

# TOWARD RECONCILIATION IN THE MIDDLE EAST: A FRAMEWORK FOR CHRISTIAN-MUSLIM DIALOGUE USING NATURAL LAW TRADITION

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## I. Introduction

Islam is the fastest growing religion in the world with approximately 1.2 billion adherents.<sup>1</sup> If current growth trends continue, by 2025 Muslims will constitute 30% of the world's population.<sup>2</sup> The history of competition, animosity, and violence that began with the early expansion of Islam was exacerbated by the Crusades and is still evident in geopolitical conflict today.<sup>3</sup> If Christians and Muslims are not able to enter into meaningful dialogue, providing a framework for peaceful coexistence, the world will likely continue in a tragic spiral of violence and decline.<sup>4</sup> While most modern legal theory lies within the realist tradition,<sup>5</sup> both Western and Islamic jurisprudence contain core natural law assumptions.<sup>6</sup> By identifying specific realms of commonality, I hope to provide a common language and the opportunity for more meaningful interaction between Muslims and Christians that will promote reconciliation.

I argue that the thinking of Bernard Lonergan, in light of the natural law insights of St. Thomas Aquinas, Ali Ezzati, and Abdullahi Ahmed An-Na'im, provides a framework for Christian-Muslim dialogue. Lonergan's transcendental method moves from the individual subject to universal insights rather than presuming to deduce universals *a priori*, without regard for history, culture, and individual experience.<sup>7</sup> I assert that the most fruitful starting place for meaning-

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<sup>1</sup> The New York Times Almanac 497 (World Almanac Books 2001).

<sup>2</sup> The Canadian Society of Muslims - Muslim Population Statistics, at <http://muslim-canada.org/muslimstats.html> (last visited Sept. 02, 2004).

<sup>3</sup> REINHARD SCHULZE, A MODERN HISTORY OF THE ISLAMIC WORLD xi-xv (N.Y. Univ. Press 2002).

<sup>4</sup> See BERNARD LEWIS, WHAT WENT WRONG? WESTERN IMPACT AND MIDDLE EASTERN RESPONSE 156-60 (Oxford Univ. Press 2002).

<sup>5</sup> See ROBERT L. HAYMAN ET AL., JURISPRUDENCE: CLASSICAL AND CONTEMPORARY: FROM NATURAL LAW TO POSTMODERNISM 156-62 (2d ed. West 2002). Legal problem-solving is situated in the actual experience of the problem-solver; the scheme embraces the full realm of practical and theoretical knowledge; the processes are ultimately pragmatic; and the correctness of the result is to be measured by (what the formalist at least would consider) an "external analysis," i.e., by asking whether our claims cohere with experience. *Id.* at 157.

<sup>6</sup> ALI EZZATI, ISLAM AND NATURAL LAW 39-42, 60-61 (ICAS Press 2002).

<sup>7</sup> See generally BERNARD J.F. LONERGAN, INSIGHT (Harper and Row 1978) [hereinafter LONERGAN, INSIGHT]. Lonergan provides a framework for the process of analyzing and knowing by turning to the human subject. Human persons grow by experiencing (being aware), understanding, judging and acting.

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ful dialogue is to address questions of human rights and social justice using natural law theory, rather than focusing on theological concerns or distinctions.

My proposal to use natural law tradition as a framework for Christian-Muslim dialogue is made within the broader context of natural law jurisprudence, particularly in the Anglo-American context. While my view fits within the Thomistic tradition,<sup>8</sup> I accept certain postmodern intuitions including fragmentation,<sup>9</sup> the importance of critical historical and social context,<sup>10</sup> and the limits of language in particular.<sup>11</sup> Thus, my theoretical approach tends to be more like that of Bernard Lonergan<sup>12</sup> or Steven D. Smith<sup>13</sup> than that of John Finnis.<sup>14</sup> My concern for rights and procedure makes me sympathetic to the works of Ronald Dworkin<sup>15</sup> and Lon Fuller,<sup>16</sup> respectively, particularly with regard to praxis.

This paper addresses the human challenges to Christian-Muslim dialogue rather than providing an exhaustive analytical guide. I begin by providing a theoretical framework for inter-religious dialogue. I then describe bias as an impediment to inter-religious dialogue. With that framework in mind, I describe some of the challenges and contributions to successful dialogue in the Christian tradition. As a Christian, I cannot claim to speak from a Muslim perspective, but I do attempt to explain how the proposed method might be applied within Islamic

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This four-fold process enables the appropriation of truth. According to Lonergan, it is a description of the inherent human pattern of thinking and learning and the key to self-transcendence.

<sup>8</sup> The last quarter of the twentieth century saw a reemergence of interest in natural law among philosophers and legal theorists, who have resurrected natural law principles regarding issues of public law and morality. Modern capital punishment debates address ideas of innate human dignity and the relation of individuals to the state. The Supreme Court's recent assisted suicide cases can be understood in part as discourses in moral philosophy. Natural law also provides the base for much of the environmental movement in the twentieth and twenty-first centuries and also for almost all international human rights initiatives. At the heart of civil disobedience discussions is a search for fundamental community values. See HAYMAN, LEVIT & DELGADO, *supra* note 5, at 9-10. For a primary example of contemporary natural law theory, see also JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* 18 (Clarendon Press 1996). A theory of natural law claims to be able to identify conditions and principles of practical right-mindedness, of good and proper order among men and in individual conduct. Unless some such claim is justified, analytical jurisprudence in particular and (at least the major part of all the social sciences in general can have no critically justified criteria for the formation of general concepts, and must be content to be no more than manifestations of the various concepts peculiar to particular peoples and/or to the particular theorists who concern themselves with those people. *Id.*

<sup>9</sup> See Allan C. Hutchinson, *Identity Crisis: The Politics of Interpretation*, 26 *NEW ENG. L. REV.* 1173, 1173 (1992).

<sup>10</sup> Joan C. Williams, *Culture and Certainty: Legal History and the Reconstructive Project*, 76 *V.A. L. REV.* 713, 743-46 (1990).

<sup>11</sup> Margaret J. Radin, *Reconsidering the Rule of Law*, 69 *B. U. L. REV.* 781, 793-97 (1989).

<sup>12</sup> See generally LONERGAN, *INSIGHT*, *supra* note 7; see generally BERNARD J.F. LONERGAN, *METHOD IN THEOLOGY* (Univ. of Toronto Press 1996) [hereinafter LONERGAN, *METHOD IN THEOLOGY*].

<sup>13</sup> See generally Steven D. Smith, *The Pursuit of Pragmatism*, 100 *Yale L.J.* 409 (1990) (proposing a synthesis of postmodern pragmatism and natural law tradition).

<sup>14</sup> See generally FINNIS, *supra* note 8 (proposing a reevaluation of natural law principles in the modern tradition).

<sup>15</sup> See generally RONALD DWORKIN, *LAW'S EMPIRE* (Belknap Press 1986) (approaching natural law within the context of the common law tradition, incorporating narrative and other postmodern approaches).

<sup>16</sup> See generally LON FULLER, *THE MORALITY OF LAW* (Yale Univ. Press 1977) (proposing a core principle of natural law within legal procedures if not within substantive law).

thought utilizing the context of natural law reasoning. I conclude with observations applicable to both Christians and Muslims open to dialogue.

## II. The Theoretical Framework for Inter-religious Dialogue

Although Islam has encountered and competed with Christianity since the 7th Century CE,<sup>17</sup> there have been relatively few successful attempts at engaging in meaningful inter-religious dialogue.<sup>18</sup> Western hegemony,<sup>19</sup> fear of terrorism,<sup>20</sup> and the threat of war<sup>21</sup> make it imperative that intercommunal relations begin to transcend superficial apologetic and polemical exchanges. Of the attempts to promote such dialogue, only a few have succeeded.<sup>22</sup>

The best known and perhaps most significant experiment in Christian-Muslim dialogue is the International Islamic Christian Congress in Cordoba which is documented in *Encuentro*.<sup>23</sup> Despite the successes of this experiment, it is not a model that can be easily reproduced, principally because the pluralism accepted by Muslim intellectuals who participated in this dialogue is typically rejected by Muslim clerics and jurists.<sup>24</sup> Although there may be a place for such theological exchanges, I believe that without a stronger foundation of trust, understanding, and cooperation, it will be impossible for dialogue to become relevant in the larger realm of Christian-Muslim interaction.

As an alternative to theological discourse, I propose that dialogue begin with questions of social justice and human rights. In the sphere of human rights it is generally accepted that many (though certainly not all) of the principles in the Universal Declaration of Human Rights<sup>25</sup> are normative and transcend culture.<sup>26</sup> Hans Kung's *A Global Ethic* further demonstrates that there are some moral insights that appear to be universal.<sup>27</sup> If agreement leads to deeper understanding and solidarity, more effective cooperative action and the actualization of common justice goals become more likely.<sup>28</sup> Then, perhaps a basis for cross-cultural relationships can be established that may move to a deeper place of interpersonal

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<sup>17</sup> See LEWIS, *supra* note 4, at 3-17, 163-65.

<sup>18</sup> See generally WILLIAM MONTGOMERY WATT, MUSLIM-CHRISTIAN ENCOUNTERS 125-29 (Routledge 1991).

<sup>19</sup> SCHULZE, *supra* note 3, at 4-6.

<sup>20</sup> See LEWIS, *supra* note 4, at 163.

<sup>21</sup> *Id.* at 159-60.

<sup>22</sup> WATT, *supra* note 18, at 125-29.

<sup>23</sup> MOHAMMED ARKOUN, DIALOGO ISLAMO-CRISTIANO Y NUEVO PENSAMIENTO RELIGIOSO, LEAFLET 31-36 In FE ADELANTE LOS PROBLEMAS DE FONDO DEL DIALOGO ISLAMO-CRISTIANO: PROCEEDINGS OF THE PRIMER CONGRESO INTERNACIONAL A DISTANCIA ORGANIZADO POR CRISLAM (Darek-Nyumba, Madrid, Spain 1988).

<sup>24</sup> WATT, *supra* note 18, at 119-22. See also ATAULLAH SIDDIQUI, CHRISTIAN-MUSLIM DIALOGUE IN THE TWENTIETH CENTURY 60-69 (St. Martin's Press 1997).

<sup>25</sup> MARY ANN GLENDON, A WORLD MADE NEW 235 (Random House 2001).

<sup>26</sup> *Id.* at 221-33.

<sup>27</sup> See generally HANS KUNG, A GLOBAL ETHIC (Continuum Int'l Publ'g Group 1994).

<sup>28</sup> See JOHN RAWLS, A THEORY OF JUSTICE 340 (Belknap Press 1999) (1971) (discussing the overlapping consensus).

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exchange, and at that point the differences will seem less relevant. If Christians and Muslims can engage in the four operations of Lonergan's transcendental method - be attentive (awareness), be intelligent (thinking), be reasonable (judging) and be responsible (acting together)<sup>29</sup> - it is possible that the collective experience of gaining insight could become a foundation for real solidarity even if there is never agreement on articles of faith.

In my own experience, there is such distrust and resentment between Christians and Muslims that the mere mention of theological issues can put people on the defensive. For example, inquiring as to the nature of Mohammad's prophethood or the resurrection of Jesus forces people to retreat into their texts with no hope of reaching new understandings.<sup>30</sup> To contrast, I have found Muslim scholars quite open to discussing questions of practical jurisprudence that are not specifically proscribed by theology (here the Quran, the traditions of the Prophet and *Shari'ah*<sup>31</sup>). Many scholars are willing to use a wide range of analytical tools, including those generally identified with the West, to find pragmatic and efficient solutions to problems of practical justice.<sup>32</sup>

While teaching American law to Muslim graduate students in Amman, Jordan, I was able to foster lively debate on issues ranging from freedom of expression to capital punishment. Students would argue from utilitarian, feminist, and socialist perspectives (just to name a few). I had students of *Shari'ah* who would never knowingly deviate from a Quranic understanding of theological concerns, but in the realm of practical justice they did not feel the need to directly apply sacred texts or principles (other than reason).

Since the basic teachings of justice and the dignity of human beings in both Christianity and Islam share some common roots,<sup>33</sup> justice is a realm where there is a real possibility for significant agreement. If members of both faith traditions agree on social justice issues (regarding torture, freedom of conscience, hunger, etc.), it is reasonable and possible to act upon those insights together. This could become a basis for relationships that leads to more meaningful sharing, and it is where I see the greatest hope for dialogue.<sup>34</sup>

### A. A Method for Intercommunal Dialogue

The notion of overlapping intellectual horizons and awareness is described in Lonergan's *Insight*,<sup>35</sup> and the similar notion of overlapping consensus is found in

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<sup>29</sup> BERNARD J.F. LONERGAN, *THE LONERGAN READER* 22, 450-51 (Mark and Elizabeth Morelli eds., Univ. of Toronto Press 1997) [hereinafter LONERGAN, *LONERGAN READER*].

<sup>30</sup> LONERGAN, *METHOD IN THEOLOGY*, *supra* note 12, at 155-62.

<sup>31</sup> *Shari'ah* is the comprehensive system of Islamic law.

<sup>32</sup> WATT, *supra* note 18, at 136-37; EZZATI, *supra* note 6, at 11-59; ABDULLAHI AHMED AN-NA'IM, *TOWARD AN ISLAMIC REFORMATION: CIVIL LIBERTIES, HUMAN RIGHTS, AND INTERNATIONAL LAW* 60-68 (Syracuse Univ. Press 1990).

<sup>33</sup> EZZATI, *supra* note 6, at 193-206.

<sup>34</sup> RAIMON PANIKKAR, *THE INTRA-RELIGIOUS DIALOGUE* 82-83, 98-101 (Paulist Press 1999).

<sup>35</sup> LONERGAN, *METHOD IN THEOLOGY*, *supra* note 12, at 235-39.

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Rawls' *A Theory of Justice*.<sup>36</sup> For Lonergan, horizons are the boundary of an individual's experience; they are "the structured resultant of past achievement and, as well, both the condition and the limitation of further development."<sup>37</sup> Individual horizons may be complementary, as is more likely the case for people from the same culture and background; they may be genetic, that is, they may be related as "successive stages in some process of development;" or they may be opposed dialectically, so that what is intelligible for one is unintelligible to another.<sup>38</sup> One of the goals of Rawls' theory is to reach consensus about questions of justice through some commonality in horizon.<sup>39</sup> This consensus is not strict in the sense that it does not require complete agreement. Instead, both sides "must believe that however much their conceptions of justice differ, their views support the same judgment in the situation at hand, and would do so even should their respective positions be interchanged."<sup>40</sup>

It is crucial that Christians and Muslims develop overlapping horizons<sup>41</sup> if they ever hope to understand each other. Understanding can lead to solidarity in a world characterized by poverty, exploitation, and hopelessness.<sup>42</sup> Both Christian and Muslim religious beliefs require believers to make ethical judgments about assaults on human dignity.<sup>43</sup> Living according to these ethics (*praxis*) is critical for the continued existence and flourishing of the human person.<sup>44</sup> Lonergan would assert that there is a pattern of awareness, understanding, making judgments, and acting that reflects the operations of human cognition.<sup>45</sup> This framework may provide a method for inter-religious dialogue.

### B. Realms of Meaning and Transcendental Method

The fundamental purpose of dialogue is to communicate meaning. According to Lonergan, there are four realms of meaning that are involved in "self-appropriation"<sup>46</sup> and dialogue: common sense, theory, interiority, and transcendence.<sup>47</sup>

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<sup>36</sup> RAWLS, *supra* note 28, at 340.

<sup>37</sup> LONERGAN, *METHOD IN THEOLOGY*, *supra* note 12, at 236-37.

<sup>38</sup> *Id.* at 236.

<sup>39</sup> RAWLS, *supra* note 28, at 16.

<sup>40</sup> *Id.* at 340.

<sup>41</sup> "Horizons" here is used in a Lonerganian sense and refers to the limits of individual or group understanding and experience.

<sup>42</sup> JOHN HAUGHEY, *HOUSING HEAVEN'S FIRE: THE CHALLENGE OF HOLINESS* 159 (Loyola Univ. Press 2002) [hereinafter HAUGHEY, *HOUSING HEAVEN'S FIRE*].

<sup>43</sup> SIDDIQUI, *supra* note 24, at xv.

<sup>44</sup> LONERGAN, *LONERGAN READER*, *supra* note 29, at 577-79.

<sup>45</sup> *Id.* at 381-86.

<sup>46</sup> *Id.* at 18-19. Self-appropriation for Lonergan is "first and foremost a process of taking possession of oneself as a knower and a doer. Our knowing and deciding are of the greatest strategic importance in the effort to uncover a transcultural foundation. . . . Self-appropriation is radically different from the Cartesian strategy of cutting oneself off from external objects in order to find oneself in the internal remainder. Self-appropriation is not disengagement from the world of objects but development of an understanding of oneself in the widest possible range of cognitive and moral engagements. The criteria immanent in interior operations cannot be discovered unless the interior operations occur." *Id.* It is achieved through

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Appropriate terminology within a particular realm of meaning is essential for higher levels of appropriation.<sup>48</sup> Abdullahi Ahmed An-Naim's *Toward an Islamic Reformation*, which I will refer to below, reflects a very sophisticated level of this kind of self-appropriation from a thoroughly Islamic perspective.

Loneragan provides a framework for the human processes of analyzing and knowing through self-appropriation and the transcendental method. Human persons grow by consciously experiencing, understanding, judging, and acting.<sup>49</sup> This four-fold process enables the appropriation of truth.<sup>50</sup> According to Lonergan, it is a description of the inherent human pattern of thinking and learning.<sup>51</sup> If this premise is accepted, questions relating to inter-religious dialogue must be analyzed and appropriated using these same operations. It is a dynamic process that would encourage both Christians and Muslims to be open to new insights in the context of dialogue.<sup>52</sup> I use this framework in my analysis of inter-religious dialogue, and, to that extent, accept Lonergan's views regarding human cognition.

Loneragan identifies a tripartite invariant structure of the good.<sup>53</sup> There are particular goods (the product of desires), goods of order (a coalescence and recurrence of desires), and goods of value (desires that have been evaluated and lead to action on the basis of the good out of a rational self-consciousness).<sup>54</sup> Human rights are a type of good of order, but they must be reflected on and appropriated in the context of goods of value in order to be a source of order.<sup>55</sup> The good (including human rights) is always concrete, never abstract, and must be continually evaluated.<sup>56</sup> Even then, there must be a critical mass of people asking these questions in order for human rights to be accepted and protected.<sup>57</sup> This becomes more likely if various religious traditions can enter into dialogue.

### C. Bias as a Challenge to Dialogue

The greatest challenge to dialogue is bias, which for Lonergan is rooted in the failure to allow free reign in our drive to understand.<sup>58</sup> The drive to understand

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the transcendental precepts, and it is rooted in an epistemology that Lonergan believes provides a solution to the Hegelian objection, that any explicitly formulated ideal is going to be abstract. *Id.* at 21-23.

<sup>47</sup> LONERGAN, *METHOD IN THEOLOGY*, *supra* note 12, at 81-84.

<sup>48</sup> *Id.* at 260.

<sup>49</sup> LONERGAN, *LONERGAN READER*, *supra* note 29, at 351-59, 446-54.

<sup>50</sup> LONERGAN, *METHOD IN THEOLOGY*, *supra* note 12, at 4-5.

<sup>51</sup> *Id.* at 2, 18-19.

<sup>52</sup> LONERGAN, *INSIGHT*, *supra* note 7, at 320-21.

<sup>53</sup> *Id.* at 596-98.

<sup>54</sup> LONERGAN, *LONERGAN READER*, *supra* note 29, at 431.

<sup>55</sup> John C. Haughey, S.J., *Responsibility for Human Rights: Contributions from Bernard Lonergan*, 63:4 *THEOLOGICAL STUDIES* 764-85 (2002) [hereinafter Haughey, *Responsibility for Human Rights*].

<sup>56</sup> *Id.*

<sup>57</sup> PANIKKAR, *supra* note 34, at 98-101.

<sup>58</sup> LONERGAN, *LONERGAN READER*, *supra* note 29, at 20.

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impels human beings to progress.<sup>59</sup> However, bias undercuts this process by censoring the spontaneous questions that lead to making correct judgments.<sup>60</sup> Bias is generated by a tension between the “higher” (intellectual operations) and “lower” (emotional and physical drives and needs) operations of the psyche.<sup>61</sup> This tension points to the reality of human selfishness that underlies bias. Decline stems from bias. Thus, bias is an incomplete unfolding of inquiry - a “flight from understanding.”<sup>62</sup> The related notion of scotosis is defined as suppressing the question, which results in an intellectual lacuna.<sup>63</sup>

The source of bias that most hinders inter-religious dialogue is the exclusive and narrow use of sacred texts.<sup>64</sup> This is true in much of fundamentalist Christianity and traditionalist Islam. Another product of bias is the social ‘surd’ described by Lonergan.<sup>65</sup> “It is characterized by disillusionment due to cultural crisis, [and] its related disarray, and the conflict within the domains of philosophical and theological practice that causes a collapse in the structure of meanings.<sup>66</sup> The failure to replace them creates a vacuum of meaning and value.”<sup>67</sup>

### D. Bias and Historical Discount

The discounting of history is another challenge of the bias created by strictly adhering to a traditional and uncritical understanding of sacred texts, both for Christians and Muslims.<sup>68</sup> If all-important questions are answered completely by sacred texts, then there is little need to learn from human history. However, historical awareness is a crucial component of Lonergan’s project and the transcendental method, with regard to the postmodern era.<sup>69</sup> Historical awareness provides a context for understanding insights and for describing horizons.<sup>70</sup> Looking to historical contexts justifies a kind of relativism that acknowledges that manifolds of insights are true in certain contexts, though not apparently consistent when removed from their respective contexts.<sup>71</sup>

Relativism and historicism are challenging notions for those who hold to presumably unchanging truths contained in sacred scripture.<sup>72</sup> However, relative truths may be understood in such a way that does not denigrate eternal verities.

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<sup>59</sup> LONERGAN, *INSIGHT*, *supra* note 7, at xiv.

<sup>60</sup> LONERGAN, *LONERGAN READER*, *supra* note 29, at 306.

<sup>61</sup> LONERGAN, *INSIGHT*, *supra* note 7, at 191-203.

<sup>62</sup> LONERGAN, *LONERGAN READER*, *supra* note 29, at 306.

<sup>63</sup> *Id.* at 128-35.

<sup>64</sup> WATT, *supra* note 18, at 119-20.

<sup>65</sup> LONERGAN, *INSIGHT*, *supra* note 7, at 229-32.

<sup>66</sup> LONERGAN, *LONERGAN READER*, *supra* note 29, at 15.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 509, 514-15.

<sup>69</sup> LONERGAN, *METHOD IN THEOLOGY*, *supra* note 12, at 181-84.

<sup>70</sup> LONERGAN, *LONERGAN READER*, *supra* note 29, at 508-17.

<sup>71</sup> Lonergan does not specifically define “context” in his discussions of relativism; however, it is likely that he means an insight’s location in time, space, history and culture. *Id.* at 439.

<sup>72</sup> LONERGAN, *METHOD IN THEOLOGY*, *supra* note 12, at 232.

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Although relativism implies that the meaning of any statement is relative to its context, “it does not follow that the context is unknown, or if unknown that it is undiscoverable.”<sup>73</sup> A statement may be true within its own context, though false in another, but historical and interpretive methods allow us to understand the context.<sup>74</sup> Both Christianity and Islam recognize some degree of progressive revelation; therefore, there is a basis for accepting relativism to the extent that it simply acknowledges changing contexts.<sup>75</sup> This insight is extremely important for dialogue because it facilitates movement beyond the apparent conflicts found in different textual traditions, let alone the internal conflicts found within any single tradition.<sup>76</sup> This is possible even though both Christians, in the Bible, and Muslims, in the Quran, generally hold that formal revelation is closed.<sup>77</sup>

### III. A Basis for Dialogue in Christianity

For dialogue to be successful, each party must have a motivation for entering into the process.<sup>78</sup> There is a clear call for inter-religious dialogue in contemporary Christianity – particularly with Muslims and Jews.<sup>79</sup> For both Christianity and Islam, the possibility for dialogue is challenged by internal tension between forms of exclusivism and inclusivism.<sup>80</sup> Many contemporary Christian theologians advocate moving from inclusivism to pluralism.<sup>81</sup> The inclusive view considers Jesus as the source of truth and salvation, even in cultures that are not Christian, while religious pluralism, in the Christian context, holds that truth and salvation may be found outside the Christian tradition. I comment below on the implications this has for inter-religious dialogue with Muslims.

While some cross-cultural encounters in the early history of the Christian church may be considered precursors to inter-religious dialogue,<sup>82</sup> the commitment to such dialogue has been made explicit within the Catholic tradition in the documents of the Second Vatican Council (“Vatican II”)<sup>83</sup> and in the 34th Gen-

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<sup>73</sup> LONERGAN, LONERGAN READER, *supra* note 29, at 439.

<sup>74</sup> *Id.*

<sup>75</sup> AN-NA’IM, *supra* note 32, at 63-64, 158-59; LONERGAN, METHOD IN THEOLOGY, *supra* note 12, at 117.

<sup>76</sup> DAVID LOCHHEAD, THE DIALOGICAL IMPERATIVE 36 (Orbis 1988).

<sup>77</sup> *Id.* at 35-37.

<sup>78</sup> PANIKKAR, *supra* note 34, at 67-83.

<sup>79</sup> LOCHHEAD, *supra* note 76, at 5-11.

<sup>80</sup> PANIKKAR, *supra* note 34, at 5-6.

<sup>81</sup> *Id.* at 10-11; See also John Hick, *The Theological Challenge of Religious Pluralism*, in CHRISTIANITY AND OTHER RELIGIONS: SELECTED READINGS 156, 156-71 (Hick and Hebblethwaite eds., One World 2001).

<sup>82</sup> See generally WATT, *supra* note 18, at 59-88.

<sup>83</sup> *Declaration on the Relationship of the Church to Non-Christian Religions (Nostra Aetate)* (Austin Flannery trans., Costello Publ’g 1999) [hereinafter *Nostra Aetate*], available at [http://www.bc.edu/research/cj1/eta-elements/texts/documents/catholic/Nostra\\_Aetate.htm](http://www.bc.edu/research/cj1/eta-elements/texts/documents/catholic/Nostra_Aetate.htm) (last visited Oct. 19, 2004). This declaration was approved by Pope Paul VI and the Second Vatican Council in 1965 from Vatican Council II.

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eral Congregation of the Society of Jesus.<sup>84</sup> Vatican II speaks both to the need for inter-religious dialogue generally and to the special relationship between Christianity and Islam as monotheistic, Abrahamic faiths.<sup>85</sup> Generally, it adopted a clearly inclusive approach to other faith traditions.

The Catholic Church rejects nothing which is true and holy in [other] religions. She looks with sincere respect upon those ways of conduct and of life, those rules and teachings which, though differing in many particulars from what she holds and sets forth, nevertheless often reflect a ray of that Truth which enlightens all men. . . The Church therefore has this exhortation for her sons: prudently and lovingly, through dialogue and collaboration with the followers of other religions, and in witness of Christian faith and life, acknowledge, preserve, and promote the spiritual and moral goods found among these men, as well as the values in their society and culture.<sup>86</sup>

Although the Catholic Church maintains that preaching with the hope of conversion is still a component of its teaching,<sup>87</sup> this declaration of Vatican II makes it clear that Catholics have an obligation to engage in dialogue which searches for and encourages commonly-held truths in non-Christian religions.<sup>88</sup> With regard to Islam, in particular, the Council recounts many of the theological and moral convictions held in common with Christianity as exemplified in the following exhortation:

Although in the course of the centuries many quarrels and hostilities have arisen between Christians and Moslems [sic], this most sacred Synod urges all to forget the past and to strive sincerely for mutual understanding. On behalf of all mankind, let them make common cause of safeguarding and fostering social justice, moral values, peace, and freedom.<sup>89</sup>

This command unequivocally calls for a new approach to intercommunal relations. This sort of dialogue, cooperation and peace is unattainable as long as Christians presume to have a monopoly on truth and work toward these goals in order to proselytize.<sup>90</sup>

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<sup>84</sup> DOCUMENTS OF THE 34TH GENERAL CONGREGATION OF THE SOCIETY OF JESUS 67-81 (Institute of Jesuit Sources 1995) [hereinafter 34TH GENERAL CONGREGATION], *available at* [http://www.jesuit.org/sections/sub.asp?SECTION\\_ID=363&PARENT\\_ID=253](http://www.jesuit.org/sections/sub.asp?SECTION_ID=363&PARENT_ID=253).

<sup>85</sup> “There had been nothing like it in the history of the Catholic Church, clearly proclaiming that ‘The Catholic Church rejects nothing that is true and holy in these religions.’” Cardinal Roger Mahoney, *In preparation for the 40th anniversary of ‘Nostra Aetate,’* TIDINGS, Feb. 20, 2004, *at* <http://www.the-tidings.com/2004/0220/nostra.htm> (last visited Nov. 16, 2004).

<sup>86</sup> *Nostra Aetate*, *supra* note 83, at § 2.

<sup>87</sup> *Id.*

<sup>88</sup> JACQUES DUPUIS, TOWARD A CHRISTIAN THEOLOGY OF RELIGIOUS PLURALISM 159-61 (Orbis 2001).

<sup>89</sup> *Nostra Aetate*, *supra* note 83, at § 3.

<sup>90</sup> *See id.* at §§ 1-3.

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The 34th General Congregation of the Society of Jesus is a more recent document and reflects the way in which *Nostra Aetate* has been interpreted.<sup>91</sup> The section on “Our Mission and Inter-religious Dialogue” recasts evangelization and mission in terms of dialogue.<sup>92</sup> It encourages all Jesuits to “move beyond prejudice and bias, be it historical, cultural, social or theological, in order to cooperate wholeheartedly with men and women of goodwill in promoting peace, justice, harmony, human rights and respect for all of God’s creation.”<sup>93</sup> The same section goes on to quote The Federation of Asian Bishops’ Conferences, who write that dialogue should “never be made a strategy to elicit conversions.”<sup>94</sup> The document gives a framework for entering into dialogue at four levels: (1) dialogue of life; (2) dialogue of action; (3) dialogue of religious experience; and (4) dialogue of theological exchange.<sup>95</sup> The dialogue of life must either be predicated by or include dialogue about common justice convictions and human rights.<sup>96</sup> Without discovering and discussing this commonality, there is no real basis for dialogue in action; this dialogue is so necessary for the solidarity and relationship, which must exist in order to discuss personal religious experience and theology.<sup>97</sup>

### IV. A Basis for Inter-religious Dialogue Within Islamic Thought

According to Lonergan, all people engage in the transcendental method.<sup>98</sup> While traditional Islamic history identifies the greatest creative flourishing of the Muslim World to have taken place in the first six centuries after the Prophet Mohammad,<sup>99</sup> there has been a flowering of contemporary Muslim scholarship, which is reflective and critical in ways that seem to incorporate the transcendental precepts.<sup>100</sup> The practice of awareness in the Lonerganian sense can be a stumbling block for many due to the rise in a traditionalism, which eschews criticism; however, some scholars have escaped this problem.<sup>101</sup> The traditionalist bias challenges the precept of judging when there is a possibility that new insights might appear to contradict the prevailing orthodoxy.<sup>102</sup> However, as a result of the emphasis on epistemological unity, thinking and acting have always

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<sup>91</sup> The 34th General Congregation of the Society of Jesus was a 1992 meeting in Rome of Jesuit leaders from around the world that culminated in a major restructuring of Jesuit governance. 34TH GENERAL CONGREGATION *supra* note 84, at 1-17. It largely struggled with the challenges of modernism and post-modernism, including questions of inclusivism and pluralism.

<sup>92</sup> *Id.* at 73.

<sup>93</sup> *Id.* at 68.

<sup>94</sup> *Id.* at 69.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 70; *see also* LOCHHEAD, *supra* note 76, at 75-80.

<sup>97</sup> *See generally* JOHN B. COBB JR., TRANSFORMING CHRISTIANITY AND THE WORLD: A WAY BEYOND ABSOLUTISM AND RELATIVISM 179-86 (Paul F. Knitter, ed., Orbis Books 1999).

<sup>98</sup> LONERGAN, INSIGHT, *supra* note 7, at 339-40.

<sup>99</sup> ALBERT HOURANI, A HISTORY OF THE ARAB PEOPLES 1-4 (Warner Books 1991).

<sup>100</sup> SCHULZE, *supra* note 3, at 281-92.

<sup>101</sup> The author would suggest Professors An-Naim and Ezzati as examples.

<sup>102</sup> *Id.* at 286-90.

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been critical components of Islamic thought and learning.<sup>103</sup> I return to the importance of unity below because it is highly significant in transcending presumed barriers between body and mind, world and spirit, and reason and faith.<sup>104</sup>

### A. Awareness as Practiced Within Islam

Although Islamic civilization provided fertile soil for developments in science and language during its golden age,<sup>105</sup> that flowering of thought and openness has been marred by fear and reaction since the rise of colonialism in Europe.<sup>106</sup> In the modern period, popular Islam has become increasingly identified with the more literalist approach of the *Hanbali* school of jurisprudence, particularly in its Wahhabi form.<sup>107</sup> Although, at the other end of the spectrum are those Muslim thinkers who recognize the limitations and dangers of a literalism that holds to traditional understandings of sacred texts—even when those understandings cannot be reconciled with reason, history, and individual experience.<sup>108</sup>

The Wahhabi approach to modernism is to integrate technology while rejecting liberal and secular morality,<sup>109</sup> which represent *shirk* (an inappropriate association with divine authority).<sup>110</sup> Although the funding and mission efforts of the Gulf States have played a role in the influence of Wahhabi spirituality.<sup>111</sup> It is its ability to provide purpose and answer complex questions with simple answers, thus making clear the distinction between good and evil, that has made it an attractive alternative for people who face poverty and foreign imperialism.<sup>112</sup>

Even traditionalist views of Islam acknowledge an evolutionary growth in understanding.<sup>113</sup> This growth indicates an expanding horizon. There is a sense that revelation was gradual, starting with the patriarchs, then the Jewish prophets, then Jesus and finally Mohammad.<sup>114</sup> Even Mohammad's revelation in the Quran is divided into two distinct periods.<sup>115</sup> The earlier period, revealed in Mecca before the flight to Medina and the establishment of a Muslim state, is characterized by universal themes of free will, equality, and justice in ways that bear a striking resemblance to similar notions within Christianity.<sup>116</sup> For exam-

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<sup>103</sup> EZZATI, *supra* note 6, at 66-68.

<sup>104</sup> *Id.*

<sup>105</sup> HOURANI, *supra* note 99, at 22-37.

<sup>106</sup> *Id.* at 434-58.

<sup>107</sup> HAMID ALGAR, WAHHABISM: A CRITICAL ESSAY 31-37 (Islamic Publ'n Int'l 2002).

<sup>108</sup> AN-NA'IM, *supra* note 32, at 182-86.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 18-22

<sup>111</sup> *Id.* at 60-66.

<sup>112</sup> *Id.* at 51-52.

<sup>113</sup> *Id.* at 186-87.

<sup>114</sup> HOURANI, *supra* note 99, at 14-20.

<sup>115</sup> AN-NAI'M, *supra* note 32, at 52-57.

<sup>116</sup> *Id.* at 52-53.

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ple, verses from this period refer to humanity as a whole or to all “children of Adam.”<sup>117</sup> Similar passages also affirm the dignity of the human person without regard to gender, race, nationality, or religion.<sup>118</sup> The latter period of sayings revealed after the flight to Medina represent a stricter and more pragmatic perspective that addressed the governance needs of the early Arab, Muslim state.<sup>119</sup>

Traditionally, the interpretive theory of *naskh* (supercession) has been invoked to conclude that the later period contains the fullness of Mohammad’s revelations.<sup>120</sup> The Wahhabi view, in particular, admits little need for growth or understanding beyond this static interpretation of the Quran and the *Sunnah* (the traditions of the Prophet).<sup>121</sup> Certain Muslim traditions, particularly Shiism and branches of Sufism, tend to see a continuous movement toward more perfect understanding of revelation in a way that is generally more open to ecumenism and an expanding horizon.<sup>122</sup>

The crisis Islamic culture faced during the 19th and 20th Centuries as it confronted Western value systems and hegemony resulted in an ideological vacuum that has been filled, in some cases, by various forms of traditionalism and literalism.<sup>123</sup> Many Muslim scholars do not aver to historical analysis except within the traditional constraints of the Quran, *Hadith* (the sayings of the Prophet) and *Sunnah*.<sup>124</sup> Anything that contradicts these sources, as they are generally understood, is problematic.<sup>125</sup> Even commenting on issues about which the sources are silent can be troublesome if it is perceived as un-Islamic.<sup>126</sup> Textual criticism as understood in Western academia is generally considered inappropriate within the religious sphere.<sup>127</sup>

### B. The Mystic Mode Facilitating Awareness

Although open intellectual discourse flourished in the early centuries of Islam, the reactionary and defensive trends of the last century have tended to limit free academic investigation in the Muslim world.<sup>128</sup> Those who propose unorthodox or controversial ideas risk their livelihood and even their lives.<sup>129</sup> As a result, it is somewhat uncommon to find mainstream Sunni academics or jurists willing to

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<sup>117</sup> See e.g. *The Holy Quran* Surah 17:70.

<sup>118</sup> See also *id.* at Surah 49:13.

<sup>119</sup> AN-NAI’M, *supra* note 32, at 12.

<sup>120</sup> *Id.* at 21.

<sup>121</sup> ALGAR, *supra* note 107, at 10-11.

<sup>122</sup> See AN-NAI’M, *supra* note 32, at 52, 57-60; CHARLES LINDHOLM, *THE ISLAMIC MIDDLE EAST: TRADITION AND CHANGE* 181, 185-87 (Blackwell Publ’g 2002).

<sup>123</sup> LEWIS, *supra* note 4, at 156-57.

<sup>124</sup> WATT, *supra* note 18, at 137; see also LEWIS *supra* note 4, at 141.

<sup>125</sup> Irshad Abdal-Haqq, *Islamic Law: An Overview of Its Origin and Elements*, J. ISLAMIC L. & CULTURE 27, 33-36 (2002).

<sup>126</sup> *Id.* at 35-37.

<sup>127</sup> *Id.* at 32-33.

<sup>128</sup> *Id.*

<sup>129</sup> AN-NAI’M, *supra* note 32, at xi.

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challenge or contradict prevailing understandings of *Shari'ah*.<sup>130</sup> The most creative source of ideas coming from the contemporary Muslim world tends to be Sufism, or Islamic mysticism. Sufism is incredibly diverse and ranges from the syncretic/universalistic teachings of the *Chishtiyya*<sup>131</sup> to the more conservative/exclusivist teachings of the *Naqshbandi*.<sup>132</sup> There is, however, an emphasis on individual spiritual experience that creates a greater possibility for authentic subjectivity as described by Lonergan.<sup>133</sup>

The Mevlevi Order<sup>134</sup> founded by Maulana Jalal ud-Din Rumi in the 13th Century in Turkey and the Republican Brotherhood<sup>135</sup> founded by Mahmoud Mohamad Taha during the 20th Century in Sudan are examples of spiritual movements with very different traditions and values; yet, both encourage individual appropriation of knowledge through spiritual experience and intellectual pursuit.<sup>136</sup> Abdullahi Ahmed An-Naim, now a professor of law in the United States ("U.S."), was a follower of Taha.<sup>137</sup> He has developed a view of Islam that intends to be completely faithful to the Quran and the spirit of divine revelation; however, he is willing to break from traditional modes of understanding when they do not comport with reason and the central truths of Islam.<sup>138</sup> As a result of his unpopular stance, he was forced to leave Sudan, but his writing continues to apply sophisticated, nuanced arguments to justify his call for reform within Islam. Someone like Abdullahi Ahmed An-Naim is able to enter into meaningful intercultural and inter-religious dialogue; his writing indicates a process of reflection and criticism that resembles Lonergan's transcendental method, probably in a more rigorous and sophisticated manner than the work of most Christian scholars. The key appears to be the willingness to question and be attentive in a way that is authentically rooted in academic integrity and his mystical approach to faith.

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<sup>130</sup> LINDHOLM, *supra* note 122, 181-93.

<sup>131</sup> ANNEMARIE SCHIMMEL, *MYSTICAL DIMENSIONS OF ISLAM* 345 (Oxford Univ. Press 1998). The Chishti order of the Sufis derives its name from Chisht, a small town near Herat in Afghanistan. The first person to call himself Chishti was Abu Ishaq Shami. The name Shami implies he came from Syria or even from Damascus (ash-Sham). He met a Sufi who directed him to settle in Chisht and from then on he was known as Abu Ishaq Shami Chishti. The Chishtiyya order is one of the oldest existing Sufi orders. Most of its adherents live in South Asia, where it flourished due to its tolerance of Hindu practice and its inclusivism.

<sup>132</sup> *Id.* at 363-68. The Naqshbandiyya is an order in Sufi Islam. It started in the Khorasan region of Iran but is also traditionally affiliated with the Ottoman Empire and has adherents in South Asia. It is a secretive order and has historically tended to support traditionalism within Sunni Islam.

<sup>133</sup> *Id.* at 3-4.

<sup>134</sup> *Id.* at 309.

<sup>135</sup> AN-NAI'M, *supra* note 32, at x-xii.

<sup>136</sup> *Id.* at ix.

<sup>137</sup> *Id.* at xi. See also <http://www.law.emory.edu/faculty> (biographical information for Abdullahi Ahmed An-Na'im).

<sup>138</sup> *Id.* at ix.

C. Understanding, Judging and Acting within Islam

*Ijtihad*<sup>139</sup> is the art of interpretation within Islamic jurisprudence (“*Usul ul-Fiqh*”),<sup>140</sup> the process of seeking to form correct legal opinions through reasoning from the Quran and the *Sunnah*. Whenever there is no clear text on a particular issue, a jurist uses the methods of analogy, precedent, consensus, custom, public policy analysis, and logic to reach a decision that is consistent with Quranic principles.<sup>141</sup> This process, if practiced authentically, contains the key elements of thinking in the transcendental precepts. The requirement to remain true to the text may limit thinking in certain areas, but this portion of the transcendental method is clearly evident in Islamic thought. The chief stumbling block in the process is the bias created by narrow and unchanging textual interpretations. The difference is that the tools of intelligence are widely recognized and understood within Islamic culture,<sup>142</sup> so that if one overcomes bias to the point that real awareness is possible, the act of intelligence should be a very natural next step. Islamic jurisprudence has not widely adopted the tools of Western textual criticism,<sup>143</sup> but its approach to interpretation was generally far more sophisticated than corresponding Christian approaches until the 19th Century.<sup>144</sup>

Although the stages of judging and acting are distinct, I treat them together while considering Lonerganian self-appropriation in an Islamic context because the problems that arise are often related. Bias is perpetuated because the consequences for arriving at unorthodox or unconventional ideas can be severe.<sup>145</sup> It creates a strong disincentive for acting on insights and even analyzing or judging potential insights. Thus, the integrity and boldness of someone like Abdullahi Ahmed An-Naim seems heroic given the cost for holding controversial intellectual positions.

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<sup>139</sup> *Id.* at 27. “Ijtihad literally means hard striving or strenuousness, but technically it means exercising independent juristic reasoning to provide answers when the Qur’an and Sunna are silent. Sunna is reported in support of ijtihad as a source of Shari’a. . . [T]he concept of ijma (consensus) appears to have come about as a result of the exercise of ijtihad, in the sense that the ijtihad of the founding jurists led them to the conclusion that the consensus of the community in general, or that of the Muslim scholars in particular, should be made a source of Shari’a. . . Qiyas (analogy) may also be seen as a technique of ijtihad. . . Whenever a principle or rule of Shari’a is based on the general meaning or broad implications of a text of Qur’an or Sunna, as opposed to the direct ruling of a clear and definite text, the link between the text and the principle or rule of Shari’a is established through juristic reasoning. It is hard to imagine any text of the Qur’an or Sunna, however clear and definite it may appear to be, that does not need this type of ijtihad for its interpretation and application in concrete situations.” *Id.*

<sup>140</sup> Abdal-Haqq, *supra* note 125, at 36. “The process of *deducing* and *applying* Shari’ah principles and injunctions in real or hypothetical cases or situations is called *fiqh* or *Islamic jurisprudence*.” See also AN-NAI’M, *supra* note 32, at 50. “Esposito referred to a distinction between Shari’a and fiqh (opinions and commentaries of muslim jurists) which is frequently made by modern Muslim authors to make their task of criticizing what they describe as fiqh appear less drastic than criticizing Shari’a itself.” *Id.*

<sup>141</sup> IBRAHIM ABDULLA AL-MARZOUQI, HUMAN RIGHTS IN ISLAMIC LAW, 10-30 (Dhabi 2000).

<sup>142</sup> Abdal-Haqq, *supra* note 125, at 50-62.

<sup>143</sup> WATT, *supra* note 18, at 135-37.

<sup>144</sup> RAYMOND BROWN, AN INTRODUCTION TO THE NEW TESTAMENT 35-40 (Doubleday 1977).

<sup>145</sup> AN-NAI’M, *supra* note 32, at xi-xii.

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According to Lonergan, all people engage in the transcendental method to varying degrees.<sup>146</sup> I believe that many of my law students in Jordan cultivated awareness and intelligence (in the Lonerganian sense), but I sensed a deep apprehension for making judgments or taking action that would appear to be inconsistent with the prevailing orthodoxy.<sup>147</sup> For instance, in class discussions of capital punishment no student criticized the use of capital punishment in the Arab World or even more generally. However, when given a test question about abuses in the American criminal justice system, four students condemned the use of capital punishment in the U.S. Their arguments were thoughtful and sophisticated, but none had been made publicly. I wondered whether addressing capital punishment in the U.S. for a test read only by a foreign professor gave these women the opportunity for real self-criticism and confirmed an insight for them. This was an environment that removed the immediate threat of bias and made the transcendental method possible. I do not know how these opportunities might become more normative, but I am convinced that, when free from the threats of group bias, many Muslims would naturally pursue rigorous self-appropriation. Although bias created by literalism is also a stumbling block for Christians, the consequences for breaking with accepted norms are not nearly as serious as they tend to be in Islamic societies.<sup>148</sup>

### V. Discerning the Natural Law as an Exercise of the Transcendental Method

Since Lonergan had his intellectual roots in Thomism,<sup>149</sup> it is not surprising that the transcendental method resembles the model for discerning the natural law found in the *Summa Theologiae*.<sup>150</sup> Therefore, the exercise of the transcendental precepts could occur within the context of discovering the natural law in both Christianity and Islam.<sup>151</sup> Since there is a basis for natural law reasoning in both traditions, it may prove to be a useful neutral starting place for inter-religious dialogue.<sup>152</sup> Because natural law discourse is rooted in reason rather than revelatory tradition (which may inform it), Christians and Muslims can bring the common tools of logic, interpretation and criticism to bear even though they were

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<sup>146</sup> FREDERICK E. CROWE, SJ, *APPROPRIATING THE LONERGAN IDEAL* 8-10 (Catholic Univ. Press 1989).

<sup>147</sup> The author taught a graduate course in U.S. Law at the University of Jordan in the spring of 2001. Most of the students were lawyers or were studying law (Jordanian civil or Shari'a). The curriculum covered some basic topics of the first year in U.S. law school (torts, contracts, constitutional law and criminal law), as well as an overview of Anglo-American jurisprudence and American legal history. The final exam included an essay question in which students were asked to critique some feature of U.S. criminal law. They could choose any topic, and most wrote about the jury system.

<sup>148</sup> WATT, *supra* note 18, at 121-22.

<sup>149</sup> CROWE, *supra* note 146, at 21-30; *See also* LONERGAN, *LONERGAN READER*, *supra* note 29, 402-07.

<sup>150</sup> HAUGHEY, *supra* note 55, at 763 & 776-78.

<sup>151</sup> *Id.* at 777.

<sup>152</sup> EZZATI, *supra* note 6, at 60-64.

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developed in different cultural contexts.<sup>153</sup> Coming to an agreement on notions of social justice and the common good can itself become a basis for cooperation to achieve the good.<sup>154</sup> While the process will ideally lead to greater solidarity, it will not begin without a modicum of that same virtue.<sup>155</sup>

This inter-traditional encounter requires a virtue that can be called intellectual solidarity—a willingness to engage other persons with other traditions in conversation and debate about what makes for a good life. . . .<sup>156</sup>

### A. Natural Law in the Thomistic Tradition

Natural law in the Catholic tradition holds to the view of St. Thomas Aquinas, that law flows from our nature as beings capable of reason.<sup>157</sup> Human beings discover natural law by observing and reflecting on the world and their relationships in it.<sup>158</sup> The capacity to understand and act on the principles we discover is a function of our reason and free will.<sup>159</sup>

Aquinas viewed all true law as rooted in what he calls the eternal law of God.<sup>160</sup> Within the eternal law, he identifies two sets of laws: divine law that is revealed<sup>161</sup> and natural law which is discernable by human observation and reason.<sup>162</sup> Eternal law is the sum of both natural law and divine law. It contains everything considered fully law.<sup>163</sup> The intersection between natural law and divine law represents that portion of the divine law, which may be discerned by reason. For example, the commandment not to kill is revealed in scripture and thus part of the divine law. At the same time, the prohibition against murder can be arrived at by reason, which for Aquinas included both observation (the order of nature)<sup>164</sup> and discursive reason (the order of reason).<sup>165</sup>

Islamic tradition also acknowledges that all true law is rooted in God.<sup>166</sup> Most scholars would identify both divine law and a form of natural law.<sup>167</sup> However, the concept of *Shari'ah* is broader than the Thomistic concept of divine law, at

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<sup>153</sup> *Id.*

<sup>154</sup> DUPUIS, *supra* note 88, at 381-84.

<sup>155</sup> PANIKKAR, *supra* note 34, at 35-37.

<sup>156</sup> David Hollenbach, S.J., *The Common Good in the Postmodern Epoch: What Role for Theology?* 41 RELIGION, ETHICS AND THE COMMON GOOD 3 (2001).

<sup>157</sup> SAINT THOMAS AQUINAS, *Summa Theologiae*, pts. I-II, quest. 90 (Fathers of the English Dominican Province trans., Benziger Bros. 1947).

<sup>158</sup> *Id.* at pts. I-II, quest. 94, art. 4.

<sup>159</sup> *Id.* at pts. I-II, quest. 8, art. 2.

<sup>160</sup> Human law which is inconsistent with the eternal law would not be considered true law by Thomas though it bears the name law. *See id.* at pt. I-II, quest. 93, art. 3.

<sup>161</sup> *Id.* at pts. I-II, quest. 91, art. 4-5.

<sup>162</sup> *Id.* at pts. I-II, quest. 91, art. 2, quest. 94.

<sup>163</sup> Aquinas, *supra* note 157, at pts. I-II, quest. 91, art. 1, quest. 93.

<sup>164</sup> CHRISTINA TRAINA, *FEMINIST ETHICS AND NATURAL LAW* 60-63 (Georgetown Univ. Press 1999).

<sup>165</sup> *Id.* at 63-69.

<sup>166</sup> EZZATI, *supra* note 6, at 74.

<sup>167</sup> *Id.* at 60-65.

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least in its applicability.<sup>168</sup> Within Islamic thought, there is a greater correlation between natural law and divine law<sup>169</sup> and the overlap of the two would likely be considered theoretically larger. Some traditions would insist that the corpus of natural law is fully contained within revealed divine law.<sup>170</sup>

For Aquinas, that which we call law outside of the eternal law is not fully law because it is neither part of the natural law nor part of the divine law, though it is at least related to the natural law to the extent that it is the product of human reason.<sup>171</sup> Note that within this framework there are rules, which require a violation of the divine law, and are not merely unjust but are non-law in an absolute sense and should not be obeyed. For example, “laws” that require sin (e.g. the killing of innocents) were in no sense law for Aquinas.<sup>172</sup>

The ideal of human law is located completely within the boundaries of natural law.<sup>173</sup> This ideal presumes that human law, though not a complete expression of natural law is always rooted within natural law. However, some human law may be positive law not rooted in reason. In some cases the result will be benign, but in others it will be a source of significant injustice.<sup>174</sup> As mentioned above, human law does not include those rules that require subjects to violate divine law.<sup>175</sup> The intersection between human law and that portion of the divine law, which is not shared in common with natural law, would be laws that require adherence to precepts found in revelation, but which are not derivable by reason. Such laws govern issues such as conscience, liturgy and purity, which are not the proper domain of human law in the modern Christian tradition.<sup>176</sup> An Islamic natural law theory would probably not make this distinction, because ideal human law is presumed to require *Shari’ah*, which would include all revealed divine law.<sup>177</sup>

Aquinas’ method consisted of a holistic approach to theology, philosophy, and science that integrated the best scholarship of his day.<sup>178</sup> As a result, his natural law theory was related to eternal law and divine law. Jesus and scripture constituted norms in his tradition.<sup>179</sup> Similarly, within an Islamic context, the Quran would constitute a norm for discovering the natural law.<sup>180</sup> However, beyond the

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<sup>168</sup> *Id.* at 89.

<sup>169</sup> *Id.* 88-90.

<sup>170</sup> *Id.* at 86-87.

<sup>171</sup> Aquinas, *supra* note 157, at pts. I-II, quest. 95, art. 2.

<sup>172</sup> *Id.* at pts. I-II, quest. 93, art. 3.

<sup>173</sup> *Id.* at pts. I-II, quest. 95, art. 2.

<sup>174</sup> *Id.* at pts. I-II, quest. 93, art. 3, reply objections 2-3.

<sup>175</sup> *Id.* at pts. I-II, quest. 93, art. 3, reply objections 2-3 & quest. 95.

<sup>176</sup> Susan Dimock, *The Natural Law Theory of St. Thomas Aquinas*, in *PHILOSOPHY OF LAW* 30 (Joel Feinberg & Jules Coleman eds., Wadsworth 2000).

<sup>177</sup> EZZATI, *supra* note 6, at 89-90.

<sup>178</sup> See TRAINA, *supra* note 164, at 128-31; see also MARY MIDGLEY, *BEAST AND MAN: THE ROOTS OF HUMAN NATURE* 190 (Routledge Press 1995) (1979).

<sup>179</sup> ROGER HAIGHT, S.J., *JESUS SYMBOL OF GOD* 405-10 (Orbis 1999).

<sup>180</sup> AN-NA’IM, *supra* note 32, at 19-21.

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realm of sectarian theology, any serious attempt to contextualize natural law jurisprudence must examine it outside of particular theological contexts.<sup>181</sup>

Perhaps the most significant challenge to the jurisprudence of Aquinas can be levied against his method for identifying natural law precepts. On the one hand are deductive rationalists such as Kant<sup>182</sup> and on the other are thinkers in the Aristotelian tradition<sup>183</sup> who rely on an empirical approach. Although Aquinas consistently defined law as a rule of reason (a position which might seem to favor rationalists), his understanding of reason combines deductive rationalism with scientific empiricism.<sup>184</sup> His reference to social order observed in the behavior of bees is an example of his empiricism.<sup>185</sup> So, it appears that his notion of reason is both deductive and inductive, rational and empirical.<sup>186</sup> This mixing of standards gives the system flexibility, but it also provides the opportunity for ambiguity when anecdotal observations in nature become the basis for “natural” law.<sup>187</sup> This general view of Aquinas seems to be shared by Ali Ezzati, who has written the most significant published work on Islam and natural law.<sup>188</sup> His treatment begins with St. Thomas and is generally quite sympathetic to that tradition of natural law reasoning.<sup>189</sup> Significantly, he notes that Aquinas was profoundly influenced by Muslim philosophers, particularly Averroes (*Ibn Rushd*),<sup>190</sup> through whom most of Aristotle was transmitted to the

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<sup>181</sup> ALEXANDER PASSERIN D'ENTREVES, *NATURAL LAW: AN INTRODUCTION TO LEGAL PHILOSOPHY* 48-49 (Transaction Publishers 2002).

<sup>182</sup> LONGERGAN, *INSIGHT*, *supra* note 7, at 339-42.

<sup>183</sup> *See id.* at 406-407. *See also* TRAINA, *supra* note 164, at 64-65.

<sup>184</sup> TRAINA, *supra* note 164, at 71-73.

<sup>185</sup> SAINT THOMAS AQUINAS, *ST. THOMAS AQUINAS ON POLITICS AND ETHICS* 17 (Paul E. Sigmund ed., Norton & Co. 1988).

<sup>186</sup> *See* TRAINA, *supra* note 164, at 56-86.

<sup>187</sup> *Id.* at 60-63.

<sup>188</sup> EZZATI, *supra* note 6, at 24-29.

<sup>189</sup> *Id.* at 25. “Although Aquinas tried to picture Christianity in the light of natural law, his theories of the state, politics and natural law put European political thought on a new plane. It legitimized the autonomy of secular rulers and a prudent rationality of decision-making. It influenced an increasing number of thinkers from the fourteenth century onwards. Thomism, the doctrines of Aquinas, also revived in nineteenth- and twentieth-century Europe and America. But the theory of natural law, of which Aquinas was one of the most influential exponents, helped lay a foundation for the theory of international law in Suarez and Grotius. John Locke also owed much to the Thomist theory of authority based upon and limited by natural law and the common good.” *Id.*

<sup>190</sup> “Abu'l-Walid Ibn Rushd, better known as Averroes (1126-1198), stands out as a towering figure in the history of Arab-Islamic thought, as well as that of West-European philosophy and theology. In the Islamic world, he played a decisive role in the defense of Greek philosophy against the onslaughts of the Ash'arite theologians (Mutakallimun), led by al-Ghazali (d. 1111), and the rehabilitation of Aristotle. A common theme throughout his writings is that there is no incompatibility between religion and philosophy when both are properly understood. His contributions to philosophy took many forms, ranging from his detailed commentaries on Aristotle, his defense of philosophy against the attacks of those who condemned it as contrary to Islam and his construction of a form of Aristotelianism which cleansed it, as far as was possible at the time, of Neoplatonic influences. In the Western world, he was recognized, as early as the thirteenth century, as the Commentator of Aristotle, contributing thereby to the rediscovery of the Master, after centuries of near-total oblivion in Western Europe. That discovery was instrumental in launching Latin Scholasticism and, in due course, the European Renaissance of the fifteenth century. Notwithstanding, there has been very little attention to Averroes' work in English, although greater interest has been shown in French, since the publication of Ernest Renan's *Averroes et l'averroïsme* in 1852,

West.<sup>191</sup>

B. Natural Law as an Islamic Concept

Historically, the bulk of Islamic jurisprudence has been suspicious of naturalism.<sup>192</sup> There is a sense in which all law is considered a part of God's divine law expressed in revelation.<sup>193</sup> However, a sophisticated approach to the Thomistic understanding of eternal law (all of which comes from God) as the sum of natural law (which is discernable in creation) and divine law (which is revealed) may be consistent with the orthodox Islamic view.<sup>194</sup> Contemporary Muslim philosophers such as Seyyed Hossein Nasr acknowledge that natural law theory exists in *Shari'ah*, "which governs not only men but also the cosmos."<sup>195</sup> The tools for interpreting *Shari'ah* include methods for construing the universal principles of creation as well as revealed texts.<sup>196</sup> Since the Quran remains a norm for all law and contains more specific standards for governance than the New Testament, its norms may have more potential for discounting "natural laws" which could contradict revelation. Thus, there are likely differences in what would be considered natural law in an Islamic sense and what would be considered natural law in a Thomistic sense.<sup>197</sup>

Ali Ezzati affirms that Islam, even in its more traditional expressions, accepts a form of natural law theory.<sup>198</sup> This system is similar to natural law in the tradition of Aquinas to the extent that it looks to an order of reason ('*aql*),<sup>199</sup> an order of nature (*takwin*)<sup>200</sup> and primordial human nature (*fitrah*).<sup>201</sup> The chief dispute in Islamic philosophy has been the tension between rationalists and those who find truth only in God himself.<sup>202</sup> Rationalists such as the *Mu'tazelah*<sup>203</sup> observe that truth is communicated vertically from God to creation and that truth may be discerned in the horizontal relationships between creatures by observation and reason.<sup>204</sup> Those who acknowledge truth only in revelation are associated with the *Ash'ari*<sup>205</sup> and the *Hanbali* school of jurisprudence<sup>206</sup> by Ezzati.

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and since that time in Spanish." Abu'l Walid Muhammad Ibn Rushd al-Qurtubi (Averroes), *available at*, <http://www.muslimphilosophy.com/ir/default.htm> (last updated Aug. 25, 2004).

<sup>191</sup> EZZATI, *supra* note 6, at 164.

<sup>192</sup> *Id.* at 86-87

<sup>193</sup> *Id.*

<sup>194</sup> *Id.* at 81, 89-91.

<sup>195</sup> SEYYED HOSSEIN NASR, *RELIGION AND THE ORDER OF NATURE* 132-33 (Oxford Univ. Press 1996).

<sup>196</sup> *Id.*

<sup>197</sup> EZZATI, *supra* note 6, at 89-91, nn. 2, 3, 8, 12-14.

<sup>198</sup> *Id.* at 85-91, nn. 4-7 & 9-11.

<sup>199</sup> *Id.* at 86-87.

<sup>200</sup> *Id.* at 89, n. 2.

<sup>201</sup> *Id.* at 19.

<sup>202</sup> *Id.* at 75-79.

<sup>203</sup> EZZATI, *supra* note 6, at 61.

<sup>204</sup> *Id.* at 125

<sup>205</sup> *Id.* at 75-76.

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They maintain that truth must come directly from God. It would be inappropriate to understand these positions in the context of the tension between Western rationalism and faith, however. Both groups acknowledge that truth is ultimately rooted in God and that human beings ought to use reason to understand and obey God.<sup>207</sup> Nevertheless, the *Ash'ari* do not find truth claims founded on human reason to be sufficiently reliable.<sup>208</sup> Ezzati claims that even the *Ash'ari* embrace a form of natural law, though it is rooted in the reason of Islamic and Quranic texts rather than in abstract speculations.<sup>209</sup>

Ezzati identifies several major features of Islam and natural law. First, "Allah is the only legislator."<sup>210</sup> His will is found in the textual sources of the Quran and Islamic tradition as well as consensus based on sound human reason.<sup>211</sup> These sources may be supplemented by public interest, analogy, and legal precedent.<sup>212</sup> Human nature is not a source unless it corresponds with sound reasoning.<sup>213</sup> The relative weight of these sources is highly debated among Muslim legal scholars.<sup>214</sup>

Second, Islam acknowledges the order of nature as well as the order of divine law, and the two cannot contradict each other.<sup>215</sup> Both of these are rooted in human nature (*fitrah*).<sup>216</sup> Aquinas would agree that natural law may not contradict divine law (although the two may overlap).<sup>217</sup> Human nature for Aquinas, though more optimistic than the anthropology of Augustine, incorporated the notion of original sin,<sup>218</sup> which is rejected by Islam.<sup>219</sup> The relative optimism about the human condition found in Islam laid the foundation for the emergence of philosophy and rationalism integrated with a revelatory faith much earlier in its history than in Christian history.<sup>220</sup>

Islam conditionally accepts the maxim "whatever is recommended by human intellect is also recommended by *Shari'ah* and vice-versa."<sup>221</sup> Corollary to this, Islamic law in general accepts that acts can be good or bad in themselves apart from *Shari'ah*.<sup>222</sup> However, reason alone cannot identify the wrongness or right-

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<sup>206</sup> *Id* at 125.

<sup>207</sup> *Id.* at 122-23.

<sup>208</sup> *Id.*

<sup>209</sup> EZZATI, *supra* note 6, at 76.

<sup>210</sup> *Id.* at 89, n. 1.

<sup>211</sup> *The Holy Quran* Surah 4:59, 83 and 16:43.

<sup>212</sup> BERNARD G. WEISS, *THE SPIRIT OF ISLAMIC LAW* 122 (Univ. Ga. Press 1998).

<sup>213</sup> EZZATI, *supra* note 6, at 94.

<sup>214</sup> WEISS, *supra* note 212, at 123-26.

<sup>215</sup> EZZATI, *supra* note 6, at 86-87.

<sup>216</sup> *Id.* at 93-109.

<sup>217</sup> AQUINAS, *supra* note 157, at pts. I-II, quest. 93, art. 3.

<sup>218</sup> *Id.* at pts. I-II, quest. 91, art. 6.

<sup>219</sup> EZZATI, *supra* note 6, at 70.

<sup>220</sup> *Id.* at 149.

<sup>221</sup> *Id.* at 89, n. 4.

<sup>222</sup> *Id.* at 90, n. 5.

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ness of all acts, making divine law necessary.<sup>223</sup> These positions tend to parallel the dynamic between natural law and divine law in Aquinas.

Ezzati claims that most Islamic jurists accept that “ethical principles are inherent in the nature of things and are apprehensible through human reason or human primordial nature.”<sup>224</sup> This statement would be unacceptable to *Ash’ari* scholars on its face,<sup>225</sup> but it might be understood in the context of revelation rather than in nature alone. As in Thomistic doctrine, God is the source of these principles, which are expressed in nature.<sup>226</sup>

The most fundamental principle of Islam is the oneness of Allah (*tawhid*).<sup>227</sup> It implies unity, harmony, and order in all of creation.<sup>228</sup> This further implies a unified order of law, including moral law. Human beings were created within this order and are subject to its provisions, as is all of creation.<sup>229</sup> The provisions of the natural law are imprinted on human nature and are discernable through reason.<sup>230</sup> In this sense, Islam lends itself to a consistent view of natural law more easily than Christianity, which wrestles with original sin, dualism, and trinitarianism.<sup>231</sup> Islam rejects all three of the preceding ideas.<sup>232</sup>

According to Ezzati, Islam holds that human beings can apprehend the natural law and are responsible for obeying it.<sup>233</sup> The Muslim community is charged with discerning and enforcing natural law principles as well as scriptural provisions.<sup>234</sup> Although many contemporary Western thinkers reject this view of natural law, it is not so different from Aquinas’ view of both the individual and the just community.<sup>235</sup>

Natural law is both predictable and rational; however, Allah is not bound by natural law and may change it.<sup>236</sup> Within conventional Islamic thought, Allah cannot be bound by nature in any way or he would not be Allah.<sup>237</sup> In this sense there is macro natural law at the level of the Creator (Allah is the rule and arbiter of all things), but there is no micro natural law at the level of creation, which would bind Allah.<sup>238</sup> This issue is given a similar answer with a different emphasis in Christianity. God may change natural law as a theoretical possibility,

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<sup>223</sup> *Id.* at 90, n. 6.

<sup>224</sup> *Id.* at 90, n. 7.

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> *Id.* at 90, n. 8.

<sup>228</sup> *Id.* at 74-77.

<sup>229</sup> *Id.* at 74.

<sup>230</sup> *Id.* at 91, n. 10.

<sup>231</sup> *Id.* at 71-72.

<sup>232</sup> *Id.* at 71-73.

<sup>233</sup> *Id.* at 91, n. 11.

<sup>234</sup> *Id.* at 86-88.

<sup>235</sup> AQUINAS, *supra* note 157, at pts. I-II, quest. 90, art. 4.

<sup>236</sup> EZZATI, *supra* note 6, at 91, n. 13.

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

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which is realized when God performs miracles.<sup>239</sup> However, Christianity is not bothered by the fact that God chooses to abide by His own edicts as a general matter.<sup>240</sup> There may then be a greater sense of permanence to natural law within Christian thought.

Islamic natural law is understood by observing human nature and by applying human reason, but this is done in the light of the code of spiritual behavior and practice found in revelation.<sup>241</sup> Ezzati makes it clear that the Quran and tradition are not meant to constitute a system of sciences but are revealed for spiritual and religious purposes.<sup>242</sup> The Quran, in particular, maintains and sustains the state of human nature (which is not fallen in Islam).<sup>243</sup> Ultimately, Islamic epistemology is rooted in revelation, reason, and human nature.<sup>244</sup> Christianity is not so different. The deepest differences would be those of emphasis within the two revelatory traditions. Within Islam, unity is clearly the overarching epistemological principle.<sup>245</sup> Christianity begins with self-giving love.<sup>246</sup>

### C. Islamic Principles Bearing on Natural Law Theory

There are a number of principles that are of great significance within Islamic jurisprudence and philosophy that are important in discerning natural law principles that might form a basis for inter-religious dialogue. As mentioned above, the most important concept is that of unity (*tawhid* in Arabic).<sup>247</sup> It is the fundamental principle of Islamic epistemology and theology. In addition to *tawhid*, *ijma'* (consensus),<sup>248</sup> *ahkam* (rules),<sup>249</sup> and *shura* (consultation)<sup>250</sup> are also significant principles of Islamic theological doctrine.

*Tawhid* is the central Quranic “principle of the unified, irreducible epistemology of universal values.”<sup>251</sup> Its principal expression is in the radical unity of God, but it also reflects a preference for unity and integration in every field.<sup>252</sup> Personalism, individualism, and pluralism are generally considered to be inconsistent with this fundamental unity.<sup>253</sup> One ramification of *tawhid* is that author-

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<sup>239</sup> AQUINAS, *supra* note 157, at pt. I, quest. 25, art. 5.

<sup>240</sup> *Id.*

<sup>241</sup> EZZATI, *supra* note 6, at 91, n. 14.

<sup>242</sup> *Id.* at 91-92, n. 14.

<sup>243</sup> *Id.* at 92.

<sup>244</sup> *Id.*

<sup>245</sup> *Id.* at 66.

<sup>246</sup> LONERGAN, *METHOD IN THEOLOGY*, *supra* note 12, at 113.

<sup>247</sup> EZZATI, *supra* note 6, at 90, n. 8.

<sup>248</sup> AN-NA'IM, *supra* note 32, at 23-24.

<sup>249</sup> *Id.* at 32.

<sup>250</sup> *Id.* at 78-80.

<sup>251</sup> MASUDUL ALAM CHOUDHURY, *REFORMING THE MUSLIM WORLD* 124 (Kegan Paul 1997).

<sup>252</sup> *Id.*

<sup>253</sup> *Id.*

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ity is integrated.<sup>254</sup> There is no real distinction made between the state and the religious community.<sup>255</sup> In the classical Sunni caliphate, the caliph was the ultimate authority in faith and government.<sup>256</sup> Similarly, many modern Muslim nations have integrated *Shari'ah* into the law of the state.<sup>257</sup> *Tawhid* does not deny a role for natural law.<sup>258</sup> In fact it asserts that there must be universal standards established by God.<sup>259</sup> Furthermore, it avoids the problems, mentioned earlier, of dualism and division with which Christianity has struggled. *Tawhid* even has implications at the social and political levels. Socially, it requires a radical equality, which denies distinctions based on such things as class or race.<sup>260</sup> Politically, it implies that all people ought to reside within a single, unified and just community, which is the ideal of the '*umma* (the unified Muslim community) in Islam.<sup>261</sup>

*Ijma'*, or social consensus, is a legitimate basis for legal principles in Islam that are not already clearly defined by the Quran and the sayings/traditions of the Prophet.<sup>262</sup> It acknowledges the importance of collective wisdom and can be considered an inherent basis for democratic institutions within Islamic tradition.<sup>263</sup> It acknowledges that some decisions are best made by the entire community.<sup>264</sup> Democratic process in the Islamic context can facilitate information flow and encourage broader support for decisions made with the consultation and participation of those affected.<sup>265</sup> Since governance is theoretically indistinguishable from the administration of the faith in Islam, any system of governance that could lead to un-Islamic notions would be unacceptable.<sup>266</sup> Although consensus is not in itself a reliable method for discerning natural law, it can be particularly helpful when it validates claims made on other bases.<sup>267</sup>

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<sup>254</sup> *Id.*

<sup>255</sup> LINDHOLM, *supra* note 122, at 78-82.

<sup>256</sup> JOHN ESPOSITO & JOHN VOLL, *ISLAM AND DEMOCRACY* 26 (Oxford Univ. Press 1996). The caliph was not a prophet. Rather, he was a leader of the community, but not in any sense a messenger of God, he could not claim to be the spokesman of continuing revelations; but an aura of holiness and divine choice still lingered around the person and office of the early caliphs, and they did claim to have some kind of religious authority. ALBERT HOURANI, *A HISTORY OF THE ARAB PEOPLES* 22 (Warner Books 1991).

<sup>257</sup> SCHULZE, *supra* note 3, at 1-14.

<sup>258</sup> EZZATI, *supra* note 6, at 73-74.

<sup>259</sup> *Id.*

<sup>260</sup> ESPOSITO & VOLL, *supra* note 256, at 26.

<sup>261</sup> AN-NA'IM, *supra* note 32, at 83-84.

<sup>262</sup> Abdal-Haqq, *supra* note 125, at 54-55.

<sup>263</sup> AN-NA'IM, *supra* note 32, at 23-24

<sup>264</sup> *Id.*

<sup>265</sup> See generally ESPOSITO & VOLL, *supra* note 256.

<sup>266</sup> *Id.*

<sup>267</sup> Abdal-Haqq, *supra* note 125, at 56.

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*Ahkam* literally means rules.<sup>268</sup> They are the practical rules of civil governance that are based on human understanding of divine law.<sup>269</sup> Although the Quran and *Sunnah* constitute a negative norm for *ahkam*, there is a tremendous amount of flexibility within Islamic jurisprudence regarding those issues that are not addressed by these sources.<sup>270</sup> As a result, *ahkam* can be adapted to meet changing cultural and economic circumstances.<sup>271</sup> *Ahkam* are the laws of practical jurisprudence. They are analogous to human laws as understood by Aquinas and described above. So, while ideally they are rooted in the natural law (as a part of the *Shari'ah*), they are not necessarily natural law.

*Shura*, meaning consultation, refers to a cooperative process of human beings moving towards the good.<sup>272</sup> It also has a dialectical character in that it presumes that human consultation moves the community toward greater perfection and understanding of truth.<sup>273</sup> In this regard it may be understood as the process of moving closer to God; however, it might also be understood as a historical dialectic moving towards progress.<sup>274</sup> *Shura* can also refer to an advisory or governing council.<sup>275</sup> It is a mechanism for providing necessary information to those who make decisions and presumes that varied perspectives produce a truer portrait of reality on which to base decisions. Like *ijma'*, the principle of *shura* presumes that multiple standpoints are more likely to arrive at true legal interpretations, which is a possible basis for standpoint theory within Islamic thought.

### VI. Components for Productive Dialogue

In order for inter-religious dialogue between Christians and Muslims to be productive, both groups must be faithful to their respective traditions.<sup>276</sup> Participants must then be able to communicate transculturally in a way that is truly bilateral. Dialogue fails if it becomes monologue.<sup>277</sup> Finally, there must be some degree of solidarity, which might form the basis for reconciliation.<sup>278</sup>

#### A. Faithfulness to the Traditions

A key component of dialogue is authenticity, which implies faithfulness to our own religious and cultural narratives defining our understanding of ultimate reality. That is not to say that horizons cannot change or that Christians and Muslims

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<sup>268</sup> CHOUDHURY, *supra* note 251, at 32-34. *Ahkam* are civil rules (human law) that are valid to the extent that they do not conflict with Sharia. They are allowable as gap-fillers.

<sup>269</sup> *Id.*

<sup>270</sup> JOSEPH SCHAFT, AN INTRODUCTION TO ISLAMIC LAW 54 (Clarendon Press 1964).

<sup>271</sup> *Id.*

<sup>272</sup> See CHOUDHURY, *supra* note 251, at 56-59.

<sup>273</sup> *Id.*

<sup>274</sup> *Id.*

<sup>275</sup> AN-NA'IM, *supra* note 32, at 78-80.

<sup>276</sup> LOCHHEAD, *supra* note 76, at 31-39.

<sup>277</sup> PANIKKAR, *supra* note 34, at 35.

<sup>278</sup> See Haughey, *Responsibility for Human Rights*, *supra* note 55, at 784-85.

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might not adapt their understanding of our narratives. One criticism of Christians I have heard from Muslims is that dialogue is meaningless because conservative Christians use it as a pretext for proselytizing and for liberal Christians it is an exercise in validating their universalism.<sup>279</sup> Both of these motives are abhorrent to most Muslims<sup>280</sup> and doom efforts at meaningful dialogue before they even begin.

Dialogue cannot be conflated with proselytizing. True dialogue is a work of reconciliation, peacemaking and searching for truth. Christian biases and presumptions in this regard are at least as problematic as Muslim ones.<sup>281</sup> Faithful authenticity requires one to be honest about his or her goals and motivations for dialogue.

Muslims who are open to dialogue presumably have some interest in knowing what Christians think and believe. Although they expect that Christians will evince respect and sensitivity in dialogue, they become frustrated when they perceive that Christians are saying only what they believe Muslims want to hear.<sup>282</sup> Sometimes this way of speaking by Christians arises out of paternalism,<sup>283</sup> and at other times, it flows from an extreme relativism that refuses to make judgments about truth and may even be unfaithful to authentic subjectivity.<sup>284</sup>

### B. Communicate Transculturally

Once individual Christians and Muslims are committed to dialogue rather than proselytizing<sup>285</sup> and have faithfully integrated their respective traditions, they still have to be able to communicate history and beliefs cross-culturally. They must be able to recognize the context of the different understandings represented in a particular dialogue, including their own. They can use the transcendental method to objectivize insights in order that they can be understood transculturally. Lonergan asserts that authentic subjectivity can lead to truth.<sup>286</sup> That truth might be relative in certain respects so that the goal is universality rather than unanimity (see the earlier discussion of relativism).

The most important tool for communicating transculturally is clear and well-defined language.<sup>287</sup> Ideas must be objectivized in a way that is intelligible so that meaning can be effectively conveyed. Since such terms as justice and mercy

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<sup>279</sup> Based on the author's conversations with scholars in Egypt, Turkey and Jordan.

<sup>280</sup> EZZATI, *supra* note 6, at 183-85.

<sup>281</sup> SIDDIQUI, *supra* note 24, at 50-54.

<sup>282</sup> *Id.* at 197-99.

<sup>283</sup> *Id.* at 54-55.

<sup>284</sup> LOCHHEAD, *supra* note 76, at 31-39.

<sup>285</sup> While dialogue for the Christian may be understood within the broader category of evangelization, this particular expression of love and reconciliation must be clearly distinguished from proselytizing in terms of motivation, method and goals. Muslims have the same challenge, but institutionalized toleration of Christians and Jews as *Ahl al-Kitab* (People of the Book) provides a historical basis for distinguishing between missions and respectful discourse—whether civil or inter-religious.

<sup>286</sup> LONERGAN, LONERGAN READER, *supra* note 12, at 548.

<sup>287</sup> PANIKKAR, *supra* note 34, at 46.

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have different meanings in different religious contexts, it makes little sense to adopt the definition of one group over that of the other. However, in discussing the differences, it might be helpful to use historical and textual interpretive methods developed in both traditions to the extent that they will provide clarity.

Since dialogue is a relatively new idea for Christians and since there remains a deep level of suspicion among Christians and Muslims generally, there has been a tendency for attempts at dialogue to begin as or quickly become monologues.<sup>288</sup> There is sometimes the perception that Christians not only speak authoritatively about their own faith tradition but claim to speak authoritatively for Muslims as well.<sup>289</sup> This attitude is often interpreted as an exclusive claim of access to truth and a desire to convert Muslims to Christianity.<sup>290</sup> These perceptions are not altogether inaccurate, and the consequence is alienation.<sup>291</sup>

### C. Moving Toward Reconciliation

Although love (*agape* in Greek and *mohabbah* in Arabic) is a virtue in Islam, outside of some Sufi orders, it does not receive the same emphasis as in the Christian tradition.<sup>292</sup> According to the New Testament, the greatest commandments are to love God and to love neighbor.<sup>293</sup> The New Testament First Letter of John goes so far as to say that God is love.<sup>294</sup> As a logical consequence, God's work in the world is to reconcile people to Himself and to one another.<sup>295</sup> Aside from practical concerns for peace and intellectual pursuit, this is what motivates dialogue for Christians.<sup>296</sup> In order to be reconciled with and truly love others, one must know them.

## VII. The Initial Content of Dialogue: Working for Common Justice Goals

Since there is such a significant overlap in natural law reasoning, Christians and Muslims should be able to arrive at commonly held principles of human rights. The Universal Declaration of Human Rights,<sup>297</sup> the Declaration of the Parliament of the World's Religions,<sup>298</sup> and the Universal Islamic Declaration of

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<sup>288</sup> *Id.* at 35.

<sup>289</sup> See ARKOUN, *supra* note 23, at 31-36.

<sup>290</sup> SIDDIQUI, *supra* note 24, at 93.

<sup>291</sup> *Id.*

<sup>292</sup> WILLIAM C. CHITTICK, *THE SUFI PATH OF LOVE* 194-96 (SUNY Press 1983).

<sup>293</sup> Matthew 22:36-40 (The New Revised Standard Version).

<sup>294</sup> 1 John 4:7-12 (The New Revised Standard Version).

<sup>295</sup> Note that reconciliation with God is not considered necessary in Islam because there is no notion of fallenness or original sin that separates God from humanity. Ezzati, *supra* note 6, at 66-73. Submission, however, is essential for relationship with God in both traditions.

<sup>296</sup> WATT, *supra* note 18, at 138-45.

<sup>297</sup> Universal Declaration of Human Rights (Dec. 10, 1948).

<sup>298</sup> The Parliament of the World's Religions Declaration Toward a Global Ethic (1993).

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Human Rights<sup>299</sup> can serve as a guide for identifying such principles to the extent that they overlap. In the context of inter-religious dialogue, I am arguing that it is reasonable to begin with the points of greatest agreement. This is not to say that differences are irrelevant. But dialogue focused on differences is more likely to create conflict than dialogue with the potential for greater solidarity and deeper relationships that might make a discussion of differences in doctrine and personal faith journeys worthwhile.

### A. Focus on Areas of Likely Cooperation First

One problem with inter-religious dialogue is that the very term implies that dialogue between people of different faiths must begin with religion. As mentioned before, there have been modestly successful experiments in Muslim-Christian dialogue. Even so, there is a perception (perhaps valid or perhaps created by the media) that the majority of public cross-cultural interchange is negative. For example, recent events in Iraq, Afghanistan, the Balkans and Palestine typify this perception. The roots of these tensions are found in a variety of places, including the early expansion of Islam, the Crusades and Western colonialism.<sup>300</sup> Given current conflicts and the history of conflict, I suggest that dialogue should begin with topics on which there is some likely agreement. There is nothing wrong with starting small. It creates the opportunity for forging meaningful relationships and could lead to cooperation.

It might be possible to enter dialogue regarding the sanctity of life and the dignity of the human person, since the principle is deeply-rooted in both Islam and Christianity. In a conference last year, representatives from all major faith communities, including Islam, gathered in Assisi at the invitation of Pope John Paul II to universally reject the notion that violence can be justified in the name of God.<sup>301</sup> This was an important step towards solidarity; however, I would propose something more concrete and grassroots.

Both Islam and Christianity have strong traditions of serving the poor. In Islam there are the *zakat*,<sup>302</sup> or alms, paid by all Muslims for the assistance of the poor, the practice of giving money and food to beggars and foundations established to meet the needs of the poor. Christians have similar values, although some of the institutionalized forms are not found in their texts as they are in Islam. If Christians and Muslims can be brought together for explicitly inter-religious, rather than political, dialogue surrounding their moral response to poverty, I believe that the process could deepen each group's convictions, empowering them to be more effective and lead to cooperation in efforts to fight poverty. Once a basis of trust and cooperation is established, the dialogue could expand to a more general consideration of human rights.

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<sup>299</sup> Ratified by the Organization of Islamic Conferences on Sept. 9, 1991.

<sup>300</sup> See LEWIS, *supra* note 4, at 3-18.

<sup>301</sup> See THE CATHOLIC STANDARD, Jan. 24, 2002.

<sup>302</sup> "Zakat is commonly translated as 'alms tax.' It is defined as a certain percentage of one's acquired property or profit for the year that is paid to the needy." SACHIKO MURATA & WILLIAM C. CHITTICK, THE VISION OF ISLAM 16 (Paragon House 1994) [hereinafter MURATA & CHITTICK].

## Toward Reconciliation in the Middle East

### B. Toward Universal Principles of Social Justice and Human Rights

Social justice and human rights constitute the most reasonable starting place for dialogue because both Christianity and Islam acknowledge the dignity and free will of human beings. Through their respective traditions, both have arrived at universal standards for justice even though these standards may not be identical. The reality is that this agreement on the value of human beings ascribed to God brings followers of both faiths to similar conclusions about the proper role of the religious community and the state (bearing in mind that there is no necessary distinction between the two in Islam) with regard to social justice and human rights. Dialogue on these issues might even allow Christians and Muslims to recognize their own scotosis<sup>303</sup> and be more faithful to the faith traditions in their respective religions. In his article, “A Revision of the Liberal Tradition”, John Langan, S.J. derives economic rights from the liberal point of view using Hobbes, Locke, Mill, and Rawls.<sup>304</sup> Given the traditional liberal and libertarian suspicion of positive, economic rights, this presents a significant challenge. They are considered secondary to political rights and are usually described as goals rather than as rights. In the Western tradition, particularly in the U.S., there has been a resistance to the idea of economic rights at every step.<sup>305</sup> Although the U.S. supported the Universal Declaration of Human Rights, it has never fully embraced the idea that economic rights, such as education and health, are truly inalienable and enforceable.<sup>306</sup> Langan’s article contains the powerful insight that economic rights can be derived from classical liberal understandings of political rights.<sup>307</sup>

As a result of its historical narrative, Christian culture, particularly in the U.S., has had difficulty accepting that a just government might have an obligation to provide social services to its subjects.<sup>308</sup> Islam has faced the opposite challenge. In Islam, it is clear that people have economic obligations to give and show mercy to the poor.<sup>309</sup> In many Arab homes, throwing out a few dry pieces of bread is considered an offense against God and the poor.<sup>310</sup> In much of Arab culture, bread, and more generally food, is sacred. If there is excess, one puts it in a bag and hangs it on a wall or post outside so that people can find food without begging. Even when people do beg, which is something more common in American cities than most Middle Eastern cities, Muslims are socialized to

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<sup>303</sup> For a description of scotosis or blind spot, see LONERGAN, *INSIGHT*, *supra* note 7, at 191-203.

<sup>304</sup> See generally John Langan, S.J., *A Revision of the Liberal Tradition in HUMAN RIGHTS IN THE AMERICAS* 69-70 (Georgetown Univ. Press 1982).

<sup>305</sup> *Id.* at 91.

<sup>306</sup> GLENDON, *supra* note 26, at 185-90.

<sup>307</sup> See generally Langan, *supra* note 304.

<sup>308</sup> See Langan for a detailed discussion of the challenge of economic rights within liberal societies.

<sup>309</sup> See generally ADAM SABRA, *POVERTY AND CHARITY IN MEDIEVAL ISLAM* (Cambridge Univ. Press 2000); see also John Alterman & Shireen Hunter, *The Idea of Philanthropy in Muslim Contexts* (CSIS 2004), at [http://www.csis.org/mideast/040222\\_philanthropy.pdf](http://www.csis.org/mideast/040222_philanthropy.pdf).

<sup>310</sup> The author was actually scolded once in Amman for throwing away a few pieces of dry pita bread instead of saving it for the poor.

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give even if it is very little.<sup>311</sup> The idea that one would walk past a beggar without giving something is offensive in traditional Islamic cultures.<sup>312</sup> Thus the obligation to give might seem to constitute a right of the poor to have their basic needs met.

There is solidarity with the poor throughout Muslim practice. One of the five pillars of Islam, *zakat*, is to give a percentage (usually 2.5%) of one's income to the poor – not for the maintenance of the mosque or the state – but to the poor.<sup>313</sup> Ramadan, too, is a radical identification with the poor in their struggles.<sup>314</sup> This ethic is so strong, that people risk ostracism if they publicly break the fast. So, unlike the Western liberal tradition, Islam has had an understanding of economic rights from its beginnings.

One challenge in Islam is to arrive at a justification for political rights. Since governance is indistinguishable from the administration of the faith, any system of rights that could lead to un-Islamic notions would be unacceptable. Within the context of an Islamic society, it is possible to conclude that ideas like democracy and individual liberties are helpful to the goals of Islam in practical justice. However, they also create the opportunity for error, especially when given to non-Muslims.

The debate on cultural rights is a relatively new phenomenon that has taken place in the U.S. and Europe, as they have become more multicultural and pluralistic societies.<sup>315</sup> Tolerance, integration, and autonomy continue to be challenges in the West. It might be even more difficult to derive cultural rights from a Muslim point of view. On the one hand, Muslims use cultural rights to reject conformity with outside forces of materialism and commercialization. On the other hand, modern Muslim cultures have not been consistent in allowing similar rights for minorities within their borders (e.g. Kurds, Christians, Muslim minorities, etc.).

Although there are challenges, I find it compelling and encouraging that Western liberals can discover the insight that economic justice is consistent with and may be derived from political rights and that Muslims might come to an acceptance of political rights as implicit within economic obligations and rights for the effective administration of the Islamic state. It gives me hope that the transcendental method may provide opportunities for dialogue and more such parallel insights.

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<sup>311</sup> See Alterman & Hunter, *supra* note 309, at 3.

<sup>312</sup> See generally *id.*

<sup>313</sup> MURATA & CHITTICK, *supra* note 302, at 16; see also ISLAM: THE STRAIGHT PATH, JOHN L. ESPOSITO 90 (Oxford Univ. Press 1998).

<sup>314</sup> See RAMADAN: MOTIVATING BELIEVERS TO ACTION (Laleh Bakhtiar ed., Kazi 1994).

<sup>315</sup> Haughey, *Responsibility for Human Rights*, *supra* note 55, at 766-77.

C. Solidarity and Relationship

On some level, the *telos* of both dialogue and human rights is solidarity.<sup>316</sup> If we acknowledge basic human dignity and then work together to defend that dignity, a natural result is that understanding and empathy for others will be developed. Once this emotional intuition is attained, it will be easier to engage in dialogue on issues that are more personal and theological because a person will be able to put himself in the place of the other. Frankly, though, I wonder whether the exclusively theological aspects of the two faiths are essential to dialogue at all. The Christian is ideally characterized by love in action according to the scriptural tradition, while Islam is ideally characterized by submission to God. Doctrine is secondary. Jesus honored the gentiles who acted in love, faith, and repentance,<sup>317</sup> and Mohammad honored the pious non-Muslim over the unfaithful Muslim.<sup>318</sup> Perhaps by moving towards solidarity in the defense of social justice, followers express love and submission to the will of God more effectively than by confessing to the Trinitarian formula of the Nicene Creed or by reestablishing the Caliphate. These are important issues, but they would certainly be contextualized and understood better from a state of solidarity rather than one of distrust and enmity.

**VIII. Conclusion**

My hope is that this theoretical framework for dialogue can serve as a precursor to concrete dispute resolution. The overlap synthesis of Western and Islamic natural law traditions allows the flexibility of a rationalist view that is both deductive and inductive and considers the role of human behavior in making universal rights and social justice claims. Addressing these claims in meaningful ways necessitates a greater commitment to the poor and marginalized. Practically, it will require challenging colonialism and the exclusion of religious minorities, both in predominantly Christian and predominantly Muslim countries. Real cooperation in the service of the poor and in protecting human rights will create opportunities for more direct and constructive cross-cultural interaction that will foster solidarity and make intercommunal reconciliation more likely.

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<sup>316</sup> *Id.*

<sup>317</sup> Jesus honors the faithful Roman centurion, *see Luke 7:1-10*. Jesus uses the story of the good Samaritan to highlight the importance of mercy over lineage, *see Luke 10:25-37*. Jesus heals the Canaanite woman because of her faith, *see Matthew 15:21-28*. *See* The Holy Quran 5:69 (Believing Jews, Christians and Sabeans may be saved). *See also* Hadith 3208 related by Sahih al-Bukhari (Those who live as Muslims and then turn to unrighteousness will be judged).

<sup>318</sup> EZZATI, *supra* note 6, at 54-55.