

The Future of 'Theological Ethics': Returning the Gaze

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Abstract

This article offers an Islamic legal perspective on the question posed by this symposium issue, namely the future of theological ethics. Concerned that abstract statements of value all too often play into an apologetics that hides more than it reveals, the article offers a paradigm that makes two specific contributions to the question of this symposium in a context of increasing tension over religious diversity in Europe and North America. First, it adopts a context-rich form of ethical engagement that weaves together commitments to theology and to our place in the world. Second, it provides a model by which to interrogate the assumptions and even the secular apologetics that arise in legal disputes involving contests about religion and the public sphere.

Keywords

Conseil d'Etat, ethics, France, Islamic law, law, public sphere, religion, theology

Introduction

This special issue features papers presented at the May 2011 *Society for Christian Ethics* conference at Cambridge University on the future of theological ethics. Determining that future, though, begs two important questions about what theological ethics is, and the current state of theological ethics. If we take 'ethics' to refer to something about more than mere belief, and rather about how to be in the world, then to ask what is 'theological ethics' overlaps with questions about the place of religion in the 'public sphere'.¹ Arguably, to ask about the future of theological ethics is to situate the question at the intersection of

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- 1 John Rawls, *Political Liberalism*, new edn (New York: Columbia University Press, 1995); Jeffrey Stout, *Democracy and Tradition* (Princeton, NJ: Princeton University Press, 2003); Jürgen Habermas, 'Religion in the Public Sphere', *European Journal of Philosophy* 14.1 (2006), pp. 1-25.

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both religion and political philosophy. In contemporary secular democratic societies such as those in Western Europe and North America,² the question about the future arises from a present that features increasing religious diversity, mounting tensions between religious groups, and claims by religious minorities for the state to accommodate religious practices that are different and distinct from those of the presumptively Christian majority in these polities. These tensions were only too apparent in the July 2011 bombings in Oslo, Norway committed by Anders Breivik. Additionally, various states have taken legal action to minimise the scope of religious accommodation of specific religious minorities, Muslims being a case in point. The Swiss ban on minarets, the legal anxiety across Europe about the burka and niqāb, the political and legal acrimony over allowing Muslims to order aspects of their private affairs pursuant to Shari'a are just a few examples.³ Indeed, the present context of religious diversity has raised no shortage of political crises for countries across these regions, which have had to contend with the presence of religion in the public sphere, and the need to define, often by means of law, the scope of religious accommodation.

To ask about the future of theological ethics is in part to contend with both a context of religious diversity and important debates about how religious theologies view the religious Other. While religious adherents will often apologetically speak to the universal value of all humanity (whether as creatures of God, or created in the image of God), abstract apologetics of inclusion, regardless of religious tradition, all too often cover deep-seated prejudices and discriminations that only arise when we deliberate about the details of how we are all to get along together. For instance, in his now infamous Regensburg speech of 2006, Pope Benedict XVI sought to meld Christianity into the very identity of Europe through a shared commitment to reason. Indeed, he went so far as to claim that Christianity 'remains the foundation of what can rightly be called Europe'.⁴ To justify his claim, he asserted that both Christianity and Hellenised Europe share a commitment to reason. Pope Benedict XVI referred to the 4th Lateran Council of 1215 and remarked: 'the truly divine God is the God who has revealed himself as *logos* and, as *logos*, has acted and continues to act lovingly on our behalf'.⁵ There is a certain irony in the Pope's reference to this document, though. He invoked it to establish the shared commitment of reason as between Christianity and Europe; but Canon 68 of that same document provides in relevant part: 'Jews and Saracens [i.e. Muslims] of both sexes in every Christian province and at all times shall be marked off in the eyes of the public from other peoples

2 The situation in the United Kingdom is not neatly characterised as secular, given that the Anglican Church is the established state church.

3 See, for instance, Rex Ahdar and Nicholas Aroney (eds.), *Shari'a in the West* (Oxford: Oxford University Press, 2011); Anver Emon, 'Banning Shari'a', *The Immanent Frame*, <http://blogs.ssrc.org/tif/2011/09/06/banning-shari-a/>; idem, 'Islamic law and the Canadian Mosaic: Politics, Jurisprudence, and Multicultural Accommodation', *Canadian Bar Review* 87.2 (February 2009), pp. 391-425.

4 Pope Benedict XVI, 'Faith, Reason and the University: Memories and Reflections', 12 September 2006, para. 8, http://www.vatican.va/holy_father/benedict_xvi/speeches/2006/september/documents/hf_ben-xvi_spe_20060912_university-regensburg_en.html#_ftn8 (accessed 12 October 2012).

5 Pope Benedict XVI, 'Faith, Reason, and the University', para. 7.

through the character of their dress... Moreover, during the last three days before Easter and especially on Good Friday, they shall not go forth in public at all'.⁶ At a time when European countries are struggling to define their identity as the EU blurs national boundaries and immigrants undermine any pretensions to cultural homogeneity, the Pope's desire to lay a Christian claim upon the identity of Europe draws upon an apologetic of reason that ultimately hides not only a premodern antagonism toward religious heterogeneity, but arguably a modern one as well.⁷ The abstract theological claims about reason and faith, when brought to bear upon the organisation of the public sphere, illustrate that mere apologetics of a theological tenor tend to cover over the negative implications that arise when an abstract principle is put to the test of determining how we are to be in the world.

Perhaps, therefore, as one reflects upon the future of theological ethics, the real question might be whether and to what extent the often abstract postulates of theology can contribute to the otherwise detailed, particular, and often highly fact-specific inquiries into how we are to be in the world. To offer a different perspective on this question, I offer a set of insights drawn from the Islamic legal tradition. The fact that this essay focuses on Islamic law and not theology is important for considering the future of theological ethics. Certainly Islamic intellectual history has a robust theological tradition. That tradition centred on defining orthodox beliefs, and, by implication, demarcating the boundaries of inclusion and exclusion. As different theological positions vied for orthodoxy, a voluntarist strain has claimed dominance since the ninth century. This is not to say that other theological views no longer exist; however, the realm of theological dispute is not always an open-ended one, and often leads to accusations of heterodoxy and heresy.⁸ Furthermore, the abstractness of many theological disputes does not easily lend theology to resolving what are often context-specific questions about ethics. Instead of drawing upon theology, this paper offers examples drawn from Islamic legal history. Furthermore, by drawing upon law, the paper suggests that the question about the future of a strictly 'theological' ethics may need to be modified if the conversation is going to include other faith traditions, such as Islam or even Judaism.⁹

The remainder of this paper provides a model for examining the theological and contextual elements that animate an Islamic legal inquiry. The model, which I call the 'quadrants

6 The Canons of the Fourth Lateran Council, 1215, <http://www.fordham.edu/halsall/basis/lateran4.asp>.

7 'Tales from Eurabia', *The Economist*, 24-30 June 2006, pp. 11, 29; George Parker, 'Catholic Church fails in bid to halt EU funding for research into stem cell', *Financial Times* (London edn), 25 July 2006, p. 10.

8 For a discussion of various issues of Islamic theology, see Anver M. Emon, 'Islamic Theology and Moral Agency: Beyond the Pre- and Post-Modern', in Natasha Bakht (ed.), *Belonging and Banishment: Being Muslim in Canada* (Toronto: TSAR Publications, 2008), pp. 51-61. On the inclusive and exclusive features of Islamic theological debates, the apostasy case of Nāṣir Ḥāmid Abū Zayd is instructive. An Egyptian intellectual deemed to have apostated from Islam through his writings on the Qur'ān, his writings were viewed by some as reflecting Mu'tazilite positions, which are generally considered heterodox in mainstream Sunnī Muslim contexts. For an overview of the relationship between intellectual freedom and apostasy cases, and the Abū Zayd case, see Baber Johansen, 'Apostasy as Objective and Depersonalised Fact: Two Recent Egyptian Court Judgments', *Social Research* 70.3 (Fall 2003), pp. 687-710; Susanne Olsson, 'Apostasy in Egypt: Contemporary Cases of *Ḥisbah*', *The Muslim World* 98 (2008), pp. 95-115.

9 See Robert Gibbs, in this issue.

model' of Islamic law, recognises that religious legal traditions such as Islamic law have to mediate between principles of theology and the particulars of the day-to-day. By examining how this mediation occurs, the quadrants model sheds light on the way in which legal traditions operate in relation to abstract principles (whether philosophical or theological) and the mundane realities of the world. The mediation of both illustrate that, in any given ethical or legal calculus, the principles at play have a certain degree of flexibility, and thereby indicate that the ethical/legal inquiry is not an all-or-nothing, zero-sum game. That particular insight into a religious legal tradition offers a basis by which we can 'return the gaze'¹⁰ to the prevailing political and legal orders. Indeed, to investigate the Islamic legal tradition in order to return the gaze upon the prevailing legal systems governing modern societies may very well be the future of 'theological ethics', however defined.

The Quadrants Model of Islamic Legal Analysis

This section of the paper offers a different, perhaps unconventional, approach to understanding the ethics of Islamic law. Imagine for a moment each Islamic doctrinal rule occupying a position on an X-Y graph. The horizontal X-axis reflects the impact and significance of a given doctrinal rule on individuals living in society together. The vertical Y-axis reflects the relationship of the doctrinal rule to the will of God. Any doctrinal rule, therefore, is plotted on the X-Y graph in light of considerations about the social significance of a given rule of law (the here = al-dunya in Qur'anic parlance), and its eschatological implications for the believer (the hereafter = al-ākhirah). The more the doctrinal rules reflect social considerations, the higher the X-value and the lower the Y-value (although greater than zero). The more the doctrinal rules reflect a concern about God's will and eschatological concerns, the higher the Y-value and the lower the X-value. Ideally, every rule should be plotted in quadrant I, where the X and Y-values are both positive.

Problems in justification and legitimacy may arise when a doctrinal rule is plotted in quadrants II, III or IV. For instance, a rule that aspires to fulfil God's will but comes at a certain social cost might have a negative X-value and a positive Y-value, and thus be plotted in quadrant II. A rule that has a positive social value but seems to violate God's desires will have a positive X-value but negative Y-value, and thus fall in quadrant IV. A rule that adversely impacts social wellbeing and violates God's will falls into quadrant III. Being mindful of these quadrants, we can imagine a Muslim jurist taking into account both the 'here' and 'hereafter' when considering how to evaluate a particular doctrinal rule, with the goal of ensuring that every doctrinal rule is plotted in quadrant I.

To illustrate and justify the explanatory power of this proposed quadrants model of analysis, this section will introduce different doctrinal issues concerning the dog in Islamic law. The dog was a subject of legal debate that moved between concerns about the social and the eschatological. Those concerns were framed in terms of, for example, ritual requirements for prayer, the regulation of the domestic household, and the management

10 The idea of 'returning the gaze' draws upon the work of Edward Said and the post-colonial tradition. See Edward Said, *Orientalism* (New York: Vintage, 1979).

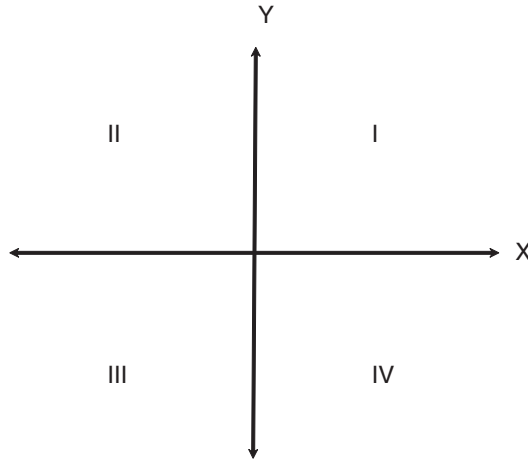


Figure I. The Quadrants Model

of agricultural professions, all of which I address at length and in detail elsewhere.¹¹ For the purposes of this shorter essay, I offer a single case study concerning the eschatological threat dogs can pose and how those threats are managed and regulated in different and distinct ways. The example shows that what might be considered a Y-value (i.e. a theological or eschatological concern) is not an all-or-nothing principle. The very idea of a Y-axis is meant to illustrate that, what might seem to be abstract theological principles of an all-or-nothing variety, actually has gradations such that diminution and adherence are not mutually exclusive.

Dogs and the Divine: Roving Eschatological Threat or Man's Best Friend?

The vast number of doctrinal rules about the dog, arguably, is built upon a particular tradition concerning a dog that licks water from a bowl. A *ḥadīth*, narrated by the companion of the Prophet Muhammad, Abū Hurayra (d. c. 678),¹² reads: ‘The messenger of God... said “If a dog licks your container, wash it seven times”.’¹³ A second version of this *ḥadīth*

11 Anver M. Emon, ‘The Quadrants of Shari’a: The Here and Hereafter as Constitutive of Islamic Law’, in Todd Lawson and Sebastian Geunther (eds.), *Roads to Paradise* (Leiden: Brill, forthcoming 2012).

12 The fact that Abū Hurayra narrates this *ḥadīth* is a point of initial interest. It is relatively well known that Abū Hurayra was fond of cats. His name suggests his favouritism towards that animal (i.e. father of a female kitten). It is reported that Abū Hurayra received his *kunya* because he found a kitten and carried it in his sleeve. On the other hand, other sources suggest that he may have also owned a farm dog. Shams al-Dīn al-Dhahabī, *Siyar A’lām al-Nubalā’* (Beirut: Mu’asasat al-Risāla, 1987), ii: 579; al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, 3rd edn (Beirut: Dār al-Ma’rifā, 1996), ix-x: 478, 483.

13 Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, iii-iv: 174.

stipulates different numbers for the required washings;¹⁴ and a third version requires one to dump the contents of the container prior to washing it seven times.¹⁵ A fourth version reads as follows: ‘The messenger of God...said: “Concerning the purity of your container (*ṭuhūr ināʿ aḥadikum*), if a dog licks from it, wash it seven times”.’¹⁶ Furthermore, some versions of this *ḥadīth* pose the additional requirement of sprinkling sand or earth in one of the washings.¹⁷ The use of sand or earth as a cleansing agent both recognises the purity of the earth for purification purposes,¹⁸ and renders the dog’s impurity something that goes beyond a concern about conventional dirt *per se*.

At the core of the legal debates about the dog is a concern about the implication of the dog for the purity of the water in a bowl. The implication of this concern can extend far and wide, based on the multitude of ways impurity can both transfer to other objects and affect human behaviour. For instance:

- Can a Muslim use the water a dog licks to perform ritual ablutions?
- How big must the container of water be before we should worry about waste of water thus used for purification?
- If the dog is impure, can it be bought and sold in the market?

The potential impact this single tradition could have on a multitude of issues prompted the jurist Ibn Ḥajar al-ʿAsqalānī (d. 1449) to write: ‘The discussions on this *ḥadīth*, and the issues that arise from it, are so widespread that one could write an entire book [about

14 The Hanafis rely on a version of the Abu Hurayra *ḥadīth* on dogs and water in which the Prophet is reported to have required either three, five or seven washings. Shams al-Dīn al-Sarakhsī, *Kitāb al-Mabsūṭ* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1993), i-ii: 48; Abū Bakr al-Kāsānī, *Badāʿiʿ al-Ṣanāʿiʿ fī Tartīb al-Sharāʿiʿ* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1997), i: 374; al-Shawkānī, *Nayl al-Awṭār Sharḥ Mintaqā al-Akhbār* (Cairo: Dār al-Ḥadīth, n.d.), i-ii: 34; Ibn Ḥajr al-ʿAsqalānī, *Fath al-Bārī bi Sharḥ Ṣaḥīḥ al-Bukhārī*, ed. Muḥibb al-Dīn al-Khaṭīb, 3rd edn (Cairo: al-Maktaba al-Salafiyya, 1407 AH), i: 332; Muḥammad al-Mubārak Fūrī, *Tuḥfat al-Aḥwadhī bi Sharḥ Jāmiʿ al-Tirmidhī* (Beirut: Dār al-Kutub al-ʿIlmiyya, n.d.), ii: 53-4.

15 Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, iii-iv: 174. Those who oppose the implications of this addition (i.e. *iraqqa*) argue that one of the members of the *isnād*, ʿAlī b. Muḥṣir (d. 189/804), was not a reliable transmitter. However, al-Dhahabī considers him trustworthy. Al-Dhahabī, *Siyar Aʿlām*, viii: 484. See also Khayr al-Dīn al-Ziriklī, *al-Aʿlām: Qāmūs Tarājim li Ashḥar al-Rijāl wa al-Nisāʾ min al-ʿArab wa al-Mutaʿarrabīn wa al-Mutasharriqīn*, 12th edn (Beirut: Dār al-ʿIlm li al-Malāyīn, 1997), v: 22.

16 Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, iii-iv: 175.

17 Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, iii-iv: 175-76. There is a debate as to whether one dusts prior to the seven washings, in the first wash, in the last wash, or somewhere in between. See also Ibn Ḥajar al-ʿAsqalānī, *Fath al-Bārī: Sharḥ Ṣaḥīḥ al-Bukhārī*, eds. Muḥammad ʿAbd al-Bāqī and Muḥibb al-Dīn al-Khaṭīb (Beirut: Dār al-Maʿrifa, n.d.), i: 331.

18 A. J. Wensinck-[A. K. Reinhart], ‘Tayammum (a.)’, in *Encyclopaedia of Islam*, 2nd edn, eds. P. Bearman, Th. Bianquis, C. E. Bosworth, E. van Donzel and W. P. Heinrichs (Leiden: Brill, 2011). Brill Online, http://www.brillonline.nl.myaccess.library.utoronto.ca/subscriber/entry?entry=islam_SIM-7466.

them].¹⁹ The wide array of legal issues the dog raises permits us to examine whether and how the proposed quadrants model of *Sharī'a* offers a better approach to understanding the nature of Islamic legal analysis, in contrast to the more dominant model of jurisprudence that posits, for instance, an analytic dichotomy between law and morality.

For Muslim jurists, a source text such as a *ḥadīth* can be applied to diverse situations, not all of which are expressly provided for in the *ḥadīth* text. Jurists can analogise [cf. *qiyās*] between express circumstances in the *ḥadīth* and the circumstances of a new situation. In doing so, they engage in an act of legal reasoning that seeks to extend the application of a rule to a similar case that warrants the legal extension.

The ability to extend a ruling by analogy, though, depends on whether the *ḥadīth* espousing the initial rule, with its relevant factual circumstances, has a discernible rationale that explains and justifies the legal outcome. Without such a ratio, the *ḥadīth* may not so easily be extended to new and different situations, given the inability to render an analogy without a rational nexus between the given rule and the new circumstance. But if a *ratio* is read into the law, such as 'dogs are impure', the *ratio* could have considerable consequences on social wellbeing.

If dogs are impure and polluting, one might wonder why jurists would tolerate the existence of dogs at all. If canines carry impurities and endanger the wellbeing (spiritual and otherwise) of Muslims, why not simply order the execution of all dogs? This option is not entirely far-fetched, in large part because of a tradition in which the Prophet expressly commanded killing all dogs. After issuing the command, he then exempted from its application hunting dogs, herding dogs and farming dogs.²⁰ Some versions of the tradition include other exemptions. Other versions contain no exceptions whatsoever. In yet different versions, after the Prophet commanded the killing of dogs, he subsequently dispatched people to kill the dogs in the area around Medina.²¹ A review of these traditions and later doctrinal rules suggests that jurists read different normative sources (e.g. *ḥadīth*) together to create a general rule to kill canines, with exceptions for limited classes of dogs.

The Prophet's motive to kill all dogs has to do with a story about how angels cannot enter homes when dogs are present. We learn from the Prophet's wife 'Ā'isha that the angel Gabriel promised to visit the Prophet Muḥammad at a given hour. That hour came but Gabriel did not. The Prophet, disturbed by Gabriel's absence, paced the room of 'Ā'isha's house, holding a stick in one hand while slapping it into the other. At one point, the Prophet noticed to his surprise a puppy under the bed. He called out: 'Ā'isha when did this dog enter here?' She did not know, but immediately removed the dog from the premises upon the Prophet's request. Upon doing so, Gabriel arrived. The Prophet said to him: 'You promised [to meet with] me so I waited. But you did not show up'. Gabriel responded: 'The dog that was in

19 Ibn Ḥajr al-ʿAsqalānī, *Fatḥ al-Bārī*, i: 333.

20 Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, iii-iv: 176. The last category of dogs, agricultural dogs, is not found in all versions of the tradition. There are other traditions, attributed to Abū Hurayra, in which this particular dog is included among those that could be owned. Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, ix-x: 479.

21 Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, ix-x: 478; Abū Bakr Ibn al-ʿArabī, *Aḥkām al-Qurʾān* (Beirut: Dār al-Maʿrūf, n.d.), ii: 545-46.

your house prevented me from entering. We [angels] do not enter a house which has a dog or picture in it.²² Upon learning this, the Prophet commanded all dogs to be killed.²³

The theological significance associated with angels is certainly great. The angel Gabriel is considered within Islamic tradition to be the conduit of God's revelation to the Prophet. Further, for angels to visit people in their homes might reasonably be considered a blessing. For a dog to block angels from entering one's home defines the dog as antithetical to these sacred and pure representatives of the divine. For many Muslim jurists, this episode explains why the Prophet commanded the execution of all dogs.²⁴ Therefore, if we consider how to plot this rule, we can reasonably assert that the rule has everything to do with being close to God by being close to God's representative. Consequently when the Prophet ordered all dogs killed, given the above context, the Prophet may have infused his directive with a high Y-value and possibly an X-value of zero.

With the command issued, various people went into the Medina countryside to fulfil the Prophet's order. The problem, though, was that once the rule was put into effect, the Prophet learned of its negative social implications. Two men came to the Prophet with a question. Their conversation was related by the Qur'anic exegete al-Qurṭubī (d. 1273):

Oh Messenger of God, our people hunt with dogs and falcons. The dogs obtain [for us] cows, donkeys, and gazelles. From the dogs, we are able to sacrifice them [(i.e. the prey) for consumption]. But you [ordered] the killing of dogs; hence we cannot consume such food. Further, God has made impermissible improperly slaughtered animals. So what is permitted for us?²⁵

In response to this question, wrote al-Qurṭubī,²⁶ the Prophet received the following Qur'anic revelation:

They ask thee what is lawful to them (as food). Say: lawful unto you are (all) things good and pure: and what you have taught your trained animals [*al-jawāriḥ al-mukallibīn*] (to catch) in the

22 Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, xiii-xiv: 307-309. See also Aḥmad b. Ḥanbal, *Musnad al-Imām Aḥmad b. Ḥanbal*, ed. Samīr Ṭāhir Majzūb (Beirut: Maktab al-Islāmī, 1993), vi: 163; Ibn Ḥajar al-ʿAsqalānī, *Faṭḥ al-Bārī*, x: 380-81; al-Mubārak Fūrī, *Tuḥfat al-Aḥwadhī*, viii: 72-73. Incidentally, al-Mubārak Fūrī wrote that the puppy in question belonged to the Prophet's grandsons, Ḥasan and Ḥusayn. In another version, after the dog was removed from the house, the Prophet sprinkled water over the area where the dog was found, which some considered as positive evidence of the dog's inherent impurity. But the Mālikis thought the sprinkling was precautionary at most. As Ibn Ḥajar al-ʿAsqalānī wrote, 'Regarding those who do not consider the dog's essence to be impure, its place is sprinkled with water out of caution, since sprinkling is the lawful method of purification where there is doubt'. Ibn Ḥajar al-ʿAsqalānī, *Faṭḥ al-Bārī*, x: 381. See also Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, xiii-xiv: 308-10.

23 Abū Bakr Ibn al-ʿArabī, *Aḥkām al-Qurʾān*, ii: 546; al-Shawkānī, *Nayl al-Awtār*, i-ii: 38.

24 Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, xiii-xiv: 310; Ibn Ḥajar al-ʿAsqalānī, *Faṭḥ al-Bārī*, x: 380; al-Mubārak Fūrī, *Tuḥfat al-Aḥwadhī*, viii: 72.

25 Al-Qurṭubī, *al-Jāmiʿ li Aḥkām al-Qurʾān* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1993), iii: 44.

26 Al-Qurṭubī, *al-Jāmiʿ*, iii: 44. See also, Abū Bakr Ibn al-ʿArabī, *Aḥkām al-Qurʾān*, ii: 546; Abū Bakr al-Jaṣṣāṣ, *Aḥkām al-Qurʾān* (Beirut: Dār al-Kutub al-ʿIlmiyya, n.d.), ii: 393; Muḥammad b. Jarīr al-Ṭabarī, *Tafsīr al-Ṭabarī*, eds. Bashshār ʿAwād Maʿrūf and ʿAṣam Fāris al-Ḥarastānī (Beirut: Muʿasasat al-Risāla, 1994), iii: 21.

manner directed by Allah: eat what they catch for you, but pronounce the name of Allah over it: and fear Allah; for Allah is swift in taking account (Q 5.4).²⁷

With this verse, the Prophet permitted one to own dogs of prey, herding dogs and farm dogs.²⁸ Although the Prophet may have considered the original directive to have a high Y-value and likely a zero X-value, the new evidence suggested that his directive posed a negative X-value, thus replottting the original directive in quadrant II. Once the consequences revealed themselves, the directive was reconsidered in light of the negative implications for society. Taking the consequences into account, we find that while the original rule had a high Y-value, it had a negative X-value, given its implications, thus plotting it in quadrant II. To shift it from quadrant II to quadrant I, where the rule would have a positive X and Y-value, the Prophet offered exceptions to the general directive to kill all dogs, given the Qur'anic verse. In doing so, he preserved the directive to kill dogs while providing exceptions. The exceptions kept the X-value within an acceptable range, and allowed him to uphold his commitment to the positive Y-value (though perhaps slightly reduced) in the original directive.

To shift the value from a negative to a positive X-value, the Prophet construed an exception from the Qur'anic verse that reversed the social impact of the initial, general directive. That the social impact was significant in the revision of the ruling can be gleaned from how jurists understood the Qur'anic verse that redeemed some animals as opposed to others by reference to the term *al-jawāriḥ al-mukallibīn*, which literally means trained predatory animal. The Ḥanafī jurist al-Jaṣṣāṣ (d. 980) concluded that 'trained predatory animal' refers to those animals that hunt on behalf of their owners. Such animals include, according to him, dogs, carnivorous animals and birds of prey.²⁹ Al-Zamakhsharī (d. 1144) understood this term to refer to animals that hunt or gather (*kawāsib*), including dogs, tigers and falcons.³⁰

Consequently, while the dog constitutes a spiritual danger, it is also an important companion that ensures the wellbeing of people. While the spiritual danger of dogs may have led the Prophet to order the killing of all dogs, the fact that dogs can positively contribute to other features of human existence could not be denied, neither in fact nor in law. Furthermore, to allow the presence of some dogs suggests a diminution in the emphasis on the eschatological principle. Importantly, however, even with that diminution, as long as the Y-value is greater than zero, diminution does not preclude adherence. As suggested earlier, adhering to eschatological principles is not an all-or-nothing, zero-sum game.

27 The translation for this verse was taken from Yusuf Ali's translation of the Qur'an. His translation is accessible in multiple editions and can be found online at: <http://www.usc.edu/schools/college/crcc/engagement/resources/texts/muslim/quran/005.qmt.html>.

28 Al-Qurṭubī, *al-Jāmi'*, iii: 44.

29 Al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, ii: 393. See also, al-Qurṭubī, *al-Jāmi'*, v-vi: 45.

30 Al-Zamakhsharī, *al-Kashshāf 'an Ḥaqā'iq al-Tanzīl wa 'Uyūn al-Aqāwīl fī Wujūh al-Ta'wīl* (Cairo: Dār al-Fikr, n.d.), i: 594. For Ibn Kathīr, it refers to trained dogs and falcons and any bird taught to hunt. It includes predatory dogs, cheetahs or panthers, falcons, and other animals like them. Ibn Kathīr, *Mukhtaṣar Tafṣīr Ibn Kathīr*, ed. Muḥammad 'Alī al-Sabūn, 7th edn (Beirut: Dār al-Qur'ān al-Karīm, 1981), i: 484.

Returning the Gaze

By introducing the Y-axis into our inquiry of Islamic law, we are able to recognise the way in which certain principles (theological and otherwise) contribute to the way in which we justify how we order our affairs in the world. Furthermore, the Y-axis reveals how, despite the abstractness of such principles, embedded within them are gradations that allow for flexibility and even diminution without precluding meaningful commitment. The quadrants model of analysis, as illuminated by an example from Islamic law, offers a framework by which we can return the gaze on contemporary debates about law, religion and the public sphere. Specifically, a quadrants-based analysis of a French citizenship case reveals how failure to attend to the graduated nature of a nation's core values along its own Y-axis creates an all-or-nothing dynamic that can unduly impinge on individual freedoms (religious and otherwise).

In 2008, France's Conseil d'Etat rejected a niqāb-wearing Muslim woman's application for citizenship. The fact that she was fluent in French did not matter, as the law permits the government to deny the grant of citizenship for failure to 'assimilate in a manner other than linguistically'.³¹ The Conseil d'Etat deemed her insufficiently assimilated into French culture because she 'adopted radical religious practices that are incompatible with the essential values of French society, and particularly with the principle of gender equality'.³²

In this case, the Government's commissioner provided various facts to justify rejecting Mrs Faisa Silmi's citizenship application. In particular, the government commissioner emphasised that the claimant:

- 'attended the prefecture several times for interviews, and each time she appeared wearing clothing in the style of women in the Arab Peninsula: a long dark or khaki one-piece dress down to her feet, a veil covering her hair, forehead and chin and, in combination with the veil, another piece of fabric covering the entire face except for her eyes which showed through a slit, which in this area is called the Niqab'.
- 'did not wear the veil when she lived in Morocco and indicated clearly that she only adopted this garment after her arrival in France at the request of her husband. She says that she wears it more out of habit than conviction'.
- 'leads a life that is almost reclusive and removed from French society. She does not have any visitors at her apartment; in the morning she does her housework and goes for a walk with her baby or children, and in the afternoon she goes to visit her father or father-in-law... [S]he is able to go shopping on her own, but admits that usually she goes to the supermarket with her husband'.

The commissioner uses the claimant's veiling habit, among other things, to characterise the quality and content of her values: 'She lives in complete submission to the men of her

31 For a statement of the case, the relevant legislation, and the conclusions of the government commissioner, see the decision of the Conseil d'Etat, Case 286798.

32 Angelique Chrisafis, 'France rejects Muslim woman over radical practice of Islam', *The Guardian*, 12 July 2008, p. 23 (quoting the Conseil d'Etat). See also Katrin Bennhold, 'A Muslim woman too orthodox for France; It bars citizenship over her strict garb,' *International Herald Tribune*, 19 July 2008, p. 4; Ronald P. Sokol, 'Why France can't see past the burqa', *The Christian Science Monitor*, 21 July 2008, p. 9.

family, which is demonstrated by the clothing that she wears, the organisation of her daily life and the statements that she made...showing that she finds this normal'. From these facts, the government commissioner concluded that the claimant had not adopted or otherwise acquiesced to the core values of the French Republic, in particular the core value of gender equality.

Interestingly, Mrs Silmi's veiling practice was offered by the government as evidence of her radical beliefs, and therefore as evidence of her failure to accept French core values. Importantly, according to the commissioner, her decision to wear the *niqāb* was a result of her husband's preference, and does not reflect Mrs Silmi's preferences. However, it was also clear that she wore the veil out of habit. In other words, there was no evidence offered to suggest that she wore it out of a particular ideological or theological conviction that pitted her beliefs against the core values of the French Republic. Nor was there evidence that she was forced to wear the veil.³³ Habit is all that the government alleged. From the mere habit of wearing the veil, the commissioner concluded that Mrs Silmi did not respect her own independence and equal standing in her marriage. Her failure to do so was represented as her failure to embrace French core values.

As another example, the commissioner noted that while Mrs Silmi could go shopping on her own, she usually went with her husband. This particular evidence can be understood in different ways. It may be that Mrs Silmi would rather shop with her husband because she enjoys her husband's company, and might otherwise find shopping alone less enjoyable. Maybe he helps carry any merchandise or groceries that she purchases. The government commissioner, on the other hand, understood this piece of evidence to suggest that Mrs Silmi is not an emancipated woman, has not embraced her independence, and therefore has not fully incorporated gender equality as a core value in her life.³⁴

After reviewing the submissions and evidence, as well as taking into account the European Convention of Human Rights and Fundamental Freedoms, the Conseil d'Etat upheld the government's decision to reject Mrs Silmi's application for citizenship. It agreed with the government that despite her French language abilities and her history as a resident in France, her religious values were contrary to the core values of the society and therefore were an obstacle to her application for citizenship. The Conseil held that Mrs Silmi adopted 'radical religious practices' (*une pratique radicale de sa religion*), which counter the 'essential values of French society' (*valeurs essentielles de la communauté française*), with special reference to gender equality. Importantly, the Conseil did not specify the offensive content of Mrs Silmi's radical religious practices, nor the offended essential values of French society, with the exception of gender equality abstractly construed.

33 This of course assumes that a finding of fact would show her husband to be of such a nature. Without such a finding, the state runs the risk of stereotyping the Muslim male as dangerous, thereby raising questions about who can and should 'save' the 'endangered' Muslim woman. For a critique of such assumptions, see Sherene Razack, *Casting Out: The Eviction of Muslims from Western Law and Politics* (Toronto: University of Toronto Press, 2008); Lila Abu-Lughod, 'Do Muslim Women Really Need Saving?' *American Anthropologist* 104.3 (2002), pp. 783-90.

34 In an interview, Mrs Silmi rejected the government commissioner's findings of fact, noting that she goes shopping on her own for instance. Bennhold, 'A Muslim woman too orthodox for France', p. 4.

The case of Mrs Silmi offers an important object upon which to turn our quadrants-model gaze. Neither the Conseil d'Etat nor the government commissioner defined or questioned the fundamental nature of French values, in particular gender equality. Nor did they question, let alone articulate specifically, the way in which those fundamental values should and must take shape in a case such as that of Mrs Silmi.

The decision rests on an abstract claim of fundamental values and a factual finding that Mrs Silmi did not live up to those values. Yet those abstract values are the very filters through which the government commissioner and the Conseil understood and characterised the 'facts' of Mrs Silmi's life, and decided that she violated core French values. She may have resided in France, have given birth to her children in France, paid taxes and abided by the laws of the state; nonetheless, all that mattered for the government commissioner and the Conseil was what she does not do. She does not challenge her husband's conservative traditions. She does not go shopping on her own. She does not socialise frequently or entertain guests at her home. From this absence or negative, the Conseil creates a positive marker of Mrs Silmi's identity—she adopts radical religious practices that disqualify her from full entry into and membership in the French polity.

The Conseil d'Etat's embrace of an unspecified set of core values was never subjected to critique or self-reflection; rather, they were simply assumed as true, right, and arguably an all-or-nothing set of principles. Thinking counterfactually, suppose that the factual representation of Mrs Silmi were correct. Further, suppose that the French core values at stake were plotted on a Y-axis. What would transpire on the Y-axis if Mrs Silmi were granted citizenship? Would granting her citizenship lead to a diminution on the Y-axis? Would that diminution be less than zero? If not, then are there reasons to think granting her citizenship would lead to negative social ramifications (i.e. a negative value on the X-axis)? What sorts of factual inquiries would be required to show that the diminution along the Y-axis or X-axis would be outside the realm of acceptability and therefore require that her application for citizenship be denied? For instance, did Mrs Silmi have a criminal record? Did she pay her taxes? Did she support her children's education in French culture and language? How often did she travel outside of France and for how long? Did she own property in France? Were the scope of her family and community ties such that she was committed to living her life in France? There is no discussion in the case to suggest that these facts mattered to the Conseil. Analysing the decision using the quadrants model, however, suggests that perhaps they should have mattered.

Conclusion

To draw upon Islamic law to return the gaze upon a French legal decision offers a particular example of how contending with the operation of theology on what might broadly be considered ethical decisions offers an answer to the question about the future of theological ethics. The quadrants-model, which brings focus to theology and its implications on ethics, also allows us to interrogate the principles and values that all too often only silent and implicitly inform contemporary legal decisions such as the French case addressed above. To turn the gaze of the quadrants model onto the French decision illustrates an important facet of contemporary legal and political life, namely that whether a legal tradition is secular or religious, it will have a Y-axis. Failure to acknowledge the Y-axis raises

the possibility that in the name of abstract values and principles, individual freedoms can be curtailed.

For example, the Prophet Muḥammad may have justified the execution of all dogs by depicting them as roving eschatological threats, but he could not do so without at the same time undermining the welfare and wellbeing of farmers and agriculturalists who relied on dogs for their livelihood. Creating an exception for certain dogs may have preserved some eschatological threat; but a commitment to eschatological concerns is not a zero-sum game. The 4th Lateran Council of 1215 may have offered a theology of Christ as logos and thereby offered Pope Benedict XVI a basis for giving ‘reason’ a universalist spirit across both the Hellenic and Christian traditions. But that did not preclude the Church in the thirteenth century from impeding the liberty of Muslims and Jews to dress as they wished or to participate in the public sphere, or preclude the current Pope from eliding Christianity and Europe in part by marginalising Islam in his Regensburg speech. Finally, the French Conseil d’Etat may certainly espouse a commitment to French core values, but by failing to interrogate how those values are gradated, it relied on them in an all-or-nothing fashion, and in the process denied Mrs Silmi a chance for full participation and inclusion in French society. Silence on such values can all too often have a hegemonic effect on minorities seeking space and accommodation for their religious identities and practices. The more a legal system remains silent about the content of its core values or theological principles—or, in other words, pays no heed to the Y-axis—legal decisions that concern how to be in the world run the risk of acting hegemonically in an all-or-nothing fashion upon the bodies of those that do not strictly adhere to the same core values.

Introducing the quadrants-model and its Y-axis is designed to expose this silence. Exposing this silence is particularly important today given the context of religious diversity that prevails across Europe and North America. Indeed, the context of religious diversity is one that cannot be ignored when considering what theological ethics is and can offer. Indeed, the conference from which this paper arose concerned the future of theological ethics. As this paper has tried to show, any answer about the future cannot ignore the very present and real implications of religious diversity and pluralism to religious traditions and the modern state. In the name of abstract values and principles, neither has been particularly good to those considered Other.