



**Religion, law, and the politics of human rights**

**Talal Asad and Abdullahi An-Na'im in conversation**

**September 29, 2009**

Talal Asad and Abdullahi An-Na'im both stand at the forefront of the challenging and constructive exchange taking place today between European and Islamic traditions of political, legal, and religious thought. At a recent event organized by the Berkley Center for Religion, Peace, and World Affairs, the two scholars traded questions and criticisms concerning the concept of human rights. Moderated by José Casanova, the discussion addressed the intrinsic limitations and historical failures of the language of human rights, as well as its formidable capacity to challenge autocratic and state-centric distributions of power, creating openings for democratic contestation and political self-determination.

*The transcript of this discussion has been edited for clarity and grammar.*

**I**

**Talal Asad:** José suggested that I should talk a little bit, first of all, about some of the main points from yesterday's lecture. The lecture was an exploration of a number of concepts that that seem to me to lie at the origin of human rights, something I'm thinking about for my next book. But if I could just summarize, first, some things from that lecture, then I will try and make some points about Professor Abdullahi's work, particularly his famous book, which has been much more influential than mine—my work on secularism is purely academic, you know; it tries to determine where the real effects of politics come from—and also to indicate the things that I think are good about secularity and then pose some questions I had, which it would be good to have you answer. And finally, I'll say a few words about actual politics. I would like to begin with the effort to move some of our countries towards a more democratic form of politics and government and so on, which is not always the same thing as speaking about what one would like to see.

I basically tried to stress a couple of things yesterday, and perhaps I should focus on the most important ones. First of all, that the emotions that we talk about, like compassion and sympathy, which are supposed to lie at the base of human rights, are really much more mobile, much more unpredictable, much more uncontrollable than one thinks. They are both necessary and dangerous, one might say. And they are not, I think, to be closely and essentially connected to the whole

question of rights. Rights, in my view, whatever their value, have a certain kind of distinctiveness that comes before emotions themselves. They may lead to certain emotions rather than being based on them. This is a matter that I would like us to think about more.

The other point that I tried to deal with was that our problems with human rights seem to me insoluble. I have often to explain to people that while I am by no means an opponent of the idea of human rights, one has to be very careful not to place too much of our hope in it, for a number of reasons. Perhaps the most important reason has to do with the fact that it is addressed to and part of a regime of law, which is ultimately invested in the state, the modern state. And the modern state, as well as some of its allies, like the corporations—international corporations—are, in my view, not only not to be trusted, they actually use human rights for their own particular purposes.

So, on the one hand, human rights are in this curious situation of being a claim to universality and, paradoxically, being vested in a state and in certain particular interests—as, of course, is the case with international corporations—so human rights serve particular interests, either the national interest of states or the financial interest of corporations. So the paradox is that this claim to universality is embodied in particularity. And I'm not absolutely sure how we get out of it, but certainly this is something one should be more aware of than I think we sometimes are. The thing, of course, that plagues the whole issue, and which I'm sure all of us have come across again and again, is that human rights are in fact invested in states, which have their national interests. They are also dependent on the interests of the great powers. Who could, who would dare, to bring the United States or any of its government officers to justice for having violated human rights? The United States and its allies also are protected from responsibility to human rights. It's more than a matter of failing to live up to an ideal. It is the way in which human rights are continuously inserted into power politics, the power politics of states, that worries me and that I was partly talking about.

I come now briefly to Abdullahi's excellent book. I must say, when I read it I was both enormously stimulated and full of admiration for what he's attempting to do, something I've known about for some time of course, even before the book came out. At the same time, I was occasionally worried by some things, which I'm sure he can more than adequately answer. We haven't had a chance actually to talk about the book yet, so I'm grateful to you for this occasion to do so and to ask for clarifications.

There are so many good things about his book. I mean, I think the kind of world one would like to see—that Abdullahi would like to see and that I would also like to see are not very far apart, in fact. And our concern with the way in which intolerance has become a form that is often given, if you like, a religious cloak, is something that disturbs us both. Nevertheless, there are other things in his book about which I would like him to be more specific, and I want to mention some of these. I think that the idea of separating political authority from spirituality or religion—I have problems with the way these separations can be made, but I'll come to that in a moment because it is central to the argument. I can see the point that you want to make and I think it's important, but it does raise in my mind certain questions, certain problems about the idea of separation. It's not that it's impossible, but that it requires further elaboration. The possibility of rethinking Islamic politics and indeed even rethinking the Sharia is very important—and there I'm in complete agreement with you—and I believe that this is something which is already beginning to happen in various ways, even within the Middle East itself. The possibility that certain aspects of what people initially think of as Sharia can be changed actually has already happened, as we know. If you think about the abolition of slavery, which used to be taken for granted in the Sharia in the Middle Ages, there is

now no country—no Muslim country—which legally accepts slavery. And it has had to be rethought and conceded that it is something which goes against our moral principles. But there is a more general point, and I think it's an interesting point, and that is: clearly the Sharia itself may have certain problems about principles which may conflict with the notion of human rights, particularly the notion of equality, for example. We know that although there are many, many good things about the Sharia—and, by the way, I liked your reference to the fact that people think that somehow Sharia is virtually, you know, nothing but stoning adulteresses and cutting off hands, when in fact there's a lot in the Sharia that is consistent with many of the principles of human rights. Nevertheless, there is also something about the Sharia which might be further explored—and I don't know whether you would agree—and that is that beyond the question of *musawa*, the question of equality, there is the recognition of a legal capacity, which in an important sense all persons, according to the Sharia, have. This is truly a universal principle, if you like. And that is that everybody, even those who are unequal, even men and women who have conventionally and traditionally been unequal, nevertheless have a certain legal capacity and certain, if you like, inalienable rights. They may not be equal rights, in the way in which human rights thinks of them, but nevertheless, they are inalienable rights. Even slaves had certain rights, and the master had to abide by those rights. And I think this is something that we could develop. I do agree completely with you about the need for rethinking and there are so many different questions which then arise, which I'm sure you want to expand on. But there is the question of the separation of politics and religion—or, rather, of the separation of the state and religion but not of religion and politics, as you put it. And that's interesting. It seems to me to suggest that it might be possible for religious principles, or religious beliefs, to come into the public square. But is it so easy—this is one of my questions—to separate off politics from the state? If you think about even our lobby system here in the United States and the fact that it's not only the electoral system that elects our Congress and therefore represents us, but there is also a lobby system, and of course there are special interests, I hardly need to tell you now, in the middle of all these debates about the health care system. Is it really possible to separate off the way in which the state operates—at least the legislative body, which is the most important part of it—and politics and the various special interests which are part of it? Whether they are religious, secular, communal, or whatever, it's difficult to separate these out from the state. Just as it's also difficult, I think—and I'd like to hear you on this—to separate out religion from the state because the state has to—and this is of course the quandary—the state has to define what is essentially religion in order to be able to protect it, especially if you have freedom of religion. The state has to decide what is to be protected. Therefore the two can't be separated out. The state will have to, in some way or other, take upon itself the right to decide what is really religion and what is not. And historically, what's interesting is that this has shifted the way in which people have come to regard what is essentially religion and thus have come to support or to dismiss what is presented as essentially religion. And these are problems that are with us and I can't see how they can be gotten over. I'd like to recommend a book, which some of you may already know—and I don't know Abdullahi, whether you know it yourself—called *The Impossibility of Religious Freedom* by Winnifred Sullivan, a professor who is both a trained anthropologist and a trained lawyer—in fact, at one of these SUNY campuses, I can't remember which now. Yes, Buffalo, right. And it's really a marvelous book that leaves us with a quandary. So my question really is to push you into being more uncomfortable than you might otherwise be about the formula that you have in the book about separating the state from religion. That's one part of it, and I would like you to comment on that.

Finally, I would like to say that one really has to pay more attention, I think, to what is actually going on in Muslim countries in the Middle East or in other parts of the Muslim world. And there are many people who are actually struggling for a greater opening and a greater possibility for public debate, argument, democratic representation, and so on, who, I think, should not be labeled, as they often are, quite so easily as Islamists, and therefore assumed to be committed to a totalitarian political order. One of the things that I think is sometimes somewhat unfair—if you like, intellectually unfair—is to imagine that while all of us learn from experience somehow people whom we call Islamists—who don't of course call themselves Islamists but, you know, Muslims—that Islamists don't themselves learn from experience. I think it's important to be able to judge when one thinks that this learning from experience is actually occurring in the politics of the countries with which we are familiar.

I've already taken more than ten minutes, which I shouldn't really have done. We'll talk again, I'm sure, later on, so perhaps I should let you talk, Abdullahi.

**Abdullahi An-Na'im:** Thank you very much Talal, and good evening everybody. I would like to start with a rejoinder to a theme from the presentation last night. One of the questions Talal asked was who is the human in human rights? It is a critical question, but I have a different answer to it. And the reason I start with this is that it will lead into all the other issues that we're going to talk about. To me the human in human rights is the self-determining human. So the idea of self-determination is for me the essence of being human. And I speak as a Muslim. So for a Muslim, the ability and the drive and the capacity to be self-determining is really at the core of my humanity. And it is very much in exercising that humanity and self-determination that it is good to challenge the difficulties and engage in struggles for human rights as a necessary means for fulfilling our humanity.

To me the human rights idea is not a state-centric, but rather a people-centered idea. It is true that we need the state as the means for protecting human rights, but we don't depend on the state to do that without our constant vigilance and action. In other words, we need *to make* the state protect our human rights, without entrusting the state with that task without accountability. So that the point I'm here trying to emphasize is that the self-determination of the human person is really the core and the hope, because it is human beings who make states do what they do or fail to do about what they are supposed to. The states are not entities that can do anything; they are institutions, they are organs, they are structures. It is the people who run the state and the people who are subjects or citizens of the state who make the state do what it does or fail to do what it is supposed to. Therefore I cannot afford to give up on the possibility of transforming the state, of challenging the state, of holding the state accountable, and I count for that on the self-determination of the human subject of human rights.

I like the idea of paradox. I find the notion of paradox very creative precisely because it gives us a chance to mediate what might otherwise look to be a dead-end or a blocked situation, as when I need the state but I cannot trust the state, or that the structures of human rights have to make use of the state but the state pursues its own interests. I see this quandary of needing the state without trusting it as a paradox that can be mediated, though it cannot be categorically resolved.

In fact, I speak of two types of paradox, namely, the paradox of universality and the paradox of self-regulation by the state. Granted, they are both paradoxes, but they are both paradoxes that we need to mediate. We cannot afford to simply give up and throw up our hands and say it can't be helped. I'm not going to talk about the universality of paradox here, except to note that it is the paradox of

seeking to promote the universality of human rights in the realities of cultural and contextual diversity of human beings everywhere.

I'll now just ask the question raised by Talal in his lecture: who would dare hold the United States accountable? My response is that it is the citizens of the United States who must and can. I think that if we look at the difference between this (Obama) Administration and the previous (George W. Bush) Administration, we can understand how. So it is not that states have to hold other states accountable. What is important is that someone can and someone does and that that someone is the citizen of his or her country. And it is the citizens of every country who have to do what it takes to make their state respond to their demands and expectations about human rights. So fortunately, there is an entity that can hold the United States accountable, and that entity is here and now tonight, among us. Those of us who are citizens of the United States are the entity that can hold the United States accountable for its human rights record. And I think everywhere that is the case. Again it goes to that notion of the self-determining human and also some notion of pessimism. Someone was saying last night that Talal ended on a pessimistic note. I call myself a pragmatic optimist. I think the pragmatic part is what makes Talal pessimistic; that is, the realities of power, foreign relations, greed, and the ambiguity of emotions that he was talking about in his lecture. But for me, optimism is a strategy; it is a survival strategy. For, what else can I do if I give up on the possibility of transformation and change?

Moving on—again not to take too long—but I'll try to respond to Talal's specific points about the book *Islam and the Secular State* and about the question of Sharia. The example of slavery is very instructive actually, because slavery was abolished in the Muslim world by secular law and not by a change in Sharia. The problem is that if we continue to adhere to the classical concepts and methodologies of extrapolating principles from the sources of Qur'an and Sunna (traditions of the Prophet Muhammad), we cannot abolish slavery as a matter of Sharia because it can be re-established through traditional methodology of interpretation of Sharia. It is not enough that slavery has been abolished by secular law, while it remains possible under Sharia. But the point actually is interesting.

We have a class here at Georgetown called "the future of Islamic law". In our class yesterday the question of slavery came up, and the point I made there is that if you can imagine the circumstances that enabled slavery to be established under Sharia arising today, if the requirements Sharia had for how slaves are to be acquired and to be dealt with are satisfied, then it can be established again. So I think what we have through secular developments is a chance to distance ourselves from an abhorrent institution that none of us is now in a position to defend morally. But that should not be taken simply to say, "Alhamdulillah, thank God we no longer have slavery." The question is that we have to confront ourselves with the paradox that slavery is still possible from a Sharia-based point of view, although it has been successfully terminated by secular law and secular practice. This spectacle has sort of put our feet to the fire. We must keep pushing ourselves to acknowledge that we cannot simply rely on the fact that a secular institution has overcome a Sharia principle and live happily ever after as if nothing is wrong with our understanding of Sharia. So the rethinking of Sharia is absolutely critical, but it has to be methodological. It cannot be selective. That is, we cannot just pick and choose whatever verses of the Quran and reports of Sunna that we find to be amenable to what we'd like Sharia to be without confronting the others which are not so helpful.

So the question has to be very much a question of challenging the paradigm of Sharia itself as a human paradigm—not as a divine one. Sharia is not divine. Sharia is a human understanding of the

divine, but is itself not a divine institution or concept. The idea of legal capacity that Talal mentioned, for example, the notion of the human (*adamy*) in the work of Imam Abu Hanifa (the founder of the Hanafi school in the 9<sup>th</sup> century) is in fact a universalist idea. But it is sort of ambiguous in Abu Hanifa's work because of its other specific limitations. So the essence of humanity is there in early Islamic jurisprudence, but it is not inclusive enough, it is not robust enough to really give us a human rights discourse or a human rights paradigm as we need to have it today. So maybe we can draw on something like the notion of the human (*adamy*, in Abu Hanifa's way of putting it) as a major example of what our thinking might be like, but we cannot stop at that because he was confined by structures that we cannot afford to stay with.

So, going back to the paradox of the separation of religion and state and the connectedness of religion and politics. Interestingly, I'm presenting this connectedness as a vehicle for directly addressing the question about the Islamist that Talal ended with. Because I take the humanity of every human being seriously, I cannot exclude any human person from any activity that is critical to being human, including the right to be politically active and engaged, and to have a stake in the institutions of the state and those of society. So the potential of the connectedness of religion and politics is to open the possibility for exactly the sort of transformation and change that can happen among even the most extreme or conservative elements. My sense is that the connectedness of religion and politics is to be acknowledged in order to create the space for every type of discourse to be possible within certain parameters, but the parameters must be those which are needed for that discourse itself to happen. That means that the parameters of inclusion of any discourse and political action are human rights, constitutionalism, and citizenship. Those are the parameters that I propose in the book (*Islam and the Secular State*), and I need that framework for civic reasons to take place so that Islamists can be part of the political process without allowing them to take it over or completely hijack it. But ultimately, how that happens is up to me and other citizens to say and act on. So, part of the idea of paradox, to conclude, is in the inherent political nature of the state and how to protect it from being taken over by a political party or faction.

The example I give to make this point is what happened in the US Justice Department during the Bush Administration. For me, the state is the institutional continuity of the sovereignty of the people. So the Justice Department is part of the state. The Attorney General is a political functionary who represents the politics of the day, who represents the government. So the idea is that the state institution must have continuity beyond any particular government. In our example, while Attorney General Gonzalez was entitled to use the Justice Department as a state institution to fulfill the mandate President Bush was elected to implement at the time, Attorney General Holder under the Obama Administration can now use the Justice Department to fulfill the mandate President Obama was elected to implement. The state is political, but it is political in a different sense than the politics of the government of the day. So, when Gonzalez abused his authority by firing ten Federal Prosecutors for political reasons, that was a violation of the integrity of the institution of the Justice Department. He was forced out of office and that is the example I give for how it is the citizens of the United States who have the authority and voting power to hold the United States government and the state itself accountable. So to conclude today, it is completely granted that theorization is never going to resolve all questions. Nothing human is going to be perfect or complete, but I think it is just a question of mediating paradoxes enough to create the space for people to act and exercise self-determination and to demand human rights, and that is, I think, how the process continues.

## II

**José Casanova:** Obviously, Abduh is not proposing a state-centric conception of human rights. He's proposing a society-centric—actually, a human-centric conception. Let me add the importance of taking into account the issue of context: the problem is not so much in which context is it proper to use the discourse of human rights, but whether certain contexts demand different discourses; and you gave us an example: Martin Luther King, who did not see the need to use the discourse of human rights, but could use a different kind of discourse. Now, in a different context—let's say, myself personally coming from Spain, under the conditions of the Franco regime—the discourse of human rights was used precisely rather effectively to contest the authoritarian structures of the regime. The transformation of the Catholic tradition and the incorporation of the discourse of human rights by Catholics around the globe did in fact have an effect in bringing about a slightly more democratic form of politics in many Catholic countries. Now, obviously this was part of various complex processes, but it presents an alternative to the simple notion that what we have is a state-centric regime of human rights. It shows the possibility of using human rights in certain contexts to challenge state authority or state structures, which I think is more the sense in which Abduh is proposing it.

**Asad:** Well, I would hope that since you had an opportunity to talk together, you would have more of a common perspective on this. No, I wouldn't ever say, you know, that the language of human rights is never useful. But if you take the example you yourself have given about the Justice Department, I don't remember the language of human rights being invoked at any point in the struggle. It was against the law and therefore against the integrity of the Justice Department. A whole series of challenges can be and have been mounted by both Members of Congress and people outside—members of parties or social movements, political movements. But they don't necessarily—and in this country, they haven't very often invoked human rights. That was my point. My point was not that the language of human rights is never usable in any situation in order to improve matters. In fact, as in the example I gave yesterday, the democratization of England itself took place over several centuries as a result of various struggles, partly class struggles, but also struggles led by members of the elite who were very much concerned with reform.. The point is that this is not a human rights language. I am not suggesting, therefore, that the language of human rights is never usable for any ameliorative purpose. What I would like to hear more on from both of you is why one should translate everything into the language of human rights as such, when, in fact, that's not how valuable reform happened. In fact, there are other languages of justice. It was not the case, as far as I know, that Martin Luther King actually decided—that he said, "I am not going to appeal to human rights, I am going to use another language." No, it came quite naturally to him to talk about democracy, to talk about American democracy, to use a Christian vocabulary, and so on. And as I said yesterday, this had a tremendous impact in the United States. And the one person, the example I gave yesterday, who did try to use the language of human rights and talked about it in that context was Malcolm X, and that didn't at the time have the same kind of impact. Now I was told yesterday that, in fact, something did come out of that, and I am ignorant of that history and would be grateful for more details on that subject. But this is interesting. I am suggesting that maybe we can look at different kinds of languages that are available—that are not legal languages, legalistic languages. I started off by emphasizing that it's possible, indeed it's very essential sometimes, to have laws—and I say laws rather than human rights here—to reform society. Law was essential to break segregation in the South, to disrupt attitudes, change emotions, feelings. My argument is simply that I don't think that one can translate everything into human rights and expect that somehow everybody will be in a position to invoke it equally. Of course there is a historical connection between human rights

and democracy, human rights as a total regime not just the United Nations Declaration but all the other covenants and treaties and so on. These have a contingent connection to democracy. But democracy—the language of democracy—is not logically, necessarily, connected to human rights. So that’s my point.

**An-Na’im:** But I don’t believe that anyone is saying that everything has to be human rights. I don’t say that. In fact, I don’t think that even human rights activists say that. I mean that the discourse of human rights is one of the discourses we need. It is not the only discourse we need and it is not appropriate everywhere and all the time. Of course, like with everything else, there are some human rights fundamentalists who may say that, just as there are secular fundamentalists and there are religious fundamentalists. But the point I take from Talal’s concern is that the language of human rights is not appropriate always, everywhere, for every context. In fact, it’s a means to an end; nothing is an end in itself, including human rights, including everything, including Islam, including the Qur’an. The human is the end of all means but nothing else is an end in itself.

So my point is that I need to keep the discourse of human rights and the idea alive and vibrant and legitimate in different settings because it is the language that can connect us globally. But every time a human right is realized, it is realized within a national context, through constitutional, legal, and political means. Human rights do not materialize in a sort of state of suspended animation, out of thin air, in abstraction. And again, it is about inspiring people; it’s also about solidarity, the idea that people can create and nurture among themselves networks of solidarity in order to generate and use political power to protect rights for all.

It is true, by the way, that often the term civil rights is used as if it were synonymous with human rights; and it is not, because civil rights are the rights of the citizen, whereas human rights are the rights of the human. So, we need solidarity at home to protect civil rights, and we need global solidarity to protect human rights everywhere. The dialectic, the contestation between the limitations of citizenship, or rather the mediation of universal human rights in national contexts is what we need to challenge, but there is a healthy relationship. So the point is that, in that sense, the American Declaration of Independence was not a human rights document. The Declaration of the Rights of Man and the Citizen was not a human rights document. There was no human rights document until the Universal Declaration of 1948, because all of those earlier documents were about the rights of citizens, not the rights of the human.

Now with all due respect, Americans are particularly chauvinistic and have a tendency to be exceptionalists, and that comes with power. It is not because they are Americans; it is because they can get away with it most of the time, or so it seems. The point is to say that when you are powerful and you have a good system working for you, you feel that you don’t need to be part of a bigger system of universal human rights—I think that’s very dangerous and unbecoming of a civilized nation. The idea that what happens to other people is immaterial to you because you have it good in your home country and you have your institutions and your political process—that is not good enough. In a way, it’s a challenge to say, actually, you do need this international system even if, in terms of your own national system, your own political and democratic system, things tend to be going well, because there is a global interconnectedness of the human everywhere. So, not to belabor the point, but I am not saying that the human rights discourse is constantly, always, and everywhere to be used. But there are situations where only that discourse will be effective. And there are situations where other discourses will be effective.

**Casanova:** This brings us to the notion of global interconnectedness and that the way in which human solidarity can somehow build consensus leads to the paradox that you, Talal, mentioned of universality being always particular, and of the competing claims of universality. To a certain extent, there are competing claims, of world religions claiming to be both true and universal and there is the competing claim of course of a secular reason that claims to be truly universal and the basis for cosmopolitan universalism. In a certain sense, the recognition of this paradox, that indeed every universalism is particularistic, one could say, is one of the reasons why they tend to create this kind of discourse of the human. But of course, as you pointed out, the question concerns the effects of all these discourses everywhere. So, in fact, the intention may be global human solidarity, but of course the effects may be different. And, as you mentioned, we know the role of Christian evangelicals in the abolition of slavery movement. But we also know the role of the same groups, in fact, in the whole missionary, colonial project in India. There is the no less paradoxical fact that, Bartolome de las Casas, the very same person who fought to liberate the Native Americans from slavery proposed the slavery of Africans. Yes, history is full of paradoxes. So we need to address this issue of the competing particular universalisms.

**An-Na'im:** If I may, on the universality question: there is no such thing as a universal human. Being human is being specific, it is belonging to a location, a context, a gender, a class; there are all sorts of specifics about the human. So it is not what Talal called imperialist universalism, which projects its relativity into the global sphere in order to apply, for example, American law or the American institution of religious freedom throughout the world under the so-called "US International Religious Freedom Act," which is an exclusively American project. How can this initiative be both international and American, such that Americans define what freedom of religion is for everybody else, and go out and impose sanctions, unless the President exempts a country like Saudi Arabia from the sanctions for other reasons. So the hypocrisy and double standards are very serious, but that is what we need to expose and American citizens need to confront.

Now, the idea of universality is not something to proclaim. It is not something to discover. It is something to construct; that is, I believe in constructing a universal consensus, using Rawls's idea of overlapping consensus. Every human being is relativist by virtue of being human. She or he is of a place, a time, a culture, a set of values, and so on. But can we come to a shared understanding of what human rights are, despite our differences as to why we come to make that commitment? So it is not a notion of the universal being already made and either brought down from natural law or proclaimed by the State Department, but it is about joining hands, joining struggles in actual solidarity. And yes, as Talal mentioned last night, it's true that solidarity can be very dangerous, very seductive, opportunistic, and all of that. That is what the human is. We are all sorts of things—not always good, not always bad—but we have somehow to make sense of that. Solidarity, as an idea, can be hijacked, can be co-opted, yes. Human rights, as an idea, can be hijacked, can be co-opted, yes. But that is not good enough reason to give up on it. In fact, the very hijacking of the idea is a testimony to its power; as Louis Henkin says, the double standards and the hypocrisy about human rights "is the tribute of vice to virtue." It is because the idea of human rights is attractive and because it is powerful that corporations would like to use it, governments or states would like to use it; but we need it more and we cannot give up on it because others abuse it.

**Asad:** Again, I am not sure that there is too much disagreement. Perhaps I am a little worried about too much confidence in human rights—that's the main thing.

**An-Na'im:** Yeah, yeah, sure.

**Asad:** However, I want to ask you a question and also to make one comment. First of all, it's not just the noble idea—this is my comment—of human rights, as I see it. There is an increasing material body of legal decisions and cases. So when corporations use human rights, they don't take human rights as an idea, you know—there are particular rules and regulations, principles of interpretation and so on that they can go in and out of—that's why they need lawyers for all this, because ordinary people wouldn't be able to understand all the legal ramifications of human rights as a regime, why certain kinds of cases can have this or that outcome. So we already have an increasing body of law through which we decide—the courts decide—what is compatible with human rights and what is not. And then you also have this distinction, you know, between soft law and hard law, where hard law is backed by sanctions and soft law is more a matter of influence, of trying to get people to be a little more responsible towards human rights principles essentially by resorting to moral suasion. There is now an enormous legal structure of human rights, and I am not an expert on it at all and don't want to use up the remaining years of my life trying to understand that part of it. But I think it isn't good enough just to keep waving the flag and saying we need human rights. Yeah, okay, different things are possible in different situations—that's fine—but there seems to me a kind of excessive, I might almost say religious, excitement about a solution which is believed to be special. I know you've said it is not appropriate in every way, but you do believe that it is in some sense special with regard to the transformation of the world. That leads me to my question. And it's a real question that's not intended to be a trap. You say you have to construct universality. What is the universe that you want to construct? Don't say a human world because that is circular. In fact, the human has very gradually been transformed, as I suggested very briefly yesterday, its content has been historically changed and can be changed again given the technological developments and genetic engineering developments that are now available to us. The human can be almost anything. This is something we should at least think about. So what is it to construct the universe, the universal for you? What is the universe, logically speaking? What is the universe to be constructed politically?

**An-Na'im:** On the last question, it is not about constructing a universe or the universe.

**Asad:** No, I don't mean, you know—

**An-Na'im:** Yeah, but it is about promoting a shared understanding of what it is to be human and of what is due to a human by virtue of their humanity. I share that understanding. That's all.

**Asad:** But that's—sorry, go on.

**An-Na'im:** But then you go on to say, why do we need that shared understanding? So that we can create solidarity and engage in joint struggle despite our different locations, our different relative strengths and weakness; so that we have a vehicle for promoting this shared vision of the human. Human rights are not an end. Human rights are not special. I never say that. In fact, I often say there was a world before human rights and there will be a world after human rights. So there is nothing special or magical or transformative about human rights as such. No. To me it is a means. It is a tool. It is a structure, a concept, a set of ideas, of laws and institutions that we can use to promote social justice and individual freedom. But if it doesn't serve that, then it is not worth having and I don't care for it. So there is no magic to the term, there is no magic to the concept. It is a means to facilitate the struggle for justice, the struggle for dignity. If it doesn't serve that end, it will die and it will go away, as many things have.

As I said, I am a pragmatic optimist, meaning that I tend to see the half full part of the cup, not the half empty part. It is true that there is a lot to be desired. There is so much wrong with this and that and the other. But if we look back a little further, we'll see that we have come some way at least. And that's part of my sense of optimism. Slavery was mentioned; nobody today, anywhere in the world, would defend slavery. We saw regression on torture under the Bush Administration, but we seem to be recovering from that now under the Obama Administration. But the point is not that it is in the language, not in the name, or the term of human rights. It is not in any particular institution or concept; it is the notion that human beings are getting to be more humane—relatively, relatively. I mean, if you look back and see how people used to deal with each other and compare that to how we do so now, despite all that is wrong with the way we deal with each other today—I think it's an improvement from the way it used to be.

I am an African. My country has been colonized by Britain and now colonialism has ended in some forms—some people say it continues in other forms—but that is the nature of it. The nature of things is human experience. To be human, by definition, is to live in contradiction, in struggle, in conflict, in limitations; but so long as you are alive, we cannot afford to give up on what we can do about them.

**Asad:** Can we think a little bit about how we can persuade the people who matter to help or facilitate changes, say, in various parts of the Muslim world? Let's stick to the Middle East, with which we are both more familiar. How can we persuade them? What is necessary to persuade them? It's no good saying you must learn to be human, because they'll say, "of course we are human. We have a conception of the human but it's not the same as the one you have." So how do we do persuade people to change?

**An-Na'im:** That is why I think we need a discourse that creates solidarity across boundaries. The labor movement—the movement to improve labor conditions—is a very instructive example. At the end of the nineteenth century, that was exactly the question: "how do we persuade capitalists to act humanely and improve working conditions for workers?" A lot of improvements have been achieved on this front, though more need to be done. But it doesn't come by persuasion in the sense of appealing to the good nature of capitalists or waving moral principles in front of their faces. Part of that persuasion is pressure, is struggle, is striving, hopefully by non-violent means, but ultimately it can be by violent means, too, if necessary.

The one thing that I believe is divine in the human is that we don't submit to injustice, and that we all find ways and means to fight back. Even the weakest, the most disorganized will find ways of resistance. It is not a question of persuading the people who matter—it is a question of making the people who matter do what is right. And that will take struggle. And again, if you leave human rights completely out, and talk about democracy or talk about constitutionalism—whatever it is—it is always something that needs a struggle to realize and to build on. If human rights are part of that discourse and if we take it forward, we will keep it for what it does, not because we expect it to do everything. If it doesn't work for what we need it to do, it will be discarded, and I have no problem with that. I have no problem with tomorrow waking up and finding that the words "human rights" have been deleted from every document or textbook. Fine. The idea remains, whatever we call it.