University of St. Thomas Law Journal

Volume 7 | Issue 3 Article 6

2010

Fana and Baqa Infinities of Islam: Approaches to Islamic Law and Behavior

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Recommended Citation

Khan, L. Ali (2010) "Fana and Baqa Infinities of Islam: Approaches to Islamic Law and Behavior," *University of St. Thomas Law Journal*: Vol. 7: Iss. 3, Article 6. Available at: http://ir.stthomas.edu/ustlj/vol7/iss3/6

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ARTICLE

FANĀ AND BAQĀ INFINITIES OF ISLAM: APPROACHES TO ISLAMIC LAW AND BEHAVIOR

L. ALI KHAN*

*All things will perish except His Face***

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* Professor of Law, Washburn University. The author is grateful to Professors Brad Borden, Bill Rich, and Alex Glashausser for their comments on earlier drafts.

** It is my view that the Qur'an cannot be translated; it can only be understood. Normally, after conducting my own research, I adopt the translation that in my view best captures the meaning of the verse. Unless otherwise specified, all translations of the Qur'an in this article are mine [hereinafter Qur'an]. Other translations include those by Abdullah Yusuf Ali, Marmaduke Pickthall, and Muhammad Asad; Qur'an 28:88.

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I. INTRODUCTION

Jalaluddin Rumi's poem narrating the conversation between the lover and the beloved captures the essence of *fanā* (transient) and *baqā* (eternal) infinities. The lover comes to see the beloved and knocks at the door. The beloved asks: "Who's there?" The lover replies: "It's me." The door is not opened. The lover goes away to perfect his longing for the beloved. Years later, the lover returns and knocks at the door. The beloved asks: "Who is it?" The lover replies: "You." The door is opened.[1] This mystical narrative captures a Sufi truth that ego cannot reach the eternal love of God.[2] The lover's self-annihilation (fanā) and complete submission to the beloved's will is the inevitable precondition for the lover to experience eternal (baqā) love. The poem also captures the submission principle, a cardinal belief of Islam, under which Muslims, as individuals and communities, forego ego and completely submit to the Will of God.

Ego and love cannot coexist, but ego and law can. Secular law emanating from human ego can establish order and justice. Secular law anchored in human ego, however, mounts barriers to the understanding of God's Law. Only when positive (man-made) law submits to the supremacy of the Word of God can human beings obtain the benefits of God's Law. This willingness to submit positive law to God's Law revealed in divine texts is the paradigmatic definition of Islamic law.[3] In submitting to God's Law, Muslims take the "pledge of faith" seriously, a pledge that according to the Qur'an all human beings take at the time of their birth. "When your Lord brings forth from the Children of Adam—from their loins—their progeny, and calls upon them to take a pledge on their beings (saying): 'Am I not

1. Mewlana Jalaluddin Rumi, "Two Friends" (Coleman Barks trans.), OLD POETRY, http://oldpoetry.com/opoem/38183-Mewlana-Jalaluddin-Rumi-Two-Friends (last visited Oct. 24, 2010).

2. HIDAYAT INAYAT KHAN, SUFI TEACHINGS: LECTURES FROM LAKE O'HARA 29 (1994).

3. This article is part of a series of Islamic law review articles I have published over the years. I group them all in this footnote for subsequent reference in this article. Ali Khan, *Islam as Intellectual Property: "My Lord! Increase Me in Knowledge"*, 31 CUM. L. REV. 631 (2001) [hereinafter *Islam as Intellectual Property*]; Ali Khan, *The Reopening of the Islamic Code: The Second Era of Ijtihad*, 1 U. ST. THOMAS L.J. 341 (2003–04) [hereinafter *Second Era of Ijtihad*]; Liaquat Ali Khan, *Free Markets of Islamic Jurisprudence*, 2006 MICH. ST. L. REV. 1487 (2006) [hereinafter *Free Markets*]; Liaquat Ali Khan, *An Islamic View of the Battlefield*, 7 BARRY L. REV. 21 (2006) [hereinafter *Islamic Battlefield*]; Liaquat Ali Khan, *Advocacy Under Islam and Common Law*, 45 SAN DIEGO L. REV. 547 (2008) [hereinafter *Advocacy Under Islam*]; Liaquat Ali Khan, *The Immutability of Divine Texts*, 2008 BYU L. REV. 807 (2008) [hereinafter *Divine Texts*]; Liaquat Ali Khan, *Jurodynamics of Islamic Law*, 61 RUTGERS L. REV. 231 (2009) [hereinafter *Jurodynamics*]; Liaquat Ali Khan, *Protection of Languages and Self-Expressions Under Islamic Law*, 19 J. TRANSNAT'L L. & POL'Y 61 (2009).

your Lord?' They say: 'Yes! We do testify!' (This is how it is), lest you should say on the Day of Judgment: 'Of this we were unaware.'"[4] This pledge of faith is the foundation of Islamic law. It joins the fanā infinity of this world with the baqā infinity of the next.

In popular vocabulary, "infinity" describes something everlasting or something that cannot be fully comprehended. God, space, time, and numbers have been associated with infinity. In this article, I use the word infinity in two distinct senses. First, I use it to describe the seemingly unending evolution, and eventual annihilation, of the physical universe whose beginning and end are unknown and uncertain; this is fanā infinity. Additionally, I use infinity to describe permanence, timelessness, afterlife, and God's Law; this is baqā infinity. The two infinities are related and yet they are mutually exclusive. Under Islam, what is permanent is not subject to evolution and annihilation, and vice versa. Thus, fanā and baqā infinities describe two distinct dimensions of Islamic law, which are critical for understanding the sources of Islamic law and their socio-psychological influence on Muslim attitudes and conduct.

In Islam, fanā and baqā infinities are not merely theoretical constructs for the consumption of theological elites. They also carry immense practical meaning for ordinary believers in their worldly affairs. These infinities bear upon core beliefs of the Islamic faith. Based on these conceptions of infinity, for example, Muslims believe that positive law (human law) is ephemeral but God's Law is eternal. They also believe that the physical universe is transient but afterlife is everlasting. Believing Muslims conduct their lives seeking rewards both in the physical world and in the afterlife. For them, any notion of law that ignores, sets aside, or opposes the relevance of the afterlife and focuses exclusively on rewards and punishments rendered in the worldly life is inherently defective, for it fails to understand the normative hierarchy of Islamic law. Part II of this article further explains general attributes of the two infinities under Islam.

In the analytical-normative realm of law, the study of baqā and fanā infinities illuminates the permanent and evolutionary sources of Islamic law—an important distinction developed in Parts III and IV of this article. According to the Islamic grundnorm,[5] the Basic Code,[6] which consists of the Qur'an and the Prophet's Sunnah, is the baqā source of law. The Basic Code cannot be altered. It is immune from any form of modification, suspension, or deletion. The Basic Code is timeless, and no passage of time

4. Qur'an 7:172.

5. *See generally* Ali Khan, *A Legal Theory of Revolutions*, 5 B.U. INT'L L.J. 1, 13–15 (1987) [hereinafter *Legal Theory*] (analyzing grundnorm as the principle of ultimate legitimacy of a legal system). Islamic grundnorm is the Muslims' core belief that the Basic Code cannot be altered. The Islamic grundnorm may also be understood as the internal viewpoint of Muslims.

6. The Basic Code is synonymous with the Shariah. Since the word Shariah, however, has been hopelessly confused, mixing revealed with human sources, the term Basic Code is used to include exclusively the two basic sources of Islamic law: the Qur'an and the Sunnah.

can invalidate its norms. Furthermore, the Basic Code is spatially infinite in that no geographical coordinates of human communities can invalidate its norms. Nothing in the physical universe or systems of knowledge can nullify the eternality of the Basic Code. In sum, the Basic Code, containing God's Law, is permanent.

Islamic law is not synonymous with the Basic Code. Not all Islamic law is permanent. Nor is all Islamic law immune from evolution and annihilation. In addition to the Basic Code, Islamic law includes Islamic positive law, such as *fiqh* (jurisprudence), *urf* (custom), *siyar* (international law), *qanun*[7] (legislation and regulations), and case law. These bodies of positive law are the fanā sources of Islamic law. They evolve and change. Islamic positive law, even when derived from, or rendered compatible with, the Basic Code is the fanā source of law. As an aggregation of fanā sources, Islamic positive law is open to modifications and deletions; it may vary from period to period, nation to nation, and culture to culture. Islamic positive law must never be confused with the Basic Code, the baqā (permanent) source of Islamic law. No fanā source of law is divine or equal in measure or weight to the Basic Code.

To further explain the baqā and fanā sources of Islamic law, Part V presents the submission principle, the first and foremost principle of Islamic law. This principle requires that the evolution of Islamic positive law be in harmony with the Islamic Basic Code. This discussion clarifies that positive law, in order to be Islamic, must submit to the Basic Code. No rule of positive law can amend or override it. The submission principle reaffirms a cardinal article of faith that God's Law is superior to human laws and that no parliamentary majority, council of jurists, high court, royal family, dictator, or a non-Muslim occupier of Muslim lands, is empowered to modify or annul the laws of divine texts.[8] In the pyramid of Islamic law, all positive law seeks submission to the Basic Code. In the mystical words of Bulleh Shah (1680–1758), a Punjabi Sufi poet, *gull ik nuktay wich mukdi-ay* (all arguments are resolved through the same one point).[9]

Part VI of this article discusses the impact of baqā and fanā infinities on Muslim behavior and law compliance. This discussion grounds baqā and fanā infinities in practical understandings of Islamic law. Again, the contrast with secular law provides the unique shared consciousness with Islamic law. Secular law embraces the fanā temporality in which violations and breaches of law are tried and remedied in this world. Individuals comply with secular law both to avoid penalties and to aggregate benefits in the

7. In Arabic, the word *qanun*, in its generic denotation, means any law. Here, however, I use the word qanun to describe legislation and regulations.

8. OLIVER ROY, SECULARISM CONFRONTS ISLAM 37–38 (Columbia Univ. Press 2007) (comparing the principle of superiority of God's Law in Islam to a similar concept in Christianity).

9. Translated by the author. *See also* AYESHA JALAL, SELF AND SOVEREIGNTY: INDIVIDUAL AND COMMUNITY IN SOUTH ASIAN ISLAM SINCE 1850, at 21 (2000).

worldly life. By contrast, Muslims rely on both baqā and fanā temporalities; in obeying the laws, they seek rewards and punishments in this life and the afterlife. Muslims are accountable for their deeds and misdeeds not only in this world but also in the hereafter. This complex notion of law, which combines rewards and punishments of both lives, earthly and afterlife, defines Muslim attitudes toward the Basic Code and Islamic positive law.

II. Fanā and Baqā Attributes

The Qur'an uses fanā and baqā paradigms to state that everything in the physical universe will perish except the face of God.[10] The fanā infinity intimates both the evolution and the annihilation of the physical universe (*alssamawati waalardi wama baynahuma*).[11] The physical universe is a phenomenal cosmos that is changing, expanding, and contracting in infinite ways that are both known and unknown to human beings. The Qur'an captures the ceaseless evolution of the physical universe in the words *kun fayakoon*, that is, "be and it is."[12] In the words of Iqbal, an early twentieth-century Muslim philosopher, kun fayakoon are not the words that God spoke just once at the time of creation.[13] These words are the divine music of an ever-evolving, infinite physical universe. Montgomery Watt and Richard Bell, in commenting on numerous verses of the Qur'an, also note "God's continuing activity in the present."[14] Kun fayakoon thus attests to constant unfolding of the physical universe.[15] In recorded history, human beings have been continuously discovering new systems of knowledge that organize and move the physical universe. The unceasing evolution of the infinite physical universe, however, is beyond the full comprehension of human intellect.

Centuries before Islam presented the notions of fanā and baqā infinities, Greek, Hindu, and Zoroastrian systems furnished insightful introductions to these infinities. The Greek literature, particularly Aristotle's writings, which cultivated early Islamic philosophy and theology, clarified theoretical and practical understandings of fanā infinities, including temporal, spatial, and mathematical infinities. Aristotle came close to understanding the baqā infinity when he distinguished between actual infinity and

10. Qur'an 55:26–27.

11. Qur'an 5:19. These words mean "the heavens and the earth and whatever is between them."

12. Qur'an 2:117.

13. Muhammed Iqbal, *yeh kainaat abhi na tamam hai shaiyid / kay aa rahi hai duma dum sada ay kun fayakoon* (This universe is still incomplete for one can hear the constant music of be and it is.) (translated by the author).

14. W. Montgomery Watt, Bell's Introduction to the Qur'an 148–49 (Edinburgh Univ. Press 1970).

15. Sadequain, the twentieth-century calligrapher, captured this idea in his famous painting called *Kun Fayakun*. *See* Annemarie Schimmel, *Thoughts About Sadequain's Calligraphy*, Sadequain Foundation, http://www.sadequainfoundation.com/Calligraphies/calligraphies.htm (last visited Oct. 21, 2010).

potential infinity to argue that actual infinity can be recognized in concept but not in reality.[16] Greeks found the practical application of baqā infinity in the repetition of tasks. The Greek gods punished Sisyphus, a deceitful king who believed he was smarter than Zeus, by condemning him to roll a huge boulder up a steep hill only to watch helplessly while the boulder, just before reaching the top of the hill, rolled back down, forcing Sisyphus to start this endless drudgery again and again.[17] This punishment was derived from a rudimentary concept of baqā infinity.

While the Greeks wrestled with baqā infinity, the Persians perfected the notion of fanā infinity. Persian Zoroastrianism adopted a fanā definition of the physical universe proclaiming that "God made the world in one day; he will one day destroy it."[18] Hindus captured the distinction between baqā and fanā infinities by constructing the concept of endless reincarnation, a concept similar to Sisyphus's punishment. Hinduism, however, offered non-being, achievable through good deeds, as the ultimate baqā infinity that defeats the cyclical infinity of life.[19]

Under Islam, the fanā infinity captures both the evolution and annihilation of the physical universe. God's Law predicts the folding up of the physical universe.[20] According to the Qur'an, the mountains, which represent the metaphorical durability of the material world, will be uprooted and scattered like dust.[21] Even during the life-tenure of the physical universe, evolution and annihilation are its constitutive elements. Witness the evolution and annihilation of animals, birds, plants, and other organisms that inhabit the physical universe. Each life form evolves and replicates itself for an unlimited period of time. Potentially, every life form is infinite with no sunset provision on its longevity. Yet nature discontinues life forms.[22]

While natural forces are primarily responsible for the extinction of life species, human beings may also unintentionally, unknowingly, or deliberately participate in destroying specific species of animals, birds, and

16. ARISTOTLE, PHYSICS, bk. 3, pts. 6–7 (R.P. Hardie & R.K. Gaye trans., 2006). For example, a number series can be potentially infinite. Its actual infinity, however, cannot be obtained. For a good and brief explanation of this distinction, see ROBIN LE POIDEVIN, TRAVELS IN FOUR DIMENSIONS 96 (2003). *See also* THEOKRITOS KOUREMENOS, ARISTOTLE ON MATHEMATICAL INFINITY 10–11 (1995).

17. *See* ELLIOT M. SIMON, THE MYTH OF SISYPHUS 13–14 (2007). *See also* ALBERT CAMUS, THE MYTH OF SISYPHUS (Justin O'Brien trans., Vintage Books 1955) (highlighting the meaning of boredom, absurdity, and meaninglessness of life).

18. THOMAS MCEVILLEY, THE SHAPE OF ANCIENT THOUGHT 122 (2002).

19. Surya Prakash Sinha, *The Axiology of the International Bill of Rights*, 1 PACE Y.B. INT'L L. 21, 42–43 (1989).

20. Qur'an 39:67.

21. Qur'an 20:105.

22. CHARLES DARWIN, ORIGIN OF SPECIES 99–101 (1902) (arguing that rarity is a precursor to extinction).

plants.[23] The extinction of dinosaurs, an animal species that evolved over millions of years, testifies to the natural fanā of the life species in the physical universe.[24] Likewise, human beings constitute an infinite life species.[25] There is no assurance, however, that the human life will continue to exist as it has for millions of years. The Basic Code predicts the worldly fanā of the human species.[26] What appears to be infinite in the physical universe is indeed finite. The idea that the physical universe will ultimately be destroyed is a core Islamic belief and a foundational principle of Islamic law.

The baqā (eternal) infinity is the complementary Islamic belief that further highlights the fanā infinity. God's Law revealed in divine texts is the manifestation of baqā infinity. The physical universe and the systems of knowledge, which animate cosmic phenomena, follow God's Law. Nothing in the physical universe or its systems of knowledge is arbitrary, chaotic, or out of God's control.[27] According to Ibn Arabi, God's Law is the spirit of the physical universe.[28] God's Law preceded the creation of the physical universe and it will survive the annihilation of the physical universe. Likewise, God's Law that animates the human body does not die with the physical death of the human body. In this sense, fanā and baqā infinities coexist in the physical universe.

Everything in the physical universe and beyond submits to God's Law as preserved in *umm al-kitab*, the Mother Book.[29] God's Law is revealed to human beings through divine texts, including the Upanishads, the Dhammapada, the Avesta, the Torah, the Gospels, and the Qur'an. The Qur'an affirms God's Law revealed in prior divine texts, clarifying confusions and misunderstandings. According to Islamic belief, the Qur'an has perfected God's Law for human beings. This perfected divine law cannot be modified, altered, or set aside. God's Law revealed in divine texts is immutable.[30] Secular and atheistic ideologies may challenge the epistemology of baqā sources. For example, ideologies like communism deny the existence of God and God's Law. These types of ideologies may also disregard the related beliefs such as afterlife as irrational and unverifiable concoctions.

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23. Bradley C. Karkkainen, *Biodiversity and Land*, 83 CORNELL L. REV. 1, 7 (describing that biodiversity loss means the degradation, fragmentation, and destruction of ecosystems and habitats).

24. DAVID E. FASTOVSKY & DAVID B. WEISHAMPEL, THE EVOLUTION AND EXTINCTION OF DINOSAURS (2d ed. 2005) (exploring the relationship between biosphere and life forms through the tale of dinosaurs).

25. C.F. HUDSON & S. COBB, HUMAN DESTINY (1860).

26. Qur'an 43:4. Within the human species, numerous subspecies, such as families, tribes, and nations, meet fanā.

27. *Islamic Battlefield*, *supra* note 3, at 25, 27.

28. Ibn Arabi, *The Imprint of the Bezels of the Wisdom* 1 J. IBN ARABI SOC. 1, 5–7 (William C. Chittick trans., 1982), *available at* http://www.ibnarabisociety.org/articlespdf/naqshalfusus.pdf. Ibn Arabi (1165–1240), born in Spain, was a Muslim philosopher.

29. Qur'an 43:4.

30. *Divine Texts*, *supra* note 3, at 810.

Persons who reject God's Law, however, may still recognize the infinities of the physical universe.[31]

In addition to God's Law, afterlife is part of baqā infinity. On the day of reckoning, human beings will be resurrected and they will face God's justice and mercy in accordance with God's Law. After justice has been done to each soul to the minutest level, a new life will begin. This new life, located in post-resurrection spatio-temporality (hell and paradise), is eternal—"a place beyond which there is no beyond."[32] No divine text intimates that afterlife will also end. In fact, there are strong indications in the Qur'an that post-resurrection life will last forever.[33]

As noted in the introduction, baqā and fanā infinities inform the practical enterprise and dynamics of Islamic law. They determine the actual behavior of Muslims toward families, communities, and non-Muslims. These infinities illuminate the two distinct sources of Islamic law, one divine and permanent, and the other human and subject to change, though the two sources are related. The following discussion explores these sources of Islamic law and their internal relationship.

In the realm of law, two factors distinguish fanā infinity from baqā infinity. First, what belongs to fanā infinity experiences an endless process of progressive and regressive change. Cultures and communities that human beings construct, as well as the natural universe, which God created, are both dynamic and evolutionary—a phenomenon frequently described in popular maxims such as "everything changes" or "nothing stays the same." In contrast to fanā infinity, baqā infinity remains the same; it is not evolutionary. The chief characteristic of baqā infinity is its immunity from change.[34] What is evolutionary cannot be permanent and what is permanent cannot change.[35] In the physical universe, some objects and systems are more durable than others, but all are subject to regressive deterioration. Likewise, positive laws are subject to transformation and have no permanence. Some positive laws are more durable than others, but no positive law is permanent in form, shape, or content. Fanā infinity is the normal state of positive law.

Second, what belongs to fanā infinity is subject to dissolution and eventual annihilation. Numerous life forms, including birds, animals, and

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31. *See, e.g.*, GEORGE H. SMITH, ATHEISM: THE CASE AGAINST GOD (1974); MICHAEL MARTIN, ATHEISM: A PHILOSOPHICAL JUSTIFICATION (1990); RICHARD HAWKINS, THE GOD DELUSION (2006).

32. CARL W. ERNST, WORDS OF ECSTASY IN SUFISM 29 (1985) (quoting the words of Abu Bakr al-Shibli).

33. Qur'an 4:122; 4:169.

34. Infinity as a process of change is not an attribute of every form of infinity. Spatial infinity, for example, shows little change or mobility. Time, however, is associated with change. Life forms are also infinite and subject to change, including annihilation.

35. No such debate, however, is necessary to illuminate the difference between permanence and infinity. Consider the tautology, for example, that evolution is permanent.

plants, which replicate themselves for centuries, meet extinction. The life of a human individual is finite and transient, though the constitutive material of the human body is indestructible.[36] By contrast, the human species as a life form is ceaselessly reproducing itself. The human species may also be evolving intellectually and spiritually. Despite its evolution, the human species possesses certain durable definitional characteristics that distinguish it from other species. According to natural probability, however, the human species cannot last forever. According to Islamic belief, the human species will cease to exist and will be resurrected on the Day of Judgment.[37] On both counts, the human species is not permanent. It is evolutionary as long as it survives. Positive law is also subject to dissolution. Statutes, customs, and constitutions—all bodies of positive law—are impermanent and face extinction.

According to Islam, transience is the *sine qua non* of all creation, including time, space, and life forms. The fanā infinity of time, space, and life forms is fragile because all creation is subject to annihilation. All human affairs are subject to the logic of change and obliteration. Permanence has been denied to human acts, human ideologies, human constructs, and positive law. Nothing that human beings do is eternal. Only God and God's Word are permanent. Relying on distinctions between baqā and fanā infinities, the following sections discuss the transience of positive law and the permanence of the Islamic Basic Code. The discussion highlights the conceptual and functional differences between positive law and the Basic Code.

III. Baqā Sources of Law

This part examines the baqā sources of Islamic law, namely, God's Sovereignty and the Basic Code. These supreme sources of Islamic law are permanent and interminable; their relevance or validity does not depend on any conditionality of time, space, or any other attribute of the physical universe. The ruling elites and governments may refuse to recognize baqā sources of law or separate them from the legal system, as secular systems do, but baqā sources continue to determine the behavior of believers. For believers of numerous faiths, including great scientists such as Isaac Newton, God is both permanent and infinite.[38] Concepts such as afterlife accountability, rewards and punishments in post-resurrection heaven and hell, and numerous other Islamic beliefs are the attributes of baqā infinity;

36. Note, however, that the appearance of transience might be deceptive because the constitutive matter of the human body is destructible in form but indestructible in matter. And since the constitutive matter of the human body can take an infinite number of forms, the human body in some sense is not only permanent but also infinite.

37. The extinction of dinosaurs and numerous other species demonstrates that life forms can be suddenly destroyed. It is unclear whether the post-resurrection human species will be evolutionary and infinite.

38. Isaac Newton, The Mathematical Principles of Natural Philosophy 312 (1803).

these attributes are firmly tied to the eternity of God's Sovereignty and the Basic Code. According to the Qur'an: "We have tied every man's history (what he did) to his own neck: On the Day of Judgment We shall bring forth a (meticulous) record, which he will see spread open."[39]

A. *God's Sovereignty*

God's Sovereignty is not a theological cliché but an iconoclastic concept of Islamic law that limits the excesses of positive law. Napoleon's egotistical utterance, *l'etat, c'est moi* (I am the state), cannot be honored under Islamic law. God is the sole proprietor of the physical universe. He has no partners. Kings, prophets, sultans, presidents, and tribal chiefs, any human being charged with executive, legislative, or judicial authority over empires, nations, and communities must submit to God's Sovereignty. According to the Qur'an, the law of the Pharaoh is not "rightly guided,"[40] because the Pharaoh himself claims sovereignty and willfully refuses to submit to God's Sovereignty. Pharaoh's law, established in opposition to God's Sovereignty, is doomed to fail. Islamic law submits to God's Sovereignty and rejects the competing notions of sovereignty under which the supreme authority to give laws flows from the people, the parliament, or some entity such as the royal family, territorial state, or empire. The Pakistan Constitution declares that "sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust."[41] This declaration is consistent with the founding principle of Islamic law *lahu al-hukumu* (His is the Law).[42]

Human authority over human beings is a sacred trust.[43] It is not *sui generis*. Human authority over the physical universe is also part of the sacred trust. A human being is not empowered to impose human will on objects and life forms that co-occupy the physical universe. God, the sole Creator and the Master-Artist, created the physical universe and adorned it with fanā infinities of time, space, celestial objects, life forms, and systems of knowledge. God created the physical universe out of nothingness. Nothing existed before God and nothing could come into being without God's Will. God is the sole Sustainer of the physical universe. This recognition of God's Sovereignty over the physical universe teaches Muslims to respect the forces of nature. Islamic law, therefore, cannot be anthropomorphic; it cannot focus only on human welfare.

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39. Qur'an 17:13.
40. Qur'an 11:97.
41. PAKISTAN CONST. pmbl.
42. Qur'an 28:88.
43. Here the word "man" is used to include both men and women. The Qur'an uses the word "*insan*," which is gender neutral. *See, e.g.*, Qur'an 4:28.

Islamic law rejects the anthropomorphic conception of God, for all anthropomorphic concepts of God are egoistic. Human beings are not created in the image of God, for no resemblance can describe God.[44] God is the God of all creatures and objects in the physical universe and beyond. The belief that human beings are superior to other creatures is not a part of Islamic faith. It is no surprise that many chapters of the Qur'an are named to demonstrate the dignity of animals, including insects, such as ants and spiders.[45] God's Infinity is the ultimate baqā infinity. God is not part of any fanā infinity. God is the creator of infinities. Omnipresence of God has been confused with the unboundedness of space and the eternality of time.[46] Reversing these confusions, scientists and scholars have disentangled God from the infinities of space and time, clarifying that "God is *causally prior* to space and time, and is . . . *unconditioned* by them."[47] In the words of the Qur'an, "there is nothing that resembles God."[48]

Islamic law repudiates the notion that God is predisposed to favoritism. God is the God of humanity, but God is not parochial or territorial. No one people, no one nation, and no one generation of humanity is God's eternal favorite, even though at various times God blesses one people or one nation or one generation with His mercy and benevolence. When good nations rise, God blesses them. When nations turn away from God's Law, they lose God's favor. No Muslim nation can take God's favors for granted, neither in times of war nor in times of peace. Muslims must constantly strive for virtue to be the best nation under God's Law. This conception of God's Sovereignty is critical for understanding Islamic law. Muslims do not believe that God will always favor them in times of conflicts or adversity, regardless of their deeds. Each Muslim individual and nation must constantly strive to achieve excellence through piety, moral purity, and good deeds.

In affirming the pursuit of excellence, Islamic law values constancy, not perpetual change. This core attribute of Islamic law also ties to God's Sovereignty. While evolution and annihilation constitute the logic of God's physical universe, God Himself does not change. God, the ultimate Sovereign, is eternal. "And the Face of thy Lord full of majesty and honor will last forever."[49] *Al-Baqi* is one of God's "beautiful names."[50] God is not in the process of becoming, though God may reveal Himself to human beings through evolutionary stages. The belief that God is al-Baqi is central to Islamic belief. Various verses of the Qur'an underscore this core belief.

44. Qur'an 112:5. Here the Qur'an differs from the Bible. *Genesis* 1:26–27.

45. Qur'an 27, 29.

46. EMANUEL SWEDENBORG, A COMPENDIUM OF THEOLOGICAL WRITINGS OF EMANUEL SWEDENBORG 10–11 (1888).

47. PAUL W. FRANKS, ALL OR NOTHING 130 (2005).

48. Qur'an 112:5.

49. Qur'an 55:27.

50. Qur'an 20:8.

"God is eternal, the uncaused Cause of all being."[51] He does not sleep, nor does he need any rest.[52] God knows no fatigue.[53] God is ever-living and self-subsisting.[54] What God has created is subject to evolution and destruction, but God Himself is eternal.[55] God has no beginning and no end. God is not confined to space or time.[56] God is in complete control of His creatures, including Satan.[57] God is subject to no accidental or deliberate destruction. God cannot die. This assurance of God's eternal authority over the physical universe allows Islamic law to remain firm while the human condition suffers disorientation or confusion.

Islamic law, though constant, is not dogmatic. It is constantly pursuing and embracing knowledge and truth. This constant adjustment to knowledge and truth is part of submission to God's Sovereignty. God's Sovereignty refers to the unlimited presence and power of God that no human system can conclusively comprehend. But this sense of God's Sovereignty, His unboundedness, is more an attribute of the limited knowledge that human beings command. As humans learn more about the physical universe and new systems of knowledge and truths are discovered through effort and experience, Islamic law stands ready to embrace these new systems. In this sense, Islamic law is progressive and scientific. No contradiction exists between truth and Islam, between knowledge and Islamic law. Contradictions are human misunderstandings, failures of human comprehension and imagination. No contradiction exists in God's Law.

B. Basic Code

The Basic Code, consisting of the Qur'an and the Prophet's Sunnah, contains God's Law. The baqā of the Basic Code carries a distinct meaning. The Basic Code is eternal; it is immune to change or annihilation. In conventional understanding, an object, a phenomenon, or a text is permanent if it experiences no change or if it survives change without losing its core principles. But baqā is more than permanence. What is baqā undergoes no change in the physical universe and it remains after annihilation of the physical universe. The Basic Code is not part of the physical universe even though it applies to the physical universe. No change in human condition,

51. Qur'an 112:2–3.

52. Qur'an 2:255. This verse, called the Verse of the Throne, is, according to the Prophet, the most important verse of the Qur'an and its value equals one-fourth of the Qur'an.

53. *Id.*

54. *Id.*

55. Qur'an, *passim*. This paradigm of God's eternality and His creatures' transience informs the core of Judaism, Christianity, and Islam. Sanaullah Mir, *Ibn Rushd's Hermeneutical Strategy*, 25 AL-HIKMA 41, 55 (2005), *available at* http://www.pu.edu.pk/phill/alhikmat/images/Al-PDF/MIR%20Ibn%20Rushd%20Strategy.pdf.

56. *Id.*

57. *Islamic Battlefield*, *supra* note 3, at 29; Qur'an 2:255.

no conception of modernity, and no new truth can invalidate the Basic Code.

Here one clarification is critical. The baqā of the Basic Code represents the internal viewpoint of Muslims,[58] derived from the first principles of Islamic law.[59] The baqā of the Basic Code is an Islamic belief; non-Muslims are not bound by it. Even believers in God may have varying conceptions of God's Law. Some may believe in one revealed book, but not in others. Non-believers may not recognize God's Law, much less that it is eternal. They may argue that divine texts are human concoctions attributed to a non-existent God. According to the Basic Code, however, not all human beings will accept God's Law. Muslims cannot impose the Basic Code on non-believers. Non-Muslims living in Muslim communities may continue to practice their religion or become Muslims. No one can be compelled to adopt Islam. The Basic Code concedes no power to any Muslim, including Prophet Muhammad, to change anyone's faith or faithlessness.[60]

As noted above, the Basic Code has two distinct divine texts, the Qur'an and the Prophet's Sunnah. The Qur'an is the Word of God, revealed in portions to Prophet Muhammad in the seventh century over a period of twenty-two years, that is, from 610–632.[61] Each portion of the Qur'an offered solutions to concrete spatio-temporal problems that the Prophet or his followers faced in the physical universe.[62] The Prophet's Sunnah, though divine, is not the Word of God. Yet it is an integral part of the Basic Code. The Sunnah emanated from applications of the Qur'an to concrete problems. Since the Sunnah is closely tied to the Qur'an, it reflects God's Law. Though the Basic Code was revealed in response to the seventh-century conditions, beliefs, and practices of Arab pagans, Jews, and Christians, God's Law contained in the Basic Code is neither territorial nor temporal. The Basic Code was rendered in the seventh century but it is not situated in that spatio-temporality.

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58. *Islam as Intellectual Property*, *supra* note 3, at 632–33.

59. Jurisprudence struggles to find the ultimate basis for legitimacy of any legal system. For further discussion of this point in the context of the legality or revolution, see *Legal Theory*, *supra* note 5, at 18–21. *See also* Philip Soper, *Making Sense of Modern Jurisprudence: The Paradox of Positivism and the Challenge for Natural Law*, 22 CREIGHTON L. REV. 67, 77 (1988–89).

60. Qur'an 2:256.

61. This historical rooting, however, neither affirms nor refutes the permanence of the Basic Code. The historical rooting places the origin of the Qur'an in finite time and space. Despite its origin in seventh-century Arabia, the Qur'an is confined to no particular time and place. Even scientific laws, such as the law of gravity, may be discovered in specific time and place. Yet its permanence cannot be confined to time and place where the law was discovered. According to Muslim belief, the Qur'an predated its revelation, and its permanence has little to do with its revelation to the Prophet of Arabia in the seventh century.

62. This is called *asbab nazool* or the cause of the revelation.

1. Qur'an

The Qur'an, the supreme source of Islamic law, provides certainty and stability to the notion of law. The Qur'an is the baqā source of Islamic law because its revealed text cannot change with spatio-temporality. Its revealed words cannot be moved or reordered within the text to generate new meanings. Additionally, the Qur'an will not change despite successive interpretations attributed to its text.[63] The Qur'an is a finite text. It is quantifiable because its words can be counted and determined. The Qur'an has a textual beginning and a textual end. Its text is defined. The first verse of the Qur'an was revealed in 610. The last verses of the Qur'an were revealed just before the Prophet died. The integrity of the text, preserved in writing and in memory for over fourteen centuries, demonstrates its permanence in the physical universe. The meaning of the Qur'an may evolve in the physical universe but the Qur'an itself is immune from alteration.[64]

Arguably, the Qur'an can be changed, modified, or repealed in the physical universe. For example, nothing prevents a person or a community from changing the text of the Qur'an or publishing a corrupted version of its chapters or verses. The Qur'an may also be shortened by removing certain verses or entire chapters. Likewise, a person may add new chapters or verses to the text of the Qur'an. Although such changes are physically possible, Muslims would not accept any such alterations. That the Qur'an cannot be altered is an inter-generational compact among Muslims, a compact that so far has withstood the test of time. In the unlikely event under which Muslims might agree to alter the Qur'an, the Qur'an's original text would still be unchanged. If by chance, the Qur'an is completely lost, the historical memory that such a text existed for numerous centuries would testify to its baqā. Even if historical memory is obliterated, the Qur'an is still eternal. The Qur'an's baqā, which God Himself has promised to preserve, is a fact that Muslims accept as an article of faith.[65]

The Qur'an, though an independent book of revelations, is an integral part of a series of divine texts that God has been revealing to human beings from time immemorial. The Qur'an itself mentions God's revelations to prophets preceding Prophet Muhammad, specifically naming "Abraham, Isma'il, Isaac, Jacob and the Tribes, Jesus, Job, Jonah, Aaron, Solomon, and David."[66] In addition to mentioning prophets who received God's Law, the Qur'an affirms the books that contain these messages, naming the Torah, the Injeel (New Testament), and the Zaboor (Psalms).[67] For a complete understanding, the Qur'an must be read along with the Torah, the New Testa-

63. Interpretations that aim at changing the Qur'an's core message will be unacceptable to Muslims of all generations.

64. *Islam as Intellectual Property*, *supra* note 3, at 643–47.

65. Qur'an 85:21–22.

66. Qur'an 4:163.

67. Qur'an 17:55.

ment, and other divine texts. Although divine texts have been revealed to different prophets in different languages at different times, all originate from the same source, One God. The Mother Book, the original source, sublime and full of wisdom, from which all divine texts are revealed, is permanently secured in God's presence.[68]

Although the Qur'an's text as revealed in Arabic is immune from alteration, its understandings may change from time to time. The Qur'an is timeless and universal, so it appeals to Muslims of successive periods, diverse cultures, civilizations, levels of economic and social development, states of knowledge, and stages of spirituality. Each generation of Muslims understands the Qur'an in ways that another generation may not. Arabic-speaking linguists may enjoy the beauties of the Qur'an not accessible to others. Jurists and scholars may understand the legal wisdom of the Qur'an in ways not open to lay Muslims. Communities emerging from superstitions may take centuries to appreciate the truth that the Qur'an teaches. Scientific communities may understand the Qur'an in ways not apparent to communities before them. The Qur'an generates plural, dynamic, and diverse interpretations. As a divine text, however, it provides guidance for all the peoples of the world. Thus, no nation, linguistic group, religious denomination, or clergy has exclusive ties with the Qur'an. Anyone may learn the Qur'an but no one may claim a monopoly over its understanding.

2. *Prophet's Sunnah*

While the Qur'an is eternal, the question arises whether the Prophet's Sunnah, the second part of the Basic Code, is also a baqā source of law. The Prophet's Sunnah, composed of Prophet Mohammed's traditions (sayings, deeds, decisions, and silence over distinct matters) is essentially the "case law" derived from, and compatible with, the divine text of the Qur'an.[69] The Prophet's Sunnah supplements the Qur'an, just as case law supplements a legal text. The Prophet was the first and the most reliable interpreter and enforcer of the Qur'an. Since the Qur'an was revealed to him, the Prophet understood both the text and spirit of the Qur'an. Al-Ghazali correctly observes that the Prophet's personal integrity is the foundation of Islam since no one else but the Prophet knew the difference between the Qur'an and the Prophet's personal views.[70] The Prophet was the exclusive source of both transmissions and there was no objective standard for anyone to separate the Word of God (*al-kitab*) from the Prophet's wisdom (*al-hikma*). Founded on the Prophet's personal integrity, the Prophet's Sunnah

68. Qur'an 43:4. The Mother Book means the ultimate source of all revelations given to various prophets over the centuries.

69. *Islam as Intellectual Property*, *supra* note 3, at 643.

70. ABU HAMID AL-GHAZALI, AL MUSTAFSA MIN ILM AL-USUAL 137 (Ahmad Zaki Mansur Hammand trans., 1987).

is obligatory even if it supplements the Qur'an in ways that seem to depart from the plain meaning of the Qur'an.[71]

The baqā claim about the Prophet's Sunnah needs clarification because the Prophet's traditions were not scientifically authenticated until over two centuries after his death. Numerous false traditions had been manufactured to shape social, political, and economic outcomes of Islamic law.[72] The verification process that was used to separate authentic traditions from false ones was tedious and controversial. Sunnah scientists, such as Imam Bukhari and Imam Muslim, developed sophisticated investigative techniques to verify the substance and transmission of authentic traditions. Gradually, Muslim communities of scholars developed a ranking system to classify the Prophet's traditions. Traditions that could not be meticulously verified were regarded as weak or were confined to the narrowest circumstances in their applications.[73] Underlying the resulting compilation of Mohammed's authentic traditions was the understanding that the Prophet's traditions can offer explanations of the Qur'an, but they cannot contradict the Qur'an's basic principles.

The contradiction doctrine, however, is not a license for jurists to effectively annul authentic traditions. One might maintain that the Prophet's traditions that are not related to the Qur'an, or which appear to contradict the Qur'an, constitute a distinct and separate genre of traditions that must not be blended with traditions that interpret and enforce the Qur'an. Such a distinction has little appeal in Muslim juristic circles. It would be hard to demonstrate that a certain tradition is totally incompatible with the letter and spirit of the Qur'an. Such a tradition, if one could be found, would likely fail the authenticity test in the first place. Jurists must not, however, be quick to find contradictions. Instead, they must exert intellect to find compatibilities. For example, in an authentic *hadith*, the Prophet prohibited men (not women) from wearing silk clothes.[74] The Qur'an approvingly mentions silk clothes, which the residents of paradise would wear.[75] The Sunnah prohibition of silk clothes, however, relates to the earthly life and not paradise. It therefore cannot be set aside on the theory that the silk hadith contradicts the Qur'an. The Prophet's rulings, if authenticated as genuine, are part of the Basic Code and no interpretation can abrogate their obligations or enforcement.

In examining the Prophet's traditions, a sophisticated methodology is needed to separate traditions that are legally binding from the ones that

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71. *Jurodynamics*, *supra* note 3, at 256–61.

72. *See* SUHAIB HASAN, AN INTRODUCTION TO THE SCIENCE OF HADITH (1994), *available at* http://islamworld.net/docs/hadith.html.

73. *Islam as Intellectual Property*, *supra* note 3, at 645.

74. SAHIH BUKHARI, Hadith 372, *available at* http://www.guidedways.com/book_display-book-8-translator-1-start-20-number-364.htm.

75. Qur'an 18:31.

simply demonstrate the Prophet's personal preferences.[76] For example, the Prophet loved to eat honey and other sweets.[77] Muslims may eat sweets but they are under no obligation to do so. As a general principle, Muslims are free to adapt their lives in accordance with the Prophet's personal preferences. The Prophet, however, did not wish to impose his personal preferences on believers as legal obligations. The science of Sunnah is highly complex and not every tradition, regardless of its authenticity and legal import, is automatically admitted into the Basic Code.[78] Only authentic traditions that articulate legal rights and obligations compatible with the Qur'an are part of the eternal Basic Code.

The Prophet's Sunnah is a baqā source of Islamic law in the sense that no human authority, including jurists and rulers, can overrule the Prophet's traditions or interpretations of the Qur'an. Once Sunnah scientists declare a Prophet's tradition to be authentic and legally binding, the tradition is a permanent legal provision of the Basic Code. Here, again, permanence means that rights and obligations contained in the authentic tradition cannot be set aside. Just like the Qur'an, however, the Prophet's traditions are open to good faith interpretations.[79]

IV. Fanā Sources of Law

Whereas the baqā sources of law are divine, the fanā sources of Islamic law emanate from human intelligence. The fanā sources of Islamic law include *dastour* (constitution), *fiqh* (jurisprudence or exegetical law), *qanun* (legislation), and *siyar* (international law).[80] They constitute Islamic positive law. As Muslim empires, nations, and communities surfaced in different parts of the world, the corresponding fanā sources of Islamic law emerged, developed, and matured. New fanā sources replace old sources, responding to the evolution of social and economic life. In every period of Islamic civilization, the fanā sources of law adapt to changing realities. Furthermore, the fanā sources of Islamic law may vary from nation to nation. For example, the constitution, statutes, and local customs are not the same in Iran as they are in Saudi Arabia. Given the cultural, linguistic, and social diversity of Muslim communities, Islamic positive law acquires distinct lo-

76. *Jurodynamics*, *supra* note 3, at 251.

77. Sahih Bukhari 65:342, *available at* http://www.guidedways.com/book_display-book-65-translator-1-start-50-number-334.htm.

78. This point is clarified in detail in another article. *See Jurodynamics*, *supra* note 3, at 266.

79. The Prophet's Sunnah imposes constraints on any free-ranging interpretation of the Qur'an, and vice versa. Thus, the two supreme sources furnish internal checks and balances to limit innovative interpretations.

80. Local customs and case holdings are also part of Islamic positive law. They too can evolve and phase out of existence. Local customs provide diversity to Islamic law as they are distinctive to Muslim cultures and may vary among cultures and regions. Case holdings are also becoming an important source of Islamic positive law, particularly in countries where there is a tradition of reporting and relying on prior precedents.

cal flavors. This diversity follows God's Law, for the Qur'an describes "tribes and nations" as natural aggregative communities that human beings need to foster intimacy and familiarity among themselves.[81]

The fanā sources of law, representing evolutionary forces of human conditions, are open to infinite revisions. Fanā law is positive law—a law of trial and error. First, each fanā source itself, whether it is the constitution, legislation, or fiqh, is prone to error and, therefore, subject to amendment and repeal. Second, each fanā source is open to interpretation and modification for the reduction of error. Seeking to minimize error and promote utility and goodness, the fanā sources of Islamic law experience evolution, mutation, and extermination. Since Islamic positive law is inherently imperfect and prone to error, no constitution, statute, treaty, custom, or other fanā source is either sacred or immutable. Each fanā source of law serves a utilitarian purpose, and some of its rules may be modified or discarded when they are no longer relevant or useful.

The fanā sources of Islamic law share numerous elements with secular law. Both are positive law, products of human intelligence, and formulated by human beings for human beings. Both can be made and unmade. Both serve to regulate human relations, solve problems, and undergird social order and security. A fundamental distinction separates the fanā sources of Islamic law from secular law, however, because the fanā submits to the supremacy of God's Law. Secular law does not. The fanā sources of Islamic law do not cultivate human ego, while secular law does. As noted before, the Qur'an warns that "the laws of Pharaoh were not rightly-guided"[82] because Pharaoh and his chieftains ruled from a position of ego and refused to submit to God's Law.[83]

The submission principle, discussed in Part V, requires the fanā sources of Islamic law to submit to God's Law. When a positive source of law submits to the Basic Code, it becomes a fanā source of Islamic law. By submission, however, no fanā source becomes divine or part of God's Law. God's Law must never be confused with human understandings and applications of God's Law, and a divine text must never be confused with human gloss on the divine text. With this caveat in mind, note that the fanā sources of Islamic law are constructed in the divine shadow of the Basic Code. They emanate from the spiritual sensibilities of Muslim lawmakers, judges, and jurists. Men and women empowered to construct the fanā sources of Islamic law cannot be atheists or non-Muslims. They are believers; they make legislation, decide cases, and interpret the Basic Code in the luminous light of Islamic faith.

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81. Qur'an 49:13.

82. Qur'an 11:97.

83. Qur'an 28:38 (Pharaoh asks his chieftains to take him as god); 79:24 (Pharaoh claims to be god).

A. Fiqh

Fiqh is the oldest fanā source of Islamic law. Fiqh is the law derived from divine texts with exegetical methodologies, such as literalism and analogy. For centuries, fiqh has been the primary source of Islamic positive law. Fiqh continues to be a contemporary source of Islamic law. It is important to understand that interpretations of the Basic Code are not divine. Both classical and contemporary interpretations constitute a fanā source of Islamic law.[84]

In contrast to the Basic Code, which is permanent and consistent, the fiqh interpretations of the Basic Code are dynamic and evolutionary. No generation of Muslims is permitted to alter the Basic Code. Instead, each generation of Muslims may interpret the Basic Code according to its understanding, level of knowledge, and social needs. One period of civilization may not need some of the interpretations that were the most relevant to a different era. New interpretations may resolve issues that prior generations did not have or could not settle. New challenges may require modification of older interpretations. The Basic Code is permanent, but its interpretations are not.

1. Fiqh Attributes

Enormous confusion was introduced into Islamic law when classical fiqh was taken to be the final interpretation of the Basic Code—a phenomenon otherwise known as the closure of *ijtihad*. Classical fiqh is a body of law derived from specific interpretations of the Basic Code in the early centuries of Islam. Classical fiqh added groundbreaking rules to numerous interpretive series or fields of Islamic law, including the law of contracts, family law, decedent estate, and rules dealing with non-Muslims. Each series of fiqh was developed and nuanced to meet situations of real life. The founders of fiqh were holy men, but they were not prophets. The following attributes of fiqh define what fiqh is and what it is not.

First, classical fiqh must not be confused with the permanent Basic Code. Classical fiqh is an interpretative series of the Basic Code. It is not the final word in the interpretive series. Fanā infinity allows no generation of Muslims to preclude the fiqh series from further progression and development. A school of fiqh (*madhab*) and an era of interpretation may furnish new rules for the interpretive series. Successive generations of jurists benefit from legal treasures of the past. They do not squander or ignore them. They learn from the wisdom of past interpretations. Each generation of jurists, however, after careful deliberation, may lawfully alter the series.

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84. Muslim philosophers and jurists developed and debated numerous issues related to Divine Infinity; however, they did not fully discuss the infinity of Islamic law. Among them, most prominent are al Kindi (d. 873), Ibn Sina or Avicenna (d. 1037), Al Ghazali (d. 1111), and Ibn Rushd or Averroes (d. 1198).

Second, each era of fiqh interpretation is rooted in spatio-temporal specificities. The classical period was rooted in the culture and social conditions of early Muslims. This era, though it covered complex geographical and cultural maps, was essentially Arabic. Contemporary Islam is highly complex since millions of Muslims live outside the Arab Middle East. The Islamic cultures of Indonesia and Malaysia bear little resemblance to those of Saudi Arabia. The contemporary era of high-speed technologies also bears little resemblance to the pastoral culture of Makkah and Medina, the holy cities where the Qur'an was originally revealed. Even within the contemporary world, the needs of Chad, a destitute Muslim nation, bear little resemblance to the United Arab Emirates, an international center of capital markets. The interpretations of the Basic Code in the classical era may or may not serve the needs and interests of contemporary Indonesia, Chad, or even Saudi Arabia.

Third, although the Basic Code itself is permanent, fiqh interpretations may or may not be. Some fiqh interpretations might indeed be permanent if successive generations of Muslims find these interpretations to be valid and useful. Each era is transient. No era of fiqh interpretation is vested with permanence, regardless of the piety of its founders. The rulings of classical fiqh may endure for centuries, but no interpretative series of any era can be equated with the Basic Code's permanence. Likewise, legal methods, such as analogy and consensus, which classical jurists deployed to interpret the Basic Code, need not be discarded as they may also continue to inform future interpretations of the Basic Code. Classical legal methods do not, however, preempt the emergence of new legal methods that may be introduced to understand the Basic Code's meaning.

Fanā infinity empowers each generation of Muslim jurists to adopt its own legal and exegetical methodologies to interpret the Basic Code. No era of interpretation, however, possesses any divine authority to close the interpretive series. Each generation of Muslims interprets the Basic Code to meet its needs and to resolve issues that previous generations either did not confront, ignored, or resolved in ways no longer acceptable. An infinite number of rules may be extracted from the Basic Code; therefore, the fiqh series are potentially infinite.[85]

Finally, and most importantly, Islamic fiqh permits no interpretive revolution.[86] In interpreting the Basic Code, the doctrine of precedent serves as a stabilizing force.[87] Precedent provides continuity and prevents

85. This Article, however, does not discuss interpretive theories or exegetical rules of textual construction.

86. Consider a mathematical series of prime numbers: (1, 2, 3, 5, 7, 11, 13 . . .). An entry of 15 or 16 will violate the logic and pattern of the series because 15 and 16 are not prime numbers and thus do not belong to the series.

87. For common law, see Roscoe Pound, *The Theory of Judicial Decision*, 36 HARV. L. REV. 641, 648–49 (1922–23); for Islamic law, see *Second Era of Ijtihad*, *supra* note 3, at 356.

normative shocks to the enterprise of Islamic fiqh. While each generation of jurists may freely interpret the Basic Code, no generation is allowed to subvert prior interpretive series by lifting all methodological constraints and completely discarding all previous entries. A strong presumption of continuity applies to fiqh. Each new rule that may be lawfully added to or subtracted from an interpretive fiqh series must satisfy the logic, pattern, and historical ethos of the series. An interpretive series of Islamic law is rarely open to any and all entries. Each new interpretive entry must respect the absolute presumption that the Basic Code is divine and permanent. Furthermore, no new entry contrary to clear ordainments of the Basic Code can be allowed. For the sake of continuity, any new interpretation that can potentially subvert the series, defy its logic, or that deviates from its pattern can have no part in the interpretive series.

2. *Text-Skepticism*

Islamic exegetical methodologies are not founded on text-skepticism. Islamic law rejects the thesis that divine texts are so porous that resourceful judges and jurists can extract diametrically opposing rules from the same words. The Qur'an specifically prohibits speculative interpretations of God's Law:

> He (God) it is who has bestowed upon you (human beings) from on high this divine text (Qur'an), containing messages that are clear in and by themselves—and these are the foundation (principles) of the divine text—as well as others (messages) that are allegorical. But those in whose hearts is doubt (and mischief) pursue that part of the divine text which has been expressed in allegory, seeking discord and confusion, and seeking its hidden meaning (as if they know); but none save God knows the hidden meaning (of allegorical messages). Hence, the persons of knowledge say: "We believe in it; the whole [of the divine text] is from our Sustainer—though none would grasp the messages save those who are endowed with knowledge."[88]

Here, the Qur'an warns against textual adventurism.[89] Verse 3:7 makes two important points. First, it repudiates the notion of text-skepticism. It clarifies that clear voices present the foundational principles of the Qur'an such that it requires no further interpretation. Consequently, no one founding principle of Islamic law should be sought in the allegorical verses of the Qur'an. Second, Verse 3:7 forbids interpretive speculation. The allegorical verses contain complex meanings that may not be accessible to ordinary readers. Experts might be able to understand the entire Qur'an but even they cannot speculate on the possible range of meanings hidden in allegorical

88. Qur'an 3:7.

89. I explain the controversy over this verse in *Divine Texts*, *supra* note 3, at 807.

verses. This prohibition discourages the mischief and discord that originate from free and creative speculation over the meaning of divine texts.

The logic of Verse 3:7 is evident regarding the text-skepticism employed in interpreting secular texts. In the United States, for example, the Supreme Court has interpreted the Constitution to reach opposite holdings in cases of juvenile executions. The Court first ruled that the constitution posed no barrier to executing persons who committed a capital offense during the age of minority.[90] The same Court, though with a different set of judges, reached the opposite holding and declared that juvenile executions constitute cruel and unusual punishments under the Eighth Amendment.[91] While such diametrically opposed holdings extracted from the same supreme text are probable, they are not so common as to support the porous thesis. Sparse opposite holdings do not yield a broad thesis that the supreme secular text exercises no guiding influence on interpretation.[92] Any such thesis of interpretive arbitrariness would force us to conclude that legal texts are simply irrelevant to interpretation.[93]

Islamic law suppresses text-skepticism and interpretive adventurism, and thus remains open to human interpretations of the Basic Code. Islamic fiqh provides methodological constraints under which proposed interpretations can be added and prior interpretations can be modified or discarded.[94] Opiniojurists must interpret the Basic Code within methodological constraints.[95] A juristic opinion does not automatically become a rule of Islamic law. It is submitted to the fiqh markets that assess the validity of proposed interpretations within the context of the body of prior interpretations.[96] The proposed interpretation is also submitted to a field test. Ordinary Muslims assess the proposed interpretation and judge whether it comports with their view of the Basic Code. Approval of a new rule is seldom arbitrary. Approval comes through compliance with the proposed rule. When Muslim communities embrace the proposed interpretation as a rule and begin to act upon it, the rule enters the corpus of fiqh and becomes a rule of Islamic law.

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90. Stanford v. Kentucky, 492 U.S. 361 (1989) (holding that juvenile execution does not violate the Eighth Amendment prohibition against cruel and unusual punishment).

91. Roper v. Simmons, 543 U.S. 551 (2005) (overruling Stanford v. Kentucky, 492 U.S. 361 (1989)).

92. The broader debate over the certainty of law vacillates from extreme skepticism to intellectualized faith in right answers. For a discussion of these views, see Richard Posner, *The Jurisprudence of Skepticism*, 86 MICH. L. REV. 827 (1987–88).

93. *But see* Bruce Fein, *On Reading the Constitution*, 90 MICH. L. REV. 1225, 1231 (arguing that the *Roe v. Wade* opinion, which allows abortion, is an example of interpretive arbitrariness).

94. The Islamic law tradition, however, is the doctrine of strict precedent that foreclosed evolution of interpretation and imposed the theological thought of the first few centuries over subsequent generations. *See Second Era of Ijtihad*, *supra* note 3, at 362–65.

95. *Id.* at 360–62.

96. Ali Khan, *Free Markets of Islamic Jurisprudence*, 2006 MICH. ST. L. REV. 1487, 1506–07.

Additional methodological constraints suppress speculation and text-adventurism. The institution of *ijmah*, consensus among jurists, is a super methodological constraint on juristic interpretations. Ijmah requires eminent jurists to consider a proposed interpretation of the Basic Code and rule on its validity. Ijmah thus prevents speculative interpretations of the Basic Code. If the experts do not agree, the proposed interpretation remains controversial. Some comply with it; others do not. A present-day example of such a fractious state of interpretation would be the rule on suicide-bombing. Some opiniojurists condemn it as an absolute negation of the Basic Code. Others would allow it under special circumstances.

Legal methods and procedural constraints turn the fiqh enterprise into an ordered progression of rules. Each generation of jurists may impose additional constraints on the interpretive enterprise. A fiqh series of Islamic law is akin to a mathematical series in which the entry of successive numbers is orderly and not arbitrary.[97] As a general principle, fiqh rules in any field of Islamic law constitute a series of ordered normative interpretations of divine texts. Moreover, a fiqh series is evolutionary because not all fiqh norms are extracted from divine texts at one time. The fiqh series accepts new norms into its repertoire, while it might discard some prior norms. This process of adding and subtracting rules to a fiqh series is disciplined. Systemically, therefore, a fiqh series seeks consistency in its ordered normative evolution.[98] Accordingly, the fiqh series of Islamic law develops with internal coherence, and any wholesale rejection of previous rulings is considered subversive.

B. Dastour

In the twentieth century, with the establishment of nearly fifty-seven Muslim states, the dastour (constitution) has emerged as a primary fanā source of law in Muslim states. The presence of a dastour, however, has not been critical to the functionality or development of Islamic law. For centuries, Islamic law developed without any notion of a dastour. Now almost all Muslim nations have established national dastours. Even today, a legal system in a Muslim state may come into existence without a dastour, it may continue to develop without a dastour, and it may or may not adopt a dastour as the supreme source of fanā law. Saudi Arabia, for example, did not adopt a constitution for decades after its establishment as a nation-state.

97. Consider, for example, (2, 4, 16 . . .). This series has an inner logic in that each successive number is the square of the preceding number.

98. In each legal system, however, there are periods of uncertainty when opposing norms vie for legitimacy and inclusion. In the United States, circuit courts may disagree about the application of federal law. Such disagreements may simmer for years before the Supreme Court provides a resolution. For example, federal circuit courts disagree whether the installation of a monitoring device constitutes a search. For a discussion of this disagreement, see People v. Zichwic, 114 Cal. Rptr. 2d 733, 742 (2001).

More recently, it has adopted the Basic Law of Saudi Arabia, which declares the Qur'an and the Prophet's Sunnah to be the Constitution of Saudi Arabia.

The Ottoman Constitution of 1876 provides a spectacular example of a dastour as a fanā source of law. Under the combined pressure of domestic unrest and the dominance of European colonial powers, this Constitution was established to infuse rudimentary elements of democracy in a dying empire that the Ottoman Sultans had ruled for nearly four centuries. The Constitution established a bicameral legislature in which the lower house was to be elected in periodic general elections by secret ballot.[99] The Sultan, also called the Supreme Caliph, belonging to the House of Osman,[100] continued to claim a blend of worldly and divine authority. The person of the Sultan was sacred[101] and his name was mentioned in the mosques after daily prayers.[102] The Caliph was the protector of the Muslim religion. As the sole sovereign, he enjoyed the prerogative to carry out the laws of the Shariah. Although Islam was declared to be the state religion, the courts were bifurcated into Shariah courts and civil tribunals with separate subject matter jurisdictions. The 1876 Constitution failed to protect the empire, the caliphate, or the sultanate. The Constitution's founder, Mithat Pasha, was exiled and later murdered.[103] The Constitution was eventually abandoned in favor of another constitution that established a secular Turkish state.

While the 1876 Ottoman Constitution faltered, a new wave of dastours became prominent in the twentieth century after several Muslim nations obtained independence from Western colonialism. Most modern legal systems in the Muslim world are constitution-based. In jurisprudence, the constitution has been identified as the grundnorm or the rule of recognition.[104] As the grundnorm, the constitution requires all rules of the legal system to be compatible with both the substantive and procedural parameters of the constitution. The constitution provides normative guidance to the legislature and judiciary by providing new statutes and case holdings. It identifies rules that lawfully belong to the legal system, and it also legitimizes the normative content of each rule. The supremacy clause of the dastour mandates that laws be compatible with constitutional values. This method of judicial review provides an institutional mechanism to filter out statutes and case holdings that cannot be reconciled with the supreme text.

The dastour is an evolutionary text. It regulates the present and the future legal system of a nation. While some dastours expire at a predeter-

99. Ottoman Const., Dec. 23, 1876, arts. 42, 65, 66.

100. *Id.* arts. 3, 4.

101. *Id.* art. 5.

102. *Id.* art. 7.

103. Kemal H. Karpat, Studies on Ottoman Social and Political History 361–62 (Reinhard Schulze ed., 2002).

104. H.L.A. Hart, The Concept of Law 97 (1st ed. 1961).

mined date, most continue to exist indefinitely. Furthermore, a dastour of even limited scope may potentially be relevant for deciding an infinite number of real and hypothetical cases. A modern dastour is a comprehensive text of substantive and procedural rules and principles. The dastour is projected to exist for an indefinite period. Rarely does a dastour contain a sunset provision for its own demise. As positive supreme texts, dastours are frequently cited in cases, legal commentaries, and legislative debates.[105]

1. Value Reversals

Unlike the Basic Code, the dastour is amendable; an amendment by definition is a value reversal. Thus, the Basic Code, which is permanent, is not subject to value reversals. By contrast, the dastour is potentially subject to infinite amendments and concomitant value reversals. Importantly, the potential for value reversals makes the dastour an arbitrary text, which can be fundamentally changed. Potentially all values of the dastour are subject to review, modification, and repeal.

The dastour is both finite and infinite because of the potential value reversibility. A dastour is a finite text at any given point in time since its total words can be precisely counted. The text has a definite beginning and end. The Pakistan Dastour was a finite text when it was first drafted in 1973. In 2010, the U.S. Constitution is a finite text, precisely identifiable. The 2010 text of the Pakistan Dastour, however, is not exactly the same text as it was in 1973. Likewise, numerous amendments have been made to the original text of the U.S. Constitution.[106] An amendable dastour remains a finite text but not the same finite text.

A dastour may be explained as a series of values subject to deletions and additions. Dastour = $\infty \ldots D_3, D_2, D_1 \ldots R_n \ldots A_1, A_2, A_3 \ldots \infty$. Here, R_n means the original constitutional text containing a set number of values. D means deletion of a value from, and A means addition of a value to, the original text. Values are deleted and added through amendments. For example, the Eighteenth Amendment (A_{18}) to the U.S. Constitution prohibited the manufacture, sale, and transportation of intoxicating liquors.[107] The

105. For a discussion of the Supreme Court's efforts to reduce its caseload, see Carolyn Shapiro, *The Limits of the Olympian Court: Common Law Judging Versus Error Correction in the Supreme Court*, 63 WASH. & LEE L. REV. 271 (2006) (suggesting the type of cases more appropriate for the Supreme Court). A choosy Supreme Court, however, does not limit the constitutional docket of lower federal and state courts.

106. In 1791, ten amendments, collectively known as the Bill of Rights, were added to the original text. As of March 2009, twenty-seven amendments have been made to the Constitution.

107. U.S. CONST. amend. XVIII. For an analysis of the Eighteenth Amendment, see Robert Post, *Federalism, Positive Law, and the Emergence of the Administrative State: Prohibition in the Taft Court Era*, 48 WM. & MARY L. REV. 1, 4–24 (2006).

Twenty-First Amendment (D_{21}) repealed the Eighteenth Amendment.[108] This value reversal occurred through the same amendment procedure. Likewise, the U.S. Constitution, which permitted slavery in its early days, was later amended to abolish slavery.[109] These value reversals were possible because the Constitution has been conceived as an amendable text. Scholars and judges who advocate original understanding of the Constitution and resist its interpretive mutation do not deny that the Constitution can be modified through the amendment process that the Constitution furnishes.[110]

Value reversals in the dastour may or may not be difficult to achieve.[111] Procedurally, the U.S. Constitution makes value reversals difficult. A constitutional amendment requires the approval of a supermajority of elected officials at both federal and state levels.[112] Despite the procedural difficulty of making value reversals, and though few value reversals have actually been made over more than two hundred years, the U.S. Constitution has gone through profound value reversals. During the life of a dastour, a limited number of value additions and deletions are typically made. Potentially, however, it is susceptible to infinite value reversals.

Some dastours prohibit certain value reversals. The Turkish Constitution, for example, cannot be amended to reverse its secular character.[113] While the Turkish Constitution is unique in preserving its secular provisions, arguments have been made to assert that even certain values of the U.S. Constitution, such as the Thirteenth Amendment, which prohibits slavery, cannot be reversed.[114] Though certain values of a dastour are not practically reversible, no dastour is permanent. The Turkish Constitution may not be reversible in its secular character, but the Turkish dastour itself may be completely replaced. The 1977 Soviet Constitution, which established the supremacy of the communist party, and which guided social, economic,

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108. Asheesh Agarwal & Todd Zywicki, *The Original Meaning of the 21st Amendment*, 8 GREEN BAG 2D 137, 139 (2005) (discussing the prohibition of unleashed violence, bloodshed, and corruption).

109. Laurence H. Tribe, *Puzzling Persistence of Process-Based Constitutional Theories*, 89 YALE L.J. 1063, 1065 (1979–80) (stating that the amendment guaranteed to obliterate all vestiges of slavery); Akhil Reed Amar, *Of Sovereignty and Federalism*, 96 YALE L.J. 1425, 1464 (1986–87) (arguing that the Thirteenth Amendment's abolition of slavery was of far greater significance than the federal guarantee of individual rights).

110. William G. Merkel, Heller *As Hubris, and How* McDonald v. City of Chicago *May Well Change the Constitutional World as We Know It*, 50 SANTA CLARA L. REV. 1221, 1223–25 (2010) (discussing original public meaning jurisprudence).

111. Maria Cahill, *Ireland's Constitutional Amendability and Europe's Constitutional Ambition: The Lisbon Referendum in Context*, 9 GERMAN L.J. 1191, 1217 (2008) (arguing that the European Union should respect national constitutional amendability procedures even if they produce unpleasant results).

112. U.S. CONST. art. V (laying out the procedure for amending the Constitution).

113. THE CONST. OF THE REP. OF TURK. arts. 2, 4.

114. George Rutherglen, *State Action, Private Action, and the Thirteenth Amendment*, 94 VA. L. REV. 1367, 1370–71 (2008).

and legislative policies,[115] was abandoned at the dissolution of the Soviet Union.

Dastours that cannot be easily amended mimic the baqā sources of law.[116] Most dastours incorporate elements of both fanā and baqā infinities. Fanā sources of law recognize the human power to make and unmake laws to protect or reverse values. Reversibility allows fanā laws to respond to changing social and economic realities of a community. Though change is inevitable, permanence also remains a desirable value of positive law. The longing for permanence translates into difficult amendment procedures. Theoretically, dastours are open to an infinite number of value reversals. Practically, however, the amendment procedure is tedious and resists easy value reversals. By requiring the collective will of a supermajority for value reversals, the dastour seeks permanence. More than in the rigid amendment procedure, the durability of a dastour is anchored in the strength of its culture and values.

Dastours exposed to value reversals through amendments can establish relatively unstable normative systems. The normative inertia is a protective force in all legal systems, divine and positive. The doctrine of stare decisis protects the system from normative shocks. Courts follow the holdings of prior cases and resist shocking the system by dramatically reversing the normative anchors of a community. The doctrine of stare decisis is defenseless, however, when the dastour itself is open to value reversals. Cases emanating from a legal text provide stability only if the text itself remains intact. If the text is modified or repealed, its precedents derived from the text lose their normative force. Courts must then discard precedents and adjust interpretive rulings in line with the modified supreme text.[117]

2. *Value Constancy*

A hierarchical normative relationship exists between a dastour and the Basic Code. In the Islamic legal tradition, the Basic Code cannot be subordinated to a dastour. The dastour may be the supreme text imposed over the fanā sources of law, but any dastour that claims supremacy over the Basic Code cannot be Islamic. Moreover, any dastour that establishes itself separate from the Basic Code is non-Islamic even though it may or may not be un-Islamic. An un-Islamic dastour opposes the fundamental norms of the Basic Code. A non-Islamic dastour does not officially submit to the

115. For a discussion of the centralization of supreme authority under the Soviet and Iranian constitutions, see Ali Khan, *Constitutional Kinship Between Iran and the Soviet Union*, 9 N.Y.L. Sch. J. Int'l & Comp. L. 293, 303–08 (1988).

116. *See* Morton J. Horwitz, *The Bork Nomination and American Constitutional History*, 39 Syracuse L. Rev. 1029, 1030 (1988) (arguing that the eighteenth-century conception of the constitution was Newtonian and presumed that the constitution would last for all time).

117. Even though precedents derived from the modified or repealed text remain in the system and are rarely physically deleted, they do not control future cases.

supremacy of the Basic Code, but its norms remain compatible with the Basic Code.

Furthermore, the Basic Code does not require any particular form of dastour or form of government. Various forms of government and various types of dastour are compatible with the Basic Code. Caliphate, constitutional monarchy, kingdom, representative democracy, and numerous other forms of government may coexist under the Basic Code, although some forms of government may be more appropriate for some Muslim nations at a given stage of social development. In all cases, the dastour and the attendant form of government must submit to the supremacy of the Basic Code. A dastour remains a transient text. A dastour may last for decades, even centuries, but it nonetheless remains a fanā source of positive law.

Most important, the dastour in the Islamic legal tradition commands no authority to fundamentally reverse the values of the Basic Code. In fact, the dastour is subjected to the permanent values of the Basic Code. The dastour may change the form of government, but it cannot alter the principle of the Basic Code that requires rulers to make decisions through consultation. Likewise, the dastour may allocate all powers to the ruler, but no Muslim ruler can exercise arbitrary powers under the Basic Code. No dastour can take away the right to property, the right to life, the right to worship, the right to language, or the right to family protected under the Basic Code. Thus, the combination of the dastour and the Basic Code establishes a legal system that is both permanent and evolutionary. The values of the Basic Code are permanent whereas the values of the dastour are reversible.

C. Qanun and Siyar

Qanun and siyar are the fanā sources of Islamic law. They are made by human beings for human beings. They can be made and unmade. They evolve. They meet the needs of national and international communities. They can be durable or transient. They may vary from time to time and from nation to nation. Though part of Islamic law, qanun and siyar are not divine. Yet qanun and siyar create rights and obligations, powers and disabilities. No Muslim state can function without these bodies of law. Qanun and siyar do not supplant or violate the Basic Code but are supplementary sources of law.

1. Qanun

Qanun, which designates legislation and regulation, is perhaps the most significant part of contemporary Islamic law. Each Muslim state has entered into the age of statutes and regulations. State governments have enacted statutes in almost every field of law to implement rights and obligations. Regulations, that is, detailed rules that agencies make to enforce objectives of legislation, developed with the emergence of governmental

agencies. Tax statutes and tax regulations, for example, enforce tax laws. While the state legislature promulgates tax statutes, the governmental agency responsible for collecting taxes issues regulations to give more complete guidance to taxpayers. No Muslim state, given the complexity of contemporary social and economic life, can function without an efficient infrastructure of statutes and regulations.

The contemporary Muslim world needs qanun because fiqh does not offer rules in many modern areas of law. For example, fiqh provides no guidance in the fields of patent, copyright, trademark, internet, or space law. Even mundane but critical areas of modern law, such as traffic rules, which fiqh does not offer, must be made for the safety and efficiency of hundreds of thousands of automobile users on the intricate webs of roads. Likewise, airports, seaports, and railroad networks need practical rules, for otherwise the systems would be chaotic and dysfunctional. Fiqh is inadequate because the quantum and detail of regulation needed to structure an orderly modern life is simply unavailable in the classical sources of Islamic law.

Each Muslim state has its own domestic procedures to identify the body authorized to make qanun. In most Muslim states, the power to make legislation has been lodged in national and provincial parliaments that may or may not be elected bodies. Regardless of the form of government, qanun is a creature of the state. Democratic Muslim states rely on popular mandate to make qanun. Qanun, however, may be made by non-democratic institutions, including kingships, dictatorships, and militaries.

There are many differences between fiqh and qanun. Fiqh is the product of opiniojurists. Qanun is the product of state officials who may or may not be elected by the people. Fiqh is derived through interpretations of the Basic Code. Qanun, even when it is compatible with the Basic Code, is rarely derived from divine texts. Social, political, and economic forces determine the needs and contents of legislation as well as the implementation of regulations. Fiqh consists of the opinions of private jurists not related to the state. Qanun is by definition public, not private. No private body is authorized to make qanun for a Muslim nation, even though individuals may enter into legal relations by means of private law, called contracts. Fiqh is the law that Muslims embrace voluntarily. Qanun is the law enforced through the coercive machinery of the Muslim state. Fiqh, though human, holds an aura of sacredness. Qanun, also human, rarely carries any sacred halo.

2. *Siyar*

While dastour, fiqh, and qanun are the internal sources of Islamic law, siyar (or Islamic international law) is an external source of law. The internal sources of law regulate the conduct of individuals and institutions within

Muslim nations and communities. By contrast, siyar regulates the foreign affairs of Muslim nations. Historically, siyar focuses on the legality of relationships between Muslim and non-Muslim nations. Independent Muslim states may conduct foreign affairs with each other under the dictates of international law. They may use the instruments of siyar, such as customs and treaties, to forge, maintain, and carry out bilateral or multilateral relationships. Such legal relationships are and will continue to be subordinate to the baqā sources of Islamic law.[118]

Siyar, as a distinct body of Islamic law, deals primarily with legal relations between Muslim and non-Muslim nations and communities. Siyar includes the law of war but it also guides the forging of commercial, security, and other relationships. Furthermore, siyar obligations, such as human rights treaties, may directly impact the internal sources of Islamic law. Human rights treaties, although they originate in agreements with non-Muslim nations, must be domestically enforced. The internalization of siyar obligations requires removing any incompatibilities between the internal sources of Islamic law and siyar to prevent jurisprudential confusion. As a general principle, siyar obligations must be compatible with the Basic Code.

Siyar or Islamic international law is founded on the principle of *aahad*, which supports the concept of international agreements and treaties.[119] The Basic Code allows Muslims to enter into treaties with non-Muslims to settle disputes, cease hostilities, and forge peace agreements. The divine concept of aahad implies the freedom of parties to enter into a mutually beneficial agreement. Aahad also implies notions of sovereignty, dignity, consent, and contractual obligation. When a Muslim nation makes a treaty with a non-Muslim nation, aahad requires contracting nations to treat each other with dignity and understand each others' needs and limitations. Most important, aahad is not a coercive but a consensual means to construct mutually beneficial terms of cooperation. However, once an agreement has been made, parties must comply with its terms. This simple contractual principle, laid down in the Basic Code, is the paradigmatic principle of siyar.

Modern dastours of Muslim nations recognize the significance of siyar. Many explicitly endorse the principle of aahad when implementing international agreements. The Saudi Arabia Constitution is framed to enforce international treaties and agreements.[120] The Iran Constitution empowers the president to sign international treaties with other governments and international organizations "after obtaining the approval of the Islamic

118. A Muslim state, however, may be treated as a de facto non-Muslim state if it does not subscribe to the submission principle.

119. *See* Qur'an sura al Anfal 8:56. The Qur'an also uses the word *mithaq* to describe a covenant that the people make with God. *See* Qur'an, sura al-Baqara 2:27.

120. MAJLIS AL-SHURA [CONSTITUTION] Mar. 2, 1992, arts. 70, 81 (Saudi Arabia).

Consultative Assembly."[121] Article 76 of the Malaysian Constitution empowers the Parliament to make laws "for the purpose of implementing any treaty, agreement or convention" with other countries.[122]

Some Muslim states' dastours focus on building relations with both Muslim and non-Muslim nations. Article 40 of the Pakistan Constitution lays down the principle that Pakistan "shall endeavor to preserve and strengthen fraternal relations among Muslim countries based on Islamic unity."[123] It also stresses the need for solidarity between Asian, African, and Latin American nations, a clause inserted to emphasize the need of decolonized countries to cooperate in resisting the domination of Western nations. Article 40 also emphasizes the principle of peaceful settlement of international disputes, a principle most compatible with the Basic Code. Rejecting the notion that Muslim nations are in a constant state of war with non-Muslim nations, Article 40 promises to "foster goodwill and friendly relations among all Muslim nations."

V. Submission Principle

The Qur'an states that "unto Him (God) submits whatever is in the physical universe."[124] This submission principle is part of Islamic legal theory. It prescribes the normative integration of various evolutionary sources of Islamic law. The fanā sources of Islamic law, fiqh, dastours, qanun, and siyar, must all submit to God's Law as revealed in the Basic Code. Submission to the Basic Code is a process of normative order and stability. In fact, the submission principle is a law of nature. Consider the loop motion that embodies the submission principle. Loop infinity is the spatial enactment of the submission principle. The ceaseless rotation of the earth around its axis is infinite submission. The earth also loops around the sun in endless submission. In fact, according to the submission principle, stars and planets rotate in their respective orbits with infinite submission. Loop infinity, when applied to Islamic law, refers to a dynamic and recurrent process under which lawmakers, judges, enforcement agencies, and other legal actors willingly submit the fanā sources of law to the gravitational order of the Basic Code.[125]

Teaching the submission principle to human beings, the Qur'an declares that "it is not permitted the sun to catch up with the moon, nor can

121. Qanuni Assassi Jumhurii Islami Iran [The Constitution of the Islamic Republic of Iran] Mar. 29–30, 1979, art. 125.

122. Const. of Malaysia, Sept. 16, 1963, art. 76(1)(*a*).

123. Pakistan Const. Aug. 14, 1973, art. 40.

124. Qur'an 3:83.

125. The Hindu concept of cyclical life and reincarnation is also an embodiment of loop infinity. In worldly matters, loop infinity is a useful concept. In a circus, for example, the bicycle moves in the circular path because a force presses the bicycle toward the center of the circle. *See* Ervin S. Ferry, A Brief Course in Elementary Dynamics for Students of Engineering 88 (1908).

the night outstrip the day. Each (celestial body) rotates in its own mathematically-computed orbit."[126] In reaffirming the submission principle, another verse of the Qur'an points out that "the sun and the moon follow courses (exactly) computed."[127] The architecture of space is designed under the submission principle so that loops do not collide with each other, even though the physical universe will face an eventual collision.[128] Until destroyed, celestial loops coexist without trespassing each others' orbits. The natural law of loop submissions and the consequent stability of multiple celestial bodies in simultaneous motion teach human beings how to construct legal systems. A legal system with hundreds of statutes, cases, regulations, and treaties mimics a celestial system of planetary motions. According to Islamic beliefs, no legal system is stable unless it submits to God's Law. For Muslims, the Basic Code provides order and stability to the dynamic cosmology of Islamic law.[129]

In fact, the submission principle is at the core of all legal systems, divine or secular. Legal systems have little option but to accept the submission principle in order to seek normative integration and to avoid chaos and collision. Each legal system, therefore, identifies a center of gravity to which all laws must submit. In secularizing the submission principle, the United States Constitution specifically provides, in the Supremacy Clause, that the "Constitution and the laws of the United States . . . shall be the supreme Law of the land . . . any Thing in the Constitution or Laws of any

126. Qur'an 36:40. The sun does not rotate around its axis as a solid body. It rotates in two loops. The sun completes a rotation in 27 days at the equator but in 31 days at the poles. The number of loops is also infinite, for it is impossible to determine the number of stars, planets, and moons orbiting in space.

127. Qur'an 55:5. *See also* Qur'an 21:33.

128. *Cf. Genesis* 6:17 (New Int'l) ("Everything on Earth will perish.").

129. In the legal system, each statute establishes its own interpretive series. The legislature and judiciary first make sure that the statute conforms to norms of the supreme text. Supremacy and Compatibility Clauses may be invoked to test the conformity of the statute. If the statute is systemically conforming, cases are decided under its text and textual history. Some statutes empower relevant state agencies to formulate regulations to enforce the statutes. Over a period of time, case holdings and regulations generate an interpretive series specific to the statute. Case holdings as well as enforcement regulations must comply with the text, object, and purpose of the statute. Each entry in the statutory series must also conform to the supreme text. The metaphor of celestial bodies clarifies that each interpretation must not only obey the gravitational regime of the statute, it must also obey the gravitational regime of the supreme text—just as bodies abide by the double gravity of the earth and the sun. At a given point in time, the cosmology of law is finite in that the number of statutes, regulations, executive orders, treaties, and case holdings can be counted and precisely determined. The cosmology, however, is potentially infinite. In a federal system, such as the United States or Pakistan, federal units may have their own constitutions, statutes, regulations, and case holdings. The cosmology of a federal system is more complex. Yet Supremacy and Compatibility Clauses assure that all legal sources as well as interpretations comply with norms of the supreme text. In the United States, each federal unit must conform to the Constitution. In Pakistan, each federal unit must conform to the Basic Code. Regardless of the number of legal sources and interpretations, the cosmology of law is stable, orderly, and functional because every legal norm is subordinate to the supreme text.

State to the Contrary notwithstanding."[130] A similar provision, what may be called a compatibility clause, appears in dastours of Muslim states to establish supremacy of the Basic Code. The Pakistan Constitution provides that "All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah [Basic Code], . . . and no law shall be enacted which is repugnant to such Injunctions."[131] Supremacy and Compatibility Clauses manifest the submission principle.

Supremacy and Compatibility Clauses, though remarkably similar in purpose,[132] must be distinguished. The most apparent distinction lies in their respective character. The Supremacy Clause upholds the supernormativity of a human constitution, whereas the Compatibility Clause submits to the supernormativity of the Basic Code. The Supremacy Clause, when read with the separation of church and state doctrine, prescribes a separation between God's Law and positive law. If a conflict arises, the Supremacy Clause would subordinate divine texts to the Constitution. By contrast, the Compatibility Clause subordinates all legislative, judicial, and administrative decisions and dastours to God's Law as revealed in the Basic Code. The Supremacy Clause signals the triumph of positive law over divine texts. The Supremacy Clause represents human ego. The Compatibility Clause subordinates human ego to God's Will.

A. Supremacy Clause

The Supremacy Clause establishes the gravitational regime and loop infinity of the United States Constitution. It focuses the legal system on the supreme text and orders the hierarchy of norms. All rules that the system generates must comply with the norms of the supreme text. Federal and state statutes, federal and state cases, federal and state regulations, and treaties and state constitutions are all subordinate to the supreme text.[133] The

130. U.S. CONST. art. VI.

131. PAKISTAN CONST. Aug. 14, 1973, art. 227(1).

132. Supremacy and Compatibility Clauses of supreme texts establish the cosmology of law. A legal system subordinated to the gravitational regime of a supreme text, secular or divine, requires that all laws subscribe to norms of the supreme text. No statute, regulation, case holding, executive order, or treaty escapes the gravitational regime of the supreme text. The cosmology of law mimics the solar system in which big celestial bodies such as planets and moons and small bodies such as asteroids, meteoroids, and comets, all are bound by the sun's gravity. The solar system constitutes a system because each member of the system, big or small, does not defy the sun's centrality. Likewise, a legal system that establishes the supremacy of a supreme text allows no law, big or small, to exist or expand outside the text's normative gravity.

133. Stephen A. Gardbaum, *The Nature of Preemption*, 79 CORNELL L. REV. 767, 770 (1993–94). Gardbaum, however, argues that preemption and the Supremacy Clause are two separate constitutional concepts though the literature hopelessly confuses them. *Id.* The author proposes to get rid of the preemption doctrine. *Id.* This proposal, however, muddles rather than clarifies the ordering of norms. The system may use, as Gardbaum proposes, ordinary rules of statutory construction to resolve conflicts between federal and state laws. *Id.* The authority to resolve these conflicts, however, must come from a source in the master text. That source is indeed the Supremacy Clause.

supremacy of the supreme text is safeguarded at two distinct levels. First, federal and state lawmakers are aware of the Supremacy Clause and make sure that the legislation under consideration does not violate the Constitution.[134] Second, judges scrutinize legislation in actual cases and controversies to probe whether the legislation, as is or as applied, is constitutional. This double scrutiny confirms that the legislation is in harmony with the supreme text. Likewise, the executive branch, which negotiates treaties and the Senate, which gives advice and consent for the adoption of treaties, both examine whether the treaties are congruent with the Constitution.[135] Common law case holdings also undergo constitutional scrutiny.[136] No court is authorized to decide a common law case contrary to provisions of the supreme text. Appellate courts oversee the enforcement of the Constitution in common law cases.[137] Thus, a complex institutional framework operates to enforce the Supremacy Clause.

Constitutional provisions like the U.S. Supremacy Clause institute the supremacy of positive law over divine law. The separation of church and state doctrine[138] requires that the state disassociate itself from the establishment of any one religion or any one denomination of a religion—though the people are free to practice any religion of their choice.[139] The secular state, however, is not obligated to pass legislation contrary to divine laws. The

134. Paul A. Diller, *When Congress Passes an Intentionally Unconstitutional Law: The Military Commission Act of 2006*, 61 SMU L. REV. 281, 282 (2008) (arguing that since members of Congress, like the Supreme Court and the president, take an oath to uphold the Constitution, they cannot lawfully enact unconstitutional legislation); Bradford R. Clark, *The Supremacy Clause as a Constraint on Federal Power*, 71 GEO. WASH. L. REV. 91, 92 (2003) (demonstrating that the Supremacy Clause allows judicial review of both federal laws and state laws).

135. An interesting debate surges in academic literature regarding whether treaties are self-executing under the Supremacy Clause. Carlos Manuel Vázquez, *Treaties as Law of the Land: The Supremacy Clause and the Judicial Enforcement of Treaties*, 122 HARV. L. REV. 599, 601–02 (2008) (arguing that the Supremacy Clause provides a default rule under which treaties are self-executing). *But see* John C. Yoo, *Globalism and the Constitution: Treaties, Non-Self-Execution, and the Original Understanding*, 99 COLUM. L. REV. 1955, 1978–79 (1999) (disputing with scholars who argue that treaties as supreme law of the land must be self-executing).

136. For example, the Supreme Court declared that the ninety-six-year-old *Swift v. Tyson*, 41 U.S. 1 (1842), federal general common law holding is unconstitutional. Spirited scholarly commentary illuminates this holding. *See, e.g.*, Craig Green, *Erie and Problems of Constitutional Structure*, 96 CALIF. L. REV. 661, 664 (2008).

137. N.Y. Times Co. v. Sullivan, 376 U.S. 254, 264–65 (1964) (holding that the state libel law is subject to the Constitution); *see also* Stephen Gardbaum, *The Myth and the Reality of American Constitutional Exceptionalism*, 107 MICH. L. REV. 391, 437 (2008) (stating common law is subject to the Supremacy Clause).

138. C.M. Hudspeth, *Separation of Church and State in America*, 33 TEX. L. REV. 1035, 1035–36 (1953–54) (describing mixed public feelings against the Supreme Court decisions in the 1940s and 1950s).

139. *See* Wisconsin v. Yoder, 406 U.S. 205, 236 (1972) (supporting parents' right to furnish religious education for their children). *But see* John Delaney, *Police Power Absolutism and Nullifying the Free Exercise Clause: A Critique of* Oregon v. Smith, 25 IND. L. REV. 71, 71–78 (1991) (criticizing the ruling that limited the free exercise of religion for some Native Americans who were fired for ingesting peyote in an annual sacramental rite).

secular state need not be a godless state, belonging exclusively to Caesar.[140] The secular state could adopt religious neutrality that does not offend the followers of any religion. The secular state could promote tolerance and respect for all religions. Nevertheless, the Supremacy Clause allows the state, if it so chooses, to violate *all* divine texts and to establish laws incompatible with what believers call God's Law.[141] An ideologically-secularized judiciary may also rely on a constitutional supremacy provision to interpret the positive supreme text to generate case holdings that blatantly defy God's Law. In such cases, the line between tolerant secularism and antagonistic atheism can become indistinct. A militant secular state armed with a constitutional supremacy provision may begin to disparage religion and may, contrary to wishes of its citizens, embrace faithlessness, a development that can possibly destabilize the legal system and breed sentiments for revolution.[142]

B. Compatibility Clause

Akin to the Supremacy Clause, the Compatibility Clause establishes the gravitational regime of the Basic Code. "Obey God and His Messenger," an ordainment frequently pronounced in the Qur'an, constitutes the Compatibility Clause.[143] The dictate to obey God refers to the Qur'an, while the dictate to obey His messenger refers to the Sunnah. The object and purpose of the Compatibility Clause is to harmonize positive law with the norms of the Basic Code. The Compatibility Clause is both prospective and retroactive. It is prospective in that it mandates that future legislation, treaties, and case holdings comply with the norms of the Basic Code. It is retroactive in that it mandates that prior legislation, treaties, and case holdings be examined for their compatibility with the Basic Code. Some Muslim states, such as Pakistan[144] and Nigeria,[145] inherited colonial laws or went through a secular period. The retroactive application of the Compati-

140. The concept of separation of church and state itself is a religious idea found in the New Testament: "Give to Caesar what is Caesar's and to God what is God's." *Mark* 12:17 (New Int'l).

141. *Divine Texts*, *supra* note 3, at 858–59.

142. The 1979 Iranian Revolution, for example, was in part a reaction to the Shah's oppressive regime that was drifting away from religion and adopting anti-Islamic policies. *See* Richard W. Cottam, *Human Rights in Iran Under the Shah*, 12 CASE W. RES. J. INT'L L. 121, 130–36 (1980) (reporting the dismal record of human rights in the Western-supported Shah's regime).

143. *See, e.g.*, Qur'an 3:32; 4:59.

144. Since independence in 1947, Pakistan has been drifting away from secularism and toward Islam. The first major move toward Islam took place under Army General Zia ul Haq in the 1970s. *See* Daniel P. Collins, *Islamization of Pakistan Law: A Historical Perspective*, 24 STAN. J. INT'L L. 511, 566–67 (1988).

145. Nigeria is a member of the Organization of Islamic Conference, an inter-governmental organization of fifty-seven states. The Shariah has raised great controversy in this nation, since although Muslims are a substantial part of the population, they do not constitute an overwhelming majority. Furthermore, the Nigerian Constitution does not carry a Compatibility Clause, even though it does have a Supremacy Clause. *See* Andrew Ubaka Iwobi, *Tiptoeing Through a Constitutional Minefield: The Great Sharia Controversy in Nigeria*, 48 J. AFR. L. 111, 127 (2004). Pro-

bility Clause assures that colonial laws and laws enacted during a secular period are brought into harmony with the Basic Code.[146] In matters of international law, the Compatibility Clause would require that the Muslim state make appropriate declarations, understandings, and reservations to a treaty so that no treaty provision violates the Basic Code.[147]

Many Muslim states have established constitutional systems. While some Muslim states such as Turkey and Senegal have embraced secularism, separating their constitutions from the Basic Code, others have inserted supremacy clauses in their national dastours to recognize the Basic Code as the supreme text. Pakistan and Iran, for example, both subject their laws to the supremacy of the Basic Code. All laws that the Muslim state enacts must conform to the Basic Code. Laws contrary to the Basic Code lose legitimacy and validity, and national courts declare them to be unenforceable. In most Muslim states, therefore, the permanent Basic Code and not the amendable constitution is the supreme text.

The Compatibility Clause, however, is a constitutional clause. A Muslim state may or may not adopt it. Turkey is a Muslim state but it has not adopted the Compatibility Clause. In fact, the Turkish Constitution safeguards "liberal democracy" and the secular state.[148] One may, therefore, conclude that the Compatibility Clause, though it guarantees the supremacy of the Basic Code, can be repealed, reverting the state to secularism. This conclusion is correct to the extent that ruling elites, with or without the consent of the people, may amend the constitution and redirect the legal system away from the Basic Code. This reversal, however, will be socially more stable with the people's consent. The reversal may cause social and political turmoil if the people are fiercely opposed to abandoning the supremacy of the Basic Code.

For most Muslims, the Compatibility Clause is part of divine law. By ignoring or repealing the Compatibility Clause, a Muslim state violates divine law. Just as individuals may violate positive or divine law, states may do the same. The violation of law, however, must be distinguished from the invalidity of law. Under the Basic Code, no Muslim state is empowered to

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Shariah jurists and advocates read the clause as the Compatibility Clause whereas secularists and non-Muslim jurists see the same clause as the Supremacy Clause. *Id.* at 127–28.

146. In 1999, the Supreme Court of Pakistan delivered a judgment that payment of interest is contrary to the Basic Code and all laws permitting interest must be revised or repealed to enforce the prohibition. *Interest Proves Repugnant to Islam in Pakistan*, 19 INT'L FIN. L. REV., Mar. 2000, at 25, 25; *see also* Judith Thomson, *Developing Financial Law in Conformity with Islamic Principles: Strict Interpretation, Formalism, or Innovation?*, 4 DEAKIN L. REV., 1999–2000, at 77, 78.

147. With respect to the Convention on the Rights of the Child, several Muslim states have made Shariah-based reservations. Pakistan made a broad reservation in the following words: "[P]rovisions of the Convention shall be interpreted in the light of the principles of Islamic laws and values." William A. Schabas, *Reservations to the Convention on the Rights of the Child*, 18 HUM. RTS. Q. 472, 478 (1996). Critics and nations object to such broad reservations. *See id.*

148. *See* L. Ali Khan, A Theory of Universal Democracy 114–15 (2003) (examining the distinction between secular states and fusion states).

defy the Compatibility Clause. By refusing to enact the Compatibility Clause or by willfully repealing it, the Muslim state may not recognize the Clause under positive law but it cannot declare the Clause invalid under divine law. The Compatibility Clause is as immutable as is the Basic Code. It is permanent and not subject to change or evolution.

C. Points of Difference

The submission principle illuminates several points of difference between positive law, particularly dastours, and the Basic Code. Divinity is the most remarkable point of difference. The Basic Code is divine while dastours, such as the Iran and Pakistan Constitutions, are man-made. Muslims believe the Basic Code is God's Law with the Prophet's explanations. The spatio-temporality of the Qur'an cannot be denied since revelation to the Prophet occurred in the seventh-century cities of Makkah and Medina. Despite its historically-validated spatio-temporal origin, the Qur'an is believed to have existed before it was revealed. Spatio-temporality was inevitable to transfer the Qur'an from the unknown (*al-ghaib*) to human knowledge. The Prophet's Sunnah, which launched the interpretive series of the Qur'an cannot be projected back before its time. Yet the Sunnah, as an explanation of the Qur'an, is also divine. Few would dispute that dastours are man-made texts, though natural law and divine texts may inspire their words and concepts. The rights and obligations enumerated in a dastour may or may not be rooted in divine texts and natural law.[149] Despite muted associations of a constitution with some sort of diluted divinity,[150] the constitution is a creature of positive craftsmanship.

Other points of difference also exist. A dastour is spatially finite. It is valid within a finite territory, even though some of its applications may be extended abroad.[151] Muslim nations are free to borrow the principles contained in foreign dastours and place them in their own national dastours. By contrast, the Basic Code is not territorial. The Basic Code is spatially infinite. It is as valid in Indonesia as it is in Saudi Arabia. The Basic Code is the supreme law of Muslims wherever they establish communities. Even if a state, such as the United States, does not recognize the Basic Code as law, Muslim communities, exercising the freedom of religion, may enforce the Basic Code in private life. In contrast, a state hostile to divine texts, such as the defunct Soviet Union, may outlaw any application of the Basic Code.[152]

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149. Suzanna Sherry, *The Founders' Unwritten Constitution*, 54 U. CHI. L. REV. 1127, 1129 (1987).

150. Thomas C. Grey, *The Constitution as Scripture*, 37 STAN. L. REV. 1, 17 (1984); *Divine Texts*, *supra* note 3, at 852–54.

151. Kal Raustiala, *The Geography of Justice*, 73 FORDHAM L. REV. 2501, 2502–04 (2005). Professor Raustiala has invented an appropriate term of "legal spatiality" to capture the territoriality of the Constitution. *Id.* at 2503.

152. Despite its militant atheism, the Soviet Union continued to allow organized religion. This anomaly benefitted the Soviet Union as Muslims identified both with the communist state and

Active state hostility toward divine texts, however, is increasingly unacceptable under human rights and individual liberties laws.

The constraints of the submission principle on the development of Islamic constitutional law provide insightful contrasts with the constitutional law of a secular state, such as the United States. The U.S. Constitution embraces secularism as its guiding principle. It does not, however, oppose the existence of God or divine texts, unlike communist constitutions. The U.S. Constitution, however, separates itself from God's Law revealed in divine texts. While the U.S. Constitution respects diverse faiths and allows freedom of religion, and while it may have openhandedly borrowed from God's Law, it does not formally accept the supremacy of God's Law. By contrast, Islamic constitutions submit to God's Law revealed in the Basic Code. Muslim states may interpret the Basic Code to extract new rules and modify old ones, but no interpretive methodology is permitted to subordinate the Basic Code to the dastour.

Furthermore, the U.S. Constitution, which does not submit to any divine texts, is potentially exposed to double fracture: amendability and interpretive impairments.[153] Even though the amendment process is tedious, the procedural tedium does not diminish the fact that the original text is vulnerable to an indefinite number of amendability impairments. One could argue that the twenty-seven amendments already made to the Constitution have improved its normative contents for establishing a more perfect Union. Yet, whether a particular constitutional impairment is socially desirable is a value judgment over which peoples and states could disagree.[154] Even though Islamic constitutions are also amendable, the scope of amendability is constrained through the submission principle. For example, the Islamic Constitution cannot be amended to allow Muslims to engage in the sale of intoxicating liquors, unlike the U.S. Constitution.[155]

The second impairment to the U.S. Constitution comes through free-range interpretations. Interpretation of legal texts is inevitable. Constitutional interpretations in the form of case holdings have generated an impressive, valuable, and complex body of constitutional law in the United States. Various methodological constraints, such as weight of the Constitutional text itself, legislative history, structure, original intent, adherence to precedents, and numerous theories of interpretation, are instituted to limit free-ranging interpretation. Yet the U.S. Constitution has dramatically changed through interpretation, allowing, for example, the practices of abortion and

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Muslims in other countries, thus building goodwill for the Soviet Union. WILLIAM C. FLETCHER, RELIGION AND SOVIET FOREIGN POLICY 1945–1970, at 70–72, 79–80 (1973).

153. Here, the word impairment denotes changes in the text and meaning of the Constitution drafted in 1789.

154. The Seventeenth Amendment, which requires that senators be directly elected by the people, did not receive the consent of Connecticut, Rhode Island, and Utah.

155. *See supra* text accompanying note 106.

homosexuality, practices abhorred in 1789 Christian communities.[156] One could argue, again, that Constitutional interpretations have, for the most part, improved the quality of American law, particularly with respect to civil rights and liberties. The point remains that the Constitution, without any super-constraints of divine texts, is wide open to any interpretation that can muster five votes in the U.S. Supreme Court. This sort of free-range liberty to interpret a legal text, including the Islamic Constitution, is unavailable under the submission principle.

These differences not only explain the dynamics of Islamic law but furnish instructive insights, as discussed below, into the motivations and dynamics underlying Muslim behavior. The pledge of faith that Muslims make to the submission principle establishes the Islamic character that values afterlife more than the worldly life, though the worldly life is rarely ignored or discounted. Islamic law offers a complex notion of temporalities.

VI. Islamic Temporalities

Islamic frames of mind toward Islamic law—rooted in fanā and baqā temporalities—explain why Muslims obey laws. Fanā temporality renders the consciousness of finite time related to the physical universe whereas baqā temporality renders the awareness of a timeless afterlife. Baqā temporality is indeed baqā timelessness. For individuals, fanā temporality means the duration of one's life. Even "a life of a thousand years"[157] must come to an end. The rewards and punishments associated with positive law are confined to fanā temporality. Individuals obey positive law to seek rewards and avoid punishments in the worldly life. Muslims, however, obey divine laws to seek rewards and avoid punishments in the afterlife. According to the Qur'an, the afterlife is superior to the worldly life.[158] Therefore, Islamic law enforcement and the associated consciousness focuses more on baqā timelessness and the rewards and punishments associated with afterlife. "The life of this world (alone) is alluring to those who reject faith, and they scoff at those who believe (in the afterlife)."[159]

A. *Life and Afterlife*

In Islam, finite temporality (*huduth*) has been contrasted with eternality (*qidam*).[160] What is eternal has no beginning and no end. The eternal is

156. Homosexuality, for example, was viewed as "*pecatum non nominandum inter Christianos* 'the sin not even to be mentioned among Christians.'" Louis Crompton, Homosexuality and Civilization 1 (1st Paperback ed., 2006); *see also* Lucas A. Powe, Jr., The Supreme Court and the American Elite, 1789–2008, at 278 (2009) (arguing that Blackmun's opinion is one of the worst of the twentieth century).

157. Qur'an 2:96.

158. Qur'an 6:32.

159. Qur'an 2:212.

160. Majid Fakhry, *The Classical Islamic Arguments for the Existence of God*, 47 Muslim World 133 (1957) *available at* http://www.muslimphilosophy.com/ip/pg1.pdf.

also infinite. Temporality presumes that the thing exists for a finite duration and that the thing does not exist before it comes into being and ceases to exist after its duration is over. The earthly life of an individual is temporal and finite since it begins at birth (or conception) and ends at death. Even the universe is temporal. Per the Qur'an, God created the worlds (earth and celestial space) in six days,[161] which means that the worlds were non-existent before they were created. The Qur'an also states that the worlds (including the earth and celestial space) will be completely dismantled.[162] Since the physical universe is a creature with a beginning and an end, it is temporal.

According to Islamic law, all creatures in the physical universe are temporal. They come into being from non-being and revert to non-being after a finite duration (*heen*) of existence. Planets, stars, spatial systems, galaxies, and life forms that may exist in the cosmos all belong to one and the same fanā temporality.[163] The fanā temporality is fragile and finite whereas the hereafter is permanent and infinite. The worldly temporality will end. The Qur'an clarifies: "We created the cosmos and the earth and all between them but for just ends, and for a finite period."[164] The entire creation, though it appears to be infinite and though its constituent parts are scattered in multifarious temporal zones, belongs to the same fanā temporality. In sum, the worldly temporality is neither timeless nor eternal.

By contrast, the afterlife is located in the timeless baqā world. Thus, paradise and hell, and their corresponding rewards and punishments, are eternal and belong to the timeless baqā world. Acts and omissions carried out during an individual's worldly life will be assessed, rewarded, and punished during baqā timelessness. Since God is merciful, He will commute punishments. Rewards, however, are eternal. A belief in baqā infinity transforms and liberates the human mind from the confines of worldly temporality. Ira Lapidus, a distinguished scholar of Islamic history, captures Islamic temporalities in the following words:

> The quality of this life is critical but still secondary, for it is temporary. Life in the next world, however, is eternal—and more important because after death the individual will be integrated into the world of spiritual and heavenly existences where the human

161. *E.g.*, Qur'an 7:54; 10:3.

162. Qur'an 14:48 (describing that the earth and heavens will lose their known identity). *See also* Qur'an 20:105–07 (describing images of the destruction of the world).

163. In order to emphasize their co-temporality, the Qur'an frequently mentions the earth (*alard*) and cosmos (*alssamawat*) together in the same verse. *E.g.*, Qur'an 2:33 (cosmos and the earth). The Qur'an declares that God alone is "The Originator of the cosmos and the earth! When He decrees a thing, He says unto it only: Be! and it is." Qur'an 46:3.

164. Qur'an 46:3.

> soul can find its ultimate meaning. Death can be accepted with solemnity and calm for it is the transition to a truer life.[165]

For individuals, a barrier, called *barzakh*, separates life and afterlife.[166] This barrier is the unitive-separative border that brings the two lives together but does not allow them to flow into each other.[167] Each individual life first passes through worldly temporality, which ends with death. When wrongdoers face death, says the Qur'an, they supplicate for more life on earth pledging that they would do good.[168] At the time of death, however, no supplications are effective because "before them is barzakh till the day they are raised up."[169] Upon death, the worldly life does not melt into the eternal life.[170] The period between death and resurrection is barzakh. It does not constitute a third temporality, because life on earth and the corresponding worldly temporality continue without interruption, even after the deceased has entered barzakh. On Judgment Day, worldly temporality ends and the dead are retrieved from barzakh to be held accountable.

Unlike secular law, Islamic law establishes numerous spiritual, moral, and legal bonds between life and afterlife. Islam presents the concept of two lives: one on the earth and the other in the hereafter. The Qur'an states: "And what is the life of this world but a play and a passing delight; and the life in the hereafter is by far the better for all who practice taqwa. Will you not, then, use your power of reasoning?"[171] The two lives belong to two distinct temporalities. The human life on earth, which may continue for centuries, belongs to worldly temporality. Worldly temporality is a finite period of time, both for individuals and the human species. The afterlife, which knows no death, constitutes eternal timelessness. The afterlife is interminable and timeless. The Day of Judgment (*yawma alqiyama*) separates the fanā and baqā worlds.[172] On this day, God will raise the dead and hold them accountable.[173]

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165. Ira M. Lapidus, *The Meaning of Death in Islam*, *in* FACING DEATH: WHERE CULTURE, RELIGION, AND MEDICINE MEET 148, 149 (Howard M. Spiro, Mary G. McCrea Cumen & Lee Palmer Wandel eds., 1998).

166. The notion of barrier appears most vividly in the following verse: "God has let free the two seas: One palatable and sweet, and the other salty and bitter; yet He has made a barrier (barzakh) between them, a barrier that cannot be violated." Qur'an 25:53.

167. Samer Akkach, *The World of Imagination in Ibn Arabi's Ontology*, 24 BRIT. J. MIDDLE E. STUD. 97, 97 (1997). Samer Akkach explains that the two seas in sura al-Furqan 25:53 are two integral domains, of the opposite nature, which are united and separated at the same time.

168. Qur'an 23:100.

169. *Id.*

170. The two temporalities are akin to these two seas that do not transgress the barrier. Qur'an 55:20.

171. Qur'an 6:32.

172. Qur'an 2:85. This day has also been called the *yawmi alddeen* (Day of Faith) and *yawmin AAatheemin* (Great Day). Qur'an 39:13.

173. Qur'an 23:100.

B. Why Muslims Obey Laws

To understand why Muslims obey laws, one must understand Islamic legal consciousness. Contrast the frames of compliance under fanā sources of law with those under baqā sources of law. The fanā sources anchor compliance in worldly temporality, which treats individual life as a finite temporal duration and institutes rewards and punishments on the assumption that individuals want to maximize personal benefits and minimize personal losses in the earthly life. In constructing its theory of compliance, secular law offers rewards and punishments in this life and not in the afterlife.[174] By contrast, Islam composes fanā and baqā sources of law and interweaves compliance with complex notions of temporality and timelessness. Muslims obey laws not only to maximize personal benefits in this world but also to maximize personal benefits in the afterlife, the existence of which is a cardinal belief of Islamic faith.[175] A combination of fanā and baqā rewards and punishments determines Islamic legal consciousness.

Why individuals abide by secular laws is a complex question that psychologists and sociologists answer with sophisticated explanations and theories.[176] Worldly punishments—capital punishment, loss of liberty through imprisonment, loss of property, social humiliation, decreased business prospects, foreclosure and bankruptcy, interest maximization, internalization of norms,[177] and moral commitments to maintain laws—promote peace and community welfare. These factors determine frames of mind conducive to meeting the obligations of secular law. These frames of mind also influence law compliance among Muslims. In a few cases, the Basic Code itself prescribes worldly punishments.[178] Islamic law compliance, however, is profoundly infused with a shared consciousness, a devout frame of mind, which prompts Muslims to obey laws primarily out of fear and love of God.

Islam does not teach asceticism or renunciation of worldly pleasures. The Qur'an instructs the children of Adam (not just Muslims) "to eat and drink, but do not waste."[179] This world is important for Muslims, and Islamic law serves this world as much as it does the next.[180] Nevertheless, much confusion, even distortion, enters the understanding of Islamic law

174. Even though millions of people living under common law systems practice diverse faiths and religions—some zealously—common law itself is for the most part secular.

175. Thomas Hodgkin, *The Revolutionary Tradition in Islam*, 10 HIST. WORKSHOP 138, 140 (1980).

176. *See, e.g.*, Daniel S. Nagin & Raymond Paternoster, *Enduring Individual Differences and Rational Choice Theories of Crime*, 27 LAW & SOC'Y REV. 467 (1993) (suggesting that attractiveness of the crime and the ease of committing the crime are related to offending decisions).

177. ROBERT C. ELLICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES 132 (1991) (discussing how self-enforcement follows internalization of norms).

178. The Qur'an and the Sunnah provide punishments for theft, false accusation, and nonmarital sex. *See* Hisham M. Ramadan, *On Islamic Punishment*, *in* UNDERSTANDING ISLAMIC LAW 43, 43–50 (2006).

179. Qur'an 7:31.

180. Qur'an 2:201 (a prayer that asks God to grant us good in this life and in the afterlife).

and its compliance ethos when Islam's afterlife dimension is ignored or deemphasized. Islamic law is not confined to this world. Its ethos cannot be reduced to worldly temporality. In matters of compliance, practicing Muslims engage in a cross-temporal calculus of rewards and punishments. Worldly finitism does not capture the spirit of Islamic law, nor does it explain why Muslims forego benefits in this world and engage in behaviors that appear irrational.[181]

In another article, I discussed the views of Western critics who ridicule Muslim militants fighting in various parts of the world, including Afghanistan, Iraq, and Israel, as seekers of *houris* in paradise.[182] Bruce Hoffman, a specialist on Islamic terrorism, argues that suicide bombers seek death, not to fight oppression or avenge family deaths in Israeli-occupied territories, but to enjoy the pleasures of afterlife, including alcohol and sex with virgins that Islam promises to martyrs.[183] Although Hoffman's argument is uncouth and callously discounts the sufferings of Palestinians under Israeli siege, the author would have a respectable point if he were to argue that Muslim militants fighting occupation are not afraid to die, partly because their conception of rewards is not exclusively confined to this world. For Muslim martyrs fighting for a just cause under the restraints of Islamic law of war, death is indeed the door to paradise, and no worldly benefit exceeds the baqā rewards of afterlife.

Although the Basic Code guarantees accountability in the next world, God is not vindictive.[184] God's justice permeates with a generous margin of mercy. In fact, according to the Qur'an, the margin of mercy is a law that God has prescribed for Himself.[185] God exercises mandatory mercy to judge human digressions and acts of disobedience. Even when His wrath is certain, God does not abandon mercy. God's mercy is compassionate, insightful, and forgiving. God understands whether a violation emanates from a hardened heart. He distinguishes hardcore violations from delinquencies lacking willful motive and bad intentions. His margin of mercy applies to all violations and infractions, whether the perpetrator is depraved, recidivist, or corrigible. Furthermore, His mercy applies to both individuals and nations. An entire nation may repudiate God's Law and adopt the law of

181. Note, however, persons of faith in many religions may consider afterlife punishments and rewards in their decisions to comply or resist worldly laws. *See, e.g.*, Linda McClain, *Rights and Irresponsibility*, 43 DUKE L.J. 989, 1066 (1994) (explaining that some groups prevent women from obtaining abortions "in the name of serving higher law").

182. Liaquat Ali Khan, *The Essentialist Terrorist*, 45 WASHBURN L.J. 47, 55 (2006).

183. BRUCE HOFFMAN, INSIDE TERRORISM 99–100 (1998).

184. For Jewish views, see Haim H. Cohn, *The Penology of the Talmud*, 5 ISR. L. REV. 53 (1970) (arguing that even in measure for measure justice, God exercises self-restraint). For Christian views, see Timothy L. Forth, *Jurisprudence of Faith: An Experiment in Using Theology to Interpret Jurisprudence*, 30 CATH. LAW. 22, 39–40 (1985–86).

185. Qur'an 6:12; 6:54.

ignorance. Even in such cases of wholesale apostasy, God exercises a margin of mercy.

Under God's margin of mercy, justice is not denied to wrongdoers but delayed. Mercy interposes a period of time (*heen*) between violation and punishment,[186] providing a temporal opportunity for wrongdoers to reflect upon the constitutive ingredients of wrongdoing and its effects on others and on the perpetrators themselves. Hardhearted wrongdoers may misinterpret this durational margin of mercy to infer that no God exists or that God is lawless. Even victims of wrongdoing may similarly conclude that God's justice is non-existent or uncertain. For persons of faith, however, whether they are perpetrators or victims of wrongdoing, God's mercy furnishes opportunities to make and receive amends, and to seek and offer forgiveness. It is a time of self-correction and healing. The temporal margin of mercy, moreover, does not weaken God's justice. According to the Qur'an, the Day of Judgment, when human beings will be gathered and held accountable for their deeds and misdeeds, is inevitable.[187] God grants a margin of mercy "so that if any of you commits a bad deed out of ignorance, and thereafter repents and lives righteously, God is indeed forgiving and merciful."[188]

Most secular systems, including common law, have separated from God's justice and mercy and embrace the worldly temporality. Secular law is mono-temporal. It does not rely on afterlife to seek compliance with laws. Adverse consequences that follow violations of law occur in this life. The law may saddle the decedent's estate with legal burdens, fines, and penalties,[189] but the deceased is effectively exempt from the reach of law. The enforcement of common law against a person terminates at death.[190] When obligations of life are unbearable, some persons commit suicide. They know that death will free them from the burdens of the law.[191] Secular law applies only during worldly life.[192] For individuals who do not believe

186. *Ezekiel* 7:27.

187. Qur'an 6:12.

188. Qur'an 6:54.

189. In common law, however, the dead man's statutes have historically prohibited the testimony of a party in interest who claims to have a share in the decedent's estate on the theory that the decedent is not there to affirm or controvert any such evidence. *See, e.g.*, Sepulveda v. Aviles, 762 N.Y.S.2d 358, 365 (App. Div. 2003) (providing the rationale for the dead man's statute). For criticism of dead man's statutes, see Ed Wallis, *An Outdated Form of Evidentiary Law: A Survey of Dead Man's Statutes and a Proposal for Change*, 53 CLEV. ST. L. REV. 75 (2005–06).

190. Common law considers dead bodies in relation to the rights of the living. *See* David J. Harris, *Respect for the Living and Respect for the Dead: Return of Indian and Other Native American Burial Remains*, 39 WASH. U.J. URB. & CONTEMP. L. 195, 222 (1991).

191. Jerry Jacobs, *A Phenomenological Study of Suicide Notes*, 15 SOC. PROBS. 60, 61 (1967) (concluding that those who commit suicide seek freedom from suffering).

192. Professor Andrew Guzman makes a credible point that states observe international law out of fear of sanctions and acquiring bad reputations. *See* Andrew T. Guzman, *A Compliance-Based Theory of International Law*, 90 CALIF. L. REV. 1823 (2002). The same can be said about individuals and businesses.

in an afterlife, legal obligations end with death. Some find no harm in dodging obligations if they can successfully do so.

"*Don't get caught*" is an attitude that appears in numerous cases, capturing mental and ethical mentalities within which individuals understand legal obligations.[193] In a murder case, a defendant said: "I guess it's alright to kill as long as you don't get caught."[194] The defendant's sense of law is rooted in worldly temporality. His statement denies any accountability before God in this life or in afterlife. In another case, an employee lost his job for complaining that the owner's son was a methamphetamine addict. In his testimony, the son reportedly said: "Perhaps as a white lie, or something of that nature, being in possession of this [methamphetamine] is a felony. But I guess as long as you don't get caught, it's all good, if you know what I mean."[195] In a case involving a Marine charged with larceny, trial counsel explained the reason for presenting admitted criminals [Marines] as prosecution witnesses: "Either they (Marines) are going to go and look for members of their own ilk, fellow criminals, or they are going to do it in private so they don't get caught. That is what this is all about. Not getting caught."[196] This case reveals that the *don't-get-caught* attitude could be a driving principle for both individuals and groups. This attitude defines the contours of law enforcement.

As a frame of mind, the *don't-get-caught* attitude is the opposite of self-enforcement of laws. To combat the *don't-get-caught* attitude, law enforcement summons state resources, such as police, detectives, regulators, and supervisors to enforce laws. While law enforcement is an indispensable part of the legal system, it is the primary tool against individuals who lack or reject voluntary compliance. The fear of sanctions dominates the legal system. An excessive reliance on law enforcement inhibits the appreciation of laws, the law's inner morality, its utility, and its contribution to the peace and prosperity of communities and nations. In unjust legal systems where individuals have little respect for law, law enforcement exacts a heavy cost since the state must raise enormous enforcement resources to seek compliance with laws.

Repudiating the *don't-get-caught* attitude, the Qur'an informs believers that God is "aware of all that you do."[197] One cannot hide from God.[198] The *don't-get-caught* attitude emanating from the worldly temporality has

193. *See also* Hillary A. Sale, *Judging Heuristics*, 35 U.C. DAVIS L. REV. 903, 957 (2001–02) (explaining that if insider trading is not prosecuted as not worthy of the courts' time, this message perpetuates the fraud).

194. Miller v. State, No. 46A04-0612-CR-696, 884 N.E.2d 437, at *1 (Ind. Ct. App. 2008) (Westlaw).

195. Earls v. Hagemann Meat Co., No. A114857, 2008 WL 459004, at *3 (Cal. Ct. App. 2008) (Westlaw).

196. United States v. Diffoot, 54 M.J. 149, 152 (C.A.A.F. 2000) (emphasis omitted).

197. Qur'an 6:3 (God knows what you keep secret and what you do openly).

198. *Id.*

no meaning for believers who recognize God's omnipresence and infinite resources for keeping accurate individual accounts of deeds and misdeeds.[199] Believing and practicing Muslims also develop a state of mind that the Qur'an describes as *taqwa*.[200] Taqwa permeates the teachings of the Qur'an; it is a spiritual goal that believers must make every effort to achieve.[201] Fazlur Rahman defines taqwa as a "mental state of responsibility from which an agent's actions proceed but which recognizes that the criterion of judgment upon them lies outside him."[202] This definition, however, is incomplete. Taqwa as a mental state is neither innate, nor does it come merely by being a Muslim.[203] Taqwa matures through righteous behavior, faith, and self-restraint.[204] A belief-based cognition that nothing can be hidden from God powers the self-enforcement of laws.

Islamic temporalities and the associated notion of a truer life in the baqā world do not endorse any claim that Muslims are inherently law-abiding. The crime rate in Muslim communities and among Muslims is by no means zero. Muslims violate worldly laws for worldly causes. Even during the annual pilgrimage to Makkah, called the *hajj*, cases of theft and pickpocketing occur. No simple model of law compliance can explain why Muslims obey or disobey laws. Islamic law neither guarantees that Muslims will be morally upright nor that Muslims will voluntarily obey laws without the fear of worldly punishments.

One may argue that an emphasis on baqā rewards and punishments rather than worldly incentives weakens rather than strengthens compliance with laws. Individuals who do not believe in a future life or eternality may simply ignore the commands of law.[205] Compliance presupposes the certainty of judgment and the high probability of punishment for violations of law. The certainty of worldly enforcement compels compliant behavior and deters violations. By removing rewards and punishments to a future life, the question arises whether Islamic law provides a credible enforcement system. One might also argue that the worldly enforcement of divine law is necessary to effect compliance because some individuals would simply ignore laws if rewards and punishments materialize in the next world.

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199. Qur'an 2:139 (each is responsible for his or her own doings); 3:19 (God is swift in maintaining accounts).

200. Qur'an 2:150; *see also Advocacy Under Islam*, *supra* note 3, at 575–76 (discussing the distinction between internal and external ethics).

201. Qur'an 47:17.

202. FAZLUR RAHMAN, ISLAM AND MODERNITY 155 (1982).

203. Jason Morgan-Foster, *Third Generations Rights: What Islamic Law Can Teach the International Human Rights Movement*, 8 YALE HUM. RTS. & DEV. L.J. 67, 112 (2005) (arguing validly that the duty paradigm need not be a priori religious but misconstruing taqwa as a priori normative judgment).

204. Taqwa is not an all or nothing state of mind. Nor is it just a state of mind. Taqwa is the righteous behavior for the righteous reason. In manifest behavior, some practicing Muslims achieve a higher degree of taqwa than others.

205. Howard N. Brown, *Immortality*, 8 HARV. THEOLOGICAL REV. 45 (1915).

This line of argument, though credible in some individual cases, misconceives taqwa in utilitarian terms. Taqwa is not mathematically tied to rewards and punishments delivered here and in the afterlife.[206] Most Muslims obey God's Law as a process of self-maturation. Compliance contributes toward moral maturity and spiritual enlightenment.[207] According to the Qur'an, a frame of mind that distinguishes right from wrong grows in purity and achieves the state of happiness.[208] Some believers comply out of an unshakeable conviction that they will receive rewards and avoid punishments on the Day of Judgment.[209] Many others comply with Islamic law not only to receive rewards but to please God and acquire the related peace of mind.[210] Pleasing God is therapeutic.

If the positive law of a Muslim state is incompatible with the Basic Code, Muslims lose respect for government and its legal system. Some Muslims may openly violate the positive law. Some may conspire to undermine the government. A secular government that defies the Basic Code is vulnerable to a violent overthrow. Iran under the Shah was unstable because the Shah underestimated the power of religion and overestimated the forces of modernity. The Taliban bombed schools because in its view, the schools, established under the Western influence, were corrupting future generations of Afghan Muslims by educating children in worldly matters without the discipline of Islam. In some cases, therefore, pleasing God can lead to intolerance and even violence.[211] Self-righteous individuals equipped with the belief of pleasing God can commit atrocities in this world that the Basic Code prohibits.[212] In the name of pleasing God, some individuals resort to the honor killing of women,[213] slaughtering the innocent in geopolitical

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206. For a secular view regarding the historical evolution of rewards and punishments, see Sheldon Shapiro, *Morality in Religious Reformations*, 18 COMP. STUD. SOC'Y & HIST. 438, 441 (1976) (explaining that because the wicked were not punished and the good were not rewarded, the afterlife rewards and punishments were constructed to explain discrepancies).

207. Qur'an 91:8 (the enlightenment of knowing the right from the wrong).

208. Qur'an 91:9.

209. Some studies show that strict churches are more successful in retaining and gaining memberships while lenient churches are not. *See generally* DEAN KELLEY, WHY CONSERVATIVE CHURCHES ARE GROWING (1986).

210. Imam Sayed Moustafa Al-Qazwinin, *Just War: An Islamic Perspective*, 9 NEXUS 79, 84–85 (2004) (interpreting the Qur'an to argue that pleasing God captures the spirit of Islamic faith).

211. The myth-ritualist theory describes religion as primitive science that magically manipulates the world. For a discussion of this theory, see Robert A. Segal, *The Myth-Ritualist Theory of Religion*, 19 J. SCI. STUD. RELIGION 173, 173 (1980).

212. Jerry Goldfried & Maureen Miner, *Quest Religion and the Problem of Limited Compassion*, 41 J. SCI. STUD. RELIGION 685, 686 (2002) (explaining that the religious attitude can be a source of compassion while a self-righteous view of religion breeds intolerance).

213. *See* Lama Abu-Odeh, *Comparatively Speaking: The "Honor" of the "East" and the "Passion" of the "West,"* 1997 UTAH L. REV. 287, 306 (explaining honor killings in the Middle East and comparing them with "heat of passion" crimes in the United States).

conflicts, and practicing intolerance toward persons of other faiths.[214] Such individuals bear temporal punishments because they seek reward in the afterlife. They will suffer and even expose their families to severe hardship because they are convinced in their hearts that what they do pleases God. Thus, compliance with Islamic law does not guarantee righteous behavior. Aggressive self-righteousness, however, is not the exclusive product of Islam or religion in general.[215] The "self-indulgent nature of human psyche" is a behavioral trait that cuts across cultures, religions, and nations.[216]

VII. Conclusion

This article draws two main conclusions. First, meeting the evolutionary needs of Muslim communities, Islamic law is a normative composite of baqā and fanā sources of law. Islamic law founded on the Basic Code offers normative stability to the extent that fundamental values of the Basic Code cannot be amended. Nevertheless, Islamic positive law, comprised of fiqh, legislation, local customs, and international law, evolves under the submission principle. This article rejects the argument derived from text-skepticism that interpretation of the Basic Code can achieve the same purposes as textual amendments. Second, Islamic baqā and fanā temporalities, interweaving the worldly life with the afterlife, offer instructive insights into Islamic law and Muslim behavior. Muslims comply with laws to please God and to maximize personal rewards in the afterlife. A worldly system of rewards and sanctions neither fully explains, nor can it fully manipulate, their worldly behavior.

214. Osama Siddique & Zahra Hayat, *Unholy Speech and Holy Laws: Blasphemy Laws in Pakistan—Controversial Origins, Design Defects, and Free Speech Implications*, 17 Minn. J. Int'l. L. 303, 384 (2008) (arguing that blasphemy laws breed intolerance and violence).

215. Johan Galtung, *A Structural Theory of Aggression*, J. Peace Res. 95, 95 (1964) (defining aggression as a "drive towards change, even against the will of others").

216. Donald C. Langevoort, *Ego, Human Behavior, and Law*, 81 Va. L. Rev. 853, 853 (1995); *see also* Andrew D. Brown, *Narcissism, Identity, and Legitimacy*, 22 Acad. Mgmt. Rev. 643, 643 (1997) (explaining that egotistical self-righteousness can also be a group trait).