

Herman Cain Would Ban Mosques; Why Not Synagogues?

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"Let's go back to the fundamental issue," said Herman Cain, while arguing that localities **have a right to ban mosques**. "Islam is both a religion and a set of laws -- Sharia laws. That's the difference between any one of our traditional religions where it's just about religious purposes."

Mr. Cain, does traditional Judaism count as "any one of our traditional religions"? If so, you've got a problem.

Cain apparently defines "religious purposes" as being inherently different from legal purposes. This conception of religion, however, carries a blatantly Christian (not to mention Protestant) bias. For many religious believers, true religion requires submission to Divine law, and for these groups, establishing a religious community requires establishing local religious courts.

This is certainly true of traditional Judaism, in which **Halakhah (Jewish law)** regulates every detail of Jewish life -- ritual, ethical, economic, civil, and quotidian. Not a single moment of the traditional Jew's day, no matter how seemingly trivial, is free from countless strictly defined mandates. Since disputes are bound to arise, the rabbinic court (*bet din / beis din / beth din*; pick your transliteration) has been a central institution for thousands of years. This has held true even in modern America. While the separation of religion and state has required the abandonment of the European model of state-supported rabbinic institutions, rabbinic courts operate on a voluntary basis in all American cities with significant Orthodox Jewish populations, and many Orthodox Jews make use of such courts to settle disputes within the community in accordance with Halakhah. The New York-based **Beth Din of America**, for example, handles not only ritual and family issues such as conversion, marriage, and divorce, but also civil and economic cases, all in accordance with Torah injunctions.

Nor do these institutions operate with complete independence from the secular legal system. Parties to rabbinic cases **can enter into binding arbitration agreements**, mandating compliance with rabbinic decisions by force of secular law. **New York and Maryland have both instituted secular laws** intended to help Jewish women avoid becoming *agunot*-- a problem which exists only within the framework of Jewish law -- "wall of separation" notwithstanding.

In the first half of the 20th Century, some Jews sought out rabbinic courts **specifically in order to avoid prejudice in the secular legal system**. That was an era during which being Jewish was seen as being foreign, and Jewish religion was seen as inherently sinister. Today it is Islam which is seen, quite unfairly, as being inherently foreign and sinister. (Yes, Islamic terrorism is a real problem, but lumping the world's billion Muslims in with a tiny, extremist fraction is foolish.) At a time when Presidential candidates score points by demonizing Islam, some American Muslims must see local Shari'a courts and local Islamic communal institutions as being more necessary than ever.

Prof. Stephen L. Carter of Yale Law School has written that "If the religious community cannot define itself, cannot set rules for membership, including rules of behavior, then it is not, in any realistic sense, a religious community. This implies that protection of religious freedom requires a high degree of deference to the definitional process within that community..." (*God's Name in Vain*, 176.) Herman Cain and others who support anti-Islamic legislation are free to argue that Prof. Carter is wrong, and that religion must be prevented from operating as a legal system in any form. But if they wish to maintain that their position is not motivated by an unfair demonization of Islam, then they must apply this principle consistently, across the board. They must be willing to take a stand against Jewish legalistic practice and Jewish legal institutions as well. They must protest outside the Beth Din of America, and rail against rabbis sneaking Halakhah into the secular legal system.

If they will not do so (and I cannot imagine that they will), their supposed concern for the separation of religion and state will stand revealed as a fig leaf for simple prejudice.