

Anglophone, Civilian, and Islamic Legal Cultures: Three Views of Human Trust in the Age of Technology and Globalization

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Abstract:

The project to construct a global regimen of law raises questions about whether human relations of personal trust continue to be relevant—especially, in a technologically mediated reality of atomized social connections. Some answers may be found by comparing the role of trust in the fundamental premise of each of the three historic legal cultures, Anglophone, Civilian, and Islamic. In fact, the understanding of human trust works differently in each of those legal regimes. One has a pejorative view of human nature, trusting its tendency to reprobation. Another trusts the faculty of human reason, its potential for growth and development, but mistrusts human subjectivity. The third is based on confidence in the natural human capacities, including bonds of personal trust. These differences began with the historical origin of each tradition. One, born as a system of legal commerce, was based on collegiality. One, produced by scholars and philosophers, was based on ideals and principles. One universalized its sacred teachings by combining them with patterns of reciprocity and accord that had existed earlier among tribes and peoples. Their different assumptions about human nature resulted in different conceptions of what law is, the method it should employ, and the purpose it can serve. Each tradition operates within its population on a different principle. In contrast with one another, they represent, respectively, faith and obedience, reason and order, justice and conciliation. As technology penetrates national borders, transcending barriers of topography and distance, it has brought these three traditions together. The conflict arising from that encounter raises profound questions about what form of legal culture will eventually predominate, what conception of human nature will prevail, and what level of human trust will define the global age.

Keywords: Anglophone, Civilian, Islamic, law, technology, globalization

Introduction

1. Law and Trust

A. The project to construct a global regimen of law in the twenty-first century raises many human, ethical, and cultural questions. A legal authority applicable to all persons in all regions of the world, acting through an immersive atmosphere of electronically transmitted sound and image, presents challenges that have never before been encountered. Such new methods of governance call into question patterns of human behavior that in the past seemed so natural as to be taken for granted. Among the questions now confronted is whether relations of human trust will continue to be relevant in the global age—especially, in a technologically mediated reality of individuated persons and atomized social connections. (Kennedy 2016)

The matter of human trust involves elements of predictability and capacity. It has to do not only with questions of honesty, integrity, and intent, but also with ability and circumstance. It entails a weighing of probabilities and certainties. In a larger way, questions of human trust become part of a discussion about human nature generally, about inherent human tendencies and innate patterns of behavior. Traditionally and historically, relations of trust have been essential to the foundation upon which communities and peoples have maintained a basis of conciliation and harmony.

Viewed on a broader scale, the matter of trust has involved agreements and alliances between nations and across cultures, connecting all regions of the earth. Such patterns, whatever their level or scale, may indicate that some instinctive

commonality is shared by all humans. It may indicate that a sense of justice or fairness, of reciprocation, is basic to human rationality. There is reason to believe that an inborn code of behavior, an ethic, operates in the human mind regardless of custom or ethnicity. However, that which is understood as trust may also be interpreted as merely a calculative or mechanical prediction based on reasoned probability and self-interest.

B. In fact, all such discussion may need to be framed in a different way with the unfolding advances in technology and in the work to construct a uniform stratum of governance and authority around the globe. The natural topography of human life is being supplanted by a virtual kind of reality as the atmosphere in which daily human existence takes place. Even the role of human cognition is being reconsidered for purposes of global governance, especially its adaptation within an immersive flow of electronically transmitted sound and image. These developments raise questions that have never been asked before as the jurists and theorists who orchestrate these developments face an unknown fraught with both hazard and opportunity. (Giddens 1991)

However, from a legal perspective, there are sources which provide at least suggestive, if not definitive, answers to such questions. After all, matters of human trust are also addressed at least implicitly as part of the fundamental premise of each of the three great historic legal cultures, Anglophone, Civilian, and Islamic. Although no explicit doctrine may have been fully elaborated in any one of them, certain general assumptions may be inferred from each of them. In particular, the three legal cultures represent three understandings of human nature, and those understandings would have, by implication, a great deal to do with questions of human trust.

Thus, to engage the question of human trust within the atmosphere of a global legal culture, it may be useful to first identify the conception of human nature that provides a basis for each mode of law. That is, attempt to understand what ideas are held about human moral or ethical capacity, about autonomy and volition inherent to human composition. In fact, from a legal perspective there are many ways to address the question of human nature, its makeup, its innate tendencies, its potential for development and reform. In the approach that follows, there will be an attempt to identify the role of trust in each of the three legal cultures, and the meanings it might have for constructing a way of life on a global scale. (Lambropoulos 1993)

C. However, in the analysis set forth below no attempt will be made to directly interrogate or examine these three legal cultures as they exist today. There will be no attempt to precisely see them in their modern incarnations, with many embellishments and accretions, including borrowings, over time, from one another. Nor in the approach taken here, will each one necessarily be viewed as it is defined and understood by its proponents, or as it is experienced by persons living within its influence. Instead, the approach will be less direct, and will begin by looking into the distant past.

The purpose here will be to examine and compare them by identifying what is basic to the nature of each. That is, to determine what elements are essential to their makeup, and without which, they would neither be characteristically Anglophone, Civilian, nor Islamic. By that means it may be possible to understand their underlying conceptions of human nature and to isolate the significance of trust in each tradition. The approach will begin by examining each of the three in their nascent and rudimentary forms, at the time of inception, when their distinctive characteristics can be most easily seen and identified. From that beginning place, there will be an attempt to follow the narrow theme of human trust as it can be inferred within each of these three legal methods and as each has evolved over time.

Yet, because the ultimate purpose here is to view these legal differences in a twenty-first century age of technology, one more dimension of study will be introduced. There will not only be an attempt to identify elements that are fundamental to each, there will also be an attempt to examine over long centuries of development, the sometimes dramatic effect of technical advance on the substance and method of each tradition. It goes without saying that technology is having a profound impact on the realm of law in the global age. Reviewing the effects of technological change in the historic past might be useful in understanding conditions in the present—including its influence on relations of trust between human beings.

2. Origins and Natures

A. Each of the three historic legal cultures was founded during a two thousand year period when the level of technical advance was generally stable around the entire world. The Islamic beginnings of the seventh century as well as the inception of both the Civilian and Anglophone traditions in the eleventh century occurred in this era of technical continuity. During that period land transportation relied on the horse, camel, or ox, just as warfare was centered on the horse mounted

soldier. Weaponry consisted primarily of bow and arrow, sword and lance. Trade was conducted mostly by caravan and by small ship that navigated close to the shoreline. Commercial transactions were conducted by barter and metallic coin. The production of books and documents was carried out by a laborious and expensive process of replicating by scribal hand, using ink brush and parchment.

Islam had its origin in the teachings of Mohammed, which after his death, were compiled into what is known as the Quran. But its development as a legal tradition came from many sources following on and adding to that original source. Actually, the teachings of The Prophet contained very little of what in modern terms would be considered law. Instead, like the founding works of all great traditions, its teachings were mainly comprised of general principles and exhortations. In fact, viewed a certain way, the origin of Islam was as an act of resistance against a Roman Empire that had become increasingly repressive in its methods. Widespread conflict had erupted as Rome attempted to impose its tandem instruments of rule: a new imperial religion and a newly propounded imperial law. On the periphery of that empire the Islamic movement developed independently of this imposed religious and civil authority. (Hallaq 2010)

Looking back to the time of The Prophet it would be easy to dismiss the Arabs as a backward tribal people, remote from the main events of history. But, in fact, they comprised one of the oldest continuously existing enclaves of human life in the entire world. From 3000 BC their land and sea routes connected the great kingdoms of India, Mesopotamia, and Egypt. Not only material goods travelled across the deserts and along the coastal waters of their native land, but ideas were carried as well. The Arabs not only became wealthy, they also became sophisticated in the ways of the world. Equally important, because of the forbidding topography of their homeland, they were never successfully invaded and conquered, and were thus able to preserve their unique customary tradition over the centuries.

In fact, the Arabs, like virtually all traditional peoples of any era, operated on communal methods of informal mediation to resolve disputes and maintain harmony among themselves. In terms of law, the influence of Mohammed had the effect of universalizing a myriad of localized tribal practices into one expansive fabric of tradition. Islamic law is often said to combine the Revelation of God with the Reason of Man, combining the three elements of conciliation, sacredness, and practicality. It asserted a confidence in the human potential for good, and sought to build relations of peace and harmony across the world. Its great unifying influence was made possible by the technology of the book—beginning with the Quran, inscribed in the single language of Arabic. Widely circulated and memorized, the teachings of Mohammed gave rise to a corpus of legal practice which rested equally on the principles of justice and mercy. Deeply imbued, it became part of the identity of a vast multitude of followers as it provided an atmosphere of trust from which an entire way of life developed. (Hallaq 2003)

Historians mark the beginning of a distinctive Anglophone legal culture with the events of the Norman Conquest of England, in the year 1066. Bringing order to its rebellious native population required establishing a highly centralized form of monarchy. From the Continent its absentee kings appointed administrators to impose a strict rule. Closely administering that realm on behalf of the Norman kings were three Royal Courts of Justice located in London. Originally those courts were presided over by jurists trained in law. The jurists were assisted in their labors by a retinue of messengers, scribes, sentinels, and orderlies who carried out the mundane procedures of litigation. These men, in the custom of the time, organized themselves into guilds of trade, their members bound together by collegial interest, including the need to exclude unwanted competition. (Baker 2002)

As it happened, following a dispute with King Henry II in 1166, the learned jurists were expelled. The conduct of legal affairs was removed from the jurists and turned over to the guildsmen, who were granted a monopoly of trade to conduct legal affairs within the Kingdom. This arrangement worked well for the king, because the fraternal lawmen were self-sufficient, collecting fees and gratuities they extracted from the litigants. At the same time forfeitures, fines, and bails flowed into the royal treasury. By this means, what came to be called the Common law was founded as a system of trade in the law courts of medieval England.

The guild fellows were presided over by the judges who acted as oracles of law, each as a kind of sovereign authority within his courtroom. Their procedures were conducted in an antiquated dialect that came to provide the internal basis of their trade. As functionaries operating within a closely ruled island kingdom, the Common lawyers had no particular philosophical or theological outlook larger than their own practical considerations of trade carried out according to the will of the king. In a servile kingdom ruled by foreign monarchs, their primary concern was simply to maintain order within the realm, and to maximize the flow of revenue. They were bound together in this work by professing a fraternal oath of strict conformity and common interest.

C. What came to be called the Civilian or Continental tradition of law was born simultaneously with its English counterpart. However, its origins were very different, and the two legal methods developed in virtual isolation from one another. The beginnings of Civil law are usually marked from the founding of the University at Bologna in 1088. That institution, the first of a long tradition of European universities, was originally established as a place for the study and teaching of law. In particular, its scholars worked to adapt the sophisticated elements of an ancient Roman Code of Justinian to the rather backward agrarian conditions of medieval European life. The result was a universal form of law called the *jus commune*, the common law of the Christian world. (Bellomo 1995)

During this period of the *jus commune* elements of jurisprudence and theology were inseparably connected to one another. As this Latin language law developed and as the role of the university evolved, the study of jurisprudence came to be integrated into a heritage of ancient Greek and Roman learning, as well as the theological and philosophical doctrines studied at the time. Thus, the discipline of law soon became assimilated to all the other areas of learning, ancient and modern. Moreover, the knowledge of those men who were instructed at the university descended down to every people and locality within Christendom. The assumptions and values that underlay the law were the same as those that underlay life in manor and village. (Radding 1988)

In the religious atmosphere of the time the God of Heaven was looked upon as an infinite and incomprehensible being. He had established an order for human life descending from heaven to earth, from Emperor and Pope, to bishop and king, and to priest and peasant. However, with limited and primitive tools of governance, the channels of authority were weak. Communication and transportation across distances was very difficult, to the extent that each region was virtually autonomous. The actual way of life amounted to a large organic whole. This simple agrarian mode of living was held together most of all by familial ties and bonds of local custom. From one perspective it would be said to have operated on the basis of human trust.

3. Invention and Modernity

A. The onset of what came to be known as the modern period was tied closely to an advance in technical development beginning around 1500. Although there were many mechanical and scientific advances at the time, what were called the Three Great Inventions came to be of particular importance. These included the maritime compass, gunpowder weapons, and the printing press. Ironically, each of these innovations came to Christendom by way of the Islamic world where they had first been introduced. Yet, the impact of these devices had been very different in that realm.

In the Moslem world, although the new inventions were widely employed, their use did not fundamentally change the way of life. The widespread human foundations of Islam generally continued undisturbed as its organic nature was able to absorb the effects of technical change. But the impact of these innovations on the Christian realm would be fundamental and profound. This was especially true because the Three Great Inventions became the means of ascent for two factions that eventually combined to overthrow the aged medieval order of life. Those factions were a rising and affluent merchant class, together with a powerful and unified legal class. Both groups had become impatient with the doctrines and restraints of an old ecclesia and nobility that had long presided over the unified realm of Christendom.

With the introduction of the Three Great Inventions both Europe and England began to undergo a prolonged and painful transformation. The maritime compass brought improved navigation, an increase of foreign trade, the rise of a new and powerful mercantile faction, and social upheaval. Gunpowder weapons brought the advent of mass armies and a new kind of total war, unparalleled in its destructiveness. The printed book brought literacy and learning, but also differences in understanding and belief. When all these disruptive influences converged, the Christian world was plunged into a century of civil and religious warfare, called by historians, The Reformation. It was one of the most deadly and destructive episodes in all of human history. (Lesaffer 2009)

B. Out of that conflict and desolation a new way of life emerged, with new concentrations of monetary wealth and military power, and new forms of centralized rule. With moveable type, the printing press could now publish books in any language, simply by changing the order of characters. Hence, each separate kingdom or republic could have its own national code of law, national religion, and its own Bible, published in the national language. Continental Europe was broken into numerous independent and sovereign nation-states. Universal Christendom reached its symbolic end at the Peace of Westphalia in 1648. With that treaty Europe was no longer a unified whole, it had become a composite of sovereign polities, a pattern it would largely retain into the twenty-first century.

The nation-state was one of the singular contributions of the Civil law tradition, and became the standard mode of governance throughout the modern world. In fact, the law and the state were assimilated to one another to the extent that the structure of the state came to equal the tangible manifestation of the Civil law. As printed publication became more commonplace and as literacy became more widespread, the new governing mechanism of the state became established in explicit form and according to a fixed structure set forth, usually in a founding document or constitution and a published legal code. During the seventeenth century the oath of office became the unifying basis of stability upon which the state was founded. Even so, in a time of shattered families, villages, and traditions, much of the natural cohesiveness between persons had disintegrated. Often, on the Continent, only the coercive power of the state could insure the basis of public order. (Misa 2011)

C. The effects of the developing religious and civil dislocations in England were equally dramatic, but they resolved themselves in a very different way. First of all, the law guildsmen were able to adapt to changing circumstance and to align themselves with the rising merchant class, which in turn, was assimilated into, and reconstituted as nobility. The legal environment of the country became centered in an all-competent High Court of Parliament comprised of Lords and Commons. The fraternity of medieval law was enlarged to administer not only the criminal and property relations of a medieval type, but also the new transactions of monetary wealth, eventually including the affairs of a maritime empire.

Just as Westphalia in 1648 was the turning point for Europe, the Glorious Revolution of 1689 was the turning point for England. Although the monarchy retained its outward shape, it was reestablished according to a famously unwritten constitution—with the authority of the king closely circumscribed. The method of rule was organic and personal in its makeup, combining the hereditary nobility with a fraternal class of gentry. Finally, and importantly, the Common lawyers became more than mere functionaries; instead their courts and guilds became integral to the new structure of monarchy. The two levels of a highly cultivated ruling class, noble and gentle, ensured their own supremacy by a strictly imposed policy of enforced illiteracy among the laboring multitude, the simple.

At the same time, the attitude of Common law jurists toward the Continental innovation of the state remained one of ambivalence. Within the Kingdom and the imperial realm the structure of the corporation, rather than the state, became the preferred instrument of governance—as exemplified by the fabulously lucrative East India and Royal African Companies. Nonetheless, where either state or corporation was employed, it was presided over by a legal stratum based on the combination of hereditary descent and fraternal pledge. Just as on the Continent, however, the English experienced a long period of upheaval and violence with a breakdown of family and tradition. But while the European public turned to reason, to secular ideals, and the aim of human perfectibility, the British public was turned to faith in religious doctrines to fulfill the need for human redemption. (Maitland 2003)

4. Humanism and Calvinism

A. Every legal culture is comprised of two aspects. They can be understood as the adjudicative and educative or as the coercive and persuasive. In any legal culture the method of ordering human life must correlate with a means of shaping human thought. It is possible for a legal regime to impose itself by sheer brute force, *in terrorim*, over the short term. But in order to establish stability and continuity the public must come to understand the structure of law in terms of the benefit it confers. There must be instilled in the population a habit of compliance. The three historic legal cultures balanced this tandem of law and learning in different ways and for different purposes.

During the sixteenth and seventeenth centuries, the period when Christendom was being transformed by the use of new technological instruments, the Islamic world stayed anchored to its underlying basis of humanity and sacredness, its fundamental elements were unchanged. For the Christian world, however, the new technical basis of life required a new way of thinking, and the process of discovering that workable basis took time. The transition also required new programs of instruction that, with the advent of printing, could now be widely promulgated. In fact, beginning after the year 1500, two strands of learning, the Humanist and the Calvinist, became especially influential.

B. The *Studia Humanitas* was the ancient training in manner and speech passed down from the Roman period through the writings of Cicero and Quintilian. However, the *Studia* was concerned with much more than merely fine oratory and an impressive demeanor. It sought to raise from childhood a man of wide learning and sophisticated understanding, not a pedant or a scholar, but the ideal of the amateur generalist. On a deeper level, this New Man would also be instilled with a high sense of civic obligation and purpose. During the sixteenth and seventeenth century, a period of unprecedented

upheaval and destruction, this new type of personage came to replace the old warrior nobility in court and council across the entire Christian realm. (Kennedy 1999) (Kallendorf 2002)

The tradition of the *Studia* was inherently skeptical in matters of religion; it instead asserted a confidence that *Man*, unaided by supernatural intervention, could successfully manage affairs of the world. In fact, because it had no religious basis and was morally agnostic, the attributes it instilled could be employed not only to elevate and construct, but also for duplicity and intrigue. These different possibilities came to be reflected in two versions of the tradition, sometimes called the Machiavellian and the Erasmian. The two strands of the *Studia* might also be thought of as the Realistic versus the Idealistic in outlook. In a general way, and over time, the Erasmian came to prevail on the Continent and the Machiavellian came to predominate in England. (Pocock 2003) (Viroli 2016; 1998)

C. The other widespread teaching that influenced the transformation of Christendom was the doctrine of John Calvin. Although commonly thought of as a religious figure, Calvin lived at a time when the two realms, law and religion, were thought to be inseparably connected. In the new era, he opposed the system of rule based on the Roman Church, the nobility, and Empire inherited from the past, as he also rejected any polity based on ancient Greek and Roman models. Instead, he advocated an alternative form of rule, the *Respublica Hebraeorum*, based on the legalistic pattern of Rabbinic Judaism. The fundamental premise of his proposed method of governance was the subordination of naturally malevolent and depraved humankind, to the authority of a *Chosen Elect*. That upper stratum would, by punitive means, bring order to the world while carrying out the Divine Plan of human Redemption. (Nelson 2010)

The story of Calvinism in the sixteenth and seventeenth century is fraught with wars of annihilation as well as widespread episodes of judicial torture and execution for the crimes of heresy and witchcraft. In fact, over time, on the Continent there came to be a reaction against not only the bitter divisiveness of Calvinism, but against the use of any religion, as the educative instrument of governance. Already, by the beginning of the eighteenth century, beginning with the writings of Descartes, Spinoza, and Leibnitz, highly developed secular philosophies and scientific principles were being set forth on which government could be based—and especially to provide a means of legal order with a more Optimistic view of human nature. (Lesaffer 2009)

But in the meantime the teachings of Calvin had reached England, where they had taken a deeper and more permanent root. Calvinism, in the form of Puritanism, came to dominate events in the Island Kingdom in the decades leading up to the eighteenth century. Moreover, its harsh religious doctrines arrived at the same time as the Machiavellian *Studia* spread among the ruling classes. Hence, the entitlement of those who held authority came to be founded on a view of human nature as being essentially corrupt and depraved. It was a convergence of ideas reflected in the writings of Thomas Hobbes who set forth a method of rule, religious and civil, that portrayed the life of common men as being essentially nasty and brutish. At the same time the Continental *philosophes* were preaching Enlightenment ideals, a doctrine of human corruption was being combined with cultivated speech and manner to indelibly color the future development of British legal methods. (Rosenblatt 2006)

5. Culture and Freedom

A. In the early centuries of the modern period the Islamic world remained fundamentally grounded in its organic way of life, a form of existence that was inherently capable of dynamic adaptation to changing technology and circumstance. With its combination of the Reason of Man and the Revelation of God its methods were in a constant state of incremental development. The strength of Islam was built from the ground up, as it were, on the whole of human attributes—objective reason, subjectivity, and intuition—with no dichotomy of secular and religious. Even though it developed an empirical science, a highly elaborated philosophical tradition, and a sophisticated jurisprudence, its legal foundation rested on the widest possible dissemination of a common teaching, a common custom, and a common language. (Black 2001)

In fact, Islam, as a way of life, could only work if the general population in its familial, ancestral, and tribal networks was deeply imbued with its values and attached to its customs. Like all traditional societies it was based on harmony by the balance of candor against conciliation. Viewed a different way, Islam was comprised of two dimensions. It was organic in that its basis was human. But it was also abstract and universal in the sense that the teachings of Mohammed were thought to be adaptable to all persons and localities. They amounted to a program of personal cultivation in thought, word, and deed. Its operation required relatively few judicial figures and no partisan advocates, or lawyers, because every Moslem, being trained in the law, was capable of representing himself or herself in a Sharia court. (Hallaq 2010)

B. But in traumatized Europe and England, both of which had once been part of a unified Christian Empire, the new premise of rule required a new way of shaping human thought to match the new way of ordering human life. Moreover, the adjudicative mechanism had advanced much more rapidly than the educative method, and a replacement was required to fill the void left by the destruction of its single universal religion. By the eighteenth century, during what historians call The Enlightenment, however, the savants of Europe arrived at a new premise, which in certain ways, matched the approach of Islam. It did so in the sense that it had a positive view of human nature, rejecting Calvinist teachings. It also came to be founded on what were held to be universal principles, principles thought to be applicable to all persons of every rank and status. It began with three general assumptions: all persons were equal in the essential elements that made them human; all persons had the potential to grow and develop; all persons had the faculty of reason.

In fact, during the eighteenth century, Continental legal development became deeply imbued with a philosophical view that followed on the ancient Roman Stoic idea of *Sensus Communis*. It asserted that if members of the common population were given sufficient opportunity for cultivation and learning, they could substantially govern themselves. They would enjoy a prosperous and peaceful existence without the need of close legal oversight. These teachings came to be expressed during the eighteenth century Age of Reason as the Optimism of Leibnitz and Wolff, the Common Sense of Shaftesbury, Reid, and Thomas Paine, the General Will of Rousseau, and the *Sensus Communis* of Kant. This assertion of confidence in an innate human potential was centrally important in a way of life intended to be based on an enlightened citizenry. (Paine 2000)

With such respect toward humankind, modern Europe came to exemplify a high level of culture, that is, culture in the sense of cultivation in thought, word, and deed, with a special emphasis on personal demeanor and training of the mind. Because of this, Europeans generally gained a reputation for refinement and intellect. At the same time, because of the underlying importance of the ideological or scientific basis of its society, the philosopher became the key person for its operation, displacing the medieval theologian. In the environment of Europe the philosopher, like the artist and poet, might become a widely known and revered public figure. As a method of social order, however, the European approach was unlike Islam in that it was purely secular, purely rational in its outlook. Its method of governance negated the subjective, the intuitive, or religious element of human composition.

C. By contrast, developments in the Anglophone world had taken a different turn. In that environment, the strength of public order did not depend on the level of cultivation prevailing among members of the common population. Order was, instead, centered in a tightly unified hierarchical structure of rule. Rather than culture and learning among the common populace, it emphasized the personal freedom enjoyed by each legal subject—but it was freedom of a certain specific type. The private person was free from any requirements and standards in mannerism and speech, or any particular ethos of thought, word, and deed. In the English view, a wide latitude of behavior, even idiosyncrasy, was permitted among the common population so long as an individual did not exceed the limits set down by law. (Dewey 1998)

Although cultivated speech and deportment among those who ruled was crucial, the personal affect of individual subjects under their authority was of relatively minor importance. After all, operation of the system as a whole, rested exclusively with an elevated stratum, rather than the public at large. Most important was the general understanding that a retributive authority was always present for those who thought to violate the law. Not only an unbridgeable gap of class separated the two levels of the population, but in a legal sense they lived in two completely different realms: the upper based on hereditary entitlement, fraternal oath, social superiority, and legal privilege, the lower comprised of dispersed families, individuation, social inferiority, and life defined by legal rights. There remained, however, a single source of unity between the two strata: the realm of religiosity. Whereas the more philosophical approach on the Continent was rationally self-existent, as a complete system of thought, the transcendent Anglophone approach relied on a supernatural imprimatur. A particular understanding of the Judeo-Christian tradition provided the theological basis for its legitimacy. (Cannadine 1994) (Bellah 2006)

6. Progress and Apocalypses

A. The technology of ink brush and parchment had made possible the legal cultures of Islam, Medieval Christendom, and the guild law of England. Beginning in the modern period, technologies of navigation, warfare, and publication had made possible a new way of life. It had been based on the foundation of concentrated monetary wealth and concentrated military power, as well as mechanical print in the separate languages that opened the way to nationally unified educational and legal regimes. However, in the nineteenth century another period of innovation would bring another dramatic wave of

change. Once again there were many scientific and mechanical inventions during that period, but for purposes of governance they can be reduced to three of special importance: the steamship, railroad, and telegraphic communication. (Stern 2011)

These innovations did not have the profound consequences of what had occurred in the sixteenth century. But they came to be equally important in that they enabled the Western nations to not only extend their methods of finance and trade, but also their forms of governance over all parts of the world. The nineteenth century saw a race to conquer or colonize the last remaining unclaimed territories of the earth. It also marked the rise of modern empires, the advent of geopolitics, and the possibility of worldwide war. What had previously been lax and casually formed imperial networks could now become closely governed systems. Where there had been three different legal cultures--Anglophone, Civilian, and Islamic--separated by topography and distance, there now began to be confrontation and encroachment upon one another and a struggle for legal supremacy.

Around the world the patterns of legal development took different forms in different regions. Japan, for example, was quick to adopt its own version of the nation-state as well as an imperial structure administered on the Continental model. During the same period America became an imperial power, following the English example. As distant peoples became colonized by European Powers they would very often have the structure of the state imposed upon them. But rather than the nation-state the Anglophone Powers favored another legal construct for wielding control over foreign lands and exploiting their resources: the extraterritorial corporation. In fact, the corporate way of manifesting legal authority was much more agile than the state, and had the advantage of being insulated from public scrutiny and political controversy. From an imperial perspective it also provided a form of transnational intervention under the benign pretext of finance and trade. (Lesaffer 2009) (Williams 2013)

B. For the first time, because of their technical superiority, the Western powers were able to penetrate and control large parts of the Moslem world. In fact, by the early twentieth century much of Islam lay helpless before the armaments of the rising Western Powers. Ironically, where the world of Islam had once been seen mostly as an inconvenient barrier between Europe and England and their rich colonies in Asia, by the early twentieth century it had become a source of oil and an important geopolitical region itself. Under Civilian legal influence the law-based territorial state came widely to be imposed over deeply rooted Islamic populations. However, its structure of secular authority based on abstract principles only crudely fit with the organic workings of Sharia law. (Piscatori 1986)

Although both Civil and Islamic laws were established on universal principles, and they shared some of the optimistic teachings of human potential, they were not wholly compatible. When the state structure was imposed upon it the larger dimensions of Islamic law often became a disfigured caricature of its former presence. More than that, with the concentrated power of the state came the rise of repressive regimes that attempted to justify their policies by distorted combinations of Islamic and Civilian legal principle. The general result was often catastrophic for the legal tradition of Islam, except in matters, for example, of family and marriage, where its existence was irrelevant to the stability of a ruling regime. (Kingston 1996)

By contrast, Anglophone imperial influence came to be widely imposed on the Moslem world through the combination of the corporation and the sponsored tribal dynasty. In particular, the English policy attempted to replicate its monarchical and hereditary methods through the instrument of royal houses and servile kingdoms. Anglophone rule, after all, was based on a transcendent law and on the assumed superiority of an elevated ruling class. The methods of instruction in manner and speech, of rank and entitlement, were extended to scions of selected dynastic families. At the same time, the law that gave substance to the extraterritorial corporation worked on a transnational level, elevated above the modes of governance that ordered day to day life among the population generally. (Piscatori 2005) (Stern 2011)

C. The twentieth century, however, would bring an entirely new wave of seemingly miraculous innovations: the automobile, airplane, cinema, and radio. Far removed from scribal hand, and printed book, the advent of cinema and radio allowed government leaders in each individual nation-state to create an atmosphere of uniform understanding; it was also possible to mobilize vast populations for production and warfare. This was demonstrated during the second worldwide war of the twentieth century, as virtually the entire population of each belligerent country was united in martial fervor. However, this combination of technical innovation, geopolitics, and nationalism resulted in an enormous human catastrophe.

Following the widespread carnage and desolation of worldwide war, the Anglophone nations emerged with their infrastructures and resources virtually intact. Their combined advantage allowed them to easily dominate international economic and political affairs—but not in the realm of law, where its practices focused narrowly on issues of commercial contract and incorporation. Instead, the cataclysmic potential of the new military innovations urgently demanded a logical structure of order among nations with clearly intelligible methods of arbitration between them. Because of its explicit, universal, and rational principles, Civilian rather than the Anglophone tradition was drawn upon to provide the foundation for international order.

However, technical developments of the past would prove to be merely a prelude to what would come next. As the end of the twentieth century approached the entire world was being transformed by a technological explosion. The consequences were obvious on many levels, but in terms of law and governance it had an especial importance. The old international world of independent and sovereign nation-states was becoming overlain by an enveloping architecture of corporate finance and trade. Moreover, every human being, in whatever remote part of the world, was now coming under the influence of an electronically mediated reality that directly shaped each individual human life.

In particular, the combination of television, computer, and communication networks began to reshape the possibilities of global oversight and public understanding. The ties of investment and production, the extended reach of corporate intervention began to supersede the network of nation-states as the primary force in world affairs. As technology came to dissolve national borders, transcending barriers of topography and distance, it brought the three traditions of law even closer together. The conflicts arising from that encounter raised profound questions about what form of legal culture would eventually predominate, what conception of human nature would prevail, and what level of human trust would define the global age. (Giddens 1991) (Habermas 1996)

7. Universal and Transcendent

A. If the twentieth century had marked the effectual demise of Islamic law as a cohesive force, the twenty-first century brought a movement to finally eradicate its remaining vestiges, even in matters of family and marriage. The Conflict of Laws in the global age narrowed to questions of competition and compatibility between the two remaining methods of global order, Civilian and Anglophone. But because of the nature of the two legal regimes, the advantage in the changing technological environment undoubtedly favored the Anglophone regimen. Not only was the Civil law married to the historical nation-state, an institution being fatally weakened by technical advance, but that law was also inhibited by the framework of principles and ideals through which it dispensed justice. Its metaphysical assumptions and optimistic assessment of human nature seemed no longer relevant in a legal atmosphere determined more and more by the impersonal dictate of algorithms, Big Data, and Deep Learning. (Murphy 2012) (Fuller 2010)

By contrast, Anglophone law appeared to be entering an era of unprecedented expansiveness. Less restrained by set doctrines and principles, pragmatic in its operation, its fellowship of law could easily adapt to changing technical and political circumstance. Independent of the nation-state it could rely on its favored instrument of oversight, the corporation. Moreover, because the English language had become, in effect, the global language, it was becoming possible for that law to extend a mono-phone authority across all lands and peoples. Most of all, Anglophone law had the advantage of transcendence, as it presided from an elevated realm of status and knowledge existing beyond the awareness of those within its jurisdictions. (Breyer 2015) (Kennedy 2016)

B. A thousand years in the past the simple tools of the scribe had made each of the three legal traditions possible. Five hundred years in the past technical advance, especially the printed book, gave impetus to the modern Continental and English structures of law. It made centralized nation-based legal regimes possible by setting forth a fixed and uniform basis of publication and communication. In the twenty-first century the new tools of electronic sound and image were providing an even more effective educative half of a globalized Anglophone legal culture. The method of instruction no longer depended on permanently instilled knowledge to shape the public mind. Instead, it produced a cognitive atmosphere filled with the continuous flow of information. For purposes of governance, this not only rendered obsolete the laborious methods of rote learning, but it fit well the basic Anglophone division of knowledge between those who wielded legal authority and the absence of knowledge among those who comprised a compliant global population. (Luhmann 2000)

In the Anglophone approach, in fact, cultivation and learning among the public had never been of crucial importance. Unlike the Civilian tradition, it had never relied on the promulgation of universal principles among all levels of status and rank as

its basis of order. Instead, it had relied historically on the instrument of belief in a Christian or Judeo-Christian religiosity to underlay its method. In fact, the stated purpose of the English law was very different from the object of its Continental opposite. English legality did not look toward a peaceful and prosperous society for all, a future world based on humanist principles, the traditional goal of the Civil law. Instead, the often stated purpose of Anglophone jurisprudence was more straightforward and concrete: imposing legal order upon an obedient public, the fellowship would confer the benefits of its own Rule of Law. (Slaughter 2004)

C. In fact, central to the operation of this Anglophone regimen of global legality was the element of human trust—but it would be a particular understanding of trust and its role in human affairs. First of all, patterns of human trust, or relations of trust among the public generally, were of only secondary consideration. After all, based on Puritan assumptions about human nature, the innate human tendencies could be trusted with absolute certainty, because they invariably descended to turpitude, malevolence, and chaos. But this was not of crucial importance, because the structure of authority would not be anchored in the attitudes and habits of the multitude of persons.

Instead, the element of personal trust would be of fundamental importance in the composition of its transcendent body of legal authority. In the specific case of Anglophone law, that importance was also related to the Puritan Calvinist view toward human nature as being essentially depraved and corrupt—but to a different purpose. After all, this generalized view of human malignancy was not limited to members of the public; it included members of the legal fellowship as well. Especially, the traits of avarice and contentiousness as well as an impulse to dominion over others, were of crucial importance among the ruling fellowship. (Breyer 2015)

Because of what might be called its theological premise, Anglophone law since the seventeenth century, did not lament the corrupt nature of human beings, nor did it expect to change that nature. Rather, it attempted to harness those impulses, to foster them, and to make the drive for power and gain the unfailing foundation of its collegial method of rule. In the case of a fellowship founded in the commerce of law it was only necessary that its members be bound together in their collective enterprise to wield authority and to gain emolument in the process. Their adverse assessment of human predictability—as having an innate and ineradicable gravity, descending to malice and rapacity—had provided the foundation of a stable and continuous legal order for a thousand years. It could be trusted in the twenty-first century to provide the central element in a Rule of Law for the global age.

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