

On Islam and Islamic Natural Law: A Response to the  
International Theological Commission's *In Search of a  
Universal Ethic: A New Look at the Natural Law*

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The International Theological Commission's (ITC) document on universal ethics and natural law comes at a time when global dialogue on shared values across religious communities is increasingly viewed as both important and a *sine qua non* for global order, peace, and harmony. This particular document is also noteworthy given a series of events that have juxtaposed the Christian and Muslim worlds in an often tense relationship. Pope Benedict XVI's 2006 speech in Regensburg, Germany, prompted considerable outrage among Muslims, who considered the pope's remarks about Islam and its capacity for reasoned deliberation uninformed and stereotypical.<sup>1</sup> In response to the pope's speech, Muslim leaders, intellectuals, and clerics drafted a letter to initiate open dialogue and exchange. That letter, "A Common Word Between Us and You," has since been the subject of multiple academic conferences and articles, where the letter has been celebrated, criticized, and held up as a starting point for a more global conversation.<sup>2</sup>

1. For an analysis of the pope's remarks in light of Islamic intellectual history, see Anver M. Emon, "On the Pope, Cartoons, and Apostates: Shari'a 2006," *Journal of Law and Religion* 22, no. 2 (2006-7): 303-21.

2. The letter can be viewed at the official website of A Common Word: <http://www>

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Four years later, the ITC issued the document that is the subject of this anthology of essays, in which it articulates in as inclusive a manner as possible a path to universal values and ethics. Far from positing particular values as shared, the ITC proffers "natural law" as a *theoretical framework* within which the global dialogue about universal ethics and values can take place. In other words, natural law provides a dialogic framework to guide a global dialogue on universal ethics.

To proffer natural law as such a framework, the ITC had to satisfy one preliminary burden, namely, to address whether the ideas and concepts that animate "natural law" exist in the various religious and wisdom traditions across the globe. In paragraph 17 of *In Search of a Universal Ethic*, the ITC offers its analysis of natural law in Islam:

Islamic law, inseparably communitarian, moral and religious, is understood as a law directly given by God. The Islamic ethic is, therefore, fundamentally a morality of obedience. To do good is to obey the commandments; to do evil is to disobey them. Human reason intervenes to recognize the revealed character of the Law and to derive from it the concrete juridical implications.

The ITC continues by addressing two pre-modern theological movements, Mu'tazilism and Ash'arism, which held opposing views on the authority of human reason to determine the law of God. The ITC represents these two theological traditions as follows:

the Mu'tazilite school proclaimed the idea according to which "good and evil are in things," which is to say, that certain behavior is good or bad in itself, prior to the divine law that commands or forbids it. The Mu'tazilites, therefore, judged that man could by his reason know what is good and evil. . . . But the Ash'arites, who dominate Sunni orthodoxy, have upheld an opposing theory. . . . [T]hey consider that the divine positive revelation of God alone defines good and evil, right and wrong. (17)

Importantly, the ITC suggests that even the Ash'arites ascribed to a set of rules that reflect the "moral patrimony of humanity," citing at length in footnote 13 a Qur'anic passage that presents such basic rules. However, the lan-

.acommonword.com/. For analyses of the letter, see Yvonne Yazbeck Haddad and Jane I. Smith, "The Quest for 'A Common Word': Initial Christian Responses to a Muslim Initiative," *Islam and Christian Muslim Relations* 20, no. 4 (2009): 369-88; Daniel L. Migliore, "The Love Commandments: An Opening for Christian-Muslim Dialogue?" *Theology Today* 65 (2008): 312-30.

guage in the quoted paragraph does not bode well for an Islamic natural law tradition in contemporary Sunni orthodoxy. Natural law depends in part on human reason having an ontological authority to know, derive, or find the law of God. Without that authority, the capacity of natural law to offer a shared framework for dialogue loses its intelligibility. Indeed, the ITC is not entirely oblivious about this; one can infer from the ITC's representation of the Mu'tazilites a wistful nostalgia for an Islamic intellectual trend that could have led to a vibrant Islamic natural law tradition (but did not do so in the end). This perspective on the Islamic tradition was certainly present in Pope Benedict XVI's Regensburg speech, when he emphasized the voluntaristic nature of Islamic law.<sup>3</sup>

The ITC's attempt to understand the role and authority of reason in Islam raises important, but highly sensitive questions that Muslims have debated for centuries. The ITC should certainly be applauded for offering a frame within which communities of faith can consider shared values. But when that frame is natural law, which involves fundamental questions about reason, the ITC cannot ignore that in the case of Islam, there are important theological, philosophical, and political stakes involved. To make brief reference to a theological group such as the Mu'tazilites or to quote a Qur'anic verse without more information raises serious problems about the politics of orthodox belief and the implications of both theology and philosophy on fundamental questions of authority and reason in Islam. In short, the ITC's analysis of the Islamic tradition is either politically naive or theologically imperialistic by implicitly advocating a contested theology for Muslims without understanding the philosophical, theological, and political dimensions of debates about reason in Islam.

The fact remains that there is a much more complex story to tell about the different natural law theories that were developed throughout Islamic legal history. This is not the place to go into substantive detail about the story of natural law in Islamic law. I have offered a book-length account of the history and jurisprudence of Islamic natural law theory in my *Islamic Natural Law Theories*.<sup>4</sup> This essay draws extensively on that work in order to outline com-

3. Pope Benedict XVI, "Faith, Reason and the University," 3-4. For the text of the speech, see [http://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). See also Emon, "On the Pope, Cartoons, and Apostates," 303-21, 304-8.

4. In the interest of space and readability, notes to this essay will be limited. Readers interested in a fuller account of the natural law theories outlined here can refer to chapters 2, 3, and 4 of my *Islamic Natural Law Theories* (Oxford: Oxford University Press, 2010).

peting Islamic natural law theories and their different juridico-theological justifications for the authority of reason in Islamic law. This essay shows that the ITC's representation of natural law in Islam is not only incorrect, but also suffers from overprivileging theology over jurisprudence as the primary medium of religious argument in Islamic thought. This essay concludes by looking at why getting the Islamic natural law story right should matter to the ITC, and the costs of failing to do so.

### The Theology and Politics of Reason in Islamic Intellectual History

To search for a natural law tradition in Islam is to ask about the role and authority of reason in Islamic thought. Such a question is not merely an academic exercise; it has deeply political ramifications. The debates about reason in Islamic law occur alongside popular perceptions of Islamic law as legislated by God, to whom the devout are bound to obey.<sup>5</sup> In other words, Shari'a is perceived as involving arguments from authority and not arguments from reason.

Within the prevailing Sunni orthodox theology today, reason cannot be an authoritative source for divine obligations; at most, it can confirm or corroborate what is already established by authoritative source-texts. The historical counterargument to that position was offered by the pre-modern theological group called the Mu'tazilites, who are referred to in the ITC document. The Mu'tazilites, adherents of a theological movement founded in the early eighth century, were considered the early rationalists in Islam.<sup>6</sup> Their position on the authority of rational argument was intimately tied to their theology of God and God's justice. They held that God only does the good and avoids the evil: to put it more straightforwardly, God does X because X is good. By holding such a position they suggested that concepts like "good" and "just" are virtues that are separate from and prior to a divine act. As separate and distinct

5. For an overview of such views and how they operate in the public sphere today, see Anver M. Emon, "Islamic Law and the Canadian Mosaic: Politics, Jurisprudence, and Multicultural Accommodation," *Canadian Bar Review* 87 (2008): 391-425.

6. For the history of Mu'tazilite theology, see Richard C. Martin, Mark R. Woodward, and Dwi S. Atmaja, *Defenders of Reason in Islam: Mu'tazilism from Medieval School to Modern Symbol* (Oxford: OneWorld, 1999), 25-45; W. Montgomery Watt, *The Formative Period of Islamic Thought* (Oxford: OneWorld, 1998), 209-52. For thematic analysis of Mu'tazilite and other theological doctrines, see Harry Austryn Wolfson, *The Philosophy of the Kalam* (Cambridge, Mass.: Harvard University Press, 1976).

from God's will, they are virtues that can be reasoned about and rationally known; in other words, they are virtues that are susceptible to reasoned deliberation. Their position was criticized as unduly impinging on the omnipotence of God. In other words, to hold that humans can reason about the good and the bad implicitly suggests that God would not (in fact, cannot) act counter to that good or in furtherance of that evil; that humans could, through their reasoned deliberation, limit the scope of God's acts and will.<sup>7</sup> This implication of the Mu'tazilite theology of God and his justice fueled their critics, voluntarist theologians, who adamantly adhered to the absolute omnipotence of God — an omnipotence that made no room for the possibility that reasoned deliberation about the good could somehow limit God in any way.

For various reasons, Mu'tazilite theology was associated with heterodoxy sometime after it was repudiated as the official Abbasid theology in the ninth century. Instead, voluntarist theology occupied the dominant theological frame for understanding God and his omnipotence. Today, those who oppose the inherited orthodox view are deemed heterodox, and are often labeled as modern-day Mu'tazilites who fall outside the orthodox teachings of Islam.<sup>8</sup> Even more, whether or not a scholar is explicit about his Mu'tazilite sensibilities, any suggestion that reason offers an important source of guidance for the modern Muslim raises suspicions of heterodoxy framed in pre-modern terms. To theorize about reason, whether in terms of pre-modern theology, or modern debates about natural law, thereby begs highly fraught questions about the intellectual bounds of credible Shari'a-based argument and the political bounds of religious community and belonging.

7. Qadi 'Abd al-Jabbar, *Sharh al-Usul al-Khamsa* (Beirut: Dar Ihya' al-Turath al-'Arabi, 2001), 203-7. For further discussion on the relationship between God and justice, see Martin, Woodward, and Atmaja, *Defenders of Reason in Islam*, 71-81.

8. Martin, Woodward, and Atmaja, *Defenders of Reason in Islam*, 166-67. The apostasy case of Nasr Hamid Abu Zayd, an Egyptian intellectual deemed to have apostatized from Islam through his writings on the Qur'an, is a well-known case of an intellectual whose ideas were viewed by some as Mu'tazilite or as heterodox, and thereby contrary to prevailing Islamic norms. For an overview of the relationship between intellectual freedom and apostasy cases, and the Abu Zayd case, see Baber Johansen, "Apostasy as Objective and Depersonalized Fact: Two Recent Egyptian Court Judgments," *Social Research* 70, no. 3 (Fall 2003): 687-710; Susanne Olsson, "Apostasy in Egypt: Contemporary Cases of Hisbah," *The Muslim World* 98 (2008): 95-115. For a comparative study of Mu'tazilite ideas and those of Abu Zayd, see Thomas Hildebrandt, "Between Mu'tazilism and Mysticism: How much of a Mu'tazilite is Nasr Hamid Abu Zayd?" in *A Common Rationality: Mu'tazilism in Islam and Judaism*, ed. Camilla Adang, Sabine Schmidtke, and David Sklar (Würzburg: Ergon in Kommission, 2007), 495-512.

### The Ontology of Reason: Reason and Philosophy in Contemporary Muslim Debates

Just because a call for natural law in Islam might invoke a certain politics of belonging does not mean, however, that modern Muslim thinkers avoid addressing the scope, role, and authority of reason in Islam.<sup>9</sup> However, they often fail to address a fundamental question about reason that is of crucial significance to natural law, namely, the ontological authority of reason in Islamic thought. For instance, when the Qatar-based cleric Yusuf al-Qaradawi writes in support of reason in Islam, he bases the authority of reason by reference to Qur'anic verses in which the Qur'an asks the reader to think or reflect.<sup>10</sup> This approach to the ontological authority of reason relies on the authority of the Qur'an, which indeed clothes the use of reason with a type of divine authority. The philosophical implication of this approach, though, renders the authority of reason derivative at best. If the Qur'anic references constitute the bases by which reason is an authoritative source of Shari'a, then reason does not stand as a separate and distinct source of Shari'a at all.

But if reason is a separate source and if the Qur'an merely corroborates what we already know by reason, that begs the question, How do we know? Tariq Ramadan, a European Muslim, suggests that the natural world offers insights about the workings of God's will. He writes:

God always makes available to humankind tools and signs on the road that leads to recognizing Him. The first space that welcomes human beings in their quest is creation itself. It is a book . . . and all the elements that form part of it are signs that should remind the human consciousness that there exists that which is "beyond" them. This Revelation in and through space is wedded to Revelations in time, which, at irregular intervals, came as reminders of the origin and end of the universe and of humanity.<sup>11</sup>

Creation and source-texts offer two approaches to understanding the divine will. For Ramadan, both are "texts" that must be read and reflected on.

9. For a general overview of different modern Muslim reformists who contend with the nature and scope of reasoned deliberation, see Jasser Auda, *Maqasid al-Shari'ah as Philosophy of Islamic Law: A Systems Approach* (Herndon, Va.: International Institute of Islamic Thought, 2008), 144-53.

10. Yusuf al-Qaradawi, *al-'Aql wa 'Ilm fi al-Qur'an al-Karim* (Beirut: Mu'assasat al-Risala, 2001), 11-68.

11. Tariq Ramadan, *Western Muslims and the Future of Islam* (Oxford: Oxford University Press, 2004), 13.

The created world, fashioned by God, is a sign of God's will if only we would look closely. Ramadan effectively fuses fact and value in the created world, thereby rendering it a foundation for the authority of reason as a source of Shari'a norms. He offers an approach to reason's ontological authority that may be sympathetic with natural law. But to render the natural world akin to a text that anyone can "read," he empowers the private individual while making the law vulnerable to massive idiosyncrasy and indeterminacy at a systemic level.

### Islamic Natural Law Theories: An Overview

Muslims have, throughout history, contended with the role, scope, and authority of reason in a religious tradition that is fundamentally linked to a book (the Qur'an), which is believed to be God's word revealed to the Prophet Muhammad and a guide to humanity's salvation. Adhering to and satisfying God's will is an important factor in attaining salvation. Consequently, the Qur'an offers the most obvious source of God's will for Muslims to follow. However, Muslim jurists knew that the world of lived experience could not be totally captured between the Qur'an's two covers; as such, they debated whether and to what extent they could build on what they learned from the Qur'an. Hence we find the pre-modern genre of legal theory (*usul al-fiqh*) that offered theoretical reflections on the nature and dynamism of law and legal interpretation.<sup>12</sup> Since the late nineteenth century, much of the debate about reason has focused on whether, how, and to what extent Muslims can perform *ijtihad*, or renewed interpretation, on matters already addressed by historical precedent. In both the scholarly and popular literature, the doctrine of *ijtihad* offers theorists and reformists alike an important doctrinal site to address the scope of moral agency; the nature of epistemic authority; and the relationship between law, reform, and modernity.<sup>13</sup>

Importantly, a natural law inquiry frames the role of reason in a manner that is distinct from, though certainly not unrelated to, the question of *ijtihad*.

12. For scholarly treatments of Islamic legal theory, see Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh* (Cambridge: Cambridge University Press, 1999); Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 3rd ed. (Cambridge: Islamic Texts Society, 2003); Subhi Mahmasani, *Falsafat al-Tashri' fi al-Islam*, 3rd ed. (Beirut: Dar al-'Ilm li'l-Malayin, 1961).

13. For scholarly works on *ijtihad*, see Shaista P. Ali-Karamali and F. Dunne, "The Ijtihad Controversy," *Arab Law Quarterly* 9, no. 3 (1994): 238-57; Wael B. Hallaq, "Was the Gate of Ijtihad Closed?" *International Journal of Middle East Studies* 16, no. 1 (1984): 3-41.

*had*. A key distinction is that an Islamic natural law inquiry concerns the ontological authority of reason as a source of law, as opposed to its epistemic authority in legal interpretation. In the Sunni *usul al-fiqh* literature, modern jurists phrased the question as follows: In the absence of some scriptural source-text such as the Qur'an or the traditions of the Prophet (*hadith*), can jurists utilize reason as a source of law? There were those who said yes, and others who said no.

Those who said yes — the hard natural law jurists — believed that God creates all things for the purpose of good and benefit. Any other option would mean that God might do something for evil purposes, which they rejected as an unacceptable possibility in their theology. If God only acts with goodness and justice, they argued, then all of his creation must also be vested with that goodness. To what end, they then asked, was this bountiful world created? Perhaps it might be for God's use and enjoyment. But since God is omnipotent and needs nothing, that option was theologically unacceptable. Instead, the created world, they argued, must be for the benefit and enjoyment of God's creatures, in particular human beings. The upshot of this theological argument is to render the created world fused with fact and value: the "is" is also the "ought." By fusing fact and value in the created world, hard natural law jurists invested reason with the ontological authority to analyze, investigate, and derive new norms.

Against the hard natural law jurists were those who disagreed with the theological view that God only does the good. According to these voluntarist theologians, there is no standard of justice that precedes God or in any way limits his omnipotence. Rather, the voluntarists held that the question about whether God can do only good or also evil fundamentally confuses human nature with God's nature. Human nature may be subject to reasoned deliberation about the good and the bad, but no one can presume to impose on God any obligation to do the good. Rather, this latter group argued that God does as he wishes; whatever he does is by definition good. Nonetheless, the voluntarists could not ignore the fact that as much as they looked to God for guidance in his sacred scriptures, those texts were limited. Consequently, they could not deny the need to engage in legal reasoning. In fact, they could not deny that at times, reason would have to be a source of the law itself.

To theorize reason's ontological authority, these voluntarist jurists developed a natural law theory that both fused fact and value in the created world and preserved their voluntarist commitment to God's omnipotence. Their natural law theory might be called soft natural law. Like the hard natural law jurists, soft natural law jurists argued that nature is fused with fact and value,

thereby reflecting a presumption of the goodness of nature. But they argued that the fusion is not because God only does the good and cannot do evil. Rather, the fusion of fact and value in nature results from God's grace (*tafad-dul*). God chose to be gracious when creating the world. Once they held that nature is fused with fact and value, they effectively rendered reason an ontologically authoritative source of law. Grace also allowed them to preserve their voluntarist theology: if God exercised grace when creating the world, he can presumably choose to alter his grace. Soft natural law jurists granted reason ontological authority by fusing fact and value in nature on a theory of divine grace. *Theologically speaking*, since God can choose to change his grace any time, soft natural law is consistent with voluntarist theology. *Jurisprudentially speaking*, they upheld the ontological authority of reason because they maintained that after God created the world as a benefit, it would not seem that God has changed his mind. Because they felt that God's grace could change, though, their commitment to the fusion of fact and value was not nearly as hard and fast as the view held by the hard natural law, which explains why I call this second group *soft* natural law jurists.

The soft natural law jurists, having granted reason ontological authority, could not just leave it at that. They were worried about reason holding an unchecked ontological authority as a source of Shari'a. To let reason hold such authority, they worried, would make them seem like the hard natural law adherents, whom they disagreed with on theological grounds, but not necessarily on jurisprudential ones. So they devised an epistemic model of reasoning to limit the scope of reasoned deliberation. They held that there are various issues and interests that work to the benefit and detriment of society. Those issues may not be the subject of any source-text. In cases where no source-text governs, those interests (*maslahah*) can be subjected to reasoned deliberation and relied on to generate a norm of legal significance. As long as the interest at stake neither confirms nor negates a source-text, relates to one of the aims and purposes of the Shari'a (*maqasid*), and concerns a social necessity (as opposed to any lesser value), then it can be the source of law.

The issue of social necessity is quite interesting to reflect on: it is one of three categories that delineate the significance of a *maslahah* for social well-being. Aside from necessity (*darura*), there are needs (*hajiyat*) and edificatory interests (*tahsiniiyyat*). While soft natural law jurists would give examples to demarcate these levels of significance from each other, the fact remains that they are not well defined. That is perhaps part of the draw they provide and the flexibility they offer. Notably, regardless of any definition of these three categories, soft natural law jurists held that only the *maslahah* that addresses a

social necessity (*darura*) could be a basis for Shari'a norms. A *maslahah* that falls into the other two categories could not constitute a basis for legal norms that could presumably reflect the divine will. Certainly they may provide a basis for some normative ordering, but they do not assume the authority of a Shari'a norm. These three categories are important because, in the aggregate, they limit the scope of reason's authority.

### Conclusion: The Upshot of Getting It Right

The different approaches to natural law in Islamic legal history reveal three important insights that might help the ITC craft a vision toward global inter-faith engagement. First, *In Search of a Universal Ethic's* paragraph 17 situates the Islamic debates on reason at the intersection of a theological dispute that has deeply political implications; this undermines the purpose of the ITC's effort. The historical fissure between the Ash'arites and Mu'tazilites still resonates today. When Muslim authors develop theories of law and politics that remotely smack of Mu'tazilite sensibilities, they are immediately criticized for stepping too far outside the bounds of inherited orthodoxy.<sup>14</sup> This is not to suggest that inherited orthodoxy should not be questioned. Indeed, contemporary Muslim writers constantly challenge views that are deemed orthodox. For the ITC to do so, though, needlessly fronts the politics of that theological dispute. *In Search of a Universal Ethic* thereby might raise speculation either about the ITC's political naiveté, or its capacity to act imperialistically in matters of theology pertaining to other faith communities.

Second, the ITC's recourse to early theological disputes in Islam, arguably, is needless if its intention is to posit natural law as a frame of reference for global engagement on pressing questions about values and ethics. As suggested above, one fundamental feature of natural law theories has to do with the ontological authority of reason. While contemporary Muslim authors seem to skirt the philosophical question about reason's authority, pre-modern Muslim jurists did not. They developed two theories of natural law that started from

14. For instance, Khaled Abou El Fadl makes a case for democracy in Islam. Mohammad Fadel criticizes Abou El Fadl's argument, however, for drawing on what he considers to be discredited Mu'tazilite views that are outside the pale of accepted orthodox Sunni beliefs. Khaled Abou El Fadl, *Islam and the Challenge of Democracy: A Boston Review Book*, ed. Joshua Cohen and Deborah Chasman (Princeton, N.J.: Princeton University Press, 2004), 3-48; Mohammad H. Fadel, "Too Far From Tradition," in *Islam and the Challenge of Democracy*, 81-86, 82.

competing theological positions, but ended up in similar jurisprudential positions. In other words, despite the fissure between Ash'arite and Mu'tazilite jurists, the irony is that their natural law models are quite similar. To get the Islamic natural law story right would enable the ITC to reorient its engagement with the Islamic tradition, shifting its focus from highly disputed theological issues to the area of legal philosophy and jurisprudence. From a purely strategic perspective, the ITC document would have greater purchase if it examined how Islamic soft natural law contributes to its renewed look at natural law.

Third, whether one sides with hard natural law jurists or soft natural law jurists, both camps rely on metaphysics to explain and justify their respective natural law theories. Consequently, a different strategy for finding a shared site for debate and engagement across faith traditions would be to ask whether and to what extent a global discussion about ethics can be framed in metaphysical terms. This is not only a question for members of faith traditions, but also one faced by liberal-secular theorists who contend with the role of religion in the public sphere.<sup>15</sup> The twenty-first-century global citizen lives in a world that may be skeptical of natural law theories that require metaphysical presumptions, whether informed by theology or liberal philosophy. To (re)present wisdom traditions without accounting for the presumptions that rendered certain views intelligible covers those presumptions in a new historical moment when they are now vulnerable to critique in light of prevailing theories of knowledge, philosophies of law, and theories of government. This essay does not, and cannot in the space provided, offer a post-metaphysical natural law framework. Nonetheless, this essay concludes by suggesting that the engagement sought by the ITC on questions of ethics may require people of different faith and philosophical persuasions to consider how shared commitments to order, ethics, and the good can be framed without, or in spite of, a commitment to one metaphysics or another.

15. See, for instance, Jürgen Habermas, "Religion in the Public Sphere," *European Journal of Philosophy* 14, no. 1 (2006): 1-25, who writes that to live in a post-secular society requires that citizens present their arguments about justice and ethics in terms that avoid metaphysical presumptions about truth and the good.