Cambridge University Press
978-1-108-42212-3 — Islamophobia and the Law
Edited by Cyra Akila Choudhury , Khaled A. Beydoun
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Introduction

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1 WHAT IS ISLAMOPHOBIA?: THE RISE OF A CONCEPT

Muslims in America are no strangers to prejudice and disparate treatment based on perceived difference. Particularly during moments of crisis, whether local or global, media pundits and academics offer opinions about political Islam and modernity regardless of their actual expertise, while Muslims brace for the inevitable backlash. Much of the current Manichean thinking about Islam has a long history and can be traced back to the very first encounters between Christians and Muslims. But more recently scholars like Bernard Lewis and Samuel Huntington have argued that "Islam" is at odds with "the West" – both of these constructed as mutually exclusive and monolithic. As part of this long-standing tradition of scholarship that seeks to differentiate Islam from Judeo-Christianity and Europe, some experts continue to advance the view that Islam is incompatible with liberal values and democracy at large because of the essential differences between the two.

In his pathbreaking work, the late Edward Said argued that what is (mis)understood as "Islam" in the West has largely been a projection of Western fears and fantasy for several centuries. He coined the term Orientalism, and theorized about Western scholars' engagement with Islam and Muslims, to describe this scholarship, which often substituted the voices, experiences, and self-knowledge of Arabs and Muslims with those of Western experts. Some of these experts had never even been to the countries they opined about. While genuine scholars with deep expertise, of course, exist, one of the enduring features of Orientalism is the elevation of the "objective" scholarship of those who are not themselves Arabs or Muslims. This expertise has come with the erasure of bona fide Muslim voices until recently. The self-representation of native scholars, as a result, has often been viewed with suspicion, if not dismissed as biased.

Fast-forwarding several decades, we find the terror attacks of September 11, 2001, a watershed moment in the United States. In their wake, a renewed interest in the

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Middle East, North Africa, and Asia flourished, giving rise to both more serious scholarship and self-appointed, neo-Orientalist experts in Islam. And because few non-Muslim Americans have had interactions with Muslims, the portrayals on television, movies, and by scholars have become the prevailing received knowledge for most people. A great deal of what emerged in the aftermath of 9/11, and with the rise of an industry of national security experts like Frank Gaffney and Brigitte Gabriel, has been blatantly prejudiced against Islam and Muslims. For many years, this form of American animus did not have a name – or at least did not have a name that scholars agreed upon, one that mainstream media voices regularly used or that activists and advocates on the ground adopted. However, the political realities and the lived experiences of the post–9/11 world required new terms and fresh theories. Orientalism was still a potent phenomenon, yet the term and theory were largely confined to academic discourses and had been crafted before 9/11.

Unlike earlier crises, the 9/11 attacks were perpetrated on the “homeland.” As a result, they made clear for the first time that American communities were vulnerable. The 9/11 attacks were categorically different because the threat was no longer “out there” but could very well penetrate deep within US communities. The response to the attacks, as many of the chapters in this volume describe, ranged from the institutional and political targeting of Muslims through national security measures to private violence unleashed on the streets. Over the decade that followed, the targeting of Muslims as subjects of surveillance, regulation, and violence resulted in the development of a discourse and vocabulary that sought to carefully describe state and private animus. The rise of the term *Islamophobia* can be traced as part of this development, and indeed emerged into a concept within academic literatures, but also was championed by advocates and activists on the ground, in the media, and beyond. The term is now widely understood as a cognizable form of animus toward Muslims and perceived Muslims, but it remains hotly debated and disparately defined.

Some critics, who believe that the perils posed by Islam and Muslims should be legitimately feared and confronted, oppose the term because it makes “irrational” what they claim to be entirely rational. Such critics often see Islam and Muslims as a monolith and argue that treating Muslims differently is a justified response. In fact, the ongoing treatment of Muslims as aberrant threats is precisely one of the reasons the term Islamophobia is useful. Just as Islamophobes carve out Muslims as exceptional threats *because of their connection to Islam*, the term reflects this very specific operation of using a single identity to exceptionalize by focusing on the basis of that identity: Islam.

Academic critics may claim that the term Islamophobia is too diffuse and imprecise to be of much analytical value. After all, it seeks to describe a host of practices and beliefs that may be only loosely related by the reference to Islam or Muslims. But, again, that is precisely why we think the term is valuable. It is capacious enough to capture the complexity of the various theoretical and practical manifestations of a

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multifaceted animus towards Islam and Muslims that is not reducible only to race, religion, or national origin. Islamophobia as a theoretical concept attempts to encapsulate the intersectional, shifting, dynamic othering of *Muslims* and *Islam* where these are not incidental but central to that othering, even if combined with other identities. As a result, the term itself is used in multiple ways and in different contexts throughout this volume. Moreover, the subjects of Islamophobia are not only "real" Muslims and believers in Islam, but include those who may be mistaken for Muslims. For instance, when a mathematician is removed from a flight because mathematics is mistaken for Arabic, we understand this to be an example of Islamophobia. When turbaned Sikhs or women wearing a scarves are targeted as Muslims, this is also Islamophobia. These incidents are incomprehensible without the animus towards Muslims and Islam. They cannot be understood as racism or sexism alone. We acknowledge that conceptually Islamophobia is necessarily imprecise, which is both a strength and a weakness. However, no other term makes these phenomena immediately intelligible (even if reductively) to a wide range of audiences in way that resonates now more than at any other time in the history of the United States.

While the targeting of Muslims and the vilification of Islam saw a dramatic increase in the aftermath of 9/11, it took Donald Trump's presidential campaign to elevate Islamophobia to a full-fledged political strategy. From the beginning of his bid for president, Trump took every opportunity to vilify Islam and Muslims. Dismissing white nationalist violence and threats, Trump repeatedly focused on Muslims, tying them collectively to foreign threats. Because of the centrality of this strategy as a means of mobilizing his supporters, Trump could be called the "Islamophobia president."[1] Furthermore, following up on his promises to stop threatening immigrants from invading the country, Trump enshrined Islamophobia as presidential policy during his first week in office by issuing the first travel ban targeting seven Muslim-majority nations.[2] As such, Islamophobia is now firmly at the center of American life. It has become a means by which other political aspirants can gin up fear while consolidating support among a vocal white-supremacist base. The term Islamophobia has now become mainstream among a diverse collective of activists and academics confronting the social, political, and legal phenomena. It is now routinely used in social media, the news, and increasingly in a growing academic literature of which this volume is a part.

While a full review of the literature is beyond the scope of this introduction, it is important to briefly sketch the origins of the term. Islamophobia was established in the scholarly literature by a range of sources. The Runnymede Trust, a British think

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[1] Khaled A. Beydoun, *Donald Trump: The Islamophobia President*, AL JAZEERA ENGLISH (Nov. 9, 2016), available at https://www.aljazeera.com/indepth/opinion/2016/11/donald-trump-islamophobia-president-161109065355945.html.

[2] White House, *Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States*, Jan. 27, 2017.

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tank, is widely recognized to be the first entity to coin the term Islamophobia. In a study conducted in the early 1990s, it defined Islamophobia as an "unfounded hostility towards Muslims, and therefore fear or dislike of all or most Muslims."[3] This definition did not attain broad acceptance or appeal until after the 9/11 terror attacks and their aftermath, when targeting and scapegoating of Muslims followed. A 2011 study titled *Fear, Inc.: The Roots of the Islamophobia Network in America* built on the foundational definition offered by Runnymede and added another dimension to the anti-Muslim network based in the United States. The study did not offer an explicit definition, but exposed the network of pundits, lobbyists, and organizations committed to and collaborating in the maligning of Islam and Muslims:

> And it all starts with the money flowing from a select group of foundations. A small group of foundations and wealthy donors are the lifeblood of the Islamophobia network in America, providing critical funding to a clutch of right-wing think tanks that peddle hate and fear of Muslims and Islam—in the form of books, reports, websites, blogs, and carefully crafted talking points that anti-Islam grassroots organizations and some right-wing religious groups use as propaganda for their constituency.[4]

Fear, Inc. noted the financial interests pushing Islamophobia and demystified the idea that it was an entirely "irrational" form of animus or fear. Other programs that popularized the term and added to the growing literature were Georgetown University's The Bridge Initiative, a research project on Islamophobia and UCLA's Islamophobia Research and Documentation Project. Professor Stephen Sheehi's book *Islamophobia: The Ideological Campaign Against Muslims* was one of the first monograph-length treatments of the subject.[5] In the United Kingdom, Dr. David Tryer's *The Politics of Islamophobia: Race, Power and Fantasy* examined similar themes, such as the racialization of Muslims.[6] Most recently, in his book *Islamophobia and Racism in America*, sociologist Erik Love also offers a definition of Islamophobia that frames it as racism against Muslims and perceived Muslims.[7] Adopting a critical race theory lens, Love sees Islamophobia as a fluid form of racism unleashed distinctly by state and private actors. These definitions rank among the most resonant and cogent framings of Islamophobia that inform the definition we advance in this book.

In the following section, we develop the concept of Islamophobia in greater depth, exploring some of the shortcomings of the popular use of the term. We then elaborate on the legal definition of the term and how law is an integral part of Islamophobia.

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[3] ROBIN RICHARDSON, ISLAMOPHOBIA: A CHALLENGE FOR US ALL (1997).

[4] Wajahat Ali, et al., *Fear Inc.: The Roots of the Islamophobia Network in America*, CENTER FOR AMERICAN PROGRESS 1, 9–10 (2011).

[5] *See* STEPHEN SHEEHI, ISLAMOPHOBIA: THE IDEOLOGICAL CAMPAIGN AGAINST MUSLIMS (2011).

[6] *See* DAVID TRYER, THE POLITICS OF ISLAMOPHOBIA: RACE, POWER AND FANTASY (2013).

[7] ERIK LOVE, ISLAMOPHOBIA AND RACISM IN AMERICA (2017).

2 TOWARD A COMPREHENSIVE UNDERSTANDING OF ISLAMOPHOBIA

Media pundits and politicians, lawyers and advocates, and scholars within the legal academy and beyond now use the term Islamophobia, further entrenching it into the scholarly and popular lexicons. However, until recently, a comprehensive definition was still lacking, and specifically a definition of Islamophobia that encompasses the law's role in maintaining and perpetuating it, the ties the modern animus toward Islam and Muslims has to preceding systems, and how the intimate relationship between government action and society has the potential to authorize private violence against Muslims. Before we articulate a fuller definition, it is important to briefly discuss the shortcomings of the prevailing uses of the term.

First, popular definitions of Islamophobia tend to center on the acts of individuals, specifically those who are framed as deviants or fringe actors and whose actions are deemed as irrational and disconnected from prevailing political discourses or "War on Terror" policy. Islamophobes, like Craig Hicks, who executed three Muslim students in Chapel Hill, North Carolina on February 10, 2015,[8] are profiled as aberrant, lone actors whose hate for Islam and violent actions are not emblematic of a broader culture or inspired by tropes and narratives endorsed by state policy. However, Islamophobia is far more than mere ignorance or hatred on the part of individuals and supersedes "fear and dislike" of Islam and Muslims[9] on the part of presidents or politicians. These definitions caricature Islamophobia as irrational[10] when, in fact, demonization of Islam and discriminatory policies are rational and increasingly successful strategies. This is exemplified most vividly by Donald Trump's capitalization of Islamophobia to mobilize supporters during the 2016 presidential campaign and placate his base during the earliest stages of his presidency by signing the "Muslim Ban" executive order only one week after his inauguration.

Second, these definitions limit Islamophobia to beliefs and actions held by private actors, not state institutions. This narrow framing exempts the state from charges of propagating Islamophobia and excuses it from accountability. Such a truncated description, particularly during the never-ending global War on Terror, fails to connect how the acts of individuals are inspired by the policies and messages disseminated by the state in its counterterrorism and national security policies and actions. For example, the Supreme Court upholding the (third version) of the

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[8] Saeed Ahmed and Catherine E. Schoichet, *3 Students Killed in Chapel Hill Shooting*, CNN (Feb. 11, 2015).

[9] Bridge Initiative Team, *Islamophobia: The Right Word for a Real Problem* (Ap. 26, 2015).

[10] Islamophobia can be deeply irrational. Our point is that it is not always so and that, for several decades, it has proven to be a well-thought out and productive political strategy.

"Muslim Ban" executive order in *Trump v. Hawaii* demonstrates the state's central role in not only endorsing Islamophobic fears and anxieties,[11] but also in authorizing it through symbolic declarations and state action.

Third, standing definitions largely fixate on the most stark and egregious forms of Islamophobia. Namely, recorded and registered hate crimes, attacks on conspicuous Muslims, murders, arson and vandalism of mosques, or explicit slurs, projecting the idea that Islamophobia is limited to openly visible acts of violence or bigotry. By training our attention on the spectacular and the extreme, much of the quotidian forms of Islamophobia that pervade society are ignored. Moreover, people need not confront the ideology of Islamophobia if Islamophobia is reduced to unconnected, random acts of violence and hate that occur spontaneously and therefore cannot be predicted or stopped.

Fourth, definitions of Islamophobia limit its victims to Muslims, when in fact a number of non-Muslim groups are also vulnerable to and targeted by it. Since Islam is commonly "racialized" or perceived in racial or religious terms, ethnic groups – turban-wearing Sikhs, for example – who fit stereotypical caricatures of Muslims and are frequent targets particularly by individual actors. This was vividly illustrated five days after the 9/11 terror attacks when Frank Roque shot and killed Balbir Singh Sodhi, the Sikh owner of a Chevron gas station, in Mesa, Arizona.[12]

Fifth, formative conceptions of Islamophobia have not adequately recognized it as a form of animus that intersects with other forms of subordination and discrimination. As theorized in her landmark piece, "Mapping the Margins: Intersectionality, Identity Politics, and Discrimination Against Women of Color,"[13] Kimberlé Crenshaw examined the compounded stigma faced by women of color along the converging lines of two subordinate identities (gender and racial identity). Crenshaw coined the term *intersectionality*, which is now widely used to denote multiple subordinations. As we note above, Islamophobia is *deeply* intersectional. It is a form of animus that interacts and overlaps with other forms of stigma and subordination, most notably racism, sexism, class/poverty, colorism, and more. The definition of Islamophobia advanced by this project enables an intersectional examination of Islamophobia, and the book comprises articles that underscore this analysis.

Finally, early definitions of Islamophobia characterize it as a modern phenomenon spawned in the aftermath of the 9/11 terror attacks. In her seminal article "The Citizen and the Terrorist," excerpted in this book, Professor Leti Volpp wrote, "We are witnessing the redeployment of old Orientalist tropes. Historically, Asia and the Middle East have functioned as phantasmic sites on which the U.S. nation projects a series of anxieties regarding internal and external threats to the coherence of the

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[11] Trump v. Hawaii, 138 S.Ct. 2392, 2402, 201 L. Ed. 2d 775 (2018).

[12] Tamar Lewin, *Sikh Owner of Gas Station Is Fatally Shot in Rampage*, N.Y. TIMES, Sep. 17, 2001.

[13] Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Discrimination against Women of Color*, 43 STAN. L. REV. 1241, 1241 (1993).

Cambridge University Press
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national body."[14] This observation, made in the immediate wake of the 9/11 terror attacks and during the earliest stages of the War on Terror, connected the uptick in animus against Islam and profiling of Muslims with a long-standing discourse of Orientalism that predates Islamophobia but informs and empowers it.[15] Islamophobia, as we argue above, is the progeny of Orientalism which frames the "Orient," of which the monolithic and essential "Muslim world" is a part, as the mirror opposite and civilizational antithesis of the "Occident," or the West.[16] In the next section, we argue that law is vital to theorizing Islamophobia, and any intervention or discourse that seeks to grapple with it.

3 A LEGAL DEFINITION

Law is central to the broader project of Islamophobia. Islamophobia consequently cannot be adequately theorized or explained without an account of the operations of law. By *law*, we mean both positive laws enacted by the state in local, state, and federal institutions, but also the social norms that prevail. As such, our broad understanding of "law" is in keeping with the law and society literature and with the view that overly formal conceptions of the law miss the ways in which society is regulated and regulates itself through informal policing of norms that may not appear in any legislative code or judicial decision. While there are sociological approaches to the study of Islamophobia, we are interested in this volume in the way that Islamophobia pervades legal institutions and enactments, and in the laws' effects on society.[17]

In the *Columbia Law Review Online*, Professor Beydoun advanced a legal definition and theoretical framework for understanding Islamophobia,[18] which we refine and elaborate here. While the authors in this volume may vary in their understanding of the concept, we think that the articulation advanced by Professor Beydoun encompasses the variations found in the chapters and provides a starting point from which to expand the theorization of Islamophobia.

Islamophobia is the presumption that Islam is inherently violent, alien, and inassimilable, combined with the belief that expressions of Muslim identity are correlative with a propensity for violence and terrorism. However, because Islamophobia is part of the cultural and political landscape shaped by centuries of

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[14] Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. Rev. 1575, 1586 (2002).

[15] Edward Said, Orientalism (1979).

[16] *Id.*

[17] The institutionalization of Islamophobia is made clear in the War on Terror policies and programs, in executive actions and judicial rulings, and most starkly in the wholesale restructuring of the state national security apparatus and the creation of the Department of Homeland Security (DHS).

[18] Khaled A. Beydoun, *Islamophobia: Toward a Legal Definition and Framework*, 116 Col. L. Rev. Online 108, 108 (2016).

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978-1-108-42212-3 — Islamophobia and the Law
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differentiation and notions of civilizational superiority, it need not manifest in its most extreme forms.

We suggest that even those who would disavow any belief that Islam is unassimilable and violent may be advancing Islamophobic ideas nevertheless. For example, the common use of the term *moderate Muslim* assumes that there are some "good Muslims" who will assimilate, who are not violent or alien. Yet this very common liberal formulation incorporates ideas that in order to fit in or to be acceptable, Muslims must interpret and perform their faith and identity in line with the dominant culture. There is a shared sense, then, that Islam is Western civilization's antithesis or that it is essentially different and/or incompatible. This is the discursive and structural landscape in which Islamophobia is perpetuated by state institutions, as well as by private institutions and citizens. Furthermore, and to reiterate some earlier points, Islamophobia is a fluid and dynamic process by which law, state policy, and action targeting Muslims endorse prevailing stereotypes and, in turn, embolden private targeting of Muslims and perceived Muslims.[19]

The definition advanced by Professor Beydoun includes three dimensions or subdefinitions, which identify and enable analyses of the distinct forms of Islamophobia that comprise the broader phenomenon. These dimensions are: (1) private Islamophobia; (2) structural Islamophobia, and; (3) dialectical Islamophobia. These are not exclusive nor entirely separate, but interact with one another in complex ways. Professor Choudhury's work has elaborated on the discursive construction of Islam and Muslims as a threat.[20] By capturing and resignifying the language of Islam and redefining words like *shari'ah*, *dhimmi*, *jihad*, and others, Islamophobes discursively link Muslims and the practice of Islam to violence and terror. By asserting that part of Muslim religious practice is to lie to non-Muslims to hide their true purpose of establishing "shari'ah law," all Muslims are rendered dishonest and unable to disavow any such interest. In a maddening catch-22, Muslims can only be believed when they "confess" to espousing the beliefs that they are accused of by Islamophobes. This discursive construction pervades all the dimensions of Islamophobia described in this chapter.

3.1 *Private Islamophobia*

Private Islamophobia is the fear, suspicion, and violent targeting of Muslims by individuals or private actors. This animus is most obviously carried forward by nonstate actors' use of religious or racial slurs, mass protests or rallies, and violence against Muslim or perceived Muslim subjects.[21] Examples of private Islamophobia

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[19] *Id.*

[20] *See generally*, Cyra Akila Choudhury, *Shari'ah Law as National Security Threat*, 46 AKRON L. REV. 49 (2013).

[21] *See* Beydoun *supra* note 18 at 111.

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include the murder of the three Muslim American students in Chapel Hill; vandalizing and burning of American mosques, which climaxed to 78 separate recorded incidents in 2015;[22] and the increasing incidence of attacks on conspicuous Muslims, most notably Muslim women who wear the hijab, emboldened by the campaign messaging and political rhetoric of Donald Trump. In addition, private actors may use more subtle, less obvious methods to advance Islamophobic policies. Subtler forms may be attempts to question Muslim loyalties, to repress speech against Islamophobia or for causes associated with Arabs and Muslims, and discriminatory hiring practices.

3.2 *Structural Islamophobia*

Structural Islamophobia is the fear and suspicion of Muslims on the part of public institutions manifested through law and policy, through both official discourse and action. These manifestations of state action are built upon the presumption that Muslim identity is associated with terrorism or the threat of it.[23] Structural Islamophobia, while typically exacted and enforced by state actors, is sometimes carried forward by private actors that closely collaborate with state agents, including think tanks, corporations, and other networks.

The most obvious examples of structural Islamophobia are the creation of government institutions like the Department of Homeland Security and departments within existing agencies. Laws, including the U.S. PATRIOT Act and the National Security Exit and Entry Registration System (NSEERS), both enacted after the 9/11 terror attacks; executive actions, including Trump's travel bans or President Barack Obama's "Countering Violent Extremism" program; and the declaration initiating the War on Terror,[24] by George W. Bush ten days after the 9/11 terror attacks primarily targeting Muslims are also part of structural Islamophobia. These structures then endorse and disseminate problematic tropes about Islam and Muslims, resulting in structural Islamophobia. In other words, the state is not only acting by way of law or policy, presidential rhetoric, and national security programming, but is communicating a specific and strategic set of messages to society through institutional action.

3.3 *Dialectical/Co-constructed Islamophobia*

This form of Islamophobia may be the most difficult to grasp for those outside the halls of academia. Professor Beydoun argues that Islamophobia is also a systematic,

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[22] Talal Ansari, *There Was a Huge Increase in Attacks on Mosques Last Year*, Buzzfeed, June 20, 2016.

[23] Beydoun, *supra* note 18, at 114.

[24] *Text of George Bush's Speech*, The Guardian, Sep. 21, 2001.

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fluid, and deeply politicized dialectic between the state and its polity, a dialectic whereby the state shapes and reshapes, endorses, and entrenches popular views, stereotypes, and attitudes about Islam and Muslim subjects inside and outside of America's borders.[25] He argues that this is *dialectical Islamophobia*, the process by which state action legitimizes prevailing misconceptions, misrepresentations, and tropes widely held by private citizens and, during times of crisis and political opportunism, emboldens bigotry and violence against Muslims and subjects perceived to be Muslim. Professor Choudhury argues that the dialectic can be understood differently as the tension between Islamophobia and liberal conceptions of multiculturalism. The state and sections of the polity can be on both sides of this tension. What Professor Beydoun describes as a dialectic,[26] Professor Choudhury would define as the co-construction of Islamophobia through an iterative process actively resisted by those on the opposing side of the dialectic: Muslims, civil rights activists, and those opposed to Islamophobia. The "Islamophobic state" and its polity then respond in move and countermove against their opposition and responsive to their supporters, to advance their policy objectives.

The state's rubber-stamping of widely held stereotypes of Islam and Muslims in society through surveillance, religious and racial profiling, and tightened immigration policies is one cornerstone of dialectical Islamophobia. This exchange, by which the broader polity absorbs the state's suspicion of Muslims by way of structurally Islamophobic policies, is an ongoing co-construction that links state policy to hate and violence unleashed by the polity. Another aspect of the dialectic is the way in which private actors influence and direct public and state responses. This is most clearly seen in the ways in which police and law enforcement agencies rely on manifestly Islamophobic private corporations and individuals for training and information. In recent times, Donald Trump has increasingly incorporated the views of Islamophobes like Sebastian Gorka and Steve Bannon in state policy, even giving them governmental roles. Thus, we see that the exchange between public and private is mutually reinforcing. Indeed, the borders between private and public are highly porous.

3.4 *The Interplay among the Three Dimensions of Legal Islamophobia*

Prevailing definitions of Islamophobia overlook the interplay between state policy and the private views about Muslims and Islam. Like other forms of bigotry, the

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[25] Beydoun, *supra* note 18, at 119.

[26] What Professor Beydoun describes as dialectical is not what is philosophically understood by that term, which involves the interplay between thesis and antithesis to reveal a greater truth. This truth does not always have to be positive, as Adorno argued in *Negative Dialectics*. Rather Beydoun's framework elaborates one side of a dialectic in which state and polity co-create Islamophobia – feeding each other in its construction – in tension with those who resist it on the opposing side of the dialectic.