

Seattle University School of Law Digital Commons

Faculty Scholarship

2017

Laudato si': Engaging Islamic Tradition and Implications for Legal Thought

Russell Powell

Follow this and additional works at: <https://digitalcommons.law.seattleu.edu/faculty>



Part of the [Law Commons](#)

Recommended Citation

Russell Powell, *Laudato si': Engaging Islamic Tradition and Implications for Legal Thought*, 40 *Seattle U. L. Rev.* 1325 (2017).

<https://digitalcommons.law.seattleu.edu/faculty/782>

This Article is brought to you for free and open access by Seattle University School of Law Digital Commons. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Seattle University School of Law Digital Commons. For more information, please contact coteconor@seattleu.edu.

Laudato si': Engaging Islamic Tradition and Implications for Legal Thought

*Russell Powell**

CONTENTS

INTRODUCTION	1326
I. EXPLICIT MUSLIM–CATHOLIC ENGAGEMENT	1326
II. RELIGIOUS TRADITIONS OF JURISPRUDENCE	1328
III. <i>LAUDATO SI'</i> 'S CONNECTIONS TO ISLAM	1329
<i>A. Timing</i>	1330
<i>B. Explicit Islamic Reference</i>	1331
<i>C. Foundational Texts</i>	1331
<i>D. Naturalism</i>	1333
IV. MUSLIM RESPONSES TO <i>LAUDATO SI'</i>	1333
<i>A. Rashied Omar</i>	1334
<i>B. Islamic Declaration on Global Climate Change, August 2015</i> .	1335
V. COMMONALITY AND DIALOGUE	1337
<i>A. Overlapping Consensus: Rawls</i>	1337
<i>B. Fusing of Horizons: Lonergan</i>	1338
<i>C. Dialogue in Catholicism</i>	1339
<i>D. Nostra Aetate Identifies Specific Overlap with Islam</i>	1340
<i>E. Dialogue in Islam</i>	1340
CONCLUDING REFLECTIONS ON THE IMPLICATIONS FOR LEGAL THOUGHT	1341

* Russell Powell is a Professor of Law and Associate Provost for Global Engagement at Seattle University. His research is primarily in the fields of Islamic jurisprudence and Catholic legal thought.

INTRODUCTION

This Essay considers the 2015 papal encyclical *Laudato si'*'s¹ engagement with Islamic religious and legal traditions in order to identify shared ethical and jurisprudential commitments and their broader implications for law. By 2025, Muslims will constitute 30% of the population of the world,² while Catholics will likely be between 15% and 20%.³ The history of interreligious conflict is long and enduring.⁴ In many cases, legal structures related to security and immigration have exacerbated these tensions, prompting uncertainty and instability.⁵ *Laudato si'* is a strategic document, intended to address climate change, increasing economic inequity, and interreligious conflict by opening a space for dialogue and opportunities for building solidarity with the goal of legal and policy reforms to address these problems.

The Essay begins by considering Muslim–Catholic engagement as a basis for understanding how *Laudato si'* (and Muslim responses to it) explicitly attempts to provide opportunities for agreement. Next, it considers multiple approaches to understanding consensus and solidarity, and the dialogue strategies that might lead to meaningful cooperative action. Finally, it concludes by reflecting on the resulting implications for law, both as it relates to the environmental justice issues addressed by *Laudato si'* and more broadly.

I. EXPLICIT MUSLIM–CATHOLIC ENGAGEMENT

Over the past fifty years, both Catholic and Muslim religious leaders have attempted to enter into meaningful “dialogue” in order to promote mutual understanding and peace building.⁶ The Society of Jesus (the

1. Pope Francis, *Encyclical Letter, Laudato si': On Care for Our Common Home* (2015) [hereinafter Pope Francis, *Laudato si'*], http://w2.vatican.va/content/dam/francesco/pdf/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si_en.pdf [https://perma.cc/QCZ6-FNZW].

2. *Muslim Population Statistics*, CAN. SOC'Y OF MUSLIMS, <http://muslimcanada.org/muslimstats.html> [https://perma.cc/J9ZG-HQ94].

3. Rogelio Saenz, *The Changing Demographics of Roman Catholics*, POPULATION REFERENCE BUREAU (Aug. 2005), <http://www.prb.org/Publications/Articles/2005/TheChangingDemographicsofRomanCatholics.aspx> [https://perma.cc/TGV8-738E].

4. REINHARD SCHULZE, *A MODERN HISTORY OF THE ISLAMIC WORLD* xi–xv (2nd ed. 2002).

5. See BERNARD LEWIS, *WHAT WENT WRONG?: WESTERN IMPACT AND MIDDLE EASTERN RESPONSE* 156–60 (2002).

6. See generally WILLIAM MONTGOMERY WATT, *MUSLIM-CHRISTIAN ENCOUNTERS: PERCEPTIONS AND MISPERCEPTIONS* 125–29 (1991).

Jesuits)⁷ and the Hizmet Movement⁸ are examples of groups explicitly committed to this sort of interreligious dialogue. As I have written previously, I believe that dialogue focused on common human problems (such as poverty, economic inequality, and human rights violations) is more likely to result in consensus than purely theological dialogue.⁹

Historically, Islam and Christianity have mutually influenced each other. There are clear examples of both Christian and Jewish thought in the preaching of the Prophet Muhammad.¹⁰ There is evidence that Christian influences on early Islamic thought continued with expansion into Greek Christian communities in Egypt, the Levant, and Anatolia.¹¹ As the Muslim community expanded to include large numbers of non-Muslim subjects, the so-called Pact of Umar institutionalized formal toleration of Christians and Jews, who played important roles in society.¹² Some contemporary scholars of Islamic jurisprudence have proposed that the relatively narrow grant of tolerance traditionally accorded to religious

7. See generally Decree 5: Our Mission and Interreligious Dialogue, in GENERAL CONGREGATION 34 OF THE SOCIETY OF JESUS (1995) [hereinafter GENERAL CONGREGATION]. The Society of Jesus was established by Ignatius Loyola in 1540. Today, there are over 12,000 Jesuit priests, and the Society of Jesus is one the largest groups in the Roman Catholic Church. Jesuit priests emphasize education and often run schools and colleges. E.H., *Who are the Jesuits, Exactly?*, ECONOMIST (Mar. 19, 2013), <http://www.economist.com/blogs/newsbook/2013/03/economist-explains-who-are-jesuits-exactly> [<https://perma.cc/4AE3-U9SQ>].

8. See, e.g., RUSSELL POWELL, SHARI'AH IN THE SECULAR STATE: EVOLVING MEANINGS OF ISLAMIC JURISPRUDENCE IN TURKEY 34, 50–51, 133 (2016); see also Russell Powell, *Forgiveness in Islamic Ethics and Jurisprudence*, 4 BERKELEY J. MIDDLE E. & ISLAMIC L. 17 (2011) [hereinafter Powell, *Forgiveness*]. The Hizmet Movement (also known as the Gülen Movement) is an international movement based on Islam's universal values, such as love, sympathy, and compassion. The movement is not a government organization and it focuses on positive social change. The movement supports democracy and humanism. See *What is the Gülen Movement?*, GÜLEN MOVEMENT, <http://www.gulenmovement.us/gulen-movement/what-is-the-gulen-movement> [<https://perma.cc/D6X7-X8VU>].

9. See Russell Powell, *Toward Reconciliation in the Middle East: A Framework for Christian-Muslim Dialogue Using Natural Law Tradition*, 2 LOY. U. CHI. INT'L L. REV. 1, 4 (2005) [hereinafter Powell, *Reconciliation*] (“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 To contrast, I have found Muslim scholars quite open to discussing questions of practical jurisprudence that are not specifically proscribed by theology[.]”).

10. See generally NORMAN SOLOMON ET AL., ABRAHAM'S CHILDREN: JEWS, CHRISTIANS AND MUSLIMS IN CONVERSATION (2005); Pope Paul VI, *Declaration on the Relationship of the Church to Non-Christian Religions*, Nostra Aetate (Oct. 28, 1965) [hereinafter *Nostra Aetate*], http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vatii_dec_19651028_nostra-aetate_en.html [<https://perma.cc/AQA9-DUFJ>].

11. ALBERT HOURANI, A HISTORY OF THE ARAB PEOPLES 7–11, 14–29 (1991).

12. Pact of Umar, 7th Century?, in MEDIEVAL SOURCEBOOK, <http://sourcebooks.fordham.edu/source/pact-umar.asp> [<https://perma.cc/TR33-C9AW>].

minorities under Islamic rule might be reimagined to approach something more like equality.¹³

One of the most significant constructive engagements with European Catholicism was the reception of St. Francis by the Ayyubid Sultan, al-Kamil, in the early thirteenth century CE.¹⁴ I suspect that this is one of the many reasons Pope Francis¹⁵ chose his name, and it is not surprising given the Jesuit emphasis on interreligious dialogue.

II. RELIGIOUS TRADITIONS OF JURISPRUDENCE

Jurisprudence in the three Abrahamic faiths developed quite differently. Although Judaism addressed practical governance when the community organized as a state, much of the Halakhic¹⁶ tradition developed to govern Jewish minority communities within larger states.¹⁷ Islamic jurisprudence wrestled with practical governance questions from the Hijra onward, as the community led Medina¹⁸ and eventually the entire Hijaz.¹⁹ In stark contrast, Christian legal thought did not really develop until Christians were in positions to govern, perhaps most importantly, when it became the official faith of the Roman Empire.²⁰ Within Catholic legal tradition, canon law did address some broader issues of law, but it

13. See ABDULLAHI AHMED AN-NA'IM, TOWARD AN ISLAMIC REFORMATION: CIVIL LIBERTIES, HUMAN RIGHTS, AND INTERNATIONAL LAW (CONTEMPORARY ISSUES IN THE MIDDLE EAST) 88–91 (1990).

14. See generally JOHN V. TOLAN, SAINT FRANCIS AND THE SULTAN: THE CURIOUS HISTORY OF A CHRISTIAN–MUSLIM ENCOUNTER (2009). The encounter between Saint Francis and the Sultan of Egypt, Malik al-Kamil, in (probably) the year 1219 has become a “model of ecumenical dialogue.” *Id.* at 1–4.

15. Pope Francis is the first Jesuit ever to become a Pope. E.H., *supra* note 7.

16. The collective body of Jewish laws. See Brandwein, *infra* note 17 (providing that Halakha has been a flexible guide for Jewish living throughout history). See generally *Halakhah*, in ENCYCLOPEDIA JUDAICA, <http://www.jewishvirtuallibrary.org/halakhah> [<https://perma.cc/8V6T-XBLU>] (“[H]alakhah’ . . . embraces personal, social, national, and international relationships, and all the other practices and observances of Judaism.”)

17. See generally Irvin Brandwein, *Changing the Halakha*, 50.4 JUDAISM 426 (Sept. 22, 2001), <https://www.thefreelibrary.com/Changing+the+Halakha.-a082469820> [<https://perma.cc/JR2U3QRG>] (describing the development of Halakha in “the most diverse and significant communities, representing nearly every part of the Jewish world . . . from India to France, from Germany to Israel, from Portugal to Poland to Persia”).

18. A city in the Hijaz, a region in the western part of present-day Saudi Arabia.

19. See HAGGAI MAZUZ, THE RELIGIOUS AND SPIRITUAL LIFE OF THE JEWS OF MEDINA 25–67 (2014).

20. “The law of Rome escaped [Christian] influence to a large extent, because much of it was compiled before Christianity was recognized by the public authorities. But the *leges barbarorum* [(laws of the Lombards of ancient Germany)] were more completely interpenetrated, as it were, by Christian influences; they received their definite form only after the several nations had submitted to the gentle yoke of Christ.” Francis Schaefer, *Influence of the Church on Civil Law*, in CATH. ENCYCLOPEDIA VOL. 9 (1910), <http://www.newadvent.org/cathen/09066a.htm> [<https://perma.cc/FQ42-AYXR>].

spoke very specifically to internal Church governance and the sacraments.²¹ On most other topics governed by state-enforced positive law, Catholic thought did not develop the sort of comprehensive rules found in Jewish and Islamic traditions.²² However, it embodied social teachings that engaged the moral questions raised by many legal issues.²³ This tradition is summarized in the documents of ecumenical councils (which carry the greatest authority)²⁴ and in papal letters or documents issued by the Roman Curia (such as the encyclical *Laudato si'*).²⁵

Islamic traditions of jurisprudence should not be confused with *Shari'a*, which is often translated as “Islamic law.” *Shari'a* refers to the ideal of God’s law as understood within Islam, similar to the ideal of divine law in medieval Christian jurisprudence.²⁶ Because divine law is not knowable with certainty, human attempts to apprehend it are subject to error. There are multiple approaches to understanding *Shari'a* within Islamic jurisprudence.²⁷ The human exercise to ascertain *Shari'a* is referred to as *fiqh*, or Islamic jurisprudence.²⁸

III. *LAUDATO SI'*’S CONNECTIONS TO ISLAM

Encyclicals are papal letters of teaching on doctrine issued to bishops within the Catholic Church. They are generally considered to be authoritative with regard to issues of faith or morals. The phrase *Laudato si'* means “praise be to you” in Italian and is a reference to St. Francis of

21. This has not always been the case. Prior to the Gregorian reforms of the fifth and eleventh centuries, canon law varied widely from diocese to diocese. The codification of canon law in 1917 further unified legal rules. See JAMES A. CORIDEN, *AN INTRODUCTION TO CANON LAW* 18–28 (rev. ed. 2004).

22. See HAROLD J. BERMAN, *LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION* 199–205 (1983).

23. See generally DAVID J. O'BRIEN & THOMAS A. SHANNON, *CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE* (1992).

24. “Ecumenical Councils are those to which the bishops, and others entitled to vote, are convoked from the whole world . . . under the presidency of the pope or his legates, and the decrees of which, having received papal confirmation, bind all Christians.” J. Wilhelm, *General Councils*, in *CATH. ENCYCLOPEDIA* VOL. 4 (1908), <http://www.newadvent.org/cathen/04423f.htm> [<https://perma.cc/988S-TGBU>].

25. See *id.*

26. See THE PEW FORUM ON RELIGION & PUBLIC LIFE, *THE WORLD’S MUSLIMS: RELIGION, POLITICS AND SOCIETY* 41 (2013).

27. See, e.g., ANDREW RIPPIN, *MUSLIMS: THEIR RELIGIOUS BELIEFS AND PRACTICES* 74 (John Hinnel & Ninian Smart eds., 2005).

28. Clark B. Lombardi, *State Law as Islamic Law in Modern Egypt: The Incorporation of the Shari'a into Egyptian Constitutional Law*, in 19 *STUDIES IN ISLAMIC LAW AND SOCIETY* 11 (Ruud Peters et al. eds., 2006).

Assisi's Cantic of the Sun.²⁹ *Laudato si'* wrestles with issues related to poverty, economic inequality, and environmental degradation in the context of Catholic doctrine and social teaching.³⁰ It engages Islamic traditions in its timing, its sources, its evocation of issues addressed by Islamic foundational texts, and its appeals to human reason.

A. Timing

The timing of papal encyclicals is often intended to frame major goals of a pope, to refocus the Catholic Church, or to address current issues—and *Laudato si'* is no exception.³¹ *Laudato si'* was the second encyclical of Pope Francis, following *Lumen Fidei* (The Light of Faith), which was issued in 2013.³² Pope Francis made a significant symbolic move by adding Arabic to the list of official languages for encyclicals.³³ In 2014, the Vatican began publishing its website in Arabic, prior to the Pope's apostolic visit to the Holy Land.³⁴ Thus, *Laudato si'* was available in Arabic from the Holy See³⁵ upon release.³⁶ This was a particularly significant gesture to Muslims because Arabic-speaking communities have a relatively small number of Catholics.³⁷ Further supporting this evidence of intentionality, *Laudato si'* was officially released on the first day of Ramadan, presumably as an honorary signal of openness and respect.³⁸

As a document addressing environmental stewardship, the encyclical was strategically written and released in anticipation of the 21st

29. The first paragraph of *Laudato si'* directly quotes the Cantic of the Sun's eighth paragraph. Pope Francis, *Laudato si'*, *supra* note 1; Cantic of Brother Sun and Moon of St. Francis of Assisi, CATH. ONLINE, <http://www.catholic.org/prayers/prayer.php?p=183> [<https://perma.cc/SCE7-N5SA>].

30. See generally Pope Francis, *Laudato si'*, *supra* note 1.

31. See Noah Toly, *Public Justice & The Pope's Environmental Encyclical*, CAP. COMMENT. (June 22, 2015), https://www.cjjustice.org/public/capital_commentary/article/1292 [<https://perma.cc/B5VM-GGBY>].

32. Pope Francis, *Encyclical Letter, Lumen Fidei: The Light of Faith* (June 29, 2013), http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20130629_ enciclica-lumen-fidei.html [<https://perma.cc/38QL-5AS9>].

33. Note that the encyclical is available in Arabic on the Vatican's website. *Id.*

34. *Vatican Website Now Available in Arabic*, VATICAN RADIO: THE VOICE OF THE POPE AND THE CHURCH IN DIALOGUE WITH THE WORLD (May 24, 2014, 12:30), http://en.radiovaticana.va/news/2014/05/24/vatican_website_now_available_in_arabic/1100907 [<https://perma.cc/95E9-33RR>].

35. The Holy See refers to the Catholic Church's sovereign seat of power in Rome.

36. Pope Francis, PAPAL ENCYCLICALS ONLINE, <http://www.papalencyclicals.net/Franc/index.htm> [<https://perma.cc/S9PR-C592>].

37. See *The World FactBook: Religions*, U.S. CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/fields/2122.html#tu> [<https://perma.cc/JK2L-4N7E>].

38. Michael Swan, *Pope's Respect for Islam in Encyclical a Ramadan Blessing*, CATH. REG. (June 28, 2015), <http://www.catholicregister.org/item/20497> [<https://perma.cc/SYF7-284J>].

Conference of the Parties of the United Nations Framework Convention on Climate Change in Paris in December 2015, which resulted in the adoption of the Paris Agreement.³⁹ Further, it also anticipated the International Islamic Climate Change Symposium held in August 2015.⁴⁰ It is likely that Pope Francis hoped to build moral consensus rooted in Abrahamic tradition as a basis for engaging the broader international discourse, which led to the Paris Agreement.

B. Explicit Islamic Reference

The papal engagement with Islam in *Laudato si'* is not limited to symbolic gestures. Substantively, the encyclical cites a significant Islamic source as an authority. In a lengthy footnote, Pope Francis cites Shaykh Ali al-Khawwas, a sixteenth century Sufi poet, teacher, and mystic:

‘Prejudice should not have us criticize those who seek ecstasy in music or poetry. There is a subtle mystery in each of the movements and sounds of this world. The initiate will capture what is being said when the wind blows, the trees sway, water flows, flies buzz, doors creak, birds sing, or in the sound of strings or flutes, the sighs of the sick, the groans of the afflicted[.]’⁴¹

Generally, citations in encyclicals refer to scripture and major documents and works reflecting the tradition of the Church. Having reviewed all 228 encyclicals issued since the pontificate of Pope Leo XIII (who served from 1878–1903), I am not aware of another reference to an Islamic source cited as an authority. It represents a clear attempt to illuminate a shared tradition of finding truth in creation as a basis for moral stewardship.

C. Foundational Texts

Although *Laudato si'* does not cite parallel Quranic passages related to the importance of creation and human stewardship, it certainly could. Resource stewardship has always been an important value in Islamic tradition and is deeply rooted in foundational documents, including the Quran as scripture and the *Sunnah* of the Prophet Muhammad recorded in Hadith.

39. See *infra* note 62, and accompanying text. See generally Paris Agreement, United Nations Framework Convention on Climate Change, Dec. 12, 2015, U.N.F.C.C.C., http://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf [https://perma.cc/3JCL-C32Q].

40. See Kevin Clark, *A Francis Effect? Islamic Leaders Issue Statement on Climate Change*, AMERICA (Aug. 18, 2015), <http://www.americamagazine.org/content/dispatches/francis-effect-islamic-leaders-issue-statement-climate-change> [https://perma.cc/YF6S-ZLTA].

41. Pope Francis, *Laudato si'*, *supra* note 1, at n.159.

Although the Quran is replete with such references, I note five that are representative:

1. "Whatever is in the heavens and whatever is on the earth exalts Allah, and He is the Exalted in Might, the Wise."⁴²
2. "And the stars and the trees prostrate."⁴³
3. "The thunder exalts [Allah] with praise of Him"⁴⁴
4. "And do not walk upon the earth exultantly. Indeed, you will never tear the earth [apart], and you will never reach the mountains in height."⁴⁵
5. "And it is He who has made you successors upon the earth and has raised some of you above others in degrees [of rank] that He may try you through what He has given you. Indeed, your Lord is swift in penalty; but indeed, He is Forgiving and Merciful."⁴⁶

These passages emphasize the relationship of God with creation and the human role as successor and steward, which are consistent Quranic themes, giving rise to contemporary environmental movements and scholarship rooted in Islam.⁴⁷

Additionally, similar themes can also be found in the tradition of the Prophet Muhammad (Sunna), as preserved in Hadith collections. Sunna is the Prophet Muhammad's example and constitutes an authoritative source for law and morals within Islam.⁴⁸ Unlike the Quran, reported *Hadith* are subject to traditional analysis to determine their reliability for juridical purposes.⁴⁹ I note three *Hadith* that elaborate the Quranic references above:

1. "The Earth is green and beautiful, and Allah has appointed you his stewards over it. The whole earth has been created a place of worship, pure and clean. Whoever plants a tree and diligently looks after it until it matures and bears fruit is rewarded. If a Muslim plants a tree or sows a field and humans and beasts and birds eat from it, all of it is love on his part."⁵⁰

42. *The Holy Quran* Surah 59:1.

43. *Id.* at Surah 55:6.

44. *Id.* at Surah 13:13 (alteration in original).

45. *Id.* at Surah 17:37 (alteration in original).

46. *Id.* at Surah 6:165 (alteration in original).

47. See, e.g., Clark, *infra* note 63.

48. See generally JONATHAN A.C. BROWN, HADITH: MUHAMMAD'S LEGACY IN THE MEDIEVAL AND MODERN WORLD (2009).

49. *Id.*

50. Hadith, in SAHIH IMAM AL-BUKHARI 24:45.

2. “[Don’t waste water] even if you are on the bank of a flowing river.”⁵¹
3. “Partake of it gladly, so long as you are a benefactor, not a despoiler; a cultivator, not a destroyer.”⁵²

These and similar sayings of the Prophet Muhammad reflect environmental ethics that parallel those found in *Laudato si’*, such as balance, sustainability, moderation, and the common good.

D. Naturalism

Although the dominant branch of Islamic theology tended to reject human reason as a reliable source of truth in favor of revelation, there have always been important strains of rationalism and naturalism within Islamic thought. *Tawhid*, or unity, is the central Quranic epistemological principle.⁵³ It is expressed in the radical unity of God, but it also reflects a preference for unity and integration in all fields.⁵⁴ *Tawhid* does not necessarily preclude naturalism.⁵⁵ In fact, it affirms universal standards established by God.⁵⁶ One expression of natural reason is *ijma’*, or consensus, which acknowledges the importance of collective wisdom and affirms a form of rationalism within Islamic legal tradition apart from inspired texts.⁵⁷ It affirms that legal conclusions made by the consensus of the jurists (at least of the four authoritative Sunni schools) are a source of truth.⁵⁸

IV. MUSLIM RESPONSES TO *LAUDATO SI’*

A number of Muslim leaders and scholars have responded to *Laudato si’*, and they tend to share a common appreciation for the openness of Pope Francis to engage Islamic thought and tradition in meaningful ways.⁵⁹

51. Hadith, in SUNAN IBN MAJAH 425 (alteration in original).

52. ABU YUSUF, Hadith in KITAB AL-KHARAJ, <http://www.islamreligion.com/articles/307/environmental-protection-in-islam-part-1/> [<https://perma.cc/4TAF-NK27>].

53. WILLIAM CHITTICK & SACHIKO MURATA, *THE VISION OF ISLAM* 47 (2006).

54. AN-NA’IM, *supra* note 13, at 78–80.

55. MASUDUL ALAM CHOUDHURY, *REFORMING THE MUSLIM WORLD* 124–25 (1997).

56. REINHARD SCHULZE, *A MODERN HISTORY OF THE ISLAMIC WORLD* 1–14 (2002).

57. AN-NA’IM, *supra* note 13, at 27.

58. Irshad Abdal-Haqq, *Islamic Law: An Overview of Its Origin and Elements*, 7 J. ISLAMIC L. & CULTURE 27, 54–55 (2002).

59. See, e.g., A. Rashied Omar, *A Muslim Response to Pope Francis’s Environmental Encyclical: Laudato si’*, *CONTENDING MODERNITIES: A BLOG ABOUT CATHOLIC, MUSLIM, AND SECULAR INTERACTION IN THE MODERN WORLD* (December 17, 2015) [hereinafter Omar, *A Muslim Response*], <http://sites.nd.edu/contendingmodernities/2015/12/17/a-muslim-response-to-pope-franciss-environmental-encyclical-laudato-si/> [<https://perma.cc/V9YL-NVCX>]. “*Laudato Si’* . . . is undoubtedly one of the most important interventions in twenty first century campaigns for environmental justice.” *Id.* Omar continued, “I concur with Muslim scholars such as Joseph Lombard,

Although some express a healthy degree of skepticism, which is wholly warranted by the historical experience of Muslims with the Catholic Church, there is a new openness to exploring common ethical commitments to justice related to the environment and economic inequality. I have selected one scholar, A. Rashied Omar, to focus on, and will then consider the communal response to *Laudato si'* as expressed in the Islamic Declaration on Global Climate Change.

A. Rashied Omar

Omar is currently a scholar at the University of Notre Dame in Islamic studies. He received his PhD in Cape Town and also received traditional training as an imam. His current research and teaching focuses on peace building, so it is not surprising that he received *Laudato si'* with openness.⁶⁰ However, he views the encyclical as an authentic opportunity to call both Muslims and Christians to deeper authenticity and commitment.

[I]t is my considered view that through *Laudato Si'* Pope Francis has inaugurated another constructive platform for credible faith and secular leaders to enter into renewed dialogue on the critical question of climate change and discuss ways in which we can bring ourselves closer to living in harmony and reverence with nature. Moreover, by locating such a conversation within the broader framework of Pope Francis's theology of compassion for the poor, which offers a powerful social critique of our global culture of consumerism, covetousness, and opulence—interreligious dialogue should find even greater resonance among Muslims

It is my sincere hope that more Muslim scholars will take up the dialogical challenge presented in *Laudato Si'* in a comparable spirit of reverence and hospitality with which the twelfth century Muslim leader, Sultan al-Kamil, welcomed Saint Francis of Assisi from whom the current Pope takes his name.⁶¹

Thus, according to Omar, Muslims can and should engage substantively with *Laudato si'* in order to build broad solidarity with meaningful global commitments for the collective good through responsible stewardship of the earth.

It is particularly noteworthy that Omar refers to the interchange of Saint Francis and the Ayyubid Sultan al-Kamil as an example of respectful

Anas Malik and Ibrahim Ozdemir, who have each engaged with *Laudato Si'*, that the important themes in Pope Francis's encyclical on the environment resonates well with the teachings of Islam." *Id.*

60. A. Rashied Omar, KEOUGH SCH. GLOB. AFFAIRS INST. INT'L PEACE STUD. U. NOTRE DAME, <http://kroc.nd.edu/facultystaff/faculty/rashied-omar> [https://perma.cc/E9ZY-DMMG].

61. Omar, *A Muslim Response*, *supra* note 59.

dialogue and that he connects it to the current pope. Events from the history of the Crusades and European missions are rarely understood in a positive light by Muslim scholars. Although the response reflected by Omar's comments may not reflect the broader reception of *Laudato si'*, it is an important standpoint that is supported by institutional expressions.

B. Islamic Declaration on Global Climate Change, August 2015

Laudato si' was strategically timed to be released before both the Paris Climate Summit⁶² and the International Islamic Climate Change Symposium (IICCS) held in Istanbul.⁶³ The IICCS was organized to coordinate global efforts at addressing environmental problems, including global warming from a truly global Muslim perspective rooted in Islamic moral and legal tradition.⁶⁴ The Islamic Declaration on Global Climate Change (IDGCC), approved and published by the IICCS, was quite bold in a number of its assertions. It begins with a powerful preamble, which identifies the centrality of God, and then gives a detailed account of some of the leading environmental science along with its often sobering observations.⁶⁵ The second section affirms a variety of environmental ethics rooted in the Quran and Hadith (some of which were mentioned earlier), followed by specific acknowledgements of human failure to abide by those standards as they relate to the environment and justice.⁶⁶ The third section calls a variety of parties to be accountable to God and to their communities.⁶⁷

This third section of the document consists of six "calls."⁶⁸ It begins by addressing the Conference of the Parties to the United Nations Framework Convention on Climate Change and the Meeting of the Parties to the Kyoto Protocol scheduled in Paris four months later, calling them to meet the "enormous responsibility [they] shoulder on behalf of the rest of humanity, including leading the rest of us to a new way of relating to God's Earth."⁶⁹ The second call in this section identifies the greater responsibility of wealthy and oil-producing nations.

62. See Pope Francis Releases Encyclical on Climate and Environment: UN Leaders React, U.N. FRAMEWORK CONVENTION ON CLIMATE CHANGE, <http://newsroom.unfccc.int/unfccc-newsroom/pope-francis-releases-encyclical-on-climate-and-environment/> [<https://perma.cc/R62E-2667>]; see also Toly, *supra* note 31.

63. See *supra* note 40.

64. *Id.*

65. See Symposium, *International Islamic Climate Change Symposium Declaration*, INT'L ISLAMIC CLIMATE CHANGE SYMP. (Aug. 17–18, 2015), <http://islamicclimatedeclaration.org/islamic-declaration-on-global-climate-change/> [<https://perma.cc/B67W-6QRG>] [hereinafter IDGCC].

66. *Id.* § 2.

67. *Id.* § 3.

68. *Id.*

69. *Id.* § 3.1.

We particularly call on the well-off nations and oil-producing states to—

- Lead the way in phasing out their greenhouse gas emissions as early as possible and no later than the middle of the century;
- Provide generous financial and technical support to the less well-off to achieve a phase-out of greenhouse gases as early as possible;
- Recognize the moral obligation to reduce consumption so that the poor may benefit from what is left of the earth's non-renewable resources;
- Stay within the '2 degree' limit, or, preferably, within the '1.5 degree' limit, bearing in mind that two-thirds of the earth's proven fossil fuel reserves remain in the ground;
- Re-focus their concerns from unethical profit from the environment, to that of preserving it and elevating the condition of the world's poor.
- Invest in the creation of a green economy.⁷⁰

The third call in this section is made more broadly to all people and their leaders to work toward some very specific sustainability and justice goals.⁷¹ The fourth call is made to corporate, finance and business leaders, to limit profit goals to those that are environmentally sustainable along with similarly explicit targets.⁷² The fifth call is made to people of all faiths to work toward these goals together: "If we each offer the best of our respective traditions, we may yet see a way through our difficulties."⁷³ It then concludes by calling all Muslims to join together in faith, solidarity, and devotion.⁷⁴

Although the document does not explicitly reference *Laudato si'*, it does approach the issues in a similar posture. Muslim leaders involved in the Symposium noted the importance of *Laudato si'* in helping to frame their meeting.⁷⁵ Some commenters have opined that IDGCC may be more effective than *Laudato si'* because of the sheer size of Muslim

70. *Id.* § 3.2.

71. *Id.* § 3.3.

72. *Id.* § 3.4.

73. *Id.* § 3.5.

74. *Id.* § 3.6.

75. See Clark, *supra* note 63.

communities, the scriptural emphasis on sustainability, and the influence of spiritual leaders.⁷⁶

V. COMMONALITY AND DIALOGUE

There are a variety of ways to think about the similar moral and juridical principles rooted in different religious traditions such as those identified in *Laudato si'* and the IDGCC. I have previously written about common Catholic and Islamic commitments to social justice, economic justice, human rights, common good, reason, mercy, and forgiveness.⁷⁷ Perhaps the most influential liberal secular framework would be Rawls' notion of overlapping consensus.⁷⁸ However, there are at least three notable frameworks rooted in religious tradition: Bernard Lonergan's notion of fused horizons, Catholic social teaching related to solidarity, and the Islamic view of the prophetic tradition shared with Abrahamic faiths. Appreciating the similar moral and juridical principle in *Laudato si'* and the IDGCC is important not only because it allows us to identify commonalities between the works but also because it allows for a recognition that both Catholicism and Islam have bases for constructively engaging in dialogue with other traditions.

A. Overlapping Consensus: Rawls

John Rawls is arguably the most prominent political theorist of the twentieth century and one of the most influential thinkers in the liberal tradition. Steven Shiffrin proposes that public reason, in the sense described by John Rawls, ought to be open to theological arguments even if those arguments ultimately need to be contextualized in secular or universal terms in legal opinions or statutes.⁷⁹ The purpose of this opening

76. See, e.g., Emma Foehringer Merchant, *The Islamic Climate Change Declaration Could Be More Effective Than Pope Francis's Encyclical*, NEW REPUBLIC (Aug. 19, 2015), <https://newrepublic.com/article/122575/islamic-climate-change-declaration-more-effective-encyclical> [<https://perma.cc/AY7V-7NCK>] (“The Muslim legacy of environmentalism has long been overshadowed by Christian-focused environmental stewardship, but the declaration could potentially have a larger reach than its Catholic counterpart.”).

77. See generally Russell Powell, *Catharine MacKinnon May Not Be Enough: Legal Change and Religion in Catholic and Sunni Jurisprudence*, 8 GEO. J. GENDER & L. 1 (2007); Powell, *Forgiveness*, *supra* note 8; Powell, *Reconciliation*, *supra* note 9; Russell Powell, *Theology in Public Reason and Legal Discourse: A Case for the Preferential Option for the Poor*, 15 WASH. & LEE J. C.R. & SOC. JUST. 327 (2009); Russell Powell, *Zakat: Drawing Insights for Legal Theory and Economic Policy from Islamic Jurisprudence*, 7 PITT. TAX REV. 43 (2009).

78. John Rawls is a prominent American political philosopher from the late twentieth century, whose theory of justice emphasizes fairness, social contract, and overlapping consensus. See generally JOHN RAWLS, *A THEORY OF JUSTICE* 340–42 (rev. ed. 1999) [hereinafter RAWLS, *THEORY OF JUSTICE*].

79. See Steven Shiffrin, *Religion and Democracy*, 74 NOTRE DAME L. REV. 1631, 1656 (1999) (“Clearly, in a pluralistic society, the state should certainly be free from the influence of an established

is to engage theological arguments, particularly those that support oppression, whether they are overtly theological or veiled in secular language, so that poor theology can be refuted on its own terms and the actual role of religion in public reason can be made more transparent.

B. Fusing of Horizons: Lonergan

A similar notion of overlapping intellectual horizons and awareness is described in Lonergan's *Insight*⁸⁰ and *Method in Theology*.⁸¹ 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."⁸² Individual horizons may be complementary, particularly among people from the same culture and background; they may be related as "successive stages in some process of development"; or they may be "opposed dialectically," making meanings from alternative perspectives unintelligible.⁸³ Although Lonergan wrote earlier than Rawls, and it is not clear that Rawls was influenced by his work, there are notable similarities. Rawls' theory identifies overlapping consensus about questions of justice by identifying commonality in horizon from the Lonerganian perspective.⁸⁴ Consensus does not require complete agreement, but it "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."⁸⁵

The fusing of horizons is one consequence of what Lonergan describes as the transcendental method.⁸⁶ Ultimately, identifying overlapping horizons of understanding can lead to consensus. Rawls does not address the underlying method of reasoning, but he does posit that law, particularly international law, has legitimacy when there is overlapping

church But, in a pluralistic society, it is precisely my point that churches and believers should be able to weigh in on controversial public questions. To counsel against their input is to betray the principles of liberalism, not to support them." For a description of Rawlsian public reason, see JOHN RAWLS, *POLITICAL LIBERALISM* 212–54 (expanded ed. 2005).

80. See generally BERNARD J.F. LONERGAN, *INSIGHT: A STUDY OF HUMAN UNDERSTANDING* (rev. students' ed. 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. 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).

81. BERNARD J.F. LONERGAN, *METHOD IN THEOLOGY* 235–39 (2d ed. 1990).

82. *Id.* at 237.

83. *Id.* at 236.

84. See, e.g., *id.*; RAWLS, *THEORY OF JUSTICE*, *supra* note 78, at 16.

85. RAWLS, *THEORY OF JUSTICE*, *supra* note 78, at 340.

86. See BERNARD J. F. LONERGAN, *THE LONERGAN READER* 445–54 (Mark D. Morelli & Elizabeth A. Morelli eds., 2nd rev. ed. 1997). See also Powell, *Reconciliation*, *supra* note 9, at 4–6.

consensus among peoples with different beliefs and traditions.⁸⁷ In a sense, Rawls⁸⁸ describes an approach to developing legal rules with legitimacy in a pluralistic world, and Lonergan delves further into the reasons why there might be overlap in the first place and how it might be broadened.⁸⁹

C. Dialogue in Catholicism

The Catholic Church has made interreligious dialogue a priority, particularly with other Abrahamic traditions, such as Islam.⁹⁰ This is a challenge for both Christianity and Islam as a consequence of their ostensibly exclusive truth claims.⁹¹ Many contemporary Christian theologians advocate moving from exclusivism to inclusivism or even pluralism.⁹² The Catholic commitment to dialogue is grounded in the documents of the Second Vatican Council (“Vatican II”)⁹³ and in the 34th General Congregation of the Society of Jesus.⁹⁴ Vatican II avers to a special relationship between Christianity and Islam as monotheistic, Abrahamic faiths.⁹⁵

The Catholic Church rejects nothing that is true and holy in these religions. She regards with sincere reverence those ways of conduct and of life, those precepts and teachings which, though differing in many aspects from the ones she holds and sets forth, nonetheless often reflect a ray of that Truth which enlightens all men

The Church, therefore, exhorts her sons, that through dialogue and collaboration with the followers of other religions, carried out with prudence and love and in witness to the Christian faith and life, they recognize, preserve and promote the good things, spiritual and moral, as well as the socio-cultural values found among these men.⁹⁶

87. RAWLS, *THEORY OF JUSTICE*, *supra* note 78, at 340.

88. For a discussion of Rawls, see *supra* note 78, and accompanying text.

89. See Powell, *Reconciliation*, *supra* note 9, at 4–5.

90. PONTIFICAL COUNCIL FOR INTERRELIGIOUS DIALOGUE, *JOURNEYING TOGETHER: THE CATHOLIC CHURCH IN DIALOGUE WITH THE RELIGIOUS TRADITIONS OF THE WORLD* 61–89 (1999).

91. RAIMON PANIKKAR, *THE INTRARELIGIOUS DIALOGUE* 5–6, 105 (rev. ed. 1998).

92. *Id.* at 5–11; see also JOHN HICK, *The Theological Challenge of Religious Pluralism*, in *CHRISTIANITY AND OTHER RELIGIONS: SELECTED READINGS* 156–71 (Hick and Hebblethwaite eds., 2001).

93. *Nostra Aetate*, *supra* note 10. This declaration was approved by Pope Paul VI and the Second Vatican Council in 1965 from Vatican Council II.

94. GENERAL CONGREGATION, *supra* note 7.

95. Roger Mahoney, *Statement on the 40th Anniversary of Nostra Aetate*, ARCHDIOCESE L.A. (Feb. 2004), http://www.la-archdiocese.org/cardinal/Pages/2004-0201_nostraetate.aspx [https://perma.cc/J8TZ-BQW3] (“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[.]’”).

96. *Nostra Aetate*, *supra* note 10, para. 2.

D. *Nostra Aetate* Identifies Specific Overlap with Islam

Since in the course of centuries not a few quarrels and hostilities have arisen between Christians and Moslems, this sacred synod urges all to forget the past and to work sincerely for mutual understanding and to preserve as well as to promote together for the benefit of all mankind social justice and moral welfare, as well as peace and freedom.⁹⁷

The Jesuit approach to dialogue, which is clearly expressed in the actions of Pope Francis, calls for Jesuits, and all people of goodwill, to “move beyond prejudice and bias, be it historical, cultural, social or theological, in order to cooperate wholeheartedly with all men and women of goodwill in promoting peace, justice, harmony, human rights and respect for all of God’s creation.”⁹⁸ This approach also notes that dialogue should “never be made a strategy to elicit conversions.”⁹⁹ Solidarity and joint action require some level of common understanding of principles of justice.¹⁰⁰

E. *Dialogue in Islam*

For Lonergan, transcendental method is not uniquely Catholic; it is a universally human process.¹⁰¹ There is a rich history of Islamic thought that clearly reflects this sort of reflective process. Critical reasoning and consistent application have always been core values in Islamic thought.¹⁰² However, law plays a different role in Islam than in Catholicism because the early Muslim community and revelation addressed practical governance matters.¹⁰³ Like the Torah, the Quran addressed the reality of governing a community.¹⁰⁴ In contrast, the New Testament was written by marginalized peoples under a strong and often oppressive state.¹⁰⁵ Only when Christianity was later adopted as an official religion (as in Armenia, Ethiopia, and eventually the Roman Empire) were its followers in a position to define and enforce law beyond internal communal norms.¹⁰⁶

97. *Id.* para. 3.

98. GENERAL CONGREGATION, *supra* note 7, para. 2.

99. *Id.* para. 3.

100. See JOHN B. COBB JR., TRANSFORMING CHRISTIANITY AND THE WORLD: A WAY BEYOND ABSOLUTISM AND RELATIVISM 179–86 (Paul F. Knitter ed., 1999).

101. LONERGAN, INSIGHT, *supra* note 80, at 339–40.

102. See, e.g., A. EZZATI, ISLAM AND NATURAL LAW 66–68 (2002).

103. See *supra* notes 20–23 and accompanying text; *infra* note 104, and accompanying text.

104. See, e.g., *The Holy Quran* Surah 6:152 (describing need to testify honestly and hold property in trust for the benefit of orphans); *The Holy Quran* Surah 2:227–32 (describing how to conduct a divorce).

105. See, e.g., A. G. RUSSELL, *The Jews, the Roman Empire, and Christianity*, 6 GREECE & ROME 170, 170–78 (1937); DAVID E. AUNE, THE BLACKWELL COMPANION TO THE NEW TESTAMENT 7–8 (David E. Aune ed., 2010).

106. See Schaefer, *supra* note 20, and accompanying text.

Islamic law is a broad and imprecise term.¹⁰⁷ *Shari'a* is typically and imprecisely translated as Islamic law.¹⁰⁸ It is actually a spiritual ideal that has more in common with the Thomistic understanding of divine law¹⁰⁹ than the law enforced by human states. There are four normative schools of jurisprudential thought to understanding *Shari'a* within Sunni Islam, and Shi'i communities developed their own approaches to jurisprudence.¹¹⁰ As a result, Islamic jurisprudence developed a robust and authentic pluralism, which admitted to human limitations and tensely held the view of conflicting legal conclusions as legitimate.

The IDGCC identifies a specific basis for interreligious engagement and cooperation. It cites the Quran 5:48: "He [God] wanted to test you regarding what has come to you. So compete with each other in doing good deeds." Additionally, the IDGCC posits, "If we each offer the best of our respective traditions, we may yet see a way through our difficulties."¹¹¹

CONCLUDING REFLECTIONS ON THE IMPLICATIONS FOR LEGAL THOUGHT

Given the degree of historical and theological congruence, it is not surprising that Islam and Catholicism share common commitments to environmental and economic justice. Acknowledging those commitments, *Laudato si'* is an overt invitation to Muslim communities to join in solidarity to the greatest extent possible. The IDGCC responds to that invitation and calls both communities to immediate and specific action. There are several implications for legal thought among Catholics and Muslims. First, it creates a basis for legitimate inclusivism and perhaps even pluralism, which were historically greater challenges for Catholicism. Second, there is a strong justification for the value of human reason, however imperfect, in deriving principles and proposing particular legal rules. Notably, the arguments in both documents rely on some of the best available science for support. However, this application of reason moves beyond pragmatism and self-interest because in both cases the responsibility of stewardship and concern for the common good permeate the texts. This legitimizes rational and scientific contributions to law,

107. "Rules of law are rules of Sharia, but not all the rules of Sharia are rules of law. However, the words 'Sharia' and 'law' are often used interchangeably." Issam M. Saliba, *What is Sharia Law?*, LIBRARY CONG. (June 2011), <https://www.loc.gov/law/help/sharia-law.php> [<https://perma.cc/L4PW-JJ78>].

108. WAEL B. HALLAQ, *SHARI'A: THEORY, PRACTICE, TRANSFORMATIONS* 1–6 (2009).

109. C. FRED ALFORD, *NARRATIVE, NATURE, AND THE NATURAL LAW: FROM AQUINAS TO INTERNATIONAL HUMAN RIGHTS* 30–31 (2010).

110. ANDREW RIPPIN, *MUSLIMS: THEIR RELIGIOUS BELIEFS AND PRACTICES* 89–95 (3d ed. 2005).

111. IDGCC, *supra* note 65, § 3.5.

policy, and regulation, particularly those that are evidence-based—in stark contrast with the current political mood in much of the world.

Unlike secular rational and empirical justifications, *Laudato si'* and the IDGCC have moral authority and are persuasive for their respective communities. Although the religious assumptions and arguments proffered by both may not be convincing to those outside the communities, they can be profoundly influential in creating consensus, which is sometimes lacking in purely secular contexts. For example, the current rejection in the United States of widely accepted climate science, despite a wealth of empirical evidence, highlights the limitations of secular arguments without religiously or morally compelling justifications and makes it nearly impossible to maintain common-sense environmental rules. Faith communities are potential partners in legal reform for environmental justice if the imperatives are contextualized as moral or religious within their traditions. It is perhaps ironic that Catholic and Muslim religious leaders (including Pope Francis) are criticized and challenged by the current U.S. administration. However, this may create a unique opening for solidarity in action among secular, Catholic, and Muslim groups to effect meaningful legal reform.