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Mosques controversies in the United States: Emotions, Politics and the Right to Religious Freedom[♦]

Pasquale Annicchino[♦] - Nadia Marzouki[♦]

Introduction

In the last decade, the number of mosques in the United States has considerably grown, from 1209¹ to 1925². As shown by sociologist Akbar Ahmed³, there is an important diversity among American mosques, in terms of size, ethnic background, theological teaching, proselytizing strategy. While most mosques and Islamic centres are built without encountering any opposition from local community, a few controversies have recently attracted a lot of media and public opinion attention. Most of the polemics regarding the construction of mosques broke out since 2008 in a context of increased opposition of part of the American public, notably under the influence of the Religious Conservative wing of the Tea

[♦] A first version of this paper was presented at the workshop on Religious Norms in the Public Sphere at University of California Berkeley in May 2011.

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¹ Ihsan Bagby, Paul M. Perl et Bryan T. Froehle, *The Mosque in America: A Report from the Mosque Study Project*, Council on American-Islamic Relations, Washington D.C., 26/04/2001.

² « Controversies over Mosques and Islamic Centers across the U.S. », Pew Research Center's Forum on Religion and Public Life, 24/09/2010.

³ Akbar Ahmed, *Journey into America, the challenge of Islam*, Brookings Institution Press, Washington D.C., 2010.

Party movement⁴, to the Obama's policy regarding health care, international diplomacy, and relations to the Muslim world.

Interestingly enough, this debate took place in a context where the legal provision would almost clearly side with the Muslim community. The Federal Religious Land Use and Institutionalized Person Act⁵ is the legal instrument that would certainly have used to declare a violation of the fundamental rights of Muslim believers in cases where the authorization to build place of worship would have been neglected by public authorities only for political reasons.⁶

Rather than an exhaustive survey of all the mosque debates, this article analyses the most important specific type of arguments that were made by

⁴ As the Pew Forum Research Centre highlights in a report: "Americans who support the conservative Christian movement, sometimes known as the Christian Right, also overwhelmingly support the Tea Party. In the Pew Research Center's August 2010 poll 69% of registered voters who agreed with the religious right also said they agreed with the Tea Party. (...). Overall, the Tea Party appears to be more widely known and to garner broader support than the religious right", See , Pew Forum Research Centre, *The Tea Party and Religion*, 23/02/2011, available at: <http://pewresearch.org/pubs/1903/tea-party-movement-religion-social-issues-conservative-christian>. On the Tea Party movement see J. Lepore, *The Whites of Their Eyes: The Tea Party's Revolution and the Battle over American History*, Princeton University Press, Princeton, 2010.

⁵ Hereinafter RLUIPA.

⁶ The RLUIPA was signed into law on September 22, 2000. As the report on the Tenth Anniversary of its passage puts it: "The law, which passed both houses of Congress unanimously and was supported by a broad coalition of religiously and ideologically diverse groups". RLUIPA "has had a dramatic impact in its first ten years on protecting the religious freedom of and preventing religious discrimination against individuals and institutions seeking to exercise their religions through construction, expansion, and use of property". As the same report highlights the role of RLUIPA is central in the protections of the rights of the Muslim believers: "(...) nearly a decade after the attacks of September 11, 2001, Muslim Americans continue to struggle for acceptance in many communities, and still face discrimination. Of 18 RLUIPA matters involving possible discrimination against Muslims that the Department has monitored since September 11, 2001, eight have been opened since May of 2010. This fact is a sober reminder that, even in the 21st century, challenges to true religious liberty remain", see *Report on the Tenth Anniversary of the Religious Land Use and Institutionalized Persons Act*, United States Department of Justice, 22/09/2010., available at: http://www.justice.gov/crt/rluipa_report_092210.pdf.

participants in such controversies. In particular, it examines the extent to which the relevance and the legitimacy of the liberal language of rights seems challenged by a growing part of the American public, that puts forward notions of appropriateness, sensitivity, and nationalism.

I. Ground Zero mosque

The debate surrounding the construction of the so-called Ground Zero mosque had a legal turning point when Supreme Court of New York Justice Paul Feinman dismissed a lawsuit by a former firefighter concluding that the applicant lacked legal standing to challenge the decision of the Landmark Preservation Commission denying the landmark status to the Burlington Coat Factory, a building that should have been destroyed in order to build the mosque and the community center. According to the Court :

Mr. Brown's allegations, accepted as true, establish only that he is an individual with a profound interest in preservation of the building, but not that he has an injury-in-fact as defined by law, he cannot satisfy the legal test for standing.⁷

The controversy over the Islamic center of 51 Park Place, focused therefore on the political divisions showing a clear divide between a liberal response based on the defense of rights, and arguments about civility, emotion and national memory. On May 25, 2010, the community board of Lower Manhattan unanimously decided to allow for the construction of the Islamic Community Center. Likewise on July 13, 2010 the Landmarks Preservation Commission refused to grant landmark status to the building

⁷ Brown v. New York Landmarks Preservation Commission, Supreme Court New York County, 7/7/2011, available at: http://www.courts.state.ny.us/reporter/3dseries/2011/2011_51273.htm.

hence allowing for its selling to Soho Property. Both decisions are based on a pragmatic evaluation of the project. It echoes comments made by the spokesperson of Mayor Bloomberg when the project was first made public in December 2009: “If it’s legal, they have a right to do what they want”⁸. Raymond Kelly, the New York Police Department commissioner similarly indicated that the project did not represent any threat to the security of Manhattan. On August 3, 2010, Mayor Bloomberg insisted on how freedom of religion is one of the founding principles of the country⁹.

The simple fact is, this building is private property, and the owners have a right to use the building as a house of worship, and the government has no right whatsoever to deny that right. And if it were tried, the courts would almost certainly strike it down as a violation of the U.S. Constitution. (...) Whatever you may think of the proposed mosque and community center, lost in the heat of the debate has been a basic question: Should government attempt to deny private citizens the right to build a house of worship on private property based on their particular religion? That may happen in other countries, but we should never allow it to happen here.

Opponents to the mosque rejected the very relevance of this liberal type of reference to constitutional rights and to religious freedom. “It’s not about rights, but about what is right”, became the key motto of the adversaries of Imam Rauf. On July 2010, the Anti-Defamation League published a statement condemning the Cordoba project as insensitive and inappropriate:

⁸ Ralph Blumenthal, Sharaf Mowjood, « Muslim Prayers and Renewal Near Ground Zero », *New York Times*, 9/12/2009.

⁹ M. Bloomberg: « Political controversies come and go, but our values and our traditions endure, and there is no neighborhood in this city that is off-limits to God’s love and mercy, as the religious leaders here with us can attest ». Quoted in: <http://www.politico.com>, 3/08/2010.

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. The bigotry some have expressed in attacking them is unfair, and wrong. 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.¹⁰

In the context of the 2010 mid-term election campaign, Carl Paladino, the Tea Party Republican candidate for the governor position in the state of New York, challenged his Democrat opponent in these terms:

Andrew Cuomo supports the mosque. He says it is about religious freedom and he says the mosque construction should proceed. I say it is disrespectful to the thousands who died on 9-11 and their families, insulting to the thousands of troops who've been killed or injured in the ensuing wars and an affront to American people. And it must be stopped.¹¹

Pundits and polemicists close to the Tea Party movement such as Pamela Geller and Robert Spencer published numerous articles and statements to protest against what they describe as the intolerance and insensitivity on behalf of Muslims for American's grief. As early as December 2010, P. Geller published a note on her blog, *Atlas Shrugs*, sharply addressing Muslims: "What's wrong with these people? Don't they have a heart and a soul?"¹² On June 6, 2010, the organization Stop Islamization of America organized a demonstration against the mosques, where protesters held

¹⁰ ADL, *Statement on Islamic Community Center near Ground Zero*, http://www.adl.org/PresRele/CvIRt_32/5820_32.htm, 28/07/2010.

¹¹ C. Paladino: "I'd Use Eminent Domain To Block Ground Zero Mosque", *Paladino for the people*, <http://www.paladinoforthepeople.com/news2.php?id=51&t=2>, 22/07/2010.

¹² http://atlasshrugs2000.typepad.com/atlas_shrugs/2009/12/mosque-at-ground-zero-adding-insult-to-agony.html

signs such as “You can build a mosque near Ground Zero when we can build a synagogue at Mecca”, “All I needed to know about Islam, I learned it on 9/11”; “It’s Jihad, idiot”, or “Mayor Bloomberg, your shameful silence dishonors the ashes of 3000 New Yorkers¹³”.

From the point of view of opponents to the mosque, the suffering and grief caused by the 9/11 attacks justify an exception to the liberal idea of an equal treatment of all citizens before the law. They do not reject the legitimacy of constitutional rights, but argue that, in the specific context of post 9/11 America, paying tribute to the sensitivity of the victims’ families and honoring the wounded national memory supersedes the blind implementation of the law. On August 17, Archbishop Timothy Dolan drew a comparison between the Ground Zero controversy and the debate that took place in 1993 about the construction of a convent near Auschwitz. He proposed the attitude of Pope John Paul II as an example for imam Rauf. Just like the Pope was wise enough to understand that allowing for the Carmelite nuns to build a convent in Auschwitz would be inappropriate, imam Rauf should ask Muslim Americans to understand the symbolic value of the territory of Ground Zero.

For a large part of the American public, a key effect of the destruction of the World Trade Center is the redefinition of the value of the American territory and of the standards used to measure the appropriateness of specific actions. As shown by Mateo Taussig-Rubbo¹⁴, the question of how

¹³ <http://thepeoplescube.com/current-truth/no-mosque-at-ground-zero-protest-6-6-10-t5426.html>

¹⁴ Mateo Taussig-Rubbo, “Sacred Property, Searching for Value in the Rubble of 9/11”, in Winnifred F. Sullivan, Robert A. Yelle et Mateo Taussig-Rubbo (dir.), *After Secular Law*, Stanford University Press, 2011, p 322-341.

the sacredness of spaces and objects should be defined remains largely contested. Nonetheless, a growing part of the public seems to support the idea that the exceptionality of the attack justifies a reversal of the ways in which value is defined and rights are allocated. This call for a sacralization of the territory of Ground Zero clearly comes up in the discussion that took place on July 13, during the day of public hearings organized by the Landmarks Commission. While the experts of the Commission explained that the building located at 51 Park Place does not fulfill the adequate esthetic criteria to be granted landmark status, the audience demonstrated that, as a “survivor” and “witness” of the attacks, the building deserves to be granted the landmark status. One participant in the hearings explained: “The building is not attractive, so I understand why you don’t want to give it landmark status. But to the extent that it was involved in the 9/11 events, there cannot be any debate as to its historical signification. We must not forget what happened on 9/11. We are losing our history and it’s up to you to save it”.

II. Murfreesboro

In the wake of the Ground Zero Controversy, a number of other affairs broke out in different states around the building of mosques and Islamic centers. The type of arguments produced in all these polemics somehow echoed, in a dialogic way, the “*right vs. rights*” paradigm of the New York controversy.

One of the most virulent of these controversies took place in Murfreesboro, Tennessee, between June 2010 and August 2011. A group of landowners in Rutherford County filed suit against the County of

Rutherford to protest against the fact that County's planning commission had given permission for the construction of an Islamic Community center of Murfreesboro, in accordance with RLUIPA and Tennessee Religious Freedom Restoration Act.

The idea that Islam is not a religion was the key arguments of the mosque opponents: consequently, Muslims are not entitled to First Amendment protections. This reasoning echoes the reasoning of those who rejected the Cordoba Initiative in Manhattan. Kevin Fisher, who initiated the trial against the County, and his attorney Joe Brandon Jr., did not refute the relevance of constitutional rights, but sought to demonstrate that Muslims do not deserve to be protected by these rights, so long as they refuse to engage into theological reform of their faith. In a similar vein, Tea Party Candidate Lou Ann Zelenik contended that, until Muslim Americans establish more clearly a separation between "spiritual Islam" and "radical Islam", they would not "deserve" constitutional protections. "Until the American Muslim community find it in their hearts to separate themselves from their evil, radical counterparts, to condemn those who want to destroy our civilization and will fight against them, we are not obligated to open our society to any of them.¹⁵" On September 27, plaintiffs' attorney Joe Brandon posed this rhetorical question to one of the witnesses: "Why would we give any religion the right to cancel our rights under the United States Constitution¹⁶?" The notion that Muslims do not have a right to cancel Americans' rights, just like the « right vs. rights »

¹⁵ <http://www.murfreesboropost.com/zelenik-issues-statement-on-proposed-islamic-center-cms-23606>

¹⁶ Christian Grantham, "Murfreesboro Mosque Opponents appear in chancery court", 27/09/2010, *Murfreesboro Post*.

argument in New York, both suggest a worldview in which American Muslims do not fully belong to the national community and in which the liberal notion of an equal treatment of citizens , without exception, is wrong.

In face of the growing opposition to the Murfreesboro mosque, and the rapid spread of the argument according to which Islam is not a religion, the Department of Justice submitted an Amicus Brief, on October 22, to remind the court that the three branched of the U.S. government had always considered Islam as a religion:

Every court addressing the question has treated Islam as a religion for the purposes of the First Amendment and other federal laws. No court has held otherwise. Islam falls plainly within the understanding of a religion for constitutional and other federal legal purposes, and qualifies as a religion under the various tests courts have developed for analyzing claims that certain apparently secular activities merit protection as a religious conduct.(...) RLUIPA prohibits local governments from using land-use regulations to discriminate against religious institution, to treat them on less than equal terms than similarly situated secular land uses, or to substantially burden religious exercise (...) There is, therefore, no question that the ICM's proposed Rutherford County Islamic center and mosque constitutes a religious assembly under RLUIPA. Failing to treat mosques as a category equally with churches as a category in application of its zoning laws would be a facial violation of Section 2(b) (2) of RLUIPA¹⁷.

¹⁷ See *Brief for United States of America as Amicus Curiae*, James Estes, et. AL, v. Rutherford Country Regional Planning Commission, and the Rutherford County Board of Commissioners et al., Chancery Court for Rutherford County at Murfreesboro. Section 2(b)(2) of RLUIPA bars discrimination "against any assembly or institution on the basis of religion or religious de nomination".

Far from appeasing the controversy, however, the Amicus Brief fueled the anger of opponents to the mosque. In court, Attorney Joe Brandon vehemently rejected what he described as an illegitimate intervention of the federal government in the community affairs. On October 22, after criticizing the Obama administration, Brandon asked a witness: "How does it make you feel that we have a President who says, 'I will stand with the Muslims should the political winds shift in an ugly direction'?"¹⁸. Elizabeth Coker, a resident of Murfreesboro who opposes the mosque construction answered: "It does bother me that the federal government has come here to Murfreesboro to tell us not to cross a line"¹⁹. This critique of the Federal government echoes similar arguments, made since May 2010, by Kevin Fisher and his allies. Mosque opponents blame the planning commission of the Rutherford County not only for failing to verify whether Islam is a religion, but also for not giving proper notice of the meeting during which the permit was given to the Islamic Center²⁰. "These people have a right to be present when the law is made, when decisions are made by this great body and, clearly, the law has been broken."²¹. In other words, the Murfreesboro controversy expresses not merely an opposition between Muslims and people who are hostile to Islam. So far, Chancellor Robert Corlew has resisted any attempt to reconsider his first decision approving the construction of the mosque. Denying a motion to reconsider his decision he wrote:

¹⁸ Christian Grantham, "U.S. Attorneys make presence known in Murfreesboro mosque trial", *Murfreesboro Post*, 22/10/2010.

¹⁹ *Ibid.*

²⁰ Fisher refers to the Tennessee Open Meetings Act. Tennessee Code, §§ 8-44-101

²¹<http://www.murfreesboropost.com/residents-express-concerns-over-new-islamic-community-center-cms-23530>

The allegations presented at the initial hearing include assertions that this structure will be used as a base to undermine our laws and our government, and perhaps even serve as a base for terrorist or military operations. Assuming for purpose of argument momentarily that such is true, were the Court to consider that after construction the Muslim congregation may begin to use the structure for terrorist activities, for example, as the Plaintiffs assert will occur, then it will be the duty of law enforcement personnel and codes enforcement personnel to halt the activities. The remedy, then, is that of halting the illegal activity and not resistance to the use of the land.(...). We have a duty equally to treat those whose religious beliefs are similar to the majority beliefs and to those whose beliefs are very different from the majority. If the zoning laws are too favorable to those seeking to build places of worship, then citizens should prevail upon their elected representatives to change those ordinances, but until they do the Court must apply those laws equally to Protestant Christians, Roman Catholics, Muslims, Buddhists and others.²²

Conclusion

Both affairs reveal a deeper opposition within the American public concerning the conception of the founding principles of democracy. Mosque opponents in Tennessee just like in New York reject the liberal language of rights and the reference to the rule of law without exception. They advocate the recognition of the right of local communities to interpret law and to implement it according to their own views, fears, and theological conceptions of what a religion should be.

The call for an exception to the liberal ideal of the rule of law is at the center of the argument of mosque opponents everywhere in the U.S. The

²² See *Judge refuses to reconsider Murfreesboro Mosque ruling*, Religion Clause, 31/08/2011, available at: <http://religionclause.blogspot.com/2011/08/judge-refuses-to-reconsider.html>.

popular will, as opposed to the general will of liberal political theory, is put forward as the only legitimate source of action and decision. In the context of the American public debate in the Obama era, the populist critique of the federal government, described as naïve, elitist and irresponsible, largely draws upon arguments developed by Religious Conservatives Tea Party activists about the need for the people to reclaim their right to interpret constitutional rights. While popular constitutionalism has inspired many grass root movements such as civil rights and feminist movements, it has recently been reinterpreted by Religious Conservatives Tea Party activists in a nationalist and populist perspective. In this narrative, the three key principles of individualism, small government and free market are allegedly threatened by foreign or anti-American forces, such as Islam, liberalism or socialism. This approach, as far as religious freedom is concerned, puts at risk the very essence of a right that is a cornerstone of the American democracy.