CHILDREN, ADULTS, AND SHARED RESPONSIBILITIES

Jewish, Christian, and Muslim Perspectives

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CHAPTER 16

Children's rights in modern Islamic and international law

Changes in Muslim moral imaginaries

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The reception of secular rights narratives in Muslim ethical and juridical discourses has generated multiple perspectives. This diversity has, in part, to do with the multiple political perspectives espoused by different individual and collectivities of Muslims, as is the case with all other groups, and thus it is almost impossible to define *the* Islamic position.[1] On a global level, a particular kind of liberal sensibility often frames cultural and family rights debates. Periodically these discourses elicit unfavorable responses from cultures that eschew such liberal sensibilities. In those instances, advocates express a preference for embracing more substantive value commitments such as modesty, decency, respect, honor, duty, and moral formation within a religious discourse, while placing the liberty of an individual to make autonomous choices lower down the list of priorities.

Whereas most Muslim human rights advocacy groups find elective affinity with a broad range of liberal rights of the child, occasionally among Muslim advocates there is some disagreement with or resistance to the value commitments of liberal discourses. And some Muslim advocates, perhaps a minority, totally reject secular international charters on the rights of the child as superfluous and theologically offensive. These opponents allege that the international charters of rights lack the fundamental theocentric value commitments required by their interpretation of Islam and that liberal rights only advance unbridled freedoms that border on hedonism.[2]

The complicated ways in which people arrive at their normative values and images in terms of their relations with others is what the philosopher Charles Taylor calls social imaginaries.[3] The emphasis here is on imaginaries

[1] Ebrahim Moosa, "The Dilemma of Islamic Rights Schemes," *Journal of Law and Religion* 15, nos. 1–2 (2000–2001): 185–215.

[2] ʿAfāf Ḥasan Mukhtār, "Naqd wathīqa ittifāqīya ḥuqūq al-ṭifl," al-Mukhtār al-islāmī, at http://islamselect.com/mat/85451 (accessed June 29, 2011).

[3] Charles Taylor, *Modern Social Imaginaries* (Durham, NC: Duke University Press, 2004), p. 23. Taylor defines a social imaginary as the ways in which "people imagine their social existence, how they fit

of a moral or metaphysical order, that in turn shape normative discourses that are held up as ideals by practitioners. Thus, a heady mix of social imaginaries and moral economies embody contemporary Muslim rights discourses affecting children. While secular international conventions and Muslim advocacy literature overlap considerably on the rights of the child, one cannot deny the significant variations spawned by specific concerns, social contexts, and moral imaginaries evident in Muslim societies.

Muslim communities the world over often engage with international conventions and legal treaties affecting the child through a set of bifocal lenses combining secular and religious narratives. Muslim actors and communities at times also respond to the dominant secular juridical and moral narratives, shaped by the language of international legal instruments, from a distinctive Islamic alphabet. Here another consideration enters. Let's call it a moral economy, a feature that is crucial to the understanding of how and for what ends human beings are raised and what they consider to be their optimal modes of flourishing. Often, Muslim modes of moral flourishing and cultural beliefs do indeed conjugate with dominant global political and economic activities. When these modes of moral flourishing translate into a distinctive Islamic alphabet and discourse, one can safely say one has arrived at a moral economy or moral economies of contemporary Islam.[4]

It is best to provide some outlines of a Muslim moral economy on the rights of the child by examining some specific advocacy literature. Keep in mind that Muslim discourses on the rights of the child and religious understandings of childhood are widely disseminated in a range of Islamic teachings ranging from issues of criminal law to moral formation.[5] Temporally these range from debates crafted in Islamic antiquity to those formulated in the modern period, each of which come with significant differences in emphasis and application.

The challenge of questions of childhood was best articulated by the second caliph, ʿUmar Ibn al-Khaṭṭāb (d. 644), in an address to parents. "Consider the mindset of your children when you talk to them," ʿUmar urged parents. "For surely they were born in a time very different from yours."[6] ʿUmar not only highlighted the Muslim teachings relating to

together with others, how things go on between them and their fellows, the expectations that are normally met, and the deeper normative notions and images that underlie these expectations."

[4] See Charles Tripp, *Islam and the Moral Economy: The Challenge of Capitalism* (Cambridge University Press, 2006).

[5] Among the few authors in the early part of the twentieth century who used the term *ḥuqūq*, meaning "rights" or "claims" with reference to children, is the Indian scholar and spiritual leader, see Ashraf ʿAlī Thānvī, *ʿĀdāb-i zindaqī* (Lahore: Suhayl Publications, 1999).

[6] Ṣubḥī al-Ṣāliḥ, *Maʿalim al-Sharīʿa al-Islamiyya* (Beirut: Dar al-ʿIlm li al-Malayin, 1975), p. 246.

childhood as a matter of generational difference but also underscored the seriousness with which he considered the transitions that human societies perpetually experience and how they affect each successive generation; hence the importance of how to raise a child.

Contemporary Muslim teachings related to the child must be viewed against the backdrop of general Islamic teachings on rights. Here, human dignity is the centerpiece of Islamic rights discourses and applies equally to the rights of the child. Article 1 of the Cairo Declaration on Human Rights in Islam states: "All men are equal in terms of basic human dignity and basic obligations and responsibilities . . . True faith is the guarantee for enhancing such dignity along the path to human perfection."[7] A modern Lebanese writer, Ṣubḥī al-Ṣāliḥ, wrote: "Indeed, the child in Islam is a human being endowed with dignity. The child is entitled to dignity just as an adult is."[8] Noble as notions of dignity are in their abstraction, they take concrete shape in practice and are imprinted by the specificities of moral economies and social imaginaries.

This chapter examines Muslim responses to the United Nations Convention on the Rights of the Child (1989) (CRC) and highlights both the achievements and challenges that arise in applying juridical and moral norms on a global scale. It discusses how contemporary Muslim traditional authorities address the rights of the child.

A word first about the term "Islamic law." "Islamic law" is the widely popular translation of the Arabic phrase *al-fiqh al-islāmī*. But it would be erroneous to compare Islamic law to what is understood to be state-enforced laws. *Al-fiqh al-islāmī* is possibly better described as an amalgam of moral and ethical teachings that aspire to realize a specific form of moral life. In this sense, it is less about laws that have to be enforced by coercive state structures. If anything, one's moral obligations are acquired by means of a voluntary accession to Islam and most often enforced by individual conscience and an unregulated communitarian ethos. Of course, in some instances, Islamic law is enforced by states who have adopted Muslim moral thought as part of the values of the state and apply it via national legal systems in multiple variations.[9]

Many states with Muslim majority populations have adopted the CRC while having also adopted Islam as a state religion, along with a

[7] "Cairo Declaration on Human Rights in Islam, Nineteenth Islamic Conference of Foreign Ministers," at www.Religlaw.Org/Interdocs/Docs/Cairohrislam1990.Htm (14 Muharram 1411/August 5, 1990) (accessed June 29, 2011).

[8] al-Ṣāliḥ, *Maʿālim*, p. 232.

[9] Knut S. Vikør, *Between God and the Sultan: A History of Islamic Law* (New Delhi/London: Foundation Books/C. Hurst & Co., 2005), pp. 1–8.

commitment to enforce versions of Sharīʿa law (religious law derived from scripture and tradition), which periodically generates tensions. Some Muslim countries have adopted the CRC but disapproved of and inserted exemption clauses on especially the right to adoption, which is controversial in terms of Islamic law.[10] The CRC is the first successful international instrument that incorporates a full gamut of rights – civil, political, economic, social, and cultural – with only the United States of America and Somalia failing to ratify it.

In an insightful review of the CRC, the distinguished Pakistani lawyer and scholar Imran Ahsan Nyazee rebutted misconceptions that Islamic law did not endorse the rights of children.[11] While Nyazee admits that classical Islamic formulations expressed moral and legal responsibility in terms of the language of duties, such discourse is compatible with modern rights language even when exercised by parents and guardians on behalf of children.

Among the representatives of Muslim countries who submitted reports to subcommittees of the CRC explaining, as well as signaling their qualification of, elements of the convention were those from the Kingdom of Saudi Arabia, Egypt, Pakistan, and Iran. Saudi Arabia endorsed the CRC and volubly stated that it was in "conformity with the teachings of Islamic law concerning the need to fully respect the human rights of the child from the time when the child is an embryo in his or her mother's womb until he or she reaches the age of majority."[12] The Saudi report to the CRC subcommittees took pains to explain the significance that the Sharīʿa accorded the doctrine of the "best interests of the child."[13] The governments of Egypt and Pakistan noted their reservations upon ratification on the issue of adoption, arguing that Islamic law did not recognize adoption.[14] However, Islamic law scholar Mohammad Fadel has argued that there are near-substitute doctrines of adoption in Islamic law, but the representatives of Egypt and Pakistan did not entertain alternative doctrines, since the matter of adoption remains a vexed one for Muslim legal authorities.[15] For instance, popular perceptions simplify, mask, and distort a complex body of subtle laws regulating the care of children of unknown parentage.[16] This creates an opening for Muslim child advocates to address the question of adoption more sympathetically in order to make meaningful alternatives to adoption more accessible and practical.

[10] Imran Ahsan Nyazee, "Islamic Law and the CRC (Convention on the Rights of the Child)," *Islamabad Law Review* 1, nos. 1–2 (2003): 88–100.

[11] Ibid. 113. [12] Ibid. 88. [13] Ibid. 90. [14] Ibid. 91.

[15] Daniel Pollack, Moshe Bleich, Charles J. Reid, Jr., and Mohammad H. Fadel, "Classical Religious Perspectives of Adoption Law," *Notre Dame Law Review* 79, no. 2 (2004): 731.

[16] Ibid. 731.

RIGHTS OF THE CHILD IN CONTEMPORARY MUSLIM ADVOCACY LITERATURE

The composite chapter advocating the rights of the child authored by traditional Muslim religious authorities and collected in the *Encyclopedia of Contemporary Islamic Law* (ECIL) (*Mawsūʿa al-fiqh al-islāmī al-muʿāṣir*) differs in some respects from but otherwise largely confirms elements of the CRC, which was adopted by some 185 countries by 1995.

The views aired in the ECIL serve as an important reference and treatise, and represent a broad consensus of Arabic-speaking traditional authorities (*ʿulamāʾ*), some of which are affiliated to the Islamic Law Academy (Majmaʿ al-fiqh al-islāmī), which functions under the auspices of the Organization of the Islamic Conference (OIC). Specialists offered comments, commensurate to their expertise, on different aspects of the rights of the child to form part of the ECIL chapter. Noticeably absent was the voice of women scholars on this crucial topic, which is so intimately tied to family life where women play a significant role. Twenty or more authorities linked to the ECIL project published in 2005 were identifiably of Middle Eastern descent, with one identifiably of South Asian origin. Many of the scholars were also attached to universities, since they were also identified as holders of doctoral degrees and professorial appointments. The ECIL listed among its principal authors the late Shaykh ʿAbd al-ʿAzīz Bin Bāz, the chief religious authority of Saudi Arabia, who publicly subscribed to the Wahhabi-Hanbali doctrine (one of the four Sunni schools of law). A number of respected Muslim jurists who enjoyed wide acclaim in the Middle East and beyond were associated with the ECIL project. Apart from the late Jordanian scholar and Muslim jurist Dr. Muṣṭafā al-Zarqā, the list included the Syrian jurist Dr. Wahba al-Zuḥaylī, the Egyptian Islamic law expert Dr. Salīm al-ʿAwwa, and the Saudi scholar al-Shaykh Mānnāʿ al-Qaṭṭān, to mention just a few distinguished figures. The editor-in-chief of the ECIL was Professor ʿAbd al-Ḥalīm ʿUways. Among the prominent authorities, only Dr. al-ʿAwwa contributed to the chapter dealing with the rights of the child.

Claims or rights of the child?

The chapter dealing with the "rights" of the child was entitled "Claims or entitlements of the child in the light of Islamic moral reasoning or law" (*ḥuqūq al-ṭifl fī ḍaw al-fiqh al-islāmī*). The word *ḥaqq* (pl. *ḥuqūq*) has

different valences and nuances. In modern Arabic *ḥaqq* is often translated as "right."[17] However, *ḥaqq* can also mean "duty" or a "claim" that one person has over another. While some people might be inclined to translate the chapter as the "rights of the child," it depends on the context of usage, since historically the idea of *ḥaqq* is premised on reciprocal claims and duties. In other words, there are reciprocal claims and duties between parents and offspring, although during the early stages of a child's life it is most often the fiduciary duties of parenthood that are discussed.

An examination of the discourse shows that it is unclear whether the ECIL authors use the term *ḥuqūq* to mean "rights" as understood in modern legal discourse or "duties" in the traditional sense. If the word does mean "rights," then it is not altogether clear whether the authors are implying modern liberal notions of rights as entitlements or some other notion.

The ECIL authors begin with an apologetic *cum* polemical passage when discussing Islam's contribution to notions of childhood and the rights of children:

> Some people ask: Islam has indeed been preoccupied with the duties to both parents (*ḥuqūq al-wālidayn*), especially the mother. But why has Islam not paid attention to the "rights of children" (*ḥuqūq al-abnāʾ*) to a degree equivalent or approximate to the rights of both parents? With the exception of Islam's concern for the rights of children – during breastfeeding and custody – you will hardly find that Islam shows concern for offspring beyond infancy.[18]

In the usage of *ḥuqūq* with reference to *parents*, the ECIL authors invoke the sense of the duties that offspring must perform vis-à-vis parents. However, when used with reference to *offspring* and *children*, they torque the word *ḥuqūq* in the direction of modern rights discourse, meaning the entitlements of children. The discussion is laced with shadow-boxing with unnamed interlocutors and veiled rebuttals of widespread media perceptions that Islamic teachings fall short on concrete rights for the child. Such charges, the authors say, demonstrate a lack of awareness of the principles of Islam as a religion and its moral system – Sharīʿa – on the part of the critics. As a religion and moral system, Islam is intimately tied to a human being's natural predisposition (*fiṭra*), just as one's spirit is tied to the body. Religion and morality, on the one side, are constantly in conversation

[17] ʿAlā al-Dīn ʿAlī al-Muttaqqī al-Hindī, *Kanz al-ʿummāl fī sunan al-aqwāl wa al-afʿāl*, 2nd edn., vol. XXII (Hyderabad: Maṭbaʿa Majlis Dāʾirat al-Maʿārif al-ʿUthmāniyya, [1395] 1975), pp. 24–26. The author explicitly states that a proper name is a claim of the child on his or her parents.

[18] ʿAbd al-Ḥalīm ʿUways (ed.), *Mawsūʿa al-fiqh al-islāmī ʿal-muʿāṣir*, 5 vols., vol. III (Manṣūra: Dār al-Wafāʾ, [1426], 2005), p. 29.

with and nourished by the natural predisposition of human nature, on the other.

So why do Islam's teachings focus more on the rights of parents than on those of their offspring, the ECIL asks, rhetorically? The reason for an emphasis on the rights of parents, the ECIL explains, is that as offspring grow older they also increase in independence and their reliance on parents decreases. But with respect to parents it is different. As parents grow older, their reliance on their offspring increases, and hence the greater emphasis on the duties of the child toward parents in traditional Islamic teachings. At the adult stage of their lives, the ECIL authors explain, children's natural disposition and inclinations turn toward egotistical selfishness.[19] "For surely the voice of the natural disposition in offspring will drive them toward a youthful wife, make them give attention to their children and focus on the joys of life at that point of their lives as young adults."[20] Given the natural realities and social priorities of young adult children, Islamic teachings place the accent on their duties toward their parents. Therefore Islamic teachings on the duties of children toward parents realistically outweigh discussions on parents' duties toward children.

A different scenario plays out when one becomes a parent, according to the ECIL, one that is diametrically opposed to tendencies that generally prevail when one is a young adult. Parents' natural inclinations inspire them to care for their young children. As parents, they sacrifice everything in the interests of their vulnerable children. Hence, the ECIL authors explain, it would be redundant for the moral system of Islam to lay out detailed prescriptions for matters in which nature itself establishes intuitive rules and instills predispositions within parents about how to act toward their offspring. Caring for children is a natural necessity and therefore does not require legislation for what nature will itself take care of. This, they say, explains the absence of detailed legislation and teachings with respect to children in the early religious teachings of Islam. However, there is an emerging body of contemporary literature on religious understandings of childhood and children in Islam.

Good choice of parents

An unborn child, the ECIL scholars stress, has the right to be the child of pious parents. Parents should ideally, for the purposes of marriage, privilege the ties of faith and god-consciousness (*al-dīn wa al-taqwa*) and not marry

[19] Ibid. [20] Ibid.

for money. The strong assumption made is that pious spouses will make good parents. A popular saying of the Prophet is cited that encourages potential spouses to find partners with good moral character, especially those who aspire to a high quality of religious practice. The piety and pious lifestyles followed by spouses was a sign of their personal moral status, and their family background and origin. Implicit was a belief that a family background that valued a life of piety, religion, and morality cumulatively in some measure guaranteed the availability of moral security and social stability during the parenting of a child.

The authors of the ECIL put a great deal of emphasis on the physical and moral health of children:

> Among the primary duties of parents toward children is [for would-be parents planning marriage] to make a good choice of partner in order to secure excellent hereditary dispositions and have an honorable home and a good environment for the flourishing of their future offspring in accordance with the teaching of the Prophet, on whom be peace, who said: "Be judicious in your [choice of] reproductive material [*nuṭf* – figuratively, your genes], for surely heredity has its own machinations."[21]

Another parental duty toward children was to help their offspring materially. This was to ensure that children could at an early age pursue morally permissible options of sex and sexuality via marriage. Since marriage was the only acceptable place for sexual gratification in Islam, parents were obliged to aid their children financially in order for them to lead sexually satisfactory and fulfilling lives as early as possible. This obligation, the ECIL authors argue, stems from a saying of the Prophet that stated: "Whoever has a child should give it a good name and training. Once the child reaches maturity, the offspring ought to be married. And if the child reaches maturity without being married and commits a [sexual] offense, then the burden of sin rests on his father."[22] Since the father is understood to be the principle breadwinner in a Muslim marriage, he therefore shoulders the burden of responsibility for his offspring in this crucial area. The authors of the ECIL insist that the word used in the saying of the Prophet, *walad*, normally meant "boy" but in this context was a generic term for "child," and hence was applicable to both male and female offspring.

Counteracting any suggestion that marriage at an early age must necessarily be in the form of arranged marriages and, by implication, be coercive in nature, the ECIL scholars repeatedly assert that individuals should be free to choose their life partners. Denying individuals the freedom to

[21] Ibid. vol. III, p. 33. [22] Ibid. vol. III, p. 48.

choose their spouses was contrary to Islam's moral law, the authors argue. Prospective partners should put each other to moral and ethical scrutiny in order to find the right pitch in compatibility prior to marriage. A father, for instance, was not allowed to abuse his unfettered authority as his daughter's marital guardian and marry her off without her explicit consent. On this issue the ECIL authors affirm a minority opinion in Islamic law, invoking the opinion of the more lenient Ḥanafī school of Sunni law and consciously setting aside the more stringent views of the other schools of law that gave the father the coercive power to marry off his daughter.

The analogy the ECIL invokes in order to buttress the position it adopts is equally illustrative. Just as the father cannot enjoy an unfettered discretionary right to spend the personal property of his minor child, he similarly cannot mortgage her future by exercising his discretionary power as guardian and betroth her in matrimony against her will. Here, the introduction of restraint on the marital power of the father is subject to his daughter's explicit consent. This is clearly a move on the part of the ECIL authors to give greater currency to a minority opinion in classical Islamic law that comparatively increased women's autonomy, especially that of daughters, in matters of marriage. In terms of this interpretation, a father may intervene in a marriage only if there are valid concerns about compatibility between the prospective spouses that would affect the well-being of the marriage.[23]

But what seems to preoccupy the attention of the ECIL authors is their irrepressible desire to ensure that potential spouses attain a modicum of religious literacy. Religious literacy, they believe, works like intellectual vitamins. Religious literacy enables married couples to understand, and subsequently adhere to, the prophetic prescriptions and teachings on marriage. Not only is there an assumption that religious literacy will enhance the quality of decision-making of a married person but there is also a belief that it would advance their moral character and turn them into model parents.

Post-natal rituals

Post-natal rituals, perhaps the closest equivalent in Islam to baptism, are deeply entrenched commandments that in part inaugurate the child into the spiritual universe of Islam. The rituals are viewed as the rights a child enjoys and involve the invocation of certain prayers in the infant's ear.[24] One such prayer is the "call to prayer" (*adhān*) that is whispered into

[23] Ibid. vol. III, pp. 47–48. [24] al-Ṣāliḥ, *Maʿālim*, pp. 234–235.

the right ear, followed by the whispering of the "announcement for the start of congregational prayer" (*iqāma*) into the left ear. These ritual acts symbolically incorporate the child into the Muslim community. Through these rituals, the parents, family, and community members try to secure for the child a place in the prayer-life of the community. One recommended ritual is called the *ʿaqīqa* – the ritual sacrifice of a sheep or goat on behalf of the newborn. The slaughtered animal is a means of hospitality and charity, and the festive celebration itself expresses thanks to God for the gift of a child. The sacrifice also makes the additional point that offspring are more valuable than wealth. On the seventh day after birth, the child's natal hair is shaved and weighed. The monetary value of the weight of the hair, after being quantified in an equivalent weight of silver, is then distributed as charity as an optional ritual.[25]

On naming children, the authors of the ECIL express their alarm at the fact that many Muslim parents give their offspring nondescript names that hide their Muslim identities. They caution against such practices in the strongest terms. The ECIL authors show empathy for circumstances under which people were coerced to hide their faith and identity. They recall the conditions of Muslims who lived in communist countries such as the Soviet Union, China, and the Eastern Bloc states who, in the interests of self-preservation, were forced to use non-Muslim names. Even in those instances, they remind readers, Muslims kept two names: a non-Muslim name compliant with the ideology of the communist state and a Muslim name bearing the religious identity of the individual for use in private and family circles. The ECIL authors point out with alarm that in a number of Muslim countries people give their children non-Muslim names or names that do not reflect their Islamic identity.

The right to education and a healthy public culture

Apart from the role of parents in nurturing children, educators, the community, and the media too have a responsibility to create a healthy public environment for nurturing children. The authors of the ECIL level pungent asides at the media and suspect it to be the major culprit in undermining and counteracting the religious values inculcated by parents. The ECIL authors describe the media as promiscuous and subversive. Therefore, every Muslim has an obligation to maintain a healthy society, says Yaḥyā Basiyūnī Muṣṭafā in a plea for greater community vigilance. He cites

[25] Mālik Bin Anas, *al-Muwaṭṭā* (Beirut: Dār al-Fikr, [1419], 1998), pp. 314–315.

a saying of the Prophet that states: "It is better for a man to invest in the moral formation [*adab*] of his child than spend a bushel [of some goods] in charity." Another prophetic tradition holds both parents responsible for the well-being of their offspring: "A man [husband or father] is the shepherd [responsible one] in his family and accountable for his flock; a woman [wife or mother] is the shepherdess of her husband's home and accountable for her flock."[26] Teachers, educators, parents, members of the extended family, and religious leaders are held responsible for the moral formation of children. Moral formation (*tarbīya*) is an integral part of raising a child, and the ECIL authors dedicate substantial attention to this aspect.

The ECIL authors contemplate the child's moral formation in different categories, albeit in a mechanistic manner. Despite its shortcomings, their proposal nevertheless indicates that they invest a great deal of energy in configuring the moral aspect of child-rearing in contemporary Muslim societies. In doing so, they craft taxonomies of each aspect of child-rearing by highlighting a set of significant details related to a child's moral formation. In fact, virtue ethics, namely, the refinement and cultivation of the multiple dimensions of a child's personality, is the centerpiece of their teachings. One dimension is called "faith formation" (*al-binā al-īmānī*). This aspect requires that children be exposed to the principles of faith and be taught religious values, and that the ritual practices of Islam be instilled at a very early age. Another dimension is named "character formation" (*al-binā al-khuluqī*). Here the ECIL authors discuss the inculcation of the moral virtues of sober habits and mental resilience in a child. "Bodily formation" (*al-binā al-badanī*) is possibly the most obvious dimension that the authors deem crucial. Physical exercise and the cultivation of a healthy body are coupled as a prerequisite in the formation of a child. Also critical is the "formation of thought, intellect and psyche" (*al-binā al-fikrī, wa al-ʿaqlī wa al-nafsī*): this is shorthand for a broad education in religious teachings to be combined with modern learning.

Combining religious and secular learning is viewed as the ideal synthesis in order to cultivate a wholesome and integrated personality in a child. Moral tenacity, the ECIL authors believe, is particularly important, since an intellectually and morally fortified child can withstand the temptation of public vices and be equipped to deal with personal challenges. In order for a child to be a responsible citizen and a force for good in society, the

[26] ʿUways, *Mawsūʿa*, vol. III, p. 39. The report is from the Book of Bukhārī, an authoritative source of Sunni hadith collections.

ECIL authors highly value "social formation" (*al-binā al-ijtimāʿī*). A child, they believe, requires a high degree of social discipline for the purposes of social integration into society, and without such formation a child may become a force for social disruption.

The ECIL authors are equally concerned about the content of the education their children receive. Secular and missionary schools of foreign origin receive a great deal of attention as odious institutions located in Muslim countries. One of the authors writes that missionary schools with European syllabuses and languages are in effect the shock troops of the Western cultural invasion of Muslim countries. In fairness, they lay the blame squarely on those parents who covet purely materialistic ends for their kids and therefore send their offspring to enterprising foreign schools. The tenor of the complaint is that many foreign schools in Muslim countries do not provide any Islamic education, nor do they instill Islamic values in the young. Thus, secular and missionary schools come under fire because they are harmful to Muslim children in both moral and cultural terms.

The authors also devote a great deal of time deliberating the ethics and circumstances under which students may be permitted to seek education in schools where they will be exposed to harmful teachings and ideologies. Here the debate centers on science and cultural education involving the study of evolution and liberal social values. The ethical tipping-point is spelt out in the juridical aphorism the authors invoke: "Repelling harm takes precedence over the derivation of benefit." Another rule invoked is the precautionary principle of Muslim ethics (*sadd al-dharāʾiʿ*): When lawful means result in harmful outcomes, then under such conditions even lawful things become prohibited. It is the potential harm anticipated that becomes the grounds for prohibition.

The ECIL authors spell out in lavish detail some of the scenarios of harm to which children are exposed. Of importance is, of course, the mode of reasoning regarding understandings of childhood that these discussions offer. If foreign schools in Muslim countries pose a threat to the religious life and faith of school-going children, then attending such schools is definitely prohibited, argues Muḥammad bin ʿAbd Allāh al-ʿAjalān.[27] If Islamic values are absent from the curriculum and instruction, then, in terms of Islamic law, another scholar who takes a softer tone argues, sending children to such a school would be deemed "abominable" or "loathsome" – a degree short of legal prohibition.

[27] ʿUways, *Mawsūʿa*, vol. III, p. 36.

However, the view of the ECIL authors on education is not unique, and in some respects it harks back to similar debates from at least a century ago. In colonial India, European education was seen as the means by which the colonized could be turned into compliant subjects. What many Muslim religious authorities objected to in India at the time was the content of the foreign education, especially the requirement that students participate in Christian religious worship programs as part of the curriculum. Students were required to sing hymns and were educated in the religious traditions of Christianity as part of the colonial school system. Requiring students to rehearse catechisms or sing hymns invoking Trinitarian doctrines or paying homage to Hindu deities evoked a strong and visceral reaction from Muslim religious authorities. Not only did they object to what they perceived to be a requirement that Muslims surrender to cultural and social acculturation of non-Muslim normative practices but they also viewed it as being coerced to perform theologically offensive practices. Rashīd Aḥmad Gangohī (d. 1905), a prominent nineteenth-century Indian Muslim religious authority, issued a stern ethical ruling (*fatwā*) that discouraged parents and students from attending such schools. Uttering Trinitarian Christian confessions, Gangohī warned, amounted to an act of apostasy, one of the most serious theological offenses in Islam. Attending schools where such doctrinal violations occurred regularly made both students and parents morally culpable, according to Gangohī.[28] What if Muslim students did not intentionally participate in such practices and only endured these rituals since they had no choice? Intentionality was not a defense, Gangohi argued, since parents and pupils could choose educational institutions of a Muslim provenance where such risky and offensive theological exposure was absent. Gangohī railed against parents who sought superior Western education for materialistic ends in the same manner that the ECIL authors were to do a century later.

The ECIL authors do make some concessions for attending schools abroad in non-Muslim societies on the grounds of necessity. If Muslim societies needed to acquire some indispensable skills or expertise in disciplines that were not available in Muslim institutions or countries, then under such circumstances there were genuine extenuating circumstances for students to brave moral risks and acquire the necessary skills.

Sending children to foreign schools for the exclusive purpose of material advancement under normal circumstances amounted to a sin, the ECIL authors claim. Even more ominous is the threat that Muslim students

[28] Rashīd Aḥmad Gangohī, *Fatāwā Rashīdiyya* (Deoband: Darsī Kutubkhāna, 1987), pp. 53–55.

raised in foreign cultures and their educational values might lose their faith in such environments. The entire Muslim community is held to be morally culpable for contributing to the subversion of the faith of their children if alternative avenues to missionary and foreign education are not found. Compared to the hostile tone of his colleagues, one scholar, Maḥfūẓ ʿAzzām, is sanguine in asserting that if the students' religious and moral life is not harmed by the educational environment and training, say in the acquisition of crucial languages and technology at a foreign or missionary school, then it is permissible for them to attend such schools.

RIGHTS OF THE CHILD IN ISLAMIC TEACHINGS AND INTERNATIONAL LAW

The views propounded by the ECIL authors on education and on cultural and moral formation can be viewed as comparable in some respects to Article 29 of the CRC. This article propounds that education should develop "respect for the child's parents, his or her own cultural identity, and the language and values of the country in which the child is living, the country from which he or she might originate, and for civilizations different from his or her own."[29] Similarly, the precursor to the CRC, namely, the United Nations Declaration of the Rights of the Child (1959), in Principle 7 also advanced the notion that a child was entitled to education which would "promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgment, and his sense of moral and social responsibility."[30]

Crucial to this discussion on the rights of the child were the relevant elements in the Cairo Declaration on Human Rights in Islam, which resonated strongly with the views of the ECIL authors. Article 7 of the Cairo Declaration stated:

(a) As of the moment of birth, every child has rights due from the *parents*, *society*, and the *state* to be accorded proper nursing and education, and material, hygienic, and moral care. Both the fetus and the mother must be protected and accorded special care. (b) Parents and those in suchlike capacity have the right to choose the type of education they desire for their children, provided they take

[29] United Nations Office of the High Commissioner of Human Rights, *Convention on the Rights of the Child* (United Nations General Assembly, 1989), at www.unhcr.org/refworld/docid/3ae6b38f0.html (accessed June 29, 2011).

[30] United Nations Office of the High Commissioner of Human Rights, *Declaration of the Rights of the Child* (United Nations General Assembly, 1959), at www.unhcr.org/refworld/docid/3ae6b38e3.html (accessed June 29, 2011).

into consideration the interests and future of the children in accordance with the ethical values and principles of the Sharī'a. (c) Both parents are entitled to certain rights from their children, and relatives are entitled to rights from their kin, in accordance with the tenets of the Sharī'a.[31] [Emphasis in italics added.]

Article 9 (b) of the same declaration highlighted the importance of education:

Every human being has the right to receive both religious and worldly education from the various institutions of education and guidance, including the family, the school, the university, the media, etc., and in such an integrated and balanced manner as to develop his personality, strengthen his faith in God, and promote his respect for and defense of both rights and obligations.[32]

Historically, a whole range of Islamic teachings has reinforced the notion of the dignity of all human beings, with special reference to the dignity of children. Treating children with dignity at an early age ensured that a child would also reciprocate with dignity. The Prophet was reported to have said: "He is not among us [i.e., part of the Muslim community] who does not respect the elders and does not show compassion to the young." Using violence and reprimanding children was strongly discouraged as a means of discipline, according to the most elementary Islamic teachings. While Islamic teachings in antiquity allowed for the use of some corporal punishment in order to discipline children, even classical authors of treatises on Muslim ethics pointed out that it was not an obligation to resort to coercive measures. Communities, parents, and families had the discretion to adopt humane modes of educating and disciplining the child.

EVALUATION AND CONCLUSION

Modern Muslim discourses advancing the rights of the child have had more to say about a child's upbringing – in terms of moral and ethical formation, and the provision of a supportive environment for the child's moral as well as cultural and religious formation. Muslim advocacy literature has had considerably less to say about the individual rights and autonomy of the child compared with modern Euro-American liberal discourses. Perhaps secular advocacy literature on the rights of the child in Muslim countries might follow their Euro-American counterparts on questions of individual rights, but that literature has not been the subject of this chapter, which has focused primarily on advocacy literature propounded in a religious

[31] "Cairo Declaration." [32] Ibid.

idiom. The absence of a strong predisposition toward autonomy in the rights of the child in Muslim teachings can in part be accounted for by the prevalence of a communitarian template in Muslim ethics inherited from tradition. However, even in a communitarian rights–duties moral system individual rights have not been precluded and have been imagined differently, and they fulfill different ends as compared with those of liberal rights.

What we call "rights" in the contexts examined above signified parental duties and obligations toward the child. The entitlement of the child was to enjoy the care of parents and guardians whose responsibility it was to advance the moral flourishing of their offspring in a comprehensive manner. Key to such a moral life was an education steeped in values. Here, the primary formation of the child was cast on the template of religious and cultural values. Value-neutral education has rarely been considered to be a serious topic in Muslim religious debates on understandings of childhood. And the advocacy literature examined has paid less attention to how a child gained autonomy and independence from their parents and families.

Surely, not all conscientious Muslims will agree with the moral imaginary fostered by the ECIL authors. While the ECIL authors place a great emphasis on culture, their claims are underlined by a strong notion of cultural normativity, one that hardly differentiates between cultural teachings and religious norms. The distinction between the facts of religious norms and the facts of culture seem to evaporate, making the largely Arabized cultural sphere of the authors the normative space for Islam. Apart from the monolithic presentation of culture as well as religious norms, the authors show little awareness of the dynamic nature of culture. There is very little understanding of the fact that often rights are not mediated only via normative instruments such as charters and conventions. Often, discourses of rights and claims are embedded within cultural practices in such notions as dignity, respect for one's fellow human beings, service to the weak and the vulnerable, and love and compassion, and through charitable acts, as well as a host of social and private practices. All of these values and ideals become highly mobile within specific contexts and manifest themselves in a myriad narratives and practices that might differ from the account offered by the authors of the ECIL. Thus, apart from the specific religious teachings of Islam on the treatment of children, one should also assume that the best cultural practices across Muslim societies equally applies and informs Muslim understandings of children and childhood. In other words, one should also assume that each of an array of Arabic, Malay, European, and African cultures complements existing Islamic teachings on this topic.

One of the major shortcomings in the literature on Muslim notions of children and childhood is the absence of specific case studies that give texture to such understandings within specific contexts. Some writings have begun to shed light on particular practices, but more are definitely needed in order to deepen our understanding of such phenomena.[33]

Moral imaginaries and moral economies, as evidenced in what was admittedly a limited sample of normative Muslim discourse, have also been informed by both history and contemporary realities. Many authors have been preoccupied with resisting hegemonic Western discourses on education, culture, and rights, and these elements have informed their writings on childhood. The contestation of values, of course, has not been free from considerations of power, domination, and resistance, and thus informs the reality of childhood in discrete Muslim contexts. Even at the level of deliberating and in grasping what was good and in the best interests of the young and the most vulnerable sectors of human society, namely children, the larger contestations have not been absent, and nor would it be reasonable to expect them to be so. For it is *when* and *where* we are most vulnerable that all our anxieties also congregate and coalesce, one sphere of which is related to childhood.

[33] Elizabeth Warnock Fernea (ed.), *Children in the Middle East* (Austin, TX: University of Texas Press, 1995); Kamal Siddiqui, *Better Days, Better Lives: Towards a Strategy for Implementing the Convention on the Rights of the Child in Bangladesh* (Dhaka: The University Press Limited, 2001).

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