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ISLAM AND AFFIRMATIVE ACTION

To Nadim'Abd al-Ahad
“...*wa 'l-fitnatu ashaddu mina 'l-qatl'*”

S.A. Jackson †

BETWEEN ISLAM AND MUSLIMS

This essay must begin with a point of clarification that is critical for those unfamiliar with Islam. While it is my belief that the view I present represents *an* Islamic position on Affirmative Action, I make no claim to represent *the* Islamic position. For far from constituting a monolith, as American public perception has it, the Muslim population in the United States is a heterogeneous amalgamation of somewhere around six million people. And while it is true that as Muslims—immigrant and native-born—they share a common scriptural heritage and, to a significantly lesser extent, a common intellectual one, it is also true that their lives, and hence their priorities and thinking, are informed by historical, cultural, political and social realities that are in many instances unrelated to each other and in some instances diametrically opposed. On such recognition, it should not stretch credulity to imagine a Muslim adopting a position on a topic like Affirmative Action that is, on the one hand, diametrically opposed to my own yet, on the other hand—at least *prima facie*—equally justified in its claim to be Islamic. In the present atmosphere, where Western ignorance and bias only adds to the tendency among Muslims to react in ways that promote rather than discourage stereotyping and essentialist readings of Islam, it would seem only fitting to insist that before we rush to catalogue *the* Islamic position on a matter like Affirmative Action, we first hear from a lot more voices from within the Muslim community.

† Associate Professor of Arabic and Islamic Studies, Department of Near Eastern Studies, University of Michigan. My concern in this essay is with Affirmative Action *as a moral issue*, i.e., whether it is right to confer certain advantages upon a class of people as a means of reversing the effects of past and present discrimination and domination. It is not my aim to promote or defend any particular *application* of Affirmative Action.

All of this is another way of pointing out that there is potentially a fundamental difference between an individual Muslim's perspective on a matter and a perspective that has the legitimate right to claim that it is Islamic. As a Muslim, one might adopt any number of views or habits that are either unrelated to Islam or even directly opposed to it. The mere fact that one is a Muslim—even an educated, committed Muslim—does not render one's views, sensibilities and actions Islamic. Nor does the fact that one knows Arabic and is able to read the Qur'ân, hadith and the books of lexicography and exegesis. Nor does one's training in Islamic law or jurisprudence or the ascetic/mystical tradition of Sufism. What renders a view Islamic—at least in terms that the Muslim community can recognize and validate as such—is the fact that it can trace a genetic relationship back to the sources of Islam, a relationship that is most easily recognized when mediated through the tradition of Muslim exegetical and jurisprudential discourse. This does not mean that the only views that can make the claim to be Islamic are those that are consistent with the established teachings of the four Sunni or one Shiite schools of thought. What it does mean is that the burden of proving that one is not prostituting religion to whim and self-interest is most effectively met by speaking through tradition.

What is really at issue, then, in the case of Affirmative Action, is the degree to which one is able to excavate from the sources and tradition of Islamic religious discourse themes, principles and precedents that enable one to speak convincingly and effectively to this issue. This is by no means an easy task, especially for Muslims in America, who are cut off from the mainstream of Muslim intellectual activity in a country where many of the issues they face have little or no precedent in the broader tradition of Muslim religious discourse. This explains why Muslims in America are often silent—not apathetic—about issues on which one would hope that they would speak out. This is also why, despite the fact that the overwhelming majority of American-born Muslims are black and thus much affected by the outcome of the Affirmative Action debate, we have yet to hear from them a clearly articulated Islamic position on the matter.

PROBING THE MYSTERY OF SILENCE

Part of this silence on Affirmative Action is a reflection of a broader ambivalence within the Muslim community at large

toward the question of participation in non-Muslim governmental structures and programs.¹ In the case of African-American Muslims, however, there is an additional factor, namely, the loss of an authoritative interpretive 'voice' via which to address issues of importance to them, as a distinct—indeed, the most distinct—American minority. This loss of authority was a direct result of the ultimate demise of what might be called the 'Protestant approach' to Islam represented in figures like Elijah Muhammad, Malcolm X or even Wārith Deen Muhammad, men who in crafting their programs and ideologies drew from, ignored and supplemented scripture with little to no regard for any tradition of how previous generations had understood the holy writ. This approach, which required no formal training, meshed well with the proletarian origins of these men and their primary identification with the plight of underprivileged blacks. What it conferred, however, in the way of interpretive license would in the end prove an ultimate source of weakness, as African-American Muslims came into closer contact with the supertradition of Muslim learning and scholarship (often in the form of distorted modern appropriations) from the Muslim world. In this encounter, the 'protestant approach' would be forced to the margin, and African-American Muslims would find themselves reduced to a position of abject intellectual and ideological dependency.

Two developments would facilitate the demise of the 'protestant approach.' The first, whose beginnings date back to the 1970s, was the massive increase in the number of Asian and Middle Eastern Muslims who became actively involved in Muslim community life in America. While it was clearly changes in U.S. immigration policy that increased the number of immigrant Muslims in America,² their increased identification with Islam was

1. For more on this point see Sherman A. Jackson, *Muslims, Islamic Law and Public Policy in America in American Public Policy and American Muslims* 51-83 (Int'l Strategy & Policy Institute, 2000).

2. Interestingly, according to James Parry Eyster, an immigration attorney in Ann Arbor, Michigan, the massive increase in the number of immigrants from Muslim countries, which began in the late sixties and early seventies, was a direct result of the efforts of blacks in the U.S. to eradicate racism. These efforts ultimately led the Kennedy and Johnson administrations to adopt the view that discrimination against non-(west) European immigration applicants was no different from the now discredited discrimination against blacks. This led to a relaxing of the extremely low quotas on immigrants from non-European countries. James Parry Eyster, conversation with author, August, 1998.

a function of a trend that started in the Muslim world following the failure of nationalism (among other isms) to deliver on the promise of a dignified modern existence. Coming out of this disappointment, many Asian and Middle Eastern peoples began to look to Islam as the new (or rediscovered) source of identity.³ To this should be added the tendency on the part of many immigrants to look to Islam as a means of reversing the sense of alienation and loss of self that they experienced upon settling in America. Over time, as more and more of these immigrants became involved in Islam, the lived reality for African-American Muslims underwent a significant change. Whereas earlier decades had witnessed an American Islam that was dominated by a black presence, African-American Muslims increasingly found themselves in the position of a political minority, even in instances where this was not numerically the case. This marginalization ran parallel to a second development, namely, the precipitous decline of groups like the Nation of Islam, the Dâr al-Islam movement, and other Muslim or Islamically-inspired groups within the black community. The cumulative effect of these two developments would be that blacks lost both their place of prominence in American Islam and their monopoly over what had functioned, for all intents and purposes, as a bone fide, indigenous tradition of Muslim thought and exegesis. As this tradition was displaced by one more heavily dependent upon Arabic and the traditional *'ulûm shar'îyah* as taught in the Muslim world, African-American Muslims lost confidence in their ability to articulate themselves in terms that were likely to be recognized and accepted as Islamic. This lack of confidence has continued well into the present era, as American-born Muslims (black and white) continue their struggle to come to terms with the 'new' basis of interpretive authority. Over the coming decade, one suspects that many more African-Americans will master these 'new' criteria, and we will hear many more black Muslim voices on issues of importance to them and the general American public.

This does little, however, to explain the silence on Affirmative Action among immigrant Muslims, whose linguistic (and in some instances educational) background would seem to privilege them under the 'new' criteria. Here, however, I would suggest that there are in fact two silences, one expressive, the

3. The bulk of the effect of this phenomenon on American Islam came from Muslims of Arab and Indo-Pakistani origins.

other mute. Most immigrant Muslims belong to the educated, professional and entrepreneurial classes. This class affiliation, coupled with their identification with many of the values of the conservative and Christian right (e.g., school prayer, abortion, school vouchers, drug-sentencing instead of drug treatment) predisposes them to the logic of the conservative platform as a whole. In addition, most immigrant Muslims come from highly stratified societies where there is little or no discourse around race and racial and ethnic disparity and enfranchisement. As such, they come to America having experienced little that would prepare them psychologically to accept the idea of limitations being placed on individual opportunity, their often romanticized notions of freedom in the West being a major reason behind their coming to America in the first place. Their silence, in other words, on Affirmative Action is not an expression of a retreat into non-commitment. It is expressive, rather, of a tacit endorsement of what exists in their minds as a legitimate status quo that is consistent with their experience, their material interests and their understanding of the basic moral, social and political teachings of Islam.⁴

Of course, this conservative, class-based view is not the view of all immigrant Muslims. But among those who do not share this perspective there is another type of silence, this one more reflective of a genuine inability to speak. This is the silence that many in the African-American Muslim community have had the most difficulty understanding. Backed by their claim of superior Islamic knowledge, immigrant Muslims are heard speaking out on all types of issues affecting Arabs and Asians in the U.S. and abroad. Yet, when it comes to issues like Affirmative Action they remain silent. Many African-American Muslims see this silence as a reflection of Arab and Asian self-centeredness, ethnocentrism and a patent insensitivity to the interests of non-Arabs and non-Asians. While this is undoubtedly true in many instances, it is probably far less often that Arab and Asian Muslims are silent for these reasons than they are for those I mentioned above. And even among those who can be so charged, insensitivity and self-interest do not tell the whole story; for the immigrant community is beholden to the same tradition of Muslim exegetical and jurisprudential discourse with which African-American Muslims

4. On one aspect of this understanding, see my comments on equality, justice and fairness below, pp 422-29.

themselves are now struggling to negotiate their responses to American issues. This tradition, as mentioned earlier, does not so easily lend itself to this task. For example, with the exception of the poor and slaves,⁵ traditional Islamic law recognizes no "discreet and insular" classes that might justify differential treatment on the basis of any permanent membership in a particular social group. Similarly, the relative dominance and sanctity in Islamic law of individual rights gives rise to a formidably high burden of proof for alienating private rights (e.g., of a proprietor to hire and fire as he pleases) in pursuit of broader social interests. In sum, even with the best of intentions, immigrant Muslims are bound to encounter difficulty in finding a way to get the tradition of Muslim exegesis and jurisprudence to speak to a matter like Affirmative Action. This difficulty will contribute no less to their silence than it does to that of other Muslims who are equally silent, including African and African-American Muslims. One need only consider that among African-Americans who have emerged as authorities in such movements as the *Salafiyah* or the *Jamâ'at al-tabligh* there has yet to appear anything of substance on this and related issues.

A MUSLIM VIEW ON AFFIRMATIVE ACTION

My own argument is that Islam, including the Qur'ân and Sunnah (or the normative practice of the Prophet Muhammad) emphatically supports the general concept of Affirmative Action. This support is only partially confirmed by the tradition of Muslim exegesis (*tafsîr*) and jurisprudence (*fiqh*): but it is in no way contradicted by that tradition. Islam's support for Affirmative Action is rooted primarily, however, *not* in a concern for African-Americans' economic or political interests qua economic or political interests. It is rooted, rather, in Islam's emphatic opposition to white supremacy,⁶ as a system of domination,

5. There is no recognition at all for "the descendents of slaves," as a "discreet and insular" class inordinately stigmatized by the legacy of slavery. This is in large measure explained by the fact that slavery in Islam was not race-based, and, as such, there were no identifying insignia, such as color, that would set the descendents of slaves off from others in society. Blacks, at any rate, did not have the largest representation as slaves in Muslim history. This distinction belongs, rather, to the Turks.

6. This includes all systems of supremacy as legitimizers and instruments of domination, including Arab supremacy and domination, or even male supremacy and domination. I simply limit myself here to white supremacy because it is the dominant hegemony in America.

whose daily assaults on black consciousness bludgeon the human spirit and simultaneously undermine and abuse the fact of black humanity. This process of short-circuiting blacks' efforts to realize their humanity, as a matter of divine fiat as opposed to some honorary recognition granted on the satisfaction of self-serving criteria imposed by the dominant culture, I identify with the Qur'ânic term "*fitnah*" which the Qur'ân characterizes as being worse than murder (*wa 'l-fitnatu ashaddu mina 'l-qatl*). Affirmative Action, I wish to argue, is a morally justified mechanism for undermining and ultimately replacing the present constellation of *normality, possibility and expectation* both on the part of the dominant and the dominated. This amounts, in concrete terms, to a program of radical and '*arbitrary*' enfranchisement, arbitrary because this is the only means through which the self-serving criteria of the dominant culture can ultimately be undermined. Otherwise, whatever gains are made end up reinforcing the very domination that these criteria promote. In the end, nothing changes about how we see, determine and interact with human worth and possibility in the world.

FITNAH AND THE REGIME OF WHITE SUPREMACY

In his provocative book, *White*, Richard Dyer observes that, "There is no more powerful a position than that of being 'just' human. The claim to power is the claim to speak for the commonality of humanity. Raced people can't do that—they can only speak for their race."⁷ In fact, Dyer insists that race is a tool of differentiation rarely applied to white people, particularly by whites themselves. "[T]o say that one is interested in race has come to mean that one is interested in any racial imagery other than that of white people."⁸ This habitual failure to see whiteness as a race, as an idiosyncrasy, with the same immediacy with which we see blackness or Hispanicness, puts white people in the position of being 'normal' or 'just people,' in contradistinction to everyone else, whose normalness and humanity is both negotiated and implicitly measured in relation to white people. Whiteness, in other words, reigns supreme precisely because it is invisible; and because it is invisible, whites enjoy the status of being "just people" in the most generic sense. The fears,

7. Richard Dyer, *White 2* (Routledge Press, 1997).

8. Id at 1.

assumptions, proclivities, prejudices and specific genius of whites take on the appearance of reflecting a transcendent “natural” order that is obvious to all save the stupid, the uncivilized or the morally depraved.⁹ The entire constellation of human worth, possibility and expectation is in turn indexed into this perception of “normal”. Non-whites, on the other hand, are ironically expected to conform to this “natural” order while at the same time they are assumed to be incapable of doing so. Even more importantly, however, the very functioning of this order as a criterion for normality denies or only provisionally grants non-whites the benefit of believing in their own minds, senses and experiences, in short in believing in their humanity.¹⁰ For this criterion functions in effect as the final authority (in determining, e.g., truth, utility or aesthetic value) beyond which there can be no appeal. This situation is far more critical for blacks than for other non-whites because the southernmost border of whiteness is a porous edifice through which other non-whites might reasonably entertain the hope of entering or participating in whiteness, as happened, e.g., with the Jews, the Irish, the Armenians and others.¹¹ Blacks, in other words, are threatened with a *permanent* denial or provisional recognition of their normalness and humanity. And it is this “subjunctive” reality that lies at the heart of what I referred to above as *fitnah*.

9. Dyer, who is careful to note that he himself is white, observes that “white people claim and achieve authority for what they say by not admitting, indeed not realizing, that for much of the time they speak only for whiteness.” Dyer’s stated aim is to bring people to see that this is how the position of white authority is achieved, “in order to help undermine it”. *Id.* at xiv.

10. Indeed, the Qur’ân itself equates the use of one’s God-given faculties for knowing God with being human, referring to those who do not use these faculties as being on a lower level than beasts:

And We have filled the depths of Hell with many a human and jinn who had hearts that they did not use for understandings, eyes that they did not use for seeing and ears that they did not use for hearing. Such individuals are like beasts; nay, they are even more astray!

See 7:179.

11. Dyer suggests that it is precisely the shifting, unclear and unstable borders of whiteness that have proved its strength. “Because whiteness carries such rewards and privileges, the sense of a border that might be crossed and a hierarchy that might be climbed has produced a dynamic that has enthralled people who have had any chance of participating in it.” See Dyer, *White* at 19-20 (cited in note 7). One wonders how much this contributes to Arab and Asian silence about white supremacy, particularly in light of their *legal* status in America as white versus their *social* status as non-white. While there is much talk among Arab and Asian Muslims about “the West,” rarely, if ever, is whiteness or white supremacy spoken of.

Etymologically, the word “*fitnah*” is a verbal noun derived from the Arabic root *fa-ta-na*, whose basic meaning is “to test or try”.¹² This testing and trying is more akin, however, to what we commonly refer to in English as a litmus test. *Fa-ta-na* refers to testing or trying for the purpose of seeing what a thing is made of or whether it can satisfy certain criteria or maintain a particular constitution in the face of various challenges. This basic meaning is captured in the standard example of *fa-ta-na* given in all classical Arabic dictionaries, namely, the putting of gold to fire in order to test its purity by seeing how many, if any, impurities come out.¹³

“*Fitnah*” and/or its derivatives occur some sixty-six times in the Qur’ân in various contexts and with multiple applications. Generally speaking, however, these can be divided into two categories: 1) *fitnah* that entails God’s testing and trying His servants; 2) *fitnah* that entails human beings ‘testing and trying’ other human beings. Examples of the first would be the verse, “Every soul shall taste death; and We visit you with good and evil as a test (*fitnah*) for you.”;¹⁴ or the verse, “Your money and your children are simply a test (*fitnah*) for you.”¹⁵ Examples of the second category would be the verse, “And fight them until there exists no ‘*fitnah*’ and religion is practiced solely out of devotion to God”;¹⁶ or the verse, “Verily those who test (*fatana*) the believing men and women and do not repent, theirs shall be the penalty of Hell and the blazing fire.”¹⁷ This second usage of *fitnah* connotes a fairly broad range of contexts and strategies. For this reason, “*fitnah*” in this second manifestation has been variously translated as “oppression,” “persecution,”¹⁸ “sedition”¹⁹ “temptation.”²⁰ In all

12. See Ismâ’il b. Hammâd al-Jawharî, in Ahmad ‘Abd al-Ghaffûr ‘Attâr, ed, *al-Sibâh tâj al-lughab wa sibâh al-‘arabiyyah* 6 vols 5:2175-7 (Dâr al-‘Ilm li al-Malâyiin, 1376/1956); Ibn Manzûr, Jamâl al-Dîn Abû al-Fadl Muhammad b. ‘Alî b. Ahmad b. Abû al-Qâsim b. Habqah, *Lisân al-‘arab* 6 vols 4:3344 (Dâr al-Ma‘ârif, n.d.).

13. *Sibâh*, 5:2175; *Lisân al-‘arab*, 4:3344; al-Râghib al-Isfahânî, Abû al-Qâsim al-Husayn b. Muhammad, in Muhammad Sayyid Kilânî, ed, *al-Mufradât fi gharîb al-qur’ân* 371 (Dâr al-Ma‘rifah, n.d.).

14. 21:35.

15. 64:15.

16. 2:193.

17. 85:10.

18. See, for example, the translation of Qur’ân 2:191 by M.M. Pickthall at 31 (Taj Co.Ltd., n.d.). See also Muhammad b. Jarîr al-Tabarî, *Jâmi’ al-bayân ‘an ta’wîl al-qur’ân* 30 vols 2:191-192, 2:349-351 (Mustafâ al-Bâbî al-Halabî, 1388/1968), & Muhammad b. ‘Alî b. Muhammad al-Shawkânî, *Fath al-qadîr* 5 vols 1:191, 1:192 (Mahfûz al-‘Alî, n.d.) for various interpretations of Companions and Followers on the meaning of *fitnah* in various verses.

19. See, for example, Mohammad Hashim Kamali, *Freedom of Expression in Islam* at 3, 4, 277-82 & passim (Islamic Texts Soc’y, 1997).

20. In this regard, the Prophet is reported to have said, “I have left no greater *fitnah*

of these applications, however, the basic meaning of the word remains in tact: a test, trial, provocation or act of oppression that seeks to draw on or expose human weakness. *Fitnah* from God seeks to expose human weakness for the purpose of nurturing a positive humility and a will to overcome. *Fitnah* from human beings is based on self-interest and aims at exploitation.²¹

It is precisely this element of drawing on human weakness in order to exploit people that explains, to my mind, the Qur'anic use of the term *fitnah*, as opposed to, say, *idtibâd* (oppression), *ta'dhib* (persecution) or *inshiqâq* (sedition) in those instances where commentators take *fitnah* to refer to these things. For these latter terms speak to the more superficial aspects of exploitation, i.e., the transparent, causal relationship between the abuses of the powerful and the reactions of the powerless. The Qur'an, meanwhile, appears to be more concerned with the deeper psychological/spiritual dimensions of exploitation, in short, with domination. For domination turns on the oppressor's success at reducing the oppressed to a state of self-contempt, whereby they internalize a vague but inextricable feeling that self-redemption can come only by living up to some criteria established by their exploiters. This is the mechanism via which exploitation is "normalized," made "invisible" and ultimately transcendentalized beyond accountability and critique. For the feelings of triumph that occur as one approaches redemption habitually obliterate any recognition of the falseness of the exploiter's criterion. This is also the means via which individuals are ultimately disabused of belief in their own minds and senses. Like George Orwell's 1984 protagonist sitting in his infamous "pain-chair,"²² objective truths are confronted agnostically and individuals are given over to formalized ideologies, popular morality or simply "the ways of the forefathers." Conscience, in other words, is bargained away in

for men than women." See Sh. Qâsim al-Shamâ'i al-Rifâ'i, ed, *Sabîh al-bukhârî* 9 vols 8:16 (*bâb al-nikâh*) (Dâr al-Arqam b. Abî al-Arqam, n.d.).

21. On this point, see al-Isfahâni, *Mufradât* 372 (cited in note 13).

22. See George Orwell, *1984* (Penguin Putnam Press, first published 1949). In what is perhaps the crowning scene of the book, the state officials place the protagonist, Winston, in a "Pain-chair" and one of them holds up four fingers and asks Winston how many fingers he sees. When Winston responds, "Four," the pain-chair is tweaked up, and he is told that there are five fingers before him. This questioning and tweaking continues until Winston finally loses his ability to believe in his own eyes. "How many fingers am I holding up, Winston." 'I don't know Four, five, six—in all honesty I don't know.'" Id at 208.

exchange for the rewards of conformity.²³ The Qur'ân's preoccupation with domination is thus grounded in the fact that *régimes* of unbelief (*kufir*)²⁴ (as opposed to individual *acts* of unbelief)²⁵ require domination in order to sustain themselves. For if left to their primordial senses (*fitrah*), humans are naturally predisposed not only to acknowledging and worshipping God but also to accepting themselves—including their superior or inferior intelligence, strong or weak constitution—as the choice and handiwork of God. Through the process of domination, however, even the most basic or known truths can evade acknowledgment or be undermined: "If you ask them, 'Who created you?', they will exclaim, 'God!' How, then, are they given over to lies?"²⁶ It here is that *fitnah* shows itself to be not only central to the Qur'ânic message but far more sinister than brute injustice (*zulm*), persecution or even murder (*qatl*). For tyrants and murderers receive limited to no psychological cooperation from their victims. Institutionalized domination, on the other hand, is an all volunteer system. While the victims of oppression habitually fight against their oppressors, the victims of domination only fight against their selves. This, to my mind, underscores the true meaning and profundity of the Qur'ânic declaration, "*wa 'l-fitnatu ashaddu mina 'l-qatl* (domination is worse than murder)." White supremacy, for its part, may not always pursue the same ends as the *fitnah* of the Qur'ân. But it is plainly a cognate institution, a consciously preserved system of normalized exploitation.

23. Among the many passages in the Qur'ân that attribute communities' refusal to follow the truth to their clinging to the ways of their forefathers, see 2:170, 5:104, 7:28, 10:78, 21:53, 43:22, 43:23 & passim.

24. I maintain, here, for the sake of convention, the common translation of *kufir* as "unbelief," "disbelief," the active participle, *kâfir*, being "unbeliever," "disbeliever." The Qur'ân, meanwhile, proceeds on the assumption that while humans can refuse to *acknowledge* the existence of or their debt to God, they cannot really disbelieve any of this, in the same way that one can refuse to acknowledge the existence of the sun but cannot truly disbelieve in it. It is this *refusal to acknowledge* that is captured in the Arabic word *kufir*, which in its original usage meant "to cover up." Thus, in pre-Islamic parlance, the night, the ocean and farmers were all referred to as *kâfir*, because they covered things up (in the case of the farmer the seeds he threw into the earth). In this light, perhaps a more accurate (but more awkward) translation of *kufir* would be "agnosticism," which refers more to a refusal or failure to acknowledge than to a refusal or failure to believe.

25. To some extent, this contrast of focus parallels the difference between the Qur'ân, on the one hand, and the theologians, on the other, the latter appearing to be far more concerned with defining specific acts of "heresy" or unbelief, with little attention to how or why these acts gain or sustain their currency.

26. 43:87. Similar statements appear at 10:30, 29:61, 31:25, 39:38, 43:9 & passim.

FITNAH AND THE HUMAN CONDITION: THE UNIQUENESS OF DIVINE
TRANSCENDENCE

But what is it about the human condition that enables some to dominate others in this fashion to begin with? If one's humanity is in fact a divine fiat, how is it that one can be brought to doubt it? Are not individuals themselves responsible for sustaining belief in their own humanity (not to mention belief in God)? And might not domination, then, be a 'natural' order, the Darwinian result of the interaction between those who assume their humanity and those who doubt it? Here my response draws upon a theological doctrine whose content is consistent with traditional Muslim theology but whose perspective is novel, being informed as it is by the realities of a marginalized minority in modern America.

There are perhaps few theological issues in Muslim intellectual history that have been more seminal than the question of God's transcendence versus God's immanence. This is at the heart of all the debates between the rationalist Mu'tazilites, Ash'arites and Mâturîdites and the anti-rationalist Traditionalists (often identified as Hanbalites). For the Mu'tazilites, God was too transcendent to have attributes; for such attributes would either be eternal or temporal. If they were eternal, there had to exist a multiplicity of eternals. If they were temporal, God was subject to temporality. Both of these views constituted for the Mu'tazilites a violation of Islamic monotheism (*tauhîd*). Within Sunnism, however, the Mu'tazilites were unable to maintain this position in the face of criticisms by the Ash'arites and Mâturîdites, on the one hand, and the Traditionalists, on the other. These are the three Sunni theological schools that have come down to us in modern times. At the center of virtually all of the debates among them is the problem of how both to affirm God's attributes and sustain God's transcendence without falling into anthropomorphism, on the one hand, and without emptying God's attributes of concrete substantive meaning, on the other. Whatever the approach taken to this dilemma (and metaphorical interpretation (*ta'wîl*) was the most common), no school of Muslim theology has showed a willingness to compromise on the question of God's transcendence.²⁷

27. For a brief and accessible survey on the main theological movements in Islam, see Binyamin Abrahamov, *Islamic Theology: Traditionalism and Rationalism* (Edinburgh U Press,

My approach to the question of God's transcendence is of a different thrust. On my approach, not only is God transcendent, God is *unique* in this transcendence, i.e., *only* God is transcendent. This transcendence entails, however, not merely a "vertical" beyondness but a beyondness that speaks to the complete non-contingency of God's "selfhood" and its total imperviousness to the world "around" God. God is unique in this capacity inasmuch as God alone possesses a purity of being by virtue of which God remains God in all God's splendor, true to God's self-determined 'character', regardless of the conditions prevailing in the universe. This is not a new idea in the history of Muslim theology. The traditionalist Ibn Taymīyah points to a similar meaning when explaining the verse, "*Allāhu samād*" (God is pure) in the 112th chapter of the Qur'ān.²⁸ It is similarly this aspect of being impervious to outside forces that the founder of the rationalist Māturīdite school, Abū Mansūr al-Māturīdī (d.333/944), identifies with "godhood" (*ulūbhīyah*).²⁹ The novelty of my approach resides, however, in the emphasis I wish to place on the *uniqueness* of God's imperviousness as opposed to the utter perviousness of human beings. The doctrine of divine transcendence, in other words, is not, on my approach, merely a statement about God; it is equally and inextricably a statement about humans. And to the extent that what it says about humans is obscured or compromised, so is what it says about God!

Human beings enjoy nothing of the transcendence, purity of being or 'beyondness' that is uniquely characteristic of God. Human beings are, rather, a mere potentiality, ensconced in and partially determined by history. Even the relationship they enter into with God is contingent upon the social and political environment in which they live. The entire edifice of Islamic law (*sharī'ah*), including the dictum to command good and forbid evil (*al-amr bi 'l-ma'rūf wa 'n-nahy 'ani 'l-munkar*), is predicated upon this fact. Moreover, to deny this fact of human perviousness is not simply to undermine the value and duty of social activism but to

1998). Note, however, that some of Abrahamov's definitions, for example, of traditionalism, rationalism, anthropomorphism, require revision. On this see Sherman A. Jackson, *The Boundaries of Theological Tolerance in Islam* (Oxford University Press, 2001).

28. See, for example, Ahmad Ibn Taymīyah, *Tafsīr sūrat al-ikhlās* 13-17 (Dār al-Tibā'ah al-Muhammadiyah, n.d.).

29. See Fathalla Kholeif, ed, *Kitāb al-tawhīd* 23 (Dar el-Machreq, 1986). Al-Māturīdī's distinction between *rubūbhīyah* (lordship) and *ulūbhīyah* (godhood) should not be confused with this distinction as it was later articulated and popularized by Ibn Taymīyah. Al-Māturīdī is almost certainly not Ibn Taymīyah's precedent in this regard.

challenge the very *uniqueness* of God's transcendence, a different but perhaps no less blasphemous form of associationism (*shirk*).

It is this dimension of the human condition that renders people susceptible to *fitnah*, of being disabused of their most basic beliefs and even of their primordial nature. Such a view is likely to draw fire from those who are oblivious to the many unearned advantages and conferred dominance that they enjoy in society. For, unable (or unwilling) to see or acknowledge these historical gifts and accretions, they can only understand their position in life as being the result of individual effort. But the Qur'ân goes flatly against this notion of transcendent super-humans. And while it holds individuals ultimately responsible for the choices they make, it never questions the impact of environment. Indeed, so great is the potential impact of environment that the Qur'ân exhorts people to migrate from places that prove non-conducive to a righteous and dignified existence.³⁰ Even the prophets are not immune to the forces and pressures of their social environments. Thus, for example, the Prophet Muhammad is at one point reminded:

*Indeed, they came close to disabusing you (yaftinûnaka, i.e., from fitnah) of what We had revealed to you, so that you might falsely attribute to Us something other than this, at which time they would have taken you to be their close friend. And had We not strengthened you (against this) you would have been prepared to cede a little something to them.*³¹

Fitnah, in sum, is a play on the human condition. It is possible precisely because we are not transcendent but human.³² Its perpetrators simply invest in their innate knowledge of human contingency. Ironically, however, it is precisely this recognition that renders them in the end perhaps less blasphemous than those of us who deny the nature and possibility of *fitnah*. For at least the perpetrators of *fitnah* acknowledge the contingency and

30. See, for example, 4:97:

'Verily' the angels (shall) say to those who are in a state of having given themselves over to wrongfulness at the time they meet their appointed death, 'What were your circumstances?' They (shall) reply, 'We were weak and oppressed in the land.' They (the angels shall) then ask, 'Was not God's earth spacious enough for you to migrate to another place?' These are the people whose resting place shall be Hell, a grievous end indeed—except those men, women and children who were (truly) weak and oppressed and unable to concoct a stratagem or find a way out. These are the people whom God may pardon. And God is ever pardoning, ever forgiving.

31. 17:73-74.

32. A fact almost certainly related to the meaning of the verse, "... and human beings were created weak (*wa kbûliqa 'l-insânu da'ifan*)."³² See 4:28.

vulnerability inherent in the human condition. By denying, on the other hand, this human susceptibility to *fitnah*, we deny in effect the uniqueness of the transcendence of God.

AFFIRMATIVE ACTION: A QUR'ÂNIC PRECEDENT

If *fitnah* is indeed central to Qur'ânic discourse and if Affirmative Action is both a legitimate and an effective means of overturning the effects of *fitnah*, one should expect to find some indications of this in the Qur'ân itself. I wish to turn now to the matter of Affirmative Action as a Qur'ânic response to *fitnah*.

As my point of departure I choose the Qur'ânic depiction of the Moses/Pharaoh saga. This is the most oft-cited and thoroughly depicted narrative in the Qur'ân. Indeed, Moses is the most oft-cited prophet; and after Satan himself, Pharaoh is the most villainous and oft-cited character, being mentioned no less than eighty-four times by name. This suggests that the Moses/Pharaoh story was intended to be taken as a broader framework within which to understand other less organically organized material in the Qur'ân, rather than as a series of atomistic details to be appended to some larger, more central narrative.

The Qur'ânic critique of Pharaoh operates on two levels: 1) his status as a vainglorious tyrant whose delusions of grandeur brought him to imagine that he was divine; and 2) his status as the sponsor of a regime that artificially divided the people of Egypt, condemning a segment of the population to a life of subjugation and scorn. To be sure, these two aspects of the Pharaoh's profile were intimately connected. It was his delusion of godhood that brought him to believe that he—rather than Moses' people's God-given endowments—could determine not only the role and status of the Children of Israel but their very perception of reality, including their perception of God.³³ The Children of Israel, meanwhile, were faced with limited choices in this situation. They could: 1) rationalize their circumstances and seek to reconcile themselves to the reality of being dominated; 2) distance themselves, to the extent possible, from those characteristics and tendencies that defined them as a distinct

33. At one point, for example, when Moses categorically proves his prophethood through miracles granted by God and the Children of Israel, along with Pharaoh's magicians, declare their belief in the one true God, Pharaoh erupts: "Do you dare believe in him before I have given you permission to do so?" See 7:123; 26:49; 20:71.

minority. This distancing option was apparently acted upon by a figure identified in the Qur'ân as Qârûn, who abandoned the Children of Israel and became a member of the house of Pharaoh, in which capacity he amassed so much wealth that the Qur'ân says that even a group of muscle-bound he-men would have difficulty carrying the keys to his treasures.³⁴ But even from this exalted station, Qârûn would remain unable to affect the overall condition of the Children of Israel; for, alas, he had entered into the house of Pharaoh on pharaonic terms, as an 'honorary' Egyptian. The most he would be able to achieve in this capacity would be an augmented capacity for *consumption*. To shape life, on the other hand, to be a *co-producer* of the parameters that defined social reality remained beyond his capability. Indeed, his individual success in the face of Egyptian chauvinism would only confirm his status as a follower who could do nothing to alter the perception or the opportunities of the Children of Israel. Clearly, the path chosen by Qârûn was not the answer for the people of Moses. Instead, this situation called for what might be considered a divine act of affirmative action: the gratuitous, "arbitrary" election of a man *from among the oppressed themselves*, to challenge the "naturalness" of the status quo, to shatter the boundaries between the valued and the valueless, to rewrite, in short, the criteria for a dignified and meaningful existence. Enter Moses.

Moses' mission to Pharaoh covered both the theological *and* the social aspects of Pharaohism. Not only did Moses proclaim divinity to be the exclusive preserve of God, he insisted that Pharaoh free the Children of Israel. For our present purposes, however, there is an additional dimension to Moses' role that calls for attention. In the opening segment of the twenty-eighth chapter of Qur'ân we read the following:

T.S.M. These are the verses of the Book that clarifies. In truth We relate to you (O Muhammad) news of the affair of Moses and Pharaoh, for a people who are comforted by the truth. Indeed Pharaoh had exalted himself in the land and divided the people into groups, one of which he exploited, executing their sons and sparing their women. Truly was he among those who spread corruption in the earth. But it is Our will that we bestow Our favor upon those who have been exploited, and that We raise them to the status of leaders, and that We make them the heirs (to Our legacy).³⁵

34. 28:76.

35. 28:1-5.

The last of these verses, to my mind, is directly relevant to the matter of Affirmative Action. While it is true that Moses' mission to the Pharaoh ended with the physical destruction of the latter, this alone would not be sufficient to raise the Children of Israel to the promised position of leadership. To be a leader, an *imâm* (as in the verse) is to display qualities that render one a model to be looked up to and emulated, ideally in an atmosphere free of manipulation and domination. But in order for the Children of Israel to be able to exemplify qualities that would render them *imâms*, they—as well as the rest of Egyptian society—would have to be restored to a basic belief in their own worth and ability. It is here that the significance of God's "arbitrary" choice of Moses *from among the disenfranchised and despised Children of Israel* comes to the fore. For God could just as easily have chosen this prophet from among the ruling class of Egyptians. Indeed, even at the highest echelons of Egyptian society stood some who believed in the message brought by Moses. The Qur'ân, in fact, gives a vivid portrayal of "the man from the House of Pharaoh who believed but concealed his belief."³⁶ There was, in other words, no shortage of viable candidates from among the dominant class of Egyptians to carry the mantle of prophethood. And, since the Egyptians, not the Children of Israel, were in power and thus the primary object of the call for reform, one might have expected the Qur'ân to continue its practice of choosing prophets from noble backgrounds. But this was not to be in the case of Moses. Instead, this prophet would be conspicuously chosen from among the despised and disenfranchised Children of Israel. And it would be precisely this very fact that would alter the entire constellation of possibility and expectation. For this choice paid no homage whatever to the criteria imposed by the Egyptians. As a result, it shattered the existing expectation among Egyptians and the Children of Israel as to whom great and important things could come from. No longer would the Children of Israel entertain the wish of becoming honorary Egyptians as the only means to a dignified existence. Rather, by publicly and directly (i.e., arbitrarily) changing the status and possibilities of a member of the disenfranchised class, God set in motion the forces to topple the regime of Egyptian chauvinism, not only on the ground but in the

36. See 40:28 ff.

souls and minds of the Children of Israel and the Egyptians. It is here and in the fact that the story of Moses and Pharaoh occupies such an exalted and ubiquitous place in the Qur'ân that I see, from an Islamic perspective, both the importance of dismantling regimes of domination, particularly those based on racial or ethnic supremacy, and of Affirmative Action as a legitimate and viable means of doing so.

OBJECTIONS

Even among those who are inclined to agree with my reading of the Qur'ân, full assent is likely to await treatment of at least some of the objections that have been raised by the opponents of Affirmative Action. In the space remaining, I should like thus to respond to what I believe to be the most significant objections. My remarks in this regard will serve the dual purpose of addressing both Muslim and non-Muslim critics, since many of the objections to Affirmative Action are likely to be shared by both groups.

As I see it, there are three major objections to Affirmative Action: 1) that it violates the principle of equality; 2) that it violates the principle of justice or fairness; and 3) that it forces present and future generations to bear the burden for a situation that was not of their making. On the basis of these three principles, variously configured, opponents of Affirmative Action have been able to marshal what appear to be, *prima facie*, some rather convincing arguments. This is in no small measure rooted in the fact that these principles—equality, fairness and responsibility—are firmly anchored in the collective consciousness of Americans as a whole, which is why they were initially appealed to as a justification *for* Affirmative Action. What has occurred of late, however, is that opponents of Affirmative Action have succeeded at hijacking these principles and claiming them as their own. And as long as these principles remain in the employ of their new masters, they will continue to contribute to the waning popularity of Affirmative Action. My approach will consist, therefore, of an attempt to reclaim these principles by arguing that opponents' insistence on applying them as *absolute* or *first-order* principles actually undermines their efficacy and renders them, as far as Affirmative Action is concerned, inadequate, irrelevant or simply false.

EQUALITY

I begin with the principle of equality. A typical example of anti-Affirmative Action arguments based on the principle of equality is found in the Supreme Court opinion in the famous Adarand case that challenged minority set-aside programs. In that case the court wrote: "A free people whose institutions are founded upon the doctrine of equality should tolerate no retreat from the principle that government may treat people differently because of their race for only the most compelling reasons."³⁷

In his concurring opinion, Justice Clarence Thomas added that "Government cannot make us equal; it can only recognize, respect, and protect us as equal before the law."³⁸ At bottom, these opinions imply that government can and will countenance even the most obvious and egregious *substantive* injustices as long as the perpetrators thereof are careful to avoid any *procedural* irregularities. Equality, on this construction, is rendered the first and final consideration, beyond whose verdict there can be no appeal. Affirmative Action, with its clearly unequal treatment of whites, is simply unacceptable.

I would suggest, however, that the entire enterprise of invoking equality as an absolute, first-order principle is far more seductive than it is substantively right or practical. In fact, those who invoke equality *both for and against Affirmative Action* invariably proceed on the basis of the erroneous assumption that by treating humans equally we realize all (or even most) that is to be realized in human relations. In reality, however, equality rarely if ever enjoys this proud preeminence among human beings. Human beings want first and foremost to be treated not equally but as humans, whereby the human self can be actualized without having to seek validation or permission from universalizing subjectivities that set themselves up as objective criteria. No Jewish person would have drawn consolation from Hitler's claim (even if it were true) that he was treating them the same as he treated the gypsies and all the other groups who opposed his programs. Equality, in other words, in the absence of a dignified human existence, simply has no meaning. Moreover, if the moral ground upon which we as a community stand is not strong

37. See George E. Curry, *The Affirmative Action Debate* 161 (Addison-Wesley Pub Co., 1996).

38. *Id.*

enough to support the promotion of a dignified existence for blacks as "a most compelling reason" for the unequal treatment of whites, we should ask whence that same moral ground derives the strength to support the principle of equality itself!

To be sure, many Muslims will at first blush be discomfited by this line of argument. This is because many, if not most, Muslims have come to see equality (along with justice) as the grand principle of Islamic social ethics. This 'belief', however, in equality as a first-order principle, is far less the result of a spontaneous reading of Islam than it is a reaction to Western criticism on such matters as the status of women and religious minorities in Muslim lands. It is the attempt, in other words, to stave off charges of *inequality* that has elevated equality to this preeminent station. Otherwise, equality in the abstract would hardly be looked to as a master principle in Islam. This status would be reserved, rather, for the so-called "five compelling interests" (*al-darûrât al-khams*), i.e., preservation of life (*hifz al-nafs*), preservation of religion (*hifz al-dîn*), preservation of progeny (*hifz al-nasl*), preservation of property (*hifz al-mâl*) and preservation of sanity (*hifz al-'aql*) (and some jurists add dignity (*hifz al-'ird*)). Equality, in other words, in a non-apologetic atmosphere, would be seen to be subservient to the promotion and preservation of these interests. And in this capacity, it would become clear that Islam may occasionally require that people be treated *unequally*, in order to avoid the obliteration of these compelling interests!³⁹ This is easily confirmed by the Prophet Muhammad's all-too-apparent readiness to engage in all types of apparent contradictions. One party he rewards for a deed; another receives nothing for the same act.⁴⁰ One party is pardoned for a

39. For more on the five-compelling interests, see Sherman A. Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shibâb al-Dîn al-Qarâfi* 59-62, especially 60 (E.J. Brill, 1996).

40. For example, the incident involving the Companions at the Battle of Hunayn following the Surrender of Mecca is well known. Here non-Muslims and newly converted Muslims were lavishly treated to the spoils of the Battle, while the Helpers (*Ansâr*), who had sacrificed life, limb and property for the entire period of the Prophet's stay in Medina received nothing. The compelling interest here was apparently the preservation of religion: By treating these new and non-Muslims (all of whom represented the old Meccan aristocracy) with favor, the Prophet was seeking to open up psychological space via which they could embrace Islam as their own, as opposed to resenting it as a capitulation to the Prophet. At sixty-one years old, the Prophet knew that any lingering Meccan resentment would likely result in a riposte after his imminent death.

certain indiscretion; another is summarily punished.⁴¹ In sum, equality in Islam is but one among a number of *competing* principles and interests, any one of which, depending on circumstances, might be enough to nudge equality to the margin.

This 'sliding-rule' application of the principle of equality is also reflected in Muslim law and jurisprudence. In the *Ashal al-madârik*, a standard and authoritative manual of Islamic law, we read the following:

"If one who is indigent and compelled by hunger happens upon the provisions of one who is well-to-do and the latter refuses to sell or donate some of these provisions to him, the indigent one should simply take it. And for this he will not be held liable." Shaykh al-Dardîr added: "The indigent one should even go so far as to fight the owner for a share of these provisions, after serving the latter notice that he is indigent and in need. And should this fighting result in the death of the owner, the indigent one would not be held liable under the rules of intentional homicide. If, on the other hand, the owner ends up killing the indigent one, he would be liable under the law of intentional homicide."⁴²

Clearly, these two individuals are not being treated 'equally'. Nor would any other well-to-do person who violated this owner's property enjoy the same legal considerations as our indigent friend. But who would argue in favor of formal equality in such a case? This situation calls not for equal treatment but for pragmatic, humane treatment. In this particular case, the principle of equality shows itself to be both *false* and *irrelevant*. And it is in light of situations like this that Islam rejects the blind pursuit of equality as an end in itself.

Beyond this criticism of the uncritical application of the principle of equality, a second criticism is that it is effective only in situations where one wants to maintain the status quo among parties who already enjoy parity with each other. Where the aim, however, is to *transform* the status quo between unequal parties, reliance upon the principle of equality is actually

41. The infamous Affair of the Lie (*Khabar al-ifk*) for their part in which all of the culprits were punished except 'Abd Allâh b. Ubayy is a radiant example of the Prophet's pragmatism. Given the subversive stance and personal opposition of 'Abd Allâh b. Ubayy to the Prophet, to punish him would have run the risk of being seen as carrying out an act of *personal* vengeance. Clearly, as a prophet, avoiding this stigma outweighed any earthly punishment to be meted out to Ibn Ubayy.

42. See Abû Bakr al-Kishnâwî, *Ashal al-madârik sharh irshâd al-sâlik fi fiqh imâm al-a'immab mâlik* 3 vols 2:63 (Îsâ al-Halabî, n.d.).

counterproductive. The classic demonstration of this is provided by the following popular anecdote:

The white team and the black team are playing the last football game of the season. The white team owns the stadium, owns the referees and has been allowed to field nine times as many players. For almost four quarters, the white team has cheated on every play and, as a consequence, the score is white team 140, black team 3. Only ten seconds remain in the game, but as the white quarterback huddles with his team before the final play, a light suddenly shines from his eyes. "So how about it, boys" he asks his men. "What do you say from here on we play fair?"⁴³

Here again the principle of equality proves itself *inadequate* to accommodate the circumstances at hand. In a similar fashion, though substantively valid, it is out of place as an absolute, first-order principle in the debate over Affirmative Action. For the entire justification for Affirmative Action, from my perspective, is to dismantle the regime of white supremacy, such that the range of human worth, possibility and expectation is changed, both in the minds and hearts of blacks and whites. This Affirmative Action cannot do if principles such as equality are used for the very purpose of sustaining an unequal status quo.

JUSTICE/FAIRNESS

As for the issue of justice or fairness (*'adl*) one of the standard arguments against Affirmative Action is that it constitutes a form of reverse discrimination. As such, it is simply neither fair nor just. Here again my response is not that justice is not an important and substantively valid moral principle. Indeed, the Qur'ân emphatically invokes it in several places. "Do not let the mistreatment of others divert you from acting justly. Be just! That is closest to God-consciousness."⁴⁴ And "O you who believe, be upholders of justice, witnesses for God, even if against yourselves, your parents or your next of kin"⁴⁵ So central is the principle of justice to Islam that several of the Ninety-Nine Names of God revolve around the notion of justice: e.g., *al-Muqsit*, *al-'Adl*, *al-Hasib*, *al-Muntaqim*, *al-Hakam*. There is no argument, in other words, against the principle of justice

43. Curry, *Affirmative Action* at 141 (cited in note 37).

44. 5:8.

45. 4:135.

itself. Problems arise, however, upon the failure to distinguish between two types or levels of justice. The first type, *formal* justice, or what we might call abstract or decontextualized justice, is roughly synonymous with equality. The second type, *concrete* or contextualized justice, is best understood by comparison with its opposite, i.e., injustice or what the Qur'ân refers to as "*zulm*." Though commonly translated as "injustice," *zulm* is formally defined as "putting a thing out of its proper place (*wad' al-shay' fi ghayr mawdi'ih*)."⁴⁶ Concrete justice, then, again as the opposite of *zulm*, may be defined as "the putting of a thing in its proper place." Now, the problem with opponents of Affirmative Action is that they tend to conflate these two forms of justice. This enables them to skirt the question of whether an action that violates the principle of formal justice must also, *ipso facto*, be inconsistent with the dictates of concrete justice. As a result, they are able to condemn Affirmative Action as simply "unjust" without bearing the burden of proving that it violates the principles of both formal *and* concrete justice. This, I submit, is itself not only unjust but misleading, as I shall presently try to show.

The essential difference between formal and concrete justice is that while the former assumes an abstracted or ideal context, the latter assumes a context in which other factors and principles compete for consideration. The outcome of this competition is informed, meanwhile, by a society's overall vision of what it should be, in the case of Islam, e.g., the so-called "compelling interests" mentioned in my discussion of equality. It is only on the basis of such consideration that an action's "proper place" can be determined and the action itself properly placed. Justice, then, i.e., concrete justice, comes to reside in action taken as a result of duly considering all the relevant factors. Without such consideration, there can be no determination of an action's proper place and thus no concrete justice. Formal justice, meanwhile, is only properly invoked under circumstances where there are no competing principles and factors, again, in light of a society's overall vision of what it aspires to be. To invoke formal justice in circumstances other than these will actually result in the commission of "injustice," or *zulm*, i.e., the putting a thing out of its proper place (*wad' al-shay' fi ghayr mawdi'ih*).

46. See, for example, al-Jawhari, *Sihâb* 5:1977; Ibn Manzûr, *Lisân* 4:2756.

Let me try to demonstrate my point here through the following trite but, I think, useful example. My office at the University of Michigan is on the third floor of a building called the Frieze building. In the morning when I enter that building, I usually take the elevator, rather than climb the stairs. As I approach the elevator, I usually find a small crowd of people gathered there waiting to go upstairs. When the elevator arrives, we all board and proceed to push the buttons corresponding to our respective floors. It is here that the principle of formal justice gets marginalized in favor of some other principles. The Frieze building has four floors, and some of the people who are already there when I arrive are waiting to go to the fourth floor. Though I arrive *after* these people, I end up getting taken to my floor *before* they are taken to theirs. Yet, nobody on the elevator complains. And the reason that nobody complains is that they all recognize that *order* and *convenience* collude to render formal justice irrelevant and concrete justice a matter of each person exiting the elevator whenever it arrives at their floor. In other words, while the principle of formal justice is being violated, no one would argue that I was acting “unjustly” for exiting the elevator before someone else who arrived before me. Similarly, while one might condemn Affirmative Action as a violation of formal justice, before going on to condemn it as simply “unjust,” one should make sure that there are no other considerations in light of which Affirmative Action might prove itself to be consistent with the dictates of concrete justice.

Having said this much, I should add that *supporters* of Affirmative Action should also recognize this distinction between formal and concrete justice. Once this is done, they can abandon the practice of trying to convince qualified whites (or others) who are denied admission or promotion that they have been treated “justly.” They have not. And Affirmative Action is neither formally just nor fair, *even if it may be justifiably formally unjust or unfair*. One of the most unfortunate ironies of the Affirmative Action debate is that those who support Affirmative Action often perpetuate against white people the single most humiliating offense that the latter have inflicted upon them, namely, the denial that whites are suffering a harm or disadvantage that they know they are suffering. This, in my view, only exacerbates the problem and leads whites to becoming even more firmly entrenched in their opposition to Affirmative Action. White people are people too.

And they too have a basic need to be treated humanely. This need is thoroughly undermined, however, when we inflict upon them a little bit of 'reverse domination' by telling them that something they know—and we know—is happening to them is merely a figment of their imagination.

BEARING THE BURDEN OF THE PAST

We come finally to the problem of subsequent generations bearing the burden of their ancestors' deeds. In Islam, it is true, there is no doctrine of original sin. The notion, as such, of our inheriting the sins of our ancestors is foreign to Islam. Having said this much, there is a certain subtlety to the Islamic understanding of the relationship between former and latter generations that must be grasped if we are not to be led astray. While the Qur'ân states on numerous occasions that, "[n]o soul shall be made to bear the burden of another,"⁴⁷ this must be understood only in connection with each individual's standing on the Day of Judgment, where neither ancestors nor descendents will be made to account for the sins one commits. This is entirely separate from the question of whether, on the level of everyday existence, you and I are affected by the deeds and misdeeds of our ancestors. (By ancestors, I mean of course not simply our bloodline but the entire network of community members from whom we inherit present reality.) Here the Qur'ân is equally emphatic in pointing out that human beings are not born into social vacuums, and that the edifice of social, political, economic and religious reality erected by one generation can be so powerful as to nearly *determine* the predisposition of its successors, fundamentally informing their outlook and prejudices and the entire range of unearned advantages and disadvantages with which they go on to face life. At one point, for example, in recalling the story of Noah and his people, the Qur'ân tells us how Noah's people rejected him and how Noah and his followers were saved on the ark. Then, the Qur'ân continues, God sent messengers, each to their people, with clear signs. But these people were not given to accept the truth brought by the messengers, "*because those before them had rejected them. This is the fashion by which God seals the hearts of the transgressors.*"⁴⁸

47. See, for example, 6:164; 17:15; 39:7; 53:38 and passim for similar verses.

48. 10:74.

The point of all of this is that, willy-nilly, we are affected by the deeds of our ancestors. We enjoy the advantages that they pass down to us. And we bear the burden of their misdeeds. It is only in the name of *ideology* that we claim the right of exemption from the effects of our ancestors' actions. This claim has no basis whatever in reality.

This is not at all to say that present generations are *morally* responsible for the reality they inherit. This is an important point to make, I think, because oftentimes supporters of Affirmative Action speak in ways that suggest that the present generation is both practically and morally responsible for the entire history of racial discrimination. This is wrong and counterproductive. The most the present generation can be shouldered with is the responsibility for overturning that legacy. This responsibility includes, of course, a willingness and commitment to pay the price of putting things right.

CONCLUSION

Every society seeks to establish criteria on the basis of which its members can earn respect and the right to marginal material comforts. To the extent that such criteria reflect the input of all its constituent groups, the genius, strengths and sacrifices of all are likely to find just reward. But when the process of establishing these criteria is monopolized by one group, this can only result in domination. And once this occurs, such domination can only be broken by violating the very criteria themselves. For, to reward only those who succeed on the basis of such criteria is merely to perpetuate the system rather than correct it. It is to confirm and give credence to a system of institutionalized *fitnah*, itself, on my reading of the Qur'ân, an even greater evil than naked injustice or brute oppression. In such situations, it is only through radical, 'arbitrary' enfranchisement that the process of redress is likely to begin. For only in this fashion is the pool of criteria-makers likely to be joined by those who will actually introduce change, change that will broaden the prism through which talent and genius are recognized and values and aesthetics established and expressed. Moreover, the presence in high places of those who are not a product of the old criteria will itself likely change the constellation of possibility and expectation among others in society. The whole point, then, of affirmatively affording blacks

and other minorities greater economic and political opportunity becomes not an end in itself but a means to the ultimate goal of dismantling the regime of white supremacy. It is from this perspective that I argue that the Islamic tradition supports the institution of Affirmative Action.