

[This is an Author's Original Manuscript of an article submitted for consideration in Islam and Christian-Muslim Relations [copyright University of Birmingham]; Islam and Christian-Muslim Relations is available online at <http://www.tandfonline.com/10.1080/09596410.2013.772343> .]

ISLAM AND CHRISTIANITY: ON “RELIGIONS OF LAW”

*Christ is condemned not by the law but by the impotence of the law.
He is condemned by the crowd and its priests.¹*

1. Introduction

Those involved in promoting understanding between Christians and Muslims not infrequently call Islam a “religion of law” to set it apart from Christianity which they might also call a “religion of grace”, “spirit” or “love”—and, occasionally, “reason”. In this chapter, I want to explore the possibility of turning this familiar opposition on its head. This is not for the sake of an intellectual game, nor because I take the reverse formula to be a definitively truthful description of the “essences” of either religion. Rather it is to illustrate both the danger of taking contingent perspectives to be a shortcut to deep understanding and the merits of going deep into the structure of religious thought to show the much more important contrasts between traditions. In religion, matters are never simple and however appealing a handy formula like that may be, it invariably conceals more than it reveals. Throughout this chapter, I use the term “religion of law” in an *ethical* sense, i.e. as a category that helps us think through whether Islam approaches the question of correct action as an essentially legal issue in contrast to a Christian stress on something less “rigid”, like love, grace or inspiration by the Spirit of God. I stress this since the law—grace opposition could also be tackled from the point of view of what “saves” a person, which is not our foremost concern here.

Part of its power as a didactic tag is that most of the people involved agree with it. Sunni Muslims are not unhappy to be thought of as following a religion of law.² Christianity, right from its birth in the teaching of Jesus Christ, has offered an incisive critique of the excesses of legalism. In the modern period, that critique has almost taken centre-stage so that the idea that the Gospel has a law to offer sounds to most people rather odd. Partly this is due to the rise of liberal Christianity (Protestant first, then Catholic), a style of religiosity that stresses individual autonomy and conscience and is critical of things being imposed from outside; a liberal outlook tends to see the achievement of Jesus Christ in his having confounded the “legalism of the Pharisees” with a message of grace, love and freedom.³ Partly, too, it may be linked to the dominance of dispensationalism in American Protestantism, a theology which also finds religious law a repellent and outmoded category. So the opposition appears to suit

everybody, nicely explaining a blatant contrast between a traditional Muslim legalism and an anti-legalistic ethos prevalent in contemporary Christianity.

Case closed? Not quite. There is good reason even for liberal Christians to hope that this neat *aperçu* is not the end of the story. For if Islam is *essentially* nomocratic (government by law), what room is there for constructive ethical conversation with Christians who place reason at the heart of their moral discernment and are mandated by Christ to interpret their religious law as being concentrated in the commandment to love?⁴ Our pedagogical device locks these two great and heterogeneous traditions into an intractable antithesis and stops some important conversations in their tracks.

And there is another worrying aspect, too: the grace—law opposition can also feed an unhealthy feeling of superiority in Christians. The appeal of being a “religion of grace” or whatever is that Christianity has gone beyond the law-fixation of Judaism into something finer and nobler. By tacitly putting Islam, a religion that itself claims to supersede Christianity, on a par with Judaism, this move makes out that Christianity had already abrogated Islam before it even saw the light of day.⁵ Perhaps the most historically important use of the device in Christian—Muslim conversation was by the twelfth century Melkite (and, in this respect, proto-Lutheran!) bishop of Saida Paul of Antioch who had precisely this intent.⁶ The stinging rebuttal offered him by the Muslim scholar Ibn Taymiyya, who availed himself of the opportunity to describe Islam as offering the perfect balance of law and grace, should be a cautionary tale.⁷

So can we find an alternative perspective, at least as valid and, hopefully, more beneficial to Christians desirous of a deeper engagement with the contemporary challenge of Islam? That is the task of this chapter. It will mean coming at both traditions with fresh eyes but our first and principal focus will be on Islam, asking in precisely what sense it is or is not essentially a “religion of law”. To guide our enquiry, let me identify three aspects of Sunni practice that not only suggest that it is essentially nomocratic but can also leave the Christian at a loss to understand:

- i) the way Muslims assume that their religious law can potentially touch every aspect of life, individual and social, an odd fact given the rather modest amount of legislation contained within pages of the Qur’ān;
- ii) the special care Muslims dedicate to the examination of legal texts, sources and their provenance (where Christians might, one hopes, do the same to their conscience);⁸
- iii) the need Muslims exhibit to rehearse both the sources and arguments of a given legal judgment as if the question had never been asked before.⁹

In the following section, we set out to look into these issues by getting behind them, historically and theologically, so as to discover something rather more intriguing about why Sunni Islam has developed in the highly legalistic way it has. We will then present an

argument for thinking of Christianity *as* a “religion of law” before offering some final dialogical reflections on why this shows a potentially fruitful way forward for Muslims and Christians to engage in conversation.

2. Law in Islam

a. Islam as a “religion of law”

There is no doubt that Sunni Islam takes God’s law very seriously indeed and many Sunni scholars would say that the history of Islam is coterminous with that of *fiqh*, the discipline that derives law from its various recognised sources. This law-governedness meant working out an understanding of God and of human beings and law itself to explain and justify why law should be the very heart of religion. In this section I want to show how the evolution of these reflections took Muslims well beyond simple legalistic thinking and into the kind of territory that the law—grace opposition would have us reserve to Christians.

To start us off: what was to be supposed of the nature of human beings if they were susceptible to divine command? The answer that came was that human beings were bound to an agreement with God into which they had entered before they were born, the covenant of the “Day of Alastu” mentioned in Qur’ān 7:172. This event is the occasion on which unborn human souls consented to construing reality as configured to divine command.¹⁰ A similar concept, frequently invoked in subsequent legal literature, is that of *khitāballah*, the divine address: human beings are defined as the object of *khitāballah*, recipients of a revelatory and absolutely normative command.¹¹ The basic theological mood that follows from this is called voluntarism: the good is only good because (contingently) that is what God wants rather than necessarily willed by God *because* it is good.¹² This is a far-reaching doctrine because it makes human agents utterly dependent on revelation to know what they ought to do. Thinking things through for themselves is unlikely to get them anywhere.

Voluntarism did not go unchallenged as Islam evolved; the story is instructive for those who scoff at a caricature of Islam’s refusal to entertain a purely rational way of proceeding. Part of the struggle that ensued between the ‘Abbāsids and the legal scholars involved the doctrinal positions of mu‘tazilism. It is often said that this school of theology (*kalām*) was rationalistic in contrast to its *ash‘ari* opponents who were fideists (i.e. they believed what their religion taught without worrying about it making any sense). There is some truth in this but it is often over-stated. In terms of the debate over law, the significant difference was not so much over whether human beings can rationally establish the goods inherent to human life as whether one may presume God’s *willing* of those goods in a given situation. Kevin Reinhart shows how one party, ultimately victorious, judged that reason (*‘aql*) could indeed yield a *probabilistic* assessment of a given action’s permissibility but that revelation alone attested divine permission and offered much needed certainty. Given that not all the precepts of Islamic law were easily explained on purely rational grounds—the outlawing of pork, alcohol and adultery, for instance—this was no negligible matter.¹³

The opposing party, comprising various mu‘tazilites, Shāfi‘īs, Ḥanbalis and Ḥanafis, held to a much more positive appraisal of the capacity of reason to betoken the divine mandate. This, as it would turn out, relatively fleeting spirit of Islamic rationalism arose during a particularly expansive phase of the ‘Abbāsīd caliphate: “proselytizing missionary religions in a dominant political position will surely find commonalities with those they rule whom they wish also to convert. The stable, assured and unified ‘Abbasid state was complemented by a religious ideology arguing that all humankind shares a kind of moral common sense, *‘aql*, which has always enabled humans to know the good from the detestable. [...] Muslim Revelation, consequently, was understood as a supplementary form of knowledge...”¹⁴

Those who trusted in their rational faculties to convey God’s command (Reinhart calls them “permitters”) stressed the sign value of creation, i.e. that the content of things communicates their goodness and usefulness to human beings. Their anthropocentric view supposed that had God wanted to forbid something damaging to human beings He would have imprinted an intimation of that prohibition upon human nature. Reinhart judges this to be the original ethical intuition of Islam.¹⁵ It is also this rationalist style of thinking, he argues, that made it possible for Islamic law to cover the whole of human behaviour: “They trusted their own moral intuitions and trusted that these were congruent with the reasonable dictates of Revelation. By this means, the scope of the *shar‘* was expanded to include many things of which it did not directly speak; the Permitters also, as it were, extended Revelation backwards in time, to the period before Revelation itself.”¹⁶

However, the so-called anti-rationalists who would prevail also needed to make the Qu’rān say more than the little it did on legal matters and this required the extensive use of analogical reasoning (*qiyās*). (One legal school, the Zāhirī *madhhab*, always opposed the use of *qiyās*, which its affiliates occasionally denounced as satanic in inspiration, but the school is widely regarded as defunct and always was marginal.) For analogical reasoning to get off the ground, certain assumptions still had to be made about the human good: Anver Emon terms the highly circumscribed rationalism that emerged “soft naturalism”. But how could one draw substantive conclusions about law from observations about the human good without in some way threatening the absolute sovereignty of God to forbid whatever He wants? It was consequently recognized that it was through God’s grace (*tafaḍḍul*) alone that the natural realm might be deemed a reliable, though not absolute, source of guidance about human flourishing.¹⁷ Thus, Muslims, desirous of extending the contents of revelation to engage the full gamut of human life, relied on the sense that God’s ordering of the universe was a free and gracious token of His concern for human flourishing. Notice how “legalist thinking” constantly has to resort to reason and grace.

Having made this slender rationalistic move, such a striking exception to its habitual voluntarism, Sunni law then resumes a more characteristic “textualist bent”.¹⁸ Law can only be divine law if it is formulated in intimate proximity to the text of command.¹⁹ In other words, law is not first and foremost cognitive content so much as performative enactment. It is not enough to obey the law; it must be obeyed *because* it is the law. Hence, codification was rejected as an approach when, in 754, the ‘Abbāsīd caliph al-Mansur refused to take the

advice of Ibn al-Muqaffa', a Persian convert from Manicheism, "to create a supreme magistracy" charged with adjudicating between contradictory juridical approaches.²⁰ The abstraction of values or principles from the text was resisted because, being at a higher level of generality and unavoidably distant from the text of command, they are potentially dangerous, sometimes actually leading one away from the divine intention.²¹

But how can you know which are the correct sources of divine revelation? The clear answer of the tradition is that it takes miraculous attestation and, in the case of Muḥammad's revelation, the Qur'ān is itself the miracle which guarantees its own authority.²² The *sunna* of the Prophet as a whole also addresses the believer, and as an ensemble is also authorized by the Qur'ān's self-attestation.²³ The validity of an individual ḥadīth is another matter entirely; over time a sophisticated discipline developed to evaluate the authenticity of each item of tradition. Underlying the whole edifice of that science is a founding axiom which requires discussion: the *tawātur* principle.

This is a response to the epistemological challenge posed by "knowledge of the past": how can we ever be said to have knowledge of events which took place some time ago or in our absence and which therefore can afford us no empirical warrant?²⁴ It is an empirical fact that human beings possess what we judge to be real knowledge, not mere opinions or beliefs, of past events. These items of knowledge can include the existence of historical figures, such as Muḥammad, as well as what one might call "religious truths", such as his prophethood. The question is, then: what are the necessary conditions for the achievement by the mind of such knowledge? The tradition, as attested by al-Ghazali, settles on two: a certain critical number of *recurrences* of citation; and the *truth* of the report's contents. In other words, a knowledge situation occurs when sufficient number of independent sources report the same true account.

The *tawātur* principle only makes sense in a culture that promotes the memorisation of texts and values orality over the written word.²⁵ It arises within a subjectivist account of what it means to know something and, as such, does not provide normative criteria for valid knowledge. It simply sets out to account for how we ever come to have real knowledge of the past. Its operative assumption is that the many cannot successfully collaborate in a falsification. If, from time to time, an untrue report does spread (as is the case, Sunnis would argue, in *Shi'i* claims that the Prophet selected 'Ali as Imam) it can create the illusion of knowledge, but it is only that. Otherwise, *al-tawātur yufīd al-'ilm*, "recurrence imparts knowledge".²⁶

If the principle cannot be used to settle conflicting claims, begging, as it does, the question of truth, nevertheless the critical mind turns quickly to the question of how one can objectively distinguish between true and illusory knowledge if the only grounds for doing so are subjective. Al-Ghazali distinguishes between knowledge and credence (*i'tiqād*), easily confused because both create in the subject a quality of confidence (*jazm*): "The difference between knowledge and credence is that in the case of knowledge one has taken into consideration the opposite of what he knows and ruled it out, whereas in the case of credence

one attaches oneself blindly to what one believes without taking real cognizance of its opposite.”²⁷

Because of its textualist bent, Sunni voluntarism also conduces to intentionalism, i.e. attentiveness not merely to the meaning of a deracinated text but to what *God* meant in making it available.²⁸ The assumption that we are apt to grasp God’s intention is grounded in the jurists’ theory of language as code: contrary to our modern sense of the tendency of words to change and lose meaning, Islamic jurisprudence posits an enduring, fixed framework of meaning.²⁹ Meaning *qua* meaning is pre-existent and public; only as long as a tradition is preserved in text, the (divine) author’s meaning is accessible for public inspection.³⁰ But the corpus of Sunni legislative texts is inherently open. There is always the theoretical possibility that the jurist, in coming to a decision, has missed a vital piece of information which is unavailable to him or has been lost forever from the memory of the *umma*.³¹

This textualist bent, for a whole variety of reasons, thus forces Sunni jurisprudence into a situation of subjective uncertainty about the correctness of any final judgment. This is why there is considerable disagreement within and between the law schools over an array of matters. The consequences of this inevitable uncertainty are potentially grave given the stakes involved in ascertaining the content of the divine will. In a sense, all law-centredness leads to this if only because of the intrinsic polyvalence of the imperative form itself: does a given usage denote command, invitation or mere exhortation? How is one to know when it is which?³² Those juridical authorities who treat it as straightforward command naturally construe *shari‘a* in a legalistic framework. Where there is only exhortation, law does not offer an adequate expression.

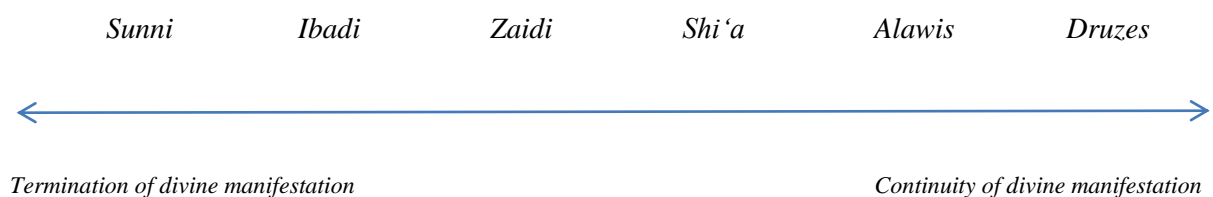
The tradition deals with uncertainty by separating procedural legitimacy from truth value. In a regime where procedural tools can yield contradictory results but cannot themselves be faulted, we find the appearance of the notion (though not the terminology) of jurists’ infallibility, the assertion that “every *mujtahid* is correct”. Naturally, this notion militates unsettlingly against the more foundational axiom of the objectivity of God’s law.³³ The only way to preserve the truth of both is to insist that there is a distinction sanctioned by God between his objective will, which a jurist might well, despite his best efforts, fail to discern, and which makes him quite fallible, and the rigour of the procedure applied by the jurist which, even if it fails to discern the objective law, is taken to be legitimate regardless of any error generated by it. It is even alleged that the gap between the truth and what can be known of it is, in some sense, providentially approved. The condition known as *istifrāgh al-wus*, the demanding insistence that the scholar must always expend every effort to ascertain the contents of God’s will, is then invoked to shoulder the weight of this formulation.³⁴ But it is underwritten by a divine fiat of grace and mercy. Once again, grace is a necessary part of the picture. Being a “religion of law” is never, it seems, quite enough. But can we now go further and show that Islam’s original turn to law was not in itself essential to its original identity?

If we have always thought of Islam as *inherently* juridical it is largely because we hold that Muḥammad founded and governed a community and that God’s law was made known directly to him in such a way as to reach every domain of individual and social life. It’s a compelling story: Muḥammad’s prophetic status meant that, under his rule, the politics, society and culture of Medina could be fashioned under a uniquely intense divine tutelage. On his death, a successor of inferior status had to suffice, a Caliph (*khalifa*) whose style of rule could only be *imitatio Muhammadi*. As the years went by and less adequate modes of leadership were tried out and found wanting, the *umma*’s went into a decline of sorts, halted only when the ‘*ulamā*’, happily putting paid to the absolutist ambitions of the ‘Abbāsīd dynasty, restored something of the prophetic tenor of government by producing a body of law genuinely expressive of Muḥammad’s example and, thus, salvaged a system grounded on the divine intention of which he had been the impeccable channel.

Let us call this the “jurist’s narrative”. With its stress on continuity between Prophetic and jurists’ law-making, it is perfectly designed to arouse the historian’s suspicion. Religions, we know, do not fall ready-made from the sky. True, the Qur’ān already manifests a certain “conscious effort towards building a new legal system”.³⁵ Nevertheless, the intricate filigree of developed Sunnism, which is our subject here, required lengthy propagation, not to mention many a creative rupture. It is most improbable that it represents merely the formal recovery of a pristine but temporarily lost way of proceeding. How else might we tell the story?

It helps if we stand back from the Sunni resolution of Islam’s early crises and take in a broader panorama. Fuad Khuri offers a crucial phenomenological insight into the existence of competing traditions within Islam. He draws a distinction between, on the one hand, the *religion* of Sunnism, marked by an open, inclusive and “state”-centred understanding of religious sovereignty; and, on the other, the various self-contained *sects* which locate religious authority in the charismatic individual of an Imam rather than the office-holding Caliph. If Sunni religiosity is intrinsically public, procedural and law-enforced, sectarian Islam is private, charismatic and persuasive. At the origin of all these differences, Khuri argues, lies primordial disagreement about the nature of divine manifestation after the death of the Prophet, that is to say of the on-going availability to the community of an immediate apprehension of the divine will. Khuri places on a continuum the various options which were to become available:³⁶

Continuity of Divine Manifestation in Human Society



At one end is Sunnism in which, quite simply, on-going manifestation has ceased, leaving only a procedural and analogical human recreation of the Prophetic regime. Sunnism points

towards the extinction of manifestation and the resumption of a mundane condition. For the twelver *Shi'a*, divine manifestation is prolonged in the Imams but ceases with the occultation of the twelfth of their number, leading to a solution reminiscent of Sunnism. Other sects prolong manifestation still further, even to the present day.

Khuri's analysis situates our question in a broader context and suggests that Sunni legalism is connected to a denial of on-going divine manifestation. But how pointed is that denial? An answer to this question will depend on the way we reconstruct the narrative of Islamic origins. The jurist's narrative, the conservative "insider voice" of the Sunni tradition, sees it as a simple acknowledgment of fact. But today other more sceptical approaches are being taken to probe what must have taken place in those early decades. To take, simply for didactic purposes, one of the more radical thoughts, Patricia Crone and Martin Hinds argue that the first successors of Muḥammad, far from being aware of any tight circumscription of their politico-religious authority, in fact exercised something approaching a *Shi'i* model of absolute, charismatic imamate.³⁷ Caliphs, in their view, had always understood themselves to be manifestations of divine authority on earth; the clue is in the title *khalifat allah*, repeatedly invoked during the first centuries. Their judgments, taken as divine law, were based on three sources: *kitab* (the Qur'ān), *ra'y* and *sunna*. These last two terms should not be understood according to their later meanings. *Ra'y* denoted not mere opinion but "superhuman understanding", even divine inspiration.³⁸ The *sunna*, during the Umayyad period, meant "according to the spirit of".³⁹ This is the sense according to which intermittent political protest would call on these "vicars of God" to govern according to the *sunna* (i.e. "in the spirit") of the Prophet.

The shift from the caliphal paradigm to that of the classical jurists takes place only gradually as it becomes customary to juxtapose the legislative acts of the caliphs and those of the Prophet. This is possible because the emerging '*ulamā*' had been gathering a vast body of ḥadīth apt to serve as a criterion—eventually, thanks to al-Shāfi'ī, an exclusive one—for the Islamic legitimacy of legislation. Rémi Brague, along with many scholars, is clear that this project began not as an exercise of piety but with a stark political aim: it was to create fictional warrants enabling Islam to embrace a raft of existing customs, laws and practices in various territories of its rapidly expanding empire whilst claiming that Islam alone was the source of its law.⁴⁰ The process, undertaken by traditionist scholars, inevitably undermined the caliphate by monopolising at its expense the legislative function and by shifting the meaning of the word *sunna* until it became a detailed *re-membering* of the Prophet's precise comportment.⁴¹ By the reign of the 'Abbāsīd caliph Hārūn, the legal experts had attained precedence over the state's own power and the triumphant '*ulamā*' retro-projected on to the first caliphs unhesitant rejection of the idea of their being God's representative.⁴²

Sunni legalism, on this view, is no utopian project. Rather, it is a tool for resisting absolutist rule, its emergence the resolution of the decisive crisis of the original *Shi'i*—Umayyad concept of the absolute caliphate.⁴³ That crisis's principal casualty is the memory of a phase of Islam when rulers governed freely "in the spirit" of the Prophet and were understood as being inspired by God, a model, let it be noted, not without similarity to the early Christian

understanding of the episcopate. Crucially, this re-telling of the story suggests that early Islam might be judged a “religion of law” largely through happenstance.⁴⁴

Aziz al-Azmeh’s rich account of Islam’s sacral kingship tradition largely concurs although he rejects Crone’s and Hinds’ thesis that the ‘*ulamā*’ wanted to subvert their king.⁴⁵ A reading of Fred Donner’s more cautious revisionism would lead one to deny the original sacral nature of the caliphate (along with the title of Caliph itself) but would still recognise something of its absolutist quality.⁴⁶ However one judges the matter, an essential aspect of the new arrangement, as al-Azmeh stresses, was its *impersonality*. Different law schools may have had contrasting instincts with regard to the degree of freedom allowed to the caliph, but all desired an impersonal polity where standards applied regardless of the personal prejudices of the ruler.⁴⁷

What this development entailed, significantly, was that the scope of jurists’ law was coterminous with the reach of the former political power: “*Usūl al-fīqh* treated the affairs of the world as if they were recoverable and comprehended entirely within the bounds of an Islam which the ‘*ulamā*’ were defining within the textual boundaries of the Koran interpreted, the hadith vastly expanded, the genealogical charters of this corporate group organised under the title of consensus, and analogies drawn from these three sources by its members.”⁴⁸ If later rationalist scholars were able to colonise this “total space”, it was only because the brute force of caliphal power had opened it up in the first place. As for the caliphate itself, it became, to all intents and purposes, otiose, even if the theorisation of its obsolescence would have to await the fourteenth century.⁴⁹

Rough explanations for the three sources of puzzlement we identified at the outset should now be clear:

- i) Islamic law was able to extend its ambit to take in practically the whole of human life not because Islam has a legalist fixation but for two reasons: a) the writ of the caliphs who ruled the early Islamic empire was unlimited and this opened up the space for the activity of the ‘*ulamā*’; and b) having occupied that space, a party of the ‘*ulamā*’ (Reinhart’s “permitters”) then embarked on what would turn out to be an uncharacteristic bout of rationalist theologising; hence, the law they produced could be extended to every area of human life because reason could too.
- ii) Muslims devote such meticulous care to the study of their texts because of the underlying voluntarism of their theology and because texts were the chosen means with which to defeat caliphal absolutism.
- iii) Muslims rehearse arguments rather than codify their law because it brings the situation under judgment into performative contact with the Word that must be obeyed and also fortifies the power of the hadīth to bestow the certainty of true knowledge.

Our account, we hope, has qualified out of existence the statement that Islam is *essentially* a religion of law. This doubt is surely vindicated by Islamic history which is, in point of fact, littered with traces of antinomianism: the Ismā‘īlī, Shī‘īs, Alawites and Bektashis are frequent targets of the accusation. *Fiqhi* Sunnism may well be nomocratic in practice, but a broader vision suggests that the settlement it represents is not an entirely stable one. Fazlur Rahman wonders whether the legalism of the *ash‘ari* consensus and the hard determinism which it also affirms can really co-exist. What are we to make theologically of a divine command which obliges a subject who has no substantive capacity to defy the same God who determines her actions?⁵⁰ It is an instability which, according to al-Azmeh, is poised to embrace the esoteric consolation of Ibn ‘Arabi: “The body politic, like all material entities, is soiled and therefore in need of salvation and of a constant maintenance by a saviour who is the representative of a Type synonymous with the comprehensive and definitive command of God which is the Tablet of Fate. The world, according to Ibn ‘Arabi, is never devoid of a living apostle who, unlike the Twelver imam, is physically present (*hay bi-jismihi*), a *quṭb* who is functionally equivalent in this preservative respect to the caliph, the ‘*ulamā*’ sodality or the impersonal *shar*’ of Sunnism.”⁵¹

3. Recovering a Different Christian Perspective

If Islam is not best understood as *essentially* a “religion of law”, can the same be said of Christianity? One reason for placing the problematic of law at the very heart of the Gospel message is the overwhelming consensus of the tradition that Jesus Christ is the fulfilment of Torah. Jesus declares in the Sermon on the Mount: “Do not think that I have come to abolish the law or the prophets; I have come not to abolish but to fulfil. For truly I tell you, until heaven and earth pass away, not one letter, not one stroke of a letter, will pass from the law until all is accomplished.”⁵²

Some Christians, of course, have favoured an anti-legalist interpretation of the New Testament, citing as scriptural warrant the *prima facie* abrogationism of St Paul’s epistles to the Romans and the Galatians or that of the prologue of the Gospel of St John. A clear riposte is given by Rabbi Norman Solomon: “[i]t is surely not the message of Christianity, even of Pauline Christianity, that there should be no ‘law’. It would indeed be a ridiculous blunder to jump from the premise that man cannot justify himself before God through the law to the conclusion that law is a waste of time, that society should be anarchic. The whole development of Christian Moral Theology and of Canon Law, both with considerable roots in Paul’s own teaching, provides a Christian *halakha* as structured and demanding as the *halakha* of Rabbinic Judaism.”⁵³

Indeed, the unremitting record of mainstream Christianity has been to affirm the on-going relevance of positive religious law. This is true of the Fathers, of the Great Church’s campaigns against the Manichaeans and the Marcionites and even of Luther’s and Melancthon’s struggles against their antinomian opponents.⁵⁴ It is indeed a paradoxical truth, as Brague notes, that Luther’s anti-law rhetoric led not so much to a forgetfulness of the Old Testament as to its “renewed valorization.”⁵⁵ An illustration that an affirmation of Torah

is available even in Reformed Christianity, albeit a marginal and extreme one, is the case of “theonomic reconstructionism”, a strand of present-day American Calvinism which seeks the implementation of Old Testament law as state legislation.⁵⁶

Yet more significantly, the most enduring and intellectually powerful systematization of Christian thought ever produced was also one which placed the category of law in the foreground. Thomist scholasticism was in intimate dialogue with classical texts (in translation), both Islamic and Jewish, and so was very much on the same wavelength as many of the key thinkers of both faiths. It is also a most rigorous and considered working-out of the place of the Old Testament law—and more broadly the category of law—in the Christian dispensation. Aquinas’ position yields a bracingly clear perspective on our problematic for it has even been said that, for him, “*juridical categories*, correctly understood, are the very means by which our intrinsic (and therefore personal) relationship to God, in the intimate union of holiness, is most truly expressed.”⁵⁷

But, in true Thomist fashion, let us lodge an objection: a clear counterpoint to legalist thinking is the place Aquinas accords to reason. Yet, for Thomas, reason is itself a matter of law. He famously holds to a doctrine of natural law: “If there is an eternal law existing in the reason of the ruler of the whole community of the universe, then it is participated in in some way by every creature, because God impresses on them the inclinations to their proper acts and ends.”⁵⁸ “Every person, Aquinas believed, has access to the first principles of practical reason by means of an innate capacity that he called *synderesis*. We know that we ought to seek good and avoid evil and that we ought to treat others as we wish to be treated.”⁵⁹

Alfred Guillaume, anxious to find points of common ground between Islam and Christianity, reluctantly concedes “a sharp and irreconcilable opposition” between their respective positions on this matter.⁶⁰ But the contrast is not as stark as that. Aquinas in fact devotes far more attention in his *Summa Theologiae* to the law of the Old Testament (the “Old Law” as he has it) than he ever does to natural law. The logic of his system insists that there is always need for divinely revealed law as a supplement to what human reason can establish unaided. This is for four reasons: natural law is not able to lead human beings towards their *supernatural* destiny; human judgment can be swayed by confusion or demoralization; because of the unavoidably interior aspect of human motivation, not susceptible to exterior judgment; and because there are some actions known by reason to be immoral and yet which, for reasons of prudence, should not be outlawed.⁶¹ There is every reason, therefore, to take the legislation of Israel with utmost seriousness; the revealed law inscribed in the Old Testament is still valid for God’s will is not capricious. True, the Old Law looked to the coming of Christ for its fulfilment and aspects of it, notably the ritual practices of the Jerusalem Temple, are henceforth superseded (though, as we shall see, not abolished). But the *moral* aspects of the law remain entirely in force. There is no hint of any opposition in Aquinas between Old and New Laws, as both are governed by the same *telos*; one is simply the fulfilment of the other.

This organic view has consequences which go beyond the ethical domain to embrace even those aspects of the Old Law pertaining to the Temple liturgy. As Matthew Levering points out: “For Aquinas, the Mosaic Law has been fulfilled by Christ, so people observe it by conformity with Christ in the community of the Church. [...] Christians, *by sharing in Christ’s passion*, will forever observe the ceremonial and judicial precepts—although now in the way proper to a universal ‘body’ that enjoys trinitarian communion through Christ the ‘Head’.”⁶² As John McDade suggests, if “Christian life is a participation in Christ’s fulfilment of the moral, ceremonial and judicial aspects of Torah, then we are required to recognize a profound connection between being a member of the Church and observing Torah”.⁶³ One can feel the full impact of Aquinas’s position in the words of John Paul II: “Jesus took to its extreme consequences the love demanded by the Torah.”⁶⁴

There is available for retrieval, then, a compelling perspective on the meaning of Christian life which gives a central place to the category of law. One could even imagine counterfactual histories within which Christianity might have institutionalised its *halakha* in ways not dissimilar to the law schools of Islam. Arguably, it’s its failure to do so that requires explanation and which certainly some Muslims find disquieting. Much is often made, not least by Muslim critics of Christianity, of the duality which emerged in the Christian world between *regnum* and *sacerdotium* and which arouses the suspicion that Christianity has conceded a realm of moral activity (the *seculum*) towards which God is indifferent, an intuition which many, perhaps most Christians would willingly assent to. How might one answer this?

A first tack would be to appeal to the role of reason in devising civil legislation. But Muslims cite canon law as proof that the Church *does* have its own positive law to offer: why is it so restricted in scope, so ethereal? Here, the answer requires historical and theological explanation. Christian theology has normally insisted that human beings have not only a natural but also a properly supernatural destiny which subsumes rather than flees the former.⁶⁵ This doctrine has led over time to the creation of something specifically Christian, *canon law*, the legal apparatus necessary to service “the good order of the Church so that she can fulfil her mission of the sanctification of man and of the world.”⁶⁶ As Brague asserts, “Canon law does not aim to regulate the whole of human life. To the contrary, one might almost say that its proper function is to trace the frontier that surrounds specifically religious activities. That is where the essential difference between canon law and the juridico-religious systems of Judaism and Islam lies.”⁶⁷

Canon law comes into its own at the start of the second millennium and for surprising reasons. Brague conjectures that it was a growing demand emanating from European monarchs for a re-sacralisation of their monarchy which impelled the medieval papacy to resist by centralising the authority of the Church and systematizing its canon law, a move which entailed impinging substantially on the affairs of the temporal world.⁶⁸ The existence of Church law is therefore to be understood as the consequence of Christian anthropology and a refusal to countenance sacral kingship. Any legitimacy there might have been hitherto in an other-worldly ethos was dissolved in this late-eleventh century “papal revolution” which

Brague sees as one side in a “fascinating change of roles”, coinciding as it does with a growing awareness in the Islamic world that *its* legal dispensation had reached its maturity and that “further development would represent a decline”.⁶⁹

4. Conclusion: the Graces of Dialogue

In the light of all this, what is a Christian to make of Islamic law? Evidently, law does not occupy exactly the same place in Christianity as it does in Islam; the respective places afforded to the covenant and the operation of grace are undoubtedly distinctive. But this hardly justifies an *a priori* Christian regret over Islam’s excessive legalism. From a Thomist perspective, the fact of the *shari‘a*’s existence is not in itself shocking. This does not mean that there need not be considerable points of tension and disagreement; indeed, certain neuralgic points, especially those regarding women’s rights, traditional corporal and capital punishment and the treatment of minorities, have so besmirched the word in western countries that it takes considerable courage to state the obvious: that many of its injunctions have much to commend them. A thorough Christian engagement would involve examining each *fatwa* in the light of the Old and New Laws and the contemporary moral teaching which seeks to actualise them. The New Testament account of where law-centredness can go wrong, a vital part of the Gospel message and not entirely foreign to every strand of Islam, must not be forgotten and needs to be fitted into the picture.⁷⁰ A more searching question would have to do with the way in which Muslims arrived at the conclusion that Islamic law could and should touch upon every area of life. It is not the case, as sometimes suggested by Muslims and liberal Christians, that “God has no opinion” on a whole raft of human activities. Indeed, the whole of life is affected by one’s decision to follow Christ. A Christian might well regard the Islamic project of extrapolating a limited body of legislative material to furnish the believer with answers to questions concerning every single aspect of life somewhat cumbersome and liable, without due correction, to yield distorted results. For a Christian, the on-going presence of the Holy Spirit to the Church and (in the case of the Catholic Church) the input of an inspired magisterium makes such meticulous poring over texts seem rather ossified as a procedure of ethical discernment.

Christians and Sunni Muslims have shared certain aims which inform their historical itineraries, notably the avoidance of a naturalism that deciphers too readily the warrant of divine will in the observable regularities of creation and (if we go with Crone and Hinds) the desacralization of monarchic power. We have seen that sizeable elements were taken over from existing custom in the lands of the new Arab empire. Insofar as these customs would have honoured the natural law, Christians should have no insurmountable difficulty with them. The judgments of Muḥammad frequently strike the reader in a positive light: he can be merciful, prudent and praiseworthy. The merciful sparing of his opponents’ lives after the battle of Badr and the betrayal of the Banu Nadir is often forgotten in the aftermath of the massacre of the Jews of Banu Qurayzah as is his friendship with non-Muslims and his great insistence on gentleness and the importance of moderation. Indeed, it is the life of the Prophet that often takes the edge off some of the harsher Qur’anic texts.⁷¹ Likewise, the meticulous care of the scholars and the pursuit of consensus suggest the kind of careful social procedures

that Jean Porter argues can give expression to the natural law: “if we take legislation broadly, to include communal processes of reflection, rational persuasion, and the formation of custom [...] then we are left with a more persuasive account according to which normative precepts are always specified through communal processes, more or less explicit and authoritative, through which the general precepts of the natural law are given concrete meaning and force.”⁷²

The criticism made today by Muslim modernists and reformers of a certain limiting fixity in the *shari‘a* method would also come under intense Christian scrutiny; the natural law is susceptible to development and its concrete determinations vary between contexts of culture, climate and language. That is why Christians need not be surprised to find difference in specific legal traditions that nevertheless embody the natural law. Any given corpus of law aspiring to eternal validity has to face revision and adaptation to circumstances.

So there are plenty of reasons to encourage appreciative and critical Christian engagement with Islamic law. But as ever, true encounter goes both ways. Here, I must voice a twinge of conscience. In this paper so far I have historicised the Islamic tradition and then commandeered an invulnerable scholastic bridgehead in my own in order to seize a powerful and perhaps novel perspective. It is not the most hospitable of gestures. The moment has come, I think, to confess that the Thomist solution to law has its own fragility: given that much of the Old Law is fulfilled “at one remove”, so to speak, sometimes unperceived by the practising Christian it is not entirely surprising that Christians can be singularly inarticulate in accounting for what happened to the Old Law in their dispensation and so end up rationalising the invisibility of Torah as brute abrogation, and, in the process, feeding a misguided nomophobia. This is where confrontation with the Islamic experience can be positively helpful. David Clairmont thoughtfully suggests three ways in which interreligious conversation about morality is analogous to the sacrament of reconciliation and thus a source of purifying grace for the Christian.⁷³ I want to suggest how the encounter with Islamic law bears out his assertion.

The first fruit of interreligious conversation about moral matters is that through it we come as if afresh to the moral task and have our commitment to it probed: “Each penitential preparation, like each interreligious conversation, is a chance to ask again, ‘Do I really believe this, and do I live by what I claim to believe?’”⁷⁴ Christians can find themselves truly challenged by the care Muslims show to ascertain the will of God. Their own tradition certainly testifies to on-going uncertainty and indecision about what Christians are to make of the Old Law. Even with regard to the New they have shown great ingenuity in finding escape routes from, say, the radical ethic espoused by the Sermon on the Mount. Various it has been taken as signalling a turn to interiority, as the exclusive remit of the religious life dedicated to the evangelical counsels, or just as a harsh reminder of the total depravity of a race quite incapable of living up to it.⁷⁵ To be sure, Muslims would not endorse what they often see as the exaggerated altruism enshrined in that sermon, but Christians might own again the unsettlingly ambitious will of Christ for His disciples by a frank avowal that this is indeed what they believe.

A second fruit of dialogue is that it shows up our humdrum sinfulness as, in effect, a manifestation of unbelief in the tradition we espouse: “the difference between a believer’s moment of confrontation with her or his own sin and the confrontation of one person with another person who holds substantially different beliefs is, I think, a difference more in degree than in kind.”⁷⁶ The kind of theonomy which Sunni Islam embodies is predicated upon a fundamental God—man opposition which Toshihiko Izutsu finds in the lexical structure of the text of the Qur’ān itself.⁷⁷ Christianity does not typically sustain such a polarity, as the doctrines of *imago dei* and incarnation make clear. That did not stop a lengthy period in which Christians embraced a kind of voluntarism, the view that God’s sovereignty made it impossible for Him to be thought of as bound by the constraints of logic or reason. Though not entirely negative in its legacy, the many deleterious effects of this nominalist flirtation certainly include the undermining of that Thomist frame of mind which was able to devote time and effort to the painstaking task of thinking through complex ethical questions.⁷⁸ Christians have no need to be reminded of God’s otherness by the assertions of voluntarist theology; the transcendence of the God of Jesus Christ is figured not by the hypothesis of unfettered, arbitrary dominion but by the scandal of the Cross and the doctrine of the Trinity.

Finally, interreligious conversation forces us out of the cosy little moral world we have made for ourselves to ask bigger questions than we are normally comfortable with. It helps us to face “the possibility that the tradition’s time-tested wisdom, although still relevant, must be constantly re-examined and assessed to ensure that the secondary precepts that govern our particular choices exhibit both sensitivity and broad scope.”⁷⁹ Mainstream modern Christians have a particularly urgent methodological lesson to learn from Muslims in this connection. Natural law theory can easily slide in the direction of rationalism or naturalism, baptizing, as it were, the order found in “nature”. Scholastic theology was consistent in binding it to nature *and* reason, juggling the three as harmonious, mutually resonant sources of law. In the scholastic view, scriptural law *is* natural, not positive (i.e. human) law.⁸⁰ There is a constant *va-et-vient* between the use of natural law as a hermeneutic which opens up the sacred text, and its particular contours as disclosed in scripture and in the natural world. Scripture is an essential corrector and form-giver to the otherwise empty abstractions natural law provides.⁸¹ In particular, Porter argues, the sacred text has had a key role in shaping the Christian sense of human nature, which, after all, horribly under-determines human morality;⁸² the principles of the natural law subsist at too high an altitude to offer much in the way of concretion and so we require “a lawgiver, whether human or divine, in the light of an overarching purpose which gives them both coherence and specificity.”⁸³ Hence, gazing at nature *through the prism of scripture*, we (as, unwittingly, do many post-Christians) privilege humankind’s care and reciprocity over its anger and self-assertiveness. Without the specificity of scriptural law, our knowledge of natural law would be fatally impoverished. Contemporary Christians can be rather too glib in invoking reason and human welfare as sufficient indication of divine approval and could learn from Muslims a deeper reverence for the Divine command as disclosed in sacred text. In this sense, it could even be said that *shari‘a* stands as a

monumental acknowledgment of the sheer difficulty and risk of trying to fathom the will of God, a profound reverence for it, and a gesture of trust in God's grace.

Damian Howard SJ

25 July 2011

¹ R. Calasso, *The Ruin of Kasch*, trans. W. Weaver and S. Sarterelli (London: Vintage, 1995), 155.

² For a recent Muslim description of Islam as “nomocratic”, see U.F. Abd-Allah, “Theological Dimensions of Islamic Law” in *The Cambridge Companion to Classical Islamic Theology*, ed. T. Winter (Cambridge: Cambridge University Press, 2008), 237-57.

³ See, for example, H. Küng, “Christianity and world religions: the dialogue with Islam as one model,” *The Muslim World* 77/2 (1987): 89.

⁴ Mark 12: 29-31; Matthew 22: 37-9; Luke 10: 25-7.

⁵ For comparisons between Jewish and Islamic law, see H. Lazarus-Yafeh, “Some differences between Judaism and Islam as two religions of law,” *Religion* 14 (1984): 175-91; C. Adang, “Medieval Muslim polemics against the Jewish scriptures,” in *Muslim Perceptions of Other Religions*, ed. J. Waardenburg (New York & Oxford: Oxford University Press, 1999), 143-59; Jacob Neusner & Tamara Sonn, *Comparing Religions through Law. Judaism and Islam* (London & New York: Routledge, 1999); F.E. Peters, *The Monotheists. Jews, Christians and Muslim in Conflict and Competition. Volume II: the Words and Will of God* (Princeton & Oxford: Oxford University Press, 2003).

⁶ “Revealed religion, [Paul of Antioch] claims, is of two kinds: religion of law and religion of grace. To the bishop, Judaism is the religion of law, while Christianity is the religion of grace. In order to manifest His justice, God sent the prophet Moses to the children of Israel to establish a law of justice and commanded them to follow its prescriptions. When the time was right, God incarnated his eternal Word in Jesus to establish the religion of grace or the perfect religion. ‘After perfection,’ he states, ‘nothing else remains to be instituted.’ There is no need for anything more, since perfection has already been achieved in Christianity. The obvious conclusion to be drawn is that Islam is superfluous, a gratuitous appendage to a divine history of salvation which had already achieved its climax in Jesus Christ.” Thomas F. Michel, “Moving beyond the Burdens of History,” Lecture 6 of the 2000 D’Arcy Lectures given at Oxford University, [online] available at <http://www.sjweb.info/Documents/dialogo/moving.doc> accessed 10 January 2011. See also David Thomas, “Paul of Antioch’s *Letter to a Muslim Friend* and *The Letter from Cyprus*”, in *Syrian Christians under Islam. The First Thousand Years*, ed. D. Thomas (Leiden: Brill, 2001), 203-21.

⁷ See Thomas F. Michel, *A Muslim Theologian’s Response to Christianity: Ibn Taymiyya’s al-Jawab al-Sahih*, (Del Mar, NY: Caravan Books, 1984).

⁸ For an illuminating caveat to this comment see Oddbjørn Leirvik, *Human Conscience and Muslim-Christian Relations: modern Egyptian thinkers on al-ḍamīr* (London: Routledge, 2006).

⁹ It is fair to say that another anxiety which Islamic law provokes among Christians is the expectation some Muslims have that it should be enforced by an Islamic state. We will not deal with this delicate issue in this article but we direct the interested reader to Sherman Jackson’s excellent *Islamic Law and the State: the constitutional jurisprudence of Shihab al-Din al-Qarafi* (Leiden: Brill, 1996), 185f.

¹⁰ Bernard G. Weiss, *The Spirit of Islamic Law* (Athens & London: University of Georgia Press, 1998), 33.

¹¹ Weiss, *op. cit.*, 34.

¹² See also Mariam al-Attar, *Islamic Ethics. Divine Command Theory in Arabo-Islamic Thought* (New York and London: Routledge, 2010).

¹³ A. Kevin Reinhart, *Before Revelation. The boundaries of Muslim moral thought* (Albany: State University of New York Press, 1995), 35f.

¹⁴ Reinhart, *op. cit.*, 178.

¹⁵ “[T]he Qur’ān presents the world as a benefaction filled with useful and pleasurable gifts. Therefore to view the world as benign and useful and to believe that its benignity and usefulness are signs of value in accord with God’s assessments is not only Qur’ānic, but surely an original position within the Muslim community. We view the Permitters, then, not as importers of an alien Greek perspective, but as conservative heirs to a long but, by the fourth Muslim century, archaic Muslim position.” Reinhart, *op. cit.*, 38.

¹⁶ Reinhart, *op. cit.*, 180.

¹⁷ Anver M. Emon, *Islamic Natural Law Theories* (Oxford: Oxford University Press, 2010), 32. Later on, “Al-Rāzī attributed the natural world’s goodness to God’s grace; but once we accept theologically that God put this particular version of creation into being to benefit humanity, we can jurisprudentially rely on the presumptive goodness of the world for the purpose of interpreting the law, even though we are theologically aware that God may change the world.” *Op.cit.*, 154. See also Anver M. Emon, “Natural Law and Natural Rights in Islamic Law” *Journal of Law and Religion* 20/2 (2004-5):351-95.

¹⁸ Weiss, *op. cit.*, 38.

¹⁹ Weiss, *op. cit.*, 40.

²⁰ Rémi Brague, *The Law of God. The philosophical history of an idea* (Chicago & London: University of Chicago Press, 2007), 151.

²¹ The jurisprudence of Abū Ishāq al-Shātibī (d.1388) is a notable exception. See Wael B. Hallaq, *A History of Islamic Legal Theories: an introduction to Sunnī uṣūl al-fiqh* (Cambridge: Cambridge University Press, 1997), Chapter 5; and M.K. Masud’s *Shatibi’s Philosophy of Islamic Law* (Delhi: Adam Publishers and Distributors, 2006).

²² Weiss, *op. cit.*, 41.

²³ Weiss, *op. cit.*, 44-5.

²⁴ Bernard G Weiss “Knowledge of the past: the theory of *tawâtur* according to Ghazâlî,” *Studia Islamica* 61 (1985): 81-105.

²⁵ Weiss, *The Spirit of Islamic Law*, 47f.

²⁶ Weiss, “Knowledge of the past,” 86.

²⁷ Weiss, *The Spirit of Islamic Law*, 97. This contention is not without interest for Muslim-Christian conversation, given the most important role played in it by different “knowledges” of the past. Grasping the basis of Islamic epistemology in this regard may help contemporary Christians to understand why Muslims speak with a confidence about past facts which sometimes strikes them as misplaced and hubristic. Christians, after all, rely for the truth of their religious beliefs on the blood of the apostles shed in witness to the Resurrection. Paul’s reminder of the sheer objectivity of this knowledge (*1Cor* 15:17) is always sobering, not least in an age tempted in its own way by subjectivism.

-
- ²⁸ Weiss, *The Spirit of Islamic Law*, 55.
- ²⁹ Weiss, *The Spirit of Islamic Law*, 58.
- ³⁰ Weiss, *The Spirit of Islamic Law*, 59-60.
- ³¹ Weiss, *The Spirit of Islamic Law*, 110.
- ³² Weiss, *The Spirit of Islamic Law*, 106.
- ³³ Weiss, *The Spirit of Islamic Law*, 114-18.
- ³⁴ Weiss, *The Spirit of Islamic Law*, 120.
- ³⁵ Wael B. Hallaq, *Sharī‘a. Theory, practice, transformations* (Cambridge: Cambridge University Press, 2009), 33.
- ³⁶ Fuad Khuri, *Imams and Emirs* (London: Saqi. 1990), 111. To be precise, Shi‘a should be taken as meaning the “twelver” tradition.
- ³⁷ Patricia Crone & Martin Hinds, *God’s Caliph. Religious authority in the first centuries of Islam* (Cambridge: Cambridge University Press, 1986).
- ³⁸ Crone and Hinds, *op. cit.*, 56.
- ³⁹ Crone and Hinds, *op. cit.*, 55.
- ⁴⁰ Brague, *op. cit.*, 147f. See also Patricia Crone, *Roman, Provincial and Islamic Law. The origins of the Islamic patronate* (Cambridge & New York: Cambridge University Press, 1987; new ed. 2002). It must be acknowledged that whilst many Muslims would be offended by the suggestion that much of the vast body of traditional material was fabricated, many would also share concerns about its historical reliability. For a sophisticated modernist take on these matters, see Fazlur Rahman, *Islamic Methodology in History* (Karachi : Central Institute of Islamic Research, 1965), 53f.
- ⁴¹ Crone and Hinds, *op. cit.*, 58.
- ⁴² Crone and Hinds, *op. cit.*, 87-8; 19.
- ⁴³ Crone and Hinds are particularly enthusiastic about this being a revolutionary movement: “[S]ince Prophetic sunna was defined in the main by private scholars rather than by public servants, its rules were frequently and indeed intentionally unhelpful to the state. That is not to say that the scholars advocated disobedience to the caliph; on the contrary, Ḥadīth is quietist. But though the subjects have to obey the caliph, the caliph in his turn had to abide by the rules which in matters such as taxation, penal law, the fixing of prices and the like committed him to a policy very different from what he might otherwise have had in mind. [...] Naturally the caliph could ignore the sunna and he frequently did; but what is a deputy of God who is forced to contravene God’s law?” Crone and Hinds, *op. cit.*, 91-2.
- ⁴⁴ Crone and Hinds, *op. cit.*, 50, n.52.
- ⁴⁵ “The empowering agency which held ultimate responsibility for maintaining the sort of order that the ‘ulama, following their interpretation of God’s will, found desirable was always and forever the king. The saying that years of iniquity are preferable to a single night without a king is everywhere to be found, for the king was the condition of the possibility of right order. If such order were in keeping with revelation and divine will, the more

fortunate both for the king and for his subjects.” Aziz al-Azmeh, *Muslim Kingship. Power and the sacred in Muslim, Christian and pagan polities* (London & New York: I.B. Tauris, 1997), 183.

⁴⁶ See Fred Donner, *Muhammad and the Believers: at the origins of Islam* (Cambridge MA and London: Belknap Press of Harvard University Press, 2010), 135f.

⁴⁷ al-Azmeh *op. cit.*, 188.

⁴⁸ al-Azmeh *op. cit.*, 102.

⁴⁹ “Ibn Taymiyya (d.1327), the most rigorous exponent of Sunnism, regarded kingship as a form of piety and of the appropriation of God, thus delegating to the ‘*ulamā*’ ultimate authority over matters of legitimacy. The parallels with and direct influence upon this line of thinking of *Shi‘i* notions are evident.” al-Azmeh *op. cit.*, 103.

⁵⁰ Fazlur Rahman, *Islam*, 2nd ed. (Chicago: University of Chicago Press, 1979), 109.

⁵¹ al-Azmeh, *op. cit.*, 199-200.

⁵² Matthew 5: 17-19.

⁵³ Norman Solomon, “Stereotyping other theologies,” in *Islam in a World of Diverse Faiths*, ed. D. Cohn-Sherbok (London: MacMillan, 1991), 105. For more on Paul’s understanding of law, see John W. Drane, *Paul, libertine or legalist? A study in the theology of the major Pauline epistles*, (London: S.P.C.K. 1975).

⁵⁴ Thus, as an example, Origen affirms: “But someone may suspect us of saying this, that because we suppose that some of the scriptural history did not happen, we do not believe that any of it happened; or that because we maintain that some precepts of the law cannot be kept according to the letter, those, that is, in regard to which either reason or the possibility of the case do not admit of a literal observance, therefore no precepts of the law are valid according to the letter.” Origen, *Origen on First Principles*, tr. G.W. Butterworth (London: SPCK, 1936), IV.III.4, 294. For more on the development of legal traditions in early Christianity see , L.T. Johnson, “Law in early Christianity” in *Christianity and law: an introduction*, ed. John Witte & Frank S Alexander (Cambridge: Cambridge University Press, 2008), 53-69. I am indebted to Professor Richard Price for light on the patristic position.

⁵⁵ Brague, *op. cit.*, 242. See also Jaroslav Pelikan, *The Christian Tradition. A History of the Development of Doctrine. Volume 5: Christian Doctrine and Modern Culture (since 1700)* (Chicago and London: University of Chicago Press, 1989), 156f.

⁵⁶ See J. Ligon Duncan III, “Moses’ Law for Modern Government,” a paper presented to the Social Science History Association, Atlanta, Georgia, USA, in 1994 [online] available at http://www.the-highway.com/recon_Duncan.html accessed 14 January 2011; and, for a critique, Gordon, T. David, “Critique of Theonomy. A Taxonomy,” *Westminster Theological Journal* 56/1 (1994): 23-43.

⁵⁷ Matthew Levering, “Juridical language in soteriology: Aquinas’s approach,” *Angelicum* 80 (2003): 309-26. Emphasis added.

⁵⁸ Clifford G. Kossel, “Natural Law and Human Law (Ia IIae, qq. 90-97),” in *The Ethics of Aquinas*, ed. Stephen J. Pope (Washington, D.C.: Georgetown University Press, 2002), 172.

⁵⁹ Stephen J. Pope, “Natural Law and Christian Ethics,” in *The Cambridge Companion to Christian Ethics*, ed. R. Gill (Cambridge: Cambridge University Press, 2001), 80.

⁶⁰ Alfred Guillaume, "Christian and Muslim Theology as Represented by al-Shahrastānī and St. Thomas Aquinas," *Bulletin of the School of Oriental and African Studies*, 13/3 (1950): 576.

⁶¹ Kossel, *op. cit.*, 180.

⁶² Matthew Levering, *Christ's Fulfilment of Torah and Temple. Salvation according to Thomas Aquinas* (Notre Dame: University of Notre Dame Press, 2002), 29. Emphasis added.

⁶³ John McDade, "Aquinas on Christ and the Jewish Law." Unpublished paper supplied by author.

⁶⁴ John Paul II, "Address at the Great Synagogue of Rome", 13 April 1986, [online] available at http://www.bc.edu/dam/files/research_sites/cjl/texts/cjrelations/resources/documents/catholic/johnpaulii/romesyagogue.htm accessed 16 Feb 2011. I am indebted to John McDade SJ for bringing this text to my attention.

⁶⁵ Brague, *op.cit.* 141. Thus Augustine: "It was when the people had been led out that Moses conveyed to them the Law which he had received from God on Mount Sinai. This Law is called the 'old covenant' because it offers earthly promises whereas the new covenant was to come into being through Jesus Christ, and in this the kingdom of heaven was to be promised. This order had to be kept, just as it has to be observed in the case of the individual, so that, in the Apostle's words, 'It is not the spiritual that comes first, but the animal: the spiritual comes later.' For it is true, as he says, that 'the first man is from the earth, is by nature earthy: the second man is from heaven.'" *Concerning the City of God against the Pagans*, tr. H Bettenson, ed. D. Knowles (Harmondsworth: Pelican, 1972), XVIII.11, 773.

⁶⁶ Raymond L. (Cardinal) Burke, "The Difference between Canon Law and Islamic *Shari'a* and the Difference it Makes," paper given at 11th Deutsch-Amerikanisches Kolloquium, Wilbad Kreuth, 26 July 2010. Text supplied by author.

⁶⁷ Brague, *op. cit.* 144.

⁶⁸ Brague *op. cit.* 141. See also H.J. Berman, *Law and Revolution. The Formation of the Western legal tradition*, (Cambridge MA & London: Harvard University Press, 1983), 85-119.

⁶⁹ Brague *op. cit.* 155.

⁷⁰ For some illuminating insights into the medieval Cordoban Christians' appreciation of Islamic law, see K.B. Wolf, "Christian views of Islam in early medieval Spain", in J.V. Tolan (ed.) *Medieval Christian Perceptions of Islam* (New York and London: Garland Publishing, 1996), 96f.

⁷¹ For a contemporary believer's account of the Prophet's life and its relevance for Muslims today, see Tariq Ramadan, *In the Footsteps of the Prophet. Lessons from the Life of Muhammad*, (Oxford: Oxford University Press, 2007).

⁷² Jean Porter, "Does the Natural Law Provide a Universally Valid Morality?" in *Intractable Disputes about the Natural Law. Alasdair MacIntyre and Critics*, ed. Lawrence S. Cunningham (Notre Dame: University of Notre Dame Press, 2009), 88.

⁷³ David A. Clairmont, "Moral disagreement and interreligious conversation. The penitential pace of understanding," in *Intractable Disputes about the Natural Law. Alasdair MacIntyre and Critics*, ed. Lawrence S. Cunningham (Notre Dame: University of Notre Dame Press, 2009), 97-129.

⁷⁴ *Op. cit.*, 111.

⁷⁵ See Pelikan, *op. cit.*, 155-8.

⁷⁶ Clairmont, *op. cit.*, 111.

⁷⁷ Toshihiko Izutsu, *God and Man in the Koran* (Salem, N.H.: Ayer Co. Publishers, 1987), 75.

⁷⁸ Anthony Levi, *Renaissance and Reformation: the intellectual genesis* (New Haven and London: Yale University Press, (2002), 86f.

⁷⁹ *Op. cit.*, 112.

⁸⁰ Jean Porter, *Natural and Divine Law. Reclaiming the tradition for Christian ethics*, Grand Rapids & Cambridge: Novalis, 1999), 134.

⁸¹ Porter, *op. cit.*, 129-46.

⁸² Porter, *op. cit.*, 141-2.

⁸³ Jean Porter, “Does the Natural Law Provide a Universally Valid Morality?”, 75.