Marcus Dovigi

Literature 190L Final Paper

Language and the Law: A Comparison of the American and Islamic Legal Systems

Introduction

The relationship between the United States and Islam has been largely defined by the United States' aggressive diplomatic posture toward the Muslim world. The recent ban on immigration from seven Muslim-majority countries and widespread anxiety about looming "Sharia law" has brought Islam to the forefront of debate surrounding the foreign and domestic policy of the Donald Trump administration. President Trump is not the first politician to scrutinize Islam—President George Bush famously declared "Either you are with us, or you are with the terrorists" after September 11th, using the tragedy to shape United States policy and, to some extent, public opinion of Islam. The ideology espoused by Trump, Bush, and others, which has controlled the political apparatus and dominated public opinion for years, depends on some fundamental difference between the two referents. They should thus be compared, to determine whether American imperialism is justified by the existence of Islam.

Upon comparison, some similarities between United States and Islamic society are striking, especially the operation of the law. Both use the law to maintain order and establish a code of conduct for society, a way of fashioning light against the "darkness"—"to secure the public order against impingements from the outside" (Harris 34, 43). According to Frank Coleman, although in reality the law may be a "servant" of the "interests that wield it," theoretically it is viewed by Americans as an element of the natural world: "In this view the American people have vested sovereignty in a pattern of law, the written law of the constitution,

because the constitution is considered to embody unchanging principles of right and justice" (Coleman 64, 62). Americans often express deep respect for the wisdom of the constitution, out of which order and freedom supposedly derive. This view mirrors Islam, which envisions the law as a "body of enforceable norms" that uphold "an ideal Islamic order of society," according to Bernard Weiss in *The Spirit of Islamic Law* (Weiss 8). For Islam, the law is a point of access between reality and the metaphysical, a way of reaching "the mind of God" through "the basis of textual sources" (Weiss 10, 22). In this way, both American and Islamic law is positivist—both view the *law* as a set of rules with defined boundaries that are accessible through language.

Essential to positive law is a text-based source. Although Islamic legal theory began as an oral tradition, before the emergence of mass printing, and American legal theory after, both are deeply textual. Both view language as central to the law, if the law is a code with which a society models itself. Indeed, for such a code to be accessible by all, for it to exercise universal jurisdiction, it must be communicable. This is achieved through language, a system of mutual intelligibility. Language is the mechanism through which the law is enforced, because language enables the transmission of ideas and values across space and time. This aspect of the law—its need for language as a medium of expression, a point of mediation between concept and reality—will be the focus of this essay. Both American and Islamic scholars explore how the law is shaped by language and observe overlap between legal and linguistic theory. While both are skeptical of the capacity of language to convey meaning, and both brush against the limits of language in the course of developing legal theory, both United States and Islamic law is ultimately positivist. In this way, the two systems have similar trajectories, complicating the

traditional "modern versus premodern" binary that undergirds many discussions of the law, and calling into question the ideology that animates United States foreign policy.

The similarities between United States and Islamic law will be grouped into two categories, both relating to problems of language: A) Law-Building, and B) Rhetoric and Interpretation.

A) Law-Building

If a language is to be communicable to every member of a society, a key element of the law, each should be capable of making legal declarations independently from the rest. Who is to say, then, that the particular declaration of law that organizes a society—say, the Qur'an or American constitution—is the official legal system, and all others false? Framed by William F. Harris II as "the radical bond of *word and power*," this problem of language is addressed by United States and Islamic scholars: how can something as accessible as language lay the foundation for a system that depends on singularity of meaning (Harris 35)? Simply put, how does a legal system establish authority?

One answer is through myth. According to Robert Cover in "The Supreme Court 1982 Term," "law is given meaning through *mythos*" (Cover 17, emphasis added). The myth, a cosmic story of fate and purpose, lends authority to the law by placing law within a larger framework of life and death—for Cover, mythos supplies the law with "history and destiny, beginning and end, explanation and purpose" (Cover 5). A myth thus indicates why the law should be taken seriously—law in itself would not matter much if some special force were not attached to it, identified by Cover as "myth." Cover concludes that a legal tradition "includes not only a corpus juris, but also a language and a *mythos* — narratives in which the corpus juris is located by those

whose wills act upon it" (Cover 9, emphasis added). Without mythos to accompany them, the set of rules that comprise the "corpus juris" of a legal system would lack coherent character and direction, existing separately from one another. The importance of myth is thus recognized by United States and Islamic law.

Myth in Islamic Law

The importance of myth in Islamic law is self-evident. Islamic law exists within a spiritual framework that views the law as one part of the wide-ranging relationship between man and God. In theory, those who follow Islamic law by extension follow Islam, and thus religious mysticism is intrinsic to Islamic law. As Bernard Weiss explains in *The Spirit of Islamic Law*, "The law is thus rooted in a covenant relationship between God and human beings. A covenanting Creator-Lord hands down to his creature-slave a body of commandments, of rules, that define the obligations that the creature incurs as a result of the covenantal encounter" (Weiss 33). Because Islam establishes a set of rules that exist apart from the law itself, law is simply "an expression of the will of the Creator" (Weiss 35). In this way legal language which, by itself, has no authority, is granted authority as an expression of the divine will. Islamic law thus solves the problem of legal authority by claiming to be "divinely sanctioned" (Weiss 120).

The authority of the primary source of Islamic law, the Qur'an, is affirmed by a legal scale that positions the Qur'an as the foundational text of Islam. In Islamic law, legal statements found in the Qur'an, although few, take primacy over others—juristic opinions, for example. The language in the Qur'an is closely examined and followed to the letter. The legal authority of the language is taken for granted by scholars because the Qur'an is the authoritative text of Islam. In *The Spirit of Islamic Law*, Weiss alludes to the scale from which Islamic law is derived: "The use

of analogy is reckoned by the four Sunni schools as a fourth source of law, following the Qur'an, the Sunna, and juristic consensus" (Weiss 23). As Weiss notes, hadith-reports, analogies, and other legislative statements not derived directly from the Qur'an are closely scrutinized—indeed, such scrutiny comprises much of Islamic jurisprudence. Scrutiny of secondary sources of the law establishes the authority of the Qur'an, the primary source, by setting it against supposedly "man-made" language. In this way, the scale of legal authority creates the impression that the Qur'an exists apart from humanity as an element of the natural world, a myth which sets Qur'anic language apart from ordinary language.

Myth in United States Law

The problem of legal authority is also addressed in the United States through myth. The mythical retelling of the American Revolution is likely familiar to anyone educated in the public school system, which inculcates stories of cherry trees and puritans. The supposed "manifest destiny" of the United States, its special relationship with God, deployed to justify the extermination of the indigenous population, has been a recurrent theme in United States history from the eighteenth-century to today: indeed, according to David Frank in "Obama's Rhetorical Signature: Cosmopolitan Civil Religion in the Presidential Inaugural Address, January 20, 2009," President George Bush's inaugural speeches framed "America as "holy," placing the country in the "sacred history of the Pauline manifestation of the Christian myth"" (Frank 617). Other characters in American folklore, like Paul Revere and Paul Bunyan, function similarly to religious characters—they enshrine society with a sense of history and purpose. In this way, although United States law diverges from Islamic law by drawing from Christian theology, rather

than creating a new religious vocabulary, the function is the same: to lend authority to an otherwise neutral set of rules.

As mentioned earlier, a special force is required to capture public attention and separate one legal system from the rest. Claiming a legal system to be divinely sanctioned, or a constitution divinely inspired, fulfills this requirement by lending the law a spiritual quality. This can be visualized by picturing the "law" as a physical document lying somewhere in the world—such a document would not carry force if the only instructions were to follow its rules. Conversely, if someone explained the origins of the document and why following the rules might be good, perhaps drawing on a myth, the rules would suddenly become linked and contextualized as part of a broad lifestyle—each unique action would be connected to a longer, richer narrative, and the meaning of the document would change. As David Frank argues, President Barack Obama commanded a spiritual vocabulary during speeches on the presidential campaign trail, drawing on concepts of cosmic importance that extend the American myth into the present. Frank argues, "The key term "journey" folds the myth into actions taken here and now, and has great metaphorical power" (Frank 609). The "here and now" illuminates the function of the myth—myths form the link between the law as it actually is, an assortment of customs that have slowly become codified, and the law as it could be, a means of organizing a society.

Myth in Both Legal Systems

In addition, both United States and Islamic law establish authority through two features that accompany mythos: a mythical source document (the Qur'an and American constitution), and a mythical set of founders (the Companions of the Prophet and Founding Fathers).

A mythical source document establishes legal authority by representing the law as inflexible, able to withstand external pressures and change. This sets legal language apart, at least theoretically, from other instances of language, which constantly shift and gain or lose meaning over time. Viewing the law as derived from a single source (say, the constitution) imparts an understanding of language as accessible across space and time. William Harris observes, "The American political arrangement was brought into existence, and it purports to continue to define itself, by a written text," a view of the constitution which recalls the Qur'an, the text through which Islamic society "defines itself" (Harris 36). Weiss notes that in Islamic law, "the texts stand as the *sole* point of contact between humans and the Lawgiver" (Weiss 38). Together, Harris and Weiss illustrate the function of a mythical source document—to set one source of law against all others by claiming it to be divinely inspired. Here we begin to observe a pattern: of language posing a problem to the law, and the law creating a mechanism to redress that problem.

A mythical set of founders establishes legal authority by inviting a society membership to a community of people, a sense of belonging to a group. In presidential campaign speeches Barack Obama often mentioned the Founding Fathers, the set of men whose supposed chastity helped lay the foundation for modern American values, "describing the pain endured by those who helped found and develop the country" (Frank 620). Such language adds a personal dimension to expressions of the law. By locating the law within a tradition of exceptional individuals, Obama invites listeners to place themselves within that historic trajectory, and, in doing so, strengthens the authority of the legal system. Tradition also features prominently in Islamic law, particularly in the four Sunni schools—as Weiss notes, "The canonical texts, the

madrasas, and the communities of scholars who congregated in them thus all became immovable rocks of Islamic society" (Weiss 16). The relationship between the law itself and the "communities of scholars" who derive the law is of primary importance in Islamic legal theory. By celebrating the four Sunni schools, among other legal philosophies, Islamic law establishes a set of mythical founders. In this way, both legal systems envision themselves as part of a larger community, and choose language which echoes that vision.

In conclusion, both United States and Islamic law lend authority to language by 1) invoking a divine presence in the law, 2) creating a mythical source document, and 3) accompanying that document with a set of mythical founders. This process reflects a self-conscious understanding of the limits of language, and poses a problem for all legal systems: how can humans organize themselves through language?

B) Rhetoric and Interpretation

This problem, of how to derive order from language, garners considerable scholarship in United States and Islamic legal theory. Because the law is rooted in language, and legal sources are intrinsically textual, legal interpretation is necessarily an exercise of linguistic interpretation. As Weiss explains, "Once exegesis—the extraction of law from texts—had, thanks to the increased dependence on hadith, become central to Islamic jurisprudence, scholars of the law were presumed to be masters of all the appropriate hermeneutical skills..." (Weiss 15). As Islamic law transitioned away from the relatively limited range of Qur'anic legislative statements and toward new theories and developments, hermeneutics grew increasingly important. The development of Islamic law corresponds with the development of an Islamic textual tradition—as opinions and commentaries grew in number and debates transformed, the corpus of

texts from which to interpret the law grew accordingly. This created a need for an established methodology for interpreting texts, a formulation of Islamic legal theory. As Wael Hallaq argues in "The Function and Character of Sunni Legal Theory," "Discovering the law of God through a highly systematic and logically sophisticated methodology was therefore considered by Muslims the primary, if not the only, function of legal theory" (Hallaq 681). This methodology is called *usul al-fiqh*.

In spite of *usul al-fiqh*, Islamic scholars viewed language as untrustworthy—they believed actual divine intent could only be approximated. They were thus aware of the legal predicament: the necessity of language to the law, and of the text to establishing a code of conduct for society, requires textual interpretation, but the nature of language ensures that such interpretation will prove inadequate. This paradox, of organizing society through an inadequate medium, lies concealed beneath the surface of American and Islamic jurisprudence. The remainder of my comparison of United States and Islamic law will focus on how each legal system interprets, obscures, and manipulates language, and will be organized into two categories: 1) Language Ambiguity, and 2) Language Flexibility.

1) <u>Language Ambiguity</u>

A precise explanation for why language ambiguity so pervades Islamic legal theory may be traced to the highly developed understanding of the properties of language found in early Islamic society. Bernard Weiss argues in *The Spirit of Islamic Law*, "Perhaps in no premodern civilization were the nature and workings of language explored in such depth and with such sophistication as in the Islamic" (Weiss 58). In the process of exploring the "nature and workings of language," Islamic scholars concluded that ambiguity, the latent gap between intention and

meaning that shrouds human communication, is an essential property of language. Language ambiguity was observed in practice through the emergence of scholarly disagreement regarding the meaning of Qur'anic and other legislative statements. In "Interpretation in Islamic Law: The Theory of Ijtihad," Bernard Weiss, documenting the emerging importance of interpretation in Islamic legal theory, identifies "the vagaries of language" as one factor that forced legal scholars into the domain of interpretation—the element of the law that requires handling by trained professionals. Muhammad ibn Idris al-Shafii, the eponymous founder of one of the four schools of Sunni legal theory, composed *The Epistle on Legal Theory* in the ninth-century, in which he acknowledges the existence of "ambiguity" within the Arabic language: "After all, the language is, as I have explained above, susceptible to ambiguity..." (al-Shafii 98). Such a view—an acute sense of the slipperiness of language, in some measure a small concession of defeat—contradicts the overall premise of the law, that the law constitutes a binding set of rules. This contradiction appears in both United States and Islamic law, and will therefore be closely examined, to extend the comparison.

Language ambiguity permeates United States legal theory. As the study of linguistics has progressed and preexisting theories have been complicated, a nuanced view of language has been adopted by legal scholars. Law schools now include textual criticism—say, the interpretation of a Supreme Court opinion—among the core requirements for students.[1] In "Legal Theory, Legal Interpretation, and Judicial Review," David Brink warns that legal interpretation "will often require reliance on theoretical considerations about the *real nature* of the referents of language in

[1] The Harvard Law School Handbook of Academic Policies 2016-2017 states that "all students are expected to pursue serious written work."

School, Harvard Law. "I. (J.) J.D. Written Work Requirement." *Harvard Law School*. Web. 18 Mar. 2017.

the law, considerations which may well outstrip conventional wisdom on the subject" (Brink 121, emphasis added). The phrase "referents of language" serves as a point of introduction to the element of language that produces language ambiguity, the *intended* (or "referred") meaning of a speaker versus a *potential* meaning. The relationship between *intended* and *potential* meaning will be broken down further in the following paragraph.

That there might be an intended meaning of a speaker would require layers of potential meaning. Such a view suggests a key task for the jurist: discovering the "real nature" of the law. In *The Spirit of Islamic Law*, Bernard Weiss explains the thought process of an Islamic jurist tasked with discovering the meaning of a text: "The meaning of a text must include for him not only obvious or literal meaning but also metaphorical meaning and implied meaning" (Weiss 23). The planes of overlapping meaning in a given text—the most obvious and more subtle ways of interpreting its language—ensures that the task of interpretation will be couched by a lack of clarity. Indeed, a total absence of ambiguity would require every component of a language to have singularity of meaning, a quality speakers of any language would recognize as impossible. Thus, as Brink argues, "legal interpretation should appeal to the reasons, purposes, and intentions of those who enacted the law" (Brink 125). Together, Weiss and Brink articulate the task of the jurist: to discover the "intended" meaning of a legal text by setting it against potential meanings. This process, called "intentionalism," plays a crucial role in United States and Islamic jurisprudence.

Discovering the intended meaning of a legal text requires the jurist to move beyond a simple analysis of the language to identify external information that may reshape meaning and therefore change the law. This includes figures of speech, irony, hyperbole, and other

peculiarities of language that produce ambiguity. Such a requirement can be met only through understanding the context, or "abstract intent," of the speaker (Brink 143). Bernard Weiss expands on how figures of speech arise: "Speakers/authors sometimes "divert" (*sarafa, awwala*) expressions from their literal meanings to other, nonliteral meanings, in which case the expressions are said to be function as figures of speech (*majaz*)" (Weiss 99). The artful operation of language, the way speakers manipulate convention to add depth and give meaning to expressions of language, poses a problem for textual interpretation. In this way, figures of speech reinforce the uncertainty in discovering legislative intent by widening the gap between the intended and potential meanings of the law.

In conclusion, the intended meaning of a legal text will always be shrouded by potential meanings, a product of language ambiguity. In United States and Islamic law, language ambiguity, while acknowledged and expanded on, is simply an obstacle to be smoothed by lawyers, rather than a deeply concerning property of the law.

2) Language Flexibility

Given the existence of potential meanings of a legal text that obscure the intended meaning, United States and Islamic jurists inevitably determine precise laws differently. This poses a logical problem because, theoretically, if the law is divinely inspired, one would expect a uniform transmission of its content. How can a society believe the law is divinely inspired if it lacks internal consistency? If each jurist arrives at a different opinion, whose most closely approximates the divine will? This problem may be addressed by honoring the opinion of a single jurist, or by allowing for scholarly disagreement and debate—both United States and Islamic law opt for the second solution.

In Islamic law, the problem of diverse legal opinions was redressed by creating a distinction between divine law and man-made law. Islamic scholars recognized that language ambiguity would produce a range of legal opinions—Weiss notes that scholars knew "the presence of error within the arena of debate was thus a certainty, even if the erroneous opinion could not be identified" (Weiss 119-120). However, as mentioned earlier, the "presence of error" calls into question a fundamental premise of the law, that the law is an expression of the divine will. This problem was solved by creating a distinction between "law as an object residing in the being of God and law as a construction of fallible jurists" (Weiss 120). Such a move is a sophisticated example of language flexibility—Islamic law retains the mysticism necessary to establish legal authority, but also accounts for the property of language that produces error and contradiction. The need for such a distinction appears in United States law. The American legal system, despite also claiming divine inspiration, has a tradition of scholarly debate that surfaces in the appellate court system, the mechanism used to appeal legal decisions. Here we observe another pattern: of a problem of language reassembled across space and time, a phenomenon which suggests that language is a fixed obstacle for the law.

Another problem of flexibility that surfaced for Islamic scholars was the Qur'an. While necessary for establishing legal authority, the Qur'an fenced scholars in because of the narrow range of verses it provided from which to formulate the law. The result was a highly particular set of rules covering only a handful of situations. However, if the law is the mechanism with which a society arbitrates disputes, clearly it must cover every scenario that arises. Here lies another contradiction embedded in United States and Islamic law: how to reconcile the belief that nothing outside the primary source of the law has legitimacy with the need to move beyond

the confines of a single text to formulate new laws. This contradiction required a methodology for applying the primary source of the law to unforeseen scenarios, known as *analogy*.

The operation of analogy in Islamic law is a tableau for understanding how legal systems view language flexibility. As Wael Hallaq explains, "...the system of analogy [...] served to harness textual legal evidence to cover yet unsolved cases arising in real life" (Hallaq 680). Analogy formed the link between a realist view of language—the notion that a language transforms in time and therefore a single source of law can never be wholly adequate—with the rigid textualism on which the rest of the law depended. Weiss concludes that, "The textualism that ultimately prevailed was of the sort that made its peace with analogism, a peace made possible by modifications in the use of analogy that did not threaten the basic textualist commitment" (Weiss 69). The following paragraph will demonstrate how Islamic scholars maintained "the basic textualist commitment" of the law while deploying analogy.

The precise way of formulating an analogy was through use of an *illa*. An *illa* is the link between a legal opinion based on the Qur'an (the point of departure for scholars), and one issued for a new situation. The *illa* is the overriding legal principle shared by both opinions that enables the jurist to link one to the other. Every analogy must have an *illa*, a point of mediation between the past and present: for Hallaq, "the indispensable presence of an *illa* in analogy guaranteed that the jurist's interpretation remains within the boundary of divine law…" (Hallaq 682). To better understand how the *illa* functions in Islamic law, the following paragraph will provide an example of analogy.

In *The Epistle on Legal Theory*, al-Shafii leaves considerable room for an extended discussion of analogy—the requirements necessary to analogize, what constitutes improper

analogy, and more. For al-Shafii, "a valid analogy involves comparing two things and then applying the ruling of the one to the other," a comparison which requires an *illa* (221). al-Shafii deploys analogy regularly throughout *The Epistle*—one example features an hadith-report stating that the Prophet Muhammad ruled that the buyer of a slave is entitled to financial reimbursement if the slave has a defect that was concealed before the purchase. al-Shafii extends the report to cover other transactions—for example, "the milk, wool, and offspring of livestock; the child of a female slave; and any other subsequently arising items in the buyer's property, for which he is liable," indicating they, too, must follow the ruling of the original hadith-report (219). The example illustrates the requirements for analogy. al-Shafii identifies the *illa* (the point of connection between the original and subsequent opinion) as the defect on the purchase concealed from the buyer. The ruling is then extended to "any other" situation which meets that basic requirement, regardless of additional information. Analogy therefore illustrates how language flexibility is resolved in Islamic law—how scholars move from a single source of the law to formulate distinct legal opinions, while still maintaining the essential continuity of the law. As Hallaq concludes, "Through the concept of the *illa*, the cornerstone of judicial inference, legal theoreticians succeeded to a great extent, from the logical standpoint, to reinterpret and even reconstruct the legal reasoning underlying the already existing judicial rulings" (Hallaq 682). Occasionally, as Hallaq notes, "existing judicial rulings" were "reconstructed" completely through abrogation, a practice which further calls into question the supremacy of the law.

Abrogation means repealing one declaration of law in support of a subsequent one. As Bernard Weiss explains in *The Spirit of Islamic Law*, "Earlier rules were therefore sometimes designed for situations that became outmoded as the new order unfolded and had to be abrogated

or replaced by more progressive rules" (Weiss 90). Abrogation is found in United States law in the constitutional amendments—the notion that the original divinely inspired text was incorrect, and had to be corrected twenty-seven times. In this way, despite the steadfast commitment to textualism that pervades United States and Islamic legal theory, the ability to move beyond the primary source of the law is a core feature of both legal systems.

Conclusion

In conclusion, a comparison between United States and Islamic law reveals how language poses a fundamental problem to the premise of the law. Language and the law are at odds with each other—the law purports to derive order from chaos, to "embody unchanging principles of right and justice" (Coleman 62). Language is a medium of disorder, constantly assuming the shape and texture of its surroundings.

Yet the two are interrelated. No legal system can function without being able to communicate itself to the society it wishes to govern. Every legal system therefore requires a language. And so long as conflict persists in human affairs, so long as humanity continues to inhabit a world of power relations, there will remain disputes that require arbitration, or "law." In this way, no society can supplant either language or the law.

I therefore conclude that an effective legal system would frankly acknowledge the problematic relationship between language and the law, rather than conceal it beneath the surface. An effective legal system would allow for ambiguity without insisting on the elusive "intended" meaning of a speaker; it would allow for flexibility without stubbornly preserving a primary source of the law; and it would encourage interpretation and reinterpretation of the law, to reflect the constant evolution of language. The problem with United States and Islamic law is

that, while brushing against the limits of language in the course of developing legal theory, both ultimately double down on preexisting notions shown to contradict with the reality of language. As Joseph Lowry argues in the introduction to *The Epistle on Legal Theory*, Islamic legal theory may then be seen as "an extended discussion of legal epistemology in which questions of theology, language, authority, community, and so on were explored as a way of dealing, perhaps through intellectual play, with the very complex problem of confronting the inherent uncertainty in attempts to discover divine legislative intent" (Lowry xxvi-xxvii). For Lowry, the ultimate function of legal theory is to confront the "inherent uncertainty" of linguistic interpretation.

It would be inaccurate to suggest that, because it emerged later in time, United States law somehow "copied" Islamic law—rather, it is more likely that the similarities between the two legal systems are so rich because both were provided with the same raw materials with which to organize society. When comparing Islamic and United States law in "Islamic Law: Its Relation To Other Legal Systems," Gamal Moursi Badr argues that liability laws in both legal systems "...were independently developed in response to the exigencies of commerce," encapsulating how legal similarities arise in response to shared problems (Badr 197). The existence of deep similarities between United States and Islamic law suggests problems faced by every legal system, complicating the distinction between "modern" and "premodern" systems of law and sharpening the misunderstanding of Islamic society that shapes United States foreign policy.

Works Cited

al-Shafii, Muhammad ibn Idris, and Joseph E. Lowry. *The Epistle on Legal Theory: A Translation of al-Shafi'i's Risalah*. New York: New York UP, 2015. Print.

Badr, Gamal Moursi. "Islamic Law: Its Relation to Other Legal Systems." *The American Journal of Comparative Law* 26.2 (1978): 187-98. *JSTOR*. Web.

Brink, David O. "Legal Theory, Legal Interpretation, and Judicial Review." *Philosophy & Public Affairs* 17.2 (1988): 105-48. *JSTOR*. Web.

Coleman, Frank M. "The Hobbesian Basis of American Constitutionalism." *Polity* 7.1 (1974): 57-89. Web.

Cover, Robert M. "The Supreme Court, 1982 Term -- Foreword: Nomos and Narrative." *Harvard Law Review* 97.1 (1983): 1-68. Web.

Frank, David A. "Obama's Rhetorical Signature: Cosmopolitan Civil Religion in the Presidential Inaugural Address, January 20, 2009." *Rhetoric & Public Affairs* 14.4 (2011): 605-30. Web.

Hallaq, Wael B. "Considerations on the Function and Character of Sunni Legal Theory." *Journal of the American Oriental Society* 104.4 (1984): 679-89. Web.

Harris II, William F. "Bonding Word and Polity: The Logic of American Constitutionalism." *The American Political Science Review* 76.1 (1982): 34-45. Web.

Weiss, Bernard G. "Interpretation in Islamic Law: The Theory of Ijtihad." *The American Journal of Comparative Law* 26.2 (1978): 199-212. *JSTOR*. Web.

Weiss, Bernard G. *The Spirit of Islamic Law*. Athens: U of Georgia, 2006. Print.