



AUGUST 2012

REPORT

ISPU

Sharing Lessons on Religious Freedom: U.S. and Muslim-Majority Countries

Asma T. Uddin, ISPU Fellow



Institute for Social Policy and Understanding



© 2012 Institute for Social Policy and Understanding. All rights reserved.

No part of this publication may be reproduced or transmitted in any form or by any means without permission in writing from the Institute for Social Policy and Understanding. The Institute for Social Policy and Understanding normally does not take institutional positions on public policy issues. The views presented here do not necessarily reflect the views of the institute, its staff, or trustees.



About The Authors



Asma T. Uddin

ISPU Fellow

Asma T. Uddin is a legal fellow at ISPU and the Founder and Editor-in-Chief of altmuslimah.com. She is also a Legal Counsel at The Becket Fund for Religious Liberty, a non-profit, non-partisan, public interest law firm based in Washington, D.C. Prior to joining The Becket Fund, she practiced commercial litigation at Morgan, Lewis & Bockius in Philadelphia and corporate real estate at Greenberg Traurig in Miami. Her editing experience includes, among other things, Dr. Umar F. Abd-Allah's *A Muslim in Victorian America*, which was published in 2007 by Oxford University Press. As Associate Editor and legal columnist for *Islamica Magazine*, Asma focused her writings on how American Muslims can rethink their social position within the American legal framework. Asma is an expert panelist for the Washington Post religion blog, *On Faith*, and a contributor to *Huffington Post Religion*, *CNN.com*, *Guardian's Comment is Free*, and *Common Ground News*. Her more scholarly work has been published by the *Rutgers Journal of Law and Religion*, *The Review of Faith & International Affairs*, *St. Thomas University Law Journal*, and the *First Amendment Law Review*, and she has book chapters forthcoming by Ashgate Publishers and several prominent university presses. Asma speaks widely on constitutional issues in legal academia. She has also traveled throughout Europe and the Muslim world to meet with Muslim and other minority groups as well as politicians, journalists, and anti-discrimination organizations. She is a 2005 graduate of The University of Chicago Law School, where she was an editor of *The University of Chicago Law Review*.

Table of Contents

5 Introduction

7 Communicating the Concept of
Religious Freedom to the Muslim World

Rethinking common misconceptions

10 Appropriate Communication Methods

Religious freedom and creating an authentic American Islam

International religious freedom as a “Christianizing force”

Muslim (non-)rights in Muslim countries

20 The Proof Is In the Pudding

Religious freedom for American Muslims

30 Building Bridges Through New Communication

35 The Arab Spring and Broader Implications of
Bridge Building

41 Conclusion

Introduction

The Qur'an 2:256 states: "There is no compulsion in religion: Truth stands out clear from Error." Countless scholars have translated these words over time according to their own linguistic and grammatical understandings, yet the main idea remains the same: People cannot be forced to believe or accept specific doctrines because genuine belief originates only within the self. As this is an internal and organic process, it is natural for human beings to think and search for purpose. For these reasons, the U.S. Constitution, the Universal Declaration of Human Rights (UDHR), and similar documents have enshrined the freedom of religion or belief as a fundamental human right.

Despite the international protection of religious freedom, an estimated 70 percent of the world's population live in countries that severely limit religious liberty.¹ This is especially true in many Muslim countries, where institutional barriers to religious liberty such as apostasy and blasphemy laws make the free practice of faith difficult. While the Qur'an commands, "Let there be no compulsion in religion," many Muslim countries nevertheless severely limit religious liberty and force both Muslims and non-Muslims to live in precarious and oppressive environments.

In "The Trouble with American Foreign Policy and Islam," Thomas Farr argues that no society can flourish as a stable democracy in the absence of religious liberty, and that repressive countries will continue to lag far behind their more progressive and inclusive counterparts until they become more protective of religious liberty.² He also points out that studies have connected the lack of religious freedom with terrorism, which makes the former a national security issue: "The logic is simple, but compelling: even if the *military* threat of radicalism is curbed, nations like Iraq, Pakistan, and Afghanistan are unlikely to remain stable—and to reject extremist Islamist political theologies—unless they address the issue of religious freedom successfully."³

In addition to the fact that, in the modern world, religious liberty is essential to a country's stability and to global security, it is also imperative to reevaluate and communicate religious liberty anew to Muslim countries because of our evolving understanding of religious and political identity. In *Freedom of Religion, Apostasy, and Islam*, Hassan Saeed and Abdullah Saeed argue that apostasy laws were formulated in a religio-political landscape that differs dramatically from its contemporary counterparts. Thus, these laws have, in effect, been rendered obsolete. For

Despite the international protection of religious freedom, an estimated 70 percent of the world's population live in countries that severely limit religious liberty.

example, during the pre-modern era when religious identity and political identity were practically synonymous, rejecting or leaving Islam was roughly equivalent to high treason, for both were seen as rejecting the Muslim ruler's political authority. In addition, it was assumed that such people would likely join the enemy's armed forces. But today, political and religious identities are considered largely independent of one another and leaving a religious tradition does not connote military desertion, political subversion, or potential armed rebellion. Recognizing this fact, most Muslim countries have abandoned the death penalty for apostasy.

Some Muslim countries have adopted a progressive approach toward abolishing apostasy laws; others maintain laws against what is considered blasphemous, hateful, or defamatory speech regarding Islam and Prophet Muhammad. As will be detailed below, the vagueness and over breadth of such laws leave them open to abuses, and they are often used to intimidate or silence political opponents and public intellectuals who challenge the status quo and are perceived by political or religious authorities as threats to existing power structures.

In contrast, unlike many Muslim-majority countries where constitutional guarantees of religious freedom are routinely violated by government actions, religious freedom in the U.S. is not only guaranteed by the Constitution and various federal and state statutes, it is also implemented. Despite the ongoing "culture wars" between secularists and those wanting broad rights for religious groups and individuals, there is ample space in the U.S. for vibrant, robust religious expression in the public square, making America the global leader in religious liberty.

This paper examines why American Muslims enjoy a high degree of religious freedom, whereas their coreligionists in many Muslim countries do not. It begins by explaining why the concept of religious freedom needs to be communicated differently to Muslims abroad and then provides various ways of doing so. The paper then analyzes religious freedom protections in Muslim-majority countries and the U.S. It concludes by explaining how this conversation about religious freedom offers a unique opportunity for building bridges between the United States and Muslim-majority countries, particularly by highlighting potential American contributions to human rights reforms in Muslim countries.

Communicating the Concept of Religious Freedom to the Muslim World

To an American audience, calls for religious freedom conjure up an image of religious pluralism⁴ fostered by the freedom of expression guaranteed by the First Amendment.⁵ Muslim countries, however, usually greet such calls with hostility and suspicion,⁶ as religious freedom is seen as mere pretext for American religious imperialism or further secularization.⁷ This suspicion is what motivates criticism of the International Religious Freedom Act of 1998,⁸ expulsion of Christian missionaries from Muslim-majority countries,⁹ and hostility toward Western humanitarian aid efforts.¹⁰ There are strong memories of colonialism in Muslim-majority countries, and resistance to foreign domination, whether perceived or real, engenders powerful political rhetoric.¹¹ In such an environment, it is hardly surprising that any religious freedom and international human rights initiatives that enjoy heavy Evangelist Christian backing¹² will be opposed.

The International Religious Freedom Act of 1998 (IRFA) represents Washington's major legislative effort to champion the rights of religious freedom abroad.¹³ Foreign governments and individuals have strongly criticized it, however, as an apparent unilateral attempt to impose a uniquely American conceptualization of religious freedom from which Christian missionaries stand to benefit the most.¹⁴ Given the Act's history, the reason for such fears becomes clear.

The Act was the culmination of a process set in motion by Michael Horowitz's 1995 article in the *Wall Street Journal*. In it, he specifically called for the promotion of religious freedom for Christians abroad.¹⁵ Subsequently, his grassroots campaign resulted in a rash of letters and phone calls from various churches to Congress.¹⁶ In January 1996, Jewish, Catholic, and Protestant leaders wrote a *Statement of Conscience*.¹⁷ The National Association of Evangelicals signed on after President Bill Clinton declined their request to issue a policy statement tying religious persecution to American trade and foreign aid.¹⁸ The House of Representatives' International Operations and Human Rights Subcommittee held hearings on the worldwide persecution of Christians¹⁹ and Jews,²⁰ after which Congress adopted resolutions on the persecution of Christians worldwide²¹ and the persecution of Baha'is in Iran.²²

By 1998, after the initial version of IRFA was scuttled because it automatically imposed sanctions on offending nations,²³ it passed both Houses unanimously and was signed into law.²⁴ IRFA established an Office of International Religious Freedom (OIRF) within the State Department, to be headed by an ambassador-at-large for international religious freedom.²⁵ Robert Seiple,²⁶ a former director of the Evangelical organization, World Vision, was appointed to this position

There are strong memories of colonialism in Muslim-majority countries, and resistance to foreign domination, whether perceived or real, engenders powerful political rhetoric.

and entrusted with duties such as preparing an annual report on international religious freedom.²⁷ IRFA also established the United States Commission on International Religious Freedom (USCIRF),²⁸ which is made up of an ambassador-at-large and nine commissioners²⁹ who review the OIRF's work and then make policy recommendations to the President, the Secretary of State, and Congress.³⁰

The Act primarily cites international instruments declaring the right to freedom of religion; however, its introductory section refers to religious freedom in American history.³¹ Muslim critics interpret the Act as representing a view of religious liberty grounded in the secular American experience, rather than one sensitive to the needs of nations shaped by a dominant faith.³²

Although its text mentions "Christians" only twice, and that in reference to resolutions adopted by the previous Congress, the endorsement and promotion of IRFA was largely a Christian-right coalition-led effort.³³ In addition, although not necessarily by intentional policy, its annual reports on human rights and religious freedom in particular countries tend to emphasize Protestant, Catholic, and Jewish difficulties abroad at the expense of other, and more sizeable, minority populations.³⁴ Critics point out that IRFA specifically calls for IRF reports to detail instances of anti-Semitism,³⁵ which seems to single out Jews for preferential treatment.

Skepticism has also extended to USCIRF, which even former staff and commissioners have accused of anti-Muslim bias.³⁶ Although USCIRF has spoken up for the rights of China's Uighur Muslims and Pakistan's Ahmadi Muslims, Muslims remain suspicious of its goals because of its silence over Switzerland's ban on minarets and similar anti-Muslim efforts. Khaled Abou El Fadl, a UCLA professor and USCIRF commissioner from 2003-07, has stated: "There is a very pronounced view of the world, and it is that victims of religious discrimination are invariably Christian. It was rather suffocating."³⁷ And in fall 2009, former policy analyst Safiya Ghori-Ahmad filed an Equal Employment Opportunity Commission (EEOC) complaint on the grounds that her contract had been cancelled because she was a Muslim, affiliated with the Muslim Public Affairs Council (MPAC), and despite a letter from the commission's six researchers urging their bosses to keep her.³⁸ According to a former USCIRF researcher, who resigned from her job as a way of protesting USCIRF's decision not to renew Ghori-Ahmad's contract, "When anti-Muslim violence is mentioned, it's usually because staff [as opposed to the commissioners] forces it. The staff compensates for the biases of the commissioners."³⁹

The overall skepticism of the U.S.'s motives is further compounded by its perceived lack of cooperation with other international human rights initiatives.⁴⁰ The concern is that while the U.S. diligently files reports on other countries' human rights record, it often fails to do so for itself, as required under international conventions such as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).⁴¹ Not only did the initial efforts by IRFA's proponents largely lack non-Judeo-Christian outreach, but the Act itself also calls more for unilateral American reaction through the use of mandatory executive action⁴² than through multilateral discussion.

Based on these and similar concerns, many Muslims abroad consider America's call for religious freedom a cover for more sinister plans, which unfortunately often leads Muslims to reject the U.S. approach wholesale. This blanket dismissal helps perpetuate religious freedom violations in the Muslim world and creates intra-community contradictions when American Muslims demand that their own religious freedom be protected. If increased religious freedom is to have any chance of success in the Muslim world, Muslim perceptions of religious freedom as a pretext for religio-political imperialism must be addressed.

Appropriate Communication Methods

Rethinking common misconceptions

If the concept of religious freedom is to truly take root within traditional Muslim societies, it must be expressed in Muslim terms and argued from a Muslim perspective based on traditional Islamic texts.

Redefining religious freedom

If the concept of religious freedom is to truly take root within traditional Muslim societies, it must be expressed in Muslim terms and argued from a Muslim perspective based on traditional Islamic texts. In other words, one does not have to dismiss traditional Islamic thought and jurisprudence to stress the importance of freedom of belief. Fathi Uthman, a well-known Islamic scholar from Egypt, states: “No power of any kind in the Islamic state may be employed to compel people to embrace Islam. The basic function of the Islamic state, in this regard, is to monitor and prevent the forces which might seek to deny the people their freedom of belief.”⁴³ His words are far from exceptional, as even Prophet Muhammad persuaded people to embrace Islam solely on its rationality and spiritual truth. In fact, there is a consensus among scholars that any involuntary or compelled confession of faith is invalid.⁴⁴

At a fundamental level, sincere religious practice is incompatible with imitation or coercion of any sort. The Qur’an and traditions of the Prophet (*hadith*) speak volumes about Islam’s respect for personal freedom and the human intellect.⁴⁵ The individual’s freedom to decide what appeals to his/her spiritual needs honors each person’s true nature, that of being endowed with dignity, honor, and the ability to discern between right and wrong.⁴⁶ The Qur’an, which states at 88:21, “You cannot compel them to believe,” is violated by the actions of contemporary Muslim states that ban proselytism and education about other religions.

Muhammad, in his dual capacity as prophet and statesman, provided the inhabitants of his state with an environment of tolerance, acceptance, and intellectual stimulation. Without a doubt, a state both can and should provide a framework in which all religions can be practiced peacefully. Imposing particular beliefs stifles its very purpose. Speaking to this point, the Qur’an states:

When it is said to them: “Follow what God has revealed,” they say: “No, we follow the ways of our fathers.” What! even though their fathers understood naught and were not rightly-guided? (2:170).

Scholars Ali Abd al-Wahid Wafi (1901-1991) and Mohammed Abduh (1849-1905), interpreting this verse, concluded that:

[T]houghtless imitation which lacks wisdom and correct guidance is the hallmark of the disbelievers. A man can hardly be called faithful or a believer (*mu'min*) unless he thinks about his faith and satisfies himself as to the veracity of his belief.⁴⁷

The well-known Egyptian scholar, Abdel Qadir Awdah, goes even further⁴⁸: not only is one obligated to pursue a faith that comports to what his/her mind and heart believes, but one is required to protect his/her ability to believe in his/her own truth.⁴⁹ He states, “if the person [who cannot practice his/her faith freely] is able to migrate and he does not do so, then he would have committed an injustice against himself.”⁵⁰ His finding is based on a Qur’anic verse that rejects the “attitude of those who do not exert themselves, if necessary, to migrate, in order to safeguard the integrity and freedom of their consciences.”⁵¹

Wafi and Awdah articulate three specific methods by which Islam ensures freedom of belief⁵²: (1) the Qur’an asserts that true faith is rooted in personal conviction and acceptance, as opposed to imitation and coercion.⁵³ Rather than being just a “random” concept, it is a theme that occurs throughout the Qur’an; (2) since Islam stresses each individual’s freedom to follow a religion that appeals to his/her rationale and reasoning,⁵⁴ proselytism and education about other religions should be allowed;⁵⁵ and (3) the Qur’an, at 2:256, clearly prohibits forced conversion. Historically, most Muslim rulers adhered to this principle and permitted their subjects to continue practicing their own religion, as long as they obeyed the laws and paid the relevant military service and poll-tax (*jizyah*), which in turn exempted them from payment of *zakat* (obligatory charity).⁵⁶

Modern Muslim states have formally incorporated this principle into their foundations, though frequently in a very flawed manner. For example, Pakistan announced “The Basic Principle of an Islamic State,”⁵⁷ at its 1952 *ulama* convention. This document stated that, “The citizen shall be entitled to all the rights ... he shall be assured within the limits of the law of ... freedom of religion and belief, freedom of worship.”⁵⁸ In 1957, Malaysia adopted a similarly worded article in its constitution: the “Freedom of Religion” clause in Article II states that “(1) [e]very person has the right to profess and practice his religion,” and “(2) [n]o person shall be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own.”⁵⁹ The understanding in both cases is that religious freedom is not only a part of Islamic theory, but also a principle that Muslim states must respect.

However, religious freedom laws in many Muslim countries contradict both Islamic principles and constitutional guarantees. Pakistan’s blasphemy laws stipulate that any member of the Ahmadi sect who self-identifies as a Muslim, preaches his/her faith, or invites others to accept it “outrages” Muslims’ religious feelings and should be fined and jailed for up to three years.⁶⁰ There have been many instances where Ahmadis materials have been confiscated, individual Ahmadis harassed,⁶¹ and their property vandalized. Malaysia provides yet another example of institutionalized religious discrimination that contradicts the spirit of the Qur’an’s injunctions. Article 153 of its constitution has been interpreted to privilege Muslim Malays over Chinese and Indian Malaysians as well as other ethnic/religious groups⁶² and to justify discrimination in government employment, university admissions, and the obtainment of government licenses and contracts.⁶³

Apostasy is a particularly contentious issue in Muslim countries. Saeed and Saeed’s *Freedom of Religion, Apostasy, and Islam* lays out many of the commonly used theological and legal arguments against religious liberty and then outlines alternative interpretations of traditional texts in order to support broad religious freedom. They start their discussion by distinguishing apostasy from related pre-modern and modern Islamic concepts, such as apostasy (*riddah*), blasphemy (*sabb Allah* or *sabb al-Rasul*), heresy (*zandaqah*), hypocrisy (*nifaq*), and unbelief (*kufr*). Although these terms’ particular definitions contain much overlap and ambiguity, traditional pre-modern Islamic legal sources state that all of them were punishable by death.⁶⁴

Many early jurists used *hadiths* to justify the death penalty. Modern Muslim thinkers have relied on Qur’anic verses as well, such as Qur’an 5:33:

The recompense of those who make war on God and his apostle and spread corruption on earth shall but be that they shall be slain, or crucified, or that their hands and feet be cut off on opposite sides, or that they shall be banished from the land: such shall be their ignominy in this world.

This verse, however, refers only to apostates who take up arms against God and the Prophet; it has nothing to say about those who do not. Saeed and Saeed refer to Muhammed al-Shawkani, a well-known nineteenth-century Qur’anic interpreter from Yemen who argued that Qur’an 5:33 applies to anyone who “spread[s] corruption on earth,” which he believes include crimes against property and human life. According to this definition, personal belief has very little to do with the matter.⁶⁵

Qur'an 5:54-55, 16:109, and other verses are also cited by supporters of the death penalty for apostasy. 5:54-55 states:

O you who have believed, whoever of you should revert from his religion - Allah will bring forth [in place of them] a people He will love and who will love Him [who are] humble toward the believers, powerful against the disbelievers; they strive in the cause of Allah and do not fear the blame of a critic. That is the favor of Allah ; He bestows it upon whom He wills. And Allah is all-Encompassing and Knowing.

Your ally is none but Allah and [therefore] His Messenger and those who have believed—those who establish prayer and give zakah, and they bow [in worship].⁶⁶

And 16:109 reads: “Assuredly, it is they, in the Hereafter, who will be the losers.”⁶⁷ As Saeed and Saeed note, the textual basis for the death penalty is very weak and more evidence exists within the Qur'an to support religious freedom. The Qur'an consistently reaffirms the concept of personal responsibility in discerning between right and wrong. In addition, many verses support the idea that belief is an individual decision and cannot be compelled, among them Qur'an 17:15:

Whoever chooses to follow the right path, follows it but for his own good and whoever goes astray, goes astray but for his own hurt; and no bearer of burdens shall be made to bear another's burden.

According to Saeed and Saeed, since belief is authentic and sincere only if it originates within one's self, Islam considers hypocrisy more offensive to God than unbelief. In the Qur'anic chapter devoted to the *munafiqun* (hypocrites), God refers to them as evil and rebellious transgressors against Himself.⁶⁸ In Qur'an 4:138, He promises them a “grievous suffering” in the Afterlife.

For the most part, neither the Qur'an nor the Prophet made any legal distinction between hypocrites and apostates, and neither source mandated the execution of hypocrites. Later Islamic jurists, however, differentiated between the two. Many modern-era Muslim thinkers have actually turned away from those post-Prophetic legal traditions that require capital punishment for apostasy, arguing that they do not accord with the spirit of Islam or the *hadith* literature⁶⁹ and, as discussed above, that its socio-historical bases have fundamentally shifted.⁷⁰

Given the rapid rate of globalization and intercultural exchange, as well as the need for all Muslims to have broad freedom, contextualizing and reevaluating the relevant traditional texts seems both morally and prudentially preferable.

The Saeed and Saeed argument against the death penalty is tied into a broader discussion of the Islamic case for religious freedom. To this end, their discussion intersects with modern human rights discourses. The human rights debate, as it relates to freedom of belief or conscience, has become a central topic in the West and in some Muslim countries. As in any religious debate, Muslims argue from all angles both for and against religious freedom. Some try to reconcile Islamic theology with modern standards of human rights, while others adhere to pre-modern legal positions. Given the rapid rate of globalization and intercultural exchange, as well as the need for all Muslims to have broad freedom, contextualizing and reevaluating the relevant traditional texts seems both morally and prudentially preferable.

Religious sensitivity and free speech “red lines”

As will be discussed below, many Muslim countries routinely enforce their existing blasphemy laws. Viewed as a criminal offense, in some cases blasphemy can result in execution or life imprisonment.⁷¹ These domestic laws have an international counterpart in the UN Defamation of Religions Resolution, which the Organization of Islamic Cooperation (OIC) has proposed every year since 1999. This association of fifty-seven Muslim countries⁷² supports a binding international covenant that makes the defamation of religion a legal offense.⁷³ Originally called the “Defamation of Islam” resolution, it was a response to what the OIC considered to be a systematic campaign to denigrate Islam, one that it feared would spur anti-Muslim violence to a level similar to that applied to the Jews in pre-World War II Europe.⁷⁴ Pro-Resolution sentiment increased due to anti-Muslim backlash after the September 11, 2001 terrorist attacks. Supporters intensified their calls for a binding covenant after the Danish cartoon controversy, Geert Wilders’ film “Fitna,” which interposed Qur’anic verses with images of terrorist attacks, and Theo van Gogh’s film, “Submission,” which featured a woman wearing nothing but a transparent burqa and tattoos of Qur’anic verses.⁷⁵

However, due to continued efforts against the Resolution by human rights organizations, support for the Resolution has waned over the years. The term “defamation” was at first replaced with “vilification,” a mere cosmetic change, but in March 2011, the Human Rights Council passed Resolution 16/18, titled, “Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief.”⁷⁶ The new Resolution is narrower than previous versions and adheres more closely to the “incitement to violence” standard in international free speech law. This new Resolution has, however, been criticized for using terminology such as “intolerance” or “incitement to

religious hatred,” that is vague and vulnerable to abusive interpretations.

States and societies should not support these efforts for several reasons. The Resolution reflects the OIC’s belief that free speech should not be extended to matters of religion because religion is sacred. In other words, religion cannot be questioned or ridiculed. This inability to move past their perceived “red lines” on free speech becomes a critical stumbling block whenever the issue of religious freedom is raised. However, this hurdle can be overcome by (1) focusing on the practical results of such draconian limitations on speech, as reflected in the case of domestic blasphemy laws, and (2) focusing on the broader spiritual implications of insinuating that Islam needs to be protected from external insult—that is, the idea that Islam cannot stand on its own merits.

Regarding the first argument, the broad nature of domestic blasphemy regulations makes them susceptible to abuse by the state. Blasphemy laws such as those in Pakistan and Egypt seek to appease, rather than to control, violent extremists. In effect, extremists are allowed to bully religious minorities or dissenters while police look the other way. The resulting culture of impunity gives rise to increasingly egregious crimes that have few, if any, negative consequences. Contrary to such laws’ supposed purpose, violence is encouraged (rather than limited) and enjoys state support, whereas the law would be more effective in preventing violence if it regulated violent actors instead of punishing non-violent speakers.

In American jurisprudence, this principle is reflected in the “hostile audience” doctrine. In *Boos v. Barry*, the Supreme Court stated that “[a]s a general matter, we have indicated that in public debate our own citizens must tolerate insulting, and even outrageous, speech in order to provide adequate breathing space to the freedoms protected by the First Amendment.”⁷⁷ The Court’s concern was not that a hostile audience might render the speaker’s speech ineffective, but that a hostile audience might prevent the speaker from speaking.⁷⁸ Weighed against the cost of imposing speech on unwilling listeners, the cost of preventing speech is much greater.⁷⁹

As for the spiritual argument against imposing “red lines” on free speech, the premise is simple: Islam does not need protection from external insult. In fact, a truer sign of confidence and pride in one’s religion is that its adherents allow it to be ridiculed, knowing full well that such ridicule is false and has no effect. Struggling to protect something, especially something so intangible, suggests vulnerability and weakness, whereas letting a religion speak for itself

reflects a deep-seated certainty that it can prevail on its own merits.

It is often difficult to make such a nuanced argument, especially because, as renowned Iranian philosopher Abdolkarim Soroush notes, Western and Islamic concepts of liberty draw the line between public and private spheres differently: “to many Muslims, apostasy [sic] and blasphemy are public acts that the state should be able to regulate, not private matters of faith that are restricted to the individual realm.”⁸⁰ Religious freedom does not limit *social* regulations on blasphemous statements; it is well within the purview of both it and free speech to punish supposed blasphemers with non-legal, non-violent penalties, such as social disapprobation.⁸¹ The American model of religious freedom fully recognizes that legal sanctions on non-violent speech are reprehensible because they give the state undue control over its citizens’ expression. But it also recognizes that some attention must be given to the sociological problem of how speech is used and manipulated. It does not deny that solutions to blasphemy and hate speech are needed; it just places them outside the parameters of coercive state action.⁸²

Religious freedom and creating an authentic American Islam

Although economic opportunity and advancement have been the primary concerns for many immigrant Muslims,⁸³ the social and political benefits of religious freedom have also played a significant role in the collective American Muslim experience.⁸⁴ As this community has grown, more of its members have become comfortable with political activism and many of them have adopted and integrated the American values of democracy, individualism, and religiosity into their traditional Islamic values.⁸⁵ Sharia, which involves the broader process of discerning divine directives and prohibitions but which is often narrowly understood by both Muslims and non-Muslims alike as a legal code, has traditionally held a central place in Islamic culture and discourse.⁸⁶ Muslims believe that Islam’s fundamental text, the Qur’an, is the word of God revealed to the Prophet. Since it commands them to follow his example, the relevant body of literature (the Sunnah) is also viewed as a normative “text.”⁸⁷

Historically, Islamic jurisprudence has based itself upon these two textual sources and built on subsequent scholarly works and interpretive writings. Eventually, distinct legal traditions or schools of thought (*madhahib*) developed and became enshrined in popular Islamic practice. After several centuries, however, *ijtihad* (the process of interpreting divine law) stagnated as Muslims fell in line with the established schools’ legal interpretations. The existing legal system,

therefore, is far more attuned to a medieval socio-historical context than to a modern one.

Contemporary Muslim intellectuals, including some American Muslim scholars, have taken it upon themselves to reevaluate traditional sources and devise new interpretations that are relevant to the modern world. This fusion of the Islamic values of scholarship and divine law with the modern secular values of individual thought and expression has led to the development of a unique and dynamic brand of scholarship that is both truly Islamic and truly American. Arguing for religious freedom from within the Islamic tradition will enable American Muslim scholars to gain legitimacy within the international Muslim community and, perhaps, acquire a major socio-political influence abroad.

The rise of extremist ideologies, particularly in the decade since 9/11, has led to an increased awareness of the need for American diplomats to promote religious freedom. The work of the American Muslim thinkers mentioned above may in fact help advance the concept of religious freedom within Muslim societies both on theoretical and practical levels.

Abdelaziz Sachedina, who has written extensively on Islamic theology and jurisprudence as well as the intersection of Islam, democracy, and human rights, argues that freedom of religion is both fundamental for “democratic pluralism” and deeply rooted within the Qur’anic paradigm of religious life in and of itself.⁸⁸ He also contends that in order to realize true religious freedom—the freedom to choose and change one’s faith—the exclusivist theological frameworks of the past must give way to more inclusivist ones. According to him, if the Qur’an is taken to be a universal moral guide for humanity and each individual has the inherent God-given ability to discern right from wrong, its message transcends the bounds of religious distinction. In other words, a universal morality trumps all particular differences related to practice and spirituality and grants salvation to all, “regardless of formal religious affiliation.”⁸⁹ Within this framework, recognizing the religious “other” as a spiritual equal is key to establishing true religious freedom. He therefore states that “Muslim thinkers working on human rights must engage in Islamic theology rather than Islamic law.”⁹⁰

Many American Muslims who have adopted very similar notions of religious freedom work alongside non-Muslims on the grounds that mutual recognition and cooperation advance common morality in the public square. Muslims are engaging in interfaith activities and creating bridges between their religious communities nationwide in the name of social justice.

As beneficiaries of their country's constitutional protections, American Muslims must embody those ideals and work to actualize them for non-Muslims as well.

This particular brand of Islam is the result of synthesizing the American values of democracy, citizenship, and spirituality with Islamic values. Umar Faruq Abd-Allah Wyman-Landgraf, of the Chicago-based Nawawi Foundation, calls this process the “cultural imperative,” the absolute need to develop “a sound Muslim American cultural identity.”⁹¹ Related to the Saeed and Saeed contention that apostasy laws must be reevaluated in light of modern norms, Wyman-Landgraf points out that “[i]t was a matter of consensus among Islamic legal thinkers that the legal judgments of earlier times had to be brought under constant review to insure that they remained in keeping with the times” and that early scholars renounced the “mechanical application” of Islamic law.⁹² In addition, he asserts that American Muslims are duty-bound to transcend anachronistic laws so that they can take affirmative action to *produce* culture: “A successful Muslim American culture must provide psychological space for all constituents of our highly heterogeneous community”⁹³ and “[c]ultural development must be intentional and proactive, focused on clear and valid goals with a concrete vision of how to attain them.”⁹⁴

Such an ambitious undertaking requires the adoption of religious freedom norms not just when doing so benefits Muslims, but consistently and for everyone. As beneficiaries of their country’s constitutional protections, American Muslims must embody those ideals and work to actualize them for non-Muslims as well.

International religious freedom as a “Christianizing force”

The 1880s witnessed an era of European imperial expansion into Asia and Africa along with a wave of mainly Anglo-British support for evangelical missions in Muslim lands. During this time, evangelists established missions from North Africa to Central Asia that attracted the attention of local Muslim communities by providing social services and distributing Christian literature. Such efforts, however, gained few converts and ultimately backfired, earning Protestant missionaries the reputation of cultural imperialists and inciting anti-colonial sentiment from Muslim nationalists and activists.⁹⁵

This particular missionary movement began in earnest in 1882, when England set up de facto colonial rule in Egypt. Imperial and expansionist rhetoric, coupled with the weakened state of Muslim rule and the Protestant powers’ physical presence in Egypt and across the Muslim world, fueled the missionary spirit and encouraged evangelists to preach openly and aggressively.⁹⁶ Although England’s occupation of Egypt officially ended in 1922, the fervor of

evangelical missionaries continued to spread even further. Making the then-feeble Ottoman Empire their prime target, they believed that the vacuum created by its disintegration would yield a favorable environment for the promotion of progressive Christianity, democratic values, modern technology, and human rights.⁹⁷

Such Evangelical activists as the influential Dutch Reformed Samuel M. Zwemer often derided Islam as a “dying religion,” poisoned from its inception by “the germs of death,” and described Muhammad as an “ambitious charlatan” and the Qur’an as a “stupid piece of prolix absurdity.”⁹⁸ Such statements, not to mention the general sentiment they reflected, incited a serious anti-Western backlash and reaffirmed the perception of Christian aggression.⁹⁹ Toward the latter half of the twentieth century, some Islamist thinkers and writers pointed to Zwemer as the prototypical neo-Crusader imposing his religion and culture through hard-line cultural imperialism.¹⁰⁰

Despite the missionaries’ forceful and persistent attempts, they made few converts due to the strong legal and social restrictions on conversion and the fact that those who did convert were typically disowned or disavowed.¹⁰¹ Potential converts often encountered familial and communal pressures in the form of intimidation, harassment, assault, ostracism, and, occasionally, honor killing.¹⁰² But such resistance did not deter evangelists; instead they began to lobby the League of Nations and its successor, the United Nations, to support and promote an individual’s religious freedom to choose, practice, and change his/her religion as a universal human right.¹⁰³

A 2004 Associated Press article, “Evangelicals give U.S. Foreign Policy an Activist Tinge,” discusses the Evangelical movement’s passion for and impact on American foreign policy. In addition to chronicling Michael Horowitz’s surprising contribution to the Evangelical spirit’s post-9/11 resurgence, the article lists some of the most powerful Christian organizations overseas. One of these, the Southern Baptist Convention (SBC), has over 16 million members and is active in 153 countries.¹⁰⁴ Its stated mission is “[t]o endeavor to make Christian disciples of all nations” via its almost \$300 million overseas budget.

All of this leads the global Muslim community to view the West’s promotion of religious freedom as a form of implicit cultural imperialism and to continue to associate the concept of religious liberty, as laid out in the UDHR, with its Evangelical advocates’ forceful missionary efforts.¹⁰⁵

The Proof Is In the Pudding

Given that many Muslim governments promote and enforce a specific interpretation of Islam, many Muslims who adhere to alternative interpretations are persecuted.

Muslim (non-)rights in Muslim countries

When demonstrating the importance of religious freedom to Muslim audiences, one must first focus on *their* concerns, rather than on the rights of non-Muslim minorities. The emphasis should be on the role of religious freedom in authentic faith, as this matter is likely to resonate deeply.

The importance of religious freedom is best demonstrated by analyzing the countless abuses stemming from intolerant religious laws. As Muslim countries have incorporated various interpretations of Islam into their governments, multiple interpretations often find a home in the same government. This incorporation is both structural and substantive.

Structural incorporation of majority religions assumes various forms. For example, in some countries, the secular government is interlinked with religious figures in a mutually reinforcing power structure.¹⁰⁶ In others, secular authorities keep a firm control over religious authorities, often through appointment powers and paying salaries.¹⁰⁷

Substantively, many Muslim countries restrict religious liberty via blasphemy laws that prohibit speech and actions deemed offensive to religious believers (on paper, religious believers of any sort, but in practice, usually only Muslims of a particular sect).¹⁰⁸ Some criminal codes have been interpreted in a way that prevents specific religious practices. Others use the religious police to enforce adherence to religious standards of, for example, modesty.¹⁰⁹ Some incorporate religion into secular laws, such as identity card requirements, in a clearly discriminatory manner,¹¹⁰ and others incorporate explicitly religious crimes, such as *moharabeh* (waging war against God). The latter is a capital crime in Iran.¹¹¹

Abuse based on restrictive religious laws generally falls into two main categories: (1) enforcement of the laws to oppress non-Muslims, or, more usually, dissident Muslims and members of minority Muslim sects,¹¹² and (2) fabrication of religious charges to target political dissidents, usually Muslims whose political views differ from the regime in power.¹¹³

Suppressing religious dissidence

Given that many Muslim governments promote and enforce a specific interpretation of Islam, many Muslims who adhere to alternative interpretations are persecuted.

Egypt

Article 98(f) of the Egyptian penal code prohibits acts that “exploit religion in order to promote or advocate extremist ideologies by word of mouth, in writing or in any other manner with a view to stirring up sedition, disparaging or belittling any divinely-revealed religion or its adherents, or prejudicing national unity or social harmony.”¹¹⁴ “Divinely-revealed religion” refers to Islam, Christianity, and Judaism, the three religions recognized in Egypt. The statute mandates a fine and up to five years’ imprisonment. Article 178, which allows up to two years’ imprisonment, penalizes such violations of “public morality” as “immoral songs, shouting, or speeches.”¹¹⁵ Other sections prohibit the printing of unofficial religious texts, public ridicule of religious groups, or incitement to hatred of religious groups.¹¹⁶

These statutes have been used to stifle dissent even among Egypt’s majority Sunni community if those in power perceive their religious or political positions as threatening the political status quo. Al-Azhar professor and Qu’ran scholar Nasr Hamid Abu Zayd, who advocated for a historically contextual interpretation of the Qur’an that tended to improve women’s rights,¹¹⁷ was first declared an apostate by the Cairo Appeals Court,¹¹⁸ and then issued a mandatory divorce from his Muslim wife because, based on the government’s interpretation of Islam, an apostate cannot remain married to a Muslim.¹¹⁹ He and his wife subsequently fled to Europe, where he died in 2010.¹²⁰

The government has also harassed the minority Shi’a community. In 2009, Shi’a cleric Hassan Shehata Moussa was arrested on charges of “using Friday sermons in promoting Shiite ideals, recruiting foreign elements, leading a banned group, receiving financial support from foreign governments, [and] possessing books defaming the Sunni sect.”¹²¹ The Egyptian authorities questioned his ties to Iran and refused to allow defense lawyers or human rights groups to attend parts of the investigation.¹²² He was released in March 2010; eight of the eleven arrested with him remain in prison.¹²³

Egyptian authorities have also harassed the Qur’anists for decades. The Qur’anists are different from the majority Muslim community in that they believe that the Qur’an is the only valid sacred text, whereas the majority believes that both the Qur’an and the *hadith* are core sacred texts of Islam.¹²⁴ The Qur’anists refuse to affiliate with either the Sunnis or the Shi’as.¹²⁵ Egypt’s government-funded religious orthodoxy,¹²⁶ such as Sheikh Mohamed Sayed Tantawi (former Grand Sheikh of al-Azhar), who argued that “the law clearly places limitations on

matters of faith” and that the state’s security forces should be permitted to arrest those who tarnish Islam’s image,¹²⁷ has endorsed the government’s restrictions. In 1985 the Qur’anists’ leader, Dr. Ahmed Subhy Mansour, was forced out of his assistant professorship in Muslim history at al-Azhar; in 2002, he sought asylum in the United States.¹²⁸

Since that event, the government has harassed those who hold beliefs similar to those of the Qur’anists, who form a loose community, “a school of thought, not a movement or a group.”¹²⁹ For example, blogger Reda Abdelrahman was arrested October 5, 2008, just weeks after five other imprisoned Qur’anists were released,¹³⁰ for expounding upon his religious beliefs concerning the Qur’an and the illegitimacy of *hadith*.¹³¹ He was beaten until he gave up his personal email account’s password, deprived of food, and subjected to electric shocks until he made false confessions.¹³² Questioned twice about his Qur’anist ideas and charged with “contempt for the Muslim Faith,” he was freed on January 23, 2009.¹³³

Suppressing political dissidence

Laws that explicitly target religion have also been used to maintain political control. Even when there is a substantial religious component, political dissent is often not distinguished from religious disagreement. In such murky waters, religious laws can be manipulated to stifle political dissidence and often form the basis for trumped-up political charges, which undermine the legitimacy of these laws even further. The vagueness of many blasphemy laws allows the selective prosecution of political dissidents for actions or statements that are common elsewhere. Those seeking reform often come from minority groups, including religious minorities, which indicates that their prosecution may be both politically and religiously motivated. Many of those persecuted, however, are targeted because of their political, rather than spiritual, dissidence.

Iran

Iran has arrested followers of Ayatollah Hussein Ali Montazeri for disseminating his religious beliefs; his teachings place a greater emphasis on human rights than the government is willing to accept. These arrests appear to have both a religious and political component. The journalist Emadeddin Baghi was arrested in 2010 and sentenced to seven years imprisonment for broadcasting an interview with him.¹³⁴ Baghi had also written a book arguing that the Qur’an does not require capital punishment, a religious interpretation that was the subject of much of his interrogation and may also have motivated his imprisonment.¹³⁵ In addition, theology

student and blogger Mojtalaba Lotfi was jailed for posting a sermon in which Montazeri criticized President Mahmoud Ahmadinejad for saying that Iran is “the world’s freest country.”¹³⁶ Lotfi was sentenced to four years imprisonment without the benefit of representation.¹³⁷ In such cases, it is almost impossible to separate political belief from its religious underpinnings.

Eighteen-year-old blogger Navid Mohebbi was arrested for advocating women’s rights and charged with insulting the founder and Supreme Leader of the Islamic Republic. Tried without his defense counsel present, he was freed after several months of solitary confinement, and even that is owing to international pressure.¹³⁸ Similarly, Shiva Nazar Ahari was arrested several times for her work in support of women’s rights and political reform. She faced charges, including *moharabeh* (waging war against God), which potentially carried the death penalty. Initially sentenced to six years imprisonment and seventy-six lashes, her sentence was reduced on appeal to four years imprisonment and seventy-four lashes.¹³⁹

*The religious
liberty of American
Muslims is
implicated in a
broad array of legal
situations.*

Religious freedom for American Muslims

After 9/11, many Americans began to view Islam as a potential threat to their way of life¹⁴⁰ and some Muslims found themselves targets of discrimination.¹⁴¹ This discrimination is rooted in stereotypes held by some 36 percent of Americans that Islam is more likely than other religions to incite violence.¹⁴² Since the terrorist attacks, the Department of Justice has investigated over 800 cases of anti-Muslim discrimination. It concluded that Muslims were targeted in 14 percent of all discrimination cases, even though they constitute just 1 percent of the country’s population.¹⁴³

The good news is that the protections for religion embodied in the First Amendment and in various federal and state statutes apply to all Americans, including American Muslims, and have been used to protect the community’s rights.

Sample cases

The religious liberty of American Muslims is implicated in a broad array of legal situations. One example is land use cases. In the United States, church autonomy and the ability to manage land and build places of worship constitute important aspects of religious liberty; most religious organizations and individuals require a place to meet and express religious convictions. When this right is threatened, they can bring a case under the Religious Land Use

and Institutionalized Persons Act (RLUIPA), a federal statute that prevents local governments from placing a greater burden on religious uses than on nonreligious uses, or from placing a substantial burden on religion without a compelling government interest.¹⁴⁴ The community can also argue that the zoning code violates its right to free exercise of religion or that it has been denied equal protection.¹⁴⁵

For example, in Tennessee, the Islamic Center of Murfreesboro (ICM) was able to go ahead with its expansion plans despite intense local opposition.¹⁴⁶ Having been around for more than a decade, a burgeoning of the local Muslim population compelled it to ask the county's permission to build various community resource facilities on a fifteen-acre plot.¹⁴⁷ After it approved the expansion plans, controversy and protest erupted. Some protests drew hundreds of people, and the new site was subject to both arson and vandalism.¹⁴⁸ Tennessee's lieutenant governor, who endorsed the opposition while running for governor, went so far as to state: "You could even argue whether being a Muslim is actually a religion, or is it a nationality, way of life, a cult, whatever you want to call it."¹⁴⁹

When the county granted the necessary permit, some citizens sued it on the grounds that the citizenry had not been properly informed of the planning commission's meeting. Another argument was that Islam is political and not religious in nature and thus undeserving of First Amendment protection.¹⁵⁰ The U.S. Department of Justice filed a brief with the Chancery Court in support of the county's approval, in particular rebutting the suggestion that the United States does not recognize Islam as a valid religion.¹⁵¹ The Chancery Court agreed with the Department of Justice, and despite continued opposition, the mosque broke ground in late September 2011.¹⁵²

The Islamic Center of Mississippi v. City of Starkville was also refused permission to build a mosque.¹⁵³ The zoning ordinance of the City of Starkville, Mississippi, prohibited the use of buildings as churches in all of the areas within the city limits near the campus of the University of Mississippi unless an exception was granted by the City Board. The Islamic Center, which owned a building situated in a residential area immediately adjacent to property being used as a church by another faith, challenged the Board's refusal to permit it to use its property for public worship services.

While the city ordinance restricted the use of any property in this type of residential area or in

the City's commercial district as a church, 25 churches, all Christian, were located in similarly regulated areas. Sixteen of these churches occupied their present sites before the ordinance became effective, and nine moved in thereafter with the benefit of an exception. Only the Islamic Center had ever been denied an exception.¹⁵⁴

The Islamic Center contended that the zoning ordinance was invalid on its face because it forced Muslims to worship in the "least acceptable parts of the City or in the county outside the City's boundaries, that the City's action in denying it an exception violates its members' right to free exercise of their religion," and that the Board's action was arbitrary, thus denying it and its members due process.¹⁵⁵

The City maintained that the ordinance did not inhibit the free exercise of religion because churches could be built in other districts or outside the city limits. It argued that the Board's refusal to grant an exception for the desired location was "based on a secular purpose, visiting only an incidental burden on religion."¹⁵⁶ The Board testified that the Board denied the exception for the Islamic Center because it was worried about traffic congestion and neighborhood safety.¹⁵⁷

The appellate court (5th Circuit) stated that regulatory statutes or ordinances that affect religious activity are constitutional only if they do not impose an undue burden on the ability of the religious group or its members to carry out the observances of their faith.¹⁵⁸

The court ruled: "Laws that make churches, synagogues, and mosques accessible only to those affluent enough to travel by private automobile obviously burden the exercise of religion by the poor, a class that includes many students. And a city may not escape the constitutional protection afforded against its actions by protesting that those who seek an activity it forbids may find it elsewhere. By making a mosque relatively inaccessible within the city limits to Muslims who lack automobile transportation, the City burdens their exercise of their religion."¹⁵⁹

According to the court, the City's approval of applications for zoning exceptions by other churches suggested that it did not treat all applicants alike. The court ruled that this fact undermined the City's contention that the Board denied a zoning exception to the Muslims solely for the purposes of traffic control and public safety. Because the City failed to establish that the Board based its denial of an exception to the Islamic Center on a sufficient reason or

that it had not favored Christian churches over Muslim mosques, the appeals court held that the Board's action violated the free exercise of religion clause.¹⁶⁰

One of the most controversial cases involving religious land use by Muslims was the Park 51 project near Ground Zero in New York City. This project, coupled with the ongoing efforts by well-established anti-Muslim activists to engender fear about Muslims and America,¹⁶¹ created tremendous turmoil around the topic of Islam and religious liberty in America. There were protests and even violence.¹⁶²

New York City's Mayor Bloomberg responded to the controversy by publicly defending religious freedom and Muslims' right to build Park 51:

Let us not forget that Muslims were among those murdered on 9/11 and that our Muslim neighbors grieved with us as New Yorkers and as Americans. We would betray our values—and play into our enemies' hands—if we were to treat Muslims differently than anyone else. In fact, to cave to popular sentiment would be to hand a victory to the terrorists—and we should not stand for that.¹⁶³

President Obama, in a speech during that year's White House *iftar*, also defended religious freedom for Muslims: "As a citizen, and as president, I believe that Muslims have the same right to practice their religion as anyone else in this country....That includes the right to build a place of worship and a community center on private property in lower Manhattan in accordance with local laws and ordinances."¹⁶⁴ In the face of social turmoil and even hostility, his and Bloomberg's statements were important reminders that religious freedom for all, including Muslims, is one of America's founding and most cherished principles.

Outside of the land use context, *Fraternal Order of Police Newark Lodge No. 12 v. City of Newark* is a representative case for how legal religious freedom protections have been applied to Muslim interests. At issue in the case was whether the Newark (N.J.) Police Department's policy regarding the wearing of beards by officers violates the Free Exercise Clause of the First Amendment. Under that policy, the Police Department granted exemptions for medical reasons (typically because of a skin condition called pseudo folliculitis barbae), but did not offer exemptions for two Muslim officers whose religious beliefs require them to keep beards.¹⁶⁵ The court held that the Department's provision of secular and not religious exemptions reflected

bias toward religion in violation of the Free Exercise Clause of the First Amendment.¹⁶⁶

Muslim prisoners have also been able to use the First Amendment and RLUIPA to their benefit. Prisoner religious freedom claims typically state that the prison is restricting a prisoner's right to worship in some way, such as by failing to provide religious meals¹⁶⁷ or religious materials.¹⁶⁸ In *Salahuddin v. Goord*, a Muslim prisoner claimed that prison officials violated his free exercise rights under the First Amendment and RLUIPA because they forced Shi'a and Sunni Muslims to participate jointly in Ramadan services.¹⁶⁹ The court held that, even if the inmate's "belief did not comport with Islam's actual requirements,"¹⁷⁰ the question of whether or not an inmate has a legitimate free exercise interest turns on whether or not the inmate sincerely believes that he/she have one; in other words, the relevant inquiry was how the inmate understood his religion.¹⁷¹

In another, very recent case, the plaintiff, a Muslim prisoner, was served halal meat while in one prison, but when moved to another prison, was denied halal meat despite repeated requests.¹⁷² The stress of not having his religious needs met led the plaintiff to go on hunger strikes and the prison ended up putting him on suicide watch.¹⁷³ The case is pending, but the court has acknowledged that the prisoner has cognizable claims under the First Amendment and RLUIPA.¹⁷⁴

American Muslims are also dealing with a host of anti-Sharia laws being proposed in states across America. For example, an Oklahoma State Representative authored State Question 755, a constitutional amendment that appeared on the Oklahoma ballot of November 2, 2010.¹⁷⁵ The bill, which required courts to only look to federal and state laws in deciding cases and explicitly prohibited the use of international and Sharia law, passed.¹⁷⁶ A Muslim Oklahoman, Muneer Awad, filed suit against state election officials stating that the proposed amendment violated his First Amendment religious freedom rights.¹⁷⁷ The district court granted, and the appellate court affirmed, preliminary injunction, temporarily stopping the amendment from becoming law while Awad's lawsuit is being litigated. The broader issue of Sharia's place in the American legal system will be examined in greater detail below.

Muslim plaintiffs do not always prevail

Muslim plaintiffs have not always prevailed on their religious freedom claims. It is important to realize that when Muslims lose in court, it is not because the court is discriminating against

American federal and state courts have also provided important protections to Muslims by recognizing Islamic contracts as well as Sharia arbitration panel decisions.

them; legal losses are usually due to weak claims or weak lawyering.

In one example, the Third Circuit held that a police department would suffer “undue hardship” under Title VII if it were required to allow police officers to wear religious clothing or ornaments.¹⁷⁸ In this case, a Muslim female police officer was not allowed to wear a headscarf while on duty.¹⁷⁹ The court did not doubt her religious sincerity; however, it held that her sincere religious belief was subordinate to the police department’s safety concerns and that it was imperative for the city to maintain the appearance of religious neutrality.¹⁸⁰ The court distinguished *Fraternal Order of Police*, stating that the discrimination in that case derived from the department’s “lack of neutrality in applying the no-beards regulation,” whereas here, the police department provided no exemption to its dress policy.¹⁸¹

In another Third Circuit case, a group of female Muslim employees brought an action under Title VII against their employer, a private company that had contracted with a prison to run the prison.¹⁸² The employer’s policy prohibited all head wear, including items worn for religious reasons, because of various safety and security concerns.¹⁸³ In response to the women’s claims that the policy violated their religious freedom right to wear the Muslim headscarf, the court held that the employer did not violate Title VII because religious accommodation would have created risks resulting in undue hardship to the employer.¹⁸⁴

Religious arbitration and Sharia

American federal and state courts have also provided important protections to Muslims by recognizing Islamic contracts as well as Sharia arbitration panel decisions. When dealing with contracts written with Sharia principles in mind, civil courts have always only referred to Sharia as a tangential issue instead focusing on issues within their competence, such as the basic principles of contract law. When it comes to enforcing religious arbitration awards, civil courts do so only to the extent that these awards comport with American public policy. These practices apply to contracts and arbitration awards based on principles from any religion.

Several examples are presented below to illustrate the protections that exist within the American legal system to ensure that courts do not become impermissibly entangled with religion or improperly consider, defer to, or apply religious law where it would contradict American or state public policy.¹⁸⁵ In one case, a federal district court honored the contractual “choice of law” provision at issue, which designated Saudi law.¹⁸⁶ The court accepted that “it is apparent

that Islam permeates every aspect of life in the Kingdom of Saudi Arabia, including its legal structure.”¹⁸⁷ Saudi law limits damages for breach of contract to “losses which are actual and direct”¹⁸⁸ such as for actual physical harm to property or out-of-pocket losses. This is based on the Islamic law principle that damages can be obtained only for losses that are certain.¹⁸⁹ Despite its foundations on Islamic principles, the Saudi law is enforceable without reference to religious doctrine; as such, the court applied Saudi law because doing so did not entangle the court in religious questions.

In other cases, Muslims have exercised their right to independent arbitration terms. An arbitration agreement stipulates, prior to an actual dispute, how two parties will deal with one another.¹⁹⁰ Both parties have the opportunity to suggest the rules of law that will be applied. Arbitration is usually a quicker and cheaper method of resolution, and thus serves judicial interests by keeping court dockets unclogged and minimizing lengthy, costly litigation.¹⁹¹ Almost all business agreements involve some kind of arbitration agreement, simply because they can be tailored to meet the parties’ needs.

An example of this is *Abd Alla v. Mourssi*, a business partnership dispute in which the parties had agreed to Islamic arbitration. Mourssi, who was displeased with the outcome, moved to dismiss the panel’s findings more than a year after the panel had finalized its determination.¹⁹² He argued that Islamic law specifies no set time for appealing a decision; Abd Alla countered that Mourssi had not challenged the panel’s decision in time according to state law.¹⁹³ The Minnesota Court of Appeals found in the latter’s favor, looking to state arbitration award principles to hold that the defendant should have raised his claim within ninety days, the time allocated to properly challenge an arbitration award.¹⁹⁴ In deciding the case, the court was not so much concerned with the nuances of Sharia law; rather, it remained focused on whether the requirements of basic Minnesota arbitration principles had been met.

In *Odatalla v. Odatalla*, the Superior Court of New Jersey upheld a *mahr* agreement.¹⁹⁵ *Mahr*, the dowry agreed to at the time of marriage, is owed to the wife and becomes due and payable at the moment of divorce if it has not been paid already.¹⁹⁶ The court determined that enforcing the Sharia-based agreement raised no First Amendment concerns because this action was based on neutral legal principles of contract law rather than “religious policy or theories.”¹⁹⁷ In other words, it reasoned that enforcing secular aspects of a religiously based written agreement “is consistent with the constitutional mandate for a ‘free exercise’ of religious beliefs, no matter

how diverse they may be.”¹⁹⁸

In contrast, the court did not uphold a *mahr* agreement in *Zawahiri v. Alwattar* because it concluded that the husband had entered into the agreement “as a result of overreaching or coercion.”¹⁹⁹ According to the court, he had agreed to pay the amount indicated in the *mahr* agreement only because he “was embarrassed and stressed” and “did not have the opportunity to consult with an attorney prior to signing the marriage contract.”²⁰⁰ Based on these facts, the court ruled that the agreement was unenforceable because it had been signed under duress.²⁰¹

There are also cases in which the court refused to rely on Sharia because doing so would contradict public policy.²⁰² In *Amin v. Bakhaty*, it determined that enforcing an Egyptian custody order would contradict Louisiana public policy.²⁰³ The court found that although Egypt, based on Islamic family law principles, generally awards custody to the father, Egyptian law did not consider the child’s best interest as the primary determining factor.²⁰⁴ Given that this is the governing factor in Louisiana’s custody disputes, the court ignored the Egyptian custody order.

In *Aleem v. Aleem*, a Maryland court refused to enforce a Pakistani divorce order regarding the wife’s assets because Pakistani law, relying partially on Sharia law principles, denied her due process and thus contravened the state’s public policy.²⁰⁵ In *Aleem*, the husband divorced his wife unilaterally by stating “I divorce you” three times.²⁰⁶ Under Pakistani law, which follows Islamic family law, the wife has a right to unilaterally divorce her husband only if he gives her permission to do so in the marriage contract.²⁰⁷ Maryland found this to be contrary to its policy.²⁰⁸ Moreover, because the contract contained no agreement about dividing the couple’s property in the case of a divorce, the Pakistani divorce order deprived her of alimony.²⁰⁹ The husband claimed that, under Pakistani law, this would prevent his ex-wife from acquiring any of his financial assets; however, the Maryland court found this to be contrary to state policy and ordered the division of the marital assets, consistent with Maryland family law.²¹⁰

In yet another case, *People v. Benu*, in which a father was charged with child endangerment for authorizing the marriage of his underage daughter, the court refused to recognize his defense that Islamic law permits underage marriage.²¹¹

Those working to spread fear of a supposed Sharia threat frequently use the *Amin*, *Aleem*, and *Benu* cases.²¹² Yet all three cases *rejected* the application of Sharia law, demonstrating that

there is no threat of Sharia law taking over the American legal system. The system has strong built-in safeguards that protect it from being fundamentally altered by any type of foreign or religious law, even when these laws are recognized by an American court. When actual cases are examined closely and all of the rhetoric is dissected, all that is left is (1) an American judicial system that carefully balances the rights of individuals to practice their religion freely and contract as they wish; and (2) the responsibility of the courts to uphold American legal principles and public policy.

Building Bridges Through New Communication

Implementing a broad religious freedom in many Muslim societies will be possible only after implementing a series of smaller changes.

Empowering Muslims in Muslim-majority countries to protect their religious freedom from government encroachment and to connect with the experiences of their American coreligionists helps develop a shared language of human rights, particularly the right to free religious expression. Connecting on the basis of religion through the vehicle of religious freedom is, as stated above, an effective way of making lasting, authentic links. In order for Muslims abroad to embrace Western notions of religious liberty, however, a drastic shift in how these concepts are perceived on an individual and societal level is key. Implementing a broad religious freedom in many Muslim societies will be possible only after implementing a series of smaller changes.

Kurt Lewin, considered one the founding fathers of modern social psychology, laid out in precise detail the process required to implement social change. Lewinian change theory involves a basic three-phase unfreeze-shift-refreeze model: (1) to unfreeze the existing socio-cultural ideas and perceptions about a certain issue or topic, to unlearn without any loss of identity what one has been socialized to believe is right and true; (2) to shift those ideas, to relearn and restructure one's thoughts, perceptions, and attitudes on a cognitive level; and (3) to freeze these new ideas and create new norms.

The first step in unfreezing is disconfirmation. According to Lewin, all change starts with some form of dissatisfaction or frustration generated by data. In other words, information disconfirms expectations and/or hopes, and this disconfirmation acts as the primary driving force in the quasi-stationary equilibrium. In the case of religious freedom in Muslim countries, "quasi-stationary equilibrium" refers to the long-standing struggle between those who argue for inclusivist constructs of religious liberty (viz., everyone is free to choose, change, or reject his/her faith) and those who defend exclusivist constructs (viz., minority religious groups are denied all or at least some of these rights). Historically, the latter have overpowered the former. According to Lewinian theory, this disequilibrium is key to change because it disconfirms minority groups and social justice activists who, in turn, will push change in the direction of greater religious freedom. The disconfirmation creates a feeling of anxiety, which Lewin calls "survival guilt," as regards the potential failure to meet self-prescribed goals and/or ideals.

The second step, inducing this guilt or anxiety, can be achieved only if society accepts the problem as relevant and worth attacking. Thus accepting that a fault, failure, or shortcoming exists is key, for such an acceptance often triggers a new anxiety that typically stalls the

change process. This “learning anxiety” is caused by the belief that admitting the existence of a wrong or imperfection can lead to a decrease in effectiveness on a social level and perhaps even a loss of identity. The greater the level of disconfirming evidence, the greater the level of anxiety and a defensive avoidance of the disconfirming information.

This phenomenon is clearly present in Muslim countries in the form of virulent hostility toward religious liberty on the grounds that protecting Islam, God, and the Prophet is integral to Muslim identity. Thus, repealing apostasy or blasphemy laws, recognizing other religious groups, and allowing proselytism are all seen as serious threats to Islam on the institutional, societal, and personal levels. Unless adequate psychological safety is established, disconfirming information and evidence will be denied and the change process will be stalled. Until Muslim societies accept that their exclusivist policies are irrelevant and impractical, no progress is possible. Until they overcome their “learning anxiety” and create a sense of psychological safety by establishing groups, alliances, and coalitions through modern Islamic scholarship in favor of greater religious freedom, they will not embrace their “survival guilt” and become motivated to change.

Cognitive redefinition or restructuring, the next step, occurs in three phases: (1) semantic redefinition, learning that words can mean something different from what has thus far been assumed; (2) cognitive broadening, recognizing that a given concept can be more broadly interpreted than has thus far been assumed; and (3) new standards of judgment or evaluation, learning that the bases for judgments are not absolute and that the induction of new bases can shift the scale of judgment altogether.

In the case of religious freedom, these three phases entail (1) redefining such terms as *human rights* and *liberty of conscience* in more practical and inclusive ways, (2) recognizing that the concept of religious freedom can be extended more broadly to include all religious minorities, and (3) embracing new standards of religious freedom, for example. Using the American standards as starting points for reform, the entire spectrum of religious liberty can be shifted toward modern concepts of human rights.

Such cognitive redefinition can only occur after one has become “unfrozen,” which renders the former quasi-equilibrium fluid. The next step is to find a direction in which to flow, a model to imitate. This paper has postulated that the American brand of religious liberty can be adapted

to fit the norms and needs of Muslim societies. The key, however, is to ensure that these societies are open to cultural innovation and progress. Once they have unfrozen their historical exclusivist attitude and mold, they can move toward greater religious liberty for all of their citizens. But since this direction of learning can be negative, unfrozen Muslim societies may actually become more restrictive in their religious liberty policies. Therefore, the United States must make the promotion of religious freedom a policy priority in the coming years as well.

If a learner does not find an adequate role model to follow, a different trial and error process occurs, one in which he/she is able to base his/her solutions on his/her own knowledge, research, and experience and thus continue the change process. The reality is that instead of imitating the American approach, many Muslim countries will probably take it as a starting point. American policies might serve as guidelines for Muslim societies that will then have to mold them to their own socio-cultural specifications. Thus, the resulting process will be a hybrid of positive imitation and trial and error, or what Lewin refers to as “relational refreezing.”

In order to institute real change, all individuals holding the old norms or ideas must be retrained within this unfreeze-shift-refreeze framework. Once they adopt the instituted changes, groups and societies will follow suit. This is key in the case of Muslim countries, for the motivation behind religious freedom regulations often comes from the deep-seated belief in a Muslim’s personal and communal responsibility to protect and defend Islam. Once they understand that this does not necessarily need to be institutional or legal, the discourse on religious freedom can move forward and become more inclusive. The religious freedom enjoyed by American Muslims can serve as further disconfirming evidence for those Muslims dissatisfied with the state of religious liberty in their own countries. If articulated tactfully, the concept of universal religious freedom can be extremely appealing to the vast majority of Muslims, whose civil and political rights are limited under the guise of blasphemy and apostasy laws. But if a broader definition of religious liberty can be expounded, then questions of apostasy and blasphemy become obsolete and the related civil restrictions will disappear. The ensuing bolstering of healthy and productive Muslim democracies can, in turn, curb the influence of extremist ideologies, a vital American policy concern. Thus, religious freedom activism specifically within Muslim societies can be seen as a shared enterprise in which both sides reap the rewards of increased religious liberty.²¹³

The Arab Spring and Broader Implications of Bridge Building

Despite IRFA's statutory mandate to advance the cause of religious freedom in foreign policy, it took President Obama more than two years into his Administration to fill the position of ambassador-at-large for international religious freedom.²¹⁴ This delay is not surprising, considering American hesitancy to act consistently toward IRFA's stated goals. Forming a broad strategic response to the Arab Spring, one that effectively pursues our national security interests, will be impossible unless the United States eschews its "learned repugnance to contend intellectually with religion."²¹⁵

Seduced for far too long by the secularization theory, which holds that modern science and reason would effectively relegate religion to the margins of human life and certainly out of the public square, the United States' national security and foreign policy apparatus must adapt what may be called "religious realism": an honest acknowledgment that religion is a primary "well spring of human behavior" in civil society.²¹⁶ To expect those fundamentally religious Arab societies that are aggressively seeking new leadership to keep Islam out of the public square is absurd.

Any authentic democratic participation in the fledgling, newly emerging Arab democracies will, by its very nature, be fueled by religiously motivated actors. As Thomas Farr, a former American diplomat and leading authority on international religious freedom, notes, "no democratic Islamic political philosophy or practice can possibly develop on the premise that religion is a private matter separate from the function of politics."²¹⁷ Understanding and accepting this "limitation ... America's long-term goal must be democratic regimes in the Middle East grounded in Islamic forms of religious liberty."²¹⁸

The dominant view of religion in the West perceives religion as something along the lines of a "private therapeutic ritual."²¹⁹ This very much informs how American foreign policy conveys and encourages the concept of religious liberty. For example, in May 2011, President Obama addressed the people of Egypt following their successful overthrow of Mubarak and explained the importance of religious freedom to their future: "Such tolerance (for the rights of minorities) is particularly important when it comes to religion ... And for this season of change to succeed, Coptic Christians must have the right to worship freely in Cairo, just as Shia must never have their mosques destroyed in Bahrain."²²⁰

What he referred to here is not freedom of *religion*; instead, his focus is on the more limited

Any authentic democratic participation in the fledgling, newly emerging Arab democracies will, by its very nature, be fueled by religiously motivated actors.

freedom of *worship*. This reflects the worrisome tendency, identified by USCIRF's 2010 Annual Report, of American officials' public references to "freedom of worship" rather than "freedom of religion."²²¹ This instinct to reduce religion to the act of worship, an intrinsically private activity, is understandable considering the "wall of separation" model of freedom of religion that now permeates the American legal and political conscience.²²² But when it comes to American policy in Muslim countries, advocating for such a wall of separation that precludes religious motivations for public behavior would require ignoring a prime motivating force in the political behavior of the world's approximately 1.5 billion Muslims.²²³ In the same vein, while ensuring freedom of worship would certainly ameliorate many basic human rights concerns, American national security interests would go largely unaddressed if there were no corresponding emphasis on the broader concept of religious freedom.

Since IRFA was passed in 1998, both the ambassador and the OIRF have been placed under the State Department's Bureau of Democracy, Human Rights, and Labor (DRL).²²⁴ Thus the ambassador-at-large for international religious freedom has been put under the supervision of DRL assistant secretaries even though the position provides for far more direct access to senior policy officials.²²⁵ This "bureaucratic and functional quarantine"²²⁶ of international religious freedom policy reflects the extent to which international religious freedom is seen through an almost solely humanitarian lens.²²⁷ Undoubtedly, freedom of worship is an indispensable human right, but international freedom of religion in a broader sense directly implicates pressing the United States' national security concerns.²²⁸

The most formidable direct threat to American national security for the past decade and more is stated to be the terrorist ambitions of Muslim extremists. The attacks of September 11, 2001 are the most visible reflection of that threat. But looking at Afghanistan and Saudi Arabia, the two countries with the most operational connections to the attacks, the security threat to American interests posed by a lack of international religious freedom becomes apparent. In Afghanistan, the Taliban government's overt persecution of even minor variations of religious thought, speech, and practice provided a safe haven for the aggressively intolerant al-Qaeda leadership.²²⁹ In Saudi Arabia, home to fifteen of the nineteen hijackers, the reigning and official religious ideology, Wahhabism, advocates that variant religious thought and practice are worthy of violent resistance rather than thoughtful consideration.²³⁰ While Muslim terrorists have a myriad of motivations and sociopolitical realities, they are "energized by radical interpretations of Islam."²³¹ By creating an environment that both "reflects and portends" religious extremism,

state repression of religious expression “incubates” violent and extreme religious energy.²³²

When a state does not protect all of its citizens’ religious freedom, it breeds religious extremism by what can be considered market failure in the “marketplace of ideas”: Expression that is *excluded* from this marketplace ferments in repression and thus takes on more extreme contours.²³³ Ideas that are given a *monopoly* on truth in this same marketplace are never subjected to the rigors of competition; the monopoly insulates ideas that would not otherwise survive critical review or popular sentiment from the natural consequences of such rejection.²³⁴

Despite the obviously religious nature of the extremist thought that threatens American interests abroad, the American foreign policy apparatus consistently declines to engage the subject of religion directly. As late as 2007, America’s official National Public Diplomacy Strategy specifically instructed American diplomats to “avoid using religious language.”²³⁵ In 2006, former Secretary of State Madeline Albright explained to American diplomats that religion “was above and beyond reason; it evoked the deepest passions; and historically it was the cause of much bloodshed. Diplomats in my era were taught not to invite trouble, and no subject seemed more inherently treacherous than religion.”²³⁶ This is despite the fact that the law requires the secretary of state to give diplomats “instruction on the internationally recognized right to freedom of religion, the nature, activities, and beliefs of different religions, and the various aspects and manifestations of violations of religious freedom.”²³⁷

The fears underlying such reticence are varied. Many believe Islam is inherently incompatible with religious freedom or even democracy, or that only moving toward secularism can bring about the desired freedoms.²³⁸ Still others believe that American diplomatic engagement with religion would be unwelcome, maybe even unconstitutional.²³⁹ For many, the Council of Europe’s determination that people have a “right ... not to be insulted in their religious feelings” is the most comfortable base upon which to rest discussions of religious liberty.²⁴⁰

These fears have resulted in a default position of avoiding engagement or cooperation with Islamists in all matters related to diplomacy and democracy building.²⁴¹ Hence, in 2005, when Secretary of State Condoleezza Rice encouraged “the Egyptian government, ... within a process ... that is ever more reforming, to engage with civil society, with the people of Egypt for elections that can be free and fair,” she stopped short of asking that the Muslim Brotherhood, the country’s most formidable opposition group, be allowed to participate in the

The United States' unrealistic understanding of political motivations and action in Muslim countries hinders its ability to form lasting and authentic bonds with those who live in the Middle East's emerging democracies.

reform process.²⁴² Indeed, “we have not engaged the Muslim Brotherhood and we don’t—we won’t.”²⁴³ For years prior to and even during the recent revolution, Mubarak maintained American support for his repressive regime by constantly warning that any move toward freedom and democracy would result in popular support for the Muslim Brotherhood.²⁴⁴

Despite the Brotherhood’s long-standing disavowal of violence and commitment to democratic engagement, the United States has sought to exclude it from the public square, in line with its default position on Islamist ideology.²⁴⁵ Islamists, not to be confused with terrorists, “believe that Islam as a body of faith has something important to say about politics and society, and are prepared to do something about it.”²⁴⁶ This, it turns out, represents the majority opinion in Libya, Egypt, Tunisia, and many other Muslim countries.²⁴⁷ The United States’ unrealistic understanding of political motivations and action in Muslim countries hinders its ability to form lasting and authentic bonds with those who live in the Middle East’s emerging democracies.

As Farr presciently explained in 2006, “[f]or better or worse, the forces of electoral democracy have been loosed in the Middle East, and long-term American policy had better adjust to the reality that Islamists, not secular autocrats, are going to determine the future of politics and of extremism.”²⁴⁸ Particularly as indigenous agents of change continue to push for an authentic voice in their political systems, American foreign policy must cure itself of this “religion avoidance syndrome” and become more realistic about religion’s pervasive role in the private and public life of the region’s inhabitants.²⁴⁹

Diaa Rashwan, an expert at Cairo’s al-Ahram Center for Political and Strategic Studies, recently commented, “Without Islam, we will not have any real progress. When Western countries built their own progress, they didn’t go out of their epistemological or cultural history. Japan is still living in the culture of the samurai, but in a modern way. The Chinese are still living the traditions created by Confucianism. So why do we [Muslims] have to go out of our history?”²⁵⁰ Thus it is no surprise that the Muslim Brotherhood, despite being systematically ignored by the West and repressed by Mubarak, garnered widespread support through “eighty years of proselytizing and street-by-street charitable work” on a foundation of Islamic values shared by the population at large.²⁵¹

In order to build lasting and authentic connections with these countries’ populations who seek a government that reflects their religious identity, the United States should seek to empower

religious actors to express their political will in a peaceful and productive manner and to debate the values of their religion on their own terms.²⁵² This represents the only chance for democratic systems to take root in the Middle East, and also serves as a potent antidote to religious extremism.²⁵³

If liberal norms are to become influential in Muslim countries, it will be because Islam as a religion, the public theology of these societies, adopts them, as opposed to just the result of political or cultural evolution.²⁵⁴ Long-time foreign affairs journalist Robin Wright recently commented that “[o]ver the next decade, the most dynamic debate will be among the diverse Islamists, not between Islamist and secular parties. These political tensions will play out as they vie to define Islam’s role in new constitutions – and then implement it in daily life.”²⁵⁵ Reformers within Muslim communities are ready to debate and advance their liberal ideas; however, if they are not allowed to challenge the governmental or reigning understanding of Islam, how can they win the war of ideas?²⁵⁶ Making it possible for would-be reformers to publically express their sincerely held religious beliefs will do more for American national security than arming authoritarian regimes that repress religious liberty.²⁵⁷

Many in the foreign policy establishment who fear that Islam cannot adapt to modern liberal norms are convinced that suppressing the religious instinct is necessary to curbing extremism or fostering democracy among Muslims.²⁵⁸ As Wright points out, however, for a vast portion of the world’s almost 1.5 billion Muslims, “[t]he values of their religion are a starting point for all other aspects of life.”²⁵⁹ In addition, many are advocating for modern conceptions of human rights through the vehicle of Islam. For example, the al-Nahda party won Tunisia’s recent elections. Its leader is Rachid el-Ghannouchi, a former philosophy professor who has been arguing for decades that Islam is compatible with diversity and pluralism.²⁶⁰ Allowing such reformers to really express their understanding of Islam is key to the emergence of Islamic public theologies that support liberal norms.²⁶¹ In the same vein, acknowledging and validating religious motivation is key to forming a relationship of trust and cooperation with Muslim societies.

Religious liberty, as envisioned by Farr and other scholars, has three key characteristics: (1) the basic freedom of worship, which includes the right to believe or *not* to believe in any particular faith, thereby nullifying apostasy as an actionable offense, and the right of minority groups to be unmolested in their houses of worship,²⁶² which helps ensure the authenticity of any belief

by putting it outside the purview of state coercion; (2) the freedom to enter and exit religious communities, the freedom of (all of) those communities to engage with civil society, and the freedom to preach and proselytize without the threat of state sanction;²⁶³ and (3) a “vigorous freedom of religious expression”²⁶⁴ that enables religious communities to influence culture through democratic political means, circumscribed of course by the previous two principles.

The work of sociologists such as Brian Grim, Roger Finke, and Rodney Stark suggest that both minority and majority religious communities benefit greatly when the playing field is leveled in the “marketplace of (religious) ideas.”²⁶⁵ Just as free competition in the marketplace necessitates that competitors improve their product, religious groups also learn to defend and promote themselves with better teaching and better preaching.²⁶⁶ In short, a “genuine religious competition for souls” should be encouraged, one that the state must protect from physical violence.²⁶⁷ This would allow minorities to engage in national political life on an equal basis and give some space to those majority community members who dare to venture new (or even old, forgotten) ideas, such as the Afghani journalism student who suggested that the Qur’an supported the equality of women,²⁶⁸ or the Muslim governor of the Pakistani Punjab province who sought to amend the country’s abusive blasphemy laws.²⁶⁹ The former was sentenced to death, while the latter was gunned down by one of his bodyguards, who subsequently gained renown among the people.²⁷⁰ “If such potential reformers are deterred by the likelihood of prosecution for blasphemy, or the threat of mob violence or murder even in the absence of official prosecution, neither religious freedom nor democracy is likely to endure.”²⁷¹

Conclusion

While many people in Muslim countries would fear and resist greater freedom of religion, either viewing it as part a Christian imperialist agenda or simply because they remain steeped in exclusivist thinking, the religious liberty benefits enjoyed by their American coreligionists can be presented as evidence that religious freedom is in the Muslim interest. Muslims, like all other American religious groups, are allowed to publicly advance their values and form organizations and movements to influence politics, despite their minority status. Seeing how religious liberty protects American Muslims may persuade Muslims, even those living in Muslim-majority countries, to adopt this concept. And given the strong connection between religious liberty and social stability, it is well within the U.S.'s interest to facilitate this communication.

Endnotes

- 1 The Pew Forum on Religion and Public Life, *Global Restrictions on Religion*. Online at: <http://www.pewforum.org/Government/Global-Restrictions-on-Religion.aspx>
- 2 Thomas F. Farr, *The Trouble with American Foreign Policy and Islam*, *The Review of Faith and International Affairs* 9, 2 (2011): 65
- 3 *Id.*
- 4 See, for example, Kate McCarthy, *Pluralist Family Values: Domestic Strategies for Living with Religious Difference*, 612 *Annals Am. Acad. Pol. & Soc. Sci.* 188, 188 (2007).
- 5 See, for example, Katherine Pratt Ewing, *Legislating Religious Freedom: Muslim Challenges to the Relationship between "Church" and "State" in Germany and France*, 129 *Annals Am. Acad. Pol. & Soc. Sci.* 31, 31 (2000).
- 6 Matthew L. Fore, *Shall Weigh Your God and You: Assessing the Imperialistic Implications of the International Religious Freedom Act in Muslim Countries*, 52 *Duke L.J.* 423 (2002).
- 7 *Id.* at 424.
- 8 *Id.* at 425.
- 9 Brent Jones, *Muslim Morocco Expels 5 Christian Missionaries*. USA Today. March 29, 2009. <http://www.usatoday.com/news/world/2009-03-29-morocco-missionaries_N.htm>
- 10 *Unholy Row in Jordan Over Missionaries*, NineMSN. March 15, 2008. NineMSN. <<http://news.ninemsn.com.au/world/392241/unholy-row-in-jordan-over-missionaries>>
- 11 Mohammed Ayoob, *The Many Faces of Political Islam: Religion and Politics in the Muslim World* (The University of Michigan Press 2008).
- 12 Peter Waldman, *Evangelicals Give U.S. Foreign Policy an Activist Tinge*, MSNBC.com. May 26, 2004. <http://www.msnbc.msn.com/id/5068634/ns/local_news-atlanta_ga/t/evangelicals-give-us-foreign-policy-activist-tinge/>
- 13 See Steven Wales, Comment, *Remembering the Persecuted: An Analysis of the International Religious Freedom Act*, 24 *HOUJIL* 579, 582 (2002).
- 14 See T. Jeremy Gunn, *A Preliminary Response to Criticisms of the International Religious Freedom Act of 1998*, 2000 *BYULR* 841, at 842, 851 (2000).
- 15 Michael Horowitz, *New Intolerance between Crescent and Cross*, *Wall St. J.*, July 5, 1995, at A8.
- 16 Wales, at 585.
- 17 *Id.*
- 18 *Id.*
- 19 Persecution of Christians Worldwide: Hearing before the Subcomm. on Int'l Operations and Human Rights of the Comm. on Int'l Relations of the House Subcomm. on Int'l Relations, 104th Cong. (1996).
- 20 Worldwide Persecution of Jews: Hearing before the Subcomm. on Int'l Operations and Human Rights of the House Comm. on Int'l Relations, 104th Cong. (1996).

21 S. Con. Res. 71, 104th Cong. (1996).

22 H.R. Con. Res. 102, 104th Cong. (1996).

23 See Wales, at 589.

24 See Wales, at 591.

25 22 U.S.C.A. §6411(a).

26 Joel A. Nichols, *Evangelicals and Human Rights: The Continuing Ambivalence of Evangelical Christians' Support for Human Rights*, 24 J.L. & ReligionJLREL 629, 645 (2008-2009).

27 22 U.S.C.A. §6412(b).

28 22 U.S.C. §6431(a)

29 22 U.S.C. §6431(b)

30 22 U.S.C. §6432(a)

31 See 22 U.S.C. §6401(a)(1)

32 See Gunn, at 848.

33 See Gunn, at 852. Groups who endorsed and promoted IRFA include, among others, the National Association of Evangelicals, the Southern Baptist Ethics and Religious Liberty Committee, the Christian Coalition, and Evangelicals for Social Action.

34 See Gunn, at 854.

35 22 U.S.C. 6412(b)(1)(A)(iv).

36 See Michelle Boorstein, *Agency that Monitors Religious Freedom Abroad Accused of Bias*, Washington Post, February 17, 2010. <<http://www.washingtonpost.com/wp-dyn/content/article/2010/02/16/AR2010021605517.html>>

37 *Id.*

38 *Id.*

39 *Id.* The Commission's future was in limbo recently, until Congress reauthorized it literally just hours before it was scheduled to shut down in December 2011. The three-year extension brought significant changes: the budget has been reduced by approximately one quarter and commissioners are limited to two two-year terms. See Mark Hensch, *House Vote Saves USCIRF; Funding Approved for Three Years*, The Christian Post, Dec. 16, 2011. <<http://www.christianpost.com/news/house-vote-saves-uscirf-funding-approved-for-3-years-65064/>> In an apparent nod to Ghorri-Ahmad, employees who have filed discrimination complaints can now complete proceedings. Joseph Kuhn, *U.S. Commission on International Religious Freedom (USCIRF) Will Not Be Closed: Panel Saved By Congress Vote*, Huffington Post, Dec. 18, 2011. <http://www.huffingtonpost.com/2011/12/18/uscirf-not-closing_n_1154670.html>.

40 See Gunn, at 863.

41 See International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature Dec. 21, 1965, 660 U.N.T.S. 195. Article 9 states that: "State parties undertake to submit to the Secretary-General of the United Nations... a report, on ... measures which they have adopted and

which give effect to the provisions of this Convention.” See also U.N. Human Rights Council, Working Group on the Universal Periodic Review, *Compilation Prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council Resolution 5/1 United States of America*, 4-6, U.N. Doc. A/HRC/WG.6/9/USA/2 (November 1-12, 2010). (charts showing the United States’ level of cooperation with different U.N. Treaty bodies as well as the Special Procedures).

42 22 U.S.C. §6445(a)(1)-(15).

43 Cf. Fathi Uthman, *Huquq al-Insan bayn al-Shari’ah al-Islamiyyah wa’l-Fikr al-Qanuni al-Gharbi*, p. 97 as mentioned in Mohammad Hashim Kamali’s *Freedom of Expression in Islam*, Islamic Text Society, 1997, p. 2.

44 Mohammad Hashim Kamali, *Freedom of Expression in Islam*, Islamic Text Society, 1997, p. 3.

45 Abdullah Saeed, *The Islamic Case for Religious Liberty*, First Things.com (Nov. 2011) available at <http://www.firstthings.com/article/2011/11/the-islamic-case-for-religious-liberty>.

46 *Id.*

47 Ali Abd al-Wahid Wafi *Huquq al-Insan fi’l-Islam* (Cairo, 1967) pp. 124 and M.R. Rida, *Ta’rikh al-Ustadh al-Imam Muhammad ‘Abduh*, II, 207; Cairo, Al Manar, 1931 Abu Habib, Darasah, p. 642. as taken from Mohammad Hashim Kamali’s *Freedom of Expression in Islam*, Islamic Text Society, 1997, p. 16.

48 Abdel Qadir Awdah, *al-Tashri’ al-Jina’i*, pp. 31-33.

49 Mohammad Hashim Kamali’s *Freedom of Expression in Islam*, Islamic Text Society, 1997, p. 16.

50 *Id.*

51 *Id.*

52 *Id.*

53 *Id.*

54 *Id.*

55 *Id.*

56 *Id.*

57 *Id.*, p. 3.

58 *Id.*

59 *Id.*

60 Post Anti Qadiani Ordinance of 1984 298-C to the Paksitan Penal Code (Act XLV of 1860).

61 Immigration and Refugee Board of Canada, Pakistan: Convictions of Ahmadis under Ordinance XX or the blasphemy laws and their prevalence; penalties handed out, 26 November 2007, PAK102653.E, available at: <http://www.unhcr.org/refworld/docid/47d654712d.html> [accessed 24 October 2011].

62 Christopher Rodney Yeoh, “Malaysia, Truly Asia? Religious Pluralism in Malaysia,” in *The Pluralism Project* (Harvard University, 2006), 2.

63 *Id.*

64 *Id.*, 35-49.

65 Saeed, 57-58.

66 Qur'an. Surat Al-Ma'idah. Online at <http://quran.com/5/55>.

67 Qur'an. Surat An-Nahl. Online at <http://quran.com/16/109>.

68 Qur'an 63:1-6.

69 See the works of Mohammed S. el-Awa on *Punishment in Islamic Law* and Mohammad Hashim Kamali on *Islamic Law in Malaysia*. An interview with Dr. Hassan al-Turabi regarding the right to apostasy is also relevant and can be found online at http://www.witness-pioneer.org/vil/Articles/shariah/interview_on_apostasy_hasan_turabi.htm.

70 *Id.*

71 UNHCR Refworld, Pakistan Penal Code. <http://www.unhcr.org/refworld/> (accessed January 1, 2011).

72 The Resolution was reintroduced in November 2010, with the phrase "defamation of religions" replaced with "vilification of religions." Adelle M. Banks, "Blasphemy Resolution Passes U.N. Committee," *The Huffington Post*, November 25, 2010, http://www.huffingtonpost.com/2010/11/25/blasphemy-resolution-pass_n_788305.html (accessed February 21, 2011).

73 The Becket Fund for Religious Liberty, "Combating Defamation of Religions," 2.

74 *Id.* at 5.

75 *Id.* at 2.

76 See 16/18 *Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against persons based on religion or belief*, United Nations Human Rights Council, A/HRC/RES/16/18 (April 11 2011).

77 *Boos v. Berry*, 484 U.S. 312, 322 (1988).

78 Wojciech Sadurski, *Freedom of Speech and Its Limits*, 88.

79 *Id.*

80 "God's Rule and the People's Rule," http://www.dr.sorouh.com/English/On_DrSorouh/E-CMO-20020930-1.html (last visited September 22, 2011).

81 Uddin, Asma. "Countering Hate Speech with Social Responsibility." *Washington Post*, On Faith, Jan 24, 2010, http://onfaith.washingtonpost.com/onfaith/panelists/asma_uddin/2010/01/the_geert_wilders_trial_free_speech_and_social_responsibility.html (last visited September 22, 2011).

82 *Id.*

83 "A strong job market and economy are at the forefront of Americans' minds, and that concern is exaggerated in the Muslim American population." Muslim Americans: A National Portrait, The Center for Muslim Studies GALLUP, 39 (2009). Thirty-five percent of Muslims in the United States classify themselves as African Americans while twenty-eight percent categorize themselves as White (which could include those of European and Middle Eastern descent), eighteen percent categorize themselves

as Asian, and another eighteen percent as other. *Id.* at 20-21.

84 John Musselman, “American Muslims: A (New) Islamic discourse on Religious Freedom,” *Review of Faith and International Affairs*, Vol. 9.2 (Summer 2011) pp 17-19.

85 See Muslim Americans: Faith, Freedom and the Future *Examining U.S. Muslims’ Political, Social, and Spiritual Engagement 10 Years After September 11*, Abu Dhabi Gallup Center (August 2011). This report details statistics and changes to the viewpoint of American Muslims stating that they are optimistic about their future and embrace civic institutions and religious pluralism in the United States. *Id.*

86 David Deming, *Science and Technology in World History: Volume 2 Early Christianity the Rise of Islam and the Middle Ages*, 80 (McFarland & Company Inc.) 2010. (“While ‘theology occupies the central place in Christianity, in Islam the central place belongs to law.’ ‘Sharia the Islamic religious law...lays out a complete pattern of human conduct and includes every human deed within its purview...the sharia is considered as something above human wisdom...as an infallible and immutable doctrine of duties, it encompass the whole of Muslim religious, political, social, domestic, and private life.’”)

87 Asifa Quraishi, *Interpreting the Qur’an and the Constitution: Similarities in the Use of Text, Tradition, and Reason in Islamic and American Jurisprudence* (February 2007). *Cardozo Law Review*, Vol. 28, pp. 69-71, 2006; Univ. of Wisconsin Legal Studies Research Paper No. 1036. Available at SSRN: <http://ssrn.com/abstract=963142>

88 Sachedina, “The Role of Islam in the Public Square,” 180-1

89 *Id.*, 181

90 Sachedina, *Islam and the Challenges of Human Rights*, 87.

91 “Islam and the Cultural Imperative.” A Nawawi Foundation Paper, p. 2.

92 *Id.*, at 6

93 *Id.*, at 9

94 *Id.*, at 10

95 Heather J. Sharkey, “Empire and Muslim conversion: historical reflections on Christian missions in Egypt,” *Islam and Christian–Muslim Relations*, Volume 16, Issue 1, (2005) pp. 43-60. DOI: 10.1080/0959641052000313237

96 Abdul Latif Tibawi, *American Interests in Syria 1800–1901: a Study of Educational, Literary and Religious Work* (Oxford Clarendon Press, 1966) p. 255.

97 Heather J. Sharkey, “Empire and Muslim conversion: historical reflections on Christian missions in Egypt,” 16 *Islam and Christian–Muslim Relations* 43 (2005).

98 Samuel M. Zwemer, *The Disintegration of Islam* (New York: Fleming H. Revell Company, 1916) pp. 7-8.

99 Sharkey, 43.

100 See *Id.* at 43-60.

101 Heather J. Sharkey, *Christians among Muslims: The Church Missionary Society in the Northern Sudan*, 43 *Journal of African History* 51, 51 (2002).

102 *Id.*

103 Sharkey, "Empire and Muslim Conversion," see also Robert Traer's "The Universal Declaration of Human Rights" available online at <http://religionhumanrights.com/Law/UDHR/cornerstone.fhr.htm>

104 Peter Waldman, "Evangelicals give U.S. foreign policy an activist tinge," Associated Press, updated 5/26/2004. http://www.msnbc.msn.com/id/5068634/ns/local_news-atlanta_ga/t/evangelicals-give-us-foreign-policy-activist-tinge/#.TkZKx80Q86o

105 *Id.*

106 For example, Iran has a Council of Guardians, made up of twelve members. Six members are theologians and the remaining six are jurists. This Council reviews election candidates and legislation for consistency with Islamic law. See Greg Bruno, Religion and Politics in Iran, Council on Foreign Relations, available at <http://www.cfr.org/iran/religion-politics-iran/p16599> (June 18, 2008).

107 See Kim Shively, Taming Islam: Studying Religion in Secular Turkey, *Social Thought and Commentary*, 684 available at: http://kutztown.academia.edu/KimShively/Papers/183954/Taming_Islam_Studying_Religion_in_Secular_Turkey ("Turkish secularism—or laicism—does not make assumptions of religious neutrality or objectivity in the public sphere, but instead religion is tightly defined and legally subordinated to the political establishment. Religion is controlled by a branch of government, the Directorate of Religious Affairs, whose main task, according to the 1982 Turkish constitution, is to regulate Islam, especially its public expressions, such that it guarantees that these expressions accord with the needs of the state.")

108 See Asma Uddin, *Blasphemy Laws in Muslim Majority Countries*, *The Review of Faith & International Affairs*, (2011).

109 For example Saudi Arabia has a morality police which enforces public morality as defined by the government. See Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, July-December 2010 *Report on International Religious Freedom: Saudi Arabia*, available at: http://www.state.gov/j/drl/rls/irf/2010_5/168275.htm (Sept. 13, 2011).

110 See United States Commission on International Religious Freedom, *USCIRF Annual Report 2012 - Countries of Particular Concern: Pakistan*, 20 March 2012, available at: <http://www.unhcr.org/refworld/docid/4f71a674c.html> [accessed 4 May 2012]

111 Nazila Fathi, *Iran, With Opposition Protests Continuing, Executes More Prisoners*, *N.Y. Times*, February 2, 2010, at A10, available at <http://www.nytimes.com/2010/02/02/world/middleeast/02iran.html>.

112 See generally United States Commission on International Religious Freedom, *Annual Report 2011* (May 2011).

113 See generally *Id.*, at 10-15.

114 Amnesty International, *Egypt: Muzzling Civil Society*; Asma T. Uddin, *Blasphemy Laws in Muslim-Majority Countries*, *The Review of Faith and International Affairs*, Summer 2011.

115 *Id.*

116 *Id.*

117 Nadia Abou El-Magd, *When the Professor Can't Teach*, Al-Ahram Weekly, <http://weekly.ahram.org.eg/2000/486/eg6.htm> (last visited June 30, 2011).

118 *Id.*

119 *Id.*

120 *Id.*

121 Amro Hassan, *Egypt: Cleric Backed by Iran Charged in Egypt*, *Babylon & Beyond: Observations From Iraq, Iran, Israel, the Arab World, and Beyond* (June 19, 2009), <http://latimesblogs.latimes.com/babylonbeyond/2009/07/egypt-security-detains-12-accuses-hundreds-of-spreading-shiism.html> (last visited June 30, 2011).

122 *Id.*

123 USCIRF report.

124 International Qur'anic Center, *About Us*, Ahl Al-Qur'an, <http://www.ahl-alQur'an.com/English/aboutus.php>, (last visited June 30, 2011).

125 *Id.*

126 Sarah A. Topol, *Cairo's Revered Al-Azhar University Now Overshadowed by TV Imams*, *Christian Science Monitor*, April 9, 2010, available at <http://www.csmonitor.com/World/Middle-East/2010/0409/Cairo-s-revered-Al-Azhar-University-now-overshadowed-by-TV-imams> (last visited July 18, 2011).

127 Karim El-Khashab, *Matters of Faith*, Al-Ahram Weekly, <http://weekly.ahram.org.eg/2007/852/eg12.htm> (last visited June 30, 2011). Sheikh Tantawi passed away in 2010, and his successor Shaikh Ali Tayyeb has recently endorsed a proposal for a more secular, tolerant Egyptian state. Mostafa Ali, *Al-Azhar's Grand Imam Declares Support for a Constitutional, Democratic State*, *AhramOnline*, June 20, 2011, available at <http://english.ahram.org.eg/NewsContent/1/64/14672/Egypt/Politics-/AlAzhar-Grand-Imam-declares-support-for-a-constit.aspx> (last accessed July 15, 2011). The proposal, the Al-Azhar Document, has attracted criticism from both the conservatives who say it abandons Islam, and liberals who say it does not sufficiently protect minorities. Heba Fahmy, *Scholars Call For Inclusion of All Beliefs in Azhar Document as Others Slam It*, *The Daily News Egypt*, July 14, 2011, available at <http://thedailynewsegypt.com/people/scholars-call-for-inclusion-of-all-beliefs-in-azhar-document-as-others-slam-it.html> (last visited July 15, 2011). The document only names Muslims, Jews, and Christians as explicitly protected; it is unclear whether the protections afforded Muslims will extend in practice to Qur'anists who are not considered Muslim by other mainstream groups. Ali Tayyeb did, however, disapprove of those "who use religion to incite sectarian strife or those who accuse others of religious apostasy simply based on political disagreements." Mostafa Ali, *Al-Azhar's Grand Imam Declares Support for a Constitutional, Democratic State*, *AhramOnline*, June 20, 2011, available at <http://english.ahram.org.eg/NewsContent/1/64/14672/Egypt/Politics-/AlAzhar-Grand-Imam-declares-support-for-a-constit.aspx> (last accessed July 15, 2011).

128 Salonaz Sami, *Newsreel*, Al-Ahram Weekly, <http://weekly.ahram.org.eg/2007/851/eg8.htm> (last visited June 30, 2011).

129 Michael Slackman, *Arrests in Egypt Point Toward a Crackdown*, *N.Y. Times*, June 15, 2007, at A6,

available at <http://www.nytimes.com/2007/06/15/world/africa/15egypt.html>.

130 Almasry Alyoum , *The Egyptian Initiative for Personal Rights Requests The Release of The Qur'anist Detainee*, http://www.ahl-alQur'an.com/English/show_news.php?main_id=3896 (last visited June 30, 2011).

131 *Id.*

132 Noha Atef, *Egyptian Qur'anist Blogger Released*, Global Voices Advocacy, <http://advocacy.globalvoicesonline.org/2009/01/30/egyptian-Qur'anist-blogger-released/> (last visited June 30, 2011).

133 *Id.*

134 In addition to 7 years in prison, Baghi sentenced to 5 years civil deprivation, EmadBaghi.com (Sep. 22, 2010), available at <http://www.emadbaghi.com/en/archives/001152.php#more> (last visited June 30, 2011).

135 *Sharia and Islamic Jurisprudence Allow for Abolition of the Death Penalty*, International Campaign for Human Rights in Iran (Dec. 1, 2008), available at <http://www.iranhumanrights.org/2008/12/baghirighttolife/> (last visited June 30, 2011).

136 *Cyber-journalist arrested in Qom for posting dissident ayatollah's sermon online*, Reporters Without Borders for Press Freedom (Oct. 13, 2008), available at <http://en.rsf.org/iran-cyber-journalist-arrested-in-qom-13-10-2008,28929> (last visited June 30, 2011).

137 *Four-year sentence for online journalist who posted dissident ayatollah's sermon*, Reporters Without Borders for Press Freedom (Dec. 1, 2008), available at <http://en.rsf.org/iran-four-year-sentence-for-online-01-12-2008,29495.html> (last visited June 30, 2011).

138 *Free Navid Mohebbi, 18-year-old women's rights defender & blogger*, Change.org (Jan. 1, 2011), available at <http://www.change.org/petitions/free-navid-mohebbi-18-year-old-womens-rights-defender-blogger> (last visited June 30, 2011).

139 Muhammad Sahimi, *Courageous and Principled: Shiva Nazar Ahari*, PBS Frontline (Aug. 28, 2010), available at <http://www.pbs.org/wgbh/pages/frontline/tehranbureau/2010/08/post-3.html#ixzz1O7yQS4RK> (last visited June 30, 2011).

140 *Id.*

141 Pew Research Center for the People and the Press & Pew Forum on Religion and Culture, *Muslims Widely Seen as Facing Discrimination*, September 9, 2009, available at <http://pewforum.org/Muslim/Muslims-Widely-Seen-As-Facing-Discrimination.aspx> (last visited July 15, 2011) (58% of Americans see Muslims as experiencing discrimination).

142 Pew Research Center for the People and the Press & Pew Forum on Religion and Culture, *Public Remains Conflicted on Islam*, August 24, 2010, available at <http://pewforum.org/Muslim/Public-Remains-Conflicted-Over-Islam.aspx>

143 Kelly Kennedy, *Senators Decry Anti-Muslim Violence*, USA Today (March 30, 2011), available at http://www.usatoday.com/news/washington/2011-03-30-Muslim30_ST_N.htm (last visited July 25, 2011).

144 42 U.S.C. § 2000cc-1 *et seq.* The statutory text provides, in part:

“No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution--(A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest. . . .

“No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution. . . .

“No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.”

145 See Eric Treene, *RLUIPA and Mosques: Enforcing a Fundamental Right in Challenging Times*, 10 FIRST AMEND. L. REV. 330 (2012) (reviewing mosque disputes and anti-Muslim violence around the country). For an overview of recent mosque-related controversies, see *Controversies Over Mosques and Islamic Centers Across the U.S.*, PEW RESEARCH CTR.’S FORUM ON RELIGION & PUBLIC LIFE (Sept. 29, 2011), <http://features.pewforum.org/muslim/assets/mosque-map-all-text%209-29-11.pdf> (last visited June 18, 2012). And: *Map—Nationwide Anti-Mosque Activity*, AM. CIVIL LIBERTIES UNION, <http://www.aclu.org/maps/map-nationwide-anti-mosque-activity> (last visited June 18, 2012) (collecting reports of vandalism, arson, and similar attacks on mosques).

146 *Order to halt Murfreesboro mosque denied*. Lucas L. Johnson II. November 18, 2010. Knoxville News Sentinel. <http://www.knoxnews.com/news/2010/nov/18/order-to-halt-murfreesboro-mosque-denied/>

147 *Justice Department stands behind controversial Tennessee mosque*. CNN. October 18, 2010. CNN. http://articles.cnn.com/2010-10-18/us/tennessee.mosque_1_mosque-construction-site-worship?_s-PM:US

148 *Id.*

149 *Id.*

150 *Justice Department Enters Murfreesboro Mosque Controversy*. Mark Bellinger. October 18, 2010. NEWS CHANNEL 5. <http://www.newschannel15.com/story/13343278/feds-file-legal-brief-in-support-of-murfreesboro-mosque?redirected=true> <http://www.newschannel5.com/story/13343278/feds-file-legal-brief-in-support-of-murfreesboro-mosque?redirected=true>

151 *Id.*

152 *Murfreesboro Mosque Breaks Ground*. CNN.com. September 29, 2011. CNN. <http://religion.blogs.cnn.com/2011/09/29/murfreesboro-mosque-breaks-ground/>

153 *Islamic Center of Mississippi v. City of Starkville*, 840 F.2d 293 (5th Cir. 1988).

154 *Id.* at 294.

155 *Id.* at 298.

156 *Id.*

157 *Id.*

158 *Id.*

159 *Id.* at 299.

160 *Id.* at 293.

161 For example, see Daniel Burke, “Pamela Geller, ‘Queen Of Muslim Bashers,’ At Center Of N.Y. ‘Mosque’ Debate,” available at: http://www.huffingtonpost.com/2010/08/20/pamela-gellerqueen-of-mus_n_689709.html

162 See Ishaan Tharoor, “Mosque Protests Add Note of Discord to 9/11 Remembrances,” available at: <http://www.time.com/time/nation/article/0,8599,2017674,00.html#ixzz1uDbXppwl>; Paul Harris, “9/11 anniversary: New York Muslims insist that they are American too,” available at: <http://www.guardian.co.uk/world/2010/sep/12/911-anniversary-new-york-muslims>; Ethan Cole, “Thousands Rally against Park51 Mosque on 9/11 Anniversary,” available at:

<http://www.christianpost.com/news/thousands-rally-against-park51-mosque-on-9-11-anniversary-46755/>

163 See “Mayor Bloomberg Delivers Teary-Eyed Defense Of Ground Zero Islamic Center,” Huffington Post, available at: http://www.huffingtonpost.com/2010/08/03/michael-bloomberg-deliver_n_669395.html (August 3, 2010). For Mayor Bloomberg’s full speech, see: http://www.huffingtonpost.com/michael-bloomberg/mayor-bloomberg-on-the-ne_b_669338.html

164 Reshma Kirpalani, ‘Ground Zero Mosque’ Clears Legal Hurdle to Build, ABC World News, available at: <http://abcnews.go.com/US/ground-mosque-wins-legal-battle-build/story?id=14062701#.T6NMqeuXtC8> (July 13, 2011).

165 170 F.3d 359 (3d Cir. 1999).

166 *Id.* at 366.

167 Prisoners have achieved some protections for religious dietary practices. See *Caruso v. Zenon*, 2005 WL 5957978, *14 (D. Colo. 2005), and *Hudson v. Dennehy*, 538 F. Supp. 2d 400, 411 (D. Mass. 2008), which required prisons to provide halal meals for Muslim inmates. See *also* *Ford v. McGinnis*, 352 F.3d 582, 597 (2nd Cir. 2003) (a prisoner has a right to a diet consistent with his or her religious beliefs.). Courts have also held that inmates have a right to avoid eating foods forbidden by their religious beliefs. See *Moorish Science Temple of Amer., Inc. v. Smith*, 693 F.2d 987, 990 (2nd Cir. 1982). Courts have ordered reasonable accommodations for religious meals for inmates. See *Ashelman v. Wawrzaszek*, 111 F.3d 674, 678 (9th Cir. 1997). Courts have also required accommodations for special religious observances related to meals. See *Makin v. Colorado Dep’t of Corrections*, 183 F.3d 1205 (10th Cir. 1999) (failing to accommodate Muslim fasting requirements during Ramadan infringed on First Amendment rights of inmate).

168 Courts have held that restrictions on a prisoner’s right to religious literature violate the First Amendment. See *Sutton v. Rasheed*, 323 F.3d 236 (3rd Cir. 2003).

169 *Salahuddin v. Goord*, 467 F.3d 263, 269 (2nd Cir. 2006).

170 *Id.* at 588.

171 As the events triggering this claim preceded the date when RLUIPA (which applies to both land

use claims and prisoners' free exercise claims), was put into effect, on remand the defendants were only directed to show that their deprivations were reasonably related to a legitimate penological interest rather than the much stricter standard imposed by RLUIPA. *Id.* at 592-594.

172 See *Mitchell v. Cate*, 2012 WL 1158760, (E.D.Cal. 2012).

173 *Id.* at 4.

174 *Id.* at 5.

175 The final text of the State Question that appeared on the ballot is as follows:

STATE QUESTION NO. 755

LEGISLATIVE REFERENDUM NO. 355

This measure amends the State Constitution. It changes a section that deals with the courts of this state. It would amend Article 7, Section 1. It makes courts rely on federal and state law when deciding cases. It forbids courts from considering or using international law. It forbids courts from considering or using Sharia Law.

International law is also known as the law of nations. It deals with the conduct of international organizations and independent nations, such as countries, states and tribes. It deals with their relationship with each other. It also deals with some of their relationships with persons.

The law of nations is formed by the general assent of civilized nations. Sources of international law also include international agreements, as well as treaties.

Sharia Law is Islamic law. It is based on two principal sources, the Koran and the teaching of Mohammed.

SHALL THE PROPOSAL BE APPROVED? FOR THE PROPOSAL — YES AGAINST THE PROPOSAL — NO

176 *Id.*

177 *Muneer Awad v. Paul Zirix*, 670 F.3d 1111 (10th Cir.Okla.2012).

178 *Webb v. City of Phila.*, 562 F.3d 256 (3rd Cir. 2009).

179 *Id.* at 258.

180 *Id.* at 261-62 (stating that the police commissioner's "thorough and uncontradicted reasons for refusing accommodations are sufficient to meet the more than *de minimis* cost of an undue burden.").

181 *Id.*

182 *EEOC v GEO Group, Inc.*, 616 F.3d 265 (3rd Cir. 2010).

183 *Id.* at 267-68.

184 *Id.* at 273. See also 42 U.S.C. § 2000(e)(j) (2006). Title VII requires employers to accommodate their employees' religious observance or practice unless doing so would create an undue hardship for the employer's business conduct.

185 *Nothing to Fear Debunking the Mythical "Sharia Threat" to Our Judicial System*, American Civil Liberties issue brief at 1 (2011) (last visited October 19, 2011).

186 *Nat'l Group for Communications & Computers, Ltd. v. Lucent Technologies Int'l, Inc.*, 331 F.Supp.2D 290, 293 (2004).

187 *Id.* at 294.

188 *Id.* at 297.

189 *Id.* at 291.

190 *Nothing to Fear Debunking the Mythical "Sharia Threat" to Our Judicial System*, ACLU at 7 (2011) (last visited October 19, 2011).

191 *Id.*

192 *Id.*

193 *Id.*

194 680 N.W.2d 569, 574 (Minn. Ct. App. 2004).

195 *Odatalla v. Odatalla*, 355 N.J. Super. 305, 810 A.2d 93 (N.J. Super. Ct. Ch. Div. 2002).

196 Richard Freeland, "The Islamic Institution of Mahr and American Law," available at: <http://www.law.gonzaga.edu/academic+program/Files/Law-Reviews/GJIL/Volume4/Vol4-TheIslamicInstitution.pdf>

197 *Id.* at 309-10, 96.

198 *Id.* at 310, 97.

199 No. 07AP-925, 2008 WL 2698679, *6 (Ohio Ct. App. July 10, 2008)

200 *Id.*

201 *Id.*

202 *Nothing to Fear Debunking the Mythical "Sharia Threat" to Our Judicial System*, ACLU at 4 (2011) (last visited October 19, 2011).

203 798 So.2d 75, 86 (La. 2001).

204 *Id.*

205 404 Md. 404 (Md. 2008)

206 *Id.*

207 *Id.*

208 *Id.*

209 *Id.*

210 *Id.*

211 *Id.*

212 *Nothing to Fear Debunking the Mythical "Sharia Threat" to Our Judicial System*, ACLU at 4 (2011) (last visited October 19, 2011).

213 <http://campus.usal.es/~mfe/SdO/Archivos/Clasicos/Papers/10006.htm#fn3>

214 William Inboden. *William Inboden on US Religious Freedom Policy in the New Egypt*. June 3,

2011. <http://berkleycenter.georgetown.edu/essays/william-inboden-on-us-religious-freedom-policy-in-the-new-egypt>
- 215 Douglas Johnston and Cynthia Sampson, *Religion, the Missing Dimension of Statecraft* (Oxford, 1994).
- 216 Thomas F. Farr (2006): RETOOLING THE MIDDLE EASTERN FREEDOM AGENDA: ENGAGING ISLAM. *The Review of Faith & International Affairs*. <http://repository.berkleycenter.georgetown.edu/RETOOLING%20THE%20MIDDLE%20EASTERN%20FREEDOM%20AGENDA%20-%20FARR.pdf>
- 217 *Id.*
- 218 *Id.*
- 219 *Id.*
- 220 Timothy Shah. *Timothy Samuel Shah on a Fully Free Egypt*. June 3, 2011. <http://berkleycenter.georgetown.edu/essays/timothy-samuel-shah-on-a-fully-free-egypt>
- 221 Thomas Farr. *Obama at the Crossroads on Religious Liberty*. May 6, 2010. <http://berkleycenter.georgetown.edu/blogs/faith-and-foreign-policy/posts/obama-at-the-crossroads-on-religious-liberty>
- 222 Thomas F. Farr (2006): Retooling The Middle Eastern Freedom Agenda: Engaging Islam. *The Review of Faith & International Affairs*. <http://repository.berkleycenter.georgetown.edu/retooling%20the%20middle%20eastern%20freedom%20agenda%20-%20FARR.pdf>
- 223 *Id.*
- 224 *Id.*
- 225 *Id.*
- 226 *Id.*
- 227 See Thomas F. Farr. *The Widow's Torment: International Religious Freedom and American National Security in the 21st Century*. 57 *Drake L. Rev.* 851, 853 (2009).
- 228 *Id.*
- 229 William Inboden. *Religious Freedom and the Anniversary of 9/11*. September 9, 2011. <http://berkleycenter.georgetown.edu/essays/william-inboden-religious-freedom-and-the-anniversary-of-911>
- 230 *Id.*
- 231 Thomas F. Farr. *The Widow's Torment: International Religious Freedom and American National Security in the 21st Century*. 57 *Drake L. Rev.* 851, 856 (2009).
- 232 *Id.*, 57 *Drake L. Rev.* 851, 853 (2009).
- 233 Jean Bethke Elshtain. *On Religious Freedom and Religious Extremism*. September 9, 2011. <http://berkleycenter.georgetown.edu/people/jean-bethke-elshtain>
- 234 See Roger Trigg. *On Religious Freedom and Religious Extremism*. September 9, 2011. <http://berkleycenter.georgetown.edu/essays/roger-trigg-on-religious-freedom-and-religious-extremism>
- 235 Policy Coordinating Comm., U.S. Nat'l Strategy For Pub. Diplomacy And Strategic Commc'n 25 (2007), available at <http://www.state.gov/documents/organization/87427.pdf>.

236 Albright, Madeleine. *The Mighty and the Almighty: Reflections on America, God, and World Affairs*, 8, New York: HarperCollins, 2006.

237 US International Religious Freedom Act of 1998, Section 104.

238 E.g. Thomas F. Farr (2011): The Trouble With American Foreign Policy And Islam, *The Review of Faith and International Affairs*, 9:2, 65-73

239 E.g. Thomas F. Farr (2006): Retooling The Middle Eastern Freedom Agenda: Engaging Islam. *The Review of Faith & International Affairs*. <http://repository.berkeleycenter.georgetown.edu/retooling%20the%20middle%20eastern%20freedom%20agenda%20-%20farr.pdf>

240 Nina Shea and Paul Marshall, "We Need to Talk About Islam," *The Wall Street Journal*, Europe Edition, November 8, 2010.

241 E.g. Thomas F. Farr (2006): Retooling the Middle Eastern Freedom Agenda: Engaging Islam. *The Review of Faith & International Affairs*. <http://repository.berkeleycenter.georgetown.edu/retooling%20the%20middle%20eastern%20freedom%20agenda%20-%20farr.pdf>

242 Daniel Philpott. *Islam: A friend or Foe of Democracy in the New Egypt?* June 3, 2011. <http://berkeleycenter.georgetown.edu/essays/daniel-philpott-on-islam-a-friend-or-foe-of-democracy-in-the-new-egypt>

243 *Id.*

244 *Id.*

245 *Id.*

246 Graham E. Fuller, *The Future of Political Islam* (Palgrave MacMillan, 2003) p. xi.

247 E.g. Thomas F. Farr. *The Widow's Torment: International Religious Freedom and American National Security in the 21st Century*. 57 *Drake L. Rev.* 851, 853 (2009).

248 Thomas F. Farr (2006): Retooling the Middle Eastern Freedom Agenda: Engaging Islam. *The Review of Faith & International Affairs*. <http://repository.berkeleycenter.georgetown.edu/retooling%20the%20middle%20eastern%20freedom%20agenda%20-%20farr.pdf>

249 Thomas F. Farr. *The Widow's Torment: International Religious Freedom and American National Security in the 21st Century*. 57 *Drake L. Rev.* 851, 854 (2009).

250 Robin Wright, *The Islamists Are Coming*. *Foreign Policy*, November 7, 2011. http://www.foreignpolicy.com/articles/2011/11/07/the_islamists_are_coming

251 Evan Hill, *Do Egypt's Liberals Stand a Chance?*, *Foreign Policy*, November 16, 2011. http://www.foreignpolicy.com/articles/2011/11/16/do_egypts_liberals_stand_a_chance

252 See Thomas F. Farr (2006): Retooling the Middle Eastern Freedom Agenda: Engaging Islam. *The Review of Faith & International Affairs*. <http://repository.berkeleycenter.georgetown.edu/retooling%20the%20middle%20eastern%20freedom%20agenda%20-%20farr.pdf>

253 *Id.*

254 *Id.*

255 Robin Wright, *The Islamists Are Coming*. *Foreign Policy*, November 7, 2011. http://www.foreignpolicy.com/articles/2011/11/07/the_islamists_are_coming

foreignpolicy.com/articles/2011/11/07/the_islamists_are_coming.

256 Thomas Farr. *Killing the Extremist Idea that Threatens America: Counter Fear with Freedom*. September 24, 2010. <http://berkeleycenter.georgetown.edu/blogs/faith-and-foreign-policy/posts/killing-the-extremist-idea-that-threatens-america-counter-fear-with-freedom>.

257 *Id.*

258 Thomas F. Farr (2011): The Trouble with American Foreign Policy and Islam, *The Review of Faith and International Affairs*, 9:2, 65-73.

259 Robin Wright, *The Islamists Are Coming*. *Foreign Policy*, November 7, 2011. http://www.foreignpolicy.com/articles/2011/11/07/the_islamists_are_coming.

260 *Id.*

261 See Thomas F. Farr (2006): Retooling the Middle Eastern Freedom Agenda: Engaging Islam. *The Review of Faith & International Affairs*. <http://repository.berkeleycenter.georgetown.edu/retooling%20the%20middle%20eastern%20freedom%20agenda%20-%20farr.pdf>.

262 Thomas F. Farr. *The Widow's Torment: International Religious Freedom and American National Security in the 21st Century*. 57 *Drake L. Rev.* 851, 862 (2009).

263 *Id.*

264 Thomas F. Farr (2011): The Trouble with American Foreign Policy and Islam, *The Review of Faith and International Affairs*, 9:2, 65-73.

265 See Rodney Stark, *The Victory Of Reason* 199 (2005) ("Religion thrives in a free market, where many religious groups vie for followers and those [religions] lacking energy or appeal fall by the wayside"); Brian J. Grim, *Religious Freedom: Good for What Ails Us?*, *Rev. Of Faith & Int'l Aff.*, Summer 2008, at 3, 4-5 (2008); Brian J. Grim & Roger Finke, *Religious Persecution in Cross-National Context: Clashing Civilizations or Regulated Religious Economies?*, 72 *AM. Soc. Rev.* 633, 654 (2007).

266 Thomas F. Farr. *The Widow's Torment: International Religious Freedom and American National Security in the 21st Century*. 57 *Drake L. Rev.* 851, 863 (2009).

267 *Id.* at 867.

268 US Department of State, *2010 Annual Report on International Religious Freedom*.

269 *Id.*

270 Omar Waraich, "Taseer Murder Reveals Depth of Pakistan's Extremist Drift," *Time Magazine*, January 19, 2011, <http://www.time.com/time/world/article/0,8599,2041558,00.html>.

271 Thomas F. Farr (2011): The Trouble with American Foreign Policy and Islam, *The Review of Faith and International Affairs*, 9:2, 65-73.

AUGUST 2012

REPORT



Institute *for* Social Policy *and* Understanding

The Institute for Social Policy and Understanding (ISPU) is an independent nonprofit think tank committed to education, research, and analysis of U.S. domestic and foreign policies issues, with an emphasis on topics related to the American Muslim community.

Since its inception in 2002, ISPU has built a solid reputation as an organization committed to objective, empirical research and continues to be a valuable source of information for policy makers, scholars, journalists and the general public. Our research aims to increase understanding of Muslims in the United States while also tackling the many policy issues facing all Americans. We provide cuttingedge analysis and policy recommendations through publications, conferences, government briefings and media commentary. ISPU firmly believes that optimal analysis and treatment of social issues mandates a comprehensive study from several different and diverse backgrounds. As social challenges become more complex and interwoven, ISPU is unique in its ability to bring this new approach to the human and social problems facing our country. Our multidisciplinary approach, in partnership with universities, think tanks and other research organizations, serves to build understanding and effect lasting social change.

Further information about ISPU can be obtained from our website at www.ispu.org.



Institute *for* Social Policy *and* Understanding

43151 Dalcoma, Suite 6, Clinton Twp., Michigan 48038 | 1.800.920.ISPU (4778) | info@ispu.org

www.ispu.org

