

The Role of Religion in the Law

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“I am used to hear bad men misuse the name of God, yet God exists.”

(A Man for All Seasons)

Introduction

The purpose of this paper is not to provoke confrontation but rather to stimulate reflection – and thereby to deepen understanding. It does not ask all the questions and it certainly does not provide all the answers. You are not expected to agree with it – but simply to think about it. If you feel nevertheless the irresistible urge to hold me to account, please do so on the basis of my own intentions, words and actions – and not of those of others – and bearing in mind that more often than not existence is a mirror in which we see our own reflection.

I believe it was Dr Samuel Johnson who once remarked, “When a man knows he is right, he is damned.”

When we examine the sources of religion, we find there are many religions, with many sources. When we examine the sources of the law, we find there are many laws, with many sources. Charting the interplay between two of many, albeit major, elements in a kaleidoscope is not always straight forward. It is often easier to identify currents than to map the entire sea. Waves come and go, but the ocean remains.

Politicians and lawyers talk of “the rule of law” as if it is a phenomenon that has always existed, immutably, from time immemorial – but if, for example, we explore the laws of the British Isles, we soon see that they have diverse origins and have never ceased changing.

Even what is understood by the word “religion” has changed from time to time in different places. It could refer to one particular dominant orthodox religion during a certain period – but over time what is regarded as orthodox changes. Within three generations, for example, most of the descendants of those who used to follow the Yasa of Ghengis Khan had embraced the Shari’a of Islam.

In the past, the word “religion” was used to indicate a way of life based on a divine revelation from God to mankind, but nowadays modern definitions of religion include a wide variety of strongly held convictions including some which even deny the very existence of God, let alone any guidance which He in His infinite mercy and wisdom has provided for the benefit of mankind.

For example, in the Charities Act 2006, section 2(3)(a)’s definition of religion “includes—

- (i) a religion which involves belief in more than one god, and
- (ii) a religion which does not involve belief in a god;”.

This definition clearly confirms the gradual transition that has taken place from a legal system deeply influenced by eighteenth century religious beliefs to a modern twenty-first century secular legal system. It effectively enshrines the outcome of the marriage between Jeremy Bentham’s utilitarian philosophy and human rights dogma.

In effect this modern perspective means that a sincere belief in the rule of law, manifested in practice, now comes within the legal definition of what amounts to a religion.

If an individual decides to relinquish the religion of European Trinitarian Christianity and to embrace Islam (which in fact, many years ago, was my choice), he or she is free to do so – but if an individual declares that he or she has decided to relinquish the religion of “the rule of law” – and perhaps to become a follower of the “free man on the land movement”, he or she is probably going to run into difficulty sooner rather than later. So it appears that some religions are more equal than others!

Since a political ideology is excluded from constituting a religion “because political parties have a full spectrum of policies, which may change,” (http://www.charity-commission.gov.uk/Library/rcr_isf.pdf), this may also apply to a legal ideology for the same reason.

Indeed the more established view is that the law is “above” religion and that it is one of the responsibilities of modern secular law, while following none of them, to both recognise and to a certain degree regulate the practice of the various religions which people follow within the boundaries of its jurisdiction.

This was not always the case. Before Christianity arrived in the British Isles, its teachings did not influence the law of the land either one way or the other. At a later stage in the past, new laws had to be consistent with Christian belief and practice. Now new laws must not be at variance with the Human Rights Act 1998. Perhaps in the future, they may have to be either Shari’a based or at least Shari’a compliant. *Lex prospicit, non respicit.* – The law looks forward, not backward.

Whereas the English monarch has traditionally been viewed as “the defender of the faith” – meaning Church of England Trinitarian Protestant Christianity (although it was in fact a Trinitarian Roman Catholic Pope who originally bestowed this title on King Henry VIII), HRH Prince Charles is on record as saying that he would prefer to be simply “defender of faith”, whatever form faith in the Divine might take.

Most of us are aware that Article 9 of the European Convention on Human Rights, as incorporated into English domestic law by the Human Rights Act 1998, recognises an individual’s right to freedom of thought, conscience and religion, including the right to change one’s religion or belief and to manifest that belief or religion in worship, teaching and practice – subject to certain limitations including for example the duty not to impede or deny anyone else’s human rights in the process.

Although free in law to follow any religion, HRH Prince Charles is at present barred by law from following any religion other than Church of England Trinitarian Protestant Christianity if he would be king of England. If he decided to embrace Islam, he would have to be prepared to relinquish the possibility of his being crowned king – unless the law had been changed beforehand and the legal impediment removed. When Lord Lester of Herne Hill QC was asked what HRH Prince Charles should do if faced with this choice, he replied with a smile, “If it happens, ask him to come and see me!”

It is clear that the relationships between “the law” and “religion” are not clear cut. Both above and beneath the surface, there are contradictions and inconsistencies. In order to assess the role of religion in the law, in this age in this land, we have somehow to perceive what their realities are today in the modern context – without becoming bogged down in history and dogma, whether religious or secular.

Definitions

Let us begin with some definitions taken from the Oxford Concise English Dictionary, whose dust jacket modestly describes it as “the world’s favourite dictionary”:

religion • n. 1 the belief in and worship of a superhuman controlling power, especially a personal God or gods. ☛ a particular system of faith and worship. 2 a pursuit or interest followed with devotion.

law • n. 1 a rule or system of rules recognised by a country or community as regulating the actions of its members and enforced by the imposition of penalties ... 4 the body of divine commandments as expressed in the Bible or other religious texts ...

Let us look also at the derivations of these two current English words:

The word “religion” derives from the Latin word *religio*, meaning “to bind back” – perhaps like a corset or a bonsai tree.

One is reminded perhaps of William Blake’s words:

And priests in black gowns were walking their rounds
and binding with briars my joys and desires. (*Songs of Experience*)

The word “law” derives from the Old English word *lagu*, meaning “code of rules” which in turn derives from the Old Norse word *lag*, meaning “something laid down or fixed” – such as what remains of England’s long established customary common law, much of which has been displaced during my brief lifetime by statute law.

One is reminded perhaps of Graham Nash’s words:

You who are on the road
must have a code that you can live by.
And so, become yourself
because the past is just a goodbye. (*Teach Your Children*)

I would like to introduce one additional word which is not to be found in the Oxford Concise English Dictionary – but without which the relationship between the other two words and what they signify cannot be fully apprehended or assessed : *deen*.

The word *deen* is the phonetic spelling of an Arabic word whose root is D-Y-N and whose meaning is defined in Aisha Bewley's *Glossary of Islamic Terms* as : “life-transaction, lit. the debt between two parties, in this usage between the Creator and created.”

One is reminded perhaps of these words from the Qur'an:

Allah alone is qualified to judge.
His order is to worship none but Him.
That is in truth the straight and upright *deen*,
but most of mankind simply do not know. (Qur'an : 12.40)

The word *deen* is also used to describe the Last Day, “the day on which debts fall due” – and in this sense *al-yawm ad-deen* is often translated as “the day of judgement” :

What will convey to you what the Day of Judgement is?
Again! What will convey to you what the Day of Judgement is?
It is the Day when a self will have no power
to help any other self in any way.
The command that Day will be Allah's alone. (Qur'an : 82.17–19)

In general terms, the word *deen* simply means “way of life” – for example :

It is He who sent His Messenger
with guidance and the Deen of Truth
to exalt it over every other *deen*,
even though the *mushrikun* detest it. (Qur'an : 9.33)

The word *mushrikun* refers to those who worship something or someone other than Allah or who ascribe to something or someone attributes which in fact belong to Allah alone. The word *Allah* literally means “the God” – the Source of all that exists.

It is clear from this last verse that the word *deen* can mean “religion”, since every religion – even as broadly defined by the Charities Act 2006 – involves a way of life. However the Qur'an distinguishes between directly and divinely revealed guidance and beliefs on one hand, in contrast on the other hand to ways of life and beliefs inspired by mortal people. So, for example, Allah says in the Qur'an :

The *deen* with Allah is Islam. (Qur'an : 3.19)

And :

If anyone desires anything other than Islam as a *deen*,
it will not be accepted from him,
and in the *akhira* he will be among the losers. (Qur'an : 3.84)

The word *akhira*, meaning “what comes after”, refers to the Next World, what is on the other side of death.

The relationship between Deen, Religion and Law

Our examination of the word *deen* indicates that there are more things in heaven and earth than are dreamed of by secular legal philosophers – although one could suggest that perhaps this is the reality of the new *nomos* which the German jurist, Carl Schmitt, had in mind.

Clearly a directly, divinely revealed guidance, if embodied in practice, is a human phenomenon both unique and extraordinary. The Prophet Muhammad's wife Aisha, may Allah bless him and his family and his companions and followers and grant them peace, described him as “the Qur'an walking” – meaning that is, that he was the existential embodiment of the revelation of the Qur'an, revealed by God, through the Angel Jibril (Gabriel), to a man who could neither read, nor write and who had never been to school. As the famous couplet in Imam Al-Busairi's *Burda* states:

The most we know of him is that he is a man –
and that truly he is the Best of all of the Creation of Allah.”

What does mankind do with such a divinely revealed guidance conveyed by such a man? The short answer is that some follow it, some change it – and some reject it.

So from a Qur'anic perspective, we would say that when a revealed deen becomes corrupted by man, then it becomes a religion – and after it has become a religion it becomes a set of laws, a set of laws which in time can become redefined by other “religions” and other “laws” which are not even linked to a divine revelation.

Thus while human rights dogma attempts to be all-embracing, it is unable to provide us with a role model whom we can follow, that is, a human being who acts rightly.

At one end of the spectrum, divine revelations refer to human duties to God and to fellow humans – as defined by God. At the other end of the spectrum, human duties are circumscribed by human rights – as defined by man. The former sometimes influences the latter – but the latter is only able to influence the former if the former is re-formed, that is re-defined, by man.

So for example the revelation which was given to the Prophet Moses, peace be on him, became in time “the Law of Moses” – and the revelation which was given to the Prophet Jesus became in time “the New Covenant”, even though he, peace be on him, is recorded in the King James version of the Bible as stating that he had been sent to uphold the law of Moses and the other Prophets who were sent between them (including Solomon and David), peace be on all of them – and not to change it:

Think not that I am come to destroy the law, or the prophets :
I am not come to destroy, but to fulfil. (*Matthew 5.17*)

In spite of this, what had begun as an original divinely revealed deen was changed by people into organised religion (usually characterised by the emergence of priesthoods), in which some tended to worship the Message, and some the Messenger – rather than the One Who had sent the messenger with the message.

An impartial examination of the historical record reveals that the European Judaism developed by the turkic (not semitic) thirteenth tribe, the Khazars, whose original homeland lies between the Black and Caspian Seas, is not entirely consistent with the original teaching of Moses. Similarly the “new covenant” of European Trinitarian Christianity is defined initially by Paul and his followers – not by Jesus and his followers – and is then constantly re-defined and re-formed once the original teaching is subjected to the philosophy, culture and customs of European tribes not descended from the original twelve tribes of Israel – Israel being another name of the Prophet Jacob, from whose twelve sons the twelve semitic tribes take their names – the word “semitic” meaning “descended from Shem”, one of the sons of the Prophet Noah.

It is important to recognise that the inter-relationship between deen, religion and law is not simply a one way process of erosion or degeneration. Sometimes deen and religion have a regenerative effect on law – so, for example, the charitable trust is derived from the Islamic waqf and the intestacy rules are derived from the Shari’a’s allocation of prescribed shares to surviving relatives. Sometimes an original deen has been lost and the consequent religion so corrupted that “common sense law” rescues it from descending into blatant excess.

Sometimes, as is the case today, there are marked similarities between “religious” law and “secular” law. They arrive at the same principles, but by different routes – for example, the principle in family law that the interests of the child are paramount.

Sometimes, as is also the case today, they are diametrically opposed. One permits what the other forbids and vice versa – for example laws governing the consumption of alcohol and wealth created out of nothing through the practice of usury.

These laws’ respective worth can only be measured in terms of whether they result in justice being done. Do they ensure justice for all, or only for those who can afford it, or only for some – or are they merely a means of control and exploitation?

History furnishes us with countless examples of both religious and secular laws being implemented either as the means to mercy and justice – or as instruments of tyranny and injustice. Some laws, for example, sanction and impose apartheid – whereas others promote respect and inclusion rather than contempt and exclusion.

The original teaching of Jesus, peace be on him, was imbued with compassion, mercy and forgiveness. Centuries later, the infamous Spanish Inquisition (whose roots were the Roman Theodosian and Justinian and then Mediaeval European Inquisitions) tyrannised, tortured and killed anyone who believed in One God, whether they were unitarian Jew, unitarian Christian or unitarian Muslim – in the name of Jesus Christ. This was all “legally” done, in accordance with the rule of law, as defined at that time – just in the same way that former President George Bush, when questioned about the ethics of torturing detainees denied due process by means of disingenuous semantics, replied that, “the lawyers said it was legal,” – so as far as he was concerned, it was not torture.

As Henry Charles Lea, one of the most thorough historians of the Spanish Inquisition, observed, if you wish to understand what kind of society a society is, study its laws.

Reflect also on how man made law is sometimes regarded as if its origins are divine and therefore beyond question, while divine law is regarded as if its origins are human and therefore highly questionable – especially if only aspects of divine law have been divorced from the whole and then secularised and utilised as a means of tyranny.

The Prophet Muhammad, blessings and peace be on him, said that Islam began as a prophecy and a mercy, and then would become a khalifate and a mercy and then a khalifate and a tyranny – and then finally a khalifate and a mercy once more. During the last fourteen centuries of Islamic history, there have been both wise leaders and heedless tyrants. Needless to say, they were not following the same teaching.

In the current age, critics of the Shari'a cannot wait to ignore the many good examples and equate Islam with the ignorance of people who do terrible things to their fellow human beings in the name of the Shari'a and in the name of God – and yet they are strangely silent when you ask, for example, if it was really necessary to murder over a million civilians in Iraq in order to have a handful of tyrants hanged, as if the imposition of democracy was in itself worthy of such human sacrifice.

At the time, the Attorney-General correctly concluded in his legal opinion dated the 7th March 2003 that, “regime change cannot be the objective of military action.” And yet both former Prime Minister Tony Blair and former President George Bush have defended their actions retrospectively precisely on that basis : “We are better off without Saddam Hussain,” – the royal “we” being understood to exclude the silenced majority, the not even worthy of mention collateral damage.

Perhaps they were influenced by Bob Dylan's words :

Oh my name it is nothin'
My age it means less
The country I come from
Is called the Midwest
I's taught and brought up there
The laws to abide
And the land that I live in
Has God on its side ...
But now we got weapons
Of the chemical dust
If fire them we're forced to
Then fire them we must
One push of the button
And a shot the world wide
And you never ask questions
When God's on your side.

(With God on Our Side)

Conclusion

If a ruler rules in accordance with a divinely revealed guidance, fearing God and the Last Day, knowing that he or she will have to answer for his or her intentions and actions and words to his or her Creator, such an awareness and such a ruler are rare – and precious. Such a ruler welcomes advisers whose job it is to ensure that he or she does not stray away from such guidance.

If a ruler relies on being divinely sanctioned – but does what pleases him or her self, then the royal advisers will not speak out, either seeking favour or fearing harm. Look what happened to Robert Devereaux, 2nd Earl of Essex, when he reminded Queen Elizabeth I that the monarch is not above God’s law and although divinely sanctioned is nevertheless ultimately answerable to God. He did not live for very long after that!

If a dictator does not claim to be divinely guided – but does what pleases him or her self, then sooner or later he or she will fall from God’s grace and the people’s favour.

What is said about personal rule applies equally to the rule of law and to those who implement it and judge in accordance with it :

The more in harmony with divinely revealed guidance a law is, the more beneficial are its effects – and vice versa. When everything is at its highest, the law and those who implement it and judge in accordance with it are rightly guided if they follow a divinely revealed guidance which has not been corrupted. When everything is at its lowest, no-one really knows what they are doing other than that they are obeying the law – and yet the law and those who implement it and judge in accordance with it do not take into account the Day of Judgment and what inevitably comes after it.

Many years ago, I met a judge from the High Court in Pakistan. He was a humble man. “I don’t always do the obligatory daily prayers,” he said, “but whenever I sit in judgement, I always ask Allah to guide me in giving a just decision.”

Perhaps he had the following *hadith* in mind :

Buraidah related that the Prophet, may Allah bless him and grant him peace, said, “Judges are of three types, one of whom will go to Paradise and two to Hell. The one who will go to Paradise is a man who knows what is right and gives judgement accordingly; but a man who knows what is right and acts tyrannically in his judgement will go to Hell; and a man who gives judgement for people when he is ignorant will go to Hell.” (Sunan of Imam Abu Dawud: 18.1339.3566).

It is in this context that the role of religion – or preferably, original divinely revealed *deen* – in the law is vital, for this world is passing – and the next world is for ever.

[Definitions of Arabic terminology are from *A Glossary of Islamic Terms* by Aisha Bewley, (Ta-Ha Publishers, London, 1998). Quotations from the *Qur’an* are from *THE NOBLE QUR’AN – a New Rendering of its Meaning in English* by Abdalhaqq and Aisha Bewley, (Bookwork, Norwich, 1999).]