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What is Islamic Law?

The Fifth Annual John E. James Distinguished Lecture Walter F. George School of Law Mercer University Macon, Georgia September 20, 2005

by Imam Feisal Abdul Rauf*

HORACE W. FLEMING: We are indebted to John E. James and the Mercer Law School for their generosity for making this event possible. Mr. James has made an outstanding contribution not only to the legal profession, but also to his community and to his Alma Mater, Mercer University.

* Founder and CEO, American Society for Muslim Advancement (ASMA) (first American organization committed to bringing Muslims and non-Muslims together through programs in culture, art, academia and current affairs); Imam, Masjid Al-Farah (a New York City mosque). Architect, Cordoba Initiative (interreligious blueprint for improving relations between America and the Muslim world and pursuing Middle East peace). Teacher, Islam and Sufism at the Center for Religious Inquiry at St. Bartholomew's Church, the New York Seminary, and the Chautauqua Institution. Member, National Interreligious Initiative for Peace in Washington, D.C.; World Economic Forum's Council of 100 Leaders; Board of Trustees, Islamic Center of New York; Advisor, Interfaith Center of New York. Books published: *ISLAM: A SEARCH FOR MEANING* (1995); *ISLAM: A SACRED LAW* (2000); *WHAT'S RIGHT WITH ISLAM: A NEW VISION FOR MUSLIMS AND THE WEST* (2004).

Among his many valuable contributions to Mercer, John James chaired the Law School Board of Visitors in 1979. Mr. James negotiated the largest settlement ever entered into the United States District Court for the Middle District of Georgia, and you will note from your program that Mr. James received the Tradition of Excellence Award from the General Practice and Law Section of the State Bar of Georgia, and the Outstanding Alumnus Award from the Walter F. George School of Law Alumni Association just this year.

Now John James is seated here with us up front. Dr. Lil James is also here. Dr. James will you please stand and let us recognize you. Thank you. Thank you both. This distinguished annual lecture is an excellent opportunity for our law school students and other citizens in the community of legal interest to hear from some of the world's renowned orators.

At the initial John E. James lecture four years ago, we were honored to have the Honorable Lord Gordon Slynn of Hadley speak to us, and he has graciously returned each year to introduce our speaker. Lord Slynn has visited Mercer annually for several years and is really a true friend of the University. We are delighted that Lord Slynn is back with us.

Since March 1992 Lord Slynn has served as Lord of Appeal and Ordinary of the House of Lords. He is an honorary fellow of Trinity College, Cambridge University College, Buckingham Saint Andrews College, the University of Sydney, John Morres Liverpool and Goldsmiths College, University of London. Lord Slynn is a graduate of the University of London and Cambridge. Lord Slynn was called to the bar in 1956. He became a Master of the Bench in Grays Inn in 1970. He has served as Vice Treasurer and Treasurer of Grays Inn.

Lord Slynn has served as a High Court Judge and as Advocate General of the Court of Justice of the European Community. Since 1999 Lord Slynn has served as the Prior of England of the Islands of the Most Venerable Order of Saint John. We want to thank, once again, John James and Dr. Lil James for making this afternoon's event possible, and we look forward to this year's lecture.

At this time, I want to introduce Dr. Craig McMahan, University Minister and Dean of the Chapel of Mercer University, to lead us in our invocation.

CRAIG T. MCMAHAN: Would you pray with me please? Oh Great God, Creator of this world and Giver of life, You have made us so that we would live together as brothers and sisters, and by our own shortcomings, there is so much that separates and divides us much to Your sorrow and ours. We are grateful for this one who comes, Imam Feisal, to speak to us today about how we might be one. How we might

live together in peace, and into the deepest purposes for which You have made this world and us. Be among us with every heart and mind that in our hearing, we might learn the truth and that in our leaving, we might practice and do the truth. We are grateful to be in this place together, for the generosity that makes this event possible, and for the wisdom that makes this event so good and so strong. Be among us, be pleased with all that is said and done to Your Glory, Amen.

HORACE W. FLEMING: Daisy Floyd is in her second year of service as our Dean, and she is doing a wonderful job. We are so pleased that she is here, and I am pleased to present Dean Floyd's greetings from our Law School.

DEAN DAISY HURST FLOYD: Thank you Dr. Fleming, Imam Feisal, Lord Slynn, Mr. James, Dr. McMahan, and distinguished guests. It is indeed my great privilege and honor to welcome you on behalf of the Walter F. George School of Law, to our John E. James distinguished lecture. This is an event we look forward to each year, and we are grateful for your presence here, and we are grateful for the generosity of Mr. James that allows us to have distinguished international speakers. Welcome to you, thank you, Mr. James, and we are glad that you are here.

HORACE W. FLEMING: Thank you Dean Floyd, and it is now my pleasure to welcome to the podium the Honorable Lord Gordon Slynn of Hadley, Court of Appeal and Ordinary, who will introduce tonight's lecturer.

THE RIGHT HONORABLE LORD GORDON SLYNN: Provost, Dean, Mr. and Mrs. James, ladies and gentlemen, as it has already been said, it is to the considerable generosity of John James that this lecture series has produced remarkably interesting talks on topics of considerable and contemporary relevance. Topics which have been dealt with by three distinguished speakers. They provided not only intellectual stimulus for the Law School, but also some very agreeable social occasions before and afterwards.

The fifth lecture in this series, I exclude the first, concerns a topic of no less interest and importance, and it is to be given by a no less distinguished speaker. That topic is of importance to everybody, including lawyers. No one in this room can fail to be conscious of the place of Islam in the contemporary world. The problems which it faces, the problems which a misunderstanding of its philosophy, its faith, and its motives causes both for its adherents and for others. Perhaps it is

the problems, which an apparently overzealous assistance of some of its aspects causes for other people, which is no less important for non-Islamic lawyers, that compels us to look at this topic of what is Islamic Law. It is a system, a due process, a procedure which is largely unfamiliar to those of us who are common lawyers or civil lawyers, and we need to be able to understand and to distinguish Islamic Law from civil law and common law.

Without an explanation, we cannot begin to understand the substance or the differences. Understanding is the only way in which, between these different legal systems and faiths, we can avoid conflict and disharmony not just in the Middle East, but increasingly, everywhere in the world.

Some years ago in the International Law Association, we saw the need to set up a working committee on Islamic Law. It was given pride to the task of research and exposition, but also a more general education. I will have to say it was not easy to get it going, and we are only just beginning to achieve some success.

The chairman of the International Law Association and I, in particular, saw the need very clearly for this study of Islamic Law. I am convinced that it is not only important in a large organization like the International Law Association, but that it is equally important in law schools throughout the world that we should set out to learn and to understand what is Islamic Law. We could not begin with a better guide and teacher than what the John James Lecture program has provided for us today.

The speaker is, I know from my own experience, a speaker of charm and eloquence, and a speaker who speaks from very real learning as the Imam of a very large Mosque in New York. He has had, over the years, considerable experience of pastoral work and work as a lecturer and writer. He has produced important books and articles on the Islamic Faith, Philosophy, and I emphasize, Law. He has participated in important conferences. I met with Archbishop Carey, the former Archbishop of Canterbury, a few days ago, and he told me he had recently participated in a valuable discussion with Imam Feisal and others at the World Economic Forum in Jordan. But it is, perhaps above all, his work in the United States that has been important.

He is a co-founder of the Cordoba Initiative, a multi-faith organization with offices in New York and in Aspen, Colorado, whose objective is to help the relationships between the Islamic world and America, to help the relationship not just between groups, but also between individuals. The Cordoba Initiative aims to increase an intercultural understanding, tolerance, and interface between the different religions to inculcate respect of one for the other. It was described by Senator George

Mitchell, when this proposal was first put forward, as a most important proposal for dealing—and I quote—“for dealing with what will increasingly be a critical issue for the nation and the world.” You will find in the programs today details of Imam Feisal’s work in this respect, and I do not repeat it. It is, however, my very great pleasure on behalf of the trustees of the John James Lecture Series to invite Imam Feisal now to address us on the question, what is Islamic Law? Imam Feisal.

IMAM FEISAL ABDUL RAUF: Thank you, thank you. Thank you very much ladies and gentlemen for the very gracious hospitality that you have extended to me. Thank you Lord Slynn for having invited me to this very lovely town and having introduced me to these very lovely people, to the Provost, to Dean Daisy, to Dr. James and to Dr. McMahan, to whom we are thankful for the lovely benediction and prayer he made. I hope that his prayer may be answered in my efforts with you today, and I add my voice to his in praying that we surrender to the Spirit, and that it may be with us all.

It is customary for Muslims when they begin an event to invoke the name of God, the one God; the God of Abraham, Ishmael, and Isaac; the God of Moses and Aaron; the God of Jesus Christ and John the Baptist; the God of Mary, the Mother of Jesus Christ, whom Muslims regard as the best of women who ever lived; and the God of Mohammad. Peace and blessings be upon all these noble souls and prophets.

The faith of Islam sees itself as within and fulfilling the Abrahamic religious traditions. In fact, when Jesus was asked by a lawyer what the greatest commandment in the law¹ was, he said it is to love the Lord thy God with all of one’s mind, heart, soul, and strength.²

When asked what the second greatest commandment was, he answered that it was equal in importance to the first, literally “like unto it” [that is, the first commandment]; and that is to “love thy neighbor as thyself.”³ But then Jesus goes on to say something not often thought of

1. *Matthew* 22:36. Note that this makes this a legal injunction.

2. *Mark* 12:28-33; *Matthew* 22:36-40. *Mark* 12:28-33 quotes all four while *Matthew* 22:36-40 just mentions heart, soul, and mind. Muslim spiritual Masters teach us that the human being consists of four components: our physiology, thus our strength; our spirit, thus our soul; our mind or intellect; and our heart or our psychic and emotional being. These two commandments therefore command us to love God with all the components of one’s being.

3. *Mark* 12:31; *Matthew* 22:39. The mystical dimension of our Abrahamic faith traditions regards these two commandments as one. This is because Judaism, Christianity, and Islam all express the belief that we are created in the divine image. Therefore, the second commandment can be restated in the form of the first as: “Love the Lord thy God and—in our contemporary world—all six billion of God’s images, with all of your heart,

by most people, "Upon these two commandments hang all of the Law and the Prophets . . .,"⁴ and that is the starting point of my lecture today.

Islamic Law, called Sharia, starts off from these two commandments. Muslim scholars have divided Islamic Law into two broad categories corresponding to these commandments: namely those called *'ibadat*, laws dealing with acts of worship, and *mu'amalat*, laws dealing with worldly affairs.

This can be pictured as follows:

I. LOVE OF GOD [*'IBADAT*]

This category of law covers proper belief [primarily an act of the mind] and liturgical acts of worship [combined actions involving body, heart, soul, and mind]. Proper belief requires a Muslim to acknowledge the existence of:

1. God
2. Angels
3. Scriptures
4. Prophets and Messengers
5. The Last Day, which includes the Day of Resurrection of all human souls, followed by the Day of Judgment by God and the admission of human souls into heaven or hell. A Muslim cannot reject any of the above-five creedal beliefs without rejecting the faith.

The five liturgical acts of worship are popularly known as the Five Pillars of Islam, and these include:

1. Testimony of faith [*shahada*], which is to say the words, "I bear witness that there is no god but God, and I bear witness that Muhammad is the messenger of God." In Arabic, these words are *ash-hadu an la ilaha illallah, wa ash-hadu anna muhammadan rasul ullah*. Saying these words makes a person enter into the Community of Believers, and I always recommend to my non-Muslim audiences that they learn them, as saying *la ilaha illallah* when they visit the Muslim world will open many doors, from concluding a bargain in a bazaar to visiting a mosque.
2. Five-time daily prayer [*salah*]
3. Charity payments [*zakah*]
4. Fasting the month of Ramadan
5. Pilgrimage to Mecca [*haj*]

mind, soul and strength."

4. *Matthew* 22:40.

II. LOVE OF NEIGHBOR [*MU'AMALAT*]

Love of neighbor comprises laws pertaining to:

1. Treatment of human beings
2. Treatment of animals [kind treatment of animals; rules of slaughtering an animal for meat which must be done humanely include, for example, that the animal should not see the blade, and that the knife should be sharp].
3. Treatment of Creation [laws of ecology, laws against wanton destruction of trees, and laws against polluting rivers and bodies of water].

Laws pertaining to human beings are further broken down into the categories of:

1. Criminal law [dealing with murder, theft, and libel].
2. Personal status law [dealing with marriage, divorce, custody of children, and child support payments].
3. Contract law [dealing with rules pertaining to contracts, gifts, hires, inheritance, and bequests].
4. Governance [dealing with just and proper rule, reciprocal duties and obligations of the ruler and the ruled, and the treatment of religious minorities].
5. Law of nations [dealing with what is today called international law, and laws between nations].

Islamic law posits that human beings are created for a very specific purpose on earth that goes beyond the usual and normal purposes of the animal kingdom of eating, sleeping, and reproducing. We are here to be ambassadors of the Divine, to embody what it means to be human in the best possible meaning of the term, which is to be reflectors—or mirrors if you will—of the Divine Image, and thus of Divinity Itself. Extending this analogy, every human being is an imperfect mirror in which Divinity wants to see Itself reflected. The Islamic contemplative tradition, known as the Sufi tradition, informs us that our work in this regard requires focusing on polishing the mirror of our being and perfecting it so as to become as transparent and accurate a reflector as possible of the divine presence, purpose, and intent as embodied in the two commandments mentioned above.

In a teaching of the Prophet Muhammad called a *hadith qudsi*, God says that there is no action more pleasing to God than adhering to His prescriptive commandments, and we acquire God's love by increasing the frequency of performing these actions. Islamic Law positions itself on the worldview that fulfilling these two commandments is how Muslims express their love of God and achieve God's love of them in return.

Muslims call these prescriptive commandments the Five Pillars of Islam, the first of which is the declaration of faith itself: that there is no god but God and that Muhammad is His Prophet. To recognize the oneness of God is not just to accept the idea of divine singularity, but includes acknowledgement of ideas proper to God, that God is described by positive and absolute attributes such as the Almighty, the Perfect, Possessor of absolute beauty, majestic Majesty, and that God is all-knowing, all-hearing, all-seeing, all-powerful, all-compassionate, all-merciful, all-loving, and all-forgiving to his creatures. Muslims have ninety-nine such attributes called "The Beautiful Names of God."⁵ Muslim thinkers have divided these names into names of "majesty" [*jalal*], such as "the Just," "the Almighty," "the Creator," and names of "beauty," such as "the Merciful," "the Forgiver," and some have suggested that an association can be made between the majestic names and masculine attributes, and the beautiful names and feminine attributes.

The other four pillars are the five-time daily prayer; the giving of alms, which is a form of tax on a Muslim's wealth to be paid to the treasury; fasting the month of Ramadan, defined as the abstention of any food, drink, or sexual activity from dawn till sunset; and the once-in-a-lifetime pilgrimage [*hajj*] to Mecca if one can afford it physically and financially. Loving God involves performing these five pillars and doing more of these actions, such as saying there is no god but God [*la ilaha illallah*] more frequently, doing additional prayers to the de minimus five-time daily prayer, giving more than the 2.5 percent of our wealth in charity, and going more frequently on pilgrimage, expresses a deeper love of God and of God's love of us. This is how Muslims fulfill Jesus's first commandment of loving God with all of their heart, mind, soul, and physical strength.

A typical manual of Islamic Law, therefore, begins by describing the Acts of Worship, and then moves on to the other categories such as personal law, contracts, and criminal law. The first of this category of law deals with the issues of ritual purity, required for prayer to be valid, then moves on to the prayers and terms of a prayer's validity, with certain licenses given to the traveler, to the ill, or to the pregnant or child-bearing woman. Obligations of Acts of Worship, the issue of when they become due, and circumstances that defer or lighten the obligations of prayer, fasting, charity, and pilgrimage are typically covered in each subject area.

5. Although we use the word "His" in Arabic, we note that there is no neutral gender in Arabic, for God is beyond being described by the attribute of gender.

Under Islamic Law, the obligation to perform the Acts of Worship falls with legal majority, which is achieved by biology, not age.⁶ The individual becomes an adult when he or she attains physical puberty rather than a mere age such as sixteen, eighteen, or twenty-one. Even if puberty is achieved at the age of ten, the individual is then considered, for all legal purposes, to be an adult.

III. SOURCES OF LAW

The two primary sources of Islamic Law are the Quran and the Hadith.

Muslims regard their scripture, the Quran, literally to be the word of God, orally recited by the Archangel Gabriel to the Prophet Mohammad. The word Quran means a recitation, emphasizing its revelation as sound rather than the written word. Although the Quran itself indicates that it is written in God's archetypal book that exists with God, in its revealed form, it was revealed as sound. Muslims, therefore, regard it more like an opera: defined not as the written lyrics and the written musical score, but the actual sound of the performance of lyrics and score, thus the event itself.

The power of the Quran lies in its power to evoke powerful feelings and ideas in the Muslim listener, especially to those who understand the Arabic language in which it was revealed. The Quran consists of over six thousand verses; about ten percent of them deal with matters of law, including the specific items included in the Ten Commandments, although the Quran does not list them together and in the same order. Quranic commandments are the primary source of law, and to the Muslim are Divine Injunctions.

The second source of Islamic Law is called the Hadith, or the Sunna, which comprises the sayings [*aqwal*], actions [*af'al*], and the tacit acquiescence or approval [*iqrar*] of the Prophet as related in authentic traditions.⁷ The Sunna clarifies some Quranic commandments and nuances them further, providing further clarity and guidance to the community. In the absence of any direct Quranic legislation, the

6. According to Islamic law, all these duties, including those of worship, are not obligatory on a minor. Differences of opinion between Muslim scholars arose on the issue of the third pillar, zakah, [the charity or tax due on one's wealth] as to whether such a payment was an obligation due from a minor orphaned by his or her parents' death and who thereby inherits from his parents' estate. These types of differences of opinion are what led to the different schools of law that evolved in Islamic thought.

7. Thus the body in Islamic law of *sunnah qawliyya* [verbal statements], *sunnah fi'liyya* [normative actions of the Prophet], and *sunnah taqririyya* [tacit consent of the Prophet indicated by his silence with reference to an event that happened in his presence].

Prophet's commandments to his companions are deemed equal to God's commandments.⁸

These two sources are called the textual sources because they are currently found in books and, therefore, are in some sense "closed." All the subsidiary sources of Islamic Law are "living," in the sense that they are the human engagement, after the Prophet's lifetime, with the textual sources.

The third source of Islamic Law is consensus, called *ijma'* in Arabic. The notion of consensus kept evolving. In the beginning, it was the consensus of the four first Caliphs, the successors of the Prophet; after some time it expanded to include the consensus of the companions of the Prophet; and after further time it evolved to the consensus of the jurists on a matter of law.

The fourth source of law is analogy, called *qiyas* in Arabic. As an illustration, the Quran has an express prohibition against wine. It does not prohibit whisky, beer, or other intoxicants, but by analogy, Islamic scholars developed and applied the particular formula of analogy that sought to define the operative cause [*'illa*] of the law, which in the case of wine is its intoxicating quality caused by its intoxicating agent, alcohol. By analogy, therefore, any alcoholic beverage is deemed prohibited.

These four sources of law were universally agreed upon by all the classical schools of law. Other subsidiary sources of law include pre-Islamic custom and government legislative authorities [and today such legislative bodies are deemed authoritative], as long as the laws enacted do not conflict with the Quran and Sunna.

Custom is a duly recognized source of law in Islam. In all societies that became Muslim, their pre-Islamic common law and normative practices were deemed to be acceptable to Muslim jurists—deemed Sharia-compliant—as long as these laws did not conflict with the Quran and Sunna. This would be analogous to American laws enacted by Congress, which would be deemed legal as long as they are constitutional. Under Islamic Law, "Sharia-compliant" would be the equivalent term to "constitutional" under American Law. And, just as in American Law, all law has to be constitutional. Furthermore, just as the Constitution itself is a tiny percentage of the whole corpus of American Law that has been enacted over time, most of Islamic Law is neither Quranic law nor Sunna, although all Islamic law has to be consistent with the Quran and

8. One important difference between the Quran and the Sunna is that there is universal agreement on the full authenticity of the Quran; there is universal agreement that a number of hadiths have been forged after the Prophet's time. Therefore, a science of authentication developed that rated the hadith's authenticity.

Sunna. The term “Islamic Law,” therefore, more properly describes the complete corpus of laws that Muslims have enacted over the centuries to govern their societies by including, of course, the laws in the Quran and Sunna.

I could continue further with the lecture, but I would much prefer to engage with you on this subject. I would like to pause with this brief overview of Islamic Law and invite you to ask questions because the questions you will ask are bound to take us into complexities and details rich in nuances, which usually are the areas of greater interest.

AUDIENCE QUESTION: What is the relationship between man-made government law and religious law in Islam?

IMAM FEISAL ABDUL RAUF: As long as man-made laws—be they sourced from government legislative bodies, custom, or any other source—do not contradict or violate the laws given in the Quran and by the Prophet Mohammad, then they are deemed acceptable, or Sharia-compliant.

The notion of government, or Sharia-compliant governance, has been a complex subject in the history of Islamic Law, mainly because from very early on in Islamic history people fought for power. Power struggles resulted in the largest of many historical splits of the Muslim community: It created the split between the Sunni and the Shia [or Shiites], the Shias believing that the leader of the community or the Caliph [successor of the Prophet] should be from the Prophet’s bloodline, and specifically from the descendants of his cousin and son-in-law, Ali. The Sunnis eventually accepted the principle that the Caliph may not have to be the best of people, but was legitimized as political head of state as long as he fulfilled the rule of law as interpreted by the legal scholars, upheld in the principle developed by the fourth century of Islam as the scholars being the “heirs of the Prophets” [*warathut al-anbiya*].

This leads me to share with you the idea of an important project we are working on, which is to propagate in the popular mind the jurisprudential definition of an Islamic State. Most people think of a theocracy when the term “Islamic State” is used, although in current actual usage the term is also often used demographically to denote a nation where the majority of the citizens practice the religion of Islam. Islamic Law, however, has some very well-established principles of what proper governance entails. Redefining the term Islamic State in the popular mind as based upon these principles will go a long way in bridging the divide between the West and the Islamic world. It will educate Muslims

and non-Muslims on what an Islamic State truly is, and what such a State should do for its citizens.

It will also demonstrate to many Muslims and non-Muslims that countries like America and Western Europe are far more Sharia-compliant and, therefore, far more “Islamic,” by that definition, than the demographic definition, which would be a very major contribution to healing the rift between the West and the Muslim world. Unbeknownst to most, some seven centuries before Thomas Jefferson wrote the words of the American Declaration of Independence—which, by the way, I and many Muslims regard as a very Islamic document in its principles—“We hold these truths to be self evident, that all men are created equal, endowed by their Creator with certain unalienable rights, among which are life, liberty and property” [which was then replaced with pursuit of happiness]—Muslim jurists said that all of Islamic Law is to protect and further five meta-objectives [called the *maqasid*]: life, freedom of religious practice, property, family, and mental well-being.

I show in my book⁹ how these principles, basic to Islamic law, are so resonant with “life, liberty and the pursuit of happiness” that defines the American Social Contract.

The Abrahamic religions [Judaism, Christianity, and Islam] reject the notion that human beings are born into classes or castes. The common ethic to these religions, which I have called the Abrahamic Ethic, is expressed in the principle of the American Declaration that all humans are equal, endowed by the Creator with inalienable rights. They are inalienable because they are given to us by God, not by the State, unlike the French Constitution where human rights are given by the State, thus by a man-made entity, which means that they can be withheld or rescinded by the State. Our American Declaration states that these are inalienable rights, thus inhering in the very definition of being human; and because they are given to us by God, no government, no government body, and no human body can deny us from these rights. American Law posits that among these inalienable rights are life, liberty, and the pursuit of happiness. Islamic Law states that among these inalienable rights are life, free pursuit of religion, property, family, and mental well-being, which altogether maps very well to the American Social Contract.

AUDIENCE QUESTION: How do you compare Islamic Law to the Wahhabi interpretation of law in Saudi Arabia?

9. IMAM FEISAL ABDUL RAUF, WHAT'S RIGHT WITH ISLAM IS WHAT'S RIGHT WITH AMERICA (2004).

IMAM FEISAL ABDUL RAUF: The Wahhabi movement was one of many revivalist movements in the history of Islam. It emanated from a certain region of the Arabian peninsula called Najd. Its founder was a gentleman by the name of Mohammad Abdul Wahhab—which is why it is named the Wahhabi movement—who lived in the eighteenth century. It was a revivalist and fundamentalist movement, in that it had a very severe or austere sense of what was acceptable and what was not.

Jurisprudentially, they follow one of the four Sunni schools [or *madhhab*], that of Ibn Hanbal. However, their interpretations over time have become far more rigid even than that of the Hanbali school, and have become far less tolerant of differences of opinion, which was actually the historical tendency in most of the Muslim world.

Their importance grew in the late nineteenth and twentieth centuries when the compact that was made between the family of Abdul Wahhab and the family of Saud developed traction. The Wahhabis promised that they would support the House of Saud in their attempt to conquer the Arabian peninsula; in return, the House of Saud would cede the religious life and aspect of Arab society over to the Wahhabis. The result of that is what we have seen in Saudi Arabia over the past century. Many aspects of especially regional Arabian culture were effaced to create a sense of national unity, such as, for example, a national dress code where all men wear white, and women wear black. This aspect was not normative of the culture of Arabia until as recently as the early part of the twentieth century when Abdul Aziz al-Saud succeeded in consolidating all of Arabia, including the western region of the Hejaz, where the all-important centers of Mecca and Madina lie, and evicting the Shareef of Mecca, who was the great-grandfather of the current King Abdullah of Jordan. Those who saw David Lean's movie *Lawrence of Arabia* may have seen bits and pieces of the edges of this history. After the discovery of oil and the secularization of other capitals of Islamic thought such as Egypt, Turkey, and Iran, the Saudis became the center of gravity in shaping late twentieth-century-Islamic thought in much of the Muslim world.

The members of the House of Saud themselves are very cosmopolitan and are greatly challenged in opening up their society to the forces of modernity. They are, in fact, working very hard to do so and could use all the help they can get in re-introducing into Wahhabi thinking the multi-culturalism that is the hallmark of classical Islamic thought. Many believe that the contemporary challenge in Saudi Arabia is less theological than political, and some see in the rise of the Evangelical Right in the United States and their increasing political activism a similarity to the Wahhabi movement: a revivalist movement less based

on theology per se, but more based on a desire to see positive social and political change.

AUDIENCE QUESTION: (inaudible question)

IMAM FEISAL ABDUL RAUF: Traditional Islamic societies had courts and judges educated in the traditional Islamic judicial system. Except for countries like Saudi Arabia that were not colonized by Western colonizers, in most of North and West Africa [in countries like Egypt, Algeria, and Senegal, for instance] and in South and Southeast Asia [like India, Malaysia, and Indonesia], what happened was that a dual system was put in place by the colonizers who introduced civil courts which carved out of the jurisdiction of the traditional courts most subject areas except for that of personal law: marriages, divorces, custody, and inheritance matters. As these societies obtained independence and segued into the secular rule, the governments continued this split, which took almost every aspect of law away from traditional Sharia court systems, which has contributed to problems in many of the Muslim countries in terms of how to weave back the rules of Islamic Law to society, and lie at the boundary of the desire of many in the Muslim world to establish an Islamic State.

Another source of law, as has been pointed out by Lord Slynn, is that of activist judges making law in the process of their interpreting law. This activism happened historically in the development of Islamic Law. Interpreted law and this "source" of law, that is, judicial activism, was called *istihsan*. One of the most important and most influential practitioners of this was Abu Yusuf, one of the greatest judges during the Abbasid era of rule, and who lived contemporaneously with the famous Caliph Harun ar-Rashid. Abu Yusuf was responsible for greater amplification and nuances in the Hanafi school of Islamic jurisprudence.

AUDIENCE QUESTION: (inaudible question)

IMAM FEISAL ABDUL RAUF: Today it would be a function of which country you are in, but I would say that in most countries that do have a dual system, you would have to go to the secular courts, the civil courts, and not to the religious courts, because that is the court that has jurisdiction over most cases involving subjects other than that of personal status. Saudi Arabia, of course, does not have that distinction so what you have to do is get a scholar of Islamic Law to help prepare or present your case. Back in the late sixties, one of the oil companies had a case in Saudi Arabia. A member of their legal staff approached my father, who was then Director of the Islamic Center in New York

City, and who was a graduate of al-Azhar, then the premier Islamic University in the world, to write a legal brief from the point of view of Islamic Law regarding that case. It was submitted, and my father was very delighted that they won their case based upon my father's argument supplied from the point of view of the principles of Islamic Law. So the partnering with Islamic jurists in certain areas where the jurisdiction is Islamic would be very helpful.

AUDIENCE QUESTION: (inaudible question)

IMAM FEISAL ABDUL RAUF: The question is about Iraq and what is happening right now between the different groups, and the tension between national identity and religious identity: Kurds versus Arabs, Shiites versus Sunnis, their aspirations for a constitution that abides by Islamic Law, and how it may be sustained or how it may be shaped to move forward.

It is certainly a work very much in progress. There are many forces impinging on Iraq: forces that are political, social, and religious in nature; and forces internal and external to Iraq. While America is trying to shape a new Iraq and a new democracy in the region, this American Administration has been very vocal on expediting regime change in the neighboring countries, especially in Iran and Syria, and has made very strong statements about broadening the power structure of other neighboring countries, such as Saudi Arabia and Egypt. When, in 2003, right after the fall of Baghdad, Donald Rumsfeld threatened Syria and Iran by saying they were next, this created an alliance—not necessarily a formal one—whose best interests lie in ensuring America's failure in Iraq. In my opinion this was a strategic mistake; the United States should have ensured the support of the neighbors first and just focused on changing Iraq.

Second, I believe that if the Administration had used Islamic vocabulary and deployed principles of Islamic Law in prosecuting their case for a democratic state in Iraq, the United States would have had much greater success, and gained much more traction in winning the hearts and minds of the populations both in Iraq and in the region. As I pointed out earlier, most Muslims are not clear as to what an Islamic State means, although it is an attractive aspiration that arouses strong passions among Muslims.

Because Islam is a religion of law, the best way to prosecute our case before the Muslim world is to use the arguments of law, and to regard the Muslim street as you would regard a jury.

George Bush missed several opportunities to do an equivalent of John F. Kennedy's *ich bin ein Berliner* speech when Bush went to Iraq on

Thanksgiving of 2003. He only spoke to United States troops and did not even leave a message to the Iraqi people. Bush could have recorded a message to the Iraqi people, congratulating them on their removal of a tyrant, and quoted a verse or two from the Quran, and a saying [hadith] of the Prophet Muhammad about the greatest jihad being speaking the truth to a tyrant, and better yet, removing him. He could have given an equivalent of the State of the Union message, listing the billions of American dollars spent on Iraqi infrastructure, schools, education, and health, for example. Missing out on opportunities like this furthered the perception in the Muslim world that the United States is in Iraq for purposes of occupation, that it does not care about the concerns of the local people, and just has other selfish intentions.

If Bush had spoken directly to the Muslim street and identified shared beliefs that he has with the Muslim world, he would have changed minds. He could have stood in Baghdad, or in the capital of any country in the Muslim world, and said: "I believe in God; I believe in the angels; I believe in the scriptures; I believe in the messengers and prophets; And I believe in the Day of Resurrection and Judgment."

You know what that is? That is the Islamic Creed. Translated into Arabic would make Muslims say, "Oh this man Bush is a Muslim!" and he would have captivated his audience. In fact, just ask Professor Chris Wells, who in the Mercer class on contracts said he was in Morocco for a couple of years, and who admitted that those who strove to be better Muslims were the best people he saw, that they exemplified what Muslim society means, and that they exhibited the same principles and the same ethics that would arouse the admiration of any human being.

Changing perceptions is possible. Many Muslims regard America as more of an Islamic country, a more Islamic society than exists in their own countries. As an example of successfully turning around perception, I participated last April [2005] in the Doha Debates, a monthly debate held in Doha, Qatar, and aired on BBC World TV, debating against the proposition that the War on Terror has become a War against Islam, a very common perception in the Mideast. The program consists of two debating for, and two against the proposition before an audience of about 300 people, who, at the end, rate the debaters on which side was more persuasive. We were expected to lose by an eighty-to-twenty margin, and we won by 50.4 percent to 49.6 percent, the narrowest of margins. We turned it around because we understood what our own religion preaches on this and other issues, and were able to bring Islamic arguments to the table, to demonstrate and argue within the boundaries of the thinking of the Muslim audience. This is how we must prosecute the case in the Muslim world if we have any hope of turning the tide of public opinion.

The Muslim's individual aspiration is to be as much as possible like the Prophet Muhammad. We are taught from an early age that the Prophet was the ideal human, representing the perfected human being, the most evolved of human beings, as are all the Prophets. By learning how he lived, how he prayed, and how he interacted with others, the Prophet Mohammad represents the embodiment and exemplar on how we are to live. The challenge is how do we recreate that in our modern era, in our particular time, in the here and now? This challenge is a perennial challenge which is faced by every religion, by every society.

What the American Muslim community is now going through is a specific form of this challenge, which is to identify the eternal principles of our religion and transplant them into the American context and culture. This challenge is not that different in principle from that faced by American constitutional lawyers when they debate the subject of how do we understand the Constitution, which was written and drafted in the eighteenth century, and apply it to the needs of the twenty-first century. It is the same issue, the same fundamental question.

AUDIENCE QUESTION: (inaudible question)

IMAM FEISAL ABDUL RAUF: Some personal information about myself: I was born in Kuwait of Egyptian parents. I was raised in England in Tunbridgewells and Cambridge, England, where I lived for five years; then in Malaysia in Southeast Asia, where I lived for ten years, and where I finished high school. Then I came to the United States, to New York, at the age of seventeen in 1965. I graduated from Columbia University, Class of 1969, and did graduate work at Stevens Institute of Technology in New Jersey.

AUDIENCE QUESTION: Do you see a movement in the Muslim world for the separation of church and state?

IMAM FEISAL ABDUL RAUF: I could give a whole lecture on this one subject and arrange for an interesting series of other lecturers if Dr. James would host such a series on this very important issue. Shedding light on this issue would do an enormous amount of good in healing the West-Islamic world divide, especially given that there is a strong feeling in the Muslim world that the West wants to impose upon the Muslim world this idea, which is interpreted there as the West's atheistic repudiation of religion and removal of religion and religious symbolism from all aspects of life; whereas in the United States it was intended, at least by the drafters of the "Establishment Clause," to mean allowing freedom of all religions and celebrating the variety of all religions.

The short answer is, of course, yes. There has been a movement to impose church-state separation over the past century, with mixed and often bad results, mainly because people “knew not what they did,” to paraphrase Jesus. The more important challenge is how to attain the desired state of affairs on the relationship between church and state, and what are the components of a desirable relationship.

But first, a bit of history. What we call in the West separation of church and state, that very use of language flows out of the European—not the Islamic—experience. Neither is that term used anywhere in the American Declaration of Independence or the Constitution, which are full of references to God, the Creator, and Providence. The core idea of church-state separation is embodied in the First Amendment of the United States Constitution. The intent of that, from my own readings, is that the federal government shall not establish a state religion that would give preference to one religion over another; that no religious group would be deemed heretical, and its members disallowed from their rights as citizens of the republic; that the power of government was not to become a tool of a particular church’s agenda that would oppress other churches or religious groups; and that no religious organization would trump the political structure over its decision-making on political affairs.

Another interpretation I remember reading somewhere was that the newly established federal government may not interfere with the rights of states at the time the Constitution was drafted to have state religions; meaning that if Georgia chose Southern Baptism as their state religion and Rhode Island Methodism, the federal government would neither prevent them from doing so nor impose another choice upon the states.

The Establishment Clause sought to preempt or to prevent what happened in Europe in the oppression of religious minorities. In most of Islamic history, religious minorities were guaranteed the protection to practice their religion, as Islamic Law is very clear that there shall be no compulsion in religion. In those occasions where religious minorities were persecuted, the triggering points were almost always political issues that caused it, or an overbearing attitude by some wealthy and powerful members of the religious minority that triggered the populace to vent their anger against the minorities’ co-religionists, most often wrongly. This is like what happened after 9/11 in the United States, where an innocent Sikh man was killed, and some Islamic Centers and innocent Muslims were attacked because of the anger his killer and some angry Americans had towards the perpetrators of 9/11. This is not an expression of American Law but of human psychology at work. Human psychology analogously worked its ways in Islamic history, despite the principles of Islamic Law.

For example, just as most Americans do not differentiate between Sunni and Shia among the global community of Muslims, Muslims did not always differentiate between different Christian groups. The anger towards European colonizers who were predominantly European Christian churches [Roman Catholic and Protestant] or Ashkenazi [European] Jews did, in fact, spill over in unwarranted reaction towards non-European Christians [the Orthodox, Coptic and other Christian groups] or towards Sephardic Jews. While incidents of this nature have happened throughout the 1500 year history of Islam, the overwhelming history of Islamic society has been predominantly shaped by a multi-religious, multi-ethnic societal contractual paradigm.

Even when Muslims ruled over societies with sometimes majority non-Muslim populations, they honored and allowed the other religious communities to practice their faith and their religion. There were some instances in Islamic history where some rulers did not honor them, but in this they went against Islamic Law; for Islamic theology and law are quite explicit. The primary textual source, the Quran, states that there shall be no compulsion in religion, which some scholars have interpreted to mean that it also prohibits coercing people in practicing their own religion.

From the Islamic Law point of view, separation of church and state is neither a coherent nor effective legal vehicle to guarantee the fundamental right of religious freedom. Another point of clarification: the difference between separation of church and state, and the separation of religion from politics.

For instance, in England, where Lord Slynn comes from, there is no separation of church and state. The Archbishop of Canterbury is appointed by the Queen, and the Church of England cannot make changes in matters of theology—and please correct me if I am mistaken on this, Lord Slynn—without the approval of Parliament. So officially, there is no separation of church and state in England, but there is separation of religion and politics. Yet in spite of the non-separation of church and state, the right of freedom of religious conscience and its attendant freedoms are fully enjoyed by British citizens. Therefore, the Establishment Clause, that is, that the state shall not establish a state religion, or loosely speaking the non-separation of church and state, is not the guarantor of the right of religious freedom. The effective guarantors of religious freedoms are the other two clauses of the First Amendment, the right to free speech and the right to freely assemble—as anyone who has visited London's Hyde Park can readily attest to!

India represents an opposite example from England, where there is official separation of temple and state, but religion plays a prominent role in politics.

I also believe that the term "separation of church and state" is a projection from the American separation of powers doctrine onto the area of religion, whose objective was to create a system of checks and balances between the powers of the Executive, the Legislative, and the Judicial branches of government. This separation of powers concept or doctrine was not intended to be a complete firewall between the Executive, the Legislative, and the Judicial branches; rather it defined the relationship and interaction between them.

Analogously, I believe it is high time constitutional lawyers in America raise the question of what checks and balances we need in nuancing a better relationship in our nation between religious institutions and the government, between concerns of religious communities and certain legislation on ethical issues. What is the role of religion in the public debate, in the public square, on how we are going to build a good society and how we are going to maintain a good society?

I believe that in the United States, we need to revisit our understanding of this expression of church-state separation because religious voices and religious ethics are part of the debate on important issues of law. *Roe v. Wade*¹⁰ is one example where religious communities have strong opinions. We can look at examples from Islamic history where different religious communities could have their cases heard under their own religious laws. We are seeing this beginning to happen in the United States where, for example, in New York, observant Jews can have cases of personal law heard at the Beit Din, authorized by the secular courts under the arbitration guidelines.

Legal space exists and can be further delineated in our American society for the religious voices to be able to conduct affairs within their community in certain carved out sectors of law [say inheritance laws and personal status laws] where they do not conflict with American Law. This, in my opinion, does not conflict with the principle and intent of church-state separation. This is a very exciting and interesting subject, worthy of further thought and exploration.

A final note on a related question to the original question on a movement of church-state separation in the Muslim world: What is more direly needed? There are other "separations of power" we take for granted in the United States. Muslim nations need to separate the state from the economy [that is, a privatized economy] and further separate,

10. 410 U.S. 113 (1973).

that is, breakup, some of the huge privatized monopolies as we have done here in the United States to create a greater distribution of wealth and greater service to the citizenry. A related separation is an independent Central Bank. Alan Greenspan, for example, does not take his orders on raising or lowering interest rates and adjusting financial liquidity from the President.

Another is the separation of the state and the media, where the state does not own the media in order to ensure a free press [although Lord Slynn here may counter by pointing out that BBC is an example of a state owned and state funded media that is a fine example of a free press not shackled by the government]. In other words, a free press rather than a state controlled media.

A third separation is that between the military and the state. In other words, where the military does not run the government or have the final say on political matters. In many societies—including a number of Islamic societies—these separations do not exist; and so the important separation that is needed in many Muslim countries, or even third-world countries, is not only separation of the three branches of government, they also need to separate the state from the economy, a free press, and separate the military from governments.

AUDIENCE QUESTION: (inaudible question)

IMAM FEISAL ABDUL RAUF: A very important question, so let us repeat the question. The question asks about the intersection points between Islamic Law and governance, the system of the Caliphate, and what Islamic Law states on how to run a government in modern times.

There are differences of opinions among the legal scholars, as always. This is no different than the United States Supreme Court case which very rarely judges a case nine to zero; and you are familiar with how many five-to-four decisions the Supreme Court makes, or the famous case in 2000 where the Florida State Supreme Court's decision was overruled by the United States Supreme Court on the national election. There are always differences of opinion among even those who are mandated and qualified to render their opinion.

The general sentiment among Muslims and Muslim legal scholars is that the role of the Caliph, or the leader of the government, is to abide by the overall principles of Islamic Law, as expressed in the primary texts of the Quran and the Hadith. There has been a growing debate in the past century as to whether the traditional historical institution, that is, the Caliphate, is the guarantor of these principles being fulfilled. Within the past few decades, the diversity of Islamic activist political forms in the current Muslim world has shifted the debate from a sense

that the institution of the Caliphate is the guarantor of implementing Islamic principles of rule, to the realization that these principles can be fulfilled in other institutional forms.

In Saudi Arabia, there is a strong partnership between a monarchy and a clergy; in the Islamic Republic of Iran, a theocratic rule of the jurispudent [*vilayeti-faqih*] prevails; in Jordan, the Islamic Action Front (the party established by the Jordanian Muslim Brothers) has accepted and even defended the Hashemite monarchy as legitimate in Islamic terms; in Morocco, the PJD has similarly made its "royalist" credentials very clear in proclaiming its recognition of the King's status as "the commander of the faithful" [*amir al-mu'minin*]; in "republican" Egypt, meanwhile, the Muslim Brothers have endorsed the Islamic credentials not only of the state but also of the government; in Turkey, the AKP, currently in government, has similarly made clear its acceptance (and thus in effect its endorsement) of the secularist as well as republican aspects of the Kemalist constitution. In ethnically pluralist Malaysia, where ethnic Malays are constitutionally Muslim, and UMNO [the United Malay National Organization] runs the government, the current Prime Minister Abdullah Badawi ran and won the election by the widest historical margin on a platform of "Progressive Islam" [*Islam hadari*]. Not surprisingly, American and Western Muslim legal scholars have generally preferred and argued in favor of a democratic polity.

We have had different institutional forms today in the contemporary Muslim world. The increasingly important thing to the Muslim in the street is the line items of how these particular entities rule.

My thesis is that what the United States should do in the Muslim world is to demonstrate the Islam-icity, the compliance of our doctrines and social contract, and to partner with key Islamic religious thinkers to establish just that. For example, Iran has been increasingly moving toward democracy, and that we see it happening there is no doubt in my mind that within another half a generation to a generation, we will see a fairly full-fledged democracy in Iran—and that is also going to happen in the rest of the Muslim world.

AUDIENCE QUESTION: (inaudible question)

IMAM FEISAL ABDUL RAUF: [Lord Slynn made the remark that "a good lawyer knows the law, a successful lawyer knows the judge." Lord Slynn asked that, if in Egypt, say, a woman who bought a washing machine which did not work and had to sue to get restitution, would the case be heard under secular law or Islamic Law?]

In states like in Egypt or Malaysia, where secular courts and Sharia courts exist, this case would fall under the jurisdiction of the secular

courts because the Sharia courts' jurisdiction may have been limited to laws of personal status and some cases of inheritance. But in a country like Saudi Arabia, where all the courts are Sharia courts, it would be heard under Sharia law. But this does not mean that the judgment will necessarily be different because the principal of justice is common to secular law and Islamic Law.

This would be like asking if, in the United States, this washing machine case was tried under the laws of the State of New York or the State of New Jersey; or in a state court or federal court, would the laws applicable to the case differ, or would the judgment necessarily differ? In most cases, assuming both lawyers knew the judges equally well, the outcome based on principles of law alone would not be clearly determinative.

Looking at the Quran to solve a problem of a washing machine case is like looking at the United States Constitution to determine how to judge a washing machine case. You would have to look at the whole corpus of law that has been developed and practiced by Muslim jurists on contract law. Rules of sale, such as whether the seller knowingly sold a defective product as meeting certain standards or "as is," whether a lower quality product was switched, and whether there were terms that validate or invalidate the sale, would be the things we would look for.

The differences between secular law and Islamic Law are not that great really, especially if one abides by principles of justice. A lot of what is called Islamic Law is not technically religious. Penalties may differ in some areas of criminal law, but the principles of due process, of validity of witnesses, and what makes contracts valid in contract law have enormous overlap with secular law. That is the point I am trying to make.

AUDIENCE QUESTION: What has been the response of the Muslim community, Muslim thinkers, and theologians on the events of 9/11, of the acts of terrorism conducted in the name of Islam.

IMAM FEISAL ABDUL RAUF: Unanimously after 9/11, every Muslim country condemned the acts of 9/11, and all Muslim thinkers and theologians condemned it. The challenge that we have in the West is that our voices were not very much heard because that was not considered newsworthy. I was interviewed on "60 Minutes" within about a month after 9/11, together with three other Imams, for three hours, which were condensed to an eleven-minute segment. At one point Ed Bradley looked at me and said, "What have you personally done after 9/11?" I pointed out the press conferences that American Imams did condemn the action, and pointed out that this violated our principles and

teachings. The Imam next to me affirmed what I said and added that we needed to do more. In the final version, my answer was edited out, and the Imam's comment that we needed to do more was left as the answer to Ed's question.

Another example which would be of interest to this audience is the following story. Before we engaged in hostilities against Afghanistan, I was called by Laurie Goodstein of the *New York Times* to comment on a request made by the Muslim chaplain of the United States Armed Forces seeking a *fatwa* [a religious ruling under Islamic Law] as to whether it was okay for Muslims in the United States Armed Forces to engage in hostility in Afghanistan since they would be fighting against and potentially killing fellow Muslims. This request was referred to five well-known jurists in the Muslim world.

Their response was yes, they could, because the act of 9/11 was an act that fell under the Islamic ruling of *hiraba*, a term that included in classical times highway robbery, those who killed innocent travelers on the road, and covers the killing of innocent civilians, a capital crime under Islamic Law. Therefore, pursuing and killing such perpetrators was acceptable. I begged Laurie to please have the translation of this *fatwa* published prominently and given prominence. At that time, the *New York Times* carried a special additional section called "A Nation Challenged." She tried, apparently, but the story was hidden in page eight of this section—insufficient to attract the attention of the reader. It would have been important and very helpful for American Muslims and non-Muslims to learn of such a *fatwa*, and for lawyers to examine how Islamic jurists responded and thought through such a case. Most American Muslims did not know about this case, and many do not even know that every Muslim nation supported the removal of the Taliban—even Yasar Arafat of the PLO and Iran. United States action against the Taliban in Afghanistan was practically universally supported by Muslims, unlike our action against Iraq, which was neither supported by the Arab world, nor by the Europeans, nor by half of the American demographic. I often have to remind Muslims abroad about how deeply divisive the Iraq war was in the United States.

The majority of the Muslim world is moderate, wants to live the way we live here, and loves the American way of life. Muslims share many issues with Americans, even the position of the Christian Right, on erosion of family values and on the right of religion to have a seat at the table in shaping the idea of a good society. You will continually be surprised by how much the Muslim world loves many things from America.

A challenge of the citizenry, Muslim or not, is when they do not agree in their hearts and minds with how practitioners of law may judge. For

instance, the Supreme Court can make a judgment as to whether abortion is legal or illegal, but if you are a devout Catholic or if, as a religious person, you have a personal belief that this violates your values, then you do not feel the Supreme Court's decision is binding upon you. This is a problem that the Muslim world faces, more so because Muslims do not have the equivalent of an organized church or a Pope who speaks with divine authority. For instance, the Chief Mufti of Egypt, Sheikh Tantawi, issued a *fatwa* some years ago saying that interest on postal bonds was okay. Many Muslims rejected his *fatwa* because they believe that interest is usurious. You cannot legislate people's feelings.

IV. CONCLUSION

Thank you very much, and I would just like to end with a benediction or prayer to join Dr. McMahan by praying that God may, in fact, inspire us, not only in our actions as human beings, but as practitioners of the law, as judges, as teachers of the law that we may have hope to build a society that embodies the principals of our own faith traditions, Christianity, Judaism, the love of God, the love of our fellow human beings, and I pray that God may answer our common prayers and thank you. Amen.
