

## U.S. Constitution, First Amendment

# Can We Ban Islam? - Legal Guidelines for the Criminalization of Islam in the United States

- Daniel Greenfield – Canada Free Press

Geert Wilders' recent call at a Palm Beach synagogue to ban Islam has stirred up all sorts of controversy, with more "moderate" blogs speaking out in opposition to it. So let's take a closer look at the issue of banning Islam.

Banning Islam is more difficult in the United States than in Europe, because of the First Amendment.

*"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."*

On the surface of it this is a fairly straightforward formulation barring the legislative branch from taking any action to create a state religion or barring the practice of any religion.

The founders were English citizens and well aware of the way in which religion could stoke political violence. In the late 18th century, Cromwell was not ancient history, neither were the Covenanters or the Gunpowder Plot. While they did not anticipate like the rise of an Islamic insurgency in America, they understood quite well that religion and violence could and would intersect.

That of course was one of the reasons for barring a State Church, to avoid giving the government control over religion, a situation that had resulted in much of the religious violence in England. By giving religion independence, but not political power, the First Amendment sought to avoid a repeat of the same ugliness that had marked centuries of wars in Europe.

That of course is a key point. The separation of church and state was meant to protect the integrity of both, and avoid power struggles between religious groups. There was to be no state religion, the government could not leverage religious authority and religious factions could not begin civil wars in a struggle to gain power or autonomy. For the most part it worked.

Until now the only real acid test for this approach involved the Mormon Church, an ugly history on both sides that has mostly been buried under the weight of time. More recently Scientology flared up as a cult turned church that demanded its own autonomy and did its best to make war on the government and its critics.

And then there is Islam. The first problem with using the First Amendment in defense of Islam—is that its goal is to violate the First Amendment. Islam’s widely stated goal is to become a State Religion, around the world and in America as well.

Sharia has been making steady advances in Africa and parts of Asia. Majorities of Muslims in the UK have said that they want Sharia law, and leading British figures such as the Archbishop of Canterbury have supported the introduction of Islamic law into the British legal system. Domestic advocates for Sharia, such as Noah Feldman, are pushing for the normalization of Sharia law in the United States as well.

This would in effect turn Islam into an Established Religion in the United States, itself a violation of the First Amendment.

Furthermore Islam abridges the remaining portions of the First Amendment, which protect Freedom of Speech and the Press. Islam rejects both of these. To protect Islamic rights therefore means depriving non-Muslims of freedom of religion—and both Muslims and non-Muslims of freedom of speech and the press.

These are not hypothetical scenarios, the Mohammed cartoon controversy has demonstrated exactly how this will work. So did the persecution of Salman Rushdie. To accept Islam is to reject freedom of speech and religion... in the same way that accepting Communism meant rejecting freedom of speech and religion. Islam and the Constitution of the United States are incompatible in the same way that Communism and the Constitution are incompatible.

The Founders sought to protect religious freedoms, at no point in time did they seek to protect religious terrorism. And Supreme Courts throughout American history have found that the First Amendment does not provide license for significant lawbreaking. That is why polygamy is not legal in the United States.

Having to choose between religious freedom and the rights and dignity of women and children—America correctly chose the latter.

In 1785, James Madison, Father of the Constitution, wrote, *“We hold it for a fundamental and undeniable truth that religion or the duty which we owe our Creator and the manner of discharging it can be directed only by reason and conviction, not by force or violence.”*

Yet Islamic history and recent events in Eurabia demonstrate that Islam does indeed spread by force and violence. Upholding the right of Islam to force its statues and views on Americans, violates Madison’s fundamental and undeniable truth.

In 1802, Jefferson wrote his explanation for the First Amendment to the Danbury Baptist Association;

“Believing with you that religion is a matter which lies solely between man and his God, and that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act

of the whole American people which declared that the legislature should “make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” thus building a wall of separation between Church and State.”

There is a key phrase in this statement, which is that the legitimate powers of government reach actions only, and not opinions. This statement was used as a legal principle by the Supreme Court in 1878 in the case of Reynolds vs the United States. Reynolds had been charged with bigamy and claimed that his faith required him to engage in polygamy.

The Court found that while Reynolds had the right to believe that polygamy was his duty, he did not have the right to practice it—thus upholding Jefferson’s distinction between action and belief.

As [the court put](#) it;

In our opinion, the statute immediately under consideration is within the legislative power of Congress. It is constitutional and valid as prescribing a rule of action for all those residing in the Territories, and in places over which the United States have exclusive control. This being so, the only question which remains is, whether those who make polygamy a part of their religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do, must be acquitted and go free. This would be introducing a new element into criminal law

Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice?

So here, as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief? [98 U.S. 145, 167] To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.

The outcome then was that we could not have a situation in which crimes could be committed in the name of religion and protected by the First Amendment. Belief could not be criminalized, but practice could be.

But what does that actually mean and how exactly do we distinguish between action and practice? Does it merely mean that it is legal to believe in seizing America in the name of Islam, but not to practice it.

We can begin by pointing out that any number of Islamic practices which violate American law or promote an unhealthy social consequence can be banned, for much the same reason that polygamy was. In *Reynolds vs the United States*, the Court upheld the right of the Utah legislature to brand the spread of polygamy as a threat to innocent women and children, that had to be arrested through strong measures. The spread of Islam's practices can be seen in the same way.

France has treated the Hijab in a similar way. The United States can too, if it finds any abuse or violence associated with its enforcement or use. Honor killings over the Hijab demonstrate that this is the case. State Legislatures can then move to ban the Hijab.

Thus while we cannot charge someone with believing in Islam, we can stamp out many Islamic practices that are dangerous or abusive. The First Amendment does not protect religious practices that are illegal or made illegal, it protects only the beliefs themselves.

And we can go much further at an organizational level, based on the Sedition Act of 1918 and the [1954 Communist Control Act](#) , which give us some guidelines for cracking down on Islam.

Sec. 2. The Congress hereby finds and declares that the Communist Party of the United States, although purportedly a political party, is in fact an instrumentality of a conspiracy to overthrow the Government of the United States. It constitutes an authoritarian dictatorship within a republic, demanding for itself the rights and privileges accorded to political parties, but denying to all others the liberties guaranteed by the Constitution. Unlike political parties, which evolve their policies and programs through public means, by the reconciliation of a wide variety of individual views, and submit those policies and programs to the electorate at large for approval or disapproval, the policies and programs of the Communist Party are secretly prescribed for it by the foreign leaders of the world Communist movement. Its members have no part in determining its goals, and are not permitted to voice dissent to party objectives

This applies to Islam just as much as it applies to Communism. And this preamble was part of a passage demonstrating the fundamental distinction between Communism and legitimate political parties.

The assumption of the Communist Control Act was that the First Amendment did not apply to the Communist party or to Communist controlled parties... because they did not fit the democratic template of the First Amendment. As such the Communist party was not a legitimate party, but an overseas directed conspiracy to overthrow the United States and replace it with a Communist system.

Not only can this same argument also apply to Islamic organizations such as CAIR, but Islam can be distinguished from other religions on similar grounds. The following phrase from the original document represents the key point here;

It constitutes an authoritarian dictatorship within a republic, demanding for itself the rights and privileges accorded to political parties, but denying to all others the liberties guaranteed by the Constitution.

And that is the core of the problem. While we cannot criminalize individual beliefs alone, we can criminalize organizations dedicated to overthrowing the United States and replacing it with a totalitarian system. An organization is not merely “belief”, it also represents an attempt to put those beliefs into practice.

The [Internal Security Act of 1950](#), along with the [1954 Communist Control Act](#) provides extensive legal grounds for criminalizing organizations dedicated to the overthrow of the United States, as well as membership in such organizations—and even provides for the removal of citizenship from members of such organizations.

While succeeding courts have thrown out many portions of these laws, had the United States truly gotten serious about the War on Terror, it could have passed a real Patriot Act that would have clamped down on Islamist organizations in a similar way.

The bill could have easily retrofitted some of the language of the Communist Control Act as follows;

Sec. 3. Islamic organizations, regardless of their assumed name, whose object or purpose is to overthrow the Government of the United States, or the government of any State, Territory, District, or possession thereof, or the government of any political subdivision therein by force and violence, are not entitled to any of the rights, privileges, and immunities attendant upon legal bodies created under the jurisdiction of the laws of the United States or any political subdivision thereof; and whatever rights, privileges, and immunities which have heretofore been granted to said party or any subsidiary organization by reason of the laws of the United States or any political subdivision thereof, are hereby terminated:

Sec. 4. Whoever knowingly and willfully becomes or remains a member of such organizations, or (2) any other organization having for one of its purposes or objectives the establishment, control conduct, seizure, or overthrow of the Government of the United States, or the government of any State or political subdivision thereof, by the use of force or violence, with knowledge of the purpose or objective of such organization shall be subject to all the provisions and penalties of the Internal Security Act of 1950

The question then becomes one of defining what exactly an Islamist organization is. If we define Islamist under the same guidelines as Communist, but specifically modified as representing a belief in the overthrow or takeover of the United States or any part of it, thereby placing the United States under Islamic law... we already have a very broad net to work with.

Or to simply quote the Internal Security Act again

Sec. 4. (a) It shall be unlawful for any person knowingly to combine, conspire, or agree, with any other person to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship

Since Islam represents a totalitarian dictatorship, any organization or individual seeking to establish Islamic Law or Sharia within the United States, can be held liable and charged over its violation. This would apply to both Muslims and non-Muslims.

And the Koran or Quran itself represents a volume whose contents implicitly call for the violent overthrow of the United States.

Consider [Chapter 9 of the Koran](#), which governs the interaction between Muslims and non-Muslims. Particularly Sura 9:29

[9.29] Fight those who do not believe in Allah, nor in the latter day, nor do they prohibit what Allah and His Apostle have prohibited, nor follow the religion of truth, out of those who have been given the Book, until they pay the tax in acknowledgment of superiority and they are in a state of subjection.

There are numerous other verses in the Koran which similarly call for Muslims to subjugate non-Muslims and take power. This parallels the charge against the Communist party and places Muslims who believe in the Koran on the same level as Communists who believed in the overthrow of the United States.

Participation in any Muslim organization therefore becomes the equivalent of participating in a Communist organization—and can be banned.

So back to the original question, can we ban Islam? While we cannot ban an individual from personally believing in Islam, we can ban Islamic practices and organizations—which would effectively ban any practice of Islam in an organized way.

While the First Amendment does not permit a ban on any specific religion, this is limited to religious belief, not religious practice. And the laws enacted against Communism in the 1950's demonstrate that organizations aimed at the overthrow of the United States can be banned and membership in them can even be criminalized.

Thus we can ban Islam from the public sphere, ban Muslim organizations as criminal organizations, criminalize Muslim practices and even denaturalize and deport Muslims who are United States citizens. The legal infrastructure is there. Despite the fact that the United States is far more protective of political and religious rights, within a decade every single Muslim organization, from the national to the mosque level, can be shut down... and the majority of professing Muslims can be deported from the United States regardless of whether they are citizens or not.

We can do it. Whether we could or will do it is another matter. It would require rolling back a number of Supreme Court decisions that are a legacy of the corrupted Warren Court. But it was possible post 9/11. It may yet become possible again.