INCITEMENT IN THE MOSQUES: TESTING THE LIMITS OF FREE SPEECH AND RELIGIOUS LIBERTY

KENNETH LASSON∗

Have no mercy on the Jews, no matter where they are, in any country. Fight them, wherever you are. Wherever you meet them, kill them. Wherever you are, kill those Jews and those Americans who are like them - and those who stand by them.1

I. INTRODUCTION

In times of terror and tension, civil liberties are at their greatest peril. Nowadays, no individual rights are more in jeopardy than the freedoms of speech and religion. This is true particularly for followers of Islam, whose leaders have become increasingly radical in both their preaching and practice.

“Kill the Jews!” and “Kill the Americans!” are chants heard regularly in many Middle Eastern mosques, as frightful echoes of the fatwa are issued by today’s quintessential terrorist, Osama bin Laden.2 The incitement continues unabated to this day. In April of 2004, for example, a Muslim preacher at the Al-Aqsa Mosque in Jerusalem referred to Jews as “sons of monkeys and pigs,” and as “murderers of prophets.” Loudspeakers boomed across the Old City with his message, in which he condemned Jews to total extinction.3 In May of 2005, Imam Ibrahim Mudeiris delivered a sermon in which he declared:

With the establishment of the state of Israel, the entire Islamic nation was lost, because Israel is a cancer spreading through the body of the Islamic nation, and because the Jews are a virus resembling AIDS, from which the entire world suffers

The day will come when we will rule America. The day will come when we will rule Britain and the entire world—except for the Jews. The Jews will not enjoy a life of tranquility under our rule, because they are treacherous by nature, as they have been throughout history. . . . Listen to the Prophet Muhammad, who tells you about the evil end that awaits the Jews. The stones and trees will want Muslims to finish off every Jew.4

∗ Professor of Law, University of Baltimore School of Law. I wish to thank my research assistant Martin Cohen for his diligent work on this article.


4. The Middle East Media Research Institute (M.E.M.R.I.), Palestinian Friday Sermon by Sheik Ibrahim Mudeiris: Muslims Will Rule America and Britain, Jews are a Virus Resembling AIDS, http://www.memritv.org/Transcript.asp?P1=669 (accessed Oct. 23, 2005) (sermon carried by national Palestinian Television on May 13, 2005). In his sermon in 2003, Mudeiris said, “Allah will drown the little Pharaoh, the dwarf, the Pharaoh of all times, of our time, the American president. Allah will drown
Such speeches are hardly exceptionally, and have been well documented.5

Moreover, this kind of rhetorical incitement is no longer limited to Arab countries, but occurs regularly around the world, even in America. The painful truth is that the great majority of international terrorists over the past several decades have been Muslims, all of whom have killed in the name of Allah.

“‘Our sons, the terrorists,’” wrote an outspoken Saudi journalist:

are loose in the world, the natural products of a deformed culture. . . . We [cannot] redeem our youth unless we take on the men of religion who have turned into revolutionaries who send other people’s kids to war while they send their own to European and American schools.

“A cure for [the] malady,” he said, “begins with [acknowledgement of the facts] and the end of denial.”6

Such denial is widespread, the silence of the Muslims broken only occasionally by moderate voices or governmental interventions.7 Khaleel Mohammed, an American Islamic cleric and scholar, is one of the few to suggest that radical fundamentalism is rapidly becoming mainstream. “Many Muslims,” he said, “stand against me for no other reason than I say that Israel has a right to exist.” The real problem is that every single mosque in the United States espouses from the pulpit that every single Jew in the world must be annihilated.8

America in our seas, in our skies, in our land . . . America will be destroyed.” A year later, referring to America as the “Byzantine dog of our days,” he declared, “you son of a bitch, I have brought an enormous army upon you, that starts here and ends here.” Steven Stalinsky, *Sermons as Political Propaganda*, N.Y. Sun 8 (May 25, 2005).

U.S. Secretary of State, Condoleezza Rice, reacted strongly to Mudeiris’ words. “The Palestinian Authority must advance democratic reform and it must dismantle all terrorist networks in its society,” she said at the American Israel Public Affairs Committee's Annual Policy Conference in May of 2005. “Arab states must end incitement in their media, cut off all support for terrorism and extremist education, and establish normal relations with Israel.” Condoleezza Rice, U.S. Sec. of St., Address, *AIPAC Policy Conference* (D.C., May 23, 2005).

Palestinian Authority (PA) Information Minister Nabil Shaath, who is responsible for PA television broadcasts, said he would ensure that such sermons are never broadcasted again. He called on the Muslim Waqf and Religious Affairs Ministry, who employ the preacher, to suspend him, investigate him and prevent him form delivering further sermons on Friday. Khaled Abu Toameh, *Shaath: Suspend Preachers For Anti-Semitic Sermon. But PA has Taken No Measures Against Him*, Jerusalem Post 6 (May 20, 2005). But in a PA-controlled telecast aired on July 8, 2005, Muslims were exhorted to “‘annihilate the infidels [common reference to US and Western countries] . . . God, count them and kill them to the last one, and don’t leave even one.’” Arutz Sheva, *IsraelNationalNews.com, PA Gets $50m from US, Then Calls for Terror Against US Soldiers*, http://www.israelnn.com/news.php3?id=89454 (Sept. 8, 2005).


7. In April of 2005, eleven Islamic preachers were arrested in Iraq on charges of incitement to violence in their Friday sermons. See *Eleven Imams Arrested in Baghdad for “Incitement to Violence,”* BBC Monitoring Intl. Rpts. (Apr. 30, 2005).


Because of his views about peaceful co-existence, Dr. Mohammed, a professor of religion at San Diego State University, has received numerous death threats and is regularly harassed and driven off the pulpit in the many mosques in which he lectures. He also believes that radical Islam is now going mainstream throughout the world. E-mail forwarded to author from congregant who attended lecture by Dr. Khaleel Mohammed, Prof. of Religion, San Diego St. U. (Nov. 5, 2004); see also *Letters to the Editor*, Poughkeepsie J. A6 (July 1, 2004); see infra n. 32 and accompanying text.

It is important, of course, to examine Islamic condemnations of infidels in proper context to understand how the religion is actually practiced, instead of judging the faithful solely on the incendiary sermons of their imams in the mosques. The great majority of American Muslims appear to be peaceful citizens. Indeed, over the course of recorded history, Islam has been relatively more tolerant than many Christian sects; religious minorities have often fared better under Muslim rulers than under Christian ones.9

Today’s world, however, is clearly different. Hate speech emanating from the mosques is perceptibly on the rise, as is worldwide anti-Semitism.10

To what extent are such calls to genocide protected by the freedoms of speech and religion guaranteed in the First Amendment to the United States Constitution? Are there any distinctions to be made between secular and religious incitement; between the protections afforded by the Free Speech and the Free Exercise Clauses; between peacetime and wartime utterances? How should American courts treat the international declarations of human rights to which the United States is a signatory, when those conventions restrict the liberty of individuals to freedom of expression?

9. Fareed Zakaria, The Politics of Rage: Why Do They Hate Us? Newsweek 22, 24 (Oct. 15, 2001). See also Kirshner, supra n. 3. In this regard, historical ironies abound. When Crusaders followed papal instructions to attack the Holy Lands, Christians, Jews, and Muslims were living in peace in various parts of Spain under Muslim rule. The second largest Islamic population today is in India, which is also arguably the largest democracy in the world. James Peterson, Islamic Extremism Will End Through Democracy, Iowa St. Daily, (Sept. 21, 2004), http://www.iowastatedaily.com.

In May of 2005, in the London Arabic-language daily, Al-Sharq Al-Awsat, Saudi columnist Hussein Shubakshi tried to analyze the Arab world’s hatred of Jews. He wrote:

The extent of tremendous hatred of the Jews is baffling. . . . Why do we hate the Jews?

The immediate answer will be: No, we don’t hate the Jews, we hate the Zionists. [But] this is nonsense. We don’t hear [preachers saying in their sermons,] Oh Allah, destroy the Zionists, the Zionist enterprise, the offspring of Herzl, and the Basel plan. . . .

There is much evidence proving that in more than one Arab country, [Muslims] lived normally alongside Jews, and that [the Jews] studied and worked like the rest of the residents of that country. . . .

[T]he Prophet Muhammad’s relations with the Jews were clear. He made agreements with them, stood [in respect] at the funeral of one of them, maintained relations with them, married a Jewess, and entrusted his armor to his Jewish neighbor and asked about this Jew when he was missing and sick.

Our religion permits us to eat the Jews’ food, trade with them, and marry them. So what is the issue? If we know the scope of the problem, and the true reason why the Jews have become this great monster, and [if we understand] how this has spread to the point where they have become the reason for every catastrophe, then we will be able to understand the idea of dividing [human beings] into groups . . .

There are Saudis who studied with Jews, were taught by Jewish teachers, and were treated by Jewish doctors. They tell good and normal stories about relations with the Jews – relations that broke the emotional barrier built long ago regarding relations with the Jews.

It should suffice us to hear a Saudi saying: My son was treated for cancer by a Jewish doctor, nobly and morally, and there is someone who wants me to hold hatred and animosity [against this Jew] in my heart, and to curse him at night. I will never do this. There is a huge difference between the contaminated Zionism that abuses Palestine and its sons and carries out atrocities and crimes, and [this] divine religion and its sons.

Once, the Muslims knew it, and treated the Jews according to [Koranic] verse [7:159]: And of Moses’s people there is a party who guided (people) with the truth, and thereby do justice. Jews attained top posts in the Umayyad state – like [Rabbi Moses] Ben Maimon, who attained the post of first minister to the caliph [sic].

I know that a subject like this launches a debate – but, with Allah’s help, it is a debate whose aims are good. There is great benefit for us in such a reexamination – and an answer to the question of why we hate the other.


10. The number of global anti-Semitic incidents increased during 2004, according to a report by the Jewish Agency and Israel’s Ministry of Diaspora Affairs. Europe led both in the number of incidents and the degree of severity. “In France, 96 incidents were recorded, in Britain about 70 and in Russia 55.” The figures in the UK and Russia also increased dramatically in 2004. “[T]he majority of attacks against Jews were perpetrated by Islamic fundamentalists,” although the report also notes a rise in the activity of Christian far-right groups. Report Shows Global anti-Semitism on the Rise, Jerusalem Post, (Jan. 23, 2005), http://jafi.org.il/papers/2005/jan/jan23jp.htm.
The questions are not new, but in the wake of increasing terrorism around the world, finding the answers has become more urgent.

Part I of this article examines the history of incitement in mosques from ancient times through the contemporary Middle East, Europe, and in the Americas, and discusses the nexus between incendiary rhetoric and subsequent violent acts, as well as how both speech and action are reflected in the media. Part II analyzes various implications of incitement for traditional civil liberties, including the differences between secular and religious speech, between utterances in peacetime and during war, and between the First Amendment and international declarations and conventions. Part III treats the difficulties of preserving liberty while ensuring security, and offers suggestions about how best to balance the alternatives and resolve the dilemmas.