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ISLAM IN THE MIND OF AMERICAN COURTS: 1800 TO 1960

MARIE A. FAILINGER*

Abstract: While there are relatively few cases from the nineteenth and early twentieth centuries that mention Muslims or Islam, an analysis of these cases discloses three common themes. First, Islam was seen as a decidedly non-American religion. Second, Islam was often used to illustrate worldwide acceptance of a legal principle, reflecting on core common values between people of different faiths. Third, religious tolerance extended beyond traditional Christian ideologies to encompass Islam, at least in theory if not in practice. These three themes display how judges used often-faulty notions of Muslims and Islam to justify their conclusions, and highlight the genesis of many stereotypes and insensitivities still prevalent in the modern era.

INTRODUCTION

Within the U.S. resident population, Muslims are estimated to make up only about three to eight million people, although their numbers are growing.¹ Yet, due in part to the events of September 11, they have loomed larger in the American mind than their numbers suggest. Anxiety over Muslims as “the other” has spilled over into a substantial incidence of civil rights violations, including government surveillance, detention efforts, and immigration restrictions.² In modern

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* Professor of Law, Hamline University School of Law; Editor-in-Chief, *Journal of Law and Religion*. This article was inspired in part by a project undertaken by *Journal of Law and Religion* student assistant Taneeza Islam to document the American court cases in which Muslims are parties. A partial list of these cases is available at <http://www.law.hamline.edu/jlr/index.html>.

¹ Richard Freeland, *The Treatment of Muslims in American Courts*, 12 ISLAM & CHRISTIAN-MUSLIM RELIGION 449, 449 (2001) (noting that the number of mosques and Islamic centers in the United States is estimated at seven hundred to two thousand, with populations concentrated in California, New York, Chicago and other strong populations in Michigan, Texas, Indiana, and Ohio); Tom W. Smith, *Religious Diversity in America: The Emergence of Muslims, Buddhists, Hindus, and Others*, 41 J. FOR SCI. STUDY RELIGION 577, 577 (2002) (noting that the Muslim population is usually overestimated by three to four times its size and that artificial year-to-year gains have been posted by some statistical compilations).

² See, e.g., Deborah J. Schildkraut, *The More Things Change . . . American Identity and Mass and Elite Responses to 9/11*, 23 POL. PSYCHOL. 511, 520 (2002) (describing proposed immi-

era American jurisprudence, Muslims are probably most visibly represented in federal cases on detention and prosecution of suspected terrorists at Guantanamo Bay, though there is an even larger number of cases involving the religious freedom rights of Muslim prisoners.³

This emerging interest in Muslims as subjects of American jurisprudence prompts an important question: how have Muslims and their religion been imagined by American judges? The courts can both reflect American social attitudes and shape them, countering misperceptions and stereotypes that result in social and legal harm to minorities.

Part I of this Article provides an overview of the history of Muslims in America. Part II describes U.S. immigration policy and its effect on Muslim immigrants. Part III catalogues how Muslims and Islam are described in federal and state court cases during the nineteenth and early twentieth centuries. Finally, Part IV describes the three common themes that pervade these cases. Although most mentions of Islam in these cases are very brief, and in most cases gratuitous, together they shed light on the social attitudes of judges in this period toward Muslim immigrants and some aspects of Islamic jurisprudence. The survey ends before 1960, at which point some modern African-Americans began to embrace Islam as an authentic part of their tradition and caused a shift in how the courts encountered Islam.

I. MUSLIMS IN AMERICAN HISTORY

For the most part, with the exception of recent work, the early history of Muslims in the United States is difficult to ferret out from the standard texts not focused on American Muslim history. Many of the well-known American religious histories written through the middle of the twentieth century barely mention Muslims at all.⁴ If they are men-

gration restrictions for student visas from Middle Eastern countries and Federal Bureau of Investigation interviews of Middle Eastern men); Ty S. Wahab Twibell, *The Road to Internment: Special Registration and Other Human Rights Violations of Arabs and Muslims in the United States*, 29 VT. L. REV. 407, 537–38 (2005) (discussing special registration of Arab and Muslim immigrants and contingency plans for interning them before 9/11). See generally Susan M. Akram & Kevin R. Johnson, *Race, Civil Rights, and Immigration Law After September 11, 2001: The Targeting of Arabs and Muslims*, 58 N.Y.U. ANN. SURV. AM. L. 295 (2002) (discussing the effects of the September 11 attacks on Muslim Americans).

³ See Freeland, *supra* note 1, at 455–56; Michael Greenberger, *You Ain't Seen Nothin' Yet: The Inevitable Post-Hamdan Conflict Between the Supreme Court and the Political Branches*, 66 MD. L. REV. 805, 806–09 (2007).

⁴ See generally ROBERT BAIRD, *RELIGION IN AMERICA* (1979) (neglecting to mention Muslims or Islam in tracing America's religious roots); EDWIN SCOTT GAUSTAD, *A RELIGIOUS HISTORY OF AMERICA* (1st ed. 1966) (same); EDWIN SCOTT GAUSTAD, *FAITH OF OUR FATHERS: RELIGION AND THE NEW NATION* (1987) (same); WILLIAM LEE MILLER, *THE*

tioned, it is generally in connection with the conquest of Spain or the rise of the Nation of Islam in the 1960s.⁵ Similarly, it is difficult to find an American legal history of note that discusses the role of Muslims in American law.⁶

A. Muslims in Early American History

There are, however, a growing number of texts on both the historical experience of American Muslims and their contemporary concerns.⁷ Histories recording the experience of Muslims in America be-

FIRST LIBERTY: RELIGION AND THE AMERICAN REPUBLIC (1986) (same); WILLIAM WARREN SWEET, RELIGION IN COLONIAL AMERICA (1st ed. 1942) (same); WILLIAM WARREN SWEET, THE STORY OF RELIGION IN AMERICA (3d ed. 1950) (same).

⁵ See, e.g., MARY FARRELL BEDNAROWSKI, AMERICAN RELIGION: A CULTURAL PERSPECTIVE 74–77, 147 (1984) (discussing the history of the Nation of Islam); MARTIN E. MARTY, PILGRIMS IN THEIR OWN LAND: 500 YEARS OF RELIGION IN AMERICA 12–14, 17–18, 444–47 (2d ed. 1984) (discussing the conquest of Spain in 711 A.D., the later expulsion of the “Moors,” and the rise of the Nation of Islam under Elijah Muhammad and his conflict with Malcolm X); R. LAURENCE MOORE, RELIGIOUS OUTSIDERS AND THE MAKING OF AMERICANS 182, 192–94 (1986) (discussing Edward Blyden’s advocacy of Islam “as a religion better suited for free blacks than Christianity” and the growth of Islam among African-Americans in the 1950s and 1960s).

⁶ See, e.g., STEPHEN BOTEIN, EARLY AMERICAN LAW AND SOCIETY, at vii–viii, 138 (1980) (lacking index or table of contents headings on Muslims); PAUL D. CARRINGTON, STEWARDS OF DEMOCRACY: LAW AS A PUBLIC PROFESSION, at vii–viii, 304 (1999) (same); LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 7–8, 639–42 (1973) (same); GRANT GILMORE, THE AGES OF AMERICAN LAW, at v, 152 (1977) (same); KERMIT L. HALL ET AL., AMERICAN LEGAL HISTORY: CASES AND MATERIALS, at xiii–xxiv (2d ed. 1996) (same); JAMES WILLARD HURST, THE GROWTH OF AMERICAN LAW: THE LAW MAKERS, at vi–xiii, 495 (1950) (same); LAW IN AMERICAN HISTORY, at iii–iv (Donald Fleming & Bernard Bailyn eds., 1971) (same); LAW IN THE AMERICAN REVOLUTION AND THE REVOLUTION IN THE LAW, at vii, 263 (Hendrik Hartog ed., 1981) (same); JONATHAN LURIE, LAW AND THE NATION: 1865–1910, at vii–ix, 178 (1st ed., 1983) (same); ROSCOE POUND, THE FORMATIVE ERA OF AMERICAN LAW, at xi, 183–84 (1938) (same); BERNARD SCHWARTZ, THE LAW IN AMERICA: A HISTORY, at vii–x, 379 (1974) (same); THE LIFE OF THE LAW: READINGS ON THE GROWTH OF LEGAL INSTITUTIONS, at ix–xiv, 580 (John Honnold ed., 1964) (same); TWO CENTURIES OF GROWTH IN AMERICAN LAW: 1701–1901, at viii, 533 (Yale Law Sch. Faculty eds., 1901) (same). See generally SELECT ESSAYS IN ANGLO-AMERICAN LEGAL HISTORY (Ass’n of Am. Law Sch. eds., 1968) (same); JAMIL S. ZAINALDIN, LAW IN ANTEBELLUM SOCIETY: ESSAYS AND MATERIALS IN LAW AND AMERICAN SOCIETY (1980) (same). As with the religious history texts, there are occasional references to the conquest of Spain by the Moors. See MAX RADIN, HANDBOOK OF ANGLO-AMERICAN LEGAL HISTORY 6–7 (1936). Hall and Karsten also mention the *Hamdan v. Rumsfeld* and *Hamdi v. Rumsfeld* terrorism cases. See KERMIT L. HALL & PETER KARSTEN, THE MAGIC MIRROR: LAW IN AMERICAN HISTORY 353–54 (2009).

⁷ See generally EDWARD E. CURTIS IV, MUSLIMS IN AMERICA: A SHORT HISTORY (2009) (describing the practice of Islam in America); KAMBIZ GHANEA-BASSIRI, A HISTORY OF ISLAM IN AMERICA: FROM THE NEW WORLD TO THE NEW WORLD ORDER (2010) (same);

fore the nineteenth century are sparse, and largely focus on individual Muslims whose exploits caught the eye of non-Muslim journalists and historians. Although philanthropist Amir Mohammed documents Muslim presence in the New World as early as 1312—when African Muslims arrived at the Gulf of Mexico on an exploratory mission—most histories suggests that the first significant Muslim presence in the New World was Esevanico Dorantes, who came in 1527 with a Portuguese explorer.⁸ According to Race Capet, Dorantes was a Morisco, or a birth-Muslim whom the Portuguese enslaved and converted to Christianity.⁹ Conversion, or at least secretive practice of Islam, was necessary in part because Spain restricted Muslims, Jews, and Gypsies from coming to the New World.¹⁰ Another noted early American of Muslim heritage was Anthony Jansen van Salee, the son of a Dutch privateer and Moroccan woman, who settled in New Netherland as part of the Dutch attempt to challenge Spain's hegemony in the New World.¹¹

B. Muslims and Slavery in America

Beyond these early explorers and the occasional free Muslim mentioned in early histories, recent historians of Muslim America suggest that the most significant influx of Muslims before the late nineteenth and early twentieth centuries was slaves.¹² Although authors of Ameri-

AMIR NASHID ALI MUHAMMAD, *MUSLIMS IN AMERICA: SEVEN CENTURIES OF HISTORY (1312–1998)* (1st ed. 1998) (same).

⁸ GHANEA-BASSIRI, *supra* note 7, at 10–11; MUHAMMAD, *supra* note 7, at 3; Freeland, *supra* note 1, at 450; Race Capet, *Created Equal: Slavery and America's Muslim Heritage*, CROSS CURRENTS, Dec. 2010, at 549, 549–50. Amir Nashid Ali Muhammad notes that Christopher Columbus had Muslim crew members with him and was influenced by Arab scholar Al-Idrissi's work discussing "the discovery of a new continent by eight Muslim explorers." MUHAMMAD, *supra* note 7, at 3. Race Capet describes Dorantes's travel to Florida in 1527, but Richard Freeland states that he arrived with Marcos de Niza in 1539. Freeland, *supra* note 1, at 450; Capet, *supra*, at 549. Kambiz GhaneaBassiri states that he accompanied his master on an expedition led by Pamfilo de Narváez to the Gulf Coast in 1527, wandered as captives of native tribes for about six years, and then traveled with Álvar Nuñez Cabeza de Vaca for eight years into western Mexico. GHANEA-BASSIRI, *supra* note 7, at 11–12. Capet notes that he went from Florida to New Mexico and Arizona before being killed by the Zuni, while GhaneaBassiri describes him serving the Zuni as a medicine man and being killed at the Pueblo of Háwikuh. *Id.* at 12; Capet, *supra*, at 550.

⁹ Capet, *supra* note 8, at 549–50.

¹⁰ See GHANEA-BASSIRI, *supra* note 7, at 28, 35, 85 (noting use of conversion by well-known slaves to boost favor with whites); Freeland, *supra* note 1, at 450 (noting the ways in which Muslims secretly retained their practices, such as writing work in Arabic); Capet, *supra* note 8, at 550–51.

¹¹ See GHANEA-BASSIRI, *supra* note 7, at 11–12.

¹² MUHAMMAD, *supra* note 7, at 9; Freeland, *supra* note 1, at 450. Muhammad notes that "Moors" from the Barbary Coast—captured by the Portuguese and enslaved—successfully

can history commonly acknowledge that Muslims were among the slaves imported into the United States, recent scholarship suggests that they were more numerous than previously thought, and that many practiced their faith or a syncretic version of Islam and Christianity well into the nineteenth century.¹³ Modern histories suggest that Muslim slaves were likely better educated and more often from elite backgrounds than other slaves.¹⁴ Many Muslim slaves may have acted out of self-interest, believing themselves superior to black slaves and attempted to gain “better treatment and possibly passage back to Africa.”¹⁵ Kambiz Ghanea-Bassiri argues that African Muslims were both “de-negrofied” and “de-Islamicized.”¹⁶ He claims that they were aware of the ways in which American slavery dehumanized people based on race and color, and often tried to disassociate themselves from other Africans by claiming that they were not black but Arabians or Moors.¹⁷ At the same time, American writers attempted to present well-known slaves as either Christian converts or exceptions to the “licentiousness and despotism” that, in the popular mind, characterized the Ottoman Empire and its citizens.¹⁸

A small number of Muslim slaves gained notoriety in white culture; for example, Job Ben Solomon, son of a respected Islamic scholar,

petitioned South Carolina authorities for their freedom in 1753 and a 1786 appearance of two foreigners who sailed from Algeria to Virginia, where they were arrested. MUHAMMAD, *supra* note 7, at 7–8. Muhammad also records the exploits of Yusef Benenhaly, who fought in the American Revolution and followed General Thomas Sumter to South Carolina, where his descendants were “known as the ‘Turks of Sumter County.’” *Id.* at 9.

¹³ See CURTIS, *supra* note 7, at 20–21 (describing syncretic Islamic and hoodoo practices of slaves); GHANEA-BASSIRI, *supra* note 7, at 63–64, 80–96 (describing Islamic-faith among slaves); Freeland, *supra* note 1, at 450–51. Freeland notes that not all Muslim slaves were black Africans; Malaysians and Turks were also enslaved because Christians could own “infidels” whereas “infidels” could not own Christian slaves. Freeland, *supra* note 1, at 450–51. He traces how slavery became racialized as slaves became Christians. See *id.* at 451; see also Capet, *supra* note 8, at 551 (2010) (citing Allan Austin’s estimation that there may have been at least eighteen thousand Muslim slaves imported from 1771 to 1775). Among the cases witnessing to the existence of likely Muslim slaves are *Hodge v. Montgomery*, which discussed the gift of slaves, one of whom had the common Muslim name Fatima, and *Bank of South Carolina v. Mitchell*, which also discussed a slave named Fatima. See *Hodge v. Montgomery*, 17 S.C. Eq. (Speers Eq.) 268, 268, 271 (1843); *Bank of S.C. v. Mitchell*, 14 S.C. Eq. (Rice Eq.) 389, 390, 397 (1839).

¹⁴ Capet, *supra* note 8, at 552, 559.

¹⁵ See GHANEA-BASSIRI, *supra* note 7, at 21–22.

¹⁶ *Id.* at 18, 27 (emphasis omitted).

¹⁷ *Id.* at 21–22. Ghanea-Bassiri notes that a Moorish identity may have captured the public imagination, the public having heard tales of white slavery coming out of the exotic and well-known Barbary Wars. *Id.* at 25.

¹⁸ *Id.* at 27–29; see CURTIS, *supra* note 7, at 1–4.

emerged from slavery in a Kent Island, Maryland, tobacco shed to become the toast of the town in London and later gained his freedom in Gambia.¹⁹ Eight Muslim slaves successfully petitioned the South Carolina House of Representatives for their freedom in 1790, describing the perfidy of the English captain who promised to redeem them back to Morocco as captives of war but sold them as slaves in the New World instead.²⁰ The white public also may have learned of Bilali Muhammad—a head overseer of a Georgia plantation who orchestrated its defense against the British in the War of 1812—or Omar ibn Said, the earliest known Arabic scribe in America who penned an autobiography about life as a slave in 1831.²¹ Capet suggests that among the most famous of Muslim slaves was Abdul Rahahman (Rahman), whose master granted his freedom at the request of Senator Henry Clay.²² Rahahman later went on a speaking tour in the Northeast to raise the funds to buy his children out of slavery and then settled in Liberia.²³

Although much of the Muslim African slave culture seems to have died out in the early nineteenth century, African-American communities became interested in re-connecting with their Islamic roots as early as the late nineteenth century.²⁴ Edward Wilmot Blyden, a Christian Liberian diplomat, promoted Islam on the U.S. lecture circuit in the 1870s and '80s as an appropriate alternative for those of African heritage.²⁵ In the early twentieth century, three movements attempted to put Muslim ideals into the American mind. First, in the early 1920s, Muhammad Sadiq's Ahmadi movement stressed the evils of American racism, attracted significant support from African-Americans, and also figured prominently in Marcus Garvey's Universal Negro Improvement Association. Second, Timothy Drew established the Moorish Science Temple in Chicago in 1925, claiming that African-Americans were of Moorish (Moroccan) and Asiatic descent, and that Islam was the original religion of his people. Finally, Wallace D. Fard established the Na-

¹⁹ See CURTIS, *supra* note 7, at 1–4; Capet, *supra* note 8, at 552–56.

²⁰ Capet, *supra* note 8, at 556. One of those eight Muslim slaves was named Fatima. *Id.*

²¹ See GHANEABASSIRI, *supra* note 7, at 62, 67; Ghada Osman & Camille F. Forbes, *Representing the West in the Arabic Language: The Slave Narrative of Omar ibn Said*, 15 J. ISLAMIC STUD. 331, 331–32 (2004).

²² Capet, *supra* note 8, at 557; see also GHANEABASSIRI, *supra* note 7, at 26–27.

²³ Capet, *supra* note 8, at 557.

²⁴ See Freeland, *supra* note 1, at 451.

²⁵ See *id.*

tion of Islam in 1930, recruiting Elijah Poole, later Elijah Muhammed, as his successor.²⁶

C. *Immigration of Muslims to the United States*

Between the Civil War and the twentieth century, the Muslim population in the United States grew primarily by conversion and immigration, according to Professor Richard Freeland.²⁷ There were a small number of prominent Caucasian conversions to Islam around the turn of the twentieth century, such as Methodist minister Reverend Norman and the U.S. Manila consul Alexander Russell Webb in 1887.²⁸ Webb was a Presbyterian-turned-Theosophist-turned-Muslim missionary, whose periodical *The Muslim World* and book *Islam in America* made Muslims visible to a larger public.²⁹ Muslim and Muslim-offshoot missionaries like Indian religious leaders Inayat Khan and Muhammad Sadiq lectured throughout the United States, though many white Americans attended their presentations out of curiosity for the exotic rather than interest in the message.³⁰ Muslim culture also greatly influenced American author Ralph Waldo Emerson, particularly “Islamic social values such as hospitality, personal nobility, and regard for women.”³¹

In measuring the growth of Islam by immigration, historians had difficulty estimating the numbers of Muslim immigrants during the nineteenth century, in part because immigration officials before 1899 classified anyone from Ottoman territories as either from “Turkey in Asia” (Syrians, Turks, Kurds, Armenians, and others from that same region) or from “Turkey in Europe” (including Albanians, Bosnians,

²⁶ CURTIS, *supra* note 7, at 31–32, 34; GHANEABASSIRI, *supra* note 7, at 223–24. The Nation of Islam was not orthodox Islam, although Fard also preached that Islam was the original religion of African-Americans. CURTIS, *supra* note 7, at 36–37. Elijah Poole came to believe that Wallace Fard was not only the Messiah (or Mahdi) but God in the flesh, and that he was God’s messenger. *Id.* at 37. Fard disappeared in 1934; Poole endured a power struggle for succession and became leader of the Chicago Temple. *Id.* The federal government later prosecuted him as a draft dodger and traitor during World War II, another victim of J. Edgar Hoover’s fear of internal, subversive groups. *Id.* at 37–38.

²⁷ Freeland, *supra* note 1, at 451.

²⁸ CURTIS, *supra* note 7, at 26–27; Freeland, *supra* note 1, at 451.

²⁹ CURTIS, *supra* note 7, at 25, 28.

³⁰ *See id.* at 29–31. Unbeknownst to most Americans, Sadiq was not an orthodox Muslim; he believed that the founder of his sect, Ghulam Ahmad, was the Messiah who would bring in the Day of Judgment. *Id.* at 31. Khan was a Sufi Muslim who focused on the unity of Islam with other great religions, but his failure to convert American audiences led him to move to Europe, leaving behind one of the oldest operating Sufi organizations in the United States, the Sufi Order International. *Id.* at 29–30.

³¹ *See* Suzan Jameel Fakahani, *Islamic Influences on Emerson’s Thought: The Fascination of a Nineteenth Century American Writer*, 18 J. MUSLIM MINORITY AFF. 291, 291, 298 (1998).

Croats, Serbs, and Macedonians).³² This inability to identify Muslims stems partly from the Ottoman Empire's refusal to allow Muslims to emigrate during this period, which encouraged immigrants to hide their religious identities.³³ Moreover, immigration numbers are hard to estimate because many emigrants from countries with large Muslim populations spent significant time in other European countries before coming to the United States.³⁴ Furthermore, Americans tended to welcome Christians from European countries and associated Muslims with negative stereotypes of the Ottoman Empire, which encouraged Muslims to downplay their faith.³⁵

In the 1870s, Syrians—particularly those from Lebanon and Palestine—began a noticeable wave of immigration that has been attributed to the Ottoman regime's oppression or their desire to take advantage of the economic opportunities offered by the United States.³⁶ Then, at the turn of the twentieth century, Turks, Kurds, and Eastern European Muslims began to emigrate, either to look for work or simply to escape oppression.³⁷ Among the best documented immigrants were the Albanians, arriving in small numbers in the 1880s and larger numbers after the outbreak of the Balkan Wars in 1912.³⁸ Albanian immigrants largely downplayed their Muslim identity during this period.³⁹

Some Muslims, however, created a community culture centered around Islam. Syrian Muslims settled in North Dakota, where they began homesteading in the early 1900s, and Muslims attracted by well-paying jobs in Henry Ford's auto plant settled in Detroit.⁴⁰ Muslim enclaves could also be found in major Midwestern cities such as Chicago, Milwaukee, Pittsburgh, Cleveland, and Akron, and major cities in the East such as New York, Philadelphia, Baltimore, and the Boston area.⁴¹

³² GHANEA BASSIRI, *supra* note 7, at 137–38.

³³ *Id.* at 141.

³⁴ *Id.* at 138.

³⁵ *Id.* at 141–42.

³⁶ *Id.* at 139–40; Freeland, *supra* note 1, at 451. Ghanea Bassiri also notes that this immigration was furthered by prominent American missionaries to Syria, who helped create a private education system and facilitated Syrians' interest in immigration. GHANEA BASSIRI, *supra* note 7, at 139. Of Syrian immigrants, the majority were Christian, but approximately eight thousand of the two hundred thousand Syrians in the United States in 1924 were Muslim. *Id.* at 140.

³⁷ GHANEA BASSIRI, *supra* note 7, at 144–45.

³⁸ *Id.* at 146–47.

³⁹ *Id.* at 146.

⁴⁰ See CURTIS, *supra* note 7, at 47–49, 53–54; GHANEA BASSIRI, *supra* note 7, at 140.

⁴¹ GHANEA BASSIRI, *supra* note 7, at 137.

II. EXCLUSIONARY IMMIGRATION POLICIES AND THE TREATMENT OF MUSLIMS AND PEOPLE FROM MUSLIM-DOMINATED COUNTRIES IN AMERICAN COURTS

Perhaps the most significant factor preventing the large-scale immigration of Muslims to America was racialization.⁴² Immigration from East Asia all but halted due to the Chinese Exclusion Acts in 1882, the exclusion of Japanese immigrants in 1908, and the creation of an Asiatic Barred Zone in 1917.⁴³ Thus, laws negatively affected immigration from many countries where Islam was prominent.⁴⁴ The addition of literacy requirements in 1917 and the exclusion of “polygamists[] or persons who admit their belief in the practice of polygamy” in the Immigration Act of 1891 acted as further barriers to Muslim immigration.⁴⁵ Perhaps the most damaging to Muslim immigration was the Immigration Act of 1924, which reduced existing country immigration quotas and disfavored countries outside of northern and western Europe.⁴⁶ All countries outside the Asiatic Barred Zone that had significant Muslim populations were given immigration quotas of one hundred per year.⁴⁷ This restrictive immigration policy began to unravel with the McCarran-Walter Act of 1952 and further loosened with immigration reforms in 1965.⁴⁸

⁴² See *id.* at 150, 152.

⁴³ *Id.* at 150–51; see Act of Feb. 5, 1917, ch. 29, 39 Stat. 874 (repealed by McCarran-Walter Act of 1952, ch. 477, 66 Stat. 163); see, e.g., Act of May 6, 1882, ch. 126, 22 Stat. 58 (repealed by Act of Dec. 17, 1943, ch. 344, 57 Stat. 600). The 1917 act excluded from admission any persons on the continent of Asia, unless they were natives of islands already possessed by the United States. GHANEABASSIRI, *supra* note 7, at 150 n.58; accord § 3, 39 Stat. at 876.

⁴⁴ See GHANEABASSIRI, *supra* note 7, at 150–51.

⁴⁵ Act of Mar. 3, 1891, ch. 551, 26 Stat. 1084; GHANEABASSIRI, *supra* note 7, at 150–51.

⁴⁶ Immigration Act of 1924, ch. 190, 43 Stat. 153 (amended by McCarran-Walter Act of 1952, ch. 477, 66 Stat. 163); GHANEABASSIRI, *supra* note 7, at 151; Freeland, *supra* note 1, at 451. The Acts reduced the country quotas to two percent of the existing U.S. population from that country and reduced the total immigration influx to one hundred and fifty thousand per annum. GHANEABASSIRI, *supra* note 7, at 151. The Acts also barred from immigration any person ineligible for citizenship, meaning that Asians previously declared ineligible for citizenship could no longer immigrate. *Id.*

⁴⁷ GHANEABASSIRI, *supra* note 7, at 151.

⁴⁸ Freeland, *supra* note 1, at 452. See generally McCarran-Walter Act of 1952, ch. 477, 66 Stat. 163 (codified as amended at 8 U.S.C. §§ 1101–1537). The McCarran-Walter Act eliminated racial restrictions on immigration but kept country quotas and imposed a preference for immigrants with special skills. §§ 201–203, 66 Stat. at 175–78; Matthew T. Hovey, Comment, *Oh, I’m Sorry, Did That Identity Belong to You? How Ignorance, Ambiguity, and Identity Theft Create Opportunity for Immigration Reform in the United States*, 54 VILL. L. REV. 369, 374 n.32 (2009). Freeland notes that Muslim immigrants arriving at that time were educated Palestinians (arriving after the Palestinian upheaval in 1948) and Iraqis (arriving

Along with immigration restrictions, federal naturalization law created a significant hardship for immigrants from predominantly Muslim countries who attempted to become citizens. “The Naturalization Act of 1790 granted citizenship only ‘to aliens being free white persons,’” though Congress amended it in 1870 to permit “citizenship ‘to aliens of African nativity and to persons of African descent.’”⁴⁹ In many of the cases in the early 1900s, the position of the U.S. government was that the 1790 Naturalization Act—permitting only “free white persons” to become citizens—applied only to persons living in Europe at the founding of the United States and their descendants.⁵⁰

Consequently, those who could not claim European descent, most prominently Syrians and Indians, fought significant court battles beginning in 1909 to establish that they were “white.”⁵¹ These cases are a painful reminder of the ways in which American racism both co-opted and stigmatized immigrants of other nationalities. For example, Judge Smith of the South Carolina District Court pronounced Syrians “non-white” but later granted a re-hearing, noting that “[d]eep feeling has been manifested on the part of the Syrian immigrants because of what has been termed by them the humiliation inflicted upon, and mortification suffered by, Syrians in America”⁵² He reasoned that Syrians should be no more humiliated by denial of citizenship than the “educated and cultivated” Chinese, Japanese, Mongolians, or Native Americans also excluded from citizenship.⁵³ On the other hand, he pointed out that the 1870 amendments “admit to citizenship the very race [of African-Americans the Syrians] term inferior.”⁵⁴ On the other hand, an

beginning in 1958), followed by Iranians and Pakistanis in the 1980s. Freeland, *supra* note 1, at 452.

⁴⁹ Act of Jul. 14, 1870, ch. 254, 16 Stat. 254 (amended by Pub. L. No. 59-338, 34 Stat. 596); Act of Mar. 26, 1790, ch. 3, 1 Stat. 103 (repealed by Act of Jan. 29, 1795, ch. 20, 1 Stat. 414); GHANEABASSIRI, *supra* note 7, at 152.

⁵⁰ See, e.g., *United States v. Balsara*, 180 F. 694, 695 (2d Cir. 1910); *In re Ellis*, 179 F. 1002, 1003 (D. Or. 1910); *In re Halladjian*, 174 F. 834, 837 (D. Mass. 1909). At least one court noted the 1870 addition to the naturalization statute of “aliens of African nativity and . . . persons of African descent.” See *Ex parte Shahid*, 205 F. 812, 813 (E.D.S.C. 1913) (quoting Act of Jul. 14, 1870, ch. 254, 16 Stat. 254).

⁵¹ See GHANEABASSIRI, *supra* note 7, at 152–53. One example of an Indian immigration appeal is *United States v. Balsara*, in which a Parsi, a descendant of immigrants from Persia into India in the eighth century, was found to be “white” because he came from a settlement of Parsis “by themselves of intelligent and well-to-do persons, principally engaged in commerce, [who] are as distinct from the Hindus as are the English who dwell in India.” 180 F. at 695.

⁵² *In re Dow*, 213 F. 355, 356 (E.D.S.C. 1914).

⁵³ *Id.*

⁵⁴ *Id.*

undertone of mistrust pervades some cases involving Syrians.⁵⁵ Commenting on the “evasive and insincere” witnesses in a bankruptcy trial, the court seemingly explained: “[t]hey are all Syrians.”⁵⁶

In keeping with the popular stigmatization of Muslims and those who come from predominantly Muslim countries, some courts took great pains to identify claimants as Christians, implying that this is a favorable factor in determining immigration status.⁵⁷ They also went into great detail about what standard of “whiteness” should be used, some of them determining that Syrians were white and others that they were not.⁵⁸ Thus, while the Oregon District Court found a Syrian to be “white” based on the popular usage of the term, the South Carolina District Court adopted the government’s proffered “European” meaning of “white,” pronouncing the need for a clear dividing line in a history shaped by intermarriage of races.⁵⁹ The South Carolina District Court thus determined that Albanians, Spanish, and Portuguese “Moors” are white, while “all inhabitants of Asia, Australia, the South Seas, the Malaysian Islands and territories, and of South America” are not unless they can show European descent.⁶⁰ Noting that Syrians can be “of pure or almost pure Jewish, Turkish, or Greek blood” due to “another Semitic conquest in the shape of the Arabian Mahometan eruption, then again

⁵⁵ See *Abdo v. Townshend*, 282 F. 476, 480 (4th Cir. 1922); see also *In re Hatem*, 161 F. 895, 896 (E.D.N.C. 1908).

⁵⁶ *Abdo*, 282 F. at 478, 480 (noting, however, that they are intelligent and good businessmen); see also *In re Hatem*, 161 F. at 896 (noting that the bankrupt and his witnesses might be exposed to prejudice because they were Syrians, but suggesting that they were liars nonetheless).

⁵⁷ See, e.g., *Ex parte Shahid*, 205 F. at 812 (noting that the claimant was a Christian); *In re Ellis*, 179 F. at 1002 (noting that the claimant was a Palestinian and a Maronite); *In re Haladjian*, 174 F. at 841 (discussing the Christian history of the Armenians, which was the claimants’ ancestry).

⁵⁸ See, e.g., *Ex parte Shahid*, 205 F. at 816–17; *In re Ellis*, 179 F. at 1003–04.

⁵⁹ *Ex parte Shahid*, 205 F. at 814–15; *In re Ellis*, 179 F. at 1004. But in *Balsara*, where the court rejected the government’s argument that “white” referred to those persons immigrating to the United States in 1790, namely northern and western Europeans, because it would exclude Russians, Poles, Italians, Greeks, and “Hebrews,” which the court found absurd. See 180 F. at 695–96. The Court concluded that Congress must have meant to distinguish the white race from “black, red, yellow, or brown races, which differ in so many respects from it.” *Id.* at 696. The court, however, also rejected the argument of amici curiae that the term “white” was meant only to exclude African-Americans and later-excluded groups like the Chinese. *Id.* at 696–97. Noting that the immigration form requires applicants to state their color and complexion, the court implied that the law continues to be concerned with the race of immigration applicants. *Id.*

⁶⁰ *Ex parte Shahid*, 205 F. at 814–16.

overlaid by the Mongolian and Turkish conquests,” the court held that a “Syrian of Asiatic birth and descent” cannot be naturalized.⁶¹

In a third case, Judge Lowell of the District of Massachusetts, after noting that the Christian Armenian claimants’ “complexion was lighter than that of many south Italians and Portuguese,” did an extensive analysis of possible meanings of “race.”⁶² He rejected the government’s position that “the average man in the street . . . would find no difficulty in assigning to the yellow race a Turk or Syrian with as much ease as he would bestow that designation on a Chinaman or a Korean.”⁶³ Focusing at length on centuries of “racial” intermingling, the District of Massachusetts ultimately read “white” expansively to include all persons not otherwise classified as “Negro,” American Indian, Chinese, or Japanese.⁶⁴

In these cases, the characterization of ostensibly not Christian Turks is not only harsh but not always clearly related to the immigration issue under discussion.⁶⁵ Although Judge Lowell at one point—perhaps in jest—described the Armenian turn to Christianity “without reproach to the followers of Mohammed or of Zoroaster,” he made several references to Turkish domination through violence and Armenian resistance to the Turks.⁶⁶ Judge Lowell noted that Turks “both socially and sexually, commingled with Europeans to an unusual degree,” utilizing Europeans as sexual partners, architects, and generals, and offering conquered Christian peoples conversion as an alternative to extermina-

⁶¹ *Id.* at 816.

⁶² *In re Halladjian*, 174 F. at 835.

⁶³ *Id.* at 838; *see also* United States v. Cartozian, 6 F.2d 919, 920–21 (D. Or. 1925) (relying on a number of race classification experts to declare Armenians white). In *In re Najour*, the court utilized a text by Dr. A.H. Keane dividing the world into four races: “Negro or black . . . ; Mongol or yellow . . . ; Amerinds (red and brown) . . . ; and Caucasians” (including those from North Africa, Europe, Iran, India, Western Asian and Polynesia, and Syrians). 174 F. 735, 735–36 (N.D. Ga. 1909).

⁶⁴ *In re Halladjian*, 174 F. at 843, 845.

⁶⁵ *See Ex parte Shahid*, 205 F. at 812–13; *In re Ellis*, 179 F. at 1002–03; *In re Halladjian*, 174 F. at 838. By contrast, one pertinent but odd immigration case involved a birth citizen of Chinese and English extraction who married a Chinese-East Indian medical student in Hong Kong. *See Ex parte Hing*, 22 F.2d 554, 555–56 (W.D. Wash. 1927). The Court’s conundrum was to determine whether she had forfeited her citizenship by marrying someone who was not eligible for naturalization. *See id.* The Court noted the Islamic marriage ceremony performed in China “may be very primitive,” and would not be legally valid if it was not in accord with Chinese law, regardless of whether she had converted to Islam or lived in a common law marriage. *See id.* at 556. Thus, the court granted the returnee’s habeas petition. *Id.*

⁶⁶ *In re Halladjian*, 174 F. at 841.

tion.⁶⁷ Indeed, Judge Lowell repeated the charge circulating in popular culture that Turks stole the most promising European boys to raise them as “Mohammedans” and he commented, seemingly approvingly, on the resistance of the Armenians “[a]gainst black pagans, Turks and Saracens.”⁶⁸ In other cases, Armenians and Syrians were permitted to immigrate because of Turkish oppression—Yerwand Karamian, an Armenian Persian, received habeas corpus from the federal court because he was “burned from the hip to the knee with a hot steel rod” to force him to convert to Islam.⁶⁹ Ossana Soghanalian, a Christian Turk, received a literacy exemption because, according to her testimony, all of the Christians from her home town had been killed or deported by Turkish Muslims and she was kept in a harem for over three years.⁷⁰

III. ISLAM IN THE AMERICAN COURTS: CONFLICTING THEMES

Suzan Jameel Fakahani argues that American intellectuals in the late nineteenth century were largely dependent on British secondary sources for their knowledge of Islam, such as George Sale’s *Koran*, a translation that “purposely manipulated information in such a way as to present the Qur’anic message as trite and untrustworthy” and “greatly lacked in dignity and depth of the original.”⁷¹ Unfortunately, to the extent American courts cited Islamic texts, they were often from Sales’ *Koran*, perhaps the only English version available to most judges.⁷² Otherwise, American judges’ references to Islam simply display little evidence of familiarity with Islamic law or the Muslim faith.

In general, American courts’ portrayal of Islam veered between two extremes: some courts treated Islam as an exotic and occasionally primitive religion that no average American would be likely to believe, while others described its believers as sincere and to be as equally respected as persons of other traditions. The courts occasionally attempted a brief discussion of substantive Islamic law, on the one hand citing favorably its stance on usury and on the other disparaging its stance on polygamy. Perhaps most interestingly, there are quite a number of church-state

⁶⁷ *Id.* at 839.

⁶⁸ *Id.* at 839, 841.

⁶⁹ United States *ex rel* Karamian v. Curran, 16 F.2d 958, 959, 962 (2d Cir. 1927). Though the court granted the habeas petition, it also decided that the petitioner should be deported. *Id.*

⁷⁰ Johnson v. Tertzag, 2 F.2d 40, 40–41 (1st Cir. 1924).

⁷¹ Fakahani, *supra* note 31, at 300.

⁷² See Van Veghten v. Van Veghten, 4 Johns. Ch. 501, 503 (N.Y. Ch. 1820); Wightman v. Wightman, 4 Johns. Ch. 343, 349 (N.Y. Ch. 1820).

cases involving matters such as oath-taking by atheists and subsidization of public religious education where the courts suggest that Muslims are treated or should be treated equally with Christians.

A. *Schizophrenia: Islam as Hyperbole vs. Islam as Respected*

As suggested, American courts in the nineteenth and early twentieth centuries often reflected popular attitudes that Islam is among the exotic religions of the world not expected to be embraced by Americans, while occasionally demonstrating respect for those who practice the religion. An example of such exoticism is evidenced in a Kentucky decision about interminable religious controversies among believers, such as the “race of Indians who . . . fought about the virtues of a monkey’s tooth, or those of the Mahometans about the mode of ablution”⁷³ Along this vein, a number of American courts in this period used an Islamic reference as an exaggerated analogy to make their argument airtight, even though the case involved no Muslims or issues related to Islam.⁷⁴

Perhaps the most blatant Muslim stereotype uttered by a twentieth century American court involved a mortgage foreclosure by an agricultural coop on a loan to farmers for crop production.⁷⁵ In dissenting on behalf of the farmers, Washington State Justice Millard castigated federal government coercion in agricultural programs of the time. He suggested that an argument appealing to force or prejudice rather than reason has no place in judicial decisions.⁷⁶ Unfortunately, his analogy was to the Spanish conquest:

In the year 711 A.D., the Moslem hordes overran Europe, first defeating the Visigoths in Spain. Those followers of Mahomet entered Europe with the Koran in one hand and a scimitar in the other. You had the option of giving at least lip service to the religion of those invaders or being liquidated. The offer of the federal official on behalf of the domestic enemy paral-

⁷³ Fisher v. Higgins, 21 Ky. (5 T.B. Mon.) 140, 144–45 (1827).

⁷⁴ See Peters v. United States, 94 F. 127, 134 (9th Cir. 1899) (quoting Engleman v. State, 2 Ind. 91, 93–94 (1850)). Indeed, these hard-to-classify cases referred to Islam gratuitously. For example, in *Engleman v. State*, a defendant objected to an indictment because it omitted the words “of our Lord” from the date “in the year of eighteen hundred and forty-six.” 2 Ind. at 93. The court noted that neither the legislature nor judges felt the need to use this phrasing because “no mention is made of the *Jewish*, *Mahometan*, or other system of reckoning time, and all understand the *Christian* calender [sic] to be used.” *Id.* at 94.

⁷⁵ Sw. Wash. Prod. Credit Ass’n of Chehalis v. Fender, 150 P.2d 983, 984 (Wash. 1944).

⁷⁶ See *id.* at 994.

lels the right of choice tendered the Europeans by their foreign enemy.⁷⁷

In the cases where Islam was used as an exaggerated analogy, the Qur'an (generally spelled "Koran") sometimes served as an example of an exotic, difficult text for the courts.⁷⁸ In *Nubby v. Scott*, for example, the court managed to insult two minorities at the same time in a contest over whether a "full-blood" daughter of the Native American Choctaw tribe, Scott, had the competence to convey her interest in part of her father's estate to her mother, Nubby.⁷⁹ Holding that Scott was incompetent, the court noted that she "was a housewife" who "could not speak, read or write English," and had the mind of a four-year-old.⁸⁰ The court further emphasized how unlikely it was that she would understand the deed, stating: "[t]he mere fact that this deed was read to her . . . imparted no more information to her, weak-minded and ignorant as she was, than would reading of the Koran to a Kangaroo."⁸¹

Similarly, a Texas appellate judge adjudicating a dispute between the fire and police commissioners of San Antonio and its mayor and city council wished to point out the difficulty of discharging the commissioners under the city charter.⁸² He noted that, absent removal using the due process required in the charter, "no order of the mayor, though it were written, as the Koran, with a quill from a wing of the angel Gabriel, can remove him from office."⁸³ Yet another court, in adjudicating a ship accident case, suggested that blaming God for placing the rock that the ship's captain struck would be "a mahometan extension" of the phrase "act of God."⁸⁴

Occasionally, American judges commented on the fanciful or useless nature of the Qur'anic text.⁸⁵ In *United States v. Wong Chung*, a federal judge objected to the flimsiness of hearsay used by an immigration

⁷⁷ *Id.*

⁷⁸ *See, e.g., Nubby v. Scott*, 190 So. 911, 913 (Miss. 1939).

⁷⁹ *Id.* at 912–13.

⁸⁰ *Id.* at 913.

⁸¹ *Id.*; *see also* *Finley v. Aiken*, 1 Grant 83, 97 (Pa. 1854) (rejecting an analogy to English law on the basis that the statute being interpreted "has no more reference to the English law, or to the law of any other foreign state, than it has to the Mahometan religion").

⁸² *Callaghan v. McGown*, 90 S.W. 319, 320 (Tex. Civ. App. 1905).

⁸³ *Id.* at 327.

⁸⁴ *Fergusson v. Brent*, 12 Md. 9, 23 (1857).

⁸⁵ *See* *United States v. Wong Chung*, 92 F. 141, 143 (N.D.N.Y. 1899); *Steel Clad Bath Co. v. Mayor*, 77 F. 736, 738 (S.D.N.Y. 1896), *rev'd sub nom.* *Steel-Clad Bath Co. v. Davison*, 80 F. 904 (1897).

collector to deny a Chinese student entrance into the United States and complained that the hearsay was

“such stuff as dreams are made on,” and the collector could have justified his course as well by asserting that it was dictated by a communication from the spirit world, or that it was supported by the revelations of the Koran. No man whose brain is in a normal condition would regulate the most trivial affairs of life upon such information.⁸⁶

Likewise, in a bathtub patent infringement suit, Judge Coxe of the Southern District of New York pointed out that patent law would become ridiculous if an infringer’s slight design modifications could negate patent protection.⁸⁷ He noted that “[t]o inform an inventor that he has a valid patent and so construe it afterwards that it is of no more practical use than a page of the Koran, is neither a logical nor an equitable position for the court to assume.”⁸⁸

Courts also cited the Qur’an when demonstrating a clear non sequitur. Judge Masterson of the Supreme Court of Texas upheld a plaintiff’s right to sue on a debt payable in stock and stated that to cite to one particular case involving bribery “would be as logical and as appropriate to read a chapter from the Koran.”⁸⁹ Similarly, the Ohio Supreme Court decided that a Kentucky statute printed on a warehouse receipt had nothing to do with the legal status of the receipt and exaggerated that, “except to facilitate deception, that act had no more to do with the receipt than a chapter from the Koran.”⁹⁰ In New York, a plaintiff’s lawyer illustrated that the clerk of court could decide an answer’s validity by noting that “[i]f a writing, denying the existence of the Koran, or stating any other absurd or irrelevant matter, but sworn to . . . and called an answer, had been served,” then the clerk could rule that the defendant had not answered.⁹¹

The Qur’an played into *reductio ad absurdum* arguments in cases involving church and other property disputes.⁹² In the South Carolina case of *Harmon v. Dreher*, church congregational partners disagreed on

⁸⁶ 92 F. at 142–43; *see also* *McDonough v. First Nat’l Bank of Houston*, 34 Tex. 310, 318 (1871).

⁸⁷ *Steel Clad Bath Co.*, 77 F. at 738.

⁸⁸ *Id.*

⁸⁹ *McDonough*, 34 Tex. at 318.

⁹⁰ *Ensel v. Levy*, 19 N.E. 597, 600 (Ohio 1889).

⁹¹ *Phillips v. Prescott*, 9 How. Pr. 430, 431 (N.Y. Sup. Ct. 1854).

⁹² *See* *Hale v. Everett*, 53 N.H. 9, 30 (1868); *Harmon v. Dreher*, 17 S.C. Eq. (Speers Eq.) 87, 124 (1843).

the sect to which the church belonged.⁹³ The court attempted to show the absurdity of allowing a majority of the congregation to change the doctrinal stance of the congregation in contravention of its founding theology. The court posited:

Suppose a majority should next year spring up in favor of the Roman Catholic or Mohammedan Religion, and introduce auricular confession and indulgences, or the Koran, into this congregation, would not these defendants, however small a minority they might form, see and feel that their liberties were trampled on, by so gross a violation of the contract of association contained in their charter?⁹⁴

Similarly, a New Hampshire court suggested how silly it would be if a court could not enjoin a dissenting congregation from turning its meeting house into a “Mohammadan mosque,” synagogue, or even a place of public amusement.⁹⁵ And a South Carolina court suggested how “perverted” a charter might be “from its original design” if a “Jewish synagogue . . . were to be converted into a Turkish mosque.”⁹⁶

Among other examples, *Wilson v. Presbyterian Church of St. John’s Island and Wadmalaw* involved a trust to pay a “minister of the Gospel” who adhered to the “Westminster confession of faith.”⁹⁷ The court gave an example of when a judge might appropriately find that a pastor failed to adhere to “right doctrine.”⁹⁸ It would be an easy inquiry, the court suggested, “if the pastor had openly declared his disbelief in the Westminster confession of faith, and avowed his belief in the doctrines of the Koran and preached them to his congregation.”⁹⁹ So too, in considering the extent of Congress’ limited power to lay taxes, a Kansas Court of Appeals cited Justice Joseph Story’s *Commentaries on the Constitution of the United States* in noting that a tax for objects “wholly extrane-

⁹³ See 17 S.C. Eq. at 91, 96–98.

⁹⁴ *Harmon*, 17 S.C. Eq. at 124; see also *Klix v. Polish Roman Catholic St. Stanislaus Parish*, 118 S.W. 1171, 1176 (Mo. Ct. App. 1909) (quoting the passage from *Harmon*); *Trustees of the Organ Meeting House v. Seaford*, 16 N.C. (1 Dev. Eq.) 457, 459–60 (1830) (holding that, in a congregational schism case, the original congregation keeps the land, but noting that, “[w]hether the grantor would have any claim to it, in case the church were to become Mahometan or Pagan, or profess their belief in the heathen mythology, I am not now, nor shall I ever be called upon to give an opinion”).

⁹⁵ *Hale*, 53 N.H. at 30.

⁹⁶ *State ex rel Ottolengui v. Ancker*, 31 S.C.L. (2 Rich.) 245, 268–69 (1846).

⁹⁷ 19 S.C. Eq. (2 Rich. Eq.) 192, 192–93 (1846).

⁹⁸ *Id.* at 215.

⁹⁹ *Id.* at 217–18.

ous, (as, for instance, for propagating Mahometanism among the Turks . . .)” is beyond the taxing power of Congress.¹⁰⁰

The Mississippi Supreme Court further pressed the notion that Islam strays far from Christian or Jewish religions by illustrating when a diversion of a bequest—in this case, to a Greek school—would violate a testator’s intent.¹⁰¹ The Court described two examples that would go too far: a bequest by a Jew for “an assembly for reading the Jewish laws” would violate the testator’s intent if used to support a Christian preacher and chapel, or “a Moslem school for the instruction of Turkish girls in the principles of the Koran.”¹⁰² Though the gift was arguably within the cy pres construction of the will, “no one could for a moment pretend that that was what the testator meant.”¹⁰³

Occasionally, courts attempted to suggest a gulf between Qur’anic and common legal and religious principles. Perhaps the highest profile example is Justice Frankfurter’s U.S. Supreme Court citation of John Quincy Adams’s address celebrating the fiftieth anniversary of Washington’s inauguration to explain the founding fathers’ views on international relations with non-Christian nations.¹⁰⁴ President Adams contrasted the Christian view of the state of nature as “a state of peace” with the “Mahometan law of nations, which considered the state of nature as a state of war—an Asiatic law of nations, which excluded all foreigners from admission within the territories of the state”¹⁰⁵ In *Dainese v. United States*, one of a number of cases involving the rights of “Christians residing or traveling in Mohammedan countries,” the court

¹⁰⁰ Kan. Gas & Elec. Co. v. City of Independence, 79 F.2d 32, 39 (10th Cir. 1935) (quoting 2 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 382 (1st ed. 1833)).

¹⁰¹ Nat’l Bank of Greece v. Savarika, 148 So. 649,650, 654 (Miss. 1933).

¹⁰² *Id.*

¹⁰³ *Id.*; see also *Denson v. Beazley*, 34 Tex. 191, 202–03 (1871). As another odd example, see *Pelton v. Ward*, where the Supreme Court of New York noted that it would not be slanderous to call someone a “Mahometan, or a jacobin.” 3 Cai. 73, 79–80 (N.Y. Sup. Ct. 1805) (Livingston, J., dissenting). In *In re Taylor’s Estate*, the court decided that the American Bible Society (ABS) is not an institution incorporated only for purposes of public charity simply because it distributes sectarian King James Bibles. See 40 N.E.2d 936, 937–38 (Ohio 1942). The Court attempted to illustrate the absurdity of the ABS’s view that it is a public charity by suggesting that, if the distribution were of the Koran or the teachings of Buddha or Confucius, the non-existence of a public charity would be obvious notwithstanding the relationship between religion, morality, and knowledge, values that are necessary for good government. See *id.* at 938. But see *Executors of Joseph Burr v. Smith*, 7 Vt. 241, 283 (1835) (noting the right of denominations, including Mahometans, to associate and be equally protected in building their houses of worship).

¹⁰⁴ See *Reid v. Covert*, 354 U.S. 1, 58 n.8 (1957) (Frankfurter, J., concurring).

¹⁰⁵ *Id.*

noted the “radical distinction between Mohammedanism” and Western legal systems grounded in “Roman law and Christian civilization.”¹⁰⁶ One New York Court of Appeals judge, dissenting in *Marshall v. Moseley*, attempted to explain why the history of English law on the respective rent rights of a life tenant and a remainderman was not binding on American courts. The judge opined that English property law is as incompatible with American social and political values “as many of the maxims of the Koran are with the genius of Christianity.”¹⁰⁷ A New Jersey chancellor similarly suggested that the religious difference between “the pagan, the mahometan, the christian, and the Jew, is radical and irreconcilable.”¹⁰⁸

On the other hand, a few courts attempted to show respect for Muslims and Islam, although sometimes they did so almost backhandedly. As one consistent theme of respect, courts noted the sincere and steadfast adherence of Muslims to the Qur’an as the binding principle of their lives. For example, in *Dainese*, the court acknowledged the Islamic view that “the Koran [is] the only source of human legislation and the only law for the government of human affairs”¹⁰⁹ Similarly, the Kentucky Court of Appeals suggested that an attack on a state political convention decision would be “as if the Mohammedan should doubt the Koran”¹¹⁰ Other courts used the Qur’an as a metaphor for the common law when noting an English judge’s reliance on Blackstone’s Commentaries, which were “believed to be as unchanged and unchangeable as the Koran.”¹¹¹ Perhaps the most backhanded attempt to praise the Qur’an occurred in *Ellis v. Newbrough*, where a fallen-away “Faithist” attempted to sue his religious community for luring him in and taking his property.¹¹² In finding that the convert was not deceived, the court compared the sacred writings of this cult to the Qur’an and the Pilgrim’s Progress, which “deal[] largely in figures and tropes and

¹⁰⁶ 15 Ct. Cl. 64, 71 (1879).

¹⁰⁷ *Marshall v. Moseley*, 21 N.Y. 280, 281–92 (1860) (Clerke, J., dissenting).

¹⁰⁸ *Hendrickson v. Shotwell*, 1 N.J. Eq. 577, 674 (1832). The Court went on to note that the Christian and Jew “worship the same God; but one approaches him through a Mediator, whom the other regards as an imposter; and hence, there can be no communion or fellowship between them.” *Id.*

¹⁰⁹ 15 Ct. Cl. at 71.

¹¹⁰ *Cain v. Page*, 42 S.W. 336, 337 (Ky. Ct. App. 1897); see also *Twombly v. Smith*, 55 P. 254, 259 (Colo. 1898) (quoting *Cain*, 42 S.W. at 337).

¹¹¹ *Merrick v. Giddings*, 11 D.C. (MacArth. & M.) 55, 64 (1879). This passage is quoted in *Berlet v. Weary*, 93 N.W. 238, 240 (Neb. 1903).

¹¹² 27 P. 490, 490 (N.M. 1891).

allegories. But, read in the light of modern sciences, they are beautiful in their very simplicity.”¹¹³

In terms of how the courts believed that Islam was viewed in American social life in this period, one of the most painful cases—reminiscent of the argument made in *Palmore v. Sidoti*—is also one of the most recent.¹¹⁴ In *In re Wing*, a mother who converted to Islam applied to change both her daughter’s name and her own to Islamic names so that her child could fit in with other Muslims with whom she attended religious school.¹¹⁵ In rejecting the request for the child’s name to be changed using the best interest of the child standard, the court noted:

[S]uch change may have an adverse effect. This child has other family ties. She attends public school. She was born in this country and is a citizen thereof. While the mother may choose a religion and a name to suit her own purposes, she should not be permitted to adopt, with the court’s approval, a name for her infant daughter that will set her apart and seem strange and foreign to her schoolmates and others with whom she will come in contact as she grows up.¹¹⁶

B. *What Courts Knew (or Thought They Did) About Islamic Law*

Most commonly, when American courts in this period attempted to describe substantive Islamic law, they focused on usury and domestic relations. There were, however, isolated discussions on a few other issues such as the prohibition of alcohol and the responsibility for ablution (washing) before prayer.¹¹⁷ As might be expected, courts cited the Islamic laws on usury and temperance favorably, while considering Islamic

¹¹³ *Id.* at 493.

¹¹⁴ See 466 U.S. 429, 433 (1984). In *Palmore*, the Supreme Court decided that a change of custody could not be based on the social stigma a child might suffer when her white mother married an African-American man. See *id.*

¹¹⁵ 157 N.Y.S.2d 333, 334–35 (City Ct. 1956).

¹¹⁶ *Id.* at 335–36. The Court gave the mother leave to renew her petition when the child was sixteen and old enough to decide for herself what name she wanted. See *id.* at 336. But see *Pelton*, 3 Cai. at 79–80 (Livingston, J., dissenting) (noting that it would not be libelous to call someone a “Mahometan, or a jacobin”).

¹¹⁷ See *Harmon v. Dothan Nat’l Bank*, 64 So. 621, 624 (Ala. 1914); *infra* notes 128–129 and accompanying text. The court likened a mortgage foreclosure to Muslim worship, noting “the mortgagee need not, before approaching the auction block, cleanse his heart of all covetousness, as the pious Mussulman cleanses his body before entering a mosque.” *Id.*

law on polygamous marriage, like the similar Mormon views, scandalous.

There are a fair number of cases that referred to Islamic law in discussing usury, though courts were not clear about the nature of the prohibition. Traditionally, Islamic law prohibited the lending of money with unjustified increase (*riba*), ambiguity (*gharar*), or risk.¹¹⁸ The American courts of this period were not sure whether Islamic law prohibited any interest or only excessive interest but, in any case, cited Islamic law as a ground for upholding public policy against usury, even when there was no prohibitory statute. A later example where the court cited *Corpus Juris* is *State ex rel Embry v. Bynum*, in which Alabama attempted to shut down a loan shark business:

It seems that the taking of interest for the loan of money, or at least taking excessive interest, has been regarded with abhorrence from the earliest times. We are told that such usury was prohibited by the early laws of the Chinese and Hindus, and by the Koran. The Mosaic law prohibited the Jews from exacting interest on loans to their brethren, but permitted interest to be taken from Gentiles.¹¹⁹

A New Hampshire court mentioned the Qur'an along with the Old Testament, Aristotle, "and the *Ancient Fathers*" in condemning inflexible or oppressive rates of interest.¹²⁰ For some courts, these similarities were surprising—a dissenting judge in a Kentucky prosecution felt compelled to note that it is "a little singular" that the Roman and European laws against usury "have been raised in the laws of China, in the Hindu Institutes of Menu, [and] the Koran of Mahomet . . ."¹²¹

¹¹⁸ See Ali Adnan Ibrahim, *The Rise of Customary Businesses in International Financial Markets: An Introduction to Islamic Finance and the Challenges of International Integration*, 23 AM. U. INT'L L. REV. 661, 664 (2008).

¹¹⁹ 9 So. 2d 134, 139 (Ala. 1942) (quoting 66 C.J. Usury § 5 (1934)) (noting that the policy is also supported by divine authority, namely Exodus 22, as well as Athenian, Roman, European, and English law); see also *Sherwood v. Roundtree*, 32 F. 113, 124 (S.D. Ga. 1887) (citing the Qur'anic rule against usury along with Chinese, Hindu, and "the laws of all nations that we know of"); *Willis v. Buchman*, 199 So. 892, 896 (Ala. 1940); *Dunham v. Gould*, 16 Johns. 367, 376–77 (N.Y. 1819) (citing the Qur'anic rule against usury along with Chinese, Hindu and "the laws of all nations that we know of" except for the Athenian Republic); *Winstel v. American Loan Co.*, 30 Ohio N.P. 537, 539 (1933); *Wessel v. Timberlake*, 116 N.E. 43, 46 (Ohio 1916) (citing similar laws as well as Abraham Lincoln); *Wheeler v. Remedial Loan Co. of Phila.*, 25 Pa. D. 793, 796 (1916).

¹²⁰ See *Houghton v. Page*, 2 N.H. 42, 45 (1819).

¹²¹ *Commonwealth v. Donoghue*, 63 S.W.2d 3, 6–7 (Ky. Ct. App. 1933) (quoting *Dunham*, 16 Johns. at 376).

By contrast, when courts discussed women's issues, they sorted into those that understood Muslim women's marital situation to be tyrannical and backward, and those that favorably compared women's rights in Islam, albeit with insulting language.¹²² On one hand, the New York Chancery Court rejected a consensual divorce by noting that, to find legal authority for a "dangerous relaxation of the marriage tie" not "tolerated among the Christian nations," one must "go, in search of such loose notions of the obligation, to the half-civilized people of *Asia*, where polygamy prevails" and there is "an almost unlimited freedom of divorce."¹²³ And Chief Justice Merrick of the Louisiana Supreme Court, dissented in a choice-of-law case about the inheritance rights of an out-of-wedlock child by noting that "[t]he child of the fourth wife of the Mohamedan, and the child perhaps of the thirtieth wife of the Mormon, have the *status* of legitimacy in their own countries" but not in the United States.¹²⁴

On the other hand, a couple of courts remarked on the relatively enlightened Islamic view of women's rights in inheritance. In *Young v. Newsom*, the court compared the common law's unjust assumption that men owned their wives' property, making wives their "chattel," with a relatively more enlightened view protecting even "those [women] living in semicivilized countries under the domination of the Koran."¹²⁵ Less insultingly, at least to Muslims, the New Hampshire Superior Court noted that marriage is a civil and not religious institution, as recognized by "every religion, whether pagan, mahometan, jewish, or christian."¹²⁶

¹²² See *Van Veghten v. Van Veghten*, 4 Johns. Ch. 501, 503 (N.Y. Ch. 1820); *Young v. Newsom*, 104 S.E. 660, 661 (N.C. 1920) (Clark, J., concurring).

¹²³ *Van Veghten*, 4 Johns. Ch. at 502–03 (citing Sale's *Koran* and other English translations of foreign laws); see also *In re Estate of Nakuapa*, 3 Haw. 342, 352 (1872) (Hartwell, J., dissenting) (remarking on the more common adoption of heirs "in eastern countries where plurality of wives is allowed, [and] where a laxity in the marriage tie exists").

¹²⁴ *Scott v. Key*, 11 La. Ann. 232, 241 (1856) (Merrick, C.J., dissenting); see also *Royal v. Cudahy Packing Co.*, 190 N.W. 427, 427–28 (Iowa 1922) (granting a worker's compensation award to a citizen of the Ottoman Empire, even though she was married "according to Mohammedan law," because her marriage was not polygamous—but noting that Muslims were permitted to have up to four wives).

¹²⁵ 104 S.E. at 661 (Clark, J., concurring); see also *Crowell v. Crowell*, 105 S.E. 206, 210 (N.C. 1920).

¹²⁶ *Town of Londonderry v. Town of Chester*, 2 N.H. 268, 278 (1820); see also *State v. Fry*, 4 Mo. 120, 142 (1835) (noting that unlike the Romans and Turks, the Jews, the pagans, Greeks, and "Mahometans" permitted only one kind of divorce). Another interesting case involving interreligious prejudice is *Kupau v. Richards*, in which an elder of the Church of Latter Day Saints who was denied a tax exemption for Christian clergymen admitted that his church believed in the New Testament and polygamy but denied that he was "a Mohammedan" or "accept[ed] the Koran." See 6 Haw. 245, 245–46 (1879).

The court, however, did go on to disparage the opposing Catholic view of marriage as a sacrament, describing it as “one of the corruptions of popery.”¹²⁷

One can also find singular references to courts’ views of other Islamic legal rules. The Indiana Supreme Court, holding that a law prohibiting alcohol was unconstitutional, noted that “*Mahomet*” was the first to prohibit alcohol as “part of his religious creed” while Jewish and Christian communities forbade only excessive drinking.¹²⁸ Since this “law of *Mahomet*” was not “adopted by civilized nations” until recent times, the Indiana court considered it inapposite to the law’s constitutionality.¹²⁹

In the area of real property, the courts opined on Islamic law in ways that reflect both respect and prejudicial ignorance. As an example of the former, in justifying the Fifth Amendment’s rule against deprivation of private property for public use, three different state courts narrated the story of the Sultan Mustapha.¹³⁰ According to the story, Mustapha complied with his Mufti’s pronouncement that he could not simply take the property of a Jew to build a mosque and must pay him full rent, because the Prophet held that private property was sacred.¹³¹

The Maryland Court of Appeals resolved an inheritance matter—in which family members died together in a flood—by referring to Roman and French law, as well as “the Mahometan law of India” which presumes that all relatives who die together die “at the same moment.”¹³² On the other hand, Justice Campbell referred to Islamic waqf (or “vakuf,” as he spelled it) law that he claimed leaves three quarters of all property under dead-hand control and fails to contribute to public welfare.¹³³ This is because property owned by mosques and charities is not alienable except on behalf of the “Uelmas [who] are both priests and

¹²⁷ *Town of Londonderry*, 2 N.H. at 278.

¹²⁸ *Herman v. State*, 8 Ind. 545, 550, 556–57 (1855).

¹²⁹ *Id.* An appellant in a U.S. Supreme Court similarly referred to the Islamic prohibition against alcohol in upholding state liquor restrictions under the Commerce Clause. *Fletcher v. Rhode Island*, 46 U.S. 504, 542, 546 (1847).

¹³⁰ See *Newby v. Platte County*, 25 Mo. 258, 261–62 (1857); *Lindsay v. Commissioners*, 2 S.C.L. (2 Bay) 38, 60 (1796) (Waties, J., concurring); *Whidbea White v. Nashville & Nw. R.R. Co.*, 54 Tenn. 518, 537 (1872).

¹³¹ *Newby*, 25 Mo. at 261–62.

¹³² *Cowman v. Rogers*, 21 A. 64, 65 (Md. 1891); see also *In re Estate of Nakuapa*, 3 Haw. at 353 (noting that the English permitted “Mohamedan, Hindoo and Gentoo” inheritance law to be retained alongside English law in India) (Hartwell, J., dissenting).

¹³³ *Dodge v. Woolsey*, 59 U.S. 331, 370 (1855) (Campbell, J., dissenting); *Matheny v. Golden*, 5 Ohio St. 361, 399–400 (1856) (Bartley, C.J., dissenting) (quoting *Dodge*, 59 U.S. at 370).

lawyers,” not unlike the oppressive corporations in Ohio.¹³⁴ Islam also entered the discussion of validity of a slavery contract when a Massachusetts appellate court remarked that both “*Mahometans*” and Christians have held “that the whole race of infidels might rightfully be reduced, by fire and sword,” to slavery, “to the disgrace of human nature.”¹³⁵

C. *Religious Equality for Islam in America*

By far the most common references to Islam occurred in church and state cases, in which courts adjudicated claims that state law preferred the Protestant or Christian religion over others. As a general rule in these cases, courts stressed the equality of the Muslim faith before the law, even in those cases where they ultimately decided that a preference for the Protestant religion is constitutional. For example, in *Perry v. Commonwealth*, the General Court of Virginia pronounced the ringing protections of the Virginia Bill of Rights:

Declaring to the Christian and the Mahometan, the Jew and the Gentile, the Epicurean and the Platonist, (if any such there be amongst us,) that so long as they keep within its pale, all are equally objects of its protection; securing safety to the people, safety to the government, safety to religion; and (leaving reason free to combat error) securing purity of faith and practice far more effectually than by clothing the ministers of religion with exclusive temporal privileges¹³⁶

Perhaps the oddest attempt to declare the equality of all religions is found in *Herold v. Parish Board of School Directors*.¹³⁷ In surveying the various versions of the Bible—such as the King James, Douai, and Luther Bibles—the court also added “the Rabbinical Bible” and “the Koran, often called the Mohammedan Bible.”¹³⁸ Although recognizing variations among these “bibles,” the court determined that it was not within its province to describe the differences but that they were immaterial to the controversy.¹³⁹

The most frequent declaration of the equality of Muslims during these years came in oath cases, in which atheists challenged refusals to admit their testimony in court. In these cases, the courts generally

¹³⁴ *Dodge*, 59 U.S. at 370.

¹³⁵ *Greenwood v. Curtis*, 6 Mass. (5 Tyng) 358, 365–66 (1810).

¹³⁶ 44 Va. (3 Gratt.) 632, 642 (1846).

¹³⁷ 68 So. 116, 117 (La. 1915).

¹³⁸ *Id.*

¹³⁹ *See id.*

ruled, in accordance with English law, that “infidels who do not believe in a God, or if they do, do not think that he will either reward or punish them in the world to come, cannot be witnesses . . . because an oath cannot possibly be any tie or obligation upon them.”¹⁴⁰ Unlike atheists, however, “Mahometans” believe in rewards and punishments in the afterlife, and therefore, “may be sworn on the *Koran*,” just as Jews may be sworn on the Pentateuch and other religions with concepts of the afterlife may be sworn according to their customs.¹⁴¹

The most ringing yet still derogatory defense of the rights of Muslims and other non-Christians comes in cases adjudicating blasphemy.¹⁴² In *State v. Chandler*—a case that rings familiar in the modern era regarding controversy about riots provoked by insults to the Prophet Mohammad—the court considered whether a defendant may be convicted for saying that the virgin Mary was a whore and Jesus Christ a bastard.¹⁴³ In a lengthy historical discursus distinguishing the right of the individual not to be punished for blasphemy because of honest views and the right of the state to punish someone whose malicious blasphemy causes potential civil unrest, Chief Justice Clayton of the Delaware General Sessions Court posed an extended hypothetical involving both Muslims and Jews.¹⁴⁴

What if, the court suggested, the majority of Delaware citizens should adopt the Jewish or Mahometan religion? What if the Christian should proclaim “the religion of Mahomet, or the impostures of Joe

¹⁴⁰ *Tuttle v. Gridley*, 18 Johns. 98, 103 (N.Y. Sup. Ct. 1820) (emphasis omitted); see also *Atwood v. Welton*, 7 Conn. 66, 69 (1828); *Perry*, 44 Va. at 638.

¹⁴¹ *Tuttle*, 18 Johns. at 103; see also *United States v. Miller*, 236 F. 798, 799–800 (W.D. Wash. 1916) (noting that a Gentoo is sworn by touching his hand to the foot of a Gentoo priest, and a Chinese person by breaking a china saucer); *Atwood*, 7 Conn. at 69, 85 (noting that Mahometan and Jewish “ideas of a future state are . . . very indistinct and loose” and that a person’s reputation for truth is a more reliable test for a witness than his faith, because a Christian will not have any confidence “in the testimony of a *Mahometan*, who believes that paradise is his inevitable portion”); *Cent. Military Tract R.R. Co. v. Rockafellow*, 17 Ill. 541, 553–54 (1856); *Gill v. Caldwell*, 1 Ill. 53, 53–54 (1822); *People ex rel Bryant v. Zimmerman*, 150 N.E. 497, 499 (N.Y. 1926) (quoting Webster’s dictionary for the definition of a promissory oath as “a solemn appeal to God, or, in a wider sense, to some superior sanction or a sacred or revered person (as . . . the *Koran* . . .) in witness of the inviolability of a promise or undertaking”); *Thurston v. Whitney*, 56 Mass. 104, 109–10 (1848) (suggesting that the belief in the obligation of an oath is the correct test for witness competency, rather than a witness’s religion); *Commonwealth v. Kipnis*, 26 Pa. D. 927, 932 (1917); *Arnold v. Estate of Arnold*, 13 Vt. 362, 367–68 (1841) (noting that a mahometan may feel his oath “as binding upon his conscience, as the most devout Christian”).

¹⁴² See *State v. Chandler*, 2 Del. (2 Harr.) 553, 568 (1837).

¹⁴³ See *id.* at 553; Robert A. Kahn, *Flemming Rose, The Danish Cartoon Controversy, and the New European Freedom of Speech*, 40 CAL. W. INT’L L.J. 253, 260–63 (2010).

¹⁴⁴ See *Chandler*, 2 Del. (2 Harr.) at 566–72.

Smith, . . . forsak[ing] the faith of their forefathers for such miserable delusions?"¹⁴⁵ While the right of the individual to change religion is preserved by the Constitution, the court asked whether anyone could doubt that a statute punishing those who maliciously and loudly revile or ridicule the Prophet in public, calling him a bastard and his mother a whore, would be constitutional.¹⁴⁶ Would the people have to suffer the insult of a man who would "gibbet[] the image of the prophet in view of the public, or burn . . . the koran by the hands of the common hangman?"¹⁴⁷ The court concluded not, suggesting that the state may either punish all blasphemers, including those who insult the faith of minority Muslims, or none at all.¹⁴⁸

Sometimes courts invoked the legal equality of Muslims when determining the constitutionality of statutes allegedly establishing Christian or Protestant religions, although these opinions rarely found an establishment or equality violation.¹⁴⁹ For example, in *Caldwell v. State*, a defendant brought a habeas corpus action after his conviction for working on Sunday in violation of Nebraska's blue laws.¹⁵⁰ His lawyer unsuccessfully claimed that the law discriminated against minority religions, particularly Muslims who have to observe both Friday and Sunday as their days of rest, while Jews and Seventh Day Adventists were given an

¹⁴⁵ See *id.* at 571.

¹⁴⁶ See *id.* at 568.

¹⁴⁷ See *id.* at 569.

¹⁴⁸ See *id.* at 579. *People v. Ruggles* is another blasphemy case, in which the defendant's lawyer claimed that the Constitution requires toleration of all religious opinions and permits only punishment of licentious conduct. See 8 Johns. 290, 291–92 (N.Y. Sup. Ct. 1811). Chief Justice Kent, responding to the argument, noted that such profane scoffing, like obscenity, injures the morals of children and violates decency and good order. *Id.* at 294–95. Also note *Commonwealth v. Kneeland*, where the court rejected the defendant's argument that the Constitution permits Muslims to ridicule the Christian religion and vice-versa, and held that the defendant may be punished for impairing the veneration due to God with an injurious intent. See 37 Mass. (20 Pick.) 206, 210, 225 (1838). The dissent noted that the state Bill of Rights protects the right of "all who believe in the existence of God, as well Jews, Mahometans and Deists, as Christians of every denomination. But clearly does not include atheists." *Id.* at 233 (Morton, J., dissenting).

¹⁴⁹ See *Caldwell v. State*, 118 N.W. 133, 135 (Neb. 1908). Two outlier cases involve Christian congregations that sued their neighbors for not ceding land to them for church extensions. See *Parish v. Municipality No. 2*, 8 La. Ann. 145, 145–47 (1853); *Hills v. Miller*, 3 Paige Ch. 254, 254–55 (N.Y. Ch. 1832). The courts noted that displaying a preference for churches over property owners "would render it equally proper for the Court to disregard [property owners' rights] if the object of the defendants was to erect a 'Hall of Science,' or a Turkish Mosque." See *Parish*, 8 La. Ann. at 157 (quoting *Hills*, 3 Paige Ch. at 258–59).

¹⁵⁰ See 118 N.W. at 134.

exemption, permitting them to work Sunday if they take off Saturday.¹⁵¹ Making an assumption-of-risk argument, the court noted:

We doubt very much whether there were any disciples of Mahomet in Nebraska in 1873, and those who have emigrated to Nebraska since that day came here with full knowledge of the Sunday statute, and their appearance in our commonwealth will hardly render unconstitutional and void an act of the Legislature that theretofore was valid.¹⁵²

The Massachusetts Supreme Judicial Court, on similar reasoning, distinguished between the constitutional freedom of religious worship and opinion—granted to all including Muslims—and the teaching of Protestant Christianity which can be supported by the state.¹⁵³

Similarly, in a few cases where taxpayers challenged the reading of scriptures in public schools, courts dismissed the notion that this reading impermissibly favored the Christian religion.¹⁵⁴ A Michigan court spoke for others in arguing that the use of the Bible as a reading text does not violate religious belief any more than if a “chapter of the Koran might be read,” which “would not be an affirmation of the truth of Mohammedanism, or an interference with religious faith.”¹⁵⁵

¹⁵¹ See *id.* at 135.

¹⁵² *Id.* The Court also notes that Muslims can choose between Saturday and Sunday to work, just like everyone else. *Id.*; see also *City Council of Charleston v. Benjamin*, 33 S.C.L. (2 Strob.) 508, 525 (1846) (noting that while the state constitution abolished religious disabilities, so that “the Christian, Israelite, Mahometan, Pagan and Infidel, all stand alike,” the decisions of non-Christians to take a day other than Sunday off for work was not caused by the Sunday closing law but their own religion, and they must obey the law if they want to enjoy its benefits).

¹⁵³ *Barnes v. Inhabitants of the First Parish in Falmouth*, 6 Mass. 400, 407 (1810).

¹⁵⁴ See *Pfeiffer v. Bd. of Educ.*, 77 N.W. 250, 252–53 (Mich. 1898); see also *Minersville Sch. Dist. v. Gobitis*, 310 U.S. 586, 593 (1940) (recognizing that individual convictions and the “[p]ropagation of belief . . . [are] protected, whether in church or chapel, mosque or synagogue, tabernacle or meeting-house”). An interesting historical note—in one of the landmark Bible reading cases, *Schempp v. School District of Abington Township*, the district court noted that Ellory Schempp, the complaining student, displayed his objection to his school’s Bible reading and Lord’s Prayer rituals by silently reading a copy of the Koran. See 177 F. Supp. 398, 400–01 (E.D. Pa. 1959); see also *Oliver v. Saint Germain Found.*, 41 F. Supp. 296, 296, 299 (S.D. Cal. 1941) (deciding a copyright infringement suit against a defendant who argued that the text was given to him from spiritual entities, like the Book of Mormon, the Qur’an, and the Bible); *Trs. of Columbia Univ. v. Jacobsen*, 148 A.2d 63, 66 (N.J. Super. Ct. App. Div. 1959) (discussing a deceit counterclaim by a university student sued for tuition based on failure of Columbia University to teach him wisdom as promised, where the student quoted from the Koran and other ancient texts to define wisdom).

¹⁵⁵ See *Pfeiffer*, 77 N.W. at 253; accord *Donahoe v. Richards*, 38 Me. 379, 399 (1854); *State ex rel Freeman v. Scheve*, 93 N.W. 169, 171 (Neb. 1903); see also *Evans v. Selma Union High Sch. Dist.*, 222 P. 801, 803 (Cal. 1924) (permitting the King James version of the Bi-

Finally, Muslims were mentioned as equal citizens occasionally in challenges to taxes or tax-exempt status. In *Executors of Joseph Burr v. Smith*, the court noted the right of denominations, including “Mahometans,” to associate and be equally protected in building their houses of worship.¹⁵⁶ Similarly, in *Turpin v. Locket*, which determined the constitutionality of a public takeover of formerly established church lands, the court noted that religious freedom would not stop the legislature from permitting the majority of persons in a parish to choose their sect, even if they chose the “mahometan” religion.¹⁵⁷

CONCLUSION

Although cases from the nineteenth and early twentieth centuries give only tantalizing hints of the views of U.S. judges about Muslims and Islam at the time, three common themes do emerge. First, Islam is seen as a “non-American” religion, one that most judges cannot contemplate any American adhering or converting to, unless he is already a Muslim immigrant. Indeed, some American judges seem to take a peculiar delight at poking fun at “Mohammadans” and their exotic views, often times with gratuitous comments.

Second, some courts find that Islamic or Ottoman law presents a valuable comparative perspective when they are attempting to show that a legal principle enjoys world-wide approval, such as the protection of private property or the moral odiousness of usury. That respect, however, does not extend to what some judges understood to be the Islamic law of marriage, although others did recognize that Islamic law protects women better than English common law in some property matters.

Third, despite their portrayal of the Islamic religion as “other” than American, the courts felt it necessary to repeat the principle that Muslims are entitled to and receive religious liberty just like Jews, Christians, and all others. Indeed, they affirmed the principle even when justifying

ble to be purchased for the school library over an objection that it was sectarian, and noting that the library may already have copies of the Koran, as well as the Talmud, the Douia Bible, or Confucius’s teachings).

¹⁵⁶ See 7 Vt. at 242. Two curious cases are *In re McReynolds* and *In re Scottish Rite Building Co.*, in which the courts adjudicated appeals relating to tax-exempt status sought by Masons. See *In re McReynolds*, 1 B.T.A. 815, 820 (1925); *In re Scottish Rite Bldg. Co.*, 182 N.W. 574, 577 (Neb. 1921), *overruled by* *Ancient & Accepted Scottish Rite of Freemasonry v. Bd. of Cnty. Comm’rs*, 241 N.W. 93 (Neb. 1932). The courts distinguished ethical teachings from those of belief in a particular religion, referring to a “Mohammedan’s” required belief in the Koran. See *In re Scottish Rite Bldg. Co.*, 182 N.W. at 577; *accord In re McReynolds*, 1 B.T.A. at 820.

¹⁵⁷ See *Turpin v. Locket*, 10 Va. 113, 113–14, 151–52 (1804).

practices such as giving state tax dollars to Christian institutions, Christian prayer and Bible reading in schools, and Sunday blue laws.

The views expressed by the courts about Muslims and Islamic law during the nineteenth and early twentieth centuries thus track common American stereotypes during this period, albeit they are somewhat less virulent and occasionally more respectful than the average American's expressed views. It would be valuable to discover whether judicial views influenced social decisions, including Christian Americans' decisions about how to interact with Muslims, or Muslims' views about the extent to which they had to conceal their religious identities.

