

“Soft Shari‘a Fundamentalism” and the Totalitarian Epistemology
of
Vincent Cornell

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I have been invited to respond to Vincent J. Cornell’s critical assessment of some of my views in his recent essay, “Reasons Public and Divine: Liberal Democracy, Shari‘a Fundamentalism and the Epistemological Crisis of Islam.” Cornell weaves an elaborate web of questionable characterizations, name-calling and outright personal attack. This is joined by a tendency to impose his constructions on the statements of others, employ a double-standard in using the term “fundamentalist,” de-historicize the articulations of modern Muslim thinkers, and apotheosize the American nation-state. This is all ostensibly vindicated by appeal to a would-be panacean liberalism, the poverty of whose freedom, equality and tolerance is painfully demonstrated and repeatedly confirmed. For the moment, however, most of this will have to pass without comment. Instead, given the limited space I have been allotted, I shall focus on a single issue -- my depiction of the normative relationship between American Muslims and the U.S. Constitution -- in hopes of steering serious readers away from what Cornell presents as the clear and only logical conclusions to be drawn from the ideas of mine he cites.

Cornell is deeply perturbed by my assertion that the Constitution is a political fact, not a transcendent ‘truth’ to which we must all give assent as truth, as I put it, “no more binding on the Muslim-American moral/religious conscience than was, say, tribalism or agrarianism on that of the early Muslim-Arabian community.” For Cornell, this is “a tepid endorsement,” certain to reinforce charges of Muslim disloyalty. This is especially problematic given that I imply (and let me state here clearly, I actually believe)

that Sharī‘a, i.e., in its broadest, ideal sense, is binding on the Muslim moral/religious conscience. For Cornell, the logic here is simple: “If Sharī‘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.” This is what makes me a “soft Sharī‘a fundamentalist,” incapable of embracing the U.S. Constitution, except as a modus vivendi, ultimately a duplicitous act of stealth dissolution (taqīya). In this regard, I differ only in degree, not kind, from such hard “Sharī‘a fundamentalists” as OBL and Sayyid Qutb.

Now, there is much to unpack here. For one, Cornell’s conflation of my position with that of OBL or Qutb is simply a poor excuse for not engaging in a more serious and fairer analysis of my view, which my writings – including, as we shall see, Islam and the Blackamerican -- make abundantly clear. But, again, given the limited space I have been allotted, let me cut to the heart of the matter.

Cornell has an emphatically romantic view of the Constitution. How much of this is indebted to 9-11 and its aftermath I cannot tell. But in this essay he makes it clear that he sees the Constitution as a statement of truth, indeed, perhaps transcendent truth. On this understanding, one can only accept the Constitution if one accepts its truth. And, one cannot really accept the Constitution’s truth if one has another source of truth, in my case, Sharī‘a. Now, this view of the Constitution is Cornell’s business. But he ought not be so, well, “fundamentalist,” that he cannot accept that others might legitimately entertain another perspective. I for one do not see the Constitution as a statement of truth; nor did the actual Framers; nor has the Supreme Court or the American scholarly tradition. Rather, the Constitution, as Robert Dahl notes, was and is basically a

negotiated, political arrangement. Few delegates to the convention got exactly what they wanted (or what they held to be the ‘truth’ of the matter); in fact, so stern was their initial opposition that Rhode Island refused to send any delegates and New Hampshire’s didn’t arrive for several weeks. The Constitution contains, thus, not transcendent, ultimate truth but a negotiated, compromise-agreement over how political rights and protections are to be distributed and adjudicated.

It is thus not the substance of the Constitution that is operative but the fact that it was agreed to. Agreements, of course, e.g., when disputing parties agree to split the difference, rarely express what either party believes to be true or even right. They merely express the basis upon which the parties agree to act, based on their inability or refusal to impose their will unilaterally. If Cornell wants to make the substance of the Constitution (i.e., qua substance, not qua agreement) binding on my moral/religious conscience as an expression of some sort of ultimate truth, I should like to ask when the Constitution acquired this proud preeminence: When it declared me three-fifths of a human? When it was constitutionally legal for him to enslave me? When women were not recognized as enjoying the right to vote? Of course, all of this ultimately changed. And this is precisely my point: what changed was the substance, which everybody recognized as not transcendent but changeable, not the fact that whatever was agreed to remained a binding agreement.

Now, the other side of Cornell’s misunderstanding is the distinction he overlooks between moral/religious and political conscience in Islam. On this distinction, I as a Muslim can honestly and fully embrace the fact of our Constitutional agreement without having to believe its substance per se to be binding on my moral/religious conscience, as

an expression of ultimate truth. This distinction is clearly reflected in numerous actions of the Prophet, God's peace and salutations be upon him. Take, for example, the Treaty of Hudaibiyah. When the Prophet set out to draw up this agreement, he began with the dedication, "In the name of God, The All-Merciful, The Mercy-Giving." The negotiator from Quraysh stopped him and refused to recognize this. The Prophet agreed to have it removed. When the Prophet proceeded to state, "This is what Muhammad, the Messenger of God agrees to with..." the Meccan negotiator stopped him and said, "If I thought you were the Messenger of God, I would not have fought you. Change this to, 'Muhammad, the son of 'Abd Allâh'." The Prophet agreed. The treaty itself went on to stipulate, inter alia, that the Muslims could not make pilgrimage that year but must return to Medina and come all the way back the next year. Now, my point in all of this is that, as a matter of moral/religious conscience, the Muslims believed much of the substance of this treaty to be wrong; they certainly did not believe it right to omit the dedication or the prophethood of Muhammad; nor did they think it right that they could not make the pilgrimage to the pan-Arabian sanctuary. Yet, as a political arrangement, this is what they agreed to. And it was the fact of this agreement, not the 'truth' of its substance, that rendered this treaty binding on the Muslim political conscience.

Part of what I find so sad and myopic in Cornell's critique is that in his hasty zeal to ram the Constitution down Muslims' throats he actually does more to alienate them – especially practicing, second-generation youth – by demanding that they see in the Constitution a truth that they believe to be the preserve of God alone. On this alienation, these youth are rendered more rather than less susceptible to attempts by the likes of Anwar al-Awlaki or others to radicalize them. I, on the other hand, am telling these

youth that they do not have to substitute the Constitution for God or the Prophet or Sharî‘a and they can still recognize and firmly embrace this Constitution -- as believing, practicing Muslims! – as a fact, an agreement that is binding on the political conscience and has the authority to regulate the political life of all Americans. And just to be clear here and to show the extent to which Cornell misrepresents me on this issue, let me quote what I actually wrote in Islam and the Blackamerican, from the same section, incidentally, from which Cornell purports to reconstruct my view:

To my mind, a more profitable approach would be not only to accept the provisions of the Constitution but to commit to preserving these by supporting and defending the Constitution itself. According to the Constitution, the U.S. government cannot force a Muslim to renounce his or her faith... The U.S. government cannot even force a Muslim (qua) Muslim to pledge allegiance to the United States! Surely it must be worth asking if Muslims in America should conduct themselves as “nouveau free” who squander these and countless other rights and freedoms in the name of dogmatic minutiae, activist rhetoric, and uncritical readings of Islamic law and history, rather than turning these to the practical benefit of Islam and Muslim-Americans. (IBA, 148)

Try as I may, I see nothing duplicitous or remotely suggestive of OBL or Sayyid Qutb here. True, OBL, Qutb and I all recognize the ultimate moral/religious authority of Sharî‘a. But so did Abû al-Hasan al-Shâdhilî, Ibn ‘Atâ’ Allâh al-Sakandarî, ‘Abd al-Qâdir al-Jilânî, al-Junayd and countless other Sufis. Would Cornell count these men “Sharî‘a fundamentalists”? Clearly, then, one can recognize the primacy of Sharî‘a without being a “Sharî‘a fundamentalist.” But Cornell might protest that I am skirting

the issue here, as these men, unlike OBL, Qutb and allegedly me, did not embrace Sharî'a as the repository of a “totalitarian epistemology,” according to which, if I understand him correctly, it was looked to for the answers to all questions, as an all-inclusive, self-contained, self-sufficient leviathan that stands over and against any and all man-made propositions. Now, I cannot speak for OBL or Qutb (though I would invite honest, serious inquirers to recognize the role of rhetoric in their articulations). But I have long recognized the limits of Sharî'a's concrete rule-making capacity and noted the ease with which it appropriates ideas and institutions from other civilizations, unceremoniously distinguishing “non-Muslim” from “un-Islamic.” All of this I have expressed explicitly in my writings.

Now, if we couple this perspective on Sharî'a with what I said earlier about the distinction between moral/religious versus political conscience, we can easily see our way to the conclusion that, while Sharî'a clearly entails political values, principles, concerns and sensibilities, it neither provides nor dictates the concrete, detailed substance of what kind of political arrangement Muslims in America must or can come to with the American state. Sharî'a empowers Muslims to engage and agree; then it compels them to uphold their agreements: O you who believe, fulfill your agreements! [5: 1] From here, what Muslims agree to, assuming due diligence, enjoys the full sanction and force of Sharî'a! Cornell attacks me as a “soft Sharî'a fundamentalist,” because, according to him, I, like OBL and Sayyid Qutb, see Sharî'a as dictating a divinely ordained, concrete, specific political arrangement that stands in stark contradiction with the Constitution. On this understanding, I can be committed either to Sharî'a or to our man-made Constitution,

but not both. Whereas OBL and Qutb accept this contradiction openly, I, and my likes, hide behind the slick and specious rhetoric of would-be ‘moderates’.

Ultimately, however, this accusation is purely – and sadly -- a reflection of Cornell’s attempt to impose his understanding of Sharî’a on me. Long before his essay, I stated explicitly that, going all the way back to classical times, Sharî’a always recognized the validity of a broad range of man-made laws that the entire tradition, including such arch-“Sharî’a fundamentalists” as Ibn Taymîya, openly recognized and endorsed. Now, I take great umbrage at Cornell’s insistence that converts to Islam and immigrant Muslims have no right to challenge the substance of the Constitution. But that that substance itself, simply because it did not originate in Cairo or Baghdad or Muslim America, must be understood as standing in categorical opposition to Sharî’a is simply the invention of Vincent J. Cornell and his totalitarian epistemology grafted onto Sharî’a. It is not the position of Sherman Jackson or, necessarily, those who believe, as he does, in the supremacy of Sharî’a as the presumptive repository of divinely ordained truth. And God knows best.

