



## Reasons Public and Divine

*Liberal Democracy, Shari‘a Fundamentalism,  
and the Epistemological Crisis of Islam*

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VINCENT J. CORNELL

You [Americans] are the nation who, rather than ruling by the *sharia* of God in its Constitution and Laws, choose to invent your own laws as you will and desire. You separate religion from your policies, contradicting the pure nature that affirms Absolute Authority to the Lord and your Creator. You flee from the embarrassing question posed to you: How is it possible for God the Almighty to fashion His creation, grant men power over all creatures and land, grant them all the amenities of life, and then deny them that which they are most in need of: knowledge of the laws which govern their lives?

Osama bin Laden

Very few words have been the subject of controversial understanding and abuse as the word democracy. I think that only the word religion had a similar fate throughout history. . . . Maybe because of that, it is necessary for me to give my own opinion on the question. I believe that God created people free and equal, that higher or lower races do not exist, and neither do good or bad nations. I believe that people bring with themselves a certain number of inalienable rights, that governments have no right to limit these rights, much as I do not believe in the unrestricted rights of the majority, as tyranny of the majority is a tyranny like all others. I believe that the measure of liberty is the relationship to minorities, and freedom of thought is, above all, the freedom to think differently. These, in short, constitute my understanding of democracy.

Alija Izetbegović

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The late Bosnian president Alija Izetbegović might have added that in contemporary Islam as well, few concepts have been as contested as democracy. As an

early Sufi once remarked about *tasawwuf*, “Today it is a name without a reality, but formerly it was a reality without a name.” The Sufi ‘Ali al-Hujwiri (d. 1071 c.e.), who cites this statement in *Kashf al-Mahjub* (Unveiling the Veiled), explains it as follows: “Formerly the practice was known but the pretense was unknown, but nowadays the pretense is known and the practice unknown.”<sup>1</sup> The pretense of democracy is indeed well known in the contemporary Islamic world. However, in most Muslim countries, the practice of democracy is another matter. As Izetbegović also said in the speech from which the above quotation was taken, “Absolute rulers rarely admitted that they were dictators, [but] called themselves democrats and asked others to consider and call them as such.”<sup>2</sup>

As William E. Connolly states in *The Terms of Political Discourse*, democracy, like “justice” and “freedom,” is a contested concept that is embedded in rival theories.<sup>3</sup> Even among classical political theorists, views of democracy varied widely. For Aristotle democracy (*demokratia*) meant rule by the lower classes. He saw democracy as a deviation of polity (*politeia*), rule by the many. Aristotle divided political systems into three types. In royalty one person rules in the common interest; the deviation of royalty is tyranny, where a single person rules in his private interest. Aristocracy is rule by a favored few in the interest of the many; oligarchy, the deviation of aristocracy, is rule by the rich in the interest of the rich. Polity is rule by the many in the common interest; democracy, the deviation of polity, is rule by the many in their own interest.<sup>4</sup>

Aristotle did not clearly favor one political system over the others. He felt that the state should be composed, as far as possible, of citizens of equal or similar means. Given the actualities of human nature, a society composed of a large middle class was the most likely to promote justice by following the mean.<sup>5</sup> Aristotle was worried most of all about oligarchy. Although democracy had its faults, it was less of a threat to the establishment of justice. It was the best of the three deviations of proper rule, since the desire of the poor to rule in their own interest at least gave the possibility of promoting the interests of the greatest number of people.<sup>6</sup>

Aristotle’s definition of democracy was the basis for the notion of democracy as “rule by the people.” The concept of rule by the people recalls the notion of civil society, which is central to Osama bin Laden’s critique of democracy in America. Although there are several approaches to the concept of civil society, in the United States civil society is based on a democratic, pluralist view of civic organization. According to this view, in the words of Alexis de Tocqueville in *Democracy in America* (1840), “The people reign over the political world as God reigns over the universe.”<sup>7</sup> For Tocqueville, as for most liberal theorists of democracy, popular sovereignty is exercised through self-government, which promotes the common good by expressing the will of the majority.<sup>8</sup> According to the democratic pragmatist John Dewey (d. 1952), the desire for self-government

and concern for the common good are not inborn values but depend on education and experience. Democratic values are nurtured by a political culture of engagement that develops out of local voluntary associations in which citizens of similar social standing, education, and temperament practice the skills of self-rule. In one sense Dewey democratizes Aristotle's notion of rule by the middle classes. More directly he affirms a principle that Thomas Jefferson enunciated in 1820: "I know no safe depository of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education."<sup>9</sup>

Liberal democracy has been challenged on theological grounds by a number of Islamist critics. For Islamist ideologues Tocqueville's statement that in America "the people reign over the political world as God reigns over the universe" is evidence that democracy is grounded in *shirk* (associating partners with God), which in this case would mean the usurpation of divine sovereignty by popular sovereignty. Shortly before he was killed in a shoot-out with Saudi security forces outside of Mecca in June 2003, the al-Qaeda activist Yusuf al-Ayeri published an essay that portrayed liberal democracy as a grave threat to Islam. According to Ayeri the problem with democracy is that it is based on the concept of the autonomous individual, whose participation in civil society shapes the political and moral nature of society as a whole. The exercise of personal autonomy opens the door for other individualistic doctrines such as religious pluralism and moral relativism. Democratic individualism undermines God-given moral standards by basing political relations on the lowest common denominator of human values. Furthermore, by denying divine sovereignty, democracy "seductively" causes people to believe that they are the authors of their own destinies and that they can change the laws that govern them. Muslims who support democracy are thus led to ignore the commands of God, reject the Shari'a as the expression of God's will, and "love this world, forget the next world, and abandon jihad."<sup>10</sup> The gendered tone of Ayeri's critique is unmistakable: Eve, in the guise of democracy, seduces the Islamic Adam into tasting the forbidden fruits of moral autonomy and free will.

Despite its extremism Ayeri's critique of democracy has a point. Liberal notions of moral autonomy and free will may indeed pose a threat to Islamic traditionalism, if not to Islam itself. Ironically some Islamist critiques of democracy seem more attuned to historically traditional Islamic worldviews than are the accommodationist positions of Muslim democrats and other apologists for modernity. When Osama bin Laden says to Americans, "You choose to invent your own laws as you will and desire. You separate religion from your policies, contradicting the pure nature that affirms Absolute Authority to the Lord and your Creator," he is not entirely wrong. John Locke (d. 1704), who was arguably

the most influential forefather of the American tradition of liberal democracy, believed that God delegated the freedom of moral and political choice to human beings, who exercised this freedom through what Jeremy Waldron has called the “democratic intellect.”<sup>11</sup> For Locke the collective wisdom of the common people was a surer guide to God’s will than the efforts of religious scholars. In premodern Sunni Islam, Locke’s notion of free choice would have been condemned for the heresy of Qadarism, and his democratic populism would have been seen as an incitement to anarchy. If Lockean democracy is construed as Islamic heresy, then Osama bin Laden’s critique of democracy is arguably valid, at least according to certain conceptions of Islam. Even though we may despise the conclusions of extremists, we are sometimes forced to admit that their arguments highlight important issues. If it proves nothing else, bin Laden’s critique of democracy shows us that one can be logically correct and morally wrong at the same time.

### *Shari‘a Fundamentalism and the Reification of Islamic Law*

The key to bin Laden’s critique of democracy does not lie in its political vision, but rather in its epistemological outlook. This outlook denies the autonomy of human reason and sees ultimate truth as accessible to the human being only through divine guidance. In *Defenders of God* Bruce Lawrence proposes a definition of religious fundamentalism that helps shed light on this issue: “Fundamentalism is the affirmation of religious authority as holistic and absolute, admitting of neither criticism nor reduction; it is expressed through the collective demand that specific creedal and ethical dictates derived from scripture be publicly recognized and legally enforced.”<sup>12</sup> Although Lawrence believes that fundamentalism depends on scripture, his definition allows the student of fundamentalism to take the concept beyond its scriptural base.<sup>13</sup> This definition is based on the premise that in fundamentalism, authority is dependent on a holistic (I would say totalitarian) epistemology. Because of this the authority of fundamentalism may be grounded in scripture, but its scope extends beyond scripture in its application.

Applying Lawrence’s definition of fundamentalism to Osama bin Laden’s critique of democracy in the United States, one observes that the epistemological aspect of bin Laden’s critique is based not so much on the text of the Qur’an as on a reification of the Shari‘a as the locus of divine authority. In this reification, which depends more on a covert mystical theology than on any classical legal theory, the Shari‘a becomes what Mircea Eliade called a *hierophany*, a manifestation of the sacred embodied as law.<sup>14</sup> As a hierophany of divine authority, the Shari‘a is made equivalent to revelation as a source of transcendent truth. In premodern Islamic tradition, it was believed that the divine will was expressed through the Shari‘a. In classical Islamic jurisprudence, the Shari‘a, and hence

God's will, was applied through the process of *fiqh*, the reasoning of juridical scholars. The association of God's will with the collective opinion of juridical scholars had the effect of obscuring the epistemological role of *zann* (uncertainty or speculation) in the practice of juridical reasoning. This led to the belief among nonspecialists that legal approaches to religious questions had only one correct answer. This is why Muslim fundamentalists are able to think of the Shari'a (in Lawrence's words) as "holistic and absolute, admitting of neither criticism nor reduction."

This form of fundamentalism is distinct enough to merit its own name: *Shari'a fundamentalism*. What makes the Shari'a fundamentalism of groups such as al-Qaeda different from other varieties of religious fundamentalism is that the reification of scripture and the law are interdependent. In Shari'a fundamentalism the law and not just the scripture on which it is based is conceived as a holistic construct. Taken out of the methodological context of the traditional schools of Islamic jurisprudence, the Shari'a is seen as an idealized expression of the divine will and the locus of truth for human society. Thus in Shari'a fundamentalism both law and scripture are conceived as "holistic and absolute, admitting of neither criticism nor reduction."

Like all forms of fundamentalism, Shari'a fundamentalism depends for its hermeneutical authority on a literalistic reading of scripture. Scriptural literalism artificially simplifies contested concepts by restricting the meaning of multivalent terms. When doubt is removed from the interpretive process, epistemological certainty becomes a realizable ideal. With the attainment of certainty, there is no need for the "speculation" (*zann*) of legal-school jurists who approach the Qur'an and the Hadith through inductive reasoning. Instead the logic of certainty is sought through deductive reasoning (*bayan* or *burhan*), not through the inductive casuistry of traditional jurisprudence. Deductive logic is like a mathematical formula: the terms of the equation are predetermined, and all the interpreter of a text needs to do is supply the proper values for the variables. The privileging of deductive logic over inductive logic is a major cause of both the authoritarianism and the superficiality that characterize fundamentalist hermeneutics in Islam. Shari'a fundamentalism can be observed in a wide variety of Islamic writings and is not confined to al-Qaeda tracts alone. However, this view of the Shari'a is particularly common in Salafi discourse.

The Shari'a fundamentalism of Osama bin Laden comes directly out of the writings of the Muslim Brotherhood ideologue Sayyid Qutb (d. 1966). In *Signs along the Road (Ma'alim fi al-Tariq)*, Qutb describes the Shari'a as a "universal law" (*shari'a kawuniyya*). By using this term, Qutb means to say not only that the Shari'a is universally applicable. Rather his Shari'a fundamentalism is based on a notion of universal law that approximates the law of nature. "[The concept of the Shari'a] goes back to its most comprehensive root in its decisive role in all

of existence, not just in human existence alone, and in its application to all of existence, not in its application to human life alone.”<sup>15</sup> Although at first glance this argument may seem similar to natural law theory, Qutb takes a much more sectarian stance than do Western theorists of natural law, who conceive of natural law as standing over and above the legal systems of individual societies. For Qutb natural law *is* the Islamic Shari‘a. It is the fundamental expression of the *namus* (Gr. *nomos*), the divine law that governs and regulates the universe. For this reason rejection of the Shari‘a amounts to rejection not only of the historically revealed laws of Islam, but also of God’s universal law, and is a denial of God’s power to determine existence by saying, “Be! And it is” (Qur’an, 16:40): “It is God who created both the human being and universal existence, and who made the human being obedient to His divine laws along with all of existence. It is God, may He be glorified, who prescribed (*sanna*) the Shari‘a to govern the human being’s voluntary life, a form of order (*tanzim*) that accords with his natural existence. Thus, on this basis, the Shari‘a is part of the Universal Divine Law (*al-namus al-ilabi al-‘amm*) that governs human nature and the universal nature of existence together. [God] has made it a single and comprehensive totality (*wa yunassiquba kulluba jumlatan wabidatan*).”<sup>16</sup>

Qutb explains, “The Shari‘a that God has given to the human being to order his life is a universal law in the sense that it is related to the overall law of the universe and is harmonious with it. The only way in which true harmony can be brought about between the laws (*qawanin*) that are operative in the inner life of the human being and the laws that govern his outward actions is through obedience to the Shari‘a.”<sup>17</sup> For Qutb the human being is not capable of creating a legal system that is in harmony with both human life and the laws of the universe. Therefore the obligation to obey the Shari‘a is greater even than the obligation to believe in Islam. Any system of laws other than the Shari‘a is nothing but the indulgence of human whims (*abwa’ al-bashar*).<sup>18</sup> The epistemology of Shari‘a fundamentalism is central to Qutb’s political argument in *Signs along the Way*. It is primarily on this basis that he dismisses all non-Shari‘a-based political systems as *jabili*, existentially and theologically “ignorant” manifestations of human vanity. Political systems that are not based on the Shari‘a are not condemned for their moral failings alone, but also because of their Promethean disregard for the rights of God in favor of the rights of man.

Qutb’s ideology of the universal Shari‘a came rather late in his career and does not appear in his earlier works, such as *Social Justice in Islam (al-‘Adala al-ijtima’iyya fi al-Islam)*, which was first published in 1949. However, even in *Social Justice*, which was written before Qutb officially joined the Muslim Brotherhood, the “holistic and absolute” vision of the Islamic Order (*al-nizam al-islami*) that frames his later Shari‘a fundamentalism is already well developed: “Islam has one universal and integrated theory which covers the universe and life and

humanity, a theory in which are integrated all the different questions; in this Islam sums up all its beliefs, its laws and statutes, and its modes of worship and of work. The treatment of all these matters emanates from this one universal and comprehensive theory, so that each question is not dealt with on an individual basis, nor is every problem with its needs treated in isolation from all other problems.”<sup>19</sup>

In contrast with Christianity, which in Qutb’s view posits an opposition between the world of human society and the world of the spirit, “Islam saw one embracing unity, which took in the universe, the soul, and all human life. Its aim is to unite earth and heaven in one world; to join the present world and the world to come in one faith; to link spirit and body in one humanity; to correlate worship and work in one life.”<sup>20</sup> Islam is unique and incomparable, and the system it represents “has never been found in any of the other systems known to the world either before or after the coming of Islam.”<sup>21</sup> Islam, says Qutb, does not seek to imitate any other system, nor does it seek to find similarities between itself and others. Thus any attempt to reform Islam or strengthen it through comparison with other systems is a useless endeavor and a sign of inferiority.<sup>22</sup>

### *Epistemological Crisis and the Reification of Islam as Culture*

The Shari‘a fundamentalism of Sayyid Qutb and Osama bin Laden is both a response to the pressures of globalization and secular liberalism and a symptom of epistemological crisis in Islam. The philosopher Alasdair MacIntyre coined the term *epistemological crisis* to describe what happens when a tradition of inquiry fails to make progress by its original standards of rationality. Former methods of inquiry become sterile, “conflicts over rival answers to key questions can no longer be settled rationally,” and arguments that have worked in the past “have the effect of increasingly disclosing new inadequacies, hitherto unrecognized incoherencies, and new problems for the solution of which there seem to be insufficient or no resources within the established fabric of belief.”<sup>23</sup> This concept accurately describes the current situation of Islamic thought, at least in the world of Sunni Islam. Shari‘a fundamentalism, as a response to the challenges posed to Islamic thought by modernity, is an important signpost (the pun is intentional) of epistemological crisis in Islam.

According to MacIntyre the “dissolution of historically founded certitudes” is the hallmark of an epistemological crisis. When a historically founded tradition confronts a new and alien tradition, it may be that some of the original tradition’s claims to truth will no longer be sustained. This threatens the integrity of the tradition as a whole. A feeling of crisis may be precipitated by the challenge of a completely new epistemology, or it may occur when social and historical conditions change such that the claims of a rival tradition provide newly cogent and illuminating explanations of why one’s own tradition has been unable to

solve its problems or restore its original coherence. Sometimes the conceptual language of the alien tradition may become a “new and second first language” of the tradition in crisis.<sup>24</sup> This happened, for example, in the second and third centuries of Islam, when, because of the crisis precipitated by Christian theological polemics against Islam, Greek logic provided conceptual tools for the newly developed tradition of Islamic theology (*ilm al-kalam*). Muslim theologians reconceptualized the logical formulations of Greek thinkers such as Aristotle and the Stoics in ways that rendered them “Islamic.” A similar process occurred in Islamic philosophy, where the philosophical languages of Platonism and Aristotelianism were recast as “Islamic” discourses. In his famous 1784 essay, “Was ist Aufklärung?” (What Is Enlightenment?), Immanuel Kant proposed that the coming of the Enlightenment heralded humanity’s liberation from its self-imposed immaturity, an immaturity marked by uncritical acceptance of dogmatic religious authority.<sup>25</sup> More than two centuries later, Kant’s vision remains the key issue in the epistemological confrontation between fundamentalist or traditionalist Islam and Western modernity.

The key to resolving an epistemological crisis is to develop new resources and frameworks for the tradition under pressure. Such resources, however, cannot be created merely by grafting elements of an alien tradition onto the original. To be acceptable, what MacIntyre calls the “new and second first languages” of tradition must be seen as authentic: they must exhibit continuity with the worldview that defined the original tradition in the first place. In addition the new resources of tradition must constitute a tradition of their own. They must provide a systematic and coherent solution to problems that have so far proven intractable. Finally the revision of tradition must be critical. It must provide an explanation of what it was that rendered the original tradition, before acquiring the new resources, sterile or incoherent or both.

Although they must be perceived as authentic, these new resources do not necessarily have to be derived directly from the earlier tradition. Rather their justification lies in their ability to engage with the previous tradition and resolve contradictions that had not been resolvable before.<sup>26</sup> The opportunity posed by an epistemological crisis lies in the prospect of coming up with new approaches to tradition that provide innovative solutions through a critical engagement with the past. In the words of the late historian of Christianity Jaroslav Pelikan, “A ‘leap of progress’ is not a standing broad jump, which begins at the line of where we are now; it is a running broad jump through where we have been to where we go next.”<sup>27</sup> The challenge for Muslim liberal democrats is to find an authentic starting point or baseline for such a running broad jump that allows modern political theory to engage the future without abandoning the past.

For Muslim fundamentalists such as Sayyid Qutb and Osama bin Laden, the epistemological crisis of Islam is seen as a clash of civilizations defined in terms

of law and culture—a conflict of values between Islam and the West. In such a view, religion and culture are conflated. Islam is seen not only as a religious alternative to other faiths, but it is also cast as the cultural antithesis of the West. Similarly Christianity, Judaism, and secularism (no meaningful distinction is made among these categories) are cast as Western cultural villains. This rhetorical strategy, in which the Orientalist dichotomy of “the West versus the rest” is turned against itself, has been called “Occidentalism.” Occidentalism is a critique of Western civilization that utilizes the bipolar model of Orientalism but reverses the polarity such that an idealized image of a spiritual East is valued over a critical image of a materialistic West.<sup>28</sup> According to the Egyptian philosopher and Islamic modernist Hassan Hanafi, who claims to have been the first to use the term *Occidentalism* in print, Occidentalism is a liberation epistemology, an “ideology for the ruled” that functions as a liberating device for the subaltern, much as Liberation Theology did for Latin Americans in the 1970s. Unlike Liberation Theology, however, Occidentalism relies on the Romantic notions of national character and national culture rather than on the Marxist concept of superstructure.<sup>29</sup>

The Occidentalist critique of Western civilization is also expressed as a confrontation between tradition and modernity. However, despite the portrayal of Islam as a form of “traditional” spirituality by Muslim Occidentalists, the ways in which they conceive of religion are dependent on nineteenth-century Western notions of culture and social science. Anthropologist Kevin Avruch has identified six common but theoretically “inadequate” notions of culture in contemporary political discourse that contribute to ethnic and religious conflicts. Each of these notions can be traced to nineteenth-century concepts of culture. When applied to Islam, each of these notions is also integral to the discourses of both Islamic fundamentalism and Islamic Occidentalism:

1. *Culture is homogeneous.* When applied to Islam, this notion presumes that Islam is free of internal paradoxes and contradictions, such that it provides clear and unambiguous behavioral instructions, a system (*nizam*) for how to act as individuals and as a polity. The ideal of normative homogeneity is maintained epistemologically by recourse to deductive reasoning.
2. *Culture is a thing.* Fundamentalist epistemology views Islam as a reified “thing” that can act, believe, assert, and take on an identity independent of human actors. It can even construct a definition of itself. This type of reification is a hallmark of fundamentalist discourse in all religions.
3. *Culture is uniformly distributed among members of a group.* In Islamic fundamentalist and Occidentalist discourses, this notion confers cognitive, behavioral, and affective uniformity to all members of the Muslim community (*ummah*). In other words all true Muslims are alike. “Islamic” consciousness

is the same for all Muslims. Variation within the group is deviance. This notion is a hallmark of the so-called *tawbidic* (unitarian) worldview of Islamic reformism, which conflates the theological oneness of God (*tawhid*) with the unification (*ittihad*) or unity (*wahda*) of an idealized Islamic culture or “nation.” When applied to the Shari‘a, this concept leads to Qutb’s notion that Islamic law is universal natural law, the norms of which can be applied to all nations and all peoples. As we have seen, this last notion is a hallmark of Shari‘a fundamentalism.

4. *An individual possesses but a single culture.* For advocates of Islamic identity politics, a Muslim is only a Muslim. One is neither Sunni nor Shiite, neither Sufi nor Wahhabi. Islamic identity thus becomes synonymous with a unitary group identity. For Kevin Avruch this notion results from the privileging of “tribal culture” over cultures that are connected to different groups, structures, and institutions. The difference between Avruch’s view of monoculturalism and the monoculturalism of Muslim fundamentalists lies in the understanding of what he calls “tribal culture.” For Avruch tribal culture is coterminous with national identity. In the politics of Islamic identity, national identity is trumped by an Islamic identity defined in ideological terms. The “tribe” is thus not the nation, but the worldwide Muslim *ummah*.
5. *Culture is custom.* According to this notion, the content of culture is structurally undifferentiated. In Avruch’s terms, “What you see is what you get.” In the discourse of Islamic fundamentalism, this is the same as saying that Islam is tradition. This identification of Islam with cultural norms helps explain the common recourse to the Hadith over the Qur’an by Muslim fundamentalists. It is in the Hadith where one can find normative interpretations of cultural attitudes and behaviors that have been handed down from the early centuries of Islamic history. The prominence of Hadith in Islamic epistemology has contributed greatly to the notion that Islam is a monoculture, despite Qur’anic verses that imply the contrary.
6. *Culture is timeless.* This is a corollary of the previous notion. Islam, as tradition, is primordial. It is changeless, and every attempt to transform the meaning of Islam is a threat to the integrity of Islam’s divine origin.<sup>30</sup>

In the discourse of Islamic fundamentalism, the word *Islam* can be used nearly everywhere the word *culture* is used in the above examples. In the discourse of Shari‘a fundamentalism, the word *Shari‘a* can be used nearly everywhere the word *Islam* is used. For Shari‘a fundamentalists, allegiance to Islam means allegiance to Shari‘a as tradition, in which the maxims of religion and culture are combined in a “holistic and absolute” system. In Shari‘a fundamentalist discourse, Islam is conceived in juridical-cultural terms as what used to be called a

*milla* (Ottoman *millet*): a self-contained and legally demarcated religious community that exists concurrently with but in separation from other *milla* communities of the same type.<sup>31</sup> The Islamic *milla* is a community of true believers because all of its members submit to God's authority under the Shari'a. Traditions that come from outside the Islamic *milla* lack authenticity because they are not Shari'a based and depend instead on the whims (*abwa'*) of human judgment rather than on the wisdom of God. This epistemological principle is foundational to the concept of Shari'a fundamentalism. Osama bin Laden was thinking along these lines when he wrote that Americans "choose to invent their own laws as they will and desire."

### *Millet Multiculturalism and U.S. Constitutionalism*

The epistemological premises of Alasdair MacIntyre and Shari'a fundamentalists such as Sayyid Qutb and Osama bin Laden could not be farther apart. The integrism and political separatism that for Qutb were signs of Islamic authenticity are for MacIntyre signs of an epistemological crisis. For MacIntyre it is integrism, not the epistemology of comparison, that is the greater token of inferiority. Qutb's integrism reflects a siege mentality, a circling of the wagons designed to protect the integrity of the Islamic order from outside influences. It creates a false sense of self-sufficiency that protects an idealized notion of tradition by ghettoizing Islam as a world civilization. On this view the call by al-Qaeda activists to isolate the Dar al-Islam politically and culturally should not be seen as an anomalous act of extremism, but rather as a consequence of the ideas that Qutb promoted. What should be most worrisome to nonfundamentalist Muslims, however, is not that Muslim extremists accept Qutb's premises but that many Muslims who think of themselves as moderates accept them as well. As Osama bin Laden, Ayman al-Zawahiri, and other al-Qaeda leaders realize, to accept the premises of Shari'a fundamentalism while at the same time paying lip service to democratic liberalism is not only contradictory, it is dishonest. If the Shari'a is in fact the only legitimate legal and moral order in the eyes of God, then participating in a self-governing liberal democracy is at best a cynical exercise in political accommodationism. At worst it may be viewed as a subterfuge that exposes the Muslim citizen of a democratic state to the accusation of disloyalty.

The horns of this dilemma are apparent in a recent book by Sherman A. Jackson, a noted Muslim scholar and public intellectual in the United States. In *Islam and the Blackamerican* Jackson states that the U.S. Constitution is an obstacle that complicates Muslim Americans' full acceptance of the U.S. political system. According to Jackson this is due to two factors, which are also implicit in Osama bin Laden's critique of democracy in the United States: (1) many Muslims question the legitimacy of the U.S. Constitution on theological grounds;

(2) Muslims question the propriety of embracing any constitution that insists on the separation of church and state.<sup>32</sup> Although Jackson argues against both of these positions, his argument is undermined by what might be termed a soft version of Shari‘a fundamentalism. This view of the Shari‘a can be seen in the following statement: “It is emphatically *not* my aim to vindicate the Constitution by conferring upon it the status of law (or even a source of law) that is binding on the Muslim moral/religious conscience on a par with *shari‘ab* (the Sacred Law of Islam).”<sup>33</sup> For Jackson the Constitution may be a relatively benign obstacle to the primacy of the Shari‘a, but it is an obstacle nonetheless. The only answer to this problem is to reach a *modus vivendi* with the Constitution. According to Jackson the Muslim American must recognize the “immovable fact” of the Constitution in U.S. politics and use it to “inform his *shari‘ab*-based approach to American life. In my approach, the U.S. Constitution is no more binding on the Muslim-American moral/religious conscience than was, say, tribalism or agrarianism on that of the early Muslim-Arabian community.”<sup>34</sup>

This is a tepid endorsement indeed. In effect Jackson is saying that U.S. constitutionalism is a product of American custom (*‘urf*) that can be worked into the Muslim American conception of the Shari‘a in the way that certain customs of the *Jabiliyya*, such as tribalism and agrarianism, were worked into Islamic jurisprudence. Such a comparison may be faulted on logical grounds, not to mention the ground of fairness. The product of a constitutional convention and the inherited political structures of tribalism are too different to be compared in any meaningful way. In addition Jackson’s implicit characterization of the Constitution as *jabili* is as culturally insensitive as it is anachronistic. Does he really mean to agree with Islamist ideologues such as Qutb and Abu al-‘Ala al-Mawdudi (d. 1979) that liberal democracy threatens the exclusive and ultimate sovereignty of God? Although Jackson disagrees with Qutb and Mawdudi that democracy constitutes *shirk*, he acknowledges part of their argument by claiming that the Constitution “was the result of an agreement among a group of *non-Muslims* about how to distribute political rights and power within a non-Muslim polity” (italics in the original).<sup>35</sup>

As for the problematical issue of the separation of church and state in American political culture, Jackson acknowledges that this is not an endorsement of secularism per se, but a separation of the institutional powers of church and state. Thus there is room for the American Muslim to become involved in the political process so that Shari‘a-based values might be integrated into American political life. However, even here Jackson steps back from a full endorsement of the American notion of civil society. For Jackson the Shari‘a, as God’s law, should always take precedence for the Muslim over the Constitution, which, in the final analysis, is a secular set of laws created by non-Muslims. He thus begs an important question when he states: “American custom (*‘urf*) must be recognized as a

legally valid consideration in areas where Islamic law admits reliance on custom.”<sup>36</sup> This is fine when American laws do not contradict Shari‘a provisions. But what if U.S. laws contradict the Shari‘a, as in the prohibition of bigamy? Should the American Muslim ignore such laws, as Mormon fundamentalists do? If the American Muslim is not morally bound by the Constitution, how can she assume the right to influence a social contract that she refuses to recognize?

Jackson’s understanding of civil society is based on the “complementarity thesis”— the idea (often promoted by Christian fundamentalists) that governmental and nongovernmental institutions play complementary roles in the pursuit of human welfare. However, as John Kelsay has pointed out, a complementarity of functions is not the same as an identity of functions.<sup>37</sup> A certain tension between governmental and nongovernmental institutions is built into the complementarity thesis. What, for example, are the limits of authority with regard to religious institutions? What are the limits of political authority? “The associations covered by civil society, resting as they do on loyalties more delimited and more intense than those inspired by the state, pose a kind of sectarian problem,” says Kelsay.<sup>38</sup> The Muslim political scientist Farhad Kazemi additionally points out that civil society is not just civic, but also *civil*: “Civility implies tolerance, the willingness of individuals to accept disparate political views and social attitudes; sometimes to accept the profoundly important idea that there is no right answer. Civility implies not only tolerance of the other, but also attachment to the institutions that constitute civil society.”<sup>39</sup> On Kazemi’s view of civil society, Jackson’s agnostic attitude toward the moral authority of the Constitution may be criticized for not being “civil” enough.

The question of sectarianism, and hence of potentially divided loyalties, is a major problem in Jackson’s discussion of Islam and the Constitution. Although Jackson disavows the politics of Islamic identity, by not “conferring upon [the Constitution] the status of law (or even a source of law) that is binding on the Muslim moral/religious conscience on a par with *shari‘ah*,” he depicts the American Muslim community as a de facto *milla* with its own religiously based laws. The political philosopher Kwame Anthony Appiah has termed a politics of identity where pluralism is conceived as the equal standing of culturally defined interest groups “millet multiculturalism.”<sup>40</sup> While it might be argued that millet multiculturalism can be accommodated to the notion of civil society in some democratic countries, this was not a principle on which the United States was founded. In the U.S. legal system, fundamental rights are individual rights, not corporate rights. However, a certain ambiguity must be acknowledged. The equal protection of religious beliefs and practices under the Constitution is a hybrid concept. It is an individual right, but it most often applies to the mistreatment of a person as a member of a group.<sup>41</sup> This is why the issue of group entitlements has been so fraught with controversy in U.S. politics and law.

Nevertheless individual rights still tend to trump corporate rights in U.S. political culture. Thomas Jefferson was explicit in the belief that the civility of civil society rests on a notion of civic unity that does not admit the separation of society into cultural enclaves: "A character of good faith is of as much value to a nation as to an individual. A nation, as a society, forms a moral person, and every member of it is personally responsible for his society."<sup>42</sup>

John Locke, who was a major inspiration for Jefferson, felt the same way. Locke's notion of commonwealth, the term he uses for civil society, included Jews, Muslims, and pagans. In the *Third Letter Concerning Toleration*, he asks: "Why might not Jews, pagans, and Mahometans be admitted to the rights of the commonwealth, as far as papists, independents, and Quakers?"<sup>43</sup> However, Locke was not tolerant of divided loyalties within the commonwealth. Although he was more open than Jefferson to the idea that the commonwealth might include semiautonomous religious groups, he did not believe that the members of such groups had the right to combine their difference of religious opinion with allegiance to an alternative set of laws. "It is ridiculous," he wrote, "for any one who professes himself to be a *Mahometan* only in his religion, but in everything else a faithful subject of a Christian Magistrate, whilst at the same time he acknowledges himself bound to yield blind obedience to the *Mufti of Constantinople*, who himself is entirely obedient to the Ottoman Emperor."<sup>44</sup> This was Locke's way of saying that preference for the laws of the Shari'a over the laws of the commonwealth meant that one was not a loyal citizen of the commonwealth.

Thomas Paine (d. 1809) would likely have objected to Jackson's soft Shari'a fundamentalism because it contradicts the concept of the social contract and is a poor substitute for a real constitution. For Paine governments arise either *out* of the people or *over* the people. A system that does not arise out of the people is prone to tyranny. Religious authority is just as likely to promote tyranny as to protect the people from it. A constitutional democracy arises when "the individuals themselves, each in his own personal and sovereign right, [enter] into a compact with each other to produce a government; and this is the only mode in which governments have a right to arise, and the only principle on which they have a right to exist."<sup>45</sup> The Shari'a, especially in the traditional *fiqh* form advocated by Jackson, would have represented for Paine a law of "priestcraft" and hence of superstition. Furthermore the Shari'a is not a true constitution because it does not outline a coherent system of government: "A constitution is a thing antecedent to a government, and a government is only the creature of a constitution. The constitution of a country is not the act of its government, but of the people constituting a government. It is the body of elements, to which you can refer, and quote article by article and which contains the principles on which the government shall be established, the manner in which it shall be organized, the

powers it shall have, the mode of elections, the duration of parliaments, . . . the powers which the executive part of the government shall have; and in fine, every thing that relates to the compleat organization of a civil government.”<sup>46</sup>

One could imagine Paine asking Jackson, to paraphrase a question he asked of Edmund Burke about the British “Constitution” in *Rights of Man* (1791): “Can then Mr. Jackson produce the Islamic Constitution? If he cannot, we may fairly conclude, that though it has been so much talked about, no such thing as an Islamic Constitution exists, or ever did exist, and consequently that the people have yet a constitution to form.”<sup>47</sup>

In addition to reifying the Shari‘a and setting it up in potential opposition to the Constitution, Jackson’s religiously sectarian view of U.S. democracy causes him to overlook the universalistic nature of U.S. political philosophy. By claiming that the Constitution “was the result of an agreement among a group of *non-Muslims* about how to distribute political rights and power within a non-Muslim polity,” he ignores the premise that U.S. constitutional democracy was intended for all citizens, Christian and non-Christian alike. Both Jefferson and Benjamin Franklin were explicit in their inclusion of Jews and “Turks” in U.S. civil society. Furthermore, as an ideological construct, the U.S. model of democratic constitutionalism was also intended for the entire world. These are issues of philosophical principle, irrespective of the attitudes and actions of U.S. governments in history. Democratic evangelism was not an invention of contemporary U.S. administrations. It has been part of the American political scene from the very beginning.

For the constitutional ideologist Paine, civil rights are based on natural rights, which are bestowed on all human beings by God and are expressed in the Golden Rule: “The duty of man . . . consists but of two points. His duty to God, which every man must feel, and with respect to his neighbour, to do as he would be done by.” Among the most important natural rights are those that Paine termed “intellectual rights” or “rights of the mind.” Religion is one of these rights of the mind, which is why freedom of religion must be respected in a constitutional democracy. “A man, by natural right, has a right to judge in his own cause; and so far as the right of the mind is concerned, he never surrenders it.”<sup>48</sup> Taking a stance that would be echoed two centuries later by Alija Izetbegović, Paine asserts that the rights of the mind are inalienable. However, he goes beyond most Muslims by asserting that the human being not only *possesses* the rights given to him by God, he actually *owns* them. For Paine human rights are private property, and the usurpation of a right is like the usurpation of private property, an act that is inadmissible even for God. It cannot be God’s will to take such rights away, nor is it the right of society to do so either: “[Man] therefore deposits this right in the common stock of society, and takes the arm of society, of which he is a part, in preference and in addition to his own. Society *grants*

him nothing. Every man is a proprietor in society, and draws on the capital as a matter of right."<sup>49</sup>

Jefferson agreed with Paine's theology of natural rights. However, he extended Paine's concept of the ownership of rights to a critique of tradition, in which he used the metaphor of contract law to assert that the dead have no rights over the living. "That our Creator made the earth for the use of the living and not of the dead; that those who exist not can have no use or right in it, no authority or power over it, that one generation of men cannot foreclose or burden its use to another, which come to it in its own right and by the same divine beneficence, that a preceding generation cannot bind a succeeding one by its laws or contracts. . . . These are axioms so self-evident that no explanation can make them plainer; for he is not to be reasoned with who says that non-existence can control existence, or that nothing can move something."<sup>50</sup>

For Jefferson the right of self-government was as much a part of natural law as the provisions of the Shari'a were for Sayyid Qutb: "Every man, and every body of men on earth, possesses the right of self-government. They receive it with their being from the hand of nature. Individuals exercise it by their single will; collections of men by that of their majority; for the law of the majority is the natural law of every society of men."<sup>51</sup> Because self-government conforms to the will of God (conceived as Nature) and the right to self-government is the possession of every human being, Jefferson believed that self-government and democratic constitutionalism are universal principles, and hence may be advocated for all peoples throughout the world:

The eyes of the virtuous all over the earth are turned with anxiety on us, as the only depositories of the sacred fire of liberty. I hope and firmly believe that the whole world will sooner or later feel benefit from the issue of our assertion of the rights of man. May the Declaration of Independence be to the world, what I believe it will be (to some parts sooner, to others later, but finally to all), the signal of arousing men to burst the chains under which monkish ignorance and superstition had persuaded them to bind themselves, and to assume the blessings and security of self-government. Cherish every measure which may foster our brotherly Union and perpetuate a constitution of government, destined to be the primitive and precious model of what is to change the condition of man over the globe.<sup>52</sup>

#### *From Millet Multiculturalism to Soft Pluralism*

The ideological universalism of U.S. democratic constitutionalism confronts Sherman Jackson with a dilemma far greater than he acknowledges in his book. If, as he seems to believe, the secular and non-Muslim origin of the Constitution means that it is not founded on the same principles as the Shari'a, then the

Constitution can only be seen as an ideological rival to the Shari‘a, and U.S. democracy must be seen as a counterideology to Islam. If this were the case, then Osama bin Laden and his followers would be correct. One cannot square the ideological circle by superimposing competing universalistic ideologies upon one another. Shari‘a fundamentalism and U.S. democratic constitutionalism cannot coexist in the same space. But is this the only way to view the democratic challenge to Islam or the constitutional challenge to the Shari‘a? Fortunately this need not be the case. However, to view the matter differently means abandoning the premises of Shari‘a fundamentalism.

Unlike Jackson, the American Muslim religious leader Fesial Abdul Rauf fully acknowledges the premises of U.S. political ideology. In fact he characterizes the United States metaphorically as “a religious state with a state religion that allows all religions.”<sup>53</sup> Abdul Rauf is a liberal Muslim intellectual, the imam of a mosque in New York City, and the founder of the Cordoba Initiative, which is devoted to building bridges of understanding between Americans and Muslims. In his acclaimed book *What’s Right with Islam*, he uses F. Forrester Church’s concept of the “American Creed” to argue that the Establishment Clause of the First Amendment to the Constitution calls for the separation of church and state, but does not preclude a relationship between religion and state-endorsed values.<sup>54</sup> According to Abdul Rauf the United States is a polity whose ethics emanate from universal moral principles that are grounded in the three Abrahamic religions of Judaism, Christianity, and Islam: “Our government’s moral authority derives from the Constitution, whose moral basis is God’s law—another way of saying, as Thomas Jefferson did, the ‘Laws of Nature and Nature’s God.’”

To bolster this assertion, Abdul Rauf cites Supreme Court justice Antonin Scalia, who argued in a 2002 paper that the U.S. system of government is not secular in origin but derives its ultimate authority from God. This argument is part of a conservative critique of utilitarian notions of democracy and rights. According to Scalia it is a “mistaken tendency to believe that a democratic government [is] nothing more than the composite will of its individual citizens [and] has no more moral power or authority than [the citizens] do as individuals.” In the words of a Supreme Court opinion from the 1940s, “[Americans] are a religious people whose institutions presuppose a Supreme Being.”<sup>56</sup> According to Abdul Rauf’s understanding of Scalia’s argument, the United States is neither a secular state nor a Christian state. Rather it is an “Abrahamic” state, and it was founded on principles held in common by all the Abrahamic religions.<sup>57</sup> This understanding is in direct contradiction to the view of Osama bin Laden, who often conflates American secularism and Christianity. Abdul Rauf’s view also contradicts Jackson’s conception of the Constitution as a document drafted by non-Muslim men for a non-Muslim nation.

Abdul Rauf rejects the sectarian premises of Shari‘a fundamentalism and asserts that the universal rights embodied in U.S. constitutionalism make the United States a “Shari‘a-compliant” state.<sup>58</sup> This claim is made on both theological and legal grounds. Theologically Abdul Rauf justifies the notion of democratic constitutionalism with the following Qur’anic verse: “Say: Oh God, Lord of Sovereignty! You invest sovereignty in whom You please and divest sovereignty from whom You please” (3:26). Paraphrasing Scalia, he contends that “the power of a community is of a vicarious kind, being held, as it were, in trust from God. A Shariah-compliant state owes its existence to the will of the people and is subject to control by them, although it derives its ultimate authority from God.”<sup>59</sup> In this pluralistic model of sovereignty, the authority of a democratic society is based on the trusteeship that God grants to all human beings as vicegerents of God. The natural law that Paine, Jefferson, and other Enlightenment thinkers saw as the basis for freedom of expression and self-government is Islamicized by Abdul Rauf through the Qur’anic concepts of *din al-fitra* (30:30), which he glosses as “natural religion,” and *din Allah* (3:83), which he defines as “God’s own religion.” As universal rights embodied in the religion of Abraham, the concepts of freedom of expression and self-government are thus morally binding on all Jews, Christians, and Muslims regardless of religious differences.<sup>60</sup>

The legal basis for the Shari‘a compliance of American democracy is premised for Abdul Rauf on the belief that the Constitution and system of governance uphold the core principles of Islamic law. To make this argument, he uses the concept of the “Goals of the Shari‘a” (*maqasid al-Shari‘a*), which has been part of the Islamic juridical tradition for nearly a millennium. According to this model, the purpose of the Shari‘a is to preserve the rights to life (*hayat*), intellect (*aql*), religion (*din*), property (*milk*), and family or lineage (*nasl*). “Any system of rule that upholds, protects, and furthers these rights,” says Abdul Rauf, “is legally ‘Islamic’ or Shariah-compliant in its substance. Because these rights are God-given, they are inalienable and cannot be deprived of any man or woman without depriving them of their essential humanity.”<sup>61</sup> Abdul Rauf thus universalizes the traditional Islamic concept of the Goals of the Shari‘a to uphold what Appiah calls “soft pluralism.” Soft pluralism is a political ethic in which “the individual remains both the terminus a quo and the terminus ad quem: its concern for identity groups is not only motivated by but ultimately subordinated to the well-being of the individual and the bundle of rights and protections that traditional liberalism would accord her.”<sup>62</sup>

In making his case for soft pluralism and the compatibility of Islamic and U.S. legal ethics, Abdul Rauf draws from arguments made by Muhammad Asad (d. 1992) in *The Principles of State and Government in Islam*.<sup>63</sup> This largely overlooked work was written by a Jewish convert to Islam who became a noted intellectual in Saudi Arabia. Asad spent the final years of his life in southern Spain

and Gibraltar, where he lived in virtual exile because of his liberal and modernist views. In this work he asserts that what makes a state “Islamic” is the incorporation of the basic tenets of Islam in the constitution of a country. Abdul Rauf takes this to mean that “a state that does incorporate such sociopolitical tenets has become de facto an Islamic state even if there are no Muslims in name living there, for it expresses the ideals of the good society according to Islamic principles.”<sup>64</sup> Going back to Jefferson’s text of the Declaration of Independence, he sees the U.S. commitment to preserve the inalienable rights of life, liberty, and the pursuit of happiness as equivalent to the Islamic commitment to preserve the Shari’a-endorsed rights of life, “mental well-being” (*aql*), religion, property, and family.<sup>65</sup> For Abdul Rauf this equivalence of values makes the United States an “Islamic” country. Being authentically Islamic does not mean that a state must hold Islam “in the liturgical sense” to be the state religion. Rather the state must be religious in the sense that God is the ultimate ruler or source of the principles on which the state is founded. By this token any state that is not atheistic can potentially be included within the “Islamic” category.<sup>66</sup>

#### *Public Reason and Overlapping Consensus*

At first glance Abdul Rauf appears to advocate the kind of accommodationist Islam that Tariq Ramadan has criticized for advocating “the integration/assimilation of Muslims, from which they expect a complete adaptation to the Western way of life.”<sup>67</sup> In his attempt to overcome the epistemological crisis of Islam, he seems merely to graft elements of an alien political philosophy onto Islam. However, such a view, which would likely be held by many conservative Muslims, is unfair. In political terms the main difference between Sherman Jackson and Abdul Rauf is that Jackson seeks a modus vivendi between the Shari’a and the U.S. Constitution, whereas Abdul Rauf seeks what John Rawls called an “overlapping consensus” of political rights and values. For Rawls a political modus vivendi is comparable to a treaty between two states or nations whose aims and interests put them at odds. It becomes the solution of choice whenever social consensus is conceived in terms of “self- or group interests, or on the outcome of political bargaining.”<sup>68</sup> This is a fair approximation of what obtains when one thinks of relations between Muslims and a non-Muslim state in terms of millet multiculturalism. In the premodern *milla* system, minority religious communities were governed under their own laws because they were seen as independent social units. A modus vivendi with non-Muslim communities was the best that could be hoped for, because premodern Muslims saw the Shari’a as a comprehensive and universal model of justice and did not recognize the reasonableness of social pluralism. Traditional Islamic political theory could only tolerate difference; it could not incorporate a theory of difference into its conception of justice and rights.

Such traditional attitudes toward pluralism place Muslim minorities in a precarious position in Western societies. Since traditional notions of the Shari'a could only accommodate an arm's-length toleration of non-Muslim minorities, it is difficult for Muslim minorities to demand full integration into non-Muslim societies without appearing to advocate a hypocritical double standard. On their own logic, it could be argued that it is unfair for Muslims to demand a greater social integration into non-Muslim societies than obtains, for example, in Western European countries such as France or Germany. The 2005 communal riots in France, however, have shown how unsatisfactory a *modus vivendi* based on group interests can be in practice. One of the problems of Shari'a fundamentalism is that it demands adherence to premodern Shari'a norms in a modern political context. Historical practice has shown that such norms have not been compatible with democratic pluralism. Advocating a Shari'a-based millet multiculturalism in the American legal context would imply that one would be willing to accept a lesser guarantee of individual rights for a greater guarantee of group rights. This would be a major yet unforeseen consequence of Jackson's refusal to accept the philosophical premises of the Constitution. Is it reasonable for Muslim intellectuals or religious leaders to ask Muslims in the United States to give up the constitutional guarantees of individual rights such as free association and freedom of conscience for an idealized (and ultimately unenforceable) notion of communal identity? Most American Muslims would answer this question with a resounding "no."

One of the advantages of political liberalism is that it is philosophically committed to maintaining the right of difference in a democratic society. Rawls summarizes the problem of difference as follows: "How is it possible that there can be a stable and just society whose free and equal citizens are deeply divided by conflicting and even incommensurable religious, philosophical, and moral doctrines?"<sup>69</sup> The practice of tolerance alone is not enough to solve this problem. First, as we have seen above, tolerance conceived as a form of "hard pluralism" or millet multiculturalism may not provide an adequate guarantee of individual rights. As Jeffrey Stout has pointed out, communitarian politics fails to protect the interests of those who "resist conformity to type."<sup>70</sup> Second, tolerance often implies a sort of theological presumptuousness, in which the human being arrogates to herself the right to judge what is acceptable or unacceptable for God. This attitude was criticized severely by Paine in *Rights of Man*:

Toleration places itself, not between man and man, nor between church and church, nor between one denomination of religion and another, but between God and man; between the being who worships and the BEING who is worshipped; and by the same act of assumed authority by which it tolerates man to pay his worship, it presumptuously and blasphemously

sets up itself to tolerate the Almighty to receive it. Were a Bill brought into any parliament, entitled “AN ACT to tolerate or grant liberty to the Almighty to receive the worship of a Jew or a Turk,” or “to prohibit the Almighty from receiving it,” all men would startle, and call it blasphemy. There would be an uproar. . . . Who art thou, vain dust and ashes, by whatever name thou art called, whether a king, a bishop, a church, or a state, a parliament or anything else, that obtrudest thine insignificance between the soul of man and his Maker? Mind thine own concerns. If he believes not as thou believest, it is a proof that thou believest not as he believeth, and there is no earthly power that can determine between you.<sup>71</sup>

The last sentence of Paine’s critique of toleration recalls, perhaps intentionally, Sura 109 of the Qur’an, *al-Kafirun*, “The Unbelievers.”<sup>72</sup> Feisal Abdul Rauf uses this sura as part of his argument for soft pluralism and to prove the Shari’a compliance of the First Amendment.<sup>73</sup> In doing so he seeks to establish what Rawls called “an overlapping consensus of reasonable comprehensive doctrines.”<sup>74</sup> In an overlapping consensus, the moral doctrines that are held in common by different groups in society endorse the concept of liberal democracy, “each from its own point of view.” However, in Rawls’s model the groups that endorse the overlapping consensus do not do so as corporate entities but as collectivities of individuals. No representative body such as the Islamic Society of North America or some national *fiqh* council has the authority speak for the Muslim community as a whole. Rawls consistently affirms the rights of the individual over the rights of the group. The “right of exit” from the group, which is often adduced as a protection for dissent by advocates of millet multiculturalism, is not a meaningful form of protection for religious dissenters because it amounts to self-imposed excommunication.<sup>75</sup> Those who exit stand to lose all of the political and social advantages of group membership.

In a liberal constitutional regime, says Rawls, political power is only legitimate “when it is exercised in accordance with a constitution the essentials of which *all citizens as free and equal* may reasonably be expected to endorse in light of principles and ideals acceptable to their common human reason” (italics in the original).<sup>76</sup> The purpose of an overlapping consensus is to provide agreement on the basic principles of public reason in terms that are specific to and hence acceptable for citizens who follow different social and religious traditions. These principles outweigh the differences that may otherwise exist between traditions. The notion of an overlapping consensus is fundamental to Rawls’s theory of political liberalism. It is also foundational for classic social-contract theories of civil society, such as those proposed by Locke, Paine, and Jefferson. Because all citizens are expected to “buy into” the social contract, it is unreasonable to expect that immigration into the society from the outside or conversion

to a minority religion from the inside provides justification for the renegotiation of the original contract.<sup>77</sup>

It is this desire to renegotiate the social contract that makes millet multiculturalist responses to democratic constitutionalism “uncivil” in the eyes of political liberals. Tariq Ramadan has criticized the notion of “the jurisprudence of [Muslim] minorities” on precisely this point. He notes that when the juridical scholar Yusuf al-Qaradawi introduced the concept in his book *On the Jurisprudence of Muslim Minorities (Fi Fiqh al-aqalliyat al-muslima)*, he subtitled the work “The Life of Muslims in Other Societies.” Qaradawi called Western societies “other societies” because he assumed that the only societies that are normative for Muslims are Muslim-majority societies. However, in today’s globalized Islam, says Ramadan, “there is no longer a place of origin from which Muslims are ‘exiled’ or ‘distanced.’”<sup>78</sup> In his book *Western Muslims and the Future of Islam*, Ramadan refutes the premises of Shari‘a fundamentalism by stressing the hermeneutical nature of the Shari‘a and revising its sources to include the Qur’an, the Sunna, and the various sociopolitical contexts in which it is interpreted.<sup>79</sup> By doing so he seeks to provide Muslim minorities in the West with the interpretive tools that will allow them to remain faithful to what Rawls calls their “background culture” while acting as full partners in the pluralistic and democratic societies in which they live.<sup>80</sup>

Although the ideas of Feisal Abdul Rauf and Tariq Ramadan are more congruent with American notions of democratic constitutionalism and civil society than are those of Sherman Jackson, they are not without their inconsistencies. After making a cogent argument for a theologically and legally justified model of Islamic liberalism, Abdul Rauf undermines his thesis by lapsing into millet multiculturalism. At the end of his essay “What’s Right with America,” he calls for the establishment of “separate Muslim, Jewish, or Christian personal status courts to render judgments for Muslim, Jewish, and Christian couples seeking to have their cases heard under such laws and to have these decisions ratified by the secular state courts.”<sup>81</sup> Not only is this proposal probably unconstitutional, it goes against the notion of an overlapping consensus. If the United States is a Shari‘a-compliant state, as Abdul Rauf asserts, and if American courts allow Islamic practices to be used as precedents in cases of civil litigation, as many do already, why should there be any need for Islamic civil courts at all? Ramadan is more successful at avoiding the lure of Millet multiculturalism, but he too remains torn between the demands of Islamic tradition and public reason. For example he repeatedly insists that the Qur’anic prohibition of *riba*’ is unequivocal and that *riba*’ always means “interest.” Although this latter claim is a tenet of the modern ideology of Islamic economics, it is far from certain that all scholars of *fiqh* would agree to such a conclusion. What is Ramadan trying to say by sowing such assertions throughout his narrative? Is he suggesting that Muslims

ought to live in economic enclaves? If so then he too is advocating a form of millet multiculturalism. Ramadan's treatment of this issue leads one to conclude that he too may be advocating a *modus vivendi* rather than an overlapping consensus.

Jackson, Abdul Rauf, and Ramadan should be recognized for attempting to resolve the epistemological crisis of Islam by developing new resources and frameworks for Islamic tradition. With varying degrees of success, they seek to develop what Alasdair MacIntyre calls "new and second first languages" of tradition that are Islamically authentic yet also engage with the new traditions that Muslims must deal with if they are to feel at home, as Ramadan says, in a globalized world. However, the inconsistencies of their arguments reveal that there is still some distance to go before the epistemological crisis can be resolved. Jackson's soft version of Shari'a fundamentalism, Abdul Rauf's values approach to millet multiculturalism, and Ramadan's pragmatic attempt to achieve a political *modus vivendi* with liberal democratic society while seeming to advocate an overlapping consensus suggest that the liberal democratic notion of public reason remains a major obstacle in this process.

Public reason is the basis of the distinction between what Rawls called "background culture" and public political culture. According to Rawls public reason is the reason of citizens, who, sharing the status of equal citizenship and acting as a collective body, "exercise final political and coercive power over one another in enacting laws and amending their constitution."<sup>82</sup> To do so they must reach an overlapping consensus on the fundamental political values of society. These are values that "all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational."<sup>83</sup> Of the Muslim thinkers discussed above, Abdul Rauf comes closest to advocating the ideal of public reason in his attempt to reach a consensus of fundamental rights and core political values. However, even he finds it difficult to conceive of public reason without an overarching authority—be it a sacred text such as the Qur'an or the Hadith or some sort of Shari'a court—that can legitimize the consensus of public reason.

The problem of public reason for contemporary Muslims is grounded in the failure of mainstream Islamic thought to agree on a warranted notion of unsupervised reason or of a "democratic intellect" such as that proposed by John Locke. The lack of such a concept has both political and epistemological consequences. Without a warrant for unsupervised reason, the exercise of public reason must be supervised. Supervised reason may all too easily become paternalism, authoritarianism, or at worst, totalitarianism. The pervasive mistrust of public reason as the basis for a just society in Islam can be observed in many contexts: in the tracts of Osama bin Laden, in the recent victories of Islamist parties in Iraq, Egypt, and Palestine, and even in the following semiofficial statement

on the coexistence of Islam and democracy from the Hashemite Kingdom of Jordan: "Worldly authority that derives solely from the human intellect is incapable of establishing perfect human justice amongst people, even when it exerts all its efforts to safeguard the people's interests and welfare. Thus, humanity is in need of a system of legislation that is based on Divine Guidance and Light; on ethics and benevolence; on upholding the truth and protecting it, and on the fulfillment of pledges and covenants. These are the principles that Islam duly affirms in its vision of government and temporal authority."<sup>84</sup>

It is ironic that a statement issued on behalf of a liberal constitutional monarchy such as Jordan would echo the views of Sayyid Qutb in *Signs along the Way*. Its authors seem to have been unaware that while they deny the validity of public reason in the first sentence of the statement, in the second sentence they affirm the very theology and ethics that liberal democratic thinkers such as Locke and Paine adduce to support public reason. What must Muslims do to avoid such contradictions in their political philosophy? Can they come to endorse the strong affirmation of individual rights and political liberalism, reproduced in the epigraph to this article, that Izetbegović made in his speech at the American Center for Democracy in 1997? The key to political liberalism, said Izetbegović, is in the protection of minorities and especially of minority opinions: "Freedom of thought is, above all the freedom to think differently." Such freedom can only be guaranteed by an institutionalized trust in individual and public reason. This trust in the clarity of political reason, whether it be autonomous, socially influenced, or divinely guided, is one of the foundational premises of political liberalism. It is not the Promethean individualism imagined by bin Laden and other religious critics of liberalism. In the words of John Rawls: "Freedom at the deepest level calls upon the freedom of reason, both theoretical and practical, as expressed in what we say and do. Limits on freedom are at bottom limits on our reason: on its development and education, its knowledge and information, and on the scope of the actions in which it can be expressed."<sup>85</sup> Thus the limits placed on public reason have much to say about the limits of freedom and ultimately about the nature of the epistemological crisis in Islam.

#### NOTES

The first epigraph is from Osama bin Laden, "To the Americans" (October 6, 2002), in Bruce B. Lawrence, ed., and James Howarth, trans., *Messages to the World: The Statements of Osama Bin Laden* (London & New York: Verso, 2005), 167. The second epigraph is from Alija Izetbegović, acceptance speech for American Center for Democracy Award, New York, March 27, 1997. See Izetbegović, *Sjecanja: Autobiografski zapis* (Sarajevo: TKD Sahinbasic, 2001), 455. This passage was translated by Professor Fikret Karcic, Faculty of Law, Sarajevo University, Bosnia-Herzegovina.

1. 'Ali B. 'Uthman al-Jullabi al-Hujwiri, *The Kasbf al-Mahjub: The Oldest Persian Treatise on Sufiism*, trans. Reynold A. Nicholson (1911; repr., London: Luzac, 1976), 44.

2. Izetbegović, *Sjecanja*, 455.
3. William E. Connolly, *The Terms of Political Discourse* (Princeton, N.J.: Princeton University Press, 1993), quoted in Frank Cunningham, *Theories of Democracy: A Critical Introduction* (London and New York: Routledge, 2002), 3.
4. These systems of government are outlined in book 4 of *The Politics*. See Aristotle, *The Politics*, rev. ed., trans. T. A. Sinclair, translation revised by Trevor J. Saunders (London: Penguin, 1992), 235–94.
5. Aristotle said of the middle class: “This is the class of citizens which is most secure in a state, for they do not, like the poor, covet their neighbors’ goods; nor do others covet theirs, as the poor covet the goods of the rich; and as they neither plot against others, nor are themselves plotted against, they pass through life safely. Wisely then did Phocylides pray, ‘Many things are best in the mean; I desire to be of a middle condition in my city.’” Aristotle, *The Politics*, trans. Benjamin Jowett, introduction, analysis, and index by H. W. C. Davis (Oxford: Clarendon, 1930), bk. 4, pt. 11. This quotation can be found at [http://www.constitution.org/ari/polit\\_01.htm](http://www.constitution.org/ari/polit_01.htm) (accessed June 16, 2009). I am grateful to Professor Stephen Sheppard of the University of Arkansas School of Law for this reference.
6. Cunningham, *Theories of Democracy*, 7. It is often overlooked that Aristotle’s acknowledgment of the utility of democracy provides a bridge between the political theories of classical antiquity and Enlightenment utilitarianism.
7. Alexis de Tocqueville, *Democracy in America*, ed. J. P. Mayer, trans. George Lawrence (New York: Doubleday Anchor, 1969), 60.
8. Cunningham, *Theories of Democracy*, 9–12.
9. Thomas Jefferson, letter to William Charles Jarvis, September 28, 1820, in *Writings of Thomas Jefferson*, vol. 10, ed. P. L. Ford (New York: Putnam, 1899), 161.
10. Amir Taheri, “Al-Qaeda’s Agenda for Iraq,” *New York Post Online Edition*, September 4, 2003. Ron Suskind’s recent book *The One Percent Doctrine: Deep Inside America’s Pursuit of Its Enemies since 9/11* (New York: Simon & Schuster, 2006) reveals that Yusuf al-Ayeri was behind a plot, eventually called off by al-Qaeda, to attack the New York City subway system with hydrogen cyanide poison gas. Before his death he was identified by the CIA as the most significant al-Qaeda operative in Saudi Arabia. See the article “The Untold Story of Al-Qaeda’s Plot to Attack the Subways,” *Time*, June 26, 2006, 27–35.
11. Jeremy Waldron, *God, Locke, and Equality: Christian Foundations of John Locke’s Political Thought* (Cambridge: Cambridge University Press, 2002), 84–85.
12. Bruce B. Lawrence, *Defenders of God: The Fundamentalist Revolt against the Modern Age* (San Francisco: Harper & Row, 1989), 27.
13. *Ibid.*, 15.
14. Mircea Eliade, *The Sacred and the Profane: The Nature of Religion*, trans. Willard R. Trask (San Diego: Harcourt, Brace & World, 1959), 11–13.
15. Sayyid Qutb, *Ma’alim fi al-Tariq* (Beirut: Dar al-Sharq, 2000), 108; this and all translations from Arabic in this essay are mine. This discussion can also be found in the English translation, *Milestones* (Damascus: Dar al-Ilm, n.d.), 87–90. In the widely distributed English version of this work, many of Qutb’s key concepts are paraphrased rather than translated directly from the Arabic text. For this reason the page references below are only for the Arabic version. *Ma’alim fi al-Tariq* was written in 1964, two years before Qutb’s execution by the Nasser regime of Egypt.

16. Qutb, *Ma'alim fi al-Tariq*, 110.

17. *Ibid.*, 111.

18. *Ibid.*, 112.

19. Sayyid Qutb, *Social Justice in Islam*, trans. John B. Hardie, with revised translation by Hamid Algar (Oneonta, N.Y.: Islamic Publications International, 2000), 37. The idea of Islam as a system or order (*nizam*) appears to have come from South Asia around the time of World War II. In 1943 Mawlana Hamid al-Ansari Ghazi used the term *nizam* to refer to Islam as a political system. The year before, in 1942, Abu al-ʿAla al-Mawdudi (d. 1979) used the Urdu term *Islami nizam* (Islamic order) in a speech about Islamic ideology. Qutb appears to have derived both this concept and that of the neo-*Jabiliyya* from Mawdudi. See Wilfred Cantwell Smith, *The Meaning and End of Religion* (1962; repr., Minneapolis: Fortress, 1991), 274n10.

20. Qutb, *Social Justice*, 42–43.

21. *Ibid.*, 114.

22. *Ibid.*, 115.

23. Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame, Ind.: University of Notre Dame Press, 1988), 361–62. The term *epistemological crisis* first appeared in MacIntyre's "Epistemological Crises, Dramatic Narrative and the Philosophy of Science," *Monist* 60, no. 4 (1977): 453–72.

24. MacIntyre, *Whose Justice?* 364.

25. "Aufklärung ist der Ausgang des Menschen aus seiner selbst verschuldeten Ummündigkeit." Cited in Ronald A. Kuipers, *Critical Faith: Toward a Renewed Understanding of Religious Life and Its Public Accountability* (Amsterdam: Rodopi / Vrije Universiteit Amsterdam, 2002), 24 and n. 34.

26. MacIntyre, *Whose Justice?* 362.

27. Jaroslav Pelikan, *The Vindication of Tradition* (New Haven, Conn.: Yale University Press, 1984), 81.

28. In Occidentalism, the mind of the West is often portrayed as a kind of higher idiocy. "To be equipped with the mind of the West is like being an idiot savant, mentally defective but with a special gift for making arithmetic calculations. It is a mind without a soul, efficient, like a calculator, but hopeless at doing what is humanly important. The mind of the West is capable of great economic success, to be sure, and of developing and promoting advanced technology, but cannot grasp the higher things in life, for it lacks spirituality and understanding of human suffering." Ian Buruma and Avishai Margalit, *Occidentalism: The West in the Eyes of Its Enemies* (New York: Penguin, 2004), 75.

29. "Occidentalism is partly a defense of national character, national culture and national life-style against alienation and disloyalty; a popular option against Orientalism as a minority option; a mass culture against Orientalism as an elite culture; an ideology for the ruled against Orientalism as an ideology of the ruler; a liberating device like liberation theology against Orientalism as a dominating device, like church dogmatics." Hassan Hanafi, "From Orientalism to Occidentalism," in *Islam in the Modern World*, vol. 2, *Tradition, Revolution, and Culture* (Heliopolis, Egypt: Dar Kebaa Bookshop, 2000), 400. This article first appeared as the paper "The Self and the Other," Department of English Language and Literature, Cairo University, December 1993.

30. Kevin Avruch, *Culture and Conflict Resolution* (Washington, D.C.: United States Institute of Peace Press, 1998), 14–16.

31. Those who conceive of Islam as a *milla* find justification for their view in the following passage of the Qur'an, where the Prophet Joseph says: "I have forsaken the *milla* of a people who do not believe in Allah and reject the Hereafter. Instead, I follow the *milla* of my fathers Abraham, Isaac, and Jacob. Never was it our practice to associate partners with God" (Qur'an, 12:37–38). Here *milla* refers specifically to the Children of Israel (*Banu Isra'il*), to whom the Qur'an consistently refers in tribal and hence in cultural terms. One is therefore entitled to ask whether the strong communitarian emphasis of contemporary Islamism represents a sort of "Judaizing" of Islamic ideology. Islamism may also be seen as an Islamic version of nineteenth-century European Romanticism in which Qur'anic universalism is replaced by Islamic nationalism. The influence of Romantic concepts of the nation can be observed in the terms that are used for nationalism in the contemporary Muslim world. Territorial nationalism is the basis of the term *wataniyya* (literally, "homeland-ism"); racial nationalism is the basis of the term *jinsiyya* (literally, "genus-ism"); cultural nationalism is the basis of the term *qawmiyya* (literally, "folk-ism").

32. Sherman A. Jackson, *Islam and the Blackamerican: Looking toward the Third Resurrection* (New York: Oxford University Press, 2005), 145.

33. *Ibid.*

34. *Ibid.*, 145–46.

35. *Ibid.*, 146.

36. *Ibid.*, 150.

37. John Kelsay, "Civil Society and Government in Islam," in *Islamic Political Ethics: Civil Society, Pluralism, and Conflict*, ed. Sohail H. Hashmi (Princeton, N.J.: Princeton University Press, 2002), 8.

38. *Ibid.*, 18.

39. Farhad Kazemi, "Perspectives on Islam and Civil Society," in Hashemi, *Islamic Political Ethics*, 40.

40. Kwame Anthony Appiah, *The Ethics of Identity* (Princeton, N.J.: Princeton University Press, 2005), 71–79; Appiah also calls this model "hard pluralism."

41. I am grateful to Professor Stephen Sheppard of the University of Arkansas School of Law for this insight.

42. Thomas Jefferson, "Notes on a Conversation with Dawson" (January 26, 1808), in *Light and Liberty: Reflections on the Pursuit of Happiness*, ed. Eric S. Petersen (New York: Modern Library, 2004), 66.

43. Quoted in Waldron, *God, Locke, and Equality*, 220.

44. Quoted in *ibid.*, 221.

45. Thomas Paine, *Rights of Man*, in *Collected Writings* (New York: Library of America, 1995), 467.

46. *Ibid.*, 468.

47. *Ibid.*

48. *Ibid.*, 464.

49. *Ibid.*, 465.

50. Thomas Jefferson, letter to Thomas Earl, September 24, 1823, in *Light and Liberty*, 59.

51. Thomas Jefferson, "Opinion on the Question Whether the President Should Veto the Bill, Declaring That the Seat of Government Shall Be Transferred to the Potomac in the Year 1790" (July 15, 1790), in *Light and Liberty*, 68.

52. *Ibid.*, 74–75. (The quotation from this source combines several statements by Jefferson that were made in 1811, 1812, 1824, and 1826.)

53. Imam Feisal Abdul Rauf, *What's Right with Islam: A New Vision for Muslims and the West* (San Francisco: HarperSanFrancisco, 2004), 104.

54. *Ibid.*, 103; see also F. Forrester Church, *The American Creed* (New York: St. Martin's Press, 2002).

55. Abdul Rauf, *What's Right with Islam*, 106.

56. *Ibid.*; for the source of these quotations, see Antonin Scalia, "God's Justice and Ours," *First Things: Journal of Religion and Public Life* 123 (May 2002): 17–21.

57. Abdul Rauf, *What's Right with Islam*; see, for example, the chapter "Common Roots," 11–40.

58. *Ibid.*, 86.

59. *Ibid.*, 107.

60. *Ibid.*, 16–17.

61. *Ibid.*, 86.

62. Appiah, *Ethics of Identity*, 79.

63. Muhammad Asad, *The Principles of State and Government in Islam* (Gibraltar: Dar al-Andalus, 1980).

64. Abdul Rauf, *What's Right with Islam*, 86.

65. *Ibid.*, 87; Abdul Rauf could have made his argument stronger if he had relied on the works of Paine and the later writings of Jefferson rather than on the Declaration of Independence.

66. *Ibid.*, 105.

67. Tariq Ramadan, *Western Muslims and the Future of Islam* (New York: Oxford University Press, 2004), 27.

68. John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), 147.

69. *Ibid.*, 133.

70. Jeffrey Stout, *Democracy and Tradition* (Princeton, N.J.: Princeton University Press, 2004), 74.

71. Paine, *Rights of Man*, 482–83.

72. The text of Qur'an 109 reads, "Say: Oh unbelievers! I do not worship what you worship and you do not worship what I worship. I am not a worshipper of what you have worshipped and you do not worship what I worship. To you your religion and to me mine" (my translation). Although "to worship" is the more accurate translation of the verb *'abida*, which appears frequently in this sura, it is most often translated as "to believe." There are numerous hints in Paine's writings that he may have been aware of the text of the Qur'an in translation.

73. Abdul Rauf, *What's Right with Islam*, 104.

74. Rawls, *Political Liberalism*, 134.

75. Appiah, *Ethics of Identity*, 76–79.

76. Rawls, *Political Liberalism*, 137.

77. *Ibid.*, 136. The social contract can, however, be renegotiated according to the principles set forth in the original contract or constitution.

78. Ramadan, *Western Muslims*, 53; see also Yusuf al-Qaradawi, *Fi Fiqh al-aqalliyat al-muslima* (Cairo: Dar al-Shuruq, 2001).

79. Ramadan, *Western Muslims*, 37; Ramadan calls this hermeneutical context in Arabic *al-waqi'*, "reality" or "actuality" (Fr. *l'actualité*).

80. Rawls, *Political Liberalism*, 220.

81. Abdul Rauf, *What's Right with Islam*, 110.

82. Rawls, *Political Liberalism*, 214.

83. *Ibid.*, 217.

84. *Summary of the Thirteenth General Conference on Islamic Government and Democracy: Differences, Similarities, and the Possibility of Coexistence*, ed. Ghazi bin Muhammad (Amman: Aal al-Bayt Institute for Islamic Thought, 2005), 8.

85. Rawls, *Political Liberalism*, 222–23n9.