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Imagining Religious Freedom: Potentials and Pitfalls in the "Land between Two Rivers"

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Abstract: This article explores the complex reality of religious freedom in post-war Iraq. It examines the constitutional parameters of religious freedom in a democratizing Iraq, while also demonstrating how the muddy realities of sectarian intolerance and violence continue to impede the realization of this essential liberty in "the land between two rivers."

INTRODUCTION

In 2005, religious freedom was included in Iraq's interim constitution, legally enshrining the equality of Iraq's citizens, regardless of religion. Yet, in reality, violence and persecution in the name of religion and because of religious identity continue to plague this fledgling democracy. Although at its lowest level since 2004, violent conflict between and within Shi'a and Sunni communities persists in the provinces of Baghdad, Ninewa, Diyala, and Salahuddin, exacerbating fear, insecurity, and distrust among Iraq's disparate Muslim communities. Nearly half of Iraq's diverse and ancient religious minorities, which represented approximately three percent of the country's population before the war began in 2003, have fled their cities of birth — from Basra to Mosul — to the relative security of Syria, Jordan, Turkey, Western Europe, and the United States (United States Commission on International Religious Freedom 2008). Iraq's *de jure* protection of religious freedom is being eclipsed by *de facto* imperatives of religious intolerance and persecution.

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This article explores the complex reality of religious freedom in post-war Iraq. It deliberates on the legal parameters of religious liberty in Iraq, while also disclosing how the brutal realities of sectarian division and religious persecution are challenging the legally protected freedom of religion in the "land between two rivers." This article endeavors to answer three central questions. First, how is the understanding of religious freedom in majority-Muslim, Near Eastern states, such as Iraq, different from dominant Western conceptualizations of this human entitlement? In particular, how does Islam help shape the cognitive and political understandings of what it means to experience religious freedom and recognize that freedom for religious minorities? Second, how expansive and transparent is Iraq's constitutional interpretation of religious liberty? That is, does Iraqi legislation proffer an acceptable level of protection for religious minorities? Are there any legal or religious provisos leeching to this freedom, draining its fundamental meaning and overall effectiveness? Finally, and most importantly, one must go beyond legal parlance and political rhetoric and inquire about the grassroots realities of religious freedom and persecution on the ground in Iraq. How wide is the lacuna between the legal and social realities of religious freedom?

These are questions that cannot be answered impartially or dispassionately. Cognizant of this propensity to subjectivity, this author proceeds with humility, recognizing the obstacles a non-Muslim Westerner confronts when evaluating the place this important human freedom holds in the contemporary Iraqi imagination.

CONTESTED MEANINGS OF RELIGIOUS LIBERTY

Democracy has secured a prominent place in modern political parlance; yet, it remains a concept not easily defined or encapsulated. It is a political idea with complex historical roots and pulsating conceptual boundaries that continue to accommodate varying models for power sharing, human rights protection, and popular sovereignty. While democratic systems of governance may hinge on a few immutable essentials, such as free and fair elections, institutional protections of civil and economic liberties, and social and cultural equality, every democratic state touts distinguishing idiosyncrasies shaped by historical experience and cultural context. Such is the case with Iraq. Iraq's religious and culture moorings, coupled with its geographical location and political history, have had a profound effect on its incipient self-understanding of democracy and the limitations of political pluralism.

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Iraq, "the homeland of the apostles and prophets,"[1] is a declared parliamentary democracy. To be more specific, Iraq is a federal republic with a regionally progressive constitution ratified by the Iraqi people in October of 2005. Elections have occurred; democratic political institutions are being created, refined and slowly integrated; and Iraq's constitution has incorporated foundational rights and responsibilities considered by many to be essential for a 21st century democracy, Western or Islamic. However, despite its self-identification as a constitutional democracy, the demographic canvas of Iraq reveals a complicated mosaic of ethnic, tribal, and religious diversity, where political questions of identity and participation, power and territory, retribution and forgiveness have yet to be fully answered.

Iraq is traversing formidable geopolitical obstacles on its voyage through the cumbersome course of democratization. The democratization process is being harmed by a sporadic yet relentless insurgency, inter- and intra-sectarian divisions and distrust, counter-productive tribalism, and socio-political instability due to caustic corruption occurring at national, regional, and local levels of government. Indeed, Iraq exemplifies the inclement unfolding and violent setbacks that have accompanied a number of democratizing states over the past two decades (Mansfield and Snyder 1995, 83, 87–88). The conclusion of Mansfield and Snyder (1995) is quite fitting in the contexts of Iraq and the greater Middle East: "In the long run, the enlargement of the zone of stable democracy will probably enhance prospects for peace." However, "in the short run, much work remains to be done to minimize dangers of the turbulent transition" (Mansfield and Snyder 1995, 330). The hope, of course, is that the "turbulent" struggle for democracy in Iraq will be worth the anticipated outcome — that of a secure and steady democracy in a not-so-steady Middle East. Time will tell.

While a democratic system of government depends upon a balancing of many factors, an indelible component of any democracy, and the determinate focus of this article, is religious liberty. Religious liberty is a juridical pillar of any 21st century democracy and a precondition to human dignity. Yet, how religious freedom is culturally conceived, legally defined, and politically enforced varies widely among the world's democracies, and capturing the place of religious freedom within the contemporary, democratizing state of Iraq is indicative of this contextual complexity.[2]

In order to weigh and measure the legal level of religious liberty in this majority-Muslim country, it is first helpful to try to harness an operational

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definition of this disputed freedom. How are we to understand and define religious freedom? Arguably, the United States Constitution contains one of the most potent and historically influential formulations of religious freedom. Its First Amendment prevents its congress from (1) making any law respecting the establishment of religion or (2) prohibiting the free exercise thereof. These two clauses — disestablishment and free exercise — require a neutral, hands-off state. Its disestablishment clause forbids the United States Congress from legislating for or against any particular religion or denomination, and its Free Exercise clause has evolved to broadly protect the beliefs, rituals, and institutions of the citizen and her religious community. If one determines that the United States offers the most comprehensive and authentic constitutional conception of religious freedom, then Iraq and a sundry group of other Muslim and non-Muslim States fall short of the mark. When conducting a global survey, however, the United States' religious liberty hypothesis may be more of an exception than the rule.

Although the world community has attempted to construct a universal definition of religious free exercise,[3] a global consensus remains elusive. Proselytism and the subsequent freedom of "conversion" are two of the most contentious components within the international religious free exercise debate. In a 2008 survey of citizens in 24 States and territories, with 23 considered to have limited to full democratic governmental frameworks, WorldPublicOpinion.org (2008, 8) concluded that "a majority in all nations agree that it is important for people of different religions to be treated equally." However, "views are mixed," on the more controversial issue of proselytism, "with more than half of the publics polled saying that people should not have such a right."[4] Within a number of States, religious equality does not include the freedom to convert the religious majority. For example, while religious freedom is clearly espoused in the constitution of the parliamentary republic of Greece, Orthodoxy is the religious confession of an overwhelming majority of Greek citizens, and is an important part of their national conscience. Consequently, conversion from Orthodoxy is perceived as a significant hazard to national solidarity and the Orthodox understanding of faith, freedom, and community. As such, proselytism is legally proscribed. In Egypt, the freedom of religious belief and practice is afforded in Article 46 of the Constitution. However, although no legal provisos prohibiting the conversion of non-Muslims exist, according to the U.S. Department of State's 2008 Report on International Religious Freedom, "the Government does not recognize conversions of Muslims to Christianity or other religions"

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(United States Department of State 2008). While proselytism is perceived from a Western perspective as a necessary corollary of religious freedom, a number of non-Western States view such behavior as an offensive, threatening, and unacceptable encroachment upon more communal societies, where the religious conscience of each person is deeply intertwined with the religio-cultural essence of the community to which he or she is wholly allied. Nonetheless, despite these cultural and religious modifications, religious free exercise is legally touted by the majority of today's nation-states.

Although religious free exercise language is widely approbated, the disestablishment element of religious freedom is far less common, as a number of States — Muslim and non-Muslim — emphasize social and legal loyalties to a particular faith tradition. For some, this preferential treatment involves overt endorsement through legislation and financial endowments; for other States, it exists in more subtle and tacit forms of cultural and rhetorical support. According to Grim and Finke (2006, 7), "although the vast majority of countries promise religious freedom in their constitutions, they often support administrative sanctions or open hostilities toward selected groups."[5] When a state, democratic or otherwise, declares an official religion, the social and political temptations to discriminate increases, and too often, the existence of equal treatment of religious minorities becomes suspect. In measuring the levels of government regulation, government favoritism, and social regulation of religion in 196 States and territories, Grim and Finke (2006, 23) concluded that, in addition to several "Christian" States and Israel, "Islamic countries with Shari'a law score high" in the categories of government regulation and favoritism.

In a 2005 comparative textual analysis of constitutions in majority-Muslim Countries, Tad Stahnke and Robert Blitt (2005, 954) concluded that "of the 1 billion Muslims living in predominantly Muslim countries, 28 percent live in ten countries that, according to the constitution, declare themselves to be Islamic states" and "also proclaim Islam to be the official religion of the state." Moreover, the comparative analysis located 12 more Muslim-majority states that declare Islam to be the official religion of the country, while refraining from identifying themselves as Islamic states. According to Stahnke and Blitt, these 22 states comprise 58 percent (over 600 million) of the global Muslim population.

Notwithstanding the military-emboldened secularism of Turkey, the multi-sectarian socio-political framework of Lebanon, and the complex constitutional character of Indonesia, for most majority-Muslim nations

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within the Islamic world's geographic heartland, Islam is the established State religion. In Kuwait, United Arab Emirates, Jordan, Yemen, Egypt, Pakistan, Afghanistan, Qatar, Saudi Arabia, and Bahrain, for example, there are constitutional provisions for the free exercise of faith, but Islam is the official State religion. State laws are scrutinized through Islamic law (shari'a), which serves as the beginning and end of positive legislation. In Morocco and Tunisia, religious freedom is constitutionally provided, but Islam is the official religion. The president — in the case of Tunisia — must be a Muslim; and non-Muslims are prohibited from proselytism. Although Syria proclaims a secular regime, ruled through an Alawite dynasty, the Constitution iterates Islamic law as a foundational source of jurisprudence and requires the country's president to be a Muslim. Some of these States are declared democracies and others are monarchies, but all establish Islam as the authoritative religion. To be clear, some Muslim States offer no legal protection of religious free exercise (e.g., Algeria and Saudi Arabia). But the majority of Muslim States that do guarantee free exercise qualify that protection through a State-sanctioned understanding of Islam.

If America's constitutional contrivance of religious freedom is one's measuring stick, then it is on this issue of religious establishment that one locates the overarching challenge for religious freedom in the Muslim world. Can a State fully protect the free exercise of its religious minorities, while showing legal, social, and cultural partiality to Islam, deferring to Islamic law as the final arbiter on matters of moral, legal, and political significance? The preponderance of the shari'a for most Muslim-dominated States is the greatest obstacle to equal treatment of all citizens. Moreover, who is authorized to interpret Islamic law, and can a consensus be derived from diverging sectarian readings of the faith?

Nina Shea, of the Hudson Institute's Center for Religious Freedom, illustrates how an official State religion presents a quandary of interpretation for both democracy and the right of religious freedom. In a discussion with *Religion & Ethics Newsweekly* on the challenges suffusing Iraq's progressive constitution, she states, "We don't know who interprets Islamic law, and that's why it is a real threat to democracy and freedom, because when you invoke Islamic law in a constitution — and a number of countries have: Afghanistan, Saudi Arabia, Iran — there is a constitution behind the constitution. We don't know who's going to do the interpreting. The laws are vague. It really depends on who's interpreting to figure out where women's rights stand or where minorities' rights stand

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or where the average Muslim even has a chance to dissent or express an opinion that's unorthodox in politics or religion" (Religion & Ethics News Weekly 2005).

Clearly, in those States where a particular religion is legally preferred, discrimination of religious dissenters and minorities is more easily evinced than in those States where a positive separation is legislated and enforced. Religious freedom may be espoused on parchment, but when a government pays the salaries of imams or priests, fiscally endows churches or mosques, or requires registration of some minority religions, while prohibiting the recognition of other peripheral faith traditions, equal treatment and religious free exercise are chimerical. When a State officially endorses a particular faith tradition, majority tyranny is facilitated, and social and legal discrimination too often result. This is the underlying dilemma of religious freedom in Iraq.

LEGAL REALITIES OF RELIGIOUS FREEDOM IN IRAQ

Religious freedom language is prominently displayed in Iraq's 2005 constitution, providing a platform from which to assess the Iraqi majority's interpretation of and appreciation for this foundational freedom. Following its inspirational preamble, which seeks to reclaim Mesopotamia's place as the geographical and sacred taproot of human civilization and broadly recount the agonizing trials its people have overcome to reach this era of self-determination, Article Two of Iraq's 2005 constitution declares Islam to be the official religion of the State and "a foundation source of legislation." Nathan Brown, a senior associate for the Carnegie Endowment of International Peace, describes how the above language constitutes "compromise" wording between those who wanted Islam to be "the source" and those who desired Islam to be "a source" of legislation (Brown 2005). Softened through concession, the shari'a has secured, nonetheless, an authoritative place over current and future jurisprudence.

Implying Islam's compatibility with democracy, sections A and B of Article Two proceed to prohibit any law that contradicts either Islam or democracy, respectively. Article Two section A legally reinforces the Islamic essence of Iraq's voting majority, harnessing this Muslim identity as an important component of the Iraqi worldview and a catalyst for solidarity with the Muslim world. Religious freedom for all individuals is then espoused, denoting, in particular, the religious beliefs and

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practices of Christians, Yazidis, and Mandaean Sabeans. (Jews, Baha'i, Zoroastrian, and "other" faiths are conspicuously unmentioned.) Article Three then proclaims Iraq's "active" membership in the Arab League and identifies the country as part of the Islamic world. Turkmen, Assyrians and Kurds, of course, find no comfort in this declaration of Arab solidarity, and Iraq's non-Muslim minorities are here again reminded of their non-Islamic, "outsider" status. What is more, as a self-proclaimed "part of the Islamic world," Iraq is envisaging itself as a guardian of Islam, inviting a potential ethical dilemma should pressures emerge to prescribe punishments for apostates (murtadd), introduce blasphemy laws, or reclassify non-Muslims as second-class citizens (United States Commission on International Religious Freedom 2009).[6]

Article 14 inaugurates Iraq's "bill of rights," reiterating the equality of all Iraqi citizens before the law, regardless of, inter-*alia*, religion. From the perspective of Iraq's non-Muslims, however, the state's decision to establish an official religion inhibits full equality. Article 41 states that "Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs, or choices, and this shall be regulated by law." How this shall be regulated through legislation is uncertain. Furthermore, in ostensible contradiction to Article 41, pre-2005 laws delimiting religious choice remain in effect. For instance, under Law No. 105 of 1970 the Baha'i faith is legally proscribed. Further, the Revolutionary Command Council Resolution 201 of 2001 outlaws Wahhabism, and, if charges are substantiated, authorizes capital punishment for devotees of this more virulent form of political Islam. It is doubtful that these regulations are constitutional — consistent with Article 41. However, according to the U.S. International Religious Freedom Report, as of 2008, no legislation had been enacted to revoke these restrictive laws, and no court has declared them invalid (United States Department of State 2008).

Article 43, section B, guarantees the right of faith communities to manage their endowments, affairs, and institutions, as regulated by law. Currently, three *awqaf* or religious endowments — Sunni, Shi'a, and Christian and other — are regulated and apportioned through the Iraqi government to help maintain religious facilities. Religious groups supported through these endowments must register with the State. (A religious community must have at least 500 members in the country to register as a religious group (United States Department of State 2008)). Equal treatment of Iraq's religious groups through these fiscal endowments is unclear. In the United States — a highly pluralistic society — opponents of faith-based initiatives often point to unequal distribution

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of monies from the public coffers and the political provisos that too often accompany and restrict such aid to demonstrate the religious discrimination underlying State endowments and reemphasize the benefits of volunteerism. That religious minorities will confront similar "equality" challenges in Iraq seems inevitable.

Article 42 protects the individual's freedom of thought, conscience, and belief; and section A of Article 43 guarantees all religious associations the freedom to practice religious rites. This protection of religious rites is an important but narrowly construed interpretation of religious expression. It remains to be seen whether Article 43 will supply sufficient protection of other important components of free exercise, such as teaching, propagation, and even abandonment of one's faith. As already mentioned, it is this last "freedom" — apostasy — that remains the most controversial and disputed component of the language debate over religious freedom within the international human rights regime today.

Liberty of conscience and freedom to exercise one's religion is approbated through Islamic scripture and the ways of the Prophet, but the liberty to apostatize from Islam is not as scripturally clear (Saeed and Saeed 2004, 16).[7] *Riddah*, or apostasy, remains a very controversial issue within the various Islamic communities and nation-states since turning away from one's Muslim faith, according to some interpretations of Islamic law and tradition, can be a capital offense. Apostasy is seen as blasphemy against Islam and a significant threat to the communal and cultural solidarity that Islam provides. While apostasy is officially outlawed in places like Saudi Arabia (1992 Basic Law), Yemen, and Northern Sudan (1991 penal code), in Iraq's civil law, no penalty is codified for conversion. Although some may interpret the shari'a as sanctioning capital punishment for leaving the faith, Article One of Iraq's Penal Code No. 111 of 1969 authorizes criminal punishment through civil law only; and according to the 2008 International Religious Freedom Report, "the penal code does not import the Shari'a penalty, nor does it contain a similar penalty." However, while non-Muslims are explicitly permitted to convert to Islam, according to the Law of Civil Affairs No. 65 of 1972, no equivalent allowance is given for Muslims (United States Department of State 2008). Due to cultural and religious strictures, Iraq, like most majority Muslim states, is simply precluded from providing a positive protection of this controversial element of religious free exercise.

From a constitutional vantage point, a qualified religious freedom is provided for in Iraq. However, in Iraq's current geo-political context, religious free exercise is simply not a reality. Religious freedom is absent in

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Iraq, not primarily due to legal constraints, but because of a lack of consistent, self-sustaining security and political will. Despite constitutional laws now in place to offer a qualified protection of religious liberty to Iraq's citizens, local and national authorities are still unable — and, in some cases, unwilling — to protect this embattled freedom. Clearly, religious-based persecution remains an inter-faith reality in Iraq.

SOCIAL REALITIES OF RELIGIOUS PERSECUTION

Islam is the religion of the vast majority of Iraqis, but its interpretation is variegated and pluralistic. Over 95 percent of Iraq's inhabitants are Muslim, with Shi'a representing at least 60 percent and Sunni approximately 35 percent of the country's inhabitants. Complicating the religious diversity of Iraq is its ethnic variety. Of the 35 percent Sunni population in Iraq, over one-half are Kurdish and around 15 percent are Arab (United States Department of State 2008). History repeatedly reminds one of how tribal identities are often superimposed upon religious identity, with the former informing, and frequently trumping, the latter. This is certainly the case in Iraq. To appreciate the complexity of the Iraqi religious landscape, one must also realize its equally complex ethnic variety. In oil-rich Kirkuk, for instance, ethnic tensions — among Kurds, Turkmen, and Arabs — consistently supersede any semblance of solidarity as Muslims.

For the past five years, inter-sectarian violence has plagued social and economic progress in Iraq. After the 2003 invasion, Sunni leaders once patronized by the Baathist regime scuttled for alternative routes of funding, locating a generous stream of support from Saudi Arabia's globalizing Wahhabi tradition — a puritanical, literalistic form of Sunni Islam currently outlawed in Iraq. At the same time, persecuted Shi'a clergy and political leaders in Iraq, or exiled in the West or Iran, sought retribution through a reordering of Iraq's political apparatus that reflected the numerical superiority and spatial advantages of the Shi'a *Umma*. Foreign, militant extremists infused Iraq's Sunni tribes with an elevated level of violent potential, predicated on expelling coalition forces, inflaming sectarian strife, and destabilizing the fledgling Shi'a dominated power structure. Sectarian tension climaxed in 2006, when the al-Askariya Mosque in Samarra, one of the most hallowed Shi'a religious sites — a mausoleum of the 10th and 11th Shi'a Imams and closely tied to the hidden Imam, or Mahdi — was bombed (United States

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Department of State 2008). Violent reprisals did take place throughout the country, although many Shi'a leaders, including the Grand Ayatollah, Ali Sistani, called for restraint — fearful of an intractable civil war erupting. It is obvious that violence and reciprocating religious persecution between Shi'a and Sunni continues to be a distinct and tragic reality in 21st century Iraq.

In his thoughtful account of the complex Sunni-Shi'a relationship, Vali Nasr, a scholar of Middle East and South Asia politics at Tufts University, makes the conspicuous and somewhat convincing claim that the future scaffolding of the Muslim heartland "will be decided in the crucible of the Shi'a revival, and the Sunni response to it." Reemerging disagreements on the ledger of political power between Shi'a and Sunni are being collectively framed as "a struggle for the soul of Islam — a great war of competing theologies and conceptions of sacred history — and a manifestation of the kind of tribal wars of ethnicities and identities . . . with which humanity has become wearily familiar" (Nasr 2006, 20, 22). Nowhere is this shifting balance of power between Shi'a and Sunni more evident than in Iraq. Although the "actual bones of contention" between Shi'a and Sunni have much to do with temporal disputes over allocation of territory, wealth, and political influence, sacred language and theological differences are fomenting resentment over these "lopsided distributions of resources and power," serving to exacerbate the level of violent conflict (Nasr 2006, 28, 29, 252). Not unlike identity conflicts elsewhere, the complex Shi'a-Sunni schism reflects "competing claims of power" that find meaning and organization in religious identity (Nasr 2006, 23).

The world community is well aware of these rival Shi'a and Sunni narratives violently clashing in Iraq. Not as obvious to many, however, are the conflicts that have occurred within the Shi'a and Sunni sects — Shi'a against Shi'a and Sunni against Sunni. Here again, tribal identities and foreign associations play an important role in motivating these intrasectarian rivalries. Iraq's Sunnis are now clashing with Sunni al-Qaeda insurgents. Moqtada Sadr's Mehdi army has, at times, violently engaged its religious Shi'a brethren, the Badr Brigade, which is the paramilitary wing of the Supreme Islamic Council of Iraq, the most powerful Shi'a political party led by Abdel Aziz al-Hakim. Indeed, one of the most promising observations one can take from the 2007–2008 military "surge" is the willingness of Iraqi Sunni leaders in Anbar province ("Anbar Awakening") and elsewhere to distance themselves, at their own peril, from the "foreign," Sunni al-Qaeda extremists who have

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infiltrated the country. As well, the rapprochement between Muqtada al-Sadr and the Mehdi army with Abdel Aziz al-Hakim and his Badr Brigade was a positive, and hopefully sustainable, milestone toward healing intra-sectarian divides.[8]

While politics, power, and territory are undoubtedly influencing these tensions between and within the Shi'a and Sunni sects in Iraq, religious identity continues to provide a potent source of legitimacy, as well as a historically convenient way to imagine an "us" *versus* "them" in the convoluted geopolitical context of Iraq. Although Shi'a and Sunni may find relative security to practice and propagate their faith within fortified sectarian enclaves throughout the country, as a result of persisting political and territorial grievances, houses of worship, sacred shrines, and religious pilgrimages remain potential targets of violence, making religious freedom an elusive reality for Iraq's Muslims.

IRAQ'S NON-MUSLIM MINORITY

Of course, the religious diversity in Iraq is more complicated than simple Shi'a and Sunni categorizations. Between three and five percent of Iraq's population consists of a complex blend of Yazidis, ancient Christian sects, and various other groups, such as Shabaks, Baha'is, and the Sabean-Mandaeans of antiquity (United States Commission on International Religious Freedom 2008; Held 2005, 387–391). And it is below the preponderance of a surging Shi'a-Sunni conflict that an undertow of persecution against non-Muslim communities is steadily eroding the soil of religious freedom and diversity in Iraq.

According to a report in *Christianity Today*, many churches remain under constant threat of bombings, there are media and eyewitness reports of Christians being raped and murdered, and clergy are being harassed and kidnapped (Christianity Today 2007). Although Iraq experienced a significant decline in sectarian violence between Muslim communities over the past two years, violent persecution of non-Muslim minorities continued with regularity in 2008 and 2009 (United States Commission on International Religious Freedom 2009, 41). Coordinated bomb attacks against six churches in Baghdad and Mosul occurred in January 2008. The violent attacks were designed to disrupt Orthodox Christmas Eve and Epiphany celebrations. According to the United States Commission on International Religious Freedom, the United Nations Assistance Mission for Iraq received "17 reports of

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attacks and kidnappings, including 10 killings, of Christians throughout Iraq" in the first six months of 2008 (United States Commission on International Religious Freedom 2009, 41).

Article 10 of Iraq's constitution proclaims the State's commitment "to assuring and maintaining" the sanctity of the country's "holy shrines and religious sites," and to protecting "the free practice of rituals in them." Moreover, the second part of Article 43 proclaims the State's responsibility to "guarantee freedom of worship" and protect houses of worship. Yet, the persistent religious persecution by Muslim extremists has caused many of Iraq's churches to discontinue holding worship services in public. In a testimony to the United States Congress, Nina Shea warned that these churches "are being eradicated," and that violent persecution against Christians and ethnic minorities is being "conducted with impunity" (Christianity Today 2007).

Iraqi citizens are required to carry a national identity card that "explicitly notes the holder's religion." In October of 2006, violent Muslim extremists raided an Iraqi office in Baquba, where they beheaded a 14-year-old Iraqi, Ayad Tariq, after learning — from his identification card — that he was a Christian ("What Iraq's Christian's Need" 2007). In April 2007, armed militants stopped a bus in Ninewa, and after checking identification cards, separated and executed 23 Yazidi passengers (Serrano 2007). A concerted international initiative is underway to encourage Iraq's national government to rescind its requirement that citizen identification cards denote religious and ethnic affiliation.

One of the most startling global emigration waves being mapped today is out of Iraq. Terror, caused by sectarian attacks and fear of future sectarian violence, has compelled many Iraqis to abandon their homes and villages. In February of 2008, a spokesperson for the International Organization for Migration, Rafiq Tschannen, outlined for the United States Congress the primary causes and magnitude of Iraq's current displacement crisis: "Although there are many older internally displaced persons (IDP) caseloads in Iraq, since the bombing of the Samarra mosque in February 2006, the primary driver of displacement has been sectarian violence, in addition to military operations, armed conflict, and general crime and violence. Organization for migration's IDP assessments, which cover over 920,000 of an estimated 1.2 million people displaced since February 2006, find that 86% of IDPs displaced since that date say they were targeted due to their religious or sectarian identity. Monthly displacement rates decreased significantly in 2007 due to many factors, including improved security and the homogenization of

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communities. However, displacement continues, especially in unstable areas such as Kirkuk, Salah al Din, Ninewa, and Diyala, with the potential for increased displacement along the Turkish border. In addition, the conditions of those already displaced continue to worsen" (Tschannen 2008).

Before the war in 2003, Iraq was home to a diverse, indigenous population of 1.4 million Christians — Assyrian Orthodox, Chaldean Catholic, Syrian Orthodox, Armenian Orthodox and Catholics, and Protestants. That number has dwindled significantly to between 500,000 and 700,000 (United States Commission on International Religious Freedom 2009, 39). According to the Ministry of Migration and Displacement in Iraq, since the war began in 2003, almost half of the country's minority communities had left the country by early 2007 (United States Commission on International Religious Freedom 2008). Chaldean Catholic leader, Andreos Abouna, of Baghdad described this mass migration as "the alarm bell for Christianity in Iraq." "When so many are leaving from a small community like ours," he warned, "you know that it is dangerous — dangerous for the future of the church in Iraq" (Caldwell 2006). Over 90 percent of Iraq's Sabean Mandeans — an ancient sect dedicated to the teaching of John the Baptist — have been forced, through threat of violent persecution, to emigrate from Iraq. Fewer than 5,000 Sabean Mandeans remain in the country (United States Commission on International Religious Freedom 2008, 10).[9]

As stated in the U.S. government's 2007 International Religious Freedom Report, an unidentified source from the Office of the United Nations High Commissioner for Refugees (UNHCR) has approximated that more than a quarter of all Iraqi refugees were non-Muslim minorities. In its December 2008 report on religious freedom in Iraq, the United States Commission on International Religious Freedom reported that religious minorities represent between 15 percent of the registered refugee populations in Jordan, 20 percent in Syria, 35 percent in Lebanon, and 64 percent in Turkey. These numbers are significant, considering Iraq's religious minorities constitutes less than three percent of the total 2009 Iraqi population (United States Commission on International Religious Freedom 2008, 6). In addition to Iraq's swelling refugee population, the United Nation High Commissioner for Refugees estimated 2.8 million IDP inside Iraq in 2008 (United States Commission on International Religious Freedom 2008, 23). Christians from Baghdad, Basra, Ramadi, and elsewhere have fled in large numbers to the relative safety of the Nineveh Plain, creating a significant enclave of internally displaced persons in the region northeast of Mosul.[10]

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While home to the majority of Iraq's Christians, the Nineveh Plain has been a melting pot of religious and ethnic groups coexisting for generations. Aramaic, Kurdish, and Arabic are widely spoken throughout the region. Among the Christian communities one will find a significant number of ethnic-Kurdish Yazidis, who constitute the largest religious minority group in Iraq with close to 600,000 adherents.[11] The Yazidis are an ancient, syncretic religious community, whose faith is comprised of an amalgamation of Islamic, Gnostic, Judaic, and Zoroastrian belief systems and ritual packages.

While providing a more hospitable landscape than Iraq's central and southern regions, non-Muslim minorities in the Nineveh Plain have simply traded no security for some security. Sectarian violence and political persecution are not uncommon in the region.[12] Tragically, in August of 2007, 400 Yazidis were killed by Muslim extremists near Mosul. In Sinjar, a minimum of five Yazidis were killed because of their religious identity in the first half of 2008, and in December of that same year, "seven members of a Yazidi family were gunned down in their home in Sinjar" (United States Commission on International Religious Freedom 2009, 42).

The United States Commission on International Religious Freedom proffers a fitting summation of the challenges of existence confronting Iraq's non-Muslim minorities: "The cumulative effect of this violence, forced displacement, discrimination, marginalization, and neglect is a serious threat to these ancient communities' continued existence in Iraq, where they have lived for millennia. This threat to Iraq's smallest religious minorities poses a grave threat to Iraq's future as a diverse and free society" (United States Commission on International Religious Freedom 2008, 3, 4). It is clear that, along with Shi'a and Sunnis, religious minorities are also dying in Iraq because of their faith. Mosques, churches, and Yazidi shrines are being attacked and destroyed, and a mass exodus is bleeding Iraq of its diverse and ancient religious heritage.

CONCLUSION

In a recent *Foreign Affairs* piece, Michael Mandelbaum (2007), a recognized authority of international relations at The Johns Hopkins University, made the compelling argument that Democracy is and will continue to proliferate around the world; but this "will not be because of the deliberate and direct efforts at democracy promotion by the

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United States," but because of the indefatigable influences of economic liberalization and free market pressures to democratize (130). In hazarding this conclusion, however, Mandelbaum acknowledges some political-geographic uncertainties among Arab countries that will prohibit democracies entrenchment. Beyond the obvious temptations associated with oil, the Arab petro-states are also "sharply divided along tribal, ethnic, and religious lines." And these "sharp divisions" are a boon of doubtful value to the establishment of an enduring democracy: "In a stable democracy, people must be willing to be part of the minority. But people will accept minority status only if they feel confident that the majority will respect their liberty. In countries composed of several groups, such confidence is not always present, and there is little reason to believe it exists in Arab countries. The evidence of its absence in Iraq is all too clear" (Mandelbaum 2007, 127).[13]

Brian Grim (2009), senior research fellow in religion and world affairs at the Pew Forum on Religion & Public Life posits three criteria central to measuring the actual degree of religious freedom in a country: (1) citizens must genuinely value religious liberty and plurality; (2) juridical provisos for religious freedom must be free of ambiguity; and (3) forceful safeguards of religious freedom must be demonstrable in government policies. Grim is right to conclude that in contemporary Iraq, each criterion is in peril.

The overarching purpose of this article has been to emphasize the significant place of religious freedom in Iraq's legal apparatus, while placing equal emphasis on how the harsh sectarian divisions in this fragile, democratizing State are challenging the veracity of this legally protected freedom. In Iraq, the constitution is not immune to the tribal and sectarian biases embedded in the country's socio-cultural psyche. While objective espousals of justice, liberty, and equality are the constitutional ideal, the muddy realities on the ground have mired Iraq's march toward stable democracy. Yet, it is encouraging that beneath the rocky soil of violent insurgency, sectarian conflict, and political disorder, Iraqi people are planting seeds of freedom and humanity that will hopefully take root. The Iraqi Institute of Peace emerged as one fruitful forum for inter-religious dialogue. This forum was cultivated through the Religion and Peacemaking Initiative of the United States Institute of Peace and the Coventry Cathedral and its Center for Reconciliation and Conflict Resolution. A primary purpose of the Iraqi Institute of Peace was to "develop effective working relations between Sunni, Shiite, and Christian leaders."[14] Such endeavors are too uncommon and deserve worldwide support.

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Determining the place and degree of religious freedom in Iraq will ultimately depend on the operational definitions one decides to apply to the investigation. Undoubtedly, judgments are conditioned by one's experiences, hierarchy of values, and geographical and historical context. In reality, religious freedom is not universal in its conceptualization or interpretation. If religious freedom requires state neutrality and a comprehensive free exercise that includes freedom to change one's religion, then religious freedom is incomplete in Iraq. If one is to postulate that a true democracy will be neutral on the issue of religion, then we must conclude that democracy remains an elusive idea in Iraq — and the majority-Muslim Middle East.[15]

However, if one acknowledges the ways in which geographical, religious, and historical contexts continue to shape conceptualizations of religious freedom around the world, then perhaps one may concede that the constitutional measure of religious freedom in Iraq was constructed in fidelity to the faith and tradition of Islam in the Middle East. One must remember that Iraq is an Islamic democracy, not a Western one. For many Muslims — Shi'a or Sunni, Arab or Kurd — Islam offers an enduring understanding of religious freedom that is simply incongruous with that conceived by Western modernity.[16] For a number of majority-Muslim states, Islam cannot be rightfully detached from the State and authentic free exercise will always place the sanctity of the religious community above that of the individual. However, if one believes in the normative advancement of humanity throughout history, perhaps Iraq is still progressing, and it will simply take time for it, and other Muslim countries, to reach the same conclusion that took "Christendom" centuries of conflict and countless lives to reach. Even with its somewhat paradoxical language concerning religious freedom, Iraq's constitution is a praise-worthy accomplishment, setting a notable precedent for the real possibilities of democracy and religious freedom in the Middle East.

Encouraging Iraq through dialogue and diplomacy to create and nurture a viable, indigenously-inspired democracy and an expansive level of religious freedom may well be part of America's participatory effort in the region. But for policy-makers or pundits to insist, through military, diplomatic, or economic coercion, on an understanding of religious freedom that is wholly consistent with America's First Amendment or akin to Article 18 of the UDHR or International Convenant on Civil and Political Rights is a misguided, unsolicited attempt to impose an understanding of freedom that is simply not a

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realistic prospect for Islam's heartland today. Perhaps what anthropologist Robin Fox recently said concerning "our fundamentalist Islamic opponents," can be gently directed to our friends in Iraq. In a 2007 piece lamenting America's myopic and amnesic perspective on the hard-won values and enduring fragility of its own democracy, Fox somberly concluded that "before we try to make them over in our image, we should remember how unnervingly recent was our own makeover, and act with becoming humility and caution. A helping hand here and there may not be amiss, but we should never be surprised at the rejection of the foreigner's gift" (Fox 2007, 170). Indeed, therein lies one of humanity's greatest challenges: appreciating the immutable particularities of the cultural and religious Other, while embracing a shared humanity that recognizes and upholds religious freedom as the inalienable birthright of every person.

NOTES

1. Preamble of Iraq's 2005 Constitution.

2. To be clear, this article was not conceived to provide a holistic analysis of democracy, address the problem of democracy promotion, or evaluate the complex nuances of Iraq's political tapestry. Rather, it is purposefully confined to the issue of religious freedom and its formative role in Iraq's democratizing identity.

3. Article 18 of the 1948 Universal Declaration of Human Rights defines religious liberty as follows: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance" (G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948)). This unprecedented human rights declaration was adopted without dissent only because South Africa, six countries under the Soviet umbrella, and Saudi Arabia all disapproved (for different reasons), but were persuaded to abstain from voting. The "freedom to change his religion or belief" was, and remains, one of the most controversial elements to Article 18, antithetical — according to the Saudi Arabian and Egyptian delegations in 1947 — to the shari'a and its prohibition against apostasy. The subsequent United Nations Covenant on Civil and Political Rights made subtle, but important, adjustments to the definition.

4. The 2008 WorldPublicOpinion.org study was conducted in the following States and territories: Argentina, the United States, Mexico, France, Germany, Britain, Italy, Poland, Ukraine, Russia, Turkey, Azerbaijan, Palestinian Territories, Jordan, Egypt, Kenya, Nigeria, Indonesia, South Korea, Hong Kong, Taiwan, Macau, Thailand, and India. When asked, "How important do you think it is for people of different religions to be treated equally?" support of those polled ranged from 74 percent in Egypt to 99 percent in Kenya (14).

5. In an earlier study, Grim (2009) concluded that "over 100 countries have government offices charged with supervising or overseeing religious groups."

6. In its 2006 commentary on Iraq's permanent constitution, the United States Commission on International Religious Freedom reiterated an earlier stated concern that constitutionally requiring Islam to provide a foundation for national legislation in Iraq "could be used by judges to abridge the internationally recognized human rights of political and social reformers, those voicing criticism of prevailing policies, religious minorities, women, or others. This concern is amplified," the report continues, "by the fact that the new permanent constitution allows for the appointment of "experts in Islamic jurisprudence" to the Federal Supreme Court" (United States Commission on International Religious Freedom 2006).

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7. There are, of course, dissident voices of Muslim intellectuals from Western and Islamic venues, who are challenging the severity of punishment for apostasy, dictated in the shari'a. For example, Mohamed Talbi, history professor at the University of Tunis, has argued that the Qur'an speaks of a harsh penalty for apostasy in eternity but provides no explicit injunction for temporal punishment in this life.

8. In its March 2009 quarterly assessment of security and stability in Iraq, the U.S. Department of Defense reported that ethno-sectarian violence was at its lowest levels since 2006 (United States Department of State 2009, 23).

9. According to the report "only 3,500 to 5,000 Mandeans are now left in Iraq." The report continues: "Like Christians, Mandeans in Iraq have experienced threats, violence, forced expulsion from their homes and businesses, and violent attacks on their houses of worship and religious leaders. According to the Mandean Human Rights Group, from April 2003 to March 2007, 144 Mandeans were killed in Iraq, 254 were kidnapped, 238 were threatened or assaulted, 11 reported being raped, and there were 35 reports of forced conversion to Islam. From January 2007 to February 2008 alone, the Mandean community in Iraq suffered 42 killings, 46 kidnappings, 10 threats, and 21 attacks. . . . Mandeans are pacifists whose religion prohibits them from carrying weapons or taking another person's life; as such they have no means of self-defense and therefore are especially vulnerable" (United States Commission on International Religious Freedom 2008, 10, 11).

10. For an interesting story recounting the forced displacement of Iraqi Christians, see "Iraqi Christians Facing Increasing Danger," *National Public Radio* (21 October, 2006), available at www.npr.org.

11. For an insightful history of Yazidis in Kurdistan, see Reshid (2005).

12. Christians and other non-Muslims in the region claim that the Kurdistan Regional Government is discriminating against minorities, seizing property without fair compensation and guilty of judicial inequality before the law. Many Chaldean and Assyrian Christians and Yazidis protested the January 2005 elections, contending they were disenfranchised by the Sunni Kurdish Democratic Party, never receiving ballots (United States Commission on International Religious Freedom 2008, 6). Concerning the discrimination against non-Muslim minorities during Iraq's 209 provincial elections, see Unrepresented Nations and Peoples Organization (2009). Some Christian groups inhabiting the Nineveh Plain are petitioning the Iraqi government and world community for an autonomous administration to be established here for Iraq's dwindling Christian population. While a significant number of Christians live in the region, it is a land of significant diversity, making autonomy a complicated matter, especially when based on sectarian or ethnic identity.

13. Mandelbaum (2007) also discusses the "Western" association with democracy as an inhibiting factor in a region where "Arab Muslims" view "themselves as engaged in an epic battle for global supremacy against the Christian West." This historical resentment still "casts a shadow over anything of Western origin, including the West's dominant form of government. For this reason, liberty and free elections have less favorable reputations in the Arab Middle East than elsewhere" (127).

14. See the United States Institute of Peace for a closer look into conflict resolution and reconciliation efforts underway in Iraq. http://www.usip.org/iraq/programs/violence.html (Accessed on March 17, 2009).

15. Jürgen Habermas (2004) contends that "religious freedom tests the neutrality of the state," discussing the tendency of a country's majority culture to abuse "its historically acquired influence and definitional power to decide according to its own standards what shall be considered the norms and values of the political culture which is to be equally shared by all" (14).

16. For an insightful analysis on the inaugural intercultural debate on the Universal Declaration of Human Right's (UDHR) conception of religious freedom see El-Hage, Y.K. (2004). "Human Rights: A Western Christian Invention?" *The Near East School of Theology Theological Review* 25: 12–14. As stated above, while the UDHR was approved with a unanimous vote by the General Assembly, Saudi Arabia abstained from voting, and Egypt officially objected to Article 18's freedom to change one's religion. See U.N. Doc. A/PV.183, at 913 (1948) and El-Hage, 14. The Universal Islamic Declaration of Human Rights (1981) and the Cairo Declaration on Human Rights in Islam (1990) together represent a collective effort by majority-Muslim countries to redress the limitations of the UDHR, especially its individualist conceptualization of religious freedom. Both declarations adopt a more limited, but, in their view, more authentic understanding of religious freedom than that espoused in the UDHR. Neither document directly addresses the contested right to change one's religion.

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