

## Case Studies

# On Sovereignties in Islamic Legal History

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### Abstract

The concept of sovereignty has posed important challenges in the ongoing debates and discourses on Islam and international law. This essay illustrates how sovereignty reflects competing ideas about legitimate authority by examining and exploring distinct debates in Islamic thought, all of which share a concern about the nature, scope, and contours of legitimacy and authority. This article does not offer a prescriptive argument for a robust notion of sovereignty in Islam, nor does it attempt to judge the Islamic past pursuant to contemporary strands of political theory. Rather, it explores various strands of historical Islamic intellectual debate that traverse the realms of theology, law and politics in order to reflect on the conditions of different sovereignties and their relationship to one another

### Keywords

Islam, Islamic law, sovereignty, authority, treaties, theology, imāma, natural law

## I. Introduction

The symposium issue of MELG is devoted to the implications of pluralism on governance and constitutionalism. Pluralism here is understood to reflect not

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merely a fact of diversity, but, rather, an appreciation of the constitutive role such diversity can and should play in the way constitutional orders and governing systems are constructed and maintained. Pluralism offers a vantage point from which to critique conceptions of law and governance that embed legitimate authority in the narrow designs of formal, state constitutional orders and administrative institutions. Of course, this begs the question: pluralism of what? It is in answering that question that this article focuses on the issue of *sovereignty* in Islamic legal history.

Sovereignty offers an important departure point for the study of Islamic legal history in the context of governance and constitutionalism. First, sovereignty features strongly in contemporary debates about the nature of political rule in the Muslim world and the conditions of its legitimacy, which often involves a reference to Islamic law. In particular, debates about sovereignty and Islamic law pose the question whether the *pre-modern* history of Islamic law, in which the normative vision of a unified *umma* led by a single executive (i.e. the caliph) remains salient in a political context in which the *modern* sovereign state has become the main unit of political power today. For this reason, David Westbrook suggests that, without a serious inquiry into the sovereignty of the state, proponents of Islamic International Law will remain unable to engage Public International Law in terms that are mutually meaningful: “Islamic law has no authoritative place for institutions, particularly nation[-states]. . . Islamic international law cannot speak to an international environment composed of institutions, and so cannot address the business of public international law.”<sup>2</sup>

Second, sovereignty has become, more recently, the subject of considerable skepticism in the fields of international law and international relations at a time when global affairs are the province not only of states but also transnational corporations, networks of civil society organizations, and international institutions such as the G8 and G20, which, though comprised of member states, also illustrate the limits of the bounded state as the principal site of power, authority, and legitimacy. To bring both of these strands of thought

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article published in *Belonging and Banishment: Being Muslim in Canada*, ed. Natasha Bakht (Toronto: TSAR Publications, 2008), which provided an initial platform to test some ideas that I further develop and expand upon herein. Lastly, I want to thank my research assistant, Jenna Preston, who expertly helped ensure the clarity and precision of my argument. All limitations or errors remain the responsibility of the author.

<sup>2</sup> David A. Westbrook, “Islamic International Law and Public International Law: Separate Expressions of World Order,” *Virginia Journal of International Law* 33 (1992-1993): 819-897, 883.

together offers the possibility of furthering a debate within the Islamic studies field that has for far too long remained in a silo of its own.

As argued throughout this article, sovereignty is a concept that connotes a claim of authority. But, more than just simply connoting ‘authority’, sovereignty implies a legitimacy to the authority being exercised. And, especially since the 20th century, sovereignty implies a boundary beyond which exercise of such authority may very well be deemed illegitimate.<sup>3</sup> Sovereignty begs questions about legitimacy, authority, and boundaries, which further beg reflexive questions about what those boundaries imply about the nature of legitimate authority. In other words, to view the sovereign as a legitimate authority within certain bounds is indirectly to acknowledge the ‘other’ sovereigns that exist outside those bounds, thus returning full circle to the theme of pluralism that pervades this symposium issue.

To approach ‘sovereignty’ from the perspective of Islamic legal and theological history, though, it is not enough to simply focus on political history or theories of the Muslim ‘state’. From the vantage point of Islamic legal thought, authority is an issue that was not limited to theories of governance. Rather, questions of authority concerned the individual, the divine being, the political ruler, and the relation between the three. Sovereignty – as in the sovereign God, the sovereign self, the sovereign ruler, and the sovereign state – offers an interesting and important entry point for bringing to bear pre-modern Islamic legal history on contemporary debates concerning authority and legitimacy in the modern world at a time when the very concept of ‘sovereignty’ is subject to increasing scrutiny.

Before proceeding, it is important to address what this article is not. It is not an Islamically based argument for the existence of a robust theory of sovereignty, democracy, or pluralism.<sup>4</sup> Nor is it an attempt to judge or evaluate the Islamic historical tradition pursuant to contemporary accounts of liberal political theory.<sup>5</sup> Nor is this article meant to perpetuate dichotomies between

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<sup>3</sup>) On ‘sovereign equality’ as a predominantly 20th century concept that, contrary to some, was not an animating feature of the peace of Westphalia (1648), see Peter M.R. Stirk, “The Westphalian model and sovereign equality,” *Review of International Studies* (2011): 1–20; Derek Croxton, “The Peace of Westphalia of 1648 and the Origins of Sovereignty,” *The International History Review* 21, no. 3 (1999): 569–91.

<sup>4</sup>) For examples of such studies, see Abdulaziz Sachedina, *The Islamic Roots of Democratic Pluralism* (Oxford: Oxford University Press, 2001); 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): 5–69.

<sup>5</sup>) See, for instance, Andrew March, *Islam and Liberal Citizenship: The Search for an Overlapping Consensus* (Oxford: Oxford University Press, 2009).

the Islamic world and the rest, using pluralism as yet another fulcrum on which the ‘clash of civilizations’ seesaws. Rather, this article offers an exploration of various strands of historical Islamic intellectual debate that traverse the realms of theology, law and politics in order to reflect on the conditions of different sovereignties and their relationship to one another.<sup>6</sup> The analysis draws upon pre-modern debates that speak generally to the issue of authority and legitimacy as they pertain to the individual, the divine, and the polity. The broad approach is meant to offer an *inductive* accounting of different sites of Islamic debate about legitimacy and authority. After first problematizing sovereignty as a concept and its implicit use in research on Islamic law (Part II), the article will proceed to address key theological disputes in Islamic legal thought that speak to the construal of the sovereign self (Part III). Part IV will move from theology to a more political genre of writing, the *mirror for princes* genre, which offered advice and guidance to rulers of Muslim lands. In that section, the discussion will focus on the existence of different political sovereigns (i.e. *imāms*) in Muslim lands, and the implication of their plurality on what counted as legitimate rule of, for, and by Muslims. Part V will shift from an internal debate about legitimate authority within the Muslim imperium, and turn to the regulation of relations between Muslim and non-Muslim rulers. By canvassing different debates about legitimacy and authority regarding the self, the divine, and the ruling regime, the article suggests that shifting focus to the conditions of legitimacy and authority reveals how ‘sovereignty’ all too often presumes a zero-sum game when, in fact, that is not the case. The paper concludes that, while many may look for Islamic precedents for a conception of ‘sovereignty’, that concept is perhaps too heavy-handed in how it sets the appropriate terms of debate.

## II. New ‘Sovereignties’ in the Study of Islamic Law

In the context of Islamic legal studies, sovereignty appears in two areas of research. The first concerns the literature on what some might call Islamic International Law (IIL). The second has to do with contemporary debates

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<sup>6</sup> The focus on law, theology, and politics is not meant to exclude other possible avenues of inquiry that might offer comparative, and even competitive, perspectives on sovereignty in the Islamic tradition. Islamic mysticism, for instance, could just as well be examined, along with more recent accounts by 20<sup>th</sup> century thinkers in the Muslim world. For purposes of this article, however, the approach will be framed in terms of pre-modern legal, theological, and political debates to offer an initial inquiry that, it is hoped, may inspire future research.

about Islamic law and the modern state, and how the rise of the modern state in the Muslim world has affected the conditions of legitimate authority with respect to Islamic law.

The efforts to develop IIL have numerous incentives. In a post-colonial tenor, to argue for IIL is, arguably, to speak back to the former empire of the West that has perhaps not fully retreated from its imperial influence.<sup>7</sup> In a context of military engagements and counter-terrorism, where the targets are often Muslim groups such as al-Qaeda, IIL is meant as a corrective to the view of Islam and Muslims as violent, intolerant, and unable to cooperate with the religious Other. Importantly, for this article, the literature on IIL offers a curious slippage in terminology that begs important questions about the status of the concept of sovereignty in Islamic legal history. Often, studies on IIL utilize certain terms of art that betray a modernist reading of an otherwise complex pre-modern Islamic legal and political history. In particular, studies by Muslim voices on the topic of IIL seem to assume the possibility of an Islamic law of *nations* that governs the interaction of *states*, whether Muslim or not. For instance, in his seminal study of Islamic international law, M. Hamidullah entitles his book, *The Muslim Conduct of States*, and defines “Muslim International Law” as follows: “That part of the law and custom of the land and treaty obligations which a Muslim *de facto* or *de jure* State observes in its dealings with other *de facto* or *de jure* States.”<sup>8</sup> When Labeeb A. Bsoul writes of an Islamic law of nations and focuses on the conduct of *jihād*, he writes: “in early works jurists/scholars generally discuss the relations of the Muslim *state* with other *states*. . . .”<sup>9</sup> Lastly, in his review of a book on *jihād*, M. Cherif Bassiouni, renowned public international criminal law scholar, addresses the role of *jihād* in the early Islamic polity. His description of the early Islamic polity suffers, however, from conceptual slippage. In one instance, he writes: “As the threat to the Islamic *nations*’ existence abated between the eighth and twelfth centuries C.E., and more friendly relations developed with other *nations*, new doctrinal limitations were imposed on the resort to *jihad*.”<sup>10</sup>

<sup>7</sup> Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: Cambridge University Press, 2007); Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton: Princeton University Press, 2009).

<sup>8</sup> Muhammad Hamidullah, *Muslim Conduct of State*, 4th ed. (Lahore: Sh. Muhammad Ashraf, 1961), 3.

<sup>9</sup> Labeeb Ahmed Bsoul, “Historical Evolution of Islamic Law of Nations/Siyar: Between Memory and Desire,” *Digest of Middle East Studies* (Spring 2008): 48–66, 51 (emphasis added).

<sup>10</sup> M. Cherif Bassiouni, “[Review] *Is Jihād a Just War?*,” *The American Journal of International Law* 96 (2002): 1000–5, 1002 (emphasis added).

A few pages later, he states: “What needs to be emphasized is that the resort to force as part of *jihād* in the early days of Islam was justified on the basis that there was no freedom to propagate Islam or for Muslims to practice it freely in non-Muslim *countries*.”<sup>11</sup> Although he does not use the term ‘state’, Bassiouni’s language slips between nations and countries, even going so far as to posit plural ‘Islamic nations’ in the pre-modern period. In these examples, the authors use terms such as ‘state’, ‘nation’, or ‘country’ unproblematically. The slippage between terms like state, nation, and country when articulating principles of an Islamic International Law, however, covers over the conditions that make possible and intelligible an inter-national law at all, for instance, the authority and legitimacy of the state as a political organ and unit. The state as we understand it today, however, is not something that can be presumed to be easily translated into the pre-modern past. The modern state has a history and dynamic of its own.<sup>12</sup>

Indeed, the rise of the modern state contributes to a second line of argument about Islamic law, sovereignty, and the conditions of legitimate authority. Far from indulging slippage that implicitly reads sovereignty into Islamic law, others recognize and critique the impact of the sovereign state in the Muslim world on Islamic law.<sup>13</sup> The modern state in the Muslim world arose from the negotiations of the great powers of the late 19th and 20th centuries that carved up portions of the world in light of their various strategic interests. Along the way, they implemented programs and policies that had adverse effects on the scope, capacity, and legitimate authority of Islamic law for purposes of governance. This post-colonial critique has been well documented and need not be elaborated here.<sup>14</sup> Rather, what remains important is

<sup>11</sup> Bassiouni, “[Review] *Is Jihād a Just War*”, 1005 (emphasis added).

<sup>12</sup> James C. Scott, *Seeing Like a State* (New Haven: Yale University Press, 1998); Hendrik Spruyt, *The Sovereign State and Its Competitors* (Princeton: Princeton University Press, 1996).

<sup>13</sup> See, for instance, Olivier Roy, *The Failure of Political Islam* (Cambridge: Harvard University Press, 1992), 13–21; Fazlur Rahman, *Islam & Modernity: Transformation of an Intellectual Tradition* (Chicago: University of Chicago Press, 1982), 84–91; L. Carl Brown, *Religion and the State: The Muslim Approach to Politics* (New York: Columbia University Press, 2000); Hamid Enayat, *Modern Islamic Political Thought* (Austin: University of Texas Press, 1982), 69–110.

<sup>14</sup> See, for instance, Anver M. Emon, “Islamic Law and the Canadian Mosaic: Politics, Jurisprudence, and Multicultural Accommodation,” *Canadian Bar Review* 87, no. 2 (February 2009): 391–425. For a discussion of the gradual demise of Shari’a courts in Egypt, see Nathan Brown, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf* (Cambridge: Cambridge University Press, 1997). For different strategies used by the French and British governments concerning Islamic law in their colonial possessions, see David S. Powers, “Orientalism, Colonialism, and Legal History: The Attack on Muslim Family Endowments in Algeria and

to recognize that the modern state is a relatively new feature in regions of the world that have not fully escaped the spectre of imperialism, though by different means (e.g., international debt, structural adjustment programs, trade tariffs and imbalances).

But, more than being a novel institution in the Muslim world, some scholars of Islamic law go so far as to suggest that the advent of the modern state works contrary to the operation and dynamics of Islamic law such that it is nearly ridiculous to speak meaningfully about the authority and application of Islamic law in the modern state. If Islamic law once had legitimate authority, that authority has been ceded to the sovereign state, leaving only the individual adherent to negotiate his or her own relationship to Islamic law.<sup>15</sup> Others, recognizing the relationship between sovereignty and the coercive force of governance, argue for a religiously neutral state as the only approach that allows Muslims to embrace their Islamic faith authentically. For instance, Abdullahi Ahmed An-Na'im argues in favor of a secular state in which all matters of religion are rendered to the private sphere and the conscience of the believer. He writes: "Muslims everywhere, whether minorities or majorities, are bound to observe Shari'a as a matter of religious obligation, and that this

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India," *Comparative Studies in Society and History* 31, no. 3 (1989): 535-71. For a discussion of the impact that the reified and static version of Islamic law had on Muslims under colonial occupation, see the excellent study by Scott Alan Kugle, "Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia," *Modern Asian Studies* 35, no. 2 (2001): 257-313.

<sup>15</sup> Wael Hallaq, *Sharia: Theory, Practice, Transformations* (Cambridge, Cambridge University Press, 2009), 359-60. Indeed, Hallaq goes so far as to state: "The demise of the shari'a was ushered in by the material internalization of the concept of nationalism in Muslim countries, mainly by the creation of the nation-state." Wael B. Hallaq, "Can the Shari'a Be Restored?," in *Islamic Law and the Challenges of Modernity*, eds. Yvonne Yazbeck Haddad and Barbara Freyer Stowasser (Walnut Creek, California: Alta Mira Press, 2004), 21-54, 22. Likewise, Abou El Fadl remarks: "The pre-modern dynamic, and the normative values and understandings that informed the practice of Islamic law, do not exist today. Arguably, the state in Muslim countries has become too powerful and hegemonic to permit the autonomous existence of the Shari'ah." Khaled Abou El Fadl, *And God Knows the Soldiers: The Authoritative and Authoritarian in Islamic Discourses* (Lanham: University Press of America, 2001), 109. See also, Khaled Abou El Fadl, "My Friend," in *Conference of the Books: The Search for Beauty in Islam* (Lanham: University Press of America, 2001), 159-62. When writing about the imperative to frame Islamic legal doctrines in terms of the modern constitutional state, An-Na'im argues: "The structure and organization of the state, the manner of distribution and exercise of its power and related matters, is the logical starting point for our discussion of the public law of Islam." Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Syracuse: Syracuse University Press, 1990), 69.

can best be achieved when the state is neutral regarding all religious doctrines and does not claim to enforce Shari'a principles as state policy or legislation."<sup>16</sup> This second approach effectively removes Islam from the realm of politics and, instead, situates it in the private realm, where it supposedly belongs (i.e. the realm where it exercises legitimate authority).<sup>17</sup>

Despite different attitudes toward the state, both accounts seek to subvert the authority of the state in order to carve out a space for the legitimate authority of Islamic law. Ironically, both accounts locate the conditions of Islamic law's legitimate authority in the individual, such that the individual becomes the new sovereign with respect to Islamic law. For instance, An-Na'im seeks to promote "voluntary compliance with Shari'a among Muslims in their communities by repudiating claims that these principles can be enforced through the coercive powers of the state . . . Shari'a can only be freely observed by believers; its principles lose their religious authority and value when enforced by the state."<sup>18</sup>

The implicit incorporation of the sovereign state in accounts of Islamic International Law, and the critique of the state as hegemonic over and against the legitimate authority of Islamic law, offer two loci of sovereignty that this article seeks to explore in terms of historical debates on authority in Islamic legal thought.<sup>19</sup> The state and the individual as distinct and competing

<sup>16</sup> Abdullahi Ahmed An-Na'im, *Islam and the Secular State: Negotiating the Future of Sharia* (Cambridge: Harvard University Press, 2008), 3.

<sup>17</sup> An-Na'im, *Islam and the Secular State*.

<sup>18</sup> An-Na'im, *Islam and the Secular State*, (see note 16), 3–4.

<sup>19</sup> Ironically, while various presumptions of the state and sovereignty operate in the above debates on Islamic law, in the fields of international law and international relations, the potency of the state and its concomitant feature of sovereignty are called into considerable question. The rise of global trade organizations, multilateral corporations, and NGOs prompt some to suggest that the state and its sovereign authority are less determinative of global governance and dominance than once believed. As James Rosenau argued in the 1990s, legitimate authority has gradually moved from the state upward to more international bodies, and downward to sub-national groups and organizations: "The states that have dominated politics for more than three centuries . . . have given way to a bifurcated system in which actors in the state-centric world compete, cooperate, interact, or otherwise coexist with counterparts in a multicentric world comprised of a vast array of diverse transnational, national, and subnational actors." Although the sovereignty of these states has not changed, their exclusive claim to authority has changed. James N. Rosenau, "The Relocation of Authority in a Shrinking World," *Comparative Politics* 24, no. 3 (April 1992): 253–72, 256. Whether one agrees with critiques of the state or not, the point here is to avoid being lulled into a sense of comfort about the scope and dominion of power the sovereign state exercises. For studies in political science and history, see Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999). Krasner offers



sovereigns raises an important set of questions about the nature of authority in Islamic legal thought, the different sites where that authority may lie, and the scope and aims to which it can be utilized.

### III. Theology, Politics, and Competing Sovereignties

Theology is often considered a distinct discipline in Islamic curricular terms, classified under the headings of *‘aqīda* or *kalām*. Yet, scholars of Islamic intellectual history have shown that theological disputes were often based on early political difference, disputes, and conflict. Certainly the political history that underlies early theological disputes need not control the meaning of those theological doctrines in shifting contexts. Historicism may help us understand the origin of theological doctrines, but whether historical theological doctrines remain meaningful is not necessarily a matter of an originalist historicist approach. But, when approaching theology and its early context from the vantage point of political theory, and, in particular, with an interest in the intelligibility of ‘sovereignty’, as a concept, the distinction between the theological and political begins to shrink. Indeed, for pre-moderns, the distinction often made today between the secular and the religious was inapplicable. Rather, the world was viewed through a robust set of values and ideas that we moderns may call ‘religious’, but which pre-moderns relied upon as the value-laden filter through which they saw and made sense of their world. Consequently, for the purpose of addressing sovereignty in Islam, the intersection between theology and political theory offers an important site of inquiry. There are three theological disputes of particular interest to the study of sovereignty, and its constitutive features of legitimacy and authority. The first one concerns an early debate about free will and determination. The second builds on the first one by addressing the nature of justice in terms of the sovereignty of God’s will and the scope of individual moral agency. The third involves a debate about the nature of the Qur’ān and the ways in which a hermeneutic moment between the Qur’ān and God’s authorial intent may be

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a typology of sovereignties that, on the one hand, contribute to the growing literature that critiques the salience of sovereignty. His typology, however, has been criticized by historians for making demarcations that do not fully capture the dynamics of sovereign claims in indeterminate cases. Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empire, 1400-1900* (Cambridge: Cambridge University Press, 2010).

necessary, legitimate, and authoritative. Together, these three debates speak to the question of agency and authority, at both the individual and communal level, thereby raising questions about the relationship between the sovereignties of God, the individual, and the polity.

### III.A The Sovereign God or the Sovereign Self

The Qurʾān contains numerous verses that provide conflicting statements about whether human actions are determined by God or whether individuals exercise free choice. For instance, the Qurʾān states: ‘God leads astray whom He desires and guides whom He desires’.<sup>20</sup> In another instance, it states: ‘Whoever God decides to guide, He opens his heart to Islam. Whoever He decides to lead astray, He makes his heart narrow and constricted’.<sup>21</sup> These verses can be read to suggest that whether we are guided or not is the result of divine intervention and not human action. Furthermore, throughout the Qurʾān, God is said to have created all that is in existence, suggesting that even an individual’s actions are determined by God’s will.<sup>22</sup>

On the other hand, the Qurʾān also includes verses that suggest individuals have free choice and are rewarded and punished for their choices. For instance, the Qurʾān states: ‘[Every soul] receives [every good] that it earns, and endures [every evil] it earns’.<sup>23</sup> The verse implies that we are responsible for our own acts, and are rewarded and punished accordingly. These competing messages in the Qurʾān certainly create confusion, and, in fact, the theological debates that arose in the first three centuries of Islamic history illustrate how these verses were used to articulate competing theologies about God’s omnipotence and the nature of human action.<sup>24</sup>

<sup>20</sup> Qurʾān, 14:4, 35:8, 74:31.

<sup>21</sup> Qurʾān, 6:125. For commentaries on this verse, see al-Ṭabarī, *Tafsīr al-Ṭabarī*, eds. Bashshār Awad Maʿrūf and ʿIsām Fāris al-Harastānī (Beirut: Muʾassasat al-Risāla, 1994), 3:345; Ibn Kathīr (d. 1373), *Mukhtaṣar Tafsīr Ibn Kathīr*, ed. Muḥammad al-Sabūnī, 7<sup>th</sup> ed. (Beirut: Dār al-Qurʾān al-Karīm, 1981), 1:617–618. Both authors arguably illustrate angst about the willfulness of one’s faith commitments. See, also, Fakhr al-Dīn al-Rāzī (d. 606/1210), *al-Tafsīr al-Kabīr* (Beirut: Dār Ihyaʾ al-Turāth al-ʿArabī, 1999), 5:137–145, who links his Qurʾānic exegesis to the theological issue.

<sup>22</sup> See, for example, Qurʾān 2:29, 6:73, 14:19, 14:32, 25:2, 25:59.

<sup>23</sup> Qurʾān, 2:286. On this verse, see al-Zamakhsharī, *al-Kashshāf*, 1:408; al-Ṭabarī, *Tafsīr al-Ṭabarī*, 2:199; Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-Kabīr*, 3:115–125. For other verses conveying a similar theme, see Qurʾān, 34:4–5, 99:6–7.

<sup>24</sup> Ibn Rushd (Averroes) (d. 1198) explained that the debate between the theological schools on this issue was directly related to the inconsistency among the verses noted above. Ibn Rushd,

At the heart of the debate on free will and determinism was the question of power and capacity to put that power to effect (*qadr, qaḍāʾ*). Advocates of free will argued that our power to act is embedded within us prior to any action we take, and we can freely choose to act without any constraint.<sup>25</sup> Their opponents argued that, prior to our decision to act, we have no power or capacity to decide whether to act or not. Rather, both the power *and* the actual commission of the act arise within us at the same moment, as a matter of God's will. At this point, we cannot choose to act in any contrary way.<sup>26</sup> The latter position, the determinist position, is particularly intelligible if one is committed to a theology of an absolutely omnipotent God: to give human beings free will would implicitly suggest that God does not control or create everything, but, rather, that we have a competing creative power as well. Advocates of free will, however, considered the determinist thesis and theology problematic. It was unjust, they argued, because nothing in the determinist view precludes judgment against the individual. In other words, we could be judged for our actions despite the fact that we are effectively coerced to perform them. Hypothetically, therefore, in the event that the act in question is evil, then, effectively, God is responsible for evil. The possibility that God might be responsible for committing evil, even if only through human action, violated fundamental theological premises free will advocates held about God's goodness.<sup>27</sup>

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*Manāhij al-Adilla fi 'Aqā'id al-Milla*, ed. Maḥmūd Qāsim (Cairo: Maktabat al-Anjlu al-Miṣriyya, 1955), 107. For a translation of this text, see, Ibrahim Najjar, trans., *Faith and Reason in Islam: Averroes' Exposition of Religious Arguments* (Oxford: Oneworld Publications, 2001).

<sup>25</sup> This view seems to have been held by an earlier group called the Qadariyya. Richard C. Martin et al., *Defenders of Reason in Islam: Mu'tazilism from Medieval School to Modern Symbol* (Oxford: Oneworld Publications, 1997), 25; Harry Austryn Wolfson, *The Philosophy of the Kalam* (Cambridge: Harvard University Press, 1976), 619–20; W. Montgomery Watt, *The Formative Period of Islamic Thought* (Oxford: Oneworld Publications, 1998), 82–112. The term 'qadariyya', however, seems to have been a pejorative term used by both sides of the debate to denigrate the other. Compare its use by the following: Al-Ash'arī, *Kitāb al-Lum'a*, ed. 'Abd al-'Aziz 'Izz al-Dīn al-Sirwān (n.p.: Dār Libnān, 1987), 131; al-Qāsim al-Rassī (d. 860), 'Kitāb al-'Adl wa al-Tawḥīd wa Nafy 'an Allāh al-Waḥīd al-Ḥamid,' in *Rasā'il al-'Adl wa al-Tawḥīd*, ed. Muḥammad 'Imāra (Cairo: Dār al-Shurūq, 1987), 146.

<sup>26</sup> Martin et al., *Defenders of Reason*, 25.

<sup>27</sup> Majid Khadduri, *The Islamic Conception of Justice* (Baltimore: Johns Hopkins University Press, 1984).

The Ash'arite theological school, named after the former Mu'tazilite Abū al-Ḥasan al-Ash'arī (d. 935-6),<sup>28</sup> attempted to take a middle position, and, in doing so, introduced the concept of *iktisāb*, or acquisition. Under this doctrine, God creates both the act and the power in us to perform the act, although we cannot use that power to pursue a different course of action. By giving us the power to act and thereby take ownership of our action (*iktasaba*),<sup>29</sup> the Ash'arites offered a means by which we could be held morally accountable while still preserving God's justice and omnipotence.

Skeptical of all of these positions, the famous philosopher and jurist Ibn Rushd (Averroes, d. 1198) argued that the Ash'arite position does not fundamentally depart from the determinist thesis since both views hold that the act and the power to perform the act are determined by God. He ridiculed the concept of *iktisāb* as making little difference in the debate between free will and determinism.<sup>30</sup> Instead, he recognized that the different positions were neither right nor wrong, rather that the truth lay in the middle.<sup>31</sup> God may give humans the faculty to choose, but God also limits those choices by putting into creation forces or external causes (*asbāb khārija*) that limit the scope of our choice. 'Human actions are neither completely freely chosen, nor purely compelled. They depend on two factors: [1. the exercise] of free will at a particular moment, [2.] as tied to external causes that proceed in a standard fashion.'<sup>32</sup> The external causes exist as a matter of divine will, whether as laws of nature, the nature of poverty and wealth, or other such circumstances. In a world in which God is ever present, these structures are a function of God's creative will.

Importantly, a fundamental concern in this theological dispute concerned authority, and whether it could legitimately vest in the individual. The above overview of the debate highlights the extreme concern in early Islamic

<sup>28</sup> For a biography of al-Ash'arī, see Ibn Khallikān, *Wafayāt al-A'yān wa Anbā' Abnā' al-Zamān*, eds. Yūsuf Tawil and Maryam Tawil (Beirut: Dār al-Kutub al-'Ilmiyya, 1998), 3:249-250; Shams al-Dīn al-Dhahabī, *Siyar A'lām al-Nubalā'*, 4<sup>th</sup> ed. (Beirut: Mu'assasat al-Risāla, 1986), 15:85-90; Ibn al-'Imād, *Shadharāt al-Dhahab fī Akhbār man Dhahab* (Beirut: Dār al-Kutub al-'Ilmiyya, n.d.), 2:303-305; W. Montgomery Watt, 'al-Ash'arī,' in *Encyclopaedia of Islam*, eds. H.A.R. Gibb, rev. ed. (Leiden: Brill, 1960), 1:694.

<sup>29</sup> For a general discussion of the Ash'arī acquisition doctrine, see Ibn Rushd, *Manāhij al-Adilla*, 110-1; Wolfson, *The Philosophy of the Kalam*, 684-710.

<sup>30</sup> Ibn Rushd, *Manāhij al-Adilla*, 110-2.

<sup>31</sup> Najjar, *Faith and Reason in Islam*, 108.

<sup>32</sup> Ibn Rushd, *Manāhij al-Adilla*, 119.

theology of detracting from God's voluntaristic omnipotence (i.e., absolute sovereignty), which denies the individual the power, capacity and legitimate authority to engage in his or her own determinations of the good, the bad, and the divinely appealing. In these debates, to emphasize God's omnipotence is, by implication, to diminish the legitimate authority of individual agency. In contrast, to give power and capacity to the individual challenges the view of God as the ultimate, omnipotent sovereign of and in the world.

### *III.B Justice and the Authority of the Moral Agent*

The political dimension to Islamic theology, or, in other words, the theological implications on the choices people make in the world,<sup>33</sup> finds an important expression in an early dispute about the good, the bad and the justice of God. The dispute not only concerns God and His justice, but also the extent to which that divine justice can be mediated *legitimately* through and by human beings. The outcome of that debate has serious implications on the legitimate authority of human beings to understand and make sense of the world for themselves – namely, to be moral agents in the world, and thereby participate in the business of ordering the world around them, or, in other words, to act politically.

In the Sunnī *uṣūl al-fiqh* literature, pre-modern jurists phrased the question as follows: in the absence of some scriptural source-text such as the Qur'ān or the traditions of the Prophet (*ḥadīth*), can jurists utilize reason as a source to determine the good (*ḥusn*) and the bad (*qubḥ*), and thereby fashion legal rules of obligation, prohibition, and so on? I have argued elsewhere that this question is tantamount to a question about the place and scope of natural law in Islam, or, to be specific, the ontological authority of reason to determine the good and the bad.<sup>34</sup> The connection between the ontological authority of reason and the concept of sovereignty is that if reason has ontological authority in the law (i.e. is a legitimate source of the law), it, in turns, grants the individual sovereignty (i.e. legitimate authority) as a moral agent in the world. There were those who granted reason ontological authority, and those who were skeptical of such a grant but, nonetheless, recognized that reason does

<sup>33</sup>) Raymond Geuss reminds us that “politics is in the first instance about actions and the context of action, not about mere beliefs or propositions.” *Philosophy and Real Politics* (Princeton: Princeton University Press, 2008), 11 (emphasis added, footnote omitted).

<sup>34</sup>) The discussion in this section on Islamic natural law theories is drawn from my *Islamic Natural Law Theories* (Oxford: Oxford University Press, 2010).

have some ontological authority. The first group – who I call the Hard Natural Law jurists – believed that God only acts justly. He 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, the world is both a site of investigation and a source of normative ordering, which thereby grants any reasoned determinations about the good and the bad both factual and normative content. By fusing fact and value in nature, Hard Natural Law jurists invested individuals with the legitimate authority to analyze, investigate, and derive new norms.<sup>35</sup>

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 upon 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.<sup>36</sup>

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 about 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

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<sup>35</sup>) Emon, *Islamic Natural Law Theories*, ch. 2.

<sup>36</sup>) Emon, *Islamic Natural Law Theories*, ch. 3

God's omnipotence. I label their natural law as Soft Natural Law.<sup>37</sup> 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* (*tafaddul*). 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 incorporating a theology of grace into their jurisprudence of natural law. *Theologically speaking*, since God can choose to change His grace anytime, Soft Natural Law is consistent with Voluntarist theology. *Jurisprudentially speaking*, Soft Natural Law upholds the ontological authority of reason because, after God created the world as a benefit, it does not seem that God has changed His mind. Because Soft Natural Law jurists felt that God's grace could change, 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.<sup>38</sup>

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, who 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

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<sup>37</sup>) Notably, the terms of art "Hard Natural Law" and "Soft Natural Law" in the context of Islamic legal theory are not standard terms of art in the field of Islamic studies, but, rather, ones that I have proposed in my own book on Islamic natural law. The competing reviews of my book suggest that whether these terms are useful or may help further ongoing research about Islamic law is a matter of dispute and debate. See for instance, the reviews in the following publications: *Journal of Law and Religion* 26, no. 2 (2010-2011): 675-83 (Andrew March); *Review of Middle East Studies* 45, no. 1 (Summer 2011): 100-2 (Rumee Ahmed); *Islam and Christian-Muslim Relations* 22, no. 4 (2011): 495-6 (David Warren).

<sup>38</sup>) Emon, *Islamic Natural Law Theories*, ch. 4.

governs, those interests (i.e., *maṣlaḥa*) can be subjected to reasoned deliberation and relied upon 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 (i.e. *maqāṣid*), 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 upon: it is one of three categories that delineate the significance of a *maṣlaḥa* for social wellbeing. Aside from necessity (*ḍarūra*), there are needs (*ḥājīyyāt*) and edifying interests (*taḥsīniyyāt*). Although 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. Notably, regardless of any definition of these three categories, Soft Natural Law jurists such as al-Ghazālī held that only the *maṣlaḥa* that addresses a social necessity (*ḍarūra*) could be a basis for Shari'a norms. A *maṣlaḥa* 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, thereby distinguishing the moral agency of humans from the sovereignty of God, and forcing a division of sovereignties that has the potential of undercutting the legitimate authority the individual moral agent can claim for his or her own moral choices.

### III.C. *The Sovereign God and/or the Sovereign Ruler*

The commitment to a voluntaristic conception of divine omnipotence has the potential of eliding theology with political philosophy in a way that addresses the place and role of political sovereignty in the Islamic tradition. Indeed, the elision of politics and theology is hardly a novel claim about Islamic intellectual history; scholars have noted the political undercurrents of theological movements in early Islamic history.<sup>39</sup> In this regard, two theological controversies are of immediate interest for the purpose of addressing the scope and content of sovereignty. The first draws upon the early history of the *khawārij*,

<sup>39</sup> Fazlur Rahman, *Islamic Methodology in History* (Islamabad: Islamic Research Institute, 1965); W. Montgomery Watt, *The Formative Period of Islamic Thought* (Oxford: Oneworld Publications, 1998).



a schismatic theological group whose founding history illustrates the elision of politics and theology, particularly as it relates to the omnipotence of God's will, while begging the question of how to identify what the divine will demands and requires in the world. The second controversy draws upon the first, and concerns the theology of the expression of the divine will, i.e., the Qur'ān. The debate was whether the Qur'ān is a co-eternal text that is outside of history, or, rather, was revealed by God in time, thereby rendering the Qur'ān subject to a historicist analysis, and, therefore, the need to negotiate and interpret the salience of the Qur'ānic message for later generations. To require such a negotiation and interpretation immediately distances God from the meaning generated from the Qur'ān, and begs the question of who occupies that newly created space. That question assumed great importance during the caliphate of al-Ma'mūn (r. 813-833), who sought to intervene in the theological dispute by making the historicist conception of the Qur'ān the orthodox position. The theology of a Qur'ānic historicism, considered in light of the early political history in Islam, marks another elision between theology and politics that has further implications on the allocation, scope, and legitimacy of authority (political or otherwise) in Islam.

The *khārījī* movement represents a theological schism in early Islam whose initial shape took form as a result of a political conflict in the 7th century. Upon the assassination of the third caliph, 'Uthmān b. 'Affān (r. 644-656), the relatively nascent but growing Muslim empire was in turmoil. Those who assassinated 'Uthmān were outraged at various policies he initiated. Yet others, who considered the assassination itself outrageous, were adamant that the murder of the caliph be redressed immediately. At the center of these opposing camps stood 'Alī b. Abī Ṭālib, the new caliph (r. 656-661) whose immediate aim was to reestablish order and peace in the empire, which, by this time, had extended from the Arabian peninsula into areas as distant as modern Egypt, Syria, and Iraq. Leading the opposition to 'Alī was Mu'āwiya b. Abī Ṣufyān. A relative of 'Uthmān and governor of the Syrian region, Mu'āwiya held considerable power. Whether in the pursuit of his own ambitions or out of a sense of family loyalty, Mu'āwiya utilized his position to oppose 'Alī's regime. The opposition between the two became so intense that military conflict ensued at the Battle of Ṣiffin (657 CE). Mu'āwiya's forces were gradually losing ground to 'Alī's; before that became irreversible, Mu'āwiya's troops demanded that the conflict be settled by arbitration in accordance with the will of God. 'Alī agreed. Indeed, the historian al-Ṭabarī recorded a letter of agreement between the two men, which stated, in part: "We submit ourselves to the rule of God

(*ḥukm Allāh*) . . . and His Book, nothing else can unite us. Verily the Book of God, most high and lofty, from its beginning to end, stands between us.”<sup>40</sup>

‘Alī’s agreement to arbitrate immediately created tensions for some of his followers. Some of his followers believed that ‘Alī was in the right, that Mu‘āwiya was in the wrong, and that any arbitration would effectively substitute the rule of human arbitrators for the rule of God. They firmly believed that God’s rule (i.e. sovereignty) in this matter had already been determined – that Mu‘āwiya and his party had to be killed or submit to the authority of ‘Alī’s caliphate.<sup>41</sup> With the slogan, “*lā ḥukm illa li Allāh*” (there is no rule/sovereignty except for God’s), they abandoned ‘Alī and his forces, and fought against him and others who they deemed to violate the sovereignty of God’s will.<sup>42</sup> In Arabic, the term used for their departure was *kharija*, which is how this group got its name: the seceders (*khārījīs*, pl. *khawārij*).<sup>43</sup>

To extrapolate from this early historical conflict to the theo-political implications on sovereignty, the *khawārij* represent a rather extreme pole about the sovereignty of God, and the limits that sovereignty poses on the authority of a political ruler. Whether the ruler is someone such as ‘Alī, a companion of the Prophet and fourth caliph in Islamic history, or a modern day ruler facing demands from Islamic fundamentalists to implement the ‘rule of God’, the ruler’s authority is couched within certain assumptions about the nature of God, His will, His expression of that will to humanity, and the ruler’s scope of discretion (or lack thereof).<sup>44</sup> Importantly, the *khawārij* not only espoused the absolute sovereignty of God, but also claimed a certain determinacy of God’s will, as if it were clear what God wanted. In other words, their political theology elided the ontology of God’s authority with the epistemology of knowing or understanding what that sovereign claim implied for human action. That elision allowed them to condemn anyone who would negotiate what seemed obvious and clear from God as exceeding the scope of his limited authority.

<sup>40</sup> Muḥammad b. Jarīr al-Ṭabarī, *Ta’rikh al-Ṭabarī* (Beirut: Dār al-Kutub al-‘Ilmiyya, n.d.), 3:103.

<sup>41</sup> Al-Ṭabarī, *Ta’rikh al-Ṭabarī*, 1:110.

<sup>42</sup> Abū al-Ḥasan al-Ash‘arī, *Maqālāt al-Islāmiyyin wa ikhtilāf al-Muṣallīn*, ed. Muḥammad Muḥyī al-Dīn ‘Abd al-Ḥamīd (Beirut: al-Maktaba al-‘Aṣriyya, 1990), 1:167, who notes that the *khawārij* deemed ‘Alī a disbeliever, and only debated whether his decision to arbitrate was a form of polytheism or not (*shirk*).

<sup>43</sup> W. Montgomery Watt, *Islamic Political Thought* (1968; reprint, Edinburgh: Edinburgh University Press, 1987), 54.

<sup>44</sup> Khaled Abou El Fadl, *Speaking in God’s Name: Islamic Law, Authority and Women* (Oxford: Oneworld Publications, 2001), 23–30.

Importantly, the debate between the *khawārij* and ‘Alī begs an important question, namely, how does one determine what God wants or decrees? In other words, if we distinguish the ontological claim from the epistemic one, is there a theological contribution to the content of epistemology? One possibility might be to look to the Qur’ān, which, for Muslims, is God’s revelation to Muḥammad. Indeed, in the letter of agreement between Mu‘āwiya and ‘Alī recorded by al-Ṭabarī, the centrality of God’s book (*kitāb Allāh*) cannot be ignored or missed. But, it would be a mistake to assume that such reference is without its own set of debates. In fact, the theology of the Qur’ān was a most important and particularly vexed debate in early Islamic history and remains so today. As suggested below, the debate on the Qur’ān’s theology (and its epistemic consequences) could have (may still have) serious implications on the recognition and scope of any claim to political sovereignty.

The pre-modern theological dispute pitted the Mu‘tazilites against others, such as the jurist Aḥmad b. Ḥanbal, later to be identified as an exponent of voluntarist theology. The debate concerned whether the Qur’ān was an eternal text or was something that God revealed in history. Was the Qur’ān, in other words, co-eternal with God, or was it a historically contingent divine statement? In the pre-modern period, the debate on the Qur’ān had much to do with the debate about the characteristics of God (*ṣifāt Allāh*), which assumed a polemical content given theological disputations between Christians and Muslims concerning the meaning of monotheism in light of Christian doctrines about Christ’s divinity and the Trinity.<sup>45</sup> Consequently, to suggest that the Qur’ān is co-eternal with God might be construed as associating with the eternal God another eternal entity, which could be viewed as undermining a monotheistic theology of God. Yet, to suggest that God revealed the Qur’ān in history could be construed as demeaning its standing and stature as the direct word of God, given the interpretive distance between God’s revelatory act, and the more contingent moment of reading and interpretation. Those who held that the Qur’ān is an eternal text adopted what Islamic intellectual history labels as the ‘uncreated’ (*ghayr makhlūq*) position. This group, which, at that time, seemed to consist of leading scholars of law and *ḥadīth*, denied that the Qur’ān was created by God in history. On the other hand, those who held that the Qur’ān was revealed by God in history adopted what has been called the ‘created’ position (*makhlūq*).<sup>46</sup>

<sup>45</sup> Harry Austryn Wolfson, *The Philosophy of the Kalam* (Cambridge: Harvard University Press, 1976), 112–32.

<sup>46</sup> Michael Cooperson, *Al Ma‘mun* (Oxford: Oneworld Publications, 2005), 115.

This particular theological dispute was not merely an academic one. It assumed political dimensions during the reign of the ‘Abbāsid caliph al-Ma’mūn (r. 813–833), who proclaimed in 827 CE that, despite the plausible variety of theological positions, the view that the Qur’ān is created (*makhblūq*) was right and true. Furthermore, in 833 he went so far as to demand that leading *ḥadīth* scholars publicly proclaim their adherence to the position of the createdness of the Qur’ān, thus instituting what historians call the *miḥna*, or inquisition. Michael Cooperson and John Nawas suggest that the most likely explanation for al-Ma’mūn’s official action had to do with claiming for the caliphate a religious authority that the scholars of law and *ḥadīth* claimed for themselves given their promulgation of *ḥadīth* as an authoritative source of religious knowledge.<sup>47</sup> Nawas states that “[c]ommon to all the men subjected to the *miḥna* . . . is that they all had something to do with *sharī‘a* and the legal establishment which it signifies . . . [T]he caliph ordered the *miḥna* in order to acquire the authority of the *sharī‘a*, to secure for himself and future caliphs unquestioned supremacy on issues of faith.”<sup>48</sup> Indeed, al-Ma’mūn’s letter, as preserved by the historian al-Ṭabarī (d. 923 CE), suggests as much. In it, he worried that the masses were uneducated and easily led astray, and that the caliph had the responsibility to uphold the religion of God (*dīn Allāh*).<sup>49</sup> As an example of the masses being led astray was how they equated God with God’s revelation of the Qur’ān (*sāwū bayna Allāh tabārūk wa tā‘ālā wa bayna mā anzala min al-Qur’ān*), or, in other words, they adhere to the uncreatedness of the Qur’ān.<sup>50</sup>

Admittedly, one might argue that the political implications of the theological debate on the Qur’ān had more to do with the machinations of al-Ma’mūn than with anything inherent in the theological dispute itself. But, the significance of the createdness/uncreatedness debate extends far beyond the political context of the early 9th century. Indeed, its significance continues today to demarcate the boundaries of community. After al-Ma’mūn died, his inquisition was brought to an end by the caliph al-Mutawakkil (r. 847–861); with the end of the *miḥna* came a reversal in orthodox belief, namely, the theology of

<sup>47</sup> Cooperson, *Al Ma'mun*, 115; John A. Nawas, “A Reexamination of Three Current Explanations for al-Ma’mun’s Introduction of the *Miḥna*,” *International Journal of Middle East Studies* 26 (1994): 615–29; John A. Nawas, “The *Miḥna* of 218 AH/833 AD Revisited: An Empirical Study,” *Journal of the American Oriental Society* 116, no. 4 (1996): 698–708.

<sup>48</sup> Nawas, “The *Miḥna*”, 708.

<sup>49</sup> Al-Ṭabarī, *Tā’rikh al-Ṭabarī*, 5:186.

<sup>50</sup> Al-Ṭabarī, *Tā’rikh al-Ṭabarī*, 5:186.

the uncreated Qurʾān (*ghayr makhblūq*). A shift in the political winds provided a new trajectory for theological orthodoxy, and, thereby, for claims of legitimacy and authority for purposes of governance through law. That victory is still felt today; anyone who opposes the inherited orthodox view on the Qurʾān, and promotes approaches that even approximate theological views deemed heterodox (such as those of the Muʿtazilites) runs the risk of being deemed heterodox. The apostasy case of the late Nasr Hamid Abu Zayd, an Egyptian intellectual deemed to have apostatized from Islam through his writings on the Qurʾān, is a well-known case of an intellectual whose ideas were viewed by some as heterodox, and thereby contrary to prevailing Islamic norms.<sup>51</sup>

One might find the theological dispute on the created/uncreated Qurʾān to be inapposite to the theme of sovereignty in Islamic thought. At most, one might say, the theological debate may have political ramifications on defining the outer limits of a religious community, but not on whether political sovereignty is a meaningful ideal in Islamic thought. On the contrary, the theological dispute on the created/uncreated Qurʾān impinges upon fundamental features of sovereignty, which can be captured by viewing any claim of legitimate authority through a historical lens.

For instance, to consider the Qurʾān created, or *makhblūq*, is to embed it in history, subject it to scrutiny, and empower the reader – whether as an individual, or as a ruler – to assess the salience of the text, its meaning and implication in light of changed circumstances. Situating the text historically enables new meanings to be generated given the historical vantage point from which the text is read. In that sense, what renders a reading authoritative is not simply whether and how it accords with God’s will, but also whether and how the reading speaks to the contemporary moment that the reader inhabits. In this sense, the authority of an interpretation is not simply about its proximity to the will of God, but also about its salience in light of the moment in which it

<sup>51</sup> Richard C. Martin, Mark R. Woodward, and Dwi S. Atmaja, *Defenders of Reason in Islam: Muʿtazilism from Medieval School to Modern Symbol* (Oxford: Oneworld Publications, 1997), 166–7. 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 Muʿtazilite ideas and those of Abu Zayd, see Thomas Hildebrandt, “Between Muʿtazilism and Mysticism: How much of a Muʿtazilite is Nasr Hamid Abu Zayd?,” in *A Common Rationality: Muʿtazilism in Islam and Judaism*, eds. Camilla Adang, Sabine Schmidtke, and David Sklare (Würzburg : Ergon in Kommission, 2007), 495–512.

is read. The authority of any given reading, therefore, has less to do with an archaeology of God's will, and, instead, with the construction of meaning in terms of a historical point of reference. The *makhluq* perspective thereby invests the reader with an authority that emanates from his very existence as a historically embodied and embedded being.

On the other hand, to consider the Qur'ān uncreated and eternal with God is to remove it from history entirely, leaving it and its meaning in the realm of the divine. An uncreated Qur'ān is both real ontologically, and out of reach epistemically, thereby limiting the legitimacy and authority that can be claimed for a particular reading or generated meaning. Indeed, the very notion of 'generating' meaning raises the fear of trespassing on God's sovereignty by invoking His words for something He did not intend. This is not to suggest that a reader can claim no legitimacy or authority for his or her reading. Rather, this is simply to suggest that the quality of legitimacy and authority that can be attributed to the interpretation will be framed differently than what might otherwise be attributed to a reading that is premised on a view of the Qur'ān as created.

Notably, both of the above positions are, in part, dependent upon the reader having a historical consciousness of his or her own embeddedness in time and space. For instance, from the created position, a reader is in a different moment than God's revelatory act. An appreciation of the distance between those two positions – the historical distance – contributes to an appreciation that any interpretation of the Qur'ān cannot be presumed to be as if God held it to be true or right or good. A historical consciousness makes possible an interpretive authority (i.e., an interpretive sovereignty) that is different and distinct from God's sovereignty. Likewise, from the uncreated perspective, an awareness of the reader's historical position (i.e., in history) in contrast to the Qur'ān's (i.e., outside history) situates both the reader and the Qur'ān in different ontological positions, and thereby distinguishes between the authority of the interpreter and the authority of the Qur'ān and its divine author.

Importantly, whether one starts from the created or uncreated position, a historical consciousness begs the question of what follows if such consciousness is absent. Failure to acknowledge and internalize that historical consciousness runs the risk of eliding the sovereignty of the interpreter with the sovereignty of God. If one adopts the created position without a sufficient regard for his or her historical embeddedness, it is not unimaginable that the reader, in constructing an interpretation of the text, will not appreciate the distance between the Qur'ān and himself, and thereby not appreciate the distinction between reading God's speech and expounding its meaning. Likewise,

if one adopts the uncreated position without due historical awareness, the reader also may not appreciate the difference in his position (in history) relative to the Qurʾān (outside of history), and, therefore, when expounding on the meaning of the text, will represent his interpretation as sufficiently immanent in the text so as to emanate from God, thus eliding, once again, the reader's interpretive 'sovereignty' with God's sovereignty.<sup>52</sup>

#### IV. The 'Other' Sovereigns I: Political Legitimacy and Multiple *Imāms*

This section will shift the analysis from the relationship between theology and sovereignty to the historical challenge of political pluralism that faced jurists in the 10th and 11th centuries CE. That historical period offers an important flashpoint for considering the political legitimacy of multiple sovereigns in the Islamic intellectual tradition. Besides the waning power of the 'Abbāsīd empire, the 10th century witnessed the co-existence of three separate and distinct caliphates: the 'Abbāsīd caliphate based in Baghdad, the Fāṭimid caliphate based in Cairo, and the Umayyad caliphate in Islamic Spain. All three proclaimed themselves as caliphates, thereby raising for Muslim jurists a troubling situation, namely, whether and to what extent there can be different and distinct Muslim-led polities.

Much scholarly attention has been directed at the question of political theory in Islam, and the implications of political plurality. In his seminal article, H.A.R. Gibbs notes how pre-modern Muslim jurists imagined a system of authority "in which all political authority was centered in the caliph-imām, and no authority was valid unless exercised by delegation from him, directly

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<sup>52</sup>) The danger posed by a lack of historical consciousness is not lost on those concerned with the hermeneutics of the Qurʾān and the legal tradition. See, for instance, Ebrahim Moosa, "The Debts and Burdens of Critical Islam," in *Progressive Muslims: On Justice, Gender, and Pluralism*, ed. Omid Safi (Oxford: Oneworld Publications, 2003), 111-127; Fatima Mernissi, *The Veil and the Male Elite: A Feminist Interpretation of Women's Rights in Islam* (New York: Basic Books, 1992); Abou El Fadl, *Speaking in God's Name*. The danger of eliding the 'sovereignty' of the reader with the 'sovereignty' of God arguably animates scholars of Islamic law who take special pains to distinguish between Shari'a as the perfected law of God, and the *fiqh*, or legal doctrines developed by jurists over centuries. See, Anver M. Emon, "To Most Likely Know the Law: Objectivity, Authority, and Interpretation in Islamic Law," *Hebraic Political Studies* 4, no. 4 (2009): 415-40, 418-9.



or indirectly.”<sup>53</sup> Hamidullah likewise holds that, upon the Prophet’s death, the community of Muslims viewed the ruler as being singular, and tasked with maintaining the unity of the Muslim polity: “Although the Muslim empire soon spread far and wide outside its birthplace, Arabia, yet practically for more than a hundred years the unity of the Muslim remained intact.”<sup>54</sup> That unitary, monistic model of political authority was soon rendered more ideal than real as the caliph’s authority waned, and the authority of princely polities ascended. As Gibb remarks, pre-modern jurists, who could not help but notice the diminished scope of caliphal authority, contended with the political realities on the ground by creating a dichotomy of political power and legitimacy in light of two political claimants to authority – the caliph and the sultān. By the 12th century, Muslim jurists regarded the caliphate and sultanate as two institutional spheres of power, such that the “caliphate retained its responsibility for, and supervision of, the Community’s religious activities, and the sultanate conducted the temporal affairs of government.”<sup>55</sup> For instance, Patricia Crone notes that jurists such as al-Māwardī developed a theory of delegation that preserved the authority of the caliph and recognized the reality of princely powers in effective control of Muslim lands. For al-Māwardī, all local rulers were deemed the caliph’s governors, whether by appointment or usurpation. But, even in the latter case, their legitimacy was built upon a post-hoc caliphal delegation of authority to them. Although this delegation theory prompted Gibb to raise concerns about the integrity of the law,<sup>56</sup> Crone considers the delegation theory a reasonable approach to preserving law and order. As Crone states:

In al-Māwardī’s opinion the legalization of usurpers, far from bringing down the edifice of the law, helped to preserve its provisions . . . partly by keeping the caliphate going and the Muslims united and partly by ensuring that public authority remained valid in the provinces in question, so that the decisions and judgments (of governors and *qāḍīs*) retained their legality, the canonical taxes could be collected, and the penalties known as *ḥudūd* could be imposed.<sup>57</sup>

<sup>53</sup> H.A.R. Gibb, “Constitutional Organization,” in *Law in the Middle East: Origin and Development of Islamic Law*, eds. Majid Khadduri and Herbert J. Liebesny (Washington DC: Middle East Institute, 1955), 17.

<sup>54</sup> Hamidullah, *Muslim Conduct of State*, 46.

<sup>55</sup> Gibb, “Constitutional Organization,” 20.

<sup>56</sup> Gibb, “Constitutional Organization,” 19.

<sup>57</sup> Patricia Crone, *God’s Rule: Government and Islam: Six Centuries of Medieval Islamic Political Thought* (New York: Columbia University Press, 2004), 233.



One way to view the dichotomy between the caliphal office and all other claimants to political authority is to regard the jurists as taking a Baghdad-centered view of political authority, where the ‘Abbāsīd caliph sat and held court.<sup>58</sup> For instance, Ann Lambton, in her study of Islamic political theory, recognizes that jurists were averse to acknowledging the possibility of two *imāms*. Commenting on al-Māwardī’s seminal treatise on governance, she speculated that one of al-Māwardī’s motives for rejecting the possibility of two *imāms* “was, no doubt, implicitly to refuse recognition of the claims of the Fatimids. That he also incidentally excluded the claims of the Umayyad in Andalusia was of little importance since they did not pose, as did the Fatimids, a political threat to the [Baghdad-based] ‘Abbasids.”<sup>59</sup> On this view, all other ruling authorities, whether self-proclaimed caliphs or not, were simply to be considered sultāns, who held power by military might. The legitimacy of their political authority, therefore, was dependent on whether the ruling powers sought the Baghdad caliph’s authority or delegation to rule in his name, even if such delegation was mere political theater.

The pre-modern jurist al-Juwaynī (d. 1085) offered a general argument against the appropriateness of having two *imāms*, as well as an account of the limited circumstances under which two *imāms* may be appropriate. In the process, he explained the aim and purpose of the *imāma* and why more than one *imām* would undermine that purpose. A close reading of his argument, though, reveals his assumptions about Islamic rule and political authority. Before turning to his analysis, a brief remark about the relevance of Juwaynī to this discussion is in order. A Shāfi‘ī jurist from Nishapur, al-Juwaynī suffered from the shifting policies of favoritism that came with changes in ruling authority over the region. Richard Bulliet has written extensively on the way in which the ruling Seljuk authorities played groups of jurists against each other in order to ensure their control of the region.<sup>60</sup> For al-Juwaynī, shifts in power led to changes in patronage, which worked against his school of jurists and in favor of others. As such, he left his home and traveled through the Muslim world, going as far away as Mecca and Medina to teach, which earned

<sup>58</sup> Indeed, Richard Bulliet reminds us to remain aware of the implications for the study of Islam when viewing its history from the center or the ‘edge’. Richard W. Bulliet, *Islam: The View from the Edge* (New York: Columbia University Press, 1995).

<sup>59</sup> Ann K.S. Lambton, *State and Government in Medieval Islam: An introduction to the study of Islamic political theory: the jurists* (Oxford: Oxford University Press, 1981), 90.

<sup>60</sup> Richard Bulliet, *The Patricians of Nishapur: A Study in Medieval Islamic Social History* (Cambridge: Harvard University Press, 1972).

him the title *imām al-ḥaramayn*, or the jurist of the two sacred precincts. He was later invited back to his hometown when Nizām al-Mulk assumed authority as a Seljuq vizier, and built the Nizāmiyya madrasa in Nishapur, where al-Juwaynī taught till the end of his life.<sup>61</sup> The fact that al-Juwaynī was vulnerable to shifting powers among the Seljuks, despite a caliph residing in Baghdad, reflects the prevailing dynamics of political authority and contests for legitimacy. Coupled with the fact that by the 11th century, the ‘Abbāsid caliphate not only lost authority over neighboring lands to conquering forces, but also was one among three claimants to the caliphal office, any political theory al-Juwaynī could or might offer had to contend with the fact of diverse political authorities.

In his *al-Ghiyāthi*, al-Juwaynī provided an account of political authority, and expressly addressed whether and to what extent it is possible to have multiple leaders or *imāms* of the Muslim community (*umma*). The term *imām*, in this context, implied, for al-Juwaynī, leadership of the Muslim community of believers, and not just over a geographic unit where Muslims resided (*khiṭṭa*). In other words, the subjects under an *imām’s* authority are not confined to territorial units, but, rather, extend beyond any such boundaries. Al-Juwaynī began his account by stating that, in cases where a single *imām* can observe, manage, and control Muslim lands from the east to west, it is not permitted to have a second *imām*.<sup>62</sup> Reflecting on the post-prophetic history of the first four caliphs of Islam, al-Juwaynī stated that, by virtue of necessity, we know that the *imāmate* is presumptively to be held by one person; failure to recognize this, he wrote, is evidence of one’s lack of understanding (*ba’id al-fahm*).<sup>63</sup>

Al-Juwaynī’s argument about the singularity of the *imāmate* was based on a particular understanding of the purpose of the office. According to al-Juwaynī, the purpose (*ghard*) of the office of the *imām*, or *imāmate*, is to unite varied opinions and diverse desires lest there be considerable social instability. “Hardly oblivious to those who are perceptive is that politics become unstable as princely rulers become partisan, opinions diverge, and desires compete.”<sup>64</sup>

<sup>61</sup> C. Brockelmann, “al-DJuwaynī, Abu ‘l-Ma’ālī ‘Abd al-Malik,” *Encyclopaedia of Islam, Second Edition*, eds. P. Bearman, et al. (Leiden: Brill, 2011; *Brill Online*) (accessed 10 March 2011).

<sup>62</sup> Al-Juwaynī, *al-Ghiyāthi: Ghiyāth al-Umam fi Iltiyāth al-Zulam*, ed. Khalīl Manṣūr (Beirut: Dār al-Kutub al-‘Ilmiyya, 1997), 80.

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

What preserves the continuity of the regime is that regional princes and rulers are governed by a single, uniting vision that rests with the *imām*. Otherwise, “if they do not have a rope to follow, [and] a particular aim to which to adhere, they will compete, become insolent, struggle with each other, vie against each other, and indulge the desires for conquest and regal authority. They will jockey with each other without paying any heed to the ruin of the multitudes and masses.”<sup>65</sup>

For al-Juwaynī, the monist theory of the *imāmate* is fundamentally tied to an aspiration of unity across the Muslim community, or *umma*. The dignity of the office is associated with its leadership of a community organized around commitments to a vision of the good that concerns both worldly and other-worldly matters. In fact, he describes the office of the *imām* as:

the perfect leader (*ri'āsa tāmma*) . . . attentive to particular and general material and spiritual affairs. Such affairs include protecting the region, the wellbeing of the masses, upholding the call [to Islam] by [both] argument and the sword, restricting disagreement and oppression, bringing justice to the victims of oppression . . .<sup>66</sup>

For al-Juwaynī, the *imāmate* represented the aspirational model of leadership for the Muslim *umma* writ large. He conceived of its legitimacy by reference to historical precedents, and a theory of politics that idealized a monistic model of governance as a check against princely rulers whose authority was based more on their coercive force.

Although al-Juwaynī was unflinching in his advocacy of the singularity of the *imāmate*, he also knew that its possibility depended on an important condition-precedent, namely, that the *imām* had effective control and management of Islamic lands. Given his own life experience, al-Juwaynī could not ignore the possibility that the *imām*'s reach and authority may not spread across the entire domain of the *umma*. “It may be,” he suggested, “that a group of people reside on a portion of land to which the *imām*'s oversight does not reach.”<sup>67</sup> The *imām*'s limited reach may be due to a variety of factors, such as the sheer expanse of territory under Muslim control, or because some territories may be islands surrounded by water and isolated from the mainland (e.g. the Iberian peninsula or Sicily). In other words, there are many reasons why the *imām*'s governing authority might not reach certain regions in which Muslims live.

<sup>65</sup> *Ibid.*

<sup>66</sup> Al-Juwaynī, *al-Ghiyāthi*, 15.

<sup>67</sup> Al-Juwaynī, *al-Ghiyāthi*, 81.

In such cases, is it permissible to have two *imāms*, with all that term implies? Al-Juwaynī noted that some argued it is appropriate to set up a second *imām* for the region that lies outside the reach of the initial, original *imām*. Failure to do so, they argued, would leave those who are outside the initial *imām*'s purview in a neglected state, which, if left unchecked, would push them into a state of ruin (*warāṭāt al-radā*).<sup>68</sup> Al-Juwaynī, however, disagreed. He held that those outside the control and management of the *imām* can appoint a governor (*amīr*) to whom they would look for guidance and leadership. The *amīr*, though, would not assume the title of '*imām*'. Rather, the office of the *amīr* is an administrative position that provides order and stability for Muslims outside the control of the ruling *imām*. It is a stopgap measure in the sense that, if the *imām* is able to establish effective oversight and management of the outlying polity, the *amīr* would voluntarily abdicate his position.

To further expound the temporary and instrumental role of the *amīr*, al-Juwaynī considered the case in which no *imām* exists or has been appointed. In such a case, recourse is had to the *amīr* again. If Islamic lands are divided into smaller units, al-Juwaynī argued that the people of those regions can appoint *amīrs* to govern each area. In this case, the imperative to appoint an *amīr* is a matter of necessity (*ḍarūra*), for, without an *amīr*, chaos may prevail. But, at no point can the *amīr(s)* presume to hold the title of *imām*. There may be many *amīrs*, but none can claim to be the *imām*, since the latter is strictly understood by al-Juwaynī as the one around whom all Muslims are linked and united. As al-Juwaynī said: "I do not reject the permissibility of establishing [two *amīrs*] according to what is needed, and enforcing their commands in accordance with the demands of the law. But [that] is a time without an *imām* . . . If the *imām* is agreed upon, then the two *amīrs* must submit to him."<sup>69</sup> Territorial leadership does not render one an *imām*. Rather, the office of the *imām* has a significance that goes beyond mere control of territory; the office is about community leadership in a manner that transcends territorial boundaries.

But what if, in those outlying regions, people actually decide to go further and appoint an *imām* for themselves? In other words, suppose peoples in different regions of the Muslim world (say, for instance, Andalusian Spain, Fāṭimid Egypt, and 'Abbāsīd Iraq) select their own respective *imām*. These peoples even go so far as to formalize the relationship by using the legal device of the '*aqd al-imāma*, or the contract of the *imāmate*. The three *imāms* may,

<sup>68</sup>) Al-Juwaynī, *al-Ghiyāthī*, 81.

<sup>69</sup>) Al-Juwaynī, *al-Ghiyāthī*, 82.

according to the respective populations that elect them, fulfill all the criteria for being a good and righteous leader to hold the office of *imām*. Yet, it is also the case that none of the three groups of people are aware of the conditions and needs of the other groups. In other words, each people select an *imām* for themselves without consideration of what other Muslims in other regions want or need. Al-Juwaynī rejected that these selected *imāms* are legitimate. Instead, he held, such a situation runs contrary to the fundamental underlying presumption of the *imāmate*, namely, that it is an *independent* and *singular* undertaking that is meant to bring unity and cohesiveness to an otherwise potentially divisive polity. The multiple *imāms* have no regard for the peoples lying outside their dominion, despite the fact that the whole idea of the *imāmate* is to represent the Muslim community regardless of territorial boundaries. Though the three might certainly establish relations with each other, there is no way to meld them into a single overarching ruler (*zā'āma kubrā*).<sup>70</sup>

This review of al-Juwaynī's approach to the *imāmate* and the possibility of multiple rulers illustrates how he negotiated between the ideal and the real, the aspirational and the pragmatic, the first best and the second best. His theory accounts for the realities of regional polities, and for the exercise of power for the sheer purpose of order and stability. In his doctrine of the *amīr*, al-Juwaynī revealed both his willingness to be pragmatic, as well as his commitment to an ideal theory that cautions against granting too much legitimacy to multiple sovereigns powers. The plurality of polities is a reality he could not avoid. But, their existence should not be mistaken as evidence of the legitimacy of their authority over the *umma*. Ruling a territory is one thing; governing and guiding the Muslim *umma* is another. The latter carries with it, in monist fashion, a type of legitimacy and authority that the former cannot and does not have. Certainly, the *amīr* is sovereign; but to focus on sovereignty without regard to its constituent elements (legitimacy and authority) is to miss al-Juwaynī's point. Al-Juwaynī's theory of the *amīrate* is a form of non-ideal theory that instantiates the ongoing discomfort for al-Juwaynī about the scope of legitimate authority that a territorially delimited regime can claim for itself as against its subjects and as against all other territorial regimes. In this sense, al-Juwaynī is not against political pluralism, but, instead, is cautious to ensure that the various claimants of worldly, territorially-based sovereign authority not mistake the circumstances of their power and dominance for the constitutive features of legitimacy and authority that extend beyond the borders of their control.

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<sup>70</sup>) *Ibid.*

## V. The ‘Other’ Sovereigns II: Treaty Law and the Politics of Breach

Section IV addressed the situation of whether and to what extent a multiplicity of imāms could claim legitimate authority as separate and distinct Muslim sovereigns ruling over Islamic polities. In that section, the sovereigns were presumed to be Muslim rulers, and the polities over which they ruled were presumed to be Muslim ones. The monism of the *imāmate* was contrasted with the plurality of the *amirate* on the basis that both imply different notions of legitimacy and authority. This section, on the other hand, presents a different context that jurists had to address: managing relations between the Muslim ruler (often presumed to be the *imām*, though not necessarily) and non-Muslim rulers. Whereas in the case of multiple claimants to sovereign authority, the tendency noted above was to theorize toward either a monist conception of legitimate rule or a circumscribed claim to legitimate authority, depending on what sort of authority was involved, in the case of a Muslim ruler and a non-Muslim ruler, the fact of multiple regimes was juridically managed by the law of treaties (*mu’āwada*, *ṣulḥ*, *mu’ahada*). The law of treaties provided a regulatory framework by which Muslim rulers could engage in peaceful negotiations with non-Muslim polities. Yet, the peaceful negotiations, as will be shown below, were often designed as stopgap measures that would allow the Muslim ruler to gather sufficient forces to conquer the non-Muslim party to the treaty. The treaty relationship, therefore, was not designed to create conditions for perpetual peace out of respect for the equal legitimacy (and thereby sovereignty) of the other. Rather, the treaty relationship was viewed by jurists as a measure that permitted peace in the furtherance of imperial gain and conquest.

The precedent for negotiating treaties in Islam arose in the time of the Prophet Muḥammad. One treaty, in particular, stands out from the historical record, namely the Treaty of Ḥudaybiyya. In the year 628, the Prophet led a sizable group of his follows from Medina to Mecca to perform religious rites at the sacred sanctuary in Mecca, the Ka’ba. The Meccans, having already suffered defeat when they had laid siege to Medina the year before, were worried that to allow Muḥammad and his followers to enter Mecca would signal to others that the Meccans were weak and no longer a dominant force in the region. Consequently, they were averse to allowing Muḥammad and his followers to enter Mecca, even though they were entering merely as religious pilgrims. On the outskirts of Mecca, in a village called Ḥudaybiyya, a treaty was negotiated between the Meccans and Muḥammad that was to last for ten

years.<sup>71</sup> Under the Treaty, Muḥammad and his followers would turn back to Medina. They could return one year later as pilgrims, during which the city would be evacuated for three days while the Muslims performed their religious rites.<sup>72</sup>

According to the pre-modern historian al-Ṭabarī, the Treaty of Ḥudaybiyya read as follows:

This is what Muḥammad b. ‘Abd Allāh agrees to with Suhayl b. ‘Amrū. They agree to halt warfare between [their] peoples for ten years, during which the people will be secure, and each will refrain from the other. However, whoever from among the Quraysh [of Mecca] comes to the Messenger of God without the permission of his guardian, [the Messenger of God] will return him to [the Quraysh]. Whoever from among those with the Messenger of God comes to the Quraysh, [Quraysh] shall not return him to [the Messenger of God]. Between us is a heart committed to fulfilling the term of the Treaty, such that there shall be no bribery or treachery. Whoever desires to enter into a pact with the Messenger of God and then does so, he can enter it [freely]. Whoever desires to enter into a pact with the Quraysh and then does so, he can enter it [freely].<sup>73</sup>

Notably, within a year of concluding the Treaty, it was breached. The historical sources indicate that the Meccans breached the Treaty first. However, a close

<sup>71</sup> Although there have been attempts to read this treaty in different ways, even as limiting the term of years, this study will focus on the text of the treaty as provided and address its consequences in light of later developments between Mecca and Medina. For alternative readings, see the commentary by W. Montgomery Watt, “The Expedition of Al-Ḥudaybiyya Reconsidered,” *Hamdard Islamicus* 8, no. 1 (nd): 3–6.

<sup>72</sup> W. Montgomery Watt, “al-Ḥudaybiyya or al-Ḥudaybiyya,” *Encyclopaedia of Islam, Second Edition*, eds P. Bearman, et al. (Leiden: Brill, 2011, *Brill Online*) (accessed 8 June 2011). In his article on this treaty, Hawting is less interested in the salience of the treaty to resolving subsequent disputes, but, rather, in whether the treaty and its breach by Quraysh are precursors to gaining access to the Ka’ba or the ultimate conquest of Mecca. G.R. Hawting, “Al-Ḥudaybiyya and the Conquest of Mecca: A reconsideration of the tradition about the Muslim takeover of the sanctuary,” *Jerusalem Studies in Arabic and Islam* 8 (1986): 1–23. In a different frame of analysis, Smith considers the normative significance of the treaty for contemporary models of Islamic public international law. Though his frame of analysis is not relevant here, it showcases the relevance of pre-modern precedents for contemporary discourses about Islamic law, sovereignty, and the interaction of sovereign states in the international sphere. Perry S. Smith, “Of War and Peace: The Hudaibiyya Model of Islamic Diplomacy,” *Florida Journal of International Law* 18 (2006): 135–68.

<sup>73</sup> Muḥammad b. Jarīr al-Ṭabarī, *Ta’rikh al-Ṭabarī* (Beirut: Dār al-Kutub al-‘Ilmiyya, 1995), 2:123. The translation is the author’s, with reference to E.W. Lane, *Arabic-English Lexicon* (Cambridge: The Islamic Texts Society, 1984), 1: 1398, 2:2206. Another translation is provided by Hamidullah, *Muslim Conduct of State*, 274–5.

reading of events suggests that whether the Treaty was breached or upheld also depended on the relative bargaining power of the parties to the Treaty as events unfolded. There are three events that occurred after the Treaty was finalized that offer insights into the way the Treaty offered a juridical regulatory framework for a political situation that was increasingly in flux.

The first example concerns the story of a Meccan man, Abū Baṣīr, who was imprisoned by his own clan in Mecca for converting to Islam and for his sympathies with the Medinan polity that Muḥammad commanded. Abū Baṣīr managed to escape and fled to Medina, only to have a representative from Mecca and his servant appear before the Prophet demanding Abū Baṣīr's return. Under the terms of the Treaty, Muḥammad had to turn Abū Baṣīr over, despite Abū Baṣīr's protestations. All the Prophet could say to Abū Baṣīr was "Verily God shall make for you, and for the oppressed who are with you, an opening and way out."<sup>74</sup> As it turned out, en route to Mecca, Abū Baṣīr gained the upper hand on the Meccan representative and killed him with the latter's sword. The servant fled back to Medina, alerting the Prophet about what had transpired, only to be followed by Abū Baṣīr brandishing the sword and announcing his return. To this, the Prophet exclaimed: "a firebrand of war, if only he had many men [with him]."<sup>75</sup> Nonetheless, the Treaty had to be observed, and so the Prophet told the servant to take Abū Baṣīr back to Mecca. In doing so, the Prophet abided by the terms of the Treaty. Yet the servant, who had already witnessed his master slaughtered by his own sword, was not about to make that mistake; he refused and returned to Mecca, thus waiving the Meccan claims under the Treaty. As for Abū Baṣīr, if he were to stay in Mecca, he would jeopardize the truce between the Meccans and the Prophet. Reading into the Prophet's exclamation, Abū Baṣīr went to the coast, where he amassed other men and began disrupting the Meccan caravans along the trade route to Syria. These events worked to the Prophet's advantage. He formally abided by the terms of the Treaty, did not give shelter to a Meccan, and, nonetheless, benefited indirectly from the continued disruption of Meccan trade. Of course, the Meccans could have launched a raid against Abū Baṣīr's regiment. But, historians suggest that they were in too weakened a state to launch such a campaign. Instead, the Meccans approached Muḥammad to bring Abū Baṣīr and his men to Medina, which would mean that they would fall under

<sup>74</sup>) Al-Ṭabarī, *Ta'rikh al-Ṭabarī*, 2:125.

<sup>75</sup>) *Ibid.*



the Prophet's treaty responsibility, and, presumably, halt the raids against Meccan caravans.<sup>76</sup>

In this situation, the Prophet did not formally breach the Treaty. The Treaty required him to return those who left Mecca for Medina, thereby ensuring the peace between the peoples of Mecca and Medina. But that does not change the fact that Muḥammad politically benefited by the agitation and raids conducted by those in the outpost led by Abū Baṣīr. Though territorially outside the Prophet's domain, Abū Baṣīr and his followers were, at least implicitly, proxies for the Prophet's ongoing campaign to weaken the Quraysh of Mecca. Quraysh, though weaker than before, was not without its own juridical recourse. The Treaty offered the Meccans a peaceful mechanism to halt Abū Baṣīr's activity. By asking the Prophet to bring Abū Baṣīr and his followers to Medina, and, presumably, waiving their claim upon Abū Baṣīr pursuant to the Treaty, the Quraysh relied on the negotiative space created by the Treaty to achieve their own ends. In short, the Treaty offered a framework of negotiation that allowed both parties to continue their political contest but without the range and scope of violence that had previously characterized their relationship.

The second event that offers a different perspective on the negotiative space created by the Ḥudaybiyya Treaty concerns the case of converted Muslim women fleeing Mecca and arriving in Medina. One of these women was Umm Kulthūm bt. 'Uqba. She was soon followed by her kinsmen who demanded of the Prophet that he turn her over to them, pursuant to the Ḥudaybiyya Treaty. According to the chronicler al-Ṭabarī, the Prophet had received a Qur'ānic revelation that forbade him from satisfying the request. The Qur'ānic verse in question reads in relevant part: "O those who believe. If believing women emigrate to you, examine them. God knows best their faith. If you consider them to be believing women, then do not return them to the unbelievers."<sup>77</sup>

A review of the Treaty, as translated above, does not distinguish between male and female Meccans who travel to Medina. The Arabic masculine pronoun that is used can be read as encompassing both men and women. On such a reading of the Treaty, the Prophet was required to send Umm Kulthūm and other believing women back to Mecca. Indeed, in the earliest biography of the Prophet, some held that, were it not for the verse of the Qur'ān, the

<sup>76</sup> W Montgomery Watt, *Muhammad: Prophet and Statesman* (Oxford: Oxford University Press, 1961), 198–9.

<sup>77</sup> Qur'ān 60:10. For the salience of this verse to the narrative of events, see al-Ṭabarī, *Ta'rikh al-Ṭabarī*, 2:125.

Prophet would have returned Umm Kulthūm to Mecca, just as he would have in the case of male believers coming to Medina from Mecca. Furthermore, were it not for the Treaty, the Prophet could have welcomed those such as Umm Kulthūm who entered Medina.<sup>78</sup>

A particularly narrow reading of the Treaty, though, might view the pronoun usage in the treaty as having only a masculine reference, thereby excluding women from its ambit. Indeed, this was one way of reading the Treaty that was espoused by later jurists. For instance, in his extensive commentary on the Qurʾān, al-Qurṭubī (d. 1273) offered an extended discussion on the believing women who came to Medina from Mecca, and the implication of their arrival on the Prophet's obligations under the Treaty. According to al-Qurṭubī, when he was requested to return Umm Kulthūm to her kin under the terms of the Treaty, the Prophet reportedly said: "The condition pertains to men, not to women" (*kāna al-shart fi al-rijāl lā fi al-nisā*).<sup>79</sup> As al-Qurṭubī noted, there is no uniform way to understand what the Prophet's actions indicate about the Treaty, its meaning, or its standing as a binding document. One particular view is that women were included in the terms of the Treaty based on a general reading of the terms. But the revelatory verse forced a renewed or revised reading of the provision to pertain to men alone. The implication would be that, while the Prophet had the ability to engage in his own independent reasoning efforts (*ijtihād*), God would not allow him to persist in an error. In other words, the verse is a post-hoc intervention by God to alert the Prophet to an issue for which he did not appropriately account.<sup>80</sup>

The difficulty posed by the believing women from Mecca is that the Prophet seems to have unilaterally altered the meaning of the Treaty based on a new development (the revelatory verse) that required him to go against the apparent meaning of the Treaty. As far as Quraysh were concerned, the verse should have no significance to the Treaty; the terms of the treaty were agreed to already, and to insist on a change of those terms after the fact runs contrary to the purpose of the Treaty in cementing a bilateral relationship on articulated and agreed-upon grounds. The unilateralism would not be appreciated by the Quraysh, and the Prophet likely knew that. It is, therefore, not surprising that although refusing to send the women back to Mecca, Muḥammad ordered that any dowries (*ṣadāq*) paid by their Meccan husbands to these women

<sup>78</sup> Ibn Hishām, *al-Sira al-Nabawiyya*, eds. Muṣṭafā al-Saqā, Ibrāhīm al-Abyārī and ʿAbd al-Ḥafīz Shalbī (Beirut: Dār al-Maʿrifa, n.d.), 2:326-7.

<sup>79</sup> Al-Qurṭubī, *al-Jāmiʿ li Ahkām al-Qurʾān* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1993), 18:41.

<sup>80</sup> Al-Qurṭubī, *al-Jāmiʿ*, 18:41-2.

should be returned back to them.<sup>81</sup> In other words, to avoid outright conflict given his unilateral act, the Prophet ensured that at least the husbands whose wives had fled would be made economically whole once again. Financial compensation, though imperfect in redressing the wrong, nonetheless was a mechanism by which the Prophet sought to negotiate a political settlement within the frame of the Treaty, in light of new information and without recourse to outright violence.

The third and final situation concerns the violence that occurred between the Banū Bakr and the Banū Khuzā'a, two tribes that resided in Mecca, but which affiliated with Mecca and Medina, respectively. Indeed, upon finalizing the Treaty of Ḥudaybiyya, Khuzā'a announced its alliance with Muḥammad, while Bakr announced its alliance with Quraysh. The conflict between Khuzā'a and Bakr broke the detente between the Quraysh and Medinans, and led to the Prophet conquering Mecca. In a series of events, Bakr orchestrated an uprising against Khuzā'a with the assistance of members of Quraysh, who provided weapons and, in a few cases, fought alongside Bakr clansmen.<sup>82</sup> Khuzā'a was taken by surprise, suffering many losses. They were able to find refuge, and, thereafter, sent news to the Prophet in Medina about what had happened. En route back to Mecca, they saw Abū Sufyān, an emissary from the Quraysh, riding to meet the Prophet. Abū Sufyān was faced with a difficult task. Members of the Quraysh had assisted Bakr in its attack on Khuzā'a, and, given the formal alliances between Bakr and Quraysh made at Ḥudaybiyya, Quraysh could not disavow Bakr as easily as the Prophet disavowed Abū Baṣīr. In fact, the Prophet was in a better position to attack the Bakr Tribe than Quraysh was when faced with the raids of Abū Baṣīr, in terms of the expectations set forth in the Treaty of Ḥudaybiyya.<sup>83</sup> Knowing Quraysh's weaker position, Abū Sufyān sought to pacify the Prophet in order to strengthen the truce between the two parties and to extend its duration, but the Prophet would not consider such measures.<sup>84</sup> Rather, for the Prophet, the violence that occurred against his ally, the Khuzā'a, with the help of Quraysh, constituted

<sup>81</sup> Ibn Hishām, *al-Sira al-Nabawiyya*, 2:326. Notably, Hamidullah suggests that the women sought refuge with the Prophet while he was still at Hudaybiyya, prior to his return to Medina, and that the Quraysh relented, thus avoiding any suggestion that the Prophet may have breached the treaty unilaterally. Hamidullah, *Muslim Conduct of State*, 276.

<sup>82</sup> Al-Ṭabarī lists three members of Quraysh that fought with the Bakr Tribe at night so as not to be identified. Al-Ṭabarī, *Ta'rikh al-Ṭabarī*, 2:153.

<sup>83</sup> Watt, *Muḥammad*, 201-3.

<sup>84</sup> Al-Ṭabarī, *Ta'rikh al-Ṭabarī*, 2:154.

breach of the Treaty. He thereby began to make preparations to attack Mecca and take over the city.

There was little discussion between Abū Sufyān and Muḥammad. Historians such as Ibn Hishām and al-Ṭabarī merely reported that, when Abū Sufyān talked to the Prophet about strengthening and extending the Treaty, the latter offered no support.<sup>85</sup> Despite the relative peace provided by the Treaty thus far, Muḥammad saw an opportunity to overtake Mecca. He thereby proceeded with military options, on the grounds that the Treaty was breached. The presumption that the Treaty was breached at this point was made explicit by later historians recounting the events. For instance, al-Ṭabarī noted that the Quraysh had negated the treaty (*al-ʿahd wa al-mīthāq*) that was between them and the Prophet with their actions against the Khuẓāʿa.<sup>86</sup> Thinking counterfactually, there are various arguments that could have been made by both sides to perpetuate the peace under the Treaty. Quraysh could have claimed that Bakr was acting on its own initiatives, and that, since Bakr was not party to the Treaty, the treaty was not violated. Quraysh could have punished those of its members who joined in Bakr's raid, and could have indemnified those who suffered among the Khuẓāʿa. In each of these cases, the wrong would have been redressed, and those who suffered would have been made as whole as possible once again, just as in the case of the believing women who remained in Medina but whose dowry was returned to their husbands in Mecca.

The fundamental point drawn from the review of these three incidents is that whether the Treaty was breached or not had little to do with the formal wording of the Treaty itself. The Treaty offered a juridical mechanism to regulate peaceful relationships between peoples who would otherwise be in a state of violent conflict. Although some may debate whether the Prophet breached the Treaty first or whether Quraysh did, the more interesting question for the purpose of this analysis is how treaties make possible ongoing political negotiations through the mechanisms of law and order, and can grant legitimacy to settlements reached under its auspices, even if not pursuant to its strict terms.

The negotiative space made possible by treaties is evident not only in the Treaty of Ḥudaybiyya, but also in the pre-modern Islamic legal doctrines (*fiqh*) on treaties. The regime of treaty law in Islamic legal history is vast, and a

<sup>85</sup> Al-Ṭabarī, *Taʾrikh al-Ṭabarī*, 2:154; Ibn Hishām, *al-Sira al-Nabawiyya*, 2:396.

<sup>86</sup> Al-Ṭabarī, *Taʾrikh al-Ṭabarī*, 2:153. Likewise, the Ḥanbali jurist Ibn Qudāma suggests that Quraysh repudiated the Treaty, not the Prophet. Ibn Qudāma, *al-Mughnī* (Beirut: Dār Ihyāʾ al-Turāth al-ʿArabī, n.d.), 8:459.

detailed study of its various features is beyond the scope of this study. Instead, this section will conclude with an analysis of two specific issues within the Islamic law of treaties, namely (a) whether treaties between a Muslim polity and non-Muslim polity are subject to time limitations, and (b) the conditions under which a Muslim polity can breach its treaty obligations.

Some jurists, such as the Ḥanbalī Ibn Qudāma, were adamant that no treaty (*hudna*) could be of indefinite duration. His position, in large part, depended on how he understood the purpose of treaties. According to Ibn Qudāma, the meaning of the term *hudna* is “to enter into a contract with the enemy (*ahl al-ḥarb*) to halt warfare for a period, with or without compensation.”<sup>87</sup> Referring to the Treaty of Ḥudaybiyya, Ibn Qudāma explained the rationale of such treaties: “it may be that there is a weakness among the Muslims, so [one] makes a treaty with [the enemy] until the Muslims become strong.”<sup>88</sup> A similar position was adopted by the Ḥanafī jurist al-Sarakhsī, who did not view bilateral arrangements as a good in itself, but, rather, as a legal device to manage otherwise aggressive relations between Muslim and non-Muslim forces. In his commentary on al-Shaybānī’s *siyar* treatise, al-Sarakhsī wrote: “Abū Ḥanīfa, may God be pleased with him, said ‘treaties with polytheists are not necessary when Muslims have authority over them.’ That is because [treaties] involve halting the fighting that is commanded, or choosing [whether to fight]. That is not among those things that are necessary for the ruler to do.”<sup>89</sup>

Given Ibn Qudāma’s understanding of the purpose of treaties and its instrumental nature, it should not be surprising that he did not allow Muslims to be parties to a treaty of indefinite duration. He required, instead, that all treaties have a stipulated period during which they are in force (*mudda muqaddara ma’lūma*), lest such treaties lead Muslims to abandon their effort to expand the dominion of Islam.<sup>90</sup> Likewise, al-Sarakhsī emphasized the importance of delimiting a treaty’s validity by expressly stating the dates during which it is effective.<sup>91</sup> Furthermore, there is debate among various jurists, and even between competing views of Aḥmad b. Ḥanbal, about whether any treaty can extend beyond ten years in duration. Those holding ten years to be the maximum period relied on the Treaty of Ḥudaybiyya, which was meant to last for

<sup>87</sup> Ibn Qudāma, *al-Mughnī*, 8:459.

<sup>88</sup> *Ibid.*

<sup>89</sup> Al-Sarakhsī, *Sharḥ Kitāb al-Siyar al-Kabīr*, ed. Abū ‘Abd Allāh Ismā‘īl al-Shāfi‘ī (Beirut: Dār al-Kutub al-‘Ilmiyya, 1997), 5:3.

<sup>90</sup> Ibn Qudāma, *al-Mughnī*, 8:459, 460.

<sup>91</sup> Al-Sarakhsī, *Sharḥ Kitāb al-Siyar al-Kabīr*, 5:63.

ten years. Others, however, allowed treaties to extend for longer than ten years, placing discretion in the ruler (*imām*) and what he considers to be in the best interests of the Muslim polity: “There may be more benefit (*maṣlaḥa*) in a treaty than in warfare.”<sup>92</sup>

Once a treaty is agreed upon, the second question concerns whether and under what circumstances jurists would counsel the *imām* to breach. Returning to al-Sarakhsī, it is important to recall his view of treaties. For him, bilateral treaties of peace are not an end in themselves. Rather, they are instrumental; treaties should be negotiated when Muslims are too weak to fight their enemy, and, instead, would benefit from the protection afforded by a treaty. “Don’t you see,” he wrote, “a youth sips milk for as long as his teeth have not sprouted. Then he chews meat after the teeth are grown. This explains the considerations about treaties in the weakened state of Muslims and the regulations [they provide], and the engagement in fighting when Muslims are strong.”<sup>93</sup> Treaties, in other words, are used as stopgaps that allow the Muslim ruler to gain the upper hand and pursue an ongoing venture of imperial gain.<sup>94</sup> Again, it should not be surprising that al-Sarakhsī counseled that a Muslim ruler who is party to a treaty with a non-Muslim party can and should breach the treaty and engage in hostilities if doing so will extend the Muslim imperium. For instance, quoting al-Shaybānī, al-Sarakhsī wrote: “If it appears to the *imām* after entering the treaty that fighting is better, he gives notice to [the other party’s ruler] of his breach, and that [treaty] becomes repudiated.” Al-Sarakhsī then commented: “The duty on the *imām* to refrain from breach is not greater than [achieving] what comes from breaching [the agreement]” with the other party.<sup>95</sup> To put it differently, treaties are not so binding as to preclude breach (*ghayr lāzim muḥtamal li al-naqd*), where the gains from breach outweigh the gains from adherence to the treaty.<sup>96</sup>

<sup>92</sup> Ibn Qudāma, *al-Mughnī*, 8:460. For this point, see, also, Hamidullah, *Muslim Conduct of State*, 268.

<sup>93</sup> Al-Sarakhsī, *Sharḥ Kitāb al-Siyar al-Kabīr*, 5:3. See, also, Majid Khadduri, *The Islamic Law of Nations: Shaybani’s Siyar* (Baltimore: Johns Hopkins University Press, 1966), 154.

<sup>94</sup> On this point, see al-Kāsānī, *al-Badā’ī al-Ṣanā’ī fī Tarrīb al-Sharā’ī*, eds. ‘Alī Muḥammad Mu‘awwaḍ and ‘Adil Aḥmad ‘Abd al-Mawjūd (Beirut: Dār al-Kutub al-‘Ilmiyya, 1997), 9:420, who writes that treaties are not permitted, except in cases where they will help lead to a state of imperial gain and conquest later. They are, in other words, instrumental to the imperial agenda (*wasīla ilā al-qitāl*).

<sup>95</sup> Al-Sarakhsī, *Sharḥ Kitāb al-Siyar al-Kabīr*, 5:8.

<sup>96</sup> Al-Kāsānī, *Badā’ī al-Ṣanā’ī*, 9:423. See also, Khadduri, *Islamic Law of Nations*, 154–5.

## VI. Conclusion

Sovereignty has operated at various levels in this paper, whether in terms of the sovereignty of God, the sovereignty of the self, or the sovereignty of the ruler. In all its variations, what should be clear is that the concept of sovereignty itself is less interesting than the varying conditions of legitimacy and authority that it connotes. In his critique of scholarship in international relations theory, J.G. Ruggie reminds us that *sovereignty* “signifies a form of *legitimation* that pertains to a *system* of relations.”<sup>97</sup> Though he was writing about states and their relationships with one another, Ruggie’s point is a reminder about how sovereignty as a concept may hide more than it reveals. This is not to suggest that sovereignty as a concept should be discarded; rather, at the intersection of theology and politics, the use of ‘sovereignty’ must be qualified given the different notions of legitimacy that may underlie its usage in a given context. For instance, it is one thing to recognize God’s sovereignty as an ontological matter, but another thing to recognize the reader of the Qur’ān exercising his or her own interpretive sovereignty, as an epistemological matter. Likewise, it is one thing to consider al-Juwaynī’s *imām* as exercising a sovereignty over all of Islamdom, and another to view his *amīr* as exercising a different type of sovereignty over a particular region. One might argue that both the *imām* and the *amīr* are sovereign rulers in that they both exert power, control, and authority. But, the legitimacy that is implied by their sovereign claims is measured on different scales. The cautionary note, therefore, is to recognize how sovereignty makes certain assumptions about power, authority, and legitimacy – topics that need not be solely affiliated with the state, and which transcend the various realms of authority and discretionary power addressed herein.

Attention to such assumptions allows us to better appreciate whether, to what extent, and in what sense features of the Islamic intellectual tradition make possible an ethic of pluralism, which is a central theme of this symposium issue. The possibility of such an ethic is particularly significant today in the Arab world, as authoritarian regimes have fallen amidst demands for greater legitimacy, accountability, and democratic participation. Moreover, as Islamist parties such as Egypt’s Muslim Brotherhood and al-Nahda in Tunisia assume greater political prominence, their recourse to Islam as an organizing principle should beg important questions about the relationship between their

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<sup>97</sup> John Gerard Ruggie, “Continuity and Transformation in the World Polity: Toward a Neorealist Synthesis,” *World Politics* 35, no. 2 (1983): 261–85, 276.

views on Islam and the scope to which their political visions for their countries allow for diversity, dissent, and a commitment to pluralism as constitutive of their state's authority and legitimacy.

For example, the discussion above suggests a deep monist aspiration in Islamic theology, jurisprudence, and politics. In debates on free will and determinism, the justice of God, and the plurality of rulers or *imāms*, the frequent refrain among many was that there is only one will (God's will), that justice is a function of that divine will, and that there can be only one legitimate authority that represents Islamdom. The prevailing theological position of an omnipotent, voluntarist God speaks to a type of unity and singularity that might limit, if not entirely preclude, suitable space for pluralism as being constitutive of an Islamic (political) ethic. Pluralism, it might be argued, runs against the unity of the divine, the omnipotence of God, and a divine singularity that is characteristic of an Islamic monotheism. That same unity and singularity is apparent in the debates about the importance of there being only one *imām*, and in the justification for why treaties were viewed as stopgap measures along the way to a universal empire. In the case of the singularity of the *imām*, the point was to ensure a clear and determinate vision for achieving the wellbeing of all Muslims, regardless of where they lived. The qualified commitment to bilateral treaties is a reminder of how the singularity and omnipotence of God can and should be made manifest through an imperial endeavor that brings the Islamic message across any and all boundaries.

That apparent monism, however, includes the possibility for a robust pluralism. For instance, even if one accepts the voluntarist thesis about God's justice (i.e., that whatever God does is thereby just), that does not preclude the fact that people can and do make determinations about the good and the bad. Al-Juwaynī reminded us that such human moral determinations are quite reasonable and acceptable, as long as they are not attributed to God or claim an authority derived from the divine will.<sup>98</sup> In other words, moral agency is not only possible, but, likely, unavoidable. Indeed, the self as sovereign cannot be precluded from making moral determinations about choices in the world. The only caveat, though, is that the legitimacy of such determinations must account for a degree of epistemic humility<sup>99</sup> in the face of infinite

<sup>98</sup>) Emon, *Islamic Natural Law Theories*, 104.

<sup>99</sup>) The author thanks Adam Seligman for his discussions on this phrase and its salience for questions of moral agency, legitimacy, and authority.



possibilities.<sup>100</sup> If sovereignty is understood as embracing both legitimacy and authority, then it becomes increasingly clear that the monism of a divine sovereignty does not preclude the pluralism of human sovereignties, as long as there be no elision of legitimacy and authority between the two. In a moment of epistemic humility, therefore, the sovereign self must acknowledge its fallibility, its capacity for error and poor judgment. Epistemic humility thereby creates a space for others to co-exist, with their own epistemic humility, all the while respecting the other as a sovereign that is, and must always be, limited by the indeterminacy of an otherwise complex and ambiguous world.

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<sup>100</sup> For further discussion of the way in which epistemic humility is a key feature of Islamic legal authority, see Anver M. Emon, "To Most Likely Know the Law: Objectivity, Authority and Interpretation in Islamic Law," *Hebraic Political Studies* 4, no. 4 (2009): 415–40.