

Coping With Otherness in a Globalized World: Lessons from Islamic, African, and Western Perspectives

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Abstract

One of the major challenges for a civilization - and a parameter for assessing it - is how it treats those who do not belong to that civilization. The dichotomy between “we” and “them” is made variously across civilizations. In the past, interactions across civilizations are less voluminous and less intense. But things have changed. the world has become a global village. Yet, it remains very pluralistic in terms of religion, culture, ethnicity, and language. The diversity of the contemporary world is due to the existence of concurrent civilizations on the world, each with its distinct culture, world view and values. Western culture, Islamic culture, oriental culture and African culture are some of the more prominent cultures today. Globalization is not without its problems. For one thing, the world is being pressurized into become a mono-cultural environment patterned after western culture. This position is not because of any inherent superiority of western civilization to the other civilization but because of the cultural invasion of the world by the west. Information flow is the world has been essentially one way - from the west to the rest. The quest for peace in the modern world must therefore address how the diverse cultures of the world are accommodated, first within specific civilizations and secondly in the world at a global level particularly within the context of the United Nations. The past offers a good lesson for the future. This paper looks at how three civilizations - Islamic, African, and western - in their pristine historical and modern forms - have approached otherness. Islamic civilization emerged from a multi-ethnic and multi-religious environment. The Islamic approach is one of tolerance and respect for otherness in spite of the full conviction of the rightness of its religious creed and way of life. Islam recognizes the freedom of religion for non-Muslims and

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expresses this in a comprehensive and complete manner. It does not impose its laws or culture on them but grants social, cultural and judicial autonomy to these strangers within its borders. This attitude which was in the past is still observable in some modern Islamic countries such as Iran. African culture is a very diverse affair. The common traits amongst Africans include their warm treatment of strangers and their respect for the cultural independence of other peoples. The attitude of western civilization contrasts with the attitudes of Islamic and African civilizations. The West has consistently pursued a policy of domination of other peoples based on its perceived superiority over them. This attitude, for which various ideological and intellectual justifications have been advanced in defense of, remains in contemporary times, a constant source of friction and tension. It is suggested that models provided by Islamic and African cultures be used as a basis for modern interaction by persons belonging to different cultures.

Keywords: Globalized World; Islamic; African; Western; Human Rights.

1. Introduction

One of the major challenges for a civilization - and a parameter for assessing that civilization - is how it treats those who do not belong to that civilization. The dichotomy between “we” and “they” is made virtually in all civilizations. ‘We’ is treated as ‘Same’ while ‘They’ is treated as the ‘Other’. To Romans, others are barbarians; to Jews others are gentiles (*goyim*) and to Arabs, others are *ajami*. In some communities, the ‘Other’ is recognized as equal of ‘Same’ while in other communities the ‘Other’ usually involves a status bordering on the derogatory.

In the past, interactions across civilizations were less voluminous and less intense. But things have changed. The world has become a global village. Yet, it remains very pluralistic in terms of religion, culture, ethnicity, and language. The diversity of the contemporary world is due to the existence of concurrent civilizations in the world, each with its distinct culture, world view and values. Western culture, Islamic culture, Oriental culture and African culture are some of the more prominent cultures today. Globalization is not without its problems. The quest for peace in the modern world must therefore address how the diverse cultures of the world are accommodated, first within specific civilizations and secondly in the world at a global level particularly in the context of international human rights law.

Modern international human rights norms emphasizes the right to equality or the right to equal treatment and the right to non-discrimination as the twin principles by which the dichotomy between ‘Same’ and ‘Otherness’ is eliminated. In this context, religion, ethnicity, gender, and circumstances of birth are the usual parameters of Otherness. The idea of equality gives rise to two controversies. One, equality itself is a very controversial concept as it is difficult to define or determine what constitutes equality especially among two very different persons.¹ Secondly, parameters of religion, gender, and ethnicity as this paper will demonstrate, are inadequate and prejudicial to non-western cultures in that as the parameters often distort the reality when making a cross-cultural study. The last point is particularly important as many have indicted modern international human rights norms as being fashion after the socio-cultural experience of the West.

This paper looks at the construction of ‘Same’ and ‘Otherness’ within three

1. See: Yap, 2005: 63-100.

civilizations namely Islamic, African (with particular reference to Yoruba peoples), and Western cultures; the attitude to the 'Other' under these cultures; and the construction of 'Otherness' under International Human Rights Law. The paper makes a critical appraisal of the position under International Human Rights Law before concluding.

2. 'SAME' AND 'OTHERNESS'

2.1. Islamic Culture

Islam stresses the unity of mankind and considers all human beings as one since they are all descendants of the Prophet Adam (AS).¹ In this context, the Qur'an repeatedly addresses mankind one and collectively as "Children of Adam (*Bani Adam*)",² and "O People! (*al-Nas*)"³. Ethnic and racial differences have no meaning; there is no superiority on ground of color or race. The Qur'an puts this vividly:

O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that you may know each other [not that you may despise each other]. Verily the most honored of you in the sight of Allah is (he who is) the most righteous of you. (Qur'an 49: 13)

The Prophet also clarified this point:

No Arab has any superiority over a non-Arab, nor does a non-Arab have any superiority over an Arab. Nor does a white man have any superiority over a black man, or the black man any superiority over the white man. You are all the children of Adam and Adam was created from clay. (Mawdudi, 1987: 69)

To this extent, mankind is same and there is no otherness. As 'Same', every human being has some alienable rights by virtue of being a human being. He has the right to life, right to security, right to kindness (and right to charity, if needed), right to freedom of personal freedom, and right to justice.⁴

In spite of seeing man as 'same', Islam recognizes 'otherness' within mankind. The only recognized ground for construing otherness is subsumed in religion

1. See: Qur'an 4:1 and 6:99. See also discussions of this theme in Ramadan, 1970: 65 - 66 and 111 - 112; Ala Mawdudi, 1987: 68 - 69 and Naqavi, 1988: 78 - 80.

2. See: examples in Qur'an 7: 26, 27, 31, 35 and 175.

3. See: for example Qur'an 2: 21 and 168.

4. See: Mawdudi, 1987: 62 - 68.

(*al-din*) and belief (*iman*). This makes a distinction between believers and disbelievers, and even among Muslims, piety forms a parameter for distinction. Thus, other Abrahamic religions -Judaism and Christianity- are recognized by Islam so also are the Sabians.¹ Others are disbelievers (*Kufar*). It is against this background that the Iranian Constitution provides as a concession to reality that the only recognized religions apart from Islam are Zoroastrian, Jewish and Christian religions.²

From the Islamic perspective, the notion of nation states as we have in modern times would be incomprehensible within the Islamic framework³ This is because in nationalism, the emphasis is on loyalty to the country whereas in Islam, the emphasis is on belief, religion and the love of God above all else.⁴ Thus, Islam regards all Muslims as brothers (*Ikhwah*)⁵ of one another and collectively they form the Islamic nation or the *Islamic ummah*,⁶ which is the only permitted political entity to which a Muslim may give allegiance. Islam is not only a system of religious belief; it is a complete way of life (*Minhaj*) with its own self-sufficient and complete laws and legal system (*Shari'ah*).⁷

The Islamic perspective of the world divides the world into three spheres, namely the abode where Islam is sovereign (*Dar al-Islam*), the abode of disbelievers who are at war or potentially at war with Islam and Muslims (*Dar al-harb*) and the abode where there is a treaty with the Islamic State or with Muslims (*Dar al sulh* or *Dar al-'ahd*).⁸ Our focus here is on *Dar al-Islam*. What constitutes 'Otherness' in *Dar al-Islam*?

In *dar al-Islam*, the basic criterion for citizenship is religion. All Muslims are automatically full citizens who are entitled to enjoy full rights and bear full obligations. One need not to be born a Muslim before one can enjoy this status, one can convert to Islam. Conversion to Islam is a voluntary matter. There is

1. Sabians are a past nation that used to live in Musal (Iraq) and were neither Jews nor Christians: Al-Hilali and Muhsin Khan, 2007/1: 28.

2. See: Article 13, Constitution of the Islamic Republic of Iran, 1979.

3. See: the in-depth discussion of this in Naqavi, 1988: 71 - 108, Ramadan, 1970: 111 - 119 and Khan, 1988: 89 - 90.

4. See: Naqavi, 1988: 82 - 96.

5. "Indeed, all believers are brethren": Qur'an 49:10. The Prophet (SAW) declared in his address during the farewell pilgrimage: "Learn that every Muslim is a brother to every Muslims and that Muslims constitute one brotherhood" quoted in Haykal, 1982: 487.

6. "And hold fast, all together, by the Rope which Allah [stretches out for you] and be not divided among yourselves": Qur'an 3:102 and "Verily, this Brotherhood of yours is a single Brotherhood": Qur'an 21:92.

7. The comprehensiveness of Islam has been emphasized by scholars such as Mawdudi and Syed Qutb, see generally tafsir 1984: 79 - 81 and Mawdudi, 1980: 95 respectively.

8. See: Ramadan, 1970: 157.

no excommunication in Islam; a Muslim can be exiled to any part of the State as punishment, but he or she cannot be stripped of his or her citizenship by anybody or by the State. Apostasy, view as disloyalty to the State attracts capital punishment.¹

In *dar al-Islam*, Muslims are 'Same' while 'Otherness' would be constituted by non-Muslims. Here, the non-Muslim is either a *Dhimmi* that is a non-Muslim citizen of the State or a *Musta'min*, that is, a non-Muslim visitor who is temporarily sojourning in the country under the protection granted by a citizen or the State.² The *Musta'min* holds "a covenant of protection" which must be respected by Muslims and the State.³ A *Dhimmi* is entitled to the full protection of his life, property, and honor by the State. He is at liberty to practice his religion. As military service is not compulsory on him he pays a tax (*jizyah*) in lieu of military service, but if he volunteers for military service he is relieved of this tax.⁴ The *jizyah* is not due on women, children and monks who normally do not give military services.⁵ It is not payable also by the poor and those who could not afford to pay it.⁶ The *Dhimmi* is freed from the compulsory tax (*zakat*) paid by Muslims. Incidentally, the amount payable as *jizyah* is considerably lesser than what is payable as *zakat*.⁷

A *Dhimmi* has the same political rights as the Muslim except that the *Dhimmi* cannot hold the post of the President (*Imam*) of the State or to any post that is concerned with Islamic religious practices.⁸ He could hold political offices and be appoint to the civil service and can even be appointed as *vizier* the Prime Minister.⁹ These have been given practical expression by Islamic states in the past and in the contemporary era.¹⁰ The *dhimmi* has a right to representation in the legislature. Thus, he could be part of the legislature provided that the arrangements do not allow Islamic laws and tenets to be superseded thereby.¹¹

1. See: Oba, 2005: 85.

2. See: Ramadan, 1970: 119-120.

3. See: Ramadan, 1970.

4. See: Ramadan, 1970: 135.

5. See: Ramadan, 1970: 133.

6. See: Ramadan, 1970.

7. See: Ramadan, 1970: 142.

8. See: Salihu, 2005: 192-193.

9. See: Ramadan, 1970: 144-145.

10. See: Ramadan, 1970: 144-145; al-Qaradawi, 1998: 300.

11. Some scholars Al-Qaradawi have therefore insisted that in such circumstance, Muslims must have the overwhelming majority in the legislature: al-Qaradawi, 1998: 299 while others such as Ramadan have argued that the laws must clearly state that the legislature cannot enact laws inconsistent with Islamic laws and tenets: Ramadan, 1970: 145.

The Iranian Constitution after providing for a representative per one hundred and fifty (150,000) faithfully followed the Islamic requirement even when the minorities are not up to this number by providing that:

The Zoroastrians and Jews will each elect one representative; Assyrian and Chaldean Christians will jointly elect one representative; and Armenian Christians in the north and those in the south of the country will elect one representative. If the population of these minorities increases, after every ten years, they will be given additional representation at the rate of one per 150,000. (Article 64, Constitution of the Islamic Republic of Iran, 1979)

Muslims and Islamic states do not always conform to the patterned dictated by Islam. Virtually all modern Muslim states are based on the idea of nation states rather than on the *dar al-Islam* concept. Citizenships in these states are based essentially on nationalistic rather than religion lines. Thus, these States could have Muslim and non-Muslim citizenry but all Muslims are not necessarily eligible for citizenship. This means that Muslims from other countries are treated as aliens who require visa to enter and who do not any of the rights to participate in the political life of the country, whereas, non-Muslims who are citizens enjoy such rights.

2.2. African Culture

In pre-colonial Africa, membership of a community was a very important reference point in construing Same and Otherness. In such communities, full membership is contingent upon one belonging to a family or clan in the community. One becomes a member of a family by being born into the family or by being assimilated into the family.¹ Assimilation provided an easy means of transforming from 'Other' into 'Same'. An assimilated member enjoys full rights except that he or she cannot normally succeed into family leadership or family chieftaincies.² Apart from assimilation, strangers in a community can become associates of a family or a powerful chief, in which case, such strangers are deemed members of that family or that chief's family. Such associated members may not necessarily enjoy full membership of the community. Members of the community are regarded as 'Same' while non-members were seen as the 'Other'.

Among the Yoruba, *alajobi* refers persons who are related by birth and

1. See: Elias, 1956: 106; Dike, 1985: 62 and 72.

2. See: Fadipe, 1970: 12 and Lloyd, 1955: 235-241 (Yoruba).

blood.¹ To the Yoruba, all “human beings regardless of race, colour, and religion belong to a primordial *alajobi*”. (Akiwowo, 1980: 19) *Alajogbe* refers to those living in close proximity whether or not they are related by blood. *Alejo* refers to strangers and visitors. Members of the community are regarded as ‘Same’ and when they are also relatives they are also *alajobi* while the *alejo* was seen as the ‘Other’.

Aliens are of two types; those who came into the community individually and those who came into the community as a group. The individual usually attaches himself to a family within the community and may eventually get assimilated into that family. Those who arrive as a group may get a grant of land from the traditional ruler of the community or they may be given land by a landholding family in the community in which case they remain on the land as tribute-paying tenants. This form of customary tenancy is forever unless the tenants commit a misbehavior that warrants their forfeiture of the land.² Alien groups such as this are recognized as part of the community and they are entitled to take part in the community’s affairs just like the other families in the community. If they are tribute-paying, that attaches to them as a perpetual reminder of their antecedents in the community and no matter how long they have stayed, they could be ejected from the land. However, ejection from the land does not necessarily mean ejection from the community if they could secure land through a grant from the traditional ruler or through another customary tenancy.

Colonialism and the advent of modern nation states brought about ethnicity as the sole criterion for ‘Otherness’.³ Members of the same ethnic community or group are seen as ‘same’ while members of other ethnic communities or groups are construed as the ‘Other’. Unfortunately, the communal solidarity has in the context of modern nation states’ capitalistic and party politics orientation transformed largely into ethnic politics, corruption, nepotism and favoritism.⁴

2.3. Western Culture

The construction of ‘Otherness’ in the West is usually based on citizenship. For example, in the United States, citizenship is based on birth, or on parentage

1. See: Akiwowo, 1980: 19.

2. See: Coker, 1958: 103-112.

3. See: Young, 1993: 3-7 and 34-37.

4. See generally Young, 1993: 163-215 (Zaire), 216-273 (Tanzania and Uganda), and 274-281, 289-295 and 301-308 (Nigeria) and Nnoli, 1979.

or on a combination of both factors, or on naturalization but only persons born in the country attains full citizenship with full rights. While others can be granted citizenships through naturalization or registration, such persons can sometimes never enjoy the full rights which a citizen by birth enjoys.¹ For one, a naturalized person cannot aspire to the highest political leadership as is the case in the United States where article 2 of the Constitution clearly states that: “No person except a natural born citizen ... shall be eligible to the office of President”. In the United States, there is also a difference between National and State citizenships. Although no State can derogate from the rights and privileges granted to national citizens, a State may give its own citizens privileges not enjoyed by citizens of other States or subject other non-citizens of the State to disabilities not applicable to its own citizens.² In the United States, a citizen cannot be deprived of his citizenship.³ However, a person born abroad one of whose parents is a citizen has to fulfill residency requirements in order to qualify for citizenship.⁴ In some countries, a person who acquires his citizenship through naturalization or registration can be stripped of his citizenship if he or she misbehaves or violates some laws.⁵ A citizen is punishable for disloyalty to the State. Treason attracts capital punishment in most States in the West.

‘Same’ and ‘Otherness’ find expression in the West in form of the citizen and non-citizen. The citizen has the right of entry into the State. The non-citizen needs a visa to enter, he could be refused entry and he could be deported if the State so wishes. The citizen cannot be deported. The non-citizen lacks the political rights and some of the civil rights that citizens have. The non-citizen cannot vote nor be voted for. From any angle, the citizen and non-citizen are not equal.⁶ In the post September 11 era, aliens in the United States are subjected to increased deprivation of civil rights. They are subjected to registration requirements, arbitrary arrests, detention and even torture.⁷

From what we have seen, it would appear that the ‘other’ in the West is not

1. See: the discussion of the position in Nigeria in Jamo, 2006: 167-176.

2. For example, a State may confine the use of fisheries within its territorial limits to its own citizens: *Corfield v Coryell* 4 Wash. C.C. 371 (1823); and it may charge non-citizens higher fees for fishing permits: *Toomer v Witsell* 334 US 385 (1948) and hunting licences: *Baldwin v Montana Fish and Game Commission* 436 S 371 (1978).

3. See: *Afroyim v Rusk* 387 US 253 (1967).

4. See: *Roger v Bellei* 401 US 815 (1971).

5. For example in Nigeria, see section, 28, 1999 Constitution of the Federal Republic of Nigeria, 1999 and comments in Jamo, 2006: 174.

6. See: the position in Nigeria in Dalhatu, 2007: 136 - 145.

7. See: further discussion on these *infra*.

normally be determined on grounds of race or religion but on grounds of citizenship. Thus properly speaking, the 'other' in the West is the non-citizen. However, this is not completely correct. Religion and race were (and still are in many countries) very important in the construction of otherness in the West. Using religion as a parameter, the same and the other within Christianity in the West have been Catholics as same and Protestants as other or vice versa depending on the particular country. The religious parameter also found expression in the Christians as same and Jews as the other dichotomy. Anti-Semitism disappeared with the Second World War when the West emerged as a Judeo-Christian civilization. Today, the construction of same and otherness using religion as a parameter finds expression in the Judeo-Christian Secularism as same and Islam as the other.

The construction of Islam as the 'Other' became pronounced after the September 11 attacks on the United States. The consequent "war against terrorism" profiles Muslims as terrorists and this has added another construction of otherness into human rights jurisprudence.¹ Suspected terrorists are construed as the 'other' while all other human beings are construed as 'same'. With this construction, it was then easy to deal with these "terrorists". Once branded as "terrorist states" within the "axis of evil" it became simple for the United States to invade the sovereign states of Afghanistan and Iraq with impunity and in complete disregard of the United Nations.² The indefinite, incommunicado detention without trial and torture of suspects at Guantanamo;³ the torture and humiliation of detainees in American-controlled prisons in Iraq such as Abu Gharaib⁴ and even in the United States;⁵ the profiling of Muslims in the United States and other countries in the West;⁶ the renditions, abductions, illegal arrests, and illegal transfer of persons across border;⁷ the widespread repression;⁸

1. See: Chon and E. Arzt, 2005: 215-254.

2. See: Maogoto, 1348: 2006.

3. See: Forsythe, 2006: 465-491.

4. See: Armacost, "Interrogation in a Post-9/11 World" *University of Virginia Law School, Public Law and Legal Theory Working Paper Series* Year 2008 Paper 87, available at: http://law.bepress.com/uvalwps/uva_publiclaw/art87

5. See: Sheikh, 2004: 1 - 13, available at: <http://www.bepress.com/mwjhr/vol1/art4>; Roosevelt III, 2008: 227 available at: <http://lsr.nellco.org/upenn/wps/papers/227>; Luban, 2008, available at: <http://lsr.nellco.org/georgetown/fwps/papers/69/>.

6. See: Swiney, 2006 Article 3, available at: <http://www.bepress.com/mwjhr/vol3/iss1/art3> and Phan, 2007: Paper 1989 available at: <http://law.bepress.com/expreso/eps/1989>.

7. See: Satterthwaite, 2006: 70 - 75 and Satterthwaite, 2008: Paper 109 available at: <http://lsr.nellco.org/upenn/wps/papers/227>.

8. See: Chevigny, 2004: 142 - 159, Kreimer, 2007: 196 available at: <http://lsr.nellco.org/upenn/wps/papers/196>;

and the public and widespread nature of these abuses seriously questions the assumption of the sacredness of man that purportedly underlies international human rights jurisprudence.¹ It appears that human rights do not simply apply to persons suspected of terrorism.

The racial parameter is another basis of construing same and otherness. In the context of Eurocentrism,² the 'Other' (particularly the black-skinned) is slightly less than human or at any rate, not on the same level with the western man.³ The status of blacks in 19th Century America was pathetically captured in *Dred Scot v Sanford*:

[a]s a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subjected to their authority, and had no rights or privileges but such as those who held the power and the government might choose to grant them.

Racial discrimination in various guises from the American version to the apartheid version - endured in the West well into the last century. It would appear therefore that the idea of all mankind as 'Same', if it has taken roots in the West at all, is of very recent origin.

3. The Right to be Different: Social, Cultural and Judicial Autonomy

3.1. Islamic Culture

One major feature of the Islamic approach to otherness is that Islam recognizes non- Muslims as variously forming a complete and different political, social, and juristic unit. In recognition of this, Islam grants them autonomy in their cultural, religious, and legal affairs.⁴ It is because of this that despite seven centuries of living under the Islamic state in Andalusia (Spain), Christianity and Judaism remained and flourished.⁵

The Islamic approach is one of tolerance and respect for otherness in spite

Waxman, 2008: Paper 08157 available at: <http://lsr.nellco.org/columbia/pllt/papers/08157> .

1. See: the discourse on the sacredness of man in Perry, 1997: 461 - 509.

2. See: Areji, 2005: 55-67.

3. See: Abdulmumini A. Oba, "Eurocentricity and Afrocentricity as Obstacles to Cross-Cultural Human Rights Dialogue between Africa and the West" (Unpublished Paper on File with the Author).

4. See: Ramadan, 1970: 146 and 152-154.

5. See: Hitti, 1970: 510 discussed in Ado-Kurawa, 2000: 88 - 89. This contrasts with the barbaric treatment meted out to muslims by the Christian conquerors: Hitti, 1970: 555-556, Kurawa, 2000: 89-90 and Ali, 1979: 378 and 387-388.

of the full conviction of the rightness of its religious creed and way of life. Islam recognizes the freedom of religion for non-Muslims and expresses this in a comprehensive and complete manner. It does not impose its laws or culture on them but grants social, cultural and judicial autonomy to these strangers within its borders. This attitude which was in the past is still observable in some modern Islamic countries such as Iran.¹

The issue of judicial and social autonomy is very important in Islam. When, a minority group lacks these, they are considered to be under oppression, as the Qur'an states: "persecution (*fitnah*) which is worse than killing". (Qur'an 2: 191 and 217)

3.2. African Culture

African culture is a very diverse affair. The common traits amongst Africans include their warm treatment of strangers and their respect for the cultural independence of other peoples.

In the pre-colonial era, all members of African communities were governed by the rules of their communities in their public and personal affairs. Strangers, apart from being obliged to respect the host community's public law and taboos particularly those relating to public safety and security of the host community, are not subjected to the customary law of the host community.² Strangers conducted their personal lives in consonance with the laws of their indigenous communities. Some have therefore described customary law as "strong, tightly knit, homogeneous" communities.³

The rules relating to Otherness are subsumed in the rules relating to good treatment of *alejo* and good neighborliness to *alajogbe*.⁴ One of the basic rules is that cultures differ and that one must recognize the uniqueness and idiosyncrasies of one's neighbors. Thus, the Yoruba proverb says:

Bayi lawa nse ni ile wa, ewo ibomiran (The norm in this family is a taboo elsewhere). (Kolawole, 1997: 200)

Yoruba speaking peoples know that peoples differ in their comportment

1. For example, article 13, Constitution of the Islamic Republic of Iran, 1979 provides that: "Zoroastrian, Jewish and Christian Iranians are the only recognized religious minorities, who, within the limits of the law, are free to perform their religious rites and ceremonies, and to act according to their canon in matters of personal affairs and religious education".

2. See: Driberg, 1955: 230 - 233.

3. See: Nekam, 1966: 3.

4. See: Akiwowo, 1980: 28 - 31.

(*iwa*) and their culture (*ise se*) and that co-living by peoples of diverse cultures is only possible when there is respect for cultural differences and judicial autonomy for all.¹ Thus, when the Yoruba says *Gambari pa Fulani koni ejo ninu* (when a Gambari man kills a Fulani man, there is no legal case) he is neither saying that murder is not a grievous offence nor that a Fulani man can be killed with impunity, he is merely saying that the Gambari and the Fulani being kin and non-Yoruba related peoples, are subject to their own laws and not to Yoruba law. Thus, the Yoruba will not insist that when you are with them you must behave as you would behave with Romans.

3.4. Western Culture

The West had always had problems coping with Otherness. The Western creed is that when you are in Rome you must behave as Romans. This attitude has gone past the Romans and its successors through to the modern age. In the colonial era, This attitude was perhaps most apparent in the French policy of assimilation. The French was prepared to accept its colonial subjects as equals provided these individuals became assimilated into the French way of life. This attitude is still very pervasive in the western world which perceives itself as the ultimate civilization.² Thus, instead of exploring ways of accommodating cultures different from its own, and instead of seeking harmonization with Others, the West usually perceives a “conflict” of “clash of civilization”³ and expects others to bend to fit its own ways. Aleksandr Solzhenitsyn the Nobel laureate vividly summarized this attitude thus:

The mistake of the West...is that everyone measures other civilizations by the degree to which they approximate Western civilization. If they do not approximate it, they are hopeless, dumb, reactionary and don't have to be taken into account. This viewpoint is dangerous. (Solzhenitsyn's response in an interview in Gray, 1989: 58)

Americanization is still a non-negotiable condition for acceptance in the United States.⁴ Many non-western groups have problems of getting some aspects of their cultures accepted in the West. Muslims are perhaps more prominent in this regard as the controversies surrounding the Islamic modest

1. See: Akiwowo, 1980: 28-31.

2. See for example Fukuyama, 1992), full text reproduction of the introduction available at: <http://www.marxists.org/reference/subject/philosophy/works/us/fukuyama.htm> .

3. See: Huntington, 2003 and Huntington, 1996.

4. See: this attitude in the context of female circumcision in Coleman, 1998: 767-781. Also available online at: <http://www.lawduke.edu/shell/cite/p1?47+Duke+L+J+717> .

dressing consisting of the *khimar* (head scarf or 'hijab'), *niqab* (face veil), and the *jilbab* (outer long gown) show.¹

It remains a major criticism of international human rights law that the norms protected therein are premised almost exclusively on western socio-cultural experience and values.² Thus, when international human rights norm as currently formulated are given legal enforcement then the charge of cultural imperialism becomes inevitable.

4. Same' and 'Otherness' Under International Human Rights Law

The western conception of human rights looks at 'Otherness' as a problem relating to minorities and so seeks to protect these minorities as soon as they are so identifiable within certain parameters. Until recently, the parameters remained essentially ethnic and religious. Gender is a recent addition. Thus, the construction of same and other under International Human Rights Law is usually based on these three factors. Article 1(3) of the United Nations Charter stated the purpose of the United Nations inter-alia thus:

... promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.. (Article 55 of the same Charter)

The Universal Declaration of Human Rights, 1948 (UDHR)³, provides:

Everyone is entitled to all the rights and freedom set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (Article 2, UDHR)

Of the several criteria specified here, only two – race/ethnicity and religion - are relevant to this paper. There are many other references in United Nations documents to the protection of racial and ethnic minorities. For example, Article 27 of the International Convention on Civil and Political Rights (ICCPR)⁴ says:

1. See: this attitude in the context of female circumcision in Coleman, 1998: 767-781. Also available online at: <http://www.lawduke.edu/shell/cite/p1?47+Duke+L+J+717> .

2. See: A. A. Oba, "Islam, The West and Human Rights: Towards Reconciling the Divergences" and A. A. Oba, "Eurocentricity and Afrocentricity as Obstacles to Cross-Cultural Human Rights Dialogue between Africa and the West" (unpublished papers on file with the author).

3. Adopted on 10 December 1948, G.A. Res. 217A (III). UN Doc. A/810, at 71 (1948).

4. Adopted 16 Dec. 1966, entered into force 23 March 1976, G. A. Res. 2200A (XXI), UN Doc. A/6316 (1966), 999 UNTS 171 reprinted in (1967) 6 *International Legal Materials* 368.

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language.

Many instruments of the United Nations state the right to freedom from discrimination on grounds of race.¹ These include the International Convention on the Elimination of All Forms of Racial Discrimination, 1966² and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities.³

Similarly, there are many provisions for freedom of religion under international human rights law. Apart from the provisions quoted above, there are specific provisions in relation to freedom of religion. Article 18 of the UDHR provides that:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and either alone or in community with other and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Many instruments of the United Nations state the right to freedom of religion.⁴ One very important document is the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.⁵ This Declaration attempted a more detailed exposition of this right. Article 2(2) of the Declaration defines “intolerance and discrimination based on religion or belief” as:

... any distinction, exclusion, restriction, or preference based on religion or belief, and having as its purpose or effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedom on equal basis.

5. Assessment of International Human Rights Law on the Protection of the Rights of the 'Other'

Islamic law is often criticized for its treatment of non-Muslims.⁶ Modern human

1. See: Article 2, Universal Declaration of Human Rights, 1948, and Article 27, ICCPR.

2. U.N.T.S. No. 195 reprinted in (1966) 5 I.L.M. 352.

3. See: G.A. Res. 47/135, annex, 47 U.N. GAOR Supp. (No. 49) at 210, U.N. Doc. A/47/49 (1993).

4. For example, article 18 ICCPR.

5. See: Res. 36/55 of 25th November, 1981.

6. See: An-Na'im, 1990; An-Na'im, 1990: 13-52; An-Na'im, in Cook (ed.), 1994: 167-188 and Bielefeldt, 1995: 597-617.

rights analysis says that Islam discriminates against non-Muslims in many respects. But in the western parlance, the non-Muslim in the Islamic State is the equivalent of a non-citizen in the West.

By using two parameters of religion and ethnicity for the construction of otherness, and by allowing the western construction of what constitutes discrimination on these grounds, International Human Rights Law have wittingly or unwittingly taken sides with western civilization and have implicated Islamic and African cultures as culprits since the parameters used under these cultures for otherness are religion and ethnicity respectively. The whole idea of modern human rights is predicated on the belief in the intrinsic worth and equality of all human beings and on the rejection of any form of discrimination that does not recognize this fundamental worth and equality of man. Thus, if religion and ethnicity cannot be grounds of discrimination, why should nationality or citizenship be a valid ground?¹

Discriminations based on nationality, between citizens and non-citizens are the most pervasive of all discriminations in the contemporary era. In contrast to its rigid immigration requirements, the West has consistently and vigorously championed free movement of capital. Open markets, liberal economic laws and unhindered transfer of profits are important components of the Western package of democracy, human rights and rule of law. If citizenship is a prohibited ground, then is the West too would be implicated and thus constrained to change its discriminations between citizens and non-citizens.

As we have seen, there are copious provisions for the protection of non-discrimination on the grounds of race or ethnicity, and religion, and in addition to these there are freedom of religion provisions, However, these are not enough to protect the religious other in the West. This is because in municipal courts, the provisions are subject to interpretations by the courts and dependant largely on each country policy.

Historically in the West, religion has been interpreted to mean no more than a system of belief. Hence in the United States religion has been judicially defined thus: “The essence of religion is belief in a relation to God involving duties superior to those arising any human relation”. (*United States v Macintosh* 283 US 605 (1930) per Justice Hughes at pp. 633 – 634) In another case, this definition was proffered:

1. See: Khan, 2007: 150.

... an individual's belief in a relation to a Supreme being involving duties superior to those arising any human relation, but does not include essentially political, sociological or philosophical views or a merely personal moral code. (*United States v Seeger* 380 U. S. 163 (1965) per Justice Field at p. 342)

International human rights law has adopted this approach with its attendant problems.¹ This approach which perceives religion merely as a system of belief is unlike Islam and African culture. Islam sees religion as a complete package, a complete way of life. The Qur'an instructs Muslims: "O ye who believe! Enter into Islam whole heartedly [completely]". (Qur'an 2: 208) In Islam, there cannot be any separation of between religion as a system of belief and 'practical' life since 'religion' permeates all. Also inseparable from faith (*Iman*) is the Shari'ah (Islamic law) which is the law of the Muslim and the law of the Muslim community. Thus, using western parameters, Islam is not only a 'religion', but also a system of laws, a political ideology and a constitution which relates exclusively to believers, their relationship with the State, the rights and responsibilities of the State, the relationship between the Islamic community and the outside world. Muslims are supposed to constitute one nation (*Ummah*). Unlike Christianity which the western conception on religion is based, Islam places much demand on the daily lives of its adherents. This is particularly so in the case of the five daily prayers *salat* and the requirement of the *hijab*² (modest dress) for Muslim women. These two requirements have been sources of friction between Muslims and the West because the West often does not understand the religious imperative of these. The times of *salat* are fixed and performing them at these periods is an important component of proper performance of the prayers. Similarly, the *hijab* is compulsory for a Muslim woman wherever she wants to appear before a *non-mahrim* (one who is not a close relative with whom marriage is prohibited).³ As a result of lack of understanding of these matters, employers in the West with the support of the law sometimes fail to allow Muslims employees to offer the *salat* when it falls during the working hours⁴ and others would prevent Muslim women from wearing the *hijab* in educational institutions

1. See: Gunn, 2003: 189-215.

2. See further Gunn, 2003: 189-215.

3. On the requirement of the *hijab* for Muslim women see generally, Mutahhari, 1987 and Abdullah (ed.), *Islamic Dress Code for Women* (Riyadh: Darussalam, not dated).

4. See: Oba, 2001: 69-86 and Oba, 2004: 200-201.

and yet find support in national and international human rights courts.¹

Another reason for the inadequacy of the protection of the ‘Other’ in the West is that there is nothing in the various human rights documents that protect non-citizens from discrimination. In others words, the dichotomy between citizen and non-citizens is not a recognized criterion for protection against discrimination in international human rights law. Although the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live² recognizes the special problem of aliens, it does nothing to tackle the discrimination between citizens and non-citizens. The Declaration does not aim at abrogating the differences in the status and rights of citizens and non-citizens. On the contrary, it affirms the right of States to “establish differences between nationals and aliens” provided that the State does not thereby violate its international legal obligations particularly in the field of human rights.³ Virtually all the rights granted by the Declaration are subject to domestic laws. Again, virtually all the rights granted to aliens are subject to domestic laws of the States. There is also the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families⁴ which covers only migrant workers. The Convention grants these workers many rights but does nothing to tackle the usual discriminations between citizens and non-citizens.

International Human Rights Law recognizes the freedom of movement but subjects this right to the national laws.⁵ The right to free movement of persons therefore does not include a general right to travel or a general right of entry into countries apart from one’s own country.

It will be unbelievable in the contemporary era that prior to 1914, international travel was fairly unrestricted.⁶ The now universal use of traveling passports which

1. See: the decisions of the European Court of Human Rights in *Dahlab v Switzerland* Decision of 15 February 2001, Application No. 42393/98, 2001-V. ECHR 447, and *Leyla Sahin v Turkey* (2005) 41 EHRR 8 and the criticisms of these decisions in Ssenyonjo, 2008: 148; Gunn, paper posted at: strasbourgconference.org/papers/Sahin%20by%20Gunn%2021%20by%20T.%20Jeremy%20Gunn.pdf ; Hostmaeligen, paper posted at: www.strasbourgconference.org/papers/Sahin_IslamInEurope_060217TL_rev.doc; Lindholm, paper posted at: www.strasbourgconference.org/papers/LindholmCommentsEnglishFINAL.doc; Moe, *Refah available* at: www.strasbourgconference.org ; “Analysis and Review”; “Papers and Scholarly Documents ” and Oba, “Religious Rights and the Corporate World in Nigeria: Products and Personnel Perspectives”, 2001: 202-203.

2. See: G.A. Res. 40/144, annex, 40 U.N. GAOR Supp. (No. 53) at 252, U.N. Doc. A/40/53 (1985).

3. See: A. Res. 40/144, annex, 40 U.N. GAOR Supp. (No. 53) at 252, U.N. Doc. A/40/53 (1985), art. 2.

4. See: G.A. res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), entered into force 1 July 2003.

5. See: art. 13 (1) and (2), UDHR and art. 12, ICCPR.

6. See: Khan, 2007: 85.

was initially meant as a means of identification together with visa requirements have now become major obstacles to international travel.¹ Significantly, the 1920 Passport Conference convened under the auspices of the League of Nations recommended uniform passports, abolition of fiscal prerequisites, visa limitations, and simplification of formalities.²

In practice, the restrictions on international travel are largely one-sided. Citizens of countries in the West usually do not experience any problem traveling anywhere in or outside the West. Whereas, citizens of Third World countries usually have a very hard time securing visas to travel particularly to western countries.

Again, there is the right to hold opinion and impart information. Article 19 of the UDHR provides that:

Everyone has the right to freedom of opinion and expression; this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Dissemination of knowledge is greatly aided by unrestricted right to travel across borders.³ It paradoxical, the unrestricted freedom to travel across frontiers which mankind has enjoyed for centuries is restricted now in an age when faster means of transportation are available and in an age that purports to the age of human rights.⁴

6. Conclusion

The Islamic culture recognizes strangers and aliens as the “Other” and thus provides a comprehensive social, culture, and judicial autonomy for them. The core of the approach is the recognition of the Other’s right to be different. This is also the thinking under African customary law. However, the West takes a completely different view. The West does not tolerate diversity but insists on full integration into its culture before acceptance into their community. In other words, the West does not accept the ‘Other’ unless it transforms into ‘Same’. This is a dangerous attitude that threatens the peaceful co-existence of the diverse peoples that constitutes this global village.

1. See: Krueger, 2009, available at: <http://www.bepress.com/gj/vol9/iss1/art1> citing also Reale, 1931: 506; Jaffe, 1956: 17.

2. See: Krueger, 2009: 1.

3. See: Khan, 2007: 120.

4. See: Khan, 2007: 85.

International Human Rights Law has been very weak as a protection mechanism for the “Other”. Firstly, International Human Rights Law provides a lopsided protection for the ‘Other’. For all its pretensions, International Human Rights still does not fully protect non-western peoples and non-western values. For example, freedom of religion as conceptualized in the International Human Rights law does not protect the rights of Muslims in basic matters, as the recent *hijab* bans in many European countries shows. The very notion of International Human Rights is seriously implicated and dragged into disrepute with the upholding of these *hijab* bans by the European Court on Human Rights.¹ International Human Rights law has suffered more seriously particularly from the abridgment of rights and violations of rights of the so-called terrorists.

Secondly, the parameters for identifying the “Other” are formulated in a manner consistent with western values and interests. Ethnicity, religion and gender are not the only parameters for measuring or identifying “discrimination”. By ignoring the most pervasive of all discriminations, the discrimination against non-citizens, International Human Rights law has sided with the West. Yet, if human rights are to be universal and if the universal man is to emerge, then the discriminations between the citizen and the non-citizen must go. Perhaps, it is time to reconsider the recommendations of the 1920 Passport Conference regarding uniform passports, abolition of fiscal prerequisites, visa limitations, and simplification of formalities.²

It is our hope that the above analysis will help improve the understanding of the friction in human rights between Islam and the West. It will also contribute to the growing discussion of the need for re-conceptualize human rights with a view to achieving genuine universal rights.

1. See: Khan, 2007: 85.

2. See: Khan, 2007: 85.

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