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## Islamic Law and American Law: Between Concordance and Dissonance

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MOHAMMAD FADEL

## Islamic Law and American Law: Between Concordance and Dissonance

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## I. INTRODUCTION

Much of the recent attention to Islamic law has been motivated by the recent public discourse concerning Islam, mosques, and anti-Sharia sentiment in America and abroad. The Center for American Progress recently published a report called *Fear Inc.: The Root of the Islamophobia Network in America*.<sup>1</sup> It is a very extensive report and is meticulously researched. Among its important findings is the fact that seven private foundations have contributed nearly \$43 million between 2001 and 2009 to various Islamophobic think tanks.<sup>2</sup> So the discourse regarding Islam in the United States is not an accident, and it is not part of a grassroots movement. I suggest it is part of a very well-organized campaign with very precise political goals.

This essay will give a much more academic presentation on the general question of how Islamic law fits within the framework of secular legal systems, focusing specifically on the relationship between Islamic law and non-Islamic law. In Part II, I discuss Islamic law as part of global law. In Part III, I address the distinction between Islamic law as a system of morality and as a system of positive law. In Part IV, I outline the use of treaties in non-Muslim majority countries. In Part V, I discuss Islam's models of co-existence and modern-day democratic equality. Part VI looks at the potential conflicts between principles of Islam and those of citizenship. Part VII highlights the differences between historical Islamic law and modern Muslim beliefs, and, finally, in Part VIII, I examine some recent trends in U.S. foreign policy and Muslim transnationalism.

## II. ISLAMIC LAW AS PART OF GLOBAL LAW

I want to start off with an overview and with the idea of Islamic law as a part of global law and other legal systems. I did not do a formal survey to determine exactly how many jurisdictions formally apply substantive Islamic law as part of their national legal systems; however, I think we probably can take for granted that many Muslim-majority countries apply some substantive Islamic law as part of their secular legal systems.<sup>3</sup> But what might be a little surprising is that scores of non-Muslim majority countries also apply substantive Islamic law as part of their domestic legal systems. One example is India, where substantive Islamic law is a part of the Indian legal system. A second example would be Israel. In Israel, Islamic law forms a part of the Israeli legal system. In Greece, there is a community of Muslims who are governed by Islamic law in certain matters pursuant to a treaty between Turkey and Greece that was entered into shortly after World War I. Kenya is another example. So there are scores of non-Muslim majority countries that already use Islamic law and recognize Islamic law as part of their ordinary legal systems, which are coercively

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1. WAJAHT ALI ET AL., *FEAR, INC.: THE ROOTS OF THE ISLAMOPHOBIA NETWORK IN AMERICA* (2011), available at <http://www.americanprogress.org/issues/2011/08/pdf/islamophobia.pdf>.

2. *See id.* at 3.

3. *See generally* Chibli Mallat, *On the Specificity of Middle Eastern Constitutionalism*, 38 CASE W. RES. J. INT'L L. 13 (2006) (discussing the application of substantive Islamic law in Middle Eastern, Muslim-majority countries such as Egypt, the Islamic Republic of Iran, and the Kingdom of Saudi Arabia).

enforced by the state. Thus, it is not only in Muslim countries that Islamic law is enforceable law.

I point this out because Islamic law as a global legal phenomenon exists all over the world, and therefore, it is hard to imagine that Islamic law somehow has not come up with some kind of systematic, principled method of integrating itself into the different legal and political circumstances facing Muslims throughout the world. Muslims are a fifth of the world's population. They live in almost every country of the world. This essay will discuss how Islamic law *fits in* with non-Islamic legal systems—that is, what are the principles governing this intersection? What are the sources of tension and what are the sources of reconciliation?

### III. ISLAMIC LAW AS A SYSTEM OF MORALITY AND AS A SYSTEM OF POSITIVE LAW

First, I want to begin by elaborating on an important ambiguity that arises when we talk about Islamic law, one which I think is necessary to keep in mind. Often times we conflate Islamic law as a system of moral reasoning on the one hand with Islamic law as a system of positive law on the other, when in fact these are two completely separate systems. It is very important to always keep these two meanings distinct in our minds.

#### A. *Ahkaam al-Taklif: The Rules of Obligation*

When discussing Islamic law as a system of moral reasoning, the jurists talk about something called *Ahkaam al-Taklif*, the Rules of Obligation. These rules state that every human act or omission can fall into one of five moral categories. The first category is *wajib*, which means obligatory. According to these Rules, there are certain acts that God has made obligatory on human beings. There are also certain acts or omissions that God has prohibited to human beings, which are called *haram*. A third category includes certain acts that God has encouraged, but humans incur no sin if we fail to perform them—this category is called “recommended.” In contrast to the “recommended” acts, there are also certain acts which would be better if we did not do them, but we incur no blame if we do. These acts are called “disfavoured.” Finally, there is a residual category called “the indifferent acts,” for which we incur neither blame nor approbation. An interesting aspect of these rules is that, despite Islamic law's reputation for being totalitarian, the default category for all human conduct is this last category, “the indifferent.” So Muslim jurisprudence starts with the assumption that anything a human being can do is morally indifferent in the eyes of God. If somebody wants to claim that something is otherwise, then the burden is on that person to produce some sort of evidence of an obligation. This is a very important structural feature of Muslim moral reasoning—the default status of freedom. Accordingly, under the rules of obligation, we assume we are free to act in the absence of some sort of express evidence compelling us to act or compelling us to refrain from acting.

B. *Ahkaam al-Wad': The Positive Rules*

In contrast to this system of moral reasoning within Islamic law is the positive system of Islamic law, which the jurists call *Ahkaam al-Wad'*—the positive rules. These rules are very different from the rules of obligation; positive rules do not direct us to act in a certain way. Instead, they provide legal judgments as to the consequences of actions that we take. For example, a contract might be valid or invalid, or it might be void. These are examples of what the jurists call *Ahkaam al-Wad'*. It has nothing to do with our morality. For instance, if I entered into a contract with Professor Sadiq Reza, but we made a mistake causing the contract to be void, that does not mean that we have done anything wrong; we just do not have a legally binding contract. So whereas Islamic law as a system of moral reasoning deals with things like sin, reward, and virtue, the positive rules, the *Ahkaam al-Wad'*, do not adopt this moralistic language at all. Instead, these rules take an objective view of the legal consequences. Other examples of these positive rules are binding or non-binding promises. For example, is a promise that I make legally binding? Or is it simply a promise that I can choose to fulfill or not fulfill, without legal consequence, at least in this life? I might ultimately answer to God, but I might not answer to the courts if we decide that promises are not legally binding.

Another important source of positive law is jurisdictional rules, which are critical in understanding how Islamic law fits into non-Islamic legal systems. Islamic law has a very complex body of jurisdictional rules, which stems from the idea that Islamic law is not universal law. It is not a system of natural law that claims to bind every single human being, simply by virtue of being true. Of course, Islamic law believes that it is true, but that is not the point. The point is that its truth is not sufficient to bind those who do not recognize it as true.

C. *Jurist's Law v. State Law*

Because Muslims believe Islam to be true, they are always morally bound to the rules of Islamic law, however, that is not the case for non-Muslims. Therefore Islamic law is always very careful to look at questions of jurisdiction to determine the extent to which these positive rules of Islamic law apply to any particular case. The other important point about Islamic law as it works within a legal system is what I call the distinction between jurist's law and state law. I highly discourage the use of terms like "religious law" and "secular law." This is because anyone with a little familiarity with Islamic law who begins reading the chapters of a legal treatise on sales, leases, or partnerships will have a very hard time understanding why this is religious law. In fact, the jurists do not consider Islamic law to be religious law. One of the reasons they do not consider it to be religious law is that anyone in an Islamic state, Muslim or non-Muslim, is bound by these rules. So the rules of contract, property, and tort under Islamic law, for example, are considered universal rules that do not depend on religion.

But Islamic law *is* a form of judge-made or jurist-made law. Why? Because the jurists developed it through their own system of reasoning. Therefore it seems that calling it the *fiqh*—calling it jurist law as opposed to religious law—is a much more

accurate conception of what it is. This is then contrasted not with secular law but with state law because Islamic law does not recognize only the rules that the jurists made. It also recognizes as binding and valid the rules that political decisionmakers make. Whenever one talks about Islamic law, we should keep in mind this distinction between juristic law and political law or state law. Accordingly, applied Islamic law is always a combination of the law of jurists and a law made by the political institutions of a state.

Moreover, the laws articulated by a state are generally valid under the principles laid out by the jurists so long as two conditions are met. The first is that the rule that is being promulgated is consistent with the public good and it does not command disobedience to God. For example, Ramadan is a month in which Muslims fast. In the 1960s there was a notorious incident when the president of Tunisia at the time, Al-Habib Bourguiba, came on television drinking a glass of orange juice. He was saying that because our *jihad*, or struggle, today is production, he wanted to discourage observance of Ramadan on the grounds that it lowered economic productivity. One can imagine a particularly zealous ruler prohibiting certain religious observations on the ground that they are inconsistent with economic efficiency. From the perspective of Islamic law, this would be an illegitimate rule because it commands people to disobey God by prohibiting them from fulfilling their religious obligations. In general, there is not a rule against positive or man-made law in Islamic law, but there are restrictions on it—for example, all man-made laws have to be for the public good and cannot command sin.

Finally, what is the state? How did medieval jurists understand the state? Did they understand the state as some kind of divine representative of God or as having some kind of charismatic authority from which the state derived its legitimacy? The answer is no, at least for the Sunnis who are about ninety percent of the Muslim world, the state is simply considered the agent of the community. The ruler is not considered some kind of divine figure, and the state is not considered some sort of embodiment of the divine will; the state is considered to be a public agent acting on behalf of the Muslim community, and that is the source from which the powers of government are derived. Hence, there is a contract of governance that establishes the state, which is why even if there is only one qualified candidate in the world for any office, he cannot be appointed, except pursuant to a valid contract. Therefore, there is never an issue of government by charismatic authority; rather, it is by the choice of the community, and the ruler is always treated as an agent of the community.

#### **IV. REGULATING MUSLIMS IN NON-MUSLIM MAJORITY COUNTRIES: THE TREATY MODEL**

Muslims have lived as minorities outside of an Islamic state since the day Islam came to this Earth. It is not a new phenomenon. In the time of the Prophet Muhammad, Islam started as a minority—a minority of one, with him. It grew gradually, and early Muslims were subject to fierce persecution in Mecca. A substantial number of the early community members emigrated to Ethiopia or Abyssinia.

Eventually, the Muslims were forced to abandon Mecca entirely because of persecution. They fled to Medina, then known as Yathrib, where the Prophet established a state. Before the state was established, there was a written charter, or constitution. But once there was a state, there was a political entity for the Muslim community. That Muslim community, however, did not encompass all Muslims, even at that time. There were additional Muslims living in Abyssinia and, more importantly, there were also Muslims living in other parts of the Arabian Peninsula who did not emigrate to the new state. The Quran recognized differences between these groups. Several verses of the Quran expressly set forth rules that applied to Muslims who lived inside the Muslim state and others that applied to those who lived under a non-Muslim political community. Therefore even the Quran itself has consciousness of these jurisdictional issues that place limits on the applicability of Islamic law. Muslim jurists used these subtle distinctions in the Quran and in the history of the early community to develop a normative framework for regulating the presence of Muslims living outside of an Islamic state. The basic model was that of a treaty.

The assumption was that Muslims who lived in a non-Muslim state lived there pursuant to a kind of treaty. Today these treaties in a modernized form might be considered a social contract, or a constitution. This was a normatively powerful idea because in Islamic law the obligation to maintain treaty commitments or maintain promises is considered a sacred obligation. *Awfu bil uqud*, a maxim of Islam, means “be faithful to your commitments.” Therefore, Islamic law made this a fundamental pillar of its international relations, requiring Muslims to be extremely careful not to breach their commitments to non-Muslims. There is a principle developed in international relations for treaty interpretation called *al-hirz an al-ghadr*, which means that we should interpret treaties in a way that prevents us from being accused of violating them. In other words, we should read them charitably, in favor of the other party, so the other side can never think that we are breaking the treaty.

It is the treaty, then, that supplies the governing law between the Muslims and the non-Muslims, not Islamic law. As explained above, Islamic law does not claim universal applicability to non-Muslims. This is because non-Muslims by definition do not believe in Islam; therefore they do not have the same moral motivations to obey the laws that Muslims have. Hence, there has to be some other way for Muslims and non-Muslims to cooperate. The answer that Islamic jurists reached was this idea of a treaty that would bind both of them together and govern the terms of their relationship. There is an early report in which the Prophet was said to have told one of his companions that, when entering into an agreement with non-Muslims, the agreement should not be conditional on applying the law of God; rather, the Muslim party should say, “We (the parties) will apply our law (meaning the agreement)” because Muslims wanted to avoid the sin of violating God’s law should the other party breach the agreement. So there is a kind of theological motivation to these undertakings. It is better to make agreements in your own name so that if it turns out that you made a mistake, it can be corrected—rather than introducing God into the situation, with different understandings of the significance of what that means. The basic model of Muslim/non-Muslim cooperation is this contract, but are there



limitations on this contract? Can Muslims enter into any kind of contract with non-Muslims? If one keeps in mind the moral aspect of Islamic law, the answer should be an obvious “no.” In an Islamic state, there are certain moral limitations on what the state can do. Likewise, a Muslim, whether an individual or a community, has moral limitations on the kinds of agreements it can enter into with non-Muslims. Here, the jurists talk about two primary limitations.

The first is that the agreement cannot be humiliating because Muslims cannot agree to humiliate themselves. The idea is that once someone believes in God and knows his proper position in the universe, he becomes dignified, after which he cannot voluntarily agree to humiliate himself. This is called *iltizam al-dhull*. Therefore, Muslims are prohibited from undertaking any kind of act that would amount to humiliation. Of course, if one is forced into something, that is a different question, but then it is not a question of morality, it is a question of duress.

The precedent for this is quite interesting. In the earliest days of the prophetic mission in Medina, the pagans of Arabia raised the greatest army that the Arabians had ever seen at that point, some 10,000 people. They laid siege to Medina, the city in which the Prophet had set up his state and an agricultural oasis. It was clear that the stakes were quite high: had the pagans won, that would have been the end of the Muslim community—they would have all been massacred. The Muslim community was quite small—they might have had 1000 people with arms. The Prophet wanted to break up this coalition through some sort of diplomacy. He negotiated with one of the parties to this coalition and asked them, “What do you think if we give you half of the produce of Medina in exchange for you going back to your country?” So the Bedouin chieftain at the time accepted the offer. Then the Prophet took that deal to the people of Medina and said, “What do you think? They’re willing to go away if we give them half of the crops of Medina for this year.” And so the leaders for the people of Medina said, “By God, no. Prior to Islam they would’ve never dared to take anything from us without payment. Now that we have Islam, we refuse to give them anything except through our free will.” Because they refused to accept what they considered to be terms of humiliation, the Prophet had to rescind the offer. The jurists took from this the idea that you cannot voluntarily accept humiliation in a treaty.

The second argument, or limitation, is that the treaty cannot stipulate a sin. Just like a rule of positive law domestically, so too the treaty itself cannot stipulate the commission of a sin. Short of those two limitations, once a treaty is entered into, it becomes morally binding on Muslims to the same extent that a verse in the Quran is binding on them because of the moral rule that you have to fulfill your commitments once undertaken.

## V. ISLAM’S MODELS OF CO-EXISTENCE AND MODERN-DAY DEMOCRATIC EQUALITY

Islamic history provides two different models of co-existence. I will talk about them in different situations. The first involves non-Muslims under the permanent protection of Muslims and the second involves Muslims under the protection of non-Muslims.



The first, involving non-Muslims under the protection of Muslims, is *Aqd al-Dhimma*—the contract of protection. According to that contract, non-Muslims would be guaranteed the protection of the Islamic state to the same extent as Muslims would in exchange for these non-Muslims being bound to all the non-religious rules of Islamic law—meaning contract, torts, property, etc. Non-Muslims would obviously not be bound to Islamic rules of ritual. They would not be required to pray or fast, for example. They're also exempt from certain kinds of criminal punishments because jurists viewed those to be essentially religious and not political in character. But they were bound to obey all the rules that were political or secular in character.

The other circumstances involve Muslims under the protection of non-Muslims and this is again modeled along a treaty. And, assuming the terms of the treaty are valid, Muslims are bound to obey it. But Muslims cannot enter into a treaty that prohibits them from manifesting their religion. For example, if the terms of the treaty say that a person is allowed to stay somewhere as long as he does not pray or as long as he does not fast, that Muslim has no choice but to emigrate. Hence, if the non-Muslims are willing to tolerate Muslims only on the grounds that the Muslims do not practice their religion, then Muslims have a moral obligation to leave that country and go somewhere where they can practice their religion.

Pre-modern Islamic law did not contemplate a model of equal citizenship. It had these models of co-existence, but it was not based on what we consider equal citizenship under today's standards. Instead, there are two different models. One is a "Muslims in charge with non-Muslims obeying Islamic law" and the other is "non-Muslims in charge with Muslims obeying non-Islamic law as long as Muslims have certain freedoms." Democracy is a different model altogether because it is based on equal rights under law instead of communal autonomy.

In the pre-modern world, Muslims insisted on communal autonomy just to practice their religious rituals and apply Islamic law internally. Under a democracy characterized by equality, this kind of communalism is in stark tension with that ideal. Democracy provides Muslim minorities with certain advantages relative to this sort of ancient regime of co-existence, but it also creates particular challenges.

First, what are the advantages from the perspective of Muslim minorities? First, there is freedom of religion. Whereas in the pre-modern world, religious expression and the rights of Muslims were extremely constrained, in a democracy, there are much greater religious rights. In addition, there are also the general rights of citizens. So you do not just have the right to pray, you also have the right to vote, to run for office, to trade in the marketplace and so forth.

On the other hand, a disadvantage is the loss of communal coercive power. In a democracy, Muslims do not have the right to apply Islamic law coercively on the members of the community, where they might have had that right in all sorts of pre-modern regimes. Therefore, on the one hand it expands rights, but from another perspective it also reduces them.

Therefore the fundamental question that modern Islamic political thought really needs to face is: Does democracy provide enough freedoms for Muslims to satisfy their fundamental religious obligations? The question is not whether democracies apply

Islamic law. I think this is a question that is debated quite intensely among modern Muslim thinkers. The answer hinges on whether democracy is satisfactory in that regard or whether there still needs to be more substantive protection for religion.

#### VI. CONFLICTS BETWEEN PRINCIPLES OF CITIZENSHIP AND ISLAMIC LAW

It is a trivial exercise to pick up a medieval treatise of Islamic law and point out substantive conflicts between the law set out in the medieval treatise and the modern standards of justice. However, we need to consider whether or not those rules really represent substantial modern-day conflicts or whether they are simply historical ones.

What are the sources of conflict? Substantive laws may differ regarding the scope of different freedoms. Islamic contract law for example, does not permit certain kinds of transactions that the common law does. Likewise, Islamic law permits polygamous marriages under certain conditions, whereas U.S. law does not. Likewise, Islamic inheritance mandates that an estate should be divided precisely among all legal heirs without any discretion given to the testator, whereas generally in U.S. law and other legal systems the testator has great freedom to dispose of his assets any way he wishes. Islamic law also forbids Muslims from waging wars with other Muslims, but citizenship in democratic countries may at times require Muslim citizens to bear arms against other believers. Not all of these are actual conflicts. Many cases simply involve the exercise of rights and can be solved by not exercising a particular right. For example, a Muslim could easily say that because he is living in the United States, he will not marry a second wife. That creates no conflict because there is no obligation under Islamic law to marry a second wife; it is simply something that is permitted under certain circumstances. Likewise, a liberal state could choose not to criminalize polygamy and it could be resolved that way as well.

Some Islamic laws, even if incompatible with modern conceptions of equality, such as the gender schemes of inheritance, seem perfectly compatible with general laws that give testators a wide freedom to dispose of their assets. Therefore there might be some Islamic rules that would be unconstitutional if adopted by the state, but are perfectly innocent when adhered to by individual citizens. This situation resolves many kinds of conflicts as well. Of course, there are some cases of actual conflict. Sometimes conflicts can be managed by exemptions from general law. For example, uniform requirements for policemen, or nurses, or public service conflict with the clothing requirements under Islam. Muslims may seek an exemption, or refrain from certain occupations requiring unsuitable uniforms. Sometimes, however, conflicts cannot be managed at all. As a purely hypothetical example (because it does not actually exist), if some sort of Muslim community were to insist on the right to criminalize apostasy, then of course many would say that cannot happen because that violates a core commitment of the United States—the constitutional commitment to freedom of religion. In that case, the Supremacy Clause would preclude an exception. In other instances, changing legal norms can eliminate or reduce conflict, such as in reformist interpretations of Islamic law or legal revolutions of public law. A specific example would be the Civil Rights Movement. The Civil Rights Movement in the United States reduced many of the

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obstacles to Muslims living a good Islamic life in the United States. Islamic reform is not the subject of this paper, but one of the most sinister aspects of the anti-Sharia movement in the United States, besides distorting medieval Islamic law, is spreading the misinformation that doctrines of pre-modern Islamic law represent what Muslims in the twenty-first century believe today, which is not true.

There are very complicated reasons as to why that is, but the important point is that most influential Islamic thinkers today accept democracy as a legitimate mode of collective governance, although they may have disagreements on specific areas and details regarding the relationship between religion and public law. Otherwise, the nature of the conflicts is eminently manageable within the domain of ordinary course accommodation for religious freedom as it has developed particularly in United States and Canada.

### VII. HISTORICAL ISLAMIC LAW AND BELIEFS OF CONTEMPORARY MUSLIMS

Now I turn briefly to historical Islamic law and the beliefs of contemporary Muslims. Why is it totally fallacious to pick up a medieval treatise of Islamic law and then cite rules from it as examples of what Muslims believe? Because it fails to recognize that in Islam there is a distinction between theology and legal doctrine. Whereas theological beliefs are immutable, legal rules are for the most part not immutable. Islamic law includes numerous techniques of reasoning that can be used to revise legal doctrines in light of changing circumstances. These techniques of legal interpretation have been particularly important in modernist doctrines of *jihad* that have radically revised pre-modern doctrines of armed conflict between Muslims and non-Muslims and for questions of gender, in which modernist Muslims have dramatically revised doctrines regarding gender so that modern Muslim conceptions are radically egalitarian as compared to pre-modern ones. These may not be as egalitarian as post-1960s United States or contemporary Canada, but they are almost ninety percent here.

There are also reformist movements that go beyond traditional methods of legal interpretation and that scarcely pay heed to historical doctrines at all. A lot of modern Muslims just are plain ignorant of the pre-modern legal tradition, have no idea what it says, and would be shocked to know what it does say. This is because their moral intuitions have been thoroughly shaped by the post-World War II consensus about equality, including gender equality, and equality among peoples, etc. People who are not specialists in Islamic law have to be aware of this distinction between theological doctrines and legal doctrines, and from the perspective of Islamic believers, legal doctrines are not something that are set in stone, even though we believe that theological truths are immutable.

### VIII. ISLAMIC TRANSNATIONALISM AND U.S. FOREIGN POLICY

Finally, I want to touch on what I think has given rise to, or is the real cause of, the fear of Sharia. It has nothing to do with Muslims following Sharia because they are going to follow Sharia for things that have to do entirely with their private lives

such as their family and their business dealings. Unfortunately, I think this anti-Sharia sentiment has to do with a political agenda that is very hostile to Muslims here because of Muslims' transnationalism.

Muslims believe in something called an *umma*—a spiritual body of all Muslims in the world. Naturally, this is something that goes beyond the borders of any one country. Muslims as part of their religious beliefs therefore have certain ties of solidarity with Muslims wherever they are. There is always this tension in a nation state between loyalties to the nation state and loyalty to or feelings of solidarity with people outside of the nation's borders. This becomes particularly problematic given the role of the United States in the world today as the sole superpower and its penchant to intervene at will all over the world, but particularly in the Muslim world.

This sense of transnational solidarity naturally gives rise to some tensions between Muslims living in the United States and abroad on the one hand and the United States with respect to the way it conducts its foreign policy on the other. Some of the issues of dispute are well-known. I think the great danger that we as a society face following 9/11 is that the space for legitimate public criticism of U.S. policy has constricted radically. Prior to 9/11, I think Muslims in the United States felt generally free to criticize the United States publicly without any fear of retribution; however, I think that freedom is gone completely. The great risk is that by radically constricting the space for legitimate dissent from government policies, the United States is alienating future generations of Muslim Americans and exacerbating conflict between Islam and public law rather than reducing it or at least containing it.

So now what we have are Muslim organizations who scarcely utter any word of condemnation or criticism of any U.S. policy. The reason why I think this is dangerous is because of what I stated earlier: Muslim relations with non-Muslims are fine as long as they do not lead to some kind of sense of humiliation and inferiority. And in a democratic society there is no greater humiliation than being treated differently by your government. An unhealthy conflict is not inevitable, but could very well be the result of particular policy decisions. Instead of adopting ever greater security measures designed to monitor Muslims' behaviour ever more closely, the United States could have responded, and could yet still respond, in the manner of Norway, whose prime minister stated that the Norwegian government's response to its 9/11 would be *more* democracy, not less.<sup>4</sup>

So I fear that in a democratic society where you have government-tolerated, and in some cases government-sponsored, discrimination, you are going to generate backlash among Muslim citizens who grew up here. There has actually been data that suggest that children of immigrants in democracies—whether the United States, Britain, or France—are much more alienated than their parents.<sup>5</sup> I think the reason

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4. See *An Attack on the Norwegian Democracy*, NORWAY—THE PERMANENT DELEGATION TO THE OSCE, <http://www.norway-osce.org/Latest-news/An-Attack-on-the-Norwegian-Democracy> (last updated Aug. 8, 2011).

5. PEW RESEARCH CTR. FOR THE PEOPLE AND THE PRESS, MUSLIM AMERICANS: NO SIGNS OF GROWTH IN ALIENATION OR SUPPORT FOR EXTREMISM (2011), available at <http://www.people-press.org/2011/08/30/muslim-americans-no-signs-of-growth-in-alienation-or-support-for-extremism/?src=prc-headline>.

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is because they have imbibed democratic values, but then find disconnects between those values that they believe should exist and their experience. That creates a very dangerous situation. And I hope that that's what we focus on, and not the teachings of medieval Islamic law.

