

Sherman A. Jackson, *The Islamic Secular*

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Sherman Jackson's latest work, *The Islamic Secular*, is an important intervention in debates about the public role of Islam in modern life. Framing his analysis of Islam using the concept of what he calls "the Islamic secular," Jackson argues that the Islamic tradition has its own modality of secularity that, unlike secularity in the dominant western tradition, does not devalue religion. Rather, the Islamic secular, at least as I read Jackson's argument, constitutes a secular domain capable of encouraging what contributes to Islam's (and by extension, Muslims') flourishing in this world. This domain is secular insofar as it is not *determined* by revelation. It is nonetheless *Islamic* insofar as it is constituted instrumentally to serve Islamic ends.

The book is divided into two parts. The first part might be described as the intellectual history and genealogy of the Islamic secular. Over three chapters, Jackson explores the history of the concept of the secular in the western tradition, what constitutes a legal ruling (*hukm*) in the Islamic jurisprudential tradition (at least from the perspective of Sunnī Islam), and the relationship of other judicial institutions in Islamic history, such as *hisba*, *maẓālim* and *siyāsa*, to formal Islamic jurisprudence.

In the second part, Jackson deploys his concept of the Islamic secular to challenge three contemporary intellectuals who have made arguments – both positive and normative – about the place of Islam in the modern world. These three interlocutors are Wael Hallaq, particularly his recent book *The Impossible State*; Abdallahi an-Na'im and his book, *Islam and the Secular State*; and Andrew March and his book, *Islam and Liberal Citizenship*. Despite their different approaches to the question of Islam's public place in modernity, according to Jackson all three of these authors share a common misconception about Islam: that everything "Islamic" is

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determined by a jurisprudential logic impervious to non-jurisprudential, i.e., secular, reason. Thinking about a specifically Islamic secular, on the other hand, allows much of the conflict identified by these three different authors to dissolve (or be substantially minimized) once one realizes that most of the debate takes place on the terrain of this Islamic secular and not the Islamic as such. If we correctly identify the nature of these conflicts, Jackson hopes, it will become easier and more realistic to find actual solutions to them in a way that is consistent with what he believes is required for Islam and Muslims to flourish in modernity.

The Islamic Secular is conceptually rich and makes an important contribution to our understanding of the public place of Islam in the modern world. Its conceptual thickness, however, risks rendering it inaccessible to the broad, non-specialist public whom I believe is Jackson's intended audience. The complexity of his arguments, while appealing to specialists in Islamic jurisprudence, theology, and intellectual history, also makes it difficult to write a concise review of the book's principal points. Accordingly, instead of attempting an overview of the author's arguments, I will instead focus on certain themes pursued in the book in an attempt to describe Jackson's central point. I will then provide a critical engagement with this argument, followed by a reformulation in my own words intended to translate it for readers who are not specialists in Islamic Studies.

The first question that confronts the reader of Jackson's book is: why the term "Islamic secular"? Jackson, on my reading, offers two principal reasons for this neologism. The first might be called an *internal* Islamic argument. It is an attempt to defend a certain conception of Islamic normativity that frees itself from what might otherwise be a totalitarian conception of the shari'a. Such a totalitarian conception, Jackson argues, is the natural outcome of conflating two distinct notions, each one of which is, on its face, a plausible Islamic position: that nothing is outside the purview of divine judgment, and that Muslims, indeed all of humanity, are under an obligation to submit to divine law (*ḥukm allāh*). If these two premises are combined, it then follows that the shari'a, at least aspirationally, communicates to humanity a divine law seeking to be totalitarian in its reach.

Jackson rejects this conclusion by placing strict limits on what ought to be considered a rule of divine law in the shari'a, giving careful attention to the formal structure of what constitutes a *ḥukm*, a "rule." I will return to this problem in greater detail, but for now it is sufficient to point out that for Jackson a "rule" is not synonymous with divine law or divine concern. The domain of human conduct regulated by divinely ordained rules, therefore, is on his account substantially smaller than the domain of human conduct

that falls under the domain of God's concern, and presumably, God's judgment in the next life as well. The rules of the shari'a are thus bounded, but what lays beyond them remains nevertheless a morally constituted domain of action. This domain of human life is for Jackson not strictly regulated by divine law, although human beings remain accountable to God for their actions in this sphere just as they are accountable to God with respect to their conduct in domains determined by divine rules, such as daily prayers. The Islamic secular, then, is constituted in large part by the vast swath of human activity for which there are no determinate rules of divine law but that which is nevertheless morally significant. In other words, the mere absence of divine law in a given domain does not entail that human beings become free to act in that domain as if God did not exist.

But that is not the only domain where the Islamic secular is to be found. The Islamic secular can also be found in those activities that sustain, for lack of a better term, an Islamically inflected, but very much humanistic, *happiness*. These include the domains of the arts, the sciences, philosophy, music, literature, and the market. These activities can be thought of as the broader ecology that sustains Islamic religious sensibility. While not a part of the Islamic religion, the cultures of Muslim peoples are part of the Islamic secular because they are crucial to sustaining a vital and dynamic Muslim community.

For Jackson, the Islamic secular also includes the subjective, psychological component that complements the formal, doctrinal, and practical elements of Islam defined in the shari'a. Because Islam is constituted by both, it bridges the two conceptions of religion – the doctrinal and the psychological – that in post-Enlightenment European conceptions have been framed as a set of binary oppositions. It is crucial to identify the Islamic secular explicitly, not only because it is an essential part of Islam as a religion, but also because Muslims live under a hegemonic western conception of secularism that devalues religion, often placing “modernity” or “progress,” for example, in a hierarchically superior position. The subordinated status of religion in this hierarchy means that the secular is able – meaning it has the power and authority – to “discipline” religion.

This is the second reason for use of the term “the Islamic secular.” The prevailing hegemonic understanding of the secular is obviously dangerous for the moral integrity of Islam insofar as it implies that Muslims can only achieve progress and enjoy the fruits of modernity if they, too, subordinate religion to the secular, which in this context means to proceed as “if God did not exist,” a phrase Jackson uses often. Introducing the category of the Islamic secular is also justified given the necessity of constructing an alternative form of secularity capable of challenging the anti-religious

bent of western conceptions of the secular. It therefore functions as a kind of defensive strategy, allowing Muslims an intellectual space to resist modern concepts fundamentally hostile to their own traditions and commitments. Making the Islamic secular legible to Muslims is crucial, then, in allowing them, simultaneously, to resist the devaluing of religion and pursue worldly happiness.

Identifying the domain of the Islamic secular is certainly an important contribution to contemporary Muslim thought. Jackson's formulation of it, however, suggests that it is paradoxically fully Islamic without being determined by the normative sources of Islam. I will try to propose my own solution to this paradox below, when I discuss Jackson's treatment of the rules of divine law (*al-hukm al-shar'i*) in contrast to policy-based rules (*siyāsa*). Here, however, I wish to note two points about the Islamic secular as we understand it so far.

The first is an important limitation: insofar as the Islamic Secular is internal to Islam, it is not clear how it functions to mediate pluralism in the context of the modern state. While Jackson invokes historical Muslim examples of pluralism, he does so while recognizing the radically incommensurate modes of governance practiced by pre-modern Muslim states. He contrasts the pre-modern imperial state, which created different regimes of legality for different populations within a given polity, with modern states, which insist on legal equality. He also recognizes that these two state formations govern differently, the pre-modern being a state based on and limited to taxation, while the modern state is based on legislation. Jackson implies that it would be possible to restore features of imperial rule pursuant to which different communities would have their own legal regimes, but there is no account of how such a regime could effectively govern a diverse population, each with its own legal order, in the pursuit of common aims.

Modern legislation often functions to coordinate the activities of a broad group of the population and create the conditions that make collective action feasible, be that for reducing pollution, pursuing economic development, building universities, or exploring space. Can such collective aims be attained without the principle of equality of citizenship? If equality of citizenship is required to make broad-based collective projects feasible, is not some conception of the secular unbound by any particular religious conception – at least in religiously pluralistic states – necessary? In short, I do not believe that Jackson, leaving aside the philosophical justifications for equality of citizenship, takes sufficiently seriously the possibility that governance in the context of modernity requires states, if they wish to be successful, to adopt equality of citizenship as a practical government policy.

Mehmet Ali Pasha's modernizing experiments in nineteenth-century Egypt serve as an excellent example of how modern institutions contain within them an almost inexorable logic driving toward equality. As he sought to build a modern army, the need for manpower led Mehmet Ali to adopt universal conscription. This, however, required him to abandon traditional Ottoman ideology's radical distinction between the military class and the cultivators and instead treated them both as equal citizens of the state. While he tried to limit the effects of this institutional innovation, it was not long before Egypt's rulers were required to take the more radical step of conscripting the Copts into the military *and* then even admitting Egyptians, both Muslims and Copts, into the ranks of military officers. These institutional developments inevitably led to a new political consciousness among Egyptians, whether Muslim or Copt.¹ Given that the immanent logic of modern governance institutions seems to require equality of citizenship, it does not seem plausible to believe that the Islamic secular, even if crucial for a healthy understanding of Islam, is sufficient for governing a modern, pluralistic state.

Jackson's focus on distinguishing the Islamic secular from post-Christian conceptions of the secular also results in missing or exaggerating key differences between the two, for example, the claim that the Islamic secular does not seek to discipline religion. Jackson acknowledges the obvious fact that the Prophet Muḥammad sought to discipline the religion of the pre-Islamic Arabians by purging their beliefs about God of superstition. But one might say that much of the structure of *fiqh*, with its aversion to innovation (*bid'a*) in ritual practice, is itself an institutionalized procedure for disciplining religion, not with the aim of transcending it, but to protect it from superstition and corruption. Religion must be defended precisely because religious enthusiasm, that subjective component of religion that Jackson argues is a constitutive element of the Islamic secular, is often little more than superstition, even if it is sincere.²

Finally, there is the question of whether the idea of the secular can be rehabilitated for use in describing the internal structure of Islamic thought. As José Casanova has pointed out, the concept of the secular is derivative of various doctrines of the western European Church.³ The fundamental problem, as I see it, is that as an organic part of its teachings, Islam includes a conception of worldly happiness, while Christianity,

1 For a general overview of this period of Egyptian history, see Bishri, *al-Muslimūn wa-al-Aqbāt fi itār al-jamā'ah al-waṭāniyah*.

2 Mālik ibn Anas, *Al-Muwatta'*, 396 (setting out reports that restrict vows to pious actions).

3 Casanova, "Secularisation, Religion, and Multicultural Citizenship", 21–32, at 21.

as far as I know, does not.⁴ If that is correct, it is not surprising that in European history, domains of earthly happiness had to be wrested from the Church's control, a problem that did not exist in the Islamic context precisely because Islamic theology affirmed the compatibility between worldly happiness and happiness in the next life.

Jackson may be correct when he argues that specialization led to the “micro-secular” in western religious history, based on an assumption that within specialized domains like the market or politics, God's revelation is not relevant. Somewhat surprisingly, at least to this reader, he nevertheless does not take advantage of Islamic law's treatment of specialization to support his arguments in favor of the Islamic secular. Domain specialization in Islam, e.g., the formal differences between ritual (*‘ibādāt*) and transactional law (*mu‘āmalāt*),⁵ did not lead to the exclusion of God as such from non-religious fields such as the market, although it did recognize that *how* God regulated these different domains was fundamentally different from ritual, and should be legally treated as such.⁶ Rashid Riḍā, in his work *The Caliphate*, for example, argued that the shari‘a distinguishes between actions based on whether their purpose is to draw near to God, to impact the moral dimension of social relations, or to function as means to serve legal ends. These last, insofar as they were means, were left to human judgment, to be determined in good faith through mutual consultation.⁷

It now makes sense to turn to how Jackson resolves the paradox of the Islamic secular as a domain of activity that is simultaneously subject to the moral principles of Islam, but is not constituted by shari‘a reasoning. Jackson solves this paradox by arguing for a constrained conception of the shari‘a, one that is effectively limited to the concept of the legal rule, *al-ḥukm*. The formal definition of *ḥukm*, in turn, is taken from the science of theoretical jurisprudence, *uṣūl al-fiqh*. Jackson relies on formal developments in *uṣūl al-fiqh* beginning with Fakhr al-Dīn al-Rāzī (d. 606/1210), who systematically defined the shari‘a as constituted by

4 Āmidī, *Al-Iḥkām fī Uṣūl al-Aḥkām*, 1:9. Al-Āmidī describes knowledge of revelation's qualifications of actions as “the basis of worldly and next-worldly happiness (*ma‘rifat al-aḥkām al-shar‘iyya* [...] *manāṭ al-sa‘āda al-dunyawiyya wa’l-ukhrawiyya*)”; Qur‘ān, 7/32, “Say: ‘Who has forbidden the adornment of God, which He has brought forth for His servants, and the good things among [His] provision?’ Say, ‘These are for those who believe, in the life of this world, and on the Day of Resurrection they are for them alone.’”

5 Fadel, *Islamic Jurisprudence, Islamic Law, and Modernity*, xxii.

6 On this topic, see Baber Johansen's useful discussion of how the structure of *fiqh* reinforces social differentiation in *Contingency in a Sacred Law*.

7 Rida, *The Caliphate or Supreme Imamate*, 155.

the combination of *injunctive* rules (*aḥkām taklīf*) and *declarative* rules (*aḥkām waḍʿ*), these latter consisting of legal causes (*asbāb*), conditions (*shurūṭ*), obstacles (*mawānī*), and rules of evidence (*ḥijāb*) established before a judge. For Jackson, al-Rāzī's contribution to the theoretical understanding of *ḥukm* meant that jurists could not only more precisely understand the elements of legal rules, but also more clearly identify what was *not* a legal rule.

The implication of this argument is that doctrines lacking these formal criteria were not legal rules, and therefore not part of the shari'a, even if revelation spoke to the issue in a general sense. Jackson relies on the distinction between injunctive and declarative rules to introduce the notion of the shari'a having horizontal and vertical dimensions. While this aspect of his argument is not free of ambiguity, he suggests that the shari'a's horizontal dimension is simply the entirety of its injunctive rulings ("Its horizontal boundaries are coterminous with the Five Juristic Statutes"⁸), while its vertical dimension is constituted by the empirical facts necessary to make a legal rule operative. Accordingly, with respect to declaratory rulings, "the operative consideration here is not the status of an act or event as a matter of law but its actual occurrence or existence as a matter of fact."⁹

But it is not clear why rules that do not satisfy al-Rāzī's idealized conception of *ḥukm* should not be considered rules of the shari'a. Here, it is helpful to introduce a distinction regularly deployed by lawyers in the common law tradition: the distinction between a rule and a standard. A speed limit is a precise rule that fully specifies permitted conduct and conduct that is not permitted. By contrast, were the rule to be "drive safely in view of the prevailing conditions," a standard would apply that is specified by the individual agent himself or herself, subject to subsequent review by a court or other regulator. Jackson seems to recognize this distinction in the example he gives of a husband's maintenance obligations for his wife: while the shari'a imposes on him the obligation to provide maintenance, it provides him no guidance on how to do so, leaving that to his own discretion. Despite the fact that revelation does not specify how the husband is expected to fulfill this obligation, he nevertheless remains answerable to God for his faithfulness in discharging this obligation.¹⁰

⁸ Jackson, *The Islamic Secular*, 87.

⁹ Jackson, *The Islamic Secular*, 88–89.

¹⁰ Jackson, *The Islamic Secular*, 88.

Theoretical jurisprudence, too, recognizes a similar conceptual distinction between a rule that is unspecified (*mujmal*, abstract) and a rule that is specified (*mufaṣṣal*). It may be the case that the distinction between these categories of rules provides another entry point into what Jackson calls the Islamic secular. Whereas abstract rules in the domain of worship *demand* specification at the time of the command given that our reason is incapable of knowing *how* to worship God, unspecified rules in the domain of human custom, what the jurists called *‘ādāt*, could very well be spelled out in the fullness of time by reference to general principles of the shari‘a through legal reasoning (*ijtihād*).

From this perspective, the Islamic secular might be described as being constituted by an abstract indication of the shari‘a – such as in the Prophetic *ḥadīth* “The claimant must provide proof, and the party denying the claim must swear an oath” – that serves as an instruction to the Muslim community to develop a general law of evidence vindicating this principle. Revealed law would then be limited to the general principle, while the detailed rules developed by jurists to govern particular cases, despite their great specificity, would remain part of the Islamic secular.

But it is not only my concern that Jackson is being overly formalistic that leads me to question his insistence on limiting the shari‘a to the formal rule as defined by al-Rāzī and his successors: it also places us in a quandary with respect to how we should understand shari‘a governance, *siyāsa shar‘iyya*, and the continued vitality of detailed *fiqh* rules in modernity. I will turn to this later question below; here, I will focus on my attention on Jackson’s discussion of *siyāsa*.¹¹

Jackson oscillates between describing *siyāsa* as *internal* to the shari‘a, insofar as the shari‘a authorizes it,¹² and describing it as *external* to the shari‘a.¹³ Jackson himself recognizes the risk of exaggerating the separation between the shari‘a and *siyāsa*, a conclusion that would likely result in the state superseding the shari‘a.¹⁴ On the other hand, Jackson rejects the view that *siyāsa* should be understood as internal to the shari‘a, because that would risk equating the former’s authority with “bona fide, unassailable *shar‘ī* authority.”¹⁵ But that risk seems remote, given jurists’

11 Jackson, *The Islamic Secular*, 134–44.

12 Jackson, *The Islamic Secular*, 142, “*siyāsah* derives its basic mandate from *shari‘ah*.”

13 Jackson, *The Islamic Secular*, 135, “One indication of the degree to which Muslim jurists conceived of *siyāsah* [...] as an entity apart from *shari‘ah* is the fact that it is rarely discussed as a formal, substantive topic in manuals of jurisprudence or juristic law.”

14 Jackson, *The Islamic Secular*, 143.

15 Jackson, *The Islamic Secular*, 143.

definition of *siyāsa* as depending on the ruler's discretionary authority. And as Jackson himself noted in quoting the nineteenth-century Ḥanafī jurist, Ibn 'Ābidīn (d. 1252/1836), the ruler derives *siyāsa* authority from the general principles of the *sharī'a* in situations for which no specific textual evidence can be found.¹⁶

A concrete example of the subordination of *siyāsa* to the *sharī'a* can be found in the obligation to establish a legal system. The Ḥanafī al-Kāsānī (d. 587/1191), for example, stated that establishment of an adjudication system was such a significant obligation that its abrogation was inconceivable. Yet, he could only cite summary, abstract texts of the Qur'ān in support of that obligation.¹⁷ Or consider what Mālikī jurist Abū'l Ḥasan al-Lakhmī (d. 478/1085) said about the ruler's obligation to establish a legal system:

Establishing the rule of law for the people is obligatory [...] The ruler of a locale can undertake this obligation himself if he is qualified. If he does not do so, or is unable to do so, or is not qualified to do so, he must delegate it to someone who will undertake responsibility for that on his behalf. If there is no ruler, that [obligation] devolves on those persons having good judgment and good character, and they appoint to that post whomsoever they agree is qualified to discharge that obligation.¹⁸

The example of the duty to establish a judicial system illustrates nicely the ideal relationship between the *sharī'a* and *siyāsa*: the former establishes an aim as a matter of an abstract obligation, but delegates to responsible persons within the Muslim community the responsibility of determining the means to achieve it. But the analysis should not stop there: a legal system, once established, even though it originated in a ruler's discretion, generates facts that function as a legal cause (*sabab*) in the technical sense described by Jackson. The ruler's discretionary decisions, whether with respect to how to allocate jurisdictional competences or to who should fill the offices of the positions he creates, interface with the formal structure of *fiqh* and become the obligatory means by which rights and obligations are adjudicated. Accordingly, a judge, even though he is appointed pursuant to the ruler's *siyāsa*, has the power under the rules of *fiqh* to summon defendants to appear before him and force them to answer

16 Jackson, *The Islamic Secular*, 142.

17 Kāsānī, *Kitāb badā'i' al-ṣanā'i' fī tartīb al-sharā'i'*, VII, 2.

18 Lakhmī, *al-Tabṣira*, XI, 5321, "iqāmat al-ḥukm li'l-nās wājib [...] fa-'alā man kāna wāliyan 'alā balad an yanzura fī aḥkāmihim in kāna li-dhālika aḥlan fa-in lam yaf'al aw lam yajid ilā dhālika sabīlan aw lam yakun aḥlan 'alayhi an yuqīma li'l-nās man yanzur fī dhālika lahu fa-in lam yakun fī'l-mawḍi' wālin kāna dhālika ilā dhawī al-ra'y wa'l-thiqa fa-man ijtimā'a ra'yuhum 'alayhi annahu yaṣluḥ li-dhālika aqāmūh."

complaints, and if such a defendant fails to appear, he risks an adverse judgment, at least according to the Mālikis.¹⁹

Jackson is of course correct that, as a formal matter and at least in the period after the establishment of the legal schools, jurists recognized a formal distinction between *fiqh* and *siyāsa*, the former being the domain of an increasingly professionalized class of jurists and the latter the domain of the executive, usually a military governor. This formal distinction is reflected in the methods of both: as reflected in Jackson's quoting of Ibn Taymiyya, the binding character of *siyāsa* is derived from the ruler's deliberation, using consultative methods, about the public good, whereas *fiqh* derives its binding character from revelation itself.

But this *institutional* division of labor is itself historically contingent and cannot be adduced as evidence of conceptual limits on the shari'a. 'Allāl al-Fāsī, for example, relying on a prophetic *ḥadīth* narrated by 'Alī b. Abi Ṭālib, argued that *fiqh* in the period of the Rāshidūn caliphs was embedded in a consultative process that resulted in binding decisions based on the agreement of those the caliph consulted.²⁰ Such decisions were binding in practice (*wajaba ittibā'uḥu fī al-'amal*) despite the fact that they did not include the views of all the Companions, and despite the fact that others remained free to dissent from the substance of the decision (*wa in jāza li-man lam yaḥḍur min ahl al-ijtihād an yubḍiya ra'yan mukhālīfan*). Those holding responsible positions, however, remained obligated, as a practical matter, to follow the decision of the institution, even if they dissented from it in substance.²¹ Umar Abd-Allah Wymann-Landgraff, too, argues that the celebrated Seven Jurists of Medina should not be thought of as individual *mujtahids* operating in the fashion of the professional jurist in the period after the formation of the law schools; rather, he suggests

19 Khalil ibn Ishāq al-Jundī, *Mukhtaṣar Khalil*, 230, "wa'l qarīb ka'l-ḥāḍir wa'l-ba'id ka-ifriqiyya yuqḍā 'alayhi bi-yamīn al-qaḍā' wa sammā al-shuhūd wa illā nuqīḍa wa'l-'ashara aw al-yawmān ma' al-khawf yuqḍā 'alayhi ma'ahā fī ghayr istiḥqāq al-'aḳār [...] wa jalaba al-khaṣma bi-khātām aw rasūl in kāna 'alā masāfat al-'adwā lā akthara ka'l-sittin milan illā bi-shāhid."

20 Fāsī, *Maqāṣid al-shari'ah al-Islāmiyah wa-makārimuhā*, 121. The *ḥadīth* states that 'Alī said, "I said, 'Messenger of God! An event takes place among us for which neither a [text of the] Quran has been revealed nor have you provided a rule (*sunna*) for it.' He said, '[In such cases,] gather those believers among you with knowledge of it and decided it through mutual deliberation (*fa ij'alūhu shūrā baynakum*), but do not resolve it based on the opinion of one of you (*wa lā taqḍū fīhi bi-ra'y wāhid*).'"

21 Fāsī, 121, "The practice of responsible officials was necessarily in accordance with what the institution agreed (*lākinna al-'amal yajib an yaqā'a min ṭaraf al-mas'ūlīna bi-mā ittafaqat 'alayhi al-hay'a*)."

that they were members of a legal council operating in Medina during Umayyad rule.²²

From this perspective, *siyāsa* can be understood as the means by which the Muslim community pursues its *collective* freedom to pursue common aims, such as establishing a system of justice. Of course, its common aims go well beyond simply having courts, a military, a system of roads, etc. These aims presumably include all the obligations that the shari'a describes as 'collective' (*furūd kifāya*): preserving the religious sciences of Islam, the cultivation of all "important crafts (*al-hiraf al-muhimma*)," and so on.²³ If the duty to establish a judicial system is taken as a paradigmatic example of the relationship between *siyāsa* and *fiqh*, we might make a more general statement: the legal concept of the collective obligation serves as the bridge between *siyāsa* and *fiqh* and places the state at the center of achieving these common aims because, in most circumstances, it is the institution best placed to organize how the community will pursue these collective ends.

Without questioning the substance of the Islamic secular, Jackson's argument for it, unfortunately, is weakened by its reliance on particular pre-modern political institutions and their particular division of intellectual labor, both of which, it seems to me, are highly contingent. Their contingency, moreover, is made clear under conditions of modernity where modern Muslims have sought to reconstitute the shari'a as a viable system of public law *outside* the domains of the legal schools. I suspect that Jackson's arguments about the distinctiveness of *fiqh*/shari'a and *siyāsa* has more to do with his own political theory regarding the modern state than it does with the nature of the shari'a and its relationship to the Islamic secular.

Jackson's suspicion of the state appears in numerous passages of *The Islamic Secular*, but I wish to focus on the concept of legal monism that he cites in at least four different places as a negative feature of modern law.²⁴ Jackson identifies Robert Cover's concept of "jurispathy"²⁵ – the capacity of

22 His interpretation of the Seven Jurists as members of a council of seven also explains why, despite the label of seven, the tradition identified twelve members of this group. Wymann-Landgraf, *Mālik and Medina*, 43, note 42, "The Seven Jurists comprised an authoritative legal council similar to the ones that existed in Medina under the caliphates of Abū Bakr and 'Umar [...] According to Mālik, the Prophet had directed the creation of such legal councils for solving questions lacking precedent in the Qur'ān or the *sunna*."

23 Al-Jundi, *Mukhtaṣar Khalil*, 89.

24 Jackson, *The Islamic Secular*, 197, 281, 291, 295.

25 Cover, "Foreword", 1–68+70–306, at 40.

modern legal institutions such as courts to destroy alternative sites of law creation through internal processes of legal interpretation and decision-enforcement – as representing “significant challenges to Islam-cum-*shari’a*” insofar as it contributes to Muslims adopting the form of the modern state, with its tendency to become an “autocracy-legitimizing leviathan.”²⁶ Legal monism, the idea of one law for all persons in a single jurisdiction, is also problematic insofar as it precludes Muslims from recognizing the legitimacy of the pluralistic normative communities living in Muslim territory.

Legal pluralism is both intra-religious, insofar as different Muslims have different interpretations of divine law – all of which, from a theological perspective, are legitimate – and inter-religious, insofar as most Muslim-majority jurisdictions also contain significant numbers of non-Muslims.²⁷ Jackson suggests that non-Muslims might prefer a return to this kind of legal pluralism, even if it entails a certain amount of subordination of non-Muslim groups to Muslims. Indeed, he even cites Pope Shenouda’s call to Egyptian judges to follow the *shari’a* in deferring to the Church on the question of Egyptian Christians’ right to remarry as evidence that there might be a desire on the part of at least some non-Muslim groups to return to a pre-modern legal order that respected community autonomy, even at the price of some kind of subordination.²⁸

In identifying legal monism as representing an especially potent threat to the integrity of the *shari’a*, Jackson seems to be relying on the notion that legal pluralism of the sort that flourished in the formative period of Islamic law, and then became institutionalized in the Mamlūk state, is an indispensable feature of the *shari’a*. Suggesting that the *shari’a* requires a high degree of legal pluralism appears to me to be a case of taking a contingent institutional feature of Islamic legal history and then elevating it to a necessary and almost immutable principle of the *shari’a*.

I would suggest, to the contrary, that the institutionalization of legal pluralism in the form taken in the Mamlūk state through the creation of a legal system representing all four Sunnī schools of law, was the exception rather than the rule in Muslim history. North Africa, Andalusia, and West Africa certainly never entertained multiple schools of law. Indeed, western Mālikis were quite hostile to allowing other schools to have any institutional presence in their domains.²⁹ Ḥanafism was practically

²⁶ Jackson, *The Islamic Secular*, 197.

²⁷ Jackson, *The Islamic Secular*, 281, 294–95.

²⁸ Jackson, *The Islamic Secular*, 291.

²⁹ See, for example, Fierro, “Proto-Malikis, 57–76. Fierro argues that jurists, in alliance with Andalusia’s Umayyad rulers, vigorously resisted the spread of Ḥanafism, Shāfi’ism, *ahl al-ḥadith*, and Zāhirism.

hegemonic in eastern Islamic lands, i.e., Central Asia and what is now the northern portion of the Indian subcontinent, particularly following the Mongol invasions when Shāfi'ism seemed to have died out almost entirely. Shāfi'ism, on the other hand, took on a hegemonic role in various territories as well – the east African coast, southern India, and Southeast Asia (what is today Indonesia, Malaysia, and Singapore).

Cover argued that the need to control the surfeit of law arising from pluralistic, community-based law-making ("jurisgenesis"³⁰) is what gives rise to law's jurispathic tendency.³¹ His observation is vindicated in the case of the Mamlūk state's institutionalization of legal pluralism. More or less contemporaneously with the institutionalization of the four-school system, jurists also developed a conflict-of-laws principle that served to regulate jurisgenesis: legal judgments could be overturned if they were contrary to explicit text (*naṣṣ*), a fortiori analogy (*qiyas al-awlā*), general legal principles (*al-qawā'id al-'amma*), or consensus (*ijmā'*), at least in the absence of a sufficiently strong countervailing consideration (*mu'arid*).³²

Jurisgenesis and jurispathy, on Cover's account, are both indispensable features of law: the former creates communities of subjective commitment, and the latter attends to the good order of the world based on objective and enforceable rules.³³ Jackson is concerned that the state, through its claim to exercise a monopoly in lawmaking, produces an excess of jurispathy, resulting in the destruction of community, or even the possibility of community. Jackson's intuition rests in why we resist totalitarian states: their desire to attend to everything destroys the capacity of individuals and communities to create any meaning for themselves. Jackson clearly fears that if the state is recognized as having an organic relationship with the shari'a through *siyāsa*, it will be able to destroy the Muslim community's ability to generate norms for itself from the ground up.

But rejection of totalitarianism, or even authoritarianism, does not tell us where and how to balance jurisgenesis and jurispathy. Not only did Muslim jurists in the Mamlūk period develop a conflict-of-laws principle to control jurisgenesis, one of the animating reasons for the caliphate, on al-Māwardī's account, is expressly jurispathic in Cover's sense: the requirement to create a unified public order.³⁴ The doctrine of the caliphate was not totalitarian,

30 Cover, "Foreword", 11.

31 Cover, "Foreword," 40. Here, Cover argues that the state and its legal institutions, such as courts, come into existence not to create law but to control the *excess* of laws that communities produce and that result in conflict between different norms.

32 Qarāfi, *The Criterion for Distinguishing Legal Opinions*, 153.

33 Cover, "Foreword," 12–13.

34 Mohammad Fadel, "Islamic Law Reform", 44–90, at 56.

however; it limited the caliph's authority to the common good, therefore allowing jurisgenesis to continue in those domains of life that were "private," i.e., that were not part of the "common interest."³⁵

Jackson's anxiety about the state, I suggest, has less to do with the innate features of the shari'a than with doubts about how to draw a principled line between the public – in which the jurispactic efforts of the state are necessary and welcome – and the non-public – in which the state would be exceeding its legitimate role. There is, of course, no easy answer to this problem, but it is hard to avoid the conclusion that the state, with its jurispactic powers, is unavoidably involved in managing the problems generated by capitalist modernity.³⁶

I suppose that many, or even most of Jackson's readers need no persuasion that an overly dogmatic approach to the shari'a is not only unjustified by the tradition, but also dangerous to Muslim flourishing in modernity. At the same time, these sympathetic readers might very well finish the book with the sense that some of the most important questions the Islamic secular raises, such as how to draw a principled distinction between the necessarily monist public domain and the pluralistic domain of private commitment, remain unanswered. Perhaps in future work Jackson will lay out how Muslims can use the Islamic secular to think critically about these larger constitutional questions and to navigate the question of how to reconcile Islamic commitment, intra-Muslim pluralism, and the instrumental rationality capitalism requires of governance if Muslim societies are to compete successfully in the modern world.

Jackson suggests that Muslim states might solve the tension between community-based jurisgenesis and the state's jurispacity by returning to the pre-modern model of different self-governing communities co-existing under the general protection of the shari'a. The example he gives may show why the Christian Church in Egypt might prefer such a solution, but it does not speak to why individual Egyptian Christians would agree, for instance, to have their rights to exit an unhappy marriage and then remarry arbitrarily limited by the decisions of their Church, especially when the vast majority of their Muslim neighbors suffer from no similar burden.

35 Fadel, "Islamic Law Reform," 69. Here, the author quotes the Māliki judge and jurist al-Qāḍī Abū Bakr b. al-'Arabī for the proposition that the ruler is only the agent of the Muslim community with respect to abstract rights enjoyed in common, not their specified, personal rights.

36 See, for example, Mohammad Fadel, "Islamic Law, Collective Obligations", 172–95, The author argues that the rapid and cascading social changes attendant to capitalist modernity require a radically new approach to Islamic law focusing more on collective obligations (*furūd kifāya*) than on *fiqh's* traditional focus on individual rights and obligations.

This line of questioning leads us back to the problem of equality and the modern state. What seems to be missing from Jackson's account of the state is that it is a necessary institution of social cooperation, with the extent of its law-making powers objectively circumscribed only by the need to organize the individuals within a society to achieve common aims. Law is the instrument by which the state attempts to organize individuals in pursuit of these common aims. It is difficult to imagine a state that consists of numerous self-governing, insular communities being capable of executing projects that require mutual cooperation on any meaningful scale. Indeed, one need only look at Lebanon to see an example of what happens to a state governed in such a manner.

The shift in constitutional law from a focus on communal rights to individual rights was not merely a result of secularization in the negative ideological sense that Jackson so rightly resists. It was also a response to the need to engage in social cooperation on a scale much broader than had been the case in the medieval period. It is not surprising that states, given their role as organizers of common projects, need to embed these projects in a common story, which explains why some kind of patriotic attachment or "nationalism" is a universal phenomenon with the rise of the state: it is easier to convince individuals to cooperate when they believe that they have a stake in the success of the cooperative project.³⁷ Conversely, states that are unable to produce a sentiment of duty on the part of its citizens are much less likely to succeed in marshaling their society's resources in the pursuit of collective ends.

For these reasons, I find it exceedingly implausible that Muslims could introduce a form of governance radically different than that of the modern state. The only question the Islamic secular should take on, therefore, is the *kind* of state Muslim societies will adopt. It is difficult to get a complete sense of Jackson's personal political philosophy but based on his criticism of Andrew March in *The Islamic Secular's* last chapter, one is tempted to call Jackson a Madisonian democrat. Like Madison, Jackson seems to trust more in the interplay of interests and an implicit balance of social power to preserve Muslim rights in the United States than in the idea of a common conception of justice.³⁸

37 ʿTaḥṭāwī, *al-Murshid al-amin*, 93–94. ʿTaḥṭāwī discusses the rights of a given country's people and why respect for their rights induces more effective cooperation in pursuit of improving their country's condition.

38 "Founders Online, The Federalist Number 10, [22 November] 1787". In this document, Madison states that unity of opinion, interests, and passions is impracticable and that the best strategy for stability is a citizenry with diverse views and interests that can check the rise of tyrannical factions.

An analysis of Jackson's critique of March could produce an essay on its own, but here I wish to emphasize the methodological critique he deploys. Throughout his engagement with March, Jackson criticizes him, essentially, for taking *fiqh* doctrines too seriously. In effect, he accuses March of confusing juristic statement that are part of the Islamic secular with transcendent Islamic ideals. For Jackson, because the doctrines March engages are properly part of the Islamic secular – and not the *shari'a* – Muslims are essentially free to revise those rules based on their concrete political interests.

The critique is more substantial than saying March's argument was based on a straw man. Jackson argues that March's entire approach – that of an ideal, ahistorical encounter between Muslims and non-Muslims seeking to form a social contract – is on its own threatening to Muslim well-being. From Jackson's perspective, engaging with *fiqh* as though it is ideal theory mischaracterizes the juristic enterprise and carries the risk of tying Muslims to particular positions as a matter of transcendent truth. This assumption ignores the fact that *fiqh*, especially as an applied practice, has always included a high degree of prudence. By treating it as an ideal theory without recognizing that prudence is internal to the *shari'a* and then testing its theoretical rules for compatibility with Rawlsian principles of justice, March places Muslims in the position, potentially at least, of having to choose between fidelity to principles of justice and fidelity to the *shari'a*. The demands of political liberalism, therefore, amount to a demand that Muslims be willing to revise even core beliefs in order for them to be reasonable citizens. It is liberalism's concern with "ordering [...] the soul [of Muslims]" that Jackson finds threatening.³⁹

In the place of Rawls' ideal of a well-ordered society comprised of reasonable persons who, for their own reasons internal to their own comprehensive doctrines, are happy to pursue only a restrained vision of their ideal theory in recognition of the equality of others, Jackson seems to endorse, implicitly at least, a conception of politics for American Muslims that can be described as competitive pluralism. Jackson describes the United States as being made up of numerous subcommunities constituted by an unchosen sense of self-love that dominates their sense of justice.⁴⁰ He not only believes Rawls' aim to replace these affective bonds with the rational bonds of public reason cannot work, but also that the attempt to do so catalyzes social conflict inasmuch as members of groups perceive the demand to justify their attachments as "mortal threats" to their continued existence.⁴¹

39 Jackson, *The Islamic Secular*, 320.

40 Jackson, *The Islamic Secular*, 350–51.

41 Jackson, *The Islamic Secular*, 351. For a similar argument, see Peñalver, "Is Public Reason Counterproductive?", 515–44.

This skepticism toward public reason and its aim, on Jackson's account, of reordering the "souls" of its subjects, originates, I believe, in Jackson's concerns for preserving the "plausibility structure" of Islam in the United States. By "plausibility structure," Jackson means the ordinary practices of life that sustain and help reproduce a certain way of living, a certain set of moral commitments shared by a particular moral community. Ideally, a community's norms are reinforced and sustained by the everyday social experiences of its members, but at the very least, its survival as a community requires that those daily social practices do not undermine its normative commitments.⁴² Jackson believes that Rawlsian demands for public reason, if followed, will undermine Muslims' capacity to sustain such a plausibility structure for their communal lives in the United States.

In place of these demands, he offers an interpretation of American civic life characterized by a thin set of common political commitments, perhaps what a Rawlsian would call a *modus vivendi* reflected in a constitutional consensus. This seems to be the thrust of his argument when he writes,

Islam, in my view, simply permits Muslims to accept the Constitution as a political pact, and the real incentive to embrace it comes largely from the Islamic Secular side of deliberation and the material benefits it confers upon Muslims, including an ability to pursue their "primary communal commitment."⁴³

Jackson is suspicious of any demand that Muslims affirm the constitution on morally significant deontic grounds that could be taken as compelling them to uphold the constitution as a matter of religious doctrine.⁴⁴ I take this position not as representing an insincere or strategic argument for Muslims to accept constitutional democracy but rather as reflective of Jackson's reticence to clothe what he sees to be a prudential political judgment with religious sanctity.

But there is a serious problem with this view: how can I, as a Muslim, commit myself to a political project in which I will be at the mercy of others *unless* I reasonably believe that my counterparties will abide by their commitments, even when they have, from their own doctrinal perspectives, good reasons to abandon those commitments when it is in their interest to do so? It is not implausible to believe that the plausibility structures of other American communities, such as Evangelical Christians or Zionists, might be radically challenged and even undermined by the

⁴² Jackson, *The Islamic Secular*, 156–57.

⁴³ Jackson, *The Islamic Secular*, 361.

⁴⁴ Jackson, *The Islamic Secular*, 361.

presence of strong, confident Muslim communities, even if numerically small. How can I, as a Muslim, trust *them* to abide by the constitution when doing so would result in a threat to their normative worlds?

Rawls, despite whatever other problems his theory may introduce, at least sees this problem and tries to explain how it is possible that a reasonably just constitution *might* be stable over the long term. He argues, correctly I believe, that the only way for a reasonably just constitution to be stable over time in pluralistic conditions is if the majority of its citizens, despite their differences, all see profound moral reasons to adhere to such a constitution. It is hard to see how it would otherwise be possible to generate the trust necessary between different social groups to convince all of them that the constitution will, in fact, provide them significant “material benefits” and protect their “primary communal commitment,” and to eschew the temptation of using political power to circumscribe or even destroy other communities seen as fundamentally contradictory to their ways of life.

But is it possible to achieve this goal – stability of the constitutional order – if every community is afforded everything it desires in the name of what its plausibility structure requires for its own flourishing, or even its own continued existence? For the same reason that Cover holds jurisgenesis leads to jurispathy, a stable constitutional order will necessarily place limits on the extent to which particular communities will be allowed to pursue their “primary communal commitment[s].”

Rawls tries to make this determination using the veil of ignorance to insulate constitutional rules from the arbitrary vagaries of power relationships between various parties in society. If his is not an appropriate method for determining constitutional limits on how different groups can pursue the actualization of their own normative worlds, it seems the only other option would be naked power. And it is difficult for me to see how it could ever be in the rational interest of a Muslim to adhere to the US constitution under such conditions: a rational Muslim simply could not trust the commitments of others to honor the constitution’s obligations to him. Instead of thinking about the credibility of others’ commitments to the constitution, Jackson seems to be focused instead on whether having a deontic commitment to the principles of justice set out in said constitution would result in an intolerable compromise of religious principle, even if we cannot articulate with precision what that religious principle is.

Jackson’s chain of reasoning in his argument against March is odd in another sense: it seems to undermine the grounds of one of his fundamental critiques of March, that the rules of *fiqh*, because of the importance of prudence in their application, should not be reified and made the standard against which Muslim good faith is measured. Jackson’s

reasoning here is not so far from Rawls' argument about the content of reasonable comprehensive doctrines. Rawls assumes reasonable comprehensive doctrines will assign superior moral weight to the rights secured by a politically liberal constitution than to those elements of the doctrine's conception of the good that it must forego to live under such a constitutional regime.⁴⁵ One can point to a well-recognized Islamic legal maxim in support of what one might describe as the *morally* grounded prudence undergirding Jackson's conception of the Islamic secular: *mā lā yudrak kulluhu lā yutrak julluhu* ("that which cannot be obtained in its entirety is not to be jettisoned in substantial part"). This is precisely the intuition that leads Rawls to have confidence in the stability of a just (or reasonably just) constitution. Indeed, Jackson may in fact be much more Rawlsian in his assumptions than he is prepared to admit.

Whatever difficulties a Rawlsian interpretation of the American polity might raise for Muslims, the question of the plausibility structure of Islam in a pluralistic America governed by Madisonian principles still looms large. I would have liked to see Jackson spend more time discussing what he believes American Muslims need to do in terms of institution-building in order for them to secure the plausibility structure he argues is so crucial for Islam to flourish in the United States. Had he done so, he would have been able to provide a more granular critique of March's argument by identifying precisely how attempts to create an overlapping consensus interfere with Muslims' ability to establish the plausibility structure they need to flourish.

The Islamic Secular is a learned and erudite book that deploys a masterful understanding of Islamic legal and theological history to make important interventions in public debates about the place of Islam and Islamic law in the modern state. As can perhaps be expected in such a book, it raises more questions than it answers. As a sympathetic reader, I sometimes wished the author had spent less time justifying the idea of the Islamic secular and instead deployed it to demonstrate its usefulness in resolving various issues of concern to the contemporary Muslim public. In any case, I am eagerly looking forward to the sequel.

Bibliography

- Âmidî, Sayf al-Dîn, *Al-Ihkâm fî Uşûl al-Ahkâm*, 4 vols. Dar al Kutub al-'Ilmiyya, 1983.
 Bishrî, Târiq, *al-Muslimûn wa-al-Aqbât fî itâr al-jamâ'a al-waṭaniyya / Târiq al-Bishrî*. Dâr al-Wahdah, 1982.
 Casanova, José. "Secularisation, Religion, and Multicultural Citizenship", In *Religions and Dialogue: International Approaches*, vol. 7, edited by Katajun Amirpur, Anna Koers, Doerthe Vieregge, and Wolfram Weisse. University of Hamburg, Waxmann, 2014.

⁴⁵ John Rawls, *Political Liberalism*, 139.

- Cover, Robert, "The Supreme Court, 1982 Term -- Foreword: Nomos and Narrative", *Harvard Law Review* 97 (1983): 4–68.
- Fadel, Mohammad. "Islamic Law, Collective Obligations and Pursuing a Just Global Order", *Islamic Studies Review* 3, 2 (2024): 2. <https://doi.org/10.56529/isr.v3i2.323>.
- Fadel, Mohammad. "Islamic Law Reform: Between Reinterpretation and Democracy." *Yearbook of Islamic and Middle Eastern Law* 18, 1 (2017): 44–90. https://doi.org/10.1163/22112987_01801005.
- Fadel, Mohammad H., *Islamic Jurisprudence, Islamic Law, and Modernity*. Resources in Arabic and Islamic Studies, Lockwood Press, 2023.
- Fâsi, 'Allâl. *Maqâsid al-shari'a al-Islâmiyya wa-makârimuhâ*. 5th ed. Dâr al-Gharb al-Islâmi, 1993.
- Fierro, Maribel, "Proto-Malikis, Malikis, and Reformed Malikis in al-Andalus", In *The Islamic School of Law*, Harvard Series in Islamic Law 2, Islamic Legal Studies Program, Harvard Law School, 2005.
- Jackson, Sherman A., *The Islamic Secular*, Oxford Scholarship Online. Oxford University Press, 2023, <https://doi.org/10.1093/oso/9780197661789.001.0001>.
- Johansen, Baber, *Contingency in a sacred law: legal and ethical norms in the Muslim fiqh*. Studies in Islamic law and society v. 7. Brill, 1999.
- Kâsânî, Abû Bakr ibn Mas'ûd, *Kitâb badâ'i' al-şanâ'i' fî tartib al-sharâ'i'*. 7 vols. Dar al-Kutub al-'Ilmiyya, 1986.
- Khalil ibn Ishâq al-Jundi, *Mukhtaşar Khalil*, ed. Tâhir Aḥmad Zâwî, Dâr Iḥyâ' al-Kutub al-'Arabiyya, 1986.
- Lakhmi, 'Ali ibn Muḥammad, *al-Tabşira*. ed. Najib, Aḥmad 'Abd-al-Karim. 14 vols. Dawlat Qaţar Wizârat al-Awqâf wa-'l-shu'ûn al-Islâmiyya, n.d.
- Mâlik ibn Anas, *Al-Muwatta': The Recension of Yahyâ b. Yahyâ al-Laythi (d. 234/848)*, Translated by Mohammad H. Fadel and Connell Monette, Harvard Law School, 2019.
- Peñalver, Eduardo, "Is Public Reason Counterproductive?" *West Virginia Law Review* 110, 1 (2007): 514-544, <https://researchrepository.wvu.edu/wvlr/vol110/iss1/23>.
- Qarâfi, Aḥmad ibn Idris al-. *The Criterion for Distinguishing Legal Opinions from Judicial Rulings and the Administrative Acts of Judges and Rulers = Al-Ihkâm Fi Tamyiz al-Fatawa 'an al-Ahkam Wa-Tasarrufat al-Qađi Wa'l-Imam*. Translated by Mohammad Fadel. Yale University Press, 2017.
- Rawls, John, *Political Liberalism*, Columbia Classics in Philosophy, Columbia University Press, 2005.
- Rida, Muhammad Rashid, *The Caliphate or Supreme Imamate*, Translated by Simon A. Wood. Yale University Press, 2024. <https://doi.org/10.12987/9780300190274>.
- Ṭaḥṭâwî, Rifâ'a Râfi', *al-Murshid al-amîn lil-banât wa-al-banîn*. Edited by 'Imâd Badr al-Din Abû Ghâzi. Majlis al-A'lâ lil-Thaqâfa, 2002.
- Wymann-Landgraf, U.F.A., *Mâlik and Medina: Islamic Legal Reasoning in the Formative Period*, Islamic History and Civilization, v. 101. Brill, 2013.
- Founders Online, "The Federalist Number 10, [22 November] 1787", Accessed: March 17, 2025. <http://founders.archives.gov/documents/Madison/01-10-02-0178>.