

The Quadrants of Sharī'a: The Here and Hereafter as Constitutive of Islamic Law

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The relationship between law and morality is a topic of considerable debate in Anglo-American legal philosophy. That debate is often identified with the exchange between H.L.A. Hart and Lord Patrick Devlin in the latter half of the 20th century. The debate was incited when a 1957 committee recommended that consensual sexual activity between men in private should be decriminalized. This recommendation met with sharp criticism from Lord Devlin. As Peter Cane states, “Although Devlin did not express it as straightforwardly as he might have, his basic point was that the criminal law was not (just) for the protection of individuals but also for the protection of society—the institutions and the community of ideas, political and moral, without which people cannot live together.”¹ Hart rejected Devlin’s assertion, and instead argued that the scope of the criminal law was defined by the harm principle, which seeks to prevent harm to others.² He outright repudiated the view that legal enforcement of widely held moral norms is justified. This is a deeply contested debate, and one that remains a topic of considerable

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¹ Cane, *Taking Law Seriously* 22, quoting Patrick Devlin, *The Enforcement of Morals* (Oxford: Oxford University Press, 1965), 22.

scholarship.³ This is not the place to address the nuances of that debate. But that issue in contemporary legal philosophy certainly forms a backdrop to this essay.

The distinction between law and morality seems to be in the minds of many who write about Islamic law and explain its scope of regulation to an audience unfamiliar with the tradition.⁴ In doing so, though, they rely on that distinction to illustrate the limits and inefficiency of the Islamic legal tradition. For instance, Wael Hallaq argues that the meaning of ‘law’ is so substantially founded upon assumptions about the state and its institutional powers that any characterization of Sharī‘a as “law” will render it a failed system. As evidence, he refers to the “routine and widespread pronouncement, usually used to introduce Islamic law to the uninitiated, namely, that the Sharī‘a does not distinguish between law and morality.”⁵ For Hallaq, the view that Sharī‘a suffers no distinction between law and morality is relied upon as one of the factors that “rendered [the Sharī‘a] inefficient and paralyzed.”⁶ In Islamist circles, the unity between law and morality in Sharī‘a, however, is applauded as yet further evidence of the moral superiority of Islam over other legal systems, which they polemically accuse of stripping law of moral content.⁷ Between these two views of Islamic law lies a third, which emphasizes that all rules in Islamic law are categorized pursuant to the *al-aḥkām al-khamsa*, or the five categories of legal value: obligatory (*wājib*), recommended (*mustahabb*), permitted (*ḥalāl*), reprehensible (*makrūh*) and prohibited (*ḥarām/mahẓūr*). This typology of rules is used to show that Islamic law

² Cane, *Taking Law Seriously* 22.

³ For other views on the debate, see Dworkin, *Lord Devlin and the Enforcement of Morals* 986-1005.

⁴ Kamali, *Sharī‘ah Law*, 43-44; Coulson, *Conflicts and Tensions*, 77-95, who begins his discussion by reference to Hart’s discussion of law and morality, where he responds to Devlin.

⁵ Hallaq, *Sharī‘a*, 2.

⁶ Hallaq, *Sharī‘a* 2.

has its own approach to distinguishing between ‘law’ and ‘morality’: the obligatory and prohibited are “law” in the modern sense, while the recommended and reprehensible categories are extra-legal, falling into the realm of morality.⁸

Hallaq’s apprehension and critique of characterizing Islamic law in terms of the law/morality distinction both challenges the assumptions underlying the meaning of “law”, and runs the risk of isolating Islamic law from compelling philosophical debates about law, its limits, and its coercive power. The Hart/Devlin debate concerned whether and to what extent particular substantive moral norms could be relied upon in the UK legal system, which has its own history and institutional design. Elsewhere, I have written about how premodern Muslim jurists were cognizant about the public good (*ḥuqūq Allāh*) and individual interests (*ḥuqūq al-‘ibād*) as they reasoned to legal outcomes about substantive doctrine.⁹ In both cases, conceptual dichotomies operate to categorize different types of interests and aspirations that animate the development of law.

Conceptual dichotomies, whether law/morality or *ḥuqūq Allāh/ḥuqūq al-‘ibād*, provide analytic modes of understanding and appreciating the dynamics of the law. And however useful they may be, when employing them, we must remain mindful about how such conceptual dichotomies carry more intellectual baggage than may be duly disclosed. For instance, in Hart and Devlin’s debate, at issue was not so much what is law and what is morality, but rather whether the state can legislate general rules of criminal law based on a particular moral outlook.

⁷ Abu-Saud, *Concept of Islam* 118-120; Moaddel and Talattof, *Contemporary Debates in Islam* 197-206 (presenting Sayyid Qutb’s *Islam and Culture*, excerpted from his *Milestones*).

⁸ Kamali, *Principles* 44-46; Kamali, *Sharīah Law*, 44; Hallaq, *Sharīa* 84-85. Hallaq disagrees with this latter argument, and suggests that Muslim jurists did not distinguish between law and morality. Instead, he queries about the modern division between law and morality, which he suggests is neither normative nor natural in the course of human history.

⁹ Emon, *Ḥuqūq Allāh and Ḥuqūq al-‘Ibād*.

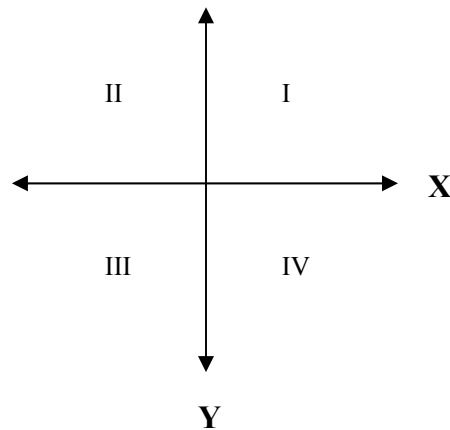
The intelligibility of their debate depends, therefore, on a variety of unstated preconditions, not all of which were historically present in the formative period of Islamic law. Such preconditions might include:

- The existence of a state with centralized legislative and enforcement power;
- A morally pluralistic polity in which all are given equal status;
A democratically formed state in which the will of the people is accounted for in a legislative process.

Not all of these preconditions map on to the Islamic historical tradition, legal and otherwise. Consequently the stakes for Hart and Devlin may not be easily translatable for the purpose of analyzing premodern Islamic law and legal theory. That does not mean that the underlying interests captured by “law” and “morality” cannot be defined or articulated in different ways that take into account the differences posed by competing legal systems. Nor are we straightjacketed into conceptual dichotomies that are borrowed from other traditions. As noted above, the premodern Islamic conceptual dichotomy of *ḥuqūq Allāh* and *ḥuqūq al-‘ibād* offers one site of examination. Another site, which is the topic of this essay, concerns the role of the Here and Hereafter in legal reasoning.

Imagine for a moment each Islamic doctrinal rule occupying a position on an X-Y graph. The horizontal X axis reflects the impact and significance of a given doctrinal rule on individuals living in society together. The vertical Y axis reflects the relationship of the doctrinal rule to the will of God. Any doctrinal rule, therefore, is plotted on the X-Y graph in light of considerations about the social significance of a given rule of law (the Here), and its eschatological implications for the believer (the Hereafter). The more the doctrinal rules reflect social considerations, the higher the X-value and the lower the Y-value (although greater than zero). The more the doctrinal

rules reflect a concern about God’s will and eschatological concerns, the higher the Y-value and the lower the X-value. Ideally, every rule should be plotted in quadrant I, where the X and Y-values are both positive.



Problems in justification and legitimacy may arise when a doctrinal rule is plotted in quadrants II, III, or IV. For instance, a rule that aspires to fulfill God’s will but comes at a certain social cost might have a negative X-value and a positive Y-value, and thus be plotted in quadrant II. A rule that has a positive social value but seems to violate God’s desires, will have a positive X-value but negative Y-value, and thus fall in quadrant IV. A rule that adversely impacts the social wellbeing and violates God’s will falls into quadrant III. Being mindful of these quadrants, we can imagine a Muslim jurists taking into account both the ‘here’ and ‘hereafter’ when considering how to evaluate a particular doctrinal rule, with the goal of ensuring that every doctrinal rule is plotted in Quadrant I.

To illustrate and justify the explanatory power of this proposed quadrant model of analysis, this essay will address different doctrinal issues in the history of Islamic law. In particular, the legal issues to be discussed revolve around the dog in Islamic law. The dog was a subject of legal debate that moved between concerns about the here and the hereafter. Those

concerns were framed in terms of ritual requirements for prayer, the regulation of the domestic household, and the management of agricultural professions, for example. Although this study focuses on traditions concerning dogs, it is not meant to offer a scholarly treatment of the dog in the Islamic tradition.¹⁰ Rather this study introduces a conceptual model of analysis, using debates about the dog, to grasp and appreciate how the Here and Hereafter contribute to Muslim jurists reasoning about the law.

Why the Dog?

The panoply of doctrinal rules about the dog arguably build upon a particular tradition concerning a dog that licks water from a bowl. A *ḥadīth*, narrated by the companion of the Prophet Muhammad, Abū Hurayra,¹¹ reads: “The messenger of God...said ‘If a dog licks your container, wash it seven times.’”¹² A second version of this *ḥadīth* stipulates different numbers for the required washings;¹³ and a third version requires one to dump the contents of the container prior to washing it seven times.¹⁴ A fourth version reads as follows: "The messenger of God...said: 'Concerning the purity of your container (*tuhūr inā' aḥadikum*), if a dog licks from it,

¹⁰ For studies on the dog in the Islamic tradition, see Abou El Fadl, *Lord of the Essence* 316-30; idem, *Dogs in the Islamic Tradition* 498-500.

¹¹ The fact that Abū Hurayra narrates this *ḥadīth* is a point of initial interest. It is relatively well known that Abū Hurayra was fond of cats. His name suggests his favoritism toward that animal (i.e. father of a female kitten). It is reported that he received his *kunya* of Abū Hurayra because he found a kitten and carried it in his sleeve. On the other hand, other sources suggest that he may have also owned a farm dog. Al-Dhahabī, *Siyar* ii, 579; al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* ix-x, 478, 483.

¹² Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* iii-iv, 174.

¹³ The Ḥanafīs rely on a version of the Abu Hurayra *ḥadīth* on dogs and water in which the Prophet is reported to have required either three, five, or seven washings. Al-Sarakhsī, *Kitāb al-Mabsūṭ* i-ii, 48; al-Kasānī, *Badā'ī al-Ṣanā'ī* i, 374; al-Shawkānī, *Nayl al-Awṭār* i-ii, 34; Ibn Ḥajr al-‘Asqalānī, *Fath al-Bārī*, i, 332; al-Mubārak Fūrī, *Tuḥfat al-Aḥwadhī* i:253-254.

¹⁴ Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* iii-iv, 174. Those who oppose the implications of this addition (i.e. *iraqqa*) argue that one of the members of the *isnād*, ‘Alī b. Mushīr (d. 189/804), was not a reliable transmitter. However, al-Dhahabī considers him trustworthy (*thiqqa*). Al-Dhahabī, *Siyar A‘lam* viii, 484. See also, al-Ziriklī, *al-A‘lām* v, 22.

wash it seven times.¹⁵ Furthermore, some versions of this *ḥadīth* pose the additional requirement of sprinkling sand or earth in one of the washings.¹⁶ The use of sand or earth as a cleansing agent both recognizes the purity of the earth for purification purposes,¹⁷ and renders the dog's impurity something that goes beyond a concern about conventional dirt *per se*.

At the core of the tradition is a concern about the implication of the dog on the purity of the water in the bowl. The implication of this concern can extend far and wide, based on the multitude of ways impurity can both transfer to other objects and affect human behavior. For instance:

- Can a Muslim use the water a dog licks to perform ritual ablutions?
- How big must the container of water be before we should worry about waste?
- If the dog is impure, can it be bought and sold in the market?

The potential impact this single tradition could have on a multitude of issues prompted the jurist Ibn Ḥajr al-‘Asqalānī (d. 1449) to write: “The discussion on this *ḥadīth*, and the issues that arise from it, are so widespread that one could write an entire book [about them].”¹⁸ The wide-array of legal issues the dog raises permits us to examine whether and how the proposed quadrants model of Sharī‘a offers a better approach to understanding the nature of Islamic legal analysis, in

¹⁵ Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* iii-iv, 175. As will be indicated below, seven is not the only number mentioned on this matter. The Ḥanafis adopt traditions which require three, five, or seven washings. The significance of the number is reflected in how jurists contend with its apparent arbitrariness, which will be discussed below. On the relationship between arbitrariness and rules, see Atiyah and Summers, *Form and Substance in Anglo-American Law* 13.

¹⁶ Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* iii-iv, 175-176. There is a debate as to whether one dusts prior to the seven washings, in the first wash, in the last wash, or somewhere in between. See also Ibn Ḥajr al-‘Asqalānī, *Fath al-Bārī* i, 331.

¹⁷ Wensinck, *Tayammum*.

¹⁸ Ibn Ḥajr al-‘Asqalānī, *Fath al-Bārī* i:333.

contrast to the more dominant model of jurisprudence that posits an analytic dichotomy between law and morality.

The Dilemma of the Dog: Limiting the Dangers of the Logical Extreme

For Muslim jurists, a source text, such as a *ḥadīth*, can be applied to diverse situations, not all of which are expressly provided for in the *ḥadīth* text. Jurists can analogize between express circumstances in the *ḥadīth* and the circumstances of a new situation. In doing so, they engage in an act of legal reasoning that seeks to extend the application of a rule to a similar case that warrants the legal extension.

But the ability to extend a ruling by analogy depends on whether the *ḥadīth* espousing the initial rule, with its relevant factual circumstances, has a discernible rationale that explains and justifies the legal outcome. Without such a *ratio*, the *ḥadīth* may not so easily be extended to new and different situations, given the inability to render an analogy without a rational nexus between the given rule and the new circumstance. But if a *ratio* is read into the law, such as that dogs are impure, the *ratio* could have considerable consequences on social well being .

If jurists render all dogs impure, the consequence of applying the dog-water *ḥadīth* generally and absolutely might lead to considerable waste, whether of water or any other item a dog might touch or lick. This concern led Mālik b Anas (d. 796) to consider it a grave sin if someone intended to benefit from the sustenance of God, but then discarded it because a dog licked it.¹⁹ To require such waste arguably creates perverse incentives against animals, and could

¹⁹ Saḥnūn, *al-Mudawwana* i, 5. See also, Ibn Ḥazm, *al-Muḥallā* i, 121.

even incite violence against them. Traditions from the Prophet about killing dogs, discussed below, play into and further inflame this incentive.²⁰

Jurists, well aware of the social costs that might arise if the dog-water *ḥadīth* were read and applied too broadly, developed different strategies to limit its application. Some jurists believed the tradition was a matter of “worshipful obedience” (*ta’abbud*), having everything to do with the believer’s commitment to obey God and seek the fulfillment of His will. Jurists such as al-Shāfi‘ī held that the dog is impure in its essence. But if the dog is impure in its essence, it could contaminate anything it has contact with. For al-Shāfi‘ī, though, this possibility is limited because of the absence of any ratio explaining the number of washings. For jurists like al-Shāfi‘ī, the *ḥadīth* on dog and water proved perplexing because of the apparent arbitrariness of the number of requisite washings. There seems to be no rationale justifying the number of washings, nor is there a necessary rational connection between the number of washings required and the kind of impurity presumed to be in the water or on the bowl. Indeed, if anything, the required number of washings was simply a directive to be obeyed dutifully. Consequently, while al-Shāfi‘ī considered the dog impure, he read the *ḥadīth* as requiring strict, worshipful obedience (*ta’abbud*). In other words, the *ḥadīth* must be adhered to, but can be extended in very limited circumstances, given the lack of an underlying rationale. For this reason, al-Shāfi‘ī remarked that it is inappropriate to use the dog-water *ḥadīth* to govern other cases when different impurities fall into water.²¹ Hence, although al-Shāfi‘ī considered the dog impure, the legal effect of its

²⁰ There are various animal rights groups in the Muslim world advocating against governments that engage in seasonal killings of stray dogs. See for example, <http://www.esmaegypt.org/>. The Fatimid Caliph al-Ḥākim bi Amr Allāh is well known for having decreed the execution of dogs on two separate occasions, presumably because their barking annoyed him. Canard, Ḥākim Bi-Amr Allāh.

²¹ Al-Shāfi‘ī, *Umm* i, 20. Al-Shāfi‘ī held that the dog-water tradition can be extended to other situations, depending on how one understands what it means to wash. Yet he explicitly considers the dog-water tradition a matter of worshipful obedience. See also al-Māwardī, *al-Hāwī al-Kabīr* i, 308.

impurity is limited to instances involving only a dog. If a dog is part of the legal question, the dog-water tradition will govern, even in situations beyond the impurity of water. But other instances of impurity, where a dog is not involved, cannot be governed by reference to the dog-water *ḥadīth*.

A second interpretive strategy was to read the *ḥadīth* as being less about the dog *per se* and more about the removal of impurities (*najāsa*). On this basis, these jurists could extend the rule to apply to other types of impurity, thereby expanding the precedential effect of the dog-water *ḥadīth*. But in doing so, they had to contend with countervailing issues as well, such as waste. For instance, suppose a dog touches one's clothes or eats solid food from a bowl. Technically these circumstances are not addressed in Abū Hurayra's tradition above. But if we believe the *ḥadīth* relies on the ratio of impurity, we may want to extend its application to these new situations. Yet if we extend its application, how far must we go before countervailing considerations, such as waste and limited resources, factor into the analysis?

For example, the Ḥanafī jurist al-Kasānī (d. 1191) suggested that focusing on the dog itself actually blurred the larger issues at stake. Suppose a dog, after being immersed in water, emerges and shakes the water off its body near a group of people. If the water lands on someone's clothes, does that mean the clothing is impure? If we assume the dog is impure in its essence, then anything it touches would become impure. But if we separate the impurity from the essence of the dog, we can put a break on the slippery slope of pollution's peril. In other words, we can shift our focus to the impact of the purported impurity on the object of concern. In the example above, al-Kasānī argued that the issue of impurity has less to do with the dog and more to do with the amount of water that splashes on the clothes. If the amount of water that hits the

clothes exceeds the volume and size of a coin (i.e. *dirham*), the clothes are ritually impure and the wearer cannot perform ritual prayers. Anything less imputes no impurity.²²

Similarly, the Mālikī jurist Ibn Rushd al-Jadd held that the tradition has everything to do with impurities that must be removed. For Ibn Rushd al-Jadd, the reference to the requisite seven washings evokes concerns over the health consequences associated with dogs licking water, specifically dogs with rabies.²³ He noted that the Prophet said during an illness, “pour over me seven waterskins (*qirab*) whose tying ribbons are untied, so that I can attend to the people.”²⁴ Here, the number seven is associated with medical care, and not any particular impurity. He wrote:

It is necessary to be cautious of the dog’s drinking or eating, and of using the vessel prior to washing it, out of fear that the dog has rabies. It is in the case of rabies, which appears in [the dog’s] saliva looking like poison harmful to the body, that the Prophet’s command, namely to wash the vessel the dog licks seven times to guard against illness, becomes applicable....²⁵

For Ibn Rushd al-Jadd, the number offers an insight into the *ratio* of the rule. He was unconvinced that the rule is simply about worshipful obedience; if it were, then the rule could not be extended to other situations. While it may be tempting to consider the *ḥadīth* as a rule of worshipful obedience that cannot be extended to other situations, the social reality of impurity,

²² Al-Kasānī, *Badā’i’ al-Ṣanā’i*, 414-15.

²³ Ibn Rushd al-Jadd, *al-Muqaddimāt* i, 90. Not all Mālikīs would have agreed. Abū Bakr b. al-‘Arabī said: “. [In this case] the number [of washings] is mentioned, and a dusting is included with it. This [process] establishes that it is pure out of worship (*‘ibādatan*), [since] there is no requisite number or use of dust for washing out an impurity.” Ibn al-‘Arabī, *‘Arīḍa* ii, 134.

²⁴ Ibn Rushd al-Jadd, *al-Muqaddimāt* i, 90-91.

²⁵ Ibn Rushd al-Jadd, *al-Muqaddimāt* i, 90-91. This same sort of rationale exists in rules regulating dog ownership in cities across the United States. For instance, Austin, Texas City Ordinance contains a provision prohibiting the ownership of dogs which have not been vaccinated for rabies. Austin City Ordinance s3-3-25(A) provides: “No person shall own, keep or harbor within the city any dog or cat over the age of four months unless such dog or cat has a current rabies vaccination. The dog or cat shall be revaccinated before the expiration of the first and each

whether associated with the dog or not, would seem to require sufficient flexibility in the norm to extend to new situations.²⁶ This is not to suggest, though, that Ibn Rushd al-Jadd disregarded any limits to extending the rule. He was mindful of concerns about waste. So while he generally held that all carnivorous animals (including dogs) contaminate what they lick, whether water or food,²⁷ he devised two important exceptions. First, if the licked water is large in quantity, then it is not rendered impure. The larger the quantity, the more likely the impurity is dissipated throughout the water, thus rendering the whole amount suitable for ritual purification. Second, one can only discard food licked by an animal if one is absolutely certain the food is polluted. But in this case, certitude is contingent upon an ancillary inquiry into whether the animal is domesticated or not. If the animal is wild or undomesticated, we can be certain the food is polluted. Otherwise, no certainty arises. For Ibn Rushd al-Jadd, the domesticity of the dog operates as a limiting factor on the extension of the *ḥadīth* to situations that might raise the specter of waste.²⁸ By shifting the focus of inquiry to issues such as the nature of impurity,

subsequent current vaccination as provided by state law.” Further, the City has gone so far as to authorize the city’s Health Authority to sponsor rabies-vaccination clinics. Austin City Ord. s3-3-26.

²⁶ Ibn Rushd al-Jadd was not compelled by those who argued that the dog-water tradition is purely about worshipful obedience or purely about impurity. He was critical of those who reduced the issue purely to a matter of removing impurity because they could not explain the specific number of washing stipulated in the tradition. But those who view the dog-water tradition as a rule of worshipful obedience seem to preclude concerns about impurity that seem present on the face of the tradition. Taking a middle road between these two positions, Ibn Rushd al-Jadd argued that whatever number of washes purifies the object, those are justified on the basis of removing the impurity. Any additional washing that occurs because of the *ḥadīth* is purely worshipful obedience, and nothing else. Ibn Rushd al-Jadd, *al-Muqaddimāt* i, 90.

²⁷ Ibn Rushd al-Jadd, *al-Muqaddimāt* i, 87-88.

²⁸ Ibn Rushd al-Jadd addressed the issue of domesticity of dogs by reference to a different *ḥadīth* concerning cats. In this tradition, a man named Abū Qatāda came upon his wife Kabasha while she was filling a container with water so that her husband could ritually purify himself before making prayers. A cat approached her, wanting to drink the water. Kabasha tilted the container so that the cat could lick water from it. Her husband later remarked: “The messenger of God...said ‘The cat is not impure. Rather it is among those who mix with you (*min al-ṭawāfīn ‘alaykum aw al-ṭawāfāt*),” or in other words is a domestic animal. Mālik b. Anas, *Muwatṭā’* i, 22. By reference to this *ḥadīth*, Ibn Rushd al-Jadd argued that “those carnivorous animals that do not mix with us in our homes carry impurities.”²⁸ Ibn Rushd al-Jadd, *al-Muqaddimāt* i, 87. By implication, carnivorous animals such as dogs that mix with us in our homes do not necessarily pollute all that they touch or lick. Ibn Rushd al-Ḥafīd, *Bidāyat al-Mujtahid* i, 30. Interestingly, Ibn Rushd al-Jadd noted that not all Mālikīs agree with this position. One group, following Ibn Wahb

quantity, and domesticity, jurists such as al-Kāsānī and Ibn Rushd al-Jadd utilized complex legal reasoning to alleviate the potential burdens of the dog-water debate.

Importantly, the two different readings of the tradition offer two important reflections on the axes of analysis that operate within Islamic legal analysis. First, the view that the *ḥadīth* is *ta'abbud*, or worship-centric, emphasizes the eschatological significance implicit in any instance of Islamic legal reasoning. One cannot ignore the importance of obedience to God (and hence of eschatology) as part of the Islamic legal calculus. Consequently, the quadrants model of analysis accounts for the eschatology of legal analysis along the vertical y-axis, which is meant to capture those modes of behavior that are directed solely for the pleasure of God. Second, the view that the dog-water *ḥadīth* is concerned with impurity but not to the point of waste, reflects the way in which the law cannot ignore, and indeed must account for, the social wellbeing of individuals living in organized society. As such, we can account for the social ramifications of the dog-water *ḥadīth* on a different axis, the horizontal X-axis. The X-axis allows us to measure how a particular legal outcome will influence and impact human experience in its variety.

Using the quadrants model of Islamic reasoning, we begin at an initial starting point where both the X and Y-values are zero (0,0), and calculate whether a given act, in light of relevant sources, constitutes a matter along the X-axis, the Y-axis, or both. In most cases, we will find that both axes matter, to varying degrees. Indeed, the debate among jurists may very well be captured by reference to how they emphasize the content of one axis over another. To illustrate how these axes operate in juristic reasoning to help plot doctrinal rules in one or another

(d. 813) ignored the argument concerning the domesticity of dogs. Ibn Rushd al-Jadd, *al-Muqaddimāt* i, 88-89. But others such as Ibn al-Mājjishūn (d. 827) held that rural dogs (*badawī*) pose no danger of pollution if domesticated, but urban dogs (*ḥadarī*) do. Ibn Rushd al-Jadd, *al-Muqaddimāt* i, 89. Of course, there is some inconsistency in Ibn al-Qāsim's position. If a domestic predatory animal, such as a dog, does not necessarily pollute food, why would it

quadrant, we will explore various rulings concerning the dog and its impurity. Throughout, we will examine the extent and degree to which the jurist's reasoning reflects concerns along the X- and Y-axes, and how those concerns are balanced to influence how each doctrinal rule is plotted in one or another quadrant.

The Axes of Analysis: From the Heavenly to the Humdrum

If dogs are impure and polluting, one might wonder why jurists would tolerate the existence of dogs at all. If canines carry impurities and endanger the wellbeing (spiritual and otherwise) of Muslims, why not simply order the execution of all dogs? This option is not entirely far-fetched, in large part because of a tradition in which the Prophet expressly commanded killing all dogs. After issuing the command, he then exempted from its application hunting dogs, herding dogs, and farming dogs.²⁹ Some versions of the tradition include other exemptions. Other versions contain no exceptions whatsoever. In yet different versions, after the Prophet commanded the killing of dogs, he subsequently dispatched people to kill the dogs in the area around Madina.³⁰ A review of these traditions and later doctrinal rules suggests that jurists read different normative sources (e.g. *ḥadīth*) together to create a general rule to kill canines, with exceptions for limited classes of dogs.

pollute a small amount of water? The answer to this may rest on other *ḥadīths* to be discussed later that involve animals drinking from large ponds.

²⁹ Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* iii-iv, 176. The last category of dogs, agricultural dogs, is not found in all versions of the tradition. There are other traditions, attributed to Abū Hurayra in which this particular dog is included among those that could be owned. Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* ix-x, 479.

³⁰ Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* ix-x, 478; Abū Bakr Ibn al-ʿArabī, *Aḥkām al-Qurʾān* ii, 545-546.

The Prophet's motive to kill all dogs has to do with a story about how angels cannot enter homes when dogs are present. We learn from the Prophet's wife 'Ā'isha that the angel Gabriel promised to visit the Prophet Muḥammad at a given hour. That hour came but Gabriel did not. The Prophet, disturbed by Gabriel's absence, paced the room of 'Ā'isha's house, holding a stick in one hand while slapping it into the other. At one point, the Prophet noticed to his surprise a puppy under the bed. He called out: "'Ā'isha, when did this dog enter here?" 'Ā'isha did not know, but immediately removed the dog from the premises upon the Prophet's request. Upon doing so, Gabriel arrived. The Prophet said to him: "You promised [to meet with] me so I waited. But you did not show up." Gabriel responded: "The dog that was in your house prevented me from entering. We [angels] do not enter a house which has a dog or picture in it."³¹ Upon learning this, the Prophet commanded all dogs to be killed.³²

The theological significance associated with angels is certainly great. The angel Gabriel is considered within Islamic tradition to be the conduit of God's revelation to the Prophet. Further, for angels to visit people in their homes might reasonably be considered a blessing. For a dog to block angels from entering one's home defines the dog as antithetical to these sacred and pure representatives of the divine. For many Muslim jurists, this episode explains why the

³¹ Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* xiii-xiv, 307-309. See also, Aḥmad b. Ḥanbal, *Musnad* vi, 163; Ibn Ḥajr al-ʿAsqalānī, *Fath al-Bārī* x, 380-381; al-Mubārak Fūrī, *Tuḥfat al-Aḥwadhī* viii, 72-73. Incidentally, al-Mubārak Fūrī wrote that the puppy in question belonged to the Prophet's grandsons, Ḥasan and Ḥusayn. In another version, after the dog is removed from the house, the Prophet sprinkles water over the area where the dog was found, which some considered as positive evidence of the dog's inherent impurity. But the Mālikīs thought the sprinkling was precautionary at most. As Ibn Ḥajr al-ʿAsqalānī wrote, "Regarding those who do not consider the dog's essence to be impure, its place is sprinkled with water out of caution, since sprinkling is the lawful method of purification where there is doubt." Ibn Ḥajr al-ʿAsqalānī, *Fath al-Bārī* x, 381. See also, Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* xiii-xiv, 308-310.

³² Abū Bakr Ibn al-ʿArabī, *Aḥkām al-Qurʾān* ii, 546; al-Shawkānī, *Nayl al-Awṭār* i-ii, 38.

Prophet commanded the execution of all dogs.³³ Therefore, if we consider how to plot this rule, we can reasonably assert that the rule has everything to do with being close to God by being close to God's representative. Consequently when the Prophet ordered all dogs killed, given the above context, the Prophet may have infused his directive with a high Y-value and possibly an X-value of zero.

With the command issued, various people went into the Medina countryside to fulfill the Prophet's order. The problem though, is that once the rule was put into effect, the Prophet learned of its negative social implications. Two men came to the Prophet with a question. Their conversation is related by the Qur'ānic exegete al-Qurṭubī (d. 1273):

Oh Messenger of God, our people hunt with dogs and falcons. The dogs obtain [for us] cows, donkeys, and gazelles. From the dogs, we are able to sacrifice them [(i.e. the prey) for consumption]. But you [ordered] the killing of dogs; hence we cannot consume such food. Further, God has made impermissible improperly slaughtered animals. So what is permitted for us?³⁴

In response to this question, wrote al-Qurṭubī,³⁵ the Prophet received the below Qur'ānic revelation:

They ask thee what is lawful to them (as food). Say: lawful unto you are (all) things good and pure: and what you have taught your trained animals [*al-jawāriḥ al-mukallibīn*] (to catch) in the manner directed by Allāh: eat what they catch for you, but pronounce the name of Allah over it: and fear Allah; for Allah is swift in taking account.³⁶

³³ Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* xiii-xiv, 310; Ibn Ḥajr al-ʿAsqalānī, *Fath al-Bārī* x, 380; al-Mubārak Fūrī, *Tuḥfat al-Aḥwadhī* viii, 72.

³⁴ Al-Qurṭubī, *al-Jāmiʿ* iii, 44.

³⁵ Al-Qurṭubī, *al-Jāmiʿ* iii, 44. See also, Abū Bakr Ibn al-ʿArabī, *Aḥkām al-Qurʾān* ii, 546; al-Jaṣṣāṣ, *Aḥkām al-Qurʾān* ii, 393; al-Ṭabarī, *Tafsīr al-Ṭabarī* iii, 21.

³⁶ *Qurʾān*, 5:4.

With this verse in hand, the Prophet permitted one to own dogs of prey, herding dogs, and farm dogs.³⁷ Although the Prophet may have considered the original directive to have a high Y-value and likely a zero X-value, he could not ignore the negative X-value, once he learned of new evidence. Once the consequences show themselves, the rule must be reconsidered in light of the negative implications on society. Taking the consequences into account, we find that while the original rule has a high Y-value, it has a negative X-value, given its implications, thus plotting it in Quadrant I. To shift it from Quadrant II to Quadrant I, where the rule can have a positive X and Y-value, the Prophet offered exceptions to the general directive to kill all dogs, given the Qur'anic verse. In doing so, he preserved the directive to kill dogs, with some exceptions, thereby controlling for the X-value while upholding his commitment to the positive Y-value in the original rule.

To shift the value from a negative to positive X-value, the Prophet construed an exception from the Qur'anic verse that reversed the social impact of the initial, general directive. That the social impact is significant in the revision of the ruling can be gleaned from how jurists understood the Qur'anic verse that redeems some animals as opposed to others by reference to the term *al-jawāriḥ al-mukallibīn*, which literally means trained predatory animal. The Ḥanafī jurist al-Jaṣṣāṣ (d. 980) concluded that 'trained predatory animal' refers to those animals that hunt on behalf of their owners. Such animals include, according to him, dogs, carnivorous animals, and

³⁷ Al-Qurṭubī, *al-Jāmi'* iii, 44.

birds of prey.³⁸ Al-Zamakhsharī understood this term to refer to animals that hunt or gather (*kawāsib*), including dogs, tigers, and falcons.³⁹

Consequently, while the dog constitutes a spiritual danger, it is also an important companion that ensures the wellbeing of people. While the spiritual danger of dogs may have led the Prophet to order the killing of all dogs, the fact that dogs can positively contribute to other features of human existence could not be denied, neither in fact nor in law. Instead, the example above illustrates how Islamic legal reasoning does not exist in a historical or social vacuum. Rather it is an ongoing process that reflects a multitude of calculations along different axes of analysis.

Purity and Resource Management: Waste and Wellbeing

An especially relevant issue that arises from the dog-water debate concerns the water left over in the container after the dog licks from it. Some jurists questioned whether the water licked by dogs can nonetheless be used for ritual purification purposes. A strict reading of Abū Hurayra’s *ḥadīth* suggests that any water in a container must be discarded. But does that mean any size container, no matter how big? And if so, then what about water in a puddle, pond, or lake, from which animals often drink? Ritual purity may be important to convene with God in prayer, but at what cost to the wellbeing of people’s everyday life? Or, to put it in terms of the axes of analysis, to emphasize the imperative of ritual purity (the Y-value) with disregard to the social

³⁸ Al-Jaṣṣāṣ, *Aḥkām al-Qur’ān* ii, 393. See also, al-Qurṭubī, *al-Jāmi’* v-vi, 45.

³⁹ Al-Zamakhsharī, *al-Kashshāf* i, 594. For Ibn Kathīr, it refers to trained dogs and falcons and any bird taught to hunt. It includes predatory dogs, cheetahs or panthers, falcons, and other animals like them. Ibn Kathīr, *Mukhtaṣar Tafṣīr Ibn Kathīr* i, 484.

consequences of waste (the X-value) would plot the legal outcome in quadrant II, with potentially devastating effects on social wellbeing. A dog may be considered impure; but that cannot end the inquiry given the consequences that may arise from this ruling. The dog may cause ritual impurity, but the spiritual importance of ritual (its positive Y-value) does not preclude delimiting the scope of the dog's impurity in other areas of human existence (along the X axis). Since the possibility exists that a rule requiring the waste of water for ritual purity purposes might be plotted in Quadrant II (i.e. positive Y-value, negative X-value), we see that jurists contended with how to find a better balance so that both X and Y-values can remain positive, thus keeping the rule plotted in Quadrant I.

To address this potentially wasteful situation, Muslim jurists had at their disposal traditions from both the Prophet and his companion 'Umar b. al-Khaṭṭāb, concerning large bodies of water from which animals drink. In a *ḥadīth*, the Prophet was asked about using water from a pond between Mecca and Madina, from which predatory animals would drink. The Prophet responded: "For them [i.e. the animals] is what they drink. What remains is for us to drink, and it is pure."⁴⁰ In the second tradition, 'Umar was with a riding party when they arrived at a pond. A member of the party asked the caretakers of the pond whether predatory animals drink from it. 'Umar interrupted: "Oh caretakers of the pond, do not tell us. We are welcomed by the animals and the animals are welcomed by us."⁴¹ Sunnī jurists relied on these traditions to shift the analysis from the impurity of animals to concerns about waste. They were no doubt aware that the issue of impurity arises in these cases, but the rules on impurity are not alone dispositive of

⁴⁰ Al-Sarakhsī, *al-Mabsūṭ* i-ii, 48-49; Saḥnūn, *al-Mudawwanā* i, 6; al-Māwardī, *al-Ḥāwī al-Kabīr* i, 304.

⁴¹ Mālik b. Anas, *al-Muwatṭā'* i, 23; al-Kāsānī, *Badā'ī al-Ṣanā'ī* i, 375.

the issue. Despite any impurity associated with the dog, jurists seemed to incorporate into their analysis concerns with resource management, waste, and social wellbeing.

To shift the frame of analysis to waste, jurists inquired about the amount of water in a container or the size of the container itself. For many Sunnī jurists, if the amount of water licked by a dog is large, the water is not impure, despite the licking.⁴² Mālik b. Anas said: "Ritual purification with the excess water of a dog does not please me, where the water is of a small amount...But it is not a problem if the water is of a large quantity."⁴³ Even jurists who generally considered the dog impure in its essence relied on quantity to limit the application of the dog-water tradition. For instance, al-Nawawī stated: "If a dog licks from a large quantity of water such that his licking does not reduce it to [less than] two *qullas*, then its [licking] does not render [the water] impure."⁴⁴ "Qulla" is meant to convey a particular quantity of measure. The exact quantity it denotes is not clear; however, some suggest that it refers to a large jar (*al-jarraḥ al-kabīra*) or small jug (*al-kuz al-ṣaghīr*).⁴⁵ If the water is greater than two *qullas*, it remains pure;⁴⁶

⁴² Al-Kāsānī, *Badāʾī al-Ṣanāʾī* i, 375. Notably, the Zāhirī jurist Ibn Ḥazm argues that any reliance upon the quantity of water at issue is an inappropriate extension of the rule. Responding to the Shāfiʿīs, he wrote: "Al-Shāfiʿī said 'If the water in the container is 500 *rutls*, do not dump it if a dog licked from it.'" Ibn Ḥazm, however, would dump out the contents out of worshipful obedience, regardless of the quantity of water at issue. Ibn Ḥazm, *al-Muḥallā* i, 123, 155.

⁴³ Saḥnūn, *al-Mudawwanā* i, 6. Likewise, the Ḥanbalī jurist Ibn Taymiyya, relied on quantity as a central feature of his analysis. Relying on customary practices (*ʿādāt*), Ibn Taymiyya, held that the container from which a dog licks is usually small. Consequently, the dog's saliva sticks to the water and the container. Hence one must dump the water and wash the container. But if the container is large, no impurity arises. Ibn Taymiyya, *Majmūʿ* xx, 521.

⁴⁴ Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* iii-iv, 177. See also, al-Haytamī, *Al-Fatāwā* i, 61, who addressed the situation where a dog drinks from a well containing a large amount of water. Although he did not rely on the two *qulla* threshold, he still invoked the quantity of water as a mediating factor in the overall purity of water licked by a dog.

⁴⁵ Ibn Manẓūr, *Lisān al-ʿArab* xi, 288.

⁴⁶ Notably, even if the amount of waters is two *qullas* or more, it can still become impure if one of its qualities is changed by the introduction of any external impurity. According to al-Qaffāl, although the amount of water may be greater than two *qullas*, if there is a change in one of the characteristics of the water (i.e. color, taste, smell), then it is impure. If there is no such change, then the water remains pure, even if an impure entity, such as a dog, makes contact with it. Al-Qaffāl, *Huliyat al-ʿUlamāʾ* i, 80. See also the Ḥanbalī Ibn Qayyim al-Jawziyya, *ʿĀlām al-Muwaqqiʿīn* i, 483.

but if it is less, the water is impure.⁴⁷ In such cases, the jurists balanced their concerns with both impurity and waste, and were keen to plot any resulting ruling in Quadrant I, where both X and Y-values are positive.⁴⁸

From Demon Dogs to Dangerous Women: Piety, Prayer, and the Polity

One of the more colorful dog-related traditions involves the situation where a dog, often a black dog, passes in front of a man praying. A tradition on this point reads as follows:

According to Abū Dharr [al-Ghaffārī], the Prophet said: “If one of you prays, he [should] lay before him a [barrier],⁴⁹ such as the back half of a saddle. If there is nothing, like the back half of a saddle, in front of him, then a donkey, woman, or black dog [that passes in front of him] voids [*qatʿ*] his prayer.”⁵⁰

The implications of this tradition on the dog, let alone women, are enormous.⁵¹ The fact that a dog can invalidate one's prayer emphasizes the eschatological danger of dogs, or in other

⁴⁷ Al-Qaffāl, *Huliyat al-'Ulamā'* i, 80. There are two prevailing views among the Shāfi'īs on what one must do with the water in this case. Some require the contents of the container to be dumped, and prohibit their use. Others hold that dumping the contents of the container is not obligatory (*wājib*) but rather preferred (*mustahabb*). Furthermore, the use of the water, in certain circumstances, may be permitted. Al-Māwardī, *al-Ḥāwī al-Kabīr* i, 305; al-Qaffāl, *Huliyat al-'Ulamā'* i, 314. Nevertheless, al-Māwardī and al-Qaffāl preferred dumping of the vessel's content. Al-Māwardī, *al-Ḥāwī al-Kabīr* i, 304; al-Qaffāl, *Huliyat al-'Ulamā'* i, 314.

⁴⁸ The Ismā'īlī Shī'a jurist, al-Qādī al-Nu'mān, discussed the case where an animal falls into a well and dies. "If something emanating from the animal changes one of the water's characteristics [i.e. color, taste, or smell], [the water] should be refrained from until the change is removed and the water becomes healthy and overcomes [the impurities]...At that moment, it is pure." Al-Qādī al-Nu'mān, *Da'ā'im al-Islām* i, 112-113.

⁴⁹ A *sutra* is generally an item which someone praying sets before him, “sticking it in the ground or laying it down if the ground be hard, in order that no living being or image may be the object next before him.” Lane, *Arabic-English Lexicon* i, 1304; See also, Ibn Manẓūr, *Lisān al-'Arab* vi, 169.

⁵⁰ Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* iii-iv, 450. In another version narrated by Abū Hurayra, the color of the dog is not specified. Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* iii-iv, 451; Aḥmad b. Ḥanbal, *Musnad* v, 194, 197, 202, 208; Ibn Ḥazm, *Muḥallā* ii, 320-326; Ibn Qayyim al-Jawziyya, *Ā'lām al-Muwaqqi'in* ii, 79-80; Abū Bakr Ibn al-'Arabī, *Āriḍa* i, 133. Ibn al-'Arabī remarks that al-Tirmidhī considered this tradition to be *ḥasan ṣaḥīḥ*, a designation that is perhaps unique to al-Tirmidhī. Abou El Fadl, *The Authoritative and the Authoritarian in Islamic Discourses* 47-48.

⁵¹ Ibn Ḥazm, *al-Muḥallā* ii, 322. See also Abū Bakr Ibn al-'Arabī, *Āriḍa* ii, 134. As one can imagine, the fact that women can negate a man's prayer in the same fashion as a dog or a donkey, raises serious concerns at the possible

words, the need to avoid dogs in order to maintain a connection to God (a positive Y-value).⁵²

Prayer is the moment when one is communicating with God. It is an intimate moment for the soul of the believer. For a dog to be able to interfere with that relationship certainly worried jurists about the dog's eschatological implications, or in other words, its affect on the vertical Y axis.

Yet jurists could not read this tradition solely in terms of its implication on Y-values. They had to devise a ruling from this tradition that did not, at the same time, adversely affect the X-value associated with any rules governing prayer. So for instance, if we take the tradition on its face as applying to black dogs, we might ask whether this tradition adversely impacts rules that allow limited ownership of dogs. Drawing upon the Prophet's exemption of certain dogs from the general command to execute all dogs, the Shāfi'ī jurist al-Nawawī recognized that, in some cases, people should be permitted to own dogs. Those cases are characterized in terms of the needs and necessities of an individual to ensure his wellbeing. Al-Nawawī wrote:

Our companions [i.e. Shāfi'ī jurists] and others agree that it is prohibited to own dogs for reasons other than need (*hāja*), such as owning a dog for the pleasure of its appearance, or out of pride. This is prohibited, without debate. As for the need (*hāja*) for which it is permissible to own a dog, the prophetic tradition includes an exception for any one of three dogs: farming, herding, and hunting. This is permitted without debate.⁵³

chauvenism implicit in this tradition. Interestingly, this possibility was not necessarily lost on the jurists themselves. This tradition raises gender concerns over the association between animals and women. Whether Islamic theology supports such an assertion, or whether this tradition is the result of chauvenist tendencies among the narrators requires a separate study. See Abou El Fadl, *The Authoritative and the Authoritarian* 71, n. 60, who suggests that discourses on women prostrating to their husbands are "largely chauvinistic, and possibly immoral." For an important recent study on gender, ethics and Islam, see Ali, *Sexual Ethics*.

⁵² Notably, there are some versions that do not specify black dogs, and rather consider all dogs equally capable of voiding one's prayer. See for example, Ibn Ḥazm, *Muḥallā* ii, 321; Aḥmad b. Ḥanbal, *Musnad* vi, 99.

⁵³ Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* iii-iv, 177.

The reference to *ḥājja* is a crucial indication that what is at stake in the prophetic exception to canine execution is an acknowledgement that dogs play an important role in certain circumstances. Need does not include the joy of a dog's companionship; rather need captures the functional role of a dog in ensuring the success of certain industries in society—industries upon which all of society potentially depends.⁵⁴

But when read alongside the black dog tradition, jurists addressed whether the dogs that can be owned for agricultural purposes must be any color other than black. On the one hand, the black dog is deemed to be an eschatological threat. For example, in most accounts of the black dog tradition, an additional section is added which explains the specification of the color. Abu Dharr al-Ghaffari is asked: “Oh Abu Dharr, what is the [difference] between black dogs, red dogs, and yellow dogs?” Abu Dharr responded: “I asked [that of] the messenger of God, just as you are asking me. He said: ‘The black dog is a devil (*shaytan*).’”⁵⁵ The black dog that voids prayer is no simple dog. It is an evil spirit, a demon dog of hell.

Incidentally, the association of the dog with the devil is not unique to the medieval Islamic world. European folklore abounds with numerous references to demons and devils in dog form. Quite often, such demon dogs take the form of a black dog. For example, in Cambridge, Essex, Suffolk, and Norfolk the black dog ghost is “frequently one-eyed, haunts coasts, fens, roads, and churchyards, and is always ominous...In the Isle of Man, there is a vague ghost, sometimes in the form of a black dog, that haunts roads; and in Guernsey, black dogs

⁵⁴ Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* iii-iv, 176-77; ix-x, 479-480.

⁵⁵ Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* iii-iv, 450; Aḥmad b. Ḥanbal, *Musnad* v, 194, 197. See also, Abū Bakr Ibn al-‘Arabī, *‘Arīḍa* ii, 133 for reference to the black dog.

attack wayfarers during the Twelve Days of Christmas.”⁵⁶ It is perhaps not entirely surprising that the black dog would be considered a devil given certain natural circumstances. In her study of the devil in dog form in European folklore, Barbara Allen Woods provides a possible explanation for why black dogs in particular might be associated with evil. She writes:

There is nothing extraordinary or mythical about such an incident. On the contrary it is entirely natural that a dog should be out trotting the deserted streets and paths. It is not even beyond credulity that such an animal would appear black in the darkness, or that its eyes, if they were caught in a faint ray of light, would appear large and fiery...Yet, any or all of these normal characteristics can seem positively uncanny, especially when observed under eerie circumstances or in an anxious state of mind.⁵⁷

Returning to the Islamic legal traditions and their implications on legal reasoning,, for the black dog to be associated with the devil only reemphasizes its negative value. More than simply being a source of filth and impurity, it is arguably a locus of evil. On the other hand, none of this denies that dogs can serve useful social purposes. How must the jurist plot the ruling? To plot the rule in Quadrant I, what sort of factors might the jurist take into account?

There was, as one might expect, considerable disagreement, especially because limiting ownership of dogs to those that are not black may or may not put a severe burden on the interests of farmers and agricultural laborers. As such, it is perhaps not surprising that al-Nawawī tells us that jurists differed on this issue. For instance, some jurists prohibited owning black hunting dogs. Rather such dogs must be killed since they are devils.⁵⁸ But he also related that al-Shāfi‘ī

⁵⁶ Brown, *The Black Dog* 176. Ethel Rudkin, writing in 1938, begins her article on the black dog by noting that the “Black Dog walks in Lincolnshire still; and there are a number of living people who have seen him, heard him, and even felt him.” Rudkin, *The Black Dog* 111. When the black dog appears, it may have two heads or none at all. Its eyes may be as big as saucers. Brown, *The Black Dog* 180-81. Rudkin’s research also indicates that in the British town of Northrope, “there is a Black Dog that haunts the churchyard, known as Barguest.” Rudkin, *The Black Dog* 117. Sometimes the black dog is not necessarily evil. Nevertheless, its common association with evil is undeniable, especially in the regions of Scandinavia and Germany. Brown, *The Black Dog* 188.

⁵⁷ Woods, *The Devil in Dog Form* 33.

⁵⁸ Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* ix-x, 480; xiii, 76.

(d. 820), Mālik b. Anas (d. 795), and the majority of scholars permit one to own black hunting dogs. Al-Nawawī then noted: "The intent of the tradition [about dogs as devils] is not to displace [black dogs] from the dog species entirely."⁵⁹ While the tradition on black dogs might appear inflexible and unforgiving, the juristic debate on canine exceptions suggests that the black dog tradition had more bark than bite. Despite the negative attitude against black dogs, jurists could not ignore the fact that dogs, black or otherwise, cannot be classified in absolute terms, whether as a pure eschatological threat or as a pure social benefit. In plotting rules of law in light of these types of concerns though, we can observe the reliance on competing axes of analysis.

Indeed, those axes pose significant challenges when considering the indirect implications of the dog-prayer tradition on the status of women. By juxtaposing women with the black dog, this tradition suggests that the dangers of the black dog's impurity and evil apply to women as well. In fact, some Muslim jurists, relying on this tradition, deemed a man's prayer void if a donkey, black dog, or woman passes in front of him while he prays.⁶⁰ Others, however, read out the donkey and women from the tradition, and instead held that only the dog negates one's prayer. If a woman or donkey passes in front of a man praying, his prayer is not void, although his concentration in prayer may be interrupted, they argued.⁶¹ This reading delinks women from dogs, but maintains the link between women and donkeys. Although the animal comparators shift, women remain equated to beasts of burden.

⁵⁹ Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* ix-x, 480; xiii, 76.

⁶⁰ Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* iii-iv, 450; Abū Bakr Ibn al-ʿArabī, *ʿĀriḍa* ii, 133-134, noted that the Companions Abū Dharr al-Ghifārī, Ibn ʿUmar, Anas, and al-Ḥasan were of this opinion; Ibn Ḥazm, *Muḥallā* ii, 320, adopted the general reading of the tradition, however he made an exception for women who are lying down as if asleep, on the basis of narrations from the Prophet's wife, ʿĀ'isha. These traditions will be discussed below.

⁶¹ Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* iii-iv, 450; Abū Bakr Ibn al-ʿArabī, *ʿĀriḍa* ii, 133.

The implications of this tradition were certainly not lost on the jurists. For instance, Ibn Ḥazm reported that ‘Ā’isha complained about the implications of this *ḥadīth*. She said: "You [men] put us [women] in the position of dogs and donkeys. Only the following negate prayer: dogs, donkeys, and cats."⁶² Some jurists even read “women” out of the tradition entirely. This exclusion is based on traditions from the Prophet’s wife, ‘Ā’isha. She is reported to have been lying down in front of the Prophet while he was praying. If the tradition equating dogs and women were historically accurate, then the Prophet’s prayer would be invalidated because of his wife’s position in front of him as he prays. But the Prophet continued to pray undisturbed. Only later when she decided to sit upright did the Prophet shift his position, thus suggesting that his prayer was disturbed. This particular set of events prompted the Andalusian jurist, Ibn Ḥazm (d. 1064), to suggest that when ‘Ā’isha was lying in front of the Prophet, he suffered no injury to his prayer. But when ‘Ā’isha sat upright, the Prophet did suffer some injury to his prayer. Ibn Ḥazm held that as long as ‘Ā’isha was lying down in front of the Prophet, no damage was done. But once she sat upright, then the Prophet restarted his prayer.⁶³ The rationale for Ibn Ḥazm’s distinction is less important here than the fact that it has nothing to do with ‘Ā’isha *as a woman*.

Another reading goes so far as redeeming the dog in order to undermine the social implications of the dog-prayer tradition entirely. That reading holds that nothing negates one’s prayer. Instead, the black dog tradition has more to do with loss of concentration. This argument hinges on the way in which the particular Arabic term *qatʿ* is interpreted. The word *qatʿ* means to cut or sever, and could connote that the prayer in this tradition is void. But many jurists argued

⁶² Ibn Ḥazm, *Muḥallā* ii, 324. Another view of this tradition narrows its meaning to apply only to menstruating women. Abū Bakr Ibn al-‘Arabī challenged this position as being based on weak evidence. Abū Bakr Ibn al-‘Arabī, *‘Ariḍa* ii, 134; Ibn Ḥazm, *Muḥallā* ii, 324.

⁶³ Ibn Ḥazm, *al-Muḥallā* ii, 322.

that what is “cut” is not the prayer itself, but rather the concentration of the person praying.⁶⁴ At most, the tradition emphasizes the need to concentrate on prayer and take pains to avoid distractions in prayer when possible. Instead of rendering the animal or woman a roving eschatological danger that can invalidate one’s prayer, the majority of jurists put the onus on the person praying to pray in an environment where he can concentrate. In doing so, they remained committed to understanding the tradition in terms of its eschatological significance (its Y-value), without creating negative social implications (its X-value). To do so, they turned the hadith into a caution to those who pray, and put the onus on believers as they convene with their Lord. In this sense, they plotted the resulting rule using a positive Y axis while delimiting its social impact almost entirely (i.e. a zero X-value).

The multiple interpretations about the black dog tradition illustrate that, despite source-texts providing an apparently clear statement of a rule, the effect of any such rule must be mediated in light of everyday life. By invalidating prayers, dogs are in bad standing with those who are concerned with their eschatological well-being. For such otherworldly-minded people, the danger the dog poses may constitute sufficient justification for a hostile stand against the dog in worldly and mundane affairs. The relationship between the eschatological and the sociological seems evident from the debate among jurists about whether black dogs can be owned, or whether they should constitute a special category of dogs that makes them vulnerable to the prophetic command to kill all dogs. The social implications of the eschatological concern are also evident

⁶⁴ Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* iii-iv, 450; Abū Bakr Ibn al-‘Arabī, *‘Ariḍa* ii, 134. According to al-Nawawī, some held the tradition to be abrogated by another that states: “Nothing negates one’s prayer. Block whatever you can [from crossing].” Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* iii-iv, 450. Ibn al-‘Arabi held that prayers are not voided, given another tradition in which Ibn ‘Abbās narrated as follows: “I was sitting behind [someone] on a donkey when we came upon the Prophet as he and his companions were praying at Mina. We descended from the donkey and entered the prayer line. The donkey passed in front of them, but their prayer was not negated.” According to Ibn al-‘Arabi this tradition has two possible explanations: first, nothing negates prayer; second, the prayer leader’s *sutra* is a *sutra* for the entire congregation. Abū Bakr Ibn al-‘Arabī, *‘Ariḍa* ii, 132-33.

in the way jurists considered the juxtaposition of dogs and women. Not only might the black dog be vulnerable to social ostracization, women might also be ostracized out of concern for their eschatological threat. To avoid such adverse social implications for both dogs and women, the majority position returns to the context of eschatology by reading the black-dog tradition as a comment on the responsibility of those who pray. In doing so, the locus of danger shifts from the dog and woman to the individual in prayer who is not fully focused on what he or she is doing. Between the minority and majority positions we find a focus on eschatology, a topic that may fit uneasily with modern conceptions of legal ordering. But as suggested in this study, the eschatological component in these traditions animates broad-ranging concerns about what the polluting dog might mean to Muslims working in the fields, drinking from a pond, or praying in a crowded area.

Conclusion

The dog-water tradition is one among many dog-related traditions, which contributes to a process of legal reasoning that cannot rely on a neat divide between the “legal” and the “moral”, without at the same time controlling for the institutional assumptions that give the law/morality dichotomy salience and significance. This essay relies on a quadrant model that posits two axes of analysis, the Here and the Hereafter, as elemental to Muslim jurists’ reasoning about the law. These two axes invoke ideas that may echo sentiments associated with the law/morality distinction; but the two axes also control for the unstated assumptions that may give the law/morality conceptual dichotomy its significance and poignancy. Muslim jurists recognized that the pollution of dogs in matters of ritual does not only implicate eschatological concerns.

The pollution of dogs for ritual purposes could also have serious implications on mundane matters that have little or nothing to do with ritual practice at all, and thereby limited eschatological significance. The dog may have been viewed as a source of impurity that might prevent one from communing with God in prayer; but that view did not end the inquiry. For many jurists, that view constituted the beginning of an analytic process that contended with the complexity of human needs and lived experience. That process could neither ignore the interests associated with what might be considered in contemporary parlance ‘moral,’ – if not ‘religious’ and thereby private –nor those interests that might be considered ‘legal.’ However, to rely upon the dichotomy between the ‘legal’ and the ‘moral’ imposes a modern bifurcation that does not adequately explain what Muslim jurists were doing when working with competing source-texts, whether Qur’ānic verses or *ḥadīth* texts. Adopting the quadrants model of analysis allows us to appreciate that the legitimacy and authority of any doctrinal rule will depend on how it is plotted in light of two axes of analysis, one which is concerned with the individual’s relationship with God and the other that is concerned with individual experience and social wellbeing. In other words, the jurists plotted doctrinal rules in terms of interests that pertain to both the here and the hereafter. To plot a doctrinal rule in terms of both the Here and in the Hereafter, is not meant to distinguish the Islamic model of analysis from other modes of legal interpretation. Indeed, the rationales for the various rules noted above are highly rational and reasonable; but their rationality comes through when we appreciate and understand the frame of reference or background factor that makes juristic reasoning intelligible. The dichotomy between law and morality is certainly an important dichotomy as it pertains to contemporary legal theory in the modern state. But it does not fully capture the framework that animated Muslim jurists in the past, whose presumptions about political society, and its relationship to the law, were different

from our own today. The quadrants model shows how Muslim jurists reasoned to doctrinal outcomes in light of concerns that are not easily captured by contemporary philosophies of law, although that does not mean such concerns are unintelligible or irrational. Each doctrinal rule arises from a complex process of legal reasoning amidst axes of analysis that reflect fundamental concerns that lie at the heart of the Islamic legal worldview.

* * *

But why offer the quadrants model at all? In a world coming to terms with the growing significance of religion in the public sphere,⁶⁵ we cannot ignore the imperative to grapple with the difficult challenge of living together amidst our difference. All too often, that challenge is met with political rhetoric and polemic, leading to public policies that not only perpetuate stereotypes, but also marginalize, if not demonize, those whose are deemed different. This tendency was certainly evident in the 2005 debate in Ontario, Canada concerning Sharia-based family law arbitration,⁶⁶ and took center stage again in 2010 when the Swiss constitution was amended by a popular referendum to ban the erection of minarets for mosques in the country.⁶⁷

⁶⁵ The increased relevance of religion (and in particular Islam) to debates about liberal governance and the public sphere in North America and Europe is evident in increasing scholarly attention to the issue of religion and the public sphere. For important scholarship on the issue, see José Casanova, *Public Religions in the Modern World* (Chicago: Chicago University Press, 1994); idem, *Public Religions Revisited*, in Hent de Vries (ed.), *Religion: Beyond a Concept*, New York, 2008, 101-119. Increasingly universities in North America and Europe are initiating centres devoted to the study of religion in the public sphere. See for instance, the University of Toronto's *Religion in the Public Sphere* (<http://www.chass.utoronto.ca/rps/>); The Baldy Center for Law and Social Policy, at SUNY Buffalo sponsors working groups on Law and Religion and Law, Religion and Culture (<http://www.law.buffalo.edu/BALDYCENTER/research.htm>); The University of Exeter in the UK is the home of the European Muslim Research Centre (<http://centres.exeter.ac.uk/emrc/>). In terms of policy development, Quebec's Reasonable Accommodation Commission, led by Charles Taylor and Gérard Bouchard, illustrates that even governments are not immune from contending with the place of religion in the public sphere (for official website, see <http://www.accommodements.qc.ca/index-en.html>)

⁶⁶ For a commentary on the tenor and tone of the debate, and its marginalizing implications, see Bakht, *Muslim Barbarians*, 67-82.

⁶⁷ Caldwell, *No Minarets, Please* 9; Nurrohman, *A lesson to draw* 7.

Yet, this polemic is confirmed by stories reporting about Muslims who adhere to an uncompromising, inflexible, and at times an oppressive version of Sharī'a. Such stories include, for instance, Muslim taxi drivers who refuse to drive blind passengers accompanied by seeing-eye dogs, on the basis that dogs are impure according to Islamic law.⁶⁸ Such cases are often described in liberal constitutional terms as examples of rights in conflict: the rights of the disabled versus the rights of the religious adherent.

Resolving such conflicts is no easy matter. But that difficulty is not unique to a liberal constitutional system of law and order; nor will it always find an amenable resolution in liberal, constitutional terms of analysis and reference. For instance, such stories may situate the conflict in terms of a distinction and division between the public and the private, the secular and religious, the church and the state, and the law and morality.

The quadrants model developed above contributes additional analytic terms to characterize such conflicts. Those terms, described above as axes of analysis, take into account the dynamics of Islamic legal reasoning, without at the same time precluding the possibility of dialogue between the animating principles of different legal systems. Furthermore, one important consequence of the quadrants model is that it counters the tendency to place Islamic doctrinal rules in contemporary categories such as 'the religious' or even the 'cultural'. Too often such terms are code for the 'irrational', thereby placing debates about Islamic law and its significance for Muslims outside the realm of conscientious reasoned deliberation about law, order and good governance.⁶⁹ The quadrants model, therefore, offers a way of unpacking the significance of a given legal rule by emphasizing the competing interests at stake. It shifts the focus from debating

⁶⁸ Brothers, Cabbie refused ride to guide dog B2; Saleh, Dirty dogs i, 27.

⁶⁹ Brown, *Regulating Aversion* 152-154.

about the authoritative hold of a given rule, to appreciating and accounting for the rational inputs that made the rule intelligible in a given period or era.

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