

## ARTICLES

# Intellectual Property Rights in the Middle East: A Cultural Perspective

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### INTRODUCTION

An intentional and purposeful consequence of the West's dominance of international law over the past century has been to remove cultural, ideological, and religious content from the substantive discussion of transnational issues throughout the world. We have built our legal complex in the form of Roland Barthes's modernistic Eiffel Tower.<sup>1</sup> Barthes describes the Eiffel Tower as enabling a new type of intellectual endeavor: the structuralization of space in a manner that allows no real contact with its content.<sup>2</sup> The Tower allows "the advent of a new perception, of an intellectualist mode . . . Paris and France become . . . intelligible objects, yet without . . . losing anything of their materiality; a new category appears, that of concrete abstraction."<sup>3</sup>

An attempt at acultural international lawmaking was demonstrated by the U.S. Department of State at the U.N.'s 1994 Cairo conference on global population issues. The Clinton Administration took the conference as occasion to promote the liberalizing of contraception, sterilization and abortion regimes in an effort to combat population issues in developing countries.<sup>4</sup>

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<sup>1</sup> See ROLAND BARTHES, *THE EIFFEL TOWER AND OTHER MYTHOLOGIES* (Richard Howard trans., Hill and Wang 1979).

<sup>2</sup> See generally *id.* at 3-17.

<sup>3</sup> *Id.* at 9.

<sup>4</sup> See Sarah A. Ramage, *Resisting the West: The Clinton Administration's*

The position of the Administration paralleled that of Professor William K. Jones, who has said, “[i]n terms of productivity analysis, legalized abortions appear to be an optimal solution. A policy of outlawing abortions results in unwanted births to unprepared parents — in many cases impoverishing parents, offspring, and society at-large.”<sup>5</sup>

In a reaction that surprised both the Administration and the press, the proposals met with disapproval and were perceived by states with large Muslim populations as being founded on abstract intellectualism rather than reason.<sup>6</sup> Reportedly, one Islamic group even felt compelled to carry out a fatal attack on foreign tourists in anticipation of the conference.<sup>7</sup> The acultural view of Western internationalists, taken from the heights of the Tower, is not equipped to anticipate the profound depth of cultural influences such as religion. Unfortunately, excluding culture from a debate where issues are entirely culturally-dependent is impoverishing. Like an observer in Barthes’s Tower, practitioners of transnational law observe beauty and “nicely connected space”<sup>8</sup> from a particular vantage point. However, abandoning notions of abstract intellectualism and descending the Tower may allow for a richer and more meaningful examination of cultural issues and diversity that cannot otherwise be appreciated.

Turning from areas where cultural issues should be anticipated to inform policy debates, this article examines intellectual property protection and innovation incentives within the Middle East, an area where cultural issues inform policy and enforcement but are often ignored by western scholars and governments. In many respects, intellectual property rights go largely unenforced in the Middle East.<sup>9</sup> Social and political factors combine, allowing the region to enjoy rich natural resources and a wealth of human

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*Promotion of Abortion at the 1994 Cairo Conference and the Strength of the Islamic Response*, 27 CAL.W. INT’L L.J. 1 (1996).

<sup>5</sup> William K. Jones, *A Theory of Social Norms*, 1994 U. ILL. L. REV. 545, 586 (1994).

<sup>6</sup> See, e.g., *UN Parley’s 20-Year Plan; Controlling Growth, Stimulating World Economy Are Goals*, CHI. TRIB., Sept. 13, 1994, at C1.

<sup>7</sup> See Ramon G. McLeod, *Abortion Fight Dominates Cairo Meeting/U.S. May Weaken Stand to Placate Vatican, Muslims*, SAN FRANCISCO CHRON., Sept. 6, 1994, at A1; see also *Egypt Militants Warn Delegates to Shun UN’s Population Forum*, CHI. TRIB., Aug. 28, 1994, at 20.

<sup>8</sup> BARTHES, *supra* note 1, at 10.

<sup>9</sup> See discussion *infra* Part II.

capital, yet, at the time, it is commonly felt that the region struggles with development issues.<sup>10</sup> Westerners promote innovation incentives as a cross-cultural,<sup>11</sup> effective and efficient means to move development forward throughout the world. However, as intellectual property protection grows in international influence and uniformity, an examination of the cultural diversity that informs these issues in the Middle East is warranted.

Section I of this essay analyzes the current state of copying in the Middle East, the laws in place to protect copyrighted works, and the enforcement of these laws, or lack thereof. Section II focuses on the Western view of innovation incentives and the West's emphasis on intellectual property rights as protectors of innovation. This Section goes on to discuss the West's promotion of intellectual property rights throughout the Middle East. Section III presents the Middle East's perspective on intellectual property rights through an examination of the conflicts present in Middle Eastern culture and their origins in Middle Eastern history. Section IV explores the forces affecting intellectual property protection in the Middle East today, including the Middle East's resistance to Western commercialism and the influence of religion and politics. Finally, this essay concludes that an understanding of the enforcement and recognition of intellectual property rights in the Middle East is incomplete without an understanding of the cultural and religious forces, deeply rooted in Middle Eastern history, that shape the protection of intellectual property in the Middle East today.

## I. COPYING IN THE MIDDLE EAST

Middle Easterners are purchasing copied goods in stunning amounts. Presently, half of all compact discs sold in Israel are pirated or copied illegally.<sup>12</sup> Strong profits and lax copyright enforcement reportedly encourage even drug dealers to change professions and embark on careers in illegal music distribution.<sup>13</sup> Iranian publishers routinely translate and copy foreign works of

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<sup>10</sup> PETER MANSFIELD, *THE ARABS* 482 (3rd ed. 1992).

<sup>11</sup> See Ethan Bronner, *Islamic World Wary of US Inroads*, BOSTON GLOBE, Oct. 11, 1994, at 1 ("The United States . . . is the world's first nation that claims no tribal base.").

<sup>12</sup> See Helen Kaye, *Sniffing Out The Copycats*, JERUSALEM POST, Feb. 22, 1999, at 6.

<sup>13</sup> See *id.*

authorship, irrespective of the wishes of foreign copyright holders.<sup>14</sup> American television programming has been regularly rebroadcast without permission.<sup>15</sup> Pirates capture satellite broadcasts and impermissibly redistribute them on cable television in Lebanon.<sup>16</sup> Unlike most other industrialized countries,<sup>17</sup> Turkey has a history of refusing to enforce intellectual property rights<sup>18</sup> in order to stimulate its generic pharmaceutical industry.<sup>19</sup> Famous trademarks are routinely used without permission throughout the Middle East.<sup>20</sup> One in three after-market automobile parts sold in the United Arab Emirates is inauthentically labeled in an attempt to pass it off as a brand name product.<sup>21</sup>

No other product has been attacked by Middle Eastern copyists more than computer software. Banks in Saudi Arabia have been accused of using illegal copies of Microsoft computer software products.<sup>22</sup> Copying of computer software is “out of control” in Bahrain,<sup>23</sup> and before 1998 unauthorized duplication of software was not illegal in Kuwait.<sup>24</sup> Authentic Microsoft computer software products are “gray marketed” by being illegally smuggled into Iran or impermissibly reproduced there.<sup>25</sup> Even in well-

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<sup>14</sup> See *Pirates of the East in Iran*, BUS. MIDDLE E., Aug. 1, 1997, available at 1997 WL 20826166.

<sup>15</sup> See *Attracting Foreign Investment to Help With Economic Recovery*, 19 No. 8 MIDDLE E. EXECUTIVE REP. 8, 19 (Aug. 1996).

<sup>16</sup> See *Piracy ‘Will Cripple Lebanon’s Software Business’*, GULF NEWS, Sept. 21, 1998, available at 1998 WL 24107951.

<sup>17</sup> See *Pharmaceuticals Industry in Turkey: Addicted to Copies*, BUS. MIDDLE E., July 1, 1998, available at 1998 WL 16834024 (“Turkey is now one of only seven countries that do not apply patent protection to pharmaceuticals (the others are Argentina, Uruguay, India, Pakistan, Egypt and Morocco).”).

<sup>18</sup> See *id.* (“Patent enforcement will certainly mean major changes for Turkey. Historically it is one of the world’s worst violators of intellectual property rights (IPR).”).

<sup>19</sup> See *id.*

<sup>20</sup> See *Bahrain Copyright Law Addresses U.S. Claims*, CHI. TRIB., June 13, 1993, at 9.

<sup>21</sup> See *Intellectual Property Rights in UAE*, BUS. MIDDLE E., Mar. 1, 1999, available at 1999 WL 2033616.

<sup>22</sup> See *Microsoft Says It Might Sue Saudi Banks Over Software*, WALL ST. J., May 30, 1995, at B2.

<sup>23</sup> See Richard Moore, *Piracy Clamp; Travelers Face Spot Checks for Fake Goods*, GULF DAILY NEWS, Aug. 7, 1998, available at 1998 WL 15175492.

<sup>24</sup> See *Kuwaitis Call for Anti-Piracy Laws*, GULF NEWS, June 5, 1998, available at 1998 WL 21407013 (“Kuwaiti citizens are petitioning the government to adopt internationally accepted anti-piracy laws. The move was begun by a local computer firm. Kuwait has no laws preventing the sale of illegal and pirated software.”).

<sup>25</sup> See *Pirates of the East in Iran*, *supra* note 14 (“However, at present, Iranians can copy both books and — more lucratively — software without fear of legal proceedings

regarded Saudi Arabia, “[m]any companies . . . still consider it their right to buy one legal package of each software product and copy it internally, without permission of the owner of the software package.”<sup>26</sup> Piracy is so pervasive, and genuine goods so scarce, that Middle Eastern governments must make concerted efforts to purchase legitimate, rather than pirated, software.<sup>27</sup> Tens of thousands of counterfeit copies of Microsoft software products destined for the Middle East have been intercepted abroad,<sup>28</sup> but even more than that are illegally distributed in the region. Although exact figures are impossible to determine, something on the order of sixty-five percent of installed software in the Middle East has not been properly purchased from authorized vendors.<sup>29</sup> Copiers include sophisticated original equipment manufacturers (“OEMs”) in the United States who have permission to duplicate software for domestic purposes, but not for export to the Middle East.<sup>30</sup>

Surprisingly, Middle Eastern intellectual property laws are as pervasive as the inauthentic goods they are intended to control. For example, Iran has strict guidelines for securing intellectual property protection.<sup>31</sup> Legal commentators have stated that Egypt’s intellectual property laws are “in keeping with general international standards.”<sup>32</sup> The Gulf states coordinate patent

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. . . . [I]llegal copies of [Microsoft] products — altered to cater for Iranian tastes and the Farsi scripts — dominate the market and leave Microsoft unwittingly, and unwillingly, breaking the US trade embargo against Iran.”)

<sup>26</sup> *Crackdown on Illegal Software*, TECHNICAL REV. MIDDLE E., Nov. 15, 1998, available at 1998 WL 10467724.

<sup>27</sup> See Rasha Owais, *U.S. Urged to Take UAE Off Piracy Watchlist*, GULF NEWS, Feb. 19, 1999, available at 1999 WL 10433566.

<sup>28</sup> See, e.g., *55,000 Pirated Software Copies Seized in Raid*, GULF NEWS, Feb. 9, 1999, available at 1999 WL 10433416 (“A recent raid on a UK warehouse netted 55,000 counterfeit copies of Microsoft’s Office 97 software, reportedly destined for the Middle East. The seized CD-ROMs would have a street value of nearly \$33 million (about Dh120 million) if they were genuine.”).

<sup>29</sup> See *Software Piracy Flourishing*, USA TODAY, Aug. 13, 1998, at 1B.

<sup>30</sup> See *Producer Software Makes Illegal Way into Gulf*, GULF NEWS, Nov. 3, 1998, available at 1998 WL 24108251 (“Original copies of popular U.S. software applications meant for producers are finding their way illegally into local retail markets via Bahrain and Qatar. These OEM (original equipment manufacturer) copies are freely available and are priced 20-30 per cent below the originals, according to industry sources . . . . But they are to be bundled solely with the computers, not as separate units.”).

<sup>31</sup> See *Pirates of the East in Iran*, *supra* note 14.

<sup>32</sup> Steven D. Jamar, *The Protection of Intellectual Property Under Islamic Law*, 21 CAP. U. L. REV. 1079, 1095 (1992).

examining efforts.<sup>33</sup> Lebanon has enacted a comprehensive intellectual property regime.<sup>34</sup> Bahrain is formally addressing copyright issues,<sup>35</sup> as is Oman.<sup>36</sup> Some Middle Eastern governments have announced the creation of intellectual property enforcement divisions,<sup>37</sup> and instances of enforcement have been reported.<sup>38</sup> For example, Saudi Arabia has impounded and destroyed counterfeit shampoo<sup>39</sup> and raided businesses that use illegally reproduced software.<sup>40</sup>

Despite the host of Middle Eastern intellectual property laws, and some reported instances of enforcement, regulations are perceived to be lax<sup>41</sup> and countries throughout the region tend not to enforce intellectual property laws.

One international lawyer active in the Middle East points out that it is not simply a question of statutes. 'You not only have to look at the laws,' he observed. 'You have to look at levels of enforcement.' Foreign companies say that even with laws on the books, the protection they afford is

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<sup>33</sup> See *Patent Office Opens at Riyadh GCC Secretariat*, SAUDI GAZETTE, Feb. 8, 1999, available at 1999 WL 9682933 ("A Patent Office has been opened at the GCC [Gulf Cooperation Council] General Secretariat in Riyadh aimed at enhancing scientific and technological research among the member states.").

<sup>34</sup> See *Plugging Lebanon*, BUS. MIDDLE E., Nov. 1, 1997, available at 1997 WL 20826303.

<sup>35</sup> See *Bahrain Copyright Law Addresses U.S. Claims*, supra note 20 ("Bahrain has enacted its first copyright law, moving a step closer to a long standing demand of the United States and others to curb pirated films, computer software, taped music and books.").

<sup>36</sup> See Emad Tinawi, *International Legal Developments in Review: 1996, Middle Eastern Law*, 31 INT'L LAW. 541, 543 (1997) (discussing Oman's first copyright law, issued in 1996, which addressed protection of both Omani and foreign works).

<sup>37</sup> See Kaye, supra note 12 (discussing the creation of a special department within the Israeli police organization, aimed at stopping copyright infringement); see also *Israel to Combat Copyright Piracy*, FIN. TIMES (LONDON), May 22, 1998, World Trade at 7.

<sup>38</sup> See *10,000 Bottles of Fake Shampoo Bulldozed*, SAUDI GAZETTE, Feb. 24, 1999, available at 1999 WL 9683236 ("The operation is the first to be conducted by the ministry in Jeddah this year. It represents the firmer attitude that the ministry is adopting towards commercial counterfeiting and fraud in local markets.").

<sup>39</sup> See Habib Shaikh, *Consignment of Fake Shampoo Destroyed*, RIYADH DAILY, Feb. 28, 1999, available at 1999 WL 9683312.

<sup>40</sup> See *Crackdown on Illegal Software*, supra note 26.

<sup>41</sup> See, e.g., *Pirates of the East in Iran*, supra note 14 (Paradoxically, while Iran is weak on the regulation of intellectual property rights, it does have strict legal guidelines for the registration of trademarks and patents. "Iran has a poor reputation on protecting intellectual property rights. But the mechanisms are there for trademark and copyright protection.").

meaningless without stricter enforcement.<sup>42</sup>

Copyright police refuse to enforce laws against those who pirate music, stating that their priorities are elsewhere.<sup>43</sup> Police officials who say that enforcement is not “in the public interest”<sup>44</sup> articulate a sentiment that may originate from higher sources within their governments.<sup>45</sup> Also, courts are reluctant to pass judgment on copyists,<sup>46</sup> and when they do, punishments tend to be ineffective in deterring piracy.<sup>47</sup>

Even when a country’s legal code contains patent, trademark and copyright laws, there can be some glaring omissions. The most consistent of these has been the weakness or absence of laws protecting computer hardware and software. In some Arab countries, pharmaceuticals cannot be patented; instead, drug companies must patent the processes and instruments used in a particular drug’s manufacture.<sup>48</sup>

Without the threat of governmental interference, Bahraini software pirates operate at will.<sup>49</sup> Saudi Arabia takes six years to

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<sup>42</sup> Josh Martin, *Arab Governments Back Stricter Patent Laws*, MIDDLE E., Feb. 1, 1996, at 18.

<sup>43</sup> See Kaye, *supra* note 12 (“Not too long ago, [Yohanan] Banon [head of the copyright enforcement section of the Israel Record Federation] sent a complete dossier to the Jerusalem Police about a pirate CD vendor who was openly plying his trade on the Ben-Yehuda Mall. The police did not deny the evidence, but declined to pursue the case, saying that it was not in the public interest. Nor do the police deny that their priorities are elsewhere, as they have stated in the past when confronted with their lack of zeal regarding the operators and owners of pirate radio stations.”).

<sup>44</sup> See *id.*

<sup>45</sup> Norman Kempster, *U.S. in Conflict With Israel on Piracy Issue Trade: Complaints from American Movie and Software Firms Could Prompt Sanctions in April for Copyright Violations*, L.A. TIMES, Feb. 20, 1999, at C1 (“Twice in the last two years . . . [noted a U.S. State department official,] the Israeli Knesset has weakened an already feeble copyright law. Moreover . . . the laws that are on the books are not enforced.”).

<sup>46</sup> See Judy Dempsey, *Israel Risks US Sanctions Over ‘Pirating’*, FIN. TIMES (LONDON), Feb. 18, 1999, at 3.

<sup>47</sup> See, e.g., Sunil Rao, *Amended Copyright Law Not Far Away*, GULF NEWS, Mar. 22, 1999, available at 1999 WL 10434382 (“Even where fines have been assessed in criminal cases, the amounts have been so as to not constitute an effective deterrent to future criminal activities,” [said U.S. Ambassador Theodore Kattouf].”).

<sup>48</sup> Martin, *supra* note 42.

<sup>49</sup> See Richard Moore, *Video Pirates in Retreat*, GULF DAILY NEWS, Mar. 13, 1999, at 1.

review and issue a patent.<sup>50</sup> The Palestinian authority “remains indifferent to the theft of copyright.”<sup>51</sup> Israel does not enforce copyright laws against music pirates.<sup>52</sup> Virtually all software sold in Oman in 1997 was pirated.<sup>53</sup> Both Turkey and Iran have intellectual property laws in place, but reportedly do not enforce the rights of copyright or patent holders.<sup>54</sup> When intellectual property infringement cases are brought, Middle Eastern judges are reluctant to enforce existing laws.<sup>55</sup>

Perceptions of conditions in Lebanon in 1996 are instructive:

Intellectual property rights violations are a serious problem, even though Lebanon is a signatory to both the Berne and Universal Copyright Conventions. In theory, some local laws afford additional protection for foreign intellectual property, but in reality, the government provides no real protection for IPR[s]. The country’s Copyright Law dates from 1924 and is inadequate; patents, trademarks, and copyrights are registered without prior study and approval and without guarantee. Even when violations come to the government’s attention, it is unlikely to act. The only time the Ministry of Economy and Trade is likely to investigate and submit a report on a specific violation is when the aggrieved party resorts to the Lebanese courts.<sup>56</sup>

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<sup>50</sup> See Tinawi, *supra* note 36, at 543.

<sup>51</sup> Kaye, *supra* note 12; see also Rebecca Trounson, *Israel’s Growing Piracy Threat; Crime: Those Trying to Fight Illegal Production of CDs, Videos and Other Items May Be Forced to Consider Unorthodox Solutions, As Consumers and Officials Seem Unperturbed by It*, L.A. TIMES, Mar. 14, 1999, at C1.

<sup>52</sup> See Kaye, *supra* note 12.

<sup>53</sup> See *Oman Urged to Battle Software Piracy*, GULF NEWS, July 16, 1998, available at 1998 WL 24108512.

<sup>54</sup> See *Pharmaceuticals Industry in Turkey: Addicted to Copies*, *supra* note 17 (“The changes to legislation have had no effect because Turkey has made little progress on the critical issue of enforcement—copyright and patent piracy is still widespread.”); see also *Pirates of the East in Iran*, *supra* note 14 (“Iran has a poor reputation on protecting intellectual property rights. But the mechanisms are there for trademark and copyright protection.”).

<sup>55</sup> See Faiz Abba, *Imitation CDs, Video Tapes to be Seized at Airport*, ARAB NEWS, Aug. 13, 1998, available at 1998 WL 15175546.

<sup>56</sup> *Attracting Foreign Investment to Help With Economic Recovery*, *supra* note 15.

Moreover, when intellectual property laws are enforced, the resulting compliance can be illusory. The geography of the Middle East “is really an archipelago of inhabited islands on a desert sea,”<sup>57</sup> and a political boundary can slice through the middle of a population “oasis.” Thus, enforcement and compliance in one country can cause piracy to flourish across the boarder in an amount adequate to supply the demands of both jurisdictions.<sup>58</sup>

## II. THE WESTERN PRESCRIPTION

In order to better understand intellectual property policies in the Middle East, it is first helpful to understand how innovation incentives operate in the West. Professor Teece describes innovation as depending on three components: the appropriability regime, the dominant design paradigm, and complementary assets.<sup>59</sup> Key to gauging appropriability is the degree to which an innovator is able “to capture the profits generated by an invention,” which depends largely on “the nature of the technology and the efficacy of legal mechanisms of protection.”<sup>60</sup> Consequently, if intellectual property protection can be made more effective, ease of appropriability decreases. Recoupment of investment in innovation will be more likely, and the firm will be able to derive sales profits related to the innovation. “[I]f the innovator possesses an impenetrable thicket of patents, or has technology which is simply difficult to copy, then the market may well afford the innovator the necessary time to ascertain the right design before being eclipsed by imitators.”<sup>61</sup> This should promote additional innovation, particularly for products that are otherwise easily appropriated, such as sound recordings, printed works and

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<sup>57</sup> MANSFIELD, *supra* note 10, at 490.

<sup>58</sup> See, e.g., *Oman Piracy Hinders UAE Copyright Enforcement*, GULF NEWS, Mar. 10, 1998, available at 1998 WL 24105909 (discussing cross-border piracy between the UAE and Oman, and the UAE’s difficulty “adequately [enforcing] its copyright law when close to a 100 per cent piracy rate is within a minute’s drive across the border in Oman.”). But see, e.g., Nagy Boushra, *New Law Ends Omani Town’s Status as Piracy Haven*, GULF NEWS, Nov. 30, 1998, available at 1998 WL 24108396 (discussing a crack-down on pirating in the Omani town of Al Buraimi, once considered a “haven for pirated audio, video and computer software products”).

<sup>59</sup> David J. Teece, *Profiting from Technological Innovation: Implications for Integration, Collaboration, Licensing, and Public Policy*, in STRATEGIC MANAGEMENT OF TECHNOLOGY AND INNOVATION 231, 233 (Robert A. Burgelman et al. eds., 2nd ed. 1996).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 237.

computer software.

The term “design paradigm” is a shorthand expression for the degree to which a field of endeavor has accepted a universally recognized<sup>62</sup> method of treatment.<sup>63</sup> Moving from the competing schools<sup>64</sup> of the preparadigmatic<sup>65</sup> or “unscientific” stage<sup>66</sup> to a mature<sup>67</sup> paradigmatic stage occurs when a synthesis is defined that “attract[s] most of the next generation’s practitioners” and “older schools [of thought] gradually disappear.”<sup>68</sup>

Once a dominant design emerges, competition shifts to price and away from design. Competitive success then shifts to a whole new set of variables.

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<sup>62</sup> See THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (3rd ed. 1996) at x (defining paradigms as “universally recognized scientific achievements that for a time provide model problems and solutions to a community of practitioners.”).

<sup>63</sup> See Teece, *supra* note 59, at 234.

It is commonly recognized that there are two stages in the evolutionary developments of a given branch of a science: the preparadigmatic stage when there is no single, generally accepted conceptual treatment of the phenomenon in a field of study, and the paradigmatic stage which begins when a body of theory appears to have passed the canons of scientific acceptability. The emergence of a dominant paradigm signals scientific maturity and the acceptance of agreed upon standards by which what has been referred to as normal scientific research can proceed. These standards remain in force unless or until the paradigm is overturned. Revolutionary science is what overturns normal science, as when Copernicus’s theories of astronomy overturned Ptolemy’s in the 17th century.

*Id.*

<sup>64</sup> See KUHN, *supra* note 62, at 12 (noting that before there is an accepted paradigm, there are a number of competing schools and sub-schools of thought).

<sup>65</sup> See *id.* at 15 (“In the absence of a paradigm or some candidate for paradigm, all of the facts that could possibly pertain to the development of a given science are likely to seem equally relevant.”).

<sup>66</sup> See *id.* at 13 (“Yet anyone examining a survey of physical optics before Newton may well conclude that, though the field’s practitioners were scientists, the net result of their activity was something less than science.”).

<sup>67</sup> See *id.* at 11 (“Acquisition of a paradigm and of the more esoteric type of research it permits is a sign of maturity in the development of any given scientific field.”).

<sup>68</sup> See *id.* at 18.

It is also important to note that “[l]ike the choice between competing political institutions, that between competing paradigms proves to be a choice between incompatible modes of community life. Because it has that character, the choice is not and cannot be determined merely by the evaluative procedures characteristic of normal science, for these depend in part upon a particular paradigm, and that paradigm is at issue.

*See id.* at 94.

Scale and learning become much more important, and specialized capital gets deployed as incumbents seek to lower unit costs through exploiting economies of scale and learning. Reduced uncertainty over product design provides an opportunity to amortize specialized long-lived investments.<sup>69</sup>

The goal of designed-in obsolescence is to prevent universal acceptance of a paradigm and resulting price competition. However, once standards are formed, innovation focuses on refining the processes that are used to produce the product, rather than generating new products.<sup>70</sup> Innovation from the paradigmatic stage, then, often occurs only serendipitously.<sup>71</sup>

The third component of Western innovation theory relates to complementary assets.

In almost all cases, the successful commercialization of an innovation requires that the know-how in question be utilized in conjunction with other capabilities or assets. Services such as marketing, competitive manufacturing, and after-sale support are almost always needed. These services are often obtained from complementary assets which are specialized.<sup>72</sup>

As dominant firms increase in scale, they increasingly rely on complementary assets to provide services efficiently to other branches of the firm. This “creates an impetus to modularize the product system, and to standardize the interfaces amongst materials, components, and architectures.”<sup>73</sup>

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<sup>69</sup> Teece, *supra* note 59, at 234.

<sup>70</sup> See Kuhn, *supra* note 62 at 35-36 (positing that the aim of normal science is not major substantive novelties but rather the achievement of the anticipated in a new way).

<sup>71</sup> See *id.* at 4.

Observation and experience can and must drastically restrict the range of admissible scientific belief, else there would be no science. But they cannot alone determine a particular body of such belief. An apparently arbitrary element, compounded of personal and historical accident, is always a formative ingredient of the beliefs espoused by a given scientific community at a given time.

See *id.*

<sup>72</sup> See Teece, *supra* note 59, at 235.

<sup>73</sup> CLAYTON M. CHRISTENSEN, INNOVATION AND THE GENERAL MANAGER 546 (1999).

However, modularizing system components allows other firms (or other components within firms) to compete to satisfy this well-defined demand.<sup>74</sup> “[W]hen imitation is easy . . . the profits from innovation may accrue to the owners of certain complementary assets, rather than to the developers of the intellectual property. This speaks to the need, in certain cases, for the innovating firm to establish a prior position in these complementary assets.”<sup>75</sup> Advantages exist for firms that innovate to skip steps in such processes; they can capture profits that otherwise accrue to firms that must complete each portion of the processes sequentially.<sup>76</sup> “This speaks to the importance to innovating nations of maintaining competence and competitiveness in the assets which complement technological innovation, manufacturing being a case in point. It also speaks to the importance to innovating nations of enhancing the protection afforded worldwide to intellectual property.”<sup>77</sup>

With this as its underlying philosophy, the United States has recognized that its constituent innovators are large paradigmatic entities that rely on diverse complementary assets to amortize long-term costs. Therefore, the U.S. has been persistent in promoting the adoption and enforcement of intellectual property regimes throughout the Middle East in order to limit appropriability.<sup>78</sup> For example, the U.S. has held intellectual

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<sup>74</sup> See *id.* at 547.

Competition amongst nonintegrated designers/assemblers wrests control over the product development cycle and the slope of the technological trajectory from the dominant, pioneering firms. To remain competitive, these firms must decouple their operations in materials and components, from their operations in product design and assembly — either through creation of an internal market, or participation in the external one.

*Id.*

<sup>75</sup> Teece, *supra* note 59, at 231.

<sup>76</sup> Note however that:

The conditions of modularity can disappear as readily as they can appear, when new, integral technologies emerge. Hence, companies that have enjoyed the advantages of flexibility, speed and cost that stem from modular designs, can suddenly find themselves uncompetitive. Companies that have been unable to transfer technology effectively from their laboratories to their markets, once again can find that their research activities constitute a key competitive advantage.

See CHRISTENSEN, *supra* note 73, at 547.

<sup>77</sup> Teece, *supra* note 59, at 249.

<sup>78</sup> See Martin, *supra* note 42 (“Copyright laws are now becoming fashionable thanks

property rights talks with Gulf states,<sup>79</sup> and pressure from both the U.S. and Europe has had an impact in formal intellectual property protection within Gulf Cooperation Council (“GCC”) member states.<sup>80</sup> Israel is routinely the focus of U.S. animus regarding its weak enforcement of intellectual property rights, especially those relating to music and software.<sup>81</sup> Placement on the United States Trade Representative’s (USTR’s) watchlist of countries that are deemed ineffective in enforcing intellectual property protection has motivated Bahrain and Jordan<sup>82</sup> to strengthen intellectual property protection. The United States has also been identified as the force behind recent intellectual property legislation in Lebanon.<sup>83</sup>

Additionally, U.S.-based non-governmental organizations seek to influence the adoption of Western-style intellectual property protection in the Middle East by threatening to expose lax enforcement in an effort to promote U.S. and international sanctions. For example, the International Intellectual Property Alliance (“IIPA”) is a private trade group comprised of U.S. copyright-based industries.<sup>84</sup> Its members include Association of American Publishers, Business Software Alliance (“BSA”), Interactive Digital Software Association (“IDSA”), Motion Picture

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to US pressure,’ says Talal Abu-Ghazaleh, chairman of the Arab Society for the Protection of Intellectual Property.”).

<sup>79</sup> See *US/GCC Copyright Talks Begin*, MIDDLE E. ECON. DIG., Jan. 21, 1994, at 12.

<sup>80</sup> See Tinawi, *supra* note 36, at 543 (“Under pressure from [sic] the United States and other Western European countries, GCC governments have not only passed IP laws but have undertaken more rigorous enforcement measures particularly in Saudi Arabia and the UAE where the governments have confiscated sizable quantities of counterfeit material.”); see also *Experts Hail Decision on Intellectual Property Rights*, KUWAIT TIMES, Mar. 24, 1999, available at 1999 WL 5554530 (noting that “international economic sanctions would be imposed on Kuwait if it did not comply” with a new law passed by the Kuwaiti Cabinet protecting intellectual property rights).

<sup>81</sup> See Kaye, *supra* note 12; see also *IPR Regulation: Israel TRIPS up*, BUS. MIDDLE E., Feb. 1, 1999, available at 1999 WL 2033537; see also Trounson, *supra* note 51.

<sup>82</sup> See *Bahrain Copyright Law Addresses U.S. Claims*, *supra* note 20; see also *Distribution & Exhibitions in Bahrain*, BUS. MIDDLE E., Mar. 1, 1998, available at 1998 WL 16833798; *Intellectual Property Rights in Jordan*, BUS. MIDDLE E., May 16, 1998, available at 1998 WL 16833926.

<sup>83</sup> See *Lebanon Parliament Approves Intellectual Property Rights Law*, DOW JONES INT’L NEWS, Mar. 16, 1999, at 16:20:00 (“Parliament on Tuesday approved a bill to outlaw the piracy of computer software and other intellectual property. . . . One opponent, Najah Wakim, a left-wing legislator, blamed the United States for the bill.”); see also *Microsoft to Open New Office in Beirut*, DEUTSCHE PRESSE-AGENTUR, Mar. 17, 1999, at 12:19:00 (“Deputy Najah Wakim and other MPS accused the United States of exerting pressure on the Lebanese government to endorse the anti-piracy law.”).

<sup>84</sup> See International Intellectual Property Alliance, at <http://www.iipa.com> (last visited Mar. 14, 2001).

Association of America (“MPAA”), National Music Publishers Association, and the Recording Industry Association of America (“RIAA”).<sup>85</sup> The IIPA makes recommendations to the U.S. Trade Representative as to which countries should appear on the U.S.’s “watchlist” of countries with lax IP protection in order to encourage the U.S. to pressure Middle Eastern governments to reduce appropriability.<sup>86</sup> In addition, the IIPS threatens offending countries with private prosecution before the World Trade Organization (“WTO”).<sup>87</sup>

Membership in the WTO complements U.S. pressure on Middle Eastern countries to adopt Western-style intellectual property rights. The Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPs”), including trade in counterfeit goods, requires that “Members [of the WTO] *shall* give effect to the provisions of the TRIPs.”<sup>88</sup> The TRIPs defines specific intellectual property provisions that must be reflected in Members’ legal regimes, including provisions relating to copyright,<sup>89</sup> trademark,<sup>90</sup> geographic indication,<sup>91</sup> industrial design,<sup>92</sup> patents,<sup>93</sup> integrated circuit layout design,<sup>94</sup> trade secret<sup>95</sup> and licensing.<sup>96</sup> Countries

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<sup>85</sup> See International Intellectual Property Alliance/IIPA Members, at [http://www.iipa.com/html/iipa\\_members.html](http://www.iipa.com/html/iipa_members.html) (last visited Mar. 14, 2001).

<sup>86</sup> See, e.g., Owais, *supra* note 27 (“The International Intellectual Property Alliance (IIPA) has recommended to the U.S. Trade Representatives (USTR) that the UAE be removed from the priority Special 301 watchlist because it reduced piracy to 54 per cent in 1998 – almost equal to the European rate.”); see also Moore, *supra* note 49 (“[The International Intellectual Property Alliance] has designated Israel as the only Priority Foreign Country, calling it ‘the key focus of international optical media piracy, producing, importing, and trans-shipping illegal products in quantities that dwarf its modest legitimate domestic demand.’ ... ‘The [International Intellectual Property Alliance] organization has threatened to add Kuwait to its Priority Foreign Country List if it fails to pass its draft copyright legislation by April 30.’”); International Intellectual Property Alliance/What We Do, at [http://www.iipa.com/fact\\_sheet.pdf](http://www.iipa.com/fact_sheet.pdf) (last visited Apr. 6, 2001).

<sup>87</sup> See, e.g., Moore, *supra* note 49 (“[The International Intellectual Property Alliance] has given Israel until January 1 to comply with its WTO commitments, or face trade sanctions.”).

<sup>88</sup> See Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, pt. 1, art.1.1, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 33 I.L.M. 1197 (1994) [hereinafter TRIPs] (emphasis added).

<sup>89</sup> See *id.* pt. 2, § 1.

<sup>90</sup> See *id.* pt. 2, § 2.

<sup>91</sup> See *id.* pt. 2, § 3.

<sup>92</sup> See *id.* pt. 2, § 4.

<sup>93</sup> See *id.* pt. 2, § 5.

<sup>94</sup> See TRIPs, pt. 2, § 6.

<sup>95</sup> See *id.* pt. 2, § 7.

<sup>96</sup> See *id.* pt. 2, § 8.

including Egypt,<sup>97</sup> Saudi Arabia,<sup>98</sup> Bahrain<sup>99</sup> and Iran<sup>100</sup> are seeking membership in the WTO.

Stimulated by these influences, we hear Middle Easterners echoing Teece's arguments regarding innovation, appropriability, and complementary assets. Intellectual property protection is said to be the necessary "handmaiden" that precedes economic development in the Middle East.<sup>101</sup> For example, intellectual property enforcement will allow "many promising Omani companies [to] create and develop their information technology programmes."<sup>102</sup> Copyright protection is promoted as capable of stimulating "creativity and invention" within the UAE.<sup>103</sup> Jordanian pirates are criticized for preventing software development from becoming "a source of national income as an export for Jordan in the future."<sup>104</sup> Establishing and enforcing an intellectual property regime is perceived as capable of "increase[ing] confidence among foreign investors and businesses"<sup>105</sup> thereby stimulating further investment in the region.<sup>106</sup> Similarly, Egypt seeks greater foreign investment by enforcing computer-oriented intellectual property rights.<sup>107</sup> When gaps are spotted in intellectual property protection, software companies request passage of intellectual property legislation as a precondition to initiating operations in the Middle East.<sup>108</sup> State

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<sup>97</sup> See *Egyptian Business Legislation: Streamlining*, BUS. MIDDLE E., Mar. 1, 1999, available at 1999 WL 2033623.

<sup>98</sup> See *Intellectual Property Rights in Saudi Arabia*, BUS. MIDDLE E., Oct. 1, 1998, available at 1998 WL 16834151.

<sup>99</sup> See *Distribution & Exhibitions in Bahrain*, *supra* note 82.

<sup>100</sup> See *Pirates of the East in Iran*, *supra* note 14.

<sup>101</sup> See Jamar, *supra* note 32, at 1079; see also Ilham Sadeq, *Jordanian Inventors Need Just An Extra Little Push*, STAR, May 28, 1998, available at 1998 WL 7320112 ("The development of any country is measured by the standard of technology and scientific progress.").

<sup>102</sup> *Oman Urged to Battle Software Piracy*, *supra* note 53.

<sup>103</sup> See *UAE Remains Committed to Fighting Piracy*, GULF NEWS, Oct. 6, 1998, available at 1998 WL 24108069.

<sup>104</sup> Zeid Nasser, *The Piracy Scare*, STAR, June 12, 1997, available at 1997 WL 8257421.

<sup>105</sup> *U.S., Gulf Council Seen Forging Pact On Intellectual-Property Rights*, DOW JONES ONLINE NEWS, June 16, 1997, at 09:12:00.

<sup>106</sup> See *Oman Urged to Battle Software Piracy*, *supra* note 53.

<sup>107</sup> See *Egypt Cracks Down on Software Pirates*, GULF NEWS, Feb. 4, 1998, available at 1998 WL 24105781.

<sup>108</sup> See *Plugging Lebanon*, *supra* note 34 (noting that a new draft law on protection of intellectual property should ease foreign investors' doubts over the shortcomings of Lebanon's legal and regulatory framework); *Lebanon Parliament Approves Intellectual*

compliance is rewarded with these firms then establishing offices<sup>109</sup> or releasing special versions of software<sup>110</sup> in order to create local “economic advantages.”<sup>111</sup>

However, despite the machinations of the U.S., the WTO, and various other parties, intellectual property rights often go unenforced in the Middle East. This has driven firms that have significant intellectual property holdings or interests to resort to self-help.<sup>112</sup> For example, Yohanan Banon head of the copyright enforcement section of the Israel Record Federation says he has never even heard of the police officially raiding pirates’ music stands.<sup>113</sup> Banon goes on to explain:

I pay off-duty police officers to raid them as well as security personnel and experts who can tell the fake from the real discs. I have about 40 people in my unit, all freelancers. They provide me with the intelligence on sales outlets, producers, importers, smugglers and so on. We make about 40 raids a month. In the first three weeks of January, we got

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*Property Rights Law*, *supra* note 83 (“Major software companies have said the adoption of [intellectual property rights legislation] would encourage them to operate in Lebanon.”); *see also Microsoft Defers Plans for Lebanon*, GULF NEWS, Sept. 12, 1998, available at 1998 WL 24107875 (reporting that a Microsoft representative stated, “[i]f Lebanon is serious about its rebuilding programmes, it needs to implement and enforce laws to protect software piracy. By doing so, it will establish the required economic and business environment for investment by major multinationals.”).

<sup>109</sup> *See, e.g., Microsoft to Open New Office in Beirut*, *supra* note 83.

<sup>110</sup> *See Microsoft in Arab Piracy Deal*, FIN. TIMES (LONDON), Aug. 28, 1997, World Trade at 5 (“Microsoft is to contract out production of Arabic versions of its computer software to Egyptian manufacturers if the Egyptian government honours a new commitment to combat software piracy.”).

<sup>111</sup> *Microsoft To Open New Office in Beirut*, *supra* note 83 (reporting that a Microsoft representative stated, “[w]e will be working ever more actively with government officials, aiming to share with them a view of the economical advantages that can be achieved by addressing the illegal software problem now that there is a legal framework in place.”).

<sup>112</sup> *See, e.g., Trounson*, *supra* note 51 (discussing Israel’s continued widespread counterfeiting operations, despite the U.S.’s efforts to stem such piracy. The article reports that “[t]he only real enforcement comes from the victimized industries in the form of private investigations and civil raids.”). Self-help is not a purely Middle Eastern phenomenon. *See, Brandon Mitchener, Video Industry in Britain Has Pirates at Bay*, WALL ST. J., Aug. 16, 2000, at B1 (“Just six years ago, an estimated 45% of all videos sold in Britain were pirated copies. Today, the figure is less than 5%. What changed? The answer, in a nutshell, is do-it-yourself justice.”).

<sup>113</sup> *Kaye*, *supra* note 12.

about 40,000 discs and tapes.<sup>114</sup>

In the past, Banon continues, sellers would not retaliate when raided, but now violence is on the increase. “The last Saturday of January, we raided the Bilu Center, near Rehovot. We arrived with seven police officers — but the stall-holders attacked the police and *the attorney, who was stabbed in the melee.*<sup>115</sup>

Du Pont has recently started a private campaign to combat piracy of its Corian counter material.<sup>116</sup> Microsoft has agreed to give discounts in Lebanon and the UAE to those who purchase its software for educational purposes in an effort to dissuade copying and encourage a habit of purchasing legally obtained software.<sup>117</sup> Similarly, users of illegally obtained software have been given amnesty.<sup>118</sup> They are allowed to exchange an unauthorized version of software for an authentic copy.<sup>119</sup> Firms such as Proctor & Gamble<sup>120</sup> and organizations such as the newly-formed Jordanian Society for the Protection of Intellectual Property Rights are investing in educating members of the bar and the public on the scope of intellectual property rights in order to stimulate

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<sup>114</sup> *Id.*

<sup>115</sup> *Id.* (emphasis added).

<sup>116</sup> See *Corian Launches Gulf Campaign Against Fakes*, GULF NEWS, May 30, 1998, available at 1998 WL 24106948.

<sup>117</sup> See *Lebanon Parliament Approves Intellectual Property Rights Law*, supra note 83 (In connection with a new intellectual property rights law passed by the Lebanese Parliament, “[the] government demanded, and received, written commitments from software manufacturers to make their products affordable to educational institutions and students by providing discounts of up to 99% of the sale price.”); *UAE Remains Committed to Fighting Piracy*, supra note 103 (reporting that Microsoft’s new regional anti-piracy initiative allows students and teachers to buy top-selling applications at up to 90% off the standard retail price in an effort to lure these consumers away from pirated products).

<sup>118</sup> See Zeid Nasser, *Amnesty Programs: For Pirates or For Users?*, STAR, Apr. 24, 1998, available at 1998 WL 7320003.

<sup>119</sup> See *id.* The article goes on to criticize these programs as labeling users of illegally obtained software as pirates or thieves. However, the author does approve of these programs as “a welcome change to the threatening tone adopted by software companies.” *Id.*

<sup>120</sup> Proctor & Gamble’s efforts at stemming intellectual property piracy are most noticeable in India, where they have joined a newly-formed “Brand Protection Commission,” and in China, where they are members of the “China Anti-Counterfeit Coalition.” See *FMCG COS Form Panel To Protect Brands*, INDIA BUS. INSIGHT, Feb. 21, 2001, available at 2001 WL 14836201; David Murphy, *Fake Goods Sales At Critical Levels in China*, BUS. TIMES (SINGAPORE), June 21, 1999, available at 1999 WL 18751570.

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compliance.<sup>121</sup>

### III. THE MIDDLE EASTERN PERSPECTIVE

#### A. *Cultures in Conflict*

Do Middle Easterners flock to newly-opened McDonald's restaurants because of the "best ingredients, strict standards and proven preparation procedures?"<sup>122</sup> Probably not, yet Middle Easterners are increasing their consumption of McDonalds, fake Coca-Cola<sup>123</sup> and even Elvis memorabilia. Consider the following:

The Elvis Inn is more than a pop shrine. It's a place where Jews, Muslims, and Christians come together. It's not unusual to see an ultra-Orthodox Jew in black garb filling up at the gas station while an Israeli Arab family stops for ice cream at picnic tables and a busload of Christian tourists pause for a snapshot in front of the statue [of Elvis]. At a time when the peace process is deadlocked and the long, simmering tension of this place can be draining, the Elvis Inn offers a way of getting away from it all. . . . [U.S. tourist] Sherry [Conrad] added, "He's not just about America, Elvis is international. The whole world loves Elvis."<sup>124</sup>

Similarly, Iranian malls are packed "[w]ith boutiques crammed with counterfeit Calvin Klein and Ralph Lauren clothing, with

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<sup>121</sup> See *Intellectual Property Rights Gets [sic] a Boost in Jordan*, STAR, Dec. 24, 1998, available at 1998 WL 22858316 (discussing the first meeting of the Jordanian Society for the Protection of Intellectual Property Rights); see also Arif Ali, *Trademarks Act As Important Consumer Guide*, GULF NEWS, Feb. 27, 1999, available at 1999 WL 10433773.

<sup>122</sup> *McDonald's to Open 41 More Mideast Restaurants*, GULF NEWS, Jan. 25, 1999, available at 1999 WL 10433138.

<sup>123</sup> See Daniel Pearl and Nikhil Deogun, *Today's Pop Quiz: Where Is Coca-Cola Not the Real Thing? In Iran, Where Coke Bottles Contain Something Else*, WALL ST. J., July 10, 1998, at A1 ("In a soda factory here, a circular machine injects a familiar brown liquid into familiar old Coke bottles. The bottles go into red 'Coca-Cola' crates. Upstairs, the factory's marketing manager sits at a desk etched with a huge 'Coca-Cola' logo and declares: 'We have nothing to do with Coca-Cola.'").

<sup>124</sup> Charles M. Sennott, *At Elvis Shrine, Arab, Jew Tune Out Discord*, BOSTON GLOBE, Aug. 31, 1998, at A2.

electronics stores featuring all the latest in Japanese gadgetry and with American-style fast food outlets offering kebabs, burgers and banana splits. . . .”<sup>125</sup> “To a greater degree, perhaps, than in any other country, the easy availability of American popular culture in the closed society of Iran demonstrates its appeal across political, religious and ethnic boundaries.”<sup>126</sup> Simply stated, Middle Easterners have a strong desire to be a part of the western world and that means partaking in the full measure of Western culture.

Countries such as Iran cannot isolate themselves completely from global modernization and the rise of technology.<sup>127</sup> Yet Middle Easterners retain a strong sense that their culture is separate and distinct from that of the West. Middle Eastern culture is derived from particular perceptions of history and religion,<sup>128</sup> and many Middle Easterners seek vigorously to protect this culture from outside corrupting influences.<sup>129</sup> For example, “[e]ven among young Iranians, there are fears that an onslaught of U.S. videotapes, books and compact discs will dilute the richness of a 6,000 year-old culture of which most are extraordinarily proud.”<sup>130</sup> In the Islamic Republic of Iran, reportedly, “rock ‘n’ roll is against the law and wearing a ball cap backward or a Michael Jordan T-shirt frontward can land you in jail for a night.”<sup>131</sup> This reflects a sentiment of many Middle Easterners who view religiously-based law “as [a] necessary bulwark against Westernization”<sup>132</sup> and its

<sup>125</sup> Tom Hundley, *Straight-Laced Code Makes Mall A Flirting Ground*, CHI. TRIB., Jan. 2, 1998, at 1.

<sup>126</sup> John Lancaster, *Western Influence Transcends A Veiled Society*, ORLANDO SENTINEL, Jan. 10, 1999, at G1.

<sup>127</sup> See Hundley, *supra* note 125.

Our religious leaders can’t stop technology. Iran can’t shut out what is happening in the rest of the world,’ [said a father] sharing an ice cream with his daughters at the mall. Even so, he said he welcomes the framework that sets limits for teenagers. He sees the veil as a kind of shield that may afford his daughters some protection from the rough edges of modernization.

*Id.* at 1.

<sup>128</sup> To the disdain of the West. See MANSFIELD, *supra* note 10, at 480 (“As for the Islamic religion, the attitude towards it in the Western world is based on an equal mixture of prejudice and ignorance.”).

<sup>129</sup> See *Introduction to EVERYDAY LIFE IN THE MUSLIM MIDDLE EAST* 1, 7 (Donna Lee Bowen & Evelyn A. Early eds., 1993) (“It seems to [Middle Easterners] that the moral core of Western society has collapsed.”).

<sup>130</sup> Lancaster, *supra* note 126.

<sup>131</sup> Hundley, *supra* note 125.

<sup>132</sup> *Id.*

attendant consumerism.<sup>133</sup>

Middle Easterners who are educated abroad often experience surprise and difficulty readjusting upon their return to the Middle East.<sup>134</sup> Cultural issues, as well as employment difficulties<sup>135</sup> cause many foreign-educated Middle Easterners to emigrate back to the West.<sup>136</sup> Some of those who remain in the Middle East live between “two worlds”<sup>137</sup> and attempt to “reunite the spiritual and religious side of life with the political and the commercial.”<sup>138</sup> Yet, there is a sense that these two worlds are irreconcilable.<sup>139</sup> This tension between a “simultaneous craving for and rejection of all things Western”<sup>140</sup> causes some Middle Easterners to “resent the domination of Western culture. . .[yet]. . .there is little real sign that they will reject [Western culture] — whether it is jeans and junk-food, television soap-operas, computers, supersonic aircraft

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<sup>133</sup> *Introduction to Home, Community, and Work, in EVERYDAY LIFE IN THE MUSLIM MIDDLE EAST* 125, 125 (Donna Lee Bowen & Evelyn A. Early eds., 1993) (“Consumerism and obsession with material objects, widely criticized by Muslim activist movements, have been in highly visible conflict with traditional society.”).

<sup>134</sup> *See Introduction to EVERYDAY LIFE IN THE MUSLIM MIDDLE EAST, supra* note 129, at 9.

<sup>135</sup> *See Introduction to Home, Community, and Work, in EVERYDAY LIFE IN THE MUSLIM MIDDLE EAST, supra* note 133, at 126 (“In some countries, swelling university populations have created a huge, unemployable reserve of white-collar workers.”).

<sup>136</sup> *See MANSFIELD, supra* note 10, at 535.

<sup>137</sup> *See John Waterbury, Islam and Hajj Brahim’s World, in EVERYDAY LIFE IN THE MUSLIM MIDDLE EAST* 178, 179-80 (Donna Lee Bowen & Evelyn A. Early eds., 1993).

[Southern Moroccan merchant Hajj] Brahim exists in two worlds: the ambiguous and provisional secular world and the logically infallible world of God. However, it is not that he exists in one *or* the other; he exists in both. The secular is made palatable and is explained by the religious, and each secular act has significance in the world of God. Islam allows Brahim to make the best of both worlds.

*Id.*

<sup>138</sup> *Introduction to EVERYDAY LIFE IN THE MUSLIM MIDDLE EAST, supra* note 129, at 7.

<sup>139</sup> *See MANSFIELD, supra* note 10, at 520-21.

[Modern Islamic reformers make it their aim] to strengthen the world of Islam in order to protect it against the dominating power of the West and for this purpose they sought to introduce the liberal humanitarian values of eighteenth-century Europe and America. But at the same time they could not admit that the values and practices of early Islam were anything less than perfect. In other words they were reformers who would not say they wanted a reformation.

*Id.*

<sup>140</sup> Hundley, *supra* note 125 (“In many ways, the scene at the mall — the women outfitted in medieval costumes parading in front of shops offering laptop computers and hundred-dollar sports shoes — symbolizes Iran’s internal conflict: the simultaneous craving for and rejection of all things Western.”).

or laser surgery.”<sup>141</sup> Others attempt to return their land and peoples to their own cultures, by completely rejecting western culture.<sup>142</sup> Given the incompatibility of Western materialism and Middle Eastern spirituality, it is very likely the struggle between these competing tendencies will continue into the future.

*B. A Shared Sense of the Past.*

Although there is no single Middle Eastern culture, clarifications may be made to illuminate or change perceptions Westerners have of the region. Ethnically, the Middle East is host to many different peoples, including Jews, Arabs, Turks and Persians. Middle Eastern culture has been formed out of the richness of these peoples’ Semitic languages,<sup>143</sup> which for centuries have been the vehicle for poetic “expression, instruction, and popular entertainment.”<sup>144</sup> “All the Semitic languages have striking similarities in their syntax and basic vocabularies, just as there are affinities between the social institutions, religious beliefs and even the psychological traits of the peoples who speak them.”<sup>145</sup> Desert living required mutual reliance for the sake of survival,<sup>146</sup> and poetry was easily adaptable to transient lifestyles and has been used for millennia to express shared ancient ideals.<sup>147</sup> Recitation, and thus an appreciation for shared history, is even today a highly regarded art form.<sup>148</sup>

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<sup>141</sup> MANSFIELD, *supra* note 10, at 531.

<sup>142</sup> See *Introduction to Home, Community, and Work, in EVERYDAY LIFE IN THE MUSLIM MIDDLE EAST*, *supra* note 133, at 127.

<sup>143</sup> See MANSFIELD, *supra* note 10, at 489 (“All nationalists need a myth and an ideal, but the Arabs need one more than most. In their case it is the unification of the Arab-speaking peoples in a single nation.”).

<sup>144</sup> ARTHUR GOLDSCHMIDT, JR., *A CONCISE HISTORY OF THE MIDDLE EAST* 105 (6th ed. 1999).

<sup>145</sup> PETER MANSFIELD, *A HISTORY OF THE MIDDLE EAST* 5 (1991).

<sup>146</sup> See David Molyneaux, *Desert Inhabitants Welcome Travelers*, *PLAIN DEALER*, Nov. 22, 1998, at 1K.

<sup>147</sup> See GOLDSCHMIDT, *supra* note 144, at 20.

<sup>148</sup> MANSFIELD, *supra* note 10, at 523. The emphasis on recitation draws its roots from the Bedouin Arabs’ nomadic lifestyle. “Their constant movement gave them no chance to develop architecture, sculpture, or painting. But they did possess a highly portable form of artistic expression – poetry. Pre-Islamic poetry embodied the Arab code of virtue . . . and the verses helped to fix [this code] in their minds.” GOLDSCHMIDT, *supra* note 150, at 20.

Given this particular cultural sensitivity to common, shared experiences, Middle Easterners tend to focus on relationships rather than results.<sup>149</sup> “Traditional ties can dilute crisp, impersonal business dealings — benefiting interpersonal relations but sabotaging efficiency.”<sup>150</sup> Contemporary shared life experiences that inform current Middle Eastern culture can also include urban unemployment,<sup>151</sup> a newly-forming bureaucratic middle class taking the place of an older entrepreneurial middle class,<sup>152</sup> and geographic isolation created by water and desert.<sup>153</sup> Furthermore, most Middle Eastern states are small, which has been perceived as an impairment in the past, but may have certain advantages in a “global” economy.<sup>154</sup> Through these experiences, “[p]re-Islamic Arab values combine with Islamic values such as piety and reverence and with secular values such as patriarchy to form the rich, complex Middle Eastern Muslim culture . . . .”<sup>155</sup>

Two main historical periods are said to define sensibilities in the Muslim Middle East:<sup>156</sup> the “coming of Islam” and the “intrusion”

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<sup>149</sup> See *Introduction to Home, Community, and Work*, in EVERYDAY LIFE IN THE MUSLIM MIDDLE EAST, *supra* note 133, at 127.

With the Middle East’s entry into a world economy dependent upon international market forces, Middle Eastern markets have changed and diversified. However, the essence of the merchant-customer or patron-client tie has not altered very much . . . . [M]erchants establish themselves in marketplaces more through social rapport than through the sale of produce.

*Id.*

<sup>150</sup> Elizabeth W. Fernea, *The Veiled Revolution*, in EVERYDAY LIFE IN THE MUSLIM MIDDLE EAST 119, 125 (Donna Lee Bowen & Evelyn A. Early eds., 1993).

<sup>151</sup> See *Introduction*, EVERYDAY LIFE IN THE MUSLIM MIDDLE EAST, *supra* note 129, at 9 (discussing the industrialization of the Middle East and the movement away from agriculture and cottage industry and towards industrial wage labor).

<sup>152</sup> See MANSFIELD, *supra* note 10, at 534.

<sup>153</sup> See *id.* at 490.

<sup>154</sup> See G. Pascal Zachary, *From Iceland to Botswana, Small Nations Prosper*, WALL ST. J., Feb. 25, 1999, at B1.

The success of small nations [in the global economy] results from the same kind of innovation in business and social organization that, in an information age, gives small corporations the edge over big ones. Entrepreneurs and small countries can both have an easier time than bigger entities in adjusting to shocks and taking advantages of new opportunities. Technology is obliterating the isolation that used to hurt small companies and countries.

*Id.*

<sup>155</sup> *Introduction to EVERYDAY LIFE IN THE MUSLIM MIDDLE EAST*, *supra* note 129, at 4.

<sup>156</sup> From this point forward, most of my remarks will be addressed to the Muslim Middle East, largely because of the prevalence of Islam in the region when compared with other influences.

of the West.<sup>157</sup> The latter has been characterized as imposing a system of rationality to displace one based in faith.<sup>158</sup> The uneasy tension between these two worldviews is explored in greater detail below.

1. *The Intrusion of the West.*

Muslim Middle Easterners have “a profound sense of their own glorious past.”<sup>159</sup> “[T]he Middle East region was in advance of western Europe for all but the last five hundred of the five thousand or so years for which human history can be traced back.”<sup>160</sup> The relatively recent triumph of the West is perceived as a mere “aberration.”<sup>161</sup>

Middle Eastern history can be woven like thread through the ancient trading colonies of the Phoenicians,<sup>162</sup> the commercial kingdom of the Nabataens,<sup>163</sup> and the empires of Alexander<sup>164</sup> and Rome.<sup>165</sup>

In AD 570 or 571, in obscure and impoverished Arabia an extraordinary man had been born who would plant the seeds of a new and much greater power that would come to overwhelm them.” “The

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<sup>157</sup> See *Introduction to EVERYDAY LIFE IN THE MUSLIM MIDDLE EAST*, *supra* note 129, at 4-5.

Most Middle Easterners speak often of two historical periods. The first, which serves to define themselves and their community, begins with the coming of Islam in the seventh century. Islam provides a safe, secure touchstone which ensures that today’s Muslim is part of a long, illustrious, and well-defined tradition. The second and less secure period begins with the intrusion of the West. Whether this event is dated from the eleventh century and the Crusades, from the end of the Second World War, or from some date in between, the import of Western incursion remains the same: a challenge to traditional patterns of action and thought, and — most important — a challenge to the supremacy of Islam as the unquestioned arbitrator of intellectual process and community guidance.

*Id.*

<sup>158</sup> See *id.* at 6.

<sup>159</sup> MANSFIELD, *supra* note 10, at 488.

<sup>160</sup> MANSFIELD, *supra* note 145, at 2.

<sup>161</sup> *Id.* at 13.

<sup>162</sup> *Id.* at 3.

<sup>163</sup> *Id.* at 8.

<sup>164</sup> *Id.* at 6.

<sup>165</sup> *Id.* at 9.

Prophet Mohammed, who was born in Mecca, one of the largest settled and trading communities in western Arabia, was a man of genius and inspiration who helped to transform the history of mankind — a fact which is acknowledged not only by the one-fifth of the human race who subscribe to the faith that he founded.<sup>166</sup>

More will be said about the tenets of Islam below, however, “a century [after the struggle for control of leadership following Muhammad’s death], in AD 750, . . . a rival revolutionary movement . . ., shifted the centre of power to Baghdad, inaugurating the Golden Age of Islam — one of the highest peaks of human civilization.”<sup>167</sup> During this time, tremendous advances were made in mathematics, science and medicine.<sup>168</sup> Arabic became the language of the civilized world.<sup>169</sup>

In 1095 Pope Urban appealed to Western powers to retake the Holy Land and protect Byzantium from the “infidel invaders.”<sup>170</sup> The crusades were launched, and “[o]nce the Holy Sepulcher was back in Christian hands, some of the European and Byzantine soldiers went home, but many stayed on to colonize the conquered lands.”<sup>171</sup> At that time, Jerusalem and the other colonies established by the crusaders were on the periphery of the Islamic empire. “The Crusaders never took a city that really mattered to the political or economic life of Islam . . .”<sup>172</sup> Neither these Western outposts nor their occupants were “regarded as a serious threat to the world of Islam.”<sup>173</sup> Nevertheless, the crusades had a weakening and corrupting influence,<sup>174</sup> demonstrating rational

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<sup>166</sup> *Id.* at 12. It is interesting to note that “Islamization was less complete than arabization because substantial communities of Christians and Jews, respected and tolerated by Islam as ‘People of the Book’, clung to their faith and survived. But the spread of Islam was more extensive than that of the Arabic language.” *Id.* at 16.

<sup>167</sup> MANSFIELD, *supra* note 145, at 15.

<sup>168</sup> *See* GOLDSCHMIDT, *supra* note 144, at 104-05.

<sup>169</sup> *See id.* at 89.

<sup>170</sup> *See* MANSFIELD, *supra* note 145, at 20; *see also* GOLDSCHMIDT, *supra* note 144, at 82.

<sup>171</sup> GOLDSCHMIDT, *supra* note 144, at 83.

<sup>172</sup> *Id.* at 84.

<sup>173</sup> MANSFIELD, *supra* note 145, at 21.

<sup>174</sup> *See id.* at 21 (“Apart from a few magnificent castles and some of their blood through intermarriage, the crusaders left little which endured. Their greatest achievement was drastically to weaken the superior civilization they encountered and to undermined its moral standards.”).

(albeit feudal) governance to the Muslim Middle East.<sup>175</sup> Most significantly, “the loss of Palestine which was recovered from the crusaders, symbolizes [to Muslims] the decline of the Arabs from power and greatness into impotence. It was the final humiliation of the Arabs at the hands of the West, and it should be no surprise that its recovery should be a spur to their renaissance.”<sup>176</sup> Islam “retreat[ed] into isolation. . . .”<sup>177</sup> Middle Easterners were to suffer ignominy again, this time at the hands of Mongol invaders in the late twelfth and early thirteenth centuries.<sup>178</sup> Horrible atrocities were committed in order to subdue the inhabitants of the region.<sup>179</sup> But, “in 1295, the Mongol Khan announced that he had become a Muslim. The struggle for the Middle East continued to be within the world of Islam.”<sup>180</sup>

More recently, Islamic culture became identified with an expanding Ottoman empire,<sup>181</sup> which tended to isolate itself from the other dominant culture in the region, that of Persia.<sup>182</sup> The influence of Arabic waned as Turkish and Persian dialects became more prevalent in the region.<sup>183</sup> Yet the power of the Ottoman Empire was soon to be challenged. For centuries Europeans sought overland trade routes to the East, and in the nineteenth century, Britain secured passage for these routes through Ottoman lands.<sup>184</sup> Special privileges and immunities had previously been granted to European traders within the Ottoman empire.<sup>185</sup> These

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<sup>175</sup> *See id.*

<sup>176</sup> MANSFIELD, *supra* note 10, at 502.

<sup>177</sup> MANSFIELD, *supra* note 145, at 21.

<sup>178</sup> *See* GOLDSCHMIDT, *supra* note 144, at 86; *see also* MANSFIELD, *supra* note 10, at 59-60.

<sup>179</sup> *See* GOLDSCHMIDT, *supra* note 144, at 86 (“The atrocities perpetrated by the Mongol armies defy description . . . . The Mongol aim was to paralyze the Muslims with such fear that they would never dare to fight back.”).

<sup>180</sup> MANSFIELD, *supra* note 145, at 23.

<sup>181</sup> *See* GOLDSCHMIDT, *supra* note 144, at 107 (introducing the idea that the Ottoman Empire’s successful expansion was in part due to its “transition to the gunpowder stage” with the accompanying strengthening of its administrative and commercial classes).

<sup>182</sup> *See id.* at 153.

<sup>183</sup> *See* MANSFIELD, *supra* note 145, at 26-27.

Just as wounding to Arab pride was the fact that the Arabic language, the glory of Arab civilization, had yielded its cultural leadership in Islam. Arabic remained the language of religion, as it was bound to be, but Turkish and Persia, after absorbing profound Arabic influence, developed more vital independent cultural worlds of their own.

*Id.*

<sup>184</sup> *See* GOLDSCHMIDT, *supra* note 144, at 139.

<sup>185</sup> *See* MANSFIELD, *supra* note 145, at 35-38 (“The foreign non-Muslim trading communities had originally been granted their privileges and immunities, which came to

so-called “Capitulations” “exempted non-Muslims from taxes and gave them the right to be tried in their own consular courts. As Ottoman power declined, these privileges were reinforced and became flagrantly abused. The foreign communities were not only privileged and protected: they were virtually above the law.”<sup>186</sup> The Ottoman empire, dependent on facilitating trade to Europe, also agreed to remove the system of imperial monopolies and allowed Britain to trade at a very low tariff rate.<sup>187</sup> Favorable trade terms allowed money to accrue to foreigners at an increasing rate,<sup>188</sup> the economic foundation of the empire began to falter<sup>189</sup> and became torn by political strife.<sup>190</sup> This set the stage for European domination of the region through financial control.<sup>191</sup> The event that precipitated physical intervention by the British was Egypt’s default in servicing debt incurred in building the Suez Canal.<sup>192</sup> The Western perception was that Islam had “failed,”

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be known as the Capitulations, in order to benefit the empire’s economy . . . .”); *see also Introduction to EVERYDAY LIFE IN THE MUSLIM MIDDLE EAST*, *supra* note 129, at 6 (“As the Ottoman Empire declined, special commercial courts guaranteed the rights of resident Europeans to pursue business interests. Europeans both shipped their manufactured goods to the Middle East and extracted the region’s resources.”).

<sup>186</sup> *Id.* at 78.

<sup>187</sup> *See* MANSFIELD, *supra* note 145, at 57.

<sup>188</sup> *See id.* at 65-66.

<sup>189</sup> *See id.* at 65.

By the mid nineteenth-century the balance of economic strength had shifted wholly in favor of western Europe — and especially Britain and France, as they passed into the second stage of the industrial revolution which Turkey had barely begun. The European powers were able to use their political and economic power to force the Empire to allow its economy to be incorporated into the nineteenth-century liberal capitalist system.

*Id.* at 85; (“The abolition of [the] system of monopolies and the opening up of Egypt to European trade and enterprise . . . not only removed the basis of the state’s revenues but also made it impossible for the rulers of Egypt to maintain control over the country’s economic development.”) *Id.*

<sup>190</sup> *See, e.g., id.* at 57 (describing the political upheaval in Egypt and Syria related to the Palmerston treaty).

<sup>191</sup> *See* GOLDSCHMIDT, *supra* note 144, at 154.

[Western reforms in the Middle East in the nineteenth century] were costly. New armies and westernized bureaucracies could not subsist on the traditional Islamic taxes . . . . Each of the countries we have studied would in later years stub its toes on finance, having run up a foreign debt so high . . . that it had to accept European control over its governmental receipts and expenditures.

*Id.*

<sup>192</sup> *See* MANSFIELD, *supra* note 145, at 66 (“In 1851 Mustafa Reshid signed an agreement with the British and a French bank for a state loan of 55 million francs. This was the first step on the road which led to the bankruptcy of the empire two decades

leaving the Ottoman empire “sick” and Europe took upon itself the role of attending physician to an ungrateful patient.<sup>193</sup>

“It is hardly surprising that the Arabs of today tend to see their four Ottoman centuries in the darkest terms.”<sup>194</sup>

During roughly the forty years before World War I, the peoples of the Arab world, Turkey, and Persia began to develop feelings of nationalism. As this era was the heyday of European imperialism, we can see rising nationalism as a natural reaction to mounting Western power. But it was also the end result of a century of westernizing reform, with its enlarged armies and bureaucracies, modern schools, printing presses, roads and rail lines, and centralized state power.<sup>195</sup>

“Nationalism was itself foreign to the world of Islam . . . . All true Muslims were supposed to be brothers and sisters, regardless of race, language, and culture.”<sup>196</sup> However, nationalism was seen as a byproduct of an anti-Christian French Revolution, and thus was palatable to Muslim Middle Easterners.<sup>197</sup> Political borders,

later.”).

<sup>193</sup> See *id.* at 28, 33-34 (discussing the Ottoman Empire’s transformation into the “Sick Man of Europe”).

What is undeniable is that, as the empire weakened and declined, its leaders . . . turned in upon themselves to become increasingly hostile and outwardly contemptuous towards innovation, originality and external influences of all kinds. Muslim national pride demanded that attempts should be made to match the European powers by adopting some of their ideas and techniques, but these could succeed only if the rigid and reactionary Ottoman system was reformed from within.

MANSFIELD, *supra* note 10, at 484 (“The Arabs were accused of treachery and ingratitude and a perverse failure to appreciate the benefits that had been bestowed upon them by the imperial powers.”).

<sup>194</sup> MANSFIELD, *supra* note 145, at 26.

<sup>195</sup> GOLDSCHMIDT, *supra* note 144, at 158.

<sup>196</sup> *Id.* at 157.

<sup>197</sup> See MANSFIELD, *supra* note 145, at 41.

The French Revolution introduced the novel concepts of political liberty and equality. It also created the basis of nationalism as it has been known in the last two centuries — derived from dedication and loyalty to a nation-state. The most important element was that the movement was secular; it was not only non-Christian but, at least initially, anti-Christian. As such it did not provoke the immediate Muslim hostility which would have been aroused by anything in the nature of a crusade.

indiscriminately drawn by colonial powers,<sup>198</sup> failed to regard the unifying force of the Islamic religion or Arabic language among Middle Eastern Muslims<sup>199</sup> and became a rallying point for Arab nationalism.<sup>200</sup> Wealth brought by oil production in some Middle Eastern states<sup>201</sup> has been a more recent source of Arab pride and also has fueled Arab nationalism.<sup>202</sup> More recently Islam itself has been experiencing a revival. For example, although Islamic law apparently does not mandate veiling,<sup>203</sup> some Middle Eastern women are now adopting Islamic dress from “inner religious conviction” in order to communicate a message of personal character.<sup>204</sup> Islamic revival has apparently not displaced, but rather subsumed, Arab nationalism.<sup>205</sup>

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*Id.*

<sup>198</sup> See J. Barkley Rosser, Jr. and Marina V. Rosser, *Iran: The Struggle for a Revolutionary Islamic Economy* in *COMPARATIVE ECONOMICS IN A TRANSFORMING WORLD ECONOMY* 408 (1996) at 113 (describing Arab borders as “artifacts drawn by the colonial powers with little logic.”); see also MANSFIELD, *supra* note 10, at 489.

<sup>199</sup> See MANSFIELD, *supra* note 10, at 489 (“All nationalists need a myth and an ideal, but the Arabs need one more than most. In their case it is the unification of the Arab-speaking peoples in a single nation.”).

<sup>200</sup> See GOLDSCHMIDT, *supra* note 144, at 157-58.

<sup>201</sup> “Economically, the presence, or absence, of oil reserves splits Middle Eastern countries into haves and have nots.” See *Introduction to EVERYDAY LIFE IN THE MUSLIM MIDDLE EAST*, *supra* note 129, at 7.

<sup>202</sup> See ROSSER & ROSSER, *supra* note 198, at 113.

<sup>203</sup> See *Introduction to Gender Relations*, in *EVERYDAY LIFE IN THE MUSLIM MIDDLE EAST* 77, 79 (Donna Lee Bowen & Evelyn A. Early eds., 1993).

<sup>204</sup> See *id.* (“More recently, modest Islamic dress has become an individual statement about piety and about society.”); see also Elizabeth W. Fernea, *The Veiled Revolution*, in *EVERYDAY LIFE IN THE MUSLIM MIDDLE EAST*, *supra* note 150, at 121 (“[T]he choice to wear Islamic dress is one they make themselves, and it must come ‘from inner religious conviction.’ . . . The wearing of Islamic dress is a practical, simple way of stating publicly, ‘I am a respectable woman. Leave me alone.’”).

<sup>205</sup> See MANSFIELD, *supra* note 10, at 496.

Thirty years ago Arab nationalism in the sense of a political pan-Arab movement was regarded as the driving force in the Middle East. Today it is often declared to have perished, to be replaced by the more fashionable movement of Islamic revival. This view is certainly an over-simplification. Since Islam is the principal ingredient of Arab civilization it could never be divorced from any Arab national movement.

*Id.*

## 2. *The Influence of Islam.*

Middle Eastern culture is fully enmeshed with religion in a way that Westerners have difficulty grasping. Consider the following shocking statement: "To the average and perhaps more than average educated Westerner, Islam appears as a fanatical, bloodthirsty, reactionary, xenophobic, and largely destructive force. The obvious present-day poverty and material backwardness of most Islamic countries . . . are all too easily equated with Islam itself."<sup>206</sup> Enlightened intellectuals tend to have a bifurcated view of Western civic life and religion. However, to Muslim Middle Easterners, Islam is not only an integral part of Middle Eastern heritage;<sup>207</sup> it is "more than a faith."<sup>208</sup> Islam "prescribes a complete lifestyle."<sup>209</sup> "[I]n Islam there is no separation between religion and politics and no concept of a secular state."<sup>210</sup> "It is evident that, unlike both capitalism and socialism, the goals of Islam are absolute and a logical outcome of its underlying philosophy."<sup>211</sup> The totality of the impact of religion on everyday Muslim life can be appreciated by understanding that "Islam is the act of submission to the will of God (*Allah* in Arabic). In the broadest sense, every object in the universe has its own 'islam.' It must conform to God's rules, or what atheists might call nature's laws."<sup>212</sup>

"In common usage, though, a Muslim is anyone who believes that God's will for all humanity was last revealed through the

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<sup>206</sup> See MANSFIELD, *supra* note 10, at 482 (quoting Walid Khalidi, *Arabs and the West*, MIDDLE E. FORUM, Dec. 10, 1957, at 15).

<sup>207</sup> See *id.* at 521

This is not to say either that Arabs as a whole are passionately religious or that none of their modern leaders have shown interest in secular reforms of any kind. If a substantial number of Arab students are attracted to the Islamic revivalist ideas of the Muslim Brotherhood, the majority show little interest and are perfunctory in the performance of their Muslim duties. But they do not deny Islam because it is an integral part of their national heritage in a way that it is for no other people. In a real sense every Arab is a Muslim, even if he is a Christian — or a communist.

*Id.*

<sup>208</sup> GOLDSCHMIDT, *supra* note 144, at 43.

<sup>209</sup> *Id.* at 43.

<sup>210</sup> MANSFIELD, *supra* note 145, at 13.

<sup>211</sup> ROSSER & ROSSER, *supra* note 198, at 101.

<sup>212</sup> GOLDSCHMIDT, *supra* note 144, at 36.

Quran to Muhammad.”<sup>213</sup> Prior to Muhammad’s revelation, many who would later become Muslims were polytheistic.<sup>214</sup> “A fundamental point of [Islam] is an absolute and uncompromising monotheism”<sup>215</sup> in a form that Muslims regard as the “seal” or perfection of Judaism and Christianity.<sup>216</sup>

From the time of Muhammad, Islam quickly spread throughout the Middle East and beyond.<sup>217</sup> Expansion slowed at the beginning of the eighteenth century,<sup>218</sup> reaching its low point in the first half of the twentieth century.<sup>219</sup> As mentioned earlier, however, Arab nationalism<sup>220</sup> and Islam are both on the rise.<sup>221</sup> Some see Iran as

<sup>213</sup> *Id.* at 36.

<sup>214</sup> Leila P. Sayeh and Adrian M. Morse, Jr., *Islam and the Treatment of Women: an Incomplete Understanding of Gradualism*, 30 TEX. INT’L L. J. 311, 315 (Spring 1995).

The period of pre-Islamic Arabia — known as Jahiliyyah, or the Age of Ignorance — consisted of a patriarchal, tribal society living mainly in the desert. Throughout the desert, various populous agricultural and trading centers such as Mecca and Medina flourished. The culture was polytheistic, with a belief that gods and goddesses, dwelling in various locations such as trees, stones, or sources of water, protected individual tribes. Beyond this polytheism was a shared belief in Allah (“the god”), who, although considered the supreme god, was removed from everyday concerns and was therefore not the object of cult or ritual.

*Id.*

<sup>215</sup> ROSSER & ROSSER, *supra* note 198, at 109.

<sup>216</sup> *See* MANSFIELD, *supra* note 145, at 12-13.

[W]hile Muslims do not believe Muhammad to be divine — for Islam is the most fiercely monotheism of faiths, adhering to the belief that “there is no God but God” — they do regard him as the last of God’s messengers, or the seal of the prophets, who include Moses and Jesus. They therefore hold that Islam is the ultimate faith, which completes and perfects the two other heavenly religions — Judaism and Christianity.

*Id.*; *see also* Leila P. Sayeh and Adriaen M. Morse, Jr., *Islam and the Treatment of Women: an Incomplete Understanding of Gradualism*, 30 TEX. INT’L L.J. 311, 313-14 (1995) (discussing the historic relationship of Islam with Christianity and Judaism and the Muslim view that Islam is “the last true and correct revelation of God’s word which had previously been revealed to the prophets of Judaism and Christianity in forms suitable for those times and places.”).

<sup>217</sup> *See* ROSSER & ROSSER, *supra* note 198, at 110.

<sup>218</sup> *See id.* at 111 (noting that this slow-down was a result of “the expanding power of industrializing Christian Europe.”).

<sup>219</sup> *See id.* at 111 (stating that “[t]he early 20th century brought a low point for Islam as most Muslim states became colonies of Christian European powers . . . . The modern revival of Islam arose in the context of nationalistic and anticolonialistic struggles against this domination.”).

<sup>220</sup> *See* MANSFIELD, *supra* note 10, at 496.

Thirty years ago Arab nationalism in the sense of a political pan-Arab movement was regarded as the driving force in the Middle East.

the “fountainhead” of this movement,<sup>222</sup> however, because Iranians generally practice the minority Shi’i branch of Islam, Iran may not be the prototypical Islamic revival state.<sup>223</sup> Alternatively, Pakistan and Saudi Arabia have been suggested as centers for Islamic revival.<sup>224</sup>

Alien to most Western thinking is the Middle Eastern perspective that the religion of Islam defines the law of many Middle Eastern countries. “[I]n 1971 the Constitution of Egypt was amended to change Islam from being *a* source of law to being *the* source of law.”<sup>225</sup> So, “[c]ontracts or agreements are not only binding to Muslims, they are sacred.”<sup>226</sup>

“[T]he Shari’ah, or sacred law of Islam, . . . was developed and assembled during the first three centuries after Muhammad’s death.”<sup>227</sup> The Shari’ah consists of Muhammad’s revelations, which were compiled in the Qur’an, and the pronouncements and

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Today it is often declared to have perished, to be replaced by the more fashionable movement of Islamic revival. This view is certainly an over-simplification. Since Islam is the principal ingredient of Arab civilization it could never be divorced from any Arab national movement.

*Id.*

<sup>221</sup> See ROSSER & ROSSER, *supra* note 198, at 112-13.

Most of the Muslim world was subjected to colonial domination by European powers sometime during the last century. Even those nations that retained formal independence were sometime subjected to powerful outside influence, as for example when the U.S. CIA organized the overthrow of the Iranian nationalist leader, Mohammed Mossadegh, in 1954, or when the Soviet military installed a puppet leader in Afghanistan in 1979. These experiences established the possibility of Islam becoming identified with national identity in the anticolonialist struggle.

*Id.*; see also ROSSER & ROSSER, *supra* note 198, at 387 (“Thus Iran stands out as an important example of practical Islamic economics, in which intense debates result in policy shifts by the revolutionary regime.”).

<sup>222</sup> See *id.* at 387, 404 (noting that Iran plays this role because of its material and spiritual support of the “most radical factions” of this international revolutionary movement).

<sup>223</sup> *Id.* at 406 (“Iran is not a typical Muslim state because it is dominated by Shi’ism, the minor branch of Islam, and because it is a major oil producer and exporter.”).

<sup>224</sup> *Id.* at 404 (noting that Muslim states more moderate than Iran “may eventually be more influential on Islamic economic experiments in the future. Among these are the predominantly Sunni nations of Saudi Arabia and Pakistan.” Saudi Arabia specifically “is highly influential because of its vast oil wealth, its position as site of the Muslim holy cities of Mecca and Medina, and its long adherence to the strict Hanbali law code.”).

<sup>225</sup> Jamar, *supra* note 32, at 1079-80 (emphasis added).

<sup>226</sup> *Id.* at 1086.

<sup>227</sup> GOLDSCHMIDT, *supra* note 144, at 43.

deeds of Muhammad and his companions, which are known collectively as the Hadith.<sup>228</sup> Professor Goldschmidt succinctly provides the following description of the breadth of the Shari'ah:

Ever mindful of the impending Judgment Day, Muslims wish to know and obey the rules of behavior that will please God and maintain a harmonious society. These rules have been carefully compiled and organized into a law code called the Shari'ah (an Arabic word meaning 'way'). It is somewhat like the Talmud for Orthodox Judaism; there is nothing comparable in Christianity. The Shari'ah tries to describe all possible human acts, classifying them as obligatory, recommended, neutral, objectionable, or forbidden by God, the supreme legislator. In addition to some commercial and criminal law, the Shari'ah covers rules about marriage, divorce, child rearing, other interpersonal relationships, property, food and clothing, hygiene, and the manifold aspects of worship.<sup>229</sup>

Because the Shari'ah allows for rationalization and interpretation<sup>230</sup> some have argued that the Shari'ah is actually a "philosophy of behavior rather than a set of specific injunctions and rules."<sup>231</sup> Much can be said regarding the impact of Shari'ah

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<sup>228</sup> See MANSFIELD, *supra* note 145, at 13; see also ROSSER & ROSSER, *supra* note 198, at 109.

<sup>229</sup> GOLDSCHMIDT, *supra* note 144, at 89.

<sup>230</sup> Sayeh & Morse, *supra* note 216, at 317-18.

Islam's legal rules are subject to rationalization, and thus, changes in the interpretation of its rules are permissible. Shari'ah demonstrates this dynamism and receptivity to change. It is used by jurists in religious and legal cases in order to administer the appropriate ruling in a new factual setting. . . . This flexible application of the rules of Shari'ah interpretation in order to meet the needs of modern society parallels the common law study in analogy and reason.

*Id.*

<sup>231</sup> ROSSER & ROSSER, *supra* note 198, at 109 n.16; see also, Sayeh & Morse, *supra* note 216, at 316-17. *But see* Sayeh & Morse, *supra* note 216, at 318.

After the era of the Rightly-Guided khalifahs, the prestige of rulers rested in sheer force rather than on succession to the Prophet; because of this development, their rule required doctrinal legitimacy. Therefore, in addition to retreating to patriarchal interpretation, as a result of political necessity rulers attacked the roots of independent thinking, causing a retreat of critical thought. The threat of

law<sup>232</sup> and the role of non-Shari'ah law<sup>233</sup> on Islamic jurisprudence.<sup>234</sup> However, it is sufficient to say that as religiously-based law, the Shari'ah is a tremendous force both legally<sup>235</sup> and economically<sup>236</sup> throughout the Middle East. For many Middle Easterners, then, Islamic law is both "inherently

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individual violence against Muslim scholars advocating free will in the interpretation of Islam and the imposition of an official dogma effectively limited religious interpretation. Finally, in the tenth century, the religious leadership of the Sunni decided that henceforth only the accepted schools of interpretation would delineate the meaning of the Qur'an and the Hadith based on their earlier *ijtihād*. This is known as the closing of the door of *ijtihād*. Thus, in Sunni Islam today, judges are severely limited in their authority to engage in *ijtihād*, and accordingly their flexibility and adaptability in applying principles of interpretation such as Shari'ah is limited. (citations omitted).

*Id.*

<sup>232</sup> See, e.g., ROSSER & ROSSER, *supra* note 198, at 112.

Because there are several different Shari'as, disputes can arise once implementation is actually attempted, although in many countries one Shari'a is clearly preferred. This demand for the imposition of a Shari'a has extended to countries with significant non-Muslim populations such as Nigeria and Sudan, in the latter aggravating a long-running Civil War.

*Id.*

<sup>233</sup> See Jamar, *supra* note 32, at 1082-83.

The second type or source of law in Islamic countries, the non-shari'a law, refers to those areas of law needed to run a modern state, but about which the Quran and other sources of Islamic law are silent, or at least too vague to structure a modern, complex society. . . . To fill the gaps in shari'a law, during the last 150 years most Arab Islamic states have adopted some form of European-style legal code to govern commerce and business while leaving other matters such as personal status, marriage, and inheritance to relatively pure Islamic law.

*Id.*

<sup>234</sup> See *id.* at 1080-82, for a more detailed discussion of the sources of Islamic Jurisprudence.

<sup>235</sup> See ROSSER & ROSSER, *supra* note 198, at 112.

The list of countries that have adopted a Shari'a code includes Sudan, Saudi Arabia, Qatar, Iran, and Pakistan. Afghanistan is in the process of doing so since the defeat of the Soviet-backed Communists. In Algeria an Islamic fundamentalist party that promised to adopt a Shari'a won an election but was prevented from assuming power by the military, resulting in a civil war. Countries moving toward partial adoption include Nigeria, Egypt, and Malaysia.

*Id.*

<sup>236</sup> See ROSSER & ROSSER, *supra* note 198, at 114 (noting that "principles of Islamic economics are derived from the Shari'as"); see also Sayeh & Morse, *supra* note 216, at 316 (noting that Muhammad's teachings often spoke directly to economic issues).

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 personal,”<sup>237</sup> as well as a “whole system of social morality.”<sup>238</sup>

#### IV. INTELLECTUAL PROPERTY PROTECTION IN THE MUSLIM MIDDLE EAST.

Professor Steven Jamar has argued that although the Shari’ah does not specifically address intellectual property matters,<sup>239</sup> it does not prevent Islamic-based governments from enacting or enforcing intellectual property trade regulation.<sup>240</sup> “[Intellectual property law] is an area, like much of criminal law and commercial law, which can be, and ought to be, and has been regulated by [Islamic] government[s].”<sup>241</sup> Once intellectual property rights have been created, the Shari’ah indicates that they should be respected, says Jamar.<sup>242</sup> Intellectual property protection should be

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<sup>237</sup> See Cravens, *supra* note 250, at 535-37 (Islamic jurisprudence emphasizes sovereignty based on personal rather than territorial ties.).

<sup>238</sup> See MANSFIELD, *supra* note 145, at 13.

[The *sharia*] is normally translated as ‘Islamic law’, but it is much more than this. It is neither canonical law (Islam has no priesthood) nor secular law, because no such concept exists in Islam: it is rather a whole system of social morality, prescribing the ways in which man should live if he is to act according to God’s will. If he contravenes the *sharia*, his offense is against God and not the state.

*Id.*; see also GOLDSCHMIDT, *supra* note 144, at 43 (“[T]he Quran, combined with the teachings and practices of Muhammad, provides a comprehensive and coherent pattern for Muslim actions and thoughts.”).

<sup>239</sup> See Jamar, *supra* note 32, at 1082.

In general, one should distinguish among (1) areas about which Islamic law has spoken with a relatively full voice, such as spiritual duties, personal status, and inheritance, (2) areas where Islamic law has provided some general principles, but with many lacunae, as in contract law with its general injunction to fulfill all obligations and its general prohibitions on usury and indefiniteness, and (3) areas where Islamic law is silent, such as in the field of intellectual property. In the latter two areas, and in particular the third area, Allah’s representative among his people, the Caliph, or in more modern terminology, the government, is free to act provided the laws promulgated do not run afoul of shari’a prohibitions and are consistent with shari’a principles. (citations omitted).

*Id.*

<sup>240</sup> See *id.* at 1083 (“The protection of intellectual property is neither prohibited nor mandated in the shari’a. . .”). Jamar concludes that “legal protection of intellectual property is fully consonant with shari’a law.” See *id.* at 1106.

<sup>241</sup> See *id.* at 1093.

<sup>242</sup> See *id.* (“[I]n certain instances the intellectual property title is less full or given less complete protection than real or tangible personal property, but title is protected and such protections are consistent with Islamic law.”); see Jamar, *supra* note 32, at 1106 (“To the

enforceable throughout the continuum of Islamic belief, from reformism to fundamentalism, he concludes.<sup>243</sup> Middle Easterners are said to display a habit of compliance with such regulation, grounded as it would be in Islamic law.<sup>244</sup>

A. *Resistance to Western Commercialization.*

Although intellectual property rights may be capable of Islamic theological justification, and thus deep cultural resonance within Middle Eastern society, the question remains why, notwithstanding this, many Muslim Middle Eastern countries fail to enforce intellectual property laws following their enactment. One justification may be based on experience. Although Middle Easterners desire to trade with the West, they have long memories of the negative impact of previous waves of Western commercialism on the region. Historian Peter Mansfield has suggested that present-day Arabs<sup>245</sup> are experiencing an “immobilism” that has followed a loss of cultural vitality,<sup>246</sup> which

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extent the protections are premised on concepts of ownership of property, the shari'a solicitude for owners of property should protect the owner.”).

<sup>243</sup> See *id.* at 1106.

Regardless of whether Islamic law moves in the direction of modern reformist theoreticians or toward more fundamentalist traditionalists, there is no compelling reason to anticipate dramatic enhancement or reduction in the protections of intellectual property based solely on the desire to make them fit within the shari'a. Other political concerns may result in sweeping changes or a particular zealot's view of the proper interpretation of the Quran and the shari'a could result in dramatic changes, but such changes are not compelled by either traditional or modern understanding of the shari'a.

*Id.*

<sup>244</sup> See *Leading Audio-Video Shop Owners Offer Help to Dig Out Pirated Cassettes*, TIMES OF OMAN, Jan. 2, 1999, available at 1999 WL 9682506 (“They said that when a law is issued in Oman everyone would obey it. And in this case, few would attempt to keep pirated versions.”); see also Abdul Wahab Bashir, *Ministry Explains Measures Protecting Consumers and Software Firms*, ARAB NEWS, Sept. 1, 1998, available at 1998 WL 15175807 (reporting that “a fatwa (religious edict) issued by the Kingdom's Grand Mufti . . . banning the use of pirated software has encouraged consumers to use original programs.”).

<sup>245</sup> Which, arguably, could be extended to other Muslim Middle Easterners, who in many cases are similarly situated with respect to these issues.

<sup>246</sup> See MANSFIELD, *supra* note 10, at 532.

The fact cannot be skirted, therefore, that even the most enlightened of Western efforts to modernize and liberalize the Middle East foundered on the rock of Moslem *immobilism*. A socio-religious tradition that suffused all life and thought that once, long before, had

is combined with a historically-imbued resistance to external, and particularly, Western influences.<sup>247</sup> Trade is desired, but not if it requires the imposition of a new commercial colonialism, bolstered by Western intellectual property regimes.<sup>248</sup> Economists have observed “there remains fear of adopting Western-style market capitalism because it might lead to a renewed loss of national sovereignty.”<sup>249</sup> In addition, however, Middle Easterners may feel that Western economic reforms infringe traditional personal and familial sovereignty, as well.<sup>250</sup>

Consider the following statements that have appeared in the Middle Eastern press:

Regarding Western-style Job Skills:

*A joke I heard in this regard was that a Jordanian can obtain copies of advanced engineering applications for nothing, bearing in mind that they cost American or European PC users*

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known three glorious centuries of vitality and creativity during the Islamic Renaissance of the Middle Ages, had lapsed during the subsequent half-millennium into fatalism and intellectual paralysis

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*See id.* at 532 (quoting HOWARD M. SACHAR, *EUROPE LEAVES THE MIDDLE EAST*, 1936-1954, 608-09 (1974)).

<sup>247</sup> *See id.* at 532.

It is because [the efforts to modernize] were Western that they failed. The impact of the Western invasion and colonization of the Arab world was far-reaching. It stirred the Arabs profoundly after a long period of political and social stagnation and created many external changes. But the dynamic for progress or modernization had to come from within Arab society, and this is as true today as it ever was.

*Id.*

<sup>248</sup> An analogy can be made to the situation of intellectual property rights in China, where:

[T]he seventeenth and eighteenth centuries witnessed the development of an approach toward intellectual property in Europe that had no counterpart in imperial Chinese history. Simply stated, there developed in England and on the Continent the notion that authors and inventors had a property interest in their creations that could be defended against the state. Society, growing numbers of Europeans came to believe, would benefit by providing incentives to engage in such work and disseminate the results. China, by contrast, continue to regulate this area predominantly in terms of how best to maintain the state's authority.

*See* WILLIAM P. ALFORD, *TO STEAL A BOOK IS AN ELEGANT OFFENSE* 18 (1995).

<sup>249</sup> ROSSER & ROSSER, *supra* note 198, at 113.

<sup>250</sup> *See* GOLDSCHMIDT, *supra* note 144, at 97 (“[T]he family played the main role in early Islamic society.”).

*thousands of dollars. So, local users have an edge, as they can list 'experience in AutoCAD and 3D Studio' as part of their Curriculum Vitae (CV)!<sup>251</sup>*

*To put a pain plainly, let's assume that every engineer had to buy his or her copy of AutoCAD for around \$2,000; how many engineers in Jordan would know how to use the software!<sup>252</sup>*

*Jordanians cannot be left behind in today's global economy. So, many believe that their [sic] is a 'chain reaction' involving different segments of Jordanian society, which would be affected by the relatively high cost of acquiring software.<sup>253</sup>*

Regarding Domestic Industry;

*Also, supporters of the current 'copyright chaos' think that the enforcement of intellectual property rights (IPR) in Jordan will cause the closure of all sorts of businesses that sell music tapes, videotapes and software. Such businesses constitute a sizable sector of Jordan's business community, employing hundreds of personnel. The social repercussions of closing them down have to be taken into consideration.<sup>254</sup>*

*[Mehmet] Domat [chairman of the Turkish Chemists Association] believes that bringing pharmaceuticals under the patent umbrella 'will protect only the rights of multinational firms and monopolies.' And he says that this will drive local firms out of the industry.<sup>255</sup>*

*[E]arlier this decade, most of us thought that the leading Arabic word processor, or Arabic spreadsheet software would actually be produced by one of the numerous Arabic software developers;*

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<sup>251</sup> Zeid Nasser, *Copyright? What Copyrights?*, STAR, Mar. 3, 1998, available at 1998 WL 7319877.

<sup>252</sup> Zeid Nasser, *Another View On Piracy*, STAR, Aug. 13, 1998, available at 1998 WL 7320387.

<sup>253</sup> *Id.*

<sup>254</sup> Nasser, *supra* note 251.

<sup>255</sup> *Pharmaceuticals Industry in Turkey: Addicted to Copies*, *supra* note 17.

*whom [sic] were very active in the field of business publication. Well, what actually happened, was that Microsoft's muscle — and to be fair, better developed products — pushed them out of the game.*<sup>256</sup>

Westerners and Middle Easterners likely reach different conclusions when hearing such statements. Westerners probably interpret these as expressions of those who desire a “free ride” on value created abroad in order to leverage economic gain. However, Middle Easterners are likely to see domestic copying as not merely desirous but actually necessary for their own survival, and also as a means of exacting revenge for the West's relentless commercial conquest of the region.

It is interesting to note that Middle Eastern software vendors may apply a double standard to local and Western software.

*Amidst this copying-oriented atmosphere, it is amusing to see some original titles being sold. These are Arabic software titles, mainly developed by Jordanians. Apparently, some sort of ‘silent’ agreement has been reached between Jordanian software developers and local pirates shops! The shops only sell originals of local software as a gesture of support to the local software industry. Quite honorable indeed! Opinions on the chaotic software copyrights situation vary tremendously.*<sup>257</sup>

*It is one thing to cut corners especially on foreign software (i.e. Microsoft products), but how would Jordanian talent feel about their software being systematically pirated.*<sup>258</sup>

*Although these shops have made a commitment not to copy Jordanian, or Arab, software products as a gesture of support to the local and regional software industries, the practice of copying all other*

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<sup>256</sup> Zeid Nasser, *Arab Developers Challenged and Beaten by a Goliath*, STAR, Oct. 17 1997, available at 1997 WL 8257645.

<sup>257</sup> Nasser, *supra* note 251, STAR, Mar. 3, 1998.

<sup>258</sup> *Some Thoughts on Software Piracy*, STAR, Oct. 30, 1997, available at 1997 WL 8257695.

*software goes on.*<sup>259</sup>

*As for Jordan's software exporters, the [new copyright] law will guarantee protection of their hard work in the investment made in their products. However, it is important to note here that local pirates have maintained an 'honorable' approach with regard to Jordanian software, refusing to copy it or pirate it. If you walked into a shop that sold illegal copies of software, you would find original copies of Jordanian software for sale. The shop owners would never agree to legally copy an item of local software. Strange conduct for a dominant illegal operation, but quite 'patriotic'!*<sup>260</sup>

Similarly, it appears that until very recently Bahraini gold merchants honorably respected the integrity of local jewelry designs and would not copy them.<sup>261</sup> Perhaps an unwritten code of informal, local intellectual property protection exists for Middle Eastern goods but not for Western goods, which do not share a local production nexus. Such *de facto* regimes facilitate the easy acquisition of Western products at reduced cost and allow profit streams to remain local, all at the expense of the West. However, because of the complex cultural influences in the region, a complete explanation of the phenomenon is not likely to be described merely in economic terms.

#### *B. Political Order and Islam.*

An additional component of the under-enforcement of intellectual property laws in the Middle East may be the influence of Islam within the culture of Middle Eastern governmental control. For example, the Saudi Arabian government has instituted an approval process for affordably guaranteeing the authenticity of certain sound recordings within the Middle East.<sup>262</sup> The approval

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<sup>259</sup> Zeid Nasser, *Piracy in Jordan, Marches On*, STAR, July 10, 1997, available at 1997 WL 8257434.

<sup>260</sup> *Parliament Passes Intellectual Property Rights Law, Jordan Set to Crack Down on Pirates!*, STAR, Aug. 17, 1998, available at 1998 WL 7320439.

<sup>261</sup> *See Traders Appeal for Protection Against Piracy*, GULF DAILY NEWS, May 12, 1998, available at 1998 WL 15174745.

<sup>262</sup> Nasser, *supra* note 259.

process ensures that the recordings comply with Saudi Arabian — that is, Islamic — law.<sup>263</sup> The government has said that “quality” approvals<sup>264</sup> are necessary to “safeguard the market.”<sup>265</sup> However, these approvals also likely serve as telltale indicators of local content, compliance with Islamic morals or products the government considers to be particularly worthy of public consumption.

Throughout the Middle East, Western culture is perceived to be a corrupt “civilization that is no civilization.”<sup>266</sup> Middle Easterners feel that “the moral core of Western society has collapsed”<sup>267</sup> and that Islam, acting through Middle Eastern governments, should resist its tainting influence. “The effort to use Islam as a bulwark against individualist American culture is greater today than at any time. . . .”<sup>268</sup> Enforcing intellectual property protection for predominantly Western rights-holders would provide Middle Eastern governments with a significant tool for controlling cultural content distribution and facilitating the elimination of “informal” cultural distribution mechanisms that are presently in place, such as bootlegging, counterfeiting and piracy. Although WTO rulings may eventually require strict enforcement of intellectual property rights, presently, it appears that governmental accession to enforcing such laws would amount to state, and thus Islamic, approval of works that are almost uniformly impertinent to the religion.

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In Amman, there is a shop that sells original music tapes, produced under license in Saudi Arabia, at prices only 25 percent higher than [sic] copies produced by other large ‘copying’ shops. The result has been a fair degree of success. Why can’t the same be applied to software? That’s a question that needs to be answered by the publishers.

*Id.*

<sup>263</sup> See Adarsh Madhavan, *No Extension of Copyright Deadline*, TIMES OF OMAN, July 14, 1998, available at 1998 WL 15174102.

<sup>264</sup> See *Committee Seeks SASO Help to Rid Market of Counterfeits*, ARAB NEWS, Dec. 15, 1998, available at 1998 WL 15177404 (“The Saudi Arabian Standards Organization has been urged to tighten controls over goods entering the Kingdom . . . with the express purpose of ensuring that all commercial and industrial practices adhere to the Kingdom’s high quality standards for the benefit of local consumers.”).

<sup>265</sup> Habib Shaikh, *Consignment of Fake Shampoo Destroyed*, *supra* note 39 (reporting on anti-counterfeiting measures that officials believe will make Saudi Arabia’s markets safer and will better the national economy).

<sup>266</sup> Bronner, *supra* note 11.

<sup>267</sup> *Introduction to EVERYDAY LIFE IN THE MUSLIM MIDDLE EAST*, *supra* note 129, at 7.

<sup>268</sup> Bronner, *supra* note 11 (quoting an “American career diplomat”).

The historical influence of Islam in the dissemination of goods and information in the Middle East is significant. For example, the Ottoman empire “forbade the introduction of Arabic and Turkish printing presses into the . . . Empire until the eighteenth century, lest a printed Quran violate the principle that God’s work was written and (in a more practical vein) lest Muslim scribes be thrown out of work.”<sup>269</sup> Today, goods that do not comply with Islamic norms may be impounded. For example, in a Saudi Arabian raid, “[f]orty-two music stores and 45 video shops were caught selling material incompatible with Islamic norms an[d] morals.”<sup>270</sup> Only after this justification was provided does the news account of the raid mention that the impounded works “also violated the copyright laws.”<sup>271</sup> The stated purpose behind the Saudi government’s tight control of automobile spare part importation is safety, and does not mention the necessity of safeguarding importer trademark rights.<sup>272</sup> In much the same way as China, many Middle Eastern governments have “focused far more on political order and stability than on issues of ownership and private interests.”<sup>273</sup>

#### SUMMARY AND CONCLUSION.

This article is an observation made from a particular elevation of Barthes’s Tower. A true cultural perspective of the Middle East can only be gained, if at all, through language training, a plane ticket and a lengthy amount of time spent in the region among its peoples. Understandably, a single “Middle Eastern culture” does not exist. Even elements that are said to broadly unite and define

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<sup>269</sup> GOLDSCHMIDT, *supra* note 144, at 127.

<sup>270</sup> *Firms Fined, Closed Down*, SAUDI GAZETTE, July 19, 1998, available at 1998 WL 15174980.

<sup>271</sup> *Id.*

<sup>272</sup> *See Imports of Spare Parts Limited to Those That Meet Saudi Standards*, SAUDI GAZETTE, Dec. 6, 1998, available at 1998 WL 15177232.

The Ministry of Commerce banned the import of cars spare parts or accessories that do not conform with Saudi specifications . . . . The ministry adopted these new measures in order to minimize the number of traffic accidents and save lives and other possessions . . . . The cheap price of the imitated spare parts make people purchase them without knowing that these parts cause damage to other genuine spare parts which eventually cause fatal traffic accidents.

*Id.*

<sup>273</sup> ALFORD, *supra* note 248, at 24.

the region are, upon closer inspection, elusive. Semitic languages, such as Arabic, are spoken throughout the region, but a single, commonly-spoken dialect is not universal. The Islamic religion is practiced throughout much of the Middle East, yet the Middle East is also the birthplace of the world's other major monotheistic religions. Ethnically, the Middle East is a diverse amalgamation of many different peoples, including Jews, Arabs, Turks and Persians. Even the term "Middle East" is suspect as an appropriate geographic descriptor because it implies Western domination of the region.<sup>274</sup>

Despite these limitations, my observation is that Westerners are nevertheless likely to perceive intellectual property rights, innovation policy and development issues differently than Middle Easterners. The West is actively seeking to stem the rampant piracy and bootlegging in the Middle East in order to reduce appropriability and increase benefits to captured, extra-Western complementary assets of paradigmatic industrial systems. The West perceives that the most efficient tool to accomplish this economic restructuring is enactment of world-wide, Western-style intellectual property regimes. Westerners foresee Middle Eastern governments cooperating in this venture so that they can obtain Western culture and investment, as well as the tariff reductions that come with membership in trade organizations such as the WTO.

However, Western intellectual property rights are, to a great extent, presently unrecognized in the Middle East. The reluctance to enforce intellectual property law stems from at least two interconnected frames of reference. First, the West is perceived to have emasculated the Middle East since the times of the crusades through colonialism until now, contributing to the decline of Islam at each turn. Second, Western culture is generally thought to be immoral and corrupt; so, if Middle Eastern governments were to acknowledge that Westerners were entitled to enforceable intellectual property rights, they would be giving governmental, and thus religious, sanction to sacrilege. Islam strongly animates political and commercial life throughout the Middle East to a degree that Westerners have difficulty appreciating.

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<sup>274</sup> See MANSFIELD, *supra* note 145, at 1 ("The term 'the Middle East' is Eurocentric . . . Common usage, however, should not allow us to lose sight of the drawbacks of the term, of which the most important is that it assumes a Western domination of the world.").

The purpose of this article is not to define an appropriate distribution of rights between Westerners and Middle Easterners,<sup>275</sup> but rather to explain what otherwise might be overlooked as an anomaly. Middle Easterners decry copying as immoral<sup>276</sup> and promote a fundamental respect for works of other Middle Easterners.<sup>277</sup> Yet, at the same time, Western goods are pirated indiscriminately. Perhaps the situation in the Middle East is not as Professor Alford observed regarding intellectual property rights in China, where state determination and individual autonomy appear to be fundamentally incompatible.<sup>278</sup> Instead, the Middle East seems to enjoy some form of selective compatibility with respect to local works, but incompatibility with respect to foreign works. The question remains whether one regime will predominate in the region.

Artists tend to be more sensitive than members of the legal community to societal change,<sup>279</sup> and the Middle Eastern *literati* is already providing an indication as to an eventual outcome of this cultural clash. Consider the following excerpt from *The Doum*

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<sup>275</sup> This is a stance similar to that taken by William Alford in *To Steal a Book is an Elegant Offense*. See ALFORD, *supra* note 248, at 121.

It is not my intention here either to define the contours of such rights, beyond referring to the broad standards set forth in the major international conventions — certain of which neither the PRC nor the United States have ratified — or to attempt a precise delineation of the relationship between economic and social rights on the one hand and civil and political rights on the other.

*Id.* This is not to say, however, that I take an inter-subjective view of cultural conflict. See John Carroll, *Modestly Witnessing a Reconciliation of Law and Science* (forthcoming).

<sup>276</sup> See Nasser, *supra* note 252 (“[A]nyone who believes in fairness understands that software piracy is illegal, immoral and harmful to the software industry.”).

<sup>277</sup> For example, Jordanian pirates have “maintained an ‘honorable’ approach with regard to Jordanian software, refusing to copy it or pirate it.” *Parliament Passes Intellectual Property Rights Law, Jordan Set to Crack Down on Pirates!*, *supra* note 260.

<sup>278</sup> See ALFORD, *supra* note 248, at 119.

A system of state determination of which ideas may or may not be disseminated is fundamentally incompatible with one of strong intellectual property rights in which individuals have the authority to determine how expressions of their ideas may be used and ready access to private legal remedies to indicate such rights.

*Id.*

<sup>279</sup> See FRANCIS A. SCHAEFFER, *THE GOD WHO IS THERE* 15-16 (1968) (arguing that those involved in the disciplines of philosophy, art and music were the first to adopt the ideas of what the author terms the “new theology,” or the movement away from absolute or revealed truths and towards the birth of the “modern man” of the second half of the twentieth century).

*Tree of Wad Hamid* by Tayeb Salih:

*“I mentioned to you that my son is in the town studying at school,” he replied. “It wasn’t I who put him there; he ran away and went there on his own, and it is my hope that he will stay where he is and not return. When my son’s son passes out of school and the number of young men with souls foreign to our own increases, then perhaps the water pump will be set up and the agricultural scheme put into being — maybe then the steamer will stop at our village — under the doum tree of Wad Hamid.”*

*“And do you think,” I said to him, “that the doum tree will one day be cut down?” He looked at me for a long while as though wishing to project, through his tired, misty eyes, something which he was incapable of doing by word.*

*“There will not be the least necessity for cutting down the doum tree. There is not the slightest reason for the tomb [of Wad Hamid] to be removed. What all these people have overlooked is that there’s plenty of room for all these things: the doum tree, the tomb, the water pump, and the steamer’s stopping place.”*

*When he had been silent for a time he gave me a look which I don’t know how to describe, though it stirred within me a feeling a sadness, sadness for some obscure thing I was unable to define. Then he said: “Tomorrow, without doubt, you will be leaving us. When you arrive at your destination, think well of us and judge us not too harshly.”<sup>280</sup>*

Perhaps, in the mind of many Middle Easterners, the process of Westernization as an overlay to an established Middle Eastern culture is inevitable. However, there remains the sense that something will be lost in the process.

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<sup>280</sup> Tayeb Salih, *The Doum Tree of Wad Hamid*, in *EVERYDAY LIFE IN THE MUSLIM MIDDLE EAST*, *supra* note 129, at 145.

As in ancient times, the Middle East lies at the “crossroads to commerce.”<sup>281</sup> As a result, Middle Easterners “have a unique opportunity to enhance the unity of mankind by acting as a link between Europe and the West and the peoples of Africa and Asia.”<sup>282</sup> However, the imposition of Western reform over existing perceptions of repeated Western economic and religious imperialism will not be likely to effect permanent transformation in the Middle East. Change comes from within<sup>283</sup> and will be stimulated by measures that respect human dignity.<sup>284</sup>

In conclusion, consider that Middle Eastern piracy is alleged to have originated within informal, local markets, commonly known as *suqs*, in which consumers made their everyday household purchases.<sup>285</sup> These markets have typically relied upon a network of personal relationships between purchasers, vendors and artisans.<sup>286</sup> Goods originating abroad lack such a personal connection. The respect given to relationships may underlie the informal intellectual property protection that appears to exist for

<sup>281</sup> *Introduction to EVERYDAY LIFE IN THE MUSLIM MIDDLE EAST*, *supra* note 129, at 9.

<sup>282</sup> MANSFIELD, *supra* note 10, at 539.

<sup>283</sup> *See id.* at 525 (“[I]t is my strong conviction that social change . . . is more likely to be pervasive and long-lasting if it takes place through the inner momentum of the whole of society rather than by government fiat.”); *see also* Martin, *supra* note 42 (“It is essential that people in the region see IPR as beneficial to them, not just something imposed from outside,” says [Clark W.] Lackert [partner in a New York-based law firm].”).

<sup>284</sup> *See* MANSFIELD, *supra* note 10, at 488 (“It has been an underlying theme of this book that the prime motive force of Arab political life in the twentieth century has been the desire to recover status and dignity after a long period of humiliation at the hands of superior Western power.”).

<sup>285</sup> *See* Kaye, *supra* note 12 (“Traditionally, Mizrahi [or what is now called Mediterranean] music was more exposed to piracy because the buying public was accustomed to buying at the market rather than in the record stores. Today rock, pop, anything that succeeds, gets pirated,” [says singer/composer Izhar Ashdot].”).

<sup>286</sup> *See* Robert Fernea, *Suqs of the Middle East: Commercial Centers Past and Present*, in *EVERYDAY LIFE IN THE MUSLIM MIDDLE EAST* 182, 184 (Donna Lee Bowen & Evelyn A. Early eds., 1993) (“Without banks to make loans or corporations to make investments, both the workshops and the stores in the suq were of a size which could be financed through familial and personal ties.”); *see also id.* at 187.

However, a major difference existed between the suq and the modern market insofar as the relationship between the producer and consumer was concerned . . . Bad workmanship could be traced back to particular individuals if necessary, as could overpricing, cheating, and failure to pay debts . . . . In the suq, reputations of individuals, not companies, rose and fell according to the quality of the goods produced and sold.

*Id.*

local works as well as encourage Middle Easterners to naturally shift to production of specialty content, rather than works of general application. For example:

Islamic software is such an area. . . . Also, the Arabic educational software sector is similar, where [Arab] companies . . . have also made their presence really felt. Tourism and culture software also seems to be a sector where Arabic publishers are doing wonders . . . . In any case, the future for Arabic software publishers will be one of 'focused markets' and applications in which us [sic] Arabs will always have a relative advantage in; as we are the most fit to 'computerize' information on our religion, culture, tourist sites and heritage."<sup>287</sup>

In addition to these local economic advantages, however, Middle Easterners possess an intuitive understanding that commerce cannot be separated from community and that religion plays a role in business relationships. Globalizers of international intellectual property policy may wish to consider the benefits of these qualities as the world grows increasingly smaller.

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<sup>287</sup> Nasser, *supra* note 256.