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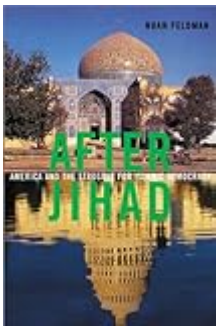

Noah Feldman. *After Jihad: America and the Struggle for Islamic Democracy.* New York: Farrar, Straus & Giroux, 2003. 260 pp. $24.00 (cloth), ISBN 978-0-374-17769-0; $14.00 (paper), ISBN 978-0-374-52933-8.

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An Optimistic Democrat

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Any subscriber to H-Law choosing to read Noah Feldman's recently released book, *After Jihad*, should read it now–that is, during the summer of 2003, while the Bush administration continues to bask in the glow of the initial military success of the Anglo-American invasion of Iraq and while the military occupation of that ancient land remains in place. Feldman's book should be read now because, if the subscriber waits, geopolitical events in the region, particularly events in Iraq, may well overtake many of the observations and practical suggestions he makes in the book, rendering much of his otherwise commendable effort either dated or irrelevant. This is perhaps not Feldman's fault; it is one of the occupational hazards of writing about current events involving the Middle East. Any author entering this field faces the daunting challenge of offering cogent analyses that will withstand the windstorm of rapidly unfolding, often utterly unpredictable events. It is not an easy task.

There is no better example of this than the events that led to the tragedy of September 11, 2001. Virtually no observer of earlier events involving the jihadists predicted such an occurrence, and few understood the depth of the jihadist grievances, their technical prowess and self-discipline, or their capacity for stealth. Before and after September 11, only a few authors have managed consistently to keep us reliably informed. For example, Edward Said's essays often rise above current events to describe incisively the despair of the Arab political, social, and intellectual condition and the West's continuing failure to see the Arabs and their oppressors (Arab and non-Arab) as they really are. Bernard Lewis, often criticized for pandering to Western alarmist instincts about Islam with sweeping generalizations and historical half-truths, still manages, more often than not, to put his finger on larger issues that should command our attention. The journalist Thomas Friedman, another prescient observer of events in the Middle East, has recently penned a number of important works exposing the absurdity and wrong-headedness of political and military policies taken by all sides, including the Americans, in the Arab-Israeli conflict. Works by Said Amir Arjomand and Abdolkarim Soroush, both Iranian scholars, have also made valuable contributions to our understanding of current events in the Middle East and the larger Islamic world.

Feldman's book does not have the sweep or the depth of the works of these authors. Although he is a clear-eyed realist, with a wide knowledge of Middle Eastern history and Islamic law, and an accomplished scholar–a Harvard Fellow, a Rhodes scholar with a D. Phil in Islamic Studies from Oxford and a J.D from Yale Law School, and a law professor at New York University–his effort in *After Jihad* does not purport to be an in-depth contribution to the scholarly literature on the Middle East or Islamic law, nor is it a thoroughgoing commentary on current events. Rather, the book is largely a policy prescription, aimed at a non-scholarly audience, particularly American government officials, concerned about the viability of the stated American goal of bringing democracy to Middle Eastern and Islamic governments and societies.

In Feldman's view, whether democracy can be made to flourish in the lands where Islam prevails is "the single most pressing question for American foreign policy" today (p. 3).[1] He is certainly right about that and, in tackling the issue, he succeeds in presenting a refreshingly realistic, well informed, enjoyable, highly readable, and optimistic perspective on the difficult problem of governance and the introduction of the notion of popular sovereignty to the Middle East. He rightly observes that both Islam and democracy have the claim of universal human equality in common and that this is a rich starting point (p. 78). He recognizes the importance of the recent Islamic Revolution in Iran and the recent efforts of many Iranians in looking toward democratic reform (p. 92). He predicts that a U.S. invasion of Iraq will cause chaos and perhaps destabilize the region and that the question of the intersection of democracy and Islam will then become "centrally important" (pp. 177-78). He seems to know exactly what is on the minds of American policymakers and, although there is much to be criticized about this book, his well-written observations and descriptions of historical events, relationships, and interests in the region are enlightening and thought-provoking, showing the importance of obtaining mastery of Islamic history and culture in today's world, something that most American policymakers do not have.

Feldman's central thesis is that political Islam and Western liberal democracy are two big "mobile" or "portable" ideas that are very compatible with each other and that if Western governments would resist their tendency to be stereotypical and closed-minded in their relations with the Islamic world, they will learn that the vast majority of the Islamists as well as most ordinary members of the Islamic *umma*[2] also fervently desire to live and flourish in a democratic political setting. He seeks to distinguish Islamist democracy from Islamic democracy. In his view, an Islamist democracy is one that is governed exclusively by Islamic law. An Islamic democracy, on the other hand, is one that draws "on Islam's values and ideals while simultaneously incorporating democratic principles, legal protections, and institutions" (p. 25).

He further argues that, whereas the Islamic democracy that would emerge in such a setting might not fit the classic Jeffersonian model of democracy that some Americans might want to see, in fact it would be a pluralist, participatory, egalitarian, electoral democracy, with sound mechanisms for dispensing procedural and economic justice and a large healthy modicum of individual freedoms, including freedoms of expression, association, conscience, and religion. He supports this argument with examples from Islamic history and modern Islamic societies–including the Ottoman Empire, the modern Turkish democratic experience, and Malaysian Islam (pp. 99-114)–showing that the predominant vision of Islam, like the predominant vision of democracy, is pluralist, egalitarian, and supportive of individual autonomy. He references a number of medieval and modernist traditions in Islamic political philosophy and sociology that suggest that the institution of a pluralist consultative government was an important part of the Prophet Muhammad's vision for Islamic society.

In suggesting how American policymakers ought to encourage the realization of Islamic democracies in Muslim lands, Feldman offers a typology of the governments in the Islamic world. His typology classifies such governments along two axes: (1) whether the government has oil to sell to the West or not, and (2) whether the government is a monarchy or a dictatorship. He then prescribes various policy alternatives that the American government ought to pursue with each of these kinds of governments.

In the case of the oil dictatorship, like the now-vanquished Saddam Hussein government, Feldman readily agrees that "regime change" may be the only realistic way to introduce democracy, although he suggests that such "regime change" need not always be accomplished by military means. In his view, political and economic pressure may be just as effective a means of eliminating undemocratic behaviors by individuals running such governments. He observes that the Islamists are "a gift from God" for Muslim autocrats like Hosni Mubarak, the long-time President of Egypt. He explains that this is so because:

"[p]reserving conditions that justify repression is

good practical policy for the autocrats. If the autocrats were to destroy the Islamist opposition completely, then Western countries might begin to feel confident enough in the possibility of secular democracy in the Muslim world to demand or at least to encourage more democratization. The optimal strategy for the autocrats is therefore to eliminate secular democratic dissent, just keeping enough Islamist opposition alive to make Islamism the only alternative without enabling it to become strong enough to overthrow the government." (p. 23)

Feldman argues that the Americans have been duped by this behavior, or, in the case of the oil monarchies, the Americans have openly supported the monarchs' anti-democratic behaviors because these leaders essentially have rented out their lands to the West and raw economic self-interest dictates that all democratic impulses in their populations be suppressed. Feldman asserts that it is high time that Americans put such interests aside and begin to bring real pressure on these governments, including military pressure, to encourage democratic reforms. Otherwise, the Islamist drumbeat for jihadist overthrow of these governments will eventually succeed. He argues that no one can seriously contemplate that anyone "sitting down to plan a government," not even the Islamists, will plan anything else other than a democratic government (p. 186). He concludes the book by quoting the Prophet Muhammad's observation that the greater and more important *jihad* is the one that occurs after human conflict, when individuals must deal with the morality of their own behaviors and their relationships with each other. He optimistically uses this idea to suggest that the quest for democracy in the Islamic world is just this kind of *jihad*, one that holds great promise for the future.

Feldman's arguments in favor of the compatibility of Islam and democracy and the interests of the Americans and Middle Eastern autocracies in defeating democratic Islamism are not new.[3] What is new is his assumption that the era of jihadism is destined to fade away, especially if experiments in democracy can gain a foothold in the Middle East. In discussing the prospect for pluralist liberal democracy in the region, he addresses many Western stereotypes about Islam and Muslim and Arab peoples in an effort to show that these barriers are largely figments of the Western imagination. He essentially urges that American policymakers, while exerting their pressures on the regimes, engage in tolerance–itself an important democratic value–and that eventually such tolerance will be rewarded with the emergence of robust Islamic democracies throughout the Middle East. He suggests that even the election of Islamists to positions of power ought not to be discouraged. In his view, the emergence of these democracies eventually will bring immeasurable benefits, including making lasting peace with Israel more likely.

While Feldman's optimism and understanding of the realities of the Islamic world are gratifying, much about his book remains unsatisfying–and these aspects will perhaps make the book unconvincing for many. Feldman's effort to convince us of the rightness of his thesis fails primarily because, at key points in the book, his treatment of the core democratic ideals that are at stake, such as liberty and equality, is extremely superficial. For example, in discussing "Islamic equality" he offers no real solution for how a liberal Islamic democracy would solve the problem of discrimination against women under the Quranic inheritance scheme.[4] Western proponents of gender equality often simply condemn the Quranic scheme, on the basis of a formalistic anti-discrimination focus, without recognition of the ideas for solutions developed by some liberal Islamic jurists. The problem is a difficult one, and Feldman acknowledges that, but, in giving the problem short shrift he leaves the reader very unsatisfied and skeptical about the viability of democracy in such circumstances.

His discussion of the notion of "Islamic liberty"[5] is even more problematic. In six short pages (pp. 69-74), he canvasses a profusion of issues that would be important in an Islamic democracy, including capital punishment, freedom of expression, freedom of religion for non-Muslims, and legal regulation of family relations, without pausing to engage in a meaningful discussion of any of them. His discussion of liberty also ignores the importance of the notion of consensus in the development of democracy and the fact that Islamic law also recognizes the key role that consensus (*ijma'*) can play in the development of juridical responses to new problems and issues, particularly assertions of autonomy. That both ideologies recognize the value of consensus would seem to be a valuable tool in the hands of someone "sitting down to plan a government." The lawlessness of Baghdad right after the fall of the Hussein government reminded all of us of Thomas Hobbes's famous arguments about the need for a coercive state. The competing claims of the Shi'a, the Kurds, the Ba'athists, and the Sunni Islamists make Iraq a difficult environment to try to find, in Feldman's words, "Islamic liberty."

Yet, it seems that this situation might actually be a great opportunity for democratic theorists, both Muslim and non-Muslim, to determine whether Rawls's concept

of the overlapping consensus might be useful. In describing the ideal liberal democracy, Rawls argued that such a democracy must have a political conception of justice that is not based on group interest or a conception of the good that flows from a particular comprehensive political, moral, or religious doctrine, but rather it must be a conception of justice that widely different and even irreconcilable comprehensive doctrines can endorse. Where there is a diversity of comprehensive religious, philosophical, and moral doctrines and politically active citizens all agree on what the basic rights and liberties of each citizen should be, the society has achieved an overlapping consensus on its political conception of justice.[6] There is a great opportunity to encourage such a consensus in Iraq and perhaps in other Islamic countries as well. More important, Islamic jurisprudence encourages the use of consensus, both as a source of law and as a means of developing interpretations of classical doctrine that will accommodate the demands of modern conditions, even when that doctrine might counsel a deprivation of liberty.

One of the best examples of the use of consensus by jurists in modern times is the emergence of a worldwide consensus among Muslim jurists that slavery is now considered to be unlawful, even though it is expressly permitted by the Qur'an and is extensively discussed in the reports of the traditions of the Prophet Muhammad. The virtual disappearance of slavery in the Islamic world, without war or major civil unrest, is an important lesson for the development of Islamic democracy and an example of the value of consensus in forging understandings of liberty. As Feldman acknowledges, the idea of democracy may be amenable to universalization (p. 206), as was, in my view, the idea of the abolition of slavery. The questions not touched on by Feldman's discussion are: (1) Is a theory of justice also capable of achieving universal form? and (2) Can a theory of justice be imposed from the outside, or must it be achieved by a home-grown consensus?[7]

Readers may also be unconvinced because Feldman relies on two political assumptions that are by no means assured: (1) that the era of jihadist war, in the Middle East and elsewhere, will soon be over; and (2) that the Bush administration's currently professed desire to bring democracy to the Islamic world is a sincerely held desire and not, instead, a cover for imperialist skullduggery. As the title of the book posits, *After Jihad* is premised on two linked assumptions–first, that America will win its amorphous war against the jihadists, and, second, that after this victory, there will have to be a post-military *jihad* era that will present opportunities for democratization in the Muslim world. In Feldman's view, "the option of holy war now seems spent, peripheral, unrealistic, and indeed distasteful in light of the violence of September 11" (p. 232). This is a very large assumption. There may have been some truth to it right after September 11, when there was great sympathy throughout the Islamic world for the suffering endured by the 3,000 innocents who lost their lives in the World Trade Center. But with the recent invasion of Iraq and the increasingly anxious, difficult, and likely protracted military occupation that is now causing much resentment and open hostility among many Iraqis and Muslims, it is unlikely that "the option of holy war" will rapidly fade from view in the perspective of many Muslims in the Middle East. Indeed, the classical Islamic doctrine of the military *jihad* is, in its essence, a doctrine of collective self-defense.[8] It has always provided normative justification for Muslims to wage war in the exercise of this collective right when their territories are invaded by non-believers and, in the words of the Qur'an, they are "expelled from their homes in defiance of right–(for no cause) except that they say, 'Our Lord is Allah....' "[9]

There is no reason to conclude that this notion of collective self-defense will disappear from the collective Muslim psyche just because it is Americans who happen to be conducting the Iraqi invasion and running the occupation. It is true, as Feldman points out, that there is great admiration for the American way of doing things throughout the Muslim world; indeed, he describes the Muslim readiness to hold the U.S. to a higher standard as "latent pro-Americanism" (pp. 202-203). Most are happy that the Saddam Hussein regime is eliminated and even the Islamists initially took heart from the Anglo-American military success against the Hussein regime. On the other hand, Islamic religious and legal doctrines still continue to shape norms and behaviors in the Muslim world. If the Iraqi territory is not soon returned to Muslim rule, the doctrine of the defensive military *jihad* will return to shape again Muslims' behavior in Iraq and, unfortunately, the post-*jihad* era that Feldman posits will suddenly become nothing more than a pipe dream.

It should be noted that Feldman has been appointed to chair a Bush administration committee charged with the responsibility of advising the Iraqis in drafting a new constitution. If Feldman can infuse the Bush administration's effort at Iraqi constitution-making with his vision of the marriage of Islam and democracy, the new Iraqi government will indeed be a great success and proof that his thesis is right. On the other hand, Feldman's

efforts may ultimately have no relationship to what actually happens on the ground in downtown Baghdad–if, for example, the Bush administration has made a strategic miscalculation in terms of its ability to restore civil society and order, or if the real objective of the Anglo-American adventure is to secure control of Iraqi oil output or, perhaps worse, to lay the groundwork for evangelical Christian proselytizing among the Muslim Iraqis. All of these scenarios will immediately give rise to calls for a military *jihad* against the Americans and their proxies in Iraq.

So, if the reader of *After Jihad* is to accept Feldman's thesis, he or she must, to some extent, suspend disbelief and become an enthusiastic optimist. Feldman's upbeat and healthy attitude toward the subject helps his enterprise tremendously. He is gushingly optimistic about the flexibility and purity of Islam and he is a keen observer of geopolitical events and relationships. He apparently trusts the motives of the current American administration. We can only hope that he is right. In the words of the Prophet Muhammad, "deeds are judged according to the actor's intentions, and every person will get his reward according to what he intended...."[10]

Notes

[1]. *See also*, "Islam and the Challenge of Democracy" in the Democracy Forum section of the April/May 2003 issue of the *Boston Review*, =<http://www.bostonreview.net/BR28.2$>$. (Essay by Khaled Abou el Fadl and responsive commentary by Noah Feldman, John L. Esposito, Jeremy Waldron, William Quandt, Bernard Haykel, and a number of other commentators, all emphasizing the importance of the issue.)

[2]. The *umma* is the Arabic term for the worldwide Islamic nation or community.

[3]. *See*, *e.g.*, John L. Esposito, The Islamic Threat: Myth or Reality 240-249 (3rd ed. 1999) citing, *inter alia*, at 241n91, John L. Esposito and John O. Voll, Islam and Democracy (1997); John O. Voll and John Esposito, *Islam's Democratic Essence*, Middle East Quarterly, Sept. 1994, at 3-11 with ripostes at 12-19, and Voll's and Esposito's reply, Middle East Quarterly, Dec. 1994, at 71-72. In a recent polemical essay, Martin Kramer accuses Feldman of essentially rehashing Esposito's arguments. *See* Martin Kramer, *Jihad is Over (If Noah Feldman Wants it)* at =<http://www.frontpagmag.com/Articles/Printable.asp?ID=7959$>$. This is an overstatement, as arguments for the compatibility of Islam and democracy, or at least, Western constitutionalism, date back to the beginning of the modern era in Islamic intellectual and legal history. *See*, *e.g.*, Bernard Lewis, The Political Language of Islam 113-114 (1988); Abdulaziz Sachedina, The Islamic Roots of Democratic Pluralism (2001); Marshall G. S. Hodgson, *Modernity and the Islamic Heritage* in Marshall G. S. Hodgson, Rethinking World History: Essays on Europe, Islam, and World History 207-243 (1993). On the other hand, as I argue below, Kramer is probably right in asserting that the era of *jihad* may not be over.

[4]. The Qur'an stipulates that a male child's intestate share of the estate of a deceased parent shall be twice as much as that of a female child, if there is a living male child at the time of death. Qur'an 4:11.

[5]. I did not know there was such a thing as "Islamic liberty." In my view, "liberty" is "liberty" whether Islamic or Hindu or Christian or secular. Even in the classical Islamic jurisprudential texts, liberty, or "*hurreyya*" in Arabic, is generally defined as the absence of slavery, that is, being free in one's person, property, conscience, and dealings with other human beings. There was no particularly religious context to this definition. Even a non-Muslim is considered to be free unless captured in war, punished for crime, or born into a state of slavery.

[6]. John Rawls, *The Domain of the Political and Overlapping Consensus*, 64 N.Y.U. L. Rev. 233, 239-241 (1989).

[7]. On these points, compare the American experience of the late 1770s and 1780s, in which Americans such as John Adams disputed the constitutional formulas proposed by European philosophes as deeply flawed in general and unsuited to the American experience in particular. See generally Willi Paul Adams (Rita and Robert Kimber, trans.), The First American Constitutions (expanded edition) (2001)(1980); Donald S. Lutz, The Origins of American Constitutionalism (1988); Zoltan Haraszti, John Adams and the Prophets of Progress (1952); and Richard B. Bernstein with Kym S. Rice, Are We to Be a Nation? The Making of the Constitution, chaps. 2, 5 (1987).

[8]. There is now a virtual genre in the scholarly and popular literature on the topic of *jihad*. For thorough treatments of the doctrine of the military *jihad*, *see* Just War and Jihad: Historical and Theoretical Perspectives on War and Peace in Western and Islamic Traditions (John Kelsay and James Turner Johnson, eds., Greenwood Press, 1991); Reuven Firestone, Jihad: The Origin of Holy War in Islam (1999); Rudolph Peters, Jihad in Classical

and Modern Islam: A Reader (1996); and Majid Khadduri's classic War and Peace in the Law of Islam (1955).

[9]. Qur'an 22:39-40, translated into English by Abdullah Yusuf Ali *in* The Meaning of the Holy Qur'an (Abdullah Yusuf Ali, trans. and commentary, 10th ed. 1999)(1934).

[10]. 1 Sahih Boukhari 5 (Beirut, 1993) (Mahmoud Matraji, trans.). The principle that all actions are to be judged by the actor's intentions is generally the first principle of jurisprudence cited in any collection of hadith of the Prophet Muhammad.