

ISLAM AND LIBERAL CITIZENSHIP: THE SEARCH FOR AN OVERLAPPING CONSENSUS. By Andrew F. March. Oxford University Press 2009. Pp. 350. \$44.00. ISBN: 0-195-33096-X.

In his work, *Islam and Liberal Citizenship: The Search for an Overlapping Consensus*, Professor Andrew March has provided a rare, much needed, rigorous and admirable foray into a subject on which there has been much discussion, but not much of it very good. March is ideally suited to the task of discussing the compatibility of Islam with the demands of political liberalism, as an Oxford trained political scientist who has devoted years of his life to the study of that vast body of norms and rules derived from Muslim sacred text known as the *shari'a*. There are few who are able to discuss Islam, or political liberalism for that matter, as thoroughly as March, and all of us interested in the subject should be grateful for the contribution he has provided.

March begins the book by setting out Rawls's well known contention that "there are many reasonable comprehensive doctrines that understand the wider realm of values to be congruent with, or supportive of, or else not in conflict with, political values as these are specified by a political conception of justice for a democratic regime" and that all of the major religions ("certain kinds of fundamentalism" being specifically exempted by Rawls) are examples of such reasonable comprehensive doctrines. (259) The purpose of March's book is to examine the extent to which this may be true in the case of Islam. March is thus in search of what he describes as an "equilibrium" between the demands that political liberalism must impose upon Muslim citizens to maintain the minimum bonds of social cooperation necessary for political citizenship on the one hand, and, on the other, whether or not such demands, expressed in the least restrictive terms possible so as to require minimal departure on the part of committed Muslims from traditional beliefs, might be reconciled with classical Islamic doctrine. (14-15) To investigate this, March presents a complex and near bewildering array of alternative demands that political liberalism might insist upon, juxtaposing them with different approaches to Islamic doctrine, at times as set forth by leading jurists of this century, at other times as explained by persons dead for more than three centuries.

Essentially, and in broad (and some might say reductive) outline, March draws upon two different themes within the Islamic legal and ethical tradition to demonstrate the problems associated with liberal citizenship and the solutions that might be imagined for them. The first theme, the more problematic for the liberal, has to do with the bipolar and nearly Manichean political world created within the classical sources of a House of Islam and a House of War, wherein the former is engaged in some form of permanent hostility with the latter. This has led a minority of jurists in largely bygone eras to declare residence in the House of War (i.e. in non-Muslim states, liberal or not) to violate the *shari'a* on its own. (103-07) More importantly in our times, because the prohibition against residence is an opinion at this point that lies somewhere between the marginal and the irrelevant, some of the same justifications used to prohibit residence in the non-Muslim state (contributing to the welfare of unbelievers, befriending unbelievers, inability to manifest one's religion) are often employed to justify alienation from the non-Muslim state and to prohibit the forms of social cooperation that political liberalism insists upon as a condition for citizenship.

The second theme, and that which March relies upon to develop a position of potential compatibility, involves the near sacred status afforded covenants within the *shari'a*, and the notion endorsed within the classical tradition that a Muslim should honor all covenants she makes with others, whether with a Muslim or a non-Muslim. (15) This has been understood within the Islamic tradition to include the requirement that if a Muslim lives in a non-Muslim state pursuant to a guarantee of protection (an *aman*, to use the Arabic term), then the Muslim must fulfill her own obligations implicit in the guarantee by obeying the relevant laws. This much seems relatively easy for March. The thorniest questions arise with respect to solidarity with and broader participation in the social fabric rather than strict adherence to law, and here March is more guarded. Participation in a non-Muslim army engaged in self defense against a different non-Muslim state may well be justified, at least according to "contemporary neo-classical scholars," although such participation seems to be defended primarily on the grounds that it is not forbidden rather than because it is in any way specifically permitted, let alone encouraged. (190) Some positive justification appears to be offered by those influential modernists like Rashid Rida, who argue that serving in such an army promotes various Muslim interests. (192) Likewise, advancing Muslim welfare might well be a reason to engage politically in the liberal state. (254-56) Either

position is potentially problematic, however, because the focus of each is exclusively on the Muslim community as the justification for broader social cooperation rather than a more general interest in the well being of the entire society. March examines this particular problem respecting the exclusivity of the justifications offered at some length before ultimately determining that there are, despite this problem, sufficient grounds for compatibility—if, that is, the exclusivist concern for Muslim welfare generates a genuine commitment to the existing political order, as opposed to, for example, an instrumental commitment whose sole purpose is to effect gradual Islamization. (256)

In his search of traditional Islamic doctrine, March cannot find substantial justification for Muslim participation in a non-Muslim army involved in hostilities against a Muslim state, even an invading one. In a work that demonstrates on almost every page the laudable and rigorous effort of its author to highlight nuance and subtlety wherever he finds it, March is uncharacteristically absolute and uncompromising on this point, as the following passage reveals:

That a Muslim is not allowed to kill brother Muslims in the service of a non-Muslim army is traditionally among the most uncontroversial positions in Islamic political and ethical thought. There is direct scriptural foundation for this aversion

The definition of a just cause for taking Muslim life is provided by a well-known *hadith*: “The blood of a Muslim who proclaims there is no god but God and that I am the Messenger of God may not be legally spilt other than in one of three [instances]: a life for a life, the married person who commits adultery, and one who forsakes his religion and abandons his community.” (114)

Muslim jurists have extrapolated from these sources not only a clear prohibition against helping non-Muslims in combat against Muslims (*whatever the cause*) but also often the ruling that doing so constitutes apostasy. (emphasis mine) (115)

March later describes support for this theory by Rashid Rida at the start of the twentieth century and in proclamations of the Ottoman Empire seeking to quell the Arab Revolt during the First World War. (115)

Finding it therefore impossible for Islamic legal theory to possibly justify Muslims joining non-Muslim armies to fight Muslims, or even to support them in any way, March instead focuses on whether the Muslim may be asked in the case of such hostilities, or any hostilities involving a Muslim state with his own non-Muslim nation, to hold to a position of strict neutrality, promising to aid neither side. He suggests that on the

basis of the *aman*, civic loyalty may be demanded within Islamic doctrine such that the Muslim does not participate in combat, but instead observes a practice, in March's words, of "forswear[ing] on grounds of principle any active aid to the Muslim force and promis[ing] to engage in no violent activities against her own non-Muslim state." (142) March believes this to be sufficient for citizenship under the demands of political liberalism.

This is hardly a complete or full discussion of the multifaceted set of issues with which March seeks to grapple, as comprehensively and fully as he can. There is, of course, much more to discuss regarding the civic duties demanded by political liberalism and the religio-ethical obligations imposed by Islam. It suffices to say that anyone interested in the subject of Islam and liberalism is not properly prepared to discuss it without reading this work.

I should also note that March's methodological and analytical framework draws from theories of political liberalism, primarily of the Rawlsian variety, though March also devotes some time to describing how his ideas might apply under different conceptions of political liberalism, including those proposed by Habermas, Rorty and Stanley Fish, respectively. In any case, the concept of citizenship, and the demands on citizenship that are imposed by political liberalism, seem, as March himself acknowledges, relatively minimal, so designed as to attract the highest number of believers in inconsistent comprehensive theories of the good into support of and loyalty to the liberal political order. (28) Political liberalism does demand more than mere adherence to law and clearly presupposes a higher level of social cooperation. However, it does not require a fundamental shift in the adoption of particular values that might transcend the political, such as normative respect (as opposed to political equality) for fellow citizens, whether they be fellow Muslims or infidels, gay or straight, black or white.

It might well be legitimate to argue that Western societies must demand more of their citizens than the minimal demands suggested by political liberalism—that our American dedication to the proposition that all people are created equal is at its base not a political statement but the assertion of a truth claim (indeed identified in the founding documents as a self-evident one) to which the nation's citizens must adhere if the nation is to survive. Such a criticism of the approach taken in this work might well carry some force; I find any political theory troublesome, for example, that would render one of my fellow Muslims a good citizen of the United States if he held to a position of strict neutrality regarding hostilities commenced between the United States

and a Muslim nation that organized a series of terrorist attacks on American soil. This, however, is a criticism of political liberalism, not of March's work. This must be said if for no other reason than that March has been unfairly attacked as an "apologist for radical Islam" because of the minimal demands he seeks to impose on the Muslim citizen.¹ This is silly, and not only because any ideology that might reasonably be characterized as "radical Islam" does *not* advance theories of broad social cooperation that March in particular, and political liberals more generally, would demand of a fellow citizen. It is also silly because to the extent that this thin concept of citizenship is nonetheless an "apology for radical Islam" because of its less than comprehensive demands, then Rawls might be similarly condemned for the same sin.

Unfair mischaracterizations of his work aside, in any inquiry of this sort, particularly in the highly polemical environment that attends to the subject of modern Islam, dangers and risks abound, and March certainly attempts to address most of them as straightforwardly as he can. In particular, a potentially more serious criticism of this type of inquiry as a general matter, at least from the vantage point of this Muslim reviewer, would not be that the political liberal is an apologist for radicalism, but rather that the inquiry (I speak now in general terms and not of March's work in particular) sounds disturbingly similar to chauvinist and exclusivist positions held in our nation's past toward Roman Catholics. This past is well documented, though hardly internalized by those of us born after Kennedy's election because it appears to us to be such incomprehensible nonsense that it is hard to make sense of. Or at least it did until uncomfortable questions began to be raised about the nation's Muslim population in the past presidential election. These questions became so pervasive that, if not for the intervention of Colin Powell two weeks before the election on a *Meet the Press* interview, the entire discussion concerning the current President and Islam during the 2008 presidential campaign would have focused on whether Barack Obama was Muslim, rather than on the more central question of whether his religion had a thing to do with his qualification for political office. Any hope that this obsession with Obama's faith was transitory and would quickly fade dissipated after the explosion of opposition in 2010, most of it deeply and fundamentally Islamophobic, to the establishment of an

1. See Campus Watch: Monitoring Middle East Studies on Campus, <http://www.campus-watch.org/blog/2010/01/andrew-march-of-yale-apologist-for-radical-islam> (last visited June 21, 2010).

interfaith community center organized by Muslims two blocks from Ground Zero. Far from being a fleeting blip on America's supposedly inevitable path toward broader equality and tolerance, one of America's more distasteful periods of religious intolerance and indeed near paranoia, seems to be repeating itself in disturbing fashion.

While nearly a century may have passed from the time that American Roman Catholics were the subject of intense vilification, and with due awareness of the vastly different political and social climate that exists in the United States today as compared to a century ago, the appearance of similar patterns in the broader discourse deserves some mention.² Then for the Catholics, as now for the Muslims, certain religiously-based nongovernmental organizations were accused of being a fifth column engaged in "a war of extermination . . . of all heretics." Then for the Catholics, as now for the Muslims, hidden agendas were ascribed to the minority religion: "'laying in guns and ammunition' in preparation for their plot to seize power, 'working day and night, spending money like water to make America Catholic!'" And then for the Catholics, as now for the Muslims (and apparently the Mormons), the notion was taken seriously that being an adherent of a religious faith and its accompanying doctrine is inherently incompatible with national citizenship, incredible as it may seem to those of us who thought we as a nation knew better by now.

"Nothing in Florida above the Nation's flag," read a campaign ad for Bishop Sidney Catts, a candidate for Florida's governorship in 1916. "As Roman Catholicism puts her allegiance to the pope above the flag, Mr. Catts stands against the invasion of the state of Florida in her politics!" read another. That this Mr. Catts was able on the basis of such bigoted sentiment to outperform far more experienced politicians is testament to the depth of anti-Catholic feeling in the United States at the time, and suggests that the notion that religious adherence has something to do with national citizenship has deep roots and dark origins.

In light of the national historical background, and given the poisonous climate in the United States today concerning Islam and the Muslim polity, one approaches any work asking questions about religious doctrine and liberal citizenship with some level of trepidation. The dangers of stigmatization are all too apparent. To March's considerable credit, he recognizes the dangers and attempts as much as

2. There are numerous scholarly undertakings documenting chauvinist attitudes towards Roman Catholics at the turn of the century. The quotations and references herein are all taken from the first chapter of Sharon Davies's remarkable work, *Rising Road*. SHARON DAVIES, *RISING ROAD* ch. 1 (Oxford Univ. Press 2010).

he can, given his analytical framework, to distinguish the serious work he is attempting from the xenophobic hysteria that led to Bishop Catts's election as governor of Florida in 1916.

March unfortunately fails to dispel the unease, but this is entirely a reflection the limitations of his framework rather than any shortcoming in his intentions or efforts. To be absolutely clear, and to dispel any possible doubt on the matter, this work is certainly far, far from the demagogic exercises engaged in by such public figures as Pamela Geller, the Islamophobic blogger par excellence, and our former Speaker of the United States House of Representatives, Newt Gingrich. This is a serious work. March is a serious person, and an open minded and tolerant one. It is in fact precisely March's lofty intentions and his extensive and well-meaning efforts that lead to the conclusion that the problem with his work, to the extent it exists, must lie with the approach, which divorces doctrine nearly entirely from the actual people who adhere to it, and not with the author, who, when it comes to the treatment of actual Muslim people, is as respectful and open-minded as they come in our academy.

First, as to the efforts of Professor March, for it would be grievously unfair to him not to point out at some length the extent to which he undertakes to disclaim any suggestion of any kind that Muslims as individuals are less than ideal citizens of the United States by virtue of religious identity. March recognizes the danger and attempts to address it as follows:

A deeper and more potent reservation about this project, however, would be that it somehow contributes to a discourse that stigmatizes or marginalizes Muslims. I take this danger very seriously but regard it as not applicable in this case. The methodology developed in this book does not assume the presence of moral conflict on the basis of stereotypes or media images but rather addresses the precise points of contestation as presented by the most systematic articulators of liberal and Islamic doctrines. The claim that Islam might object to liberal or democratic principles (just as many other comprehensive doctrines do) and can justify illiberal political action is grounded in (fairly mainstream) Islamic texts, not in clichés or the actions of marginal groups. (62)

While I might quibble with his characterization of these sources as "fairly mainstream," there can be no doubt that one view within Islamic discourse suggests that Islam is hostile to liberal citizenship, and it is not marginal. Moreover, I heartily agree with March that he does not traffic

in stereotypes but borrows arguments exclusively from figures that genuinely articulate Islamic doctrine and have a reasonably sizable following.

Yet this is cold comfort to the stigmatized Muslim, and March knows it (and attempts to address it elsewhere, as we shall see below). To illustrate the problem, we may consider the example of America's first Muslim in Congress, Representative Keith Ellison, and some of the difficulties he encountered—the “stigma,” if you will, associated with his religious affiliation. Certainly some of the efforts at marginalization of Muslims following Ellison's victory were hardly well informed and bordered on the hysterical. For example, Representative Virgil Goode ominously warned that a failure to secure the American border would lead to more congressional representatives swearing their oath of loyalty upon a Qur'an—in reference to the election of a black man whose ancestors arrived in the United States on a slave ship centuries earlier.³ Certainly this notion of invading Muslim hordes is the very type of “stereotype or media image” that March properly decries. Similar nonsense might well be pointed out as concerns the recent opposition to “Ground Zero” community centers, among them the allegation that this must be some sort of “Victory Mosque” to celebrate the September 11 attacks⁴ because Muslims build mosques at sites of conquest. This is in spite of the fact that the Imam of the proposed community center, Feisal Abdul Rauf, has been so prominent in his condemnations of those attacks, and so faithful and committed an American, that the *United States Department* has asked him to travel to the Middle East to promote reconciliation between the United States and the Muslims of the Middle East.⁵

Yet it could fairly be said that other criticisms of Ellison, or Muslims in public life more generally could potentially draw from the very “fairly mainstream” sources that March uses. Suppose an accuser were to say that if the United States were to engage in military hostilities against Iran, Muslim Congressmen and Congresswomen would remain neutral and would not support American troops in any way in their

3. The substance of the letter to constituents in which Goode made this remarks may be found at Talking Points Memo Document Collection, <http://www.talkingpointsmemo.com/docs/goode-letter/> (last visited June 21, 2010).

4. This preposterous allegation is frequently made as against the community center, as any Google search of the term “muslim mosque victory site” will reveal. For one typical example, see <http://rightwingnews.com/2010/08/victory-mosque-muslims-refuse-to-discuss-building-elsewhere/>.

5. Anne Barnard, *For Imam in Muslim Center Furor, A Hard Balancing Act*, N.Y. TIMES, Aug. 21, 2010.

efforts, and would do no more than promise not to confront U.S. troops militarily. According to March, this is not only a mainstream position: it is an incontestable one under traditional understandings of Islamic doctrine. Yet nothing would be more unfair than to ascribe this position to a Muslim politician merely because it happens to derive from genuine Islamic sources.

March, as noted earlier, recognizes such concerns as well. Very early on in the book, he states:

Chapter 3 . . . presents the range of Islamic arguments found in both classical and contemporary sources that problematize liberal citizenship. The aim in this chapter is merely to provide evidence that liberal citizenship can be contested within formal Islamic religious doctrine. These internal Islamic discourses show that before we can discuss the central liberal concerns of justifying state neutrality and individual freedoms to revise one's conception of the good, it is necessary to look at a series of questions related to Muslim belonging, loyalty and solidarity in a non-Muslim state. *There is, however, no case made or suggested that, because of these Islamic juridical-doctrinal debates, actual Muslim citizens (in the cultural, identity sense) must experience liberal citizenship as problematic.* (14) (emphasis in original).

While encouraging, I remain puzzled as to what "in the cultural, identity sense" is supposed to mean. On its face, that phrase seems to refer to that class of Muslims who self-identify as such, just as perhaps, Albert Einstein might self-identify as a Jew. Yet to say that Muslims who do not care about Islamic doctrine are not constrained by it seems almost tautological and would not be disputed by the most extreme Islamophobes. Even Geert Wilders insists, in his efforts to ban the Qur'an in the Netherlands and in his statement that Islam is "the ideology of a retarded culture", that he harbors no hatred for Muslims, which might explain his once close relationship with the cultural Muslim Ayaan Hirsi Ali,⁶ who has self-identified as an infidel by the title of her own memoir.⁷

In any event, this is of no help to Representative Ellison or others like him, or a substantial portion of the Muslim community that looks to them as a model, from the dangers of stigmatization or marginalization. Representative Ellison is not merely a *cultural* Muslim, and he does not merely *self-identify* as a Muslim. Rather, if we are to take him seriously,

6. Ian Traynor, "I don't hate Muslims, I hate Islam," says Holland's Rising Political Star, THE OBSERVER (U.K.), Feb. 17, 2008.

7. AYAAN HIRSI ALI, INFIDEL (Free Press 2007).

as I think we must, we must view him as a *practicing and believing* Muslim. Clearly as a sitting Congressional Representative he does not think, and could not think, that it would be impermissible for a Muslim to serve in the U.S. military. His own effusive praise for veterans, which appears on his own website, is hardly consistent with the notion that one sins by serving in the military.⁸

Were Ellison alone as a Muslim on this point, perhaps his views could be disregarded as being idiosyncratic or necessitated by political considerations. But the problem is not that Representative Ellison is acting idiosyncratically and contrary to clear Islamic doctrinal positions, but rather that Professor March is unduly narrowing the scope of appropriate material from which we can understand Islamic doctrine.

As the following examples demonstrate, Representative Ellison has many Muslim compatriots who share his view respecting cooperation with non-Muslim forces against Muslim ones deemed to be oppressive. To take the starkest example, at least to this reviewer, whose grandfather served the monarch who led the Arab Revolt, it is not enough, as March seeks to do, to describe the religious basis of the *Ottoman* opposition to Muslims fighting with the British against its empire to demonstrate the near unanimity of Islamic doctrine prohibiting fighting alongside non-Muslims against Muslims. There were two Muslim sides to that battle, and one wonders why March does not address what the *Arabs* engaged in the Arab Revolt may have thought respecting the Islamicity of their actions. One can be certain the leaders did not make an open call to apostasy. This position, once explored historically, might well temper March's certainty respecting the supposedly absolute prohibition against serving with non-Muslims against Muslim states deemed to be oppressive in one form or another.

More contemporary examples exist as well. March cites to what appears to be a general statement by the influential Sheikh Yusuf al-Qaradawi concerning the impermissibility of killing other Muslims in war as part of a non-Muslim army. (116) Yet he neglects to mention that Qaradawi himself specifically maintained that Muslims in the U.S. military *could* lawfully engage in military activities against Afghanistan, another Muslim state, given what had been done to the U.S. on September 11 and given the expectation that it would improve the welfare of American Muslims.⁹ The blanket rule March has laid out, as

8. http://ellison.house.gov/index.php?option=com_content&view=category&layout=blog&id=40&Itemid=21 (last visited Sept. 25, 2010).

9. See Charles Kurtzman, *Pro-US Fatwas*, 10 MIDDLE E. POLICY 155, 157 (2003).

with all rules in legal discourse, hardly seems so comprehensive.

In addition, the quite devout Sunni sheikhs of Iraq's western Anbar province were easily persuaded to turn on Al-Qaeda and support the United States in its efforts to systematically capture or kill the members of this (Muslim) terrorist organization. I have yet to meet a Kurd, secular or devout, who thought it was anything but a national and religious duty to assist the United States in its efforts to remove Saddam Hussein. There is also the 1991 *fatwa* of Ibn Baz, a scholar who later became Saudi Arabia's chief cleric, allowing non-Muslim troops to be stationed on Muslim land specifically to engage in war with Saddam Hussein's Iraq, which had just invaded Kuwait.¹⁰ Admittedly the Ibn Baz *fatwa* concerned whether "the leader of the affairs" (*wali al-amr*) of the Muslim community (i.e. the Saudi monarch) had the right to seek non-Muslim assistance. But thirteen other majority Muslim nations did not share the view of Ibn Baz concerning the identity of the leader of the Muslim community and still participated in the coalition to remove Saddam Hussein, from Bangladesh in the east to Morocco in the west to Niger in the south. Whether the cause has been distasteful Muslim colonialism, genocide, national annihilation or terrorism, Muslim minds have been refocused on the dangers that single Muslim states or organizations might constitute to the Muslim world absent the support of non-Muslim polities.

Given these developments, might it be the case that what March regards as unthinkable, participation in a non-Muslim army on the part of Muslims, has begun to shift? Is the doctrine undergoing some level of evolution, so that requiring a Muslim to serve in a non-Muslim army and fight a Muslim state is not nearly as problematic as he suggests? Distressingly, March does not address the matter, leaving us with the impression that he implicitly regards these examples more as doctrinal distortions than evolution.

This points to a broader problem. March rarely discusses the doctrine, and its evolution, with reference to how actual Muslim citizens might approach it. Ideally, he would engage the actual Muslim community in the doctrinal debates, and seek to understand how that community (or at least subsets within it) might approach the doctrine, thereby capturing a greater understanding of *doctrinal* trends and traditions and the manner in which these relate to contemporary liberal Muslim citizenship. For example, one could delve into considerations of the *religious and doctrinal positions of* spiritual leaders of the Arab

10. *Id.* at 159-60.

revolt against Ottoman rule, *or of* the Kurdish clerics who supported the American intervention in Iraq, *or of* the Sunni clerics who joined in the American fight against Al Qaeda, *or of* the many, indeed the near unanimity of, American Muslim clerics more prone to lionize Ellison than agonize over his political participation.

Unfortunately, however, rather than discuss the positions of actual Muslims toward their doctrine, March adopts a more distressing path. Having collected his sources, March directs his inquiry to a different sort of interlocutor, one he creates from the thin air and describes as “the ideal-typical Muslim.” This ideal-typical Muslim has no nation, gender, or race. He/she has no family, no material interests, no social connections and no tribal associations. The only interest of this ideal-typical Muslim seems to be adherence in some sort of faithful fashion to Islamic doctrine in its academic reconstruction.

As an outsider to the debates of political philosophy, I am regularly confounded by the propensity in the field to describe things that exist in the world (among them, “actual Muslim citizens”) with reference to things that do not, among them veils of ignorance, states of nature, noble savages, and now ideal-typical Muslims. Jarring nomenclature aside (there is nothing I find in this Muslim that I would describe as ideal as a normative matter, nor typical as a descriptive one), the real problem is that, like the “formal Islamic religious doctrine,” the “ideal-typical Muslim” is a product of the academic laboratory. The image is not so much a community’s reflection of or engagement with its norms as it perceives them, but is rather a doctrine imposed upon them through a device that does not describe a single one of them.

The problem in the approach is immediate and obvious: it hardly harmonizes with March’s ultimate goal of finding potential grounds for consensus, based on his own articulation of how to achieve that goal. He describes as a “first aim” of a search for overlapping consensus to be not “truth,” but “plausibility.” Stated more fully:

We are aspiring to the most plausible interpretation of an ethical or cultural tradition, in the sense of preserving what are generally held to be the most constitutive elements of that tradition—what makes that tradition that tradition and not another one—that still allows us to arrive at some sort of consensus. If the dialectical process of comparative ethics results, particularly in the case of revealed religions, in an exegetical free-for-all with little regard for the continuity of doctrinal and methodological traditions, then we would not be engaging in a process for which we could expect a wide range of interlocutors. It is no less true, however, that if the

process of comparative ethics insists on an artificially integral fossilized or pristine conception of the other ethical tradition, then we may also run the risk of irrelevance. (68)

Ultimately, plausibility can be measured only in terms of the reception of a given claim by the discursive community to which it is directed.

The reader is left confounded by the last sentence in particular. If plausibility is to be determined by the reception of the discursive communities, then surely we must frame the search for plausibility in relation to the discursive communities in question and not waste time worrying about “ideal-typical Muslims.” I do not contest March’s premise, namely, that if Islamic doctrine is to mean *something* (i.e. that it is not to devolve into “an exegetical free-for-all”) (68), then respect must be paid to “the continuity of doctrinal and methodological traditions.” (68) But the way in which to avoid an “artificially integrated, fossilized or pristine conception,” (68) is precisely to engage the relevant community of believers to understand how they view their own “doctrinal and methodological traditions” (68) and the limitations they themselves impose on acceptable discourse.

A sampling of religious authorities, classical and contemporary, along with a guess of how a fictional “ideal-typical Muslim” might respond to such a sampling does not achieve this. In the end, this is precisely the type of “artificially integral, fossilized conception” (68) that March rightly warns against in the passage above. It privileges the academic outsider over the members of the community and decides for them and imposes upon them a rigid, preexisting formulation of “the most constitutive elements” (68) of their tradition and their doctrine.

When this is done, the results are distorting. For example, in my own area of research, about two decades ago, as Islamic finance grew more popular, a debate arose concerning the permissibility of insurance. One approach was to declare conventional insurance Islamically prohibited because it involved a form of gambling or speculative risk wherein an insured paid a premium without knowing whether there would ever be a return on that premium. Naturally, this was a problem, and the Islamic finance community needed to resolve the issue, either deeming insurance acceptable or finding another commercial vehicle to serve in its place.¹¹

11. I discuss this in some detail in Haider Ala Hamoudi, *The Muezzin’s Call or the Dow Jones Bell: On the Necessities of Realism in the Study of Islamic Law*, 56 AM. J. COMP. L. 423, 459-60 (2008).

Mustafa al Zarqa' developed a set of arguments permitting conventional insurance, pointing out that the purchaser of insurance is not "gambling" or engaging in any form of risk taking—to the contrary, she is purchasing a product specifically to avoid risk. A healthy person who does not need a doctor over the course of a year does not begrudge the fact that she has received nothing for her premiums, any more than (to use the specific example developed by Zarqa') a person who hired a guard to protect his goods is disappointed that nobody comes by to steal them. The product obtained is the avoidance of risk, not the opportunity for a speculative gain.

According to another set of arguments, however, conventional insurance was not permitted because of the speculative uncertainty surrounding the transaction. But this rule specifically exempted the providing of a *gift* which involved speculative uncertainty. Thus if the insurance company was structured using a mechanism wherein all parties would contract to provide "charitable donations" (effectively, premiums) to a vehicle (the insurer), with the condition that this vehicle would then provide them with coverage in the event of loss, all managed by one who received the "donations," managed the coverage and distributed the balance between himself and the "donors" (the insured), then this effort at *solidarity* was in effect entirely permissible. The vehicle was given the name *takaful*, Arabic for solidarity.

Which of these is more plausible? Do we adopt the first approach, appealing to the Muslim commercial lawyer comfortable with the modalities of modern commercial and economic order, because it is economically correct and in any event more palatable than the semantic gamesmanship that characterizes the *takaful* with its contractual "charity" and its profit-making charity manager? Should we lean to the second approach instead, as others in the Muslim community eager to articulate Islamic finance as a fairer and more socially just form of commercial order might prefer, on the grounds that the prohibition of insurance and permissibility of solidarity certainly at least create the impression of social justice based distinctiveness? Could it reasonably be said that one or the other is more "plausible" or more in keeping with "doctrinal and methodological traditions?" Would anyone think it would be helpful to imagine what "ideal-typical Muslims" might deem more plausible?

In the end, as I have noted earlier, the unease associated with the dangers of marginalization is not entirely abated. Framing the approach to the doctrinal materials in terms of nonexistent "ideal-typical Muslims," the implicit if entirely unintended suggestion is that the

approaches taken by them (or, stated more precisely, because they do not exist, by the academic speaking on their behalf) are somehow more “orthodox,” more “traditional” or more “correct” than alternative positions that might be taken by significant portions of the Muslim polity, even those who purport to be applying and responding to the same ethical, cultural and legal traditions. Thus, essentialism re-emerges, and attributes of “true” Islamic doctrine begin to be articulated and imposed without reference to Muslims themselves, in some cases (such as the prohibition against serving in the non-Muslim army against Muslim states) in a manner that may seem to many positively disloyal. The point is not that religious doctrine can or should be ignored in favor of lived practices, a point that March rebuts forcefully and effectively at the end of his book (273-74), but rather that religious doctrine cannot sensibly be divorced from the people who purport to apply it to govern their lives. Orthodoxy, like plausibility, is determined by the community, and thus attention must be paid, in the end, not to “ideal-typical Muslims” but rather real ones, from Representative Keith Ellison to Hezbollah leader Hasan Nasrallah, and to the respective Muslim sub communities within which they play important roles.

It is thus important when Grand Ayatollah Sistani in Iraq issues a *fatwa* indicating that the *shari'a* requires an election to be held in order to determine the body responsible for drafting the Iraq constitution, precisely the type of “fairly mainstream” data point March would use if the matter concerned the plausibility of liberal citizenship rather than democratic rule. But equally relevant is the fact that hundreds of thousands of Iraq’s Shi’a demonstrated in favor of *this particular fatwa* and no other, forcing the United States to concede elections ultimately. Thus, the plausibility of the position may be tested against the actual relevant Muslim community (or sub community, or community within the Islamic meta-community, depending on how the relevant polities are defined) with full respect for the continuity of doctrinal and methodological traditions, to the extent the Grand Ayatollah purports to adhere to such traditions, as he claims to and as we must assume he does. Plausibility *requires* us to look beyond the doctrine and investigate the possibility of its receptivity if we are to avoid essentializing Islam’s vast number of adherents as believing one thing or another on the basis of classical and contemporary texts.

Such an approach will necessarily involve considerations beyond those that are purely doctrinal, *not* because one can reference extra legal materials to make legal arguments. March is correct that this is difficult, and that it is presumptuous in the extreme to simply declare to a Muslim

that her motivation, for example, in opposing Danish cartoons of the Prophet is not grounded in religious doctrine, but instead originates in “anxiety about [your] encounter with modernity and [your] children’s exposure to Western habits.” (61) Yet it would be equally presumptuous to ignore such anxieties to the extent one believes them to be real, and to assume that one could create for this objector a plausible doctrinal position respecting liberal citizenship to which this person might be receptive, via the vehicle of the “ideal-typical Muslim.” In other words, considering additional factors does not mean we can dismiss the critic of the Danish cartoons as disingenuous when she claims religious doctrine motivates her. Rather it suggests that there are many ways to be faithful to a set of “doctrinal and methodological traditions” and if we are to understand how modern Muslims claim to remain faithful, we must consider more than a pastiche of “fairly mainstream” (96) opinion, no matter how carefully and thoughtfully collected.

In the end, I applaud March for his fortitude in engaging this difficult subject, for the depth of his considerations of Islamic doctrine and its compatibility with political liberalism, and for his careful and extensive explorations of various theoretical strands of Muslim and Western thought in his search for equilibrium. I only wish he had paid somewhat more attention to the very Muslims he seeks to persuade while doing it.

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