

Double Consciousness: Full Inclusion for the Muslim American!*

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* This paper was written originally at the request of *Islamica Magazine*, the forerunner of this magazine. Unfortunately, the *Islamica Magazine* folded before the essay was published. While expanded considerably, it retains the flavor of the original and my goal remains the same, to provoke discussion in various Muslim communities. Much of the new material comes from subsequent work that grounds the universalism dominant in Christianity and the particularism dominant in Islam in an analysis of the fundamental building blocks of religiosity that characterize each religious denomination. While I hope that this discussion is of interest, the core of the paper still focuses on the role of double consciousness in the full inclusion of Muslims within United States society.

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In the United States, many of us learned from the Black Power Movement that particularistic and universalistic convictions and/or identities are not contradictory. One may take pride both in being black and in being “American.” Being a black-American, an African-American, does not mean melting into a homogeneous body; universalistic value-commitments, more general than particular ethnic or religious convictions, enable people to maintain and develop diverse ethnic, cultural, and religious identities. But this is possible only when no group seeks (successfully) to impose its particular convictions and/or culture on others.

Christianity, because it is rooted in a sense of right reason/natural law that has been understood to be accessible to all people, has facilitated the development of civil religions,¹ which constitute social values/principles more general than denominational precepts and are thus able to encompass and include diverse religious traditions. In contrast, Islam created a space for other religions, but only within the context of the implementation of the precepts constitutive of *Shari'a*²; this place entailed second-class

¹ Cf. Robert N. Bellah, “Civil Religion in America,” reprinted in his *Beyond Belief: Essays on Religion in a Post-Traditional World*. N.Y.: Harper & Row, 1970.

² For my understanding of the logic of religious commitment in Islam and Christianity, including why Christianity is a religion of principles and Islam a religion of precepts, see my “Understanding Jihad,” *Policy Review*, #129 (February-March, 2005), pp. 15-32 <http://www.hoover.org/publications/policyreview/3431076.html#>. For my understanding of the place of reason and natural law in Christianity and Islam, see “Religion Within Reason: Pope Benedict’s Critique of Islam,” *Policy Review*, #146 (December 2007/January 2008), pp. 25-38 <http://www.hoover.org/research/religion-within-reason>. For an analysis of the role of natural law, human fallibility and the immanence or

"citizenship" for non-Muslim peoples of the book and even less officially authorized inclusion for other non-Muslims, and thus is unacceptable in the contemporary world.

The question I pose here is whether it is possible for Islam to be incorporated into a civil religion that transcends denominational conviction, and whether the incorporation of Muslims within this civil religion may facilitate the development of Islam in a way that fosters a genuine reciprocity between Muslims and others.³ My argument is largely theoretical; it refers primarily to the situation in the United States, but is, I think, relevant in other Western contexts where Muslims are a minority population. First, however, I want to ground my characterization of Christianity and Islam in a way that makes intelligible the contention that Christianity conduces a social order in which universalism trumps particularism, while in Islam the logic of religious commitments is one that conduces outcomes where particularism trumps universalism.⁴

transcendence of God in the creation of different logics of religious comment and their consequences for the emergence of democracy and human rights, see my "Natural Law, Human Fallibility and the Transcendence of God: Islam, Christianity (Confucianism and Judaism) and Democracy/Human Rights," Presented at a Visiting Fellows Symposium at the Human Rights Program, Harvard Law School, October, 2104, and at an International Conference on the Legacies of Shmuel Noah Eisenstadt, Paris, 2016.

³ In this paper, I argue that societies rooted in religious commitments where universalism trumps particularism conduce to the development of civil religions, notions of universal human rights, and democracy, while those rooted in religious convictions where particularism trumps universalism inhibit these developments. I focus on the former situation, leaving the latter, an analysis of societies where the dominant values are particularistic, for another occasion.

⁴ My characterizations are "ideal types." They consciously essentialize Islam and Christianity to provide a way to characterize the autonomous effects of different forms of religious commitment.

A Preface...

Given the dominant tendencies current in "Religious," and especially "Islamic Studies," it is necessary that I begin with a few orienting comments. In this paper, I commit three "sins," violations of norms that currently regulate the study of religion: after Said's *Orientalism*, we have been told that we must study discrete Muslims and not Islam. To do the latter is to commit the sin of essentialism, which is the worst sin an academic can commit. Here, I commit this sin; I construct ideal types of religious commitments that "essentialize" them; I do this because, believing that religious commitments affect the way people act, it is the only way to get at the autonomous effects of religious commitments.⁵

Robert Bellah referred to my second sin as adopting a Protestant view of religion, treating religion as a set of beliefs (or here value-commitments) instead of looking at religion experientially. It is correct that religion is more than a set of religious convictions, but my contention is that to understand the effects of religiosity, we must understand the nature of religious commitments, and how those commitments vary from one religion to another. Following Weber's insight, I am interested in the autonomous effects of religious value commitments, moral obligations that motivate and legitimate actions. I am not interested in religious dogma, which, Weber told us, has little effect on how people act.

⁵ It is worth noting that the people most likely to support this contention, that religious commitments have an autonomous effect on the way people act, are those who are, themselves, religious.

My third sin, hinted at above, has two dimensions: the first is my concern with characterizing systematically variations between religions. It is fashionable to emphasize their similarities. Correlatively, we are told to emphasize the heterogeneity within each religious tradition by accentuating the many forms each has taken. In some analyses, this is crucial as these differences may have substantial consequences. However, if we are to understand how the autonomous effects of each religion are constructed, and how they differ, we must examine differences between the great religions, focusing, in the first instance, only rudimentarily on a characterization of the heterogeneity within each tradition.⁶ Here, I attempt to specify differences in the logics of religious commitment between Islam and Christianity (elsewhere I have also discussed Judaism and Confucianism); I contend that these differences matter, and I endeavor to specify a few of the ways they matter. A more comprehensive look at religious effects would also examine other aspects of religion, like, for example, the way religiosity is institutionalized socially. If I ignore these in this paper, it is to make my argument manageable, not because they are unimportant.

Right Reason and Revelation

The belief, found in many varieties of Christianity, that God has imbued all humans with an understanding of justice (natural law, right reason), results in a

⁶ We might think of a great religious tradition along three dimensions. The first might be labeled "orthodoxy"; the second is a reaction to what are taken to be innovations within the orthodox tradition, a fundamentalism that, in religions of the book, often takes the form of a textual literalism or revivalism. The third emphasizes experience (sometimes against commitment). This last is manifest in the great mystical traditions, including Sufism. Here, I focus only on the logics of religious commitment that may be taken to represent central elements of "orthodoxy."

predisposition in Christianity for a universalism (focusing on humanity) that may regulate the particular (focusing on specific religious denominations), for the creation of a civil religion that legitimates religious pluralism. Christianity facilitated a universalism that, in time, but not at all times, made possible the inclusion of diverse groups within a set of general social values that transcended denominational convictions. When this happened, universalism trumped particularism.

The absence of a natural understanding of justice in Islam results, in contrast, in a universalism that facilitated the inclusion of diverse groups within a specific, religiously-constituted *umma* that was regulated by a set of precepts, but it was an exclusionary universalism that did not facilitate the full inclusion of non-Muslims within the larger society; instead non-Islamic faiths were fit into a structure dominated by Islam. In Islam, because it is a form of moral voluntarism, the particularism of one specific creed trumps universalism.

While, for much of its history, Islam was more tolerant than Christianity, because it created space for people of the Book within "Islamic states," this status was not one of full inclusion; it was not dependent on a notion of universal reason/rights and a strong sense of human fallibility, and thus it did not develop a belief in the sovereignty of the people, of a community of *citizens* (of whatever religion).

The standard religious argument against "reason" is that it leads to erroneous conclusions.⁷ Revelation, in contrast, makes manifest the right and the true. If revelation

⁷ Cicero stated the essential rebuttal to arguments against reason correctly when he remarked that, "While it [reason] may vary in what it teaches, it is constant in its ability to learn" (The Laws, Book One, 30). Cicero, *The Republic and the Laws*, trans. by Niall Rudd. Oxford: Oxford University Press, 2008 (1998).

trumps reason, this does not mean that reason has no place, just that it serves only as a vehicle to access, interpret, and/or to rationalize what we know already through revelation. God is the source of authority and argument; even when humans are interpreting God's word, authority is top down. It is God who is sovereign. Ideally, normative expectations and the actions they regulate are a manifestation of a hierarchically-ordered tradition.⁸ Such arguments, which usually vest authority in the hands of experts with access to sacred texts (or other sources of religious authority, including ritual), inhibit the discourse integral to democracy, or they limit that discourse to revealing what God has disclosed. They obstruct the genesis of both democratic procedures and the universalistic values that legitimate them.

Right reason, and its correlates, natural law and natural rights, are not subordinate to revelation. In their weakest form, they are understood to be coterminous with revelation. In their stronger form, they have the capacity to regulate our interpretations of revelation. In their strongest form, which may well be incompatible with revealed religion, they trump revelation.⁹

Unimpeded access to reason makes revelation redundant; unimpeded access to reason cannot be sustained in a religious tradition grounded in God's word. In Christianity, the redundancy of revelation is precluded by "original sin," which clouds

⁸ This is the case even when, as happens occasionally, the values so constituted are not "traditional."

⁹ Differently, there may be no need for revelation. See the discussion of Confucianism in Gould, "Natural Law, Human Fallibility and the Transcendence of God: Islam, Christianity (Confucianism and Judaism) and Democracy/Human Rights."

people's understanding of what they know naturally.¹⁰ Natural law means that people have the potential to reason together; original sin means that they must reason together to access an understanding of justice. This apparent contradiction between right reason and original sin conduces to the development of democracy, especially when God is understood to be transcendent, when, unlike in Roman Catholicism, where God is immanent in the Church, no organization, group or individual may speak in God's name.¹¹

There is no notion of original sin in Islam. *Fitra*, instead, characterizes people's natural affinity for God. While original sin means that no person, on her own, is worthy of salvation, so that God has sacrificed his only begotten son so that humans may be saved, *fitra* means that God is able to send prophets to humans, and most importantly the final prophet, Mohammad, informing them of what they must do to be saved. In Islam, God asks nothing that humans cannot undertake successfully; on the Last Day, God will evaluate them fairly.

¹⁰ For a much fuller discussion, see Gould, "Natural Law, Human Fallibility and the Transcendence of God: Islam, Christianity (Confucianism and Judaism) and Democracy/Human Rights."

¹¹ Even though Roman Catholicism shares with certain strains of Protestantism the notion of "natural law," because God is understood as immanent within the Church, the fallibility of humans derived from original sin is allayed through the immanence of God in, and thus the authority of the Church. Since the Church serves as an authority, there is no need to create institutions where autonomous reason might be activated. In consequence, the relationship between Roman Catholicism and (the origins of) democracy is lessened considerably. In contrast, the Protestant notion of a community of saints emphasizes the fallibility of all individuals and creates for them an uncertainty about their salvation in the face of a transcendent God. This notion of fallibility, when conjoined with the belief that all individuals are imbued with a natural sense of justice, and the idea that each has a direct relationship to a transcendent God, predisposes societies dominated by this form of Protestantism to the articulation of social processes within which reason might be redeemed, and to religious freedom.

In contrast to the consequences of the combination of original sin and natural law, in Islam, the amalgamation of *fitra*, people's natural affinity for God, and natural law would have been incompatible with the necessity for revelation, because human access to an understanding of natural justice would have been transparent. Given *fitra*, the triumph of moral voluntarism was essential for the stable institutionalization of Islam.¹²

While access to right reason may be understood as limited to specific groups, when it is understood as the birthright of all humans, its social institutionalization within a society predisposes the genesis of democracy and positive, man-made, law.¹³ This is especially so when reason is, somehow, unclear, when there is something that inhibits our capacity to access reasoned truth, a reasoned understanding of what is just, transparently. When reason is present, but obstructed, when truth is understood as the function of rational individuals reasoning together, when reason becomes discursive (and, potentially, grounded empirically), it conduces most strongly to democracy.

Unimpeded access to revelation, as in Islam, inhibits the genesis of democracy, for truth and right action may be accessed directly (or through an elite). People must find

¹² Gould, "Natural Law, Human Fallibility and the Transcendence of God: Islam, Christianity (Confucianism and Judaism) and Democracy/Human Rights," constructs models of religious commitment out of three fundamental building blocks of religiosity: natural law versus moral voluntarism (whether God is understood to act justly or whether God's actions and expectations constitute what is just); strong versus weak human fallibility (e.g., original sin versus *fitra*), and transcendence versus immanence (e.g., in most forms of Protestantism, God is transcendent, whereas God is immanent within the Catholic Church, which may act authoritatively in God's name).

¹³ I have argued elsewhere that "Islamic Constitutionalism" is an oxymoron not because it requires the legitimation of procedures and outcomes in terms of religious, social, values (contrary to certain constitutional theories, this is always the case in constitutional systems), but because Islamists articulate values incompatible with positive, man-made law. Mark Gould, "Islam, the Law, and the Sovereignty of God," *Policy Review*, #149, June-July, 2008, pp. 3-17 <http://www.hoover.org/research/islam-law-and-sovereignty-god>.

the law; they do not make law.¹⁴ The consequences are analogous to the case where reason is present, but subordinated to revelation (and its agents).¹⁵ In contrast, when reason may trump (at least our understanding of) revelation, regulating our conclusions about it, it may, when the reason is not vested in the hands of an authority, predispose the genesis of democracy. This is especially the case when right reason is not transparent and when procedures are manifest that provide access to it for all mature humans.

For the attributes of democracy to emerge autonomously, the dominant values in a society must privilege right reason and all mature human's access to right reason, and, in addition, understanding of natural law must be inhibited by a strong stress on human fallibility. Here all persons have the potential to know what is "right," but this knowledge is clouded. Only then will crucial elements of democracy be manifest: the capacity to legislate (make and not just find law) and the justification of this capacity procedurally, from the bottom up, as a manifestation of the sovereign people. Then natural law/rights may facilitate the articulation of universalistic values/principles that legitimate these procedures and regulate the outcomes that emerge from them. Here, pluralism, the full inclusion of a variety of political and religious orientations and their bearers, may become valued as integral in the quest for justice.

¹⁴ See Gould, "Islam, the Law, and the Sovereignty of God," *Policy Review*, #149, June-July, 2008, pp. 3-17. The classical discussion between finding and making (legislating) law is Charles Howard McIlwain, *The High Court of Parliament and Its Supremacy*, New Haven: Yale University Press, 1910.

¹⁵ Here, where authorities have access to revelation, while they do not have the capacity to legislate, they may issue ordinances, which are "extra-legal." This is the case in patrimonial states, where state actions are legitimated traditionally even when their actions extend well beyond what is traditional. See Mark Gould. *Revolution in the Development of Capitalism: The Coming of the English Revolution*, Berkeley: University of California Press, 1987, ch. 4; Bryan S Turner, *Weber and Islam*. London: Routledge and Kegan Paul, 1974.

Right Reason and Revelation in Islam and Christianity

While this is not the place to discuss in detail the natural law tradition in Christianity, I can illustrate my characterization of right reason in a brief examination of Pope Benedict's Regensburg speech,¹⁶ where he differentiates between Islam and his understanding of Catholicism.¹⁷ For Benedict, Christianity was constituted through the Greek understanding of *Logos*, reason. It can contain no tenets, legitimate no actions, which are unreasonable, where an understanding of what is reasonable is available to *all* mature humans, where all persons can have a reasoned understanding of justice.¹⁸

Benedict contrasts this natural law position, where God is understood to act justly, where humans have a reasoned understanding of justice, and where, in consequence, that understanding regulates their interpretation of scripture, with the classical Sunni

¹⁶ Pope Benedict XVI, "Faith, Reason and the University: Memories and Reflections," 2006. The revised version may be accessed at http://w2.vatican.va/content/benedict-xvi/en/speeches/2006/september/documents/hf_ben-xvi_spe_20060912_university-regensburg.html. (10 May 2015).

¹⁷ Benedict recognizes a counter-argument in medieval Catholicism, one that he associates with Duns Scotus, which approaches the voluntarist position. Brown comments, "While voluntarism was not unknown among Christian theologians it never gained the predominance that it held in Islam. Peter Damian (1007-1072), Duns Scotus (1266-1308) and William of Ockham (1300- ca. 1350) were voluntarists. Thomas Aquinas, however, represented the majority Christian position when he declared the position blasphemous." Daniel Brown, "Islamic Ethics in Comparative Perspective." *The Muslim World* vol. 84, fn. 9, 183. Benedict's argument is more problematic when he characterizes the Protestant position.

In my discussion here, I draw on and sometimes quote from Mark Gould, "Religion within Reason: Pope Benedict's Critique of Islam," *Policy Review*, 2007-2008b, #146, 25-38.

¹⁸ Benedict's point is that the Greek philosophical tradition has been incorporated into Christianity; in my terms, it is partially constitutive of the logic of religious commitment in Christianity. In contrast, while there was a great philosophical tradition in Islam, it did not constitute decisively Muslim religiosity. See my discussion in "Religion within Reason: Pope Benedict's Critique of Islam," *Policy Review*, 2007-2008b, #146, 27-31.

understanding, derivative from the Ash'arite position.¹⁹ There, God's expectations and actions comprise what is just.²⁰ As Khaled Abou El Fadl puts it, in Islam, Divine law defines justice: "The Divine law provides particularized positive enactments that exemplify, but do not analytically explore, the notion of justice."²¹

Ethical commitments in Islam tend, Daniel Brown tells us, "toward extreme theological voluntarism," "an ethical system which holds that God alone defines the standard of right and wrong."²² "Indeed," he contends, "Islam might be considered the defining case of ethical voluntarism. Among most Sunni Muslim scholars, past and present, voluntarism has been an undisputed assumption of Islamic ethical theory, finding reflection in Islamic credal formulations: 'We confess that the decision concerning good and evil wholly depends on Allah.'"²³ ²⁴ Further, "If God alone defines good and evil,

¹⁹ This is the case, that Benedict's focus is on Sunnism, even though he refers to Ibn Hazm, a Zahiri, which is not one of the four contemporary, orthodox, schools of law in Sunnism. Ibn Hazm is often referenced, and quoted, in discussions of ethical voluntarism in Islam; see, for example, Brown, who takes a quotation from Hourani: "Islamic Ethics in Comparative Perspective." *The Muslim World* vol. 84, 184; George Hourani, *Reason and Tradition in Islamic Ethics*. Cambridge: Cambridge University Press, 1985, 174.

²⁰ I discuss, briefly, the orthodox Sunni understanding in "Religion within Reason: Pope Benedict's Critique of Islam," *Policy Review*, 2007-2008b, #146, 25-38. For related discussions of Christianity, as a religion of principles, and Islam, as a religion of precepts, see my "Understanding Jihad," *Policy Review* 129:15-32, and "Islam, the Law, and The Sovereignty of God," *Policy Review* 149:3-17.

²¹ Khaled Abou El Fadl "Constitutionalism and the Islamic Sunni Legacy," *UCLA Journal of Islamic and Near Eastern Law (LEXUS)*, 2001, vol. 1, 79; "Islam and the Challenge of Democratic Commitment," *Fordham International Law Journal (LEXIS)*, 2003, vol. 27, 41.

²² Brown, "Islamic Ethics in Comparative Perspective," *The Muslim World* vol. 84, 181.

²³ 183, quoting *The Wasiyat Abi Hanifa*, art. 6, which is quoted in A. J. Wensinck, *The Muslim Creed: Its Genesis and Historical Development*. New Delhi: Oriental Books Reprint Corporation, 1979 [1932], p. 126. I have cited my edition of the Wensinck book.

²⁴ "[T]he Mu'tazilite tenet that human acts are either good or bad, and that the mind, independent of revelation, is capable of determining which act is good or bad ... runs in diametrical opposition to the most fundamental principle of Sunni jurisprudence, namely,

then good and evil can be known only through revelation—reason is at worst helpless, at best dependent” (184).²⁵

In contrast, as noted above, according to Benedict, Christianity was constructed in an engagement with Greek philosophy. The latter is not incidental to the former, but, instead, the Greek notion of *Logos* partially constitutes the principles that characterize Christian religious commitment.²⁶ Given this understanding, he is comfortable suggesting that Christians should engage politically in civil society using arguments grounded in right reason, instead of arguments derivative from Catholic, or more generally Christian, dogma. While he is liable to see the two sets of arguments as congruent, this is in part because he argues that a valid understanding of Christian teaching must be regulated by the principles derivative from right reason. In fact, this is the basis on which he criticizes

that God decides on all matters and that the human mind is utterly incompetent to function as a judge of any human act.’ (Wael Hallaq, *A History of Islamic Legal Theories* (Cambridge, UK: Cambridge University Press, 1997), 135.)[.]” Andrew F. March, “The Uses of Fitra (Human Nature) in the Legal and Political Theory of “Allal Al Fasi: Natural Law or ‘Taking People as They Are’?” Yale Law School, Public Law & Legal Theory Research Paper Series, Research Paper #190, fn. 3. I accessed this paper at <http://papers.ssrn.com/abstract#150000> (21 January 2012), but it is no longer available at this link.

²⁵ Brown suggests that this ethical voluntarism is mitigated somewhat by the assumption that God’s commands are purposeful (186ff.). This presumption allowed for the genesis of a jurisprudence that was able to extend the Qur’an and *Sunna* into areas not covered explicitly by their precepts. While correct, this contention does not call into question the conclusion that in the logic of Islamic religious obligation, commitments are constituted directly through God’s revelation and the Prophet’s (and for the Shi’a, the Imam’s) *Sunna*.

²⁶ While not relevant in the context of this discussion, there is a secondary reason why Benedict makes this argument. He wants to reinforce the universal nature of his understanding of Christianity against culturally-divergent understandings that downplay reason. If the relationship between Christianity and *Logos* is understood to be contingent, then other forms of Christianity, in relationship with other cultural traditions, are defensible. Given that the growth in Christianity and Catholicism in recent years has been in non-European settings, the reinforcement of the constitutive effect of *Logos* on Christianity is crucial for *this* (emeritus) Pope.

Islam. Muslims may (mis)interpret the Qur'an because they have no standard outside the Qur'an, right reason, to regulate their understanding.²⁷

While right reason is often characterized deductively, it may also be manifest "inductively," in discourse, in the autonomy of each individual, and in the capacity of individuals to reason together to find truth and what is morally right. In this form, right reason is often considered integral to the tradition that constituted ascetic Protestantism; there it grounds the legal understanding of the jury and was manifest, for example, in seventeenth-century England, in Protestant congregations where each individual was expected to find his (and sometimes her) own understanding of God within the congregation, and in the beginning of political dialogue.²⁸ Interestingly, this idea can also be seen in Benedict's Regensburg remarks, where he makes The Enlightenment's argument about the necessity for discourse mediated by reason in the search for truth.²⁹

²⁷ I have argued previously that some of Pope Benedict's interpretations are inconsistent with his own characterization of right reason and the integrity of all people before God; see "Religion within Reason: Pope Benedict's Critique of Islam," *Policy Review*, 2007-2008b, #146, 36-38.

²⁸ There is an extensive literature, both sociological and historical, on the relationship between ascetic Protestantism and democracy. It is important to note, however, that we cannot characterize this relationship meaningfully apart from situational conditions. This is the point we may learn from Shmuel Eisenstadt's argument that ascetic Protestantism has democratic consequences when held by a minority and authoritarian consequences when held by a majority in a state (personal communication). Too many of the discussions of the relationship between Puritanism and democracy ignore the fact that value-commitments regulate, but do not determine, social activities. To my knowledge, none of the discussions share my characterization of the relevant attributes of Puritanism/Christianity.

²⁹ Reading about seventeenth-century English Puritans is sometimes reminiscent of reading the work of Jürgen Habermas. Some, but certainly not all, in the seventeenth-century had the same conviction about the efficacy of discourse among humans possessed of reason. Sometimes the participants, who were to have an equal right to participate, included women. See Christopher Hill, *The World Turned Upside Down: Radical Ideas During the English Revolution*. New York: Viking Press, 1972. For the great example of

This is the *universitas* of discourse that includes *all* persons,³⁰ and, crucially for the (emeritus) Pope, must include the reasoned consideration of faith.³¹

Implicit in the contrast Benedict draws between Islam and Christianity is an understanding of “orthodox” Sunnism. In contrast, Abdulkarim Soroush, a Shi’ite, presents a Mu’tazilite interpretation of Islam that finds natural rights integral to it, while, at the same time, recognizing that traditional understanding sees Islam as constituting duties for believers, duties that are laid down in *Shari’a*, which is grounded in the Qur’an and *Sunna* (the words and actions of the Prophet, and for the Shi’a, the Imams, as recorded in *hadith*). While Soroush finds in the complex tradition of Islam a way to claim a universal rationality, this claim cannot be redeemed in the logic of Islamic religious commitment.³²

this process in action, see, especially the Putney Debates, in A. S. P. Woodhouse, *Puritanism and Liberty: Being the Army Debates (1647-9) from the Clarke Manuscripts with Supplementary Documents*. London: J. M. Dent, 1951 [1938].

³⁰ See my discussion of the Regensburg speech, where I suggest that, for Benedict, reason functions at two levels: “The first is the *universitas* of discourse that includes all persons.... The second level at which reason functions is to regulate his and others’s remarks within this dialogue....” (“Religion within Reason: Pope Benedict’s Critique of Islam,” 26). See also Benedict’s dialogue with Jürgen Habermas; Joseph Cardinal Ratzinger and Jürgen Habermas. *The Dialectics of Secularization: On Reason and Religion*. Translated by B. McNeil. San Francisco: Ignatius Press, 2007.

³¹ As noted above, Benedict insists on the applicability of right reason to questions of policy, which he believes can and should be discussed politically in the light of reason, which is shared universally, and not in terms of Catholic dogma. See Joseph Cardinal Ratzinger, *Truth and Tolerance: Christian Belief and World Religions*. Translated by H. Taylor. San Francisco: Ignatius Press, 2004 [2003]; Joseph Ratzinger and Marcello Pera, *Without Roots: The West, Relativism, Christianity, Islam*. Translated by M. F. Moore. New York: Basic, 2006. Unfortunately, as can be seen when the hierarchy demands obedience to dogma it articulates, and when members of the Leadership Conference of Women Religious or certain Catholic theologians request a free discussion, this expectation has sometimes been denied *within* the Roman Catholic Church.

³² Soroush is not the only one to associate Islam, and not only Shi’ism, with natural law; see also Anver M. Emon, *Islamic Natural Law Theories*. Oxford: Oxford University

Abdulaziz Sachedina, who is also a Shi'ite, grounds a Mu'tazilite understanding of natural law in an analysis of *fitra*. In my opinion, this analysis conflates humans' natural affinity for God and God's laws (*fitra*) with autonomous access to a natural law that is capable of regulating our understanding of revelation.³³ Simply, *fitra* provides no basis for problematizing revelation; instead, it characterizes humans' natural disposition and capacity, a disposition to God's law and a capacity to implement it.

There are, however, differences between Twelver Shi'ism (the Twelvers, Imamis, make up a considerable majority of the Shi'a) and Sunnism. In *fiqh*, while rejecting the use of analogy (*qiyas*) to apply "old" law in new contexts, the Shi'a have not rejected *ijtihad*. Some Shi'a have made arguments, derivative from Mu'tazilite ideas, which have remained more integral to Shi'a than Sunni thought, contending, for example, that a *hadith* of the Prophet and the Imams had to be subject to "a yardstick of reason; and if it

Press, 2010; Anver M. Emon, Matthew Levering, David Novak, *Natural Law: A Jewish, Christian, and Islamic Trialogue*. Oxford: Oxford University Press, 2014; A. Ezzati, *Islam and Natural Law*. London: ICAS (Islamic College for Advanced Studies) Press, 2002. For a critique of Emon, see Rami Koujah. "A Critical review Essay of Anver M. Emon's *Islamic Natural Law Theories*, *UCLA Journal of Islamic and Near Eastern Law*, vol. 14, #1 (2015) <http://ssrn.com/abstract=2847439>. Perhaps more illuminatingly, some see arguments from right reason emerging in the twentieth century, often drawing on the notion of *Maqasid al-Shari'a*. Representative of these attempts are David L. Johnston, 2007a, "Maqasid Al-Shari'a: Epistemologies and Hermeneutics of Muslim Theologies of Human Rights," *Die Welt des Islams* vol. 47, pp. 150-87; 2007b, "A Turn in the Epistemology and Hermeneutics of Twentieth Century *Usul al-Fiqh*," *Islamic Law and Society* vol. 11, pp. 233-82. I have discussed *Maqasid al-Shari'a* briefly in "Kemal A. Faruki's Reconstruction of Islam(ic Law): A Modernist Position in Islam(ic Jurisprudence)," *Muslim World* vol. 98, fn. 36.

³³ See my "Natural Law, Human Fallibility and the Transcendence of God: Islam, Christianity (Confucianism and Judaism) and Democracy/Human Rights." I discuss Soroush and Sachedina in much greater detail in the Appendix to this paper.

contradicted reason this was seen as proof of its lack of authenticity.”³⁴ They have certainly vested in the *ulama*, more consistently than the Sunnis, the right to interpret scripture rationally.³⁵

There are, however, two caveats to this picture of Shi’a religious commitment. The first is that for most Shi’a, including most *ulama*, their interpretation was regulated by scripture and by the understanding of those who were more learned. Secondly, the Shi’a believe in infallible Imams, and believe that God sent them to guide believers in their understanding. After the occultation of the twelfth Imam, and after contact was lost with him in the Greater Occultation, “clergy” appropriated certain of his powers. When, in the 18th century, the Usuli (who believed in the rational interpretation and application of *Shari’a*) triumphed over the Akhbari (who believed in the literal interpretation and application of the Qur’an and *hadith*),³⁶ both the capacity for reasoned interpretation by the “clergy,” and the *taqlid* of almost all believers, their dependence on a model of

³⁴ I have quoted from Halm’s discussion of Sharif al-Murtada, Heinz Halm, *Shi’ism*. Translated by J. Watson and M. Hill. New York: Columbia University Press, 2004 [1991, 1987].

³⁵ The role of *ijma*, consensus, as constituting correct law, is more problematic among the Shi’a than the Sunni. This is because of the notion of infallibility of the Imams and the appropriation of their position as interpreters, if not their infallibility, by the Shi’a *ulama*. Even among the Sunni, however, *ijma* came to be understood as a consensus of the qualified *ulama*, and the consensus was codified only retrospectively because there was no procedure to establish it. See Kemal A. Faruki, *Islam Today and Tomorrow*. Karachi: Pakistan Publishing House, 1974, ch. 8, “‘Ijma’ and the gate of Ijtihad”; Ahmad Hasan, *The Doctrine of Ijma' in Islam: A Study of the Juridical Principle of Consensus*. New Delhi: Kitab Bhavan, 2003 (1992); Ahmed Hasan, *The Early Development of Islamic Jurisprudence*. New Delhi: Adam Publishers, 2003.

³⁶ Juan Cole, “Shi’i Clerics in Iraq and Iran, 1722-1780: the Akhbari-Usuli Conflict Reconsidered,” *Iranian Studies* vol. 28, 1985, pp. 3-34.

emulation (*marja-e taqlid*), were institutionalized.³⁷ Thus, even if we were to grant that right reason exists for the Shi'a, we would have to acknowledge (1) that its full realization is limited to one or two or at most several models of emulation in each generation,³⁸ and (2) that it has no capacity to trump revelation.³⁹

We may summarize this discussion by suggesting that the combination of natural law/right reason (God is understood to act justly, and humans have an understanding independent of revelation of what is just) and strong human fallibility (original sin) result in a Christian universalism that may lead to the development of civil religions,⁴⁰ where universal inclusion is the norm. Here universalism trumps particularism. In contrast, the combination of moral voluntarism (God's actions and words constitute what is just) and weak human fallibility (*fitra*) result, in Islam, in a particularism that trumps universalism. While all persons may become Muslims, the notion of full-inclusion for non-Muslims was not integral to the tradition (among either the Sunni or the Shia).

³⁷ The term "institutionalized" may be misleading. There is no procedure through which models of emulation are selected. The process is, instead, charismatic. While *marja-e taqlid* must be learned and must appear to be righteous, believers attach themselves to a *marja* voluntarily and may switch allegiance from one to another.

³⁸ It is not farfetched to say that God is immanent in certain social roles among the Shi'a and, akin to Roman Catholicism, this immanence vests religious authority in those roles and short-circuits any need to institutionalize the use of reason in democratic procedures.

³⁹ Khomeini's notion of the Guardianship of the Cleric appears to suggest otherwise, that (some) clerics may have the capacity to void (at least temporarily) aspects of *Shari'a*. If so, the rationale for trumping *Shari'a* is not right reason, but the reason of state, a form of expediency (institutionalized, in Iran, in the Expediency Council). I plan on discussing the sources and consequences of these (constitutional) ideas in another paper. Here I need remark only that their consequences are not democratic.

⁴⁰ Note, again, that this process may be short-circuited when God is understood to be immanent within the Church.

Double Consciousness

These reflections provide us with a context in which we might discuss the incorporation of Islam within United States civil religion, which will facilitate the inclusion of Muslims within US civil society and enable their active participation within the US constitutional system; a universalistic civil religion makes possible the construction of a Muslim double consciousness, a Muslim-American identity.

My use of the term "double consciousness" and the suggestion that many of us learned about its positive connotations from African-Americans forces recognition of barriers to inclusion in the US context. W. E. B. Du Bois was at best ambivalent about his notion of double consciousness. In *The Souls of Black Folks*, he wrote, "It is a peculiar sensation, this double-consciousness, this sense of always looking at one's self through the eyes of others, of measuring one's soul by the tape of a world that looks on in amused contempt and pity. One ever feels his two-ness,—an American, a Negro; two souls, two thoughts, two unreconciled strivings; two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder."⁴¹ In contrast, I characterize "double consciousness" ideally, without this ambivalence, as the positive affirmation of both one's own denominational convictions and a more general set of principles, a civil religion, which might be generalized from one's own and from other creeds. It encompasses one identity that is particular and one that is universal, compatible and integrated with one another, each enriching the other in a plural society, neither possible alone in that society.

⁴¹ <http://www.bartleby.com/114/1.html> (13 May 15).

Social Inclusion

The full inclusion of African-Americans and Muslim-Americans into US society must be both social and moral. For many years, the racism that segregated African-Americans precluded their full inclusion, even as the values that they espoused were congruent with the American Creed. Today, residential segregation and lower levels of education, income, and wealth remain barriers to the social integration of a significant section of the African-American community.⁴²

In comparison, while Muslim-Americans are socially, ethnically, and culturally heterogeneous,⁴³ they are to a significant degree integrated social-structurally into US society. In terms of many indices, including income and level of education, they do about as well as the average American; in terms of avowed friendship patterns, they, especially men, are a reasonably, if insufficiently, well-incorporated part of society. The overlapping social networks that facilitate integration are present for most Muslims in the

⁴² It is paradoxical that egalitarian, universalistic and individualistic values, when taken in conjunction with the social position of African-Americans, have resulted in a "new racism," one grounded not in the hierarchical ranking of blacks and whites, but in the negative evaluation of blacks in what most Americans believe are conditions of equal opportunity. It is contended, if only tacitly, that, if African-Americans should have equal opportunity, and if they are understood to have equal opportunity, disproportionate failure in their community must be due to their individual attributes or to attributes of their culture. For a characterization of this "new racism" see my "The New Racism in United States Society," in Paul Colomy (ed.) *The Dynamics of Social Systems*. Beverly Hills: Sage, 1992; "Race and Theory: Culture, Poverty, and Adaptation To Discrimination in Wilson and Ogbu," *Sociological Theory*, vol. 17, #2 (July, 1999) <http://www.blackwell-synergy.com/doi/pdf/10.1111/0735-2751.00074>, and "More Than Just Social Structure: The Poverty of Cultur(al) Analysis," *The Du Bois Review* vol. 8, #2 (2011), pp. 476-88.

⁴³ It is important to emphasize the obvious, that Muslims in the USA include many African-Americans and immigrants, recent and not-so-recent, from many countries and cultures. Here, I have limited my discussion to the effects of Islam on their full inclusion.

USA.⁴⁴ The social bases for a double consciousness, without the ambivalence Du Bois identified, are manifest.

There are, however, two additional questions concerning Muslims's inclusion within the US moral community. First, do the values of "American" civil religion allow for their inclusion? The answer to this question is, I believe, simple: The Civil Rights Movement made this inclusion possible. Due to the courage of African-Americans and their supporters, only a small percentage of the people in the United States question the *universal applicability* of the values that enable full participation and citizenship.⁴⁵ The second question is whether one can retain an Islamic religious identity and be part of a more universal community constituted through a civil religion.

Particularism Within Universalism- Universalism Within Particularism

The themes of equality of believers and social justice are omnipresent in writings delineating the nature of Islam. A fundamental notion in Islam is each individual's responsibility for his or her own salvation; at the Day of Judgment, each person stands

⁴⁴ See *Muslim Americans: Middle Class and Mostly Mainstream*. Pew Research Center, May 22, 2007. <http://pewresearch.org/assets/pdf/muslim-americans.pdf>.

⁴⁵ Unlike Talcott Parsons, writing in 1965, we no longer have to state, as a question, "Full Citizenship for the Negro American?" When Parsons wrote this essay, there was a question as to whether this full inclusion was possible; there was no question in his mind that it was a moral imperative. His essay is reprinted in *Sociological Theory and Modern Society*, N.Y.: The Free Press, 1967.

As noted above, the first version of this paper was written several years ago for *Islamica Magazine*. At that time, the contention that only a small minority questioned the moral imperative of full inclusion/full citizenship for Muslim Americans was easy to sustain. Republicans, following George W. Bush, were careful to argue for such inclusion. Now, however, there are "mainstream" voices questioning this inclusion. Nonetheless, most Americans believe that the full inclusion of Muslim Americans is morally legitimate and politically desirable.

alone before God to be judged in light of her or his deeds. These notions may be taken to imply the sanctity of all believers.

It is the case, however, that the universalism manifest in traditional Islam is specified in terms of particular precepts mandated for believers. All persons are equal in the sense that belief is available to all without regard to social status, but parity has, traditionally, been accorded only to believers,⁴⁶ with nonbelievers occupying positions in Muslim societies that denied them full inclusion. Here universalism is contained within a dominant particularism. The question is whether the generalization of Islamic precepts can come to encompass all persons who share a set of fundamental values, even when they reject the specific convictions and precepts that identify people as Muslim. This generalization requires a form of *double consciousness*.

In the case of Christianity, the universalistic creed that is embedded in both the contemporary understanding of human rights and in our idea of citizenship emerged alongside a set of particular commitments. The universal commitments to the sanctity and equality of each individual, to judging individuals in terms of their performance and not their social status, to reciprocity inclusive of all people, were generalized out of the particular denominational form these commitments took in Christianity. One remained Christian within a society regulated by more general social values; a universal civil religion allowed for the inclusion of many particular groups.⁴⁷ Is a similar form of double consciousness possible within Islam?

⁴⁶ I am ignoring the difficult issues raised by the position and standing of women in many Muslim communities.

⁴⁷ Christianity is, of course, universalistic in the sense that all who accept Jesus as their savior may become Christians. For our purpose, however, what is significant is its role in

In addition to social integration, the process of inclusion for Muslims within US civil society requires that Muslims incorporate themselves into a set of moral values that is more general than the particular denominational values of their creed. One aspect of this inclusion will entail the recognition of the division between religion and society. Muslims, like other believers, will have the ability to act on their religious commitments (insofar as they are consistent with the society's civil religion) in the sphere of civil society, but they will not be able to impose their particular convictions on others through the state. If God, as understood by Muslims, retains his sovereignty, it must be in *a* public sphere constituted by believers, not in *the* public sphere regulated by state action.⁴⁸

the constitution of universal values that transcend any particular denomination, and the capacity of multiple, Christian, and other, denominations to live reciprocally under those shared values. This process of value-generalization was assisted by post-Enlightenment Christianity. These universalistic principles were, of course, often violated, sometimes with horrific consequences. In regard to African-Americans, this violation can be seen in Myrdal's analysis of the consequences of pairing egalitarian values with hierarchical racism; it amounted to the exclusion of African-Americans from the set of those who were to be included, in their dehumanization. Gunnar Myrdal. *An American Dilemma*. New York: McGraw-Hill, 1964 [1944].

⁴⁸ Martha Minow, then Dean of Harvard Law School, recently made an analogous argument in the starkest possible terms. She distinguished between legal orders that provide ways for people to worship in their own fashion and those that provide the basis for some to impose their beliefs on others. Then, while dealing with a somewhat narrower set of issues than those under consideration here, those manifest in the title of the Conference where she made her remarks ("After Hobby Lobby: What Is Caesar's, What Is God's?"), she made the following point in reference to the first type of legal order: "Adversarial litigation leads to black and white, yes and no, win and lose answers, and for many people who are people faith, and I count myself in that category, if the choice is adhere to your faith or leave the country, they'll leave the country. It's just that simple. You know, so when a group of Amish families were engaged in 'Wisconsin versus Yoder,' if the United States Supreme Court had not found a way to create an exemption for otherwise fining the parents for not sending their children to the public high school, they would have left the country; we're clear about that, that's what they told their lawyers, that's what they planned. That would be sad since this country actually has been a haven for religious freedom, really since even before its founding. On the other hand, there will be some issues where the values of this country will run into viol...conflict

The more general part of the double consciousness that regulates state action must allow for the sovereignty of the people, which is to say, for the legislation of new laws, and sometimes for laws that contradict precepts embedded in *Shari'a*, but not the principles of civil religion. The part of sovereignty that regulates state action must allow for the (regulated) autonomy of all citizens. The autonomy of Muslims must be embedded in a shared reciprocity. As Kemal A. Faruki wrote, "...one way of evaluating whether there has been injustice done is to imagine the position of Muslim and non-Muslim reversed or to consider whether the same done to Muslims in a non-Muslim state would be palatable."⁴⁹

with some people's religious views, and if they can't live with it, they should leave. And that's just the problem is, if law is answering the question, it may make it more all or nothing than it need[s] to be. Because many times there can be accommodations that can be worked out on a much more nuanced level than win or lose, when there are two parties, particularly, again, when we are dealing with the variety and diversity of religion in America, where there may be third parties, fourth parties, fifth parties, affected by the resolution between the two parties.... And at the same time, I also want to acknowledge there is not going to be a neutral resolution to these issues. People are going to disagree, and some people may leave the country, or otherwise divest or become less involved in American politics, which would be unfortunate. We have seen it happen before and it will happen again depending on who wins and who loses in current skirmishes." Martha Minow, Remarks at "After Hobby Lobby: What Is Caesar's, What Is God's?" Petrie-Flom Center Conference, Harvard Law School, 7 May 15. <https://vimeo.com/127718116#t=1h38m51s> (13 May 15). This is my transcription of Dean Minow's remarks. They suggest, correctly, that the legal nature of the questions I raise are more complex and textured than I have indicated, while still emphasizing the essential point about adherence to the universal values that partially constitute the *conscience collective* of the society.

⁴⁹ Kemal A. Faruki. *Islamic Jurisprudence* [*Jurispurdence* [sic] on title page]. Delhi: Adam Publishers, 1994 [1962], pp. 121. Even though he was an advocate for an Islamic state in Pakistan, Faruki articulated an understanding of Islam that is consistent with its integration into a more general civil religion. I analyze the logic of his position in my "Kemal A. Faruki's Reconstruction of Islam(ic Law): A Modernist Position in Islam(ic Jurisprudence)," *The Muslim World*, 2008, 146, pp. 25-38.

Perhaps this reciprocity is not too much to expect, at least in a situation where Muslims can only expect, as they fully deserve, full inclusion into US society. This inclusion, which must be grounded in the reciprocity that Faruki describes, will itself provide Muslims with a set of values that they might use in an internal critique of some understandings of their tradition, of the notion of *jihad* as extending Muslim political control, of the correlative imposition on others of forms of Islamic particularism that some Muslims advocate.⁵⁰ But this is no different from the internal critique that must be institutionalized in Christianity, where there are groups that seek to impose particularistic, denominational understandings of moral values contrary to the universalistic values constitutive of civil religion. Inclusion within a civil religion composed of universal values will facilitate the reinterpretation of Islam as Muslims facilitate the (re)creation of what it means, for Muslim and non-Muslim alike, to be citizens of the United States.

⁵⁰ Crucial here is the form of civil advocacy undertaken by various religious communities. There are two alternatives. The first is a demand for implementation of particular goals. The second is a demand for a universal process that facilitates each group's ability to implement its own goals internally. The second set of demands reinforces universalistic values, while the first may undermine them. In the United States, the second is often the strategy of minority groups that have no hope of implementing their own goals collectively. The first is often found in Muslim-dominated societies, where the implementation of particularistic goals is possible. It is sometimes manifest among Christian fundamentalists in the USA, who advocate for the construction of a "Christian Nation," and is sometimes manifest among Muslims in the United States, who advocate for the implementation of a particular religious/political position instead of for universal standards, for example, for anti-blasphemy laws instead of for the principle of free speech.

Conclusion

In "American" civil religion, moral principles from many denominations are found, but they are abstracted from the denominational precepts that may be in force for believers, precepts that are not enforced politically. The principles constitutive of civil religion are consistent with the natural law premises of Christianity; they enable diverse groups to retain their autonomy even as they enter into reciprocal relationships with one another. This autonomy and reciprocity are made possible by the universal values of "American" civil religion. The social resources for an accommodation to and an inclusion within this civil religion will strengthen with the continued and enhanced participation of Muslims in civil society; the resources for the ideological inclusion of Islam within "American" civil religion may be found in Islam, in its concern for equality, moral autonomy, and social justice. However, full inclusion will require that Muslims understand universalism in a way that incorporates all citizens within US society; it will necessitate that they understand themselves as a particular group capable of functioning with integrity because of these more general, universal, values. It will entail the subordination of a Muslim particularism within a societal universalism. It will entail a double consciousness.

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