

Divine Law and man-made law

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In the second of two talks given on the 19th of February 2001 at Aston University, Birmingham, Ahmad Thomson described the main differences between divine law and man-made law and indicated why ultimately divine law will prevail.

“First of all it is very clear that mankind needs laws in order that its societies can last. If there were no laws then people would not know how to behave towards each other and societies would crumble very quickly. The question arises then what laws apply and what is the rationale behind them. One thing is very clear and that is that legal systems are always in motion, not static. They are always developing and having new influences. And we see from this very brief history of what has been happening in the British Isles [given by Dr Bainbridge] that there are many different times when different criteria were applied.

I remember when I first went to university back in 1969, one of our introductory law lectures gave an outline of the history of the English legal system and its roots. At that point in time, 30 years ago, the speaker said that if you look at our legal system, it is mainly customary law and that we had a bit of statutory law – whereas now, 30 years on, we have mainly statutory law with a bit of customary law surviving here and there and playing only a minor part. We have seen then in the space of 30 years how the English legal system has had a complete transformation. Most of the laws which are applied today are man made. And they are only as good as those who make them. Humans however are not infallible, including us. It takes wise people to make good laws and unfortunately today there are not many wise people around.

There have been two ways of approaching law; one based on divine revelation, one based on man made law – prophetic law and pharaonic law. The *Qur'an* sheds light on this intense struggle where prophetic law prevails over man's desires. It is important to note that there is a third way in this respect, where we have man made law which to all intents and purposes is based on sound divine law, and instances where divine law is implemented in an unjust manner by corrupt people.

The English legal system shows an intermingling of these two forms of law. Most references to English legal history start with the Norman Conquest of 1066. But before that you had Roman law. But even before the Romans we had in Britain a century or so before Christ came, customary law that changed with whatever invader came to the isles whether it was Vikings, Jutes, Angles, or Saxons, etc. It was in about the third century AD that Unitarian Christianity came to these shores. But in the following centuries the Trinitarian version grew stronger, eventually wiping out the Unitarian belief. St Patrick the Irish saint was responsible for shedding the blood of many Unitarians. By the time of St Augustine, the Trinitarian version had become the law of the land.

So by the time the Normans arrived they confirmed the version of Christianity which we know by now was far removed from the original teachings of Christ who was sent to – and only to – the twelve tribes of Israel. His teachings however left the Israelites when it came to Europe, where it was changed dramatically. The divine law succumbed to European customary law, which in so many ways defines European Christianity. There was this cross-fertilisation if you like between custom and Christian laws. In the end a compromise was reached whereby the king would be a 'Christian' and would claim to be the temporal representative of the divine law doctrine. This stated that whatever the king said or did was inspired by God. If the king or queen did not actually follow the divine law, as they were clearly not, then many injustices crept in.

The reign of King Henry VIII is an interesting time in history because it was a time when attempts were made to reform the Christian Church, which was becoming very corrupt. Henry VIII's reforms were not surprisingly opposed by the Papacy in Rome because they were seen as a threat to the Pope's supremacy that was the Roman Catholic version of Christianity. But because Henry VIII suppressed the Unitarian movement in Britain – which he viewed as a threat to his own authority – the Pope called him the defender of the faith, and this is the title that has remained with English monarchs till this day. But Henry VIII had his own selfish, personal gains to get from Church independence. He wanted a divorce from his wife and to marry another, something forbidden by the Church. So what he did was to form his own church, the Church of England, making himself the head of it. As head of the church, he changed the laws accordingly to suit his own personal desires. Another split occurs in Christianity and the Church of England is born.

From that time onwards there was a great struggle between various Churches and the state apparatus. And as long as the royal family was in power there was never any mention of the state – but then power was taken away from the kings and queens. This started the whole doctrine and notion of the state. But you can never say that you want to see the state tomorrow afternoon at 3 p.m. because it doesn't exist, it is an abstract. It is just a fiction that is used by the people who control it to hide behind and it is a mechanism for ensuring the continuation of the *kafir* status quo. The state today, as it was then, takes on a pyramidal structure. In the time of Moses, the pyramids were physical – today they are invisible. A look at the state structure shows a pyramid shape and this is why one of the main freemasonic symbols is that of a pyramid with the all-seeing eye.

So we see the struggle continuing and what would happen is that there were some rulers who said that they didn't want to go to the hell fire because they had *taqwa* (fear of God) when they governed, and there were some that governed without *taqwa*, like Henry VIII. Their policies were based on expediency because they didn't have real *taqwa* or a real *shari'ah* to follow. St. Paul lost the *shari'ah* of Isa (*alayhi salam*) by inventing a new covenant. So although Isa (*alayhi salam*) came to restore the *shari'ah* of Musa (*alayhi salam*) amongst the Tribe of Israel, it would be and was impossible for 'followers' in Europe to obey that *Shari'ah* and therefore they discarded it. What they replaced it with was a mixture of part custom and part Christian laws but not of pure divine nature. And so the results were horrendous. And every so often you would get people like Dickens writing great novels protesting about the injustices of the system.

In Britain the 19th century saw the rise of Jeremy Bentham's utility theory which in a nutshell said that Christians didn't know what they were doing so the best thing to do was to create laws that would create the 'greatest happiness for the greatest number'. But the reality of such a view is that the law then becomes a means of manipulation and control. We see this aspect more than ever in today's age where the law is used to control people and to regulate people to such an extent that the scenarios in George Orwell's *Nineteen Eighty-four* and Aldous Huxley's *Brave New World* become a distinct reality. The whole thrust of the law then is to make people into harmless slaves in the system, who are willing producers and consumers in the system, who will not cause any trouble – people who are so obedient that they are willing to pay their taxes on time!

Tax is another illness in modern society for which Henry VIII is responsible. He was the monarch who legalised usury in England. Up until the time of the Reformation, Christians supposedly followed the teachings of Musa and Isa (*alayhi salam ajma'in*) which made usury illegal – *haram*. Making money out of interest, getting something out of nothing. It is all based on exploitation.

One of the aspects of the Reformation which very few people talk about is the fact that it was then that the Christians agreed that a reasonable amount of usury was acceptable. What the Jews had done to get round the teachings of Moses (*alayhi salam*) was to say that they wouldn't charge interest among themselves but instead would levy it on the *goyim* (non-Jews). In short, "We will take them for all they're worth." What the Christians originally did was that they allowed the Jews to do their lending for them because, "We can't do it ourselves." And then with the Reformation, they said, "We will now charge interest, but only a reasonable amount." But this opened a door to a whole host of injustices that most people today find themselves burdened with.

So for example in the last hundred years or so, every country in the world has had a national debt created for it that has mushroomed and shows no immediate sign of receding. William of Orange was responsible for starting England's national debt. The debt is structured in such a way that it is impossible to pay it off. So at the moment the UK national debt is around £300 billion and continually growing. The debt cannot be paid off and as a result, taxes have to be increased. That is why most election campaigns are fought on the argument over which party can tax less when the reality is that they have to increase it. Such a tactic is fighting a losing battle because the debt can only grow. This is why most people do not bother to vote – the result is the same whoever 'wins' the election.

And the only way to deal with the problem is to follow the advice of the Prophet Muhammad (*salla'llahu alayhi wa salam*) who said in his final sermon on the *Hajj* for all usurious debts to be written off. The only thing you have to pay back is the capital. When the Muslims do this they will be strong and they will be following the law of Allah. Usury and tax is an example of where man-made law has introduced something that on the face of it seems harmless but in fact has terrible consequences. A look at the great tragedies and disasters in today's world reveals that they are the result of institutions like the International Monetary Fund and the World Bank as well as other massive national banks. These institutions are basically robbing countries that are rich in the real sense of their natural resources in the alleged 'poor South', which are then taken to the apparently rich 'hi-tech North'. The entire world is involved in this great injustice.

Laws are all about regulating relations between people and also between people and government. And as far as relations between people are concerned what happens to most of us is that we get married, which requires laws that govern this process. And if for some misfortune the marriage does not work out then rules are needed to end the marriage fairly in terms of property and children. When we die, our property that we had earned in our brief life is then distributed via a will that needs interpreting and executing. And when we live we need rules regulating our earnings that keep us alive and well. A whole area of trade and commerce is required to regulate this important aspect. Also, there has always been activity in society that has been antisocial. People do terrible things like robbing, stealing and even killing people. All these aspects are part of life, and what is interesting about this is the different ways that different systems deal with these 'life situations' which everyone sooner or later has to face and deal with.

A look at the institution of marriage shows clear differences in the divine and human interpretations of it. The same applies to property laws and rights. For Muslims or those people that adopt the *Shari'ah* – the only living *Shari'ah* is that of Islam – the point is that it makes things, the boundaries, very clear in regards to these life transactions and leaves no element of doubt. A look at inheritance rights in this country shows that depending on how close your relatives are to you they get a share. This means it cuts down friction between people because you do get situations where

relatives are totally cut out from the will. In the *Shari'ah* there is a balance whereby you can leave a third of your possessions to whoever you want, the other two-thirds however must go to your relatives. This is an example where *Shari'ah* has influenced the English legal system. Another case is the law of intestacy, where somebody dies without leaving a will. In this scenario the estate is divided amongst your remaining relatives. Although this is not in the same proportions as under *Shari'ah*, the concept remains. The same applies to the laws pertaining to adoption. This has been influenced and referenced according to *Shari'ah*. The question often arises in such cases where the adopted child may ask about his or her real parents. Under Islam it is a duty to tell them the truth.

Criminal law is a big contentious issue because Islam is often labelled as barbaric. Murder is referred to as a common law offence in England, but what is forgotten is that the punishment for murder has been changed by statute from the life for a life principle to one of imprisonment. The *Shari'ah* is not as barbaric as people make it out to be because it gives an alternative to taking the criminal's life. Blood money can be accepted by the victims' relatives in lieu of that person's life. Moreover the *Shari'ah* encourages the possibility of pardoning that person completely. There are many options available in regard to murder. The *Shari'ah* is flexible and fair, not rigid. The *Shari'ah* is applied with the concept of mercy at its heart. The same cannot be said of the man-made legal systems. Mercy and compassion are absent from a system which is moving closer to trial by computer, as it is deemed that computers can make better judgements than man. What is happening in effect is the dehumanising of society and justice.

On the face of it, the losing of a hand for committing theft is a terrible thing to happen to someone, but a closer examination of the *fiqh* shows that it can only take place after firm circumstantial evidence emerges. The stolen property first of all has to be of a certain value to constitute a theft. The theft also has to be premeditated. It cannot be something that was done on the spur of the moment. The hand is not amputated if the theft took place out of genuine need. Such an example is when a famine occurs. Indeed we find in Islamic history an occurrence when *sayedina* Umar (may Allah be pleased with him) ordered for the hand not to be amputated when a person was caught stealing in a time of famine. If the *Zakat* is not being collected and distributed to the poor, how can they be punished for resorting to theft?

Such a view of theft acts as a successful deterrent. In many Muslim countries, like in Morocco, when the *adhan* is called the bazaars empty as people go to the mosques to pray. The people return to find that nothing at all has been stolen. This is a clear sign of a stable society. Compare this to England where we have a proliferation of CCTV cameras located on every street. Persistent offenders go in and out of jail frequently causing only more and more problems for society. If the Islamic law were applied then persistent offending would end – as after two offences they could no longer commit the crime! Non Muslim countries face a growing problem of ever increasing incarceration. You will find in Muslim lands very few people indeed who have only one hand.

Social relations are based on trust between man and woman. If that trust doesn't exist then society falls apart. Part of that trust is that there is no adultery. This is why the *Shari'ah* prescribes the stoning to death by the community of the persons who commit such a crime. *Kafirs* claim that such a treatment is barbaric and terrible, but let us examine the number of adultery cases in such communities where this law is in place! There are in short very few cases of adultery amongst Muslims living under *Shari'ah*. There is a story of a woman who came to the Prophet Muhammad (*salla'llahu alayhi wa salam*) herself and told him of her adultery. She had become pregnant as a result of the act and was told to return when the baby was born. When the baby was born she

came back seeking the punishment, but the Prophet (*salla'llahu alayhi wa salam*) turned away. She persisted however and (after confirming that she was sane and therefore responsible for her actions) eventually the punishment was given. A companion after her death said something bad about that woman. The Prophet (*salla'llahu alayhi wa salam*) heard this and told the companions to change their view. He told them that the woman had more faith than all the people of Madinah and that she was currently in the Garden. Her *taqwa*, her awareness of Allah, took her to the Garden.

This is a crucial aspect that non-Muslims fail to grasp which revolves around the *hadd* punishment. What the woman did by admitting her crime to the Prophet (*salla'llahu alayhi wa salam*) and submitting to the *hadd* punishment acted as a *kaffara* that wipes away sins and leads to Paradise. Having paid the price in this world, she was free to go to the Garden in the next world. The West are caught up in the idea that we live, we die and then turn into dust. There is no viable conception of other worlds for them. They have a lack of awareness about who they really are and what they are doing on earth. These people feel that, "If I don't get caught, then I can get away with it." This mentality is the total antithesis of the true *muminun*, as in the story just mentioned, who are fully aware that they have recording angels noting their every action and intention and that on the Day of Judgement they will have to give account for their actions in this world. Muslims live in a sense of self-regulation and keep themselves in check – compared to the *kuffar* who have a lack of awareness; hence the CCTVs. Laws are imposed from without rather from within – which is the difference between the Muslims and the *kafirs*. More and more laws are imposed which will inevitably lead to collapse.

History is full of examples of civilisations that start off as close communities where trust exists. But later on as the empire expands with wealth, corruption creeps in which serves only the elite's desires. These civilisations then decay and collapse. Where are the Romans today? They have gone, they no longer exist. The same applies to the Greeks before them and the European 'civilisations' after them. The banking empire that is terrorising the world today will also end very soon, just as the other false systems have perished. Law for these people is a tool of expediency and it is also used against those people trying to live by the divine law. It is not surprising then that the *kuffar* need a pyramidal Dajjal system to keep them in check because they lack the awareness of the omnipresence of Allah the Almighty.

Allah says that if you are going to judge, then judge with justice – because Allah loves the just. *Taqwa*, fear of God, is the key difference between the followers of divine law and the followers of man-made law. There are judges today in the English legal system who in sincere honesty try their best to do justice, but know deep down that justice cannot be done when the whole system is flawed. Insha'Allah if they live long enough they may be able to execute justice when Islamic law is established.

The key feature of the *Shari'ah* is that there is very little tax to pay. There is the obligatory 2.5% *Zakat* for Muslims – and the *Jizya* for non-Muslims living under Muslim protection. The *Jizya* is less than the council tax. This means that all the other taxes you can care to mention are abolished. A Chinese philosopher once said that the more laws there are in a country the more criminals there are. In short, as the number of laws proliferate, the more lawlessness there is. The current system will collapse under its own weight, along with the economic system propping it up – which is after all no more than numbers printed on bits of paper money flying about and digital impulses on computer screens stored up on mega hard disks. Once this terrible system ends, Islam will then come and flourish because the Muslims will be better equipped to live in the next world order.

Man-made law seen in its best light is with some sincerity trying to do justice. The laws are pragmatic and encourage positive action. But at the end of the day it is always trying to catch up with a society that is always fast moving. The law then becomes in some senses experimental. You hear the government announcing that it is 'tough on crime' when in actual fact it is not. Divine law on the other hand comes from the One Being – Allah – that created man and his environment. Allah knows everything – including all about mankind. In this respect divine law has got things right first time. Divine laws are bound to be the best there are because they come from the Source of all creation.

When you buy a product you will find with it an instruction manual which will tell you how to use it. It will tell you to do certain things and tell you to avoid certain things. You accept the advice of the manual in case you get hurt. Similarly with divine law, you accept it because it is the best law, because its source is from the best. This is a very simple analogy, which I think explains the point I am trying to make.

One area of criticism of divine law is in regards to the possibility of injustice, given the tough punishment. What if, it is argued, the person did not commit the theft but his hand is chopped off? The answer to this query is that the *Shari'ah* imposes strict evidential requirements that are much tougher than any man made system. Indeed in the English legal system convictions can and do occur on what can only be described as flimsy circumstantial evidence. In Islam, however, there has to be absolute certainty before any punishment is carried out. It is true that it is men who implement divine laws, men who can be either good or awful. The sad fact is that today in the Islamic world most of the executors of law are of the latter category. This is because they lack the *taqwa* which is needed in implementing Allah's will. Only people who fear Allah can establish law and justice.

On a final concluding note, as we have seen in this talk by looking at both sides of the debate, the whole legal system is in constant motion. Allah states clearly in the *Qur'an* that everything has an appointed time. Everything has a beginning and an end. The same it goes without saying applies to the current legal system that man has initiated."

Transcribed by Shahid Hussain.

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