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Beyond Secular Legal Frameworks: Islamic Legal Thought and the International Protection of Religious Freedom and Minority Rights

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Abstract

This article examines whether the frequently assumed opposition between Islamic legal thought and secular international human rights law, particularly with respect to religious freedom and minority protection, is as absolute as it is often portrayed. Rather than testing whether Islamic law can be reconciled with a fixed international standard, the paper treats both traditions as internally plural, historically situated normative systems and asks where they actually meet, where they genuinely diverge, and what kind of reasoning would be needed to negotiate the difference. Drawing on classical juristic concepts such as maqasid al-shari'ah, maslahah, and the historical dhimma framework, alongside the instruments and jurisprudence of international human rights law, the article argues that the relationship is better described as a field of selective convergence, principled disagreement, and unfinished interpretive negotiation than as a binary contest between "Islamic" and "Western" values. It identifies genuine points of contact, most notably in shared commitments to human dignity, communal protection, and restraints on arbitrary power, while also confronting unresolved tensions concerning apostasy, equal citizenship irrespective of religion, and the relationship between individual and collective rights. The paper's principal contribution is a dialogical framework that neither subordinates Islamic legal reasoning to a secular universal standard nor treats Islamic sources as immune from critical scrutiny, but instead specifies the

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conditions under which cross-traditional legal reasoning can proceed without erasing the distinctiveness of either tradition. The analysis is doctrinal and comparative rather than empirical, drawing on primary legal instruments, classical juristic literature, and contemporary scholarship rather than fieldwork or survey data, and its conclusions are offered as contributions to an ongoing scholarly conversation rather than as a settled resolution of the underlying disagreements between the two traditions.

Introduction

Religious freedom occupies an uneasy place in international law. It is guaranteed in every major human rights instrument, yet it remains contested in practice because it touches what legal systems do not fully control: what counts as belief, what counts as legitimate manifestation of belief, and how far a state or a community may regulate the relationship between the individual and the sacred. Minority protection raises a parallel difficulty. International law recognizes minorities as bearers of collective as well as individual claims, yet it has never settled how far collective religious identity should limit the rights of individual members, or of the wider society, without amounting to discrimination.

Islamic legal thought is relevant here not because it offers a single alternative doctrine to set against international law, but because it is one of the oldest and most extensively theorized bodies of jurisprudence to address the legal status of religious difference within a single polity. Long before the modern state system existed, jurists across the schools of Islamic law had to decide how a Muslim-majority polity should treat Jewish, Christian, Zoroastrian, and other communities living under its authority. Those decisions produced a body of doctrine, generally discussed under the heading of the *dhimma* system, that combined guarantees of protection and communal autonomy with legal disabilities that would not survive contact with contemporary equality norms. This coexistence of protective and discriminatory elements is itself a reason to resist simple verdicts, celebratory or condemnatory, about what Islamic law says about religious minorities.

The scholarly problem addressed here is narrower than the civilizational comparisons that dominate public debate. It is not whether "Islam" is compatible with "human rights," a formulation that treats both terms as more unified than either is. It is, instead, whether specific concepts within Islamic legal reasoning,

most importantly *maqasid al-shari'ah* (the objectives of the law), *maslahah* (public welfare), and the historical vocabulary of covenant and protection, can be read, without distortion, as resources speaking to the same normative terrain as contemporary religious-freedom and minority-rights law, and where the two bodies of thought instead produce genuinely incompatible conclusions.

The literature tends to divide along predictable lines: universalist scholarship treats Islamic legal categories as premodern accommodations to be superseded; apologetic literature claims Islamic law already exceeds international standards; and a smaller body of comparative and reformist scholarship, associated with An-Na'im, Abou El Fadl, Sachedina, and Baderin, works through the doctrinal detail rather than asserting a conclusion in advance. This article builds most directly on that third body of work, while trying to be more explicit than much of it about where genuine tension remains unresolved rather than rhetorically dissolved.

The article proceeds as follows. Section 2 maps the principal positions in the literature; Section 3 defines the key concepts, resisting the temptation to treat "secular," "Islamic," or "universal" as internally uniform categories. Sections 4 and 5 examine, respectively, the resources within Islamic legal thought and the assumptions underlying international religious-freedom law. Sections 6 and 7 identify convergence and tension. Section 8 considers how modern scholarship and state practice have reworked classical doctrine. Section 9 develops the article's central contribution, a dialogical framework for negotiating disagreement. Section 10 tests that framework against its strongest objections, and Section 11 states plainly what the analysis does and does not establish. The method is doctrinal and comparative legal analysis supported by intellectual history; no fieldwork, interviews, or survey data have been used, and none are claimed.

Review of the Literature

to offer, and that this qualification is frequently deployed for political rather than theological reasons ⁴. This position treats international human-rights law as the relevant baseline, a methodological choice criticized by scholars who argue it presumes the very universality that is in question.

The second position is cultural-relativist: a recurring argument that rights frameworks embed culturally specific, historically Western assumptions about the

⁴ Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics* (5th ed., Westview Press 2012).

individual, and that imposing them on Muslim-majority societies without regard to local normative traditions is itself a form of domination. This position is less a constructive legal theory than a critique, and has been criticized, including by Muslim scholars, for risking the entrenchment of authoritarian practice under the cover of cultural authenticity ⁵.

The third position, treated here as the most analytically productive, consists of reformist and comparative scholarship that neither defends existing state practice nor cedes normative authority entirely to international instruments. An-Na'im argues that coercive state enforcement of shari'a is religiously and politically self-defeating, and that genuinely voluntary practice of Islam requires institutional separation between religious authority and state power ⁶. Abou El Fadl argues that core Islamic ethical commitments to human dignity and the rejection of arbitrary authority can supply independent grounding for constitutional protection of individual rights, while acknowledging this reading is contested within the tradition ⁷. Sachedina argues that Islamic sources contain a genuine, underexploited theological warrant for religious and civic pluralism, though his method has been criticized for moving quickly between scripture and doctrine without engaging the intervening centuries of juristic elaboration ⁸.

The fourth position is doctrinal-comparative: it describes, as precisely as possible, what classical and contemporary Islamic law says about non-Muslims and religious dissent, without assuming in advance a condemnatory or apologetic answer. Baderin's article-by-article comparison of the ICCPR with Islamic legal doctrine ⁹ and Emon's historical study of the dhimmi rules ¹⁰ belong here. Emon's central claim, that the dhimmi rules are best understood not as evidence of Islam's unique intolerance but as one historical instance of the general problem every legal order face in governing religious diversity, reframes the comparative question in a way this article adopts.

What this literature has not adequately explained, and what this article attempts to address, is an interpretive architecture that lets genuine disagreement be

⁵ Khaled Abou El Fadl, *Islam and the Challenge of Democracy: A Boston Review Book* (Joshua Cohen & Deborah Chasman eds., Princeton Univ. Press 2004).

⁶ Abdullahi Ahmed An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a* (Harvard Univ. Press 2008).

⁷ Abou El Fadl, *supra* note 2.

⁸ Abdulaziz Sachedina, *The Islamic Roots of Democratic Pluralism* (Oxford Univ. Press 2001).

⁹ Mashood A. Baderin, *International Human Rights and Islamic Law* (Oxford Univ. Press 2003).

¹⁰ Anver M. Emon, *Religious Pluralism and Islamic Law: Dhimmis and Others in the Empire of Law* (Oxford Univ. Press 2012).

represented and negotiated rather than dissolved rhetorically or treated as terminal. Much scholarship argues toward convergence, reading Islamic sources generously and international law narrowly, or documents incompatibility without asking what a workable relationship might look like once real disagreement is conceded rather than argued away. Hallaq's more skeptical intervention, questioning whether the modern state on either side of the comparison can carry the moral weight either tradition asks of it, is a useful corrective engaged with directly in Section 10 ¹¹.

Conceptual and Theoretical Framework

"Secular legal framework" denotes a legal order in which religious authority is not, in principle, a source of binding legal obligation independent of positive enactment by a state or ratification of an international instrument. This is a formal, institutional definition, not a claim that secular legal orders are free of religious influence in fact; contemporary Western legal systems retain many historically religious categories, and international human-rights law itself emerged from a largely Christian-influenced natural-law inheritance even as it presents itself in religiously neutral terms.

"Religious freedom" in international instruments distinguishes, following ICCPR Article 18 and General Comment No. 22, between the internal freedom to hold or change a belief (*forum internum*), treated as absolute, and the external freedom to manifest belief through worship, observance, practice, and teaching (*forum externum*), which may be limited where necessary to protect public safety, order, health, morals, or the rights of others ¹². This distinction matters throughout, because much of the apparent tension between Islamic doctrine and international law concerns manifestation and communal regulation rather than the *forum internum* as such.

"Minority rights" protects persons belonging to national, ethnic, religious, or linguistic minorities in their right, individually and in community with others, to enjoy their own culture, religion, and language ¹³. The framework is formally individual, even though the rights protected are frequently exercised communally, a tension that, as Section 7 shows, has a rough structural parallel in classical Islamic

¹¹ Wael B. Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (Columbia Univ. Press 2012).

¹² Human Rights Comm., General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), U.N. Doc. CCPR/C/21/Rev.1/Add.4 (July 30, 1993).

¹³ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, G.A. Res. 47/135, U.N. Doc. A/RES/47/135 (Dec. 18, 1992).

doctrine's own difficulty in locating rights in the individual, the family, or the recognized religious community.

"Islamic legal thought" is used deliberately rather than "Islamic law" as a single system, to signal that the object of analysis is a tradition of juristic reasoning (fiqh) about a divine law (shari'a) whose human articulation has always been plural. The Sunni schools and the Shi'i traditions differ, sometimes substantially, on the questions addressed here, and reformist and traditionalist jurists within each school differ further. "Classical doctrine" means positions dominant, though rarely unanimous, among premodern jurists across several schools; "modern Islamic legal scholarship" means contemporary specialists engaging critically with that inheritance, as distinct from state-produced instruments such as the Cairo Declaration, which reflect political rather than purely juristic positions.

"Universality" and "equality" are treated as contested rather than self-evidently settled on both sides. International law asserts universal application of rights language while accommodating substantial variation in implementation; Islamic legal thought asserts universal validity of divine guidance while historically differentiating legal status by religious affiliation, gender, and free or unfree status. Neither tradition achieves a clean, uncomplicated universalism, and the comparison below treats that shared difficulty as a starting point rather than an embarrassment to explain away on either side.

Islamic Legal Thought and Religious Pluralism

Classical Islamic legal thought developed within a context of religious plurality from its earliest period. The Qur'anic principle often rendered as "there is no compulsion in religion" (Qur'an 2:256) has served, across many centuries, as a textual anchor for arguments against forced conversion, though its precise legal scope was and remains debated among exegetes and jurists, some of whom historically read it as descriptive rather than as establishing an enforceable legal right. Verses addressing the diversity of religious communities and counselling competition in good works rather than uniformity (commonly associated with Qur'an 5:48) have similarly been invoked, particularly by modern reformist scholars, as scriptural grounding for pluralism, though such readings coexist with juristic traditions that placed heavy weight on communal boundary maintenance.

The dominant doctrinal framework through which classical jurists regulated relations with non-Muslim communities was the dhimma, or "protection," system. As documented by Emon¹⁴,

The historical document most frequently invoked as an early example of pluralistic constitutional practice is the so-called Constitution, or Charter, of Medina, traditionally associated with the Prophet Muhammad's arrival in Medina and understood to have organized relations among Muslim, Jewish, and other clans on the basis of a single political community with differentiated religious obligations. An-Na'im and others draw on this text to argue for a historically grounded model of religiously plural citizenship¹⁵. The document's precise textual history, and the degree to which it can bear the constitutional weight sometimes placed on it, remain matters of ongoing scholarly discussion: specific textual-transmission claims about the Constitution of Medina should be checked against primary historiographical scholarship before being relied upon for legal argument.

It is important not to romanticize the protective dimension of this history. The dhimma system operated for centuries as a comparatively stable framework for managing religious diversity, notably by comparison with contemporaneous European practice. But it was also a framework of formal legal inequality, and its protective and discriminatory dimensions cannot be separated; protection was conditional on acceptance of subordinate status. Contemporary Islamic legal thought that draws on this history as a resource for pluralism must therefore do more than retrieve the protective vocabulary of covenant and security; it must explain why the disabilities historically attached to that vocabulary are not retrieved along with it, a question addressed further in Section 8.

higher objectives classical legal theorists identified as underlying the law's detailed rules, generally the preservation of religion, life, intellect, lineage, and property; and *maslahah*, the principle that legal rulings should serve the demonstrable welfare of the community. Both concepts have been used, including by Baderin¹⁶, to argue that Islamic legal method contains internal resources for reinterpreting specific historical rulings without abandoning the authority of the underlying sources. Whether this move is legitimate, and how far it can be pushed, is itself contested and is treated in Sections 8 and 9 rather than assumed here.

¹⁴ Emon, *supra* note 7.

¹⁵ An-Na'im, *supra* note 3.

¹⁶ Baderin, *supra* note 6.

International Legal Frameworks for Religious Freedom and Minority Rights

The international legal architecture protecting religious freedom rests on a small number of foundational instruments. Article 18 of the Universal Declaration of Human Rights proclaims a right to freedom of thought, conscience, and religion that explicitly includes the freedom to change one's religion or belief¹⁷. Article 18 of the ICCPR restates this guarantee in binding treaty form, adding the internal/external distinction discussed above and specifying the narrow grounds on which manifestation of religion may be limited¹⁸. The 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief elaborates the content of manifestation, though as a General Assembly declaration it lacks the ICCPR's binding force¹⁹. General Comment No. 22 remains the most authoritative interpretive gloss on Article 18, taking an expansive view of the forum internum's absolute character alongside a narrower, more sceptical view of state limitations on manifestation than many states, including several Muslim-majority states, have historically accepted²⁰.

Minority rights are addressed most directly by Article 27 of the ICCPR, a narrowly worded negative right providing that person belonging to ethnic, religious, or linguistic minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, religion, or language, and by the more elaborated, though non-binding, 1992 Minorities Declaration²¹.

Several assumptions underlie this framework worth making explicit. First, the framework is built around the individual as primary rights-holder, even where the right, such as religious practice, is characteristically exercised in community; religious communities are not themselves direct bearers of rights under the ICCPR, a structural choice with consequences for how the framework interacts with legal traditions, including much of classical Islamic law, that historically located certain rights and obligations at the level of the recognized religious community rather than the individual. Second, the framework treats freedom to change religion as part of an unlimitable forum internum, a position in direct tension with the majority classical juristic position on apostasy (ridda), discussed in Section 7. Third, the

¹⁷ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948).

¹⁸ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (Dec. 16, 1966).

¹⁹ Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, G.A. Res. 36/55, U.N. Doc. A/RES/36/55 (Nov. 25, 1981).

²⁰ General Comment No. 22, *supra* note 9.

²¹ ICCPR, *supra* note 15. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, *supra* note 10.

limitation clauses referring to public order, morals, and the rights of others are themselves open-textured and have generated extensive, unsettled jurisprudence even within the international system; European states, for example, have produced their own contested restrictions on religious dress and practice that test the same clauses.

It follows that international religious-freedom law, whatever its aspiration to universality, embeds a particular resolution of the relationship between individual conscience, communal practice, and state authority, one that developed largely out of a post-war, majority-Western drafting history even as it was subsequently ratified by, and shaped through subsequent practice by, states from every legal tradition. Recognizing this history is not an argument against the framework's legitimacy; it is a precondition for comparing it honestly with Islamic legal thought rather than treating one side as parochial and the other as neutral.

Points of Convergence

Notwithstanding the tensions examined in the next section, several areas of substantive convergence between Islamic legal reasoning and international religious-freedom norms are defensible on the evidence rather than merely asserted for rhetorical effect.

The first concerns the *forum internum*. Classical Islamic legal thought, whatever its treatment of external conduct, did not generally claim jurisdiction over unexpressed belief; legal consequence attached to conduct, testimony, or declared change of religious affiliation rather than to interior conviction, a position broadly consistent, at the level of formal structure, with the ICCPR's protection of the *forum internum* as an area beyond legitimate coercion.

international human-rights law offers for its own protections²². This is convergence of underlying value rather than specific rule, and should not be overstated into a claim of doctrinal identity.

The third concerns restraint on arbitrary power. An-Na'im's argument that coercive state imposition of religious observance undermines rather than serves genuine religious commitment draws on classical distinctions between voluntary faith and compelled conformity, and converges with international law's insistence that

²² Abou El Fadl, *supra* note 2.

manifestation of religion be a matter of free choice rather than state compulsion, though An-Na'im's own conclusion, favoring institutional separation of religious and state authority, remains a minority position within contemporary Islamic thought ²³.

The fourth concerns communal protection as such. The historical dhimma framework, for all its discriminatory features, was built on an explicit legal commitment to the physical security and internal religious autonomy of minority communities, a commitment with structural, if not textual, affinity to the collective dimension of ICCPR Article 27 and the 1992 Minorities Declaration's recognition that minority rights are frequently exercised in community with others. The affinity is structural rather than substantive, since the content of protection differs sharply, but it indicates that both traditions recognize communal religious life, and not only individual belief, as a legitimate object of legal protection.

These convergences are genuine but more modest than apologetic or optimistic comparative literature sometimes suggests. They establish shared normative concerns and, in some cases, structurally similar architecture; they do not establish that the two traditions reach the same substantive conclusions once worked out in specific rules, a question taken up in the following section.

Points of Tension

stands in direct, largely unmediated conflict with the ICCPR's treatment of the freedom to change religion as part of the non-derogable forum internum. Reformist scholars, including An-Na'im and Abou El Fadl, argue that the classical ruling reflects a historically specific conflation of apostasy with rebellion against a nascent, militarily vulnerable community, and that a maqasid-based reinterpretation can distinguish private religious change from political betrayal ²⁴. This reinterpretation is intellectually serious but remains a minority position among contemporary jurists and is rejected in the criminal law of several Muslim-majority states; the tension is real and should not be dissolved by citing reformist scholarship as though it already represented settled doctrine.

A second tension concerns equal citizenship irrespective of religion. The classical dhimma framework, and its analogue in the doctrine of political leadership, historically restricted the highest offices of state to Muslims and imposed

²³ An-Na'im, *supra* note 3.

²⁴ An-Na'im, *supra* note 3. Abou El Fadl, *supra* note 2.

differential treatment on non-Muslims in testimony, inheritance, and taxation. International equality and non-discrimination norms, by contrast, prohibit differential treatment on grounds of religion as a general matter, subject only to narrowly justified exceptions. Contemporary constitutional practice in Muslim-majority states varies from formal equality regardless of religion to explicit religious qualifications for the head of state, indicating genuine, unresolved disagreement rather than settled convergence.

A third tension concerns gender and family law, which intersects with religious-freedom and minority-rights questions wherever personal-status law is organized by religious community. Classical Islamic family law differentiates legal capacity and inheritance shares by sex in ways that conflict with international equality norms, and where personal-status jurisdiction is assigned to religious authorities communally, individuals, particularly women, may find their legal status determined by a framework they cannot exit, a genuine conflict between collective communal autonomy and individual equal treatment.

A fourth tension concerns public order. Both traditions permit limitations on religious manifestation in the name of public order, but define its content differently. Restrictions justified by reference to public morals derived from a specific religious tradition, common in several Muslim-majority states, sit uneasily with the Human Rights Committee's requirement that limitations be necessary and non-discriminatory rather than aimed at protecting one religious tradition's status against others ²⁵.

A fifth, more structural, tension concerns the location of rights in the individual versus the collective. International law formally locates rights in the individual even where they protect communal practice, while classical Islamic law historically located significant legal authority, particularly over personal status, in the recognized religious community. This reflects a different underlying picture of what a legal subject is and where authority over that subject's religious life properly resides, and it recurs across each of the more specific tensions above.

None of these tensions should be exaggerated into a claim that Islamic law is simply incompatible with international human-rights law; each is the subject of active reformist engagement, and the degree of tension varies across schools and

²⁵ General Comment No. 22, *supra* note 9.

jurisdictions. But none should be minimized either. A dialogical framework honest about its own limits, developed in Section 9, must begin by taking these five areas as genuine rather than artefacts of insufficiently generous interpretation.

Contemporary Reinterpretations

Modern Islamic legal scholarship has approached the tensions above through several distinct interpretive strategies, which need to be kept analytically separate from state practice, since a state's constitutional or statutory choices do not necessarily track, and are frequently in tension with, the positions of contemporary jurists.

One strategy, associated with An-Na'im, argues for a historically contextualist reading of the Qur'an and Sunna that distinguishes rulings addressed to the specific circumstances of seventh-century Arabia from the underlying ethical principles those rulings were meant to serve, giving interpretive priority to later, more universal principles once the earlier historical context has passed ²⁶. This strategy has been influential in reformist circles but remains contested by traditionalist jurists who reject the interpretive priority it assigns to later over earlier textual layers.

Closer to international standards without wholesale abandonment of Islamic legal authority ²⁷.

A third pattern is visible not in juristic scholarship but in state constitutional practice, and needs to be assessed independently. Several Muslim-majority states have adopted constitutional guarantees of religious freedom and non-discrimination that closely track international language, while retaining religious qualifications for specific offices, differentiated criminal treatment of apostasy or blasphemy, or personal-status regimes organized by religious community. This pattern of formal constitutional convergence alongside substantive retention of classical doctrine illustrates Emon's point that state practice frequently instrumentalizes religious law for reasons as much political as theological, cautioning against reading constitutional text alone as evidence of doctrinal reinterpretation ²⁸.

²⁶ An-Na'im, *supra* note 3.

²⁷ Baderin, *supra* note 6.

²⁸ Emon, *supra* note 7.

The Cairo Declaration on Human Rights in Islam, adopted by the Organization of Islamic Cooperation in 1990²⁹, is the most prominent state-level attempt to articulate an Islamic gloss on international human-rights instruments. Its religious-freedom provision has been widely criticized, including by Mayer ³⁰, for subordinating the right to an undefined shari'a-based qualification capable of being read narrowly by individual states. The Declaration is best treated as a political instrument reflecting participating states' positions rather than a considered statement of contemporary Islamic legal scholarship, and should not substitute for the more careful reformist and doctrinal literature discussed above.

Taken together, these developments show real interpretive movement within the tradition, but movement that is uneven, contested, and frequently disconnected from the law Muslim-majority states actually apply. This gap between reformist doctrine and state practice matters: assessing "Islamic legal thought" by reference to state behavior alone risks attributing to the juristic tradition positions better explained by contemporary political interest.

Toward a Dialogical Model

The preceding sections suggest that neither a convergence thesis, which reads the tension away, nor an incompatibility thesis, which treats the two traditions as sealed off from one another, adequately describes the relationship between Islamic legal thought and international religious-freedom law. What is needed is a framework that can hold genuine agreement, genuine disagreement, and genuine uncertainty in view at once, without collapsing any into the others. This section develops such a framework, organized around five propositions.

The first proposition is interpretive pluralism as a starting condition rather than a conclusion. Because both traditions are internally plural, any dialogical encounter must specify which version of each is speaking. A dialogue between the Human Rights Committee and the Cairo Declaration is a different, less productive exercise than one between the Committee's jurisprudence and the maqasid-based reformist scholarship of An-Na'im, Abou El Fadl, or Baderin, because the latter pairing brings comparably serious, internally self-critical bodies of reasoning into contact, whereas

²⁹ Organisation of Islamic Cooperation, Cairo Declaration on Human Rights in Islam, Aug. 5, 1990, U.N. Doc. A/CONF.157/PC/62/Add.18 (1993).

³⁰ Mayer, *supra* note 1.

the former compares a treaty body's jurisprudence with a state-diplomatic instrument never designed to bear that scrutiny.

The second proposition concerns shared normative principles that can serve as common ground without either tradition abandoning its own sources of authority. Section 6 identified human dignity, protection from arbitrary coercion in belief, and communal religious security as genuine shared commitments. A dialogical model should treat these not as evidence the traditions already agree, but as a starting vocabulary within which more specific disagreements, such as those in Section 7, can be debated on terms both sides recognize as meaningful.

The third proposition concerns the legitimacy of continuing disagreement. A model that treats every disagreement as solvable by better interpretation on one side misunderstands what dialogue between distinct normative traditions can achieve. On apostasy, it is more honest to recognize that a substantial body of classical and contemporary opinion conflicts directly with the ICCPR's protection of the freedom to change religion, and that this is unlikely to be resolved by argument alone in the near term, than to present reformist reinterpretation as though it had already settled the question. A workable model specifies which disagreements are, at present, principled and unresolved, rather than implying all disagreement is a failure of interpretive generosity.

The fourth proposition concerns contextual interpretation as a disciplined method rather than a license for unlimited reinterpretation. The maqasid framework gives Islamic legal reasoning an internally recognized method for distinguishing the purpose a rule serves from the historical form it took, and this method, applied with the rigor jurists have historically used, can generate reinterpretation that remains recognizably Islamic in source and reasoning, as Baderin's and An-Na'im's work illustrates, rather than an ad hoc importation of external standards under an Islamic label. Any dialogical model's credibility depends on maintaining this distinction.

The fifth proposition concerns institutional and constitutional mediation. Where classical doctrine locates rights and obligations at the level of the religious community rather than the individual, a dialogical model need not choose exclusively between the individual-rights architecture of international law and the communal-autonomy architecture of classical Islamic law. Constitutional arrangements granting religious communities' autonomy over specified matters, most plausibly aspects of personal status, while reserving to individuals an unwaivable core of rights, including the right to exit a communal jurisdiction,

represent one plausible, though contested, mediating structure, existing in varying forms in several plural legal systems and meriting closer comparative study than this article can provide.

Taken together, these five propositions describe a dialogical model whose purpose is not to produce agreement where none exists, but to make disagreement legible, principled, and open to future revision on both sides, rather than a temporary misunderstanding or a permanent civilizational fact. The article's central thesis is that the relationship between Islamic legal thought and international religious-freedom law is best described as a field of selective convergence, principled disagreement, and interpretive negotiation, and this section has specified what conducting that negotiation responsibly would require.

Critical Discussion

The framework developed in Section 9 is open to several serious objections, which need to be addressed rather than anticipated only to be dismissed.

The first objection is that the framework risks cultural relativism by legitimating continuing disagreement on matters, such as the freedom to change religion, that international human-rights bodies treat as non-derogable. The response is that recognising a disagreement as principled and currently unresolved is not the same as endorsing the position that disagrees with international law; Section 7 was explicit that the classical apostasy doctrine conflicts with a right the Human Rights Committee treats as absolute, and did not propose that this conflict be resolved in Islamic law's favour. What the framework resists is the pretence that the conflict has already been resolved through sufficiently generous reinterpretation, a pretence that occurs on both the apologetic and, less often, the reformist side of the literature.

The second objection runs in the opposite direction: treating international law as historically particular and open to critique, as Section 5 does, risks undermining the universalism the framework claims to respect, giving states an opening to reject rights obligations as merely one culturally specific tradition among others. The response is that acknowledging a legal instrument's historical origins does not weaken its binding force for states that have ratified it, nor license unilateral reinterpretation by states that have not accepted the relevant obligations; Section 5's point is about the honesty required for comparative scholarship, not a claim about legal validity, which is a separate question governed by treaty law.

The third objection concerns selective reading of Islamic sources, levelled from opposite directions at both reformist and traditionalist scholarship: reformists are accused of reading generously to reach predetermined liberal conclusions, traditionalists of reading narrowly to preserve inherited authority structures. This article has tried to manage the risk by relying on scholarship, particularly Emon's and Baderin's, that is explicitly doctrinal rather than argumentatively driven, but the risk cannot be eliminated in a field where the primary sources are themselves the object of centuries of continuing juristic disagreement; any synthesis, including this one, is one contribution to that disagreement, not a neutral description of it.

The fourth objection concerns diversity within Islamic jurisprudence that this article has not always represented adequately. Sunni and Shi'i traditions, and the schools within Sunni jurisprudence, differ on several doctrines discussed above, including apostasy and the precise content of dhimma obligations, and a fuller treatment would need to disaggregate these positions rather than referring, as this article has sometimes had to for reasons of scope, to "classical doctrine" or "the majority position" in ways that risk flattening real internal variation.

The fifth objection concerns state instrumentalization of religion, documented in Section 8. This objection strengthens rather than undermines the article's argument, since it is precisely because state practice and juristic reasoning diverge that a dialogical framework must engage scholarly and doctrinal sources directly rather than inferring the content of Islamic legal thought from self-interested state conduct.

The sixth and final objection concerns the limits of comparative legal synthesis as such: that building a general framework out of two traditions this internally diverse necessarily does some violence to the specificity of each. This cannot be fully answered, only acknowledged; the framework in Section 9 is a provisional architecture for further doctrinal and empirical work, including closer national-level case studies of mediating constitutional arrangements, rather than a finished theory.

Conclusion

This article set out to ask whether Islamic legal thought can contribute a theoretically distinct framework for the international protection of religious freedom and minority rights, and how such a contribution relates to dominant international legal frameworks. The analysis does not support either of the two

simple answers commonly offered in public and scholarly debate: that Islamic law is inherently incompatible with international human-rights protection, or that the two traditions, properly understood, already converge.

What the study demonstrates is that the relationship is uneven across issue areas. On the forum internum, on the underlying value of human dignity, and on the principle that religious commitment should not be coerced by the state, there is genuine, substantively grounded convergence between reformist Islamic legal reasoning and international norms, even where that convergence is not shared by all currents within the tradition. On apostasy, equal citizenship irrespective of religion, and the relationship between individual and communal religious authority, there is genuine, currently unresolved tension that responsible scholarship should represent honestly rather than argue away.

What the study does not demonstrate is that this tension will necessarily persist, or that it is incapable of principled negotiation. The maqasid-based reinterpetive method used by contemporary reformist scholars provides an internally recognized avenue for doctrinal development rooted in the tradition's own sources of authority, and the dialogical framework in Section 9 specifies the conditions under which that development, alongside a parallel willingness on the international-law side to examine its own historical particularity, could proceed as genuine negotiation between two serious normative traditions rather than unilateral imposition of one upon the other.

The article's theoretical contribution is this dialogical framework itself: a way of describing the relationship that avoids both premature harmonization and premature closure, treating disagreement as data to be represented accurately rather than argued out of existence. Its implications for scholarship are modest but concrete: comparative work should distinguish state practice from juristic scholarship more carefully than it often does, specify which strand of each tradition is being compared, and resist treating either tradition's self-presentation, whether the apologetic claim that Islamic law already exceeds international standards or the universalist claim that international law is simply neutral and complete, as a substitute for the doctrinal work of establishing what each tradition actually says.

Future research could extend this analysis in three directions: closer case studies of the constitutional mediating arrangements sketched in Section 9, particularly in states with religiously plural personal-status systems; a more disaggregated treatment of Shi'i legal doctrine, which this article has not addressed with the depth

it deserves; and empirical study, outside the doctrinal method used here, of how religious minorities themselves experience the practical operation of these overlapping legal frameworks.

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- **Data collection, interpretation, and drafting of manuscript**
- The author agrees to take responsibility for every facet of the work, making sure that any concerns about its integrity or veracity are thoroughly examined and addressed

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