

Islamic Views on Property Rights, Economic Freedom, and Entrepreneurship: Application to Iraq

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The signals coming from the Bush administration so far on nation building in Iraq suggests that the Pentagon's legal team has a vision inspired by the welfare states of Europe. But if the United States is going to impose on Iraq a secular socialist state, then we might just as well invite the Ba`ath party to return. Instead, I would like to suggest that there is a natural way of implementing a constitution and laws harmonious with tenets advanced by George W. Bush in a recent speech regarding human hopes "universal in every country and ... every culture." President Bush correctly noted that "Men and women everywhere want to **live in dignity to create and build and own**, to raise their children in peace and security." Mr. Bush proceeded to say that "dignity requires the **rule of law, limits on the power of the state, respect for women, private property, equal justice, religious tolerance**. No nation owns these principles. No nation is exempt from them." (President George W. Bush, speech to VMI, April 17, 2002, advocating a new Marshall plan for Afghanistan.)

If we seek to advance titled property rights and economic freedom, we would do well to note that historical experience has shown that liberty in general is best promoted when the institutions advancing it conform to the local cultural milieu. The most spectacular success story of the institution of a market economy in the twentieth century may be that of Japan. It is important that economic growth of Japan took place in a system that did not savage the indigenous culture, but built on the ideas embraced by the Japanese themselves during the Meiji Restoration.

I have two themes that I wish to stress. The first is that because there already is a sophisticated Islamic legal tradition that recognizes the importance of private property, equal justice, religious tolerance, and above all that the law is above the state, there is no need to impose a foreign tradition upon the Iraqi, or any other Muslim people, in order to achieve the goals we share. The second point, is that in order for American advisers in this process of nation building to have any credibility, and therefore any hope for success, it is the property rights and economic rights of the indigenous people that must come first, before the rights of foreign investors, American or otherwise.

The importance of economic and property rights in Islam can be seen from a variety of aspects. Theologically, man requires property in order to fulfill his function as the *khalîfah*, God's vicegerent on earth. The word *khalîfah* is familiar to most people as the

name adopted by the leaders of the Muslim community after the death of the Prophet Muhammad (peace be upon him), but that is not the way it is used in the Qur'an. There it refers to the mission of every man and woman to be God's stewards on the earth.

Legally, property has been sanctified in Islamic law. (See, E.G., the Qur'an 2:188, and 6:152.) This is a right of both men and women, and envy is denounced (4:32): "And in no wise covet those things in which Allah hath bestowed his gifts more freely on some of you than on others: to men is allotted what they earn and to women what they earn: but ask Allah of His bounty: for Allah hath full knowledge of all things." In his Farewell Pilgrimage, the Prophet declared: "Your lives and your property shall be inviolate until you meet your Lord. The safety of your lives and of your property shall be as inviolate as this holy day and holy month" (Muhammad Haykal's *Life of Muhammad*, Indianapolis: American Trust, 1976, p. 486).

Morally, theft, fraud, and injustice have been prohibited by the *shari'ah*. Islam does not merely respect the right of contract in the abstract, but holds contracts to be of such importance that some specifics of Islamic contract law are found in the Qur'an itself.

Every Muslim is promised success in this life and the next. Success in this life depends on freedom of trade. The Qur'an encourages (4:29): "O ye who believe! eat not up your property among yourselves in vanities: but let there be amongst you traffic and trade by mutual good-will: nor kill (or destroy) yourselves: for verily Allah hath been to you Most Merciful."

Historically, Islam has been favorable to the merchant beginning with the Prophet Muhammad and his wife Khadijah (may Allah be pleased with her), both of whom were merchants. Even in discussing spiritual matters, the Qur'an favors metaphors from the world of commerce, encouraging the believers to strike a profitable bargain with God (e.g., 61:10, 9:111). Throughout most of its first eight hundred years Muslim society flourished due to a respect for these principles. Although dynasties often violated market principles, imposing excessive taxes and interfering in commerce, they would decline and be replaced with other dynasties closer to the universal principles to which Mr. Bush referred. The famous Muslim historian Ibn Khaldun identified the economic reasons for the rise and fall of dynasties in his celebrated book the *Muqaddamah*, and it would make a very good starting point for the education of would-be nation-builders throughout the world, including Iraq.

For the specifics as to how to implement these principles in Iraq, I make the following suggestions. Do not impose a brand new legal system from scratch, but institute recognition of private property and free trade by modifying the pre-existing legal system in Iraq by bringing it more into line with Islamic law. Open a dialog with the religious leaders on the points raised above, and many more like them. Rather than impose a new strong central government, encourage local leaders to legitimize their claims to leadership through free open elections. Familiarize a people that have suffered under socialism for so long with market mechanisms by creating not a single state-owned or foreign-owned oil company, but by creating several oil companies whose stock will be distributed among the Iraqi people. Forbid sale of shares for a period of 12-18 months so

they have an opportunity to understand how shareholding works and then delay sales to foreigners for at least two to three years so that the reforms not be perceived as a method to con the people of Iraq out of their natural resources. Capitalism is not mercantilism. Let state revenues come from taxes that have been recognized by Islamic law like the 20% zakat on minerals. A 20% tax on oil at the wellhead and no other would permit private ownership of the oil industry without completely cutting off the revenues that state ownership had provided.

Finally, distinguish welfare from statism. Iraqis must be weaned off state-provided services like national health care. While a cold turkey termination of state health care would only throw fuel on the fire of anger over the destruction of Iraqi society wreaked by sanctions and now by war, a “Marshall plan” that continued the old state welfare system would only continue the Iraqi mindset that welfare comes from the government. Instead there must be a return to the traditional Islamic system of *waqf* under which endowed charities provide public goods like hospitals and schools. Any American aid should be aimed at supporting institutions like those until they can become self-supporting.

Above all, we should not be so arrogant as to believe that the virtues of *laissez faire* apply only to us. The Lebanese have shown how quickly an Arab, mainly Muslim society can rebound from the disaster of war. A return to historical Islamic civil society institutions like the *waqf*, free markets, just government, and a well-defined and protected system of private property is something we can encourage, but not force, Muslims to do.