

“Cooperate in Furtherance of Righteousness and Godliness, not in Sin and Aggression”:
Muslim Citizenship in the Context of the “War on Terrorism”

Mohammad Fadel

The year 2010 may very well go down as a watershed for Muslims in liberal democracies: Major Nidal Hasan’s shooting of fellow soldiers, which killed 12 and wounded scores of others; Faisal Shahzad’s failed attempt to explode a car bomb in New York’s Times Square; the controversy surrounding Park51; the controversies surrounding the building of new mosques across the United States; the niqab ban in France and Belgium, and its proposal in Quebec; the ban on minarets in Switzerland; the rise of explicitly Islamophobic political parties in Europe, the most notorious being Geert Wilders of the Dutch Party for Freedom; and, the overwhelming evidence that in U.S. popular culture, the term “Muslim” is an accepted smear, as best evidenced by the right’s conclusion that the most effective smear against President Barack Obama is to call him a Muslim. The extremes that dominate the debate regarding Muslim citizens in liberal democracies are united in rejecting citizenship as a morally relevant category: the attacks (or attempted attacks) by Nidal Hasan and Faisal Shahzad, and Anwar Awlaki’s exhortations for American Muslims to emulate Hasan and Shahzad, are evidence the rejection of citizenship is an Islamically relevant category; and right-wing movements in liberal democracies, which now oppose all things Islamic (including, apparently, Campbell’s soup), also discount the value of legal relationship of citizenship in favor of adherence to a vague set of cultural norms as a condition for enjoying the rights of citizenship.

Between these two extremes – one of rejection and conflict, and the other of assimilation – lie the vast majority of Muslims in liberal democracies who, as a practical matter, live conflicted lives. The views of adherents of both extremes, perhaps best exemplified in Anwar Awlaki and Ayan Hirsi Ali, respectively, are well-known. But what of the beliefs of the vast majority of Muslims between these two poles? How can a conflicted Muslim middle — defined for purposes of this essay as Muslims who wish to maintain an integral commitment to loyal citizenship and fidelity to Islamic doctrines — resolve this conflict in a manner that is faithful to both these commitments rather than sacrifice one for the other? Given the predominance of the rejectionist and assimilationist theses, Muslims in liberal democracies desperately need a normative Islamic theory of their Islamic duties that affirms their status as loyal citizens of their polity and their status as faithful Muslims. It is high time that Muslim religious leaders in liberal democracies accord issues of citizenship as great a priority in the articulation of what it means to be a Muslim in a liberal democracy as they do to matters of ritual observance and private morality.

Obviously, a Muslim’s personal moral commitment to follow the rules of Islam, the *Sharī‘a*, is not contingent on place. Accordingly, whether a Muslim lives in a communist state, a liberal state, an oligarchic state, an authoritarian state, or a proper Islamic state, his obligation to conform to the positive commands of the *Sharī‘a*, and refrain from its prohibitions, is, in the first instance, the same. It may very well be the case, however, that the circumstances of his life are sufficiently unfriendly to excuse him from the performance of some Islamic duties or from his performance of acts that are otherwise prohibited. That such a person is only excused — and is not deemed to be acting rightly — is evidenced by the fact

that all scholars agree that if the circumstances are sufficiently egregious, a Muslim is under an obligation to migrate from that territory to one more hospitable to life as a Muslim. For purposes of this essay, we assume that liberal democracies represent constitutional orders that offer Islamically permissible grounds (i.e., not *ḍarūra*) for Muslim residence and citizenship. This moral permissibility derives from the legal structure of liberal states, beginning with their constitutions, which guarantee a political regime that is sufficiently hospitable to the practice of Islam so a Muslim can freely practice the fundamentals of his religion without fear of persecution.

In practice, however, we know that states, Islamic as well as non-Islamic, do not always live up to their political and moral ideals. A Muslim in democratic state or even an Islamic state, then, must always face the question of what his Islamic obligation is in circumstances where his state of residence or citizenship is behaving contrary to its own ideals, and whether this breach of its ideals represents a total and complete repudiation of the political relationship in toto, or merely involves a partial breach in situ for which there is a reasonable hope of a remedy. It ought to be clear that a Muslim who is a U.S. citizen, or a citizen of any state, even an Islamic state, is never morally free to act in a manner contrary to the claims of the *Sharīʿa* simply because the government demands that he act in a certain way: from an Islamic perspective, a Muslim is under an obligation to refrain from complying with a secular rule if compliance with that rule would cause him to violate a rule of the *Sharīʿa*, a principle that is expressed in Islamic law by the maxim: “There is no obedience if (obedience entails) sin.” (A person, if he is acting under a sufficient degree of compulsion or duress, however, may be excused for a violation of the *Sharīʿa* in these circumstances, depending on the nature of the coercive threat, on the one hand, and the nature of the violation, on the other. Obeying a rule that compels one to sin, moreover, should be distinguished from complying with a rule that requires one to refrain from exercising a right granted under the *Sharīʿa*. This latter circumstance generally ought not raise a principled objection from Muslim citizens of liberal states.)

At the same time, however, Islamic law does not grant a Muslim license to use violence against each and every act of injustice, whether on the Islamic grounds of commanding the good and forbidding the evil, when Muslims are the wrongdoers, or on the grounds of *jihād* when non-Muslims who are fellow citizens are the responsible parties. Our relationship of citizenship in liberal democratic states therefore creates Islamic duties of solidarity with fellow citizens that are no less binding from the perspective of the *Sharīʿa* — even if they are contingent in a way that Islamic duties are not — as the duties that Islam imposes on us as a matter of our religious doctrine. Just as a Muslim’s failure of commitment — manifested in even egregious sin — does not exclude him from the community of Muslims, so too, we are not excused from honoring our obligations that arise out of citizenship simply because the state of our citizenship has engaged in a course of illegality, or groups of citizens under its jurisdiction have acted or continue to act in a manner calculated to humiliate or persecute Muslims. One is tempted to say here that just as apostasy is indicated only by express and unequivocal evidence, so too, the political tie of citizenship — and the moral obligations that it creates — should only be deemed destroyed from the perspective of Islamic law when the state (not individual citizens of the state or elements of the state) unequivocally rejects its obligation to honor Muslims as equal citizens under its protection. In all cases, however, Islam demands from us that we do not assist in the wrongdoing and that we contribute to the suppression of the wrongdoing in a lawful manner, not that we use violence to suppress every wrong. This is especially so when democratic politics afford reasonable means to contain the wrongful conduct without resort to violence.

With this background, it should be clear that the “war on terrorism,” and the policies adopted in connection with its prosecution, poses an acute problem for Muslim citizens of a liberal state. Even if this “war” is not a war against Islam, it is most certainly a war against Muslims, and Muslims are prohibited from harming other Muslims, much less assisting others in killing them, or killing them themselves, except in particular circumstances. One such circumstance — which is clearly satisfied in the case of al-Qaida — is warfare against Muslim rebels, but even in this case, the concern for minimizing the loss of life is paramount in Islamic law. Accordingly, Muslim jurists set out important limitations designed to minimize the potential for the loss of life in connection with the suppression of rebellion, stressing that the purpose of fighting rebels is not their obliteration, but rather their reincorporation into the community. This concern for preserving life and rehabilitating the rebels explains why Muslim jurists forbade the Islamic state from entering into an alliance with non-Muslim powers to defeat Muslim rebels: jurists assumed that non-Muslim allies would not respect Islamic law’s limitations on warfare, and blood would be unnecessarily shed as a result.

Accordingly, even though we in good conscience condemn al-Qaida as criminals, as Muslims we cannot simply endorse any tactic in defeating them, much less what appears to be random death by drones from afar that cannot distinguish between a member of al-Qaida, a Pushto tribesman fighting what he believes to be a foreign invasion, and women and children non-combatants who are simply in the wrong place at the wrong time. A fortiori, Muslims cannot morally subscribe to the “Bush doctrine” or other expansive doctrines intended to justify armed intervention into (primarily) Muslim states on various national security or human rights grounds. By invoking Islamic law’s restrictions on lawful violence, we do not appeal to a sectarian standard of lawful violence that permits to Muslims what it forbids others. That Islamic law’s concern is with the substantive standards governing the use of force and not the religious identity of who is exercising the force is evidenced by the fact that Islamic law does not give even Muslim states immunity from claims of the unlawful use of force: thus, a public official cannot offer as a defense to murder that he was acting under the command of the ruler, if he had good reason to know that the ruler’s command was unlawful. “Following orders,” therefore, is never a defense to immoral conduct in Islamic law, whether a Muslim or non-Muslim issues the immoral command.

We should explicitly recognize and publicly affirm that the tactics used in the “war on terrorism” raise profound ethical dilemmas for us as Muslim citizens of liberal states. As a community, we have failed to communicate the moral dilemmas the “war on terrorism” generates for Muslims. Nine years after 9/11, George Bush’s division of the world into a binary “us” and “them,” and his declaration that you are either “with us or against us,” continues to limit our moral and political thinking. Islam, however, teaches us that it is possible both to be with “us” and “them.” Dissolving this binary world is the function of justice, and is evidenced by the Prophet’s (peace be upon him) statement, “Support your brother, whether he is acting justly or unjustly.” When the companions (may God be pleased with them) asked in astonishment how could it be that they are to support the unjust, the Prophet (peace be upon him) replied that one supports the unjust by reminding him (and then imposing, if necessary, provided one has the legitimate means) of the duties that justice imposes on him. By supporting justice, then, one demonstrates solidarity with all: one supports the victim of injustice by promoting their rights; one supports the unjust by pointing out to them that by ignoring the demands of justice, they are betraying the highest purposes of their humanity. If the unjust are Muslim, in the case of al-Qaida, then they are risking divine punishment.

In taking up this challenge, however, we must make clear that we are expressing our opposition to the “war on terror” for principled reasons that are consistent with our commitments as citizens. This means mastering the language of civic discourse by formulating our complaints in the language of public law: constitutional and statutory law in the case of domestic violations of rights, and international law in the case of conduct overseas. It may very well be the case that Muslim citizens of liberal democracies will pay a short term (or even a long term) political price for openly opposing “the war on terror.” This is clearly a price that we must pay, however, if we are to maintain our moral integrity as a community. I would add, however, that purely prudential reasons suggest we adopt a more openly critical voice toward U.S. policies on “the war on terror”: the strongest card Muslim rejectionists have is the failure of Muslims in the U.S. and other liberal states to take public stands against the unjust policies of the U.S. and its allies in “the war in terror.” In other words, they accuse Muslims in these countries of being obsequious. These criticisms in turn feed the demonization of Muslims generally and strengthen voices on the right that call on Muslims to prove their loyalty through assimilation.

From a wholly prudential perspective, then, it is important for Muslims in liberal democracy to establish democratic credentials by providing democratic critiques of the policies to which we object. Establishing such a tradition would satisfy the ethical demands that Islam imposes on believers — obligations encapsulated in the verse (al-Mā’ida, 5:2) that forms the title to this essay — and those of liberal democracy that ask citizens to formulate their demands in a manner that reinforces the constitutional values of the polity. Demanding that liberal states respect the values of their constitutions is clearly secular, but it is also a religious activity when undertaken with the proper intention, given the fact that the liberal political virtues — respect for the rights of others, making decisions after mutual consultation, the promotion of honest advocacy — are also important Islamic virtues. There can be little doubt that formulating an Islamic discourse of liberal democratic citizenship and exercising the powers of democratic citizens in accordance with that theory, constitute communal obligations (*fard kifāya*) for Muslim citizens of liberal democracies.

Just as liberal constitutions protect the freedom of religion, it also protects other valuable freedoms that Muslim can and therefore are obliged to use in furtherance of positive cooperation with fellow citizens to affirm shared values. If we are convinced that it is possible to fight groups such as al-Qaida within the moral limitations that Islam imposes on us, we should certainly be able to convince fellow citizens of that possibility as well. At a minimum, we must try. A failure to even engage fellow citizens in the problematic aspects of “the war on terrorism” is a tacit concession to the likes of Anwar Awlaki that ordinary democratic politics is futile, a message that only makes Muslims more likely to become either rejectionists or assimilationists. Indeed, even if we were to conclude that in this particular set of circumstances, the political climate is too hostile to provide a reasonable basis for hope that positive change can be effected, liberal democratic theory provides an option that Muslims in liberal states have not begun to explore: civil disobedience. In short, liberal democracies simply afford Muslims too many opportunities to express their principled opposition to the tactics that have heretofore been employed in “the war on terrorism” to permit us the luxury of retreating into pietistic, wholly private affirmations of our faith. In such circumstances, quietism can be reasonably interpreted as little more than cowardice or opportunism.

If Muslims were to adopt the language of citizenship to express their domestic criticisms, and the language of international law to express their criticisms of the foreign policies of democratic states vis-à-

vis the Islamic world, they will find many non-Muslims of goodwill as their allies. Indeed, it continues to be the case that it is largely non-Muslims who make public arguments in defense of Muslim citizens and against the United States' claim that it is entitled to intervene militarily wherever and whenever it wishes. While there are many theories of citizenship, a fundamental — perhaps determinative feature of citizenship — is performative: if one does not exercise the rights of citizenship, one is gradually divested of those rights, as if by a process of negative prescription. Muslims in liberal democracies, ever eager to prove they are not extremists and thus reluctant to challenge the fundamental paradigm of “the war on terrorism,” are at increasing risk of losing whatever citizenship rights they have. Incorporating the values of citizenship into our religious discourse is surely a more difficult task than encouraging Muslims to adhere to the ritual and moral teachings of our religion, something that, admittedly, can't be taken for granted in today's largely secular world. But to pretend that citizenship does not raise moral dilemmas for Muslims in the context of the current “war on terrorism” that are at least as grave as the garden variety of sin we are accustomed to condemn is morally short-sighted and politically self-defeating. I pray that God inspires our leaders to address these issues more forthrightly so Muslims do not feel that their only choices in life are Anwar Awlaki or Ayan Hirsi Ali.

Mohammad Fadel teaches law at the University of Toronto Faculty of Law. He specializes in Islamic legal history, Islam and liberalism, and commercial, corporate and securities law.