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Islam in the Inter(National)

Lama Abu-Odeh*

* Professor of Law, Georgetown University Law Center

Islam, Muslims, and Islamic law have become an intense American pre-occupation since September 11, 2001. Since then, much literature has been written in academia¹ and public culture² alike, deciphering the Muslim and the Islamic,³ bestsellers sold,⁴ careers made, and expertise claimed, solicited, and generously offered.

Unsurprisingly, another type of literature coincided with the rise of the literature on Islam and the Islamic, namely, the one on national security.⁵ Sometimes, this literature paralleled and intersected with that on the Islamic,⁶ with both fields claiming the same experts, though for the most part, the latter commanded its own independent list of bestsellers,⁷ experts, and careered stars.⁸ Indeed, if the establishment of centers and degrees in U.S. law schools and

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1. *See generally* JOHN WALBRIDGE, *GOD AND LOGIC IN ISLAM: THE CALIPHATE OF REASON* (2011); *ISLAM, LAW AND IDENTITY* (Adam Gearey & Marinos Diamantides eds., Cavendish Pub. Ltd. 2011); *ISLAM AND HUMAN RIGHTS: SELECTED ESSAYS OF ABDULLAHI AN-NA'IM* (Mashood A. Baderin ed., Ashgate 2010); JOHN L. ESPOSITO, *ISLAM: THE STRAIGHT PATH* (Oxford Univ. Press 4th ed. 2010); JOHN L. ESPOSITO, *THE FUTURE OF ISLAM* (2010); ABDULAZIZ SACHEDINA, *ISLAM AND THE CHALLENGE OF HUMAN RIGHTS* (2009); JOHN L. ESPOSITO, *WHAT EVERYONE NEEDS TO KNOW ABOUT ISLAM* (2011); *THE LAW APPLIED: CONTEXTUALIZING THE ISLAMIC SHARI'A* (Peri Bearman et al. eds., I.B. Tauris 2008); ABDULLAH AHMED AN-NA'IM, *ISLAM AND THE SECULAR STATE: NEGOTIATING THE FUTURE OF SHARI'A* (2008).
 2. *See generally* ERICK STAKELBECK, *THE TERRORIST NEXT DOOR: HOW THE GOVERNMENT IS DECEIVING YOU ABOUT THE ISLAMIST THREAT* (2011); ANDREW C. MCCARTHY, *THE GRAND JIHAD: HOW ISLAM AND THE LEFT SABOTAGE AMERICA* (2010) (stating that the real threat to the United States is not terrorism; the real threat is the sophisticated forces of Islamism, which have collaborated with the American Left not only to undermine U.S. national security, but also to shred the fabric of American constitutional democracy — freedom and individual liberty); BENAIZIR BHUTTO, *RECONCILIATION: ISLAM, DEMOCRACY, AND THE WEST* (2008); ROBERT SPENCER, *THE POLITICALLY INCORRECT GUIDE TO ISLAM (AND THE CRUSADES)* (2005); KAREN ARMSTRONG, *ISLAM: A SHORT HISTORY* (2002).
 3. Mohammed Ayob, *Deciphering Islam's Multiple Voices: Intellectual Luxury or Strategic Necessity?* 12 *MIDDLE EAST POL'Y* 79 (2005).
 4. *See generally* AYAAN HIRSI ALI, *NOMAD: FROM ISLAM TO AMERICA: A PERSONAL JOURNEY THROUGH THE CLASH OF CIVILIZATIONS* (2010); REZA ASLAN, *HOW TO WIN A COSMIC WAR: GOD, GLOBALIZATION, AND THE END OF THE WAR ON TERROR* (2009); REZA ASLAN, *NO GOD BUT GOD: THE ORIGINS, EVOLUTION, AND FUTURE OF ISLAM* (2005); IRSHAD MANJI, *THE TROUBLE WITH ISLAM: A MUSLIM'S CALL FOR REFORM IN HER FAITH* (2005).
 5. *See generally* DAVID COLE & JULES LOBEL, *LESS SAFE, LESS FREE: WHY AMERICA IS LOSING THE WAR ON TERROR* (2007); David Luban, *The War on Terrorism and the End of Human Rights*, 22 *PHIL. & PUB. POL'Y Q.* no. 3, at 9-14 (2002); DAVID LUBAN, *The War on Terrorism and the End of Human Rights*, in *THE CONSTITUTION IN WARTIME: BEYOND ALARMISM AND COMPLACENCY* (Mark Tushnet ed. 2003); JACK L. GOLDSMITH, *THE TERROR PRESIDENCY: LAW AND JUDGMENT INSIDE THE BUSH ADMINISTRATION* (2007); JACK L. GOLDSMITH & ERIC A. POSNER, *THE LIMITS OF INTERNATIONAL LAW* (2005).
 6. *See generally* MARC SAGEMAN, *LEADERLESS JIHAD: TERROR NETWORKS IN THE TWENTY-FIRST CENTURY* (2008); MARK A. GABRIEL, *CULTURE CLASH: ISLAM'S WAR ON THE WEST* (2007); MARK A. GABRIEL, *ISLAM AND TERRORISM: WHAT THE QURAN REALLY TEACHES ABOUT CHRISTIANITY, VIOLENCE AND THE GOALS OF ISLAMIC JIHAD* (2002); DANIEL PIPES, *MINIATURES: VIEWS OF ISLAMIC AND MIDDLE EASTERN POLITICS* (2003); DANIEL PIPES, *MILITANT ISLAM REACHES AMERICA* (2003).
 7. *See* SAM C. SARKESIAN, JOHN ALLEN WILLIAMS & STEPHEN J. CIMBALA, *US NATIONAL SECURITY: POLICYMAKERS, PROCESSES AND POLITICS* (2007).
 8. *Roger Hertog Program on Law and National Security*, COLUMBIA LAW SCHOOL <http://www.law.columbia.edu/hertog-national-security> (last visited Apr. 2, 2012); *International Security Graduate Certificate*, STANFORD UNIVERSITY <http://sepd.stanford.edu/public/category/courseCategoryCertificateProfile.do?method=load&certificateId=1226779> (last visited Apr. 2, 2012); HARVARD KENNEDY SCHOOL, John F. Kennedy School of Government offers National Security Fellows Program,

universities with the title 'national security' are any indication, the latter field can certainly claim to have commanded the higher interest, if not the resources.⁹ For all practical purposes, the centers and departments historically specializing in all things Islamic have, since September 11, witnessed a loss of status, if not money and resources, ironically in the name of 'national security.'¹⁰ The proliferation of the former has coincided with the dwindling of the latter. The experts of the old have been replaced by the media starred experts of the new.

That is not to say that conservatives and Islamophobes dominate the field of national security. In law schools, the field of national security seems to be squarely divided between liberals and conservatives, if not dominated by the former, given the general make-up of the law professoriate. The odd thing, however, is that the field of national security has formally configured itself around addressing the puzzling question of *balancing liberty with national security*, while it is covertly understood by all its participant interlocutors that what 'national security' is a stand-in for, is really the 'the Muslim terrorist,' or in loose terms, the Islamic writ at large. Its formalist posture has made the study of the 'Muslim/Islamic' superfluous. With some horror, but also quite a bit of amusement, I watched my own law school faculty, one famous for its progressive and liberal views on all things under the sun, meet to vote on a proposal to establish an LLM degree in national security.¹¹ Not one colleague balked at the fact that not a single course in the list proposed for the degree, compulsory or optional, included anything on Islam, Muslims, or the Islamic.

Arguably, the aversion to the formal association of the 'Muslim' with 'national security' is a good thing as to do so would simply be racist. Surely, it is much better for the Muslim that what is at stake in discussions on national security is the competing valuation of liberty versus national security among Americans, the 'Muslim' here appearing as simply a historically accidental object of national discussion (albeit unnamed) that could be replaced by any random 'other' in the future, as indeed has been the case in the past. One can treat the formal dissociation of the two to be a liberal and progressive victory turning the disapproving eye away from the Muslim, or at least constraining it as it tries to locate the target of its discipline.

<http://ksgexecprogram.harvard.edu/Features/nsf.aspx> (last visited Apr. 2, 2012); and The National Security and Human Rights (NSHR) Program at Harvard University, <http://www.hks.harvard.edu/cchrp/nshr/index.php> (last visited Apr. 2, 2012); THE GEORGE WASHINGTON UNIVERSITY, *National Security & U.S. Foreign Relations Law at GW* offers L.L.M degree in National Security and U.S. Foreign Relations Law, <http://www.law.gwu.edu/Academics/FocusAreas/natsec/Pages/Default.aspx> (last visited Apr. 2, 2012); UNIVERSITY OF CALIFORNIA, LOS ANGELES offers The National Security Education Program (NSEP), <http://www.international.ucla.edu/funding/article.asp?parentid=17181> (last visited Nov. 14, 2011).

9. See *Center on Law, Ethics and National Security*, DUKE LAW <http://www.law.duke.edu/lens/> (last visited Nov. 14, 2011); *Center for National Security*, UNIVERSITY OF VIRGINIA <http://www.virginia.edu/cnsl/index.html> (last visited Nov. 14, 2011); *Center on National Security and the Law*, GEORGETOWN LAW, <http://www.law.georgetown.edu/cnsl/> (last visited Nov. 14, 2011).
10. See International Studies in Higher Education Act of 2003, H.R. 3077 (2003).
11. GEORGETOWN UNIVERSITY, Georgetown Law, *Center on National Security and the Law*, recently launched an L.L.M program for national security law in Dec. 2010, <http://www.law.georgetown.edu/graduate/NationalSecurityLawLLMandJDLLM.htm> (last visited Nov. 14, 2011).

To be sure, there is an awareness among liberals in the field of national security law that the forever expanding national security state has thrown its behemoth weight squarely on the shoulders of Muslims, both in the US and abroad, which, at least domestically, has serious civil libertarian consequences.¹² Meetings between government representatives of the security state, civil libertarian advocates, Muslims, and otherwise, continue apace. Grievances by such advocates are continuously made over the unwarranted attention given to Muslims in certain circumstances, such as travel, immigration, places of worship, some of which have even turned into lawsuits.¹³ Law review articles about discrimination against Muslims, either private or official, are increasingly appearing in law journals.¹⁴ Nevertheless, anti-Muslim racism remains a marginal pre-occupation of national security law, a field whose theorists remain insistent that what is really at stake in the discussion is the plight of liberty/security, and not that of the Muslim per se. More importantly, the client of the civil libertarian advocate has proven to be as opaque and un-definable, as that of the object of threat of the national security theorist. Both, as embodied in their Islam or Islamicity, are treated as historically accidental. They could be anybody, believing in anything, and coming from anywhere. What really matters (or warrants attention) is freedom from discrimination and liberty (or national security). That is what is at stake, what needs to be considered and theorized, and in short, what needs to be *known*.

The closest to developing a semblance of knowledge on Muslims, Islam, and the Islamic, the liberals/libertarians of the national security field have come is the assertion that not all Muslims are violent. It is a formal assumption because it can be safely claimed of any people, not just Muslims. It is an important position to take so Americans can proceed to defend their national security in a proper way: Not all Muslims are Al-Qaeda and Co., only the latter demands their institutional and military attention, all other Muslims should be safe from unwarranted US attention on the one end, and retaliatory violence on the other. Understandably, this posture is necessary as a response to those who come down on the

12. Numerous law suits have been brought on behalf of Muslims concerning Civil rights violations. For example, ACLU and the Center for Constitutional Rights were retained by Nasser al-Awlaki, the father of Obama assassination target (and U.S. citizen) Anwar al-Awlaki, to seek a federal court order restraining the Obama administration from killing his son without due process of law. See Glenn Greenwald, *ACLU, CCR Seek to Have Obama Enjoined from Killing Awlaki Without Due Process*, CENTER FOR CONSTITUTIONAL RIGHTS (Aug. 2010), <http://ccrjustice.org/newsroom/news/aclu-ccr-seek-have-obama-enjoined-killing-awlaki-without-due-process>. Muslim Advocates Organization brought a case against a meatpacking plant by the U.S. Equal Employment Opportunity Commission in which, supervisors and workers had cursed [the plaintiffs] for being Muslim; thrown blood, meat and bones at them; and interrupted their prayer breaks. *Muslim Civil Rights Violations on the Rise, Durbin Hearing Shows*, THE LEADERSHIP CONFERENCE (Mar. 30, 2011), <http://www.civilrights.org/archives/2011/03/1179-durbin-hearing.html>. For a comprehensive list of human rights violations of Muslims, see *Restoring a National Consensus: The Need to End Racial Profiling in America*, THE LEADERSHIP CONFERENCE (March 2011), http://www.civilrights.org/publications/reports/racial-profiling2011/racial_profiling2011.pdf.

13. *Id.*

14. See generally Sahar F. Aziz, *Sticks and Stones, the Words That Hurt: Entrenched Stereotypes Eight Years After 9/11*, 13 N.Y. CITY L. REV. 33 (2009); Sahar Aziz, *The Laws on Providing Material Support to Terrorist Organizations: The Erosion of Constitutional Rights or a Legitimate Tool for Preventing Terrorism?* 9 TEX. J. C.L. & C.R. 45 (2003); Frank E. Vogel, *The Trial of Terrorists Under Classical Islamic Law*, 43 HARV. INT'L L.J. 53 (2002).

national security side, who at times seem to be suggesting that there is that thing about Islam that is hateful and violent, and that all Muslims are therefore suspect.¹⁵ This crowd may advance a Quranic verse or two in defense of their position, in an attempt to use culturalism in lieu of racial stereotypes. Given the unpopularity of the latter, stopping them in their tracks on the part of the libertarian side, refusing their opining on all things Muslim and Islamic certainly seems the way to go.¹⁶ That said, I always find it hard to take seriously when a famous civil libertarian/national security advocate interviewed on public radio is asked to give substantive views on the war in Afghanistan and has little to say! It hits me afresh each time I witness it: My sincere advocate is ignorant (deliberately?) of my war!

A parallel phenomenon with a twist seems to have happened on the Muslim side, the other side of the expertise corridor described above. The expert on Islam, the Muslim, and the Islamic seems to have as little to say about national security, as the national security advocate has to say about the Muslim. It is certainly true that some experts on Islam and Islamic Law, in the context of legal academia since September 11, have responded in their writings to the assault on Islam and Muslims, and have produced much literature opining on the nature of these categories, most of which attempts to dispel stereotypes about the culture and its adherents, and attempts to show its internal diversity, historical complexity, indigenous liberal, multicultural, and democratic strands.¹⁷ Taking the tack that what is at stake in all these discussions is the status of Islam in the American mind, many such experts proceeded to defend it against its hateful and racist detractors (and there were many) who seem to have found a fertile soil in American public culture, both high and low.¹⁸ Most, however, especially in the field of Islamic law, proceeded with their intellectual projects seemingly unaware of the chain of political events triggered by September 11, including the US wars on Iraq and Afghanistan, the covert wars in Yemen and Somalia, and the onslaught of the American national state on American Muslims, either trotting the earth looking for the Islamic to comment on, like one looking to discover a pearl in a shell, or alternatively churning out manuscripts on how to reconstruct Islamic law in this or that field.¹⁹ The violence wreaking havoc in Muslim lands found only the few to comment on, let alone theorize.

In other words, parallel to the position adopted by national security theorists that what is at stake really is liberty/security and not Muslims themselves, the experts on Islam opine that what is at stake in the discussion on national security is the reputation of Islam and not Muslims themselves. Each side embraces, indeed hugs tenderly, that which it considers most

15. DAVID HOROWITZ, *UNHOLY ALLIANCE: RADICAL ISLAM AND THE AMERICAN LEFT* (2004).

16. *Id.*

17. *See generally* KHALED A. EL FADL, *THE GREAT THEFT: WRESTLING ISLAM FROM THE EXTREMISTS* (2007); KHALED A. EL FADL, *THE SEARCH FOR BEAUTY IN ISLAM: A CONFERENCE OF THE BOOKS* (2006); Wael B. Hallaq, *Islamic Rage and Islamic Law*, 54 *HASTINGS L.J.* 1705 (2003); Wael B. Hallaq, *The Quest for Origins or Doctrine? Islamic Legal Studies as Colonialist Discourse*, 2 *UCLA J. ISLAMIC & NEAR E. L.* 1, 1-31 (2003). *See also* ASLAN, *supra* note 4.

18. *See* HOROWITZ, *supra* note 15.

19. *See* AN-NA'IM, *supra* note 1; *see also* SHERMAN A. JACKSON, *ISLAM AND THE PROBLEM OF BLACK SUFFERING* (2009); RICHARD A. DEBS, *ISLAMIC LAW AND CIVIL CODE: THE LAW OF PROPERTY IN EGYPT* (2010); *THE ISLAMIC SCHOOL OF LAW: EVOLUTION, DEVOLUTION, AND PROGRESS* (Peri Bearman et al. eds., 2005).

its own, the former liberty/security, and the latter, Islam. My criticism should not be read as an objection to the contrasting, by the experts on both sides of the corridor, between what is ephemeral like the principle of liberty and the religion of Islam on the one hand, and the embodied feeling and hurting Muslims on the other; where the latter is seen by me as more valuable than the former (real Muslims matter more than Islam or liberty), rather that both sides, it seems to me, eschew knowledge about Muslims-in-history. What strikes me as absent in both fields is Muslims as agents of modern history, actors who trigger history's march.

The discussion of modern Muslims-in-history inevitably forces us to shuffle the cards a little bit. Once we do, we discover that the defenders of Islam (it is not violent) as well as the defenders of Muslims (they are not all violent) preoccupy themselves with endowing the Muslim/Islam with the quality of liberalism while neglecting to endow it with that thing that is most valuable to it in modern history: national security; neither, of course, do those who err on the Muslims are violent and the Islam is violent side. The absence of such endowment is highly significant in my view. Indeed, I think that the most charitable thing that a scholar can endow upon the Islamic in modern history is not so much its inherent tolerance, non-violence, and liberalism, as a religion, but rather its agency in history as seeking its own national security. Indeed, going back to the topic of this symposium, religion and international law, what needs to be done is to locate the national in the religious (i.e. Islam) and read the actions of its adherents as trying to find *the* only framework available in modern history for agency in the world. While it is nice to be seen as liberal and non-violent in these days, what is definitely nicer is to be seen as a nation endowed with national will, a position allowed the ex-colony in international law in a devious way. Its independence as a state and a member of the UN is certainly formally recognized. But let's not mistake this formal recognition of statehood with the recognition of nationhood. While the ex-colony has become an independent state after the colonial power departed, its boundaries remain those willed by the colonial power, and that is a far cry from nationhood! Nation-statehood is a status that was achieved by most Western countries in the eighteenth and nineteenth centuries.²⁰ As they formed themselves into disparate and differentiated nations, and as they acquired the state as the proper political framework for their national aspirations on the one hand, but also as the regulator and disciplinarian of that nationhood over time, they consequentially endowed themselves with national will. The distance between national will and national security is a simple act of deduction.

By contrast, ex-colonial nation states are either fragments of a nation denied the existence of a nation state, like the states of the Arab world, or a formal framework for pre-modern social groups unable to collect themselves into a viable nationhood, like Africa. The result is the same in both cases; when a nation is fragmented it is unable to find its will, and when it cannot be created out of potentially disparate parts, it too cannot project any national will. Under such conditions, the national security such a state seems to project is always really the security of the regime. As the Egyptian intellectual Samer Soliman puts it, there are often

20. See ANTHONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* (2005); THE THIRD WORLD AND INTERNATIONAL ORDER: LAW, POLITICS AND GLOBALIZATION, 45 DEVELOPMENTS IN INTERNATIONAL LAW (Anghie et al., eds., 2003).

strong regimes and weak states behind the formal framework of independent ex-colonial states, which is certainly the case in the Arab world.²¹ Some, but only the fortunate few, have escaped this punishing condition, and they are states that have no trouble projecting their national security onto the world, namely, Iran, Turkey, and Brazil! When they do, we hear it loud and clear.

To be certain — only nation states can be endowed with national security, only they can project national security onto the world, only they can define it, demand it, and work for it. Those living in states with their nation torn apart by numerous formal states, as in the case of the states whose citizens have waged the September 11 attacks, cannot. It is not accidental that national security after September 11 cannot be endowed upon Muslims who, in the debate, are seen simply as potential threats to American national security, and not rightful owners of the privilege of security. It was not endowed because it could not be imagined, and it could not be imagined because it had never been demanded, and it had not been demanded because it could not be projected, and it could not be projected because its proper historical agent, the state, was immobilized by its form and deprived of its nation/statehood!

However, the absence of the proper political form for the expression of national security interests does not negate the fact that the citizens of those states have the need to enjoy national security the way Americans do, nor that they too feel its urgent call. Absent the proper form to capture such security needs, national security remains a political task for the national collective that finds itself deprived of it.

Let us not commit the formalist mistake of assuming that there is plenty of national security to go around, and that once the proper political form for national living is endowed upon all those who lack it at the moment, we can all enjoy the national security manna. The distribution of national security in our contemporary world is as skewed as the distribution of wealth. In fact, the former seems to follow the tracks of the latter quite closely. Those who have plenty of wealth tend to have plenty of national security.²² When looked at closely, it seems to be the case that the connecting link between wealth and national security is the nation-statehood, with all three enjoyed by citizens at the same time, and all three experienced as God-given entitlements by their citizens.

National security is a scarce commodity in the age of empire, and we live in the age of American empire. Empires define their national security interests by negating those who live in their imperial sphere. And if there is a region that definitely lives in the American imperial state, it is the Arab region. Its oil is highly coveted as a strategic commodity in so far as empire is concerned, it is also the region that hosts the Jewish state that the American empire has simply decided is an extension of its own national being; the national security of

21. SAMER SOLIMAN, *THE AUTUMN OF DICTATORSHIP: FISCAL CRISIS AND POLITICAL CHANGE IN EGYPT UNDER MUBARAK* (Peter Daniel trans., 2011).

22. Obvious exceptions, of course, are the oil producing countries in the Arab gulf that host in their territories more US military bases than any other region in the world but are the quintessential non-nation states. Far from being nation-states, the political framework of their statehood resembles more closely a corporation with their citizens as shareholders in the equity of the corporation. Compare NAZIH AYUBI, *OVER-STATING THE ARAB STATE: POLITICS AND SOCIETY IN THE MIDDLE EAST 240-253* (1995) (applying the corporatism and consociationalism paradigms to the Arabia Gulf states).

the one is defined as the national security of the other. Cheap oil and safe Israel is the way that the US empire has defined its national security needs, come hell or high water. The US and its enfant terrible Israel have proceeded accordingly, and the task of response to their encroachment on the national security of the Arabs stuck in the air of the region for decades, waiting to be picked up by the proper form.

The trouble with September 11 is that the national security interests of the Arabs came to be picked up by the wrong form: the fundamentalist group Al-Qaeda. Its members are Arabs suffering the wounded nationalism of all Arabs, which, for the longest time has been experienced as the *manifest destiny* of the Arabs. Their response has not only missed its target (killing civilians is not the way to attain national security), but was a historic moral wrong of grand proportions.

As Egypt follows Tunisia in transforming itself into a democracy through popular revolution, and Arabs everywhere wait to enact *that* manifest destiny, the proper form to carry their national security needs will come to the fore. Till then. . . .