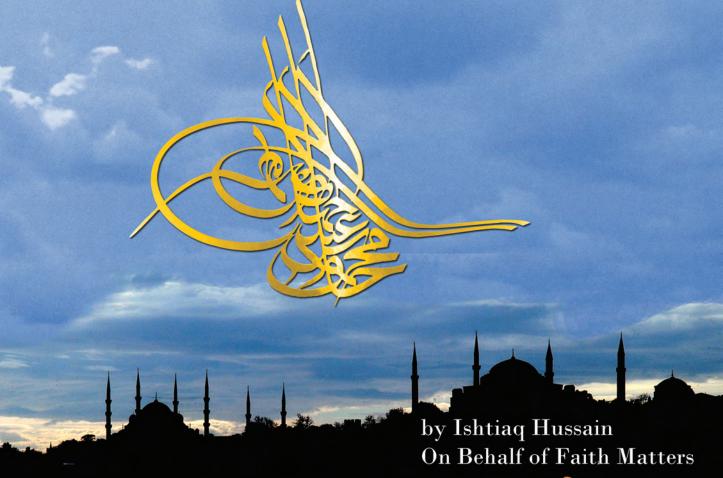# THE TANZIMAT: SECULAR REFORMS IN THE OTTOMAN EMPIRE

A brief look at the adoption of Secular Laws in the Ottoman Empire with a particular focus on the Tanzimat reforms (1839-1876)

by Ishtiaq Hussain
On Behalf of Faith Matters

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The Tanzimat:

Secular reforms in the Ottoman Empire

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Contents

Foreword

Faith Matters is launching this paper to offer a brief insight into the secular reforms of the Ottoman Empire, in order to analyse and debunk claims by extreme groups such as Al Qaeda, who portray it historically as an Islamic Caliphate, strictly governed by Shariah Law. The Ottoman Empire is often presented by such groups as a model political system upon which to re-build a global Caliphate. Osama bin Laden marked the decline of the Empire as the fall of Islam - that the Islamic world "has been tasting this humiliation and this degradation for more than 80 years" and that "the righteous *Khilafah* will return with the permission of Allah". Through the implementation of an Islamic legal and political system, extreme groups who mis-use the Islamic faith, call for the rejection of liberal values and of the current political and societal structures in place. We believe that the very systems that such groups seek to overhall do not fundamentally clash with Islam.

The report authored by Hussain who has long studied such ideologies, offers a new challenge to Islamist claims, arguing that the Ottoman Empire bares little resemblance to the model proposed by such groups. In focusing on the period known as the Tanzimat Reforms (1839-1876), Hussain shows that the Ottomans were in fact attempting to secularise their laws and state institutions rather than integrating narrowly interpreted religious laws into the State's legal framework.

These are some of the key findings in the report, which show that:

- Homosexuality was decriminalized
- Ottoman society in general moved away from punishments such as stoning
- The death penalty for Apostasy was not implemented

Islamists often bypass these facts and use a warped interpretation of history in order to weave their own narrative into mainstream debate. They project their own picture of a 'perfect' Ottoman society, living under a deeply rigid interpretation of Shariah Law in order to argue for the building of a modern day Islamic Caliphate. Those who spin this historical account help to prop up the ideological narrative that such extremist groups use as their basis. The attacks of 9/11 were even marked by Bin Laden as "a great step towards the unity of Muslims and establishing the righteous Caliphate". Until now, their account has been met with little intellectual resistance.

This important paper is the first of its kind to expose and dismantle the Islamist historical account of the Ottoman Empire. By debunking one of the fundamental layers of the Islamist narrative, this paper provides an opportunity for debate and discussion within the public sphere. It also supports those civil society organisations and policy makers who defend the liberal democratic values that underpin communities in Britain and also provides another tool for Muslims to counter the small yet vocal groups who espouse such a warped interpretation of the Ottoman Empire and the Khilafah. *We also hope that it counters those who undermine the history of majority Muslim countries as places where pluralism has been very much alive and thriving.*

Fiyaz Mughal OBE FCMI,
Founder and Director – Faith Matters

Preface

Islamists often present the Ottoman Empire as the most recent historical precedent of their dystopian vision; according to them, it was the perfect Islamic society with a model political system. They also claim that the empire strictly enforced and adhered to a single interpretation of Shariah (Islamic law/code of conduct) across its lands for over 600 years, from 1299 until its demise in 1924. According to this narrative, the success of the empire was largely linked to its adherence to Islamic law. This assertion is then used to support the general Islamist vision within which the establishment of an Ottoman-style empire, in the form of a Caliphate, or 'Khalifah', is presented as being viable, achievable and much needed.

This line of argument has become a fundamental part of the Islamist narrative and is rarely challenged in any meaningful way. This paper aims to refute this misleading historical narrative by showing that, rather than implementing Shariah, the Ottomans were actually attempting to secularise their laws and state institutions. Secular reforms in the Ottoman Empire can be traced back to the 17th century. However, this paper focuses on the period of reformation better known as the Tanzimat (1839-1876). During this period, as will be demonstrated, customary and religious laws were either abolished or repealed in favour of secular European ones. This was done on the orders of the Sultan/Caliph himself and with the approval of the religious authorities. Also during this period, the Ottomans attempted to integrate non-Muslim communities and afford those communities equal rights and privileges.

Understanding these reforms is important in the context of today's political climate. Islamist activists of various stripes seek to resist reform and modernisation in the political sense by employing distorted historical facts to further their restrictive ideological goals. I believe that an objective analysis of the Tanzimat period can illustrate how the Ottoman Empire was far from being the ideological Caliphate that Islamist groups purport it to be. Rather, it was a pragmatic military empire doing whatever it needed in order to survive. The implication is that the Islamist political system has no recent historical precedent to offer Islamist groups.

I would like to thank Prof. Muhammad Bukari of *Fatih University* (Istanbul) for taking his valuable time to proof read this paper.

Ishtiaq Hussain

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1: Introduction

The Ottoman Empire was one of the longest lasting empires in history. One of the reasons for its longevity was, to some degree, that it tolerated the existence of multiple faith communities. As such, ten million Turks were able to rule over 250 million people on three continents.[1] The Ottomans ruled their subjects through the Millet (communities) structure; each community had its own autonomous courts and could legislate according to its own religious laws. They also appreciated religious diversity. When the Sephardic Jews were expelled from Spain during the inquisition in 1492, the eighth Ottoman Sultan Bayezid II (1447-1512) welcomed them to his dominions[2] and granted them Ottoman citizenship.

During the 16th century, the Ottoman Empire was at its peak as a world super power, but by the mid-18th Century it had considerably weakened. It suffered increasing losses on the battlefield and its territories began to shrink. Internal and external revolts became commonplace and the empire's collapse seemed imminent. These realities pushed reformist Sultans and influential thinkers to look for new solutions to the empire's problems.

The first Sultan to recognise the empire's serious decline was Selim III (1789-1807). After being proclaimed Emperor, he began a programme of reforms along European lines. He started by initiating changes in education, legal and military systems. These reforms were not welcomed by the Janissaries (Ottoman soldiers) who, through the terror of Europe, had now become ineffective on the battlefield. When Selim began developing an infantry force known as the Nizam-i Cedit (New Order) 'it aroused bitter opposition among the Janissaries who saw this new army as a threat to their existence'.[3]

The Janissaries eventually declared the European-inspired reforms to be bidah[4] and with the backing of the Shaykh ul Islam (grand scholar of the Ottoman Empire), they revolted. They succeeded in deposing (and later murdering) Selim and replacing him with his brother Mustafa (1807-08). A year later, after a bloody struggle, Mustafa was removed by supporters of Selim and replaced by his nephew Mahmud II (1808-39). Mahmud, like his uncle Selim, was determined to modernise the empire by adopting European laws over the traditional Ottoman ones (Kanun-i Osmani), which at the time combined religious, customary and secular law through imperial decrees. During this period, European states had also started pressuring the Ottomans to give their non-Muslim subjects equal legal status.

The modernising secular reforms were carried out mainly through imperial decrees (firmans), better known as the Tanzimat (reorganisation). However, the reforms were not without opposition, in particular the Kuleli incident in 1860 (a revolt and an assassination

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[1] M Hakan Yavuz and John L Esposito, Turkish Islam and the Secular State, (New York: Syracuse University Press, First Edition, 2003), p64

[2] Richard Davey, The Sultan and his Subjects (London: Chatto & Windus, First Edition, 1907), p395

[3] John Freely, Inside the Seraglio: Private Lives of the Sultans in Istanbul (New York: Penguin, 2000), p226

[4] A bidah is deemed to be an act that is contrary to Islamic law by literalists (also see glossary of terms).

attempt on the Sultan's life[5]).   Nevertheless, the Ottomans continued their reforms undeterred and with mixed success, gaining momentum under the reign of Mahmud II.

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[5] Alpay Kabacali, Abdulhamid: In Light of Objective History (Istanbul: Creative Publishing, 2004), p13.

2: The Gulhane Decree (Hatt-i Sharif) 1839

Sultan Mahmud's first aim in modernising the military was to remove the ineffective Janissaries and replace them with a modern army trained along European lines. He spent the next decade building a new armed force and placing his nominees in key positions of power amongst the Janissaries:

> 'By May 1826 Mahmud was confident that most senior officers were sympathetic to reform, and at the end of the month he required the corps to accept a European code of drill, European uniforms and training in the use of rifles'[6].

As expected, the Janissaries refused to obey and revolted. The Sultan's new army, equipped with modern rifles, gunned down the Janissaries. The Janissaries were completely destroyed, and by Saturday 18th June 1826 'the Janissaries corps was finally abolished'[7].

After this event, the Ottoman Army and state officials all wore European style uniforms and progress was made in modernising military, navy and state laws. Sultan Mahmud did not live to see all his reforms implemented, as he died in 1839, but his son Sultan Abdul Majid, who succeeded him, continued with them at a greater pace. Shortly after Abdul Majid's succession, on 3rd November 1839, the 'Gulhane Decree' was proclaimed.

The Gulhane decree (Hatt-i Sharif) promised to:

> Protect the lives and properties of its subjects;
>
> Insert a new code of Justice asserting equal status of Muslims, Jews and
>
> Christians before the law;
>
> Institute a regular system of levying taxes;
>
> Develop a fair method of conscripting subjects for service in a
>
> modernised army and navy.[8]

The Gulhane decree, whilst acknowledging Islamic principles, paved the way for the introduction of new laws in the coming years. For example, 'in 1843 a new penal code was introduced, and in 1844, the death penalty for apostasy from Islam was abolished'[9]. In general, Ottoman society had already moved away from punishments such as stoning for adultery:

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[6] Alan Palmer, The Decline and fall of the Ottoman Empire (London: John Murray Publishers Ltd, 1995), p91
[7] Ibid, p92
[8] Ibid, p107
[9] Elie Elhadj, The Islamic Shield: Arab Resistance to Democratic and Religious Reforms (USA: Brown Walker Press Florida, 2007), p49

Throughout Ottoman history only one case of rajm (stoning) was decided and carried out (in 1680). This happened in a period of extreme religious fanaticism, and it encountered such opposition that it was not repeated.[10]

The Gulhane decree was one of the most important documents in Ottoman history, mainly because it initiated a period where the state would endeavour to implement a whole series of modernising reforms (i.e. moving from religious to secular laws).

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[10] Ilber Ortayli, Ottoman Studies (Istanbul: Bilgi University Press, Second Edition, 2007), p164

3: The Imperial Rescript (Hatt-i Humayun) 1856

After the Crimean War, on 18th February 1856, the Imperial Rescript (Hatt-i Humayun) was proclaimed. This was another step in further reforming the existing laws of the Ottoman Empire. This edict was also supported by European states, who felt that the previous proclamation had not gone far enough in providing equal rights to the non-Muslim subjects of the empire. Unlike its predecessor, this edict did not make any reference to Islamic principles and favoured a European inspired penal code:

> The Ottoman Penal Code of 1858 was based on the Napoleonic code of 1810, putting aside Islamic punishments. It established a French-type system of courts, with tribunals of first instance, courts of appeals and a high court of appeals. These were the first distinct hierarchy of a secular court system of the country…This secular criminal code and court system remained in operation till 1923'.[11]

Putting aside the Hadd (Islamic punishments) was not wholly unprecedented for the Ottomans. In fact, the Hadd punishment for stealing had been suspended before by the 2nd Caliph (leader) of Islam Umar ibn al-Khattab, a companion of the Prophet Muhammad (pbuh):

> The decision of `Umar ibn al-Khattab to suspend the hadd penalty (a penalty prescribed by the Qur'an and the Sunnah) of amputating a thief's hand during a time of famine is an example of istihsan (juristic preference). Here the law was suspended as an exceptional measure in an exceptional situation. Istihsan is considered a method of seeking facility and ease in legal injunctions and is in accord with Qur'an 2:185. This suggests that the Companions were not merely literalists. On the contrary, their rulings were often based on their understanding of the spirit and purpose of the Shari`ah.[12]

The Ottoman Sultans considered their decision to set aside the Hadd punishments to be in the best interest of their subjects and a way to meet the challenges they were facing. For example, 'During the Ottoman administration of the Arabian Peninsula, the Hadd punishments were not applied'[13]. It was only after Arabia became independent, and was ruled by the Saudi Royal family, that the Hadd punishments put into force.

The duty of providing legal edicts all across the Ottoman Empire fell to the Shaykh ul Islam; a system which had existed for over 500 years. The putting aside of Hadd punishments for the benefit and in the interest of the people (Maslaha) was accepted by the Shaykh ul Islam as being in accordance with Islamic theological reasoning. Sultan Mahmud and Abdul Majid's reforms were assisted by two prominent Shaykh ul Islams of the empire: Seyyid

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[11] Dr. Ihsan Yilmaz, Muslim laws, Politics and Society in Modern Nation States (UK: Ashgate, 2005),p90
[12] Nadirsyah Hosen 'In Search of Islamic Constitutionalism', American Journal of Islamic Social Sciences, Volume 21, No 2, 2004, p23
[13] Mohammad S. Wl-awa, Punishment in Islamic Law: A Comparative Study (USA: American Trust Publications, 1993), p31

Wahab Effendi and Mustafa Asim.[14]

The Imperial Rescript (Hatt-i Humayun) also elevated the role of non-Muslims from Dhimmi[15] status by abolishing the Jizya (head tax paid by non-Muslim subjects of the Empire):

> The bedel-i askeri essentially replaced the jizya (head tax) traditionally paid by non-Muslims, which was abolished with the 1856 Hatt-i Hümayun declaration that all subjects of the Ottoman Empire were equal and therefore obligated to serve in the military.[16]

In the Tanzimat period, the Ottomans also adopted: '...the Napoleonic Trade Laws in 1850, the French Penal Code in 1858, the Property Law also in 1858 and the Maritime Trade Law in 1864.'[17] Homosexuality was decriminalised in 1858.[18] Although there were still Shariah courts in the empire, these were not the only legal institutions of the period:

> Sharia courts had primary jurisdiction over urban Muslims, rural tribes followed customary rules and procedures (urf), and Milliya courts were regulated by and for the various sects of Christians and Jews. Hence Sharia courts were by no means the only form of law and administration. Indeed the ruler had his own body of administration law (Qanun) that did not draw authority from the Sharia.[19]

The 19th century saw the establishment of secular Nizamye[20] courts across the empire. These courts were created by the Ottoman Sultans to apply the new secular laws. Attempts to codify Shariah were also made in the late nineteenth century. This resulted in the 'Mejelle', codified law based on Hanafi fiqh.[21] However, the Mejelle covered only a small part of the Shari'a law - mainly contracts, hire, surety, obligations and trust, agencies as well as testimony and evidence: that is mainly economic and procedural matters. It did not cover family law, where traditional Shari'a was dominant nor criminal law, which was already codified on a European-inspired basis.[22]

The Ottoman Empire was adapting to new realities and the Tanzimat reforms were a direct manifestation of this change. Another significant point to mention here is that the founder of the Bahai faith, 'Baha'u'llah' (1817-1892), claimed to be a new messenger of God. He also claimed that the Qur'an and teachings of the Prophet Muhammad (pbuh) were no longer applicable. Despite these claims, Sultan Abdul Hamid II (1876-1909) did not have Baha'u'llah executed on charges of apostasy, but had him imprisoned instead. This incident

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[14] Nadine Sultana, The Legacy of Sultan Abdulhamid II (USA: Sultana Publishing, First Edition, 1999), p58

[15] A non-Muslim subject of a Muslim state (also see glossary of terms).

[16] Roderic H. Davison Reform in the Ottoman Empire 1856 - 1876 (Princeton New Jersey: Princeton University Press, 1963) p116

[17] Hans-Lucas Kaiser and Walter Stoffel, Revolution of Islamic Law. Eighty years of the Swiss Civil Code in Turkey (Berlin: Tagungsbericht University of Fribourg, 2006), p1

[18] Legal Recognition of Same-sex Partnerships: A Study of National, European and International Law, p438

[19] Talal Asad, Formation of the Secular: Christianity, Islam, Modernity (Stanford University Press, 2003), p210

[20] Courts organised in 1869 to decide cases under new secular European laws the empire had adopted.

[21] Hanafi is a school of thought in Islamic jurisprudence (also see glossary of terms)

[22] Knut S. Vikor, Between God and the Sultan: a history of Islamic law (UK: C. Hurst & Co Ltd, 2005), p230

goes to show that the death sentence for apostasy was not only abolished in theory but in practice as well.

4: The Tanzimat Legacy

The Tanzimat reforms accelerated the process of secularisation as intended by Sultan Mahmud:

> …the most significant aspect of the innovations initiated by Mahmud II was the emergence of an Ottoman state based on secular aspects of sovereignty as contrasted with the medieval concept of an Islamic empire. The real beginning of modernisation and secularisation was in this change.[23]

Despite the mixed success, the Tanzimat reforms were successful in bringing about equality for all citizens, especially non-Muslims who had previously only been tolerated as dhimmis. They also led to the creation of a new identity known as *Ottomanism*[24], which replaced the millet system. *Ottomanism* technically meant that all citizens of the empire were equal in the eyes of the law, regardless of faith, however, in reality old prejudices remained (the Ottoman Empire's crimes against the Armenians are well documented).

The Ottoman Sultans, from the late 18th century onwards, were held back from initiating further reforms because they believed their subjects were not ready for them. An example of this is in the late introduction of the printing press to the Ottoman Empire. The printing press was invented in 1450 and was transferred to the Balkan domains of the Ottoman Empire by Jewish migrants from Spain as early as 1493. Although it found its way to Ottoman Greece in 1627, it was not permitted in Anatolia until 1727. In 1742, the Ottomans banned the printing press, and although it reappeared in 1784, printing in Arabic was forbidden altogether - 'The printing press, as may be imagined was resisted by the priesthood...It was pronounced an innovation of Satan, sure to bring every sort of heresy and infidelity in its train.'[25]

It was not until Napoleon's invasion of Egypt in 1798 that moveable type printing was available in the Arabic-speaking regions of the empire. This fear of the printing press meant that the Ottoman Empire fell at least 200 years behind other European states in most fields of intellectual thought. Radical changes were needed in order to bring the empire up to date with the rest of the world and the Tanzimat reforms went some way towards achieving that goal.

Although the Tanzimat reforms never quite produced the results the later Sultans had hoped for, they did improve various aspects of the empire such as the education system and the status of non-Muslims. It could be argued that, had the empire been around today, it would have had a very similar political structure to modern day Turkey. After all, it was only because of the reforms that the Turkish Republic was able to emerge from the ashes of the Ottoman Empire and resist being colonised by European powers.

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[23] M Hakan Yavuz and John L. Esposito, Turkish Islam and the Secular State (New York: Syracuse University Press First Edition, 2003), p.244.
[24] Stanford J. Shaw, History of the Ottoman Empire and Modern Turkey, 2 vols. (vol. 2 co-authored with Ezel Kural Shaw, London: Cambridge University Press, 1976-77), p.36.
[25] Richard Davey, The Sultan and his Subjects (London: Chatto & Windus, First Edition, 1907), p.154.

5: Conclusion

By constantly citing 1924 as the last time that a Caliphate system existed, Islamists seek to convince the world that their ideal is an achievable and workable political model exemplified within recent history (the last one hundred years). Writing their own history of the Caliphate is, therefore, a tactical move on their part and a vital component in their grand narrative. The political model that modern day Islamists are seeking to introduce bears little resemblance to the past, despite using language such as 'Caliph' (for political expediency) to invoke nostalgic imagery of Muslim Empires of the past. In fact, the Ottoman Empire did not enforce a single interpretation of Shariah on their citizens and differing political systems were implemented across the various Muslim Empires.

Therefore, the modern day Islamist vision has no historical precedent and is more inspired by European political constructs than Islam. It is rooted in a totalitarian vision of society, where the state is seen as a tool for social engineering, capable of shaping obedient citizens at the mercy of theocratic dictators. It is devoid of the essence of Islam, which is to seek social justice through a fair and flexible framework.

This paper aims to fundamentally challenge, balance and re-write a historical narrative dominated by extremist organisations such as Al-Muhajiroun and Hizb-u-Tahrir, who promote a 'Khilafah' concept state, intent on a literalist interpretation of religious texts.

Whilst Hizb-u-Tahrir does not espouse violence in communities, their pamphlets and literature regularly promote a narrow historical view of the Ottoman Empire by harping back to a misleading narrative on the Khilafah. In so doing, they ignore the pragmatism that formed the basis of the Tanzimat period of the Ottoman Empire. Such pragmatism that developed in this period, fused with the strong Islamic roots of the Ottomans, to produce an outwards-looking country that actively engaged with its neighbours and tried to secure its future by implementing equality laws and the inclusion of minorities. It was hoped that this would bind minorities to the empire while complying with the Islamic principles of social inclusion for the *'People of the Book'* (meaning Christians and Jews).

Therefore, this research shines a light on a fundamental pillar of the narrative that radical groups promote within towns and cities in the United Kingdom. Their literature portrays the Ottoman Empire as a shining example of an Islamic state, due to its apparent adherence to fundamental scriptural edicts. However, this view is formed through a narrow ideological lense, which ignores the range of reliable historical sources that express more accurately the the values and practices of the Tanzimat period. Through this contextualised and rigorous enquiry, the Tanzimat reforms can now be understood to have formed a fundamental part of Ottoman history rather than a simple deviation or aberration. Furthermore, such radical groups ignore the very flexibility of the Islamic religious framework that was so integral to the survival of the Empire during this period. They fail to accurately reflect the religious narratives and theological discussions that have been present throughout Islamic history and that fuse spirituality and belief with the realities of living in changing political and social environments.

It is hoped that this paper can provide a focal point for discussions on the Tanzimat and the manner in which Ottoman history is used by certain groups to promote an exclusionist and restrictive ideological viewpoint. History demonstrates that groups viewing the past through such a narrow lense are in danger of not only reducing their life chances, but also of corroding communities from within. Islam and Muslim communities deserve better and the influence of these historical misreadings and hence misunderstandings can be countered by considering a range of differing narratives. Without these varied perspectives, history can be manipulated into a dangerous tool for ulterior polical and radical Islamist motives.

Glossary of terms

Bidah - An act that is deemed to be contrary to Islamic law by literalists

Caliphate/Khilafah – An expansionist Muslim state/empire.

Dhimmi – A non-Muslim subject of a Muslim state

Fatwa – Islamic ruling, usually derived from an application of fiqh to a given situation.

Fiqh – Refers to understanding the practical knowledge of Shari'ah.

Hadd – Literally means limit or restriction. Usually refers to limits (Hudud) placed by God on man; terminologically refers to medieval interpretations of penalties of the Shari'ah for particular crimes described in the Qur'an: theft, adultery, fornication, and false accusation of adultery. Some have added things like apostasy to this list.

Halal – Permissible (the opposite of Haram)

Hanafi – A school of thought in Islamic jurisprudence.

Haram – That which is forbidden in the Shari'ah

Islamist – A term used to describe those who believe that Islam is primarily a political ideology rather than a faith.

Kafir – Insincere, disbelief in God and denial of truth

Shari'ah – The Muslim religious code of conduct

Shaykh ul Islam – A grand scholar

Ummah – The term refers to the fraternity of believers/religious community.

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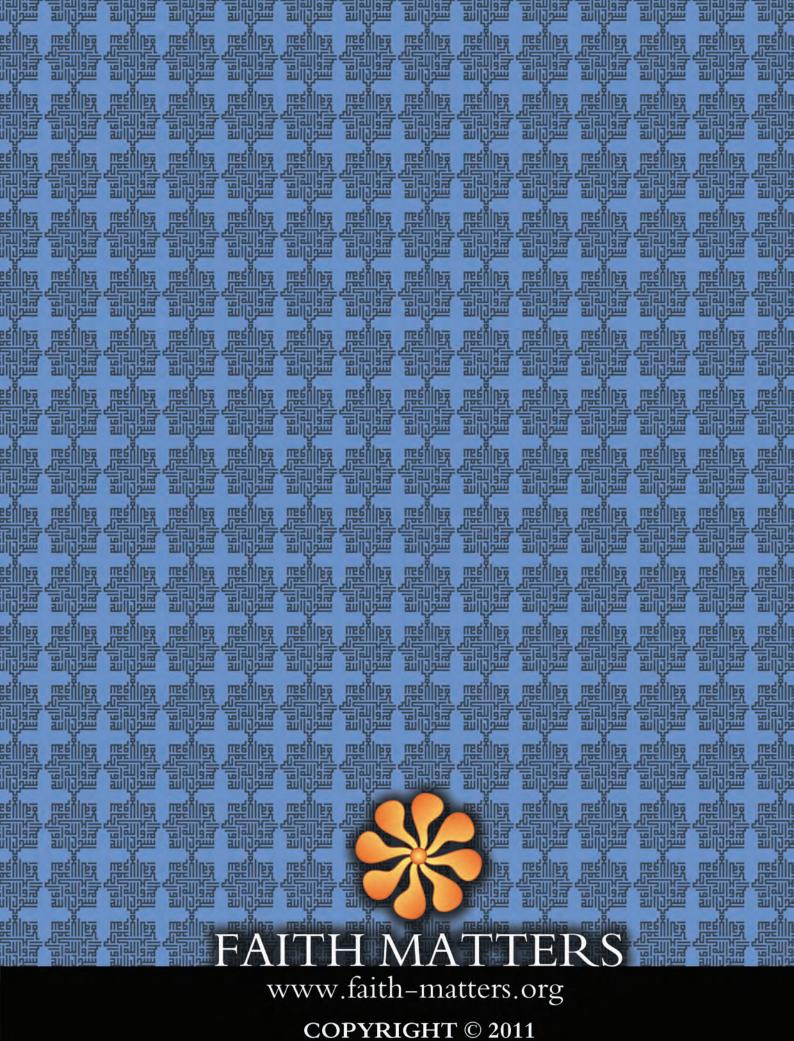
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