

2 America

Islam and the Problems of Liberal Democracy

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Introduction

The main theme running through our chapter is that, while liberal governments such as that of the United States claim to favour the separation of church and state, governments constantly intervene to regulate religions in multicultural societies, precisely because religious beliefs and practices create problems, real and perceived, of governance.¹ For instance, states often intervene in the domestic space to protect the interests of children in interfaith marriages or in unpopular religious communities.² In New York State in 2011, legislation was passed to recognize gay marriages, and yet state governments have regularly intervened to control the practice of polygamy, for example among the Fundamentalist Church of Jesus Christ of Latter-Day Saints.³ The state intervenes to regulate the employment and practice of chaplains in prisons and in the military.⁴ In France, the state has banned the wearing of the veil in public spaces. Therefore, in modern societies, there is widespread 'management of religions' by the state.⁵

One might ask why the management of religion is a problem for liberals. Surely the regulation of religion is a pragmatic and necessary response to religious diversity? However, the problem is not the intervention but rather *the absence of a level playing field*, which is an essential aspect of liberal tolerance. The law must treat individuals and social groups on the same basis, and the state must not be seen to treat certain groups with special favour. This principle is very important when it comes to the recognition of religious practices. Jews should not receive special advantages over those that Hindus enjoy, and vice versa. In America, the ideal of the separation of church and state makes this principle central to constitutional rights. In practice, however, things are very different. Some religious groups are allowed special privileges, but others are not. The issue of equality versus respect for difference has become very acute in the case of Islam, and no more so than over the shari'a. In some American states, politicians are pressing to ban the

shari'a, but both Judaism and Catholicism have religious courts. Is this freedom of religion equally applied and available?

Brian Barry, an important critic of multicultural celebration of difference, argues that in modern societies, our commitment to the importance of difference has undermined an equally important value: the principle of equal treatment.⁶ He cites the exemptions and advantages enjoyed by the Amish community in the United States, which appear to have little relevance to the actual practice of their religion. Perhaps the most important absence of fair treatment in modern American society is that, while Jewish and Catholic tribunals are allowed to operate in certain areas of life, there is a widespread move to stop any institutionalization of Muslim tribunals applying aspects of the shari'a. The result is endless contradiction and confusion within cultural and legal practices.

Another example of such a contradiction occurs in the area of financial affairs. While there is widespread fear of the shari'a as applied to domestic disputes, there is growing acceptance of so-called shari'a-compliant mortgages, shari'a banking practices and institutions, and a growing commercial acceptance of shari'a insurance schemes in America and other Western nations.⁷ While the public is fearful of the presence of the shari'a in American court systems, there appears to be more acceptance of shari'a finance, presumably because it is 'good for business'.

The liberal dilemma is intensified because we live in a world in which religious differences are deeper and much more complex than in the past. We should note that when early philosophers, such as Richard Hooker and John Locke and the colonial leader Thomas Jefferson, addressed the issue of religious tolerance, they were mainly concerned either with conflicts between Catholics and Protestants or between Protestant sects. Although opposition to the presence of Jews in Europe had often been the cause of violence, the seventeenth and eighteenth-century debates about tolerance were typically about tolerance *within* Christendom. By contrast, modern societies are multicultural and multi-faith. Extensive labour migration, as well as the acceptance of refugees from war-torn areas of the world, has transformed the West, including the United States, by creating significant diasporic communities that are often organized on the basis of religious identity. Arguably, the Westphalian model of tolerance based on a clear separation between the private (individual conscience) and the public (the state and the law) no longer holds in societies with substantial Hindu, Jewish, and Muslim minorities.⁸

Intolerance is not just about domestic political issues, because with globalization, the conflict between religions appears to be on the

increase. In the Middle East, and especially after 9/11 and the invasion of Iraq, there is now ample evidence of conflicts in Islam between Shi'ite and Sunni communities, as well as conflicts between Christians and Muslims. In Iraq there have been serious attacks on Catholic churches; in Egypt there is mounting tension between Muslims and Copts; and in Syria there is widespread fear that if and when the Assad regime collapses, there will be reprisals against both Alawite and Christian communities. Beyond these Middle Eastern conflicts, there have been growing tensions between Muslims and Christians in Nigeria, where Muslims represent about 45 per cent of the population. Spreading peacefully to northern towns like Osogbo in the 1820s, Islam established its presence in Nigeria by more forceful means during the Fulani Jihadist invasion of the 1830s. In response to the spread of Pentacostal-ist evangelicals in Nigeria, various reform movements were created in the 1990s to attract young people to reformed Islam and to spread the religion across the country. As a result, Nigeria has become the focus of an often-violent religious confrontation.⁹ Consequently, American foreign policy has to try to improve the image of America and reduce tensions between religions. For example, the United States government spent \$70,000 on advertisements on six Pakistani television stations in September 2012, disavowing an amateur movie depicting the Prophet in a prejudicial and hateful manner.¹⁰ The management of religion is therefore a strategy of both American domestic and foreign policy.

These modern difficulties within and between religions may be explained partially by the rise of fundamentalism in various world religions. However, we prefer to refer to this development as a *growth in piety*. The spread of veiling is one very obvious example of new forms of 'urban piety', and we can likewise regard demands for the implementation of some aspects of the shari'a as yet another aspect of new piety movements. In much of North Africa and the Middle East, the Arab Spring was followed by demands for more traditional piety and the revival of the shari'a.¹¹ The growth of 'urban piety' also creates additional problems within the public domain. Although the secularization thesis in the sociology of religion in the 1970s predicted the decline of religion in the West, there has in fact been significant religious revivalism across many societies. This revivalism is often associated with reformed Islam, but the manifestations of such piety are global.¹² Puritanical forms of religiosity are associated with the rapid urbanization of traditional communities and the growth of literacy among the urban lower and middle classes. This tendency can be seen in the development of urban piety in Southeast Asia among newly urbanized Muslim populations.¹³

These piety movements tend to create religious enclaves by sharpening the differences between the pious and the outside world.¹⁴ Religious differences are often reinforced by in-group marriages, separate educational institutions, and various exemptions from public services and institutions (occasionally involving exemptions from taxation and military service). Such developments tend to create cultural and religious fissures in the public domain, in which religious groups become socially and geographically separate. The result is growing social fragmentation.

This argument can be challenged, of course. In the United States it is often claimed that inter-racial marriages have increased, suggesting that the racial divisions of American society in the past have been repaired, and hence sociologists such as Jeffrey Alexander have argued that the civil sphere in the United States is relatively successful and harmonious.¹⁵ More recently, Robert Putnam and David Campbell, in their report on the 'Faith Matters' surveys in 2006 and 2007, noted that three religious groups in America – Buddhists, Mormons and Muslims – are viewed unfavourably, and that certain religious groups have strong feelings of mutual solidarity.¹⁶ Nevertheless, between one-third and half of all Americans are in interfaith marriages, and the majority of Americans feel comfortable in a pluralistic religious world. For example, some 80 per cent of Americans believe that 'there are basic truths in many religions'.¹⁷ They conclude their study with the observation that 'Geographic segregation by religion has largely ended, while social segregation along religious lines is also mostly a thing of the past'.¹⁸

Islam in America: A Historical Summary

Before examining the shari'a in America in more detail, we offer a brief sketch of the situation regarding Islam in America. Muslims first came to America as African slaves.¹⁹ Black American Islam developed into a radical political movement under the Nation of Islam, and various radical leaders emerged from this anti-white political protest, most notoriously Malcolm X.²⁰ While black African-American Islam is a significant social group, very little research has been undertaken on the role of shari'a within this community. However, in this chapter we are concerned mainly with recent Muslim migrants. Unlike both Britain and France, Muslim migrants to America in the second half of the twentieth century were typically well educated, and they quickly assimilated into American society, at least in economic terms. By the late 1980s, Muslim intellectuals had come to the conclusion that America was no

longer incompatible with Islamic belief and practice, but a 'place of order' or *dar-al-aman*, signifying that Muslims could comfortably live in the United States while also recognizing that it is a place of outreach. The majority of pious Muslims – like pious Christians – see America as a corrupt and immoral society in which Muslims have a responsibility to call people back to Islam, a practice known as *da'wa*. However, many Muslims from minority traditions such as Isma'ilis see America as democratic and pluralist, and therefore a society in which they can flourish and enjoy religious freedom. This argument about successful assimilation has received further support from a significant ethnographic study of Muslims in America by Mucahit Bilici (2012), entitled *Finding Mecca in America*. Despite discrimination and prejudice, Muslims are settling successfully in America, where they find freedom to practise their faith without draconian interference from the state.²¹ In fact, for many Muslims, America has now become *Dar-al Islam* (the Abode or House of Islam). This phrase is often contrasted with *Dar al-Harb* or the House of War, but a better and less controversial translation might be the arena of struggle against those things that threaten the integrity of Islam.²² Another term, as we have seen, is *dar-al-aman*, or a place of stability and proper order where people can peacefully practise their religion. Thus Bilici suggests that ironically, Muslims find they are better able to practise Islam in America than in many Muslim-majority societies with authoritarian governments.²³

In this environment, a new leadership emerged from within the Muslim middle classes. Unlike the traditional *imams* of an earlier period, the new professional leadership was not trained in the traditional religious literature, and approached the shari'a from the perspective of Western training. This initially resulted in some tension and competition between the traditional leadership and the new professional class. Many of these legal professionals came to believe that shari'a from outside America did not satisfy the needs of educated Muslims living in a multicultural and secular environment. One example is Khaled Abou El Fadl, professor of Islamic Law at UCLA.²⁴ He complained, for example, that the shari'a Scholars Association of North America meeting in Detroit in November 1999 was composed of *fiqh* scholars (legal experts) who had typically never lived in America, knew nothing about actual conditions, and came from totalitarian and corrupt regimes in the Middle East.²⁵

While this 'import' of foreign scholars and scholarship was an important problem, the American Muslim community was also faced by the uncontrolled and often badly informed on-line debate about *fatwas* where the discussants have no real legal training or legal sophistica-

tion. As one young American Muslim of Indian background exclaimed, 'The Internet has made everyone a mufti.'²⁶

Several attempts were made early on to improve this situation. In the 1970s, a *fiqh* council was set up by the Muslim Students Association, but it was mainly concerned with narrow issues like the appropriate dates for fasting. In 1988 the Fiqh Council of North America was created, but its critics claim that it was dominated by 'naturalized Muslims' who knew little about American laws relating to the family, property and divorce. Because Islam is a devolved religion and consensus comes from the community, such organizations rarely have much authority. It is also very important to realize that the shari'a is not state law and historically could not automatically depend on the state to enforce *qadi* justice (that is, judge-made law). The situation is also complicated by the diversity of legal traditions in Sunni Islam, of which there are four dominant schools. One outcome of these developments is that much of the richness of traditional teaching has been lost in the United States, where there remains a dearth of scholars trained in the full breadth of Islamic law.

As we have noted, one interesting development in the West concerns Islamic banking and finance. Many Muslim financiers argue that there is no serious incompatibility between Islamic norms relating to investment, banking and profit sharing, and American laws relating to finance.²⁷ To take one example: the American financial house LARIBA (the Los Angeles Reliable Investment Bankers Association) called itself a 'faith-based financing' business in response to President Bush's call for faith-based initiatives.²⁸

Growing Fears Concerning Islam

By the beginning of this century, it would be reasonable to claim that second or third-generation American Muslims had become successful American citizens and were well integrated.²⁹ This positive situation was transformed by the terrorist attack on September 11, 2001. After the tragic event, Muslims were often identified as un-American outsiders who were fundamentalists and dangerous. While Muslims struggled in the majority of cases to re-affirm their loyalty and American identity, right-wing elements have attacked Muslim customs (such as veiling) and have more recently led a specific attack on what is seen as the significant advance of shari'a in American courts, alongside the growth of halal-certified goods, even including Thanksgiving Day turkeys.³⁰

Thus the positive picture of 'American Grace' presented by Putnam and Campbell and of Americanized Islam by Bilici appears to be con-

tradicted by the response of the American public to the rise (alleged or otherwise) of religious radicalism, especially Islamic radicalism. Since 9/11, the possibilities for pluralism and tolerance have been severely tested and constrained by a discourse focused on terrorism and security. In particular, Islam as a civilization has come to be defined as fundamentally incompatible with Western values. Muslim communities have thus been marginalized by a mixture of official processes of securitization and popular hostility.

Moreover, the argument that America now has a benign social environment of religious and racial tolerance is questionable given the widespread hostility to the proposal to build a Muslim cultural centre close to Ground Zero,³¹ the religious standpoint of the Tea Party movement (demonstrated by reluctance to endorse Mitt Romney as the Republican candidate because he is a Mormon), and the persistent notion that President Obama is a Muslim, among other things. There also is growing opposition to the idea that the shari'a could be referred to in American court proceedings.

While there is evidence that Muslims in America have been quite successful in terms of social mobility and their integration into American culture,³² growing concern about the shari'a is indicative of divisions in modern America that may not have been obvious in the Faith Matters surveys on which Putnam and Campbell based their argument. Various lobby groups opposed to the shari'a, such as ACT for America and the Society of Americans for National Existence, now operate in the United States to warn people about the spread of shari'a.³³ Many of these groups operate on the margins of mainstream politics, and it is possible that their animosity to Islam as a cultural threat will not have any long-term consequences. However there is a more fundamental issue being raised by the shari'a, namely the growth of legal pluralism.

On 11 November 2011 (the Veterans Day holiday in America), nearly one thousand people attended a conference in Tennessee with the theme, 'The Constitution or shari'a'. The conference, organized by the shari'a Awareness Action Network, which is a coalition of religious liberty and national security groups, focused on the alleged perils of shari'a and efforts to promote the 'Islamization of America'.³⁴ The conference was held at a large fundamentalist Protestant church after the hotel that was to be the original venue cancelled due to 'security concerns'. The conference attracted participants from across America and several other countries, who were told about efforts of the Muslim Brotherhood to infiltrate the government, as well as the concept of 'lawfare,' by which was meant the use of the judicial system to fight the spread of shari'a and its 'stealth *jihad*'.

The moral panic about Islam and the shari'a is being fostered by some prominent politicians in America, including several Republican presidential candidates. Congresswoman Michele Bachmann (Republican from Minnesota) has spoken of the 'threat' of Muslims bringing shari'a law into the United States and has claimed that Muslims want to 'usurp' the Constitution. Herman Cain has said he would not appoint a Muslim to his administration, and former Speaker of the House Newt Gingrich has also expressed concern about Muslims in the government.³⁵ Earlier in 2011, New York Congressman Peter King sponsored, despite vehement protests, a hearing of the Homeland Security Committee he chairs on the alleged threat of Muslim radicals in America. The hearing, held on 10 March 2011, attracted widespread attention both in the United States and overseas.³⁶

Legal Plurality and the Spread of Shari'a

The idea of 'legal pluralism' was originally associated with anthropological research into the continuity of customary law in colonial societies, where it often existed alongside Anglo-Saxon common law. We may describe legal pluralism as a situation in which there are competing 'bodies of law' within a given sovereign territory. It is often thought to be a problem emerging in the modern state, where the unified sovereignty of the state is challenged by different competing, and occasionally overlapping, systems of law. Although legal pluralism is often associated with both globalization and post-colonialism, legal pluralism in fact existed in Europe throughout the medieval period in terms of *ius commune*, commercial law (*lex mercatoria*), and ecclesiastical or canon law.³⁷ Modern Muslims also like to imagine a time when the shari'a had dominant and exclusive authority, but this notion also turns out to be mythical.³⁸ We do not intend in this chapter to seriously engage with the technical literature surrounding the anthropological study of legal pluralism, and for our purposes it may be less problematic to use the term 'legal plurality' to describe modern societies grappling with diverse legal traditions.

While the ideas of state sovereignty and a unified legal code may be political fictions, they are useful fictions: any functional system of law would have to have some minimal agreement about a final umpire who could arbitrate between competing legal claims. The growth of legal pluralism becomes a problem in societies where a common citizenship is fragmenting under the impact of globalization and the decline of shared culture.

In some societies, such as the United Kingdom, there is evidence of the development of religious arbitration, but these 'courts' are confined to private disputes (typically around marriage, divorce, adoption and so forth).³⁹ If accepting religious law means in practice accepting third-party arbitration, then legal plurality might not in itself pose a direct threat to state sovereignty. However for some critics, such as the popular press in the United Kingdom, which expressed almost hysterical concern over a lecture in which the Archbishop of Canterbury seemed to endorse the shari'a, arbitration is merely the 'thin end' of the legal wedge, raising the problem of whether an arbitration hearing is in fact a 'court'.

Many of these debates are concerned with the formal use of the shari'a in the West, where judges may refer to marriage contracts made under shari'a norms in disputes over inheritance or the care of children. However, there is also informal and unregulated use of shari'a, for example, through the spread of 'online *fatwas*' providing informal legal judgements and opinions about matters relating to how Muslims should live in a secular society. With the global spread of the Internet, some degree of informal but popular opinion formation is taking place between individuals in ways that may be compatible with shari'a as a consensus-seeking legal tradition. This development involves the informal growth of religious codes in everyday life.

The informal spread of shari'a tribunals in America and elsewhere and appeals to online shari'a judgements can be defined as 'the sharia-ization of the everyday world'.⁴⁰ From the perspective of religious orthodoxy, however, there are some important questions surrounding such online legal opinions. The first is that Internet religious opinions can no longer be controlled by traditional religious authorities, and there is therefore an erosion of religious authority.⁴¹ The second related issue is what we might call '*fatwa* shopping', namely the search for a particular religious opinion that will satisfy an individual's specific requirements.

The prospect of shari'a courts operating in formally secular societies has given rise to acrimonious public debate in America, as well as Britain, Australia, and Canada. Recent protests, as we have noted, against the Archbishop of Canterbury's public lecture on 'Civil and Religious Law in England',⁴² and the public dispute over the introduction of shari'a into arbitration courts in Ontario, Canada, are examples of the moral panic concerning shari'a.⁴³ In both episodes, practical objections were raised about how women's rights could be protected and how arbitration could be enforced.

American Legal Exceptionalism and Shari'a

Having considered various examples of the spread of the shari'a, there is one simple objection to our argument, namely that the American Constitution in fact prohibits the spread of legal plurality by defending the central authority of the Supreme Court as the sole arbiter of law in the United States. However, a report from the Center for Security Policy (2011) claims that it has discovered fifty significant cases of the shari'a in American courts, and fifteen Trial Court Cases and twelve Appellate Court Cases where it was found to be applicable in the case of the bar.⁴⁴ The claims made in this report are, however, greatly overblown, as noted by University of Windsor law professor Julie MacFarlane and by Wajahat Ali and Matthew Duss, writing for the Center for American Progress.⁴⁵ MacFarlane states that a closer examination of the cases cited in the CSP report shows that American judges usually reject any interpretation or ruling based on Islamic law. Most of the cases dealt with family matters (marriage contracts, divorce, child custody and inheritance), and judges assumed jurisdiction because of questions about basic fairness to the parties involved and other concerns, such as the 'best interests of the child' in custody disputes. MacFarlane concludes that American courts take an exacting approach to contracts that refer to Islamic law principles. Ali and Duss point out the many internal contradictions in the CSP report, and note that, since most Muslims oppose terrorism, the report alienates them from those trying to stop terrorism fostered by a small minority of Muslims.

There have been several efforts to preclude the use of the shari'a in legal proceedings in states in the United States, and more are being developed. In 2010 the State of Oklahoma passed a constitutional amendment with a 70 per cent voter approval precluding use of the shari'a in its court system. A suit was brought immediately by the Council on American-Islamic Relations (CAIR) on the grounds that the amendment was in violation of the Establishment Clause of the US Constitution, which precludes the favouring of one religion over another by the government. A federal judge in Oklahoma granted an injunction delaying implementation of the amendment, and that ruling was affirmed by the 10th Circuit court of Appeal in Denver.⁴⁶ Court documents filed in the appeal by the CAIR and the American Civil Liberties Union, as reported in a television newscast, state:⁴⁷

The measure tramples the free exercise rights of a disfavoured minority faith and constrains the ability of Muslims in Oklahoma to execute valid wills, assert religious liberty claims under the Oklahoma Religious Freedom Act, and enjoy equal access to the state judicial system.

Julie MacFarlane claims that following the Oklahoma example, two other states (Tennessee and Louisiana) passed similar constitutional amendments, and similar efforts were underway in nineteen other states as of March 2011.⁴⁸ These efforts demonstrate a high degree of concern about the shari'a in America that might be characterized as a 'moral panic,' given how little reference to the shari'a is actually occurring in courts in the United States.⁴⁹ Furthermore, there is little evidence that the majority of Muslims want the full implementation of the shari'a as an alternative to secular common law, and certainly there is no evidence suggesting that Muslims want access to Islamic criminal law in the West. When the Western media discuss the shari'a, they often equate it with the *hudud* rules specifying what are often horrendous punishments, such as stoning and cutting off the hands of thieves. Such reports neglect the reform of criminal law in Pakistan, for example, where the conservative legacy of Syed Mawdudi has been challenged by younger scholars and political activists.⁵⁰

Relevant Research on Muslims

Although there has been little recent systematic research directly focused on the shari'a as a comprehensive system of norms and laws in the West, an earlier study by Haddad and Lummis did survey Muslims in five sites in the United States on the basic values of Muslims in America.⁵¹ They found that most Muslims were supportive of American values, and that they were finding ways to make their religious practices mesh with other aspects of their life. There have also been a few recent studies of specific issues that relate to aspects of the shari'a, particularly family matters such as marriage, divorce, and custody of children (see below). The Pew Foundation has also published considerable research on Muslim social status, views, and attitudes, but none to date dealing directly with the shari'a.⁵² The aforementioned professor Julie MacFarlane has done perhaps the most relevant research for this chapter, with her four-year in-depth study of divorce within Islamic communities in the United States and Canada.⁵³ Her research, motivated by the controversy that erupted in Ontario, Canada, in 2003, involved interviews with over 100 highly-educated divorced Muslim women and men (80 per cent women), as well as over 110 others (about 40 *imams* and 70 others working with divorce issues) from Muslim communities in selected cities in the United States and Canada (75 per cent from the us). She pointed out that many Muslims desire a religiously sanctioned marriage, which is achieved through a contractual marriage agreement

referred to as a *nikah*. This is easily accomplished and usually also accompanied by a formalized civil marriage. However, getting a divorce is much more complicated if the persons involved want it to be religiously sanctioned. This is the case because Islamic law and tradition allow the male much more power to end a marriage, and on terms that are more advantageous to him than to the female in the marriage. This imbalance of power and rights has been noticed by many commentators, and is the subject of considerable controversy.

MacFarlane's research reveals that informal processes of applying shari'a elements to marriage and divorce in the United States are occurring, even though there is no formal recognition via statute in any state. Such informal processes are occurring because they are desired by those involved in important family-oriented rituals. However, MacFarlane reports that none of those interviewed advocated establishing a formal legal status for Islamic family law, preferring to retain the use of the civil law system as well as informal shari'a-based processes when desired. She also says that there is little agreement among American and Canadian Muslims about what shari'a means in terms of its application, noting that there is much debate among Muslim scholars and leaders about its core principles. MacFarlane describes the concern over shari'a as a 'moral panic', and laments that so much misinformation is being promulgated by the mass media and some politicians regarding what Muslims are doing and what they want when they live in Canada and the United States.

Inger Furseth has done research on Muslim women's views concerning arranged marriages.⁵⁴ She interviewed a sample of Muslim women in Los Angeles, and found that they were divided on the value of arranged marriages. Some thought such marriages important as a way to have the young person remain in touch with his or her culture and family's country of origin. Others were much more flexible, and had accepted more Western norms about marriage, allowing the young person more choice, or at least the right to veto an arrangement for a marriage that they did not like. Her research demonstrates that American Muslim women are not of one mind on this issue, a finding that perhaps should not surprise anyone, but which has implications for applications of the shari'a when a marriage results in a divorce. As noted above, there is considerable controversy about the issue of divorce within Muslim communities, and the issue of religious versus civil divorce is quite contested.

Furseth also did interesting research on the clothing worn by some Muslim women in America, an issue that some assume is derived from the shari'a, and which has caused major controversies in some Western societies.⁵⁵ If controversy erupts in America about the garb of Muslim

women, this research will be quite germane. Furseth studied Muslim women in Los Angeles (the same sample as for her work on Muslim women's views of marriage) on the issue of their dress code, and what it means to wear traditional Islamic clothing. She points out that there has been a growing emphasis on wearing a headscarf among Muslim women in recent decades, especially since the tragic events on 9/11. She attributes this to the women who wear the garb's efforts to emphasize their religious identity. Furseth's work emphasizes that Muslim women who cover themselves are exercising human agency, and disputes the idea that they are being coerced by Muslim males to do so. Indeed, she notes instances from her sample where the husband was opposed his wife's wearing of the headscarf. While the role played by social networks in the decisions to cover oneself is acknowledged, the important networks are female ones. In her conclusion, Furseth suggests that 'wearing the hijab has increasingly become a symbol of Muslim's women's courage to represent Islam in the public sphere and show solidarity with co-Muslims'.⁵⁶ One conclusion to be drawn from this research is that American Muslim women are beginning to challenge and modify the practice of Islam. For example, in many traditional Muslim societies, women do not attend the mosque, and when they do, women are typically segregated from men. However, in many American mosques, women are gradually undermining these norms by claiming a space within the mosque with or alongside men.⁵⁷

Conclusion

Legal pluralism or plurality, while viewed positively by some, can contribute to the ongoing erosion of citizenship as a shared cultural, social and political framework. Legal pluralism and multiculturalism require a lively and effective framework of active citizenship if they are to be successful. The weakening of common ties, establishment of separate religious schools, growth of legal pluralism, wearing of distinctive religious dress in public spaces, ethnic segregation and development of symbolically segregated communities such as the proliferation of *eruv* in the Jewish world, and the consequent if unintended creation of parallel communities, can promote an acute differentiation of identity and have a divisive effect on society, leading to 'the enclave society'.⁵⁸

Religious differences and identities are often championed in the name of human rights, namely freedom of conscience. The paradox of these individual rights is that *we need effective and viable states if rights are to be enforced*, and the enforcement of rights is a necessary condi-

tion of political life. Hence, despite much of the contemporary commentary on the decline of the state and the growth of porous political boundaries, we need to be concerned that any decline in the authority and coherence of the state – associated with neo-liberal globalization – will in fact undermine the political foundations that are necessary to sustain legal pluralism and multiculturalism, and lead to the decline of participatory citizenship.

Our argument is that the real political issue behind the possible growth of shari'a arbitration is not (or not just) the conventional feminist anxiety about equal treatment, but a broader concern about the current state of citizenship in democracies such as in the United States. The notion that citizens have a right to choose the legal systems under which they are to be ruled in the name of cultural difference and multiculturalism makes questionable political sense, and could destroy the very institutions that protect our cultural diversity. In *Genealogies of Citizenship*, Margaret Somers provides a vigorous and passionate defence of citizenship as the necessary foundation of democracy and our best hope of sustaining social solidarity, equality and mutual trust. Her basic argument is that 'democratic citizenship regimes (including human rights) can thrive only to the extent that egalitarian and solidaristic principles, practices, and institutions of civil society and the public commons are able to act with equal force against the exclusionary threats of market-driven politics'.⁵⁹

We find some solace in the empirical research reported above, based on studies of American (and Canadian) Muslim communities. The research reported by Pew and that reported by MacFarlane and by Furseth shows strong support among most Muslims for the values of American society, and little support for any extremist ideas or programmes. As Pew states in one of its recent reports, 'Muslim Americans have not become disillusioned with the country. They are overwhelmingly satisfied with the way things are going in their lives (82 per cent) and continue to rate their communities very positively as places to live (79 per cent excellent or good)'.⁶⁰ Indeed, Pew reports that Muslims are more satisfied with the situation in America than non-Muslim members of American society (56 per cent vs. 23 per cent). MacFarlane's finding that no one in her study was promoting or desired the establishment of formal shari'a tribunals or courts is also of note. Furseth's research also demonstrates that, while the Muslim women she studied are seeking ways to identify with their faith, they are not trying to force Islamic values upon others. Indeed, her work shows that there is some tension *within* Muslim communities over such issues as dress and arranged marriages, suggesting that there is no monolithic Islamic

set of cultural values that is invading American society and attempting to make others accept those values. Bilici also argues that debates are occurring about Muslim dress codes and the shari'a within Muslim communities.

Obviously, more research is needed, but based on what is available so far, we would suggest that, while there are grounds for some concern about the implications for the potential development of legal pluralism and the spread of the shari'a in America and elsewhere, those fears may be groundless, given the apparent fact that the vast majority of Muslims in America are finding ways to adjust to American secularism, while also expressing their religious identity in various ways.

Notes

- 1 See James T. Richardson (ed.), *Regulating Religion: Case Studies from around the Globe*, New York: Kluwer, 2004.
- 2 Stuart Wright and James T. Richardson (eds.), *Saints under Siege: The Texas State Raid on the Fundamentalist Latter Day Saints*, New York: New York University Press, 2011.
- 3 Cardell Jacobson and Lara Burton (eds.), *Modern Polygamy in the United States*, Oxford: Oxford University Press, 2011.
- 4 James A. Beckford and Sophie Gilliat, *Religion in Prison*, Cambridge: Cambridge University Press, 2008.
- 5 Jack Barbalet, Adam Possamai, and Bryan S. Turner (eds.), *Church and State. A Comparative Sociology*, London: Anthem Press, 2011.
- 6 Brian Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism*, Cambridge, Mass.: Harvard University Press, 2002.
- 7 Michael Nazir-Ali, 'Islamic law, fundamental freedoms, and social cohesion' in: Rex Ahdar and Nicholas Aroney (eds.), *Sharia in the West*, Oxford: Oxford University Press, 2011, pp. 71-89. And Jamila Hussain, *Islam: Its Law and Society*, 3rd edition, Sydney: Federation Press.
- 8 Jeff Spinner-Halevy, 'Hinduism, Christianity and liberal religious tolerance', *Political Theory*, 2005 (Vol. 33, No. 1), pp. 28-57.
- 9 David O. Ogungbile, 'Tradition and Response: Islam and Muslim Societies in a Nigerian City', in: Tugrul Keskin (ed.), *The Sociology of Islam. Secularism, Economy and Politics*, Reading, UK: Ithaca Press, 2011, pp. 319-342.
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