Honoring Contracts as a Foundation of Peace
A Shi‘ah Articulation

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> Treaties are the bones and sinew of the global body politic, making it possible for states to move from talk through compromise to solemn commitment. They are also its moral fiber, the evidence that governments and people have pledged their “full faith and credit” to one another. [1]

The question of obligation upon which contracts and promises are based has been a long-lasting challenge precisely due to its centrality in defining the meaning and scope of human interaction in society. In ancient times, Hans Wehberg observes, this principle was developed in the East by the Chaldeans, the Egyptians, and the Chinese in a noteworthy way. According to the view of these peoples, the national gods of each party took part in the formation of the contract. The gods were, so to speak, the guarantors of the contract and they threatened to intervene against the party guilty of a breach of contract. So it came to be that the making of a contract was bound up with solemn religious formulas and that a cult of contracts actually developed. [2] Philosophers delving into moral, legal, and political philosophy as well as those dealing with economics and international relations have also had to find a justificatory platform for the inviolability of contracts. The question of obligation can be re-evaluated through the prism of human security broadly conceived. Not only is legal security, which entails the provision of a foundation to guarantee that contracts will be fulfilled, one of the major aspects of human security, it is the notion of social trust at the heart of social security, which also depends on the obligatory nature of promises.

This paper will look into some of the most consequential themes and solutions for the question of *pacta sunt servanda* [3] in the history of Western philosophy. Consequently, it will shed light on a Muslim understanding of contracts based on scripture and one of the well-established doctrinal documents in Shi‘ah Islam. Finally, a brief section will review the implications of this revisit of pacta sunt servanda for “political Islam.”

The exogenously given and unproblematized character of pacta sunt servanda renders it a somewhat intractable notion, especially when it comes to taxonomic issues. As such, the typology presented here should not by any means be interpreted as a clear-cut distinction between different themes. Quite the contrary, many combinations of different themes are conceivable. However, it is pedagogically useful to distinguish eight approaches to pacta sunt servanda in Western philosophy: Roman law, Hobbesian, Lockean, customary, legalist/Rawlsian, linguistic/constructivist, Kantian, and finally natural law.

It is possible, however, to classify these themes under two major headings: functional approaches that institutionalize obligation based on the utility of pacta sunt servanda (i.e., Roman law, Hobbesian, and Lockean); and essentialist approaches that bestow a sine qua non quality upon pacta sunt servanda (i.e., customary, legalist/Rawlsian, linguistic/constructivist, Kantian and natural law).

Pacta Sunt Servanda in Western Legal Philosophy

In Roman law, obligation is a “legal tie” arising from the notion of personal liability, that is, the seizure of the debtor’s body unless he or she fulfills the contract. This is a law of obligation dealing with in personam, not in rem, meaning that the [body of the] person and not his or her properties would be the guarantee of the contract. [4] Here, the binding character of contract is a posteriori, meaning that the consequences of adherence or non-adherence to the contract are the basis for the obligation. The obligation is a functional necessity. The instrumentality of pacta sunt servanda is negative: it is to avoid personal insecurity. In such a situation, the consent of the parties (especially those who are in the inferior positions) in the creation of the contract is generally trivial. Naturally, in such situations, contracts are not “self-referential,” meaning that there is a need for an extra-legal foundation. In the case of Roman law, this extra-legal entity was the structure of the Empire that laid down and reinforced Roman law and therefore guaranteed the fulfillment of contracts. Roman law itself was based on the notion of “special rights.” More than any other theme, the Roman law approach seems to implement the literal meaning of pacta sunt servanda; that one is the servant of the pact. [5]

Similar to Roman law approach, the Hobbesian approach to pacta sunt servanda asserts the functional necessity of fulfilling contracts. [6] It maintains the instrumentality of pacta sunt

servanda is a negative one; though in this case, instead of personal liability, pacta sunt servanda is a vehicle to escape the dreaded “state of nature.” The legitimacy of pacta sunt servanda is ex post facto supported by the undesirable consequences of dishonoring contracts, thus a posteriori again. It must be mentioned, however, that this is not how Hobbes himself treated contracts. In labeling this theme Hobbesian, the authors follow the common—often simplified—reading of Hobbes in which the state of nature (perceived as the state of extreme personal and collective insecurity) is central in understanding human interaction. On this matter, a Hobbesian ethic is more sophisticated, with an evident role granted to science in shaping human knowledge about how to attain happiness as the ultimate goal of ethics. [7] In fact, Hobbesian ethics has been classified as a version of natural law. In any case, following the putative “Hobbesian” theme in international relations here, although consent of the parties involved in contracts is still relatively marginalized, there is a “harmony of fears,” which is in line with the necessity of an extra-legal foundation for pacta sunt servanda in a Hobbesian city. Therefore, it seems that it would be the task of Leviathan to guarantee the fulfillment of contracts. [8]

The last functionalist approach is best reflected in the political philosophy of John Locke. Similar to the previous theme, this labeling does not do justice to Locke’s vision of pacta sunt servanda. Rather, it follows the widespread reading of Locke’s pragmatic approach in the discipline of international relations. In fact, Locke’s conception of moral obligation also belongs to the natural law tradition in which such obligations are deemed to be obligations to God. [9] In the vicinity of Rousseau’s notion of “social contract,” [10] albeit with more optimism, a Lockean theme sees obligation as a legal tie reflecting a collective solution to obtain mutual benefit. [11] Therefore, it is similar to the Hobbesian theme in that it is a posteriori and utilitarian. Yet, Lockean pacta sunt servanda gravitates toward functional preferences, that is, positive instrumentality. Pacta sunt servanda is no longer a runaway formulation from harm but an instrument to obtain public—or common—good. Voluntary consent resulting from pragmatic reasoning generates an obligation to obey the law. There is, indeed, a “harmony of interests.” Yet, the functional character of this approach still necessitates an extralegal foundation for holding the parties responsible. The enforcement may be established by law provided through parliamentary mechanism. [12] The parliamentary majority ideally embodies individual consents that gave birth to pacta sunt servanda in the first place.

The five other major themes attach essential authority to pacta sunt servanda, albeit through different conduits. A customary approach maintains that the frequent "practice" itself is the source of obligation when a particular act, in this case honoring contracts, is expected from the parties, feeding an expectation of permanency. [13] The customary theme is the atypical combination of an a posteriori yet essentialist reading of pacta sunt servanda. It is a posteriori in the sense that nothing a priori (i.e., prior to the actual practices) is the foundation of the sanctity of contracts. Yet, it is essentialist in the sense that once established by constant practices of actors, pacta sunt servanda becomes, ipso facto, authoritative, regardless of the consequences. As far as this approach underscores praxis, at least an initial consent of the actors to join the practice and to enforce pacta sunt servanda is indispensable, though this consent could be unconscious, carried out of inertia. [14] This theme is traceable in Hume's thought that puts the locus of obligation—and normativity—in the "expectations" developed by the repetition of the practice ("Constant Conjunction"). These expectations are, after all, cultural constructs. [15] John Austin cogently elaborates on this communitarian reading of the sanctity of contracts in *The Province of Jurisprudence Determined*. He observes:

> The conventions enforced by positive law or morality, are enforced legally or morally for various reasons. But of the various reasons for enforcing any convention, the following is always one.—Sanctions apart, a convention naturally raises in the mind of the promisee, (or convention tends to raise in the mind of the promisee,) an expectation that its object will be accomplished: and to the expectation naturally raised by the convention, he as naturally shapes his conduct. Now, as much of the business of human life turns or moves upon conventions, frequent disappointments of those expectations which conventions naturally excite, would render human society a scene of baffled hopes, and of thwarted projects and labors. To prevent disappointments of such expectations, is therefore a main object of the legal and moral rules whose direct and appropriate purpose is the enforcement of pacts and agreements. … Without the signification of the intention, there were no promise properly so called: without the signification of the expectation, there were no sufficient reason for enforcing the genuine promise which really may have been proffered. [16]

Rawls contribution to moral philosophy and his formulation of "justice as fairness" [17] is

the basis for the next theme. He speculates an “original position” in which the parties decide about the principles of justice through detachment (abstracting knowledge of themselves). The congruence arising from this ignorance of one’s abilities, desires, and claims heavily relies on Rawls’ normative conception of citizens as rational, free, and equal. [18] This democratic procedure leads to the formulation of “justice as fairness” that constitutes the basis for not only equal opportunity and basic liberties but certain inequalities within society as well. It is crucial to notice that justice as fairness is the foundation for the rule of law according to Rawls. [19] A justice-as-fairness formula is not only enacted by the congruence of “public,” but also endorsed by the “overlapping consensus” of different religious and philosophical perspectives. [20] Therefore, a Rawlsian approach to pacta sunt servanda would found its obligatory character in its fairness. As Kratochwil has noticed, there is a cognitive turn here from the question of obligation to the evaluation of the validity of norms and their fairness. [21] Pacta sunt servanda is a priori due to the morality of justice, regardless of (personal) consequences. For one, this is ignorant of one’s own status in the “original position.” [22] In the same vein, its validity is essential as far as there is an intrinsic value to justice, the practice of which, according to Rawls, defines the very nature of moral agent and the agent’s moral autonomy. However, due to the cognitive turn discussed above, the Rawlsian system still requires an extra-legal foundation, that is, “rule-handlers” or law-makers to implement just rules. [23] Rawls himself asserts that there is nothing metaphysical as such in his theory of justice; but, inter alia, his “original position” has provoked criticism of his allegedly metaphysical conception of persons. [24]

The linguistic tradition of Searle, Austin, and Onuf, among others, provides a constructivist perspective on pacta sunt servanda. Speaking in the world, Onuf asserts, is acting on the world. [25] For Onuf, contracts are a particular type of “action through speech,” or “speech acts,” that intersubjectively come about. He tags them “commissive speech acts” that are by definition binding. Conceived as such, it is the generative logic of contract that is the provenance of obligation. But after we commit ourselves, why do we hold to that commitment? Onuf explains this by employing the notion of guilt, especially prevalent in Semitic cultures. These “guilt-cultures,” Onuf acknowledges, have initially originated from religious sources, and gradually have become internalized and desacralized in the course of history obtaining its own momentum. [26] Religious guilt has long become a secular, cultural drive to follow what is right. This is an a priori argument and grants essential

validity to pacta sunt servanda. Finally, there is no need for any extra-legal foundation; commissive speech acts are self-referential. Onuf's constructivist narrative of pacta sunt servanda paves the ground for breaking the maxim free from its inflexibility and deploying its full capacity. [27]

Immanuel Kant delves into several metaphysical, ethical, and religious questions relevant here. Among them are the questions of epistemology and deontology as well as existential questions about human beings and hope. His Critique of Pure Reason was an attempt to tackle the epistemological question, concluding that pure reason falls short of answering deontological and existential questions. [28] Therefore, in his second Critique, he sought a solution to such questions by resorting to "practical reason." For Kant, practical reason relates to the natural tendency in human beings toward moralities (hence relevant to deontological questions) and toward spiritualities (hence relevant to existential questions). In his assessment of practical reason, Kant comes to the transcendental essence of morality: act only on that maxim through which you can at the same time will that it should become a universal law. [29] Following this line of thought, since pacta sunt servanda is a universal law, it is a moral law and therefore essentially valid. [30] This validity is a priori due to the morality of universal law, regardless of consequences, personal or otherwise.

Last is the tradition of natural law in Western philosophy. The common thread in all the diverse strands of natural law is the belief that there are universal laws beyond localities and temporalities. [31] The earliest manifestation of this tradition was in Greek philosophy. Aristotle has often been read as the most prominent philosopher of natural law, even though natural law can be traced back to pre-Socratic philosophers as well. In this ancient "cosmologic" understanding, nature is the source of universally binding laws, in contrast to local norms and customs. [32] The foundation of this version of natural law is more in pre-Socratic Greek cosmology and less in the theology of the age. The tradition went through a pragmatic shift in Roman law and significantly affected jus naturale in the Roman legal system. [33] In the Middle Ages, following an initial period of reluctance and hesitation in accommodation of Aristotelian thought, the Scholastics identified natural law with divine law. Ultimately, Thomas Aquinas, the most influential architect of Christian natural law, re-established natural law as independent of divine law. [34] Asserting the deficiencies of human reasoning in the comprehension of natural law, Aquinas maintains that divine law is necessary for the guidance of human beings toward salvation. [35] Similar to Rawls,

Aquinas maintains that the just content of law is essential to the obliging character of natural law. Later on, Hobbes adopted the discourse of natural law but formulated it differently, for he argued that prior to the sovereign (i.e., the Leviathan), there was no law, natural or otherwise; even if there were, it would be the natural law of survival. [36] Once Leviathan is instituted, however, there are natural laws binding citizens. In fact, an earlier version of rational natural law can be found in Hobbes where the universally binding law, including a version of pacta sunt servanda, can be justified by reason. [37] The liberal version of natural law moved further from Hobbes as Locke maintained that the binding character of natural law precedes the sovereign, and thus citizens have the right to remove the sovereign with reference to natural law. [38] Grotius created a solidly secular version of natural law in which even God could not evade the imperative of that law. [39] Although the content of natural law has remained ambiguous, a natural law reading of pacta sunt servanda would recognize it as universally binding. The obligation to fulfill contracts and covenants —its source being Aristotelian nature, the Christian God, the Hobbesian Leviathan or the Lockean reason— is universal, a priori, and self-referential.

Not surprisingly, the Muslim treatment of pacta sunt servanda is close to the Christian reading of the principle of natural law. However, the legality of Islam—even in its theological domain—led to a slightly different understating of pacta sunt servanda, with certain implications for so-called "political Islam." Addressing these differences and implications is the focus of the following section.

Pacta sunt servanda and Shi'ah Islam

The notion of pacta sunt servanda in Islam should be understood vis-a-vis a particular theological context. It seems that, based on the scripture, Islam views the God-believer-God relation as an ultimate contract. The Arabic word 'ahd, which means, among other things, "covenant," has been used in scripture to refer to religious commitments to God. Committing sin is depicted as essentially breaking a promise one had made (Qur'an 2:27 and 13:25). The origins of this covenant, the scripture maintains, go back to one's eternal stage of existence before falling down to the physical world. In verse 7:17 there is an image of the "children of Adam" being exposed to God prior to this world and being asked about their relation with him and their subsequent testimony. The testimony has been usually interpreted as a promise, though a forgotten one:

> When thy Lord drew forth from the children of Adam, from their loins—their descendents, and made them testify concerning themselves, (saying):
> --Am I not your Lord (who cherishes and sustains you)?
> They said:
> --Yea! We do testify! (This)
> Lest ye should say on the Day of Judgment:
> --Of this we were never mindful. (7:172)

This notion of an "Original Promise" or "Original Covenant" is stressed elsewhere:

> We had already, beforehand, taken the covenant of Adam, but he forgot: and we found on his part no firm resolve. (20:115)

> Did I not enjoin on you [by The Covenant], O ye children of Adam, that ye should not worship Satan: for that he was to you an enemy avowed? (36:60)

These verses seem to portray Islam as a manifestation of the Original Covenant, a primordial contract between human beings and God. The text then asserts that human beings are the only creatures able to break such a covenant. In doing so, according to the Qur'an, they commit the "cardinal sin;" that is, they do injustice to themselves:

> Those who break God's Covenant after it is ratified … cause loss (only) to themselves. (2:27 and 13:25)

The scripture, therefore, offers a particular image of life on earth as the ongoing fulfillment of the primordial Original Covenant. Within this theological context, the more legalistic character of Islam emerges; and the notions of contract, promise, and covenant become central in shaping both Islamic theology and Islamic jurisprudence (*Fiqh*).

Based on this ontological doctrine, the scripture portrays its deontological character. Reference to contracts among human beings has been made in several verses in the Qur'an, including:

> [I]t is righteousness to believe in God and … to fulfill the contracts which ye have made. … such are the people, of truth, the God-fearing. (2:177)

> [The believers are] those who faithfully observe their trusts and covenants.

(23:8)

> And those who respect their trusts, [oaths] and covenants [such will be the honored ones in the Garden of Bliss]. (70:32) [40]

All contracts, according to the Qur'an, are guaranteed by God. [41] The principle of pacta sunt servanda is paramount "because it is God who is the witness of all contracts." [42] Beyond this triangulation, honoring obligations is the basis for building up trust, esteem and respect. The final—and rather absolute—word in the scripture can be found in 5:1: "Oh ye who believe, fulfill (all) [your contractual] obligations."

This principle does not apply solely to agreements concluded between private entities; rather, its applicability potentially extends to agreements entered into by a sovereign state. For instance, it is forbidden, according to the text, to assist depressed groups seeking aid from the Muslim community if to do so would contravene agreements:

> But if they [i.e. your brothers in Islam] seek your aid in religion, it is your duty to help them, except against a people with whom ye have a treaty of mutual alliance. And (remember) God seeth all that ye do." (8:72)

Therefore, it appears that "a national Islamic state has no vested right to cancel or alter a contract [either with Muslims or non-Muslims] by unilateral action, whether such action takes the form of an administrative, judicial or even legislative act." [43] According to the Qur'an, even the state of war by itself does not constitute a sufficient justification for contractual violation. [44]

This seeming strictness of the scripture regarding pacta sunt servanda restricts parties' freedom in making contracts. Such strong norms of pacta sunt servanda produce expectations that contracts negotiated under Muslim law should be upheld, even as circumstances change.

In order to better understand the implications of such treatment of pacta sunt servanda for inter-sovereign relations, it is useful to review one of the important documents in Shi'ah Islam. This is a letter written by Ali, the forth Sunni Caliph and the first Shi'ah Imam, to his appointed governor, Malik, in Egypt. [45] What makes this letter particularly relevant here is the connection Ali makes between the principle of pacta sunt servanda on the one hand and peace on the other. Ali asserts that there is an inherent value in peace not only because of its

accordance with the Divine, but also due to practical grounds:

> If your enemy invites you to a Peace Treaty that will be agreeable to God, then never refuse to accept such an offer because peace will bring rest and comfort to your armies, will relieve you of anxieties and worries, and will bring prosperity and affluence to your people." [46]

One may extrapolate from this passage and anecdotal evidence that, for Ali, promoting a contractual environment between private and collective entities brings about an institutionalized sense of permanency and predictability that in its own right paves the ground for peace.

Ali then emphatically expresses absolute obligation to honor treaties and words. At the same time, in reaction to the realistic suspicions that might consider his approach as naïve, he acknowledges unavoidable adversities and tribulations associated with his deontological approach to contracts. All the same, Ali reiterates that unqualified and absolute obligation, upon conclusion, should be undergirded with foresight and circumspection to address such realistic concerns:

> But even after such treaties, be very careful of the enemies and do not place too much confidence in their promises because they often resort to Peace Treaty to deceive and delude you and take advantage of your negligence, carelessness and trust. At the same time be very careful, never break your promise with your enemy, never forsake the protection or support that you have offered to him, never go back upon your words, and never violate the terms of the treaty. You must even risk your life to fulfill the promises given and the terms settled because of all the obligations laid by Almighty God upon man (in respect to other men) there is none so important as to keep one's promises when made. [47]

Similar to the triangulation of contracts in the Qur'an, he views "Almighty God" as the force behind obligations. Meanwhile, he also sees pacta sunt servanda as a universal obligation—a Natural Law—with important practical implications:

> Though people may differ in their religions and ideologies and may have divergent views upon various problems of State, yet they all agree that

> promises when made must be fulfilled. Even the heathens take care to keep the promises made among themselves, because they have seen and realized the evil effects of breaking promises. Therefore, take very particular care of promises made, never go back upon the words given, never go into the offensive without previously challenging and giving an ultimatum. Deception and fraud even against your enemy is a deception against God and none but a wretched sinner would dare do that. [48]

And then, he directly correlates pacta sunt servanda with peace, to which he had already attached axiomatic and intrinsic value:

> God has given promises and treaties the high rank of being messengers of peace and prosperity and through His Kindness and Mercy has made them a common desire (of keeping promises) in the minds of all men and a common requirement for all human beings. He has made them such a shelter and asylum that everybody desires to be under their protection. [49]

He also warns against any subjective impediment in the way of fulfillment of contracts as well as any deceiving intention:

> Therefore, there should be no mental reservation, no fraud, no deception and no underlying meanings in between the lines when you make a promise or conclude a treaty. Do not use such words and phrases in your promises and treaties as have possibilities of being translated in more than one way or as may have various interpretations and many explanations, let there be no ambiguity in them, and let them be clear, precise and to the point. And once a treaty has been finally concluded, do not try to take advantage of any ambiguous word or phrase in it. [50]

Finally, Ali reiterates his non rebus sic stantibus conceptualization of obligation:

> If you find yourself in a critical situation on account of the treaty made in the cause of God, then try to face the situation and bear the consequences bravely and do not try to back out of the terms that account, because to face such perplexing situations as may gain His Rewards and Blessings is better than to break your promises on that account and earn that about which you feel nervous

and for which you will have to answer God and which may bring down His Wrath upon you in this world and damnation in the next. [51]

Pacta sunt Servanda and "Political Islam"

As mentioned above, the question of pacta sunt servanda and inviolability of contracts is not purely an intellectual and theoretical enterprise. Although it is beyond the scope of the present work to delve deep into the international political implications of pacta sunt servanda, it is worth a brief treatment in the final segment of the paper.

As evident in Ali's letter, an absolute and unqualified approach towards pacta sunt servanda is associated with peace and resolving conflicts by the second-most prominent religious figure in Shi'ah Islam. This potential is not limited to relations between individuals. Rather, it has significant implications in forging trust and sustaining confidence as peace-inducing factors in relations among sovereign states as well, specifically between those of divergent civil provenances. Given the similarity at a foundational level between Muslim and Christian natural law approaches to pacta sunt servanda, this principle can be tapped into, brought to the fore, and reinforced to change the climate of relations between the Muslim world and the West from one of a "clash of civilizations" [52] to one that emphasizes forging a common consciousness based on dialogue and commonalities between the two. This transformation in atmosphere assumes even more urgency in the post-9/11 world where an unprecedented politicization and securitization of Islam on the international scene has taken place.

In this new climate, the "trust gap" between Muslim and Western states can be filled through an absolute adherence to pacta sunt servanda as advocated by Ali, even in the face of long odds and unmitigating circumstances. The necessity of filling the gap has been nowhere as pronounced and urgent as it is in the relationship between Iran and the West, particularly regarding the former's nuclear program.

Taken panoramically, Iran's mistrust of the international system's bona fides in regard to pacta sunt servanda has a long trajectory that dates back to well before the Iranian Revolution in 1979. Probably the most conspicuous case in contemporary memory is 1946 when the USSR's Red Army refused to observe its treaty-stipulated pledge in the Tripartite Treaty of Alliance of January 1942 to withdraw from Iranian territory within six months

after the cessation of hostilities at the end of World War II. This so-called Iran Crisis of 1946 etched deep scars in Iran's national political psyche and has intermittently been recalled to justify the country's wariness toward unqualified, binding international treaties. The so-called "wall of mistrust," famously coined by former President Mohammad Khatami [53] to diagnose Iran's troubled relations with the United States, got even more pronounced in 1979 when a group of radical students stormed the US embassy compound in Tehran, taking fifty-two Americans hostage for 444 days. This act of outrage was in blatant violation of Iran's obligations under the Vienna Convention on Diplomatic Relations that grants inviolable status to mission premises and diplomatic immunity to the embassy staff. This incident's adverse impact in subverting Iran's claims to pacta sunt servanda can hardly be overstated.

As it turns out, the Iran Hostage Crisis ran in the very face of Ayatollah Khomeini's religiously informed injunctions that international contracts, voluntarily entered into, should be upheld without qualification. Despite these occasional references, however, pacta sunt servanda rarely figures prominently as a determining factor in the decision-making discourse of Iranian politicians, leading one to suspect that the Iranians have a political, reciprocity-based approach, as opposed to Ali's prescribed absolutist system that relied on strict adherence to principle. As such, it seems the Iranian political elite have, thus far, paid more attention to their educational experiences in a "hostile world" than to their religious roots.

This troubled trajectory assumes even more prominence when applied to the Iranian nuclear program and its interaction with the West. This is a dossier saturated with allegations of untrustworthiness hurled back and forth by both sides that has given rise to a virtual impasse. For instance, Iranian officials have consistently alluded to the French Government's breach-of-contract action in denying Iran its 10-percent share in the Eurodif uranium enrichment plant under a multinational joint venture arrangement concluded between the governments of Iran and France in 1975. Iran has always portrayed the French government's refusal to discharge its contractual obligation to deliver Iran its share of enriched uranium as an indication of the West's tactical and instrumental approach toward its commitments and has employed it in defense of its claims to an indigenous nuclear fuel cycle. Along the same lines, another grievance is oftentimes tossed around by Iranians to showcase the West's contractual unreliability. It is the failure of Kraftwerk Union AG (a

Siemens subsidiary) to honor its contractual obligation to complete the two Bushehr Nuclear Power Plants on the Persian Gulf coast following the 1979 Iranian Revolution.

On top of these examples, Iranians often claim that they, unlike the West, have an unqualified commitment to and have adhered to the Nuclear Non-proliferation Treaty (NPT), despite the fact that this membership has hardly been a rewarding enterprise. Iran's position, simply put, has been that the United States and other NPT nuclear-weapon states (NWS) interpret the treaty's nuclear abstinence articles as applicable to the non-nuclear-weapon states (NNWS) while dragging their feet on the all-important issue of comprehensive nuclear disarmament stipulated in article VI of the same document.

On the other hand, the United States and the West have their own list of grievances against Iran's pacta sunt servanda trajectory on the nuclear issue. First and foremost, they claim that Iran, by embarking on a clandestine nuclear program for over a decade, has been in breach of the spirit, if not the letter, of the international nuclear non-proliferation treaty. On top of this, the United States also claims that Iran has violated its NPT obligations under Article II of the treaty by actively pursuing a nuclear weapons program. These NPT non-compliance allegations contextualized against the backdrop of the 1979 Hostage Crisis provide the United States with a seemingly persuasive case against Iran, claiming that the latter does not hold up its end of international contracts.

Because of this unfortunate and ubiquitous trust deficit, the two parties have squandered endless opportunities to chip away at the decade-long nuclear impasse. A recent case in point is the so-called "nuclear fuel swap" proposal, floated in October 2009 by the United States, that required Iran to trust the West with a substantial tranche of its stockpile of low-enriched uranium in exchange for highly enriched uranium designed exclusively for medicinal purposes. This proposal could have curbed or even reversed the escalation of Iran's nuclear crisis from a political issue to a full-blown security challenge. Both sides claimed that the deal failed to go through because the other party's track record on absolute adherence to contractual obligations was less than complete. In other words, both sides accused each other of an instrumental approach towards pacta sunt servanda, blaming the resulting trust deficit for their failure to reach a compromise deal. Without doubt, an atmosphere of absolute adherence to pacta sunt servanda would have resulted in completely different outcomes. As a matter of fact, a few months after Iran refused to entrust its uranium stockpile to the Russian Federation and France, it signed on in May 2010 to the so-

called “Tehran Declaration,” depositing its low enriched uranium stockpile in Turkey. It is interesting to note that, retrospectively, Iranian officials made not-so-subtle references to Russia’s failure to honor its contractual obligations as part of Iran’s reason for not trusting Russia with its uranium stockpile and to backing out of the October 2009 deal.

The overall lesson one could extract from this case and a plethora of other trust-deficit cases in the relationship between the Muslim world and the West is that a non-consequentialist adherence and categorical deference to pacta sunt servanda could help both sides to come up with a more solid platform for crisis-management and problem-solving. In such a context, pacta sunt servanda would supplement, even substitute, material power as the more fungible currency of international behavior. Obviously, use or threat of use of force as a conflict-resolution mechanism will be less frequent and pronounced in such a contractualized atmosphere, leading, in turn, to more peaceful international relations.

1. 1. Thomas M. Franck, “Taking Treaties Seriously,” *The American Journal of International Law* 82, no. 1 (1988): 67-68.
2. 2. Hans Wehberg, “Pacta Sunt Servanda,” *The American Journal of International Law* 53, no. 4 (1959): 775-786.
3. 3. “Agreements must be kept.”
4. 4. Andrew Borkowski and Paul du Plessis, *Textbook on Roman Law* (New York: Oxford University Press, 2005), 251.
5. 5. Christianity exercised a great influence on the sanctity of contracts and further fortified Roman law’s functional approach by injecting religious motives to the principle. Its basic idea demanded that one's word be kept, as is clearly expressed in Matthew 5:33-37: “But let your communication be, Yea, yea; Nay, nay: for whatsoever is more than these cometh of evil.” Later, the Fathers of the Church, such as St. Augustine, set forth in detail the notion of the sanctity of contracts. Augustine taught that one must keep one’s word even with one’s enemies [Hans Wehberg, “Pacta Sunt Servanda,” *The American Journal of International Law* 53, no. 4 (1959): 775-778]. Malcolm P. Sharp argues that even the Church establishment had functionalistic impulses when it canonized inviolability of contracts in both public

and private sectors, thus institutionalizing promissory liability. He writes: “There were limits on the enforcement of promises in classical Roman law, comparable to, though not by any means identical with, the peculiar limits imposed by the Anglo-American rules about seal and consideration. The Church, with its large temporal interests and power, and its able lawyers, criticized these limits. It taught that Christians should keep their promises. … Grotius, considering the tension between old and new needs and rules, gave the resulting controversy classical expression. He took the view that natural needs require that private promises, like public treaties, should be observed, and should generally be supported by public power” [Malcolm P. Sharp, (1945), “Pacta Sunt Servanda,” *Columbia Law Review* 41, no. 5 (1945): 783).]

6. 6. Friedrich Kratochwil, “The Limits of Contract,” *European Journal of International Law* 5, no. 4 (1994): 465-91.
7. 7. Tom Sorell, *Hobbes* (London: Routledge, 1986).
8. 8. Thomas Hobbes, *Leviathan* (Cambridge: Cambridge University Press, 1991). Hobbesian treatment of pacta sunt servanda bears a close resemblance to that of Machiavelli. The latter puts the prince above law, and justice out of necessity imperatives are, in their own right, embedded in a raison d'etat context of the Renaissance and the Reformation. Hobbes expresses the idea, in particular in his Leviathan, that the holder of state power has almost unlimited power. “Hobbes considers as decisive not the principles of justice, but those of wisdom. Nevertheless, he recognized as natural law the principle that agreements are to be kept. The concept of wrong arises out of the non-performance of a contract, the promisor being therefore in contradiction with himself. However, also according to Hobbes, agreements need not be kept if the security of the state so requires” (Wehberg, 778). These developments between the sixteenth and eighteenth centuries set the stage to de-absolutize pacta sunt servanda and institutionalize the rebus sic stantibus doctrine that had been in the making since the thirteenth century, as is evident in the writings of prominent religious figures as Thomas Aquinas (See Saint Thomas Aquinas, (1948), *Summa Theologica* (New York: Thomas More, 1948).
9. 9. Michael Ayers, *Locke: Epistemology and Ontology* (London: Routledge, 1993).
10. 10. Nicholas Dent, *Rousseau* (Oxford: Blackwell, 1988).
11. 11. Alexander Wendt, *Social Theory of International Politics* (Cambridge: Cambridge University Press, 1999).

12. 12. Friedrich Kratochwil, “The Limits of Contract,” *European Journal of International Law* 5, no. 4 (1994).
13. 13. Karol Wolfke, Custom in *Present International Law* (Norwell, MA: Kluwer Academic Publishers, 1993).
14. 14. Karol Wolfke, *Custom in Present International Law* (Norwell, MA: Kluwer Academic Publishers, 1993). Note that following the customary law conduit may problematize the very foundation of pacta sunt servanda by shearing the maxim’s transcendental quality, highlighting its malleability, and questioning its irreplaceability. John P. Humphrey for instance argues that “The principle that agreements are binding possesses no independent force of legal necessity. Agreements are binding because the legal order so provides. And, what is more, the legal order may achieve its purpose in other ways. This is shown by known facts of legal history which teach us that long before agreements as such were recognized as binding, obligations arose from form or some other element. Even in the developed Roman law, there was no rule corresponding to pacta sunt servanda. Indeed it was a principle of that law that mere pacts did not give rise to obligations: nudum pactum obligationem non parit. In the early Roman law the obligation arose not from the fact of agreement but always from some other factor. For an agreement to be binding it had to be clothed in a particular form or accompany some act and the important thing was the formality, not the agreement. … The idea that obligations result from agreements, which is at the base of the modern law of contract, is a canonist innovation that is nothing more than a specific rule of customary international law” [John P. Humphrey, “On the Foundations of International Law,” *The American Journal of International Law* 39, no. 2 (1945): 235-37.]. For Humphrey, pacta sunt servanda has no stand-alone or exogenously given validity. This conceptualization leads him to observe: “If that is so, to attempt to establish the validity of customary law by reference to it is to argue in circles” (238).
15. 15. Byers, Michael, *Custom, Power and the Power of Rules: International Relations and Customary International Law* (Cambridge: Cambridge University Press, 1999). This brings Hume close to Onuf’s linguistic approach to pacta sunt servanda. These cultural constructs can relate to the notion of guilt or blame (negative human experiences, Onuf) or to the notion of desirability and values (positive human experiences, Dewey).

16. 16. John Austin, *The Province of Jurisprudence Determined*, 2nd ed. (London: John Murray, 1861), 299-300.
17. 17. John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971).
18. 18. John Rawls, *Collected Papers* (Cambridge, MA: Harvard University Press, 2001).
19. 19. Samuel Freeman, *Rawls* (London: Routledge, 2007).
20. 20. John Rawls, *Collected Papers* (Cambridge, MA: Harvard University Press, 2001); Samuel Freeman, *Rawls* (London: Routledge, 2007), and Samuel Freeman, *Justice and the Social Contract: Essays on Rawlsian Political Philosophy* (Oxford: Oxford University Press, 2007).
21. 21. Friedrich Kratochwil, "The Limits of Contract," *European Journal of International* Law 5, no. 4 (1994).
22. 22. Samuel Freeman, *Justice and the Social Contract: Essays on Rawlsian Political Philosophy* (Oxford: Oxford University Press, 2007).
23. 23. Friedrich Kratochwil, "The Limits of Contract," *European Journal of International Law* 5, no. 4 (1994).
24. 24. See for example Michael J. Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982).
25. 25. Nicholas Onuf, *World of Our Making: Rules and Rule in Social Theory and International Relations* (Columbia, SC: University of South Carolina Press, 1989).
26. 26. Nicholas Onuf, interview with the author, 2007.
27. 27. Josef L. Kunz, "The Meaning and the Range of the Norm Pacta Sunt Servanda," *The American Journal of International Law* 39, no. 2 (1945): 197.
28. 28. Immanuel Kant, *Critique of Pure Reason* (Cambridge: Cambridge University Press, 1999).
29. 29. Immanuel Kant, *Critique of Practical Reason and Other Writings in Moral Philosophy* (Chicago: University of Chicago Press, 1950).
30. 30. Paul Guyer, ed. *The Cambridge Companion to Kant* (Cambridge: Cambridge University Press, 1992); Paul Guyer, ed., *Kant's Groundwork of the Metaphysics of Morals: Critical Essays* (Lanham, MD: Rowman & Littlefield, 1998).
31. 31. Jerome Schneewind, *The Invention of Autonomy: a history of Modern Moral Philosophy* (Cambridge: Cambridge University Press, 1998).
32. 32. W. F. R. Hardie, *Aristotle's Ethical Theory* (Oxford: Oxford University Press,

1980).

33. 33. Jerome Schneewind, *The Invention of Autonomy: A History of Modern Moral Philosophy* (Cambridge: Cambridge University Press, 1998).
34. 34. St. Thomas Aquinas, *Summa Theologica* (New York: Thomas More, 1948).
35. 35. John Finnis, *Natural Law and Natural Rights* (New York: Oxford University Press, 1980).
36. 36. Tom Sorell, *Hobbes* (London: Routledge, 1986).
37. 37. Thomas Hobbes, *De Cive: The English Version* (Oxford: Oxford University Press, 1984) and Thomas Hobbes, *Leviathan*, Cambridge: Cambridge University Press, 1991).
38. 38. Michael Ayers, *Locke: Epistemology and Ontology* (London: Routledge, 1993).
39. 39. Jerome Schneewind, *The Invention of Autonomy: a history of Modern Moral Philosophy* (Cambridge: Cambridge University Press, 1998).
40. 40. See also Qur'an verses 3:76; 13:20; 17:34; and 16:91.
41. 41. Note the notion of "fear of God" in Qur'an verse 2:177, that of "love of God" in 3:76, and that of "covenant of God" in 16:91 and 13:20 in reference to contracts.
42. 42. S. E. Rayner, *The Theory of Contracts in Islamic Law* (London: Graham and Trotman, 1991).
43. 43. S. E. Rayner, *The Theory of Contracts in Islamic Law* (London: Graham and Trotman, 1991).
44. 44. S. E. Rayner, *The Theory of Contracts in Islamic Law* (London: Graham and Trotman, 1991).
45. 45. The letter is believed to be written sometime between 656 AD to 661 AD.
46. 46. All excerpts are from letter 53 of *Nahj al-Balāghah: Peak of Eloquence*, by Ali ibn Abi Talib and translated by Jafri (1988).
47. 47. *Nahj al-Balāghah*, letter 53.
48. 48. *Nahj al-Balāghah*, letter 53.
49. 49. *Nahj al-Balāghah*, letter 53.
50. 50. *Nahj al-Balāghah*, letter 53.
51. 51. *Nahj al-Balāghah*, letter 53.
52. 52. Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon and Schuster, 2011).
53. 53. Mohammad Khatami, Interview with Christiane Amanpour, CNN, 8 Jan. 1998,

Tehran, Iran, http://www.cnn.com/WORLD/9801/07/iran/.

Endnotes:

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