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International Law, Secularism, and the Islamic World

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ARTICLES

INTERNATIONAL LAW, SECULARISM, AND THE ISLAMIC WORLD

ADRIEN KATHERINE WING*

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INTRODUCTION

After September 11, 2001, many Americans became vitally interested in the Middle East.¹ In this Age of the War against Terror,

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1. Cf. J. H. Crawford, *The Terrorist Attacks of 11 September 2001*, Sept. 26,

issues such as the violence in Afghanistan, the conflict in Iraq, and the resilience of Osama Bin Laden and other Al Qaeda-inspired terrorists have joined perennial topics such as the Israeli-Palestinian dispute in centrality.

One of the themes that has also become more salient is the dichotomy that exists between the suitable role for religious values and the proper place for secularist principles. While there is a global tension in this regard, the Muslim world is a prime locus for study, particularly while the United States is transitioning power. President Obama will have to develop a more nuanced understanding of the region than his predecessor, including its religious-secular tensions, in order to create relevant informed policies that will enhance American interests and hopefully restore respect globally for our country as well.

This Article will discuss International law, secularism, and the Islamic world from the perspective of Global Critical Race Feminism (GCRF). After providing a brief overview of GCRF, Part I will introduce fundamentalism as a current trend in the Muslim world. Next, Part II will discuss illustrations on Muslims in several societies where this religious-secular tension exists—France, Turkey, Tunisia, and Palestine. Tunisia and Turkey are of particular interest because they are two predominantly Muslim countries that have chosen, for many years, to be secular in most aspects of their legal systems.² This Article will conclude with some practical suggestions as to how Americans can address the complexities which will be raised as the futures of the United States and the Muslim world become more intertwined.

2001, <http://www.jhcrawford.com/op-ed/wtc.html> (explaining that until 9/11 the Middle East seemed “very far away” to most Americans).

2. See, e.g., Adrien Katherine Wing & Ozan O. Varol, *Is Secularism Possible in a Majority-Muslim Country?: The Turkish Example*, 42 TEX. INT'L L.J. 1, 3 (2007) (emphasizing that although Muslims account for ninety-nine percent of Turkey's population, the country is democratic and secular, and is not a theocracy); Adrien Katherine Wing & Hisham Kassim, *Hamas, Constitutionalism, and Palestinian Women*, 50 HOWARD L.J. 480 (2007); Middle East Institute, Tunisia, <http://www.mideasti.org/country/tunisia> (last visited Oct. 8, 2008) (describing how Tunisia set up both a secular political and legal system after gaining independence).

I. GLOBAL CRITICAL RACE FEMINISM³

GCRF emerged from a synthesis of interrelated intellectual trends that commenced late in the last century. Each of the three strands, Critical Legal Studies, Critical Race Theory, and Critical Race Feminism, requires a brief introduction. Critical Legal Study was organized in the late 1970s by a “collection of neo-Marxist intellectuals, former New Left activists, ex-counter-culturalists, and other varieties of oppositionists in law schools.”⁴ Critical theorists endorse a progressive perspective on the role of law. Conservative orthodoxies and legal liberalism are both subject to challenge. This strand questions the notion of law as neutral, objective, and determinate.⁵ Critical Legal Study may employ the deconstruction methodology of European postmodernists like Jacques Derrida⁶ and Michel Foucault⁷ to reveal how legal structures have sustained or even bolstered inequitable hierarchies of class, race, and gender.

Critical Race Theory is a jurisprudential movement that emphasizes the centrality of race, ethnicity, and color in the law.⁸

3. This Part draws from Adrien Katherine Wing, *Polygamy from Southern Africa to Black Britannia to Black America: Global Critical Race Feminism as Legal Reform for the Twenty-first Century*, 11 J. CONTEMP. LEGAL ISSUES 811 (2001).

4. Kimberlé Crenshaw, *Introduction to CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* xvii (Kimberlé Crenshaw et al. eds., 1995).

5. See, e.g., MARK KELMAN, *A GUIDE TO CRITICAL LEGAL STUDIES* 13 (1990) (asserting that the legal system is in fact characterized by “contradictory norms,” each of which would lead to the opposite result in every case).

6. See, e.g., Rodolphe Casché, *Infrastructures and Systematicity*, in *DECONSTRUCTION AND PHILOSOPHY: THE TEXTS OF JACQUES DERRIDA* 3, 4 (John Sallis ed., 1989) (“Deconstruction must be understood, we contend, as the attempt to ‘account,’ in a certain manner, for a heterogeneous variety or manifold of nonlogical contradictions and discursive inequalities of all sorts that continues to haunt and fissure even the *successful* development of philosophical arguments and their systematic exposition.”).

7. See Paul Rabinow, *Introduction to THE FOUCAULT READER* 3, 7 (Paul Rabinow ed., 1984) (“[T]he goal of my [Foucault’s] work during the last twenty years has not been to analyze the phenomena of power, nor to elaborate the foundations of such an analysis. My objective, instead, has been to create a history of the different modes by which, in our culture, human beings are made subjects.”).

8. See generally Crenshaw, *supra* note 5, at xiii (discussing how CRT hones in on the constructions and representations of race and racial power both in

Global Critical Race Theory steps beyond our borders because these issues know no boundaries, but may manifest differently in each country.

Critical race theorists are also, in a broad sense, concerned with all identities that people adopt or are assigned.⁹ From a global perspective and especially when analyzing issues involving the Muslim world, theorists focus not only on the race, ethnic, and color identities, but also on the religious identities in play.¹⁰ For example, it is highly relevant in Iraq whether a person is a Shiite or a Sunni.¹¹ Much as the whites were a privileged minority in South Africa,¹² the Sunni minority under the late President Saddam Hussein was privileged in Iraq.¹³ The current internecine situation cannot be

America's legal system and in American society in general); Richard Delgado, *Introduction to CRITICAL RACE THEORY: THE CUTTING EDGE* xiv (Richard Delgado ed., 1995) (describing how CRT is used as a tool to fight racism).

9. See, e.g., GLOBAL CRITICAL RACE FEMINISM: AN INTERNATIONAL READER 1 (Adrien Katherine Wing ed., 2000) (exploring women's experiences with race, ethnicity, and gender).

10. See, e.g., *id.*; Adrien Katherine Wing, *A Critical Race Feminist Conceptualization of Violence: South African and Palestinian Women*, 60 ALB. L. REV. 943, 961-63 (1997) (discussing how Palestinian women are treated by Palestinian men as a result of Islamic customs and laws); Adrien Katherine Wing & Monica Nigh Smith, *Critical Race Feminism Lifts the Veil?: Muslim Women, France and the Headscarf Ban*, 39 U.C. DAVIS L. REV. 743, 749 (2006) (presenting perspectives of Muslim and non-Muslim women in France regarding the importance of wearing the headscarf).

11. Geoffrey Swenson, Book Notes, 43 STAN. J. INT'L L. 216, 218 (2007) (reviewing JANE STROMSETH ET AL., *CAN MIGHT MAKE RIGHTS?: BUILDING THE RULE OF LAW AFTER MILITARY INTERVENTIONS* (2006)) (explaining how the minority Sunni Muslims in Iraq tend to resent the majority Shiite because of the way Saddam Hussein treated the groups).

12. See, e.g., Adrien Katherine Wing, *Communitarianism vs. Individualism: Constitutionalism in Namibia & South Africa*, 11 WIS. INT'L L.J. 295, 349-51 (1993) (highlighting the ways the white minority government's apartheid regime disenfranchised black South Africans); Monal Chokshi et al., *Computers and the Apartheid Regime in South Africa, The History of Apartheid in South Africa* (Spring 1995) (unpublished CS201 final project, Stanford University), <http://www.cs-students.stanford.edu/~cale/cs201/index.html> (demonstrating through statistics such as the "ratio of average earnings," the "infant mortality rate," and the "annual expenditure on education per pupil," how apartheid greatly benefited white South Africans).

13. Edmund L. Andrews & Patrick E. Tyler, *As Iraqis' Disaffection Grows, U.S. Offers Them a Greater Political Role*, N.Y. TIMES, June 7, 2003, at A8 (describing how Sunni Muslims have lost the privileged standing they once enjoyed under Hussein).

understood without an understanding of the complexities of the Sunni/Shiite dynamics.

The identity of “political ideology” also informs our holistic understanding of personhood. In many countries, the espousal of a particular political ideology can result in imprisonment and even assassination, such as the plight of the late Pakistani former Prime Minister Benazir Bhutto.¹⁴ Americans treasure and revel in their freedom of speech in most contexts. But many Americans fail to appreciate the extent to which much of the world, particularly in the Muslim world, cannot openly criticize the government.

Critical race theorists also examine the role gender occupies in a person’s life.¹⁵ Critical Race Feminism is centrally concerned with the study of women of color but also draws from feminist jurisprudence. Critical Race Feminism constitutes a race intervention in feminist discourse, in that it necessarily embraces feminism’s emphasis on gender oppression within a system of patriarchy. Mainstream feminism has paid insufficient attention to the contributions of both white men and women to the subordination of women of color. In addition to rejecting essentialism within feminism, critical race feminists reject Critical Race Theorist’s essentialization of all minorities. As the experiences of males may differ significantly from females, we are thus a feminist intervention within Critical Race Theory. Our antiessentialist premise is that identity is not additive. In other words, black women are not white women plus color or black men plus gender.

Critical race theorists also look at many other identities including language, age, class, disability, marriage status, and sexual orientation. For example, sexual orientation is a divisive issue in the

14. See Salman Masood & Carlotta Gall, *Bhutto Is Killed at Rally, and Pakistan Faces Outrage and New Turmoil*, N.Y. TIMES, Dec. 28, 2007, at A1 (describing the circumstances of Bhutto’s assassination, which took place after she gave a speech to a large group of supporters); David Rhode & Jane Perlez, *Pakistani Officials Order Detention of Bhutto and Block a March*, N.Y. TIMES, Nov. 13, 2007, at A12 (chronicling how Bhutto was put under house arrest in November 2007 after she called for a rally against then President Pervez Musharraf).

15. See generally CRITICAL RACE FEMINISM: A READER (Adrien Katherine Wing ed., 1997) [hereinafter CRF] (exploring the ways in which gender and race both influence identity).

predominantly Muslim Middle East where Islam forbids same sex practices. It is frequently not acknowledged at all. In a speech at Columbia University, Iranian President Ahmadinejad recently asserted that there were no gay people in Iran.¹⁶ Many other people in the Middle East and Africa believe the same about their countries.¹⁷ Of course, all these countries have gay and lesbian residents. Yet it is not something that may be openly discussed.

Critical Race Feminism goes beyond the borders of the United States and embraces global or transnational perspectives. We are extending the narrow U.S. notion of race to examine the legal treatment of women of color, whether they are living in developing or industrialized societies. International and comparative law, which includes the subfields of public international law, human rights, international business transactions, and the comparative law of different countries, also benefit from Critical Race Feminism's contributions.

These are fields that developed primarily based upon principles first enunciated by American and European white male scholars. Men of color from the developing world did not become involved until their respective nations gained independence or sufficient clout in entities like the United Nations. Their voices are still muted, but often rise in discussions of cultural relativism and other issues of human rights.¹⁸

In recent years, western women have joined the discourse and are attempting to reconceptualize international law from feminist perspectives to fill the void created by an absence of women's voices

16. Mahmoud Ahmadinejad, President of the Islamic Republic of Iran, Keynote Address, Columbia University World Leaders Forum (Sept. 24, 2007), (transcript available at <http://www.azstarnet.com/sn/hourlyupdate/202820.php>) [hereinafter Ahmadinejad Address].

17. See Brian Whitaker, "No Homosexuality Here", *GUARDIAN.CO.UK*, Sept. 25, 2007, <http://www.guardian.co.uk/commentisfree/2007/sep/25/nohomosexuality> here (asserting that political leaders in most Middle Eastern states would claim there are no homosexuals in their countries, and that others in the region who may admit there are homosexuals view them as "victims of western influence").

18. See Adrien Katherine Wing, *Critical Race Feminism: Legal Reform for the Twenty-First Century*, in *A COMPANION TO RACIAL AND ETHNIC STUDIES* 160, 166 (David Theo Goldberg & John Solomos eds., 2002).

for so many years.¹⁹ This absence may explain international law's failure to address inequality within the family unit. Most women spend a significant part of their lives in this sphere.²⁰ Global Critical Race Feminism contributes to the development of international law, global feminism, and postcolonial theory by demarginalizing women of color in a theoretical and practical sense. Women of color may be simultaneously dominated within the context of imperialism, neocolonialism, or occupation as well as local patriarchy, culture, and customs. Women are often forced to choose between the nationalist struggle for independence or self-determination and the women's struggle against patriarchy. The nationalist struggle usually has prevailed and the women who have just helped throw off the yoke of outsider oppression have then been forced back to traditional roles.

Especially in Africa and the Muslim world, open acceptance of feminism can be seen as an unpatriotic embrace of western values that may be regarded as inimical to local culture.²¹ Those who do choose to be known as feminists must struggle with how to embrace the universality of women's international human rights within their own cultural context. Despite the various difficulties, these women continue to insist on the complex interrelationships between feminist, antiracist, and nationalist struggles.²²

19. See, e.g., INTLAWGRRRLS, <http://intlwgrrls.blogspot.com/> (last visited Nov. 8, 2008) (commenting on international law issues from a female perspective).

20. Wing, *Critical Race Feminism: Legal Reform for the Twenty-First Century*, *supra* note 19, at 166, 167.

21. See, e.g., Adrien Katherine Wing, *Constitutionalism, Legal Reform, and the Economic Development of Palestinian Women*, 15 *TRANSNAT'L L. & CONTEMP. PROBS.* 655 (2006); Adrien Katherine Wing, *Critical Race Feminism and Human Rights*, in *THE ESSENTIALS OF HUMAN RIGHTS*, 74, 74-76 (Rhona K.M. Smith & Christien van den Anker eds., 2005); Adrien Katherine Wing, *Critical Race Feminism and the International Human Rights of Women in Bosnia, Palestine, and South Africa: Issues for LatCrit Theory*, 28 *U. MIAMI INTER-AM. L. REV.* 337 (1997); Adrien Katherine Wing, *Global Critical Race Feminism: A Perspective on Gender, War and Peace in the Age of the War on Terror*, 15 *MICH. ST. J. INT'L L.* 1 (2007); Adrien Katherine Wing, *Women's Rights and Africa's Evolving Landscape: The Women's Protocol of the Banjul Charter*, in *AFRICA: MAPPING NEW BOUNDARIES IN INTERNATIONAL LAW* 13, 13-34 (Jeremy I. Levitt ed., 2008); Adrien Katherine Wing & Eunice P. de Carvalho, *Black South African Women: Toward Equal Rights*, 8 *HARV. HUM. RTS. J.* 57 (1995).

22. Chandra Talpade Mohanty, *Introduction to THIRD WORLD WOMEN AND THE POLITICS OF FEMINISM* 1, 7 (Chandra Talpade Mohanty et al. eds., 1991)

Critical race theorists are, of course, concerned about theory. But they also focus on the pragmatic aspect of theory—on praxis.²³ The implication of praxis through international law and critical race feminism is essential if Americans are going to coexist with the Muslim world in the future.²⁴ This involves applying theory on the ground to actual situations.

II. FUNDAMENTALISM IN THE MUSLIM/ARAB WORLD

While there are many trends in the Muslim/Arab world, this Part focuses on fundamentalism.²⁵ Fundamentalism is a global trend of people following the most conservative views espoused in their holy books. Christian fundamentalism, Jewish fundamentalism, Buddhist fundamentalism, and Hindu fundamentalism are all growing globally.²⁶ Americans are part of this trend, just as are most other nations. We often conceptualize religious fundamentalism as an Islamic phenomenon, and as a negative development, but we rarely scrutinize our own society. We seldom note that George W. Bush was, in some ways, a Christian fundamentalist President.²⁷

(claiming that what truly connects “third world women” is a common struggle against “sexist, racist, and imperialist structures,” and not just their color or race).

23. See, e.g., Adrien Katherine Wing, *Brief Reflections Toward a Multiplicative Theory and Praxis of Being*, 6 BERKELEY WOMEN'S L.J. 181, 197-98 (1991) (urging black women law professors to translate theory into practice on a micro level by personally mentoring their students, and on a macro level by using their legal training to advocate for social policies that will truly help black women meet their potential).

24. See discussion *infra* Part V.

25. See Margot Patterson, *The Rise of Global Fundamentalism*, NAT'L CATHOLIC REP., May 7, 2004, available at http://ncronline.org/NCR_Online/archives2/2004b/050704/050704a.php (“Scholars say fundamentalism is a modern movement that responds to and reflects the pains of modernity and modernization.”).

26. See *id.* (explaining that these religions are especially prone to fundamentalism because they are based on readings of holy scriptures, which can be interpreted literally).

27. See John D. Goldhammer, Opinion, *Dr. Bush and Mr. Hyde: The Fundamentalist Shadow of George W. Bush*, SCOOP.CO.NZ (Sept. 19, 2005), <http://www.scoop.co.nz/stories/HL0509/S00292.htm> (describing the political tactics of President Bush and his political allies as following a fundamentalist understanding of the Christian faith, speaking of judicial appointments, war and other issues in absolutes).

In the case of the Muslim world, Islamic fundamentalism has grown, at least in part, because of the failure of other ideologies. For example, many countries in Africa, Latin America, and the Muslim world embraced communism when the Soviet Union was a superpower.²⁸ The ideology provided a roadmap for life and government, and was also incompatible with fundamentalism because of its anti-religious tenets. When the Soviet Union fell, however, communist regimes around the world collapsed or were abandoned.

In addition to communism, Arab nationalism was a powerful ideology in the Middle East for many years which left no room for the ideological rise of Islamic fundamentalists.²⁹ Much like communism, Arab nationalism was a broad ideology. Gamal Nasser, one of Egypt's most powerful presidents in the 1950s, typified the Arab nationalistic ideology³⁰ that was very attractive to many young people in the Arab and Muslim countries. It was not necessarily anti-religious, but it was decidedly secular. Arab nationalism and its concomitant secularism is no longer a predominant rallying cry in the post Cold War era.³¹

Physical and psychological trauma has also contributed to the rise of fundamentalism in the Muslim world.³² For many, daily life is

28. See TAREQ Y. ISMAEL, *THE COMMUNIST MOVEMENT IN THE ARAB WORLD* 1 (2005) (“[T]he history of the Arab communist movement can be seen as one of gradual, and until the very end, just partial emergence from the penumbra of Soviet ideological influence into a movement which, nevertheless, has had a fundamental impact on the political discourse of the Arab world.”).

29. See, e.g., Erin Rose Peterson & Megan McMillan, Interview, *Living History Interview with Ambassador Clovis Maksoud*, 16 *TRANSNAT'L L. & CONTEMP. PROBS.* 621, 622-23 (2007) (describing the rise of Arab nationalism in Lebanon during the emergence of the Palestinian-Israeli crises).

30. David S. Sorenson, *Global Pressure Point: The Dynamics of Political Dissent in Egypt*, 27 *FLETCHER F. WORLD AFF.* 207, 218 (2003) (characterizing Nasser as a leader whose legitimacy stemmed from Arab Nationalistic policies).

31. See Adeed Dawish, *Requiem for Arab Nationalism*, 10 *MIDDLE E. Q.*, Winter 2003, at 1, available at <http://www.meforum.org/article/518> (arguing that Egypt's defeat in the Six-Day War and the fall of Gamal Abdel Nasser as a potent political figure led to the inevitable demise of the Arab nationalist movement).

32. See, e.g., Erich Ferrari, Comment, *Deep Freeze: Islamic Charities and the Financial War on Terror*, 7 *SCHOLAR* 205, 222-23 (2005) (asserting that high levels of poverty and grief in places like the West Bank and Gaza Strip help Islamic fundamentalists gain support).

fraught with poverty, war, and destruction.³³ When life on earth is so unrewarding, many people turn to religion for strength, direction, and for solace.

Additionally, retreating into religion has helped bolster an Islamic identity contrary to the secular, developed, Christian nations. The West, particularly the United States, is perceived as an imperial power inflicting itself across the globe. Many people around the world reject Western imperialism or neocolonialism. Additionally, American popular culture floods the world and often clashes harshly with local customs and mores. Many in the Muslim world resent its imposition on their culture, the values it promotes, and the images it portrays.³⁴ Even countries that used to embrace Western popular culture, such as Egypt, are now turning to their own heritage and religion for popular trends.

Broader Western ideals, which are arguably more valuable than popular culture, are also rejected. These may include western-derived international human rights norms. First generation rights,³⁵ the civil and political norms embodied in the U.S. Constitution, the French Declaration of the Rights of Man, and the International Covenant on Civil and Political Rights (ICCPR),³⁶ may be rejected as inappropriate in the Muslim world. This includes the Western conceptualization of freedom of religion, which also means the right to convert into other religions—something forbidden by Islam as the crime of apostasy.³⁷ In essence, the underlying values that make democracy possible—freedom of speech, freedom of association,

33. See, e.g., *id.* (“This [constant conflict] has torn and impoverished areas such as the West Bank and Gaza Strip.”).

34. See DANIEL BENJAMIN & STEVEN SIMON, *THE AGE OF SACRED TERROR* 407 (2003) (commenting that American cultural hegemony threatens traditional values in societies that give privileged status to men and religious authority).

35. See, e.g., Charles M. Fombad, *Challenges to Constitutionalism and Constitutional Rights in Africa and the Enabling Role of Political Parties: Lessons and Perspectives from Southern Africa*, 55 AM. J. COMP. L. 1, 11, n.23 (2007) (providing a broad overview of the three generations of “fundamental human rights”).

36. See, e.g., International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171.

37. See SIR MUHAMMAD ZAFRULLA KHAN, *Definition of Apostate, in PUNISHMENT OF APOSTACY IN ISLAM* (1995), <http://www.alislam.org/books/apostacy/5.html> (explaining that anyone who “abjures Islam” will be punished in the life to come).

freedom of assembly, equal protection—may be rejected as Western values incompatible with Muslim culture.³⁸ Second generation rights, which include economic, social and cultural rights,³⁹ are also viewed as Western and therefore disfavored in some circles.

In some Muslim countries, people viewed as espousing so-called Western values find their lives threatened.⁴⁰ Intellectuals and academics may be disparaged, censured, and silenced; they may be imprisoned or executed.⁴¹ Even when the person has a high international profile, espousing Western notions can have a deleterious impact on life and career. For example, Shirin Ebadi, the Iranian lawyer and Nobel Prize winner,⁴² was forbidden by her government from visiting and speaking at the University of Iowa. This event occurred near the same time as President Ahmadinejad's visit to New York City and was seen by some as an attempt to silence and censor Ms. Ebadi's voice.⁴³ Those who speak out and are not Nobel Prize winners can have distinctly more unpleasant experiences far from public scrutiny.

In reaction to failed secular ideologies, an era of great pain and agony, and the overbearing Western influence in the world many in the Muslim world are focusing instead on their own Islamic identities—as a Muslim citizen of their country and as a Muslim

38. BENJAMIN & SIMON, *supra* note 35, at 480-87.

39. *See* Fombad, *supra* note 36, at n.23 (contrasting first generation rights, which are generally understood as negative rights because they merely impose a negative duty upon a State to avoid violating them, with second generation rights, which require the State to take affirmative steps to enable these rights can be fully realized).

40. *See, e.g.*, Kristin J. Miller, *Human Rights of Women in Iran: The Universalist Approach and the Relativist Response*, 10 EMORY INT'L L. REV. 779, 783-84 (1996) (noting that Iranian government agents employed violent methods including mass summary executions in order to carry out the government's anti-Westernization agenda).

41. *See id.* at 783-84, 819-20 (describing the censorship of academicians and scholars, the administration of governmental-ideological "character test[s]" for entry into universities, and the punishment of those perceived as un-Islamic, as well as violent government enforcement tactics).

42. *Nobel Prize: Shirin Ebadi*, CBCNEWS.CA, Sept. 28, 2006, <http://www.cbc.ca/news/background/nobel/ebadi.html> (summarizing the accomplishments of Shirin Ebadi, the first female judge in Iran and the first Iranian to win the Nobel Peace Prize).

43. Ahmadinejad address, *supra* note 17.

citizen of the Umma (the entire Islamic community).⁴⁴ The next section will highlight examples where the religious-secular tension, both in the Islamic and in the Western worlds, manifests in very interesting ways.

III. A WESTERN EXAMPLE: FRANCE

France is a western secular country. Nonetheless, it is quite different from the United States in its approach to dealing with the tension between religion and secularism. In 2004, France passed a law banning the wearing of ostentatious religious symbols in state schools.⁴⁵ In the United States, such a law would violate freedom of religion. France's view of secularism, however, is quite the opposite.⁴⁶ Under their view, religious symbols such as Sikh turbans, Jewish yarmulkes, and head scarves are seen as divisive and dangerous.⁴⁷ Despite the law's broadly-applicable language, the Muslim headscarf was widely perceived as the particular target of this law.⁴⁸ Some commentators were concerned that girls in state schools (i.e., under eighteen) would be forced by their families to wear the headscarf.⁴⁹ To eliminate the perceived danger of some religious symbols, the government decided to ban all ostentatious religious symbols in state schools.

44. See, e.g., W. Jason Fisher, *Militant Islamicist Terrorism in Europe: Are France & the United Kingdom Legally Prepared for the Challenge?*, 6 WASH. U. GLOBAL STUD. L. REV. 255, 257 (2007) (presenting an example of a militant Islamic ring that “span[ned] the socioeconomic spectrum” and covered multiple nations).

45. Wing & Smith, *supra* note 11, at 745 (pointing out France's historical commitment to secularism that led to the passage of the 2004 law and contrasting that with the U.S. conception of separation of church and state, which would permit wearing such headgear).

46. See generally *id.* at 775-77 (contrasting France's law with examples of students in U.S. public schools ultimately being permitted to wear headscarves).

47. Cf. *id.* at 745, 755 (discussing the collective French fear, expressed by former French President Jacques Chirac, that France would lose its identity if it espoused Anglo-American multiculturalism rather than maintaining itself as a cultural and religious melting pot).

48. See *id.* at 745 (presenting various forms of religious headgear affected by the law and revealing that the law's primary purpose was to ban headscarves).

49. *Id.* at 767 (quoting Rachida Ziouche saying that “girls and young women are intimidated by Muslim men who oblige them to wear the scarf”).

To understand the French reaction, one must understand their view on diversity and multiculturalism. The French have adopted, as part of their cultural heritage and core beliefs, the myth of assimilation.⁵⁰ They do not recognize the American concept of multiculturalism. Instead, they consider everyone “just French,” not Algerian-French or Senegalese-French. This belief is so strong that France’s government does not even keep racial or ethnic data.⁵¹ Their belief is similar to our “melting pot” analogy—every immigrant is melted into French. Reality, however, is much different. France, much like the United States, is much less a melting pot and much more a tossed salad—a whole made of distinct, different, and identifiable ingredients. The French attachment to this myth, however, has resulted in French minorities being dispossessed from inclusion in the system.

Because of this myth, the French government feared the headscarf, an overt Muslim religious symbol, and responded with prohibition. Unfortunately, the growing Muslim community, currently about five or ten percent of the French population,⁵² has had little involvement in French politics. However, there are now some Muslims in the parliament,⁵³ and the Minister of Justice, Rachida Dati, is a Muslim woman.⁵⁴ Many hope these developments will allow the government

50. See Commentary: *French Assimilation vs. British Multiculturalism - What Integration Model for Europe?*, EURACTIV.COM, Nov. 15, 2005, <http://www.euractiv.com/en/socialeurope/commentary-french-assimilation-vs-british-multiculturalism-integration-model-europe/article-148227> (summarizing and commenting on an interview with Trevor Phillips, the chair of the Commission for Racial Equality in the UK, in which Phillips maintained that France pursues assimilation as its monolithic approach to integration).

51. See Ellen Wiles, *Headscarves, Human Rights, and Harmonious Multicultural Society: Implications of the French Ban for Interpretations of Equality*, 41 LAW & SOC’Y REV. 699, 705 (2007) (noting that data protection laws formally preclude institutional recognition of ethnicity and that even the national census contains only two categories: national or “étranger.”).

52. Daniel Strieff, *Forging a Voice in ‘France’s High-rise Hell’*, MSNBC.COM, May 9, 2007, <http://www.msnbc.msn.com/id/12812186/> (reporting that France has the largest Muslim population in Western Europe with 6 million Muslims out of a population of approximately 60 million).

53. Stéphanie Giry, *France and Its Muslims*, 85 FOREIGN AFF., Sept.-Oct. 2006, at 87, 93 (hypothesizing that French Muslims may vote less because they are underrepresented and therefore do not view themselves in the political class as only two of the French Parliament’s 908 members are Muslim).

54. Elaine Sciolino & Souad Mekhennet, *Muslim Women and Virginity: 2*

to make a more informed and representative decision when future issues involving the Muslim community arise. However, many fear that President Sarkozy will stall or even reverse these developments. During the 2005 French riots, he publicly characterized rioting Muslim youth in *de facto* segregated urban ghettos as “scum.”⁵⁵

The French headscarf ban shows that, even within the West, there is no essentialized way to define how the tension between religion and secularism will play out. In the United States, the government would maintain its secularism by refusing to prohibit any or all religious symbols because they are an aspect of freedom of religion and, perhaps, freedom of speech. In France, prohibition protects their secularism. From an American perspective, the French approach shows that pure secularism can result in the government infringing rather than protecting freedom of religion.

IV. THREE EXAMPLES FROM THE MUSLIM/ARAB WORLD

A. TURKEY

Turkey is a country that decided to be secular under its founding president, Kemal Atatürk.⁵⁶ And even though he died many decades ago, his presence, and in particular, his commitment to having an absolutely secular society, still have a lingering effect there.⁵⁷ His presence and influence live on most strongly in the Turkish military.

Worlds Collide, N.Y. TIMES, June 11, 2008, at A1 (discussing the response of Rachida Dati, a Muslim and France’s Justice Minister, to the controversy surrounding a court in Lille, France, which annulled the marriage of two French Muslims after the groom discovered that his wife was not a virgin as she had claimed to be).

55. See David Kaplan & Ilana Ozernoy, *Issue du Jour: Why is Paris Burning?*, U.S. NEWS & WORLD REP., Nov. 14, 2005, at 28 (attributing the tough talk from then-Interior Minister Sarkozy to his Presidential ambitions).

56. See Wing & Varol, *supra* note 3, at 11-12, 18 (commenting on how, in addition to re-acquiring most of the landmass of the Republic of Turkey, Atatürk believed the establishment of a secular regime was crucial to the development of the country and primarily pursued policies designed to effectuate a separation between religion and state, which culminated in the insertion of the word “secular” into the Turkish Constitution in 1937).

57. See *id.* at 18-19, 21-25 (noting that subsequent redraftings of the Turkish Constitution continue to contain numerous secularist principles).

The Turkish army is unique in that it has been the guarantor of secularism; it has overthrown regimes that it felt were leaning too much toward a role for religion in the state.⁵⁸

In 2007, the Turkish electorate reelected its Muslim governing party.⁵⁹ This group ostensibly supports the secular foundations of the state, but its members are heavily Islamist. There was a great fear among secular citizens in Turkey that the reelection of the Islamist-leaning government would result in changed laws.⁶⁰ One of the laws that many secularists feared would change was a headscarf ban similar to, but broader than, the one in France.⁶¹

For many years, Turkey has banned head scarves in universities and public sector jobs in Turkey.⁶² A major court case ensued when a young medical student, Layla Sahin, challenged the headscarf ban.⁶³ She ultimately took her case to the European Court of Human Rights (ECHR).⁶⁴ She argued that the ban violated the European Convention

58. See Emma Ross-Thomas & Paul de Benden, *Turkey's Army Defends Secularism Ahead of Elections*, REUTERS.COM, Aug. 27, 2007, <http://www.reuters.com/article/worldNews/idUSANK00030420070827> (observing that comments made by Turkey's armed forces, leading up to a presidential election, that efforts were being made daily to undermine the secular government suggested that the military would not passively tolerate any threatening of secularism).

59. Sabrina Tavernise, *Hard-liners Make Gains in Turkey Election*, INT'L HERALD TRIB., July 23, 2007, available at <http://www.iht.com/articles/2007/07/23/europe/turkey.php>.

60. See Phil Zimmerman, *Turkey: Headscarf Politics*, PBS.ORG, Sept. 27, 2007, http://www.pbs.org/frontlineworld/blog/2007/09/turkey_headscar.html (documenting the growing concerns regarding Turkey's secular future as a result of the recent election of Islamic President Abdullah Gul, who is the first president with roots in the Islamist political movement).

61. See *id.* (reporting that controversies surrounding President Abdullah Gul's intentions focused on his wife, who wears a Muslim headscarf). Headscarves are banned from all public offices and universities. *Id.*

62. See Wing & Varol, *supra* note 3, at 36 (citing *Sahin v. Turkey*, 44 Eur. Ct. H.R. 5, ¶ 36 (2005)) (observing that the Turkish Cabinet first established a regulation concerning wearing Islamic headscarves in universities in 1981, which required all those working for "public organizations and institutions and personnel and students at State institutions to wear ordinary, sober, modern dress").

63. See generally *Sahin v. Turkey*, 44 Eur. Ct. H.R. 5 (2005) (agreeing that the ban interfered with Sahin's right to manifest her religion, but, nevertheless, upholding the ban as justified and proportionate to furthering Turkey's interests in secularism).

64. See generally Wing & Varol, *supra* note 3, at 41-49 (discussing the issues presented in *Sahin*, the Court's reasoning and conclusions, and the Turkish government's response to the Court's holding).

on Human Rights, particularly the freedom of religion.⁶⁵ The Court however, ruled against her and upheld the Turkish government principle of secularism.⁶⁶ This was shocking to many, because Europe values freedom of religion and free exercise of religion. However, the ECHR ruled for the government, relying on its contention that the ban was foundational to secularist Turkey.

Just as France rejected religion instead of embracing free exercise, so did the Court uphold Turkey's right to prohibit religious symbols in the public sphere. This is especially important because, unlike in France, Muslims are a majority in Turkey and arguably have total political power. Despite its secular history, in February 2008 the Turkish government lifted the headscarf ban and actually inserted amendments into the Constitution,⁶⁷ but the Constitutional Court overruled these amendments.⁶⁸ It remains to be seen if the military will intervene as it has in the past to uphold secularist principles.

B. TUNISIA

Tunisia, like Turkey, decided to follow a secular approach based upon what their founder proposed.⁶⁹ The first Tunisian President,

65. See European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 9, Nov. 4, 1950, 213 U.N.T.S. 222 (providing that:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others).

66. See *Sahin*, 44 Eur. Ct. H.R. at ¶¶ 116, 122-23 (holding that the headscarf ban was justified in principle and was proportionate to the legitimate objective of protecting secularism pursued by Turkey).

67. See *Turkey Moves to Lift Headscarf Ban*, CNN.COM, Feb. 9, 2008, <http://edition.cnn.com/2008/WORLD/europe/02/09/turkey.headscarf/index.html> [hereinafter *Headscarf Ban*] (announcing that after Turkey's parliament passed a constitutional amendment that would lift the ban on Islamic headscarves at universities, tens of thousands of protesters amassed to demonstrate against the amendment).

68. See Sabrina Tavernise, *Bid to Allow Head Scarves Fails in Top Turkish Court*, N.Y. TIMES, June 6, 2008, at A6 (ruling that allowing headscarves "violated principles of secularism set in Turkey's Constitution").

69. See *Listening to the Views of Islamic Dictators*, N.Y.SUN.COM, June 2,

Habib Bourguiba,⁷⁰ was inspired by the West and embraced secularism.

Tunisia is unique in the Arab world, not only for being secular. It also banned polygamy in 1956.⁷¹ In most Arab/Muslim countries, marriage laws follow Islamic *shari'a*, which holds that men can have four wives.⁷² To avoid clashing with religion, Tunisia based its ban on polygamy on the aspect of Islamic law that requires wives be treated equally, which is extraordinarily difficult. Tunisia was able to use this Islamic justification, rather than a Western justification, to ban polygamy.

Thus, Tunisia has used a culturally and religiously acceptable justification to become secular and to balance the tension between religion and secularism. During my several trips to Tunisia, I discovered that the balancing act has worked for the most part for over fifty years. The rate of polygamy in Tunisia is very low and the law is backed by the imposition of a one year jail sentence.⁷³

2006, <http://www.nysun.com/foreign/listening-to-the-views-of-the-islamic-dictators/33743/?print=3008385221>.

70. See President Habib Bourguiba – The Official Website, Biography, <http://www.bourguiba.com/pages/biography.aspx> (last visited Nov. 11, 2007) (chronicling the life of Habib Bourguiba and his ascent to the presidency after Tunisia abolished its monarchy a year after declaring independence).

71. See *Habib Bourguiba: Father of Tunisia*, BBCNEWS.COM, Apr. 6, 2000, <http://news.bbc.co.uk/2/hi/obituaries/703907.stm> (eulogizing former Tunisian President Habib Bourguiba for giving women the right to vote and eliminating polygamy).

72. See Yakaré-Oulé Jansen, *Muslim Brides and the Ghost of the Shari'a: Have the Recent Law Reforms in Egypt, Tunisia and Morocco Improved Women's Position in Marriage and Divorce, and Can Religious Moderates Bring Reform and Make it Stick?*, 5 NW. J. INT'L HUM. RTS. 181, 186 (2007) (distinguishing polyandry (multiple husbands for one woman), which is not allowed under Islamic marriage laws, with polygamy (multiple wives for one man), which is permitted, as long as the husband has the capacity to treat all wives equally in kindness and in provisions).

73. See Lama Abu-Odeh, *Modernizing Muslim Family Law: The Case of Egypt*, 37 VAND. J. TRANSNAT'L L. 1043, 1105 (2004) (documenting that, according to Article 18 of the Tunisian Majallah, polygamy is prohibited and is punishable by one-year imprisonment and/or a fine of 240,000 francs); Andrea Barron, *Tunisia as an Arab Women's Rights Leader (Part I)*, THEGLOBALIST.COM, July 11, 2007, <http://www.theglobalist.com/StoryId.aspx?StoryId=6305> (describing polygamy in Tunisia as “unthinkable”).

C. PALESTINE

Lastly, consider the case of Palestine, defined as the West Bank, Gaza, and East Jerusalem.⁷⁴ In contrast to Turkey and Tunisia, Palestine has recently rejected secularism. In the 2006 Palestinian Legislative Council election, Fatah, the ruling secular nationalist party was defeated by Hamas, the Islamic party.⁷⁵ This globally surprising defeat did not occur because Palestine became “more” Islamist. Rather, Fatah had a long history of corruption and failure to deliver in a peace process skewed against them.⁷⁶ The Palestinian people were disillusioned and disgusted with the status quo.

Palestine has been paying for its decision to embrace religion and reject secularism. The West cut off most funding.⁷⁷ Some spoke out against the aid cuts, most notably former President Jimmy Carter, who pointed out that this was a very destructive foreign policy.⁷⁸ He counseled that the West should, instead, work with Hamas and the

74. See generally *Israel & the Palestinians: Key Maps*, BBCNEWS.COM, http://news.bbc.co.uk/hi/english/static/in_depth/world/2001/israel_and_palestinians/key_maps/ (last visited Nov. 8, 2008) (showing a variety of maps related to the Israel-Palestine conflict, including Israeli settlements in the West Bank and Gaza, the land occupied in 1967, and the United Nations partition plan for Palestine).

75. See Wing & Kassim, *supra* note 3, at 480 (observing that the victory of the Islamist party Hamas in the 2006 parliamentary elections surprised the United States, Israel, and the Palestinians themselves).

76. See *Gaza E.R.: Fatah vs. Hamas*, PBS.ORG, Aug. 23, 2007, <http://www.pbs.org/wnet/wideangle/episodes/gaza-er/fatah-vs-hamas/1227/> (noting the failure of the Oslo Peace Accords and the subsequent loss of Palestinian support for Fatah, which ultimately led to Fatah's fall from power when Hamas won the 2006 elections).

77. See *Hamas Win Prompts US Aid Cut Vote*, BBCNEWS.COM, Feb. 16, 2006, http://www2.newsbbc.co.uk/2/hi/middle_east/4718616.stm (reporting that the U.S. House of Representatives voted to slash direct U.S. aid to the Palestinian Authority unless Hamas renounced its position of pushing for Israel's destruction); *U.S. Redirecting Palestinian Aid*, CNN.COM, Apr. 7, 2006, <http://www.cnn.com/2006/US/04/07/us.palestinians/index.html> (calculating that \$411 million in U.S. aid would be cancelled or suspended due to concerns that the money might assist Hamas, while \$100 million would be redirected to humanitarian purposes).

78. *Jimmy Carter: Give Hamas a Chance*, CNN.COM, Feb. 2, 2006, <http://www.cnn.com/2006/WORLD/meast/02/01/carter.hammas/> (documenting Jimmy Carter's belief that Hamas, as the product of a democratic election, deserves to be recognized by the international community and that the United States should not cut its aid, but should channel it to the Palestinian people through United Nations organs).

Palestinian people. The situation was exacerbated by the June 2007 schism in which Hamas seized power in Gaza, while Fatah-affiliated Palestinian Authority President Mahmoud Abbas still rules in the West Bank.

V. PRAXIS

Given these globe-spanning examples of societies dealing with ongoing and potentially explosive religious-secular tensions, what does this mean for those of us who live in the United States, for those of us who are the future lawyers, the future politicians, the future judges and the future leaders? What kind of praxis is possible?

First, we all need to become much more educated about these issues. Attend lectures, take courses, meet people, and learn from your family. Learn about the rest of the world. Help reduce America's appalling cultural ignorance, which is institutionalized and systemic.⁷⁹ Learn about the Muslim and Arab worlds, about languages like Arabic and Farsi and others.

Travel, if you can. Visit those countries. Visit as an interested human being, not as a brash American. See how people live, how they pray, how they speak. Learn how they feel and think. Go beyond the "safe" places, the tourist places, and learn how people really live. Meet people as individuals, and learn about them as friends. Learn about their lives, their children, and their spouses. You will see that many issues are the same all over the world. You will also see that many of our fears—fears about gang violence, fears about the future we build for our children—are universal. Through travel and understanding, we will learn to truly respect people.

We must increase travel opportunities for our students. We need to get more American students into the Muslim world, into the Arab world, to truly make the next generation more knowledgeable and sensitive. Right now, there are few ABA-licensed summer programs

79. See, e.g., Jonathan Karl & Maddy Sauer, *Slim Chance of Finding an Arabic Speaker at the U.S. Embassy in Baghdad*, ABCNEWS.COM, June 20, 2007, http://blogs.abcnews.com/theblotter/2007/06/slim_chance_of_.html (exposing that the U.S. Embassy in Baghdad had ten employees with a working knowledge of Arabic out of a staff of one thousand, which was a slight improvement from the previous year in which only six individuals in the embassy could speak Arabic).

in the Arab world.⁸⁰ There are 139 in the rest of the world. These programs are important if our students and young people, our future leaders, educators, and parents, are to learn firsthand what people are like.

We must encourage our government to let Arab and Muslim students come here, to learn with us and from us, and so we can learn with and from them. Don't reject them and have them instead study in London, New Zealand, and other places. We must embrace them and the richness they will add to our education, culture, and understanding. We also need to pressure our government to admit more foreign speakers. We need to hear all sides, meet all the people. We do not need our government censoring whom we listen to by keeping valuable speakers out. Instead, we must share our knowledge. Talk to relatives over a meal. Educate others, so that the knowledge and understanding spreads.

Second, we must treat people with respect. All people, regardless of origin, language, or religion, need our respect. Muslims and Arabs are generally disrespected and feared by Americans right now.⁸¹ That needs to change. One way we need show that respect is through our immigration policies. We need to stop racial profiling and allow Arabs and Muslims entry into the United States. The Iraqi translators have put their lives on the line for us, and some have been slaughtered.⁸²

80. See ABANet.org, Foreign Study Programs, Oct. 12, 2008, <http://www.abanet.org/legaled/studyabroad/foreign.html> (listing the offering of three programs in the Muslim, as contrasted with the Arab, world—all of which are located in Istanbul, Turkey—and four programs in Israel).

81. Lydia Saad, *Anti-Muslim Sentiments Fairly Commonplace*, GALLUP NEWS SERVICE, Aug. 10, 2006, available at <http://media.gallup.com/WorldPoll/PDF/AntiMuslimSentiment81006.pdf> (estimating that 39% of Americans have some feelings of prejudice against Muslims, 41% would require Muslims to undergo more intensive airport security checks, and 39% believe Muslims living in the United States are not loyal to the country).

82. Christine Romo & Meena Hartenstein, *Iraqi Translators Search for Fresh Start in U.S.*, ABCNEWS.COM, Nov. 24, 2008, <http://abcnews.go.com/WN/WoodruffReports/story?id=6290550> (documenting that approximately 300 Iraqi translators working for the US have been murdered in Iraq since 2003); Scott Conroy, *Iraqi Translators: Visas or Death?*, CBSNEWS.COM, Feb. 14, 2007, <http://www.cbsnews.com/stories/2007/02/14/eveningnews/main2478843.shtml> (lamenting that Iraqi translators are “hunted down and murdered” for working with the United States).

Third, we must speak out. We need to pressure all of our politicians to adopt and enforce international and domestic policies that enhance, rather than hurt, humanity. We, as a country, need to shift from a policy that sells weapons and starts wars to one that fosters peace and understanding.

It is incumbent upon us, who live here in the most powerful and influential nation in the world, to use the power that we have to effect a change that will allow us to sensitively consider issues of religious and secularist values around the world, responding appropriately and respectfully. We have the power, whereas many people in other countries do not.

CONCLUSION

The tension between religion and secularism permeates the world. It is one of the most important phenomena of our time. We can see how other nations have balanced the tension by looking to modern examples in places such as France, Turkey, Tunisia, and Palestine. We can learn what those countries have tried and how people have responded. We can understand and proactively respond to the tension by empathizing with the people of the world.

When we interact and relate respectfully at the individual level, the walls of country and culture melt away. Instead of being rejected as “American,” we will be welcomed as a friend, a relative. Understanding the commonalities between individuals allows us to move past labels and view people, and be viewed in turn, simply as human beings.

Regardless of one’s view regarding the right balance between secularism and religion, the starting point is to learn what other people, other cultures, and other countries want. Start by listening, learning, and understanding. Don’t start by trying to force “our” way on others. Instead of saying, “We will do this to help you,” ask, “What can we do to help?”

Young people in the United States have to break from the current generation’s American-centric mold. We must learn, instead, to focus on understanding others. That is the only way to be a harmonious part of the changing world, the only way for our country to evolve. The way of the past leads only to war and death. The path

of understanding leads to peace. So learn, share, travel, and speak out. Be a part of making essential change happen.