

RELIGION, THE LAW, AND MEDICAL ETHICS

The role of the church in developing the law: an Islamic response

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The concept of Hisba in Muslim law has been used by members of certain Islamic groups to impose, through the courts, limitations on freedom of expression. In so doing they sought to circumvent the right of parliament to legislate on matters of personal freedom. This device is now restricted by the Egyptian authorities.

The separation of church and state is the hallmark of the modern secular system of government. Nevertheless the law has to take into consideration prevailing opinion among the population. Occasionally a legislative body may disregard the view of the public—for example, the abolition of the death penalty in the United Kingdom despite wide support for it on the part of the electorate. When a religious body acting as *amicus curiae* seeks to advance its doctrine—which is not universally supported by the population—in Muslim countries where the Shariah (Muslim law) is supposed to be established, individuals and organisations may intervene to draw the court's attention to a point of law or even initiate an action against some individuals. Such interventions have the same status as *amicus curiae*.

In secular Muslim countries such as Egypt religious organisations and individuals have used the device of *Hisba*, which is best defined as enjoining virtue and combating vice, to ban books that do not accord with their view and to brand authors as being non-Muslim, which can have the consequence of breaking up their marriage. The most famous case of this type is that of Professor Nasr Abu Zeid who was declared by the court to be "Kafir", an unbeliever. He and his wife had to flee

the country and they are both now working at Leiden University. A plethora of similar interventions forced the government to restrict the right to intervene to those immediately affected. This proved to be ineffective since anyone can claim that the violation of Islam—as he or she understands—is of immediate concern to them, so the authorities ordered that no such intervention was to be entertained without the approval of the public prosecutor. Happily, the Islamic legal system is not based on precedents and so the Court of Appeal's decision in the case of Professor Abu Zeid will not bind the courts, because cases can be argued from principal sources. Nevertheless, a case can be made on the basis of the previous judgment and a defence lawyer would have to show that it violated a legal principle, so that it should be dismissed as a valid precedent.

In the case of institutions affected directly by the court's decision in such a way as to be forced to act against their own convictions—for example, the Catholic-run hospitals being required to perform abortions or to assist by advice or intervention in the practice of contraception, the court should refer them to the rules instituted by the Ministry of Health. If this area of medicine is troublesome for them, then they should confine their health care to those in which they do not conflict with the law. Their only way of changing the rules should be through carrying the majority of the people with them. No minority should be allowed to use the courts to impose its this view on the population.

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