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Special Issue: Natural Law? Conceptions
and Implications of Natural Law Elements of
Religious Legal Discourse

Prof. Dr. Ronen Reichman

Dr. Britta Müller-Schauenburg (Guest Editors)

Naturrecht – Islamische Perspektive

Natural Law – Islamic Perspectives

Rüdiger Lohlker*

Translated by Jacob Watson

Eine kleine Vorbemerkung sei erlaubt: Da die folgenden Überlegungen nicht aus der Perspektive islamischen religiösen Denkens formuliert werden, vielmehr aus einer religionswissenschaftlichen, die islamisches Denken als einen gleichwertig zu betrachtenden Teil der Geschichte menschlichen Denkens versteht, können diese Überlegungen lediglich den Status eines Denkexperiments haben und keinerlei normativen Anspruch haben. Die Versuchsanordnung lässt sich so beschreiben: Ist es möglich, aus islamischen Kontexten heraus naturrechtlich zu denken? Eine weitere Frage, die zu stellen ist: Kann sich die Rede über islamisches Recht nur auf das Recht der *Gelehrten* beziehen, oder gibt es andere normative Systeme, die Gültigkeit beanspruchen können (s.u.)?¹

I. SPINOZA UND NATURRECHT

Vielleicht etwas irritierend, aber trotzdem möchte ich meine Überlegungen mit einem jüdischen Philosophen beginnen. Spinoza beklagt im *Theologisch-politischen Traktat* (TPT) die Knechtschaft; wir könnten auch allgemeiner sagen: den Machtwunsch und den Wunsch zu gehorchen. Entgegen damals üblichen Denkfiguren (Cicero, Thomas von Aquin) – ich folge hier Deleuze' Lesart von Spinoza² –, die Naturrecht als Übereinstimmung mit allgemeinen Wesenheiten definieren, ist Spinozas Verständnis ein anderes.³ Er knüpft dabei, wie bekannt, an Hobbes an und geht mit ihm einen Weg, der sich in vier Lehrsätzen beschreiben lässt:

- Es heißt, dass „ein jedes natürlich Ding von Natur aus soviel Recht hat, wie es Macht hat zu existieren und tätig zu sein.“ (TPT II, §3, S.15)
- Der Naturzustand geht der Gesellschaft voraus. Sie ist nicht als gute Ordnung vorgegeben, vielmehr eine Anstrengung, ein Konstrukt, eine Möglichkeit, das menschliche Vermögen zu steigern. Hier sehen wir wesentlich die Prinzipien des anderen Naturrechts unterlaufen:

* Prof. Mag. Dr., Institut für Orientalistik an der Philologisch-Kulturwissenschaftliche Fakultät, Universität Wien.

1 In *Shahab Ahmad*, What is Islam? The Importance of Being Islamic (2016) wird argumentiert, dass es weit wichtigere Normkomplexe als das islamische Recht in islamischen Gesellschaften gegeben habe. Auf diesen Gedanken wird noch zurückzukommen sein.

2 *Christoph Dittrich*, Weder Herr noch Knecht: Deleuzes Spinoza-Lektüren (2012), 221ff.

3 Dass es in seiner Andersheit konventionelleren Gemütern schwer verständlich ist, mag dieses Zitat verdeutlichen: „Schließlich dürfte aus dem obenstehenden ersichtlich geworden sein, daß Spinozas Naturrechtauffassung doch eine recht fremde, eigenartige ist. Bei Spinoza fungiert das Naturrecht als Legitimation für den Rechtspositivismus und verwandelt zu einer Art ‚Mechanik der Macht.‘“ (*Wilhelmus A. M. Luijpen*, Phänomenologie des Naturrechts (1973), 71) Offenkundig ist das Konzept des Vermögens jenseits des Verstehenshorizontes verborgen geblieben.

A short preliminary remark is in order before we begin: the following reflections have not been elaborated from the perspective of Islamic religious thought but rather from the vantage point of religious studies, which regards Islamic thought as an equally important part of the history of human thought. As such, these reflections have only the status of a thought experiment and have absolutely no normative claim. The thrust of the experiment can be described as follows: Is it possible to pursue natural law thought in Islamic contexts? A further question which must be asked is whether the discussion of Islamic law concerns only the law of the *scholars* or whether there are other normative systems that can claim validity (see below)?¹

I. SPINOZA AND NATURAL LAW

Though some may find the approach perplexing, I would still like to begin my reflections with a Jewish philosopher. Spinoza, in his *Treatise on Theology and Politics* (TTP), laments servitude; we could also more generally speak of the desire for power and the desire to obey. Spinoza's understanding of natural law – following Deleuze's reading² – differed³ from that of the traditional thinkers of his time (Cicero, Thomas Aquinas), who defined natural law as that which conforms to the universal essence of something. As is well known, Spinoza draws from Hobbes and takes a similar path, which can be described in four propositions:

- It is stated that “every natural thing has by nature as much right as it has power to exist and act.” (TPT II, §3, p.15)
- The state of nature precedes the social state. The latter is not predefined as a sound order, but rather exists as an effort, a construct, a way to enhance human capacities. Here we see the principles of other concepts of natural law are significantly undermined:

* Prof. Mag. Dr., Department of Near Eastern Studies, Faculty of Philological and Cultural Studies at the University of Vienna.

1 In *Shahab Ahmad*, What is Islam? The Importance of Being Islamic (2016) it is argued that other normative complexes existed in Islamic societies that were far more important than Islamic law. This idea will be taken up again later.

2 *Christoph Dittrich*, Weder Herr noch Knecht: Deleuzes Spinoza-Lektüren (2012), 221ff.

3 The fact that his view, in its otherness, is difficult for more conventionally-minded thinkers to understand is made clear in the following: “Let us add that Spinoza's view is rather strange: in his eyes, the natural law has the function of legitimating legal positivism and degenerates into a kind of ‘power mechanics.’” (*Wilhelmus A. M. Luijpen*, Phenomenology of Natural Law Naturrechts (1967), 79) (Volume 22 of Duquesne Studies: Philosophical Series; Pittsburgh: Duquesne University Press) Obviously, the concept of capacities beyond the mind's understanding remains beyond grasp.

- Statt der Pflicht, sich einzuordnen, tritt das Recht entsprechend dem Vermögen und der Mächtigkeit des Einzelnen ein, und
- der Weise, der die Pflicht, sich einzuordnen, bestimmt, verliert seine Kompetenz und seine Möglichkeit zu richten, denn es bedarf seiner nicht mehr. Dadurch, dass das Recht unveräußerlich zueigen ist, kann es auch im Hobbeschen Sinne nicht an höhere Instanzen abgegeben werden. In der Formulierung von Deleuze: „Niemand ist für mich kompetent. Das ist so. Hier haben wir die große Idee, die die *Ethik* als Anti-system des Gerichts beseelt.“⁴

Dies hat – nebenbei – auch praktische Konsequenzen für das Verhältnis von Individuen und Institutionen. „Der Staat ist nicht Zweck an sich, sondern findet seine einzige Rechtfertigung darin, den Vermögen und Mächtigkeiten der Menschen ein möglichst fruchtbares Milieu zu bieten.“⁵

Fassen wir das Problem noch einmal aus anderer Sicht, könnten wir zu Luhmann greifen⁶:

„In Anlehnung an Aristoteles, vor allem seit dem Hochmittelalter, setzt das Naturrecht voraus, dass es in der Natur (Naturen) gibt, die Kenntnis von sich selber haben. Die Vernunft (*ratio*) findet ihren Ort und entfaltet sich als Natur in der Natur. Wenn im Mittelalter Selbsterkenntnis gefordert wird [...] geht es um das Erkennen der eigenen Natur, die in *analogia entis* verstanden wird [...] als Kreatur der Schöpfung. Vor allem die Vorstellung des Menschen als ‚Mikrokosmos‘ deutet an, daß ihm durch Selbstreflexion der ganze Kosmos zugänglich sei. Noch im Spätaristotelismus der deutschen Protestanten bleibt diese Vorstellung lebendig: daß theologisch-moralisch-politisch-naturrechtlich gültige Normen in der Selbstbesinnung erkannt werden könnten.“

In diesem Zitat ist bewusst der Teil ausgelassen, der sich mit der o.g. Übereinstimmung mit allgemeinen Wesenheiten beschäftigt.⁷ Wir können die Selbstbesinnung noch in anderer Weise in unseren

- Instead of the duty to comply, it is the right to capacities and powers of the individual that is favoured, and
- the competent sage, who decides how one is to comply, loses his competence and his ability to mandate, for it is no longer needed. Because natural right is inalienable, it cannot, in the Hobbesian sense, be handed over to higher authorities. As Deleuze puts it: “Nobody is competent for me. There it is. There is the great idea that will animate the *Ethics* as the anti-system of Judgement.”⁴

This has – incidentally – practical consequences for the relationships of individuals and institutions. “The state is not an end in itself but rather finds its sole justification in offering the most fertile environment for man to realise his capacities and powers.”⁵

To tackle the problem from yet another perspective, we can turn to Luhmann⁶:

“Following on from Aristotle, but above all since the High Middle Ages, natural law has assumed that in nature there are natures (beings) which are conscious of themselves. Reason (*ratio*) is thus allocated its place and develops as nature in nature. When self-knowledge was referred to in the Middle Ages [...] it meant recognition of one’s own nature, which was understood in *analogia entis* [...] as a creature of creation. In particular, the idea of the human being as a ‘microcosm’ suggested that the whole world was accessible through introspection. Even the Aristotelianism of the German Protestants kept alive the idea that the theological, moral and political norms of natural law could be recognized by introspection.”

The passage as it is quoted here deliberately excludes mention of the conformity with the universal essence referred to above.⁷ We can find other ways to bolster introspection in our reflections

4 Deleuze nach Dittrich, Weder Herr, 223f.

5 Dittrich, Weder Herr, 225.

6 Und zwar zu Niklas Luhmann, *Das Recht der Gesellschaft* (1995), 508f.

7 Hier liegt es nahe, an die Abhandlung Hayy b. Yaqzān des andalusischen Philosophen Ibn Tufail (gest. 1185) zu denken, der einen ähnlichen Prozess der Erkenntnis nachvollzieht. Dieser Linie sei hier aber nicht gefolgt.

4 Cf. for the translation <http://deleuzelectures.blogspot.de/2007/02/on-spinoza.html>, last access: 21 June 2017.

5 Dittrich, Weder Herr, 225.

6 Specifically, to Niklas Luhmann, *Das Recht der Gesellschaft* (1995), 508f.; translated by Klaus A. Ziegert, in: *Niklaus Luhmann, Law as a social system* (2004), 432.

7 Here it seems logical to think of *Hayy ibn Yaqzān*, a work in which the Andalusian philosopher Ibn Tufail (d. 1185) follows a similar process of gaining understanding. However, this approach is not followed here.

Überlegungen stärken.⁸ Die Selbstbesinnung führt letztlich zu Pluralitäten. Mit den Worten Hannah Arendts:

„Der Satz vom Widerspruch, mit dem Aristoteles die abendländische Logik begründet hat, lässt sich zu dieser grundlegenden Einsicht des Sokrates zurückverfolgen. Insofern ich Einer bin, werde ich mir nicht widersprechen, aber ich kann es doch, weil ich in Gedanken aufgespalten bin, Zwei-in-Einem bin; deshalb lebe ich nicht nur zusammen mit anderen, als Einer, sondern lebe auch mit mir selbst. [...] Selbst wenn ich ganz allein leben würde, so lebte ich doch mein Leben lang im Zustand der Pluralität. [...] Der Philosoph, welcher der Grundbedingung der menschlichen Pluralität zu entkommen sucht und in die absolute Einsamkeit flieht, ist dieser jedem Menschen inhärenten Pluralität sogar noch radikaler ausgeliefert. Als ein anderer. Denn es ist ja das Gespräch mit anderen, das mich aus dem aufspaltenden Gespräch mit mir selbst herausreißt und mich wieder zu Einem macht – zu einem einzigen, einzigartigen Menschen, der nur mit einer Stimme spricht und von allen als einziger Mensch erkannt wird.“⁹

Gerade in dieser Pluralität können wir die Bedingungen der Möglichkeit zur Steigerung des Vermögens der Menschen aus der gelungenen Pluralität, die im gelungenen Mit-sich-selbst-Übereinstimmen erwächst, erkennen. Arendt fährt fort:

„Und wenn ich den Dialog der Einsamkeit führe, wo ich ganz allein bin, bin ich doch nicht völlig getrennt von jener Pluralität, welche die Welt der Menschen bildet und welche wir im allgemeinsten Sinne Menschheit nennen. Diese Menschheit – oder besser: diese Pluralität – wird bereits dadurch aufgezeigt, dass ich Zwei-in-Einem bin. Die verliebte Zeile des englischen Volkslieds ‘One is one and all alone and evermore shall be so’ lässt sich strikt nur auf Gott beziehen. Die Menschen existieren nicht nur wie alle irdischen Wesen im Plural, sie tragen die Signatur dieser Pluralität in sich.“¹⁰

Wir können durch diese Gedanken eine mehrfache Verknüpfung stiften. Die Entfaltung des Vermögens des Einzelnen ist mit einer unhintergehbaren Pluralität verbunden, die im Rahmen der Pluralität des Nicht-Göttlichen – „alle irdischen Wesen“ – zu erkennen ist. Diese Selbstbesinnung bewegt sich zuerst einmal im einzelnen Menschlichen und

here.⁸ Introspection ultimately leads to pluralities. In the words of Hannah Arendt:

“The axiom of contradiction, with which Aristotle founded Western logic, can be traced back to this fundamental discovery of Socrates. Insofar as I am one, I will not contradict myself, but I can contradict myself because in thought I am two-in-one; therefore I do not live only with others, as one, but also with myself. [...] even if I were to live entirely by myself I would, as long as I am alive, live in the condition of plurality. [...] The philosopher who, trying to escape the human condition of plurality, takes his flight into absolute solitude, is more radically delivered to this plurality inherent in every human being than anyone else, since it is companionship with others that, calling me out of the dialogue of thought, makes me one again – one single, unique human being speaking with but one voice and recognizable as such by all others.”⁹

It is precisely in this plurality that we can recognise the conditions that enable the enhancement of human capacities out of successful plurality, which in its success gives rise to conformity. Arendt continues:

“Moreover, while engaged in the dialogue of solitude, in which I am strictly by myself, I am not altogether separated from that plurality which is the world of men and which we call, in its most general sense, humanity. This humanity, or rather this plurality, is indicated already in the fact that I am two-in-one. (‘One is one and all alone and evermore shall be’ is true only of God.) Men not only exist in the plural as do all earthly beings, but have an indication of this plurality within themselves.”¹⁰

We can use these thoughts to establish multiple ties. The development of the capacity of the individual is connected with an inevitable plurality, which is readily recognisable in the context of the plurality of the non-divine – “all earthly beings”. This introspection exists within each individual’s humanness

8 Auch wenn dies für Luhmann natürlich in den Bereich des „alteuropäischen Denkens“ fällt. Da es in diesen Überlegungen um nicht genuin europäische gedankliche Zusammenhänge geht, sei auch dieser europäischen Binnenauseinandersetzung nicht gefolgt.

9 *Hannah Arendt*, Sokrates. Apologie der Pluralität (2016), 56f.

10 *Ibid.*, 59f.

8 Even though for Luhmann this of course falls within the realm of “old European thinking”. But since the current reflections focus on conceptual contexts that are not authentically European, this intra-European discussion will also not be pursued here.

9 *Hannah Arendt*, *The Promise of Politics* (2005), 20f.

10 *Ibid.*, 22.

bedarf durch das durch die Existenz gegebene Recht jedes „Dings“ (s.o.) nicht mehr des über alles wissenden Weisen und damit des Systems des Gerichts.

Fassen wir aber die bisherigen Gedanken zu unserer Problematik zusammen: Es gibt legitime Fluchtlinien in der naturrechtlichen Diskussion, die es ermöglichen, den Faktor des Richtens und damit der Gerechtigkeit Gottes aus der Rechnung zu entfernen, und es erlauben, darüber zu reflektieren, ob es in islamischen rechtsbezogenen Traditionsgefügen¹¹ Verknüpfungen gibt, die es ermöglichen, „den Vermögen und Mächtigkeiten der Menschen ein möglichst fruchtbares Milieu zu bieten“.

In diesem Zusammenhang spielt die von Luhmann genannte Selbstbesinnung und kosmische Einbindung eine wesentliche Rolle. Um diesen Gedanken in die europäische naturrechtliche Diskussion einzuordnen, sei ein Zitat gegeben:

“Now the Spirit of man is the Candle of the Lord. First, as *Lumen derivatum*, [...] [a derivative light, a light from a light]. Surely there’s none can think that light is primitively and originally in the Candle; but they must look upon that only as a weak participation of something that is more bright and glorious. All created excellency shines with borrowed beames, so that reason is but *Scintilla divinae lucis* [a spark of the divine light], ’tis but *Divinae particula aurae* [a breath of the divine breeze]. This was the very end why God framed intellectual creatures, that he might communicate more of himself to them, then he could to other more drossie and inferiour beings, and that they might in a more compleat and circular manner *redire in principium suum* (as the Schoolmen speak) that they might return into the bosom of the first and supreme cause by such operations as should in some measure imitate and represent the working of God himself, who being a most free and intellectual Agent, would have some creature also that should not only take notice of these his perfections, so as to adore and admire them, but should also partake of them, and should follow the Creator in his dispensations and workings, though still at an infinite distance and disproportion. This moved him to stamp upon some creatures understanding and will, which in themselves make up one simple and entire print and signature of Reason.”¹²

and, by virtue of the right that is granted to every “thing” (see above) through the fact of its existence, no longer requires the competent sage and thus the system of the court.

Let us summarise the ideas considered thus far with respect to our problem: in the discussion of natural law, there are legitimate avenues of escape that allow the factor of God’s judgement, and with it His justice and righteousness, to be struck from the balance, thus permitting reflections on whether in Islamic rights-based tradition structures¹¹ there also exist ties which make it possible to “offer the most fertile environment for man to realise his capacities and powers”.

In this context, Luhmann’s notions of introspection and cosmic integration play a significant role. The following passage embeds these thoughts within the European discussion of natural law:

“Now the Spirit of man is the Candle of the Lord. First, as *Lumen derivatum*, [...] [a derivative light, a light from a light]. Surely there’s none can think that light is primitively and originally in the Candle; but they must look upon that only as a weak participation of something that is more bright and glorious. All created excellency shines with borrowed beames, so that reason is but *Scintilla divinae lucis* [a spark of the divine light], ’tis but *Divinae particula aurae* [a breath of the divine breeze]. This was the very end why God framed intellectual creatures, that he might communicate more of himself to them, then he could to other more drossie and inferiour beings, and that they might in a more compleat and circular manner *redire in principium suum* (as the Schoolmen speak) that they might return into the bosom of the first and supreme cause by such operations as should in some measure imitate and represent the working of God himself, who being a most free and intellectual Agent, would have some creature also that should not only take notice of these his perfections, so as to adore and admire them, but should also partake of them, and should follow the Creator in his dispensations and workings, though still at an infinite distance and disproportion. This moved him to stamp upon some creatures understanding and will, which in themselves make up one simple and entire print and signature of Reason.”¹²

11 Ich beziehe mich hier auf Reinhard Schulzes Begriff in *Reinhard Schulze, Der Koran und die Genealogie des Islam* (2015).

12 *Nathaniel Culverwell, An Elegant and Learned Discourse of the Light of Nature*, in: Robert A. Greene/Hugh MacCallum (eds.), *Natural Law and Enlightenment Series* (2001), 88.

11 Here I refer to Reinhard Schulze’s German term, *rechtsbezogenes Traditionsgefüge*, in *Reinhard Schulze, Der Koran und die Genealogie des Islam* (2015).

12 *Nathaniel Culverwell, An Elegant and Learned Discourse of the Light of Nature*, in: Robert A. Greene/Hugh MacCallum (eds.), *Natural Law and Enlightenment Series* (2001), 88.

Dass an diesem Punkt einem Islamwissenschaftler der Lichtvers des Qurans (24:35) in den Sinn kommt („Gott ist das Licht der Himmel und der Erde...“), der eine ähnliche Verbindung zwischen Gott, Licht und Schöpfung aufbaut, mag als lässliche Präokkupation erscheinen, ermöglicht es aber sehr gut, die Verbindung von europäischen naturrechtlichen Diskursen zu islamischen Kontexten herzustellen.

Stellen wir uns zuerst die Frage, ob wir im Kontext der Diskussionen islamischer Rechtsgelehrter ähnliche Vernüpfungen erkennen können.¹³ Wenn wir die rechtmethodeischen Überlegungen dieser Gelehrten durchmustern, erscheint die Antwort recht einfach. Die Problematik europäischer naturrechtlicher Diskussionen oder der „abendländischen Kulturgeschichte“¹⁴ ist für diese Gelehrten keine.

Das Erkenntnisziel ist die Erschließung göttlicher Intentionen aus den grundlegenden Texten des Qurans und der Sunna zuerst einmal auf der Ebene sprachlicher Ausdrucksformen, die wir in diesen beiden Quellen finden. Sind weiterreichende methodische Mittel erforderlich, ist ebenfalls die Frage nach der göttlichen Gerechtigkeit nicht zu stellen. Wir erkennen vielmehr durchaus Anknüpfungsmöglichkeiten, die allein auf Gottes Barmherzigkeit verweisen, als Rahmen, das menschliche Vermögen und die Mächtigkeiten zu steigern. Daneben, dies bleibt festzuhalten, spielt der Gebrauch der menschlichen Vernunft eine zentrale Rolle. In einer – und der vermutlich einzigen nennenswerten – Studie zu islamischen naturrechtlichen Theorien werden „harte“ und „sanfte“ Naturrechtstheorien unterschieden. Beide Strömungen haben unterschiedliche theologische Implikationen, die wichtig genug sind, um ein langes Zitat zu erlauben:

“What distinguishes the Hard Naturalists from the Soft Naturalists is the theological implication of their respective theories of natural law on God’s omnipotence. For the Hard Naturalists, nature’s beneficial quality is a constant that reflects the unchanging style of God. God only does the good, and consequently the nature that He creates only presents a good for human beings. But an implication of this theory of nature is that God is bound and obligated to do the good. He cannot act badly or will something other than the good. According to the Soft Naturalists, this implication undercuts the omnipotence of God. Soft Naturalists argued that God

That at this point, scholars of Islamic studies might find their thoughts drifting to the Verse of Light of the Qur’an (24:35) (“God is the light of the heavens and the earth”), which establishes a similar connection between God, light and creation, may testify to a forgivable predilection, but at the same time it presents a very good opportunity to establish a link between the Islamic context and European discourses on natural law.

Let us first ask whether we can discern similar connections in the discussions of Islamic jurists.¹³ When we peruse these scholars’ considerations of the legal method, the answer seems quite simple. The problem found within European discussions of natural law or within “Western cultural history”¹⁴ does not exist for these scholars.

Their aim is to determine divine intentions based on the fundamental texts of the Qur’an and the Sunnah, starting with the linguistic forms of expression that we find in these two sources. If more far-reaching methodological means are necessary, then the question of God’s justice and righteousness will also not be raised. Instead, the clear links that we find refer solely to God’s mercy as a framework to enhance human capacities and powers. In addition, it must be stated, the use of human reason plays a central role. In one study of Islamic theories of natural law – and probably the only one worthy of note – a distinction is made between “hard” and “soft” natural law theories. Each understanding has different theological implications which are important enough to justify a long quote:

“What distinguishes the Hard Naturalists from the Soft Naturalists is the theological implication of their respective theories of natural law on God’s omnipotence. For the Hard Naturalists, nature’s beneficial quality is a constant that reflects the unchanging style of God. God only does the good, and consequently the nature that He creates only presents a good for human beings. But an implication of this theory of nature is that God is bound and obligated to do the good. He cannot act badly or will something other than the good. According to the Soft Naturalists, this implication undercuts the omnipotence of God. Soft Naturalists argued that God

13 Ich beziehe mich hier auf meine Ausführungen in *Rüdiger Lohlker, Islamisches Recht* (2012).

14 *Michael Welker, Gottes Gerechtigkeit* (Abschiedsvorlesung gehalten am 21. Mai 2014), 2.

13 I am referring here to my remarks in *Rüdiger Lohlker, Islamisches Recht* (2012).

14 *Michael Welker, “God’s Justice and Righteousness”* (farewell lecture held on 21 May 2014), 2.

acts out of grace to benefit humanity. Nature's goodness does not bind God to do only the good, since He can change His will and grace. Consequently, Soft Naturalists preserved a theology of divine omnipotence while adopting a naturalistic jurisprudence that grants ontological authority to reasoned deliberation in the law. Nature is both an enduring structure that we can reliably investigate, and is subject to a change in divine will. Soft Naturalism is softer in that while it acknowledges the constancy of nature for the purposes of legal analysis, the constancy of its goodness is undermined, for theological purposes, in a way that Hard Natural Law theories avoid. For Soft Naturalists, nature's goodness must be subjected to the possibility of a divine change of mind. Possibility, however, is not the same as probability. Perhaps for that reason, they could proffer their Soft Natural Law theory without fundamentally rendering it immediately vulnerable to the specter of sudden shifts in the nature of creation. Soft Natural Law theory both avoids theological implications that violate voluntarist commitments, and grants ontological authority to reasoned deliberation in and about Shari'a values. Soft Natural Law jurists recognized that not all issues of everyday life are addressed by source-texts. They knew they could not preclude reason as a source of law, lest they admit that the finitude of source-texts implies that Shari'a cannot speak to *de novo* issues of law. Indeed al-Juwayni and al-Sam'ani were committed to the view that all issues in life could be captured by the Shari'a. But they did not suggest that authoritative source-texts address all issues that arise from lived experience. Rather they, and the other jurists surveyed above, understood that Shari'a modes of inquiry had to incorporate a mode of practical reasoning that did not at the same time render the Shari'a vulnerable to unchecked indeterminacy. For them, Shari'a must be able to regulate all aspects of life; consequently the epistemology of practical reasoning about fundamental values, the necessities of life, and the silence of authoritative source-texts contributed to a philosophy of law that permits extending the Shari'a to regulate human behavior in accordance with what God may want. While developing a model of reasoning for *de novo* issues, Soft Naturalist jurists were also eager to ensure that their epistemology of legal reasoning would limit the scope of reasoned deliberation in the law. Jurists such as al-Ghazali, Fakhr al-Din al-Razi, al-Qarafi, and al-Shatibi developed a method of practical reasoning in Shari'a that centered around key concepts such as *maqasid* and *maslaha*. The *maqasid* reflect the fundamental purposes of a legal

acts out of grace to benefit humanity. Nature's goodness does not bind God to do only the good, since He can change His will and grace. Consequently, Soft Naturalists preserved a theology of divine omnipotence while adopting a naturalistic jurisprudence that grants ontological authority to reasoned deliberation in the law. Nature is both an enduring structure that we can reliably investigate, and is subject to a change in divine will. Soft Naturalism is softer in that while it acknowledges the constancy of nature for the purposes of legal analysis, the constancy of its goodness is undermined, for theological purposes, in a way that Hard Natural Law theories avoid. For Soft Naturalists, nature's goodness must be subjected to the possibility of a divine change of mind. Possibility, however, is not the same as probability. Perhaps for that reason, they could proffer their Soft Natural Law theory without fundamentally rendering it immediately vulnerable to the specter of sudden shifts in the nature of creation. Soft Natural Law theory both avoids theological implications that violate voluntarist commitments, and grants ontological authority to reasoned deliberation in and about Shari'a values. Soft Natural Law jurists recognized that not all issues of everyday life are addressed by source-texts. They knew they could not preclude reason as a source of law, lest they admit that the finitude of source-texts implies that Shari'a cannot speak to *de novo* issues of law. Indeed al-Juwayni and al-Sam'ani were committed to the view that all issues in life could be captured by the Shari'a. But they did not suggest that authoritative source-texts address all issues that arise from lived experience. Rather they, and the other jurists surveyed above, understood that Shari'a modes of inquiry had to incorporate a mode of practical reasoning that did not at the same time render the Shari'a vulnerable to unchecked indeterminacy. For them, Shari'a must be able to regulate all aspects of life; consequently the epistemology of practical reasoning about fundamental values, the necessities of life, and the silence of authoritative source-texts contributed to a philosophy of law that permits extending the Shari'a to regulate human behavior in accordance with what God may want. While developing a model of reasoning for *de novo* issues, Soft Naturalist jurists were also eager to ensure that their epistemology of legal reasoning would limit the scope of reasoned deliberation in the law. Jurists such as al-Ghazali, Fakhr al-Din al-Razi, al-Qarafi, and al-Shatibi developed a method of practical reasoning in Shari'a that centered around key concepts such as *maqasid* and *maslaha*. The *maqasid* reflect the fundamental purposes of a legal sys-

system, and which guide all legal reasoning. Maslaha, in this epistemic context, refers to more context-specific norms resulting from the act of practical reasoning about what the law should be for an issue not addressed by authoritative source-texts. Not all maslaha norms can become authoritative rules of Shari'a, though. Most jurists surveyed above agreed that only the maslaha norms that uphold the maqāsid, are of general application, and contribute to the necessities of life can offer a foundation for Shari'a rules of obligation and prohibition. Consequently while these jurists granted ontological authority to reason in the law, they developed methods of practical reasoning that actually limited reason's scope of application and authority in the development of new rules of law."¹⁵

Greifen wir die oben zitierte Bemerkung Luhmanns über den Mikro-Makrokosmos auf, können wir allerdings jenseits der Reflexion über vernunftbezogene-rechtliche Beziehungen eine weitere Fluchtlinie verfolgen, die sich aus dem engeren Feld des rechtsgelehrten Diskurses hinausbewegt.

II.

'ABDALKARIM AL-JILI UND DAS VERMÖGEN DER MENSCHEN

Eine der immer noch wenig bekannten Größen der Geschichte des islamischen Denkens ist 'Abdalkarim al-Jili (gest. zwischen 1421 und 1428).¹⁶ Um wen handelt es sich? Auch wenn es bisher wenige wissenschaftliche Arbeiten über ihn und sein Werk gibt¹⁷, gilt er doch als einer der wichtigsten Vertreter der viele Jahrhunderte in der ganzen muslimischen Welt einflussreichen sufisch-mystischen Strömung der Einsheit des Seins (*wahdat al-wujūd*). Sein Vorhaben wurde so beschrieben:

"Al-Jili clarified Ibn al-Arabi's basic insight regarding the ultimate unity of being (*wahdat al-wujud*) in terms of a series of emanations or Grades of Being. The main problem was to reconcile God's ultimate unity as experienced by the mystic with the phenomenal multiplicity of the world as experienced in everyday life."¹⁸

15 *Anver M. Emon*, *Islamic Natural Law Theories* (2010), 185ff. Es sei hier angemerkt, dass bei Emon die Zentriertheit auf den gelehrten islamrechtlichen Diskurs dominant ist, die bedeutende Rolle der normativen Sollensordnung der Rechtsgewohnheit (arab. meist mit 'urf oder 'āda bezeichnet) für die "lived experience" aber nicht gesehen wird.

16 Die Angaben über das Todesdatum divergieren sehr.

17 Die wichtigste Ausnahme ist *Nicholas Lo Polito*, 'Abd al-Karim al-Jili: *Tawhid*, Transcendence and Immanence (2010).

18 *Thomas Gibson*, *Islamic Narrative and Authority in Southeast Asia from the 16th to the 21st Century* (2007), 35.

tem, and which guide all legal reasoning. Maslaha, in this epistemic context, refers to more context-specific norms resulting from the act of practical reasoning about what the law should be for an issue not addressed by authoritative source-texts. Not all maslaha norms can become authoritative rules of Shari'a, though. Most jurists surveyed above agreed that only the maslaha norms that uphold the maqāsid, are of general application, and contribute to the necessities of life can offer a foundation for Shari'a rules of obligation and prohibition. Consequently while these jurists granted ontological authority to reason in the law, they developed methods of practical reasoning that actually limited reason's scope of application and authority in the development of new rules of law."¹⁵

If we take up Luhmann's above-cited remark on the micro-macrocosm, we can, however, pursue a further avenue of escape, beyond the reflections on reason-orientated legal relations, which moves out of the narrower field of the jurists' discourse.

II.

'ABDALKARIM AL-JILI AND MAN'S CAPACITY

One of the lesser-known greats of Islamic thought is 'Abdalkarim al-Jili (d. between 1421 and 1428).¹⁶ Who is this man? Although very little research exists on his life and his writings,¹⁷ he is still considered to be one of the most important representatives of the Sufi-mystic idea of the "transcendent unity of existence" (*wahdat al-wujūd*), which remained influential in the entire Muslim world for centuries. His intention has been described as follows:

"Al-Jili clarified Ibn al-Arabi's basic insight regarding the ultimate unity of being (*wahdat al-wujud*) in terms of a series of emanations or Grades of Being. The main problem was to reconcile God's ultimate unity as experienced by the mystic with the phenomenal multiplicity of the world as experienced in everyday life."¹⁸

15 *Anver M. Emon*, *Islamic Natural Law Theories* (2010), 185ff. It is noted here that in Emon, the emphasis lies on the centrality of the jurists' Islamic law discourse; the significant role of the normative regulation of behavior according to customary law (in Arabic, generally 'urf or 'āda) for "lived experience" is, however, not considered.

16 The dates of death given for al-Jili vary considerably.

17 The most important exception is *Nicholas Lo Polito*, 'Abd al-Karim al-Jili: *Tawhid*, Transcendence and Immanence (2010).

18 *Thomas Gibson*, *Islamic Narrative and Authority in Southeast Asia from the 16th to the 21st Century* (2007), 35.

Betont sei, dass al-Jilī mitnichten ein bloßer Fortsetzer Ibn al-'Arabī war, vielmehr selber höchst originäre Ansätze aus eigener Erfahrung entwickelte.¹⁹ Aus diesem differierenden Ausgangspunkt entwickeln sich mit unserer Problematik kompatible Gedankenformen, denen wir in al-Jilīs *al-Insān al-kāmil* (Der vollkommene Mensch) nachgehen werden. Der vollkommene Mensch ist ein Konzept, das bis in die Neuzeit islamische Denker inspiriert hat.²⁰

Warum wird hier ein eindeutig nicht juridischer Diskurs eingeführt? Shahab Ahmad hat überzeugend argumentiert, dass andere normative Ordnungen als die rechtliche in muslimischen Gesellschaften bestimmend gewesen sind. So auch ein sufisch-theologisch-philosophischer Komplex, als dessen Einflussraum er eine Region bestimmt, die vom Balkan bis zum Golf von Bengalen reicht.²¹ Al-Jilī können wir als Teil dieses Raumes verstehen, sodass wir mit ihm einen gedanklichen Raum jenseits der häufig vorhandenen Beschränkung auf einen Islam als rechtlich definierte Sphäre eröffnen können.

Betrachten wir also al-Jilīs Gedanken!²² Die makrokosmisch-mikrokosmische Ebene²³ der Reflexion scheint bei al-Jilī auf, wenn er sich in einem Kapitel von den sieben Himmeln bis zu der Vielzahl an Meeren und Geschöpfen bewegt.²⁴ Hier scheint bedeutsam die Betonung der Vielfalt und Pluralität des Geschaffenen, das in seiner Diversität ausgeführt wird. In dieser Diversität liegen das jeweils eigene Recht und die Macht der Dinge zu existieren – in letzter Instanz abhängig vom Schöpfer. Dabei wird der Mensch – definiert als Adam, der der Geist (*rūh*) der diesseitigen Welt (*al-'ālam al-dunyāwiyy*) sei, durch dessen Leben das Leben der Welt erschaffen wird.²⁵

Diese Diversität wird in Beziehung zu Gott gesetzt: „Wisse, dass Gott – Er ist erhaben – ja alle Geschöpfe zu seiner Anbetung erschaffen hat. Es gibt kein Ding im Sein (*maujūd*), es sei es verehrt

It must be emphasised that al-Jilī was by no means merely a follower of Ibn al-'Arabī but rather a thinker in his own right who developed highly original approaches based on his own experience.¹⁹ From this different point of departure emerge thought-forms which are compatible with our problem and which we will pursue in al-Jilī's *al-Insān al-kāmil* (The Perfect Man). The perfect man is a concept that inspired Islamic thinkers well into the modern age.²⁰

Why is a clearly non-juridical discourse being introduced here? Shahab Ahmad convincingly argued that other normative orders besides the legal tradition have been decisive in Muslim societies. And such is the case with a Sufi theological-philosophical complex that was influential across a region he describes as stretching from the Balkans to the Gulf of Bengal.²¹ We can understand al-Jilī as existing within this space, so that with him, we can open up a conceptual space whose reference lies beyond the frequent constraint of Islam to a juridically defined domain.

So let us consider al-Jilī's thoughts!²² The macrocosmic-microcosmic level²³ of reflection appears in al-Jilī when he moves from the seven heavens to the multitude of oceans and creatures in the space of one chapter.²⁴ Here the emphasis on the multiplicity and plurality of created forms, which have been executed in all their diversity, seems significant. Within this diversity lies the individual right and power of each thing to exist – in the end, independently from the creator. And thus man emerges – in the form of Adam, who is the spirit (*rūh*) of the Nether World (*al-'ālam al-dunyāwiyy*), by means of whose life the life of the world is created.²⁵

This diversity is related to God: “Know that God – may He be exalted – created all creatures to worship him. There is no thing in existence (*maujūd*) except

19 S. dazu *Nicholas Lo Polito*, 'Abd al-Karīm al-Jilī: *Tawhīd*, Transcendence and Immanence (2010), 271ff.

20 S. bspw. *Itzhak Weismann*, God and the Perfect Man in the Experience of 'Abd al-Qadir al-Jaza'iri, *Journal of the Muhyiddin Ibn 'Arabi Society* 30 (2001), 55–72; *Merin Shobhana Xavier*, The Insan Kamil of Bawa: The Metaphysics of a Tamil Sufi Sheikh, *The Sri Lanka Journal of the Humanities* 39 (2014), 51–63; *Mohsin Afzal Dar*, Iqbal's Concept of Insan-i-Kamil or Mard-i-Momin (Perfect Man), *Islam and Muslim Societies* 6ii (2013), 48–56.

21 *Shahab Ahmad*, *What is Islam? The Importance of Being Islamic* (2016).

22 Eine umfassende Monographie über ihn steht trotz Lo Politos wichtigem Beitrag immer noch aus.

23 Wir lassen hier bewusst die Ebene der Reflexion über das Verhältnis zu Gott und die besondere Rolle der „muhammedanischen Form“ (*al-sūra al-muhammadiyya*) aus. Lediglich die Verehrung Gottes ist weiter unten einzubeziehen.

24 'Abdalkarīm b. Ibrāhīm al-Jilī, *al-Insān al-kāmil fī ma'rīfat al-awā'il wa'l-awā'il*, ed. Abū 'Abdarrahmān b. 'Uwayd (1997), 228ff.; vgl. 'Abdalkarīm b. Ibrāhīm al-Jilī, *al-Insān al-kāmil fī ma'rīfat al-awā'il wa'l-awā'il* (2013), 315ff.

25 *Ibid.*, 230.

19 Cf. *Nicholas Lo Polito*, 'Abd al-Karīm al-Jilī: *Tawhīd*, Transcendence and Immanence (2010), 271ff.

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21 *Shahab Ahmad*, *What is Islam? The Importance of Being Islamic* (2016).

22 A comprehensive monograph about him is still lacking, Lo Polito's important contribution notwithstanding.

23 Here we deliberately exclude the level of reflection on the relationship to God and the special role of the “Muhammedan form” (*al-sūra al-muhammadiyya*). Only the worship of God is to be included further below.

24 'Abdalkarīm b. Ibrāhīm al-Jilī, *al-Insān al-kāmil fī ma'rīfat al-awā'il wa'l-awā'il*, ed. Abū 'Abdarrahmān b. 'Uwayd (1997), 228ff.; cf. 'Abdalkarīm b. Ibrāhīm al-Jilī, *al-Insān al-kāmil fī ma'rīfat al-awā'il wa'l-awā'il* (2013), 315ff.

25 *Ibid.*, 230.

Gott – Er ist erhaben.“²⁶ Alle geschaffenen Dinge sind hier also gleich zu Gott und auch in ihrem Vermögen gleichgestellt. Wenn al-Jilī auch den Islam als richtige Religion sieht, kann er in diesem Rahmen auch andere Religionen respektieren und in ihrem Wert respektieren:

„Was nun die Ungläubigen (*kuffār*) betrifft, so verehren sie ihn [Gott] durch die Essenz (*dhāt*), weil Er – insofern er das Wahre (*haqīqa*) – Er ist gepriesen und erhaben – ist, die Wahrheit des Seins in ihrer Gesamtheit, und die Ungläubigen zur Summe des Seins zählen, ist Er auch ihre Wahrheit. Somit verkennen sie, dass es für sie einen Herrn gibt, weil Er – Er ist erhaben – auch ihre Wahrheit ist. Es gibt für ihn keinen Herrn; er ist vielmehr der absolute Herr. Sie verehren ihn entsprechend dem, was von ihnen ihre Essenzen verlangen, deren Kern Er ist.“²⁷

Hier wird also selbst der Ungläubige nur nach seinem Vermögen betrachtet, seine durch die Existenz zu Gott gleiche Macht mit anderen Geschöpfen zu verwirklichen („das, was von ihnen ihre Essenzen verlangen“). Es geht um die volle Entfaltung des Vermögens der Menschen – und durch ihre Eigenschaft als „Kinder Adams“ (*banū Ādam*) der Welt als Gesamtheit –, zu der sie das Recht durch ihr Sein, ihre Existenz allein haben. Hier lässt sich durchaus eine Verknüpfung mit der oben skizzierten Konzeption des Naturrechts Spinozas herstellen, die durch das Recht auf Verwirklichung des Vermögens der Menschen allein durch ihr Sein auf die Position des Richtens verzichten kann, ja muss.

Gegen Einwände, al-Jilī bewege sich jenseits dessen, was als islamisch bezeichnet werden könne²⁸, lässt sich mit Cornell sagen:

“Although Jili’s exegesis of the Qur’an was innovative, it was fully valid according to the rules of hermeneutics proposed by Ghazali. Jili began his analysis by taking the sacred text at its literal word. Starting from the literal meaning (*zahir*) of the Qur’anic verses, he employed the method of Qanun al-Ta’wil on the conceptual and intellectual levels of meaning, without resorting to metaphor. Then he took another Qur’anic verse, ‘God does whatever He wishes’ (2:253), and applied the theological notion of divine voluntarism to the empirical fact of religious diversity. The conclusions that Jili draws in al-Insan al-Kamil – that the existence of religious differen-

that it worships God – may He be exalted.”²⁶ All created things are therefore equal to God and also in their capacities. As al-Jilī also sees Islam as the right religion, so too can he respect other religions and respect their value in this context:

“As for the unbelievers (*kuffār*), they worship him [God] through the essence (*dhāt*), for God – insofar as He is Reality (*haqīqa*) – may He be exalted and praised – the truth of being in its totality, and the unbelievers belong to the sum of being, He is also their truth. Thus they wrongly think they have no lord, because He – may He be exalted – is also their truth. For him there is no Lord; rather, he is the absolute Lord. They worship him such as their essences, whose core He is, require them to do.”²⁷

Here, even the unbeliever is regarded only in terms of his capacity to realise his power, which, through existence, is equivalent to that of other creatures (“as their essences require them to do”). What is described here is the full development of the capacity of human beings – and, as they are inherently “children of Adam” (*banū Ādam*), the world as a whole – to which they have the right solely by virtue of their being, their existence. Here, we can establish a link to Spinoza’s concept of natural law, as outlined above, which, by virtue of the right to realise one’s capacity being granted solely through one’s being, can, or even must, dispense with the position of judgement.

Any objections that al-Jilī is moving beyond the realm of what can be called Islamic²⁸ can be preempted with the words of Cornell:

“Although Jili’s exegesis of the Qur’an was innovative, it was fully valid according to the rules of hermeneutics proposed by Ghazali. Jili began his analysis by taking the sacred text at its literal word. Starting from the literal meaning (*zahir*) of the Qur’anic verses, he employed the method of Qanun al-Ta’wil on the conceptual and intellectual levels of meaning, without resorting to metaphor. Then he took another Qur’anic verse, ‘God does whatever He wishes’ (2:253), and applied the theological notion of divine voluntarism to the empirical fact of religious diversity. The conclusions that Jili draws in al-Insan al-Kamil – that the existence of religious differen-

26 *Ibid.*, 252; dies wird dann anhand von Koranversen den Regeln der Auslegung gerecht begründet (s.u.).

27 *Ibid.*, S.255.

28 Wobei wir die Frage, was denn als islamisch bezeichnet werden kann, zuerst einmal außen vor lassen.

26 *Ibid.*, 252; using verses of the Qur’an, this is then justly substantiated according to the rules for interpretation (see below).

27 *Ibid.*, 255.

28 For the time being we will not attend to the question of what can be considered Islamic.

ces is God’s will, and that all human beings, even unbelievers, practice religion as God intended them to do – follow logically from this process of interpretation. However, this is not to say that Jili’s interpretation is the ‘true’ meaning of these Qur’anic verses. It is only to say that his interpretation is as valid as any other interpretation derived from the literal meaning of these three verses. Even more, Jili affirms that Islam is the quintessential religion of God. Later on in the text, when he discusses how ‘each sect finds pleasure in its tenets’ (Qur’an, 30:32) he does not absolve the unbelievers of their errors. For Jili, religions are not equal in value. However, when the Qur’an commands, ‘There is no compulsion in religion’ (2:256), this means that even false religions should be respected by Muslims because all religions, including those that are in error, exist by God’s will.”²⁹

Neben den Ansätzen der “hard naturalists” und “soft naturalists” scheint bei al-Jili eine weitere Möglichkeit naturrechtlichen Denkens auf, die sich außerhalb des rechtlichen Denkens bewegt, aber gleichzeitig ein normatives Sollen beinhaltet.

Kommen wir noch einmal zurück zu Welker! Wir können sagen, dass das Welkersche Problem der Gerechtigkeit Gottes in islamischen Kontexten nicht aufscheinen muss. Vielmehr ist die Problematik völlig anders formulierbar. In dieser Reformulierung ist es durchaus möglich, jenseits der „räuberischen Verfasstheit“ von Naturrecht und religiösem Recht zu sprechen und den Gedanken des Richtens durch den Weisen aufzugeben.

III. NACHBEMERKUNGEN

Zwei Nachbemerken seien erlaubt: Manch europäischer naturrechtlicher Beitrag ließe sich sehr einfach „islamisieren“. Wir lesen so:

“Whoever does not consider himself, as Member of a Society, at whose Head God is, seems to me, to be truly an Atheist. For, whoever pretends to acknowledge a God, or universal Mind, considering him only Naturally, as the Soul of the World, and not Politically, as the supreme Governor thereof, and so not acknowledging a Providence, (a particular Providence, for, without that, a general Providence is an unintelligible Notion;) as he cannot prove the Being of

²⁹ Vincent Cornell, Practical Sufism : An Akbarian Foundation for a Liberal Theology of Difference, <http://www.ibnarabisociety.org/articles/cornellpracticalsufism.html>, last access: 03. April 2016.

ences is God’s will, and that all human beings, even unbelievers, practice religion as God intended them to do – follow logically from this process of interpretation. However, this is not to say that Jili’s interpretation is the ‘true’ meaning of these Qur’anic verses. It is only to say that his interpretation is as valid as any other interpretation derived from the literal meaning of these three verses. Even more, Jili affirms that Islam is the quintessential religion of God. Later on in the text, when he discusses how ‘each sect finds pleasure in its tenets’ (Qur’an, 30:32) he does not absolve the unbelievers of their errors. For Jili, religions are not equal in value. However, when the Qur’an commands, ‘There is no compulsion in religion’ (2:256), this means that even false religions should be respected by Muslims because all religions, including those that are in error, exist by God’s will.”²⁹

Alongside the approaches of the “hard naturalists” and the “soft naturalists” there appears a further possible approach to natural law thought in al-Jili, one which falls outside the sphere of legal thought but at the same time involves a normative way to regulate behaviour.

Let us now return to Welker! We can say that the Welkerist problem of God’s justice and righteousness need not appear in Islamic contexts. Instead, the problem can be formulated in a completely different way. In this reformulation it seems quite possible to speak of natural law and religious law beyond the “form of robbery” and to dispense with the idea of judgement by the sage.

III. POSTSCRIPT

Two remarks must be appended here: some European contributions on natural law could easily be “Islamicised”. For instance:

“Whoever does not consider himself, as Member of a Society, at whose Head God is, seems to me, to be truly an Atheist. For, whoever pretends to acknowledge a God, or universal Mind, considering him only Naturally, as the Soul of the World, and not Politically, as the supreme Governor thereof, and so not acknowledging a Providence, (a particular Providence, for, without that, a general Providence is an unintelligible Notion;) as he cannot prove the Being of such

²⁹ Vincent Cornell, Practical Sufism : An Akbarian Foundation for a Liberal Theology of Difference, <http://www.ibnarabisociety.org/articles/cornellpracticalsufism.html>, last access: 03. April 2016.

such a God, so neither does the Acknowledging him influence our Conduct, or answer any valuable Purpose in Life. If God were the Soul of the World, and not its supreme Governor, it would be impossible for us to prove his Being, which we can discover, only from the Effects of his Wisdom, Power, and Goodness, in Forming and Governing the World.”³⁰

Dies könnten wir ohne Probleme in ein salafistisches Format einpassen. Unsere vorherigen Überlegungen wären auch für ein salafistisches Gemüt recht „atheistisch“. Hieran ließen sich Überlegungen zur Modernität des Salafismus knüpfen. Verknüpfen lässt sich auch der Gedanke, dass der Islam offenkundig *nicht* so ganz „das Andere“ Europas ist. Dies ist aber nicht Gegenstand der jetzigen Überlegungen.

Eine andere Problematik taucht in der Diskussion um islamisches Recht und Naturrecht an einer spezifischen Stelle auf. In einem Paper der Summer School 2009 des International Institute of Islamic Thought³¹ ist zu lesen:

“Democratic positive law is the old divine right of kings with the majority taking the role of Pharaoh and, therefore, it is a form of shirk. The question confronting us in the world today is not the medieval philosophical dispute over whether the laws of nature are axiomatic or God-given. The important question today is put to us by the Qur’an: Shall we be ruled by Allah or by men?”³²

Damit wird die Diskussion über islamisches Recht und Naturrecht in ein identitäres politisches Projekt eingebettet. Bei der Betrachtung solcher Positionen wird eine rein konzeptuelle Betrachtungsweise schnell an ihre Grenzen stoßen. Ohne *kontextuelle* Betrachtung wird eine solche Aussage nur eingeschränkt verständlich³³; abgesehen davon, dass die zitierte Bemerkung von einer grundlegenden Fehlübertragung des koranischen Kontextes in eine anders als die Offenbarungssituation geartete – zeitgenössische – Situation zeugt. Abschließend sei noch vermerkt, dass eine solche identitäre Abschließung auch ein Verständnis für die gelungene Pluralität ausschließt.

a God, so neither does the Acknowledging him influence our Conduct, or answer any valuable Purpose in Life. If God were the Soul of the World, and not its supreme Governor, it would be impossible for us to prove his Being, which we can discover, only from the Effects of his Wisdom, Power, and Goodness, in Forming and Governing the World.”³⁰

We could adapt this to a Salafist format without any problem at all. Our previous reflections would be rather “atheistic” for a Salafist frame of mind. But this could be linked to reflections on the modernity of Salafism. It is also possible to tie this in to the idea that Islam is obviously *not* entirely “the Other” in Europe. However this is not the subject of the present reflections.

Another problem arises in the discussion of Islamic law and natural law at a very specific point. In a paper presented at the International Institute of Islamic Thought’s 2009 Summer School,³¹ we find the following:

“Democratic positive law is the old divine right of kings with the majority taking the role of Pharaoh and, therefore, it is a form of shirk. The question confronting us in the world today is not the medieval philosophical dispute over whether the laws of nature are axiomatic or God-given. The important question today is put to us by the Qur’an: Shall we be ruled by Allah or by men?”³²

The discussion of Islamic law and natural law is thus embedded in an identitary political project. When considering such positions, a purely conceptual approach quickly reaches its limits. Without *contextualisation*, such a statement can only be understood to a limited extent,³³ apart from the fact that the remark cited attests to a fundamental misapplication of the Qur’anic context to a situation of a different nature – namely, a contemporary one. In closing, it should be noted that this kind of identitary delimitation also excludes an understanding of successful plurality.

30 Richard Cumberland, A Treatise of the Laws of Nature, Ed. Jon Parkin (2005), 26.

31 S. dazu Lorenzo Vidino, The New Muslim Brotherhood in the West (2010).

32 Imad-ad-Dean Ahmad, On Natural Law and Shari’ah, <http://www.minaret.org/Natural%20Law%20and%20Shariah.pdf>, last access: 24 March 2016, 14.

33 Ich danke Jameleddine Benabdeljelil dafür, dass er mir diese notwendige Unterscheidung wieder ins Gedächtnis gerufen hat.

30 Richard Cumberland, A Treatise of the Laws of Nature, Ed. Jon Parkin (2005), 26.

31 See Lorenzo Vidino, The New Muslim Brotherhood in the West (2010).

32 Imad-ad-Dean Ahmad, On Natural Law and Shari’ah, <http://www.minaret.org/Natural%20Law%20and%20Shariah.pdf>, last access: 24 March 2016, 14.

33 I thank Jameleddine Benabdeljelil for reminding me of this necessary distinction.