

LANGUAGE MATTERS: TALKING ABOUT ISLAM AND MUSLIMS

Mohammad Fadel

INTRODUCTION

Despite the passage of more than ten years since the horrific events of September 11, 2001, the American public discourse with respect to Islam and Muslims has taken an increasingly negative turn. Hostility to Islam has become a central feature of the Republican Party, and a popular Democratic president with a clearly identifiable Muslim name has yet to visit a single mosque in the United States. This not so subtle signal reveals that the Democratic Party, even if it does not engage directly in anti-Muslim rhetoric, remains unprepared to risk any of its political capital by defending Muslims.¹ In the immediate aftermath of 9/11, prominent members of the political elite, led by then President George W. Bush, took immediate and highly visible steps to indicate that the American Muslim community was an integral part of the American body politic. At the same time, however, the seeds of the corrosive public discourse that eventually produced the paranoid hysteria about Islam on the right were already being sown via a systematic campaign based on lies, misinformation, half-truths, and gross caricatures of medieval Islamic teachings, many of which do not reflect modern Muslim beliefs or practices.² As a result, otherwise obscure legal and theological terms (e.g., *taqiyya*, *dhimma*, and *khilāfa*³) have entered the common parlance of the American right as signifiers of the “threat” that Islam poses to the American republic.⁴

One strategy that Muslims can use to resist the demonization of Islam is to empower fair-minded Americans who, although they know little about Islam, recognize the dangers that anti-Muslim politics have introduced into the nation’s political discourse. These people could debate credibly (precisely because they are non-Muslims) with the American right regarding Islam’s place in American life and eventually pave the way for community members to regain their legitimate voice in the public sphere. To accomplish this, however, the latter must communicate to the former more effectively regarding the content of the various medieval-era Islamic doctrines (*jihād*, *taqiyya*, *sharī’a*, *al-khilāfa*, and *dhimma*), that the right wing uses to marginalize American Muslims, as well as historical doctrines pertaining to gender, to place Muslims beyond the pale of civilization. In this way, they can refute the right wing’s claim that denying the American Muslims’ civil rights is a justifiable precaution and explain what it really is: a gross travesty of basic freedoms. This position paper will discuss how the media uses these and other controversial terms, and then provide a scholarly discussion of each, in the hope that fair-minded people will be able to draw on this paper as a resource to help change the public discourse regarding Islam. It will conclude with a discussion of the democratic ethics that apply to public discussions of democracy.

In declaring a “war on terrorism,” the Bush administration adopted a Manichean worldview in which

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everyone was forced to take sides: either one was with the Americans (i.e., the Bush administration) or with al-Qaida. Muslims were quickly classified into two groups: moderates and extremists. The government dutifully declared that the vast majority of Muslims, both in the United States and worldwide, were peaceful moderates and that only a very small minority fell into the camp of the violent extremists who had perpetrated 9/11. Such a division was clearly reductionist. Even if it was motivated

by the right reasons, it had a sinister effect: American Muslims were effectively stripped of their practical ability to criticize, at least publicly, American policies in the Islamic world in general or the conduct of the “war on terror” in particular. Their position only became more and more untenable due to the vehemence with which the administration pursued this “war.” Believing that it was not sufficient to target al-Qaida, the administration began to target any insurgency involving Muslims. Thus Muslim resistance movements in Palestine, Chechnya, and Kashmir, among others, became associated with al-Qaida, even though they had started long before al-Qaida even existed, were motivated by well-recognized and understood local grievances, and were operationally independent of al-Qaida.

Solidarity with such causes, however, had played a central role in American Muslim identity formation well before 9/11, particularly among the relevant immigrant communities. By refusing to differentiate essentially local insurgencies from al-Qaida’s very specific and openly declared global campaign against Americans, the Bush administration suddenly considered the long-term advocacy of these causes as *prima facie* evidence of support for al-Qaida. But silence in these circumstances, even if it was the best strategy in the context of a very weak hand, was insufficient to protect American Muslim institutions or the community from charges of sympathy for terrorism. And once any kind of political violence became indelibly associated with al-Qaida, it was not long before Islamic doctrines justifying armed resistance (e.g., *jihād* or acceptance of the idea of the *caliphate*) became synonymous with adherence to al-Qaida’s ideology.

American policymakers, who refused to acknowledge any political reasons for terrorism, developed in large part a *theological* response: adherence to “bad” theology came to serve as a proxy for sympathy with al-Qaida. The quest was on to find “moderate” Muslims who could serve as the public allies in its “war on terror.”⁵ In such an atmosphere, American Muslims were subjected to a virtual inquisition, their words and actions placed under

continual scrutiny, to determine whether they held any questionable beliefs. If so, they were subject to exclusion from public life. In the worst cases, sting operations were launched against individuals in the hope that they might be induced to commit a manufactured crime. A community faced with what amounts to a systematic inquisition of its beliefs, doctrines, and practices is

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obviously in no position to defend itself. Indeed, one of the most vicious and insidious charges that the American right has leveled is that Muslims systematically engage in deceit and intentionally conceal their true beliefs when they discuss Islam with non-Muslims as part of a diabolical plot to subvert American institutions. One of the most destructive consequences of the right's hysterical anti-Muslim campaign has been to undermine the trust of broad swathes of the American public in the community's ability to serve as honest representatives of Muslim beliefs. As a result, American Muslims have been effectively silenced and excluded from public discussion of their own faith, not to mention important public issues regarding the future of the "war on terror," the country's relationship with the Muslim world, and the future of peace in the Middle East.

In such circumstances, the obligation to defend Muslims' status as equal citizens in the American political community has necessarily fallen on the shoulders of non-Muslim individuals and civil society institutions. Institutions like the ACLU, the Brennan Center for Justice,⁶ and the Center for American Progress⁷ have played important roles in publicly defending Muslims' civil rights. Some prominent journalists such as Glenn Greenwald of Salon.

com⁸ have also courageously defended them against the ever-expanding impact of the "war on terrorism" on the community. Others, like Andrea Elliott of the *New York Times*, have done a masterful job of normalizing the lived American Muslim experience⁹ and tracing the rise of the so-called "anti-Sharī'a" movement.¹⁰ Yet, I know of *no* public intellectuals who have defended Islam as a legitimate part of American public culture. Normally, each community is responsible for articulating its own views and explaining how its members relate to the values of American democracy. The poisonous anti-Islam atmosphere, however, has effectively made it impossible for Muslims to explain their beliefs or their politics in public fora. Professional right-wing anti-Muslim propagandists, however, have stepped into the breach, effectively dominating the public discussion of Islam and Muslims. Effective resistance requires the Muslim community to cultivate its relationships with fair-minded non-Muslims and to educate them on the history of certain controversial concepts within Islamic theology and law, as well as their significance in the religious lives of modern Muslims.

ISLAM, TERRORISM, AND COGNITIVE BIAS

During a search of the *New York Times* database for the last year, I discovered 100 articles that included the terms *Islam* and *jihād*. The articles covered included a plethora of stories, ranging from the Palestinian-Israeli conflict, the assassination of Osama bin Laden, the New York Police Department's spying on Muslims living in New York, and Rep. Peter King's (R-NY) House Homeland Security Committee's investigations into claims of American Muslim "radicalization." Only one included a Muslim's perspective on the meaning of *jihād*, its significance to Muslim beliefs, and the dilemmas facing Muslims in the United States who wish to speak about *jihād*.¹¹ While one might quibble with the *New York Times* with

respect to some of these articles' particular details, the problem is not so much factual as it is the framing: stories involving Islam are overwhelmingly reported within a national security frame in which Muslims are presented at best as a "problem" and at worst as a "civilizational threat." Moreover, their cumulative effect goes beyond the particular facts they report. Behavioral psychologists have a specific term for this phenomenon: the *availability heuristic*. This term designates the human tendency to reach inferences based on the information that most readily comes to their mind, which is a function both of the frequency of occurrence and the magnitude of events associated with it. While all human beings indulge in this heuristic, it is, in the best of circumstances, a mental shortcut. Moreover, as with all mental shortcuts, it is not a very accurate tool. In other words, given what we know about human cognitive biases, the frequency with which individuals come across reports associating terms like *Islam*, *jihād*, *militant*, *violence*, *terrorism*, *Osama bin Laden*, and *al-Qaida* in combination with the *magnitude* of 9/11 and the ubiquity of images from that attack, it is inevitable that the average individual will radically overestimate the threat of violence inspired by a *doctrinal* commitment to *jihād*.

How serious is the likely overestimation of the risk, due to the availability heuristic, regarding the probability of dying from a terrorist attack? According to one set of estimates,¹² if terrorists successfully pulled off an attack of the magnitude of 9/11 once a year, the annual risk would be 1 in 100,000; over one's lifetime, it would be 1 in 1,300. A comparison with the ordinary risks we face every day (on a lifetime risk basis) is illuminating: dying from an airplane crash: 1 in 5,000; drowning: 1 in 1,100; being murdered: 1 in 210; and dying from a car crash: 1 in 83. Thus, on the wildly unrealistic assumption that terrorism could kill 3,000 Americans per year, Americans would still be 15.6 times as likely to die in a car accident than in a terrorist attack.¹³ The availability heuristic, reinforced by the experience and magnitude of 9/11 and then combined with the nearly daily news reports regarding Muslims somewhere in the

world engaged in some kind of politically related violence, however, results in a sharply skewed public perception of the risks posed by terrorism in the name of Islam.

Media framing, however, is not the only source of background data that helps exaggerate this heuristic's effect: post-9/11 government security policies have performed the same function. As a recent economic analysis of the United States' post-9/11 security spending demonstrates,¹⁴ the resources deployed to prevent another terrorist attack would have been cost-justified only if one assumed that enhanced homeland security measures deterred, prevented, protected against, or foiled four terrorist attacks a day, each causing twelve deaths and \$100 million in property damage. If one takes the 7/7 London subway bombings as one's base case, thirty such attacks would have to take place annually to justify such increased expenditures. Even assuming a repeat of 9/11, an attack on that scale would have to occur at a rate of greater than once a year to justify the increased amount of spending.¹⁵ Washington's spending on anti-terrorism security measures far exceeds any reasonable estimate of the actual threat posed by terrorism. Such a waste of resources, at a time of great economic deprivation, ought to be of general concern to all citizens. Its effect on American Muslims is, however, particularly pernicious because it reinforces the public's perception that the threat of terrorism, particularly terrorism in the name of Islam, is pervasive.

The framing effect produced by the availability heuristic is, in turn, reinforced by ubiquitous reminders in airports, subways, train stations, and other public places that warn citizens to be vigilant against suspicious looking persons or objects; public service announcements; and even the much-mocked color coded "threat levels." While these may be marginal to improving collective security, they very effectively enhance the average American's already present bias to overestimate the risk of terrorism. The pervasiveness of the irrational fear of terrorism motivated by Islam, in turn, has led to a perverse feedback loop in which fear both increases the pressure on law enforcement

to “prevent” terrorism via aggressive policing techniques, the very “success” of which, in turn, reinforces the public’s fear of the threat’s pervasiveness, thereby leading to more pressure to “catch” more terrorists before they can act on their violent intentions.¹⁶ This pervasive fear produces an ever-narrowing domain in which Muslims can exercise their constitutionally protected rights to express their opposition to government policies, with hardly any concern from the non-Muslim American majority.¹⁷

In these circumstances, the most serious obstacle to creating a civil discourse regarding Islam and Muslims in the public sphere is the cognitive biases resulting from the hegemonic fear produced by the availability heuristic. The media can play a crucial role in this context not by ignoring violence committed by Muslims in the name of Islam, but by placing that violence in its proper context, both from an empirical and an ideological perspective. Empirically, the media needs to resist the public perception that terrorism is a pervasive threat by pointing out the statistically minimal risks terrorism creates, even if we assume a wildly successful terrorist campaign. Ideologically, the media needs to educate the public that while *jihād* is part of mainstream Islam, the vast majority of Muslims do not understand it as unrestricted war in all times and places against non-Muslims. The media is well-equipped to do the former job, but it will need the community’s help to do the second. To that end, I now discuss various Islamic terms that have become part of public discourse, but only in a grossly distorted fashion.

CONTROVERSIAL ISLAMIC TERMS

Muslims can take an important step toward creating a civil discourse about Islam by providing more nuanced explanations of controversial Islamic doctrines. While it is tempting to provide anodyne, Sunday school versions, such an approach is inconsistent with Islam’s long-term viability in the United States, whether viewed from an internal Islamic perspective or that of democratic citizenship. First of all, such terms have long, contested

histories within Islam itself. In addition American Muslims, insofar as they are members of a transnational Muslim community, cannot reasonably claim nor hope to have

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an interpretive monopoly on their meaning. Moreover, in the context of an interconnected and truly global Muslim world, they cannot hope to insulate themselves from different understandings that may gain currency elsewhere and then travel to this country. In short, American Muslims must develop a more complex account of these doctrines.

From the perspective of democratic citizenship as well, this is an imperative: just as American Muslims cannot remain immune from doctrinal debates abroad, they also cannot monopolize the meaning of Islam within the country with respect to non-Muslims. To put it differently, non-Muslim Americans are perfectly entitled to educate themselves about Islam from whatever source they wish, and they may very well choose sources that American Muslims, as a general matter, reject. When facing two conceptions of a term, a non-Muslim American may very well choose, for perfectly non-biased reasons, to believe that the more rigorously formulated conception is the “genuine” Islamic teaching. Many Islamophobes use this very tactic: they cherry-pick positions from the pre-modern Islamic legal tradition and then use that as evidence of the “true” Islamic position on a particular position. When American Muslims do not have a well-developed explanation for why their view is superior to the traditional view, it becomes that much easier for a suspicious non-Muslim to deny it any credibility. In other words, American Muslims ought to take a more *historical* approach to communicating the meaning of

these concepts, one that acknowledges the legitimate concerns such ideas might raise in the context of a democratic society, while at the same time offering their fellow citizens reasons why such concerns are misplaced.

This is ultimately an exercise in *public theology*,¹⁸ a practice fraught with danger, one that, at this point in time, even recalls the atmosphere of an inquisition. Nevertheless, I believe it must be undertaken, if only to insulate this and future generations of American Muslims from alternative conceptions of Islam that will inevitably compete with what we teach our children. Accordingly, I have tried to sketch out below more nuanced understandings of several terms drawn from Islamic doctrines used by the right wing to further the sense of pervasive fear associated with Islam and Muslims.

Sharī'a

In contemporary discourse, sharia has almost inevitably been reduced to "Islamic law," and in more popular conceptions, the *hudūd* punishments (which involve either execution or amputation) and rules that discriminate against women. In fact, the *sharī'a* is not so much a body of substantive legal doctrines (although it certainly produces substantive legal doctrines) as it is a method of religiously grounded practical reasoning designed to explain how to live a life pleasing to God. Its historical manifestation is found in many works of theology, jurisprudence, law, ethics, mysticism, exegesis, and other fields, as well as in the *sharī'a*'s fundamental sources: the Qur'an and the Sunna (the Prophet's normative practice). While some of its conclusions operate as fixed points of reference, the vast majority of its doctrines, particularly its legal doctrines, remain subject to further debate and consideration, especially given the radically different circumstances of modernity. Muslim adherence to the *sharī'a*, then, at least in its best manifestations, is part of a continuous millennium-long effort to understand what it means to live a godly life. It is extremely misleading to pick and choose particular substantive doctrines from medieval works of substantive law and then portray them

as representing contemporary Muslims' views of the substantive requirements of the *sharī'a*.¹⁹

Historically, Muslims used this term to signify a broad range of theological, ethical, and legal discourses said to derive from revelation. Among its numerous disciplines were theology (*kalām* or *uṣūl al-dīn*), ethics (*ādāb*, *akhlāq*), jurisprudence (*uṣūl al-fiqh*) and law (*furū' al-fiqh*), exegesis (*tafsīr*), and mysticism (*taṣawwuf*). The term has its origin in the Qur'an, where God tells Muḥammad that "He has placed him on a certain way (*sharī'atin min al-amr*)" (*al-Jāthiya*, 45:18). The Qur'an also refers to prior revelations with a cognate of *sharī'a*, *shir'a*, declaring that "To each [people] we have given a law (*sharī'a*) and a path, so compete with one another in good deeds" (*al-Mā'ida*, 5:48). In this sense, the *sharī'a*'s disciplines are distinguished from those of the secular, empirical world. This reality gave rise to a religious/secular dichotomy, exemplified in *Discipline: Profane and Religious (Adab al-Dunyā wa-l-Dīn)* by the prominent judge and intellectual Abūal-Ḥasan al-Māwardī (d. 1058). One of the profane disciplines was law, and thus traditional Muslim thought contrasted revealed law (*sharī'a*) with profane law (*siyāsa* or *qānūn*). Historically, Islamic law was elaborated by a special class of Muslim jurists, the *fuqahā'*. Among Sunni Muslims, four "schools" of law eventually became dominant: Mālikī (Spain, North and Western Africa), Ḥanafī (parts of the Arab Middle East, Turkey, Eastern Europe, Central Asia, and the Indian Subcontinent), Shāfi'ī (parts of the Arab Middle East, East Africa, South India, and Southeast Asia), and Ḥanbalī (Arabian Peninsula, with the rise of Saudi Arabia). The Shi'a Muslim community, which globally represents about 10% of the worldwide Muslim community, generally follow their own school of law, known as the Ja'farī school, after the sixth Imam of the Shi'a, Ja'far al-Sādiq.

Much of the controversies regarding law in the Muslim world today center around the proper relationship of secular law to the *sharī'a*. Secularists seek to advance a conception of law that would be unrestricted by the

sharī'a, while partisans of the *sharī'a* appear to call for a legal order that would recognize *only* *sharī'a*-derived norms. Both absolutist positions are contrary to traditional Muslim views that recognized the legitimacy of secular law provided that it was not *repugnant* to revealed law. This structural relationship of revealed law acting as a check on secular law provides the relevant line of analysis for reconciling a Muslim's moral commitment to adhering to revealed law with membership in a particular political community. Provided that the political community's secular legal system does not substantially interfere with one's ability to adhere to the *sharī'a*'s specific demands, conflicts between both realms will generally be minimal.

Such a conclusion might be surprising, especially in light of the specific content of particular rules of Islamic law, such as stoning married adulterers. The reason why one should be reasonably optimistic about the general compatibility between a morality grounded in revealed Islamic law and democratic culture is that not all specific rules of Islamic law are understood as having equal theological, moral, or practical significance. In other words, the thousands of particular rules that have historically made up the body of Islamic law are internally differentiated and weighted. Some have central significance to an Islamic way of life, whereas others are only marginally so. Accordingly, while orthodox Muslims would probably, as a matter of theology, affirm that God has decreed the above-mentioned punishment, most likely they would not be interested in stoning any actual adulterers, whether Muslim or non-Muslim, for several reasons. First, even if one assumes a rigorous Islamic state committed to the application of such penalties, the *sharī'a*, in its capacity as a legal system, imposes very substantial evidentiary bars (e.g., four eyewitness to the act of penetration, and the accused's right to withdraw his/her confession at any time, even after the punishment has commenced). Second, the *sharī'a* as a moral system strongly discourages individuals from informing public authorities about moral crimes such as adultery, and instead encourages an ethic of

privacy (*satr*) and private moral counsel (*naṣīḥa*). Third, the *sharī'a* prohibits private persons from applying these punishments to individuals, even if they are actually guilty, because the right to do so is vested exclusively in the public authorities. Fourth, as a Muslim living in a non-Muslim state, a Muslim is morally obliged to respect the *sharī'a*'s prohibition against fornication and adultery; however, he/she is under no obligation to apply any of the *sharī'a*'s substantive penalties for the violation of its norms. Finally, even in an Islamic state, most Islamic law authorities would agree that non-Muslims are never to be subjected to the penalty of stoning.

I have discussed stoning in depth because it is often cited as emblematic of the “barbarity” of the *sharī'a* to make the point that, even in the absence of substantive reform, even the most traditional and orthodox American Muslim would be very unlikely to have any interest in applying such a penalty in the United States. The historical *sharī'a*'s approach to regulating a substantive crime like adultery, however, is representative of how the *sharī'a* distinguishes between fundamental moral commitments and secondary and even tertiary practical legal ones. It therefore gives its adherents a practical means to navigate complex social circumstances in a principled fashion without violating one's religious ideals. The very fact that the *sharī'a* itself engages in this internal differentiation among its various rules also makes it more amenable to change through sustained and reasoned dialogue than would otherwise be the case if all rules were considered equally central.

Nonetheless, the *sharī'a*'s substantive rules are, in many cases, subject to revision, reconsideration, and even rejection pursuant to the internal rules that govern *sharī'a*-based reasoning. This is true, despite the claim that it is a revealed law, for various reasons, among the most prominent of which are that Muslims rarely claim that a specific rule of substantive law actually represents God's rule. Instead, they claim that it represents a reasonable hypothesis regarding the content of God's rule. Moreover, Islamic law includes the legal principle that

rules, to the extent to which they are based on empirical contingencies, must be revised when those contingencies change. Accordingly, even that which appears to be categorical language in revelation might end up being qualified to the extent that Muslim interpreters believe that the language at issue was actually intended to respond to a very particular circumstance or set of circumstances that no longer apply.

Jihād

Perhaps no other Islamic term raises more fear than the dreaded “j” word: *jihād*. Regularly translated as “holy war” in English, this word’s connotations bring up images of swarthy, bearded men wearing flowing cloaks and turbans, perhaps riding horses, screaming unintelligible words, killing all people in their path, motivated above all else by irrational religious fanaticism. Although Muslims use this term to signify religiously sanctioned warfare, that conception hardly resembles the popular stereotype in the minds of American non-Muslims. In the western tradition of international law, a *holy war* was distinguished from a *just war* insofar as the former was an all-out war that knew no restraint and had the ultimate intent to destroy the enemy, usually due to the belief that he was irredeemably evil. Even the most aggressive *medieval* Muslim conceptions of military *jihād* do not envisage mass slaughter; rather, they contemplate the destruction of the enemy’s military power and the establishment of peaceful relations either by truce (*hudna*), their incorporation into Islamic state as protected non-Muslims (*dhimma*), or their adoption of Islam. The sacrosanct nature of pacts was evidenced in Islamic law by the legal principle that Muslims must always adhere scrupulously to their agreements (*al-muslimūn ‘inda shurūṭihim*) and that Muslims should never treacherously break their word after giving it (*al-ḥirz ‘an al-ghadr*). The sacrosanct nature of such undertakings, in turn, provided the legal foundation for the concept of “safe passage” (*amān*), which eventually became one of the grounds for justifying Muslim citizenship in non-Muslim states.

Although Muslim jurists used *jihād* in law books to refer to warfare against non-Muslims, this was neither its exclusive use nor the sole legal term for war. For example, writers in the field of ethics used it in its literal sense of “struggle” to refer to the individual struggle to conquer one’s passions and draw closer to God: *jihād al-nafs* or *mujāhadat al-nafs*. Jurists used the ethical concept of moral struggle to describe warfare against non-Muslims on the assumption that such warfare represented a particular form of struggle that was especially critical to the community’s future. The stakes of defeat on the battlefield in Late Antiquity and the Middle Ages was, after all, quite high: defeated soldiers were often killed, while women and children were typically enslaved. This existential element was not present in intra-Muslim warfare, which the jurists called *baghy* (rebellion), because both parties recognized the *sharī’a*’s authority and, accordingly, would not kill prisoners or enslave captives. Rather, these were civil wars, insofar as they were motivated by different conceptions of right, rather than a desire to defeat (and destroy) the other side.

Under medieval doctrine, *jihād*—the law that governed both war and peace between Muslim and non-Muslim states—was recognized as being both defensive (*jihād al-daf‘*) and discretionary (*jihād al-ikhtiyār*). Under the former, all Muslims living in a Muslim locale were obliged, if attacked by an enemy and if able to do so, to participate in its defense either by fighting or supporting those who were fighting. If they were unable to repulse the enemy, then Muslims located in adjoining territories were obliged to come to their aid. In theory, the entire Muslim community should come to its aid if that was the only way to repulse the invader. Most jurists labeled discretionary *jihād*, what we might call in the post-Iraq world a “war of choice,” as a communal obligation (*farḍ kifāya*). Pursuant to this doctrine, the state was to fight the enemy along those frontiers most in need of military assistance at least once a year. Not all Muslims were obliged to serve, however, and only the state was authorized to wage discretionary wars.

Many commentators have stated that in classical Islamic

law, the purpose of “discretionary war” was essentially expansionist and that the Islamic state was legally obliged to wage war on non-Muslim states until the entire world become Muslim territory. This view is probably a result of a mistaken interpretation of the limitations that some jurists placed on the term of treaties between Muslim and non-Muslim states. For example, the Shāfi‘ī school did not permit the state to enter into truces with non-Muslim powers that exceeded ten years, whereas the Ḥanafī and Mālikī schools permitted the state to enter into open-ended treaties with non-Muslim states provided that doing so was in the community’s interest.

Even in the absence of a peace treaty, however, not all medieval jurists recognized an obligation to pursue the enemy. Some jurists said the obligation to wage “discretionary war” was satisfied if the state assigned enough soldiers and maintained sufficiently strong border fortifications to deter an attack. Other jurists believed that this obligation ended when the Prophet retook Mecca, in which case the obligation to fight a discretionary war came about exclusively by command of the state. No significant modern Muslim jurist, with the possible exception of some scholars from Saudi Arabia (e.g., the late Nāṣir al-Dīn al-Albānī) continues to adhere to this medieval doctrine, arguing that the permissibility of non-defensive warfare was conditioned on the chaotic condition of the medieval world order. Now that the international order is governed by international law and international institutions like the United Nations, the only kind of permissible *jihād* is defensive *jihād*.²⁰ So complete is this understanding that even al-Qaida invokes self-defense to justify its war against the United States.²¹

Despite abandoning any interpretation of *jihād* that would justify wars of expansion, modern Muslim discourse has emphasized the obligation of defensive *jihād*. In fact this obligation, when combined with the transnational idea of the Muslim community (*umma*), has been merged with modern conceptions of anti-colonialism, national liberation, and self-defense to promote a doctrine of transnational solidarity linking Muslim peoples throughout

the world. This merging of religious and secular ideas perhaps best explains the global Muslim community’s consistent support for the Palestinians’ struggle against Zionism. The United States exploited this same notion to rally worldwide Muslim support against the Soviet invasion of Afghanistan in 1979, and al-Qaida invokes it to justify its war against the United States. While the vast majority of Muslim jurists deny al-Qaida’s argument that 9/11 was justified on the basis of self-defense, most Sunni Muslim scholars agree that the American invasion of Iraq was unjustified and therefore triggered the obligation of defensive *jihād*.²²

When speaking of *jihād*, then, the context must be made clear: Is it being used in the classical or medieval sense to describe the law of war and peace that Muslims developed to govern their relations with non-Muslim peoples and powers (academic)? Is it being used to describe what is essentially a nationalist struggle undertaken by a particular Muslim people, who therefore describe it as a *jihād* to give it religious resonance (Palestine)? Or, is it being used to describe a war in defense of an imagined worldwide community that is under universal assault by non-Muslims (al-Qaida)? These are diametrically opposed usages of the same term and, given the sensitivity associated with *jihād* in common parlance, it is important not to conflate any of these conceptions.

Madrassa

In the wake of 9/11 and in the search for answers to what motivated nineteen young Arab men to kill themselves in carrying out that attack, a large degree of responsibility was assigned to the content of religious education in parts of the Muslim world, especially Saudi Arabia and Pakistan. “Radical” religious schools, often called by their Arabic name, *madrassa*, were frequently vilified and pressed to reform their education system to help prevent radicalization.²³ There is little empirical evidence, however, to support the theory that such schools either promote or are crucial to producing terrorists. For example, almost all of the 9/11 terrorists were graduates of western

universities.²⁴

Madrasas are indigenous educational institutions with a long and illustrious history. While they generally focused on teaching religious subjects, they also taught general literacy skills, Arabic literature, natural sciences, and philosophy alongside their religious curriculum. In most parts of the Muslim world, they enjoyed a monopoly over education until the nineteenth century, when Muslim governments began to introduce western-style education in the “secular” or “modern” subjects. Traditional madrasas largely adapted by expanding their curriculum to include many of the “modern” sciences. At al-Azhar in Egypt or the Zaytuna mosque in Tunisia, the state took over the traditional institution and remolded its curriculum directly to make it more compatible with its own modernizing efforts.

Far from being terrorist indoctrination centers, madrasas are the functional equivalent of Islamic seminaries. Even though many of them probably do not provide an optimal education, that is a structural problem common to education programs throughout the Muslim and the developing worlds and has nothing to do with terrorism. Instead of viewing madrasas as hostile institutions, then, they should receive enhanced investment so that they can do a better job of transmitting mainstream Islamic doctrines while at the same time providing their students the content of a modern education.

Caliphate

Fear of the “caliphate” became part of American political orthodoxy no later than September 2006, when then President Bush, trying to justify the ongoing war in Iraq, stated that the United States was fighting, in part, to prevent the restoration of the “caliphate[,] ... a totalitarian Islamic empire encompassing all current and former Muslim lands, stretching from Europe to North Africa, the Middle East and Southeast Asia.”²⁵ His decision to associate the caliphate, a completely standard part of orthodox Sunni religious doctrine, with al-Qaida’s peculiar ideology was most unfortunate, even dangerous. The term

caliphate, the anglicized version of *al-khilāfa* (succession), refers to the institution(s) that appeared after the Prophet’s death to discharge his worldly and religious functions. It became a part of Sunni Muslim dogma largely as a result of disputes with the Shi’a as to whether his successor was to be freely chosen by the community or whether

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the Prophet had designated him before his death, and forever thereafter by the sitting leader of the community. The Sunnis held that the leader must be chosen by the community; the Shi’as believed that the leader should be designated, first by the Prophet and thereafter by the sitting leader.

It is not hard to understand why something like the *khilāfa* is a necessary part of Islamic dogma, for it goes to the central question of whether Islam would survive as an organized community. As the term literally suggests, it is a theory of how “succession” can take place so that Islam, as a religion, and Muslims, as a community of believers, can survive over time. Such historical writers as al-Māwardī (d. 1058) and Ibn Khaldūn (d. 1406) identified it with a particular set of institutions, which suggests a tightly governed universal Islamic polity with a caliph (*khalīfa*) as its titular head who appoints all subordinate officials and in whom all power derives. But such a model never reflected Muslim political practice, or even legal practice, except for perhaps during 200 years of Umayyad (661-750) and Abbasid (750-1258) rule. What did persist, however, even after the effective dissolution of centralized caliphal power, was a legal ideal of political unity, such that various Muslim polities functioned effectively as coordinate jurisdictions, each having its own local machinery of government. These were then tied together into a horizontally integrated legal system by virtue of these jurisdictions’ common adherence to

Islamic law. Accordingly, judgments issued by a court in Baghdad would be recognized and enforced in Cairo, or vice versa, as though they were the decisions of domestic courts. Likewise, because all Islamic states functioned as one legal commonwealth, intra-Muslim violence (e.g., conquest) was not *legally* effective to transfer legal entitlements. In fact such warfare, being civil and not international, was legally distinguished from warfare with non-Muslims. As a consequence, it was regulated by the law of rebellion (*aḥkām al-bughāt*), a law designed to limit the associated violence and restore peace and legality as quickly as possible.

Due to the powerful associations of the caliphate with the Muslim world's peace and unity, the idea of the caliphate is hardly unique to al-Qaida. One of the most prominent contemporary Arab legal reformers, 'Abd al-Razzāq al-Sanhūrī (d. 1971), wrote his first doctoral dissertation following the Ottoman Empire's collapse and Mustafa Kemal's dissolution of the caliphate in 1924 on the topic of a renewed caliphate that would function effectively as an "Oriental League of Nations." This institution would help Muslim-majority states to pursue liberation from colonization and to modernize. At the same time, it would promote a universalist ideal of Muslim fraternity to prevent the dangers of fanatic nationalism, the evils of which had been made so clear by the destruction of World War I, from spreading in the Islamic world. Indeed, the very same intuition that ideals of Muslim fraternity could help promote peace and counteract the rise of ethnic nationalism underlay the establishment of the Organization of Islamic Cooperation,²⁶ which, although comprised of independent *sovereign* states, is based on the idea that common adherence to Islam helps reinforce already existing international obligations to maintain peace and international community.

Finally, the ideal of the caliphate remains an important source of political legitimacy in the Sunni world. In short, it provides the foundation for a legal regime of limited government that is representative of the governed and is bound by a rule of law. In the Sunni conception of

the caliphate, public offices are a trust to which public officials accede pursuant to a contractual appointment between the Muslim public (alternatively referred to with terms such as *umma*, *jamā'at al-muslimīn*, or *'āmmat al-muslimīn*) and the public official. The very structure of the relationship as one that is simultaneously contractual and fiduciary provides the normative foundations for limited self-government, and thus refutes Bush's claim that the caliphate is some kind of totalitarian ideal. While Muslims need to consider more profoundly how non-Muslims can be incorporated as equal members of this political community, this kind of narrow criticism is far removed from confusing a widespread and orthodox Muslim belief and set of legal doctrines with advocacy of a totalitarian dictatorship.

Taqiyya

This term, now a favorite catchphrase of anti-Islam activists in the West, is used to impeach the credibility of Muslim claims about their own beliefs on the ground that Islam commands Muslims to dissimulate, deceive, and otherwise trick non-Muslims as part of a carefully planned strategy to further Islam's allegedly expansionist aims. Thus, any Muslim's attempts to condemn terrorism or reinterpret medieval doctrine is dismissed out of hand as disingenuous at best, and intentionally misleading at worst. This accusation, of course, seeks to preclude Muslims from acting as effective interlocutors in civil discourse by depriving them of the right to represent their own beliefs. As is the case with much of contemporary anti-Muslim discourse, *taqiyya* in the sense of dissimulation is found among certain Islamic sects, most notably the Shi'a. However, it is hardly a license to lie to non-Muslims in order to conquer them or falsely induce them to become Muslims, or the like. It is, essentially, a prudential doctrine that permits a believer to conceal his/her identity in circumstances where to tell the truth would expose him/her or the community to grave harm because of a well-founded threat of persecution. Its origin is in the Qur'an, which permits a believer to renounce his/her faith

outwardly because of persecution, provided that his/her heart remains faithful.²⁷

According to Muslim tradition, the relevant verse (Qur'an 16:106) was revealed in connection with the persecution of an early convert family: Yasir and his wife Sumayya, who died at the hands of their persecutors without renouncing Islam, and their son Ammar, who recanted to save his life. Thus, people who find themselves in such a life-threatening situation do not sin if they outwardly recant. The Shi'a, because of their status as a Muslim minority persecuted by Sunnis, unsurprisingly developed this doctrine so they could adopt Sunni views to deflect reasonably feared persecution if their true religious affiliation became known. Sunnis, too, sometimes resorted to it when they found themselves in oppressive circumstances. One paradigmatic example is the Moriscos, the Spanish Muslims who were forced to conceal their religion after the Reconquista.

Taqiyya, therefore, is a doctrine of self-defense in the face of persecution, not a doctrine of systematic dissembling to further Islam's "ascendancy." There is simply no basis for the belief, now widely accepted among right-wing American Islamophobes, that Islamic theology grants Muslims an absolute license to lie to non-Muslims simply to gain an advantage. Nor is there any empirical evidence that American Muslims in particular believe in such a doctrine. Indeed, the contrary is closer to the truth: Muslims are taught to be faithful to their undertakings and that treachery, even at the expense of non-believers, is a grievous sin. Moreover the right wing's version of *taqiyya* is fundamentally at odds with Islam as a universal, missionary religion; if Muslims are allowed to lie systematically about the content of Islamic doctrines, it would be effectively impossible for them to preach Islam to non-Muslims.

Dhimma

This concept has its roots in classical Islamic international law and refers to non-Muslims who are permanent residents in Islamic territory, in contrast to non-Muslims

whose presence was only transitory. Muslims were obliged to treat such permanent residents as Muslims with respect to defense against aggression, whether the aggressor was a Muslim or a non-Muslim. While a temporary non-Muslim residents enjoyed a commitment of non-aggression from Muslims, Muslims had no obligation to protect them from aggression committed by non-Muslims. Accordingly, if the enemy captured both Muslims and permanent resident non-Muslims, the Muslim state had to ransom both the Muslim and non-Muslim prisoners. It was under no such duty, however, with respect to non-Muslims who were only temporary residents in Muslim territory.

With respect to domestic law, different schools of Islamic law afforded non-Muslim permanent residents different rights. The Ḥanafī school was the most generous in treating non-Muslims as the equivalent of Muslims with respect to all "civil rights," including the right to demand retaliation in kind (*qiṣāṣ*) if one of them was killed by a Muslim. On the other hand, all pre-modern schools of Islamic law excluded non-Muslim permanent residents from exercising any *independent* political power over Muslims. Thus they could not serve as the head of state, a plenary minister (*wazīr tafwīḍ*), a judge (*qāḍī*), or a witness (*shāhid*)²⁸ against a Muslim party. They could, however, and frequently did serve in senior government "administrative," rather than plenary, posts. Accordingly, a non-Muslim could serve as an *executive* minister (*wazīr tanfīdh*) entrusted with implementing state policy. Likewise, a non-Muslim permanent resident could testify as an *expert* witness, given that Islamic evidentiary law did not view such people as exercising political power in contrast to fact witnesses. In order to enjoy the protections and privileges of *dhimma*, a non-Muslim had to agree to abide by the non-religious provisions of Islamic law *and* pay the poll-tax (women and children were exempt from this requirement). While non-Muslim permanent residents had no legal entitlement to support from the public treasury, as a matter of practice pre-modern Muslim states often established public endowments, particularly in cities, that benefitted everyone, regardless of religion. Non-Muslim

communities also could, and did, establish endowments under Islamic law to protect their communities' economic interests and provide charity to the poor members of their communities.

While *dhimma* provided non-Muslim permanent residents with a lawful place within Muslim society and assured them basic rights of worship and protection from forced conversion, it was not a system of equal citizenship. Indeed, many Muslim authors, particularly from later periods, were committed to the notion that Muslims were obliged to subject this class of non-Muslims to periodic forms of psychological humiliation as an inducement for them to convert. This sentiment was not, however, universal, and such contemporary Arab Muslim modernists as Rashid Rida (d. 1935) and Yusuf al-Qaradawi have argued against such discriminatory and humiliating rules. As a result of reformist movements in the nineteenth and twentieth centuries, the ideal of equal citizenship—with the exception of family law, which continues to the subject of sectarian law—has become the norm in the Islamic world.

One of the principal ideas behind the First Amendment's prohibition of establishing a particular religion was to short-circuit the possibility that public discourse would become infected with controversial theological debates, more often motivated by ignorance, bias, and outright religious bigotry, than a disinterested investigation into the public good.

While it would be anachronistic to treat the pre-modern system of *dhimma* as the equivalent of today's ideal of equal citizenship, it is also a gross distortion to characterize this relationship as one of slavery, servitude, and abasement.

Numerous scholars have shown, for example, that non-Muslim permanent residents of different historical Islamic states used Muslim courts to secure their rights against their co-religionists and in commercial and other disputes with Muslims.²⁹ Finally, and without denying the need for Muslim-majority countries to improve their record regarding the treatment of non-Muslim minorities, to insist that modern non-Muslims living in Muslim-majority states remain subject to medieval doctrines of legally enforced discrimination is a gross distortion of reality and ignores the important strides that Muslim states have made in achieving equality of citizenship.

CONCLUSION: TALKING ABOUT ISLAM IN THE PUBLIC SPHERE

As this brief discussion reveals, each controversial term has a complex history that has evolved over time. Understanding the details of this evolution is the task of historians of Islamic intellectual, theological, and legal history, one that is profitably and usefully studied in a university setting. Making the meaning of such terms part of public debate, however, is unlikely to produce anything other than what we have already witnessed: the appropriation by anti-Muslim activists of the power to define Islam, and the disempowerment of Muslims over defining the meaning of Islam in the twenty-first century. The result is not educated discourse, but rather a public inquisition in which Muslims are essentially asked to "recant" various ideas in which, in the usual course of things, they have never actually believed. But the very act of publicly recanting itself undermines the credibility of such a statement, because it is the product of an unequal power relationship in which the element of possible coercion is never very far off. One of the principal ideas behind the First Amendment's prohibition of establishing a particular religion was to short-circuit the possibility that public discourse would become infected with controversial theological debates, more often motivated

by ignorance, bias, and outright religious bigotry, than a disinterested investigation into the public good. And while other First Amendment values such as freedom of speech preclude the government from interfering in bigoted and destructive speech, responsible citizens who care about the quality of civil discourse, democratic deliberation, and the equality of citizens must resist the discourse of anti-Muslim activists not because they can point out the myriad ways in which their claims are false, but rather on the grounds that theology is not a proper concern of political debate in a constitutional democracy.

Muslims, particularly in the present environment that has become thoroughly infected with anti-Islamic rhetoric, lack the effective political power to change the discourse. Only non-Muslims who take seriously the political values of the Constitution and pause to consider why, for example, it forbade religious tests for public office, are in a position to defeat organized anti-Muslim bigotry.

By definition, a constitutional democracy supports diverse and conflicting ways of life, each with its own view of the good and even ideals of justice. Many times, the values upheld by various groups living under the terms of a democratic constitution will be incommensurable. The United States, in particular, is deeply divided on the role of religion in public life and whether religions are morally entitled to pursue their conceptions of the good through political means.³⁰ American Muslims themselves are deeply divided on the role of religion in public life, despite claims by anti-Muslim activists that they are secretly plotting to take over the government and forcibly impose Islam on all Americans. It would not be implausible to speculate that an unknown percentage of American Muslims probably hold views that are deeply at odds with one or more principles of democratic constitutionalism. But this is also true of numerous adherents of other religions. If one were to search out actual religious threats to the robustness of the country's constitutional democracy, it is unlikely that organized Muslim religious movements would be at the top of that list. Despite our knowledge that some

adherents of religions wish to change the basic structure of the United States' constitutional regime in a radical fashion,³¹ our constitutional system does not seek to exclude such persons from the public sphere or limit their rights as such; rather, it seeks to rely on the constitutional institutions' resilience and inherent attractiveness to uphold the country's fundamental political values, first through the mechanism of representative government and then through an independent judiciary that will enforce constitutional values. Fears of a Muslim takeover really amount to an indictment of these institutions' effectiveness and implicitly rely on the notion that the Constitution's checks and balances cannot strike down unconstitutional legislation that a hypothetical Muslim majority in the political branches of government would be tempted to pass.

Given our reliance on institutions and the rule of law to protect our fundamental constitutional structure, there is no political logic to religious exclusions or the religious inquisitions that inevitably follow in their wake. The United States in the twenty-first century is not Great Britain in the seventeenth century, where the fear that the heir to the throne was a Roman Catholic plausibly raised the issue of whether Roman Catholicism would be reestablished. Even if President Barack Obama were a Muslim, and even if he harbored a secret desire to impose Islam, the resilience of the country's constitutional institutions precludes him from so doing. If that is the case, then it is simply politically irrelevant to question his beliefs or motives. And if that is true, the same observation applies with even greater force to the political views of the American Muslim community. While inquiries into individual citizens' "hidden" religious beliefs will rarely be conducive to promoting the public good, insistence on making religious beliefs a part of the public debate will almost always undermine that very debate by silencing the voices of fellow citizens. In the case of the American Muslim community, a strong case can be made that its views are especially likely to offer important contributions to the quality of public decision making with respect to several important issues. At a

minimum, the disastrous expansion of the “war on terror” from a narrow focus on al-Qaida in Afghanistan would have been most likely avoided had American decision makers heeded the community’s views. Allowing anti-Muslim rhetoric to run unchecked in the public sphere not only deprives American public discourse of potentially valuable views, but it also raises the palpable risk of becoming a self-fulfilling prophecy. To the extent that anti-Muslim rhetoric succeeds in excluding Muslims from effective membership in the body politic, it should not surprise anyone if increasing numbers of American Muslims accept the notion that they are not Americans, which will have potentially dangerous results for everyone.

ENDNOTES

1 Arsalan Iftikhar, “Romney Should Avoid Pandering to anti-Muslim Sentiments,” *Sacramento Bee*, May 7, 2012, available at <http://www.sacbee.com/2012/05/07/4471271/romney-should-avoid-pandering.html> (last viewed May 13, 2012).

2 A recent Center for American Progress report has thoroughly documented the systematic nature of this campaign and its origins in a relatively few right-wing organizations. See Wajahat Ali et al., “Fear, Inc. The Roots of the Islamophobia Network in America,” Center for American Progress, available at <http://www.americanprogress.org/issues/2011/08/islamophobia.html> (last viewed May 13, 2012).

3 Technical terms drawn from Islamic theology or law will be italicized and transliterated to indicate that they are, in fact, technical terms. Where they have become part of common parlance, they will not be italicized or transliterated.

4 See, for example, “Shariah: The Threat to America,” Center for Security Policy, “Shariah: The Threat to America – An Exercise in Competitive Analysis—Report of Team B ‘II’” (Center for Security Policy Press: Washington, DC: 2010).

5 See, for example, Cheryl Barnard, “Civil Democratic Islam: Partners, Resources and Strategies” (Rand Corporation: 2003).

6 See, for example, Faiza Patel, “Rethinking Radicalization,” *Brennan Center for Justice*, March 8, 2011, available at http://www.brennancenter.org/content/resource/rethinking_

radicalization/ (last viewed May 13, 2012) (criticizing, presciently, the New York Police Department’s “conveyor belt” theory of radicalization).

7 See, for example, Ali et al., “Fear, Inc.”

8 See http://www.salon.com/writer/glenn_greenwald/.

9 Andrea Elliot, “A Muslim Leader in Brooklyn: Reconciling Two Worlds,” “To Lead the Faithful in a Faith Under Fire,” and “Tending to Muslim Hearts and Islam’s Future,” *New York Times*, March 5-7, 2006, available at <http://topics.nytimes.com/top/news/national/series/muslimsinamerica/index.html> (last viewed May 13, 2012).

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11 “A Marked Man in America,” Andrea Elliott, *New York Times Magazine*, March 20, 2011.

12 See Ronald Bailey, “Don’t Be Terrorized,” August 11, 2006, available at <http://reason.com/archives/2006/08/11/dont-be-terrorized> (last visited April 16, 2012).

13 Ibid.

14 Mark Stewart and John Mueller, “10 years and \$1 Trillion Later, What Has All Our Security Spending Achieved?,” June 2, 2011, available at http://www.niemanwatchdog.org/index.cfm?fuseaction=ask_this.view&askthisid=00512 (last visited April 16, 2012).

15 Ibid.

16 Peter Finn, “Documents Provide Rare Insights Into FBI’s Terrorism Stings,” April 13, 2012, *Washington Post*, available at http://www.washingtonpost.com/world/national-security/documents-provide-rare-insight-into-fbis-terrorism-stings/2012/04/13/gIQASJ6CGT_story.html?wprss=rss_national-security (last visited April 17, 2012).

17 Glenn Greenwald, “Personalizing Civil Liberties Abuses,” April 16, 2012, *Salon*, available at http://www.salon.com/2012/04/16/personalizing_civil_liberties_abuses/ingleton/ (last viewed April 17, 2012).

18 As the University of Western Ontario’s Centre for Public Theology puts it, “Public theology in the most general sense is reflection on issues relating to public life, carried out in the light of theological conviction and with the aid of the theological

disciplines. Theology in this context is understood as the systematic thinking of faith communities, as they navigate their own histories, traditions and texts in specific historical and cultural contexts.” <http://www.publictheology.org/groups/centreforpublictheology/> (last viewed May 13, 2012).

19 This, however, is precisely how the authors of the infamous “Shariah: The Threat to America” approach their analysis of the sharī‘a. Center for Security Policy, “Shariah: The Threat to America.”

20 For a general discussion of the history of the Islamic law of war and peace, see Mohammad H. Fadel, “History of Islamic International Law,” *Max Planck Encyclopedia of International Public Law*, ed. Dr. Frauke Lachenmann et al. (Oxford: 2010), available at http://www.law.utoronto.ca/documents/Fadel/Max_Planck_Final.pdf (last viewed April 19, 2012).

21 Alia Brahimi, *Jihad and Just War in the War on Terror* (New York: Oxford, 2010).

22 Anthony Shadid, “Scholars Urge *Jihad* in Event of Iraq War, Cairo Center Declares All Muslims Threatened,” *Washington Post*, March 11, 2003, A12.

23 See, for example, Sabrina Tavernise, “Pakistan’s Islamic Schools Fill Void, but Fuel Militancy,” *New York Times*, May 3, 2009, A1, available at http://www.nytimes.com/2009/05/04/world/asia/04schools.html?_r=1&pagewanted=all (last viewed April 19, 2012).

24 Peter Bergen and Swati Pandey, “The Madrassa Myth,” June 14, 2005, *New York Times*, available at <http://query.nytimes.com/gst/fullpage.html?res=9A04EFDB1F38F937A25755C0A9639C8B63> (last viewed April 19, 2012).

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26 When this organization was first founded in 1969, it was called the Organization of the Islamic Conference.

27 *Al-Nahl*, 16:106: “As for those who deny God, after having embraced faith in Him—save for those who have been compelled while their hearts remain tranquil in faith; those whose hearts have inclined to rejection [of God], they have earned God’s anger and a painful punishment.”

28 It is important to bear in mind that witnesses in the pre-modern Islamic legal system played a role much closer to the jury in the Anglo-American system. Therefore, jurists considered courtroom witnesses to be discharging a political office and not just providing facts to the court. Finally, a party in Islamic judicial procedure could not never be a “witness” in his/her own case, whether Muslim or non-Muslim. As a result, witnesses comprised a professional class of legal experts who were called upon to document such legally noteworthy acts as marriages, divorces, and other substantial transactions. In criminal cases that by their very nature did not generally involve this class of professional witnesses, courts relied largely on circumstantial evidence. Therefore, the testimony of non-Muslims would certainly be admissible to the same extent as the testimony of Muslims.

29 See, for example, Najwa Qattan, “Dhimmi’s in the Muslim Court: Legal Autonomy and Religious Discrimination,” 31 *Int. J. Middle East Stud.* Pp. 429-444 (1999).

30 See, for example, Phillip L. Quinn, *Political Liberalisms and Their Exclusions of the Religious*, where he argues that while he does not wish to see American Christians repeal the First Amendment in order to make way for a Christian republic, he is not convinced that it is immoral for them to try.

31 See, for example, Phillip Quinn, “Political Liberalisms and Their Exclusions of the Religious,” 69,2 *Proceedings and Addresses of the American Philosophical Association*, pp. 35-56 (1995).

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