are clearly beyond the influence of most actors operating at the ground level. Yet the provisions of international human rights legislation tend to be highly abstract, as delegates are generally concerned with negotiating 'expedient ambiguity' into them (An-Na'im 1994, 65). They express general standards and leave it open as to how those standards shall be met in the myriad of contexts to which they apply. "Human rights are an incomplete project in that [the] standards and their content are continuously evolving, as actors in the global South and North and activists at all levels contribute to their development" (ICHRP 2009, 1; see also Nelson 2010). The primary question that local-level activists in Bangladesh face concerns how those standards ought to have effect in their communities. What kinds of arrangements should count as either meeting or failing to uphold a given norm? It is the meaning of those standards in the context of Bangladesh that should not be placed beyond question and beyond change.

If human rights advocates refuse to allow their own conceptions of human rights to change as they use the methods of persuasion in their communities, their efforts may be less effective and potentially even counterproductive. For one thing, to insist on the meaning of a norm without being open to alternatives could cause them to pass over potential common ground or innovative solutions that address the concerns of both sides. Further, to adopt Islamic or local vernaculars without being open to insight from those perspectives risks being perceived as cynical, manipulative or insincere. This would inevitably undermine trust among some community members, inviting a backlash of antagonism. Furthermore, it would undermine the ethos of dialogue that is so important to the long term political health of the community. Advocates contribute to the political culture of their communities and should be mindful of the example they set.

One difficulty that advocates must navigate is the tension between the universality of human rights and the need for those standards to be expressed differently in different contexts. In An-Na'im's words: "This sort of tension between the requirements of contextual diversity and cultural specificity, on the one hand, and the dangers of normative ambiguity or confusion, on the other, is inherent in any project which purports to set truly universal norms" (1994, 63). Human rights will not be efficacious if they are not fit for the local context; and yet, there is always a danger that re-crafting rights for a specific locale will

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undermine their universal meaning. According to An-Na'im the meaning of a given human rights norm must be determined in conversation with local "folk models" that offer alternative standards. Ultimately the goal is a situation in which the folk models are in conformity with human rights. But that doesn't mean that human rights are fixed points and folk models are re-engineered as needed. Nor does it mean that folk models are the points of reference that ultimately define the meaning of the rights, since it would undermine the utility of human rights if all they "can do is to conform with existing folk norms and practices" (1994, 70). Further, it must be remembered that culture, custom and religion are internally contested; advocates should be aware of the dangers of confirming unjust power relations to which some or many may not consent. Instead An-Na'im suggests

> a dynamic interaction between the two. On the one hand, international standards should be premised on fundamental global ethical, social and political values and institutions, and thereby have an inspiring, elevating and informative influence on popular perceptions of existing folk models. These models and their rationale, on the other hand, should be seen as a source of the values and institutions which legitimize the international standards (1994, 71).

(*ii*) Advocacy and Public Reason: In addition to their efforts to provide Islamic justifications for human rights, advocates should also seek to work out and employ conceptions of human rights that are not rooted in any one comprehensive doctrine. I will call these public conceptions of human rights.

The goal of a public conception of human rights would be to provide a public basis of justification that all citizens can accept in an overlapping consensus, forming the basis of a stable, human rights respecting society. As I am using the concept here, a public conception of human rights has the primarily *pragmatic* purpose of bolstering the general human rights ethos in a society by offering a conception of human rights that does not offend the major comprehensive doctrines and is persuasive to, if not all then hopefully most, of the citizens.[17] Such a conception would include a scheme of basic rights more or less in line with those enshrined in international law and a theoretical account of their importance. To accomplish its task the theoretical account should be grounded in values that citizens adhering to all the different comprehensive doctrines can accept and that all (or most) citizens actually find persuasive. Precisely what values might suffice in this regard in Bangladesh is not for me to

[17] My focus on the pragmatic value of a public conception of human rights for advocacy marks a point of departure from the predominantly normative focus of many theories of public reason. It is not necessary to go into the significance of this departure here.

say here, though some typical candidates are freedom, equality, fairness, respect and non-exploitation. If the conception achieves this goal, then its justifications will be reasonable, in the sense that they do not conflict with the tenets of any of the reasonable comprehensive views in society.[18] In the words of Joshua Cohen,

> It aspires to present a conception of human rights without itself connecting that conception to a particular ethical or religious outlook; it minimizes theoretical ambitions in the statement of the conception of human rights with the aim of presenting a conception that is capable of winning broader public allegiance (2004, 192).[19]

The justifications offered by the theoretical account of the public conception itself would not be philosophically deep, in that they would not be grounded in a comprehensive view of the world. It would be left to the various comprehensive doctrines and to individual citizens to fit the conception into a comprehensive view of the world and supply philosophically deep justifications. For example, some Hindus might say that the values of the public conception of human rights are acceptable and persuasive because of their understanding of *dharma*; and some Muslims might say it is acceptable and persuasive because its values are in accordance with Muhammad's assertion that diversity is a gift from God, recorded in *hadith* (Tellenbach 2002; An-Na'im 1987). There could be innumerable ways of fitting the conception into a comprehensive view of the world, which is precisely what allows it to provide a common moral vocabulary in spite of intractable moral disagreement.

I cannot suggest what a well worked out public conception of human rights for Bangladesh might look like in this essay. Working out such a shared conception of human rights would require some difficult theoretical work. A number of theorists have suggested ways of constructing a specifically Islamic conception of public reason (see Fadel 2007 and 2008; El Fadl 1995; Bahlul 2003; Cohen 2004) and these efforts could be illuminating, though they are not directly on point. Ultimately, though, a consensus would have to be forged among the citizens of Bangladesh, not just philosophers of public reason, and so the most important work of constructing a conception of human rights that is consonant with the various incompatible comprehensive views in society will take place in

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[18] There will inevitably be some unreasonable fringe groups that reject the very possibility of a compromise with rival factions. This doesn't affect the pragmatic use of a public conception of human rights, which is to bolster the general human rights ethos.

[19] Cohen's analysis addresses the issue of a "global public reason." Though he doesn't use the same phrase, he envisions a public conception of human rights that can have global appeal, whereas my recommendations here are restricted to individual societies, and Bangladesh in particular.

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the public forums of politics, media and civil society.[20]

Human rights advocates could do much to encourage the necessary kind of public debate. Some NGOs and civil society groups, in Bangladesh and elsewhere, have experimented with intercultural and interreligious dialogue. Similar endeavours could provide important venues for hammering out common values on which to found a public conception of human rights that might be endorsed by the various comprehensive views.[21] In part the idea would be to encourage the kind of secularization of public discourses that Jeffrey Stout documented following the protestant Reformation. By attempting to offer persuasive reasons to adherents of different comprehensive views, Bangladeshi citizens engaged in good faith dialogue will slowly come to an increasingly secular discourse. I emphasise that secular here does not mean that religion is expunged from the public sphere, but simply that when citizens recognise that a common theological or philosophical framework cannot be taken for granted, they will employ reasons that are not grounded in such controversial comprehensive views. Also, I should note that this 'secularization' may not look the same in Bangladesh as it does in America or Canada, for example.

However, as it may not be feasible in the short term to construct a public conception of human rights that commands a broad overlapping consensus, human rights advocates might consider trying to make use of a few different public conceptions of human rights, none of which would command a perfect overlapping consensus, but which together might be able to offer something persuasive to most groups in society. Such a family of, in a sense, quasi-public conceptions of human rights could provide a reasonably coherent moral vocabulary to unite the disparate groups and facilitate slow progress towards a more adequate conception for the long term.

The process of consensus formation that I have in mind here is similar to that which Robert Hefner documents in his study of democratization movements in the Muslim world. Hefner discusses the emergence of a "democratic or civic-pluralist tradition in the Muslim world that seeks to recover and amplify Islam's democratic endowments" (2001, 491). While affirming the legitimacy of religion in public life, this civic pluralist Islam claims "that the modern ideals of equality, freedom, and democracy are not uniquely Western values, but modern necessities compatible with, and even required by, Muslim ideals" (498). Hefner's analysis

[20] Advocates will generally have a scheme of rights in mind in advance of this public dialogue. But, as discussed above, it should be remembered that this scheme may be subject to change as the dialogue unfolds. Human rights, in Joshua Cohen's words, "are a part of the subject of dialogue, not a determinate and settled doctrine awaiting acceptance or rejection" (Cohen p. 195).

[21] For more regarding this possibility see *Democratic dialogue: A Handbook for Practitioners*, published by the UNDP and available online at: http://www.undp.org/cpr/documents/we_do/democratic%20_dialogue.pdf.

focuses on Islam, whereas I am suggesting a conception of human rights that speaks to Muslims and non-Muslims alike. Nevertheless, it is analogous to the movement that I have in mind. Human rights advocates in Bangladesh should foster similar movements. The emergence of a civic Islam—and a civic Hinduism, Buddhism, Christianity, etc.—in Bangladesh will be an important precursor to the forging of an overlapping consensus on a public conception of human rights (or a family of such conceptions), which would in turn effectively weave human rights norms firmly into the diverse normative fabric of Bangladeshi society.

Conclusion

This paper starts from the premise that widespread human rights abuses in a society reflect a lack of cultural legitimacy of human rights norms and a general weakness of the human rights ethos. Consequently, human rights advocates in Bangladesh should be concerned with fostering the cultural legitimacy of human rights norms among their constituents. I have argued that some human rights violations in Bangladesh implicate Islam. Yet it would be a mistake to conclude that human rights are incompatible with Islam *per se*. On the contrary, human rights norms will not be strong until Islam is conceived of as in harmony with those norms. This raises the question of how advocates might effectively engage religious elements to advance the human rights agenda. Drawing on the ideas of politics and public reason I suggested two broad strategies. First, advocates should employ the methods of persuasion and rhetoric, which recommend speaking to different audiences differently and linking human rights norms into the existing commitments and beliefs of each one. This would entail offering different justifications for human rights to the different groups in Bangladeshi society. Second, advocates should foster the growth of a public conception of human rights that can speak to all groups at once, and which would unite the various groups around a common moral vocabulary. Together these would engender a highly variegated and highly effective discourse on human rights.

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