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Protection of Languages and Self-Expressions under Islamic Law

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PROTECTION OF LANGUAGES AND SELF-EXPRESSIONS UNDER ISLAMIC LAW

LIAQUAT ALI KHAN*

Islamic law recognizes two distinct divine rights, one applying to speech communities and the other to individuals. The divine right to language allows each speech community to preserve and celebrate its native language free of coercion and disrespect from other speech communities. Native languages are the assets of speech communities. Islamic law prohibits coercive degradation of native languages while at the same time it interposes no barriers in learning other languages. Closely related to the right to language is the divine right to individual self-expression or self-determination. Each human being is unique because God, the Master-Artist, shapes each human being with special attention. Social, economic, and legal barriers that suppress special talents or refuse to accommodate disabilities are incompatible with Islamic law. When individuals are given the liberty allowed under Islamic law to pursue sciences, arts, knowledge, sports, and spirituality, Muslim communities prosper. When Muslim states are oppressive, they undermine individual initiatives. This study recommends that Muslim states should recognize linguistic pluralism and the right to self-expression in their positive law, including national constitutions.

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“And among God’s signs are the creation of the heavens and the earth, and the diversity of your languages and your colors, verily in all this (diversity) there are indications for persons of knowledge.”¹

INTRODUCTION

This article explores the concept of speech pluralism under Islamic law.² It first argues that each literate and preliterate speech community has a divine right to language.³ This divine right recognizes and protects the diversity of languages.⁴ The differences among languages may be traced back to dictates of geography, history, ethnicity, race, culture, means of communication, literacy, social and economic development, and a legion of other causal factors.⁵ According to the Basic Code of Islam,⁶ however, these differ-

1. Quran, sura ar-Rum 30: 22. It is my view that the Quran cannot be translated, it can only be understood. Normally, after conducting my own research, I adopt the translation that in my view best captures the meaning of the verse. I specifically consult translations by Abdullah Yusuf Ali, Marmaduke Pickthall, and Muhammad Asad. Unless otherwise specified, all translations of the Quran in this Article are mine.

2. The term Islamic law refers to the composite sources of the Quran, the Prophet’s Sunnah, classical jurisprudence (*fiqh*), positive law (*qanun*), and international law (*as-siyar*). Liaquat Ali Khan, *Jurdynamics of Islamic Law*, 61 RUTGERS L. REV. 231, 232-33 (2009).

3. There exist roughly 6,000 languages in the world. UNESCO, *UNESCO Launches Register of Good Practices in Language Preservation*, July 18, 2005, http://portal.unesco.org/ci/en/ev.php-URL_ID=19434&URL_DO=DO_PRINTPAGE&URL_SECTION=201.html. Experts estimate, however, that over 50% of languages face extinction. *Id.*

4. One may dispute whether primitive tribes engage in activities worthy of the name of religion or art, but no tribe has been found to be without a language. EDWARD SAPIR, *LANGUAGE: AN INTRODUCTION TO THE STUDY OF SPEECH* 21-22 (1921).

5. See generally DANIEL NETTLE, *LINGUISTIC DIVERSITY* (1999); Robert Nicolai, *Language Processes, Theory, and Description of Language Change, and Building on the Past*, in *LINGUISTIC DIVERSITY AND LANGUAGE THEORIES* 81 (Zygmunt Frajzyngier et al. eds., 2005).

6. The term Basic Code refers only to the Quran and the Prophet’s Sunnah and excludes all other sources of Islamic law. Khan, *supra* note 2, at 232 n.3. For the purposes of this article, the terms Basic Code and Shariah are synonymous.

ences in languages are part of the divine plan. Although imperial languages, such as Arabic and Persian, rose to power and prestige, little evidence supports any finding that all speech communities ever spoke a single language at any historical juncture.⁷ A future single language appears to be equally implausible.⁸ Regardless of future possibilities, any imposition of a single language on speech communities of the world or any suppression of plurality of languages is contrary to the teachings of Islam. Islamic law requires that Muslim states enforce the divine plan of linguistic pluralism, respect minority and majority languages within their jurisdictions, and coordinate regional and global efforts to preserve the diversity of speech communities.⁹

Second, the article argues that each individual has a divine right to self-expression or personal self-determination.¹⁰ According to Islam, each human being is vested with unique personal assets and disabilities that together constitute a personal identity.¹¹ While language facilitates communication among members of a speech community, self-determination allows each individual to unfold his or her vested being, including thoughts, dreams, talents, and countless other personal effects. Inwardly, self-expression is neither proprietary, nor predatory, nor overly acquisitive;¹² it is anchored in piety.¹³ Outwardly, self-expression is neither tied exclusively to language nor synonymous with the right to free speech. An individual may speak two or more languages, or speak none. Individual self-expression may or may not use any script or language and, as such, it is not confined to any grammar, syntax, or vocabulary. Self-expression can be more extensive and robust than the spoken or written word. Silence, stuttering, lisps, voice variations, gestures, signs, signals, eye contacts, and facial expressions are among many additional speech tools that enhance, clarify, obfuscate, or decorate self-expression.¹⁴ Furthermore, calligra-

7. See *infra* Part II.A.

8. See Joshua A. Fishman, *The New Linguistic Order*, FOREIGN POL'Y, Winter 1998-99, at 26 (arguing that English, despite its worldwide dominance, will likely not become a world language).

9. See *infra* Parts IV.A-B. However, the Quran is a book not exclusively for Muslims; rather it is a book for all the peoples of the world. See Quran, sura al-Isra 17:106 (the Quran may be recited to all human beings). The Quran's ordinances are binding on believers. *Id.* sura al-Anfaal 8:24 (Obey God and His messenger).

10. The right to self-expression and personal self-determination are used synonymously for the purposes of this article.

11. See *infra* Part III.

12. Shahrough Akhavi, *Islam and the West in World History*, 24 THIRD WORLD Q. 545, 554 (2003).

13. Quran, sura al-Hujurat 49:13. The best person is the best in conduct. *Id.*

14. See, e.g., Carolyn Ellis, "I Hate my Voice": Coming to Terms with Minor Bodily Stigmas, 39 THE SOC. Q. 517, 528 (1998) (author narrates a devastating childhood experience based on her lisp).

phy, architecture, drawing, painting, dancing, music, sports, and numerous other modes of expression fall within the domain of self-expression. Whereas language identifies speech communities, self-expression identifies individuals.

The right to language and the right to self-expression are distinct divine rights, and each must be separately recognized and protected. Yet, these two divine rights are related and reinforce each other, since personal speech is inherently part of individual self-expression. When a language is protected and promoted, the personal speech of its native speakers is correspondingly protected and promoted. But when a language is suppressed or denigrated, its native speakers cannot effectively exercise their right to personal speech. Even if one is multilingual, most individuals exercise their right to personal speech through their own native languages. Personal speech is, to a large extent, a utilitarian means for communicating with other members of a speech community. It is also an artistic and literary means by which to share joy and beauty. When native speakers are denied their right to personal speech, the speech community's right to language is impacted negatively. Correspondingly, when a native language is suppressed, the right to personal self-determination is diminished for its speakers. The Islamic law of speech diversity, therefore, protects both the speech community's right to language as well as the individual's right to self-expression.

The twin rights of language and self-expression function in a dynamic and evolutionary universe.¹⁵ No language or mode of self-expression is motionless in time and space. Languages continually interact with each other, lending and borrowing words, phonology, syntax, idioms, and, indeed, life and cultural experiences.¹⁶ Some languages develop and prosper while others decay and die.¹⁷ The Quran itself refers to communities that were annihilated;¹⁸ these communities disappeared along with their cultural and linguistic heritages. Per the Quran: "For every nation there is an appointed time. When their time comes [for disappearance], then they can

15. Quran, sura ar Rahman 55:29 (every day God manifests Himself in yet another wondrous way).

16. See generally GUY DEUTSCHER, *THE UNFOLDING OF LANGUAGE: AN EVOLUTIONARY TOUR OF MANKIND'S GREATEST INVENTION* (Metropolitan Books, 1st ed. 2005) (describing how language emerges, evolves, and decays). English, for example, despite its Indo-European rooting, borrowed heavily from Latin and French. *Id.* at 85.

17. Today, 40% of languages are dying at an unprecedented rate: "Languages are far more threatened than birds (11% threatened, endangered, or extinct), mammals (18%), fish (5%), or plants (8%). K. DAVID HARRISON, *WHEN LANGUAGES DIE: THE EXTINCTION OF THE WORLD'S LANGUAGES AND THE EROSION OF HUMAN KNOWLEDGE* 7 (1st ed. 2007).

18. Quran, sura al A'raf 7:4.

neither put it off by a single moment, nor hasten it.”¹⁹ Likewise, new nations with new languages and cultural heritages are established. In this evolutionary process of extinction and creation, the twin rights of language and personal self-determination do not lose validity or significance.

Any degradation of speech communities or individual self-expression is contrary to the Islamic law of speech diversity. No human system can be allowed to do what natural forces of evolution might do to the diversity of languages and individual self-expressions.²⁰ “To God belongs the command.”²¹ This point—the grundnorm of Islamic law that God alone is the core of normativeness²²—distinguishes divine acts from human acts, particularly when the two acts are analogous. The divine obliteration of a language is not normatively equal to the human destruction of the same language.

Therefore, the Islamic law of speech diversity opposes both coercive monolingualism and stereotypism. Coercive monolingualism suppresses the diversity of languages, using economic, cultural, and legal tools.²³ In its extreme forms, it may also display hostility toward the propagation and celebration of diverse languages. Stereotypism²⁴ suppresses the diversity of individual self-determination, using normic standards,²⁵ stigmatism, racial and gender stereotypes, and notions of disability. It does not permit individuals to question what the Quran calls the beauty (*zeenat*) that God has bestowed on each one of them.²⁶ Each individual is endowed with personal beauty and, according to the Quran, no one may deny what God permits.²⁷ Whereas coercive monolingualism champions one language at the expense of other languages; stereo-

19. *Id.* sura Yunus 10:49.

20. For example, natural forces such as tornadoes and hurricanes kill and maim human beings, sometimes in large numbers, but no human system can rely on natural law to maim and kill human beings.

21. Quran, sura ar-Rum 30:4; *see also id.* sura al-Qasas 28:88.

22. Ismail R. al Faruqi, *The Essence of Religious Experience in Islam*, 20 NUMEN 186, 194 (1973).

23. Monolingualism may be *de jure* or *de facto*. *De jure* monolingualism is established by law, such as in France and Germany, whereas *de facto* monolingualism is established by state practice, such as in the United Kingdom and the United States. Adeno Addis, *Constitutionalizing Deliberative Democracy in Multilingual Societies*, 25 BERKELEY J. INT'L L. 117, 143 (2007).

24. Stereotypism reduces certain individuals to performing certain socially allocated tasks. *See* Ali Khan, *The Dignity of Manual Labor*, 32 COLUM. HUM. RTS. L. REV. 289 (2001).

25. *See* Gerhard Schurz, *What is 'Normal'? An Evolution-Theoretic Foundation for Normic Laws and Their Relation to Statistical Normality*, 68 PHIL. OF SCI. 476 (2001) for a discussion of normic rules. Normic rules are distinguishable from universal rules in that normic rules admit exceptions whereas universal rules do not. *Id.*

26. Quran, sura al-A'raf 7:32.

27. *Id.*

typism restricts individuals from exercising the full range of self-expressive options. The Islamic law of speech diversity safeguards the variety of languages and self-expressions that communities and individuals mobilize for communication and cultural and artistic discourse.

While speech diversity is part of the divine plan as articulated in the Quran and the Prophet's Sunnah—the Basic Code of Islam or the Shariah²⁸—Muslim states and communities have done little to protect the diversity of languages. Some states, such as Turkey, continue to impose a single language on all ethnic groups, refusing to recognize even the existence of other languages spoken in the country.²⁹ Pakistan faced language riots and eventually lost the Bengali-speaking East Pakistan when it imposed Urdu (a language identified with the liberation movement though only spoken by a small immigrant minority) as an official language of the entire nation.³⁰ In the Middle East and North Africa, Arabic gradually displaced numerous local languages as Muslims abandoned their native tongues to embrace Arabic, the language of the Quran and the Prophet's Sunnah.³¹ Some Muslim states show tolerance for minority languages but do little to celebrate the riches of linguistic diversity.

The protection of individual self-determination is even more problematic in some Muslim states. Conceptually, the right to individual self-determination rebuffs the tyranny of normic standards, actively supports special talents, and proactively accommodates special needs (disabilities). Historical marvels of Islamic architecture, poetry, and art are testaments to the recognition of self-expression, though iconoclastic interpretations of the Basic Code have disapproved of figurative art.³² And although individuals have always been encouraged to excel in calligraphy³³ and other

28. See Ali Khan, *The Reopening of the Islamic Code: The Second Era of Ijtihad*, 1 U. ST. THOMAS L.J. 341, 341-348 (2003).

29. Lauren Fulton, *A Muted Controversy: Freedom of Speech in Turkey*, HARV. INT'L REV., Spring 2008, at 26 (reporting a history of abuse against the Kurds).

30. Tariq Rahman, *Language and Ethnicity in Pakistan*, 37 ASIAN SURV. 833, 836 (1997).

31. In some nations, such as Egypt, the pre-Islamic languages have disappeared; in others across North Africa, some pre-Islamic native languages, specifically Berber, persist, though Arabic is still the dominant language. Kees Versteegh, *Linguistic Contacts Between Arabic and Other Languages*, 48 ARABICA 470, 470-71 (2001). For an analysis of how Arabic replaced Greek and Aramaic in Palestine, see Sidney H. Griffith, *From Aramaic to Arabic: The Languages of the Monasteries of Palestine in the Byzantine and Early Islamic Periods*, 51 DUMBARTON OAKS PAPERS 11 (1997).

32. RICHARD ETTINGHAUSEN ET AL., ISLAMIC ART AND ARCHITECTURE 650-1250, at 6 (2001).

33. SHEILA S. BLAIR & JONATHAN M. BLOOM, THE ART AND ARCHITECTURE OF ISLAM 1250-1800, at 248 (1994). Calligraphy, the most traditional art in Islam, has continued to develop in quality and sophistication. *Id.*

revered activities, individual self-expression in broader social contexts finds fewer protections and outlets. Muslim women face unusual difficulty in personal self-determination,³⁴ and while persons with special abilities may break through barriers of normalcy, persons with disabilities face stigma and a lower quality of life.³⁵ For example, Muslim states offer little leadership in instituting, developing, and protecting speech systems for the deaf and the blind.³⁶ Variations from the ordinary are treated as abnormalities,³⁷ even objects of ridicule and stigma,³⁸ without any serious effort to provide therapeutic services, broaden the scope of communication, and integrate persons with special needs into the classroom,³⁹ workplace, and other communitarian places.⁴⁰ Children with disabilities are loved and respected, but sometimes denied the opportunity for development and self-determination.⁴¹

The thesis of this study is laid out in the following sequence. Part II analyzes the divine grammar of speech diversity, explaining three important ordainments. This part furnishes the rationale

34. Contemporary Islam and Muslim nations face two formidable charges. First, Muslim nations are charged with oppressing Muslim women. See Aziza Yahia al-Hibri, *Muslim Women's Rights in the Global Village: Challenges and Opportunities*, 15 J. OF L. & RELIGION 37 (2000-01) (analyzing injustices against Muslim women in Muslim societies). Second, Islam is charged with being an inherently violent religion. See Liaquat Ali Khan, *The Essentialist Terrorist*, 45 WASHBURN L.J. 47 (2006) (analyzing claims whether Muslim militants are addicted to spiritually-inspired violence).

35. See, e.g., Atsuro Tsutsumi et al., *The Quality of Life, Mental Health, and Perceived Stigma of Leprosy Patients in Bangladesh*, 64 SOC. SCI. & MED. 2443 (2007). But see Fahad al Aboutd & Khalid al Aboutd, *Leprosy in Saudi Arabia*, 78 LEPROSY REV. 405, 405 (2007) (reporting the establishment of a special hospital for leprosy in Saudi Arabia).

36. See *infra* notes 37-41.

37. For an overview of speech disorders including stammering, dysphagia, dysphonia, dysarthria, cleft palate, and other speech disorders, see Pam Enderby & Joyce Emerson, *Speech and Language Therapy: Does it Work?*, 312 BRIT. MED. J. 1655 (1996).

38. Mah Nazir Riaz, *Pakistan*, in COMPARATIVE STUDIES IN SPECIAL EDUCATION 143, 146 (Kas Mazurek & Margret A. Winzer eds. 1994) (noting that disabilities are considered socially stigmatic).

39. Julie E. Dockrell & Geoff Lindsay, *Children with Specific Speech and Language Difficulties—The Teachers' Perspective*, 27 OXFORD REV. OF EDUC. 369 (2001) (explaining the difficulties that teachers experience in providing accommodation to children with special speech needs).

40. Historically, however, Muslims have taken care of the disabled. Souraya Sue El-Hessen, *Disabilities: Arab States* in 3 ENCYCLOPEDIA OF WOMEN AND ISLAMIC CULTURES 98 (Suad Joseph, ed. 2006). Muslim parents see children with disabilities as a gift from God. Disabilities were accommodated at the highest state level. *Id.* The education and training of deaf courtiers in the Ottoman Empire was sophisticated, and sign language was widely used. *Id.*

41. G. Ali Afroz, *Islamic Republic of Iran*, in COMPARATIVE STUDIES IN SPECIAL EDUCATION 88, *supra* note 38, at 88, 92-93 (describing the treatment of the disabled children under Iran's Islamic government); see also Sayyed Ali Samadi, *Comparative Policy Brief: Status of Intellectual Disabilities in the Islamic Republic of Iran*, 5 J. OF POL'Y & PRAC. INTEL. DISABILITIES 129 (2008) (reporting that stigma is associated with intellectual disabilities in Iran and that there is limited opportunity for work and care for persons with intellectual disabilities).

that the Basic Code provides for protecting the diversity of languages and personal development. Part III explores the divine right to language, making important distinctions between native languages and gainful languages. It explains that in the evolutionary dynamics of human life, speech communities cannot be isolated from the rest of the world. While linguistic interactions are beneficial for communities, and developing communities may learn the languages of developed communities, any coercive extermination of languages is unacceptable. Part IV discusses the divine right to individual self-expression. This part argues that individual talents and disabilities are part of the divine plan and each individual has the God-given right to fully explore his or her talents. Persons with disabilities have no lesser right to live fully. Together, Parts III and IV conclude that both the right to language and the right to personal development are integral parts of the Islamic law of speech diversity. Part V analyzes the constitutions of seven major Muslim states to determine whether the positive law of those states incorporates the diversity of languages and self-expression. The study concludes by strongly recommending that Muslim states, whether secular or fusion states,⁴² will most profoundly reflect the sentiments of people if the state proactively recognizes the divine rights of language and personal self-development.

I. DIVINE GRAMMAR OF SPEECH DIVERSITY

The Shariah reveals three basic elements that constitute the grammar of speech diversity. First, the Quran affirms the presence of diversity (*ikhtilaf*) among human speech communities as part of the divine plan.⁴³ Speech diversity is not an aberration, abnormality or primitive condition likely to disappear under the developmental force of evolution. *Ikhtilaf* (diversity) of languages is an ordained human condition. As explained below, even monolingual communities do not speak exactly the same language.⁴⁴ Second, the Quran intimates that diverse communities exist for forging meaningful fellowship (*ta'aaraf*) among their constituents.⁴⁵ *Ta'aaraf* is not aimed at creating detachment, envy, or rivalry between speech communities. It is not a divisive force, though it can

42. See L. ALI KHAN, A THEORY OF UNIVERSAL DEMOCRACY: BEYOND THE END OF HISTORY 43-48 (2003). In this book, I develop the concept of fusion states to distinguish them from secular states. *Id.* A fusion state merges the state law with divine law. *Id.*

43. Quran, sura ar-Rum 30:22.

44. See *infra* text accompanying notes 56-59.

45. Quran, sura al-Hujurat 49:13.

be so abused. The divine purpose of *ta'araf* is to establish positive group feelings so that the members of a speech community may establish interpersonal relationships, families, schools, and neighborhoods.⁴⁶ Third, the Quran states unambiguously that everything that God has created is empowered with intelligent speech (*nataqa*).⁴⁷ *Nataqa* is the universal language that manifests itself through diverse languages and speech forms, empowering all creatures, including animate and inanimate objects, to actively participate in the divine plan of creation. The power of intelligent speech belongs to communities as well as to individuals.

A. Ikhtilaf or Diversity Ordainment

The Quran states: "And among His Signs is the creation of the heavens and the earth, and the variations (*ikhtilaf*) in your languages and your colors: verily in that are signs for those who know."⁴⁸ According to this diversity ordainment, the existence of hundreds of languages is a sign of God's will and sovereignty. It is no accident that human communities develop and speak diverse languages. It is consistent with the divine plan of creation that diverse communities speak not one but many languages. For the uninformed, the diversity of languages might be confusing, threatening, or inefficient. But for those who seek knowledge, says the Quran, variations (*ikhtilaf*) in languages are indispensable elements of creation.⁴⁹ The diversity ordainment invites linguists, anthropologists, and other experts to explore the diversity of languages and speech forms, for only persons of knowledge can appreciate linguistic magnificence of the divine plan.

In explaining this diversity ordainment, Muslim exegetes reach the same conclusion. Ibn Kathir lists a number of speech communities, including Tartars, Franks, Berbers, Kurds, Persians, Indians, and Armenians, who speak their own languages.⁵⁰ Only God knows, says Ibn Kathir, the variety of languages spoken among the children of Adam.⁵¹ Commenting upon the diversity ordainment, Maududi opines that linguistic variations defy the apparent logic of biology in that human beings furnished with the similar equipment of vocal chords, mouth, and tongue nonetheless culti-

46. See *infra* Part I.B.

47. Quran, sura Fussilat 41:21.

48. *Id.* sura ar-Rum 30:22.

49. See *id.*

50. Tafsir ibn Kathir, sura ar-Rum 30:23, available at <http://www.tafsir.com/default.asp?sid=30&tid=40245>.

51. *Id.*

vate diverse languages, dialects, pronunciations, and accents.⁵² This is so because God, the Master-Artist, has willed diversity (*ikhhtilaf*) among human beings.⁵³ The diversity ordainment is founded on rich diversity, and not automated uniformity.⁵⁴ Languages and dialects may differ from nation to nation, city to city, and community to community, even though the people may belong to the same nation or racial stock.⁵⁵ Localized accents, pronunciations, and dialects are not necessarily the products of times when communications were scarce and communities lived in temporal and spatial enclaves.⁵⁶

Modern research discloses that monolingualism itself contains intriguing and complex diversity. Accents and pronunciations, the essential parts of speech, vary even within the same language and dialect. In many monolingual speech communities, particularly Arabic, diglossia—a custom under which a prestigious variant of the language is spoken at formal occasions but colloquial vernaculars are used in mundane exchanges—is commonplace.⁵⁷ Even substantively, the same language may vary from district to district, the variants often described as dialects. Furthermore, the same language may also carry what are known as sociolects and ethnolects. The sociolect of the educated classes is different from that of the working class. In the United States, Black English is not the same as White English.⁵⁸ And even within white communities, the third generation descendants of German, Polish, and Italian Americans, who have lost their ancestral language, continue to carry in their respective English ethnolect their family's linguistic heritage.⁵⁹ These dialectal layers furnish insights into the divine plan of speech diversity.

52. Sayyid Abul Ala Maududi, Tafheem ul Quran, sura ar-Rum 30:22, n.32 (Zafar Ishaq Ansari trans.), available at <http://www.tafheem.net/main800.html>.

53. *Id.*

54. *Id.* sura ar-Rum 30:22, n.31.

55. *Id.*

56. Even in the twenty-first century United States, a nation meshed together through extensive media including scores of television and radio channels, English is the language of the South and North, East and West, yet accents and usages of English are far from uniform across the nation. The same English words are pronounced and understood differently in different ethnic and immigrant communities.

57. Amin F. Malhas, *Jordan*, in MOTHER TONGUE PRACTICE IN THE SCHOOLS 181, 191 (Kurt Opitz ed., 1972); see also Peter Sutton, *Educational Language Planning and Linguistic Identity*, 37 INT'L REV. EDUC. 131, 134 (1991).

58. Walter F. Edwards, *Sociolinguistic Behavior in a Detroit Inner-City Black Neighborhood*, 21 LANGUAGE IN SOC'Y 93 (1992) (persons embedded in the neighborhood are more likely to speak the vernacular).

59. Peter Sutton, *Educational Language Planning and Linguistic Identity*, 37 INT'L REV. EDUC. 133, 135 (citing Wolfgang Wolck, *The Linguistic Resolution of Urban Ethnic Conflict*, in PLURILINGUA VII, URBAN LANGUAGE CONFLICT 21, 23 (Peter H. Nelde ed., Dummler-Bonn 1989)).

Speech diversity is not confined to communities, but each individual is gifted with a unique and dynamic apparatus of speech. No two individuals exercise speech abilities in the same exact manner.⁶⁰ The choice of words, accent, pronunciation, quality of voice, speech rhythm, gestures, humor, facial expressions, sentence structure and numerous other variables, including speech disabilities, distinguish one speech act from the other. The diversity of speech acts is immeasurable even though individuals may be using the same language. The same individual may exercise diverse manners of speech in varying social contexts. Even stuttering may vary from one situation to another, depending on “effects of emotional and autonomic arousal, and linguistic and other cognitive processing demands.”⁶¹

Languages are often associated with the ear and the tongue and not with the eyes. Only with the advent of scripts have languages become visual. But for centuries, and even today, language in its most robust and lively form involves speech and hearing. The word, spoken or written, has been the primary focus of the so-called “intellectual languages.”⁶² Visual languages are not necessarily texts. They could consist of numbers, figures, abstract symbols, and human gestures. The rise of hermeneutics is the rise of the word over visual images. In hermeneutic cultures, the truths of interpretation carry more value than the methods of observation.⁶³

B. *Ta'araf or Fellowship Ordainment*

In order to further clarify the grammar of speech diversity, the Shariah intimates that the diversity of nations and communities is part of the divine plan. The Quran states: “O human beings! Lo! We have created you male and female and have made you nations and tribes that you may know one another (*ta'araf*).”⁶⁴ This fellowship ordainment recognizes two distinct diversities, gender and communal, which are mentioned together in the same verse to demonstrate their analogous rooting in natural law. Gender identity furnishes self-knowledge whereas communal identity supplies familiarity with others. Each identity, such as sisterhood or bro-

60. See A. Daniel Yarmey, *Earwitness Speaker Identification*, 1 PSYCHOL. PUB. POL'Y & L. 792 (1995).

61. Christine Weber-Fox & Amanda Hampton, *Stuttering and Natural Speech Processing of Semantic and Syntactic Constraints on Verbs*, 51 J. SPEECH LANGUAGE & HEARING RES. 1058, 1058-59 (2008).

62. See Quran, sura al-Hujurat 49:13.

63. Martin Jay, *The Rise of Hermeneutics and the Crisis of Ocularcentrism*, 9 POETICS TODAY 307, 309 (1988).

64. Quran, sura al-Hujurat 49:13.

therhood that is derived from gender and camaraderie that is derived from meta-gender community, is both natural and authentic. It is natural for women to congregate with women and men with men, for such congregations furnish gender-specific knowledge. However, men and women cannot be imprisoned in their respective genders. Men and women must meaningfully and respectfully serve inter-gender communities to nurture social, cultural, artistic, and spiritual bonds.⁶⁵

Most important, the Quran's ordainment clarifies the divine purpose of creating communal diversities. According to the divine plan, the *raison d'être* of forming communities is fellowship (*ta'araf*).⁶⁶ The community supplies individuals with what Ibn Khaldun (d. 1406) described as "group feelings,"⁶⁷ which is yet another explication of *ta'araf*. While grandiose sentiments of connections with the entire human species or a big portion thereof are noble, individuals as a matter of reality derive an intimate sense of belonging from community affiliations. Ibn Khaldun argues that blood ties generate natural affection among members of a group.⁶⁸ The Basic Code obligates individuals to support and serve their extended families.⁶⁹ The sense of group fellowship, however, is not confined to blood relations. The Prophet disapproved of tribal and ancestral pride that disables persons from connecting with other people.⁷⁰

In introducing the concept of fellowship (*ta'araf*), the Quran mentions two distinct meta-gender aggregative units: tribes and nations.⁷¹ The sense of group solidarity may not be confined to a single aggregative unit but indeed may be simultaneously formed with both smaller and larger groups. An intimate sense of fellowship or "we-feeling" may exist in a smaller group, such as a neighborhood, town, or tribe, but individuals who forge an intimate rela-

65. The Basic Code places restrictions on certain inter-gender behavior to avoid non-marital sexuality and treating women as sexual objects. See Rafida al-Hariri, *Islam's Point of View on Women's Education in Saudi Arabia*, 23 COMP. EDUC. 51 (1987). However, it does not prohibit women from participating in social, political, and economic life of the community. *Id.*

66. Quran, sura al-Hujurat 49:13.

67. IBN KHALDUN, *THE MUQADDIMAH* 264-65 (Franz Rosenthal trans., 1958). John Stuart Mill made a similar argument that unless the people speak the same language, establishing a representative democracy "is next to impossible." JOHN STUART MILL, *CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT* 120-121 (Longmans, Green and Co., 1919) (1861).

68. KHALDUN, *supra* note 67, at 264.

69. Quran, sura an-Nahl 16:90.

70. The Prophet said: "Allah, Most High, has removed from you the pride of the pre-Islamic period and its boasting in ancestors." Sunan Abu Dawud, bk. 41, Hadith No. 5097, http://www.searchtruth.com/book_display.php?book=41&translator=3&start=199&number=5085 (last visited Apr. 11, 2010).

71. Quran, sura al-Hujurat 49:13.

tionship with the inhabitants of a town or a tribe may also belong to a larger social group, such as a state or a nation.⁷² This human ability to foster more than one aggregate bond, an ability emanating from the divine plan, demonstrates that human beings are not designed to pursue only narrow group identities but also possess the natural capacity to connect with peoples outside of their tribes and towns. The fellowship (*ta'araf*) ordainment must not be interpreted to defend any rigid or virulent tribalism.

Although tribes and nations mentioned in the fellowship ordainment are not defined through linguistics, language remains an integral part of group solidarity. Even modern scholars observe that the more intimate the group, the more solidarity occurs within the same speech community.⁷³ It is natural for an extended family, a tribe, or a town to speak the same language or the same dialect. Larger social units, such as states or nations, however, may or may not speak the same language. The contemporary phenomenon of official state languages is bringing diverse communities together through a common language. Official languages, however, rarely succeed in eliminating sociolects and ethnolects that continue to furnish intimate fellowship.

The fellowship ordainment does not justify group arrogance or linguistic factionalism. Analogous to social markers of race and color, language can be used as a tangible marker of group inferiority or superiority. In Pakistan, for example, minor languages spoken by poor and powerless speech communities are often saddled with inferiority, pressuring these communities to shift to Urdu or English. Even Punjabi, a major language spoken by over forty-four percent of the population, is associated with backwardness and the "village yokel," forcing Punjabi families to shift to Urdu.⁷⁴ The children educated at elitist English-medium schools, and coming from affluent or professional families, show little respect for Urdu.⁷⁵ These social hierarchies attributed to language cannot be justified under the fellowship ordainment.

72. Terrance G. Carroll, *Islam and Political Community in the Arab World*, 18 INT'L J. MIDDLE E. STUD. 185, 192 (1986) (explaining that people identify with more than one group).

73. See, e.g., Mark S. Nadel, *Customized News Services and Extremist Enclaves in Republic.com*, 54 STAN. L. REV. 831, 836-37 (2002) (book review) (arguing that fostering a common language is indispensable for the forming of a community).

74. Tariq Rahman, *Language Policy, Language Death and Vitality in Pakistan*, <http://www.tariqrahman.net/lanmain.htm> (follow hyperlink for article title) (last visited Apr. 11, 2010).

75. *Id.*

C. Nataqa or Universality Ordainment

The Hebrew Bible presents the idea that the "whole world had one language and a common speech."⁷⁶ Furthermore, human beings are inherently loquacious since Adam could name all things, an advantage he had over the angels. The first and only language was perfect, and could accurately describe reality. However, according to the Bible, this perfect language was lost when the Babylonians planned to build a city "with a tower that reaches to the heavens."⁷⁷ God confused the one, perfect language so that builders could not communicate with each other.⁷⁸ This confusion produced multiple languages and the dispersion of one people into many communities.⁷⁹ Exegetically, particularly in Christianity,⁸⁰ the diversity of languages is interpreted as a curse, a living reality of human arrogance, and a testimonial that man is confused, confounded and scattered.⁸¹ Some argue that human speech has not been completely corrupted but each language contains some elements of truth.⁸² Since the pre-confusion language was divine and perfect, the question remains whether the epistemologically perfect language can be retrieved or reconstructed.⁸³

The Quran does not embrace the linguistic part of the Babel story.⁸⁴ Like the Bible, however, the Quran does offer the idea of a universal speech that informs the entire universe; a speech that has not been confused, lost, or taken away. In addition to instituting diverse languages among tribes and nations to foster social solidarity as opposed to punishing or to dispersing them, the Shariah intimates that God has empowered all creatures with universal

76. *Genesis* 11:1 (New International Version).

77. *Genesis* 11:4 (New International Version).

78. *Genesis* 11:5-7 (New International Version).

79. *Genesis* 11:9 (New International Version).

80. In the Christian tradition, the Babel story is about human pride, but in the Jewish exegetical tradition the story is about dispersion since the people by building a vertical tower wanted to stay at the same place. See P.J. Harland, *Vertical or Horizontal: The Sin of Babel*, 48 VETUS TESTAMENTUM 515 (1998).

81. Einar Haugen, *The Curse of Babel*, DAEDALUS, Spring 1973, at 47, 47-48 (arguing that the Biblical story has reversed the cause and effect in that diverse languages surfaced because human beings were scattered and not vice versa). Even secular literature embraced the idea that the diversity of languages was a curse and can be remedied. See Clark Emery, *John Wilkin's Universal Language*, 38 ISIS 174 (1948).

82. Hans Aarsleff, *Origin of Universal Languages*, 6 LANG. IN SOC'Y. 281 (1977) (book review). See generally HANS AARSLEFF, FROM LOCKE TO SAUSSURE: ESSAYS ON THE STUDY OF LANGUAGE AND INTELLECTUAL HISTORY (Univ. of Minn. Press 1982).

83. See David S. Katz, *The Language of Adam in Seventeenth-Century England, in HISTORY AND IMAGINATION: ESSAYS IN HONOUR OF H.R. TREVOR-ROPER* 132, 132-45 (Hugh Lloyd-Jones et al. eds., 1981); see also JAMES KNOWLSON, UNIVERSAL LANGUAGE SCHEMES IN ENGLAND AND FRANCE 1600-1800, at 9-15 (Univ. of Toronto Press 1975).

84. See sura Ghafir 40:36-37. The Quran, however, does mention that the Pharaoh summoned the building of a tower to reach the God of Moses. *Id.*

speech, called *nataqa*. The Quran clarifies this point with the following illustration. On the day of accountability, says the Quran, human skins will speak to testify for and against the persons who resided in them.⁸⁵ The persons held accountable would ask their skins how they acquired the ability to express themselves.⁸⁶ The skins will reply: "The same God Who has given *nataqa* (intelligent speech) to everything has given it to us too."⁸⁷ This ordainment alerts human beings that all creations, human and non-human, possess *nataqa*.

Anthropocentric presumptions that languages are the unique property of human beings embrace a notion of speech that cannot be reconciled with *nataqa*. Likewise, human notions that animals are dumb or that inanimate objects are mute are incompatible with *nataqa*. According to the Quran, each distinct community, human and non-human, animate or inanimate, cultivates its own speech.⁸⁸ Each speech system, human and non-human, is an intelligent manifestation of *nataqa*. By participating through the intelligence of *nataqa*, diverse species, including angels, ants, birds, mountains, and animals communicate among themselves and with each other. Even God speaks through the universal medium of *nataqa*;⁸⁹ hence, *nataqa* is not anthropocentric.

With respect to human speech, whether spoken or written, *nataqa* is not confined to auditory or scriptory forms of communication. Among human beings, the sign language for the deaf is visual, and one for the deaf and the blind is tactile. Gestures constitute a significant part of communication. Even complete silence conveys meaning. All these diverse modes of communication—auditory, scripted, visual, tactile, gestural, silence, and many others—are manifestations of universal speech or *nataqa*.⁹⁰

There exists no opposition between the universality of *nataqa* and diversity of human speech.⁹¹ Over the centuries, human beings

85. Quran, sura Fussilat 41:21.

86. *Id.*

87. *Id.*

88. In the nineteenth century, Louis Braille, who turned blind at the age of 3, invented a new language for the blind, now named Braille, which allows the person to read a text with his fingers. C. MICHAEL MELLOR, *LOUIS BRAILLE A TOUCH OF GENIUS* (2006). Braille can be used to write and read text in any human language. *Id.* at 112

89. I am developing the divine concept of *nataqa* in a forthcoming article. See Liaquat Ali Khan, *The Islamic Concept of Universal Speech* (unpublished manuscript, on file with author).

90. *Antaqa* may be distinguished from *aswat* (voices). *Aswat* are auditory whereas *antaqa* is much more than a collection of *aswat*. The Quran mentions *aswat* in several verses. See, e.g., Quran, sura Luqman, 31:19 (lower thy voice).

91. In Western literature, important distinctions have been made between speech and language. Language is defined as the underlying structure whereas speech is the use of language for functional or literary purposes. See Edward MacKinnon, *Language, Speech,*

have developed hundreds of speech forms.⁹² Most were spoken languages, though some were both spoken and written. In the relatively small area of New Guinea region alone, presently some 1200 languages are actively spoken.⁹³ Franz Boas explains that the present distribution of a few linguistic stocks⁹⁴ across vast geographical areas is a new historical phenomenon.⁹⁵ And as with other human elements, human languages rise and fall.⁹⁶ Some languages perish.⁹⁷ Others attain universal recognition.⁹⁸ New languages replace old languages.⁹⁹ Some languages merge with others to make new dialects and languages.¹⁰⁰ Some generously borrow from each other.¹⁰¹ While languages as speech forms are transient, *nataqa* is permanent. Under no circumstances do human beings lose the ability to communicate with each other. This ability emanates from *nataqa*.

Anthropocentric linguistic research struggles with the notion of a universal language. Despite the extensive and dynamic diversity of human speech forms, linguists continue to discover various universal elements underlying human speech. A nineteenth-century observation captures a simple but spectacular truth that "[e]very people can learn the language of every other."¹⁰² Franz Boas identifies phonetics, grammar, and vocabulary as three fundamental aspects of human speech.¹⁰³ Variations in these elements constitute the differences in conventional languages.¹⁰⁴ Each conventional

and Speech-Acts, 34 PHIL. & PHENOMENOLOGICAL RES. 224 (1973). These distinctions are not made here to separate *antaqa* from languages.

92. Frederic W. Farrar, *Language and Ethnology*, 4 TRANSACTIONS OF THE ETHNOLOGICAL SOC'Y OF LONDON 196 (1866) (showing inaccuracy of the belief that there was only one primitive language from which all languages have branched off).

93. William A. Foley, *The Languages of New Guinea*, 29 ANN. REV. OF ANTHROPOLOGY 357, 358 (2000). Each language is spoken by a small number of speakers, roughly 3000. *Id.* at 359. The largest language, Enga, has only 200,000 speakers. *Id.* Some languages have fewer than fifty speakers. *Id.* The reasons for this unprecedented linguistic diversity are the time depth of human settlements and the political disunity of self-protective clans. *Id.* at 358.

94. A linguistic stock is a group of related languages that differ from another group of related languages. J.M.C., *Primitive Languages*, 1 PRIMITIVE MAN 17, 18 (1928). The Indo-European stock is in this sense distinct from the Semitic stock. *Id.*

95. Franz Boas, *The Classification of American Languages*, 22 AM. ANTHROPOLOGIST 367, 368 (1920).

96. See Foley, *supra* note 93, at 358-59.

97. *Id.* at 359.

98. See Fishman, *supra* note 8.

99. Boas, *supra* note 95, at 368.

100. Urdu, for example, is an amalgam of numerous languages and dialects. C. Shakle, *Punjabi in Lahore*, 4 MODERN ASIAN STUD. 239, 241 (1970).

101. Foley, *supra* note 93 at 359.

102. 1 FRIEDRICH RATZEL, *THE HISTORY OF MANKIND* 30 (A.J. Butler trans., 1896).

103. Boas, *supra* note 95, at 369.

104. Western colonization produced the unsupportable theory of primitive languages, arguing that European languages are superior. See JOEL SPRING, *EDUCATION AND THE RISE*

language cultivates its own phonetics, grammar, and vocabulary, yet cross-pollination of these elements has been a recurrent linguistic phenomenon.¹⁰⁵ Cross-pollination evidences *nataqa*. Noam Chomsky proposes the existence of a universal grammar rooted in human cognitive capacities and mental structures.¹⁰⁶ Neurological evidence suggests that the human brain is wired to comprehend the logic of real languages.¹⁰⁷ These insights might carry elements of divine truth, at least as far as the human species is concerned, that a fundamental intelligence informs diverse languages.

II. DIVINE RIGHT TO LANGUAGE

This part argues that speech communities have a divine right to language. The Islamic law of speech diversity protects native languages and values diverse dialects and scripts that speech communities develop to create and preserve stories, poems, proverbs, jokes, songs, insights, wisdom lessons, and numerous other oral and written linguistic assets. Opposed to the protection of native languages is “coercive linguistics” that threatens the survival of hundreds of minor languages. Coercive linguistics is an aggressive ideology that imposes a single language over diverse speech communities. Defended under the rubrics of nation-building, state unification, cultural assimilation, economic instrumentalism, or even blatant supremacist dogma, coercive linguistics aims to exterminate the diversity of languages, dialects, and scripts.¹⁰⁸ In defending native languages, Islamic law repudiates coercive linguistics as an ideology contrary to the divine plan of speech diversity. While Islamic law protects native linguistics, it does not oppose speech communities from learning a second or third language. In order to draw economic, scientific, or spiritual benefits, speech communities may encourage their members to learn other languages. The Islamic law of speech diversity is not opposed to the

OF THE GLOBAL ECONOMY 13 (1998). However, primitive languages served their communities as effectively as do contemporary languages. See J.M.C., *supra* note 94, at 23. “[S]avages and barbarians are possessed of the same kind [and degree] of rational intelligence that civilized peoples possess.” *Id.*

105. Foley, *supra* note 93, at 359.

106. NOAM CHOMSKY, *RULES AND REPRESENTATIONS* 28-30 (Colum. Univ. Press 1980) (1980).

107. *Id.*; see also MICK RANDALL, *MEMORY, PSYCHOLOGY, AND SECOND LANGUAGE LEARNING* 40 (2007) (discussing both universalist and modular approaches to languages).

108. *E.g.*, Rahman, *supra* note 74 (“Language policy in Pakistan is meant to strengthen the state.”); see also CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN arts. 28, 251. For a case study of how a script containing religious literature meets extinction, see Ali S. Asani, *The Khojki Script: A Legacy of Ismaili Islam in the Indo-Pakistan Subcontinent*, 107 J. AM. ORIENTAL SOC’Y 439 (1987).

gainful usage of linguistics that does not threaten the existence of native languages. Islamic law is tied neither to monolingual ideologies nor to any presumed purism or exclusivity of native linguistics.

A. Native Linguistics

As discussed above, variation (*ikhtilaf*) in languages is part of the divine script. In other words, the Basic Code confirms the permanence of native linguistics—that is, a common language forges cultural solidarity among members of a speech community.¹⁰⁹ Sociolinguists may study the mechanics of language as a marker of identity. They may research how dialects sprout and subsist. They may analyze the special attributes of a speech community. They may explain how economic and cultural forces contribute to the construction of sociolects. They may investigate the role of law in promoting and suppressing languages. While these studies are instructive, “native linguistics” in this article refers to the divine plan under which macro- and microlinguistic variations are inevitable, beyond any human power to completely eradicate them.

Native linguistics is a manifestation of natural law. The emergence and disappearance of languages or the process of their mutual differentiation is no different than any other natural phenomenon that, for example, brings forth evolutionary variety in flora and fauna, in forms of life, and among stars and planets strewn in the universe.¹¹⁰ Following the forces of natural law, native languages undergo complex transformation. Some languages face the threat of extinction. Others bear fruit and gain strength. Due to economic-driven globalization, languages are disappearing at a rapid pace.¹¹¹ Losing a language is losing the cultural assets of a speech community, including its ideas, stories, insights, and inferences drawn from experience.¹¹² Yet the natural disappearance of some languages is as much a part of the divine plan as is their survival.

1. Cultural Pluralism

Native linguistics is so sturdily wired into human nature that

109. Quran, sura ar-Rum 30:22.

110. *Id.* sura as-Saffat 37:6.

111. DANIEL NETTLE & SUZANNE ROMAINE, VANISHING VOICES: THE EXTINCTION OF THE WORLD'S LANGUAGES 10-23 (2000).

112. See HARRISON, *supra* note 17, at 3-12.

even a common religion cannot diminish its longing.¹¹³ Hundreds of speech communities across the world continue to speak their native tongues after practicing Islam for many centuries and while knowing that the Basic Code was revealed in Arabic. National vernaculars among Arab states vary considerably and continue to flourish along with the immutable Arabic of the Quran. In the era of nation-states, the common faith of Islam could not furnish a strong rationale for diverse speech communities to band together under the same flag. Muslim Kurds living among Muslim Persians, Muslim Syrians, Muslim Iraqis, and Muslim Turks yearn for a separate nation-state where they can speak their own language. Pakistan, a state carved in the name of Islam out of a predominantly Hindu India, failed to override native languages of diverse speech communities¹¹⁴ through the common faith of Islam. In contrast, East Pakistan, though largely Muslim but speaking *Bangla*, a language nowhere spoken in West Pakistan, seceded to establish a separate nation-state, called Bangladesh (the home of *Bangla*).

The divine plan of speech diversity affirms cultural pluralism. In each speech community, native or folk stories are the repositories of culture.¹¹⁵ Stories convey the messages of good relationships with parents, family, neighbors, and community; they teach manners, morality, fairness, bravery, virtue, and things that must be done and things that must be avoided. Storytelling is an essential part of cultural education. No culture can survive without stories, and no stories are free of cultural intones. A speech community is degraded when its stories are assaulted, ridiculed, or simply ignored. A speech community is preserved when its stories are told, retold, staged, filmed, and set to music. "Through storytelling, the values and philosophies of particular cultural groups [are] passed on across the generations, thereby contributing to the maintenance

113. Likewise, a common geography, economy, or legal system may not produce a monolingual community. Franz Boas explains that, at the earliest times, linguistic diversity had existed among genetically related racial groups. FRANZ BOAS, *THE MIND OF PRIMITIVE MAN* 137-48 (The Free Press 1965) (1911).

114. For a complete list of the living languages of Pakistan, see *Pakistan*, in *ETHNOLOGUE: LANGUAGES OF THE WORLD* 588-598 (M. Paul Lewis ed., 16th ed. 2009), available at http://www.ethnologue.com/show_country.asp?name=PK. Muslim Pakistan is home to over sixty native languages though six distinct major languages predominate. Tariq Rahman, *Arabic in Pakistan*, <http://www.tariqrahman.net/lanmain.htm> (follow hyperlink for article title) (last visited Apr. 11, 2010). The major languages are Punjabi, Pashto, Sindhi, Siraiki, Urdu, and Balochi. *Id.* In the flow of time, some Pakistani languages have died while others are rejuvenated. *Id.*

115. Language does not shape the entire culture since culture contains numerous non-linguistic elements. WILLIAM BRIGHT, *VARIATION AND CHANGE IN LANGUAGE: ESSAYS* 3-5 (Anwar S. Dil ed., 1976). Nonetheless, language is an integral part of culture. *Id.*

of the group's cultural identity and sense of community."¹¹⁶ Authentic cultural stories, told without bias and filters, may be incorporated into a shared curriculum of public and private schools so that children of diverse backgrounds can take pride in their own heritage and simultaneously learn about other cultures. Language is an experiential and existential narrative; it cannot be viewed mechanistically as a series of abstract morphemes and phonemes.¹¹⁷

Native languages spoken in Muslim communities are storehouses of the intangible cultural heritage. The heritage of a civilization is rarely limited to material manifestations of creativity and grandeur. The Moghul Taj Mahal in India, the Moorish Alhambra in Spain,¹¹⁸ and the Umayyad Dome of the Rock in Jerusalem are monuments to Muslim conceptions of love, beauty, and commitment to share spiritual space with other peoples of faith. But the cultural heritage of Islam also resides in unknown native tongues. Dungans, the descendants of Chinese Muslims in the Ch'u Valley of Central Asia, migrated from China to escape the brutality of Manchu rule.¹¹⁹ They were poor and illiterate.¹²⁰ They brought little with them except the Arabic Quran and native "stories, poems, legends, songs, proverbs, and riddles in oral form."¹²¹ These linguistic treasures retained in the original Chinese dialect sustained Dungans as a speech community while they worked hard to build a new life.¹²² These native treasures are also part of the Islamic cultural heritage.

2. Nativization of the Basic Code

Besides native languages, the Arabic of the Quran carries a

116. Ella Inglebret, et al., *Integrating American Indian/Alaska Native Culture into Shared Storybook Intervention*, 39 LANGUAGE, SPEECH, & HEARING SERVICES IN SCHOOLS 521, 522 (2008); see also DONALD L. FIXICO, *THE AMERICAN INDIAN MIND IN A LINEAR WORLD: AMERICAN INDIAN STUDIES AND TRADITIONAL KNOWLEDGE* 21-37 (2003).

117. See Carola Conle, *Language, Experience, and Negotiation*, 22 CURRICULUM INQUIRY 165 (1992) (proposing to join the learning of a second language with students' personal practical knowledge).

118. Professor Karen Barron of Washburn University sent me the following note: "It was a great pleasure to revisit Alhambra in my mind again as you mention it. The tiles, the architecture, the gardens seem as heaven might be." Letter from Karen Barron to Ali Khan (Jan. 23, 2009) (on file with author).

119. Svetlana Rimsky-Korsakoff Dyer, *Karakunuz: An Early Settlement of Chinese Muslims in Russia*, 51 ASIAN FOLKLORE STUD. 243, 244 (1992).

120. *Id.* at 245.

121. *Id.*

122. See *id.* One riddle depicts a scorpion as follows: "A piece of meat is on the wall [but] no passerby touch it." *Id.* at 260 (alteration in original). Insect stories are also part of the Islamic intangible heritage. The thirtieth chapter of the Quran is named *al-Ankabut*, which means "the spider."

special place in the hearts of Muslims.¹²³ Arabic is the language that the Prophet spoke and the language in which he delivered legal opinions, called the Sunnah. Although Arabic dialects vary from one Arab nation to another and have evolved over the centuries, the immutable Arabic of the Quran binds Muslim communities across time and geography.¹²⁴ Even though most Muslims are unable to speak Arabic, they say the daily five prayers in Arabic. The call to prayer, said in Arabic, is a universal phenomenon. All Muslims wish to memorize the Quran in Arabic as much as they can. Almost all Muslim speech communities of the world individually produce several hundred persons who memorize the entire text of the Quran and recite it in special prayers during Ramadhan. When it comes to the sacred text of the Quran, the distinction between Arab and non-Arab ceases to exist as no one disputes that the Quran is revealed in Arabic. Listening to the Quran in Arabic is commonplace in Muslim states and in mosques and Islamic centers built in non-Muslim countries, including the United States. These practices, presenting the ritual unity of the Muslim world, are unlikely to change in the future. These practices invite Muslims of the world to add the Arabic of the Quran to their linguistic assets.

While the Quran is preserved in Arabic, it has now been translated and explained in numerous languages. Diverse speech communities, which exist under the divine plan, have every right to understand the Quran and the Sunnah in their native tongues. God's ordainment that "[w]e have made it a Qur'an in Arabic so that you may be able to understand"¹²⁵ was addressed to the Prophet and his Arabophone audience and not to non-Arabic speech communities. With reliable translations and explanations of the Basic Code, the center of exegetical gravity has begun to

123. The languages in which scriptures have been written or revealed are known as truth or divine languages. Liaquat Ali Khan, *The Immutability of Divine Texts*, 2008 BYU L. REV. 807, 810. Sanskrit contains the truth of Gita and Puranas, the Hindu religious texts, Hebrew is the language of the Torah, Aramaic and Greek are the languages of the Gospels, Latin is the language of the Catholic Church, and Arabic is the language of the Quran. Communities show great respect for truth languages and believe that their deepest identity is derived from the truth language. It is no minor event that a sacred text is preserved in a particular language for centuries.

124. One of the most distinctive features of the Arab world is that Classical Arabic coexists with such national vernaculars as Egyptian, Syrian, Jordanian, and so on. The first is the language of writing, education, and administration, while the latter are the media of oral exchanges, nonprint media, poetry, and plays.

Niloofer Haeri, *Form and Ideology: Arabic Sociolinguists and Beyond*, 29 ANN. REV. OF ANTHROPOLOGY 61, 63 (2000). The Arabs are reluctant to translate the Quran in national vernaculars. *Id.* at 75.

125. Quran, sura az-Zukhruf 43:3.

shift away from the Middle East. For centuries, Arabophone communities have interpreted the Quran for the Muslim world. In these interpretations, the Arab culture informed the understanding of the Basic Code. The second era of *ijtihad*, which is underway throughout the Muslim world, is no longer tied to the Arabic language and Arab culture.¹²⁶ Muslims have always been multilingual, and now Islam will be too.¹²⁷ Arabophone communities will continue to contribute to the evolving understanding of the Basic Code, but now, perhaps more vigorously than ever before, diverse speech communities will understand and interpret the Basic Code in their native tongues, expanding the comprehension of God's ordinances and the Prophet's Sunnah. The nativization of the Basic Code will deepen the roots of Islam.

B. Coercive Linguistics

Coercive linguistics deploys language as a means of imposing a world viewpoint, a way of life, and cultural preferences, and, in its worst form, turns predatory to burgle natural and human resources. Most importantly, coercive linguistics suppresses minor languages to the extent of degradation. Empires, occupiers, and missionaries have deployed coercive linguistics to control, plunder, and convert populations considered barbaric, resourceful, or bereft of truth.¹²⁸ Lord Thomas Babington Macaulay, a humanist, the author of the Indian Penal Code, and the colonial champion of English language, believed that "a good European library [is] worth the whole native literature of India and Arabia."¹²⁹ He had serious doubts that Sanskrit or Arabic could absorb the modernity of the nineteenth century.¹³⁰ In order to effectively rule British India, Lord Macaulay proposed to educate "a class of persons, Indian in blood and colour, but English in taste, in opinions, in morals, and in intellect."¹³¹ The Indian elites, Hindus more than Muslims, accepted Macaulay's invitation to race-laden linguistics.

Lord Macaulay was by no means atypical. "Colonial linguistics

126. See Khan, *supra* note 28. "Intellectual and spiritual striving to find the path is *ijtihad*." *Id.* at 345.

127. Muslim speech communities must be careful against foreign conspiracies to divide Muslims on the basis of language. The French, for example, actively conspired to drive a wedge between Arabophone and Berberophone communities of Algeria. See ISLAM: STATE AND SOCIETY 185 (Klaus Ferdinand & Mehdi Mozaffari eds., 1988).

128. See FELIX MARTI ET AL., WORDS AND WORLDS: WORLD LANGUAGES REVIEW 80-83 (Colin Baker & Nancy H. Hornberger eds., 2005) (explaining how lingual racism identifies certain languages with poverty, superstition, and inferiority).

129. THOMAS BABINGTON MACAULAY, SPEECHES 349 (Oxford Univ. Press 1979) (1935).

130. *Id.* at 345-61.

131. *Id.* at 359.

. . . [was] a project of multiple conversion: of pagan to Christian, of speech to writing, and of the alien to the comprehensible."¹³² Multilingual communities were seen as communities of the Biblical Babel, which had been confused through the loss of a single language, a state of linguistic bliss to be experienced in the Paradise, which is presumably monolingual.¹³³ Colonial missionaries perceived linguistic diversity as a curse¹³⁴ and not as a resource. "Linguistic diversity within and across communities [was] perceived in this way as a puzzling sign of barbarism."¹³⁵

Coercive linguistics searched for verbal glue to bind societies.¹³⁶ Shaped by Spencer and Darwin, secular metrics surfaced to measure the survivability of languages in terms of their "conceptual precision" and "communicative efficiency."¹³⁷ The secular metrics paved the way for hierarchies, according less respect to some languages than to others.¹³⁸ Coercive linguistics conceptualized the progression of languages from senses to intellect. Primitive languages were presumably tied to the senses, whereas Western languages presumably flourished through intellect.¹³⁹ This presumptive ideology saw language as an instrument of social engineering rather than a cultural and literary asset of community.¹⁴⁰ Anthropologists argue that minority languages are suppressed when the majority centralizes power and enforces hegemonic state structures.¹⁴¹ The reverse is also true. When the state centralization weakens, minority languages reappear and flourish again.¹⁴² A minority language may meet extinction only if it is subordinated for a long period.¹⁴³

The Muslim world, though conquered and degraded during colonial times, has not been immune to its own internal coercive linguistics. Although the extinction of minor languages was never a policy they favored or followed, Muslim empires spanning over a period of thirteen centuries did little to promote the diversity of languages. Arabic and Persian, the two dominant languages of

132. Joseph Errington, *Colonial Linguistics*, 30 ANN. REV. ANTHROPOLOGY 19, 21 (2001).

133. *See id.* at 27.

134. KNOWLSON, *supra* note 83, at 9-15.

135. Errington, *supra* note 132, at 28.

136. *Id.* at 23-30.

137. *Id.* at 33-34.

138. *Id.* at 25-27.

139. *See id.* at 34.

140. *See id.* at 33-34.

141. *See generally* Jonathan Friedman, *Globalizing Languages: Ideologies and Realities of the Contemporary Global System*, 105 AM. ANTHROPOLOGIST 744 (2003).

142. *Id.*

143. *Id.*

most empires, monopolized creative and administrative functions, including literature, arts, jurisprudence, and judicial systems.¹⁴⁴ In fact, much of the Islamic linguistic history can be described as a fruitful duel between Persian and Arabic, to the exclusion of other languages.¹⁴⁵ For millions of Muslims, Arabic, the language of the Quran, has a competitive advantage over Persian. Even the Persian language abandoned its historical Pahlavi characters and adopted the Arabic script.¹⁴⁶ Yet Persian superseded Arabic in many parts of the Muslim world, including Central Asia, India, and Indonesia.¹⁴⁷ Even the Ottoman Empire could not resist the influence of Persian.¹⁴⁸ The royal language of the Mughal Empire was Persian, not Arabic.¹⁴⁹ The British colonization of Mughal India introduced English to replace Persian, and not Arabic, as the language of administration.¹⁵⁰

The positive law of constitutions, statutes, and regulations can suppress native languages and may even succeed in perpetrating legal linguicide—that is, deliberate destruction of a specific language by means of law.¹⁵¹ The phenomenon of official language, which gained currency and strength in the era of nation-states, is coercive by design. It excludes non-official languages from governmental affairs.¹⁵² A nation-state may impose an official language for a variety of reasons, including convenience and efficiency.¹⁵³ Some argue that a state's administration and legislative proceedings will be "overtaxed, tangled, and inefficient" if transacted in

144. ALBERT HABIB HOURANI, *A HISTORY OF ARAB PEOPLES* 87-89 (2002). Major empires were as follows: Umayyad Empire (661-750); Abbasid Empire (750-945); Mughal Empire (1526-1858); Safavid Empire (1501-1722); Ottoman Empire (1280-1923). IRA M. LAPIDUS, *A HISTORY OF ISLAMIC SOCIETIES* 45, 233, 250, 357, 499 (2d ed. 2002). While Arabic was the lingua franca of the first two empires, Persian was the royal language of the Mughal and Safavid empires. The Ottoman Empire was heavily influenced by both Persian and Arabic, although it retained the Turkish language. *Id.* at 319.

145. *Id.* at 153-56.

146. BERNARD LEWIS, *THE MUSLIM DISCOVERY OF EUROPE* 71-72 (2001).

147. *Id.*

148. *Id.* at 81-82.

149. Juan R.I. Cole, *Iranian Culture and South Asia, 1500-1900*, in *IRAN AND THE SURROUNDING WORLD* 17 (Nikki R. Keddie & Burzine K. Waghmar, eds. 2002).

150. ANNEMARIE SCHIMMEL, *THE EMPIRE OF THE GREAT MUGHALS* 259 (2004).

151. An impressive account of state-sponsored linguicide is portrayed in a play. See HAROLD PINTER, *MOUNTAIN LANGUAGE* (Faber and Faber 1988). Speaking to prisoners, a state official announces: "You may only speak the language of the capital. That is the only language permitted in this place. You will be badly punished if you attempt to speak your mountain language. . . . Your language no longer exists." *Id.* at 21.

152. Even the so-called concept of standard language is frequently a political choice. For example, standard Spanish is based on the Castillian variety whereas standard Italian is based on the Tuscan variety. MARTI ET al., *supra* note 128, at 84.

153. Jonathan Pool, *The Official Language Problem*, 85 AM. POL. SCI. REV. 495, 496 (1991) (providing a methodology to choose an official language that satisfies both the demands of fairness and efficiency).

multiple languages.¹⁵⁴ Some argue that equal treatment of languages cannot be a guiding normative principle since governments cannot practically allocate the same status to numerous assorted languages.¹⁵⁵ The state must choose a language to do its official business. In addition to these functional arguments, some scholars argue that representative democracy cannot prosper, and perhaps may not even survive, unless the people contemplate national issues using a single common language.¹⁵⁶

The ideology of an official language may vary from extreme intolerance of other languages to reasonable accommodation. The most egregious experiment in linguistic engineering and the concomitant suppression of minority languages has occurred in Turkey. During the Ottoman Empire, which identified itself with Islam, the Turkish language, both in phonology and vocabulary, was profusely loaded with borrowings from Persian and Arabic.¹⁵⁷ At the dissolution of Empire and the institution of modern, secular Turkey, a number of steps were taken to cleanse the Turkish language of Arabic-Persian influences.¹⁵⁸ In 1928, the script was changed from the Arabic-Persian alphabet to the Latin alphabet.¹⁵⁹ In imposing the Turkish language on all speech communities, Turkish laws ruthlessly discriminated against the Kurdish language.¹⁶⁰ Even though the laws have softened on the Turkish linguistic ideology, the Kurds remain unsatisfied and aggrieved over the inferior status of their language.¹⁶¹

C. Gainful Linguistics

Gainful linguistics recognizes that socioeconomic dynamics influence the acquisition of an opportunity language other than the

154. Heinz Kloss, *Types of Multilingual Communities: A Discussion of Ten Variables*, 33 SOC. INQUIRY 135, 135 (1966).

155. Vernon Van Dyke, *Human Rights Without Distinction as to Language*, 20 INT'L STUD. Q. 3, 5-6 (1976).

156. Alan Patten, *Political Theory and Language Policy*, 29 POL. THEORY 691, 701 (2001) (arguing that a common language is critical for political deliberations).

157. JACOB M. LANDAU, *ATATURK AND THE MODERNIZATION OF TURKEY* 133 (1984); CHARLES WELLS, *A PRACTICAL GRAMMAR OF THE TURKISH LANGUAGE* 1 (1880).

158. LANDAU, *supra* note 157, at 133.

159. ERİK J. ZURCHER, *TURKEY: A MODERN HISTORY* 188 (2004). With the change of the alphabet, many Persian and Arabic words, which had become part of the Turkish language, looked alien and even unintelligible in the new script. *Id.* at 189.

160. See KEVIN MCKIERNAN, *THE KURDS: A PEOPLE IN SEARCH OF THEIR HOMELAND* 28 (2006). Likewise, the Kurds living in predominantly Arabic speaking Iraq wish to preserve their language, even though Iraq governments have made no attempts to assimilate the Kurds. *Id.* at 38. McKiernan narrates the story of a Kurdish-American, a freedom fighter armed with a dictionary, who has devoted himself to the preservation of the Kurdish language. *Id.* at 16.

161. See *id.* at 306-07.

native language. Native speakers learn the opportunity language as a second language if economic and leadership prospects available in the native language are inferior or nonexistent. Conversely, native speakers have little incentive to learn a second language if the native language offers ample economic and leadership prospects. When speech communities residing in the same nation-state have developed mutually disparate economic and leadership resources, the language of the most successful speech community is likely to emerge as the opportunity language. Gainful linguistics thus plays a decisive role for native speakers to choose and learn a beneficial second language.

Tariq Rahman makes an important distinction between a language of utility and a language of identity.¹⁶² If the language of identity does not bring good jobs or is excluded from the power circles, families are more interested in educating their children in the language of jobs and power.¹⁶³ Thus, utilitarian considerations outweigh concerns for identity. In Pakistan's tribal areas, for example, Pashto faltered as the medium of instruction because Urdu and English were the languages of jobs and power.¹⁶⁴

An important feature of gainful linguistics is its tolerance, and even respect, for other languages. Multilingual communication promotes meta-linguistic awareness of cultural relativity and differences between form and substance, and the arbitrariness of linguistic signs carrying meaning.¹⁶⁵ Whereas coercive linguistics shows little respect for other languages and strives to suppress them, gainful linguistics invites speech communities to open up to a beneficial language and to draw commercial, intellectual, literary, and spiritual benefits from its resources. Whereas coercive linguistics by nature is subtractive, gainful linguistics adds to the linguistic assets of a speech community. Elements of coercion are nearly absent in gainful linguistics. Accordingly, gainful linguistics promotes bilingualism and even multilingualism. Speech communities do not give up their native languages or dialects. They simply add the beneficial language to the speech pool. Each speech community determines for itself to what extent it would adopt aspects of the beneficial language in its repertoire.

Islamic law does not outlaw gainful linguistics. In fact, Islamic

162. See Tariq Rahman, *A History Survey of Language-Teaching Among South Asian Muslims*, <http://www.tariqrahman.net/lanmain.htm> (follow hyperlink for article title) (last visited Apr. 11, 2010).

163. *Id.*

164. *Id.*

165. Michael Clyne, *Towards an Agenda for Developing Multilingual Communication With a Community Base*, in *MULTILINGUAL COMM.* 19, 20 (Juliane House & Jochen Rehbein eds., 2004).

law encourages Muslims to seek refuge from domestic persecution, and find superior economic and leadership prospects available, in foreign speech communities. Migration, leaving native homes, is an essential strategy of survival that the Basic Code mandates. Muslims must seek refuge in safer lands if native communities have turned oppressive and genocidal.¹⁶⁶ The Prophet himself gave up his city of birth, Makkah, when its inhabitants were determined to kill him and his followers. Some of his followers sought refuge in Ethiopia, whose Christian King, Negus, enjoyed a reputation of kindness and hospitality.¹⁶⁷ Forced or voluntary migration in most cases would require learning a new dialect or language in order for refugees to survive and prosper in adopted speech communities and nations.¹⁶⁸

Gainful linguistics has been an integral part of Islamic trade and commerce. Islam favors transactional commerce beyond speech borders. In prohibiting interest-laden lending, which could be highly localized within a speech community, the Basic Code recommends investments in domestic trading as well as in transactions across speech borders.¹⁶⁹ Before apostleship, the Prophet Muhammad himself was an international merchant who carried merchandise outside the country on a profit-sharing basis with a Makkan business woman, Khadija, who would later become his first wife.¹⁷⁰ International trading brought the Prophet in close contact with diverse speech communities.

The dynamics of gainful linguistics varies with the rise and fall of successful trading communities. The phonological, morphological, and syntactical influence of Arabic over indigenous speech communities of Sicily, Spain, Portugal, India, and Turkey may be traced back to the Arabophone Muslim empires.¹⁷¹ However, the hegemony of Muslim empires does not tell the whole story. The Arabic language influenced numerous foreign languages through commerce and trade. Indonesia, now the largest Islamic country, has never been part of any Islamic empire.¹⁷² Yet, Islam and the

166. Quran, sura an-Nahl 16:41 (stating God promises a better home in this world and in the hereafter to refugees who leave their homes to flee from oppression).

167. Sahih Bukhari, bk. 58, Hadith Nos. 216, 217 (describing migration to Ethiopia; calling Negus a "pious man"), available at http://www.searchtruth.com/book_display.php?book=58&translator=1&start=91&number=210.

168. Sahih Bukhari, bk. 58, Hadith No. 214 (the Prophet using a word of the Ethiopian language (sanah) for praising the dress of a girl who returned from Ethiopia).

169. Quran, sura-al Baqara 2:275 (Quran recommends buying and selling, but prohibits charging interest).

170. ABU AL-FIDA ISMAIL IBN KATHIR, 1 THE LIFE OF THE PROPHET MUHAMMAD 189-90 (Mustafa Abd Al-Wahid, ed., Trevor Le Gassick, trans., 1998).

171. See Versteegh, *supra* note 31, at 471.

172. Robert W. Hefner, *Political Islam and the Problem of Democratization*, 62 SOC. RELIGION 491, 500 (2001).

Arabic language were introduced to Indonesia through international trade and commerce.¹⁷³ As early as the thirteenth century, Indonesian traders and royal families began to embrace Islam.¹⁷⁴ Similarly, the influence of Arabic on the local languages of Senegal and Gambia drew from trading and not conquest.¹⁷⁵ African traders and tribal leaders found it beneficial to learn Arabic.¹⁷⁶ Yet Arabic was rarely mobilized to suppress local languages or dialects.¹⁷⁷ African speech communities freely borrowed from Arabic to satisfy their literary, commercial, and spiritual needs.¹⁷⁸

The concept of gainful linguistics is not tied to any single language. Muslim speech communities are free to adopt any beneficial language for meeting their lawful needs and purposes. For example, Muslims fleeing from domestic tyranny and seeking refuge in a foreign speech community may teach themselves and their children the language of the protective community.¹⁷⁹ Actively learning a foreign language that has developed beneficial intellectual or scientific assets will increase the knowledge of the Muslim world. Muslim speech communities must disregard the fact that the beneficial language belongs to non-Muslims or that it also carries morally harmful contents. Because all languages are part of the divine plan, Muslim speakers should exclude no beneficial language from learning, regardless of the faith or non-faith of its native speakers. Immigrant Muslim communities living in Europe, the United States, the Caribbean Islands and Latin America may retain their ancestral languages, but they must also actively learn the languages of their adopted communities.¹⁸⁰

173. KEES VERSTEEGH & C.H.M. VERSTEEGH, *THE ARABIC LANGUAGE* 226-229, 238 (1997). "[A]t least 3000 words [in modern Indonesian] may be traced back to an Arabic original." *Id.* at 238.

174. P.A. Hoesein Djajadiningrat, *Islam in Indonesia*, in *ISLAM, THE STRAIGHT PATH* 375 (Motilal Banarsidass Publ. 1987).

175. Sulayman S. Nyang, *Islam and Politics in West Africa*, *ISSUE: A J. OPINION*, 1984 at 20-21.

176. *Id.*

177. See *AFRICANIZING KNOWLEDGE* 130 (Toyin Falola & Christian Jennings eds., 2002). While French was imposed on the Senegalese people, the Wolof willingly accepted Arabic language and Arabic script. *Id.*

178. 2 FREDERICK WILLIAM HUGH MIGEOD, *THE LANGUAGES OF WEST AFRICA* 241-47 (Books for Libraries Press 1972).

179. Speaking more than one language contributes to cognitive fitness. *Speaking More Than One Language May Slow the Aging Process in the Mind*, *SCI. DAILY*, May 8, 2008, <http://www.sciencedaily.com/releases/2008/05/080507152419.htm> (last visited Apr. 11, 2010).

180. JANE I. SMITH, *ISLAM IN AMERICA* 55-60 (1999) (narrating the early establishment of Muslims in various cities of the United States). See generally Muhammed Abdullah al-Ahari, *The Caribbean and Latin America*, in *ISLAM OUTSIDE THE ARAB WORLD* 443-460 (David Westerlund & Ingvar Svanberg eds., St. Martin's Press 1999) (describing the arrival of Muslim immigrants in the Caribbean Islands and Central and South America).

III. DIVINE RIGHT TO SELF-EXPRESSION

This Part argues that according to the Basic Code of Islam, God, the Master-Artist, creates each individual as a unique being vested with the divine right to self-determination. In exercising self-determination, each individual is empowered with unique talents and tested through unique trials. Talents, in the language of the Quran, are adornments (*zeenat*) that God confers on individuals.¹⁸¹ Trials are hardships that individuals face during life experiences. By design, God has created human beings *fi kabad* (in trial).¹⁸² Consequently, suffering is an inevitable part of each life. As individuals live their personal stories vested with abilities and disabilities, each life negotiates a way between adornments and challenges—a struggle that defines self-determination.¹⁸³ The Islamic law of speech diversity promotes the self-determination of each individual.

While freedom of speech is an indispensable part of self-expression, this study does not focus on issues relating to permissible contents of personal speech. Generally, Islamic law instructs Muslims to speak the truth but refrain from lewd, disrespectful, and hurtful speech. Self-determination must therefore observe the laws of piety and self-purification. In any event, the right to self-determination is neither absolute, nor an invitation to engage in forbidden behavior. There is no divine right for individuals to express themselves through pornography, murder, theft, false accusations, marital infidelity, or through defamation of prophets, holy books, and faiths. Such substantive restrictions on self-expression, which some governments may lawfully impose, and others unlawfully abuse to control individuals, would require a separate study. The right to self-expression discussed in this study does not address substantive freedoms or restrictions. Just as the right to language exists independent of, and in addition to, freedom of speech, the right to self-determination is much broader than lawful restrictions on certain expressive conduct.

A. God as Master-Artist

According to the Basic Code, “He is God, the Creator, the Sha-

181. Quran, sura al-A'raf 7:32.

182. *Id.* sura al-Balad 90:4.

183. See *id.* sura al-Kahf 18:7 (stating that adornments (animals, plants, trees and so on) have been placed on earth to test mankind to see who is best in conduct).

per out of naught, the Master-Artist.”¹⁸⁴ As the Master-Artist, God creates each individual with special talents, powers, and barriers. Even in the human world, a fundamental paradigm separates mass producers from artists. While mass producers multiply the same object without any variation, artists attend to details, constructing each object with imagination and uniqueness. Mass production thrives on repetition, duplication, and imitation. By contrast, artistic hands confer an irreplaceable identity on each object they create.¹⁸⁵ God as Master-Artist has created infinite variation in human beings, thereby granting each individual with a special visible identity,¹⁸⁶ even though the human species as a whole shares features that distinguish it from other creations. Furthermore, each human being is vested with a unique set of powers and barriers, a set rarely repeated in the exact same form for another individual. In body, mind, and soul, each individual is special. No individual is fungible or replaceable with the other.

God’s Artistry infuses the principle of diversity into the plan of creation. The Quran constantly reminds believers to recognize differences and to avoid the deceptive allure of sameness or equality. For example, the Quran says: “Can the blind and the seer be deemed the same?”¹⁸⁷ The Quran poses this observational and intellectual challenge to the people who think and reflect¹⁸⁸ and, by implication, not to the people who dwell in ignorance or who lack imagination to appreciate diversity in creation. Of course, the divine purpose of highlighting the physical (and metaphorical)¹⁸⁹ difference between the blind and the seer is neither to ridicule the blind nor to sanction discrimination against persons with disabilities, something that ignorant social and legal systems might perpetrate. No believers who think and reflect on diversity will conclude that the blind ought to be treated unfairly or that persons with disabilities are worthless or that their lives are futile. A purpose of highlighting the difference is to repudiate the notion of sameness and to emphasize physical, intellectual, and spiritual diversity that informs the plan of creation. A prophet warns and teaches, but not even a prophet can bring all to the right path because non-believers—the spiritually blind—are part of a diverse

184. Quran, sura al-Hashr 59:24.

185. *See id.* sura Ta-Ha 20:50.

186. *Id.*

187. *Id.* sura al-An’am 6:50; *see also* sura Fatir 35:19; sura Ghafir 40:58.

188. *Id.* sura al-An’am 6:50.

189. Most explanations of this verse conclude that blindness refers to hardness of the heart in that certain persons cannot appreciate the truth. *See, e.g.,* Maududi, Tafheem, *supra* note 52, sura al-An’am 6:50 n.32.

universe.¹⁹⁰ No human system can undermine the plan of creation, undo diversity, and institute sameness.

The divine plan of diversity is closely related to viewpoint relativity. Accordingly, not all forms of self-expression can be mutually agreeable. Some people may resent a form of self-expression that others adopt and advocate. When the Prophet was conveying the divine message that there is only One God, the polytheists refused to turn away from many gods. The Prophet was sometimes dismayed. On such occasions, God would remind the Prophet that the plan of creation does not contemplate the elimination of false gods,¹⁹¹ and that the Prophet's mission was limited to conveying the message of One God to the people and not converting them.¹⁹² In fact, polytheists have God's permission to self-expression as do believers of monotheism. Under the plan of diversity, opposing viewpoints coexist in the realm of thoughtful debate but without persecution and resentment. This allowance for spiritual relativity does not deny the existence of truth but reaffirms a broader notion that no compulsion is justified to convert anyone from one faith-based viewpoint to another.

The approach of Islamic law to diversity mandates that disagreeable forms of self-expression be tolerated with patience and grace.¹⁹³ However, a caveat is called for. Islamic law does not encourage individuals or groups to adopt hateful modes of self-expression that gratuitously hurt the sentiments of racial, ethnic, or religious communities. Plurality of views is inevitable under the plan of diversity, which would require that believers take no aggressive action against persons or nations who deny the truth of their beliefs, show disrespect for their prophet, or harshly malign their religion. The critics of Islam are protected in their self-expression under the divine plan of diversity provided that they do not physically or materially harm any Muslim community. Muslims have no divine obligation to eradicate beliefs and practices contrary to Islam, for non-Islamic beliefs and practices are part of the divine plan.

B. Individual Form and Nature

Under God's artistic plan of diversity, each individual is gifted with a unique form and nature (*khalqahu*). When Moses and his

190. Quran, sura al-Baqara 2:6 (warning has little influence on disbelievers).

191. *Id.* sura al-An'am 6:107.

192. *Id.*

193. *See id.* sura al-Kafiroon, 109:1-6; *see also* Ali Khan, *Free Markets of Islamic Jurisprudence*, 2006 MICH. ST. L. REV. 1487, 1507-09.

brother, Aaron—Moses with his speech disabilities and Aaron with his rhetorical abilities—delivered God’s message, the Pharaoh asked: “Who, then, Moses, is the Lord of you two?”¹⁹⁴ Moses replied “Our Lord is He Who has given a distinctive form and nature (*khalqahu*) to everything.”¹⁹⁵ This answer first affirms the diverse personalities of both Moses and Aaron. But it also captures a more profound line of reasoning about the uniqueness of each individual. The Pharaoh, who had subjected the entire nation of Israelites to slavery and drudgery, had no appreciation for individuals. Slavery of an entire people is the ultimate denial of personhood, since slavery refuses to recognize the distinctive form and nature of the enslaved individual. Moses came to the Pharaoh not only to liberate a nation from slavery but also to free each enslaved individual from the aggregative stereotype. Contextually, therefore, Moses’ answer demonstrates God’s artistry that differentiates individuals from each other, masters from slaves, brother from brother, Pharaohs from prophets, and empowers each person with unique internal and external attributes.¹⁹⁶

According to the Shariah, each human being is not only vested with a distinctive form and nature, but has the divine right to self-expression. Poets, philosophers, and writers may express their form and nature through the medium of diverse languages. Artists may draw and paint, architects may imagine and build, athletes may display their physical skills, scientists may unlock the secrets of nature, farmers may till the ground, merchants may buy and sell, and physicians may treat the sick and the wounded. Each individual participates in the divine plan through self-determination. Self-determination submits to the divine law, without willful breaches or violations. In this ceaseless unfolding of individuals, the Basic Code permits no system to lawfully suppress or frustrate the diversity of self-determination. In contemporary normative discourse, individuals may exercise the right of self-determination without any distinctions of race, color, nationality, ethnicity, culture, language, wealth, or any other status.

More specifically, men and women are entitled to exercise the right of self-determination. Customs and practices that exclude Muslim women from creative modes of self-determination, including performing arts and sports, are contrary to the Islamic law of speech diversity. Any suggestion that the life of women is limited to reproduction or household management is contrary to the divine

194. Quran, sura Ta-Ha 20:49.

195. *Id.* sura Ta-Ha 20:50.

196. *Id.* n.31 (Muhammad Asad’s commentary); see also Maududi, Tafheem, *supra* note 52, sura ar-Rahman 55:3, n.2.

plan of diversity. No one gender has a monopoly over talent or skill. True, men and women are not the same. Any ideology that disputes gender diversity is misguided. Any pressure on women to emulate men is oppression. Any burden that undermines motherhood is onerous. Gender diversity, however, does not mean that women are just physical beings¹⁹⁷ or that they are intellectually inferior or spiritually incompetent. The Shariah protects each woman's right to self-determination, a protection no less extensive than the one offered to men. Women have the right to deploy God-given talents to be writers, teachers, architects, calligraphers, painters, musicians, artists, or friends of God, in addition to being wives and mothers. God's guidance is available to both men and women.

Part of that guidance comes by way of warning against wasting special talents to pursue what the Quran calls "worldly ornaments."¹⁹⁸ The Shariah identifies numerous worldly ornaments, including wealth, children, and power, which can compromise natural endowments. Social formulae dictate lifestyles and self-expression. Instead of expressing their own special talents, individuals imitate each other in acquiring social goods defined in terms of affluence and influence. Writers and artists, for example, may lose their mind's eye if they squander away imagination in gathering wealth. Some individuals abandon families to seek power and some seek mediocrity without striving. Some find gratification in family lineage but do little to explore their own form and nature that the divine plan has bestowed on them. Almost always, the quest for worldly ornaments distracts individuals from spirituality and nearness to God, a point that the Basic Code emphasizes.

C. Tyranny of Normic Standards

As discussed below, the Basic Code repudiates the tyranny of normic standards. An obligation to achieve or maintain what is normal generates a normic standard. Ordinarily, normic standards are inevitable for the construction of social, legal, and even scientific systems. The concept of the "reasonable person" is a useful normic standard of law for purposes of dispute resolution. A zealous enforcement of normic standards, however, denies meaningful and inevitable exceptions. When any deviations from normic stan-

197. See generally Ali Khan, *The Hermeneutics of Sexual Order*, 31 SANTA CLARA L. REV. 47 (1990). The author no longer prescribes to prescriptive parts of this article.

198. See Quran, sura al Imran 3:14, 3:116.

dards are punished or degraded, normalcy turns into tyranny. When the right to self-determination is rigidly tied to normic standards, the tie discounts the value of diversity. Individuals are forced through social engineering or systemic pressures to conform to normic standards and adjust their self-determination. Thus normic standards, which otherwise serve social utility, begin to undermine the divine plan of diversity. Persons with disabilities who cannot meet normic standards are frequently excluded from the acquisition and enjoyment of social goods, and even human dignity. Their burdens are rarely accommodated.

The Quran, while prescribing normic standards, deliberately leaves open accommodation for persons with disabilities. Fasting, for example, is made mandatory.¹⁹⁹ Each year Muslims are required to fast roughly from sunrise to sunset each day for the entire lunar month of Ramadhan.²⁰⁰ This prescription, however, is relaxed if a Muslim is ill or travelling.²⁰¹ The person with a disability may meet the obligation by fasting at another time or by feeding the indigent.²⁰² If the disability is permanent, such as a diabetic condition, feeding the indigent is the appropriate replacement obligation.²⁰³ If the disability is temporary, the person is accommodated by postponement of fasting and not complete exemption.²⁰⁴ In providing accommodation to fasting, the Quran specifically provides a rationale by intimating that "God desires for you ease, and does not desire hardship for you."²⁰⁵

Contrary to the Quran's vivid accommodation of disabilities, spurious arguments assert that the disabled are disadvantaged under the divine plan of creation.²⁰⁶ True, the Quran uses disabilities as metaphorical devices to highlight persons who refuse to listen to God's voice and dissolve relationship with spiritual intelligence.²⁰⁷ These are the persons whose "hearts are sealed, so are their ears; and a thick veil covers their eyes."²⁰⁸ Such verses can be interpreted to show that God disfavors the dumb, the blind, and

199. Quran, sura al-Baqara 2:183, 2:185.

200. *Id.* sura al-Baqara 2:185.

201. *Id.*

202. *Id.* sura al-Baqara 2:184.

203. *Id.*

204. *Id.*

205. *Id.* sura al-Baqara 2:185.

206. See MAJID TURMUSANI, *DISABLED PEOPLE AND ECONOMIC NEEDS IN THE DEVELOPING WORLD: A POLITICAL PERSPECTIVE FROM JORDAN* 52-53 (2003) (showing that the Basic Code can be interpreted to conclude that it disfavors disabilities).

207. Quran, sura Ya-Sin 36:65-67. The concept of disability serves numerous instructive purposes in Islam. AMOS YONG, *THEOLOGY AND DOWN SYNDROME: REIMAGINING DISABILITY IN LATE MODERNITY* 145-47 (2007).

208. Quran, sura al-Baqara 2:7.

the deaf.²⁰⁹ Any such interpretation of the verse, though cursorily maintainable, does not match with the Quran's profound compassion for the disabled. In relying on metaphorical disabilities, the Quran identifies three distinct processes through which individuals may receive spiritual intelligence that permeates God's universe.²¹⁰ They can use ears to listen to spiritual intelligence. They can use eyes to observe the beauty of spiritual intelligence. Or, they may experience spiritual intelligence through their hearts. The reception of spiritual intelligence can be auditory, ocular, or heartfelt. Ordinarily, individuals are empowered with all three channels to receive spiritual intelligence, but even the metaphorically deaf and blind persons are not denied their share. They may use their heart—a mode of communication given to all human beings—to directly experience spiritual intelligence. Only when individuals deliberately close down all channels of communication with God do they go astray and inflict on themselves non-communicative disabilities. The Quran's graphic parables draw attention to the diversity of possibilities, above and beyond normic standards, through which human beings can connect with God.

In analyzing normic standards, natural disabilities must not be confused with manmade disabilities that diminish the rights of designated groups. While natural disabilities, such as blindness or dysphonia, must be accommodated, manmade disabilities invented to deny benefits to target groups must be dismantled. In some Muslim states, for example, a social disability has been created to deny women the facility to drive motor vehicles.²¹¹ This disability is manmade since women can learn to drive as they do in most Muslim states. Likewise, manmade disabilities created on the basis of race or immigration status deny opportunity and benefits to target groups.²¹² Manmade disabilities impact the right to self-determination, sometimes more severely than natural disabilities. A Muslim state willing to accommodate natural disabilities may be adamant about enforcing disabilities of its own creation.²¹³

209. In another verse, the Quran compares the limitations of the dumb person with the strengths of a spiritually enlightened person. Quran, sura an-Nahl 16:76.

210. See *id.* sura al-Baqara 2:18 ("Deaf, devoid of intelligence, and blind, they cannot retrieve (understanding).")

211. *Female driving instructor leaves gender bias in her dust*, DAILY STAR (Beirut, Leb.), Apr. 11, 2008, at 5, available at NewsBank, Record No. 11FFB4C9F9E57CC8.

212. In the United Arab Emirates, for example, foreign workers complain of discrimination and abuse. See Human Rights Watch, *UAE: Draft Labor Law Violates International Standards*, Mar. 24, 2007, <http://www.hrw.org/en/news/2007/03/24/uae-draft-labor-law-violates-international-standards> (last visited Apr. 11, 2010).

213. In Saudi Arabia, for example, the state assumes the obligation to accommodate natural disabilities. However it, refuses to relax restrictions on female driving, thus creating a legal disability. PETER W. WILSON & DOUGLAS GRAHAM, SAUDI ARABIA: THE COMING

The Islamic law of speech diversity does not sanction discrimination. Diversity is part of the divine plan, but the attendant discrimination is human gloss. This distinction is critical. Accommodation, not prejudice, is the proper response to disabilities. Just because a person is blind or deaf or bears a speech barrier does not mean that the person lacks the ability of self-determination. The concept of disabilities, which are deviations from what is most familiar and abundantly found in most human beings, presupposes a socially constructed regime of normic standards. Variations in personal effects, including standard deviations from normic standards, may be labeled as disorders, pathologies, or impairments. In the scheme of creation, however, each individual is gifted with distinctive assets and burdens that may vary from the mean in more than one aspect. These variations from the mean are signs of a complex divine plan that incorporates the Quran's intimation that, "God is the one who shapes you in the wombs as He wills."²¹⁴ No disability can weaken the individual right to self-determination and self-expression.

1. Moses' Speech Disability

The story of Moses and his brother, Aaron, told in the Quran, highlights the divine accommodation of Moses' speech disability. God summons Moses to go to the Pharaoh, the King of Egypt, to seek the release of the Israelites, who had been enslaved and subjected to forced labor.²¹⁵ Moses is reluctant to accept the ministerial responsibility because he doubts the truth of his own prophetic credentials for three distinct reasons.²¹⁶ First, Moses faces the charges of murder for administering a fatal blow to an Egyptian who was fighting with an Israelite.²¹⁷ Moses is apprehensive that he would be executed for the crime of murder even before he delivers God's message to the Pharaoh.²¹⁸ Second, Moses was raised as a child in the Pharaoh's household.²¹⁹ He fled the royal family after

STORM PETER W. WILSON & DOUGLAS GRAHAM, SAUDI ARABIA: THE COMING STORM 248-50 (1994). For a discussion of the developmental status of women in Saudi Arabia, see RODNEY WILSON ET AL, ECONOMIC DEVELOPMENT IN SAUDI ARABIA 108 (2004).

214. Quran, sura aal-Imran 3:6. This verse also uses the word "yusawwir" to affirm God as Artist.

215. For a narrative of the story of Moses in the Quran, see William Griffiths, *Abraham, Moses, Jesus, and Gabriel in the Quran*, 12 OLD & NEW TESTAMENT STUDENT 272, 274-76 (1891). A similar story, though variant in details, is presented in the Old Testament. *Exodus* 2-6.

216. Quran, sura as-Shu'ara 26:10-19.

217. *Id.* sura as-Shu'ara 26:14.

218. *Id.*

219. *Id.* sura as-Shu'ara 26:18.

committing the murder.²²⁰ Nurturing the guilt of a runaway child, Moses feels ungrateful²²¹ to return to the Pharaoh after leaving the house, committing a crime, and bringing shame to the foster family. Third, and most important for the purposes of personal speech, Moses suffers from a speech disability.²²² Moses is concerned that he will falter in delivering God's message.²²³ Moses seeks accommodation for his speech disability and pleads to God to send Aaron with him.²²⁴ God grants the accommodation and allows Aaron to accompany Moses to speak to the Pharaoh and his people.²²⁵

According to popular Jewish literature, Moses is known to have burned his tongue on a coal in infancy and thus suffered from a physiological speech impediment.²²⁶ In pointing out Moses' speech difficulties, some older interpretations of the Old Testament paint Moses as "heavy of mouth and heavy of tongue" and "uncircumcised of lips."²²⁷ These interpretations support the popular view that Moses suffered from a physical impediment and not mere rhetorical difficulty.²²⁸

Moses' speech difficulty is mentioned thrice in the Quran. In one chapter of the Quran, Moses prays to God in the following words: "And loosen the knot from my tongue."²²⁹ Although "the knot in the tongue" may be interpreted to suggest ineloquence, the expression is better read to mean physical disability which causes

220. *Id.* sura as-Shu'ara 26:19-21.

221. *Id.* sura as-Shu'ara 26:19.

222. *Id.* sura Ta-Ha 20:27.

223. *Id.* sura as-Shu'ara 26:12-13.

224. *Id.*

225. *See supra* notes 194 -196 and accompanying text.

226. LOUIS GINZBERG, 2 *THE LEGENDS OF THE JEWS: BIBLE TIMES AND CHARACTERS FROM JOSEPH TO THE EXODUS* 274 (Henrietta Szold, trans., 1983) (1920). Moses' speech impediment is mentioned in the Old Testament. It is unclear from the Biblical literature, however, whether Moses' speech disability is physiological or rhetorical. Physiological speech disability might involve stammering or some other physical disability that obstructs the clarity and fluidity of speech. Rhetorical speech disability means that Moses lacks eloquence even though he bears no physiological speech defect. In the worst case scenario, Moses might be suffering from both physiological and rhetorical disabilities.

227. Jeffrey H. Tigay, "Heavy of Mouth" and "Heavy of Tongue" on Moses' Speech Difficulty, 231 *BULL. AM. SCH. ORIENTAL RES.* 57, 57 (1978).

228. Disputing Moses' physical speech problems, some scholars argue that Moses had forgotten the Egyptian language, the language of the Pharaoh, and therefore, as a foreign speaker, lacked fluency and persuasion. SIGMUND FREUD, *MOSES AND MONOTHEISM* 53-54 (Ernest Jones ed., Katherine Jones trans., The Hogarth Press 1951) (1932). Some scholars point out that Moses was deficient in debating skills. *See, e.g.,* LORIN WOOLFE, *THE BIBLE ON LEADERSHIP: FROM MOSES TO MATTHEW-MANAGEMENT LESSONS FOR CONTEMPORARY LEADERS* 106 (2002) (stating that in modern terminology Moses had a 'communication disorder'). More recent interpretations of the Exodus express Moses' speech difficulties in rhetorical rather than medical terms: "Moses said to the Lord, 'O Lord, I have never been eloquent, neither in the past nor since you have spoken to your servant. I am slow of speech and tongue.'" *Exodus* 4:10. Rhetorical rather than physical speech impediments are read in other parts of the Exodus as well. *Exodus* 6:12, 6:30 ("I speak with faltering lips").

229. Quran, sura Ta-Ha 20:27.

a speech impediment.²³⁰ Maududi disagrees with exegetes who interpret the verse to mean physiological defect and rules out the possibility that Moses suffered from any physical speech disability, arguing that God would not appoint a lisper or stutterer as His messenger.²³¹ This argument is unpersuasive because physical disability can neither discount the inherent worth of persons nor their achievements.²³²

The story of Moses assigns the most formidable task to a person with manifest disability. In addition to seeking the release of the Israelites, Moses must deliver the iconoclastic message to the Pharaoh and his followers that there is only One God in the entire universe, "the Lord of the heavens and the earth and of all that is between them,"²³³ One God "the Lord of you [the Pharaoh] and your forefathers who ruled before you."²³⁴ The release of the captives, a pragmatic objective, is inextricably intertwined with a more formidable ideological message of One Powerful God, a message that threatens the metaphysical foundation of the Pharaohs' kingdom. On hearing this defiant message, Pharaoh declares Moses to be a madman²³⁵ and threatens to cast Moses "among those who are rotting in the prison."²³⁶ Issuing threats of force is emblematic of powerful rulers who lose in rational discourse, particularly if the opponent suffers from a manifest disability.

2. Zechariah's Sign Language

While the story of Moses accentuates a speech impediment, the story of Zechariah, described in the Gospel and the Quran, affirms

230. Compare the translations of sura Ta-Ha 20:27 by Asad, Piktall, and Yusuf Ali. Whereas Asad and Piktall refer to loosening the knot from the tongue, Yusuf Ali translates the verse as removing impediment from speech. Quran Search, <http://www.islamicity.com/QuranSearch/> (select "20-Ta-Ha" from Chapter Index, then select "English - M Asad," "English - Yusuf Ali," and "English - Piktall" from Available Translations).

231. Maududi, Tafheem, *supra* note 52, sura Ta-Ha 20:28 n.15.

232. While Moses' physical impediment is controversial, the Quran clarifies that Moses did nurture doubts about his advocacy skills. In another chapter, Moses expresses his advocacy deficiency to God in the following words: "And I shall be embarrassed, and my tongue will not speak plainly, therefore commission Aaron (to help me)." Quran, sura as-Shu'ara 26:13 (Piktall). A person who suffers from a physical speech disability is rarely eloquent. Therefore, these verses can be read together to conclude that Moses was unsure about his advocacy skills partly because of physical disability.

233. Quran, sura as-Shu'ara 26:24.

234. *Id.* sura as-Shu'ara 26:26.

235. *Id.* sura as-Shu'ara 26:27. Moses, however, persists in his defiance and repeats that there is only One Powerful God, "the Lord of the East and the West and of all that is between them, if you [the Pharaoh] apply any power of reasoning." *Id.* sura as-Shu'ara 26:28.

236. *Id.* sura as-Shu'ara 26:29. Note that while the Pharaoh calls Moses a mad man, Moses too challenges the Pharaoh's power of reasoning. See *supra* note 235 and accompanying text.

that the sign language is a form of speech that deserves recognition and respect.²³⁷ Zechariah was an old man and his wife, Elizabeth, was old and barren.²³⁸ They had no children.²³⁹ Zechariah prayed to God: "O my Sustainer! Bestow upon me out of Your grace the gift of goodly offspring; for indeed You are Hearer of prayer."²⁴⁰ One day, an angel appears to Zechariah and delivers the good news that God has accepted his prayer and that Elizabeth would bear a son whose name would be Yahya (John the Baptist),²⁴¹ a chaste man who would confirm God's Speech and be a prophet.²⁴² Upon hearing this, Zechariah requests confirmation of the news.²⁴³

From this point onward, the Gospel and the Quran present different versions of the story. According to the Gospel, Zechariah was punished with speechlessness for seeking confirmation of the news.²⁴⁴ According to the Quran, however, Zechariah did not challenge the good news but asked for God's sign to express his gratitude.²⁴⁵ Whether Zechariah's silence was punitive or prayerful and whether it lasted for three days or more, the fact remains that Zechariah did not lose all speech during the period of his verbal moratorium.²⁴⁶ When Zechariah came out of the temple after hearing the good news, he could not speak to the people.²⁴⁷ The Quran confirms that the silent Zechariah was allowed communication by means of gestures.²⁴⁸ This prophetic story clarifies that verbal speechlessness bears God's approval. Even when verbal speechlessness is involuntary, the divine plan does not close down all

237. Both the New Testament and the Quran indicate that when Zachariah was ordered not to speak for three days, he was allowed to communicate with gestures, signs, or signals. See *Luke* 1:20-22; Quran sura aal-Imran 3:41.

238. Quran, sura aal Imran 3:40.

239. *Id.*

240. *Id.* sura aal Imran 3:38.

241. *Id.* sura aal Imran 3:39. For a thorough discussion of the life of John the Baptist as mentioned in the Bible, see Clayton Raymond Bowen, *John the Baptist in the New Testament*, 16 AM. J. THEOLOGY 90 (1912) (comparing the comings of John the Baptist and Jesus and finding parallels between the two prophets).

242. Quran, sura aal Imran 3:39.

243. *Id.* sura aal Imran 3:41.

244. *Luke* 1:18-20. The angel says to Zechariah: "And now you will be silent and not able to speak until the day this happens, because you did not believe my words, which will come true at their proper time." *Luke* 1:20.

245. Quran, sura aal Imran 3:41.

246. Zechariah was instructed to remain silent for three days and celebrate the praises of your Lord again and again, and "glorify [Him] in the evening and in the morning." *Id.* According to the Gospel, Zechariah would remain speechless until Elizabeth became pregnant. The Gospel and the Quran could be reconciled if Elizabeth became pregnant three days after the angel brought the good news. But see 3 HENRICUS OORT ET AL., *THE BIBLE FOR LEARNERS* 45 (Philip H. Wicksteed, trans., 1898) (Zachariah did not get his speech back until after John was born and so named).

247. *Luke* 1:22. "They realized he had seen a vision in the temple, for he kept making signs to them but remained unable to speak."

248. Quran, sura aal-Imran 3:41.

means of communication. More specifically, the story of Zechariah established that sign language enjoys God's blessing when it replaces verbal speech.

3. Dignity of Blindness

A gripping disability story in the Quran endorses the dignity of blindness. Abdullah ibn Umm Maktum, a blind man and a relative of the Prophet Muhammad's first wife, Khadija, came to the Prophet and said: "O Muhammad, show me a place near you (where I can sit)."²⁴⁹ At the time, the Prophet was engaged in a conversation with Al-Walid, an influential pagan leader, in the hope the leader would embrace Islam and strengthen Muslims.²⁵⁰ Per the Quran, the Prophet frowned and turned away from the blind man.²⁵¹ This treatment of the blind man was unacceptable to God who rebuked the Prophet by revealing several verses of the Quran.²⁵² In teaching the Prophet that the blind man's speech was valuable, the Quran draws a comparison between the influential leader and the blind man. The leader was proud of his wealth and influence and resistant to embrace the purity of truth. The blind man, though humble in his social station and suffering from a visible handicap, was eager to seek knowledge so that he could grow more in the purity of truth.²⁵³ Yet the Prophet, says the Quran, paid his entire attention to the influential leader and disregarded the blind man.²⁵⁴

By teaching the Prophet that the blind man's speech is no less worthy than that of the socialite, the Quran is issuing a broader "reminder"²⁵⁵ to shun discrimination against persons with disabilities. In social hierarchies, the speech of the wealthy and the powerful carries more credence than the speech of persons with social and physical disabilities. In customary calculus, the focus shifts from the content of speech to the person of speech. The bias against disabilities turns into an unexamined presumption that persons with disabilities are intellectually inferior or simply incompetent for a profitable exchange of views. The bias might also

249. Malik, Muwatta, bk. 15, No. 15.4.8, available at http://www.searchtruth.com/book_display.php?book=15&translator=4&start=0&number=0; Maududi, Tafheem, *supra* note 52, sura Abasa 80:2, n.1.

250. 2 ABU AL-FIDA ISMAIL IBN KATHIR, THE LIFE OF THE PROPHET MUHAMMAD 36 (Mustafa Abd Al-Wahid, ed., Trevor Le Gassick, trans., 1998).

251. Quran, sura Abasa 80:1-2.

252. Malik, *supra* note 249, bk.15, No.15.4.8,

253. Maududi, Tafheem, *supra* note 52 sura Abasa 80:10, n.2.

254. Quran, sura Abasa 80:5-10.

255. *Id.* sura Abasa 80:11.

contend that persons with disabilities are slow learners or cannot learn at all. When persons with disabilities are frowned upon and excluded from participating in gainful conversations, educational gatherings, or learning opportunities, the tyranny of normic standards is established. Islam prohibits prejudicial presumptions against persons with disabilities, dignifies their unique being, and rates their self-expression no less worthy than that of prominent leaders.²⁵⁶

IV. QANUN ON SPEECH DIVERSITY

This Part discusses whether positive law (*qanun*)²⁵⁷ in Muslim states enforces the Shariah of speech diversity. Whereas the Shariah is the divine law, *qanun* is the positive law that a Muslim state makes to conduct internal and external affairs.²⁵⁸ *Qanun* consists of the constitution, statutes, regulations, international law, and case law.²⁵⁹ The *qanun* of a Muslim state may or may not be in compliance with the Shariah.²⁶⁰ This section discusses whether Muslim states have made any constitutional and international law commitments to protect diverse languages and self-expressions. Implicit in this discussion is an appeal to Muslim states that they develop positive law to enforce the Shariah of speech diversity. Through adoption of constitutional norms as well as by adherence to international law, Muslim states can and must safeguard native languages and promote professions, performing arts, and sport activities for both Muslim men and Muslim women for the maximization of individual self-expressions.²⁶¹

256. While prejudice against the blind lingers in Muslim and non-Muslim societies, periodic stories continue to remind us that the blind are gifted with precious talents. Geoffrey Yunupingu, born blind in a remote island of indigenous population in Northern Australia, has been received as a gifted singer with a voice of "transcendental beauty." Barbara McMahon, *Aboriginal Singer Beats Poverty and Prejudice to Top Australian Charts*, THE GUARDIAN (London), July 17, 2008, at 18. He has not learned Braille and does not have a guide dog or use a stick. *Id.* A number of persons with remarkable achievements, including Homer (the Greek poet), John Milton (the English poet), Ray Charles (the Jazz pianist), Stevie Wonder (the pianist), and Helen Keller, (the prolific writer), all were either born blind or turned blind due to illness.

257. See Khan, *supra* note 2 (distinguishing between the Basic Code (Shariah), classical jurisprudence (*fiqh*), and positive law (*qanun*)).

258. *Id.* at 272-73.

259. *Id.*

260. *Id.* at 274.

261. Several Muslim states are signatories to international treaties that protect linguistic diversity and cultural expressions. See, e.g., Convention for the Safeguarding of the Intangible Cultural Heritage, Oct. 17, 2003, 2368 U.N.T.S. 35. This convention, which protects linguistic diversity, is heavily subscribed by Muslim states. UNESCO, States Parties to the Convention for the Safeguarding of the Intangible Cultural Heritage, <http://portal.unesco.org/la/convention.asp?language=E&KO=17116&order=alpha> (last visited Apr. 11, 2010); see also Convention on the Protection and Promotion of the Diversity of

More than a billion Muslims living in all parts of the world, both as natives and immigrants, speak nearly all languages of the world. No one language unites the Muslim world. Leading Muslim states, such as Indonesia, Saudi Arabia, Iran, Turkey, Senegal, and Pakistan, speak radically different languages. Even in a single Muslim country, the people may be speaking dozens of languages.²⁶² Very few Muslim states are monolingual.²⁶³ Linguistic diversification is now a two-way street. Foreign languages, particularly English, have permeated Muslim states and millions of Muslims have immigrated to foreign lands, learning foreign languages. In Africa, native Muslims speak European languages, in addition to scores of tribal languages and dialects.²⁶⁴ In Europe, millions of Muslim immigrants speak French, German, and Dutch, to name a few. The Quran, though revealed in Arabic, has been translated into numerous languages of the world, including Korean, Japanese, Chinese, Finnish, Russian, and Swahili. Europeans and Americans embracing Islam are turning their languages into native languages of Islam.

While non-Muslim states are under no duty to enforce the Sha-

Cultural Expressions, Oct. 20, 2005, 45 I.L.M. 269. As of January 2009, among Muslim states, Bangladesh, Egypt, Jordan, Kuwait, Mali, Mauritius, Nigeria, Oman, Sudan, Syria, Tajikistan, and Tunisia are parties to the Convention. UNESCO, States Parties to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, <http://portal.unesco.org/la/convention.asp?KO=31038&language=E&order=alpha> (last visited Apr. 11, 2010).

262. In Pakistan, for example, each of its four provinces may promote the use of its provincial language. CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, art. 251(3). The percentages of the population that speaks each language are as follows: Punjabi 48%, Sindhi 12%, Siraiki (a Punjabi variant) 10%, Pashtu 8%, Balochi 3%. CIA, *The World Factbook*, <https://www.cia.gov/library/publications/the-world-factbook/index.html> (last visited Apr. 11, 2010). The national language is Urdu, though native speakers do not exceed 8%. *Id.* Other languages and their respective percentages are Hindko 2%, Brahui 1%, Burushaski and other 8%. English is the language of government, courts, and elite institutions. CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, art. 251(2). In Syria, half a dozen languages are broadly spoken, including Arabic, Armenian, Aramaic, Kurdish, Circassian, and French. *Id.* In Turkey, there are at least half a dozen languages as well, including Turkish, Dimly, Azeri, and Kabardian. Turkey Population Statistics, <http://www.irantour.org/turkey/populationturkey.html>. In Afghanistan, there are at least thirty three languages and numerous dialects. *Id.*; see also Richard F. Strand, *Notes on the Nuristani and Dardic Languages*, 93 J. AM. ORIENTAL SOC'Y 297 (1973).

263. In Saudi Arabia, for example, an overwhelming majority of native population speaks Arabic. However, millions of immigrant workers from Asia (Pakistan, India, Philippines, Bangladesh), and other countries speak non-Arabic languages in their own communities. In 1980s, foreign workers constituted about 30% of the population and 60% of the workforce. MADAWI AL-RASHEED, *A HISTORY OF SAUDI ARABIA* 150-153 (2002).

264. ALAMIN M. MAZRUI, *THE POWER OF BABEL: LANGUAGE & GOVERNANCE IN THE AFRICAN EXPERIENCE* 70, 71 (University of Chicago Press 1998). The languages spoken in Africa have been categorized in four categories: Afro-ethnic, Afro-Islamic, Western and Afro-Western. *Id.* Swahili, Somali, and Nubi in East Africa and Hausa, Fulfide and Mandinka are major Afro-Islamic languages that absorbed Islam ethos and Arabic vocabulary. *Id.* at 70.

riah of speech diversity, Muslim states may choose to do so.²⁶⁵ Contrary to popular perceptions, the following discussion divulges that Muslim states that embrace constitutional secularism may impose monolingualism and curtail individual self-determination. Conversely, Muslim states that uphold constitutional supremacy of the Shariah may vigorously protect the diversity of languages and a more extensive right to self-determination. No bright line, however, separates Islamic states²⁶⁶ from secular states. Islamic states that advocate supremacy of the Shariah fall short of recognizing the broad range of speech diversity, just as some secular Muslim states do.

No Muslim state may lawfully deny or suppress any community's divine right to language. Any such denial or suppression is not only a violation of the community's language and cultural rights but also a violation of God's ordainments. In compliance with the Shariah, Muslim states must revere and not resent speech diversity. Since the right to speech diversity is secured in the Basic Code, the right is neither a creation of positive law (*qanun*), nor is it a creation of international law (*siyar*), though both positive law and international law may reaffirm the right to speech diversity. Speech communities, whether as the majority or the minority, and whether Muslim or non-Muslim may, therefore, lawfully claim a divine right to language.

A. Commitments to Linguistic Diversity

The constitutions of Saudi Arabia, Turkey, Iran, Egypt, Pakistan, Indonesia, and Senegal offer a notable cross-section of the Muslim world²⁶⁷ to determine whether Muslim states protect the

265. Even though drafted under the occupation of the United States and NATO forces, the Afghanistan Constitution lists a number of languages spoken in the nation, including Pashto, Dari, Uzbeki, Turkmani, Baluchi, Pachaie (Pashai), Nuristani, Pamiri (Alsana), and Arabic, and declares Pashto and Dari as the official languages of the state. CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN art. 16. The official recognition of Pashtu and Dari, the languages spoken by an overwhelming majority of major ethnic groups, however is not purposefully designed to suppress other languages or to create an assimilative culture forcing the extinction of minor languages. The Constitution mandates that the state adopt and implement effective plans for strengthening and developing all languages of Afghanistan. *Id.* Print media as well electronic media are permitted for the promotion of local and regional languages. *Id.*

266. Islamic state may be distinguished from Muslim state. An Islamic state is a Muslim state that upholds supremacy of the Shariah; whereas, a Muslim state is one where the majority of the population professes the faith of Islam. Thus, a Muslim state may or may not be an Islamic state.

267. As of July 2008, the seven states highlighted in this discussion are predominantly Muslim: Saudi Arabia, 100% Muslim; Turkey, 99% Muslim; Iran, 98% Muslim; Egypt, 90% Muslim; Pakistan, 95% Muslim; Indonesia, 86% Muslim; Senegal, 94% Muslim. CIA, *supra* note 262.

Shariah of linguistic diversity. Of these seven leading Muslim states with diverse historical, ethnic, and cultural backgrounds, Turkey and Senegal have each made a constitutional commitment to secularism;²⁶⁸ whereas Saudi Arabia, Iran, and Pakistan uphold the supremacy of the Shariah by way of their constitutions which require positive law to be in compliance with the Basic Code.²⁶⁹ Although the Egyptian Constitution declares Islam to be the state religion and the Shariah to be the principal source of legislation, it carries no explicit statement that positive law contrary to the Basic Code lacks validity or enforceability.²⁷⁰ Indonesia, the largest Muslim state, has made no constitutional commitment to either secularism or Shariah.²⁷¹

Although the seven states mentioned above recognize official languages, four states espouse constitutional monolingualism. The constitutions of Saudi Arabia and Egypt declare Arabic as the official state language.²⁷² The constitutions of Turkey and Indonesia also advance monolingualism. Article 36 of the Indonesian Constitution declares that “[t]he national language shall be Indonesian (*Bahasa Indonesia*).”²⁷³ Article 3 of the Turkish Constitution declares that Turkey is an indivisible state and that its language is Turkish.²⁷⁴ In declaring a single language as the official language, the constitutions of Saudi Arabia, Egypt, Turkey, and Indonesia recognize the existence of no other languages. This official monolingualism is not descriptive, as other languages are spoken in each of these four countries. Their monolingualism appears to be instrumental in engineering national and cultural unity through the official imposition of a single language.

268. CONSTITUTION OF THE REPUBLIC OF SENEGAL art. 1; CONSTITUTION OF THE REPUBLIC OF TURKEY art. 2. Since its independence in 1960, Senegal has drafted eight constitutions—including the last one in 2001—which have all been based on the principle of secularism. See Fatou Sow, *Fundamentalisms, Globalisation, and Women’s Human Rights in Senegal*, 11 GENDER & DEV. 69, 72 (2003).

269. Qanuni Assassi Jumhuri’i Isla’mai Iran [The Constitution of the Islamic Republic of Iran] 1,2 [1980]; CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN pmb.; BASIC SYSTEM OF THE CONSULTATIVE COUNCIL [Constitution] art. 7 (Saudi Arabia).

270. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT art. 2. The Egyptian constitution does not restrict the definition of Shariah to the Quran and the Prophet’s Sunnah but includes fiqh, juristic law mostly made in the early centuries of Islam.

271. FAREED ZAKARIA, *THE FUTURE OF FREEDOM: ILLIBERAL DEMOCRACY AT HOME AND ABROAD* 126 (2003).

272. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT art. 2; BASIC SYSTEM OF THE CONSULTATIVE COUNCIL [Constitution] art. 1 (Saudi Arabia).

273. CONSTITUTION OF THE REPUBLIC OF INDONESIA. art. 36. Although over 400 languages are spoken in Indonesia, *Bahasa Indonesia* is promoted as the national language for cognitive, instrumental, integrative, and cultural purposes. P.W.J. Nababan, *Language in Education: The Case of Indonesia*, 37 INT’L REV. EDUC. 115, 116, (1991) (Neth.). *Bahasa Indonesia*, however, has not been designed to replace vernaculars. *Id.* Most Indonesians are bilingual or multilingual. *Id.*

274. CONSTITUTION OF THE REPUBLIC OF TURKEY art. 3.

Of the four monolingual constitutions, Turkey's militantly secular constitution is openly oppressive toward linguistic diversity. In enforcing a social monopoly of the Turkish language, the Turkish constitution states "No language other than Turkish can be taught as a mother tongue to Turkish citizens at any institutions of training or education."²⁷⁵ While the constitutional provision is sweeping and universally biased against all local languages, it is specifically targeted at Kurds and Kurdish.²⁷⁶ Language has been the principal emic marker of Kurdishness.²⁷⁷ Since Kurds are Muslims, their language has also been the principal etic marker.²⁷⁸ Stereotypes abound in Turkey that describe the Kurdish language as not sophisticated enough to express profound thought and that the first step in the mission to civilize the Turkish Kurds is to teach them the Turkish language.²⁷⁹ The indivisibility of the Turkish state mentioned along with its official monolingualism within the same section of the constitution reflect sentiments for an oppressive form of ultra-nationalism, a course of action contrary to the Shariah principles of speech diversity.

Iran, Pakistan, and Senegal recognize linguistic diversity, even though each has adopted a national language. Iran's Islamic Constitution declares that Farsi, the lingua franca of its people, shall be the official Language and script of Iran.²⁸⁰ Thus, Farsi is both the national and official language of Iran. In addition to Farsi, however, the constitution allows the use of regional and tribal languages in print and electronic media.²⁸¹ The literature written in regional and tribal languages may be taught in schools as well.²⁸² The Iranian Constitution states that Persian, the lingua franca of its people, is the official language and script of Iran.²⁸³ Official documents, books, and textbooks are required to be in Persian language and script.²⁸⁴ The constitution also recognizes Arabic, the language of the Quran and Islamic texts, a language that per-

275. CONSTITUTION OF THE REPUBLIC OF TURKEY art. 42.

276. CHRISTOPHER PANICO, *TURKEY: VIOLATIONS OF FREE EXPRESSION IN TURKEY* 89 (1999).

277. Servet Mutlu, *Ethnic Kurds in Turkey: A Demographic Study*, 28 INT'L J. MIDDLE E. STUD. 517, 518 (1996). Kurdish as an Indo-European language is closely related to Persian. See George S. Harris, *Ethnic Conflict and the Kurds*, 433 ANNAL AM. ACAD. POL. & SOC. SCI. 112, 113 (1977). Although the Kurdish language could be the basis of Kurdish identity, various dialects spoken among Kurds living in Iran, Iraq and Turkey defy a unified language. *Id.*

278. Mutlu, *supra* note 277.

279. Martin Van Bruinessen, *The Kurds in Turkey*, MERIP REP., Feb. 1984 6, 6.

280. Qanuni Assassi Jumhuri'i Isla'mai Iran [The Constitution of the Islamic Republic of Iran] 15 [1980].

281. *Id.*

282. *Id.*

283. *Id.*

284. *Id.*

meates the Persian literature.²⁸⁵ The teaching of Arabic is mandatory in all classes of secondary school and in all areas of study.²⁸⁶ In addition to these two languages, the constitution allows the use of regional and tribal languages in the press and mass media.²⁸⁷ The literature available in regional and tribal languages may also be taught in schools.²⁸⁸

Senegal's secular constitution adopts French as the official language but mentions several native languages as national languages. This is unique in that no national language is elevated to the status of an official language. Pakistan's Islamic Constitution recognizes Urdu and English as official languages but only Urdu as the national language.²⁸⁹ The constitution contemplates a time in the future, though without setting a deadline, when Urdu shall be the only official language.²⁹⁰ In addition to Urdu, the four provinces of Pakistan are authorized to teach, promote, and use their native languages.²⁹¹ Article 28 of the constitution shows even more respect for linguistic diversity by recognizing a right to language. It states that "any section of citizens having a distinct language, script or culture shall have the right to preserve and promote the same and subject to law, establish institutions for that purpose."²⁹²

Pakistan and Iran specifically recognize Arabic in their constitutions as the language of Islam. Pakistan's Constitution promotes what it calls the "Islamic way of life."²⁹³ The state undertakes to provide facilities, such as the learning of the Quran and Islamic studies, so that Muslims can "understand the meaning of life according to the Holy Quran and Sunnah."²⁹⁴ Furthermore, the state shall endeavor "to encourage and facilitate the learning of Arabic language."²⁹⁵ According to one study, in 1951 merely 10% of Muslims could read the Quran in Arabic; in 1998, this figure increased to more than 55%.²⁹⁶ Iran's Constitution states: "Since the language of the Quran and Islamic texts and teachings is Arabic, and since Persian literature is thoroughly permeated by this language, it must be taught after elementary level, in all classes of secondary

285. *Id.* art. 16.

286. *Id.*

287. *Id.* art. 15.

288. *Id.*

289. CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN art. 251.

290. *Id.*

291. *Id.* art. 251(3).

292. *Id.* art. 28.

293. *Id.* art. 31.

294. *Id.* art. 31(1).

295. *Id.* art. 31(2)(a).

296. Rahman, *supra* note 114.

school and in all areas of study.”²⁹⁷

Pakistan and Senegal have adopted foreign languages as official languages. Under the lingering influence of the British Raj, Pakistan’s ruling elites and governmental officials speak English as a second language.²⁹⁸ The experience of Senegal with the French language has been similar. The fact that both Pakistan and Senegal continue to embrace foreign languages is less of an ideological choice and more of a practical decision since the government machinery in each country has been running on its respective adopted foreign language since colonial times. The bureaucracy, the courts, and corollary paper work all exist in the adopted foreign language. No attempts, for example, have been made in Pakistan to translate high court cases into native languages. Thus English continues to be the language of high courts by the sheer force of inertia. Likewise, English is the default language of the bureaucracy.²⁹⁹

In both Pakistan and Senegal, there exists no one native language that can easily replace the adopted foreign language. In Pakistan, the majority of the people speak Punjabi.³⁰⁰ But Punjabi is the language of the province Punjab, and it cannot be elevated to a national language because the other three provinces speak their own native languages.³⁰¹ Urdu, the national language, though more widely spoken than English, is primarily the language of Muslim immigrants from India.³⁰² A very small percentage of the population speaks Urdu as a mother tongue.³⁰³ In Senegal, several distinct languages are spoken.³⁰⁴ Wolof is a major language, which is also spoken in other parts of Western Africa, including Gambia

297. Qanuni Assassi Jumhuri’i Isla’mai Iran [The Constitution of the Islamic Republic of Iran] 16 [1980].

298. See Rahman, *supra* note 114.

299. Article 251 of Pakistan’s constitution states:

(1) The National language of Pakistan is Urdu, and arrangements shall be made for its being used for official and other purposes within fifteen years from the commencing day.

(2) Subject to clause (1), the English language may be used for official purposes until arrangements are made for its replacement by Urdu.

(3) Without prejudice to the status of the National language, a Provincial Assembly may by law prescribe measures for the teaching, promotion and use of a provincial language in addition to the national language.

CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN art. 251.

300. CIA, *supra* note 262.

301. See ALYSSA AYRES, SPEAKING LIKE A STATE: LANGUAGE AND NATIONALISM IN PAKISTAN 47 map 2; IAN TALBOT, PAKISTAN: A MODERN HISTORY 25-27 (1998); Ian Talbot, *The Punjabization of Pakistan: Myth or Reality?* in PAKISTAN: NATIONALIZATION WITHOUT A NATION? 51, 60 (Christophe Jaffrelot, ed. 2002).

302. TALBOT, PAKISTAN: A MODERN HISTORY, *supra* note 301, at 25-26.

303. *Id.* at 26.

304. ELIZABETH L. BERG & RUTH LAU, SENEGAL 94-95 (2d ed. 2009). Pular, Serer, and Diola are spoken in parts of Senegal. *Id.*

and Mauritania, but less than forty percent of Senegalese speak Wolof as their mother tongue.³⁰⁵ Even though Wolof is broadly understood and widely spoken as a second language, Senegalese are not prepared to abandon Fula, Diolo, and many of the other native languages spoken in different parts of Senegal.³⁰⁶ By default, therefore, the adopted foreign languages in Pakistan and Senegal continue to mediate the competition among native languages.

The Shariah is not opposed to learning foreign languages because all languages are part of the divine plan. Practical wisdom, however, dictates that the people of a state must be able to speak an official language.³⁰⁷ Anomalies arise when an official language lacks democratic rooting. While the adopted foreign languages connect the peoples of Pakistan and Senegal to Western nations, no evidence demonstrates that these two countries have been advantaged over Muslim states that have kept their native language for official business. Arabic speaking Saudi Arabia and the Gulf States have done much better in accumulating wealth through natural and entrepreneurial resources. Likewise, non-Muslim states, such as Japan and China, have developed leading world economies without officially adopting a foreign language.

In fact, the official adoption of a foreign language fosters hierarchical institutions of class, caste, and other imbalances, a development that cannot be justified under the Shariah egalitarianism. The people most likely to learn an officially adopted foreign language are bureaucrats, judges, lawyers, physicians, and other high professionals. Further, an adopted foreign language is almost always more dominant in cities than in rural areas, and even more so in affluent areas of cities.³⁰⁸ Consequently, farmers, blue collar

305. Fiona McLaughlin, *Dakar Wolof and the Configuration of Urban Identity*, 14 J. AFR. CULTURAL STUD. 153 (2001) (arguing that the rise of Dakar Wolof as a written urban language has created a new meta-ethnic identity).

306. Article 1 of Senegal's constitution states: "The official language of the Republic of Senegal shall be French. The national languages shall be Diolo, Malinke, Poular, Serer, Soninke, Wolof, and any other national language which shall be codified." CONSTITUTION OF THE REPUBLIC OF SENEGAL art. 1.

307. The rise of the United States as a super power coincided with the decline of the British Empire. Even though the decline of the British Empire may have caused the reappearance of Welsh and Scottish languages at home, the rise of the United States confirmed the imperial ascendancy of English as the world language. See ROBERT PHILLIPSON, LINGUISTIC IMPERIALISM 5-11 (1992). Whenever a regional or global superpower emerges on the international scene, its language receives a tremendous boost as the ruling elites, merchants, intellectuals, and other groups learn the dominant language in order to succeed, to make a difference, and to cope with reality. See Rahman, *supra* note 162 and accompanying text. This phenomenon may weaken local languages, as influential sectors of the population learn the new regionally or globally dominant language. See *id.*

308. See, e.g., Kwame Botwe-Asamoah, *African Literature in European Languages: Implications for the Living Literature*, 31 J. BLACK STUD. 746, 761 (2001) (arguing that African literature produced in foreign languages does not connect with the masses and does not

workers, and the vast majority of people living in villages and remote areas are unlikely to learn an adopted foreign language.³⁰⁹ Since many high paying jobs are available to individuals speaking the adopted foreign language, a great injustice is perpetrated and entrenched, in turn creating a small ruling class that draws the greatest benefit from the adopted foreign languages.³¹⁰

The Universal Islamic Declaration of Human Rights (Islamic Declaration) contains no specific provision for the protection of linguistic diversity.³¹¹ In its preamble, the Islamic Declaration proposes "to establish an Islamic Order wherein all human beings shall be equal and none shall enjoy a privilege or suffer a disadvantage or discrimination by reason of race, colour, sex, origin or language."³¹² The word "language" appears only one more time in the Declaration, again in the context of prohibiting discrimination.³¹³ While the prohibition of discrimination on the basis of language is discussed in broad terms in the inspirational preamble, the prohibition seems narrower in the operative text.³¹⁴ The narrower prohibition is related to the "opportunity to work" and exposure to "greater physical risk."³¹⁵ The Islamic Declaration protects an important right of workers who might be denied work or exposed to physically dangerous labor just because they speak a different or foreign language.³¹⁶ The Islamic Declaration, however, fails to establish an affirmative right to language diversity.³¹⁷ This failure demonstrates that Muslim states are reluctant to affirmatively embrace the diversity of languages, which the Shariah not only recognizes but celebrates as part of the divine plan.

B. Commitments to Self-Expression

As discussed in Part IV, the Shariah recognizes each individual

promote local cultures).

309. *See id.*

310. Rahman, *supra* note 74 (arguing that the ruling elite, despite its lip service to Urdu as the national language, has maintained English medium schools to preserve privilege and class difference).

311. Islamic Council of Europe, *Universal Islamic Declaration of Human Rights*, Sept. 19, 1981, reprinted in MUSLIM WORLD LEAGUE J., Dec. 1981, at 25. [hereinafter *Islamic Declaration*].

312. *Id.* pmbl. For a critique of the origin or validation of human rights in Islam see JACK DONNELLY, *UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE* 50-52 (1989) (arguing that claims about the existence of human rights in Islamic law are almost entirely baseless).

313. *See Islamic Declaration, supra* note 311, art. III(c).

314. *See id.*

315. *Id.* art. III.

316. *Id.*

317. *See id.*

as a unique human being—a concept that finds support in scientific research.³¹⁸ The promotion of arts, literature, sports, sciences, professions, vocations, and other expressive modes is indispensable for individual self-expression. Suppressing individual talents through state neglect and social stereotypes are as much contrary to the divine plan of diversity as are state and social prejudices against persons with disabilities. Knowing this, the non-Muslim world would presume that, in adhering to Islam, Muslim states would comply with the Shariah and maximize opportunities for individual self-expression, and that Muslim states would proactively recognize, protect, and foster individual self-expression so that persons with special talents and disabilities may develop their natural competencies for the benefit of families and communities.

This section analyzes the constitutions of seven Muslim states to determine whether the Shariah ordainments for individual self-determination have been codified into rights and obligations of positive law (*qanun*). Here, a caution is pertinent. Because modern constitutions are drafted as fanciful documents trying to impress the world with a state's commitment to civil, political, economic, social, and cultural rights, they are rarely reliable indicators that governments indeed protect the rights superbly laid out in constitutional texts. As judiciaries in most Muslim states lack independence, governments can engage in gross violations of the right to self-determination with little accountability.³¹⁹ Some Muslim states resort to torture, while some blatantly subjugate women and minorities.³²⁰ In some Arab states, discrimination against immigrants is open and brazen.³²¹ In light of the dismal human rights record of Muslim states, it might be that the right to self-determination, even if enumerated in the constitution, is much less

318. Take speech, for example. Each individual possesses a unique manner of speech. Biological and cultural differences between individuals contribute to speech diversity in that individual voices differ in voice quality, pitch, and loudness, while speech varies in terms of pronunciation, accent, inflections, and pauses. See Yarmey, *supra* note 60, at 794. Even the same individual can exhibit speech variations due to “changes in mood, emotion, intentions, thought distractions, and situational demands.” *Id.*

319. See Ali Khan, *Pakistan Elections and the Lawyers' Movement*, JURIST, Nov. 27, 2007, <http://jurist.law.pitt.edu/forumy/2007/11/pakistan-elections-and-lawyers-movement.php> (discussing the plight of the independence of the judiciary in Pakistan under military dictator Pervez Musharraf).

320. Liaquat Ali Khan, *Friendly Renditions to Muslim Torture Chambers*, COUNTERPUNCH, June 6, 2005, <http://www.counterpunch.org/khan06062005.html>; see also Tayyab Mahmud, *Freedom of Religion & Religious Minorities in Pakistan: A Study of Judicial Practice*, 19 FORDHAM INT'L L.J. 40 (1995).

321. See U.N. Human Rights Council [UNHCR], *Addendum to the Report of Special Rapporteur on Trafficking in Persons, Especially Women & Children, Mission to Bahrain, Oman & Qatar*, ¶¶ 70-78, U.N. Doc. A/HRC/4/23/ADD.2, (April 25, 2007) (describing the deplorable living conditions of immigrant workers in Bahrain, Oman, and Qatar and the lack of legal protection provided to them).

guaranteed in reality.

1. Effective Recognition

The constitutional texts of seven Muslim states do not use any single phrase to recognize the individual right to self-expression. With varying qualifications, provisos, and claw-back clauses, most of the seven constitutions enumerate the rights to speech and expression.³²² The rights to speech and expression, however, are not the same as the right to self-determination. The right to expression is part of the right to self-determination. For meaningful self-determination, individuals must have the minimal right of expressing their thoughts and opinions. The right to self-determination, however, is much broader and includes the development of special talents, acquisition of abilities and capacities, and accommodation of disabilities through education, training, and opportunity. An artist, for example, expresses herself when she draws or paints. However, the artist's right to self-expression empowers the artist to learn the science and skills of drawing and painting, develop her vision of the art, share her work with a community of artists, and exercise her artistic imagination without undue social and legal impediments. Likewise, a person with a disability cannot effectively exercise his or her right to self-determination unless the disability is accommodated.³²³

Saudi Arabia's Constitution, adopted in 1992, is silent on the individual right to self-determination. It enumerates no conventional rights found in modern constitutions, though the constitution makes a broad normative statement that the state protects human rights in accordance with the Shariah.³²⁴ The Saudi Constitution mentions the individual in only two contexts. First, every individual has the right to address public authorities in all matters affecting the individual.³²⁵ Second, the state may encourage indi-

322. See, e.g., CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN art. 34; CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT art. 47; CONSTITUTION OF THE REPUBLIC OF INDONESIA art. 28; Qanuni Assassi Jumhuri'i Isla'mai Iran [The Constitution of the Islamic Republic of Iran] 175 [1980]; CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN art. 19; CONSTITUTION OF THE REPUBLIC OF SENEGAL art. 8; CONSTITUTION OF THE REPUBLIC OF TURKEY art. 26.

323. For example, the Individuals with Disabilities Education Act (Act), 20 U.S.C. §§ 1400-1482 (2006), is the United States law most consistent with the Shariah on speech diversity. The Act requires the establishment of an Individualized Education Program (IEP) for each child with a disability through the cooperation of teachers and parents. 20 U.S.C. §§ 1414(d) (2006). The Act was first enacted in 1970 when disabled children in America were either excluded from schools or had no option but to drop out after unsuccessful integration in regular classrooms. *Schaffer v. Weast*, 546 U.S. 49, 51-52 (2005).

324. BASIC SYSTEM OF THE CONSULTATIVE COUNCIL [Constitution] art. 26 (Saudi Arabia).

325. *Id.* art. 43.

viduals to contribute in acts of charity.³²⁶ Though a text of individual rights is missing, the constitution nonetheless obligates the state to provide education and combat illiteracy,³²⁷ safeguard science, literature and culture,³²⁸ and furnish job opportunities for whomever is capable of working.³²⁹ The Saudi state also guarantees the rights of citizens in cases of illness and disability.³³⁰ These significant state responsibilities benefit individuals and assist them in developing personal talents and skills that the divine plan has bestowed on them. Yet, the constitution supplies little confidence to legal analysts that the right to individual self-determination is sufficiently guaranteed.

By contrast, the Indonesian constitution, adopted in 1945, articulates the individual right to self-development in the most balanced phraseology. Article 28B assures children the right to live, to grow, and to develop without exposure to violence and discrimination,³³¹ Article 28C assures every individual, both men and women, the right to personal development.³³² Further, the constitution recognizes that no individual can develop without his or her basic needs being met.³³³ But the satisfaction of basic needs alone does not guarantee the full development of a person. Accordingly, Article 28C provides that each person has the right to receive education and to benefit from science and technology.³³⁴ According to the Indonesian government, outmoded education is thus insufficient to bring out the talents of a person in the contemporary context. Thus, the constitution makes an important philosophical point that the concept of self-determination is contextual; it is rooted in the context of the time and the state of civilization. But the learning of science and technology can alienate individuals, indeed an entire nation, from its arts and culture. To further assure that the individual is not alienated from his or her cultural roots, Article 28C contextualizes self-development not only in the realm of science and culture, but also in the moral realm of the

326. *Id.* art. 27.

327. *Id.* art. 30.

328. *Id.* art. 29.

329. *Id.* art. 28.

330. *Id.* art. 27. Similarly, the Turkish constitution states that persons with physical or mental disabilities will enjoy special protection in work related matters. CONSTITUTION OF THE REPUBLIC OF TURKEY art. 50.

331. CONSTITUTION OF THE REPUBLIC OF INDONESIA art. 28B. Egypt's constitution also provides that the state shall "take care of children and youth and provide suitable conditions for the development of their talents." CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT art. 10.

332. CONSTITUTION OF THE REPUBLIC OF INDONESIA art. 28C.

333. *Id.*

334. *Id.*

welfare of human race.

Note, however, that no constitutional right, under any legal system, not even the right to self-determination, is categorical. The right to self-determination may not be fully enforceable for a number of reasons, including lack of resources. More so than for other rights, the right to individual self-determination is related directly to social and economic development. A poor Muslim state may not have sufficient resources to open schools and colleges for the learning of arts, sciences, literature, sports, professions, and vocations. Market forces may also falter in creating opportunities in the private sector for individuals to discover and develop their special talents.

While resource constraints certainly impede opportunities, a constitutional right to self-determination is far from an empty commitment. This paper argues that when a Muslim state commits to the enhancement of individual talents and to the accommodation of persons with disabilities, the dynamics of social and economic development acquire new social energy. When hope and dignity are offered to everyone in the community, more individuals are likely to deploy their talents and abilities toward self-improvement, with consequential contributions to the larger community.

2. Women's Self-Determination

Critics of Islam often paint it as an overly oppressive religion towards women. Saudi Arabia is characterized as a state of gender apartheid.³³⁵ Muslim fundamentalists are accused of imposing a singular religious identity on Muslim women, thus denying women the right to personal self-determination.³³⁶ The Taliban regime forbade women, who constitute nearly seventy percent of the population due to the death of men in wars, from working outside of the home.³³⁷ "British colonial officials in Egypt specifically invoked the veil and treatment of women under Islam as a justification for colonialism."³³⁸ Feminist Susan Okin makes a broader charge against religious oppression, arguing that Judaism, Christianity, and Islam all subordinate women to the authority of men.³³⁹ The

335. See Recent Case, *General Court of Qatif Sentences Gang-Rape Victim to Prison and Lashings for Violating "Illegal Mingling" Law*, 121 HARV. L. REV. 2254, 2259-60 (2008).

336. Madhavi Sunder, *Piercing the Veil*, 112 YALE L.J. 1399, 1435-36 (2003).

337. Anastasia Telesetsky, *Recent Development, In the Shadows and Behind the Veil: Women In Afghanistan Under Taliban Rule*, 13 BERKELEY WOMEN'S L.J. 293, 296 (1998).

338. Leti Volpp, *Feminism Versus Multiculturalism*, 101 COLUM. L. REV. 1181, 1196 (2001).

339. SUSAN MOLLER OKIN, *IS MULTICULTURALISM BAD FOR WOMEN?* 9-13 (Joshua Cohen et al., eds., 1999).

Muslim Middle East is described as “a desert of non-compliance within the human rights community.”³⁴⁰

Pressed against this unrelenting criticism, Muslims and Muslim states engage in special efforts to deny the oppression of women. Some Muslim scholars emphasize the need to root women’s rights in sacred texts for the continuity of Islamic traditions.³⁴¹ Historically, Islam can be viewed as a liberation theology for the rights of women.³⁴² Contemporary efforts to recognize the rights of women are reflected in the constitutions of Muslim states. For example, Senegal’s secular constitution, promulgated in 2001, contains all the righteous rhetoric in support of individual self-determination. Borrowing the concept from the Universal Declaration of Human Rights, Article 7 proclaims that every individual has the right to “the free development of his or her personality.”³⁴³ In fact, Article 7 improves upon the text borrowed from the Declaration by introducing the word “her” to demonstrate that the Senegalese constitution is protective of both men and women.³⁴⁴ This textual improvement is noble and compatible with the Shariah of speech diversity since both men and women are empowered to express their special talents in accordance with the divine plan of creation. To further underline gender equality, the constitution declares that “[m]en and women shall have equal rights.”³⁴⁵

While these normative commitments to women’s right to self-determination are commendable, the living reality tells another story. Linda Beck narrates that there exists what she calls a “hidden public” in Senegal that wields the power to influence policy and make legislation.³⁴⁶ The hidden public is a network of influential men from powerful families who control the reins of power.³⁴⁷ While the Parliament houses elected representatives, the power

340. Naz K. Modirzadeh, *Taking Islamic Law Seriously: INGOs and the Battle for Muslim Hearts and Minds*, 19 HARV. HUM. RTS. J. 191, 192 (2006).

341. Iman Hashim, *Reconciling Islam and Feminism*, GENDER & DEV., Mar. 1999, at 7 (arguing for the need, and suggesting a way, to find women’s rights in Islamic texts).

342. There is vast and controversial literature on this topic. Compare Leila Ahmed, *Women and the Advent of Islam*, 11 SIGNS 665 (1986) (arguing that Muslim women should not be forced to choose between religion and self-affirmation), with Anour Majid, *The Politics of Feminism in Islam*, 23 SIGNS 321 (1998) (responding to Leila Ahmed’s critique of Islam), and Izzud-Din Pal, *Women and Islam in Pakistan*, 26 MIDDLE E. STUD. 449 (1990) (discussing the possible costs and benefits of the emancipation of women in Pakistan).

343. CONSTITUTION OF THE REPUBLIC OF SENEGAL art. 7. Cf. Universal Declaration of Human Rights, G.A. Res. 217A, art. 22, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948) [hereinafter Universal Declaration].

344. Article 22 of the Universal Declaration of Human Rights reads: “the free development of his personality.” Universal Declaration, *supra* note 343, art. 22.

345. CONSTITUTION OF THE REPUBLIC OF SENEGAL art. 7.

346. Linda J. Beck, *Democratization and the Hidden Public: The Impact of Patronage Networks on Senegalese Women*, 35 COMP. POL. 147, 148 (2003).

347. *Id.* at 147-48.

belongs to the executive branch as cohorts with the hidden public.³⁴⁸ The challenge for women is not only to obtain more seats in the Parliament but to enhance their position within the hidden public.³⁴⁹ Such has been the powerlessness of the Senegalese women that they were unable to play an effective role in obtaining a legal ban on the pre-Islamic cultural practice of female genital mutilation.³⁵⁰ Even in family matters, though law requires a woman's consent to marriage, "[f]ear of disinheritance, of social ostracism, or of financial destitution" can effectively diminish the right.³⁵¹

Turkey's 1982 secular constitution obligates the state "to provide the conditions required for the development of the individual's material and spiritual existence."³⁵² Ironically, this normative statement conforms to the Basic Code, which commands Muslims to strike a balance between material and spiritual pursuits. One of the most popular *dua* (meaning "supplication to God"), borrowed from the Quran, which Muslims throughout the world implore after daily prayers, says: "O our Sustainer! Grant us good in this world and good in the life to come."³⁵³ In theory, the right to personal self-development is available to both men and women since the constitution espouses equality between men and women and holds the state responsible for ensuring that gender equality exists in practice.³⁵⁴ Furthermore, the constitution promises the spread of sports among the masses.³⁵⁵ It also obligates the state to "protect, promote and support works of art and artists, and encourage the spread of appreciation for the arts."³⁵⁶ These provisions should help Turkish women attain a very broad right to personal self-determination.

348. *Id.* at 151.

349. *Id.* at 151, 165.

350. *Id.* at 162. Though the country eventually enacted a ban against female genital mutilation, the final decision came from the presidency. *Id.* See also Peter Easton et al., *Social Policy from the Bottom up: Abandoning FGC in Sub-Saharan Africa*, 13 DEV. PRAC. 445 (2003) (highlighting a grassroots initiative experiment in Senegal that was effective in curbing female genital mutilation in villages).

351. Abd-el Kader Boye, et al., *Marriage Law and Practice in the Sahel*, 22 STUD. FAM. PLAN. 343, 346 (1991).

352. CONSTITUTION OF THE REPUBLIC OF TURKEY art. 5.

353. Quran, sura al-Baqara 2:201. In promoting a balanced life, Islam does not teach asceticism or renunciation of the world. It only warns believers that excessive engagement with worldly goods removes spiritual elements from life.

354. CONSTITUTION OF THE REPUBLIC OF TURKEY art. 10.

355. *Id.* art. 59. Evidence discloses that Turkish women are developing sports activities. See also Selcan Teoman, *Sports: Turkey*, in 3 ENCYCLOPEDIA OF WOMEN AND ISLAMIC CULTURES, *supra* note 40, at 448, 448.

356. CONSTITUTION OF THE REPUBLIC OF TURKEY art. 64; see Susan N. Platt, *Public Politics and Domestic Rituals: Contemporary Art by Women in Turkey, 1980-2000*, FRONTIERS: J. WOMEN STUD., 2003, at 19 (describing the works of Turkish women artists).

Despite generous words for the development of women, Turkey has been oppressive toward women in its own secular ways. Turkish laws prohibit women from wearing the Islamic headscarf in colleges, universities, government offices and national parliament.³⁵⁷ The notion of modernity adopted at the dissolution of the Ottoman Empire imported a conception of female liberty that could not be reconciled with Islamic values. By adopting a fierce concept of secularism, state institutions including the armed forces took Islam as a force of backwardness and decay. Whereas the Taliban imposed a preliterate view of Islam on women, the Turkish secular establishment impresses a pseudo-European stamp on Muslim women. Consequently, Turkish women are denied the right to express their Islamic identity. Although secular laws are under social stress and the militant secularism of the twentieth century is yielding to a more balanced understanding of Islam, Turkish women have yet to be liberated from an imitational and anti-historical notion of modernity.

Iran's Islamic Constitution does not enumerate a general right to individual self-determination. However, it specifically lists such a right for women. Article 21 obligates the government to create a favorable environment for the development of woman's personality, and "the restoration of her rights, both the material and intellectual."³⁵⁸ The favorable environment, however, must be in conformity with Islamic criteria.³⁵⁹ Note that the Constitution of the Islamic Republic of Iran aims at the "restoration" of women's rights, which means that women draw rights of self-development from the Basic Code, not merely from positive law. Although no such right is framed for men, it is highly improbable that the constitution discriminates against men. The special emphasis on women's rights is meant to dismantle historical modes of discrimination that have prevented women from exercising their talents in sciences, sports, arts, and literature.³⁶⁰

357. Ali Khan, *Suppressive Rulings*, NAT'L L.J., July 24, 2006. A recent ruling by the Turkish Constitutional Court upheld the ban on wearing Islamic headscarf at universities. *High Court in Turkey Rules Against Headscarves*, CHURCH & STATE, July-Aug. 2008, at 22.

358. Qanuni Assassi Jumhuri'i Isla'mai Iran [The Constitution of the Islamic Republic of Iran] 21 [1980].

359. *Id.* Some criticize the idea of subjecting human rights to the Islamic criteria. See, e.g., Ann Elizabeth Mayer, *Islamic Rights or Human Rights: An Iranian Dilemma*, 29 IRAN. STUD. 269, 273 (1996) (U.K.) (accusing Iran of building one human rights system for men, and another much inferior one for women and minorities).

360. Evidence suggests, however, that women's rights in Iran have experienced both reduction and expansion. Valentine M. Moghadam, *Islamic Feminism and its Discontents: Toward a Resolution of the Debate*, 27 SIGNS 1135, 1137-42 (2002). In the early deconstructive stage of the Iranian revolution, the rights associated with the West were withdrawn. *Id.* at 1137-38. In the 1990s, however, more doors were open for women to actualize their self-expression in numerous professions. *Id.* at 1138.

Furthermore, women have constitutional rights to participate in the creation of wealth as well as in the acquisition of intellectual assets. Article 21 mentions both material and intellectual rights, repudiating the logic that women are merely reproductive machines.³⁶¹ A foundational constitutional principle underlines the systemic significance of “sciences and arts and the most advanced results of human experience, together with the effort to advance them further.”³⁶² When this foundational principle is applied to a woman’s right to self-development, women are entitled to deploy their talents and abilities to acquire material and intellectual resources. This freedom to self-development, however, cannot be corrupted by undermining family and motherhood. Consistent with the Basic Code, the right to self-development under the Iranian constitution, for both men and women, is not a freedom to abandon children or parents to frailty and helplessness.

3. Islamic Way of Life

One may ask whether the individual right to self-determination is compatible with a state-sponsored Islamic way of life. Most Muslim states are fusion states in that they fuse Islam with state, and do not separate them, to safeguard Islamic values. Some Muslim states make a much stronger constitutional commitment to Islam than others. Iran and Saudi Arabia, the two prominent fusion states, enforce the Islamic way of life both at state and social levels. Saudi Arabia’s constitution provides that “[t]he state protects the Islamic Creed; carries out its Shariah; and undertakes its duty towards the Islamic call.”³⁶³ The communitarian principle of commanding the people “to do right and shun evil” is taken from the Quran.³⁶⁴ Invoking the verbatim text of the communitarian principle, Iran’s constitution obligates the government and the people to establish virtue and disestablish vice.³⁶⁵

361. Qanuni Assassi Jumhuri’i Isla’mai Iran [The Constitution of the Islamic Republic of Iran] 21 [1980]; cf. Mehran Tamadonfar, *Islam, Law, and Political Control in Contemporary Iran*, 40 J. SCI. STUD. REL. 205, 208 (2001) (asserting that despite the constitutional language of equality, women’s rights are interpreted under the Shia doctrines).

362. Qanuni Assassi Jumhuri’i Isla’mai Iran [The Constitution of the Islamic Republic of Iran] 2 [1980].

363. BASIC SYSTEM OF THE CONSULTATIVE COUNCIL [Constitution] art. 23 (Saudi Arabia); see also Rashed Aba-Namey, *The New Saudi Representative Assembly*, 5 ISLAMIC L. & SOC’Y 235, 236 (1998) (describing a historic reluctance by the Saudi government to adopt a constitution, as both the government and the people of Saudi Arabia believed that the Quran was the constitution).

364. The principle is repeated numerous times in the Quran. See, e.g., Quran, sura al-Imran 3:104; 3:110; 3:114, sura al-Araf 7:157, 7:199, sura at-Tauba 9:71, 9:112, sura al-Haj 22:41.

365. Qanuni Assassi Jumhuri’i Isla’mai Iran [The Constitution of the Islamic Republic of Iran] 8 [1980]. The constitution cites Quran, sura at-Tauba 9:71.

Furthermore, the state of Iran is obligated to institute a social environment "for the growth of moral virtues based on faith and piety and the struggle against all forms of vice and corruption."³⁶⁶ The responsibility to preserve and transmit Islamic values is partly deferred to social institutions since the state alone cannot construct a community of believers if social structures play an oppositional or passive role. The Saudi Arabia constitution mandates that the family raise its members in the Islamic faith.³⁶⁷ The Iran constitution also relies on families to inculcate Islamic values.³⁶⁸ In both Iran and Saudi Arabia, state and social institutions are coordinated in promoting the Islamic way of life.

Although Pakistan's Constitution does not incorporate the Quran's communitarian principle to do right and shun evil, it explicitly uses the phrase "Islamic way of life" and obligates the state to take steps for ordering the lives of the people according to the principles and concepts of Islam.³⁶⁹ The state owes this obligation to Muslims of Pakistan, individually and collectively.³⁷⁰ In promoting the Islamic way of life, the state provides "facilities" so that individuals can "understand the meaning of life" according to the Basic Code.³⁷¹ One listed facility is the educational means to foster the Islamic lifestyle.³⁷² The teaching of the Quran, the Prophet's life and character, and the basics of Islam (*Islamiyat*) are made compulsory parts of the education.³⁷³ In addition to providing facilities, the state is burdened with a more diffused and general obligation to foster Islamic moral standards.³⁷⁴

From a secular viewpoint, the state sponsored promotion of the Islamic way of life limits individual choices of lifestyles and self-expressions. Although non-Muslims are not coerced into adopting Islamic values,³⁷⁵ Muslims are ideologically engineered to seek self-expression within the realm of Islam. The communitarian

366. Qanuni Assassi Jumhuri'i Isla'mai Iran [The Constitution of the Islamic Republic of Iran] 3 [1980].

367. BASIC SYSTEM OF THE CONSULTATIVE COUNCIL [Constitution] art. 9 (Saudi Arabia).

368. Qanuni Assassi Jumhuri'i Isla'mai Iran [The Constitution of the Islamic Republic of Iran] 10 [1980].

369. CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN art. 31.

370. *Id.*

371. *Id.*

372. *Id.* art. 31(2)(a).

373. *Id.*

374. *Id.* art. 31(2)(b).

375. See, e.g., CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN art. 22. (stating that no person can be required to take instructions in a faith other than his own). Enforcement of Islamic values, however, can benefit non-Muslims. For example, because of restrictions on alcohol and drugs, the United States troops stationed in Saudi Arabia suffered little substance abuse problems that plagued the troops in Vietnam. Phil Gunby, *Service in Strict Islamic Nation Removes Alcohol, Other Drugs from Major Problem List*, 265 J. AM. MED. ASS'N 560 (1991).

principle allows the government to adopt supervisory policies that further limit individual choices. Secular critics would argue that a more robust protection of the right to self-determination would allow individuals to explore personal talents without state paternalism or ideological constraints. While individuals should be free to adopt the Islamic way of life, the secular argument asserts that the government should stay out of teaching virtue and enforcing Islamic values.³⁷⁶

From a comparative perspective, therefore, the restricted right to self-determination available under Muslim constitutions is inadequate. In the United States, for example, the liberty of self-exploration available to individuals is extensive with few restrictions.³⁷⁷ A person is free to invent or savor pornography, within certain bounds.³⁷⁸ A performer may dance in strip clubs.³⁷⁹ An artist or writer may satirize prophets and holy books.³⁸⁰ An entrepreneur may assemble an empire of intoxicants. At the same time, however, individuals in the United States are free to pursue sciences, sports, spirituality, and religion as they wish. A scientist may research the cure for cancer or AIDS. An athlete may master the skills of ice-skating. An activist may advocate against gambling and drinking. A holy man may devote his life to reading the Quran and calling worshippers to prayer.³⁸¹ In sum, individuals may express themselves through vice or virtue. Each individual answers to God without fear of the other. This freedom to live or not to live under God's Law, available in the West but not in the Muslim world, is presumptively more supportive of the right to

376. Muslims living in countries with more secular governments still tend to hold strong to Islamic values. See Monika Stodolska & Jennifer S. Livengood, *The Influence of Religion on the Leisure Behavior of Immigrant Muslims in the United States*, 38 J. LEISURE RES. 293 (2006). In the United States, for example, where families tend to be more independent, Muslim families engage in leisure behavior that emphasizes strong family ties and family oriented leisure, which excludes intoxicants, mix-gender interactions, dating, and alcohol. *Id.*

377. JON R. BOND & KEVIN B. SMITH, *THE PROMISE AND PERFORMANCE OF AMERICAN DEMOCRACY* 112-141(2007).

378. See generally Adil Mustafa Ahmed, *The Erotic and the Pornographic in Arab Culture*, 34 BRIT. J. AESTHETICS 278 (1994) (arguing that the Arab culture should allow the erotic in visual arts since the culture allows the erotic in literature); Phyllis Schlafly, *The Morality of First Amendment Jurisprudence*, 31 HARV. J.L. & PUB. POL'Y 95 (2008) (arguing that the United States Supreme Court protects pornography).

379. DAVID LAURENCE FAIGMAN, *LABORATORY OF JUSTICE* 325 (2004) (discussing zoning laws regulating strip clubs and their effect on the First Amendment liberties of free speech).

380. See, e.g., Sohnya Sayres, *Accepted Bounds*, SOC. TEXT, No. 25/26, 1990, at 119, 120-21 (1990) (discussing the controversy over Salman Rushdie's, *THE SATANIC VERSES*, a novel condemned in the Muslim world but defended in the West).

381. Carol Zaleski, *Time Out For Allah*, CHRISTIAN CENTURY, June 15, 2004 at 371 (discussing the controversy over the Muslim call to prayer in Hamtramck, Michigan, near Detroit).

self-determination.

Even from the Islamic viewpoint, state enforcement of the communitarian principle "to do right and shun evil" raises an intriguing inquiry. Does state enforcement of the communitarian principle interfere with the divine contract that God has made with Satan, a contract under which Satan may freely tempt human beings away from virtue?³⁸² If God allows Satan to mislead individuals, can a Muslim state preempt Satan's temptations? Banning the sale of liquor, for example, preempts Satan from tempting Muslims to drink. While Satan is free to tempt, individuals and communities are also free to resist temptation. The state is under no divine obligation to collude with Satan to tempt believers away from the articles of faith. The state as a corporate may fight Satan on behalf of the people, just as the state safeguards the people against enemy aggression. Frustrating Satan's temptations at both individual and collective levels, therefore, does not interfere with Satan's contract with God. Indeed, Muslims are obligated to resist and defeat Satan. Here, caution is called for. If state enforcement of the communitarian principle is overly coercive, as was the case under the Taliban in Afghanistan, it might defame, and even undermine, the goodness of Islam.³⁸³ Overly coercive enforcement might also establish a black market of sin, a market that breeds hypocrisy, health hazards, and a more corrosive form of subterranean vice.³⁸⁴

In Muslim states, the individual right to self-determination cannot function in a moral vacuum or contrary to mainstream religious ethos. The Basic Code prohibits certain behavior, including the consumption of intoxicants and pornography and engaging in non-martial intimacies.³⁸⁵ It also forbids gambling and other enterprises of chance.³⁸⁶ These prohibitions outlaw certain modes of self-determination. The prohibitions emanating from the Basic Code, even if ignored in the privacy of homes, cannot be publicly dismissed, for such public dismissal would undermine the Islamic

382. See Liaquat Ali Khan, *An Islamic View of the Battlefield*, 7 BARRY L. REV. 21 (2006) for a thorough discussion of this point.

383. For a discussion of the Taliban rule, see generally FUNDAMENTALISM REBORN? AFGHANISTAN AND THE TALIBAN (William Maley ed., 1998); PETER MARSDEN, THE TALIBAN: WAR, RELIGION AND THE NEW ORDER IN AFGHANISTAN (Zed Books 1998); AHMAD RASHID, TALIBAN: MILITANT ISLAM, OIL AND FUNDAMENTALISM IN CENTRAL ASIA (2000).

384. Some Muslim states may deny the presence of prostitutes, thus limiting the availability of medical services and knowledge about sexually transmitted diseases. See J. Zar-gooshi, *Characteristics of Gonorrhoea in Kermanshah, Iran*, 78 SEXUALLY TRANSMITTED INFECTIONS 460 (2002).

385. *E.g.*, Quran, sura al Ma'idah 5:90 (prohibiting intoxicants); sura al-Isra 17:32 (prohibiting non-marital sex).

386. *Id.* sura al Ma'idah 5:90.

character of the community. A Muslim state is unlikely to build "sin cities" like Las Vegas.³⁸⁷ While some individuals in a Muslim state may demand freedom from restrictions of the Basic Code, the nation as a whole would insist on preserving lifestyles consistent with the Basic Code. Consequently, the divine right to self-determination in a Muslim state functions within the freedoms of a religious framework.³⁸⁸

CONCLUSION

The Islamic law of speech diversity recognizes two distinct divine rights. The divine right to language allows each speech community to preserve and celebrate its own language free of coercion and disrespect from other speech communities. Native languages are the assets of speech communities, containing a view of life, a history, literature, folk songs, stories, moral lessons, jokes, lyrics, and laws. The divine plan maintains the diversity of languages so that each speech community may forge fellowship among its members. While native languages furnish the bonds of close familiarity, they do not prevent its speakers from learning other languages. No speech community is under any divine compulsion to rigidly enforce its own monolingualism. It is natural for speech communities to learn beneficial languages that bring intellectual, scientific, or material well being. Human beings have the inherent capacity to speak more than one language. In learning beneficial languages, however, native speakers need not abandon their own language. The Islamic law prohibits coercive degradation of native languages but at the same time, it interposes no barriers in learning other languages. In fact, millions of Muslims learn Arabic to recite the Quran. They also learn English and other dominant languages needed to be successful in global affairs.

Closely related to the right to language is the divine right to individual self-expression or self-determination. Each human being is vested with assets and disabilities. Each human being is unique for God, the Master-Artist, shapes each human being with special care. Although human beings share common features, no human being is replaceable with another. Accordingly, the Islamic

387. For a discussion of the deregulation of gambling in Missouri, see Christopher T. O'Connor, Note, *A Return to the Wild West: The Rapid Deregulation of the Riverboat Casino Gambling Industry in Missouri*, 19 ST. LOUIS U. PUB. L. REV. 155 (2000).

388. Anouar Majid, for example, writes that Western conceptions of feminist emancipation cannot work in the Muslim world. Majid, *supra* note 342, at 345-46. And even if secularism is adopted at the state level, the deeper social and cultural realities will remain Islamic. *Id.* Only indigenous ideas of the right to self-expression will bring effective change. See *id.*

law of speech diversity grants each individual the divine right to personal development. Social, economic, and legal barriers that refuse to recognize special talents or refuse to accommodate disabilities are incompatible with the divine plan. In some Muslim states, gender barriers have been mounted to deny women the right to personal self-determination. The suppression of arts, sports, sciences, and other creative disciplines is contrary to the right to self-expression since individuals are forced to pursue lives through preapproved social models of success. While normic standards are critical for the functioning of a social and legal system, a zealous enforcement of normic standards results in the non-acceptance of individual diversity of talents and disabilities. Normic standards function with efficacy when a generous allowance is made for variations from the mean.

While most Muslim states respect linguistic diversity, some do not. Some deploy the model of the nation-state to impose assimilation and deny speech communities their divine right to preserve and speak native languages. Likewise, some Muslim states do not proactively appreciate the divine right to individual self-determination. A vigorous right to individual self-expression is not contrary to Islam. Nor does it demand that the state be secular. Muslim states need not follow the Western model of personal self-development. Observing the Islamic way of life and moral standards, Muslim men and women, naturally vested with abilities and disabilities, have the God-given right to explore and unfold their unique beings. When individuals are given the maximum liberty allowed under Islam to pursue sciences, arts, knowledge, sports, and spirituality, Muslim communities will prosper. This study recommends that Muslim states recognize linguistic diversity and the right to personal self-determination in their positive law, including national constitutions.