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Justice and Rights

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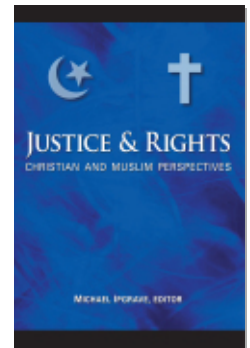
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where, let it be overcome, as is proper, with God's word. But if you can continue to brandish the sword, take heed lest someone come and compel you to sheathe it—and not in God's name!

But you might say: "Since there is to be no temporal sword among Christians, how then are they to be ruled outwardly? There certainly must be authority even among Christians." Answer: Among Christians there shall and can be no authority; rather all are alike subject to one another, as Paul says in Romans 12: "Each shall consider the other his superior" [Rom. 12:10]; and Peter says in 1 Peter 5: "All of you be subject to one another" [1 Pet. 5:5]. This is also what Christ means in Luke 14: "When you are invited to a wedding, go and sit in the lowest place" [Luke 14:10]. Among Christians there is no superior but Christ himself, and him alone. What kind of authority can there be where all are equal and have the same right, power, possession, and honor, and where no one desires to be the other's superior, but each the other's subordinate? Where there are such people, one could not establish authority even if he wanted to, since in the nature of things it is impossible to have superiors where no one is able or willing to be a superior. Where there are no such people, however, there are no real Christians either.

What, then, are the priests and bishops? Answer: Their government is not a matter of authority or power, but a service and an office, for they are neither higher nor better than other Christians. Therefore, they should impose no law or decree on others without their will and consent. Their ruling is rather nothing more than the inculcating of God's word, by which they guide Christians and overcome heresy. As we have said, Christians can be ruled in faith, not with outward works. Faith, however, can come through no word of man, but only through the word of God, as Paul says in Romans 10, "Faith comes through hearing, and hearing through the word of God" [Rom. 10:17]. Those who do not believe are not Christians; they do not belong to Christ's kingdom, but to the worldly kingdom where they are constrained and governed by the sword and by outward rule. Christians do every good thing of their own accord and without constraint, and find God's word alone sufficient for them. Of this I have written frequently and at length elsewhere.

Notes to Part II

1. For a discussion of these texts and the events they describe, see Omid Safi, *The Politics of Knowledge in Premodern Islam: Negotiating Ideology and Religious Inquiry* (Chapel Hill: University of North Carolina Press, 2006), xlv, 1–2.
2. *Ibid.*, 4.
3. *Ibid.*, 6.

4. Ibid., 19.
5. Ibid., 102.
6. Ibid., 53–54.
7. Cf. the extract and discussion that follows.
8. John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, MA: Belknap Press of Harvard University Press, 1999), 117.
9. See, e.g., Alasdair MacIntyre, *Whose Justice, Which Rationality* (Notre Dame, IN: University of Notre Dame Press, 1988), esp. the chapter titled “Aristotle on Justice,” 103–23. For Aristotle, justice was based on ratios, not on equivalences. These ratios govern the principle of fairness in distributive justice and retributive justice (or “justice as rectification”). See Aristotle, *Nicomachean Ethics*, trans. Martin Oswald (1962; repr., Indianapolis: Bobbs-Merrill, 1981), bk. 5, 111–30.
10. See Vincent J. Cornell, “Practical Sufism: An Akbarian Foundation for a Liberal Theology of Difference,” *Journal of the Muhyiddin ibn ‘Arabi Society* 36 (2004): 59–84.
11. Cited in Jeremy Waldron, introduction to *Theories of Rights*, ed. Jeremy Waldron (Oxford: Oxford University Press, 1984), 4.
12. Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, originally published in the *Yale Law Journal*, 1913 and 1917; new ed. by Walter Wheeler Cook (New Haven, CT: Yale University, 1964).
13. Bernard Lewis, *The Jews of Islam* (Princeton, NJ: Princeton University Press, 1984), 14–15.
14. Cf. the following further for text and discussion of ibn Lubb’s debate with a *dhimmī*.
15. Victor E. Makari, *Ibn Taymiyyah’s Ethics: The Social Factor* (Chico, CA: Scholars Press, 1983), 127–31.
16. Ibid., 128.
17. Ibid., 130.
18. Ibid., 218n63; this ḥadīth is translated inaccurately on 129–30, where *mu’abid* (covenanter) is replaced by *dhimmī*.
19. Ibid., 128.
20. Ibid., 129.
21. Al-Ghazālī’s *Fayṣal al-Tafriqa* is chosen for discussion later for just such a reason.
22. See Sayyid Qutb, *Social Justice in Islam*, trans. John B. Hardie and rev. Hamid Algar (Oneonta, NY: Islamic Publications International, 2000), 53–67.
23. *Discours pour la majorité de Charles IX et trois autres discours*, ed. Robert Desimon (Paris: Imprimerie Nationale, 1993), 71–89. Michel de l’Hôpital was

in fact an influential leader of the party of the *politiques*, who sought a pragmatic solution to the conflicts of the time by recognizing that, despite the value of religious uniformity, attempts to impose it by force could be disastrous. In an address in 1562, he insisted that the fundamental issue “is not about the maintenance of religion (*consituenda religione*) but about the maintaining of the commonwealth (*constituenda respublica*)”—the enforcement of unity “may be good in itself,” but “experience has shown it to be impossible.” Ibid.

24. De l'Hôpital describes the adage as *un vieux proverbe français*. However, it cannot be traced back earlier than the sixteenth century.
25. Joseph Lecler, *Toleration and the Reformation* (New York: Longmans, 1960), 2:42.
26. The title *Rex Christianissimus*, not originally restricted to the kings of France, was assigned by Paul II to Louis XI and his successors in perpetuity in 1469.
27. Following a massacre ordered by the emperor at Thessalonica, Ambrose in 390 forbade him to enter the Cathedral of Milan; the rebuke is set out in *Ep. LI* (Migne, PL16, 1159C–1164B).
28. *Auctoritas sacrata pontificum et regalis potestas*, Denzinger-Schönmetzer, 347.
29. E.g., *Codex iuris canonici*, 130, states: *Potestas regiminis de se exercetur pro foro externo, quandoque tamen pro solo foro interno*.
30. “Il y a en Angleterre soixante sects différentes, et une seule sauce”; the aphorism is also attributed to the Marquis Francesco Caraccioli, Neapolitan ambassador in London.
31. Extracts from the translation of Letter XCIII by J. G. Cunningham, from *Library of the Nicene and Post-Nicene Fathers of the Christian Church, Series I*, vol. 1, *The Confessions and Letters of St Augustine, with a Sketch of His Life and Work*, ed. Philip Schaff (Edinburgh: T. & T. Clark, 1886). For each of the following extracts, references are provided for the Latin texts in J. P. Migne's *Patrologia Latina*, vol. 33.
32. The schismatics particularly objected to Caecilian, bishop of Carthage 311–45, on the grounds that he had been consecrated by the *traditor* Felix of Aptunga.
33. The schism was named for Donatus, consecrated by Numidian bishops as a rival bishop to Caecilian in the see of Carthage.
34. Letter XCIII is addressed to Vincentius, Bishop of Cartennae, a member of a moderate subset of the Donatists called the Rogatists, and former friend of Augustine, who addresses him as “dearly beloved brother” (*dilectissimus frater*).
35. *Enarrationes in Psalmos* 95.11, drawing the contrast between the extremely limited world of Donatism and the genuinely universal horizon of Catholi-

- cism: “The clouds of heaven thunder out throughout the world that God’s house is being built; and the frogs cry from the marsh (*clamant ranae de palude*), ‘We alone are Christians (*Nos soli sumus Christiani*).”
36. *De civitate Dei* 5.26. The praise of Theodosius is the more striking in that it immediately follows a rather factual, even tepid, account of the archetypal Christian hero Constantine.
 37. Migne, *Patrologia Latina*, 33, 325–26.
 38. *Ibid.*, 33, 329–30.
 39. *Ibid.*, 33, 345–46.
 40. The manuscript is from Biblioteca de El Escorial, Spain, no. 1810, 147–55v; text and some notes provided by Professor Hayat Kara of Université Mohammed V, Rabat, Morocco. This translation is by Professor Vincent Cornell.
 41. As a close associate of the *Qāḍī al-Jamā’a*, who had control over religious appointments, property, and teaching in Granada, ibn Lubb would have been the second most important religious figure in a centralized kingdom with tight church–state links.
 42. This is particularly the import of his quotation from al-Anbiyā’ 21:22 in the following text.
 43. The *dhimmī* in this case is a Jew—there were hardly any Christians in Granada at this time, as they had been ordered to leave by church authorities.
 44. This is a play on words. The Arabic verb *dhamma*, the root of *dhimmī*, means “to blame.” Thus the phrase *dhimmīyu dinikum*, which is used in the poem, can mean both “a non-Muslim whom your religion protects” and “one whom your religion blames.”
 45. The Arabic term *shaqwatī* literally means “my unhappiness.” In the present context, “my damnation” is more appropriate.
 46. Ibn Lubb’s first response is in verse; a more extensive prose version follows.
 47. “Community” here translates from *milla*. The text reflects a situation in which Muslims and Jews are assumed to be in separate communities, with little interaction.
 48. “General” here means “nonspecific” rather than “universal.”
 49. This seems to be a reference to al-Mā’ida 5.48: “We have assigned a law and a path to each of you.” Ibn Lubb turns this Qur’anic verse against the *dhimmī* in a way that shows he is far from understanding it as pluralist in meaning.
 50. Ibn Lubb adds a further section to his response after seeing a counter statement from another Islamic scholar, whose identity is not now known.
 51. *Sunan Abu Dawūd* 4/232 number 4694.

52. The Prophet's pagan uncle.
53. The translation is taken from Sherman A. Jackson, *On the Boundaries of Theological Tolerance in Islam: Abu Humid al Ghazālī's Fayal al Tafriqa* (Oxford: Oxford University Press, 2002), 104–10.
54. *Burhān* has the restricted technical sense of a syllogism but more generally indicates any inductive proof that is convincing and conclusive: “argumentation probante, démonstration, quelle que soit sa forme.” Farid Jabre, *Essai sur la Lexique de Ghazali* (Beirut: Université Libanaise, 1970), 24–27.
55. The reference is to interpretive disputes over the *Istawā* verse, “[God] ascended (*istawā*) his throne” (al-A'rāf 7:54), which raised for theologians the question of anthropomorphism.
56. “The Just Balance,” al-Ghazālī's polemical work against the Ismā'īlīs.
57. *Tajrībī* indicates experience as a basis for knowledge, as distinct from reason and analogy. Jabre, *Essai sur la Lexique de Ghazali*, 49–50.
58. *Tawātūrī* reports are those with more than one chain leading back to a source; the term is used particularly in the classification of aḥādīth, but al-Ghazālī's sense here is wider. Jabre, *Essai sur la Lexique de Ghazali*, 269.
59. “The Touchstone of Reasoning,” one of al-Ghazālī's works on logic.
60. *Zann* refers to an inductive logic that may be largely correct but is not conclusive; here al-Ghazālī contrasts it polemically as “speculation,” with the assurance of *burhān*.
61. The Ismā'īlīs, so called because of their emphasis on esoteric (*bāṭin*) exegesis.
62. The English translation of the treatise is provided by Gary Mann on the “Luther Project” website, www.uoregon.edu/~ssohemak/323/texts/luther-1.htm (accessed April 4, 2009).
63. The two pairs are sometimes conflated in shorthand accounts of the “two kingdoms” theory, but the *Zwei Reiche* should be distinguished from the *Zwei Regimente*.
64. In this dialectical approach, Luther distinguished himself from other Reformation theologians such as Melanchthon, who argued instead for the principle of *cura religionis*, that the civil magistrate had a responsibility, as custodian of both “tables of the Law,” to regulate the right order of true religion. It has been suggested, though, that in later life Luther came closer to Melanchthon's position. Cf. James Estes, “The Role of Godly Magistrates in the Church: Melanchthon as Luther's Interpreter and Collaborator,” *Church History* 67, no. 3 (1998): 463–84.
65. The reference seems to be to Acts 1:24.
66. This is a recognized proposition of the canonists (cf. Gratian) applied to specific pastoral situations. It is adopted, for example, in the Council of

Trent's canons on marriage (Denzinger no. 1814), where the issue is that of the interior motivation of the couple. Luther here extends its juridical scope dramatically.

67. Cf. *In Joann.* 25 (PL 35, 1607). However, as St. Thomas Aquinas points out (*ST* 2a 2ae 10, 8 *ad* 3), Augustine did defend the use of force to compel right belief in some cases, such as those involving heretics or schismatics who had once held the Catholic faith (e.g., Donatists).
68. The scholastic category of *peccata aliena* included various kinds of personal involvement in another party's sin: by, e.g., counseling, approving, or even failing to criticize.
69. Job 41:27, 33. The biblical reference is in fact to Leviathan.
70. Psalm 107:40: "He pours contempt upon princes."