

Law

Law - Christian Perspective

Dr. James Gaffney

Christian understanding of law, as of many other social institutions, derives from both biblical and classical sources. In its broadest sense, the term law is applied to all regularities of behavior, including predictable sequences of events in the natural world, as in modern reference to more or less "scientific" laws such as "universal gravitation" or "supply and demand." For Christians as for many other religious people, this use of law has a further implication inasmuch as the laws of nature are thought to be expressions of a Creator's will and providential design. In addition to these laws built into creation, there are laws prescribed to free, intelligent beings (angelic as well as human) who are capable of obeying or disobeying. Such laws may come from several sources.

Law in the Hebrew Bible: *Torah*

The Christian idea that God prescribed specific laws for human beings derives mainly from the Hebrew Bible, where God's covenant with his people is predicated on their conformity with *Torah*, the divine law revealed to Moses. This law is set down in writing in the first five books of the Bible. To the modern reader it appears to be a collection of various kinds of prescriptions, some grouped together in smaller collections. The most celebrated of these are the Ten Commandments, given in two slightly different versions, stating broad norms of religious and moral conduct. Of the other laws in *Torah*, some are broad principles but many are very specific "case" laws, pointing to the determination, judgment, and punishment of various kinds of offenses. There are many laws prescribing ceremonial behavior. Still another kind of law declares the "uncleanness" of certain foods, natural functions, and artificial arrangements, and prescribes purification rituals.

These various categories of law are not distinguished in the biblical text. As a result, modern readers find in the biblical text examples of what they might call moral principles, criminal, civil, and penal laws, liturgical rubrics, and taboos. Modern scholars have found many resemblances between portions of *Torah* and legal material recovered from older Middle Eastern documents.

Jesus' Interpretation of the Law of Moses

In the New Testament, Jesus is presented as an observant Jew who affirms the authority of *Torah*. But he was also a reformer who called for its reinterpretation. He typically deplored superficial legalism, insisting that interior virtuous attitudes must underlie and intensify outward behavior. He opposed oppressive literalism in applying ritual obligations. He taught that the whole *Torah* along with the Prophets is ultimately reducible to the twofold standard - itself taken from the *Torah* - of loving God with all one's heart and loving one's neighbor (understood as any fellow human being) as oneself.

Paul's Expanded View of Law

St. Paul introduced a much more radical view of the Torah, asserting that what is valid in it is not different from the moral demands non-Jews find "written in their hearts" and experienced in the deliberations of conscience. Once that was admitted, early Christians were in a position to seek God's will not only in the Bible but in personal moral judgments based on reason, and assisted even by pagan authorities on morality and law.

Paul also asserted the duty of Christians to obey laws of the state - in a passage that would often be abused to secure obedience to tyrants on supposedly religious grounds. These revisionary teachings of Paul, part of his campaign to make Christianity accessible and congenial to non-Jews, were understandably resented by many Jews.

Roman Law for a Roman Church

These developments were accelerated when Christianity became the established religion of the Roman Empire. Roman law, purged of features incompatible with Christianity, was maintained in the Christian empire, codified by a Christian emperor, and developed by Christian jurists. At the same time, the Church developed a body of law for its own purposes, which presumed dogmatic teachings, but which was modeled on Roman law. This "Canon" law, which had its own courts, lawyers, and judges, recognized the Bishop of Rome (pope) as having supreme legislative, executive, and judicial authority. Thus, by the Middle Ages, Christians found themselves subject to two bodies of law, that of the State and that of the Church. Both were rooted in Roman law, confined within the limits of Christian orthodoxy, but also progressively modified by the laws of lands outside the Empire into which Christianity spread. Though supposed to function in harmony, tensions inevitably developed between these bodies of law when conflicts developed between rulers of church and state. The climax of these tensions would be reached at the Protestant Reformation, when anti-Roman rulers used legislative powers in direct opposition to the pope, and both Protestant and Catholic governments sponsored laws designed to persecute their opponents.

Medieval Christian Philosophy of Law

During and after the Middle Ages, Christian philosophers, jurists, and theologians developed out of traditional elements a basic philosophy of law. Especially progressive was a determination that, to be binding, any law must satisfy four requirements. It must be a rational prescription. It must be designed to serve the common good. It must originate from legitimate legislative authority. And it must be made publicly known to its subjects. Enactments lacking any of these qualifications could be resisted unless resistance would do more harm than good. But if the enactments called for immoral behavior they must be disobeyed regardless of consequences. It was also gradually conceded that rulers owed their legislative power to the people they governed, and not immediately and directly to God.

These centuries saw increasing use of the concept of "natural law" (*ius naturalis*), understood as the exercise of right reason in moral deliberation - not to be confused with "laws of nature" in scientific or quasi-scientific usage. Also frequently invoked in disputes between political communities was the "law of nations" (*ius gentium*), understood as principles of political justice whose regular appearance in various societies established them as acceptable common ground for international negotiations and agreements.

Theologically, all valid law was understood to participate in "eternal law" (*lex aeterna*), the divine providential master plan, known fully only to God.

Laws Exploited By Religious Hostility

After the Protestant Reformation, Catholic teaching adhered, at least in theory, to the doctrine of law just described. But with the multiplication of nations professing different religious loyalties, Christian churches found themselves under legal systems that either supported or opposed their beliefs. In the former case, the "establishment" or exclusive support, of a particular church, was often introduced. In the latter case, religious commitments fostered alienation from government, distrust of its laws, and, when conditions became intolerable, efforts to emigrate to more tolerant lands. In addition to the mutual intolerance of Christian churches, most of them shared an even deeper intolerance of non-Christians, especially Jews and Muslims, whose civil rights were often in legal jeopardy, and who were often subject to persecutions that the laws either supported or ignored. Similar discrimination was often experienced by the "pagan" populations of lands colonized or appropriated by Christians.

Law as Protection, Both Of and From Religion

Perhaps the greatest beneficiary of reaction to legal discrimination and persecution was the United States of America, whose Constitution explicitly prohibited the "establishment" or official endorsement of any religion, while guaranteeing freedom of worship. The result was to attract and retain a culturally diverse and religiously pluralistic immigrant population.

The American model of legally protected religious freedom has spread gradually to many other countries, which have progressively shed the "Catholic" or "Protestant" bias of their laws. This trend, strongly resisted in many "Catholic" countries, became a part of Catholic reform with the publication of a *Decree on Religious Freedom* by the Second Vatican Council. Many Protestant denominations and organizations have endorsed similar principles. In recent years also, Christian churches have taken increasing interest in international law, especially as a means to identify human rights and protect them from the abuses of national politics.

Law in Islam (*Shari'a*)

Dr. Hatam al Haj

Shari'a, in the contemporary common Islamic terminology, means the legal rulings or the Islamic law. The word, linguistically, means the path to water, which infers that following the divine law is vital for the spiritual and moral welfare of humans as water is for their physical welfare.

In the early usage of the word, it meant the divine injunctions whether they pertain to the articles of faith, laws, morality or spirituality. Then, the word became more specific for the laws.

Those laws, however, are not like the secular laws, for they do not only regulate man's interactions with his fellow men, but also his relationship with himself, and most importantly, God. Hence, the books of jurisprudence (*fiqh*) start with the laws pertaining to worship, such as how one may purify himself, pray, fast, pay alms and perform *hajj* (pilgrimage). Following thereafter are the chapters on transactions, customs and family laws followed by the chapters on penal laws. Most often *shari'a* is reduced in the minds of many to a fraction of the last part, which pertains to the corporal punishments prescribed for major crimes such as murder, adultery, theft, and banditry.

Although such rules are part of the *shari'a*, it would be a colossal distortion of the truth to portray them as the entire *shari'a*. It would also be unwise to try to understand or implement them outside the context of the entire *shari'a*.

The objective of the *shari'a* is the attainment of the welfare and well-being of man as an individual as well as the human societies.

Imam Ibn al-Qayem said: "The *shari'a* is founded and based on wisdom and the pursuit of the welfare of all servants (of God) in this life and the one to come. So, everything that deviates from fairness to unfairness, from mercy to its opposite, from benefit to harm or from wisdom to foolishness is not of the *shari'a* even if it was introduced into it by misinterpretation. For the *shari'a* is the manifestation of Allah's justice between His servants and His mercy for His creations and His expression on His land and His wisdom that leads the people to Him and to the truthfulness of His messenger" (*Ibn al-Qayem, l'lam al-Muwaqqe'een*).

The *shari'a* accomplishes this pursuit of human welfare by responding to the various needs of humans, which are divided into three categories: necessities, needs and comforts/luxuries. The necessities include the protection of the religion, life, intellect, lineage, wealth, and honor. For the preservation of everyone, there are several legislations. The needs are less essential for human life than the aforementioned matters. However, the *shari'a* aims to secure them for the people as well as the luxuries and comforts that are of less priority but would still enjoy the protection of the *shari'a*. This is true as long as their attainment does not take place at the expense of compromising the necessities or the needs and they do not cross into the realm of extravagance and wastefulness.

As for the sources of the law, they are:

1. 1. The Quran

Which is, in the Muslims' belief, The revealed word of God to His last prophet and messenger, Muhammad (peace and blessings be upon him) and God's last testament and communication to mankind.

1. 2. The Sunnah

The way of the Prophet (peace be upon him) established from his statements, actions and tacit approvals.

The Quran and Sunnah are the two original sources that are undebatable, and if their wording were clear, they would provide a decisive uncontested proof.

There are two other derived sources whose authority is agreed upon, which are:

1. 3. The consensus of Muslim scholars (*Ijma'*)

Which is almost always based on the Quran and Sunnah for it is almost impossible for all of them to agree on a matter that has not been mentioned in the original sources, even indirectly.

1. 4. The Analogy

This is to extrapolate from established rulings to cover new events and problems. A good example would be the prohibition of drugs based on their sharing with wine in the quality of intoxication, which is the effective cause (*'Illah*) behind the prohibition of wine.

There are other secondary sources for legislation including the fatwa (religious edict) of a companion (disciple of Prophet Muhammad), consideration of public interest (*maslaha mursalah*), consideration of equity (*istihsan*), customs (*'urf*) and blocking the means to evil and opening the means to good (*sadd adh-dhara'e' wa fath adh-dhara'e'*) but the first four are the most important & most agreed upon.

Since Muslims believe that the Quran was the last Divine communication to man and Prophet Muhammad was the final messenger, they believe in the validity of the *shari'a* at all times, with two important guidelines:

1. The sacredness is not conferred on the opinions of scholars –as long as it is not consensus –but rather it is the revelation (Quran and Sunnah) that is sacred. By consensus, Muslims believe that the scholars are not infallible and Sunni Muslims believe the only infallible humans are the prophets, and they were sealed by Prophet Muhammad (peace and blessings be upon him). The scholars, thus, may disagree based on their understanding of the textual implications (*delalat*) and the truth is never tied to one of them, but may be recognized from the evidence.

2. The *shari'a* itself provides flexibility to accommodate the various changes in people's lives from one time to another. This is due to many factors, mainly, that though it provides much detail in the area of worship it only gives essential guidelines in the areas of transactions. An example for that would be in financial transactions. If the contract does not include usury (*riba*), injustice (*ghubn*) or undue risk taking (*gharar*, which is the equivalent of gambling in business), it would be valid and permissible no matter what form or shape it may take. This allows the *shari'a* to adapt and adjust to the various changes that may take place in people's lives.

The Muslims' desire to implement the *shari'a* is one of the manifestations of their desire to submit to Allah (God) and submission is what the word "Islam" means. It is quintessentially what the religion of Islam is about.

Law (Shi'i point of view)

Dr. Liyakat Takim

Shi'is follow a school of law based on the teachings of their sixth spiritual leader (called Imam), Ja'far al-Sadiq (d. 765) after whom the school has been named. However, this does not mean that Shi'i law differs substantially from Sunni law. On the contrary, there are many points of convergence between the two schools of law.

The formation and crystallization of a distinct Shi'i school of law coincided with the rise of Sunni schools of law. The emergence of a distinct Shi'i school can probably be traced to the time of the fifth Shi'i imam Muhammad al-Baqir (d. 735). Respected by and contemporary to many Sunni jurists in Medina and Kufa, he is credited with laying the foundations for the establishment of the Ja'fari school of law. His legal formulations were later elaborated on by his son, the sixth Shi'i imam, Ja'far al-Sadiq. Al-Sadiq was contemporary with prominent Sunni jurists like Abu Hanifa (d. 767) and Malik b. Anas (d. 795).

Circumstances that led to the rise of the schools of law in Sunnism also precipitated a concurrent need for a Shi'i school. The goal of the jurists' endeavor in the eighth and ninth centuries was to reach an understanding (*fiqh*) of the *shari'a* i.e., to comprehend in precise terms the law of God. Guided by a corpus of precepts and laws and their own independent reasoning the jurists attempted to construct a legal edifice by developing and elaborating a system of *shari'a* law. At the same time, the Shi'i imams began to formulate their own understanding of the law and to establish paradigmatic precedents for the situations they encountered. Knowledge, interpretation, and articulation of the law meant that the imams became the main source of religious authority in Shi'ism.

During the period when the imams were with them, the Shi'is accepted their pronouncements as the only valid source of law after the Qur'an and the *sunna* of the Prophet. The imam was believed to be the final enunciator of the law, occupying the same

position as the Prophet himself did. As Shi'i theology posited the imam to be divinely appointed (*nass*), endowed with divinely inspired knowledge (*'ilm*) and infallible (*ma'sum*), the authority of the imam supersedes the authority of local practice or speculative reasoning. The emergence of a distinct Shi'i school of law should thus be viewed as the result of the Shi'is' self-understanding of the nature of religious leadership and their confinement of juristic authority to the imams.

Apart from the imams, some of their deputies in places like Kufa reportedly acted as jurists in their communities. In particular, Jabir al-Ju'fi (d. 745), Burayd b. Mu'awiya (d. 767), Zurara b. A'yan (d. 767), and Muhammad b. Muslim al-Thaqafi (d. 767) are mentioned as some of the *fuqaha'* (jurists) of the Shi'i community. Disciples like Aban b. Taghlib (d. 759) were reportedly authorized by the imams to issue juridical edicts (*fatawa*) and to respond to legal questions in Medina.

The Shi'is were not allowed by the imams to practice *qiyas* (analogy), *ra'y* (opinion), *ijtihad* (independent legal judgment) or other rational methods that were employed in the Sunni schools. They were required to rely on the Qur'an and narrations (*riwaya*) from the Prophet and the imams in the derivation of juridical rulings. In practice, some of the disciples of the imams like Zurara b. A'yan, Muhammad b. Muslim, and Hisham b. al-Hakam, probably influenced by the cosmopolitan and eclectic nature of Kufa, employed many of the speculative methods that were accepted in the Sunni schools.

After the twelfth imam went into a state of hiding in 940 C.E., Shi'i jurists had recourse to various interpretive devices like *maslaha* (enacting a legal point that is most conducive to the welfare of the community) and other interpretive principles to respond to the needs of the times and to go beyond the rulings stated in the revealed texts. They introduced more speculative elements and reasoning (*ijtihad*) into Shi'i law. Unlike Sunni law, the doors of independent reasoning or *ijtihad* were never declared closed in Shi'i Islam.

Living in America has forced contemporary Shi'i jurists to resort to various interpretative and exegetical strategies so as to respond to the challenges of contemporary times. Some jurists have argued that the juridical decisions in the past were interwoven to the political, cultural, or historical circumstances in the eighth century. Thus, they have reinterpreted and restated Islamic law, invoking various interpretative principles like *maslaha* (derivation and application of a juridical ruling that is in the public interest), *ijtihad* (independent reasoning), *istihsan* (preference of a ruling which a jurist deems most appropriate under the circumstances) and other innovative and interpretive principles to respond to the needs of the times.

Although Shi'i law has its own distinctive character, there are many instances where it agrees with one or more of the Sunni schools. Today, lay Shi'is are required to follow or emulate the rulings issued by their scholars called Ayatullahs. In many cases, the Ayatullahs have derived newer rulings on issues like cloning, euthanasia, fasting and praying in cities where the sun does not rise or set, and *IVF* (in vitro fertilization) to respond to the challenges that Shi'is encounter, especially those living in the West.

Points of Agreement:

Both Muslims and Christians agree that all valid law must be based in the divine eternal law. Law which conflicts with God's law is invalid law.

Points of Disagreement:

Generally, Christians think of church law as applying mainly to church matters, such as marriage and divorce, and moral matters, such as murder, abortion, and sexual behavior. Church law is separate from secular law, which governs most affairs of everyday life, including transactions, criminal and penal codes, etc. Although church morality is concerned about ethical business transactions, there is not a large body of church law governing transactions. Catholic Social teaching, for example, deals with general principles of economic and political morality, but there is no large body of Catholic law governing economic and political transactions. This seems quite different from Islam, in which the *sharia* law covers all areas, including transactions, penal offenses, inheritances, and so on. It is true that many Muslim countries, such as Egypt, Turkey, Indonesia, and others have both secular law systems and courts, and *sharia* law systems and courts. But this seems to be a result of accommodation to western styles of law. Islam, however, claims to be a whole way of life, and *sharia* law itself seems to claim application to all areas of life, as Hatam al Haj indicates above. Very few Christians, on the other hand, think that the law of the state should be based on the Bible or church law, and in any case there is no detailed body of Christian law which could serve as a law code for all areas of life. The range and extent of religious law, then, is a point of disagreement between Muslims and Christians.

James Gaffney offers some reflection on the difference between Muslim and Christian approaches to law:

Islam has maintained an emphasis on religiously based law, understood to derive from divine revelation that had parallels in Judaism's regard for written and oral Torah, but never in Christianity. This difference has both theological and historical causes. St. Paul taught that salvation was by faith, and not by the works of the law, although one who was saved by faith would live a life in conformity with the moral law. He also taught that the moral law given in Torah was essentially identical with the moral law that reason and conscience make known to all human beings. Parts of Torah that dealt with other matters, such as dietary and ritual prescriptions, were considered irrelevant to Christians. In addition to these theological factors, Christianity grew in a social and political environment, that of the Roman Empire, where law and jurisprudence were very highly developed. Christians, for the most part, had no quarrel with and deep respect for Roman law, and acknowledged a moral obligation to obey it except in the rare instances when it appeared to depart from justice. As a result, when the pagan Roman Empire became, in the 4th century, a Christian Roman Empire, the law remained essentially intact, modified only incidentally to serve Christian interests and beliefs. When, in addition, a body of specifically ecclesiastical law was formed, it did not replace but supplemented and in many ways imitated Roman law.

In principal, therefore, Christians have not regarded the law of the State as a threat or a rival, and their occasional criticisms of laws of the State are typically based on moral convictions, not on any supposedly superior body of divinely revealed law. An important consequence of this has been the relative ease with which Christians in modern times learn to live tranquilly under the laws of states that profess no ecclesiastical commitment nor any bias, positive or negative, regarding religion, including states that accommodate as equals believers and unbelievers, and believers of many kinds.

Because of this very different theology and history, Christianity has no significant counterpart to the challenges, opportunities, or difficulties confronting *Shariah* in modern Islam. Whether it offers examples that faithful Muslims might or should adopt is an important question, but one whose answer must come from Islam.

Points for Further Discussion:

The legitimacy of secular legal systems, and what areas of life should be governed by secular law, and what areas should be governed by religious law, is a large area for discussion between Muslims and Christians, and also within each religion itself.