

The Guardian's Report

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HATRED UN-MOSQUED

- *Central Question of Ground Zero Mosque is Government Power over Private Property.*
- *Freedoms of Speech and Religion Include the Freedom to be Proud and Offensive Even if Other People Don't Like It*
- *Other Americans Free to Hate Muslim Triumphalism*

by Dovid Z. Schwartz.

Event: The New York City Landmarks Commission rejected a bid this week requesting the granting of Landmark status that would block demolition of a building in downtown Manhattan slated to house a new \$100 M mosque and Islamic cultural center. Critics of the mosque said it should not be built on the space two blocks from where Muslim terrorists destroyed the World Trade Center, perhaps the largest terrorist attack on U.S. soil.

Outcome: Positive. The decision limits government power that would threaten to erode the constitutional pillars of 1) freedom of private property, 2) freedom of speech, and 3) freedom of religion.

Overview of Analysis: Efforts by "liberals" to defend the rights of the Cordoba Initiative by praising its "tolerant" or "moderate" face of Islam implicitly endorse the unsavory notion that religion and private property might be abridged if the government doesn't like ideas that are "extremist" or "intolerant." Misplaced faith in tolerance also glosses over potential security

concerns raised by the group's imam and potential affiliations with foreign governments hostile to the United States.

Efforts by "conservative" opponents to block the mosque's construction through erecting legal hurdles are tantamount to calls for arbitrary use of government power to squelch unpopular speech and religion.

This Report will evaluate claims advanced in support and against the building of the mosque near ground zero.

Position 1 (Pro): "AN APPROPRIATE FIT FOR GROUND ZERO... MODERATE MUSLIMS SHOULD BE ENCOURAGED."

Several journalists stood up in defense of the Ground Zero mosque with the claim that the people at the Cordoba Initiative are nice Muslims, not extremist Muslims.

THE ATLANTIC MONTHLY stated, "I know the people who run the initiative... and I came to understand that the organization is interested mainly in battling extremism within Islam, and in building bridges to non-Muslim faiths. It seems to me that its mission makes Cordoba an appropriate fit for Ground Zero. One of the ways to prevent future Ground Zeros is to encourage moderation within Islam, and to treat Muslim moderates differently than we treat Muslim extremists." ("Peace-Seeking Muslims Should Refudiate Sarah Palin," by Jeffrey Goldberg)

TIME MAGAZINE stated, "Park51's main movers, Imam Feisal Abdul Rauf and his wife Daisy Khan, are actually the kind of Muslim leaders that rightwing commentators fantasize about: modernists and moderates who openly condemn the death-cult of al-Qaeda and its adherents... Since 9/11, Western 'experts' have said repeatedly that Muslim leaders who fit Rauf's description should be sought out and empowered, to fight the rising tide of extremism." ("The Moderate Muslims Behind the 'Ground Zero Mosque,'" by Bobby Ghosh, Time, Tuesday, August 3, 2010.)

Analysis: There might be peace loving Muslims out there, and the Cordoba Initiative planners might really be peace loving as well. But by focusing solely on the peaceful message of the Cordoba Initiative completely ignores the public perception that location was either motivated by, or may come to stand for, a deliberate statement of defiance and provocation.

The fact is, whether the planners are moderate or peace loving is irrelevant. Even if these people are lying, bloodthirsty maniacs, there should be nothing preventing them from building this mosque. To defend the Cordoba Initiative solely because they say they are peace-loving eclipses the importance of fundamental rights of 1) private property, 2) freedom of speech and 3) freedom of religion.

Position 2 (Con): "AN IDEOLOGICAL QUESTION ... AN ISLAMIC CULTURAL AND POLITICAL OFFENSIVE." *National attention to the issue was sparked by conservative personalities voicing opposition to Cordoba Initiative, because the mosque would encroach on the power of Ground Zero as a symbol. One specific plan was advanced to go beyond designating the site as a "landmark" and use other avenues of government power to stop the building of the mosque.*

CANDIDATE FOR GOVERNOR OF NEW YORK CARL PALADINO suggested that if elected governor, he would employ the government's power of eminent domain to seize the site of the proposed mosque. Mr. Paladino said that while he is aware that Federal Land Use laws prohibit government entities from using zoning rules to stop the construction of a house of worship, he knows of a loophole that would permit the property to be seized through the power of eminent domain. "I've been driving land-use issues for 40 years, and I understand the full powers of the governor... A mosque would be unacceptable. This is an ideological question, not a freedom of religion issue." He proposed turning the site into a war memorial "instead of a monument to those who attacked our country." ("Candidate has Plan to Stop Mosque," by Casey Seiler, Albany Times Union, July 23, 2010.)

CONGRESSMAN NEWT GINGRICH, former Speaker of the House from Georgia, wrote, "There should be no mosque near Ground Zero in New York so long as there are no churches or synagogues in Saudi Arabia... 'Cordoba House' is a deliberately insulting term. It refers to Cordoba, Spain – the capital of Muslim conquerors who symbolized their victory over the Christian Spaniards by transforming a church there into the world's third-largest mosque complex... America is experiencing an Islamist cultural political offensive designed to undermine and destroy our civilization. Sadly, too many of our elites are the willing apologists for those who would destroy them if they could."

Analysis: Government seizure of private property is possibly one of the biggest objections to liberal use of government power. It's strange and shocking to see serious political candidates and respected commentators who identify themselves as "conservatives" feeling perfectly comfortable to unleash the full force of naked government power to take property away from people they just don't like or find offensive. The proposal to declare a building a "landmark" simply as a subterfuge to block an unwanted religious or political statement would fall into an excessive use of government power violating the freedom of personal property.

Journalists and commentators across the U.S. might think of Ground Zero as "sacred ground" or a memorial. But downtown Manhattan is not a state park, it's not a military base, and it's not a state or Federal office complex. The vast majority of buildings downtown are privately owned, including "Ground Zero" itself. Should the leaseholder of the World Trade Center, for example, decide to erect a statue of Osama Bin Laden in the place where the Twin Towers fell, there should be no government power stopping him. That's called private property, just as strong a reason for the American Revolution to have taken place as the desire for religious freedom.

Position 3 (Pro): "AMERICA STANDS FOR TOLERANCE AND OPENNESS." *The project was defended on the grounds that just precisely this shocking religious statement standing*

nearby Ground Zero is a testament to the strength of the tolerance for different religions which New York City and the United States stand for.

NEW YORK CITY MAYOR MICHAEL BLOOMBERG said, (in his **EARLIER STATEMENTS**), "Everything that the United States stands for and everything that New York City stands for is tolerance and openness and I think it's a great message for the world that unlike another place where they might actually ban people from wearing an item or they might actually keep people from building a building, that's not what America was founded on nor is it what America should become." ("Bloomberg Criticizes Sarah Palin for Mosque Tweet, but Says She's Not A Racist," Foxnews.com, July 21, 2010.)

"I happen to think this is a very appropriate place for somebody who wants to build a mosque, because it tells the world that America, and New York City... really believes in what we preach." ("Bloomberg Repeatedly Defends Mosque by WTC Site," by Bobby Cuza, NY1.com, July 16, 2010).

Radio talk-show host **RABBI SHMULEY BOTEACH** wrote that "I have a simple, elegant and deeply moral solution. Let the Islamic Cultural Center be built. Let the mosque be included. But, the Muslim organizations building it should commit right now to making the principal focus of the building a museum depicting the rise of Islamic extremism, its hate-based agenda, and how it is an abomination to Islam... The museum would repudiate these haters by showing how their actions are an abomination to authentic Islamic teaching and how every G-d fearing Muslim has a responsibility to spit them out." ("Is a Giant Mosque at Ground Zero Justified?" Rabbi Shmuley Boteach, Huffpost.com, May 17, 2010).

Analysis. First and foremost, Mayor Bloomberg stood up for religious freedom in this case and demonstrated how the U.S. is different from European socialist countries that trample over the freedoms of its citizens. The banning of burqas and religious

clothing in France is a travesty that warrants serious international criticism.

We would point out, however, that Mayor Bloomberg's comments go beyond defending religious freedom in this case. By calling the mosque a "great message for the world" located in "an appropriate place," he appears to reject out of hand the sense of shock expressed by protesters over the appearance of rank insensitivity and lack of respect to the city, the nation, and the victims of Islamic terror. According to this logic, to be American means to be tolerant, and to be tolerant means that "anything goes."

Civil Rights laws were created to protect individuals from the abuse of government power. A country such as France feels justified in breaching the individual choices of its citizens, like policing their choice of clothing, because of the value it places on maintaining its vision of civility and cultural consistency. We must be careful not to allow our own vision of "tolerance" and "openness" to become its own model for imposing a blanket command to accept and respect all the beliefs, speech and actions of others. Such a distortion of tolerance may threaten to downplay, dismiss and minimize the important cultural value of dissent, objection and protest.

A backwards interpretation of the legal duties connected with civil rights, is that "tolerance" and "openness" require everyone to accept and respect everyone else, no matter how offensive that other person's beliefs or conduct may be to one's own sensibilities. Alternatively, the "tolerance fallacy" has been recently extended in attempts to force religious and other organizations to water down and sugar coat their beliefs by being forced to accept or teach a state-approved doctrine of secular pluralism. (For example, the "Dignity for All Students Act," passed by the New York State Legislature, analyzed in the Guardian Report, issue 4.)

It's true that the multi-cultural makeup of a metropolis such as Manhattan fosters the exchange of ideas, mutual cooperation

and exposure to a vast amount of different perspectives. However, we cannot turn the merits of the city's diversity into a command to love one's neighbor unconditionally. Religious freedom often boils down to the ability of individuals to believe they're right, and others are wrong. While it's a noble goal to promote tolerance between the residents of a city, the constitutional protection of freedom of religion cannot be put on par with an attempt to sanitize the public space by discouraging people from objecting to their neighbors' actions which they find offensive.

While the New York City government may be required to let the Cordoba Initiative build their mosque near Ground Zero, under no circumstances are private New Yorkers required to like it, to help them, to welcome them, to respect them, or to let them live there undisturbed. The Cordoba Initiative, for its part, has absolutely no obligation, legal or civic, to show itself as "tolerant," "open," or "rejecting the haters." Just as they have a right to pray to Allah for the death of unbelievers, everyone else has a right to hate them, to hold them in contempt and scorn them, to picket and protest and rally and boycott as much as they want. Sadly, the peaceful face of the Cordoba Initiative might very well mask a deliberate attempt to provoke a reaction of anger precisely like the uproar they have managed to create.

Position 4 (Con): "THEY SHOULD BE STOPPED BECAUSE IT'S HURTFUL." *A call was made to stand up for the feelings of the families of the victims of the September 11 terrorist attack.*

SARAH PALIN, former Governor of Alaska, published a series of Tweeter messages, declaring, "Peaceful Muslims, pls refute the Ground Zero mosque plan if you believe catastrophic pain caused @ Twin Towers is too raw, too real." "Peace-seeking Muslims, pls understand, Ground Zero mosque is UNNECESSARY provocation; it stabs hearts. Pls reject it in the interest of healing." ("Plain, Shakespeare and the Ground Zero Mosque," by Sarah Wheaton, New York Times, July 18, 2010).

THE ANTI-DEFAMATION LEAGUE released a statement that, "The controversy which has emerged regarding the building of an Islamic Center at this location is counterproductive to the healing process. Therefore, under these unique circumstances, we believe the City of New York would be better served if an alternative location could be found... Proponents of the Islamic Center may have every right to build at this site, and may even have chosen the site to send a positive message about Islam... But ultimately this is not a question of rights, but a question of what is right. In our judgment, building an Islamic Center in the shadow of the World Trade Center will cause some victims more pain – unnecessarily – and that is not right." ("Statement On Islamic Community Center Near Ground Zero," adl.com, July 28, 2010)

Analysis: It should be noted that Governor Palin's proposal is directed not at government officials, but at private citizens. She has suggested an approach of using persuasion and cooperation with the Muslim community to explain why so many Americans would want the location to be changed.

The ADL has advanced an utterly vague standard for evaluating whether controversial projects should be blocked by government power. According to its logic, religious activity should be blocked in cases where it "will cause some victims more pain – unnecessarily." The ADL's position is best understood as a product of intense advocacy for government power to be exerted to punish people who say things they don't like.

Government power is not intended to be used to squelch public speech, no matter how offensive it may be. Aside from being a completely arbitrary standard, virtually no projects of significant value can be advanced without someone feeling "pain" and taking an issue against them, often for valid reasons. Neither should the government get involved in policing the content of speech. Governments can not make standards that demand teaching an "acceptable" message.

Americans are not afraid of ideas. European countries have brought state power to bear to discourage and punish ideas unwelcome to the government by labeling it "hate speech." They claim that hateful words in themselves should be criminal. In the United States, however, anyone who actively participates in planning, carrying out, or acting as an accessory to crimes can and should be charged and imprisoned by law enforcement. As long as there are already criminal laws on the books to arrest and punish people for planning or committing actual acts of violence, speech itself cannot be criminalized for being hateful.

The rise of the movement for "political correctness" starting on college campuses in the 1980's has led many Americans to mistakenly believe that there is a constitutional civil right to not be insulted by anyone else. Misguided attempts to "protect" vulnerable people from discrimination has led to proposals for "political correctness" standards to reach government power into regulating speech in private businesses and private schools.

For example, the ADL has proposed federal legislation "requiring Internet providers to clearly define prohibited hate speech in their Terms of Service agreements." Does this mean that the government should set standards or require private companies to monitor "offensiveness" of private communications? Legislation has been proposed on the State and Federal level to curtail freedom of speech on the grounds that it insults people, under the guise of "anti-bullying" statutes. While the ADL's position is morally flimsy and practically infeasible in this case, serious attention should be paid to opposing efforts to infringe upon freedom of speech and freedom of religion under the guise of stopping anything "causing victims more pain."

Position 5 (Pro): "THIS NATION IS ABOUT RELIGIOUS FREEDOM... THIS BUILDING IS PRIVATE PROPERTY." A forceful defense for the Cordoba Initiative was grounded in freedom of religion and respect for private property.

CANDIDATE FOR GOVERNOR, NEW YORK ATTORNEY GENERAL ANDREW CUOMO, stated, "If there is a central

premise to the founding of this nation, it is religious freedom. And it is that government does not pick religions... And it could offend some people's sensitivities to have this mosque where it's located... but this nation is about religious freedom, period. If there's evidence of criminality... then they should bring that forward. And obviously if there's a criminal case here, then that's a different situation. I have not heard of any evidence of criminality." ("Video: Andrew Cuomo on Ground Zero Mosque Plan," by Celeste Katz, New York Daily News, including video from YouTube, July 7, 2010.)

NEW YORK CITY MAYOR MICHAEL BLOOMBERG stated, in his **LATER STATEMENTS** on the issue, "[W]ith or without landmark designation, there is nothing in the law that would prevent the owners from opening a mosque within the existing building. The simple fact is that this building is private property, and the owners have a right to use the building as a house of worship... This nation was founded on the principle that the government must never choose between religions, or favor one over the other."

Analysis: Attorney General Cuomo should be noted for pointing out that until the present time, no allegations of criminality on the part of the Cordoba Initiative have been raised. Imam Feisal Abdul Rauf's public statements blaming the U.S. for 9-11, his refusal to acknowledge Hamas as a terrorist organization, and The Cordoba Initiative's association with politically controversial Muslim organizations, as reported so far, do not rise to the level of criminal activity. As much as we may suspect the motives of the Cordoba Initiative planners, and as provocative as the choice of location for this mosque, none of these activities are illegal.

That said, law enforcement officials need to fully understand Muslim views of the propriety of the use of violence and martyrdom, in order to create and effectively implement policies to fully protect New Yorkers. We cannot rely on pleasant public statements from the Cordoba Initiative that they oppose

extremism ignore the possibility that other people who support terrorism might enter and use the premises for criminal purposes.

We have recorded the opinions of Mayor Bloomberg twice, once as his "earlier statements," reflecting his views of tolerance, and listed separately here, his "later statements," on private property rights. We did not find news sources quoting the Mayor explaining the right of freedom of private property from government seizure, until after the Landmarks Commission voted.

For the most part, the Mayor should be noted for pushing the message of religious freedom in tandem with his appeals for tolerance. But as stated above, we believed that beyond the Mayor's comments on freedom of religion, which is a duty binding government to respect private citizens, the Mayor appeared to be instructing private New Yorkers about their duty to show "tolerance" and "openness" for each and every one of their neighbors. We believed that the Mayor's directive of a duty on private citizens to show tolerance was worthy of separate analysis.

Position 6 (Con): "WE NEED TO KNOW WHO'S PAYING FOR THE MOSQUE." *A proposal was made to apply the standards and procedures of law enforcement to halt the mosque from reaching suspect goals.*

NEW YORK GOVERNOR CANDIDATE, CONGRESSMAN RICK LAZIO wrote, "In June, Imam Feisal Abdul Raif, the man behind the proposed ground zero mosque, was asked on live radio if he believed Hamas was a terrorist organization ... Imam Rauf... refused to state whether or not he believed Hamas to be a terrorist organization... I oppose the center and the mosque's construction because I believe there should be an investigation into the sources of its funding. The Cordoba Initiative... is a registered charity in New York State. It is the responsibility of New York's Attorney General Andrew Cuomo to ensure the mosque's funding is coming from reputable sources... On CBS's '60 Minutes,' less than a month after the attacks, [Imam Rauf]

said American policies were an 'accessory' to the crime of 9/11... The Cordoba Initiative has reported less than \$20,000 in assets. Where the \$100 million for his project would come from is anybody's guess... This is not an issue of religious freedom, but rather, a question of safety and security. We need to know who is paying for the center and mosque. We to know what their motives are, and we need to know if the Imam is promising any potential benefactors anything in return for their support." ("Who's Paying for the Ground Zero Islamic Center?" by Rick Lazio, CNN.com)

Analysis: Congressman Lazio should be noted for spearheading an effort to stand up for objections to the mosque using a reasonable inquiry into the group's ties to other organizations through its funding.

Aside from the suspicious location, the question of the financing of the project is a legitimate one, as multiple U.S. court rulings have found charities operating under innocuous names have secretly funneled money to Muslim terrorists such as Hamas and Hezbollah.

However, it should be noted that Congressman Lazio appears to advocate using the investigation of the Attorney General as a vehicle for halting construction of the mosque. While the investigation may be warranted, it is completely unrelated to the rights of the planners to build there. If there are no criminal activities afoot, then it is up to the people of New York and America to do their best to act righteously and leave it to G-d to decide if He wants to listen to the Imam's prayers.

SUMMARY: The Central Issue: Government Seizure of Private Property.

According to **NEW YORK CITY LANDMARKS COMMISSIONER STEPHEN BYRNS**, the building's proximity to the World Trade Center site, and the fact that it was struck by

airplane debris during the attacks, does not qualify it as a landmark.

"The debris field around ground zero was widespread, and one cannot designate hundreds of buildings on that criterion alone." ("Panel's Landmark Denial Frees NYC Mosque Site" by Karen Matthews, Associated Press, August 3, 2010)

The Landmarks Commission's website lists criteria of declaring a property a landmark. They list factors for an appropriate designation of a landmark, "because it has a special character or special historical or aesthetic interest or value as part of the development, heritage, or cultural characteristics of the city, state, or nation."

While the building was over 100 years old, the request for landmark status did not involve features of the building itself as much as its relationship to the September 11 attacks. As stated above in this Report, the attempt to disqualify the building of a mosque for the sole purpose that people feel offended or threatened by the message of others is an unwarranted appeal to government power over the rights of private citizens.

TOPIC FOR FURTHER INQUIRY:

What are the limits of "freedom of speech" and "freedom of religion" in the United States?

If the Cordoba Initiative decided to run a display celebrating the great military conquests of the Muslim empires, should it be censored?

What if they displayed or distributed Fatwas (religious law rulings) calling for the killing or the destruction of property of non-believers?

Would religious displays that depict a vision of Muslim world conquest, including the destruction of all the institutions of other

religions, prohibition of charging interest in the financial markets, and death sentences for homosexuals, be permitted?

If the Cordoba Initiative, or any Muslim school, for that matter, decided to display religious programming developed by Hamas which encouraged children to hate and or kill Jews and Christians, have they overstepped the protections of freedom of speech and freedom of religion?

If so, how do we distinguish their Hamas videos from Hollywood motion pictures that seem to glorify violence and destruction as expressions of egotistical power?

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