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Law and the Rule of God:
A Christian-Muslim Exchange

By

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An abstract of
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Abstract

Law and the Rule of God: A Christian-Muslim Exchange
by Joshua B. Ralston

This dissertation leverages political theology and comparative theology to engage longstanding debates over the place and function of law in Muslim-Christian relations. By adopting a comparative approach, I seek to avoid two routes that dominate most discussions of political theology in Christian-Muslim exchange. One leans strongly on the legal apparatuses of secularism, and thus too quickly silences religious commitments and their critiques of modernity; and the other attempts to reassert the ultimacy of religious community over and against the secular state largely through reinscribing old battle lines between Christendom and the *dār al-Islām*. Instead, I argue that debates regarding *Sharī'a,* secularism, and law can be productively reframed by attending to the history of debate over the law in Christian-Muslim encounter and also the nuanced perspectives regarding public law within the theo-legal discourse of both Islam and Christianity.

To advance this comparative political theology, I first offer a critical evaluation of two dominant Christian perspectives on *Sharī'a*, arguing that both misconstrue *Sharī'a* as inherently legalistic and politically theocratic. By dismissing *Sharī'*a, Christian thinkers fail to engage with Islamic political ethics and Muslim critiques of secularism, the modern nation-state, and Christianity. The third chapter attempts to address this lacuna by tracing shifts in Muslim judgments of Christian views of law from their initial focus on *taḥrīf* to modern arguments that connect the lack of a Christian *Sharī'a* to the rise of secularism in the West. Ibn Taymiyya proves to be pivotal, combining early rhetoric with an emerging legal-political criticism of Christian power. Engaging with Islamic thought demands that Christians present a more integrated account of the relationship between their political and theological accounts of law. Chapters four and five offer a constructive response to these challenges through a reading of the relationship between divine and public law in Justin Martyr, Thomas Aquinas, Martin Luther, and Karl Barth. Building on Barth's theology of witness, I contend that public law is properly understood as a provisional and indirect witness to the divine rule. This theo-legal account allows for the primacy of theological identity and an affirmation of a morally grounded and communally oriented law that outstrips the claims of the state—but also maintains that God's rule does not depend on political establishment or public recognition for its legitimacy. I conclude by arguing that this Christian position resonates with Islamic concerns regarding the distinction between *Sharī'a* and *fiqh,* the importance of divine sovereignty over all of life, and the demand to examine legal rulings in light of the higher purposes of the law. As such, a comparative analysis of debates in post-colonial Arab Islamic Thought and Western Christian political theology presents mutually enriching possibilities for understanding the limits of the secular and the relationship between divine and public law.

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Acknowledgments

This dissertation began during the halcyon days shortly after Hosni Mubarak stepped down as the President of Egypt. During the spring of 2011, I lived in Egypt—teaching courses at the Evangelical Theological Seminary of Cairo to Arab Christians (and one stray Italian Nun) on Christian-Muslim Dialogue. It was in Cairo and then later for two years in Jerusalem and Ramallah that I began to wrestle with the central ideas and to write—in fits and starts— this dissertation. The work began when the possibilities of a renewed political and social vision, beyond the confines of either theocracy or dictatorial nationalism, seemed not only possible but imminent. I write this acknowledgment as 'wars and rumors of war' engulf much of the Levant, Mesopotamia and parts of North Africa: the Syrian War continues to displace and kill millions; the chaos unleashed by the US invasion of Iraq seems worse than ever; millions of Palestine still lack the basic dignities offered by citizenship.

Writing would have been easier had I heeded Karl Barth's advice to write as if nothing happened. But how could I when my Palestinian neighbors were crossing countless checkpoints daily to get to work? How could I write about law being a witness to God's rule when the law was being invoked to justify the eviction of Palestinians from their own homes? How could I dare offer a sympathetic approach to *Sharī'a* when Da'esh (ISIS) or the *al-Nusra* front invoked divine law to justify murder? How could I write hopefully about Christian-Muslim relations when the Egyptian pastors that I had taught in Cairo were posting on Facebook about their churches being burned down? I still have no answers to these persistent realities, but I have worked diligently to write about texts and ideas without ceasing to hear the constant interrogations offered by human beings and societies. Even though the arguments of this dissertation only tangentially names or discuss the current socio-political realities of Egypt, Palestine, Israel, Syria, Lebanon, Jordan, and Iraq, the issues—no the people and their hopes, joys, dreams and *sumūd*—form the deep motivation of my work.

I have found myself in the (un)enviable position of trying to finish a dissertation after beginning an academic position as a theologian at Union Presbyterian Seminary in Richmond, Virginia. I am grateful to the search committee, President Brian K. Blount, Dean Stanley Skreslet, and the Board of Trustees for having the confidence to take a risk in hiring me and having the patience as I struggled to finish. Thanks are in order for my wonderful and hospitable colleagues turned friends at UPSem, especially Dawn DeVries, Paul Galbreath, and Christine Luckritz Marquis.

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The inchoate ideas for this comparative dissertation began in a directed study with Richard C. Martin on Modern and Contemporary Islamic Thought. I am grateful to Professor Martin for introducing me to the complexity of Islamic debates, for his engagement with my work and his willingness to join a host of theologians on this

committee. Rich, I apologize if it has caused any negative flashbacks to your own days in seminary.

Joy Ann McDougall's energy and commitment to her students are nearly without parallel. For almost a decade now, Joy has been teaching me the value of a close reading of a text and the importance of theological passion; she has been an intellectual sparring partner and fellow lover of a long coffee break. She pressed me to share publically my ideas far before I felt ready and introduced me to the broader theological community. More than anything I am thankful for your commitment and confidence in me and for your willingness to let me go my own way, even as I wandered aimlessly.

Steffen Lösel introduced me to theological conversations and debates, particularly in the German and Catholic worlds, that continue to open my thinking to new possibilities. Your demand that I push myself to say something other the obvious Christian political opinion is a continual prod. Your willingness to ask the unnamed questions about truth, method, and meaning have cracked open, if not broken, my Barthian inclinations. A long conversation with you, deep into the night in the spring of 2013, revitalized my fleeting hope that I might complete this project.

Even if my Reformed commitments indicate otherwise, Ian A. McFarland's theological perspective has profoundly shaped this dissertation and my broader theological inclinations. From my (our) first semester at Candler in ST501, Dr. McFarland has modeled an approach to theology that is deeply committed to the tradition(s) and simultaneously open to the diversity of the world. I strive to impart to my own students something of his Christocentric theology, affection for making subtle scholastic distinctions, breadth of knowledge, and concern for constructive claims. Ian (yes, I risked it!), I am grateful beyond measure for your investment in my formation as a theologian and teacher. May you fare better than Martin Bucer as the Regius Professor of Divinity at Cambridge.

For all of my committee members and teachers, I hope this work and my continued teaching and writing might bear witness—but not capture—the profound importance of your vocations as scholars and teachers.

If words cannot not fully capture my appreciation for my teachers, they break apart when speaking of my friends and family. At Emory, I am grateful for a broader cohort at Candler and the GDR that included lifelong friends and models of scholarship and Christian ministry, especially Parker Diggory, Carl S. Hughes and Adam Young. Jessica Smith and I spent countless hours in coursework, at coffee shops, and on gchat discussing theology, life, and the difficulty of writing. Our friendship is one of the many surprising blessing of my time at Emory. Kyle Tau and I share a love of the West Coast, a complicated relationship with evangelicalism, and deep desire for our scholarship to impact the world (a vestige of our childhood evangelicalism?). Even after he left for Fordham, John David Penniman has influenced my life and work more than anyone else at Emory. His wide-ranging intellectual interests, friendship, and abiding kindness have been a constant source of scholarly and human companionship—a sustaining gift that allows us to jointly navigate life in the academia.

To my in-laws: You have endured the perplexity of having your first son-in-law seemingly stuck as a perpetual student. Your love, support, occasional questions about my writing, vacations, and warmth continues to be a life-giving witness to God's grace.

To my parents: You instilled in me a love of Jesus Christ, education, the world, and the San Francisco Giants. I have been shaped by all four of those loves, but most of all by the unfathomable depths of your love and support for me.

More than anyone else, save the One, my daughters—Adele Charis and Miriam Noor—have been my grace and light.

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Chapter 1

Christian Political Theology as Comparative Theology[1]

Recently a spate of legislation was passed throughout Western Europe and North America aimed at responding to the increasing number of Muslims residing within Western nation-states.[2] In November of 2009, Switzerland approved a constitutional referendum banning the construction of any new minarets.[3] France leveraged its long tradition of *laïcité* in order to bar women from wearing the *burqa'* or *niqāb* in public. In the summer of 2011, the Netherlands considered banning *kosher* and *halal* methods for slaughtering animals. State Question 755 of Oklahoma, which forbids international law or *Sharī'a* as a serving as source for state law, passed with seventy percent of the vote.

[1] I use the qualifier of "Christian" to distinguish Christian political theology and ethics from the post-Christian political theology of figures such as Carl Schmitt and Giorgio Agamben. Unless otherwise noted, throughout the dissertation the term political theology will refer to Christian political theology or Christian political theologians. For more on post-Christian political theology, see for instance the volume edited by Hent de Vries and Lawrence Eugene Sullivan, *Political Theologies: Public Religions in a Post-Secular World* (New York: Fordham University Press, 2006). I am following the broad definition of political theology offered by Peter Scott and William Cavanaugh: "Political theologies vary in the extent to which social sciences and other secular discourses are employed; the extent to which they are 'contextualized' or rooted in a particular people's experience; the extent to which the state is seen as the locus of politics; and the ways in which theological resources—scripture, liturgy, doctrine—are employed. . . What distinguishes all political theology from other types of theology or political discourse is the explicit attempt to relate discourse about God to the organization of bodies in space and time." *The Blackwell Companion to Political Theology* (Malden: Blackwell Publishing, 2004), 2. Thus, I do not draw a strong conceptual distinction between the "new political theology" of Germany of the 1970s, liberation theology of South America, public theology in the United States and United Kingdom, or theories of Church and State. Instead, I see all of these approaches as differing strategies for approaching the same fundamental task of addressing the 'political' in light of God and God's relation to the world.

[2] According to most estimates there are approximately twenty million Muslims now living in Western Europe, which makes it the second largest religion in Europe. Moreover, "This expansion, while boosted initially by immigration, is likely to be significantly enhanced in the twenty-first century by the higher birth rate of Muslims compared to non-Muslim Caucasian majority." Rex Adhar and Nicholas Aroney, "The Topography of Sharī'a in the Western Political Landscape" in Rex Adhar and Nicholas Aroney, *Sharī'a in the West* (New York: Oxford University Press, 2010), 12.

[3] For an analysis see Todd Green, "The Resistance to Minarets in Europe," *Journal of Church and State* 52 (2010), 619-643.

Throughout the United States, debates about the construction of Islamic centers and mosques raged from metropolises like New York City to small cities like Temecula, California. In addition to formal legislation, Angela Merkel, Nicholas Sarkozy, and David Cameron publicly questioned the capacity of Muslims to integrate or assimilate into Germany, France, and the United Kingdom. The January 2015 attacks on the office of *Charlie Hebdo* in Paris and the copy-cat attack on a free speech meeting in Copenhagen in February of the same year only heighten Western Europe's questions about Islam and Muslims.[4]

Debates are not limited to Western societies; questions of the relationship between, public law, religious law, and ethnical or religious minorities have also been at the forefront of recent debate within Muslim-dominated societies. Indonesia, the most populous Muslim country, continues to struggle with how to balance its constitution's promise of freedom of religion and civil law with the demands for both customary laws and *Sharī'a*. Malaysia has recently passed legislation that would allow only Muslims to use the term Allah. The March 2011 assassination of Shahbaz Bhatti, Pakistan's Minorities Minister, appeared directly related to his calls for reforms to Pakistan's blasphemy laws. The rise of the Justice and Development Party (AK Party) is increasingly challenging Turkey's own longstanding *laïcité*, even as Turkey lauds its secular credentials as it presses for admission into the European Union. Post-Mubarak Egypt brought to the surface long-simmering tensions between Coptic Christians, Islamists, and various other Muslims. How the demands of a majority religion for formal

[4] For a study on the rise of anti-Muslim rhetoric in Western Europe and North America, see Todd Green, *The Fear of Muslims: An Introduction to the Problem of Islamophobia in the West* (Minneapolis: Fortress Press, 2015).

recognition will allow for equal legal protection of minorities is an ongoing debate, one that has taken on even more urgency after the revolutions and wars of 2011. At the center of many of these debates are questions about the relationship between *Sharī'a*, the historical concept of *dhimmī* (protected minority status for non-Muslims), and national law.

These recent events reinforce longstanding anxieties in Western Europe and North America about Islam, its relationship with liberal values, and Muslims' capacity to live within Christian or secular states. While medieval anti-Islamic rhetoric is well known, exemplified by the twin events of the Crusades and the *Reconquista,* early Modern political thinkers show strong concern about the compatibility between Islam and the emerging political culture of Western Europe. Take, for instance, John Locke's seminal text, *A Letter Concerning Toleration:*

> It is ridiculous for any one to profess himself to be a Mahometan (sic) only in his religion, but in everything else a faithful subject to a Christian magistrate, whilst at the same time he acknowledges himself bound to yield blind obedience to the Muftī of Constantinople, who himself is entirely obedient to the Ottoman Emperor and frames the feigned oracles of that religion according to his pleasure. But this Mahometan living amongst Christians would yet more apparently renounce their government if he acknowledged the same person to be head of his Church who is the supreme magistrate in the state.[5]

Locke judges Muslims, as well as atheists, Jews, and Roman Catholics, to be *ipso facto* incapable of living in his proposed political community.[6] The problem according to Locke is that Muslims cannot maintain allegiance to their Islamic convictions and also

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[5] John Locke, *A Letter Concerning Toleration*, edited by John Horton (New York: Oxford University Press, 1991), 32.

[6] Within Locke studies there are numerous debates about how to interpret Locke's apparent exclusion of Catholics, Jews, and Muslims. See John Perry's *The Pretenses of Loyalty: Locke, Liberal Theory, and American Political Theology* (New York: Oxford University Press, 2011), part II.

loyally reside under a non-Muslim political authority; ultimate allegiances lie elsewhere and thus threaten the stability of the political community.

Such concerns about Islam's relationship to the public arena persist to this day, characterized in the oft-repeated dictum that Islam recognizes no distinction between religion and politics. Typically these observations are quickly followed by condemnation. Summarizing this dynamic, William Cavanaugh notes how, "contemporary liberalism has found its definitive enemy in the Muslim who refuses to distinguish between religion and politics."[7] In fact, Joseph A. Massad has recently argued that Islam is central to the ideology, identity, and historical construction of Western liberalism. "Liberalism as the antithesis of Islam has become one of the key components of the very discourse through which Europe as a modern identity was conjured up."[8] Over a half century ago, the American Christian ethicist Reinhold Niebuhr argued that the demise of the Ottoman Empire and the waning of Islamic power were due to its "own inner corruptions…The Sultan of Turkey found it ultimately impossible to support the double role of political head of a nation and spiritual head of the Islamic world."[9] While Niebuhr's claim about Islam's demise is certainly dated given its global resurgence since the Iranian Revolution, his overly simplistic diagnosis remains widely held.[10] Muslims' perceived inability to integrate into the West, adopt liberal democracy, or protect minority rights commonly are attributed to Islam's insistence on merging the spiritual and political.

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[7] William T. Cavanaugh, *The Myth of Religious Violence,* (New York: Oxford University Press, 2009), 5.

[8] Joseph A. Massad, *Islam in Liberalism* (Chicago: University of Chicago Press, 2015), 11.

[9] Reinhold Niebuhr, *The Irony of American History*, (Chicago: University of Chicago Press, 2008), 128.

[10] Critical examination of thinkers who hold such a view of Islam can be found in chapter 4 of Cavanaugh's *The Myth of Religious Violence* and throughout Elizabeth Shakman Hurd's *The Politics of Secularism in International Relations* (Princeton: Princeton University Press, 2008).

These worries crystallize around the issue of state enforced *Sharī'a*, whether in the constitutions of Muslim majority societies or the increased demands for Western accommodation to Muslim immigrants. The intertwined realties of globalization and migration only heighten debates. For instance, what might once have been a largely intra-Muslim or at least regional negotiation regarding the relationship between *Sharī'a* and national law in the new constitutions of Egypt, Iraq, Tunisia, or Libya now feature prominently in Western policy discourse. In turn, members of the Muslim Brotherhood in Egypt defend their Islamic position with recourse to terms that have global currency such human rights, minority protection, and democracy.[11] The complex and rapidly changing political and social realities in Mesopotamia, the Levant, and North Africa have only heightened questions regarding the relationship between tolerance, law, religious diversity, and the nature of the state.[12]

Moreover, Western secular states find Muslim immigrants challenging their political systems by demanding accommodation and recognition of their Islamic identity by invoking the principles of religious freedom and human rights. As evidenced by the litany of public legislation, Western nation-states have increasingly developed political and legal responses to Muslim immigration and the accompanying demand for some forms of accommodation to *Sharī'a*. The then Archbishop of Canterbury, Rowan

[11] "Islamism is a work in project. The Brotherhoods' discourse has been penetrated by democratic language. It has partly moved way from a vision of religious supremacy in favor of religiously backed democracy…The Brotherhood stands at a crossroads. It has nuanced its view of the relation of the state to the divine enterprise. Its younger members increasingly recognize that the state, though important, is not revealed by God." Paul L. Heck, *Common Ground: Islam, Christianity, and Religious Pluralism* (Washington, D.C.: Georgetown University Press, 2009), 174.

[12] For many, Da'esh (or the Islamic State in Iraq and Syria) is the quintessential example of the problem and challenge of *Sharī'a*. Here is a purported caliphate that justifies the mass execution of political prisoners, the crucifixion of dissidents, and the destructions of mosques and temples in the name of *Sharī'a*.

Williams' provocative February 2008 lecture on *Sharī'a* in the United Kingdom caused one of the most public controversies related to these questions. Williams proposed that the UK consider legally allowing Muslims to have recourse to *Sharī'a* under the broader umbrella of British law. "There's a place for finding what would be a constructive accommodation with some aspects of Muslim law, as we already do with some other aspects of religious law."[13] The public response to Williams' proposal was quick and nearly universally negative. Members of Parliament, and journalists condemned British recognition of *Sharī'a* as disastrous, legally incoherent, and a return to pre-Enlightenment religious barbarism. Critique came not simply from the tabloids, news media, or Islamophobes. Numerous high-ranking church officials including the previous Archbishop of Canterbury, George Carey, and the Bishop of Rochester, Michael Nazir-Ali offered searing negative assessments.[14]

The problem of these dominant responses was that they fixated on the question of dual authorities or multiple legalities—a focus that Williams' focus partly invited. Lost in the uproar were the deeper questions and responses that Williams' thought raised. In the conclusion of his lecture Williams noted that engagement with *Sharī'a* demands clearer reflection about "the theology of law" and also a "fair amount of 'deconstruction' of crude oppositions and mythologies, whether of the nature of *Sharī'a* or the nature of the Enlightenment."[15] What is the use of the law? Is the secular as neutral as it claims to be? What exactly is *Sharī'a?* How do we negotiate difference in ways that are both charitable

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[13] Rowan Williams, "Civil and Religious Law in England: A Religious Perspective," in Rex Ahdar and Nicholas Aroney, *Sharī'a in the West* (New York: Oxford University Press, 2010), 298.

[14] For more on the controversy, see Mike Higton, "Rowan Williams and Sharia: Defending the Secular" *International Journal of Public Theology 2* (2008), 400-417.

[15] Rowan Williams, "Civil and Religious Law in England: A Religious Perspective." 303.

and just? Does the law have any basis beyond itself? How might we live in a world of competing religious identities? These are fundamental questions that Christians, Muslims, and others must ask and answer before the concrete issue of multiple legalities or shared jurisdiction can be coherently addressed. Unfortunately, general ignorance and fear of *Sharī'a* hindered Williams' call for a coherent conversation regarding the relationship between the State and the multiple identities found within it, religious or otherwise.

What is lacking in these quick dismissals of *Sharī'a* in the name of liberalism is a genuinely theo-political engagement with Islam that does not move too quickly into the Enlightenment dualities of public/private and religion/politics, but engages with the complexity of Islamic theology, ethics, and law. For as Talal Asad has argued, "The attempt to understand Muslim traditions by insisting that in them religion and politics (two essences modern society tries to keep conceptually and practically apart) are coupled must, in my view, lead to failure."[16] It is impossible to understand 'Islam' or '*Sharī'a,*' in all their complexity and contestation, by simply invoking the often-repeated Arabic dictum: *Islām dīn wa dawla*—Islam is religion and state. Such an approach is bound to fall into the false trap of assuming that the theopolitical and legal options available for Muslims, not to mention Christians, Jews, and others—are simply to choose between a form of secularism that privatizes all 'religious' claims or a theocratic state that imposes religious law through state apparatus.[17]

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[16] Talal Asad, *Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam* (Baltimore: Johns Hopkins University Press, 1993), 27-28.

[17] "When we look at the Islamic world we are not looking at an intellectual monolith any more than we are looking at a political monolith. But so long as Christians and Muslims both have commitments to do with the historic origins of their faiths and so long as they agree in seeing that their faith implies a universal offer of wisdom and salvation, there is inevitable tension, inevitable conversation, disagreement and negotiation to pursue between our parts of the family."

For as Elizabeth Shakman Hurd has argued, "Political Islam is a modern language of politics that challenges, sometimes works outside of, and (occasionally) overturns fundamental assumptions about religion and politics that are embedded in the forms of Western secularism that emerged out of Latin Christendom."[18] As I will argue throughout this dissertation, it is vital and important to make careful distinctions between how we understand Christian theologies of law, Islamic thought, *Sharī'a* and *fiqh* (Islamic jurisprudence), and the relationship between the mosque, church, and modern state. However, it is important not to make these distinctions wholly within the hegemony of the nation-state or the imagination of modern politics, but to attend to the theological, legal, and scriptural distinctions inherent within the traditions themselves. To invoke a separation between religion and politics as the solution to the complications regarding religious identity and multiculturalism is to cede the dialogue to ahistorical rendering that imagines that modern and late modern views of the world are the only way to imagine public life.

The political "problem" of Islam, then, is also a profoundly theological challenge to secularism and political liberalism, one that also directly impinges upon political theology and Christian-Muslim dialogue. Modernism, as Seyyed Hossein Nasr wisely notes, is "a silent and often unnoticed partner in Christian-Islamic dialogue…many ideas and practices which are now defended as Christian are the result of antireligious and

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Rowan Williams, "Islam, Christianity, and Pluralism" *Islam and Christian-Muslim Relations* 19 (2008), 340.

[18] Elizabeth Shakman Hurd, *The Politics of Secularism in International Relations* (Princeton: Princeton University Press, 2007), 119.

secularist forces of modernism."[19] In light of this situation, to engage in political theology in our globalized and migratory world should also be partly an act of Christian-Muslim dialogue. Likewise, to engage in Christian-Muslim dialogue is also to address political and legal theory in our post-secular age.

Christian Political Theology's Methodological Lacuna

Given the increasing visibility of Islam, it is somewhat surprising to find Christian political theologians in North America and Europe carrying on their projects with little to nothing to say about Islamic political ethics, let alone making attempts to engage in debate with Muslim intellectuals. This is in stark contrast to political theorists, religious studies scholars, and cultural critics for whom Islam is a central issue of concern and debate in our post-9/11 age. With a few notable exceptions that I examine in the next chapter, political theologians have largely either ignored Islam or engaged with Muslim concerns on a fairly superficial level—mostly around the question of terrorism and religious violence. For instance, the introduction to the 2012 publication of *An Eerdmans Reader in Contemporary Political Theology* highlights the specific challenge of Islam by asking if Christianity has "a kind of vision that can match the vision of Islam?"[20] However, the image of Islam that is propagated by the co-editors is devoid of nuance and marked by the same essentialisms that dominate most public discourse about Islam. In fact, the form of Islam that is presented is described exclusively through Bin Laden and his militant and ardent anti-secularism. It seems that even when Christian

[19] Seyyed Hossein Nasr, "Comments on a Few Theological Issues in the Islamic-Christian Dialogue," *Christian-Muslim Encounters,* edited by Yvonne Yazbeck Haddad and Wadi Z. Haddad (Gainesville: University of Florida Press, 1995), 465.

[20] William T. Cavanaugh, Jeffrey Bailey, Craig Hovey (eds.), *An Eerdmans Reader in Contemporary Political Theology* (Grand Rapids: Eerdmans, 2012), xxiv.

theologians and ethicists recognize the need to engage with Muslims, there simply does not appear to be a preparation for how to do so with any amount of care or nuance. Only "adding to the problem is the lack of preparation that the Christian church and Christian theology bring to this new and complex engagement with Islam."[21]

A quick scan of political theologies written in the United States and United Kingdom in the last decade by figures such as Eric Gregory, Oliver O'Donovan, and Jean Bethke Elshtain illustrates this oversight. Gregory's important new work offers "an Augustinian ethic of citizenship for the morally ambivalent conditions of liberal democracy."[22] In so doing, however, he does not directly address religious pluralism or difference; nor does he ever mention Islam and the myriad debates swirling around the relationship regarding Muslims and citizenship in the West. O'Donovan's *Ways of Judgment*, whose stated aim is to address issues vital to late modern society, largely skirts any consideration of Islam or religious pluralism, even as it offers insightful perspectives on issues ranging from criminal justice to immigration to socialism.[23] By contrast, Jean Bethke Elshtain's *Just War Against Terror* does engage with Islam, but does so through the lens of terrorism and Islamic extremism.[24] This neglect or oversimplification of Islam is curious since most of these figures are attempting to develop a political theology in an explicitly pluralistic and post-establishment West. Certainly, the lack of engagement with Islam does not undermine the internal goals and important insights of their work. However, it does indicate a broader methodological problem latent within contemporary

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[21] Daniel Migliore, *The Power of God and the gods of Power* (Louisville: Westminster John Knox, 2008), 116.

[22] Eric Gregory, *Politics and the Order of Love: An Augustinian Ethic of Democratic Citizenship (*Chicago: University of Chicago Press, 2008), 13.

[23] Oliver O'Donovan, *The Ways of Judgment* (Grand Rapids: Eerdmans Publishing, 2005).

[24] Jean Bethke Elshtain, Just War against Terror: The Burden of American Power in a Violent World (New York: Basic Books, 2003).

political theology: a lack of concrete engagement with the specific claims, practices, and political theologies of religious others.

It has become something of a truism in political theology and Christian ethics to depict life in the late twentieth century and early twenty-first century as post-Christian and, increasingly, post-secular. Nearly all contemporary political theologians recognize the realities of social and religious pluralism, and yet they largely carry on writing without attention to or engagement with the particularities of other religious traditions. Instead, broadly speaking, there are currently two dominant methodological approaches evident in theo-political accounts of pluralism and difference. The first strategy tackles religious pluralism as part of the larger challenge of social pluralism and thus tends to marginalize questions of religious difference. The second explicitly addresses the challenge that religious difference poses to political life, but does through a discussion of religious pluralism in the abstract. Elided in both of these approaches are the unique challenges, contours, and perspectives on public life that distinct religious communities offer.

The most common strategy for addressing the politics of religious pluralism is to subsume the specific challenge of religious diversity within a broader account of either difference or tolerance. Three recent examples of such an approach are found in Kathryn Tanner's *The Politics of God: Christian Theologies and Social Justice,*[25] David Fergusson's *Church, State and Civil Society*,[26] and Kristen Deede Johnson's *Theology,*

[25] Kathryn Tanner, *The Politics of God: Christian Theologies and Social Justice* (Minneapolis: Fortress Press, 1992).

[26] David Fergusson, *Church, State and Civil Society* (New York: Cambridge University Press, 2004).

Political Theory and Pluralism: Beyond Tolerance and Difference.[27] All offer robust theological arguments for valuing difference and respecting otherness within the political and theological arenas. In so doing, they present frameworks through which Christians might sympathetically and critically engage political liberalism, recognizing its strength and flaws. Kathryn Tanner's book, for instance, leverages her "non-competitive account" of divine and human relations in order to "show how Christian beliefs about God and the world may be disentangled from a history of use in support of a status quo of injustice and reconstituted as a resource for commitment to progressive social change."[28] A key aspect of Tanner's argument is a critique of hierarchy and a theological defense of respect for otherness and difference. She contends that since God is utterly unique and transcendent, God's relations to creatures need not employ intermediaries. God relates to each creature directly as the One who creates, upholds, and redeems them. While Christians have referenced divine transcendence throughout their history to support hierarchy and human lordship over others, the internal logic of Christian belief actually should cut in the opposite direction. Thus, Tanner maintains, "The kind of community Christians holding my account of God and creation should judge appropriate for creatures of God, and the kind of community that Christians holding those beliefs should promote as members of social bodies, is one that celebrates, rather than denigrates or devalues, differences among persons."[29] Respect for others and difference are socio-political consequences of faith in God's transcendence and creative power.

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[27] Kristen Deede Johnson, Theology, Political Theory, and Pluralism: Beyond Tolerance and Difference (New York: Cambridge University Press, 2007).

[28] Kathryn Tanner, *The Politics of God,* vii.

[29] Ibid., 193.

David Fergusson's work offers an account of how the Church in a post-Christian and pluralist environment might relate positively to the state and other social actors. One important component of his political theology is that "distinctive theological arguments for religious tolerance" provide an alternative grounding for the advancement of "some of the features of liberal society."[30] He claims that theo-political arguments for tolerance of religious division, especially early modern ones, prove more adept at responding to our challenges of globalization and religious difference than the "modern philosophy of autonomy."[31] Such a theological grounding for tolerance rejects the relativism of late modern capitalism's fixation on individual choice in favor of thick public spaces in which debate and discourse is carried out. Tolerance, then, need not be either relativism or the privatization of religion. Instead, a theological account of tolerance gives space for the pursuit of social goods and community formation in the context of differing moral commitments.

Certainly, Fergusson and Tanner's theological support of the political and Christian wisdom of practical tolerance and respect for difference is a vital component of a political theology of religious pluralism. However in so far as these works remain largely concerned with the general problem of respect, difference, and tolerance, they are insufficiently concrete and thus provide limited guidance for addressing the distinct challenges that differing religious and cultural communities present. For instance, it is unclear how tolerance or respect for difference can respond to certain Muslim communities' demands for the legal recognition of *Sharī'a* within Western States. Fergusson's and Tanner's arguments for the importance of discourse and "a genuine

[30] Fergusson, Church, State and Civil Society, 69.
[31] Ibid., 92.

community of argument"[32] provide some practical suggestions for how these questions might be adjudicated. And yet such debates demand specific engagement with Islam (or other traditions). Tolerance and respect are a condition for proper engagement with religious others; however, tolerance and respect alone do not demand such engagement. On this specific question and a host of others, there are, as David Hollenbach so aptly asserts, certain "problems tolerance cannot handle."[33] What is needed is not only a theology of tolerance and respect, but also a theology of the necessity of political engagement with religious others.

At first glance, Kristen Deede Johnson offers an alternative to the largely politically liberal political theologies of Tanner and Fergusson. She presents a thoroughgoing critique of grounding political theology primarily in toleration and respect for difference. Her book is structured as a dialogue between liberals, post-Nietzschean political theorists, and her own retrieval of Augustine. She aims to "contribute something to the creation of a picture in which Christianity and the other constituencies of Western society live and converse together in ways that are more true to their identities and differences than either political liberalism or post-Nietzschean political thought currently allows."[34] This statement, however, and her focus on John Rawls, William Connolly, and Chantal Mouffe indicate her underlying assumption that "constituencies of Western society" are primarily Christian, liberal, or post-Nietzschean. What is lost in such a description is the sheer religious diversity within "Western Society"—which includes significant numbers of Jews, Muslims, Sikhs, Hindus, and Buddhist, not to mention

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[32] Kathryn Tanner, *Theories of Culture: A New Agenda for Theology* (Minneapolis: Fortress Press, 1997), 123.

[33] David Hollenbach, S.J., *The Common Good and Christian Ethics* (New York: Cambridge University Press, 2002), 32-61.

[34] Kristen Deede Johnson, *Theology, Political Theory, and Pluralism*, 26.

adherents of other forms of religion. As William Connolly has argued, "To pursue a new pluralism appropriate to the contemporary world is therefore to come to terms with the expansion of religious diversity within western states."[35] Attention to this religious difference would at the very least complicate, if not invalidate, her claim that Augustine's vision of two cities and his Trinitarian ontology offer a more inclusive approach than either liberals or post-Nietzscheans. In light of our situation of religious pluralism, strong reliance on Augustine demands at least some rewriting of how the eschatological division in the *City of God* between the saved and the reprobate might serve in our political context. Thus, even when naming difference as a theological and theoretical starting point, Johnson fails to address the actuality of religious difference and instead relies on a generic account of pluralism. Like Tanner and Fergusson, Johnson largely approaches the theological challenge of pluralism and difference as a social and political one, not an issue that demands inter-religious engagement.

The other dominant strategy for addressing the political challenge of religious pluralism is more promising since it approaches religious difference as a specific issue in its own right. For instance, part of the project of Charles Mathewes' *A Theology of Public Life* is to sketch a theology of engagement appropriate for the political and theological issues raised by religious pluralism.[36] He aims to address the question of "how should Christians live with non-believers and with 'other-believers'?"[37] In asking this specific question, Mathewes aims to shift attention away from debates with political secularists

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[35] William Connolly, *Pluralism* (Durham: Duke University Press, 2005), 61.

[36] Another promising framework for addressing religious pluralism that nevertheless fails to follow through with actual dialogue is found in David Hollenbach's account of intellectual solidarity in *Christian Ethics and the Common Good*, ch. 6.

[37] Charles Mathewes, *A Theology of Public Life* (New York: Cambridge University Press, 2007), 107.

and toward engagement with religious others. "Theology should reframe its understanding of dialogue with others, rejecting as the dominant frame the apologetic debate with secular modernity, and replacing it with an understanding informed by dialogue with other major traditions."[38] Secularist discourse is restricting and largely subjectivist and thus forestalls true dialogue and engagement. In contrast, dialogue with religious others opens up a broader conversation in which engagement on questions of identity, metaphysics, and the good life are possible.

Mathewes advocates for an alternative to the so-called neutral realm of public reason. He advocates for "a humbly confessed particularism. We should confess the dogma we hold…we work from within Christian convictions, and both our motives and our basic premises are distinctly Christian."[39] Under such a model, the deepest commitments of Christians as well as religious others are brought forward in conversation and debate and not silenced prematurely in the name of neutrality. To do this, Mathewes advocates for a form of "inter-traditional" semi-languages, neither the indigenous language of traditions nor the so-called neutral public reason, through which conversation on issue of common concern might occur. He contends that traditions might speak from their particularism to one another through a halting, learned, and temporary shared second language. Particularism, then, need not eliminate the possibility of theological and political agreement across traditions. In fact, the aim of entering into dialogue with religious others is to enhance both the self and the public. "While appreciating differences as needful, we also must find genuine ways to have real engagement, real conversation; and such a project will always find commonalities beyond

[38] Mathewes, *A Theology of Public Life*, 116-117.
[39] Ibid., 135.

(but not necessarily before) the differences."[40] Dialogue with religious others, then, is an important and necessary aspect of political theology. It is an arena through which human persons might be experience growth, humility, understanding, and ultimately conversion towards shared work in the world.

While Mathewes' methodological claims have much to commend them and resonate at important points with the comparative political theology that I will advocate, two issues demand redress. First, a theological problem: Mathewes avers that religious pluralism is part of the larger theological issue of otherness, one that finds its ultimate expression in the Divine Other. In rooting the challenge of political pluralism in the broader confrontation with otherness, specifically the human relation to God, Mathewes blurs a number of important theological distinctions. He makes little to no qualifications between the different types of "otherness" that constitute divine-human relations, human-human relations, and intradivine relations. Our relationship to one another and the otherness therein, while possibly an analogy to the divine other, cannot be equated as easily or as directly with God as the divine other as Mathewes contends. God is other to us in a way that is distinct from the otherness that we encounter in creatures. Certainly, the Christian tradition contends that love of neighbor can be an act of loving God (e.g. I John 4). Still, our encounter with the differences within humanity occurs within the context of shared creatureliness; the otherness of God is of a wholly different kind. Even more problematically, Mathewes' invocation of the "otherness of the divine Trinity"[41] as an example of how "others have always been reconciled"[42] opens up a host of theological

[40] Ibid., 119-120.
[41] Mathewes, *A Theology of Public Life,* 109
[42] Ibid., *A Theology of Public Life*, 107.

quandaries that are left unaddressed. It makes little sense to speak of the three Trinitarian persons, who are eternally of one nature, being reconciled. How can those who have never been estranged be reconciled? Moreover, how can the three hypostases that eternally dwell in unity offer any sort of analogy for adjudicating the religious and political difference amongst human communities? As Kathryn Tanner has compellingly argued, "Trinitarian relations, say, the co-inherence of trinitarian Persons, simply are not appropriate as they stand for human relations"[43] Simply put, it is unclear what guidance a Trinitarian ontology of difference provides for a theology of engagement or why it is necessary for the political theology of dialogue Mathewes offers.

Second, on a practical level, Mathewes' important contention that dialogue and debate are vital for a theology of engagement with religious pluralism remains a largely theoretical claim and thus the promise of chapter 3 is not carried out in the later part of the work. When he makes the turn in Part II towards writing his constructive proposal, religious pluralism or dialogue with Muslim, Jews, or other religious traditions rarely if ever appear. Religious pluralism is said to be an important issue that demands engagement, but the distinct claims of other religions are not treated as something that are either worth debating or which might constructively aid Christian thinking. Once the theoretical problem of religious difference is addressed through a theory of dialogue, difference, and common ground the challenge of religious pluralism appears settled. In the end, Mathewes work is indicative of the second methodological strategy in which

[43] Kathryn Tanner, *Jesus, Humanity and the Trinity: A Brief Systematic Theology,* (Minneapolis, MN: Fortress Press, 2001), 82. For a longer argument against social trinitarianism, see Kathryn Tanner, *Christ the Key* (New York: Cambridge University Press, 2010), 207-246.

religious pluralism is a distinct issue of concern, but is addressed in largely theoretical or abstract terms.

The problem of addressing the politics of religious pluralism through a theoretical account of pluralism is that it fails to account for the vastly different approaches to public engagement embodied in diverse religious and cultural traditions (both the differences between religions and the differences within them). For instance, the question of how a Reformed Jew born in the United States understands her national citizenship cannot be equated directly with how a nationalized Hindu from Sri Lanka might relate to the same issue. In terms of Islam, Jehu Hanicles points out how "unlike the New Age movement, which lends itself to the privatization of religion engendered by secularism, more robust religious systems such as Islam threaten the ideals of Western secularism more directly."[44] Given these facts, the questions that currently dominate theological and political debate such as citizenship, public reason, toleration, pluralism, secularism, and Christian uniqueness in a post-secular world would seem to invite engagement with other religious perspectives in their concrete particularity. And yet, religious pluralism, even when said to be vital to a Christian account of the political, is largely addressed as a theoretical or sociological reality, not as an invitation to interfaith dialogue and debate.[45]

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[44] Jehu Hanciles, *Beyond Christendom: Globalization, African Migration, and the Transformation of the West* (Maryknoll: Orbis, 2008), 254.

[45] In some sense, there is a loose analogy between our theological context and that of the German-speaking world in the late 1960s and early 1970s. After a generation of relative theological silence in the face of the *Shoah,* Jürgen Moltmann and Johan Baptist Metz, amongst others, attempted to think theologically. Such theological reflection demanded addressing the history of anti-Semitism in the Christian tradition, listening attentively to Jewish thinkers, and reconsidering classic paradigms of theodicy. Of course, the *Shoah* and the history of anti-Semitism within the Church cannot be directly compared to the challenges raised by Islam. Nevertheless, our *Zeitgeist* is one in which Islam looms large and still few Christians have chosen to engage in a reconsideration of Islam, the history of colonialism, or the history of anti-Islamic rhetoric in the church. The shifts in theological thinking and methodology brought about by

In order to move beyond sociological and theoretical engagement with the politics of religious pluralism, political theology should broaden its methodology and engage in specific and concrete conversations with select thinkers from other religious traditions on specific themes of interest. What I am suggesting, then, is that political theology also become a form of comparative theology. Drawing from the methodology of comparative theology better equips political theology to address religious pluralism in its concrete particularity and thereby strengthens Christians' capacity to engage faithfully and honestly with Muslims around pressing question of the law, secularism, and citizenship. To make this case, it will be necessary to understand exactly what comparative theology is and how its methodology might aid political theology.

Comparative Theology

Comparative theology is a relatively new theological discipline that emerged out of discontent with Christian theologies of religion.[46] Theologies of religions, especially the soteriological categorizes of exclusivism, inclusivism, and pluralism presented by John Hick have come under increasing criticism from a wide range of theologians such as Wolfhart Pannenberg, Gavin D'Costa, and Jeannine Hill Fletcher. Comparative theologians, while sympathetic to both the aims of pluralism and its recent critics, worry that theologies of religion pay insufficient attention to theological particularity and the often-competing visions of the world and God that religions present. Part of the problem

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dialogue with Judaism after the *Shoah* may be a guide to a reconsideration of Christianity and Islam in the late modern world.

[46] For an introduction to comparative theology and its relationship to comparative religion and theologies of religion, see Reid B. Locklin and Hugh Nicholson's "The Return of Comparative Theology," *Journal of the American Academy of Religion*, June 2010, Vol. 78, No. 2, pp. 477-514.

is that theologies of religion largely attempt to account for religions in general and not religious communities and their theologies in their specificity. For instance, whether members of other religions can be saved is an important question for Christian theology to ask. And yet in asking this question another question remains unasked, namely, what exactly does salvation consist of in other traditions? As S. Mark Heim points out in *Salvations*[47] and *Depths of Riches*,[48] other religious communities have distinctly different views of humanity's and creation's ultimate end. Nirvana and the beatific vision cannot simply be equated. To claim, as certain proponents of the pluralistic position do, that all religions ultimately lead to salvation or God is therefore to avoid the challenges raised by religious diversity and different traditions' distinct views of human *telos* and the divine. James Fredricks contends, "Theologies of religion, including pluralist theologies, can easily become a sophisticated way to avoid dealing with the moral, theological, and spiritual challenges that non-Christian religions pose to Christian believers today."[49]

In response, comparative theology proposes a method to better account for theological and ethical distinctions while remaining open to learning from religious others. To do this, it critically appropriates from comparative studies of religion, in which religious traditions are theoretically analyzed on their own terms without recourse to a universal normative perspective. However, comparative theology attempts to advance beyond comparative studies of religion by insisting on the importance of theological analysis, an aspect often missing from religious studies. Comparative theology is

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[47] S. Mark Heim, *Salvations: Truth and Difference in Religion* (Markynoll: Orbis Books 1995).

[48] S. Mark Heim, *Depths of Riches: A Trinitarian Theology of Religious Ends* (Grand Rapids: Eerdmans Publishing, 2000).

[49] James L. Fredericks, *Faith among Faiths: Christian Theology and Non-Christian Religions* (Mahwah: Paulist Press, 1999), 163.

constructive theology written as a hybrid between comparative study of religion and Christian theologies of religion. It trades grand theories of religious pluralism for "limited case studies in which specific elements of the Christian tradition are interpreted in comparison with elements of another religious tradition."[50] John Thatamanil, for instance, develops a nondualistic account of divine immanence through a conversation between Paul Tillich and Sanakra.[51] Michelle Voss Roberts's *Dualities* brings female voices into comparative theology through an analysis of the Christian Mechthild of Magdeburg's and the Hindu Lalleswari's views on embodiment, the divine, and dualisms.[52] In both of these works, the goal is not to account for Christianity and Hinduism in every place or time, but to explore how aspects of the Christian and Hindu traditions might illumine one another and open up new conceptual space for addressing challenges that face theology. As Francis Clooney defines it, comparative theology "marks acts of faith seeking understanding which are rooted in a particular faith tradition but which, from that foundation, venture into learning from one or more other faith traditions. This learning is sought for the sake of fresh theological insights that are indebted to the newly encountered tradition/s as well as the home tradition."[53] At its best, comparative theology does not seek a neutral ground in which to analyze all religions, but instead writes confessional theology in and through comparative and dialogical study.[54]

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[50] James L. Fredricks, "A Universal Religious Experience? Comparative Theology as an Alternative to a Theology of Religions." *Horizons* 22:67-87.

[51] John J. Thatamanil, *The Immanent Divine: God, Creation and the Human Predicament* (Minneapolis, MN: Fortress Press, 2006).

[52] Michelle Voss Roberts, *Dualities: A Theology of Difference* (Louisville: Westminster John Knox Press, 2010).

[53] Francis X. Clooney, *Comparative Theology: Deep Learning Across Religious Borders* (Malden: Wiley-Blackwell, 2010), 10.

[54] Such a view is in contrast to Keith Ward's claim that comparative theology is "not....a form of apologetics for a particular faith but… an intellectual discipline which enquires into ideas

At times comparative theology might appear arbitrary with the thinkers or themes seemingly dictated more by the predilections of the contemporary theologian than by any real historical or theological engagement between the figures under comparison.[55] This concern might be partly attributed to the fact that Christian and Eastern traditions, which currently dominate comparative theology, often have not shared the direct historical connection or overlapping intellectual heritage of the Abrahamic religions. For many comparative theologies these historical and metaphysical differences are part of the appeal and richness of the method. By bringing into conversation issues of thinkers with relatively distinct conceptions of God and world, fresh vistas, new insights, and surprising convergences can emerge in ways that are otherwise hidden in either a single tradition or the shared metaphysics of Judaism, Christianity, and Islam. Yet these gains often come at the cost of a relatively ahistorical and apolitical theology.

A comparative approach between Christianity, Judaism, and Islam walks into a much more delicate and historically fraught terrain. These traditions' history of overlapping scriptures and shared yet diverging views of God raise serious questions about how far comparative theology might actually go in addressing areas of acute theological disagreement. Take, for instance, the questions of the Trinity and Christology,

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of the ultimate value and goal of human life, as they have been perceived and expressed in a variety of religious traditions," Keith Ward, *Religion and Revelation* (New York: Oxford Press, 1994), 40. In the final volume of his four-part comparative theology, Ward appears to have moved slightly away from such a strong contrast between comparative and confessional theology. "Naturally, each scholar will have a particular perspective. One might expect it to develop and deepen in the many conversations of comparative theology, but it will most probably remain the same in its fundamental elements, especially if the scholar is a member of a religious community." Keith Ward, *Religion and Community* (New York: Oxford University Press, 2000), 339.

[55] John Thantaminl recognizes this worry in his Foreword to Voss Roberts's work, but largely leaves it unaddressed.

where Muslims accuse Christianity of departing from classical monotheism. *Surat an-Nisa* (4:171) states:

> O people of the scripture, do not transgress the limits of your religion, and do not say about God except the truth. The Messiah, Jesus, the son of Mary, was a messenger of God, and His word that He had sent to Mary, and a revelation from Him. Therefore, you shall believe in God and His messengers. You shall not say, "Trinity." You shall refrain from this for your own good. God is only one god. Be He glorified; He is much too glorious to have a son. To Him belongs everything in the heavens and everything on earth. God suffices as Lord and Master.

Regardless of how well early Muslims actually understood Christian doctrines of the Trinity and Christology, such Qur'ānic injunctions continue to shape Muslims' views on Christian theologies of God. And as long as one wants to hold onto something approaching a traditional position on the incarnation, Muslims will likely to continue to view Christians as guilty of committing, or at least dangerously close to, *shirk*.[56] On such matters, comparative theology might help illumine and correct misunderstands about the nature of Christian and Muslims claims about God, transcendence, and immanence, but it ultimately presses up against the limits of comparison.[57] To be a Muslim is to confess *tawḥīd* and the Qur'ān's finality and thus to reject both the incarnation and the crucifixion.[58] To be a Christian is to claim that God is present in the life, death, and resurrection of Jesus of Nazareth.

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[56] The sin of idolatry or making an associate with God and thereby compromising God's unity and transcendence.

[57] For an example of some of the challenges of comparative theology in relation to Christology, see Mona Siddiqui, *Christians, Muslims, and Jesus* (New Haven: Yale University Press, 2013).

[58] *Tawḥīd* is the Islamic doctrine of God's absolute unity and oneness.

David Burrell and a Comparative Account of Creation

The intractable nature of theological debates regarding Jesus Christ, God's (tri)unity, and divine revelation does not mean that comparative theology yields no fruit when engaging with the heirs of Abraham.[59] David Burrell's study of the philosophical and theological development of the doctrine of creation in the medieval period is a particularly compelling example of the insights gained through comparison. He offers an interfaith genealogy of the doctrine of creation and the creator-creature distinction through analysis of Ibn Sina (Avicenna), Ibn Rushd (Averroes), Ghazali, Maimonides, and Thomas.[60] "Creation offers the one area where we can track interaction of some kind among these three traditions."[61]

According to his account, Jews, Christians, and Muslims in the medieval period faced a conundrum. All shared a commitment, dictated by their own readings of scripture, to God's freedom in creating. Creation, according to classical readings of Genesis and the Qur'ān, is an entirely free act of God. "No external incentive nor internal need can induce God to create, for this creator need not create to the One by whom all that is can originate."[62] And yet if God is free and transcendent from creation, God also "outstrips our capacities for characterization."[63] How, then, is it possible to speak about God's relation to creation, if God stands beyond any categories? How might the traditions hold

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[59] The Scriptural Reasoning Project, in which Christians, Jews, and Muslims gather to read and discuss one another's sacred texts, is another example of how such differences might be engaged more constructively. See David Ford and C.C. Pecknold, eds., *The Promise of Scriptural Reasoning* (Cambridge: Blackwell, 2006).

[60] See David B. Burrell, *Towards a Jewish-Christian-Muslim Theology* (Malden: Blackwell Publishing, 2011), *Faith and Freedom: An Interfaith Perspective* (Malden: Blackwell Publishing, 2004) and *Knowing the Unknowable God: Ibn-Sina, Maimonides, Aquinas* (South Bend: Notre Dame University Press, 1986).

[61] David B. Burrell, *Towards a Jewish-Christian-Muslim Theology*, 12.

[62] Ibid., 11.

[63] David B. Burrell, *Faith and Freedom*, 20.

fast to their scriptural insights about God's freedom not only to create but also their witness to God's engagement with creation? Such questions are both complicated by and illuminated through Judaism, Christianity, and Islam's shared Aristotelian and Neo-Platonic heritage, and their models of emanation and participation.

The philosophical and theological responses to such questions are complex and occupy a long history of debate. What is interesting to note for our purposes, is Burrell's claim that the various 'solutions' proposed are only achieved as a result of direct and indirect interfaith collaboration. This is clearest in the case of Thomas, who stands chronologically after many of the important Muslim and Jewish thinkers of the medieval period and who cites and engages with these figures explicitly in his work. Burrell carefully illumines how Thomas' solutions to these predicaments, one in which God's being (*esse)* is ontologically distinct from creation since only God's being exists itself (*ipsum esse)*, are partly due to the philosophical and theological possibilities opened by Jewish and Muslim thinkers that preceded him. He notes, for instance, how Thomas recasts Avicenna's "primal distinction between *essence* and *existing* by elevating *existing* from the oxymoronic status of an *accident* to that of an *act*."[64] Such a move allows Thomas to affirm that God is free from creation, as only God exists in Godself, and that creation can participate in God "since every creature exists only by participating in the inexhaustible act of existing which is the creator. That is no creature can *be* without its inherent link to the creator."[65] The doctrine of *creatio ex nihilio* and the accompanying claims about God's simplicity, unity, and eternity is further clarified not only through internal scriptural commitments and engagement with Greek philosophy, but also through

[64] Burrell, *Faith and Freedom*, 21.
[65] Ibid., 20-21.

interfaith exchange and learning. Importantly, then, Burrell illustrates how exchange, mutual debate, and shared learning are not a product of modernism alone or a compromise to faith commitments, but have deeper roots in Muslim, Christian, and Jewish history.

In addition to providing an historical example of Muslim, Christian, and Jewish exchange and mutual enrichment, Burrell's comparative theology also presents a strategy for balancing between the extremes of conciliation, in which particularity is lost through either privatization or relativism on the one hand and isolation/confrontation on the other, in which traditions are closed in on themselves.[66] On the one hand, Burrell rejects the Enlightenment view of a universal neutral rationality that is severed from tradition and the practices that shape human persons. As Wittgenstein and McIntyre have shown because language and human reason are intrinsically embedded within traditions and practices, there is no neutral rationality. The heritage of Western Enlightenment reason, in which religious difference and particular revelation is a scandal, is largely taken over by advocates of religious pluralism. Burrell demurs from such views in claiming, "We need to step outside of our presumptive certainties—those of our faith as well as those of a Western intellectual superiority that would minimize the truth claims of any religious traditions."[67] The danger of both Enlightenment modernity and contemporary advocates of a theology of religious pluralism is that their quest for human harmony and unity comes at the cost of particularity and what is most central to many religious traditions. For Burrell, "The fact that all religions make totalizing claims is a constituting feature of

[66] As the next chapter will show further, these are the two dominant modes of Muslim-Christian encounter according to Clinton Bennett's *Understanding Christian-Muslim Relations: Past and Present* (New York: Continuum, 2008).

[67] Burrell, *Faith and Freedom*, 215.

such faiths; it is not up to us to relativize them from some purportedly superior perspective."[68]

However, the fact that religious claims exist within distinct linguistic communities does not foreclose the possibility of learning and reasoning across traditions. Burrell thus presents a model of "creative hermeneutics, whereby conceptual patterns, often developed separately, can illumine one another."[69] The skills and rationality that are developed through engagement with one historic tradition can equip practitioners to see and learn from another. "Rationality will then show itself in practices that can be followed by persons operating in similar fashion from different grounding convictions."[70] For instance, even when Christians do not share in Muslim convictions regarding the Qur'ān's centrality and finality, their own understanding of Christ's existence as the Word of God and Christian Scripture's importance for theology, better equips them to follow the reasoning of Islamic arguments that appeal to the Qur'ān's status as divine Word. Differences of belief or practice, also, prove particularity illuminating as they invite reconsideration of internal theological claims. Differences "help us move out of settled patterns of discourse into ways of understanding 'the other' and a consequent fresh appreciation of our own traditions."[71] Encounter, for instance, with Islamic claims about the centrality of the law demands that Christians return to their own tangled debates regarding the relationship between the law and the gospel.

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[68] Ibid., 196.
[69] Burrell, *Towards a Jewish-Christian-Muslim Theology*, xii.
[70] Burrell, *Faith and Freedom*, 203.
[71] Ibid., 195.

A Comparative Political Theology of Law

It is the wager of this dissertation that borrowing from Burrell's historical example and comparative methodology and applying it to contemporary debates around public law and political secularism will: 1) strengthen Christian political accounts of religious diversity in general and Islam specifically, by 2) offering a more complex and honest engagement with the challenges raised by *Sharī'a* than those presently on offer in the West, which 3) presses Christian theology to reassess its own understanding of public law and the secular and how these are related to our theological claims concerning the law, the gospel, and the kingdom, all of which combined 4) present a corrective to comparative theology's ahistorical and apolitical tendencies. By adopting such a comparative approach, I hope to avoid two routes that dominate most discussion of political theology and Christian-Muslim-secular relations today. The one mode leans strongly on the heritage and legal apparatuses of secular liberalism and thus too quickly silences religious commitments and their critiques of modernity. The other attempts to reassert the ultimacy of religious commitment and community over and against liberalism, but does so largely by reinscribing the battle lines between *dar al-Islam* and Christendom. By contrast, a comparative approach aims to respect the concerns both of liberalism—by seeking out common ground—and of traditional theological positions—by beginning with the particularity of religious commitments and theological depictions of the world—all the while avoiding the dangers of either accommodation or self-enclosure.

To do this, I bring Christian debates on the relationship between the law, the gospel, and the grounding of political authority into conversation with both classical Islamic critiques of Christianity and twentieth- and twenty-first-century Islamic debates

on the relationship between *Sharī'a*, secularism (*'almaniyya*), and civil/state law (*qānōn*).[72] A comparative focus on law is particularly promising since many Islamic debates on issues such as membership in the nation-state, obligations to public law, and minority rights overlap with concerns that plague Christian political theology in the West. As the historian, Richard Bulliet succinctly notes, "The past and future of the West cannot be fully comprehended without appreciation of the twinned relationship it has had with Islam over some fourteen centuries. The same is true of the Islamic world."[73] Here it would be wise to follow Johan Baptist Metz's instincts: "The relationship between religion and politics at the limits of modernity cannot be discussed only in terms of the tensions between Christianity and modernity. Rather, it is increasingly necessary that the discussion include the relationship of the other monotheistic religions to modernity: the root monotheistic religion of Judaism, and also that of Islam, with its pointed cultural conflicts with European modernity."[74] A comparative or dialogical approach to political theology, then, is grounded in shared or at least overlapping commitments and interests—just as creation was a shared doctrine of concern during the medieval period.

Moreover, concrete engagement with Islamic debates regarding the law and its implications on citizenship and secularism also might aid Christian theological accounts of the relationship between the law and the gospel and its implications for theologically grounding public law. Political theology, especially the pressing questions around the

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[72] Writing as a Western Christian, the constructive political theology of the dissertation will primarily be oriented to how Christian-Muslim relations function within the liberal nation-states of North America and Western Europe. However, the intertwined realities of globalization and migration make such a geographic distinction less than clean. Thus, at times I will touch on questions and emerging debates in the Arab world and Sub-Saharan Africa.

[73] Richard Bulliet, *The Case for Islamo-Christian Civilization* (New York: Columbia University Press, 2004), 45.

[74] Johann Baptist Metz, *A Passion for God: The Mystical-Political Dimension of Christianity,* translated by J. Matthew Ashley (Mahwah: Paulist Press, 1998), 136-137.

relationship between secularism, the law, and membership in the nation-state, is an arena in which late modern Christian theology finds itself at an impasse. The debate that has marked much of post-Christendom political theology between what Jürgen Moltmann describes as "identity" and "relevance" persists.[75] On the one hand, those who wish to affirm Christian distinctiveness either through an ecclesially oriented political theology à la Stanley Hauerwas, or a reinvigorated Christendom model à la John Milbank, struggle to offer a positive account of the liberal tradition, the secular state, or the shared pursuit of the common good. On the other hand, defenders of the liberal tradition such as the German theologians Hans Küng and Friedrich Wilhelm Graf or the later work of Reinhold Niebuhr elide the uniqueness of Christian claims and minimize the capacity of the church to stand over and against modernity and the nation-state. A similar division is evident within recent Islamic debates. 'Islamists' such as Sayyed Qutb and Hassan al-Turabi refuse any positive assessment of political modernity while secularists such as Bassam Tibi and Sadik Jalal al-Azm fail to offer sufficiently Islamic or Qur'ānic arguments for political pluralism or the dangers of modernity. Both Christian and Muslim political theologians have struggled to chart a path between the goods of secular tolerance and the priority of religious commitments.

Part of this predicament is related to the challenge of how to relate religious law, and its accompanying claims on identity, to public law and citizenship. The contemporary questions that swirl around *Sharī'a* and the state might serve as a prod for Christians to reconsider their own relationship with public law and secularism. As Jehu Hanicles astutely notes, "Islam evokes old questions and threatens to breathe new life into an old

[75] Jürgen Moltmann, *The Crucified God: The Cross as the Foundation and Criticism of Christian Theology,* translated by R.A. Wilson (Minneapolis: Fortress Press, 1993), ch. 1.

ghost…If the very public religiosity of Muslim minorities has evoked cultural angst and profound questions about European identity, it is because that identity, while now decidedly secular, is haunted by a religious past."[76] Political theology has thought too little about the theological underpinnings of the law, being largely occupied with debates about public reason, the political possibilities of love, social pluralism, and the relationship between the church and the nation-state. Part of this lack of attention to the law can be attributed to the fact that Christianity has no *Sharī'a* or *halakah,* and thus its views on law are largely *ad hoc*, drawing at times from Roman law, at others from common law, natural law, or Enlightenment arguments. Such an *ad hoc* approach to the law need not be problematic and can in fact be a source of strength and flexibility in Christianity. However, Seyyed Hossein Nasr has pointed out that Christianity's minimal focus on the law also makes it more susceptible to uncritically adapting or compromising with other forms of law. This can be partly attributed to the fact that, as Wolfhart Pannenberg has noted, Christian debates about how to relate the gospel to both the heritage of Jewish law and the civil law of particular governments "have still not been settled in the history of Christian theology."[77] The law, both in its theological and political dimensions, then, is a site where Christian reflection is needed and where a comparative method might prove particularly germane.

In writing a comparative political theology of the law, I largely leave aside important issues in Muslim-Christian relations concerning Christology and the doctrine

[76] Jehu Hanicles, *Beyond Christendom,* 263.

[77] Wolfhart Pannenberg, *Systematic Theology Vol. III*, translated by Geoffrey W. Bromiley (Grand Rapids: Eerdmans Publishing Company, 1998), 60.

of God. Its focus is on what Moltmann terms the "political question" of dialogue.[78] Still, a comparative political theology that focuses on "dialogues of life" or "dialogues of justice" cannot avoid the theological underpinnings of such claims. It has become a widespread practice to commend the common good and social justice as the proper starting point in Muslim-Christian relations. The perceived benefit of this methodology is to circumvent the "outstanding neurological issues" of God's (tri)unity, the nature of Jesus, the prophethood of Muhammad and the status of the Qur'ān.[79] This activist approach to Muslim-Christian dialogue has become increasingly popular across theological, political, and denominational differences. For instance, *Nostra Aetate's* remarks on Islam concludes by urging "all to forget the past and to work sincerely for mutual understanding and to preserve as well as to promote together for the benefit of all mankind social justice and moral welfare, as well as peace and freedom."[80] Similarly, both the 'mainline' World Council of Churches and the evangelical movement of Lausanne have issued various documents advocating for social justice and shared common action as means for improving Christian-Muslim tensions. Moreover, theologians and ecumenists as diverse as Paul Knitter, Hans Küng, David Kerr, Charles Amjad-Ali, Lamin Sanneh, all prefer to shift the primary focus of Muslim-Christian dialogue away from theology proper to socio-political ethics and activism.

While there is much to commend in this approach, it runs the risk of obscuring the ways that understandings of ethics and the common good are deeply shaped by theological and scriptural commitments that may not be shared. *Sharī'a* is a case in point.

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[78] Jürgen Moltmann, "Is Pluralistic Theology Useful for the Dialogue of World Religions?" in Gavin D'Costa, *Christian Uniqueness Reconsidered: Myth of Pluralistic Theology of Religions* (Maryknoll: Orbis Books, 1990), 149-156.

[79] Burrell, *Towards a Jewish-Christian-Muslim Theology*, ch. 7.

[80] Nostra Aetate, §3.

For most Muslims any discussion of ethics, justice (*'adl*) and the common good (*maṣlaḥa)* inevitably will be understood not only through the Qur'ān and Hadith, but also in light of the history of *fiqh* (Islamic jurisprudence). Thus a presumed area of common ground actually lands us firmly on one of the most controversial aspects in current Christian-Muslim relations: namely, the law. To engage in dialogue about the common good is to enter into theological discussion about revelation, law and morality, and the divine will.

A brief example from the recent events in Egypt might help illustrate my point. One of the most enduring images to emerge from the protests against the Mubarak regime during 2011 was of a group of Christians who served as human shields encircling and protecting Muslims as they prayed. Throughout the protests and during the months that followed Mubarak's resignation, numerous interfaith rallies in the name of social justice and equality were held throughout Cairo and Alexandria. Sheihks and priests marched in the name of a future Egypt, chanting "Muslims and Christians we are of one hand." Shared protest against a despotic regime offered a lived example of the type of political-social dialogue advocated by so many. However, and often at the same time, intense conflict and debate flared throughout Egypt about how the new constitution might reflect the Muslim majority's desire to see Islam afforded a greater public role, specifically in the government and legal system. The rise of various Salafi political parties such as *an-Nour* and the victory of the Muslim Brotherhoods' presidential candidate, Mohammed Morsi, heightened the concerns of Christians, not to mention many Muslims. These inter- and intrareligious tensions were used to support and justify the military coup of 2013 that overthrew the democratically elected, but increasingly totalitarian, Muslim Brotherhood.

In the case of Egypt, then, the public good has been and continues to be a site of both interfaith cooperation and rivalry. Advocating for shared common action without also understanding the ways that law, ethics, public good, and social life are intertwined with divergent theological and scriptural claims undermines the positive gains of such a socio-political dialogical approach.

A comparative theology of the law offers a theo-legal perspective on these complex realities, one that combines the best insights of the social justice approach with increased attention to ways that this is theologically and scripturally understood. Thus, while a comparative theology of the law stands within political theology and dialogues of the common good, the dissertation also advocates for interpreting public law in light of its scriptural and theological underpinnings. A comparative political theology of law, then, must resist the temptation to focus exclusively on the questions of public law, state establishment and human rights to the exclusion of any examination of scripture, personal ethics, soteriology, and theology. To do so is unnecessarily to constrain the conversation to the terms dictated by national and post-Enlightenment politics. Islam largely resists such divisions, even if it too has not escaped the imaginative power of modernity. Nevertheless, the law in Islam, like in Judaism, binds together the public and private, the political and religious, and the secular and sacred. In this way, law is something of a hinge concept that pivots between realms that we in the West have grown accustomed to treating separately. As Felix Körner has argued, political and societal debates between Muslims and Christians cannot be closed off from religious and theological ones.

"Dialogue must also address, both theologically and concretely, practical issues such as the state, society, and legal theory."[81]

By exploring the diversity within both traditions and their debates around public law a more nuanced perspective on our shared and diverging theologies and practices can emerge. In terms of public relations between Muslims and Christians, such theo-legal and political comparison aids adherents of both traditions to move towards enhanced commitment to issues of the common good and beyond the fear and violence that characterizes recent Christian-Muslim relations. Such animosity is often fueled by caricatures, with secularism equated with immorality and godlessness by many Muslims and *Sharī'a* viewed as simply barbaric and patriarchal by many Christians. A comparative political theology works to overcome such ignorance by producing a more honest assessment of the benefits and limitations of political secularism and liberalism than those currently offered by either its ardent defenders or detractors in the two traditions.[82] As I will argue in the next chapter, such a comparative political theology model of interfaith exchange—one that begins with the internal discourse and norms of each tradition, while also allowing for cross-pollination into others—is a more promising model for both political theology and Muslim-Christian dialogue than current Christian approaches to Islam that either seek conciliation through uncritical acceptance of

[81] "Der Dialog hat auch praktische Themen der Staats-, Gesellschafts-, und Rechtstheorie theologisch zu thematisieren und zu konkretisieren ." This is the title of the fourth thesis in Felix Körner's "Reizwort Dialog: Wo das christlich-muslimische Gespräch schärfer werden muß," *Stimmen der Zeit,* 8 (2008): 538. "Eine radikale Ausklammerung der theologischen Fragestellung aus dem gesellschaftlichen Diskurs ist jedoch ebenfalls gefahrlich."

[82] Here theo-political dialogue begins to turn towards practice. Charles Amjad-Ali, a Pakistani Christian theologian, asserts that dialogue is "a process of discourse in which the communities involved go through their own respective *logos* to come to a common understanding of certain social and political problems."[82] Such a methodology echoes Ḥassan Ḥanafī's contention that liberation theology and social justice are primary arenas for ecumenical and interfaith engagement.

Enlightenment paradigms or reinforce images of confrontation in the form of a clash between Christendom and *dar al-Islam*.

Chapter 2

Neither Conciliation Nor Confrontation: A Comparative Approach to *Sharī'a*

From the outset, a comparative political theology that aims to dialogue with and learn from Islamic ethics must confront the deep-seated unease that most Christians and liberals have with the very notion of *Sharī'a*. For many non-Muslims, *Sharī'a* is largely associated with theocratic government, limits on personal freedom, punishments of amputation and stoning, and patriarchy. Haram Tariq Ramadan notes how "in the West, the idea of *Sharī'a* calls up all the darkest images of Islam."[1] Furthermore, Christians living in Muslim majority societies such as Egypt, Pakistan, Iran, Indonesia, and Northern Nigeria often have legitimate concerns about their religious freedom and equality. This was highlighted at the seventh assembly of the World Council of Churches: "Many Christians…feel threatened by Islamization and the introduction of the *Sharī'a* law."[2] The ongoing tumult in the Arab world after the uprisings across the region in 2011 has only heightened Christian worries about the role of Islam and *Sharī'a* in these emerging governments.

Without minimizing these concerns, it is also vital to recognize that for Muslims *Sharī'a* is much more than these controversial elements. *Al-Jathiyah* (45:18), the only time that *Sharī'a* is explicitly used in the Qur'ān, says, "Then we put you on the clear way (*Sharī'a*) of our commandment, so follow it and do not follow the inclinations of those who do not know." For Muslims, *Sharī'a* is a guide for a life lived in obedience to

[1] Tariq Ramadan, *Western Muslims and the Future of Islam* (Oxford: Oxford University Press, 2004), 31.

[2] Quoted in Ataullah Siddiqui, *Christian-Muslim Dialogue in the Twentieth Century* (New York, NY: Palgrave Macmillan, 1997), 60.

God and with respect for neighbor, a guide that covers all aspects of human interaction from prayer to property rights. *Sharī'a* is a central component of Islamic identity, thought, and practice, and thus any honest account of Muslim-Christian dialogue, especially one focused on political theology and ethics, should engage it. Certainly, Islamic ethics includes more than just *Sharī'a*, but Islamic ethics gives pride of place to *Sharī'a*. In order to get a comparative theology of the law off the ground, it is vital first to re-examine both the nature of *Sharī'a* and Christian understandings of it.

Unfortunately, two perspectives to Islamic ethics dominated Christian theological approaches, and both of these hinder genuine engagement with the challenges various Islamic thinkers raise about *Sharī'a* and its place in theo-legal-political discourse.[3] The one understands Islam to be essentially theocratic in nature and therefore necessarily in competition with Christian views of the distinction between the spiritual and earthly, whether the Christian view is grounded in Augustine's account of two cities, the doctrine of two kingdoms, or church-state separation. This first perspective depicts Islam and Christianity as being locked in an endless clash of religions that is rooted in the very core scriptural and theological identities of both communities. According to such a view, this divide goes back to the seminal figures in the religions. Muḥammad merged the political and religious after the *hijra*, while Jesus told the Pharisee to "render to Caesar what is Caesar's."[4]

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[3] These theological approaches largely mimic, even as they reinforce, the dominant approaches to Islam in contemporary Western public discourse. The one, exemplified in Huntington's (in)famous clash of civilizations thesis and evidenced in groups such as jihad watch and creeping Sharī'a, depicts Islam as the rival of the Christian and secular West. The other, seen oddly in George W. Bush's insistence that Islam is a religion of peace, argues for liberalization.

[4] There certainly was a difference in Muḥammad and Jesus' respective relation to and use of political violence. In spite of these distinctions, one is hard pressed to say that one or the other religion was more or less violent in its history, either in its treatment of religious others or in its

The other approach understands Islam to be trapped by its theocratic past, but nonetheless able to evolve, much like Christianity did in Europe and North America, by adopting a liberal political model. Islam is at its core a religion of peace but this truth is best realized when Islam follows the lead of Western secular liberalism by privatizing religion. Christianity was able to find a way beyond the wars of religion through political liberalism; Islam can as well.

Borrowing from Clinton Bennett's typology of Muslim-Christian theological relations as either confrontational or conciliatory, the first view of *Sharī'a* can be dubbed as a mode of political encounter marked by confrontation and the second as exemplifying political conciliation.[5] And yet both the confrontation and conciliation models largely

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relations to co-religionists perceived to be 'heretical.' This Calvinist only needs to think of the case of Servetius.

[5] Clinton Bennett, *Understanding Christian-Muslim Relations: Past and Present* (New York: Continuum Press, 2008). While Bennett's typology is strained at points, it does offer a useful hermeneutical lens through which to interpret the approaches, goals, and presuppositions that particular Christians and Muslims bring to their engagement with one another. Confrontation is marked by polemic, while conciliation is defined by an irenic openness to the other. Bennett describes the confrontational model of Christian-Muslim relations to be one that focuses on debates that draw strong distinctions between Christianity and Islam. Points of connection and contact are overlooked and each side calls into question the authority and authenticity of the other community's scriptural texts. For Bennett, such an approach classically is exemplified on the Christian side by John of Damascus' accusation that Muḥammad was a pseudo-prophet who stole his ideas from a monk, and on the Muslim side by Ibn Taymiyyah's critique of Christians as polytheists and his accusation that the Gospels were corrupted and altered by Christians (*tahrif)*. In contrast, conciliation approaches to interfaith relations begin with dialogue and shared conceptual commitments, rather than polemic. This might include seeking justification and defense of one's own theological commitments through careful analysis of the other communities' texts or a recognition of the polyphonic aspects of one's own scripture. For instance, Christian theologians such as Mar Timothy or Theodore Abu Qurrah express a willingness to engage constructively with the *Qur'ān*. Similarly, Muslim thinkers such Ibn Arabi find resources within Sufism to engage positively with Christian views of God's activity in Jesus Christ. Conciliation, at least in Bennett's classical examples, need not entail the erasure of theological commitments or a smoothing over of disagreements. It is simply an approach that begins with the assumption that one might learn from and profitably engage with the religious other. However when Bennett turns to contemporary examples of conciliation, he tends to show preference to approaches that seek common ground at the cost of classical theological claims. Thus, in his example of conciliation in contemporary Christian theological approaches to Islam, he appears to demand the negation of the orthodox position on the trinity and incarnation for the sake of dialogue. In my opinion, this

equate *Sharī'a* with state enforcement, coercive law, patriarchy, and *hudud* punishments, and thus essentialize it as offering a theocratic vision of politics, law, and the state. The difference in the models is not found in their views of *Sharī'a*, but in their solutions to this "problem" for Muslim-Christian relations.[6] The one seeks a Christianization of Islamic political ethics, the other liberalization. Neither model amounts to an honest engagement with Muslim's own differing accounts of the importance of *Sharī'a* and the moral world that it imagines and ritually enacts. By relegating *Sharī'a* to only theocracy and absolutist law, Christian theological engagement with Islam misses opportunities for genuine dialogue, mutual learning, and constructive disagreement.

Sharī'a is a central component of classical Islam and also core to the fabric of contemporary Islamic political and ethical debates, both in Muslim majority societies where arguments continue about if and how *Sharī'a* might be reflected in national law and in North America and Europe where questions of accommodation and religious liberty abound. By interpreting *Sharī'a* through its most controversial elements, Christians misunderstand its appeal and import for Muslims and the legitimate critiques and alternatives that it might offer to secular liberalism and the nation-state. Moreover by dismissing *Sharī'a* out of hand, Christians lose the opportunity for mutually enriching

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form of conciliation hinders Christian-Muslim engagement and vacates it of its particularity, excitement, and import. Part of the appeal of Muslim-Christian dialogue is the challenge it raises to Christians to express coherently their commitments to God's triune nature and Christ's two natures in the face of Muslim queries. To begin with a conciliatory approach to Islam does not demand a conciliatory conclusion, if by conciliatory one means vacating one's own faith commitments. Put differently, one can have a conciliatory approach to Islam by taking absolutely seriously its scriptural injunctions and theological commitments to God's transcendence and unity and can nevertheless conclude with a "confrontational" position that defends Nicaea and Chalcedon. To seek conciliation prematurely through appeal to a shared post-Enlightenment rationality is intellectually flat and theologically unsatisfying.

[6] *Hudud* are the fixed punishments under *Sharī'a* for particular crimes such as theft, adultery, and blasphemy. Most notoriously, they can include stoning for adultery and amputation for theft.

dialogue concerning issues such as the theology of the law, the state, and modern morality. As Mona Siddiqui noted, "For a largely Western audience whose general understanding of *Sharī'a* goes little beyond the application of draconian and barbaric penal laws, the idea that a liberal democracy could make space for such oppressive laws left many silently squirming and some openly outraged."[7] This is not to say that Christians should be ambivalent about state enforcement of *Sharī'a*, for, as I will argue, that notion is politically problematic, theologically wrong-headed, and theoretically incoherent. And yet, we must appreciate in its full ethical complexity the desire for *Sharī'a* as a form of moral law that counters the shallow legal positivism and state-centric jurisprudence of modernity. When *Sharī'a* is viewed in this light as moral-legal discourse, and not first and foremost as state law, we can discover new vistas for engagement between Christians and Muslims.[8]

To flesh out this argument, this chapter evaluates current Christian theo-political approaches to Islamic political ethics, while attempting to dispel some myths about *Sharī'a*.[9] First, I show how Hans Küng's account of Islam and global ethics relegates *Sharī'a* beyond the bounds of dialogue even as he advocates for ethics and justice as a way forward in Muslim-Christian relations. I question his largely uncritical acceptance of the Kantian political paradigm and the effectiveness of the underlying liberal assumptions of the conciliation model. Next, I turn to John Milbank's confrontational model and

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[7] Mona Siddiqui, "Sharia and the Public Debate" *Political Theology* 9:3 (2008), 261.

[8] And yet to engage in such discussions, *Sharī'a*'s connection with the modern nation-state and its legal apparatuses must be untangled. This question—of the relationship between religious law and the law of the nation—will be addressed in the final chapter.

[9] This chapter focuses on Christian theologians' engagement with Islam and not on figures such as Christian Troll, Felix Körner, Louis Massignon, and Kenneth Cragg whose primary work is in the arena of Christian-Muslim dialogue. Nevertheless, the tendency that I chart in this chapter of avoiding the challenges raised by *Sharī'a* by marginalizing it as theocratic we can also discern in the works of Troll and Cragg.

query whether his claim can actually be sustained that "only a hegemonically Christian outlook, and not a secular one, can accord to Islam respect as *Islam*."[10] My interrogation shows how despite the merits of his critiques of grounding interfaith interaction within the secular project, his own renewed Christendom ecclesiology employs a problematic theological account of church and culture, an orientalist view of *Sharī'a*, and an arrogant rhetorical strategy that undercuts the possibility of mutual enrichment. In response, I commend a comparative political theological approach as being better positioned to engage with the complexity of *Sharī'a*, with Christians own commitments to understanding the law in light of the gospel, and with the political realities of our religiously diverse world.

Models of Political Conciliation: Küng and Knitter

Hans Küng: Dialogue for a Shared Global Ethic

Hans Küng's *Islam: Past, Present and Future* is one of the most comprehensive engagements with Islam written by a Christian theologian. The book is structured as a chronological account of Islam, from its beginnings in Arabia through its rapid expansion and the subsequent dynasties of the Umayyad, 'Abbasid, and Ottoman Empires, concluding with the colonial and postcolonial situation. Yet this is no neutral historical introduction; the real focus of Küng's work is the present reality and future possibilities of Islam. Throughout, he invokes his own ethical and theological perspectives as a Christian theologian in the form of critical questions and constructive suggestions on topics such as the relationship between revelation and reason, historical criticism and the

[10] John Milbank, "Sharī'a and the True Basis of Group Rights: Islam, the West, and Liberalism," in Rex Adhar and Nicholas Aroney, *Sharī'a in the West*, 138.

Qur'ān, law and society, and gender and human rights. To accomplish his historical and dialogical aims, Küng advocates for a sympathetic and yet critical engagement with Islamic theology, ethics, and history. "Without any sense of superiority (of a Christian or secular kind), and in awareness of the dialectic of the Enlightenment," he argues "for a renewed Islam."[11] Küng aims to strike a balance between "deep understanding" of Islam and "open criticism" that seeks its "inner renewal."[12] Christian engagement with Islam must proceed from genuine encounter with Muslims and Islamic history and not from the stereotypes and fears that have often characterized Christian perceptions of the religion. Nevertheless if such engagement is to be honest, it must not demand the silencing of questions or critiques. A genuine dialogue across religious and cultural difference demands both appreciation and critical inquiry.

Küng's work seeks to counter hostile stereotypes of Islam prevalent in the West, equip non-Muslims with the necessary knowledge to engage in interreligious dialogue, and contribute to a base global ethic that can be shared by all religions, as well as by the non-religious. It is this quest for a global ethic that serves as both the impetus for and end of Küng's study of Islam and commitment to interreligious dialogue more broadly. Küng's involvement in drafting the global ethic declaration at the 1993 Parliament of the World's Religions in Chicago was a driving force behind his decision to write a trilogy on the Abrahamic religions, with the book on Islam as the final installment.[13] As he argues in his oft-repeated maxim, "No peace among the nations without peace among the religions. No peace among the religions without dialogue between the religions. No

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[11] Hans Küng, *Islam: Past, Present and Future*,. translated by John Bowden (Oxford: OneWorld, 2007).

[12] Küng, *Islam*, xxvi-xxvii.

[13] See Hans Küng and Karl-Josef Kuschel, *Global Ethic: The Declaration of the Parliament of the World's Religions* (Edinburgh: Continuum Press, 1993).

dialogue between the religions without investigation of the foundations of the religions."[14] Küng's historical studies of Judaism, Christianity, and Islam are part of his commitment to distilling a common global ethic through attention to the history of the religions. "We can speak of a common basic ethic of the three prophetic religions which can make a historic contribution to the global ethic which is developing."[15] *Contra* those who focus exclusively on nation-states and international organizations as keys to achieving peace, Küng is rightly adamant that religion plays a vital role in the quest for peace. Certainly, religion is an ambivalent actor, producing both violence and acts of justice. Still a genuine commitment to global justice and peace demands that the religions, in their historical foundations and contemporary complexity, be engaged. Inter-religious dialogue and historical study of religions are central components for articulating a global ethic and political theory.

Given the ethical and political importance of *Sharī'a* for Muslims, both in Islamic history and contemporary debates regarding its role in national law, one would expect it to figure prominently in Küng's study. In one sense it does, with sections focused on classical issues such as the formation of the schools of law (*madhhab*), the development of Islamic jurisprudence (*fiqh)*, and the sources of the law (*uṣūl al-fiqh)* as well as studies of contemporary issues such as the relationship between secularism and the law and the future of the Islamic Legal Order. However when addressing *Sharī'a*, Küng consistently marginalizes its importance by equating it with legalism, absolutism, and a medieval mentality. The underlying Enlightenment assumptions of Küng's global ethic project evidence an inbuilt commitment to the superiority of the secular and thereby biases his

[14] Küng, *Islam,* xxiii.
[15] Hans Küng, *Islam*, 92.

reading of *Sharī'a*. Thus, Küng's important argument for moving beyond a clash of civilizations through a "concentration on great common tasks"[16] fails to include Islamic ethics fully because it never truly engages with *Sharī'a*, preferring instead political conciliation through Enlightenment liberalism.[17]

The reason that Küng fails to engage sufficiently with *Sharī'a* as a source for developing a shared global ethic can be attributed to two factors that bias his reading of classical Islamic ethics and law: 1) his historiography, which, echoing certain nineteenth-century German liberal Protestant assumptions, tends to view later legal and institutional developments in a religion as a compromise to the original insight of the founder, and 2) the strong distinction he draws between ethics and law. Combined, these assumptions essentialize *Sharī'a* as a "medieval legal system"[18] that corrupts Islam's essence. Küng thus largely views *Sharī'a* as an impediment towards finding common ethical ground, and never as a source for it. When Küng turns to his own contemporary political ethics, he advocates for a form of religiously open political liberalism. While one may appreciate Küng's political proposal, by sidestepping *Sharī'a* he fails to engage Islam in its particularity and the challenges that it offers to secular Western traditions. Instead of beginning with the religious traditions and then seeking out overlap and common action, Küng employs his commitments to liberalism to foreclose dialogue. In the end Küng cannot escape his own liberal political presuppositions and thus he does not achieve his

[16] Hans Küng, *Islam,* 4.

[17] A similar move can be seen in Küng's engagement with Christian claims regarding Nicaea and Chalcedon. Küng views the councils as past paradigms that need not apply to current Christian-Muslim debate and thus similarly avoids the complex task of interreligious conversation that involves disagreements over the particularities of each tradition.

[18] Küng, *Islam,* 551.

admirable methodological goals of critically and sympathetically engaging with Islam as Muslims understand it when discussing ethics and law.

Ethical Essence and Legal Perversion

Küng's historical methodology seeks to account for both Islam's consistency across the centuries as well as its changing historical form. With affinities to the nineteenth-century German historical theologian Adolf von Harnak, Küng differentiates between Islam's unchanging essence, its various historical forms, and its perversions.[19] "Only if we see the 'essence' of Islam in its changing historical manifestations do we grasp…real Islam, as it exists in this world and its history. The real essence of real Islam takes place in different historical forms."[20] According to Küng, the abiding elements of Islam are its confession of monotheism, the prophethood of Muḥammad, and the event of the revelation of the Qur'ān. Borrowing from philosopher of science Thomas Kuhn's account of paradigm shifts, Küng argues that Islam's essence is manifested in six different paradigms: the original community, the Arab empire, the classical era of Islam as world religion, the Ulama and Sufis, modernization, and the current movement towards a contemporary postmodern view. While each paradigm offers a needed response to the challenges of its age, each also risks fossilizing, absolutizing, and thereby perverting the essence of Islam. Moreover, while there is a genuine advancement and change from paradigm to paradigm, Küng claims that the previous paradigms are never fully replaced and thus that they reassert themselves in differing ways in the present. This is clearest in Küng's argument that each of the modern movements within Islam—Arab

[19] Küng, *Islam,* 19-21.
[20] Küng, *Islam,* 20.

nationalism, pan-Islamism, conservatism, and reformism—are partly expressions of a previous paradigm.

Leaving aside other historiographical problems, Küng's paradigm model and its focus on essence, historical form, and perversions largely predetermines his negative reading of classical *Sharī'a* and the emergence of the schools of law. An example from the life of Muḥammad might illumine this problem. Küng prioritizes the personality and experience of the founder of a religion as the criteria by which the rest of a religion is judged. Certainly there is an important point to be made here as, Muslims consistently seek out the guidance and example of the prophet and his companions as a touchstone for their own behavior. In fact the Sunni (who make up approximately 85% of Muslims worldwide) derive their name from the term *sunna* (tradition). Identifying as a *Sunni* is simply a way of saying that they are the people who living in conformity with the tradition of the prophet and his companions. However, Küng's understanding of the importance of Muḥammad and his role in the revelation of the Qur'ān diverges from this Sunni self-understanding. Instead of understanding the import of Muḥammad in the entirety of his prophethood and example, Küng locates a kernel or essence in Muḥammad's life that serves as the final criterion to judge both his actions and the later developments in Islam.[21] This is said to be found in Muḥammad's call to preach the absolute oneness of God and the subsequent ethic of justice and equality that emerges from this theological commitment. These "religious" factors are primarily at work during Muḥammad's time in Mecca. After the *hijra* to Medina, Küng depicts Muḥammad's

[21] This division between Muḥammad's genuine call and the accumulated tradition we see further in Küng's strong critique of the importance that the *hadith* or *sunna* plays in Islamic piety and law.

prophetic role increasingly as moving away from his fundamental religious task and towards that of a "statesmen" who consolidated power and institutionalized his prophetic word and ethical vision. Thus, even within his depiction of Muḥammad's own life and ministry, Küng employs a hierarchy by which religion is to be preferred to politics, ethics is truer than law, and the freedom of preaching in Mecca is superior to the challenge of leading a community in Medina. For Küng, any movement towards institutional authority or legal articulation is seen as a fall from the original purity of the message.[22]

The combination of Küng's historiography and his *a priori* suspicions toward institutional authority, law, and the mixing of religion and politics strongly prejudice his reading of *Sharī'a*. *Sharī'a* appears to express all that Küng assumes corrupts the essence of religion. It is a legal apparatus that depends on authority, both scriptural revelation and the arguments of a trained class of scholars that emerged centuries after the original messenger. Given this, it is little surprise that Küng is harsh in his assessment of *Sharī'a* 's place within Islam. He claims that the schools of law, by being exacting and scientific, compromise the original insights of Muḥammad and his critique of the traditionalism of pre-Islamic Arabia.[23] He maintains that the legal schools absolutized the tradition at the cost of the original message. "Under the influence of traditionalist orthodox Ulama, both the spiritual and the social life of the Ottoman empire had

[22] The relationship between the Meccan and Medinan periods is complex and I do not wish to imply that Küng is wrong for raising such concerns. Many Christians involved in Muslim-Christian dialogue agree with Küng's assessment that the Meccan period is more promising/impressive/congenial for Christians. Moreover, some Muslim thinkers, such as Mahmoud Mohamed Taha, have advocated for giving preference to the Meccan period. While Christians might want to make judgments about the promise of the Meccan period for inter-religious dialogue, it is problematic to ascribe our preferences onto Muslim self-understanding.

[23] Küng, *Islam,* 276-278.

fossilized."[24] Küng therefore intimates that the schools of law and the *Sharī'a* fall within his category of perversion, and never are an authentic historical form and expression of Islam's essence. For Küng, *Sharī'a* is not a genuine outworking of Islamic commitments to God's oneness, the ethical demands placed on humanity, and a way towards human flourishing. Instead, it is largely depicted as a legalistic mechanism for over regulating human action and maintaining religious control. If this is the case, it is no surprise that Küng thinks that *Sharī'a* is best evaded instead of engaged when pursuing his global ethic project.

The Interconnection of Law and Ethics in Classical Sharī'a

And yet Küng's account of *Sharī'a* is only maintained by drawing sharp distinctions between ethics and law, particularly as he depicts the differences between the early ethical aspect of Islam and its later legal developments. This bifurcation, however, is more the byproduct of Küng's methodological assumptions and biases against the very concept of law than the result of either the internal evidence of Islamic history or Muslim self-understanding. His predetermined categories actually hinder a true assessment of the importance and necessity of law as a moral source of formation.

Küng locates the ethical import of Islam in how Muḥammad critiqued the unjust economic structures of Mecca and the Arabian trade, called for moderation in drink, demanded contributions to the poor in the form of *zakat,* placed limits on violence and retribution, and brought about the stabilization of the family. Personal piety and social justice are central to the original essence of Islam. These ethical concerns for "justice,

[24] Küng, *Islam,* 406.

fairness, restraint, moderation, compassion and forgiveness"[25] are the hallmarks of Islamic ethics and the proper place to develop a distinctly Muslim contribution to a global ethic. In Küng's eyes, this original ethical impulse unfortunately devolves into law or *Sharī'a*. Islam, which, was "originally the religion of an ethic, became a religion of the law."[26] The key distinction between ethics and law for Küng does not appear to be in its content but in its aims and formal authority. Giving to the poor is an ethical demand when Muḥammad preaches it, but it is a legal act when it is enforced or collected in Muḥammad's Medina or in modern day Morocco. For Küng, ethics are like guiding principles that emerge from the encounter with God and therefore give considerable space for personal moral discernment and action. Laws, on the other hand, are formal enactments that depend on the authority and decisions of others. Ethics guide; laws restrain. Law is a pejorative term that is tied to tradition, coercion, and authority. It is not a concept grounded in the moral and/or the ethical encounter with God and others. Ethics are part of the essence of Islam while legalism is a compromise or perversion of this essential insight.

However, one has to query whether ethics are so distinct from the law. Is not the law an attempt to give formal expression, albeit in imperfect ways, to the ethical dimensions of human life together? Certainly for most Muslims, *Sharī'a* and the development of *fiqh* are central components to their understanding of what it means to live ethically. In fact it is precisely this ethical or religious character of *Sharī'a* that provides its force. Wael Hallaq, one of the foremost contemporary scholars of *Sharī'a* , argues that it is classically "Islamic law's presumed 'failure' to distinguish between law

[25] Küng, *Islam,* 149.
[26] Küng, *Islam,* 209.

and morality that equipped it with efficient, communally based, socially embedded, bottom-top methods of control that rendered it remarkably efficient in commanding willing obedience and—as one consequence—less coercive than any imperial law."[27] According to Hallaq, it is the fact that *fiqh*'s sources are primarily ethical, moral, and religious that provides its legal authority. For many Muslims, *Sharī'a* is not understood s legalism, but as a guide for a life lived in accordance with the purposes of God, even if that law is complex in its application to individual cases. *Sharī'a* and *fiqh* attempt to give legal expression to the fundamental Muslim interest in "the relationship of human beings to their Creator and thus with their relationship to their fellow human beings."[28] Put differently, *Sharī'a* is binding because it is ethical (in Küng's sense of the term) and not because it is legal (in Küng's sense of the term).

Küng fails to note any such distinction and equates *Sharī'a* exclusively with political enforcement. However, as Talal Asad has argued convincingly, it is only with the rise of the colonial project and the hegemony of the nation-state that *Sharī'a*'s power is made to reside primarily in the coercive enforcement of a state. Prior to its codification in the nineteenth century, *Sharī'a* chiefly functioned in the complex space between rulers (*caliph*), judges (*qadi)*, and religious authorities (*muftī)*. The overwhelmingly "statist perspective" of much current debate about *Sharī'a* (both in Muslim societies and in Western commentary) is in fact a modern phenomenon that results from the rise of nation-states.[29]

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[27] Wael Hallaq, *Sharī'a: Theory, Practice, Transformations* (New York: Cambridge University Press, 2009), 2.

[28] Küng, *Islam,* 149.

[29] Talal Asad, *Formations of the Secular*, 253. "But both secularists and Islamists have taken a strong statist perspective in that both see the *Sharī'a* as 'sacred law' that is presently circumscribe but should in any case by properly administered or further reformed by state

Moreover, most Muslims understand the development of a legal tradition within Islam not as a fall from its original ethical center but as an attempt to remain faithful to it. As the Muslim community encountered new situations and contexts, it sought to engage these realities from a perspective shaped by the Qur'ān and the example of the prophet. Thus it developed a framework and methodology for arriving at legal decisions regarding new cases and situation. What Küng interprets as "dry legal casuistry," many Muslims understand as the means through which human action and decision-making might accord with the broader ethical and moral vision of God.[30] Certainly Küng (alongside many Muslim jurists both classical and contemporary) is correct to worry about too direct an equation with legal formulations of scholars and the will of God. And yet, the quest to live by God's will as the *Sharī'a* expresses it cannot be viewed simply as a legal imposition. By too neatly distinguishing ethics and law, Küng fails to identify the moral power of *Sharī'a* and its ongoing import for Muslim life and ethics.

Liberalism as Premature Conciliation and the Foreclosure of Dialogue

Given his negative reading of classical *Sharī'a*, Küng primarily blames Islam's "medieval legal system" for Muslim's "massive difficulties with modernization."[31] While Küng briefly notes the negative impact that colonialism, the failures of post-colonial nation-states, and the prevalence of dictatorships have had on the Muslim world, he gives more attention to the ways that Islam's traditionalism has inhibited political and social progress. For instance, he interprets any Islamic demands for recognition of

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institutions." As the dissertation will argue, it is by attending to this statist perspective that we might find space to appreciate the ethical and legal achievements of *Sharī'a* and simultaneously reject *Sharī'a* as a law enforced by a nation-state.

[30] Küng, *Islam,* 322.

[31] Küng, *Islam,* 551.

Sharī'a as an expression of theocracy and what he terms "semi-modernity." *Sharī'a* is also the biggest impediment to the adoption of human rights. "The more strongly a religion is legalized and has committed its believers to a narrow web of commandments and prohibitions then, paradoxically, the more intensively it opposes the codification of legal rights."[32] And yet, Küng is adamant that Islam is not trapped by classical *Sharī'a* but has the opportunity to reform and renew itself by adopting the standards of human rights, democracy, and constitutional states. To do this, Islam must recover its ethical and spiritual core and reform and revive its outward practices to accord with the demands of pluralism and personal rights, what he terms a postmodern Islam.

In some ways, Küng's arguments for a "renewed" Islam that is grounded in Qur'ān and *tawḥid* offer important avenues to pursue. He rejects a form of ardent secularism or laicism that would ban religion from public participation. "The West, one-sidedly imprisoned in the modern paradigm, has ignored the depth-dimensions of society and neglected the deepest force in human beings, religious faith."[33] Thus, Küng commends Muslim thinkers such as Hasan Hanafi of Egypt and Abdurraham Wahid of Indonesia as important figures who seek to renew (*tajdīd)* Islam between the polarities of fundamentalism and ardent secularism. Moreover, Küng provides Islamic justifications for the liberal project of individual liberty, freedom of conscience, human rights, and religious toleration.

I do not find it problematic for Küng to engage Muslims and Islamic thought with the questions that modern conceptions of human rights, religious pluralism, and gender equality raise or to resist the state enforcement of religious law. In fact, as I will argue in

[32] Küng, *Islam,* 551.
[33] Küng, *Islam*, 541.

Part III of the dissertation, Christians are right to ask these questions of Muslims, even as Muslims are continually engaged in critical dialogue with their own tradition on these very topics. What is problematic is how Küng employs his commitments to a form of individualistic Enlightenment liberalism and his own methodological assumptions to silence any critical perspective that Islam and *Sharī'a* might offer over and against modernity, nation-states, and the liberal project. Küng is adamant that the best way to accomplish this Islamic renewal is through the adoption of a form of political liberalism. "In the long run, peace and freedom can be built *only* on the basis of constitutional states, tolerance, human rights and ethical standards."[34] Liberalism interpreted through Western nation-states for Küng seems to be the only political configuration that can achieve religious toleration, respect for human dignity, and equality under the law.

His commitment to liberalism largely leads him to ignore the significant number of Muslim thinkers of all political and theological stripes who leverage *Sharī'a* to offer critiques of secularism, individualism, and aspect of political liberalism.[35] Küng's commitment to the end of a shared minimal ethical standard grounded in the Enlightenment values of personal freedom from constraint, non-authoritative religion, and human rights blinds him to Islamic critques of modernity's failings. These values are not necessarily problematic, but the fact that Küng does not address Islamic critiques of their excess is a significant oversight. Thus, it is unclear from what he writes what if anything *Sharī'a* or Islam might bring to bear critically against modernity or secular liberalism. In the end, Küng's arguments for a renewed Islam appear to do little more

[34] Küng, *Islam,* xxv.

[35] See Kate Zebiri, "Muslim Anti-Secularist Discourse in the Context of Muslim-Christian Relations," *Islam and Christian-Muslim Relations*, Vol. 9 1998, 47-64.

than provide an Islamic justification for the values of the Enlightenment. What Küng is unable to recognize adequately are some of the problematic aspects of liberalism that Muslim, Christian, and secular political commentators alike recognize.

The liberal tradition that Küng leverages promised an end to religious sectarianism through a neutral political arena open to all citizens. Central to this tradition are the notion of freedom, rights, and public reason. As Immanuel Kant argues, "all that is needed is freedom. And the freedom in question is the most innocuous form of all—freedom to make public use of one's reason in all matters…. But by public use of one's own reason I mean that use which any one may make use of."[36] Under such a schema, religious discourse and commitments are to be privatized for the sake of the common good. Political secularism, both in its laicism and church-state separation modes, has become the unspoken assumption in the West and the normative aim through which it engages the rest of the world. Even as Küng seeks to engage with and listen to Muslim perspectives, these underlying assumptions still shape his critical views on Islam and his constructive suggestions for its renewal. Thus, Küng's vision of a renewed Islam is often akin to Kantian political liberalism in its rejection of authority, its emphasis on personal freedom and the primacy of the individual. Moreover, his global ethics project still largely depends on the Kantian belief in discovering a distilled ethic that everyone can share everywhere and at all times.

The liberal Kantian political tradition, however, for all its benefits in advancing human dignity and equality across gender, race, and ethnicity, has its limits. First, secularism is not as neutral as it claims to be. It depends on a historically conditioned

[36] Immanuel Kant, *Political Writings,* translated by Hans Siegbert Reiss (New York: Cambridge University Press, 1991), 55.

mode of discourse and reason that privileges certain forms of knowledge, laws, and religious traditions. The public arena is only available to those who are willing and able to adhere to these assumptions. Chief among them is the divisiveness of religion and the need for its privatization. Saba Mahmood, amongst others, points out how this 'neutral' arraignment is in fact deeply theological. "This has often meant that nation-states have had to act as de facto theologians, rendering certain practices and beliefs indifferent to religious doctrine precisely so that these practices can be brought under the domain of civil law."[37] What is often left unexamined by defenders of political liberalism is the centrality of the nation-state in framing what counts as social justice and the common good. Those religious traditions that abjure to such privatization (or religious domestication through state-establishment) liberal defenders render radical, sectarian, and a threat to political unity.[38] This we see in the way that the term Islamist is used to characterize any Muslim in the post-dictatorial Arab world who seeks even some space for *Sharī'a* or Muslim identity in national constitutions. Küng's attempt to distinguish between the ethics of Islam and its law fits Islam within the acceptable categories of this liberal project, even as he largely uncritically aspects the validity of nation states and national law.

Second, the liberal secular tradition is incapable of adequately engaging the normative importance of theology and religion. Dominant forms of ardent liberalism are less open to pluralism and debate than they aspire to be. What many human beings take

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[37] Saba Mahmood, "Secularism, Hermeneutics, and Empire: The Politics of Islamic Reformation" *Public Culture* 18 (2006), 326-327.

[38] As Elizabeth Shakman Hurd argues, "Despite its authoritative power status, however, secularist boundaries between politics and religion exist not as a result of teleology or God's hand or chance, but as a result of historical and political processes that create distinctions and then lean upon these distinctions to maintain power." Elizabeth Shakman Hurd, *The Politics of Secularism in International Relations* (Princeton: Princeton University Press, 2008), 16.

to be the true and good is excluded from the public arena at the outset. The recurring question of *Sharī'a* 's relation to public law is a case in point. Liberals perceive an entire legal and jurisprudential system developed over centuries to be equal to illiberal penal punishments and therefore exclude them from consideration. As Elizabeth Shakman Hurd has argued, "Laicism and Judeo-Christian secularism, and the collective identities in which these traditions are embodied and through which they are expressed, have been consolidated in part through opposition to the idea of anti-modern, anti-Christian, and theocratic Middle East."[39]

By depicting *Sharī'a* as a legalistic and absolutist medieval practice, Küng falls into this trap and thus avoids critical aspects of the complicated task of seeking justice and ethical commitments alongside Islam. For as Michael Barnes rightly points out, inter-religious ethics and common action cannot be proclaimed from on high but must be nurtured "from within the religious tradition."[40] Instead, Küng begins with his global ethic project and seeks to retrofit Islamic ethics. Furthermore by critiquing law and *Sharī'a* wholesale, Küng misses the opportunity to engage with Muslims who wish to see the *Sharī'a* and *fiqh* revived, renewed, and reformed in light of contemporary life, ethics, and human rights law. Might not *Sharī'a 's* accounts of submission to God, worship and duties to one another, banking laws, and transnational justice offer a critical edge over and against some aspects and corruptions of modernity, the overly individualistic use of human rights rhetoric, and the rampant global capitalism of late modernity? If the best aims of Küng are to be advanced, then political theology must go through, and not avoid,

[39] Elizabeth Shakman Hurd, *The Politics of Secularism in International Relations,* 49.

[40] Michael Barnes, *Theology and the Dialogue of the Religions* (New York: Cambridge University Press, 2002), 19.

the questions the normative claims of particular religious communities raise.[41] Despite its promise, Küng's work alone is unfit to meet the challenges facing global politics and Muslim-Christian relations. By prematurely foreclosing debates about *Sharī'a* and public law through the conciliation offered by political liberalism, Küng's global ethic project does not significantly address these issues and thus his project concludes with little more than a religiously sanctioned model of Kantian political liberalism.

Paul Knitter: Another Model of Political Conciliation

Küng is not the only scholar to evade *Sharī'a* through recourse to a pre-existing political commitment. A number of other recent works on Muslim-Christian dialogue and on the theology of religious pluralism more broadly do the same. Chief among them is Paul Knitter's and his argument for grounding interreligious encounter in practical reason and liberation instead of metaphysics and Christology. He claims that liberation theology and the preferential option for the poor should be both the proper aim of and context for interreligious dialogue. Christian engagement with other religious traditions should not be focused on debates about Christological uniqueness or if and how non-Christians can be saved, insists Knitter.

> The primary concern of a soteriocentric liberation theology of religions is not 'right belief' about the uniqueness of Christ, but the "right practice," with other religions, of furthering the kingdom and its *Soteria*. Clarity about whether and how Christ is one lord and savior, as well as clarity about any other doctrine,

[41] Nader Hashemi has correctly pointed out, "In societies where religion is a marker or identity, the road to liberal democracy…cannot avoid passing through the gates of religious politics, *Islam, Secularism, and Liberal Democracy: Toward a Democratic Theory for Muslim Societies* (New York, NY: Oxford University Press, 2009), 2.

> may be important, but it is subordinate to carrying out the preferential option for the poor and nonpersons.[42]

Justice should take pride of place in interreligious encounter. Knitter's 2009 speech on Muslim-Christian relations at al-Azhar in Cairo, one of the foremost Sunni educational centers in the world, clearly expresses this approach. The lecture begins by quoting affirmatively Küng's axiom on the import of religious dialogue for world peace. If this maxim is important for all religions, Knitter argues that it is urgently important for Muslim-Christian relations given their historical antagonism. "What is in general true for much of the history of our two great religious traditions is even more dangerously true of our present historical situation, especially since the event of September 11, 2001 and, just as much, since the events that have followed 9/11."[43] Certainly there are a number of social, economic, cultural, and political reasons for Christian and Muslim hostility. However, Knitter's lecture focuses on the "theological reasons that often form the basis of, or the justification for, hostile, hateful attitudes that Muslims and Christians have toward each other."[44]

Knitter claims that the chief theological source of this rivalry is supersessionism and how its logic leverages either Christology or prophetology to marginalize the other religious community. To shift attention away from these competitive aspects of the two traditions, Knitter argues that Christianity and Islam's shared commitment to the oneness of God opens up possibilities for affirming diversity and justice. The one God of both

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[42] Paul Knitter, "Toward a Liberation Theology of Religions" in John Hick and Paul Knitter (eds), *The Myth of Christian Uniqueness:. Toward a Pluralistic Theology of Religions* (Maryknoll: Orbis Books, 1989), 192.

[43] Paul Knitter, "Islam and Christianity: Sibling Rivalries and Sibling Possibilities" *Crosscurrents*, 2009, 554.

[44] Ibid., 555.

Christian and Muslim confession creates the world and calls diversity good. Most important for Knitter, the one God is also a God of justice who demands that God's diverse creation live in harmony, peace, and justice. Since this is not the case, God calls God's people to care for the impoverished, the widowed, and the marginalized. According to Knitter, "this is an area in which their differences are minimal and their voices blend in harmony"[45] and thus "justice, and action for justice, can provide the common ground, the arena, the starting point for Christian-Muslim dialogue and collaboration."[46] Claims about the finality of Jesus or Muḥammad distract from their shared message of justice and their commitment to challenging the principalities and powers of their day on behalf of the marginalized. Knitter thus advocates that Christians and Muslims take up the example of their seminal figures and "act together in a solidarity of praxis for justice."[47]

Certainly Knitter is correct to highlight the important place that justice plays in both Islam and Christianity. He also emphasizes how justice is ultimately rooted in theological claims about God and humanity as well as the historical examples of Jesus and Muḥammad. However, this later claim is insufficiently attentive to the historical differences in how Christians and Muslims have perceived justice and power at various times and places. Most specifically, *Sharī'a* is conspicuous by its absence. Knitter claims that, "The God of justice demands that action be taken, laws be passed, exploitative and oppressive governments be challenged and removed."[48] Most strands of both traditions can affirm this. The challenge, of course, arises in the diverse ways that each tradition

[45] Ibid., 567.
[46] Knitter, "Islam and Christianity," 568.
[47] Ibid.
[48] Ibid.

understands justice and how justice is to be implemented by human governments. The question of the relationship between the state and *Sharī'a* is a case in point. Does God's call for justice demand that the state recognize *Sharī'a?* Is political liberalism the best arrangement for achieving the demands of justice? Might religious communities better accomplish justice by eschewing the power of the state? Knitter brushes these challenges aside, arguing that Christianity and Islam offer "distinct but complementary differences" in their approach to power. Thus, Knitter's understanding of justice and his affirmation of progress, tolerance, and liberation largely float above the complicated fray of seeking these goods. He also fails to understand how deeply theological and scriptural commitments shape concepts of power, justice, and peace. Just as Küng employs the notion of ethics to evade *Sharī'a*, Knitter invokes justice and liberation to do likewise. Justice and solidarity on behalf of the poor may be a proper arena for Muslim-Christian relations, but if it is, then Christian-Muslim dialogue must engage more fully in the debates surrounding the meaning of justice, law, and *Sharī'a* than Knitter allows.

Models of Confrontation: Milbank

John Milbank: Against Dialogue

John Milbank presents a searing critique of Küng's and Knitter's arguments that interreligious dialogue is fundamental to securing truth, justice, respect for difference, and international peace. In his 1990 essay, "The End of Dialogue," Milbank claims that interreligious dialogue in general and the focus on practical reason and justice more specifically do not result in genuine conversation across cultures. Practical reason, like theoretical reason, depends on commitments to Western conceptions that emerge from

the interaction between Greek thought and the Jewish and Christian traditions. Ironically, then, pluralism results in the "total obliteration of other cultures by Western norms and categories, with their freight of Christian influence."[49] Despite their claims to the contrary, Milbank argues that pluralist theologies of religion, either in their soteriological or liberationist iterations, do not deliver on their promises of respect for difference and appreciation of the other.

Milbank traces this failure to pluralists' underlying assumptions about the nature of religion, practice, and justice. First, he challenges the pluralist argument that in order for religious dialogue to occur, we must assume the existence of a genus called religion and that religions are various species of this genus. By entering into dialogue with such a conception, pluralists unwittingly bring the baggage of Enlightenment views on the nature of religion, namely that it is primarily concerned with the spiritual, ritualistic, and personal. Non-Western religious phenomena are then interpreted through "categories that compromise Western notions of what constitutes religious thought and practice."[50] This dynamic is apparent in the way that classic thinking about soteriology and religious others assumes certain Christian perspectives about the world's end and the nature of the divine. One cannot overcome these Western ideas simply through recourse to the Real. Teleology turns out to be as complicated and divisive as Christology.

A key reason that proponents of the pluralist-justice solution to religious diversity have shifted their focus to concerns about common action is to skirt these problems and the challenges of Christology and soteriology for dialogue. Justice becomes the proper

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[49] John Milbank, *The Future of Love: Essays in Political Theology* (Eugene: Cascade Books, 2009), 280.

[50] Milbank, *The Future of Love*, 282.

arena of dialogue and action in which members of various religious communities can come together and work for the good of the world irrespective of theological differences. Milbank, however, argues that Western and Christian conceptions influence the focus on justice, social formation, and praxis just as as either Christology or soteriology. He rightly points out, "Religions have differed over political and social practice quite as much as anything else."[51] *Sharī'a* is one particularly obvious example. "The claim to a space for the full exercise of Islamic practice tests the bounds of—and perhaps reveals the spuriousness of—the crucial Western commitment to religious toleration."[52]

The turn to justice and social goods, then, is also a move into hotly debated terrain; terrain that, despite protests from the post-Enlightenment West, is also religious. Social formation of communities and their conceptions of justice and equality are part and parcel of their 'religious' commitments. The neat divisions between religion, as the realm of personal piety or ritual action, and politics, the arena of justice and law, simply do not hold for the vast majority of human history. To assume they do, and that, for instance, Christology can somehow be divorced from how Christians understand justice or that Muslims might conceive of a notion of justice or ethics apart from the long history of *fiqh,* is untenable and naïve. To advocate for shared commitments to justice but largely ignore these theological, legal, and political differences, is only possible if one adopts a Western vision of the separation of religion and politics. Rather than view religions as practices that fluidly cross the dualisms of public/private and politics/religion, the pluralist-justice solution takes up these dualisms. Religions, then, are seen as ritual or private inspiration for public action, not holistic modes of being in the world. In the

[51] Ibid., 289.
[52] Milbank, *The Future of Love,* 292.

process, the religions' understandings of justice and equality are largely understood to be coterminous with their modern and liberal definitions. The differences between religions, especially their distinct notions of community, justice, public action, and law, people solve through "ascription to modern liberal Western values," not genuine debate and dialogue.[53] In the end, Milbank argues that the pluralist-justice solution crashes back on the shores of the Western presuppositions that it sought to overcome. Put simply, religions differ significantly in their ideas of what constitutes justice or equality, and thus, justice will not provide a clear path to interreligious consensus. To turn to political action as a solution to the challenge of religious pluralism without addressing the very nature of the political and the secular is to advocate again for a solution that is rooted in a distinctly Western vision of the world.

Milbank's critique of interreligious dialogue is intertwined with his (in)famous deconstruction of the secular and its supposed neutrality in *Theology and Social Theory*, published the same year as the "End of Dialogue." According to Milbank, the secular is not a neutral and rational space open to all, but a historically constructed practice of power maintained by violence and ascription to the idols of the Enlightenment. At its core, the secular is a theological concept, albeit a heterodox one, that demands critique. Milbank's "onslaught" against "secular reason" culminates in a Christian alternative to the violence and hegemony of modernity.[54] His counter proposal—better, his counter practice—of the *ecclesia* is grounded in a participatory metaphysics and ontology of peace. Milbank claims that such a counter narrative, a postmodern Christian perspective

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[53] Milbank, "The End of Dialogue," 280.

[54] John Milbank, *Theology and Social Theory: Beyond Secular Reason*, 2nd Edition (Malden: Blackwell, 2006), 440.

inflected through its Aristotelian and Neo-Platonic heritage, is the best (and possibly only) way to account peacefully for harmony in difference. As he writes in the 'End of Dialogue,' "A postmodern position that respects otherness and locality, and yet at the same time still seeks the goals of justice, peace, and reconciliation, can only, in fact, be a Christian (or possibly a Jewish) position."[55] It is the Church that gives space for the genuine exercise of difference and particularity and thus offers a way out of the violence inherent in the secular. His response to the challenge of religious pluralism is as provocative as his critique: replace dialogue with mutual suspicion and commitment to Christian particularity and thereby engage in true conversation across cultures beyond the bounds of liberal modernity.

Islam as Case Study of Milbank's Cultural Confrontation Model

Even if Milbank's critique of the pluralist-justice solution's underlying Western political assumptions is on target, it remains an open question whether or not his proposed response of mutual suspicion and conversation provides a more frank and honest engagement with Islam. In a recent essay engaging Rowan Williams's *Sharī'a* lecture, Milbank proposes that "only a hegemonically Christian outlook, and not a secular one, can accord to Islam respect as *Islam*…A Christian polity cannot go so far as adopting Islam's own standards…but a renewed Christendom is, I believe, far better for Islam than a secular polity."[56] Does this approach prove salutary? Is Milbank better positioned to understand, appreciate, and also critique Islam in and through his own commitment to

[55] John Milbank, *The Future of Love,* 281.

[56] John Milbank, "Sharī'a and the True Basis of Group Rights," *Sharī'a in the West*, edited by Rex Adhar, (New York: Oxford University Press, 2011),

Christian particularity? Or does his Christian particularity—like the liberalism of Küng—prematurely foreclosure dialogue and debate?

While Milbank's thought has garnered much debate, particularly around his theories of the secular and his constructive theo-political responses, what has gone largely uncommented on is the increasing role that Islam plays as the foil to his own political theology and Christendom ecclesiology. Throughout his 1990 essay, Milbank invokes Islam as the example *par excellence* of the impossibility of religious dialogue grounded in practical reason. While this example proved profitable for that argument, his more recent engagement with Islam has been increasingly antagonistic and simplistic. This confrontational approach leads Milbank to numerous misunderstandings about *Sharī'a* and prejudices him against constructive engagement with Islam. These two issues are interwoven, for it is primarily *Sharī'a*—in all its complexity and complications—that serves as the site and source for Muslim critiques of the secular. By misunderstanding *Sharī'a,* Milbank ignores the very discursive space that might offer a critical and constructive Islamic conversation partner for Milbank's own theo-political project.

Following the long history of Christian polemics against *Sharī'a*, Milbank describes Islam as a religion of legalism. In contradistinction to Christianity and Judaism, Islam is grounded in "obedience or fearful piety" instead of trust.[57] Unlike the God of Jews and Christians, Islam demands obedience and submission instead of trust, covenantal partnership, or participation in the divine life. While there are salutary distinctions to be made between the central focus on trust or faith in Christianity and Islam's focus on submission, Milbank's assertions do not probe these differences

[57] John Milbank, "*Sharī'a* and the True Basis of Group Rights," 139.

charitably or consider possibilities for increased or critical attention to obedience in the Christian tradition. Instead, Milbank asserts that Islam's understanding of obedience and submission is self-referentially problematic in so far as it encourages moral subservience and political intolerance.

In Milbank's reading, Islam demands strict obedience to a divine law, which is a form of human submission that quells moral inquiry and does not adequately engage reason. God commands apart and beyond human reason. Law, at least *Sharī'*a, is made out to be antithetical to reason. Echoing the concerns Benedict XVI raised in his Regensburg address, Milbank writes, "Strict Sunni Islam knows only an expression of sacrally-backed absolute sovereignty supplementing non-negotiable *sharia* law."[58] While this claim accurately describes certain Islamic movements such as those that simply proclaim that 'Islam is the Answer,' Milbank's view does not capture the whole of Sunni Islam or the primary ways that *Sharī'a* has been understood and practiced. One problem of Milbank's argument is his identification of a renewal movement that arose in the nineteenth century, Wahabbism and Salafism, as the quintessential example of Sunni legal practices. He defines the Wahhabi and their rejection of much of the history of *fiqh,* as quintessentially Muslim. Without denying their appeal amongst a sizable minority of modern-day Muslims, these 'strict' versions of Sunni Islam are not indicative of the broader tradition of *fiqh*.[59]

For instance, the classical schools of thought did not define *Sharī'a* as clear or non-negotiable on all matters. Certainly there were clear guidelines—to pray, to fast, to

[58] John Milbank, *The Future of Love,* 232.

[59] Interestingly, they do resemble the aspects of Protestant Christianity against which Milbank most protests.

give *zakat*—that were in some sense imposed and non-negotiable. Still, in addition the tradition developed legal categories that distinguished not only between what was *halal* (lawful) and *haram* (unlawful), but also between more ambiguous moral actions. Thus some activities, such as praying and fasting, are called duties, while others are simply deemed beneficial. Similarly some acts are forbidden, such as eating pork, while others are viewed as either neutral or frowned upon. This history of *fiqh* and the diversity of legal opinions within the four classical schools illustrates that many of these decisions are neither clear nor settled. Far from a simple fideism to a revealed law, *fiqh* exhibits a diverse range of moral reasoning and debate. In the classical schools of Islam, *uṣūl al-fiqh* described the various ways that one might move from the revealed scripture and example of the prophet to other forms of moral decision. These practices were not and are not simply sacral law, but complex forms of human reasoning and debate. For instance, Islam recognizes the importance of consensus (*'ijmā*), legal reasoning (*ijtihād*), the common or public good (*maṣlaḥa*), and the higher objectives of the law (*maqaṣid)* as central to the task of making moral decisions in the world. This is not blind obedience to a capricious deity, but complex moral reflection that engages revelation, contemporary circumstances, and custom. For while *Sharī'a* remains a contentious and complicated issue today--particularly as it relates to both nation-states and modes of political Islam that simply trumpet *Sharī'a* as the solution --the classical schools of law (*madhhab*) were sites of intense reflection around the intersection of revelation and reason. *Fiqh*, at least classically, is not the quintessential example of divine voluntarism, but the discursive space in which Muslims have interrogated the relationship between divine revelation, reason, custom, human, and societal needs.

While Christianity may choose to refuse a central theo-ethical importance of law—in favor of the freedom of grace given in Christ—it should nevertheless be able to recognize the compelling importance of law and submission to another religious tradition. If Milbank's model of conversation and understanding were fully operative, he might have been able to refuse *Sharī'a*, or *halakah* for that matter, even as he understood its protest against the danger of Christian antinomianism. Instead, as Peter Ochs notes about Milbank's thinking, "He argues against the reduction of religious thinking to universal concepts but then makes universal claims on the basis of his religious thinking."[60] In other words, Milbank's Christian hegemony is not a way to understand and evaluate the particularism of another tradition, but a criterion by which all other modes of thought must be judged.

In addition to seeing Islam as primarily focused on blind obedience, Milbank also judges Islam and Islamic polity to be less open to religious difference than Christianity. "It is rather *Christianity*, and to a degree Judaism, which developed a framework—corporatist constitutionalism—that is able to comprehend 'the other.' It is certainly *not* Islam, in its historically dominant varieties."[61] Like many of Milbank's assertions, it is difficult to discern the precise argument and support for this claim. On the one hand, Europe's constitutional heritage, if it can be convincingly connected to Christianity, has created space for the other in the public sphere. However, Christianity's long and lamentable history of anti-Semitism, which can be seen in the biblical texts themselves and lingers in Christian theologians throughout the centuries, is a clear counter testimony

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[60] Peter Ochs, *Another Reformation: Postliberal Christianity and the Jews* (Grand Rapids: Baker Academic, 2011), 242.

[61] John Milbank, "*Sharī'a* and the True Basis of Group Rights," 147.

to Milbank's arguments. In contrast, classical Islamic polity did provide explicit space—albeit limited ones—for the free practice of religion by the *'ahl al-kitab* (people of the book). The legal category of *dhimmi*, while problematic in comparison to modern constitutional states, did offer religiously based arguments for the protection and freedom of certain religious communities. Jews and Christians were given protection and some limited freedom to worship in exchange for the *jiza* tax. Scholars largely agree that it was Islam and not Christianity in its Western forms that was considered more amenable to religious and political difference until at least the seventeenth century. In drawing attention to this I am not attempting to provide what Milbank has called "a scholarly inaccurate 'religious studies' view of Islamic history" that glosses over or sanitizes the genuine problems of violence, colonialism, and patriarchy. Instead, I am demanding that Milbank not gloss over Christianity's problems. Here it would appear that the secular—at least in some form—is the space for recognizing the other and not some form of pure medieval Christianity per se. However, instead of interrogating this possibility and thereby nuancing his earlier arguments, Milbank offers a broader ontological argument for Christianity's eternal openness to difference. Now Milbank is certainly correct that present day Christianity offers more freedom of belief and respect for religious others than modern Islam, as legally defined in the modern states of Malaysia, Pakistan, Turkey, and Saudi Arabia. This present day reality, however, does not justify a broader ontological claim about the essence of either religious tradition.[62]

[62] In addition, there is no recognition whatsoever that colonialism might be related to the ruptures in *Sharī'a* or in the rise of the so-called problem of modern Islam. In fact, Milbank suggest that it was precisely the opposite; colonialism was too short and limited to reshape Islam. He in fact, in full bellicose form, laments the "premature collapse of the Western colonial empires." Thus the very secular project of the modern period that he laments in *Theology and*

Part of Milbank's failure to engage fairly with Islam might be tied to his own disdain for Protestantism.[63] Much of what he critiques in Islam—its focus on scriptural texts, its lack of hierarchy, its ambivalence toward creaturely meditation, and its skepticism toward speculative theology—echoes his concerns about Protestantism. Moreover, Milbank's suggestions for a renewed Islam look curiously like his suggestions for a renewed Christianity. "Probably it is only a return of mystical and esoteric sensibilities within Islam which will allow the Mosque-centered community to take on a collectivist 'church'-like character."[64] He perceives Shi'a Islam and mystical Sufism refracted through Platonism to be the way forward for Muslims. Why? Is this because Shi'aism in Iran has proved more hospitable to otherness than Sunni Islam in Saudi Arabia? No. Rather, it seems that Shi'aism and Sufism most clearly resemble Milbank's own Christian philosophical vision. In the end, Milbank's method does no better in respecting Islam as Islam than Küng's liberal approach. Like Küng, Milbank's approach to *Sharī'a* simply does not mesh with Muslim's own understanding or the complex history of *Sharī'a* and *fiqh*.

Moreover, by misconstruing many elements of Islam and further fueling crass visions of *Sharī'a*, Milbank overlooks genuine opportunity for shared constructive engagement around the moral challenges of legal positivism, secularism, and their relationship to religious communities. One example: Milbank's arguments in *Theology and Social Theory* concerning the secular were largely novel in the West. However, his appraisal of secularism and his vision of a religious community that stands over and

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Social Theory is, when expressed through the European colonial project, curiously championed as a counterpoint to modern Islamic critiques of the secular.

[63] Similarly, Luther tends to depict Islam as quintessentially Catholic.

[64] John Milbank, "*Sharī'a* and the True Basis of Group Rights," 139.

against modernity resonate with earlier Islamic thinkers. In fact, Milbank's rhetorical strategy shares a structural similarity to a number of nineteenth- and twentieth-century Muslim figures. For instance, Muḥammad 'Abduh's *Risalat at-Tawhid* and Ali Shariati's *Marxism and Other Western Fallacies* both couple incisive critiques of Western political, economic and social practices with a proposal that a properly conceived account of Islam and the *umma* are the most compelling solutions to these limitations. Moreover, they share with Milbank a desire to balance aspects of personal freedom with a tentative appreciation of Marxist focus on society. At times, Milbank gestures towards something like a comparative political theology that might draw his own project into conversation with Islamic and Jewish thought. For instance, he writes:

> Both empty secular power and arbitrary theocratic power, in their secret complicity" show us no way forward. Neither enlightenment nor 'fundamentalism' can assist us in our new plight. Instead we need to consider again the biblical and Platonic-Aristotelian metaphysical legacy common to Christianity, Judaism, and Islam. We should ponder ways in which this legacy provides us with a certain area of common vision and practice, including economic practice, while at the same time respecting social and cultural spaces for exercised difference.[65]

In that same essay, Milbank provocatively and constructively notes, although only in passing, the possible similarities between the West's secular state and modern Islamic forms of politics exemplified in the Salafi and Wahhabi movements. Here he touches on a key question about the moral sources of law, the power of the state, and the possibility of mutual engagement. However, Milbank does not exploit these overlapping interests to construct a political theology against ardent secularism in partnership with Islam (or Judaism), nor does he allow his critique of the secular to be tempered in the face of Islamism's calls for state-enforced law.

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[65] John Milbank, *The Future of Love,* 240.

Instead, his political theology, despite claims to an original ontological peace, is one in perpetual competition, be it with the secular or Islam.[66] As he writes in *The Future of Love,* "There are now three crucial global forces in the world: Capitalist rationality, Islam, and Christianity. And of the latter two, the global reach and universalism of Christianity is far more serious and far more likely to prevail in the long term."[67] This confrontational and stereotypical approach to Islam is scattered through most of his other writings about Islam. "The universalist thrust of Christianity is more extreme than that of Judaism and Islam, besides being more complex." [68] Given Milbank's insistence in *Theology and Social Theory* that ecclesiology must be rooted in attention to the actual lived practice and history of the Church, it is difficult to see how such claims might be sustained. Beyond the rhetorical flourish of these phrases, Milbank offers little to no evidence to support their pronouncements. In fact, the very public presence of Islam in the form of protest movements, religiously backed social organizations, and/or political parties, and the formation of distinctly Islamic forms of banking would seem to suggest that Islam is at least as serious about countering globalization, if not more so, than Christianity.

Milbank's increasingly conservative bent stems partly from his tendency to romanticize a past Christendom, one whose enemies are first secularism (which he at least deeply engages) and now Islam (which he engages only cursorily and based on stereotypes). While Milbank's thought rightly calls attention to the holistic vision of Christianity as a response to the shortcomings of ardent secularism and the banality of

[66] Milbank does give various nods to Islam and Judaism's potential to impact Christianity positively. For instance, he argues that Christianity "can perhaps learn from the other two monotheisms the importance of a more integrated culture."

[67] John Milbank, *The Future of Love*, xi.

[68] John Milbank, *The Future of Love*, 318.

late modern politics, his positive reconstruction depends on a problematic vision of Christianity and culture. He ties the church and the gospel far too strongly to its Greek philosophical heritage and the ecclesial sacramental hierarchy developed in the patristic and medieval period. Christianity and the Church are not only accidentally Western and Greek, but essentially so. Thus, to defend Christianity is to defend the West, at least it its classical and medieval forms before nominalism, Protestantism, and modernity corrupted it. Given this, it is little wonder that eventually part of Milbank's task includes rendering Islam as Christendom's eternal rival, even as he largely neglects the ways that aspects of Greek philosophy was mediated to the West through Islam and Arabic.[69] With language harkening back to earlier fears about Ottoman advances, Milbank writes, "The West must also properly guard its own religious-political legacy against the various modes of Islamic territorial incursion."[70] This statement begs numerous questions and seemingly implies that migration, multiculturalism, and even Muslim citizens in the West are somehow akin to the Ottoman advance on Vienna. In the end, Milbank's hegemonic Christian outlook can only appreciate Islam as Islam if Islam remains exclusively a rival to Christianity; as such, his commitment to suspicion overwhelms his ability to engage in conversation and thus opportunities for critical conversation concerning law, secular, and power are lost.

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[69] For a more promising engagement with Greek philosophy and Jewish-Christian-Muslim relations, see David B. Burrell, *Towards a Jewish-Christian-Muslim Theology* (Malden: Blackwell Publishing, 2011), *Faith and Freedom: An Interfaith Perspective* (Malden: Blackwell Publishing, 2004) and *Knowing the Unknowable God: Ibn-Sina, Maimonides, Aquinas* (South Bend: Notre Dame University Press, 1986). For more on the relationship between Greek Philosophy, Islam, and Arab Christianity, see Sidney Griffith, *The Church in the Shadow of the Mosque* (Princeton: Princeton University Press, 2008), ch. 5.

[70] John Milbank, *The Future of Love,* 232.

Conclusion

Neither conciliation nor confrontation proves wholly satisfactory since both identify *Sharī'a* exclusively with legalism and state-sanctioned theocracy. Both approaches circumvent the concerns, challenges, and perspectives of this moral-legal tradition and thus genuine dialogue, discourse, and debate are stifled. In the case of Küng, his liberal tradition recognizes the dangers of religious particularity, especially when this intersects with political power. Thus he asks Islam what he also demands of Judaism and Christianity: a toning down of particular claims in the pursuit of the common good and mutual understanding. Rapprochement replaces rivalry. And yet in the process Küng unwittingly enshrines political liberalism, the modern nation-state, and an uncritical acceptance of the Enlightenment project as the neutral ground of debate. As Milbank, and a host of others with him, have shown, this is no neutral ground. On the other hand, Milbank is better positioned to recognize the complex heritage of the secular traditions and the problems that it presents for religious communities. However his turn to Christian particularism results in a Christian exceptionalism that proves no more capable of engaging the Islamic tradition with both criticism and charity.

If the best aims of liberal secularism—the equality and dignity of all persons—are to be advanced then politics must go through, and not avoid, the normative claims of particular religious communities.[71] Despite its promise of equality and openness, liberal secularism alone is unfit to meet the challenges facing global politics. What is needed is a middle way that recognizes the need to engage in and through our particularism and thick

[71] Nader Hashemi has correctly pointed out, "In societies where religion is a marker or identity, the road to liberal democracy…cannot avoid passing through the gates of religious politics, *Islam, Secularism, and Liberal Democracy: Toward a Democratic Theory for Muslim Societies* (New York, NY: Oxford Press, 2009), 2.

self-understandings, but that also recognizes both the genuine import and problematic shortcomings of aspects of the secular political tradition and its recognition of plurality and tolerance. What might it look like to engage with Islamic perspectives on ethics and politics in and through *Sharī'a* and *fiqh* instead of avoiding them? What new challenges might Muslims' claims present that demand both rethinking Christian views of the law and developing a more nuanced position on the strengths and weaknesses of the secular through this conversation? Might such an open dialogue create the space to recognize the real moral and legal value of *Sharī'a*?

This dissertation offers a Christian theological response to William Connolly's question of how to "rewrite secularism to pursue an ethos of engagement among a plurality of controversial metaphysical perspectives, including, for starters, Christian and other monotheistic perspectives, secular thought, asecular, nontheistic perspectives."[72] I argue that what is needed in this challenging context is a humble, prophetic, and politically pluralistic theology that seeks out areas of overlap and shared concern, instead of exclusively noting rivalry and conflict. As Wael Hallaq has suggested in his important new book, *The Impossible State,* such exchange needs to begin not from the myths of the nation-state or needs of *Realpolitik*, but by reinvigorating the moral center of law, politics, and religious communities.[73] Yet to advance such a project, we must reject the Orientalism and Islamophobia that too often mark Western political and theological thinking—be it laïcité, church-state relations, or the Christendom model presented by Radical Orthodoxy.

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[72] William E. Connolly, *Why I am Not a Secularist* (Minneapolis: University of Minnesota Press, 1999), 39.

[73] Wael B. Hallaq, *The Impossible State* (New York, NY: Columbia University Press, 2013).

Chapter 3

"That Hideous Schizophrenia:" A Genealogy of Muslim Critiques of Christian Theologies of the Law

Any honest dialogue depends on the ability to listen to the other. As the previous chapter illustrated, recent Western Christian theologians have largely failed to listen to the constellations of ethical and political claims that emerge from and pass through *fiqh*. Christian theology thus has not understood *Sharī'as* importance for the religious and ethical life of Muslims and therefore truly has not heard, let alone constructively responded to, the challenges it raises for both Christian political theology and for political secularism. Until Islamic theology, law, and ethics are understood on their own terms, Christian responses will continue to miss the mark.

This chapter is given over to the act of listening. To do so, I offer an intellectual genealogy of Muslim critiques of Christianity's accounts of law and their relation to the emergence of political secularism. I trace shifts and developments in Muslim critiques of Christian views of law from their initial focus on *taḥrīf* (corruption of scripture) to modern and contemporary arguments that connect the lack of a Christian *Sharī'a* with the rise of secularism in the West. In this, Ibn Taymiyya proves to be pivotal, combining early critiques of *taḥrīf* and the negative influences of Paul with an emerging legal-political critique of Christian power. With the advent of colonialism, this legal-political critique of Christianity is heightened and expanded into a critique of Christianity's anemic response to secularism and Marxism.

The chapter attempts to broaden contemporary discussions concerning public law and *Sharī'a* in a more expansive space beyond political theory. As I argued in the

introduction, there are vital and important conversations to be had concerning legal pluralism, and the capacity of liberal constitutional democracies in Europe and North America to accommodate demands for Islamic courts. However, this project's focus is not on these practical-political questions, but on the theo-political and theo-legal debates that often go on behind these debates. In fact, I argue that situating Muslim-Christian theo-political dialogue within broader theologies of revelation and community offers a better understanding of Islam and its own accounts of legal and political life. This serves to further the argument of Chapter 2: to demand that Muslims privatize their claims about *Sharī'a* before entering into theo-political dialogue is to evade the very challenges that Muslims thinkers and theo-political practice raise. Second, the chapter enhances understandings of what Kate Zebiri terms "Muslim anti-secularist discourse" by locating these critiques within a longer tradition of interfaith debate—or better, polemic— on the law.[1]

Placing these modern critiques of the secular within the much longer tradition of Muslim-Christian dialogue and polemic strengthens and extends Zebiri's argument and also enriches the burgeoning studies of Muslim responses to secularism. Together, these ideas demonstrate that Muslim critiques of the secular cannot be understood simply through an essentialist view of religion (i.e. no distinction between religion and politics) or imperialism (i.e., secularism is equated with colonialism and authoritarianism). Instead, anti-secularist thinking within Islam is best interpreted within a complex web of intellectual, theological, legal, political, and social forces. One of these (or so the genealogy offered here contends) is the discursive practice of distinguishing Islam from

[1] Kate Zebiri, "Muslim Anti-Secularist Discourse in the Context of Muslim-Christian Relations," Islam and Christian-Muslim Relations, Vol. 9 (1998), 47-64.

Christianity by way of *taḥrīf* and *Sharī'a*. Finally, the chapter considers what concrete challenges the Muslim thinkers who mount this critique present to a contemporary Christian political theology.

Christian Accounts of the Law in Qur'ānic Perspective

The Qur'ānic Grounding for Muslim Discussions of Christianity and Law

Muslims consider the Qur'ān to be the eternal word of God, the "great criterion (*furqān*)" by which to judge the world and religious others.[2] Before turning to classic, modern, and contemporary Muslim critiques of Christian views of law, it is wise to examine briefly the scriptural warrants that inform these thinkers and their claims.[3] Convictions about prophethood, the unchanging nature of divine law (although Islamic thought highlights that the human application and understanding of this immutable law is far from settled or static), and the ambiguity of Christian and Jewish communities shape Muslim views of Christianity. First among these convictions is the Qur'ān's affirmation of the genuine divine origin of the messages of Moses (*Mūsa*) and Jesus (*'Issa*).[4] Both are considered to be prophets (*nabī)* and messengers (*rasūl*) of God who have revealed a divine book (*kitāb*) to their people. The Torah and the Gospel *(Injīl)* "were sent down by God" (*Sura 'Āli 'Imrān*/3:3) and provide authentic access to the divine will.[5] As *Sura al-*

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[2] Paul L. Heck, *Common Ground: Islam, Christianity and Religious Pluralism* (Washington D.C.: Georgetown University Press, 2009), 9.

[3] For a chapter length treatment, see Clinton Bennett, *Understanding Christian-Muslim Relations*, ch. 2. For an important book-length treatment on the positive Qur'ānic texts concerning Christians and the subsequent history of interpretation of these texts see, Jane Dammen McAuliffe, *Qur'rānic Christians: An Analysis of Classical and Modern Exegesis* (New York: Cambridge University Press, 1991).

[4] Jesus is also identified as Messiah (*al-Masīḥ*), Word (*Kalima)*, and sign (*'aya*).

[5] As will become apparent in this section, the Qur'ān's use of the term *Injīl* is not necessarily equivalent to either the Christian gospel or the New Testament Gospels.

Mā'idah states, "We sent down the Torah, in which there was guidance and light" (5:44) and "following in their footsteps, Jesus, the son of Mary, confirming that which came before him in the Torah; and We gave him the Gospel, in which there was guidance and light and confirming that which preceded it of the Torah as guidance and instruction for the righteous" (5:46). Given these positive affirmations of Moses and the Torah and Jesus and the gospel, Muslims are scripturally compelled to affirm aspects of Judaism and Christianity. As Mahmoud Ayoub notes, "the Qur'ān commands the Muslim to accept the people of the Book in the 'fairest dialogue,' and to say to them, 'we accept that which was sent down to us and that which was sent down to you. Our God and your God is one, and to Him we are submitters (*muslimūn)*' (29:46)."[6]

While this and other chapters (*suwār*) affirm the import of the Torah and the gospel, Muslim understanding of these texts differs significantly from Christian (and Jewish) understanding. According to the Qur'ān, the message that Moses and Jesus communicate is essentially the same as that of the others. God, who is eternal and unchanging, wills all of humanity to know the unity of God, worship God alone, live lives of submission and obedience to God's law, uphold social justice, and believe in the Day of Judgment. Prophets, from Adam and Abraham to John and Jesus, each call humanity back to this eternal truth. As a Hadith reports, "O, assembly of prophets, our faith is one." For Islam, revelation is primarily repetitive.[7]

Thus, the content of the Torah and the gospel should be consistent with what is revealed in the Qur'ān. The Qur'ān does overlap and resonate with aspects of both the

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[6] Mahmoud Ayoub, *A Muslim View of Christianity: Essays on Dialogue*, ed. Ifran A. Omar (Maryknoll: Orbis Books, 2007), 3.

[7] For more on how this impacts the differences between Christian and Islamic views on revelation, see Kate Zebiri, *Muslims and Christians, Face to Face* (Oxford: Oxford One, 1997), 9-11.

Torah and gospel, including accounts of Adam, Abraham, Moses, and Jesus. However, it also departs significantly on a number of vital components of these accounts. For instance, the account of Ibrahim's sacrifice of his first son leaves the identity of the boy unnamed, even as later readers identify him as Ishmael not Isaac (a fact that points to some of the problems that come with an appeal to the "Abrahamic religions" as a context for possible Jewish-Christian-Muslim rapprochement). Among these disagreements, the most notable for Christians is the Qur'ān's denial of the crucifixion of Jesus in *Sura al-Nisā'*: "They did not kill him, nor did they crucify him" (4:157).

In terms of Christian accounts of the place of the law, the Qur'ān differs from, or remains silent about, Christian claims about the relationship between the law and the gospel. Before turning to these differences, we should note that the Qur'ān does appear to give the Christian way or law its own internal and ongoing validity. Again from *Sura al-Mā'idah*, "To each among you, we have prescribed a law and a clear way. If God willed, He would have made you one nation, but that (He) intended to test you in what He has given you; so strive as in a race in good deeds. You will all return together to God and He will inform you of the truth on which you differed" (5:48). This positive view of the Christian way is to be read alongside other more ambiguous or negative renderings of Christian practice. For instance, later *ayat* (verses) in *Sura al-Mā'idah* imply that Christians (and Jews) have abandoned the way of God and the Gospels. *Sura al-Baqarah* (2:140) and *Sura 'Āli 'Imrān* (3:70-71) both accuse Christians and Jews of concealing or ignoring the truth of the divine revelation given to them. In *Sura al-Ḥadīd*, some Christians are commended for their "compassion and mercy" and promised "due reward,"

even as others are accused of departing from the truth and depicted as "rebellious transgressors" (57:27).

In addition to these explicit texts, there is also an implicit critique of Christian claims, grounded in New Testament texts such as Acts 10 and the Pauline Epistles, of being free from particular aspects of purity laws. The Qur'ān upholds the necessity of parts of Jewish law, such as the importance of circumcision and the prohibition against eating pork, that Christians understand to be either abrogated or of limited applicability.[8] Since Paul and other apostles are not identified in the Qur'ān (and are thus not accorded respect as prophets), subsequent Muslim interpretation of Christianity lays the blame for the corruption of Christianity primarily at their feet. The Qur'ān identifies their failure to hold fast to Jesus' message and the law as the reason for the problem in Christian views of law and practice. Thus, some (or most or all) Christians are guilty of innovation (*bid'a*) in both their worship and practice.

It is these positive affirmations of divine prophethood and inspired texts coupled with Qur'ānic critique of later corruption in practice that grants Jews and Christians a special but also ambiguous status amongst the people of the world. Jews and Christians, unlike polytheists (*kuffār*), are deemed people of the book (*'ahl al-kitāb)* and Muslims are to afford them a certain level of respect. They are free to worship and practice their religion, even as they are deemed inferior. This concept, to which we will return throughout the dissertation, later developed into the legal political category of *dhimmī:* those non-Muslims who are granted particular rights, protections, and restrictions under

[8] These scriptural commitments place Christians and Muslims at seemingly intractable odds about the nature of divine law, with Christians accused of innovation by Muslims even as Muslims are called legalist and opponents of the Gospels by Christians.

an Islamic polity. In sum, the Qur'ān demands that Muslims respect Jesus, the gospel, and even some aspects of Christianity, even as the Qur'ān offers an ongoing critique of Christian thought and practice. As we will now see, these Qur'ānic influences continue to shape later Muslim thinkers' approaches to and critiques of Christian views of the law.

Taḥrīf and Early Muslim Interpretation of Christian Scripture and Law

To make sense of the tensions within the Qur'ān, early Muslim exegetes employed the Qur'ān's passing references to *taḥrīf* (corruption) as a polemic tool to use against Christian and Jewish scriptures. The classical account of *taḥrīf* claims that both the Torah and the Gospels, as read and understood by Jews and Christians, cannot be trusted because they have been altered beyond recognition. The cause of this scriptural corruption these exegetes trace to one of two factors. In the first model (*taḥrīf al-ma'nā*), Muslims claim that while the Torah and Gospels are still textually authentic, Christians and Jews have and continue to misinterpret them in ways that conceal or alter their genuine meaning. The practice of reading the Gospels as supporting either divine incarnation or the Trinity is often cited by Muslims as the classic example of such misinterpretation. The second model (*taḥrīf al-naṣṣ*) argues that the actual texts themselves have been altered from their originals. Initially this approach focused primarily on the corruption of the Hebrew Scriptures, claiming for instance that Ezra had written or consolidated a new and corrupted version of the original Torah given to Moses. However, these exegetes soon also levied accusations of textual alteration against figures such as Matthew, Luke, and Paul. The effect of both hermeneutical strategies is the same:

neither the Torah nor the Gospels can continue to serve as reliable sources of divine revelation.

Ibn Ḥazm (d. 1064), a polymath from al-Andalus, provides one the most extreme and highly developed accounts of the corruption of Jewish and Christian Scriptures.[9] In his *Kitāb al-Fiṣl fī l-milal wa-l-ahwā' wa-l-niḥal* (*Book of Distinctions on the Contradictions and Lies)*, Ibn Ḥazm offers a close albeit polemically charged reading of the Torah and New Testament. For instance, he cites numerous 'innovations' in the Torah, such as the demeaning of the prophets in stories such as David's affair with Bathsheba and his murder of Uriah. He also points out various mathematic, scientific, and historic errors in the differing texts. Ibn Ḥazm rails against Christian readings of the Incarnation and Trinity as irrational and claims that the apostles themselves were untrustworthy. Moreover, Christian depictions of the law in Acts and the Pauline epistles are cases of innovation and *taḥrīf*, says Ḥazm. The New Testament, then, is not a faithful exposition of the life and ministry of Jesus, but an abandonment of his message. The goal of Ḥazm's reading is to depict both the Torah and Gospels as unreliable and insufficient apart from the Qur'ān.[10]

Taḥrīf serves as a way for Muslims to understand why Christian practice departs so radically from Islamic (and Jewish) perspectives on law. Christians do not require circumcision; they allow for the eating of pork and the drinking of alcohol (even making the latter a central component of worship), and can therefore be accused of annulling the law of God and departing from the way of Jesus. The Mu'tazilite 'Abd al-Jabbār's (d.

[9] See Theodore Pulicini, *Exegesis of Polemical Discourse: Ibn Ḥazm on Jewish and Christian Scriptures* (New York: Oxford University Press, 1998).

[10] See Samuel M. Behloul, "The Testimony of Reason and Historical Reality: Ibn Ḥazm's Refutation of Christianity" in Camilla Adang, Maribel Fierro, and Sabine Schmidtke (eds.) *Ibn Ḥazm of Cordoba: The Life and Works of a Controversial Thinker* (Leiden: Brill, 2013), 457-482.

1025) *Tathbīt* offers a clear example of the general form of argumentation used by a wide range of Muslims to this end. First, following the Qu'rānic injunctions in 3:50, 5:46, 61:6, 'Abd al-Jabbār argues that Christ came to uphold and follow the law of Moses. "In a word, Christ only came to revive the Tawrat and to establish it."[11] The mission and teaching of Jesus were oriented towards proclaiming the unity of God, calling human beings to worship God and submit to God's will. Jesus renews the original religion of humanity—given to Adam and Abraham and handed down through the Torah taught by Moses. What had been obscured by tradition and false interpretation is brought back to light through Jesus and his teachings, argues 'Abd al-Jabbār.[12]

As the second movement of the argument contends, while Jesus' followers continued in his way of life initially, they eventually "began to make changes, substitutions, and innovations in religion, in pursuit of leadership, seeking favor with the people through things they desire."[13] The list of such innovations includes the doctrines of the Trinity, the Incarnation, the Eucharist, and the veneration of icons. Paul serves as the prime culprit for the betrayal of the vision of Jesus, as he will in later (albeit constructively very different) liberal Christian arguments.[14] Specifically 'Abd al-Jabbār depicts his rejection of the necessity of circumcision and dietary laws for Gentiles as a

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[11] 'Abd al-Jabbār, *Critique of Christian Origins: A Parallel English-Arabic Translation*. Translated and annotated by Gabriel Said Reynolds and Samir Khalil Samir (Provo: Brigham Young University Press, 2010), 88.

[12] Within this broader shared argument about Jesus' relationship to Mosaic Law, there is also some disagreement amongst Muslims. While 'Abd al-Jabbār argues that Jesus simply came to uphold and re-establish the law, it is more common for Muslims to contend that Jesus came to both uphold the law and correct certain rigid aspects of it. Thus Gabriel Said Reynolds notes how 'Abd al-Jabbār's argument that Jesus only came to revive and establish the law is "unusual for a Muslim theologian." Gabriel Said Reynolds, *A Muslim Theologian in the Sectarian Milieu: 'Abd al-Jabbār and the Critique of Christian Origins* (Leiden: Brill, 2004), 159.

[13] 'Abd al-Jabbār, *Critique of Christian Origins*, 89.

[14] Ibid. See 98-103.

form of doublespeak that leads people away from God's law. "Paul said to the Jews, 'The law is a good guide for the one who acts according to it. Then he said to the Romans and other who were enemies of Moses and the prophets, 'The Tawrat stirs up evil. When the laws of the Tawrat are put way from the people, God's goodness will be perfected and His benevolence will be completed.'"[15] Thus 'Abd al-Jabbār does not understand the Council of Jerusalem as a Spirit-directed expansion of God's covenant beyond Israel, but as a compromise of the true way of God. This council signals the moment at which the original mission and teaching of Jesus becomes mingled with Roman customs. "They came to the opinion that they should mingle with the nations, make concessions to them, give in to their inclinations, leave off their opposition to them, mix with them, eat from their slaughtered meat, act according to their morals, and concur with them in all opinions."[16] Once such a compromise is made with pagan ways, a decision 'Abd al-Jabbār interprets as being centered on questions of law, the door is open for theological innovations such as the Trinity and Incarnation to creep into the Christian community. The corruption of the Gospel of Jesus that begins with Paul and the Council of Jerusalem marks the beginning of a period of innovation that culminates in Constantine and the ecumenical councils. In sum, 'Abd al-Jabbār argues that the early Christians departed from the will of God and the message of Jesus when they "gave up acting according to the laws of the prophets, which they claimed they were following, and departed from them."[17] Decisions to compromise on law led to the corruption of Scripture and thus the corruption of Christian theology and practice more broadly. Positive statements about

[15] 'Abd al-Jabbār, *Critique of Christian Origins,* 89.
[16] Ibid., 90.
[17] Ibid., 91.

Christians in the Qur'ān, then, are best interpreted through this history of malpractice and legal compromise.

The Beginnings of an Islamic Theo-Legal Critique of Christianity

The Law in Ibn Taymiyya's al-Jawāb al-Ṣaḥīḥ

Ibn Taymiyya (d. 1328), one of the most prominent thinkers in Islamic history and an intellectual inspiration for many current *salafi* movements, presents a sophisticated and multilayered critique of Christian views of the law. His *al-Jawāb al-Ṣaḥīḥ li-man baddal dīn al-Masīḥ* (*A Correct Reply to those who altered the religion of the Messiah*) is a thousand-page response to a revised and expanded version of the Melkite Christian Paul of Antioch's *A Letter to a Muslim Friend*.[18] Ibn Taymiyya's six-volume opus covers topics from the unity of God in the face of Christian claims concerning the Incarnation and the Trinity to the prophethood of and the corruption of Jewish and Christian Scriptures. It is a work "whose length and scope has never been equaled in Muslim critiques of the Christian religion and whose depth of insight into the issues that separate Christianity and Islam sets it among the masterpieces of Muslim polemic against Christianity."[19]

In the sixth and final chapter, Ibn Taymiyya turns his attention to the place of the law in Christian thought and practice, critiquing Christianity on textual, theological, and

[18] For more on Paul of Antioch's Letter and the various textual issues surrounding it, see Rifaat Ebied and David Thomas, eds.,*Muslim-Christian Polemic during the Crusades: The Letter from the People of Cyprus and Ibn Abi Talib al-Dimashqi's Response* (Leiden: Brill, 2005).

[19] I will primarily use Thomas F. Michel's translation and abridgment, *A Muslim Theologian's Response to Christianity* (Delman: Caravan Books, 1984). However, there are a number of major issues with his translation, especially around the terms *Sharī'a*, *'adl*, and *dīn*. At these points, I have altered and/or expanded his translation. I will note such changes in the footnotes.

socio-political grounds. While he offers similar Qur'ānic critiques of Christian readings of Jesus, Moses, and Paul as those of earlier Muslim thinkers such as Ibn Ḥazm and 'Abd al-Jabbār, Ibn Taymiyya also begins to connect his textual critiques of Christianity to problems in Christian social-legal practice. For him, public injustice in Christian political life is deeply related to its negligence and ambivalence about the place of law after Christ. Problems in scripture lead to Christian misunderstandings of public law and rule. By corrupting Christ's relation to the law, Christians misconstrue the relationship between justice and mercy in social life. In contrast, Islam, through the *Sharī'a*, offers a holistic vision of human sociality, one that integrates the need for both justice and mercy.

A Summary of The Letter from Cyprus/Paul of Antioch's Claims about the Law

The selection from Paul of Antioch that Ibn Taymiyya uses to frame Book Six of *Al-Jawāb al-Ṣaḥīḥ* presents a Christian perspective on the law in relation to Jewish law and the Incarnate Word. It begins by noting the need to distinguish between "two revealed laws (*Sharī'tīn*): the law of justice (*'adl*) and the law of generosity/grace (*faḍl*)."[20] According to Paul, Muslims, despite their cultural achievements, fail to distinguish properly between these two aspects of the law and thus misunderstand both the law and the fittingness and finality of the Incarnation. Christians, however, see that

[20] It is important to notice how a Christian authors uses the term *Sharī'a*. The practice of contrasting a law of justice with a law of perfection is not unique to Paul of Antioch. Rather this is a fairly common trope that is employed in polemics aimed at both Jews and Muslims. . For instance, *Risāla fi ithbat 'aqa 'id al-dīn al-Masīḥi,* a twelfth-century work, employs the same distinction in order to commend the superiority of Christian morality and ethics to both Judaism and Islam. See, David Thomas and Alex Mallett, eds., *Christian-Muslim Relations. A Bibliographical History, Volume 3 (1050-1200)* (Leiden: Brill, 2010), 633.

God, who is "just and generous,"[21] has shown humanity the way or law of justice, through Moses, and the law of generosity, through the incarnation of the Word.[22]

First, God revealed the law of justice to Israel through the prophet Moses. The law of justice serves as a guide for Israel and humanity as a whole to live in conformity to God's will. However, God also wishes to communicate a way of perfection (*kamāl*), which is generosity (*faḍl*) to humanity. In order to reveal what is perfect, it is fitting that "only the most perfect being could institute it. And so he himself, holy be his name and great his divinity, was necessarily the one to institute it, because there is nothing more perfect than he."[23] Paul assumes that perfection, unlike justice, demands a perfect mediator. Through reference to the virgin birth in the Qur'ān and the concept of humanity as the greatest amongst created things, Paul employs what are also Islamic categories of thought to argue that it was fitting that God promulgate the law of perfection through the union of God's Word and human nature in the incarnation. Once the way of generosity has been revealed, there is nothing more to add: God has given that which is perfect: God's own Word to humanity. In the Christian perspective, everything that comes after the law of generosity is redundant. "After such perfection there is nothing left to institute, because everything that preceded it necessitated it, and there was no need for what came after it. For nothing can come after perfection and be superior."[24] Through Moses, humanity has been shown God's law of justice; and through the Word made flesh, humanity has been given God's perfect generosity. The implication is clear without being

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[21] Michel, *A Muslim Theologian's Response to Christianity*, 350.

[22] The Arabic root *shr'* connotes both a law and a way or street. It is important to capture the multivalent nature of the term and not limit it simply to a sense of law in modern Western terms. This debate about the law is also a debate about the right path or way for human beings to follow.

[23] Michel, *A Muslim Theologian's Response to Christianity*, 350.

[24] Ibid., 351.

polemically stated: Muḥammad and *Sharī'a* are unnecessary. For Paul of Antioch and his redactors, no matter how knowledgeable of the Qur'ān and Islamic thought they might be, it is incomprehensible to think of any need for a new prophet or law after Christ. Law gives way to Christology; grace perfects justice.

Ibn Taymiyya's Response

While Paul of Antioch's reflections on the law are preoccupied with making soteriological and Christological claims, Ibn Taymiyya's rebuttal is primarily concerned with its moral, social and textual ramifications. What for Paul is an occasion for reflection on the mystery of the Incarnation is for Ibn Taymiyya an opportunity to emphasize the straight path of Islam. The central concern about law from a Christian perspective, the need for a perfect mediator between God and humanity, is largely irrelevant to an Islamic description of law. Instead, the focus is the perfection and universality of *Sharī'a* and the consistency of the divine prophets. This is not to say that Ibn Taymiyya's response avoids Paul's arguments, just to note that he redirects them in ways that highlight classically Islamic concerns.[25]

Ibn Taymiyya begins his refutation by challenging Paul's claim that there are only two laws (*Sharī'a*)—that of justice (*'adl*) and that of generosity (*faḍl)*—by claiming that there is in fact a third law.[26] This third law "combines grace and justice by prescribing

[25] In fact, while it is not the focus of this section, Ibn Taymiyya does wonder why grace demands a divine mediator, but justice does not. "The way of justice is more deserving to be ascribed to God than is the way of grace. The command to pardon and do good can be properly carried out by everyone, but the law of justice and judgment between people is only possible for certain individuals." Michel, *A Muslim Theologian's Response to Christianity*, 354.

[26] While Michel translates law as religion, this is a problematic decision. The term *Sharī'a* should be left as law or way as it makes Ibn Taymiyya's later arguments about the

justice and exhorting goodness."[27] Playing off the root of *faḍl,* Ibn Taymiyya asserts that this third law is the best or preferred (*ifḍal*) way. Of course, this law is found in the Qur'ān. In Ibn Taymiyya's typology, the Qur'ān combines moral obligations and justice, which are emphasized in the Torah, with a concern for moral character, the focus of the gospel. It establishes justice in much the same way as the Torah–by putting forth particular binding obligations and punishments. Debts must be repaid, deaths and injuries avenged, and personal purity maintained. However, the Qur'ān goes beyond justice by encouraging human beings to cultivate generosity or charity in the face of injuries and wrongdoing. The first law of justice is binding and obligatory to all, while the way of generosity is more like a counsel—beneficial but not required. Ibn Taymiyya piles up examples of such a model of justice and generosity with various Qur'ānic citations: *al-Baqara/2:280,* "And if the debtor is in a hard time, then grant him till it is easy for him to pay, but if you remit it by way of charity, that is better for you;" or *al-Mā'idah*/5:45, "we ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution. But whoever gives charity, it is an expiation for him." The Qur'ān, then, is "more complete than what is in the previous laws" since it covers both what is obligatory and what is beneficial.[28] It gives humankind a model for both public justice and personal moral transformation. "The guidance and true religion which is in the law (*Sharī'a*) brought by Muḥammad is more perfect than what was in the two previous religious laws."[29]

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ongoing reality of Moses and Jesus' law difficult to decipher. . Michel elected to translate the term religion, but this leads to a number of misunderstandings in his translation. Additionally, Michel translates *'adl* as law instead of justice which is even more problematic.

[27] Michel, *A Muslim Theologian's Response to Christianity*, 351.

[28] Michel, *A Muslim Theologian's Response to Christianity*, 354

[29] Ibid. translation slightly altered to distinguish between *dīn* and *Sharī'a*.

Given the various statements of the Qur'ān, Ibn Taymiyya is forced to walk a fine line between commending the superiority of Islam and affirming the gospel as a genuine divine revelation. While at times he implies that the gospel itself is an insufficient law, he largely traces Christianity's failings to improper interpretation of Jesus' teachings and later corruption in Christian theology and practice. Invoking the common polemic accusation of *taḥrīf*, which he examines at length in Book II of *al-Jawāb al-Ṣaḥīḥ*, Ibn Taymiyya claims that the Christianity currently practiced cannot be equated with the gospel described by the Qur'ān. "Christians, however, neither followed the Torah nor the gospel. Rather, they invented a law which was not sent through the prophets."[30] This "invented law" is exceedingly lenient in both personal practice, allowing Christians to eat pork and drink wine, and in public justice, by allowing the wrongdoer to be forgiven and even pardoned apart from public punishment. This leniency is due to a poor interpretation of Jesus' ministry, in which Jesus' moral teachings concerning turning the other cheek and cultivating forgiveness are interpreted apart from his faithful obedience to the divine law revealed in the Torah. Instead of abiding by the purity of the divine law revealed in Torah and gospel, Christians "mixed" the law of God with "what was alien to it."[31]

While accusations of *taḥrīf* are common polemical fare, what has largely gone unnoticed in studies of Ibn Taymiyya's assessment of Christianity is the way that he extends his scriptural critique into the beginnings of a trenchant social-political one. Ibn Taymiyya's move of tying the Christian corruption of scripture to corruption in Christian theo-legal practice is largely unique in the medieval period and sets apart his response from other critiques of Paul of Antioch, such those by as Shabib al-Din Aḥmad bin Idris

[30] Michel, *A Muslim Theologian's Response to Christianity*, 355.
[31] Ibid., 355.

al-Qarafi[32] and Ibn Abi Talib al-Dimashqi.[33] In fact, I read Ibn Taymiyya as offering a pre-modern critique of Christian secularity—a mode of critique that becomes all the more prevalent in modern and contemporary Muslim depictions of Christianity. According to Ibn Taymiyya's assessment, the failure of Christians to submit to the divine law has disastrous theo-political consequences. Since the gospel does not contain an "independent *Sharī'a,*"[34] Christian accounts of power lack the necessary theo-legal checks against hierarchy and injustice. This occurs in two different but interlocking ways. First, without a clear account of divine law that covers all aspects of human life, the might and power of rulers often become the true justification for the rule of law. When the political and judicial arenas are severed from their divine moral underpinnings, absolute power risks becoming the barometer by which to judge everything. Thus, the justice administered by Christian kings "is not a revealed law, but operates according to the opinions of the rulers."[35] As Ibn Taymiyya argues throughout his six-volume work, "Christians permit their leaders to abrogate God's legislation by their opinions."[36] Human rulers, however, are prone to act tyrannically and to claim that their decrees are the laws of God. Without the stability and guidance of a clear divine law, human judgments exceed their rightful place, and political might instead of law or morality regularly becomes the final arbiter. Throughout Book VI, Ibn Taymiyya continually inveighs against the malpractice of

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[32] Shihab al-Din al-Qarafi, *Al-ajwiba al-fakhira 'an al-as'ila al-fajira*, ed. B.Z. Awad, Cairo, 1987. See Diego R. Sarrio Cucarella, *The Mirror of the Other: Shihab al-Din al-Qarafi's Splendid Replies* (Leiden: Brill, 2015), 114-121.

[33] See Rifaat Ebied and David Thomas, eds., *Muslim-Christian Polemic during the Crusades: The Letter from the People of Cyprus and Ibn Abi Talib al-Dimashqi's Response* (Leiden: Brill, 2005). Al-Dimashqi shares Ibn Taymiyya's critique of Christian abrogation of purity laws and critiques Christians for lacking a comprehensive account of law. However, nowhere does he tie this to any critique of Christian political practice.

[34] Michel, *A Muslim Theologian's Response to Christianity*, 355.

[35] Ibid., 366.

[36] Ibid., 156. .

Christian rulers,[37] who "display pride and harshness and pass judgment in opposition to what was handed down by God."[38] Stripped of a clear and complete divine law, politics for Christians becomes a vacuous space for secular action.

This is not to say that Christian have no sense of divine law. Ibn Taymiyya is quite aware of the way that divine commands and law are prevalent in the Christian gospel. However, he believes that the law of the Christian gospel results in a second problem in Christian practice, namely, that while Christian rulers are guided by the law of power, church leaders and laypeople are often held to an alternative standard under the law of the gospel. This arrangement results in a dualistic vision of the world, with one law for the Church and another law for the public arena; a law for those in power and a law for the powerless. Consequently, the oppressed and powerless are made to abide by the standards of forgiveness and generosity taught by Jesus while rulers are free to rule as they wish. Clearly referencing the Sermon on the Mount, Ibn Taymiyya writes, "These people claim that the Law of the Gospel demands that people abandon their rights and that it does not establish the rights of the oppressed against his oppressor."[39] To claim that the oppressed must turn the other cheek and forgive in the absence of justice is to commit a "double injustice upon the mistreated person who has sought justice. First the evildoer wronged him, and then, when he sought justice he would be wronged a second time."[40] While the justifications are different, the results are the same. Whether Christians abide by the rule of kings or the rule of the Church, public justice is abdicated. Under a Christian vision of the world, humans must either compromise with power or retreat from

[37] Here, one should be mindful of the fact that Ibn Taymiyya is writing in the aftermath of the major European crusades in the Levant, as well as the Mongol conquest.

[38] Michel, *A Muslim Theologian's Response to Christianity*, 358.

[39] Michel, *A Muslim Theologian's Response to Christianity*, 366.

[40] Ibid., 369.

it. What Christianity ultimately lacks, and what Ibn Taymiyya claims Islam provides, is a vision of divine law that can gives moral guidance and public justice for both kings and paupers. "A revealed Law must include a legal system which is just, and must at the same time exhort people to pardon and to act with kindness. The Law of Islam has done this."[41]

Modern Muslim Critiques of Christianity, Law, and Secularism

While the Ottoman period produced a number of Muslim responses to Christianity, none match the length and sophistication of Ibn Taymiyya's *al-Jabib al-Ṣaḥīḥ*.[42] It was not until the late nineteenth century and the beginnings of Western colonial encroachment into traditionally Muslims territories that Muslim critiques of Christianity begin to advance in new and more forceful ways. While these nineteenth- to twenty-first-century Muslim thinkers continue to accuse Christians views of the law of *taḥrīf*, what is more interesting for our purposes is the social, economic, and political shortcomings they diagnose in Christianity as a result of an insufficient attention to law. In the modern context, here understood as the colonial and post-colonial periods, the type of social, legal, and political criticism that Ibn Taymiyya begins to levy against Christian views of the law are heightened and expanded into full-blown theo-political critiques of Christianity and its relationship with political secularism. In fact, Muslim critiques of secularism and Western political practice are often intertwined with critiques of Christianity. Christianity is perceived as either a primary source for the rise of secularism and its attendant division of religion and politics or depicted as being overly spiritual,

[41] Michel, *A Muslim Theologian's Response to Christianity*, 366.

[42] On the other hand, the Ottoman period saw some of the first developed Latin Christian engagements with Islam. Most notable are Nicholas of Cusa's *De pace Fidei* and *Cribratio Alkorani*.

ascetic, and dualistic and thus simply swept up by the onslaught of modernity and secularism. The Pakistani thinker, Muḥammad Iqbal (d. 1938) writes, "this ancient mistake arose out of bifurcation of the unity of man into two distinct and separate realties which somehow have a point of contact, but are in essence opposed to one another."[43] Some figures employ both aspects of this critique, others only one, but all of the figures covered in the second half of this chapter charge Christianity, and its underdeveloped view of the law, as at least partially contributing to the maladies that plague the political world of today.

Before turning to a few representative thinkers in the modern period, it would be advantageous to examine briefly some of the reasons behind Muslim critiques of the secular. Very few Muslim thinkers are explicit champions of the secular. However, analysis of such anti-secularist discourse amongst Western media, public intellectuals, and (as Chapter 2 showed) Christian theologians rarely rises above simplistic orientalist accounts of fundamentalism and the backwardness of Muslims. And yet, as Kate Zebiri has argued convincingly, "anti-secularist discourse is not confined to Islamists," but is also shared by many liberal and reformist Muslims.[44] Identifying Islam with fundamentalism or an essential melding of religion and politics is not a wholly satisfactory account of Islamic political thought and inhibits constructive Christian engagement with Muslim thinkers.

There are numerous scholarly works that seek to understand the complex reasons for Islam's largely negative reaction to political secularism. One of the most succinct and

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[43] Muḥammad Iqbal, *The Reconstruction of Religious Thought in Islam* (Stanford: Stanford University Press, 2012), 122.

[44] Kate Zebiri, "Muslim Anti-Secularist Discourse in the Context of Muslim-Christian Relations," *Islam and Christian-Muslim Relations*, Vol.9, 1998, 47.

compelling is Nader Hashemi's *Islam, Secularism, and Liberal Democracy*. He argues that "secularism is deeply suspect in Muslim societies" for four primary reasons. First, he notes how the term "secularism" is a loanword that lacks a clear synonym in Arabic, Farsi, or Turkish. When the term "secular" was introduced into the Muslim world (primarily through debate in the late nineteenth century between Jamal al-Afghani and Ernest Renan) it was translated in a way that related to atheism and anti-religious materialism. Decisions about translation thus pitted political secularism against religion and bred suspicion that continues to this day. Second, the actual experience and practice of political secularism in many Muslim societies have not developed organically but have been imposed through colonialism and the authoritarian post-colonial regimes of leaders such as Saddam Hussein in Iraq, Hafez and Bashar al-Assad in Syria, Hosni Mubarak in Egypt, and Zine el-Abidine Ben Ali in Tunisia. The "crises of secularism in the Muslim world today is deeply connected to the failure of modernization programs and policies…in Muslim societies, with a few exceptions, modernization has been synonymous with dictatorship, repression, and corruption—in short, social injustice."[45] Third, political secularism as practiced in Western countries is seen as duplicitous in so far as the religious freedom of Muslims are perceived to be under assault by the very countries that support religious freedom elsewhere.[46] Prime examples are "secularism in France" and the U.S. "support for repressive regimes and intervention in the Middle

[45] Nader Hashemi, Islam, Secularism, and Liberal Democracy: Toward a Democratic Theory for Muslim Societies (New York: Oxford University Press, 2010),133.

[46] Elizabeth Shakman Hurd in *The Politics of International Relations* makes the same argument compellingly and at great length. She argues that French laicism and Judeo-Christian Secularism both consistently "other" Islam, thus undermining positive international relations between the West (in her case, the E.U. and the United States) and Muslim majority societies (Turkey and Iran).

East."[47] Fourth, Muslim debates about political practice and religious authenticity have continually used the secular West as a foil. Influential Muslims such as Ayatollah Khomeini and Sayyid Quṭb employ the essentialist account of rivalry as a rhetorical tool to construct their own depictions of the superiority of Islam. Secularism is equated with atheism, relativism, and dualism, while Islam is depicted as the way of God, truth, and unity.

Given this complex web of intellectual, social, political, and theological anti-secularist discourse—a backdrop that this genealogy also situates within the earliest Muslim critiques of Christian views of the law—we are now better prepared to understand how the ideas present in Ibn Taymiyya's critique of Christianity and its political-legal practices are taken forward in the modern period. To do this I will explicate the thought of the Egyptian Islamist Sayyid Quṭb, the Malaysian traditionalist Syed Naquib at-Attas, and the Iranian philosophical-mystic Seyyd Hussein Nasr, attending specifically to their critiques of Christianity, secularism, and law. While all three are located within different branches of Islam and propose widely divergent solutions to the challenges of modernity, all critique both secularism and Christianity as betraying the law of God.

That Hideous Schizophrenia: Christianity in the Thought of Sayyid Quṭb

Thanks in part to a 2003 *New York Times Magazine* feature, Sayyid Quṭb, executed for sedition by President Nasser in 1966, is perhaps best known in the West as

[47] Nader Hashemi, *Islam, Secularism, and Liberal Democracy*, 147.

the "philosopher of Islamic Terror."[48] Despite dying decades before the rise of al-Qaeda and other extremist militant groups such as Boko Haram in Nigeria and *al-Shabaab* in Somalia, Quṭb has been an intellectual and ideological inspiration for militant Islam. His critiques of both the West and Muslim societies, his call for *jihād* in order to reshape social, political, economic, and spiritual life on the basis of the Qur'ān, and his vision of a renewed *umma* governed by *Sharī'a* are hallmarks of the rhetoric of al-Qaeda.[49] However, it would be misleading to identify Quṭb's thought primarily with al-Qaeda and its terror activities (in which he never participated) and thus too quickly dismiss him as only a fundamentalist or radical Muslim—and thus not representative of Islam. In fact, Quṭb, a member of the Muslim Brotherhood, continues to be widely read and is an inspiration to many Muslims and an intellectual guide for a number of Islamic social and resistant movements. Beyond this, Roxanne L. Euben's important work *Enemy in the Mirror* has convincingly shown that Western negative reactions to Islamic fundamentalism obscure the ways that Quṭb's critique of the modern political project overlaps at interesting points with Western political thinkers such as Hannah Arendt, Charles Taylor, and Robert Bellah.[50] Quṭb and may be a "religious totalitarian," but he is also, at times, an incisive critic of modern social, religious, and political arrangements who has garnered a wide and diverse following. To attend to his understanding of

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[48] Paul Berman, "The Philosopher of Islamic Terror," *New York Times Magazine*, March 23, 2003.

[49] For more on Quṭb, see Roxanne L. Euben's *Enemy in the Mirror: Islamic Fundamentalism and the Limits of Modern Rationality* (Princeton: Princeton University Press, 1999), Sayed Khateb, *The Political Thought of Sayyid Quṭb: The Theory of Jahiliyah* (New York: Routledge, 2006), and John Calvert, *Sayyid Quṭb and the Origins of Radical Islamism* (New York: Columbia University Press, 2010).

[50] See Euben, *Enemy in the Mirror*, ch. 5.

Christianity, the West, and law is not to endorse his project, but to take into consideration one of the more influential thinkers in the twentieth century.

Quṭb's most extensive and constructive engagement with Christianity comes in the opening chapters of his 1949 work, *al-'Adalah al-ijtima'iyah fi 'l-Islam* (*Social Justice in Islam*).[51] Like many of the theologians examined in chapter 2, Quṭb understands Islam and Christianity as largely incompatible, especially in their views of society and law. "Islam is essentially different from Christianity."[52] However, he turns on its head the depiction of Muslim societies as falling behind the West due to Islam's merging of the political and religious, arguing instead that it has been the Muslim world's imitation *(bid'a)* of the West that has led to stagnation within Muslim societies. Rather than look to communism, socialism, democracy, or capitalism for solutions to the inequalities in Egypt and the broader Muslim world, Quṭb demands that Islam and its "one universal and integrated theory which covers the universe and life and humanity" be mined first.[53]

In order to recover this holistic account of religion (*din*), says Quṭb, Western understandings of 'religion' must be resisted. Specifically, Muslims should reject what Quṭb understands as a Christian notion, that " 'Religion concerns only a man and his God,' while the temporal is concerned with the relationship between the individual and the state."[54] According to Quṭb, the various problems facing Islam in the colonial and

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[51] Written shortly before he officially joined the Muslim Brotherhood, William Sheppard has termed Quṭb's *Social Justice in Islam* as his first ideologically Islamist work. William Shepard, "The Development of the Thought of Sayyid Quṭb as Reflected in Earlier and Later Editions of 'Social Justice in Islam'." *Die Welt des Islams,* vol. 32(2), 1992.

[52] Quṭb, *Social Justice in Islam,* translated by John B. Hardie, translation revised and Introduction by Hamad Hamid Algar (Oneonta: Islamic Publications International, 2000), 273.

[53] Ibid., 37.

[54] Ibid., 22.

emerging post-colonial world of the post-World War II era is partly tied to the fact that Muslims have too readily accepted these Western and Christian notions of religion as a private affair. This has left Muslims impotent in the face of colonialism and has bred a parasitic mindset that continually looks abroad for solutions.

Quṭb contends that Christianity, and its own experience of secularization in Europe, is not a viable model for Islam since it is too one-sided, focusing primarily on the individual, the conscience, and the heart. It is inherently a spiritual, ascetic, and otherworldly religion. Quṭb traces the reasons for this imbalance to *taḥrīf*[55] and the particular cultural milieu that birthed the Christian tradition. Christianity began without power under the shadow of the Roman Empire and thus focused primarily on purifying Judaism and transforming the inner person and character. While Quṭb considers this aspect of Christianity to be commendable in so far as it "fulfilled its task in the spiritual sphere of human life,"[56] this also created a series of fundamental dualisms and corruptions within Christianity that have never been truly overcome. Specifically, Christianity is built on oppositions—"that hideous schizophrenia"—between the body and the soul, the individual and society, and faith and works. It offers solutions for the individual and the soul, but lacks a robust vision of legal and political life. "Christianity is essentially an asceticism, a refusal to take an interest in a practical, worldly life."[57] Human beings in the modern West are thus forced to operate within two distinct spheres of life: the spiritual and the worldly. Inevitably either the worldly takes precedence or the spiritual person is forced to retreat from the world. The result is that in Europe and North

[55] Quṭb offers a more extended and very traditional account of *taḥrīf* in *Basic Principles of an Islamic Worldview* (Oneonta: Islamic Publications International, 2005).

[56] Quṭb, *Social Justice in Islam,* 22.

[57] Quṭb, *Social Justice in Islam,* 280.

America, Christianity "has remained in isolation from the business and the customs of life from the day of its entry to the present day."[58]

Law is a case in point. Echoing his intellectual forebear Ibn Taymiyya, Quṭb identifies the root cause of the otherworldliness of Christianity as its anemic account of divine law. Christianity "left society to the State, to be governed by its earthly laws, since to it society was connected with the outer and temporal world, whereas the faith had its realm in the soul and the conscience."[59] Without a strong account of divine law, society tends to operate through brute force or local custom. "They settled their quarrels by the judgment of the sword, or on occasion by that of local law."[60] As a result, Christian thought and practice become largely passive in the face of various social movements in history, be they communism, liberalism, capitalism, or secularism. "Christianity is unable…to compete with the social and economic systems that are ever developing, because it has no essential philosophy of actual, practical life."[61] Even when Christianity attempts to engage with such social realities, it lacks the critical divine legal principles to challenge the injustices of the world and offer an alternative. Rather than engage the legal and political realm through divine law, Christianity has largely abdicated the law to local custom, military power, or the arbitrary development of precedent. Religion becomes a means to escape the world and not to engage it.

Writing shortly after the end of the Second World War, Quṭb is well aware of the Marxist critique of religion. In fact, he shares its assessment, at least when applied to Christianity, that religion distracts from instead of inspires social and economic

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[58] Ibid., 24.
[59] Quṭb, *Social Justice in Islam*, 23.
[60] Ibid.
[61] Ibid., 317.

revolution. However, he argues throughout *Social Justice in Islam* that Islam does not fit with either Marxist or secularist visions of religion. In contrast, Islam "united earth and heaven in a single system, present both in the heart of the individual and the actuality of society."[62] By refusing a separation between religion and society or law, Islam is better positioned to struggle for social justice and present an alternative to either communism or capitalism. It is Islam, not capitalism, communism, or Christianity, which is "able to provide equity and justice in society and to establish justice in the whole of the human sphere. It also frees Islam from the narrow interpretation of justice as understood by Communism."[63] Quṭb offers something of an Islamic liberation theology— an account of Islam from the side of those marginalized by both colonial power and the economic and political system of their own nation.

While there is much to be gleaned from engaging Quṭb's critiques of both Christianity and Western society more broadly, his own constructive position takes an increasingly fundamentalist and scripturalist turn. These ideas which are present in outline form in *Social Justice in Islam* he accentuates in his manifesto *Ma'alim fi 't-Tariq* (*Signposts on the Road*). He rejects Islamic philosophy, the traditional schools of law, and *kalām,* and argues that most of Muslim society is in fact *jāhiliyyah* (a term typically used to describe pre-Islamic Arabia). Instead of engaging with the richness of Islamic philosophy, law, or theology or dialoguing with religious others, Quṭb contends that renewal is to be found "only in its own theoretical sources: the Qur'ān and the Traditions, the life of its Prophet and his everyday customs."[64] A pure Islam purged from any

[62] Ibid., 26.
[63] Quṭb, *Social Justice in Islam*, 47.
[64] Ibid., 38.

mingling with philosophy, Christianity, or Western political practice provides the only avenue for Islamic renewal and advancement. In order to accomplish this, Quṭb proposes what Vincent Cornell has termed '*Sharī'a* fundamentalism,'[65] a form of *Sharī'a* largely stripped of the nuance of *fiqh*, instead envisioned as a divine natural law directly enacted by a renewed caliph and/or Muslim nation-states. It is this vision that has inspired a number of Islamic resistance movements (and also terrorist groups), shaped popular contemporary Muslims figures such as Yusuf al-Qaradawi, and continues to fuel much anti-secular discourse.[66] To reject Quṭb's constructive solution, which can be done as easily for good Muslim reasons as for secular or Christian ones, does not mean that one cannot still attend to his critiques of Christian otherworldliness. To do as Miroslav Volf does in the introduction to both his *Allah* and his *Public Faith,* and treat Quṭb simply as a foil for what a pluralist Christian political theology is against, does little to advance the conversation or aid in understanding Quṭb's appeal among wide swaths of Muslims.[67] In fact, a number of other Muslim thinkers share Quṭb's critiques of Christianity, law, and secularism, Many of them disagree strongly with Quṭb's account of *Sharī'a* and *jaāhilliya*.

A Traditional Islamic 'Ulama Critique of Secularism: Syed Naquib al-Attas

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[65] Vincent Cornell, "Reasons Public and Divine: Liberal Democracy, Sharī'a Fundamentalism, and the Epistemic Crisis of Islam," in Richard C. Martin and Carl Ernst, *Rethinking Islamic Studies: From Orientalism to Cosmopolitanism* (Columbia: University of South Carolina, 2010).

[66] Yusuf al-Qaradawi, *al-Islam wa al-Ilmaniyah* (Beruit: Mo'assassat al-Rissalah), 2000.

[67] See Miroslav Volf, *Allah: A Christian Response* (San Francisco: HaperOne, 2011) and Miroslav Volf, *A Public Faith: How Followers of Christ Should Serve the Common Good* (Ada: Brazos, 2013).

One such thinker, the Malaysian scholar Syed Naquib al-Attas, echoes many of Quṭb's critiques in his book *Islam, Secularism and the Philosophy of the Future*.[68] The book opens with an extended assessment of the relationship between Christianity and secularization, arguing that the Christian response to the epistemic and political changes brought on by modernity cannot provide a model for Islam to emulate. While al-Attas's account of Islam, education, and *Sharī'a* are less stringent than Quṭb's *Sharī'a* fundamentalism, his criticism of Christianity is actually more trenchant. Like Quṭb, al-Attas draws a sharp distinction between Christianity and Islam: "Islam is not similar to Christianity in this respect that secularization, in the way in which it is also happening in the Muslim world, has not and will not necessarily affect our beliefs in the same way it does the beliefs of Western man. For that matter Islam is not the same as Christianity, whether as a religion or as a civilization."[69] That said, al-Attas does show greater familiarity with the major figures and movements in Western philosophy and theology—and thus his argument is more nuanced than the stereotypical views of Christianity that Quṭb offers.

Al-Attas draws a direct correlation between *taḥrīf* and the corruption of early Christianity and modern Christian theologies' capitulation to secularism. Following the traditional lines of argumentation outlined earlier in the chapter, al-Attas contends that Paul and other apostles altered the religion of Jesus to appease Gentiles. Thus they created a religion that is largely distinct from the way of Jesus. These original corruptions were only increased as Christianity became the state religion of the Empire. Once the

[68] Syed Naquib al-Attas, *Islam, Secularism and the Philosophy of the Future* (Kuala Lumpur: Art Printing Works, 1978).

[69] Syed Naquib al-Attas, *Islam, Secularism and the Philosophy of the Future*, 15.

center of gravity of Christianity shifted from Jerusalem to Rome, the betrayal of the original mission of Jesus was fixed. In Rome, Christianity became a Western religion infused with the metaphysical, mythic, and legal worldview of the Roman Empire. "Because of the confusion caused by the permeation of Western elements, the religion from the outset and as it developed resolutely resisted and diluted the original and true teachings of Christianity."[70] Christianity thus became primarily a Western religion, not a universal one.

In diluting the original teachings of Jesus, Christianity set itself on a path towards secularization—defined by al-Attas as an intellectual project that ignores revelation and religion, and leads to relativism and the rejection of divine authority. Secularism, according to al-Attas, arises from the dualisms within the Western worldview. Dividing the world into the natural and the heavenly (through Aristotelian philosophy) and the body and the soul (primarily through the influence of Descartes), the Western intellectual project is naturally inclined toward secularization and then relativism. The fusion of biblical Christianity with the various intellectual projects of Western civilization has produced

> a characteristic dualism in the world view and values of Western culture and civilization; a dualism that cannot be resolved into a harmonious unity, for it is formed of conflicting ideas, values, cultures, beliefs, philosophies, dogmas, doctrines and theologies altogether reflecting an all-pervasive dualistic vision of reality and truth locked in despairing combat. Dualism abides in all aspects of Western life and philosophy: the speculative, the social, the political, the cultural—just as it pervades with equal inexorableness the Western religion.[71]

[70] Al-Attas, *Islam, Secularism, and the Philosophy of the Future,* 21.
[71] Al-Attas, *Islam, Secularism, and the Philosophy of the Future,* 133-34.

Christian theology has long imbibed these dualisms that separate the world from heaven, the body from the soul, religion from politics, and works from faith. Twentieth-century theologians such as Harvey Cox, John A. T. Robinson, and Rudolph Bultmann, who attempt to counter the challenges brought on by modernity by adapting the Christian message to the realities of secularization, actually further corrupt the original message of Jesus. For al-Attas, while Christian theologians and philosophers helped usher in the secular age, genuine Christianity did not directly cause secularization. "Christianity has attempted to resist secularization but has failed, and the danger is that having failed to contain it the influential modernist theologians are now urging Christians to join it."[72] Thus he rejects outright the claims made by Harvey Cox and others that secularism is a positive outgrowth of Christianity:

> The claim that secularization has its roots in biblical faith and that it is the fruit of the Gospel has no substance in historical fact. Secularization has its roots not in biblical faith, but in the *interpretation* of biblical faith by Western man; it is not the fruit of the Gospel, but is the fruit of the long history of philosophical and metaphysical conflict in the religious and purely rationalistic *worldview* of Western man.[73]

Al-Attas claims that one of the major reasons that Christianity was assimilated into the power structures of Western society and philosophy without adequately challenging them was its lack of a clear revealed law. "Since it had no Revealed Law it had to assimilate Roman laws; and since it had no coherent world view projected by revelation, it had to borrow from Greco-Roman thought and later to construct out of it an elaborate theology and metaphysics."[74] The rise of secularism, then, Al-Attas ties directly to the lack of divine law within Christianity. Without the integrative principle of law—one that

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[72] Al-Attas, *Islam, Secularism, and the Philosophy of the Future*, 23.
[73] Ibid., 20.
[74] Ibid., 29.

covers all aspect of human life from property to purity—Christianity retreats from the world into the private, the interior, and the spiritual. Thus, al-Attas concludes that while Christianity has the remnants of genuine revelation, it is not a *revealed religion*. A revealed religion, by his definition, is one that presents an overarching way of life, a *Sharī'a*. Christianity as it presently exists and functions in the West lacks such a coherent legal-philosophical worldview and therefore is no more than a "sophisticated form of cultural religion."[75]

While al-Attas is a strong critic of secularization as an intellectual project, he shows some sympathy to aspects of political secularism. Unlike Quṭb, he refuses to pit secular politics wholly against divine politics. In fact, he affirms the need for the desacralization of the political, arguing that Islam and its emphasis on divine sovereignty rejects investing divine authority in political leadership. Although providing scant details on how this arrangement works, al-Attas claims that a Muslim state might also be a secular one. "A Muslim state calling itself secular does not necessarily have to oppose religious truth and religious education; does not necessarily have to divest nature of spiritual meaning; does not necessarily have to deny religious values and virtues in politics and human affairs.[76] The way forward for al-Attas is to be found not simply in the establishment of a renewed caliphate or a state-enforced *Sharī'a*, although he appears to support these.[77]

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[75] Al-Attas, *Islam, Secularism, and the Philosophy of the Future*, 29.

[76] Ibid., xvi.

[77] "It must be emphasized that our assault on secularism is not so much directed toward what is generally understood as 'secular' Muslim state and government, but more toward secularization as a philosophical program, which 'secular' Muslim states and governments need not necessarily have to adopt. The common understanding among Muslims, no doubt indoctrinated by Western notions, is that a secular state is a state that is not governed by the *'ulama,* or whose legal system is not established upon the revealed law. In other words it is not a theocratic state. But this setting in contrast the secular state with the theocratic state is not really an Islamic way of understanding the matter, for

More importantly, he advocates for a renewal in Islamic education, a strengthening of the *'ulama*, and an increased attention to the traditional thought of classical Islam. Only when Muslims attend deeply to the Qur'ān, Hadith, and the Islamic tradition will they be able to meet the challenges brought on by intellectual secularization. Like Quṭb, then, al-Attas argues that proper response to the challenges of modernity must be found within Islam, not through emulating Christianity and its dalliance with secularism.

Law in Muslim-Christian Dialogue: The Case of Seyyed Nasr

Seyyed Huessien Nasr, an Iranian born philosopher and longtime professor at George Washington University, presents a far less polemical approach to Christianity than either Quṭb or al-Attas. A longtime participant in Muslim-Christian dialogue, Nasr positively affirms Christianity as a "revealed religion" that demands respect and is afforded protection by Islam. He employs the Islamic philosophical, mystical, and hermeneutical traditions, especially as they have developed in Shi'a, to press towards innovative solutions to classical points of Muslim-Christian contention. For instance, he considers how the transcendence and unknowablity of God allows for the possibility of mutual perceptions of divine reality. While his approach to Christianity is far more irenic than the figures previously examined, he still presents challenges to Christianity, especially its understanding of Islamic and Jewish law and Christian's own accounts of

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since Islam does not involve itself in the dichotomy between the sacred and the profane, how then can it set in contrast the theocratic state with the secular state? An Islamic state is neither wholly theocratic nor wholly secular." *Islam, Secularism, and the Future of Philosophy,* xv.

the law. His work illustrates how even amongst Muslims who seek dialogue and positive relations with Christianity, the question of law remains an issue of intractable difference.

As Nasr writes in his comments on the Common Word Document, the question of law remains a point of impasse in interfaith dialogue: "We do not see eye to eye about the relation between canonical law and secular law, on the one hand, and *al-Sharī'ah* and *al-qānūn*, on the other."[78] Nasr argues that one of the reasons for this continued disagreement is different understandings of the terms employed—*Sharī'a* and *qānūn* within Islam and ecclesial versus civil law within Christianity. For most Muslims, *Sharī'a* is God's binding will and command. It is God's eternal and transcendent will for humanity. *Qānuūn*, or civil laws, are laws created by human beings, often done in either contradistinction to or in ignorance of the divine law. In contrast, Christian theology, especially in the medieval period, primarily divides ecclesial law from civil law into distinct spheres of society. Ecclesial laws govern the church and civil laws govern the public. For Muslims, such a division appears arbitrary and unnecessarily separates Christian life into distinct categories of the sacred and secular. These differences often blind Christian theologians to Jewish and Muslim self-understandings. The history of Christianity and its tendency of pitting law against grace, works against faith, and obligation against freedom negatively prejudices Christian engagements with *Sharī'a*:

> One of the major problems of dialogue between Christianity and Islam is precisely the great difficulty many Christian scholars have in understanding the fact that the law is not only the formalism which Christ attacked, and that in a sense Islam combines the Mosaic attitude towards the law with the "Christic" attitude of breaking the shell of the law "from above" while revering the law as sacrosanct and immutable on its own

[78] Seyyid Hossein Nasr, "The Word of God: The Bridge Between Him, You, and Us," in Miroslav Volf, Ghazi bin Muḥammad, and Melissa Yarington, *A Common Word: Muslims and Christians on Loving God and Neighbor* (Grand Rapids: Eerdmans, 2010), 113.

> level. The possibilities of dialogue are very profound therein. But the attack against the *Sharī'a*, against its formalism, against even its injunctions, is really as difficult for a Muslim to accept as it would be for an orthodox Jew if one attacked the injunctions of the law which he also considers sacred. In fact the lack of comprehension of the reality of the Torah as the eternal Torah and of the eternal law of orthodox Judaism is almost as great as it is for Islam.[79]

According to Nasr, Christian views of the law not only inhibit positive interfaith exchange, they also present internal problems within Christianity. In much the same vein as the figures already examined, Nasr contends that Christianity's lack of divine law forced it to adopt foreign legal and metaphysical elements into the tradition. "Since it had no divine legislation of its own, it had to absorb Roman law in the religion of a civilization."[80] Nasr does not view this creative melding of the Roman and Christian traditions positively. Instead, he claims that this was the beginning of inherent fractures in Christian public life. A "cleavage was created in the mind of Western man between the laws of nature and spiritual principles."[81] This cleavage is only exacerbated by the fact that the various political and legal theories that developed within early and medieval Christianity could not be traced back directly to the person and work of Jesus Christ. Thus, "In Christian civilization law governing human society did not enjoy the same divine sanction as the teaching of Christ."[82] Christian engagement with the legal and public realm, then, was always somewhat tenuous. Without a clear account of divine law that is rooted in revelation to serve as a guide and check, the door is open to secularization and the devaluation of ethics, morality, and social life. Thus for Nasr, the decline of Christianity in Europe and North America is partly due to its truncated

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[79] Sayyid Huessin Nasr, "Response to Hans Küng's Paper on Christian-Muslim Dialogu" *The Muslim World* 77 (1987), 104.

[80] Seyyed Hossein Nasr, *Ideals and Realities of Islam*, 93.

[81] Nasr, *The Essential Seyyed Hossein Nasr,* 193.

[82] Nasr, *Ideals and Realities of Islam*, 93.

theology of the law. "One of the reasons that Western Christianity became weakened as no other religion has in history except for the late Greco-Roman religions…is that the laws used by Christian people in Europe were not drawn directly from the source of Christian revelation and the fountainhead of their religion."[83] For Christianity to correct these problems, Nasr suggests that it reconsider and reevaluate its own Scripture and revelation and consider the possibility of learning from the views of the law in Muslim and Jewish traditions.

This is not to say that Nasr perceives the law alone as *the* constructive solution to the challenges facing modern life. In fact, he is quite explicit at rejecting the types of *Sharī'a* fundamentalism offered by Quṭb, Qadawari, and others. He argues instead that Muslims must reclaim the interrelation between philosophical, mystical, and legal traditions—in much the same way that polymaths such as al-Ghazali and Mulla Sadra did in the classical Islamic tradition.[84] Within such a renewed Islam, *Sharī'a* will always have a vital and important place (and thus the attempt to marginalize it in Muslim-Christian dialogue is misguided). It serves as a moral guide, a divine ideal, and a model of ethical and legal thinking. *Sharī'a* allows for a transcendent reality that resists complete and full application by the state, even as it includes specific details for how human beings are to conduct their lives with regard to God, their neighbor, animals, and creation.

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[83] Seyyed Hoseein Nasr with Ramin Jahanbegloo, *In Search of the Sacred: A Conversation with Seyyed Hossein Nasr on His Life*, (Santa Barbara: Praegar Press, 2010), 307.

[84] Seyyed Hossein Nasr, *Islamic Philosophy from Its Origin to the Present: Philosophy in the Land of Prophecy* (New York: State University of New York, 2006), ch. 14.

Conclusion: From Interfaith Listening to Constructive Christian Engagement

Even when they present drastically distinct accounts of the relationship between *Sharī'a* and the secular, the modern Muslim thinkers surveyed suggest that the very category of law serves as a vital integrative principle.[85] Moreover, this chapter has shown that modern critiques of Christian theo-legal practice are rooted in a much longer history of hermeneutics and interfaith polemics that can be traced to the Qur'ān and early thinkers such as Ibn Ḥazm, 'Abd al-Jabbār, and Ibn Taymiyya. According to this line of tradition, Christianity, because of its scriptural and theological corruptions, lacks a divine law and thus failed to challenge the divisions between religion and politics, the individual and society, the soul and the body, and works and faith. By adopting and absorbing (or being absorbed by) Roman law, Christianity became an idealistic and culturally captive religion.[86]

In conclusion, I want to bring to light something largely unsaid that underlies many of these Muslim critiques of Christianity and law, namely, that even when Christianity discusses divine law–which it has and does–the discussion remains primarily abstract. Christian divine law and natural law tend to function primarily as principles or ideals. There has been, at least within Christian theology proper, very little attention to divine law as it relates to the particularity of legal cases. Here is where the Islamic history of *fiqh* is fundamentally different from Christian accounts of the law, and it is here that Islamic claims might offer a particularly fruitful arena for constructive comparative

[85] Chapter 6 offers a more extensive examination of the various theories of the law and political power currently being debated in the Arab world.

[86] This common Muslim account of Christian origins comports, at least in aspects, with the historical record. According to Brian Tierney, Christianity "irrupted into an ancient civilization that already had its own established hierarchy of government and its own sophisticated tradition of political thought based on non-Christian concepts. Brian Tierney, *Crisis of Church and State, 1050-1300* (Toronto: University of Toronto Press, 1964), 7.

political theology. *Fiqh* is about moving from general principles and ideals to the act of judging concrete cases and rendering specific judgments. Contemporary Christian views of law, in contrast, are relatively abstract and not connected with concrete cases, practices, and jurisprudential models. It is especially this lack of jurisprudential specificity within the Christian tradition that I think Muslims have in mind when critiquing Christian views of the law.

To varying degrees other Muslim thinkers widely share such views.[87] For instance, Muslim reformers such as the Egyptian Islamic leftist, Hasan Hanafi argues that the Arab world is not in need of Western secularism. In the same collection of essays the Moroccan Mohammad Abed al- Jabrī contends that Islam is not to be separated from the state because the *umma* is not the same as a church.[88] In *Islam Between East and West,* the former president of Bosnia, Alija Izetbegovic draws a sharp distinction between the otherworldliness of Christianity and the practical ethical focus of Islam.[89] The Palestinian born and Western educated Isma'il Ragi al-Faruqi offers a book-length critique of Christian ethics as primarily arbitrary and individualistic.[90] The Iranian Ali Sharī'ati's vast oeuvre argues that Islam alone offers a solution to the division within Christianity

[87] For more detailed studies of some of these modern Muslim figures' approach to Christianity, see Kate Zebiri's "Muslim Anti-Secular Discourse" and *Muslims and Christians: Face to Face* and Ataullah Siddiqui*, Christian-Muslim Dialogue in the Twentieth Century* (New York: Palgrave McMillian, 1997).

[88] Hasan Ḥanafī and Mohammad al- Jabrī, *Hiwar al-mashriq wa al-maghrib* (Cairo: Maktabat Madbuli, 1990).

[89] Alija Izetbegovic, *Islam Between East and West* (Indianapolis: American Trust Publications, 1993).

[90] Ibrahim al-Faruqi, *Christian Ethics: A Historical Survey and Systematic Analysis of Its Dominant Ideas* (Toronto: McGill University Press, 1967).

and Western society between the individual and society.[91] As Quṭb's unsettling phrase puts it, Christianity is plagued by a "hideous schizophrenia."

While there is much to appreciate and respond to in these Muslim critiques of Christianity, particularly the overarching issue of dualisms within Christian thought and practice and the resulting problems such dualisms created in political practice, there remain a number of fundamental misunderstandings about Christian theology amongst most Muslim thinkers. Just as the Christian views of Islam covered in chapter 2 largely failed to understand Islam on its own terms and thereby viewed *Sharī'a* as little more than legalism and arbitrary power, most Muslim critiques of Christian approaches to the law do not see the way that Christian views of law are refracted through understanding of the gospel. There is an abiding sense that both Christian views of *Sharī'a* and Muslim views of the place of the law in Christianity "often miss the mark."[92]

It would be easy to dismiss Muslim claims as misinformed and respond with only a polemical rebuttal or corrections. While there is a time and place for point-by-point responses to these critiques and corrections to these misconceptions, this dissertation moves in a wholly different direction by asking whether aspects of Muslim thought might be fundamentally correct, however off they are in details, and whether they could thus serve as a constructive source for Christian theology's own thinking about the law. What if these challenges were not dismissed but receieved as a prod and a challenge to Western Christians that have too easily capitulated to the categories of secular liberalism, especially around questions of public law and the market? Lest we forget, Christianity

[91] See for instance Ali Sharī'ati, *Marxism and Other Western Fallacies*, translated by B. Campbell (Detroit: Mizan Press, 1980) and *On the Sociology of Islam*, translated by B. Campbell (Detroit: Mizan Press, 1979)

[92] Zebiri, *Muslims and Christians: Face to Face*, 232.

itself, through different iterations and governmental forms throughout the centuries, also refused to give away the political realm to a purely secular or empty rule. As Oliver O'Donovan has so powerful stated, "Theology must be political if it is to be evangelical."[93] If Christianity loses sight of its political character then its evangelical character is also at risk (and vice versa). For what is the most primitive Christian confession, but a "political" one, namely that Jesus Christ is Lord? How might Muslim critiques of Christian views of the law be an occasion for Christian own theological development? What key themes and ideas might emerge within Christian theology by attending to these Muslim arguments about the importance of law as an integrative principle? Put differently, what might it mean to offer a non-polemic particularistic response to these Muslim critiques? As David Burrell suggests, "comparative inquiry will inevitably highlight dimensions of our own theological task, by accentuating items in our traditions which need clarification and development."[94]

Given this approach, let me draw together the foregoing genealogy into three primary insights,—each of which forms something of the deeper, and at times unnamed, backdrop for the constructive work in Chapters 4, 5, and 6—that shape my comparative Christian theology of the law:

1. Arguments about *taḥrīf* demand that a Christian theology of the law present an integrated account of the relationship between the message and ministry of Jesus and later developments within the Church. Christian arguments about public law need to cohere with our views of revelation, and thus a Christian theo-legal

[93] Oliver O'Donovan, *The Desire of the Nations: Rediscovering the roots of Political Theology* (New York: Cambridge University Press, 1996), 3.

[94] David Burrell, *Towards A Jewish-Christian-Muslim Theology,* 176.

account should resist too neat a divide between public reason and specific revelation.

2. A theology of the law should offer a holistic vision for human life in its personal and societal dimensions, and find ways beyond the dualisms that Muslims claim plague Christian theology and ethics. In so doing, a theo-legal account attends to the ways that God's will for humanity might provide a touchstone for evaluating existing legal orders and thus provide a check against the abuse of power.
3. Finally, Muslim critics challenge Christians not only to understand public law in negative terms—as constraining evildoers, for example —but also to consider how law might offer concrete and particular judgments that positively witness to God's will for humanity. Law is not simply a moral or ethical principle, but also a social and culturally specific practice of responding to contextual realities.

In responding to these challenges, the Christian political theology that I present will depart from Islam on critical issues around revelation, the gospel, Paul and *Sharī'a*. Biblical and theological understandings of the law's relationship to the gospel and the Kingdom will inevitably shape Christian views of the law. Still, Muslim thinkers raise important concerns that have been plaguing Christian political thought for centuries and their suggestion that attention to the category of law might be a solution is not one that Christian thinkers have widely pursued. Law is more often taken for granted as part of debates about democracy, human rights, or public discourse in Christian political theology. Even if Christians want to make distinctions between the law and the gospel and the religious and civil authorities, as I believe we must, writing in the presence of

these Muslim critics demands that we do so in a way that ensures such distinctions do not become dualisms that amputate the civil realm, particularly the juridical, from broader Christian claims about Christ's sovereignty and lordship, the gospel's social import, and the law's enduring social and moral value.

Chapter 4

The Difficulty with Distinctions: Justin Martyr, Thomas Aquinas, and Martin Luther on Law

The Place of the Law in the New Testament

One need not follow the more drastic accounts of *taḥrīf*—those that argue that the entire Christian canon has been corrupted—to recognize the legitimacy of Muslim critiques that challenge the possibility of grounding a coherent theology of public law in Christian scripture. Christians have long recognized that the New Testament offers an ambiguous account of the place of law in Christian life, thought, and practice.[1] Take the case of Jesus of Nazareth's relationship to the law.[2] On the one hand, he is portrayed as upholding the centrality of the Torah. Famously, Jesus proclaims in the Sermon on the Mount, "Do not think that I have come to abolish the law and the prophets; I have come not to abolish but to fulfill. 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" (Matt. 5:17-18). The Sermon on the Mount is often read as an intensification of the Mosaic law, demanding internal purity of motivation to accompany outward action. In fact, some commentators argue that the Gospel according to Matthew offers a depiction of Jesus as a

[1] The following is a far too brief summary of the various New Testament accounts of the law and is in no way meant to be a comprehensive study of the place of the law in the New Testament.

[2] Here it is important to note that most often when the New Testament uses the word law (*nomos*) it has the Torah as a primary reference point. The law is not first moral law, natural law, or public law, but the law of God revealed at Sinai.

living embodiment of the law—the Torah made flesh.[3] Such a positive portrayal of the relationship between Jesus and the Torah/law is not limited to Matthew. Jesus says similar words about the eternal importance of the law in a debate with the Pharisees in Luke 16:14-18. Mark describes Jesus' moral teaching as not only upholding the laws of Moses but also intensifying them (Mark 10:1-12 and 17-31) and John identifies Jesus' teachings with the authority of God and Moses (John 7:14-24).

At the same time, Jesus' ministry regularly bumped up against certain practices and interpretations of religious law in first-century Judaism. His willingness to enter into table fellowship with tax collectors and sinners (e.g., Matt. 9:9-13, Mark 2:13-17, Luke 15:1-2), his healing on the Sabbath (e.g., Matt. 12:9-14, Mark 1:21-28, Luke 6:6-11, John 5:1-18), his attitude towards certain purity laws (Mark 7:1-22), and most dramatically the cleansing of the Temple (Matt. 21:12-17, Mark 11:15-19, Luke 19:45-48, John 2:13-25) all garnered critique from the religious authorities. And yet Jesus never pits these actions over and against the law itself, arguing instead that he is in conformity with it, even if he and/or his disciples counter current tradition about it. In good prophetic tradition, he says to the religious establishment, "You abandon the commandment of God and hold to human tradition" (Mark 7:8). Even with this critique of tradition in place, Jesus is rarely described as overturning central aspects of Jewish law such as dietary rules, circumcision, and festival celebrations—the very aspects of the Torah that the early Christian community deemed optional and/or revisable. Jesus' actions against particular traditions of the law are justified as being in conformity with the law in so far as they uphold the central demands of love of God and love of neighbor. For Jesus, like other rabbis in the

[3] David Bartlett, *What's Good about This News?: Preaching from the Gospels and Galatians* (Louisville: Westminster John Knox, 2003), 72.

first century, it is love of God and neighbor on which all the laws and prophets hang and the criteria by which certain ritual practices are to be judged (Matt. 22:40). Riffing on his own words about the Sabbath, Jesus' approach to the law might be summarized as "humans were not made for the law, but the law was made for the wellbeing of human beings."[4]

The accounts of the early Christian communities' relationship to the law after the death, resurrection, and ascension of Jesus is far less straightforward. Proceeding canonically, the Acts of the Apostles initially depicts the early community in Jerusalem as following in Jesus' specific approach of abiding by the Torah and participating in the life of early Judaism, including its legal components. The early converts appear all to be either Jews or God-fearers, such as the Ethiopian in Acts 8, and thus the question of adherence to the Torah does not arise. However, as the gospel begins to spread beyond Jerusalem, Judea, and Samaria, the question of the relationship between Torah observance and membership in the new community becomes an issue of considerable debate. Chapters 9 and 10, with Paul's conversion, Peter's vision, and the conversion of Cornelius and his family, are the turning point. After Gentiles hear the good news and receive the Spirit (Acts 10:34-48), a debate erupts about whether or not circumcision and adherence to dietary laws are a necessary part of the Christian way. Eventually at the Council of Jerusalem (Acts 15), it is decided that it is unnecessary for either salvation or membership in the community of faith to be circumcised or to keep the law of Moses (although James remains adamant that certain dietary restrictions remain in place). As the Lukan Peter says, "God, who knows the human heart, testified to them by giving them

[4] Here Muslim readings of Jesus relationship with the law largely comport with the Gospel accounts.

the Holy Spirit, just as he did to us; and in cleansing their hearts by faith he has made no distinction between them and us. Now therefore why are you putting God to the test by placing on the neck of the disciples a yoke that neither our ancestors nor we have been able to bear?" (Acts 15:8-10). A break over the law occurs within early Judaism, of which the Christian movement initially was part, as the now developing early Christian community includes Gentiles without demanding their circumcision. Following this decision, the law would no longer be a marker of communal identity in the same way that it had been.

Most of the New Testament epistles evidence the complicated debates surrounding the question of the place of the law after Christ. Paul, especially in his letters to the churches in Galatia and Rome (both of which predate the composition of Acts), offers the most comprehensive theological account of the role of the law in the economy of salvation. In Galatians, he vehemently argues against those who wish to (re)introduce adherence to Torah, exemplified by circumcision, as a necessary component of salvation for Gentiles. Against such a view, Paul contends that human beings are free from the law since God's justification of humanity is accomplished "not by the works of the law but through faith in (or of) Jesus Christ" (Gal. 2:16; cf, Rom. 3:28). Salvation is given by the Spirit and not through the works of the law or the flesh. The law, according to Paul, is incapable of making human beings righteous. Thus, to rely on the "works of the law" is to subject oneself to the curse of the law, a curse from which Jesus Christ has already redeemed us (Gal. 3:10-14; cf. Rom. 9:16). In fact, Paul argues that even Abraham was justified through faith in the promises of God and not through the law. This is not to say the law plays no part in God's saving action. On the contrary, Paul is adamant that the

law does not contradict the promises of God; it reveals sin and transgression and serves as a necessary (and temporary) safeguard and disciplinarian before the coming of Christ. After the saving action of God in Christ, believers are no longer in need of such discipline and are thus freed from the law and are made to live by the Spirit. Interestingly, Paul goes on to say that the freeing work of the Spirit results in a life lived for the other, not in antinomian avoidance of law and obligation. In fact, such a life in the spirit is described as the epitome of the law. The "whole law" is summed up in love of neighbor (Gal. 5:14) and "bearing one another's burdens" fulfills "the law of Christ" (Gal. 6:2). While Paul is adamant that the law does not justify, he nevertheless describes the Christian life of freedom as one that fulfills the purpose and meaning of the law, and as such nonetheless consistent with the Jesus' identification of the heart of the law with love of neighbor.

Debates about law are not limited to the Pauline corpus.[5] The epistle of James is often read as something of a counterbalance to Paul's perspective on the law and faith. Like Paul, James holds a rigorous standard of obedience to the law, claiming that transgressing any one law makes one guilty of violating the whole law (James 2:10-13). However, James' response is not to emphasize the need for faith alone. Instead, the letter continually demands that people "be doers of the word, and not merely hearers" (James 1:22); he is also adamant that "faith by itself, if it has no works, is dead (James 2:17). James is concerned, much like Paul in his letters to the church at Corinth (I Cor. 8), that freedom from the law has become an occasion for laxity. He thus demands that his

[5] Hebrews, which traditionally was ascribed to Paul but is no longer recognized as having an anonymous author, offers a somewhat similar approach to the law as that found in the Pauline corpus. The author of Hebrews describes the law as a "shadow of the good things to come and not the true form of the realities" (Heb. 10:1).

readers "look into the perfect law, the law of liberty, and persevere, being not hearers who forget but doers who act—they will be blessed in their doing" (James 1:25). The central way that James understands faith to be put to work is through actions of love. For James, like Jesus and Paul, the law centers on love of neighbor and care for the other. Love demands a radical equity amongst persons and challenges favoritism and partiality based on worldly success (James 2:1-7, 5:1-6). Love of neighbor, then, is the "royal law according to Scripture" (James 2:8) and the chief sign that a person has understood the mercy and grace of God. To submit to God (James 4:7) demands that one work out one's faith through the law of love.[6]

The connection between commandments (or law) and love is nowhere more clearly expressed than in 1 John. John presents an image of the Christian life as one marked by obedience and love. Love is defined as obedience to the way of Jesus (1 John 2:1-6). According to John, the command to love one another is not a "new commandment, but an old commandment that you have had from the beginning" (John 2:7). The ancient law of God is summed up not in *Halakah*, but in the command to abide in the love of God and neighbor. For John, the Christian life is not one that leaves behind the law of Israel and the will of God, but rather is a way of living that more perfectly expresses submission and obedience to God. "And this is his commandment, that we should believe in the name of his Son Jesus Christ and love one another, just as he has commanded us.

[6] Peter, at least in the narrative of Acts, serves as something of a meeting point between the perspectives of Paul and James. Moreover, Peter figures prominently in Paul's polemics in Galatians. It is somewhat odd, then, that there is "no interest in Israel, no interest in the law or covenant" in his eponymous epistles. Lewis R. Donelson, *I & II Peter and Jude: A Commentary*, The New Testament Library Commentary Series (Louisville: Westminster John Knox, 2010), 8. . This has led many scholars to conclude a later date of composition, or an alternative author, where the debates around law had been settled.

All who obey his commandments abide in him, and he abides in them. And by this we know that he abides in us, by the Spirit that he has given us" (1 John 3:23-24). The spirit of God that dwells within Christians empowers them to love God and one another and thus to fulfill the commandments of God. For John, love and obedience are not antagonistic, but mutually reinforcing realities (1 John 5:1-5). To love is to obey and to obey is to love.

Taken together, these various texts present a complex, diverse, and somewhat ambiguous picture of the place of the law in the New Testament. On the one hand, obedience to the law is not the means of salvation or a necessary part of membership in the community of Christ. In fact, the New Testament often describes the law in somewhat negative terms as a burden, a shadow, a disciplinarian, and source of communal division. The law's primary task would appear to be to expose sin. In response to this predicament, the author of Ephesians writes that Christ "abolished the law with its commandments and ordinances, that he might create one new humanity in the place of the two, thus making peace" (Eph. 2:15). In all its diversity, the New Testament is univocal that the law alone cannot save. Jesus Christ—through faith, love, and the Spirit—does. A seeming implication of this soteriological claim is that aspects of the written law, as manifested in the various codes of the Old Testament, are fulfilled and thus no longer binding. Still, the authors of the various gospels and epistles go to great pains to insist that the law is "holy and just and good" (Rom. 7:12). To make sense of this apparent incongruity, the New Testament writers often distinguish between the traditions of the law and the eternal heart of the law. Throughout the New Testament, the center of the law is identified as love of God and neighbor, following the Old Testament (Lev. 19:18; Deut. 6:4-5) and Jesus'

words. The law of Christ or the royal law is love. God's commandments and law, then, are eternal, consistent, and true, even if aspects of their outward manifestation (such as dietary law and circumcision) can be amended. The New Testament's witness demands that law be relativized in light of Christ, and therefore theologians and exegetes should make certain distinctions when discussing the law (distinctions that may not be shared by Jews or Muslims).

Finally, I note what is largely missing: that which forms the primary subject of this study—public law.[7] The vast majority of New Testament discussions about the law are preoccupied with questions of its salvific importance, the faithfulness of God, the new communities' relationship to the Torah; the dialectic between *nomos* on the one hand and *pneuma, pistis,* and *charis*, on the other; and the law's grounding in love of God and neighbor. In this context, questions of public law are not of much, if any, concern. Simply put, there is nothing resembling a developed Christian account of public law in the New Testament. At most, there are a few passing references to the issue. Jesus tells his followers to settle differences outside of the court and avoid arbitration (Matt. 5:25, Luke 12:57-59); Paul chastises the church in Corinth for taking lawsuits to public courts (1 Cor. 16:1-10); and Romans (13:1-7), Titus (3:1), and 1 Peter (2:13-17) each encourage submission and obedience to public rulers and their judgments.

These New Testament accounts of the law therefore seem to offer little basis for developing a coherent scriptural theology of public law. Consequently, they seem to justify the Muslim critiques covered in the previous chapter. As we will now see, the Early Church largely followed the New Testament's lead and focused primarily on the

[7] This oversight is interesting given the fact that the pivotal event in the New Testament is the public execution of Jesus of Nazareth—an act of public law.

law's moral, symbolic, and soteriological importance, leaving aside question of its public function.

An Early Christian Case Study— Justin Martyr's *Dialogue with Trypho*

One way for Christians to engage more creatively and faithfully with Islamic discourse on the law is by reconsidering Christianity's early encounters with Judaism and Jewish understandings of law. If Christian theology has long struggled to recognize the ongoing validity of *halakah*, which is rooted in Jews' and Christians' shared scriptures, how much more difficulty will Christian theology find in understanding a religious law that comes after Christ? If most of the tradition has argued that observance of the Mosaic law after Christ is a mortal sin, then of course observance of *Sharī'a* is a mortal sin.[8] Returning to some of the earliest post-apostolic writers on Mosaic law will aid our ability to re-consider the place of law in Christianity and thereby reframe Christian engagements with both of our Abrahamic cousins' commitments to the place of law. This exercise is all the more important given that both early and current Jewish critiques of Christianity resonate strongly with the classical Islamic critiques covered in the previous di.

Relatively quickly in the post-apostolic period, Christian thinkers began to make distinctions between different aspects of the law. Early Christian theologians and exegetes consistently reconsidered the soteriological and moral importance of law, denying it pride of place in the economy of salvation. While there are myriad variations within early Christian exegesis, there was a common tendency to interpret the Old Testament law through typological, allegorical, and/or symbolic tropes in order to show

[8] See for instance the eighth Canon of the seventh Ecumenical Council.

how the law prefigures the coming of Christ. At the same time, Christian theologians emphasized the ongoing insight and validity of the moral aspects of biblical law. As the case study of Justin Mayrtr's *Dialogue with Trypho* illustrates, these readings developed in the context of the early church's attempt to distinguish itself from Judaism, often in extremely problematic ways, even as they attempted to justify the continued use of the Old Testament, against the Marcionite position. While there is much more to say about patristic exegesis of the law than can be done in the following pages, I aim to focus on the two habits of Justin's thinking that remain dominant in later patristic exegesis: 1) that the various distinctions regarding the law drawn by Christian thinkers is dictated by Christology, and 2) that this Christologically-guided exegesis is not consistently applied as exegetes consider either the moral or civil law.

Justin Marytr's second-century *Dialogue with Trypho* is a pivotal document for understanding emerging Christian approaches to interpreting biblical law.[9] The staged dialogue occurs between a recently converted Justin and his Jewish counterpart Trypho.[10] In recounting his conversion from Platonic philosophy to Christianity, Justin invites Trypho to follow him to Christ since the Hebrew prophets who "spoke through the

[9] Selecting Justin's *Dialogue with Trypho* as a case study for Early Christian thinking on the law was made for a number of reasons. First, he offers on the earliest example of drawing multiple distinctions within Christian understandings of law. Second, he is still directly engaged with Judaism and thus attentive to law as a specifically Jewish reality. The focus on the law as a specifically Jewish and Israelite phenomenon fades from view as the Church expands and increasingly becomes unconnected to the Jewish communities and debates. . Third, the distinctions that he makes between the moral and the allegorical are the dominant ones in subsequent patristic interpretation. Fourth, he offers a clear example of the habit of assuming that moral or natural law is clear, universal, and given. The scandal of election and particularity for Justin is not Jesus Christ, but the Jews. Finally, Justin, like most Early Christian thinkers, is largely unconcerned with the function of law as an expression public or civil justice.

[10] There is considerable debate about whether or not Trypho is fictions or not. For more on this debate, see Timothy J. Horner, *Listenting to Trypho*: *Justin Martyr's Dialogue with Trypho reconsidered* (Leuven: Peeters, 2001), ch. 1.

inspiration of the Holy Spirit" foretold of Christ and glorified the Creator.[11] Trypho demurs and insists that Justin should have remained a disciple of Plato who also observed the Mosaic law. Trypho argues that observance of the law is universally binding and central to salvation:

> For, while you adhered to your former school of philosophy and lived a blameless life, there was hope of a better destiny for you, but, when you have turned away from God and have placed your hope in man, what chance of salvation do you have? If you will listen to me (indeed I already think of you as a friend), first be circumcised, then observe the precepts concerning the Sabbath, the feasts, and God's new moons; in brief, fulfill the whole written law, and then, probably, you will experience the mercy of God.[12]

Trypho goes on to critique further Christianity's approach to the law by noting how it too closely mimics pagan practice. By not observing the law, he argues, Christians blend into the world and thus fail to give true witness to the holiness of God. "But this is what we are most puzzled about, that you who claim to be pious and believe yourselves to be different from the others do not segregate yourselves from them, nor do you observe a manner of life different from that of the Gentiles."[13] Trypho concludes his opening objections by implying that Christians reject the true God when they fail to obey the divine commandments. The gauntlet is thrown and the challenge issued to Justin, "If, then, you can give a satisfactory reply to these charges and can show on what you place your hopes, even though you refuse to observe the Law, we will listen to you most willingly."[14]

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[11] Justin Martyr, *Dialogue with Trypho,* Translated by Thomas B. Halton. Washington D.C.: Catholic University of America, 7.1 (14)

[12] Justin Martyr, *Dialogue with Trypho* 8.3 (15, 16)

[13] Justin Martyr, *Dialogue with Trypho* 10.3. Trypho's critiques of Christian positions on the law have strong resonance with those early Muslim thinkers such as Ibn Ḥazm, 'Abd al-Jabbār, and Ibn Taymiyya that we analyzed in the previous chapter.

[14] Justin Martyr, *Dialogue with Trypho* 10.3 (19)

Justin's response to these critiques is complex, touching on questions of exegesis, theology, and philosophy. I will not attempt a complete study of the *Dialogue*, but instead focus on the ways that Justin's broader argument depends on his decision to draw distinctions in how Christians understand the Mosaic law.[15] While the foreground of the dialogue is Justin's response to a composite representative of a second-century Hellenistic Jew, the backdrop is likely Marcion's *Antitheses*. In order to carve space between Marcion's wholesale rejection of Jewish Scriptures and Trypho's commendation of continued obedience to the Mosaic law, Justin insists that Christians make distinctions in how they understand the law. "In accepting the Jewish Scriptures," Justin had to "explain how he could thus reject the law that was so clearly presented in those scriptures."[16] Justin's strategy for affirming that Christians do in fact worship the God of Israel, even though they do not keep all of the commandments, is to distinguish between the Mosaic law and the new law of Christ. This distinction can be found in Scripture, especially the Pauline texts, and also in other earlier texts such as the *Epistle of Barnabas*, the *Didache*, and Ptolemy's *Letter to Flora*. And yet, Justin goes one step further and also highlights other divisions to be discerned within the Mosaic law itself.

The first and most vital distinction to be made is between the Old and New Covenants (to which Justin often interchangeably refers as the old law of Moses and the new law of Christ). Referencing texts such as Isa. 55 and Jer. 29, Justin argues that the

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[15] For more in depth analysis, see Pierre Prigent, *Justin et L'Ancien Testament* (Paris: Libairie Lecoffre, 1965), Theodore Stylianopolous, *Justin Martyr and the Mosaic Law* (Atlanta: Society of Biblical Literature, Dissertation Series No. 20, 1975), Craig D. Allert, *Revelation, Truth, Canon and Interpretation: Studies in Justin Martyr's Dialogue with Trypho* (Leiden: Brill, 2002), and Timothy J. Horner, *Listening to Trypho: Justin Martyr's Dialogue with Trypho reconsidered* (Leuven: Peeters, 2001).

[16] Craig D. Allert, *Revelation, Truth, Canon and Interpretation: Studies in Justin Martyr's Dialogue with Trypho (*Leiden: Brill, 2002), 224.

God of Israel had promised the Israelites a new and everlasting covenant. The Mosaic law was never intended to be either universal or eternally binding. Instead, it pointed beyond itself to a New Covenant that would be written on the human heart and given to all nations. For Justin, this promise is clearly fulfilled in Christ: "An everlasting and final law, Christ himself, and a trustworthy covenant has been given to us, after which there shall be no law, or commandment, or precept."[17] Christ is the new and final law, and thus the law of Moses is abrogated.

The need for a new law is tied up in what Justin understands as shortcomings in the old law, particularly its limited scope. According to Justin, the Mosaic law was given exclusively to the Jews and thus was inherently provisional, since it could not reach to all nations and thereby fulfill the promises of God to Abraham. In contrast, the new law of Christ is universal, intended for all of humanity. "The law promulgated at Horeb is already obsolete, and was intended for you Jews only, whereas the law of which I speak is simply for all men. Now a later law in opposition to an older law abrogates the older."[18] The new law reveals the provisional nature of the Old and therefore supersedes it.[19]

While the law of Moses is obsolete, Justin insists that the Christian God is in fact the God who created the universe, called Abraham, led Israel out of Egypt, and gave the law. The God of Christ is the God of the patriarchs and prophets. Justin justifies his

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[17] Justin Martyr, *Dialogue with Trypho* 11.2 (20). For Justin, this covenant is Jesus Christ, who is the new law, the new covenant. Contra Pannenberg's reading and critique of Justin as offering a new Christian law, Justin is actually adamant that Christ does not usher in a new covenant or law, he himself is the new law.

[18] Justin Martyr, *Dialogue with Trypho*. 11.2 (20).

[19] R. Kendall Soulen has shown how Justin's argument and his use of a salvation-history hermeneutic was pivotal in framing the way that later Christian thinkers interpret the Old Testament and Judaism. As Soulen argues, this model, while preferable to Marcion, is marked by supersessionist logic. In order to 'save' the God of Israel for Christianity, Justin casts aside the Jewish people and their practices.

claims by offering an extended Christological reading of the law and the Old Testament. He presents an extensive exegesis of numerous prophetic or typological signs in the Old Testament that he contends signal the coming of Jesus Christ. For instance, he argues that circumcision is an external sign for the coming of baptism,[20] that the Passover Lamb is a sign of the crucifixion,[21] and that Moses's outstretched hands during the battle of Amalek is a Christological symbol.[22] And yet, Justin argues that trust in this one God does not stem from the Mosaic law, but from the crucified Christ. As Bruce Chilton notes, for Trypho the "systematic meaning of the Scriptures is the law, while Justin argues that their systematic meaning is Christ."[23]

Simply asserting the finality and perfection of the new law risks pitting the God of Israel and the God of Jesus Christ against each other. Instead, Justin maintains that God was truly active in giving the law to Israel and that God's actions were a good and genuine component of salvation history. Nonetheless, questions remain unanswered: How could the old law be genuinely from God and yet limited? Why would God give a law only to supersede it later? Is there anything in the old law that remains after Christ?

To support his argument and respond to these questions, Justin suggests further distinctions in how Christians understand the old law. "For I say that some precepts where given for the worship of God and the practice of virtue, whereas other commandments and customs where arranged either in respect to the mystery of Christ (or) the hardness of your people's hearts."[24] The Old law, then, can be divided into

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[20] Justin Martyr, *Dialogue with Trypho*, 16.
[21] Justin Martyr, *Dialogue with Trypho*, Chapter 40.
[22] Justin Martyr, *Dialogue with Trypho*, Chapter 111.
[23] Bruce Chilton, "Justin and Israelite Prophecy" in Sara Parvis and Paul Foster (eds.), *Justin Martyr and His Worlds* (Minneapolis: Fortress Press, 2007), 79.
[24] Justin Martyr, *Dialogue with Trypho*, 44.2 (67).

distinct categories, some of which are relevant for Christians today and some of which are not. The first distinction, which does not figure prominently in the rest of the dialogue, focuses on the aspects of the law that cultivated moral virtue and pointed Israel toward right worship of God. The moral category focuses on those Old Testament moral norms—theft, murder, and adultery—that are universal and therefore binding. The second (typological) distinction allows Justin to perceive the ways that numerous ritual practices of the law witness to the coming crucifixion and resurrection of Christ. The third distinction, which we might term concessive, provides Justin with the tools to interpret the meaning of a whole host of seemingly (from his Greek point of view) odd, specific legal commands such as circumcision, dietary laws, and the Sabbath. Justin understands these various socio-religious practices as divine concessions necessary for Israel in light of their peculiar sinfulness. Here tropes of anti-Semitism function both to other Jews and to harmonize the biblical witness. Given Justin's relative restraint in employing typological readings, the concessive category is necessary for giving a full account of the Jewish Scriptures. As contact with Judaism diminishes and allegorical readings grow in favor, Justin's secondary category of interpretation largely drops from view in subsequent exegetical practice. While the practice of distinguishing between aspects of the Old law becomes commonplace in later Christian thinking about the Old Testament, Theodore Stylianopolous has argued that Justin is in fact the "first Christian writer explicitly to distinguish different parts within the Law."[25]

[25] Theodore Stylianopolous, *Justin Martyr and the Mosaic Law* (Atlanta: Society of Biblical Literature, Dissertation Series No. 20, 1975), 51. Most readers of Justin argue that he offers three major divisions in the old law: the moral, the typological/prophetic, and the historical dispensation/concessive. While it is clear that Justin does draw distinction in his understanding of the Mosaic law, it is less certain that these distinctions are properly understood as tripartite. Justin's assertion that some laws were given for worship of God and the practice of virtue might

The second and third distinctions, the typological and the concessive, are what hold together Justin's argument about the genuine importance of and limited scope in the Old law. The typological and concessive were given to Israel for a specific and limited dispensation, a time that has now passed with the coming of Christ. The typological includes all of the prophetic and allegorical symbols within the law that point toward the coming of Christ. The concessive, a problematic category that I will return to shortly, includes those legal or moral rulings such as circumcision, dietary restrictions, and even the Sabbath that are given explicitly and uniquely to Israel.[26]

In addition to these two limited aspects of the Old law, Justin also maintains that the Mosaic law includes universally binding principles or legal expressions of moral law.[27] Justin's view of universal law is understood to be clear and innate. "God shows every race of man that which is always and in all places just, and every type of man knows that adultery, fornication, murder, and so on are evil."[28] The eternal law, which is

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be read as two distinct notions: the ceremonial and the moral. Even if they can be neatly divided into three major categories, these three do not map directly onto Thomas's tripartite categorization of the old law as moral, ceremonial, and judicial/civil. Regardless of whether Justin offers three or four differences in the old law, the very practice of drawing distinctions between the Old and new law and also of distinguishing between temporal and enduring elements of the Mosaic law is one that has reverberated throughout Christian history.

[26] Oliver O'Donovan suggests that the reference to hardness of heart might be tied the later development of the 'civil precepts' in medieval and reformation thinkers. "It is obviously related to Justin's reference to "hardness of heart," but its interpretation of the compromise in terms of Moses' distinctively socio-political work marks a decisive step." Oliver O'Donovan, "Towards an Interpretation of Biblical Ethics," *Tyndale Bulletin* (1976), 60. While there is terminological resonance between Justin's arguments and later views on the role of civil law as restraining evil doers, O'Donovan's suggestion that this is related to Justin's own position on Jews and Judaism is not sustainable. Justin does not suggest that the concession are legal rulings that might be related to penal law such as stoning or other forms of physical punishment given to wrong doers. Instead, he consistently points to those particular commands such as Sabbath and circumcision that set Israel apart from the nations.

[27] As we will see, Justin's understanding of the moral component of the law is distinct from Luther (and Paul's) understanding of it. Justin does not have any sense of the moral law as convicting or pointing toward the need for forgiveness.

[28] Justin Martyr, *Dialogue with Trypho,* 93.1 (144).

akin to natural law, is universally valid and seemingly known apart from revelation. Certainly, Christ "confirms and perfects" these ethical precepts, but he does not uniquely reveal them. Christ's 'legal' function in relationship to these moral principles is to show how they are eternal, universal, and spiritual.[29] Thus, Justin's distinctions within the Old law allow him to maintain that the Mosaic law includes both temporary laws and universally valid laws. "They who are obligated to obey the Law of Moses will find in it not only precepts that were occasioned by the hardness of your people's hearts, but also those that in themselves are good, holy, and just."[30] To understand the Old Testament and its presentation of the law properly, Justin suggests that Christians interpret it through Christ and in light of the distinct components that the law contains.

What might we make of Justin's reading of the law or his justification of Christian ambivalence toward the Mosaic law? Does his argument adequately address the concerns of Trypho, not to mention those of Ibn Taymiyya or Ibn Ḥazm? Are his attempts to connect the God of the Old Testament through invoking his tripartite divisions compelling? There is much to say about its problematic readings of Judaism and the way that his allegorical or typological readings often stretch the bounds of the plain sense of the text. However, I want to focus on the ways that Justin's understanding and interpretation of the three aspects of the Mosaic law is marked by a deep hermeneutical inconsistency – an inconsistency that, I suggest, is related to the way that Justin inverts Paul's understanding of the challenge of understanding the particularity and universality of law.

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[29] R. Kendall Soulen, *The God of Israel and Christian Theology*, (Louisville: Westminster John Knox, 1996), 39.

[30] Justin Martyr, *Dialogue with Trypho,* 45.2 (68).

Throughout the *Dialogue,* Justin consistently reconsiders the typological and concessive aspects of the law in light of Christ. In contrast, he never rethinks moral law in light of the particularity of Jesus Christ. He simply assumes moral law to be universal and known by all people. Given his commitment to the universality of the *logos*, there is no sense in Justin's thinking that Jesus Christ might be the criteria by which Christians evaluate claims about the natural or moral law. Instead, Christ is the quintessential expression of universal morality, in which anyone can participate through the exercise of human reason. Justin makes no attempt to consider how Jesus of Nazareth's rejection of vengeance or his call for love of enemy might reframe what is viewed as 'natural.' Nor does Justin ever hint that the cross might interrupt or upend human visions of justice. Justin uses the figure Christ to re-think certain aspects of Jewish laws, but Jesus is not brought to bear on moral law.[31]

Part of Justin's failure to interrogate the moral in light of Christ is related to his aversion to interpreting divine election in a way that emphasizes particularity. This antipathy frames his understanding of the concessive category of Mosaic law, which is given "because of your people's hardness of heart."[32] As we saw previously, the concessive is a framework for making sense of those biblical commands that Justin perceives to be neither distinctly moral nor clearly typological. Rather than understanding these as signs of divine election or a framework for a specific moral-social way of being in the world, Justin interprets them as punishment. Here Justin turns on its head the

[31] In pointing to this problem, I am not calling for a Barthian rejection of all accounts of natural law or conscience. Instead, I am suggesting that Justin's hermeneutical commitments are not consistently applied when considering each of the divisions that he draws in the Mosaic Law. That he might have affirmed the moral categories of the Old Testament as universally binding and yet also demanded that they, like the other categories of law, be reevaluated in light of Jesus Christ.

[32] Justin Martyr, *Dialogue with Trypho,* 67.4 (103).

conundrum that Paul addresses in Romans. Instead of the law being an advantage for Jews and a sign of divine election—as Paul always assumes—Justin interprets the Mosaic law as concession to distinct problems in the Israelite people. Instead of Jews being elected by grace, they appear to be 'elected' because of a peculiar predilection toward sin. Justin's hesitancy to embrace the whole of Mosaic law as a divine gift is related to his aversion to what anachronistically we might term the scandal of particularity. Given this aversion, it is no wonder that Justin fails to consider the particularity of either Christ's moral teaching or the way that his crucifixion might upend morality. Instead, Justin interprets the law of Christ as coextensive with a perceived given universal moral law, one that lacks any connotation to the moral particularity of Jesus Christ.

By not interrogating the moral with the same rigor that he does the concessive and the typological, Justin begins the habit of quarantining the natural from the gaze of the gospel. Given the way that natural law becomes the basis for later Christian arguments about civil law, this lacuna in addressing moral law becomes influential for how Christians understand civil law. Put differently, the problem is not so much the distinctions that Justin draws within the Mosaic law—for Christ and the New Testament texts compel Christians to make some distinctions—but the inconsistent way that these distinctions are judged.

A Brief Excursus on Justinian Corpus Iuris Civilis,

Throughout the first few centuries of the Church, there continue to be consistent efforts to understand the law in light of the New Testament account of Christ and Spirit. While diverse strategies are employed, there is recognition that Mosaic law cannot be left

as is, but must be rethought in and through Jesus Christ. The dominant framework for addressing the law is through two of Justin's three categories: the moral and the typological.[33] However, discussions of what we might now term common, civil, public, or human laws are largely absent from these Patristic accounts of the law. Even Augustine, who wrote extensively on the soteriological place of law in his anti-Pelagian works, rarely discusses law in his more 'political' works such as the *City of God*. When he does discuss law in some of his letters, he does little to connect it with his understanding of its soteriological place.[34] This lacuna is partly due to the New Testament's own limited discussions of human law outside of Israel and the initial minority position of the Church within the Roman Empire. Yet one might expect this oversight to be corrected after the edict of Milan and the subsequent establishment of Christianity as the religion of the Empire.

Alongside the evidence of theologians like Augustine, one might also cite in support of this thesis Emperor Justinian I's monumental commissioned collection of civil law in *Corpus Iuris Civilis*. In this collection one finds little to no reflection on how the gospel and Christology might reconfigure questions of civil law. Yes, this is a public promulgation in the name of the Lord Jesus Christ that makes adherence to Nicene orthodoxy necessary for citizenship, includes pronouncements against heresy, and discusses the election of bishops. However, the primary sources of law do not include the Christian Scriptures, but are almost exclusively Roman jurists, emperors, and customs. As one scholar has argued, this is not a "Christianization of the substantive principles of

[33] Oliver O'Donovan, "Towards an Interpretation of Biblical Ethics," 59,

[34] "One searches in vain in the corpus of St. Augustine for any extensive or systematic treatment of the role of law." *Augustine through the Ages: An Encyclopedia*, 584. Calvin also points out the lack of discussion of civil law in Augustine in *Institutes* II.7.9.

classical Roman law."[35] The principles of the classical Roman law are made Christian not through creative synthesis between Roman and Christian sources or through a Christian redirection of Roman customs, but by imperial fiat.[36] As Edward Gibbon classically put it, "The religion of the Empire had exerted but very slight influence—no fundamental influence, we may say—on the Justinian law."[37]

Medieval Case Study— Thomas Aquinas

In contrast to the relative dearth of theo-legal thinking in the first six centuries of Christianity, medieval Christian thought developed complex accounts of the law in its theological, ecclesiological, and public aspects. As Rémi Brague shows, "the reign of the law was so-far reaching in the Middle Ages that the word 'law' was used to designate what we prefer to call 'religions.' "[38] No theologian has been more influential in framing Christian theologies of the law than Thomas Aquinas. Questions 90-108 of the *prima secundae* of Thomas's *Summa Theologiae* present one of the most comprehensive analyses of the concept of law in Christian history.[39] Drawing on previous authorities

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[35] Caroline Humfress, "Law and Legal Practice in the Age of Justinian," in ed. Michael Mass, *The Cambridge Companion to the Age of Justinian* (New York: Cambridge University Press, 2005), 168.

[36] Where Christianity seems to have influenced these promulgations is through its anti-Jewish laws.

[37] Edward Gibbon, *The Rise and Decline of the Roman Empire, Vol.* 5, 525.

[38] Rémi Brague, *The Law of God: The Philosophical History of an Idea*, translated by Lydia G. Cochrane (Chicago: University of Chicago Press, 2007), 107.

[39] Given the complexity and importance of Thomas' thought, the following pages will be at best a cursory examination of his theology of law. What I hope to show is not any new insight into his opus, but simply note the ways that his distinctions within the old law continues to shape the thought of later thinkers such as Luther and Calvin, even if they depart from him fundamentally on other aspects. Moreover, my critique of Protestant theologians for largely failing to integrate the concept of civil law through the light of the Gospel is muted by the fact that Thomas promises no such examination. Moreover, his participatory metaphysic and his vision of all law be related to Eternal law avoids worries about a pure nature. Still, questions

such as Scripture, Aristotle, Augustine, Isidore of Seville's *Etymologies*, and Gratian's *Decretum*, Thomas sets forth a complex and nuanced discussion of law and its various distinctions.[40] Thomas' engagement with the law mimics the overarching form of the *Summa,* beginning with general concepts accessible via human reason and then moving to the particular knowledge known through divine revelation. In these eighteen questions, Thomas moves from definitions of law in general (I-II.90-92) and the eternal law (I-II.93) to a detailed examination of natural law (I-II.94), human law (I-II.95-97), the old law (I-II.98-105), and the new law (I-II. 106-108).[41] Within this broader architectonic, Thomas presents some of his most enduring contributions to theories of law, namely his account of natural law and his proposal for drawing distinctions between the moral, ceremonial, and judicial precepts of the old law.

Contrary to both neo-Thomist readings of natural law and traditional Protestant critics of Thomas, recent scholarship has shown that questions 90-108 are integrated within the *Summa*'s broader vision of God, human flourishing, and salvation.[42] Thomas does not understand the law as only a site of pure nature, straightforwardly available to all via reason. Rather, the law is also an act of divine intervention in a situation of sin and

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should be asked about whether or not civil law might be readdressed in light of the new law of Christ.

[40] As Mark D. Jordan discusses, Isidore is influential in being one of the first Christian thinkers to offer an extended discussion of the distinction between divine and human laws, see Book V of *Etymologies*. In addition, Alexander of Hales' *Summa Theologica* defines law as eternal, natural, Mosaic, and evangelical.

[41] Further discussions of the law also occur in the *secunda secundae*'s examination of justice (IIa IIae, qq. 57-122).

[42] See for instance, Pamela Hall, *Narrative and the Natural Law: An Interpretation of Thomistic Ethics* (Notre Dame: Notre Dame University Press, 1999), Mark D. Jordan, *Rewritten Theology: Aquinas after His Readers* (Malden: Blackwell, 2006), Matthew Levering, *Christ's Fulfillment of Torah and* Temple (Notre Dame: Notre Dame University Press, 1992), Stephen J. Pope, ed., *The Ethics of Aquinas* (Washington: Georgetown University Press, 2002), John Rziha, *Perfection Human Actions: St. Thomas Aquinas on Human Participation in Eternal Law* (Washington: The Catholic University of America Press, 2009).

vice (I-II.71-89) that draws human beings toward grace, virtue, and eventually beatitude. Law is central to the divine pedagogy, a key point of transition from the natural to the supernatural.[43] In addition, Thomas' examination of law is premised on a conceptual framework in which no aspect of law is fully cut off from the whole. Each part of the law, be it natural, human, or divine, participates in some way in the eternal law of God. The distinctions that Thomas draws within the law arise because of the different aims of each component of law. Divine and human law, then, differ not because one participates in the law of God and one in the law of nature, but because they have distinct ends: one aims for supernatural beatitude and the other toward natural flourishing. In contrast to Justin, then, Thomas' discussions of the moral or the natural are not wholly unrelated to his broader theological vision.[44] Interpretations of Thomas' various distinctions concerning law should be cognizant of the ways that these definitions are held together within his broader teaching on human growth toward God. With these two cautions in mind, let us now turn to a brief examination of the various distinctions that Thomas draws in his understanding of law.

The Eternal and Natural Law

Thomas opens his inquiry into law by defining its essence and aim as "a rule of measure of acts, whereby man is induced to act or is restrained from acting."[45] Law is a

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[43] See Mark D. Jordan, *Rewritten Theology*, ch. 7.

[44] Contra Muslim critiques, Thomas' theology of human law is not completely removed from his theological commitments. However, one can still raise questions of the sufficiency of this argument and whether or not the natural/supernatural and exterior/interior distinctions nonetheless results in a depiction of the human law as largely unrelated to the quest toward God. As I will argue, without returning to the issue of human law in light of the new law, Thomas insufficiently interrogates the relationship between the new law of Christ and the human law.

[45] *ST* I-II.90.1.

binding rule of human action that either prohibits or prescribes specific deeds.[46] Throughout the subsequent articles of question 90, he enriches this definition by attending to the ways that law is constituted by three key components: reason, ordering toward an end, and community. First, genuine law must conform to reason, since reason is the rule and measure of all proper human actions.[47] Second, all law is given in order to direct and constrain human action toward a particular end, namely the common good of a specific community.[48] Third, given its communal orientation, public promulgation is a central component of any law. For a command to be properly considered a law, either the whole community or a representative ruler of the community must promulgate it. Still, reason takes precedence over public dissemination. Thomas will argue that if a ruler issues a 'law' that does not comport with reason or serve the common good of the community, then it is not a genuine law. Laws must be both reasonable and public in order to be defined as such. Thomas thus concludes question 90 by offering a richer definition of law as "nothing else than an ordinance of reason for the common good, made by him who has care of the community, and promulgated."[49]

The quintessential determination of any law is whether or not it partakes in the eternal law, which is God and God's providential ordering of the whole of the world. "Now it is clear that, granted the world is governed by Divine providence, the whole community is governed by divine reason. And therefore, the very idea of the governance

[46] ST I-II.90.1.

[47] ST I-I.3.

[48] Since law is prescribed for a community, it is not primarily given for either families or individuals Thomas argues that the rules of a family are not properly law since they are not related to a broader political community. ST I-II.90.3.

[49] ST I-II.90.4.

of things existing in the Divine mind has the nature of law."[50] The eternal law is the fundamental meaning of all subsequent law and that which all other components of the law participate in. Here it is important to note that Thomas does not equate the eternal law with divine law. The eternal law includes the divine law, but divine law does not exhaust the eternal law. Divine law, as we will see later, is specifically demarcated as the revealed law, both the Old given through Moses and the New offered by Christ and Spirit. In contrast, the eternal law is the entirety of God's ordering and directing of the world from creation to eschatological consummation. In addition to the revealed divine law, this also includes both natural and human law, which are not derived from special revelation but are knowable, however dimly, through human reason and practical judgment. As Fergus Kerr highlights, "The Mosaic Law and the Law of the Gospel, let alone natural and human law, are located in the context of eternal law, namely God himself."[51] Both natural and divine laws equally flow from the eternal law.[52] "All laws, in so far as they partake of right reason, are derived from the eternal law."[53] All of Thomas' subsequent discussions and distinctions of law, then, emerge from these two opening claims: 1) that law is public and reasonable, and 2) that all law in so far as it is reasonable participates in the eternal law of God, which orders and directs creation toward its proper end.

Thomas' much debated theory of natural law is situated within these initial examinations on the nature of law and the eternal law. It might be surprising to some given the preponderance of subsequent debates that Thomas' own discussion of natural

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[50] ST I-II.91.1.

[51] Fergus Kerr, *After Aquinas,* 106.

[52] There is debate about the hierarchy of these concepts, whether Thomas understands the eternal law flowing to natural law, which is then known through both human and divine law, or whether there is a more progressive movement that understands law that culminates in divine law.

[53] ST I.II.93.3.

law only occupies one question made up of six articles.[54] He depicts natural law as the created inclination and reasonable ability of human beings to understand their end and thereby make practical judgments about proper action and morals. It is imprinted on the human heart and "can nowise be blotted out."[55] Central to Thomas' account of natural law is a definition of what it means to be a creature. Human beings participate in the natural law alongside other creatures. Thus, Thomas describes the natural law as including a variety of levels of the good and being from which its precepts are derived. First, human beings share with all others in the good of existence, which includes an inclination or precept of survival. Second, human beings are animals and thus share with other animals in the inclination toward reproduction and care. Finally, human beings are rational and thus natural law has imprinted on them an inclination to community and knowledge of God.[56] Thus, natural law is the first principle of practical reason, which attempts to seek these goods through reason, virtue, and judgment. Centrally, natural law is always oriented toward seeking the good and avoiding evil.[57]

The challenge of human moral discernment is to move from these general principles of the good to concrete actions and judgments. Natural law provides central guidance in the pursuit of these various layers of the good, but general principles alone do not always decide the proper course of action. In fact, Thomas insists that natural law includes two distinct layers: "certain most general principles, that are known to all; and secondly certain secondary and more detailed precepts, which are, as it were, conclusions

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[54] In no way do I wish to engage in an extended debate about the natural law or the host of interpretations about Thomas' view. For a clear and succinct summary of these recent debates, see Fergus Kerr, *After Aquinas,* ch 7.

[55] ST I-II.94.6.

[56] ST I-II.94.2.

[57] ST I-II.94.2.

following closely from first principles."[58] Natural law includes inclinations and hints of proper acts, but it does not always offer a fulsome account of all law and action. While human beings can regularly use their reason and natural inclinations to arrive at clear decisions, such as the immortality of murder, other issues of natural law are opaque. What for instance, does the natural law demand in terms of the sharing of material goods, the handing on of property, or the propriety of certain criminal punishment? On these more practical matters, the natural law remains undefined and therefore limited. Thus natural law alone is insufficient to guide human beings and community toward their proper end. As Mark Jordan notes, "The common natural law is so abstract that it provokes disagreement when expressed as precept, much more when applied to particular cases."[59] While God has imprinted the natural law and moral inclination onto all human beings, the complexity of finitude and the reality of sin both complicate the natural law. Thomas thus recognizes that natural law alone is not sufficient, even as he affirms that all subsequent accounts of law cannot contradict natural law or reason. "The precepts of the natural law are general, and require to be determined: and they are determined both by human law and by divine law."[60] The generality of natural law leads Thomas to introduce two further distinctions in his understanding of the law: the human and the divine.

Human Law

Human law is a necessary, albeit imperfect, aspect of human creaturely existence. It provides guidance and restrictions to societies and thereby directs human beings toward

[58] ST I-II.94.6.
[59] Mark D. Jordan, *Rewritten Theology: Aquinas after His Readers,* 143.
[60] ST I-II.99.3.

their proper natural ends by fostering the goods of survival, nurture, and community. The human law's proper *telos,* according to Thomas, is "the common good" of a specific community that will persist across generations.[61] By fostering the common natural good, human law participates through reason in both the eternal and natural law. Thomas "locates human law in the continuous flow of law and reason: divine reason and eternal law; human natural reason and natural law; finally, human reasoning to further conclusions and determinations of the generalities of natural law."[62] The central way that human law participates in the eternal law is by offering specific moral and legal decisions on the general principles of the natural law. These legal decisions are meant both to restrain the community and to offer ameliorative direction.[63]

Human law, then, is legal specifications of the principles of natural law promulgated by and for a particular community. The binding force of these judgments is based on whether or not they serve the end of the common good, cohere with natural reason, and are promulgated by the assent of either a leader or the whole community. Thomas teaches that some aspects of human law are binding regardless of political statutes because they participate in natural law through reason (e.g. murder), but most human laws are simply attempts to make concrete judgments about specific situations (e.g. taxation). These later decisions have no inherent natural force, but become laws

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[61] ST I-II.96.1.

[62] Clifford G. Kossel, S.J., "Natural Law and Human Law," in Stephen Pope (ed.), *The Ethics of Aquinas,* 178.

[63] Thomas positively quotes Isidore's definition of human law: "law shall be virtuous, just, possible to nature, according to custom of the country, suitable to place and time, necessary, useful; clearly expressed lest by its obscurity it lead to misunderstanding; framed for the common good." ST I-II.95.3.

through public promulgation. This aspect of human law, even if it is only derivative judgment, remains binding for a community and its leaders.[64]

The fact that most aspects of human law are specific judgments culled from abstract principles means that distinct political communities' laws are properly variable to circumstances, customs, and time. As long as the law of a community coheres with justice, reason, and aims toward the "common good," a specific community can make different decisions about what should constitute its own law. Differences in, say, political organization or rules of representation or penal code do not necessarily make some political laws more just and others less so. These may be injustices, but they are more likely simply reflections of differences in custom and circumstances. The fact that human law is variable also means that it is malleable. "Human law is rightly changed, in so far as such change is conducive to the common good."[65]

Given that the end of human law is the natural communal good, human law has built-in limitations. Thomas argues that human law cannot condemn all vices, but must leave some vices to the realm of providence. "Human law does not prescribe concerning all the acts of every virtue: but only in regard to those that are ordainable to the common

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[64] See ST I-II.95.2.

[65] However, Thomas recognizes that considerable or regular change to human laws imperils its authority. In fact, he seems to suggest that communities avoid changing laws since laws are often based on custom and it is imprudent to disrupt these. Thus there is a built in conservatism to Thomas' account of human law. One should only change a law if it is clearly against justice and inhibiting the common good. However, Thomas does not address the fact that those in power and thus capable of promulgating changes in the laws are often slow to recognize the way that custom can oppress. Here one thinks, for instance, of the long history of slavery, gender injustice, or homophobia that were reinforced through appeal to nature or custom. The challenge, however, comes with the human propensity to mistake custom for natural law. Here Thomas unfortunately proves no more adept at distinguishing one from the other than previous or future generations of thinkers.

good."[66] Since the human law is oriented toward the common good, its promulgations are only concerned with the exterior life of human beings. Its focuses on issues of nature: how to trade goods, exchange property, encourage life and care for children, the extent of penal punishment, and other such concerns of the common life. On the one hand, this is a positive feature that resists legal and political overreach. Human law cannot fully address the interior life of individuals or completely shape human beings toward their true and final end of union with God. Human law is a genuine good, but it is also a limited one. A further law is needed to guide human beings toward our ultimate end, a law that Thomas calls divine.

The Need for Divine Law

In light of this predicament, God graciously offers a revealed law in order to draw human beings to their supernatural end. While the natural and human laws are good, they are also insufficient in and of themselves to direct human beings. "The end of human law is different from the end of Divine law. For the end of human law is the temporal tranquility of the state, which end law effects by directing external actions…the end of divine law is to bring man to that which is everlasting happiness; which end is hindered by any sin, not only of external, but also of internal action."[67] The human law is only concerned with intra-human relations, while the divine law addresses both intra-human relations and the relation between humans and the divine. Thus, "God has also bestowed divine law to aid humans in making proper judgments, to direct humans interiorly as well

[66] ST I-II.96.3.
[67] ST I-II.98.1.

as exteriorly, and to forbid all sins."[68] Thomas contends that the divine law is more excellent than the human law in four key ways: 1) it is capable of drawing human beings to their supernatural end; 2) it corrects the uncertain legal judgments of humanity; 3) it addresses the interior life and nurtures virtue; and 4) it is capable of judging all sins and vice, even those beyond the scope of human law. As John Rziha notes, the divine law "has the greatest participation in the eternal law and the most extensive content."[69]

The divine law, like creation and consummation or nature and grace, includes two distinct stages or movements. God does not simply reveal the whole of the divine law, but instead elects to unveil it through stages in human history. Following the lead of the New Testament and a millennium of tradition, Thomas divides the divine law into two parts, or better two epochs: the old law of Moses and the new law of the gospel. The first is given only to Israel as a sign and promise; it is an act of "gratuitous election."[70] In contrast, the New law is the actualization of the promises of the Old, and is thereby offered through Christ and Spirit to the whole of humanity.

Old Law

Thomas, like theologians before and after him, is confronted with the challenge of making sense of the relationship between Moses and Christ. Questions 98-105 are concerned with addressing these theological and exegetical conundrums. Rejecting any suggestion of a Marcion-like division of Gods, Thomas affirms, "Without any doubt, the

[68] ST I-II.91.4.

[69] John Rziha, *Perfecting Human Actions: St. Thomas Aquinas on Human Participation in Eternal Law* (Washington, D.C.: The Catholic University of America Press, 2009), 108.

[70] ST I-II.98.4.

Old Law was good,"[71] in accordance with reason, and "given by the good God."[72] The Old law is a central part of God's moral pedagogy and salvific action.[73] These positive affirmations, however, sit alongside other more ambiguous claims about the Old law's insufficiency. The Old law cannot effect what it promises; it only addresses the exterior realities of a person and cannot bring them to a full exercise of the virtues; it is only given for a temporary time and to a particular people; it can be compared to a young boy with the New law likened to a man. As Pamela Hall notes, the Old law could not be fully obeyed, and therefore could not "effect the union with God which is the end of divine law."[74] What was the reason, then, for the Old law? For Thomas, the purpose of the Old law related is related to its proper end: to address sin, redirect human reason, draw human beings away from idolatry, and most crucially to give testimony to Christ and the coming of effectual grace.[75] The Old law is the first stage in the unfolding of the divine law.

Thomas' earlier teachings on natural law, both its import and its ambiguity, are something of a hermeneutical key for unlocking this puzzle of the Old law. Thomas opens his discussion of the distinction in the Old law by noting that it is "distinct from the natural law, not as being altogether different from it, but as something added thereto. For just as grace presupposes nature, so must the Divine law presuppose the natural law."[76] The Old law, then, is a graceful addition to the ambiguities of the natural law, given in response to the postlapsarian situation. There is nothing in the Old law that contradicts or

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[71] ST I.II.98.1.

[72] ST I.II.98.2.

[73] In contrast to Justin's more critical theology of election, Thomas positively affirms the dynamics of election. Israel is elected, not because of a unique sinfulness, but due to their faithfulness and monotheism. ST I-II.98.4.

[74] Pamela M. Hall, "The Old and New Law," 195.

[75] In fact, Thomas' discussion of the old law is his most extensive examination of any of the categories of law.

[76] ST I-II.99.2.

denies either nature or reason. According to Thomas, the need for the old law is due to the sinful predicament of humanity and the natural law's abstraction. It is a response to sin and finitude. The divine law, in contrast to human law, offers a more articulate and extensive set of moral judgments, a set of commands that guide fallen humanity in relations to themselves, God, and one another.

Central to Thomas' reading of the old law is his division of it into three distinct precepts: the moral, ceremonial, and judicial.[77] Just as it was for Justin, dividing the law into distinct categories aids Thomas' ability to distinguish between what aspects of the Old Testament are still morally binding and what commandments have been abrogated. While each of these precepts coheres with natural law and is a genuine expression of divine law, not all of them endure in perpetuity. To distinguish those precepts that are enduring from those that are temporary, Thomas proposes examining each in light of their particular role in shaping the people of Israel and preparing the way for Christ. In brief, Thomas argues that the precepts of the old law that express universal moral goods are binding on all of humanity, while those that are pertain to Israel's worship and civil life are non-binding after Christ.

The moral precepts, which are quintessentially expressed in the Ten Commandments, offer clarity regarding what is universally morally binding for humanity across time and space. "The moral precepts, distinct from the ceremonial and judicial precepts, are about things pertaining of their very nature to good morals."[78] According to Thomas, the moral precepts of the old law aid human understanding of the natural law in

[77] While previous theologians, such as Justin and others, had distinguished between various aspects of the old law, Thomas solidifies the distinctions into these specific three, a practice that is followed by most magisterial Reformers as well as Lutheran and Reformed scholastics.

[78] ST I-II.100.1.

two key ways. First, the moral precepts clearly state the moral judgments of natural law and thereby address the various failings and inconsistency in human reasoning. The moral precepts make clear what human deductive reasoning often fails to grasp by offering "clarification of the particulars regarding what is to be done…and providing an authoritative correction to gross errors of reason."[79] Second, the Decalogue is a divine response to human sin, a response that intends to both restrain sin and also point individuals toward the need for grace. Since the moral precepts relate to universal truths, and not simply to a particular epoch of divine-human relation, Thomas contends that they remain universally binding. The moral component of the old law continues to aid humanity, even after Christ, by correcting our moral judgments, exposing our sin, and pointing to our need for grace.

In contrast to the enduring place of the moral precepts, the ceremonial aspects of the old law are no longer valid. Thomas avers that the ceremonial precepts were given to ancient Israel in order to guide them in proper worship of God, halt idolatry, and point toward Christ. "Now the end of the ceremonial precepts was twofold; they were ordained for the worship of God at that time, and for prefiguring Christ."[80] The ceremonial precepts, then, must be understood as including both literal and the figurative elements. In the literal sense of the precepts, the old law externally guided and directed Israel toward its proper end. The ceremonies described in the law did increase piety, direct true worship through the rejection of idolatry, and externally demand adherence to God's will. Thus, in many ways they did point Israel toward beatitude. Still, the ceremonial precepts were only the shadow of the true image that was to come. In and of themselves the

[79] Pamela M. Hall, "The Old Law and the New Law," 196.
[80] ST I-II.102.2.

ceremonial precepts do not offer justifying grace or enact what they promise.[81] The ceremonial precepts served a more central and enduring function: to prefigure and witness to the coming of grace in Christ. Through an extended series of questions complete with ample scriptural reference, Thomas argues that while the ceremonial precepts were good, they have reached their true end in Christ. The aim of the ceremonial precepts was both moral pedagogy and proper worship of God, both of which are fully and uniquely realized in the person of Christ and the sending of the Spirit into the human heart.[82] The ceremonial precepts, then, are preparatory, not perpetual. Given this, Thomas argues that to continue to practice the ceremonial precepts is not only no longer necessary, but now "deadly."[83]

The final aspect of the old law that Thomas interrogates is the judicial precepts, those ample biblical laws "which directed the relations between man and man."[84] According to Thomas, the judicial precepts, much like the human law, frame and shape ancient Israel's dealings with one another and aid the pursuit of communal and intra-human justice. Like all true law, the judicial precepts participate in the eternal and natural law. However, like human law the justification of the judicial precepts is not based on reason alone, but on public promulgation. In the case of the judicial precepts of the old law, God publically promulgates the law for the people of Israel. God is the true political

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[81] ST I-II.103.2.

[82] For a more complete examination of these issues, see Matthew Levering, *Christ's Fulfillment of Torah and Temple*.

[83] For a critical Jewish reading of Thomas' division of the law and his argument against the cessation of the Mosaic Law for Jews, see Michael Wyschogrod, "A Jewish Reading of St. Thomas on the Old Law" in Clemens Thomas and Michael Wyschogrod (eds.), *Understanding Scripture: Explorations of Jewish and Christian Traditions of Interpretation* (Mahwah: Paulist Press, 1987), 125-138.

[84] ST I-II.104.1.

sovereign of Israel who renders determinations about how the moral and natural law should be manifested in the 'human' law of the people.

Like the ceremonial precepts, the judicial includes two different senses: the literal and the figurative. In the literal sense, the judicial precepts are the divinely promulgated public law of ancient Israel that directs the 'nation' toward civil justice. These instructions include determinations about how natural law can be expressed in legal practices related to issues like property, war, and marriage. The chief literal end of the judicial precepts is to cultivate "justice and equity" within ancient Israel and between Israel and its neighbors and thereby "shape the state of that people."[85] This literal formation of the whole people of Israel includes a secondary consequence, to foreshadow Christ.

Unlike the ceremonial precepts, which foreshadow Christ through the distinct sacrificial and temple practices, Thomas argues that the judicial precepts foreshadow Christ in an indirect way. "Some precepts are figurative, not primarily and in themselves, but consequently. In this way the judicial precepts of the old law are figurative. For they were not instituted for the purpose of being figurative, but in order that they might regulate the state of the people according to justice and equity."[86] The chief end of the judicial precepts was to organize the public life of Israel in a way that is marked by equality. And yet Thomas seems to be arguing that in so far as the whole elected people are directed toward justice and equity, they give accidental testimony to Christ. The way that the judicial precepts foreshadow the coming of Christ is not through its individual rulings, but as a consequence of this holistic communal direction. By electing a people

[85] ST I-II.104.3.
[86] ST I-II.104.2.

and demanding they live in justice and equity with one another, the judicial percepts make that "entire state of the people" a figurative foreshadowing of Christ.

Given the fact that the judicial precepts are divine civil legislations that aim at justice and equity, one might think they endure after Christ. Through the judicial precepts of Israel, God has made judgments about the best ways to share property, organize leadership, impose taxes, regulate marriage, declare war, and treat immigrants.[87] Why would political communities want to resort to the ambiguity and arguments of human law when a divine way has been revealed? Thomas rejects such an overture and instead insists that the judicial precepts, like the ceremonial, have ceased to be binding.

> The judicial precepts did not bind forever, but were annulled by the coming of Christ; yet not in the same way as the ceremonial precepts. For the ceremonial precepts were annulled so far as to be not only 'dead,' but also deadly to those who observe them since the coming of Christ, especially since the promulgation of the Gospel. On the other hand, the judicial precepts are dead indeed, because they have no binding force: but they are not deadly. For if a sovereign were to order these judicial precepts to be observed in his kingdom, he would not sin unless perchance they were observed, or ordered to be observed, as though they derived their binding force through being institutions of the Old Law.[88]

The judicial precepts are no longer binding due to Thomas' understanding of the very nature of their political force. The judicial law, like human law and the ceremonial precepts, is authoritative because of its promulgation to a specific community by the recognized authority of that community. God gave the judicial precepts to the community of Israel, not through reason or nature (which would have made them universally binding) but as specific publicized determinations. The authority of the judicial precepts

[87] ST I-II.105 offers an extended argument for why the particular legal and communal regulations of Israel were fitting.

[88] ST I-II.104.3.

is dependent on the makeup of the political community. Following Aristotle, Thomas argues that if the political community changes, the human law of that community can (or should) also change. In the case of Israel, the coming of Jesus Christ fundamentally altered the community. The people of God are no longer only (or primarily) Israel, but a community made up of Jews and Gentiles. The law, then, must change to address this reality.[89]

While Thomas concludes that the judicial precepts of the Old Testament are no longer binding as divine law, they still retain legal potential after Christ. The judicial is primarily concerned with certain intra-human relations; it is first and foremost concerned with "certain deeds" that might encourage justice and equity within human relations. In contrast to the ceremonial, their primary function is not figurative but civil. In so far as they promote justice and equity, these divine precepts might therefore be promulgated after Christ. In contrast to the ceremonial, promulgating certain parts of the judicial precepts is not necessarily problematic. However, the justification for such promulgation cannot be appeal to the authority of the old law since the judicial precepts no longer have any divine political authority.[90] Instead, the sovereign of a community might discern that a distinct aspect of the judicial precepts accords with reason and would serve the common good of that particular community. To decide that a certain judicial precept of the Old Testament—such as the provision to forgive debt through a Jubilee year—is applicable for a different political community is only appropriate if it is justified through reason and

[89] "Those judicial precepts directed the people to justice and equity, in keeping with the demands of that state. But after the coming of Christ, there had to be a change in the state of that people, so that in Christ there was no distinction between Gentile and Jew, as there had been before. For this reason the judicial precepts needed to be changed also." ST I-II.104.3.

[90] In fact, Thomas argues that appeal to the old law as a divine authorized blueprint for a post-Christ community is a morally deadly act.

the common good. The new law has not only transformed worship, but also the community.

New Law

For Thomas, the new law or the gospel is both similar to and distinct from the Old. On the one hand, the new law shares the same end as the old law, "man's subjection to God."[91] Moreover, the new law does not subvert or amend the moral law of either natural law or the old law. Still, the new law's "distinctive perfection is… in the achievement of the end and, thereby, the expression of an animating love, which is charity."[92] The new law is a gift of grace given by Christ through the Spirit; it alone is able to accomplish what is promised and prefigured by the old law. According to Thomas, Christ fulfills and thereby displaces the ceremonial and judicial precepts of the old law, creating a new community that worships in spirit and truth.[93] The reason that the new law is able to accomplish what the old law could only point toward is because the new law is the very love of God at work in inwardly transforming human beings' soul. The new law is "principally the grace of the Holy Spirit, which is given to those with faith in Christ."[94] For Thomas, the new law is first and foremost an unwritten law that is "instilled in our hearts" in fulfillment of the promise of God given through the law and the prophets.[95] The

[91] ST I-II.107.1.
[92] Pamela M. Hall, "The Old Law and the New Law", 202.
[93] For more on this issue, especially its problematic rendering of Judaism, see Matthew Levering, *Christ's Fulfillment in Torah and Temple*, and Paul Martens, "On the Superiority of the New Law: Stumbling Through some Difficulties in Thomas Aquinas," *Theology Today* 60 (2003): 170-185.
[94] ST I-II.106.1.
[95] ST I-II.106.1.

new law is a law of liberty, virtue, and indwelling grace that brings human beings to their proper end in God.

In addition to its primary unwritten precepts, Thomas also notes how the new law includes secondary elements: the teachings and commands of Christ and the Church. The new law does include commands that regulate some external acts. "If the kingdom of God is internal righteousness, peace, and spiritual joy, all external acts that are incompatible with righteousness, peace, and spiritual joy, are in opposition to the kingdom of God; and consequently should be forbidden in the Gospel of the kingdom."[96] Principally, Thomas understands these external regulations to be the sacraments and those "moral precepts which have a necessary connection with virtue."[97] These written components of the new law, however, are always secondary to and dependent upon the inward work of the Holy Spirit. Without the interior movements of grace, the written components of the new law are no more effectual in drawing human beings toward God than the old law. Following the New Testament's focus on love and liberty, Thomas leaves many aspects of exterior law undefined and open to discernment and interpretation. Much like the natural law, then, the new law is primarily inward and unspecified.[98]

Since the focus of the new law is the interior work of the Spirit imparting grace and transforming the character of human beings, Thomas resists a reading of the Sermon on the Mount that understands it as a new set of commandments. The Sermon instead contains "the whole process of forming the life of a Christian. Therein man's interior movements are ordered."[99] It does so not through external laws, but through a

[96] ST I-II.108.1.
[97] ST I-II.108.2.
[98] For more on this, see Mark D. Jordan, *Rewritten Theology,* 146-49.
[99] ST I-II.108.3.

transformation of the internal life of the believer in relationship to God, self, and neighbor. At this point, Thomas interjects one of his more controversial claims, that many of Jesus' teachings are not commands, but counsels of perfection. Clearly many of Jesus of Nazareth's instructions are quite revolutionary, seemingly going beyond or even against nature—teachings regarding turning the other cheek, going the extra mile, embracing poverty, or loving the enemy. Thomas contends that these are not properly understood as commands to be obeyed always and everywhere, but counsels of perfection to guide human beings toward virtue. Certainly these teachings offer moral benefit and expedite moral transformation, but they are not necessary for all Christians.[100]

Human Law after the New Law?

Given the interior focus of the new law, Thomas gives little to no attention to its influence on shaping human law. In contrast to Thomas' earlier discussion of both natural law's concretization through human law and the old law's specific judicial precepts, the new law offers little insights for human governance. It is grace, not nature. The new law is not expressed through specific legal judgments, but through the cultivation of virtue in the individual. Thus, when Thomas explores the effects of the new law of grace in the *secundae secunda* through a study of the virtues, this examination is by and large unconcerned with the public legal manifestation of these virtues.

And yet, if the divine law is a clearer and more articulate description of the eternal law, why does Thomas not re-interrogate human law in light of the ultimate instance of divine law, the new law of the gospel? If grace perfects nature, then can nature be

[100] Thomas' view on counsels has some resonance with Ibn Taymiyya's concerns covered in the previous chapter.

reevaluated in light of grace? In asking these questions, I am not calling for the judicial precepts of the Mosaic law to become a template for forming society in the modern era, but pressing Thomas to go further in allowing the new law to illumine, shape, and frame engagement with human law. Put differently, how might the new law function in aiding Christians to make proper judgments, not only about the interior life or our movement toward virtue, but also about the justice of human law and the nature of the common good?

Thomas does not move in this direction in part because of his claims that the new law is chiefly concerned with the interior life of the individual. While Thomas is correct to maintain that Paul is clear that grace does address the human heart and is not enacted through external legislation, it is also the case that the New Testament is preoccupied with the formation of a new community composed of Jews and Gentiles, male and female, and slave and free. The supernatural end of human beings is also communal. If this is the case, how does the new law manifest itself in communal form, whether that community is depicted as the church or human society more broadly? There is a danger in Thomas' account of grace as primarily interior, and occupied with the cultivation of virtue, to overlook these genuine exterior manifestations of grace. The author of Ephesians, for instance, connects the inbreaking of grace with a concurrent change in social relations (e.g., Eph. 2-3). In the letters to the Church of Corinth, Paul condemns those that would think of grace and justification as not relating to social practices of eating and drinking (e.g. I Cor. 11:17-34). Once the strong connections between the 'exterior' and 'interior' work of grace are evident, the need to ask more specific questions about the relationship between the new law and human law becomes acute. If under God's grace all human

beings are equal, what becomes of natural or human laws that distinguish between humans? Thomas gestures toward these issues in his rejection of the perpetual power of the judicial precepts and in his question on the relationship between the interior and exterior dynamics of the new law, but these are insufficiently developed in his project.[101]

Here, Thomas's ontological hierarchy that places divine law and human law as two different out workings of the natural law constrains him in two ways. First, since he defines human law as focused on temporal life and the divine law on the eternal, there is an inevitable separation between the two. Once divine law is understood as primarily concerned with the eternal and interior, there is little need to return and further engage the questions of temporal or exterior reality of human law. While Thomas attempts to hold them together through his account of the eternal and natural law, this places nature as something of the arbiter of all civil law. Second, his argument is based on a specific configuration in which reason and nature precede revelation and grace. As the Jewish theologian Michael Wyschogrod points out, this ordering presents a number of conundrums in Thomas' reading of the old law, especially the moral law. For instance, it overlooks the Decalogue's own self-reference to revelation history, and not nature. It justifies the biblical demand to worship God alone not through appeal to either nature or reason, but in reference to YHWH's liberation of Israel from slavery in Egypt. "The Old Testament knows only God's commandments and Israel's duty to carry them out…in short, the central role that Thomas assigns to natural law in his reading of the Mosaic

[101] In the final chapter, I will advance Thomas' understanding of the judicial precepts offering accidental witness to Christ. If the community can give witness to God's rule through its pursuit of justice and equity before Christ, I will argue that human law after Christ can give provisional witness to Christ without being instituted for that purpose. By the very act of struggling for justice and equity, the law can indirectly point behind and ahead to the rule of God.

Law seems more an imposition."[102] The moral law, then, appears to be a response to unique divine activity and not first and foremost a case of natural reason.

While there is much to appreciate in Thomas' thinking on law and the rich constructive possibilities for both a contemporary theology of law[103] and a Christian-Muslim dialogue about law,[104] there remains the question of whether or not the natural and human law have been sufficiently addressed in light of the central claims of Christianity regarding our end in Christ.[105] The eternal law of God might be known through nature, but first the eternal law is must be made known through gifts of grace and revelation.[106] While Thomas does locate all law in God, he does not sufficiently interrogate the natural or human law in light of the ultimate expression of God's will, the gospel of Christ.

Reformation Case Study— Martin Luther

The Distinction between the Law and the Gospel

For the Reformer Martin Luther, the first and most vital distinction to be made regarding the law is its categorical difference from the gospel. "Almost all Scripture and the understanding of all theology hangs on the proper understanding of law and

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[102] Michael Wyschogrod, "A Jewish Reading of Thomas Aquinas," 135.

[103] See Jean Porter, *Ministers of the Law: A Natural Law Theory of Legal Authority* (Grand Rapids: Eerdmans, 2010).

[104] see Damian Howard, "Islam And Christianity: On Religions of Law," *Islam and Christian-Muslim Relations* 24 (2013), 173-189.

[105] On these points, I am indebted to Ulrich Kühn's reading and critique of Thomas in *Via Caritatis: Theologie des Gesetzes bei Thomas von Aquin* (Göttingen: Vandenhoeck & Ruprecht, 1965).

[106] Obviously this critique is pressing Thomas in what is traditionally thought of as a more Protestant direction, but one might also say that I am offering an Ash'arite critique to his Mut'azallite sensibilities, by seeking to begin with the scriptural narratives of Law before addressing issues of reason and natural law.

gospel."[107] In contrast to Justin and Thomas who categorize the gospel as the new law, Luther argues that gospel and law are wholly different from each other. The law is demand; the gospel is promise. The law is works; the gospel is justifying faith. The law accuses; the gospel saves. The law kills; the gospel gives life. What must be said again and again, according to Luther, is that the law is not and cannot be the gospel.[108] As he famously states in *On the Freedom of a Christian*, "the entire of Holy Scripture is to be divide into words: the commandments or the law of God and the assurances or the promises."[109] The law is God's demand; the gospel is God's justifying work on behalf of sinful human beings. Whatever other distinctions Luther makes regarding the various categories and uses of the law, those distinctions cannot obscure the absolute difference between God's word as law and God's word as gospel.

Importantly, Luther does not identify the stark difference between the law and gospel with the distinction between the Old and New Testaments. For Luther, the law and gospel are not different epochs in salvation history, but separate modes of divine address. As such, Old and New Testaments both include the law and the gospel. Even more, Luther states that individual texts often have the law and the gospel side by side. What distinguishes the law from the gospel, then, is not its location in the canon, but the content of the message; and the challenge for the theologian and the exegete is to differentiate properly and consistently between them.[110] The Old Testament does not simply bear witness to the gospel yet to come, but itself holds forth the gospel by

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[107] *WA* 7: 502.

[108] As Gerhard Ebeling argues, "it is not a question of the relation of two different kinds of statute or code, or even of two different laws, but of law and Gospel." Ebeling, *Word and Faith*, translated by James Leitch (London: SCM Press, 1963), 388.

[109] WA 7: 23.24.

[110] Whoever knows well how to distinguish the Gospel from the Law should give thanks to God and know that he is a real theologian." *LW* 26: 115.

proclaiming the promises of God. As Ian A. McFarland argues, "Although both were to be taken literally as God's Word, their relationship was profoundly dialectical, reflecting their different purposes within the divine economy: the primary function of law was accusatory, and the of the gospel promissory."[111] As such, both the law and the gospel retain their ongoing importance. The minister of the gospel must continue to engage and preach the law in order to expose human beings to their sin and proclaim God's justifying grace. Luther's categorical distinction between the law and the gospel, then, has a number of innovative features. "Luther's distinction not only differs from the tradition insofar as it no longer structured in salvation-historical but in dialectic fashion. What is also new is that the distinction between law and gospel cannot be made once for all, but must be drawn ever anew."[112]

If the law is fundamentally different than the gospel, what purpose does it serve? If it cannot prepare humanity for grace, let alone justify human beings, why does Scripture call it good? To address these questions, Luther introduces the concept of the law's twofold use: the theological and the political (or civil) uses of the law. Not only should the theologian distinguish between the law and the gospel, but she must also understand the proper and distinct uses of the law. As Bernhard Lohse argues, "Luther's treatment of the law under the concept of *usus* was clearly a decision without precussor in all the tradition. The term *usus* refers to the proper distinction between the law's various functions and effects."[113]

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[111] Ian A. McFarland, "Law and Gospel in Lutheran Biblical Hermeneutics" Unpublished MS.

[112] Bernhard Lohse, *Martin Luther's Theology: Its Historical and Systematic Development*, translated by Roy A. Harrisville (Minneapolis: Fortress Press, 1999), 269.

[113] Ibid., 270.

The most fundamental use of the law is its theological one. The theological use of the law has already been gestured at in the previous discussion of the distinction between the law and the gospel. The law accuses, condemns, and terrifies sinners and thereby convicts them of their sin; it reveals that each and every human being stands under divine wrath. Luther clearly describes his understanding of the theological use of the law in his preface to his commentary on Romans. He argues that the law of God requires both external and internal obedience; it is uncompromisingly demanding. And yet as Paul notes, the law is incapable of being fulfilled since no human being is able always to act rightly and also internally rejoice in his actions. "Sin, in the Scripture, means not only the outward works of the body but also all the activities that move men to do these works."[114] Paul in Rom. 1-3 sketches this account of the law culminating in the declaration that all have sinned and deserve God's wrath. In order to fulfill the law we must obey all of the external commands and also internally love the law of God, but that is an impossiblity. In its theological use, then, the law reveals human sin by showing us that we are enemies of God who rightly stand under divine condemnation. Luther reads Paul as having a deeply skeptical appreciation of the law's capacity to guide, redeem, or aid human beings. All that the law can do is prepare us for to hear God's justifying gospel, the alien righteousness of Christ. It is faith, the "living, daring confidence in God's grace, so sure and certain" and not the law that human beings need for salvation.[115] And yet, the law makes known our very need for that justifying grace.[116] The law, then, plays an integral

[114] Martin Luther, "Preface to Romans," *LW 25,* 100.

[115] Ibid.

[116] Johannes Heckel argues that the Law is one of "universal righteousness" that is incapable of being "obeyed" and thus renders human beings as enemies of God.

noetic, existential, and homiletic function in Luther's theology. It discloses human sin, judges pride, and in that way negatively prepares us for the gospel.

The Mosaic Law

If there is a categorical difference between the law and the gospel and the proper theological use of the law is to convict human beings of sin, it would seem appropriate for the Christian to disregard the Old Testament, especially the Mosaic law. In one sense, Luther argues that this is appropriate. The distinction between the law and gospel means that Christians rightly deny that certain words of Scripture pertain to them. "The word of Scripture is of two kinds: the first does not pertain or apply to me, the other kind does."[117] Once God has justified the sinner, s/he no longer stands under the condemning power of the law (or the devil), but is clothed in Christ. To seek refuge in the law is deadly, whether this is attempted through personal adherence to the Mosaic law, a resuscitation of the political practices of ancient Israel, or a slavish imitation of the Sermon on the Mount. "We will not have Moses as a ruler or lawgiver any longer."[118] Luther is adamant that the Mosaic law does not bind or compel Christians.

This is the case not only because of the law/gospel distinction but also as a result of the very nature of the Mosaic law. According to Luther, the law of Moses was only intended for a specific people, the Jews, during a specific dispensation. The Mosaic law was not given to the world, but only to the Jews, and thus the biblical law was only ever required for Jews. In some sense, the law of Moses might be compared to any other civil law given to a specific social community. "Let the law of Moses be the Jewish common

[117] LW 35: 164.
[118] "How Christians Should Regard Moses," in *LW* 35:164.

law and do not confuse us Gentiles with it, just as France pays no attention to the Saxon common law and yet certainly agrees with it in natural law."[119] Compare Luther's argument to Thomas'. While Luther takes up Thomas' threefold account of the old law's precepts, he does not follow Thomas in arguing that the moral law remains necessary for Christians. As Paul Althaus argues, Luther maintains that even the moral laws as expressed in the Decalogue are not universally compulsory.[120] Luther's attention to the biblical text leads him to the controversial claim that, "The text makes it clear that even the Ten Commandments do not pertain to us. For God never led us out of Egypt, but only the Jews."[121] The ceremonial, judicial, and moral law of the Old Testament are not and never were binding for Gentiles.

If this is the case, why continue to read the Old Testament and preach Moses? In his 1525 sermon on "How Christians should regard Moses," Luther offers three primary reasons for refusing the Marcionite position. First, the Torah includes numerous clear teaching about the goods of natural and moral law. "Thus we read Moses not because he applies to us, that we must obey him, but because he agrees with the natural law."[122] The Old Testament, then, expresses the goods of natural law in a particularly perspicuous manner. The law of the Old Testament is integrally related, although not identical with, the natural law that is written on the hearts of all people. As such, the only place where a Christian is bound to follow the teachings of the Old Testament is when it correlates with nature. The moral force of the law originates from the moral norms of God and the universe and not the scriptural injunctions in and of themselves. "Where he gives

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[119] LW 40: 98.
[120] Paul Althaus, *The Theology of Martin Luther,* (Minneapolis: Fortress Press, 1996), 90.
[121] *LW* 35, 165.
[122] Ibd., 171.

commandments, we are not to follow him except so far as he agrees with natural law."[123] Moreover just as in Thomas' account, Luther argues that there are numerous wise and just insights in the political and civil practices of Israel. A present day sovereign may find legislation in the civil law of Israel and decide to put it into current practice. "There are also other extraordinarily fine rules in Moses which one should like to accept, use, and put into effect. Not that one should bind or be bound by them" but "one could adhere to it without obligation as long as one pleased."[124] The first reason, then, to read the Old Testament is because of the way that its ethical and political teachings often overlap with natural law and political justice.

The second explanation for engaging Moses is that he offers "promises and pledges of God about Christ," which Luther argues is the "best thing" about the Mosaic law. For instance, Luther finds promises of Christ through the Torah and offers the examples of Gen. 3, Deut. 18, and Gen. 22 to be particularly clear. In these texts, God's promises of salvation and justification are not only allegorically signaled, but also truly offered. Moreover, because of the "beautiful examples of faith, of love, and of the cross, as shown in the fathers, Adam, Abel, Noah, Abraham, Isaac, Jacob, Moses, and all the rest," the Old Testament provides models of piety that can increase faith, hope, and love.[125]

In sum, Luther primarily understands the Mosaic law as the common civil law of ancient Israel. Its authority does not arise, for Christians and Gentiles, from its origin in God, but from its relationship to natural law. Thus while the law of Moses can serve to

[123] Ibid., 173
[124] Ibid., 166.
[125] LW 35: 173.

convict sin and engender faith, and while it includes wise human rulings, Luther maintains that these legal insights can also be found elsewhere in the natural law and in the practice of civic governments. The revelation on Sinai is God's clear restatement of the natural law and the universally morally binding demands of God, which are given to a particular people. The significance of the law of Moses is not found in its specific rulings or in the way that it forms and shapes the people of Israel, but in its function of showing forth the law/gospel distinction and offering examples of faith. According to Luther, then, the concept of law's primary reference is the eternal moral demands of God that cast judgment on all of humanity, not the particular law revealed at Sinai. The law is, in contrast to Justin and Thomas, never abrogated with respect to its accusatory function.

The Political Use of the Law and the Two Kingdoms

The importance of the law and gospel distinction is vital for much of Luther's theological oeuvre; it is a central corollary to his hermeneutics, his reading of the Old Testament, and his soteriology.[126] The distinction between the law and the gospel is also intricately related to Luther's account of the two kingdoms. As Johannes Heckel has argued, these two features of Luther's thought are intertwined, "Luther's doctrine of law has to be evaluated in light of the two kingdoms."[127] Gerhard Ebeling argues that the law/gospel distinction requires that Luther's doctrine of the two kingdoms be viewed as a doctrinal necessity (*Notwendigkeit*). "The Gospel is constitutive of the *regnum Christi,* while the *lex* is constitutive for the *regnum mundi*…the co-ordination of the one *regnum*

[126] See Ian A. McFarland's "Law and Gospel in Lutheran Biblical Hermeneutics" on the place of the Law/Gospel distinction in Lutheran hermeneutics and Bernhard Lohse, *Martin Luther's Theology*, chs. 27 and 28 for an examination of its role in his soteriology.

[127] Johannes Heckel, *Lex Charitatis: A Juristic Disputation on Law in the Theology of Martin Luther*, translated and edited by Gottfried G. Krodel (Grand Rapids: Eerdmans, 2010), 39.

with the *lex* and the other *regnum* with the Gospel is fundamental."[128] The distinction between the law and the gospel is given expression in and through his theory of the two kingdoms.

Put far too succinctly, Luther argues that God reigns over both church and world in two distinct manners. God's lordship over the temporal kingdom, which is grounded in God's identity as creator and the reality of the Fall, occurs primarily in and through the natural and civil laws. In contrast, God's reign in the spiritual kingdom, which is grounded in Christ's work as redeemer, occurs in and through the justifying Word of the the gospel. As David VanDrunen argues, "the purpose of the spiritual government is for the Holy Spirit to produce righteous Christians under the rule of Christ and the purpose of the temporal government is for restraining the wicked and non-Christians by the temporal sword."[129] Just as in the distinction between the law and the gospel, Luther draws a strong division between God's activity in ruling the world and the church. As such, he contends that the only proper use of the law within the Church is its theological one, while the only proper use of the law in society is its political one.

The close correlation between Luther's two kingdom's model and his distinction between the law and the gospel is connected to his understanding of the law's other use: the civic or political. Chronologically, the political use of the law precedes its theological one. After the Fall, human existence is marred by sin and the power of the devil. The world required a means for restraining evil, controlling civil unrest, and resisting the

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[128] Gerhard Ebeling, *Word and Faith*, translated by James Leitch (London: SCM Press, 1963), 388-89.

[129] David VanDrunen, *Natural Law and the Two Kingdoms: A Study in the Development of Reformed Social Thought* (Grand Rapids: Eerdmans, 2010), 63.

devil. God provides such protective intervention in the form of the temporal authorities and the political use of the law.

The importance and limitations of the worldly kingdom and its political use of the law is articulated in Luther's 1522 essay *Temporal Authority: To What Extent it Should be Obeyed*. "It is certain and clear enough that it is God's will that the temporal sword and law be used for the punishment of the wicked and the protection of the upright."[130] God provides the law—in its civil use—as a means for public judgment and the restraining of sin and evil. According to Bernhard Lohse, the political law has two major functions for Luther, "By means of the political use, external order on earth is maintained, and peace and the securing of justice preserved. The law has also the task of inculcating the divine commandments and instructing consciences."[131] The civil use of the law is both to restrain and morally educate the unregenerate sinner. And yet, it accomplishes this task only externally and only in relationship to the temporal kingdom. The political use of the law is in no way related to its theological use since the real Christian has no need of the "temporal law or sword."[132] The corollary is that the political use of the law cannot encroach on its theological use. Temporal authorities should not "prescribe laws for the soul" since that would "encroach upon God's government and only mislead souls and destroy them."[133] Worldly governments and their law are in some sense God given, but they have a limited scope.

This is not to say that Luther believes that Christians should retreat from the world and be unconcerned with worldly existence. To the contrary, the political use of

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[130] LW 45: 87.
[131] Bernhard Lohse, *Martin Luther's Theology*, 271.
[132] LW 45:89.
[133] LW 45: 105.

law is a genuine good given by God and thus Christians can properly participate in the temporal kingdom. While Luther insists on the importance of Christians exercising their authority in the world, they are to do so fully cognizant of the fact that such work has no soteriological significance. Work in the world is an expression of our temporal office and not our spiritual calling. Christian actions in the various earthly governments occur simply *coram mundo* and never *coram Deo*. While Christians have no need of the law or the temporal authorities *coram Deo*, they are nonetheless called to engage in the world for the sake of the good and protection of their neighbor.[134] "No Christian shall wield or invoke the sword for himself and his cause. In behalf of another, however, he may and should wield it and invoke it to restrain wickedness."[135] Christians are then called to exercise the proper authority of various earthly offices for the sake of the common well being of society and in accordance with nature, even when those offices such as judge or hangman require political violence.[136]

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[134] Luther's distinction between the two kingdoms provides him with an ingenious way to make sense of Jesus' commands to turn the other cheek and love our enemies. Luther rejects Thomas' argument regarding counsels and contends that Christ's teachings are binding on all Christians. . All Christians are called to love their enemy, turn the other cheek, and go the extra mile. And yet although, Christians cannot defend themselves, they have an obligation to defend their neighbor, which may include the exercise of temporal authority.

[135] LW 45: 103.

[136] The problems and possibilities of Luther's theology of two kingdoms is seen in his argument about going to war with the Turks. Such a division yields fruit in the way that Luther critiques the idea of war with the Turks being religiously sanctioned. First, Luther critiques the issue of counsels and the contradictions that it entails. Employing passages from John and Matthew, Luther asks what Jesus Christ and his people have to do with fighting wars? Nothing! Thus, Luther argues again and again against any notion of Holy War. "If I were a solider and saw a priest's banner in the field, or a banner of the cross, even though it was a crucifix, I should run as though the devil were chasing me."[136] Christians are not called to go to war against the Turks *qua* Christians. Such a view mistakes ourselves for righteous—when we are not—and thus attacks Turks (as a religion) with a sword, when the spirit can only be 'attacked' via prayer and the preaching of the Gospel. Nonetheless, Christians do have a right to defend their neighbors and rulers have a right to self-defense. Luther's theology of the kingdoms while potentially fruitful in challenging a two close association between the Christian Gospel and political leadership and rule, ultimately only *transfers* the problem onto Christian rulers since he argues that obedience to

The Standards for Participation in the Political Use of the Law

Luther's categorical instance on the fundamental distinction between the law and the gospel rightly places Christ's redeeming work at the center of his theology. The gospel is the free and proper work of Christ, absolutely distinct from the law and human works. Salvation is a gift from God, apart from works. It is God alone that forgives, establishes true justice, and reconciles humanity to Godself. All theological claims must be reconsidered in light of the proclamation of the gospel. Luther's decision to place the law/gospel distinction at the center of his theology offers an important soteriological correction to Thomas' more incremental theology of law, grace, and salvation. The ultimate revelation of God is God's work on our behalf in Christ, chiefly in the event of the cross. The *theologica crucis* is the event that occasioned a radical rethinking of the biblical law and marks a break from Jewish practice.[137]

And yet the way that Luther employs the law/gospel distinction in his understanding of the political law and temporal authorities does not overcome the tradition's practice of quarantining natural law from the Christological interrogation. Instead, Luther's theology results in a number of dualisms that often reinforce this problematic estrangement. As such, his legal theology, even more so than Thomas', is

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rulers is in some way obedience to God. Instead of succeeding in his attempt to challenge holy war, Luther merely begins the process of transmuting holy war onto the princes. Instead of holy war being a salvific act justified by a priest, it is not a moral obligation based on the divine authorization to obey rulers

[137] The very scandalous particularity of God's action that Luther strongly embraces in this theology of the cross (and revelation) is completely absent from his thinking about Israel. Rather than the scandal of divine revelation in Christ being a pattern of divine action, which is evidenced in exodus and law, Luther allows his discussion of the law of Israel to be normed by nature—or one might even say a theology of glory.

particular susceptible to the Muslim critiques of the previous chapter. For instance, the distinction between God's saving work and human works is correlated with other divisions in Luther's thought such as the inner and outer person, the church and the world, the spiritual and the temporal, and the theological and the civil. Once the law/gospel distinction is mapped onto these other distinctions, trouble begins to surface in Luther's theology of public law.

These dualisms are theo-legally problematic on two fronts. First, by so clearly separating out the theological and political uses of the law, Luther risks soteriologically justifying the principalities and powers of the sinful political system. The idea of two kingdoms and two uses of the law results in strong dualistic tendencies that leave the civil and worldly life, not simply different than, but also completely disconnected from the theological events of redemption. According to Luther this is appropriate since our worldly and social life is chiefly related creation, and not redemption. However, without offering a better set of critical principles for evaluating nature and civil law, quietism and passivity in the face of political forces because more likely. At what stage, for instance, does the hangman begin to question his vocation under the temporal authorities? How might the law of love, which Luther champions as a vital part of communal life in the world, challenge the political use of the law's demand for judgment? Second, human life is not as clearly demarcated between the spiritual and the temporal, the inner and the outer, as Luther's theology suggests. Our existence in the temporary structures of this world profoundly shapes our identities, our habits, and our abilities to love are neighbors. The borders of our identity are more porous than the dualisms that tend to dominant Luther's thinking.

Certainly, political or worldly righteousness does not alter our standing before God's justifying grace. This important theological distinction is made abundantly clear in Luther's thought. And yet, one wants Luther to press further and ask more questions about what the justifying grace of God entails for human beings concrete socio-politcal existence in the world. How might this surprising revelation of God upset and trouble the standards of power, authority, and vocation that the world presents? For all of Luther's insights, he does not consistently and fully extend his own best thinking about justification, grace, and the scandal of divine revelation on a cross to thereby construct a set of critical norms for examining the political and natural norms of a given society.[138] His distinction between the law and the gospel, while vital for soteriology, is socially and politically underdeveloped.

Conclusion

As this chapter has argued, Christian theologies of the law are scripturally compelled to make at least some distinctions in their understanding of the law. Distinctions are necessary to make sense of Scripture's various affirmations that Jesus has not overturned (Matt. 5:17) the perfect law of the LORD (Ps. 19:7), which is established forever (Ps. 111:8), and also that the law has been in some way "abolished" in Christ (Eph. 2:14-15). Neither antinomianism nor a strict legalism is a faithful Christian possibility. The three theologians surveyed in this chapter offer various approaches for interpreting these seemingly incongruous scriptural texts. Their strategies, while not the

[138] There are numerous occasions where Luther's own thinking does press in this direction, for instance in his discussion of usury, but as is seen in his response to the peasant revolt and some of his critiques of radical reformers, this was not consistent. Luther himself often points to the law of love and the criteria of nature, but both of these categories demand more concretization to be of much legal and political use.

only ones in Christian history, have been particularly influential in Western theological and ethical traditions, both in the overarching distinction they draw (old law/new law, law/grace, or law/gospel) and the more specific distinctions made within their reading of the Old Testament (moral, ceremonial, and judicial precepts). Drawing distinctions, even if not these, appears to be biblical, theological, and politically necessary.[139]

However, the way that the tradition has drawn distinctions has often been problematic, both in its overly critical appraisal of Israel and its overly positive view of nature. This chapter, then, both troubles and confirms the Muslim critiques of Christian theologies of the law presented in chapter 3. In each of the three case studies that I presented, the theologians' convictions regarding the positive nature of public law was drawn from criteria, other than the gospel. This is not to say that the gospel did not frame their discussions, but that when they turned to positively considering the place of public law after Christ, they appealed to norms from culture and nature with little to no integration with the central Christian claims regarding God's action in Jesus Christ and the Holy Spirit or God's ongoing covenant with Israel. These reading habits are partly due to a preoccupation with understanding the biblical notion of law in relationship to grace or the gospel, which subsequently narrows the law's theological import to an issue of personal soteriology. In this scheme, questions of law are preoccupied with its relationship to individual salvation and adherence to the Old Testament laws.

While these are vital issues to address and ones that demand clarity, the consequence was that the challenge of public law and custom was then largely addressed only through the lens of nature or creation. Israel's laws were Christologically rethought,

[139] Despite their protests against Christian distinctions both Judaism and Islam also make distinctions about categories of law in their more all-embracing legal systems.

but the civil laws of the nations were by and large left to the realm of nature. The process of making soteriological distinction about the law, then, resulted in a somewhat anemic account of civil law, in which the public law is handed over to the realm of nature. Even in Thomas' highly developed theology of the law or in Luther's instance on the primacy of the gospel, nature remains the governing category for building a Christian understanding of public law.

One need not be a Barthian to question the wisdom of grounding public law in exclusive appeal to creation or nature. While there are innumerable examples of Christians thinking and acting against the broader political, social, and legal cultures, these are often somewhat ad hoc. While certain members of the Salamanca school employed natural law to resist the colonization of the New World and Sub-Saharan Africa and the subjection of the peoples of those lands, these were exemptions to a broader rule. As Willie Jennings has incisively argued in *The Christian Imagination*, the colonization of Africa and the Americas actually involved a deeply rooted Christian logic.[140] The history of Christianity is littered with examples of inequality and injustice justified through appeal to nature or creation. Women's servitude to men, enslaved black bodies, and the subjection of native populations in the Americas have all, at various points in history, been understood as reflecting the natural order of reality.[141] Even when

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[140] Willie James Jennings, *The Christian Imagination: Theology and the Origin of Race* (New Haven: Yale University Press, 2010).

[141] A recurring question is whether or not ones new identity in Christ render 'natural' relations such as slave and free null and void? Or does this new identity simply impact the interior disposition of slave and free? These questions are wrestled with in Scripture itself, but often in inchoate and largely passing ways. The fact that the New Testament was not all together clear at answering these questions (and often appear to answer them through a recourse to the internal life of persons such as in Philemon) has reinforced slavery and gender hierarchy. Appeals to the natural coupled scriptures own ambivalence on the issue are often read as positive enforcement of existing social structures. Thus while there are ample examples in Christian

the gospel proclamation of the unity in Christ was heard, these claims were often interpreted to be a spiritual reality, not meant to disrupt the natural order. As Rosemary Radford Reuther writes, "the dominant Christianity never denied this equality of men and women in Christ but rather interpreted it in a spiritual and eschatological way that suppressed its relevance for the sociology of the Church."[142] This is not to say that categories of creation or nature should be completely jettisoned, for there are also traditions of inquiry that leverage nature in ways that press toward legal equality across difference. And yet this decidedly mixed record confirms the limited possibilities of exclusive appeal to the realm of either nature or creation. As the Dominican preacher and theologian Herbert McCabe argues, there is "a too ready assumption that mankind (sic) exists as a unity 'by nature.' It seems to me that human unity is something towards which we move, a goal of history."[143] In light of this, the next chapter will argue that in order to address the limitations of exclusive appeal to nature and to more consistently employ the hermeneutical strategies of reading the law in light of Christ. Previewing the next chapter's concerns, what then of public law today? What theological role might our engagement in civil law play in the scheme of divine redemption and consummation? As Karl Barth wonders, how might public law not only be distinguished from the gospel, but also related to Christianity's most central claims about Jesus Christ and the divine establishment of justice in and through his life, death, and resurrection?

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tradition of resistance to this sort of interpretation (e.g. Nyssa on slavery, Ambrose to Emperor, Salamanca school on equality of 'Indians'), they are often ad hoc and far less prevalent than one would hope for in a tradition that proclaims the justification of the sinner.

[142] Rosemary Radford Reuther, *Sexism and God-Talk: Toward a Feminist Theology* (Boston: Beacon Press, 1983), 35.

[143] Herbert McCabe OP, *Law, Love and Language*, (New York: Continuum, 2003), 67.

Chapter 5

Building a Christological Legal Foundation: A Conversation with Karl Barth

A Qur'ānic Prelude

There are compelling New Testament reasons for Christians to make distinctions both between the law and the gospel and within our understanding of biblical law. While these distinctions may be foreign to rabbinic Judaism and problematic to most Muslims, they are not arbitrary but based upon central Christian theological commitments. Faith in Jesus as the *Kyrios* or Lord is both the hermeneutical criterion for interpreting Scripture and the very event that occasions diverse Christian readings of law. Just as the Qur'ān is the *furqān* by which Muslims interpret religious claims and the standard by which legal distinctions are made, Christians regard the event of Jesus to be the *furqān* by which Scripture is evaluated and the Old Testament laws reinterpreted.[1]

It need not be considered a corruption of interpretation (*taḥrīf al-ma'nā*)—at least formally speaking—for Christians to re-evaluate the law in light of Jesus. Muslims engage in the very same practice when they re-evaluate the Torah and gospel in light of the Qur'ān. Nor is the importance of making distinctions between and within the law foreign to Islam, particularly given the distinctions made between *fiqh* and *Sharī'a* as well as the degrees of permissibility within Islamic ethics. As previously argued, Islam is classically understood as a middle way (*wasaṭ)* between Jewish and Christian visions of the law. Within this Muslim self-understanding, it is standard to disregard aspects of Jewish law (cheeseburgers and shrimp cocktails come to mind) even as other aspects are

[1] I opt for the event of Jesus as a way of intentionally leaving the open ended in order to allow for the diversity of interpretations of Christology and soteriology.

maintained (a rejection of pig roasts) and others added (prohibition on alcohol). The logic of Christians evaluating the law and practices of Israel in light of what is central to its own religious community, then, is not foreign to Islam. The Christian practice of legal reimagining should be understandable to Muslims, even when they disagree with our judgments about the law. The difficulty arises when *tahrīf* is too quickly invoked to silence the readings of another community.[2] As Mun'im Sirry argues, "If Muslims want to appreciate other peoples' scriptures they must begin with a serious engagement with the way other peoples understand their scriptures."[3]

In addition to these internal Christian reasons, there is something of a Qur'ānic justification for the Christian hermeneutical strategy of reading the Torah in light of the gospel. As *Sura al-Mā'idah* articulates, God has sent down "Jesus the Son of Mary, confirming the Law that had come before him" and through him God gives the *Injīl* or gospel in which there is "guidance and light, and confirmation" (5:46). Christians, or the *'ahl al-Injīl* (people of the gospel) are granted the freedom to "judge (*ḥakm)* by what God has revealed therein" and they are only categorized by the Qu'rān as disobedient if they fail to do so. Read in this way, the Qur'ān authorizes Christians to follow our own curriculum, that of the gospel, when interpreting the law.

Certainly as chapter 3 made clear, Christians interpret the gospel and Jesus Christ in starkly different ways than Muslims. Muslims do not understand the gospel or Jesus as something genuinely new—let alone a radical interruption—that demands scriptural re-evaluation, but rather a calling back to belief in divine oneness and the corollary

[2] Christians have historically had a similar problem when we read the texts of Israel as the Old Testament and fail to appreciate how Jews interpret it coherently without reference to the New Testament and thus approach it simply as the Tanakh.

[3] Mun'im Sirry, *Scriptural Polemics,* (New York: Oxford University Press, 2014),131.

doxological and ethical acts.[4] Given the fact that Muslims believe that the Qur'ān is the final and definitive standard for legal and religious judgments, there are internal Islamic reasons to resist Christian interpretations regarding the law's ambiguity. The very texts cited above can also be read as a critique of Christians and Jews. "To thee We sent the Scripture in truth, confirming the scripture that came before it and guarding it in safety, so judge between them by what God has revealed, and follow not their vain desires, diverging from the Truth that has come to you" (5:48). Muslims are warned to not be led astray by the misinterpretations and foolish judgments of Christians and Jews and to cling fast to the Qur'ānic standards. This seems hardly a recipe for allowing Christian freedom for biblical and legal interpretation grounded in the gospel.

However in the very same *aya*, there is a divine recognition of both ancient and ongoing religious difference. "To each among you we have prescribed a law (*sharī'a)* and a curriculum (*mnhājān)*. If God had so willed, He would have made you a single people (*umma*), but (he intended) to test you in what He has given you, so race with each other to the good. Together you will return to God and God will fully inform you of the truth of the matter in which you dispute" (5:48). Here we find an opening for Christians to engage with our own interpretations of the law—in so far as we follow the judgments handed down in Jesus and the Gospels. As Wael Hallaq notes, it appears that "the Prophet not only considered the Jews and Christians as possessing their own divine law but also as bound by the application of this law."[5]

The New Testament demands that Christians rethink the law in the light of the

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[4] See Gerhard Forde's argument that "for the sake of a proper understanding of the gospel, *the continuity in the system of the law must be broken*." Gerhard Forde, *The Law-Gospel Debate* (Minneapolis: Fortress Press, 1969), 200.

[5] Wael Hallaq, "Law and Qu'ran" in Jane Dammen McAuliffe, *The Encyclopedia of the Qur'ān:* Volume Three J-O (Leiden: Brill, 2003), 151.

event of Jesus, and one could also argue that the Qu'rān allows for such freedom in Christian legal and ethical interpretation. In fact, we are said to have our own law/way and curriculum by which we are to live. The challenge of this text—and the question that the last chapter raised—is whether or not we have sufficiently followed our own curriculum as received in the event of Jesus and the testimony of Scripture. Or have the distinctions that we have been compelled to draw unwittingly contributed to latent dualisms that cut off aspects of our lives from the standard of the gospel and the commands of God?

My critical argument in the previous chapter was not that Christians lack a theology of law (there are diverse and complex ones) or that Christians have no principles for interpretation (the complexity of Christian theologies of law are occasioned by the reevaluation caused by the in-breaking act of God in Jesus). In this regard, I disagree with the twentieth-century Palestinian Muslim thinker Isma'il Ragi al-Faruqi's claim that the problem of disjointed visions of Christian law is due to "little consensus as to which fundamental Christian principle is to serve as a basis for societistic edifice of ideas."[6] The problem is not a lack of a fundamental Christian principle—for that is the event of Jesus and the proclamation that the crucified one is Lord—but rather a lack of consistency in judging all aspects of the law in light of Christ. Public law has been treated as something of a given, even though it was a public law that justified the crucifixion of Jesus. Such a principle does create distinctions, but these need not be dualisms that too quickly divide God's work in Jesus Christ and the Spirit between creation and redemption, the law and the gospel, and the world and the church. The God who creates

[6] Isma'il Ragi al-Faruqi, Christian Ethics: A Historical and Systematic Analysis of Its Dominant Ideas (Montreal: McGill University Press, 1967), 255.

the world and gives the law is the same God who has reconciled the world and called together the church through the power of the gospel. To flesh out the implications of this sketch, I will now turn to a constructive and critical engagement with key themes in the theology and ethics of the Swiss theologian Karl Barth, one of the most significant Protestant theologians of the 20th century and a thinker who developed an innovative account of the law and the gospel with far-reaching political implications.

Engaging Karl Barth's Political Theology

In a series of three essays written between 1935 and 1946, Karl Barth develops the groundwork for a Christologically controlled theological politics.[7] Barth's arguments in these essays regarding the gospel-law, the relationship between human justice and divine justification, and the church and civil communities have profound possibilities for developing a more explicit Christian theology of public law that refuses to cede the secular or the public to criteria of nature without falling back on religious appeals to state establishment. David Fergusson argues, "For Barth, there is no sphere of human life which is not governed by the divine intention."[8] In these controversial essays, as well as in his more expansive development of the themes in the *Church Dogmatics,* Barth delineates the basis for a theo-legal framework through which all of human life—from the ecclesial community to the various social and political communities of the world—

[7] I will be using the translations from Karl Barth, *Community, State, and Church: Three Essays*, with a new introduction by Haddford. Henceforth *CSC*. For more on Barth's account of nationalism and the state, see Carys Moseley, *Nations and Nationalism in the Theology of Karl Barth* (New York: Oxford University Press, 2013).

[8] David Fergusson, *Community, Liberalism, and Christian Ethics*, 22.

might be evaluated in light of the central Christian confession of Jesus Christ.[9] As he famously wrote in the Barmen Declaration, Jesus Christ must be the standard which Christians measure all other claims and actions:

> Jesus Christ, as he is attested to us in Holy Scripture, is the one Word of God which we have to hear and to which we have to trust and obey in life and in death. We reject the false doctrine, as though the church could and would have to acknowledge as a source of its proclamation, apart from and besides this one Word of God, still other events and powers, figures and truths, as God's revelation.[10]

Despite this, one also might worry, as critics such as Wolhart Pannenberg, James Gustafson, and Ismai'l Ragi al-Faruqi have done, that Barth's Christological focus results in insurmountable problems for engaging our pluralist and (post)secular world(s). How can one ground claims about public law in Christ without asking the state to be Christian or demanding that others recognize Christian claims?

This section contends that it is possible to develop a Christologically refracted theology of law though critical engagement with Barth that is simultaneously particular and open to the pluralism that marks the twenty-first century. To develop this claim, I first trace Karl Barth's argument that the law is a form of the gospel—paying particular attention to his three political theological essays of the 1930s and early 1940s and the argument in §36 of *Church Dogmatics*. In order to draw out the potential of these essays for developing a Christian public theology of law in response to Islamic critiques of Christianity, I leverage Randi Rashokver's reading of Barth as constructing a non-

[9] The dogmatic focus of his subsequent theology in *Church Dogmatics* (and elsewhere), however, did not result in an explicit political theology of law. Per his methodological commitment that theology is ethics and ethics theology, his reflection on politics and law were interwoven throughout his engagement with the doctrines of God, Creation, and Reconciliation.

[10] The Barmen Declaration, 8.11

apologetic particularism.[11] Nonetheless, while Barth's thought provides important tools for a theology of public law—particularly the non-oppositional dialectic between gospel and law and his account of the law as witness—his own theology is still hampered by a lack of concrete attention to public laws, an issue to be addressed in the final chapter of the dissertation.

Gospel and Law

With the rise of National Socialism and his own expulsion from Germany as the political backdrop, Barth's essay "Gospel and Law" (*Evangelium und Gesetz*) presents an innovative rethinking of the traditional magisterial Protestant theology on the relationship between the law and the gospel. While remaining committed to the fundamental soteriological insights of the Reformation (*sola fide, sola gratia, solus Christus*), Barth attempts to reframe the debate regarding the law by emphasizing the essential priority (both chronologically and ontologically) of the gospel. At the outset of the essay, Barth insists that the traditional order of law and then gospel must be inverted to highlight the preeminence of the gospel. "Anyone who wishes correctly to approach our subject must speak first of the *Gospel*."[12] This move reframes the longstanding debate between Lutherans and the Reformed over the law-gospel. Rather than honing in on the questions around the law's third use, Barth presents an innovative argument that both prioritizes the gospel and defines the law as the form of the gospel.[13]

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[11] Rashkover, *Freedom and Law: A Jewish-Christian Apologetics* (New York: Fordham University Press, 2011).

[12] Barth, *CSC*, 71.

[13] The primary focus of my engagement with Barth's reworking of the Law-Gospel paradigm is not the fraught terrain of intra-Lutheran, Reformed-Lutheran, or Protestant-Catholic debates around Law/Gospel and the doctrines of justification and sanctification. For more on

Barth's argument is not a rejection of the Reformation distinction between the law and the gospel. The law still commands (imperative) while the gospel still promises (indicative) and thus the two should not simply be conflated. "The Gospel is not Law, just as the Law is not Gospel."[14] And yet while dialectically distinct in one sense, Barth is adamant that the law and gospel are also united since both function within the broader arch of the divine covenant with humanity, particularly the promises given to Abraham and his descendants (Gen. 12 and 15). It is only in light of the initial divine promise to Abraham that the giving of the law at Sinai can be properly interpreted. The law is both literally and symbolically contained within the Ark of the Covenant's promise and fulfillment. Of course, the claim that the promise precedes the command is a strongly Pauline theme (Gal. 3:7, Rom. 5:20) found in numerous scholastic Lutheran and Reformed theologians. This insight of Barth, then, is neither particularly controversial nor innovative. However, the implications that Barth draws from this biblical ordering he leverages to support his more fundamental and controversial claims that both the gospel and law are part of a single act of grace and that the law is the form of the gospel (*das Gesetz die Gestalt des Evangelums ist*).[15]

Barth contends that the law and gospel are forms of divine address, events in which the Word of God communicates to human beings. Of course the Word speaks in a variety of contexts (e.g. to Abraham and Sarah around a tent, to dying criminals on a hill outside Jerusalem, to a jailer in Philippi, etc.), in a variety of cadences (e.g. as poetic utterance, narrative, wisdom, prophetic pronouncement, etc.), and says a variety of things

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these important matters, see Gerhard Forde, *The Law Gospel Debate*. Rather than focus primarily on the soteriological and hermeneutical implications of Barth's argument, I turn instead to some of the political and legal implications of his argument.

[14] Barth, *CSC*, 72.

[15] *Kirchliche Dogmatik II.2* (Zurich: Evangelischer Verlag, 1948), 847.

(comfort, condemnation, forgiveness, healing, etc.). Still, Barth insists that these various forms of divine communication are united by the fact that they are fundamentally graceful. "The *very fact that* God speaks to us, that, under all circumstances, is, in itself, grace."[16] Given Barth's dialectic commitments to the absolute ontological distinction between God and humanity, he contends that the bare fact that the wholly other God speaks to finite human beings in and through the Word is to be taken as fundamentally graceful. Even words of condemnation, if the Triune God who only wills reconciliation speaks them, are words of grace.[17] As he writes years later in *CD IV.1,* "To say God is to say eternal benefit."[18] Whatever distinctions are drawn between the law and the gospel, these must also be held together in the greater unity of divine grace.

Barth's dual claims that the law and gospel are to be distinguished even as they are united funds his argument that the law is a *necessary* form of the gospel. For Barth, the law is not simply one part of divine speech and the gospel another; instead, the law is a particular form of divine communication that itself includes the gospel. The law is "nothing else than the necessary (*notwendig)* form of the Gospel, whose content is grace. It is just this content that enforces this form, the form which calls for a like form, the form of law."[19] The law's relationship to the gospel is not one simply of accusation, making the sinner aware of their need of grace. Instead, the law actually bears—if only in incognito—the gospel's content. As John Webster argues, "Setting law within the context of election to the covenant, its role is redefined: no longer primarily accusatory, no longer a source of hostility to drive the sinner to repentance, the law incorporates into

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[16] CSC, 72.

[17] Werner Elert finds this claim to be nonsensical and biblically problematic. See Werner Elert, *Law and Gospel,* translated by Edward Schroeder (Philadelphia: Fortress Press, 1967).

[18] CD IV.1, 40.

[19] CSC, 78.

the relation of God and humanity that imperatival aspect which makes humanity under grace more than simply a beneficiary."[20] In some qualified sense, the gospel relies on the law. This is not to say that Barth's account of the gospel and law lacks judgment or the condemnation of sin or that the gospel overrides or negates divine command. Far from it; since Barth is adamant about the need for a robust account of both the justification of the sinner and of the command of God. In fact central to the event of the gospel is the justification of the sinner in Jesus Christ. Still, the gospel does not displace the law but restores it to its proper function. "Sin triumphs even with respect to the Law only in its misuse, not however (for good reason, not) in its abandonment!"[21] As he writes after his discussion of Jesus Christ's election as both saved and damned in CD II.2 "Ruling grace is commanding grace. The Gospel itself has the form and fashion of the Law. The one Word of God is both Gospel *and* Law. It is not Law by itself and independent of the Gospel. But it is also not Gospel without Law."[22] The gospel relies on law and the law on the gospel. For Barth "Grace is obedience" and the law is freedom.[23]

The primary purpose of the law is not to accuse but to bear witness to the gospel. One might argue that all of Barth's theology of the law is conditioned by Calvin's insights regarding the third use of the law.[24] For Barth and Calvin the problem of the law, especially as they interpret Paul, is not the law itself but the tendency for sinful human beings to misuse the law. The law is good and remains so for all eternity—it is perfect

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[20] John Webster, *Barth's Ethics of Reconciliation*, 111

[21] *CSC*, 89.

[22] CD II.2, 511.

[23] Barth, *Romans*, 229.

[24] Calvin writes, "The third and principal use, which pertains more closely to the proper purpose of the law, finds its place among believers in whose hearts the Spirit of God already lives and reigns. For even though they have the law written and engraved upon their hearts by the finger of God, that is, have been so moved and quickened through the directing of the Spirit that they long to obey God, they still profit by the law in two ways." Calvin, *Institutes,* II.7.12.

and revives the soul (Ps. 19:17) and will never pass away (Luke 16:17, Matt. 5:18). The problem of the law is that, precisely because it is truly of God and its commands witness to the promises of God, it is prone to be used as a tool for self-justification and works righteousness. In fact, Barth contends that when the law is understood first in and through the gospel of grace, it acts as the bearer of the divine promise. The law is no longer a demand that declares 'you ought;' rather, the law elicits confidence and trust in God's grace and thus we receive the divine command as a promise of who we shall be (compare with Rom. 3:27-31). Barth argues "the Law no longer speaks as the instrument of sin's deception and as the organ of God's wrath, but in its proper original sense as witness."[25] The law, while not the gospel, is both a witness to and a bearer of the gospel. As David Haddorff astutely notes, this means that "the law has a gracious, not legalistic, content."[26]

Eberhard Jüngel argues that Barth's reversal of the law-gospel paradigm is indicative of the broader theological architectonics of Barth's thinking, particularly his theology of the threefold Word. He claims that Barth's theology of gospel and law is best understood in light of Barth's insistence that sin is only truly known in light of Christology. Barth does this by making the wholly other Word of God, which in his later theology is concretized through his Christological actualism, the standard from which all theology is developed. Barth's primary interest is not Luther's (viz., to make the right distinction between law and gospel) but "rather with seeing the right relationship between them: not the relationship of gospel to law, but of law to gospel."[27] The question of the law, then, must be re-oriented away from a primary concern about what specific

[25] CSC, 98.

[26] David Haddorff, Christian Ethics as Witness: Barth's Ethics for a World at Risk (Eugene: Cascade Books, 2010), 108.

[27] Eberhard Jüngel, *Karl Barth: A Theological Legacy,* Translated by Garrett E. Paul (Philadelphia: Westminster Press, 1986), 110.

commands it entails and instead begin with a focus on God's prior action of grace. "But because the Law is in the Gospel, from the Gospel, and points to the Gospel, we must first of all know about the Gospel in order to know about the Law, and not vice versa."[28] There are multiple dogmatic implications for Barth's claims for thinking about sin and grace, Christology, and hermeneutics; but for our purposes this reversal has profound import for establishing that moral action (including public law) is ultimately rooted in God's grace and not a generic appeal to the natural. "From what God does *for* us, we infer what he wants *with* us and *from* us."[29] One only understands law (*Gesetz*) and command (*Gebot*) by first hearing the gospel. It is the gospel that shapes the law and not vice versa.

It is important to note that when Barth uses the word law (*Gesetz)*, he employs it in a specifically Christological manner. What God has done for us and what God wants from us is principally revealed in Jesus of Nazareth. For Barth, the law is not properly understood by turning to the specific commands of the Old Testament—be it the Decalogue or the broader accounts of law in the Torah—but by looking to Jesus Christ. "This fact will not only form the criterion by which we must measure all of our self-constructed concepts of Law and norm. It will also have to become the canon of interpretation of everything called Law in the Old Testament and New Testament."[30] Barth argues that when defining the law (*Gesetz)*, Christians must begin with the fact that the law and all its commands have been kept *pro nobis* by Jesus Christ. The law's central command is that "we believe *in* Jesus Christ."[31] As he puts it more succinctly in *CD* II.2,

[28] Barth, *CSC*, 72.
[29] Barth, *CSC*, 78.
[30] *CSC*, 77.
[31] Barth, *CSC*, 83.

"The name of Jesus is itself the designation of the divine content of the truth of the divine claim, of the substance of God's law."[32] The law and gospel are united in grace in so far as they are both fundamentally united in Jesus Christ. The law does not simply accuse the sinner, it also bears witness to Christ. To seek to find another law apart from or beyond Jesus Christ is to divide both God's Word and work. "In the one image of Jesus Christ we have both the Gospel which reconciles us with God and illumines us and consoles us, and the Law which in contradistinction to all the laws which we ourselves find or fabricate really binds and obligates us. This is the Law to which theological ethics clings."[33] The content of both the law and gospel is grace, which is Jesus—the One who both saves and commands.

As in the *Barmen Declaration,* Barth's arguments about justification and Christology have implicit political ramifications. If the gospel of Jesus is the criterion of the law, then it must act as the standard by which Christians are to make moral and political judgments about both ecclesial and public law.

> Yes, and further, the Church would not be the Church if, in her very existence, but also in her teaching and keeping of the Law of God, its commands, its questions, its admonitions, and its accusations would not become visible and apprehensible also for the world, for state and society—even if they do not receive precisely the message concerning the grace of the triune God, expressed in the three articles of faith, the message which uniquely constitutes the task of the Church.[34]

Since Christians confess that Jesus Christ is Lord, not only of the church, but also of the whole world, they are called to live by his "commands and questions and admonitions and accusations" and make these visible in the broader public. "And, of course, it has to

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[32] CD, II.2, 568.
[33] CD II.2, 539.
[34] *CSC,* 79.

do this, not only in its own place and sphere, but also outside it, for the world, for the state and society, where are also claimed objectively by the Law of God."[35] There is no possibility for Christians to grant ultimate legal authority to any state, moral principle, or legal apparatus if it contradicts the claim of Jesus Christ. Barth explicates how, Jesus Christ "alone can also be the meaning and content of the authority which the Church confronts its members and the world…Thus there can never be claims and demands which would have legal validity from another source or in themselves."[36] Barth's contention that the law is the form of the gospel (and the gospel the content of the law) means that the church's concern for and engagement with the different societies that it lives in will always be shaped by the gospel. To engage the world from any other perspective than God's saving action in Jesus Christ is superfluous at best and deleterious at worst. Apart from the gospel, "even the most serious talk about the will and command of God can only be idle chatter, for which the Church is not needed, which can be much better done outside the Church."[37]

For Barth, then, there is no purely natural or secular space in which a person might be even partially free from God's claim on her life. "We can know of no human action which does not stand under God's command, of no human existence which does not respond in one way or another to God's command…we do not know any human action which is free, i.e., exempted from decision in relation to God's command, or neutral in regard to it."[38] This claim is not simply an argument that all human beings stand under the Creator's command and as such are held accountable to the divine law

[35] CD II.2, 563.
[36] *CSC*, 83.
[37] CD II.2, 563 & 564.
[38] CD II.2, 535.

made manifest in creation and thus knowable first and foremost through our conscience or reason. Barth is making a rather more radical argument, namely that all human beings stand under the command of God specifically as people who have been elected in Jesus Christ. Thus, there is no "possibility and reality of a general moral enquiry and reply which are originally and ultimately independent of the grace and command of God, which are not touched or affected by them and to that extent stand inflexible and inviolate in themselves."[39] It is the electing and saving God that commands.

While this aspect of Barth's argument about the relationship between the gospel and law have significant potential to address the concerns raised in chapters 3 and 4, questions remain about how Barth's views on the gospel, law, and Jesus Christ might address both Christianity's supersessionist history and also our own politically pluralist situation of the twenty-first century. Is Barth arguing that one must recognize Jesus as Lord in order to have a proper political polity or legal authority? How exactly does the one Word of God relate to the various laws of the land? Is not Barth's theological account of law, justice, and Christology far too particularist, even supersessionist, to be of any use in our (post) secular and religiously pluralist societies? While these questions are not fully addressed by Barth's later thinking, his own more explicit political arguments of 1938 and 1946 might aid in assuaging some worries that his thinking is too strongly marked by the assumptions of Christendom. Before examining these essays, we will turn more fully to strategies for thinking about the possibilities for addressing the supersessionism in Barth's thinking. For as I argued in the previous chapter, the issue of how Christians address the place of Israel is often vital to how they understands law.

[39] CD II.2, 522.

A Jewish-Christian Interlude

Barth's rhetoric might appear to be a return to traditional supersessionist Christian models of interpretation in which Jesus fulfills the law and thereby abolishes it—granting law little of lasting substance. From this perspective, because Jesus is the standard and thus Jewish law cannot be. While there are aspects of Barth's thought that push in this supersessionist direction, his insistence that the law is the (necessary) form of the gospel also might allow us to read against these tendencies. Joseph Mangina has pointed out how Barth's reversal of the standard interpretation has two major insights. The first is a "radical subordination of law to grace" such that "any ethics calling itself Christian ought to begin with Jesus." However by also saying that the law is a form of the gospel, Barth "cuts the nerve of all Christian antinomianism" since he defines law as a sign of grace.[40] The first might demand some type of supersessionism, while the second is the antithesis of this.

For instance, to follow Barth's reversal of the law and gospel brings new insights into classical Christian readings of the Old Testament. The events of Exodus are a case in point. In Sinai we see a quintessential example of the priority of the divine act. At Sinai, the law is given and received—with its conditions and blessings—and yet this divine gift and obligation is only given on the backside of a previous divine act of liberation. We can insist, then, that the biblical account of law is not simply a depiction of what is natural or inherently moral, but instead must ground our examinations of divine law in broader claims about God and God's relationship to the world in creation, providence, and reconciliation. Appeals to the Decalogue that divorce them from God's saving action in

[40] Joseph L. Mangina, *Karl Barth: Theologian of Christian Witness* (Louisville: Westminster John Knox, 2004), 146.

Egypt are not only exegetically problematic but also enforce the types of moralism and works righteousness that the Reformers rightly condemned. As Bultmann has argued, for Paul, the law (*nomos*) is "not the rational moral law inherent in man's intellect…Rather, the Law is the *totality of the historically given legal demands,* cultic and ritual as well as ethical."[41] The law, particularly at the very site where Christians often rhetorically point to the problem and limits of it, is a response to God's act in freeing the people of Israel from slavery. Inscribed in the very commands themselves in Exodus is this recognition. "I am the LORD your God, who brought you out of the land of Egypt, out of the house of slavery" (Exod. 20:2). Appeals to the Decalogue as an expression of natural law, so common in the history of Christian theology and ethics, too often fail to note the central and particular conditions from which the law flows. God is to be obeyed, not because God is capricious or because these laws are a simple distillation of what is natural for human beings (although they may be), but because God (who is YHWH and thus the Lord) has freed the people from bondage. The giving of the law on Sinai occurs within the broader narrative context of the establishment of YHWH's kingdom. It is only after YWHW defeats other would-be rulers of the world—the gods of Egypt as seen in Pharaoh—that the law is given at Sinai. The law is given not as a precondition to divine rule, but as the continuation of an act that frees the people from slavery to a false lord, Pharaoh, thereby establishing the Divine rule of God. At Sinai, then, we might even say that the law is intended to function in a manner akin to Calvin's description of the third use of the law.

[41] Rudolf Bultmann, *Theology of the New Testament,* 260 (§27).

Thus, while there are supersessionist dangers lurking in the Christological focus of Barth's reversal of the law-gospel paradigm, his thought also might aid us in reframing classically negative readings of Jewish law. Two Jewish thinkers who engage Barth's theology, David Novak and Randi Rashkover, suggest other concrete possibilities for advancing Jewish-Christian encounter. The key for both Novak and Rashkover, despite their drastically different constructive aims and readings of Barth, is to reframe engagement away from Barth's specific supersessionist claims and toward an analysis of Barth's more fundamental commitments. Novak writes, "it might be best not to engage Barth on what he actually said about Judaism, but to engage him on what he said about Judaism's primary concern."[42] The key themes for Novak's engagement with Barth are law and command, particularly as they are negotiated in the purportedly secular spaces of the twentieth and twenty-first centuries. Jews and Christians cannot agree on the exact details of the covenant, the law, and certainly not the gospel. However, this should not inhibit engagement and mutual learning around the challenges of living faithfully in the modern world. While Novak's argument for a renewed vision of natural law is promising for one strain of Jewish-Christian-Muslim relations, it still skirts the key challenges raised by Barth and others regarding particularity.[43] Moreover, there remains the question of how Novak thinks Barth's radical Christocentrism, which is the guide and norm for his theology of law, can simply be sidestepped in the name of cordial exchange. Thus while Novak wishes to engage Barth around his focus on command, Barth's distinctive perspective is lost from the exchange.

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[42] David Novak, *Talking with Christians: Musings of a Jewish Theologian* (Grand Rapids: Eerdmans, 2005), 129.

[43] See Anver M. Emon, Matthew Levering, and David Novak, *Natural Law: A Jewish, Christian, and Islamic Trialogue* (New York: Oxford University Press, 2014).

Randi Rashkover offers a more promising approach for negotiating particularity and difference with and beyond Barth. She contends that most models of Jewish-Christian engagement, Novak's included, are still marked by the logic of exceptionalism. In Barth, Rashkover finds an alternative to the "false-choice" between self-preservation and recognition of the other. She does not seek to evade Barth's particularity, but to read his soft supersessionism within the broader framework of his non-apologetic theology. In fact, she argues that Barth's Christologically centered theology, particularly his theology of the gospel and law, might aid Jewish-Christian exchange by offering a theological justification for a non-apologetic particularity.

It is by attending to the particular contours of Barth's thinking, especially on the themes such as law, gospel, and Jesus that are most often avoided in interfaith exchange, that Rashkover proposes a disposition that might reframe Christian and Jewish theologies of law. She interprets Barth's dialectic as offering an account of the law that is both deeply Christocentric, but also logically free of the antinomian and anti-Jewish rhetoric that is so often a feature of Christian discourse. Barth's inversion of the law-gospel account presents a vision of law that is marked by freedom and love and an account of the Gospel that is inherently ordered and lawful. The law, in Rashkover's reading of Barth, is not interpreted exclusively through the paradigm of faith vs. works, but is embedded within an account of freedom and faith. "We receive the gospel in the law, and we experience the law through the gospel."[44] In fact, the law is nothing other than freedom and freedom nothing other than obedience. She contends that for Barth, "God's command is not a tool through which God trumpets his own justice but renders it

[44] Rashkover, *Freedom and Law,* 244.

available for enactment by us all."[45] The law is not judgment but gift and thus not only is the law always graceful, but "divine grace is always lawful."[46]

As such, Rashkover contends that Barth's theology "honors and requires law" in such a way that resists anti-Jewish rhetoric even as it supports a "Christologically based articulation of the logic of law" that does not require the "performance of Jewish law."[47] By placing law within the heart of the gospel, and not as a mere precursor or judge, Barth's political theology creates space for understanding the legal traditions of Judaism in more appreciative ways. However to accomplish this, Rashkover must read Barth's theology in ways that are even more unapologetic than his own. She reads Barth not as the polemic defender of orthodoxy, but as a Christian theologian who presents a "different concept of apologetics whereby I may freely present my claim without polemically defending it against another's."[48] The radical freedom of God, the power of the gospel, and the fact that the gospel and law are always intertwined should free Christian theologians to be simultaneously particular and open. "I must confess the gospel, Barth says. I must because I am commanded, and I must because I am free. However, my confession of the gospel transpires within the law, and this means that when I confess the gospel, I do so non-polemically."[49] Proclamation of the gospel does not depend on polemics that disparage the law, since the very gospel to which Christians witness is encountered in and with the law. Put differently, if Barth is honest to his own

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[45] Rashkover, *Freedom and Law,* 241.
[46] Ibid.
[47] Ibid., 227.
[48] Ibid., 271.
[49] Ibid., 271. Rashkover's argument is important, in so far as she presses Barth to be more consistently non-apologetic than he actually is. However, her reading of Barth's account of law does give priority to law over gospel in a way that is problematic for Barth's own thinking. The law and gospel both operate within the broader framework of the covenant, but it is the gospel that takes precedence over law.

theological commitments about God being the only standard of theology, then he should be able to resist the apologetic polemics that too often mark his own theological engagement with religious others.

In sum, Rashkover argues that when you understand the law as the form of the gospel, it becomes logically impossible to disparage law since the law both carries and bears witness to the gospel. This does not mean that Christians and Jewish dialogue is going to move forward by neatly identifying shared commitments between Jews and Christians over what aspects of biblical law they both share. "Rather, the argument here is that a Christian theology of law that demonstrates the order of witness renders Christianity more capable of listening to the claims of non-Christians, Jews included."[50] According to Rashkover, a theologian that follows Barth's account of divine freedom, the gospel-law, and the lawful nature of the gospel, should be capable of precisely the type of comparative theology this project offers. Rashkover's recasting of Barth is a vital corrective to Barth's own tendency toward a polemical posture toward Judaism and Islam. Moreover, her reading invites us to read Barth beyond Barth and thus to turn his critique of religions inward to a self-criticism of Christianity, rather than deploy it as a tool for Christian exceptionalism or triumphalism.

Rechtfertigung und Recht

In *Rechtfertingung und Recht*, Barth attempts to connect his central arguments regarding the gospel and law to the theo-political question of how divine justice and human justice are related. "Is there a connection between justification of the sinner

[50] Rashkover, *Freedom and Law,* 274.

through faith alone, completed once and for all by God through Jesus Christ, and the problem of justice, the problem of human law?"[51] Phrased differently, Barth asks what the revelation of God's justice—which is singularly known in the justification of the sinner—entails for Christian understandings of human law. Barth laments that Luther, Calvin, and other Reformers insufficiently probed this connection. Rather than considering how the two themes are interrelated, the Reformers focused exclusively on the distinction between justice and justification. The magisterial Reformers by and large opted to argue that the two spheres or kingdoms exist side by side, both "competent in its own sphere."[52] While there is a distinction between the justice of earth and the justice of heaven, Barth wonders, "to what extent they are connected."[53] There is "either no answer at all, or, at the very best, a very inadequate answer" to be found in Luther, Zwingli, and Calvin.[54] This is a particularly troubling lacuna for the Lutheran tradition that argues that justification is the doctrine on which the church hangs or falls. How is it possible to speak of justice without reference to the central event of divine justice—the alien righteousness given to the justified sinner?

Barth's own essay promises to address this omission by developing a "gospel foundation" for theo-political discussions of justice, the state, and law.[55] However as the English translation of the essay, "Church and State," makes clear, the actual content of the essay is not primarily concerned with articulating a positive connection between justice and justification. Instead, Barth fairly quickly moves away from the main stated goal to offer a reading of the relationship between the church and state. While Barth's

[51] Barth, *CSC,* 101.
[52] Barth, CSC, 102.
[53] Ibid.
[54] Ibid.
[55] Ibid., 104.

thinking fails to full engage the questions laid out at the outset, the essay does offer insights into the key theological themes for thinking about the role of the church, state, and coming Kingdom of God, particularly in relationship to both law and Christology.

Given the context of 1938, specifically the co-opting of theological discourse and ecclesial independence by the National Socialist Party, Barth remains committed to maintaining a distinction between the church and the state. By employing his typical dialectic approach, Barth resists a reading of the relationship between church and state that would abdicate Christian responsibility for justice in the present world, even as he refuses a too close correlation between the Christian and any particular nation-state. The church should never wish to be the state, nor should the state impose its will onto the church. "The State would be denying its own existence if it wished to become the Church. And the Church on its side, for its own sake, or rather, for the sake of its mission, can never wish that the State should cease to be the State."[56] The aim and task of the church is the proclamation of the justifying gospel, while the task of the State is to maintain justice and social welfare. Even as Barth affirms the fundamental different tasks of the church and state, he also recognizes how the Scriptural witness and Christian language of salvation is saturated with political language. Pilate finds his way into the creed; Christ is called Lord, an honorific and political title; the vision of the eschatological future is that of a city and Kingdom. Importantly for Barth, this language should not be simply spiritualized, as if the political intrigue surrounding the history of Jesus Christ is purely symbolic. Instead, Barth is adamant that politics and the state both must be interpreted Christologically.

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[56] *CSC*, 132.

A case in point is the pivotal role that Pilate plays in the justification of the sinner. According to Barth, Jesus' encounter with Pilate illustrates a number of theological themes for thinking about the church's posture toward the state and vice versa.[57] First, Barth interprets the encounter with Pilate to be an illustration that the State is by its nature "neutral" to the "question of truth" and thus is unable to adjudicate theological or philosophical claims.[58] Pilate's question to Jesus (John 18:38) offers scriptural justification for recognizing the state's theological and religious neutrality. The church does not look to the state for theological guidance and thus there must be some form of freedom of the church from overt state control of its message. While this claim has vital resonance with the German situation of the 1930s, it is unclear what particularly political arraignment Barth has in mind by this comment—be it *laicité*, church-state separation, non-establishment, or multiculturalism. Suffice it to say that whatever the framework, the most important aspect for Barth is that it is one that allows for the proclamation of the gospel. In fact, Barth goes on to argue that a necessary component of a genuine state is its willingness to grant freedom for preaching.

A second theme that emerges from Barth's reading of the execution of Jesus is the ambiguous nature of political power. On the one hand, the narrative affirms that the government, represented by Pilate, has power over both Jesus and by extension other human subjects.[59] The state has legitimate legal authority of society in so far as it seeks justice, restrains evil, and promotes the general welfare of the community. On the other

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[57] It would be preferable to depict the biblical account as being concerned with political order or political power and not the state as such. Such a description would aid in avoiding the ahistoricism that plagues Barth's account of the nation-state and its development. Pilate is not a representative of a nation-state but of an empire.

[58] *CSC*, 110.

[59] Barth seems to prefer state and citizen, but this is another sign of ahistoricism.

hand, Barth also notes how God always establishes political power. Pilate only has authority over Jesus because Jesus allows him to establish such authority. As such, it is clear that God does not necessarily affirm every particular political enactment of this God-given political power since authority is prone to manipulation and misuse. Governments may be invested with divine authority, but this does not mean that every decision is divinely authorized. The decision to execute Jesus is the quintessential example of legal manipulation and injustice. "Under the cloak of legality he trampled on the law which he should have upheld."[60] Like Pilate, the government is prone to employ the law, not for justice, but for power. When it acts as such, the church is free to disobey the state's unjust laws. And yet, in these situations the church is not called to become the state but to remind the state of its task of seeking justice and the welfare of the people. David Haddorff argues that for Barth, "being responsible to the state implies that Christians intercede on the state's behalf as well as actively respond in moral judgment and action *to* the actions of their state without seeking to *be* the state."[61] When the state acts in the name of power alone without attending to the demands of the law and justice, Barth argues that they contradict their own nature and purpose.

Finally, the account of Pilate and Jesus' encounter presses against any too neat division between religion and politics. Far from the state having nothing to do with redemption—as advocates of a strict two kingdoms model or the spirituality of the church might contend—the "legal administration of the State" is actually in the second portion of the creed.[62] Pilate's prominence, both in the biblical accounts and the creed itself,

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[60] *CSC,* 113.
[61] Haddorff, *Christian Ethics as Witness*, 112.
[62] *CSC*, 114.

indicates that the exercise of political authority cannot be understood exclusively through the paradigms of nature or creation, but are also Christological. "When the New Testament speaks of the State, we are, fundamentally, in the *Christological* sphere."[63] The fact that the state exists in the Christological sphere means that Christians can never abandon the political, even with the state's flaws and self-aggrandizement. Particularly when the state overreaches its proper limits, the church is called to intercede on the state's behalf and remind it of its divine calling to struggle toward administering justice.[64]

The central importance of political community is inherent throughout the gospel accounts, particularly the prominence given to the Kingdom of Heaven or God in the synoptic Gospels. According to Barth, the Kingdom of God is not a mythic or ideal state, but the very definition of the state. "In this future city in which Christians have their citizenship here and now (without yet being able to inhabit it), we are concerned not with an ideal but with the real State—yes, with the only real State."[65] Certainly, the Kingdom of God is not of this world, but this claim is not intended to depoliticize the gospel or the Christian community, but to orient them toward their divine telos. Importantly Barth interprets the Kingdom as a divine act and not something achieved by human efforts. And yet human communities and political arraignments are nonetheless tasked with bearing witness to the divine reign of justice and peace. "Because the heavenly Jerusalem is also a State, and every State, even the worst and most perverse, possesses its imperishable destiny in the fact that it will one day contribute to the glory of the heavenly Jerusalem, and will inevitably bring its tribute thither."[66] Even though the Kingdom remains beyond

[63] CSC, 120.
[64] CSC, 146.
[65] CSC, 123.
[66] CSC, 125.

human construction, the various human governments nonetheless anticipate, if only dimly in the final heavenly government. As he noted in the controversial fifth thesis of the Barmen Declaration, the state is divinely appointed and is also called to "draw attention to God's Kingdom (*Reich)*, God's commandment (*Gebot*), and justice (*Recht*)."[67] The unrealizable nature of the Kingdom in this world presses against any messianic political agenda. However, the eschatological kingdom is not meant to produce resentment in Christians toward life in this world or political existence, but produce a "positive sentiment" that allows a constructive and critical stance toward human institutions. Depending on the context and situation, the church and the Christian is able to stand either against or with the state and its claims. As Jesse Couenhoven notes, "Like the law, the state is not simply the order of God's wrath."[68] The state and the law can be both be witnesses to the Divine rule.

Even though the state misuses its power and authority, the church is not free to abandon the state and seek to live outside the bounds of law. "The State is called to establish human law, and it has the capacity to do so."[69] The church recognizes this authority, even as it resists state overreach. In fact, Barth argues that law should govern both the church and the state. Refusing idealistic pictures of a church free from all order, systems of governance, and law, Barth is adamant that the church itself is a community of law. Of course, this is the law of the gospel, but it is a law nonetheless. If the church is going to seek the legal well being of the state, then it must also hold itself to legal standards internally. Still, when the church evaluates human laws, be they civil or

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[67] Barmen, 5. For a lengthy engagement, see Eberhard Jüngel, *Christ, Justice and Peace: Toward a Theology of the Sate in Dialogue with the Barmen Declaration,* translated by D. Bruce Hamill and Alan J. Torrance (New York: Bloomsbury, 2014).

[68] Jesse Couenhoven, "Law and Gospel, or the Law of the Gospel?" 189.

[69] CSC, 147.

ecclesial, it does so through the lens of the gospel. "We cannot measure what this law is by any Romantic or Liberalistic idea of 'natural law,' but simply by the concrete law of freedom" which is found in the Word of God.[70]

While this emphasis on the centrality of the Gospel for evaluating public laws has creative promise to address the hegemony of consciences and nature in most Christian theologies of law, Barth does not positively develop these insights in the essay. He offers no positive connection between the law of the Gospel and the organization and framework of the state. Instead of considering how the very categories and justifications of public law might be judged by the standards of God's kingdom or the priority of the Gospel, Barth simply argues that "all that can be said from the standpoint of divine justification on the question (and questions) of human law is summed up in one statement: the Church *must have freedom to proclaim divine justification*."[71] He goes so far as to say that only a state that freely allows the preaching of the Gospel has the right to be called a state. The dire political situation of 1938 surely influenced the shape and scope of Barth's theo-political project. As Rowan Williams writes, Barth's "relentlessly antithetical preservations of the 'communities' of state and Church preserves some echo of Lutheran dualism, but it is a dualism brilliantly and triumphantly deployed against the extraordinary muddles of Lutheran political theology in the 1930s."[72] Still, Barth does not sufficiently probe the question that frames his essay, namely, how exactly does the state bear witness to the kingdom of God? How does the state's work of promulgating laws positively connect with the justification of the sinner? Even as sympathetic reader of

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[70] CSC, 147.

[71] CSC, 147.

[72] Rowan Williams, "Barth, War and the State" in Nigel Biggar, *Reckoning with Barth: Essays in Commemoration of the Centenary of Karl Barth's Birth* (London: Mowbray, 1988), 181.

Barth as George Hunsinger recognizes that Barth's essay actually has "little to say about justice and justification" and thus his stated aim of exploring the connection between the two was "not well met."[73] On these important and intriguing questions, Barth does not develop a sufficient account of what Pilate's encounter with Jesus depicts about the law. What does it say about state legal power that it often functions contrary to justice? How might Romans 13 be read in light of Jesus' encounter with Pilate? Or how do we understand the limits of Romans 13's account of public law in light of the problems inherent in the law's misuse in Romans 1-8? I echo Isma'il Faruqi's worry that "Barth has missed that the act of Jesus itself was carried out in a state which was the opposite of everything he demands the state to be."[74] Instead of considering any of these more constructive questions, Barth offers a somewhat allegorical reading of the texts that shows how God nonetheless triumphs over injustice. While the framework for developing a more constructive answer to Barth's own questions is present in *Rechterfertigung und Recht,* the development of these themes must wait for his later project.

The Christian Community and The Civil Community

In 1946, Barth authored his most well known study of theological politics, "The Christian Community and the Civil Community." The essay follows through more fully on the promises laid out at the start of his *Rechtfertigung und Recht* to consider not only the contrastive relationship between divine and human justice, but also to discuss their inner connection. Part of this shift is undoubtedly related to the different challenges

[73] George Hunsinger, "Justice and Justification" in Michael Weinrich and John Burgess, eds. *What is Justification About?: Reformed Contributions to an Ecumenical Theme* (Grand Rapids: Eerdmans, 2009), 208 & 210.

[74] al-Farugi, *Christian Ethics*, 270.

facing the European churches in the post-war situation. Barth draws out more clearly the implications of his arguments in *Rechtfertigung und Recht* regarding the Christological foundation of political existence.

An important shift in Barth's reflections is evident in the differing linguistic descriptions he uses to distinguish between the church and the political. In the 1938 essay, Barth employs traditional language of the Church (*Kirche*) and the State (*Staat*), but by 1946 he has opted for a focus on the relationship between the Christian Community (*Christengemeinde*) and the civil community (*Bürgergemeinde*).[75] David Haddorff has argued that this change is indicative of a broader movement in Barth's thinking away from an institutional focus that assumes Christian establishment and toward a focus on persons and community. While this post-establishment claim is somewhat overwrought, the focus on persons and their engagement with various communities of belonging is vital to Barth's later theo-political thinking and the dialectic relationship he envisions between the Christian and civil communities.

The essay begins by highlighting the importance of understanding persons in communion. "We are concerned in the 'Church' and the 'State' not merely with institutions and offices but with the human beings gathered together in corporate bodies in the service of common tasks."[76] Theological descriptions of the Christians' relationship with others, be they Christians or non-Christians, best begins with human relationships and not the institutional organizations of these communities. Examining institutional structures and powers is vital, but this is not the primary angle for theological

[75] This is not a complete shift as Barth does not completely abandon language of church and state.

[76] Barth, CSC, 149.

interpretation. To understand the nature of the church, we do not look to the structure or shape of various denominations but to the people who are gathered together by and for the Word of God. Similarly the state is best understood as a community of persons living and struggling together toward security, justice, peace, and societal well-being. The concept of community allows Barth to focus on two features that mark both the Christian and civil community: being a common people and having a specific task.

The Christian community, then, is defined as the "commonality of the people in one place, region, or country who are called apart and gather together as 'Christians' by reason of their knowledge of and belief in Jesus Christ."[77] Similarly the civil community (or the state) is understood to be the "commonality of all the people in one place, region, or country in so far as they belong together under a constitutional system of government that is equally valid for and binding on them all, and which is defended and maintained by force."[78] Importantly for our study, Barth argues that the central tasks of the civil community are primarily legal in nature. The civil community is to (a) "settle the legal system, which is binding on all; (b) the government and administration which has to apply the legislation; (c) the administration of justice which has to deal with the cases of doubt or conflicting law and decide on its applicability."[79] Barth's primary concern in this essay, then, is not to develop a full theory of the state's development or its moral authority but to sketch the state's primary function. As Wolfgang Huber writes, "Barth entwickelt nicht ein theologische Ontologie des Staates, sondern eine Theologie der

[77] CSC, 150.
[78] CSC, 150.
[79] CSC, 150-151.

staatliche Funktionen."[80] While Huber might be slightly overstating this division given Barth's interest in locating the state in relationship to the Kingdom of God, he is certainly correct in pointing to Barth's primary interest in conceiving of the state's legal tasks.

In many ways, Barth's theological position continues in the long Western Christian theo-political tradition of drawing a contrastive distinction between the two kingdoms, two swords, two rules, or two cities. As he argued in his earlier essay, the Christian and civil communities are to be distinguished and thus have distinct tasks. The church exists by and for the preaching of the gospel and the celebration of the sacraments; the state exists for the maintenance of order, the constraining of sin, and the provision of temporal goods. Barth is adamant that the Christian community fulfills its task by remaining the church[81] and that the civil community is not to be grounded in any explicit appeal to theology or religion.[82]

Given this seemingly strict division of labors, what then of Barth's insistence in the *Barmen Declaration* that Jesus Christ is the one Word of God that we are to obey throughout the entirety of our lives? What of the claim in "Gospel and Law" that the church is tasked with making manifest the demands of Christ in the world? What of the inner connection between divine and human justice that Barth sought in "*Rechtfertigung und Recht"*? Do these fundamentally distinct tasks and forms of authority reinforce the very dualisms that Muslim critics (amongst others) have levied against the Christian tradition? If there is an absolute difference in knowledge is not the civil community—in its laws and structure—necessarily grounded in natural law?

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[80] Wolgang Huber, *Gerechtigkeit und Recht: Grundlinien christlicher Rechtsethik* (München: Gütersloher Verlagshaus, 1996), 150.

[81] *CSC*, 157.

[82] *CSC*, 151.

While this initial description is largely contrastive, Barth is adamant that the Christian community is not wholly distinct from the civil community but always and inevitably intertwined with it. "There are and always have been communities outside" the circle of the Christian community.[83] A Christian person resides both in the church and in the civil community. Christians always live in the midst of broader social communities with their particular cultures, politics, and laws. It is impossible for the Christian community to be either co-terminus with the civil community or wholly distinct from its surroundings. Christians live in the world and rely on the common goods of food, commerce, housing, law, and social organizations just as much as any other human being. Again this is not dissimilar from the classical Western position articulated by Augustine when he argues in *The City of God* that, "the Heavenly City makes use of earthly peace during her pilgrimage" and thus "does not hesitate to obey the laws of the earthly city."[84]

Yet Barth's own theological understanding of the Church-Government paradigm moves beyond both the Augustinian tradition of two cities and Reformation theologies of two kingdoms by arguing that both the civil and Christian communities are grounded in Jesus Christ and his Kingdom. Barth describes the Kingdom of God at the center of two concentric circles that include both the Christian and civil communities, with the Christian community as the inner and the civil community as the outer. Both communities are distinguished from the Kingdom of God, but both communities are also grounded in God's Kingdom. As Jesse Couenhoven has argued, the church does not have "a different ontological basis than the state. Both have the same basis, Jesus Christ."[85]

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[83] Barth, *CSC,* 149-150.

[84] Augustine, *City of God,* XIX. 17 (946/7).

[85] Jesse Couenhoven, "Law and gospel, or the Law of the Gospel?: Karl Barth's Political Theology Compared with Luther and Calvin," *Journal of Religious Ethics* 30.2 (2002), 193.

Barth thus resists traditional models that too neatly cut off the 'world' from God's reconciling action in Jesus Christ. The civil or earthly acts of politics, governing, and enacting laws are not exclusively related to the doctrine of creation or post-lapsarian divine ordnances, but are also included in Christ's reconciling work. The civil community's "existence is not separate from the Kingdom of Jesus Christ; its foundation and its influence are not autonomous. It is outside the Church but not outside the range of Christ's domination—it is an exponent of His kingdom."[86] Contra Augustine, the cities of this world are not wholly divorced from God's redemptive rule in Christ. There is not a kingdom of the world and a kingdom of heaven, but a single eschatological Kingdom that grounds both the civil and the Christian communities. As such, the state is not only guided by the left hand of God—or Christ's rule as creator—as it is traditionally understood in the two kingdoms paradigm, since Barth rejects any fundamental division between forms of grace or modes of divine rule. As he wrote in the 1922 edition of his *Römerbrief*, Scripture "speaks of the Creator who shall be our Redeemer and of the Redeemer who is our Creator."[87] Christ is Lord always as both the creator and reconciler, not as partly one and partly the other.

Nonetheless, neither the Christian or civil community is or will become the Kingdom (*Reich*) of Christ itself. The Kingdom of God remains an eschatological reality that stands in judgment over and against any human effort, ecclesial or political, to usher it in. "The Kingdom of God is the Kingdom where God is without shadow, without problems and contradictions, where He is All in All."[88] Not only do the two communities

[86] *CSC*, 156.
[87] Barth, *Romans*, 37.
[88] *CSC*, 167.

share an ontological basis in Christ's Kingdom, but both the church and the state also exist in a "world not yet redeemed."[89] In this in-between time of the *saeculum*, both communities are only capable of bearing witness—whether directly or indirectly—to God's rule in Christ. The Kingdom is never achievable or realizable in time apart from the event of Jesus Christ. Still these two communities, in so far as they are rooted in the lordship of Christ, are able to point toward the justice and mercy of God's rule.

Drawing out more fully the political implications of his early claims about the relationship between the Kingdom of God and the existence of the state, Barth argues that "the existence of the State (is) an allegory, an analogue, to the Kingdom of God which the Church preaches and believes in."[90] The civil community or the state, then, bears the potential to be a better or worse witness to the divine rule. It does not do this through explicit appeal to Christian theological language or state establishment. Just as he had argued in 1938, Barth maintains that the political arena is ignorant of the truth of the gospel and the divine Kingdom.[91] The state's relationship with the Kingdom of God does not depend on explicit Christian confession, but on its capacity to bear analogical witness to God's kingdom. The civil community does this when it concerns itself with the so-called secular task of establishing laws, adjudicating cases with equity, restraining evil, and seeking the common good. For Barth, public law, even when it is unaware of Jesus Christ and the, is able to point toward the rule of God. Witness to God's rule is not dependent on explicit human recognition, but on the extent to which human justice, laws, and political arrangements are analogically related God's kingdoms as revealed in

[89] *CSC*, 168.
[90] *CSC*, 169.
[91] There are possibilities to develop this theme in interesting directions both with and against Oliver O'Donovan's arguments in *Desire of the Nations*.

Christ.[92] When it comes to the government, the civil community best bears witness to God's rule when it enacts laws for all human beings that are marked by equality, concern for the poor, freedom, and the pursuit of justice. God's rule and sovereignty over all of human existence may invite public confession, but it does not depend upon it.

The fact that the state might bear witness, albeit indirectly, to the gospel and the Kingdom of God implies that Christians have a responsibility toward the state. Barth's theological claims about the relationship between the Kingdom of God, the church community, and the civil community lead him to develop an account of political engagement that is marked by neither assimilation nor withdrawal. Barth's theological schema not only locates the civil community within the scope of the divine kingdom, it also implies that the Christian community has a necessarily political character. In fact, Barth reminds the reader that the very term *ekklesia* is a "borrowed from the political sphere" and that the Christian community, like the civil one, is ordered by a framework of law and governance.[93] Barth goes so far as to argue that the Christian community is of ultimate political value since it is directed toward an eternal *polis* built by God. There is an analogical relationship, then, between both the civil community and the Kingdom and the Christian community and the civil community.

Still for Barth there is no explicit and pre-defined Christian political system. The Christian community is inherently political, but not in the sense of being partisan. "The

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[92] Barth offers twelve analogies that begin with the Gospel and then move outward toward a political theology. Many of these are understandable and clear such as the idea that the incarnation entails an affirmation or human dignity or that Christ's ministry with the poor and lost suggests a political arrangement that includes all and prioritizes the weak. However, others are so strained that it begs the question of whether Barth is in fact beginning with the Gospel and moving toward political theology and theory, or if he is seeking biblical justification for a pre-conceived political theory. See Wolfhart Pannenberg, *Ethics,* translated by Keith Crim (Philadelphia: Westminster Press, 1981), 31-33.

[93] CSC, 153.

Christian decisions which have to be made in the political sphere have no idea, system, or program to refer to but a direction and a line."[94] Christians are tasked with being salt and light to the broader political community and to discern in each circumstance the proper and faithful course of political and legal action. The Christian community does this first and foremost by preaching the gospel of Jesus Christ. "The Christian community shares in the task of the civil community precisely to the extent that it fulfills its own task."[95] The church does not seek to take over the role of the state. The Christian exists in the civil community and is called to work for its good—bearing witness to faith, love, and hope—and abiding by its laws.

The gospel does not call human beings away from the world but into it. "The Christian community is not an end in itself. It serves God and thereby serves humanity."[96] Christians are thrown out into the world with the task of taking active and critical responsibility for the welfare of the whole community. This does not entail forming a Christian party or working toward Christian privilege or recognition, but offering concrete judgments that seek the good of all. Engagement with civil communities, then, is to be both highly specific and contextual. The Christian community must discern in each new situation the specific reality of the government and its laws and make judgments about its consistency with divine justice. Thus engagement with society is not to be marked by a Christian triumphalism but by an incognito struggle to be "political salt."[97] When Christians act in such a humble political fashion, they both bear witness to the gospel and aid the civil community in its political and legal tasks, which in and of

[94] CSC, 163.
[95] CSC, 158.
[96] CSC, 166.
[97] CSC, 184.

themselves bear indirect witness to the rule of God.

Unsurprisingly, Barth is adamant that Jesus Christ and not an appeal to natural law define the proper Christian political direction. In fact, Barth asserts that there is no such thing as a neutral natural law that is acceptable to all, but rather there is a series of cultural norms, moral hunches, and political maneuvers. Far from being a more solid and common basis for building up civil community, Barth argues that the rhetoric of natural law is more often a cover for power. "The civil community is reduced to guessing or to accepting some powerful assertion of this or that interpretation of natural law."[98] Thus Christians are to enter into the political arena precisely as those with another authority. "The Church community 'subordinates' itself to the civil community by making its knowledge of the Lord who is the Lord of all its criterion, and distinguishing between the just and unjust State, that is, between the better and the worse political form and reality."[99] Again, it does not do this by seeking explicit political recognition but by discerning how to be obedient to Christ in each and every political and legal situation. In fact, this is a profoundly 'secular' pursuit.

> The tasks and problems which the Christian community is called to share, in fulfillment of its political responsibility, are 'natural,' secular, profane tasks and problems. But the norm by which it should be guided is anything but natural: it is the only norm which it can believe in and accept as a spiritual norm, and is derived from the clear law of its own faith, not from the obscure workings of a system outside itself: it is from the knowledge of this norm (Jesus Christ) that it will make its decision in the political sphere.[100]

Barth's essay, then, presents a positive vision of how the church and state might both bear witness to the Kingdom of God, without either one overreaching its boundaries.

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[98] *CSC*, 164.
[99] *CSC*, 162.
[100] *CSC*, 165.

The Problem of Barth on Islam and Politics

Before turning to the constructive possibilities for how Barth's thinking might address the concerns raised in chapters 3 and 4, it is important first to name the way that Barth's theology bears the imprint of Christianity's long history of anti-Jewish and Islamophobic rhetoric. While there are positive theological directions that ameliorate his view of Judaism, Barth's views on Islam are far less nuanced.[101] In fact, Barth shows a far worse understanding of Islam than the Christian thinkers that I critiqued in chapter 2. Barth's limited comments on the religion show a lack of comprehensive knowledge of Islamic thought or practice and thus he tends to rely on the crudest stereotypes of Muslims.[102] Barth rejects appeals to shared theological foundations—be it monotheism, a scripturally attested Creator, or trust in divine providence—as doctrinal loci that might allow Christians and Muslims to comprehend one another. Glenn A. Chestnutt has proposed one solution beyond this impasse, namely to extend Barth's cautiously positive understandings of the integral relationship between the church and synagogue to include also the mosque. "While there is a negative stereotyping of both Judaism and Islam in Barth's work there are other resources available within the same corpus to overcome this."[103] He contends that Barth's theology of universality of grace, the Light and the little lights, and God's covenanting action might create space for Christian-Muslim engagement, particularly around social justice and the common good.

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[101] For Barth's views on Judaism, see Katherine Sonderegger, *That Jesus Christ Was Born a Jew: Karl Barth's 'Doctrine of Israel'* (University Park: Penn State, 1992) and Mark R. Lindsay, *Barth, Israel, and Judaism* (Farnahm: Ashgate, 2007).

[102] For a full study of Barth's views on Islam, see Glenn A. Chestnutt, *Challenging the Stereotype: The Theology of Karl Barth as a Resource for Inter-Religious Encounter in a European Context* (Bern: Peter Lang, 2010), chs. 1 and 2.

[103] Glenn A. Chestnutt, *Challenging the Stereotype,* 85.

While Chestnutt's arguments are important and his research into Barth's views of Islam groundbreaking, the constructive turn unfortunately asks Barth to do more than his explicit statements on the subject of Islam would allow him to do. It minimizes the deep anti-Muslim rhetoric that marks almost all of Barth's engagement with Islam. If Barth's thought is going to be used in any positive way for Christian-Muslim exchange, as this dissertation is proposing, then we must also name the problems in Barth's approach to Islam and recognize the ways that any rapprochement must go directly against Barth's own claims about Muslims. Simply put, Barth's engagement with Islam shows no understanding of Islamic law or theology whatsoever, and thus amounts to little more than problematic tropes. As Chestnutt rightly notes, there are theological themes within Barth's thought that might allow one to read against Barth's own explicit judgments about Islam. However, it is important that those who wish to employ Barth not skirt the real problems in such an appropriation.

The anti-Muslim character of Barth's though is most troublingly apparent in the way that Barth employs Islam as a cipher for his own critiques of National Socialism.[104] In his 1939 lecture, "The Church and the Political Problem of Our Day," Barth describes National Socialism as the "new Turks." In fact, Barth argues that it is "impossible to understand National Socialism unless we see it in fact as the *new Islam,* its myth as a new Allah, and Hitler as this new Allah's prophet."[105] Barth's implication is as clear as his stereotypes crude; the Nazi party is totalitarian, just like the Turks or Muslims are.[106] It is

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[104] Glenn A. Chestnutt, "Karl Barth and Islam" *Modern Theology* 28 (2012), 290.

[105] Karl Barth, *The Church and the Political Problem of Our Day* (London: Hodder and Stoughton, 1939), 43.

[106] It is interesting to note how little academic research is done on this comparison. Even Barth scholars attuned to the problematic rhetoric in Barth's description of religious others, like Timothy Gorringe and Glenn Chestnutt, bypass the opportunity to name the deep problems in

worth quoting Barth's rhetorical equation at length, particularly since he touches on themes related to both the problem of the two Kingdoms and of Islam:

> But there is one prayer with regard to the *ruling* National Socialism which may be uttered and ought to be uttered. It may and has to be prayed, in all its earnestness, by Christians in Germany and the whole world. It is the prayer which was uttered right into the nineteenth century according to the old Basel Liturgy: 'Cast down the bulwarks of the false prophet Muhammed!' Those who want to make a too clean-cut division of the two Kingdoms or Offices are as ready, to-day as ever, to appeal to Luther. And unfortunately a good bit of this is justified. But the same Luther prayed in just this way against the Turks, and indeed did not stop at praying! And there we have it—we stand to-day, all Europe, and the whole Christian Church in Europe, once again *in danger of the Turks*. And this time they have already take Vienna and Prague as well…They prayed that it would pass and be driven away to the honor of God *and* to the preservation of the Church and State *and* to the obviating of the incalculable affliction for multitudes!...The Church must and will, in great need, learn to pray against the new Turks.[107]

Barth's argument is part of a long western theological tradition of engaging with Islam, not on its own terms, but in largely internal debate. Obviously, Barth's direct worry was not Islam, but National Socialism, the nationalism of the German church, the militancy of Nazi Germany, and the ways that Luther's theology could be used as a source for political quietism. It is interesting to note how Barth cites Luther's theology, who he finds wanting on the Two Kingdoms, but in this case possesses resources to combat totalitarianism.

Barth's equation between Nazism and Islam continues to reverberate in the contemporary discourse around Islam and politics. In fact, while Barth scholars largely ignore this comparison, there are ample references to it in a number of anti-Islamic authors. Ibn Warraq, the nom de plume of an ex-Muslim and notable and vocal critic of

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Barth's description of Islam. Instead, they focus on his vital and important stand against Hitler and National Socialism, without even a critical footnote on Barth's analogy and the way that it continues to fund anti-Islamic perceptions.

[107] Barth, *The Church and the Political Problem of Our Day*, 64-66.

Islam, champions and extends Barth's comparison.[108] The term Islamofacism, which has caché amongst both new atheists such as Sam Harris and Christopher Hitches and strident Islamophobes such as David Horowitz, is employed to paint all of Islam and the very idea of *Sharī'a* as inherently totalitarian. In February of 2015, shortly after the attacks against *Charlie Hebdo* and the kosher grocery store in Paris, *USA Today* ran Cameron Cardow's political cartoon that depicted a skeleton in a Nazi uniform pronouncing "Allahu Akbar." Written on the uniform were both Islamic militant terrorist groups like ISIS and Boko Haram, but also key Islamic concepts like Jihad and the *takbīr*.[109] While Barth cannot be directly held responsible for the rise of Islamophobia in the last three decades, it is equally irresponsible to ignore the ways that Barth's arguments fund such an approach. Barth is one of the first, if not the first, author publically and theologically to link the ideologies of National Socialism and Islam.[110]

Given this deep anti-Muslim sentiment, how to proceed? Rashkover's reading of Barth's theology of law as logically non-polemic provides a way to justify engaging Islamic thought on its own terms without resorting to the rhetorical tropes that Barth himself employs. However, Barth's lack of interest in a post-biblical examination of either Judaism or Islam, as well as his assumptions that Islam is necessarily totalitarian, cautions against too quick an appropriation of Rashkover's insights. Part of the possibility that allows for Barth to engage with Judaism is that there is clear biblical justification for interpreting God's interaction with Jews. The biblical case for positively

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[108] Ibn Warraq, *Virgins? What Virgins?: and Other Essays* (Amherst: Prometheus Books, 2010), ch. 8.

[109] http://fair.org/blog/2015/02/03/muslims-are-nazis-usa-today-jokes/

[110] For a critique of Barth's orientalism, see Daniel Colucciello Barber, *On Diaspora: Christianity, Religion, and Secularity* (Eugene, OR: Cascade Books, 2011), 109.

interacting with Islam is far less clear, and is nowhere named by Barth.[111] To follow Rashkover's important insights for thinking about a non-polemic posture toward Islam, it is necessary to clearly untangle two aspects of Barth's thinking—namely his Christological particularism and his Christian triumphalist attitude.

The twentieth-century Palestinian American Muslim thinker, Isma'il Ragi al-Faruqi, argues that these two features of Barth's theology are dependent upon one another. In a strongly worded critique of Barth's theology, he interprets Barth as marked by an "absolutism in political world affairs" that includes a "particularist separatism" that necessarily prioritizes Christians over others.[112] While there is much to wrestle with in al-Faruqi's assessment of Barth's thought, his assessment is hampered by an inability to account for Barth's dialectic theology. In fact, al-Faruqi consistently misreads Barth's theology as disinterested in ethics, unable to name what is at the center of Christian thinking, and concerned only with the political well being of Christians. In fact, Barth's political ethics does not hold such views. Certainly, Barth's theology remains marked by

[111] There are, however, interesting possibilities for thinking about the biblical view of Islam in the story of Hagar and Ishmael in Genesis 21. Ishmael has played a prominent role in the theological debates between Christians and Muslims. Shortly after the rise of Islam, John of Damascus branded Muslims as Ishmaelites. This identification of Muslims with Ishmael, one that Muslims themselves have often embraced, has led to heated inter-religious rivalry that re-enacts the enmity between Sarah and Hagar, Isaac and Ishmael. Under this model, God has chosen one and thus must hate the other. Attending to God's provision for Hagar and covenant with Ishmael in Genesis 21:15-22 offers biblical resources for a more positive engagement with Muslims. As the British theologian Tom Greggs notes, it is "made exceptionally clear in the text: God, the Lord, is clearly the God of Ishmael as much as He is the God of Isaac. Genesis makes this abundantly evident." (Tom Greggs, "Peoples of the Covenants: Evangelical Theology and the Plurality of the Covenants in Scripture." *Journal for Scriptural Reasoning*, 11, no. 1 (2012), online). The God that is present to Isaac and his descendants is also the God of Ishmael and his descendants. It is vital also to highlight the divine action in verses 15-21. There we find Hagar and Ishmael alone and abandoned in the desert of the Negev, cast aside by human beings and seemingly without hope. It is into this situation—one that has resonance with Exodus 3 where God hears the cries of the slaves in Egypt— that God intervenes. In contrast to the apparent abandonment of v. 12, these later verses depict God as hearing, caring for, providing, and even covenanting with Hagar and Ishmael.

[112] Isma'il Ragi al-Faruqi, *Christian Ethics,* 277.

the heritage of Western Europe and its problematic racial and religious dynamics; and yet, Barth clearly argues that the state and the law must be concerned with all. Understandably, al-Faruqi's negative assessment of Barth is primarily framed through a reading of the aforementioned anti-Muslim rhetoric. It appears that Barth's polemical tropes have hindered Barth's own ability to bear faithful witness to Jesus Christ. Barth's own adamant commitment to Jesus Christ unfortunately is heard as a defense of Christianity and Christendom. On this point, Barth would be aided both by more humility and by a greater openness to applying his critique of religions and theologies to himself. As Sven Ensminger has argued, the "attractiveness of Barth's critical position towards religion per se lies precisely in applying this critique first and foremost to the Christian religion."[113]

On these points it is important that Barth's political theology more clearly articulates how Christian engagement with the law can remain faithful to the One that it proclaims. As the crucified and rejected One, Jesus' work of reconciliation was public and yet hidden, persuasive and yet non-coercive. Similarly, the church (and here it is vital to understand the church not as an institution but as a people that has been claimed, gathered, and sent in a variety of vocations) lives in the world as witnesses to the rule of God in Christ known through the Spirit. The church is tasked with bearing witness to this rule in ways both direct and indirect. However, when it acts it must be in accordance with its humble Lord, and thus it must work for the sake of its neighbor and not for itself. True Christian particularism, if it is to follow Barth's explication of Christ's lordship, must refuse the type of polemics that mark Barth's own view of Islam. Following Rashkover's

[113] Sven Ensminger, *Karl Barth's Theology as a Resource for a Christian Theology of Religions* (New York: Bloomsbury, 2014), 159.

reading, then, I argue that Barth's particularism need not lead to a triumphalism toward other religious communities, particularly as it relates to politics since politics is explicitly for the sake of all.

Thus, I am engaging with Barth's thinking, not because he is in his own attitude toward Islam an obvious resource Christian-Muslim exchange, but because there are key aspects of his thought that can be reframed to address Muslims' worries about Christianity. However in so doing, it is vital that Barth's own negative accounts of Islam be challenged, named, and addressed. There is no sense in trying to ameliorate or work around the ways that Barth's own account of Islam and politics fails to escape any of the traps that marked my analysis of Christian political theologians in chapters 1 and 2. In fact, we might consider ways that a theology of public law in conversation with Barth might address Muslim worries about Christian theologies of law, even as we recognize the recurring problems in Barth's own thinking.

With and Beyond Barth

A recurring critique of Barth's theological ethics is its lack of casuistry and consistency. Major late twentieth-century English-speaking ethicists like Nigel Biggar, John Howard Yoder, and James Gufsaston, as well as German theologians such as Wolfhart Pannenberg and Wolfgang Huber, all question whether or not Barth's appeal to divine command is capable of offering a coherent, consistent, and reasonable account of the Christian moral life. Despite their deep disagreements on the importance of Barth for their own ethical projects, all find Barth plagued by a form of ethical occasionalism and

divine voluntarism.[114]

In the *Church Dogmatics* II.2, the very volume where Barth develops more fully his revolutionary reversal of the law-gospel paradigm within the context of the doctrine of election, Barth eschews law (*Gesetz* or *Recht)* as the organizing framework for Christian ethics. Instead of law, Barth argues that God's will for humanity always comes with a specific and concrete command (*Gebot)*, one that must be heard afresh on each new occasion. Barth quickly translates his discussion of law into an analysis of theological ethics or command. In fact, it might be fair to say that Barth's theology of law (*Gesetz*) is more accurately a theology of command (*Gebot*). Obviously the language of law (*Gesetz*) has baggage in Christian theology, and the turn to command (*Gebot*) and ethics (*Ethik*) avoids claims of legalism. At the same time, by preferring ethics to law, conscience to command, Christian theology risks blurring what should be clear. Too often moral and political ideas are commended but not commanded—one thinks of the long history of slavery as one example. While this may be an appropriate and even wise response to certain moral and political ambiguities, it also has inculcated within Christian ethics a tendency to appeal to personal freedom, conscience, and general moral categories rather than to concrete legal renderings. The great advantage of law, and what many Jews and Muslims worry is lost in Christianity, is that it makes concrete and explicit the implications of our theological and doxological claims.

Reading Barth within the context of this Christian-Muslim exchange, however, highlights the need to reframe and rethink law as the central category for both Christian ethics and political theology. In fact, as chapter 3 argued, many Muslims thinkers are

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[114] See David Clough, *Ethics in Crisis: Interpreting Barth's Ethics* (Aldershot: Ashgate, 2005).

adamant that a missing component of Christian political theology is a holistic theology of law. Barth's theology of the gospel-law and his account of the civil and Christian communities together gesture toward such a holisitic vision. However, his turn away from law and toward a theology of command that is both occasional and not concrete inhibits him from developing his insights more fully.

One of the difficulty of appeals to conscience, interpretation, ethics, or general ideas of divine command as the way that the one Word of God becomes morally binding on us is that it risks falling into many of the same problems identified in the previous chapter regarding natural or moral law.[115] When the appeal to Jesus or the gospel is emptied of its specific and concrete demands it often becomes an ideal. Take, for instance, the dominant interpretation of Paul's reference to self-examination before entering the table of the Lord in I Corinthians. By and large, although not exclusively, this text has been moralized, individualized, and spiritualized and thereby dislocated from its primary ecclesial function—to challenge the unjust and exclusionary practices of the rich at the expense of the poor. Put differently, appeals to Jesus can just as easily reinforce inequality and social injustice as can appeals to natural law. Barth himself recognizes this in a long section of small print in *CD* IV.3, in which he inquires about the reasons for Christians' apathy in the face of social revolution. "It is found also in the difficulty that as yet there has been no clear apprehension of the concrete things….which the Church has to proclaim to the disorder of secular politics and economics as the

[115] Some of this is related to sin, partly to human finitude and the gap between God and the world, but there is also an inability within Christianity to say what needs to be said. Is the greater danger works righteousness or an evasion of the divine command? For our culture, grace has become operative in such a way as to evade instead of transform.

message of salvation."[116] And yet, Barth's own constructive response to this problem is primarily oriented around the prophetic office of Christ. There is no doubt, especially after the insights of liberation theologies, that recovering the deeply prophetic heritage of the Scriptures is vital for the church's public witness. However, without an assessment of the 'concrete things,' Barth's theology remains too idealistic and disconnected from the messiness of the world.

The shortcoming of Barth's theological politics, especially as it relates to public law—as sympathetic critics like Wolfgang Huber have pointed out—is its lack of specificity and criteria for judgment.[117] As Huber has argued, like some of Barth's later work, *Barmen* is hampered by a lack of concrete attention to the precise social and legal implications of the gospel proclamation. The example of the Jewish question in the 1930s is a case in point. It is deeply problematic that one could wholeheartedly sign on to *Barmen* and yet be largely unconcerned with the most pressing moral issue of the day—the Jewish question. In fact, Barth later comes to regret his own timidity regarding the rising anti-Semitism in Germany. However it is not only in *Barmen* that this aspect of Barth's thought has theo-political slippage. His entire opus can be read as open to such critique. One can see the traces of idealism, even in his essay on *Justice and Justification*. As noted above, the focus of the essay sets out to be the connection between justification and human justice but quickly veers off into a more theoretical analysis of the relationship between the church and the state. Even within this essay, Barth's discussion of the state is ahistorical and disconnected from the historical rise of nationalism and the

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[116] Karl Barth, *CD* IV.3.1, 37.

[117] See Wolfgang Huber, *Christian Responsibility and Communicative Freedom: A Challenge for the Future of Pluralistic Societies*, edited by Willem Fourie (Zürich: Lit Verlag, 2012), ch. 8.

modern nation-state. Government, in all its historical forms, is equated with the modern state and thus Barth reads his own moral and political assumptions into the account of Pilate. Despite Barth's Christological actualism, his theology of law is too often disconnected from the concrete historical and ethical demands of political life.

Part of this might be traced to the shifting language that governs his reflections, more specifically the slippage between *Gesetz, Gebot,* and *Recht*. By opting for a focus on divine command without integrating this well into other frameworks for thinking about law and moral justice, Barth's theology still falls victim to some of the ethical occasionalism that plagues Christian theology. As Gerhard Forde notes in his important book on *The Law-Gospel Debate,* "it is, however, somewhat difficult to see" how Barth can "insist that the command of God is to be distinguished from all other commands not just relatively but *absolutely,* with the distinction of heaven and earth" and yet "at the same time it appears that for Barth the command of God 'without prejudice to its particular form'—always wears the 'garment' of another claim of this kind."[118] How is it that Barth can both insist that the command of God is radically other *and* that God's demand always is mediated through other commands? Certainly this is part and parcel of Barth's larger dialectic, but it is difficult to ascertain how Barth understands how one comprehends, judges, and engages with the various commands of this world.

Put differently, Karl Barth's account of law would benefit from both a healthy dose of *usūl al-fiqh* or the Islamic jurisprudential tradition of reasoning from divine revelation to the contextual demands of the law in a given place.[119] God's demands are

[118] Gerhard Forde, *The Law-Gospel Debate* (Minneapolis: Fortress Press, 1969), 145.

[119] Barth would reject such a suggestion and argue that *fiqh* would necessarily result in a casuistry ethics that falsely baptizes human law as divine command. For a fuller discussion of

not primarily heard, (Barth's language), but discerned in and through the painstaking work of interpretation, moral discernment, and social analysis. The long legal debates within Islamic jurisprudence about how to move from God's revelation in scripture to the legal demands of new situations offer Barth the possibilities of a mode of legal reasoning that is not marked by general revelation or natural theology. Instead, analogy, consensus, the common good, and the intent of the law are put at the service of divine revelation—which norms and guides all discourse.[120]

Recast in these ways, Barth's essays on political theology present a Christological grounding for interpreting both the law's theological and political significance. As such, Barth can be read to address many of the key concerns raised in chapters 3 and 4 concerning the tendency of Christian political theology to sever its legal claims from its central theological ones. In fact, Barth's theology offers a strong rejoinder to al-Faruqi's argument that the disjointed visions of Christian law are due to there being "little consensus as to which fundamental Christian principle is to serve as a basis for [a] societistic edifice of ideas."[121] Barth is adamant that Jesus Christ is at the center of the Christian faith and thus that all moral, legal, and political ideas must be understood in and through him. Contra certain renderings of the two kingdoms, there is no realm cut off from Christ's rule as redeemer.[122] God does not speak the law only as judge or creator,

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Barth's concerns, see Gerald McKenny, *The Analogy of Grace: Karl Barth's Moral Theology* (New York: Oxford University, 2010), 280.

[120] See Joshua Ralston, "Analogies of Faiths: Barth and Ghazali on Revelation and Reason," in Martha Moore-Keish and Christian Collins Winn, *Karl Barth and Comparative Theology* (New York: Fordham University Press, forthcoming).

[121] al-Faruqi, *Christian Ethics,* 255.

[122] David VanDrunen, one of the most prolific and outspoken Reformed advocates of natural law and the two kingdoms, recognizes the possible theological problems of dividing Christ's rule into two orders, that of creator and of redeemer. However, he offers no substantial theological argument against Barth's critique of Reformed theologies that divide grace into

but also as the One who has reconciled the world to Godself through the Word and Spirit. Barth clearly and consistently argues for a model of Christian civic engagement that prioritizes Jesus Christ as the criteria or *furqān* for all of our lives. As he writes at length in CD III.4:

> The attempt to listen to a Word of God on the right hand and another word on the left, has always had the unfortunate result, as in Protestantism, that vocation has begun to take and has actually taken precedence of calling, so that the Word of God on the right hand has increasingly and finally to yield before that on the left, the before the Law. And what then remains? The Law of God, a Word of God on the left hand?" No, but "the voice of things themselves and their necessity" interpreted by the voice of an inner call; a law of man's understanding of self and time; a conservative or liberal and eventually even national or social ideal of culture and society. And what man must do within this framework and for its fulfillment is supposed to be his vocation, or, to give the matter a Christian air, his divine calling.[123]

Barth's worry about the left hand of God eventually overriding the right hand echoes Muslim critiques of Christianity as subliminally giving over aspects of our lives to secular demands and then even baptizing purely secular concerns as the will of God. Barth repeatedly rejects such theological opinions, even as he refuses a return to a Christendom model of politics that depends on religious establishment.

In so doing, Barth's political theology presents two distinct understandings of what is traditionally depicted under the category of the secular. The state or the civil community could be considered secular in the sense of not being concerned with or justified by explicit religious appeal or argumentation. The task of the state is the care of the people, regardless of religious affiliation, within a particular geographic space. The

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various categories. See David VanDrunen, *Natural Law and the Two Kingdoms: A Study in the Development of Reformed Social Thought* (Grand Rapids: Eerdmans, 2010).

[123] Karl Barth, *Church Dogmatics III.4,* 602.

institutions of the state are by their vary nature 'secular' and appeals to religion are more than likely attempts to justify and consolidate the state's own power rather than being fundamentally theological or religious appeals. Institutionally speaking the state is incapable of being anything but 'secular.' However, Barth is not attempting to create a values free space where God's command and rule does not apply. All space, all time, all people exist under the authority of the divine rule, says Barth, and human beings are to submit their whole lives to God. As such, the 'secular' is not the 'free' space where God's rule does not pertain, but rather the time (*saeculum*) between when God has revealed God's definite claim (for Christians in Jesus and for Muslims in the Qur'ān) and when this rule is established as the all in all in the eschatological future.

This definition of the *saeculum*, as time and space in which all are called to bear witness, may go some way to address the Muslim critiques of chapter 3. A political theology of the law after Barth refuses the notion of there being any empty space free of God's command. Instead, Barth insists that one's vocation and one's public life is always and everywhere under the one divine command as revealed in the event of Jesus Christ, or what Arab Christians from as early as the ninth century have called *Sharī'a injīl* (the way of the gospel) or *Sharī'a massiah* (of the law of the Messiah). In fact, Barth's insistence that public law is able to bear witness to the rule of God, even when it operates without state endorsement, is a vital corrective to numerous assumptions in Christian and Islamic political thought. God's sovereignty, as one who is radically free and

transcendent, does not depend on political confession to be established. It exists simply by virtue of God's nature.[124]

Still, as I will argue in the final chapter, Barth's theology might be recast in a few fundamental ways: first, by attending more clearly to the importance of law as the site of public provisional witness to the divine rule; and second, by reconsidering the concrete nature of public law.[125] My argument that certain key themes in Barth's theology help address the concerns raised in chapters 3 and 4 is not meant to be an endorsement of Barth's whole theological program, nor does it indicate that his thinking solves all issues related to law and pluralism. Not only would Barth's account benefit from an increased awareness of the concrete nature of public law, he also is vague in his account of how the civil account bears witness to the divine rule. As I will argue in the opening of the final

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[124] Nonetheless, Barth has fundamental Christian assumptions about the differences between the Christian community and its responsibility to the public that do not operate in exactly the same way in Islamic thought since the notion of the *umma* is not interpreted in the same as that of the *ecclesia*. One may in fact think of the concept of the *umma* as more explicitly carrying forward the political and civil concepts inherent in the Greek *ecclesia*. The *umma* is in some way simply the gathering of all the people in a current situation. The *umma* at Medina during the Prophet's rule included Muslims, Jews, Christians, and (*kuffr*). Thus, this fundamental distinction between the task of the church and the task of the state may not function exactly the same way in comparative study. However, when one considers the state not simply as the general notion of the political community—but as historically conditioned and formed omnicompetent nation-state of the nineteenth to twenty-first centuries—then these distinctions may take on more possibilities. As I will make clear, following Wael Hallaq's arguments about the impossibility of reconciling the modern nation-state, its role in the colonial process and traditional *Sharī'a*. If this is the case, then the possibility is not so much in distinguishing between a secular (understood as empty space free of divine obligation) and religious space, but between the power of the law of the state and the more subtle power of religious law, as well as the distinction inherent within classical Sunni Islam between *fiqh* and *sharí'a*.

[125] Having a robust place for law in a religious community, a la Judaism and Islam, does not guarantee an elimination of the issues decried by Barth in CD IV.1. In fact, one might argue that a legal approach to these concerns risks further ossifying injustice in a schema of divine law. Human sin, cultural captivity and ignorance will remain recurring factors in any community. And yet, I contend that increased attention to the concrete category of law, specifically as understood in light of the rule of God established in Christ, offers one approach that would better challenge these lacuna in Christian ethical thought.

chapter, the primary way that the civil community is capable of bearing witness to the divine rule is through its legal existence.

Chapter 6:

The Witness of the Law In Comparative Perspective

The previous chapter concluded with an assertion that significant aspects of Barth's theological account offer possibilities for addressing Muslim critique of Christian views of the law, possibilities centered in Barth's argument that Jesus Christ is the standard by which all of life and law is to be evaluated and judged. I also gestured toward a theology of law within secular time that might address Muslim critiques about secularity without falling into the temptation of seeking a theocratic nation-state. This final chapter briefly outlines the contours of such a public theology of law before considering if it is possible for these two arguments regarding public law under the evaluative standard of Christ and the eschatological divine rule as the framework for interpreting the secular to be: First, broadly address Muslim worries regarding ardent secularism's diluting of law, morality, and public space; and second, to find any justification within contemporary Islamic debates. Certainly, the position that I sketch out is grounded in fundamental Christian claims about the gospel, the law, and the Kingdom of God. Still, following the comparative hermeneutic that has guided this dissertation, I contend that my theo-legal vision shares broader contours and commitments with certain aspects of classical, modern, and contemporary Sunni Islamic thought. Again, this is not to conflate a Christian theology of law and state with either the classical Sunni schools of law or reformers' commitments to revive the moral force of *Sharī'a* in the post-colonial world. Rather it is to recognize the possibility of mutual challenge and enrichment, both in and through distinct claims that are rooted in revelation. It is not necessary either to accept or to reject appeals to revelation for such a claim. What is necessary is openness

toward engagement. Thus what is precluded is any position that demands the erasure—symbolically, theologically, politically, or otherwise—of the diversity inherent in our political worlds.

Public Law as Provisional Witness to the Divine Rule

For Christians, political theology is an attempt to offer an account of public life in the "long and meaningful middle" between Christ's resurrection and the future when God's rule will be all in.[1] The previous two chapters explored the question of how four key Christian theologians have understood the function of the law in this ambiguous time. In light of Muslim critiques of Christian accounts of the law and my own reading of these four seminal theologians, I contend that locating theological discussions of law in the overarching biblical motif of the coming of God's kingdom or rule offers a firmer foundation for discussing the multivalent aspects of law than those models that primarily discuss it in relationship to grace, the gospel, or nature.[2]

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[1] Joe R. Jones, *A Grammar of Christian Faith: Systematic Explorations in Christian Life and Doctrine,* 2 Vols. (Oxford: Rowman & Littlefield Publishers, 2002), 1:259.

[2] While consistently Christologically oriented, Barth's own discussions variously employ other theological motifs in order to integrate his reflections on theological politics. For instance, in *Gospel and Law*, he appeals to both the covenant and divine speech as organizing frameworks for understanding the relationship between Gospel and Law. In Church and State, however, Barth begins with a query about the relationship between justification and justice but quickly focuses his conversation on a less concrete study of the *Church and State*. Rather than *Recht* (the shared linguistic connection between in justification and justice/law/right in German), Barth turns to more theoretical and even idealistic discussions of the Church-State relationship. Finally in "The Christian Community and Civil Community," Barth's discussion is principally grounded in Christology's relationship to the Kingdom (*Reich)* of God. All three of these different approaches are still framed by Christological commitments, but are expanded in distinct ways. It is this final framework of the rule of God that is most promising for advancing Barth's theology into more concrete Muslim-Christian discussion concerning law, particularly given his views of secularity. As he wrote later in his life, "Looking back, we may well ask with amazement how it was that the Reformation, and (apart from a few exceptions) the whole of earlier and especially more recent Protestantism as it followed both Luther and Calvin, could overlook this dimension of the Gospel which is so clearly attested in the New Testament-its power as a message of mercifully

First, to focus on the relationship between the law and the kingdom is just as biblically justified as appeals to the law/grace or law/gospel paradigms. For instance, as I argued in the previous chapter, a compelling interpretation of the giving of the law at Sinai interprets the law as a response to the broader movements of God's liberative action. God establishes the divine rule through freeing the people from slavery and then gives commands in light of this act. Many of the legal prescriptions in Deuteronomy follow this same order by locating law in light of the previous graceful establishment of the divine rule (Deut. 5:15, 15:15). God is Lord and therefore God commands. We must insist, then, that the biblical account of law is not simply a depiction of what is natural or inherently moral; instead, we must ground examinations of law in broader claims about God and God's relationship to the world in creation and reconciliation. Appeals to the Decalogue that divorce them from God's saving action in Egypt are not only exegetically problematic but also perpetuate the types of moralism and works righteousness that the Reformers rightly condemned. Moreover, recent Pauline scholarship has illustrated how Paul's soteriological focus is not limited to the traditional Lutheran accounts of justification, but are marked throughout by God's eschatological or apocalyptic in-breaking to create a new community.[3] The law operates within, and often as a response to, the broader biblical movement of God establishing the divine rule over human life.

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omnipotent and unconditionally complete liberation from φθορά, death and wrong as the power of evil. How could Protestantism as a whole, only too faithful to Augustine, the "father of the West," orientate itself in a way which was so one-sidedly anthropological (by the problem of repentance instead of by its presupposition-the kingdom of God)?" Karl Barth, CD IV.2, 233.

[3] See for instance, E. P. Sanders, *Paul and Palestinian Judaism: A Comparison of Patterns of Religion* (Philadelphia: Fortress; London: SCM, 1977), J. D. G. Dunn, "The New Perspective on Paul," *BJRL* 65 (1983) 95-121, J. Louis Martyn, *Galatians: The Yale Anchor Bible Commentary* (New Haven: Yale University Press, 2004), and Francis Watson, *Paul, Judaism, and the Gentiles: Beyond the New Perspective* (Grand Rapids, MI: Eerdmans Publishing, 2007).

To approach law from this perspective allows us to engage the best aspects of Justin, Thomas, Luther, and Barth since it provides a way for us to interpret law in a holistic manner that crosses theological boundaries between soteriology, the Christian life, and public theology. As the past chapters showed, the category of law is porous—touching on themes of revelation and creation, ritual, public life, and Israel. To interpret the law exclusively in reference to either nature or justification, without also considering its broader place in regard to God's rule, risks quarantining the moral from the soteriological and vice versa. The movement of creation, election, law, Israel, the prophets, Jesus, the Spirit, and the Church are all acts that seek to establish and make known God's rule. Such a claim still makes sense of the Reformation's soteriological insistence on the necessary distinction between the law and faith. The law is not the gospel or the rule of God, and trust in one's own or one's community adherence to the law will not save. Only God saves. And yet as Barth contends, the law is part and parcel of how God's saving act occurs. The law is variously given as a response to the saving act of God (as in Sinai or Josiah), as a guide toward the future rule of God (as in the third use of the law), and also as a judging reminder of humanity's own inability to usher in God's rule (as in the first and second uses). While the law functions differently on different occasions and in different setting—serving to convict in one case while offering hope in another—the law is always located within the movement of God's rule.

The focus on the rule or kingdom has the added benefit of connecting the theological, soteriological, and biblical accounts of law to debates about public law. The rule of God is oriented toward the creation of a community marked by mutuality, justice, and equality. Similarly social communities, whether they are local, national, regional, or

international—are tasked with struggling to create laws and ways of life marked by the exact same aims. As Barth argued, and Wolfhart Pannenberg makes even clearer, the divine kingdom and human social order are thus analogously related. "The kingdom will bring the definite actualization of an order of justice and peace in the fellowship of humanity. In its worse as well as its better forms the political order always has the task of establishing a state of justice."[4] Thus, I want to argue that during the saeculum, public law offers provisional and indirect witness to the eschatological rule of God.[5]

First, public law is only and ever a *witness* to the eschatological rule of God. As all four theologians examined made clear, albeit in distinct ways, law is not and can never be the saving act of God. Since the rule of God is both accomplished and coming, both past and future, human beings and political communities can only ever be witnesses that point toward this apocalyptic in-breaking. Contra liberalism, there is no movement toward the rule of God in history. And yet, since the rule of God and the various laws of this world have a shared interest in justice, social formation, equality, and the flourishing

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[4] Wolfhart Pannenberg, *Systematic Theology III*, translated by Geoffrey W. Bromiley (Grand Rapids: Eedrmans, 198), 49.

[5] This section is heavly influenced by the Pannenberg's important essay on the theology of the law. Pannenberg criticizes theologies of the law grounded in natural law or ordinances of creation and also the Barthian attempt to base law exclusively on Christ. Neither is able to address the challenges raised by legal positivism since neither sufficiently attends to the way that public law has been formed through culture and history. Without getting into an extended study of Panneberg's critiques of natural law and the ordinances of creation, it is sufficient to note that he finds them unable "come to grips with the historically conditioned nature of the formation of laws" (33) Moreover, the focus on distinction in family, government, state, and work belies an ahistorical approach that fails to contend with the way that culture is formed in and through constant change and negotiation. Pannenberg finds Barth's attempt to root a discussion of law in Jesus Christ to be more promising and points towards a solution. However, he contends that Barth draws too stark a distinction between knowledge in Christ and previous ways of knowing. "To say that in terms of Jesus Christ we can attain a new understanding of reality does not mean that apart from him no understanding of reality is possible at all…rather it means that our previous understanding of reality is transformed" (46). Wolfhart Pannenberg, *Ethics*, Translated by Keith Crimm (Philadelphia: Westminster Press, 1981).

of the world, public law is not disconnected from God's intention for humanity. Identifying public law as a witness encourages some of the better insights of the two kingdoms model as it does not expect too much from public law. The gospel, both in its individual address as justification by grace through faith and its communal manifestation as the establishment of God's rule in Christ and Spirit in the gathered community, is now and always only the free work of God. It does not occur by the law. Law only ever bears witness to or responds to this free and graceful act of God. If that is true of justification, it is also true in human society. The establishment of God's kingdom will not come about through any specific human political order or legislation. The world will not have complete justice, peace, and equality through the further expansion of human rights or the adoption of democracy (as good as these might be), but only through a divine act.

Still, this argument refuses to divorce the human law from the coming rule of God or the central gospel claims of Christians. There are in fact better or worse public witnesses to God's rule. Under such a schema, law becomes the most appropriate public witness. The primary way that the civil community is capable of bearing witness to the divine rule is through its legal existence. Christian commitments to public law emerge out of a sense that law is a better ruler than 'kings' in the time between the times. As Pannenberg astutely notes, the biblical narrative expresses ambivalence around the concept of divine rule and human representation of this rule. In fact, in the postexilic situation, "the Jewish people confessed the sole kingship of God and sought to observe his righteous will in the traditional form of the Mosaic law."[6] Theologically, then, the primary ways that 'political' communities can witness to God's will for humanity and the

[6] Wolfhart Pannenberg, *Ethics,* 51.

world is through legal systems. Christian commitments to public law emerge out of a sense that law is a better ruler than men in the time between the times. Law is the proper rule for how we negotiate the contested and pluralist space. It does so in two different ways: 1) through the pursuit of just legal frameworks that emphasize equality under the law (e.g. public policies and laws), and 2) through concrete legal judgments (e.g. particular cases). In fact, the pursuit of legal equality under the law might give witness to God's indiscriminate grace.

Second the law is an *indirect* witness to the eschatological rule of God. If following Thomas, the old law can offer typological public witness to divine rule, it is also possible to imagine contemporary forms of public law (in their desacralized and imperfect form) as offering indirect witness to divine rule. Just as the civil precepts of Israel shaped a people—in justice and equity—and thereby gave figurative witness to the reign of God, public laws after Christ might also offers indirect witness to God's reign and our eschatological end. Thus Christians (and others) should claim that public law need not function exclusively in protective or restrictive ways, as in the classical articulations of the law's second use, but might also act as something of a moral and even prophetic prod toward justice. Take, for instance, the legislations against slavery or the civil rights laws. They not only restrain evil by forbidding discrimination, they also positively witness to God's desire for humanity to live in equality with one another. Thus law can serve to shape the moral imagination of humanity positively by expanding its understanding of what it means to live with one another (especially across generations). This of course does not mean that the public law of any society is or can ever be God's

kingdom or the bring gospel in and of itself. But that public law can nevertheless witness, or gesture towards, God's coming will for human communities.

The law's witness to God's rule should not be understood—as too often it has been in the history of Western Christianity—as being dependent on public confession of faith or doctrinal fixity. Rather, public law gives testimony to God's future rule in and through its moral focus on justice and equity. Thus the laws of the nations, analogous to the laws of the ancient Israel, are made to bear typological witness to God's rule. Is does this not through its primary focus—which is 'earthly' concerns—but as a secondary or accidental consequence of such action toward equity, justice, and peace. This witness is indirect—and not clear as the Word, Table, and Font in Church or the continuing practice of Torah observance by Jews or the way that the call to submission to God is heard through the minaret and enacted in the *Sharī'a*—but it is nonetheless a witness beyond itself to the divine rule. Societies by virtue of seeking justice and equity, even if haltingly and inchoately, might bear indirect witness to God's rule. Thus, public law is not simply concerned with restraining evildoers, promoting family life, and biding time before the eschaton, it might also serve as a source for the moral tutoring and formation of a society and thereby serve figurative witness to the rule of God.

The fact that public law offers indirect witness means that the public religiosity of the government or its appeals to theological justifications is largely irrelevant. Political and judicial activity, then, is related to the coming kingdom of God, regardless of whether the leadership understands this or not. However, the relationship between human political and legal activity and God's coming kingdom is related only by sharing a task. In fact, an ostensibly non-Christian public law is just as capable of gesturing toward

the divine rule as a supposedly 'Christian' law. The quality of the law's witness does not depend on its doctrine or confession, but on its resonance with justice, equality, and promotion of the common good.[7] Public law, then, is something of an incognito witness to God's rule. It does not name the thing as such, but gestures toward it as it goes about its primary business of establishing justice, restraining evil, negotiating difference, and building up society.

Third and finally, public law is a *provisional* and indirect witness to the eschatological rule of God.[8] For Christians, there is nether a sacred sociology nor a sacred jurisprudence; there is no timeless legal system or blueprint (despite what you might hear about democracy in popular Christian rhetoric) that God wills for all times and places. As Pannenberg contends, "Even a political order that is built on a Christian

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[7] Hans Küng argues that that the realities of our globalized and pluralist world demand the "farewell to aggressive universalistic Christian and Muslim claims."[7] It is thought that the two great monotheistic traditions commitments to da'wa/mission are part and parcel of an exclusivist political agenda and therefore must be abrogated in the name of political harmony. However, the tendency to link a non-established religiously pluralist political arena with a theologically pluralist account of mission, truth, and salvation is not necessary. In fact to tie a commitment to a pluralist and non-established state to a pluralist account of religious truth is both theological and politically problematic. As Christian Troll argues, "Both faiths have at their very core a commitment to universal mission." Instead, supporting a non-established religiously pluralist legal and political arena in no wise compromises Muslim and Christian commitments to the finality of their truth claims and their relevance for every human person. Instead, a non-established political legal system provides the framework through which Christians, Muslims, and others might give space for witness to their theological truths and appropriate time for debate, dialogue, and disagreement to occur (largely free—although we are never truly free—from political and legal coercion). If there is "no coercion in religion" (2:256) and true worship occurs not through legislation but in "spirit and truth" (John 4:2$) then a non-established state with "secular" laws, should not be seen as antithetical to the truth claims of da'wa and Christian evangelism.

[8] I chose provisional instead of Oliver O'Donovan's argument about the law's imperfectability in *The Ways of Judgment* (Grand Rapids: Eerdmans, 2005), ch. 5. O'Donovan's argument does well to name the complexity and problematic nature of the law and its inability to grasp fully either God's rule or justice. However, he interprets these facts in such a way that it encourages a more conservative stance to the law. Since the law is imperfect, than we should be careful to not attempt too hard to transform it since it will inevitably fall short. While there is some wisdom in this method, thinking of the law as provisional opens up more progressive ends.

foundation is not the Kingdom of God. It remains provisional."[9] Since legal systems, be they local, national, or international, are never able to usher in the rule of God, they should be understood as only provisional witnesses to God's justice. They exist as indirect witnesses, but only in their particular time and place, and are thus laws that are subject to challenge and revision. The great variety of human laws and legal systems are simply a mark of human cultures, history, and society, and one should approach each system as neither divine nor demonic. Thus Christian engagement with public law takes on something of a contextual and *ad hoc* character.

Moreover, theologically and sociologically it is the case that public law is never fixed or settled, but requires constant renegotiation, critical reflection, and debate. In most cases, the law is never able to grasp the human and social desires for restitution, recognition, or amelioration. The law provides some temporary justice, but it rarely if ever offers a full accounting. Public law is unable to provide the very things that it promises and seeks and thus it testifies to the 'eschatological surplus' that justice requires. As Kenneth Cragg writes in the context of the Israel-Palestine context, "The pyrrhic legal victory, however short-lived, at least witnesses to the actual suffering and the official ambivalence around the rule of law."[10] Human laws then are only ever provisional interpretations of justice. Public law is not simply limited, it is also often turned to evil ends and used as a tool to victimize and maim. When the law is used to trample on justice, it becomes a parody of itself and turns the victimized and oppressed to another or

[9] Pannenberg, *Ethics,* 11.

[10] Kenneth Cragg, *The Arab Christian: A History in the Middle East* (Louisville: Westminster John Knox, 1991), 245.

higher law.[11] Viewing the law as a provisional and indirect witness to the divine rule allows us to account for both of these two legal limitations. The divine rule stands in graceful judgment over all human society and thereby demands actions to revise and revisit the law constantly, so that it might bear better witness to the divine rule.[12] Of course it will not ever be justice *in se* or God's rule, but God's rule is a prod and a pull that unsettles and presses the Christian forward to challenge and question provisional human laws—both in their framework and in particular legal cases.

Christians might interpret and engage public law, then, as a site of contestation where provisional and indirect witness to God's rule is at stake. The law is a witness because it is never able to be or to usher in the rule of God; it is indirect because, as Barth argued, public law should be minimally concerned with the truth about God's identity and nature; it is provisional since the law is always in need of critique and re-evaluation and can never be finally settled.

The Colonial Transformation of Sharī'a

Having outlined some of the implications of my arguments in chapters four and five, I now offer a brief analysis of how three fundamental and overlapping debates within Islamic thought, particularly in the Arab world, affect contemporary questions related to law and political theology: 1) the nature of divine sovereignty and public law, and 2) the distinctions between *Sharī'a* and *fiqh*, and 3) the relationship between *maqaṣid*

[11] For an important argument on this matter, see Ted A. Smith, *Weird John Brown: Divine Violence and the Limits of Ethics* (Stanford: Stanford University Press, 2014).

[12] Martin Luther King Jr.'s "Letter from the Birmingham Jail" is a quinessential example of such a theo-legal logic.

(the higher aims of the law) and *fiqh*.[13] My aim is not to offer an exhaustive analysis of the debates or the primary thinkers involved but to present their thought and some of the main positions as an invitation for deeper engagement by Christian political theologians. I aim to educate non-Muslims about the diversity, history, and richness of Islamic jurisprudence, both in the classic and modern periods. It is also important to note how these arguments have not developed in a vacuum, but are profoundly rooted in the historical realities that surround colonialism, the demise of the Ottoman Empire, the creation of the state of Israel, the Six-Day War, disenchantment with Arab Nationalism, and the post-9/11 context. Appeals to the Islamic or Arab heritage are not simply archaic religious appeals, but are often creative attempts to combat political hegemony. Thus, it is vital to locate these debates more concretely in the history of Islamic law, particularly as it was transformed through the colonial and post-colonial contexts.

The dominant contemporary Sunni Islamic position—or at least the most vocal position since the Iranian revolution of 1979—is that it is possible to implement *Sharī'a* in and through either the nation-state or a renewed caliphate. "In the view of an increasing majority, Islam is not Islam without its Sharī'a, and the passage of time has

[13] For more extensive studies of these key thinkers and arguments, particularly as they are related to the Arab World, see the classic work by Albert Hourani, *Arabic Thought in a Liberal Age* (London: Oxford University Press, 1962). More recent studies include Ibrahim M. Abu-Rabi', *Contemporary Arab Thought: Studies in Post-1967 Arab Intellectual History* (London: Pluto Press, 2004), Abedelilah Belkeziz, *The State in Contemporary Islamic Thought: A Historical Survey of the Major Muslim Political Thinkers of the Modern Era* (London: I.B. Tauris, 2009), and Elizabeth Suzanne Kassab, *Contemporary Arab Thought: Cultural Critique in Comparative Perspective* (New York: Columbia University Press, 2010). Part of the impetus of introducing, if only briefly, a few of the major figures and debates in contemporary Arabic Thought is to encourage Christian theologians and ethicists writing on political theology and Islam to widen their discourse and engage these important conversations.

(since the onset of colonialism) made the call to restore it ever more intense."[14] The methods of how this might be possible vary widely—from Islamist rejections of *fiqh* and the *madhhab* to more establishment models such as those sought by major voices within al-Azhar. In fact, every Arab constitution, except the most recent version in Tunisia, includes at least some reference to *Sharī'a*.[15] For both Islamists and most non-Muslims, the very term *Sharī'a* is often equated with this call for a theocratic government.

However recent scholarship, both by Muslim intellectuals and scholars of Islam, has shown that most Muslim thinkers have recognized the impossibility of completely understanding, let alone accurately applying, the *Sharī'a* in this world. Ironically, such a claim is evident even in Islamist figures such as Sayyid Qutb and more recent radical groups such as Da'esh (ISIS), who argue that the full implementation of the *Sharī'a* depends on social or moral conditions that are not yet present. More fundamental is the fact that the history of the development of Islamic law is marked by a great variety of intellectual and discursive practices. Groups that easily tout slogans such as "Islam is the solution," are often inattentive to the complexity of Islam's own tradition, not to mention contemporary life. The most promising means to combat theocratic visions of state-sanctioned *Sharī'a* is to attend more and not less closely to both classical and contemporary debates regarding *fiqh, uṣūl al-fiqh,* and *ijtihād,* particularly as these develop in the colonial and post-colonial milieus.

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[14] Wael Hallaq, *Sharī'a: Theory, Practice, Transformations* (New York: Cambridge University Press, 2009), 501.

[15]Ennhada, an Islamist party that was elected after the 2010/11 revolution, and the Tunisian secularist parties jointly drafted the current Tunisian constitution. The first constitution without reference to *Sharī'a* in the Arab world, then, was written when an Islamist party was in power. Moreover, a second round of elections in 2014 unseated Ennhada and put the secular party Nidaa Tounes in power.

It would be difficult to overestimate the drastic and far-reaching changes in Islamic society and law that the encounter between colonial Western law and *Sharī'a* in the nineteenth and twentieth centuries produced. Western legal systems, be they French, British, or Dutch, were imported to Muslim societies stretching from Western Africa to the archipelagos of Southeastern Asia. The colonial project of economic exchange and exploitation depended on legal systems to govern both the economy and the society, especially criminal activity. The colonial expansion of western legal systems met with an alternative, and highly sophisticated, model of law— *Sharī'a* The colonialists recognized that *Sharī'a* could neither be completely eliminated nor fully appropriated. Depending on the region and the particular colonial strategy, *Sharī'a* was, instead, privatized, relegated to the arena of family law and religious practices, or conscribed to serve the interests of the colonial power. *Sharī'a* largely came to operate within the confines of Western legal systems. The subsuming of the rich diversity of classical *Sharī'a* under western legal practice continued in post-colonial Muslim nation-states. Even when *Sharī'a* was supposedly revived in nations such as Sudan and Iran, it was done under the auspices of the nation-state, a form of government developed through western legal models and jurisprudence. As Wael Hallaq has argued in his magisterial new work, *Sharī'a: Theory, Practice, Transformations*, Islamic law's encounter with "hegemonic modernity" has created a crisis in the epistemology and legitimacy of *Sharī'a*.[16]

The encounter between western colonial law, which eventually morphed into state or national law, and *Sharī'a,* has produced far-reaching changes in the legitimacy and scope of Islamic law today. Nearly all subsequent divides between classical *Sharī'a* and

[16] Wael Hallaq, *Sharī'a,* ch. 5.

the modern forms of law enacted by nation-states can be traced to competing accounts of legal authority and legitimacy. The basis and authority of *Sharī'a* is grounded in God's revelation in the Qur'ān and derivatively the *sunna* or hadith. Certainly a *muftī* or *fuqha'* extrapolates from these religious sources through the process of *ijtihād* to arrive at decisions regarding issues such as financial transactions, inheritance, or criminal punishment, for neither the Qur'ān nor the *Sunna* is sufficient in itself to build an entire account of human life and law in all is complexity. As Abdullahi An-Nai'm argues, the Qur'ān is not a legal document, but rather an "eloquent appeal to mankind to obey the law of God."[17] New situations and experiences demand the development of intellectual practices and theo-legal reasoning to discern appropriate human action in the specific context. Throughout the first centuries of the Islamic era, various methodologies or schools of law were developed to address these challenges. Wael Hallaq contends that pluralism is in fact a distinctive characteristic of classical Islamic views on law and the public life. "Fiqh's pluralism (*ikhtilāf*) constituted in effect one of Sharī'a's socio-political dimensions."[18] The various strategies of interpretation, *uṣūl al-fiqh*, such as *qiyas* and *ijmā'*, all aim at discerning the implications of God's revelation for a given situation. In fact, the divides between the four major Sunni schools—Shāfi'ī, Ḥanbalī, Mālkī, and Hanafi— can be traced to their differences in conceiving of how to move from revelation to contemporary application. All agree that the Qur'ān and *hadith* are fundamental, but they differ on how to order the *hadith* and employ various methodologies such as tradition, consensus (*'ijmā')*, analogy (*qiyas)*, and the common good (*maṣlaḥa)* in the

[17] Abdullahi An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law* (Syracuse, NY: Syracuse University Press, 1990), 24.

[18] Wael B. Hallaq, *Sharī'a,* 544-545.

construction of legal formulations The authority and legitimacy of the schools of law, however, reside in their capacity to engage in religious thinking and connect legal conclusions with divine revelation. "It was not heresy to belong to another school of law, nor were the relations between the *madhhabs* sectarian in the way that they can be between Sunnīs and Shī'īs."[19] Classically, then, the legitimacy of *Sharī'a* was grounded first in God and subsequently in the religious piety and theo-legal ability of the *ulema, muftī* and *qadi*ī[20]

The fact that *Sharī'a* was primarily authorized religiously did not mean that it was privatized. *Sharī'a* was a public arena of discourse and law that had sweeping social and political ramifications. In fact, *Sharī'a* was the dominant model for deciding legal cases throughout most of the first thirteen centuries of the Islamic era. And yet, *Sharī'a* maintained forms of independence from the control of governmental authorities. *Sharī'a* existed in the liminal space between state and society. Certainly Islamic governments or caliphates from 'Abbasid and Malmuk to the Ottoman and Egyptian desired to root their laws in *Sharī'a* since *Sharī'a* was perceived to be divine law (or at the very least to be based on divine law). Thus, they established and appointed *qad*īs (judges) to rule over *siyasa* (political) courts. However, the appointment of judges to rule over state run courts did not mean that the *Sharī'a* emerged as a top down state law. Instead, *Sharī'a* maintained its independence through the *muftī*, independent scholars who issued *fatwa* and decided on the relative merits of cases and religious argumentation. The *muftī* provided the intellectual legitimacy, norms, and merits to *Sharī'a* at a local or grassroots

[19] Knut Vikør, *Between God and the Sultan: A History of Islamic Law* (London: Oxford University Press, 2005), 106.

[20] Knut Vikør draws a distinction between the authorization of the *muftī* and *qaḍī,* "A *qaḍī* gets his authority by appointment from the state, while the *muftī* gets his authority through his learning, his personal status and recognition by his peers and public." 187

level. Individuals could approach *muftī* and have legal disputes debated and reconciled apart from the control of the state.

Sharī'a did not depend on governmental recognition for its legitimacy and authority. Moreover, the existence of four main Sunni schools of law, and the fact that each school recognized the other as legitimate, resulted in a plurality in *Sharī'a* practice. As Marshall G.S. Hodgson notes, "no man, no institution, no human structure of any sort could legitimately be vested with any responsibility which could relieve the individual Muslim of his direct and all-embracing responsibility before God."[21] *Sharī'a* is a guide or gateway into right practice; it does not create either orthodoxy or orthopraxy before God. "It may strike one as odd that there can be plurality when it comes to God's law, but the reality is that legal pluralism was the *sine qua non* of Islamic law."[22] Across the caliphate different schools of law were practiced side by side. This plurality further resisted any attempts by ruling elites to control *Sharī'a* or employ it directly and finally as the law of the Empire. *Sharī'a* was certainly seen by the rulers as the source of the government's law, but the empire and government did not control or dictate Islamic law.

In contrast to Western images of a monolithic *Sharī'a* that moves directly from divine revelation to state enforcement, the diversity of *ijtihād* and the schools of law refuse easy state appropriation. In fact, the development of the schools of law occurred during the same period of 'Abbasid rule. In other words, the diversity of Islamic law developed under and within one empire, which neither favored nor enforced one interpretation of *Sharī'a* universally. As Wael Hallaq argues *fiqh* "was not political in the

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[21] Marshall G.S. Hodgson, *The Venture of Islam Vol I: The Classical Age (*Chicago, IL: Chicago University Press, 1977), 320.

[22] Soharia Siddiqui, "Beyond Authenticity: ISIS and the Islamic Legal Tradition," http://Sharī.jadaliyya.com/pages/index/20944/beyond-authenticity_isis-and-the-islamic-legal-tra

modern sense of the word, and it did not involve coercive state power."[23] It was not until the late nineteenth century, when the Ottoman Empire enforced *Sharī'a,* that Islamic law became equated with state law. Part and parcel of this alteration was tied up in the encounter with colonialism. However, the choice to enforce *Sharī'a* as the law of the state diminished the variety of opinions and interpretations present within Islamic law, thereby jeopardizing its diversity and vitality. Prior to codification by the state, judges were able to draw from the range of legal opinions of the four schools, exercising judgment on each particular case.

In contrast to the religious legitimacy that grounds *Sharī'a*, current models of national law are self-consciously secular, often positivist, basing their authority in either precedence, as in the common law tradition, or in legislation, as in the statutory law model. The laws of modern-nation states also depend, at least theoretically, upon uniformity and consistency in application. State laws simply cannot tolerate the type of diversity and plurality that is evidenced in *Sharī'a*, especially when it is related to areas of so-called public concern. Moreover, the legitimacy of the law and its rulings depends on the state's power to enforce the law, often with the threat or use of coercive force. Certainly a modern nation-state might appeal to categories of justice or human rights to justify their legal decisions, but these are only authorized through the enforcement of the state. A major paradigm shift, then, occurs when laws based on revelation and religious authority encounter laws grounded in state authority.

The beginnings of this change are evident in the nineteenth century. The Ottoman Empire and its Egyptian counterpart began to make subtle shifts in their approach to law

[23] Hallaq, *Sharī'a*, 546.

and *Sharī'a* in order to resist encroaching western imperialism. First, the Ottoman Empire formally enacted *Sharī'a*, particularly *hudud*, as state law around 1840.[24] The move to enact *Sharī'a*, though, occurred through a modern concept of penal law, not a classically Islamic one. *Sharī'a* gained formal recognition through the apparatus of state law, which was largely borrowed from western legal concepts. The relevance of *Sharī'a* began to shift from a classic theo-social legal apparatus of discourse to a modern state-centric one. Second, reform attempts in Egypt from 1810 to 1850 adopted western legal models of financial transaction and began to displace *waqf* and other classical Islamic practices. The aim was to resist the West and strengthen the Egyptian 'nation's' resistance to the invasions of Napoleon and the economic inroads of the British. Ironically, Egypt's ruling elites attempted to resist the West by adopting Western legal models. The influence of state-centric models of law began to emerge in Muslim societies, even before the formal colonization of territories. These two experiences prefigured many of the changes to *Sharī'a* that would occur during colonization and the post-colonial development of Muslim majority nation-states. Whether *Sharī'a* is enacted through the state or marginalized in the name of modernity, the legitimacy of the law becomes firmly entrenched in the power of the state and its authority.

Samer Esmier's *Judicial Humanity: A Colonial History* offers a compelling example of this transmutation. She pinpoints Muhammad Afandi Ra'fat's 1897 study of the sources of law in both western and Islamic context as a text that exists in precisely this liminal time when western colonial law encountered and transformed classical Islamic law. "Ra'fat's book constituted one of the last attempts to hold on the *Sharī'a* as

[24] See Reem A. Meshal, *Sharī'a and the Making of Modern Egyptian: Islamic Law and Custom in Courts of Ottoman Cairo* (Cairo: American University of Cairo Press, 2014).

a holisitic system of law. Simultaneously, however, his book transformed the *Sharī'a* into a comparative system used to shed light on the limitations of the existent system of law."[25] She argues that Ra'fat's work, which seeks to defend the connection between morality and law inherent in *Sharī'a* unwittingly privileges western law. By framing his comparison using the categories of western law, Ra'fat enshrines Western legal thinking as the standard by which *Sharī'a* is evaluated.

The distinct differences in legitimacy, authority, and jurisprudence between western legal theory and *Sharī'a* produced a narrowing in scope of Islamic law during the colonial period. Western theories of secularism that emerged in the Enlightenment period envisioned religion and politics as necessarily divided. Religion was the sphere of piety and moral life, an interior and personal matter, while politics was the arena of public discourse and debate based on non-religious rationality. As we have seen, Islam has no such neat divide, but incorporates all of life under the broader umbrella of God's sovereignty and revelation. *Sharī'a* developed with attention to such an all-encompassing vision. Issues such as *wudu*, dietary law, family law, *riba,* and *hudud* are all considered to be aspects of *Sharī'a* In fact in classical works of law, there is no clear division between what would later be pulled apart into civil law, financial law, religious law, criminal law, etc. Instead, *fiqh* considers all of life in relationship to revelation.

The colonial state, and later modern nation-states, drew from western theories of religion and secularism in order to constrict *Sharī'a* within the boundaries of statist and secular imagination. During the colonial period, a common strategy was to allow *Sharī'a* courts to maintain their jurisdiction over matters that were deemed private by Western

[25] Samera Esmeir, *Juridical Humanity: A Colonial History* (Stanford: Stanford University Press, 2012), 49.

authorities. This primarily meant that 'religious practices' and family law such as marriage were still under the control of *Sharī'a* courts and *muftī*. Colonial governments largely took over financial law, property rights, and criminal law. Clearly, the amount of openness to aspects of *Sharī'a* varied from region to region and colonial government to colonial government. For instance in Northern Nigeria, penal law remained under the control of *Sharī'a* courts for much longer than it did in Egypt or other British mandates.[26] Nevertheless, the trajectory of colonial governments was to employ Western accounts of secularism to minimize and/or privatize *Sharī'a* and impose western models of civil and penal law on the colonies. The integrated heritage of *Sharī'a* was torn asunder by the modern nation-state.

Once Muslim majority societies achieved independence from colonial rule in the mid-twentieth century they were forced to wrestle afresh with the relationship between the nation-state system and *Sharī'a*. For many of the ruling elites, such as Nasser of Egypt and Sukarno of Indonesia, a focus on nationalism and nation building took precedence over questions of *Sharī'a*. The surest (and quickest) way to secure national unity and a vibrant independent government was to adapt and build upon the existing western legal models. Part of such adaptation would entail the overhauling of educational systems, particularly legal ones, to equip lawyers and judges to rule in a state-centric court system, and not a *Sharī'a* court. This is not to say that nationalists were uninterested in issues of religion or *Sharī'a*, but that they initially opted primarily to mimic colonial approaches to governance, law, and *Sharī'a*. Simply put, the encounter

[26] See Knut Vikør, *Between God and the Sultan*, 246-250.

between *Sharī'a* and western nation-states led to a division within a formerly unified *Sharī'a*.

These divisions persist today and are evident even in the calls for Muslim majority countries to enact *Sharī'a* through the apparatus of the state. The backlash against secularism and the marginalization of Islam during the colonial period has led to increasing calls for the reinstatement of *Sharī'a* over all of public life. Interestingly *Sharī'a* enforcement is chiefly symbolized as a reclaiming of the *hudud*, the very aspects of *Sharī'a* that had been relegated out of legal existence by colonial powers.[27] In one way the call for a return of the public practice of *Sharī'a* through state enforcement can be read as an effort to re-unite *Sharī'a* after its dismemberment during the modern period. However, the very fact that *Sharī'a* enactment is sought in and through the state illustrates the underlying and enduring shift that the colonial and modern period has created.

For instance, in attempting to re-establish *Sharī'a* through the nation-state without questioning the hegemony of the state, advocates for Islamic government often end up unintentionally limiting the scope of *Sharī'a*. They do this in two ways. First, application of *Sharī'a* through the state entails fixing a particular version of *Sharī'a* as the definitive account—for example, Ḥanbalī in Saudia Arabia or Hanafī in the Ottoman Empire. When *Sharī'a* becomes fixed as the state law, it risks losing its dynamism and connection to broader society. Such fixing also necessarily means either the elimination of or minimization of the schools of law, as a nation-state would have to advocate for one school of law. Second, *Sharī'a* as religiously based law that exceeds the territorial

[27] Interestingly, the *hudud* are also the primary aspects of *Sharī'a* that are not to be enforced without a broader system of equity and social justice in place.

borders of the state, does not fit within the dominant models of national law. Knut Vikør notes how national laws are typically predicated on one of three models: 1) territorial, 2) international, or 3) universal. He argues that *Sharī'a* does not fit neatly into any of these categories. It is universal in its scope, but cannot be considered international or universal law *per se* since it does not claim to apply to non-Muslims. It cannot be national since it does not apply equally to all citizens since non-Muslims are either exempt from *Sharī'a* or treated differently as *dhimmi*. It is local, but it also stretches beyond the nation to include all Muslims. To enforce *Sharī'a* through the apparatus of the nation-state, then, is to compromise its universal application to all Muslims and also to ignore its distinctly religious justification. State enforcement would minimize the scope of *Sharī'a* just as the secular colonial and post-colonial governments once did. If the colonial project divided aspects of *Sharī'a* that were once united, state enforcement risks making uniform what was once plural. *Sharī'a*, then, lost both its dynamic connection with all of life and its capacity for flexibility and diversity through its encounter with European nation-states.

Sharī'a did not develop as a jurisprudential model tailored for the nation-state, and the colonial alterations in society, the state, and *Sharī'a* have led Wael Hallaq to aver that *Sharī'a* is no longer a possibility. If *Sharī'a* is both a theological and politico-legal practice, it is difficult to conceive of how it might remain pertinent to Muslims and still be free from complete state enforcement in our day. Laws are established by the state, at least in our state-centric world, and how a system of law can exist without state enforcement is an open question. The call for Islamic States and government enforced *Sharī'a* by Islamists simply recognizes this reality of modern-nation states. As Noah Feldman astutely notes, "the constitutional proposals of Islamism…are products of

twentieth-century ideology."[28] Given the constraints of the modern nation-state the only apparent solution is for *Sharī'a* to be enforced. However, the application of classical *Sharī'a* onto contemporary problems without attending to the legacy of modernity, human rights, and colonialism is fraught with compromise and difficulty. It is no wonder that Wael B. Hallaq claims that the contemporary situation has created a crisis of "Islamic legal identity."[29] He bluntly concludes that "*Sharī'a* is no longer a tenable reality"[30] since it has been "so flagrantly manipulated that it lost its organic connection with traditional law and society."[31] Hallaq is certainly correct in his assessment that the classical society, modes of discourse, and forms of government that gave rise to *Sharī'a* are forever lost. If *Sharī'a* does have a future, it will not be the same as it was in the 'Abbasid or Ottoman caliphates. And yet Hallaq's pessimism about *Sharī'a*'s future offers little direction for negotiating the contemporary demands by Muslims for a publically relevant model of *Sharī'a*. As Knut Vikør has argued, *Sharī'a* continues to serve as both a 'real' and 'symbolic' alternative to current political, legal, and social practices.[32]

Even if *Sharī'a* in the twenty-first century cannot be equated with classical *Sharī'a*, it remains a powerful source for organizing political, social, and legal life in Muslim dominated nation-states. Normative truth claims, especially when rooted in

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[28] Noah Feldman, *The Fall and Rise of the Islamic State,* (Princeton, NJ: Princeton University Press, 2008), 106.

[29] Wael B. Hallaq, "Can the Shari'a be Restored?" in *Islamic Law and the Challenges of Modernity*, edited by Yvonne Yazbeck Haddad and Barbara Freyer Stowasser (Walnut Creek, CA: AltaMira Press, 2004), 22.

[30] Hallaq, "Can the Shari'a be Restored?" 22.

[31] Ibid., 25.

[32] Real alternatives are those actually rooted in *Sharī'a*. Symbolic appeals to *Sharī'a* are moral or social claims that distinguish Muslims from current practices, but actually have no roots in *fiqh*.

revelation, are rarely defeated by examples from the complexity of history and practice. What is needed if *Sharī'a* is to contribute to the flourishing of justice and human rights in pluralist nations is Muslim jurists proposing frameworks and interpretations of *Sharī'a* that are rooted in jurisprudential history and the revelatory sources of Islam as well as postcolonial and modern realities. Showing people that they can faithfully practice their religion, even in the civil society and political realm, depends on showing that faithful adherence to *Sharī'a*, whatever the particular form, does not rely on the state.

Imagining the Postcolonial Future of *Sharī'a*

Like Christian political thinking, the classical Islamic tradition has expressed a deep concern about how God's sovereignty is manifested in the political and social order.[33] The division in the early Islamic community over who would rule the *umma*, the nature and authority of such an office, and the divides between various Caliphates, were not explicitly theo-political debates, and yet these arguments and contestations continue to inform and frame contemporary Islamic discourse. Modern and contemporary arguments appeal to historical precedence—Muhammad's rule in Medina, the rightly guided Caliphs, the import of the Imam, the Khajarites stringency, the moral failure of the Ummayads, or the golden age of the 'Abbasid—in order to justify their own modern positions.

There is a long and intense debate both within and beyond the Arab world about the precise configuration of *Sharī'a* and the state, and its capacity to challenge and

[33] See for instance, Patricia Crone, *God's Rule: Government and Islam* (New York: Columbia University Press, 2005) and Anthony Black, *The History of Islamic Political Thought: From the Prophet to the Present* (New York: Routledge, 2001).

reframe the historical context.[34] Broadly speaking, there are four major approaches to debates regarding the place and function of *Sharī'a* since the collapse of the Ottoman Empire and the demise of colonialism.[35] First, there remains a dominant and institutionally supported discursive and educational system that supports the four classical schools of law. While these institutions, such as al-Azhar in Cairo, continue to train students in the classical disciplines of Arabic grammar, *tafsīr, hadith,* and *fiqh,* they are increasingly affected by both national control and the influence of Salafism and Islamism. The second and most discussed approach comes from the wide swath of thinkers and movements variously called Islamic revivalists or Islamists. These intellectual figures and social movements argue that classical schools of law have been domesticated and there is an urgent need for a renewed *ijtihād* that would allow for the application of the *Sharī'a* over all of life.[36] Third, Islamic reformists recognize the need to engage questions of *fiqh* and *Sharī'a* though a revival and reframing of classical themes such as *ijtihād*, *maqaṣid* (higher purposes of the law) and *maṣlaḥa* (the public or

[34] One of the first and most important figures in this debate is Abdel al-Raziq, whose 1925 essays, *al-Islam wa uṣūl al-hukm,* set off a fierce argument.

[35] This categorization borrows from and expands Abedelilah Belkeziz's argument in *The State in Contemporary Islamic Thought*. He employs the terms Reformist and Revivalist to offer a framework to approach his study of five generations of Islamic intellectual thought that begins in the late nineteenth century and moves through to the late twentieth century. As Belkeziz argues, these categories and generations are fluid and resist easy categorization since many figures cross generations and typologies. I have added a reference to two other major features of Islamic thought that go largely unnoted in his study, namely the classical schools associated with al-Azhar and Arab secularism and nationalism. Employing this four-fold typology is not meant to offer a comprehensive analysis of Islamic thinking, but to frame and organize these thinkers in order to introduce major thinkers and themes vital to the study of political theology. In future work, I hope to give more sustained attention to the texture and nuance of specific thinkers and arguments, particularly as these Muslim thinkers interact with and engage Christian theology.

[36] For an important debate on the term Islamism, see Richard C. Martin and Abbas Barzegar, *Islamism: Contested Perspectives on Political Islam* (Stanford: Stanford University Press, 2009).

common good).[37] However, their positions on the relationship between *Sharī'a* and political power are often more 'liberal' or 'socialist' in orientation.[38] It is important to note that both Islamic revivalist and reformers share a number of fundamental commitments, even tracing their intellectual heritage to major figures such as Jamal al-din al-Afghani (d. 1897) and Muhammad 'Abduh (d. 1905). Fourth and finally, Islamic secularists or nationalists reject the idea that any form of *Sharī'a* is relevant to political society. Certainly, Arab nationalism and secularism are important intellectual movements that do not simply mirror Western thought. The shortcoming of Arab nationalism and secularism, especially since the rise of Political Islam, is that it often fails to engage with the major concerns and categories of current Islamic thinking.[39] A feature that unites all four of these forms of thought, but particularly the first three typologies, is the way that Islamic identity has been framed by and in opposition to the colonial and post-colonial situation.

The Sovereignty of God

Many Islamists' arguments against the classical schools of law rely heavily on theological argumentation, particularly around the Islamic claims of divine rule and *tawhid*. As I argued in chapter 3, a number of Muslim thinkers critique political secularism on the grounds that it denies divine sovereignty and the central Qur'ānic injunction to follow the *Sharī'a* given by God "and do not follow the inclinations of

[37] While the definition of the common or public good has varied widely in Islamic thought, there are five key categories in considering *maqaṣid*. The purpose of the law is to preserve *dīn* (religion), *nafs* (life), *nasl* (lineage), *'aql* (intellect), *and mal* (wealth).

[38] For a study of some of the major arguments for how to engage with and re-imagine *fiqh*, see Wael Hallaq, *Sharī'a*, 500-542.

[39] See Kassab, *Contemporary Arab Thought*, ch. 5 and abu-Rabi', *Contemporary Arab Thought*, chs. 3-5.

those who do not know" (45:18). There are dominant streams of nineteenth- and twentieth-century Islamic theology and law that equate divine sovereignty and *tawḥīd* with a need for a form of government marked by *Sharī'a*.[40] According to this line of thinking, to establish a form of public or civil law other than *Sharī'a* is to cease to submit fully to God's rule, and thus risk not living authentically as a Muslim. The divergent groups and movements, variously described as Islamists, Islamic revivalists, or Political Islam, are often those most adamant about such a position. Appeals to divine authority function to resist and critique the authority of either Western imperialists or nationalist dictators.

For instance, the influential Pakistani thinker, Abul A'la Mawdudi (d. 1979) argued that secularism and democracy replace divine sovereignty with human rule. Culling from the classical Ḥanbalī arguments of Ibn Taymīya's *al-Siyasa al-Shar'iyya* (the political authority of Sharī'a),[41] Mawdudi contends that divine governance (*Ḥakimiyyat Ilahiiya)* is necessarily antithetical to any form of political secularity and that the only authentic Muslim alternative is to be ruled by *Sharī'a*.[42] "If an Islamic society consciously resolves not to accept the sharī'a, and decides to enact its own constitution and laws or borrow them from any other source in disregard of the sharī'a,

[40]An important reason for the revival in interest in the political theology of divine sovereignty is tied to the success of the Iranian revolution. For a constructive Shi'a critique of the Iranian revolution, see Naser Ghobadzadeh, *Religious Secularity: A Theological Challenge to the Islamic State* (New York: Oxford University Press, 2014).

[41] See Baber Johansen, "A Perfect Law in an Imperfect Society: Ibn Taymiyya's Concept of 'Governance in the Name of the Sacred Law" in Peri Bermean, Wolfhart Heinrichs, and Bernad G. Weiss (eds.) *The Law Applied: Contextualizing the Islamic Shari 'a* (New York: I.B. Tauris, 2008), ch. 14.

[42] See Safdar Ahmed, *Reform and Modernity in Islam: The Philosophical, Cultural and Political Discourse Among Muslim Reformers* (New York: I.B. Tauris, 2013), ch. 5.

such a society breaks its contract with God and forfeits the right to be called Islamic."[43] To be a Muslim is to seek after the *Sharī'a* in one's own life and in the broader government under which one lives. Mawdudi's claim is neither simplistic nor reactionary, but is in fact based on theological commitments that are central to Islam. He argues that, "belief in the unity and the sovereignty of Allah is the foundation of the social and moral system propounded by the Prophets. It is the very starting point of the Islamic political philosophy."[44]

The popular and exiled Egyptian preacher Yusuf al-Qaradawi's critique of secularism is also grounded by shared theological claims. For him and many of his followers, secularism, democratic liberalism, and even a civil government are antithetical to the divine rule. These theological commitments to divine sovereignty undergird many of the various Islamist movements ranging from those more open to democratic engagement, such as Ennhada and the Muslim Brotherhood, to more militant groups, such as al-Shabbab. As the Syrian Muhammad Sa'id al-Būṭī summarizes this core Islamic claim: "all rule is God's alone" (*al-ḥākimiyya hiya lil-Lāh waḥdah*).[45]

While Islamists emphasize the relationship between divine sovereignty and the need for a *Sharī'a* state, it is unclear why affirmation of God's rule and *Sharī'a* necessitates such a political vision. In fact, the idea that Islam should prescribe a particular form of human government is more symptomatic of twentieth-century debates than classical ones. Tamara Sonn astutely notes how, "the notion of divine sovereignty is

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[43] Abu'l A'la Mawdudi, "The Islamic Law" in Roxanne L. Euben and Muhammad Qasim Zaman, *Princeton Readings in Islamist Thought: Texts and Contexts from al-Banna to Bin Laden* (Princeton: Princeton University Press, 2009), 92.

[44] Abu'l A'la Mawdudi, *The Islamic Law and Constitution,* (Lahore: Islamic Publications, 2000), 145.

[45] Quoted in Wael Hallaq, *Sharī'a,* 540.

unassailable in Islam, but that does not mean that legal codes based on the divine will as revealed in the Qur'ān and exemplified in the life of Prophet Muḥammad are likewise flawless."[46] The question that this debate around divine sovereignty, political authority, and law raises is not whether Muslims should abide by and seek after the divine law, for *Sharī'a* is and will remain a key factor of Islamic life, thought, and practice. As Imam Shatibi (d. 1388) argued, the overarching objective of the *Sharī'a* is "serving as a means of submission of God, the Exalted (*al-Mut'ālī*) and for any other purpose."[47] More recently, Khaled Abou El Fadl, a law professor at UCLA, argues that "an essential characteristic of a legitimate Islamic government it that it is subject to and limited by *Sharī'a* law."[48] The question that modern and post-colonial life asks is precisely how submission to *Sharī'a* is expressed in the political and social organizations of various Muslim and non-Muslim societies today, and to what extent our social, individual, and political lives might cohere with the divine law. Does commitment to God's rule over both society and one's own life demand a *Sharī'a* state? Is the only way to recognize God's authority through these Islamist appeals?

Jeffry R. Halverson argues that reforms cannot be fully advanced if the focus is only on the distinction between *fiqh* and *Sharī'a* or a renewal of *ijtihād* or an increased awareness of *maqaṣid* or *maṣlaḥa*. On their own these themes can only be advanced so far before they run up against more fundamental theological and exegetical questions. Halverson notes how theological discourse is vital to any renewal or reform in Islamic

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[46] Tamara Sonn, "Islam and Modernity: Are They Compatible?" in Huma Malick, *Modernization, Democracy, and Islam* (Washington, D.C.: Praeger, 2005), 78.

[47] Ibrahim ibn Musa Abu Ishaq al-Shatibi, *The Reconciliation of the Fundamentals of Islamic Law*, translated by Imran Ahsan Khan Nyazee (Reading: Garnet Publishing Limited, 2011), 19.

[48] Khaled Abou El Fadl, *Islam and Democracy: A Boston Review of Books* (Princeton: Princeton University Press, 2004), 19.

thought. Law cannot be divorced from theology. One does not need to fall victim to an Orientalism that prioritizes theology over law to recognize the ways in which *fiqh*, *kalam*, and *tafsir* are intertwined in the history of Islamic discourse. Theological arguments about divine sovereignty, the nature of the Qu'rān, and the codification of the *Hadith,* were all central to the growth of the *madhhab* and the creation of *uṣūl al-fiqh*. As Wael Hallaq argues that, "Theology justifies and established the broad foundations of religion, including the existence of God, the truth of His Book and His Prophets, the last one of who was Muhammad. Legal theory departs from the point where theology leaves off, assuming the truth of theology's postulates."[49] When attention is not also given to a renewal of *'ilm al-kalām*, or the science of theological discourse, renewal and revival in legal theory and debate will necessarily be limited.[50]

A number of Muslim intellectuals challenge Islamist claims that trust in *tawhīd* and divine sovereignty necessitates a particular form of Islamic government, particularly a statist one. One of the more important arguments offered to support such views is to draw a strong distinction between *Sharī'a,* understood as the divine law or way, and *fiqh,* interpreted as the human understanding and application of this law. For instance, Mona Siddiqui argues, "*Fiqh* was never more than a human approximation of a sacred ideal, a product that was ultimately a pious, but a human and therefore imperfect, effort."[51] If *fiqh* is a product of human reasoning from the divine sources, and not the divine rule itself,

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[49] Wael Hallaq, *Islamic Legal Theories: An Introduction to Sunni uṣūl al-fiqh* (New York: Cambridge University Press, 1997), 59.

[50] While Halvereson points to the important possibilities of reform latent within Asharism, particularly the distinction between the divine Word in God and the divine Word in Arabic script, Richard C. Martin and Mark R. Woodward note the ways that Mu'tazalism functions as a renewed modern source for re-conceiving Islamic thought in the post-colonial era. See Richard C. Martin and Mark R. Woodward with Dwi S. Atmaja, *Defenders of Reason in Islam*.

[51] Mona Siddiqui, *The Good Muslim: Reflections on Classical Islamic Law and Theology* (New York: Cambridge University Press, 2012), 4.

then disagreement with rulings or *fatwas* does not amount to a denial of God's rule. The distinction between the eternal and divine on the one hand, and the temporal and human is one of the fundamental arguments in contemporary Islamic thought, and offers constructive space to open up debate beyond both the rigidity of the schools and the triumphalism of Islamists. Anver M. Emon notes, "Modern reformists are keen to suggest that '*Sharī'a'* as a term of art reflects the law in the mind of God, and thereby has no connection to the way in which law and governance actually existed."[52] While Emon's claim that modern reformists recognize no connection is too strong, his emphasis on the important place in contemporary debates of the distinction between *Sharī'a* as an eternal ideal and *fiqh* as a human interpretation is vital. "The question of where and how to draw the lines between 'revealed law' and its 'juridic formulation' is of paramount importance in all manner of contemporary Muslim discourses."[53] The issue that Emon raises, and one that I share, is whether or not this distinction can do quite as much work as reformers would like. Certainly distinguishing between *fiqh* and *Sharī'a* is one key component of Islamic discourse, but such arguments also must include a broader analysis of questions of scriptural interpretation (*tafsir)*, the higher purposes of the law (*maqaṣid)*, the public good (*maṣlaḥa)*, the sources of the law (*uṣūl al-fiqh),* and the theological imaginary in which legal thinking occurs.

In his *Islam and the Political Order,* the Egyptian judge Muhammad Sa'īd al-'Ashmāwī (d. 2013) argues for an alternative reading of the relationship between politics and appeals to God's rule, a reading that addresses questions both theological and legal.

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[52] Anver M. Emon, *Religious Pluralism and Islamic Law: Dhimmīs and Others in the Empire of Law* (New York: Oxford University Press, 2012), 169.

[53] Yvonne Yazbeck Haddad and Barbara Freyer Stowasser, *Islamic Law and the Challenges of Modernity* (Walnut Creek, CA: AltaMira Press, 2004)**,** 4.

Challenging Qutb, Mawdudi, and the Muslim Brotherhood in Egypt, al-'Ashmāwī maintains that the invocation of divine sovereignty is more often a guise for political manipulation than authentic Muslim piety.[54] The claim that "God is the only sovereign (*lā hukm illā lillāh*)" often functions as a "tyrannical political strategy for seizing power."[55] By tracing the history of absolutist political authority back to ancient Egyptian, Babylonian, and Roman models of rule, al-'Ashmāwī questions the Islamic roots of Islamists' political theology. In fact, he argues that the Kharjarites and Ummayads (neither of whom are thought highly of by most Sunnis), and not the rightly guided Caliphs, are the primary historical sources for such an Islamic authoritarianism. Nowhere does the Qur'ān or Hadith draw a direct correlation between divine sovereignty and a particular form of Islamic government As William Shepard notes in his study of al-'Ashmāwī, appeals to the application or enactment of *Sharī'a* are "in reality little more than empty slogans, designed to get popular support for a political venture but extremely vague and probably insignificant in substance."[56]

Alternatively, al-'Ashmāwī argues that a proper Islamic interpretation of divine sovereignty should caution against the elevation of human authority, not the establishment of a particular sect or political figure. In fact, claims to divine sanction for political power are likely to be contrary to Muslim claims about God alone being sovereign. After Muhammad, there is no clear political blueprint laid out in the sacred texts or even in the early history, and thus appeals to divine sovereignty are more often a

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[54] For an interesting Christian theological argument regarding the various functions that appeals to divine sovereignty can take, see Kathryn Tanner, *The Politics of God: Christian Theologies and Social Justice* (Minneapolis: Fortress Press, 1992), chp. 2.

[55] Muhammad Sa'īd al-'Ashmāwī, *Islam and the Political Order* (Washington, D.C.: Council for Research in Values and Philosophy, 1994), 27.

[56] William E. Shepard, "Muhammad Said al-'al-'Ashmāwī and the Application of Shari'a in Egypt," *International Journal of Middle East Studies*, Vol. 28 (1996), 43.

means to evade taking responsibility for human action. "After his death there remained only men, all equal, none of whom was like him, inspired directly by Revelation. Their government is one of men…any other doctrine serves only to surround a government or its opposition with a halo of infallibility…whose effect is to relieve it of all responsibility."[57] The Islamist position actually usurps the authority of God and the finality of Muhammad's prophethood; it does not uniquely uphold divine rule. To recognize the way that most legislation and all forms of government in the history of Islam are inherently historical and constructed by human interpretation is to testify that God alone is God.

According to al-'Ashmāwī's reading, the manner that divine authority is legislated in the Qur'ān is not through a particular political arrangement such as the Caliphate, but through the moral appeal of revelation and law. Like many others critical of Islamists, al-'Ashmāwī appeals to a distinction between the divine law and human interpretation. He argues, "Islamic thought confuses *Sharī'a*—that is to say, the Qur'ānic norm—with Islamic jurisprudence (*fiqh)*—that is to say, what results from the free opinion (*ijtihād*) of jurists."[58] The problem of Islamists' appeals to divine authorization for political power is that it misses this crucial distinction. Most of what counts as Islamic law is in fact the result of human reason, textual deduction, and social factors. None of these social and culturally factors are a problem for al-'Ashmāwī; the difficulty arises when the products of human intellect and a particular social situation is equated with the divine rule for all times and places. As many others note, the Qur'ān has a very limited number of explicit legal injunctions. The Qur'ān is not a legal manual, but a moral

[57] Muhammad Sa'īd al-'Ashmāwī, *Islam and the Political Order,* 30.
[58] al-'Ashmāwī, *Islam and the Political Order,* 102.

invitation to respond to God's claim on human life and society. Given this, al-'Ashmāwī argues that, "We should return to its proper usage, in which *shari'a* includes only those values, principles and laws that can be found in the Quran and the sound sunna, because these alone are protected from error by God."[59] For al-'Ashmāwī, any attempt to read the Qur'ān's interest in "deciding instances of litigation" with a modern account of political authority is bound to subvert God's rule, not uphold it.[60]

al-'Ashmāwī avers that recognizing God's sovereignty over all of human life depends on seeking the spirit or purpose of the law, which is a concern for human welfare and justice. "Where one finds the common interest there is situated the Law of God. Politics is the art of being in conformity with the spirit of that Law, and not with its letter; general welfare comes before the letter of the law."[61] The law rules in and through its moral capacity to shape individuals toward communities of justice and social welfare, not through a top down imposition of a political structure. The task of politics and law is not to enact a pre-determined blueprint onto society, but to engage critically the sources and contexts in order to discern the proper models for engagement today.

> A government inspired by the principles of Islam would be founded on justice and human values. It could only be a civil government emanating from the people and working in the interest of all without exclusion or discrimination. It would give all its attention to education, culture, science, the arts, history and civilization. It would encourage mutual comprehension and cooperation, work and planning, sacrifice and success. It would produce acts and not logs, facts and not promises. It would understand Islam as mercy, not as menace, and present it to humanity as a way toward God and toward progress.[62]

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[59] William E. Shepard, Muhammad Said al-'al-'Ashmāwī and the Application of Shari'a in Egypt," 44.

[60] al-'Ashmāwī, *Islam and the Political Order*, 99.

[61] Ibid., 107.

[62] al-'Ashmāwī, *Islam and the Political Order*, 68.

Given these definitions, al-'Ashmāwī contends that the Egyptian system—at least how it operated in the 1980s when he was writing—is an example of the spirit of *Sharī'a*. The various Egyptian constitutions have stated that *Sharī'a* is either *a* or *the* source of the law. And yet even in this shift towards state recognition of *Sharī'a*, there remains an important distinction between state law and *Sharī'a*. Judges may reference *Sharī'a* and public debates might include appeals to *Sharī'a*, but the laws of Egypt are still primarily understood as national law and not a direct enforcement of *Sharī'a*.[63]

While his arguments were not well received by either Islamists or the religious establishment at al-Azhar, al-'Ashmāwī's attempt to combat political theologies that too neatly correlate divine sovereignty with human rule is indispensible. One does not need to agree with his positive arguments regarding the Egyptian legal system, or the place of s*harí'a* in contemporary society to recognize the insights of his claims regarding divine sovereignty. Moreover, the idea that *Sharī'a* might serve as a moral source of the law, without being explicitly enshrined in the law, is one of the prominent actual constitutional practices in the Muslim world.[64] The danger in al-'Ashmāwī's constructive position is that it lacks a critical position over and against the modern state. Without more concretely defining the nature of the common good and the spirit of *Sharī'a*, his position risks falling prey to many of the problems of Christian political theology named in chapter 4. In fact, Wael Hallaq argues that al-'Ashmāwī is so eager to critique Islamists that he fails to evaluate critically the Egyptian legal system (of which he was a part) and many aspects of modern Western legal practice.

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[63] It remains to be seen, of course, how Egypt will negotiate the balance between *Shari'a*'s public relevance and the state's legal independence after Mubarak and Morsi.

[64] It is also an element in the state of Israel's Basic Law.

How will Muslims continue to engage their sacred sources and their long jurisprudential history without assuming that God's reign is equal to governmental rule and while challenging the moral limitations of modernity, the nation-state, and the market? As Wael Hallaq has shown, those who align more strongly with the traditional positions often are able to leverage this stance to offer more persuasive critiques of modernity. However, those who engage in revision and critique often end up explaining away central Islamic demands. A case in point is al-'Ashmāwī's view on interest and *riba*, which essentially empties the classical Islamic of its prophetic edge.[65] Of course, as Saudi Arabia shows, traditional *fiqh*—like all humans—is able to evade the challenges of economic justice through legal maneuvering. As such, the critical edge of Islamic thought and practice, particularly as it combats the hegemony of the state and market, is lost by too quick an accommodation.

The Purpose and Goal of the Law

The Moroccan intellectual, Mohammad Abed al-Jabrī (d. 2010), offers a compelling argument on how Muslims might affirm the divine origins of the *Sharī'a,* the contingencies of contemporary life, and also the impossibility of completely applying the divine law.[66] Al-Jabrī's argument is not primarily rooted in drawing a distinction between *Sharī'*a and *fiqh*—although he does make this move—but in the demand to renew and reinvigorate Arab reason. Al-Jabrī's project calls for Muslims to offer an honest and complex engagement with indigenous reason and its possibilities in the postcolonial

[65] See Wael Hallaq, *Sharī'a,* 522-27.

[66] For a summary of al-Jabrī's life and thought, see Jaafar Aksikas, *Arab Maternities: Islamism, Nationalism, and Liberalism in the Post-colonial Arab World,* (Bern: Peter Lang, 2009), chp. 3.

world. In his *magnum opus,* a three-volume study of Arab reason (*al-'aql al-arabī*) he offers a historical and critical analysis of themes ranging from philosophy and linguistics to politics and colonialism.[67] Al-Jabrī positions himself between the dominant imaginaries of an Arab secular nationalism and the fundamentalism of Islamist movements. He aims to "overcome the current polarization of Arab thought: namely, between 'an imported modernism' that entirely disregards Islam traditions and an 'Arab traditionalism or fundamentalism' that assures Arabs or Muslims of a spurious identity through nostalgic retrievals of the past."[68] Ai-Jabrī draws from the deep intellectual wells of Andalusian thinkers such as Ibn Rushd, Ibn Ḥazm, and Imam Shabiti to renew Arab reason.[69]

While *Sharī'a* is not the central pre-occupation of al-Jabrī, he does offer critical theological and philosophical interventions into debates about the application of the divine law.[70] A major political argument for al-Jabrī is a distinction between the positive call for renewal (*al-tajdīd*) and the *Salafī* demand for a clear return to the era of the *Rashidun*. Employing al-Shatibi's (d. 1388) groundbreaking work on the higher purposes of the law, al-Jabrī argues that Islam was never a pre-determined and fully developed

[67] For an English translation of the first volume of this argument, see Mohammad Abed al-Jabrī, *The Formation of Arab Reason: Text, Tradition and the Construction of Modernity in the Arab World,* (London: I.B. Tauris, 2011)

[68] Fred Dallmayr, *Being in the World: Dialogue and Cosmopolis,* (Lexington: University of Kentucky Press, 2013), 213.

[69] See Abu-Rabi', *Contemporary Arab Thought*, chs. 12 and 13.

[70] On this point, I strongly disagree with Bassam Tibi's argument that al-Jabrī draws a clear dividing line between *falasafa* and *fiqh*. This reading of al-Jabrī is untenable given al-Jabrī's own appeal to the seminal *fuqha',* Shabiti. While Tibi rightly points to the influence of Ibn Rushd on al-Jabrī's work, he fails to note the importance of Shabiti and Ibn Ḥazm, figures that don't fit neatly into Tibi's division between reason and revelation. Like in much of Tibi's work, there is a deep disdain for the very terms *fiqh* and *Sharī'a* and a tendency to understand these only through the categories of Ḥanbalī Islamists. Such a position—which is marked by Kantian definitions—leads Tibi to regularly misread Arab thinkers who employ these terms in different ways. See Bassam Tibi, *The Shari'a State: Arab Spring and Democratiziation* (New York: Routledge, 2013),

Islamic system of government and law. He notes how the companions and the prophet were constrained by time and place and thus unaware of many of the challenges and questions that new encounters would create. The very development of the schools of law, as I have already argued, is recognition that the demands of God for a particular situation are not always predetermined. In fact he notes how "there is no Islamic system, ready-made and well-defined to cover life in all its aspects."[71] As the Palestinian-American Muslim intellectual Ibrahim Abu-Rabi' (d. 2011) notes in his extended commentary on al-Jabrī's work, al-Jabrī argues that the early companions and Umayyad caliphate are marked by a distinct lack of political philosophy and organization. Far from being an ideal political model, the earliest accounts of Islam are marked by deep and contentious debates about authority and governance. Attention to the earliest traditions, the primary theological and scriptural appeal for Islamists, proves to be problematic for thinking about political life today.

This is not to say that Islam is not interested in all aspects of human life, or a merely private religion. Nor is al-Jabrī arguing for jettisoning the earliest traditions or the Qur'ān. Instead, he is arguing that renewal will occur through a critical and historical engagement with culture, reason, law, and the revelation of God. Such a renewal is impossible simply through an opening of *ijtihād,* if such legal argumentation is not broadened beyond the traditional confines of the schools of law. According to al-Jabrī's diagnosis, although the defeat of 1967 resulted in an intellectual and fossilization and backward orientation,[72] it is insufficient to invoke *Sharī'a, fiqh,* and *ijtihād* as a response.

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[71] Mohammad Abed al-Jabrī, *Democracy, Human Rights and Law in Islamic Thought,* (London: I.B. Tauris, 2008) 66

[72] See Joseph A. Massad, *Desiring Arabs* (Chicago: University of Chicago Press, 2007), 18-24.

Rather, one must interpret them in such a way as to orient the past toward the present and future. "What is needed today is a renewal (*tajdīd),* emanating not from a mere resumption of *ijtihād* in the branches, but from a re-rooting from the origins."[73] Like Islamists, then, al-Jabrī shares a critique of schools. However, al-Jabrī does not primarily appeal to an ideological past, but points to the past to reframe the future.

To accomplish this renewal, al-Jabrī argues that *ijtihād* should be oriented toward the higher purposes of the law (*maqāṣid*), the public good (*al maṣlaḥa al-'āma),* and also be marked by a contextual and contemporary social and philosophical analysis.[74] Yet understanding the purposes of the law and the public good demands a critical reason that evaluates the past and present in dynamic ways. The traditional Islamic focus on rulings and deductive reasoning, when taken out of philosophical, cultural, theological, or historical contexts, is bound to be restricted. Building on this argument, al-Jabrī intervenes in an ongoing argument within Sunni Islam about the continued place, or lack thereof, for independent juristic reasoning. He contends that the gates of *ijtihād* were not closed—the common opinion—but that they instead closed in on themselves. "The truth is that no one in Islam has the authority to 'close' the door of *ijtihād,* neither the rulers, nor the *fuqahā',* nor any other."[75] The reason for this closure of innovative and creative

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[73] Mohammad Abed al-Jabrī, *Democracy, Human Rights and Law in Islamic Thought*, 76.

[74] Appeals to *maqaṣid* or *maṣlaḥa* are a common feature of many twentieth- and twenty-first-century Islamic thinkers. Rashid Rida (d. 1935), for instance argued that the law must be rethought through the common public interest and not through a focus on analogy and consensus. More recently, Jasser Auda argued through engagement with classical thinkers such as al-Juwaynī (d. 1085), al-Ghazālī (d. 1085), and Ibn al-Qayyim (d. 1347) that attention to the wisdom behind the rulings has always been used to combat literalism and fossilization. He proposes that a systems approach to *ijtihād* that would attempt to interpret and employ the *hadith* and classical arguments of jurists through the contextual and multi-dimensional lens of 'purposiveness.' Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (Washington, D.C.: The International Institute of Islamic Thought, 2008).

[75] Mohammad Abed al-Jabrī, *Democracy, Human Rights and Law in Islamic Thought*, 78.

rethinking of the law was not political or religious authority but the fact that the old method had exhausted all its possibilities. What is needed is a more comprehensive *uṣul al-fiqh* that draws from al-Shatibi's arguments from the universal principles (*kulliyāt*) and intent of *Sharī'a*. Al-Shatibi himself argued, "each principle of the *Sharī'a* that is not supported by a particular text, but is compatible with the fundamental principles of the *Sharī'a*...is valid and can be employed for further extension (of the law)."[76]

For al-Jabrī, Shatibi's fourteenth-century renewal of the methods of *fiqh* through the hermeneutical and theological commitments to *maqaṣid* offers an important model from which to draw in constructing a critical Arab political perspective. Al-Jabrī argues that Shatibi's methodology presents a more open-ended framework for considering the purposes and intent of the law than those that dominate classical Sunni *fiqh*. The traditional position on divine intent as articulated by Shāfi'ī considers what God's intention might be for each specific ruling. So for instance, the jurist deliberates on what the divine reason might be for the prohibition on wine and then proffers further legal judgments that depend on the proposed intent of the original ruling. God has decreed a prohibition on wine and the jurist deduces that the reason is to forbid intoxication; the jurist then applies this divine intent to new cases and forbids opium and beer. The problem with this approach is that it makes the divine intent auxiliary and prioritizes specific legal sayings without any attention to the overarching reason for the law. Al-Jabrī asserts that such a legal approach will necessarily either close in on itself by exhausting all options or become tedious and obsessed with minutia.

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[76] Ibrahim Ibn Musa Abu Ishaq al-Shatibi, *The Reconciliation of the Fundamentals of Islamic Law,* translated by Imran Ahsan Khan Nyazee (Reading: Garnet Publishing Limited, 2011), 7.

In contrast, al-Jabrī argues that Shatibi's approach places divine intent at the center of the law, as the root from which all legal arguments should emerge. The divine purpose is best discerned in the overarching goal of the law—which is human and social flourishing. "Since the good of the people is the foremost intent of the Legislator (God is not in need of any of His creatures, 3:97), the consideration of public good should establish the rationality of *sharī'ah* judgments."[77] God hands down revelation and law, not for God's sake, but for the well being of humanity. As such, the jurist should attempt to discern the broader legal intent in the social and political context that God wished to either correct or create, and not the divine will behind each individual law. God's will toward the good is timeless, but human understanding of God's law is constantly marked by context and limitations.

Al-Jabrī remains committed to key aspects of the classical training of the schools, but also argues for a renewed focus on contemporary social analysis and a study of "occasions of revelation" *(asbāb al-nuzūl)*. So for instance, he rethinks the *hudud* punishments in light of the social situations of both ancient Arabia and the twentieth century. He notes how the Bedouin cultures of the pre-Islamic period lacked the possibility of imprisonment and thus practices of amputation for theft served to "obviate against the possibility of perpetual recidivist theft; and to put a mark on the thief so as to warn people."[78] The intent behind these legal punishments was not retribution alone, but the ongoing life of the community. Given this, al-Jabrī asks how the *hudud* might be reconsidered in a "modern city." If the conditions that gave rise to a legal ruling no longer hold, should the exact prescription still be binding? Al-Jabrī suggests that they

[77] Mohammad Abed al-Jabrī, *Democracy, Human Rights and Law in Islamic Thought*, 82.
[78] Ibid., 85.

need not and that building up the "rationality of a shari'a ruling on the occasions of revelation within the scope of considerations of public good would open the way for the construction of another rationality concerning other occasions of revelation, or new situations."[79] By giving pride of place to the universals and the divine intent, al-Jabrī argues that *fiqh* is no longer constricted but given "unlimited scope of movement."[80]

When the law is considered through these categories, it necessarily becomes both contextual and forward-looking—we might even say it will function on the eschatological horizon. The divine law always exceeds human application, even as humans consistently must interrogate the demands of God in the present context. "Fullness and perfection in the application of laws, as in any other field, is only relative, whether in the time of the prophets, their disciples, or companions, or in the times that came after them. There is no perfection in this world, either in the field of applying *al-sharī'ah* or in any other field."[81] This is not to say that al-Jabrī opts for a positivist secularism, devoid of all religious values; he is clear that the law must exist for the sake of the community and life. As Islamists note, Islam is a *dīn* or way of life, that is oriented toward and for the whole of the human community. Al-Jabrī's thought, however, shows how claiming the revolutionary potential of Islam as a source of protest in the face of military defeat, nationalism, and attack need not be lost when one also turns criticism inward to oneself and one's community.

Toward Mutual Exchange

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[79] al-Jabrī, *Democracy, Human Rights and Law in Islamic Thought,* 85.
[80] Ibid., 83.
[81] 102.

A major argument of this dissertation has been for the need to engage with Islamic thought regarding law and the political beyond the simplistic tropes that have too often marred Christian discourse. Christian theologians and ethicists engaged in studies of pluralism, law, and the state, especially those who discuss Islam, must pay closer attention to the intellectual history of *Sharī'a*, not to mention modern debates regarding *fiqh, maqaṣid,* and *maslhaha*. As this chapter has shown, inherent within the long discursive traditions of Islam are distinctions about law that trouble simplistic slogans or easy divisions between it and Christianity. Chief among them are the debates regarding the difference between *fiqh, usūl al-fiqh,* and *Sharī'a,* as well as arguments between the schools about the use and limits of analogy, human reason, and consensus. Moreover, there is an emerging focus on leveraging the deeper tradition of the *maqaṣid* that argues that such an approach might reframe discussions of God's law and human laws after colonialism and the rise of the nation-state.

Importantly, none of these distinctions regarding God's law and human application function in exactly the same way as the various theories of the two kingdoms, cities, or rules do in Christian political theology. There is no sense in Islam that God rules the world differently than God rules the *umma*, although Islam does make important distinctions between those under the divine rule of *Sharī'a* and those outside it. This we see in the classical distinctions between the *dar al-islam* (the abode of Islam) and the *dar al-harb* (the abode of conflict), as well as other nuanced views such as the *dar al-hudna* (house of calm or treaty). However, this distinction is based on the type of rule of law that a person or community is under and is not grounded in a divide between God's earthly and heavenly rule. Nor do they amount to a full severing of the legal and political

from the scriptural and theological. Even if *fiqh* is distinguished from *Sharī'a*, the arguments and logic of *fiqh* still remain infused by Islamic logic that is necessarily at least rooted in the *Qur'ān* and *hadith*—divine revelation and tradition. As such, the very categories and concerns of Islamic political thought are marked by a much greater concern about jurisprudence than political theory, which is by and large the opposite concern form Christianity.

These distinctions raise important and vital questions about how to negotiate the relationship between public law and the rule of God. While this dissertation has largely eschewed in-depth conversation on the precise legal and political configurations of the church, mosque, and state, I follow recent arguments by figures as distinct as Wael Hallaq and Abdullahi An-Na'im, who both argue that by its very definition an Islamic State is impossibility.[82] They contend that the nature of a modern nation-state and the practices and imaginaries of *Sharī'a* and *fiqh* are fundamentally incommensurate with one another. The longing for such a theo-legal arrangement—whether enacted by the state sanctioned Wahhabism of Saudi Arabia or the martial law of ISIS—is more often a retrenchment of power than it is rooted in the long intellectual and legal practices of *Sharī'*a. As Hallaq argues, "The Sharī'a has become a marker of modern identity, engulfed by modern notions of culture and politics."[83] This is not to say that the desire for *Sharī'a* should be dismissed or all claims to law privatized, but rather that rule and law of God cannot be directly applied to the nation-state. Khaled Abou El Fadl forcefully argues against state-centric accounts of *Sharī'a*. He is emphatic about the centrality of *Sharī'a* in

[82] See Wael Hallaq, *The Impossible State: Islam, Politics and Modernity's Moral Predicament* (New York: Columbia University Press, 2013) and Abdullahi An-Na'im, *Islam and the Secular State: Negotiating the future of Shari'a* (Cambridge: Harvard University Press, 2008)

[83]Hallaq, *Sharī'a*, 550.

the life of the Muslim and the moral, spiritual, and ethical importance of affirming divine sovereignty. And yet el Fadl refuses to equate submission to God's rule to any form of authoritarian political rule. "It is important to emphasize that the understanding that Shari'ah is inseparable from Islam does not imply that by being Muslim, one is accepting any authoritarian system of government that rules in God's name. Indeed, my argument is that not only do governments not rule in God's name but also that no prescriptive legal rule implemented by the state can pretend to be God's judgment."[84] Here I am not suggesting a Christian-style secularization of Islam, or that Islam must reform akin to what is supposed to have transpired during the sixteenth to eighteenth centuries in Western Europe, but a more humble and cautious approach to invoking the divine name to justify particular political arraignments.

Let me suggest that the Christian theological position that I sketched out, particularly the notion of the law as witness during the time between revelation and consummation, connects with Islamic concerns regarding the distinction between *sharī'a* and *fiqh,* the importance of divine sovereignty over all of life, and the constant demand to reexamine legal rulings in light of the purposes of the law. Moreover, my argument that human law bears witness to the divine rule without ever possessing or fully capturing the law, presents one comparative model for how to think about the gap between the higher law of God and the epistemic, political, and moral limits of life in the world. In fact, built into the linguistic reality of the word *Sharī'a* is a recognition that *Sharī'a* is not the thing in itself, but a path, a guide, or a way to well-being and God's rule. The category of witness may, then, even be reemployed in a Muslim setting in order to chart a path

[84] Khaled Abou El Fadl, *Reasoning with God Reclaiming Shari'ah in the Modern Age* (London: Rowman &Littlefield), 327.

beyond those who claim that public *Sharī'a* is God's law and those who argue that the law is devoid of any transcendent appeal. Claiming, then, that *Sharī'a* and *fiqh* might bear witness to God's rule without grasping the fullness of God's law is not foreign to the history of Islam. Refusing political theocracy—by maintaining eschatogical theocracy—is a demand for intellectual humility when invoking God's law. Legal rulings might become a witness—a *shahīd* even—to God's just and eternal rule. They participate in the rule of God not by becoming the rule itself, but by gesturing towards it, even if this is only and always provisional, marked as it is by intellectual and social constraints. This argument is intended not as a compromise of central Islamic positions, but as a deeper affirmation of them.

In regard to *Sharī'a,* Christians (in the West) should develop a more coherent approach to the moral vision of Islamic law, one that is based on a case-by-case understanding and not on either outright rejection or wholesale adoption. Simply put, Christians should refrain from critiquing *Sharī'a tout court,* and instead learn to attend to and engage with the distinctions within *fiqh* and thereby judge the concrete rulings *akham* and *fatwas*. This is not to say that Christians should embrace *Sharī'a* states or accept a return to *dhimmi* status in the name of dialogue. Far from it! However, the most likely way to combat the violent and hegemonic tendencies of Salafi-Jihadism is not by dismissing *Sharī'a* completely, but by both leveraging the rich tradition of *fiqh* and engaging with the deep and complex intellectual traditions that have marked Arab thought since the late nineteenth century. It is far more likely that understandings of the place and role of *Sharī'a* in political life will be re-thought and re-imagined than that Muslims will simply abandon the notion of living life in accordance with their

understanding of God's demand—which is signified for most Muslims by the word *Sharī'a*. To ask a Muslim to refrain from submitting their whole life to the authority and rule of God in the name of interfaith dialogue is like demanding that Christians abdicate their claims about Jesus, the gospel, and the law.

Of course, Christians do not recognize the normative claims of either the Qur'ān or *hadith*. Nor should Christians find *fatwas* or Islamic claims any more (or less) binding than the moral and legal arguments of Jews, philosophers, public policy advocates, or politicians. If Christians have been willing to live under and with a host of distinct judicial regimes and to judge their worth, not on religiosity, but on their relationship to the common good, reason, and (as I have argued) their ability to give provisional witness to God's rule, then why cannot Christians judge *Sharī'a* in the same way that they judge other laws? Islamic law, like Jewish law, French law, Indonesian law, American law, etc. are claims that that both cohere and contradict the ways that Christians understand the divine rule as seen in Christ and Spirit. This means a willingness to recognize those moral-legal judgments within *fiqh* that are good, and also a willingness to be challenged on issues that are largely forgotten in Christian thoughts such as property, interest rates, and worship regulation. Thus, Christian political engagement with Islam and Muslim views on secularism, law, the state, and the common good should have an *ad hoc* character, seeking overlapping areas of commitment to the common good, social justice, and the poor.

Certainly, Christians and Muslims should stand against iterations of the blasphemy laws such as those in Pakistan and demand the full equality of non-Muslims and women under the law. Yet there are other aspects of *Sharī'a* such as care for the poor,

just property rights, limits to interest rates that lead to financial exploitation, and the sharing of natural resources that are all contemporary pressing concerns. Moreover, Huessein Ali Agrama's recent study of *Sharī'a* courts in Egypt has shown that they regularly offer more equal access to judgments and law than Western legal courts, be they in Egypt or North America. Specifically, he highlights the ways that legal representation in *Sharī'a* courts is largely free of the economic hurdles that other forms of legal representation demand. Put simply, money does not seem to buy either access or justice in classical *Sharī'a* courts in the same way that these aspects do in most other twenty-first century legal systems. These are all areas to which *Sharī'a* might prophetically speak. The prophetic edge of *Sharī'a* is lost when state enforcement domesticates, solidifies, and imposes it, thereby creating a situation of religious competition and fear.

One may argue that my approach to *Sharī'a* is too sympathetic, and thus unable to be critical toward certain actions taken in the name of *Sharī'a* and legal rulings that are derived from *Sharī'a*. In fact, one might argue that my approach compromises on necessary claims to justice, equality, and the freedom. If one understands openness to engagement as full endorsement, then I am guilty. However, my own view on *Sharī'a*, particularly distinctions between *fiqh* and *Sharī'a*, I think allows me to balance critique and shared learning more clearly than the Christian theologians and ethicist examined in chapter 2. In fact, the constructive comparative position that I sketched out is an attempt to refuse either conciliation or confrontation and instead seek a model of witness marked by mutual learning and disagreement.

As such, there are a number of aspects of classical and contemporary aspects of *fiqh* that are deeply troubling to Christians. The fears of *Sharī'a* are often built on stereotypes, but they are not disconnected from all legal judgments. Questions persist and must be challenged around gender equality, the place of and limits to *hudud*, and the freedom of both proclamation and worship for non-Muslims. Are the literal punishments of the *hudud* revealed by God or is there a way to reinterpret them in light of the law's higher purpose? How does the claim that there is no compulsion in religion relate to restrictions on proclamation and worship in many Muslim majority societies? Muslims do not ignore such issues, and many thinkers such as Amina Wadud, Tariq Ramadan, and Prince Ghazi bin Muhammad have begun to demand that these aspects of law be reimagined and re-read.[85] However an honest exchange demands that Christians both ask hard questions around these issues and refuse Muslim answers when they contradict central notions of justice, freedom, and equality.

Even as Christians asks questions of Muslims, engagement with Muslim thinkers presents new possibilities, questions, and insights to Christian theology and ethics. Islamic ideas and legal practices continue to press back against the ways that my argument still remains largely devoid of concrete legal judgments on issues such as capital punishment, property rights, interest rates, and divorce. How does a claim to the divine rule in Christ manifest itself in debates about refugees or property exchange or banking law? The Islamic history of *fiqh* is fundamentally different from Christian accounts of the law. Islamic thought, like Jewish thought, has been and continues to be

[85] See Amina Wadud, *Qur'ān and Woman: Rereading the Sacred Texts from a Woman's Perspective* (New York: Oxford University Press, 1999), Tariq Ramadan *Radical Reform: Islamic Ethics and Liberation* (New York, Oxford University Press, 2009), Miroslav Volf, Ghazi Bin Muhammad, and Melissa Yarrington, *A Common Word: Muslims and Christians on Loving God and Neighbor* (Grand Rapids: Wm. B. Eerdmans, 2010).

deeply concerned about such seemingly mundane questions. And so it is precisely here that the Islamic claim might offer a particularly fruitful arena for constructive comparative political theology. *Fiqh* is about moving from general principles and ideals to the act of judging concrete cases and rendering specific opinions on both the general frameworks of law and specific cases. Contemporary Christian views of law, in contrast, are relatively abstract and not connected with concrete cases, practices, and jurisprudential models. There are of course exceptions in Catholic social teaching or the moral arguments offered in the white papers of many mainline denominations.[86] And yet, these arguments continue to lack the type of concrete theo-legal appeal and demand of either Jewish or Islamic thought and practice. Maybe this is simply a necessary consequence of the Christian vision of freedom and grace, but if so there remains the enduring risk that Christian ethics will be devoid of the types of life-giving demands that the God continually commands in the Scriptures. We might say—at the risk of simplification—that Islamic thought and law would benefit from renewed attention to their theological claims regarding sovereignty and the nature of the Qur'ān, even as Christian thought and law would benefit from increased attention to jurisprudence and the concrete legal decisions that its theological claims demand.

[86] The entire enterprise of Christian ethics is in many ways a form of Christian fiqh. Debates about marriage, abortion, just-war, drone attacks, and genetics are examples of such legal moral reasoning. What I am suggesting is that these modes of thought better consider 1) the law as the primary site for such discussion, 2) develop theologies that see law, both in its occasional and fixed roles, as the place for witness to God, 3) and consider church statements or confessions to offer moral legal authority than is often articulated.

Conclusion:
Toward a Comparative Theo-Legal Discourse

Christians and Muslims disagree on issues of profound import regarding the nature of God's revelation, the extent to which divine law is a sufficient response to the human condition, and the relationship between the divine rule and political power. These differences and the various scriptural, historical, and cultural contexts that have shaped them have created differing political and legal models—both within and between the traditions. They have also produced ample polemics and misunderstandings that continue to inhibit cross-religious understanding and debate. Islam has been, in the words of Gil Anidjar, Christianity's "theological enemy."[1] From at least John of Damascus's early depiction of Islam as a heresy to the Latin translation of "The Apology of al-Kindī," Western Christians have regularly described Islamic views of God and the law as demonic and dangerous.[2] Even more recent sympathetic engagements with Islam, such as those by Hans Küng or Miroslav Volf, often either dismiss or avoid discussions of *Sharī'a*.[3] More common, however, are continued tropes that interpret Islam and political theology exclusively in light of its most radical Islamists.[4]

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[1] Gil Andijar, *The Jew, the Arab: A History of the Enemy* (Stanford: Stanford University Press, 2003).

[2] For the textual and historical debates around "The Apology of al-Kindī," see P.S. van Koningsveled, "The Apology of Al-Kindī" in Theo L. Hettema and Arie van der Kooj, *Religious Polemics in Context: Papers Presented to the Second International Conference of the Leiden Institute for the Study of Religions* (Assen: Van Gorcum, 2004), 69- 84.

[3] See Miroslav Volf, *Allah: A Christian Response* (San Francisco: HarperOne, 2011), part III. I am sympathetic to Volf's claim, "Commitment to the properly understood love of God and neighbor makes deeply religious persons, precisely because they are deeply religious, into dedicated social pluralists. When Christians and Muslims commit themselves to practicing the dual command of love, they are not satisfying some private religious fancy; instead, they are actively fostering peaceful coexistence in our ineradicably pluralistic world, which is plagued by

The aim of this dissertation has been to reframe these acute points of diatribe and disagreement—the "neurological issues," to use David Burrell's powerful phrase—within a broader conversations about law, revelation, God's rule, and time between the times. In one sense, the dissertation is a constructive response to the insightful suggestions of Rowan Williams' controversial 2008 lecture on *Sharī'a*. To do this, I attempted to clear away some of the hostility, suspicion, recrimination, and disdain that have regularly marked Christian perceptions of Islam in general and *Sharī'a* more specifically. Central to this work was an attempt to listen and understand Islamic debates on their own terms and not solely through the categories of either Christianity or Western political theory. What was unearthed was a rich and complex discursive legal, scriptural, political, and theological conversation that shares significant concerns, although not language or doctrinal commitments, with Christian political theology.

Through such comparative analysis, I have argued that Christians and Muslims are discussing and debating the same central conundrums of divine revelation, human life, secularism, society, pluralism, and God's sovereignty. As Josef von Ess notes (albeit in terms of classical theology), "On the whole, taken in relation to Christianity, Islam did

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deep divisions. They are making possible the constructive collaboration of people of different faiths in the common public space for the common good." However, more theological and political arguments need to be mustered than he offers in order to defend such a position.

[4] One particularly egregious recent example is a page-long diatribe in Douglas Farrow's *Ascension Theology* (New York: Bloomsbury, 2001), 99-100. "It is true that from its inception Islam has been locked in combat with Christianity over the question of the unity of God, the reign of Christ, the form of justice and the fundamentals of human nature…It is true that its own curious mixture of particularism and universalism has helped to make Islam a fierce global competitor to Christianity and an ever-present threat to Jews, a fact that accounts for many wars and rumors of war. It is true that Islam—which purports to show all mankind how to submit to the law of God—has lent itself, in its suppression of the gospel, to cultures of secret or open lawlessness… Islam depends upon Christian precedent, yet it confesses a counter-revelation to that on which the church relies. For that reason it is theologically important to Christians in a way that other world religions are not,"

not treat new problems; it treated the same problems differently."[5] Islam and Christianity are not asking fundamentally different questions about law, reform, or politics. Rather, their answers vary because they are inevitably shaped and formed by distinct scriptures, traditions, and histories. Christians and Muslims alike both bear witness that God alone is the true sovereign and that there is none like God. These confessional claims emerge from central theological commitments to divine transcendence and God's creative and sustaining power of the world. Moreover, both confess that God has established or revealed God's rule over the ignorant or sinful world in and through events in history. For Muslims, the revelation of the will of God is expressed in and through the prophetic call to worship and submit to the one God, which is ultimately revealed in the Qur'ān and handed down through the prophethood of Muḥammad. For Christians, God's rule is established and revealed in the covenant with Abraham and Sarah, the giving of the law, the formation of Israel, the calling of the prophets, and definitively in the event of Jesus. The primary and original confessions of both traditions—for Christians that Jesus is Lord and for Muslims that there is no God but God—are testimonies to the divine rule. And yet, there remains something outstanding, a time between the time when God's rule has been definitely established and the eschatological future when God's rule of justice and peace will be all in all. It is within this ambiguous time that we debate the place of law, politics, power, revelation, justice, and the common good.

Christian engagement with the debates and complexity of Muslim understandings of *fiqh, Shari'a,* and political order presses political theology toward a mode of interfaith engagement marked by a theo-legal discursive contestation. The broader issues addressed

[5] Josef Van Ess, *The Flowering of Muslim Theology*, translated by Jane Marie Todd (Cambridge: Harvard University Press, 2006), 15.

in this dissertation—be they the relationship between religion and politics or between public law and the common good—are far from settled. Even amongst themselves, Christians cannot agree about the nature of justice or the limits and possibilities of public law. How much more so when engaging with the diversity of Islamic perspectives. Debate and disagreement, however, is constitutive of life in the *saeculum*. In fact, the very idea of law, both in its broader framework and particular judgments, is constantly under scrutiny and debate. New cases are brought forth, previous cases are appealed, and laws are debate and reframed. As William Connolly argues in his important work, *Pluralism,* a key fact of contemporary politics is the deep heterogeneous makeup of our societies. In such political arenas, appeals to uniformity and fixity in the name of religious or secular ethics are bound to fail. Instead, political and legal environments marked by multiple belongings and various ethical and religious identities have to be constantly negotiated and contested. In such an arena, Connolly argues that, "you work politically (and I might add legally) to negotiate a generous ethos of engagement between multiple faiths whose participants inevitably bring pieces and chunks of it with them into the public realm."[6] Simply put, the goal of a comparative political theology of law cannot be final settlement, but it can perhaps propose an improved framework for understanding, contestation, and joint action. My hope is that this dissertation might contribute in some small way to the process by which we learn to disagree well by nurturing the *adab al-ikhtilāf* (ethics or proper limits of disagreement).

Viewing the *saeculem* as contested time and not as empty space allows people and communities formed by theological claims to enter into the public arena more honestly in

[6] William Connolly, *Pluralism,* 31.

order to consider, debate, and argue over the future of our laws and societies. Moreover, recognizing that the *saeculum* is contested presses against too neat and ahistorical renderings of the emergence of the very idea of the secular. As Hussein Ali Agrama argues, the secular is not a settled category but a constant debate marked by power and contestation. "Normative conceptions of the secular and the religious" are not "distinct, transhistorical essences" but concepts that are "continually defined and redefined."[7] Christians and Muslims—as individuals and communities—are integral to this contextual and historical disputation over what our societies and laws will look like. This is not to say that Christians and Muslims should seek to establish the rule of God via political processes. The conceits of theocracy are as dangerous, if not more so, than the 'conceits of secularism.' And yet the claims that Christians and Muslims make about what the divine law requires clearly do intersect with public legislation. Care for the poor, concerns over social equality, and the just use of resources are all issues that cross the boundary between the 'religious' and the 'secular.'[8] If Muslim scholars press Christian theologians to think more clearly about the dangers of separating God's law from the concrete demands of political and social life, Christian theologians ask Muslims to reconsidering the dangers of too easily identifying God's with our understanding or

[7] Huessein Ali Agrama, *Questioning Secularism: Islam, Sovereignty, and the Rule of Law in Modern Egypt* (Chicago: University of Chicago Press, 2012), 29.

[8] Divine law, whether understood via *Sharī'a,* the Gospel, or *halakah,* resides both beneath and beyond the concerns of public law. The command to turn the other cheek or to submit in trust and prayer to God five times daily are beneath the concern of public law, and yet they are central to divine law. Moreover, claims of a belonging to a transnational and transhistorical community called church or *umma* always exceeds the purview of the state. Still, divine law—as only discerned in human communities—is only tentatively expressed in concrete instances of public law, even as its primary focus is beneath (e.g. prayer, zakat/tithing) and beyond (claims for human worth beyond national identity) the purview of the state. One can imagine the practical import of this project resulting in increased attention to shared moral-legal debates on themes such as the hegemony of the market, financial exploitation through usury or riba', Gitmo, drone strikes, the occupation of the Palestine, and religious freedom.

interpretation of it. The nature of the theo-legal account that I have developed allows for the primacy of theological identity and an affirmation of a morally grounded and communally oriented law that outstrips the claims of the state—but also recognizes that God's rule does not depend on explicit public recognition for its legitimacy. As such, I have offered one Christian theological response to William Connolly's question of how to "rewrite secularism to pursue an ethos of engagement among a plurality of controversial metaphysical perspectives, including, for starters, Christian and other monotheistic perspectives, secular thought, asecular, nontheistic perspectives?"[9]

This dissertation has argued that debates regarding Sharī'a, secularism, and law can be reframed beyond the constraints of political theologies of the Enlightenment by seeking deeper and more radically pluralistic perspectives, not by evading difference and disagreement but by attending closely to them. In conclusion, an Abrahamic political theology of law is primarily concerned with considering what are the appropriate aspirations and limits in our life together—a life that we know biblically, Qur'ānically, and sociologically to be marked by great religious and social diversity. This time is an oddly ambiguous one. For central to Christianity and Islam, albeit in different ways, is a recognition that we live in a time between when God's rule has been decisively revealed (be it in Christ or Qur'ān) and the future when the rule of God is fully established. During such a time, we bear witness to God's rule in a host of ways—in our preaching and prayer, in our acts of charity and hospitality, but also in and through public laws—in both their framing and applications. In such an ambiguous time, we are called not to usher in God's rule, but to struggle to give faithful witness to it by heeding our scriptural

[9] William E. Connolly, *Why I am Not a Secularist* (Minneapolis: University of Minnesota Press, 1999), 39.

injunctions to “love one another with mutual affection, [and to] outdo one another in showing honor” (Rom 12:10) and to “race toward good deeds” (Sura al-Mā’idah, 5:48).

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