

# Understanding Islamic Law (*Shari'a*)



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THIRD EDITION

**Raj Bhala**

BRENNEISEN DISTINGUISHED PROFESSOR  
THE UNIVERSITY OF KANSAS, SCHOOL OF LAW  
LAWRENCE, KANSAS

SENIOR ADVISOR  
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## ***Bismillah ir Raḥmān ir Raḥīm***

(In The Name of God, the Most Gracious, the Most Merciful)

*Christians and Muslims are brothers and sisters. We must therefore consider ourselves and conduct ourselves as such. . . . Together, we must say no to hatred, to revenge and to violence, particularly that violence which is perpetrated in the name of a religion or of God himself. God is peace, salām.*

His Holiness,  
Pope Francis (1936-),  
Bishop of Rome  
Address and Meeting with the Muslim Community  
Central Mosque  
Bangui, Central African Republic  
30 November 2015

*May the pure, brilliant sun of bodhicitta [enlightened mind]  
Dawn in each and every heart and mind  
Dispelling the darkness of suffering and confusion  
Unstoppably — until all are illumined and awakened.*

Lama Surya Das, *Awakening the Buddha Within: Tibetan Wisdom for the Western World*  
(New York, New York: Broadway Books, 1997)

*There is neither Hindu nor Mussulman, so whose path shall I follow? I shall follow God's path. God is neither Hindu nor Mussulman, and the path which I follow is God's.*

Guru Nanak (1469–1539), 1st of the 10 Sikh Gurus and founder of Sikhism, following an experience of enlightenment at age 30, *quoted in* W. OWEN COLE & PIARA SINGH GAMBHI, *THE SIKHS — THEIR RELIGIOUS PRACTICES AND BELIEFS* (London, England: Routledge, 1978)



To the trinity of great women in my life:

My patient mother, *Barbara Mae Mallory* (1937–2003), who in the 1960s introduced me to the beauty of Islam through Islamic arts and calligraphy exhibited at the New York Metropolitan Museum, and to the spiritualism of Islam from the poetry of Maulana Jalâluddin Rumi (1207–1273), whom she read even on her last day.

My dear wife, *Kara Tan Bhala*, who grew up in a Muslim country, Malaysia, in a Buddhist Chinese family and attended Catholic Convent School, witnessed in many countries the evils of ignorance and extremism, and rightly pushed me to author this Textbook out of her compassion for people, regardless of their faith, so they may be better educated.

Our little gift from God (Allâh), our daughter, *Shera Tan Bhala*, who has travelled with us to no fewer than 33 countries, many of them Islamic, and helped us see them better through her loving eyes, generous heart, and empathetic spirit, and for whom I pray this Textbook makes her world more peaceful than mine.





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# About the Author

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Born in Toronto, Raj is a dual Canadian-U.S. citizen. Raj holds the inaugural Leo S. Brenneisen Distinguished Professorship (2017-present) at the University of Kansas School of Law, before which he held the Rice Distinguished Professorship (2003–2017). Both are university-level chairs, the highest scholarly accolade in Kansas. He has served as KU's Associate Dean for International and Comparative Law (2011–2017). *Ingram's Business Magazine* designated him as one of "50 Kansans You Should Know" (<https://ingrams.com/article/50-kansas-you-should-know-the-class-of-2020/>).

Raj practiced at the Federal Reserve Bank of New York, where he twice won the President's Award for Excellence, thanks to his service as a delegate to the United Nations Conference on International Trade Law (UNCITRAL). He is Senior Advisor to Dentons U.S. LLP, the world's largest law firm, focusing on international and comparative legal matters. He is a member of the Speaker Program of the U.S. Department of State.

A Harvard Law School graduate (*Cum Laude*), he completed Master's degrees at LSE and Oxford as a Marshall Scholar, and an undergraduate degree at Duke (*Summa Cum Laude, Phi Beta Kappa*) as an Angier B. Duke Scholar.

Raj is author of one of the world's leading references in international trade law, the multi-volume *International Trade Law: A Comprehensive Textbook*, and the first treatise on GATT in nearly 50 years, *Modern GATT Law*. He is the first non-Muslim American scholar to write a textbook on Islamic Law, *Understanding Islamic Law (Shari'a)*. His newest books are on U.S.-China relations, *Trade War: Causes, Conduct, and Consequences of Sino-American Confrontation*, and the Trans Pacific Partnership, *TPP Objectively: Legal, Economic, and National Security Dimensions of CPTPP*. His earlier work, *Trade, Development, and Social Justice*, applies Catholic social theory to GATT. His current book project is *Principles of Law, Literature, and Rhetoric*. From January 2017–October 2022, "On Point" was his regular column on International Law and Economics, which Bloomberg-Quint (India) published (<https://www.bloombergquint.com/author/92714/raj-bhala>), and which was distributed to approximately 6.2 million readers worldwide (<http://www.bloombergquint.com/>). Media worldwide frequently call upon Raj.

Bhala serves on the Executive Board of Directors of the Carriage Club of Kansas City, and the Alumni Association Board of University School of Milwaukee (his alma mater). He loves fitness cross-training, has finished 115 marathons, including the "Big Five" of the "World's Majors" (Boston twice, New York twice, Chicago twice, Berlin, and London), and enthusiastically studies Shakespeare and French. He is blessed to have studied, worked, and/or played in 50 countries.



# Preface to the Third Edition

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No background in law, religion, history, or foreign languages is required to read *Understanding Islamic Law (Shari'ā)*. Only a dedicated mind and open heart are needed. This textbook is for two audiences: law students and legal practitioners. It is a learning tool for future lawyers and reference for current ones. But, it cannot possibly resolve all issues about Islamic Law. It is a prelude for further study and contemplation. Completing the first edition in 2011 after nearly three years, second edition in 2016 after another four years, and third edition through five more years, is like finishing a long run. It leaves me with the certitude I have more to learn, just as I seek to improve as a runner.

This Textbook also is eminently suitable for students of other disciplines, and non-lawyers, who are interested in or need to know about the subject. Along with my law students, many non-law graduate students and professionals in other fields have completed successfully the Islamic Law (*Shari'ā*) course at the University of Kansas School of Law (KU Law School) since I first offered it in the fall 2003 semester. That also is true of the honorable men and women, for whom I have enormous respect, and who I was humbled to serve, in the United States (U.S.) Special Operations Forces (SOF). They began taking the course in the fall 2010 semester at the Command and General Staff College (CGSC) at Fort Leavenworth, Kansas, and did so through fall 2019. Thanks to them, this Textbook is better. Indeed, to all who have taken the class, I owe much. Hailing from Bangladesh, Canada, China, Egypt, India, Iran, Korea, Pakistan, Saudi Arabia, Syria, Turkey, United Arab Emirates (UAE), and from cities, suburbs, or farms around Kansas and across America, the “students” taught the teacher about the subject, and constructively criticized earlier iterations of this book.

It sounds not only striking, but also supercilious, to state that *Understanding Islamic Law (Shari'ā)* is the first comprehensive textbook and treatise on the topic ever written for the English-speaking market by an American law professor. The book is the first work to incorporate systematically comparisons and contrasts with American law and Catholic Christian teaching.<sup>1</sup> And, it is the first such work to address frankly controversial matters from abortion to Wall Street, paying particular attention to women’s issues. There is no genius on the part of the author, who is nothing more than a struggling student of the

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1. For an overview of the American legal system, see Gerald Paul McAlinn, Dan Rosen & John P. Stern, *An Introduction to American Law* (Durham, North Carolina: Carolina Academic Press, 2nd ed., 2010). For brief discussions of Catholicism, by the Chaplain to Cambridge University and a Professor of Philosophy at Boston College, respectively, see Alban McCoy, *An Intelligent Person’s Guide to Catholicism* (London, England: Continuum, 2005) and Peter Kreeft, *Fundamentals of the Faith: Essays in Christian Apologetics* (San Francisco, California: Ignatius Press, 1988). For a monumental work on the religion and history of Christianity, see Diarmaid MacCulloch, *Christianity: The First Three Thousand Years* (New York, New York: Viking, 2009).

*Shari'a*. Rather, these facts reflect the under-developed state of Islamic Law in American legal education and practice.

True, Dr. Majid Khadduri (1909–2007) and Dr. Herbert J. Liebesny (1911–1985), edited a collection of 15 essays, *Law in the Middle East*, published by the Middle East Institute in Washington, D.C. in 1955. The Foreword to that book was written by U.S. Supreme Court Justice Robert H. Jackson, who observed:

Every matured legal system records a store of experience with the problems of maintaining an ordered society among men. The opinion that the *similarities and contrasts found in the teachings of different legal systems are among the best sources for illuminating one's understanding of his own law and suggesting means of its improvement has won increasing acceptance in the United States.*<sup>2</sup>

Perhaps not enough acceptance in the post-9/11 world, as Justice Jackson anticipated:

Though our debt to Arabic culture is exhibited in the customary enumeration of our astonishing output of law reports, *we long held the impression that the Muslim world had nothing to contribute to what was inside the covers. Islamic Law was regarded as of speculative rather than of practical interest, and received attention from a relatively few specialists and scholars.*<sup>3</sup>

This specialization was not for lack of effort from great scholars, long before the terrorist atrocities of September 11, 2001, to (for lack of a better word) “mainstream” their work.

For instance, in 1975, Dr. Liebesny produced *The Law of the Near & Middle East — Readings, Cases, & Materials*, published by The State University of New York Press, which compiled materials from a graduate seminar he taught at The George Washington University. In 1981, The George Washington University published the 4th edition of his casebook, *Foreign Legal Systems: A Comparative Analysis*, which first appeared in 1981, and which marvelously covers Roman, French, German, and Islamic Law. Nevertheless, and despite more books appearing on a variety of Islamic topics in the intervening decades, no full-length, English-language treatment of Muslim law, religion, and history, covering not just the Arab world (in which over 300 million Muslims live), but also East Asia, Africa, and other regions (where the other over 1 billion Muslims live), appeared.

That a major text and reference work did not emerge after the Iran Hostage Crisis, which ran for 444 days starting on 4 November 1979, is shocking. After all, that debacle was a rude awakening involving legal issues and *Shi'ite* Islam. As Justice Jackson observed, discourse on Islamic Law was the province a small group of faculty (many of whom were Muslim) and a niche area of practice for precious few specialist practitioners. Since then, the circle has expanded only modestly, even though the group never was a cabal. To the contrary, *Shari'a* experts are delighted and pleasantly welcome newcomers to the field.

Where, then, does a newcomer (like me) begin? There is no single or correct answer. My work stands (humbly) not only on the books by Dr. Liebesny, but also those authored by many other wonderful teachers, especially (in chronological order):

- Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (London, England: Oxford University Press 1950).
- H.A.R. Gibb, *Mohammedanism* (Oxford: Oxford University Press, 1953).

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2. Justice Robert H. Jackson, *Foreword*, LAW IN THE MIDDLE EAST, VOLUME I: ORIGIN AND DEVELOPMENT OF ISLAMIC LAW v-vi (Majid Khadduri & Herbert J. Liebesny, eds., Washington, D.C.: The Middle East Institute, 1955) (emphasis added). [Hereinafter, Justice Jackson *Foreword*.]

3. Justice Jackson *Foreword* (emphasis added).



- Richard N. Frye, ed., *Islam and the West — Proceedings of the Harvard Summer School Conference on the Middle East, July 25–27, 1955* (The Hague, Netherlands: Mouton & Co., 1956).
- N.J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964).
- Kenneth Cragg & R. Marston Speight, *Islam from Within: Anthology of a Religion* (Belmont, California: Wadsworth Publishing Company, 1980).
- Joseph Schacht, *An Introduction to Islamic Law* (Oxford, England: Clarendon Paperbacks, 1982).

I appreciate such works have been criticized as suffering from the biases of Orientalism, as M. Mustafa Al-Azami does in his *On Schacht's Origins of Muhammadan Jurisprudence* (Oxford, England: Oxford Center for Islamic Studies, 1996). Indeed, I am indeed a fan of the paradigm-shifting work of Edward W. Said, *Orientalism* (New York, New York: Pantheon Books, 1978), and of Post-Colonial Literary Theory. Yet, a student (me) must start somewhere, and build from there.

How can Islamic Law be mainstreamed in the American legal curriculum? The problem has been a lack of attention to modernizing the International and Comparative Law curriculum and practice in the U.S. in the wake of paradigmatic shifts around the globe. That is, Islam and the *Shari'a* have not been emphasized in most such modernization plans. Perhaps we in the American legal academy have been too complacent in our familiar Euro-centrism. Perhaps now we are too dazzled by China, and forget the Chinese Communist Party (CCP) has an uneasy time in its rule over a vast Muslim population, the Uyghurs, in the Far West of the People's Republic — and has treated them, by all credible accounts of multiple governments and acclaimed human rights organizations, genocidally. Perhaps we exalt too much the prestigiously placed law review article as a precious mode of scholarship over the old-fashioned book that is useful to students and practitioners. We use student law review editors as means to an end, especially when we leverage one journal over another. In so doing, we miss the opportunity to orient ourselves to be instruments of service through the patient preparation of teaching materials.

To be sure, Islamic legal scholarship is as old as Islam. Hence, there are innumerable volumes on the *Shari'a* — in Arabic, written by Muslims, with a Muslim audience in mind. There also are countless books in English, many written by Muslims, on the religion and history of Islam, and on specialty Islamic fields, such as Family Law, Inheritance Law, and International Law. Some such books are written originally in English. Others are in translation from Arabic, French, or German. With a few notable exceptions, many of which are cited herein, the authors tend not to be foreign lawyers or law professors. None of these books is oriented to the needs of the contemporary English-speaking legal classroom or demands of modern legal practice. Likewise, within the American legal academy and among practitioners, fine law review articles and books have been written on focused Islamic legal topics. But, the bottom-line is where can a newcomer, an average English-speaking law student or legal practitioner, learn about the breadth and depth of Islamic Law?

There certainly is nothing wrong with a book on Islamic Law written by a Muslim. But, it is not the same as one written by a non-Muslim. In first case, the author is writing from inside the system to which she adheres. It is difficult to see outside the paradigm, even if the author creatively and courageously advocates certain reforms against centuries of tradition and understanding. In the second case, the author is doing her best to empathize, but still is explaining and assessing the paradigm from the outside looking in.

Her instincts may be less honed, her appreciation of nuances less sophisticated, than her Muslim counterpart. But, in contrast to her Muslim counterpart, perhaps she can view the paradigm more systemically and systematically, and ask different questions. One type of work is not better than the other. Both kinds of contributions are necessary for a full understanding and appraisal. Writing this book puts me in both positions. I am a non-Muslim writing about the *Shari'ā*. I am an American lawyer and a Catholic comparing the subject to American law and Catholicism.

In the present age of globalization, such is the status of many law students and young lawyers in America. They — or shall I say, we? — are blended and mixed in ways scarcely imaginable when the last Kansan to become President, Dwight D. Eisenhower (1890–1969), occupied the White House. We are on the inside of some paradigms angling for a more holistic view, and on the outside of other systems yearning to get in. This problem is a good one to have. It suggests we are unwilling and even unable to be limited and defined by traditional boundaries. That spirit of adventure, along with a dedicated mind and open heart, surely ought to lead to greater peace, tolerance, and understanding.

In keeping with the present age and contemporary Kansas, *Understanding Islamic Law (Shari'ā)* is the product of a decidedly mixed author: an imperfect Roman Catholic, who is proud of his half-Indian (Punjabi), half-Canadian (Scottish) heritage. These influences, plus the impressions of my Malaysian-Chinese wife, our blessedly mixed daughter, and our travels around the world, resonate throughout this Textbook. I endeavor to do so transparently, as teaching is not supposed to be veiled indoctrination.

So, I readily confess a special exertion in respect of the influence of my faith. When drawing comparisons and contrasts to Catholic Christianity, I rely on the three recognized sources of Catholicism: Sacred Scripture (*i.e.*, the Bible), the Magisterium (*i.e.*, the teachings of the Church through the Popes, Cardinals, Bishops, Priests, and Nuns), and Sacred Tradition (*i.e.*, the practices of the Church, many of which are from its earliest days). The *Catechism of the Catholic Church* provides a single-volume summary of the substance of all three sources.<sup>4</sup>

Notably, in writing *Understanding Islamic Law (Shari'ā)*, I am mindful of two quotes from such sources. First, there is the 2000 document, *Dominus Iesus*. In this Declaration, Pope John Paul II (1920–2005, Pope, 1978–2005) states, “to consider the Church as one way of salvation alongside those constituted by the other religions” is “contrary to the faith.” Likewise, his successor, Pope Benedict XVI (1927–) warns repeatedly that one danger of relativism is the trivialization of different religions by equating them all. In turn, one consequence is false ecumenism and inauthentic inter-faith dialogue.

Second, in respect of Muslims, the Church teaches in the document from the Second Vatican Council, *Lumen Gentium*, that:

The plan of salvation also includes those who acknowledge the Creator, *in the first place amongst whom are the Muslims*; these profess to hold the faith of Abraham, and together with us they adore the one merciful God, mankind’s judge on the last day.<sup>5</sup>

*Dominus Iesus* is (*inter alia*) an admonition against relativism, against trivializing Catholicism by equating it with, or subordinating it to, other paths to salvation. *Lumen Gentium*

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4. See CATECHISM OF THE CATHOLIC CHURCH (United States Catholic Conference, Inc., Washington, D.C.: Libreria Editrice Vaticana, 2nd ed. 1997).

5. *Lumen Gentium*, ¶16, quoted in CATECHISM, *supra*, at ¶841 (emphasis added).

is (*inter alia*) an admonition against pride, against arrogance. It is the province of God, not man, to judge fitness for salvation.

Until then, there are many joys from writing this book to cherish: a greater admiration for Islam and the *Shari'ah*, a better appreciation of the gift of the Catholic faith, and a clearer understanding of the common points, amidst undeniable differences, shared by Muslims and Christians, and Muslim and Christian lawyers, in our common human dignity derived from God.

For now, *Understanding Islamic Law (Shari'ah)* spells the beginning of the end of one conventional excuse for not teaching a course in Islamic Law, namely, there are no readily available, user-friendly teaching materials. In time, there may well be more choices than this volume, and so there should be. Let 100 flowers bloom, particularly in a field as rich and elegant as the *Shari'ah*.

On a final note, there also is no excuse for not having fun in reading this Textbook and taking an Islamic Law course. An abiding concern of mine is the mental and physical health of my students. Consider these grim facts revealed in 2015:<sup>6</sup>

- (1) American law students enter law school with the same rate of depression as the general public, namely, 8%. By the spring semester of their 1L year, 32% of them are clinically depressed. By the time they graduate from law school, 40% of them are clinically depressed. (The figure drops to 17% two years after graduation, but that still is double the average.)
- (2) Suicide is the third leading cause of death among lawyers in the U.S. and Canada. It accounts for 10.8% of their deaths. Suicide among lawyers is 6 times the suicide rate in the general population (69.3 per 100,000, versus 10–14 per 100,000).

More recent data, from a 2018–2019 survey of depression, anxiety, and stress among First-Year students all ABA-accredited law schools, confirm and amplify these findings:<sup>7</sup>

- (1) 57% of 1Ls report some form of depression, with 10% in the “severe,” and 15% in the “extremely severe,” category. These figures far exceed those of the general U.S. population: annually, 16% of Americans qualify under the clinical standards for depression.
- (2) When Second- and Third-Year (2L and 3L) student survey results are aggregated with those of 1Ls, depression is significantly higher at so-called “Tier One” schools as ranked by *U.S. News and World Report*. Law students at Tier One law schools also felt less supported, had a lower perception of learning, lower academic self-perception, and lower social self-perception, than those at lower Tier institutions.
- (3) 10% of 1Ls say they suffer from “severe” anxiety, and 26% of them say they suffer from “extremely severe” anxiety. Here, too, these figures well exceed results

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6. See Brian S. Clarke, *Coming Out in the Classroom: Law Professors, Law Students and Depression*, 64 JOURNAL OF LEGAL EDUCATION 403, 405 (February 2015).

7. See Amanda Carey, J.D., Ed.D., *The Fog of Blackacre: Exploring Depression, Anxiety, and Stress of the American Law Student*, Doctoral Dissertation, Northern Illinois University (Executive Summary) (2020), ProQuest Dissertation Publications, <https://search.proquest.com/openview/9e6c077b911ea455e784f082852f5557/1?pq-origsite=gscholar&cbl=18750&diss=y> (also observing a 2014 Yale Mental Health Alliance study indicated as many as 70% of law school students experience mental health distress, and the WHO reported over 300 million people globally suffer from depression).

from the general U.S. population: 18% suffer from some form of anxiety each year.

- (4) 20% of 1Ls state they are under “severe” stress, and 10% under “extremely severe” stress. The four most significant sources of stress are: ineffective teaching (*e.g.*, heavy workloads, use of the Socratic method, lack of feedback from faculty before exams, disrespectful faculty, that is, professors who are nasty in class, and a need to self-educate owing to a lack of teaching); competition and isolation (*i.e.*, competition among students that results in a sense of alienation); ineffective assessments (*e.g.*, application of a curve, use of class rank, and final exams); and, institutional construction of success and failure (*i.e.*, how a law school defines success and failure for students and attorneys, and the link between its definitions and grades and class rank).

Notably, all these figures are from surveys before the COVID-19 pandemic, which assuredly caused greater depression, anxiety, and stress.

Economically, the grim facts bespeak a terrible waste of human capital. Morally, it is tragic that students pay good money (plus incur an opportunity cost) for the salaries of law professors, yet then go to law school only to become depressed (or worse), and thereafter join a profession that puts them at disproportionate risk of suicide. Morally, law professors who, through their acts or omissions, cause or contribute to the problem need to rethink how they do business. Regrettably, nowhere in the process of faculty hiring, promotion, or tenure is account taken of the mental health of teachers; rather, dysfunctions typically are dealt with by cover up, excuse, or neglect. Faculty can avoid faculty, but students cannot avoid faculty. So, students pay the price.

Thanks to the COVID-19 pandemic, the figures have worsened:

Of the coronavirus’s many side effects, perhaps the least appreciated are psychological. Those who’ve had a bad case and survived, like people who’ve been in war or accidents, may suffer post-traumatic stress for years. And even people in the as-yet-healthy majority are hurting. Young adults, in particular, are getting more depressed and anxious as SARS-CoV-2 uproots whatever budding life plans they’d been nursing.

It’s long been clear that Covid-19, like any major disaster, is causing an increase in mental-health disorders and their accompanying evils. Those range from alcoholism and drug addiction to wife beating and child abuse. In the Americas, the world’s most afflicted region with hotspots from the U.S. to Brazil, this psycho-social crisis has become its own epidemic. . . .

In the U.S., the national rate of anxiety tripled in the second quarter [April-June 2020] compared to the same period in 2019 (from 8.1% to 25.5%), and depression almost quadrupled (from 6.5% to 24.3%). In Britain, which has also had a severe outbreak and a long lockdown, depression has roughly doubled, from 9.7% of adults before the pandemic to 19.2% in June [2020].

. . .

[O]lder adults had already built their lives before the pandemic — with routines, structures, careers and relationships to fall back on. The young had not, and were just embarking on that adventure when Covid-19 struck. And what a mess it has made of all those hopes. Even in good times, adolescents and young adults aren’t exactly paragons of emotional stability. Many are unhappy with their own bodies or confused about their professional paths, their sexual options, and their friendships.

But in 2020 all these bugbears have grown. . . .

[R]eplacing in-person, tactile and pheromonal interactions with screens and apps just doesn't cut it. Biologically, we're still like other primates, who need to groom and be groomed to lower cortisol levels and feel well. One result, especially for the hormonal young, is isolation and loneliness, which can lead to listlessness and despair: in short, depression.<sup>8</sup>

Fortunately, an Australian Nurse, Bronnie Ware, offers wise counsel in her book, *The Top Five Regrets of the Dying* (2013).<sup>9</sup>

Having served for many years in palliative care for patients in the last 12 weeks of their lives, Ms. Ware explains these patients gain clarity of vision at the end of their lives. Their top five regrets are:

- (1) I wish I had had the courage to live a life true to myself, not the life others expected of me.
- (2) I wish I had not worked so hard.
- (3) I wish I had had the courage to express my feelings.
- (4) I wish I had stayed in touch with my friends.
- (5) I wish I had let myself be happier.

The inference is obvious.

Before our last 12 weeks, we can learn from the wisdom of Ms. Ware's patients. We need not wait until the end of life to be true to ourselves, to realize we work too hard, to express our feelings courageously, to stay in touch with our friends, and to let ourselves be happier. If our present position leaves our dreams unfulfilled (*e.g.*, working for MNCs instead of LDCs), keeps us on a treadmill (*e.g.*, billing over 2,000 hours annually), suppresses our true capabilities (*e.g.*, does not involve client contact or field work), corrodes our friendships (*e.g.*, by leaving no time for spontaneous gatherings at the local pub), and is merely satisfactory (*e.g.*, because it is a familiar routine), then we should move on, perhaps setting up our own enterprise. Our lives are finite.

Raj Bhala  
June 2023  
Kansas City, Missouri

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8. Andreas Kluth, *An Epidemic of Depression and Anxiety Among Young Adults*, BLOOMBERG QUINT (Mumbai), 22 August 2020, [www.bloombergquint.com/gadfly/coronavirus-millennials-are-suffering-an-epidemic-of-depression](http://www.bloombergquint.com/gadfly/coronavirus-millennials-are-suffering-an-epidemic-of-depression).

9. See Susie Steiner, *Top Five Regrets of the Dying*, THE GUARDIAN, 1 February 2013, [www.guardian.co.uk/lifeandstyle/2012/feb/01/top-five-regrets-of-the-dying/print](http://www.guardian.co.uk/lifeandstyle/2012/feb/01/top-five-regrets-of-the-dying/print).



# Notes on Manuscript Preparation

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- *Use of “Holy” and “PBUH”*

It is respectful to refer to the sacred text of Islam, the Qurʾān, as the “Holy Qurʾān,” somewhat akin to the phraseology “Holy Bible.” Indeed, it is respectful to refer to insert “Holy” before each reference to the “Qurʾān.”

Likewise, it is respectful to use the phrase “Peace Be Upon Him,” or “PBUH,” sometimes put in parentheses, after mentioning the name of the Prophet Muhammad (570/571–632 A.D.). Thus, traditional constructions would be “The Prophet (PBUH)” or “Muhammad, Peace Be Upon Him.” Similarly, following the name of special persons associated with Muhammad, such his Companions (*Sahābah*), a phrase after the name of a male Companion, like “May Allāh Be Pleased with Him” or “May the Blessing of Allāh Be Upon Him” (*Radia Allāhu ʿAnhu*) is respectful. And, a phrase like “May Allāh Be Pleased With Her” or “May the Blessing of Allāh Be Upon Her” (*Radia Allāhu ʿAnhā*) after invoking the name of his female Companions or his wives, particularly, Khadyja (*circa* 555–619) and ʿĀisha (614–678), is respectful.<sup>1</sup>

The title Qurʾān and names “Prophet” and “Muhammad” are used a large number of times in *Understanding Islamic Law (Sharīʿa)*. That also is true of the *Sahābah*, Khadyja, and ʿĀisha. I respect the conventions. Thus, I mean to say “Holy Qurʾān” and “PBUH” in every instance, and to include an expression of honor for the *Sahābah* and wives. Chapter titles manifest this respect explicitly. However, to repeat the prefix “Holy,” suffix “PBUH,” or phrase of honor throughout the text of every Chapter would consume space that may be dedicated to other substantive matters. The reader is sufficiently sensitive and sensible to appreciate my respect for the Qurʾān, Prophet, Companions, and wives, and mentally fill in the appropriate prefix or suffix. In other words, hereinafter all references to the Qurʾān implicitly mean “Holy Qurʾān,” all references to Muhammad implicitly include “PBUH,” and all references to the *Sahābah* and wives implicitly are followed by the customary phrase of honor.

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1. It is useful to remark that in delivering oral presentations, it is respectful to begin as follows:

*Bismillah ir Rahmān ir Rahīm*

(which translates as “In the Name of God, the Most Gracious, the Most Compassionate”). Then, insert the names and/or titles of special guests, such as:

Your Royal Highnesses, Your Reverences, Your Excellences, Ladies and Gentlemen

And then say:

*Al salām Alaikum, wa rahhmatu Allāh, wa Barakātuh.*

This sentence means:

Peace be upon you, May God’s mercy, and blessings, be with you.

- *Use of Diacritical Signs*

Notwithstanding the matter of Arabic, I spice the text of *Understanding Islamic Law* (*Shari'ā*) heavily with Arabic terms, as well as quotations from the Qur'an, *hadith*, and Muslim scholars. I do not render Arabic terms into simpler, bowdlerized English words, such as "Koran." Rather, two British scholars of Sikhism, W. Owen Cole and Piara Singh Sambhi, inspire me:

We have decided to retain Sikh words as much as possible in the hope that readers will make the attempt to *enter the world of Sikhism rather than try to bring it into their own.*<sup>2</sup>

Likewise, to help the law student or lawyer enter the Islamic legal mind, I endeavor to be faithful to Arabic terms. I use diacritical marks on letters of Arabic terms to assist in their pronunciation and, moreover, out of respect for that beautiful language.

The diacritics, and all Arabic terms, are explained in the *Glossary* in the final Part of this book. Also to make the text user-friendly, I put every Arabic term in italics, with five exceptions:

- (1) Allāh
- (2) Qur'ān
- (3) Islam
- (4) Muslim
- (5) Proper nouns, specifically, names of persons (*e.g.*, Muhammad) or places (*e.g.*, Mecca).

Further, like a foreign language teacher, I repeat certain key terms so they become second nature and are incorporated into normal patterns of thought and discussion.

There is, of course, a considerable degree of variation in the English spelling of Arabic terms, as the title of the sacred text of Islam well illustrates. The distinctions present a problem not so much when I write a passage, but rather when I quote from another source with a spelling different from mine. Typically, my choice is to leave the different spelling in the quotation untouched rather than harmonize it with my own. But, the third option — to alter mine in conformity with the quote — is one I sometimes select. Likewise, I exercise this option with respect to diacritic marks, inserting them where they are missing from the original source. I suspect I will not satisfy the reader who demands no change whatsoever to the diacritics (or lack thereof) in a text, or prefers perfect consistency, when I report that my solution is confessedly occasionally interventionist and *ad hoc*.

So, with apologies, on a case-by-case basis, I determine whether it seems in the best interests of a smooth and edifying text to leave original Arabic word spellings in the quote, or to intrude and "correct" them for consistency and pronunciation ease. Certainly, I correct minor typographical and punctuation errors in any quote. But, of course, in no way do I dare ever alter the substance of a quotation.

- *Key Primary Sources*

As for quotations from the Qur'an, I use the following English language hardcover edition: *THE QUR'AN — A New Translation by M.A.S. Abdel Haleem* (Oxford, England: Oxford University Press, 2004). Technically, any version of the Islamic holy scripture

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2. W. OWEN COLE & PIARA SINGH SAMBHI, *THE SIKHS THEIR RELIGIOUS BELIEFS AND PRACTICES* xiv (New York, New York: Routledge, 1978) (emphasis added).



other than the Arabic is considered not authentic, but rather a translation, which necessarily involves interpretative judgments by the translator. The first English language translation did not appear until 1649, roughly 1,000 years after the Prophet Muhammad received revelations from God (Allāh). The edition I use happens to be widely available, in both hardbound and paperback form, and received strong review in no less a publication than *The Economist*.<sup>3</sup>

I confess a bias in favor of this translator, Professor Haleem, of the School of Oriental and African Studies (SOAS) of the University of London. He “argues it is time that English become one of the familiar languages of Islam, like Urdu.”<sup>4</sup> Unless and until Islamic legal materials are available widely in English, and the Qurʾān itself is seen as authentic in vernacular languages, like the Bible and other sacred texts, the claim of Islam to universality remains weaker than it might be. In any event, by no means is it the only esteemed English-language edition. One particularly beautiful one, approved by Cairo’s renowned Al Ahzar University, is *An Interpretation of the Qurʾān*.<sup>5</sup> Readers may enjoy examining others to compare and contrast decisions on diction made by the translators.

For quotations of a *hadīth*, as far as possible I obtain them directly from either or both of the following sources:

- (1) THE TRANSLATION OF THE MEANINGS OF SAHIH AL-BUKHARI, ARABIC-ENGLISH by Dr. Muhammad Muhsin Khan (Islamic University, Medina, Kingdom of Saudi Arabia: Dar Ahya Us-Sunnah, Al Nabawiya, March 1978), 8 volumes.
- (2) SAHIH MUSLIM — BEING TRADITIONS OF THE SAYINGS AND DOINGS OF THE PROPHET MUHAMMAD AS NARRATED BY HIS COMPANIONS AND COMPILED UNDER THE TITLE AL-JAMʾ-US-SAHIH BY IMAM MUSLIM, RENDERED INTO ENGLISH BY ABDUL HAMĪD SIDDIQĪ, WITH EXPLANATORY NOTES AND BRIEF BIOGRAPHICAL SKETCHES OF MAJOR NARRATORS, CORRECTED AND REVISED BY DR. HASSAN (Lahore, Pakistan: Sh. Muhammad Ashraf Booksellers and Exporters, 1990), 8 volumes.

For the convenience of the reader, and in homage to the formidable work of the compilers, I introduce quotations from these sources by referring to “*Imām* Bukhari” and “*Imām* Muslim,” respectively.

Islamic religious and legal scholars regard as definitive any *hadīth* found in either, or better yet, both compilations. Fortunately, beautiful hard-bound multi-volume sets of *Bukhari* and *Muslim* are easily available in English. In certain instances, I take the liberty of correcting what are obvious, minor typographical errors apparently introduced by the Pakistani or other foreign printer, and left uncorrected by the editor or editors. Examples

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3. See *Found in Translation*, THE ECONOMIST, 22 May 2004, at 77 (stating the translator “has managed to transform the complex grammar and structure of the holy book into a form of modern English which reads easily and flows smoothly without taking liberties with the inviolable text”). [Hereinafter, *Found in Translation*.]

For another version, which contains helpful commentary on each verse (*ayah*) plus interpretative essays, see *The Study Quran: A New Translation and Commentary* (New York, New York: Harper Collins, 2015, Seyyed Hossein Nasr, Caner Karacay Dagli, Maria Massi Dakake, Joseph E.B. Lumbard, and Mohammed Rustom, trans.).

4. *Found in Translation*, *supra*.

5. See AN INTERPRETATION OF THE QURʾAN ENGLISH TRANSLATION OF THE MEANINGS, A BILINGUAL EDITION (New York, New York: New York University Press, 2002, Majid Fakhry, trans.).

are corrections of a missing or wrong letter or punctuation mark. In no way do these corrections alter the substantive text or meaning of a *hadīth*. On occasion, I find it helpful to quote from a *hadīth* not recounted by *Imāms* Bukhari or Muslim. In such instances, I take them, with credit, from a secondary source.

Finally, all translations from the Bible are taken from *The Catholic Study Bible*. This edition, published by Oxford University Press (New York, New York) in 1990, is the New American Bible translation. It is highly appealing because of its prodigious yet accessible supplementary information and analysis. It contains a Readers Guide to every Book in the Old and New Testament, articles on key topics such as Biblical Texts and their Background, Biblical Archaeology, and the Geography of the Holy Land. It also has introductory notes, footnotes, and maps.

- *Citations*

Each Chapter of this book is self-contained, though the topics are all related. Thus, footnotes are numbered consecutively in each Chapter. To some degree, the *Bluebook* system of citation familiar to American lawyers is used. However, that system conveys insufficient information about some sources — for example, the name and location of a book publisher — which may be helpful to the reader seeking to access those sources. Moreover, that system uses abbreviations that may be unfamiliar to foreign readers. Thus, I provide as full information as possible about each source, even if not called for by the *Bluebook*.

# Acknowledgments

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We cannot do great things on this Earth, only small things with great love.

Saint Mother Teresa of Calcutta (1910–1997),  
Missionaries of Charity

I did nothing great in writing this book. Rather, I had great help from my Research Assistants (RAs). We all collaborated with great love for our endeavor, hoping our respective small contributions would help make the world a better place. So, “blessed” hardly is too strong a word to describe how I feel about my RAs and their substantive contributions to this textbook. Without the help of this elite but understated team, the result would have been much diminished.

- **Ahmed D. Alyousef**

S.J.D. Candidate, University of Kansas School of Law. J.D., University of Kansas School of Law (Certificate in International Trade and Finance, and Certificate in Business and Commercial Law), 2009. LL.M., University of Missouri-Kansas City (UMKC) School of Law, 2006. LL.B., Imām Mohammed bin Saud University School of *Shari’a* (Riyadh, Kingdom of Saudi Arabia), 2000. Ahmed is a Professor of Law in Saudi Arabia.

Ahmed, a native of Quassim, which is 300 kilometers north of Riyadh, and of Ras Al Khaimah, United Arab Emirates (UAE), is fluent in Arabic and English, and works on international business matters, including Islamic insurance (*takaful*). “*Ras Al Khaimah*” literally means the “top of the tent,” which is appropriate as he is a leader at Kansas in both the International Law Society and Islamic Law Students Association. Ahmed’s research memo on Islamic partnerships is the basis for the Chapters on Business Associations. His memos on risk (*gharar*), interest (*ribā*), and Islamic insurance are the bases for portions of the Chapters on those topics. His memos on the life of the Prophet Muhammad are the basis for portions of the Chapters on the Prophet. His personal pilgrimage figures into the account of the *Hajj* in the Chapter on the Five Pillars.

- **Adam Casner**

J.D., University of Kansas (Certificate in International Trade and Finance), 2010. B.A. (Italian, Economics Minor), University of Texas, 2005. Adam practices Social Security Disability Law at The Casner Law Firm PLLC, which he founded in Cedar Park, Texas.

Before coming to KU Law School, Adam worked in business development for a mobile radiology company. He has lived in Rome, Italy and Limerick, Ireland, and speaks Italian and Spanish. While in Law School, he did litigation work in Kansas

City. Adam's research memos on the Four-Rightly Guided Caliphs (*Rashidun*) and Islamic Law of War are the bases for the Chapters on those topics.

- **Elena Delkhah**

J.D. University of Kansas (Certificate in International Trade and Finance), 2011. B.B.A., Business Administration (Concentration in International Business), University of Kansas, 2006. Elena works in international business law in New York City.

Elena was born and raised in Tehran, Iran, and migrated to Lawrence, Kansas in 1987. She speaks *Farsi*, and travels back to Iran. She served as President of the KU Law School Islamic Law Students Association (ILSA). Her research memo on the history of Iran, covering the *Sunni-Shi'ite* split, *Safavid* Dynasty, regime of the Shah, 1978–1979 Islamic Revolution, and Constitution of the Islamic Republic, factored into various Chapters.

- **Alec Michael Feather**

J.D. University of Kansas School of Law, 2022. B.A. (Political Science) University of Kansas, 2019. Alec accepted a position as Legal Counsel for the Kansas Department for Aging and Disability Services (KDADS).

Alec majored in Political Science and minored in Russian, Eastern European, and Eurasian Studies. His research focused on international organizations, including the Asian Infrastructure Investment Bank. In 2019, he graduated with the highest distinction award for academic performance. At KU Law School, Alec recommitted to public service. He interned with Judge Roseann Ketchmark at the U.S. District Court for the Western District of Missouri and worked with KDADS. In 2022, he graduated with the distinction award for *pro bono* service. Alec's research memo on blasphemy informed greatly the material on that topic, and his editing of the Chapters on the Taliban and Afghan War was superb.

- **Alex Gilmore**

J.D., University of Kansas School of Law, 2016 (Certificate in International Trade and Finance). B.A. (Classical Antiquity, Minors in Philosophy and Art History), University of Kansas. Alex practices Business, Real Estate, Family Law, and Litigation with Ferree, Bunn & Ridgway in Kansas City, Missouri.

While at KU Law School, Alex was a Legal Extern at KU's Office of the General Counsel. He worked with the University's Spencer Museum of Art on intellectual property, contract, and museum management issues. Evidencing his hard work, Alex earned a Computer Aided Legal Instruction (CALI) Award for the top performance in the *Advanced International Trade Law* course for his paper on an Indo-American WTO dispute over solar cells and solar modules. Alex provided memos concerning Islamic joint ventures (JV) (*musharakah*), which are commonly used in project finance, and on Islamic State.

- **Katherine Hann**

J.D. University of Kansas School of Law, 2023. L.L.B. Law Degree, University of Liverpool School of Law, 2018. Katherine plans on practicing International Trade Law in the U.S., U.K., and EU.

At Liverpool, Katherine focused on International Law including European Communities and Regulation Law, World Trade Law, and Public International Law. At KU

Law School, she pursued a Certificate in International Trade and Finance, interned at the Kansas Department of Children and Families, and worked on a research paper with the Supreme Court of Kansas on a research paper. Her review of the Chapters on Iran's Constitution, the Taliban, and the Afghanistan War was indispensable in enhancing their substance and style.

- **Adham Hashish**

S.J.D., University of Kansas School of Law, 2015. L.L.M. (International and Comparative Law), The George Washington University School of Law, 2008. L.L.B. *magna cum laude*, Alexandria University Faculty of Law (Alexandria, Egypt), 2003. Graduate Diploma (International Law), Tanta University (Tanta, Egypt), 2004. Graduate Diploma (Public Law), Ain Shams University (Cairo, Egypt), 2005. Adham practices in Egypt and is a Professor of Law at the UAE University Faculty of Law in Al Ain, UAE.

Adham, who is from Egypt, was appointed Lecturer on Law at Alexandria University Faculty of Law in 2006. His scholarship focuses on law and development, especially as it affects good governance, the ethics of multinational corporate conduct, and weaknesses in the legal infrastructure of developing countries. In 2005, he served as a Delegate Judge on the Egyptian Administrative Court (State Council). Adham is fluent in Arabic and English. His help on the Glossary of Arabic Terms, meaning of the word “Qur’ān,” and material concerning the wives of the Prophet Muhammad, was indispensable. Generously sharing his considerable knowledge and experience in Islamic Law, he provided invaluable insights and corrections on all the Chapters. He taught in the Department of Religion at KU.

- **Beau Jackson**

J.D., University of Kansas School of Law (Certificate in International Trade and Finance), 2009. B.A. (Political Science and History), University of Kansas, 2003. Beau practices International Trade Law, specializing in Section 337 cases, customs litigation, and trade policy advocacy, at Husch Blackwell LLP in Kansas City, Missouri.

Beau, originally from Wichita, served as a Peace Corps Volunteer in Cape Verde, West Africa before coming to KU Law School. While at KU Law School, he was President of the International Law Society and an editor on the *Kansas Journal of Law and Public Policy*. Beau's research memos on the *Umayyad* and *Abbasid* Caliphates, Crusades, economic development in the Muslim world, the Muslim Brotherhood, and *Al Qaeda* are the bases for the Chapters on those topics.

- **Ayesha Sheharyar Mehdi**

J.D. and M.H.S.A., University of Kansas School of Law, 2009. B.B.A., Walsh College of Accountancy and Business Administration, Troy, Michigan, 2004. Ayesha practices and teaches law in Las Vegas, balancing her responsibilities as a wife and mother. She has taught Health Care Law at the University of Nevada Las Vegas (UNLV), served as Executive Director of the Hope Cancer Care of Nevada, Las Vegas, and is a Partner in Health Care Law at Spencer Fane LLP, Las Vegas.

Ayesha immigrated in 2002 to the U.S. from her hometown of Lahore, Pakistan, where she had a career as a journalist. At Kansas, Ayesha served as an editor of the *Kansas Journal of Law and Public Policy* for two consecutive years, and participated in the National Health Law Moot Court Competition. Ayesha's research memos

on mixed marriages and inheritance are the bases for portions of the Chapters on Family Law and Inheritance Law, respectively.

- **Corrine Moffett**

J.D. University of Kansas School of Law (Certificate in International Trade and Finance), 2021. B.A. (History and International Studies), Kansas State University, 2018. After graduation, Cori headed west to Colorado, and practices in Denver.

Corrine devoted her undergraduate career to international issues and was heavily involved in organizations such as Model United Nations. Subsequently, she studied International Relations at Libertas International University in Dubrovnik, Croatia. She landed back in Kansas at KU Law School, where she excelled in her work, including for the International Trade and Finance Certificate. Corrine researched and wrote extensively about the Taliban and Afghanistan War, and followed the progress and aftermath of the February 2020 *Peace Agreement*. Her work was the basis for the Chapters on those topics.

- **Matt Odom**

J.D., University of Kansas School of Law (Certificate in International Trade and Finance), 2010. B.A. (Political Science), Fort Hays State University, 2004. Matt worked in Colorado, with practice interests in International, Comparative, and Tax Law, and thereafter transitioned to practice in Hays, Kansas.

Before coming to the Law School at Kansas, Matt was a U.S. Army Enlisted Infantryman, and is a Veteran of Operation Iraqi Freedom, with service in Baghdad (2005–2006). His experiences led to his interest in Human Rights and International Humanitarian Law. Matt’s research work on the Prophet as a military leader is the basis for part of the Chapter on Muhammad. His research memo on the twelve *Shi‘ite Imāms* is the basis for part of the Chapter on *Shi‘ism*. His memos on the compilation of the Qur’ān, *naskh* (repeal), and Islamic countries and international law on religious freedom, are the bases for discussion on those topics.

- **Ellen O’Leary**

J.D., University of Kansas School of Law (Certificate in International Trade and Finance), 2011. B.A. (Classics, Political Science), Truman State University, 2006. Ellen is a Product Coordinator at Casepoint LLC in Overland Park, Kansas.

Ellen is from Shawnee, Kansas. She studied Comparative Law in Istanbul, Turkey, and Biodiversity Law in the U.S. Virgin Islands. Likewise, she worked abroad and at home — with the Istanbul office of the British law firm Denton Wilde Sapte, and with the Lawrence, Kansas firm of Wisler, Trevino, and Rosenthal. In college, Ellen was inducted into the Classics Honor Society, *Eta Sigma Phi*, and at KU Law School she earned top honors in Islamic Law. Active in the Law School community, she served as Treasurer for the International Law Society and Women in Law. Ellen was a referee for youth and adult soccer, and an instructor to teach others to be referees. Ellen carefully edited virtually every Chapter, re-drafted sections of several Chapters, and her insights on many points added great value. Her research memoranda on analogical reasoning (*ijma’*), consensus (*qiyās*), and *ijtihad* (independent reasoning) formed part of the basis of the Chapter on the Four Sources of Islamic Law (*usūl al-fiqh*), and on additional sources. A Latin scholar, Ellen also provided all Latin translations.

- **Jomana Jihad Qaddour**

J.D., University of Kansas School of Law (Certificate in International Trade and Finance), 2009. B.A. (Human Biology and International Studies), University of Kansas, 2006. Jomana works in Washington, D.C. She served as a Senior Research Assistant and Publications Manager for the Project on U.S. Relations with the Islamic World in the Center for Middle East Policy at the Brookings Institution, worked with Winston & Strawn LLP, focusing on intellectual property cases, and pursued a doctorate in law at Georgetown. She co-founded the Syria Relief and Development, a humanitarian organization that provided over \$ 92 million worth of aid in Syria and the region.

Jomana, a Syrian-American, is from Overland Park, Kansas and works on domestic and international business law, and intellectual property law matters. Fluent in Arabic and English, she has a keen interest in Middle Eastern affairs, has participated in a variety of activities designed to build understanding and tolerance among competing constituencies in that region, and travels frequently to the region. Jomana's research memos on abortion, contraception, women's dress, and women's employment are the bases for portions of the Chapters on Family Law. Her memo on *hawāla* banking is the basis for a portion of a Chapter on Finance. Her memo on the meaning of "jihād" is the basis for a portion of a Chapter on International Law.

- **Ben Sharp**

J.D., University of Kansas School of Law (Certificate in International Trade and Finance, and Certificate in Business and Commercial Law), 2009. M.Sc. (Philosophy of the Social Sciences), London School of Economics, 2005. B.S. (Philosophy), Kansas State University, 2003. Ben practices domestic and international business law in Minneapolis.

Ben is from Rossville, Kansas and practices law in Minneapolis. While at KU Law School, he served as an editor of the *Kansas Journal of Law and Public Policy*. Ben's research memos on non-Islamic debt instruments and insurance products, and on socially responsible investing, are the bases for portions of the Chapters on Islamic Finance. His memos on the Ottomans, Anglo-Muhammadan Law, Four *Sunnite* Schools, and *Shi'ite* legal doctrines are the bases for Chapters on those topics.

- **Eric Witmer**

J.D., University of Kansas School of Law (Certificate in International Trade and Finance), 2017. B.A., Pennsylvania State University, 2005 (Film). Eric is a Research Attorney with the Kansas Courts of Appeal, plus a beloved regular Guest Professor at KU Law in *International Trade Law*, *Advanced International Trade Law*, *International Law and Literature*, and *Islamic Law*.

Eric served in the U.S. Army in Bosnia, Germany, and briefly in Korea. Eric switched from active Army to National Guard so he could attend Penn State University, where he completed his Bachelor's degree in two years. Eric taught English in Los Angeles, learned Old English at UMKC, and landed at KU Law School. He served as a Staff Editor on the *Journal of Law and Public Policy*, and interned at Immigration & Customs Enforcement (ICE).

Eric researched and wrote for the Second Edition about the use of human shields, battle casualties and the Prophet Muhammad, and impact of blasphemy laws on

events such as the *Charlie Hebdo* attacks. Eric's interests include International and Comparative Law. He served as a Judicial Clerk in the 16th Judicial District Court of Jackson County, Missouri, and as the Research Attorney to the Chief Justice of the Kansas Supreme Court.

As the RAs and I worked collaboratively on this book, they became part of my family. My wife, Kara, our daughter, Shera, and I miss them. We shall always remember them well.

Devilish polarization and anti-intellectualism have engulfed America since the publication of the first edition of this Textbook, the consequences of which (*inter alia*) have been (*inter alia*) enactment of anti-*Shari'a* legislation motivated by right-wing Islamophobia and slashes to public education budgets already eroded by inflation. The two are related. Yet, these RAs — my family — are proof Kansas can be a venue for a marvelous mix of the cosmopolitan and contemplative in service of International and Comparative Law scholarship and teaching for the common good.

I am grateful to KU Law School for financial support from its RA and summer research grant budgets.



# Introduction:

## Ten Threshold Issues

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### 1. What Does “*Shari‘a*” Mean?

The word “*Shari‘a*” typically is translated as “Islamic Law.”<sup>1</sup> That was not its original meaning, as Professor Seymour Gonne Vesey-Fitzgerald (1884–1954 A.D.) of the School of Oriental and African Studies (SOAS) at the University of London explained:

The word *shari‘a* originally meant the path or track by which camels were taken to water, and so by transfer the path ordained of God by which men achieve salvation.

This conception of a path or way of life is very common in early Islam.<sup>2</sup>

Translating “*Shari‘a*” as “Islamic Law” is not wrong. But, from an American legal mindset, it is incomplete in two respects.

As to the first respect, consider what Professor Joseph Schacht (1902–1969) of Columbia University wrote:

*Islamic Law is the epitome of the Islamic spirit, the most typical manifestation of the Islamic way of life, the kernel of Islam itself.* For the majority of Muslims, the law has always been and still is of much greater practical importance than the dogma. Even today the law remains a decisive element in the struggle which is being fought in Islam between traditionalism and modernism under the impact of Western ideas.<sup>3</sup>

Similarly, Professor Vesey-Fitzgerald said:

Islam is not only a religion, it is a political system, and though in modern times devout Muslims have endeavored to separate the two aspects, Islam’s whole classical literature is based upon the assumption that they are *inseparable*. *Most legal systems have at one time or another in their history been intimately connected with religion;* but the two great Semitic systems, the Jewish and the Islamic, are probably unique

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1. See, e.g., Michael J.T. McMillen, *International Legal Developments in Review: 2007 Islamic Law Forum*, 42 THE INTERNATIONAL LAWYER 1017–1032 (Summer 2008) (stating the *Shari‘a* “is what is commonly referred to as Islamic law”).

2. S.G. Vesey-Fitzgerald, *Nature and Sources of the Shari‘a*, in LAW IN THE MIDDLE EAST, VOLUME I: ORIGIN AND DEVELOPMENT OF ISLAMIC LAW 86 (Majid Khadduri & Herbert J. Liebesny, eds., Washington, D.C.: The Middle East Institute, 1955). [Hereinafter, Vesey-Fitzgerald.]

3. Joseph Schacht, *Pre-Islamic Background and Early Development of Jurisprudence*, in LAW IN THE MIDDLE EAST, VOLUME I: ORIGIN AND DEVELOPMENT OF ISLAMIC LAW 86 (Majid Khadduri & Herbert J. Liebesny, eds., Washington, D.C.: The Middle East Institute, 1955) (emphasis added) (extracted from JOSEPH SCHACHT, THE ORIGINS OF MUHAMMADAN JURISPRUDENCE (London, England: Oxford University Press 1950)).

in the thoroughness with which they identify law with the personal command of a single Almighty God. . . .<sup>4</sup>

To capture the orthodox Muslim view of the inseparability of law and religion, perhaps a fuller (and, indeed, observed) translation of “*Shari‘a*” is the “religious law of Islam.”

A corollary to this inseparability is that the *Shari‘a* occupies a more prestigious place in the minds of Muslims than does American law in the minds of Americans. It is one thing to respect the American legal system for its various geniuses (e.g., Bill of Rights, federalism, judicial independence, separation of powers, and transparency). It is quite another thing to revere a legal system because of its Divine characteristic.

As to the second reason why a straight equation of “*Shari‘a*” with “Islamic Law” is incomplete, consider the contrast Professor Vesey-Fitzgerald draws:

*To the Westerner, law is a system of commands enforced by the sanction of the state. This concept is wholly alien to Islamic theory.* On the one hand, the state has from time to time enforced much which could not be called law; on the other hand, the law of God remains the law of God even though there is no one to enforce it, and even though in many of its details it is quite incapable of enforcement. Indeed, the

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4. Vesey-Fitzgerald, *supra*, 85. Likewise, Justice Jackson writes:

. . . Islamic Law offers the American lawyer a study in dramatic contrasts. . . . *In its source, its scope, and its sanctions, the law of the Middle East is the antithesis of Western law. We may find divergence in legal experience as instructive as parallelism if, instead of allowing it to repel our inquiry, we accept it as a challenge to understanding.*

*To the American, the most fundamental of differences lies in the relation between law and religion.* In the West, even those countries which do not accept the idea of rigid separation of church and state still regard the legal system as mainly a secular concern. . . . Of course, religious influences have been powerful in shaping the law. . . . But, . . . the law has remained a temporal affair, the legislatures for its making and the courts for its enforcement *worldly institutions, identified with and responsible to the state and not the church.* Hence, our American law does *not* prescribe religious duties; indeed, it consciously *omits* them. It does not make more than a limited approach to enforcing ethical duties. Indeed, *one may at the same time be a law-abiding citizen and a thoroughly shabby character.*

*Islamic Law, on the contrary, finds its chief source in the Will of Allāh as revealed to the Prophet Muhammad.* It contemplates one community of the faithful, though they may be of various tribes and in widely separated locations. *Religion, not nationalism or geography, is the proper cohesive force.* The state itself is subordinate to the Qur‘ān, which leaves little room for additional legislation, none for criticism or dissent. *This world is viewed as but the vestibule to another and a better one for the faithful,* and the Qur‘ān lays down rules of behavior towards others and toward society to assure a safe transition. It is not possible to separate political or juristic theories from the teachings of the Prophet, which establish rules of conduct concerning religious, domestic, social, and political life. *This results in a law of duties rather than of rights, of moral obligation binding on the individual, from which no earthly authority can relieve him, and which he disobeys at peril of his future life.* Since Americans do not accept the religious or philosophical foundations of Islamic Law, they are apt to think nothing of the superstructure can interest us.

Justice Jackson *Foreword* (emphasis added).

It is, however, important to add that to classify Islam as a “sacred” legal system, and urge law and religion are inseparably one, does not mean every single aspect of the system originates directly with the Divine. As several Chapters chronicle, there are dimensions of the system and its sources, beyond the Qur‘ān (which is understood and accepted as the Word of Allāh), which involve human reason (or, in extremist instances, the lack thereof), or simply culture. This point is made, for example, by some contemporary Iranian theologians, who note additional sources of Islamic Law are not directly from God.

law is revered for its divine character even by people who do not profess to obey it; and so we find communities living according to customs completely at variance with the divine command, yet on occasion imbued with religious fanaticism.

Law, then, in any sense in which a Western lawyer would recognize the term, is but a part of the whole Islamic system, or rather, it is not even a part but *one of several inextricably combined elements* thereof. *Shari'a*, the Islamic term which is commonly rendered in English by "law" is, rather, the "Whole Duty of Man." Moral and pastoral theology and ethics; high spiritual aspiration and the detailed ritualistic and formal observance which to some minds is a vehicle for such aspiration and to others a substitute for it; all aspects of law; public and private hygiene; and even courtesy and good manners are all part and parcel of the *Shari'a*, a system which sometimes appears to be rigid and inflexible; at other to be imbued with that dislike of extremes, that spirit of reasonable compromise which was part of the Prophet's own character.<sup>5</sup>

The reference to law as a system of commands is to the legal philosophy of John Austin (1790–1859), who in his 1832 book *The Province of Jurisprudence Determined* defined "law" as a command of a sovereign that is habitually obeyed under the threat of punishment. This "Command Theory" of law is classified as strict positivism, meaning there is no necessary connection between law, on the one hand, and morality or religion, on the other hand.

Muslims find such a proposition puzzling, absurd, or even heretical. *Surah* (Chapter) 6, *ayah* (verse) 162 states:

Say [Prophet], "My prayers and sacrifice, my life and death are all for God, Lord of all the Worlds. . . ."<sup>6</sup>

This passage connotes that the *Shari'a* is to govern all of life. Thus, legal positivism, the proposition that law and morality are or ought to be separate, and the project of its modern-day exponents, like Judge Richard Posner (1939-) of the U.S. Court of Appeals for the Seventh Circuit, which is "the demystification of law and in particular the freeing of it from moral theory, a great mystifier," are devilishly off track.<sup>7</sup> God (Allāh) revealed a law, the *Shari'a*, for all people, in all places, at all times. Why would man try to separate the inseparable, law from morality? Prominent Christian thinkers make the same point: Saints Augustine (354–430) and Thomas Aquinas (1225–1274) urged that a secular law that violates God's law is no law at all, and the Reverend Dr. Martin Luther King (1929–1968) agreed, citing them in his powerful 13 April 1963 *Letter from a Birmingham Jail*.

In truth, the likes of Judge Posner make two fatal errors. First, they presume utilitarian analysis is not a moral theory. All they are doing is substituting one moral theory for another. Along with deontology and virtue ethics, utilitarian theory is a recognized framework in moral philosophy. All three address the same question: is an action moral?

- In a *Deontological* framework, championed by Immanuel Kant (1724–1804), the emphasis is on duty. Actions are intrinsically right or wrong, regardless of their

5. Vesey-Fitzgerald, *supra*, 85–86 (emphasis added).

6. THE QUR'ANA *New Translation* by M.A.S. Abdel Haleem 6:162 at 93 (Oxford, England: Oxford University Press, 2004) (emphasis added). [Hereinafter, Qur'an.]

7. RICHARD A. POSNER, *THE PROBLEMATICS OF MORAL AND LEGAL THEORY* vii (Cambridge, Massachusetts: Harvard University Press, 1999).

consequences, if they conform to moral imperatives such as “do not steal” or “do not kill.”

- Under *Virtue Ethics*, originated by Aristotle (384–322 B.C.), the focus is not on the actions of an agent, but rather on the agent herself. Does she live an ethical life, possess virtues, and if so, which ones, and thereby have a moral character? If the agent has such a character, then her acts will be moral.
- *Utilitarian Theory* is the most common form of consequentialism, and holds that whether an act is right depends not on the agent but the outcome of the act. It entails a cost-benefit calculation familiar in law and economics, with a judgment as to the morality of an act depending on whether that act maximizes the good, the good being defined as pleasure by Jeremy Bentham (1748–1832), or well-being by John Stuart Mill (1806–1873).

Notably, Christian theologians use all three of these moral frameworks in reasoning and argumentation, which is a testament to how much more broad-minded they are than positivist thinkers.

The second error of legal positivism is it endeavors to separate the inseparable. Pope John Paul II spoke for Christians and Muslims alike when he said:

Even if some are reluctant to refer to the religious dimension of human beings and human history, even if others want to consign religion to the private sphere, even if believing communities are persecuted, Christians will still proclaim that *religious experience is part of human experience. It is a vital element in shaping the person and the society to which people belong.*<sup>8</sup>

Likewise, Blessed Cardinal John Henry Newman (1801–1890) stated in 1865:

Liberalism . . . is the mistake of subjecting to human judgment those revealed doctrines which are in their nature beyond and independent of it, and of claiming to determine on intrinsic grounds the truth and value of propositions which rest for their reception simply on the external authority of the Divine Word.<sup>9</sup>

Stated differently, both reasoned and revealed truth are sources of Truth, and they are at times independent — but never contradictory — of one another. From a Muslim as well as Christian perspective, law, morality, and religion are inseparable. In turn, the scope of law is not restricted to working out hypothetical disputes between abstract parties, like plaintiffs and defendants, prosecution and accused, debtors and creditors, shareholders and management, benefactors and beneficiaries, and so forth. That scope encompasses such matters, but extends far beyond them to religious practice (such as the Five Pillars of Islam), personal attire (*i.e.*, how to dress in public versus private), and etiquette. They are not merely matters of religious or social habit, as a legal positivist would say. Rather, they are part of the law — Islamic Law — itself.

In sum, to think of “the *Shari‘a*” and “Islamic Law” as synonyms is to ignore the reality that for Muslims, the *Shari‘a* is an entire way of life linked to Allāh.

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8. Pope John Paul II, 13 January 2001 Address to the Diplomatic Corps accredited to the Holy See (quoted in *Address of the Holy Father to the New Ambassador of Iraq to the Holy See*, 28 April 2001), [www.vatican.va](http://www.vatican.va) (emphasis added).

9. JOHN HENRY NEWMAN, *APOLOGIA PRO VITA SUA* Appendix 2: Matter Peculiar to the 1865 Edition, Note A Liberalism, at 493 (1864).

## 2. What Does “Islam” Mean?

“Islam” means “submission.” The purpose of life is to discern and submit to the Will of Allāh in preparation for a Day of Judgment. Through His mercy, God has made His Will known, in an authoritative way, by the revelation of the Qurʾān to his Messenger, the Prophet Muhammad. Thus, during the last 14 centuries since the first revelation in 619 A.D., Muslims (especially Muslim scholars) have dedicated a large amount of time and attention to understanding precisely what it is God expects of them. They have studied and debated the Qurʾān, trying to derive from it the principles, requirements, rights, and duties that should govern their lives. And why bother considering submission to the Will of Allāh? Because a Day of Judgment will come, on which each person will be held accountable for his or her life, and merit entry into heaven or condemnation to hell based on the degree to which that person made a resolute effort to submit.

Thus, Islam is a system built around an ideal. The ideal is to identify everything that a Muslim should do in order to lead life in accordance with Divine Will. The consequence of the many centuries of study and debate over the text of the Qurʾān, and the elaborations on that text by the Prophet Muhammad (*hadīth*) and Muslim scholars through analogical reasoning (*qiyās*) and consensus (*ijmaʿ*), is one of the great intellectual achievements in history: the development of an authoritative body of “dos” and “don’ts,” an expression of those things a Muslim is supposed to do, and those things a Muslim is not supposed to do, so as to behave in accordance with the Will of Allāh and thereby gain entry into Paradise. Those “dos” and “don’ts” are the *Sharīʿa*, or the “legislation” that is called “Islamic Law.”

It is sometimes remarked that Islam, like Judaism, is a legalistic system, because it focuses less on what a person believes about God than on what a person does or does not do in life. With the extraordinary elaboration of the Qurʾān and Qurʾānic-based legislation, the impression conveyed is that adhering to the *Sharīʿa* is a merely ticking boxes. This characterization is wrong. The “legislation,” ultimately, is advisory in character. Its purpose is to facilitate the ability of Muslims to know how to conform their lives with the Will of Allāh. While Islam is a regime to lead life in accordance with this Will, and while “Islamic law” is that regime, Islam, like any religion, is about trust in what is not usually seen readily or experienced directly. It is about faith.

## 3. Use of Name “Allāh” and Promise of Muhammad to Saint Catherine (628 A.D.)?

We all worship the same God. All too often, religious extremists spread the poisonous message that our prayers are directed to different powers. The Ancient Greeks, Trojans, and Romans paid homage to the same deities, calling them different names. Yet, these Ancient peoples warred, as chronicled, for instance, in *The Iliad* by Homer (circa 8th century B.C.). In recent times, Islamist fanatics have asserted the name “Allāh” is reserved exclusively for Muslims. This assertion comes from quarters as disparate as Saudi Arabia and Malaysia. All adherents to it misunderstand pre-Islamic history and Islam itself, and attribute false motives to non-Muslims. These errors sow division where there is none, and in turn push all of us down the slippery slope toward violent conflict.

An example comes from Malaysia, which is home to approximately 850,000 Catholic Christians amidst a population of 25.7 million people. Of the total population, Muslims account for 60.4%, Buddhists 19.2%, Christians 9.1% (3.3% of whom are Catholic), and

Hindus 6.3%.<sup>10</sup> Taking the position that “Allāh” is an Islamic word, the Malaysian government banned non-Muslims from using the word “Allāh” to refer to “God.”<sup>11</sup> The government, or its extremist backers, thought the Catholic Church posed a threat, namely, conversion of Muslims. There was an irony in that fear. Malaysia has four large ethnic groups: Malays (53%), Chinese (26%), Indian (8%), and Indigenous (12%); and Malays are required by the Constitution to be Muslim.<sup>12</sup> Arguably, some Malays feel insecure amidst economic reforms and political changes that undermine the dominance they have long enjoyed, partly through positive discrimination in their favor under the 1970 New Economic Policy implemented after race riots in 1969.<sup>13</sup>

Nevertheless, in 2007, Malaysian government prohibited *The Herald*, a publication of the Catholic Church in Malaysia, from using “Allāh” to describe the Christian God. Arguing that the name “Allāh” needed protection from insults and abuse, and use of this name by non-Muslims confused Muslims, the Malaysian government effectively ordered *The Herald* to cease publication, because it insisted on its right to use the word “Allāh” to refer to the one God of both Muslims and Christians. The argument of the government was more than shockingly patronizing toward Malays. It ignored the manifestly respectful use of “Allāh” by non-Muslims, and was incongruous with Islamic tradition and illogical.<sup>14</sup> That tradition holds there are 99 Names of Allāh, including *Al Rahman* (The All-Compassionate) and *Al Rahim* (The All Merciful). Surely the 100th name, “God,” would not confuse a people who have successfully navigated the other 99 names.

In 2007, *The Herald* filed suit. In December 2009, the High Court of Malaysia, in Kuala Lumpur, held that Christians have the right to use the word “Allāh” when referring to “God.” The High Court, in a decision by female Christian Chinese justice Lau Bee Lan, agreed with the argument of *The Herald* that Malay-speaking indigenous Christians in Malaysian Borneo (the states of Sabah and Sarawak) had used the word “Allāh” for decades, as there is no alternative in the Malay language, and Christians in Muslim countries like Egypt and Syria had used it for centuries.<sup>15</sup> Moreover, the Court said Articles 10–12 of the Malaysian Constitution protect freedom of speech and religion, and use of the “Allāh” is part of the exercise of those freedoms. The High Court won plaudits for its

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10. See CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK, *Malaysia*, [www.cia.gov/library/publications/the-world-factbook/geos/my.html](http://www.cia.gov/library/publications/the-world-factbook/geos/my.html). The data are as of July 2010.

11. See *Malaysian Court Rules Non-Muslims May Call God Allāh*, BBC NEWS, 31 December 2009, <http://news.bbc.co.uk>.

12. See Kevin Brown, *The “Allāh” Spat Masks Ethnic Malays’ Feelings of Insecurity*, FINANCIAL TIMES, 13 January 2010, at 2. [Hereinafter, Brown.]

13. See Brown, *supra*.

14. Anecdotally, in 2007 the *Majlis Agama Negeri Perlis* (Religious Assembly of the State of Perlis) a large group of learned Muslim Malaysian *ulema* issued a *fatwā* stating there is absolutely nothing wrong with non-Muslims using the word “Allāh.” The *fatwā* has not been circulated widely, but (assuming it exists) apparently the Malaysian government paid little heed to it. See *Marina Mahathir and the Word Allāh*, 9 January 2010, <http://all4one4all.wordpress.com/2010/01/09/marina-mahathir-the-word-allah/>. The blogger is the daughter of Dr. Mahathir bin Mohamad (1925–), who served as the Prime Minister of Malaysia from 1981–2003.

15. See *Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri*, High Court in Malaya, No. R1-25–28-2009, 31 December 2009; Brown, *supra*; *God and Allāh in Malaysia*, ASIA SENTINEL, 3 January 2010, [www.asiasentinel.com/index.php?Itemid=178&id=2217&option=com\\_content&task=view](http://www.asiasentinel.com/index.php?Itemid=178&id=2217&option=com_content&task=view).

judicial independence. But, its decision triggered a spate of fire bombings of churches, many of the Protestant, by a small number of extremists.<sup>16</sup>

Regrettably, in October 2013, the Court of Appeal in Putrajaya, Malaysia reversed the December 2009 High Court ruling that permitted the Malay-language edition of *The Herald* may use the word “Allāh.”<sup>17</sup> The unanimous decision by three Muslim judges on the Appeals Court barred the Christian newspaper from using “” to refer to “God.” Why? First, said Chief Judge Mohamed Apandi Ali, “[t]he usage of the word Allāh is not an integral part of the faith in Christianity.”<sup>18</sup> Second, said the Chief Judge, “[t]he usage of the word will cause confusion in the community.”<sup>19</sup> That confusion could cause Muslim Malays to convert to another religion, and conversion out of Islam is a crime under Malaysian law.

Unfortunately, in June 2014, the Federal Court of Malaysia — that country’s highest court, also located in Putrajaya — upheld the decision of the Appeals Court.<sup>20</sup> The 4–3 decision rejected the Catholic Church challenge against the ban on its use of “Allāh” in its Malay-language newspaper. In what passed as “rationale,” but perhaps was an abdication of judicial responsibility, Chief Justice Arifin Zakaria stated: “It [the Court of Appeal] applied the correct test, and it is not open for us to interfere. Hence, the application is dismissed.”<sup>21</sup>

The “reasoning” in favor of the ban against non-Muslim use of the word Allāh is shockingly parlous and easily rebutted. As to the first reason, use of the word “God” is an integral part of Christianity, and the long-standing synonymous term for it in Arabic, and used by Malays, is “Allāh.” The term entered the Malay language from the Arabic, and indeed Malay (like most languages) has borrowed plenty of words.<sup>22</sup> So, Malay-language

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16. The violence apparently caused the High Court to stay its own decision, pending a hearing of an appeal by the Malaysian government to the Federal Court of Malaysia (the apex of the Malaysian judiciary).

In March 2011, the Malaysian Home Ministry agreed to release 35,000 Bibles. For months it had impounded them because they used the word “Allāh.” The Bibles, printed in Indonesia, principally were for Christians in East Malaysia, *i.e.*, the states of Sabah and Sarawak. Christians explained their Bibles have referred to “Allāh” since before September 1963, when Malaysia was formed as a federal state (along with Sabah, Sarawak, and Singapore) following independence from Britain in August 1957 as the Federation of Malay States. (In August 1965, Singapore became an independent country). The Malaysian government insisted it took its decision to resolve inter-faith issues amicably, though political analysts suggested it sought increased support from Christian voters in future East Malaysian elections. See *Malaysia to Release 35,000 Bibles Amid “Allāh” Row*, BBC NEWS, 16 March 2011, [www.bbc.co.uk/news](http://www.bbc.co.uk/news).

17. See Siva Sithraputhran, *Malaysian Court Rules Use of “Allāh” Exclusive to Muslims*, REUTERS, 14 October 2013, [www.reuters.com/article/2013/10/14/us-malaysia-court-allah-idUSBRE99D01J20131014](http://www.reuters.com/article/2013/10/14/us-malaysia-court-allah-idUSBRE99D01J20131014).

18. Quoted in [Hereinafter, *Malaysian Court Rules Use*].

19. Quoted in *Malaysian Court Rules Use*.

20. See *Malaysia Allāh Dispute: Top Court Rejects Challenge*, BBC NEWS, 23 June 2014, [www.bbc.com/news/world-asia-27970565](http://www.bbc.com/news/world-asia-27970565); *Top Malaysian Court Dismisses “Allāh” Case*, AL JAZEERA, 23 June 2014, <http://m.aljazeera.com/story/20146232448487953> [hereinafter, *Top Malaysian Court*]; *Malaysia’s Highest Court Backs A Ban on Allāh In Christian Bibles*, THE GUARDIAN, 23 June 2014, [www.theguardian.com/world/2014/jun/23/malaysia-highest-court-allah-bible-ban](http://www.theguardian.com/world/2014/jun/23/malaysia-highest-court-allah-bible-ban) [hereinafter, *Malaysia’s Highest Court*].

21. Quoted in *Top Malaysian Court, Malaysia’s Highest Court*.

22. See *Malaysia Court Rules Non-Muslims Cannot Use “Allāh”*, BBC NEWS, 14 October 2013, [www.bbc.co.uk/news/world-asia-24516181](http://www.bbc.co.uk/news/world-asia-24516181).

Bibles have translated “God” as “Allāh” since before 1963, when Malaysia became a Federation. As Reverend Lawrence Andrew, Editor of *The Herald* summarized:

Allāh is a term in the Middle East and in Indonesia it is a term both for Christians and Muslims. You cannot say that in all of the sudden it is not an integral part. Malay language is a language that has many borrowed words, Allāh also is a borrowed word. . . . God is an integral part of every religion.<sup>23</sup>

Of course, this point presumes consideration of the minorities in a pluralistic society, but as Father Lawrence said after the Federal Court decision, “the ‘ruling didn’t touch on the fundamental rights of minorities.”<sup>24</sup>

As to the second reason, the real confusion sown is for followers of a particular religion to think they have a monopoly on the way to express a name, much less worship, for what ultimately is nameless. They do not: no one can trademark the ineffable, and it is an arrogant folly to think otherwise. In sum, the first rationale is based on a misunderstanding of Christianity and its relation to Islam: adherents of both great faiths pray to the same Higher Being. The second rationale cheapens Islam.

Indeed, the second rationale is paternalistic: it wrongly treats Malays as if they were incompetent simpletons easily deceived into apostasy. They are not. A BBC article pictured an activist — among roughly 100 who stood in front of the Federal Court chanting “Allāhu Akbar!” (God is Great) and holding banners saying, “Uniting to defend the name of “Allāh”<sup>25</sup> — donning a t-shirt on the back of which was emblazoned “Allāh Just for Muslim.” That poor English suggested the government might help Malays more by offer-

23. Quoted in *Malaysia Court Rules Non-Muslims Cannot Use “Allāh,”* BBC NEWS, 14 October 2013, [www.bbc.co.uk/news/world-asia-24516181](http://www.bbc.co.uk/news/world-asia-24516181).

24. Quoted in *Malaysia’s Highest Court*.

25. See *Top Malaysian Court, Malaysia’s Highest Court*.

The June 2014 Federal Court decision did not end the controversy in Malaysia about who could say “Allāh.” In March 2021, in a different case, the Kuala Lumpur High Court ruled in favor of the use of this term by a Christian on the grounds of Constitutionally protected freedom of religion:

Malaysia’s High Court has overturned a policy banning Christians from using the word “Allāh” to refer to God, the latest in a decades-long legal battle.

It comes as part of a case brought by a Christian whose religious materials were seized as they contained the word.

...

... Christian communities argue that they have used the word “Allāh,” which entered Malay from Arabic, to refer to their God for centuries and that the ruling violates their rights.

Malaysia’s Constitution guarantees freedom of religion. . . .

In 2008, Malaysian authorities seized Malay-language compact discs from Jill Ireland Lawrence Bill, a Christian, at an airport after they found the recordings used “Allāh” in their titles.

Ms. Bill then launched a legal challenge against a 1986 ban on Christians using the word in publications.

On . . . [10 March 2021,] after more than a decade the Kuala Lumpur High Court ruled that she had the right not to face discrimination on the ground of her faith.

... Justice Nor Bee ruled that the word “Allāh” along with three other words of Arabic origin “Kaabah” (Islam’s holiest shrine in Mecca), “Baitullah” (House of God), and “Solat” (prayer) could be used by Christians.

Justice Nor Bee said the directive that banned the use of the four words was “illegal and unconstitutional.”

“The freedom to profess and practice one’s religion should include the right to own religious materials,” she said.



ing better instruction in the world's business language — English — than suing Christian publications. As for apostasy, the real problem is it is misconstrued as a crime in Islamic Law — a point stressed later in this Textbook.

What devalues Islam yet further is the apparent political motivation for the October 2013 decision.<sup>26</sup> In May 2013, the ruling United Malays Nation Organization (UMNO), led by Prime Minister Najib Razak, narrowly won a controversial re-election. The UMNO led coalition notched its worst result since coming to power over 50 years earlier. Many non-Muslims (Chinese and Indians) voted for the opposition, as did some Muslims, and UMNO feared further erosion in support, perhaps even losing power for the first time ever. So, why not try a tactic used by politicians in many pluralistic, multi-cultural societies, be they India's, America's, or Malaysia's: stoke ethnic and religious divisions to shore up support from the base? Malays must be Muslim by law, so why not reassert ostensible Muslim Malay values — not just the name of “their” God, but also affirmative action policies for their benefit, and indeed, stronger internal security laws to protect “their” public order?<sup>27</sup>

Not surprisingly, I have no patience for such “us-against-them” polarizing nonsense, and nor does the Qur'an. *Surah 22, ayat 39–40* states:

<sup>39</sup>Those who have been attacked are permitted to take up arms because they have been wronged — God has the power to help them — <sup>40</sup>those who have been driven unjustly from their homes only for saying, “Our Lord is God.” *If God did not repel some people by means of others, many monasteries, churches, synagogues, and mosques, where God's name is much invoked, would have been destroyed. God is sure to help those who help His cause — God is strong and mighty. . . .*<sup>28</sup>

This passage is about more than self-defense. It calls for respect for houses of worship, in which the name of God is invoked and extolled.

Likewise, the Prophet Muhammad clearly established a tradition (*Sunnah*) of tolerance toward Christians. Dr. Muqtedar Khan, the Director of Islamic Studies at the University of Delaware, explains the context and meaning of “The Promise to Saint Catherine's Monastery” by Muhammad, and quotes this extraordinary Promise in its entirety:

In 628 A.D., a delegation from St. Catherine's Monastery came to Prophet Muhammad and requested his protection. He responded by granting them a charter of rights, which I reproduce below in its entirety. St. Catherine's Monastery is located at the foot of Mt. Sinai and is the world's oldest monastery. It possesses a huge collection of Christian manuscripts, second only to the Vatican, and is a world heritage

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*Malaysia High Court Rules Christians Can Use “Allāh,”* BBC NEWS, 11 March 2021, [www.bbc.com/news/world-asia-56356212](http://www.bbc.com/news/world-asia-56356212).

26. See *Malaysian Court Rules Use*.

27. Note that (as discussed in the Chapters on Criminal Law), a public order offense (*hirabah, ḥaṭ' al-ṭarīk*) conventionally is understood to include highway robbery and (by analogy) violent crimes. To construe use of “Allāh” by different constituencies as spreading corruption in a society and thereby undermining general security seems itself to undermine unity and peace in the eyes of God (Allāh).

The controversy about the use of “Allāh,” and more generally about freedom of artistic expression, has arisen in contexts far beyond Church publications, most notably, Korean Pop (K-Pop) and Malaysia Pop (M-Pop) music concerts. See, e.g., *Marco Ferrarese, K-pop Mania Poses Hard Questions for Malaysia*, NIKKEI ASIA, 23 December 2020, <https://asia.nikkei.com/Life-Arts/Arts/K-pop-mania-poses-hard-questions-for-Malaysia>.

28. QUR'AN, *supra*, 22:39–40 at 212.

site. It also boasts the oldest collection of Christian icons. It is a treasure house of Christian history that has remained safe for 1400 years under Muslim protection.

*The Promise to St. Catherine:*

“This is a message from Muhammad ibn Abdullah, as a covenant to those who adopt Christianity, near and far, we are with them.

Verily I, the servants, the helpers, and my followers defend them, because Christians are my citizens; and by God! I hold out against anything that displeases them.

No compulsion is to be on them. Neither are their judges to be removed from their jobs nor their monks from their monasteries. No one is to destroy a house of their religion, to damage it, or to carry anything from it to the Muslims’ houses.

Should anyone take any of these, he would spoil God’s covenant and disobey His Prophet. Verily, they are my allies and have my secure charter against all that they hate.

No one is to force them to travel or to oblige them to fight. The Muslims are to fight for them. If a female Christian is married to a Muslim, it is not to take place without her approval. She is not to be prevented from visiting her church to pray. Their churches are to be respected. They are neither to be prevented from repairing them nor the sacredness of their covenants.

No one of the nation (Muslims) is to disobey the covenant till the Last Day (end of the world).”

Dr. Khan comments quite rightly:

The first and the final sentence of the charter are critical. They make the promise eternal and universal. Muhammad asserts that Muslims are with Christians near and far straight away rejecting any future attempts to limit the promise to St. Catherine alone. By ordering Muslims to obey it until the Day of Judgment the charter again undermines any future attempts to revoke the privileges. These rights are inalienable. Muhammad declared Christians, all of them, as his allies and he equated ill treatment of Christians with violating God’s covenant.

A remarkable aspect of the charter is that it imposes no conditions on Christians for enjoying its privileges. It is enough that they are Christians. They are not required to alter their beliefs, they do not have to make any payments and they do not have any obligations. This is a charter of rights without any duties!

The document is not a modern human rights treaty but even though it was penned in 628 A.D., it clearly protects the right to property, freedom of religion, freedom of work, and security of the person.<sup>29</sup>

Accordingly, throughout *Understanding Islamic Law (Sharī‘a)*, the names “God” and “Allāh” are used interchangeably. Often, the expression “God (Allāh)” is used as a deliberate reminder that we do indeed worship the same Almighty.

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29. Dr. Muqtedar Khan, *Prophet Muhammad’s Promise to Christians*, AL JAZEERA MAGAZINE, 1 January 2010, <http://aljazeera.com/news/articles/39/Prophet-Muhammads-promise-to-Christians.html>.

## 4. Does Arabic Matter?

The Qurʾān was recited to the Prophet Muhammad from Allāh through the Archangel Gabriel (Jibreel) between the years 610 and 632 A.D. in the Arabic language. The vast majority of Muslims do not speak Arabic, much less the Classical Arabic in which the Qurʾān is written and recited. Most non-Arab Muslims try to learn a bit of Arabic, perhaps enough to know a few verses (*ayat*) and chapters (*surat*), or even the entire text. But, aside from the call to prayer and certain readings from the Qurʾān in a mosque, most non-Arab Muslims live their religious and secular life in the vernacular.

Nonetheless, the fact, which is referred to in the Qurʾān, the revelation occurred in Arabic explains the reverence all Muslims, whether Arabs or not, have for Arabic. There is little if any analogy here to Latin and Catholic Christians. Different parts of the Bible were written in different original languages, notably Hebrew and Ancient Greek, and translated from them. For Catholics, there is nothing particularly sacrosanct about the original languages. To the contrary, Pentecost, which marks the end of the Easter Season in the Church calendar, is a seminal event in establishing the universality of the Christian message. As Jesus promised, the Holy Spirit came down from above, and as described in *The Acts of the Apostles*:

<sup>1</sup>When the time for Pentecost was fulfilled, they [the Twelve Apostles, Peter, John, James, Andrew, Philip, Thomas, Bartholomew, Matthew, James (son of Alphaeus), Simon the Zealot, Judas (son of James), and Matthias] were all in one place together. <sup>2</sup>And suddenly there came from the sky a noise like a strong driving wind, and it filled the entire house in which they were. <sup>3</sup>Then there appeared to them tongues as of fire, which parted and came to rest on each one of them. <sup>4</sup>And *they were all filled with the Holy Spirit and began to speak in different tongues, as the Spirit enabled them to proclaim.*

<sup>5</sup>Now there were devout Jews from every nation under heaven staying in Jerusalem. <sup>6</sup>At this sound, they gathered in a large crowd, but they were confused because each one heard them speaking in his own language. <sup>7</sup>They were astounded, and in amazement they asked, “Are not all these people [the Apostles] who are speaking Galileans? <sup>8</sup>Then how does each of us hear them in his own native language? <sup>9</sup>We are Parthians, Medes, and Elamites, inhabitants of Mesopotamia, Judea and Cappadocia, Pontus and Asia, <sup>10</sup>Phrygia and Pamphylia, Egypt and the districts of Libya, near Cyrene, as well as travelers from Rome, <sup>11</sup>both Jews and converts to Judaism, Cretans and Arabs, yet *we hear them speaking in our own tongues of the mighty acts of God.*”<sup>30</sup>

Put simply, the Apostles spoke fluently in different languages, ones they never had studied, and each person listening to them understood what was said in his or her own native language. That each Apostle could convey the message in different languages, and that each listener could understand the other regardless of the language spoken, meant the Christian message was a universal one, and could be conveyed in any language.

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30. See *The Acts of the Apostles*, 2:1-11, in THE CATHOLIC STUDY BIBLE 186–187 (New York, New York: Oxford University Press, 1990, New American Bible trans.) (emphasis added). See also *Sermon by a Sixth Century African Author*, in THE DIVINE OFFICE THE LITURGY OF THE HOURS vol. II (Lenten Season & Easter Season), second reading for Seventh Week of Easter, Saturday, at 1005–1007 (New York, New York: Catholic Book Publishing Co., 1976) (stating: “The disciples spoke in the language of every nation. At Pentecost God chose this means to indicate the presence of the Holy Spirit: whoever had received the Spirit spoke in every kind of tongue.”).

Here, then, is an important contrast with implications for studying the *Shari'a*. While Islam, like Christianity, proclaims a universal message, Islamic history knows no event like Pentecost. For one faith, the original language of its message matters. For the other faith, the message transcends the original medium of its expression.

Whether Arab or not, Muslims try to learn rudimentary Classical Arabic. To them, the proper way to comprehend completely the Qur'an is in that language. It is not possible to translate the Qur'an into any other language and call the resulting text an authentic "Qur'an." This sacred text is to be read, recited, and heard in its original mode of expression. Any translation is an interpretation bearing the qualification (often in a subtitle) of "interpretation" or "translation." Only in the language in which Allāh chose to reveal the Message is the full, accurate, and complete meaning conveyed.

Catholic Christians simply do not approach the Bible in a like manner. Certainly, knowledge of Hebrew, Ancient Greek, or Latin is encouraged for laity and non-specialists, as it can broaden and deepen understanding of that sacred text. But, over the last 6 centuries, the Bible has been printed in over 2,000 languages.<sup>31</sup> It may be added that Buddhists, like Catholics, do not take that view of sacred texts, including the earliest ones of Theravada Buddhism, which were composed in Pāli (and are called the *Tipitaka*, or *Pāli Canon*, written down in Sri Lanka in the 1st century B.C. at the Fourth Buddhist Council). To be sure, some monks, scholars, and practicing Buddhists study Pāli so as to read or chant the texts in the original. But, the message of these texts, too, is universal — catholic with a small "c." Hence, for example, Tibetan monks read them in Tibetan.

As a further illustration of contrast, the relationship between the Qur'an and Arabic is not analogous to the relationship between the sacred text of Sikhism and the original languages in which it was composed. That text is the *Adi Granth* ("First Book"), or *Sri Guru Granth Sahib*. Compiled initially in 1604 by the fifth of the 10 Sikh Gurus, Arjan Dev (1563–1606), and supplemented between 1704–1706 by the tenth one, Gobind Singh (1666–1708), it is written in Gurmukhi script.<sup>32</sup> This script, commonly called "Punjabi," is used regardless of whether the passage (technically, hymn) originally was composed in medieval Hindi, Punjabi, or some other language such as Persian.<sup>33</sup> Following the passing of Guru Gobind Singh, as of 1708, the *Adi Granth* became the perpetual Guru for Sikhs, a fascinating transformation from a line of living, human Gurus to a single, scriptural one.<sup>34</sup> However, among all sacred scriptures in the world, the *Adi Granth* is unique in that it records passages from other faiths, namely, from Hinduism and Islam.<sup>35</sup> The Sikh text is "catholic," then, in this sense of inclusiveness, and it was Guru Arjan Dev who insisted on the use of a uniform script, namely, Gurmukhi.<sup>36</sup>

31. See Beth Griffin, *Librarian Oversees Rare Collection of Bibles*, THE LEAVEN (Newspaper of the Archdiocese of Kansas City, Kansas) 4 June 2010, at 10.

32. "Guru" typically is translated as "teacher." It comes from two words, "gu" (darkness) and "ru" (light). See W. OWEN COLE & PIARA SINGH SAMBHI, *THE SIKHS THEIR RELIGIOUS BELIEFS AND PRACTICES* 50 (New York, New York: Routledge, 1978). [Hereinafter, *THE SIKHS*.] Hence, a Guru is "one who delivers a person from ignorance by giving him the message which liberates and the technique to realize it." *Id.* at xxii.

33. See *THE SIKHS*, *supra*, 50.

34. See *THE SIKHS*, *supra*, 43.

35. See *THE SIKHS*, *supra*, 52.

36. For an excellent works on the importance of kindness in Sikhism, see JASREEN MAYAL KHANNA, *SEVA: SIKH SECRETS ON HOW TO BE GOOD IN THE REAL WORLD* (New Delhi, India: Juggernaut Books,

In any event, the obvious problem for prospective students of the *Shari‘a*, and interested legal practitioners, be they Muslim or not, is that most of them do not know Classical Arabic — and, frankly, never will. For English-speaking law students and lawyers, the problem is acute: few of them ever are likely to allocate the years of time required to master that beautiful language. Even if they would like to, they do not have the time. To some of them, this reality is a “deal breaker.” Paralyzed with insecurity about their linguistic limits, they over-react, and abandon the effort to learn about Islamic Law. Alas, the perfect (knowing Classical Arabic) becomes the enemy of the good (learning about the *Shari‘a* in English). The consequences are potentially dreadful.

The vast majority of Muslims, like their non-Muslim sisters and brothers, are not intransigent about how to approach the *Shari‘a*. They agree it is perfectly appropriate to “interpret” the Qur‘ān. They welcome the interest and enthusiasm of non-Muslims to learn a bit about their law, religion, and history. Yet, should the project be abandoned, then a vital bridge to building peace, tolerance, and understanding (learning the *Shari‘a* and Islamic religion and history from which it is inseparable) never gets built. Put bluntly, to remain paralyzed poses a national security threat to the U.S. and other non-Muslim countries. Law students are supposed to be at the forefront of bridge builders within and across countries, not remain behind walls of ignorance and prejudice buttressed by a fear of imperfection. An “us-versus-them” mentality sets in, those walls become fortresses, miscalculations occur, and violence erupts (again).

## 5. Sphere of Application of *Shari‘a*?

To whom and when is Islamic Law applicable? The message of Islam and disciplines of the *Shari‘a* purport to be for all time, place, and people. Universally applicable, the precepts of Islam, and the *Shari‘a* at least in the sense of the personal obligations it establishes, such as the Five Pillars, bind all Muslims, regardless of when or where they live. This fact intimates there are two dimensions to discerning the scope of the *Shari‘a*.

First, is the person a Muslim or a non-Muslim? Generally, the *Shari‘a* is not imposed on non-Muslims. But, depending on the country and matter at issue, it may be. For example, non-Muslims are expected to respect the Islamic legal obligation not to drink alcohol when living or traveling in the Kingdom of Saudi Arabia. Should they commit the crime of drinking alcohol (*shurb al-khamr*), they risk having imposed on them a *Shari‘a* punishment (specifically, a “*hadd*,” or “limit,” sanction — flogging — which is associated with a

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2021) (using scientific studies, interviews, and Sikh history and fables to identify eight rules of daily life to become kinder, and therefore lead a happier and more meaningful life), and Jasreen Mayal Khanna, *Viewpoint: Why Sikhs Celebrate Kindness*, BBC NEWS, 16 July 2021, [www.bbc.com/news/world-asia-india-57817615](http://www.bbc.com/news/world-asia-india-57817615) (asking “How did Sikhs [who number as of July 2021, 25 million world-wide] become the Good Samaritans of the world? Most religions tell their followers to help others and to do good — but how have the Sikhs gone from talking to doing so effectively?” and observing: “It goes back to their founder Guru Nanak who preached that selfless service (*seva* as it is called) and hard work are as important as prayer. . . . The secret to being good is that it’s actually a natural outcome of other behaviors and attitudes. Sikhs pray daily for two things. The first is “*sarbat da bhalla*,” or the welfare of all, and by doing this, they accept all beings as worthy. This is the root of *seva* and why *gurdwaras* [Sikh temples] are open to all. The second is eternal positivity what they call “*chardi kala*.” Sikhs chant these two words in every moment of life, when they visit the *gurdwara*, at weddings and celebrations and to each other when life deals them a blow. The motivation for doing *seva*, thus, is to find purposeful happiness in our life.”).

*haqq Allāh* offense, or “claim of God”). As another example, a non-Muslim doing business in a Muslim country with Muslims may want, or even have, to respect *Sharīʿa* rules on banking and financial transactions, particularly as they concern interest (*ribā*).

Second, in what jurisdiction does the person, Muslim or non-Muslim, reside? Muslim countries can be divided into six categories in terms of whether, and how, they adhere to the *Sharīʿa* on matters in the public sphere, such as Contracts, Property, Business Associations, Banking and Finance, Family Law, and Criminal Law. Consider the diversity in the Middle East, South Asia, and Far East:

- (1) *Officially Islamic Country, but Secular Legal System* — Islam is the official religion of the country. But, the *Sharīʿa* plays little (if any) role in the legal life of the country. Islamic Law affects the private lives of Muslims, such as adherence to the Five Pillars, to the extent they are devout practitioners. Examples include Iraq before 2005.
- (2) *Islamic Majority Country, but Secular Legal System* — Islam is the official religion of a majority of people in the country. But, there is no official state religion. The *Sharīʿa* plays little (if any) role in the legal life of the country. Again, it affects the private sphere, to the extent individual Muslims prefer. Examples include Jordan and Syria.
- (3) *Secular Country and Legal System* — Nothing is mentioned in the Constitution of the country about Islam as a religion or the *Sharīʿa* as a legal system. Once again, adherence to the personal obligations associated with Islamic Law is regarded as a private matter. An example would be Turkey. Likewise, Iraq under Saddam Hussein was the most militantly secular country in the Arab Muslim World.
- (4) *Islam is the Basis for Some Law* — The country is all or majority Muslim, and Islam may or may not be declared as the official state religion. The legal system uses the *Sharīʿa* in certain areas. Thus, Islamic Law governs not only the private sphere, but also some aspects of the public life. For example, Israel and Palestine adhere to the *Millet* System on matters of Personal Status. Under the secular Constitution of India, the minority Muslim community is permitted to follow Islamic Family Law.
- (5) *Islam is Part of a Mixed Legal System* — Again, the country is all or majority Muslim, and Islam may or may not be propounded as the official religion. The legal system is mixed, in that it has features from Common Law, Civil Law, and Islamic Law. Depending on the country, the *Sharīʿa* component in the legal system is increasingly prominent. Here again, Islamic Law matters in both the private and public spheres. Mixed, or hybrid legal systems characterize almost all Muslim countries on the Indian Subcontinent and in East Asia. They include Bangladesh, Brunei, Indonesia,<sup>37</sup> Malaysia,<sup>38</sup> and Pakistan.

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37. For a study of the division of Islamic factions into three groups “traditional,” “fundamentalist,” and “modernist” and their participation and performance in the 2019 Indonesian Presidential election, see Salahudin, Achmad Nurmandi, Hasse Jubba, Zuly Qodir, Jainuri & Paryanto, *Islamic Political Polarization on Social Media During the 2019 Presidential Election*, LI ASIAN AFFAIRS JOURNAL OF THE ROYAL SOCIETY FOR ASIAN AFFAIRS number III, 656–671 (September 2020), <https://rsaa.org.uk/journal/>.

38. For an analysis of Malaysia’s May 2018 General Elections, which delivered a “stunning upset” in which “the country’s citizens voted out the previously undefeated ruling coalition, *Barisan Nasi-*

(6) *Islam is the Legal System* —

Again, the country is all or majority Muslim, but Islam almost certainly is the officially recognized state religion. Islam is the law itself, that is, the *Shari‘a* is the “law of the land.” It is supplemented by governmental decrees of one form or another, but only when and to the extent necessary. Consequently, Islamic Law affects private behavior, plus all aspects of public life. The Kingdom of Saudi Arabia and Iran are examples. Indeed, adorning the green flag of the Kingdom is the *Shahada*. And, Islamic law is referenced 11 times in the Saudi Constitution. The first article states that the Constitution is the Qur‘an and the *Sunnah* (Traditions) of the Prophet. There is no area of Saudi law in which the *Shari‘a* is not at least tangentially pertinent. Additionally, but of course wrongly, certain violent extremist groups, most notoriously *Al Qaeda* and Islamic State, seek to impose the *Shari‘a* in areas under their control or influence.

Table I-1 summarizes the two dimensions of the question of applicability of Islamic Law.

The Table also can be used diagonally, that is, to consider the applicability of the *Shari‘a* to Muslims in a Muslim country entering into transactions with non-Muslims in a non-Muslim country (or vice versa). For example, does the *Shari‘a* apply to a contract or banking transaction between a Muslim in Saudi Arabia and a non-Muslim in England? The answer is “it depends.” First, the Muslim party may prefer the transaction comport with Islamic Law, for example, have no interest (*riba*), and the British party may agree. Alternatively, the British party may insist on non-Islamic rules (such as English banking law), which allow for interest. In this latter instance, the transaction still would be legally valid in Saudi Arabia. But, in the event of a dispute between the parties, a *Shari‘a* court would not enforce the deal.

Categorizing Islamic countries according to the dimensions of the Table is a dynamic process. That is, the role of the *Shari‘a* and its applicability in a country may change, by evolution or revolution, over time. That reality is all the truer after the Arab Spring.<sup>39</sup>

## 6. Apology for *Shari‘a*?

Two aspects are missing from *Understanding Islamic Law (Shari‘a)*, and intentionally so. First, this book is not an apology for Islam or the *Shari‘a*. In modern parlance, “apology” connotes a statement of sorrow, sometimes coupled with an explanation. The Latin root of the term “apology” refers to offering a reasoned defense of a proposition. The point here is not to defend Islam and the *Shari‘a* against any and all challenges.



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onal (BN) in favor of a newly-reconfigured opposition alliance, *Pakatan Hapun (PH)*,” and which witnessed “the departure of the Islamist Party, *Parti Islam S-Malaysia (PAS)*, from the previous opposition coalition, *Pakatan Rakyat*, and its decision to contest independently [that] was thought to benefit BN through splitting the protest vote,” see Francis E. Hutchinson, *Malaysia’s 14th General Elections: Drivers and Agents of Change*, XLIX ASIAN AFFAIRS JOURNAL OF THE ROYAL SOCIETY FOR ASIAN AFFAIRS number IV, 582–605 (November 2018), <https://rsaa.org.uk/journal/>.

39. For a case study of Egypt, see Adham Hashish, *The Egyptian Second Republic: The Future of Litigating Islam Before the Supreme Constitutional Court*, 5 BERKELEY JOURNAL OF MIDDLE EASTERN ISLAMIC LAW 119–164 (2012). For a synopsis of the disappointing aftermath of the Arab Spring, as of October 2021, almost 11 years after it began in Tunisia in January 2011, see Vivian Yee, “What Have We Done With Democracy?” *A Decade On, Arab Spring Gains Wither*, THE NEW YORK TIMES, 10 October 2021, [www.nytimes.com/2021/10/10/world/middleeast/tunisia-arab-spring-anniversary.html?referringSource=articleShare](http://www.nytimes.com/2021/10/10/world/middleeast/tunisia-arab-spring-anniversary.html?referringSource=articleShare).

Yet, this book is not a mere regurgitation of Islamic legal precepts. To the contrary, it endeavors to show the reasons for them. Often, these reasons are impressive, appealing in an ecumenical sense, and even persuasive. Credit must be given where credit is due, and all the more so if doing so contributes to dialogue among faiths and legal systems by spotlighting areas of agreement and narrowing points of disagreement.

**Table I-1: Applicability of the *Shari'ā***

Country  Person 	<i>Muslim Country in which the Shari'ā is All or Part of the Legal System</i>	<i>Non-Muslim Country</i>
<i>Muslim</i>	The <i>Shari'ā</i> is applicable in both the public and private spheres.	The <i>Shari'ā</i> is applicable in the private sphere, to the extent the individual seeks to follow it.
<i>Non-Muslim</i>	The <i>Shari'ā</i> is not applicable in the private sphere, but may be applicable to certain transactions or events ( <i>e.g.</i> , contracts, banking, and certain criminal matters) in the public sphere.	The <i>Shari'ā</i> is not applicable.

It is appropriate to emphasize reason in a book on Islamic Law. Not to do so is a terrible disservice to this sacred legal system. Reason — the application of the intellect manifest through non-violent discourse — has been a part of Islam since the Prophet Muhammad received the message of the Qur'ān from Allāh. *Surah* (chapter) 16, *ayah* (verse) 125 of the Qur'ān states clearly:

[Prophet Muhammad], call people to the way of your Lord *with wisdom and beautiful teaching. Argue with them in the most courteous way*, for your Lord knows best who has strayed from His way and who is rightly guided.<sup>40</sup>

That *surah* 16 is a Meccan *surah*, meaning (*inter alia*) it was revealed to Muhammad early on, before the *Hijra*, is all the more evidence that reason is an innate part of Islam. Of course, the use of reason has ebbed and flowed in Islam, as in all religions. At different times, and led (sometimes misguided) by different leaders, reason has been de-emphasized at the expense of faith. At other times, the opposite has occurred.

To my mind, reason and faith are inseparable, as Pope John Paul II beautifully points out in his September 1998 Encyclical Letter, *Fides et Ratio*.<sup>41</sup> His successor, Pope Benedict XVI (1927–, Pope, 2005–2013), calls for a re-balancing of faith and reason in Islam, with greater emphasis on reason, even independent reasoning (*ijtihad*). Many observers view this call as provocative, particularly in respect of the September 2006 address at Regens-

40. QUR'AN, *supra* 16:125 at 174 (emphasis added).

41. See Encyclical Letter, *Fides et Ratio*, of the Supreme Pontiff John Paul II to the Bishops of the Catholic Church on the Relationship Between Faith and Reason (14 September 1998), [www.vatican.va](http://www.vatican.va).



burg University, Germany.<sup>42</sup> In that speech, the Holy Father quotes, without endorsing, a Byzantine ruler. The quote and the key paragraphs around it are as follows:

. . . I read the edition by Professor [Adel] Theodore Khoury (Münster) [a German Catholic theologian and expert on Islam (1930-)] of part of the dialogue carried on — perhaps in 1391 in the winter barracks near Ankara — by the erudite Byzantine Emperor Manuel II Palaiologos [(1350–1425)] and an educated Persian on the subject of Christianity and Islam, and the truth of both. It was presumably the emperor himself who set down this dialogue, during the siege of Constantinople between 1394 and 1402; and this would explain why his arguments are given in greater detail than those of his Persian interlocutor. The dialogue ranges widely over the structures of faith contained in the Bible and in the Qurʾān, and deals especially with the image of God and of man, while necessarily returning repeatedly to the relationship between — as they were called — three “Laws” or “rules of life:” the Old Testament, the New Testament and the Qurʾān. It is not my intention to discuss this question in the present lecture; here I would like to discuss only one point — itself rather marginal to the dialogue as a whole — which, in the context of the issue of “faith and reason,” I found interesting and which can serve as the starting-point for my reflections on this issue.

In the seventh conversation . . . edited by Professor Khoury, the Emperor touches on the theme of the holy war. The Emperor must have known that surah 2, 256 reads: “There is no compulsion in religion.” According to some of the experts, this is probably one of the *surahs* of the early period, when Mohammed was still powerless and under threat. But naturally the Emperor also knew the instructions, developed later, and recorded in the Qurʾān, concerning holy war. Without descending to details, such as the difference in treatment accorded to those who have the “Book” and the “infidels,” *he addresses his interlocutor with a startling brusqueness, a brusqueness that we find unacceptable*, on the central question about the relationship between religion and violence in general, saying:

“Show me just what Mohammed brought that was new, and there you will find things only evil and inhuman, such as his command to spread by the sword the faith he preached.”

The Emperor, after having expressed himself so forcefully, goes on to explain in detail the reasons why spreading the faith through violence is something unreasonable. Violence is incompatible with the nature of God and the nature of the soul. “God”, he says,

“is not pleased by blood — and not acting reasonably . . . is contrary to God’s nature. Faith is born of the soul, not the body. Whoever would lead someone to faith needs the ability to speak well and to reason properly, without violence and threats. . . . To convince a reasonable soul, one does not need a strong arm, or weapons of any kind, or any other means of threatening a person with death. . . .”

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42. For one synopsis of the controversy, see *Regensburg Lecture*, WIKIPEDIA, [http://en.wikipedia.org/wiki/Regensburg\\_lecture](http://en.wikipedia.org/wiki/Regensburg_lecture).

The decisive statement in this argument against violent conversion is this: not to act in accordance with reason is contrary to God's nature. The editor, Theodore Khoury, observes: For the Emperor, as a Byzantine shaped by Greek philosophy, this statement is self-evident. But for Muslim teaching, God is absolutely transcendent. His will is not bound up with any of our categories, even that of rationality. Here Khoury quotes a work of the noted French Islamist R. Arnaldez, who points out that Ibn Hazm went so far as to state that God is not bound even by his own word, and that nothing would oblige him to reveal the truth to us. Were it God's will, we would even have to practice idolatry.

At this point, as far as understanding of God and thus the concrete practice of religion is concerned, we are faced with an unavoidable dilemma. Is the conviction that acting unreasonably contradicts God's nature merely a Greek idea, or is it always and intrinsically true? I believe that here we can see the profound harmony between what is Greek in the best sense of the word and the biblical understanding of faith in God.<sup>43</sup>

Manifestly, the speech was drafted by an academic at heart for scholarly debate about faith, reason, and violence.<sup>44</sup>

One reaction to the speech was:

It is not so much that what he says is controversial, but that people find it painful to hear.<sup>45</sup>

This reaction is an intelligent, nuanced one. There were less open-minded and even violent responses, despite Pope Benedict adding in a footnote to the controversial quotation:

In the Muslim world, this quotation has unfortunately been taken as an expression of my personal position, thus arousing understandable indignation. I hope that the reader of my text can see immediately that this sentence does not express my personal view of the Qur'ān, for which I have the respect due to the holy book of a great religion. In quoting the text of the Emperor Manuel II, I intended solely to draw out the essential relationship between faith and reason. On this point I am in agreement with Manuel II, but without endorsing his polemic.<sup>46</sup>

The broader, deeper, and indispensable point made in *Fides et Ratio*, and exemplified in the Regensburg speech, is a courageous one: faith without reason leads to blind adherence, and even extremism; and reason without faith is a cold intellectual cul-de-sac that historically has justified hideously inhuman acts. Thus, as Pope John Paul II put it meta-

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43. Papal Address at University of Regensburg, "Three Stages in the Program of De-Hellenization," Apostolic Journey of His Holiness Benedict XVI to München, Altötting and Regensburg, 9–14 September 2006, Meeting with the Representatives of Science, Lecture of the Holy Father, Aula Magna of the University of Regensburg (12 September 2006), Faith, Reason and the University Memories and Reflections., [www.zenit.org/article-16955?l=english](http://www.zenit.org/article-16955?l=english) (official Vatican translation) (footnotes omitted, emphasis added, minor formatting and spelling changes). [Hereinafter, Regensburg Address.] The Address also is at [www.vatican.va/holy\\_father/benedict\\_xvi/speeches/2006/september/documents/hf\\_ben-xvi\\_spe\\_20060912\\_university-regensburg\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/speeches/2006/september/documents/hf_ben-xvi_spe_20060912_university-regensburg_en.html).

44. Quoted in *A Chapter of Accidents*, THE ECONOMIST, 65, 66, 16 May 2009.

45. *A Chapter of Accidents*, THE ECONOMIST, 65, 67, 16 May 2009 (quoting a "conservative Catholic layman in Rome").

46. Regensburg Address, *supra*, fn. 3.

phorically, faith and reason are two wings of the same bird, without which the bird cannot fly, but with which it can soar.

Extremism is antithetical to flight. It kills the bird. Yet, among some liberal, elite intellectual circles, it is popular to eschew use of the word “extremism.” Former British Foreign Secretary David Miliband (1965-) argued in a May 2009 speech to the Oxford Centre for Islamic Studies that habitual use of the distinction between “moderates” and “extremists” among Muslim political and religious movements results in lazy stereotypes.<sup>47</sup> Worse yet, the distinction obfuscates a variety of national territorial struggles with pan-Islamist *jihādi* struggles. Are Uyghur Muslims in Xinjiang Province, China, Kashmiri Muslims in northwest India and Pakistan, and Chechnyan Muslims in the Russian Caucasus all part of a broad *Al Qaeda* movement? Or, are they more an eclectic and diverse group of nationalist fighters? Ostensibly, the question is academic. They are violent, and commit heinous terrorist acts. But, if they are to be dealt successfully and justly, then the question matters. How to deal with them depends partly on who they are and how they think.

The Foreign Secretary makes a valid point. Nevertheless, I do rely on the distinction between “moderates” and “extremists” in various parts of this book. A person entirely unwilling to entertain the possibility of synthesizing faith and reason is an “extremist” in the lexicographic meaning, given by the *Oxford English Dictionary*, of the term: “lacking restraint or moderation,” “advocating immoderate measures,” “outermost,” “furthest from the center,” “situated at either end.” Its synonyms include “rigid,” “harsh,” “draconian,” “uncompromising,” “drastic,” “outrageous,” and “beyond the pale.” As do all faiths at one point or another in history, Islam is bedeviled by a small minority of “extremists.” That is no secret, including to Muslims, and to use euphemisms is to commit the same blunder: obfuscation of the truth.

## 7. Attack on *Shari‘a*?

The second missing dimension is attack. This book is not an attack on Islam or the *Shari‘a*. A prospective reader hoping for a polemical account, or castigation, of the religion and sacred legal tradition it has spawned will be disappointed. I have no interest in the level of discourse about Islam characteristic typical of the mainstream American media. Even after the horrors of 9/11 and the blunders in Iraq and Afghanistan, in America and throughout the English-speaking world, the inattentiveness, misunderstanding, ignorance, and prejudice toward Islam and its legal system remain dangerously high and widespread. The “danger” is inattentiveness, misunderstanding, ignorance, and prejudice lead to clashes between civilizations. Given the destructive potential of modern weaponry, the world cannot afford such clashes. Our survival depends in part on proving that the thesis of Samuel Huntington, in *The Clash of Civilizations* (1996) is wrong, or cannot be allowed to come true. Writing a tract would be orthogonal to the common interests of Muslims and non-Muslims alike.

That is not to say this book is uncritical of Islam or Islamic Law. If I am not an antagonist against Islam and the *Shari‘a*, I also am not a cheerleader. There are plenty of points at which the book offers candid observations. The two leading examples, and the ones about which I cannot pretend to be objective, are religious freedom and the treatment of women.

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47. See *Engaging Islamists* Miliband Asks Right Questions as Muslims Await Obama, FINANCIAL TIMES, 22 May 2009, at 8.

Bluntly put, on these topics, many parts of the Muslim world are backward, and some of the trends therein are depressing if not outrageous. Many of my Muslim friends not only agree with these points, but argue far more articulately than I do in first-rate research publications like the *Arab Human Development Report*.

## 8. Importance of Understanding *Shari‘a*?

The purpose of this book is aptly conveyed by the first word of the title — “Understanding.” The book is supposed to be a reasonably comprehensive and balanced treatment of a sacred legal system and the religion and history associated with that system. This treatment is designed for the student of the *Shari‘a*, whether she is enrolled formally in a law school or other graduate program, or has moved on into professional legal practice or the academy.

Unless the world is content with rising tensions and deeper schisms that too often yield the poisons of incivility and violence, more understanding is needed than currently exists about Islam. Non-Muslims in America generally have little knowledge of Islam, and concomitantly, some prejudice against it. In January 2010, Gallup published *Religious Perceptions in America*. The report contains an in-depth analysis of the attitudes in the U.S. toward Muslims and Islam. Among its most striking findings are:<sup>48</sup>

- Of the four faiths studied, Judaism, Christianity, Islam, and Buddhism, Islam elicits the most negative views. Over half of Americans (53%) state that their opinion of Islam is “not favorable at all” (31%) or “not too favorable” (22%).
- Nearly two-thirds of Americans (63%) confess they have “very little knowledge” of Islam (40%), or “none at all” (23%).
- Americans view Islam more negatively than they view Muslims, suggesting an ability to distinguish between a religion and its adherents. But, Americans are more than twice as likely to hold negative feelings toward Muslims than toward Jews, Christians, or Buddhists. Nearly half of Americans (43%) confess they are “a little” prejudiced toward Muslims. Almost 1 in 10 Americans (9%) say they harbor “a great deal of prejudice” against them.
- In respect of individual prejudice, Americans who do not know a Muslim are twice as likely to say they are greatly prejudiced toward Muslims. Knowing the name of the Prophet of Islam (Muhammad) makes an American twice as likely to have “a great deal of prejudice” toward Islam.
- Notably, neither other faiths (except for their extreme fringes) nor adherence to them is to blame for prejudicial attitudes. A key variable associated with “a great deal of prejudice” by Americans against Muslims is absence (in terms of attendance less than once a week) from church or other religious service. In contrast, Americans who attend a service more than once a week are more than twice as likely to say they feel no prejudice against Muslims.
- On religious freedom, two-thirds of Americans (66%) feel Muslims are not accepting of other religions. A similar proportion (68%) disagrees with the proposition that the religious beliefs of Christians and Muslims are basically the same.
- On women and diversity, the vast majority of Americans (81%) do not agree that most Muslims believe women and men should have equal rights. Nearly half (47%) of Americans think most Muslims accept others from different races.

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48. See Gallup, *Religious Perceptions in America*, Executive Summary 4–5 (2009).

Lest it be thought this negativity is an American phenomenon, consider the result of an October 2010 opinion poll of Germans by ARD state television: 37% of Germans agreed with the proposition that “‘Germany without Islam’ would be a better place.”<sup>49</sup>

The mirror-image of many of these points also seems to be true. Muslims, in America and around the world, are not always familiar with those other faiths. That is especially true if they do not live in close proximity to persons of other faiths. This ignorance is a breeding ground for stereotypes and prejudice. One consolation in the Gallup findings is that nearly three-quarters of Americans (70%) agree most Muslims want peace. There is reason to believe most Muslims would say the same about most Americans, and thus both groups would adduce the ability to differentiate individuals from governments, and people from policies.

My professional station in life is a teacher. A teacher is supposed to explain, and in doing so probe with a critical intellect and compassionate heart. The explanation is supposed to stimulate the student, which occurs only if the teacher is passionate about the subject matter. I am passionate about the study of Islam and the *Sharīʿa*. That is not to say I am a master of the subject — hardly.

My primary area of scholarship is International Trade Law. I know well, in my head and heart, that I do not have the confidence or command in writing about the *Sharīʿa* that I sense (perhaps foolishly so!) in Trade. That is, I am more cognizant of what I do not know in Trade than in Islamic Law. After all, through the 1,600 years since the advent of Islam, thousands upon thousands of scholars (who know Arabic, which I do not, aside from a few tutorials and limited vocabulary) have devoted their lives to the study of Islamic Law. I am not, and never will be, in their league.

Nevertheless, my sense of “mission” to write this book has never wavered, and indeed increased with each day of work on the project. The problem with that elite league is it has not engaged the contemporary English-speaking law student. Treatises on the *Sharīʿa*, written in Arabic, stacked away on some dusty shelf at a school of Qurʾānic thought in Damascus, are inaccessible to this student. The grand scholarship of Islamic scholars through the ages plays little role in the life of the average American law student. That, by the way, is ironic. Many Anglo-American legal doctrines originate (directly or indirectly) in Islamic Law concepts, or bear an uncanny resemblance to them. As Professor John A. Makdisi argued in a brilliant 1999 article, excerpts from the Introduction and Conclusion to which are as follows:

The origins of the common law are shrouded in mystery. Created over seven centuries ago during the reign of King Henry II of England, to this day we do not know how some of its most distinctive institutions arose. For example, where did we get the idea that contract transfers property ownership by words and not by delivery or that possession is a form of property ownership? Even more importantly, where did we get the idea that every person is entitled to trial by jury?

Historians have suggested that the common law is a product of many different influences, the most important being the civil law tradition of Roman and canon law. Yet, as we shall see, the legal institutions of the common law fit within a structural and functional pattern that is unique among western legal systems and certainly different from that of the civil law. The coherence of this pattern strongly

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49. Quentin Peel, *Merkel Needs to Reconcile the Economic and Political Realities*, FINANCIAL TIMES, 19 October 2010, at 2.

suggests the dominating influence of a single pre-existing legal tradition rather than a patchwork of influences from multiple legal systems overlaid on a Roman fabric. The only problem is that no one pre-existing legal tradition has yet been found to fit the picture.

This Article looks beyond the borders of Europe and proposes that the origins of the common law may be found in Islamic law. The first three Parts examine institutions that helped to create the common law in the twelfth century by introducing revolutionary concepts that were totally out of character with existing European legal institutions. For the first time in English history, (1) contract law permitted the transfer of property ownership on the sole basis of offer and acceptance through the action of debt; (2) property law protected possession as a form of property ownership through the assize of novel disseisin; and (3) the royal courts instituted a rational procedure for settling disputes through trial by jury. This Article explores the origins of these three institutions by tracing their unique characteristics to three analogous institutions in Islamic law. The royal English contract protected by the action of debt is identified with the Islamic *'aqd*, the English assize [*i.e.*, session of court or council] of novel disseisin [*i.e.*, dispossession, specifically, wrongful deprivation of someone of freehold property possession] is identified with the Islamic *istihqaq*, and the English jury is identified with the Islamic *lafif*.

Part IV examines the major characteristics of the legal systems known as Islamic law, common law, and civil law and demonstrates the remarkable resemblance between the first two in function and structure and their dissimilarity with the civil law. Part V traces a path from the Maliki school of Islamic law in North Africa and Sicily to the Norman law of Sicily and from there to the Norman law of England to demonstrate the social, political, and geographical connections that made transplants from Islam possible.

The conclusions of this Article shatter some widely held theories on the origins of the common law, but they should not come as a complete surprise. Other writers have already suggested an Islamic influence on the common law. In 1955, Henry Cattan noted that the English trust closely resembled and probably derived from the earlier Islamic institution of *waqf*. George Makdisi revealed many parallel institutions in Islamic and western legal education including most notably the scholastic method, the license to teach, 12 and the law schools known as Inns of Court in England and *madrasas* in Islam. Abraham Udovitch pointed out that the European *commenda* probably originated from Islam. Yet none of these scholars have suggested that the common law as an integrated whole was a product of Islam. Given the evidence outlined below, this conclusion can no longer be avoided as a plausible theory.

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Until now, historical research has focused almost exclusively on Roman, Germanic, Anglo-Saxon, and other European legal systems as potential origins for the revolutionary changes introduced by King Henry II to English law in the twelfth century. Yet, despite hashing and rehashing the modes by which transplants could have taken place between these legal systems and English law, historians have had to admit that the fit is just not there. Consequently, some have suggested that King Henry II's great contribution in the assize of novel disseisin was really the product of original thinking through many wakeful nights.

This Article has proposed a wider sweep in the search for origins. The Islamic legal system was far superior to the primitive legal system of England before the birth of the common law. It was natural for the more primitive system to look to the more sophisticated one as it developed three institutions that played a major role in creating the common law. The action of debt, the assize of novel disseisin, and trial by jury introduced mechanisms for a more rational, sophisticated legal process that existed only in Islamic law at that time. Furthermore, the study of the characteristics of the function and structure of Islamic law demonstrates its remarkable kinship with the common law in contrast to the civil law. Finally, one cannot forget the opportunity for the transplant of these mechanisms from Islam through Sicily to Norman England in the twelfth century. Motive, method, and opportunity existed for King Henry II to adopt an Islamic approach to legal and administrative procedures. While it does not require a tremendous stretch of the imagination to envision the Islamic origins of the common law, it does require a willingness to revise traditional historical notions.<sup>50</sup>

Of course, the challenge for the Islamic world is less about the past than the future.

That the *Shari'a* provided a venerable legal model 1,400 years ago is significant, not only as an intellectual matter, but also as a practical one, as it lends insight into questions concerning the operation of current legal doctrines and institutions. Indeed, it matters to fostering a more balanced, and humbler, view among Britishers and Americans of Anglo-American law and legal culture. But, what can the Islamic world offer as a legal model in today's world, which is characterized by great power competition between the U.S. and China, and contestation among diverse legal systems from Europe to the Indo-Pacific region? It's the proverbial "what have you done for me lately?" question.

So, there is a choice: be paralyzed with fear of what I do not know, and do nothing, or try to bridge the gap with what I do know and can readily learn in a limited span of time. The teacher in me, moved by the critical period in world history in which my students are destined to practice, impelled me to write this book. In making that choice, I faced a stark truth: I cannot be objective. Indeed, I do not believe value-free scholarship is possible, or even desirable. C.S. Lewis (1898–1963) persuaded me of this truth through his 1944 book, *The Abolition of Man*.<sup>51</sup>

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50. John A. Makdisi, *The Islamic Origins of the Common Law*, 77 NORTH CAROLINA LAW REVIEW number 5, 1635–1740, 1638–1640 (June 1999), <https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=3823&context=nclr>. Among the many fascinating points Professor Makdisi makes, he observes that the English jury had all the features of the Islamic *lafif*, with the exception the *lafif* did not entail a judicial writ directing a jury to be summoned and a bailiff to hear its recognition. Hence, he writes that “[n]o other institution [*i.e.*, other than *lafif*] in any [other, *i.e.*, non-Islamic] legal system studied to date shares all these characteristics with the English jury.” *Id.*, 1695. He suggests that Normans, who conquered England and the Emirate of Sicily (a prosperous, cosmopolitan Islamic Kingdom from 831–1091 that fell to Christian Norman mercenaries led by Roger I (1031–1101), also known as Roger Bosso or The Great Count), brought *lafif* to England, and *lafif* evolved into the English jury. See *id.*, 1717–1730.

51. See C.S. LEWIS, *THE ABOLITION OF MAN* REFLECTIONS ON EDUCATION WITH SPECIAL REFERENCE TO THE TEACHING OF ENGLISH IN THE UPPER FORMS OF SCHOOLS (1944, New York, New York: Harper Collins Publishers, Inc., 2001 ed.).

## 9. Compared to What?

Islamic Law as taught in American and other English-medium law schools is not a course in catechesis, though it certainly can have the positive benefit of helping students think through their own questions about religion. It is not, strictly speaking, a trade course in the sense of preparing students to practice Islamic Law, though it certainly can have that positive benefit. Instead, Islamic Law is a course that falls under the rubric of “Comparative Law.” For most of the post-Second World War era, that rubric was far narrower than it sounds: it meant comparing American Law to Civil Law, *i.e.*, it was a Euro-centric label under which most courses examined French or German Law.

In more recent decades, “Comparative Law” has come to encompass courses in Chinese Law, Japanese Law, the Law of Latin American countries, and the Law of Indigenous Peoples. That is a right and proper development, if for no other reason than to correct the prior imbalance in favor of the western European continent. An additional supporting rationale is the rising cultural, economic, and political importance of the non-western world. No law student, regardless of where he or she practices, is immune from influences from the “Third World.”

It is equally right and proper that Islamic Law has been incorporated into the Comparative Law curriculum of a large and growing number of American and English-medium law schools. It may well be the case that Islamic Law is increasingly mainstreamed into this curriculum, and viewed by Deans and faculties alike not as an “exotic” course, but rather as fairly important to producing educated, globally-minded lawyers — the way, for example, Chinese Law seems to be.

Yet, this happy trend begs a question: to what should Islamic Law be compared? The question is asked in any Comparative Law course. What, for instance, is the reference point for examining Chinese Law? At one level, it is important not to dwell on the question. The highest and noblest goal of a Comparative Law course is to develop a sense of empathy for the other legal system. That requires an effort to see the other legal system from within, and view it as lawyers and scholars in that legal system would view it. But, in a practical sense, a frame of reference — a starting point — always is helpful. It is in the nature of the legal mind to examine the unfamiliar by relating it to the known.

I answer the question of what the *Shari‘a* ought to be compared with as I suspect most lawyers and legal scholars do: I start with what I know (or, at least, what I think I know). But, Islamic Law is a sacred legal system. It comes from God (Allāh), not just a secular parliament or court. That means the *Shari‘a* is best compared not only with a secular legal system, but also another sacred tradition. To compare an Islamic legal rule only with American law is a recipe for under-appreciating the richness and depth of *Shari‘a*, with no disrespect intended to American law. The dimension of the Divine cannot be extricated from Islamic Law, whereas it can and often is in respect of American Law. (Whether it should be is another, and hotly debated, question.)

Setting aside the insight most authors get from writing a book — the more they learn, the more they realize what they do not know — my familiarity is with a little bit of American Law and Catholic Christianity. Stress should be placed on “a little bit.” Much as I love and respect them, I do not claim to know either of these broad and deep areas well. I am fairly certain that in the pages of this book, experts in these fields, along with authentic scholars of the *Shari‘a*, will find I have goofed up various points. I apologize, of course, in advance, and assure that no disrespect is intended. I welcome corrections for a Fourth Edition. Yet, the facts remain I am educated in the American legal system, practiced at the



Federal Reserve in New York, and am a (flawed) Roman Catholic. The American legal and Catholic Christian paradigms are the ones in which my mind, body, and soul operate. I neither can nor wish to leave them at home when I go to work. They impart the reference points for comparisons with Islamic Law.

However, surely a less personally expedient, more pragmatic, defense of comparing the *Shari'a* with American Law, and with Catholic Christianity, exists. Consider the following four arguments.

**(1) Demographics (in the Static Sense) Matter**

First, the demographic *status quo* matters. It drives a great deal of life. There are 1.6 billion Muslims in the world:<sup>52</sup>

- 2.5 million Muslims are in the U.S., accounting for 0.8% of the American population, and 0.2% of the global Islamic population.
- 315.3 million Muslims are in the Middle East and North Africa, accounting for 91.2% or more of the people in these regions, but just 20.1% of the global Islamic population.
- 972.5 million Muslims are in the Asia-Pacific region, accounting for over 61.9% of the global Islamic population.
- Muslims account for ever-increasing proportions of traditionally Christian Europe, and (candidly) Christians have themselves partly to “blame.”

Ireland is a remarkable case in point.<sup>53</sup> In 1971, there were 400 Muslims in the entire country. By 2013, there were roughly 50,000 Muslims, and Islam was the fastest growing religion. Conversely, in 1971, 92% of Irish said they were Catholic; in 2013, 84% said so. Immigration from non-western countries fueled this growth. The decade-long economic boom of the Celtic Tiger brought 199 nationalities to Ireland. But, secularism among Catholics, a scourge plaguing all of Europe and beyond, created a void on the island for which Saint Patrick is the Patron, into which Islam flowed. Weekly Mass attendance was 80% in the 1980s, but 35% by 2013. In 2011, only six Priests were ordained in all of Ireland, and in 2013, the average age of Irish Priests was 64. Between 2002 and 2011, the number of Irish saying they held no religious faith doubled to 277,237. This scourge was more than the prediction of the philosopher Friedrich Nietzsche (1844–1900) coming true: that “God is dead,” (a phrase in his *The Gay Science* (1882) and *Thus Spoke Zarathustra* (1883–1885)), *i.e.*, there would come a time when people no longer feel a need for a God, that God is irrelevant in their lives. It was partly a self-inflicted wound. Scandals in the Church eroded the trust of everyday Irishmen, laity, and clergy alike, in that institution. For two decades, Ireland suffered instances of child sex abuse, yet felt the Vatican downplayed, even cov-

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52. Unless otherwise noted, these data are from:

- (1) An October 2009 study by the Pew Forum on Religion & Public Life, *Mapping the Global Muslim Population: A Report on the Size and Distribution of the World's Muslim Population*, and are based on research in over 200 countries. See <http://pewforum.org>.
- (2) A 2 April 2015 study by the Pew Research Center on Religion and Public Life, *The Future of World Religions: Population Growth Projections, 2010–2050*, [www.pewforum.org/2015/04/02/religious-projections-2010-2050/](http://www.pewforum.org/2015/04/02/religious-projections-2010-2050/). [Hereinafter, April 2015 Pew Research Center *Projections*.]

For further statistics (including updates), see, e.g., *CIA World Factbook*, [www.cia.gov/library/publications/the-world-factbook/](http://www.cia.gov/library/publications/the-world-factbook/).

53. See Jamie Smyth, *Away from the Pulpit*, FINANCIAL TIMES, 7 January 2013, at 6.

ered up, its concerns. In 2012, the Irish government had had enough: Prime Minister Enda Kenny closed the Irish Embassy to the Holy See.<sup>54</sup>

- Indonesia is the largest Islamic country in the world, with roughly 220 million people, most of whom are Muslim. India is home to between 180–250 million Muslims. Bangladesh and Pakistan boast populations, almost all of which are Muslim, of about 170 million each. If the numbers of Muslims on the Indian Sub-continent, specifically, Bangladesh, India, and Pakistan, are summed together, they exceed the number of Hindus in India.
- Undergoing rapid population growth, Pakistan soon may be the fourth largest country in the world, following China, India, and the U.S.<sup>55</sup> But, its decrepit infrastructure, corrupt political system, archaic tribal rivalries, and insecurity complex relative to India (causing it to over-allocate resources to its military) render Pakistan incapable of supporting that population with a decent standard of living. Few want to call it a failed state, but that is an accurate label for parts of the country, and the consequences in terms of fecundity for extremism are obvious.
- With about 7.3 billion people on the planet, about one out of every five persons, or 21.3% of the world, is a Muslim.<sup>56</sup>
- Of the total Islamic population in the world, between 10–13% are *Shīʿites*, with between 68–80% of them living in Iran, Iraq, India, and Pakistan, and the remaining 87–90% of Muslims are *Sunnis*.

It must be added that two out of five people in the Arab world live on less than U.S. \$2 per day.<sup>57</sup> This last statistic is poignant in light of the oft-remarked link between poverty, or oppression more generally, on the one hand, and vulnerability to the evil temptation of extremism, on the other hand. Saudi Arabia is a case in point. Like Pakistan and Egypt, it is experiencing rapid population growth.<sup>58</sup> Over 60% of the Saudi population is less than 30 years old. But, it lacks the robust educational and job opportunities to match the aspirations of its young people, a disconnect that is all the more excruciating given the tight cultural, social, and religious milieu in the Kingdom.

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54. Yet more controversies associated with the Church further catalyzed Irish secularist trends. For example, in October 2012 death Dr. Savita Halappanavar, a 31-year-old non-Catholic dentist from India, who was 17 weeks pregnant, died of septicaemia after medical staff in Galway refused her an abortion. A vigorous debate about the power of the Church in Irish politics and law ensued. Irish abortion laws, which, along with those of Malta, were among the only two in the European Union (EU) that made it difficult for a woman to abort even if her life was endangered. (Despite a 1992 Irish Supreme Court decision stating that pregnancy termination is allowable under limited circumstances, what they are remained unclear, and under an 1861 Irish law, the penalty for conducting an abortion is penal servitude for life.) Relatedly, artificial contraception was not legal in Ireland until 1980, and divorce not until 1997. To be sure, such matters did not mean Irish Catholics converted to Islam in droves. Hardly. But, regrettably from a Christian perspective, they turn the Irish Republic from being orthodox to culturally Catholic.

55. See [www.businessinsider.com/10-countries-on-the-verge-of-a-demographic-crisis-2010-2#pakistan-167-billion-gdp-2](http://www.businessinsider.com/10-countries-on-the-verge-of-a-demographic-crisis-2010-2#pakistan-167-billion-gdp-2). (The data are as of June 2010.)

56. See United States Census Bureau, *U.S. and World Population Clock*, [www.census.gov/popclock/world](http://www.census.gov/popclock/world).

57. *Waking From Its Sleep*, THE ECONOMIST, 25 July 2009, at 9.

58. See [www.businessinsider.com/10-countries-on-the-verge-of-a-demographic-crisis-2010-2#saudi-arabia-380-billion-gdp-4](http://www.businessinsider.com/10-countries-on-the-verge-of-a-demographic-crisis-2010-2#saudi-arabia-380-billion-gdp-4). (The data are as of June 2010).

There also are 1.13 billion Roman Catholics, and a further roughly 1.1 billion Protestants. Thus, 1 out of 3 persons is Christian, *i.e.*, about 2.2 out of 7.3 billion, with nearly one 1 of every 5 being Catholic or Protestant. By comparing Islam and Catholic Christianity, over 40% of the professed faith of the world — nearly half — is covered. Insofar as adherents to Protestantism are familiar with Catholicism, the figure rises to almost 60%, or nearly two out of every three persons. In any work on Comparative Law, the opportunity to have that work resonate with such large percentages of the global community is rare.

## (2) Demographics (in the Dynamic Sense) Matter

Complementing the static picture the aforementioned statistics provide is a dynamic one based on growth projections. Population prognostications may not come true for a variety of reasons, including climate change, disease, war, and women's emancipation, relative to other faiths. With that caveat in mind, demographic data show Islam is a particularly fast-growing religion:

Over the next four decades [2010–2050], Christians will remain the largest religious group, but Islam will grow faster than any other major religion. If current trends continue, by 2050 . . .

- The number of Muslims will nearly equal the number of Christians around the world.
- Atheists, agnostics, and other people who do not affiliate with any religion — though increasing in countries such as America and France — will make up a declining share of the world's total population.
- The global Buddhist population will be about the same size it was in 2010, while the Hindu and Jewish populations will be larger than they are today.
- In Europe, Muslims will make up 10% of the overall population.
- India will retain a Hindu majority but also will have the largest Muslim population of any country in the world, surpassing Indonesia.
- In the U.S., Christians will decline from more than three-quarters of the population in 2010 to two-thirds in 2050, and Judaism will no longer be the largest non-Christian religion. Muslims will be more numerous in the U.S. than people who identify as Jewish on the basis of religion.
- Four out of every 10 Christians in the world will live in Sub-Saharan Africa.

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[In specific:] [a]s of 2010, Christianity was by far the world's largest religion, with an estimated 2.2 billion adherents, nearly a third (31%) of all 6.9 billion people on Earth. Islam was second, with 1.6 billion adherents, or 23% of the global population. If current demographic trends continue, however, Islam will nearly catch up by the middle of the 21st century. Between 2010 and 2050, the world's total population is expected to rise to 9.3 billion, a 35% increase. Over that same period, Muslims — a comparatively youthful population with high fertility rates — are projected to increase by 73%. The number of Christians also is projected to rise, but more slowly, at about the same rate (35%) as the global population overall.

As a result, . . . by 2050 there will be near parity between Muslims (2.8 billion, or 30% of the population) and Christians (2.9 billion, or 31%), possibly for the first time in history.

With the exception of Buddhists, all of the world's major religious groups are poised for at least some growth in absolute numbers in the coming decades. The global

Buddhist population is expected to be fairly stable because of low fertility rates and aging populations in countries such as China, Thailand and Japan.

Worldwide, the Hindu population is projected to rise by 34%, from a little over 1 billion to nearly 1.4 billion, roughly keeping pace with overall population growth. Jews, the smallest religious group for which separate projections were made, are expected to grow 16%, from a little less than 14 million in 2010 to 16.1 million worldwide in 2050.

Adherents of various folk religions — including African traditional religions, Chinese folk religions, Native American religions, and Australian aboriginal religions — are projected to increase by 11%, from 405 million to nearly 450 million.

And all other religions combined — an umbrella category that includes Baha'is, Jains, Sikhs, Taoists and many smaller faiths — are projected to increase 6%, from a total of approximately 58 million to more than 61 million over the same period.

While growing in absolute size, however, folk religions, Judaism and “other religions” (the umbrella category considered as a whole) will not keep pace with global population growth. Each of these groups is projected to make up a smaller percentage of the world's population in 2050 than it did in 2010.

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Similarly, the religiously unaffiliated population is projected to shrink as a percentage of the global population, even though it will increase in absolute number. In 2010, censuses and surveys indicate, there were about 1.1 billion atheists, agnostics and people who do not identify with any particular religion. By 2050, the unaffiliated population is expected to exceed 1.2 billion. But, as a share of all the people in the world, those with no religious affiliation are projected to decline from 16% in 2010 to 13% by the middle of this century.

At the same time, however, the unaffiliated are expected to continue to increase as a share of the population in much of Europe and North America. In the United States, for example, the unaffiliated are projected to grow from an estimated 16% of the total population (including children) in 2010 to 26% in 2050.<sup>59</sup>

These projections are based on three key factors: (1) relative fertility rates and (2) age distributions of the respective religious communities, and (3) religious conversion:

Globally, Muslims have the highest fertility rate, an average of 3.1 children per woman — well above replacement level (2.1), the minimum typically needed to maintain a stable population. Christians are second, at 2.7 children per woman. Hindu fertility (2.4) is similar to the global average (2.5). Worldwide, Jewish fertility (2.3 children per woman) also is above replacement level. All the other groups have fertility levels too low to sustain their populations: folk religions (1.8 children per woman), other religions (1.7), the unaffiliated (1.7) and Buddhists (1.6).

Another important determinant of growth is the current age distribution of each religious group — whether its adherents are predominantly young, with their prime childbearing years still ahead, or older and largely past their childbearing years.

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59. April 2015 Pew Research Center *Projections*.

In 2010, more than a quarter of the world's total population (27%) was under the age of 15. But an even higher percentage of Muslims (34%) and Hindus (30%) were younger than 15, while the share of Christians under 15 matched the global average (27%). These bulging youth populations are among the reasons that Muslims are projected to grow faster than the world's overall population and that Hindus and Christians are projected to roughly keep pace with worldwide population growth.

All the remaining groups have smaller-than-average youth populations, and many of them have disproportionately large numbers of adherents over the age of 59. For example, 11% of the world's population was at least 60 years old in 2010. But fully 20% of Jews around the world are 60 or older, as are 15% of Buddhists, 14% of Christians, 14% of adherents of other religions (taken as a whole), 13% of the unaffiliated and 11% of adherents of folk religions. By contrast, just 7% of Muslims and 8% of Hindus are in this oldest age category.

In addition to fertility rates and age distributions, religious switching is likely to play a role in the growth of religious groups. But conversion patterns are complex and varied. In some countries, it is fairly common for adults to leave their childhood religion and switch to another faith. In others, changes in religious identity are rare, legally cumbersome or even illegal.

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Over the coming decades, Christians are expected to experience the largest net losses from switching. Globally, about 40 million people are projected to switch into Christianity, while 106 million are projected to leave, with most joining the ranks of the religiously unaffiliated. . . .

All told, the unaffiliated are expected to add 97 million people and lose 36 million via switching, for a net gain of 61 million by 2050. Modest net gains through switching also are expected for Muslims (3 million), adherents of folk religions (3 million) and members of other religions (2 million). Jews are expected to experience a net loss of about 300,000 people due to switching, while Buddhists are expected to lose nearly 3 million.<sup>60</sup>

The lack of freedom to convert from Islam under traditional *Shari'a* rule on apostasy (*riddah*) is not followed by all Muslims: between 2010–2050, Islam is forecast to win 12,620,000 million, but lose 9,400,000 adherents.<sup>61</sup> The net gain is 3,220,000 million.

Interestingly, the biggest winner is projected to be the “Unaffiliated” category: it will gain 61,490,000 million new “adherents,” with 97,080,000 million leaving a faith for no denomination, and 35,590,000 making the reverse journey.<sup>62</sup> Conversely, Christianity is forecast to suffer the greatest loss: 66,050,000, with 40,060,000 conversions against 106,100,000 departures. Arguably, then, the greatest threat to world religion is secularism, in the sense of a lack of interest in matters sacred. America, for all its “religiousity” (including its frac-

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60. April 2015 Pew Research Center *Projections*.

61. The Pew Research Center projects “switching in” and “switching out” of a religion using survey data from 70 countries, allowing for all directions of switching, and for partial offsetting. See April 2015 Pew Research Center *Projections*.

62. See April 2015 Pew Research Center *Projections*.

tious religious politics) is a case in point, as the Pew Research Center documented through Gallup polling March 2021:

For the first time in eight decades, fewer than 50% of Americans say they belong to a church, synagogue or mosque amid an ongoing steep decline in religious attendance. . . .

Gallup first began polling Americans on church membership in 1937. In the six decades that followed, between 68% and 76% of Americans said they belonged to a place of worship. Then, at the turn of the century, a persistent decline in religious membership began — and has continued for 20 years.

. . . 47% [of Americans polled] now say they are a member of a Church, synagogue or mosque. It's the first time the percentage dipped below 50% since Gallup was founded in 1935.

About 70% of Americans identify as Christian. . . . About 2% of Americans identify as Jewish and nearly 1% are Muslim. Those represent the largest religious groups in the United States.

The decline in membership coincides with an increase in the number of Americans who do not identify with a particular religion. . . .

In the past three years [2018–2020], about 21% of Americans say they do not have a religious preference. This is a sharp increase from the 8% mark from 1998 to 2000.

There is also a decline in church membership among U.S. adults who are religious. From 1998 to 2000, about 73% of Americans who have a religious preference went to church, but that number has dropped to 60%. . . .<sup>63</sup>

Perhaps many joining the ranks of the unaffiliated do so because the intransigence, and even extremism, of a sliver in each of the organized religion categories puts them off. Stated differently, it is commonplace to blame Satan's temptations of worldly pleasures for disinterest in what is holy, and for a belief that God no longer is relevant or necessary in a "post-Christian" world. But, as a wise Priest once said, "every time you point the finger at someone else, remember that there are three fingers pointing back at you."

As an important aside, one obvious inference from the above demographic statistics is that the tendency to equate "Arab" and "Muslim," fueled by mainstream media coverage of Islam in the non-Muslim western world, is erroneous. Indeed, it can prove insulting to Arab and non-Arab Muslim communities around the world. The Muslim population of China probably exceeds the entire population of any Arab country.

Note some basic terminology: an "Arab" is a speaker of Arabic, regardless of his or her faith. The word "Islam" means "submission." It is properly and specifically used to mean submission to the Will of Allāh. A "Muslim" is anyone who follows "Islam," and thus who seeks to submit to the Will of Allāh. To submit to that Will, a Muslim must exert effort, or struggle, that is, practice a "*jihād al-akbar*," to discern what it is God wants from him or

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63. Mike Stunson, *Majority of Americans Don't Belong to a Place of Worship in Historic Decline, Poll Finds*, THE KANSAS CITY STAR, 29 March 2021, [www.kansascity.com/news/nation-world/national/article250289895.html#storylink=cpy](http://www.kansascity.com/news/nation-world/national/article250289895.html#storylink=cpy). See also Jeffrey M. Jones, *U.S. Church Membership Falls Below Majority For First Time*, GALLUP, 29 March 2021, <https://news.gallup.com/poll/341963/church-membership-falls-below-majority-first-time.aspx> (announcing the results of the updated 2019 poll results).

her. Manifestly, not all Arabs are Muslims. Conversely, not all Muslims are Arabs. Indeed, the vast majority of Muslims are not Arabs. Rather, they make their home in East and South Asia. A large and growing number of Catholic Christians also make their home in East and South Asia. And, American influence — while arguably in relative decline *vis-à-vis* other powers — still is pre-eminent. It will be for decades. Thus, to study the *Shari'a* with some comparisons to Catholic Christianity and American Law “works” to appreciate a bit about Islam in a pluralistic and somewhat American-oriented environment.

To be sure, Arabs play an important role in Islamic history. It was on the Arabian Peninsula the Qur'an was revealed, in Arabic. It is to the Arabian Peninsula every Muslim goes, or tries to go, on the *Hajj* pilgrimage. Consequently, all Muslims have a special reverence for Arabs, Arab lands, and Arabic. But, there are rivalries, sometimes fierce and violent, between Arabs and non-Arab Muslims, such as Persians or Turks. Ironically, of the three largest countries in the Middle East — Iran, Turkey, and Egypt — only one of them, Egypt, is Arab. The demographic significance of Egypt is partly in its population density. As Herodotus said, Egypt is the gift of the Nile. Nearly all of its population lives around this river. Omitting the desert from the calculation makes Egypt the most densely populated place on earth, with 2,000 people per square kilometer, double that of Bangladesh.<sup>64</sup>

### (3) History Matters

As for a third defense of the comparative undertaking here, it is this: history matters. It shapes our present consciousness and future dispositions. Christianity has known Islam since the birth of that great faith. Much of the early interaction was unpleasant, indeed violent. To this day, Christianity still is getting to know Islam better, and recover from past misinterpretations and misunderstandings.

The Catholic Church has global interests, not only in the doctrinal sense of proclaiming a universal message of salvation, but also in the practical sense of protecting Christian minorities in Muslim lands. As for America, in the post-Second World War era, or actually just before it with the discovery of oil on the Arabian Peninsula in the 1930s, it came into direct, sustained interaction with the Arab Muslim world. Since then, the contacts have metastasized throughout the Islamic world.

### (4) Political Economy Matters

Fourth, political economy matters. It is about the grand issues of war and peace, and wealth and poverty. In the post-9/11 era, the U.S. must come to a peaceful accommodation with the Islamic world, and assist it in its continued economic development. The alternative is continued uneasy, unstable, and unpredictable relations.

By definition, as a (if not the) superpower, the U.S. has global interests. That is true whether the topic is energy and natural resources, democracy, nuclear proliferation, religious freedom, or women's rights. On virtually every topic of cross-border relevance, America cannot avoid Islam any more than Christianity can do so: Islam is a “fact on the ground,” and a growing one at that.

Perhaps the greatest global interest America has is security. Security is unattainable when a sizeable percentage of the world's population feels oppressed and, rightly or wrongly, lists Americans or Christians as among the causes. Ironically, through more and richer comparisons among the *Shari'a*, American law, and Catholic Christianity, on many such topics,

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64. See [www.businessinsider.com/10-countries-on-the-verge-of-a-demographic-crisis-2010-2#egypt-188-billion-gdp-3](http://www.businessinsider.com/10-countries-on-the-verge-of-a-demographic-crisis-2010-2#egypt-188-billion-gdp-3). (The data are as of June 2010.)

and on security itself, the three parties might find themselves in agreement, even alliance. Americans and Muslims, as well as Christians and Muslims, know each other as brothers and sisters. And, yet, they do not. It is in their collective self-interest to do so.

## 10. Other Reasonable Comparisons?

I concede the argument a better analogy than (1) Islamic Law-to-American Law and Islamic Law-to-Catholic Christian teaching would be (2) Islamic Law-to-Canon Law, (3) Islamic Law-to-Jewish Law, or (4) Islamic Law-to-Hindu Law. Indeed, what Jesuit Father John A. Hardon (1914–2000) writes of Canon Law easily be said of the *Shari'a*:

Canon Law is only an attempt to organize and systematize for prudential reasons the external aspects of what is essentially not juridical: *the will of God in its demands on the will of man*.<sup>65</sup>

Thus, when making comparisons, why not draw them directly to another sacred legal tradition? I offer two rather anemic answers.

First, my knowledge of Jewish and Hindu Law is woefully inadequate, and bested by only a marginal understanding of a few points in Canon Law. As the title connotes, the point of *Understanding Islamic Law (Shari'a)* is to understand Islamic Law. Comparisons to American law and Catholic Christian teaching are used to facilitate that understanding. Given my constraints, comparisons to other sacred legal systems would obfuscate matters and rightly subject the book to criticism.

Second, Canon, Jewish, and Hindu Law are of relatively limited applicability. The demographic and political economy factors render such a comparison relatively less compelling as a practical matter, however intellectually appealing they may be. Canon Law, which is the law of the Catholic Church itself, has its roots in the Council of Jerusalem (or Apostolic Conference), which occurred around 50 A.D. There are 1,752 canons. They govern ecclesiastical matters, particularly the actions of Bishops, who are responsible for all decisions in their dioceses and oversee the operations of their local churches. While many Catholics in the world are affected by that Law, the direct, daily impact is on the clergy and religious orders. The *Shari'a* is more expansive in scope than Canon Law, guiding not only Islamic clergy, but also extending into economic, social, and political realms. Perhaps this difference is based on the foundational sacred texts: while the New Testament of the Bible provides general guidelines and examples of virtue and sin, the Qur'an specifies punishments for those sins and metes out inheritance in a specific way.<sup>66</sup>

There are approximately 14 million Jews in the world (with estimates ranging from 12 to over 17 million, based on different interpretations of who qualifies as a "Jew"), accounting for roughly 0.25% of the global population.<sup>67</sup> (To be sure, it is important to be mindful of the principle of human dignity in mind, and the Catholic Christian precept that each life is unique, unrepeatable, and of inestimable value. Hence, the importance of life must never be valued in a utilitarian calculation involving numbers.) Even Israel does not run

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65. JOHN A. HARDON, S.J., *THE CATHOLIC CATECHISM* A CONTEMPORARY CATECHISM OF THE TEACHINGS OF THE CATHOLIC CHURCH 336 (New York, New York: Doubleday, 1981) (emphasis added).

66. See JAMES A. BILL & JOHN ALDEN WILLIAMS, *ROMAN CATHOLICISM AND SHI'Ī MUSLIMS: PRAYER, PASSION, AND POLITICS* 97 (Chapel Hill, North Carolina: University of North Carolina Press, 2002).

67. See [www.adherents.com](http://www.adherents.com).



itself entirely on Jewish Law. As for Hindu Law, the majority population of India, the Hindus, are for the most part bound by the secular legal system of India guaranteed by the Constitution of that country and the principles of its founders, namely, Mahatma Gandhi (1869–1948) and Jawaharlal Nehru (1889–1964). Arguably India's finest post-Partition achievement is it is a home for adherents of all faiths, who live in relative peace alongside and integrated with one another, in the largest free-market democracy in the world.

A final point about comparisons is worth making. I try to avoid being profoundly stupid, though perhaps surrender an opportunity to be stunningly brave. That is, I eschew extending the comparison of the *Shari'a* along both the secular and sacred axes.

On the secular axis, I refer to "American" law, by which I mean the law of the U.S. at a Federal or State level. Thus, I have resisted the temptation to use the term "Anglo-American" law, and thereby encompass the law of the United Kingdom (U.K.). America received much law from England. England still provides America with legal inspiration. Indubitably, there are comparisons and contrasts that are legitimate between Islamic and English law, but I best leave them to be drawn by others.

On the sacred axis, I dearly would like to include comparisons and contrasts to Protestant Christianity, at least as I understand it through mainstream denominations such as Anglicanism, Lutheranism, and Methodism. I occasionally do so in the classroom from the safety of standing behind the lecture podium. Yet, as with English law, I simply lack the competence to put these points in writing in any credible fashion. Consequently, at the risk of passing up some potentially edifying, and even obvious, comparisons and contrasts with Protestantism, I have erred on the side of caution. I would not want to perpetrate an intellectual injustice to my Protestant brothers and sisters. After all, it is quite enough of a task to try and get Islamic Law "right," and not do too much damage in rendering comparisons to Catholic Christianity and American Law.

I ask the reader to accept my limitations and forgive my mistakes. I hope that in doing so, the reader, regardless of the faith she follows or legal jurisdiction in which she resides, finds this work inclusive and thought-provoking.

