
Tolerance

The Concept of Toleration

John Locke, *Letter on Toleration*

Above all things I deem it necessary to distinguish exactly the business of civil government from that of religion and to settle the just bounds that lie between the one and the other. If this be not done, there can be no end put to the controversies that will be always arising between those that have, or at least pretend to have, on the one side, a concernment for the interest of men's souls, and, on the other side, a care of the commonwealth ...

The commonwealth seems to me to be a society of men constituted only for the procuring, preserving, and advancing their own civil interests. Civil interests I call life, liberty, health, and indolency of body; and the possession of outward things, such as money, lands, houses, furniture, and the like. It is the duty of the civil magistrate, by the impartial execution of equal laws, to secure unto all the people in general and to every one of his subjects in particular the just possession of these things belonging to this life ...

Now that the whole jurisdiction of the magistrate reaches only to these civil concernments, and that all civil power, right and dominion, is bounded and confined to the only care of promoting these things; and neither can nor ought in any manner to be extended to the salvation of souls ... The only business of the Church is the salvation of souls, and it no way concerns the commonwealth, or any member of it, that this or that ceremony be there made use of. Neither the use nor the omission of any ceremonies in those religious assemblies does either advantage or prejudice the life, liberty, or estate of any man ...

The political society is instituted for no other end, but only to secure every man's possession of the things of this life. The care of each man's soul and of the things of heaven, which neither does belong to the commonwealth nor can be subjected to it, is left entirely to every man's self ...

Separation of Church and State

Thomas Jefferson, *Notes On The State of Virginia*,

Thomas Jefferson fought for the separation of church and state in the United States. In this passage, he describes the existing relationship between religion and politics in his native Virginia and makes a suggestion that will be fixed in the first amendment to the United States constitution (1786). The significance of Jefferson's position goes well beyond the American context. Indeed, a good argument can be made that it is essential to the success of liberal democracy.

The first settlers in this country were emigrants from England, of the English Church, just at a point of time when it was flushed with complete victory over the religious of all other

persuasions. Possessed, as they became, of the powers of making, administering, and executing the laws, they showed equal intolerance in this country with their Presbyterian brethren, who had emigrated to the northern government. The poor quakers were flying from persecution in England. They cast their eyes on these new countries as asylums of civil and religious freedom; but they found them free only for the reigning sect. Several acts of the Virginia assembly of 1659, 1662, and 1693, had made it penal in parents to refuse to have their children baptized; had prohibited the unlawful assembling of Quakers; had made it penal for any master of a vessel to bring a Quaker into the State; had ordered those already here, and such as should come thereafter, to be imprisoned till they should abjure the country; provided a milder punishment for their first and second return, but death for their third; had inhibited all persons from suffering their meetings in or near their houses, entertaining them individually, or disposing of books which supported their tenets.

If no execution took place here, as did in New England, it was not owing to the moderation of the church, or spirit of the legislature, as may be inferred from the law itself but to historical circumstances which have not been handed down to us. The Anglicans retained full possession of the country about a century. Other opinions began then to creep in, and the great care of the government to support their own church, having begotten an equal degree of indolence in its clergy, two-thirds of the people had become dissenters at the commencement of the present revolution. The laws, indeed, were still oppressive on them, but the spirit of the one party had subsided into moderation, and of the other had risen to a degree of determination which commanded respect.

The present state of our laws on the subject of religion is this. The convention of May 1776, in their declaration of rights, declared it to be a truth, and a natural right, that the exercise of religion should be free; but when they proceeded to form on that declaration the ordinance of government, instead of taking up every principle declared in the bill of rights, and guarding it by legislative sanction, they passed over that which asserted our religious rights, leaving them as they found them. The same convention, however, when they met as a member of the general assembly in October, 1776, repealed all acts of Parliament which had rendered criminal the maintaining any opinions in matters of religion ... Statutory oppressions in religion being thus wiped away, we remain at present under those only imposed by the common law, or by our own acts of assembly. At the common law, heresy was a capital offense, punishable by burning. Its definition was left to the ecclesiastical judges ... Heresy, thus circumscribed, being an offense against the common law, our act of assembly of October 1777, c. 17, gives cognizance of it to the general court, by declaring that the jurisdiction of that court shall be general in all matters at the common law. By our own act of assembly of 1705, c. 30, if a person brought up in the Christian religion denies the being of a God, or the Trinity, or asserts there are more gods than one, or denies the Christian religion to be true, or the scriptures to be of divine authority, he is punishable on the first offense by incapacity to hold any office or employment ecclesiastical, civil, or military; on the second by disability to sue, to take any gift or legacy, to be guardian, executor, or administrator, and by three years' imprisonment without bail. A father's right to the custody of his own children being founded in law on his right of guardianship, this being taken away, they may of course be severed from him, and put by the authority of a court into more orthodox hands.

This is a summary view of that religious slavery under which a people have been willing to remain, who have lavished their lives and fortunes for the establishment of their civil freedom. The error seems not sufficiently eradicated, that the operations of the mind, as well as the acts of the body, are subject to the coercion of the laws. But our rulers can have no authority over such natural rights, only as we have submitted to them. The rights of conscience we never submitted, we could not submit. We are answerable for them to our God. The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbor to say there are twenty gods, or no God. It neither picks my pocket nor breaks my leg. If it be said, his testimony in a court of justice cannot be relied on, reject it then, and be the stigma on him. Constraint may make him worse by making him a hypocrite, but it will never make him a truer man. It may fix him obstinately in his errors, but will not cure them. Reason and free inquiry are the only effectual agents against error. Give a loose to them, they will support the true religion by bringing every false one to their tribunal, to the test of their investigation. They are the natural enemies of error) and of error only.

Had not the Roman government permitted free inquiry, Christianity could never have been introduced. Had not free inquiry been indulged at the era of the Reformation, the corruptions of Christianity could not have been purged away. If it be restrained now, the present corruptions will be protected, and new ones encouraged. Was the government to prescribe to us our medicine and diet, our bodies would be in such keeping as our souls are now. Thus in France the emetic was once forbidden as a medicine, and the potato as an article of food. Government is just as infallible, too, when it fixes systems in physics. Galileo was sent to the Inquisition for affirming that the earth was a sphere; the government had declared it to be as flat as a trencher, and Galileo was obliged to abjure his error. This, error, however, at length prevailed, the earth became a globe, and Descartes declared it was whirled round its axis by a vortex. The government in which he lived was wise enough to see that this was no question of civil jurisdiction, or we should all have been involved by authority in vortices. In fact, the vortices have been exploded, and the Newtonian principle of gravitation is now more firmly established, on the basis of reason, than it would be were the government to step in, and to make it an article of necessary faith.

Reason and experiment have been indulged, and error has fled before them. It is error alone which needs the support of government. Truth can stand by itself. Subject opinion to coercion: whom will you make your inquisitors? Fallible men; men governed by bad passions, by private as well as public reasons. And why subject it to coercion? To produce uniformity. But is uniformity of opinion desirable? No more than of face and stature. Introduce the bed of Procrustes then, and as there is danger that the large men may beat the small, make us all of a size, by lopping the former and stretching the latter. Difference of opinion is advantageous in religion. The several sects perform the office of a censor morum over such other. Is uniformity attainable? Millions of innocent men, women, and children, since the introduction of Christianity, have been burnt, tortured, fined, imprisoned; yet we have not advanced one inch towards uniformity. What has been the effect of coercion? To make one half the world fools, and the other half hypocrites. To support roguery and error all over the earth. Let us reflect that it is inhabited by a thousand millions of people. That these profess probably a thousand different systems of religion.

That ours is but one of that thousand. That if there be but one right, and ours that one, we should wish to see the nine hundred and ninety-nine wandering sects gathered into the fold of truth. But against such a majority we cannot effect this by force. Reason and persuasion are the only practicable instruments. To make way for these, free inquiry must be indulged; and how can we wish others to indulge it while we refuse it ourselves.

But every State, says an inquisitor, has established some religion. No two, say I, have established the same. Is this a proof of the infallibility of establishments? Our sister States of Pennsylvania and New York, however, have long subsisted without any establishment at all. The experiment was new and doubtful when they made it. It has answered beyond conception. They flourish infinitely. Religion is well supported; of various kinds, indeed, but all good enough; all sufficient to preserve peace and order; or if a sect arises, whose tenets would subvert morals, good sense has fair play, and reasons and laughs it out of doors, without suffering the State to be troubled with it. They do not hang more malefactors than we do. They are not more disturbed with religious dissensions. On the contrary, their harmony is unparalleled, and can be ascribed to nothing but their unbounded tolerance, because there is no other circumstance in which they differ from every nation on earth. They have made the happy discovery, that the way to silence religious disputes, is to take no notice of them.

Let us too give this experiment fair play, and get rid, while we may, of those tyrannical laws. It is true, we are as yet secured against them by the spirit of the times. I doubt whether the people of this country would suffer an execution for heresy, or a three years' imprisonment for not comprehending the mysteries of the Trinity. But is the spirit of the people an infallible, a permanent reliance? Is it government? Is this the kind of protection we receive in return for the rights we give up? Besides, the spirit of the times may alter, will alter. Our rulers will become corrupt, our people careless. A single zealot may commence persecutor, and better men be his victims. It can never be too often repeated, that the time for fixing every essential right on a legal basis is while our rulers are honest, and ourselves united. From the conclusion of this war we shall be going down hill. It will not then be necessary to resort every moment to the people for support. They will be forgotten, therefore, and their rights disregarded. They will forget themselves, but in the sole faculty of making money, and will never think of uniting to effect a due respect for their rights. The shackles, therefore, which shall not be knocked off at the conclusion of this war, will remain on us long, will be made heavier and heavier, till our rights shall revive or expire in a convulsion.

First Amendment of the United States Constitution: Taking Religion Seriously

Nathan Oman (*Humane Studies Review*, spring 2001)

Oliver Wendell Holmes once declared, "The first requirement of a sound body of law is, that it should correspond with the actual feelings and demands of the community, whether right or wrong." [1] At the opening of the twenty-first century, constitutional protection for the free exercise of religion in the United States is anemic at best. Scholars much abler than I have suggested ways in which the doctrinal intricacies of the religion clauses can be navigated. However, if Holmes is correct, what I take to be the problem of American

religious liberty jurisprudence may stem from the "actual feelings . . . of the community." If that is the case, then a more robust protection for religion will require more than sophisticated constitutional and doctrinal analysis. This essay will argue that the current anemia of American religious jurisprudence reflects the fact that none of the current arguments for religious liberty can actually justify a robust concept of religious freedom. Referring to the concept of liberty generally, Friedrich A. Hayek wrote, "If old truths are to retain their hold on men's minds, they must be restated in the language and concepts of successive generations. What at one time are their most effective expressions gradually become so worn with use that they cease to carry a definite meaning. The underlying ideas may be as valid as ever, but the words, even when they refer to problems that are still with us, no longer convey the same conviction." [2] I believe that something like this has happened with the concept of religious freedom, and this essay will offer a possible re-justification for this important facet of liberty.

Before I begin, however, we must be clear about some preliminary concepts. The First Amendment to the United States Constitution declares, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." [3] This constitutional provision can be divided into two separate clauses. The first, known as the Establishment Clause, limits the religious activity of Congress, while the second, known as the Free Exercise Clause, protects the private religious activity of citizens. With the passage of the Fourteenth Amendment, the Supreme Court has ruled that these clauses of the Constitution apply to all levels of government. This essay is primarily concerned with the Free Exercise Clause. My goal is to justify a special protection for private religious conduct. Thus, while my arguments might have implications beyond the issue of private religious conduct, I will not address issues such as school prayer or government use of religious symbolism, which generally are questions under the Establishment Clause.

I.

In 1990 the Supreme Court handed down its decision in *Employment Division v. Smith*. *Smith* [4] dealt with an apparently narrow legal issue. An Oregon man was dismissed from his job as a state drug counselor because he tested positive for the use of peyote, a hallucinogen made from cactus plants. The man then applied for unemployment benefits from the state. However, under Oregon law someone whose unemployment results from illegal activity cannot collect benefits. The man sued. He was a member of the Native American Church, which uses peyote as a sacrament. Because the original Oregon law criminalized the exercise of his religion, he argued that he should be exempted from the law under the Free Exercise Clause. However, the state argued that since the Oregon law did not specifically target the religious use of peyote, it did not violate the First Amendment. The question before the Court was whether or not the Free Exercise Clause required that a neutral law that applied equally to everyone had to be set aside in those cases where it burdens the practice of someone's religion. The Court ruled that it did not.

At its heart, *Smith* is about whether or not the free exercise of religion can be understood as a separate and independent right protected under the Constitution. In its decision the Court in effect ruled that it was not. Under post-*Smith* jurisprudence the Free Exercise Clause is viable only in claims against laws specifically targeting religious practice. This,

in effect, makes "free exercise of religion" into a subspecies of the Equal Protection Clause. The state cannot use religion to single out some group for different treatment. Religion has thus become akin to a "suspect classification," like race or ethnicity. Put another way, Smith says that the "free exercise of religion" is not about personal freedom at all. Instead, the Free Exercise Clause simply forbids some form of illegitimate religious discrimination by the state. [5] What Smith disallows is the notion that there is some distinctive and exclusive right available only to religion under the First Amendment. Indeed, Justice Scalia made this point explicit when he classified previous rulings granting special rights under the Free Exercise Clause as really involving a hybrid between free exercise and some other constitutionally protected right. [6]

The alternative to Smith would be an understanding of the Free Exercise Clause that grants it some specific and unique content. Prior to Smith the Court had attempted this in *Sherbert v. Verner*. [7] In a fact situation remarkably similar to Smith, [8] the Court ruled that the state could not burden religious practice — even with neutral and generally applicable laws — unless it could show some especially compelling reason for doing so. Under the *Sherbert* regime religionists could claim a special protection for their religion under the Free Exercise Clause. Unlike Smith, *Sherbert* provided this protection independent of any other formal or substantive claim. A religious plaintiff did not need to show that a given law unfairly targeted her religion, or that it violated some other constitutional right (such as free speech). She only needed to show that the law in question burdened the exercise of her religion. In short, *Sherbert* concluded that the Free Exercise Clause provided protection for religious practice as religious practice rather than as a surrogate for something else (speech, equal protection, etc.). This is a far cry from Smith, where the Court ruled that the state of Oregon could criminalize the central sacrament of the Native American Church without running afoul of any constitutionally protected liberties.

None of this is new. The last ten years has seen a stream of commentary criticizing and defending both Smith and the congressional legislation that Smith has spawned. What has become evident recently is a new pessimism among the proponents of an independent Free Exercise Clause. The central problem for these theorists is to find a plausible and rhetorically powerful justification for religion-specific rights unavailable to non-religious citizens. Some theorists are beginning to conclude that such a justification is not possible. For example, Professor Frederick Gedicks, who undoubtedly would like a more robust constitutional protection of religious practice, has advocated abandoning the notion of an independent Free Exercise Clause altogether. He writes, "My thesis is that . . . various justifications [for religious exemptions from otherwise valid laws] are no longer plausible, and thus can no longer account for religious exemptions. In the face of increasing scrutiny and growing criticism, these justifications no longer persuasively explain why religious people are constitutionally entitled to exemptions from laws that burden their religious practices, but non-religious people are not" [9]

II.

A brief survey of some of the more prominent justifications for religious liberty shows the problems to which Gedicks alludes. Ultimately these justifications fail in one of three ways. First, some arguments beg the question by asserting the necessity of religious

freedom without offering any normative justification for why religious freedom should be protected. Second, some arguments fail to provide any justification for religious liberty *per se*. Since these arguments work equally well to justify protections for non-religious forms of personal activity, they cannot serve to justify religious liberty under the Free Exercise Clause in those cases where protection is unavailable to non-believers. Finally, some arguments simply fail to justify religious freedom in precisely those situations where it is most likely to run up against the dictates of the state.

Some theorists have sought to justify unique religious protections by appeals to history or the constitutional text. Professor Douglas Laycock has insisted that regardless of how one justifies religious liberty, there is no arguing with the fact that the text of the First Amendment on its face extends special protection to the free exercise of religion. He writes, "'Because the Constitution says so, and because our liberties depend on maintaining the authority of the Constitution's guarantees,' should be sufficient reason to vigorously protect religious liberty." [10] Other scholars have argued that in addition to the constitutional text, the historical intent of its framers requires a more robust protection for religious liberty than the Court now seems willing to provide. [11] These arguments boil down to an appeal to authority: if the plain text of the Constitution demands it and the framers intended it, then we should grant greater protection for religious liberty.

These arguments run into the same kinds of problems that appeals to authority always face: the legitimacy of the authority. Ultimately, appeals to the plain meaning of the constitutional text or the historical intent of its framers rest on a certain approach to legal hermeneutics. Not only must one define what the framers' intention actually was, but one must also justify why that intent should be dispositive. Likewise, appeals to text must justify a robust interpretation of a particular constitutional clause in the face of the fact that many constitutional provisions are not legally enforceable. [12] Professor Gedicks points out, "It does not follow from the enumeration of religious exercise among the rights protected by the First Amendment that religious exemptions are constitutionally required. . . . The mere fact that the free exercise right is enumerated in the constitutional text does not mean that holders of the right are constitutionally entitled to be excused from complying with government action that incidentally burdens the right." [13] Gedicks argues that there are a host of pretexts by which courts can avoid explicit constitutional guarantees. [14] Yet even if one does not adopt Professor Gedicks's cynical attitude towards constitutional hermeneutics, the initial problem of providing the kind of re-justification envisioned by Hayek remains. Textual and historical arguments simply do not grapple head on with the issue of justifying religious liberty.

Other theorists have offered a more sophisticated argument based on the insights of Alexis DeToqueville. DeToqueville saw two great dangers within the structure of American democracy. The first danger is the simple problem of tyranny by the majority. The second danger is the radical individualism inherent in America's classical liberal foundations. DeToqueville's fear was that American individualism would atomize people, destroying the sense of community upon which democracy depends. The solution, said DeToqueville, is a rich set of mediating institutions that act as a check on both an overweening government captured by a single majority and a centrifugal individualism. Scholars such as Stephen L. Carter have argued that religion should be afforded protection because it

provides just such powerful mediating institutions. [15] Upon closer examination, however, this argument also provides no ground for offering special protections to religion. Political scientists have identified the benefits of mediating institutions with what they call "social capital." This "social capital"[16] is the trust and mutual commitment that makes communal life successful. However, it is provided equally well, they demonstrate, by institutions such as soccer leagues and the Lions Club. Thus, theorists such as Carter who would justify religious freedom with this argument fail to show why religion should be protected but bowling clubs should not. [17]

Another argument for religious freedom is that it should be protected as a part of some kind of constitutionally recognized personal autonomy. The Supreme Court has announced that "at the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life." [18] It seems plausible to think that religion could be protected under such a broad view of human autonomy. Thus, Professor Lawrence Tribe, for example, claims that the religion clauses of the First Amendment protect "rights of religious autonomy." [19] Yet this approach has several problems. It seems to identify freedom of religion with a generalized right of "freedom of conscience." [20] To the extent that such a right to personal autonomy has been found in the constitution it has come from the right to privacy that lurks in the penumbras of various provisions of the Bill of Rights and the Fourteenth Amendment rather than within the Free Exercise Clause. Furthermore, such a right rests purely with the individual. Yet religion is most often a communal endeavor, and it is often the corporate rather than the personal manifestations of religion that are seeking protection.

Finally, some have sought to justify religious freedom with the idea that self-government requires some basic level of civic morality in order to survive, and that religion is uniquely suited to provide this virtue. For example, many of the founders believed that religion is a source of the civil virtue that makes democratic government possible. [21] Yet this justification is problematic on several fronts. First, it requires that the government act to create some level of official orthodoxy of belief — a proposition that is at odds with most generally accepted interpretations of the Establishment and the Free Speech Clauses of the First Amendment. Furthermore, such an attitude is ultimately condescending to religion, reducing it to the kind of "noble lie" that Plato argued elites should use to control the ignorant demos. [22] But perhaps most damning from the point of view of a religious freedom partisan, the notion of civic virtue provides no basis for protecting precisely the kind of religion that is most likely to be subject to state sanction — minority faiths with idiosyncratic and iconoclastic beliefs. The opening chapter of American free exercise jurisprudence powerfully illustrates this point. The first case in which the Court squarely faced the issue of the Free Exercise Clause came when nineteenth century Mormons claimed an exemption from anti-bigamy laws that burdened the practice of plural marriage. For the Mormons plural marriage was a religious principle, but to the rest of Victorian America it was the height of immorality and for that reason it had to be destroyed by the state. [23] Thus, it is precisely religious conduct that violates majority norms of morality that is most likely to draw government sanctions.

All these arguments ultimately fail because, while they provide some justification for religious freedom, they do not provide any independent content for the Free Exercise

Clause. To the extent that these arguments are constitutionally cognizable, it is always under revisions other than the Free Exercise Clause. They have the virtue of appealing to non-believers, but they cannot provide a sufficient justification for religious freedom as a genuinely unique protection for religion.

III.

Current justifications of religious freedom fail because they do not take religion seriously on its own terms. This fact should be obvious to thoughtful believers. No Muslim believes that he should make a pilgrimage to Mecca in order to raise the general level of civic virtue. He does it because his faith that "there is no God but Allah and Mohammed is his Prophet" teaches that only by completing the hadj can he qualify for entry into paradise. Likewise, Orthodox Jews are not interested in creating mediating institutions but in faithfully fulfilling the conditions of the covenant God made with Moses and Israel on Mount Sinai. Buddhist temples are not factories for the production of social capital but places where people attempt to follow the example of Buddha to nirvana. Christian churches are not expressions of autonomous individuals attempting to define "the mystery of human life." They are meetings of "fellow citizens with the saints, and of the household of God" seeking salvation through Jesus Christ the Son of God. In short, none of the arguments offered in favor of religious liberty have anything to do with the ultimate concerns that are at the heart of religious belief. They simply do not take such concerns seriously.

Of course, it is difficult to discern precisely how the law can take such claims seriously without creating the kind of official orthodoxy that is anathema to the other provisions of the First Amendment. However, this seems to be precisely what an independent content for the Free Exercise Clause requires ...

Notes:

[1] Oliver Wendell Holmes, *The Common Law* (Boston: Back Bay Books, 1963), 36.

[2] Friedrich A. Hayek, *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960), 1.

[3] U.S. Constitution, Amendment 1.

[4] 494 U.S. 872 (1990).

[5] It is worth noting that forbidding religious discrimination cannot be justified on the same basis as forbidding racial discrimination. Race is an innate characteristic over which a person has no control. Religion, however, can be thought of as a kind of conduct based on specific beliefs. As such, it is not innate in the same sense that race is, and it is far easier to foresee circumstances in which one might have some rational basis for interfering with religion.

[6] "The only decisions in which we have held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action have involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections . . ." *Employment Division v. Smith*, 494 U.S. 872, 881 (1990). Internal citations omitted. This rationalization

of previous cases is post hoc at best. None of the cases Scalia cites explicitly adopted his rationale; nevertheless, the post hoc analysis is useful for what it reveals about the current attitude towards religious liberty.

[7] 374 U.S. 398 (1963).

[8] In *Sherbert*, an unemployed Seventh Day Adventist refused to take a job because it required that she work on Saturday, the Seventh

Day Adventist Sabbath. A state law required that she accept any proffered job as a condition for unemployment benefits. When the state

refused to grant her benefits because of her religious refusal to take the Saturday job, she sued, arguing that the state regime violated her

right to the free exercise of her religion. The Supreme Court agreed.

[9] Frederick Gedicks, "An Unfirm Foundation: The Regrettable Indefensibility of Religious Exemptions," *UALR Law Journal* 20:3 (Spring 1998): 555-74, 556.

[10] Douglas Laycock, "Religious Liberty as Liberty," *Journal of Contemporary Legal Issues* 7 (1996): 313, 314.

[11] Michael McConnell, "The Origins and Historical Understanding of Free Exercise of Religion," *Harvard Law Review* 103 (1990):

1409. Mark V. Tushnet attacked McConnell's historical approach in "The Rhetoric of Free Exercise," *Brigham Young University Law Review* 1993 (1993): 117.

[12] For example, the Constitution guarantees to each citizen a "Republican form of government," but this is not necessarily a legally or judicially enforceable right.

[13] Gedicks, *supra* 559-50.

[14] Gedicks, *supra* 559.

[15] Stephen L. Carter, *The Culture of Disbelief* (New York: Anchor Books, 1993), 134-35.

[16] See Edward C. Banfield, *The Moral Basis of a Backward Society* (New York: Free Press, 1967); Robert D. Putnam, *Making*

Democracy Work: Civic Traditions in Modern Italy (Princeton, NJ: Princeton University Press, 1993); and Robert Putnam, *Bowling*

Alone: The Collapse and Revival of American Community (New York: Simon and Shuster, 2000).

[17] One might argue that bowling clubs should be protected under the Freedom of Association Clause for precisely the reason that they

do provide "social capital." If this is the case, then religious freedom is simply subsumed as a subset of another constitutional right.

[18] *Planned Parenthood of Pennsylvania v. Casey*, 505 U.S. 833, 832 (1992).

[19] Lawrence Tribe, *American Constitutional Law*, 2nd Edition (Mineola, NY: The Foundation Press, Inc., 1988), 1154.

[20] The authors of the First Amendment seemed to have specifically considered—and rejected—such a constitutional provision. See generally McConnell, *supra*.

[21] See Richard Vetterlli and Gary Bryner, *In Search of the Republic: Public Virtue and the Roots of American Government*

(Lanham, Md.: Rowman & Littlefield Publishers, Inc., 1996).

[22] See generally Plato, *Republic*, trans. G.M.A. Grube (Indianapolis: Hackett, 1992), especially 278c.

[23] *Reynolds v. United States*, 98 US 145 (1879). See B. Collin Mangrum and Edwin Firmage, *Zion in the Courts: A Legal History of the Latter-Day Saints, 1830-1900* (Chicago: University of Illinois at Urbana Press, 1988), 151-59.

Toleration: An Impossible Virtue?

What follows is an excerpt from an article by Bernard Williams. When he died in 2004, Williams was a leading English philosopher.

... The *practice* of toleration can be supported by various attitudes such as skepticism or indifference, or it can be understood in terms of a balance of power. Toleration as a *value* seems to demand more than this. In fact, it has been thought by many that this can be expressed in a certain political philosophy, a certain conception of the state.

To some degree, it is possible for people to belong to communities bound together by shared convictions—religious convictions, for instance—and for toleration to be sustained by a distinction between those communities and the state. The state is not identified with any set of such beliefs and does not enforce any of them; equally, it does not allow any of the groups to impose its beliefs on the others, though each of them can of course advocate what it believes. In the United States, for instance, there is a wide consensus that supports the Constitution in allowing no law that enforces or even encourages any particular religion. There are many religious groups, and no doubt many of them have deep convictions, but most of them do not want the state to suppress others or to allow any of them to suppress others.

Many people have hoped that this can serve as a general model of the way in which a modern society can resolve the tensions of toleration. On the one hand, there are deeply held and differing convictions about moral or religious matters, held by various groups within the society. On the other hand, there is a supposedly impartial state, which affirms the rights of all citizens to equal consideration, including an equal right to form and express their convictions. This is the model of liberal pluralism. It can be seen as enacting toleration. It expresses toleration's peculiar combination of conviction and acceptance, by finding a home for people's various convictions in groups or communities less than the state, while the acceptance of diversity is located in the structure of the state itself.

This implies the presence of toleration as more than a mere practice. But how exactly does it identify toleration as a value? Does it identify toleration as a virtue? This turns on the question of the qualities that such a system demands of its citizens. The citizens must have at least a shared belief in the system itself. The model of a society that is held together by a framework of rights and an aspiration toward equal respect, rather than by a shared body of more specific substantive convictions, demands an ideal of citizenship that will be adequate to bear such a weight. The most impressive version of this ideal is perhaps that offered by the tradition of liberal philosophy flowing from Kant, which identifies the dignity of the human being with autonomy. Free persons are those who make their own lives and determine their own convictions, and power must be used to make this possible, not to frustrate it by imposing a given set of convictions.

This is not a purely negative or skeptical ideal. If it were, it could not even hope to have the power to bind together into one society people with strongly differing convictions. Nor

could it provide the motive power that all tolerant societies need in order to fight the intolerant when other means fail. This is an ideal associated with many contemporary liberal thinkers, such as John Rawls, Ernest Nagel, and Ronald Dworkin.

Under the philosophy of liberal pluralism, toleration does emerge as a principled doctrine, and it does require of its citizens a belief in a value: perhaps not so much in the value of toleration itself as in a certain more fundamental value, that of autonomy. Because this value is taken to be understood and shared, this account of the role of toleration in liberal pluralism implies a picture of justification. It should provide an argument that could be accepted by those who do find *prima facie* intolerable certain outlooks that obtain in the society, and which liberalism refuses to deploy the power of the state to suppress. As Nagel has well put it, “Liberalism purports to be a view that justifies religious toleration not only to religious skeptics but to the devout, and sexual toleration not only to libertines but to those who believe extramarital sex is sinful. It distinguishes between the values a person can appeal to in conducting his own life and those he can appeal to in justifying the exercise of political power.” No one, including Nagel himself, believes that this will be possible in every case. There must be, on any showing, limits to the extent to which the liberal state can be disengaged on matters of ethical disagreement. There are some questions, such as that of abortion, on which the state will fail to be neutral whatever it does. Its laws may draw distinctions between different circumstances of abortion, but in the end it cannot escape the fact that some people will believe with the deepest conviction that a certain class of acts should be permitted, while other people will believe with equal conviction that those acts should be forbidden. Equally intractable questions will arise with regard to education, where the autonomy of some fundamentalist religious groups, for instance, to bring up their children in their own beliefs will be seen by liberals as standing in conflict with the autonomy of those children to choose what beliefs they will have. (Such problems may be expressed in terms of group rights.) No society can avoid collective and substantive choices on matters of this kind, and in that sense, on those issues, there are limits to toleration, even if people continue to respect one another’s opinions.

The fact that there will be some cases that will be impossible in such a way does not necessarily wreck liberal toleration, unless there are too many of them. There is no argument of principle to show that if A thinks a certain practice wrong and B thinks that practice right, A has to think that the state should suppress that practice or that B has to think that the state should promote that practice. These are considerations at different levels. Nevertheless, there is a famous argument to the effect that the liberal ideal is in principle impossible. Some critics of liberalism claim that the liberal pluralist state, as the supposed enactment of toleration, does not really exist. What is happening, they say, is that the state is subtly enforcing one set of principles (roughly in favor of individual choice – at least, consumer choice – social cooperation, and business efficiency) while the convictions that people previously held deeply, on matters of religion or sexual behavior or the significance of cultural experience, dwindle into private tastes. On this showing, liberalism will come close to being “just another sectarian doctrine”: the phrase that Rawls used precisely in explaining what liberalism had to avoid being.

What is the critic’s justification for saying that the liberal state is “subtly enforcing” one

set of attitudes rather than another? Nagel distinguishes sharply between enforcing something like individualism, on the one hand, and the practices of liberal toleration, on the other, though he honestly and correctly admits that the educational practices, for instance, of the liberal state are not “equal in their effects.” This is an important distinction, and it can make some significant difference in practice. Being proselytized or coerced by militant individualism is not the same thing as merely seeing one’s traditional religious surroundings eroded by a modern liberal society. The liberal’s opponents must concede that there is something in the distinction, but this does not mean that they will be convinced by the use that the liberal makes of it, because it is not a distinction that is neutral in its inspiration. It is asymmetrically skewed in the liberal direction. This is because it makes a lot out of a difference of procedure, whereas what matters to a non liberal believer is the difference of outcome. I doubt whether we can find an argument of principle that satisfies the purest and strongest aims of the value of liberal toleration, in the sense that it does not rely on skepticism or on the contingencies of power, and also could in principle explain to rational people whose deepest convictions were not in favor of individual autonomy and related values that they should think a state better that let their values decay in preference to enforcing them.

If toleration as a practice is to be defended in terms of its being a value, then it will have to appeal to substantive opinions about the good, in particular the good of individual autonomy, and these opinions will extend to the value and the meaning of personal characteristics and virtues associated with toleration, just as they will to the political activities of imposing or refusing to impose various substantive outlooks. This is not to say that the substantive values of individual autonomy are misguided or baseless. The point is that these values, like others, may be rejected, and to the extent that toleration rests on those values, then toleration will also be rejected. The practice of toleration cannot be based on a value such as individual autonomy and also hope to escape from substantive disagreements about the good. This really is a contradiction, because it is only a substantive view of goods such as autonomy that could yield the value that is expressed by the practices of toleration.

In the light of this, we can now better understand the impossibility or extreme difficulty that was seemingly presented by the personal virtue or attitude of toleration. It appeared impossible because it seemingly required someone to think that a certain belief or practice was thoroughly wrong or bad, and at the same time that there was some intrinsic good to be found in its being allowed to flourish. This does not involve a contradiction if the other good is found not in that belief’s continuing but in the other believer’s autonomy. People can coherently think that a certain outlook or attitude is deeply wrong and that the flourishing of such an attitude should be tolerated if they also hold another substantive value in favor of the autonomy or independence of other believers. The exercise of toleration as a virtue, then, and in that sense the belief in it as itself a value, does not necessarily involve a contradiction, though in a given situation it may involve that familiar thing, a conflict of goods. However, we cannot combine this account of liberal toleration with the idea that it rises above the battle of values. The account gives rise to the familiar problem that others may not share the liberal view of these various goods; in particular, the people whom the liberal is particularly required to tolerate are precisely those who are unlikely to share the liberal’s view of the good of autonomy, which is the basis of the

toleration, to the extent that this expresses a value. The liberal has not, in this representation of toleration, given them a reason to value toleration if they do not share his or her other values ...

... It may be that the best hopes for toleration as a practice lie not so much in this virtue and its demand that one combine the pure spirit of toleration with one's detestation of what has to be tolerated. Hope may lie rather in modernity itself and in its principal creation, international commercial society. It is still possible to think that the structures of this international order will encourage skepticism about religious and other claims to exclusivity and about the motives of those who impose such claims. Indeed, it can help to encourage restraint within religions themselves. When such skepticism is set against the manifest harms generated by intolerance, there is a basis for the practice of toleration, a basis that is allied to liberalism but is less ambitious than the pure value of liberal toleration, which rests on the belief in autonomy ...

Is Islam Compatible With Liberal Democracy?

Bernard Lewis is a well-known historian of the Middle East. The following article was written in 1993 but since 9/11, Lewis has commented extensively on the relationship between Islam and terrorism, the relationship between Islam and western political ideals and so on. He is also a "neo-conservative" advisor to the Bush administration on relevant issues

Bernard Lewis, *The Atlantic Monthly*

There has been much discussion of late, both inside and outside the Islamic world, about those elements in the Islamic past and those factors in the Muslim present that are favorable and unfavorable to the development of liberal democracy. From a historical perspective it would seem that of all the non-Western civilizations in the world, Islam offers the best prospects for Western-style democracy. Historically, culturally, religiously, it is the closest to the West, sharing much—though by no means all—of the Judeo-Christian and Greco-Roman heritage that helped to form our modern civilization. From a political perspective, however, Islam seems to offer the worst prospects for liberal democracy. Of the forty-six sovereign states that make up the international Islamic Conference, only one, the Turkish Republic, can be described as a democracy in Western terms, and even there the path to freedom has been beset by obstacles. Of the remainder, some have never tried democracy; others have tried it and failed; a few, more recently, have experimented with the idea of sharing, though not of relinquishing, power.

Can liberal democracy work in a society inspired by Islamic beliefs and principles and shaped by Islamic experience and tradition? It is of course for Muslims, primarily and perhaps exclusively, to interpret and reinterpret the pristine original message of their faith, and to decide how much to retain, and in what form, of the rich accumulated heritage of fourteen centuries of Islamic history and culture. Not all Muslims give the same answers to the question posed above, but much will depend on the answer that prevails.

The Prod of Weakness

In December 14, 1909, the Ottoman Sultan Mehmed V, in a speech from the throne delivered to the Ottoman parliament, spoke of the commitment of his administration to "constitutional and consultative government ... the way of security and salvation prescribed by the noble shari'a and by both reason and tradition." The content of the speech and the manner of its delivery reflected the new situation after the Young Turk Revolution of 1908 and the suppression of the counterrevolutionary mutiny in the spring of 1909. Under the restored constitution the Ottoman Empire had become a constitutional monarchy, and the speech that the Sultan presented, British-style, to his parliament was written for him by his ministers, whose policies it expressed. The language used is interesting and revealing. "Constitution" is *mesrutiyet*, a term coined in the nineteenth century to denote a new procedure; "consultation" is *mesveret*, an old term with many associations derived from both Ottoman political usage and Islamic political literature. The Islamic association implied by the use of this term is made explicit by the citation of "the noble shari'a" and of "reason and tradition," *akl ve-nakl*, a formula commonly used by Muslim theologians. The desire to borrow or imitate Western institutions perceived as useful, and to present them as somehow representing a return to authentic and original Islamic principles, is characteristic of most nineteenth-century and some twentieth-century Islamic reformers. The desire for such change arose in the main from a growing awareness of Western strength and wealth contrasted with Muslim weakness and poverty. The discovery or invention of Islamic antecedents was seen as necessary to make such political changes acceptable to the people of a proud and deeply conservative society with old and strong religio-political traditions of its own—these last including a profound contempt for the unbeliever and all his ways. It is not easy to accept instruction in matters as fundamental as the conduct of state from those one has long been accustomed to regard as benighted and unenlightened.

Muslim awareness of weakness and defeat first achieved significant expression in the early eighteenth century, following the disastrous failure of the second siege of Vienna (1683) and the Treaty of Karlowitz (1699), the first imposed by a victorious enemy on a defeated Ottoman government. There had been earlier defeats and setbacks—the final expulsion of the Moors from Spain, the ending of the Tatar yoke in Russia, the establishment of the Western European maritime powers in the Muslim lands of South and Southeast Asia. But all these were in a sense peripheral and seem to have had little impact on the heartlands of Islam and the Middle East, where the Ottoman Empire, the last and in many ways the greatest of the Muslim military empires, continued to perform its task as the sword and shield of Islam in the long struggle against Christendom. For a while the awareness of weakness was in the main limited to the Ottoman governing elite, the first to bear the brunt of the changed balance of forces, while the rest of the population was still protected from both invasion and reality by the armed might of the Ottoman state, even in its decline a formidable military power. The terms of the discussion were similarly limited to military matters, to weapons and training and military organization, since for some time it was in these alone that Muslims experienced the growing superiority of the West. The events of the late eighteenth centuries—the Russians in the Black Sea, the French in Egypt—made European superiority painfully obvious. This succession of military defeats was the more galling to the people of a religious society with a long history of political and

military triumph, starting in the lifetime of its founder, and with a proud awareness of that sacred history.

In time there arose some among the reformers who argued that European military superiority derived from nonmilitary causes, and two in particular—one economic, the other political. Some identified the sources of Western power more specifically as industrialization and constitutional government. The Arab failures in the struggle against Israel, particularly in 1948 and in 1967, revived the great debate on what is wrong with Arab and, more broadly, Islamic society, and what can be done to put it right. Like the Turks after their failure to capture Vienna, so the Arabs after their failure to capture Jerusalem began by seeing this as a primarily military problem for which there was a military solution: bigger and better armies with bigger and better weapons. And when these bigger and better armies also failed, there was a growing willingness to listen to those who sought deeper causes and offered more-radical solutions.

Fundamentalists and Democrats

There are many who see no need for any such change and would prefer to retain the existing systems, whether radical dictatorships or traditional autocracies, with perhaps some improvement in the latter. This preference for things as they are is obviously shared by those who rule under the present system and those who otherwise benefit, including foreign powers who are willing to accept and even support existing regimes as long as their own interests are safeguarded. But there are others who feel that the present systems are both evil and doomed and that new institutions must be devised and installed.

Proponents of radical change fall into two main groups—the Islamic fundamentalists and the democrats. Each group includes a wide range of sometimes contending ideologies. The term "fundamentalism" derives from a series of Protestant tracts, *The Fundamentals*, published in the United States around 1910, and was used first in America and then in other predominantly Protestant countries to designate certain groups that diverge from the mainstream churches in their rejection of liberal theology and biblical criticism and their insistence on the literal divinity and inerrancy of the biblical text. The use of the term to designate Muslim movements is therefore at best a loose analogy and can be very misleading. Reformist theology has at times in the past been an issue among Muslims; it is not now, and it is very far from the primary concerns of those who are called Muslim fundamentalists.

Those concerns are less with scripture and theology than with society, law, and government. As the Muslim fundamentalists see it, the community of Islam has been led into error by foreign infidels and Muslim apostates, the latter being the more dangerous and destructive. Under their guidance or constraint Muslims abandoned the laws and principles of their faith and instead adopted secular—that is to say, pagan—laws and values. All the foreign ideologies—liberalism, socialism, even nationalism—that set Muslim against Muslim are evil, and the Muslim world is now suffering the inevitable consequences of forsaking the God-given law and way of life that were vouchsafed to it. The answer is the old Muslim obligation of jihad: to wage holy war first at home, against the pseudo-Muslim apostates who rule, and then, having ousted them and re-Islamized

society, to resume the greater role of Islam in the world. The return to roots, to authenticity, will always be attractive. It will be doubly appealing to those who daily suffer the consequences of the failed foreign innovations that were foisted on them.

For Islamic fundamentalists, democracy is obviously an irrelevance, and unlike the communist totalitarians, they rarely use or even misuse the word. They are, however, willing to demand and exploit the opportunities that a self-proclaimed democratic system by its own logic is bound to offer them. At the same time, they make no secret of their contempt for democratic political procedures and their intention to govern by Islamic rules if they gain power. Their attitude toward democratic elections has been summed up as "one man, one vote, once." This is not entirely accurate, at least not for the Iranians. The Islamic Republic of Iran holds contested elections and allows more freedom of debate and criticism in the press and in its parliament than is usual in most Muslim countries, but there are exacting and strictly enforced limitations on who may be a candidate, what groups may be formed, and what ideas may be expressed. It goes without saying that no questioning of the basic principles of the Islamic revolution or the republic is permitted.

Those who plead or fight for democratic reform in the Arab and other Islamic lands claim to represent a more effective, more authentic democracy than that of their failed predecessors, not restricted or distorted by some intrusive adjective, not nullified by a priori religious or ideological imperatives, not misappropriated by regional or sectarian or other sectional interests. In part their movement is an extension to the Middle East of the wave of democratic change that has already transformed the governments of many countries in Southern Europe and Latin America; in part it is a response to the collapse of the Soviet Union and the new affirmation of democratic superiority through victory in the Cold War. To no small extent it is also a consequence of the growing impact of the U.S. democracy and of American popular culture in the Islamic lands ...

No one will dispute that the creed and political program of Islamic fundamentalists are not compatible with liberal democracy. But Islamic fundamentalism is just one stream among many. In the fourteen centuries that have passed since the mission of the Prophet, there have been several such movements—fanatical, intolerant, aggressive, and violent. Led by charismatic religious figures from outside the establishment, they have usually begun by denouncing the perversion of the faith and the corruption of society by the false and evil Muslim rulers and leaders of their time. Sometimes these movements have been halted and suppressed by the ruling establishment. At other times they have gained power and used it to wage holy war, first at home, against those whom they saw as backsliders and apostates, and then abroad against the other enemies of the true faith. In time these regimes have been either ousted or, if they have survived, transformed—usually in a fairly short period—into something not noticeably better, and in some ways rather worse, than the old establishments that they had overthrown. Something of this kind is already visibly happening in the Islamic Republic of Iran.

The question, then, is not whether liberal democracy is compatible with Islamic fundamentalism—clearly it is not—but whether it is compatible with Islam itself. The debate has focused on a few major points.

God's Polity

Every civilization formulates its own idea of good government, and creates institutions through which it endeavors to put that idea into effect. Since classical antiquity these institutions in the West have usually included some form of council or assembly, through which qualified members of the polity participate in the formation, conduct, and, on occasion, replacement of the government. The polity may be variously defined; so, too, may be the qualifications that entitle a member of the polity to participate in its governance. Sometimes, as in the ancient Greek city, the participation of citizens may be direct. More often qualified participants will, by some agreed-upon and recurring procedure, choose some from among their own numbers to represent them. These assemblies are of many different kinds, with differently defined electorates and functions, often with some role in the making of decisions, the enactment of laws, and the levying of taxes.

The effective functioning of such bodies was made possible by the principle embodied in Roman law, and in systems derived from it, of the legal person—that is to say, a corporate entity that for legal purposes is treated as an individual, able to own, buy, or sell property, enter into contracts and obligations, and appear as either plaintiff or defendant in both civil and criminal proceedings. There are signs that such bodies existed in pre-Islamic Arabia. They disappeared with the advent of Islam, and from the time of the Prophet until the first introduction of Western institutions in the Islamic world there was no equivalent among the Muslim peoples of the Athenian *boule*, the Roman Senate, or the Jewish Sanhedrin, of the Icelandic *Althing* or the Anglo-Saxon *witenagemot*, or of any of the innumerable parliaments, councils, synods, diets, chambers, and assemblies of every kind that flourished all over Christendom.

One obstacle to the emergence of such bodies was the absence of any legal recognition of corporate persons. There were some limited moves in the direction of recognition. Islamic commercial law recognizes various forms of partnership for limited business purposes. A *waqf*, a pious foundation, once settled is independent of its settlor, and can in theory continue indefinitely, with the right to own, acquire, and alienate property. But these never developed beyond their original purposes, and at no point reached anything resembling the governmental, ecclesiastical, and private corporate entities of the West.

Thus almost all aspects of Muslim government have an intensely personal character. In principle, at least, there is no state, but only a ruler; no court, but only a judge. There is not even a city with defined powers, limits, and functions, but only an assemblage of neighborhoods, mostly defined by family, tribal, ethnic, or religious criteria, and governed by officials, usually military, appointed by the sovereign. Even the famous Ottoman imperial *divan*—the *divan-i humayun*—described by many Western visitors as a council, could more accurately be described as a meeting, on fixed days during the week, of high political, administrative, judicial, financial, and military officers, presided over in earlier times by the Sultan, in later times by the Grand Vizier. Matters brought before the meeting were referred to the relevant member of the *divan*, who might make a recommendation. The final responsibility and decision lay with the Sultan or the Grand Vizier.

One of the major functions of such bodies in the West, increasingly through the centuries, was legislation. According to Muslim doctrine, there was no legislative function in the Islamic state, and therefore no need for legislative institutions. The Islamic state was in principle a theocracy—not in the Western sense of a state ruled by the Church and the clergy, since neither existed in the Islamic world, but in the more literal sense of a polity ruled by God. For believing Muslims, legitimate authority comes from God alone, and the ruler derives his power not from the people, nor yet from his ancestors, but from God and the holy law. In practice, and in defiance of these beliefs, dynastic succession became the norm, but it was never given the sanction of the holy law. Rulers made rules, but these were considered, theoretically, as elaborations or interpretations of the only valid law—that of God, promulgated by revelation. In principle the state was God's state, ruling over God's people; the law was God's law; the army was God's army; and the enemy, of course, was God's enemy.

Without legislative or any other kind of corporate bodies, there was no need for any principle of representation or any procedure for choosing representatives. There was no occasion for collective decision, and no need therefore for any procedure for achieving and expressing it, other than consensus. Such central issues of Western political development as the conduct of elections and the definition and extension of the franchise therefore had no place in Islamic political evolution.

Not surprisingly, in view of these differences, the history of the Islamic states is one of almost unrelieved autocracy. The Muslim subject owed obedience to a legitimate Muslim ruler as a religious duty. That is to say, disobedience was a sin as well as a crime.

Modernization in the nineteenth century, and still more in the twentieth, far from reducing this autocracy, substantially increased it. On the one hand, modern technology, communications, and weaponry greatly reinforced the rulers' powers of surveillance, indoctrination, and repression. On the other hand, social and economic modernization enfeebled or abrogated the religious constraints and intermediate powers that had in various ways limited earlier autocracies. No Arab Caliph or Turkish Sultan of the past could ever have achieved the arbitrary and pervasive power wielded by even the pettiest of present-day dictators.

Money and Power

The impediments to the development of liberal institutions were not merely political. The small-scale autocracy of the home, especially the upper-class home, founded on polygamy, concubinage, and slavery, was preparation for an adult life of domination and acquiescence, and a barrier to the entry of liberal ideas. Women—particularly the mothers, sisters, wives, and daughters of rulers—have played a much more important role in Muslim history than is usually conceded by historians. But they were until very recently precluded from contributing to the development of their society in the way that a succession of remarkable women have contributed to the flowering of the West.

The economic basis of Western-style liberal democracy was early recognized in the West. British, American, and French democrats alike insisted on the right to property as one of

the basic human rights that safeguard and are safeguarded by free institutions. It also forms an essential component of civil society as conceived by European thinkers. For some time the rise of socialist ideas, parties, and governments weakened the belief in private property as a liberal value. Recent events have done much to restore that belief.

Islamic law unequivocally recognizes the sanctity of private property, but Islamic history reveals a somewhat different picture, in which even a rich man's enjoyment of his property has never been safe from seizure or sequestration by the state. This chronic insecurity is symbolized in the architecture of the traditional Muslim city, in which neighborhoods, and even the houses of the wealthy, are turned inward, surrounded by high blank walls. Marx and Engels themselves recognized that their canonical sequence of ruling classes defined by production relationships might not apply to non-Western societies. They sketched the theory of what they called "the Asiatic mode of production," in which there was no effective private ownership of land, and consequently no class war—just a simple opposition between the terrorized mass of the population and the all-encompassing state power, bureaucratic and military.

Like many of their other insights, this is a caricature, not a portrait, but also like their other insights, it is not without some basis in reality. Comparing the relationship between property and power in the modern American and classical Middle Eastern systems, one might put the difference this way: in America one uses money to buy power, while in the Middle East one uses power to acquire money. That is obviously an oversimplification, and there are significant exceptions on both sides. The misuse of public office for financial gain is not unknown in the United States; the use of money to buy into the political process is not unfamiliar in the traditional Middle East. But these are marginal, in the main small-scale departures from the norm. In the vast American political and economic system the money made through the actual exercise of power is relatively unimportant—no more than small-time speculation. In the Middle East money can buy only the power of intrigue, not of command.

Perhaps the most striking manifestation of this difference between the two systems is in the merchant class, and its place in the society and polity. Muslim societies, both medieval and early modern, often included a rich and varied industrial and commercial life, and evolved a wealthy and cultivated merchant class. But with brief and insignificant exceptions—as, for example, in a disputed borderland between rival states, or in an interregnum between the collapse of one regime and the consolidation of another—they were never able to match the achievement of the rising European bourgeoisie in the creation of the modern West. One reason is that a large proportion of them were non-Muslims, principally Christians and Jews, and therefore precluded from any decisive role in the political process. But far more important was the chronic, permanent insecurity, the sequence of upheavals and invasions, the ever-present threat of expropriation or destruction.

These traditional obstacles to democracy have in many ways been reinforced by the processes of modernization, and by recent developments in the region. As already observed, the power of the state to dominate and terrorize the people has been vastly increased by modern methods. The philosophy of authoritarian rule has been sharpened

and strengthened by imported totalitarian ideologies, which have served a double purpose—to sanctify rulers and leaders and to fanaticize their subjects and followers. The so-called Islamic fundamentalists are no exception in this respect.

Self-criticism in the West—a procedure until recently rarely practiced and little understood in the Middle East—provided useful ammunition. This use of the West against itself is particularly striking among the fundamentalists. Western democracy for them is part of the hated West, and that hatred is central to the ideas by which they define themselves, as in the past the free world defined itself first against Nazism and then against communism.

The changes wrought by modernization are by no means entirely negative. Some, indeed, are extremely positive. One such improvement is the emancipation of woman. Though this still has a long way to go before it reaches Western levels, irreversible changes have already taken place. These changes are indispensable: a society can hardly aspire realistically to create and operate free institutions as long as it keeps half its members in a state of permanent subordination and the other half see themselves as domestic autocrats. Economic and social development has also brought new economic and social elements of profound importance—a literate middle class, commercial, managerial, and professional, that is very different from the military, bureaucratic, and religious elites that between them dominated the old order. These new groups are creating their own associations and organizations, and modifying the law to accommodate them. They are an indispensable component of civil society—previously lacking, yet essential to any kind of democratic polity.

There are also older elements in the Islamic tradition, older factors in Middle Eastern history, that are not hostile to democracy and that, in favorable circumstances, could even help in its development. Of special importance among these is the classical Islamic concept of supreme sovereignty—elective, contractual, in a sense even consensual and revocable. The Islamic caliphate, as prescribed and regulated by the holy law, may be an autocracy; it is in no sense a despotism. According to Sunni doctrine, the Caliph was to be elected by those qualified to make a choice. The electorate was never defined, nor was any procedure of election ever devised or operated, but the elective principle remains central to Sunni religious jurisprudence, and that is not unimportant.

Again according to Sunni doctrine, the relationship between the Caliph and his subjects is contractual. The word bay'a, denoting the ceremony at the inauguration of a new Caliph, is sometimes translated as "homage" or "allegiance." Such translations, though no doubt reflecting the facts, do not accurately represent the principle. The word comes from an Arabic root meaning "to barter," hence "to buy and to sell," and originally referring to the clasp or slapping of hands with which in ancient Arabia a deal was normally concluded. The bay'a was thus conceived as a contract by which the subjects undertook to obey and the Caliph in return undertook to perform certain duties specified by the jurists. If a Caliph failed in those duties—and Islamic history shows that this was by no means a purely theoretical point—he could, subject to certain conditions, be removed from office.

This doctrine marks one of the essential differences between Islamic and other autocracies. An Islamic ruler is not above the law. He is subject to it, no less than the humblest of his servants. If he commands something that is contrary to the law, the duty of obedience lapses, and is replaced not by the right but by the duty of disobedience.

Muslim spokesmen, particularly those who sought to find Islamic roots for Western practices, made much of the Islamic principle of consultation, according to which a ruler should not make arbitrary decisions by himself but should act only after consulting with suitably qualified advisers. This principle rests on two somewhat enigmatic passages in the Koran and on a number of treatises, mainly by ulama and statesmen, urging consultation with ulama or with statesmen. This principle has never been institutionalized, nor even formulated in the treatises of the holy law, though naturally rulers have from time to time consulted with their senior officials, more particularly in Ottoman times.

Of far greater importance was the acceptance of pluralism in Islamic law and practice. Almost from the beginning the Islamic world has shown an astonishing diversity. Extending over three continents, it embraced a wide variety of races, creeds, and cultures, which lived side by side in reasonable if intermittent harmony. Sectarian strife and religious persecution are not unknown in Islamic history, but they are rare and atypical, and never reached the level of intensity of the great religious wars and persecutions in Christendom.

Traditional Islam has no doctrine of human rights, the very notion of which might seem an impiety. Only God has rights—human beings have duties. But in practice the duty owed by one human being to another—more specifically, by a ruler to his subjects—may amount to what Westerners would call a right, particularly when the discharge of this duty is a requirement of holy law ...

No Obstacle to Democracy

Michael Hirsh, Washington Monthly

America's misreading of the Arab world—and our current misadventure in Iraq—may have really begun in 1950. That was the year a young University of London historian named Bernard Lewis visited Turkey for the first time. Lewis, who is today an imposing, white-haired sage known as the “doyen of Middle Eastern studies” in America (as a *New York Times* reviewer once called him), was then on a sabbatical. Granted access to the Imperial Ottoman archives—the first Westerner allowed in—Lewis recalled that he felt “rather like a child turned loose in a toy shop, or like an intruder in Ali Baba's cave.” But what Lewis saw happening outside his study window was just as exciting, he later wrote. There in Istanbul, in the heart of what once was a Muslim empire, a Western-style democracy was being born.

The hero of this grand transformation was Kemal Ataturk. A generation before Lewis's visit to Turkey, Ataturk (the last name, which he adopted, means “father of all Turks”), had seized control of the dying Ottoman Sultanate. Intent on single-handedly shoving his

country into the modern West—“For the people, despite the people,” he memorably declared—Ataturk imposed a puritanical secularism that abolished the caliphate, shuttered religious schools, and banned fezes, veils, and other icons of Islamic culture, even purging Turkish of its Arabic vocabulary. His People's Party had ruled autocratically since 1923. But in May 1950, after the passage of a new electoral law, it resoundingly lost the national elections to the nascent Democrat Party. The constitutional handover was an event “without precedent in the history of the country and the region,” as Lewis wrote in *The Emergence of Modern Turkey*, published in 1961, a year after the Turkish army first seized power. And it was Kemal Ataturk, Lewis noted at another point, who had “taken the first decisive steps in the acceptance of Western civilization.”

Today, that epiphany—Lewis's Kemalist vision of a secularized, Westernized Arab democracy that casts off the medieval shackles of Islam and enters modernity at last—remains the core of George W. Bush's faltering vision in Iraq. As his other rationales for war fall away, Bush has only democratic transformation to point to as a *casus belli* in order to justify one of the costliest foreign adventures in American history. And even now Bush, having handed over faux sovereignty to the Iraqis and while beating a pell-mell retreat under fire, does not want to settle for some watered-down or Islamicized version of democracy. His administration's official goal is still dictated by the “Lewis Doctrine,” as *The Wall Street Journal* called it: a Westernized polity, reconstituted and imposed from above like Kemal's Turkey, that is to become a bulwark of security for America and a model for the region.

Iraq, of course, does not seem to be heading in that direction. Quite the contrary: Iraq is passing from a secular to an increasingly radicalized and Islamicized society, and should it actually turn into a functioning polity, it is one for the present defined more by bullets than by ballots. All of which raises some important questions. What if the mistakes made in Iraq were not merely tactical missteps but stem from a fundamental misreading of the Arab mindset? What if, in other words, the doyen of Middle Eastern studies got it all wrong?

A growing number of Middle Eastern scholars who in the past have quietly stewed over Lewis's outsized influence say this is exactly what happened. To them, it is no surprise that Lewis and his acolytes in Washington botched the war on terror. In a new book, provocatively titled *The Case for Islamo-Christian Civilization*, one of those critics, Columbia scholar Richard Bulliet, argues that Lewis has been getting his “master narrative” about the Islamic world wrong since his early epiphanic days in Turkey—and he's still getting it wrong today.

In Cheney's bunker

Lewis's basic premise, put forward in a series of articles, talks, and bestselling books, is that the West—what used to be known as Christendom—is now in the last stages of a centuries-old struggle for dominance and prestige with Islamic civilization. (Lewis coined the term “clash of civilizations,” using it in a 1990 essay titled “The Roots of Muslim Rage,” and Samuel Huntington admits he picked it up from him.) Osama bin Laden, Lewis thought, must be viewed in this millennial construct as the last gasp of a losing cause, brazenly mocking the cowardice of the “Crusaders.” Bin Laden's view of America as a “paper tiger” reflects a lack of respect for American power throughout the Arab world.

And if we Americans, who trace our civilizational lineage back to the Crusaders, flagged now, we would only invite future attacks. Bin Laden was, in this view, less an aberrant extremist than a mainstream expression of Muslim frustration, welling up from the anti-Western nature of Islam. “I have no doubt that September 11 was the opening salvo of the final battle,” Lewis told me in an interview last spring. Hence the only real answer to 9/11 was a decisive show of American strength in the Arab world; the only way forward, a Kemalist conquest of hearts and minds. And the most obvious place to seize the offensive and end the age-old struggle was in the heart of the Arab world, in Iraq.

This way of thinking had the remarkable virtue of appealing powerfully to both the hard-power enthusiasts in the administration, principally Bush and Donald Rumsfeld, who came into office thinking that the soft Clinton years had made America an easy target and who yearned to send a post-9/11 message of strength; and to neoconservatives from the first Bush administration such as Paul Wolfowitz, who were looking for excuses to complete their unfinished business with Saddam from 1991 and saw 9/11 as the ultimate refutation of the “realist” response to the first Gulf War. Leaving Saddam in power in '91, betraying the Shiites, and handing Kuwait back to its corrupt rulers had been classic realism: Stability was all. But it turned out that the Arab world wasn't stable, it was seething. No longer could the Arabs be an exception to the rule of post-Cold War democratic transformation, merely a global gas station. The Arabs had to change too, fundamentally, just as Lewis (and Atatürk) had said. But change had to be shoved down their throats—Arab tribal culture understood only force and was too resistant to change, Lewis thought—and it had to happen quickly. This, in turn, required leaving behind Islam's anti-modern obsessions.

Iraq and its poster villain, Saddam Hussein, offered a unique opportunity for achieving this transformation in one bold stroke (remember “shock and awe”?) while regaining the offensive against the terrorists. So, it was no surprise that in the critical months of 2002 and 2003, while the Bush administration shunned deep thinking and banned State Department Arabists from its councils of power, Bernard Lewis was *persona grata*, delivering spine-stiffening lectures to Cheney over dinner in undisclosed locations. Abandoning his former scholarly caution, Lewis was among the earliest prominent voices after September 11 to press for a confrontation with Saddam, doing so in a series of op-ed pieces in *The Wall Street Journal* with titles like “A War of Resolve” and “Time for Toppling.” An official who sat in on some of the Lewis-Cheney discussions recalled, “His view was: ‘Get on with it. Don't dither.’” Animated by such grandiose concepts, and like Lewis quite certain they were right, the strategists of the Bush administration in the end thought it unnecessary to prove there were operational links between Saddam and al Qaeda. These were good “bureaucratic” reasons for selling the war to the public, to use Wolfowitz's words, but the real links were deeper: America was taking on a sick civilization, one that it had to beat into submission. Bin Laden's supposedly broad Muslim base, and Saddam's recalcitrance to the West, were part of the same pathology.

The administration's vision of postwar Iraq was also fundamentally Lewisian, which is to say Kemalist. Paul Wolfowitz repeatedly invoked secular, democratic Turkey as a “useful model for others in the Muslim world,” as the deputy secretary of defense termed it in December 2002 on the eve of a trip to lay the groundwork for what he thought would be a

friendly Turkey's role as a staging ground for the Iraq war. Another key Pentagon neocon and old friend of Lewis's, Harold Rhode, told associates a year ago that “we need an accelerated Turkish model” for Iraq, according to a source who talked with him. (Lewis dedicated a 2003 book, *The Crisis of Islam*, to Rhode whom “I got to know when he was studying Ottoman registers,” Lewis told me.) And such men thought that Ahmad Chalabi—also a protégé of Lewis's—might make a fine latter-day Ataturk—strong, secular, pro-Western, and friendly towards Israel. L. Paul Bremer III, the former U.S. civil administrator in Iraq, was not himself a Chalabite, but he too embraced a top-down Kemalist approach to Iraq's resurrection. The role of the Islamic community, meanwhile, was consistently marginalized in the administration's planning. U.S. officials saw Grand Ayatollah Ali al-Sistani, the most prestigious figure in the country, as a clueless medieval relic. Even though military intelligence officers were acutely aware of Sistani's importance—having gathered information on him for more than a year before the invasion—Bremer and his Pentagon overseers initially sidelined the cleric, defying his calls for early elections.

Looking for love in all the wrong places

... At least until the Iraq war, most present-day Arabs didn't think in the stark clash-of-civilization terms Lewis prefers. Bin Laden likes to vilify Western Crusaders, but until relatively recently, he was still seen by much of the Arab establishment as a marginal figure. To most Arabs before 9/11, the Crusades were history as ancient as they are to us in the West. Modern Arab anger and frustration is, in fact, less than a hundred years old. As bin Laden knows very well, this anger is a function not of Islam's humiliation at the Treaty of Carlowitz of 1699—the sort of long-ago defeat that Lewis highlights in his bestselling *What Went Wrong*—but of much more recent developments. These include the 1916 Sykes-Picot agreement by which the British and French agreed to divvy up the Arabic-speaking countries after World War I; the subsequent creation, by the Europeans, of corrupt, kleptocratic tyrannies in Saudi Arabia, Syria, Egypt, Iraq, and Jordan; the endemic poverty and underdevelopment that resulted for most of the 20th century; the U.N.-imposed creation of Israel in 1948; and finally, in recent decades, American support for the bleak status quo.

Yet as Bulliet writes, over the longer reach of history, Islam and the West have been far more culturally integrated than most people realized; there is a far better case for “Islam-Christian civilization” than there is for the clash of civilizations. “There are two narratives here,” says Fawaz Gerges, an intellectual ally of Bulliet's at Sarah Lawrence University. “One is Bernard Lewis. But the other narrative is that in historical terms, there have been so many inter-alliances between world of Islam and the West. There has never been a Muslim umma, or community, except for 23 years during the time of Mohammed. Except in the theoretical minds of the jihadists, the Muslim world was always split. Many Muslim leaders even allied themselves with the Crusaders.”

Today, progress in the Arab world will not come by secularizing it from above (Bulliet's chapter dealing with Chalabi is called “Looking for Love in All the Wrong Places”) but by rediscovering this more tolerant Islam, which actually predates radicalism and, contra Ataturk, is an ineluctable part of Arab self-identity that must be accommodated. For centuries, Bulliet argues, comparative stability prevailed in the Islamic world not (as Lewis

maintains) because of the Ottomans' success, but because Islam was playing its traditional role of constraining tyranny. “The collectivity of religious scholars acted at least theoretically as a countervailing force against tyranny. You had the implicit notion that if Islam is pushed out of the public sphere, tyranny will increase, and if that happens, people will look to Islam to redress the tyranny.” This began to play out during the period that Lewis hails as the modernization era of the 19th century, when Western legal structures and armies were created. “What Lewis never talks about is the concomitant removal of Islam from the center of public life, the devalidation of Islamic education and Islamic law, the marginalization of Islamic scholars,” Bulliet told me. Instead of modernization, what ensued was what Muslim clerics had long feared, tyranny that conforms precisely with some theories of Islamic political development, notes Bulliet. What the Arab world should have seen was “not an increase in modernization so much as an increase in tyranny. By the 1960s, that prophecy was fulfilled. You had dictatorships in most of the Islamic world.” Egypt's Gamel Nasser, Syria's Hafez Assad, and others came in the guise of Arab nationalists, but they were nothing more than tyrants.

Yet there was no longer a legitimate force to oppose this trend. In the place of traditional Islamic learning—which had once allowed, even encouraged, science and advancement—there was nothing. The old religious authorities had been hounded out of public life, back into the mosque. The Caliphate was dead; when Ataturk destroyed it in Turkey, he also removed it from the rest of the Islamic world. Into that vacuum roared a fundamentalist reaction led by brilliant but aberrant amateurs like Egypt's Sayyid Qutb, the founding philosopher of Ayman Zawahiri's brand of Islamic radicalism who was hanged by al-Nasser, and later, Osama bin Laden, who grew up infected by the Saudis' extreme version of Wahhabism. Even the creator of Wahhabism, the 18th-century thinker Mohammad Ibn Abd al-Wahhab, was outside the mainstream, notorious for vandalizing shrines and “denounced” by theologians across the Islamic world in his time for his “doctrinal mediocrity and illegitimacy,” as the scholar Abdelwahab Meddeb writes in another new book that rebuts Lewis, *Islam and its Discontents*.

Wahhabism's fast growth in the late 20th century was also a purely modern phenomenon, a function of Saudi petrodollars underwriting Wahhabist mosques and clerics throughout the Arab world (and elsewhere, including America). Indeed, the elites in Egypt and other Arab countries still tend to mock the Saudis as déclassés Bedouins who would have stayed that way if it were not for oil. “It's as if Jimmy Swaggert had come into hundreds of billions of dollars and taken over the church,” one Arab official told me. The hellish culmination of this modern trend occurred in the mountains of Afghanistan in the 1980s and '90s, when extremist Wahhabism, in the person of bin Laden, was married to Qutb's Egyptian Islamism, in the person of Zawahiri, who became bin Laden's deputy.

Critics were right to see the bin Laden phenomenon as a reaction against corrupt tyrannies like Egypt's and Saudi Arabia's, and ultimately against American support for those regimes. They were wrong to conclude that it was a mainstream phenomenon welling up from the anti-modern character of Islam, or that the only immediate solution lay in Western-style democracy. It was, instead, a reaction that came out of an Islam misshapen by modern political developments, many of them emanating from Western influences,

outright invasion by British, French, and Italian colonialists, and finally the U.S.-Soviet clash that helped create the mujahadeen jihad in Afghanistan.

Academic probation

Today, even as the administration's case for invading Iraq has all but collapsed, Bernard Lewis's public image has remained largely intact. While his neocon protégés fight for their reputations and their jobs, Lewis's latest book, a collection of essays called *From Babel to Dragomans: Interpreting the Middle East*, received mostly respectful reviews last spring and summer. Yet events on the ground seem to be bearing out some of the academic criticisms of Lewis made by Bulliet and others. Indeed, they suggest that what is happening is the opposite of what Lewis predicted.

The administration's invasion of Iraq seems to have given bin Laden a historic gift. It has vindicated his rhetoric describing the Americans as latter-day Crusaders and Mongols, thus luring more adherents and inviting more rage and terror acts. (The administration admitted as much last summer, when it acknowledged that its "Patterns of Global Terrorism" report had been 180 degrees wrong. The report, which came out last June, at first said terrorist attacks around the world were down in 2003, indicating the war on terror was being won. Following complaints from experts, the State Department later revised the report to show that attacks were at their highest level since 1982.)

The new Iraq is also looking less and less Western, and certainly less secular than it was under Saddam. In the streets of Baghdad—once one of the most secular Arab capitals, women now go veiled and alcohol salesmen are beaten. The nation's most popular figures are Sistani and his radical Shiite rival, the young firebrand Moktada al-Sadr, who was permitted to escape besieged Najaf with his militia intact and is now seen as a champion of the Iraqi underclass. According to a survey commissioned by the Coalition Provisional Authority in late May, a substantial majority of Iraqis, 59 percent, want their religious communities to have "a great deal" of influence in selecting members of the new election commission. That's far more than those who favored tribal leaders (38 percent), political figures (31 percent), or the United Nations (36 percent). The poll also showed that Iraq's most popular political figures are religious party-affiliated leaders such as Ibrahim Jaferi and Abdul Aziz al-Hakim. To a fascinating degree, Islam now seems to be filling precisely the role Bulliet says it used to play, as a constraint against tyranny—whether the tyrant is now seen as the autocratic Americans or our man in Baghdad, interim Prime Minister Iyad Allawi.

Bremer once promised to ban Islamic strictures on family law and women's rights, and the interim constitution that he pushed through the Governing Council in March affirms that Islam is only one of the foundations of the state. But Sistani has dismissed the constitution as a transition democracy, and Iraq's political future is now largely out of American hands (though the U.S. military may continue to play a stabilizing role in order to squelch any move toward civil war). "I think the best-case scenario for Iraq is that they hold these parliamentary elections, and you get some kind of representative government dominated by religious parties," says University of Michigan scholar Juan Cole. Even Fouad Ajami, one of Lewis's longtime intellectual allies and like him an avowed Kemalist, concluded last spring in a New York Times op-ed piece: "Let's face it: Iraq is not going to be America's

showcase in the Arab-Muslim world ... We expected a fairly secular society in Iraq (I myself wrote in that vein at the time). Yet it turned out that the radical faith—among the Sunnis as well as the Shiites—rose to fill the void left by the collapse of the old despotism.”

Turkey hunt

Today, the anti-Lewisites argue, the only hope is that a better, more benign form of Islam fights its way back in the hands of respected clerics like Sistani, overcoming the aberrant strains of the Osama bin Ladens and the Abu Mousab al-Zarqawis. Whatever emerges in Iraq and the Arab world will be, for a long time to come, Islamic. And it will remain, for a long time, anti-American, beginning with the likelihood that any new Iraqi government is going to give the boot to U.S. troops as soon as it possibly can. (That same CPA poll showed that 92 percent of Iraqis see the Americans as occupiers, not liberators, and 86 percent now want U.S. soldiers out, either “immediately” or after the 2005 election.) America may simply have to endure an unpleasant Islamist middle stage—and Arabs may have to experience its failure, as the Iranians have—before modernity finally overtakes Iraq and the Arab world. “Railing against Islam as a barrier to democracy and modern progress cannot make it go away so long as tyranny is a fact of life for most Muslims,” Bulliet writes. “Finding ways of wedding [Islam's traditional] protective role with modern democratic and economic institutions is a challenge that has not yet been met.”

No one, even Bush's Democratic critics, seems to fully comprehend this. Sens. Joseph Biden (D-Del.) and Hillary Clinton (D-N.Y.) have introduced legislation that would create secular alternatives to madrassas, without realizing that this won't fly in the Arab world: All one can hope for are more moderate madrassas, because Islam is still seen broadly as a legitimating force. “What happens if the road to what could broadly be called democracy lies through Islamic revolution?” says Woods of the University of Chicago. The best hope, some of these scholars say, is that after a generation or so, the “Islamic” tag in Arab religious parties becomes rather anodyne, reminiscent of what happened to Christian democratic parties in Europe.

This may already be happening slowly in Turkey, where the parliament is dominated by the majority Islamic Justice and Development Party. The JDP leader, Prime Minister Recep Tayyip Erdogan—who was once banned from public service after reciting a poem that said “the mosques are our barracks, the domes our helmets, the minarets our bayonets, and the faithful our soldiers”—has shown an impressive degree of pragmatism in governing. But again, Turkey is a unique case, made so by Kemal and his secular, military-enforced coup back in the '20s. If Erdogan still secretly wants to re-Islamicize Turkey, he can only go so far in an environment in which the nation's powerful military twitches at every sign of incipient religiosity. Erdogan is also under unique pressure to secularize as Turkey bids to enter the European Union, which is not a card that moderate Arab secularists can hold up to win over their own populations.

Resolving the tension between Islam and politics will require a long, long process of change. As Bulliet writes, Christendom struggled for hundreds of years to come to terms with the role of religion in civil society. Even in America, separation of church and state

“was not originally a cornerstone of the U.S. Constitution,” and Americans are still fighting among themselves over the issue today ...

... The neoconservative transformationalists of the Bush administration, though informed by far less scholarship than Lewis, seemed to adopt his dismissive attitude toward the peculiar demands of Arab and Islamic culture. And now they are paying for it. The downward spiral of the U.S. occupation into bloodshed and incompetence wasn't just a matter of too few troops or other breakdowns in planning, though those were clearly part of it. In fact, the great American transformation machine never really understood much about Arab culture, and it didn't bother to try. The occupation authorities, taking a paternalistic top-down approach, certainly did not comprehend the role of Islam, which is one reason why Bremer and Co. were so late in recognizing the power of the Sistani phenomenon. The occupation also failed because of its inability to comprehend and make use of tribal complexities, to understand “how to get the garbage collected, and know who's married to who,” as Woods says. Before the war, Pentagon officials, seeking to justify their low-cost approach to nation-building, liked to talk about how much more sophisticated and educated the Iraqis were than Afghans, how they would quickly resurrect their country. Those officials obviously didn't mean what they said or act on it. In the end, they couldn't bring themselves to trust the Iraqis, and the soldiers at their command rounded up thousands of “hajis” indiscriminately, treating one and all as potential Saddam henchmen or terrorists (as I witnessed myself when, on assignment for Newsweek, I joined U.S. troops on raids in the Sunni Triangle last January).

There remains a deeper issue: Did Lewis's misconceptions lead the Bush administration to make a terrible strategic error? Despite the horrors of 9/11, did they transform the bin Laden threat into something grander than it really was? If the “show of strength” in Iraq was wrong-headed, as the Lewis critics say, then Americans must contemplate the terrible idea that they squandered hundreds of billions of dollars and thousands of lives and limbs on the wrong war. If Bernard Lewis's view of the Arab problem was in error, then America missed a chance to round up and destroy a threat—al Qaeda—that in reality existed only on the sick margins of the Islamic world.

It is too soon to throw all of Lewis's Kemalist ideas on the ash-heap of history. Even his academic rivals concede that much of his early scholarship is impressive; some like Michigan's Cole suggest that Lewis lost his way only in his later years when he got pulled into present-day politics, especially the Israeli-Palestinian issue, and began grafting his medieval insights onto the modern Arab mindset. And whether the ultimate cause is modern or not, the Arab world is a dysfunctional society, one that requires fundamental reform. “The Arab Development Report” issued in the spring of 2002 by the U.N. Development Programme, harshly laid out the failings of Arab societies. Calling them “rich, but not developed,” the report detailed the deficits of democracy and women's rights that have been favorite targets of the American neoconservatives. The report noted that the Arab world suffers from a lower rate of Internet connectivity than even sub-Saharan Africa, and that education is so backward and isolated that the entire Arab world translates only one-fifth of the books that Greece does. Some scholars also agree that in the longest of long runs, the ultimate vision of Lewis—and the neocons—will prove to be right.

Perhaps in the long run, you can't Islamicize democracy, and so Islam is simply standing in the way.

Iran is the best real-world test of this hypothesis right now. A quarter century after the Khomeini revolution, Iran seems to be stuck in some indeterminate middle state. The forces of bottom-up secular democratic reform and top-down mullah control may be stalemated simply because there is no common ground whatsoever between their contending visions. That's one reason the Kemalist approach had its merits, Fouad Ajami argued in a recent appearance at the Council on Foreign Relations. "I think Ataturk understood that if you fall through Islam, you fall through a trap door. And in fact, I think the journey out of Islam that Ataturk did was brilliant. And to the extent that the Muslim world now has forgotten this. . .they will pay dearly for it."

But there is no Ataturk in Iraq (though of course Chalabi, and perhaps Allawi, would still love to play that role). For now, Sistani remains the most prestigious figure in the country, the only true kingmaker. Suspicions remain in the Bush administration that Sistani's long-term goal is to get the Americans out and the Koran in—in other words, to create another mullah state as in Iran. But those who know Sistani well say he is much smarter than that. Born in Iran—he moved to Iraq in the early 1950s, around the time Lewis saw the light—Sistani has experienced up close the failures of the Shiite mullah state next door. He and the other Shiites have also suffered the pointy end of Sunni Arab nationalism, having been oppressed under Saddam for decades, and they will never sanction a return to that. So Sistani knows the last, best alternative may be some kind of hybrid, a moderately religious, Shiite-dominated democracy, brokered and blessed by him and conceived with a nuanced federalism that will give the Kurds, Sunnis and others their due. But also a regime that, somewhat like the Iranian mullahs, uses its distinctive Islamic character, and concomitant anti-Americanism and anti-Westernism, as ideological glue. For the Americans who went hopefully to war in Iraq, that option is pretty much all that's left on the table—something even Bernard Lewis may someday have to acknowledge.

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