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RIGHTING THE RIFT BETWEEN MUSLIM AND AMERICAN: CELEBRATING ABDULLAHI AN-NA'IM

*Khaled A. Beydoun**

ABSTRACT

This Essay is a special contribution to the Journal of Law and Religion and the Emory International Law Review, honoring the work of Professor Abdullahi An-Na'im and his impact on my work, and more broadly, discourses on Islam in America, rights, and citizenship.

This Essay, celebrating the landmark work of Professor An-Na'im and its impact on my scholarly and public work, will examine these two fronts. By challenging the political constructions of Americanness and Muslim identity that prevailed on the right, left, and in-between, An-Na'im inspired new frontiers of thought and thinkers that followed his footsteps. This line of intellectual impact emanates from his landmark contributions on human rights and Islamic law, but also stands alone to inform the work of thinkers, like myself, who write beyond the bounds of the spheres where Professor An-Na'im made his name.

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INTRODUCTION

“If I’m not resisted, I’m not relevant.”

—Abdullahi An-Na’im¹

Na’im¹

I encountered the work of Professor Abdullahi An-Na’im well before entering legal academe, yet it was not until I began forging my work on Islamophobia that its salience left an imprint on my view of a changing world.

During the thick of the War on Terror, which had transitioned onto a second presidential administration, Professor An-Na’im’s work grappled with a question fundamental to the moment and movement waged against Muslims in the United States. “What is an American Muslim?” he probed in a 2014 book that entered a debate on the Americanness of a faith group tied to terror suspicions.² In the opening passages of the book, Professor An-Na’im asserts, with emphasis and without reservation: “As an American Muslim, I have wholeheartedly embraced my Americanness. . . . In this book, I will argue that other Muslim Americans should as well.”³ He stood atop the very line that divided “Muslim” and “American,” resisting the very rift drawn by the War on Terror.

The assertion, direct yet profound, challenged platitudes that prevailed on two fronts. First, An-Na’im took on the foundational War on Terror baseline, built upon “redeployed Orientalist tropes,” that positioned Muslim identity as inimical to Americanness.⁴ By not only claiming his

¹ Shiraz Sidhva, *Abdullahi Ahmed An-Na’im: On Human Rights, the Secular State and Sharia Today*, *THE UNESCO COURIER* (2019), <https://en.unesco.org/courier/2019-1/abdullahi-ahmed-naim-human-rights-secular-state-and-sharia-today>.

² ABDULLAHI AHMED AN-NA’IM, *WHAT IS AN AMERICAN MUSLIM?: EMBRACING FAITH AND CITIZENSHIP* 1 (2014).

³ *Id.*

⁴ See Leti Volpp, *Critical Race Studies: The Citizen and the Terrorist*, 49 *UCLA L. REV.* 1575 (2002).

Americanness, but *reclaiming* it away from the marching orders of racial caste and religious animus, An-Na'im stood defiantly. Particularly, Islam—the focus of An-Na'im's rich and celebrated corpus of scholarship—was positioned as principal national security and “civilizational” threats by Washington and private halls of power.⁵ By fusing Muslim *with* American across the political divide, longstanding and re-weaponized, An-Na'im disrupted the war discourse and forged inroads for my own scholarship on Islamophobia and beyond.

Second, An-Na'im's conception of Americanness is rooted in the principle of rights instead of political wrongs. This is a critical distinction, particularly as it became the penchant among liberal scholars and intellectuals examining Islam to distance themselves from the American empire and the political baggage associated with it. While seated at American colleges and universities, or waxing poetic in television studios or lecture halls, Americanness became a pariah among leftist and progressive thinkers. A badge of shame hidden, or denounced, while War on Terror programming moved into the homes of Muslims and droned villages in Muslim-majority nations on the other side of the globe. In doing so, a liberal dissonance between “Muslim” and “American” was taking form, emboldening suspicions on the right and capitulating on the longer war over language. An-Na'im stood, sometimes alone or with a sparse few, in that liminal space of embracing his Americanness while fiercely confronting the strident policies of the day. The former served as the platform to conduct the latter; a platform not built on political wrongs, but legal rights grounded in liberty, equality, and citizenship.

This Essay, celebrating the landmark work of Professor An-Na'im and its impact on my scholarly and public work, will examine these two fronts. By challenging the political constructions of Americanness and Muslim identity that prevailed on the right, left, and in between, An-Na'im inspired new frontiers of thought and thinkers that followed his footsteps. This line of intellectual impact emanates from his landmark contributions on human rights and Islamic law, but also stands alone to inform the work of thinkers, like myself, who write beyond the bounds of the spheres where Professor An-Na'im made his name.

⁵ See SAMUEL P. HUNTINGTON, *THE CLASH OF CIVILIZATIONS AND REMAKING OF WORLD ORDER* (1996). This book is the text that influenced formative War on Terror policy and rhetoric, and the popular animus that it spurred against Muslims. *Id.* Civilizational definitions of Islam often politicized the religion as a nonfaith, and more pointedly, a political movement. *Id.* For a critique of this position, see ASMA T. UDDIN, *WHEN ISLAM IS NOT A RELIGION* (2019).

I. RIGHTING MUSLIM IDENTITY

Before the War on Terror redefined what it meant to be Muslim and American, Professor An-Na'im was already a leading Islamic and human rights scholar. His work penetrated American and international discourses, steered by conceptions of religion, rights, and law still unchanged by the War on Terror and untainted by its imprint. In short, neither his intellectual or religious identity were defined by the war nor its reckoning, unlike the new scholars drawn to academe because of it.

This was certainly the case for me, a Muslim American raised in a single-parent household in Detroit, Michigan, drawn to the law by a commitment to racial justice. Later, I was summoned to the legal academy by the study of Critical Race Theory and the tools it equipped me with to challenge War on Terror policy and structural Islamophobia.⁶ My objective, shared by the likes of rising Muslim law scholars including Amna Akbar, Sahar Aziz, and SpearIt, was clear: speak truth *directly* to power by challenging its nefarious exploitation of law to entrench that power.

That was not Professor An-Na'im's *raison d'être*. Professor An-Na'im spoke *before* that neoconservative architecture of counterterrorism took form, and above those presiding over it and their successors that took over after its inaugural eight years. He wrote, six years into the Obama Administration, that,

I am not concerned here with defending Islam and Muslims against negative stereotyping or charges of “un-Americanness.” I do not accept that there is a uniform, monolithic measure of American identity other than citizenship. Within that framework, multiple and overlapping identities will continue to evolve, interact, and cross-fertilize.⁷

This observation came at a time when Americanness was being politically contested on multiple grounds. The Tea Party re-narrowed its contours with the parallel marching of white populism and anxiety;⁸ changing demographics projecting a majority-minority country spawned mandates for

⁶ See Khaled A. Beydoun, *Between Islamophobia, Indigence, and Erasure: Poor and Muslim in “War on Terror” America*, 104 CAL. L. REV. 1463 (2016) (examining how federal and local surveillance policies disproportionately target indigent and working Muslim communities in the United States).

⁷ AN-NA'IM, *supra* note 2, at 3.

⁸ See Jacob Weisberg, *The Right's New Left*, SLATE (Sept. 18, 2010, 9:11 AM), <https://slate.com/news-and-politics/2010/09/the-tea-party-movement-has-two-defining-traits-status-anxiety-and-anarchism.html>.

“diversity and inclusion” while the Supreme Court diligently eroded affirmative action;⁹ and an Islamophobic “rage shared by law” and private vigilantism cast Muslim identity as antithetical to American identity.¹⁰

These distinct tentacles grasping to redefine what it meant to be American were diabolically enmeshed by Donald Trump, the fringe-candidate-turned-president whose nostalgia for an American identity defined by racial and religious caste turned his ire squarely on Islam. “Make America Great Again,” which rang loudly across the country shortly after An-Na’im wrote *What Is An American Muslim?*, aimed to redact religion from the meaning of America, through law and lurid rhetoric.¹¹

My work, mounting at the time, challenged misrepresentations rising from the right and the notion that Muslims were a monolithic bloc or threat. Deploying An-Na’im’s paradigms of national identity rooted in citizenship, and the intersectional and intricate meaning of Muslim identity steeped in liberty and individuality, took on that foundational Islamophobic myth that expressions of Islam—through free exercise of religion, speech, or dress—were presumptive of terrorism.¹²

In his own words, “an American Muslim is a citizen of the United States who happens to be Muslim, as she may happen to be a Christian, Jew, Hindu, or an adherent of any religion or belief.”¹³ That very legal touchstone—not terrorism or piety, immigrant or Arab, or whatever imagined essence ascribed to the Muslim component of an American identity that preempts the coexistence of the two—is so richly articulated in the canon of An-Na’im’s work. This canon is critical to my ability to speak directly to the power that he spoke beyond.

Even more lucidly, it was An-Na’im’s articulation of Muslim identity along lines of liberty that shifted it from the prism of villainy or victimhood

⁹ See Vinay Harpalani, *Narrowly Tailored but Broadly Compelling: Defending Race-Conscious Admissions After Fisher*, 45 SETON HALL L. REV. 761, 763 (2015) (offering a trenchant defense of race-conscious remedialism challenging prevailing affirmative action jurisprudence and the conservative attack of both remedial and diversity justifications).

¹⁰ Muneer I. Ahmed, *A Rage Shared By Law: Post-September 11 Racial Violence as Crimes of Passion*, 92 CALIF. L. REV. 1261, 1312 (2004).

¹¹ Khaled A. Beydoun, Opinion, *America Banned Muslims Long Before Donald Trump*, WASH. POST (Aug. 18, 2016), https://www.washingtonpost.com/opinions/trumps-anti-muslim-stance-echoes-a-us-law-from-the-1700s/2016/08/18/6da7b486-6585-11e6-8b27-bb8ba39497a2_story.html.

¹² Khaled A. Beydoun, *Islamophobia: Toward a Legal Definition and Framework*, 116 COLUM. L. REV. ONLINE 108, 111 (2016).

¹³ AN-NA’IM, *supra* note 2, at 176.

that saturated the legal literature, and even more starkly, the popular press. In *The Spirit of Laws Is Not Universal*, An-Na'im observes, "Victims must always be human agents in the protection of their own rights, not mere subjects or beneficiaries."¹⁴ I read this six years ago in the same manner as I read it today, in 2022, as a call to action for Muslim Americans to become proactive agents in unmaking the violence wrought against them by organizing, protesting, and activating the citizenship rights the War on Terror aimed to erode.

II. RE-ORIENTING AMERICANNES

I revisited Professor An-Na'im's works interrogating rights and citizenship during a moment of emboldened Islamophobic populism across the globe. In 2022, the War on Terror metastasized and marched across longitudes and latitudes, and Islamophobia became a global phenomenon.¹⁵ On both human rights and citizenship fronts, states cracked down on their Muslim populations through the guise of counterterrorism. Many of these states, several of them vanguards of structural Islamophobia like France, lacked constitutional safeguards to protect the free expression and dignity of their Muslim communities.¹⁶ Despite standing as the architect of the global War on Terror that emboldened French Islamophobia, Hindu supremacy in India, the ethnic cleansing of Rohingya in Myanmar, and the cultural genocide the Communist government in Beijing is actively enforcing upon the Uyghur, the United States' *religion clauses* set it apart.¹⁷

These religion clauses, and the First Amendment that enshrine them, are the marrow of An-Na'im's reorientation of Americanness. Moreover, the constitutional protection of the free exercise of religion and the prohibition against the establishment of religion function as the bridge to a legal

¹⁴ Abdullahi Ahmed An-Na'im, *The Spirit of Laws Is Not Universal: Alternatives to the Enforcement Paradigm of Human Rights*, 21 TILBURG L. REV. 271, 273 (2016).

¹⁵ In China, for example, the American War on Terror has indelibly fueled the state campaign against the Uyghur Muslim population in Xinjiang—the disputed territory in northwest China. See DARREN BYLER, IN THE CAMPS: CHINA'S HIGH-TECH PENAL COLONY 21 (2021) ("The system is premised on a rhetoric of a war on Muslim 'terrorism' that the Chinese state has imported from the US and its allies post-September 11, 2001.").

¹⁶ See Khaled A. Beydoun, *Laicite, Liberalism and the Headscarf*, 10 J. OF ISLAMIC L. & CULTURE 188 (2008); see also JOHN R. BOWEN, WHY THE FRENCH DON'T LIKE HEADSCARVES: ISLAM, THE STATE, AND PUBLIC SPACE 33 (2006) ("Laicite remains one of those 'essentially contested concepts' that is politically useful precisely because it has no agreed-upon definition").

¹⁷ See U.S. CONST. amend. I. ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .").

conception of American identity wed to liberty. Although a technical framing of American identity, An-Na'im presented it with an unabashed "embrace of Americanness" within the intellectual and public spheres.¹⁸ Again, he does so unabashedly against an ominous zeitgeist that denies American identity to him on account of religion, race, and hailing from a nation (Sudan) listed on the original Muslim Ban.

Pivoting in the other direction, An-Na'im claims Americanness against factions that define it in terms of profiling, persecution, and plunder. To be American, during the distinct phases and shifting faces of the War on Terror, was a marker of stigma on the left. Critical scholars and public intellectuals who identified as such would qualify it with prepared criticisms, while others renounced it as politically irredeemable. This was sometimes performance and other times bona fide perspective, but it was *always political*. In other words, it was a framing of American identity shaped by prevailing policies or political machinations. An-Na'im, whose mosaic works centered the universality of human rights' principles to Islam and the individual, (re)defined Americanness through rights,¹⁹ namely, those distinct American First Amendment liberties denied to Muslims in parts of the globe where Islamophobia raged onward.

His embrace of an American identity rooted in rights was often confused, conflated with political platitudes not his own, and critiqued by Islamic thinkers that rebuffed separation of Islamic Law with state. But he stood firm, as a scholar and public intellectual, against the times and tides that challenged his view of Americanness tied to Islam. He wrote,

I believe that Muslims everywhere, whether a religious majority or a minority of the population, should acknowledge the constitutional principle of separation of religion from the state, while demanding the right to free exercise of religion.²⁰

Explicitly talking to Muslim readers, An-Na'im embeds a definition of Americanness that veers from the War on Terror baggage and burdens it places on those defending it. This is a liberal definition, but more potently, a *liberating* definition that enables one to embrace Americanness—as he does—from the vantage point of universal rights.

¹⁸ AN-NA'IM, *supra* note 2, at 1.

¹⁹ See generally ISLAM AND HUMAN RIGHTS: SELECTED ESSAYS BY ABDULLAHI AN-NA'IM (M. Baderin, ed. 2006).

²⁰ AN-NA'IM, *supra* note 2, at 1.

That is precisely what I did, adopting that essential definition of American identity in my book, *American Islamophobia: Understanding the Roots and Rise of Fear*.²¹ Against the fire of Islamophobia raging from the Trump Administration, An-Na'im's words helped me write:

By voting, marching, and struggling to exercise a religion demonized by law and policy . . . Muslim Americans bring to life the civil liberties enshrined in the Constitution, [which have been] systematically denied to them.²²

Rights, activated by a community that while at the margins still faithfully pursues them, is what defines Americanness.

This commitment to a rights-driven definition of American citizenship is built upon the state's engagement with religion. Across his work, he affirms the importance of religious freedom to democracy and dignity, and the vitality of separating religion from state authority. These dialectics between free exercise and establishment spans An-Na'im's work in Islamic law, human rights, and citizenship, and remains consistent across national lines. Even when the subjects are Muslim societies, he argues, "Islam and the state must be institutionally separate in order to safeguard the possibility of being Muslim out of personal conviction rather than conformity to the coercive will of the state."²³ The enforcement of Shari'a through the coercive power or authority of the state is neither desirable nor possible in the modern context of a territorial nation-state.²⁴

It is that promise, laden in the lofty letter of the First Amendment and the words that precede it and proceed from it, that orient what it truly means to be an American. Professor An-Na'im knew that well before the 9/11 moment that mangled Muslim identity and mutated Americanness, providing a baseline for so many of us to build from.

CONCLUSION

"The divides are not Islam and western society, the divide is between

²¹ KHALED A. BEYDOUN, *AMERICAN ISLAMOPHOBIA: UNDERSTANDING THE ROOTS AND RISE OF FEAR* (2018).

²² KHALED A. BEYDOUN, *AMERICAN ISLAMOPHOBIA: UNDERSTANDING THE ROOTS AND RISE OF FEAR* 208 (2018).

²³ Abdullahi Ahmed An-Na'im, *Islam, State and Politics: Separate but Interactive*, at 1 (2000), https://www.brookings.edu/wp-content/uploads/2012/04/2007islamforum_an-naim.pdf.

²⁴ Abdullahi Ahmed An-Na'im, *Complimentary, Not Competing Claims of Law and Religion: An Islamic Perspective*, 39 PEPP. L. REV. 1051, 1060–61 (2013).

people who have different values. We must promote connections between people who want to contribute to human values.”

—Abdullahi An-

Na'im

As a law student navigating the canon of Critical Race Theory to make sense of a world remade by the War on Terror, I was coming to understand the redemptive power of language and its capacity to challenge power. On a summer day in 2003, I remember flipping through the *Los Angeles Times* and reading the words of the intellectual giant Edward Said, who wrote, “Every empire, however, tells itself and the world that it is unlike all other empires, that its mission is not to plunder and control but to educate and liberate. These ideas are by no means shared by the people who inhabit that empire.”²⁵

I sat there, a Muslim American student whose parents fled war to find a safe haven in a nation that waged *a new kind of war* against everyone that shared my faith. “With or against us,” my president announced, drawing a political, legal, civilizational lines between halves that were further apart than ever before.²⁶

I believed then, blinded by an imperial construction of Americanness that swallowed me into its belly, that they would always be at odds. Derrick Bell, Kimberlé Crenshaw, and Edward Said shaped my analytical perspective and inspired intellectual courage that guided me to legal academia, and Professor An-Na'im issued a mandate that being a Muslim “inhabitant of [the American] empire” was to reclaim what that maligned and misrepresented identity meant.

He did so, clearly and courageously, by centering the importance of rights at a time when the weight of politics overwhelmed what *Muslim*, *American*, and most consequentially, *Muslim American*, meant.²⁷ He did so by not fearing to stand alone, or in front of fierce criticism coming from

²⁵ Edward Said, *Blind Imperial Arrogance*, L.A. TIMES (July 20, 2003), <https://www.latimes.com/archives/la-xpm-2003-jul-20-oe-said20-story.html>.

²⁶ *Text: President Bush Addresses the Nation*, WASH. POST (Sept. 20, 2001), https://www.washingtonpost.com/wp-srv/nation/specials/attacked/transcripts/bushaddress_092001.html.

²⁷ The political importance of Muslim Americans is only growing with time. “Muslims will likely become increasingly relevant in U.S. political contests and discussions in key battleground states. Pew’s population projections indicate that the number of Muslims in the U.S. will rise from 3.45 million [a grossly under-estimated figure] in 2017 to 6.2 million in 2030.” NAZITA LAJEVARDI, OUTSIDERS AT HOME: THE POLITICS OF AMERICAN ISLAMOPHOBIA 10 (2020).

within his religious community or from those that viewed that community at a monolithic source of terror threat. He did so because he believed that the timeless universality of rights would outlast the fickle and fluid politics of the moment, and the stewards of ideologies that conspired to conceal the genuine contours of citizenship.

Like the very principles he so zealously defended, Professor An-Na'im's works have inspired so many scholars within law and across disciplines. And the power of his words will stand, defiantly, against the changing faces of challengers that will engage his transformative work for years to come.