

**Preface to *Islam and Federalism:*  
New horizons for Islamic law**

Chibli Mallat

I

The publication of Hasan Bahr al-‘Ulum’s *Islam and Federalism* is an occasion to thank Professor Baber Johansen and the Islamic law program at Harvard Law School for a special platform the law school and its Islamic law program provide to the world.<sup>1</sup> Harvard’s model *hawza* is the closest equivalent in the West to the legal seminaries documented in the Muslim world for hundreds of years. In the contemporary world, I can think only of Najaf as a similarly influential place of learning, and the preface to the present book is a way to speak to Harvard’s and Najaf’s *hawzas* with the same voice.

Najaf has been a point of departure for my scholarship in Islamic law, shaping my thought, and life, in ways I could scarcely fathom when I first became interested in Muhammad Baqer as-Sadr some thirty years ago. That my own life, both in terms of personal trajectory, and in terms of scholarship, should have been so affected, is hardly of interest. But that American and Iraqi lives should become so profoundly entangled, I could hardly suspect then.

Two simple theses obtain from that mix of subjective and objective trials over the continued and challenging interest in Iraq as country and in Islamic law as field of research:

*Thesis 1.* Islamic law’s future is national first, then Middle Eastern, and will remain Islamic only insofar as it is successful nationally and regionally.

*Thesis 2.* Traditional law, always revisited by lawyers, is illustrated most importantly in Iraq in a search for an Islamic legal theory of federalism. Hasan Bahr al-‘Ulum’s *Islam and Federalism* is its most remarkable illustration to date.

---

<sup>1</sup>This Preface was first presented at Harvard Law School, 29 March 2010, Workshop on ‘Islamic Law in the Law of National States in the Middle East and Southeast Asia.’ I am grateful to Hiram Chodosh, Trudi Hodges and Gareth Smyth for their friendly help, and generally to the colleagues in the Global Justice Project: Iraq, with whom I was privileged to work in the past two years. This book is part of the Project and was funded, in part, through a grant from the Department of State. The opinions, findings and conclusions or recommendations expressed herein are those of the Author(s) and do not necessarily reflect those of the Department of State.

Following the first thesis, the decisive spheres for Islamic law are national then regional. All law - Islamic or not - is bound to remain dominantly national, that is closely tied to a territory defined by the 190+ recognized nation-states. Whatever the reach of global or regional law, the basics remain national. The conclusive evidence for this stretches from the reluctance of Supreme Court judges in the United States to quote a foreign decision,<sup>2</sup> to the dominance of national legal systems so trivially apparent when any human being sets foot in a foreign airport. National law greets a person heavily in the line she is forced to choose at entry point, and leaves her only when she departs.

The prime importance of national law is a truism. In Iraq, Islamic law in the new legal order has been all but absent from its constitutional formation, and even more so in the legislation at large, and in the judiciary. This requires a discussion of the needed *aggiornamento* of Islamic law in the bill of rights adopted in Iraq, a discussion pursued in the context of its Constitutional Review Committee.<sup>3</sup>

The regional, Middle Eastern dimension, obtains in my work in the strong intellectual shift from *The Renewal of Islamic law* to *Introduction to Middle Eastern law*.<sup>4</sup> The passage is from Islamic to Middle Eastern Law, in a departure from the received categories in academic circles and beyond. To illustrate the shift, the 2009 preface to the *Introduction* applies the concept of break, *coupure*, common to French modern philosophers and Thomas Kuhn's paradigmatic shifts in science, in this case the emergence of Middle Eastern law, in contradistinction to Islamic law, as a 'legal continent'. A corollary to this proposal, namely that the

---

<sup>2</sup> Some of the most relevant arguments to the legal autonomy of a nationally bound community are offered by Judith Resnik, 'Law's migration: American exceptionalism, silent dialogues, and federalism's multiple ports of entry,' *Yale Law Journal*, 115, 2006, 1564-1670 (relating the controversy amongst US judges and scholars, and linking it to federalism), and by Paul Kahn, *The reign of law*, New Haven, Yale University Press, 1997 (how the perception of a community ruled by law was formed in early America) and 'Universal Jurisdiction or the Rule of Law?' in John Borneman ed., *The case of Ariel Sharon and the fate of universal jurisdiction*, Princeton Institute for International and Regional Studies, Princeton 2004, 134-35: 'Claims of law, like claims to the sacred, work within established communities of belief. They do not in themselves create those communities, and they do not easily cross borders.'

<sup>3</sup> See Mallat, *Iraq: Guide to law and policy*, Aspen, 2009, 47-48, 130-31. (On the missed occasion in the writing of the Iraqi constitution to combine the Islamic legal tradition with contemporary universal human rights); Mallat, 'Fi hasilat munaqashat lajnat muraja'at al-dustur al-'iraqi, al-fidiriyya al-'iraqiyya: hudud jadida (In conclusion to the discussions of the Iraqi Constitutional Review Committee, Iraqi federalism: new horizons)', *al-Nahar*, 22 March 2010.

<sup>4</sup> Mallat, *The renewal of Islamic law: Muhammad Baqer as-Sadr, Najaf, and the Shi'i International*, Cambridge University Press, Cambridge 1993; *Introduction to Middle Eastern law*, Oxford University Press, Oxford 2007.

future of Islamic law is Middle Eastern as a comparative field of equal importance to common law or civil law.<sup>5</sup>

Another alluring level of analysis vests in the challenge to classical Islamic law in the Iraqi context where ‘federalism’ is an openly espoused system, by the Iraqi Constitution itself, but also beyond, in those very Islamic circles of the oldest living university that the Holy City of Najaf constitutes.<sup>6</sup> This is the gist of the second thesis, namely that traditional law, always revisited by lawyers, is illustrated in the Iraqi search for an Islamic legal theory of federalism which the current book carries to new levels of scholarship.

Much of the discovery takes shape as a ‘bricolage,’ a cohering patchwork of legal odds and ends that Claude Lévi-Strauss has masterfully illustrated in other contexts. In *La Pensée Sauvage*, he opposes mythical thought to scientific thought by contrasting the *bricoleur* and the engineer. The *bricoleur* uses the material at his disposal, in ‘odds and ends’:

The totality of the means of the *bricoleur* cannot therefore be defined by a project (which would in any event suppose, as for the engineer, the existence of as many instrumental ensembles as types of projects, at least in theory); it gets defined only by its instrumentality, in other words, and to use the very language of the *bricoleur*, because the elements are received or conserved by virtue of the principle that it ‘could always be used.’<sup>7</sup>

---

<sup>5</sup> ‘Preface’ to the paperback edition of *Introduction to Middle Eastern law*, 2009. Although the use of Thomas Kuhn’s works is emphasized in this preface, as is Louis Althusser’s *coupure* (break) I had since an occasion to read again Gaston Bachelard, *La formation de l'esprit scientifique*, Vrin, Paris 1938. Bachelard puts the more solid foundation to the nature of scientific work, introducing in this groundbreaking book both the concept of the ‘cité des savants’ as the norm for scientific progress, as against the individual scientist-genius, and ‘the epistemological break’ which Kuhn couches in the language of ‘paradigmatic shift,’ and Althusser as *coupure épistémologique*.

<sup>6</sup> In work always in progress on federalism, in the Middle East and elsewhere, see e.g. Mallat, ‘Federalism in the Middle East and Europe’, *Case Western Journal of International Law*, 35, 2003, 1-15 (On the allure of federalism in both regions), *Democracy in America*, Dar al-Nahar (in Arabic), Beirut 2001, (Federalism as one of two American signal contributions to world constitutionalism, the other being constitutional review).

<sup>7</sup> Claude Lévi-Strauss, *La Pensée Sauvage*, original 1962, in Lévi-Strauss, *Oeuvres*, La Pléiade, Paris 2008, 577. ‘Odds and ends’ is used, in English, at 582: ‘Or, le propre de la pensée mythique, comme du bricolage sur le plan pratique, est d’élaborer des ensembles structurés, mais en utilisant des résidus et des débris d’événements: ‘odds and ends’, dirait l’anglais, ou, en français, des bribes et des morceaux, témoins fossiles de l’histoire d’un individu ou d’une société.’

The concept of *bricolage* in its legal illustration cuts across the whole discipline of law. It intersects with the unending battle between traditionalists and constructivists, familiar to lawyers the world over, both tinkering with a part of Lévi-Strauss's 'fossilized witnesses' that history puts at their disposal. Historical documents are at the center of both schools in a process of continued, and unending discovery. To take two examples drawn for the present occasion from the Harvard *hawza*, the process is always afoot in law, whether in the identification by Martha Minow of the Nuremberg trials for the *bricolage* of the post-1990 'international criminal courts',<sup>8</sup> or in the difficulties described by William Alford in projecting modern copyright legal notions backward to the classical Chinese legal system.<sup>9</sup>

So lawyers relentlessly revisit the tradition, in an instrumental exercise that is very much an essence of their trade, whatever legal documentation history might offer for their pressing case. In Iraq, federalism is the most remarkable current illustration of the *aggiornamento* of Islamic law.

## II

How did this federal horizon for Islamic law -- the first being the primarily 'national' working of federalism in the Iraqi Constitution of 2005 -- arise? 'All law is 'situational law'',<sup>10</sup> as is all writing, on law or otherwise. Anecdotal 'situationism' helps set an unusual stage, a thread running in Najaf from the late Muhammad Baqer as-Sadr to Sayyed Hasan Bahr al-'Ulum's *Islam and Federalism*.

---

<sup>8</sup> Martha Minow, *Between vengeance and forgiveness: Facing history after genocide and mass violence*, Beacon Press, Boston 1998, 25-51 ('Trials'), at 33 (footnotes omitted): 'Once established, the Nuremberg tribunal and even the 'somewhat nebulous' notion of crimes against humanity no longer could be viewed as unprecedented... Indeed, one former Nuremberg prosecutor argues that the most important contribution of Nuremberg is the development of a kind of international law that grows, and is always in the process of becoming.'

<sup>9</sup> William Alford, *To steal a book is an elegant offense: Intellectual property law in Chinese civilization*, Stanford, Stanford University Press, Stanford 1995, see esp. ch.2, 'Don't stop thinking about... yesterday: why there was no indigenous counterpart to intellectual property law in Imperial China', summarized at 2 (footnotes omitted): '[Contrary to the assertions of Chinese scholars and the expectation of Western theorists, imperial China did not develop a sustained indigenous counterpart to intellectual property law in significant measure because of the character of Chinese political culture.]'

<sup>10</sup> Carl Schmitt, *Political theology*, original German 1922, Chicago University Press, Chicago 1985, 17.

Muhammad Baqer as-Sadr was executed by Saddam Hussein on April 8, 1980. I never knew Sadr personally, but my research gave me the opportunity to meet many of his colleagues and companions, indeed over the years most of the intelligentsia of Najaf of importance to legal scholarship. In the large pool of talents, one friendship has endured, that of the Bahr al-‘Ulum family. Sayyed Muhammad Bahr al-‘Ulum (born 1923) , *al-sayyed al-kabir* as his friends and family call him, is a force of nature.<sup>11</sup> Around him was built the whole Iraqi opposition in 1990, after a painful, extensive walk in the wilderness of many exiles beginning in 1968.<sup>12</sup> While student revolutions were breaking sexual and authoritarian taboos in the West, 1968 marked the tangible beginning of totalitarianism in Iraq. As early as 1968-69, the list of political victims had become significant, from the Ba‘th companions who were murdered by the new leadership around Ahmad Hasan al-Bakr and Saddam Hussein, to the Jesuits of Iraq, to the remaining Jews of Baghdad, some of whom publically hanged in January 1969.<sup>13</sup>

Muhammad Bahr al-‘Ulum, already by then a promising young scholar, was close to the leading Najaf *marja‘* at the time, Muhsin al-Hakim (d.1970). The brewing conflict between Hakim’s Najaf and the Ba‘th in Baghdad began over an educational project sponsored by Hakim, the University at Kufa. The project was undermined by the Bakr-Saddam tandem rising authoritarianism, which feared

---

<sup>11</sup> A brief note on titles: *Al-sayyed al-kabir*, the great (or grand or old) *sayyed*, is not a traditional title, it is used endearingly out of respect for Muhammad Bahr al-‘Ulum's patriarchal status in the family. *Sayyed*, which is the equivalent of Mr. in modern Arabic, refers in Shi‘i society to a descendant of the Prophet through his daughter Fatima and son-in-law ‘Ali, the fourth Caliph and first of the Twelve Imams of the tradition. *Mujtahid* is the generic name for legal scholar in Islam. In Shi‘ism, a *mujtahid* is the scholar who has reached a level of knowledge in law that allows him to lead and innovate in legal rulings and interpretation. Top *mujtahids* have in the second half of the 20th century have been increasingly referred to as *Ayat Allahs* (Ayatollah in English), but the more accurate word is *marja‘*, plural *maraje‘*, reference, connoting a final, decisive word of the expert/arbitrator. Muhammad Bahr al-‘Ulum always shunned the vain title of *Ayat Allah*, which he certainly was far more entitled to, if he wished, than many others who don it. Note that Arabic does not have capital letters, so *Sayyed*, *Allah*, or *Muhammad*, should also be written in even letters, *sayyed*, *allah*. *muhammad*. It is not in widespread usage.

<sup>12</sup> On the early period, see my ‘Muhammad Bahr al-‘Ulum’, *Orient*, 3/1993, 342-345, and ‘Sunnism and Shi‘ism in Iraq: Revisiting the codes’, in Chibli Mallat and Jane Connors eds., *Islamic Family Law*, Graham and Trotman, London 1990, 71-91.

<sup>13</sup> Samir al-Khalil (Kan‘an Makkiyye) wrote the most powerful book on totalitarian Ba‘thism, *The republic of fear*, University of California Press and Hutchinson, London 1989. On the January 1969 public hanging of Jews accused to be spies for Israel, see at 46-58. On the first confrontation between Baghdad and Najaf, see Faleh Jabar, *The Shi‘ite movement in Iraq*, Saqi, London 2003, 201-06.

independent universities, and proceeded to close the forty-year old Jesuit institutions of academic excellence.<sup>14</sup> The Najaf-Baghdad confrontation in 1968 quickly translated into a spate of government actions against Hakim's closest collaborators, his son Mahdi and his most talented assistant, Muhammad Bahr al-'Ulum. They both were amongst the very early targets of the new, already relentless dictatorship.<sup>15</sup>

Organized resistance started to jell in the late 1980s, after the long and bloody Iran-Iraq war. This is when, together with Mahdi al-Hakim, Muhammad Bahr al-'Ulum succeeded in bringing together the Iraqi opposition. That development was correctly perceived by Saddam Hussein as the greatest risk on his rule, which is why he had Mahdi al-Hakim assassinated in Sudan in January 1988. Bahr al-'Ulum took on the mantle. He remained the consensual person of reference for the Iraqi opposition throughout the following two decades, and was elected a member of the Iraqi National Congress' tripartite Presidency Council in 1992.<sup>16</sup> After a crossing of the desert that lasted 35 years, he was chosen by his peers upon returning to Baghdad in 2003 to be the president of the Iraqi Governing Council, the first government of the post-Saddam era. A month later, he left the position to allow other colleagues their share of the 'presidency'. Muhammad Bahr al-'Ulum may be that unique character in modern Iraq who has earned extensive praise from

---

<sup>14</sup> Joseph MacDonnell, *Jesuits by the Tigris*, Jesuit Mission Press, Boston 1994, relates at 233-66 the expulsion of 61 Jesuits in 1968-69 and 'the Iraqization' of the Jesuit high school (Baghdad College) and university (al-Hikma). John Donohue, the Superior of the Jesuits in Iraq at the time of the expulsion, stayed until the end, see the moving letter he sent to his colleagues in Lebanon at 250-51. See more on Donohue in his Festschrift, which I edited with Leslie Tramontini, *From Baghdad to Beirut*, German Orient Institute, Beirut 2007.

<sup>15</sup>The long oppositional journey of Iraqis as a whole is yet to be documented in a comprehensive way. Any such study would have to include long chapters on Bahr al-'Ulum as political leader, following the assassination of his long-standing colleague, Mahdi, his early companion in exile. I have documented this story partially in a number of contributions, including 'The Iraqi opposition: a dossier', London, School of Oriental and African Studies, February 1991. The opposition to the rule of Saddam Hussein, which culminated in his removal by the US-led occupation/liberation of Iraq in 2003, is the subject of great passion, as is the invasion itself. See discussion in Mallat, *Iraq: Guide to law and policy*, above n.3, 208-221 (On the march to war for the removal of Saddam Hussein and the alternatives available).

<sup>16</sup> The Iraqi opposition and the emergence of the Iraqi National Congress in Vienna in June 1992, and then in Salaheddin in October of that year, are discussed in Mallat, *The Middle East into the 21st Century*, Ithaca Press, Reading 1996, 71-126. I am not aware of any comprehensive work on the Iraqi opposition between 1995 and 2003, although the Iraqi ambassador to the United Nations, Hamid al-Bayati, will hopefully complete a book on the subject.

the powerful American envoy at the time, Paul Bremer, without anyone in Iraq daring to question his Iraqi nationalism, or indeed the authenticity of his Islam.<sup>17</sup>

This brief detour sets the stage for the story behind the present book. It began with an evening in Najaf with *al-sayyed al-kabir* on 14 March 2009. As part of the work within the ‘Global Justice Project: Iraq’, the University of Utah initiative in Baghdad that supported various branches of the Iraqi government in their legal efforts,<sup>18</sup> I was keen to see Najaf again, which I had visited in 2004 to see where Muhammad Baqer as-Sadr had lived. I had even spent some time with the Hamletian grave-digger who had witnessed Sadr’s secretive burial in 1980, then followed every single instance when the authorities moved the body several times over the following years to avoid its transformation into a political rallying point for mourners.<sup>19</sup> In 2009, I wanted to garner some support for our constitutional efforts with the CRC, and I was hoping to discuss these developments with some of the leading Najaf scholars, including Bahr al-‘Ulum. So I also visited some of the leading *mujtahids*, sat in on lectures by one of the rising scholars of Najaf, and gave a lecture at al-‘alamayn, a college with a modernist bent that Bahr al-‘Ulum established after his return from exile.<sup>20</sup>

That evening on March 14, at yet another lavish meal at his home, we were three, the grand *sayyed*, his nephew Hasan Bahr al-‘Ulum, and myself. The feast, though, was mostly intellectual, and we spent a long evening talking about politics, literature and poetry. Najaf must have the greatest concentration of poets the world over.<sup>21</sup>

From that meeting emerged the unusual book in the reader's hands. As the Najaf conversation drifted, the issue of federalism came up. We agreed that federalism was an intriguing but little understood concept in Middle Eastern lore, and Sayyed Hasan expressed an interest in probing it further from an Islamic legal perspective. Since the public law legacy of Islam tends to be poor, such a legal probe was inevitably novel.

---

<sup>17</sup> Paul Bremer, *My year in Iraq*, Simon and Schuster, New York 2006, 96-103.

<sup>18</sup> Website gjpi.org. The Project was led by the dean of the law school, Hiram Chodosh, and I acted as senior law advisor. The present book is part of the GJPI work.

<sup>19</sup> Khaled Oweis, ‘Iraq cleric inspires Arab democrats from his grave’, Reuters, 8 December 2004.

<sup>20</sup> Ali Ghadir, ‘Mallat, risalat al-Najaf ilal-‘alam hamalaha thalathat mujahidin: al-Sadr wal-Hakim wa-Bahr al-‘Ulum (Mallat, the message of Najaf to the world was carried by three fighters: Sadr, Hakim and Bahr al-‘Ulum), *al-Muwaten*, Baghdad, 15 March 2009.

<sup>21</sup> Muhammad Bahr al-‘Ulum is a noted poet, see his *Diwan* (Collection of poetry), al-Maktaba al-adabiyya al-mukhtassa, Najaf 2006.

Constitutional arrangements as have emerged from the Atlantic revolutions in the late 18th century were unparalleled elsewhere. Modern constitutionalism vests in two modern concepts that are the brainchildren of the mid-century: Montesquieu's separation of powers, and Rousseau's social contract. Both constructs are at the heart of the Atlantic constitutions. The notion of a social contract between people and the sovereign offers the grounding philosophical concept for the American and French constitutions, and the separation of powers marks the functional expression of the end of absolutism. Neither concept will be found as such in classical Islamic theory. Despite all the talk about the so-called 'Constitution of Medina', the text that survives presents an arrangement of power that has little to do with what forms a modern constitution.<sup>22</sup>

By the 21st century, US and French style constitutions have become the norm, including for a politically backward place like Saudi Arabia, at least on paper. Both Rousseau's social contract and Montesquieu's separation of powers were institutionalized, along with voting and majoritarian rule, which had slowly become universal. All these traits had been well internalized, if not applied, in the Middle East. Across the region, they have become normative. What wasn't the norm anywhere in the region, however, was federalism.<sup>23</sup>

### III

How federalism as a concept came to Iraq is a fascinating story, which finds its roots in discussions amongst oppositional leaders throughout the 1990s.<sup>24</sup> By the time the regime was changed in 2003, federalism had firmly taken root in the minds of leaders among two out of the three main socio-political constituencies in Iraq: the Kurds and the Shi'is. Federalism lacked an educational basis in that it was

---

<sup>22</sup> The Constitution of Medina (Arabic *sahifat madina*, literally the text or document of Medina) appears in the earliest biographies of the Prophet Muhammad as an arrangement mostly between Jews and Muslims on matters of war and the fight against criminality. Text in English by A. Guillaume, *The life of Muhammad — A translation of Ishaq's sirat rasul Allah*, Oxford University Press, London 1955, 231-233. Hanna Batatu documents a similar arrangement in a neighborhood of Najaf after the uprising of 1915 which freed the city from Ottoman control. Hanna Batatu, *The old social classes and the revolutionary movements of Iraq*, Princeton University Press, Princeton 1978, 19-20. In neither case are the basics of a 'modern' constitution recognizable. In both texts, tribalism is dominant.

<sup>23</sup> See generally *Introduction to Middle Eastern law*, above n.4, chapter 4, esp. 176-79.

<sup>24</sup> In a conversation on 15 May 2009, Iraqi president Jalal Talibani suggested that the concept first appeared amongst Iraqi Kurds in the late 1980s. Shi'i oppositional leaders started discussing it in various fora in 1991, and the concept was adopted formally by the Iraqi National Congress in the Salaheddin meeting in October 1992.



never part of the law school curriculum, the practice of government or the courts, and, as importantly, the worldview of the classical Islamic scholars. This crucial educational gap Hasan Bahr al-'Ulum single-handedly fills.

Born in 1963, Hasan Bahr al-'Ulum is the scion of a learned family also steeped in active politics. He is the nephew of Muhammad Bahr al-'Ulum, and his father, 'Izzeddin, was a leading Najaf scholar who was executed in 1991 by the Hussein government along with 21 other close aides and relatives. Hasan joined the *hawza* in Najaf in 1976, studying with 'Ala' al-Din Bahr al-'Ulum and Rida Khalkhali, both killed in 1991, and with Muhammad Taqi al-Khu'i who was assassinated in 1994. He also studied with the leading *marja'*, Abulqasem al-Khu'i (d. 1992), but he left after the 1991 uprising against Saddam Hussein for Iran, where he studied with a number of prominent Qum leaders, foremost Sheikh Mustafa al-Harandi who features prominently in this book as the proponent of a new, individual-based concept of Islamic government. Hasan left Iran in 1994 for London, and spent some time in Canada after 2001 before returning to his teaching and studying in Najaf in 2003. A prolific writer on topical subjects, a particularly important book is a study of non-violence from an Islamic perspective, *Mujtama' al-la 'unf: dirasa fi waqe' al-umma al-islamiyya* (The non-violent society: study in the shape of the Muslim community), published in Kuwait in 2004.

Likewise, *Islam and Federalism* is an impressive treatise, completed in less than a year. It consists of three major parts. The first discusses theories of government from an Islamic legal perspective. The second brushes a comparative stroke of 'the forms of the state' in Western scholarship as conveyed in the now many books available in Arabic. The third examines proto-federal arrangements in Islamic law and history. A final section bridges the conclusions of the first chapter on government and the proto-federal investigations in the last chapter. The conclusion sums up the proposed Islamic law view on federalism in the light of the new reading of its embryonic forms in Islam's classical age, and within the theories of governance as developed around *wilayat al-faqih* (the rule of the jurist), which on the basis of his master al-Harandi, Bahr al-'Ulum redraws significantly. This new theory, which he calls '*wilayat al-insan 'ala nafsih*', the person's self-governance, is the basis of an extensive first chapter in the book.

The conclusions of the book are best put in the author's own words. In a first conclusion, he summarizes the gist of his second chapter on modes of governance with a federalist-centralist overtone, international as well as domestic:

1. Federalism in its long recorded history is a style and a method which humans have adopted a long time ago, possibly even prior to the advent of Islam, and is

but one of the experiments for coexistence in-between extension of influence and control, and the improvement of the structural construction of society.

Another conclusion underlies the limitations in the public law theory of classical Islamic law:

5. In its political program, Islam has gone a long and important way in grounding the system of the state, as well as the person who stands as the head of the state. But the problem we have confronted after the disappearance of the Imam (peace on him) was the variety of opinions and their divergence. We therefore need a legal and historical method that gets to the kernel point around which we can position ourselves.

This caveat does not mean the impossibility of reconstructing some of the proto-forms of federalism by a retrospective projection of federal modes identified in the second chapter in Western legal and political theory. This work the author undertakes in the third chapter, in which he looks for governance antecedents in the wide and varied Islamic empire. The results are summarized in two brief conclusions:

3. The vastness of the Islamic State established by the Prophet, in turn established the bases of the federal system. We saw this clearly in the provinces, that are politically subject to the center, with the right to decide several aspects of local administrative rule.

4. Islam aimed in its adoption of the style of the federal system to achieve two objectives. The first is the confirmation of the federal principle and its legitimization. The second was to protect and respect the rights of various religious minorities in the Islamic state, to guarantee their right to practise their own rituals and worship, so as to retain the social and national [ethnic] habits and values in a general framework that doesn't conflict with retaining the general outward expressions of Islam.

Since proto-forms of federalism can be clearly detected in Islamic history, then the full circle started in the first chapter, which chooses amongst competing theories of governance the one which privileges individual choice, the person's self-government as the root of all Islamic public law principles, this full circle is completed with the grounding of federalism on that preferred governance theory:

6. In my study of the theories of government in Islam, I have found most evidence available in these theories lacking, which has triggered my curiosity as an investigator who appreciates the greatness of Islam. I have discovered in the theory exposed in the ‘rule of the person over his own self’, the one most appropriate to rest the federal system on.

Finally, the practical, decisive experiment, Bahr al-‘Ulum argues, is happening in Iraq:

2. The topic of a federal order has come a long way from both the theoretical and practical perspectives. Advanced as well as developing nations have adopted its mechanisms and programs, but current space and time have positioned Iraq as a particularly adequate model for it, especially in view of the confessions, nationalities, sects and factions that comprise the country.

Islamic law’s future is national, and in Iraq, it is taking a fundamentally novel scholarly shape in Najaf, on no less a new theory bridging the wide scholarly world of federal constitutionalism between the Middle East and the West. No doubt *bricolage* in the Lévi-Strauss sense, the importance of this book is clear for the debate it opens, and it will be judged by the scholarship it conveys.

Salt Lake City, June 2010