



### **Profile: Noah Feldman** **Illuminating the Deep History of Shari'a**

Perhaps no legal system has ever had worse press than shari'a. This term, which is often defined as Islamic law, “conjures horrors of hands cut off, adulterers stoned and women oppressed,” writes Dr. Noah Feldman, Bemis Professor of International Law at the Harvard Law School and an adjunct senior fellow at the Council on Foreign Relations. But according to Dr. Feldman, shari'a is *not* just a set of legal rules. “To believing Muslims,” he continues, “it is something deeper and higher, infused with moral and metaphysical purpose. At its core, shari'a represents the idea that all human beings—and all human governments—are subject to justice under the law.” Indeed, Dr. Feldman makes the point that for most of its history, Islamic law offered “the most liberal and humane legal principles available anywhere in the world.”

When he was nominated to become a Carnegie Scholar, Dr. Feldman's stated goal was to study the Islamic state that began with the Prophet Muhammad, ended with the Ottoman Empire, and is again on the rise. A professed believer in the lessons of deep history, he sought to trace the traditional Islamic constitution from its noble beginnings to its later downfall. His research proposal included studying the development of constitutional ideas under Western imperial expansion, as well as the complicated interplay of ideas and players related to constitutional change in the contemporary Islamic world. Whether today's new Islamic states will succeed over time depends, Dr. Feldman says, on their ability to establish effective human institutions, “recreating a state that combines the best of the old while coming to terms with the new.” With his experiences both as a constitutional advisor to the Iraq Coalition Provisional Authority and a litigator of constitutional cases before the federal

courts, Dr. Feldman was uniquely positioned to illuminate shari'a and constitutional change in modern majority-Muslim countries as a Carnegie Scholar.

Dr. Richard L. Revesz, New York University's dean and Lawrence King Professor of Law, described Dr. Feldman as "one of the leading experts on Islam and democracy today" in his letter of recommendation to Carnegie Corporation's selection committee. Dr. Feldman was eminently qualified to be a Carnegie Scholar, Dr. Revesz wrote, because "he is an academic superstar who combines admirable talent for analytic scholarship with genuine concern for how to make that scholarship useful to the development of public policy."

After being selected as a Carnegie Scholar in 2005, Dr. Feldman authored *The Fall and Rise of the Islamic State* (Princeton University Press, 2008) with the Corporation's support. Praised for its clarity and consummate scholarship, the book provides an essential context for understanding the current relevance of the decline of the Ottoman Empire and the rebirth of the Islamic State since the 1920s. His discussion elucidates the complex interplay of legitimizing constitutions with the promulgation of shari'a in the modern Islamic state. At a time when this nation is scrambling to develop strategies for helping emerging democracies in the Middle East, the book advances Dr. Feldman's goal of applying his scholarship to the shaping of public policy.

"I want to propose an interpretation of the Islamic constitution in its old and new forms that will help clarify where we are today and where we are going with respect to government in the Muslim world," Dr. Feldman writes in the Introduction to *The Fall and Rise of the Islamic State*. In his view, the future of the Islamic state is very much under formation, and Dr. Feldman says he takes seriously the arguments of those Muslims who are trying to reconstruct an Islamic state that will succeed in the face of contemporary conditions. For them, he says, the past of the Islamic state is "not some dead hand but the living, breathing material from which the future will be built." The call for Islamic law, he insists, is in important ways *a call for the rule of law*.

Dr. Feldman is often commended for his compelling voice and lucid writing, particularly in the service of helping Americans better understand Islam and the Muslim world. "He writes persuasively about complicated constitutional issues for the public and policymakers alike," says Patricia Rosenfield, director of the Carnegie Corporation Scholars Program. She calls Dr. Feldman "an intellectual risk-taker who succeeds in reaching the highest levels of policymaking with his research findings."

Carnegie Corporation's selection committee was in agreement that Dr. Feldman met its members' highest expectations. "His accomplishments are already legion, including

advising the interim Iraqi government about writing a constitution. He brings knowledge of Islamic and Western law as well as direct experience to bear on fascinating legal developments in the Middle East. This project will be a *tour de force*,” predicted one committee member. Dr. Feldman’s selection as a Carnegie Scholar would surely result in “a scholarly and, most likely, widely read book on the more contemporary tensions between different sources of constitutional change,” said another. Still other members of the committee praised Dr. Feldman for being “extremely knowledgeable and fluent,” “learned in the best sense,” and “someone we will hear much about in the future.”

That future was set in motion by Dr. Feldman’s parents, who provided him with living examples of scholarship and service as he was growing up with two brothers in Cambridge, Massachusetts. “My parents were academics and social scientists and they had an interest in Islam and the Middle East,” he recalls. Early in Noah Feldman’s life, his father was a Fulbright visiting professor at Hebrew University in Jerusalem. His father also served as a Ford Foundation grantee in Afghanistan, studying the effectiveness of U.S. aid in that country. His mother, too, has applied her scholarship to policy issues. As vice president of the Visiting Nurse Service of New York in recent years, she directed its center for home-care policy and research.

Another part of Dr. Feldman’s legacy was the primary and secondary education his parents chose for him at the Maimonides School in Brookline, Massachusetts. A Jewish day school for children from kindergarten through grade 12, Maimonides has the philosophy that “the child is the true keeper of our faith.” Accordingly, the school begins teaching its students Hebrew in first grade, and works hard to transmit Jewish tradition and values. “The fact that I had a religious background in Judaism was pretty positive for me, relative to Islam,” he reflects. “Their histories are so closely linked.” Knowledge of one Abrahamic faith led to his respect for, and scholarly interest in, another.

By 15, he’d decided to add Arabic to his language skills, and attended summer school at Harvard University to do so. He’d traveled in Israel during his thirteenth year, and spent time there during his sixteenth summer as well. “The Middle East was always a factor in our family,” he says. “I was very lucky,” he continues, “to have the opportunities I had, especially in languages.”

In his last year at Maimonides in 1988 he was named a United States Presidential Scholar, one of the nation’s highest honors for high school students. The award is based on SAT/ACT scores and other academic achievements as well as personal qualities, leadership and service activities. Young honorees from all over the nation, numbering approximately

150 annually, meet with government officials and receive a medallion at a ceremony sponsored by the White House. For young Noah, it was one of many academic accolades to come.

At Harvard University he got off to a swift start, winning the Jacob Wendell Prize for being the most promising freshman scholar. By junior year he'd been elected to Phi Beta Kappa and was also named a Harry S. Truman Scholar. This award from the Truman Foundation provides graduate school scholarships and recognizes college juniors with exceptional leadership potential who are committed to career fields including government, education and public service. "Noah's selection as a Truman Scholar in 1990 was an investment that has paid great dividends for the public good," says Frederick G. Slabach, the foundation's executive secretary. "His work in government and academia further President Truman's vision that 'free and inquiring minds, with unlimited access to the sources of knowledge, can be the architects of a peaceful and prosperous world.'"

In 1992 Noah Feldman graduated *summa cum laude* from Harvard with a bachelor's degree in Near Eastern Languages and Civilizations, a concentration that mirrored his youthful interests in Arabic, Hebrew and the Middle East. He won the Sophia Freund Prize for highest GPA in the graduating class, and was named a Rhodes Scholar. Next stop, Oxford University.

But first, a summer that he'd never forget. "I was 22 and it was my first government job," Dr. Feldman recalls. "I wanted to add real-world, on-the-ground experiences to being a scholar." He got a State Department job as a political/economic intern at the Consulate General's office in Jerusalem, where he did spot and analytical reporting on Palestinian affairs and the peace process. His boss, Molly Williamson, spoke Arabic and Hebrew, as he did, and she impressed young Noah with her success at opening up channels of communication with Palestinians in the West Bank. Of his duties that summer, he says, "I had the opportunity to travel all over the West Bank. It was an extraordinary experience, seeing things I could never have seen on my own."

He followed that peak experience with still another as a Rhodes Scholar pursuing Oriental Studies at Christ Church, Oxford University. Dr. Feldman credits Oxford with deepening his thinking during his two years there. "I was given tremendous freedom to do my own scholarly research," he recalls. His dissertation, *Reading the Nichomachean Ethics with Averroes*, explored the work of an Islamic religious philosopher of the 12<sup>th</sup> century whose interpretation of Aristotelian ethics influenced both the Islamic world and Europe for centuries afterward. When Dr. Feldman left Oxford in 1994 with a D. Phil. degree in Islamic political thought, he took with him the conviction that Averroes' ethical grounding, as well

as other religious and cultural traditions important in Islamic history, continue to influence people in the Middle East. “I believe in deep history,” Dr. Feldman says, “the idea that things that happened centuries ago still have deep consequences today.”

After Oxford, Dr. Feldman found himself at decision point. “Should I get a job in Islamic studies, or pick a path that would lead to academia and political affairs? I went with the latter,” he says, “because although I wanted to be an academic, I also wanted a set of skills that would allow me to get involved in government.” That decision led him to go to Yale Law School. He was the book reviews editor, and Olin Fellow in Law & Economics, before receiving his J.D. degree from Yale in 1997.

As a young lawyer Dr. Feldman clerked for Justice David Souter of the Supreme Court between 1998 and 1999. Then, following that distinction, he was chosen as a junior fellow of the prestigious Society of Fellows at Harvard University. The purpose of the Society is to give men and women at an early stage of their scholarly careers a chance to pursue studies in a department of their choice, free from formal requirements. Between 1999 and 2002, Dr. Feldman used his Harvard fellowship to conduct research on legal theory and history.

A year later, in 2003, Dr. Feldman was asked to serve as constitutional advisor to the Coalition Provisional Authority in Iraq, and subsequently advised members of the Iraqi Governing Council on the drafting of the nation’s interim constitution. He was only 33. “It was a once-in-a-lifetime chance to take my academic interests and see how those ideas met up with real-world issues,” Dr. Feldman enthuses. He came away from this life-altering assignment with the opinion that “constitutional and Islamic studies have a lot to learn from Iraq.” And as for himself, Dr. Feldman says he learned much from his work there as well. “It made me a different kind of academic. I now know more about how academic ideas work out in public policy.”

Dr. Feldman says it was satisfying to witness the emergence of an Iraqi constitution that was both democratic and Islamic, as well as widely accepted by the population. Also impressive, he notes, was the fact that its framing was accomplished at a time in Iraq’s history when so many other things in the country had gone awry. Being one of the framers of such a worthwhile effort helped Dr. Feldman recognize how much he enjoyed being actively involved in policymaking and then discussing and explaining what he’d learned. “In government,” he says, “you’re forced to make hundreds of decisions and you’re not always able to sit back and reflect on them—as you can in academia.”

Following his experience in Iraq, academia offered Dr. Feldman some of its choicest opportunities. He joined the faculty of New York University School of Law in 2001 and

was a visiting professor at both the Yale and Harvard law schools during the 2004-05 academic year. He subsequently joined the Harvard Law Faculty in 2006 and became its Bemis Professor of International Law in 2007.

“Noah Feldman is one of the stars of his generation,” Elena Kagan, then dean of Harvard Law School and now Solicitor General of the United States, said at the time of his appointment. “He is a brilliant thinker and writer who has produced a remarkable body of work while still early in his career. From his on-the-ground knowledge of lawmaking in Iraq to his historical research on religious freedom in the United States, his range is as wide as any in the legal academy. He will add depth to our already great constitutional law faculty, and enhance the richness and dynamism of the Harvard Law community in innumerable ways.”

Dr. Feldman’s scholarly focus on complex and controversial topics has enriched the Harvard community as well as the public discourse. “I never undertake a project unless I think it can be *transformative*,” he says. And certainly that has been true of his writing, both scholarly and popular. Throughout law school and clerking he had been thinking and writing about constitutional issues. And after the events of 9/11 he decided to collect his thoughts in a book on democracy in the Islamic world. The result was *After Jihad: America and the Struggle for Islamic Democracy* (Farrar, Straus & Giroux, 2003). In his review, Harold Hongju Koh, professor of international law at Yale Law School, praised *After Jihad* for being rich in political history, cultural analysis, religious understanding and comparative law. Dr. Koh added that Dr. Feldman’s was the first book he had read since September 11<sup>th</sup> that “gives me hope that there may be light at the end of the war against terrorism.”

Dr. Feldman’s second book, *What We Owe Iraq: War and the Ethics of Nation Building* (Princeton University Press, 2004), included his memories of being an advisor in Baghdad. Fareed Zakaria, editor of *Newsweek International*, said the book “illuminates America’s mission in Iraq, and much more.” Kenneth Pollack, director of research for the Brookings Institution’s Saban Center for Middle East Policy, described it as timely and thought-provoking and said Dr. Feldman “elevates the debate on this issue above the platitudes of the politicians.” And in *The New York Times Book Review*, Robert Kagan of the Carnegie Endowment for International Peace described the book as “powerful and important.”

In his third book, Dr. Feldman shifted his focus to the home front, analyzing America’s battle over law and religious values in *Divided by God: America’s Church-State Problem and What We Should Do About It* (Farrar, Straus & Giroux, 2005). A review in *The New Yorker* called the book “an agile account of church-state relations, from the creation of the First Amendment to the 2003 Supreme Court ruling against a public display of the Ten

Commandments.” The book was also welcomed by *The Washington Post*’s reviewer, E. J. Dionne, who described the book as “indispensable” and said, “In an arena so contested and contentious, it’s a blessing to have an honest voice stating uncomfortable truths....”

Dr. Feldman’s fourth book and the one he wrote as a Carnegie Scholar, *The Fall and Rise of the Islamic State*, has likewise won attention and acclaim—including being named one of *The Economist*’s best books of the year—for its analysis of uncomfortable truths about shari’a, the law of the traditional Islamic state. The very term shari’a has become radioactive for the purposes of public discussion, he observes. Yet the reality of shari’a is much more nuanced and considerably more complicated.

A century ago, forward-looking Muslims thought of shari’a as “outdated, in need of reform or maybe abandonment,” Dr. Feldman explains. Yet today 66 percent of Egyptians, 60 percent of Pakistanis and 54 percent of Jordanians say that shari’a should be the lone source of legislation in their countries. Islamist political parties make the adoption of shari’a the most prominent plank in their political platforms. Indeed, the message of shari’a resonates so well that Islamists tend to win almost as many seats as their governments allow them to vie for. The Islamist movement is the fastest growing in the Muslim world, Dr. Feldman reports, and “shari’a is its calling card.”

Sharia’s comeback in the Middle East understandably alarms Westerners, sometimes for good reason. As Dr. Feldman himself acknowledges, some of shari’a’s rules, such as those that treat men and women unequally, are old-fashioned and harsh. But as his breakthrough book explains, even many Muslim women flock to the safe harbor of shari’a. The reason: for believing Muslims of both genders, shari’a connotes a connection to the divine, a set of unchanging beliefs and principles that order life in accordance with God’s will, Dr. Feldman writes. And for oppressed people in the Middle East, those unchanging beliefs and principles can loom as lighthouses in the storm. “For many Muslims today, living in corrupt autocracies, the call for shari’a is not a call for sexism, obscurantism or savage punishment,” he explains. What shari’a offers them instead, Dr. Feldman makes clear, is “an Islamic version of what the West considers its most prized principle of political justice—the rule of law.”

For the cool-headed logic he brought to such explosive subject matter, Dr. Feldman has been much praised. Leslie H. Gelb, president emeritus of the Council on Foreign Relations, has called Dr. Feldman “just the kind of scholar who can work through the tensions between theology and power.” The Association of American Publishers named the book a 2008 Prose Award winner in the Government & Policy category. *The New York Times Magazine* published a much-discussed excerpt, entitled “Why Shariha?” And that maga-

zine's editor, Gerald Marzaroti, recommended the book highly to a gathering of New York journalists when he moderated a press briefing with Dr. Feldman on March 19, 2008, at the Council on Foreign Relations.

*The Fall and Rise of the Islamic State* drew other responses as well. Dr. Feldman's scholarly work has at times turned him into something of a lightning rod, particularly regarding the subject of shari'a. At the Council on Foreign Relations press briefing, for example, he was accused by a reporter of advocating for the Islamic rule of law, including its treatment of women. Dr. Feldman's response: "Nowhere in the book am I saying that I, Noah Feldman, am advocating for shari'a. What I'm doing is talking about a social movement—the most powerful and effective social movement anywhere in the Arab-speaking world and arguably in the whole of the Muslim world now. I'm trying to explain where it's coming from in as fair-minded a way as I can, so that we can ask the question, 'What should secular people in the Arab or Muslim world, or people in the West, do about it?'"

One of the many illuminating things about Dr. Feldman's work for Carnegie Corporation is that it challenges Westerners to get past their misconceptions and myths regarding the Islamic rule of law—and this nation's legal system as well. "The extremes of our own legal system—like life sentences for relatively minor drug crimes, in some cases—are routinely ignored," Dr. Feldman has written. "It sometimes seems as if we need shari'a as Westerners have long needed Islam: as a canvas on which to project our ideas of the horrible, and as a foil to make us look good."

With such provocative and compelling observations, it's no wonder that Dr. Feldman holds sway as a public scholar in many spheres. He is a contributing writer for *The New York Times Magazine*, where the publication of his piece on Mitt Romney's Mormonism, and its implications for Romney's electability, stirred great interest during the last presidential campaign. He lectures at the Council on Foreign Relations, where he is an adjunct senior fellow. He is a faculty director of New York University School of Law's Center on Law and Security, which is committed to promoting an informed understanding of the legal and security issues defining the post 9/11 era. And he is a frequent media commentator, interviewed by Charlie Rose, Stephen Colbert and others.

When it comes to public scholarship, Dr. Feldman says he decided a long time ago to extend his reach beyond the scholarly realm. "Only ten people may read one of my academic books carefully," he says lightly. "But TV watchers and *New York Times* readers—those are important audiences, too." In keeping with the encouragement that Carnegie Corporation routinely gives its scholars to go public with their findings, he says, "I am grateful



to be able to write a serious book and then go on Stephen Colbert's show to talk about it."

Dr. Feldman makes a point of saying that he became a Carnegie Scholar at a crucial time in his career, just two scant years after being granted tenure as a law professor. "Carnegie Corporation's help," he declares, "has been hugely significant to me." Dr. Feldman urges other philanthropies to follow the Corporation's lead and support the scholarly work of not only big names or dominant figures in academia, but rising stars as well. "This will be one of the legacies of Carnegie Corporation," Dr. Feldman predicts, "to look back 20 years later at the people they helped on their way up."