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Shari'a Law Versus the United States Constitution

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The First Amendment to the Constitution of The United States reads:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

It is, of course, no accident that the first clause addresses what the founders of our nation considered to be the most important freedom to be protected: religious liberty. It guarantees that no government (local, state, or federal) in the United States can establish or favor any religion or deny anyone the right to believe and worship (or not) in accordance with their convictions.

One consequence of this principle is that no specific religious system can determine public policy solely on its theological or ethical prescriptions. That is to say that a legislative body cannot base a civil law simply on a doctrinal tenet of any specific religion or make law that favors any specific religious group. For example, the state of Utah, which is about 70% Mormon, cannot pass laws that are based only on the teachings of the Book of Mormon (and other Mormon scriptures) or that give special favors to the Church of Jesus Christ of Latter-day Saints. (I think most contemporary Mormons would agree with this principle.)

Now, this is not to say that religious principles and ethical standards cannot or should not have impact when civil laws are formulated and passed.

Indeed, without a solid moral basis for establishing legal concepts, the law has no real foundation. Purely secular standards are insufficient grounds for a just and righteous legal system. Only divinely revealed religion can provide timeless and absolute ethical standards. Further I would argue, and history supports my contention, that the Judeo-Christian biblical tradition provides the best (and really only) such foundation.

This leads, however, to the inevitable questions, "What about Islam? Can it and its holy book, the Qur'an, not also provide a solid foundation for a just society and its laws?" There can be no arguing that, in many countries in the world, Islam (and its texts) is indeed the basis for their laws and societal norms. In fact, in many countries, the principles of Islamic law, called shari'a, are recognized as the established civil law itself. The problem is that in most of those countries no other basis of law is tolerated. Thus, only those laws that are consistent with shari'a, and do not conflict with Islamic teachings, can ever be established.

The term shari'a is derived from an Arabic word meaning "the pathway to follow." The two primary sources for shari'a are the Holy Qur'an and the Hadith. The Qur'an is the divine revealed word of God (Allah) dictated by angels to the prophet Muhammad. The Hadith is a collection of commentaries supposedly made by Muhammad and other early Caliphs (Islamic rulers). Not all Muslims are in agreement as to which of these commentaries are authoritative. Nonetheless, they all recognize the supremacy and authority of Islam in every area of society and law.

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As Geisler and Saleeb state:

"The prophetic tradition has not only greatly influenced every detail of the life of the individual believer, but it has also been the foundation of Islamic law and social government. Islamic law, or shari'a, is based on the Qur'an, the hadith, ijma' (the consensus of the community), and qiyas, the application of analogical reasoning to the other three sources for the deduction of new rules." (Geisler, Norman, and Abdul Saleeb. *Answering Islam - The Crescent in Light of the Cross*. Grand Rapids: Baker Book House, 2002, page 84.)

Shari'a traditionally is all encompassing and effects four areas of legal concern: personal acts of worship; laws relating to commercial dealings; laws relating to marriage and divorce; and penal laws. That basically covers all aspects of a society: religious, commercial, familial, and criminal. In religion, it designates Islam as the official state religion and proscribes certain religious duties of Muslims. Those duties include keeping the Five Pillars of Islam (Faith [Shahada]; Prayer [Salat]; Almsgiving [Sakat]; the Fast [Sawm]; and Pilgrimage to Mecca [Hajj]). Also designated are strict legal religious regulations for non-Muslims (i.e. Christians and Jews) in Islamic societies.

Commercially, shari'a regulates how businesses function and how banks do their work. Likewise, it prescribes certain roles in the family unit and regulates marriage and divorce principles, most heavily favored toward men and suppressing women. Criminally, shari'a provides guidelines for judges and courts and designates specific punishments for specific crimes. Many of those, such as beheading, stoning, flogging, and amputation of limbs,

are considered cruel and extreme by most civilized standards.

So how does this relate to the Constitution of the United States? Just that shari'a law is, at its roots, incompatible with the First Amendment's guarantees of religious liberty. When instituted it violates both clauses of that amendment. Shari'a basically requires the government to create, if not always a de jure official state religion, certainly a de facto state religion.

Historically, in nearly every nation where Islam has become the predominant faith, shari'a has become the basic foundation of civil law. Islam is, of course, given a special favored status among religious groups, a clear contradiction of the First Amendment establishment clause. Furthermore, non-Muslim faiths are denied certain rights reserved only for Islam, a denial of the free-exercise clause. Also, under shari'a, Christian evangelism is prohibited and it is unlawful for anyone who is a Muslim to convert to another faith. The punishment may be death.

Obviously we are far from the place in America where Islam becomes the dominant religion. However, as the Muslim population continues to expand, its influence in certain locations has grown, especially where Muslims are concentrated. Many Muslims are demanding to settle their legal disputes outside of the usual legal system, using shari'a. This is already true in some western countries. In Britain, for example, the Muslim Arbitration Tribunal utilizes shari'a law to settle some family disputes.

As Americans and Christians we should resist any and all attempts to bypass American civil law with shari'a. If Muslims are to live in this country they must expect to adhere to the laws and legal system already in place. Why? Because American law is grounded in the principles and rights spelled out in of the U.S. Constitution.

Only by requiring legal issues to be resolved according to American laws can the rights of everyone be guaranteed, including women and children.

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