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Symbolism and Legal Institutions

In *The Myth of the Judeo-Christian Tradition,* Jewish theologian and philosopher Arthur A. Cohen questions the notion that a "Judeo-Christian" tradition even exists, and suggests it is an invention of twentieth-century American politics spawned by efforts to form a cultural consensus and, in the process, syncretize religious identification and promote interfaith harmony. The conception of such a tradition is, in Cohen's words, "mythological or, rather, not precisely mythological but *ideological* and hence, as in all ideologies, shot through with falsification, distortion, and untruth (emphasis mine)."[1]

An ideological use of the term "Judeo-Christian" has gained particular currency at the close of the twentieth century as reliance on certain religious values, symbols, and rhetoric in public discourse both generates and reflects popular approval. Recent attention focused on multiculturalism has accounted for, in some measure, an antithetical response represented in the use of the symbol of a Judeo-Christian nation and a reaffirmation of a shared Judeo-Christian cultural heritage.[2] Faced with the realities of religious and cultural pluralism, the American public is currently reevaluating common assumptions about the place of religion and morality in public life, and the nature of the relationship between church and state. For better or worse, religious symbols have become an important component in the dialectical statement of what constitutes "America."

Our two most recent U.S. Presidents provide illustrations of this phenomenon. George Bush, during his final days in office, declared January 16, 1993 to be Religious Freedom Day. He proclaimed:

> We Americans have long cherished our identity as one Nation under God. To this day American law and institutions have been

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> shaped by a view of man that recognizes the inherent rights and dignity of individuals. The Framers of our Government shared this view, and they never forgot the political and religious persecution that had forced their ancestors to flee Europe. Thus, it is not surprising that the first of all freedoms enumerated in our Bill of Rights is freedom of religion. . . . Over the years the exercise of our religious freedom has been instrumental in preserving the faith and the traditional values that are this Nation's greatest strengths. . . . In that spirit, the United States has continued to champion religious liberty around the world.[3]

Likewise, Bill Clinton, in acknowledging Religious Freedom Day on January 14, 1994, claimed:

> It is no accident of authorship that the right to free exercise of religion is the first freedom granted by our Bill of Rights. . . . Religious freedom helps to give America's people a character independent of their government, fostering the formation of individual codes of ethics, without which a democracy cannot survive. . . . To be both the world's strongest democracy and its most truly multi-ethnic society is a victory of human spirit we must not take for granted. For as many issues as there are that divide us in this society, there remain values that all of us share.[4]

The reality that a reliance on the symbol of a strictly Judeo-Christian nation masks, however, is one of growth and complexity, both in the number and nature of religious faiths that have appeared on the American horizon of late. Several variables have changed the religious composition of the United States since World War II. Increased immigration from Asia[5] and the Middle East, declining religious membership in the conventional religious communities of Protestantism, Catholicism, and Judaism, and the concomitant growth of secularism have produced a vastly more pluralistic religious environment. A diverse assortment of faiths now represents a sizable number of American religious adherents.[6] Among these the Muslim community is growing the fastest, at a rate that will make it the second largest religious community in the United States by the twenty-first century,[7] when it will have nearly doubled the size it was estimated to have been in 1980.[8]

Islam, representing over four million adherents in the United States[9] is a significant minority religion in America. The rapid growth of the American Muslim community led a prominent Muslim scholar and activist, Isma'il Raji al-Faruqi (1921–1986), to call for its

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inclusion in the mainstream of American society, to be reflected in the reformulation of the concept "Judeo-Christian" to add "Islamic" to it. What al-Faruqi called for is an affirmation of the *Abrahamic* tradition, or a recognition of the common origin—God's covenant with Abraham—shared by Judaism, Christianity, and Islam.[10]

Symbols evolve and acquire new meaning as ideological understandings and demographic realities shift. This study grew out of the conviction that the Muslim experience in the United States has evolved out of a particular set of social forces with its characteristic values of religious liberty and tolerance, and yet has *not* been captured in the symbols of the dominant culture. A close look at the circumstances of Muslims in the United States can tell us something not only about the nature of that faith community but also about the social relations of the dominant culture.

Ronald Takaki, professor of ethnic studies at the University of California at Berkeley, analyzes racial domination in the United States in an effort to understand more fully its relationship to the development of American culture and to the political, social, and economic institutions the culture has helped to create and maintain.[11] He borrows from the thought of Italian theorist Antonio Gramsci when he identifies the phenomenon of cultural hegemony. The relationship between culture (the superstructure of ideology) and material conditions produces

> an order in which a certain way of life and thought is dominant, in which one concept of reality is diffused throughout society in all its institutional and private manifestations, informing with its spirit all taste, morality, customs, religious and political principles, and all social relations, particularly in their intellectual and moral connotation.[12]

Hegemony, then, is the organization of society along lines that benefit a particular class which has gained the loyalty of subordinate as well as dominant groups through a combination of coercion and consent. The exercise of hegemony, according to Takaki's analysis, consists of more than the simple dissemination of ruling-class ideas; it also includes the ability to define, through various media, the symbols and terms by which people understand themselves and the world they live in.

The network of symbols that filters our perceptions of the world and our places in it is fundamental to our culture. According to Takaki, those who control institutions and are chiefly concerned

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with the preservation of these institutions, are able to claim power because of the effective universalization of certain interests in the name of the collective good, reflected in cultural symbols. Those symbols whose imagery and vocabulary are universal remain predominant and substantially unaltered in the cultural realm, sustained and transmitted by active institutional custodians. This cultural hegemony exists at the expense of groups at the margins in the discursive production of state and society.[13]

The image of the United States as a Judeo-Christian nation implies a shared religious basis for the Western values at the core of the democratic ideal. As anthropologist Clifford Geertz puts it, "[r]eligious symbols formulate a basic congruence between a particular style of life and a specific (if, most often, implicit) metaphysic. . . ."[14] According to Geertz, religion relates a people's view of reality to a set of ideas about how they are expected or required to live. Religious and, more broadly, cultural symbols link ideologies and behavior and synthesize and disseminate a people's ethos. They are derived from common experiences and are fixed in identifiable forms; they are "embodiments of ideas, attitudes, judgments, longings or beliefs."[15] As such they must continue to make sense to the people who are meant to understand them.

However, reliance on the symbol of a Judeo-Christian nation has the effect of excluding other religious groups, such as Muslims, and non-religious groups from the mainstream of American society.[16] This symbol is of diminishing significance in an increasingly diverse society.

Political scientist Timothy Mitchell, informed by the philosophy of Michel Foucault,[17] warns against relying on the unexamined assumptions of the frameworks for analysis developed by such theorists of culture and ideology as Takaki and Geertz. While sharing their focus on relationships of domination and, like them, contributing to theories of power and resistance, Mitchell takes exception to the distinction they draw between material reality and culture, the concrete and the abstract, a practice which he sees as reinforcing the effect of a two-dimensional world constituted as something divided between two neatly opposed realms. This "binary" approach, as Mitchell calls it, is problematic and misleading because it replicates uncritically a larger dualism characteristic to modern means of domination. The distinction between material reality and culture conjures an image of an "unphysical realm of order that stands apart from the world of practice."[18] The apparent existence of such "frames of meaning" as described by Geertz is an artifact, "precisely the

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effect introduced by modern mechanisms of power"[19] which separate the material order on the one hand from the sphere of meaning or culture on the other. Through this structural effect, modern systems of domination are maintained. In Mitchell's estimation, Geertz's analysis, by reducing the world to a binary form, would ascribe to the "frames of meaning" a metaphysical authority, the power to persuade, which exists as something external to ordinary life, through which material reality and daily practices are perceived, understood, and justified.

Mitchell argues that this approach is overly simplistic: "the complexities of domination never quite fit the terms of the opposition between a physical and mental form of power. . . [and] many forms of exploitation and control cannot be reduced to this binary form."[20] The very image of a binary world itself inhibits political dissent by placing authority ultimately in the "unphysical realm" of order and meaning, communicated through symbols and terms congruent with publicly shared understandings of an imagined heritage. The parameters of society, or the boundaries around various arenas of action, are established not simply by "the agenda-setting of particular interests" who control access to institutions of power and the rhetoric of national debates, but also by social processes.[21] Meaning is context-bound and located in the social acts and attitudes of a given historical moment. Human activity vests symbols with meaning, which is continually reproduced. The analyses of many theorists of culture and ideology, according to Mitchell, are inherently flawed because they do not examine closely the ordinary social practices commonly taken for granted. In this sense, the theorists themselves are complicitous in reproducing a dualistic world view. When social scientists place the phenomena of physical coercion and ideological persuasion in two separate and opposing realms, we see how the binary world created by the methods of domination "works itself into the very vocabulary with which we speak of power."[22] The problem, then, becomes one of understanding the provenance and effect of this larger dualism.

Similarly, legal scholar Martha Minow suggests that the problem of dualism requires that we expose the:

> rigidity and limitations of patterns of thought that force perceptions into dualities: good/bad, same/different, white/black, male/female. Becoming adept at recognizing how each half of a given duality depends upon the other half in self-definition, and how crudely each duality divides varieties and ranges of perceptions

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> and experience, can help people challenge the seeming inevitability of dualisms in social practice.[23]

The discourse that reinforces the dichotomy between material reality and culture, or between the notions of a Judeo-Christian and a multicultural society, is both cause and effect.[24]

Values, including pluralism and tolerance, need to be seen and understood in the context of social relations. Political scientist John Brigham, in studying the U. S. Supreme Court, makes this point when he professes an interest in seeing the way values affect institutional arrangements. Brigham defines institutions broadly as sets of practices which accomplish certain tasks.[25] Institutions "amount to ways of acting."[26] In an important way, an institution is constituted through the interactive process of establishing, refining, and understanding the way things get done. Human activity vests institutions, as well as symbols, with meaning. Just as symbols are context-bound, so are institutions, located in the social acts and attitudes of a given historical moment. In turn institutions share "a capacity to order social life because people act as if they exist, as if they matter."[27] Thus, not only are institutions socially constructed but, in a dynamic process, are constitutive of social life. They rest firmly on social foundations, and their actions must be congruent with the values and expectations of the communities "who understand the practices [of the institution] and operate according to them."[28]

Brigham's approach is helpful in that it explores those practices which produce a social order. It traces how shared understandings about social reality become ingrained, are reinforced by, and, in turn, reinforce the authority of such institutions as the law courts in ordering social life. Secondly, the insights revealed in Brigham's analysis are useful for the present study because they help clarify the relationship between beliefs and practice, linking ideologies and legal institutions.

The ideologies[29] of a society find their most concrete expression in its legal institutions.[30] For that reason, the study of these institutions in the United States should provide some insights into the complicated ways in which culture and ideology interact with politics and law. In the United States, a struggle to move away from the amalgamation model of a melting pot in favor of a society which esteems pluralism continues, and a look at the institutions that reflect these notions—including religious tolerance—is in order. An examination of the record of legal institutions, which are often the

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location of contests over issues of rights and freedoms, can help to illuminate the production of ideologies.

A look at the reception of Islam and Muslims in America can help to elucidate the culturally productive role of law. The present study sheds some light on the character of the Muslim experience in America by examining the responsiveness of legal institutions as Muslims seek recognition and tolerance. It seeks to clarify "the role of law in constructing an authoritative image of social relations and shaping popular consciousness in accordance with that image" in the particular context of Muslim aspirations to be included within the parameters of a pluralistic society.[31] How the law has been used to fashion categories that may serve to exclude Muslims from full participation in society will be examined. This study focuses on the American experience of Muslims to: (1) provide a contemporary and concrete example that illustrates the functions of law in defining how society orders itself; (2) say something meaningful about the historical experience of a liminal group (a religious minority) in a liberal democratic state with a long tradition of text-based constitutional guarantees of free exercise of religion; and (3) contribute to the growing literature on Muslim life in the United States.

It has been noted that "Islamic scholars, students of religion, Middle East experts, and analysts of the American scene all tend to overlook the presence of Islam in America, or to dismiss it as of only marginal interest."[32] However, the growth of the Muslim community, not only in the United States but worldwide results in demographic changes and social, economic, and political tensions that can no longer be ignored by scholars, analysts, and government officials alike.

MUSLIMS IN THE UNITED STATES

The size of the American Muslim population is estimated at present to exceed four million.[33] The number of Muslim immigrants entering the United States has more than doubled since 1960. During the same period, the number of North American converts to Islam, both black and white, has also risen. This rate of growth, combined with the recent wave of religious resurgence in the Muslim world and the popular association of Islamic revival with terrorism, presents a challenge to the shape of American society and its commitment to the principle of tolerance. The February 1993 bombing of the World Trade Center in New York represents only the most recent rupture in the strained relations between the Muslim world and the West. Further, the evolution of the objectives of the indigenous African-American

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Muslim community—from black separatism to accommodation and a stronger identification with the global community of orthodox Islam—is yet another factor which helps define the diverse Muslim community and Muslims' claims for greater tolerance within the American milieu.[34]

A careful look at the history of Muslim migration ought to disprove the prevailing misconception held by many in the West that Muslims and Arabs are synonymous. An accurate portrait shows that the Muslims of the United States come from diverse national origins and cultural backgrounds covering as many as sixty-five countries, not only in the Arab world but also South Asia—including Afghanistan, Pakistan, India, Bangladesh, the Maldive Islands, and Sri Lanka; Southeast Asia—including the Philippines, Indonesia, and Malaysia; as well as Europe, Africa, China, Iran, and Turkey. Additionally, indigenous African-American Muslims were estimated in 1980 to comprise roughly thirty percent of the total Muslim population living in the United States.[35] American Muslims are not restricted to any particular national origin, but represent a microcosm of the multi-national global community of Islam. In short, the migration of Muslims to the United States and the development of American-evolved Muslim groups have contributed to the contemporary diversity of American society.

In *Islamic Values in the United States: A Comparative Study*, Yvonne Haddad and Adair Lummis describe the pattern of Muslim migration as consisting of five "waves," the first arriving in the United States between 1875 and 1912. Most of these immigrants came from the Arabic-speaking provinces of the Ottoman Empire: Syria, Jordan, Lebanon, and Palestine. For the most part, those who stayed in the United States settled in urban communities. The second and third waves, between 1918 and 1922 and 1930 and 1938, respectively, consisted to a large degree of relatives, friends, and acquaintances of earlier immigrants but also included a very small number of immigrants from other parts of the Middle East and Eastern Europe.[36] Many who came as part of the second wave had experienced the disruptive effects of World War I. Some were enticed to immigrate to the United States by the reports of opportunities there from returning and visiting immigrants, letters from immigrants, or Americans visiting the region.[37] Isma'il al-Faruqi, himself an immigrant to the United States from Palestine, writes:

> For two hundred years the image of America in the minds of Muslims was one of a haven where the persecuted could lead

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> lives of religious freedom and piety and where they could earn from God's bounty to feed and clothe themselves and their families.[38]

The fourth wave of Muslim migration arrived to the United States between 1947 and1960 and was more diverse in national origins. It contained immigrants from the Middle East plus South Asia, Eastern Europe, the Soviet Union and other parts of the Islamic world. Displaced by the upheavals of the post-World-War-II era, many of these arrivals differed from their predecessors in that they were less likely to be from unskilled, uneducated, or rural backgrounds. Many:

> were the children of the ruling elites in various countries, mostly urban in background, educated, and Westernized prior to their arrival in the United States. They came to America as refugees or in quest of a better life, higher education, or advanced technical training and specialized work opportunities, as well as for ideological fulfillment.[39]

The fifth wave began in 1967 and continues at present. The volume of this wave has been affected by the relaxation of immigration quotas. The U.S. Immigration Act of 1965 abolished national quotas and, at the same time, introduced standards of immigration selection which drew an occupational elite. Hence, according to Carol Stone's study of U.S. immigration and census statistics, the number of Muslim immigrants has more than doubled in an eighteen-year period, "increasing from 4% of all immigrants in 1968 to 10.5% in 1986."[40] A large proportion of these arrivals are professionals in medicine, engineering and other technical fields, and share the socio-economic background (i.e., middle-class, highly educated) of the immigrants of the fourth wave. Many come from the South Asian subcontinent and the Arab world, and, as a result of the 1979 Islamic Revolution in Iran, there are a substantial number of Iranian newcomers. The arrival of Afghanis also increased throughout the 1980s as a result of the war in Afghanistan.

The international scene has had its effects on the development of black nationalism and the indigenous African-American Muslim community, too. During the post-World-War-II period when several African nation-states achieved independence,[41] the popularity of black nationalism in the United States was enhanced. Africa became the symbol for liberation, a model for black Americans' efforts to deal with their own problems of daily existence in America. In the words

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of historian C. Eric Lincoln, "freedom for the Africans left the Blacks in America the only "colonized" peoples in the world."[42]

In these circumstances, under the leadership of Elijah Muhammed, the Nation of Islam grew. Called America's foremost black nationalist movement in Lincoln's classic study, *The Black Muslims in America*, the Nation of Islam appealed to the oppressed as "a protest directed at the whole value-construct of the white Christian society—a society in which the Black Muslims feel themselves (as Blacks) an isolated and unappreciated appendage."[43] Distinguished from orthodox Islam by their beliefs (e.g., that a black man named Fard was God-in-the-flesh and Elijah Muhammed was his Prophet; the White Man is Satan), members of the Nation of Islam, at least until the transformation of the movement in 1975,[44] adhered to doctrines about black supremacy and suspicions of white America and its institutions. Thus, the Nation of Islam cannot be understood as an isolated phenomenon, but as an important part of a larger liberation movement, or a mass protest against the state of race relations in North America.

The dynamics of the ideological and philosophical conversion of this American subculture, leading to its conformity with more orthodox Islamic beliefs and practices after the death of its charismatic leader, are a product of a particular set of forces. That the immigrant Muslim community is generally prosperous, educated, and middle-class isolated it from the experiences of the Black Muslim community of more humble socio-economic backgrounds. The mainstream Muslim groups in America, composed of immigrants and their descendants, by and large dissociated themselves from the Black Muslims prior to 1975, but the rift has since been mended. In 1976, the Nation of Islam was renamed the World Community of Islam in the West when Elijah Muhammed's son, Warith Deen Muhammed, assumed leadership of the movement, and the name was changed again in 1980 to the American Muslim Mission.[45] By 1985, the racialist tenets of the former Nation of Islam had been expunged from all but a few remnants, and the vast majority of African-American Muslims now consider themselves part of the mainstream Muslim community in the United States.[46] While relations between immigrant Muslim organizations and the African-American Muslim community remain somewhat tentative, both immigrant and African-American Muslim organizations have made greater efforts to extend their fellowship to embrace each other. The immigrant American Muslim community's recognition of African-American Muslims as part of the global Muslim community, rather than as strictly a

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black nationalist movement, was noted in the memorial banquet hosted by the Islamic Society of North America, held to honor Al Hajj Malik el-Shabazz, otherwise known as Malcolm X, at the Muslim American Political Awareness Conference in Washington, D.C. on August 5, 1989.

Islam in the United States is maturing. Religious consciousness in the Muslim community has been reawakened and intensified by Islamic resurgence in the Middle East, North Africa, and Asia. Generational differences appear to affect the degree to which immigrants from the Muslim world exhibit a strong religious identity. Arrivals prior to the mid–1960s tended to be absorbed into the local communities where they settled, sometimes intermarrying and Americanizing their names (for instance, Mohammed became Mike), while more recent immigrants have displayed a desire to maintain their separate identity. This recent propensity can be said to be due in part to increased numbers of immigrants, reaching critical mass in the United States under liberalized immigration policies. However, it is also related to significant changes in their countries of origin, where rising trends of a political Islam and movements of Islamic resurgence have forced many to grapple with the issue of identity, redefining what it means to be a Muslim. A key principle of this explicitly Islamic consciousness is that *religious* should prevail over *ethnic* identity. Thus, Muslim-Americans, bound by ties of a common religion regardless of their national origins, are being galvanized by events in the Muslim world at large as well as by their reception in the host society of the United States.

Drawn by the vision of a restored and resurgent Islam that began in the the early 1980s, many have affected changes in lifestyle, resulting in an increase in mosque attendance and daily prayer. At the same time, the American Muslim community, inexorably drawn by the promise of their new home, has become politically active, and is presently engaged in the process of articulating a collective agenda that reflects Islamic moral principles. Generally, Muslim political activity has been bipartisan, both Democratic and Republican, but is socially conservative—against abortion, pornography, gay rights, and permissive sexual standards.

The politicization of Muslims is evident in such events as the Muslim American Political Awareness Conference, organized by the Islamic Society of North America Political Action Committee and held August 4–6, 1989, in Washington, D.C.; the 26th Annual Convention of the Islamic Society of North America, held September 1–4, 1989, in Dayton, Ohio, to discuss ways of increasing public aware-

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ness of the Muslim presence in North America; and the American Muslim Conference held in the San Francisco-East Bay area on November 4, 1989.[47]

Further, the Islamic Society of North America,[48] whose stated purposes are "to foster unity and brotherhood among Muslims and to raise their Islamic consciousness as a people enjoining the right and forbidding wrong,"[49] has established three professional organizations: the Association of Muslim Social Scientists (AMSS), Association of Muslim Scientists and Engineers (AMSE), and the Islamic Medical Association (IMA). These associations seek to represent their respective constituencies in the political arena. The American Muslim Council operates to protect the civil rights of Muslims in the United States.

Although Islam has been practiced in America for more than one hundred years,[50] it has only recently received even nominal recognition as an American phenomenon. The presence of Muslims in the United States is gaining the attention of the larger society. *Time* magazine published an article entitled "Americans Facing Toward Mecca, The Fast-Growing Muslim Community is Invisible No Longer" in its May 23, 1988, issue. *USA Today* featured "A Growing Islam Community, Moslem Faithful in USA Tackle Misconceptions," in its September 3, 1989, edition. An article called "American Moslems" appeared in the October 5, 1990, edition of *The Wall Street Journal*. *U.S. News & World Report* followed suit by publishing an article on American-Muslims on October 8, 1990, which stated that "Islamic worship and lifestyles are becoming an increasingly familiar part of the American tableau."[51] Following the February 1993 World Trade Center bombing, *The New York Times* published a series on Islam in America.[52] However, Islam is still widely perceived to be a foreign creed and is maligned by its association in the media with terrorist activity, both domestic and abroad, and black separatism in the U.S. Because of a prevailing sense, however misguided, that Islam is a violent religion, intolerant of non-Muslims and a threat to society, it is a faith that is not easily accommodated.

The Muslim experience in America is considered in this study for several reasons. The impact of Muslims' experiences in the United States on their changing perceptions of the world and their ideas about social order merits attention. Muslim impressions of American society, and the unprecedented intellectual freedom many Muslims enjoy here, have been essential in shaping the contemporary resurgence of an Islamic identity. While the current trend of Islamic resurgence denounces the West, especially America, as

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imperialistic, corrupt, and corrupting, there is a burgeoning migration of Muslims to Western countries, especially the United States.[53] This holds immense implications into the next century, for American society as well as the development of a global Islam.

Yvonne Haddad, author of several articles and books on Muslims in the United States, notes that Muslim students, having enrolled in American universities in increasing numbers since the mid-sixties (estimated to be over one hundred thousand per year in some years), have the opportunity to explore ideas and structures "away from the watchful eyes of wary governments and the criticism of [Muslim] traditionalists," and can critically assess their heritage, religious beliefs, and the global role of Islam.[54] The benefits of relative religious and intellectual freedom available in North America have proven to be crucial to the ideological formation of contemporary Islam. In Haddad's estimation, the United States in particular has of late become a center of "Islamic intellectual ferment" in the shaping of an Islamic world view.[55] Key individuals, such as Egyptian opposition leader Sayyid Qutb,[56] who was angered by what he "experienced as strong racial prejudice in the United States," have returned to their home countries to become catalysts in the conception of contemporary Islamic ideology and Islamic responses to the challenges of the present.[57] They have adhered to an alternative vision, based on an Islamic ideology, which is deemed to be more appropriate for their societies than the Western secular paradigm with Westernized political and social institutions adopted by previous generations.

The global implications of Muslims' experiences in and observations of North America have been profound.[58] The rising popularity of Islamic revival and the intensification of Islamic identity abroad has, in turn, affected the goals and identity of the Muslim community remaining in the United States. Muslims who stay permanently and those who are North American converts are encouraged by the global resurgence of Islam to assert their religious identity more publicly and to be more religiously observant. The ideal that unity (*tawhid*) of the Muslim community (*ummah*) overrides all other forms of national and ethnic affiliation, constitutes a challenge to other focuses of identity. Global and local factors combine to constitute the American milieu in which Muslims now emerge as new claimants for religious tolerance and protection.

As Muslims become more involved in the American political process, the character of the community is subject to change. Political involvement may tempt a religious community to compromise or

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even ultimately to eschew their religious mission. Once the attention of the Muslim community has been diverted from the internal concerns of interpreting the past and present in accordance with scripture, and prescribing the normative Islamic lifestyle, and has been broadened to include a functional understanding of American society, the nature and identity of the community will have evolved. As the Muslim community interacts with the surrounding legal and political systems, and becomes attentive to the authoritative institutions in them, it is likely that the institutional setting will have a transformative impact on the community.[59] The concerns of Muslims as participants in American political life will alter to some extent their practices and adherence to literal interpretations of scripture. How Muslims retain an Islamic identity while being part of the mainstream of American society will merit greater attention as the American Muslim community continues to grow and develop.

An example of this happening can be seen in the fact that the Islamic Society of North America (ISNA) now issues Islamic marriage certificates to Muslims only if the following provisions are met: (1) *a "proper" marriage license has already been secured from a court in the United States or Canada*; and (2) an Islamic marriage has been performed by or in the presence of an ISNA representative in the United States or Canada.[60] The first requirement indicates compliance with an American civil practice. The two provisions together demonstrate the intertwining of different normative orders, one official (i.e., the courts, state law) and the other unofficial (i.e., a voluntary association), in identifying plural sources of authority for the sanctioning of a marriage. This may be seen as an instance in which aspects of the dominant legal order are replicated in the rules of ISNA, which, as a voluntary association, might appear to be remote from the processes of state law.

Another example, which is examined in detail in chapter 6, is the cautious approach recently taken by the Islamic Society of East Bay-San Francisco in building a mosque in Fremont, California.[61] The Islamic Society has worked closely with the Fremont architectural review board and made sure that the size and height of the dome on the proposed mosque was acceptable to the board, the Fremont city planning department and neighborhood groups. Further, the mosque is being built on a site adjacent to the United Methodist Church in Fremont and, to insure their success, the Islamic Society has cultivated an amicable relationship with their neighbors. The church and the mosque have a formal arrangement to share in the construction and maintenance of parking and landscape and in the

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cost of sewer service. With this arrangement, the Islamic Society has gained a strong ally before the planning board and other municipal boards, including the City Council, as well as neighborhood groups from whom approval is necessary for the construction and operation of the mosque.[62]

The Islamic Society found that gaining approval was not a simple matter. It was "a task in educating not only the City Staff, but also the public" about the functions of a mosque and the intention of its prospective worshipers. To accomplish this task the Society utilized the print media. Plans for the mosque were published in such newspapers as the Fremont *Argus*, the San Jose *Mercury*, the Oakland *Tribune* and the San Francisco *Chronicle*.[63]

MAPPING THE TERRAIN

The principle of religious tolerance becomes valid and meaningful only through its elaboration within the particular circumstances of time and place. Muslim aspirations to be recognized as full members of American society, to assimilate without jeopardizing their Islamic identity, and to gain political and civil rights, raise questions about the meaning of religious tolerance. To date, relatively little scholarly attention has been paid to the circumstances of Muslim communities in the United States.[64] Most of what has been written have been sociological case studies of specific immigrant communities, which do not differentiate clearly between the influence of religious and ethnic factors. These offer valuable insights into the patterns of assimilation and acculturation of certain immigrant communities that happen to be Muslim, and begin to discuss Muslim responses to challenges presented by the host society. However, they do not deal in any systematic or analytical way with the responsiveness of the host society—the United States—to the special circumstances presented by Muslims.

Moreover, these studies have a fragmentary nature. That is to say, they have broken apart the totality of the Muslim experience by treating various national groups as hyphenated Americans going through essentially the same acculturation process as every other immigrant. These virtually, if not completely, ignore the religious element of identity and the historical dimension of experience. There is a need to overcome excessive fragmentation, heal the fractured approach, and focus on the meaning of religious tolerance in relation to what we constitute as state and society. An analysis of legal institutions in the United States can contribute to this endeavor. The point has been made elsewhere that "the fact remains that the

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chances of acculturation and recognition essentially depend on the kind of welcome which the host society provides for immigrants and their descendants."[65]

The paucity of information and studies about the reception of Islam and Muslims in the United States conceals an important aspect of the evolution of American society, ideology and institutions. While scholarly literature tends to focus on the experiences of Protestants, Catholics and Jews as the mainstream faiths, and of Jehovah's Witnesses, Mormons, Native Americans, Hutterites and Amish as minority faiths, nothing has been written about the reception of Islam as a faith that seems to many people to be foreign to, if not at odds with, the dominant Judeo-Christian tradition. Most people are in favor of religious freedom and tolerance in principle, but are less supportive of these norms in specific situations. Popular conceptions of Muslims and Islam may mitigate the willingness of Americans to adhere to the espoused principles of religious freedom and tolerance when called for by Muslims in the United States.

Studies of memoirs, articles, and letters written by immigrants from the Arab[66] countries and from other areas of the Muslim world,[67] as well as African-American Muslims[68] reveal early Muslim experiences with discrimination in the United States. Several recent works have examined negative stereotyping of Muslims, especially Arabs, and of media distortions of the Muslim image.[69] Problems of misunderstanding, prejudice, and hatred have become acute during the last quarter of the twentieth century, as Islam and Muslims have been maligned by association with terrorist acts.[70]

Crude caricatures of Muslims appear abundantly in the production and organization of popular culture. Events and situations, whether fictional or real, are presented to us within a framework of symbols, concepts, and images through which we mediate our understanding of reality. Our common sense ideas about race, ethnicity, and religion help us order social life in a way that is easily understood and meaningful, and provide us with clues about appropriate behavior and shared expectations. The news and entertainment media both generate stereotypes and rely on our familiarity with them in order to formulate the world in their terms and communicate ideas and information in an efficient, i.e., timely, fashion. Discussion of the effects of such overt manifestations of prejudice on Muslims has only just begun, although the primary focus to date has been almost exclusively on the distorted image of the Arab.[71]

A study of the particular circumstances and claims of Muslim communities for tolerance and acceptance as part of the American

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landscape will help illustrate the extent to which these misconceptions have been operationalized through the legal institutions of the United States. Ultimately, such work will reveal the degree to which the secular state in the United States has the capacity to accommodate pluralistic forms of community and can sustain a truly heterogeneous society. It will also attempt to show the connections between concepts of race, religion, and culture, on the one hand, and national identity on the other. In essence, it seeks to show how Muslims' claims are a constituent element of the discussion about who Americans are, and how the cultural setting—its characteristics and arrangements—both suggest and inhibit behavior.

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