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AMERICAN AND MUSLIM PERSPECTIVES ON FREEDOM OF RELIGION

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INTRODUCTION

My aim is to compare the legal and cultural perspectives on the Establishment and Free Exercise Clauses from American and Muslim vantage points. The most important, and at the same time, perhaps, most difficult, thing to do in comparing perspectives on legal issues in two different cultures is to avoid the trap of pretending, in the interests of simplification, that either cultural view is monolithic. This is certainly not true of the American culture, nor is it true of the Muslim culture. This Article studiously attempts to include the nuances of the debate, not only in the interests of accuracy, but because I believe that they highlight a conflict within these cultures that is far more important than the conflict between the cultures that gets most of the attention of academics and virtually all of the attention of the press.

We begin by observing that freedom of religion in America is understood in terms of the two religious freedom protection clauses in the First Amendment to the Constitution: the Free Exercise Clause and the Establishment Clause. The concept of free exercise of religion is well established in Islamic law, having been respected more consistently in the classical Islamic civilization (7 c.–15 c.) than in medieval Europe.[1] The right of tax-paying non-Muslims to freely exercise their religion was established in the Qur'an for "the People of the Book," generally understood to mean followers of previous revelation like Jews and Christians, and usually (but not always) extended to include other religious

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[1] See S.D. GOITEIN, JEWS AND ARABS: THEIR CONTACTS THROUGH THE AGES 72 (Schocken Books 1964) (comparing the absence of economic and labor restrictions against Jews in Islamic countries with the pervasiveness of such restrictions in Medieval Europe). There has arisen a genre of polemical literature disputing the pluralism in Islamic law in which the poll tax on non-Muslims is raised as an objection to the conventional view of Islmaic tolerance. *See* Imad-ad-Dean Ahmad, ISLAM AND DHIMMITUDE: WHEN CIVILIZATIONS COLLIDE, 21 #3 AM. J. ISLAMIC SOC, SCI. 149 (2004) (reviewing BAT Y'OR, ISLAM AND DHIMMITUDE: WHERE CIVILIZATIONS COLLIDE (MIRIASM KOCHAN & DAVID LITTMAN TRANS. 2002)). This objection is unfounded as the poll-tax is in lieu of military service (from which the minorities are usually exempt) and religious minorities are exempt from the religious taxes imposed on Muslims (see Imad-ad-Dean Ahmad, "Islam, Commerce and Business Ethics," IN BUSINESS AND RELIGIONS: A CLASH OF CIVILIZATIONS? Nicholas Capaldi, ed. (Salem, MA: Scrivener, 2005).

groups as well.[2] The right of Muslims to variations in the interpretation of the divine law is reflected in the diversity of Islamic schools of law.[3] In recent decades, however, Western systems (especially America's) have demonstrated a greater tolerance of religious minorities and of diversity within the state-established religion than most Muslim states. At the same time that some are urging Muslims to abandon the state-establishment of religion as a necessary condition of democratic reform, many Americans are challenging the abandonment of religion by the American states.[4] These matters, as well as the urgency of questions concerning the rights of Muslims in America and of non-Muslims in Muslim states, make clear the significance of a comparison of the American and Muslim perspectives on freedom of religion.

We shall compare the legal and cultural perspectives on the Establishment and Free Exercise Clauses from American and Muslim vantage points. In the process we shall explore the following questions:

- Do either or both freedom of religion clauses apply to the states?
- Do either or both clauses reflect a fundamental human right?
- What is the line of separation between the public and private spheres?
- Can a religiously based political system respect both clauses?

I. THE DEBATE IN AMERICA

Relevant to many of the controversies surrounding freedom of religion in the United States is the question of whether the religious freedom clauses apply to the several states as well as to the federal government. Behind this question is the more fundamental question of whether either or both of these clauses enumerate a fundamental human right.

These issues have become clearly manifested since the *Employment Division v. Smith*[5] decision in 1990. In *Smith*, two Native Americans in the State of Oregon lost their jobs at a private drug counseling agency as a result of their use of peyote in their religious practice.[6] Their employer

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2 *See* ABD-AL-RAHMAN AZZAM, THE ETERNAL MESSAGE OF MUHAMMAD, trans. By Caesar E. Farah (New York: Mentor), 53-55 (describing the Prophet Muhammad's tolerance towards Christians and Jews, based upon their shared belief in the unity of God).

3 *See generally* Majid Khadduri, *Nature and Sources of Islamic Law*, 22 GEO. WASH. L. REV. 3 (1953) (discussing some of the prevalent schools of Islamic Law).

4 *See, e.g.*, T.O. Shanavas, *Islam Demands a Secular State*, http://www.freemuslims.org/document.php?id=54 (last visited Apr. 1, 2006) (arguing that the mandates of the Qur'an concerning religious freedom for all religions require a secular state); Alan Keyes, *On the Establishment of Religion: What the Constitution Really Says*, WORLDNETDAILY, Aug. 26, 2003, http://www.wnd.com/news/article.asp?ARTICLE_ID=34270 (arguing that "the First and 10th Amendments reserve the power to address issues of religious establishment to the different states and their people").

5 494 U.S. 872 (1990).

6 *Id.* at 874.

found the use of peyote problematic because Oregon's drug laws prohibiting the use of peyote made no exemptions for religious practice at that time.[7] In addition to losing their jobs, the men were also denied unemployment compensation on the grounds that their dismissal was due to "work-related 'misconduct.'"[8] They sued on the grounds that the Oregon law did not meet the strict scrutiny test protecting First Amendment rights.[9]

It is well established in American law that a law may not infringe on fundamental human rights unless a two-pronged test has been met. First, the infringement must serve a compelling governmental interest. Second, that interest must be met in the least restrictive way possible.[10] The State of Oregon argued that the strict scrutiny test had been met because the "war on drugs" serves a compelling state interest.[11] They lost the case in Oregon and appealed to the U.S. Supreme Court. In a surprise move, a 5–4 majority of the Court held the Oregon law constitutional, finding that the strict scrutiny test was irrelevant, that it was sufficient that the law in question was not intended to violate freedom of religion, and that such violation was an incidental consequence to a law of general applicability.[12]

Although a state would be "prohibiting the free exercise [of religion]"[13] in violation of the First Amendment if it sought to ban the performance of (or abstention from) physical acts solely because of their religious motivation, the Free Exercise Clause does not relieve an individual of the obligation to comply with a law that incidentally forbids (or requires) the performance of an act that his religious belief requires (or forbids). If the law is not specifically directed to religious practice and is otherwise constitutional, as applied to those who engage in the specified act for nonreligious reasons, all individuals must comply.[14] The only decisions in which the Court has held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action are distinguished on the ground that they involve other constitutional protections in addition to the Free Exercise Clause.[15]

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7 Smith v. Employment Div., 721 P.2d 445, 446 (Or. 1986).

8 *Smith*, 494 U.S. at 874.

9 *Id.* at 882–83 (noting that respondents argued that they should be exempted from the prohibition against the use of peyote unless the Court found a compelling governmental interest for this prohibition).

10 *Id.* at 894 (O'Connor, J., concurring) ("[W]e have respected both the First Amendment's express textual mandate and the governmental interest in regulation of conduct by requiring the government to justify any substantial burden on religiously motivated conduct by a compelling state interest and by means narrowly tailored to achieve that interest.").

11 *Id.* at 909–10 (Blackmun, J., dissenting).

12 *Id.* at 893 (O'Connor, J., concurring) ("The Court today, however, interprets the Clause to permit the government to prohibit, without justification, conduct mandated by an individual's religious beliefs, so long as that prohibition is generally applicable.").

13 U.S. CONST. amend. I.

14 *See, e.g.*, Reynolds v. United States, 98 U.S. 145, 167 (1878) ("[W]hen the offence consists of a positive act which is knowingly done, it would be dangerous to hold that the offender might escape punishment because he religiously believed the law which he had broken ought never to have been made.").

15 *See, e.g.*, Wisconsin v. Yoder, 406 U.S. 205, 232–34 (1972) (finding that Wisconsin's compulsory school attendance law, which prohibited Amish plaintiffs from providing home education for their children, impinges on the plaintiffs' free exercise of religion and traditional interests as parents with respect to the upbringing of their children); Cantwell v. Connecticut, 310 U.S. 296, 304–07 (1940)

We see here the Court declining to give to freedom of religion the same protection it would give, for example, to freedom of speech. This ruling virtually invites people concerned about the issue to petition Congress to defend their religious freedoms under the authority of the Fourteenth Amendment. Accordingly, an extremely broad coalition consisting of almost every major religious group in the country, civil libertarians, and organizations dedicated to the separation of church and state, succeeded in obtaining the passage of the Religious Freedom Restoration Act ("RFRA") by the U.S. Congress. This law, which passed unanimously in the House of Representatives and 97–1 in the Senate, reinstituted the "strict scrutiny test."[16]

The constitutionality of RFRA was challenged after RFRA was invoked by a small Catholic church in Boerne, Texas, seeking to protect itself from a zoning regulation that prevented a much-needed church expansion.[17] In a badly fractured decision, the Supreme Court struck down those parts of RFRA that would affect state governments generally, leaving it intact only as it affects federal regulations and policies.[18] The Court essentially restricted the congressional authority under the Fourteenth Amendment (outside the federal arena) to the rectification of deliberate, systematic discrimination against a demonstrably victimized group. The opinions of Justices Antonin Scalia and Sandra Day O'Connor elucidate the sharp divide over whether or not freedom of religion is a fundamental human right.

In her dissent, Justice O'Connor argued that both *Smith* and *Boerne* misinterpreted the Free Exercise Clause.[19] Agreeing with the majority that "Congress lacks the ability independently to define or expand the scope of constitutional rights by statute,"[20] Justice O'Connor insisted that the historical record reveals that the Founding Fathers "likely viewed the Free Exercise Clause as a guarantee that government may not unnecessarily hinder believers from freely practicing their religion, a position consistent with our pre-*Smith* jurisprudence."[21] She noted that "[t]he practice of the Colonies and early States bears out the conclusion that, at the time the Bill of Rights was ratified, it was accepted that government should, when possible, accommodate religious practice."[22] Justice O'Connor justified this accommodation by analogizing freedom of religion to freedom of speech:

> As the historical sources discussed above show, the Free Exercise Clause is properly understood as an affirmative guarantee of the right to participate in religious activities without impermissible governmental interference, even

(finding Connecticut's law requiring Jehovah's witnesses to acquire a solicitation license unconstitutional under the First Amendment's Free Exercise Clause, and the Fourteenth Amendment's concept of liberty).

16 Religious Freedom Restoration Act (RFRA) of 1993, Pub. L. No. 103-141, 1993 U.S.C.C.A.N. (107 Stat.) 1488, *invalidated by* City of Boerne v. Flores, 521 U.S. 507 (1997).

17 *City of Boerne*, 521 U.S. 507.

18 *Id.* at 519.

19 *Id.* at 544 (O'Connor, J., dissenting).

20 *Id.* at 545.

21 *Id.* at 549.

22 *Id.* at 557.

> where a believer's conduct is in tension with a law of general application. Certainly, it is in no way anomalous to accord heightened protection to a right identified in the text of the First Amendment. For example, it has long been the Court's position that freedom of speech—a right enumerated only a few words after the right to free exercise—has special constitutional status. Given the centrality of freedom of speech and religion to the American concept of personal liberty, it is altogether reasonable to conclude that both should be treated with the highest degree of respect.[23]

In rejecting what he terms Justice O'Connor's "extravagant claim,"[24] Justice Scalia argued:

> The issue presented by *Smith* is, quite simply, whether the people, through their elected representatives, or rather this Court, shall control the outcome of those concrete cases. For example, shall it be the determination of this Court, or rather of the people, whether (as the dissent apparently believes) church construction will be exempt from zoning laws? The historical evidence put forward by the dissent does nothing to undermine the conclusion we reached in *Smith*: It shall be the people.[25]

Dismissing the view that freedom of religion is, like freedom of speech, a fundamental human right, Justice Scalia stands by his position in *Smith* that loss of the right to practice one's religion is the price you pay to live in a democracy:

> It may fairly be said that leaving accommodation to the political process will place at a relative disadvantage those religious practices that are not widely engaged in; but that unavoidable consequence of democratic government must be preferred to a system in which each conscience is a law unto itself or in which judges weigh the social importance of all laws against the centrality of all religious beliefs.[26]

When one examines the lineup on the Court in these decisions, one finds the center (e.g., Justices O'Connor and Souter) supporting the Free Exercise Clause against a coalition between a right wing that wants state and local governments to be free to reflect the religious preferences of majority religions and a left wing without sympathy for protection from secular infringement on religiously motivated practices. Religious conservatives who would not want, for example, orthodox Jews to be exempt from proposed anti-abortion laws,[27] have a common cause with secular liberals who do not want, for example, Christian Scientists to be exempt from mandatory medical treatments.

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23 *Id.* at 564–65.

24 *Id.* at 537 (Scalia, J., concurring).

25 *Id.* at 544 (internal citation omitted).

26 Employment Div. v. Smith, 494 U.S. 872, 890 (1990).

27 *See* Judith Shulevitz, *What Do Orthodox Jews Think About Abortion and Why?*, SLATE, Aug. 25, 2000, http://www.slate.com/id/1005956/ (discussing how in the Orthodox Judaic belief system the life of the mother is considered more important than that of a fetus, and so abortion itself is under certain circumstances not considered an absolute moral wrong in the same manner as in other conservative religions); *see also* Daniel Eisenberg, M.D., "Abortion and Halacha," http://www.jewishvirtuallibrary.org/jsource/Judaism/abortion.html (last visited May 4, 2006) (concerning the fact that abortion is mandatory for Jews in certain cases).

An analogous debate exists in the case of the Establishment Clause.[28] If the First Amendment ban on infringement of free exercise only applies to the federal government, then the ban on an established religion only applies to the federal government as well.

II. THE DEBATE IN THE MUSLIM WORLD

Before making the transition to a discussion of religious freedom in the Muslim world, we need to explore the notions of the public and private sphere in the two cultures. In the West, religion is generally considered to be a private matter. This is truer of Europe than of America, and it is truer of America than it is of the Muslim world. Americans consider the religious practices in which people engage inside their churches or within their own homes to be the business of the practitioners. Yet, it is disputed to what degree American law protects privacy. While many view the Supreme Court decision on contraception as evidence of the recognition of a fundamental right of privacy,[29] that understanding is being challenged by no less a figure than Robert Bork. Bork has argued that the courts have recognized no unenumerated right of privacy protected by the Ninth Amendment, but rather some subsidiary privacy rights found in the "shadow" of the enumerated rights in the Constitution.[30]

In Islamic law, the situation is reversed. Religion governs both public and private spheres, but the private sphere is explicitly protected from intrusion by the state.[31] Thus, Muslims are forbidden from drinking alcohol, whether in public or in private, but the Muslim state is denied a means of enforcement in the case of private alcohol consumption.[32] Further, Islamic law explicitly protects the rights of Jews and Christians to

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[28] *See* Stephen G. Gey, *Reconciling the Supreme Court's Four Establishment Clauses*, 8 U. PA. J. CONST. L. (forthcoming 2006) (surveying the debate over the incorporation of the Establishment Clause and concluding that nonincorporation would protect intrastate majority interests at the expense of local minorities); Kent Greenawalt, *Common Sense About Original and Subsequent Understandings of the Religion Clauses*, 8 U. PA. J. CONST. L. (forthcoming 2006) (arguing that the language of the Establishment Clause lends itself to the interpretation that Congress could not prohibit states from establishing a religion).

[29] Griswold v. Connecticut, 381 U.S. 479 (1965) (holding that the Constitution guarantees certain zones of privacy, making restrictions on the sale of contraceptives unconstitutional).

[30] *Uncommon Knowledge: Robert's Rules of Order* (PBS television broadcast, filmed July 16, 2003), *available at* http://www.uncommonknowledge.org/800/811.html (discussing how the Supreme Court's jurisprudence has come to recognize a right of privacy not explicitly written in the Constitution's Bill of Rights).

[31] As we have noted in our comparison of Islamic law with the American Constitution, the right of privacy within one's own home is guaranteed in the *Qur'an* 24:27. And, early in Islamic law the principle was established that people who consumed wine in private could not be prosecuted if the evidence was obtained by violating their right to privacy. YUSUF AL-QARADAWI, THE LAWFUL AND THE PROHIBITED IN ISLAM 315 (1980) (citing the Prophet's belief that those who search out others' faults are hypocritical and "proclaim their beliefs with their tongues while their hearts do not confirm what they say"). "The texts prohibiting spying and searching out people's faults apply equally to the government and to individuals." *Id.* at 316; *see also* Imad-ad-Dean Ahmad, *On the American Constitution from the Perspective of the Qur'an and the Madinah Covenant*, 20 #3–4 AM. J. ISLAMIC SOC. SCI. 105, 105–124 (2003) (analyzing the compatibility of democracy and constitutionalism with Islamic law).

[32] Ahmad, *supra* note 31. at 118.

use wine in their religious ceremonies,[33] while *Smith* and *Boerne* leave the Native Americans at the mercy of the putatively secular state legislatures.

In the case of the free exercise of religion, there is no question that the freedom of religion, at least of the People of the Book, is hardwired into Islamic law.[34] The question is not whether free exercise is part of Islamic law, but what are its limits? Those Muslims who wish to restrict the free exercise of religion for non-Muslims must argue that the free exercise is guaranteed only to People of the Book, and narrow the definition of the People of the Book to only Jews and Christians.

The argument for limiting the scope of free exercise with the broadest appeal among Muslims is the argument for the prohibition of polytheism.[35] The attraction of this argument in a religion in which the founding principle is the unity of God should be self-evident. Yet, it flies in the face of the scriptural fact that the Qur'an forbids coercion against those who are not engaged in hostilities against Islam and Muslims,[36] and of the historical fact that the Prophet Muhammad (peace be upon him) did not drive the polytheists out of Mecca on its conquest, but issued a general amnesty.[37]

A second area of concern involves the overlapping issues of apostasy and blasphemy. A number of Muslim scholars have argued that the prohibition of apostasy is actually a prohibition of treason, not a prohibition on mere conversion, but the opposite view is widely held.[38] The prohibition on blasphemy has been defended by analogy to Western libel laws, but there is absolutely no doubt that it has been used (or abused) as a means of silencing religious (or even political) dissent.[39]

The final area of concern for free exercise in the Islamic law is the same concern that arises in the *Smith* and *Boerne* decisions. As Noah Feldman has put it, "no democracy, however liberal, has ever adopted the pure liberal view that the state must refrain from regulating conduct that does no harm to anyone except the actor."[40] To what degree are laws of general applicability to be imposed on non-Muslims? This issue is a somewhat different dilemma for Muslims in an Islamic state than for Christians in America. Christians are under no religious obligation to impose their views on polygamy, contraception, homosexuality, or drug use even on other Christians, let alone on non-Christians. Muslims, however, are accustomed to the notion of an Islamic state charged to enforce Islamic law

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[33] *Id.* at 110.

[34] *See supra* note 2 and accompanying text for a discussion of "People of the Book."

[35] *See, e.g.* Charles J. Adams, *Kufr*, *in* 2 THE OXFORD ENCYCLOPEDIA OF THE MODERN ISLAMIC WORLD 442 (Oxford, 1995) (discussing various intellectual and political movements to ban such forms of perceived polytheism as veneration of saints, astrology, and, in extreme cases, secular Islamic governments).

[36] *Qur'an* 2:190 ("Fight in the cause of Allah those who fight you, but do not transgress limits; for Allah loveth not transgressors.").

[37] Ahmad, *supra* note 31, at 122 n15.

[38] *See* Magdi Abdelhadi, *What Islam Says on Religious Freedom*, BBC NEWS, http://news.bbc.co.uk/2/hi/south_asia/4850080.stm (last visited Apr. 1, 2006) (questioning those Islamic scholars who endorse capital punishment for apostates when the Qur'an's text supports freedom of belief).

[39] For a discussion of "blasphemous libel" in English law, see Kate Gilchrist, *Does Blasphemy Exist?*, ART MONTHLY (Dec. 1997), *available at* http://www.artslaw.com.au/Publications/Articles/97Blasphemy.asp.

[40] NOAH FELDMAN, AFTER JIHAD: AMERICA AND THE STRUGGLE FOR ISLAMIC DEMOCRACY 60 (2003).

on Muslims. The argument that non-Muslims should be governed by their own laws is clear in Islamic law (in the Qur'an and in the Medina compact as well as the general practice in Muslim history).[41] Thus one can easily argue that an Islamic state must impose a strict scrutiny test before imposing Islamic law on non-Muslims. But how can an Islamic state not impose Muslim law (insofar as it applies to the public sphere) on Muslims? This question, it seems, cannot be separated from the question of establishment of religion, which is precisely where the distinctions between Muslim law and American law are the greatest.

So entrenched is the notion of entanglement of state and religion in Muslim history, that I am aware of no discussion of the possibility of its separation in the pre-modern era. Let me clarify one thing before attempting to tackle this issue. In Islam, there is no entanglement of Church and State because in Islam there is no Church. Most Church-State questions have to do with the desire to separate the religious establishment from the political establishment. Islam, however, has no priesthood and, at least in Sunni Islam, there has never been the kind of religious hierarchy such as that associated with the medieval Catholic Church and the issues raised by its political role in medieval Europe.[42] (The Shi'a hierarchy was not in a position of political authority until the recent Iranian Revolution.[43]) The Muslim religious scholars are in essence legal scholars, and the notion that they should be indifferent to political issues is like saying that law professors should refrain from issuing opinions on legislation.

Because Islam has no priesthood, no "Church" in the Christian sense of the term, the issue for Muslims is not the relationship between Church and State, but between politics and religion. Although it is a new idea to Muslims, I think they (we) can benefit from the American (as opposed to the French[44]) notion of secularism. By this I mean that religion and politics cannot and should not be completely separated, but that there should be no establishment of a state religion. Thus, while citizens in a democratic

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41 Ahmad, *supra* note 31, at 110.

42 *See* IMAD A. AHMAD, SIGNS IN THE HEAVEN: A MUSLIMS ASTRONOMER'S PERSPECTIVE ON RELIGION AND SCIENCE 123-29 (2nd ed., 2006) (comparing the comprehensive political control the medieval Catholic Church exercised over the dissemination of scientific ideas that ran counter to its own theory of the universe with the relatively sporadic interventions of Muslim polities into philosophical debate in the medieval Islamic civilization). *Compare* Michael E. Marmura, *Sunni Islam*, *in* 4 THE OXFORD ENCYCLOPEDIA OF THE MODERN ISLAMIC WORLD 140 (1995) (describing Sunni Islam as "not monolithic," and characterizing Sunni as comprising "a variety of attitudes and outlooks conditioned by historical setting, by locale, and by cultural circumstances") *with* Dennis J. Callahan, *Medieval Church Norms and Fiduciary Duties in Partnership*, 26 CARDOZO L. REV. 215, 221-22 (describing the central cultural, legal, and political role of the Catholic Church in Medieval Europe, and asserting that "[t]hroughout the Middle Ages, the Catholic Church stood at the apex of society as a centralized, hierarchical institution which took upon itself the role of creating, applying and enforcing basic conduct norms for society" (citations omitted)).

43 *See* Hamid Dabashi, *Shi'i Islam*, *in* 4 THE OXFORD ENCYCLOPEDIA OF THE MODERN ISLAMIC WORLD 65-68 (1995) (detailing the events leading to, and impact of, the Iranian Revolution of 1979).

44 French Secularism, or laïcité, differs from the American idea of secularism mainly in its strict idea of church and state separation. In recent years, the French type of secularism has led to the banning of headscarves—typically worn by Muslim girls as a part of their religious observance—in French classrooms. For a discussion of both French secularism and its application to ban religious expression by students, see Steven G. Gey, Address, *Free Will, Religious Liberty, and a Partial Defense of the French Approach to Religious Expression in Public Schools*, 42 HOUS. L. REV. 1 (2005).

government can and should bring their religious sensibilities to their positions on the issues, and thus may subject the state to the ethics of religion, the state itself must maintain an absolute neutrality among religious communities and must not dictate religious practices or beliefs, neither to religious minorities nor to the dominant religious community.

To make room for this novel, and therefore controversial, idea in the Muslim debate, the issue must be framed within the discourse of Islamic jurisprudence, not injected as a foreign element. Separation benefits both religion and state, but is more important to religion. If one looks at societies in which the state has involved itself in matters of religion, one sees that religion has taken the harder hit. "Power tends to corrupt and absolute power corrupts absolutely."[45] An Islamic state can never restrict itself to being the state of "Islam," but becomes the state of a particular interpretation of Islam, putting at risk not only the religious minorities, but the majority as well. It is rulers who must be restrained by religion, and not religion that ought to be imposed (and in the process defined) by the rulers. Consider Saudi Arabia. It was conceived by the agreement between a religious scholar (Muhammad ibn Abdul-Wahab) and a political leader (Muhammad ibn Saud) that the former would recognize the latter's claim to kingship in exchange for the latter's recognition of the former's interpretation of Islam as the only correct one.[46] That Saudi Arabia prohibits the open practice of non-Muslim religions is (given the lack of a non-Muslim citizenry) the least of its problems. Not only religious liberals, but religious reactionaries (such as Usama bin Ladin) despise the Saudi influence in the Muslim world, an influence totally due to its oil money and the power of its American ally.[47]

CONCLUSION

In the classical era of Islamic civilization, a "completely free and unorganized republic of scholars"[48] outside of government defined the religious law. What is remarkable about Islamic history is not that Islamic civilization declined, but that it lasted for so many centuries before it declined. Islamic civilization's success is in large part attributable to the existence of a rule of law that was sufficiently fixed to provide for rational calculation, yet sufficiently flexible to adapt to changing circumstances, with the balance of these factors determined outside the domain of the rulers, who had the greatest incentive and power to distort the balance to serve their own interests. A renaissance of Islam in the modern era will require that it develop independent of the government. That would be best assured by an adoption of the disestablishment principle by Muslims. With

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[45] Letter from Lord Acton to Bishop Mandell Creighton (1887), *reprinted in* 1 LOUISE CREIGHTON, LIFE AND LETTERS OF MANDELL CREIGHTON 372 (1904).

[46] *See* Eleanor Abdella Doumato, *Saudi Arabia*, in 4 OXFORD ENCYCLOPEDIA OF THE MODERN ISLAMIC WORLD 4-5 (Oxford 1995) (describing the genesis of Saudi Arabia).

[47] *See* Angilee Shah, *Wahhabism, bin Ladenism, and the Saudi Arabia Dilemma*, http://www.international.ucla.edu/article.asp?parentid=25057 (last visited May 31, 2005) (analyzing Saudi Arabia's "delicate balance.").

[48] S.D. GOITEIN, JEWS AND ARABS: THEIR CONTACTS THROUGH THE AGES 59 (Schocken Books 1964).

an imminent tide of democratic reform poised over the Muslim world, now is the time for Muslims to fully discuss this issue.

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