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The Political Utility of Religious Illiteracy

A Case Study of Anti-Sharia Laws in the United States

**The Political Utility of Religious Illiteracy:
Anti-Sharia Laws in the United States¹**

Nathan C. Walker²

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² Dr. Nathan C. Walker is the associate editor of *Religion & Education*, executive director of 1791 Delegates—a delegation of First Amendment and human rights educators—managing director of The Foundation for Religious Literacy, and founder of ReligionAndPublicLife.org. He received his doctorate in First Amendment law from Columbia University and previously served as a research fellow in law and religion at Harvard University.

1. What's at Stake: Illiteracy of Law and Religion

From 2010 to 2017, over two hundred “anti-Sharia bills” were introduced by 43 state legislatures³ across the United States, broadly attempting to ban state courts from considering ‘foreign’ or ‘religious’ law. Two disturbing political rationales were given to justify these legislative proposals.

- First, there was the idea that Islam is “foreign” to the United States, which reveals the public’s illiteracy about American Muslims. However, there has never been an America without Muslims—at the founding of the country five percent of the population identified as Muslim, five times more than the proportion of Americans that identify as Muslim today.⁴
- Second, there was the notion that “religious law” cannot and is not considered by the courts, which also reveals a general illiteracy about American law. Most obviously, the First Amendment provides legal accommodations from secular laws that substantially burden religion.⁵

Taken together, these justifications for anti-Sharia bills perpetuated illiteracy about both religion and the American legal system, creating the political conditions for invidious discrimination against the “suspect minority” of the day.

In this case study of Muslims and American law, I demonstrate two premises.

- First, there can be political utility in breeding both religious animosity and contempt for the law.
- Second, this animosity is made possible by a public that is lacking religious and legal literacy, thus creating the conditions for unequal treatment of religious minorities.

Overall, this case study demonstrates how illiteracy of law and religion weakens U.S. democracy and fuels social hostilities.

³ Elsheikh, E., Sisemore, B., & Ramirez Lee, N. (2017a). “Legalizing othering: The United States and Islamophobia.” Berkeley, CA: Haas Institute for a Fair and Inclusive Society, University of California; Elsheikh, E., Sisemore, B., & Ramirez Lee, N. (2017b). “The United States of Islamophobia database.” Berkeley, CA: Haas Institute for a Fair and Inclusive Society, University of California; and Pilkington, E. “Anti-sharia laws proliferate as Trump strikes hostile tone toward Muslims.” *The Guardian*, December 30, 2017.

⁴ Cohn, T., & O’Neill, J. (2018, January 31). “Enslaved and Muslim in early America.” Sidedoor podcast, season 2 episode 17. Washington, DC: Smithsonian.

⁵ The First Amendment to the U.S. Constitution (1791) states, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

2. Religious Animosity and Contempt for the Law

It is no coincidence that Donald Trump repeatedly expressed hostilities towards Muslims during his presidential campaign. The proliferation of anti-Sharia bills across the United States in the period preceding the 2016 presidential election made clear that there was an appetite amongst members of the American public for such anti-Muslim sentiments. Trump and his campaign found it politically advantageous to explicitly and routinely vocalize animosity toward Muslims.

During his run for the presidency, Trump called for the government to engage in “extreme vetting” of Muslims, agitated for a “total and complete shutdown of Muslims entering the United States,” repeatedly advocated for government surveillance of American Muslims, and claimed there was “absolutely no choice” but to shut down U.S. mosques.⁶

In the first week of his presidency in January 2017, Trump issued an executive order banning people from six Muslim-majority countries.⁷ Fourteen state legislatures then proceeded to introduce anti-Sharia bills, illustrating the close relationship between anti-Muslim animosity at the federal and state levels. This animosity was not only directed at Muslims, however. Instead, it became apparent that it was also politically advantageous to show contempt for the various courts in the American legal system.

The political playbook from which Trump operated was not new, but rather, years in the making. In 2013, the Tenth Circuit Court of Appeals found anti-Sharia bills introduced and enacted by state legislators violated the U.S. Constitution.⁸ Still, the governors of Arkansas and Texas rejected this precedent, signing into law anti-Sharia bills in 2017 knowing they would be unconstitutional.⁹

Similarly, Kansas Governor Sam Brownback rejected the federal court’s determination that such state laws are discriminatory toward Muslims and signed a similar bill into law.¹⁰ In 2018, President Trump rewarded Brownback the title of U.S. Ambassador for international religious freedom.¹¹ Both, Trump and Brownback were politically rewarded for legally expressing animosity towards Islam and the courts; one with the presidency, the other with an ambassadorship.

This political recipe has four parts: first, appeals to (generally, white Christian) Americans who are illiterate about Islam and fear Muslims as “foreign” invaders;¹² second, claims by politicians

⁶ Johnson, Jenna and Abigail Hauslohner. (2017). ““I think Islam Hates Us”: A Timeline of Trump’s Comments about Islam and Muslims.” May 20. *The Washington Post*.

⁷ Els Sheikh et al., 2017A

⁸ *Awad v. Ziriax*, et al, No. 10-6273 (10th Cir. 2012).

⁹ Arkansas HB1041 (2017). To Protect the Rights and Privileges Granted Under the Arkansas Constitution and the United States Constitution; and to Declare American Laws for American Courts. Signed into law April 6, 2017 as Arkansas Act 980; and Texas HB 45 (2017). Relating to requiring the Texas Supreme Court to adopt rules and provide judicial instruction regarding the application of foreign laws in certain family law cases. Signed into law June 14, 2017.

¹⁰ Murphy, K. “Kansas governor signs bill effectively banning Islamic law.” Reuters, May 25, 2012.

¹¹ Smith, M. “After long wait in Kansas, Gov. Sam Brownback gets ambassadorship.” New York Times, January 24, 2018.

¹² Anti-Muslim sentiments, as many scholars have noted, is also racialized. See Sylvia Chan-Malik, *Being Muslim: A Cultural History of Women of Color in American Islam* (New York: New York University Press, 2018).

that they will protect such Americans from “foreign” invaders; third, court rulings deem proposed anti-Muslim laws as unconstitutional; and fourth, politicians again claim to protect the American people from not only Muslims, but also “activist judges.”

There is thus a cycle in which contempt for a religious other is fermented to contempt for the American legal system. This process is made possible by a religiously illiterate public, one that cannot pierce through this flattening, anti-Muslim discourse.

3. Religious Illiteracy Breeds Unequal Treatment Under the Law

The American legal system is plagued by systemic biases resulting in unequal treatment. This unequal treatment, despite the posturing of Trump, has been squarely directed at marginalized groups, including religious minorities such as Muslims.

In looking at five decades of Free Exercise cases, researchers found that Protestants won cases 65% of the time, whereas Native Americans, Jews, and Catholics won less than half of their cases. Muslims filed nearly double the number of Free Exercise cases despite constituting less than 1% of the American population—making up 7% of all Free Exercise cases—and only received a favorable court ruling in one third (33%) of their cases.¹³

To date, no Native American, Jewish, or Sikh person has won a Free Exercise claim before the U.S. Supreme Court. While Muslims won their first Free Exercise cases in 2015, both were on statutory, not constitutional, claims.¹⁴

These trends illustrate that even before the rise of the anti-Sharia bills in the legislative branch, there was unequal treatment of Muslims in the judicial system, alongside other non-Protestant religious groups. In spite of this longstanding bias, the courts have consistently deemed the anti-Sharia bills as unconstitutional.

Against this legal backdrop Trump’s administration found it politically advantageous to promote disinformation about Muslims. For instance, he falsely claimed that nearly three in four criminals convicted of terrorism were “foreign-born,” implicitly invoking the specter of Islamic terrorism.¹⁵

However, while “foreign” terrorism is a threat, domestic white supremacist groups are far more dangerous and active.¹⁶ According to a Government Accountability Office report, “far right wing

¹³ Wybraniec, J., & Finke, R. (2004). Religious regulation and the courts: The judiciary’s changing role in protecting minority religions from majoritarian rule. In James T. Richardson (Ed.), *Regulating religion: Case studies from around the globe* (pp. 535–553). New York: Kluwer Academic/Plenum Publishers.

¹⁴ *Holt v. Hobbs* was filed under the Religious Land Use and Institutionalized Person’s Act; *EEOC v. Abercrombie* was filed under Title VII under the Civil Rights Act of 1964 and sidestepped the direct question about religious discrimination against a hijab-wearing job applicant and instead held that the store had the burden of notifying the applicants about their “look” policy.

¹⁵ Rizzo, S. “The facts about Trump’s policy of separating families at the border.” *Washington Post*, June 19, 2018.

¹⁶ “White Supremacist Extremism Poses Persistent Threat of Lethal Violence,” Joint Intelligence Bulletin of the Federal Bureau of Investigation and Department of Homeland Security, IA-0154-17, May 10 2017. <https://www.documentcloud.org/documents/3924852-White-Supremacist-Extremism-JIB.html>

violent extremist groups” made up of U.S. citizens accounted for 73 percent of terrorist convictions in the U.S.¹⁷ Thus Trump’s administration “grossly exaggerated misuse of federal data,” leading eighteen former counterterrorism officials to explicitly reject his “link between terrorism and immigration.”¹⁸

Nonetheless, the Trump administration’s animosity towards foreigners and Muslims became the basis for three different versions of a travel ban that targeted people from Muslim-majority countries.¹⁹ The lower courts found this unconstitutional, so the administration added North Korea and Venezuela in the second draft, both of whom were already on the U.S. State Department’s no-fly lists.

Despite these modifications, the Fourth Circuit Court of Appeals—the most conservative federal appellate court in the country—ruled against the President. The Court stated, “to the objective observer [President Trump’s travel ban] continues to exhibit a primarily religious anti-Muslim objective.”²⁰ The Fourth Circuit also noted that there is “undisputed evidence that the President of the United States has openly and often expressed his desire to ban [Muslims] from entering the United States.”²¹ The Court held that the president’s directive “strikes at the basic notion that the government may not act based on religious animosity.” Despite the Court clearly identifying the anti-Muslim animus that underwrote the travel ban, the decision also played directly into the playbook that mobilizes the public against both Muslims and the ‘activist judges’ of the courts.

The U.S. Supreme Court, hearing the appeal, scolded the President for expressing such animosity yet ultimately upheld the travel ban. How, after even the most conservative appeal court in the country blocked the ban, did the highest court in the United States rule in favor of it? To answer this, it is important to understand that the Court found the President’s viewpoint inappropriate but still recognized his authority to ensure “national security” as absolute.

Every member of the U.S. Supreme Court noted that Trump’s anti-Muslim rhetoric went against historical norms. The majority ruling, as well as the concurring and dissenting opinions, all pointed to the fact that numerous Presidents, especially the founders, actively advocated for the rights of Muslims: “President Trump’s words strike at fundamental standards of respect and tolerance, in violation of our constitutional tradition.” The conservative majority, in this vein, agreed that many Presidents—including Washington, Eisenhower, and George W. Bush—actively promoted the religious liberty rights of Muslims and non-Muslims alike.

¹⁷ “Countering Violent Extremism: Actions Needed to Define Strategy and Assess Progress of Federal Efforts,” Washington, DC: Government Accountability Office, GAO-17-300, April 2017.

<https://www.gao.gov/assets/690/683984.pdf>

¹⁸ Ellen Nakashima, “Trump administration draws fire for ‘misleading’ report linking terrorism, immigration,” *Washington Post*, September 13, 2018.

¹⁹ The original ban was against people from seven majority-Muslim countries: Iran, Iraq, Syria, Yemen, Somalia, Sudan, and Libya.” After being blocked by federal courts for showing religious animosity, the Trump administration removed Iraq and allowed for Syrian refugees to enter the US. Again, blocked by the courts, the third revision added Chad, a Muslim-majority country, and included two non-majority Muslim countries, North Korea and Venezuela.

²⁰ *International Refugee Assistance Project IRAP v. Trump*, 883 F.3d 233 at 60 (4th Cir., 2018).

²¹ *Ibid.*, at 69.

Nonetheless, the conservative majority of the Court upheld the President’s travel ban, not on the basis of the animosity that the President expressed, but on the basis that the President, and the President alone, has the authority to put forth an immigration ban that they alleged was “neutral on its face, addressing a [national security] matter within the core of executive responsibility.”²²

While acknowledging the concerning intent of the President’s ban, the conservative majority focused on its effect. Further, the precise language of the final version of the proclamation did not mention Islam, the majority emphasized, therefore did not single out a religion for hostile treatment.

4. Social Consequences

Since Trump’s repeated expressions of religious animosity toward Muslims since the start of his presidential campaign, the U.S. has seen a startling rise in religious-based hate crimes and social hostilities.²³ Rashes of anti-Muslim hate crimes correlate with the timing of his anti-Muslim tweets,²⁴ and “counties that had hosted a 2016 Trump campaign rally saw a 226 percent increase in reported hate crimes over comparable counties that did not host such a rally.”²⁵

From 2015 to the start of 2018, 44 states have experienced anti-Muslim discrimination against mosques, such as vandalism, break-ins, or building-permit denials, with 23 of these states seeing five or more such incidents.²⁶

American Muslims have experienced systematic opposition against their constitutional right to assemble and freely exercise their religion, and yet they are faced with legal restrictions on being able to maintain houses of worship or community centers.²⁷

In this climate, FBI data shows that hate crimes against Muslims reached an all-time high,²⁸ Pew Research Center data shows that assaults against Muslims in the United States “surpass[ed] the 2001 level”;²⁹ and data collected by the Council for American-Islamic Relations showed that in 2017 there were 2,599 anti-Muslim incidents in the U.S., including 300 hate crimes—a 17 percent increase from the previous year.³⁰

²² *Trump v. Hawaii*, 585 U.S. (2018).

²³ FBI (2017). Hate crime summary of 2016: Hate crime statistics. Washington, DC: Federal Bureau of Investigation; Kishi, K. (2017). “Assaults against Muslims in U.S. surpass 2001 level.” Washington, DC: Pew Research Center; Mogahed, D., & Chouhoud Y. (2017). American Muslim poll 2017: Muslims at the crossroads. Washington, DC: Institute for Social Policy and Understanding; Müller, K., & Schwarz, C. (2018). Making America hate again? Twitter and hate crime under Trump. SSRN.

²⁴ Müller, K., & Schwarz, C. (2018). Making America hate again? Twitter and hate crime under Trump. SSRN.

²⁵ Ayal Feinberg, Regina Branton and Valerie Martinez-Ebers, “Counties that hosted a 2016 Trump rally saw a 226 percent increase in hate crimes.” *Washington Post*, March 22, 2019

²⁶ ACLU (2019). “Nationwide Anti-mosque activity.” New York, NY: American Civil Liberties Union.

²⁷ ACLU 2019, *Ibid*.

²⁸ FBI 2017, *Ibid*.

²⁹ Kishi/Pew 2017, *Ibid*.

³⁰ Arain, Z. (2018). “Targeted: 2018 civil rights report.” Washington, DC: Council on American–Islamic Relations.

5. Conclusion

In summary, in-group favoritism and out-group animosity became a predictable political strategy in the United States, evinced by the constellation of anti-Muslim laws introduced at state and federal levels. Promoting fear about an ‘Other’ and building trust with a core base of supporters are closely intertwined processes.

Moreover, when those supporters are illiterate about both religion and American law, political actors can fuel a blaze of contempt for the “suspect minority” of the day that correlates with increases in social hostility and violence.

This case study demonstrates that religious illiteracy does not emerge in a vacuum. Rather, illiteracy is nurtured not only by inaction, but is fostered by active disinformation and fear-mongering campaigns.

This is how illiteracy can become a political tool to shape the attitudes of an electorate, fueling in-group solidarity and out-group hostility, to secure electoral and legislative victories. As this case study demonstrates, the political utility of religious illiteracy can result in fundamental changes in law that fails to protect the most vulnerable among us.