Muslims in the West

From Sojourners to Citizens

Edited by
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To
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33. James Philips, "Islamic Terrorists Pose a Threat," in *Urban Terrorism*, ed. A. E. Sadler and Paul Winters (San Diego: Greenhaven Press, 1996), 62–65.

34. Jonathan J. Goldberg, "Jewish Power: Inside the American Jewish Establishment" (Reading, Mass.: Addison-Wesley, 1996), 88, 197–226, 337–67.

35. *First Things*, February 1998, 64.

36. Vatican, "Declaration on the Relations of the Church to Non-Christian Religions," Proclaimed by His Holiness Pope Paul VI on 28 Oct. 1965. The Pontifical Council for Interreligious Dialogue (PCID) oversees relations with other faith groups. The PCID has a special commission for relations with Muslims that engages in studies on different aspects of Christian-Muslim relations. Since the reorganization of the PCID in 1988, the Pope has visited several Muslim countries and received delegations from various Muslim communities, including a visit by an American Muslim delegation in 1999.

37. Address of Kenneth Whitehead at CAIR panel, "Muslims and Catholics: Challenging Antireligious Bias," 14 Oct. 1998; "Religious Expression in the Public Schools," testimony by William Donohue, president of the Catholic League for Religious and Civil Rights, before the U.S. Civil Rights Commission, 20 May 1998, and published in *Catalyst* (July/August 1998): 8–9.

38. The letter was published as an advertisement in the *Washington Times* on 29 June 1999.

39. "*Religion in Public Schools: A Joint Statement of Current Law*" (Washington, D.C.: ACLU, n.d.).

40. Interview by the author with Laila al-Marayati, president of the Muslim Women League, on 16 May 1997. The league is affiliated with the Muslim Public Affairs Council.

41. Whitehead, "Muslims and Catholics."

42. Interviews with Rabbi Alfred Wolf and Salam al-Marayati, 30 Sept. 1999.

43. Interview with Manal Omar, of AMC, 25 Oct. 1999.

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Representation of Islam in the Language of Law: Some Recent U.S. Cases

Kathleen M. Moore

The following exchange between a convicted defendant and a judge occurred at the culmination of the trial of Ramzi Yousef for his part in the 1993 bombing of the World Trade Center Building in New York and in the conspiracy to bomb American jetliners in the Far East. Speaking face-to-face in a federal courtroom in Manhattan on the day of sentencing, January 8, 1998, the condemned verbally sparred with the judge. Ramzi Yousef proclaimed,

> The Government in its summations and opening statement said I was a terrorist. Yes, I am a terrorist and I am proud of it. And I support terrorism so long as it was against the United States Government and against Israel, because *you* are more than terrorists; *you* are the one who invented terrorism and [are] using it every day. You are butchers, liars, and hypocrites. . . . You don't believe in human rights nor [*sic*] ethics nor [*sic*] anything. All that you believe in are your own interests and being bribed. That is what you worship, money. Money is your God, hypocrisy your courier. . . . You were the first one who killed innocent people and you are the first one who introduced this type of terrorism to . . . history . . . when you dropped an atomic bomb which killed tens of thousands of women and childrens [*sic*] in Japan and when you killed over a hundred thousand people, most of them civilians, in Tokyo with fire bombings. You killed them by burning them to death. And you killed civilians in Vietnam with chemicals as with the so-called orange agent. You killed civilians and innocent people, not soldiers, innocent people every single war you went [*sic*]. You went to wars more than any other country in this century and then you have the nerve to talk about killing innocent people. . . . And since this is the way *you* invented and since this is the means you have been using against other people, which you continue until this day to use in killing innocent people . . . it was necessary to use the same means against you because this is *the only language you understand*. (Emphasis added)[1]

At the same time, Judge Kevin Thomas Duffy, who had presided over the trials of all the World Trade Center defendants, chastised Yousef before sentencing him to life in prison:

> Ramzi Yousef, you claim to be an Islamic militant. . . . Ramzi Yousef, you are not fit to uphold Islam. Your God is death. Your God is not Allah. The Qur'an teaches in connection with the People of the Book, in Surah Al Imran, ayat [verse] 72–73: "Grace is surely in Allah's hand. He gives it to whom he pleases . . . he specially chooses for his mercy whom he pleases and Allah is the Lord of Mighty Grace." And again, the book teaches

in the Surah the Cave, ayat [verse] 29: "The truth is from your Lord; so let him who please believe, and let him who please disbelieve." Thus it can be seen that the *true* worship of Allah does not allow the compulsion which you sought to bring about. You weren't seeking conversions. The only thing you wanted to do was to cause death. Your God is not Allah. . . . What you have shown is your total disdain beyond doubt for the people whom Allah has made.[2]

The conviction of Yousef was expected. This exchange, however, is startling. Here, as in any courtroom, the language of the law predominates. Yet the words uttered raise questions about identity and meaning. On what authority do these two men speak? To which laws do they refer? For his part, Yousef adopts the language alternately of American criminal law and international human rights law. For the first time he admits to being a "terrorist"—an identity he had not claimed during the trial.[3] At his sentencing he assumed the label "terrorist" somewhat reluctantly, but with pride. Moreover, in a reflexive move, Yousef turns the appellation back onto his prosecutor and judge by accusing them of the same crime—"you" (i.e., the American government) are the quintessential terrorists because "you" invented terrorism and were the first to terrorize innocent civilians. In invoking images of wartime atrocities—bombings of Hiroshima and Nagasaki, Tokyo, and Vietnam—the accused thinks he holds a mirror to the faces of his accusers. He presumes that his statement in the courtroom on the day of his sentencing will be intelligible because it contains some shared meaning. His acts of terrorism were "necessary" because this is "the only language you understand."

Again, none of this seems out of the ordinary or controversial, given the political nature of the crimes involved in this trial. There are a number of presuppositions that listeners would have to accept to make sense of Yousef's polemics. For instance, the message implied in Yousef's indictment of the United States—that attacks on American (and Israeli) targets are in fact defensible *counterattacks* against an imperialist power—relies on a set of presuppositions about the structural violence that results from American cultural and economic hegemony around the world, as well as the direct violence perpetrated by the United States and its allies against so-called third world interests. The images of wartime atrocities and the presuppositions upon which Yousef's statement rests must be understood in relation to the collage of images invoked by recent global events, namely by the end of the Cold War and the (re)emergence of Islam as the "new" global threat since the fall of the Communist "Other."[4] The very act for which Yousef is convicted, the bombing of the World Trade Center in New York, is often portrayed by the media and in many academic accounts as the opening salvo in the new post-Cold War era, needing what *Newsweek* has called in a headline "A New Kind of Containment."[5] "The global war between 'us' and 'them', previously scripted as that between capitalism and communism, is being reconstructed by such propagandists [e.g., *Newsweek*] as that between the Christian and Muslim societies."[6] Hence, the World Trade Center bombing is labeled as the kind of "fanatical violence" typical of the religion of the main villains in this new warfare, and Yousef's indictment of the United States can be readily dismissed as false propaganda from the enemy. Perhaps not surprisingly, "we" in the West might read ourselves in this indictment "as the others of our others."[7]

What is more surprising is that the judge, Kevin Thomas Duffy, made a rather dramatic shift at the moment of sentencing Ramzi Yousef. While wearing the robes of the judge that signify his authority on the bench of an American court, Duffy assumed the mantle of Islam. Just before pronouncing the sentence, he indicted Yousef not in terms of what American criminal law requires, even though there is no absence of such law with which to convict. Rather, he chastised the defendant in terms of what he, Duffy, saw in the Qur'an as its ethical message. Judge Duffy said he knows the true nature of Islam (that it does not allow compulsion) and that the defendant was mistaken if he thought his actions were justified. Further, he claimed that the People of the Book (e.g., the Jews and Christians) must be treated with mercy ("Grace is surely in Allah's hands"). He cited chapter and verse from the Qur'an in support of both of these assertions. Thus, in what may seem an ironic twist, the convicted defendant spoke at his sentencing about his crimes exclusively in terms of positive law,[8] and the judge spoke in terms of the standards of morality contained in the Qur'an.

In decoding this critical moment in American justice, we could make various observations about the mixed sources of justice operative in the transaction between the condemned and the judge. Some might say that in that fleeting moment when two "incommensurable" world views stood face-to-face in the courtroom, two men tried to launch missiles across the chasm that separated them, each translating his message into the native tongue of the other. However, this argument would be essentializing identity, positing that the judge, a man of Irish-American descent who grew up in the Bronx,[9] and the defendant, a Middle Easterner of Islamic faith, were incapable of transcending their fixed "essences," hedged in by their respective cultures, as well as by their respective roles as judge and defendant. In this interpretation, the courtroom becomes the battlefield in which the two "warriors" may transgress their cultural boundedness only momentarily, for tactical gain. The instability of the transgressive moment serves only to reinforce the categorical opposition of the two men and their failure to share a vocabulary of tradition and legal convention.

An alternative interpretation might posit that the exchange between the condemned and the judge is full of signifying resources and illustrates the transformation of dominant meaning. According to this interpretation, the sentencing is the medium through which some meanings are privileged and others delegitimized. The judge chooses to speak of Islam and to provide his selective "proof texting" in order to tell the convicted defendant that his (the defendant's) understanding of Islam is wrong (e.g., "your God is not Allah" and "you are not fit to uphold Islam"). Thus, on the basis of his authority as an officer of the court, the judge substitutes his version of Islam, the putatively "correct" one, for that of the defendant. This is a question not necessarily of disparaging Islam but of subjecting it to a particular standpoint.[10] This privileging of a particular interpretation of Islam delimits possibilities by aligning a judicially sanctioned "Islam" with the power structures of the state.[11] Not that the judge's definition is in any way definitive. However partial or imperfect it is, though, the judicial demarcation of what constitutes "Islam" enters into the political environment to join other sources of "knowledge" about Islam (e.g., journalistic, academic, religious, and entertainment sources) to shape ideas about Islam and to give meaning to what Islam represents in the new world order. Islam, in effect, is reconstructed discursively through its encounter with the American judicial system into terms that make sense for the law's secular system of meaning.[12]

Legal Orientalism

What *are* the representations of Islam in American law? The British scholar John Strawson has written about the construction of Islamic law in English texts about law, such as Charles Hamilton's *The Hedayah, A Commentary on the Mussulman Law* (first edition, 1791, second edition, 1870). He writes about the role that law played in British colonial rule and how the Orientalist methodology of "making Islamic law understandable to the English lawyer or official" was mobilized for administrative purposes in the interests of consolidating colonial power.[13] Classical texts of Islamic law were turned into authoritative "positivist instrument[s] of colonial rule,"[14] which were pivotal in constituting the colonists' management of disputes within a particular cultural system of meaning. Following Strawson's suggestive lead, in this chapter I want to examine the role played by the primary "texts" of American law—judicial decisions—in reproducing what Strawson has called "legal Orientalism,"[15] although for a different historical context. My inquiry highlights the language of alterity in legal constructions of cultural and national identities framed in the post-Cold War era, and in particular its domestic implications. The picture I present is not meant to be comprehensive, for it is indeed hard to imagine how a comprehensive picture could be drawn, given the recent increase in the numbers and kinds of encounters Muslims are having with the American legal system.[16] Instead, I try to illustrate what the public understandings are of the one word "Islam" and how these can circumscribe the opportunities that exist in the American legal order for Muslims to seek legal protection for fundamental rights.[17] To show how representations are reproduced in the law, in the following sections I analyze briefly some recent encounters between Islam and the law in the United States. I want to emphasize at the outset, though, that law is only one of the several sources of meaning that are involved in the reproduction of representations of Islam. However, the close connection between the day-to-day, practical requirements of the government body and the representation of Islam promotes a certain kind of regulatory power within which the contemporary American national identity is constructed.

Expert Testimony

While Judge Duffy pronounced his understanding of Islam from the bench on the day of Ramzi Yousef's sentencing, most occasions in court are met with a great deal more circumspection. Judges often refrain from interpretation themselves, allowing "expert testimony" of witnesses to provide definitions of religious belief systems such as Islam for the court. For instance, in an appeals court case in New Jersey,[18] the court was asked to review the First Amendment claims brought by two Newark police officers who are Muslim and who wore beards in compliance with the requirements of Islam. Officers Faruq Abdul-Aziz and Shakoor Mustafa are both devout Sunni Muslims who assert that they believe they are under a religious obligation to grow their beards. The officers were sanctioned by the police department for violating the department's no-beard policy. They argued that, while the police department allowed exemptions from this policy for medical reasons, exemptions for religious reasons were not granted, and this violated the First Amendment's guarantees of free expression and free exercise of religion. While

the appellate decision was limited to providing a review of religious exemption jurisprudence[19] and ruled in favor of the Muslim police officers on that basis, the record does include a Muslim cleric's testimony relating Islamic requirements for grooming. The decision reads, "according to the affidavit of an imam, it is an obligation for men who can grow a beard, to do so" and not to shave. The affidavit of the Imam continues:

> The Quran commands the wearing of a beard implicitly. The Sunnah is the detailed explanation of the general injunctions contained in the Quran. The Sunnah says in too many verses to recount[:] "Grow the beard, trim the mustache." . . . I teach as the Prophet Mohammed taught that the Sunnah must be followed as well as the Quran. This in the unequivocal teaching for the past 1,418 years, by the one billion living Sunni Muslims world wide. . . . The refusal by a Sunni Muslim male who can grow a beard, to wear one is a major sin. I teach based upon the way I was taught and it is understood in my faith that the non-wearing of a beard by the male who can, for any reason is as [serious] a sin as eating pork. . . . This is not a discretionary instruction; it is a commandment. A Sunni Muslim male will not be saved from this major sin because of an instruction of another, even an employer to shave his beard and the penalties will be meted out by Allah.[20]

The court relied on the expert testimony of one Muslim cleric to determine whether this was a matter of some external authority requiring facial hair. In effect, what the appellate decision attempts to do is to assess the strength and nature of the Muslim individual's religious obligation to grow a beard and to couch this language in terms of institutionalized "rights." In other words, the court searched for an Islamic law that requires men to grow beards and, significantly, for any legitimate reasons a man may be excused from this requirement. Given that the Muslim cleric said there were no legitimate exemptions, that refusing to grow a beard is a major sin even if done at the instruction of an employer, the majority of the appellate bench concluded that the Muslim officers' request for a religious exemption from the police department's "no-beard" policy was valid.

In reaching this decision, the court needed to represent Islam in a way that made it cognizable under the law. In other words, Islam was narrowed down to a set of obligations that set Muslims apart from everyone else. Once that was established, through the testimony of the Muslim cleric, the judicial task then became one of weighing the absoluteness of the Islamic requirement against the validity of the police department's policy. Through such a balancing test, the court recognized the police department's position that it had legitimate concerns about uniformity of appearance and a desire to convey the image of a "monolithic, highly disciplined force," while permitting beards for religious reasons would somehow "undermine the force's morale."[21] However, the court determined that these justifications for the refusal to allow religious exemptions from the "no-beard" policy were not enough to outweigh the Muslim officers' interest in wearing beards in compliance with their religion. Thus, the particular obligation of wearing a beard was given the status of a fundamental "right" protected by the First Amendment.

My point here is that an issue that started out as a matter of belief and obedience to God's will was translated through the judicial process into terms that made sense in the eyes of the law. For example, Officers Abdul-Aziz and Mustafa contended in their appeal that, since the Newark police department grants medical, but not religious, exemptions from its "no-beard" policy, the department "ha[d] unconstitutionally devalued their religious reasons for wearing beards by judging them to be of lesser importance than

medical reasons."[22] In response, the department maintained that it gave medical exemptions in order to comply with a federal statute, the Americans with Disabilities Act (the ADA, adopted in 1994). In evaluating these claims, the court held them in tension. While it is true that the ADA requires employers to make "reasonable accommodations" for individuals with disabilities, the court noted, another federal statute, Title VII of the Civil Rights Act of 1964, also imposes the "reasonable accommodation" requirement on employers with respect to religion.[23] These parallel requirements in the law of reasonable accommodation reduce Islam to a series of rules. As an artifact of legal reasoning, Islam is regarded not as a transcendent belief system but as a set of ritual practices of traditional origin that applies to Muslims and not to others. As Michael King puts it, "Islam takes on an identity-in-law of 'legal religiosity', offering to its adherents an absolute or limited right to engage in prayer and ritual. . . . Muslims are accepted as different, but not so different that they cannot be brought within the ambit of the liberal state."[24] Once the transformation has been made and Islam is reconstituted as a set of rules and rights, it can take its "place in a legal world where [its] particular demands and obligations may be related to, compared with and placed in rank order with all other rights, obligations and demands."[25]

Another dimension of the court's influence in defining the "essence" of Islam in this case, allowing the one cleric to provide testimony to the effect that men are required to wear beards, presents only one Muslim standpoint. This suggests that Islam is monolithic and provides a representation of Islam that fails to reflect the considerable degree of diversity in the socioeconomic backgrounds, gender, political orientations, and religious practices among those who profess Islam. Yet this reduction to one standpoint is necessary for the law to be able to "reconstruct religion" as a set of rights, such as the right to wear beards, or headscarves, in ways that conform to certain religious obligations. If multiple versions of Islam were permitted to speak in court, a cacophony of voices would clash over what Islam requires, and then courts would have to evaluate the relative merits of each claim in order to assess the "true" representation.

"Culture" in Court

In the preceding section Islam was seen to be understood in the law as a set of essentialist practices (behavioral traits and customs) largely unaffected by history or a change of context. We saw how particular understandings of Islam became privileged in legal discourse, and how Islam has been reconstructed in terms of the secular meanings of the common law, narrowed from a religion to a specific set of social and moral obligations applicable to certain individuals and not to others. It became an external marker of a different system of meaning that had to be accommodated under the law. In this section we focus on constructions of "culture" that are connected to a specific sense of American national identity.[26] These constructions of "culture" as static, as a fixed and stable set of beliefs, values, and institutions, facilitate a certain capacity for positioning the United States in a superior location vis-à-vis its various Others (in this case, Islam), as a civilized nation now home to a host of "primitives" whose practices are portrayed as antithetical to the construct of American-ness. Through the language of alterity, an image of American selfhood is constructed within the broader context of cultural essentialism.[27] The examples discussed in this section provide a picture of American domesticity in an Aramco compound in the Saudi Arabian desert; U.S. prohibitions on female genital mutilation; an "incest" case in which the cultural meaning of family intimacy is contested; and the arranged marriage of two child brides.

A Rockwellian World

The child custody case described in this section does not involve Muslims directly but nevertheless involves the deployment of certain images of Islam in the judicial evaluation of a father's claims. In December 1997, Judge Eileen Bransten of the Supreme Court of New York rejected the efforts of Milo Lazarevic, the noncustodial parent of a six-and-a-half-year-old boy named Adrian, to stop Adrian's mother from relocating to Dhahran, Saudi Arabia, taking Adrian along with her as she settled into her new life in an Aramco compound with her husband and their two children.[28] The judge notes that Adrian's mother, Jan Fogelquist, has been Adrian's primary nurturer since birth and that the child has close emotional ties to his stepfather and his half-siblings. The consideration the judge says she has to make is whether granting Mr. Lazarevic's petition to prevent Ms. Fogelquist from leaving the United States with Adrian would be "in the best interest of the child." The construction of a particular (nuclear) vision of family life becomes apparent in the judge's evaluation of the child's best interests, and concepts of Islam as threatening, dark, and censorious play a subtle role in the construction of this idyllic vision.

Adrian's father, Mr. Lazarevic, is portrayed in the court record as an unemployed artist who has made no effort "to secure gainful employment" in order to support his son should Mr. Lazarevic gain custody. He lives in a rent-controlled apartment on Riverside Drive in New York, which he shares with several roommates, and is building a house in Coxsackie, New York, paid for by insurance money received after another house he had owned burned down. His financial worth is listed: $10,000 in assets and nearly $20,000 in debts. In contrast, Adrian's stepfather, who has been hired by Aramco as a civil engineer, is listed as earning $102,000 after taxes, and his new position will provide him and his family with subsidized housing, free education, medical insurance, and reimbursement of high school tuition. The judge notes that, while relocation to Saudi Arabia will result in a dramatic change in Adrian's life, the benefits (economic stability) outweigh the potential losses (emotional bond with father). In evaluating the child's best interests, the judge weighs the risks associated with the bohemian lifestyle of Adrian's father against the financial security offered by the boy's stepfather.

But the judge says that economic security is not the sole factor in determining the best interests of the boy. She continues by describing life in the Aramco compound in Dhahran in glowing terms, portraying the world of a Norman Rockwell painting, where the children run in the streets playing soccer, baseball, and football and families don't have to lock their doors at night. Judge Bransten also notes approvingly that Adrian's mother, Ms. Fogelquist, has chosen to leave a lucrative private practice as a psychiatrist in order to be a "stay-at-home" mother. The move out of New York City to Saudi Arabia will permit this nuclear family to remain intact, with the stepfather as civil engineer being the sole breadwinner. What draws our attention in this portrait is its patriarchal,

familial character and how, in order to preserve a particular set of social relations associated with the American Family, these particular American citizens are physically displaced to an enclave in a foreign country. The larger this portrait becomes in the judicial consideration of "the child's best interest," the more it is assumed that Islam is, in the Derridean sense, the "constitutive outside" of the ideology of domesticity. As we will see, the court reasons that any barriers both Islam and physical distance from the United States may present to the maintenance of the privileges associated with being American can be surmounted.

For example, the fear of physical danger intrudes upon this scenario. Both Adrian's father and the law guardian representing Adrian's interests[29] argue that Adrian will be placed at risk of terrorist attack by the mere fact that he is in Saudi Arabia. The specter of the recent (June 1997) bombing of the Khobar towers in the nearby American military base in Dhahran, which killed nineteen American soldiers and nearly 400 other people, is raised at the court hearing. The father and law guardian deploy images of Islamic fundamentalism and fanatical violence in a general fashion, asserting that the Aramco compound and its residents are "sitting ducks in a volatile region already targeted and attacked by terrorists." Yet Judge Bransten addresses these images of danger when she writes,

> The court is deeply troubled by the prospect of sending Adrian to an area that might be a target for terrorism. Unfortunately, the court is also aware that there is no place in the world where a person is absolutely safe from a terrorist attack or, indeed, where a person is safe from an attack of random violence. After the recent assaults on American institutions, the World Trade Center, the Federal Building in Oklahoma City, and the nightly barrage of reports of children assaulted or killed by parents or by strangers, the court must conclude that it cannot insure Adrian's absolute safety anywhere in this turbulent world. It may be that Adrian might be as safe or even physically safer in the Aramco compound in Dhahran where Adrian will be in a secured environment protected not only by Aramco's security force but, if necessary, by the United States military which is stationed in close proximity to Dhahran.

The World Trade Center is the primary but not the *only* signifier of violence found in the judge's words. By imposing a broader perspective relating to security issues, suggesting that sometimes even parents pose the most dangerous threat to a child, the judge deflects the negative impact of the image raised in the courtroom of Islam as an inherently violent religion, although she does not suggest the concern is completely ill conceived. Rather, she relies on the presence of American troops, a physical reminder of the state's monopoly of force, to ensure the child's safety.

Adrian's father, Mr. Lazarevic, and the law guardian also deploy certain images of Islam and Muslims as being ignorant and censorious of art and information. They argue that Adrian will sacrifice the freedom of speech, freedom of assembly, and freedom of dress he would have enjoyed had he remained "here in America."[30] They argue that Adrian will suffer "deprivation of intellectual stimulation" and will not have access to the usual cultural outlets, such as museums and theaters. Finally, they argue that the schools Adrian will attend will not teach him about places and events that the Saudi government may feel threatened by, such as Israel and Judaism, and that the curriculum will place an emphasis on Muslim culture, while not offering instruction about topics that may offend Islamic values (e.g., European art). Judge Bransten states that,

while much of this may be true, testimony at the court hearing shows that the American families already living in the compound deliberately vacation in places in Europe where there are museums and theaters so that they can "soak up culture" like a commodity or a nutrient in a well-balanced diet. She also asserts her faith in technology, in the capacity of the "virtual" to substitute for the "real," by suggesting that Adrian can gain access to "culture" through the use of computers, television, and videos. She writes that "the issue of cultural deprivation as a result of isolation is not as problematic as it may have been before the tools of modern life: Adrian will be able to share in the arts, theatre and music, if not necessarily in person, then through the use of modern communications." At another point she makes it a condition of the court's ruling in favor of Adrian's mother that, "before relocation is permitted," Adrian's mother and stepfather must "purchase and set up compatible computer systems" in Mr. Lazarevic's home and in their new home in Dhahran, with "dedicated phone lines in the child's bedroom" for the computer and a fax machine so that father and son can communicate.

The legal constructions in this case are complex and interesting. First, the judge relies not only on her faith in the power of computer technology and other electronics to stand in for "the real thing"—to substitute for the face-to-face communications that create family life, to bring "culture" into the home for personal consumption but also on the presence of "things American"' to assure her that the child's best interests are served in spite of the "Islamic threat" lurking in the shadows. Culture here is posited as a tangible object, something that can be partaken. This construction of the "child's best interest"—represented by information technology, economic security, physical safety, and western culture—takes questionable forms as it requires parallel ideas that construct Saudi Arabia as a cultural desert, as unenlightened, underdeveloped, uncivilized, and dangerous. The judge is assured the Aramco compound is an oasis in the desert, a sanctuary of domesticity in "a turbulent world," because of the presence of American troops nearby. She also resists the suggestion, raised by Adrian's father, that Islam is the only source of violence to be taken seriously; nevertheless, Islam remains in her view a credible threat. Second, concerns about Adrian's education are allayed in the judge's mind (and in the court record) by the fact that Aramco will pay the tuition for Adrian to attend a "first-class private school" in the United States or Europe when he is old enough to go to high school. The judge tacitly consents to the proposition that there is a connection between the word "Islam" and its associated meanings—forced ignorance and lack of intellectual stimulation.

The suggestion that Adrian's mother will be able to afford to remain at home as a full-time "stay-at-home" mom merits, in the judge's eyes, a thorough evaluation of the risks associated with the relocation from New York to Saudi Arabia. The traditional ideal of family, with its specific authority structure—the father earning an adequate family wage to keep a wife at home—is favored by the court and is (ironically) tied to the construction of an American national identity. The irony lies in the fact that this ideology of domesticity may have immured this particular middle-class American woman, and others situated like her, in the home within the corporate oasis of an Aramco compound located in Saudi Arabia, a society often discredited for oppressing women. This masculine-dominant, gender-normative discourse gives official U.S. sanction to constructions of home life that confine women to domestic roles as mothers and homemakers. Finally, finding that the potential "threats" presented by Islam—

terrorism, ignorance, and censorship—can be diminished by access to the familiar (such as American troops and secondary education in a western boarding school), the judge concludes that the child's interests are best served by relocation. The judge does not challenge the prevailing negative stereotypes about Islam that are marshaled in the father's custody claim. She merely weighs the alleged dangers against the measures taken to anticipate the threat Islam poses to an "American" way of life in an Aramco compound. The result is an American colonization of spaces for American nuclear families such as Adrian's to inhabit in what is argued to be a "turbulent" and "volatile" world.

A Cultural Defense

The path to judging other "cultures" is always a slippery slope. It requires the establishment of what Edward Said calls the superior location from which to evaluate selected characteristics and practices of the Other.[31] In the United States, "culture" has become an increasingly common defense in courtrooms in recent years, as defendants assert that a person's cultural background is a factor that must be considered in assessing penalties for criminal offenses. Most often the term "cultural defense"—a defense strategy that seeks the admission of cultural evidence to benefit the defendant—has been associated in the United States with practices that are patriarchal and harmful to women's interests and is affixed to immigrants.[32] For instance, in a Los Angeles suburb, in 1994, the attorney for a man who beat his wife to death raised the "cultural defense" by stating that the victim had violated the norms of their Iranian Jewish community by serving her husband a bologna sandwich on the eve of the Persian New Year, an occasion usually celebrated with a feast. Further evidence brought to light by the defense showed that the woman had constantly ridiculed her husband during their twenty-five year marriage, calling him "stupid" in front of relatives and friends and making him sleep on the floor—again, violating the norms of Jewish Persian culture, in which the man is dominant. In his opening argument, the defense attorney had promised the jurors that they would hear evidence "about a culture that is vastly different from yours and mine," one that is male dominated and religious.[33] Judge Kathryne Ann Stoltz dismissed the first-degree murder charges against the defendant in the death of his wife, finding no evidence that the killing was premeditated. The jury convicted the defendant on the lesser offense of voluntary manslaughter, and he was sentenced to the maximum prison term of eleven years.[34]

A very real danger of the so-called cultural defense is the chance that, when the defense strategy essentializes a particular cultural group by focusing on specific traits, such as the dominance of males in the story of the Iranian Jewish couple just related, the argument can be appropriated by the institutions of dominant society to make the subordinate culture seem even more exotic and inferior. It locates a pathology in a particular cultural group by choosing to concentrate on specific elements of "culture" that support inappropriate behavior, while simultaneously overlooking the presence of similar shortcomings in the dominant society. Male dominance is an important example of this double standard at work.

Female Genital Mutilation

The case of female circumcision has raised just such a selective discourse about Muslim "culture" in the United States.[35] In 1986, authorities in De Kalb County, Georgia, charged a Somali woman, whose profession was nursing, with child abuse for having cut her two-year-old niece's clitoris. In what was probably the first criminal case in the United States involving the practice of female circumcision (also known as "female genital mutilation"), the government lost its case.[36] However, subsequently, efforts to ban the practice in the United States bolstered a drive to get Congress to adopt a law that would make female genital mutilation illegal. Such efforts culminated in 1996 when, aided by much media attention to the plight of Fauziya Kassindja, a young woman from Togo who had fled to the United States to escape the practice, supporters of a federal ban succeeded in getting legislation through Congress.[37] Opponents of these efforts to criminalize the practice argue that it is a cultural rite no worse than the American procedures of liposuction, rhinoplasty, and breast augmentation, "morally on a par with practices of dieting and body shaping in American Culture."[38] For these cultural relativists, the criminalization of female genital mutilation is hypocritical, given both the obsessive focus on the ideal body image in American culture *and* the epidemic levels of violence against children in the United States. Before condemning the custom of female circumcision and "exoticizing" it, they argue, Americans must be prepared to be critical of comparable practices in American society and show greater commitment to safeguarding *all* children.[39]

Child Brides

Another case that caused a flurry of media attention arose in Nebraska in 1996, when the Iraqi father of two young girls, who were then thirteen and fourteen years old, was charged with child abuse because he arranged marriages for his daughters. Reported in the *New York Times*, the case of the "forced" marriages met with public consternation because the girls were married to two Iraqi immigrants "more than twice their age," who then took the "brides" home and "consummated the marriages."[40] The *Times* coverage highlighted the legal and cultural complexity of cases, such as this one, that pose the dilemma about how to prosecute "when religious traditions become criminal offenses." The accused were charged with and convicted of statutory rape and child abuse. At sentencing, the defendants argued that they had conformed to the norms of Islamic "culture" and therefore deserved leniency. Nine months after the arrests, the *New York Times* followed up the initial story by reporting that the two men "who married girls half their age in a ceremony arranged by the youngsters' Iraqi-born father" were sentenced to serve four to six years in prison for the crime of sexual assault of a child.[41] These news accounts consistently eroticized and exoticized the incident by emphasizing the difference in ages of the brides and bridegrooms and the "arranged" nature of the marriages, as well as the fact that the ceremony was presided over by a Muslim cleric. As in the case of female genital mutilation, the practices depicted here are without question a detriment to women's rights. Female genital mutilation and forced marriages position gender and religious tradition in tension. However, the generalizations about the "culture" with which these practices are associated are hegemonic in that they represent the deficits as culturally specific, rather than as the product

of gender and class power relations experienced by women across cultural boundaries. Media coverage of such occasions arouse the suspicions of many Muslims in the United States about American hypocrisy because of the selective attention paid to "Muslim" crimes that victimize women and children. As readily available as statistics are about sexual violence against women as well as children in the United States, most Americans still maintain that domestic abuse has social and psychological roots—except when it happens within the confines of an inferior "culture" such as Islam, when it is viewed as being congenital or culturally based.

Incest

In 1989 an Albanian Muslim-American named Sadri Krasniqi was arrested for allegedly molesting his four-year-old daughter in front of hundreds of people in a crowded gymnasium in suburban Dallas, Texas. Krasniqi admitted to having placed his daughter on his lap and reaching under her skirt to "fondle" her through her underpants as they watched Krasniqi's son compete in a martial arts tournament.[42] Horrified onlookers who watched the father caress his daughter alerted security officers, who in turn called the police. In his turn, Krasniqi was horrified upon his arrest to learn of the nature of the charges against him and that his two children were being removed from their family home and placed in foster care. The case against Krasniqi proceeded in two stages: a criminal trial and a civil trial. The civil trial to determine the custody of the two children resolved much earlier than the criminal trial. In April 1990, a jury ruled that Mr. and Mrs. Krasniqi's parental rights would be terminated and that the children, ages five and eleven, would be adopted by Christian parents.[43] Mr. Krasniqi was acquitted of criminal charges in February 1994. Witnesses at the criminal trial, including medical doctors, psychologists, and an anthropologist, testified that there was no physical evidence of sexual abuse of Krasniqi's daughter and that the case was one of cultural and religious misunderstanding. The "cultural defense" in this case argued that, while adult touching of children is considered suspect in the United States, where pedophilia is criminalized, it is common in Albania, where sexual molestation of children is "unthinkable." The assumptions are that Albanian cultural norms do not constitute "touching" of children as a sexual or inappropriate practice and that "touching" does not lead to other acts that are constituted as molestation. While successful in winning an acquittal in the criminal trial, none of this kind of testimony was raised in the earlier civil trial in juvenile court.

Upon his acquittal, Krasniqi fully expected to get his children back, but the termination of his parental rights and the adoption of his children were final and irreversible. Many Muslims in Texas and nationwide were angered by the adoption of Krasniqi's children by a Christian couple. In September 1995, Muslim protesters rallied on the steps of the juvenile court, demanding a reversal of the civil court decision and an apology from Judge Hal Gaither, the judge who had presided over the children's case. In a letter to the editor, published in the *Dallas Morning News*, Judge Gaither said that he could not apologize for what had happened in his courtroom, that no legal authority can overturn a jury verdict, and that Krasniqi's defense was based on the offensive assertion that "molesting young girls is acceptable in Muslim culture."[44] In effect, the juvenile court judge had understood—and rejected as relativistic—the defendant's argument that sexual crimes are cultural and relativistic. Moreover, the defense strategy of trying to mitigate Krasniqi's culpability generalized from the specific case of one man of Albanian birth to allow for the possibility that Albanian culture generically allows for the sexual abuse of children. Finally, in his letter to the editor, the judge characterized the defense as an argument that summed up the idiosyncrasy not of one man nor of Albanian "culture" but of the entire Muslim world. The legal defense implied generalizations about the world's substantial Muslim population (estimated at one billion) on the basis the actions of one man precisely because the dominant discourses about Islam make such an account seem credible. The generalizations validate core images of Islam and Muslims already structured by law.

In summarizing the process in which legal Orientalism is reproduced in judicial decisions, I want to return to the privileging of particular constructions of Islam with which I began. When Judge Duffy attempted to extract and salvage the "true" meaning of Islam from the motivations of the criminal suspects in the World Trade Center bombing, he quite possibly felt he was only doing what was expected of him as a fair and impartial officer of the court. Yet when a particular interpretation of "culture" is associated with the authority of the state, what is the excess? Or, to put it slightly differently, as Dennis Porter asks, "What happens when [a jurist] encodes atomized features of an alien culture into the linguistic codes and conventions of narrative forms of a culture of reference?"[45] Are there social impacts of these textual representations of Islam? The jurist cannot step outside the discursive formation in which she or he has encoded that, for instance, compulsion in the name of religion is never permitted by the "true" worship of Allah or that the Qur'an requires men to wear facial hair.

Yet the hegemony of the law is never complete. Like most languages, the law is an open-textured system of communication, amenable to differences in interpretation. People can disagree over its meaning in given contexts; thus, the law becomes an arena of ideological contest. People grasp the vocabulary of this system of communication and sometimes wield it as a means of resistance, either rejecting the ideology of law completely or overtly challenging it.[46] Moreover, if we assume, as critical discourse analysts would have it, that texts have the power to constrain readers' interpretations because words are not neutral, then it is crucial that we try to understand the social meanings of texts.[47] My goal here has been to provide a description and critique of the textual strategies used to make representations of Islam in American law appear to be common-sense, apolitical statements, to be "taken-for-granted as the natural and received shape of the world."[48] In sum, the law provides both resources and constraints in terms of constructing narratives about Islam. The connection between the texts analyzed here and the politics of Muslim-American communities lies in the ways the law constitutes social relations, how it generates signs and symbols with which differences between the dominant society and minority groups within society are constructed and given meaning. Legal discourses are central to the hegemonic processes of governance, but they can also be a crucial resource in the construction of resistance, otherwise known as "counterhegemonic" discourses.[49]

A certain ambivalence toward Islam exists in judicial decisions and can be seen in an apparent willingness to credit Muslims with the moral high ground in some cases, but not in others. This raises doubts about the law's utility in the minds of many Muslims, and yet the rate of legal activism among Muslim communities continues to rise. Orga-

nizations such as the Council on American-Islamic Relations (CAIR) and the American Muslim Council (AMC) have been especially dedicated to documenting acts of discrimination, violence, and harassment against Muslims in the United States, and they devote some of their resources toward litigation. In 1997, a group of young Muslim lawyers in Chicago established a local, citywide Muslim Bar Association, which they say helps to serve the needs of their community and to promote the participation of Muslims in the American legal field. These organizations, with the exception of the Muslim Bar Association, tend not to view litigation as an exclusive means of promoting their goals. They are committed to other political tactics as well, such as lobbying Congress, holding press conferences, and enhancing public education about Muslims' presence, practices, and beliefs in the United States.

There is a connection between the emergence of legal strategies and key changes in demographics among Muslim communities in the United States. Muslims engaged in organizing advocacy groups, as well as those who are encouraged to file formal complaints of religious discrimination, tend to be young, often native-born Muslim Americans whose parents arrived in the United States from the late 1960s onward. This younger generation has been raised in a "civil rights" society and, while not entirely persuaded by the "myth of rights," demands more of the institutions of a democratic government than their parents' generation did. Rights are seen as more than mere abstractions; they are embedded within the social practices and relationships of the current generation. Groups such as CAIR, AMC, and others enact provisional closures around public representations of Islam and either counteract or elaborate them in order to project an identity politics beyond the reactive mode.

Liberal legalism posits that the law is central in establishing a liberal society organized so that each individual has a wide area of freedom in which to decide how to live. It presents an idealized understanding of American law in part by suggesting that political change is possible through litigation and by upholding those moments in which "law offers leverage to the relatively powerless" in society.[50] The framework of liberal legalism presents itself as the mechanism whereby certain values (e.g., equality under the law and the protection of life, liberty, and property) will be implemented. The representations of Islam that are found in judicial decisions may either become constraints on the promise of gaining positive rulings for Muslim litigants or be of sufficient complexity to present openings for a counterhegemonic discourse to develop. Perhaps more important, these representations being reproduced in the law may serve as a basis for challenge and contestation, leading us to reform the dichotomous structure of how we view Muslims' place in the new world order.

Notes

I am grateful to Professor Cynthia Lee, director, Women's Law Project, Mills College, and to John Strawson, a law lecturer at the University of East London, for their comments on an earlier draft of this essay. All mistakes are my own.

1. Excerpts from transcript of sentencing in *U.S. v. Ramzi Ahmed Yousef*, S12 93 CR 180 (KTD), 9, 12–14, and 18.

2. Ibid., 21–22, 23.

3. Yousef did not testify in his own defense. However, he did issue one statement to the press during his trial and granted an interview to an Arab newspaper in which he attacked American and Israeli policies and endorsed terrorism against the United States and Israel. However, he never claimed responsibility for the attacks for which he was prosecuted until his sentencing. See Benjamin Weiser, "Mastermind Gets Life for Bombing of Trade Center," *New York Times*, 9 Jan. 1998, sec. A, p. 1.

4. I emphasize the *re*-emergence of Islam as enemy because historically Islam played the same role in the formation of western (i.e., European) identity. Karim H. Karim ("The Historical Resilience of Primary Stereotypes: Core Images of the Muslim Other," in *The Language and Politics of Exclusion: Others in Discourse*, ed. Stephen Harold Riggins [Thousand Oaks, Calif.: Sage, 1997], 160) writes, "The *Reconquista* against Muslims who had occupied Spain, southern Italy, and Sicily, which required making common cause against the infidel Saracen, sharpened the sense of a European identity. The very consolidation of Western Christendom under the Holy Roman Empire and the papacy seems to have contributed to the rise of the Muslim as the primary Other."

5. Karim, "Historical Resilience of Primary Stereotypes," 166.

6. Ibid., 165.

7. Dennis Porter, "Orientalism and Its Problems," in *Colonial Discourse and Post-Colonial Theory: A Reader*, ed. Patrick Williams and Laura Chrisman (New York: Harvester Wheatsheaf, 1994), 150–61 (citation at 150).

8. Positive law consists of the legal *rule* laid down by the state and backed by state power, which may or may not have any connection with a moral or political foundation. "The essential feature of positivism is the view that there is no necessary connection between legal validity and moral defensibility." Mark J. Osiel, "Dialogue with Dictators: Judicial Resistance in Argentina and Brazil," *Law and Social Inquiry* 20, no. 2 (1995): 481–560, citation at 491.

9. National Public Radio coverage sensationalized the personalities of the judge and defendants in the World Trade Center trials, portraying the event as a series of skirmishes of global importance. NPR coverage represented Judge Duffy as a colorful, Pattonesque character, "irreverent, unpredictable, and not one to mince words," who had faced off with members of the Black Liberation Army and the Gambino crime family in previous trials ("All Things Considered," 20 Feb. 1998, Transcript # 98022013-212). NPR reported that, during his hour-long commute between his home and his office every day, the judge read books, including the Qur'an, from which he selected his text for Yousef's formal sentencing. In juxtaposition, the World Trade Center defendants remained all but nameless, unknown, and shadowy, menacing figures. Ramzi Yousef was repeatedly called the "mastermind," a word with a sinister connotation. The juxtaposition of the irascible but likeable figure of Duffy against the menacing bombers almost resembles a Hollywood script of a World War II movie.

10. For a similar point with regard to law use in the history of British colonialism, see John Strawson, "Islamic Law and English Texts," in *Law and Critique* 7 (1995): 21–38.

11. John Brigham shows that legal language is full of symbols generated by courts that influence how things get done. He writes, "by interpreting the authoritative concepts governing politics, the courts exert their greatest influence. By refining the language of politics they contribute to the association of what is possible with the authority of the state." *The Cult of the Court* (Philadelphia: Temple University Press, 1987), 196.

12. Michael King makes a similar point about representations of Islam in English cases in his essay, "The Muslim Identity in a Secular World," in *God's Law versus State Law: The Construction of an Islamic Identity in Western Europe*, ed. Michael King (London: Grey Seal, 1995), 91–114.

13. Strawson, "Islamic Law," 22.

14. Ibid., 28.

15. Ibid. See also John Strawson, Note, "Interpreting Oriental Cases: The Law of Alterity

in the Colonial Courtroom," *Harvard Law Review* 107 (1994): 1711–30. For an alternative point of view, see *Islam and Human Rights* (Boulder, Colo.: Westview Press, 1991), 10, where Professor Ann Mayer asserts that Edward Said's *Orientalism* "is not a concept developed for application to the field of law" (cited in Strawson, "Islamic Law and Legal Texts," 21). Rather, Mayer argues, this form of analysis is applicable only to literature, philosophy, and anthropology.

16. The Council on American-Islamic Relations (CAIR) monitors discrimination against Muslim Americans and annually publishes a report (e.g., *The Status of Muslim Civil Rights in the United States: Unveiling Prejudice* [Washington, D.C.: Council on American-Islamic Relations, 1997]) on efforts to defend Muslims' rights through legal activism. CAIR claims that the level of legal activism among Muslims in the United States is rising. See also Irshad Abdal-Haqq and Qadir Abdal-Haqq, "Community-Based Arbitration as a Vehicle for Implementing Islamic Law in the United States," *Journal of Islamic Law* (Spring/Summer 1996): 61–88.

17. Fundamental rights here are understood to be binding statements of duties to individuals, implied or explicit in the United States Constitution.

18. *Fraternal Order of Police (FOP) Newark v. City of Newark* (3rd Cir., No. 97-5542, decided 3 March 1999).

19. For exemption jurisprudence, see *Sherbert v. Verner*, 374 U.S. 398 (1963); *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Thomas v. Review Bd. Of Indiana Employment Div.*, 450 U.S. 708 (1981); *Bowen v. Roy*, 476 U.S. 693 (1986); and *Employment Div., Dep't. of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990). The *Smith* decision changed the legal landscape dramatically because the majority of the Court refused to apply the "strict scrutiny" standard in a case of free exercise of religion. ("The right to free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes [or prescribes] conduct that his religion prescribes [or proscribes]." *Smith*, 494 U.S. at 879.) However, the *Smith* holding does not apply in this case because the Newark police department already makes a secular exemption from the "no-beard" policy for medical reasons. The appellate court concludes that the officers are entitled to a religious exemption because the department already makes secular exemptions.

20. *Fraternal Order of Police (FOP) Newark v. City of Newark*, 3–4.

21. Ibid., 24 and 25.

22. Ibid., 19.

23. Ibid, 20.

24. King, "The Muslim Identity in a Secular World," 111.

25. Ibid., 108.

26. The word "culture" is bracketed in scare quotes in this text to highlight how contentious the word has become over the past decade. Once constructed in anthropological literature—and then disseminated at a more popular level by the print and electronic media—as a set of ahistorical and collective behavioral, moral, and aesthetic traits that represented a group of people that was integrated, stable, consensual, bounded, and distinctive, the concept of "culture" has been critically reinvented (Sally Engle Merry, "Law, Culture, and Cultural Appropriation," *Yale Journal of Law and the Humanities* 10 [1998]: 575–603). Cultures are now seen to represent "flexible repertoire[s] of practices and discourses created through historical processes of contestation over signs and meanings" (Merry 1998: 577). Particularly influential in leading this intense scrutiny of cultural forms and practices are the anthropologists James Clifford (*The Predicament of Culture* [Cambridge, Mass.: Harvard University Press, 1988]), and John Comaroff and Jean Comaroff (*From Revelation to Revolution* [Chicago: University of Chicago Press, 1991]). See also Steven Vertovec, "Multiculturalism, Culturalism and Public Incorporation," *Ethnic and Racial Studies* 19, 1 (Jan. 1996): 49–70.

27. Uma Narayan defines cultural essentialism as the problem of conflating the socially dominant norms held by dominant groups with the actual values and practices of a "culture." It

"equates the values, worldviews, and practices of some socially dominant groups with those of 'all members of the culture.'" ("Essence of Culture and a Sense of History: A Feminist Critique of Cultural Essentialism," *Hypatia* 13 [Spring 1998]: 87–106; citation at 89).

28. The case of Milo Lazarevic, Petitioner, v. Jan Fogelquist, Respondent. Supreme Court of New York, New York County, 175 Misc. 2d 343; 668 N.Y.S2d 320; 1997 N.Y. Misc. LEXIS 640 (decided 12 Dec. 1997). All quotes in the following are taken from this case.

29. In New York persons under the age of majority are afforded a guardian *ad litem*, or legal guardian, in judicial proceedings to represent their interests, which may differ or even be in direct conflict with the legal interests of their parents.

30. These liberties are founded on a social contract and codified law, as opposed to status and custom, the stuff of "primitive" modes of government, including Saudi Arabia's. For a discussion of this in relation to the colonization of South Africa, see John Comaroff, "The Discourse of Rights in Colonial South Africa: Subjectivity, Sovereignty, Modernity," in *Identities, Politics, and Rights*, ed. A. Sarat and T. R. Kearns (Ann Arbor: University of Michigan Press, 1998), 193–236. The court here is appealed to as the guarantor of individual liberties, and the question implied by Mr. Lazarevic's argument about sacrificing these constitutionally protected liberties is this: once the rights-bearing citizen moves outside the nation-state's jurisdiction, do these rights continue to exist?

31. Edward Said, *Orientalism* (Harmondsworth: Penguin, 1978).

32. The cultural defense holds that people who are socialized in a minority or foreign culture, who conduct themselves in compliance with their own cultural norms, ought *not* to be held fully legally accountable for conduct that conforms to the proscriptions and prescriptions of their own culture. There is a tension between the demands placed on the legal system by the increasing diversity of the American population for greater sensitivity to "multiculturalism" on the one hand and the "core American values" of protecting the liberty interests of women and children on the other. See Leti Volpp, "(Mis)Identifying Culture: Asian Women and the 'Cultural Defense'" *Harvard Women's Law Journal* 17, no. 57 (1994), in which she argues that cultural evidence is often used in ways that harm women; and Doriane Lambelet Coleman's response to and critique of Volpp's article, in "Individualizing Justice through Multiculturalism: The Liberals' Dilemma," *Columbia Law Review* 96 (1996): 1093–67 (citation at 1093).

33. Cited in Thom Mrozek, "Manslaughter Verdict Sought in Slaying; Courts: Judge Reduces Murder Charges against Iranian Immigrant in Wife's Death." *Los Angeles Times*, 10 March 1994, Metro section, Part B, p. 5. The promise of a tale of a "vastly different" culture exoticizes the defendant's world through legal argumentation and cultural evidence.

34. The point of a "cultural defense" strategy is to have the sentence reduced, as happened here, not necessarily to get the criminal defendant acquitted of his crime. The defense is a legal strategy raised by defendants to mitigate their responsibility for criminal behavior on the basis of an impaired mental state. For information about this case, see Thom Mrozek, "Manslaughter Verdict Sought in Slaying"; and Mrozek, "Husband Gets 11-Year Term for Killing Wife," *Los Angeles Times*, 30 April 1994, Metro, Part B, p. 4. See also Margot Slade, "At the Bar," *New York Times*, 20 May 1994, sec. B, p. 20.

35. Although the practice of female circumcision is most prevalent among Muslims in Africa, it is important to note that it is not the practice of a single culture ot group. It is also practiced by some Christians and by followers of traditional African religions. The origins are not entirely known, but scholars believe female circumcision to have started "in Egypt or the Horn of Africa more then 2,000 years ago, before the advent of Christianity or Islam." Celia W. Dugger, "Rite of Anguish: A Special Report; Genital Ritual Is Unyielding in Africa," *New York Times*, 5 Oct. 1996, sec. 1, p. 1.

36. According to an article in the *Atlanta Journal and Constitution*, the ritual cutting of female genitals has been a time-honored custom in more than twenty central African countries, Yemen, and Oman and among Muslim populations in Malaysia and Indonesia. Some persons argue that

progress in getting the practice banned in the United States is slow because of the intensely personal and private nature of the custom. "Many immigrants reject what they see as Western interference in a highly private matter." There is no consensus that the practice is prescribed by Islam. In the *Atlanta Journal and Constitution* article, a Somali woman is quoted as saying that she would not have her five-year-old daughter cut because "she learned that Islam did not require it." All quotes from Jane Hansen and Deborah Scroggins, "Female Circumcision: U.S., Georgia Forced to Face Medical, Legal Issues," *Atlanta Journal and Constitution*, 15 Nov. 1992, sec. A, p. 1.

37. A federal ban on female genital mutilation passed on September 30, 1996. The law requires that federal authorities inform new immigrants from countries where female genital mutilation is commonly practiced that *parents* who arrange the excision of their daughters, as well as those who perform the excision in the United States, face a penalty of up to five years in prison. Additionally, the law requires U.S. representatives to the World Bank and other financial institutions to oppose loans to governments in African countries where the practice of genital mutilation persists, unless these governments can prove they have instituted educational programs designed to eradicate the practice. See Celia W. Dugger, "New Law Bans Genital Cutting in the United States," *New York Times*, 12 Oct. 1996 sec. 1, p. 1.

38. Martha C. Nussbaum, *Sex and Social Justice* (New York: Oxford University Press, 1999), 121. Nussbaum is critical of the cultural pluralists' position, and suggests that American feminists have devoted "considerably more attention to these problems [of dieting and body shaping] than to genital mutilation" (122).

39. Hansen and Scroggins, "Female Circumcision: U.S., Georgia Forced to Face Medical, Legal Issues."

40. Don Terry, "Cultural Tradition and Law Collide in Middle America," *New York Times*, 2 Dec. 1996, p. 17.

41. "National News Briefs: Prison Terms for 2 Men in Marrying Young Girls," *New York Times*, 24 Sept. 1997, sec. 2, p. 14.

42. Jim Schultze, "Albanian Cleared of Crime But Loses Kids Anyway; Clash of Culture Catches Couple," *Houston Chronicle*, 17 Sept. 1995, p. 1. All information and quotes in this paragraph are taken from this article.

43. According to Mrs. Krasniqi, after they were removed from her custody the children began to wear crucifixes around their necks and T-shirts with sayings about Jesus on the front, and they ate pork, a meat forbidden in Islam.

44. Judge Hal Gaither, "I Cannot Apologize but Others Should," Letter to the Editor, *Dallas Morning News*, 21 Sept. 1995, cited in Farah Sultana Brelvi, "'News of the Weird': Specious Normativity and the Problem of the Cultural Defense," *Columbia Human Rights Law Review* 28, no. 3 (Spring 1997): 657.

45. Porter, "Orientalism and its Problems," 150.

46. Susan M. Olson and Christina Batjer, "Competing Narratives in a Judicial Retention Election: Feminism versus Judicial Independence," *Law and Society Review* 33 (1999): 123–60; citation at 125.

47. Stephen Harold Riggins, "The Rhetoric of Othering," in *The Language and Politics of Exclusion: Others in Discourse*, ed. Stephen Harold Riggins (Thousand Oaks, Calif.: Sage, 1997), 3.

48. Patricia Ewick and Susan Silbey, "Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative," *Law and Society Review* 29, no. 10 (1995): 195–226; citation at 212.

49. See Sally Engle Merry, "Law, Culture and Cultural Appropriation," 578, where she writes, "[c]ultural forms construct hegemonic understandings as well as the counterhegemonies that challenge these understandings." See also Comaroff and Comaroff, *From Revelation to Revolution*.

50. Richard Abel, "Speaking Law to Power: Occasions for Cause Lawyering," in *Cause Lawyering: Political Commitments and Professional Responsibilities*, ed. Austin Sarat and Stuart Scheingold (New York: Oxford University Press, 1998), 69.

13

Interface between Community and State: U.S. Policy toward the Islamists

Mamoun Fandy

United States policy toward Islamists cannot be seen in isolation. It is part of a larger U.S. foreign policy in relation to the Middle East. In the past, the cornerstone of this policy was the need to protect the flow of oil from the Middle East at a reasonable price, to ensure the security of Israel, and to fight communism. In a world dominated by the mediated images of CNN, Muslims all over the globe are informed not only by what they themselves write but by what is written about them. In this interactive global moment, U.S. policy toward the Islamists abroad and the reaction to that policy shape Muslim views in the West and about the West. The issues are not defined in a unidirectional relationship. Muslims abroad define issues at home, and issues in the Muslim world define the attitudes of Muslims in the West. Thus, it is no longer useful analytically, except for manageability of research, to make a clearcut demarcation between Muslims in the West and Muslims in *Darul Islam* (the house of Islam) locally defined. With the collapse of the communist bloc, the priorities of U.S. policy in the region shifted; while oil issues and Israeli security remain central concerns of American policymakers, fears of Soviet expansion have been replaced by a preoccupation with other sources of global threat and regional instability. In an effort to counter these new threats and to safeguard American interests, the U.S. administration has promoted various regional initiatives. As delineated by Robert Pelletreau, former Assistant Secretary for Near Eastern Affairs, these include "a just and lasting peace between Israel and its Arab neighbors, Israel's security and well-being, a security framework in the Gulf that assures access to its energy resources upon which we and other industrial nations continue to be dependent, non-proliferation of weapons of mass destruction, control of destabilizing arms transfers, promotion of political participation, and respect for basic human rights, ending state-supported and other forms of terrorism, promotion of economic and social development through privatization and market economies, [and] encouragement of American business and investment opportunities."[1] Although this exhaustive list appears to encompass a justifiable if ambitious set of initiatives, the way in which they are prioritized and implemented bears significantly on their true implications for the peoples and governments of the Middle East.

Considered within the context of policy implementation, the principles embodied in these initiatives are not uniformly applied. The United States identifies certain state and nonstate actors in the region as partners and friends, while singling out others as