

Islam Without Borders: Transnationalism, Social Justice, and Refugee Assistance

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I. Introduction

Since the September 11 terrorist attacks ten years ago, there has been an increasing interest in Islam, Islamic scholarship, and inter-faith dialogue. Researchers have concentrated on the large amount of Muslim migrants in western nations (particularly in Europe), the process of assimilation, and the effect an increased Muslim population has had on nations. The migration of Muslims to Europe has been a very popular subject and hundreds of books have been written regarding it. In contrast, there is minimal writing on social justice in Islam. There is a considerable amount of literature on social justice in Christianity and the relationship between social justice and migration. For example, there are numerous studies available about the response of Christian faith-based organizations or missionaries in response to refugee crisis.

In this paper, I explore migration, social justice, and refugees in Islam. First, I look at the most significant migration that took place in Islamic history- the migration of the prophet from Mecca to Medina. Second, I examine the foundation for social justice in Islam, which ultimately is the recognition of the oneness of God and the all-encompassing nature of the religion. Muslims engage in social justice when performing the mandatory act of zakat (almsgiving), one of the five pillars of Islam. Social justice is also performed through sadaqah, voluntary almsgiving. Third, I look at John Bowen's ideas on the transnational sphere of Islamic discourse and the deference Muslims give to Islamic scholarship and Sharia law even when they are functioning in a non-Islamic state. Forth, I explore the impact Islamic Relief, a faith-based international organization, had on assisting Muslim refugees. Lastly, I look at how asylum is defined and applied in Sharia law.

A. Background on Islamic Migration

The most significant period of migration in Islam is known as Hijrah, the time when the prophet and his followers traveled from Mecca to Medina in 622 C.E.¹ The prophet Muhammad (Peace Be Upon Him) publically preached Islam for over a decade. In response, Muhammad and his followers received a numerous amount of death threats from protestors. Some of his followers were abused and tortured. Eventually, the amount of violence and persecution reached a peak and the prophet instructed his followers to travel to Medina (then called Yathrib). When he learned there were plans to murder him, he contacted his close friend, Abu Bakr al-Siddiq, and planned to journey to Medina. As the persecutors searched for him, the prophet and Abu Bakr found refuge in a cave (the cave of Thur). Spiders spun a web over the mouth of the cave and the persecutors believed it to be uninhabited when they passed by it. The prophet and Abu Bakr were able to continue to Medina without being captured.

Hijrah signifies a new beginning in Islam. The year of the Hijrah was designated the first year of the Islamic calendar, symbolic of the “beginning” of Islam.² When the prophet traveled from Mecca to Medina, it was not a last minute decision to flee in desperation. Rather, it was a carefully thought out plan by the prophet, designed so that he and his followers could start a new life. Earlier, the leaders of powerful tribes in Medina had invited Mohammad to settle down there and informed him of the opportunities that existed in Medina. Those who traveled with the prophet during the Hijrah were called the Muhajirun – “those that made the Hijrah” or the “emigrants,” and those in Medina who became Muslims were called the Ansar or “helpers.”

¹ See F. A. Shamsi, "The Date of Hijrah", *Islamic Studies* 23 (1984), 189-224, 289-323.

² *Id.*

After winning the fight against the Meccans in the Battle of Badr, Muhammad was seen as the political leader of all of Medina. His leadership was recognized in the Constitution of Medina, a document that was drafted by Mohammad and essentially laid the foundation for the first Islamic state under one community- the ummah.³ This transition was significant for many reasons. First, it “showed that the political consciousness of the Muslim community had reached an important point; its members defined themselves as a community separate from all others.”⁴ Second, it defined the role of non-Muslims within the community. Jewish people were treated as part of the community and were referred to as “dhimmis” meaning, “protected” or “one whose responsibility has been taken.”⁵ Both Christians and Jews were given religious freedom and were required to pay a tax every year. Such treatment did not extend to polytheists, only to believers of monotheism. The treatment of non-Muslims during the establishment of the first state set a precedent for the treatment of non-Muslims in future conquests.

B. Islam and Human Development

Human development is fundamental to the religion of Islam. Taking care of one another and engaging in acts to assist brothers and sisters in society is an integral aspect of practicing Islam. In order to understand the fundamental nature of human development, it is important to first understand a key element of the religion itself: the holy text of the Quran is viewed to be the sole authority on how to lead a proper Muslim life. It is an all-encompassing text seen as the ultimate source of direction and humanity in life.

The significance of the Quran is not limited to spiritual guidance but instructs Muslims on how to handle all facets of life. For example, passages in the Quran address the issues of

³ See William Montgomery Watt, *Muhammad at Medina*. England, Oxford University Press, 1956; See also R. B. Serjeant, *The Constitution of Medina*, *Islamic Quarterly* 8 (1964), 4.

⁴ See generally, <http://www.islamicity.com/mosque/ihame/Sec2.htm>

⁵ See definition <http://www.google.com.pk/search?hl=en&noj=1&defl=en&q=define:Zimmi&sa=X&ei=e6p0Tb-gC83hrAeLtonSCg&ved=0CBQQkAE>

marriage, wills and division of property, cleanliness, dress code, and interaction between spouses, children, relatives, visitors, enemies and strangers. The holy book also provides information on how human beings originated, how they are supposed to live life on Earth, and what the afterlife consists of.

The text in the holy book is considered to be the very words of Allah as conveyed to the prophet Muhammad. Therefore, when one follows the Quran, he or she is not following the teachings of Muhammad but the very words of Allah. For Muslims, the Quran is a book of divine guidance and direction for humanity and God's final revelation to humanity. It is believed that the text in its original Arabic is the literal word of God,⁶ revealed to Muhammad through the Angel Gabriel over a period of twenty-three years.

That the Quran is the source of direction in all facets of life and is believed to be the very word of God is key to understanding social justice and human development in Islam. In observing social justice, I will begin by looking at the five pillars of Islam, which are the staples of the religion. Human development is pervasive within the five pillars. The first pillar in Islam is Shahada, the belief that there is no God but Allah. This belief that there is only one God helps unite all followers and decreases the possibility of factions (although factions still do exist in Islam). The belief that there is one God places everyone on equal footing in relation to God. God is the superior being and human beings are all inferior in comparison.

The second pillar is Salat (prayer), performed by Muslims five times a day. Although it is not required, Muslims often pray together, with one person leading the prayer and others following in unison. The third pillar is fasting during the holy month of Ramadan. The act of fasting brings Muslims together unlike anything else in the religion. The fourth pillar, almsgiving (zakat) will be discussed in further detail. The fifth pillar is the pilgrimage to Mecca (hajj).

⁶ See Quran, Chapter 2, Verse 23–4, <http://www.cmje.org/religious-texts/quran/verses/002-qmt.php#002.151>

II. Muslim Scholars on Social Justice

Sayyid Qutb, author of *Social Justice in Islam*, is one of the leading Muslim scholars on the issue of human development.⁷ Qutb is an Egyptian writer and educator and was one of the leading members of the Egyptian Muslim Brotherhood, the largest political opposition organization in many Arab states. He was active with the Muslim Brotherhood in the 50's and 60's. He is most well known for his work, *Social Justice in Islam*, which discusses the social and political connection in Islam.

In *Social Justice in Islam*, Qutb laid the foundation for social justice, his principle idea being that in Islam, everything is connected and different facets of life are not dealt with separately.⁸ Islam is a comprehensive system and it is necessary to understand the inter-relationship of divinity, the universe, life, and mankind. Not only is it a comprehensive system, but it is also a system of unity. "Islam is the religion of unity between worship and social relations, creed and Shari'a, spiritual and material things, economic and spiritual values, this world, and the afterlife, and earth and heaven."⁹

Although teachings in Islam stress equality and unity, there is an acknowledgement that all people are not born with equal skills.¹⁰ Teachings recognize that some people are prone to good health (and other such beneficial attributes) while others are born with weaknesses. Those with superior physical, mental, and spiritual aptitudes should not be stifled from flourishing their

⁷ Other leading Islamic scholars on social justice include Yusuf al-Qaradawi, Abul Ala Maududi, and Muhammad al-Ghazali.

⁸ All the sources utilized in this paper are either originally written in English or are English translations of Arabic text.

⁹ See William E. Shepard, *Sayyid Qutb and Islamic Activism: A Translation and Critical Analysis of "Social Justice in Islam"* E.J. Brill, The Netherlands, 1996.

¹⁰ *Id.* at 33.

skills and should be able to use their ability to assist society.¹¹ However, Islam forbids ostentatiously displaying the kind of luxury that creates a vast disparity in living standards.

A. The Elements of Social Justice

For Qutb, the elements of social justice are (i) absolute liberation of the inward soul (taharrur wijdani), (ii) complete human equality, and (iii) firm social solidarity (al-takaful al-ijtima’I al-wathiq).¹²

i. Liberation of the Soul (Taharrur Wijdani)

Absolute liberation of the inward soul is an individual’s recognition that he or she deserves social justice, that social justice is necessary for society, and that social justice is a source of God’s will. Liberation of the soul means not having fear since God is in control of everything and faith should eliminate fear. This recognition is important because even if legislation exists delegating social justice, Qutb believed that such legislation is futile unless the individual and the community believe they have a *right* to it. Amongst the weak, recognition is a form of self-respect and amongst the strong; it is a sense of humility. Recognition by people, coupled with legislation, will result in effective social justice for the community.¹³

To be fully liberated, one should be free of weakness caused by desire. However, constant suppression is not healthy if it leads to destruction. God did not create life in vain, “it is good for man to rise above his needs and passions but it is not good to destroy life itself in that process.”¹⁴ The ideal example Qutb cited for this sentiment is the pillar of fasting since fasting is meant to “elevate the soul above the insistent demands...so that its will can be strengthened....”

¹¹ *Id.* at 37.

¹² *Id.* at 40.

¹³ *Id.* at 42.

¹⁴ *Id.* at 41.

¹⁵ The Islamic approach takes into consideration morality and economic factors- it takes into effect the practicality of living on Earth and being human as well as “the power of the soul.”¹⁶

ii. Human Equality

Human equality is important because it promotes unity and prevents factions within society. During the prophet’s time, there were vast factions among people, such as class divisions where royalty claimed to have the blood of the Gods while others were deemed untouchables.¹⁷ In discussing human equality, Qutb highlighted the equality between men and women and also discussed the honor of women.¹⁸ All Muslim people have honor and sanctity, neither of which should be violated by anyone. Islam follows every aspect of human psychological and social life so as to give full confirmation to the idea of equality.

However, as noted earlier during my discussion on Hijrah, although Muslims are all seen as being equal to one another, the status of non-Muslims is more complicated.¹⁹ The Quran acknowledges “people of the book,” as Jews, Christians, and Sabians. People of the book are treated with respect because they recognize the God of Abraham as the one and only God, same as Muslims do. One surah in the Quran states, “Verily! Those who believe and those who are Jews and Christians, and Sabians, whoever believes in God and the Last Day and do righteous good deeds shall have their reward with their Lord, on them shall be no fear, nor shall they grieve.”²⁰ People of the book are permitted to practice their religion and are required to pay a yearly tax, jizya, in place of zakat, the yearly tax Muslims are required to pay. However, there is nothing in the Quran that explicitly places people of the book on equal footing with Muslims.

¹⁵ *Id.* at 54.

¹⁶ *Id.* at 56.

¹⁷ *Id.* at 57.

¹⁸ *Id.* at 61-67.

¹⁹ *See generally, supra* note 4.

²⁰ *See* Quran, Chapter 2: Verse 62, <http://www.cmje.org/religious-texts/quran/verses/002-qmt.php#002.151>

iii. Social Solidarity

The final element of social justice is social solidarity, which focuses on the importance of group responsibility. Islam grants individual freedom, which should be practiced responsibly and not be abused. Alongside individual freedom is group responsibility. The various levels of responsibility are explained by Qutb, “there is responsibility between the individual and his self...individual and his immediate family...the individual and the group... the nation (ummah) and other nations...one generation and all successive generations.”²¹ All individuals are expected to be hard working and to uphold God’s wishes. Additionally, “every individual is obligated to watch out for the interests of the community as if he were appointed to be its guardian.”²²

Qutb elaborated on the role of individuals as guardians by comparing them to shepherds in charge of “the flock.” He stated that no person is excluded from this role; everyone is obligated to put a stop to wrongdoing. When an individual is witness to wrongdoing, he or she, “becomes responsible for every bit of wrongdoing that happens in the nation, even if he does not share in it.”²³ Qutb stated it is necessary to protect the weak, to care for their needs, and to fight for them when necessary.²⁴

III. Sharia Law

Sharia law provides the legislation necessary for firmly grounding the principles of social justice. In particular, zakat, the pillar of alms giving, is viewed as the pinnacle of social justice. Zakat is one of the pillars of Islam and all Muslims are obligated to give zakat. Qutb phrases it as an “eternal law” and traces the act of alms giving back to the prophets before Islam. He wrote of

²¹ See Shepard, *supra* note 9, at 69.

²² *Id.* at 75.

²³ *Id.* at 76.

²⁴ *Id.*

Ishmael and Abraham who told his people to perform Salat (prayer) and zakat.²⁵ “Islam ordained zakat for the deprived as a right to share in the wealth of those who are well off...” and that right is enforced in Islam through Sharia law.²⁶

In addition to zakat, there is also voluntary almsgiving called sadaqah. Voluntary almsgiving is the “fruit of compassion and brotherhood...in order to establish mutual human ties and social solidarity by means of a personal sense of duty and an inner sense of compassion.”²⁷ Compassion is strongly emphasized by Qutb who referd to it as the “basis of faith.” In Islam, the act of compassion exemplifies that religion has affected and penetrated one’s soul.²⁸

Qutb made several references to acts performed by Muslims during the Prophet’s time. For example, he shared the story of the Prophet’s daughter, Fatima, her husband, Ali, and the members of their family: “They fulfill their vows...they give food... to the needy, the orphan, the captive...”²⁹ Qutb constructed the act of sadaqah in another interesting light by describing it as a loan to God, “...the men and women, who give sadaqah and have lent to God a good loan, it shall be multiplied for them, and theirs shall be a generous wage.”³⁰ So for those who are compassionate and open heartedly give to others, God will reward them and that reward is not intended for this life as much as it is for the afterlife.

When Muslims give to others, the detachment from wealth and materialism is a sign of the souls liberation. Sadaqah is a means of purifying both one’s souls and one’s possessions. More significantly, the giving of charity leads to Paradise and the Quran calls on people to engage in charity before it is too late. The prophet stated it is obligatory for people to engage in

²⁵ *Id.* at 90.

²⁶ *Id.* at 88.

²⁷ *Id.* at 90.

²⁸ *Id.* at 91.

²⁹ *Id.* at 92.

³⁰ *Id.* at 92.

charity and even those who have nothing should engage in charity. If a person has nothing to offer another, then he should “keep himself from evil, and that will be his Sadaqah.”³¹ As a result, everyone is placed on an equal level when giving charity, “in terms of what he possesses and what he can do.”³²

In Islam, all people are worthy of honor, so it is encouraged that when one gives sadaqah, he or she should do it secretly. This way, the receiver’s dignity remains intact and the grantor is not boastful of her actions. Pride is always looked down upon since pride and conceitedness are viewed as objectionable personal characteristics and are inconsistent with the feelings of equality, fairness, and brotherhood.³³

A. The Divinity of God

According to Qutb, the ideal model for society stems from the way society was structured during the time of the prophet. His ideas on social justice derive from his understanding of society when the first generation of Muslims existed. Scholar, Albert J. Bergesen, explains that for Qutb, “what emerged then was a society and political system based upon the divine revelations of the Qur’an....”³⁴ The notion that people could organize and run their lives based of one source was astounding: “what an amazing phenomenon in the history of mankind: a nation emerging from the text of a Book, living by it, and depending on its guidance as the prime source!”³⁵

Qutb advocated modern society should resemble the system that existed during the prophet’s time and believed that such a reversion would solve all the problems of modern

³¹ *Id.* at 97.

³² *Id.* at 97.

³³ *Id.* at 102.

³⁴ See Albert J. Bergesen, *The Sayyid Qutb Reader: Selected Writings on Politics, Religion, and Society*, New York, Routledge, 2007, 14.

³⁵ *Id.*

society. His concept of reversion focused primarily on the first pillar- the exclusive divinity of God. The idea that God's divinity spans across all dimensions of life has two important consequences: (1) the link between religion and daily politics and (2) God is not limited to any one group of people. The link between religion and daily politics is viewed as Qutb's most significant contribution to political theory.

One consequence of belief in the Oneness of Allah is that Allah Most High is the Lord and Sovereign of men not merely in their beliefs, concepts, consciences, and rituals of worship, but in their practical affairs...the Muslim believes that there is no true rules above him except Allah, no legislation for him except Allah, no one except Allah to inform him concerning his relationships and connections with the universe, with other living creatures, and with one's fellow human beings. This is why the Muslim turns to Allah for guidance and legislation in *every aspect of life*, whether it be political governance, economic justice, personal behavior, or the norms and standards of social intercourse.³⁶ (Emphasis added)

Islamic authority in every facet of life, including politics, differs greatly from the western division of religion: the idea that one should leave to Caesar what is Caesar's and to God what is God's.³⁷ Qutb believed that God alone is the sovereign and men should not submit to one another but should submit to God only. For humans to submit to one another is a creation of "servitude of servants" and takes away from God's sovereignty on Earth.³⁸ Thus, any system or government ruled by man over men is wrong. Instead, people should look to the Quran for guidance on political and legislative needs.

God has a quality of oneness and opposite to God's oneness is the oneness of humanity. Since God is for all humanity, it would be wrong to state that God is only for a particular group of people. Such a division would create factions and those factions would result in people praying to different Gods as opposed to one God. Qutb explained the possibility for factions,

³⁶ See Sayyid Qutb, *The Islamic Concept and Its Characterizations*, Plainfield, IN, American Trust Publications, 1991, 191.

³⁷ See Bergsen, *supra* note 34, at 18.

³⁸ *Id.*

A god for a particular people, subdivides the potential Oneness of the global *umma* (community of believers) into peoples, nations, states, groups, races and so forth, and the Oneness of God into de facto, separate gods, for if there is a god for this group, then that isn't the god for other groups, which...means they would have to have their own gods.³⁹

Therefore, any kind of faction, whether it is one of race or nation states, lends itself to detracting from the oneness of God. Qutb emphasized that because there is only one God, there “should only be one global community of believers- no social, class, tribal, national, regional, racial, ethnic, or gender differences within humanity.”⁴⁰

Qutb's ideas on factionalism present potential problems that can arise from national unity and global disunity. If there is only one God and if there should only be one global community, then the separation of the community into nations, states, groups, etc. destroys the fundamental principle of Islam: God's divinity.

B. Abul Ala Maududi

Abul Ala Maududi, a Sunni Pakistani journalist, theologian, political philosopher, and a major 20th century Islamist thinker, was another leading scholar on social justice. He is most famous for being the founder of Jamaat-e-Islami, an Islamic revivalist party. His ideas of social justice are very similar to those of Qutb. Both scholars placed heavy emphasis on the all-inclusive nature of the religion. Maududi stated,

Islam is not a 'religion' in the sense this term is commonly understood. It is a system encompassing all fields of living. Islam means politics, economics, legislation, science, humanism, health, psychology and sociology. It is a system which makes no discrimination on the basis of race, color, language or other external categories. Its appeal is to all mankind. It wants to reach the heart of every human being.⁴¹

Maududi took the “all-inclusive” idea to the same extent that Qutb did- he advocated for a society run by Sharia law and Maududi is known for coining and popularizing the term “Islamic

³⁹ *Id.* at 16.

⁴⁰ *Id.*

⁴¹ See Sayyid Abul Ala Mawdudi, *Towards Understanding the Quran*, Translated by Zafar Ishaq Ansari, India, The Islamic Foundation, 2006, Ch. 7.

State.”⁴² The ideal Islamic State would be a “theo-democracy” with three underlying principles: (1) tahwid, the oneness of God; (2) risala, prophethood; and (3) khilafa, the caliphate.⁴³ Sharia law would dominate and be an all encompassing system covering, “family relationships, social and economic affairs, administration, rights and duties of citizens, judicial system, laws of war and peace and international relations.... The Sharia is a complete scheme of life and an all-embracing social order where nothing is superfluous and nothing lacking.”⁴⁴

Maududi’s position on theo-democracy has been criticized because it is seen as an, “ideological state in which legislators do not legislate, citizens only vote to reaffirm the permanent applicability of God's laws....”⁴⁵ Maududi did advocate that the role of the legislation is to interpret law and not make it.⁴⁶ His idea on the role of the legislative body is consistent with the views of Qutb, who believed that the laws have already been created, they just have to be interpreted and applied properly. And for Qutb, “properly” meant following the system that existed during the prophet’s time.

C. Abu Hamid Muhammad al-Ghazzali

Abu Hamid Muhammad al-Ghazzali is a Persian medieval jurist, theologian, and philosopher whose ideas on social justice are still relevant today. Scholars have referred to him as “the Islamic equivalent” of Kant⁴⁷ and historians have viewed him as the single most influential Muslim after the prophet.⁴⁸ Similar to Qutb and Maududi, Ghazzali’s ideas center on the idea of God’s oneness. He believed that all knowledge stemmed from the oneness of God. He

⁴² See S.V.R. Nasr, *Mawdudi and the Making of Islamic Revivalism*, New York, Oxford University Press, 1996, Ch. 4.

⁴³ See Abu al-A'la al-Mawdudi, *Islamic Way of Life*, Delhi, Markazi Maktaba Islami, 1967, 40.

⁴⁴ See, Abul Ala. Maududi, *The Islamic Law and Constitution*, ed. and tr. Khurshid Ahmad, Lahore 1955, 57.

⁴⁵ *Id.*

⁴⁶ *Id.* at 125.

⁴⁷ See Ozay Mehmet, *Al-Ghazzali on Social Justice Guidelines for a New World Order from an Early Medieval Scholar*, International Journal of Social Economics 24. A11 (1997): 1203-1218.

⁴⁸ See William Montgomery Watt, *The Faith and Practice of Al-Ghazali*, London, George Allen and Unwin Ltd, 1953, 14-16.

also placed a heavy emphasis on reason, which he defined as intellect plus free will.⁴⁹

Knowledge, coupled with reason, provided “the path for all moral concepts ultimately leading to the belief in God.”⁵⁰

However, Ghazzali offers a different view on government from Qutb. Qutb (and similarly Maududi⁵¹) believed that sovereignty is given to God alone and God alone legislates.⁵² The ruler’s job is to enforce the Sharia; he does not receive any religious authority personally.⁵³ The ruler is picked through the free choice of Muslims, and the position is not inherited within a family. In contrast, Ghazzali’s central idea in political discourse is the importance of a just monarch. A just monarch is the staple of dawlat (good government) and the purpose of dawlat is to promote social justice, to “bring development and prosperity to the world through justice and equitable rule.”⁵⁴ The ideal state is not democratic; it is feudal and monarchical.

To ensure stability, there is a system of checks and balances: one is divine and the other secular.⁵⁵ In the divine, “the king’s rule is a trusteeship from God to whom he is ultimately answerable.”⁵⁶ In the secular, the king’s daily actions and decisions are limited by advice from the learned scholars, ulema.⁵⁷ Ghazzali did believe that Sharia law should control the state however he stated, “There is no support for the shari’ah except through royal authority”⁵⁸ indicating the role of the monarch in implementing Sharia law.

IV. Migration and Transnationalism

⁴⁹ See Mehmet, *supra* note 48, at 3.

⁵⁰ *Id.*

⁵¹ Maududi’s instruction that legislators should not make law but only interpret it is similar to Qutb’s idea that no man should rule over another since both suggest that God is the ultimate source of law and no person should be given deference regarding such.

⁵² See Shepard, *supra* note 9, at 106.

⁵³ *Id.*

⁵⁴ See Mehmet, *supra* at 48, at 5.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

Anthropologist John R. Bowen researches the comparative social studies of Islam across the world⁵⁹ and offers a unique analysis on the relationship between Islam and migration. In *Beyond Migration: Islam as a Transnational Public Space*, Bowen argues “transnational Islam creates and implies the existence and legitimacy of a global public space...of debate, and that space cannot be reduced to...migration or transnational religious movements.”⁶⁰

Bowen breaks down migration into two categories: (1) movement across national borders for social or economic reasons and (2) migration tied to religious practice. Bowen cites the Tablighi Jama’at as an example of migration tied to religious practices. The Tablighi Jama’at movement originated in India and sends missionaries around the world to convince Muslims to return to what they believe is the right practice of Islam. Another group that migrated for religious reasons are the Sufis, whose devotion is on living and dead saints. Bowen refers to these groups because he believes that oftentimes when research is conducted about Islam and transnationalism in Europe, there is a focus on groups whose migration is directly tied to a religious purpose.

However, Bowen looks on a third category, “namely, the development of debates and discussions among Muslims about the nature and role of Islam in Europe and North America.”⁶¹ These discussions center on the problems Muslims face in trying to be a part of Western society while maintaining an Islamic culture. When Bowen looks at the dialogue that takes place between Muslims about their role in Western society, he notes the *intrinsic universality* of the religion. He points to the use of Arabic as the primary language of scholarship and prayer, the

⁵⁹ See generally http://anthropology.artsci.wustl.edu/bowen_john [accessed Sep. 7, 2012]

⁶⁰ See John R. Bowen, *Beyond Migration: Islam as a Transnational Public Space* <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCAQFjAA&url=http%3A%2F%2Fartsci.wustl.edu%2F~anthro%2Farticles%2FBeyond%2520migrationon.pdf&ei=YHq0TvnwOMargweL8-CyBA&usq=AFQjCNGx7ZNMHQ41-ooWioHtbcW9NaaUtA>

⁶¹ *Id.*

pilgrimage to Saudi Arabia (hajj), and the idea that no matter where a Muslim is located globally, they all face the same direction for prayer.⁶²

Bowen focuses on the implication of the “transnational public space for the question of Islam’s place in Europe” and does so specifically for the nation he believes to have the hardest case: France. Bowen examines a conference that occurred in Adda’wa Mosque in Paris’s 19th Arrondissement. The mosque is known for fostering dialogue between Muslims and non-Muslims. During one particular session in 2002, the topic was on Islamic jurisprudence. Important Islamic scholars sat on the panel and gave speeches followed by a Q&A session afterwards. During the Q&A session, various questions were asked including questions about headscarves and coverings. In relation to headscarves, conversations took place of whether women should continue wearing the headscarf during employment if doing so puts them at risk of losing their job. There were also discussions about how to interpret Islamic norms and how to apply Islamic law to current issues. Ultimately, Bowen noticed that during the six-hour event, no one deferred to French, European, or international norms or laws.⁶³ Additionally, the conversations took place in Arabic and Arabic scholars and religious figures were often referenced.

Discussions similar to that which took place in Adda’wa Mosque are occurring all over French cities. According to Bowen, such discussions are an indication, “that the transnational public space of Islam is firmly anchored in Islamic norms of justification.”⁶⁴ Muslims do not make references to French ideologies or norms that contradict with Islamic norms since doing so

⁶² *Id.*

⁶³ *Id. at 9.*

⁶⁴ *Id.*

could be construed as Muslims attempting to “fit Islam to reality” rather than using Islam to “reshape reality.”⁶⁵ Bowen concludes,

Migration and Islamic religious movements have played an obvious...role in developing a Muslim presence in France and elsewhere. Islam’s transnational public space is ‘beyond migration,’ in that it is dependent neither on specific migration patterns nor on the activities of particularistic transnational movements. This space has existed since the beginning of the Islamic era, and long before it extended to Europe, it regularly defined and developed debates and references among scholars and public figures...⁶⁶

V. Social Justice and Migration

There is a distinct overlap between Qutb’s beliefs on Islam and social justice and Bowen’s transnationalist ideas, namely that Islamic practices are not limited to boundaries. In *Social Justice in Islam*, Qutb emphasized how the attempt to fractionalize Islam detracts from its fundamental nature- the belief in one God.⁶⁷ Thus, factions, such as nations, states, cities, towns, ethnicities, race, etc., risk diminishing the divine nature of God. Qutb passionately advocated for a return to a society during the time of the Prophet- a time when everyone lived according to the teachings of the Quran.

However, as Bowen points out, there is a transnational public space in which Muslims from all over the world are trying to assess the role of Muslims in the Western sphere. It is true that even this space is limited since Bowen only looks at the role of Muslims in the Western sphere without assessing the role of Muslims in Muslim nations. However, he does so because his focus is on the migration of Muslims from Islamic nations to non-Islamic nations. The fact that this transnational space exists signals that Muslim migrants are not easily going to give up the universal nature of Islam; rather they are working to maintain the unity and divinity that Qutb, Maududi, Ghazzali, and others, believe is so defining of Islam.

⁶⁵ *Id.*

⁶⁶ *Id.* at 11,12.

⁶⁷ See Shepard, *supra* note 32.

Bowen's research that the discussions occurring amongst the Muslim community tend to focus on Islamic norms and Sharia law and draw upon Islamic justifications, demonstrates the attempt of Muslims to maintain unity even in the face of separation which can be caused by migration. Bowen describes, "In its impulse to refuse particularistic loyalties to ethnic groups or to a nation-state, this consciousness first and foremost creates an imagination of an Islamic community transcending specific boundaries and borders."⁶⁸

Bowen's focus on France as a case study is useful since identity and assimilation issues are particularly tense in France. In a nation where the pressure on Muslims to adopt a French identity and adapt to French nationalism is so high, Muslims are forced to have these discussions. These discussions have revealed that even in the face of widespread pressure, Muslims are assessing themselves and their role in the nation primarily through Islam and Sharia law.

VI. The Response of Faith-Based Organizations in Contexts of Forced Migration

There is a vast amount of literature available on the issue of migration and religion when people chose to migrate or are forced to migrate because of religious concern. In contrast, the issue of religious *responses* to migration has largely been left unexplored. At the Refugee Studies Centre at the University of Oxford, scholars have begun to focus on this interesting issue. Last year, the Centre held an international conference titled, "Faith-Based Humanitarianism: The Response of Faith Communities and Faith-based Organizations in Contexts of Forced Migration."

The scholarship presented at the conference focused on faith-based communities, defined as "formally recognized groups or bodies which profess a belief in a superhuman reality and/or god(s) and which worship this reality and/or god(s)" and faith-based organizations (FBO),

⁶⁸ *Id.*

defined as “any organization that derives inspiration from and guidance for its activities from the teachings and principles of faith or from a particular interpretation or school of thought within a faith.”⁶⁹ The difference between the two is that FBOs exist to “perform a specific function, such as responding to humanitarian needs arising from forced migration.”⁷⁰ At the conference, two fundamental questions were addressed. First, “what, if anything, distinguishes the motivations, actions and impacts of faith-based and secular organizations” and second “how do displaced people relate to local, national and international faith-based aid providers, given the power inequalities which characterize such encounters?”⁷¹

Elizabeth Ferris explores the relationship between faith and humanitarianism in her paper titled, “*Faith and Humanitarianism: It’s Complicated.*” She highlights that one of the complications in researching this topic is the lack of record keeping found amongst most faith-based organizations. As an example, she cites mosques in Iraq that provide support to the needy people in the community but do not document this kind of aid.⁷² Similarly, local churches do not typically keep a record of the assistance they provide, such as soup kitchens or assisting disaster victims. This makes it difficult to determine the extent to which religious local community organizations are providing humanitarian relief.

Ferris observes that Muslim charities usually provide assistance during the holy month of Ramadan. During this time, Mosques do their best to provide food for all people fasting and oftentimes, Muslims will break fast together at the mosque and stay for night prayer afterwards. Muslim charities also focus on providing access to a clean water supply and sponsor orphans. In addition, Muslim charities are dedicated to assisting refugees and Ferris attributes this to the fact

⁶⁹ See Elena Fiddian-Qasimiyeh, *Introduction: Faith-Based Humanitarianism in Contexts of Forced Displacement*, *Journal of Refugee Studies* Vol. 24, No. 3.

⁷⁰ *Id.*

⁷¹ *Id.* at 4.

⁷² See Elizabeth Ferris, *Faith and Humanitarianism: It’s Complicated*, *Journal of Refugee Studies* Vol. 24, No. 3, 5.

that the prophet himself was a refugee when he left Mecca and traveled to Medina in order to avoid persecution.⁷³

In another paper titled, *Translating Faith into Development*, Khan writes that the focus of Muslim charity typically tends to be ‘paternalistic’ and generally offers temporary relief as opposed to focusing on the root of the problem. Muslim charities generally have a goal of providing immediate relief, not advocating long-term change or creating long-term goals. The author reasons this is due to the “conservatism of traditional Muslim donors, who put a priority on providing direct assistance to individuals, as well as to the lack of professional development of some staff of Islamic charities” as a result of “government restriction the activities of NGOs, which limit their work to endeavors which can be readily classified as non-political.”⁷⁴ It is also likely that some Muslim Charities only offer short-term solutions most likely because they do not have the resources or foundation to provide long-term assistance.

VII. Islamic Relief Organization

In the article, *Does Faith Matter: An Examination of Islamic Relief’s Work with Refugees and Internally Displaced Persons*, Nida Kirmani and Ajaz Ahmed Khan explore the significance of asylum (anyone seeking protection) in Islam.⁷⁵ The authors discuss the lasting impact of the prophet’s role as a refugee during Hijrah, when Mohammad left Mecca and traveled to Medina to escape persecution. Khan and Khirmani explain this as the reason why “the issue of forced displacement has a particular resonance in Islam... the story of the Hijrah itself and its centrality in terms of the foundations of the faith indicates the importance given to the concept of the

⁷³ *Id.* at 8-9.

⁷⁴ See A. A. Khan, I. Tahmazov, and M. Abuarqub, *Translating Faith into Development*. (2009) Available from [http://www.islamic-relief.com/indepth/downloads/Translating% 20faith%20into%20development.pdf](http://www.islamic-relief.com/indepth/downloads/Translating%20faith%20into%20development.pdf). [Accessed: 15th October 2011].

⁷⁵ See A. A. Khan and N. Kirman, *Does Faith Matter? An Examination of Islamic Relief’s Work with Refugees and Internally Displaced Persons*, *Refugee Survey Quarterly* 41: 50 (2008).

protection of refugees and the provision of asylum in Islam.”⁷⁶

The significance of asylum is outlined in both the Sharia and the Quran. In Sharia, it is the concept of “aman,” the rights of refugees and asylum-seekers and the duties incumbent upon their hosts.⁷⁷ According to Sharia, people are given asylum in sacred places such as the Kaaba in Mecca and mosques generally. Furthermore, asylum is nondiscriminatory, so anyone seeking asylum, whether it is a Muslim or non-Muslim, poor or rich, male or female, will be given protection. Passages in the Quran specifically instruct, “if any one of the disbelievers seeks your protection, then grant him protection so that he may hear the word of Allah, and then escort him to where he will be secure.”⁷⁸ The authors reference one medieval theologian, Ibn-al-Arabi, for suggesting that providing asylum is obligatory to those fleeing states where there is injustice, intolerance, physical persecution, disease, and financial insecurity.⁷⁹

Islamic Relief is a prime example of a Muslim faith-based organization that provides long-term (as well as short-term) assistance to refugees. Islamic Relief is an international faith-based organization that assists refugees and internally displaced persons (IDPs) in vast situations. The organization first provided humanitarian assistance during the Bosnian conflict in 1992.⁸⁰ The conflict continued until 1995 and in the immediate aftermath, Islamic Relief assisted by reconstructing homes, schools, and health clinics.⁸¹

Since that time, the focus of the organization had shifted as it endeavors to provide more long-term assistance to refugees. For example, the organization creates small-scale businesses in the areas of return, “through a successful microcredit programme based upon Islamic financing

⁷⁶ *Id.* at 42.

⁷⁷ See G.M. Arnaout, *Asylum in the Arab-Islamic Tradition*, Geneva, Office of the United Nations High Commissioner for Refugees and International Institute of Humanitarian Law, 1987, 49.

⁷⁸ See Quran Chapter 9, Verse 6, Surah Al-Tawbah, <http://www.cmje.org/religious-texts/quran/verses/009-qmt.php>

⁷⁹ See D.F. Eickelman and J. Piscatiri (eds.), *Muslim Travelers: Pilgrimage, Migration, and the Religious Imagination*, New York, Routledge, 1990.

⁸⁰ See Khan, *supra* note 75, at 4.

⁸¹ *Id.*

principles.”⁸² Another example is the post-traumatic stress disorder therapy the organization provides to those who have suffered during the conflict. Islamic Relief is currently still operating a number of programs in Bosnia today, demonstrating its long-term commitment.

In the article, Khan and Kirman examined how refugees respond to Islamic Relief as a faith-based organization. Ultimately, they examined, “how does being an FBO influence Islamic Relief’s work with refugees and IDPs, both in terms of the communities themselves as well as in the organization’s dealings with other stakeholders?”⁸³ In order to answer this question, they spoke to numerous staff members about their work experiences and studied reports and evaluations.⁸⁴ They concluded that an answer to that question was undeterminable because the organization works in such diverse contexts, with Muslim and non-Muslim refugees in Muslim and non-Muslim contexts.

However, the authors did find that often times the organization was more successful in its outreach to Muslim refugees than other faith-based organizations or secular organizations were.⁸⁵ For example, in Somalia, Islamic Relief was able to gain trust from Muslim refugee communities quicker because of their shared faith. In addition, the organization was aware of religious norms, such as how people fast during Ramadan, the rituals associated with Eid-ul-Adha, and the structure of daily prayers. As a result, the organization was able to have a quicker and stronger impact assisting refugees than other non- faith-based organizations or secular INGOs.⁸⁶

VIII. The Significance of Asylum in Sharia

Professor Ahmed Abou-El-Wafa conducted an extensive study regarding the legal rights of asylum in Sharia and the legal rights in International Refuge Law. His book, *The Right to*

⁸² *Id.*

⁸³ *Id.* at 45, 46.

⁸⁴ *Id.* at 46.

⁸⁵ *Id.*

⁸⁶ *Id.*

*Asylum between Islamic Shari'ah and International Refugee Law*⁸⁷ is a comparative study of these two legal perspectives on asylum.⁸⁸ He looks to three different sources in examining the rules on asylum: 1) the Holy Quran, a religious text; 2) Sharia, Islamic law; and 3) International Refugee law.

A. The Holy Quran

Abou-El-Wafa argues the Holy Quran, along with the Sunnah and Hadith of the prophet, provide the primary historical source for the foundation of contemporary refugee law.⁸⁹ The Quran is filled with passages and quotations regarding asylum. One such line states, “Those who give (them) asylum and aid, these are (all) in very truth the believers: for them is the forgiveness of sins and a provision Most generous.”⁹⁰ There is also an array of words that relate to the word refuge. The term “hijrah”, which means immigration, is sometimes used to refer to the right of seeking refuge.⁹¹ The word “malja” means refuge, and “azhimma” means to provide refuge and protection. There are at least seven synonyms for the word “istajarah”⁹² which means, “seeking refuge.” There is also a considerable amount of synonyms for the word “isti’azha”⁹³ meaning “to seek protection.” In addition to the numerous words, phrases, quotations, and passages in the Holy Quran that address asylum, there is also the journey from Mecca to Medina⁹⁴ (discussed earlier) that underlines the significance of providing refuge seekers with asylum.

The Quran informs Muslims to engage in altruistic manners when responding to those

⁸⁷ Ahmed Abou-El-Wafa, *The Right to Asylum between Islamic Shari'ah and International Refugee Law*, Naif Arab University for Security Sciences, Riyadh 2009.

⁸⁸ This book was written, on behalf of UNHCR by Prof. Dr. Ahmed Abou-El-Wafa, Chief of the Department of Public International Law, Faculty of Law, Cairo University.

⁸⁹ See Abou-El-Wafa, 5.

⁹⁰ See Quran Chapter 8, Verse 74 Surat al-Anfal, <http://quran.com/8>

⁹¹ See Abou-El-Wafa, 34.

⁹² Such other synonyms include: istasrakha; istanjada; istashara; istajasha; lahafa ilayi; istazhhar bihi and istawhasha bihi.

⁹³ Such other synonyms include: iltaja'a; i'tasama; tahassna.

⁹⁴ Discussed in Section i. Background on Islamic Migration, 3.

who seek asylum. Ayah 9 of Surat al-Hashr provides 1) refugees should be warmly welcomed and not refouled; 2) give them preference over themselves; 3) receive refugees regardless of if they are wealthy or poor; 4) receive refugees regardless of if the receiver is poor; 5) admit all incoming refugees.⁹⁵

In addition, asylum seekers should not be discriminated upon, rather, asylum should be granted equally, “The right to equality for all human beings is one of the most significant grounds on which Islam is based; there is no distinction between human beings on grounds of race, might or fortune but only on account of piety.”⁹⁶ In support of this principle, Abou-El-Wafa cites numerous passages from the Quran discussing equality.⁹⁷ The Quran strongly advocates against racial discrimination, stating that the differences amongst physique are attributable to God and his plan.⁹⁸ Non-Discrimination is also a fundamental principle in international law. As expressed in Article 3 of the Convention, “The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.”

In addition, the religion is not forced upon others, rather, the rule is that Islamic nationality may not be imposed on a non-Muslim, “*Let there be no compulsion in religion: truth stands out Clear from error.*”⁹⁹ A non-Muslim acquires nationality either by conversion to Islam or by an explicit or implicit zimma covenant (for example by residence in Muslim land). As regards zimma covenant, some argue that it does not impart Islamic nationality on zimmi, since

⁹⁵ See Abou-El-Wafa, 54.

⁹⁶ See Abou-El-Wafa, 78-79.

⁹⁷ Wafa refers to these surahs on pg 79: “*And their Lord hath accepted of them, and answered them: “Never will I suffer to be lost the work of any of you, be He male or female: ye are members, one of another...”* (Surat Al-Imran, 195) (Surat An-Nisaa’, 1) and *O ye who believe! avoid suspicion as much (as possible): for suspicion in some cases is a sin: and spy not on each other behind their backs. Would any of you like to eat the flesh of his dead brother? Nay, ye would abhor it...But fear Allah. For Allah is Oft-Returning, Most Merciful.*” (Surat Al-Hujurat).

⁹⁸ See Abou-El-Wafa, 81, *O man! what has seduced thee from thy Lord Most Beneficent? It is Him Who created thee, fashioned thee in due proportion, and gave thee a just bias; in whatever form He wills, does He put thee together.* (Surat al-Infitar, 6-8)

⁹⁹ See Abou-El-Wafa, 217.

the latter do not enjoy the same rights (such as political rights) nor the same obligations as Muslims (for example, while zimmi have to pay jizya (a form of tax), Muslims have to pay zakat (a form of tax for Muslims)).¹⁰⁰

B. Sharia

In Islamic Sharia, asylum can be given to those who meet the following requirement:

The person should be present in the land of Islam or in a territory subject to an Islamic state. This is an a priori condition. Islamic territory includes territories, where Islamic Shari'ah is applied and where all inhabitants, Muslims as well as non-Muslims and others under Muslim protection, enjoy the aman of Islam.¹⁰¹

One should have a motive for seeking asylum, and all motives are treated equally. This approach is different than the one taken in international refugee law, which limits motive to those who flee for fear of prosecution.¹⁰² In Sharia, a person seeking refuge cannot be returned to a country in which she fears for her life and freedom. This concept is recognized in customary international law as the principle of non-refoulement.¹⁰³ Returning a person to a State in which she fears for her life is considered “treachery” and is forbidden under Sharia.¹⁰⁴

Protection from non-refoulement extends to both Muslims and non-Muslims. For non-

¹⁰⁰ See Abou-El-Wafa, 217. Others have described this opinion as feeble, because Islamic Shari'ah adopts, with some exceptions, the rule of equal rights and obligations for both Muslims and non-Muslims. Some other jurists adopted an opposite opinion, arguing that since zimmi pay jizya, it is established that they will have the same rights and obligations as Muslims. According to ibn 'Abideen, “ If they accept to pay jizya, they shall have the same rights and obligations as Muslims, including the right to being equitably treated (insaf) and the right to seek justice (intisaf). Proponents of this tendency were at variance on the grounds on which a zimmi acquires the nationality of an Islamic state. Some argued that such acquisition is predicated on his compliance with the provisions of Islam, while others attributed it to unspecified-term residence in Muslim land.

¹⁰¹ See Abou-El-Wafa, 43.

¹⁰² The 1951 Convention and the 1967 Protocol relating to the Status of Refugees exclusively defines a refugee as one who is fleeing in fear of persecution.

¹⁰³ See Abou-El-Wafa, 54. Some scholars have argued that this principle originated in Islam. See S. Mahmassani: *The Principles of International Law in the Light of the Islamic Doctrine*, RCADI, Vol. 117, 1966, p. 256. Wafa refers to the story during the prophet's time in which cheiftans of Quraysh asked the prophet's uncle to give him up, but he refused. In addition, he cites to sections of the Quran that states once a person has been offered protection, it cannot be retracted. This comes under the principle of “inadmissibility of breaching aman (safe conduct) or that of “inadmissibility of reneging on a covenant of protection for those who are safe or are seeking protection (protégés)”.

¹⁰⁴ See Abou-El-Wafa, 62.

Muslims, protection is granted to those living in Muslim territory (zimmi)¹⁰⁵ as well as for those who flee to Muslim territory for protection (musta'min).¹⁰⁶ Some jurists have put forth the argument musta'min should not be returned even when in exchange for Muslim hostage or prisoner of war.¹⁰⁷ Additionally, if a non-Muslim state threatens to engage in war if the musta'min is not returned, the Muslim state should refrain from doing so.¹⁰⁸ She should be permitted to seek refuge in Muslim territory as long as necessary; returning her to the state she fled from would be putting her life at risk, which is not acceptable in Islam.¹⁰⁹

C. International Law on Refugees

The 1951 United Nations Refugee Convention and the 1967 Protocol are the preeminent sources in International Law for determining what defines a refugee, what his or her legal rights are, and the obligations States have towards refugees. In order to qualify as a refugee, one must be outside the country of his or her nationality, have a well-founded fear of being persecuted for race, religion, political opinion, etc., and is unable or unwilling to seek assistance from the country of origin.¹¹⁰

Article 31 of the convention addresses the principle on non-refoulement, for which refugees seeking asylum should not be “returned” to territories in which his life and freedom will

¹⁰⁵ See Abou-El-Wafa, 216. “...acquisition by a refugee of a “zimmi status” in Islam is equivalent to “local integration” in contemporary international law. A refugee under a zimma covenant, shall be granted nationality of the Islamic state, and shall have the same rights and obligations as Muslims. Thus, he is considered to be fully integrated into Muslim land and almost equally treated as Muslims. Ali ibn abi-Talib (May Allah be pleased with him) reportedly said, “They accepted zimma covenant so that their property might be as (safe as) ours and their lives as (safe as) ours.” Therefore, it is argued that a zimma covenant for Muslims provides for “the obligation to keep our hands off them and ensure inviolability of their lives and property.”

¹⁰⁶ See Abou-El-Wafa, 62.

¹⁰⁷ See Abou-El-Wafa, 66.

¹⁰⁸ See Abou-El-Wafa, 64.

¹⁰⁹ See Abou-El-Wafa, 65-66. Wafa cites examples in Islamic history during which a refuge was not extradited. One such example was when Emperor Negus of Abyssinia (Ethiopia) refused to extradite Muslim immigrants to Quraysh delegation, when they so requested and gave protection to Muslims, who stayed “with the best protector in the best land”, as Ummu Slamah says.

¹¹⁰ Article 1.A.2 of the 1951 Convention.

be in danger.¹¹¹ The principle of non-refoulement is a principle of customary international law, it is viewed as a *jus cogens* right, and it cannot be derogated from.¹¹² However, an exception is permitted when national security and public order are at risk.

D. Legal Status of Refugees in Sharia and International Law

Refugees are given a specific legal status in Sharia, which Abou-El-Wafa argues is equivalent to the status granted refugees in international law. In Sharia, refugees are legally entitled to basic physical needs, such as that of food, shelter, and clothing.¹¹³ Significant portions of refugees are displaced persons or “wayfarers”, and the Quran provides that Muslims should voluntarily assist such persons because it is righteous.¹¹⁴

In addition to physical needs, Sharia provides that refugees should maintain legal rights to their property. For *musta'min* who enter Muslim territory under *aman*, they are entitled to protection for their property, children, and any relatives in their company. However, they do not receive any protection for the possessions left behind in non-Muslim territory.¹¹⁵ Thus, there are three aspects to the legal rights of a refugee.¹¹⁶ First, private property, which a refugee has in his possession, is protected. Second, the property, which a refugee leaves behind in a non-Muslim

¹¹¹ Article 33, the prohibition of expulsion or return (“refoulement”) contains the following two provisions: 1) No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. 2) The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

¹¹² See Conclusions on The International Protection of Refugees adopted by the executive committee of the UNHCR Programme, Geneva, 1996, p. 214, No. 79. “The principle of non-refoulement is not subject to derogation. See also The Declaration by the States Parties to the 1951 Convention and 1967 Protocol relating to the Status of Refugees, adopted on December 12, 2001, on the fiftieth anniversary of the 1951 Convention states,» *The application of the non-refoulement principle has become part of common international law.*” See also The preamble of the Mexico Declaration and Action Plan on Strengthening International Protection of Refugees in Latin America described the principle of non-refoulement as being of a *jus cogens* nature. Ibid, Vol. 3, p. 1221.

¹¹³ See Abou-El-Wafa, 144.

¹¹⁴ See Abou-El-Wafa, 146, *Material assistance is to be voluntarily and willingly offered to wayfarers, as the Ayah says,* “ ...But it is righteousness to ... spend of your substance, out of love for Him, for your kin, for orphans, for the needy, for the wayfarer,” *Surat al-Baqarah*, 177.

¹¹⁵ See Abou-El-Wafa, 158.

¹¹⁶ See Abou-El-Wafa , 160.

state, is not protected. Third, the relatives accompanying the refugee (as well as the property of the relatives) are protected.

In international law, a different approach is listed in Article 30 of the Convention, which provides that States should allow for the transfer of assets necessary for resettlement.¹¹⁷ Thus, international law encourages cooperation between States when handling the property of refugees. This cooperation is not mandatory; it does not place an obligation on states to permit transfers. Rather, it is humanitarian language, appealing to States to take a sympathetic approach towards refugees.

In his book, Abou-El-Wafa provides an analysis of Sharia law and the treatment of refugees. He observes passages in the Quran discussing refugees and interprets their meaning, alongside the Sunnah, and stories from the prophet's time. He provides an in-depth discussion on the legal rights refugees have to property, however, he refrains from discussing the educational, political, and cultural rights they may or may not be entitled to. These rights are afforded to refugees in international law in the introductory note of the Convention, written by the Office of the United Nations High Commissioner for Refugees. At most, Abou-El-Wafa discusses the right to education during his discussion of the rights refugee children have.¹¹⁸ The lack of discussion on educational, political, and cultural rights provided to refugees under Sharia is a stark gap in Abou-El-Wafa's discourse on the legal rights of refugees under Sharia.

IX. Conclusion

Migration has played an important role in the history of Islam since the time of the

¹¹⁷Article 30 of the 1951 Convention relating to the Status of Refugees provides, "Contracting State should, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement. Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted."

¹¹⁸ See Abou-El-Wafa, 162.

prophet. His migration from Mecca to Medina in order to avoid persecutors marks the beginning of the Muslim calendar. The success of the religion was fated upon the prophet having an opportunity to seek asylum *and* start a new life in a different region. Since that time, Muslims have placed an emphasis on assisting refugees. Assisting refugees is a fundamental requirement of Sharia. Abou-El-Wafa's book is valuable for the details it provides on the extent to which Sharia embraces the assistance of refugees, however, there is a lack of detail on the political, cultural, and economic rights of refugees. Conventions in International law provide more detail on political, cultural, and economic rights; however, the reasons permitted for seeking refugee are more limited than those in Sharia.

Muslim charities and organizations, such as Islamic Relief, have done an excellent job setting up long term programs to assist refugees. A large part of their success in assisting Muslim refugees derives from being a faith-based organization and gaining trust from the refugees because of a shared faith. As scholars like Sayyid Qutb and Abul Ala Maududi have expressed, the fundamental elements of social justice are the oneness of God and Islam's all encompassing nature. Under these ideas of social justice, it is understandable why Muslim refugees are more likely to respond to Muslim faith-based organizations and charities.

Since Islam encompasses all facets of life, a refugee will be comforted when approached by a Muslim charity or organization and feel a stronger connection to one who understands the all-encompassing nature of Islam. In his research, Bowen discussed the transnational space that exists for Muslim migrants and explained how even in a strongly secular state such as France, Muslims primarily defer to Muslim scholarship, the Quran, and Sharia in handling affairs, as opposed to French or international law. Bowen's idea on a "transnational Islam" correlates with Qutb's ideas of an all-encompassing Islam. Islam has retained its form of universalism and it is

necessary to understand this universalism when evaluating the approach of faith-based organizations and Sharia with regard to assisting refugees.

Going forward, it would be beneficial to conduct further research exploring the transnational sphere Bowen discusses and how Muslim migrants communicate with one another and continue to turn to Islam as their primary source on how to live life. It would be interesting to inquire about Muslims who are born in Western countries or have been settled there for a long time and discover how often and to what extent do they turn to Islam as a resource.

It would be most beneficial to look at the long-term solutions for refugees receiving assistance. The prophet sought refuge from persecution and was able to travel to another region, not just for a temporary escape but also as a permanent solution. What, if any, permanent options are available to refugees who either cannot or will not return to their country? For example, in his research, James Emmanuel studied Iraqi refugees in Jordan and concluded that it is necessary for the refugees to obtain official access to long-term employment in order to create a stable solution.

In studying long-term solutions, more resources should be given to understanding, from a refugee's perspective, what is the effect of receiving assistance from a faith-based organization vs. a secular organization? More specifically, what is the effect of receiving aid from an organization or charity that shares in the same faith as the individual vs. an organization belonging to a different faith? For example, in Jordan, how did Shia Iraqi refugees feel about the assistance they received from Sunni Muslim organizations? Or from Christian organizations? In such situations, it is essential to be able to understand the situation from the refugee's point of view in order to provide plausible long-term solutions.