



THE SABAN CENTER
for MIDDLE EAST POLICY
at THE BROOKINGS INSTITUTION

THE FALL AND RISE OF THE ISLAMIC STATE

A Project on U.S. Relations with the Islamic World Policy Luncheon with

Noah Feldman

Professor of Law
Harvard University

Lama Abu-Odeh

Professor of Law
Georgetown University

Moderated by:

Stephen R. Grand

Fellow and Director
Project on U.S. Relations with the Islamic World
Saban Center at Brookings

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PROCEEDINGS

MR. GRAND: Let me welcome everyone here today. My name is Steve Grand. I am Director of the Project on U.S. Relations with the Islamic World housed within the Saban Center for Middle East Policy at Brookings. We are extremely pleased today to have with us Professor Noah Feldman for discussion of his new book "The Fall and Rise of the Islamic State." We are also pleased to have with him as a commentator today Professor Lama Abu-Odeh. I believe you have in your materials bios on both of the speakers, so I will just briefly introduce them and turn to Noah to speak briefly about the book and then Professor Abu-Odeh to offer some comments on the book. Then we will open it to a more general discussion.

For those who do not know Professor Noah Feldman, he is a professor of law just recently moved to Boston where he is at Harvard Law School, previously at Yale University. He's also an Adjunct Senior Fellow at the Council on Foreign Relations. In addition to being a former Rhodes Scholar and Carnegie Scholar, in 2003 he served as Senior Constitutional Adviser to the Coalition Provisional Authority in Iraq and played an important role in advising the Iraq Governing Council on the drafting of the Interim Constitution. He holds a B.A. in Near-East languages and civilizations from Harvard, a Ph.D. in Islamic thought from Oxford University, and a J.D. from Yale Law School.

Professor Lama Abu-Odeh is a professor of law at Georgetown University Law Center and an expert on Islam, Islamic law and feminism. She previously

ANDERSON COURT REPORTING
706 Duke Street, Suite 100
Alexandria, VA 22314
Phone (703) 519-7180 Fax (703) 519-7190

served as an assistant professor at Stanford Law School and has worked at the World Bank as legal counsel in their Middle East-North Africa Division. She holds an LLB from the University of Jordan in Amman, an LLM from the University of Bristol in England, an M.A. from the University of York also in England, and a J.D. from Harvard University. Noah?

MR. FELDMAN: Stephen, thank you very, very much. Thanks to all of you for coming. I thank the Saban Center and to Martin for having me, and for Lama for taking time to have a conversation.

I shall speak extremely briefly and just put out a kind of brief account of the central arguments that I make in the book in the hopes that the conversation will be a more exciting part of our lunch. In particular, I have enormous respect for Lama's work, and one of the reasons I am so pleased that she is able to make time for this event is that she and I often do not agree about things and I think we disagree in ways that are I hope productive and sometimes even maybe interesting for people other than the two of us as I know that the two of us might find these things very interesting.

The book has three central claims and one recommendation. Let me just say what those three claims are, and I will go in reverse order. I will start with the past and make my way to the present in these three claims. The first claim is that the classical Islamic constitutional order which is a phrase that I am using to incorporate

governments that range in size from global empires to city-states, so there is a lot of variety there but which I claim were encompassed by a single constitutional theory, that the classic Islamic constitutional order accorded very closely to what we today would call the rule of law. What I mean by rule of law, and that is a term that is itself deeply disagreed about and deeply contested, is in this context that the classic Islamic constitutional order made everybody in the society up to and including the ruler subject to the law.

Furthermore, that is only half of what it takes to have a rule-of-law system, part of it is you must have this view that everyone is subject to the law, the other half is that it has to actually work that way. It has to be actually the case in reality that there are forces in the society capable of limiting the behavior of the government such that the rule of law is followed. I suggest, and this is part of this first claim, that what made the classical Islamic state an effective rule-of-law state is that a class of scholars, the *olama* in Arabic, but we will just say scholars for ease, that there was a class of scholars who were partly connected to the state and they were partly independent of the state who served the social role of checking the executive by demanding that he follow a legal system of which they claimed to be the final arbiters. That is just a headline of the claim, and there is much to be debated inside each of these claims so instead of already anticipating objections, I will just formulate that as the first claim about the world. So the first claim is that the classical Islamic constitutional world was a rule-of-law world.

The second claim is that world of the rule of law ended in the later days of the Ottoman Empire, giving rise to the tendency toward executive dominance that we see certainly in the Arabic-speaking countries today, and more broadly or arguably you might say that we see it in the majority of Muslim countries as well, although I do not feel it is necessary to focus on that for the moment.

My suggestion in the book is that the way that this collapse occurred is that in the later days of the Ottoman Empire in the so-called Tanzimat period of reforms, the reforms were creative and interesting and they sought to take the body of Islamic law which was kind of a common-law system in that it had written sources and unwritten sources, and reduce it to a codified legal system. Codification would not have meant the end of the rule of law necessarily provided that the codification had been accompanied by the development of some new institution other than the scholars to balance the ruler. In the classical system, what balanced the rule was the fact that the scholars said what the law was. Once you could look up the law in a code, the scholars were going to lose that capacity to act as checks. So a legislature for example which was imagined by the Ottoman constitution might have developed, this is counterfactual, to check the executive, and so you could have had codification and still preserved the rule of law, but as it turned out, those reforms were only partial. The Ottoman sultan managed to adopt codification and then to suppress the legislature. The Ottoman legislature was one of the short-lived legislatures of

history, it lasted just over a year, and it was not even in session for much of that. What emerged from this was a period of tremendous executive dominance.

Part of this claim is that that model of executive dominance continued after the First World War in the period of colonial and quasi-colonial, depending on which country you are looking at, domination in the Arab-speaking Middle East. This is a tricky claim as well because of course the forms of government that emerged under colonial and quasi-colonial conditions were not exactly the same as the ones that emerged in the late Ottoman Empire. They were different. So just to clarify, the key point I want to suggest here is that it was the loss of status of the *olama*, of the scholars, their loss of status during the Ottoman reforms that persisted even after the end of the Ottoman Empire that have the effect of robbing political culture or the constitutional order in most Arabic-speaking countries of a counterbalance against the executive.

That is not to say that the scholars would have been successful counterbalances against the executive when the executive was backed by the force of let's say Great Britain or France, but they would at least have been in a position in those societies to attempt to play that role. And other efforts as for example in Egypt by secular lawyers or secularly minded lawyers to emerge and function as similar checks on society ultimately provided unsuccessful. There were Egyptian lawyers who were very active in the constitutional movement there, in fact I would say that lawyers were central to the Wafd Party and to the constitutional movement

in Egypt and it was a very promising movement in many ways, but it turned out ultimately not to be successful and I think the reason that it was unsuccessful ultimately is that it was unable to check executive authority.

The last claim about the world, and as I present these I start to think that one is more controversial than the next, but I guess that is why I wrote the book, to make a bunch of controversial claims, the third claim is that if you want to understand in a rich way the full motivation and discourse of those contemporary Islamists, and particularly I am thinking of those associated with the Muslim Brotherhood but more broadly of people in a similar strand, people who say that they believe that Islam is the solution and that the *sharia* should be the source of law but who also profess to believe in democracy and democratic institutions, that if you try to figure out the appeal, the broad transnational appeal I would add if you look at polling data or electoral results of their movements, that one important feature of why they are so appealing has been essentially overlooked by most external Western commentators, and that is the one that they themselves make central to their argument. If you look at their political platforms, they start by saying that the *sharia* by which they mean not quite Islamic law in its technical details but the broader vision of justice and good government associated with Islamic legal order, they say that that is their first plank in their platform. They say that that is what they are advancing. Then if you look at the details, they also call for rule of law and a range

of other things in which they are using Western or quasi-Western terminology which now is gradually becoming assimilated into their political discourse.

I think in the West when we think about why the rise of the Islamists or the democratically oriented Islamists, we think a lot about answers that have to do with the collapse or the failures of secularism in the region. We talk sometimes about nostalgia which is also part of the story. We talk sometimes about religious revival. We talk sometimes about social reaction or social conservatism against modernity. I do not mean to say that any of these things are not important parts of the story. What I mean to say is we are playing "Hamlet" without the prince. We are not paying attention, and I think this is characteristic of the West and of plenty of people's work in the West, myself not excluded, to look at every possible explanation for why people are acting in the Arabic-speaking world except the reason that the people themselves give. In this case I am saying let's look at the reason that is being given. The reason that is being given explicitly in the literature, in the public discourse, and in the political discourse of the political Islamists is law, and in particular Islamic law.

I want to argue that seeing things through these terms requires us to ask seriously why this vision of the law is so appealing, and I think the answer is something like the following, and this is a tricky answer. I think the appeal of the call to *sharia* is precisely that it is remembered by many, many people in the Arabic-speaking world and in the Muslim world more generally, that the classical

Islamic legal countries actually was a rule-of-law system. So that becomes a good argument to make if you live in a society where there is executive dominance and where it is difficult for forces in civil society to constrain or limit the executive. To say that *sharia* itself is part of the mode of limitation is terribly appealing, very appealing.

There is a big catch, and the catch is this. The Islamists for the most part, and again one is generalizing when one says the Islamists, but the people that I am talking in particular are associated with the Muslim Brotherhood, they are modernists in the sense that they do not call for the restoration of a traditional mode of government in which the *olama* or the scholars would play the same role that they historically played. They are not calling for that. Instead they are calling for both the democratization and the constitutionalization of the *sharia* through provisions in the law that will state that *sharia* or Islamic law, depending on your formulation, shall be the source of law, and also will state that supreme courts or constitutional courts should have the authority to review legislation to ascertain whether it is in fact in accordance with *sharia*. These modern technologies of government, constitutional provisions, judicial review, are being used, that are being borrowed and used, to effectuate the goal of establishing something like the spirit of the *sharia*. Notice that that phrase the spirit of the *sharia* which is a phrase that you can find in Islamist writing through most of the century has almost no resonance in the classical Islamic world because you do not have to talk about the spirit of something if you are

already living it. You start talking about the spirit of something when you are at a distance from it and you are trying to invoke it.

The practical result is that it will be extremely difficult, and in the book I ultimately come down very skeptically about this, actually to use the model for implementation of *sharia* that is being discussed by these Islamists actually to achieve their stated goal of the rule of law. I do not want to say it is impossible, but it is extremely challenging and difficult to see it succeeding precisely because the challenge of balancing the executive which in the classical system was accomplished by this tradition of scholarly independence does not exist today and there is no obvious way to replace it, and as I say the Islamists when asked to replace it and with what it shall be replaced essentially talk about constitutional forms of limitation on government and those are exactly the things that dominant executives like to avoid and are very good at avoiding. Dominant executives are very good at having a written constitution that creates a court and creates a legislature and then ignoring them or controlling them to the extent that they can.

Last, the recommendation. The recommendation that I have that grows out of this historical project, and it is an historical project that also attempts to connect to the contemporary world, is that when one listens to and makes policy towards the Islamists and broadly speaking to towards the Arabic-speaking world generally, the U.S. and the West should be much more focused on the desire for the rule of law than we have been previously. That means we should encourage rule-of-law

initiatives and programs when they are domestically occurring and that we should not react with horror to projects and programs associated with the term *sharia* until we have stopped and thought about what they are trying to achieve politically and how they themselves see their goals and their objectives. I think that might lead to some differences in the way our policy operates, and I would be happy to talk in practical terms if people are interested in ways that our policy might be able to operate.

But just to put the headline right on the table, because I think that the phrase democratization will turn out to have been to a great degree discredited in American foreign policy towards the Arabic-speaking world in the next presidential administration no matter who the president is by virtue of our mismanagement of our efforts in Iraq in particular but in Afghanistan as well, and because nevertheless it will not be the choice of any American president simply to say publicly that we are finished with this democratization business, that we have failed, we blew it, we are walking away because no one will say that, a potential direction in which things could be pushed on the policy side I am talking about now that might actually be productive or at least more productive than what we have presently got is the view that sees the rule of law as an important plank in our efforts to figure out what sorts of movements should be engaged with, encouraged where possible, but more importantly than that, not discouraged and not treated as the inevitable enemies of the United States and of American interests.

I will shot off there and the floor over to Lama and hope she will turn the tables on me once she has got the floor.

MS. ABU-ODEH: Let me start by thanking the organizers for inviting me. I am very pleased to be here.

I would like to start with a confession. It is not my inclination to speak at Washington think tanks. I have been living in Washington since 2000 and have thus far rejected every invitation to speak at institutions like this. What I would like to confess to you is that I am ignorant of my audience and that sort of makes me feel uneasy because every talk has to pitch to a particular audience. So I feel like I am walking in the dark here.

Noah's presentation as well as anybody who read his book will see that Noah is actually a person who has managed to straddle both the academic world and the foreign policy world really quite well. In fact, what was very interesting to me about the book is that I would say that the opening chapter and its concluding chapter is Noah speaking as adviser to the foreign policy establishment. In the middle of the book is Noah acting as an Islamic law scholar in the tradition that I am most at home with. Here I am going to speak as a person who is familiar with Islamic law, whose life is based on engaging with scholars who write on Islamic law, and I would leave the foreign policy part to maybe the Q and A questions. I do not know. I have not figured that out for myself. I do not in general identify myself as an adviser

to power, that might be a reaction from my father, but that is something that I have actually shunned all my life, so if you ask me a question on foreign policy, I am not sure I can advise you on anything.

To go back to claims that Noah is making in his book, I would like to begin by placing his argument within the tradition of Islamic law by identifying positions of people within the scholarship of Islamic law and situating Noah among them. So I would like to draw a spectrum on approaches to Islamic law and where Noah would sit. That is the first thing I want to do. The second thing I want to do is make the argument that this claims are inherently contradictory and they just do not work. Then the third thing I would like to do is identify both sides of the contradiction, describe them, and tell you why I do not think they work.

Now what I going to talk about is really based on my reading of his book, the beauty of his presentation smoothly goes over the bumps and difficulty of the book. I think your presentation makes it look like one claim is built very nicely and smoothly from the claim before it, but I want to argue that the book as a text has serious difficulties, much more serious than I think your presentation has portrayed.

The first task is to situate him within the tradition of Islamic law scholarship. Here is how I would put Noah. Noah makes in a sense a very subversive claim on the one hand, but also quite a traditional and conventional claim within the tradition of Islamic law scholarship. What is subversive about him is if you compare him to position number one, and I am going to describe position number one as the right-

wing position, and to my mind the people who represent in Islamic law scholarship the right-wing position are people like Bernard Lewis, for these people, to sum it up, Muslims are shit because their tradition is shit, and that applies to their history and to their present. Noah comes to this conversation by saying doing a sort of interesting split. Noah says Muslim tradition was great, they are just not to good as contemporaries, so he divides that. And in fact, they are not so great as contemporaries precisely because they have amazingly given up what was so good about them. What I find interesting about his claim is whereas Bernard Lewis hates us in our past and hates in our present, Noah hates us in our past and is not admiring of us in our present, and moreover, blames for us what is unattractive about our present which is a very interesting move. The way he describes the history of the Islamic demise so to speak, he interestingly to my mind tells the history by concentrating on the Ottoman Empire and on what has happened in Istanbul. In other words, it is what the Ottomans have done in reaction to the decline of their empire and the rise of colonial powers and their threat of Ottoman territories, and by describing what the rulers in Istanbul have done is a very ingenious way of giving the agency back to Muslims so that their demise could be blamed on them.

For instance, the historical narrative speaks extremely little on the Europeans and on what I think is a devastating effect that they have had and deep influence on the giving up part of the past. So it is love of Muslims in the past and blaming them for a very unattractive present. I think if you told those stories, say as the story of

Egypt in which the British stepped foot in Egypt by 1882, your description of the giving up of the Islam world be much more dramatized where the British are primary players in the acts of the giving up in which over and over again they ally themselves with the traditional monarchy and over and over again they oppose any liberal democratic movement that truly is interested in liberalizing the system. In other words, the secular nationalists of Egypt wanted to give up the *olama* but they wanted democracy and it was the British alliance with the royalty that constantly torpedoed their efforts. If you took for instance that story as your example, you could not simply say these Muslims, they are idiots, they dropped the thing that was best about them and failed to develop alternative institutions, it is actually they tried incredibly hard and the colonizing power conspired against them over and over again. So the story will start to become very different.

We have Bernard Lewis on the right. I want to describe Noah's position here as the liberal multicultural center. Then I want to describe my position which is the left, and my position is the position of a secular leftist nationalist whose relationship to Islamic history as simply one's relationship to one's past which is a complicated relationship always in a postcolonial context in which the way you regard your past truly being past, you think about your contemporary struggles as truly contemporary, but I would want to add that the people of my position in Islamic law scholarship are sharply and deeply aware that the Muslim introduction to the modern state, secularism, and enlightenment ideas, have been condensed in the

colonial moment. In other words, their relationship to these things to my mind are all positive. It is good to have a modern state, it is good to be a secularist, and it is good to engage with the enlightenment. Our misfortune has been that they came as a result of European colonialism or in the Ottoman case as the result of imperial European pressure on the empire and that actually deeply affected our relationships to our past. So one of my struggles as a contemporary is to constantly rehabilitate myself to my Islamic past while at the same time giving it up as a secularist and indeed as a leftist. So that's my position. I would put myself to the left of Noah.

The second thing I want to say is I want to claim that the arguments Noah is making are actually contradictory, and here is how I would describe it. If you read his book, as I said earlier, there is Noah the foreign policy adviser to power Noah, and there is Noah the scholar. What is interesting is that they are two different Noahs actually.

MS. ABU-ODEH: And their approaches to Islamic law are very different. So that when he is in his Islamic law scholar skin and he is doing a telling the history of Islamic law, one cannot miss what I thought was a very interesting, deep attachment. There are certain paragraphs that convey I would say an emotional attachment to the *olama*, to the scholarly class of the Islamic empire. It puzzles me how much in love with them you are. The only explanation I could land on towards the end is it is some kind of a professional identification you have made with them. In other words, you self-identify yourself as a member of an elite scholarly class, i.e.

or constitutional law profs, and when you read history at some elite institutions, you look for an image of yourself and you land on the *olama* and you give them they are the best thing that ever happened to Muslims in their history and you take them and it is the apocalypse, but it the decline into an inferno. It is like a house where the foundation is the *olama* and you take the *olama* out and everything collapses.

I have to say that it is mysterious to me throughout the book exactly what is the role he gives to the *olama*. It is very ambiguous. Sometimes he suggests that the demise of the *olama* leads to contemporary authoritarianism, in other words, the causality is very strong, as if he gave the text to somebody and they read it and came back and said, Noah, that is really too reductionist. You cannot explain contemporary authoritarianism by the demise of the *olama*. Contemporary authoritarianism is a very complicated social and political phenomena. Then the language of causality actually shifts and becomes a little milder and more qualified, sometimes he uses the terminology demise of the *olama* opens up the possibility for authoritarianism, so the causality throughout is very ambiguous. It moves from being strong in the beginning, gets qualified in the middle, and then picks up again towards the end. So it was not clear to me what causality you are making.

The other thing that I am very opposed to in your approach of studying the *olama* is the organicistic part of your argument. You have an organicistic approach to culture, so in your retelling of the Muslims, there is Islamic law and there is the *olama* and there is an organic link between all of these things, that short of Islamic law,

short of the *olama*, Islamic identity is dead. That is a sort of familiar move that I see in many people who write on Islamic law, and I can name two other people (inaudible) with the same move, and the other person who does this same move is Frank Fogel, and interestingly, none of you are Muslim. The idea is to take Islamic law, take the *olama* and Muslims are no longer identifiable creatures. That is what I take as the organistic approach and I am opposed to it. I do not think that the *olama* are crucial for my existence as a Muslim, I do not think that Islamic law is even crucial for my existence as a modern Muslim. So these claims seem to be to me very exaggerated. In this organistic approach I say that you have a particular methodological bias that enforces it, that sort of colors it.

What is interesting is that in his mode as a lover of the *olama* and the constant predictions of the horrible demise of Muslims once they are gone, he is very skeptical of the contemporary Islamist movement and actually dismisses them for getting it wrong in the sense that the fact that they want to interject Islamic law into contemporary systems without the *olama* class, you find this very interesting paragraph in which Noah dismisses their attempts as just completely unreasonable, how can you have Islamic law without the scholars? You got to be crazy. But then amazingly enough, in his foreign policy mode he picks up the Islamists. So he drops the *olama* as coldly as they seem to have dropped themselves when the Ottomans kicked them in the butt without a whimper or a word, so then Noah moves on in the text and he drops his *olama* and now he picks up the Islamists and then he invites us

having first earlier discrediting the Islamists to our working without an *olama* class, now he invites us to pick them up and support them as a movement that defends identity. So the contradiction in the book is first the claim that there is an organic relationship between Islamic law, Islamic identity, and the *olama* class, and so the death of the *olama* class sort of jeopardizes Islamic identity to a large degree on the one hand. Then on the other, speaking to us as the foreign policy establishment or as the U.S. government and telling us you need to pay attention to the contemporary Islamists when earlier he has just accused them of having given up on the *olama* who according to him are the only people who would keep the system going.

MR. GRAND: Let me thank you both. Thank you to Noah for in 5 minutes I think giving us a very solid encapsulation of a 150-page book which is very rich. And thanks to Lama in 10 minutes for deconstructing that took.

I have a number of questions, but sensing the possibility for some real debate, I am going to give up the prerogatives of the chair and, Noah, ask if you want to respond.

MR. FELDMAN: Yes. Thanks, Stephen. I will say just a couple of quick things. Thank you, Lama. That was very, very rich and interesting. Something that I think is right, I like your point about the first and last chapters being directed toward the foreign policy, I think you called it the establishment. I am not sure that the people in the foreign policy establishment think they are the establishment anymore, so it is not clear that I have got anybody to address it to. In the middle I

am trying to tell an historical story, and I say actually in the introduction that one of the very frustrating things to me about the field of let's say Islamic studies in the most general way is that it is really broken into three groups. There are the historians who work on what they call the classical world and sometimes on the modern Middle East. Then there are the people who work in the think tanks. Sorry, then there are the people in university political science departments who work on the political arrangements of contemporary Middle Eastern countries. Then there are the people in the think tanks who are speaking in a more direct way to the government. It is not useful to have all of these three groups of people, and probably there are more that I am leaving out here, it is useful because it is nice to see different perspectives, but these three groups of people never talk to each other. So some of the tensions and contradictions that Lama I think very well identifies in my work are the product of trying self-consciously, and I say in the book that I am trying to do this, of trying to write a book that all three groups of these people could read so at least they could have a conversation about why I am wrong if for no other reason.

So I think the tension is a real one and it the result of my sense of frustration because then of course you turn around and get together with a group of people who work on Islamic legal history and they will spend all this time complaining about how ignorant the policymakers of everything that they have done in their work, which is true that the policymakers are completely ignorant of it but that is partly because

they have not written things that could be ready by policymakers and the policymakers have not bothered to read those things they have written because they are, frankly, just extraordinarily arcane and difficult to read. Much of the most brilliant and important scholarship, a lot of which I am drawing on here, is just wholly inaccessible if you have not spent years in graduate school trying to figure it out. So I am trying to do this, and there are tensions with it. No question about it.

As for being situated somewhere between Bernard Lewis and Lama, I will plead guilty to that.

MS. ABU-ODEH: A lot of people are.

MR. FELDMAN: Yes, I know. That's not such a bad range. And I suppose liberal multiculturalism is a phrase that I -- I guess since I think liberalism and multiculturalism are themselves a little different from each other, I do not know if they exactly fit together, but I will take that too.

One thing I do want to clarify though is in Lama's initial formulation which is very arresting; she was talking about blaming Muslims. To me that does not sound familiar to me in terms of the way I have written my book or in terms honestly of what I think. It is true that when I survey the structures of governments in most contemporary Arabic-speaking countries, I am not happy with what I see, but in that I am hardly unique, and in reading the writings both of contemporary Islamists in the Arabic-speaking world who are even more unhappy than I am I think it is fair to say, and the writings of secular nationalists who have participated in programs like the

United Nations Human Development Reports on the Middle East, they are also deeply unhappy. A common theme of unhappiness that interestingly is shared by the Islamists and by secular and leftist critics is what I am capturing under this general heading of executive dominance. Executive dominance is a polite academic sounding way of saying unfettered rulers who do what they want and do not respect people's rights. It is not a problem in the written constitutions of these countries all of which guarantee rights, the problem does not adhere in the documents or the texts, I think the problem adheres in the structure of the way government is functioning. To me to say that, I have not yet gotten to the question of the causes which I will talk about in a second, does not reflect any positive or negative feeling toward Muslims. I am not trying to write as someone who blames Muslims or does not like Muslims or like Muslims in the past. That is not what I am saying. I am trying to diagnose something in light of what people are saying about it who live in the region and critics of the region, and also what I see as a constitutional scholar who looks at constitutional structures, and part of what that job is it is ineluctably normative. It involves saying that constitutional system works pretty well, that one does not work very well. So to take the example of the Iraq constitutional system, most of it does not work very well. I have no trouble saying that. It is something that I think one can say by observing it and making judgments about it.

On the question of causality which I will just talk about briefly, I think that Lama is right that there might be hints in the book of moments especially when I am

talking to general policymakers when I am trying to speak in strong causal terms. Part of that is just my experience in government. If you qualify things too much, people stop listening to you. Then they identify you as an academic who can never give a straight answer to any question. It is always on the one hand and on the other hand. But in the middle when I am trying to talk to a scholarly audience, I think it is true that it is too simple to say that the decline of the *olama* or their distancing from the central governance of their societies was the cause of the rise of autocracy, as you say, there are many factors that go into that.

And more importantly, if you look at less-developed countries around the world, police states or executive dominance are a relatively common phenomena. What is more striking through is that when you look at what the primary public avenue of objection or resistance to these movements is, it actually looks pretty different in different places. It looks different from Latin America than it does in sub-Saharan non-Muslim Africa, and it looks different again in the Arabic-speaking world. One really striking thing about the Arabic-speaking world is that over the last 25 years the sort of transnational Islamist movement associated roughly with the Brotherhood, but I am using them as a placeholder, has actually become the most successful in terms of getting its voice heard and in terms of garnering support throughout society, the most successful resistance movement in Arabic-speaking countries. So that is a remarkable fact, and that is the fact that I was setting out to try to explain and to try to account for.

The last bit, I guess I do not think that the contradiction that Lama is talking about is one that is in the text that she suggests for the following reason. Lama was saying that I used what she called an organic view according to which there is no Islam without the scholars, and I do not think that. The word Islamic identity which she used several times, that there is no Islamic identity without the scholars, the word Islamic identity I can say with confidence does not appear in my text. The identity is not in the book. I do not use the word identity because I have no idea what it means, so I try never to use it. As for organic, I think I had the word organic once in a draft and then when I went through and reread it, you were talking about giving it to someone to reread, I give it to myself to reread, and when I saw the word organic I think I crossed it out because I do not want to --

MS. ABU-ODEH: There is an organic in your text.

MR. FELDMAN: Maybe one snuck in. There you go. Maybe I got one and I left behind another. There are always traces, right?

I guess what I would simply say about this is to me Islam is whatever today's Muslims say that it is. I do not have some account of what the essence of Islam is. If Muslims today say that it is X, Y, or Z, and in fact as it turns out Muslims will not say it is any one thing, there are many different Muslims, there are 1.3 billion Muslims give or take, they are going to say it is I do not want to say 1.3 billion different things, but many different things, and Islam is for me especially as a non-Muslim, when I say Islam is, I do not mean that I have some metaphysical claim

about what Muslim is. I think if you are believing member of a religion, you can say my religion is X and you can have a claim that that is really the way it is. As an outsider, I do not think you can say that in an intelligible way.

All I am trying to say is that the constitutional structure, and that is what my book is about after all, constitutional structure, of the classic Islamic world really did depend upon this delicate balance and then when you remove one of the elements of that balance, things go array and it becomes very difficult to restore them. Then I look at a movement of people, contemporary political Islamists, who say they want a restoration, that is their term, not mine, and say they want *sharia* to be the crucial element in the restoration, and I raise the red flag of saying I find this inspiring, I think I called it noble somewhere in the book because I got a lot of angry letters when I wrote this in the "New York Times," a lot of people very angrily said how can you say that this is a noble goal, but I say I have concerns about it and the red flag is that when you have a system that works a certain way and then you seek to restore it under different conditions, you might not succeed. I do not say in the book that you cannot succeed. In fact, I think you have to try to succeed. There is no going back historically. You can never truly turn back the clock. Institutions change and societies change and conditions change. And I do not think there is some better, more appealing option that actually has a viable chance of political success. There are options that I myself would personally prefer, but they are not options that have big public success.

Again, thank you very much for the comments. That is my best crack at answering them. Now I think we should have a conversation.

MR. GRAND: First was Robin Wright. Robin, can you grab a microphone?

MS. WRIGHT: That's a fascinating presentation. I have a question for both of you. To Noah, I know you mentioned the Muslim Brotherhood. Can we step over a little bit and look nearby to Iran? This is a place that has tried to institutionalize a number of different roles for clerics from the top to the bottom and it has failed abysmally. What does that tell us?

To Lama, if you are going to reject the whole *olama* argument, who then plays the role of the moral conscience in countries that are trying to undergo transition? Because clearly the monarchy and the number of alternatives, opposition parties are outlawed, the monarchy has not played a constructive role in really pushing change, who does play that role then?

MR. FELDMAN: First of all, Robin, thanks for your question and thanks for your own very interesting recent book very much on closely related topics.

In Iran I would say it exemplifies to me the argument that what you need is a balance and that the word *sharia* does not answer the question, because in Iran for the first time ever in Islamic history, you had this idea that instead of a balance between executive and scholar, the executive should be a scholar. That had never been tried before. And the idea that the supreme leader is himself a scholar I think frankly owes more to the platonic philosopher king influence in Khamenei's thought

than it does to his reading even of the traditional Shia sources, platonic though they may be. I think the reason that it has been a failure is precisely that the constitution of the Islamic Republic of Iran did not create a constitutional balance. It put all of the power in one person and that person can use the word *sharia* or he can use the word secularism or he can use the word market capitalism, he can use any word he wants. If he has absolute power essentially, absolute is too strong a term, but if he has overwhelming power and if the institutions that might check him whether it is a council or guardians or a legislature are within his ability to shape in a very definitive way, and there have been 27 elections in Iran since the republic came into existence which is an astonishing number, so it is not that there are not elections, there is kind of electoral democracy in some sense in Iran, but the participation in those elections is definitively shaped from the top and that means not surprisingly that the constitutional system does not work very well. So to me it is another lesson in how just saying *sharia* is not enough, it is another creative attempt to create something that has not existed in the past, it is just a failed one because it did not allow for a balance of power.

MS. ABU-ODEH: Moral conscience? I do not really quite understand this question to be quite honest. The way I understand the way these things work is that the people of the Islamic world are engaged in various ongoing struggles. There are struggles against their governments. There are struggles toward the system of distribution of wealth. There are struggles against particularly in the Arab world the

U.S., and the Arab world is one of the most fragile regions in the world precisely because of the U.S. military presence there and its ongoing invasions of that part of the world. They do not have governments to represent them so they are left with the task of representing themselves. There are various responses to the various regimes of power that they confront and each one of them creates their moral conscience as they struggle. Moral conscience comes from the bottom up is my view.

MS. SLAVIN: Barbara Slavin from the U.S. Institute of Peace. A great discussion. Very interesting.

I wanted to ask about the other Islamic state, if you consider that Iran at least calls itself an Islamic state, Saudi Arabia, clearly in terms of living up to the *sharia* or at least applying the *sharia* is an Islamic state. Would you consider that an example of a successful regime when it produces so much terrorism and hatred and al-Qaeda? Then also in terms of your policy pronouncements, are you suggesting that the U.S. drop its restrictions on talking to Hamas, Hizballah, and the Muslim Brotherhood and engage these groups since they do seem to represent the most reform-minded elements in their societies? Thanks.

MR. FELDMAN: Both great questions. On Saudi Arabia, and I actually have a whole section of the book talking about exactly this, I hope this also will disabuse anyone who might be skeptical of this idea that I think that just because I

have this personal identification with the classical *olama* that somehow I think that what we need in the world is the restoration of classical Islam.

The Saudi state is in one sense the closest contemporary continuer of classical Islamic constitutional order, but it is through a funhouse mirror. It is as though you took the model and then put it in one of those distorting mirrors, and the distortion is introduced by the oil wealth. The classical constitutional balance, all constitutional balances no matter where they are, have legal and constitutional components and they have economic components and these are intimately interconnected with each other, you cannot separate one out and expect the constitutional order to continue, and the classical order depended upon taxation and the generation of an economy. You can go all the way back to the great Medieval sociologist Ibn Khaldun who says explicitly to the ruler, the ruler and he also thought it was important to speak truth to power, not to ignore the power but to speak to it, if you distort economic earnings in the society and you rob people, then there will be no incentive to produce and in the absence of an incentive to produce, society will essentially collapse. This is an argument to the ruler against expropriating people in the society who are actually generating wealth.

In Saudi, the fact of the oil wealth is such an overwhelming feature that what it has done is it enables the state to subvert the balancing effect that these scholars traditionally had, and instead what the scholars have done in reaction to this very limited scale is that they pick a very few symbolic issues, typically issues connected to

women although there are some other examples, and they use those as the only place where they actually feel they can exercise leverage, and what is left over from their traditional power in legitimating the monarchy is sufficiently great that on those points they can actually limit the government, limit the executive, from reforming. So that is a real problem and it is a serious distortion and it is one of the reasons that I do not think that somehow returning the *olama* to authority if such a thing were possible is necessarily the answer.

On the question of the Brotherhood and Hamas and Hizballah, my own view is that it is important to distinguish a political position that argues for *sharia* as a source of law from the use of military or quasi-military means to achieve governance. One of the weird things that you have got in the weak states of the contemporary Middle East, and by weak states I am including Iraq which we have made very, very weak, Lebanon, and Palestine which is so weak that you would consider it a state. So in those weak state environments, the rising political Islamist movements have acted simultaneously as militias and as political parties. They have adopted this sort of dual strategy where you do both, so this is the Mahdi Army in Iraq, and it is of course true of the Supreme Islamic Council as well through their own militia, it is obviously true of Hizballah in Lebanon, and I should add that Hizballah did not invent the strategy in Lebanon, they have just followed a time-honored strategy of Lebanese political parties, and it has been true of Hamas in Palestine as well. To me for the U.S. to engage it needs to be promoting nonviolent distribution of political power

and so drawing the line and saying we are not going to talk to anybody who uses violence within the political scene is a plausible line to draw, just to finish the thought. Note by the way that in Iraq we do not even follow that because then we would have nobody to talk to. I am not saying that we follow this in any sort of consistent way, but to me there is a principled line that could be drawn and from a policy standpoint a plausible line.

The Brotherhood itself though as a transnational institution I do not think can be seen in a unified way, it has to be seen chapter by chapter. But if you look at the Brotherhood in Egypt, for example, it is not as far as it is possible for an outsider to determine, Robin has written about this, seem to be pervasively militarized. I am not saying that if Egypt came a weak state it would not become militarized, but Egypt is a strong state for better or worse, it is not militarized, so I do not think there is any reason not to talk to the Brotherhood there. This is going to become relevant because as the transition in Egypt is negotiated complexly by the many stakeholders in Egypt and outside of Egypt, the Brotherhood there, and they are a player, I think to not talk to them would be a strange thing.

MS. ABU-ODEH: May I pick up on this? I want to actually ask you a question. One of the things that really took me back when you discussed the role of the *olama* in the Saudi state is that unlike your discussion of the *olama* in the premodern era, when you looked at the *olama* in Saudi Arabia suddenly understanding them in the context of a contemporary political economy that Saudi

Arabia became crucial to understanding them, whereas you just did not do this move in exploring the *olama* in the premodern era. In other words, I felt that while we spend a lot of time talking about how great they were, there is absolutely nothing about their what I would call their social history, in other words, how they were situated. First of all, there was no periodization of the premodern era whatsoever. It really read as if from the 7th century to the 19th century time stopped in the Islamic empire. It was quite Orientalist in that way. There are no caliphates, no eras, no transformations in political systems, in economic systems, in movements of wealth and power within these periods. And there was therefore no attempt in situating the *olama* historically in terms of their material base and which I thought was absolutely crucial to really understanding the real role that they played in relation to the ruler was exactly what bargaining chip did they have against the ruler and then what bargaining chip they had against them which seems to be something that is highly contextual to that period we are talking about, and therefore to make generalized claims about how fundamental they were to the system seemed to me unjustified by the description. So I was happy to read about oil in Saudi Arabia and I had wished you had talked about oil in the premodern era in relation to that.

MR. FELDMAN: I would say partly guilty, party not guilty. The part that I think is true is that it is true that in the book I do not give the complex periodization of the different constitutional subparts within the traditional constitutional order of the Islamic world. That is absolutely right. There are important other books by

other scholars that do this. "Marshall Hogdson and the Venture of Islam" runs three volumes, each one is about 700 pages, and he says in the introduction, I am just scratching the surface. No one should think this is even the first word. And he is not wrong about that. So some things are just actually really hard to do, and I did not do that.

With respect however to their role in the political economy, I did at least propose the outlines of the argument, here is the argument, and it could be a wrong argument. I think that the *olama* traditionally played the role of demanding that the ruler respect property. I think it is basically a property protection role, and I say this and I give some sources to support it as at least their argument. So they were identified with the property-owning classes first of all. I think I also suggest the mechanism by which they were actually able to get the government to do this, and referring to Robin's point, it was not just conscience, it was that in all of these different constitutional periods, a crucial problem and this is crucial in every regime, transition is also the crucial regime and by regime I do not mean it in the negative sense, all political regimes are regimes and they all have transition questions. In the traditional Islamic constitutional order, transition was always a delicate matter. In theory, the ruler could designate a successor, but in reality, any new ruler needed, A, to receive validation of legitimacy so as to get popular support because, B, that ruler always had to fear either internal palace coups, competition from within, or the potential in many cases for external invasion, and I give a few examples of external

invasion, especially the Mongol invasion, as a risk. And under those circumstances of uncertainty at the moment of transition, and that is really the moment of key influence for outside political actors, think of the Bush v. Gore Supreme Court case in the United States, that was the moment that the Supreme Court had to influence the fate of the United States more than at any other moment and by gosh they did it, in that moment the *olama* actually had a way of having a major influence because of the need for validation. Again, that argument is outlying with respect to the traditional Western-Orientalist scholarship on this topic, but there is a strand of more recent Islamic constitutional thought or scholarship with which it is consistent. I might be right or I might be wrong, but at least that is the argument.

MR. ALYAMI: I am Ali Alyami from the Center for Democracy and Human Rights in Saudi Arabia, and it is here in Washington, D.C. I have a comment to make about the two institutions the two of you represent, Georgetown and Harvard. Your institutions take money from the Saudi government and you promote understanding between Christians and Muslims. How about the millions of Americans who are neither Christians nor Muslims? Don't they count? This is a question you probably have addressed with your colleagues when you go back to school or quit to protest your institutions promoting discriminatory policies. That is the comment.

I agree with you Dr. Abu-Odeh that the *olama* is the problem. I think they should be rounded up and taken to The Hague and then hire Feldman to try them

for their crimes they have committed against their people, especially women, religious minorities, and then Muslims.

A question to you, Lama, is will there be women's rights, full rights as full citizens, and there will be *sharia*, *hadith*, Qur'an? For Feldman, do you think it is worth your time and energy and actually civic responsibility towards this country and democracies to use your time and knowledge and brilliance, you are a brilliant man, to argue for the things that have worked, nonsectarian constitutions and a bill of rights to protect the individuals' right around the abuses from the governments such as the Saudi government and others in the Middle East and the Islamic courts?

MS. ABU-ODEH: I did not really quite the discrimination part of the comment, but I will try to answer the women's part. My own position about Islamist political movements is they for sure, which totally corresponds to your position, actually, which is if they win elections we should let them have power and we should commit them to the practices of democracy and as soon as they get into power can work and mobilize to unseat them from power. It is very likely I would say that given in my own reading of the various positions of women of the Islamic movement on the political spectrum because I might add that the Islamists are not on the same political spectrum, they could be distributed from right to left, they have different view on anything. And what they have shown, and I think Noah talks about that in his book, is that the word Islamic actually works as a vessel. It is like a thing that is empty of content and you can actually fill it with all kinds of ideas that

are borrowed from different political philosophies so that you can have a right-wing Muslim, a liberal multiculturalist Muslim, you can have a radical Muslim, and you can actually have a secular Muslim. That would be me. When it comes to women, there are equal positions on the women's question.

To get the Islamists to rule, I think because of the quality of the rules on women in Islamic tradition, they tend to be more determinate than any other rules on anything else. To have Islamists take power puts the position of the women's question and the people who oppose Islamic treatment of women in a very difficult position. In other words, it has the quality of changing the conversation instantly and in a way that anybody who is a feminist would find daunting. So I think that Islamists coming to power changes the conversation, opens up the possibility, in other words, shifts the power towards these determinate rules and makes people like me work much harder. The reason I put it in those terms as opposed to anything more decisive is because I think it is uncertain and unpredictable what is the range of rules that we can arrive at which seems to be largely dependent on the kind of Islamist movement in power and the way they are distributed in the political system and their experience of being in power, in other words, how fragile and they feel what is their constituency, what are the possibilities of removing them, et cetera. All of this I think completely will color their position on the women's question and our bargaining position vis-à-vis them would shift either here or there. So, yeah, I would not be too pleased if Islamists came to power, but they do, I will live with them.

MR. ALYAMI: No, my question is do you think there will be full rights for women under *sharia* or the Qur'an or the *hadith*?

MS. ABU-ODEH: I think the *sharia* and the Qur'an, if you are talking about the Qur'an itself, it is a very flexible document and you can make it say all kinds of things. It is sort of like the American Constitution.

MR. FELDMAN: To answer your two points very briefly, first, yes, my university which I love very deeply does take money from Saudi Arabia, from Saudi individuals, and it was founded by religious radicals who burned witches, it was funded by people who made a lot of their money in the slave trade, and it has got a history of taking money from almost anybody it could get its grubby little paws on, but the test of whether it is appropriate to accept a gift I think is whether the university is in a position to guarantee independence to its scholars. I have criticized Saudi Arabia in I think every book I have ever written, actually I wrote one on American church and state and I do not think I mentioned the Saudis there, and I have never had that be an issue, and if it were that would be a grave concern to me.

With respect to nonsectarian constitutions and bills of rights, I love them, and when Lama was talking about this question of whom do I identify with, I was thinking about this, it is not just that I identify with the *olama* in particular, I identify with the law. That may be too abstract a thing to identify with, but maybe even you secretly identify with the law.

MS. ABU-ODEH: I don't. I don't.

MR. FELDMAN: We can criticize the law.

MS. ABU-ODEH: (inaudible) law is based on not identifying -- it is too rarified.

MR. FELDMAN: Except the thing is that one is in legal institutions, and I will not speak for Lama, but in my own case, one does develop a certain kind of what a friend of mine called *asabiyah* for people who are lawyers, a sense of solidarity for people who are committed to a structure of law. So nonsectarian bill of rights constitutions, to me there is no better functioning mode of government. But, and this is the overwhelming but of my comment, what my study of constitutionalism has suggested to me very strongly is that having a piece of paper with a bill of rights and a guarantee of nonsectarianism is exactly like having no piece of paper unless you have institutions in place that actually function to assure that these guarantees work. Those institutions have to build on the political and social realities and economic realities of the societies in which they are going to function. That is one of the lessons of the Iraqi constitutional process, but it is the lesson of every constitutional process. So when I write about constitutionalism that happens in dialogue or in complex interaction with the Islamist political movement, it is only because that is the political movement that when you allow for elections at present at this contingent moment does surprisingly well, it should not be surprising anymore, but continues to do very well in Arabic-speaking countries, and therefore I think it is important to engage that.

MR. GRAND: In the interests of time, I am going to try to group a couple of questions and I would ask you that they be questions and that you make them short. Ali, the gentleman right here in the middle, and then Garrett. There are more to follow, but let's start with those three.

QUESTIONER: Ali -- from the Libya Forum here. I would like to say a word of appreciation for Professor Feldman. Two questions. When in the development of the classical Islamic constitutional setup the Umayyads and the Abbasids who represent the classical scene, in both of them we have seen scholars being tortured, being imprisoned, not given the right to really react. At the same time there was an absence of a political will. How do you explain that?

The second point is that in today's world which is important for us, how do you explain the situation when they insist, the autocratic regimes, you call them the executive dominance, that no political party should be based if it is taking religion as its reference?

MR. MITCHELL: Gary Mitchell from the "Mitchell Report." My first short question is I am still trying to figure out what all this has got to do with what we are going to do about Florida and Michigan.

Noah, I will make the question short and if the answer is too long for here, that is fine with me. I am unclear on, I am thinking about your policy recommendation, and so I am imagining that in comes this new administration whoever that may be in January, my guess is there is a lot more flesh on that in the

book which I have not seen. Substantively how might it drive policy and diplomatic relationships between the 44th President and the Arab Muslim countries?

MR. POLLAK: Dan Pollak with the Zionist Organization of America. There were a number of comments about *sharia* and kind of harnessing it if I'm not mistaken, to summarize what Noah was saying to give a basis in the rule of law. But how do we get away from the unpleasant aspects of it? We talked a little bit about women's rights. If I am not mistaken, I guess I might have learned too much from Bernard Lewis, but there are other aspects of Islamic law that are not very nice from a Western point of view such as a church cannot be higher than the local mosque, for example. And if that is actually true that that is in understanding conventional interpretation of Islamic law, once you empower *sharia* to be the type of government that we are going to deal with, how do we have religious toleration, for example, in the kinds of countries that we hope to develop in the Arab world?

MR. FELDMAN: All great questions. I think that there are some common themes that I can use to try to draw upon them. First, the most important theme here I think is one that Lama has already touched on which is the flexibility of a legal system that's actually functioning in the real world. It is true that in the formative periods of the Islamic constitutional order, and this was also true subsequently, you had punctuated periods where the executive was trying to suppress the scholars, to control them, and that is characteristic of a struggle for constitutional authority. You have the same thing with judges in British constitutional history at certain moments.

You have the same thing with the church at various times in Europe where church and state are two of the balances constitutionally. So those events which were real suggest that any constitutional development is situated in a real world political context and it is never perfect on day one, it is never perfect on the final day, it is never perfect anywhere in between.

But you also asked this question about the ban on parties based on religion and to me it is not a good idea to ban parties based on religion because it is based on this idealistic notion that we could make religion disappear by just banning it formally. Maybe if they were successful, if you could actually do this, if anyone could show me somewhere in the world where this had happened successfully, maybe I would be more sympathetic to it. I would still be concerned about it on human rights grounds, but I do not know of examples where it truly has been successful. The reason it is not so successful is that a political party based on religion implies a tremendous flexibility in what people mean by religion because religion can mean purely personal religious devotions, pious devotions, but it can also mean an institutional structure in which people fulfill not only their personal religions needs but also a range of social and political needs which are not historically distinguished by most religions as definitely nonreligious.

This comes to the question of how *sharia* should be handled instrumentally. The first thing is, no outsider, Muslim or non-Muslim, is going to successfully be able to tell the political and religious leaders of a country how they can or cannot

handle the question of *sharia* in implementation. Good luck. You could try to do it, but it will not have much success. What I have been able to observe though is that you can capitalize as an outsider on developments within the thought world of the people. For example, in the case of Iraq, the suggestion was since the Islamists were all saying, all the ones participating in the constitutional process, that Islam and democracy were compatible, to say then perhaps the constitution should reflect that value of compatibility. And sure enough, the text of the Iraqi Constitution simultaneously in the same passage that prohibits any law from violating the judgments of the principles of the *sharia*, talk about a vague formulation, and also says or the principles of democracy or of the rights guaranteed in this constitution. This was easily accepted by the Islamists because there was no escape for them from the formulation where we asked them you say it is compatible with democracy, right? They said absolutely. So we said then there is no reason not to put it in the constitution that way. So that is a mode of instrumentalization, but it will not determine for you exactly how it is going to be handled.

Abdullahi An-Na'im's very interesting book which I find moving in many respects even though I disagree with almost every word on every page, I do not disagree with it because I think that he is wrong as a Muslim making an assertion about the true meaning of his religion, that is the part I find inspiring, what to me is unconvincing is the argument that a religious tradition, and he is using Islam as an example, cannot be truly religious if it engages with the institutions of the state. This

is an argument that John Locke famously pushed, and Locke is not really that convincing on this topic either. What he is convincing on is it is a good idea to arrange the society this way if you want a whole bunch of good things to follow. But the idea that it is inherently a violation of the religious tradition seems implausible because all of the great world religions have always been prepared to develop ideas about how to interact with the state and to say that they are impure which is Abdullahi's formulation when they do that is not a view that has traditionally been convincing to many, many people who are committed to the religious tradition again precisely because of the question of flexibility. That means that when one is making a policy recommendation and talking about how to interact especially in moments of transition, and I am focused on moments of transition because I think they are always the moments for the outside world to have influence if it is going to have influence. You can have bad influence as we did in Iraq, we destroyed the state and as a consequence of destroying the state at that moment of transition we have had a very bad influence in many practical respects on Iraqi political and constitutional life. But in the moments of transition which we are going to have for example in Egypt just to pick that as an example, I think diplomatically saying to Gamal Mubarak, just to pick a name out of the hat, do whatever you need to do to marginalize the Brotherhood, we will back you because we see the Muslim Brotherhood as a force for bad in the society because it is connected to Hamas or connected to other political entities that we do not like because we think that broadly Islamism equals

bad which is often our policy, not in Iraq of course because again there would be no one else to deal with, but that is our policy frequently that we seem to talk that way sometimes, that would be a mistaken policy and we ought to adopt a different and more constructive policy in which we say to whoever are the powers contending for authority we expect to see you engaging all of the important social and political forces in your society and building something like a legitimate consensus or else we do not think that you are going to emerge as the kind of legitimate leader whom we are prepared to work with.

That leaves last the question of the substantive content of *sharia*. That is contested and argued about so you will find people who fit the spectrum of Islamist who are Taliban-like and want to see stonings or the immurings in walls of homosexuals, some of that stuff from the Taliban came from the Pashtun tradition rather than Islamic law, but some of it had some roots in Islamic legal tradition even though the Taliban are pretty mediocre at applying it. There I think the remedy is twofold. One, many voices within the Muslim world including voices of widely respected religious figures are not in favor of implementing a version of the *sharia* that goes that way. Take Iraq as an example where the senior most *olama* in the society most of whom are Shia because of the strength of the Shia *olama* in Iraq, do not envision, did not call for, and did not implement a form of government that includes any form of that kind of corporal punishment. That is internal progress. The key point here is that the only way you have movements away in practice from

the use of those sorts of punishments which were always outlying historically is when actual believing Muslims making their own choices about their own political arrangements decide that they do not want them. There is not a way I do not think from the outside to definitively put an end to calls for that, and in fact it can move the other way. It can sometimes happen that if the West says you absolutely may not implement this, this part of *sharia* we cannot stand, you are going to create a perverse incentive for advocates of certain radical versions of Islamism to say this is what we must keep, this is definitely a thing we must keep, and that is not unique to Muslims. It is true of anybody in the world that if somebody tries to tell you that these aspects of your tradition are the ones that we hate and we do not want, that is a reason to focus on those and to make them the symbols or the emblems of resistance.

MR. GRAND: Lama, any closing words?

MS. ABU-ODEH: Yes. Actually one thing I wanted to say in my presentation and you kept talking about it over and over again, what puzzles me is incorporating *sharia* into the constitutional system as a source of law and having some form of judicial review or a legislature interpret what that is, you give it the name of the Islamic state and I am not really sure what you mean by that. It is a description of the way Egypt works today. It is actually incorporating *sharia* into the legal system by having judicial review. I would describe it as perhaps one of the most cynical secular compromises with Islamists. In a way you pretend like you are incorporating them in the system but you really are not. In other words, calling it an

Islamic state seems to be completely farfetched I would say. It sounds like the perfect way to secularize the Islamists is precisely by incorporating it this way and that would go against the grain of everything --

MR. FELDMAN: A final thought on this. I know it's time for us to wrap up. I agree with Lama that in some cases, and Egypt is an example of this and Pakistan in certain ways is also, you do open the door to this kind of cynical use of the Islamists, but what the Brotherhood is calling for and what other politicians similarly are calling for and what you have for example in Iraq is similar written constitutional provisions of those in Egypt but actually likely to be implemented in a more aggressive way. So when I speak of the Islamic state, again to me Islam is just the thing that Muslims say is Islam or the different things that Muslims say is Islam, I am talking about what the Islamists have in mind and to them it is very important to identify the state as Islamic, and what they mean is not just have these things on the books, but for them to actually operate. So in that sense there is some connection between the classical Islamic state which I describe as falling and the modern Islamic state or the postmodern Islamic state that I see as rising.

MR. GRAND: Let me just end with an apology. I know there are a couple of people who really wanted to ask questions and I am sorry that we have just run out of time. I would encourage you to come forward and address your questions directly to the presenters after this.

Let me thank Noah and Lama for a very, very enlightening session, and thank you to all who joined us today for lunch. Thanks.

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