Backgrounder

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The Challenges of Islamist Ideology to America's Founding Principles

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Abstract: *What challenges does Islamism pose domestically to the core principles of Western plural societies, particularly the United States? Although Islamist rhetoric is sharp and polarizing, many of these tenets have been derived from classical Islamic sources, and Islamists reject any interpretations of them offered by "reform-minded" or "moderate" Muslims. Western European and British experiences point to potential areas of friction in public life. Specifically of note are the following Islamist tenets as they relate to specific core principles of Western legal and social foundations: the challenge of* Sharīʿa *law to the rule of law; of the role of women to equality before the law; of alleged "defamation of religion" to religious liberty, freedom of speech, and academic freedom; and of Islamic financing to free enterprise.*

Western legal tradition rests on the idea that there is "one law for all." This idea has emerged from the Judeo–Christian tradition as mediated by the Enlightenment, particularly from the tradition's teaching about the equal dignity and liberty of all and that the law should therefore apply equally to all.

Partly because of this sense that the law is the same for everyone, public law has acquired a certain autonomy from *particular* religious or moral traditions. Such an autonomy, exemplified in the United States Constitution and its refusal to establish any church, does not, of course, exclude the influence of religious tradition in the public square.[1]

Talking Points

- Radical Islamism poses critical challenges for free societies in the West.
- In recent years, there have been increasing calls for Western legal recognition of certain aspects of Islamic law; but because of the fundamental opposition between the assumptions of Western public law and those of the *Sharīʿa*, it is impossible to provide *Sharīʿa* with a recognized place in terms of the rule of law.
- *Sharīʿa*'s denial that the law should apply equally to all has ramifications in arenas ranging from family law and the place of women in society to freedom of belief and expression.
- The rise of radical Islamism, the relationship of isolation to radicalization, and the spread of radicalization through extremists in mosques, schools, universities, and prisons pose crucial concerns for the United States, both in terms of national security and in terms of America's commitment to freedom in the world.

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It is important, however, to respect this autonomy, just as it is important for the public law to recognize the freedom and autonomy of religious organizations (among others) to conduct their own activities within the framework provided by such law. Not only that, but the informed conscience of believers and others should also, as far as possible, be respected by legislation which is likely to impinge on such consciences.

In such a situation, what challenges does Islamism pose domestically to the core principles of Western plural societies, particularly the United States? Although Islamist rhetoric is sharp and polarizing, many of these tenets have been derived from classical Islamic sources, and Islamists reject any interpretations of them offered by "reform-minded" or "moderate" Muslims.

Western European and British experiences point to potential areas of friction in public life. Specifically of note are the following Islamist tenets as they relate to specific core principles of Western legal and social foundations: the challenge of *Sharīʿa* law to the *rule of law*; of the role of women to *equality before the law*; of alleged "defamation of religion" to *religious liberty*, *freedom of speech*, and *academic freedom*; and of Islamic financing to *free enterprise*.

Sharīʿa and the Rule of Law

The development of law in the Western world has generally taken place in close conjunction with the Judeo–Christian tradition. The influence of this tradition was mediated, first of all, through the Christianized Roman law of the Codes of Theodosius and Justinian of the fifth and sixth centuries, respectively. This was followed by the widespread use of Canon Law, especially in the areas of marriage and family life, inheritance, education, oaths, contracts, and a host of other matters.

The Protestant Reformation, on the one hand, upheld the dignity of the human person as created in God's image (an idea that was to become important in the developing discourse on natural rights). On the other, it recognized that human beings were fallible and sinful and thus needed the restraint of the law to prevent them from injuring their neighbor or causing damage to the body politic. Although the Reformers challenged Canon Law because they felt it kept people from a direct relationship with their Creator, it is surprising how much of Canon Law survived in the provisions that had to be made in Protestant countries for the ordering of personal, family, and social life. The difference was that the state took primary responsibility for this ordering, largely displacing the role of the Church in this area.

The Enlightenment, while it questioned the place of the Judeo–Christian tradition in public life, also drew many of its ideas about "inalienable" human dignity, equality, liberty, and natural law from this tradition. These ideas were duly secularized and made assumptions of rational discourse rather than being seen as derived from divine revelation. The result is that the tradition of public law, as it has developed in the West, is "secular" and yet in a continuing relationship with the tradition that has given it birth. One result of the emphasis on the equal dignity and liberty of all has been the insistence that the law should apply equally to all—or, to put it another way, that there should be "one law for all."[2]

In recent years, however, there have been increasing calls for some legal recognition in Western contexts of at least certain aspects of Islamic law or *Sharīʿa*. There was, for example, the proposal in Ontario, Canada, that Islamic family law should be used to settle family issues. The proposal was hotly debated but then set aside, mainly because of opposition from Muslim women's groups who did not wish to lose precious freedoms available to them under Canadian law. In Britain, both Church leaders and high judicial officers have called for

1. On "civil religion," see Martin E. Marty, *When Faiths Collide* (Oxford: Blackwell, 2005), pp. 82–83 *ad passim*.
2. See John Witte, Jr., and Frank Alexander, eds., *Christianity and Law: An Introduction* (Cambridge: Cambridge University Press, 2008), pp. 7ff, and Michael Cromartie, ed., *A Preserving Grace: Protestants, Catholics and Natural Law* (Grand Rapids: Eerdmans, 1997). On the influence of the Bible on the language about fundamental freedoms, see Mark Hill, ed., *Religious Liberty and Human Rights* (Cardiff: University of Wales Press, 2002). See also Peter Stein, *Roman Law in European History* (Cambridge: Cambridge University Press, 1999).

some recognition of *Sharīʿa* in certain areas of public law.

Muslims should, of course, be free to practice their faith like anyone else. The question is whether another system of law should be given public recognition in terms of an autonomous and universal tradition founded on quite different assumptions.

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We need to note immediately that *Sharīʿa* is not a generalized collection of dispositions. Nor is it only an approach to lawmaking. It is founded on the injunctions of the Qur'an and the *Sunnah* (or the practice of Muhammad, the Prophet of Islam) and exists in concrete and prescriptive codes or schools of law known as *fiqh*. All of these schools differ, to a greater or lesser extent, from one another and work with different assumptions and rules—for example, about the use of reason in reaching a verdict or on the flexibility available to jurists in the interpretation and application of a particular law.[3]

In relation to public law in the West, however, each of the schools would be in fundamental confrontation with the Western assumption of equality. Muslim commentators themselves recognize the three great inequalities of the Islamic legal tradition: between male and female, Muslim and non-Muslim, and slave and free.

Public law in the West, as well as international declarations such as those of the United Nations, also safeguard freedom of thought, belief, and expression. Once again, this is contrary to *Sharīʿa*. For these and other reasons, many Islamic countries have adopted such international covenants only with reservations; i.e., only insofar as they do not contradict the provisions of *Sharīʿa*. It is also for these reasons that various representative Islamic organizations, such as the Islamic Council of Europe and the Organization of the Islamic Conference, have produced their own declarations of human rights which are compatible with *Sharīʿa*. These differ markedly from the U.N. declarations precisely in the areas of equality, freedom, and penal law.[4]

A number of moderate Muslim scholars have, for a number of years, advocated *ijtihād*, or a radical reconstruction of Islamic law in the light of modern conditions. Other, more traditional scholars have commended the more conservative principle of *maslaha*, or having regard to the common good, in the implementation of *Sharīʿa*. Such activity must, of course, be encouraged, not least because its success will affect the lives of millions of women, children, and non-Muslims in Islamic countries.[5] It has to be said, however, that progressive approaches to *Sharīʿa* have not found general acceptance whenever it is enforced, and, indeed, such scholars often face opposition and hostility from orthodox "*Ulamā.*"[6]

We see, then, that there is fundamental opposition between the assumptions of public law in the West and those of the *Sharīʿa*. This means that it is not only undesirable, but actually impossible to provide *Sharīʿa* with a recognized place in terms of the rule of law.

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As with other religious communities, Muslims should be free, of course, to live according to the tenets of their faith. For some, even for many, this will mean living according to the *Sharīʿa*. No one,

3. On the emergence and development of *Sharīʿa*, see Michael Nazir-Ali, *Conviction and Conflict: Islam, Christianity and World Order* (London and New York: Continuum, 2006).
4. See Colin Chapman, *Islam and the West: Conflict, Co-existence or Conversion?* (Carlisle: Paternoster Press, 1998), pp. 113ff.
5. See *ibid.*, pp. 128ff, and Nazir-Ali, *Conviction and Conflict*, pp. 145ff.
6. See Denis MacEoin, *Sharia Law or "One Law for All"?* (London: Civitas, 2009), pp. 56ff.

however, should be restricted in their access to public law or to the courts because they belong to this or that religious community which observes this or that religious law. In the sections which follow, we shall see how the difficulties of reconciling *Sharīʿa* with Western public law are revealed in relation to particular areas of the law such as marriage, the family, freedom of belief, and others.

Family Law and the Place of Women in Society

In their plea that *Sharīʿa* should be given some legal recognition in the United Kingdom, both the Archbishop of Canterbury and the Lord Chief Justice referred to marriage and family law as an area of Islamic law which could be accommodated in this way. Their interventions were followed by press reports that the Muslim arbitration tribunals were already operating in the country and that the settling of marriage and family disputes was one aspect of their work. A government minister, at about the same time, suggested that the rulings of these tribunals could be given authority and enforced by British courts. Such views were also echoed by senior figures in the legal profession.[7]

As might be expected, these suggestions caused an immediate and sustained backlash from a long-suffering public. The underlying fear was that the equality of all under the law was being compromised. Those who have commended the adoption of Islamic family law may have done so in the belief that it was one of the "soft" aspects of *Sharīʿa* and might therefore be more acceptable to British public opinion.

Would such family law be more easily acceptable in Western countries? As in other areas of law, when we examine the issue closely, we find that Western and Islamic law work on very different assumptions. A basic assumption of marriage in the West, no doubt under Christian inspiration, is that it is monogamous and, in theory at least, for life. Neither of these assumptions is shared by *Sharīʿa*. It is well known that polygamy is permitted and sometimes practiced, even without the permission or knowledge of the existing spouse, while in the West, generally it is forbidden by law. If *Sharīʿa* family law were recognized, would bigamy be a crime only for some?

Much *Sharīʿa* family law is directly or indirectly influenced by the belief in the inequality between men and women. This inequality is shown, for example, in the provisions for divorce. Here, a man may end the marriage contract (marriage is seen in this way rather than as a relationship or a sacrament) unilaterally and irrevocably, even without his wife's knowledge, simply by pronouncing *talāq* three times. The wife, on the other hand, has to have the power of divorce delegated to her by her husband at the time of marriage (*talāq tafwīd*) to ransom herself from the marriage (*khulʿ*) or to petition the courts to dissolve the marriage on grounds which have been laid down. The husband is not bound to maintain her after her period of waiting (to see whether she is pregnant) is over (*ʿidda*), although legal decisions in South Asia have recently attempted to question this long-standing practice.

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Such unequal treatment is clearly contrary to the equal treatment of the parties involved in divorce proceedings according to public law in the West.[8]

In most instances of law in the West, the presumption is that the custody of any children goes to the mother unless there are strong reasons for making other provisions. In *Sharīʿa*, however, the presumption is that custody of children beyond a certain age goes to the father.

At the very time that prominent figures in Britain were advocating the recognition of Islamic law, the Law Lords, at the time the highest court of law in

7. See Douglas Murray, "To What Extent Is Sharia Already Operating in Britain?" The Douglas-Home Memorial Award Essay, *Times Online*, December 30, 2009, and McEoin, *Sharia Law or "One Law for All"?*
8. Lucy Carroll and Harsh Kapoor, eds., *Talaq-i-Tafwid: The Muslim Woman's Contractual Access to Divorce* (Grabel, France, and Lahore, Pakistan: Women Living Under Muslim Laws, 1996).

the land (now replaced by the Supreme Court), declared that *Sharīʿa*, at least in this respect, was contrary to human rights legislation. As a bishop, I had led the prayers for the Law Lords and was sitting with them at the time their judgment was delivered in the Chamber of the House of Lords. The case was that of a Lebanese Muslim woman who had applied for asylum on the grounds that if she returned to Lebanon, her 12-year-old son would be taken from her and given into the custody of his father. The Law Lords ruled that this would breach the woman's fundamental rights and would be disruptive for the child. It was said that *Sharīʿa*, in this context, contradicted European law and was discriminatory on grounds of gender.[9] The woman's appeal was therefore allowed.

In the law of inheritance also there is discrimination: Females inherit from their parents only half of what is due to a male child. This is based on the inheritance rules laid out in Qur'an 4:11ff.

In the earlier part of the past century, there was a vigorous debate between the Turkish nationalist poet Zia Gökalp and Muhammad Iqbal, the poet-philosopher credited with the idea of Pakistan as a homeland for the Muslims of India. Zia wished to recognize the cultural and historical importance of Islam for the Turkish people, but he was adamant that there should be equality between the sexes in marriage, divorce, and inheritance. While Iqbal has much sympathy for Zia's aims, he regards his demand for equality, especially in matters of inheritance, as mistaken. According to him, the daughter gets only half of the son's share because *Sharīʿa* makes her maintenance wholly the responsibility of her husband.[10]

There are other significant aspects of the law of inheritance in Islam, such as the requirements that non-Muslims cannot inherit from Muslims, which are likely to cause problems in Western courts. In any case, would a judge in such a court be recognized as having the authority to rule in these matters, or would *Sharīʿa* courts be required as of necessity?

The law of evidence is another area of conflict with Western legal traditions. In the latter, men and women are, of course, equal in giving evidence before the courts. Not so in Islamic law. Here, generally speaking, two male witnesses are required and, if two men are not available, only then a man and two women. Note that a man is still required.

Muslim arbitration tribunals pose several challenges to the rule of law.

There cannot be, for instance, four women witnesses, and, secondly, the man is preferred regardless of the quality of evidence. In cases of adultery or rape, four male witnesses are required, and until recently, under the *Hudūd* laws in Pakistan, a woman reporting rape could find herself charged with perjury, attracting the same draconian punishment as for rape, if she could not produce four qualified male witnesses.[11]

Muslim arbitration tribunals pose several challenges to the rule of law. If British courts enforce the tribunals' decisions made on the basis of *Sharīʿa*, it is quite possible that they may be enforcing decisions that are contrary to the basic presuppositions of British law. Other questions about these tribunals include whether the parties have agreed to submit to their decisions freely (this is particularly relevant if women are involved) and whether the tribunals are exceeding the remit which arbitration panels may have, for instance, by encroaching in the area of criminal law.

Whatever else may be said about these "tribunals," it must be clear that recourse to them should not affect a person's fundamental right of access to the courts of the land and the protection of the police.

Islamic Finance and Western Societies

A "soft" aspect of *Sharīʿa* which is looked on without specific concern by Western policymakers and with favor by commercial banks and other

9. Afua Hirsch, "Sharia Law Incompatible with Human Rights Legislation," *Guardian*, October 23, 2008.
10. See Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam* (Lahore: Ashraf, 1971), pp. 158ff.
11. See United States Commission on International Religious Freedom, *Annual Report 2009*, May 2009, pp. 68ff.

financial institutions is that of Islamic finance. The basic reason why Islamic finance is different from conventional financial activity is the prohibition on *ribā* (Qur'an 2:275). This term occurs in a number of Semitic languages and generally means usury or interest in the sense of making a profit by lending money or goods to someone who needs them. The prohibition has had significant influence on *fiqh* as well as on the piety of many Muslims. A number of ways of trading and investment were developed by the classical jurists which avoided this prohibition.

In its modern form, however, the outlines of distinctive Islamic finance were developed by two men most responsible for the emergence of radical Islam: Maulānā Syed Abul a ʿalā Maudūdī , founder of the Jamāʿat-i-Islāmī in South Asia, and Sayyid Qutb, author of *Milestones* and hugely influential in both the Muslim Brotherhood in Egypt and the emergence of al-Qaeda. For Maudūdī and Qutb, the prohibition on *ribā* means a total ban on all interest, in cash or in kind. Such a view has led to the development of a number of instruments which enable like-minded Muslims both to observe this prohibition and to engage actively in trade.[12]

One of the main instruments used by Islamic banks is *murābaha*. This arrangement allows a customer to make a purchase without having to take out an interest-bearing loan. The bank purchases the goods itself and then sells them to the customer on a deferred basis with a mark-up which meets the bank's operational costs, as well as an element of profit which is built into the arrangements. The question is whether this is simply interest by another name but less transparent and perhaps less favorable from a customer's point of view.

Other instruments, like *Mudāraba*, are about the financing of ventures by entrepreneurs, with the financing institution sharing in the profits or losses of the ventures on an agreed basis and passing these on to their own investors or depositors. Again, is this very different from conventional venture-capital schemes? *Ijāra* is very like lease financing, and the bank's risk in owning any equipment, leased in this way, is covered by insurance for which the client pays.[13]

Mushāraka is a form of equity participation contract based on the issuance of *sukūk* bonds. Unlike conventional bonds, they are not debt-based but asset-based. That is, the bondholder shares in the underlying assets, to obtain or develop which is why the bonds have been issued. This means that if bondholders do not get a return on their bonds, they may lay a claim to the underlying assets. In the case of government or other strategic projects, the question that arises is whether such projects would be rendered vulnerable to a range of hostile interests as a result of raising capital in this way.[14]

There is now growing pressure from Islamist quarters on conventional insurance.

There is now growing pressure from Islamist quarters on conventional insurance. It is said, for example, that the uncertainty of outcomes for which insurance is taken introduces an element of gambling, which is, of course, forbidden by *Sharīʿa*. It is claimed also that, because the premium received by insurance companies is usually invested in interest-bearing ventures, Muslims cannot profit from any income produced by such ventures.

Some are now proposing an Islamic form of insurance called *takāful*, which is based on social solidarity or mutuality: A group of persons or organizations agree jointly to indemnify loss or damage inflicted upon any one of them out of a fund to which all contribute and which is invested in *Sharīʿa*-compliant ventures. Any profits are distributed in accordance with pre-agreed ratios.[15]

If all interest is regarded as *ribā* and therefore unlawful, the question arises as to how far "interest-

12. Michael Nazir-Ali, *Islam: A Christian Perspective* (Philadelphia: Westminster Press, 1983), pp. 131ff; *Report of the Council of Islamic Ideology on the Elimination of Interest from the Economy* (Islamabad, 1980); and Patrick Sookhdeo, *Understanding Sharīʿa Finance* (McLean, Va.: Isaac Publishing, 2008), pp. 50ff.
13. A. Meleagrou-Hitchens, "Banking on Allah," *Standpoint*, July/August 2009, pp. 50ff.
14. See *The Development of Islamic Finance in the UK*, HM Treasury, London, 2008.

free" transactions are to be taken. If, for example, conventional banks provide *Sharīᶜa*-compliant products to their Muslim customers, can these be provided from funds generated in the usual way—i.e., by interest-bearing activities—or will such funds also have to be generated through "interest-free" activity? Would this result in the so-called Islamic windows of conventional banks becoming, in due course, free-standing entities within their parent institutions or even separate from them?

It may be for reasons such as these that there has been a long tradition of scholarly opinion in Egypt, for instance, going back to the great reformer Muhammad ᶜAbduh (1849–1905) and continuing down to our times, which has declared that interest charged and paid by banks is not *ribā* and thus not contrary to Islam. Both the recently deceased Sheikh of Al-Azhar, Dr. Tantāwî, and the present Grand Mufti, Sheikh ᶜAli Gomaᶜa, have adhered to this consensus.

The government of Pakistan, similarly, has petitioned the courts to reverse their earlier decisions declaring all interest to be *ribā*. It has argued that there is no hard and fast definition of *ribā*, that the Qur'an refers to the pre-Islamic practice of punitive and exploitative usury, and that a completely interest-free system would isolate Pakistan from the global economy. In this view, the government of Pakistan can find support in the writings of noted reformist scholars like Fazlur Rahman and financiers like Muhammad Saleem.[16] The most widely read translation of the Qur'an, by A. Yusuf ᶜAli, and commentary also supports such an understanding of *ribā*.[17]

If these scholars and Islamic institutions and governments are to be believed, the case for a distinctive Islamic financial system is effectively undermined and rendered unnecessary. If commercial interest is not *ribā* and is therefore permissible, there is no need for the elaborate products and superstructure created to avoid interest in all forms.

If Islamist Muslims insist, it may still be possible to provide financial products which they judge to be *Sharīᶜa*-compliant; but such products and the companies which market them should be regulated according to the law of the land, and any recourse to litigation should be through the usual courts. Any recognition of *Sharīᶜa*-related financial and commercial law in terms of public law and any granting of judicial or quasi-judicial powers to Islamic experts in this field would be fraught with difficulties.

Any recognition of Sharīᶜa-related financial and commercial law in terms of public law and any granting of judicial or quasi-judicial powers to Islamic experts in this field would be fraught with difficulties.

- How and by whom, for instance, would determinations be made whether funds available for *Sharīᶜa*-compliant products were themselves *Harām* (prohibited) or *Halāl* (permitted)?
- What legal procedures would be used in settling disputes, and what would be the rules of evidence?
- Would Muslim and non-Muslim parties be treated equally?
- What would be the role of *Sharīᶜa* experts in the course of litigation?

As we have seen, Muslim-majority countries have themselves experienced serious problems with the ideological commitments of Islamic finance, and Western governments and institutions should learn from this experience.

Both the governments of Islamic countries like Pakistan and Western critics have noted the tendency of Islamist financial ideology to isolate nations such as Iran, Pakistan, and the Sudan from the mainstream global economy. The question has also been asked as to whether it will also further iso-

15. *SITC Review*, Zurich, August 2006, pp. 14ff.
16. See Sookhdeo, *Understanding Shariᶜa Finance*, pp. 18ff, and Liquat Ali Khan, *How Does Takaful Differ from Insurance?* unpublished, n.d., pp. 10ff.
17. A. Yusuf Ali, *The Holy Qur'an: Text, Translation and Commentary* (Leicester: The Islamic Foundation, 1975), p. 111.

late Muslims and Muslim communities in societies where they are a minority.

Given their present isolation from the mainstream of many societies in the West and the need for greater integration into these societies, we must ask whether more energy should be spent in publicizing the progressive views of the scholars mentioned above than should be spent in the planning for and regulation of instruments and products which pander to Islamism in one form or another. This is certainly an issue of public policy, but commercial institutions have also to ask themselves whether they are importing principles of contradiction into the very system which has given them birth and within which they operate. One factor to bear in mind is that those demanding distinctive forms of Islamic finance in Western countries appear to be a minority within their own communities.[18]

Although the ethical virtues of Islamic finance are often trumpeted, in this respect it is very little different from a host of ethical funds and schemes of mutual benefit. What is not so often mentioned is the vulnerability of the Islamic financial system and Islamist institutions within that system to money laundering, the funding of terrorism, and other illegal practices. It is known, for example, that very large amounts of *Zakāt*, or alms, were channeled through such institutions to terrorist organizations like al-Qaeda. How profits are made and shared is another way in which there could be illegal transfer of funds. So is the widespread custom of discretionary bonuses to clients. It is not clear whether such vulnerabilities are inherent in the system itself or in the ways in which institutions operate. Both international and national regulatory bodies have repeatedly expressed concern about these vulnerabilities.[19]

The use by Western financial institutions and regulatory authorities of a relatively small number of Islamist experts in this area is another cause for concern. At least some of them have views in other areas, such as *Jihād* or penal law, which would be unacceptable in Western societies. Given the variety of views among scholars, and given that, apparently, only a minority of Muslims in the West are seeking distinctively Islamic financial provision, is there a way of seeking more balanced advice from a range of Muslim and non-Muslim scholars as to what, if any, distinctive provision is necessary and what its extent should be?

Scholarship and Academic Freedom

Scholarship, indeed, is one of the issues as we consider Islamic civilizations and their history, language and culture, politics, economics, and religion. Thirty to 35 years ago, a country like the United Kingdom had a capacity and reputation for reasonably independent research, teaching, and writing in these areas. The universities had scholars and faculties which could be relied upon for knowledge which is necessary for intelligence, policymaking, and diplomacy.

This was, admittedly, criticized for its alleged "Orientalism." Those who are sympathetic to the Arab situation, for example, whether Muslim or Christian, have charged such scholarship with constructing an Islamic world purely out of classical religious, historical, and legal texts without sufficient attention to the lived experience of Muslims. It is said that this scholarship was suborned to politics, funded by interested parties, and a polemical tool for the propagation of Western ideas.[20]

Such criticism, however, has itself been criticized by scholars of the eminence of Kenneth Cragg, who is highly respected in the Muslim world and has written extensively on Muslim–Christian under-

18. Sookhdeo, *Understanding Shariʿa Finance*, pp. 78ff.

19. See Mahmoud El-Gamal, "Overview of Islamic Finance," U.S. Department of the Treasury, Office of International Affairs, *Occasional Paper* No. 4, 2006; Nicholas Ridley, "The Development of Islamic Banking and Financial Institutions, and Potential Vulnerabilities to Criminal Exploitation and Terrorist Fund Transfers," John Grieve Centre for Policy Studies, London Metropolitan University, 2007; and Jean-Charles Brisard, "Terrorism Financing," United Nations, 2002, at *http://www.investigativeproject.org/documents/testimony.* See also Sookhdeo, *Understanding Shariʿa Finance*, pp. 41ff.

20. The best-known of these critics is, of course, Edward Said, a Palestinian Christian. See his *Orientalism* (New York: Random House, 1978).

standing and Western perceptions of Islam. Cragg has pointed out that these critics speak from the very same assumptions of the Western intellectual tradition which they criticize Western Orientalists for doing. They disregard, however, a deep commitment to the Muslim world and a long experience of it which many Orientalists have had. Cragg is, of course, a very good example of this himself, but he mentions others as well.[21] It can also be said that they take for granted the freedom which allows them to make such criticisms, sometimes of the very institutions which support them—freedom, incidentally, which would be hard to come by in the world for which they claim to speak.

Whatever may be said of the situation in the past, things are radically different now. Many institutions of higher education, including leading universities, have received endowments and other types of funding to establish centers, professorships, and programs for Islamic studies in a variety of forms. A comprehensive survey of such funding reveals the sources from which it has come. In many cases, they originate from conservative Islamic regimes, organizations, and individuals. The survey examines such funding in terms of its implications for human rights, transparency, influence on academic procedures, etc.[22]

A serious matter which really does need further research is the extent to which Islamic funding is altering the nature and content of what is being taught in Western universities.

These are all valid areas for investigation, but a serious matter which really does need further research is the extent to which such funding is altering the nature and content of what is being taught in Western universities. The leaders of such institutions often claim that they are taking a "long-term view" in providing such endowments for their universities and that there is no compromise on academic freedom.

Many of these endowments are for the purpose of promoting "a better understanding of Islam," "building bridges between Islam and the West," and "for the sake of greater tolerance" (not always tolerance in Islamic societies, but quite often greater tolerance of Islam in the West). These are worthy aims, but we need to ask what is *not* being taught or researched.

- Is there as rigorous a historical-critical study of the Qur'an, its sources, context, literary dependence, etc. as there has been in the past?
- What about the *Sunnāh* of the Prophet of Islam?
- Is it still possible to study critically and to comment on all the sources and to identify issues relevant to the place of Islam and of Muslims in today's world?

These questions also need to be raised in relation to the nature of *Sharīʿa*, the possibility of development in the existing schools of law (*fiqh*), and the implications of this for fundamental freedoms. How minorities are treated in the Muslim world and how Muslims see themselves when they are a minority should be areas of priority for study and research. So should be the relationship of Islam to democracy and whether there are models for government by consent which could work in the Muslim world. There are numerous other areas which could be identified.

More important, however, it is the attitude and the independence of researchers and teachers which needs affirmation. It is vital for Western and other societies to have knowledge of the Islamic world that is objective (as far as possible), independent, and disinterested (in the sense of promoting any kind of political or religious agenda). We must not sleepwalk into a situation where, for temporary gain, we compromise the range and depth of scholarship necessary for survival itself in the world as it is today. If the universities will not provide this,

21. Kenneth Cragg, *The Arab Christian: A History in the Middle East* (London: Mowbrays, 1992), pp. 297 and 302.
22. Robin Simcox, *A Degree of Influence: The Funding of Strategically Important Subjects in UK Universities* (London, Centre for Social Cohesion, 2009).

who will?

Apostasy, Blasphemy, and Defamation of Religion vs. Freedom of Belief and Expression

The issue of academic freedom reminds us of the wider questions of freedom of speech, belief, and the right to change one's belief. It is well known that, although the Qur'an does not explicitly provide for the punishment of apostates in this life, the different schools of Islamic law are unanimous that a male, adult apostate is to be put to death. Some prescribe the same penalty for a woman, but others hold that she should be imprisoned until she accepts Islam again. They base this mainly on the traditions of their Prophet and the practice of his companions. More recently, some passages of the Qur'an (e.g., 2:217 and 4:88–89) have also been recruited to support the punishment of apostasy in this life.

While apostasy is punishable by death in the legal codes of only a few countries, in fact, judges sometimes directly invoke the authority of the *Sharīʿa* in sentencing apostates to death. This has happened, for instance, in Iran and Afghanistan and could happen again.

Obviously, apostasy and its penalty are relevant only to those who have been Muslims. The offence of *Sabb* (insulting the Qur'an or the Prophet of Islam), on the other hand, can also be applied to non-Muslims. Once again, the penalty is death in the case of insulting the Prophet, and in some places, as in Pakistan, it has been deemed mandatory by the Federal *Sharīʿa* Court.[23]

Many people in Muslim countries like Egypt, Iran, the Sudan, and Afghanistan have suffered grievously in recent years because of the apostasy penalties, some because of decisions by the courts but others because families, neighbors, and even the police have taken the law into their own hands. Religious minorities, similarly, have suffered disproportionately because of the blasphemy law in Pakistan.

Although the punishments for apostasy and blasphemy cannot have legal sanction in non-Muslim-majority countries, their influence is nevertheless felt and sometimes quite sharply. The *fatwās* against Salman Rushdie and the German–American scholar Khalid Duran, as well as the situation of prominent personalities like Ayyan Hirsi Ali and Taslima Nasrin, are examples of how a mentality formed by the apostasy and blasphemy laws expresses itself in the non-Muslim or Western context.

Increasingly, there are efforts to silence dissent not only within the Islamic community, but also beyond it. This is done by threatening those who speak out or write and any media outlets which may dare to broadcast or publish such material. There are calls for such people to be removed from public office or dismissed, even if they are employed by private organizations.

The continuing influence of *Sharīʿa* in contexts where aspects of it cannot be enforced should be taken into consideration by those who argue for giving a place in public law to those aspects they find "palatable." As many *ʿulamā* claim, *Sharīʿa* is indivisible, and the recognition of some aspects will undoubtedly have implications for other aspects which will be found to be distinctly "unpalatable."

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More recently, and particularly in the aftermath of the Danish cartoons controversy, a number of Islamic states and the Organization of the Islamic Conference have been campaigning to have "defamation of religion" recognized as an offense under international law. Existing laws, such as Article 20 of the International Covenant on Civil and Political Rights (ICCPR), already prohibit incitement to religious hatred which leads to discrimination, hostility, or violence. The attempt to go beyond this provision to protect religions and their founders

23. Michael Nazir-Ali, *Conviction and Conflict*, pp. 149ff, and Foreword to Patrick Sookhdeo, *Freedom to Believe: Challenging Islam's Apostasy Law* (McLean, Va.: Isaac Publishing, 2009), pp. 7ff. See also Colin Chapman, *Islam and the West*, pp. 130ff.

from criticism has enormous implications for the freedom of speech.

The European Union too has moved recently to make incitement to religious hatred an offense in law, and this has led to legislation in member countries such as the United Kingdom. In the U.K., the bill to prohibit such incitement was thought by some to be curtailing not only freedom of expression, but freedom of religion as well since it could have prevented criticism of a religious belief or of a religious group by someone belonging to another religion or to a secular organization. A last-minute amendment in the House of Lords, however, drew the sting from the proposed law by exempting what was done in the way of debate, criticism, preaching, and evangelism from its purview.[24]

In any society, we would expect civility in the context of debate, religious or otherwise. Article 20 of the ICCPR already prohibits incitement to hatred on the basis of the national origin, race, or religion of an individual or, it could be argued, of a group. It would be unwise to go beyond this to narrow the scope for legitimate discussion, questioning, criticism, or rejection of a particular belief or belief system.

There are many Muslims and Muslim leaders, both political and religious, who recognize the problems that are being caused by apostasy and blasphemy laws. They are calling for a new understanding of religious freedom, based on Islamic precepts. It is important to cooperate with them as they seek to bring greater openness and tolerance to Islamic societies and, indeed, to Muslim communities living in largely non-Muslim contexts, since even in such contexts, there can be hardship, exclusion, and danger for those who speak out, criticize, or change their beliefs.[25]

Radicalization vs. Integration

Radicalization, in its different forms, both feeds on the isolation of Muslim communities in non-Muslim societies and gives it a form which serves the purposes of radical Islam. Mosques have been used by extremists through visiting preachers, dissemination of literature, recruitment around the margins of worship, and the use of the attached *madrassas* or mosque-schools. University and college students, similarly, are enlisted in radical causes by infiltration of Islamic societies in these institutions.

Prison radicalization is another example of how institutions of different kinds are infiltrated. Many prisoners convert to Islam as a kind of affirmation of identity and as a protest against a system of which they see themselves as victims. These and other nominal or observant Muslims can be exposed to extremism through prisoners who have radical views, through literature, and through visiting clerics.

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The Quilliam Foundation, founded by former radical Islamists, lists a number of ways of combating the spread of extremism in prisons (and, indeed, other institutions). This involves literature produced by former extremists, courses on Islam which bring moderate scholarship to bear on the questions Muslims prisoners are asking, and the promotion of friendships with former extremists. The *Sunday Times* three years ago asked for more stringent measures to control radicalization in prisons, involving the separation of extreme Islamists from other prisoners.

The problem quite often is that Islamism itself, even if it is nonviolent, can lead to involvement in extremism.[26] The need, then, is to address Islamism as such, as well as extremist manifestations of it.

It is often claimed that Muslims are better integrated into society in America than they are in

24. See, for example, U.S. Commission on International Religious Freedom, *Annual Report 2009*, pp. 227ff.
25. See Nazir-Ali, *Conviction and Conflict*, pp. 149ff; Chapman, *Islam and the West*, pp. 130ff; and D. Murray and J. P. Verwey, *Victims of Intimidation: Freedom of Speech Within Europe's Muslim Communities* (London: Centre for Social Cohesion, 2008).
26. Quilliam Foundation, *Pulling Together to Defeat Terror: Recommendations for Uprooting Islamic Extremism* (London, 2008), and Colin Dye, *The Islamisation of Britain: And What Must Be Done to Stop It* (London: Pilcrow Press, 2007).

Europe and that the kind of extremist separationism which has emerged in Britain and other parts of Europe cannot occur in the United States. For this reason, imams from the U.S. have been brought to Britain to show British Muslims how to integrate.

This may be, however, a fool's paradise. The propagation and acceptance of certain kinds of Islamism may itself lead to separationism. This has been seen, for instance, in the *takfīr wa-l hirja* movements in Egypt and elsewhere and among the Taliban in Pakistan and Afghanistan. The presence of extremist sentiment in the military, as shown in the Major Nidal Hasan Malik case; the emergence of extremist imams, once thought to be moderate, as with Al-Awlaki; the arrest in Pakistan of radicalized young men from Washington, D.C., itself; and the arrival of former U.S. prisoners in Yemen should all give us pause for thought.

It is quite possible, given the evidence, that radicalization is happening in mosques and their *madrassas*, on college campuses, in prisons, and even in the military. If this is the case, this could pose a serious threat to national security as well as to integration in the United States and thus to the core principle of "one nation under God."[27] Both positively and negatively, there can be much learning here from the experience of European countries and beyond.

Conclusion

Radical Islamism poses critical challenges for free societies in the West. In recent years, there have been increasing calls for some legal recognition in Western contexts of certain aspects of Islamic law. Because of the fundamental opposition between the assumptions of public law in the West and those of the *Sharīʿa*, it is not only undesirable, but actually impossible to provide *Sharīʿa* with a recognized place in terms of the rule of law.

The difficulties of reconciling *Sharīʿa* with Western public law, which is premised on the equal dignity and liberty of all persons and the corresponding mandate that the law should apply equally to all, can be seen in such important areas as family law, the place of women in society, Islamic finance, and freedom of belief and expression.

Other areas of concern are the rise of Islamism, the relationship of isolation to radicalization, and the spread of radicalization through extremists in mosques, *madrassas*, universities, and prisons in both the Islamic world and the West.

These challenges to fundamental freedoms have import for the United States with regard to national security as well as America's commitment to freedom in the world wherever radical Islamism has emerged, whether it be in Europe, the Middle East, South Asia, or West Africa.

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27. See Malise Ruthven, *A Fury for God: The Islamist Attack on America* (New York: Granta, 2002), pp. 99ff, and Anya Hart Dyke, *Mosques Made in Britain* (London: Quilliam Foundation, 2009), p. 43.