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On Being A Muslim Corporate Lawyer

by Azizah al-Hibri*

Introduction

It is not easy for me to discern the ways in which my faith has informed my professional life. I have been shielded from this awareness for most of my adult life by thick layers of subconscious denial. The interesting antecedent question thus becomes: "Why did I feel the need to deny, to shield myself from a recognition of the relationship between my faith and my profession?" Upon reflection, the puzzling answer I settle upon is: "Because I am trying to be a good American Muslim."

Clearly, this paradoxical answer needs some elaboration. I have denied the impact of my faith on my professional life because I am a good American Muslim. Yet, as every religious person will readily admit, being religious is central to one's life. You cannot, for example, decide to be dishonest in the office and a good Muslim, Christian or Jew at home. Religion just does not work that way. It provides you with a worldview, complete with a set of moral and other rules that are supposed to permeate every aspect of your life and inform your daily practices.

In particular, my religion requires me to be a law-abiding citizen. To do so in the United States, I have to abide by the constitutional principle of the separation of Church and State. I have been told that this principle requires me to drive a wedge between my public activities and my faith. Consequently, to be a good American Muslim, I have had to be less of a person of faith, at least less publicly so.

This is the existential paradox I and other people of faith find ourselves in. For example, Archbishop John Hughes made the following statement at Saint Patrick's day over a hundred years ago: "Well, there is but one rule for a Catholic wherever he is, and that is to do his duty there as a citizen."¹ At the time he made that statement, the good archbishop was no doubt aware of the potential tensions between being a good Catholic and being a good citizen in a secular state. Some Christians have even found the very ideology of nationalism as objectionable on religious grounds.²

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1. MARTIN E. MARTY, *THE MODERN SCHISM* 136 (1969). Jews have also pondered this issue. See, e.g., Sanford Levinson, *Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity*, 14 *CARDOZO L. REV.* 1577, 1607-08 (1993).

2. WALTER WINK, *ENGAGING THE POWERS* 25-31 (1992). See also Jose Faur, *Law and Herme-*

Nevertheless, religious people in this country seem to have somehow reached an acceptable *modus operandi*.

Recognizing one aspect of this paradox, Stephen Carter writes: "We have created a political and legal culture that presses the religiously faithful to be other than themselves, to act publicly, and sometimes privately as well, as though their faith does not matter to them."³ His view echoes a statement by De Tocqueville who pointed out as early as the Nineteenth Century, that "[i]n America religion is a distinct sphere, in which the priest is sovereign, but out of which he takes care never to go."⁴ Thus, compartmentalization of faith into private life has been a basic feature of this society for a long time. In this Symposium I, an immigrant who came to the United States from Lebanon three decades ago, am being asked to describe the ways in which I have failed to compartmentalize my faith.

A First Level of Analysis

Glancing quickly at my recent past, I notice that when I practiced corporate law on Wall Street, I did not assess it from an Islamic vantage point, whatever that might be. Similarly, I do not offer today a religious critique of the subject when I teach it. I teach about the legal aspects of modern business in America; I do not judge these aspects. I take them as I find them. In other words, as an American citizen, I have thoroughly internalized the demand to compartmentalize the religious aspects of my life. I have not failed in being a good citizen.

Yet now that the door of recollection and reflection has been opened on this subject, I look back for the first time at my days as a practitioner with greater compassion and understanding. I begin discerning many levels of analysis regarding that experience. I start with the most obvious one which relies on the basic religious principles of fairness and hard work. I recall the first agreement I drafted. I had looked at all the precedents and found them lacking. The document related to a big deal and time was of the essence. I therefore felt that drafting a fair agreement that took into account the interests of both parties would get us to the finish line faster. That was of course the first big strategic mistake. The other was to make certain language in the agreement clear and precise.

I was soon reminded that our legal system is based on an adversarial way of doing things. Consequently, I should have looked out solely for the interests of my client and let the other lawyer look after the interest of hers.

neutics in Rabbinic Jurisprudence: A Maimonidean Perspective, 14 CARDOZO L. REV. 1657, 1669-72 (1993). (discussing the supremacy of Jewish law for Jews even in *galut* (exile)).

3. STEPHEN L. CARTER, *THE CULTURE OF DISBELIEF* 3 (1993).

4. MARTY, *supra* note 1, at 129-30 (quoting Alexis de Tocqueville in *THROUGH OTHER EYES* 33 (D. Herr & J. Wells eds., 1965)).

If she failed to do so adequately, then that only meant that our client had the better lawyers. I also learned that I should have left the ambiguity in the language where such ambiguity worked in favor of my client. I was reminded that these were the rules of the game, but they still did not come to me naturally.

Upon reflection, I now realize that subconsciously I was playing by different rules. As a person of faith I had already internalized my own religious values, which demanded fairness. The Qur'an is replete with statements asking us to deal with others fairly. Some verses refer specifically to commercial contexts. For example, one verse states: "And O my people! give just measure and weight, Nor withhold from the people the things that are their due" ⁵ Another enjoins us to "[g]ive just measure, and cause no loss (to others by fraud). And weigh with scales true and upright. And withhold not things justly due to [people], nor do evil in the land, working mischief."⁶

Notice that the last verse mentions commercial injustice in the same passage as doing evil in the land and working mischief. Also, notice that the verse does not permit one to shift the responsibility for achieving justice to others, such as the other person's lawyer. Being just is one's own burden. Now as I already said, I wanted to be a good citizen. Subconsciously, I did not want to be party to an injustice in my country which is akin to working mischief. Sure, I was being paid handsomely by my law firm. Yes, the firm was not being unethical by professional standards. To the contrary, it would have been remiss if it did not zealously represent the interests of its client. Yes, zealous representation has been interpreted by the profession to mean, in the context of corporate law, drafting a document which tilts scales and measures in one's own client's favor. Still, I had problems.

I had difficulty with the common understanding of the concept of zealous representation. I had difficulty with the adversarial system. I had difficulty with common negotiation tactics, starting from those that keep the other side waiting for hours and ending with those that start serious negotiations only when the other side is ready to go to bed. All of these appeared to derive from a worldview based on domination and manipulation which was foreign to my religious beliefs. I know that I am not alone in my aversion. Many lawyers have pondered these issues. Some have found

5. The Holy Qur'an 11:85 (Mushaf Al-Madinah An-Nabawiyah trans., The Presidency of Islamic Researches, IFTA, Call and Guidance, Saudi Arabia, ed., 1990). All references to the Qur'an in this essay are to the Mushaf Al-Madinah An-Nabawiyah translation with minor corrections and changes made to increase the accuracy of the translation and to modernize the English language used. These modifications are indicated by use of brackets.

6. The Holy Qur'an 26:181-183.

a way to adjust to secular legal realities. Others continue to resist in various ways.⁷

As for my job security at the firm, the Qur'an says that it is God who determines our financial destinies and that we should not give up our principles for money.⁸ Sound like the Bible? You bet; same God, same principles. So how is it that I was surrounded at the law firm with Christians and Jews who appeared not to be conflicted about this matter? I do not know, but I have to say that the turn-over rate is high at these firms despite the great financial rewards. Could it be the subconscious of some of these lawyers is at work? Is that why the term "hired gun" evokes such negative reactions in us?

I wanted to be in corporate law because I believe in private enterprise. Private enterprise fits nicely with my religious beliefs. The Qur'an recognizes legitimate profit and the fact that people have different levels of wealth. In fact, it discusses business in several places. The Prophet himself, as well as his wife Khadija, were successful business people. What the Qur'an warns against, however, is making a profit by taking unfair advantage of others.⁹ It also denounces elevating the profit motive above faith.¹⁰ For this reason, it tells Muslims that it is better for them to pray when it is time for prayer, than to do business. God's "business," it notes, is much more profitable.¹¹

Working on Wall Street, it was "business" eighteen to twenty four hours a day. It was the height of market activity, and law firms were leveraging their human resources to the hilt. Driven by the Qur'anic injunction to do my job well, I put in long hours. But my firm and I were not quite on the same page. The firm wanted to maximize its profits, while offering quality services. I wanted to oblige. Yet, I was hampered in my efforts by my ambivalence about the system.¹² I also had no time to do God's "business." There was no time to perform my five daily prayers, even in a corner of my office. It was not possible to fast the month of Ramadan or even celebrate my holidays. How could I when I had to work and bill every working moment of my long days and nights? I couldn't even get sick!

7. In this regard, it is interesting to read Levinson, *supra* note 1, at 1598-99 (discussing the history of the issue of adversarial lawyering in Jewish jurisprudence). The rest of the article is also of interest in so far as it discusses issues facing Jewish lawyers in the profession.

8. The Holy Qur'an 13:26; 65:3; 2:41.

9. The Holy Qur'an 11:85; 5:8; 55:9; 17:35; 26:181-83.

10. The Holy Qur'an 62:11; 9:24.

11. The Holy Qur'an 61:10; 24:37-38; 35:29.

12. The significance of the employee's perceptions of both substantive and procedural justice and fairness issues in the work place are discussed by Lynne Dallas, *Working Toward a New Paradigm*, in *PROGRESSIVE CORPORATE LAW* 35, 44 (Lawrence E. Mitchell ed., 1995).

There was, however, one bright spot in my law firm experience. There was one area of the law that (subconsciously) suited my values quite well, that of securities regulation. This area of the law came into existence in order to protect public interest. For this end, full and adequate disclosure (in religious terms, telling the truth) by issuers of securities was required. I therefore launched into this difficult area of the law with a great deal of zest. In fulfilling the injunction of doing my work well, I spent long careful hours conducting due diligence and drafting documents, so that the public interest would be properly protected. I flourished doing that kind of work, I withered doing deals.

In due course, however, I concluded that the world of law firms had something fundamentally wrong with it. It was based on a system of substantive hierarchy or domination (as opposed to a merely formal one). Combined with the principle of maximizing profit to partners (at the top of the hierarchy), the system created a great deal of misery among aspiring lawyers.

The issue of hierarchy is a very significant issue for me as a Muslim feminist. Let me take the time to discuss it. In the story of the fall of Satan, we are told that God asked Satan and the angels to bow to Adam. The angels did, but Satan refused. He objected saying: "I am better than he, [you created] me from fire and [created him] from clay."¹³ This Satanic arrogance which led to challenging the Divine Will resulted in God cursing Satan.

The story has become an important symbol of what is wrong with arrogance and hierarchy. Al-Ghazali, a major Muslim jurist from the Tenth Century, states that in Islam, the rich are not better than the poor, nor are the white better than the black.¹⁴ These categories, he argues, are all irrelevant in the eyes of God, but they can imbue a person with a feeling of false power and arrogance, leading him to disobey God and to posit himself or another entity as a false deity. This is why wealth has often been referred to in the Qur'an as a trial or a temptation (as well as a blessing).¹⁵ In another passage, the Qur'an tells the story of two friends. One of them became quite arrogant about his wealth. He told his poor friend: "[I have more wealth] than you, and more honour and power in my following of [people]."¹⁶ God destroyed his wealth overnight.

These kinds of stories are hard to ignore. They are part of one's religious consciousness. Yet, with few exceptions among the old guard, there is increasingly no room for modesty on Wall Street. In fact,

13. The Holy Qur'an 38:76.

14. 3 AL-GHAZALI, *IHYA' 'ULUM AL-DIN* (The Revival of Religious Studies) 342-43 (reprint Cairo, 1939).

15. The Holy Qur'an 8:28.

16. The Holy Qur'an 18:32-44.

arrogance is an important indication of one's stature. A partner for example is less likely to return your greeting than an associate. Indeed, that is one way to tell the two apart. Yet the Prophet encouraged us to greet each other. He also encouraged us to return the greeting with an even better one.¹⁷

It is dehumanizing to be in an oppressive hierarchy, regardless of your level within the corporation. But it is most dehumanizing for those at the lower end. After several years of practice, I felt that my mind was slipping. I no longer knew whether the mind which had produced many works in the area of philosophy was capable of any further original thinking. I felt drained, saddened and oppressed. When I returned to academia, I felt engulfed by sublime sunshine. I celebrated my liberation with several articles. I knew in a very fundamental way how much of a blessing it was to be free again.

My religious beliefs worked (again subconsciously) to my advantage in academia. There, I could pursue the prophetic injunction that learning is the duty of every Muslim, female and male.¹⁸ So, I tried to keep abreast of all legal developments and do my best toward all my students. Significantly, I was able to do so without being conflicted. I derive great pleasure out of teaching securities regulation and imbuing in my students the ethical values important for a lawyer in this area. I also enjoy teaching corporate law and encouraging my students to take private enterprise seriously. I stay away from teaching negotiating tactics.

I have been uplifted by my school's commitment to diversity. This too springs from my commitment to the principle of fundamental human equality which is another lesson of the story about Satan. Satan thought that being made from fire made him superior to Adam, who was made from clay. His belief was so unshakable that he was willing to risk God's wrath. But there is only one God. Everyone else is God's creature. To forget that is to move away from the true essence of monotheism and fall into Satanic logic. Thus, I celebrate diversity in the classroom by treating it as a very average thing. I treat my students with respect and concern, because they are God's creatures too. I have never consciously tried to place a substantive hierarchal relation between us. The results have been good for all.

I have also been finally able to do my job as well as my religion requires of me. I know I work harder than my students in preparing for each class meeting, regardless of how many times before I have taught the subject matter. I pay special attention to women in my class who take the

17. 4 ABU DAOUD, *SUNAN* (Ways) 351-52 (reprint Beirut, n.d.).

18. See ABDUL HALIM ABU SHUQQA, *2 TAHRIR AL-MAR'AH FI 'ASR AL-RISALAH* (Liberating Woman in the Era of Revelation) 41-42 (Kuwait 1990) (discussion of this prophetic injunction).

course not because they want to, but because they need it for the bar exam. They often come to my office and shyly reveal their secret. They really have no interest or prior experience in corporate law. They would rather "help people." I think, on the other hand, that perhaps we can help people by placing more of these concerned and compassionate individuals in corporate America. So, I reveal to them that I knew nothing about corporations when I took my first course in law school, and that I ended up working in that area for many years in major law firms. I ask them to give the subject a real chance. My personal revelation almost invariably imbues them with confidence. Many do very well. Some get the top grades.

Two other principles inform my classroom teaching. The first principle is that a Muslim scholar may not hide her knowledge from others.¹⁹ I do not, and in doing so I can finally draft lectures (and articles) that embrace clarity with vengeance. Free at last! I have never subscribed (even as a philosopher) to the school of mystification of knowledge. Not only do I prepare lectures that are as clear as I can make them, but I also tailor the lectures to the special interests of the student group. Consequently, while the same material is covered every term, the lectures and class discussion can be quite different.

Furthermore, abiding by this principle of clarity works well for students, especially those who are either hostile towards or intimidated by the subject. It helps them develop their business intuitions. I also tell them repeatedly that "profit" is not a bad word. It enables one to help others. It works.

The second principle is that of modesty. I had learned that principle from my faith, and had it reaffirmed during my life as a philosophy professor. There is nothing shameful about being wrong. Only God is right every time. What is shameful is to hide the fact that you are wrong or refuse to be corrected. One famous Muslim jurist, Imam Malik Bin Anas, made this point with endearing modesty. He said: "I am only human. At times I am right, at others I am wrong. So, look into my opinion critically"²⁰ Khalifah 'Umar wrote his appointed judge Abu Musa al-Ash'ari advising him not to be bound even by the judge's own precedent, once the judge has concluded that it was erroneous. 'Umar added in the same letter, "correcting oneself is better than persevering in the wrong."²¹ In short, there is no such thing as incorrigible human knowledge.

19. The Holy Qur'an 2:174; *see also* 1 AL-GHAZALI, *supra* note 14, at 17 (quoting Prophet Muhammad who said that a person who withholds knowledge from others will be curbed on Doom's Day with a bridle of fire).

20. S. MAHMASSANI, *IHYA' 'ULUM AL-SHARI'AH* (Introduction to the Revival of Shari'ah Studies) 30 (1962).

21. *Id.*

This view of the human condition, as well as my commitment to the principle of fundamental human equality, has helped me act in a democratic fashion in my classes. I am always good for a serious argument. I am always willing to be convinced that the other point of view is better. But the student had better work hard at making her point and making it well, after all she is arguing with a logician. This approach has brought life into the classroom and reduced the level of alienation inherent in the role of being a student. Obviously, teaching works much better for me than practice, and it shows.

A Second Level of Analysis

Despite the rewards and pleasures of academia, the tension between my faith and profession is not totally eliminated. Certain problems remain. These relate more to the substance of what I am teaching, rather than the surrounding working conditions.

I go back to corporate law. In that course, I teach my students about a system of financial organization which is primarily driven by the profit motive. I emphasize to them that a corporation is not a welfare institution. If profitability is down, then serious reexamination should follow. Perhaps a restructuring is in order. In that case many employees may lose their jobs. Here, I inject some discussion about the possible rights of stakeholders in a company, I even introduce the views of progressive corporate law advocates. Thus, I try to open the students' thinking to alternative ways of looking at the corporate structure, without distorting the basic facts about that structure as it operates today.

But how do people of faith feel about the fact that profit is the primary driving force in corporate America today? They have mixed feelings. Walter Wink, a respected Christian theologian, has addressed this issue. In his award-winning book *Engaging the Powers*, he notes that what characterizes our society is the unique value ascribed to money.²² He is very troubled by that fact, which he views as part of a "domination system."²³ That domination system, he observes, consists of an entire network of powers becoming integrated around idolatrous values.²⁴ He concludes that Satan is the presiding spirit of the domination system.²⁵ This kind of language is reminiscent of al-Ghazali's analysis of the story of the fall of Satan. The singular commitment to the pursuit of wealth posits an alternative god with a whole different morality.

22. WINK, *supra* note 2, at 54.

23. WINK, *supra* note 2, at 54.

24. WINK, *supra* note 2, at 9.

25. WINK, *supra* note 2, at 57.

Clearly, the worship of wealth is idolatry, but the pursuit of wealth need not be synonymous with its worship. Consequently, what is needed is not a rejection of wealth, but a rejection of values that make it possible for a human being to regard wealth as an end in itself. We need to regain a worldview which sees society as an integral whole in which the wealthy have a duty to share part of their resources with the less privileged. We need a system which does not dehumanize workers. But such a refinement in values will require significant changes in the existing legal system itself. It will not, however, require a total rejection of the legal and business status quo.

It is important to note that in seeking such changes, religionists are not alone. Many lawyers and economists have presented humanist secular reasons for the modification of the existing system. These arguments are usually based on the high social costs of the present arrangements and the false or arbitrary assumptions on which they rest.²⁶

The Qur'an tells us that God extends wealth to whomever God pleases.²⁷ God also warns us against accumulating wealth in our coffers instead of helping others. The Qur'an repeatedly states that those who are needy and deprived have a "recognized right" (*haqq ma'lum*) in the wealth of a Muslim.²⁸ Under this Qur'anic view, to be rich is a blessing (and a temptation) which affords a person the opportunity to do good deeds.

Coming from a religious family which has engaged in business for centuries, I have respect for both religion and business. I also understand that it was profit earned from this business which enabled my family to establish charitable institutions. These institutions continue to exist to this day and have benefitted countless people over the years. Thus my religious beliefs do not conflict with my worldly belief in profitable business.

Consequently, I view this debate about profit as akin to that other debate about whether technology is good or bad. It is not the technology. It is human values. Similarly, it is not the money, it is how you view it, as a means to help others or as an end in itself. Both attitudes are consistent with a general corporate goal of maximizing profits within certain acceptable parameters, but they lead to drastically different consequences. So, it is not the substantive aspects of corporate law that trouble me. These may need some further refinement and development, but they are not fundamentally problematic. It is the student learning this body of law who needs to have her values straight.

Are there other troublesome points in corporate law? At this point of the discussion I am inclined to submerge any further thoughts on this issue.

26. See, e.g., the critique by Dallas, *supra* note 12, at 57-59.

27. The Holy Qur'an 13:26.

28. The Holy Qur'an 70:24; 51:19.

Subconsciously, I am concerned that opening this theological Pandora's box could make it impossible for me to teach a traditional introductory class on corporations. If I end up having problems with basic assumptions on which corporate law rests, where do I go from there? So, I tend to shut down my critical powers. Like the law firms, I opt for lack of clarity as the solution. So do many other people of faith in this country.

But this approach does not work. The door to my subconscious has been opened and ideas keep rushing out. So, I turn to this example. I teach about interest and how it works. Am I teaching my students how to engage in *riba* (usury), or is interest a different concept? This issue is not unique to Muslim Americans. It also is familiar to Christians and Jews.²⁹ Also, since many modern Muslim countries have adopted the same financial and legal structures we have in the United States, what have they done about interest? Have Christians and Muslims succumbed to secularist practices on this issue and abdicated their religious responsibility, or have they resolved matters satisfactorily?

While some thinkers may be said to have abdicated their religious responsibility in the pursuit of secular modernity, others have made a serious attempt at a reconciliation. On the particular question of interest, debate was heated in Muslim communities for quite a while. Finally, some jurisprudentially acceptable solutions were worked out, which were consistent with the over-all global business and legal structures.

Certain jurists distinguished between the concept of *riba* and the modern concept of interest. Others defined new financial instruments or relations having a similar financial effect as the ones involving an interest-bearing loan. For example, Muhammad Anwar, a Muslim economist, describes many alternative ways which Muslim banks devised in order to do business without falling into *riba*. These include *musharaka*, where the bank is an

29. See the enthusiastic discussion by Wink, *supra* note 2, at 183-84 of the statement by Jesus on lending to the poor. See also Jerome Hornblase, *The Jewish Lawyer*, 14 CARDOZO L. REV. 1639, 1651 (1993) (pointing out that the Torah forbids interest on loans to the poor). In today's system, if a poor person manages to get a loan, her poor credit will usually result in higher interest. For example, Grameen Bank (Bangladesh) which makes small loans to the poor, has been touted as a model for economic developers all over the world. Yet, according to the *Asian Economic News*, the rate of interest charged by Grameen Bank is 20% which is much higher than the rates of other financial institutions. *Grameen Bank Changes Concept of Banking in Bangladesh*, ASIAN ECONOMIC NEWS, Jan. 8, 1996. According to *Atlantic Monthly*, the bank charges interest four points above the commercial rate. David Bornstein, *The Barefoot Bank With Cheek*, ATLANTIC MONTHLY, Dec. 1995, at 40. So while the bank may be motivated by social concerns, its lending risks are reduced by the fact that its loans are widely dispersed. Furthermore, the risks are more than adequately compensated for by the high interest rates charged to the poor. Additionally, the bank has never forgiven a loan, even after a flood or a cyclone. All of these facts do not describe a religious approach to helping the poor. Rather, it represents a secular business approach, similar to that formulated by Michael Milken who recognized value in high-risk or "junk" bonds. It is worth reflecting upon the fact that Grameen Bank started with a different lending approach to the poor, based on low interest rates. It appears, however, that market forces, such as the demands of capital suppliers, have made the bank restructure these rates upward.

active partner with the borrower and shares in the profit and loss of his enterprise; *murabaha*, where the bank buys the goods and resells them to the borrower at cost plus an agreed upon profit; and *qard hassanah*, which is a straight forward interest-free loan.³⁰

At the same time, other thinkers have found jurisprudential bases for permitting Muslims in the West to become parties to agreements involving interest-bearing instruments. They did so by relying on well-established Islamic principles, such as the principle of necessity. This principle permits a Muslim to even consume pork if that is the only available food. It is founded on express statements in the Qur'an and, more generally, on the fundamental principle of jurisprudence that the Law Giver's intent (*makasid al-shari'*) in prescribing laws is public interest (the "Public Interest Principle").³¹

For some Muslims, some or all of these solutions remain questionable, for others they are acceptable articulations of Islamic law under existing circumstances. The concept of "existing circumstances" is itself an important concept which is broadly defined. Existing circumstances in Muslim countries are usually understood to include not only the need of the local Islamic monetary system to interact with the global one, but more importantly, a variety of internal conditions within the country itself.

In particular, the Islamic financial system is supposed to be an integral part of an overarching social and political order characterized at minimum by the principles of *takaful* and *shura*.³² The first principle asserts the collective responsibility of the community in meeting the basic needs of every one of its members. The second principle insures the basic right of every citizen to a democratic government. In the absence of one or both of these principles, the application of certain Islamic laws may well result in undue hardship to many. But, when conditions distort or reverse the intended outcome, a modification is permissible under the Public Interest Principle, so long as such conditions persist.

The position of a Muslim in a non-Muslim country is complicated by additional or different considerations for various other issues. An American Muslim recognizes the fact that she lives in a society that has in some areas a set of rules that she may disagree with. What should a Muslim do about that? Actually, no more than what any other person (religious or not) is

30. MUHAMMAD ANWAR, *MODELLING INTEREST-FREE ECONOMY* 9 (1987).

31. See, e.g., YUSUF AL-'ALIM, *AL-MAKASID AL-'AMMAH LI AL-SHARI'AH AL-ISLAMIYAH* (Public Interest Objectives of Islamic Law) (1981).

32. For more on the principle of *takaful*, see, e.g., ZUHAIR AL-A'RAJI, *AL-NAZARIYAH AL-ITTIMA'IYAH FI AL-QUR'AN AL-KARIM* (Social Justice in the Qur'an) 34-37 (1994). On the principle of *shura*, see Azizah Y. al-Hibri, *Islamic Constitutionalism and the Concept of Democracy*, 24 CASE W. RES. J. INT'L L. 1, 21-24 (1992). For more on some of the Islamic principles mentioned in this article, see also *id.* at 7-10.

expected to do. If these different rules are patently unfair, discriminatory or otherwise impose a hardship on the person in the exercise of her own religion, then she should try to change these rules. If every possibility of meaningful change is rejected by the majority, then the Muslim is encouraged to move to a community which is more in tune with her values. After all, many prophets of the past left their homeland for similar reasons. If there is no such community to be found or if it is not possible for the Muslim to relocate, then the principle of necessity may apply.

Living by one's religious beliefs turns out, however, not to be a problem for the American Muslim. An American Muslim lives in a society which shares the basic principles taught by Islam. It is a society which believes in and practices democratic governance. It is a society which believes in *takaful*, although it has not settled yet the question of whether such social responsibility should be the domain of the government or the private sector. Finally, it is a society which has constitutional guarantees for the freedom of worship. Ideally, a person of faith does not have to leave this country in order to avoid religiously oppressive laws. She only needs to go to court. A Muslim can thus be quite comfortable in this religiously diverse society because she has a place at the table like everyone else and, furthermore, she likes the table manners.

But what about the difficult question of interest? Muslims who hold the view that financial institutions in the United States violate their religious rules, can remedy the situation by establishing their own interest-free financial institutions, or by extending *qard hasanah* to each other. In fact, such developments have taken place within the community, although I am not clear about their extent. But the practice does not seem to represent a significant enough development to cover in my main stream course about finance. Furthermore, all students, Muslim and non-Muslim alike, need to understand the basic financial structure in this country in order to function in the business world successfully. They do not have to like the system, they do not have to borrow on terms that offend them, but they do need to know about it. So, I have no religious problem to teach about how interest works in our society.

From this vantage point, corporate law generally becomes a collection of rules to manage the marketplace in a presumably faith-neutral way. It provides a wide umbrella under which people of faith and secularists can come and do business together. I can thus teach it without being conflicted. I can also refuse, in practice, to avail myself of those aspects of corporate law that I find troubling. The latter, however, is a personal decision, not a matter of instruction.

Furthermore, had I been teaching a course in international business and finance, I would probably find it interesting to include some lectures on Islamic banking which is now in existence in many parts of the world. I

would, for example, inform my students that the number of Islamic banks around the world has grown fifty folds within the last ten years, with Malaysia leading the way. Since 1993, Malaysia has increased its Islamic institutions from three to thirty-nine. During that same period, banking deposits increased from 249 million Ringgits to one billion, 700 million Ringgits.³³ It appears that Islamic banking works and that depositors are pleased with the results.³⁴

The Third Level of Analysis

The first level of analysis focused on principles involved in the practice and teaching of corporate law. The second level of analysis focused on substantive issues in corporate law. But the third level of analysis goes beyond the previous two by focusing on the way in which a belief system or worldview invariably transmutes the "raw data" received. The argument in this third level is that regardless of anyone's best efforts, it is simply not possible to experience the world "objectively," that there is no such thing as "objectivity" and that consequently, neither our laws nor our interpretation of them are "objective." Therefore, the whole project of separation of Church and State is in a very important sense metaphysically flawed and epistemically impossible.

This is not a ground-breaking claim, except perhaps in its application to corporate law. Many scientists, philosophers, feminists and others have argued repeatedly and convincingly, that there is no such thing as purely objective data. In particular, feminists initially had difficulty supporting their claim that science was "infected" with a male-perspective. This claim was extremely questionable because it was intended as an attack on that branch of knowledge that is considered to be the epitome of "objectivity." The scientific method, we all thought, allowed no room for bias. It simply calculated and reflected what was out there. In time, however, feminists succeeded in developing a very enlightening critique in support of their thesis. In the words of Nancy Tuana, a philosophy professor,

By practicing the scientific method, scientists are believed to be detached from their personal motives or expectations, and simply report facts. Given this model of science, the idea that knowledge or reason could be gendered was nonsense.

33. The foreign exchange rate is approximately 2.54 Ringgits to a dollar. *Exchange Rates*, WALL ST. J., Mar. 1, 1996, at C16.

34. See Abdul Malik Yusuf Hummar, *About the Phenomenon of Islamic Banking*, AL-HEWAR, Nov.-Dec. 1995, at 37-41 (publication of lecture delivered by Abdul Malik Yusuf Hummar, former governor of the Central Bank, United Arab Emirates at Al-Hewar cultural center).

Feminists, in company with other theorists, have rejected this image of science. Science is a cultural institution and as such is structured by the political, social, and economic values of the culture within which it is practiced.³⁵

This argument is perhaps even more urgent in the realm of law and corporations. Recently, several legal authors have written along these lines. Of these I single out the contributions of Jonathan Stubbs, who attempted to support a similar claim with his theory of perceptual prisms,³⁶ and Mark Roe who argued that corporate structures (both legal and nonlegal), as we know them today, are in considerable part the result of political decisions and compromises.³⁷ The latter I mention for the benefit of those who believe that corporate structures are purely the result of "objective" market forces and principles.

Much work needs to be done in this area to uncover the systematic secular bias in our corporate law. To deny the existence of such a bias is to espouse the myth of "objectivity." We have been led to believe that laws that do not reflect a religious perspective are "neutral" laws. We hold this belief because we live in a culture where the dominant ideology is that of secularism. But the values of a dominant culture are invariably invisible, because they are always perceived as "objective," "the way things are." It is only when the dominant ideology is questioned that its systematic shaping of our lives and laws become visible. This essay has led me to start that questioning in my field and I can already discern the outlines of the secular "invisible hand."

We live in a country where religious freedom is guaranteed to all, and no religion may be oppressed by another. Yet, in the name of achieving those goals we have abandoned *all* religious perspective and replaced it with a secular one. Such an unfortunate approach denies the very truth and authenticity of the religious perspective *per se*, and thus oppresses all religions. That was not, I believe, what the Founding Fathers intended.

So, at this third level of the analysis, I conclude that to be a good American, I need to participate in unveiling the multi-layered secularist ideology which has systematically shaped our very legal model and

35. Nancy Tuana, *Introduction*, Special Issue, *Feminism and Science II*, 3 *HYPATIA* 1, 2 (Nancy Tuana ed., 1988).

36. Jonathan K. Stubbs, *Perceptual Prisms and Racial Realism: The Good News About a Bad Situation*, 45 *MERCER L. REV.* 773 (1994); see also Dallas, *supra* note 12, at 55 (referring to an "interpretative filtering device inserted between the subject and the situation").

37. MARK J. ROE, *STRONG MANAGERS, WEAK OWNERS: THE POLITICAL ROOT OF AMERICAN CORPORATE FINANCE* at vii-xi (1994) (arguing that existing corporate structures in the United States are in considerable part the result of historical political compromises and that alternative corporate models are possible). He also suggests that it may be possible that different models may even coexist side by side.

reasoning. I believe that our democratic system, with its guarantees, would be better served with laws that accommodate all individuals, secular and religious, without requiring capitulation from either in the name of a national compromise.

Religious consciousness has certain distinctive characteristics that set it apart from the dominant paradigm of secularist consciousness. Foremost among these differences are matters essential to the definition of one's own self. For example, are we creatures of a superior being or are we the *ubermensche* himself? Are moral values objective and transcendental or can we put any values into question? These two matters alone point to fundamental structural differences that could arise between the secularist and the religionist. They could also easily inform the development of our legal model.

Our nation has been engaging in collective self-denial by pretending that these differences do not exist and that our laws reflect a neutral, objective compromise. Such claims make it difficult for the average person to recognize the roots of her dissatisfaction and produces a malaise that has a high cost to society. A more rational approach to this problem would be to revisit the matter, uncover the "invisible" assumptions and try to reach a compromise which is better tailored to the needs of both secularists and religionists.

Conclusion

It appears to me that religion subconsciously informs our individual professional practice and that a non-humanitarian form of secularism has quietly shaped our corporate laws. The attendant dissonance causes severe dissatisfaction, and at times even disfunction, in our society. The claim that our present corporate laws are imbued with a non-humanist secularist perspective deserves closer examination from a religious vantage point. Given our constitutional guarantees, our present legal structure appears to place undue burdens on persons of faith in this country. A more just balance between religious and various forms of secular perspectives is, I submit, a worthy goal for us all.

