

## INTRODUCTION

A few years ago, this issue was just a gleam in the eyes of the board of this *Journal*. After I joined the Editorial Board, discussions commenced in earnest about how the *Journal* might bring authentic Islamic thought to American and other English-speaking scholars in an academic environment used to hearing about Islam through secondary sources. I (naively) volunteered to guest-edit an issue of modern, groundbreaking Islamic thinking and invited the contributions of distinguished writers from around the Muslim world including the United States, and the volume in your hand reflects these efforts.

The topics selected by our authors are themselves worthy of reflection. These important, timely—even timeless—topics are being addressed at once in authentic and fresh ways in this volume. As will be apparent, these articles were written not so much to enlighten English-speaking non-Muslim readers about Islam as to further Islamic thought and dialogue in the U.S. and around the world. It is our hope that the worldwide distribution of this issue will generate sufficient excitement about the openness and genuine interest of this *Journal* in authentic Islamic thought so as to invite regular *Journal* contributions from other distinguished and emerging Islamic thinkers.

To underline our commitment to excellence in Islamic thought, we begin this volume with a *fatwa* issued by Sheikh Taha Jaber al-Alwani, Chairman, *Fiqh* Council of North America, and member, the International *Fiqh* Assembly, Jeddah, Saudi Arabia. As the title of the *fatwa* indicates, *The Supreme Courtroom Frieze* has quite an important history. The *fatwa* was written in response to the crisis that developed in the Muslim American community (and later abroad) when a group of Muslims noticed in late 1996 that the north wall frieze in the courtroom of the United States Supreme Court contained what appeared to be an image of the Prophet Muhammad. In early 1997, a group of fifteen Muslim Organizations demanded that the Supreme Court alter the frieze to remove that image, arguing that “Muslims are sensitive to created images of the Prophet Muhammad,” and that “the portrayal was stereotypical,” because the image depicted the Prophet holding a book and a sword. (In fact, the Supreme Court architects used the symbol of the sword throughout the building to indicate worldly authority, not the use of force.)

Negotiations over the “Statement To the Supreme Court From National American Muslim Organizations” were not going well and the crisis was full-blown when *Karamah: Muslim Women Lawyers for Human Rights*, founded only a few years earlier, became aware of the situation. *Karamah* had a natural interest, since it had only the year before hosted a reception for American Muslim leaders at the Supreme Court, where Justice Antonin Scalia delivered remarks entitled “Religion and the Constitution” and Judge Rosemarie Annunziata of the Court of Appeals of Virginia gave “An Introduction to American Law.” The reception and a following symposium at the School of Islamic and Social Studies (SISS) helped American Muslims reach a better understanding of American constitutional law on religious matters and the principle of separation of church and state, as well as raising consciousness on the importance of mediation and conflict resolution in Islam.

As a founder of *Karamah*, I felt that Muslims needed to put an Islamic approach into practice to mediate the conflict, and *Karamah* sought the views of the distinguished scholars Sheikh Taha Jaber al-Alwani and Seyyed Hossein Nasr on the matter. Their opinions were based in part on the nature of the architectural relief in question, the intent of the architects, Islamic jurisprudence and the history of Islamic art. Based on these scholarly opinions, *Karamah* issued a press release in which it concluded that it was not necessary to alter the portion of the frieze purportedly depicting an image of the Prophet. *Karamah* then gathered support for this position from the American Muslim community, mediated the conflict and ended the crisis.

Prominent members of the American Muslim community then asked Dr. al-Alwani to write a full-fledged opinion on the matter. That opinion is being published in this issue for the first time for the benefit of scholars worldwide since the crisis resonated around the Muslim world. (The basic documents which surround this controversy are on file in the *Journal* editorial office.)

The volume also contains some of the papers presented at a symposium on women’s issues held in fall, 1999, at the United States Supreme Court and aired on C-Span in January, 2000. Organized by the Hannibal Club (founded by the Tunisian Embassy), in cooperation with the President’s Interagency Council on Women (OIW), the symposium panel was graced by the presence of Justice Sandra Day O’Connor and Judge Akila Jarraya, Chamber President, Tunis Court of Appeals, and I was honored to participate as well. The Hannibal Club, OIW and Justice Sandra Day O’Connor were kind enough to agree that the *Journal*

publish part of the proceedings of the symposium.

Justice O'Connor's remarks, published here, included a valuable statement about the struggle of American women for their rights. She gave a brief legal and social overview of that struggle, concluding that legal change has a greater chance of success when it follows public opinion, rather than leading it. Justice O'Connor also concluded that women must participate in political life and forge common ground in order to achieve meaningful change. Finally, she noted insightfully that building consensus for liberty and equality of all people, women and well as men, depends at bottom on custom, tradition and the efforts of millions of ordinary citizens.

My own contribution, also published here was based on my long-standing views on the rights of women in Islam, which are founded on intensive and painstaking research and reflection on the Qur'an, *hadith*, and traditional sources. The resulting presentation examines the relation of religion to culture and its historical impact on Islamic law. It then studies the basic principles of Islam, the governing philosophical principles of the Qur'an, and the Qur'anic view of women and gender relationships. Based on this study, certain matters of Islamic law are re-examined and analyzed from an American Muslim perspective. The article concludes that Islam has given women their full rights, but that culture has often conspired to deny them these rights. Since Muslims are bound by the Qur'an and not by culture, it is important to seek the realization of the Islamic ideal of gender relationships by abandoning patriarchal cultural models and adhering faithfully to the message of the Qur'an.

A student comment by Ghada Qaisi from the University of Richmond Law School, entitled *Religious Marriage Contracts: Judicial Enforcement of Mahr Agreements in American Courts*, follows the symposium. A longer version of this comment by Ms. Qaisi received awards from the American Judges Association and the American Association of Matrimonial Lawyers. Her comment describes the struggle of American courts in dealing with the Islamic marriage contract, the Islamic concept of *mahr*, and constitutional limitations on the enforcement of the contract. She also analyzes public policy concerns surrounding the Islamic marriage contract, often viewed in American courts as a prenuptial agreement, and highlights differences in approaches among the various states on the validity of prenuptial agreements. Ms. Qaisi concludes that United States courts should continue their accommodationist approach to religious contracts, within the bounds of constitutional constraints, and urges Muslims to

familiarize themselves with state family law when drafting their Islamic marriage contracts.

*Karamah's* symposium on mediation and conflict resolution at SISS underscored the importance of these issues to the American Muslim community. The symposium exposed the dearth of English-language writing on conflict resolution from an Islamic perspective, and the thirst of the American Muslim community for further information. Most Muslims in the audience were familiar with the Qur'anic injunction to seek mediation and arbitration, (Qur'an 4:35) but few were aware of any jurisprudential work in that area. The *Karamah* conflict resolution and mediation division which emerged from this symposium identified two emerging scholars in this area, Omar Abdallah and Muhammad Abu Nimer, who have both contributed to this volume.

Abdallah's article focusses on developing interpersonal dispute resolution models within an Islamic context. His task was complicated, for he needed to discover Islamic literature relevant to the topic and understand how it was relevant to the modern situation while avoiding the trap of imposing a secular Western model on a Muslim community. Abdallah was able to achieve his goal in part because of his unique background. While he has received advanced training in the United States on conflict resolution and is thus quite familiar with Western models, he is also quite familiar with Islamic thought and tradition, having lived and worked most of his life in Egypt. This background enabled Abdallah to accomplish the delicate task of balancing ideas and bridging gaps without falling into Orientalist traps. His resulting contribution is serious and significant in a field not yet fully explored. We hope that it will invite further discussion and scholarship in this area.

Influenced by his own experience as a Palestinian living in a troubled land, Abu Nimer's research focuses on conflict resolution in the public arena, exploring issues of non-violence and peacebuilding from an Islamic perspective. His aim was two-fold. First, he wanted to refute once and for all distorted Orientalist claims which conveniently stereotyped Islam as a religion of violence. This concern is neither idle nor only of historical interest. As the Cole article discussed below will show, American Muslims, like other Muslims, have had to suffer the consequences of such unfair stereotypes, legally as well as socially. Their struggle has given birth to a new consciousness in the American Muslim community about the importance of protecting its civil rights.

Not an apologia about Islam, Abu Nimer's work is directed primarily to Muslims who would like to contemplate their religious heritage and develop its teachings about peacemaking in new directions and diverse situations. Thus, he rooted his analysis in Islamic basic principles, values and tradition. Abu Nimer then developed a set of guiding principles that define a framework for peacebuilding in particular Islamic contexts. Again, we hope that his contribution will spark further discussion and writing on this subject.

Closely related to this project of peace and conflict resolution in Islam is the groundbreaking contribution of the distinguished Syrian scholar Jawdat Sa'id. It is a culmination of a series of books previously published in Arabic. In his article *Law, Religion and the Prophetic Method of Social Change*, a *tour de force* in Islamic jurisprudence, the author introduces the central Qur'anic notion of *rushd* (political and social maturity) and exposes the heavy cost of ignorance and oppression (*baghy*). In particular, Sa'id explores the root causes of the historical and religious violence that has afflicted humanity.

Sa'id begins with an examination of the disconnection between human perception and the objective world, but he rejects arbitrariness and argues for the possibility of knowledge, especially knowledge of the human condition and the root causes of violence. His arguments are steeped in both the Qur'an and the *hadith*. He views violence as a disease of the soul, and argues that the core of the relationship between law and religion, and the mission of all prophets, has always been one of solving the problem of violence and subjugation. His examination of the chain of prophethood reveals the unity of the prophets' determination not to enter the world of physical conflict even in the case of persecution as first established by Abel who said to his brother Cain "I (surely) will not stretch my hand to kill thee: for I fear God." Sa'id shows how the Prophet Muhammad deepened the understanding of this principle in various contexts. In the end, the author calls for renouncing coercion as a means for changing human behavior and the recognition of the importance of human equality.

This section also contains an article by the well-known South African scholar, Ebrahim Moosa. In his article, *The Dilemma of Islamic Rights Schemes*, Moosa focuses on the gulf in perception between Islamic and secular perspectives over the meaning of human rights. He argues that the two perspectives involve basic conceptual differences. For example, secular human rights are the product of a political agreement among members of a polity, while religious human rights are partly conferred by revealed authority. But Moosa also argues that

while the concept of rights as developed in the early period of Islam may be incompatible with modern human rights discourse, modern Muslim jurists can contribute to both tradition and the modern discourse by re-examining some of the old juristic presumptions. In the course of developing his argument, Moosa discusses important issues, such as conversion, the protected status of non-Muslims, and the status of women. He also addresses the role of culture in this discussion, and attempts to formulate the equivalent of a "liberation theology" in the Muslim community of South Africa.

Finally, Professor David Cole details shameful violations of the civil rights of Arabs and Muslims in the United States by the Immigration and Naturalization Service (INS). Relying on an old practice, the INS has been using secret evidence to target and detain Arabs and Muslims. The INS's authority in this area was expanded by the recent passage of two statutes—the Antiterrorism and Effective Death Penalty Act, and the Illegal Immigration Reform and Immigration Responsibility Act. As a result of this practice, a number of Arabs and Muslims have spent long years in American prisons unable to defend themselves against the secret evidence of the INS. Professor Cole, who successfully defended many of the detainees, discusses some of these cases and efforts to introduce legislation to end the use of secret evidence.

The second part of this volume represents a significant collaborative effort to review works on Islam published within the last two decades. This effort was conceived and executed by my friend and colleague Edward Gaffney.

Like the articles in this issue, the review section is international in scope. Ed commissioned review essays on "Modern Law and Arab Societies in Recent French-Speaking Literature" by Baudouin Dupret, Centre d'Etudes et de Documentation Economiques, Juridiques et Sociales, Cairo, Egypt; on "The Study of Islamic Law in Germany" by Hilmar Krüger, Faculty of Law, University of Cologne, Cologne, Germany; and on "Spanish Research on Islamic Law, 1990-1999" by Delfina Serrano Ruano, Albert-Ludwigs-Universität Freiburg, Freiburg, Germany.

The reviews also reflect the global character of scholarly interest in Islam. Distinguished commentators from every continent except South America have contributed thoughtful reviews of work on a wide range of topics. The headings under which the books are clustered reflect the breadth of vision in this project: Origins, History and Methodology of Islamic Law; General Applications of Islamic Law; Shi'i Jurisprudence;

Islam in Dialogue with Christianity; Specific Applications of Islamic Law: Commercial Transactions and Financing; Property and Inheritance; Family Law and the Role of Women; Human Rights; Anthropological and Sociological Perspectives on Muslim Communities; and The Myth of the "Islamic Threat to the West": Religion and Politics in the Middle East. We are grateful to all these scholars from all over the world who have offered a rich variety of perspectives on Islamic law.

Dr. Pieterella Van Doorn-Harder, of the Department of Theology at Valparaiso University, assisted the Book Review Editor in reading and editing the reviews. Ms. Nancy Young, of the Faculty Support Staff of the Valparaiso University School of Law, provided logistical support for the project by identifying and tracking down the books under review (many of which were out of print), shipping them to reviewers all over the world, and organizing the reviews for the editing process. We are grateful to Professor Van Doorn-Harder, and to Ms. Young for their invaluable assistance.

It is important to mention others whose efforts were critical for the success of this issue. We are especially grateful for the funding support of the Lilly Endowment, which has enabled us to distribute this volume to Islamic scholars and institutions and others worldwide. Other thanks go to the Editor of this *Journal*, Marie Failinger, whose patience, energy, expertise and commitment to pluralism made this project much easier than expected. Special thanks also go to Afra' Jalabi, the quiet scholar who patiently and skillfully translated the articles of Jawdat Sa'id and Dr. Taha al-Alwani, and has provided invaluable support on translation and citation issues. I thank also our hardworking staff at the *Journal of Law and Religion* who turned the manuscripts into print, Linda Berglin, Production Manager; Howard Vogel, Managing Editor; Stephen Liebo, Technical Editor; Julie Tessier, Student Assistant Editor; and the student editorial assistants of the *Journal* who worked so hard to bring forth this issue.

Putting this issue together was more difficult than we initially expected. Translating and editing jurisprudential articles that fuse law with philosophy and religion requires very advanced skills and is very demanding. Despite all our collective efforts to meet these challenges we are likely to have missed some errors. We are fortunate that everyone who participated in this project was ready to do their best, and thank everyone, particularly our authors, for their commitment and perseverance. Needless to say, the articles in this issue represent the views of their authors and do not reflect views of the *Journal* itself. The

*Journal* welcomes scholarly contributions from around the world, as well as comments on the reviews appearing in this issue. Our only aim is to promote the *Journal* as a vehicle for serious dialogue about the important issues that confront Muslims in a wide variety of contemporary societies. Despite all our collective efforts to meet these challenges we are likely to have missed some errors.

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