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## Legal Cultures in Muslim Societies

### Current Trends in the Muslim World (Part 2)





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## Editor's Note: Our National Conversation

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Since 9/11, scholars and others have turned their attention to a previously underappreciated area of study – the rule of law and legal systems in Muslim societies. Much valuable attention has been given to identifying the questions that best describe the field and point the way towards further study. In the coming years, the United States will continue to engage with political systems and legal cultures that seem at times far removed from our own, just as others will need to look more deeply into Western democratic structures of governance, public policy and accountability. The next administration will need to approach the Middle East and the greater Muslim world with a thirst for knowledge and an eye for nuance if it is to inspire and craft thoughtful and productive ways forward. All of us – leaders, policymakers, lawyers, scholars, journalists and citizens – now face the challenge of encouraging a dialogue that is informed and sophisticated, yet helpful to real-time discussions of the nation's foreign policy agenda.

Thanks to a generous grant from the Carnegie Corporation of New York, the Center on Law and Security hosted a four-part conversation on the topic of “Legal Cultures in Muslim Societies.” Containing the highlights of those four discussions, this publication provides a succinct and provocative digest of many of the major legal and cultural issues that must be understood, if not reconciled, in the endeavor to create peaceful and respectful alliances between the U.S. and the Muslim world. Among the questions our panelists – Reza Aslan, Nathan Brown, Noah Feldman, Toby Craig Jones, Ricardo René Larémont and Vali Nasr –discussed were: Is Shariah law compatible with democratic institutions and international human rights expectations? Can it serve as the basis for systems of government and the rule of law? Is it in fact possible to consider Shariah in the abstract or is it inextricably intertwined with the politics of the countries that rely upon it to varying extents? Participants looked at these general questions as well as at specific countries – including Saudi Arabia, Iran and Nigeria – and at topics such as women's rights, constitutional issues and the role of the judiciary.

Our goal was to provide a point of constructive intellectual departure for the many voices in this conversation, and thus to begin to assess the shared and varying frameworks, priorities, value systems and legal tenets involved. We hope that the conversations presented herein will be considered not as conclusive and self-contained but rather as a starting point for continued dialogue as we progress into the next era of American relationships around the globe.

Karen J. Greenberg,

A handwritten signature in black ink, appearing to read "Karen J. Greenberg".

Executive Director, Center on Law and Security

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Session One: November 16, 2007

# The Rule of Law and Muslim Societies: An Overview



Prof. Noah Feldman, Karen J. Greenberg, Prof. Nathan Brown. Photo by Dan Creighton

**Panelists:** Prof. Nathan Brown,  
Prof. Noah Feldman

**Moderator:** Karen J. Greenberg

**Karen J. Greenberg:**

I would like to thank the Carnegie Corporation for funding this entire series, which promises to question the interaction between Muslim societies and the rule of law as we understand it in the West. We would like to inspire the scholars who think about countries in the Middle East and around the world, and who try to combine constitutional law and Shariah law, to begin to think in new ways that will have an impact on both the policy and intellectual worlds.

Our speakers today know very different parts of the Middle East, but both of them have had to grapple, theoretically and practically, with what it means to transform from a society with a legal culture very different from ours to one that, at least in conversation, has democratic structures of law and the judiciary as we know them.

**Prof. Nathan Brown:**

I am not a specialist in Islamic law, but what I am interested in and try to focus on is how the Muslim societies that I know best,

which are in the Arab world, grapple with issues of law – what it is that law does, how it *should* operate, and how it *does* operate.

I will make two bald statements to lead things off, and then back off on them a little bit. The first is that when you are dealing with the Arab world you are not dealing with an Islamic legal tradition. The second is that there is a strong consensus on exactly how to apply Islamic law in the modern era. Both statements are extremely general, and also false, but truer than you might think.

Of course there is an Islamic legal tradition. It is more than 1,000 years old and informs not simply the law as it operates but also intellectual public discourse in all kinds of ways. There are those who say that the Islamic legal tradition was so thoroughly transformed by changes in the modern era that it essentially died 100 or 200 years ago. I do not subscribe to that view. That is not what I mean when I say that you are not dealing with an Islamic legal tradition.

Instead, what I mean is that in most societies in the Arab world, with a few exceptions, the bulk of the legal system is imported from France. It is a civil law tradition. If a legal practitioner from the United States talked to a legal practitioner from the Arab world, when they came to a strong clash of cultures they would be best served by calling in a French mediator or translator. The Islamic legal tradition is very much intellectually alive, but the law as it is actually practiced owes far more to a civil law tradition.

The second statement, the claim about the consensus on what the Islamic tradition means or how it should be applied, is also overly bald, and therefore false, but it does contain some truth. Arab constitutional texts generally have some kind of provision not only making Islam the official religion (which is not controversial in most societies in the Arab world) but also giving that language some meaning by decreeing that the principles of Islamic Shariah have a role in legislation. That is an extremely vague formulation. A fairly broad spectrum of people – from essentially secularly trained



judges on Egypt's supreme constitutional court to the Muslim Brotherhood, for instance – would agree that it does not mean that all laws have to be derived from the Islamic legal tradition, nor that the understanding of provisions of the Islamic legal tradition have to be codified, literally, into current law, but that matters on which the Islamic legal tradition is clear and definitive have to be respected by the state. Any law or legal text – whether it is a decree by a minister or the president or a parliamentarily approved piece of legislation – cannot contradict anything that is authentic and certain in the Islamic Shariah.

In a sense, that sets some boundaries on the legal order. It uses Islamic law in a meta-constitutional way. That is not the way that Islamic law was originally practiced or understood, which is why the people find the Islamic legal tradition to have been thoroughly transformed so that it is no longer recognizable as the classical tradition, but it is something that gets surprisingly widespread acceptance from parts of societies that are far more secular and those that are deemed so Islamist that they are a security threat.

### Prof. Noah Feldman:

I am going to make three points that grow out of a book project that I am working on. The first is that the transplantation of civil law that Nathan was talking about was a failure. The civil law tradition failed to produce an effective system devoted to the rule of law in the majority of Muslim countries. That is a crucial fact with which we need to begin.

That is not to say there aren't some judges who try their best or there aren't some lawyers who want to stand up and insist upon the rule of law. Of course, if you were to expand beyond the Arabic-speaking countries where the civil law traditions prevailed and include Pakistan, you would see a perfect example of what I am describing. There is a legal class in Pakistan standing up and insisting upon the rule of law, for which they deserve enormous credit, and it is not doing them much good. They are still in prison; they are still under house arrest. That is a perfect example of the failure of the rule of law. It is not quite the story of transplantation, because Pakistan inherited an English colonial tradition, but nevertheless it is symptomatic of the kinds of failures that we see elsewhere in the Muslim world. So that is my first point – failure.



Prof. Bernard Haykel. Photo by Dan Creighton

Second, why did this failure happen? I think it is because this transplantation effectively eliminated the central legal institution that had shaped the rule of law as it had existed in Islamic societies for most of the previous millennium – the institution known, roughly speaking, as “the scholars.” They were the people who were in charge of the content of the law. As in a common law tradition, they did not say they made the law but rather that they found it (because it was, of course, God's law). But just as with a common law tradition, an outsider would say that it looked an awful lot like the scholars were making the law.

The key point is that the scholars were in charge of the law and that the ruler, the executive, was not. That meant that the scholars had a practical mechanism for constraining the ruler when he threatened to violate the rule of law. The ruler could do many things that they allowed him to do. The scholars obviously had to be prepared to offer latitude in a wide range of areas but they nevertheless sustained a rule of law system. Instead of asking what went wrong in the first thousand years of Islamic legal tradition, the relevant question is what went right. What went right for all that time is that there was a constitutional structure in which the executive was counterbalanced by an institutional group of people who controlled the law and therefore ensured that the rule of law applied.

You might ask why we should care about this history. The answer is my third point – in the face of failure of the transplantation of civil law in the previous century, there are now people in the Muslim world (I would describe them statistically as most people, and in some cases almost everybody) who believe that a legal system in which the Shariah plays a central role is going to be a key part of the solution to the problem of the failure of the rule of law.

The reason for the failure, I want to suggest, is that the transplantation occurred through

a process in which the executive essentially appointed judges and lawyers and made the practice of lawmaking into a state function, which historically it had not been.

It is entirely possible to have the rule of law in places where lawmaking is a state function. It just so happens that in the classic Islamic tradition the scholars who made the law were *not* a state apparatus. They were outside the state in important ways. When they were removed and replaced by judges and lawyers, who saw themselves as working for the state, there was no force that was capable of counterbalancing the executive. In Nathan Brown's very important book on the Egyptian judiciary and the rule of law, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf*, he makes the argument, which I think is completely correct, that the legal and judicial system in Egypt was designed and seen by its participants to be the expansion of state authority over society. You are very unlikely to get the rule of law when you have a system like that. It is not impossible but it is very unlikely.

In Egypt, 66 percent of people polled say that they favor Shariah being the *only* source of law and almost 30 percent say they favor Shariah becoming *a* source of law. In Pakistan, the same number is 60 percent. In Jordan, it is 56 percent. The people saying this have in their minds that historically their countries did have the rule of law, and they associate the rule of law with the Shariah. That is the most important point that I am going to make.

When people vote for those political parties, when people tell the pollsters that they favor such an enormous role for Islamic law – as in the only source of law – we need to see clearly, as we do not now, that these Islamists are focused on the idea that the Shariah itself is capable of somehow restoring the rule of law to their societies. It is not just a random group of people, it is almost everybody.

Are they right? Assuming that the motivation for the support for these political parties and for the desire for a return to the Shariah is to a great extent the idea that you can establish the rule of law through it, is that idea accurate? It is very unlikely but there is a possibility. I would like to be somewhat optimistic about it, but as someone whose previous five years have been spent working in a constitutional process in which things have not worked out so well (and Nathan may share some of my feelings, having been deeply involved in the

Palestinian constitutional process) I am less optimistic than I wish that I were.

The success of the classical Islamic legal tradition in establishing a rule of law was not due to the fact that the system itself was somehow inherently superior. It was due to the fact that it was a system in which there was a group of people who could counterbalance the executive. It mattered that everyone believed that those people spoke on behalf of God, which is partly how they counterbalanced the executive. Nevertheless, if you were to incorporate the substantive rules of the Shariah into government today without reviving the class of people who actually implemented it you would be very unlikely to get the kind of balance that made the classical Shariah state successful.

That is the key problem. When the Islamist parties say that they want Shariah, what they mean is a democratized Shariah, one where the legislature passes laws infused by democracy, and a constitutionalized Shariah, which is to say a constitutional court or a similar judicial review body that tells the legislature whether it has violated principles of Islam in passing its laws (just as Nathan described). These are new institutional forms of the Shariah. In theory, they could succeed in becoming new institutional counterbalances to the executive, but only if they develop into effective institutions. We have no guarantee that they would, and merely saying the word “Shariah” or implementing the substantive rules of the Shariah is not necessarily going to get us there.

#### **Karen J. Greenberg:**

How much is this conversation taking place within these Muslim societies, and how much of it is laden with the fact that there is a Western agenda attached to some of it?

#### **Prof. Nathan Brown:**

There certainly is a Western agenda and it is not recent in origin. If you look at the classics of modern Western political thought, when they are looking for a foil, the kind of system that they do *not* mean by “rule of law,” they point to the Middle East – the Ottoman Empire, Persia, and later on to the Arab world.

I agree with Noah about the tremendous appeal of the Shariah. There are very active debates within these societies. Yes, they are aware of the external interest, but the internal debates are very lively. In a sense, what has happened over the last 100 years or so

is that the scholarly tradition has been under attack not only because the actions of states have impinged on formerly scholarly domains but also because of the tremendous democratizing trends within many societies in the Muslim world. Essentially what has happened is that all sorts of people who do not necessarily have advanced scholarly or legal training are getting involved in the debates.

The kinds of issues that we are referring to here are ones that resonate very broadly. If you look at newspapers, magazines, or journals in these societies, or even if you watch talk shows, there are very lively discussions about these issues.

#### **Prof. Noah Feldman:**

Nathan is quite right. If you look at the platforms of the mainstream Islamist political parties associated with the Muslim Brotherhood, rule of law is high on their platform lists without exception. Of course, the first thing on their lists is implementation of the Shariah, but then they actually also use the term “rule of law.”

There are two case studies we need to mention that are different from the places that Nathan and I have been talking about thus far – different in that in these two places the classical Islamic law tradition is very much alive and well. They are Saudi Arabia and Iran, in different ways. They are interesting for what they show and what they do not.

In Saudi Arabia, which is the only country in the Muslim world today that purports to follow the classical, medieval Islamic legal tradition (I am not saying that it does, but it purports to), the scholars actually do balance the executive to a remarkable degree. There is distortion by virtue of the oil wealth that enables the royal family to exercise an influence over society generally, including the legal scholars, to a greater extent than any pre-modern state anywhere was ever able to exercise. That is a distorting force that I think helps explain why the Saudi system looks a bit like the traditional system through a funhouse mirror. But you do see a society where the executive, the king, often wants to do things that he just cannot because the scholars would disapprove. He is constrained, in part, because the classical Islamic legal system remains in place. That is also proof that the introduction of the classical model is not going to be a panacea. One does not want the world to end up looking like Saudi Arabia.

Iran is another strange phenomenon. In

Iran, the scholarly class that controlled the law did something in the 1979 revolution that had never even been imagined, I think it is fair to say, in the previous millennium of Islamic legal tradition – they actually displaced the executive completely and *became* the executive, so that the supreme leader in Iran is himself a scholar, a cleric.

The message is again that the Shariah itself is not the solution. Here you have a system that is run according to a kind of Shariah vision by the scholars, but they are not counterbalanced by anybody either because there is no alternative to *them*. They dominate the entire society and block the legislature or judiciary from becoming a counterbalance. That shows you that when you put someone in absolute power you will not have an effective rule of law system emerging, even if the people in power claim that their whole legitimacy derives from their knowledge of the legal tradition.

#### **Karen J. Greenberg:**

I would like to ask a little bit about content as opposed to structure. One of the important issues about Shariah law is what it regulates – personal life, human rights, and many things having to do with the agenda and the concerns of the international, if not in-country, human rights community. How do you see the relationship between the process you have described in terms of its structural possibilities and content, and what it means in terms of tolerance, civil rights, and human rights?

#### **Prof. Nathan Brown:**

The claim that I made about the civil law tradition prevailing in most countries in the Arab world holds true, but the one area most deeply influenced still by the classical tradition of Shariah law is personal status law. It is virtually beyond controversy in most countries that personal status law is to draw from the traditions of the Islamic Shariah. Only occasionally will you hear a murmur of people calling for a completely civil personal status code. Marriage, divorce, birth, inheritance – these are areas of law which are expected to be informed by the classical Islamic legal tradition. That said, the apparent consensus masks a variety of ways in which that can be done. It can be done, as it is still done in a few places, through the same kinds of traditional courts that have always existed. But many, and probably most, countries have tried to incorporate personal status into their regular court system. And they have tried to take

away the monopoly over interpreting the Shariah by codifying the law themselves. It can be codified for some groups and not for others. In Kuwait, the law is codified for Sunnis but not for Shia.

This is the last preserve of Islamic law and the idea that it has to be replaced by a completely civil law system that takes no account of a person's religious identity in the most intimate spheres of life has very little resonance in the region. But for reform *within* that tradition there is a fairly large menu of choices, both about the substantive law and the court systems by which it would be implemented. You see tremendous variety within the Muslim world and tremendous debates within these societies over personal status law. The debates are carried out with the assumption that whatever reforms or changes are brought about will still be within the bounds of the Islamic legal tradition.

**Prof. Noah Feldman:**

There are three areas where I think this is most relevant: sex equality, religious toleration, and corporal punishments. My answer assumes that the Islamist political parties that are advocating for Shariah successfully come to power in one way or another and actually are able to govern.

You are unlikely to see the rhetoric of the international human rights community criticizing sex inequality, religious intolerance, or corporal punishment having direct and immediate effects on what Islamists say is the content of Islamic law. Part of the appeal of this tradition is that it is autochthonous, it is local, so saying that we need to change the Islamic law so that it reflects Western values – a strategy that some people tried 100 years ago – has never attracted any takers. On the other hand, it is entirely likely that the people who make these legal decisions will be influenced, subconsciously or consciously, by the desire to conform to international human rights norms and will engage in interpretive strategies in these three areas that are likely to lead to liberalization.

On the question of sex equality, it is already the case that the platforms of the Islamist political parties all declare that men and women are fully equal. They all support both men and women voting. Regarding family law determinations, they are on a few issues constrained by classical Islamic legal rules that, for example, make it easier for a man than for a woman to initiate a divorce, but they are showing signs

of being open to what might be described as administrative regulations enacted outside of the classical Islamic law that essentially equalize the playing field.



**“When people tell the pollsters that they favor such an enormous role for Islamic law – as in the only source of law – we need to see clearly, as we do not now, that these Islamists are focused on the idea that the Shariah itself is capable of somehow restoring the rule of law to their societies.”**

**– Prof. Noah Feldman**

In respect to religious toleration, there was much Islamist literature 20 years ago about whether and how non-Muslims could be equal citizens in an Islamic state. Some were saying that it could never happen; others were saying that it could and were enumerating the ways. The views of those who said it could happen have become the standard in the writings and the political platforms of the Islamists. That does not mean that every Islamist political party would instantiate this in office; I am not making an optimistic claim like that. What I am saying is that you can chart the progress on the question of religious toleration, at least at the ideological level, over the previous 20 years and the trend is very much in the direction of compliance with international human rights norms.

With regard to the issue of corporal punishments, the classical Islamic law always set certain punishments very high because the degree of proof required first was also extraordinarily high. Stoning could only be used as punishment for adultery if four adult males of good character witnessed the adultery, an unusual circumstance. Implementation of these punishments in the classical world was always unusual. The same holds for the English common law,

which prescribed the death penalty for any theft, even of something of little value. The theory behind structuring a legal system in such a way is that there should be a strong disincentive to violate the law if enforcement is difficult.

The Islamic legal tradition has never created a circumstance in which these harsh punishments are required to be applied. One possibility is that they will simply slowly fade. A more intriguing interpretative possibility comes from people within the Islamic legal tradition today. The Shia especially are coming up with creative interpretations that change the game plan; it remains to be seen whether it will influence the Sunnis. To continue with the example of stoning, the Qur'an itself does not prescribe stoning for adultery. There is reason to think that the later adoption of stoning is based on the reception of a biblical and Talmudic Jewish law tradition where stoning is, in fact, the obligatory punishment for adultery. There are now some scholars in the Shia world coming up with creative interpretative moves and trying to essentially say that this practice may always have been based on a misinterpretation of certain aspects of the Islamic legal tradition. Such an interpretation would not be accepted in the Islamic universities in Riyadh today, because it is too deviant from the mainstream interpretation, but serious people are saying it at home in Iran. It is an interesting phenomenon.

**Karen J. Greenberg:**

What does that mean for people in the West thinking about the legal systems and the legal cultures within these countries? Does it mean that we should sit back and let them take the course that they are taking because that course has an internal sense to it? Does it mean that in the best of all possible worlds we should somehow be invested in the conversation for whatever reason, either to help them or to help us? Or should we just stay out?

**Prof. Noah Feldman:**

I have a strongly held policy view that grows out of my practical experience seeing everything we do badly in Iraq. We are extraordinarily bad at remaking from scratch. We are good at destroying everything before we begin the process of rebuilding. What we are worst at, and what we need to be best at, is strengthening domestic institutions that show vitality and interest in accomplishing things like the



rule of law. The rule of law is a good example because it is definitely not thought of as an American value.


Pakistan is an illustration. The U.S. government's policy towards Pakistan is very mistaken. There is a domestic constituency there that is not even Islamist. The lawyers and Supreme Court justices in Pakistan are a relatively secular group. They are as secular in Pakistan now as they were in Egypt 30 or 40 years ago, but they will not remain similarly secular if we continue to sell them out as we have.

They are standing up, protesting, and being arrested. This has not happened only in the past few weeks but rather has been going on for the better part of a year. We had a perfect opportunity and there are things that can be done. Institutions can be strengthened from abroad simply by saying to Musharraf, our client, "Do what you need to do in the North-West Frontier Province vis-à-vis terrorism, but *don't* suspend the Constitution; *don't* depose the chief justice, twice; and *don't* arrest every lawyer and human rights activist in the entire country and claim that you need to in order to have democratic elections in a few months." There is something ironically telling about this. I am outraged by it.

The Bush administration has pushed hard for elections. This comes from the president himself; it is not just a neoconservative position. It is the president's own view. He thinks elections are tremendously important as markers of democratization. They are significant, I do not want to act as though they are not, but Musharraf has made a mockery of it by telling the world that he is going to shut down the legal system and the most vibrant civil society institution in order to serve the needs of the election. That is outrageous even by dictatorial standards. There are things that the United States could be doing substantially that we are not.

As a caveat, I fully support training sessions that bring lawyers and judges together to understand the significance of the rule of law and to help strengthen them as institutions. But, in the end, the sessions alone are unlikely to strengthen the role of the judiciary in a country where it has no traction structurally. I am not saying that the conferences should not be held, but do not think that a conference or rule of law strengthening program is going to do much work under such circumstances. You need an actual domestic constituency.

That is why I think that the Islamists



## Ulama

Religious scholars educated in a traditional manner (the singular form is alim).

**Sources:**  
John Esposito, ed., *The Oxford Dictionary of Islam* (Oxford University Press, 2003)  
Hans Wehr, *Arabic-English Dictionary* (Spoken Language Services, 1994)

offer the most promise of all of the unpromising options. They have a huge domestic constituency that believes in the rule of law. With that going for you, it is not totally implausible to talk to the leadership about ways of making the rule of law more concrete.

### Excerpts from the Question and Answer Session:

#### Karen J. Greenberg:

Professor Haykel, could I please ask you to address some of these issues, particularly about the role of Shariah and the balance of powers in Saudi Arabia?

#### Prof. Bernard Haykel

(from the audience):

I agree with virtually everything that Noah and Nathan have said, including Noah's note of pessimism with respect to a Shariah system being implemented today. I would like to talk a little bit more about the informal aspects of politics that have been hinted at.

The pre-modern period of Islam should not be overly romanticized. The *ulama* – the scholars of Islam – did constrain the executive but the constraint often took informal forms. When it did take place it was in the form of private advice. Open politics, debate, and discussion, especially oppositional politics, rarely took place. Nor was there an acknowledgement by the members of the community of the distinction between a majority view and minority rights. In a number of instances, if a minority disagreed with the majority it was deemed rebellious and a source of dissension and civil strife (*fitna*). When the *ulama* did decide and reach a consensus on a matter it was hardly through a show of hands. It was constituted through a process of informal consensus-building, and somehow the idea of a consensus being reached percolat-

ed through society and the rule which ensued became irrevocable.

I do not want to sound essentialist, but you see in Saudi Arabia and elsewhere that there are core values in the political system so that unanimity – not majoritarian versus minoritarian ideas of politics – trumps everything else. The ideal is for one word to prevail (in Arabic, this is referred to *lamm al-kalima* or *wahdat al-saff*) rather than there being majority and minority points of view. Tolerance for a difference of opinion is a real problem. You see this, for instance, in Iran with the vetting of electoral candidates. And though there may be a vote resulting in majority and minority positions in Iran's parliament, deliberations in the Council of Experts – where it really matters – are secret. We are always told afterwards that there was a unanimity of opinion among the jurists of the Council. Something quite similar takes place in Saudi Arabia on the Permanent Committee of Fatwas.

So I think that there would be additional hurdles if a Shariah form of government were to be institutionalized. You would have to overcome the challenges of turning an informal system into a formal and institutionalized one, and allowing the form of private advice-giving to become more public and deliberative.

#### Prof. Noah Feldman:

I would only add one piece of context. Someone who studies civics and then goes to Washington to observe the Congress will probably be disappointed. The idea of a deliberative, legislative body that debates things and then decides on them does not correspond to the way the institution actually operates. Almost all of the important work in Congress takes place through private deliberation. The Supreme Court also pushed very hard for unanimity in its early years. In its most successful period, it was obsessed with generating unanimous decisions. It continues to be a tremendously secretive body.

#### Karen J. Greenberg:

The notion of the informal and the private is very interesting. Is it something that either of you grappled with while working on the constitutions in Iraq or the Palestinian Authority?

#### Prof. Nathan Brown:

We have a vision of what constitution-writing is about that is based not on our own



history but rather on a Norman Rockwell version of it. We see it as an abstract, deliberative process, and that is not what actually happens, especially with constitutions that work. These are messy. In democratic societies the drafting has to be done in public. In order to have any kind of legitimacy or buy-in, they have to involve horse-trading and bargains and so on. When you put them only in terms of abstract language and sophisticated deliberation, you are placing them beyond the realm of normal politics and they fail.

**Prof. Noah Feldman:**

Even in the most democratic environments, the way that constitutions are drafted looks a little bit like the way legislation is drafted. There is a negotiation among elites who may have been selected by elections but who may have been selected by some other means. The democratic part is that you get public debate, deliberation, and eventually some type of referendum on the constitution that they have come up with after they have come up with it. The founding fathers of the United States are an extreme example. They swore an oath of total secrecy while they were drafting the Constitution (and actually kept it, which is amazing).

You see similar things in other constitutional processes. Sometimes an external force, such as an occupying government, will basically write the constitution and hand it over to the elites to rubber stamp it. That is what happened in Japan, for example, which is an example of a pretty good constitution. It was back-translated into Japanese at 3 a.m. and has grammatical errors in Japanese that remain to this day. But then at some point the constitution is taken to the public. In the case of the Japan, it was not taken to the public in a real way and it had buy-in over time.

Constitution-making turns out to be extreme in this respect. The African National Congress's role in the South African constitutional process is probably the most democratic scenario you could imagine today. It looks much more like the Civics 101 lesson. But even there, the core element of that constitution – the agreement by the ANC essentially to protect the property rights of the South African whites who controlled the economy and the society in exchange for their not engaging in capital flight – would have had no chance of passing if it had been presented to the ANC membership for an open vote originally. So first you negotiate it secretly, and then you

say to public, “Listen, this is the only option you’ve got. If you don’t vote for this constitution, you are going to have chaos.” People become reasonable at that point and many of them vote for the constitution.

**Prof. Rick Pildes** (*from the audience*):

Noah, it sounds like you are saying that there is a sort of happy convergence between the Muslim world and the West in respects that we had not noticed – that the aspiration to Shariah is at some fundamental level an aspiration towards holding executives accountable through checks and balances, rule of law constraints, and the like. You say that this is not likely to succeed because the institutional structures cannot be recreated and, even if they could be, they might not be desirable.

I assume that if the aspiration is towards constraints on executive power then we have to look to other alternatives. What are those other alternatives? Do they look like the standard Western devices of elections for accountability, independent judicial review, and a parliament?

It sounds as though you are saying that the West should not be so concerned about these aspirations towards Shariah law because they are really an aspiration towards the rule of law; that they are not as threatening as they appear to be to the European Court of Human Rights, for example, which upholds Turkey’s ban on Shariah-based parties because of the view that Shariah is fundamentally incompatible with democracy. Is the image of an ultimate convergence of these two traditions around basically the same set of institutional structures a correct understanding?

**Prof. Noah Feldman:**

I absolutely think that a crucial component, although not the only component, of the aspiration to Shariah is the aspiration to balanced government, to good government. It is not expressed by ordinary people in terms of checks and balances. You will not find that language in the platforms of these parties. What they do say is that the government will be ruled under law, that it will not be corrupt, and that it will aspire to justice. “Justice” is the key term that is always used by Islamist political parties, so much so that when the government does not let them put the word “Islam” in the names of their parties they use “justice” and everybody knows exactly what that means.

I think that the undeveloped view of the Islamist political parties right now is that if

they were able to implement the Shariah as they conceive it, which is the Shariah through legislation and through what I am calling Islamic judicial review, then that will somehow enable them to institute the rule of law alongside some notion of personal virtue of a kind that might have been recognizable to our founding fathers but that we are skeptical about today.

That vision is the best of any of the visions calling for the rule of law with political constituencies behind them in the Muslim world today. That is the only optimistic bit of it. The pessimistic bit is that it is not clearly understood inside the Muslim world, even by the political parties advocating this project, that the reason the Shariah functioned historically as a constraint on the executive was because of the institutional role of the scholars. That has been forgotten, I think, if it was ever fully understood. These Islamist parties are not talking about checks and balances in a way that I would like to see them doing but that I think they could.

The answer is not to reinvent the scholarly class. It is too late for that and it would not necessarily be desirable. I do think it is possible to use values of Islam, specifically the idea of Islam as a legal system that is over the state and not subject to the whims of the executive, as the wedge to push new constitutional arrangements that balance the executive in countries where the Islamists take power. That is the hope that I am expressing. What distinguishes this from my earlier work is that I am trying to be much more aware of the mismatch between the picture of Shariah doing all the work and the institutional realities that would be necessary for that to happen.

**Prof. Rick Pildes** (*from the audience*):

Could you say a little bit more about the institutional dimension? If it is not going to be embodied in a class of scholars, will it be embodied in something that looks like independent judicial review, a parliament, or the like?

**Prof. Noah Feldman:**

Yes. I would call that a convergence, although I don’t know whether I would describe it as a happy one. Those happen to be the institutional forms out there today in the grab bag of comparative constitutional design. They are the popular institutions of the moment. However, it is important to note that they have historically been washouts in the majority of Muslim countries where they were implemented. They

have not really had clout. There are legislatures all over the Muslim world but they are not very impressive. The same is true for most judiciaries.

**Prof. Nathan Brown:**

I fundamentally agree with Noah's conclusions but I would tweak them a little. You do not hear the phrase "checks and balances" in these platforms because that phrase is particularly American. You certainly hear "separation of powers" in all of them. When the Muslim Brotherhood won 20 percent of the seats in the most recent Egyptian parliamentary elections, one of the first pieces of legislation they pushed for supported the independence of the judiciary and had been drafted by a group of liberal judges. So they picked this up with real enthusiasm. They are calling for a parliamentary system. They are basically saying that the big political problem in Egypt is executive domination and that a parliamentary system would solve many of the country's political problems.

I think that Noah is right about the attempt to do it through the democratic process and through what he referred to as an Islamic form of judicial review. I am not familiar with the broad range of thought throughout the Muslim world. I am familiar with parts of the Arab world, and the groups that I pay the most attention to are the ones that are more mainstream – the Muslim Brotherhood and so on. There, the interesting development that I see is an increasing reliance on democratic rather than judicial, suprajudicial, or quasijudicial mechanisms. In the countries where I have looked, the Muslim Brotherhood is becoming increasingly comfortable with the idea that drawing from the Shariah has to be done through, rather than limiting, the democratic process.

In a sense, my concern about them would be that they are excessively majoritarian at this point.

The movements have a very strong sense that they are popular, that their vision of the Shariah is popular, and that in a free election their vision would prove electorally persuasive either in form of the Muslim Brotherhood or alternative parties with similar kinds of visions. There is much less of a coming to terms with what I would call fundamental diversity of interest within society.

**Prof. Clayton Gillette**

*(from the audience):*

Noah, it seems to me that the executive-constraining institutions that you have men-

tioned are governmental entities, but your comments remind me of claims by economists like Douglas North and political scientists like Barry Weingast who say that a great deal of push for the same kinds of executive-constraining institutions comes from the creation of, or the desire to create, markets. It may be that there are, in at least some societies, private entities – entrepreneurs and other people who participate in markets – who have a desire for executive-constraining institutions because they feel that those are conditions under which markets will work most effectively. Aligned with this are the economists who believe that one of the great generators of democracy is the institution of public debt; that when the executive has to borrow then the creditors have opportunities to place contractual and other kinds of institutional constraints upon the executive in order to ensure repayment of the debt.

To what extent do you see the private sources of constraint possibly working to augment the solution that you favor?

**Prof. Noah Feldman:**

Nathan has written very interestingly about the role of public debt, especially foreign public debt, in the early constitutional-formation process in Arabic-speaking countries. I hope he can speak to that. In respect to the markets component, I have a two-part answer.

The first part is that the middle class is one of the natural constituencies for the Islamic parties calling for separation of powers and the rule of law. The great example of this is Turkey, where the AK Party – the Justice and Development Party, which is a kind of soft Islamist party (the military stops it from becoming more than soft) – is supported overwhelmingly by the new Anatolian middle class that has arisen in the past 30 years as a result of economic reforms that have allowed its emergence. There is substantial middle-class support for Islamists elsewhere as well. Although you still hear it in the Western media, the idea that Islamism does best when people are poorest is hopelessly outdated if it was ever true. It turns out that Islamism does well when people are poor but it also does well when people are middle class, and then it gets organized. I think you see this in Jordan as well, where the economic sector is very much still dominated by a small group of people who are close to the monarchy and the Islamic political parties are interested in reforms.



**"We have a vision of what constitution-writing is about that is based not on our own history but rather on a Norman Rockwell version of it. We see it as an abstract, deliberative process, and that is not what actually happens, especially with constitutions that work."**

**– Prof. Nathan Brown**

The second part of my answer is that in countries with rentier economies, where the oil money enables the government not to have to rely on taxes from the middle class, there is a major stumbling block in the way of a middle class exerting this kind of effect. In countries that do not have oil, there are other kinds of interventions from the outside, such as for security purposes. That becomes a serious problem. There is a middle class straining to emerge but on some level the government does not need them in the same way, and that complicates the situation.

**Prof. Nathan Brown:**

One of the primary motivations for written constitutional texts in the Middle East from the nineteenth century, when they were first introduced, until the early twentieth century was fiscal and had to do with debts. Constitutions were documents that were pushed by bureaucrats or men of the regime. It was the kind of conflict that we have seen most recently between Yasir Arafat and Salam Fayyad, between the patrimonial ruler and the good bookkeeper. The good bookkeeper says, "Look, you have to have rules, you have to have procedures, you have to account for these funds." That was an awful lot of the struggle that went on in the nineteenth century.

To the extent that there are debates about constitutional issues today, they tend to be much more detached from fiscal issues. They are not completely separated but they



are much more detached than they were in the nineteenth century, partly because of the prevalence of rentierism that Noah talked about.

**Prof. Noah Feldman:**

How significant a feature was this in the Palestinian constitutional process?

**Prof. Nathan Brown:**

The Palestinian Authority in the 1990s or early 2000s looked much like nineteenth-century Tunisia would have. The same kind of struggle was going on in an international context. Salam Fayyad had no political party, no movement behind him. He did have a group of Palestinian intellectuals and reformers who were coming up with ideas and then in May 2003, he had the European Union conditioning continued assistance to the Palestinian Authority on them implementing a reform program. So it was very similar but I think it is unusual in the region. The Palestinian Authority continues to be absolutely dependent on transfers from the European Union for daily operating revenue.

**Patricia Rosenfield** (*from the audience*):

The issue of informal and more private mechanisms, or perhaps more contextually appropriate mechanisms, brings me to the question of Afghanistan. I am wondering about the role of the *loya jirga* versus the push for the parliament in terms of relationship with the judiciary, and relationship with the people and place. Might there have been a different way of proceeding with more contextually appropriate institutional arrangements that might have led to, or could lead to, a more stable society in that situation and a greater understanding of the role of the judiciary as well?

**Prof. Noah Feldman:**

It is an extremely complicated case. The *loya jirga* is meant to be a traditional Afghan quasiconstitutional form, with many notable people coming together to make some sort of a collective decision. But even that tradition is not really at the national level because traditionally there has not been a nation of Afghanistan, and there still is not – there is a state but not a nation.

So what you have first is this kind of *loya jirga* brought together to produce something that looks like a quasilegitimate government. Then you have the “constitutional *loya jirga*,” which is meant to take a draft produced by a super-secret committee and

discuss it and change it. This second stage worked in a very interesting way. (It has not been well written on, and everyone who was not physically there has to rely on second-hand sources, so my comments are subject to revision by somebody who understands it better than I do.) In this second process, the draft that came out of the drafting commission was rejected. The constitutional *loya jirga* was representative enough of at least some power constituencies in the country that it said that this document was not going to fly. They insisted on something much more Islamically shaped in a whole range of ways, and then they reached a consensus decision on it.

It called for a judiciary with judges trained in general civil law and also people trained in classical Islamic law. The difficulty was that the only sort of legal training that had existed at all in Afghanistan for the previous 20 years was in Islamic law, and that was at an extraordinarily low level. This created a strange, hybridized group of people to function as judges and part of the judiciary.

I am not sure whether calling the next body that was supposed to meet another *loya jirga* would have made so much difference, because it would have had to have been more bureaucratized. By its very nature, the *loya jirga* is supposed to be a compromising entity, not a legislating entity. If you were to say that the Shariah would be the law of the land, then you might also say that you’d just have some national consultative body for foreign policy or to allocate the budget.

But I do not think that would have worked from the standpoint of the international community. Professor Pildes mentioned the phenomenon of global convergence. There is a norm in the international community; you have to show that you have certain kinds of institutional functions such as a legislature and a judiciary. So they had to call it a legislature and they had to hold elections for it, regardless of the realities on the ground.

**Question** (*from the audience*):

Could informal constraints have a place in terms of providing legitimacy during political reform and transition in Muslim countries?

Grand Ayatollah Ali al-Sistani in Iraq seems to hold himself apart from politics to a significant degree in part to maintain his own legitimacy, but he does step in and provide the sort of obstacles to crossing the line and maybe treading upon a core tenant of Islam that you mentioned earlier.

**Prof. Noah Feldman:**

That is a terrific question. Ayatollah Sistani was the single-most important person in the Iraqi constitutional process by a tremendous margin. He first got it going by issuing a fatwa, which had no formal governmental effect, saying that any constitution would have to be drafted by an elected assembly. Everyone had to follow that fatwa as a practical matter. Then, the politicians who saw themselves as affiliated with the movement he led went to him and brought him formulations in the constitution for his sign-off. They would not sign off on anything until he had personally approved it. He had a veto power. The only other person with a comparable veto power was the president of the United States. I would say that Sistani was substantially more influential because he really liked the content of the constitution and George Bush did not.

How do you characterize this power that he had? It was not formal power. It was an advisory power, which corresponds to the vision of the right role for religion and politics that he has expressed over the years. He said that the scholar should not be the politician; that the politician should be a religious civilian who takes the scholar’s teachings seriously and asks him for advice. It was an informal advisory process, although it being the Shia rather than the Sunni context it was not really consensus-based.

It was not unproductive. You are right that we shouldn’t think that the formal is always good and the informal is always bad. But the reason Sistani was productive is because he is a reasonable person. Someone in the same situation but with unreasonable views would be a recipe for a disastrous constitutional process. If you want a consensus constitutional process, you might rather not have someone with that much power in the society. You could say that we got lucky in this case – that would be one possible interpretation.

**Prof. Nathan Brown:**

I understand that much of the Shia hierarchy (and not only in Iraq) has been a bit standoffish about playing that sort of role for fear of what happens when they get dragged too much into the political process. They look at Iran as an example of the scholarly integrity of the religious institutions being corrupted.

So, excessive or exclusive reliance on the informal can be corrupting for both sides. There needs to be some level of formality and institutionalization, and a healthy separation between them.

Session Two: January 16, 2008

# Power Politics: Iran, Saudi Arabia, and Leadership in the Muslim World



Prof. Vali Nasr, Karen J. Greenberg, and Prof. Toby Craig Jones. Photo by Dan Creighton

**Panelists:** Prof. Toby Craig Jones,  
Prof. Vali Nasr

**Moderator:** Karen J. Greenberg

**Karen J. Greenberg:**

The purpose of tonight's program is to help identify those aspects of the United States' dialogue with Iran, Saudi Arabia, the Persian Gulf countries, and the Middle East that warrant attention in order to craft a wise foreign policy in the days to come.

The presidential candidates are scrambling to assemble their facts, to find their experts, and to figure out what is happening in these countries. Tonight's panelists are two people who can clarify the topic for the candidates and for us. I am hoping that we can take a somewhat complicated, mysterious, but ever-present part of our lives and start to understand it a little bit better. Vali Nasr and Toby Craig Jones have both studied the region and are incredibly attentive to what these issues mean for the globe and specifically for the United States.

I would like both of our speakers to begin by explaining their perceptions of

the geopolitical realities facing Iran and Saudi Arabia.

**Prof. Vali Nasr:**

That question is extremely important for the United States. We often talk about how the Iraq War has changed the scene in the Middle East, but I do not think that we fully understand the scope of that change, what it entails, and how it impacts U.S. interests. A number of significant developments have heightened the profiles of Saudi Arabia and Iran and have focused attention on the rivalry that has long existed between them.

The Iraq War has in many ways shifted the focus in the region away from the areas that we are most familiar with – the Levant, the Jordan Valley, and the arc from Lebanon to Egypt – to the Persian Gulf, where it had not been for a long time. It is clear that every issue that matters to the United States is now centered on the Persian Gulf, including oil, nuclear weapons, Iraq, Iran, and even regarding Pakistan and Afghanistan. I do not mean to say that Lebanese issues and the Palestinian crisis do not matter. They are very important. They are important to American prestige and American interests. But they are not the factors deciding the winners and losers in the Middle East. Those factors are all clustered around the Persian Gulf.

It is not coincidental that when President Bush traveled to the Middle East in January 2008, the heavy lifting began when he arrived in the Persian Gulf. The little emirates that are now busy making purchases on Wall Street are one positive economic model in the region. Those buyers are Dubai, Oman, and Abu Dhabi, not the larger countries that we are more familiar with.

The playing field has changed in ways that we have not realized. We still think that the Arab/Israeli issue is going to reshape the region. That is not the case. The future of the region is going to be shaped by Iran, Saudi Arabia, the relationship between



them, and their relations with the United States.

There has been a major shift in the balance of power between those two players. Before the Iraq War, Iran was caged in. They were surrounded by countries that were somehow dependent on Saudi Arabia. There was a powerful Saudi/Pakistani/Taliban axis that contained Iran on its eastern border and pushed into Turkmenistan and Uzbekistan. There was a chain of Arab-related groups to Iran's west, stretching south from Azerbaijan. Even though Saddam Hussein did not have a good relationship with either Saudi Arabia or Kuwait, he nevertheless did their bidding by containing Iran.

The collapse of the Iraqi state and the empowerment of its Shia majority opened one of the most important Arab countries to Iran. Iran is the major powerbroker in southern Iraq and also one of the two or three most significant powerbrokers among the Kurds in the north. Iraq's Prime Minister Nouri al-Maliki, former Prime Minister Ibrahim al-Jaafari, and President Jalal Talabani, as well as General David Petraeus's closest Shia allies, have all been Iranian assets in the past, if they are not currently. The war between Israel and Hezbollah during the summer of 2006 also contributed to Iran's rising power in the Arab world after the U.S. and Israel blamed the conflict on the Iranians.

Iran holds the cards. Iran is controlling the most significant war since 1982. Rather than our traditional allies, Iran can control the fate of Lebanon and the Palestinians.

We had thought that one of the most significant consequences of the destruction of the Iraqi Army was that all of the soldiers and officers became insurgents. But more importantly, the Iraqi Army was the only Arab military that had been balancing Iran in the Gulf. With the Iraqi military gone, there is no longer any balancing force other than the United States, provided that the U.S. stays to baby sit Iran for the next 20 years.

Even as the power in the Middle East has shifted to the Persian Gulf, the power within the Gulf has shifted to Iran. When talking to leaders and opinionmakers there, you do not have to delve too deeply in order to see the main source of their anger towards the United States. It is not that the U.S. meddled with and imploded Iraq but rather that it empowered Iran without a game plan for handling the situation. There is continuous worry about what a more powerful Iran means.



Prof. Toby Craig Jones. Photo by Dan Creighton

Regardless of whether they are delusional or not, the Iranians now clearly see themselves as being the hegemon in the Persian Gulf, the same way that India sees itself in South Asia. One could say that the Iranians now look at the Persian Gulf now as their "near abroad." That is what they are trying to confirm through their power play.

Our policy has not been updated to reflect reality. I think the Bush administration still behaves as though the clock could be turned back to 2002. When the president gave a very tough speech about Iran in Abu Dhabi, the premise was based on the assumption that a certain kind of containment is possible; that the Arab governments can actually rally around the Persian Gulf to do what the Iraqi Army was doing. I do not think that is possible. The challenge is to come up with a new way of thinking that deals with the post-Iraq reality, which is much larger than Iraq. It must address the regional consequences of the Iraq War.

### **Karen J. Greenberg:**

Professor Jones, would how do you see the Iraq War affecting the region?

### **Prof. Toby Craig Jones:**

I would like to focus on the Saudi Arabian perspective rather than on U.S. policy because, as Vali Nasr said, there is not much clarity or coherence in the American geostrategic position at this point. Iran is identified as the principal antagonist but it is not clear how we are going to deal with them. Perhaps ironically, it is much easier to answer the question from the perspective of Saudi Arabia. Its post-Iraq concerns are much more clearly identified and articulated, and they are twofold.

One is the expansion of Iranian hegemony into Iraq and the Persian Gulf. Saudi Arabia is concerned about Iranian power in

several manifestations. One aspect is the empowerment of Iraqi clerics. Another is Iranian control or influence over politics in states that Saudi Arabia considers to be its satellites in the Persian Gulf, either through the Shia communities there or the threat of violence in the Straits of Hormuz. Beyond the Gulf, Saudi Arabia is worried about the Iranian role in the Palestinian territories and Lebanon and has attempted to challenge it since the middle of 2006.

Saudi Arabia's other post-Iraq strategic concern is the regional terrorism threat and the continued survivability of al Qaeda. In 2003 and 2004, a wave of militant violence in Saudi Arabia targeted American and Saudi targets. Saudi Arabia came to terms with the fact that it is in al Qaeda's crosshairs. The Saudis have also come around to the position that there are somewhere between 1,500 and 3,000 Saudi citizens (the number depends on which Saudi camp you talk to) who have crossed the border, mostly through Syria, to fight in Iraq. The specter of a new generation of Afghan-type battle-hardened jihadis returning to Saudi Arabia is a principal strategic concern.

So, checking Iranian power and making sure that they have deployed an effective counterweight, both ideologically and militarily, to a future generation of jihadis are the issues that the Saudis are primarily concerned with.

Those issues are about politics and security. We also need to consider that the Saudis are making a tremendous amount of money. They want a return on their investments in Lebanon, in the Gulf, and eventually in Iraq and elsewhere. The security threats are fairly well articulated. The commercial aspects are less clear but they exist and are in the forefront of Saudi thought.

### **Karen J. Greenberg:**

How does this play out in terms of the internal dynamics within each one of these countries? If we had held this conversation three years ago, we would have been talking about chances for democracy in the Gulf countries and beyond. Neither of you mentioned the conflict between the Shia and the Sunni. How do these more internal struggles fit into the larger vision?

### **Prof. Vali Nasr:**

The problems and the struggles are there but the context has changed. To the extent that there was an external push for democracy in this region, it is gone. It is no longer

part of the U.S. security strategy; it is only given lip service. There is no longer pressure on Arab governments, in particular those who are allies of the United States, to support democracy. Regarding Pakistan, Deputy Secretary of State John Negroponte has said that security concerns trump democracy. That has always been American foreign policy. After a parenthesis of the Bush years we are now back to where we were.

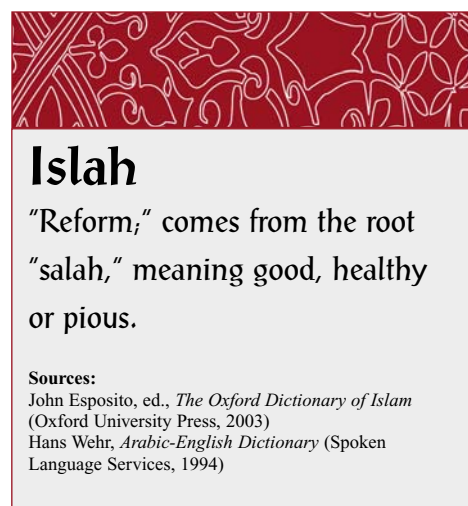
The discourse of democracy has been sidelined by security concerns. If you talk to people in the region, security is their first priority. You can talk much more openly about democracy if you already have security and prosperity. The region is now caught in a belt of conflict stretching from Lebanon to the Palestinian territories and into Iraq, Afghanistan and Pakistan are basically collapsing, and there is potential for war with Iran. The first priority right now is not massive political transformation but rather trying to bring a certain degree of calm and stability.

But the economic issues have not gone away. Iran is facing a tremendous increase in its working-age population but its economy is not producing jobs for them. Its economic problems have been compounded by a significant amount of inflation since Mahmoud Ahmadinejad became president. The region is not doing well economically but we do not see moves towards reform. This is partially because some countries now have too much money. They do not see why they *should* reform. Others receive security dividends and the like – such as \$10 billion to Pakistan and billions of dollars to Egypt – that ameliorate the problem and allow solutions to be postponed. Security concerns in countries like Jordan allow them to put off hard economic decisions.

Political issues are similar. The question of voting has been very nicely managed by the regimes in most of the Middle East, starting from very early on. Right after the elections in Iraq, the argument elsewhere was essentially, “Look what the elections in Iraq did. We don’t want to hold them in other countries.” I asked a State Department official about his conversations in Saudi Arabia regarding elections. He told me that the Saudi response was that elections would lead to sectarianism there and that the majority of the Saudi population seemed to be persuaded by that argument. Similar arguments have made in Syria, and especially in Lebanon where there is tension between the Shia drive for power led by

Hezbollah and resistance from the Sunni/Christian condominium at the helm. So the push for democratization will not be restarted until the context in the region has changed.

The United States, which was the main driver for democracy, is no longer interested. In addition, the push for democracy is seen to have been mismanaged. The situation is not as though the United States had actually been able to produce results anywhere. In the case of the Palestinian territories, the U.S. itself is dissatisfied with the outcome. The few successful cases that might exist, such as Turkey and arguably Morocco, have nothing to do with the United States. There are many muddled cases that nobody is happy with, including Bahrain even Morocco, where only 50 percent of the parliament is elected and the government controls the other 50 percent and the tie-breaker vote to boot.



**Islah**

“Reform;” comes from the root “salah,” meaning good, healthy or pious.

**Sources:**  
John Esposito, ed., *The Oxford Dictionary of Islam* (Oxford University Press, 2003)  
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However, outside of democracy, there is the potential for substantial breakdown in many countries. Political change might not be democratic or peaceful. It could be destructive. Look at Pakistan as an example. There was an opportunity for a much smoother transition of power. It was lost, partly because of U.S. support for General Pervez Musharraf. Political change will come to Pakistan. It will be extremely ugly and far worse for the United States.

Populations elsewhere, such as in Bahrain, are increasingly opting out of the democratic process because they believe it is not going to go anywhere. They are adopting a much more radical anti-regime status. In Iran, elections are scheduled for March 2008. It will be interesting to see who is allowed to run and what the result will be.

In sum, there are problems. Unfortunately,

democracy is not operating as a means of channeling those problems in a smooth transition to something better. That does not mean the region is free. What it means is that there are risks of disruptive change in certain key countries, such as Pakistan.

### **Karen J. Greenberg:**

Do you agree, Professor Jones? How do you think the fading of the American agenda has affected the internal responses in these countries? Who has it empowered and who has it disempowered?

### **Prof. Toby Craig Jones:**

Vali is quite right about the issue of democracy. It has faded from the agenda. It is no longer taken seriously by either regional governments or the people whom we might once have identified as democratizers. In Saudi Arabia, that is because most people who identify themselves as democratizers go to jail because of it. Most Saudi activists do not use the word “democracy.” They use “*islah*,” which means reform. They make it very clear that they are not talking about democracy because that would undermine their credibility for domestic constituencies.

We have to keep the historical framework in mind. These are smart, stable authoritarian governments that have much more experience outflanking democratic reform than the United States has promoting it in the region. When they saw us momentarily flirting with the idea of reform, they winked and smiled and said, “We’ll wait until you get distracted by something else.” Also, they probably knew that Iraq would prove to be more complicated than we expected and would eventually absorb the energy that put pressure on them to change.

What is interesting about this in the case of Saudi Arabia is that it is somewhat paradoxical. The people who constituted Saudi Arabia’s very amorphous and yet large reform lobby in 2003 and 2004 are the same people who have benefited in some sense from great oil wealth. Saudi Arabia is still a patronage-based state. What the Saudis have done historically, and what they have done particularly well since 2003, is co-opt and crush various sorts of opposition. They have perfected a balancing act between hard-line Islamists and those who we identify as liberals, and they bring both of them into the fold. In the 1990s, for example, Salman al Ouda was on the frontline denouncing the presence of American troops. He is now jockeying for a position in the Supreme Islamic Council in Saudi



Arabia. He wants to be on the state payroll.

At the same time, tried-and-true people who identify themselves as liberal are also on the dole as it were. They are getting both material and political influence as a result of the oil wealth. So the Saudis have managed to maneuver diverse opposition camps into a position in which they support the state.

So, opposing groups have both managed to benefit. They are competing to define precisely how the state is oriented. Is Saudi Arabia a moderate liberal regime? In the sense that we would use the term, the question is absurd. But in Saudi Arabia, the government, the Islamists who move into the state fold, and the reformers all say that they need top-down reform controlled by the government or else they'll wind up with al Qaeda militants. They have competing agendas but have all managed to situate themselves so that they benefit materially and ideologically from the new arrangement.

Among the losers in this are the Shia in Saudi Arabia and Bahrain and to a lesser extent Kuwait. One of the effects of the Iraq War is increasing sectarianism. Although the Shia participated in national reform efforts in 2003, they have been largely marginalized. Women are the other losers in this. Women's issues have largely faded from consideration for political reform except in moments of real crisis in which they garner international attention and embarrass the government. That is what happened after the rape of the Shia "Qatif girl." Women have been given space for social rights. They can work. They can go to school. They might actually have IDs, so the issue of driving continues to come up. But in terms of politics and their role in the political arena, they have been further marginalized.

**Prof. Vali Nasr:**

The name of the game for most Arab governments and some of the others in the region is getting their main opponents to opt out of the political process. Intimidation, use of the intelligence services, censorship – all of that is there. But so is a policy of trying to promote an apolitical, folk, personalized practice of Islam. The very governments that we identify as the bastions of secularism have a particular way of actually Islamizing their society. They do not want radical Islamists, not because the Islamists are religious but because they are political. They also do not want secular politicians for the same reason.



**"We still think that the Arab/  
Israeli issue is going to reshape  
the region. That is not the case.**

**The future of the Middle East  
is going to be shaped by Iran,  
Saudi Arabia, the relationship  
between them, and their  
relations with the United States."**  
**– Prof. Vali Nasr**

Rather, they are promoting piety through government-sponsored clerics and television programs. Al Azhar and Amar Khalid, a preacher, are examples in Egypt. A Saudi program that had been on YouTube for a while showed a vision of a pietistic Sufi Islam that does not see religious salvation associated with an Islamic state in any way. It is a sort of old-time religion. One of the impacts of governmental reaction to democratic pressures actually has been greater Islamization of the Middle East, not because of the Islamists but because the governments are playing the same card as a way of pacifying the population.

**Karen J. Greenberg:**

Is that completely separate from foreign policy?

**Prof. Vali Nasr:**

It is and it isn't. The foreign policies of these Middle Eastern governments, whether vis-à-vis the United States or vis-à-vis one another, are quite pragmatic. They are based on trying to maximize power, territory, and influence. They very easily could be understood in terms of national interest or aggrandizement of power. One could look at Iran's foreign policy and say that it is largely the shah's foreign policy. The shah signed the Nuclear Nonproliferation Treaty fully intending to push the envelope as far as he could.

But nevertheless, Islam is a tool. If populations understand religious language, if they care about religion, then religion

becomes very important to the legitimacy of foreign policy and to the ability to exert influence. The Iranians have influence in Iraq not because they are Iranian but because they are Shia. They may not want to own up to it but that is the reality. The Iraqi Shia have influence in Bahrain, Saudi Arabia, and Lebanon not because they are Iraqi or Arab but because they are Shia. Saudi Arabia has influence in quarters as far away as Indonesia and Nigeria because of Islam.

This is very important in the context of Saudi/Iranian relations. There is a rivalry between the two for leadership in the Muslim world that goes back to the 1980s. During the Iranian revolution, Ayatollah Khomeini had claims of leading the entire Muslim world along the lines of a resistance movement – of resisting imperialism and the United States, among other things. This was particularly threatening to Saudi Arabia. He referred to Saudi Islam as "American Islam." He accused the Saudi dynasty of prostituting themselves to the United States. These statements are all in his last will and testament.

The Saudis reciprocated by adopting for themselves the lofty title of the "Protector of the Two Holy Cities." They also use their cash capabilities by making investments to contain Iranian influence everywhere they can. The best way of containing a Shia is to point out that he is a Shia, because a Sunni may respect Khomeini or Hassan Nasrallah politically but cannot follow them. This resulted in a very bloody sectarian war in Pakistan in the 1980s and '90s that in many ways presaged what has happened in Iraq. If you look at some pro-Saudi, as well as pro-al Qaeda, Web sites since the Lebanon War during the summer of 2006 that made Hezbollah so popular, you will see that they are more anti-Iranian than they are anti-Israeli. They are all peppered with talk of a Sassanid-Safavid conspiracy against the Arabs rather than the typical talk about a Zionist conspiracy and the like. So there is a religious dimension. Saudi Arabia and Iran are each trying to sell their case in terms of religious leadership at a time when this matters in the Muslim world.

There are also secular Islamic causes, such as the issues of Israel, Iraq, and the desire to stand up to the United States. I think that at some point in 2004 or 2005, when the Iranians realized that there would not be any kind of negotiations with the U.S., they decided that this would be a better path to follow. In capturing the anti-

American mood in the Arab world, they have taken the torch from Saudi Arabia. In fact, one of the reasons that the Saudis are extremely worried about an American attack on Iran is that they believe such an attack would be the end of the game for them. It would hand the entire Islamic world over to Iran. Saudi Arabia could not claim the mantle of Islamic leadership after having hosted President Bush while he taunted Iran and then having supported him in such a war.

For the Saudis, this is not just foreign policy. If their claim to Islamic leadership were to collapse, they would domestically vulnerable because much of their legitimacy is based upon it.

#### **Prof. Toby Craig Jones:**

For the Saudis, the role of Islam in framing foreign policy is very complicated. Since early in the 20th century, the basic political arrangement in Saudi Arabia has been one of state deference to the clergy. They have an arrangement in which the state assumes the mantle of political leadership but the clergy has autonomy and authority over the role of religion as well as cultural and social life. This relationship complicates the state's ability to frame its own role in an Islamic foreign policy. The nature of the problem has become more apparent in the age of new media.

The independent-minded clergy, believing that they have a voice over religious affairs, has energetically expressed their views about the Arab/Israeli conflict, Chechnya, Pakistan, Kashmir, and Iraq in specifically Islamic terms. They have advocated a particular kind of approach to those issues, which in the last few years has been basically one of jihad.

The state, however, is much more realpolitik. It has a secular agenda. It plays balance-of-power politics in the region. It does not necessarily want to bring Islam into the discussion. The exception was during the 1980s, when it served its purpose to use Islam as a foil against the exportation of the revolution in Iran. During the summer of 2006, the Saudis were frustrated that Hezbollah had temporarily interrupted Saudi Arabia's hegemony over the Arab/Israeli conflict. The Saudis were maneuvering to restore their credibility over regional politics, which Iraq to a large extent had stripped. Hezbollah's effective counteroffensive to Israel hindered Saudi Arabia's identity and its role as a regional

guarantor of Islamic issues. Saudi Arabia then denounced Hezbollah's role in provoking the conflict, which created an immediate domestic political crisis. Every Islamist in Saudi Arabia – both Shia and Sunni – thought that Hezbollah was fantastic for having taken on Israel.



**“Checking Iranian power and making sure that they have deployed an effective counter-weight, both ideologically and militarily, to a future generation of jihadis are the issues that the Saudis are primarily concerned with.”**

**– Prof. Toby Craig Jones**

How does Saudi Arabia respond? How does it claim credibility as a regional Islamic actor when, in the eyes of even moderate clerics and religious figures, it has abdicated its principal role as defender of Muslims around the region? One Saudi cleric, who is viciously anti-Shia, essentially excused his support for Hezbollah by describing them as basically Sunni – a remarkable reinvention of his Salafi credentials in the Saudi religious landscape.

When the state has a foreign policy that does not square with the clerics' political view of the world, it obstructs the foreign policy's credibility. The clerics actually then can become a voice of opposition.

Another powerful example occurred in 2004. A group of 26 Saudi clerics said that jihad against the United States in Iraq was legal; that people should go to fight (they hedged as to whether this applied to Saudis). This posed serious problems for the Saudi government because it appeared as though some of their most popular religious voices were declaring that Saudi foreign policy should be to fight the Americans in Iraq. The Saudis outmaneuvered them but it demonstrates the difficulty they have in leveraging Islam to achieve

specific political arrangements. They do much better when they have identifiable ideological enemies, such as Iran in the 1980s.

#### **Karen J. Greenberg:**

I would like to talk about Pakistan for a moment. How do events there fit into the regional politics, particularly in regard to Saudi Arabia? What are the stakes beyond the obvious?

#### **Prof. Vali Nasr:**

Pakistan matters enormously. It is quite a scary scenario when you contemplate that it is a country of 150 million people with the social and ethnic tensions and the level of extremist activism that exist there, in addition to the number of guns, the nuclear arms, and the fact that there will be no success in Afghanistan if Pakistan begins to slide in a different direction. If Pakistan were to collapse, if its institutions were to give way, there would be potential for a tremendous amount of internal carnage and also much damage to the region.

Stability and security in Pakistan are of vital national interest to all of its neighbors and to the United States. Although I think that it is counterintuitive to most Americans, stability and security there are unachievable with General Musharraf in place. Pakistan will be far more stable and America will be much safer the sooner Musharraf is out of the picture. But we are where we are. That is part of the dilemma because the U.S. policy of continuing to look at Musharraf as the solution is not shared by Saudi Arabia, Iran, or others.

Developments in Pakistan are far more important to Saudi Arabia than they are to Iran, partially because there was a strategic shift in Pakistani/Iranian relations during the 1980s and '90s. Pakistan was very close to Iran while the shah was in power. The axis was Iran and Pakistan against Afghanistan and India. That's the way it was during the Indira Gandhi period in India and the Zulfikar Ali Bhutto period in Pakistan. Iran supplied Pakistan with weapons during the wars that Pakistan fought in 1965 and 1971. But Iran lost Pakistan to Saudi Arabia during the 1980s. The Pakistani military establishment and its fundamentalist allies turned towards Saudi Arabia because of money and ideology, and the Iranians began to shift their focus to India. It is instructive that Benazir Bhutto, while she was prime minister of Pakistan during the 1990s, went to Iran to make a



strong Islamic plea to the Iranian parliament on behalf of the people of Kashmir who were being brutalized by non-Muslim Hindus. The Iranian parliamentarians were completely unmoved. She got the cold shoulder. Iran pragmatically saw itself as allied with India rather than Pakistan.

So Iran has very little diplomatic investment in Pakistan. Iran has looked at the breakdown of the Taliban/Pakistan/Saudi axis, caused by al Qaeda, as a great strategic boon that fell into its lap. The weakening of the Musharraf regime is not necessarily bad for Iran, particularly because the Iranians have been convinced that the Pakistanis have been behind the Baluchi uprising in Iran and the resurrection of the Taliban – that somehow the pre-al Qaeda axis is being resurrected right under America's nose despite the United States's \$10 billion investment.

Saudi Arabia has much more of an investment in Pakistan. Since the 1990s, Saudi Arabia has looked to a Pakistani nuclear, military, and intelligence shield. Pakistan's security establishment has for a while been Saudi Arabia's "strategic depth" (using a Pakistani term referring to Afghanistan). The relations between them are very tight. It is not coincidental that the Saudis can interfere in Pakistani politics with great ease. If the entire Pakistani political, military, and intelligence apparatus falls, the Saudis will be even weaker vis-à-vis Iran and the region than they are today. When the Saudis say that they would look to a rapid counterbalance if Iran were to have a nuclear weapon, they could mean an American nuclear shield as in Europe. But I don't think that is what they'd want because it would be sticky from a religious point of view. What they are really talking about is cashing in on the billion dollars they have invested in Pakistan's nuclear program. That investment was made for a reason. King Abdullah is the only non-Pakistani ever to have been taken on a tour of Pakistan's nuclear facilities. Saudi Arabia is also far more vulnerable to the social backlash of any kind of political collapse in Pakistan because of their economic and labor relations and the nature of the labor markets.

The distance between Pakistan and Saudi Arabia across the Arabian Sea is much shorter than the distance between Iran and Pakistan even though they share a border. We think about Pakistan in connection with our global war on terror, and we think that

if Pakistan were to collapse al Qaeda would become more of a problem. We do not realize that if Pakistan collapsed al Qaeda would be child's play compared to other consequences in the region. If Afghanistan were to be sucked down with it, the result would be enormously taxing on American resources and crisis management. It would destabilize the Persian Gulf and India to some extent.

Our approach to Pakistan is wrong-headed. We are looking to the source of the problem – the Musharraf government – for the solution. Rather, we have to think about how we can restore political institutions, calm nerves, and pull Pakistan back from the brink. The fastest way to do that is to get the person responsible for the crisis out of the political scene. We cannot dictate that but at least we can stop supporting him.

### **Prof. Toby Craig Jones:**

I would exceed the bounds of my expertise if I were to talk about Musharraf, but I am not convinced that the other consequences of a collapse of Pakistan would dwarf al Qaeda. Islam's militant turn would be compounded in multiple ways if Pakistan disintegrated. Jihadists would have an opportunity to train, to equip, and to maneuver between various frontiers. The symbolic significance of a failed Pakistani state as a new frontier for jihad would energize and galvanize disillusioned communities outside of central Asia, perhaps in the Middle East. There might also be sectarian repercussions. A disintegrated Pakistan might further complicate sectarian relationships in places like the Gulf, Lebanon, and elsewhere.

### **Karen J. Greenberg:**

What is the proper role for the United States in this? Should the U.S. stay out of it? Is its role to stabilize the situation through a variety of military, financial, and other means?

### **Prof. Vali Nasr:**

We have to separate means from objectives. Means can include money, hard power, military force, and diplomatic initiatives. Up until now we have overemphasized certain means and not utilized others. Money is very important. We tried military means in Iraq for a long time. We believe that the surge is working because we have put more troops on the ground, but it is actually because we are spending much more money. We are buying everyone fighting us.

That will continue to work as long as we keep doing it. It might be tried elsewhere. We have not tried using diplomacy in many cases – it may work and it may not.

I think that it is time for new objectives. We need to think about what the end game is. We know that we want to fight against terrorism and to protect ourselves, but in some ways those are results. If the Middle East were to be secure, democratic, and prosperous, we would not be confronting the issues that we are now. But the Middle East is in a belt of conflict stretching from Lebanon through Afghanistan. The priority for the United States should be to try to stabilize the entire region.

As part of that effort, the United States has to stop looking for maximal goals with minimal means. We are overstretched. Given our troop commitment, the elections, and our foreign policy support, we cannot have the exact outcome that we would like in Afghanistan, Pakistan, Iraq, Lebanon and regarding both Iran and the Palestinian issue all at the same time.

We have to see where our interests are most in danger and focus our assets.

We also have to accept the fact that the issue will be about Iran whichever way we turn. We created this problem; we created Iran's breathing room. The question is how to deal with Iran and achieve our goals without destabilizing the region, given our resources and abilities. There is much at stake for the United States and for the Middle East.

It used to be that we just wanted the flow of oil and some kind of sanity within the Arab/Israeli conflict – if not a peace process then at least a certain kind of order. We invested in the Arab governments to keep the oil going. We thought that the Arab governments in the Levant could keep the Palestinians in check. All of those tools have gone by the wayside. There are new powers in the region. The conflicts and the issues are much more complicated. We have to accept that the Middle East matters to us much more now than it did before. It is not just about oil or the Arab/Israeli issue. The Middle East is defining our position in the world, defining our power, electing our presidents, and deciding our economy. It will be with us for the long-term and we have to have a long-term strategy to deal with it.

That will in many ways be the challenge for our next president. The administration will need to properly situate the Middle

East within the context of our foreign policy and develop a long-term strategy. They will also need to clearly define our priorities in the region for the people in the Middle East, for the people in the United States, and for themselves. We are confused right now. Do we want secular democracy or do we want stability? Different branches of the U.S. government are confused. Is General Petraeus's agenda in Iraq to prevent people from fighting or is it still to create the shining city on the hill?

Bringing our means and our goals into some kind of synchronicity with one another is an important priority. That would at least clarify why are we there and what are we trying to achieve.

### **Prof. Toby Craig Jones:**

Whether explicit or implicit in the strategic arrangements that we pursue, stability and maintaining access to oil are clearly going to drive our policy. I think that most policy-makers are indifferent to the forms of government that take shape.

Regarding Iran, my recommendation is that we talk to them. It is pretty clear that closing the door to communication is simply a recipe for an escalation of anxiety, tension, miscommunication, and fabrication. Talking to Iran is the reasonable way to move forward. It would not be a quick fix. I do not think it would solve the Arab/Israeli conflict. I am not advocating a strategic bargain. But I do think we might make reasonable progress towards stability and oil security.

We also need to take political Islam seriously. We have a real problem talking about the Muslim Brothers, Hezbollah, and their variations around the region as representative of Arab and Muslim voices. They represent more people than they ever have before, either symbolically or organizationally. I am not here advocating for reform, but the standard American political line of propping up authoritarian governments in the region when there are reasonable alternatives to talk to is another recipe for escalation. I am not suggesting that the U.S. should condone what Hamas does but there are alternatives. Certainly the Muslim Brothers in Egypt, Saudi Arabia, the Gulf, and elsewhere are not the same as Hamas.

The question of Hezbollah is obviously complicated. Not everyone would agree that it is a political organization in addition to a militia. In any event, political Islam has to be taken seriously. That it may be inconvenient to long-standing political

arrangements with authoritarian governments does not mean that it can simply be set aside.

## **Excerpts from the Question and Answer Session:**

### **Rachel Robbins** (*from the audience*):

Prof. Nasr, you spoke about the need to stabilize the region with limited resources. What would your priorities be?

### **Prof. Vali Nasr:**

We have to find an exit strategy for Iraq in which we can extricate our troops and shut down our monthly spending. That will change the entire calculus of America's ability to engage in other conflicts or to be considered a credible deterrent force. There are places where U.S. troops will be needed. In Afghanistan, for example, it is critically important that the Taliban not succeed. That would be tremendously embarrassing. After having forced the Taliban out of Afghanistan, six years later they are resurgent. Journalists returning from Kabul say that every shopkeeper there believes that the Taliban are winning and will be back. So Afghanistan is a priority that requires a concerted effort.

Pakistan does not require a troop deployment. It has a very capable military. The question is how to stabilize the political climate. In February, there will be elections. Either they will not happen or they will be rigged, either of which will add to the crisis. Where does the United States stand? What kind of pressure is being brought to bear in order to avert the crisis?

We have a variety of tools – diplomatic tools, military tools, and economic tools. In each of these cases, we need to know our end game. We need to know what we want and how it can be achieved. If we really want stability in Pakistan, we do not need to deploy troops there. We need to have a better roadmap for diplomatic engagement. Iraq and Afghanistan are clearly military issues. Iran is complicated and there is much riding on it. Iran's nuclear program is a major problem for the United States. The U.S. and many other countries, including many of Iran's neighbors, are not reconciled to an Iran with a full-fledged nuclear capability. How are we going to change Iranian behavior? So far, the current strategy has failed. They keep building centrifuges and they don't take the U.S. seriously. A war

would open Pandora's box. If we cannot handle Iraq, could we handle a country three times its size with a population of 70 million people? We have not tried diplomacy. We do not know whether it would work, but it is a tool that could potentially be used, as Toby said.

The next president will have to decide what to focus on. Which conflicts could we probably dampen? Does the United States need to become completely involved in Lebanon right now – building the Lebanese army and potentially disarming Hezbollah – or is that something that could wait a year or two? What is our priority and game plan in Iraq?



**"The discourse of democracy has been sidelined by security concerns. The first priority right now is not massive political transformation but rather trying to bring a certain degree of calm and stability."**

**– Prof. Vali Nasr**

The answers to all of these questions will define the resources we have available to deal with Iran, Pakistan, and the like. The problem we are facing now is that we are constantly behind crises as they happen. The events in Pakistan were unexpected. Everybody was anticipating that whatever resources the U.S. had could be focused on Iran. Now we are trying to catch up in Pakistan and we do not have the diplomatic, financial, and military resources in reserve to comfortably say that we can handle another crisis. If there were to be another Taliban offensive in Afghanistan we would be at a loss. If southern Iraq suddenly were to take a turn for the worse we would not have the troops to go all the way to Basra. We need to create the ability to manage those sorts of events because nobody takes us seriously when they think we're bluffing. We just do not have the manpower, the money, the resources, or the public support in America to be able to do what we claim.

When President Bush gave a speech in Riyadh in January 2008, al Riyadh, the main pro-government newspaper there, wrote an editorial saying that the Iranian nuclear program is not a big deal even according to the United States's own National Intelligence Estimate. What the Arabs are saying is that they do not need to be told that Iran is a threat – they already know it. The issue is whether the U.S. can do anything about it. They are saying that they don't believe we can, and that they will therefore start talking to Iran on their own. Why did the Saudis invite Mahmoud Ahmadinejad to the Hajj? Why did the Gulf states invite Iran to the Gulf Cooperation Council summit? It is because they don't believe that we can mount an effective Iran policy.

**Prof. Toby Craig Jones:**

It should tell us something that the Arabs are more progressive on the diplomatic front than we are. I think that we have two major issues. One is that the next president has to take the Arab/Israeli conflict seriously. The conflict continues to be a major issue for people across the region and elsewhere. When I started working for the International Crisis Group in 2004, we had commissioned a project on determining the symbolic significance of the Arab/Israeli conflict for generating jihadis in South Asia and across the Middle East. It continued to rank as the number one issue driving people towards militant Islam. The issue remains an engine for various kinds of disillusioned politics. The next president's approach cannot consist of the secretary of state saying that the Arabs need to do more to reach out to Israel. It must be more complex and more serious than that.

The other priority is figuring out a way to extricate ourselves from Iraq. Vali is exactly right. The war has become disastrous on various levels. It needs to be resolved in some way that is not further destabilizing.

**John Brademas (from the audience):**

We in the United States need to understand Islam to a much greater extent than we do. Tariq Ramadan was supposed to have accepted a professorship at the University of Notre Dame but the State Department denied his visa. He is now at Oxford. New York University has established a center for Islamic studies and is opening a campus in Abu Dhabi.

Would it make sense to forge a consor-

tium of universities with Islamic studies centers in the United States, Europe, and reaching into the Middle East so that students and scholars could educate each other?

**Prof. Toby Craig Jones:**

Universities think critically about this sort of issue and seek to exchange students. We might do better by going one step further. Rather than solely moving campuses to Abu Dhabi and elsewhere in the region, universities could bring Middle Eastern students into our American studies and other programs.

**Prof. Vali Nasr:**

The main function of the proliferation of Islamic studies in America is to provide sorely needed knowledge to various agencies and businesses as they deal with the Muslim world. American academia traditionally has had difficulty relating to policymaking. The kinds of relationships that exist in Europe and Israel between scholarship and government do not exist here. The problem is not limited to Middle East studies; it is fundamental.

The visa issue and the way in which customs and security agents handle people from Muslim countries are also problems. They are alienating the secular middle class in the Middle East that has tended to be more pro-American. I participated in the Kennedy School of Government's Dubai Initiative. Donors who have given millions of dollars to Harvard refuse to come to Boston because they have been repeatedly humiliated at Logan Airport. Students are no longer coming, which means that there is no exposure.

**Question (from the audience):**

To what extent is America is condemning itself to repeat the same mistakes that the British made in the Middle East years ago?

**Prof. Toby Craig Jones:**

Starting a couple of years ago, the Department of Defense and various intelligence agencies have been talking to historians. I am not saying that historians necessarily know what the answers are, but the fact that they have been approached at all is a promising sign.

**Prof. Vali Nasr:**

Rashid Khalidi, a history professor at Columbia, addresses that question in a book called *Resurrecting Empire*. The problem is



**"We need to take political Islam seriously."**

**– Prof. Toby Craig Jones**

that the United States is what might be called an accidental imperialist. Our intention is not to become occupiers. The transitory nature of American engagement in the Middle East can be seen as a benefit but it presents practical difficulties.

Because the British intended to stay, they built permanent structures. Look at Connaught Place in Delhi for example. One of the problems facing the U.S. military is that there is a limit to how long you can keep a brigade in prefabricated housing when the temperature is 120 degrees. The transitory structures and frequent troop rotations make it very difficult to manage things on the ground. Commanders stay for months and are then rotated out. There is no continuity. The tactical level must be considered along with the grand picture.

**Karen J. Greenberg:**

It seems that there at least two conclusions to be drawn. The first is that we have not had a reality-based foreign policy for a very long time. A great deal of painful reconsideration is required.

The second is that the word "change," which has been batted about by our presidential hopefuls to the extent that it seems to have become an empty concept, actually means something. We could not have had this discussion three or four years ago. We would not have been talking about the reformulation of the Middle East except in terms of democracy-building. We would not have been talking about Pakistan or even about the nuclear presence in the Middle East in the way that we are now. We are going to have to deal with the Iraq War and the rebirth of al Qaeda. The good news is that we can hope for the change in the discourse over the last several years to continue.



## Rights in Conflict: Case Studies



Prof. Reza Aslan, Karen J. Greenberg and Prof. Ricardo René Larémont. Photo by Dan Creighton

**Panelists:** Prof. Reza Aslan,  
Prof. Ricardo René Larémont  
**Moderator:** Karen J. Greenberg

**Karen J. Greenberg:**

I would like to thank the Carnegie Corporation and the Council on Foreign Relations for co-partnering with us to present tonight's event. I suspect that we will have more questions after the conversation than we came in with. Don't let that make you feel uncomfortable; it is okay.

Tonight's topic is the intersection of our understanding of Shariah and the concept of international human rights law. We are going to address the role, or the lack of one, of Shariah within specific countries and regions. We will be mixing many conceptual and political ideas that are difficult to navigate. But with these speakers, we have a pretty good chance of understanding the issues confronting the United States in dealing with countries where Muslim law is influential.

How influential is Shariah law? How

important is it? Have we, as Americans or Westerners, overestimated what it is? Do we have an exaggerated fear of it? We are going to start the conversation in a rather unusual way. Professor Larémont will tell us a little about Nigeria, because without understanding the context the rest of the discussion would not make as much sense.

**Prof. Ricardo René Larémont:**

Before I talk about Nigeria specifically, I would like to take a step back and talk first about Africa and Islam. The first misconception people who are not active researchers in the region have is that there is some sort of bifurcation of interest between North Africa and West Africa. The Sahara was a highway rather than a barrier until the beginning of the 20th century. Islam cannot be understood in isolation but only in terms of how West Africa connects with North Africa and the Sudan, which in turn connects to Yemen and the Arabian Peninsula. This is the first and most important idea to grasp.

The second idea, which is also relevant to our discussion of Nigeria in particular, is the importance of Sufi Islam within Nigeria, West Africa, North Africa, and arguably Indonesia and Pakistan. Sufi Islam, with its interior search for meaning, provides an alternative to the literalist, legal understanding of Islam as has been strongly proposed by the Wahhabis and neo-Wahhabis. There is a dialectical tension between them. It has been played out with occasional thesis, antithesis, and synthesis but not always successfully. This is a prelude to what I will discuss later so that we understand what Shariah means in Nigeria. It is important for us to realize that, arguably, there is not one Islam but rather various Islams played out by proponents who may have different understandings of its specificity within this context.

Women play very interesting political roles in how Shariah law is developed and engaged in the political process in Nigeria and elsewhere. I will talk in greater depth about the topic in a few minutes. So that is a series of introductory ideas. Now I would

like to turn to a discussion of Nigeria more specifically.

Shariah law there is extraordinarily important from both an ontological and an epistemological perspective, especially to the northerners within the country. Nigeria is a diverse place and will be increasingly so given the domestic movement of people. At the beginning of the 20th century, the majority of northern Nigeria was almost entirely Muslim.

The southwest of the country is a mixture of Christians and Muslims and the southeast is predominantly Christian. This leads to a lack of internal cohesion in terms of national identity. The tendencies towards breaking away have been substantially mitigated by the Biafran War, which took place in the late 1960s. The fear of civil war still serves to keep the country together.

There are 12 northern states in Nigeria in which Shariah law has been fully reinstated. The process began in about 2000 and was completed by 2002. When the movement came into place, it caused considerable consternation, including within the Christian community. The Christian community in Nigeria is itself complex. Catholics have provided the majority of its leadership, many of whom have been trained in Rome in Islamic theology. They have been on the forefront in terms of working on Muslim/Christian reconciliation. The Anglicans are similarly adept in questions of Muslim/Christian dialog. There is an increasingly important Pentecostal movement that takes a harder, more militant line in regard to the Muslims. So there is neither a homogeneous Christian community nor a homogeneous Muslim community.

What transpired in 2000 was the complete reinstitution of Shariah in Nigeria. Shariah has always had a role in social life, including the civil law questions of marriage and inheritance. The key innovation of 2000 and 2002 was a restoration of Shariah *criminal law*. It involves eight *Hudood* crimes, including homicide (*jinaya*) and robbery (*khiraba*). But the two most important, around which the states most litigated, are *zina*, which is fornication or adulteration, and *sariqah*, which is theft. It very quickly became clear that the two communities immediately affected by the reinstitution of Shariah criminal law were women – particularly poor or less-educated women – and minors or men who had been engaged in theft. When you look analytically at the cases that have been brought, those who have been prosecuted



Prof. Reza Aslan. Photo by Dan Creighton

tend to be poor, village women who do not have access to legal defense. Shariah is meant to be comprehensive, involving both transparency in government and the creation of a moral society. What we have seen thus far is the prosecution of women and quasi-indigent men.

Shariah is important to many northern Muslims for profound ontological reasons. Shariah law became important in northern Nigeria beginning in 1803, when a Muslim leader named Usman dan Fodio initiated a revolution against the so-called animist practices of the Muslim leaders of the time and established an Islamic state there. That Islamic state operated from the first decade of the 19th century until the first decade of the 20th century, when the British came in and seized northern Nigeria. So, for a period of 100 or 110 years, Islamic law existed and served as the basis of the operation of the Sokoto caliphate.

From 1905 until independence in 1960, the British, having experience in India and Uganda, employed the politics of indirect rule in order to rule northern Nigeria. They co-opted Muslim political, religious, and legal leaders into their system of political rule, of colonialism. The British had the ultimate control in terms of power within the military – they could quash any rebellion – but the government was in effect operated by Muslim political leaders as their agents. The only aspect of Shariah that the British prohibited was stoning to death for fornication and amputation of the hand for theft. Other than that, Shariah law continued. So Shariah operated from 1803 until 1960.

In the period between 1960 and 2000, the various military and civilian governments of Nigeria similarly allowed Shariah law to operate, although they also prohibited stoning and amputation.

In 2000, eight months after the election of Olusegun Obasanjo as the first post-military president of Nigeria, the governor of Zamfara state in the extreme north initiated a law within his state to reinstate Shariah criminal law. He argued that the state needed the full implementation of Shariah. This caused considerable consternation among Christians, who thought that they would be subjected to these types of draconian punishments, and also among Muslims. Muslim activists argued that these punishments could only be imposed in a context in which full Shariah law was implemented – in other words, that you could not impose Hudood punishments for women without first having established transparency in government. You cannot pick and choose among your Islam, they argued, but rather must establish the whole Shariah. What then happened, at least from my perspective, was that certain governors manipulated the question of full implementation of Shariah, including the criminal law, in order to advance their own political careers. Nevertheless there were people whom I would describe as Muslim progressives critiquing these political activities. They tended to be academicians and legal activists. That is the context in which Shariah developed after 2000.



Prof. Ricardo René Larémont. Photo by Dan Creighton

Besides the Muslim critics, there are two other groups trying to provide a critique of Shariah. One is the Christian community, which can be broken down into three segments. The Catholics and the Anglicans have had the longest experience dealing with the questions of Shariah and Islamic law. The Methodists, the Presbyterians, and the Baptists occupy a middle position. One of the most interesting political dynamics that has emerged in Nigeria is the rising popularity of Pentecostal Christianity. It is

within that group that I have found the greatest militants within the Christian community against Islamic law. There are many flash points of violence that episodically occur because of it.

The other segment of society providing a critique is the community of women. There are essentially four women's groups within Nigeria who are active on the question of Shariah. One is the Federation of Muslim Women's Associations of Nigeria (or "FOMWAN"), an association which argues that Shariah is important. With the full implementation of Shariah, they say, Muslims will reacquire a sense of their legal tradition's cultural and historical legacy and women will be empowered. Women will get their inheritance rights and will have equitable rights to divorce and access to support afterwards. FOMWAN is also supported by a smaller, less powerful group called the Muslim Sisters Organization.



## Fiqh

Human interpretation of divine law. The use of the different words "Shariah" (law) and "fiqh" (interpretation of the law) indicate the separation between divine law and the human understanding of it.

### Sources:

John Esposito, ed., *The Oxford Dictionary of Islam* (Oxford University Press, 2003) Hans Wehr, *Arabic-English Dictionary* (Spoken Language Services, 1994)

There is another series of Muslim activists on the so-called left. They are led by Baobab for Women's Human Rights, a legal advocacy organization, and the Women's Rights Advancement and Protection Alternative (or "WRAPA.") WRAPA has come to the defense of many women accused of fornication or adultery. What is most interesting about their politics is that they have immersed themselves in Islamic law in order to fight for the rights of women within Islam and within an Islamic discourse. They seize upon of the discourse of Islam in order to assure that women are not subjected to penalties such as stoning. For the most part they have been extraordinarily successful.

That leaves us with a legal regime within which women can still be arrested for zina

and may still be subject to stoning to death. On the other side, however, there are very effective legal activists coming to their defense.

The evidentiary requirements of the Qur'an for a *zina* prosecution are extraordinarily high. In order for a woman to be accused of fornication or adultery, four competent, male Muslims must observe the sexual intercourse involved. Alternatively, a woman can confess to the crime, which is what has happened in many of these cases. These women, not knowing that they shouldn't confess, did. They were dragged into court, and then the legal defense teams came in.

### Karen J. Greenberg:

Prof. Aslan, one of the most significant problems we have in addressing this issue is that the word "Shariah" seems to mean everything and nothing. How do you assess the validity of the concept of Shariah in respect to the Middle East and the Persian Gulf region?

### Prof. Reza Aslan:

I'm glad that we are focusing on Africa because in talking about Islam we so often focus solely on the Middle East, and particularly on the Arab world. There are more Muslims in sub-Saharan Africa than there are Arabs in the entire world. We too often forget an entire continent of Muslims – and a very important continent at that.

We have been using this term, "Shariah." But in reality, there is no such thing. Shariah is meant to be a utopian, perfected, divine law – a law that is, in many cases, impossible to put into actual practice. Through jurisprudence, or *fiqh*, legal codifications are brought about that allow a society to access this divine Shariah. If you think of the Shariah as an ocean, the *fiqh* is the ladle used to pull some of the water out. However, the water then needs to be put into some sort of a container. That container is formed by a community's social traditions, its political traditions, religious traditions, and tribal traditions. The water takes the shape of the container that it is poured into, and, *voilà*, you have a society based on Shariah.

That is why Shariah has such vastly different iterations in, for example, Nigeria, Iran, and Indonesia. There are some countries, like Egypt, where Shariah is the law of the land. But when I asked an Egyptian supreme court justice about it he told me, "We just ignore it. We just pretend it's not

there." In other words, the constitution of Egypt claims that the state is built upon Shariah, and yet Egyptian lawyers are trained to essentially ignore it. So then, why is it still there?

It is there because, in modern societies, law equals identity. In modern constitutional states, your social and collective identity is given shape, meaning, and substance through the law.

Many Muslim countries went through an experience in which their legal traditions were usurped by Western powers. Colonialism, of course, was a "civilizing mission." It was an attempt to bring civilization to the peoples of the Muslim world. Particularly in the Middle East, that was done through the wholesale implantation of Western (Roman) law. Anything that smacked of Shariah was immediately done away with as an emblem of Muslim backwardness. (The exception was family law, which was more or less left alone.) For the most part, though, Islamic or Arab legal traditions were replaced by what the colonialists believed were proper, civilized legal traditions.

There is much that colonialism gave the Muslim world. It provided a sense of nationality and nationhood in a region where that did not exist. Arbitrary borders were drawn up, fabricated nationalities were created, and made-up names were given to these countries, like Iraq for instance. All of this was essentially an attempt to form an identity for the region that was created, ruled, and controlled by outsiders.

The decolonization process was violently disruptive. In many cases the colonialists simply picked up and left, leaving behind social chaos, political instability, and economic uncertainty. Most of these economies were wholly dependent upon the colonial market – that is, making goods to be shipped out to Europe. But the decolonization process also left behind a sense of nationhood. Suddenly these so-called Islamic states were forced to create an identity for themselves. Governments and rulers started putting into practice what only political philosophers had been talking about until then.

"What is an Islamic state," they asked? It is not just a state full of Muslims; that cannot be all it is. There has to be some defining aspect to it. In many cases, that defining aspect was Shariah. In other words, an Islamic state is one based upon Islamic law. Because Islamic law is a nebulous thing –





# Hudood

Hudood crimes are those that entail mandatory punishments described in the Qur'an or Sunnah. While the list of offenses varies between schools of jurisprudence, those considered Hudood crimes by some or all of the schools include: adultery or unlawful sexual intercourse, apostasy, drinking alcohol, highway robbery or banditry, homicide, rebellion or treason, slander or false accusation, and theft.

## Sources:

Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century* (Cambridge University Press, 2005)

Yahaya Yanusa Bambale, *Crimes and punishments under Islamic law* (Malthouse Press Limited, 2003)

something that exists much more in the minds of theologians than on paper – it was very difficult for many of these countries to implement the actual Shariah itself. And hence contradictions like Egypt.

But Egypt is not the only example. Morocco also has Shariah on the books but it is similarly ignored except in cases of divorce and inheritance. There are very few places in the world where implementation of the Shariah includes the *Hudood* ordinances that Professor Larémont was talking about, because it is impossible to reconcile that aspect of the *fiqh* with what we expect of a modern constitutional state.

The *Hudood* ordinances are a perfect example of what I am trying to show here. The Qur'an is not a legal text. It is not the Torah. It provides very little legal foundation for the creation of a society. Nor was it ever meant to. As a codex of laws to form a legal society, it is and always has been woefully inadequate. That is why the legal establishment, the *ulama*, was created so early on. In fact, the *ulama* as an institution began to be formed before the Qur'an was even canonized as a single text.

The Qur'an is a book of moral guidance. It is a text that teaches you how to lead your

life morally, how to commune with God. There is, however, a very small handful of verses with explicit legal content. Those include the *Hudood* laws, which are considered to be divinely sanctioned, unbreakable laws that all Muslim societies are supposed to adhere to. (The emphasis in the Qur'an regarding the *Hudood* laws is not on the legal issues but rather on the punishments.)

Adultery is one of the *Hudood* laws. There is regular theft and something called highway robbery. Murder is not one of them, nor is rape. These are criminal acts in Shariah but they are not in the Qur'an. And therein lies the key to understanding the *Hudood*. The *Hudood* ordinances are considered divinely sanctioned because they are in the Qur'an but they are not assembled as a "Ten Commandments." There is no single place in which the Qur'an says, "Here are the eight things you must never do." It is simply that these six or eight prohibitions just happen to be mentioned somewhere between the first page and the last page of the Qur'an. I say this in order to emphasize the randomness of the *Hudood* and the way in which they are applied.

Not only is Shariah applied randomly and haphazardly, but a society's cultural norms (particularly tribal norms) almost always outweigh the importance of the law. Stoning, for example, is never used as a punishment in the Qur'an, including for *zina*. The punishment for *zina* in the Qur'an is lashes. But the social development of Islamic law has brought about stoning as punishment for *zina*. More importantly, as Professor Larémont said, the Qur'an makes a prosecution for *zina* almost impossible to attain. Four men of blameless virtue must simultaneously witness the actual act of fornication. (How someone could be of blameless virtue and witness to an act of fornication escapes me). Yet these courts, whether in Nigeria, Taliban-controlled Afghanistan, or Iran, claim to apply Shariah, even though for them, Shariah is an idealized thing that exists in heaven. This is how they think: fornication is a sin, it's mentioned in the Qur'an, and the punishment for it is stoning.

Women are often at a disadvantage in so-called Shariah-dominated cultures. Indeed, Shariah is most often put into place precisely to deal with women. In Cairo, where the judicial system functions well, nobody is ever brought up on *zina* charges and stoned. But in tribal regions away from the centralized authority of the state, there will be instances in which women have their hands cut off or are stoned to death.

In Iran, the most successful women's rights organizations are those that are adept at Shariah and that use Islamic law to their advantage. Any argument that relies on Western law or the principals of feminism would be destined to failure in Iran. The issues are not about the law; they are about identity. If you were to separate yourself from the identity of the community by resorting to international law or American precedents, then you would have lost the argument before you ever began.

However, if you absorb yourself into that identity and fight fire with fire, so to speak, then you can succeed. Shirin Ebadi, who won the Nobel Peace Prize in 2003 for activism and for her work defending human rights and women's rights in Iran, knows everything there is to know about Islamic law. She can say to a judge, "No, that's not what the Qur'an says. That is not what the law says." That is, she shames the courts into throwing out cases. This has been a very effective means for her to ensure the rights of women.

We frequently hear about a resurgence of interest in Shariah in North London or the poor, ethnic enclaves of Paris. But again, it must be understood that the people supporting Shariah have no idea what Shariah means. They don't know what it is or what it isn't. They are not trained in Islamic law. They have not gone through the dozens of years of training in one of the accepted schools of law that would allow them to talk about Shariah, let alone discuss implementing it. They would be horrified if they had to live in a true Shariah state. All they know is that Shariah means Islam; that Islamic law means Islamic identity. At a time in which they are not sure about their identities as British, South Asians, Westerners, or Muslims, it is a way for them to identify themselves. I have spoken with them and asked them about what they mean when they talk about Shariah. They don't know. It is just an idea, an identity.

When we talk about international human rights law and the way it should be applied to countries implementing Shariah in one way or another, we need to realize that international human rights law is not international. It was written by the victors of World War Two. It is Western law universalized. At no point was anyone from the Muslim world brought in to help define the Universal Declaration of Human Rights (or "UDHR") or any of its accompanying protocols. When it is used as the measure by which a traditional, conservative Arab or

Muslim state should apply its own laws, it is violating the identity of that country. It is not their law. It was written in Brussels and it has nothing to do with them at all.

I am not trying to give a relativist's point of view, but I want to emphasize that there is more to the idea of Shariah than legal provisions and punishments.

**Karen J. Greenberg:**

Reza, you're interested in social movements. A word that has not come up yet in this discussion is "jihad." I am curious about how the Islamic fundamentalists – the politicized jihadi movement – has utilized or been affected by Shariah in the way that you have just described it. Ricardo, would you please talk about how the political movements that you are concerned with utilize these larger, transnational issues?

**Prof. Reza Aslan:**

I appreciate the way you have phrased the question. "Islamist," "fundamentalist," "crazy," "militant," "jihadist" – we do not know what to call it. We really don't. As an academic and as a sociologist, I think the proper term for the group that you are referring to is "jihadist." There are many people who would not agree. They would object because of the correct notion that jihad is a very complex tenet in Islam (although never a foundational tenet) that has been continuously argued and debated for 14 centuries. To refer to this group as jihadist is to devalue the word. I completely agree, but the term is important and correct. Jihadist is a proper epitaph, if for no other reason than they use it themselves.

But the jihadists are not fighting a jihad. A jihad has very specific rules. It is always tied to some kind of political establishment. In other words, a jihad can be issued by either the caliph or a qualified cleric. A jihad is, without exception, in defense of either property or land. But jihadism does something very new. It divorces the concept of jihad from any specific goal. It transforms jihad into a purely metaphysical conflict, a cosmic war. This is not jihad to free Palestine – they do not care about Palestine. It is not jihad to free Egypt – there is nothing to free in Egypt. This is jihad totally divorced from any concrete goal, a proactive form of jihad that is more than anything else a symbol of collective identity.

The jihadists are more than transnationalists. They are *antinationalists*. They want



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**– Prof. Ricardo René Larémont**

to rid the world of all borders, nations, and nationalities. They cannot create an identity based on nationality, ethnicity, common culture, common language, or even common religion because, as Ricardo said, Islam is many things to many people. They needed some symbol in order to rally a group together under a single umbrella and to mobilize them to action. For this they use jihad – but jihad stripped of any kind of localized or defensive, state apparatus whatsoever. Jihad as purely a metaphysical idea. Jihad as symbol or a rallying cry to bring together people from different states, with different customs, languages, religions, and ideologies under a single identity.

That is precisely why jihadism is so successful. We are entering a period that many people refer to as postnationalist. I think that is going a little too far. But nevertheless, we have certainly entered a period in which the old identity markers that we have been handed from the last century, by which I mean secular nationalism, have begun to break down. As that occurs, more primal forms of identity are beginning to take its place. Ethnicity and religion are the two main ones. Seventy-five percent of people the Middle East are younger than 35, and 60 percent are younger than 30, so we are talking about kids here – kids for whom the old markers of identity used by their parents no longer apply. They are desperate for alternative forms of collective identity, and jihadism is a form of identity that is very appealing. In that sense, the same kinds of identity conflicts that have resulted in the

resurgence of Shariah are precisely the same kind as those that have allowed jihadism to flourish.

**Prof. Ricardo René Larémont:**

I see things from a rather different perspective. I think that jihad is good. I think the problem comes from the way that we in the West have constructed the discourse about it. Jihad has become the new Fascism. In some ways, I disagree with Reza and in others I profoundly agree with him. I think we need to comprehend jihad from a generational perspective, as he said. That is the essence of the issue.

Jihad has various aspects. The first time I walked into the al-Karaouine Mosque in Fès, Morocco, the imam pulled me over and started lecturing to me in Arabic about interior jihad and exterior jihad. He told me that nobody is qualified to conduct exterior jihad until they first have finished their interior jihad. What we need to do in order to bring some rationality to this discourse is realize that jihad is not bad. Jihad is struggle. But, as Reza said, and this is where I agree with him, those who are obsessed with exterior struggle have not been sufficiently versed in the practice that requires internal struggle first.

Unless we in the West make our understanding of jihad correctly complex, we will never understand the dynamism of this particular movement. Rather than focusing on the term "jihad," we need to look at the legitimate aspirations and complaints of the people who seize upon this so-called jihadi philosophy in order to realize their dreams or express their frustrations. They are predominantly men between the ages of 18 and 35 who are marginalized politically and economically. Until there is a shift in our discourse about jihad, we will never be able to seriously engage the underlying issues that are driving it.

The second point that I would like to make is that these men are extraordinarily mobile. There are direct flights from Kano, where I do my research in northern Nigeria, to Beirut, Riyadh, and Abu Dhabi. When I was lecturing in Niger, right before the United States decided to invade Iraq, I met numerous people in their 20s and 30s who intimately understood the layout of Baghdad because they had studied there.

I think the dangerous part of the American political discourse is a failure to fully engage the more comprehensive meaning of jihad, which in many ways is rather noble. Our focus upon exterior

jihad, as opposed to the more important interior jihad, has diverted us in a dangerous direction.

**Prof. Reza Aslan:**

I am not trying to say that jihad is a bad thing. What I want to emphasize is that the doctrine of jihad, the history of jihad, and the concept of internal and external jihad are irrelevant to the jihadists. They do not see it as a doctrine. They see it as a symbol. They do not use the word in the way that Muslims do. They do not understand it the same way. Osama bin Laden said, “We want to give jihad the status of worship.” That is not Islam. We cannot refer to someone who says such a thing as a Muslim. Ayman al-Zawahiri once said that “to deny jihad is to remove the distinction between the unbeliever and us.” In other words, *jihad* is his religion.

Hamas, Hezbollah, and the Chechen rebels are not jihadists. Jihadism is a transnational, puritanical Sunni ideology. It is not an organization.

**Karen J. Greenberg:**

I would like to discuss the situation of women in these countries. It is, I think, an issue in which Western law and the notion of Shariah law as you have described it come into conflict.

From my perspective as a non-specialist, it is difficult to discern how much the issue is due to this new movement in Shariah law or to something else that has been there for ages, how much of it has been politicized, and how much of it is only window dressing. A situation in which you need four witnesses of blameless virtue as a prerequisite for a *zina* prosecution is not so fearful. In that case, ignorance is the most significant problem.

How do you assess the discourse, which in the United States seems to be misinformed? What are the differences between countries in the Middle East and Africa in respect to these issues?

**Prof. Ricardo René Larémont:**

Whether in Pakistan, Saudi Arabia, Afghanistan, or Nigeria, the area of concern when Shariah has resurged has always been women’s bodies, which at times invokes notions of patriarchy, domination, and honor. The people in favor of Shariah on the progressive end of the spectrum have at the same time come to women’s defense and argued that fuller implementation of Shariah is required.

The major problem, as I see it, is not Shariah. It is the political manipulation of Shariah and the tremendous unevenness in the Nigerian judiciary. Some judges are extraordinary experts at both Shariah and English common law. Others are substantially unlearned. There are judicial dilettantes incorrectly interpreting or applying the law. An empirical study of the cases involving *zina* would show that they have all been in remote villages. The appellate judiciary has then corrected the mistakes of these relatively inexperienced judges. We should nevertheless arrive at a point within Shariah where women are simply not arrested for this crime, given the high evidentiary burden required for a prosecution.

The project of implementing Shariah cannot be endorsed unless the judges are fully trained. Women are substantially at risk until important corrections are made.

**Karen J. Greenberg:**

The system cannot change without a shift in the understanding of what the treatment of women should be. Are we really talking about fundamental, societal changes as well as institutional changes?

**Prof. Ricardo René Larémont:**

Patriarchy is hard to destroy. What is admirable, at least from what I have observed in Nigeria, is that there are extraordinarily articulate women who have versed themselves in Islamic law. They provide the basis for a shift in attitude, not only among conservatives but among all men, in regard to what women can do in society.

**Karen J. Greenberg:**

Reza, I would like for you to address the same question, but I would like you to talk a little bit about women within the political system, as politicians.

**Prof. Reza Aslan:**

Women have always been a symbol of the honor and identity of these cultures, particularly in the Middle East. To return to the topic of colonialism for a moment, women were seen by the European colonizers as the symbol of the backwardness of Islamic societies. The Victorian imperialist Alfred Lord Cromer started a forced anti-veiling program in Egypt because he saw the veil as a symbol of the backwardness of Islam and Egyptian culture. The only way to truly modernize Egypt, in his view, was to promote women’s rights by stripping them of the veil. Of course, in the UK, Lord Cromer

led the National League for Opposing Women’s Suffrage. He was a misogynist; he had no interest in women’s rights in the Muslim world. The anti-veiling program was an attempt to apply a British conception of societal relations to a society that had never understood anything like that, a tribal society in which women had a different role than men.



**“Suddenly these so-called Islamic states were forced to create an identity for themselves. In many cases, that defining aspect was Shariah.”**

**– Prof. Reza Aslan**

Many of these issues have far more to do with cultural practice than with religious practice. But, of course, in many places religion and culture become so intertwined that you cannot tell the difference between the two. That is why there is such difference between women in Iran and Turkey, for example. In Iran, a Shariah state in which women are forced to veil themselves and where their legal testimony is considered half the worth of men’s, there are the largest, most vibrant, and most robust women’s rights organizations in the whole of the Muslim world. In Turkey, women with veils are not allowed to receive college degrees or to work in the civil bureaucracy. The very notion of permitting women who put scarves over their heads to go to college launched massive waves of protests. So, the way women’s issues are viewed both in countries that consider themselves secular and those that consider themselves Shia or Sunni is a complicated mosaic.

I would say that we in the West are equally guilty about seeing Muslim women as nothing more than symbols rather than actual human beings. We play the same game. We talk about women in Iran as veiled and therefore politically disenfranchised. Until 2005, there were more women in the Iranian parliament than in both houses of the U.S. Congress combined. But they had to put scarves over their heads.



We have to understand that they have their own conceptions of their role in society. Women's roles cannot be dictated to them by men, by Westerners, or worst by men in the Muslim world. There is a way of seeing Muslim women, either veiled or unveiled, as a symbol of the difference between the West and the Muslim world – that being in a Muslim society necessitates a devaluation of the female gender. I spoke with an Iranian woman about this. I said to her, “I live in a country in which most people see your veil as a symbol of your oppression.” She replied, “You live in a country in which it takes topless women to sell a wrench.”

## Qiya

“Analogy.” Islamic sources do not address all topics relevant to modern legislation, so jurists use analogy to infer the appropriate application of Islamic legal principles.

### Sources:

John Esposito, ed., *The Oxford Dictionary of Islam* (Oxford University Press, 2003)  
Hans Wehr, *Arabic-English Dictionary* (Spoken Language Services, 1994)

She is right. Why does it take naked women to sell tools in this country? For her, that was a devaluation of women; that was the oppression of women. I am not going to say that all Iranian women believe this, because I do not want to make such generalities. It is a very complex mosaic and we must be wary of making simplistic judgments about these cultures that come from a completely different viewpoint and worldview than we do.

### Karen J. Greenberg:

Would your answer be different in respect to Saudi Arabia?

### Prof. Reza Aslan:

It would be, and not just Saudi Arabia. There is no excuse for taking away the rights of women in any culture or any society. But I am not talking about legal rights. I'm talking about social status and social positions. We cannot expect a traditional,

tribal culture like Afghanistan to suddenly adopt American social conceptions of gender relations. We can expect them to give the same legal rights to women as they give to men.

## Excerpts from the Question and Answer Session:

### Question (from the audience):

Prof. Aslan, you mentioned that the *Hudood* laws are in the Qur'an by happenstance. But what about the prophetic traditions?

### Prof. Reza Aslan:

In order to create Shariah, you have to rely on the Sunnah and on clerical precedence, both of which change according to the school of law you follow. You need to create complex analogies, or *qiyas*. For instance, there is nothing in the Qur'an about abortion, nor would there be. So is abortion legal or illegal in Islamic law? There is a group of clerics who essentially say, “There is a verse in the Qur'an that condemns the ancient Arab practice of leaving newborn girls out in the desert to die. That is like abortion, so therefore abortion is illegal.” You have to jump through enormous hoops in order to create a legal doctrine out of the Qur'an because it is not a legal text nor was it intended as one.

As a result, the Shariah has been perpetually malleable. It has changed in every culture, in every century, and with every generation. It changes dramatically depending on where you live and which school of law you accept. Since there is no centralized religious or legal authority in Islam, you can choose whatever school you want. That is why talking about Shariah as if it were one thing does not make sense.

### Prof. Ricardo René Larémont:

From my perspective, that is a bit of an overstatement. For Muslims, there is a body of law and there are four schools of jurisprudence. There are laws within the Qur'an. Just because they are haphazard, which they are, does not make them invalid.

### Karen J. Greenberg:

Saying that the Qur'an is woefully inadequate as a legal text is rather a philosophical view. I understand your point, but it does not seem to address the realities underlying global security concerns. There is a legal code that we need to understand.



**“The major problem, as I see it, is not Shariah. It is the political manipulation of Shariah and the tremendous unevenness in the Nigerian judiciary.”**

**– Prof. Ricardo René Larémont**

### Prof. Reza Aslan:

That is why you have to look at culture, ethnicity, and tribal traditions and customs before trying to determine how Shariah weaves itself into them. The container into which you put that ladle of water is what matters. You start with the container, not with the water. If you want to talk about how Shariah functions in the world, start with the world.

### Question (from the audience):

How are the women's organizations in Iran addressing the growing drug problem in Iran and the abuse of young girls, incest, rape, and prostitution?

### Prof. Reza Aslan:

Drugs are a real problem in Iran, among both men and women. But at the same time, and even though women do not have the same legal rights as men, their social status is getting stronger every day. Sixty percent of the college degrees now go to women. The female literacy rate in Iran is 90 percent, which is the same as in the United States. Women are fast approaching 50 percent of the workforce, albeit a diminishing workforce.

The women's organizations are doing the same thing as Professor Larémont described in Nigeria. They are not focusing their energies so much on the outcasts in Tehran who are drug addicts, who are living on the streets, or who have gone into prostitution. They are focusing instead on the villages, where stonings are taking place and where women are dealing with a legal system in which judges do not really know what they are doing.

### Question (from the audience):

How does Shariah address female genital mutilation?

**Prof. Reza Aslan:**

It is not an Islamic issue. It is not an Islamic practice nor has it ever been. It is a tribal practice most particularly among African cultures. Very few Arab tribes outside of North Africa practice it.

**Prof. Ricardo René Larémont:**

It is not mentioned anywhere in the Qur'an or in the Sunnah. It is practiced rather extensively, but it is not a Muslim practice.

**Question (from the audience):**

Are international human rights law and Shariah compatible?

**Prof. Ricardo René Larémont:**

While the question may be germane to us in this forum, it is not to the women have been prosecuted in Nigeria. Most of them have been prosecuted in outlying villages where international human rights protocols are unknown. The protocols are never

discussed and never have any applicability. They are sound and fury, signifying nothing.

As a political activist, which I am as a scholar, I have chosen to focus my attention upon those most at risk – the women who need adequate legal defense. I have also been focusing on the need to train judges to be truly expert in their field. That is how I'm going to use my time in order to try to protect and empower those most at risk. The international human rights protocols are something that we can discuss in our law journals but do not have any real importance on the ground.

**Prof. Reza Aslan:**

When the Universal Declaration of Human Rights was first drafted, a number of countries – not only Muslim countries but also in Latin America and eastern Europe – rejected it because it did not attempt to accommodate their legal traditions. The Islamic

Council of Europe put together a version called the Universal Islamic Declaration of Human Rights. The text is interesting because it mimics, almost word for word, the principles laid out in the UDHR, except for an added condition that they be in compliance with the Shariah. Any country that adopted it could say that a truly free press is trumped by their conception of Shariah, for example.

But that said, I think that international human rights law and the Shariah can be reconciled. I think that a universally applied idea of legal rights can be created, as long as we understand that legal rights and social position are different things.

**Karen J. Greenberg:**

What I have learned tonight is that we still have quite a bit more learning to do. As I mentioned at the beginning, the conversation was bound to raise as many questions as it answered. Thank you.

## Participant Biographies

**Reza Aslan** is a fellow at the University of Southern California's Center on Public Diplomacy; an assistant professor of creative writing at the University of California, Riverside; and Middle East analyst for CBS News. He is a member of the Council on Foreign Relations, the Los Angeles Institute for the Humanities, and the Pacific Council on International Policy. He serves on the board of directors for the Ploughshares Fund and PEN USA. His *New York Times* bestseller *No god but God: The Origins, Evolution, and Future of Islam* (Random House, 2005) has been short-listed for the *Guardian* (UK) First Book Award and nominated for a PEN USA award for research nonfiction. His next two books will be *How to Win a Cosmic War* (Random House, 2008) and an edited anthology, *Words Without Borders: Contemporary Literature from the Muslim World* (Norton, 2009).

**Nathan Brown**, a professor of political science and international affairs at George Washington University and a senior associate at the Carnegie Endowment for International Peace, is the author of four books on Arab politics. His research interests include Egyptian and Palestinian politics, legal reform in the modern Middle East, and democratization. His most recent book, *Palestinian Politics After the Oslo Accords: Resuming Arab Palestine* (University of California Press, 2003), presents research on Palestinian society and governance after the establishment of the Palestinian Authority.

**Noah Feldman** is a professor at Harvard Law School, an adjunct senior fellow at the Council on Foreign Relations, faculty co-director of the Center on Law and Security, and a contributing writer for *The New York Times Magazine*. He specializes in constitutional studies with particular emphasis on the relationship between law and religion, constitutional design, and the history of legal theory. In 2003, he served as senior constitutional advisor to the Coalition Provisional Authority in Iraq and subsequently advised members of the Iraqi Governing Council on the drafting of the interim constitution. His latest book is *The Fall and Rise of the Islamic State* (Princeton University Press, 2008).

**Karen J. Greenberg** is the Executive Director of the Center on Law and Security. She is the co-editor of *The Torture Papers: The Road to Abu Ghraib* (Cambridge University Press, 2005) and *The Enemy Combatant*

*Papers: American Justice, the Courts, and the War on Terror* (Cambridge University Press, 2008), both with Joshua L. Dratel. She is most recently editor of *The Torture Debate in America* (Cambridge University Press, 2006). Greenberg is a frequent writer, commentator, and lecturer on terrorism, the U.S. courts and the war on terror, global counterterrorism, and detainee issues.

**Toby Craig Jones** is an assistant professor of history at Rutgers University. His main research interests focus on the history of state-building, politics, and Shia-Sunni relations in Saudi Arabia and the Gulf. He has taught courses on the history of the modern Middle East, Iran and Iraq in the 20th century, the history of oil, and Islam and politics. He worked as the Persian Gulf analyst for the International Crisis Group from 2004–2006, where he wrote about reform and sectarianism in Saudi Arabia and Bahrain. He has published in the *International Journal of Middle East Studies*, *Middle East Report*, *Foreign Affairs*, the *Arab Reform Bulletin*, and elsewhere.

**Ricardo René Larémont** is interim dean and professor of political science and sociology at Harpur College at SUNY Binghamton. His books include, most recently, *Borders, Nationalism, and the African State* (Lynne Rienner Publishers, 2005). His monograph-in-progress is *Islamic Law and Politics in Nigeria, 1804–2007*. His research focuses upon Islamic politics, Islamic law, ethnic and religious conflict, civil wars, conflict resolution, democratization, and civil/military relations. He was a Carnegie Corporation scholar for 2007 and a Fulbright scholar for 1994.

**Vali Nasr** is an adjunct senior fellow for Middle East studies at the Council on Foreign Relations. He is a professor of international politics and associate director of the Fares Center of Eastern Mediterranean Studies at Tufts University's Fletcher School of Law and Diplomacy. He has worked extensively on political and social developments in the Muslim world with a focus on the relation of religion to politics, social change, and democratization. He also serves as a senior fellow for the Dubai Initiative at Harvard University's John F. Kennedy School of Government. He is editor of *The Oxford Dictionary of Islam* (Oxford University Press, 2003) and the author of five books, most recently *The Shia Revival: How Conflicts within Islam Will Shape the Future* (Norton, 2006).

## Roundtable on the “Legal Cultures in Muslim Societies” Series

Over the past several months, panelists in the “Legal Cultures in Muslim Societies” series generated many questions that merit further consideration. To conclude the series, the Center convened a group of experts on law, U.S. foreign policy and the Muslim world to look specifically at those questions and to suggest future avenues of inquiry. The series touched on a wide range of subjects, including such issues as the doctrinal particularities of Shariah, women’s rights in Muslim countries, and the geopolitics that govern foreign policy decisions in Iran and Saudi Arabia. The following is a summary of the reflections offered at that roundtable conversation.

### **Prof. Eva Bellin:**

After a wide-ranging discussion, we can identify three central questions. First, can Shariah law be a constructive force for the development of liberal democratic legal systems in the Muslim world or is it inherently adverse to such a goal? Second, what role does the political reality in a given country play in a government’s choice to implement Shariah, either in whole or in part? Asked another way, what role does politics play in the development of the rule of law? And finally, is there a way that the U.S. can support the evolution of legal trends in the greater Middle East towards a system where there is rule of law?

### **SHARIAH AND THE RULE OF LAW**

#### **Prof. Eva Bellin:**

Reading the transcripts from the events shows that there was agreement on certain points with respect to Shariah. There are provisions, particularly regarding religious tolerance and the rights of women, which present problems for the understood goal of progressing toward a legal system compatible with international standards of human rights. However, the ideas of Shariah more broadly stated could potentially allow systems to work around those tenets deemed problematic. For example, human rights groups, particularly those defending women’s rights, have achieved legal victories using their knowledge of Islamic law to

contradict and invalidate oppressive actions on the part of the state. Shariah can be used to reach a wide range of differing ends. Shariah also has a rich history of pluralism, encompassing five schools of *fiqh*, and the interpretation of its tenets is dynamic. It contains provisions that can be read as conducive to developing a liberal democratic system and others that can be read as hostile to that tradition.

#### **Prof. Toby Craig Jones:**

We may not be asking the right questions about Shariah. Looking at what Shariah actually says, rather than searching for the redemptive aspects of it, could be a more productive line of inquiry. A scholar who examines the doctrines of Shariah with an expressed desire to read it as a force for the rule of law will certainly be able to support such an interpretation. That is a helpful exercise for making a case in favor of Shariah, but it is less helpful in understanding it as an entire complex and sometimes contradictory body of law. Shariah was, in many cases, preserved in British and French colonies as a way of maintaining order and for many years was enforced in a colonial context. Though it was still “Shariah,” it was not implemented as a requirement of Islam but rather as a convenience for the colonists. Why do Middle Eastern countries have the legal systems that they have? This is a question that we need to answer before we begin trying to change the systems in place.

### **THE ROLE OF POLITICS**

#### **Prof. Farhad Kazemi:**

Judicial institutions have the potential to play a helpful role in reinforcing the development of the rule of law in Muslim countries, though that potential varies by country according to the political situation. Egypt’s Court of Cassation, the country’s highest appeals court, has rebuked the executive branch in the past. Saad Eddin Ibrahim, an Egyptian intellectual and dissident who was jailed in 2000, was vindicated by the Court of Cassation in 2003; his case is one well-known example of Egyptian courts refusing to act according to the will of the executive branch.

There are other countries in the Middle East where the judiciary has acted in the opposite fashion, as a means of consolidating the power of the executive. In Iran, for example, the judiciary, the head of which is appointed by the supreme leader, serves as a tool for legitimating oppressive practices on the part of the security apparatus. While institutions like the judiciary can potentially provide a check on the executive, their presence does not necessarily mean that they will act as a meaningful restraint. In many cases, the judiciary’s role in reform has been limited. Courts that might be considered independent exist in varying degrees in states that purport to have a legal system based on Shariah, and a professed allegiance to Shariah is not determinative in forming an independent judiciary. In some cases, as in Iran, the use of Shariah as the sole source of personal status law, dealing with such issues as marriage and divorce, has contributed to the problems with the legal system.

#### **Prof. Stephen Holmes:**

Political circumstances and agendas invariably influence the development of the rule of law. Idealizing the rule of law as a panacea for the ills of the Muslim world denies many of the realities of the American legal tradition, wherein for many years the legal system enforced, among other things, racial inequality. Globally, laws afford citizens unequal protection. Many developing legal systems, such as in China, have limited enclaves in which the rule of law is a reality while the remainder of the country is subject to the whim of authority. The economic advantages of consistency and predictability in a system can prompt elites to request some regulation, often for economic reasons. The expansion





"Power Politics," January 16, 2008. Photo by Dan Creighton

of legal rights from the upper class to other, less privileged populations over time represents one model of the establishment of the rule of law. Politics certainly plays a role in determining which groups receive which rights at what time.

## THE UNITED STATES' ROLE

### **Prof. Stephen Holmes:**

The United States cannot do very much to establish independent judiciaries in Muslim countries. Judicial legitimacy and legal tradition must be built over time, and foreign policy can only do so much to foster its development. Rule of law is not something that can simply be imported or exported; the United States cannot bring it to the Muslim world. Even if there were unlimited resources to devote to such a project, there are several other complex forces at work in creating a system based on the rule of law, which takes time to develop. Moreover, idealizing the United States' system has the potential to distract from understanding the meaning of the phrase "rule of law." In order to conduct an effective foreign policy, the U.S. government must have clearly defined goals. Given that the rule of law could have different meanings in different contexts, policymakers must consider what goal or goals they expect it to attain before crafting a policy designed to promote it.

### **Prof. Eva Bellin:**

Regardless of the avenue the United States chooses to take in promoting democracy, the rule of law, or the productive incorporation of Shariah into the legal system, it is stifled by its conflicting agendas in the

region. The democracy agenda is overshadowed by the security and economic agendas, both of which the government must also address. Attempting to promote democracy while juggling these other priorities weakens any efforts launched. Democracy, to a degree, means institutionalized uncertainty, and the U.S. government does not seem to want to take on that kind of uncertainty.

### **Prof. Stephen Holmes:**

It is important to clearly define our goals with respect to democratic development before we attempt to implement them. Once we do define those goals, efforts to support civil society may offer an alternative that can be done on a small scale. Civil society groups are potential partners for the U.S. Many of them have goals that could be considered compatible with an agenda of democracy promotion or cultivation of the rule of law, but they often lack the resources to pursue their goals effectively or to form effective coalitions with other organizations that share their objectives. The U.S. government can offer nongovernmental organizations support, financial or otherwise, as a means of fulfilling our goals by proxy.

The idea that the rule of law can be imported or exported was formed by our experience in Germany and Japan after World War II. Our experience in Eastern Europe in the wake of the Cold War consolidated it. Many Eastern European states accepted democratization initiatives sponsored by the U.S. to counteract the influence of the Soviet Union. There is no similar countervailing force in the Middle East at present. As a result, promoting democracy and the rule of law presents different challenges. In addition to the more focused inquiry suggested earlier, the research community can provide a forum for debate as to whether democracy promotion is an acceptable goal and how it can be done ethically and effectively.

### **Prof. Farhad Kazemi:**

Soft power is certainly a more effective tactic to adopt in attempting to encourage democratic development in the Middle East. Support for organizations in ways that do not undermine or compromise their credibility as voices of their own communities will be more helpful than force. Efforts such as training journalists – as many of the journalists working in the Middle East have very little training – could lead to an increased role on the part of the press,

which has a clearly positive impact on the cultivation of open society.

### **Prof. Eva Bellin:**

On the other hand, we should maintain some skepticism regarding the role civil society can play in a state where an authoritarian government is a pervasive force, which is of course the case in those places where the United States wants to promote democracy and the rule of law. When there are so many obstacles to effective organization, it may be unrealistic to expect nongovernmental organizations to initiate any kind of positive changes. Civil society may not be the appropriate vehicle for a democratic transition in Middle Eastern countries.

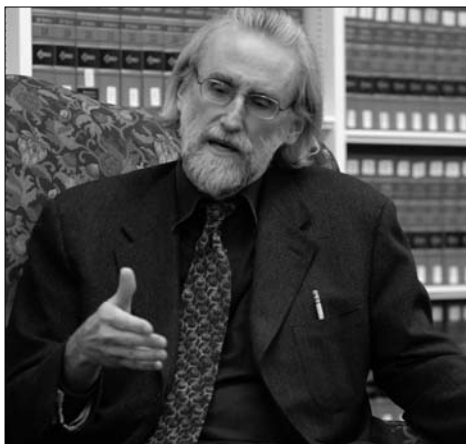
### **Prof. Stephen Holmes:**

A civil society organization or an opposition party may share certain values with an American administration, but that would not enable it to hold a nation together in the event of a government collapse or an Islamist insurgency. Supporting groups that agitate for change may bring about undesirable destabilization that threatens global security. It is unrealistic to expect that the rule of law will be prioritized above global security concerns. In Pakistan, for example, lawyers protesting Pervez Musharraf's suspension of the chief justice provided a powerful image, and their complaints are certainly resonant. However, it is the military rather than the lawyers who can protect Pakistan from the threat of Islamist extremists.

### **Prof. Toby Craig Jones:**

In at least some cases, the dictators in place, in order to consolidate their own power, perpetuate the idea of a dichotomy between those groups or parties whose values the United States shares and those that will maintain a degree of stability and security. Dictators such as Hosni Mubarak and Pervez Musharraf have a clear incentive to exaggerate the security risks their countries would face without their leadership. Pakistanis may in fact be more moderate than Musharraf portrays them, and the U.S. choice to lend credibility to a regime like the one in Pakistan may do more to engender extremism than to prevent it. Seeking information from sources other than the government in question would be more informative than simply taking a dictator's narrative as fact and may alleviate the "conflicting agenda" dilemma.

# New Works by the Center on Law and Security's Faculty and Fellows



Prof. Stephen Holmes. Photo by Dan Creighton



Barton Gellman. Photo by Dan Creighton

## Peter Bergen

"al Qaeda in Iraq: Leaderless jihad or well-organized insurgency," *ac360.blogs.cnn.com*, June 12, 2008

"The Unraveling: the jihadist revolt against bin Laden," *The New Republic*, June 11, 2008 (with Paul Cruickshank)

## Sidney Blumenthal

*The Strange Death of Republican America: Chronicles of a Collapsing Party* (Union Square Press, 2008)

Executive Producer, *Taxi to the Dark Side* (Academy Award, Best Documentary Feature, 2008)

## Paul Cruickshank

"The Unraveling: the jihadist revolt against bin Laden," *The New Republic*, June 11, 2008 (with Peter Bergen)

"How Muslim Extremists Are Turning on Osama bin Laden," *Daily News*, June 8, 2008

## Amos Elon

"Olmert & Israel: The Change," *New York Review of Books*, February 14, 2008

## Noah Feldman

*The Fall and Rise of the Islamic State* (Princeton University Press, 2008)

## Baltasar Garzón

*La Línea del Horizonte: Una crónica íntima de nuestro tiempo* (Debate, 2008)

## Barton Gellman

*Angler: The Cheney Vice Presidency* (Penguin Press, Forthcoming 2008)

Pulitzer Prize, National Reporting, 2008

## Karen J. Greenberg

*The Enemy Combatant Papers: American Justice, the Courts, and the War on Terror* (with Joshua L. Dratel) (Cambridge University Press, 2008)

"Scars and Stripes," *Financial Times*, May 30, 2008

"Visiting the Torture Museum: Barbarism Then and Now," *www.tomdispatch.com.*, Feb. 21, 2008

## Stephen Holmes

"Free-Marketeeing," *London Review of Books*, May 8, 2008

## Tara McKelvey

"The Officers' War," *The American Prospect*, June 2008

## Dana Priest

"Careless Detention: Medical Care in Immigrant Prisons," (Series in *The Washington Post*, May 11-14, 2008, with Amy Goldstein)

Pulitzer Prize, Public Service, 2008

## Nir Rosen

"The Great Divide," *The National*, June 5, 2008

## Michael Sheehan

*Crush the Cell: How to Defeat Terrorism without Terrorizing Ourselves* (Crown, 2008)

## Craig Unger

*The Fall of the House of Bush: The Untold Story of How a Band of True Believers Seized the Executive Branch, Started the Iraq War, And Still Imperils America's Future* (Scribner, 2007)

## Lawrence Wright

"The Rebellion Within: An Al Qaeda mastermind questions terrorism," *The New Yorker*, June 2, 2008

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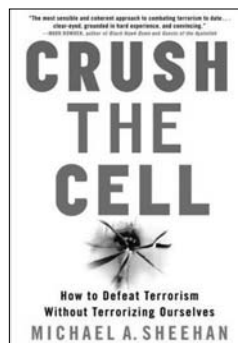
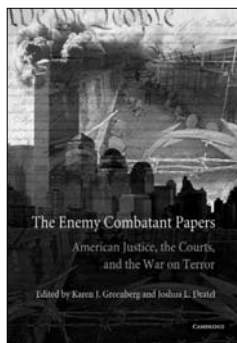
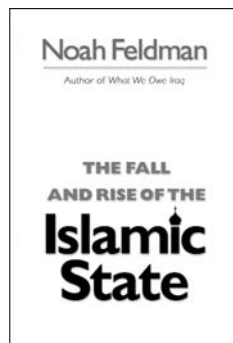
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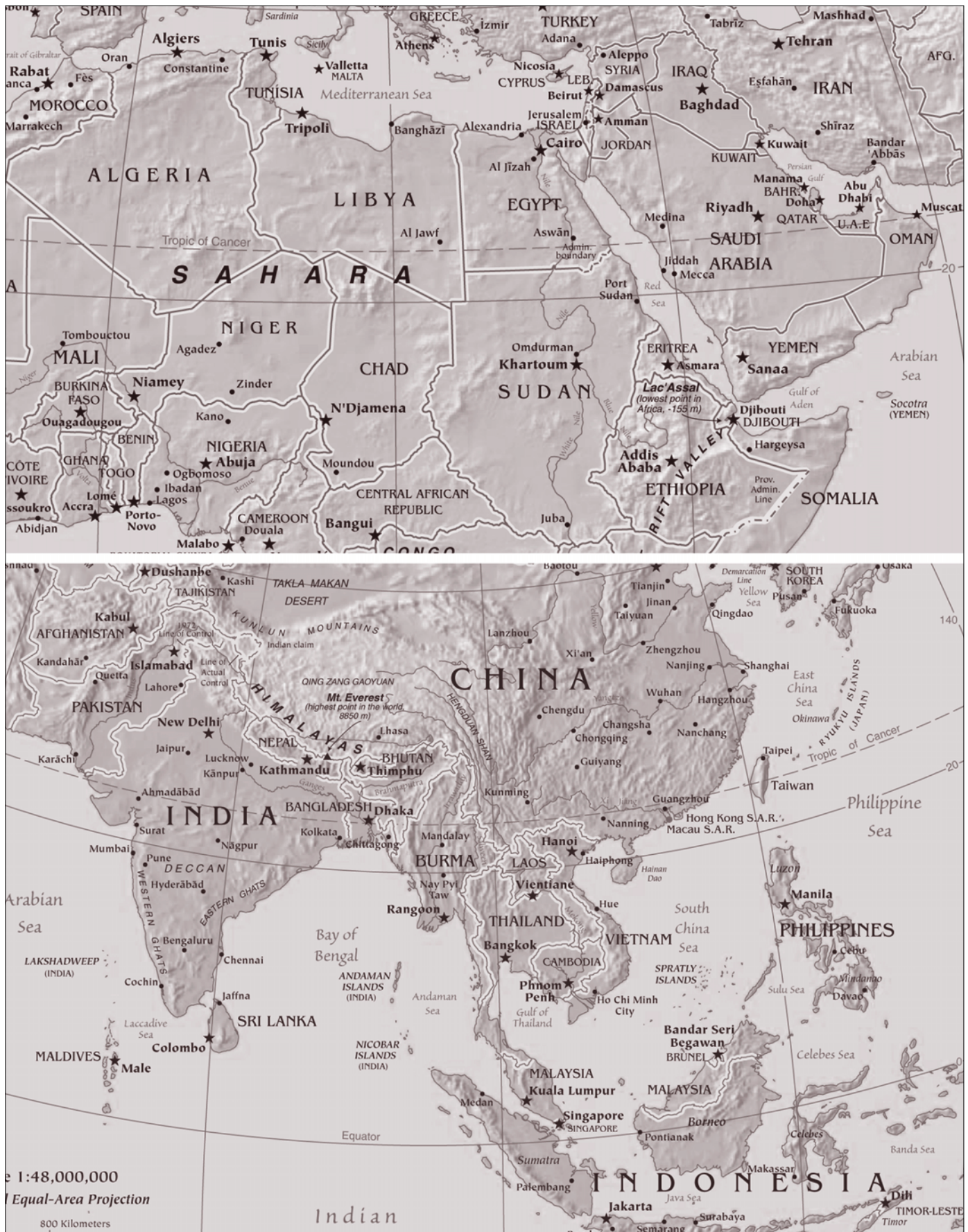
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