

FIU LAW REVIEW

RELIGION AND THE LAW SYMPOSIUM

FALL 2015

Abstracts



FIRST SESSION: HOLY WARS

BEVERLY I. MORAN AND RAHIMJON ABDUGAFUROV

Professor of Law and Sociology, Vanderbilt Law School

Ph.D. candidate, Emory University

Are Muslims Obligated to Engage in Holy War?

In the 21st Century, there is some belief among Muslims and non-Muslims alike that Islam requires Muslims to engage in holy war [Jihād]. In this article we conclude that the 21st century view that Muslims must engage in holy war fails to understand that Jihād was never a universally agreed upon concept nor was there ever a universally accepted obligation for Muslims to participate in Jihād.

In order to support our position, we begin with canonical texts from the Hanafi School of Islamic law from the 9th through the 14th century CE. These texts are called Fatwā collections because they compile legal opinions on a wide variety of matters. The first observation that we make is that some Fatwā collections do not even address the question of Jihād while others treat Jihād in a wide variety of ways. Thus we are able to show that the earliest Islamic legal scholars did not have a uniform understanding of what constitutes holy war nor of who is obligated to become a holy warrior.

We then turn to contemporary scholars, who also work on Jihād. What we see is that these modern authors fail to appreciate the many competing voices concerning holy war at the birth of Islamic Law. Indeed, we conclude that the views of Islamic legal scholars have not been consistent in any historical period and that the very idea of Jihād shifts from period to period and from author to author. Thus it would be false to claim that Muslims are obligated now (or have ever been obligated in any historical period) to engage in Jihād.

HAIDER ALA HAMOUDI

Associate Professor of Law and Associate Dean for Research and Faculty Development

University of Pittsburgh School of Law

Lone Wolf Terrorism and the Classical *Jihad*: On the Contingencies of Violent Islamic Extremism

It is nearly impossible to describe Muslim expansionism in the centuries following the death of the Prophet Muhammad—broadly undertaken in service of the Islamic doctrine of *jihad*-as being somehow compatible with modern norms of international relations, including self-determination and noninterference in the affairs of other states. To detractors, this seems to suggest a certain tension in modern Muslim thought that jihadist movements have been able to exploit. Modern Muslim intellectuals, that is, are forced to somehow reconcile an expansionist past, which was not only tolerated by early jurists interpreting Islam's sacred texts but indeed exhorted by them as a duty of the Muslim community, with modern realities, where the *jihad* as it was

historically understood has become something of an embarrassment. In so doing, the argument runs, they leave themselves exposed to the “literalist” claims of the jihadists, who can call up such sources at will and demonstrate the true Islamicity of their actions relative to modernists who can only rely on abstract principles and vague apologies that sound suspiciously Western.

The purpose of this paper is to explore the fallacy of this conclusion through the examination of “lone wolf” terrorism. This form of terrorism is quite relevant not only because of its inherent danger, but also because the methods of the lone wolf terrorist have been broadly accepted by a panoply of the most extreme Islamist organizations. I will show that even if early and medieval Muslim jurists hardly incorporated a worldview that rested on principles of mutual tolerance and respect toward other states and other religions, they nonetheless regarded the *jihad* as a fundamentally *conservative* doctrine, meant to preserve the Muslim state as it was and direct violence exclusively in external directions, in an organized and systematic attempt to expand what was known as the House of Islam into the universal Muslim state. The notion of lone wolf terrorism—individually directed and organized violence, executed beyond the meaningful control of the caliph—was entirely foreign, and it bears far more resemblance to other modern, non-Islamic displays of violence, such as mass shootings in schools and churches, than it does to anything in Islam’s history.

SAHAR F. AZIZ

Associate Professor of Law
Texas A&M University School of Law

The Racial Muslim

Although protected by law, religion is often treated separately than race. In contemporary legal discourses, religious liberty is rarely described as inherently racial and often normatively privileged over racial justice. The post-9/11 era, however, has exposed the flaws with such artificial dichotomies. For Muslims in America, their religion is their race. Pervasive and entrenched discrimination against Muslims in various forums across the United States is founded on the same stereotyping and stigmatization that underpins discrimination against blacks and other minority racial groups. The result is the “racial Muslim” whose religion is imprinted onto her body as she is raced as barbaric, violent, forever foreign, and disloyal.

Regardless of her phenotype or skin color, the racial Muslim cannot be white. Viewed as a descendant of the infidels whom the Crusaders sought to annihilate in the name of God or a former European colony comprised of heathens; the racial Muslim is forever an outsider in a predominantly white Christian nation. Accordingly, this article proffers two arguments: 1) Islam has become exempt from the normative (and jurisprudential) privileging of religious liberty over racial justice; and 2) the consequent creation of the “racial Muslim” calls for an expansive interpretation of civil rights law prohibiting solely race-based discrimination claims. Failure to acknowledge the racialization of Islam by government and private acts leaves Muslims exposed to discrimination without legal recourse altogether or unduly circumscribed civil rights protections.

KARIMA BENNOUNE

Professor of Law

University of California-Davis School of Law

**Remembering the Other's Others:
Theorizing the Approach of International Law to Muslim Fundamentalism**

The Algerian sociologist Marieme Helie Lucas has defined fundamentalisms as “political movements of the extreme right, which, in a context of globalization . . . manipulate religion . . . in order to achieve their political aims.” Such movements today pose challenges to human rights, in particular the rights of women, around the world across diverse religious traditions. Today they threaten a wide range of rights *inter alia* in many Muslim majority contexts and diaspora populations, and as a result are being widely challenged by civil society in those countries and communities. This point will be illustrated with accounts drawn from Professor Bennoune’s recent book, “Your Fatwa Does Not Apply Here: Untold Stories from the Fight Against Muslim Fundamentalism.” The human rights defenders and advocates under discussion often understand their enterprise in terms of defending freedom of religion, claims which are also sometimes made by defenders of fundamentalism as well. How has the problem of Muslim fundamentalism been articulated in the language of human rights law, and how has the discipline of international law responded to the work of human rights defenders who are challenging Muslim fundamentalism? How might the response be improved? How can the conflicting claims to freedom of religion be reconciled?