

# Islam on Trial

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Image: via [Peter Burgess](#)

In his inaugural address, Donald Trump vowed to eradicate “radical Islamic terrorism . . . completely from the face of the earth.” This pledge—not the first of its kind from an American president—is not as anodyne as it may first seem. It mobilizes a longstanding dichotomy between acceptable and radical Islam, between good and bad Muslims. For too long we have accepted our government’s ability to discern the difference. We have acquiesced to a wide-ranging set of government policies toward Muslims in the United States and around the world to root out the “dangerous ones.” And we have trusted that all of this is necessary for our collective good.

Meanwhile the government has enacted an interlocking system of domestic and foreign policies that reflect, codify, and reenact suspicion of Muslims globally: wars and targeted assassinations named and unnamed; deportations, prosecutions, and policing; a regime of surveillance that goes from sea to shining sea and then wraps around the rest of the world; Countering Violent Extremism programs aimed at shaping the very ideas that Muslim communities discuss and debate, effectively marking certain forms of religious practice or critique of U.S. policies as criminally dissident. The cost of silence—of our failure to scrutinize, question, or resist—is now clear. It is not too late to wake up, but it will take far more than resisting Trump’s Muslim ban.

The United States has bombed six of the seven countries listed in Trump’s ban.

In the first two weeks of his presidency, Trump enacted the ban, installed Steve Bannon to the National Security Council, and [restructured the Countering Violent Extremism program](#) to focus exclusively on Muslim extremism.

While Trump has undoubtedly stoked anti-Muslim prejudice, his programs stitch together a whole set of preexisting U.S. policies and practices directed against Muslims at home and abroad. To understand the dangerous terrain that American Muslims negotiated before Trump's inauguration, consider the national security machinery and practices built by Bush and Obama over the last fifteen years: widespread surveillance of Muslim life and politics; paradigms of preemptive prosecution and radicalization enabled by capacious material support bans to root out would-be terrorists; the use of inhumane conditions of confinement and secret evidence that defendants are precluded from seeing before trial; and targeted assassinations. With little scrutiny from the courts or the American public, these tools have compromised American Muslims' rights and imperiled their lives.

Trump's easiest route to achieve his aims is therefore to amplify, extend, and revisit practices already in place. The now on-hold ban—which would return Muslim refugees to the very violence that the United States helped to foster—names the same seven countries from Obama's extreme vetting program. The United States has bombed six of those countries (Syria, Iraq, Somalia, Sudan, Yemen, and Libya; all but Iran) regularly, as recently as in the past year. Customs and Border Patrol has been practicing extreme vetting on an even larger constituency for the last fifteen years, subjecting a broad swath of American Muslims (immigrant or not) to excessive stops, searches, scrutiny, and harassment at the borders. Obama's Countering Violent Extremism program (dubiously cast as an avenue for collective "self-empowerment") already targeted Muslim communities in the United States, with little emphasis on countering White Power or Neo-Nazi extremism.

It is painful to confront how deeply afflicted we have become with anti-Muslim prejudice. Even those rare Muslims we celebrate reflect our pathos. Recall Khizr Khan's powerful speech at last summer's Democratic National Convention. Challenging Trump's then-proposed Muslim ban, Khan, whose son had been killed serving in the U.S. military in Iraq, pulled out his pocket Constitution and demanded that Trump search the document "for the words 'liberty' and 'equal protection of law.'" Twitter erupted with praise. Sales of pocket Constitutions soared. Khan became a laudable figure by virtue of his son's sacrifice and his celebration of the constitutional imaginary: raising up the United States as a place of liberty and a beacon of light to the world. He showed America through a romantic filter—how America likes to see itself, not as it is. The speech, and its widespread praise, imparted the false impression that anti-Muslim prejudice is a recent phenomenon promoted by Trump and his supporters

Why did it take a Muslim family's sacrifice for them to be celebrated by the American public?

Islamophobia did not start with Trump nor is it simply the purview of people willing to spout hateful things about Muslims on TV or on the street. It is a historical phenomenon rooted in the history of colonialism. Today, Islamophobia is a widely supported, entrenched social practice invigorated by the rise of the modern national security state and the persistence of global wars against Muslim-majority nations. Trump made anti-Muslim policy a cornerstone of his campaign, recognizing the popular and legal purchase such sentiments already had. And so he famously slurred the Khans, speculating that Ghazala Khan had been silenced by her husband. This, too, drew from the orientalist script Edward Said taught us to watch out for decades ago: if the stereotype of Muslim men is that they are would-be or actual terrorists and despots, the complement to this is that Muslim women are subjugated nobodies, waiting to be saved. We celebrated the Khans as the counterweight: the good Muslims. But we did not question the paradigm. Why did it take a Muslim family's sacrifice for them to be loved and defended by the American public?

Over the past twenty years, and particularly since 9/11, a bipartisan consensus has developed around the idea that a willingness to sacrifice body or rights to defend America is a precondition for Muslims to be acceptable members of society. As Bill Clinton himself declared at the Democratic National Convention a few days before Khan's speech, "If you're a Muslim and you love America and freedom and you hate terror, stay here and help us win and make a future together." In bold brushstrokes, Clinton assumed the otherness of American Muslims and offered up a deeply provisional welcome. Asserting a sort of Muslim litmus test, Clinton demanded that American Muslims stand lockstep with U.S. domestic and foreign policy, implicitly lauding the violence of American militarism around the world. But little public criticism of Clinton's speech followed.

This forum asks readers to think more deeply about the contingency of American Muslim belonging in the United States. Until droves of people flooded our airports to contest the ban, there was little willingness by most politicians, the American public, and the courts to protect American Muslim rights; to place any significant limits on government spying, targeting, searches, and stings; or to ask difficult questions about the role of the United States in the world. Trump's celebration and intensification of the ugliness of these longstanding policies presents an urgent opportunity to understand and contest these practices.

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Focused largely on the domestic War on Terror (and only briefly touching on the interconnected global dimension), this forum examines the paradigms and legal infrastructure of U.S. domestic counterterrorism policy. The essays look at the impact of surveillance and the lack of First Amendment protections for American Muslims; the deference of federal courts to government assertions of national security; the rights-abusing paradigms of preventive prosecution, radicalization, and extremist networks; and the intersectional realities of American Muslims as (predominantly) communities of color in the United States.

These essays highlight the public silences and racialized assumptions that constitute some of the devastating legacies of 9/11 in law and culture. They show us the dangerous paradigms that have built and nourished anti-Muslim policy and law enforcement. Taken together, they reveal six key misapprehensions—even more dangerous now under a Trump presidency—that we must understand and challenge if we do not wish to see a world defined by bans and registrations.

***One: Framing a defense of Muslims based solely on innocence, thereby leaving in place the idea of the “dangerous” Muslim who might deserve special measures.***

In the days after the ban was announced and the first immigrants were detained, tens of thousands of people packed airports across the country: “Not in our name, not on our watch,” the protestors said. But much of this public outcry rested on a particularized notion of Muslim innocence, emphasizing the children and elderly detained at airports in inhumane conditions. But the airport has long been a place of peril for Muslims—for those Muslims whose actions, travel patterns, or social media posts are deemed questionable and who are then held for extra screening (devices searched, associations questioned, more and more information required to be allowed to pass through) and for those who are placed on the No Fly List—with almost no public challenge. The No Fly List is a secret list, expanded considerably after 2009, routinely updated without transparency about who is on it or why, and with no clear pathway for getting off the list. In 2013 civil rights groups [sued](#) on behalf of clients who were pressured to become informants under the threat of being left on the No Fly List. Democrats have celebrated the No Fly List; for instance, John Lewis's sit-in to limit access to guns for those on the No Fly List garnered widespread liberal praise.

***Two: Focusing on the new measures Trump might create without understanding the already existing legal powers and practices and the dangerous power they hold.***

This election brought the issue of Islamophobia to the fore. While many Americans are speaking out against the hateful rhetoric of Trump and his administration, legal policies already in place also need to be scrutinized and challenged. Law has accomplished and legitimated many of the most egregious rights violations of American history: enslavement and segregation, the stripping of indigenous land, the internment of Japanese Americans. Rather than providing a check, courts historically often endorsed public fears and hatreds.

The overbroad material support ban—instituted under Clinton and expanded with the USA PATRIOT Act—is the primary criminal charge in prosecutions the government calls terrorism-related. The black box of domestic counterterrorism charges, material support bans criminalize association, political and religious opinions, travel, and charitable giving. Combined with the government's commitment to counter-radicalization approaches, the ban incentivizes aggressive entrapment-style policing of Muslim religious and cultural life. The Trump administration's

serious contemplation of adding the Muslim Brotherhood to the list of designated Foreign Terrorist Organizations to which material support would be criminal would increase the already heavy footprint of this dangerous statute.

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In the past fifteen years, U.S. courts have normalized and legitimated the material support ban and the rights abridgements that go with its policing. While the judiciary's willingness to push back against Trump's ban is a heartening development, the federal courts have largely stamped their approval on the government's abuse of the rights of Muslims. The courts must now be pushed to draw the line around a host of other injustices that have been legalized in the past two decades.

### ***Three: Separating national security policy from criminal and immigration law, deportation, and mass incarceration.***

Vibrant, growing movements for black liberation and immigrant rights, supported by a flood of critical scholarship, have shifted the ways in which many understand the violence of the nation's criminal justice and immigration systems. But we have not made enough connections between the war on drugs and the War on Terror, between the kinds of policing and targeting they both require, and the kinds of power they give law enforcement in the name of safety and security. The contradictions that Black Lives Matter has exposed—about the supposed neutrality of law and how it comes down violently and disproportionately on communities of color—apply with equal force in the national security context. Just as conceptions of blackness and criminality have been conflated, Muslims and terrorism are seen as inseparable.

As the tanks that rolled into Ferguson illustrated, the tools in service of the wars on drugs and terror coincide, borrowing from and expanding on each other. Moreover, black, immigrant, and Muslim communities often overlap. The intersectionality of these regulatory regimes is all too real in communities of color. We ignore them to our collective peril.

### ***Four: Whitewashing surveillance and its consequences.***

While Edward Snowden's revelations provoked awareness and outrage about the scale of post-9/11 government surveillance, that outcry largely focused on the impropriety of government spying on all Americans. But the brunt force of the mushrooming of surveillance collection and sharing fell on American Muslims, and other communities of color. For Muslims in America, the breadth and depth of surveillance has become intertwined with the already heavy imprint of policing, monitoring, prosecutions, and deportations. The [intimacies of Muslim life](#), from worship to family life to community organization to student activities, have come under persistent scrutiny. The repeated justification—that if people are not doing anything wrong they should be willing to shoulder this burden to root out those who are—ignores the chilling nature of such surveillance and the ways it alters and imperils Muslim religious, political, personal, and educational life.

The airport has long been a place of peril for Muslims.

### ***Five: Exceptionalizing Guantánamo without understanding the injustices embedded in the domestic criminal legal process.***

The demand to close Guantánamo Bay has often been predicated on the idea that the offshore base is an exception to the fairness of our domestic legal process. But our courts have never afforded criminal defendants much in the way of protection. In both ordinary criminal and national security cases, people of color are disproportionately subject to unchecked government power. Federal terrorism prosecutions, like military prosecutions at Guantánamo, are marked by tremendous judicial deference to overzealous prosecutors and federal agents who impose inhumane conditions of confinement pretrial; use secret evidence and anonymous witnesses in court; aggressively criminalize political speech and association as “material support” to terrorism; and seek overly long prison sentences. Trump

has promised to send more prisoners to Guantánamo. While we keep a critical eye on his actions there, we cannot ignore the grim reality of how our federal criminal system polices and prosecutes American Muslim communities.

***Six: Refusing to confront the role of the United States around the world, particularly the last fifteen years of war, globalization, and austerity.***

The United States has cast military engagements, drone strikes, and on-the-ground combat in many Muslim-majority countries as essential to American freedom. In 2015 alone the United States dropped more than 23,000 bombs on Iraq, Syria, Afghanistan, Pakistan, Yemen, and Somalia. The domestic and global wars on terror are intimately connected. Through national security policing, the federal government pressures American Muslims to participate in this global regime and marks those who question American foreign policy—especially when they practice a conservative forms of Islam—as extremists. Indeed, the FBI instructs its undercover informants to listen and probe for such “anti-American” sentiments as a way to identify potential terrorists.

This forum offers a set of critical accounts of the modern domestic security state and its direct and diverse impacts on Muslim life and religious and political expression. The essays explore what we have allowed to go wrong over the past fifteen years, and what may go radically wrong if we do not speak up now.