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“No Salvation Outside Islam”:

Muslim Modernists, Democratic Politics, and Islamic Theological Exclusivism

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“[W]hoever dares to say *there is no salvation outside the Church* should be chased out of the State, unless the State is the Church, and the prince is the pontiff.”\*

Jean Jacques Rousseau  
*The Social Contract*  
Book IV, Chapter VIII

1. Introduction

Jean Jacques Rousseau, speculating on the relationship of religion to a democratic political order, famously denied the difference between civil and theological intolerance: “It is impossible to live at peace with people whom one believes are damned. To love them would be to hate God who punishes them. They must absolutely be either brought into the faith or tormented.”<sup>1</sup> He thus concludes that democracies cannot tolerate a religion that teaches an exclusive doctrine of salvation, saying that such a dogma is fit only for a theocratic government in which “the State is the Church, and the prince the pontiff.”<sup>2</sup>

Contemporary democratic practice, however, rejects this proposition and instead maintains a broad distinction between the freedom to believe (which is taken as absolute)<sup>3</sup> and the freedom to manifest religious beliefs in practice, which all

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\* Jean Jacques Rousseau, *On the Social Contract with Geneva Manuscript and Political Economy*, ed. Roger Masters, trans. Judith Masters (New York: St. Martin’s Press, 1978), 131-132.

<sup>1</sup> Id., 131.

<sup>2</sup> Id.

<sup>3</sup> See, for example, *Employment Division v. Smith*, 494 U.S., 877 (1990), and *Layla Şahin v. Turkey*, E.C.H.R., *Application no. 44774/98* (Nov. 10, 2005) ¶ 107.

democracies take as a legitimate object of public regulation, albeit with different approaches to when a state may legitimately regulate the manifestation of religious practices.<sup>4</sup> John Rawls, both in *A Theory of Justice* and *Political Liberalism*, in contrast to Rousseau, defends the contemporary approach to religious freedom; he insists that freedom of belief – including a belief in an exclusivist salvation religion – is not only consistent with the stability of a democratic regime and democratic principles of toleration, but is one that these principles demand. Contrary to Rousseau, Rawls concludes that the freedom to hold intolerant doctrines should be circumscribed only in very limited circumstances.<sup>5</sup> On the other hand, Rawls clearly *expects* that the popularity of exclusivist doctrines of salvation will wane in a democratic state, with the result that Rousseau’s concern regarding the deleterious effects that such doctrines have on civic peace will be effectively, even if not theoretically, dissipated. Indeed, one might speculate, following Rawls, that exclusivist theologies of salvation, once transplanted to the soil of a democratic polity, trend toward the development of a more inclusive theology of salvation, one that mimics the civic tolerance of democracy.<sup>6</sup> Rawls relies primarily on psychological arguments to justify his expectation that liberal democracy saps the strength of exclusivist theologies, arguing that a citizenry that has become

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<sup>4</sup> See, for example, *Employment Division* (permitting the restriction of a religious practice by an otherwise valid generally applicable law provided there is no discriminatory animus in the legislation) and *Şahin* (permitting restriction on the freedom to manifest religion if the restriction is prescribed by law, in furtherance of a legitimate aim, and necessary in a democratic society).

<sup>5</sup> Such circumstances would arise when the intolerant doctrine or dogma poses a reasonable threat to the public order; the existence of that threat is “supported by ordinary observation and modes of thought”; and, the threat to the public order is reasonably imminent. John Rawls, *Theory of Justice* (Cambridge: Harvard University Press, 1971), 213.

<sup>6</sup> John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), xxvii (“Perhaps the doctrine of free faith developed because it is difficult, if not impossible, to believe in the damnation of those with whom we have, with trust and confidence, long and fruitfully cooperated in maintaining a just society.”).

accustomed to productive cooperation with non-believers is likely to become more optimistic regarding the prospects for their salvation, despite their non-belief.

This essay proposes to test Rawls' hypothesis regarding the tempering effects of democracy on theological exclusivism by considering the arguments of 20<sup>th</sup> century Muslim modernist theologians regarding the fate of non-Muslims in the next life. As this paper will show, the teachings of this group of theologians provide an important historical case confirming Rawls' prediction that a tolerant political regime can very well have a profound impact on a religion's theology of salvation; and, one result of that theological development is that it becomes easier for believers to engage in good-faith political cooperation with non-believers. Indeed, the example of 20<sup>th</sup> century Egyptian modernist theologians provides an even stronger case for Rawls' arguments: their doctrinal revisions were formulated substantially as a reaction to the *prospect*, and not the actual realization, of either a democratic Egypt, on the one hand, or substantial equality in international relations between Muslim states and their former colonizers, on the other hand.

A comprehensive study of tolerance in the Islamic tradition, however, is beyond the scope of this paper.<sup>7</sup> Instead, I propose to explore the question of theological tolerance and its relationship, if any, to the political terms of legitimate Muslim-non-Muslim political relationships from the perspective of Islamic speculative theology (*kalām*).

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<sup>7</sup> Such a study would entail surveying not only the theological and legal treatises, exegetical works of the Qur'ān and the Sunnah, but also the views of other Islamicate traditions, whether religious such as Sufism, or secular, such as literature (*adab*). It would also need to take into account informal religious practices and celebrations as well as secular institutions that comprised Muslim "civil society."

This paper will begin by describing the dominant medieval theological position which can be fairly characterized as one having a strong commitment to the notion of “no salvation outside of Islam,” subject only to a relatively undeveloped concept of excuse which preserved the theoretical possibility that non-Muslims, despite their theological errors, would nevertheless be saved from punishment in the next life. The paper will then explain how that doctrine derives from medieval theology’s epistemological commitments, in particular, its distinction between knowledge (*‘ilm*) – the domain of dogma – and considered opinion (*ẓann*) – the domain of practical ethics. From a political perspective, this distinction between theological error for which all humans are culpable, and ethical error for which they are not, justifies a hierarchical political relationship between Muslims and non-Muslims. This hierarchy receives its practical manifestation in the twin statuses of non-Muslims under medieval Islamic law: the protected non-Muslim *dhimmī* (who, while equal to Muslims in many respects, is excluded from exercising political rights), and the hostile non-Muslim enemy (*al-ḥarbī*) who enjoys neither rights nor is subject to any obligations arising out of Islamic law, and against whom Muslims are either permitted or obligated to wage war (*jihād*).<sup>8</sup> It also justifies a relationship of equal tolerance between Muslims, meaning that whatever theological errors they commit, or violations of the law they incur, they continue to enjoy the absolute protection of Islamic law, unless such theological errors or legal violations, in each case, are sufficiently grave as to constitute repudiation of Islam.

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<sup>8</sup> There is also a third category, that of the non-Muslim who is protected by a grant of safe passage, referred to alternatively as *mu’amman*, *musta’min*, or *mu’āhad*. I have omitted discussion of this third classification because in classical and medieval Islamic law, this status was transitory, and would ultimately resolve itself either by the non-Muslim adopting Islam, becoming a *dhimmī*, or returning to his status as an enemy (*ḥarbī*).

The paper will contrast the medieval doctrine of “no salvation outside Islam” with two different theological positions which are more open to the salvation of non-Muslims. The first of these views belongs to two relatively early Muslim theologians who denied the moral distinction between errors of dogma and in practical ethics, thus enabling them to articulate a theory of salvation that included non-Muslims who knowingly, but in good faith, rejected Islam. The second are the views a group of 20<sup>th</sup> century Egyptian Muslim reformist theologians, a movement whose origins can be traced to the last quarter of the 19<sup>th</sup> century in the teachings of the modernizing Egyptian Azharī theologian, Muḥammad ‘Abduh (d. 1905).<sup>9</sup> The views of this latter group constitute the focus of this study.

This paper will demonstrate that these modernist theologians, by radically expanding the medieval notion of excuse and recognizing the moral worth of the deeds of non-Muslims, rejected medieval theology’s insistence on adherence to truth as a condition of salvation in favor of a less demanding theology whose focus is moral virtue, i.e., adherence to just norms, rather than theological virtue, i.e., recognition of theological truth. In contrast to early theological expressions of tolerance for theological error for whom no obvious political consequences flowed from their capacious theory of salvation, these 20<sup>th</sup> century reformist theologians were also active in reformulating traditional Muslim conceptions of political relations with non-Muslims, including, *inter alia*, revising historical conceptions of *jihād* in order to promote the possibility of an enduring peace between Muslim and non-Muslim powers in the international arena.<sup>10</sup>

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<sup>9</sup> For a detailed treatment of Muḥammad ‘Abduh’s thought, and his impact on both religious and secular reformers in the 20<sup>th</sup> century, see Albert Hourani, *Arabic Thought in the Liberal Age, 1798-1939* (Cambridge University Press: New York, 1983), 130-192 and 222-244.

<sup>10</sup> Some of the modernist theologians whose arguments on the fate of non-Muslims will be discussed in this paper also wrote on modern international relations from the perspective of Islamic law in an attempt to reconcile the secular system of international law with the historical Islamic law of international relations.

The most recent of these theologians, Yūsuf al-Qaraḍāwī, appeals to this line of reformist theology to justify a political relationship between Muslims and non-Muslims that appears to transcend the medieval conception of hierarchical tolerance to one grounded in values of theological restraint and an ethic of mutual respect grounded in an assumed universal conception of justice that applies equally to Muslims and non-Muslims.

## 2. Theoretical Knowledge, Practical Knowledge and the Possibility of Toleration in Medieval Islamic Theology

The medieval theological doctrine of “no salvation outside Islam” is in large part a function of the epistemology underlying speculative theology (*kalām*). This tradition is grounded in the distinction between knowledge (*‘ilm*) and considered opinion (*ẓann*) and is so fundamental that moral culpability for error is dependent on it.<sup>11</sup> If a question is not amenable to rational proof, in the case of matters related to creed (*uṣūl al-dīn*), or is not regulated by incontrovertible textual proof (*dalīl qaṭ‘ī*), in the case of practical religious doctrine, error cannot result in sin.<sup>12</sup> Conversely, if a question is amenable to rational proof or is regulated by incontrovertible textual proof, error is tantamount to sin. For this reason, speculative theology traditionally made a distinction between the elements of Islam’s creed – which were said to be based on certain knowledge – and Islam’s practical elements (*furū‘ al-dīn*), i.e. the rules of right conduct – which, with the exception of the

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See Maḥmūd Shaltūt, *al-Qur’ān wa’l-Qitāl* [The Qur’an and Fighting] (Nazareth: Matba‘at al-Nasr wa Maktab Ittihad al-Sharq, 1948) and Muḥammad Abū Zahra, *al-‘Alaqāt al-Dawliyya fī’l-Islām* [International Relations in Islam] (Cairo: al-Dar al-Qawmiyya li-l-Nashr, 1964).

<sup>11</sup> Mohammad Fadel “The True, the Good and the Reasonable: the Theological and Ethical Roots of Public Reason in Islamic Law,” *Canadian Journal of Law and Jurisprudence* 21 no. 1 (2008): 5, 21-23 (describing scope of theology in the Islamic tradition).

<sup>12</sup> See, for example, Abu Ḥāmid Muḥammad b. Muḥammad b. Muḥammad al-Ghazālī, *al-Muṣṭasfā* (Beirut: Dar al-Kutub al-‘Ilmiyya, 1993), 347-348.

so-called “the necessary elements of religion” (*ma ‘ulima min al-dīn bi-l-ḍarūra*), it was generally agreed, were based on reasoned opinion.

While dogma, because it deals with ontological matters, is the domain of unitary truth, normative pluralism is the defining characteristic of practical ethics, the *furū‘ al-dīn*.<sup>13</sup> In the latter, all considered opinions regarding rules of conduct were either theologically valid in themselves (on the assumption that God did not have a predetermined rule for all events) or, on the assumption that some considered opinions were wrong, that such errors did not entail sin (because they were reasonable, even if mistaken, attempts to know what God’s actual ruling was). This system of normative pluralism in the realm of ethics was encapsulated in the saying *kullu mujtahid muṣīb* (“every [qualified] interpreter is correct”) and the saying attributed to the Prophet Muḥammad that every interpreter who correctly describes God’s will receives two rewards while those who advance an erroneous judgment receive only one.<sup>14</sup>

As described in greater detail below, this commitment to ethical pluralism, did *not* apply to questions of dogma because Muslim theologians believed one true answer existed for those questions, and that such answers were accessible to all rational beings. Typical of this stance is the opinion of Fakhr al-Dīn al-Rāzī, a 12<sup>th</sup>/13<sup>th</sup> century Transoxianan theologian and jurist who wrote that “God, may He be glorified, has placed conclusive evidence for these matters [of dogma], and has endowed rational beings with

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<sup>13</sup> Muslim ethics are largely defined through the discipline of jurisprudence – *uṣūl al-fiqh* – and is encapsulated in breaking down all human acts into one of five moral categories: obligation, prohibition, recommended, disfavored and indifferent. Id., 23-27 (giving an overview of the relationship of jurisprudence to Islamic ethics).

<sup>14</sup> 13 Aḥmad b. ‘Alī Ibn Ḥajar al-‘Asqalānī, *Fatḥ al-Bārī Sharḥ Ṣaḥīḥ al-Bukhārī*, ed. ‘Abd al-‘Aziz b. Baz (Beirut: Dar al-Kutub al-‘Ilmiyya, 1989), 393-396.



the capability of knowing them.”<sup>15</sup> With respect to matters of dogma, individuals are strictly liable for even their good-faith errors in reasoning, the only qualification being that some kinds of dogmatic errors result only in sin whereas other, more serious errors (such as failing to recognize the existence of God or the truth of the Prophet Muḥammad), results in a judgment of disbelief that could, unless otherwise excused, result in eternal punishment in the next life.

The views of the Abū Ḥāmid al-Ghazālī and Shihāb al-Dīn al-Qarāfī, jurists and theologians from the 11<sup>th</sup> and 13<sup>th</sup> centuries, respectively exemplify medieval Islamic theology’s epistemological distinction between theoretical truth and practical ethics, and its insistence that theoretical virtue in the form of recognizing dogmatic truth is a condition precedent to recognizing practical virtue. Both al-Ghazālī and al-Qarāfī adhered to a version of the doctrine that held that the conclusions of all moral reasoning (*ijtihād*) undertaken in good faith were in some sense ethically valid;<sup>16</sup> however, they both deny that the substantial ethical freedom that exists in the realm of practical conduct – the branches of religion – applies to Islam’s dogmas. Accordingly, they both reject the theologically “tolerant” position that a mistaken, but good faith rejection of Islam, could be excused.<sup>17</sup>

The medieval theological tradition attributed that position, namely, that good faith errors regarding the dogmatic elements of religion could be excused, to two relatively

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<sup>15</sup> 2 Fakhr al-Dīn al-Rāzī, *al-Maḥṣūl fī ‘Ilm al-Uṣūl* (Beirut: Dar al-Kutub al-‘Ilmiyya, 1988), 500.

<sup>16</sup> Al-Ghazālī, *supra* note 12, 352; Shihāb al-Dīn Aḥmad b. Idrīs al-Qarāfī, *Sharḥ Tanqīḥ al-Fuṣūl*, ed. Taha ‘Abd al-Ra’ūf Sa’d (Cairo: Maktabat al-Kulliyat al-Azhariyya, 1993), 438-444.

<sup>17</sup> Al-Ghazālī, *al-Muṣṭasfā*, 349; 9 Shihāb al-Dīn Aḥmad b. Idrīs al-Qarāfī, *Nafā’is al-Uṣūl fī Sharḥ al-Maḥṣūl*, ed. ‘Adil Ahmad ‘Abd al-Mawjud and ‘Ali Muhammad Mu’awwad (Riyadh: Maktabat Nizar Mustafā al-Baz, 1997), 4052-4054.

early Muslim theologians, the 8<sup>th</sup> century judge and theologian, ‘Ubaydallāh b. al-Ḥasan al-‘Anbarī (d. 785), and the 9<sup>th</sup> century Mu‘tazilite theologian and littérateur, Abū ‘Uthmān ‘Amr b. Baḥr al-Jāḥiẓ (d. 869). According to the medieval theological tradition, both al-‘Anbarī and al-Jāḥiẓ denied that error could be attributed to any person who made a good-faith effort to study the claims of Islam but then erroneously, but honestly, rejected them.<sup>18</sup> Neither al-Ghazālī nor al-Qarāfī could take their argument literally. Dogma, as a matter of logic, entailed the possibility of only one correct answer: either God exists or does not; either the Prophet Muḥammad is truthful in his claims or he is not. Instead, they both understood al-Jāḥiẓ and al-‘Anbarī to have articulated a theory of excuse pursuant to which God would forgive individuals who erroneously, but in good faith, rejected Islam. Al-Ghazālī, however, denied that individuals’ subjective sincerity is relevant to the question of their moral culpability for error with respect to these questions. Even though he granted that reasoning to the truth was an arduous process in which individuals could make good-faith errors, al-Ghazālī not only believed that God had obliged us to use our reason in considering questions of religious truth, but also to do so correctly.<sup>19</sup> Because it was possible through the diligent and correct use of reason to arrive at a true conception of God and other questions of dogma (such as the truth of the Prophet Muḥammad), good faith errors in theological reasoning could not excuse a person’s failure to adhere to true doctrine.<sup>20</sup>

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<sup>18</sup> Al-Ghazālī, *al-Muṣṭaṣfā*, 349; 9 al-Qarāfī, *Nafā’is al-Uṣūl*, 4026.

<sup>19</sup> Al-Ghazālī, *al-Muṣṭaṣfā*, 349.

<sup>20</sup> Id..

Although al-Qarāfī rejects the notion that all human beings are capable of reasoning their way to theological truth (women and certain barbarian peoples that inhabit the extreme north and south being the prime examples of groups that he assumes lack the capability of understanding theological argument), he nonetheless accepts the distinction between the inapplicability of tolerance to matters of dogma and its permissibility in matters of practical ethics.<sup>21</sup> Instead of defending this difference on epistemological grounds, however, argues that toleration arises only in matters over which humans have a legitimate interest. Thus, while it is true that Islam is gracious with respect to matters of practical ethics, he states, it cannot tolerate errors regarding the divinity. The difference between the two is that errors with respect to practical ethics inevitably implicate the claims of human beings, a fact reflected in their legal classification as “the claims of people (*ḥuqūq al-‘ibād*),” while theological error implicates ontological truth, and thus the “claims of God (*ḥuqūq allāh*).”<sup>22</sup> Because of the instrumental character of ethical rules in furthering human well-being, al-Qarāfī maintains that it is within our power, as human beings, to forgive others their violations of our rights. Toleration, in al-Qarāfī’s analysis, is conceptually akin to forbearance, and thus finds its moorings in the notion that individuals, as bearers of rights, have the capacity to waive violations of their own rights. Toleration in the domain of practical ethics, therefore, simply does not raise a principled problem from the perspective of al-Qarāfī’s theology.

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<sup>21</sup> 9 al-Qarāfī, *Nafa’is al-Usul*, 4053-4054.

<sup>22</sup> On the distinction between the “claims of people” and the “claims of God,” see Anver Emon, “Ḥuqūq Allāh and Ḥuqūq al-‘Ibād: A Legal Heuristic for a Natural Rights Regime,” *Islamic Law & Society* 13 no. 3 (2006): 325.

This analysis does not apply, however, with respect to matters of dogma such as the oneness of God or God’s transcendence. Theological truths, in contrast to rules of conduct, lack an instrumental nexus to our well-being as such; they are simply ontological truths that we are obliged to recognize. Accordingly, humans do not have the capacity to forgive transgressions against God; moreover, God has positively indicated, specifically through the obligation of *jihād*, that theological error is not, in the first instance, to be tolerated. For al-Qarāfī, recognition of the dogmatic truths of Islam is the prerequisite to enjoying the practical toleration that characterizes Islamic substantive law.<sup>23</sup> Al-Qarāfī’s theology in turn influences his theory of *jihād*. Although al-Qarāfī noted the existence of several different legal theories of *jihād*, only one of which required the Islamic state to conquer non-Muslim territory whenever feasible, al-Qarāfī interpreted the obligation of *jihād* to be a specific instance of the general religious obligation “to command the good and forbid the evil.” And because there was no greater evil (*mafsada*) than theological error, it was the obligation of Muslims to remove this evil whenever they were reasonably capable of doing so.<sup>24</sup>

Al-Qarāfī’s theory of *jihād*, however, while it provides a coherent theory for *jihād*, becomes problematic from the perspective of the Islamic doctrine of *dhimma* – permanent protection of non-Muslims who have submitted to the jurisdiction of the Islamic state. For al-Qarāfī, the rationale for the relationship of protection was to give

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<sup>23</sup> 9 al-Qarāfī, *Nafa’is al-Usul*, 4053-4054.

<sup>24</sup> 3 Shihāb al-Dīn al-Qarāfī, *al-Dhakhīra* (Beirut: Dar al-Gharb al-Islami, 1994), 385-386. Al-Qarāfī reported the following opinions on the obligation of *jihād* in addition to his own: (i) it lapsed upon the Prophet Muḥammad’s defeat of the pagans in Arabia except in circumstances where the ruler declares war on an enemy state; and, (ii) it is satisfied whenever the ruler defends the frontiers and fortifies them so as to deter effectively enemy incursions. Al-Qarāfī reported no difference of opinion that Muslims are required to engage in military conflict to repel an enemy in circumstances where the failure to do so would threaten the lives of Muslims (*istibāḥat dam al-muslimīn*).

non-Muslims an opportunity to become Muslim, even as he acknowledges that experience confirms that only a minority of them will in fact abandon their false religion for Islam. The fact that Islamic law nevertheless permits them to continue to enjoy the protection of Islamic law despite their persistence in unbelief is therefore, from the perspective of al-Qarāfi's legal analysis, an anomaly because Islamic law usually considers ordinary experience to be determinative of the contents of legal rules.<sup>25</sup> Accordingly, *dhimma* is a legally exceptional relationship, and al-Qarāfi can only account for it by invoking God's grace.<sup>26</sup>

If medieval theology did not countenance error with respect to theological propositions, it nevertheless continued to adhere to a conception of excuse, albeit one different than that attributed to al-Jāhiz and al-'Anbarī. In certain circumstances non-Muslims could be morally absolved for their blasphemous beliefs about God in the next life if they had not received a fair opportunity to consider the truth of Islam. This theological doctrine was known as "communication of revelation (*bulūgh al-da'wa*)."<sup>27</sup> In brief, this doctrine posited that in the absence of a fair opportunity to learn true Islamic teachings, a person who dies as a non-Muslim could still be eligible for salvation. Al-Ghazālī, even though he accepted the familiar position that good faith errors in matters of dogma are not exculpatory, nevertheless elaborated a doctrine of excuse capacious enough to conclude that God would save the majority of Christians and Turks (pagans),

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<sup>25</sup> 4 Shihāb al-Dīn al-Qarāfi, *al-Furūq* (Beirut: Dār al-Ma'rifah lil-Ṭibā'ah wa-al-Nashr, 1974), 104 (*al-aṣl i 'tibār al-ghālib wa taqdīmuḥu 'alā al-nādir wa huwa sha'n al-sharī'a*).

<sup>26</sup> Id., 106 (*al-shārī' . . . athbata ḥukm al-nādir raḥmatan bi'l-'ibād*).

despite their erroneous beliefs.<sup>27</sup> The scope of excuse that could arise from the absence of an opportunity to learn about Islam, however, was substantially reduced by the independent obligation of all human beings to inquire and use their reason in a diligent effort to discover the truth about God, an obligation known in medieval Islamic theology as “the obligation of inquiry (*wujūb al-naẓar*)”; indeed, according to many theologians, this obligation was the first obligation of all human beings. While those who discharged this obligation yet nevertheless failed to become Muslim would certainly be saved, those who neglected it entirely could certainly be subject to punishment in the next life for that failure.<sup>28</sup> Even nominal Muslims were under the obligation to inquire, and accordingly, some theologians, such as al-Qarāfī, raised the possibility that most nominal Muslims were also to be punished in the next life on account of their failure to discharge this duty.<sup>29</sup>

This doctrine of excuse, however, like the closely associated doctrine obliging inquiry, applied only to the next world; no medieval theologian (to my knowledge) used the doctrine of excuse or for that matter, the doctrine of inquiry (with its ambiguous implications for Muslims), to suggest that the distinction between Muslim and non-Muslim, as a matter of practical politics, whether for the application of Islamic law within the boundaries of the Islamic state, or for purposes of international relations, was unsound. Accordingly, despite the theological possibility that at least some non-Muslims would be saved in the next life (because Islamic teachings had never been communicated

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<sup>27</sup> Abū Ḥāmid Muḥammad b. Muḥammad b. Muḥammad al-Ghazālī, *On the Boundaries of Theological Tolerance in Islam*, trans. Sherman Jackson (Karachi: Oxford University Press, 2002), 126.

<sup>28</sup> Fadel, *supra* n. 11, 34 n. 117.

<sup>29</sup> Al-Qarāfī, *supra* n. 25, 104.

to them or because they discharged the duty of inquiry, even if they had not yet become Muslims), and some Muslims would be damned (because of their failure to inquire), medieval Muslim theologians permitted, even if they did not unanimously oblige, the Islamic state to wage war against non-Muslims to bring them into the Islamic commonwealth.

Twentieth-century reform minded theologians, however, would take this limited doctrine of excuse, expand it, and then ultimately use it to justify important revisions in Islamic substantive law in an attempt to provide a theological foundation for both permanent peace with non-Muslim powers and for Muslim and non-Muslim political cooperation. To the extent the doctrine of excuse expanded, the associated doctrine of inquiry receded in significance, and almost disappeared entirely, in favor of a new Islamic duty – conveying Islamic teachings – and a new focus, the practical ethical virtues of non-Muslims, particularly, their willingness to live in peace with Muslims and permit Muslims to practice and teach Islam. The paper will take up these themes in the next Part.

### 3. The Modern Concept of Excuse and the Possibility of Toleration

Evidence for the importance of this expanded concept of excuse can be found in the proceedings of a roundtable discussion (*nadwa*) published in the magazine of the prominent Azhar mosque college, *Liwā' al-Islām*, in 1955.<sup>30</sup> Two of the most important mid-20<sup>th</sup> century Egyptian modernists participated in this roundtable, Muḥammad Abū Zahra and ‘Abd al-Wahhāb Khallāf.<sup>31</sup> The question posed to the roundtable was the fate

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<sup>30</sup> *Liwā' al-Islām*, Nadwat Liwā' al-Islam 9 no. 1 (April-May 1955): 61-70.

<sup>31</sup> The other participants were Muḥammad al-Bannā, ‘Abd al-Wahhāb Ḥammūda, ‘Abd al-Ḥalīm Basyūnī, Muḥammad Kāmil al-Bannā, Muḥammad ‘Alī Shattā. Abū Zahra and Khallāf were particularly

of those non-Muslims who, through their practical (largely scientific) accomplishments, had made great contributions to “humanity,” and whether, despite those contributions, they would be punished in the next life on account of their failure to embrace Islam.<sup>32</sup>

The discussion quickly developed into two different, although closely related, theological questions. The first was the general fate of non-Muslims in the next life, i.e., whether or not they were eligible for salvation despite their failure to embrace Islam, and the second was whether God would reward non-Muslims for their practical contributions to secular human welfare despite their failure to have a proper religious intention (*niyya*).<sup>33</sup>

The roundtable participants generally agreed that moral culpability for the failure to embrace Islam could not attach unless several stringent requirements were first met, most notably that an invitation to become a Muslim had reached the individual in an “appropriate fashion” (*‘alā wajhahā*).<sup>34</sup> This modernist theory of culpability can be appropriately described as an “actual notice” doctrine because it focuses on the circumstances of the individual non-Muslim and asks whether he or she can be held blameworthy for his or her non-adherence to or rejection of Islam. Unlike pre-modern theologians, who were generally satisfied with what amounts to a doctrine of “constructive notice” in order to conclude that non-Muslims are morally culpable, these theologians went to some lengths to establish what the actual communicative requirements for culpability were. Thus, Khallāf said, “And what we mean by

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influential as well in recasting the classical legal tradition into the legal system of modern Arab states. See Monique C. Cardinal, “Islamic Legal Theory Curriculum: Are the Classics Taught Today,” *Islamic Law & Society* 12 no. 2 (2005): 244.

<sup>32</sup> Nadwat Liwā’ al-Islam, *supra* n. 30, 61.

<sup>33</sup> Id.

<sup>34</sup> Id., 70.



‘appropriate fashion’ is that the invitation reaches him in a clear fashion, accompanied by supporting argumentation with evidence and proof that is sufficient to cause him to investigate it [i.e. the call to Islam] and to submit to it. As for those non-Muslims who have never heard of the Islamic call, or they have heard of it only from [Christian] missionaries or from those who mutilate (*yushawwihûn*) Islam, the Islamic call has not reached such persons appropriately . . . They are in the judgment of Islam to be saved from punishment despite their disbelief and lack of [true] faith.”<sup>35</sup>

Abū Zahra, meanwhile, pointed out that Muslim theologians are of two opinions with respect to this question. The first, which Abū Zahra states is accepted by many theologians – is that the Prophet Muḥammad communicated Islam perfectly to his companions who then, after his death, spread out throughout the world, east and west, to the point that, “Every person now has the ability to understand [Islam], and so therefore, ignorance cannot be an excuse because it is within each individual’s power to know it, for the names ‘Qur’ān’ and ‘Islām’ have spread far and wide to all areas [of the earth].”<sup>36</sup> On the “constructive notice” view, the moral culpability of non-Muslims in the next life does not turn on whether they have received a detailed and accurate account of Islam and its doctrines;<sup>37</sup> rather, it is a function of their ability to discover the truth of its message, a notion rooted in the doctrine of the obligation of inquiry. This traditional position was advocated most forcefully by one of the roundtable’s participants, ‘Abd al-Ḥalīm Basyūnī. He stated in response to Abū Zahra and Khallāf that, “Every individual is under

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<sup>35</sup> Id., 61-62.

<sup>36</sup> Id., 64.

<sup>37</sup> Id.

an obligation to search for the true religion [and] embrace it, because religion is necessary for every individual. Accordingly, these inventors, given their vast culture and deep learning, are capable of grasping the truth about Islam, its principles and its teachings. Therefore, their ignorance is no excuse, given the ease with which truthful information about it can be obtained.”<sup>38</sup>

Abū Zahra attributes the second opinion, that of the “the actual notice” doctrine, to Muḥammad ‘Abduh. According to this doctrine, moral culpability for rejection of Islam arises only when an individual unreasonably rejects Islam after having received a subjectively appropriate invitation to adopt Islam. Abū Zahra said:

Islam – and it is the natural law [*al-qānūn al-‘ādī*] – can only consider this question from the perspective of truth and justice: is it possible for a human being to say that a person in the depths of Africa or North or South America or in the far reaches of Europe who [subjectively] knows nothing of Islam, to the point that some of them call it “the Turkish religion” instead of Islam; if they know nothing of Islam except that it is “the Turkish religion,” justice requires that we conclude that they are not accountable and not culpable. Indeed, if there is accountability it is for those who have been negligent in calling [people to Islam in the proper manner]. Accordingly, it is the obligation of Muslims to spread Islam’s true teachings among the nations of the world . . . And if we have been negligent, we are the sinners; they are not sinners by virtue of their ignorance.<sup>39</sup>

Two features of the “actual notice” doctrine are striking when compared to the “constructive notice” doctrine. First, the majority of the participants in the discussion are all concerned that no one should be subject to punishment in the next life until they have had a fair opportunity to understand the teachings of Islam, something that includes communication of Islamic teachings in their *own* language.<sup>40</sup> For Abū Zahra, it is a matter of natural justice – *al-qānūn al-‘ādī* – that precludes God from punishing anyone

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<sup>38</sup> Id., 65.

<sup>39</sup> Id., 64-65.

<sup>40</sup> Id., 68.

in the next life except for what amounts to a knowing or reckless rejection of truth. Second, the medieval doctrine of the obligation to inquire, is no longer categorical, but rather springs into existence only after a non-Muslim learns enough about Islam from reliable sources to cause him, as a subjective matter, to grasp Islam's possible truth. Only at that moment can one begin to speak of moral culpability; until that time, it is Muslims who are morally culpable. Accordingly, it is Muslims who bear the burden of teaching Islam to non-Muslims and no longer the burden of the non-Muslim to discover Islam's truth through diligent inquiry. The replacement of the "constructive notice" conception of non-Muslims' moral culpability with the "actual notice" doctrine explains in important part the centrality that the concept of *da'wa* has come to play in regularizing from a theological perspective the presence of Muslim minorities in liberal democracies.<sup>41</sup>

The roundtable also articulated a substantial revision of Islamic ethical doctrines regarding what, from a religious perspective, constitutes good works. The classical position, which Khallāf endorses, is that in the absence of sound faith, an individual's good deeds lack religious merit (although such individuals are entitled to receive secular rewards, such as public acclaim and a good reputation). This is so because revelation stresses repeatedly the notion that religiously meritorious conduct is a combination of correct conduct conjoined with the intention to worship God through performance of the act. It would seem impossible to satisfy the second condition of a religious act if the

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<sup>41</sup> Andrew March, *Islam and Liberal Citizenship: the Quest for an Overlapping Consensus* (New York: Oxford University Press, 2009), 221-229.

person is motivated by the desire to serve humanity rather than God.<sup>42</sup> Abū Zahra generally follows the same line of reasoning as Khallāf, with the following important qualification: he made clear that the deeds of non-Muslims, performed for the sake of humanity, are religiously meritorious in themselves, at least in circumstances in which the non-Muslim is not culpable for not adhering to Islam.<sup>43</sup>

Even as Khallāf defended the traditional insistence on the necessity of a religious intention for a deed to have religious merit, however reluctantly,<sup>44</sup> Khallāf's colleague Muḥammad al-Bannā appeared willing to go beyond the views of Khallāf and Abū Zahra, and grant religious significance to good deeds performed simply for the sake of "humanity" rather than out of religious motivation, even in circumstances where the non-Muslim had been adequately informed of Islamic teachings and is thus morally culpable for his failure to embrace Islam.<sup>45</sup> For al-Bannā, the pivotal figure from Islamic religious history with respect to this question is that of Abū Ṭālib, the Prophet Muḥammad's uncle. Despite never becoming a Muslim, Abū Ṭālib continued to protect his nephew during the worst period of persecution the nascent Muslim community experienced in Makka. In recognition of Abū Ṭālib's pivotal role in protecting the early Muslim community, the Prophet Muḥammad was reported to have declared that Abū Ṭālib's punishment in the

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<sup>42</sup> Nadwat Liwā' al-Islam, *supra* n. 30, 62. Basyūnī defended the traditional position, arguing that whenever a person is morally culpable for not becoming a Muslim, his rewards "are in this world, in accordance with the good that they did, in terms of wealth, comfort and other such things." As for the worth of those deeds in the next life, they will be, according to Basyūnī, who quoted the Qur'ān, "like a mirage in a plain; the thirsty believes it to be water, but when he arrives, he discovers it is nothing." *Id.*, 65-66.

<sup>43</sup> *Id.*, 65.

<sup>44</sup> *Id.*, 62.

<sup>45</sup> *Id.*, 63.

next life would be substantially reduced.<sup>46</sup> Abū Ṭālib’s theological significance lies in the fact that Islam, without doubt, had been communicated to him adequately, yet he did not become a Muslim. Nevertheless, the Prophet Muḥammad stated that his uncle’s punishment in the next life would be substantially mitigated. Al-Banna suggests that the most plausible explanation for Abū Ṭālib’s relatively light punishment is the notion that the good deeds of even the theologically culpable have religious value. Although al-Bannā suggests this conclusion, he was content with concluding that the religious worth of the deeds of modern non-Muslims who contribute to the welfare of humanity, even if they are theologically culpable for their failure to become a Muslim, is a question that should be left to God (*tafwīd*), a position that is, on its own terms, a substantial departure from traditional Islamic theology that denied any religious significance to the deeds of culpable non-Muslims.<sup>47</sup> It is safe to assume that for al-Bannā non-culpable Muslims, *a fortiori*, would receive better treatment than Abū Ṭālib in the next life.

As Muṣṭafā Zayd, one of the participants to the roundtable observed, discussions of the fate of non-Muslims in the next life and whether their deeds had any religious significance was not really the point of this roundtable; rather, “the question of the roundtable has a noble goal, and it is our relationship to those and other [non-Muslims]”<sup>48</sup> and how long (or under what circumstances) are Muslims obliged to maintain a posture of dialogue, based on peaceful invitation of others to Islam?<sup>49</sup> In other words, what we are really interested in is the practical political consequences of

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<sup>46</sup> Id. (“*innahu fī ḍahḍāḥ min al-nār*”).

<sup>47</sup> Id., 63 (“*al-‘aql al-muṭlaq yarā anna hā’ulā’i al-nās yufawwad amruhum li-khāliq al-nās*”).

<sup>48</sup> Id., 69.

<sup>49</sup> Id., 70.

these theological discussions. This paper now turns to that question, first discussing the doctrine of *jihād* and then the possibility of political cooperation between Muslims and non-Muslims in light of these theological controversies.

#### 4. Jihad Revisionism as a Reflection of Theological Revisionism

From the theological perspective, the critical doctrinal developments within the thought of the 20<sup>th</sup> century Egyptian modernist school with respect to the status of non-Muslims can justly be described as the elevation of practical virtue – what Rawls would recognize as the “political virtues” – over the theoretical virtue of attaining true knowledge of God that the medieval theologians had emphasized. This is reflected in the evisceration of the duty of inquiry, the corresponding increased weight given to the duty to convey adequately Islam’s teachings, and, at a minimum, the *de facto* recognition of the religious merit of non-believers’ good deeds.

One witnesses a parallel development in 20<sup>th</sup> century reformers’ writings on the law of *jihād*, warfare with non-Muslims. While it is often assumed that medieval Islamic law imposed *jihād* in the sense of offensive warfare as a duty on Muslims as part of their obligation to spread Islam, limited only by temporary truces,<sup>50</sup> pre-modern Muslim jurists in fact expressed a variety of positions with respect to the precise contours of the duty of non-defensive *jihād*.<sup>51</sup> No Sunni writer in the pre-modern period, as far as I know however, argued that Islamic restraints, in the absence of a treaty, prohibited wars to acquire the territory of peaceful non-Islamic state.

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<sup>50</sup> See, for example, Majid Khadduri, *War and Peace in the Law of Islam*, (Baltimore: The Johns Hopkins Press, 1955) 16-17 (stating that prosecution of the *jihād* was obligatory upon Muslims until they had subdued the entire non-Muslim world).

<sup>51</sup> One such interpretation of *jihād*, for example, maintained that it was satisfied if the frontiers were adequately defended. See, al-Qarāfī, al-Dhakhīra, *supra* n. 24, 385-386.

Twentieth-century reformist Muslim theologians in al-Azhar, however, argued for precisely this position, beginning in the inter-war period and later in the aftermath of World War II and the establishment of the United Nations. Their theory of *jihād* in turn was premised on a certain conception of Islam as a rational religion that wins adherents through rational dialogue and invitation, *da‘wa*, and a conception of persons as autonomous and rational beings who have the ability to recognize and accept truth, simply by virtue of a rational examination of the evidence. This revisionist doctrine of *jihād* complements the revisionist theory of excuse described above: because religious truth could be discovered through open discussion, an aggressive conception of *jihād* was morally incoherent.<sup>52</sup> For these 20<sup>th</sup> century modernist scholars, Muslims’ obligations to fight non-Muslims was not a matter of their non-belief in Islam, but rather the duty to fight turned on whether a particular non-Muslim power refused to enter into mutually-respectful relations with Muslims, including, critically, its recognition of Muslims’ right to practice their religion freely, teach Islamic doctrines, and call others to it. These reformist theologians therefore proposed an interpretation of *jihād* that was always limited to self-defense: either defense against invasion by non-Muslims, or defense of the right of Muslims to teach others about Islam.

Aḥmad al-Marāghī, son of a former rector of the Azhar seminary, argued in his multi-volume commentary on the Qur’ān published in 1946, that 2:256 (*al-Baqara*),

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<sup>52</sup> That this modernist interpretation of *jihād* is dependent upon a conception of the person as enjoying autonomous reason is confirmed by the modern interpretation of *jihād* by those Muslim scholars who maintain that offensive *jihād* is a duty whenever possible. For those scholars, truth, especially religious truth, is not likely to be discovered discursively; rather, it must be experienced in some sort of manifest way. Even if it is not impossible for non-Muslims to discover the truth of Islam discursively, the average person will not be in a position to recognize Islam’s truthfulness until he or she experiences it by living in an Islamic order, something that necessitates incorporation of non-Muslim states into an Islamic state, even if that requires force. See, for example, ‘Abd al-Karīm Zaydān, *Majmūma‘at Buḥūth Fiqhiyya* (Baghdad: Maktabat al-Quds, 1975), 62-63.

which provides, “There is no compulsion in religion. Truth is clearly distinguished from error, so whoever rejects false gods, and believes in God has grasped tightly to the firmest bond which shall not be split. God is all-hearing and all-knowing,” established two fundamental principles. The first is that religious faith is based on evidence and proof, not compulsion. The second is that it prohibits Muslims from demanding of non-Muslims either that they accept Islam or choose war.<sup>53</sup> Verses such as 9:29 (*al-Tawba*) which states, “And fight those who do not believe in God nor in the Last Day, who do not prohibit that which God and His Messenger have prohibited, such ones of the people of the Book who do not follow the religion of truth, until they pay tribute, out of their property, after their submission,” and which have been used to justify an obligation upon Muslims to fight non-Muslim political powers, were in fact responses to aggression from neighboring scripturalist powers, such as Byzantium, and accordingly, only lay out the rules of warfare for fighting hostile scripturalists. These rules differed from the rules that applied to the Arab pagans, for whom no choice was given but to renounce their paganism and become Muslims. The conditions on which Muslims may fight scripturalists, however, remain “aggression against you or your territories, oppression or religious persecution of you, or threats against your security and safety, as the Byzantines had done.”<sup>54</sup>

Maḥmūd Shaltūt, who was a reformist rector of the Azhar in the 1950s, developed a similar line of argument in two books, the first in 1933 titled *al-Da‘wa al-Muḥammadiyya wa’l-qitāl fī al-islām* [Muḥammad’s Mission and Fighting in Islam], and

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<sup>53</sup> Aḥmad al-Marāghī, 3 *Tafsīr al-Marāghī* (Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, 1974), 16.

<sup>54</sup> 10 *Tafsīr al-Marāghī*, 95.



the second in 1948 titled *al-Qur'ān wa'l-Qitāl* [The Qur'ān and Fighting].<sup>55</sup> Shaltūt argued that the traditional method of exegesis, which applied a verse-by-verse method, was faulty, and erroneously led some commentators to assert, in connection with their commentaries on verses treating fighting, that 70 verses in the Qur'an had been abrogated. In contrast to the traditional method, Shaltūt argued that a more faithful reading of the Qur'an required the exegete to gather all the verses that were relevant to a certain topic – in this case fighting – and interpret them together. By doing so, Shaltūt hoped to dispel two misconceptions. The first was that the Qur'an's message was concerned solely with the relationship of individuals to their Lord, and the second to affirm the Qur'an's “desire for peace and its aversion against bloodshed and killing for the sake of vanities of this world.”<sup>56</sup>

Appealing to the evidence of numerous Qur'ānic verses which appeal to human beings' reason as the basis for affirmation of God's oneness, he argued that Islam is built on the concept of free faith. Thus, the Qur'ān makes consistent appeal to human reason as the basis for accepting its truth,<sup>57</sup> even eschewing appeal to the miraculous as a proof of the Prophet's truthfulness.<sup>58</sup> Accordingly, Shaltūt asserted that the core Qur'ānic teaching on fighting is that it is permitted to prevent religious persecution, including persecution of the followers of other religions.<sup>59</sup> For this reason, fighting *must* cease

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<sup>55</sup> This latter work has been translated by Rudolph Peters and is included in his book *Jihād in Classical and Modern Islam*, (Princeton: Markus Wiener Publishers, 2005).

<sup>56</sup> Id., 61-62.

<sup>57</sup> Id., 62-64.

<sup>58</sup> Id., 68-69.

<sup>59</sup> Id., 73.

when religious persecution comes to an end.<sup>60</sup> As for 9:29 (*al-Tawba*), Shaltūt argued that this verse is not a command (or even a grant of permission) to fight unbelievers solely on account of their unbelief; instead, that verse applied only to those groups of unbelievers, which included some scripturalists, who participated in the religious persecution of Muslims,<sup>61</sup> or otherwise indicated their intention to resist the call to Islam violently.<sup>62</sup>

Shaltūt concluded, therefore, that the Qur‘ān permits fighting for only three reasons: defense against aggression, protecting the Islamic mission and defending religious freedom.<sup>63</sup> Accordingly, Shaltūt argued that Qur‘anic teachings regarding requiting evil with good (41:34, *Fuṣṣilat*), and calling people to Islam with wisdom and beautiful admonition (16:125, *al-Nahl*) remain applicable despite the revelation of verses permitting, and at times obligating, armed conflict, but on the condition that adherence to those principles of “forgiveness and pardon . . . do not infringe on pride and honor.”<sup>64</sup>

5. Yūsuf al-Qaraḏāwī: Theological *Kufr*, Legal *Kufr* and the Prospects for Muslim-Non-Muslim Political Cooperation

While al-Marāghī and Shaltūt develop the political consequences of this revised theological conception of non-Muslim culpability in the context of international relations, Yūsuf al-Qaraḏāwī applies it to the problem of political cooperation between Muslims

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<sup>60</sup> Id., 74-75.

<sup>61</sup> Id., 77-78.

<sup>62</sup> Id., 98-99. Shaltūt referenced in this context the murder of the Prophet Muhammad’s ambassador by Shuraḥbīl al-Ghassānī, a vassal of the Byzantine ruler, and the decision of the Persian emperor to tear up the Prophet’s letter inviting him to Islam.

<sup>63</sup> Id., 79.

<sup>64</sup> Id., 81.

and non-Muslims within a single state. For al-Qaraḏāwī, unbelief operates on two different levels, the theological and the legal.<sup>65</sup> While the former question is ultimately one for God on the Last Day, for purposes of Islamic law, all persons are either Muslims or non-Muslims, the latter being anyone who does not affirm the Islamic declaration of faith. The significance of this classification is effectively jurisdictional: by stating that only those who affirm Islamic theological doctrines are legally Muslim, he exempts all who do not affirm these truths from the substantive norms of Islamic law. Theologically, however, legal *kufir* is not the same as theological *kufir*: because of the doctrine that culpability only arises after a person has education about Islamic teachings in an “appropriate fashion,” it is the case that many non-Muslims who, as a matter of Islamic law, take the status of *kāfir* (non-believer), nevertheless may be saved on the Last Day. Al-Qaraḏāwī, moreover, adopts a subjective notion of “appropriate fashion” so that all but the obstinate are eligible for salvation on the next life.<sup>66</sup>

With al-Qaraḏāwī’s and Shaltūt’s limitation of theological unbelief to obstinate rejection of Islam, the theological doctrine of excuse comes full-circle: whereas al-‘Anbarī and al-Jāhīz suggested in the first centuries of Islamic theology the possibility that good faith theological error can be tolerated, a position that implied that non-Muslims were only morally culpable if they obstinately rejected Islam’s truth, mature Muslim theology, as represented by theologians such as al-Ghazālī, Fakhr al-Dīn al-Rāzī

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<sup>65</sup> 3 Yusuf al-Qaraḏāwī, *Fatāwā Mu‘āshira* (Beirut: al-Maktab al-Islāmī, 2003), 151-191.

<sup>66</sup> Id., 154-155. As authority for this subjective conception of culpable unbelief, al-Qaraḏāwī quotes approving a long passage from his teacher, the aforementioned Shaltūt. Id., 155-156, quoting Maḥmūd Shaltūt, *al-Islām ‘Aqīda wa Sharī‘a* (Cairo: Dar al-Shuruq, n.d.), 19-20.

and al-Qarāfī, expressly rejected the possibility that only the obstinate were to be condemned by God.<sup>67</sup> Yet, this is precisely the position Shaltūt and al-Qaraḍāwī adopt.

Why does al-Qaraḍāwī adopt an early theological doctrine that had been expressly repudiated by the mature theological tradition? The answer appears to lie in the political context of the argument. Al-Qaraḍāwī made this argument in response to a claim that Jews and Christians could not be deemed to be non-Muslims for purposes of Islamic law, and thus had to be deemed to be Muslims, or some other category other than Muslim or non-believer. The basis of this claim was that because Islamic substantive law permitted Muslims to establish relatively thick bonds of social solidarity and cooperation with adherents of these two religions, the Qur’ān’s correspondingly strong condemnation of unbelief could not refer to them.<sup>68</sup> Al-Qaraḍāwī’s distinction between theological unbelief (which is quite narrow) and legal unbelief (which is quite broad) serves his political aim of preserving a meaningful role for Islamic law for the governance of Muslims while at the same time establishing legitimate grounds for wide political cooperation with non-Muslims. Accordingly, his capacious interpretation of the theological doctrine of excuse allows him to argue that verses in the Qur’ān that counsel Muslims to be suspicious of, if not hostile to, non-Muslims, applies only to non-Muslims that are fanatic in their hostility to Islam. The Islamic solution to the political problem of religious and doctrinal pluralism, therefore, is not doctrinal syncretism, as suggested by

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<sup>67</sup> 2 Fakh al-Dīn al-Rāzī, *supra* n. 15, 500 (noting that most of the Prophet’s enemies were not obstinate, but rather chose to continue to follow their own religions solely out of deference to tradition and authority); 9 al-Qarāfī, *supra* n. 21, 4052-4054 (obstinate refusal to embrace Islam, although it exists, is rare and that no excuses are sufficient to negate the sin arising out of errors regarding doctrine); and al-Ghazālī, *supra* n. 12, 349 (while accepting the rational plausibility of the view that only the obstinate will be punished, concluding that revelation rejects that view and holds even those who reject Islam without realizing its truth, are nevertheless culpable).

<sup>68</sup> Al-Qaraḍāwī, *supra* n. 65, 184.

the article that prompted his response, but rather the recognition that Islamic substantive law treats just, peaceful non-Muslims differently from those who are unjust and hostile to Islam.<sup>69</sup>

He finds Qur'ānic support for this distinction in two verses of the Qur'ān, which he calls the “effective constitution governing [Muslims’] relations with non-Muslims.”<sup>70</sup> The first verse declares “God does not forbid you from loving and behaving justly towards [non-Muslims] who did not wage war on you on account of your religion or expel you from your homes, for God certainly loves the just.”<sup>71</sup> The second and succeeding verse declares “God only forbids you from taking as allies those who waged war on you on account of your religion, expelled you from your homes and assisted in expelling you [therefrom], and whosoever makes alliances with them, they are the unjust.”<sup>72</sup> Implicitly, verses of the Qur'ān suggesting hostility between Muslims and non-Muslims, e.g., “You will not find people who believe in God and the Last Day manifesting love for those who contend [*hādd*] with God and His Messenger, though they are their fathers, or their sons, or their brothers or their clan” (*al-Mujādila*, 58:22), are limited to those non-Muslims who are unjust and actively hostile toward Islam.

His distinction between hostile unbelievers and just unbelievers, combined with the distinction between theological and legal unbelief, then allows al-Qaraḍāwī to develop a new ground for political cooperation between Muslims and non-Muslims that

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<sup>69</sup> Id., 184-185.

<sup>70</sup> Id., 185.

<sup>71</sup> *Al-Mumtaḥina* 60:8.

<sup>72</sup> *Al-Mumtaḥina* 60:9.

does not appear to be based on the doctrine of *dhimma*.<sup>73</sup> The Islamic grounds he identifies for *political* cooperation with non-Muslims are as follows:

- The Muslim's belief that each individual has dignity without regard to his religion, race or color;
- The Muslim's belief that religious difference is part of the divine plan that granted human beings freedom and choice;
- Muslims are not obligated to judge non-believers on account of their non-belief, or punish them on account of their error; instead, accountability is for God on the Day of Judgment and their reward (or punishment) is left to God; and,
- A Muslim's belief that God commands justice and loves fairness, and that He hates injustice and punishes the unjust, even if the perpetrator is a Muslim and the victim a polytheist.<sup>74</sup>

Although al-Qaraḍāwī does not explicitly renounce the medieval doctrine of *dhimma* in this *fatwā*, it is notable that he does not mention it; moreover, the tenor of the argument suggests that the medieval justification for the relationship no longer exists in his mind. For example, he states that it is impermissible to address non-Muslims using the term non-believers (*kuffār*), even though for purposes of Islamic law they are non-believers, stating that “the Qur’ān did not address any group of [Arab] polytheists or others, with a term [derived from] ‘polytheist’ or ‘unbelief’; instead, when it addresses polytheists it states ‘Oh people!’ or ‘Oh Children of Adam!’ or with a similar phrase, just as it addresses Jews and Christians with a title that draws hearts close, not [one] that creates distance between them.”<sup>75</sup>

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<sup>73</sup> Even though he does not explicitly renounce the notion of *dhimma*, his substantive position on the political relationship of Muslims and non-Muslims is inconsistent with medieval conceptions of this relationship.

<sup>74</sup> Al-Qaraḍāwī, *supra* n. 65, 189-191.

<sup>75</sup> Id., 187-188.

In the pre-modern era, the political function of *dhimma* was to generate some morally relevant basis upon which non-Muslims would become subject to the rules of Islamic law and thus establish peace between Muslims and non-Muslims. While peace was guaranteed between Muslims by virtue of their moral commitment to abide by the rules of Islam, this did not provide a basis for peace between them and non-Muslims because Islamic law, by its terms, did not apply to the conduct of non-Muslims, at least not in a political sense. The relationship of *dhimma* solved this problem by establishing a contractual basis for legal relations between Muslims and non-Muslims pursuant to which the latter agreed to abide by the non-religious elements of Islamic law and the former agreed to provide them all the civil (but not political) rights of Islamic law and defend them against all aggressors. Al-Qaraḏāwī, however, seems to imagine that Muslim-non-Muslim relations can take place in the domain of justice which, although commanded by God, e.g., *Al-Mumtaḥina*, 60:8, may not necessarily be defined exclusively by revelatory norms, and is therefore something that is, implicitly at least, shared and universal.

Al-Qaraḏāwī's implicit commitment to a normative conception of universal, mutual standards of justice that exists logically prior to the ethical knowledge imparted by revelation is also consistent with the position he attributes to Shaltūt regarding the scope of Islamic law. Shaltūt's description of the domain of Islamic norms limits its application to two spheres, the first being the ritual duties Muslims owe God, and the religious duties, e.g., performance of funeral rituals, that Muslims owe one another. As for the other rules of Islamic law, e.g. contract law, tort law, etc., they do not appear to be "rules of Islam" or at least not "rules of Islam" in a religiously significant way. This

again suggests that the domain of Islamic law dealing with secular matters, the so-called *mu'āmalāt*, are in reality nothing other than a specified conception of the justice commanded by God in the Qur'ān, but because justice in these matters is effectively universal and exists prior to revelation, it seems that for both Shaltūt and al-Qaraḍāwī, there is a kind of looseness in the determination of the relationship of secular rules to revelation that would be consistent with the existence of a just, non-sectarian law that governs secular relationships. Conversely, however, whatever the precise content of just non-Islamic law, it could not interfere with the religious obligations Muslims owe God or to one another, for those are, in principle at least, non-negotiable.<sup>76</sup>

## 6. Conclusion

Twentieth-century Muslim reformist theologians, beginning with Muḥammad 'Abduh, developed a new Islamic theory of religious toleration that allowed for possibilities of political toleration that went beyond the medieval theory of hierarchical toleration as manifested in the concept of *dhimma*. This theological revisionism was achieved largely through a re-working of the pre-modern doctrine of “the communication of revelation.” This revisionist theology in turn produced a much more robust notion of excuse than their pre-modern predecessors would have recognized. In addition to narrowing the theological scope of unbeliever drastically, they also revised ethical theory to grant *prima facie* religious significance to acts performed by non-Muslims with the intent of serving “humanity.” The details of their arguments not only involved revision of core Islamic theological doctrines and ethical doctrines, but also involved revisionist interpretations of scripture, in particular, reading the Qur'ān to prohibit aggressive warfare against peaceful

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<sup>76</sup> In other words, a Muslim could not abandon adherence to those rules except in circumstances where he or she is excused from compliance by virtue of an extrinsic factor, e.g. compulsion or the like.



non-Muslims and expanding the notion of a religious intention to include humanistic motivations.<sup>77</sup> The fact that these scholars advance theological and ethical arguments in favor of toleration, however, does not mean that their arguments are categorical: they remain historically contingent to the extent that it requires the existence of “reasonable” non-Muslims, which from the perspective of these Muslim theologians means the recognition by non-Muslims of not only the secular rights of Muslims, but also their religious right to discharge their Islamic obligations openly; to teach Islam internally to the Muslim community; and finally, to call others to Islam.

This essay began with the debate between Rousseau and Rawls on the question of whether a democratic government can tolerate salvation religions that teach an exclusive doctrine of salvation. The case of modernist Muslim theology provides an interesting case study for this debate. Even though the Egyptian theologians who participated in this debate were not citizens of a fully independent liberal state, all of them, with the exception of al-Qaraḍāwī, and ‘Abduh, lived much of their adult lives during Egypt’s liberal age between the world wars. And although this experiment was cut short by nationalist struggles that culminated in the Egyptian Revolution of 1954, the theological achievements of Egypt’s liberal theologians were preserved, and in important ways, expanded by al-Qaraḍāwī, even as his thought continues to show strong connections to

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<sup>77</sup> While a thorough review of pre-modern commentaries on the relevant Qur’anic verses is well-beyond the scope of this paper, it is sufficient to point out that whether the verses cited by Shaltūt and al-Qaraḍāwī as representing the “constitution” for the Islamic view of Muslim relations with non-Muslims were legally relevant to Muslims’ conduct at all is a matter of historical controversy, since at least some interpreters believed they were abrogated by 9:29 (*al-Tawba*) (i.e., they lacked legal force even if they remained part of scripture). This was the view of those interpreters who obliged Muslims to wage war against non-Muslim powers whenever practically possible. See, for example, 28 Muḥammad b. Jarīr al-Ṭabarī, *Jāmi’ al-Bayān ‘an Ta’wīl Āy al-Qur’ān* (Cairo: Mustafa al-Babi al-Halabi, 1968, 3d ed.), 66 (refuting the argument that 9:29 abrogated 60:8-9 and the conclusion that Muslims were prohibited from maintaining friendly relations with non-Muslims, even in circumstances when no peace treaty existed between the Muslim state and those non-Muslims, provided that relationship resulted neither in humiliation nor weakening of the Muslim state).

nationalist anti-colonial movements in the Muslim world, particular the Palestinians' struggle against Zionism.<sup>78</sup>

Al-Qaraḍāwī's nationalist and pan-Islamist political sympathies, however, should in no way obscure or diminish his liberal theology and the prospects that it contains for peaceful political cooperation between Muslims and non-Muslims.<sup>79</sup> Indeed, the fact that al-Qaraḍāwī has these two-personas, one of liberal reformer, and the other, of strident Arab nationalist and pan-Islamist, makes his example and that of the Egyptian modernists even more relevant to the debate between Rousseau and Rawls: to the extent that they accept the possibility of a transnational (or domestic) order that is consistent with Islamic conceptions of justice, they were willing to become more tolerant of non-Muslims' erroneous beliefs about God and envisage them as likely recipients of divine grace in the next life. On the other hand, as al-Qaraḍāwī's strident nationalism makes clear, the theological and political toleration Muslim modernism offers is not without demands of its own, but unlike the theological demands of a medieval theologian like al-Qarāfī, their demands are political.<sup>80</sup> To paraphrase the words of Shaltūt quoted earlier, civic and religious toleration are realistic possibilities, but only on the condition that adherence to those principles "do not infringe on pride and honor."<sup>81</sup>

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<sup>78</sup> Of course, al-Qaraḍāwī is best known (and vilified) in the west for his opinion that Palestinian suicide bombings against Israeli targets inside the Occupied Palestinian Territories and Israel are a legitimate form of self-defense. He also has a *fatwā*, however, in which he criticizes those Muslims who believe that the struggle against Zionism is a religious war rather than about justice. Al-Qaraḍāwī, *supra* n. 65, 198-199.

<sup>79</sup> Id., 197 (noting that Islamic brotherhood is not exclusive, and can also be consistent with other kinds of brotherhood, such as Arabism, patriotism and humanism).

<sup>80</sup> Id., 199 (denying that the fight against Zionism has anything to do with Jewish religious beliefs, but is rather because "they have seized our land and cast out our people").

<sup>81</sup> Peters, *supra* n. 55, 81.

Given the aspirational norm of liberal democracy to create a political community that is consistent with the individual dignity of all citizens (or among states in the international order), it is unsurprising that the prospect of the creation of an international and domestic political order reflecting this ideal served as a catalyst for the theological innovations achieved by this group of Egyptian theologians in the 20<sup>th</sup> century. To the extent that these innovations were spurred mainly by the mere prospect (and not even achievement) of a just system of cooperation with non-Muslims, moreover, 20<sup>th</sup> century Muslim Modernist theology provides an important historical example in support of Rawls' contention that not only can democracies tolerate theologies that teach "No salvation outside the Church," but also that, far from subverting the stability of a democracy, liberal democracy, if anything, is more likely to subvert theological exclusivity.

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