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EDITORIAL

This editorial is a comment on the limitations of comparative understanding, and more specifically, the epistemology and terminology of the fast-growing field of "law and religion." As I try to clarify here, comparative reflection about law, religion, and the interdisciplinary subject of "law and religion" should be performed through the terms and concepts indigenous to all sides of the comparison, instead of forcing the concepts and terminology of other sides of the comparative field into approximations of our own familiar "equivalents." At a fundamental level, my concern about what I call "epistemological imperialism" applies to the underlying ideas of law and religion—and consequently any discourse about law and religion. Calling this attitude "imperial" is appropriate due to the persistence of the "civilizing mission" mindset in neocolonial academic exchange, which assumes that non-Western societies lack their own epistemological concepts and methodologies. I am, therefore, calling scholars in various relevant disciplines to pursue and promote valid and useful cross-cultural understanding through indigenous epistemology and terminology. Senior scholars in particular should lead young scholars of their disciplines by "going to the mountain" instead of expecting the mountain to come to them.

As I see it, the problem is that, in the name of comparative reflection, we tend to simplify and approximate concepts and experiences in one context in order to compare them to equally simplified and approximated concepts and experiences in another context. This is an inherent limitation, true of all comparative reflection even if all parties to the conversation are operating on a level playing field, but it is far more problematic in the current realities of geopolitical power relations. When considered from a global perspective, the question is whether comparative understanding among varieties of what we call law, religion, state, politics, and related ideas is possible when those key concepts are already encoded in the experiences of dominant colonial traditions and applied to presumably subordinate postcolonial traditions.

For instance, a clear and valid understanding of a subject like Sharia, in relation to law and the state, should not be expected from a discourse of approximations and metaphors. Yet we find that in some academic settings and sophisticated media the subject of religion and the state for Muslims is referred to as a matter of "separation of mosque and the state." With their imperial, neocolonial worldview, some American or European scholars fail to see the fallacy of equating "mosque" to "church," unless we limit the point to "the name of the building where Muslims go to pray, and the name of the building where Christians go to pray." The least reflection on the meaning and significance of "the church" in Christian discourse would immediately reveal that assuming equivalence with "the mosque" is not only fundamentally wrong but also counterproductive for understanding the discourse in a Muslim context. This misunderstanding is counterproductive precisely because there is no possibility of a "church" for Muslims that would enable them to negotiate the problematic relationship of religion, state, and politics.

The question I am raising here is far from being merely theoretical or hypothetical. Drawing on my personal experience, I have encountered this difficulty in trying to argue for a secular state from an Islamic perspective, without conceding that I mean the same relationship of religion and the state as understood and practiced in Britain, France, or the United States. To briefly clarify the difficulty I mean, which can be fatal for my presentation of the argument to Muslims, I have written that "it is

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unwise in my view to contrast the religious and secular . . . More broadly, it is misleading to contrast the religious and secular in such binary terms because they are in fact mutually interdependent. For Muslims in particular, such a binary distinction tends to confirm their worst apprehensions about the secular state as 'anti-religious.'"[1] Elaborating on the same point elsewhere, I have written,

> In my experience, Muslims have a positive comprehension and experience of the secular, in the sense of material and this worldly, and take it to be integral to their worldview, rather than distinct or opposed to it. This inherent consistency and complementarity of the secular and the religious induce Muslims to think of both as entwined: life is all at once religious and secular, spiritual and material, and Islam takes each side of the human experience and both of them combined equally seriously. Defining the secular and religious as opposites or as mutually exclusive is not a workable solution for Muslims.[2]

Another misleading consequence of imperial epistemology is the misconception of the interpretation and articulation of Sharia norms as a lawmaking process, "equivalent" to the enactment of positive law in the modern nation state. This equation defies the actual historical development and evolution of the normative authority of Sharia. It is also inconsistent with the self-understanding of Muslim jurists and their view of what they were doing. The religious nature of Sharia means that it is theologically impossible for a group of people or an institution to have the competence to enact Sharia norms. As a historical fact, Sharia was never codified until the effort of the Ottoman Empire to codify some principles of property and transactions in the Hanafi School of Islamic Jurisprudence in a series of decrees in the middle of the nineteenth century (called *al-Majalah*, "The Ottoman Courts Manual"). Every proposition of a Sharia norm emerged as an opinion of scholars that communities of Muslims accepted or rejected over time, through a process of intergenerational consensus, and was never declared by a council or legislative body. The state, whether in the form of an empire, monarchy, or otherwise, had no role whatsoever in identifying or defining any Sharia norm. Moreover, whenever independent scholars expressed their views, they always categorically disavowed any claim of lawmaking and insisted that they were merely expressing tentative and contingent fallible human views in discovering what they believed to be Sharia norms.[3] Legal pronouncements may have become specifically normative when applied to the facts of the specific dispute for which a *fatwa* (reasoned legal opinion) was constructed by independent jurists, but such authoritative advice could neither serve as judicial precedent nor be codified for general application.[4]

Moving back and forth between the religious normativity of early Sharia formations and the secular legality of modern secular state-centric systems as "equivalent" for the purposes of comparative analysis misses the opportunity of understanding the normativity of Sharia on its own terms. Such simplification and approximation of specific "terms of art" in order to facilitate comparative analysis across religious communities is probably approved by the established authorities (gatekeepers) of academic disciplines. The difficulty I have with this discourse is the loss of self-understanding by members of the religious communities who are subjected to study and comparative analysis. Whatever leaders and members of those communities are trying to communicate about their beliefs and practices to other communities is lost in the effort of scholars to "translate"

1 Abdullahi Ahmed An-Naʿim, "Islam and Secularism," in *Comparative Secularisms in a Global Age*, ed. Linell E. Cady and Elizabeth Shakman Hurd (New York: Palgrave Macmillan, 2010), 217–18 (notes omitted).

2 Abdullahi A. An-Naʿim, "Islamic Politics and the Neutral State: A Friendly Amendment to Rawls?," in *Rawls and Religion*, ed. Tom Bailey and Valentina Gentile (New York: Columbia University Press, 2015), 260.

3 Wael B. Hallaq, *Sharīʿa: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), 27–124.

4 Knut Vikør, *Between God and Sultan: A History of Islamic Law* (Oxford: Oxford University Press, 2006).

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communal knowledge and understanding into the terms of the dominant discourse. The consequent misunderstanding can only reinforce perceptions of the imperative need for imperial epistemology since imperial subjects continue to deploy that epistemology instead of advancing that of their own tradition.

Assuming that the above comments are reasonable, I would conclude that the side whose concepts and methodologies are most often simplified and approximated is the side that is perceived in need of being understood and accepted. This relationship can also be seen in terms of the side that is perceived to be on lower epistemological ground tending to rely on the concepts and terminology of the side that is perceived to be on higher epistemological ground. Since colonial relations reflect a state of mind of the colonized as well as the colonizer, the flow of power relations will continue to be in favor of former colonial powers until colonized peoples assert their own epistemological independence. At the same time, it seems to me, in the present global realities of economic and security interdependence and self-determination, all it takes is an assertion of epistemological independence because we are all in as much need of being understood as others are in need of being understood by us.

My objective in this editorial is not to reject any possibility of useful comparative work. Instead, my argument is that even when close textual or ethnographic analysis is done to understand a given tradition or community, it is inevitable that such efforts are compromised when they are "translated" into concepts and methodologies imported from the presumed dominant culture. I am cautioning against the pitfalls of familiarity and ethnocentricity, rather than rejecting any possibility of useful comparative work.

Abdullahi Ahmed An-Naʿim
Senior Fellow in Center for the Study of Law and Religion, Emory University

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