A History of Rule by Divine Law among Semitic Cultures

Ideals of Semitic Theonomocracy from Hammurabi to the Islamic State with Al-Māturīdī in between

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Abstract

This is a comparative study of several widespread and canonical texts from the lowlands of the Middle East and North Africa, with regard to historically reoccurring interconnected traits of ideal state structure among cultures, where Semitic languages have been main languages of communication from the 18th century BC to the modern day. The study is of reoccurring ideals of state structure with defined limits and causes for its existence across several Semitic speaking cultures. The study's extent stretches from the code of Hammurabi during the 18th century BC to the modern day, and it includes more than ten text collections among four different cultures as well as a modern text for what can be seen as a modern example of reoccurring traits. In this study, geography, phases of establishment of civilizations and interconnectivity among the cultures through a lens of cultural Darwinism based upon ideas proposed by Richard Dawkins has been used. This study draws inspiration from studies done by the historians Patricia Crone and Martin Hinds among others. The study focuses upon systems based upon holy law from the divine and arrives at the conclusion of the existence of several reoccurring ideals throughout history, due to a shared overarching context among several of the cultures promoting a reoccurring development and survival of these ideals. These ideals include a rulership, of a chosen holy lineage, limited and defined by divine law, as opposed to ideals of absolutist oriental despotism common to older models, and a judiciary class of men of religion interpreting the law coming from the divine and controlling the rulership through it with concepts such as nomination. The study took into account the extent and limits of the reoccurring ideals in the peripheral of the context that was assumed to have created the reoccurring ideal. It did this by studying the political ideals of the foundational 10th century text *Kitāb al-Tawḥīd* from Central Asia within the *Māturīdīya* school of Sunni Islamic theology, which became the dominant theology within the later Ottoman Empire 1298- 1924 AD. This focus upon *Kitāb al-Tawḥīd* was to study the limits of the context for the tendency towards the ideals with a different geography and cultural influence creating a different context for survival and development of ideals. The conclusion was that the ideals of *Kitāb al-Tawḥīd* is a syncretism between ideals of rule by divine law and local influences, which reflected a different context. This context determined the ideals that survived and demonstrated the geographical and cultural limitations for possibilities of a tendency of reoccurring ideals based upon divine law outside the Middle East and North Africa.

Keywords: History, Islam, Arabic, Judaism, Hammurabi, State, Divine law, Sharia, Halakha, Aksum, Ethiopia, Didascalia, Theocracy, Theonomocracy, Semitic, Israelite, Al-Māturīdī

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Transcription System and Glossary

This study is going to utilize several Arabic texts in addition to various translations from other languages. Thus, a system for transcription with regard to Arabic has been used.[1]Almost all Arabic words have been transcribed using this system except for those words that might be considered so common that the regular translation/transcription is motivated, for example the use of the word caliph rather than *khalīfa*. Words will be transcribed in cursive except in references. Proper names will not be cursive when transcribed. Names of authors have been transcribed as they are written in their publications if not only written in Arabic. Citations from other authors using various systems of transcription have retained their transcription as to not change their quotes.

This study uses some rather specific words, abbreviations and vocabulary that may be hard to understand. Therefore, there is a glossary.[2]

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[1] For more information about the transcription system see appendix 1.

[2] Glossary is found in appendix 2.

1. Introduction and Why the Subject Was Chosen

The interest for a study began with a great number of classical literature coming from the Middle-East and North Africa, such as the code of Hammurabi, the Old Testament, classical Ethiopic literature, translated from Ge'ez, and Arabic literature, both translated and in Arabic. In the literature was inductively noticed what appeared to be a historical reoccurring pattern of interconnected ideals through history, through thousands of years. It was an ideal of concrete and direct law from the divine limiting the ruler in a type of ideal religious state structure as a division of power, a heavily law-based theocracy or Theonomocracy, rule by divine law. Furthermore, there was secondary literature in closely related fields, if considered together with each other and the primary literature, would support the assumption of the existence of a reoccurring tendency towards an ideal. Patricia Crone's and Martin Hind's description of how codification, the process of standardizing and defining law in written form, of Islamic law under a judicial class led to reduced caliphal authority[3] could be seen as a practical and historical example on this pattern of ideals. Moreover, the reoccurring ideals appeared to be limited to literature written originally in Semitic languages and certain geographical areas, the low lands of the Middle-East and North Africa. As Al-Māturīdī's book *Kitāb al-Tawḥīd*, from the 10th century in the Samarkand area, seemed to share some traits but not others in a form of syncretism. The pattern seemed to occur even today among certain Islamist groups, such as the recent Islamic State, abbreviated as IS, in Syria and Iraq. This sparked an interest in studying the ideals of state structure to explain how, why and to what extent a pattern of an ideal of rule by divine law emerges from a historical context. For the purpose of studying this ideal structure more than ten text collections across four Semitic cultures[4] were chosen for the study to be compared with each other.[5] The time-scale of the sources stretches throughout several millennia, from the 18th century BC to the modern day, through several Semitic cultures, Akkadian speaking Mesopotamians, Israelite-Jewish culture, the Ge'ez using Ethiopic culture sphere and the Arabic-Islamic culture sphere, although mainly focused upon early medieval Arabic history. The focus is not on religion in itself but on an ideal structure with religion as a part of it and the study includes religious literature due to the importance of religion in history and due to the religious nature of the ideals.

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[3] This can be seen in Crone, Patricia & Hinds, Martin, *God's caliph: religious authority in the first centuries of Islam*, University of Cambridge: Oriental publications, 1986.

[4] The use of the term Semitic cultures is from old orientalist literature, which had racial associations, but will not have any racial meaning in this study. It is limited to texts, shared similar geographical locations and traditions as passed down customs and beliefs among groups speaking Semitic languages. The use of Semitic is due to its usefulness for describing several similar cultures under similar circumstances in comparison as a whole.

[5] See pages 10-12, 23-26 in this study.

1.1.1. Knowledge and Previous Studies of State Structures among Semitic Cultures

There is a gap in recent knowledge related to ideals of state structure among the Semitic peoples, the peoples/cultures speaking Semitic languages, using a large comparative perspective. State is here defined as the formal political entity enforcing and upholding political order and law through fulfilling judicial, executive and legislative functions.[6] The purpose of this paper is not to overanalyze the reasons, why there is a lack of studies regarding comparative views. However, there was a time when large-scale comparisons among the cultures of the Middle-east, comparing various Semitic cultures and reaching conclusions from these comparisons, was common according to Jacques Waardenburg.[7] Orientalists, like Ernest Renan and David George Hogarth during the 19th century and to a lesser extent Sabatino Moscati and Martin Bauber from the middle of the 20th century, had views about an, rather, unchanging Semitic theocracy distinct to Semitic people. Although in the case of Martin Bauber, this was limited to the Jews only and from an emic perspective, the perspective from within the social group.[8] Sabatino Moscati mainly focused on migratory patterns among Semitic cultures, not state structure. Most of the older models were based on racialist biological perspectives, which are outdated. Close in time to the racial views of theocracy are also older Marxist and Weberian models of eastern absolutist despotism, based on methods of production as described by Rolando Minuti and used by Karl Wittfogel.[9] These Marxist and Weberian models gave a too strong picture of an absolutist centralized rulership, which this study did not agree with and will argue against; however, Michael Curtis, from the field of political science, does try to argue for the validity of the views of Marx and Weber.[10]

Concepts about Semitic theocracy, or other patterns have been heavily criticized by people

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[6] There exists no universally agreed upon definition of state, especially before modern time, and definitions can differ from each other as can be seen in Cudworth, Erika, Hall, Timothy & McGovern, John, *The modern state: theories and ideologies*, Edinburgh: Edinburgh University Press, 2007, E-book, p.1, 70-96. But for this master study, the stated broad definition that is based upon the function of formalized administration will be used, as it covers the various cultures and older political entities discussed in the study. The definition is close to, but more comparatively applicable across several cultures and defined than, the focus of formalized administration in Nevo, Yehuda D. & Koren, Judith, *Crossroads to Islam: the origins of the Arab religion and the Arab state*. Amherst, NY: Prometheus Books, 2003, pp. 2-25 and Crone & Hinds, 1986, pp.1-12, 98-110.

[7] Waardenburg, Jacques, View of a Hundred Years' Study of Religion, in Jacques Waardenburg, (Ed.), *Classical approaches to the study of religion: aims, methods and theories of research*. The Hague: Mouton, 1973, pp.3-80, specifically pp. 21-24. For the lack of comparative studies and the orientalists mentioned afterwards.

[8] The analytical terms emic and etic, observing from an outsider perspective, are from anthropology and ethnology and will be used due to this master study using/comparing to literature with a background in those fields. The master study itself will, as most history, describe things from an outsider perspective.

[9] Wittfogel, Karl, *Oriental Despotism: A Comparative Study of Total Power*. Newhaven: Yale Univ. Press. 1957, pp. 22-48. Describes his production based model; Minuti, Rolando: Oriental Despotism, in: *European History Online (EGO)*, published by the Leibniz Institute of European History (IEG), Mainz 2012-05-03.

[10] In: Curtis, Michael, *Orientalism and Islam: European thinkers on Oriental despotism in the Middle East and India*. Cambridge: Cambridge University Press, 2009.

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within oriental studies. Edward Said has criticized any type of monolith description or adscription of tendencies of oriental people discussed such as those made by Ernst Renan.[11] Following Said is legal historian Lena Salaymeh's criticism of how the early orientalists presented Semitic law as rigid and based upon theocratic thinking in comparison to the secular Arian traditions of law.[12] Hans Leander, a Swedish Ph.D. in Bible studies, cities Said in relation to Ernst Renan and dismisses the notion of Semitic Theocracy.[13] In addition, Edward Said is cited by people outside the direct field of oriental studies. Stefano Bordoni, a historian of ideas, cities Edward Said regarding Semitic theocracy and Ernst Renan's racism.[14] The criticism of the old views regarding a Semitic theocracy are not entirely unfounded. David George Hogarth and Sabatino Moscati used race in their writings as an aspect of explanation.[15] Although in the case of Sabatino Moscati, it was probably not out of malice since his books do not actually contain the paternalistic contempt that can be found in the other older orientalist literature and race is more a term for ethnic group.

This discarding of older views together with the rise of postcolonial views has led to an aversion towards comparative studies in subjects of law and ideals of state structure. This disregard is for example expressed by postcolonial authors, such as Lena Salaymah. Salaymah is critical about discovering origins of various legal developments that have been borrowed from earlier cultures, which can be exemplified in her writings.[16] The demur being that since these non-postcolonial studies defines another culture, thus giving an essentialist view of traditions and peoples, it reduces them and gives power to the describer with a colonialist and/or racist dimension. Because of this perspective the post-colonial tradition has not been interested in describing commonalities that might be unique to Middle-eastern people in matters of ideal state structures. The Middle-eastern studies that Lena Salaymeh describes as ideal tend to be focused on particularistic[17] subjects and narratives of the describer. This attitude leads to attacks on what is considered "positivist attitudes"[18] among other branches of

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[11] Said, Edward W., *Orientalism*. Stockholm: Ordfront, translation to Swedish by Hans O. Sjöström; introduction: Sigrid Kahle., 2000 [1978]. Especially pp. 186-187, 219-250 where Said criticizes Ernst Renan's descriptions.

[12] Salaymeh, Lena, *The Beginnings of Islamic Law: Late Antique Islamicate Legal Traditions,,* Cambridge University Press, 2016, pp. 92-111.

[13] Leander, Hans, *Discourses of empire: the gospel of Mark from a postcolonial perspective*. Atlanta: Society of Biblical Literature, 2013, pp.92-94.

[14] Bordoni, Stefano, *When Historiography Met Epistemology*, Brill, 2017, pp.103-106.

[15] Hogarth, David. G., *The Ancient East*. London: Williams and Norgate, 1914; Moscati, Sabatino, *Storia e civiltà dei Semiti*. Bari, Laterza, 1949; Moscati, Sabatino, *Le antiche Civiltà semitiche*. Bari, Laterza. 1958.

[16] Salaymeh, 2016, pp. 91-93 and Salaymeh, Lena, 2015, 'Comparing' Jewish and Islamic legal traditions: between disciplinarity and critical historical jurisprudence, *Critical Analysis of Law, New Historical Jurisprudence*, 2, no. 1,2015, pp.153-172 specifically pp. 157-162, 168.

[17] Particularistic as only focused upon one culture, or detail in one culture, and being isolated in absence of a larger causative context with a comparative perspective.

[18] Salaymeh, 2016, p.98.

Middle Eastern studies. These are connected to a rather harsh criticism. Patricia Crone and later followers are criticized using descriptions such as "intellectually haphazard"[19] for using categorizations that reproduce narratives supporting colonialist agendas, by trying to point out syncretic, borrowed, elements in early Islam for example.

The study does follow what could be roughly called a neo-German revisionist orientalist tradition based on studies of earlier German orientalists with revisionist views. The study is thus sympathetic to Patricia Crone and others, such as Michael Cook, who based much of their work on earlier German orientalism and the study gives due to their willingness to challenge long-held views of the Islamic developments. The study will not assume a post-colonialist position and will not accept the premise that all described epistemological approximations of ontological reality in cultural spheres are merely a power-play, in this matter the study agrees with Michael Curtis.[20] This master study has an ontological position where knowledge is present as a category separate from power. Even though power can lead to epistemological obscuration that hinders attainment of knowledge it is not the same as knowledge. The focus is on practical reasons for historic developments and assumes that developments are influenced by factors such as locality and societal needs for stability within the cultures. The interest is to describe a repeating pattern of interconnected ideals as due to an environment. Discourses and power are constrained, molded and the result of factors surrounding them.

Sensitivities together with a general tendency towards specialization within narrower fields of study has made comparative studies rare, in the matter of ideals of state structure. When comparative studies in other connected matters are still existent, they tend to be the result of specific cases and of being connected to those that Lena Salaymeh would categorize as followers of Patricia Crone. Those comparative studies have been rather limited in scope, usually only the Jewish and Islamic cultural spheres and the neo-German revisionist orientalist tradition has not treated state structure in a large comparative way. Large-scale comparisons with regards to state, law and religion among several Semitic cultures have been limited to old and outdated literature, which either used race and/or did not reference their sources properly and/or did not use a properly defined theory. The only exception to using a large-scale comparative perspective, found to have relevancy, is from Linda T. Darling.[21] Her

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[19] Salaymeh, 2016, p.94.
[20] In the criticism of post-colonial studies as made in Curtis, 2009, pp.6-18.
[21] Darling, Linda T., *A history of social justice and political power in the Middle East: the circle of justice from Mesopotamia to globalization*, London: Routledge, 2013.

work has a focus upon ideal state practice, rather than state structure, in the Middle-East and uses a formulated Ottoman ideal as a tool of analysis even further back than the Ottomans, but, even Darling does not take religion into account. She points out that she does not try to point at an unchanged Middle-East but merely pointing out a long tendency. The reluctance of Darling could be because of fear of facing the criticism as described above. Yet, she criticizes views from modern writers of politics supporting ideas of oriental despotism.[22]

1.2. The Intentions behind this Study and the Questions Related to It

The intention is to increase our knowledge about reoccurring ideals of state structure among Semitic cultures, from a long comparative perspective with defined limits and causes for a tendency's existence, which can be used for future studies. This is because comparisons and reflections in the subject has been largely neglected since the middle of the 20th century. The study will go away from earlier not suitable models of eastern absolutist despotism and biological racialist views.[23]

In order to study a tendency towards certain reoccurring ideals of state-structure, summarized for future studies, the focus will be on the following questions with regard to more than 10 representative examples of classical literature:

- Which shared interconnected traits of an ideal state structure with regard to concrete divine law, the judiciary role and the limitations of the earthly central rulership are reoccurring in 3 or more of these 4 cultures across the sources? Why are they reoccurring through the various sources of these cultures throughout several millennia?

- How does *Kitāb al-Tawḥīd's* theology with regard to divine law, with assumed influence of a tendency towards a concrete divine law and the context behind the theology, indicate the geographical and cultural confines of the tendency towards the reoccurring traits of the ideal?

- Which factors and aspects in the study indicate the scope of the tendency towards the traits of the ideal with regard to geography, cultural influence and time?'

The questions in the first point are going to describe a tendency towards certain reoccurring traits whereas the two others are subordinate and to define the limits and potential of what was answered in the first. Because of this difference the questions will be addressed in different methodological stages, as will be discussed with regard to the method of this study.[24] The last question is a summation of what is found in these different stages. The choice of material will be discussed late, as it is connected to the choice of theoretical framework.[25]

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[22] Darling, 2013, pp. x, 5, 6-7, 10. Darling discusses that she wants to avoid religion and oriental despotism.
[23] Such as when David George Hogarth compared the Aryan Persians with the "theocratic prepossessions and nomadic traditions of Semites" Hogarth, 1914, pp.168-169. For a section detailing the example see appendix 3
[24] See pages 27-30, in this master study.
[25] See pages 10-12, 16-26, in this master study for discussions about theory, choice and issues of the material.

2. Source Material, the Main Sources

The primary sources will be referenced with name of the work, or a recognizable shortening if too long, and thereafter with pages, written with (p.), and/or sections depending on what is the most appropriate with regard to finding the material of the referenced sources in the footnotes. Below are the sources that will be used for the study categorized in accordance with their cultural spheres.

Old Semitic cultures of Mesopotamia: The *Code of Hammurabi*[26] from the 18th century BC inscribed in Akkadian by order of the Babylonian Amorite King Hammurabi 1792-1750 BC and translated by L. W. King 1915. It is one of the oldest law codes in existence.

Jewish and Israelite: Parts of the *Tanakh/the old testament*[27], translated, first texts of the Old Testament date to the 11th century BC and later texts until the second century BC.[28] Despite being different texts, they will be treated as one document but referred to according to their sections. There is the later *Mishna,* as translated and edited by Joshua Kulp,[29] section *Nezikin,* from the third century AD, which deals with civil and criminal law and matters of criminal court. The Mishna was collected by several scholars but completed by Yehudah HaNasi in Judea. After the Mishna there is Maimonides's, real name Moses ben Maimon, *Mishna Torah,*[30] section *Sefer Shoftim*, chapter, War and Kings, translated by Reuven Brauner 2011, and chapter, The Sanhedrin and the Penalties within their Jurisdiction, by Philip Brinbraum 1967. The Mishna Torah was composed in Egypt and Morocco from the 12th century AD.

Ethiopic: The Ethiopic *Didascalia Apostalorum* is from the third to fourth century AD when it was taken into the cannon of the Ethiopic Orthodox Church. The translation that is used[31] is by J.M Harden, 1920, for the Society for Promoting Christian Knowledge. In addition to the Ethiopic text there has been several versions, with different texts, in other languages, such as a Syriac version that has been translated by R. Hugh Connolly. This text has not been used as a source in itself, but has been read and compared to the Ethiopic version. The inclusion is to use literature and previous research related to the Syriac version for the Ethiopic when they still share the same matters discussed in the research. The text is related to the earlier Didache

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[26] Will be referenced as (Hammurabi:) followed by page number of translation.
[27] Will be referenced by standard referencing to sections with regard to the Bible.
[28] Riches, John, *The Bible: a very short introduction*. Oxford: Oxford Univ. Press, 2000, pp. 9-20 for dates.
[29] Will be referenced as (Mishna:) then followed by appropriate section names and then sub numbers.
[30] Will be referenced as (Mishna Torah:) then followed by appropriate section names and then sub numbers.
[31] Will be referenced as (Didascalia :) followed by page number.

text.[32] There is the later *Fetha Nagast* translated by Abba Paulus Tzadua and Peter L. Strauss, 2009.[33] It is a law-text from the middle of the 13th century written originally in Arabic by the Christian Copt al-Ṣafī Abū al-Faḍā'il Mājid Ibn al-'Assāl. It began to be used during the 15th century AD as a constitution after a process of reeditions. *Kebra nagast*[34] translated by Sir E. A. Wallis Budge, [1932] 2000, is from the 14th century AD, which details the legendary history of the Solomonic line of emperors and their origins and history coming from the union between the queen of Sheba and king Solomon. Certain other texts taken from the New Testament are taken for argumentative purposes only.

Arabic: The *Qurān*, the classical view with regard to dating of the Quran is that it was revealed by Mohammed from God through the archangel Gabriel during the seventh century AD. However, there is dispute about the date.[35] The study will follow the view of the Quran as created from previous sources and regard the dating as being around the seventh to eighth century AD. Both the Quran in Arabic and a translation by Marmaduke Pickthall will be used.[36] Other sources to be used include: Abū Jaʿfar Muḥammad ibn Jarīr al-Ṭabarī's *Jami` al-bayan `an ta'wil 'āy al-Qur'an*, also known as *tafsīr al-Ṭabarī,*[37] The exegesis of al-Ṭabarī, is from the ninth century AD in a new print version. Abū Manṣūr Muḥammad b. Muḥammad b. Maḥmūd al-Samarḵandī al-Māturīdī's *Kitāb al-Tawḥīd*, the book of monotheism, from the 10th century AD Samarkand, modern day Uzbekistan, in a new print version. The manuscript is Ms.add.no.3651 in the Cambridge University Library. The manuscript is at least from the turn of the 17th and 18th century. The date on the manuscript itself is the month of *sha'bān* the year 1150 H./1737 AD as date of purchase from a previous owner, and brought to the Cambridge University Library, in the beginning of the 20th century. It is the only existing known copy of the text. This manuscript has been read and compared with an edited and printed version by Bekir Artukoğlu and Muhammed Aruçi by Dar Sader publisher in Beirut, 2001, that is the text that is going to be referenced to, for ease of reference, in this study. There are some minor issues with the version, such as fixing minor grammatical issues found

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[32] Bradshaw, Paul F., *The Search for the Origins of Christian Worship.*, Oxford University Press, 2002, p.79.
[33] Will be referenced as (Fetha nagast:) followed by page number.
[34] Will be referenced as (Kebra nagast:) followed by page number.
[35] See. John Wansbrough's *Quranic Studies: Sources and Methods of Scriptural Interpretation*, Oxford: Oxford Univ. Press, 1977 and *The Sectarian Milieu: Content and Composition of Islamic Salvation History*, Oxford: Oxford U.P, 1978, and Patricia Crone's and Michael Cook's *Hagarism: The Making of the Islamic World*, Cambridge: Cambridge Univ. Press, 1977. Crone's and Cook's work is discussed by Holmberg, Bo, Hagarism Revisited. *Studia Orientalia Electronica*, *99*, 2014, p.53-64. These books, and article, can be seen as a relevant introduction to the issues associated with the Quran and its origins.
[36] Will be referenced with (Quran:) followed by chapter number and verse. Any translated text is taken from Marmaduke Pickthall's translation unless otherwise stated in this study.
[37] Will be referenced as (tafsīr al-Ṭabarī) followed by section of discussed verse.

in the original text; however, they are nothing that has been deemed to affect the study. Abu al-Hasan Ali Ibn Muhammad Ibn Habib al-Māwardi's *Al-'Aḥkām al-Sulṭāniya wa al-Wilāyat al-Dīniya,*[38] The Governmental Wisdoms and the Religious Government, is a princely mirror[39] from the 11th century AD Baghdad , but what has been used as source is an old new print from 1909. Abū ʿAbdullāh Muhammad ibn Idrīs al-Shāfiʿī's *Kitab ar-Risāla fī Uṣūl al-Fiqh,* the book of the message in the principles of jurisprudence, around the turn of the eighth and ninth century AD, in a new print taken for argumentative purposes but not greatly referenced. This is because most of the subjects inside the book are repeated by al-Māwardī, as he was a judge following al-Shāfiʿī's school of *fiqh,* Islamic jurisprudence, *al-Shāfiʿīya.*[40] Abu Muhammad al-Adnani al-Shami's *Hadhā waʾd allah,*[41] This is Allah's Promise, is from the modern day 21st century AD and is a recorded and translated speech made during the inauguration and proclamation of IS, the Islamic state, on 29 June 2014 when IS proclaimed itself to be a worldwide caliphate after having crossed the border between Syria and Iraq.

The Sunni-hadith collections,[42] stories about Mohammed and his companions, collected around the Middle-East will be used as sources such as: Abū 'Abdillāh Muḥammad ibn Yazīd Ibn Mājah al-Rabʿī al-Qazwīnī's *Sunan Ibn Mājah,* Abū 'Abd Allāh Muḥammad ibn Ismāʿīl ibn Ibrāhīm ibn al-Mughīrah ibn Bardizbah al-Juʿfī al-Bukhārī's *Ṣaḥīḥ al-Bukhārī* in translation by Muhammad Muhsin Khan ,2009, and Sulaymān ibn al-Ashʿath al-Azdi as-Sijistani Abū Dāwud's *Sunan Abū Dāwud.* All are originally from the ninth century AD but what has been used are Arabic new printed versions.

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[38] Will be referenced as (Al-'Aḥkām al-Sulṭāniya:) followed by page number.
[39] Princely mirrors are a literary genre focused on instructing rulers on aspects of rule and behavior.
[40] Brockelmann, C.,"al-Māwardī", *Encyclopaedia of Islam,* Second Edition, Ed. P. Bearman et al. Brill, 2012. Reference Online. Web. 8 May 2019.
[41]Will be referenced as (Hadhā waʾd allah*).*
[42] Will be referenced with the name of the collections and then location numbers indicating volume, chapter and story number of the individual stories, depending on collection. Except for *Ṣaḥīḥ al-Bukhārī* all the hadiths are translated by the writer of this master study.

3. Use of Research and Literature with Regard to State, Law and Religion

The subject of this study is broad and the choice of literature will thus be somewhat eclectic. The literature presented will be used both to compare, supplement, give context to the study and be integrated into a greater context than the individual works. This study will include more important and broader works within various fields in the subjects of law, religion and ideals of state, to provide a better oversight rather than always the most recent, and narrower, if there is not a large fundamental difference or a contradiction in a relevant matter among them. Literature about law is included due to a connection between law and rulership in the sources and to integrate them into a greater comparative framework. The study will include matters about law in the middle-east and especially the law in a historical context and/or connected to legitimacy and state structure.[43] Comparative works[44] will also be used including a book about general middle-eastern legal history.[45] Some works are also going to be focused upon one source. [46] Literature about the development of law in the European west will also be used comparatively to highlight certain traits in the analysis with regard to natural law theory.[47]

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[43] Here Khaled Abou El-Fadl's *Rebellion and violence in Islamic law*, Cambridge; Cambridge Univ. Press, 2001, can be seen as an important work since it deals with the development of law and legitimacy of rulers with regard to rebellion within Sunni Islam This subject is close to ideals to how government should be structured and thus provide a legal supplemental view. On a similar note but more historical perspective is Michael Cook's *Commanding right and forbidding wrong in Islamic thought*, Cambridge;Cambridge Univ. Press, 2000 that deals with the concept of ḥisba, accountability, within Islam. It is from an outside perspective and is part of the neo-German school, but it does not use a comparative perspective between cultures. With a more singular focus from an exclusively Jewish emic perspective, unlike the outside comparative perspective of this study, is Ze'ev W Falk's *Religious law and ethics: studies in Biblical and rabbinical theonomy*, Jerusalem: Mesharim Publishers, 1991. Falk uses an idea about a type of religious contract/constitution as the basis for Jewish society, which will be used for comparison with the other cultures.

[44] Such as Patricia Crone's *Roman, Provincial, and Islamic Law*, Cambridge Univ. Press, 1987, that compared law and tried to uncover the origins of Islamic law. This work does not touch state-structure, but it will be used to discuss borrowing among the various cultures in matters of law. On the subject of comparisons there is also Jacob Neusner and Tamara Sonn's *Comparing Religions through Law: Judaism and Islam,*Lodon: Routledge, 1999. Jacob Neusner and Tamara Sonn compares Jewish and Islamic law; however, from a legal perspective and not a historical view or involving a state.

[45]A general view of legal history in the Middle East is given by Chibli Mallat's, *Introduction to Middle Eastern Law,* Oxford: Oxford University Press, 2007. Mallat's observations are used as a supplement in the analysis.

[46] Since the hadith will be part of the sources used, the anthology *Hadith, Piety, and Law: Selected Studies* edited by Christopher Melchert is relevant due to its connection to law. Dominique Charpin's *Hammurabi of Babylon,* New York; I.B.Tauris, 2012, focuses on the legacy of Hammurabi and has a large focus on law and administration; however, he does not go outside the most immediate history. On power and politics generally, there is Eltigani Abdelgadir Hamid's *The Qur'an and Politics: A Study of the Origins of Political Thought in the Makkan Quran*, Washington: IIIT, 2004. Hamid's work deals with politics in the Meccan verses of the Quran and their context according to traditional sources.

[47] Here are examples such as Alan Watson's *the making of the civil law*, Cambridge,Mass.: Harvard Univ. Press,1981, and John O'Manique's *The Origins of Justice: The Evolution of Morality, Human Rights, and Law*, Philadelphia: University of Pennsylvania Press, 2003. The works deal with the influence of natural law upon the western legal development. Literature such as John Witte Jr.'s *God's joust, God's justice: law and religion in the Western tradition*, Grand Rapids, Mich; Cambridge : Eerdmans, 2006, is important since it focuses on the use of religion as a source of law in the western tradition. Witte Jr.'s work highlights certain traits with regard to natural law and division between state and church.

There is also literature about rulership in the middle-east.[48] Some are from an older materialist perspective[49] and lighter post-colonial perspectives[50] that like the emic works[51] lack a cross-cultural perspective. In opposition this study tries to describe it from an outside comparative perspective with several cultures and a broader range of sources. All literature about rulership is not limited to Islam since the extent of the study goes outside the Arabic-Islamic civilization and thus includes works related to early Judaism and Christianity with concepts of law and kingship.[52] These include comparative works between Judaism and Christianity that provide a context for certain similarities between the Ethiopic cultural sphere and the Israelite/Jewish spheres.[53] This will be connected to a greater context of interconnectivity and as comparative literature in the analysis. The literature of early Judaism and Christianity is outside of the traditional orientalist traditions and belongs to more traditional fields of religious studies, which this study wishes to use for a comparative historical approach.

There are few works about the Ethiopic cultural sphere from a historical perspective; the study thus fills a gap with regard to Ethiopic history. However, there are some general works[54] and literature about the Jewish influences upon the Ethiopic cultural development

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[48] Such as Maria del Rosario Jazmín Puignau's *The Speculum of Divine Justice and Obedience in Christian and Islamic Mirrors for Princes*, Ph.D dissertation, University of California, Santa Barbara, 2014, which compares princely mirrors from a more historical perspective between Europe and the Middle-east including al- Māwardī's *Al-'Aḥkām al-Sulṭāniya wa al-Wilāyat al-Dīniya*. Al- Māwardī's text is the reason is for the inclusion of Hanna Mikhail's *Politics and Revelation: Māwardī and after*, Edinburgh: University Press, 1995 that describes developments of political ideals within the Middle-east during the middle-ages. Mikhail's and Puignau's studies will be compared to the ideals discussed and contrasted in this study's greater contexts.

[49] Such as Aziz al-'Aẓmah's *Muslim Kingship*, London; New York: I.B. Tauris, 2001[1997], which compares Greek and Persian ideals with early Islamic ideals of rulership although he largely ignores the power of religion. It is probably due to his materialist perspective, which is representative of the old classical Marxist models of oriental despotism and Aziz al-'Aẓmah ignores other Semitic cultures, which this study will compare with.

[50] Leon Carl Brown's *Religion and State: The Muslim Approach to Politics*, New York: Columbia University Press, 2012 [2000], E-book. Has a broad perspective and relates to both modern day politics and older ideals within the Islamic world. Leon Carl Brown provides a rather light postcolonial perspective and will be used to exemplify why a comparative perspective is useful.

[51] Fuad Khuri's *Imams and emirs: state, religion and sects in Islam*, London: Saqi, 1990, and Sami Zubaida's *Law and Power in the Islamic World*, London: I. B. Tauris, 2003. The works provide perspectives on politics in Islam. In addition, Khuri's and Zubaida's works provide complementary information from a historic sectarian, (Khuri's), and/or legal perspective (Zubaida's), which will be included as a part of the analysis

[52] For example Jacob Neusner's *Rabbinic Political Theory: Religion and Politics in the Mishnah*, University of Chicago Press, 1991. The book deals with the politics inside and about the Mishna. Jacob Neusner does not go much outside the Mishna, which this study will do with its sources.

[53] Edwin K. Broadhead's *Jewish ways of following Jesus: redrawing the religious map of antiquity*, Tübingen: Mohr Siebeck, 2010, has sections about religious law among early Christianity and certain early types of Christianities' Jewish roots and likeness. There is the much older classic work by Henry Chadwick *The early church*, Harmondsworth: Penguin Books, 1993[1967], that deals with the same theme, of how early Christianity developed from a Jewish sub-group, including political aspects. In regard to only Judaism there is the rather emic *Give Us a King: Legal-Religious Sources of Jewish Sovereignty*, Hoboken, KTAV Publishing House,1989, by the Rabbi David Polish, which deals with Jewish ideals of kingship. He also made an article, Rabbinic Views On kingship- A study in Jewish Sovereignty, *Jewish Political Studies Review*, 1991, 3:1 that will be used that more or less, condenses what he says in his book.

[54] Such as Stuart Munro-hay's *Aksum: an African civilization of late antiquity*, Edinburgh: Edinburgh University Press, 1991. It is a principal work about early Ethiopic imperial history using an archeological approach towards describing the development of early Ethiopia.

exists.[55] The rest of the literature is about the sources coming from the Ethiopic culture sphere.[56] These works will be used to describe the background and as a part in the analysis. There is not much literature about the Ethiopic Didascalia. Though there is not much written about the Ethiopic version of the Didascalia but literature written about the Syriac version of the text exists.[57] This literature is sometimes still relevant for the Ethiopic version as well, since the versions of the texts still share a lot of content and features.

The study will have a focus upon Islamic theology, and especially the *Māturīdīya* School, one of the great theological traditions within Sunni-Islam for which *Kitāb al-Tawḥīd* was a foundational text. For this more specific focus there is literature about Arabic theology.[58] The literature connected to Islamic theology will mostly be used to compare and fill in gaps in the argumentation and to give context. The study mainly differs from previous works with its focus upon divine law as a political implication in the *Māturīdīya* theology.

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[55] Such as David Kessler's *The Falashas: the forgotten Jews of Ethiopia*, New York: Schocken Books, 1985.

[56] Such as Negussie Andre Dominic's *The Fetha Nagast and Its Ecclesiology: Implications in Ethiopian Catholic Church today*, Peter Lang Publishing Group*,* 2010, E-book.The work deals with the Fetha Nagast's influence today in matters of the church, law and relation to the state.

[57] Such as Holger Zellentin's *The Qurʾān's legal culture: the Didascalia Apostolorum as a point of departure*, Tübingen:Mohr Siebeck, cop, 2013. The work compares the Quran with the Syriac version of the Didascalia. Holger Zellentin is connected to the neo-German tradition, which can be seen both in the introduction of his work and when he mentions Patricia Crone's influence upon him and by the fact that it is a comparative work. The work will be used both as a part of the background and as part of an argument.

[58] Ulrich Rudolph's *al-Māturīdī und die sunnitische Theologie in Samarkand*, Leiden: E. J. Brill,1997, deals with the development of the early *Māturīdīya*-school and Franz Rosenthal's *Knowledge Triumphant: The Concept of Knowledge in Medieval Islam,* Leiden : Brill,,1979, is important with regards to understanding Islamic theology in its' context. Franz Rosenthal has also written the *The Classical Heritage in Islam*, Routledge, 2003[1994], that describes, primarily, the Greek philosophical influences upon the development within Islam through the use of several translated texts. That theme is also represented in the earlier book of Montgomery Watt, *Islamic philosophy and theology* Edinburgh: Edinburgh Univ. Press,1962 and his later *The Formative Period of Islamic Thought*, Edinburgh : Edinburgh Univ. Press, 1973. Toshihiko Izutsu's *Concept of Belief in Islamic Theology,* New York: The Other Press, 2006 [1965], deals with the development of the concept of belief in Islam.

4. Theoretical Framework

4.1. The Greater Theoretical Framework for a Tendency, Cultural Darwinism

The greater theoretical framework, which the analysis will use, is based on Richard Dawkins observations of memes as carriers of culture.[59] The theory is based on the concept of **memes** that are ideas and thought concepts, such as the idea of God .The assumption is that these memes act in a manner not unlike that of biological organisms. These memes reproduce themselves through replicators such as speech, text or other mediums. The important part is that communication and acceptance ensures transferal of the memes between hosts, the humans that carry these memes. These memes contain **meme-traits**. Meme-traits define an idea's/meme's relation with their environment and decides if it survives or dies because of a lack of reproduction. Examples of meme-traits would be that the halakha, the Jewish holy law, and the sharia, the Islamic holy law, despite being different memes due to having different laws, meme-traits, and based on different sources both carry the meme-trait of being divine law from God. They are thus subject to similar selection processes. These meme-traits are not static and **meme mutations**, which are changes brought about by various factors, can alter a meme's traits slightly so that it becomes something new. This happens for example when things are borrowed.[60]

The survival of a meme is dependent on the **cultural selective pressure**. The selective pressure can be from other memes which have an antagonistic relationship, that is to say they include meme-traits which hinder the spreading/implementation of other memes. Selective pressure can also be due to physical factors for the meme to reproduce, a lack of resources or geographic factors for spread and/or that the meme's interaction with the physical world causes a reduction in the number of potential hosts. This is based upon the assumption that memes can lead to practical effects in the practical world and the memes will in turn be exposed to the conditions of the practical world. The factors, both physical and cultural together, are what is considered the cultural niche, which is the environment that shapes the formation and survival of memes. This is connected to an idea in biological evolution theory of parallel- and convergent evolution. The concept is that similar organisms in similar environments will develop similar traits given enough time and stability of the environment.

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[59] Richard Dawkins wrote about the analytical concept of memes in *The extended phenotype : the gene as the unit of selection*, Oxford Freeman, cop.,1982, pp. 109-114 and *The Selfish gene 30th anniversary edition*, Oxford : Oxford University Press, 2006, pp.189-201. This definition of memes should not be confused with the popular usage about pictures or films on the internet that spread in a short time.
[60] See pages 36-39 for examples of how the Semitic cultures were interconnected.

The theory of the study assumes the same is true to memes and meme-plexes, interconnected memes. This fits with the interest in examining the existence/survival of meme-traits among similar meme-plexes, such as the sources in the Semitic cultures and their meme-plexes about rulership, religion and law. An overarching similar cultural niche will result in a repetition of similar memes and meme-plexes sharing the same or similar meme-traits even though they might be named and identified as different memes. This is **convergent** cultural evolution. The focus is on survival in a context, cultural niche, rather than meaning in a context like in classical structuralism theories, although the traits of a meme is important to its survival. The theory differs from most discourse analysis in that it focuses on the spreading of memes in a context, which can include physical factors, due to its nature rather than only on power relationships or intentions. It does not mean that the focus is that memes must be true, but that they survive in a context; the background is thus needed to be a part of the analysis. A part of this is that a perspective of peripheral and heartland cultural niches with the influences in contacts between them will be made with regard to analyzing *Kitāb al-Tawḥīd*.

Memes are often not alone and they can create **meme-plexes**, clusters of ideas/memes. These are memes acting together in a symbiotic relationship to strengthen each other, often creating webs of interconnected memes that are in turn connected to even greater webs. Examples on different levels of meme-plexes would be religions, with theologies within religions, or entire civilizations, with nations as subcategories. These meme-plexes act as memes in themselves, like how multicellular organisms work as a greater system rather than individual cells, and something can be a meme or a meme-plex always in relation to something else. Meme-plexes usually has layers of memes where the more fundamental memes, so-called **core memes**, which determine if memes can be linked and formed into the meme-plex. When certain types of memes are in opposition to each other the core memes prevent the adoption of certain types of memes in a meme-plex because of their meme-traits. A trait could for example be monotheism in a religion, which prevents ideas associated with polytheism, but ways of worshiping the one God would be more superficial memes and are more likely to change since they are not antagonistic to the **core meme-trait**. This is in line with the idea that Dawkins argues about memes survival chances relative to other memes.[61] Memes are divided into more or less important memes within a meme-plex and some memes have reduced likelihood of survival due to their meme-traits being antagonistic to other memes. This assumes relationships between ideas and their environment, for example contradictions

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[61] Dawkins, 1982, p.111.

among ideas will weaken the ability of those memes to survive. It does not mean that contradictions cannot survive within meme-plexes, but that their survival is supported by other factors within or outside the meme-plex.

4.1.1. Criticism of a Memetic Perspective and Discussion

Cultural Darwinism is not particularly common in the humanities. It is thus a relatively unorthodox way of confronting the material and is a tentative attempt to apply a relatively new theory, but it can add a new perspective and way of examining cultural development. Dan Sperber and Luis Benitez-Bribiesca has criticized, among other things, the ability of memorized memes to reproduce themselves in a stable environment without the influence of the individuals' whims, lack of memory and/or other distortions of the ideas.[62] However, this criticism is not considered relevant since a text's reproduction is more direct than pure memories and the time periods are extended over several hundred years to millennia, which limits the individual's impact. A focus on a larger structure limits individual impact. The theory is essentialist since it assumes memes are limited in how they can be interpreted and apply themselves, which affects how they are replicated. It is unlikely for a recipient of a text to read completely the same message whether the person is alive today or several thousand years ago. However, reading differently would be a case of meme-mutation. The original would be considered dead due to lacking the ability to replicate itself, as the cultural niche that allowed it before has disappeared. Even this "new" meme would be subject to its new environment due to its inherent traits. The essentialism is not in any racial/genetic factors, rather that ideas has significance as interacting with, and in relation to, the world around them. Humans are in essence replicators for these ideas bound to the realities of a material world. The theory assumes that memes need a function in such a way that they suit their material-environment and interact with the structure and meme-traits of other memes. The meme-traits need to fit within a framework of selective cultural pressure and thus have a nature, or essence, suited to it. This suits a study focused upon explaining reoccurring ideals through a long historical perspective.

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[62] Sperber, Dan, An objection to the memetic approach to culture, in Robert, Aunger (ed.)*Darwinizing Culture: The Status of Memetics as a Science*. Oxford University Press, 2000, pp.163-173 and Benitez Bribiesca, Luis, 2001, Memetics: a dangerous idea, *Interciencia: Revista de Ciencia y Technologia de América*, Venezuela: Asociación Interciencia,26(1): pp.29–31.

4.1.2. Theoretical definitions of ideal-types in connection to arguing for a tendency

The study will through answering the questions about a reoccurring pattern of ideals create a generalized Weberian like ideal-type model for future studies, ideal-types are abstract constructions of key concepts used to explain social phenomena.[63] Max Weber proposed ideas about **caesareopapism,** the earthly religious system is subordinate to the religious absolutist mandate of the earthly ruler i.e. the king rules the church, or **hierocracy**, rule by priests.[64] Neither hierocracy nor caesareopapism reflected the ideals in the sources in an adequate way. Furthermore, caesareopapism and hierocracy are connected to the older Weberian theories of oriental despotism. This study rejects these old Weberian models but retains the idea of ideal types created from inter-connected meme-traits and as terms for analytical use. A new model will be the description of a tendency of reoccurring shared, among the cultures, meme-traits towards a convergently evolving and reoccurring ideal meme-plex of state structure. This reoccurring ideal meme-plex will be seen as due to an intercultural overarching niche between the studied Semitic cultures. Certain terms and definitions in this study have thus been stripped of any connotation connecting them to a single Semitic culture or emic perspective to allow a greater comparative perspective. The adopting of a generalist view, with the name of **Semitic Theonomocracy** for the model, is to avoid the emic connotations and singular focus on one religion/culture or detail only. For example Jose Faur uses theonomocracy in his article with regard to Judaism and the term theonomocracy is used by Shabbir Akhtar to refer to the political system of Sunni Islam.[65] Like both Jose Faur and Shabbir Akhtar the study will be based upon an ideal of divine law governing society and develop from there. **Theonomocracy**, rule by divine law, in this study will be empirically different, non-emic and non-restricted to only Islam or Judaism as part of a comparative perspective, hence "**Semitic**". The Semitic cultures lived/live in an interconnected world and this will be argued about as part of a cultural niche to explain certain meme-traits.[66] The choice of words to describe certain common traits of historic developments will try to reflect this perspective by being as general as possible between the various cultures, which will be noticed in choice of definitions below. Cultural categories for the sake of clarification, as useful epistemological

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[63] For an explanation of ideal-types see Swedberg, Richard & Agevall, Ola, *The Max Weber dictionary: key words and central concepts*. Stanford, Calif.: Stanford Social Sciences, 2005, pp. 119-122.

[64] Caesareopapism is explained by both Swedberg & Agevall, 2005, p.22 and Curtis, 2009, pp. 268,285-287. Hierocracy is explained in Swedberg & Agevall, 2005, p.112 and Curtis, 2009, p.287.

[65] Akhtar, Shabbir, *Islam as political religion:the future of an imperial faith*.Abingdon:Routledge,2011,pp.VI,149 and Faur, José, "*Law and Hermeneutics in Rabbinic Jurisprudence: A Maimonidean Perspective*," 14 Cardozo Law Review, 1993, pp.1657-1679.

[66] See pages 31-39 in this study.

abstractions, such as Arabic, Ethiopic, and Israelite and so on will be used. They will be seen as different cultures even if they share features. The intention is not to dissolve these cultures as being the same, rather it is focusing on shared traits among similar Semitic cultures due to historic developments. In opposition to earlier discussed postcolonial views, this study assumes categorizations can be used to examine certain conditions of the world and not only as a product of power.

The analytical ideal-type terms, below, used in the study are inspired by a wish to combine Crone's and Hind's work and the previously mentioned authors' emic observations of theonomocracy,[67] in a greater comparative context. The terms have been taken and/or specifically made and defined,[68] by this master study, to allow, and present, a comparative perspective across texts of the cultures with brevity and clarity, in order to easier make understandable arguments. **Religion** in this study is going to be defined as the meme-plex about supernatural, unexplainable above human, forces in a culture, although definitions of religion are contestable.[69] **The divine** is the highest authorities of religion, the deities of the religions. It is they who give **legitimacy,** which is the acceptance of a rightful authority. **Law** is the system of rules, which are recognized as regulating specific actions and is to be enforced by the imposition of penalties. **Codification** is the process of standardizing and defining law in written form. **Divine law** is either direct law in the religious sources coming from either the Divine or the practice of a prophet as agreed through interpretation from those sources. Divine law is an extension of orthopraxy, which is a focus on correct conduct and rules being the ground for faith whereas orthodoxy is a focus on correct belief.[70] Divine law is directly from the religious sources in opposition to law inspired by the divine in the sources and revealed through reason by inherent God-given nature, thus is given the legitimacy of the divine, as **natural law**.[71] Divine law stands in contrast to **man-made** law, law made by humans in place of the divine rather than revealed directly to humans and interpreted. This concept of law is connected to a **mandate to rule**, the meme-trait that the ruler is a source of

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[67] Crone & Hinds, 1986, pp.1-25, 97-110; Faur, 1993, pp.1657-1679 and Akhtar, 2011, pp. I-30.
[68] Absolutism, law, legitimacy and codification are taken from Crone & Hinds, 1986, pp. 1-3, 19-25,68, 97-110. The other bolded terms in this section are made and defined, by this master study, to be analytically applicable across all the cultures during comparison such as divine law for sharia or halakha, religion for Sunni Islam or Judaism, rulership for caliph, man-made law or natural law for the Arabic-Islamic term *qānūn* etc.
[69] McKinnon, Andrew. M., Sociological definitions, language games, and the 'essence' of religion, *Method & Theory in the Study of Religion.* **14** (1), 2002:pp. 61–83. Has argued that there is no universally agreed upon definition of religion and what relates to it are contestable; but, a relevant definition, for the various cultures, was needed for argumentation. The term's analytical use for the study was more important than its universality outside it.
[70]Orthopraxy and orthodoxy are common analytical terms and are directly used by Akhtar, 2011, p.1.
[71]Natural law should here be viewed as corresponding to the theocentric natural law doctrine that developed in ancient and medieval Christian Europe rather than more secular concepts of natural law. For more information about the history of Natural law this study recommends O'Manique, 2003, especially pp.165-167.

law and rules in the divine's place and is thus free to legislate and/or act however he wishes by the grace of God or that his man-made law is a representation of the Divine. This is connected to an **absolutist** ideal, the ideal that all legislative authority is under a centralized earthly rulership without executive accountability. The **rulership** is here defined as the holders of centralized authority and this is connected to the **holy lineage.** Holy lineage is the meme-trait of a named bloodline given religious justification to rule in the sources rather than a general statement about rulership being granted to the kings without specification. The **men of religion** are learned professionals within the religion that must have knowledge, such as priests or the ʿulamāʾ in Islam or the rabbis in Judaism.

4.1.2.1. <u>Further discussion about theories in connection to a Semitic Theonomocracy</u>

Inspiration, for this study, has been taken from Crone's and Hinds presentation of the view that a loss of caliphal authority happened due to the emergence of a scholarly class of jurists with a more codified divine law that limited the authority of the caliph.[72] The focus in this master study will be on the ideals that are behind this development and will argue that this development is earlier using a comparative method, including all the four cultures not just the Arabic. This will lead to a focus on the existence of concrete divine law, men of religion as a judiciary class and a rulership limited by divine law. It will assume a conflict of interest between men of religion as a local elite and the central rulership common to all the cultures. The texts, of the source material, are to be treated as political texts and a political aspect in these sources is thus assumed. Divine law will be seen as a core meme-trait with regard to ruling, hence why the ideal system will be called Semitic Theonomocracy. The study is going to engage in outside empirical factors, geography and cultural contact, through the greater theoretical framework to explain its development and that there is an internal reason for it. The tendency will overlap with the comparative model template used by Linda Darling:

> *The world is a garden, hedged in by sovereignty. Sovereignty is lordship, preserved by law. Law is administration, governed by the king. The king is a shepherd, supported by the army. The army are soldiers, fed by money. Money is revenue, gathered by the people. The people are servants, subjected by justice. Justice is happiness, the well-being of the world.[73]*

Darling's template model is taken from an Ottoman saying as a reoccurring ideal type of governance that she compares with several sources to prove it as a reoccurring thematic ideal-type through several ages and cultures of the Middle East. She focuses on ideals of

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[72] Crone & Hinds, 1986, pp. 97-110.
[73] Darling, 2013, p.3.

governmental practice rather than governmental structures and ignores religion.[74] This is in contrast to the ideal meme-plex that will be connected to religion in this master study. The tendency towards a certain ideal meme-plex that this study will propose is limited to Semitic cultures and does not go into detail of Persian or Ottoman history, which Linda Darling deals with. The focus is limited to ideals of Semitic state structure.

The analysis will focus on meme-traits limiting rulership among the various cultures to shed light on possible reoccurring meme-traits that opposes previous views about oriental despotism and racial Semitic theocracy. A strong power in the legitimacy of direct divine law among the believers will be assumed, as it is the divine that gives legitimacy. Connected to the legitimacy is the assumption that memes have practical effects on history, as memes are connected to the world around them. This does not mean that the religions are assumed to be the truth. Rather, the perspective is that belief shapes a perception of the world that leads to action. The study has a meta-level of understanding and will not go into particularistic details about the laws or administration rather the study has a focus on the implication of the existence and potential rational behind the existence of divine law and meme-traits of ideal state structure that follow. This is to reduce the complexity due to size and time constraints and the fact that the study will describe a generalist tendency that ought to be applicable to several cultures and time-periods with a focus on what is definitely shared. The tendency, with its meme-traits, will be an epistemological abstraction, and thus generalization, since a social phenomenon such as ideal state-structures cannot be understood in their totality with all details over three millennia. It is also based upon analytical ideal-types that are in themselves abstractions.

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[74] Darling, 2013, pp. x, 5, 8. Linda Darling tries, and even states, her intention avoid religion on the pages.

5. Theoretical and Methodical Considerations for the Source Material
5.1. Criteria for the Selection of the Sources

One of the criteria for the choice of sources was that they were connected to religion, law and/or rulership. Since the purpose of the study is the relationship between the state and the religious law, this was decided as a fitting choice that bridges the difference in genera among the sources. This brings a problem with being biased towards the power of the religion since most of the sources are written by religious scholars or are religious sources. This is somewhat less relevant when dealing with ideals, which is the subject matter, but it can mean that it has concealed various viewpoints that were widespread and were/are not represented in the material. The problem is connected with another criteria, that the material had to be widespread and an established part of the culture, thus representative of a greater cultural niche. The Code of Hammurabi was used as a law-text among later kings after Hammurabi.[75] The Ethiopian texts in this study are canonical and widespread works. The Didascalia is part of the canon of the New Testament within the Ethiopic Orthodox Church.[76] The Fetah Nagast is a book of law that functioned as the practical constitution of government up until relatively recently, 1930, and is still a part of the Ethiopic law together with more modern sources of law.[77] And, with regard to the Kebra Nagast, "The Kebra Nagast is not merely a literary work, but it is the repository of Ethiopian national and religious feelings.".[78] The Jewish materials are some of the most important religious sources within mainstream rabbinical Judaism and are thus important sources for that culture. The Arabic texts could be considered to be part of either religious and/or literary canon. Most of the texts were selected for coming from an area of what can be considered the Semitic heartlands,[79] in North Africa and the Middle East.

There are two deliberate exceptions to these criteria; the first is Abu Muhammad al-Adnani al-Shami's *Hadhā wa`d allah* that is modern and included to reveal the relevancy of a reoccurring pattern even in the modern day and as a comparison, since it shares many features that highlight certain developments. To understand the past one ought to view the closest present analogy, which this study considers modern day Islamists. The second is *Kitāb al-Tawḥīd,* an obsolete text within Islamic theology; but, it was one of al-Māturīdī's main work

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[75] Charpin, 2012, pp.156-157.
[76] Ethiopian church, *Canon* , 2003, http://www.ethiopianorthodox.org/english/canonical/books.html(2017-09-09)
[77] See; Damtie, Melesse, Anthropocentric and Ecocentric Versions of the Ethiopian Legal Regime, in *Exploring Wild Law: the philosophy of earth jurisprudence*, Kent Town,South Australia: Wakefield Press, 2011, pp.159–172 specifically pp. 162-165 and Dominic, 2010, pp. 1-4.
[78] Ullendorf, Edward, *Ethiopia and the Bible*, Oxford: University Press, 1968, p.74.
[79] Semitic Heartlands is a term invented for this master study and under pages 34-36 will be a definition of it.

and laid the foundation for the *Māturīdīya*-school. The school still survived and flourished afterwards and is now one of the main schools of theology within Sunni Islam. The theology's survival is connected with the criteria of being widespread. The criteria for being widespread was to make it an extension into time and strengthen the long perspective of several millennia. This means that the material is only from the surviving majority groups within the cultures, which means that the study has turned a blind eye to minority traditions, such as the Shia traditions within Islam or Karaite Judaism. The choice of focusing on the majority tradition has its merits in that it is based on the assumption of greater relevancy and on the theoretical framework; it assumes that survival of texts is connected to a greater overarching cultural niche. The more widespread something is over time the more suited it is for survival in the niche and is an ideal suited for that niche. In addition, there were constraints of time, money and the size of the study for the choice of sources. However, the Arabic sources where chosen to cover a broad spectrum and includes several theological schools of both *fiqh*, Islamic jurisprudence, and ʿ*aqīda*, faith theology, within Sunni Islam. There are the literalists within the hadith traditions such as al-bukharī's collection and al-Ṭabarī's exegesis, and the neo-'atharī, literalist theology, IS speech. The study also includes the founder of the *al-Shāfiʿīya* school of jurisprudence, al-Shāfiʿī, and later followers such al-māwardī and the founder of the *al-Māturīdīya ʿaqīda* School, al-Māturīdī who followed the Ḥanafīya School of fiqh. *Kitāb al-Tawḥīd* also has the distinction of being the only work in the study that is known to be created outside an area historically dominated by Semitic speaking peoples, in a peripheral area. *Kitāb al-Tawḥīd* represented a relevant syncretism about limits of ideals that was connected to discussions of divine law. This created an opportunity to demonstrate the effects and limits of a tendency based upon divine law in the periphery of a Semitic culture. *Kitāb al-Tawḥīd* was also selected for being an Arabic text and thus readable in its original language. Other texts had problems of not being as relevant, not being connected to religion, law and/or politics together, or by being in other languages.

5.2. Problems with the Sources
5.2.1. Translations and the problems inherent in them and in printed ancient texts

That many non-Arabic sources are translated is a source of potential error. This is spoken from experience with Arabic that can sometimes be very hard to translate, and this can affect the content of a source, which will be discussed when relevant. The fact that the study uses printed and edited versions of the texts is a source of potential error, the printed versions of the texts can be divergent from the handwritten original texts.

As the sources are several millennia apart from us in time and were made in different cultural contexts, it can be hard for a reader to understand what was intended in the various sources. This means that there exists a potential weakness in this master study. All the texts will be literally viewed and the same view was adopted with regard to all the sources. This method has been chosen since it would be impossible to know all details surrounding all the sources and thus interpret them according to specific contexts. Many of the sources were used to be a basis of law and laws would, in most cases, ideally be interpreted directly although metaphors do play a large role in developing legal theory.[80] Moreover, there is a risk that the texts might be inordinately interpreted through an Arabist lens as the study has a background in Arabic studies and uses literature from the Arabist tradition in this study. The counter argument is that this is preferable to viewing the sources, as being alone, in a particularistic manner.

5.2.2. Source criticism, other problems and aspects

It has been less important to know whom the sources where originally written by or what the original documents were than that they survived in their current forms. That they survived in this form is the important part since the theoretical framework implies a selection through cultural selective pressure. The sources are viewed as being a reflection coming from survival in a certain cultural niche. That the study focuses on ideals, what they want us to believe, makes it so that biases has less of an impact and can even become an advantage. Thus, the issue of inherent biases in religious sources, as noted by Yehuda D. Nevo and Judith Koren is avoided.[81] This avoidance is due to the survival of the declared statements and views being the interest of the study rather than the intentions behind them. That there are such large time gaps among the various sources, often several hundreds of years, is a problem that is somewhat remedied by analyzing them as being in an overreaching cultural niche. Yet, there still exists the issue that the gaps together with the somewhat lacking number of material for certain periods makes the appearance of certain traits hard to identify. When this issue is the case it will be mentioned in the analysis. That almost all the sources are part of widespread standardized cultural canons lessen the risk of large reeditions through the ages, since large changes would be noticed after the sources' canonization in the cultures. This is the case for every old source except for Ms.add.no.3651, *Kitāb al-Tawḥīd*, the handwritten text by Al-Māturīdī. *Kitāb al-Tawḥīd* did not see direct widespread use and did not survive until today as a used text, although its theology was cited and used afterwards. Ms.add.no.3651 is most

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[80] Makela, Finn, Metaphors and models in legal theory. *Les Cahiers de droit*, 52(3-4), 2011, pp.397-415.
[81] Nevo & Koren, 2003, p.6.

likely not the original work written by Al-Māturīdī, or his scribe; but, the question is how far back the copy dates. The writing-style is fitting for the period of the middle-ages, the *naskh-* style is typical, but that does not conclusively say how close in time and the style can be copied or used outside of the period. Also, the information about paleography in Arabic is lacking and therefore this assumption is based more on personal experience. The material the text is written on appears in relatively good condition, which implies that it is younger. However, there exists older texts, than even a possible earliest date of *Kitāb al-Tawḥīd*, that are in a similar condition. *Kitāb al-Tawḥīd* has been cited several times and the manuscript, Ms.add.no.3651, contains several sections and traits that correspond with what is known about Al- Māturīdī's theology from his later students.[82] So the study assumes it is correct.

5.2.2.1. <u>Interrelation and dependability among the sources</u>

Most of the sources are dependent on each other such as the Quran, the hadith and later Islamic theology or the Old Testament with both the Ethiopic and later Jewish traditions being dependent upon what is therein. There is a connection among, for example, the Islamic tradition and the earlier Jewish and Christian. This will be discussed during the analysis and is written about in the background.[83]

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[82] For an overview of why *Kitāb al-Tawḥīd* is trustworthy and why the study views it as trustworthy even though it is possible that a late date does present a source of error see Özervali, Mohammed Sait, The Authencity of the Manuscript of Māturīdī's Kitāb al-Tawḥīd: A Re-examination, *İslâm Araştırmaları dergisi,* saui 1, 1997, pp.19-29.

[83] See pages 36-39 in this master study.

6. Method for the Study

The study will begin with an identification and analysis of shared background factors that might work as an overarching cultural niche to explain a reoccurring tendency towards an ideal meme-plex. Thereupon, the study has been divided into a two stage study to answer each of the inquiries at the start. The first stage is a comparative qualitative text-study, with semi-quantitative synthetic elements, of the primary sources with a focus upon the relationship between religion and ideal forms of government. The second stage is a shorter but deeper and more focused in depth study of the theology of al-Māturīdī as found in his *Kitāb al-Tawḥīd*. The two stages is to provide a better and more comprehensive view of the studied phenomena, a tendency towards certain ideals, from two perspectives.

6.1. The First Stage, its Focus and Limitations

The first stage is to study the reoccurring ideals of state structure and summarize them in a tendency and explain why it occurs. A comparative method will be utilized where the primary sources are compared with regard to important themes, which have been seen to be related to ideals of state structure based upon divine law. It is in these categories/themes where it was found what could be described as the basis of a reoccurring pattern and were chosen for having relevance to it. It was assumed that the more meme-traits that can be demonstrated as being present generally across the themes in the sources and interconnected to each other, creating an ideal meme-plex, the more likely it is they form a tendency that might be a functional tool of analysis. For this reason only interconnected meme-traits with regard to concrete divine law, the judiciary role and the earthly central rulership that have been found to appear in at least three of the cultures have been presented as being relevant. When similar patterns, such as the existence of a concrete divine law giving judicial power to men of religion or limiting power of rulership, emerge this is commented upon and analyzed. This is to create a coherent reason as to why/how it is tied together with other patterns in an overarching cultural niche. The various factors within the cultural niche will be argued for in the historical background of these cultures. The focus is on how several meme-traits interact with each other and their cultural niche in forming a covergently evolving repeating pattern of an ideal meme-plex through long stretches of history. If a source contradicts a general tendency it is commented upon and analyzed as to why. Other context is also used, such as references to other sources for co-dependability and connection among several of the sources

as textual traditions. When a result is reached it is compared to certain European and Middle-Eastern history within similar fields to establish a historic context of a tendency, to argue more clearly for certain traits and their scope. The time difference is large in both the sources and the secondary literature, with developments in Europe for example often having a much shorter time span. However, since it is there to demonstrate certain reoccurring traits, rather than an in depth comparison, it is reduced as a source of error. Likewise, it is hard to compare the Semitic civilizations to anything else as they are so long lived and have had an almost unrivaled literary tradition. Use of secondary literature is to highlight certain developments and give context to arguments to avoid having to reinvent the wheel with regard to certain arguments. This comparison among the sources and connecting them to historical factors will result in the explanation of a tendency towards an ideal meme-plex.

6.1.1. Studied themes for the study's first stage

These are the interconnected themes that the study limited itself to focus upon as they were the ones with relevant direct reoccurrence.

The first is **the divine law**. The focus was on if the primary sources include concrete laws, laws with clear punishments and/or stipulations, not principles revealed through reason like natural law. If the laws were regarding subjects that have traditionally in the west been the domain of the laws of Caesar i.e. a ruler's created laws or divinely inspired laws rather than directly divinely mandated laws, this study generalizes it into being criminal law, laws about rulership and property law rather than only rules regarding faith to God and worship. The second is **the men of religion**. The focus was the mentioning of the role for the learned men of religion as judges and upholders of the divine law and being local elites. The third is the **rulership.** It was focusing on if the sources have a concept of placing limitations on the central earthly rulership with regard to the divine law and if the rulers were condemned and held accountable if they did not follow the divine law. There was a focus on if the rulers are required to have certain qualities, such as holy lineage, to have office.

The use of the themes focus on the underlying meme-traits behind the themes in relation to a context rather than details within the themes. The focus is on a greater abstraction level or meta-level, since the tendency will be an epistemological abstraction, as are Weberian ideal-types.[84] A social phenomenon like state-structures in their totality is too vast for any study. The focus is not on details in specific laws as much as tendencies of general ideals of

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[84] As described in Swedberg & Agevall, 2005, pp.119-122.

accountability, limiting power and giving authority. This was the case unless there was a detail that directly conflicted with a general ideal instead of being allowed, as a variant within it, or highlighted a certain concept. This means that certain nuances on the detail level are lost, but it provides a broader perspective to the study.

6.2. The Second Stage, its Focus and Limitations

The second stage is an analysis of the theology of al-Māturīdī in *Kitāb al-Tawḥīd* and how it relates to the influence of ideals of divine law in its own peripheral context. This choice of perspective for this second stage study was chosen in accordance with the aspects that were relevant to the topic of rulership and laws in his theology. The main topic of al-Māturīdī's book is about the nature of God and to what extent one can understand God and his will. But, the theology, as will be argued, does include political aspects, both explicitly and implicitly in the theology, in its structure with regard to the divine law. Central to this is a focus upon the influences from foreign meme-plexes, primarily Greek philosophy in contrast to the tendency from stage one, and how al-Māturīdī works around the contradictions and/or argues in relation to the assumed core meme-trait of the tendency, the divine law. Comparisons to other sources will be made for argumentative and contextual reasons, but this more in-depth study will be mainly about *Kitāb al-Tawḥīd* in itself. The comparisons that are used are mostly going to be focused upon the polemics in *Kitāb al-Tawḥīd* and relations to other Islamic theologies with regard to divine law. Whereas the first stage is more superficial and trying to demonstrate the broadness of Semitic Theonomocracy through a comparative method the second tries to point to a more specific context and determine the influence of the tendency, from the first stage, in a peripheral part of the Arabic-Islamic world. As *Kitāb al-Tawḥīd* is from another geographical area and cultural niche the second stage will begin with a discussion about the niche of *Kitāb al-Tawḥīd* that integrates the theoretical framework. This is important as it assumed that an overarching cultural niche is what creates the conditions for a tendency towards the ideals with the divine law as a core meme-trait. This is thus in way to study the fundamental assumptions behind the basis of the limits in the tendency and to demonstrate how far the tendency influences through cultural contact in the peripheral.

6.3. Repeated Questions for the Study Divided for the Stages

These are the questions that will be answered in this study to gain knowledge about ideals of Semitic state structure, divided by the methodological stages.

- **For the first stage:** Which shared interconnected traits of an ideal state structure with regard to concrete divine law, the judiciary role and the limitations of the earthly centralized rulership are reoccurring in 3 or more of these 4 cultures across the sources? Why are they reoccurring through the various sources of these cultures throughout several millennia?

- **For the second stage:** How does *Kitāb al-Tawḥīd's* theology with regard to divine law, with assumed influence of a tendency towards a concrete divine law and the context behind the theology, indicate the geographical and cultural confines of the tendency towards the reoccurring traits of the ideal?

- **The final question discussed in the conclusion after, and throughout, the two stages:** Which factors and aspects in the study indicate the scope of the tendency towards the traits of the ideal with regard to geography, cultural influence and time?

7. Historical Background of the Semitic Cultures in the study

This section is partly a background and partly an analysis of important shared factors among the cultures for the survival of what is in the primary sources. The background is important since it is linked to the greater theoretical framework and here the most important empirical aspects and factors for developments will be introduced. These aspects and factors have been considered as they have been long lasting enough to have an impact on the survival of the memes in the sources over the long time-scale, over three millennia, and are connectable to the subject. They should form an overarching cultural niche, for the cultures, that determine the development and survival of convergently evolving meme-traits in an ideal meme-plex.

The Early Mesopotamian development, Babylonians and Hammurabi

The Babylonians were the result of a migratory people, the Semitic Amorites, who occupied large swaths of Mesopotamia from the 21st century BC to the end of the 17th century BC in migratory waves coming from the Arabic deserts in the south. However, they were mainly speaking Akkadian, as they adopted the language that was already present in the area.[85] Under the rule of Hammurabi 1792-1750 BC, the small city-state of Babylon developed into a great kingdom and the Mesopotamian city-states were unified under one ruler. This had not been the case since under Sargon of Akkad 2334-2279 BC and the Ur III dynasty 22nd to 21st century BC.[86]

The Israelite-Jewish development

The Israelite civilization began its development in the centuries following the Bronze Age collapse from the 13th century to the middle of the 12th century BC that meant the cultural and economic downfall of the Egyptian empire in Syria and Canaan and all other major powers in the area of the Levant.[87] This is the context in which the earliest parts of the Bible either describes or was created during. Eventually the Israelite-Jewish polities were taken over by a myriad of foreign entities, most important is the Assyrian influences under the Assyrian occupation and Babylonian exile during the seventh century and sixth century BC, where the Israelite-Jewish civilization came into contact with the Mesopotamian Semitic peoples.[88]

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[85] Charpin, 2012, p.6
[86] Darling, 2013, pp.17-19.
[87] Drews, Robert, *The end of the Bronze Age : changes in warfare and the catastrophe ca. 1200 B.C.* Princeton, N.J.: Princeton University Press, 1993, pp. 4-9.
[88] Nelson, Richard D., *Historical Roots of the Old Testament (1200–63 BCE)*, Atlanta: Society of Biblical Literature Press, 2014, pp. 176-184.

Parallel to political happenings the religious sources for the Israelite-Jewish tradition were codified and the development continued under later rulers; Assyrian, Babylonians, Persians and Greeks, to what would become the Tanakh/the Old Testament and the New Testament Bible under the romans. The standardization in a Jewish context continued during the Roman period 63BC-642 AD with the codification of the Mishna during the third century AD. It went to continue later under Arabic influences with Maimonides during the 12th century AD who traveled and was active as a doctor of the court in the Arabic-Islamic world in current day Spain, Marroco and Egypt. Maimonides actually wrote almost everything in Arabic except for his Mishna Torah, which he wrote in Hebrew.[89]

The Ethiopic development

The Aksumit Empire, 100 AD to 940 AD, arose from the city-state of Aksum after the decline and collapse of the earlier Dʿmt civilization in the Ethiopic area.[90] The Askumit Empire converted under Ezana the great, 320-360 AD, after a period of conquest, great economic success through trading and urbanization with population growth in the Axum area.[91] It is important to point out that it was a separate conversion from the Roman conversion to Christianity and not an offshoot of that Christian development. One interesting aspect is that the conversion to Christianity seems to mainly have happened among the elite and traders of the Aksumit Empire. This is in stark contrast to the conversion to Christianity in Rome that mainly began among the lower classes.[92] The Ethiopic Orthodox church adopted much literature in their Bible canon, translating it into the south Semitic Ge'ez language, which was discarded and not canonized in the Roman church during the first centuries following the conversion, such as the Ethiopic Didascalia.[93] The Aksumit Empire after its collapse was later replaced by the Zagwe dynasty 900-1270 AD that was replaced by the Solomonic dynasty 1270-1974 AD. The popular Ethiopic view is that the Solomonic dynasty, together with the previous Aksumite rulers, descended from Solomon as is detailed in the Kebra Nagast.[94]

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[89] Pormann, Peter E & Savage-Smith, Emilie, *Medieval Islamic Medicine*, Edinburgh Univ. Press 2010, p.35. Most of his religious works and medicinal works were in Arabic with his Mishna Torah being an exception.
[90] Munro-Hay, 1991, pp. 42-43.
[91] Munro-Hay, 1991, pp. 42-43.
[92] Grierson, Roderick, Dreaming of Jerusalem, in Roderick Grierson (Eds.), *African Zion: the sacred art of Ethiopia*, New Haven, Conn. ; London : Yale University Press.,1993, pp.5-19 specifically 8-9 and Appleyard, David, Ethiopian Christianity, in: Parry, Kenneth(ed.),*The Blackwell companion to Eastern Christianity*, Oxford: Wiley-Blackwell, 2010, pp. 119-121.
[93] Regarding the absorption of literature in the Bible canon it is described by Draper, Jonathan, Performing the cosmic mystery of the church in the communities of the Didache, In Jonathan Knight & Kevin Sullivan (Eds..),*The open mind: essays in honour of Christopher Rowland*, London: Bloomsbury, 2015, pp. 37-57; Grierson, 1993, p. 47 and Moscati, 1949, p.188.
[94] Summarized by Grierson, 1993, p.11.

The Arabic-Islamic culture sphere's development

The relevant history, for this study, begins with tales of the revelation to Mohammed during the middle of the 7th century AD and the succeeding caliphs. They conquered most of the middle-east from both the Sassanid Persian Empire and the Byzantine Empire after they had exhausted themselves because of the previous Byzantine-Persian wars. This was followed by continued expansion during succeeding dynasties, the Umayyad dynasty, 661-750 AD in the middle-east and in the western parts of the Islamic-Arabic sphere including Spain of the Arabic-Islamic sphere until 1031 AD. The later Abbasids 750–1258 AD seized power from the Umayyad-dynasty in the middle-east, but towards the end of the 10th century began to break up into smaller polities. It is in this context that al-Māwardi is writing as the capital of the Abbasids, Baghdad, was occupied by the Iranian Shi'ite Buyyid-dynasty of the Zaydi subsect.[95]

Parallel to these changes and developments was a process of codification of the religious sources beginning with the Quran, probably during the early Umayyad period, and the codification of the hadith collections during the eighth and ninth century. There is the development of the different schools of Islamic law, *fiqh*, following the Abbasid revolution and later during the ending of the ninth and tenth century AD commences the development of the classical schools of faith theology, ʿ*aqīda*.[96]

During the Abbasid period there is an influx of Greek culture and other cultures upon the Arabic cultural sphere.[97] This coincides with an influx of foreigners in the administration. Previously all the offices had been exclusive to almost only pure blooded Arabs but following the Abbasid revolution, and take over, reforms were made that resulted in positions of power being made available for non-native Arabs.[98] The language of the religion and court still remained Arabic and these reasons is why the study refers to an *Arabic*-Islamic sphere.

7.1. Shared developmental characteristics among all the Semitic cultures

Doing an overview of these cultures, as shown previously, points towards there being a shared aspect of going from peripheral nomadic/semi-nomadic culture to sedentary life-styles with civilization building following the collapse and conquest of previously dominant civilizations

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[95] Cahen, Cl., "Buwayhids or Būyids", *Encyclopaedia of Islam*, Second Edition, Ed. P. Bearman et al. Brill Reference Online.,2012, Web. 8 May 2019.
[96] Berkey, Jonathan Porter, *The formation of Islam: religion and society in the Near East, 600-1800*. Cambridge: Cambridge University Press,2003, pp. 141-151.
[97] Gutas, Dimitri, *Greek Thought, Arabic Culture*, Routledge, 1999, pp.155-166.
[98] Gutas, 1999, p.63.

and cultures. Parallel to this process is the development of the religious traditions. Strong tribal groups taking over from earlier collapsed empires and civilizations is so reoccurring that the Arabic historian ibn Khaldūn, active during the 14th and 15th century AD, actually coined a term for the concept behind it as ʿAṣabiyya,[99] roughly "tribal spirit". Peter F. Ellis summarizes the view, of Moscati, with regard to Semitic transitions from nomadism in his review of a translation of *Le antiche Civiltà semitiche.*[100] Moscati also wrote an article for *Oriente Moderno* in which Moscati describes it as not just a few migrations but a constant stream of periodic migrations from the desert to sedentary regions.[101] Even though Sabatino belongs to the older orientalists this study will still use the fact of nomadic transition to civilization as an explanation since it has nothing to do with race and can still be considered a valid useful fact for this study.

7.2. The Shared Physical and Geographical Factors Affecting all these Cultures

One important physical factor to discuss with regard to history is the environmental and geographical factors, such as that most of the heartlands of these cultures have been mostly flat dry steppes and deserts with dry and warm climates and largely infertile land. There are exceptions, the mountains and forests of Yemen being one, but this is a generalization for the study. This has forced civilization to be centered in urban centers around sources of water with fertile earth around them, some examples include; the rivers Euphrates and Tigris of Mesopotamia with Hammurabi, the various water sources of Arabia including the oasis of Yathrib/Medina, the Jordan River with the sea of the Galilee or the Atbara and Abbay river systems of Ethiopia.[102] The Abbasids had their capital in Baghdad in the middle of the Mesopotamian river systems and both the Abbasids and the previous Umayyad dynasty controlled most of the Semitic speaking heartlands that were under these geographical conditions. The Semitic heartlands are the lowland areas in North Africa and the Middle East

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[99] Gabrieli, F., "ʿAṣabiyya", *Encyclopaedia of Islam*, Second Edition, Ed. P. Bearman et al. Brill Reference Online., 2012, Web. 8 May 2019. The idea of *Aṣabiyya* is that strong nomadic groups with social solidarity, with an emphasis on group consciousness, cohesiveness, and unity will conquer earlier decadent empires. However, in the process they expose themselves to the processes that undermine the ʿAṣabiyya and they themselves become decadent.

[100] Ellis, Peter F., 1960, 'The Semites in Ancient History Sabatino Moscati', *The Catholic Biblical Quarterly*, 22(3), pp. 339-340. Moscati also deals with migrations in *Storia e civiltà dei Semiti* 1949.

[101] Moscati, Sabatino, 1955, "I POPOLI SEMITICI NELL'ANTICO ORIENTE." *Oriente Moderno* 35, no. 7 : p.319-330. "[…] ma un periodico, pressoché ininterrotto migrare di genti dal deserto verso le vicine regioni a cultura sedentaria." p.327. This is regarding both Ethiopic, Akkadian, Hebrew and Arabic migrations.

[102] For example the existence of early urban centers in ancient Israel is known according to Nelson, 2014, pp. 2-11. That the area around the city of Aksum being very fertile is known and well documented according to Munro-hay, 1991, p.35. The concentration of Sunni-Arabic control of fertile areas with urbanization is noted in Khuri 1990, pp.58-59.

that the Semitic civilizations lives/lived in for more than 800 years as the dominant cultures.[103]

This probably led to centralization with strong local centers/islands of civilization even if not as centralized as the ancient Egyptians who lived along one straight and easily navigable river, the Nile. The previously mentioned rivers are a patchwork of dispersed water sources and crossing rivers that makes logistics and infrastructure harder and complete centralization on a larger scale more unlikely. The Nile was a part of the later Arabic-Islamic sphere. But, from a greater perspective the Nile is an isolated water source, like the sea of the Galilee, if taking into consideration the size of the early Umayyad and Abbasid caliphates. This has everything to do with logistics since it is easier to move troops and not to mention animals such as camels, elephants and horses through a relatively flat desert than through forests, mountains, rivers and over marshes that can hinder movement of carts and necessary supplies. The probability of getting lost in a forest as an army or getting stuck in the mud with the supply carts, or forced through one narrow road in a forest or mountain pass is reduced, likewise is the number of effective choke points and bottlenecks for hindering enemy logistics. The relatively centralized populations together with the visibility of the terrain-types would probably reduce the likelihood of ambushes and the preindustrial counterparts to local guerrilla warfare. However, the deserts between the sources of water are still an obstacle and preserves a certain local autonomy for the urbanized centers that can easily dominate their surroundings and act as strong local centers of power in a net of interconnected urban centers. The seasons are more stable in the middle-east and Ethiopia than further up north with regard to changes in temperature and rainfall. This makes cultivation of land possible for longer periods of time and ensures better harvests. Together with the rather high levels of local centralization that ensure strong local control it ought to have led to a high level of political stability of sedimentary civilization and politics.

The focus will primarily be at the geographical components that grant autonomy and stability through local spots of centralized urbanization and power. This stands in contrast to a focus upon the productive features, in line with older Marxist and Weberian models of Asiatic means of production to explain eastern despotism as explained by Rolando Minuti, Michael Curtis and seen in Karl Wittfogel's book.[104] This is because the study aims to shift the focus

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[103] See appendix 4 for a map over the areas.
[104] Curtis, 2009, pp. 236-240, 250-257, 277-280; Minuti, 2012-05-03 and Wittfogel, 1957, pp. 22-48.

to limitations of central power to impose its will in order to explain an ideal that rejects the absolutism of eastern despotism.

7.3. A Net of Communication, Contact and Borrowing among these Cultures

A cultural niche for a tendency cannot be considered without accepting the fact that the Semitic cultures rather than being isolated entities actually had much cross-cultural contact, which will be argued here through both secondary literature and primary sources. The Semitic languages are closely related and have had close contact with each other, so close in fact that it is hard to pinpoint when a shared trait among the Semitic languages is due to shared origin or due to influencing each other and questions of classifications remain a problem even today.[105] Close languages lead to intercultural borrowing; for example, it is know that several types of Semitic themes of poetry are shared between Arabic poetry and other Semitic cultures going back to Akkadian poetry.[106]

A most relevant observation of this cross-cultural contact is made by David P. Wright through comparisons that shows that the Israelite-Jews borrowed heavily from the Mesopotamian cultures and used the laws of Hammurabi as a basis to create parts of the Old Testament as a counterpart.[107] There exists Akkadian inscriptions from the 8th-7th century BC that mention the Arabs and their rulers.[108] So at least the later Mesopotamians had similar contact with the ancient Arabic people. As for the code of Hammurabi itself, it was based on earlier Akkadian Semitic laws.[109] The Old Testament is shared between both the Ethiopic and Jewish traditions and referred to as a source of Divine law by both.[110] With regard to the Didascalia in the Ethiopic tradition, Broadhead has observed that the previous Didache text, on which the Didascalia is based, combines the Old Testament with the New Testament in such a way that it can only be described as a Jewish Christian text.[111] Marcello Del Verme claims that the author of the later Didascalia was probably a converted Jew and Karin Hedner Zetterholm notes the same.[112] Zellentin believes that the similarities between the Qur'an and the Syrian

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[105] Faber, Alice, Genetic Subgrouping of the Semitic Languages, in Robert Hetzron (ed.)*The Semitic languages*. London: Routledge, 1997, pp.3-15.

[106] Frolov, Dmitry, *Classical Arabic Verse. History and Theory of ‘Arūḍ*, Leiden, 2000, pp.27-33.

[107] Wright, David P, *Inventing God's Law: How the Covenant Code of the Bible Used and Revised the Laws of Hammurabi,* New York: Oxford University Press, 2009, E-book, pp. 347-360.

[108] Retsö, Jan, *The Arabs in antiquity*. London: Routledge Curzon, 2003, p.167.

[109] Charpin, 2012, pp. 154-155.

[110] This will be discussed at pages 41-44.

[111] Broadhead, 2010, pp.131-132,158.

[112] Del Verme, Marcello, *Didache and Judaism: Jewish roots of an ancient Christian-Jewish work*. London: T & T Clark International., 2004, p.213 and:

Didascalian, if not coming from direct borrowing, is based on a common Jewish-Christian inheritance with regard to the role of divine law.[113] Both Zetterholm and Zellentin discusses the Syrian version, but it is applicable to the Ethiopic version as well since the versions do not differ much in what they refer to. This leads into what Yehuda D. Nevo and Judith Koren also, through archeological evidence, argue for; that a large Jewish-Christian substrate was present and an integral part during the formation of Islam during the first hundred years.[114]

On the subject of the Quran, even it accepts this likeness by constant reminders that it should be seen as a continuation and epitome of previous religious traditions by referring back to the previous traditions,[115] where it refers to the texts of the Bible as a type of previous revelation. The Arabs during the time of Mohammed and the followers of Mohammed himself had supposed contact with the Aksumite Empire from the beginning.[116] As for later developments Patricia Crone noted that Jewish law and local laws were used to develop the sharia and it is hard to pinpoint one source as being the origin.[117] This goes back to Ignaz Goldziher who noted the similarities of the hadiths to previous sources such as both East-Roman law and Jewish sources and proposed that the hadiths were developed to legitimize a new law system for the emerging Arabic imperial construction.[118] Goldzhier's work in the field is still of use today by modern revisionists in the study of Islam's early history such as Patricia Crone although she has criticized him for having had focused too much on Roman law rather than local law and Jewish sources.[119] Fred Donner have gone through Islamic sources and argues that much, but probably not all, of the Arabic- Islamic history was written for political purposes and legitimization especially with regard to the Christian and Jewish subjects whom had been subjugated.[120] D. Nevo& Koren argued, through archaeology, the same and they regard the creation and formation of Islam as a process of borrowing.[121] In any case the Islamic development did take influences from the Jewish-Christian tradition.

[...]seeing the Didascalia as a basically Jewish, although non-rabbinic composition seems convincing. The author/redactor is steeped in Jewish tradition, interpreting the Bible like a Jew, thinking like a Jew, and arguing like a Jew, and his ideas make sense within a Jewish world-view provided we allow for expressions of Judaism other than the rabbinic one. Zetterholm, 2014, p.139.

[113] Zellentin, 2013, pp. 134,200-201.
[114] D.Nevo & Koren, 2003, pp.171, 190-200.
[115] Such as Quran: 5:43, 5:110, 30:47, 61:6.
[116] Munro-hay, 1991, pp.55-56.
[117] Crone, 1987, pp.89-99 and Crone & Cook, 1977, pp.29-32.
[118] Can be read about in Goldzhier, 1890, *Muhammedanische Studien,* Second part, Chapters 1-8.
[119] Crone, 1987, p.3.
[120] Donner, 1998, *Beginnings of Islamic Historical Writing*, Cambridge University Press, pp.149-154, 280-285, 288-290.
[121] D.Nevo & Koren, 2003, pp. 337-354.

There is a net of constant interconnectivity in other regards as well. Maimonides was for example active in the Arabic-Islamic world. John Brinns argue that the Ethiopic Orthodox Church has strong roots in Judaism and David Kessler has noted that there probably was a large Jewish influence on the early adopted Christianity under emperor Ezana in the Aksumit Empire.[122] According to Steven Kaplan some dubious sources say that as much as half the population of Ethiopia was Jewish during the conversion to Christianity, yet he admits it is clear that the impact of Judaism on Ethiopic culture is undeniable and he states "No church in the world has remained as faithful to the letter and spirit of the old testament as the Ethiopian orthodox church.".[123] In addition to that, close to the time of Ezana, several Yemenite kingdoms converted to Judaism around the third century AD[124] and Aksum, under emperor Kaleb, conquered southern Arabia and subjugated the southern Arabic Jewish people during his reign in the early 6th century AD.[125] The conquest is even described by Islamic-Arabic historians such as al-Ṭabarī' himself.[126] There has continually been a strong Jewish presence historically in the Ethiopic territory and in the 17th century Jews might have even numbered up towards half a million.[127]

The south Arabian people were connected to both the central Semitic speaking Arabs and the Ethiopians. They actually had a society dominated by priest-kings like the society of the Mesopotamians before converting to faiths such as Judaism.[128] However, to which degree they were like the Mesopotamian civilizations has been debated by people such as Alfred Beeston.[129] But, there were at least contacts and similarities. The text that parts of the Fetha Nagast was based on came from Egypt and was written in Arabic by Al-Ṣafī Abū al-Faḍā'il Mājid Ibn al-'Assāl thus there is a connection to the Arabic-Islamic culture. It is possible to see more direct absorption of memes connected to kingship that are borrowed, for example the role of King David and the kingship of Israel. The Solomonic Ethiopic emperor at coronation was even called king of Israel and claimed descent from David's son Solomon.[130]

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[122] Binns, John, 2017, *The Orthodox Church of Ethiopia: a history*. London: I. B. Tauris, p.24-32; Kessler, 1985, p.14, 59.
[123] Kaplan, 1992, pp. 17-20. Quote is from p.17.
[124] Kessler, 1985, p. 63.
[125] Pankhurst, Richard Keir Patrick, *An introduction to the economic history of Ethiopia from early times to 1800*, London: Lalibela House, 1961, pp.44-49.
[126] In his *Tarikh al-Rusul wa al-Muluk,* the History of Kings and Messengers, when he discusses the Ethiopian campaign against the people of Himyar in Yemen in one of his volumes.
[127] Kessler, 1985, p.93.
[128] Doe, Brian, *Suthern Arabia*, London: Thames and Hudson, 1971, pp. 23-28.
[129] Beeston A. F. L., Kingship in Ancient South Arabia „*Journal of the Economic and Social History of the Orient* Vol. 15, No. 3,Dec, 1972, pp. 256-268.
[130] Binns, 2017, p. 54.

The Quran mentions the example of David as a good ruler, which in turn is cited by Al-Māwardi,[131] to demonstrate what a good ruler ought to strive towards being.

All the examples of interaction shown points towards the fact that the Semitic cultures had contact with each other and this is a net of cultural interexchange in which developments need to be considered. This can be seen as a localized and limited version of John Robert McNeill & William Hardy McNeill's human web.[132] This is to be considered when discussing similarities among the various cultures.

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[131] Al-'Aḥkām al-Sulṭāniya: p.13 citing Quran: 38:26.
[132] McNeill, John Robert & McNeill, William Hardy, *The human web: a bird's-eye view of world history*. New York: W.W. Norton & Company, 2003, pp.3-24.

8. Analysis and Discussion about Ideal State Structure in the Sources

8.1. The First Stage of the Study; Beginning with the Divine Law

During the study the divine law emerged and became viewed as a core meme-trait underpinning everything else in an ideal. Thus, first the existence and codification of a concrete divine law across all the cultures needed to be established and analyzed.

8.1.1. Existence of Concrete Divine Law and Further Codification in the Cultures

A discussion of an ideal system based on meme-traits of divine law ought to start at the beginning with the Babylonian code of Hammurabi around the 18th century BC. The laws of Hammurabi are laws with specified punishments for defined crimes. It includes everything from property laws, inheritance and criminal law with outlined punishments.[133] Examples of property laws and criminal law include laws 6-10,[134] which deal with theft and fraud in transactions punished by the death penalty. The stone tablet where the laws are written contains the following text about Hammurabi "who recognizes the right, who rules by law".[135] This study interprets "the right" as the right of the gods and "rules by law" with "by law" as following a law. The tablet implies following the law rather than making law himself, which in turn implies that the law comes from the outside and not from Hammurabi himself. This is repeated in the epilogue with regard to the god Shamash. "Hammurabi, the king of righteousness, on whom Shamash has conferred right (or law) am I.".[136] If "Law" and "right" can be seen as the same word in the translation that would mean that the tablet claims that the law was given, "conferred", to Hammurabi and the claim is that he simply is the messenger of this divine law. There is a problem with translations, and that is that the word translated into right or law can have multiple and/or hidden meanings that are not clear here. There is a risk of bias as the translation was written at a time when ideas of Semitic theocracy were common and does pose a source of concern, since it can have tilted the translation towards a theocratic bent. There is a concept of swearing an oath before the divine found on several of the laws, such as laws number 23, 120 and 126,[137] this is similar to *qasam* or *yamīn*, swearing an oath before God within Islamic jurisprudence. This goes back to pre-Islamic Arabic traditions of

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[133] Hammurabi: p.6-31.
[134] Hammurabi: p.6-7.
[135] Hammurabi: p.4.
[136] Hammurabi: p.33.
[137] Hammurabi pp.8, 15-16.

the divine being present within the law.[138] This type of oath can be seen as based on memes with similar meme-traits that invokes a divine nature in the law and points toward the law being of direct divine origin. That the gods' curse[139] is called upon those that changes or alter the laws connects also direct divinity to the laws. The relief on the stone tablet in *Musée du Louvre* could potentially be interpreted as the God Shamash giving Hammurabi the law, the deity being Shamash is a borrowed interpretation.[140] It depicts a sitting deity handing over something to Hammurabi in similar manner to how Moses is described as receiving the law from God a couple of hundred years later.[141] This gives the laws a divine nature and does at least additionally point towards a concept of divine law with Hammurabi as a prophet. It is not clearly revealed that Hammurabi's law is divinely ordained from only one aspect. However, when all the aspects pointing towards the law being of direct divine origin are taken into consideration it points towards that the laws are divinely ordained. This interpretation contradicts Walton's claim that "The ancient Near Eastern collections do not include cultic law; rather, their focus is on civil law"[142] and that breaking them is only an affront to society and not the religious unlike the Israelite laws.[143] This study views the laws of Hammurabi as resting upon the rationalization of direct divine law from the Gods.

As for the Israelite laws, moving at least 800 years forward, the Old Testament is full of laws sent from God and/or ordained by the various prophets such as the Ten Commandments and other laws that have clear punishments and stipulations on certain crimes.[144] Reparations for stealing and execution for murder are a few examples.[145] This continues with the later Mishna, around 200 AD, as it is a collection and codification of the various laws and rules found in the oral and written law traditions of the Jewish people. Consequently, the same laws are discussed in the Mishna, in the Mishna subsection Nezikin chapter Bava Kamma that deals with civil matters that involves largely damages and compensation in various cases. These laws even directly reference Exodus, about the exemption of having to pay reparation for injury of livestock.[146] The Mishna adds the stipulation that it does not apply to non-Jews, which is absent in Exodus. This is one example, there are more; yet, it seems the laws have

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[138] Pedersen & Linant de Bellefonds, 2012 and Ed., 2012.
[139] Hammurabi pp.34-36
[140] From Charpin, 2012, p.153, which this study adopts.
[141] See Exodus 17:14, 24:4, Deuteronomy 31:24–26; Leviticus 26:46, Joshua 8:31-32. For the picture of the code of Hammurabi see appendix 5.
[142] Walton, 1994, A*ncient Israelite literature in its cultural context: a survey of parallels between biblical and ancient Near Eastern texts*, Grand Rapids, Mich. : Zondervan, 1989, p.233.
[143] Walton, 1994, pp.233-234.
[144] Exodus 20:1-17; Deuteronomy 5:4-21.
[145] Exodus 21:12,22 for murder and Exodus 22:4 for stealing.
[146] Mishna: Nezikin: Bava Kamma: 4:3 references Exodus 21:35.

become more precise and concrete over time as traditions of interpretation. Since the Mishna is a codification of Jewish law this could be viewed as a natural consequence of standardizing interpretation. Maimonides almost a thousand years later wrote his Mishna Torah, which is a further clarification of these laws.[147]The development of halakha as becoming more codified, meme-mutated, through various methods of interpretation and application of divine law is not something new. The further codification of the Halakha in the Mishna and later, such as the Mishna Torah, is known from before,[148] but the further codification is now going to be compared with other systems.

As for the Ethiopic culture, the legal nature of the Ethiopic Didascalia is somewhat contradictory. Divine law is present in the text and is used as if it is still relevant. The law, as the Old Testament law, is a recurring theme in the Didascalia and mentioned repeatedly rhetorically.[149] However, there are a few contradictions to the role and existence of the law. There are for example some paragraphs where Jesus's statement makes it possible to interpret the law as "fulfilled",[150] but the Didascalia's general mention of the law in a context after Jesus as still in use with specific laws and rules is an antagonistic meme-trait against the view that the divine law should no longer be valid. The fact that the Didascalia is used as a reference, by name, in the later Fetha Nagast[151] reveals that it was used, or became used, as a source of divine laws.

The rules in the Didascalia are concrete divine laws and an example is how the Didascalia lists interest, murder, adultery and robbery and that they who commit these" [...] shall surely die [...]".[152] It references back to the laws found in the Old Testament "For the Scripture saith, 'If any man lieth with a man as with a woman; they have wrought uncleanness, let both of them die the death'; and, 'He that lieth with a beast, let him die the death' and, 'He that committeth adultery with his neighbour's wife, let him die the death'".[153] To understand the legal nature of the Didascalia, compare these to John: 8:4-12 in the western canon. A woman accused of adultery was spared by Jesus, in these passages, instead of being sentenced to death as the laws of the Old Testament dictates. The gospel of John is a part of the Ethiopian Church Canon but it is clear that the Didascalia's stricter idea of death for those who commit

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[147] See Mishna Torah; Nezikim, especially the section about Damages to property 1:1-10 that discusses the same law as Exodus 21:35.
[148] Segal, Peretz „Jewish Law During The Tannaitic Period, in Hecht, Neil S(ed.),1996, *An introduction to the history and sources of Jewish law,* Oxford: Clarendon, 1996, pp. 106-124.
[149] For example Didascalia: pp. 2-3, 6-7, 11, 26, 39, 49, 51, 57, 80-81, 122, 127, 132,145, 156, 162, 177, 181.
[150] Didascalia: pp. 7, 159.
[151] Fetha Nagast: p.276.
[152] Didascalia: p. 25.
[153] Didascalia: p.165.

adultery is/was in a competitive relationship with other parts of the canon that counteract the memes of literalist adoption of divine law.[154] The Didascalia is a more legalistic text then the western church canon in that the Didascalia does not mention an event or a passage like this applicable to adultery rather it directly preaches the death penalty as in previous scriptures. This fits Grillmeier & Hainthaler's observations that texts like the Ethiopian Didascalian are trying to unite Christian theology with Old Testament Judaism in a type of syncretistic combination.[155] The laws of the prophets in the Old Testament has survived in the Ethiopian Didascalian from the Didache text according to Jonathan Draper and he makes the following observations about the texts developed from the Didache text "[...] Ethiopic texts are extracts and the fact that the section on prophets is chosen is highly significant, indicating that prophets and rules for their control were still relevant or even burning issues.".[156] The western church development came into conflict with the direct divine law, because of non-Jewish influences, such as increased Roman influence of the Church.[157] According to Witte Jr. the Didascalia was written to oppose the current Roman society and establish rules for the Christian believers.[158] This fits with the assumption that the laws and legal nature of the Didascalia can be seen as containing memes antagonistic to the abandonment of divine law. Texts such as the Didascalia survived in the Ethiopic culture with its meme-traits of divine law intact. This study agrees with the observations of Grillmeier & Hainthaler, Draper and Witte Jr., but will place them into a greater context of survival.

About a millennium later Fetha Nagast appears as a law text. The Fetha Nagast is divided in two parts between internal matters of the church and greater society, which would imply a secular sphere. This is contradicted though by the fact that the laws are made on basis of Holy Scripture, as direct divine law, in both parts and, as will be discussed under pages 53-54, the judges are required to be priests. The law even explicitly states with regard to other law systems that they are not legitimate.[159] Even the translators' commentary in the introduction are of this interpretation.[160] Legal judgment and laws are derived from God's commands in

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[154] Ethiopian church, *Canon*, 2003.
[155] Grillmeier, Aloys,& Hainthaler,Theresia ,*Christ in Christian Tradition, From the: The Church of Alexandria With Nubia and Ethiopia*, Volume 2 part 4, translated by Dean .Jr, Mawbray London; Mowbray, 1996[1990], pp. 369-371.
[156] Draper, 2014, p.46.
[157] Chadwick, 1993, pp.11-13, 19-21 and Broadhead, 2010, pp. 390-391.
[158] Witte Jr, 2006, p.10.
[159] "A Christian shall not go to a pagan magistrate, nor to a magistrate of heretics to be judged by him in any matter."Fetha Nagast: p. 262.
[160] "The tendency to blend secular with religious, a tendency common to the Fetha Nagast and particularly to be found in its penal sections, has contributed to a conception of law as something intrinsically sacred in character.*"Fetha Nagast:p. XXIX. About how Fetha Nagast draws upon the Bible.

scripture. Peter H. Sand describes the Fetha Nagast as a combination of Islamic *fiqh* and Roman law in style and influences.[161] The original writer, before the transferal to the Ethiopic sphere and reediting, was al-Ṣafī Abū al-Faḍā'il Mājid Ibn al-'Assāl, an Arabic speaking Christian Copt. There is a possibility of influence by the Arabic- Islamic cultural niche that resulted in borrowing and reproduction of certain meme-traits of the sharia. The important thing to state is that this law code, with the meme-traits of divine law in a manner close to the Islamic sharia, actually survived and became standardized. The laws in the Fetha Nagast are divine laws taken directly from religious sources in an interpreted and standardized form based on scholarly consensus. Richard Pankhurst notes that "The Fetha Nagast was based essentially on exegesis – the selected use of the Bible"[162] and discusses the various rules about slavery in the Fetha Nagast, such as those mentioned in Fetha Nagast: p. 175-178 that directly references Leviticus: 25:44 as a legal justification for the legality of slavery. The Fetha Nagast adds several stipulations regarding slaves and are much more precise than any passage in the Old Testament. This master study notes that the Fetha Nagast follows a similar trend to the Israelite-Jewish tradition with more precise laws, which is not surprising since the Fetha Nagast like the Mishna and Mishna Torah is not just a document containing law but a standardized law code to be applied. An applied law requires great detail, and they share the same fundamental memes, that is the Old Testament, as a source. Noticing a shared trend toward more specific law in the Ethiopic tradition is new and the comparative perspective assists in revealing that it follows a pattern similar to the other Semitic cultures. Fetha Nagast's acceptance of slavery with basis in Mosaic Law[163] and further elaboration ought to be seen in view of the extensive history of the slave trade between the Ethiopic and the Arabic-Islamic cultures.[164] The trade would have required clearer laws to regulate. It ought to be seen as an example on how physical needs and interaction among cultures drives the developments of laws. In view of the various texts in the Ethiopic tradition it becomes clear that the Ethiopic tradition is highly legalistic with regard to the faith and contradicts Brown's statements that Christianity does not generally have the focus on law as Judaism and Islam does.[165] This reveals the need of doing comparisons among Semitic cultures and the problems a lack of comparisons brings and the comparative view is what this study intends to provide.

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[161] Sand, Peter H, , *LAW OF THE KINGS*" (*FETHA NAGAST*) Roman Origins of the Ethiopian Law of the Kings,. *Journal of Ethiopian Literature* Volume 11, Issue 1, 1980, pp. 71 – 81.
[162] Pankhurst, R., Slavery and Emancipation in Traditional Ethiopia: The Role of the Fetha Nagast, or Laws of the Kings, *African and Asian Studies*, 10(1), 2011, p.32-40. Quote is form p.32.
[163] Mosaic law are the laws found in the old testament brought down by the prophet Moses.
[164] Pankhurst, 1961, pp. 372-388 describes the slave trade and its influence.
[165] Brown, 2012, pp. 24-26.

The Kebra Nagast mentions the law, as in the Old Testament law, several times generally. With the exception of the food laws found in the Old Testament and the Ten Commandments[166] no specific laws are mentioned. This is except for a legal incident involving Solomon and David/Manelik, the son of Solomon and the main protagonist of the story, and trespassing of cattle.[167] This is probably because the Kebra Nagast is a story about the origins of the Ethiopic line of kings and does not have a directly legalistic goal as the other texts although the law does play an important role as a rhetorical subject so it is still present.

The Arabic sources such as the Quran, which is God's speech, and the later hadith collections do contain laws that are the basis of sharia. The Quran contains the laws referred to as the *Ḥudūd,* crimes that require physical punishments in the Quran. These are actually a lot fewer than most of the other sources with the exception of the Kebra Nagast but they exist.[168] These are further expanded upon in al-Ṭabarī's exegesis.[169] Al-Ṭabarī even discusses the grammatical implications behind Quran: 5:38 in *tafsīr al-Ṭabarī:* 5:38 and specifies the hand that is to be cut off," *'aydīyahum al-yumnā"*, their right hands. In addition he discusses views about the amount of value stolen required to condemn someone.[170] It goes into further detail than the verse in the Quran that only mentions cutting the hand of a thief without further specifications.

The same process of going towards further codification is also true for the hadith collections that includes stoning.[171] Stoning is not in the Quran and represents an addition and further refinement of divine law with the lack of a verse is explained also by another hadith.[172] In a similar manner to what happened with *tafsīr al-Ṭabarī:* 5:38 and the specification of the right hand. It introduces a new category of illicit sexual conduct, of married people, with a separate

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[166] Kebra Nagast: p.136 for the food laws and Kebra Nagast: p.51 for the Commandments.
[167] Kebra Nagast: p. LIV, which will be discussed on page 67 in this master thesis.
[168] For example flogging for false witness in Quran: 9:66, 16:106, 24:4, 24:6, flogging for illicit sexual conduct in Quran:24:2 and cutting of hands for thievery in Quran:5:38.
[169] Tafsīr al-Ṭabarī: 5:38, 9:66, 16:106, 24:4, 24:6.
[170] Tafsīr al-Ṭabarī: 5:38 mentions *"thalāthati darāhim"*, three dirham or more*," "rubʻu dīnārin"*, a quarter of a dinar, *"'ashratu darāhim"*, ten dirham, and comes to the conclusion that it is "rubʻu dīnārin", a quarter of a dinar, that is the most suitable amount.
[171] *'innī khashaytu 'in ṭāla bin-nāsi az-zamānu 'an yaqūla qā'ilun mā najidu āyata r-rajmi fī kitābi allahi fayaḍillū bitarki farīḍatin 'anzalahā allahu taʻālā far-rajmu ḥaqqun ʻalā man zanā min ar-rijāli wa an-nisā'i 'idhā kāna muḥṣanan [.....],///Verily I fear if time extends that people say, We do not find the verse of stoning in the book of Allah, and thus they go astray by abandoning a duty which Allah most high had sent down. Stoning is a right thing upon those who commit fornication among (married) men and women[.....]Sunan Abī Dāwūd: 4418 and also found in Ṣaḥīḥ al-Bukhārī: 8:82:816.*
[172] *Laqad nazalat āyatu r-rajmi [...] falammā māta rasūlu allahi ,ṣalā allahu ʻalayhi wa salam, wa tashāghalnā bimawtihi dakhala dājinun fa'akalahā,/// The verse of stoning did descend [........] and so when the Messenger of Allah died, peace and prayer be upon him, and we were preoccupied with his death a domesticated animal came and ate it(the verse)Sunan Ibn Mājah:9:2020.*

punishment, stoning, for it whereas the Quran only mentions it generally with lashing and does not distinguish. This codification finally reaches its peak in the formation of the schools of *fiqh*, which further interpret and codify/standardize the law in books such as al-Shāfiʿī's *Kitab ar-Risāla fī Uṣūl al-Fiqh.* "Historically, a founding landmark of the discipline of *usul* is the *Risala* of Muhammad ibn Idris al-Shafi'i (d. 204/820)."[173] *Usul* are, as meant here, the principles of deriving Islamic law from the religious sources. The practical application of al-Shāfiʿī's codifications are seen in *Al-Ahkām al-Sultāniya.* Al-Māwardi's introduction[174] opens with thanking God for having given divine law "*shara'a*", and separated the permissible from the forbidden and given "*Qawā'id*", fundaments/rules for rulership. The introduction describes his intention to separate the divine laws of governing from other laws and mentions that he should highlight the various views of the "*Madhāhib al-fuqahā'*", schools of jurisprudence, on the whole matter. The intent is thus to detail the rules of ideal rulership in the sharia and the text contains specified laws and rules with references to Islamic jurisprudence and with regard to the caliph. To show how certain rules apply, Al-Māwardi's text mentions further codified concrete laws of when and how people can be seized with an entire chapter dedicated to the implementation of the *ḥudūd* for crimes such as robbery.[175] *Ḥudūd*, singular *ḥadd*, are the laws dealing with corporeal punishment in the Quran.

There is a tendency of going toward further codification with more defined interpretations of divine law in the various Islamic sources. Knowledge of this further codification is not new and is summarized by Jonathan Berkey, among others.[176] There is one exception, *Kitāb al-Tawḥīd,* however barely, mention the *hudūd*[177] and this will be discussed as to why in the second stage. But, by highlighting the parallels of the Islamic-Arabic codification in this study with what happened in the Jewish and Ethiopic traditions.[178] There is a noticeable trend that is greater than each single tradition, with all the meme-plexes of divine law going towards greater codification and concretization, and this master study by its adoption of a comparative view highlights this shared development. All the primary sources of the traditions tend to develop clearer and more codified laws the further forward in time the sources are. This is missed by other particularistic studies. Several other authors mentioned before have, like this

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[173] Mallat, 2007, p.9.
[174] Al-'Aḥkām al-Sulṭāniya: p.2.
[175] Al-Ahkām al-Sultāniya: pp.192-207.
[176] Berkey, 2003, pp. 137-151. Summations of this can also be seen in Forte, 1978, pp.8-15 when summarizing Joseph Schacht's views; see also Schacht, Joseph, *The Origins of Muhammadan Jurisprudence,* Oxford; Clarendon press, 1950, especially pp. V-57,214-223, 329 and Zubaida, 2003, pp.18-22.
[177] Kitāb al-Tawḥīd: pp.447, 458.
[178] With the Mishna, Mishna Torah, Didascalia and Fetha Nagast codifying Old Testament laws.

study, noticed the codification process for their individual cultures[179] but not across the cultures. These are not many examples, the specific material that the study has used are but a fraction of a far greater totality, and it could be possible to make a large tome about these changes in themselves. There are differences in time in the codification of the traditions, the Islamic tradition codifying around a period of 400 years in comparison to the thousand year periods of the Ethiopic or Israelite-Jewish traditions. In addition, the study lacks comparative Akkadian material, although similar clarifications, codifications, of the laws of Hammurabi were made according to Charpin, which complements the picture.[180] These factors weaken comparisons somewhat, but a development towards more codified divine law will be assumed.

The ideal of implementing divine law is not gone in modern times and is repeated by groups such as IS that can be viewed in their announcement with regard to appointing their caliph and their ideals. "The hudūd (Sharia penalties) are implemented – the hudūd of Allah – all of them.".[181] The 10 text collections, from the cultures through several millennia, and their focus on divine law should be seen together with Brown's view that Islam has historically not focused on orthodoxy as much as orthopraxy, acts are central to the religion.[182] The IS speech and older Islamic sources are not different from what is written in the Ethiopian or Jewish texts and the laws of Hammurabi in their focus upon divine law.

8.1.1.1. Divine Law and its Existence in a Context

The sources of the Semitic cultures and different timelines share the meme-trait ideal of a concrete divine law that goes into subjects of property- and criminal law, such as stealing, with punishments in this earthly life.[183] All the cultures, in the cited and referenced primary sources, under the previous heading included those types of laws from the beginning. The laws include ideas of limiting rulership as well, which will be discussed later.[184] The divine law is an important aspect of an ideal meme-plex since it is highly connected to how a state is to be run. What this master thesis does, uniquely, is to place the divine law in a greater comparative frame-work examining it at the meta-level and how it fulfills an aspect of a

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[179] Charpin, 2012,pp. 155-160. About the codification of the Code of Hammurabi after Hammurabi. Segal, 1996, pp. 106-124 and Polish, 1991,pp. 77-82 about the Halakha codification. Berkey,2003,pp. 137-151; Forte, 1978, pp.8-15 and Zubaida, 2003, pp.18-22 about Sharia codification.
[180] Charpin, 2012,pp. 155-160.
[181] Hadhā waʿd Allah.
[182] Brown, 2012, pp. 24-25.
[183] For example Hammurabi: pp.6-7; Exodus:22:4; Didascalia:p.25-26 and Quran: 5:38 as a few examples.
[184] On pages 65-81 as to why and how.

greater whole. This differs from Lena Salaymeh's view that one cannot generalize similarities between different law traditions due to details that make them different from each other, such as laws about circumcision.[185] This is ironically a generalization from the particular to the general in the opposite direction. A choice of a comparative perspective allows the notice that all these studied cultures shared an ideal of divine law, something that is missed by studies that only has a particularistic focus on Jewish and/or Islamic law. The focus is not on the details in the laws in comparison among them; but, the place of the focus is on the common meme-trait of a divine legal system, which particularistic studies become blind to. Neither does this master thesis claim that laws are unchanging among the different Semitic cultures, as the effect of interpretation and mutation towards more concrete laws becoming more detailed is a counterexample. It is even verbatim with regards to the marriage laws in the Didascalia making them stricter. "Behold we give commandment that they marry not a harlot, nor a servant, nor a woman that is divorced, nor a widow, even as it is written in the law.",[186] the quotation states that prospective church members should follow rules regarding marriage that are stricter than the Mosaic Law. Neufeld observed that the marriage laws were different among the various Semitic civilizations; however, that does not disprove that Israelite law, as the Didascalia text is one development of, had origins in Hammurabi's law and in turn was based on previous laws.[187] It will be argued for this master thesis that the rationale behind the laws in the sources is still that of concrete divine law. All the Semitic religious meme-plexes share the fact that they have memes of divine law with concrete punishments and/or stipulations and not just general principles, like do not X, a principle, but rather if X is done punishment Y in this life follows, a concrete law. There is a focus on orthopraxy with regard to law and it seems to grow to be more exact and concrete.

These memes of divine law that has the traits of being concrete laws are different from the western tradition of law that is based rather on religious principles. Property and criminal law, which is found in all the mentioned cultures, has not generally been drawn directly from the divine. Instead it has been based on principles revealed through religious sources and processed through inherent human reason/being, like natural law. The western view was based on a legislative dualism between state and church, epitomized in the two swords doctrine that made a distinction between two different legislative functions between the

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[185] Salaymeh, 2016, pp.91-98; 2015, pp.153-172.
[186] Didascalia: p. 154.
[187] Neufeld, Ephraim, *Ancient Hebrew marriage laws : with special references to general Semitic laws and customs*, London : Longmans, Green, 1944, pp. 1-7, 11-13.

church and state within a shared religious system, as noted by Witte Jr.[188] There are however exceptions, but it is a general tendency of the western legal traditions and Watson regards the Western legal tradition as "basically unitary, and much the same historical legal elements have gone into the creation of the law of each nation state: Roman law, Germanic customs, canon law, feudal law ,and so on.".[189] Thus not based on religious sources directly and literally as in the sources. Canon law was largely based on Roman law and pontific decrees gradually and regularly replacing scripture.[190] The Pope, as a leader, made law by mandate to rule from, or rather by, God rather than following a directly given concrete divine law in the sources. This is in contrast to direct references to divine law in the sources were direct divine laws from God and prophets are mentioned, not priest-made law as intermediaries being given a mandate to rule by the divine as in a Hierocracy.[191] These cases can be extended to all the Semitic legal traditions since all the sources have concrete laws claimed to be directly divine. There is a discrepancy between comparing ideals to the practice of Canon law nevertheless all the traditions did include law codes that were to be applied practically. From a comparative perspective Asma Afsaruddin describes it as "The Western legal tradition has been predisposed to legal and political expediency, since divine prescriptions were not understood (outside of canon law) to dictate the formulation of specific laws as in the Islamic milieu.".[192] Likewise, Mikhail claims that the Islamic development never evolved a legitimate natural law outside of the direct command of the divine like the theology of Thomas Aquinas 1225-1274 AD.[193] That there was no natural law tradition in classical Sunni Islam during the Abbasid age and before has, as well, been claimed by Patricia Crone and by George Makdisi.[194]

Connected to a lack of natural law is that there is no concept of a co-equal inherent natural law indirectly given/inspired by the divine and revealed through reason in any of the sources, as literally interpreted, across the cultures except in Al-Māturīdī's text that will be discussed in the second stage. It is instead direct external legal proscriptions from the divine or the prophets. This is ideally and with regard to the surviving dominant Sunni groups within Islam, which is the focus. When entered into practical law and minority groups, and extinct sects, the

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[188] Witte Jr., 2006, pp. 4-7, 211-220.
[189] Watson, 1981, p. 1.
[190] Schöllgen, Georg, Kalb, Herbert, Puza, Richard, Pirson, Dietrich, Engelhardt, Hanns, Potz, Richard, Landau, Peter, Merkel, Friedemann and Kaufhold, Hubert, "Canon Law/Church Law", *Religion Past and Present*. 2011.
[191] Curtis, 2009, pp. 285-289; Swedberg & Agevall, 2005, p.112.
[192] Afsaruddin, Asma, "The Islamic State: Genealogy, Facts, and Myths." *Journal of Church and State* 48, 2006, pp.153–173. Quote is from pp. 166-167.
[193] Mikhail, 1995, pp.53-56.
[194] Crone,2004, 263-264 and in: Makdisi, George, *Ibn Aqil: religion and culture in classical Islam*. Edinburgh: Edinburgh University Press, 1997, see p. 130 for the claim.

matter becomes a lot more complex as noted by Anver M. Emon.[195] Certain scholars in Jewish studies such as Marvin Fox categorically deny any Jewish concepts of natural law in medieval, and earlier, tradition;[196] however, there are others that do not share the view according to Avi Sagi.[197] Studies for the Ethiopic and Akkadian cultures regarding natural law have not been found; the study will continue with the generalization that natural law is not existing due to a lack of evidence. The primary sources with their legal nature, ought to have included a concept of natural law if it was present in these cultures.

The lack of natural law does not mean that the laws should be viewed as being radically different in their function of governing society. Thus, the study agrees with Mallat's claim: "I have often emphasized, against lingering perceptions that law in the region is a mysterious and irrational phenomenon, that Middle Eastern law is not different from law anywhere else.".[198] The difference lies within the rationale behind the laws, being directly from the divine, not the laws themselves: "Another characteristic is the dominant religious expression one finds in Middle Eastern law, and its main historical component, Islamic law [….]".[199] Mallat does not focus on the political implications upon the rulership, which this study will do, and does not include Ethiopian history; but, the divine nature of the laws is noted.

Regarding the western European Christian history there is the question if it is possible to reduce to any commonalities. The European traditions are long and extremely diverse with many different cultures and by presenting it as being uniform risks reducing it into a false dichotomy, of following direct divine law or not. Some developments might have followed the meme trait of concrete divine law. A large-scale comparative view means that epistemological simplifications sometimes are needed to be made, such as comparisons with a simplified conformity or comparisons despite different time-scales. Comparative generality is the price to reveal historically significant structures and processes. This does not negate the fact that it carries risks of false simplifications. What this study dares to claim is that the Semitic sources differ from any tradition that does not use concrete divine law as a reoccurring underlying meme-trait, across thousands of years. All the sources from the Semitic heartlands are uniform in their use of direct divine law rather than talking about

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[195] Emon, Anver M. ,Natural Law and Natural Rights, *Islamic Law Journal of Law and Religion*, Vol. 20, No. 2, 2005, pp. 351-395.
[196] Fox, Marvin, *Interpreting Maimonides: Studies in Methodology, Metaphysics, and Moral Philosophy,* Chicago: University of Chicago Press, 1995[1990], pp. 125-150.
[197] Sagi, Avi , 2015, "Natural Law and Halakhah: A Critical Analysis". In *Natural Law and Halakhah: A Critical Analysis*. Leiden, The Netherlands: Brill. Sagi Avi argues against but manly uses minority groups and opinions, which are not the focus of this study, and has a different definition of natural law from this study.
[198] Mallat, 2007, p.5.
[199] Mallat, 2007, p.6.

inherent principles, like natural law. In addition, the sources represent important canonic sources and standardized law codes to be used, hence they together with the traits of divine law succeeded in surviving their cultural niche. Here it might be that the material gives a bias since many, but not all the sources, are religious sources in their nature and they tend to present the direct divine command as being more important. The focus is with expressed ideals and their survival in a context rather than intentions behind them, thus this is reduced; but, it is still a source of error. None of the sources gives the impression of an ideal of separation, like Saint Augustine, 354-430 AD, the religious in two parts, or two cities, the earthly and the heavenly like two separate entities.[200] Instead the divine law is a part of the earthly realm dealing with property, criminal law and rules regarding earthly rulership. It does not treat the earthly realm as a separate entity with regard to assessing acts. They could, like certain western religious traditions, have separated the religious into heavenly and earthly matters, and through it create roam for a separate legal sphere of law, but the sources did not. Thus there is agreement with the Weberian claim that there was no separation in the law of oriental cultures into religious and secular law like canon law and law was taken directly from the sources.[201] Nevertheless the study disagrees with any generalization of irrationality in content or concreteness of the laws,[202] as the laws still function as any other laws.

The concept of divine law ought to be seen as the result of taking influences and sometimes direct borrowing of memes between the sources and cultures. The Israelite-Jewish tradition was influenced by the code of Hammurabi that in turn was influenced by earlier traditions.[203] Borrowing is especially the case in the Abrahamic religions. The cultures had similar languages making borrowing easier and they lived in similar conditions with a large amount of contact. There is a pattern of transformation from being a peripheral culture-sphere to the dominant culture after a collapse of previous civilizations, in a process of creating a new polity. Creating a new polity binding the various strong local centers of power together requires legitimacy and few things ought to be as legitimate as claiming that the lawmaker is the divine. The divine law binds together the various dispersed population-centers under a common understanding of law. Borrowing previous laws and justifications and adapting them for a new context becomes a natural process that helps divine law, and texts promoting or containing it, to spread and survive. Borrowing to create a new religious law system is what

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[200]As described in: Lewis, Jon E., *A documentary history of human rights: a record of the events, documents and speeches that shaped our world*.,New York: Carroll & Graf, 2003, pp.117-128.
[201] Curtis, 2009, pp. 294-297.
[202] Made in Curtis, 2009, pp.295-297.
[203] Charpin, 2012, pp. 154-155; Wright, 2009, pp. 347-360.

several orientalists has argued,[204] with regard to the development of the sharia and Islam. This master thesis argues, from the background, that this is the case for all the traditions and includes the Ethiopic, in how it adoptees the divine law from the earlier Jewish Tanakh, by adopting a comparative perspective. The study assumes this is a part of a greater repeating pattern of convergent cultural evolution. Need for legitimacy is beneficial towards an ideal where the divine law is assumed to be an underlying core meme-trait on a meta-level and helps it reappear, and spread, in similar situations of an overarching cultural niche.

An additional reason for this repeating pattern of convergent cultural evolution is that the meme-traits of divine laws provides stability in an environment such as the Semitic heartlands of the middle-east. Unchanging laws in a changing world creates instability. But, changing laws in a less changing world, such as the Middle-East and North Africa in comparison to Europe, creates instability though the changes and law is a tool for stability. Cultures that become unstable are going to die out since it threatens their reproduction. This is why there is no concept of natural law in the sources. The meme-trait of law coming from inherent being and reason would undermine the stability of divine law coming directly from the divine. Because it would allow greater ability to make law in place of direct divine law and through it cause greater changeability. This study sees laws as being made to follow a function and avoiding disorder whereas John O'Manique would argue that law arises from our inherent morality in accordance to natural law theory.[205] It might be that the divine laws in the various cultures were originally created for moral needs as well. It does not though explain the continuation and codification of them that laws as part of concrete divine law entail. The sources clearly references each other for making statements of law within the traditions. The cross-referencing ought to be seen as contradicting the view that the law comes from an inherent moral nature but rather a result of previous traditions. John O'Manique mainly studies western legal thought and ignores middle-eastern traditions, which are subjected to different physical factors and needs. The implication of the stability, existence and spread of divine law as a meme-trait suitable for this niche will later return in this study.

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[204] D. Nevo & Koren, 2003, 337-354; Donner, 1998, 149-154, 280-285, 288-290; Crone, 1987, 89-99 and Goldzhier, 1890, Second part, Chapter 1-8. They have all argued that Sharia developed as borrowings from other cultures.
[205] O'Manique, 2003, pp.172-185.

8.1.2. The Men of Religion in the Judiciary Role of Judges

Having established that there is a long tradition of divine law there is the matter that every law, no matter its origins, be it divine or mundane, needs someone to judge and apply the laws. This is where the role of the judge and the judiciary role of the men of religion comes into being. In having religion and the will of the divine as a foundation of law it would logically necessitate the need for religious learning to interpret the laws. Since knowledge of Akkadian was lacking for this study and no translated text was found about a priestly class of judges in the culture of Hammurabi, although judges as a profession are mentioned in Hammurabi.[206] It is possible that it exists; however, nothing in the material has clearly pointed towards that being the case. It should be noted that a lack of evidence for something is not evidence against but merely a lack of evidence for.

At earliest seven hundred years later is the clear role of a religious class of judges in the Old Testament to judge in accordance with the will of God.[207] The ideal of judges is later reoccurring with the rabbis in the Mishna and descriptions of the old Sanhedrin, the court of judges.[208] In the Mishna Torah it is written that only learned men of religion should be judges and not common people lacking knowledge "[….] not because he is evil but because he is lacking in knowledge.".[209] This is interpreted as meaning that he must have an education in the matters of the faith, and more specifically divine law, to not misjudge.

As for the Ethiopic tradition, The Didascalia states that judgeship is reserved for the priests. "For it is said to those that have not the office of the priesthood, 'Judge not, for your judgment shall not be acceptable.'".[210] The Didascalia affirms the Old Testament tradition of judges and has sections dealing with conduct in litigation and quarreling parties.[211] That both the Mishna and the Syriac Didascalia calls for divine laws and judges in the cases have been observed by Charlotte Elisheva Fonrobert, she proposes the view that the Syriac version of the Didascalia

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[206] Hammurabi: p.6-7, 14-16, 21.Although, "before God and the judges" p.14 can imply some sort of connection between the divine and judges as men of religion but it is not clear.
[207] See Exodus 18:21–22; Deuteronomy 1:15–18, 17:9–12; Numbers 11:16–17, 11:24–25.
[208] *The great Sanhedrin [Highest court, charged with deciding cases and appeals that had national significance. It was comprised of 71 scholars who had received the full traditional rabbinical ordination, and its decisions fixed Jewish practice for subsequent generations.][was comprised of] seventy-one [judges], and a small [Sanhedrin] twenty-three [judges]. From where [do we derive] that the great [Sanhedrin] [comprises] seventy-one [judges]? As it says, (Numbers 11:16) "gather for me seventy men from the elders of Israel," and Moses [set] over them, behold, [the number of judges adds to] seventy-one.*Mishna: Nezikin: Sanhedrin: 1:6.
[209] Mishna Torah: Shoftim: Sanhedrin: 3:8.
[210] Didascalia: p.57.
[211] Didascalia: pp. 28-29, 32-33, 36-37, 57-59.

can be viewed as a Christian-Jewish political and legal counterpart to the Mishna.[212] This is applicable to the Ethiopic Didascalia since it shares a common origin and nothing was found that differ from the Syriac version enough to warrant notice. It explains why they, the Didascalia and the Mishna, are alike in regard to judges. They are both texts establishing men of religion as having sole judiciary power.

That the judgeship is reserved for the priests is echoed later in the codified law of Fetha Nagast when it describes the judge.[213] These statements are written in the second half of the Fetha Nagast that is concerned with greater society rather than only the rules concerning the church. The men of religion are mentioned in specific laws as being required, such that the laws regarding emancipation of slaves requires the participation and acceptance of a bishop to be valid.[214] The entire document, as a law code, is also written as for men of the religion being the readers. Adopting this text as a law grants the men of religion the judiciary power. The Kebra Nagast has the old priests of the Old Testament and judges as moral guardians.[215] Like the other traditions the priests, as the men of the religion, ensure the following of the divine law. Because of the lack of literature about the Ethiopian culture-sphere this is something that is overlooked and the study provides a perspective that places the judiciary role of the priests in a comparative position with the other men of religion.

The Quran has the verses Quran:4:58-59 about obeying authorities in judgment, but this does not literally mean learned men of religion, and the verses mention only obey those in authority,*''ūlī l-'amr''*, without specifying whom those in authority are. It later became interpreted as men of religion, as exemplified and explained by al-Ṭabarī as a held opinion by the scholars that it means the *'ulamā'*, the learned men of the religion.[216] There are hadiths, which were collected by religious scholars, that mention judges and judgment with regard to judging right.[217] These all point towards men of religion having a judiciary role as judges. This reveals a bias, in that it is the men of religion that write and state how they should be the judges, however these memes managed to survive despite this giving the judicial power to the men of religion. Later *Al-'Aḥkām al-Sulṭāniya* refers to the views of the *fuqahā'*, those that

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[212] Fonrobert, Charlotte Elisheva, The Didascalia Apostolorum: A Mishnah for the Disciples of Jesus, *Journal of Early Christian Studies*, vol. 9 no. 4, 2001, pp. 483-509.

[213] *The judge is the highest priest, that is, the patriarch or the bishop and those among the priests ranking next to them and worthy of being appointed judges in their stead. The appointment of a Judge is required by law and by nature. [...]Thirdly he must be an orthodox Christian and a priest conversant [with his duties].*Fetha Nagast: p.249.

[214] Fetha Nagast: p. 178.

[215] Which will be discussed under pages 66-67.

[216] Tafsīr al-Ṭabarī: 4: 58-59.

[217] For example Sunan Abī Dāwūd: 3575 and Sunan Ibn Mājah: 13:8.

know the divine law among the religious scholars, as with regards to various rulings about law and rules relating to rulership. Al-Māwardi writes that he is going to give the views of the *fuqahā'*.[218] The caliph is compared to the judge, *al-qāḍī,* with regard to qualifications for office.[219] The section points out differences in the standards for the appointment to the office of the caliph in comparison to the judge. The detailing of the judicial role of the judge and the executive role of the caliph is because they are both religious offices, although with different duties but they are similar offices since they both have a religious authoritative role. As for Al-Māturīdī, *Kitāb al-Tawḥīd* does cite jurists mainly the 8th century scholar Abū Ḥanīfa[220] as a source for deciding issues, but rarely goes into issues of law and judgement directly. Mostly it is as a source of theology in a discussion about the theological concept of *'irjā'*, postponement of punishment for sin.[221]

After having discussed the learned men of religion as judges in the various cultures, their responsibility towards the divine law ought to be discussed. The connection between the role of judge and man of religion is not clear in Hammurabi's code, as previously stated the law is interpreted as of divine origin and that implies need for religious learning. Despite this lack of a clear judicial role, the judges are nevertheless subject to rather harsh penalties if misjudging as in law number 5.[222] Based on the assumption that the law is divine it would possibly explain why misjudging is so unforgiven in the law, breaking/changing the law to suit one's needs becomes an affront to the divine. The seriousness of misjudging is a reoccurring theme in the traditions in the Ethiopic tradition. The Didascalia calls to judge and rule rightly and that those that do not shall be judged by those around them.[223] Fetha Nagast describes that the judge must follow God's will and examples of breaking the divine law leads to God's and the law's punishment.[224] Likewise Kebra Nagast calls to avoid sinners perverting the divine law.[225] The need for correct judgment has parallels in the earlier Israelite-Jewish tradition beginning in the Tanakh. It goes back Deuteronomy: 1:17 and continues in the Mishna

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[218] Al-'Aḥkām al-Sulṭāniya: p.2.
[219] Al-'Aḥkām al-Sulṭāniya: p.5-6.
[220] Such as in Kitāb al-Tawḥīd: p.480.
[221] Which will be discussed under pages 91-95.
[222] *If a judge try a case, reach a decision, and present his judgment in writing; if later error shall appear in his decision, and it be through his own fault, then he shall pay twelve times the fine set by him in the case, and he shall be publicly removed from the judge's bench, and never again shall he sit there to render judgement.* Hammurabi: p.6.
[223] "For the Lord saith (to them) "Judge in righteousness and uprightness"; and, Be of understanding and judge the great ones of the people, each one of them."Didascalia:p. 57; "And judge between those who rule justly, and (those who) rule unjustly"Didascalia:p. 172.
[224] Fetha Nagast: pp.252-253.
[225] "Thus Habakkuk the Prophet prophesied and said, 'The governor maketh [men] wise concerning this perversion of the Law, and no right judgement cometh forth; for the sinner corrupteth the righteous man, and therefore a perverted judgement cometh forth.'"Kebra Nagast: p.185.

Torah.[226] Furthermore, this is paralleled in the Arabic-Islamic culture with Quranic commands to "judge justly". [227] For example, the judge may not judge if he is blinded by anger according to the hadith.[228] Emphasis is on the importance of following the divine law with impartiality in accordance with the standards of the sharia. In the hadiths is even a repeat of the Quranic commands with regard to judging wrong and those that judge wrong are called *"al-fāsiqūna"* "the despoiled" in both the hadith and the Quran.[229] Thus, it was deemed important enough to repeat in the hadith what was already stated in the Quran with regards to following divine law, in addition to other hadiths condemning misjudgment.[230]

From the various examples of Judgment and judges in the cultures , together with the presence of divine law, emerges a pattern of implementation of divine law as justice and this intersects with Darling's rings of justice.[231] With the concept of concrete divine law, that was established earlier, orthopraxy is a concept of concrete justice and creates clear divine laws to follow. This is the reason why the application of Weberian hierocracy[232] was rejected, since the judges are ideally bound by a divine law and condemned if they misjudge in relation to it. This is an ideal far from the claims of Weber through Curtis about the arbitrariness of oriental law.[233] They are not to create their own laws by principles, like canon law by Papist decree for earthly matters in his magisterium.[234] In other words they are held accountable by a concrete divine law in a similar way to the rulership, which will be discussed later.[235] This

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[226] *If a Sanhedrin, or king or exilarch, appointed an unworthy judge in a Jewish community, who is not sufficiently versed in the lore of the Torah and qualified to be a judge, though he is otherwise altogether lovable and possesses fine qualities, the one responsible for his appointment has broken a prohibitive commandment, as it is written: "You shall not be partial in judgment" (Deuteronomy: 1:17).* Mishna Torah:Shoftim:Sanhedrin: 3:8.

[227] "Lo! Allah commandeth you that ye restore deposits to their owners, and, if ye judge between mankind, that ye judge justly. Lo! comely is this which Allah admonisheth you. Lo! Allah is ever Hearer, Seer*"* Quran: 4:58. The word for "judge justly" *"bil-'adli",* can also be translated as "with justice" as implying a standard.

[228] *"lā yaqḍī al-qāḍī bayn ithanaynin wa huwa ghaḍbān"*,"May the judge not pass judgment between two when he is wrathful." Sunan Ibn Mājah: 13:9.

[229] Such as*"'ibn 'abbās qāla {wa man lam yaḥkum bimā 'anzala allāhu fa'ūlā'ika hum al-kāfirūna} 'ilā qawlihi {al-fāsiqūna} "//"*Ibn Abbas said {whoever does not rule/judge with what Allah sent down, they are the unbelievers} until his speech {the despoiled}" Sunan Abī Dāwūd: 3576 that references Quran: 5:47.

[230] *Al-quḍātu thalāthatun 'ithnāni fī n-nāri wa wāḥidatun fī l-jannati rajulun 'alima al-ḥaqqata faqaḍā bihi fahuwa fī l-jannati wa rajulun qaḍā lin-nāsi 'alā jahlin fahuwa fī n-nāri wa rajulun jāra fī l-ḥukmi fahuwa fī n-nāri//Judges are of three types, two are in the fire and one is in Paradise, a man who knew the truth and judged in accordance with it, he is in Paradise. A man who has judged on the people out of ignorance, he is in the fire and a man who has done injustice in his ruling, he is in the fire.* Sunan Ibn Mājah: 13:8 and:

Man ṭalaba qaḍā' al-muslimīna ḥattā yanālahu thumma ghalaba 'adluhu jawrahu falahu al-jannatu wa man ghalaba jawruhu 'adlahu falahu n-nāru//Whoever demands judgment of the Muslims until he receives it, and thereupon his justice prevails upon his injustice, heaven is for him and whoever's injustice prevails upon his justice for him is the fire Sunan Abī Dāwūd: 3575.

[231] As seen in the quote"The people are servants, subjected by justice" Darling, 2013,p. 3.

[232] As described by Curtis, 2009, p. 287 and Swedberg & Agevall, 2005, p.112.

[233] Curtis, 2009, pp. 295-297.

[234] As described in Schöllgen et.al, 2011.

[235] The rulership being accountable to divine law will be discussed on pages 59-81 as a reoccurring subject.

interpretation of the study do carry previously mentioned risks of simplifying a western tradition, but it has the advantage of making clear certain elements in the studied sources.

8.1.2.1. The Judiciary Role of the Men of Religion in its Context of Power

It is clear that the traditions include an ideal of men of religion as a judiciary class/judges utilizing divine law, as almost all mention men of religion as judges. However, the religious role of the judge in Hammurabi's text cannot be confirmed directly in any source. This study will still state this as being peculiar to the Hammurabi tradition and to avoid the risk of excessively supporting a perspective that all the cultures are completely alike. Despite this, the Judge in Hammurabi's text is dealing with divine law with the proviso on the importance that he must judge in accordance with it, therefore it is not hard to imagine a connection to being a man of religion. All the other traditions include the concept of religious scholars with their legal role as judges in matters of divine law to ensure justice. This goes from the beginning to the later traditions although the Arabic-Islamic tradition does not start with it as clearly as the others, but it does evolve into it or it is more clearly pronounced in later time during the late Umayyad and early Abbasid periods. This study views the judiciary role broadly and does not differentiate among these judges on the detail level, or discuss the internal hierarchy among the learned men of religion, but rather focuses on the rough generalities of the role through time. That is being a specialist class of interpreters of divine law. It is important to note the men of religion as the local authority.

There exists material, as pointed out by Dominque Charpin, that the men of religion did play a role in politics and condemned rulership during the time of Hammurabi.[236] The Aksum Empire before the conversion to Christianity was ruled by the High Priests under the Emperor where the emperor probably had the role of supreme high priest with subservient independent lower priests who ruled through religious legitimacy in a type of feudal structure with landownership under the religious establishment.[237] The structure continued even through the later Solomonic dynasty that was strongly influenced by the relation to the emperor that has supported and influenced the church through the dynasties from Aksum to modern times.[238] In the Israelite tradition the other tribes of Israel where supposed to give tithe to the Levite

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[236] Charpin, 2012, pp.81-84.
[237] As described and interpreted from Munro-hay, 1991, pp.144-145, 198, 201-202; Kobishchanov,1979,pp. 49, 64-67, 146.
[238] As described and interpreted from Marcus, 1994,pp. 11-26; Pankhurst, 1961, p.179.

priests.[239] The paying of tribute to the priests is also in Fetha Nagast.[240] The later Jews were led by the rabbis.[241] In the Arabic culture the role of the *fuqahāʾ*, the jurists, and the *al-qāḍi*, the judge, must be seen in light of the roll of the *waqf*, religious endowment, often in the form of land, and/or *ʾiqṭāʿīya*, the Islamic feudal system.[242] This meant that the religious scholars like those in the Ethiopic sphere were the primary controllers of land. Khuri states the religious nature of the Islamic system, and contrasts it with medieval European feudalism, focusing on the lack of a system of landed property outside the religious domain.[243] That there is no enforced sacerdotal celibacy in any of the cultures, or sources, discussed means that the men of religion can reproduce themselves as a class. An objection is that there has probably been exceptions within these systems, but the assumed part for the study is that the religious scholars should generally be seen as elites and ideas about rulership must be discussed in this light. This is why religion cannot be politically ignored and why much of the material for the study is religious, the elites after all are often the literate class that reproduces the historical material.

Divine law gives legitimacy through the need for someone interpreting them and specific divine laws demand men of religion as learned judges and these interact in a meme-plex relationship. The Divine law was probably a result of creating legitimate laws quickly and the need for interpretation created a niche for the memes of the men of religion as judges to spread. As there existed a net of interconnectivity among the Semitic cultures, the various elites in the Semitic cultures probably saw what the other cultures had and borrowed similar memes of judgeship and were able to uphold these ideals in the written sources. The strong centralized urbanized, but also dispersed, local centers around the water sources common to all the studied cultures led to local autonomy of power. It hindered centralized rulership from being antagonistic towards the men of religion spreading these memes of a judiciary role and contesting their taking on a judiciary role, as written in the sources. It provided the possibility of taking a judiciary role as an extension of local authority, for the sake of local

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[239] Deuteronomy18:3-21; Numbers 18:1-30.

[240] Fetha Nagast: p.272.

[241] The role of the rabbis, from antiquity to the emancipation processes that began in the 18th century, was as the maintainers of structure, law and order in the Jewish community according to Groth, Bente,*Judendomen Kultur, historia, tradition*, Natur kultur akademisk littratur, ,2002, pp.100-108. Although Bente Groth focuses on the European Jews mainly the same applies to the medieval Middle East according to Cohen, Mark R.,*Under crescent and cross: the Jews in the Middle Ages*. Princeton: Princeton University Press, 2008, pp.30-31, 52-74.

[242]For more information see Cahen, Cl., "Ḍayʿa", *Encyclopaedia of Islam*, Second Edition, Ed. P. Bearman et al. Brill Reference Online., 2012, Web. 8 May 2019; Cahen, Cl., "Iḳṭāʿ", *Encyclopaedia of Islam*, Second Edition, Ed. P. Bearman et al. Brill Reference Online,2012, Web. 8 May 2019; Curtis, 2009,297; Peters, R., Abouseif, Doris Behrens, Powers, D.S., Carmona, A., Layish, A., Lambton, Ann K.S., Deguilhem, Randi, McChesney, R.D., Kozlowski, G.C., M.B. Hooker et al., "Waḳf", *Encyclopaedia of Islam*, Second Edition, Ed. P. Bearman et al. Brill Reference Online.,2012, Web. 8 January 2019

[243] Khuri, 1990, pp.58-60.

administration and legitimacy. But, in doing so any threat to the legitimacy of the divine law becomes a threat to the specialist class of judiciary men that in turn is a threat to the local authority of the men of religion.

That the legitimacy of this judiciary class is based upon divine law explains the spread and reoccurrence of condemnations of misjudging and calls to follow the divine law, as described in the previous heading section. Trying to hold each other responsible with all the calls for not breaking the divine law, which misjudging is, is to protect the legitimacy of the divine law and thus their own legitimacy. Furthermore, the calls against misjudging ought to be considered together with the trend of divine law becoming more codified through traditions of interpretation. Misjudging because of this trend becomes stricter and clearer to define thus a clearer ideal to follow. The interactions in the meme-plex, the connection between the meme-traits of divine law and the role of the judges, together with surrounding factors of an overarching cultural niche helped the survival of the judiciary role and the convergent cultural evolution among the cultures. This fits what Neusner & Sonn claim; the judicial courts are only a part of a greater system in both Islam and Judaism and both traditions agree that in the beginning there is only God's words, that is to say his divine law.[244] Neusner & Sonn does claim that one does have to take into consideration Islam's rise to power explain Islam's focus on governing politics; however, Neusner & Sonn does not have a historical perspective, of why or how, in a broader sense and focuses more on what in purely textual matters and does not integrate it into a greater system like this master thesis.

8.1.3. The Divinely Ordained Role of the Earthly Rulership, Limited Earthly Power and Rulership Being Held Responsible

One important aspect to note with regard to a repeating ideal is the divine laws and rules that the earthly central rulership are subject to. This is going to be the subject of this section, to demonstrate how they have defined the role of rulership. Limitations and definitions are important in a system since a concept of state structure is based upon an assumption of upholding order and not much is more important for order than to know if the rulership is limited, defined and/or beholden with regard to divine law.

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[244] Neusner &Sonn, 1999, pp. 124-126.

8.1.3.1. <u>Existence of Chosen Holy Lineage for the Earthly Rulership across the Cultures</u>

To discuss holy lineage is important, as that is what gives a ruler legitimacy, in order to understand how the ruler ideally becomes bound by various duties in the divine laws.

The beginning of the laws of Hammurabi mentions Hammurabi lineage and hint[245] at being part of a chosen holy lineage and is the same interpretation as Dominique Charpin from other material.[246] There is one important matter to note about Hammurabi, he does not claim divinity for himself. This is common for later Semitic Mesopotamian rulers as Jerrold Cooper states that "[…]none of the great and powerful rulers of Mesopotamia after the time of Hammurabi of Babylon became god[….]".[247] This separation of mortal and divine is important for this master thesis and can easily be integrated into what separates a Semitic ideal of Theonomocracy, from the pharaoh of Egypt for example, since the meme of a ruler as divine is antagonistic to the memes of holding a ruler responsible through divine law.[248] If the ruler is divine it grants the power of legitimacy for breaking the laws and redoing them if there is no separation, since it rests upon the assumption of the divine as the legislator above the ruler. None of the Semitic cultures in the sources have had the concept of god-king as head of government, and Jesus does not count since he is not a ruler in a direct sense as the kings in the Bible or Mohammed and the caliphs. It is so obvious that it has been overlooked, but the Semitic civilizations could have chosen to deify their leaders as gods or demi-gods, similar to the Egyptians,[249] but they did not.

In the Israelite-Jewish tradition there is the promise from God of keeping kingship in the house of David that is elaborated by the Mishna Torah.[250] Nothing was found about King David's lineage in the Mishna, but considering it sits between the Tanakh and the Mishnah Torah timeline-wise and the Mishna Torah is a gathering of various Jewish law traditions from before it is likely that the tradition survived. It was simply not mentioned. Possibly it may be due to Roman pressure. The topic of David's blood line and kingship could be seen as a challenge to Roman authority. Although it should be noted that Maimonides was favorable

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[245] With statements such as "the royal scion whom Sin made" Hammurabi: p.3 and as "the royal scion of Eternity" Hammurabi: p.5.

[246] Charpin, 2012, pp. 75-77.

[247] Cooper, Jerrold, Divine Kingship in Mesopotamia, a Fleeting Phenomenon, in Brisch, Nicole Maria (ed.), *Religion and power: divine kingship in the ancient world and beyond*. Chicago: Oriental Institute of the University of Chicago, 2008, p.263.

[248] The subjugation of the rulership to divine law will be discussed at pages 62-78 65-81.

[249] McKenzie, Steven L., "Kingship in the Ancient Near East", n.d.

[250] 2 Samuel: 7:1-16. Elaborated in "The monarchy remains with the House of David forever, as it says, "*your throne shall be established forever*" (II Samuel 7:16). In contrast, if a king from (any of the other tribes of) Israel is appointed, the monarchy will cease from his House, as it says with regard to Jeroboam, "*but not for all the days*" (I Kings 11:39)."Mishna Torah, Shoftim, Kings and Wars 1:9.

towards the concept of kingship, even in comparison with other rabbis in the Jewish tradition according to David Polish[251] and Maimonides's writing about it, and especially about the line of David, could be a result of this. It should be pointed out that the views of rulership were varied among the various scholars.[252] The strongest opposition against kingship was made by Isaac Abravanel, who lived in the Venetian republic during the 15th and 16th century, and called the monarchy even a "Cursed leprosy".[253] It is interesting to note that it was the Jews outside of the Middle-East, thus removed from the heartland of the Semitic cultures, that were the most against the politics that kingship would ensure. This is why there was a limitation to sources from the heartlands of the Semitic cultures in the first stage study. When one goes far outside them the cultural-niche changes too much and certain traits do not appear as strongly.

The Ethiopic tradition borrowed the sacred line from the Jews and the imperial line is described as being descended from king David via Solomon in the Kebra Nagast, thus king David has been described as the grandfather to all the Ethiopian kings. Kessler and Binns mention that parts of the Kebra Nagast actually might be far older than the Solomonic dynasty dating back to 6th century AD,[254] thus the ideas of a holy lineage might be far older than when the current Kebra Nagast was written down. Even the earlier Didascalia praises King David and Solomon as exemplary kings and the law book Fetha Nagast does hold David as the example to emulate by showing him as the righteous king in comparison to the kings who attracted God's wrath.[255] It is possible that holy lineage was present before Kebra Nagast, which would explain the presence of high praise for these kings, but it is not possible to know, due to the time gaps of the sources, and what remains are vague references.

The development within the Arabic-Islamic world had a similar concept of Holy lineage. Holy lineage is present in the Arabic-Islamic tradition, the Quran 06;1-4 speaks about the needs of Quraysh being provided for. The Quran actually does not mention anything about the selection of a caliph/the rulership, which was one of the reasons as to the succession crisis resulting in the split between Shia and Sunni Islam. A counterpoint is that his should be seen in the context that all the caliphs from the earliest caliphs directly after Mohammed to the Abbasids were from the Quraysh, the sub-tribe of Mohammed. Subsequently, at least practically the ideal was implemented as existing even if not written in the material. This imprecision of identifying the beginning of holy lineage in the Arabic-Islamic culture can be

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[251] Polish, 1991, pp. 77-82.
[252] Polish, 1991,pp. 90.
[253] Polish, 1991, p.83. Isaac Abravanel rejected the old system in favor of a republic.
[254] Binns, 2017, p.24; Kessler, 1985,p. 38. Points towards fragments of earlier material at best.
[255] Didascalia: pp.21-22, 37, 48, 74, 94, 165;Fetha Nagast:pp.271-274.

viewed as a case of when the lack of material and the gaps among the sources causes issues with identifying the appearance of a meme-trait. The later hadith do mention to whom the caliphate belongs to "'this matter (of the caliphate) will remain with the Quraish, and none will rebel against them but Allah will throw him down on his face, as long as they stick to the rules and regulations of the religion (Islam).'".[256] *Al-Ahkām al-Sultāniya* does mention *nasab*, lineage, as an important aspect of being electable to the office of caliph, and states with regard to Quraysh the right to the caliphate by citing Mohammed.[257] *Al-Ahkām al-Sultāniya* goes into detail about the need to provide for the Quraysh-lines in one section.[258] The memes of this aspect of Islam actually do live on, among certain Islamic groups today, and is seen in the following excerpt from the speech of the caliphial inauguration by the Islamic state:

> *Sufficient for you should be what al-Bukhārī (may Allah have mercy upon him) reported from Mu'āwiyah (may Allah be pleased with him). He said that he heard Allah's Messenger (peace be upon him) say, "This matter is for Quraysh. No one opposes them regarding it except that Allah throws him down on his face, as long as they establish the religion.*[259]

8.1.3.1.1 *Implications behind Holy Lineage and its Legitimacy in a Historical Context*

As has been demonstrated previously, all these cultures from Hammurabi to the medieval Ethiopic and Arabic-Islamic civilizations had convergently evolved concepts of holy lineage. Even if both the Ethiopic and Arabic-Islamic culture-spheres did not have it clearly in the sources from the beginning the cultures evolved into the direction of having it. There is a meme-trait of a lineage that binds the ruler to the religion in such a way that the rulership is an integrated part of the religion with direct references to the divine. The holy bloodlines can be seen and referenced directly in the sources for each of these cultures. For example the nobility

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[256] Ṣaḥīḥ al-Bukhārī: 9:89:253. Important to note is that the word al-'amr, that is translated as "matter" also means "command" and the "as long as they stick to the rules and regulations of the religion (Islam)" is actually, "mā 'aqāmū d-dīn" that is closer to "as long as they establish the religion". This still can be argued to be something else than rule and regulations even if it is a likely interpretation. This is thus a translation being colored by a certain view of Islam and demonstrates how translators such as Mohammed Muhsin Khan's can change translated texts to have stronger focus on divine law with orthopraxy than the source material.

[257] *wa qāla an-nabī ṣallā 'alayhi wa sallama qaddimū qurayshan wa la quddimūhā wa laysa ma' hādhā an-naṣṣi l-muslimi shubhatan limunāzi'in fīhi wa la qawla limukhālifin lahu// and the prophet said, peace and prayer be upon him, "Set forward the Quraysh and do not set forward before them" and there is not with this Muslim text a doubt for a quarreler in it nor a speech by a contrarian for it* Al-Ahkām al-Sultāniya:4.

[258] Al-'Aḥkām al-Sulṭāniya:p.82-85. The text mentions at p.82 "*Al-'ansābu sh-sharīfatu*", the noble lines, and about the need to ensure that they do not fall under the control of the less "worthy" in honor "*la yukāfi'uhum fī n-nasabi wa la yusāwīhim fī sh-sharafi*" and cites a call from Mohamed beginning with "'*i'rifū 'ansābakum*","know your lineage", and then proceed with outlining the importance of not breaking the lineage. However, it is not until p. 83 when the "*aṭ-ṭālibīna*" and "*al-'abbāsiyīna*" are mentioned. They are branches of the Quraysh, descendants of Abū Ṭālib and the Abbasids respectively**.**

[259]Hadhā wa'd Allah. The excerpt even cites the previous mentioned hadith Ṣaḥīḥ al-Bukhārī: 9:89:253.

in Europe of post conversion to Christianity never claimed, at least in no known extent for this study, any directly referenced blood line in the Bible directly commanded by God.[260]

The divine law with a meme of holy lineage defines the leadership from the beginning and it gives a precedence to the divine law controlling the earthly ruler and subjecting him to it. The ruler thus becomes not a partner with the religious establishment under God but rather a subject within the establishment that must fulfil certain legal criteria. It can be assumed that the memes involving holy lineage are connected to the same premise of interpretation as the divine law. If the divine stands above and choses the earthly ruler, as being necessarily from a certain lineage, it becomes natural that the divine also choses the law or vice-versa. Since when a meme of direct command rather than general principle becomes established the meme-traits of holy lineage and divine law interact and form a meme-plex that strengthen each other. When the divine law is what gives legitimacy to the rulership to begin with it becomes hard to argue that it is only that one rule that should be followed and that others can be discarded arbitrarily since these laws are not merely vague principles of a ruler's right to rule but concrete commands. When a holy lineage becomes established adherence to the religion becomes a direct question of legitimacy, as the legitimacy is based on the will of the divine in the religious context. The existence of holy lineage makes the rulership part of the religious structure as chosen head of the centralized power. Hurting the legitimacy of the religion would thus hurt the rulership. These aspects force adherence to, and preservation of, divine law when the entire religious structure is focused on orthopraxy, which will be discussed under the next heading section. The meme-trait of holy lineage does not leave room for the two swords doctrine, with state and church as two separate spheres under God, since the rulership is entirely defined by the religion, not mere vague principles of a right to rule. As Mikhail states that Islam did not make spheres for church and state in the form of the Two Sword doctrine rather it has an ideal of divine law upon everything.[261] The ideal of a chosen lineage to rule must here be seen as being included in the divine law, together with the divine laws directly limiting rulership.[262] Mikhail only speaks about the rulership ideal in early Islam, during the Umayyad and Abbasid period, but the same can be said for the other cultures' developments within the various Semitic cultures. They all remove the distinction between a profane earthly rulership and the religious by having holy lineage. It is a much

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[260]European rulers have claimed Biblical origins but no direct claims of being commanded by God or prophets directly in the Bible such as the line of David or the Quraysh in Islam were found.

[261] Mikhail, 1995, pp. 54-55.
[262] The concept of specific laws that limit the rulership will be discussed later on pages 72-76.

stronger connection to the divine when a direct claim in the sources of the religion can be made. A rulership with legitimacy of holy lineage becomes directly an executive branch of the religious establishment, not a separate institution under the divine, as the case in the Two Swords doctrine.

Holy lineage, considering the legitimacy granted by the divine to the ruler, gives strong legitimacy for executive power and thus rulers would be interested in its spreading. Especially during the early establishment phase of the cultures where enforcement of a new order would be important. Likewise, holy lineage ensures that the divine law is followed and with the weight of the legitimacy of divine law and the legitimacy to execute it. In compensation, holy lineage limits the legislative power, as changing or ignoring the divine law risks the legitimacy of the rulership. Through this relationship the role, and the legitimacy, of the judiciary role of the men of religion becomes protected and their power over the ruler increases. It is corresponding to the physical factors favoring and ensuring a certain level of autonomy, large centralized positions of urbanization surrounded by deserts, form strong urbanized local centers of authority that creates a balance between the men of religion being a type of local authority and the central power of the rulership. Claiming a stronger type of rule such as being a god-king would have been undermined by the geographical factors making it hard to inforce and spread such a claim. A god-king meme would undermine the legitimacy and authority of the judges of the divine law, as a specialist class granted legitimacy through interpretation of the divine law. Since they are dependent on its ensured continuation and legitimacy for their legitimacy and authority in the meme-plex. Otherwise the rulership can dismiss the divine law, and them, whenever necessary as he is divine with similar authority as the God(s). Similarly, the judiciary role would have lost the legitimacy of the divine law to limit the rulership.[263] As a local power they would probably have antagonistically resisted and been aided by the geographical factors strengthening their autonomy and claims of an ideal system. The spread and actual survival of the sources with holy lineage used for the study reflect this, they suited the literary class of the men of religion. Influenced by their neighbors the Semitic cultures probably borrowed the concept of holy lineage from each other, as is known in the case of the Israelite-Jewish and Ethiopic cultures with King David and Solomon. Holy lineage gives the needed legitimate authority during the establishment of a new polity that was needed for all these cultures without threatening the order and core meme-trait of divine law.

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[263] As will be discussed about on pages 65-86.

Holy lineage have previously only been observed as isolated developments among these cultures,[264] and no study has been found that connects it into a greater reoccurring system of divine law among the four cultures. Through comparing the various cultures, and various studies, it can be seen as part of greater tendency. Yet, the holy lineage in the Ethiopic culture sphere seems to appear later than the others, if one does not include an earlier date for the memes of the Kebra Nagast.[265] Potentially it could be argued that the collapse of the Zagwe dynasty and following usurping by the Solomonic dynasty created a similar cultural niche, as the case was in previous collapses of civilizations. This consequently led to a repeat in the adoption of holy lineage in the Ethiopic culture sphere, but this still ought to be considered as a later development.

8.1.3.2. The Limiting Aspect of Codified Divine Law versus Laws of the Rulership

One of the first aspects that limits the power of rulership is the existence of concrete divine law and an orthopraxy that supports it, since the memes of divine law stand in an antagonistic relationship to man-made laws. A law coming from the divine ought to have a greater legitimacy than a law made by an earthly ruler, especially with the lack of a concept of natural law and inherent being to argue any divinely inspired man-made law from. This study is not stating that these law codes or specific laws are not man made; but, in the eyes of the believers, as the hosts of the memes of the religions, they would have been interpreted as coming from the divine. It is as Neusner notes regarding the divine law of the Jews, the halakha, that it was not only violence that makes people follow law but a question of legitimacy since it would have been hard to enforce by violence during the exile after the fall of the second temple.[266] It is only needed to examine IS's ideal of following divine law as a modern version and imagine how it would be viewed within the ranks if a ruler said that he is making the law instead of God directly. It seems unlikely that the ancient peoples, writing and spreading the sources used for the study, would think much differently. As previously mentioned, the rulership is based on the legitimacy of holy lineage, it is thus bound by the conditions of it. This connection leads to limitations on the legislative role of the rulership. There are, in addition, calls for not changing the laws and following them in all of the traditions from the first sources. On the tablet of the laws of Hammurabi it states clearly in the

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[264] Charpin, 2012,pp. 75-77;Cooper,2008, pp.261-266; Crone & Hinds,1986, pp.16-17; Polish, 1989, pp.4-6,76; Tamrat, Tadesse , *Church and state in Ethiopia 1270-1527*.Oxford: Clarendon, 1972, pp. 216,456-458; Tino,Jozef, *King and Temple in Chronicles: A Contextual Approach to their Relations*, Götting, Vandenhoeck & Ruprecht,2010, pp.76-90.These authors have not placed their observations into a greater cross-cultural context.

[265] Binns, 2017, 24; Kessler, 1985, 38. Points toward an earlier date but this study will assume the later date.

[266] Neusner, 1991, pp. 151-156.

epilogue to not change or corrupt the laws and that they are laws of righteousness and it would be illegitimate injustice to change them.[267] It specifies that it is a command to the succeeding kings with the threat that they will be cursed by the gods for not obeying. If one compares Hammurabi to a prophet, as done on page 41, then successor kings actually have a position close to that of the later caliphs, as the case in the later Arabic-Islamic sphere, as being successors of a previous prophet, Mohammed, and having to follow the prophet's laws.[268]

The same pattern, as in the code of Hammurabi, applies to the stories about kings being punished for breaking the commands of God in the Old Testament and doing their own wishes.[269] One instance that stands out is 2 Chronicles 26:16-21 that describes how the men of religion opposed the king, Uzziah, when he went beyond his authority and broke God's rules. He was confronted both by the men of religion and punished by God, so both the men of religion and God held the rulership responsible. The story of Uzziah is repeated in the Ethiopic tradition with the Didascalia[270] and the same theme of God punishing kings out of line is reoccurring in the Didascalia, with regard to various other Biblical kings.[271] Even if the Didascalia does not primary concern itself with kingship it does use the old kings as examples for what happens if one breaks the divine law, the implication being that a king is limited in regards to the rules imposed from the divine. There is: "And judge between those who rule justly, and (those who) rule unjustly"[272] that can be regarded as applying to both judges, men of religion, and to rulers. There are calls in the Didascalia for standing up to rulers who do not conform to the divine law of God. With regard to the code of Hammurabi, despite not having found any material that describe men of religion as judges there is material[273] where the men of religion play a role in politics and condemn the rulership during the time of Hammurabi.

The later Fetha Nagast has on the section with regard to the duties of kingship examples from the Bible of kings being destroyed by God for infractions.[274] It proclaims with regard to the king "He must never swerve either to the right or left of what has been laid down in the law, […] And if the King becomes a heretic from that moment he is no longer a king but a

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[267] Hammurabi: pp.33-36.
[268] This interpretation is derived from the fact that the study has a basis in Arabist studies and probably sees parallels with an Arabist lens. It is justified with that it is better than a particularistic viewing that these cultures are being completely alien to each other, contradictory to the fact that they shared similar languages and much cultural contact with each other.
[269] Some examples are 2 Chronicles 13:20, 1 Kings 11:9-39, II Kings 17:18-20, 24:2-4.
[270] Didascalia:p. 137.
[271] Didascalia:pp. 7, 36-37, 39, 42, 49, 102.
[272] Didascalia:p. 172.
[273] Charpin, 2012,p. 81-84.
[274] Fetha Nagast: p.273.

rebel.".[275] Considering that in the law apostates should be stoned to death[276] it does give the statement weight. The text is written as a law book for priests, since they are the judges and should thus be interpreted as being the ones responsible for upholding the law with regard to the rulership. The Kebra Nagast has confrontations between the king and men of religion represented by the high-priest Zadok, from the Old Testament, who is called to inform the king of his duty.[277] Zadok later goes on to name several examples on how God punishes the unbelievers and rebellious kings.[278] The theme of priests, as men of religion, confronting a king is also present directly[279] and this confrontation should be seen in light by the general necessity of upholding the divine law in the Kebra Nagast.[280]

These examples of holding the rulership responsible would be strange, considering that the Kebra Nagast can be seen as a type of written propaganda for the Ethiopic imperial line, if an absolutist view of rulership was the norm. The Kebra Nagast reflects probably a greater attitude towards the rulership not being an infallible entity but beholden to the divine law. Priests can stand up to and should rebuke the rulership if not following and carrying out the divine law. A central conflict with regard to implementation of law is even what begins the story of Kebra Nagast and the origin of the imperial line in Ethiopia[281] and it portrays a type of acquaintance to a concept of rulership that does not have absolute authority and is questioned in legal matters.

This idea of confronting a ruler breaking the divine law is mirrored in the Jewish tradition with the Mishna when Kings are reduced into the likeness of commoners if they sin against God.[282] The King is not exempted from being confronted by the men of religion and judged if

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[275] Fetha Nagast: p.271.
[276] Fetha Nagast: pp.286-287.
[277] "'Make him to know and tell him concerning the judgment and decree of God which he shall observe there' [in Ethiopia] […] And Zadok the priest answered and said unto the young man, 'Hearken unto what I shall say unto thee. And if thou wilt perform it thou shalt live to God, and if thou dost not God will punish thee, and thou shalt become the least of all the nations, and thou shalt be vanquished by thy foes'"Kebra Nagast: pp.46- 47.
[278] Kebra Nagast: p.47.
[279] "And a priest, who hath in him understanding, rebuketh the king concerning that he hath seen; and that which he hath not seen God will enquire into, and there is none who can call Him to account." Kebra Nagast: p.56
[280] Exemplified by quotes such as "And now, hearken to the judgment and laws which the elders and the sons of the mighty men of Israel brought, which they wrote before King Solomon and have given unto us, so that we may not turn aside either to the right hand or to the left from what they have commanded us " Kebra Nagast:p.128.
[281] *On one occasion in the case of a trespass of cattle the king decided that the owner of the field might confiscate the cattle which had trespassed, but Menyelek ordered him to accept six measures of grain instead of confiscating the cattle. Thereupon the people told the king that they would not be ruled by two chiefs, and that he must send his son back to his native country. When Solomon told his son of the people's complaint Menyelek advised his father to say to them, "Is not Menyelek my first-born son? I will send him away if you will send your first-born sons with him"; and the people agreed to send their first-born sons to Abyssinia with Menyelek.* Kebra Nagast: p.LIV.
[282] *[Leaders] who sinned before they were appointed and afterwards were appointed, these are [treated] like a commoner. Rabbi Shimon says: If it became known to them before the appointment, they are liable. [If it*

clearly sinning and breaking the divine law is sin. This is part of a greater discussion about responsibilities for appointment of kings and how a ruler may redeem himself for transgressions against God. The Mishna mention many of the punished kings; Jeroboam, Ahab, and Manasseh in the Tanakh, stating that they will have no share of the world to come.[283] The ideal is repeated in the later Mishna Torah in that the king is subservient in the tradition to the divine law, God's commands, and required to follow what is laid down, otherwise the king should not be heeded.[284] His role is bound by the divine law. This ideal follows the ideals as formulated by Neusner about the earlier Mishna that "The king reigns but does not rule"[285] that is to say he is subordinate to the lordship of the divine, who is the true maker of the law.

The Arabic-Islamic tradition has the hadith collections that are clear in regard to rulership being based on following religious commands[286] and several verses in the Quran have versions of "*al-'amru bil-ma'rūfi wa an-nahyi 'an al-munkari*" ,"the ordering of what has been known to be right and forbidding what has been rejected".[287] It is a general duty upon all believers, including rulers, and is explained in *tafsīr al-Ṭabarī*.[288] Cook has noted that this is a common interpretation among many exegetics of the Quran during the early medieval age, but there were a variety of opinions.[289] However, as Cook states about the exegetes that the duty was generally linked among the classical exegetics to an idea of reproach towards those that break the specific and concrete laws and rules in the sharia,[290] which include rulers. Regarding *ḥisba,* which is the name of the described concept, Al-Māwardi even dedicated an entire chapter[291] to the matter with regards to lesser matters from the perspective of the ruler and how it is upon a ruler to ensure a society of general fairness. He begins the chapter with

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became known] after the appointment, they are exempt. Who is the prince? This is the king, as it says (Leviticus 4:22): "And he did one of the commandments of Hashem his God," [this refers to] a prince, because there is no one above him besides Hashem his God. Mishna: Nazikin: Horayot 3:3.

[283] Mishna: Sanhedrin 10:2.

[284] *Anyone who fails to obey the king's orders because he is engaged in the performance of Commandments, even of one simple Commandment, is exempt. This is so since whenever a dictate of the Master (G-d) conflicts with a dictate of the servant (the king), the dictate of the Master takes precedence. Needless to say, the king is not heeded if he decrees something which cancels a Commandment.* Mishna Torah: Shoftim: Kings and Wars: 3:9.

[285] Neusner, 1991, p. 78.

[286] *As-sam'u wa aṭ-ṭā'atu 'alā al-mar'i al-muslimi fīmā 'aḥabba wa kariha mā lam yu'mar bim'aṣīyatin fa'idhā 'umira bim'aṣīyatin falā sam'a wa la ṭā'ata //The hearing and following is upon the Muslim man in whatever he likes or hates as long as he is not ordered with rebellion/sin (against God), for if he is commanded with rebellion/sin then no hearing or following.* Sunan Abī Dāwūd: 2626, also found in Ṣaḥīḥ al-Bukhārī: 9:89:258.

[287] Such as Quran: 3:104, 110, 9:112, 31:17. Is a translation made by this study not Pickthall.

[288] Tafsīr al-Ṭabarī:3:104,110 , 9:112, 31:17.

[289] Cook, 2000,pp. 10-31.

[290] "[…]and they see its scoop as in the first instance response to specific misdeeds, rather than vague and general ethical affirmation." Cook, 2000, p.31.

[291] Al-'Aḥkām al-Sulṭāniya: pp.208-223.

citing Quran: 3:104 and writes that the duty of *ḥisba* is upon every believer, but for the ruler it is an even more necessary duty. He goes on to mention nine points that need to be considered by one holding people responsible in an official capacity, four are significant; point one is that he must be chosen by proper authorities, point four is that he must heed the complaints of the people who he interacts with, point eight is that he may be paid by the money for the *bayt al-māl*, the people deserving of certain monetary privileges, and nine is that he must not break any of the laws of the sharia. The underlining ideal is that it is upon the ruler to ensure that his administration is responsible to the divine law and has accountability in face of it.

In regards to only the caliph, according to Al-Māwardi there are ten paragraphs[292] to follow for a caliph, paragraphs one, two, four, seven and eight are about divine law. The first is to make the law clear to the ones who has gone astray and treat them according to the divine law in accordance their *al-ḥuqūq,* rights, and the *al-ḥudūd,* penalties. The second is about conduct during involvement in judgment of disputes between factions and parties. The fourth, are conditions for establishment of certain laws in the sharia generally. The seventh and eighth is about collecting tax, and hand it out to the "*bayt al-māl*","the house of property", with the meaning being those deserving of certain monetary rights in accordance with the sharia. Afterwards Al-Māwardi dictates that a caliph that does not follow the religion and does sinful things, "*yakhruju bihi*", "goes out with it",[293] thus leaving the title of caliph and the caliph is no longer deserving of being heeded. This should be interpreted as if the ruler breaks the divine law he is to not be followed.

It is clear when one reads the texts of the first four hundred years of the Arabic-Islamic civilization that the ruler is supposed to follow a specific law and provide for its implementation. The caliph is bound to the divine law. As can be seen by the other traditions this follows a larger tendency and is not unique to the Arabic-Islamic culture sphere. The role of the rulership is not as primarily an absolutist legislative office but rather an office for carrying out and acting in accordance with the divine law. The ideal of divine law can be seen in the importance of knowledge. Knowledge of the religion is important because it is needed to carry out the divine law as the executive office. This is implied by the priest-king tradition in Mesopotamia, which can be seen in how Hammurabi mention his religious offerings and rituals,[294] implying knowledge of the divine. In the Israelite-Jewish tradition there is the idea

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[292] Al-'Ahkām al-Sulṭāniya: pp.12-13.
[293] Al-'Aḥkām al-Sulṭāniya: p.14.
[294] Hammurabi: p.4.

about keeping two scrolls of the Torah at hand for the king,[295] so that he may have at hand the sources to uphold the correct law through the knowledge contained therein. This is repeated in the Mishna, the Mishna Torah and Fetha Nagast.[296] The idea is that the rulership needs to have knowledge about the divine law to do his function of keeping justice. Al-Māwardi, in the Arabic-Islamic culture sphere, writes that if there is not an urgent need for war that makes it otherwise, chose the "'*a'lam*", the most knowing, in matters of religion, rather than the best military commander as the leader.[297] This choice is because the office of the caliph, like the other Semitic examples, is a rulership of orthopraxy and having knowledge of doing right in accordance with the divine law is paramount, like the men of religion of the other cultures. This legal similarity differ from the institutional legal separation of the two swords ideal.[298]

There are several calls to follow the divine law in the various traditions but one equally important aspect that must be considered is what happens with a judicial class of people whose existence actually is based on the interpretation of divine law. Not only are there the previously mentioned examples of men of religion opposing the rulership and standing up and rebuking the rulership when it oversteps the divine law. There is an inherent interest in preserving and spreading the divine law as it is the basis of legitimacy for the class in all the cultures. Like the ruler is bound with the legitimacy of bloodlines to the religion, the judges are bound to the religious role of upholding the religion and the rules therein, such as the divine law, as the reason for their existence. It is exemplified in the saying of Al-Māwardi as "*fayastawī fī 'iqāmati l- ḥudūd 'alayhim*", "and so the establishment of the *hudūd* is equally upon both of them",[299] it is upon both the judge and the caliph to implement the divine laws, "*l-ḥudūd*", in the meme-plex. The system is not only centered upon the ruler, but it is a matter of legitimacy among the men of religion as well. This connects to the concept of *ḥisba* and connected to the previous mentioned verses of the Quran about ordering that which is known as good and forbidding what is rejected. There was opposition and reproach to caliphs who were imagined to have transgressed during the early Abbasid age.[300] Muslim rulers have been

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[295] Deuteronomy 17:18-20.

[296] Mishna: Nezikin: Sanhedrin: 2:4; Mishna Torah: Shoftim: Kings and Wars: 3:1 and two scrolls is referenced as a legal point for the appointment of a king in the Fetha Nagast: p.271.

[297] Al-'Aḥkām al-Sulṭāniya:p.4.

[298] That the rulership has a similar need of knowledge of the same direct divine law removes the distinction between the rulership and the men of religion as separate institutions, instead they are classes with differing functions, and thus differ from the two swords ideal with the rulership and the church as two distinct legislative institutions based upon sacred understanding of natural law as in Witte Jr., 2006, pp. 4-7, 211-220.This has been discussed earlier regarding only Islam in Mikhail,1995, 52-56. It seems applicable across the cultures.

[299] Al-'Aḥkām al-Sulṭāniya:p.194.

[300] Cook, 2000, pp.10-11.

challenged and overthrown by the *ʿulamāʾ* several times in Abbasid history.[301] Entire legal theories developed about when and how it was legitimate to confront the state about *ḥisba* and there was a myriad of opinions throughout the early middle-ages.[302] Doctrines around rebellion developed, when it is just or not to commit it, during the Umayyad and Abbasid periods and even today legal questions about rebellion against rulers are important.[303] This master study points out that this development of protecting an ideal meme-plex with divine law is comparable to the Fetha Nagast's statement that a nonbelieving Ethiopic emperor is illegitimate and not a ruler but a rebel.[304] If he ignores the divine law he should be opposed. This is a clear threat of rebellion. These threats of rebellion and disobedience becomes much more important when taking into account that the men of religion are elites in centralized large population centers, rather than small villages. This is the first study that clearly discusses limits of imperial power by putting it in a comparative context and taking into account urbanization, climate and geography favoring local power.

The increasing specification through the process of interpretation must be seen as a more limiting aspect on the legislative role of rulership in all the traditions. The further in time every tradition goes the more limited the rulers ability to make and change laws becomes as a more legitimate divine law is codified and leaves less room for man-made law and interpretation by the rulership. It ought to be remembered that the divine law in all the traditions from the beginning includes laws of criminal law, property law and laws directly affecting rulership, which will be discussed under the next headings. These are fields of law that the ruler becomes limited to legislate in and the rulership becomes more limited to only an administrative and executive role for them. The conclusion is based upon the view that the law is unchanging to a certain degree and this goes within Lena Salaymeh's criticism against categorizing Semitic law as being rigid.[305] Yet, unchanging/rigid law can be beneficial since it means having a standard that limits chaotic excesses of rulership. In addendum, it is only unchanging in that it goes in one direction, the laws becoming further codified. The historical societies in which these laws developed were in many ways less changing than the modern changing world. The lack of change together with the stability provided by the geography, climate and stable urbanization tendencies of the Semitic heartlands made it so that constant

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[301] Brown, 2012, p.33 and Berkey, 2003, p.212-213.
[302] Cook, 2000,pp. 50-67.
[303] Abou El-Fadl, 2001, pp. 158-161, 333-342.
[304] Fetha Nagast: p.271.
[305] Salaymeh, 2016, pp. 92-111.

laws were much less exposed to cultural selective pressure to change.[306] Divine law provides stability rather than instability of constantly changing manmade-law from a central rulership. In contradiction to only divine law, creating laws outside of the divine law is not unheard of, the *Qanūn* for example was used in Arabic-Islamic tradition from the beginning.[307] The *qanūn*, plural *qawānīn*, are regulations/laws filing a void where there is a lack of divine law. However, this was/is limited to areas that are not covered by the divine law. Meaning that man-made laws is there to fill gaps rather than to replace divine law. Man-made law is thus ideally subordinate to the direct divine law. This view is based on assumptions that have their origin in Arabist studies and that they hold true for the other cultures. Due to the condemnations against breaking the divine laws, which convergently evolved in all the other Semitic cultures, and a lack of a natural law as an alternative to create new man-made laws, replacing direct divine law in legitimacy, the ideal ought to be seen as equally present in the other cultures. This study has found nothing in the primary sources to contradict this ideal.

8.1.3.3. <u>The Concept of Divine Law with Rules Directly Limiting Rulership</u>

Not only does the concept of divine law in itself limit rulership, there is a reoccurring meme-trait, in the sources, of an ideal of laws and rules that directly limit rulership and sets up stipulations upon it. There are not any explicit divine laws directly limiting the rulership in the code of Hammurabi except insurances of privileges for various groups. Although, it ought to be mentioned that the laws themselves, as applicable to the kingship, can be seen as limiting the power of rulership. Pointing towards it being the case is law number 175.[308] The law could be interpreted as applying to the rulership if the words translated for "state slave" includes slaves bound to the rulership. There is an explicit presumption of innocence in the laws that could act as a limiting aspect as the first law deals with presumption of innocence.[309] These laws should be considered together with calls against changing or disregarding the laws as discussed earlier, which included kings, and can consequently be seen as directly applicable on the rulership. One important matter to note is that the code of Hammurabi is the only text, maybe with the exception of the Ethiopic Kebra Nagast, that is written from the perspective of a ruler rather than by men of religion and can be slanted to show limitations less clearly .

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[306] See pages 34-36, 47-52.
[307] Linant de Bellefonds, Y., Cahen, Cl., İnalcık, Halil and Ed., "Ḳānūn", *Encyclopaedia of Islam*, Second Edition, Ed. P. Bearman et al. Brill Reference Online., 2012, Web. 8 May 2019.
[308] "If a State slave or the slave of a freed man marry the daughter of a free man, and children are born, the master of the slave shall have no right to enslave the children of the free*." Hammurabi: p.22.
[309] Hammurabi: p.6.

The later Israelite-Jewish tradition has several laws and stipulations in the Tanakh that deal with limiting the power of kingship and the requirements for ruling.[310] These laws are further codified in the Ethiopic Fetha Nagast along others such as laws about tribute of the kingship to the priest-judges for their needs.[311] Tribute is also upon the caliph in Al-Māwardi's text, along other further codifications about rulership from previous religious sources, and is an example of how the rulership is a subject to divine law.[312] This ideal of subjection of the rulership to specific laws goes further forward in time and in other cultures than Jozef Tino's same observations on the laws in the Tanakh.[313] The later Mishna adds more specified laws making them more exact and adds other further codified stipulations with regard to the rulership such as that the king must seek the consent of the Sanhedrin, the judge-court, in order to go to an optional war.[314] Rules restricting rulership is the ideal that comes forward, considering the specific rules against the kingship and the general rules about not breaking the divine law with regard to kingship. It is as Neusner writes, "One thing the Mishna makes explicit is that the monarchy serves at the pleasure of the sages".[315] This ideal is not entirely strange since it is a continuation of the Israelite meme-plex where the king had a role that resides in the law and is bound by the law of God, as an executive office and the priesthood has another function, that of judges and upholder of the divine laws as Marvin A. Sweeney describes.[316] Considering the borrowing of memes such as the memes of David,[317] who is an ideal king, it is not surprising when the same view reemerges, further codified, in the other Semitic cultures. Interests among the men of religion, as local men of authority, align with spreading and codifying memes protecting their rights and powers against central rulership. The later Mishna Torah continues with several rules and laws regarding kingship that include limitations on the executive power.[318] It should be noted that the Mishnah Torah has much

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[310] To not nominate an outsider as a ruler from Deuteronomy: 17:15. The ruler should not obtain an excessive number of horses from Deuteronomy: 17:16. The ruler should not have an excessive number of wives from Deuteronomy: 17:17. The ruler should not take an excessive amount of gold and silver for himself from Deuteronomy: 17:17 or the previously mentioned fact that the ruler should have a scroll of the Torah for himself in addition to the normal one that every believer should have from Deuteronomy: 17:18-19.
[311] Fetha Nagast: pp. 271-273. "This tribute is meant to provide the judges with the necessities they are in need of since they put aside their own interests and care for the public safety." Fetha Nagast: p.272.
[312] Specifically the seventh and eighth paragraphs in Al-Ahkām al-Sultāniya:p.13. As mentioned earlier on page 69 in this master thesis.
[313] Tino, 2010, pp.76-90. Tino discusses kingship being under the laws in the Tanakh only.
[314] "The number of wives for the king is not allowed to exceed eighteen" Mishna, Sanhedrin, 2:4, in Deuteronomy 17:17 it is only mentioned that it cannot be an excessive number ; "[The King] may lead [the people] out to an optional war with the consent of the court of seventy-one." Mishna, Sanhedrin, 2:4.
[315] Neusner, 1991, pp.79- 81. Quote on p. 79.
[316] Sweeney, Marvin A., "Rights and Duties of Kingship in Israel", n.d.
[317] As the figure of David is important in all the Abrahamic faiths and their cultures.
[318] Mishna Torah: Shoftim: Kings and Wars: 3:2-6, 8, 4:3 with a quotation for example:
   The king has permission to execute only by the sword. He may imprison and beat someone with a whip for the sake of his honor. However, he may not declare their money ownerless, for it would be robbery were he to do so. Mishna Torah, Shoftim, Kings and Wars 3:8.

more rules and laws regarding kingship than previous texts in the Jewish-Israelite tradition. This can be a result of interpretation leading to more specific rules; this can also be a result of, as pointed out by David Polish, that Maimonides can be seen as the most pro-monarchy proponent among the major Jewish scholars,[319] which can have influenced him to write a lot about rulership. Maimonides served in Arabic courts as a doctor and could also have been influenced by Arabic culture. Pinpointing the exact borrowings and personal motivations is outside the scope of this study and the focus is upon a more generalist view with cultural niches rather than individuals; but, it is a potential factor. In any case, the further codification of laws follows David Polish's observations that stipulations are added with the argument being that kingship risks the displacement of God as the true authority; [320]but, this master study adds the other cultures' codifications of laws with regard to rulership.

On the subject of the Quran or the Hadiths in the Arabic-Islamic culture sphere there are actually not many specific rules on leadership. However, hadiths about distribution of booty are present, such as dividing conquered land among the warriors participating in jihad and there are calls of war against the unbelievers upon the ruler until the end of time.[321] Al-Māwardi in the first lines of a chapter, dealing with the handling of punishments and crimes, stipulates that anyone facing a "*tuhma*", accusation of a crime, is to be considered innocent, "*'istibrā'*", until proven guilty because, "*taqtaḍīhi s-siyāsatu d-dīnīyatu*", "the religious politics demands it".[322] Al-Māwardi also outlines nine points[323] about what separates an 'amīr, prince/commander, that is to say the caliph himself or one endowed by the office to command, from a *qāḍin*, judge, and what is imposed on them both in terms of duties, of them three are of interest: Firstly, it is not allowed for the prince to accept claims of a criminal circumstance through second hand accounts without examining it and establish proof of misconduct. Point four is that if there is a strong enough suspicion of minor crime for punishment it is okay to beat the suspect, but would the suspect admit any other crime during the punishment it should not be considered valid evidence. Point seven states that the prince must not threaten or enforce a death penalty if there is no divine law that demands it. These are clear limitations on the conduct of leadership and stipulations for how rulership is allowed to procced within its executive office. These laws are directly argued from previous

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[319] As stated by Polish, 1991,pp. 78-80.
[320] Polish, 1991,pp. 77-82.
[321] For examples about booty see Ṣaḥīḥ al-Bukhārī: 5:59:340,360; Sunan Abī Dāwūd: 2698, 2703 and calls for war Sunan Abī Dāwūd: 2483, 2532.
[322] Al-'Aḥkām al-Sulṭāniya:p.192.
[323] Al-'Aḥkām al-Sulṭāniya:pp.192-193 goes through the points and the views of the *fuqahā'*, with regard to enforcing divine law and discretionary punishment by a ruler.

interpretation of divine law and there is a general tendency of actually pointing out limits of rulership early in al-Māwardi's text, referring to divine law. Māwardi states that going outside of the religion, and its rules and laws, means the right of the caliphate goes out with it,[324] that is leaves him. These statements should be regarded as the ideal of al-Māwardi in wanting to put limits upon the earthly rulership rather than desiring absolutist forms of government.

The limitations stated by al-Māwardi is why this study disagrees with Al-'Aẓmah. He sees al-Māwardi's text as a product of supporting Persian and earlier absolutism by pointing towards a lack of concrete physical punishments for rulers' transgressions and ignores religion.[325] *Al-'Aḥkām al-Sulṭāniya* does lack concrete punishment of rulers not coming from God, if losing the caliphial right does not count. However, this study does not agree that the references to religion can be ignored. Al-'Aẓmah's result is because he ignores all the statements about religious justification with regard to divine law and want to see a continuation from Greek, Byzantine and earlier Persian traditions and has a perspective that largely reduces religion to only a materialist tool of the rulership. For example, when speaking about the legitimacy of the caliphs; "Legitimacy is, strictly speaking, a legal and not a religious or moral category, and a legitimate caliphate is one which obeys certain legal conditions".[326] This separation does not work when the law is religious in nature and the entire legitimacy of the rulership is grounded on religious foundations. Al-'Aẓmah almost completely ignores the development of religious developments with regard to religious scholars and codification of divine law "[….] there is no room for tracing this process in detail".[327] This lack of religious consideration probably stems from his wish to lessen the focus on Islam to avoid exceptionalism.[328] This avoidance comes at a cost of the perspective of the religious being a force in itself and how religion actually can shape ideals of governance, which is central for this study. He explicitly ignores Israelite-Jewish concepts in shaping the ideals of rulership[329] and does not compare with the Ethiopic cultural that is/was linguistically, culturally and geographically closer than the Persian, or Greek, culture in many aspects. This could have reduced the exceptionalism of Islam without sacrificing what, for this master study, is a central meme-trait of Semitic ideals, the fundamental use of divine law for government. Even if the laws themselves are different they are still based on the assumption of divine laws setting limits for rulership. The limits are both directly by stating limits or indirectly by codifying law thus hindering other laws. The

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[324] "*yakhruju bihi*","goes out with it" Al-'Aḥkām al-Sulṭāniya:p.14.
[325] Al-'Aẓmah, 2001, pp. 96-102.
[326] Al-'Aẓmah, 2001, p. 166.
[327] Al-'Aẓmah, 2001, p. 104.
[328] As he states himself Al-'Aẓmah, 2001, p. XV.
[329] Al-'Aẓmah, 2001, p. X.

traditions do not appear different in holding rulership accountable through divine law and thus this master study's criticism differs from El-Fadl's mono-cultural criticism of Al-'Aẓmah.[330] Other views, regarding al-Māwardi, are provided by Mikhail. He views al-Māwardi as having a focus on an ideal of the ruler bound by a religious divine law as a formulated view of government that was repeated by later writers.[331] The view of the religious calls mattering opposes Asma Afsaruddin's description that al-Māwardi was for absolutism inspired by Persian influences.[332] In addition, this master study takes into consideration the close cultural ties with other Semitic cultures and the memes and meme-traits that they have in common, which Afsaruddin, El-Fadl and Mikhail do not. It is assumed that even if the laws are not directly borrowed nor exactly the same they at least share a common cultural link by being in cultures where constant borrowing, contact and influencing was common.[333]

8.1.3.3.1. *Nomination by the Men of Religion as Control of the Rulership*

One thing that the later Semitic cultures; the Jewish, the Ethiopic and Arabic-Islamic, have in common is an idea of laws regarding nomination of rulership by appointment of men of religion as a clearly limiting divine law on rulership. For example, in Deuteronomy: 17:15 appointment is said in a context of judges and Levite priests and this points towards them being the electors and is repeated in later works such as the Mishna Torah and the Ethiopic Fetha Nagast.[334] No study was found that has focused on nomination in the Fetha Nagast and thus no previous comparisons has been made to the other Semitic cultures referring to it. What is known is that early Aksumit kings might have been chosen by election among several candidates for rulership.[335] So it can possibly be a continuation or reoccurrence of a previous practice rather than a borrowing, although it is presented as adopted from the Old Testament.

Nomination is described by Al-Māwardi in the chapter of what to do before going into the matter of choosing a caliph.[336] The description starts with defining the *'ahl al-khiyār*, those who choose, and *'ahl al-'imāma*, the people of leadership or those who can be elected. Al-

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[330] Abou El-Fadl, 2001,pp. 15-20 criticizes Al-'Aẓmah for ignoring the Islamic legal texts but from only the Islamic tradition.
[331] Mikhail, 1995,pp. 20-28,46-50.
[332] Afsaruddin, 2006, p.157.
[333] As described in the background at pages 36-39.
[334] "A king can be appointed only with the consent of the supreme court of seventy-one." Mishna Torah, Shoftim, Sanhedrin, 5:1. The specific laws in the later Mishna Torah about the appointment of kings can be read at Mishna Torah, Shoftim, Kings and Wars 1:1-7, 4:10. Nomination of kingship is in Fetha Nagast: p.271. Since it is a law book and the priests are the ones judging and the Fetha Nagast is written as speaking to priests/judges it is probably aimed at priests high in the hierarchy as being the electors.
[335] Munro-hay, 1991, p.41.
[336] Al-'Aḥkām al-Sulṭāniya:pp.3-18 especially p.4 about the '*ulamā*' being the electors and pp.7-8 about bias about appointment of family members for the caliphial office.

Māwardi goes on to state that the electors should have certain qualifications; that they have the quality of fairness, *'adāla*, with regard to its conditions, *lishurūṭih*a, which should be understood as the sharia, and that they have *'ilm,* knowledge, of whom deserves leadership with transparency and wisdom so that it is possible to discern the most qualified for the office. *'ilm* is of the same semantic rot as *'ulamā'*, the learned men of religion, it is thus they who are to be the electoral base. Al-Māwardi mentions the view of the jurists, *fuqahā'*, that any candidate chosen as an heir by the caliph from close family such as *al-walad*, the son, or *al-wālid*, the father, should be approved of by the electors to avoid risk of bias in the decision. Nomination is repeated even today by Islamist groups such as the Islamic State. Examining a modern counterpart reveals a similar thinking with the same term "ahlul-halli-wal-'aqd", the electors, also used similarly by Al-Māwardi.[337] This term can be translated as, people of dissolution and of binding, since they are the people choosing, binding, the caliph and holding responsibility for the caliph. What can be seen here is an idea of nomination based on consent by the men of religion in these cultures stretching millennia. This spreading of these memes ought to be viewed as an extension of the men of religion as the local authority wanting to control the rulership, to protect their own interests. It reflects a type of balance of power that suits the niche created both by cultural interaction and the physical geography, favoring and ensuring the autonomy and power of local elites versus the central rulership.

8.1.3.4. <u>Synoptic Discussion about the System of Divine Law Limiting Rulership</u>

There are several aspects of divine law that limit the rulership. First is the general existence of divine law that stands in an antagonistic relationship to ideas of man-made law. Secondly, all the traditions have writings of punishment, divine and/or confrontation by the men of religion against rulers who break/change the divine law. Thirdly, there have existed specific laws and rules that set boundaries of the rulership although, in the Code of Hammurabi it is a little bit harder to pinpoint it as a meme-trait. It has to be considered that the existence of specific rules and laws with regard to rulership implies ideally that they will be enforced or/and that they are a clear standard to measure rulership. It is still a convergently evolved ideal of holding the ruler responsible through divine law. Fourthly, there is a concept of nomination of the rulership by the men of religion in all the traditions except the Code of Hammurabi. These

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[337] *[…]the Islamic State – represented by ahlul-halli-wal-'aqd (its people of authority), consisting of its senior figures, leaders, and the shūrā council – resolved to announce the establishment of the Islamic khilāfah, the appointment of a khalīfah for the Muslims[…]* Hadhā waʿd Allah.

The term "ahlul-halli-wal-'aqd*"* is used in Al-'Aḥkām al-Sulṭāniya:p.5.

four aspects indicate a long lasting convergently evolved concept of the rulership being limited legislatively and held responsible under the true ruler, which is the divine, and through it by the men of religion. These divine laws are different from each other with different rules in different cultures and are even different within the same general culture, depending on the religious group within the culture. But, there is still the shared meme-trait of having clearly defined divine laws limiting the rulership. Instead of focusing on the details of the divine law the study wanted to focus on this general underlying core meme-trait as part of a convergently evolved ideal meme-plex in an overarching cultural niche.

The limited role of the centralized rulership can be seen as favored by cultural interexchange spreading the memes, although through cultural mutation, and shared geographical factors favoring local autonomy. Both of which limit the centralized rulership. This in turn is reflected in the survival of the meme-traits that recognizes the power of the men of religion as a local elite. The ruler should be seen generally as an executive branch of the state, held in check by a divine law from the legislative divine and the judiciary counterfoil in the form of the men of religion. The ideal is not an absolutist ideal of kingship as unleashed oriental despotism.[338] It is a limited rulership rather than the earlier absolutist ideas. The study's view follows what Brown describes and warns as viewing and reducing Islam, and other middle-eastern cultures, to pure despotism.[339] Yet, this study points out similarities; but, it does not regard religion only as mere tool of power. It regards religion as corrective power in itself creating a niche for a certain view of rulership. Although, it ought to be pointed out that the study's focus is on ideals of limitations whereas the old views of the orient varied from both ideals to practical application of state structure and focused on absolutism or a lack of limitations.

All of the traditions have restrictions on rulership, in the form of divine law directly and/or indirectly, despite their differences. Because of these meme-traits it is unlikely that these sources would be interpreted as being an excuse for absolutist rulership as the underlying repeating core meme-trait is that the divine is the legislator. This is why Hammurabi describes himself receiving the divine law and how he portrays himself as a servant of the Gods.[340] This theological idea of legitimacy as being a servant of the divine is espoused by Charpin with

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[338] As presented in *the Ancient East, 1914,* by David George Hogarth and older Weberian and Marxist models of Oriental despotism such as Curtis,2009, pp. 252-557, 270-271 and Minuti, 2012-05-03 and it, for example, contradicts Wittfogel's ideas of unchecked power among oriental cultures and the religious being subordinate to the rulership as in Wittfogel, 1957, pp.87-107.
[339] Brown, 2012, p. 66.
[340] Hammurabi: pp.3-5.

regard to Hammurabi's time,[341] like this study but in a smaller context. In Judges of the Old Testament it is explicitly stated[342] and that is relevant for both the Israelite-Jewish and Ethiopic tradition, as the Old Testament was adopted into it and the same sentiment is found in the Arabic-Islamic tradition exemplified in a quote of Abu-baker the first caliph made by Al-Māwardi.[343] As Crone and Hinds has observed, the earliest Umayyad caliphs did not call themselves caliphs of the messenger but rather caliphs of God thus implicating a more absolutist mandate in the earlier stages of Islam and this later disappeared/mutated into a role more similar to the other traditions due to opposition from the men of religion, *al-fuqahā'*.[344] The comparisons in this master study with other Semitic cultures highlights that there is a general trend of limiting rulership by subordinating it to divine law. Through shared geographical factors strengthening local authority and due to borrowings out of the cultural contact certain meme-traits were spread among the cultures. An overarching cultural niche strengthened a propagation of memes that ensure ideals limiting the power of a ruler as it suited the men of religion that stood in opposition to central rulership.

In most of Christian western European history the power of the divine has granted authority to rulers and their laws throughout history so that the difference is blurred.[345] However, the important matter is in how it manifests. In the Semitic traditions the rulership's power to make laws is subordinate to the textualism of divine law. What is portrayed, in all Semitic traditions, is not a mandate to rule as a deputy of God to implement his will according to vague principles but to administer the earthly realm in accordance to a concrete Divine law. Compare this to the Protestant ideal in Europe, "Until well into the 19th century, the authority to determine church law was in the hands of the secular rulers".[346] The Protestant idea of a king being head of the church and choosing to implement for example mosaic law rather than being forced to, would be strange to this ideal. Equally, the ideal is different from the byzantine caesaropapist structure of the emperor being the controlling head of religion.[347] There are problems of comparing the ideals of a reoccurring pattern that is more than three millennia old to the ideals of an empire from the fourth to the 15th century A.D. Despite this

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[341] Charpin, 2012, p.78.
[342] "I will not rule over you, neither will my son rule over you, but the Lord shall rule over you" Judges 8: 23.
[343] "*Lastu bikhalīfati allahi walākinnī khalīfatu rasūli 'illahi*", "I am not God's caliph, but the caliph of God's messenger" Al-'Aḥkām al-Sulṭāniya:p.12. Since the word *khalīfa*, caliph, can also mean deputy this implies that the rulership is not a mandate to rule, make law, in place of God but to carry on implementing God's will in the form of divine law.
[344] Crone & Hinds, 1986, pp. 30-42.
[345] As pointed out by Witte Jr, 2006, pp.457-461.
[346] Schöllgen etc., 2011.
[347] As described in Chadwick, 1993,pp. 164-166; Meyendorff, John, *The Byzantine legacy in the Orthodox Church*, Crestwood, N.Y. : St. Vladimir's Seminary Press, 1982, pp. 43-54 and Witte Jr., 2006,p.11.

difference in time, it is the oldest and thus best comparable European system. In any case, the caesaropapist structure would undermine the meme-trait of the divine law and render useless all calls for rebuking the rulership for breaking the divine law when the rulership is head of the religion and makes the law in the divine's place. The Semitic ideals of state are rational in that they have the practical purpose of avoiding abuse by setting up a standard of rules and laws that the rulership must follow and/or implement. If a divine law is present with a class of people to determine when and how it is overstepped it is easier to hold rulership accountable to a standard of justice and this compliments Mallat's and Darlings views about law.[348] There are rational reasons for the survival of divine laws as a meme-trait that makes sense in a world before modern technology made other methods for control possible. This study, from a comparative perspective, agrees with Eltigani Hamid in the idea that the Islamic ideal is not a theocracy in the western sense,[349] since it is under a direct divine law that brings together the earthly and the divine, and not rule by priests making laws, rather they interpret/follow the law. Yet, there is disagreement with Hamid's claim that the Jews, at least historically Middle-Eastern Jews, would differ and Islam is unique.[350] This is probably due to Hamid's emic perspective limiting him to his own culture and one source, the Quran.[351]

The direct divine being ideally the source of true law is discussed by Maria Puignau about the difference in ideals of princely mirrors between Europe and the Islamic middle-east during the medieval age. She uses Al-'Aḥkām al-Sulṭāniya as a primary source, and to quote:

> *Whereas the ideal prince in medieval Christian political literature is rex gratia Dei, stating that all power comes from God, in Islam the elevation of the Muslim ruler to a king contradicts formal theology, which stresses the indivisible sovereignty of God and also the reticence in using the term mulk for earthly rulers[352]*

Mulk means dominion/rulership, and as Crone and Hinds points out; law in Islam is regarded as given by God, not by the caliph, as caliphal law is rather administrative authority and practice made to uphold the divine law.[353] Caliphs were, during most of the medieval age, not seen as a source of law but administrators for its implementation. This is in opposition to the general separation of an earthly and sacred, religious, sphere in the two swords doctrine.[354]

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[348] It goes back to Mallat's idea of religious law actually being rather rational in Mallat,2007,p.5. Mallat does not focus on laws limiting rulership, but the thinking applies here and to Darling's circle,"Sovereignty is lordship, preserved by law."Darling, 2013, p. 3. Since following Divine law is what preserves the legitimacy to rule.

[349] Hamid, 2004, pp. 83-92.

[350] Hamid, 2004, pp. 83-85.

[351] Whereas this study uses a several sources across four cultures Hamid only uses the verses of the Quran that were revealed in Mecca according to Islamic tradition.

[352] Puignau, 2014, pp. 273-274.

[353] Crone&Hinds, 1986,pp. 50-55.

[354] As described by Witte Jr., 2006, pp. 211-216.

Jeremy Kleidosty compares al-Māwardī and the famous Italian writer Niccolò Machiavelli's, 1469-1527 AD, political thought with regard to where true wisdom for government lies and comes to the conclusion that Al-Māwardī's ideal differs from Machiavelli's in its focus on the following of a concrete divine law.[355] Although Machiavelli might not be considered typical and limited in time in comparison to the reoccurring ideals, he is still an example of a different thought-tradition and it reveals a difference in thought. On a comparative level Crone's and Hind's, Jeremy Kleidosty's and Maria Puignau's observations are here interpreted as examples of controlling rulership through divine law like those found in the other Semitic cultures. The same concept is present in all the other Semitic cultures. The Ethiopic and Jewish cultures follow a similar pattern as do the earlier laws of Hammurabi. Even though the title may be "king", the legislative power and final rulership is in the hands of the divine in the divine law for the believers. In that aspect it is alike. This ideal stands in opposition to the Marxist explanation of transforming the oriental despot into God or controller of the religion.[356] Thus, the study agrees with Neusner's notation that "The king reigns but does not rule" in the Mishna and Jose Faur regarding Judaism's and Maimonides's focus on law for authority.[357] This legal thinking should be viewed as being a result of physical and cultural factors shared among the Semitic cultures in a more historic developmental view, rather than from the mono-cultural view of Jose Faur and Neusner. Falk describes Jewish law as a contract with God, with various commitments and functions in society.[358] Falk writes from an emic Jewish perspective and largely focus on society rather than politics. But building upon Falk; the divine laws include forms of government and can be seen as a type of constitution in a historic sense. As seen, this ideal can be seen in the other Semitic cultures and is wider than just Falk and others' observations. Like constitutions in democracies that might differ from each other in details, they still have traits in common such as the populace being the electorate. A Semitic Theononocracy has the divine as legislator, the men of religion as a judiciary and a rulership in an executive role.

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[355] Kleidosty, Jeremy, Māwardī and Machiavelli: Reflections on Power in their Mirrors for Princes, *Philosophy East and West*, Volume 68, Number 3, July 2018, pp. 721-736 and especially p.731:
   In Māwardī, it is the wisdom of the eternal rule of law as defined by sharīʿa and facilitated by a Muslim ruler in an Islamic institutionalized state. For Machiavelli, it is the wisdom of historical experience, a rejection of idealism when it leads to the greater evil of instability, and the very modern call to create a national consciousness and a nationalistic, unified Italian polity.Kleidosty,2018, p.731.
[356] As claimed in Curtis, 2009, p.254 and Wittfogel, 1957, pp. 87-100.
[357] Neusner, 1991,p. 78 and: "Again, whereas in other legal systems, law is the effect of authority, in Judaism authority is the effect of the law. Therefore, all forms of authority are limited by the law. [….] Rather than a theological doctrine, this is a fundamental legal principle postulating that the law requires no promulgation or earthly authority to sanction it.[…]" Faur, 1993, 1660-1661 and Faur even claims that Maimonides did go further , than most others, in divine law as a basis for authority that can even be called "radical" Faur, 1993,p. 1661.
[358] Falk, 1991, pp.16-17, 32-34.

8.1.4. History of Subordination of Rulership to Divine Law

Before a discussion of the applicability of a tendency of a reoccurring meme-plex, it is important to go back to the greater theoretical framework with ideals as an interactive part of the material world. Thus, it is inevitable that certain reoccurring ideals have practical effects on history as people try to implement them. This led to a choice of showing the clearest examples of this, to establish reoccurring traits and their interaction with practical history. Considering the time-scale of the study, this argumentative part could be made longer and even argued against by using counter examples; but, it was considered that a practical and historical side of a tendency was needed to be discussed.

Dominique Charpin points out that later kings in Mesopotamia did not change the law of Hammurabi and that there was a great reluctance in changing the divine law due to its prestige.[359] If there is a general trend of history, of making rulership following a concrete divine law then it would be natural for kings to not change it easily. If Hammurabi is seen as a prophet then he managed to do what was repeated later in the other cultures and does not stand out other than being an early example.

The dwindling authority of the caliph during the Umayyad and later Abbasid period in the Arabic-Islamic culture sphere could also be explained through the aspects covered of going towards greater codified divine law. Crone & Hinds proposed the view that the original Islamic view was caliphal absolutism like certain Shia concepts of the rulership. Crone and Hind argued that the Shia concepts of the rulership, instead of being a deviant development, is an archaism preserving the concept of legal religious authority, in centralized absolutist rulership with which all of Islam began.[360] According to Crone and Hinds, the Sunni pattern represents the outcome of a conflict between the caliphs and early learned men of religion who assumed authority for themselves through a process of canonization and codification of divine law. Benjamin Jokisch continues the observations of Crone and Hinds and notes that both the Umayyad and Abbasids failed in directly implementing an imperial law based on the direct will of Caliphs.[361] Jokisch works with a greater amount of Arabic material, but he still connects this failure of centralization to the development of a legal class with their own interests and codification of divine law.

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[359] Charpin, 2012, pp. 156-157.
[360] Crone & Hinds, 1986, pp. 27-32, 97-110.
[361] Jokisch, Benjamin, *Islamic imperial law Harun-al-Rashid's codification project*. Berlin; New York: Walter De Gruyter, 2007, pp. 264, 280-285, 287- 293.

Both Crone & Hinds and Jokisch viewed the Arabic development in a vacuum, without an overarching context. In opposition to Crone & Hinds and Jokisch, if the existence of a divine law that seems to grow further complex, codified, is taken into the consideration,[362] with the existence of a class of judicial men of the divine law in all the other Semitic cultures the view changes. It does not appear like a random happening if taking a large-scale perspective with a theory of a larger niche created by cultural contact and physical factors that creates a certain ideal. Absolutism does not seem the norm. Divine law limited authority in a similar pattern across the cultures or would in the case of Judaism.[363] However, the question is if the Jews had a state like the other Semitic cultures would they have developed in the practical world similar to the Ethiopian and Arabic-Islamic cultures? The stories about the earlier Israelite kingdoms does indicate memes of a limited rulership with appointment of kings and other rules upon the kingship with a divine law that restricts the kingship. The spreaders of the Tanakh, like the later religious scholars of Islam, managed to spread memes of limitations on the rulership without successful opposition from a rulership. If the ideal kings were absolute it would have been hard for texts with this type of message contained within to survive. Borrowing from neighboring Semitic cultures and being grounded in similar closely related traditions, such as borrowed laws, and physical factors, favoring local authority, leads to similar developments. When the basic memes of divine law are adopted higher levels of interpretation will probably further limit the power of the central rulership. This fits, but from a greater comparative perspective, what Calum M. Carmichael argues. That much of the narrative of the Old Testament law was created or borrowed to legitimize a religious power and establish limits to central power.[364] Furthermore, this elucidates why no natural law was developed in the Jewish medieval tradition or earlier as claimed by Fox.[365] Natural law would be antagonistic to memes controlling the central rulership as it allows a separate law argued through reason rather than direct divine law and the Jewish development is a legacy of the earlier Israelite laws when they hade kingdoms and it was practically relevant.

Mikhail states that the coming of the Seljuq Turks, during the 11th century AD, led to an undermining of the practical caliph system with a central power bound by the sharia toward systems of more absolutist local powers.[366] Mikhail focuses on factors such as military power.

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[362] As discussed on pages 41-47.

[363] Since as Neusner, 1991, p. 9 points out a Jewish state was constructed as a fictional ideal as the Jews did not have a state.

[364] Carmichael, Calum M., *Law and narrative in the Bible : the evidence of the Deuteronomic laws and the Decalogue*, Ithaca : Cornell University Press, 1985, especially pp. 26-29, 74-76,107-112.

[365] Fox, 1995, pp.125-150.

[366] Mikhail, 1995, pp.50-52.

If viewed as a tendency among Semitic cultures it becomes natural that the ideals became less effective when a foreign entity such as the Turkic peoples migrated into the middle-east from the Asian steppes. They changed the cultural niche with their cultural memes in the forms of ideas of rulership. The Turks were cut off from the niche of the Semitic cultural interexchange by the language barrier initially and this study takes into consideration the alien nature of the Turkic peoples. They also mainly came to settle the mountainous areas of the Middle-East such as the Anatolian peninsula, which is not part of the heartlands. Thus the factors behind the cultural niche for an ideal were undermined. The development can also be considered together with the fact that power accumulate into local elites due to the geographical factors favoring it, especially during a period of disintegration of central power such as the late Abbasid period. On the subject of the Turks and Islam, Michael Curtis has studied and compared different European thinkers' views on Islam, among them Marx and Weber, with a focus on mainly Ottoman history. He comes to the conclusion of there actually being a sort of oriental despotism with no limits to central power.[367] This master study agrees with the matter being often "simplified" often due to post-colonial perspectives[368] and that there exists a kind of reoccurring ideal. It does not agree with the ideal being absolutist oriental despotism, as the divine law ideally limits the rulership. This is probably due to Curtis's focus on writers describing the Ottoman Empire, which is outside of the cultural niche of the studied tendency.

On the topic of practical effects of an ideal of following divine law, it could explain what drives groups like IS to fight as it is what they state that they fight for.[369] IS could be viewed as a current iteration trying to strive towards the ideal theonomocracy following in the footsteps of far older cultures than even the Arabic-Islamic culture itself. Especially considering the sharing of so many commonalities with similar arguments.[370] Therefore, there is disagreement with Asma Afsaruddin statement that "[...] there is very little in the foundational texts and thought that may be considered as mandating any particular mode of government, [...]"[371] with regard to the politics found in the Islamic traditions. Islamist materials do contain memes that have similar traits such as divine law to the other traditions, as they are an extension of their own Arabic-Islamic tradition. This in turn have led to similar ideals of the state through a history going back more than three millennia through intercultural exchange of several Semitic cultures. It should be mentioned that the ideal IS pursues ought to

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[367] Curtis, 2009, pp.299-311.
[368] As stated by Curtis, 2009, pp.299-304.
[369] Hadhā waʿd Allah, see appendix 3 for example.
[370] As discussed on pages 47, 62 and 77.
[371] Afsaruddin, 2006, p. 173.

be seen as due to cultural factors more than geography. The advent of modernity ought to have brought factors, such as modern vehicles, that reduces the ability to claim autonomy through the use of the desert as a physical barrier. Darling connects Islamist movements with a wish to achieve an ideal with regard to a concept of justice.[372] She argues that the history of Islamist-movements' calls for justice goes back far in the past. The connection to justice as described by Darling can be seen in the IS speech as connected to the wish of a state based on divine law. The law sets out the limits for what is allowed and what justice is for the ruler. The opposite is as the IS speech says oppression. Piety is following the divine laws, and equals justice, and was even a concept in the early Akkadian culture as Charpin claims that this differs from the European medieval notion of kingship "as fountains of justice" in that it went directly to the divine, rather than the kings themselves being representations of justice on earth.[373] This is an important intersection between the concept of justice and divine law where Darling's state practice and the study's focus on structure interact since the divine is the legislator and the decider of justice. It should be mentioned that the IS speech is an extreme case that was chosen as a point of comparison because of its similarities to the other sources. The speech is only representative of certain Islamist movements. With regard to cultural influences behind the ideals, the net of communication described as being a deciding factor of the development of the ideals has ,through modern times, probably begun to change as new ideals from outside the Semitic heartlands are communicated.[374] These new ideals will change the cultural niche and present challenges for the reoccurrence of the meme-traits. It is after all significant to remember that all the other sources are from premodern times, before the advent of modern communication reduced distance in communication. This modernity has to be taken into consideration as a factor if using the tendencies of reoccurring ideals as a tool of analysis during modern times.

As for the Ethiopic culture, they adopted the Didascalia that uses punishments of kings as examples for transgressors of the divine law and the Fetha Nagast served/serves as a constitutional law,[375] and was even known before it was the constitutional law. These texts have several memes that grant great power to the men of religion; that they are the judges, the electors at selection of rulership and that they uphold laws and stipulations limiting

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[372] Darling, 2013, pp.200-212.
[373] Charpin, 2012, p.145.
[374] This study was inspired to mention modernity due to the explanation of how the construction of religious identity and authority in Sunni Islam had to take place in a global context after the late 18th century due to increased contact as described in Berkey, 2003, pp. 268-269. Something that has only increased since the late 18th century.
[375] Dominic, 2010, pp.1-4.

kingship.[376] If absolute power was in the hands of the emperor it seems unlikely that such texts would have survived in the Ethiopic culture sphere, much less been taken as a constitution. This goes into discussions of the value of normative vs practical law, since law sometimes is not practically followed. The study's argument to this is that if the law was adopted by the rulership and even became recognized as legitimate then it ought to have had a practical role on the rulership. These texts ought to at least be seen as acknowledgements to the men of religion and the power of a divine law. Using the stories in the Kebra Nagast for legitimacy[377] that includes examples of the rulership being rebuked by the men of religion and called to not overstep its bonds ought to be seen as an acknowledgement of the power in the divine law and the men of religion.[378] It needs consideration that even before the conversion by emperor Ezana during the Akusmit period, it was a structure deeply tied with religion with priests ruling,[379] which means that it was probably not new. In addendum, it would be hard for the central rulership to have absolute power with the geography strengthening local power. The Ethiopic culture lived alongside the Arabic and Jewish cultures and the men of religion ought to have been able to see the memes in between the length of time of the texts of the Ethiopic culture sphere. There is probably an interest, like their neighbors the Arabs, in actually enforcing restrictions[380] and a possibility to do it with a geography favoring local authority. Unfortunately, no literature was found about the application of divine law against the rulership, but comparing it to the other Semitic developments it does seem likely.

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[376] Didascalia: p.57 and Fetha Nagast: pp. 249, 271-273.
[377] As for example emperor Zara Yaqob, 1399-1468 AD, did according to Tamrat,1972, pp.456-458. The coronation ceremony of the Solomonic line referenced the story, as can be seen in Binns, 2017, p. 54.
[378] Kebra Nagast: pp.46- 47.
[379] As described in Munro-hay, 1991, pp.144-145.
[380] Abou El-Fadl, 2001, pp.158-161;Berkey, 2003, 212-213; Brown, 2012, p.33 and Cook, 2000, pp. 50-67. All deal with various conflicts and struggles between the caliph and the ʿulamāʾ during the Abbasid period.

8.2. Summarizing a Tendency of Ideal State and its Confines: End of the First Stage

There are many aspects in the sources that point towards the tendency of a convergently reoccurring ideal-meme-plex with interconnected meme-traits reoccurring together in a shared cultural niche. There is a concept of divine law in all of the traditions including subjects such as criminal law and this divine law is concrete with defined punishments in this life. There is a tendency for the divine law to even grow more codified, expanded, and specified over time in the later traditions. The traditions have the men of religion as judges, but it is not clearly the case in the code of Hammurabi. There are still judges of divine law and powerful men of religion, but it has not been found that they have the same role. As for a religious role of the earthly leadership, legitimacy of the rulership lies in a holy lineage of the divine law and they are called upon to not break or change the divine law. The rulers are condemned if they do not follow these divine laws and even threatened with disobedience and/or rebellion by the men of religion. Additionally, there are divine laws directly limiting the conduct and controlling the rulership. The divine laws act as a limit of earthly power. Both generally by the existence of concrete divine law in matters such as criminal law and with specific laws and rules that set out limits and specifications for the rulership, such as nomination of the rulership with men of religion as the electors. There are also calls in the sources for the judges to not misjudge which is interpreted as not changing the divine law.

The law of Hammurabi somewhat sticks out, but it is the only text that seems to be clearly written from the perspective of the ruler rather than by men of religion. It could also be the lack of material from the Akkadian civilization in this study. In addition, the law of Hammurabi is the one furthest away culturally from the other cultures, if not in time. Since the greater theory is based on the idea of similar cultures evolving similarly if in a similar niche it explains that it should be somewhat dissimilar. As the starting culture is not connected as strongly to the others. But, it still shares several similar meme-traits with the later traditions, even if not as directly, and ought to have done so since it still shared geography and similar cultural context that made it evolve convergently to a certain degree.

Although the material for a time frame over three millennia is barely more than 10 text collections, it represents in various ways canonized and important literary works for these cultures. It does give survivor bias to the study; but, that the sources of the study survived and even thrived means they contained well-fitted meme-plexes for a cultural niche. The material must have been suited for their cultural niches to be able to reproduce even today, or become

standardized law afterwards in the case of the laws of Hammurabi. The tendency within these sources towards an ideal meme-plex is with meme-traits that seem to historically reappear in several of these cultures and survive over millennia. A traditional discourse analysis might argue about survival being based on power; but, this study's theoretical counterargument is that it is the cultural niche that allows, hinders and defines that power and survival. This study disregards a focus upon power and individuals to focus upon the cultural niche around them.

There is a pattern as to why these traits appear together as an ideal meme-plex. The core-meme trait of divine law was established in an early phase by borrowing due to the need of having a legitimate law and providing order with the divine as the legislator. The legitimacy of divine law limits the legislative power of earthly rulership in exchange for legitimacy of holy lineage and executive power. The divine law continued to survive due to providing stability fitting a more stable environment. In addition, it is a context with a geographical base for a structure of power between the men of religion as elites of local centers of power and the central rulership. This makes it possible for the survival of the memes with regard to the claims to judicial power for the men of religion. The legitimacy of divine law creates interests among the judiciary men of religion as a class to preserve the divine law, thus the calls against rulers and judges changing or breaking the law. For example calls against misjudging were spread as they protect the legitimacy of the divine law that the judges are dependent upon for their legitimacy. The men of religion have an interest in supporting the spread of a concept of holding the rulership responsible through the divine law. Thus memes are spread against rulers changing or breaking the divine law and a concept of specific divine laws and rules with regard to rulers is spread. Similarly, there is nomination of the rulership with the men of religion as the electors. Since the legitimacy of the rulership lies in a holy lineage, which is defined by the authority of divine law, the ruler becomes bound to not break the divine law. The ideal seems to be strengthened over time, since the core meme-trait holding the system together is the divine law and it grows further codified. As has been observed both in this study, and by others, the codification of divine law seems to be increasing the more time passes. This limits the possible types of interpretation and legislation that can be made by the rulers without infringing a concrete divine law. Thus it further limits legislative power. The entire process of the tendency towards the ideal is in a greater context of similar languages and contact that facilitated intercultural borrowing and included suitable concepts to be adopted. It should be mentioned that the political nature of the discussed religious meme-plexes makes it probably hard to pinpoint exactly when or in which way something was

borrowed. The sources revealing direct borrowing would have been outcompeted since it would undermine the legitimacy of the system, as the system relies on the origin being seen as divine rather than human, and not been fit for survival. A borrowing among the cultures ought to have occurred as they shared memes and contact with each other. When an ideal meme-plex is reoccurring over millennia across these cultures and even continues within the specific cultural contexts, it indicates a successful convergently evolved template for several similar cultural niches with reoccurring similar conditions.

The recurring meme-traits as a tendency can help to explain certain developments among the cultures. Especially since there are examples from practical history in which trends of meme-traits in the ideal meme-plex can be used to explain developments.[381] This demonstrates how the tendency towards the ideal meme-traits can reappear in practical use and interaction. Thus, it might be useful as an adopted tool for future studies. The tendency towards a convergently evolved ideal-type caused by an overarching cultural niche should not be seen as a deterministic law. As the ideals are inductively argued for, through synthesis of several diverse sources, it would not necessarily be always true outside of them. The study do not claim that there are not exceptions rather it tries to describe a general tendency. With a history over several millennia and several polities it would be strange if there were no exceptions due to locally stronger niches, such as the Turkic migrations. There are also the large gapes among the sources and the limited material that leaves gaps for other views. In addition, there are different time periods among the cultures when the meme-traits appear after their establishments as cultures, after previous collapses. Only four cultures were studied, which makes it hard to generalize outside of them. Furthermore, the greater theoretical framework used to analyze the material and the choice of material the tendency could be seen as limited to widespread texts dealing with religion, law and rulership among the majority cultures only. Despite all these factors and aspects it will be assumed that the tendency does work enough at least with the limited material to proceed to the second stage and use the tendency towards the ideal meme-plex, as a tool of analysis. The study does assume that there is a cultural niche favoring it in the Semitic heartlands, but it can still be useful even outside of it due to cultural influence.

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[381] As discussed on pages 82-86.

8.3. The Second Stage; Influence of the Ideal and its Cultural Niche

8.3.1. Nature of the Kitāb al-Tawḥīd and the Context around it

Having established the tendency towards a convergently evolved ideal meme-plex, in the first stage, it becomes important to know the limits of it and when it can be useful. Because of the theoretical framework, focusing on the cultural niche creating conditions for the convergent developments and spreading of the meme-traits of the ideal, there exists an importance in discussing a different cultural niche with regard to divine law. [382] This reason is why it was decided that it was important to discuss al-Māturīdī's *Kitāb al-Tawḥīd*. Al-Māturīdī lived and was active around Samarkand, in modern day Uzbekistan, far away from the centralized urbanized centers of the Semitic heartlands, of the Middle-East, with a different geography, grassy steppes and mountains around for example Samarkand and colder climate further in the north. The text still has strong cultural ties to the Arabic-Islamic civilization though not much is known about al-Māturīdī. He was an obscure figure until the Turkish migrations, after the 11th century AD, carried his theology into prominence.[383]

His text, *Kitāb al-Tawḥīd,* did not survive as a canonized work; however, his theology went on to survive in a spectrum of theologies together with the *al-ʾAshʿarīya* school and the textualist literalist *al-'athariya* tradition as one of the three mainline Sunni currents of theology. In *Kitāb al-Tawḥīd*'s case its lack of survival, as a canonized work, is probably because it is unusually written and chaotic in structure, the handwriting is clear, but the structure and word choices are not following the standard. The fact that he used an obscure form of language with long sentences and the text is somewhat chaotic in structure with a lack of organization points towards it being an amalgamation of texts as has been also noted by Özervali.[384] The problems of his text can be summarized in that he was a great theologian but not a great writer although his theology was reproduced by later writers.

Kitāb al-Tawḥīd was influenced a lot by foreign meme-plexes. The influence can be seen in his mentioning and discussing of philosophers such as Arasṭāṭilīs, Aristotle, with a discussion of Aristotle's philosophical concepts with the prime-mover.[385] The book begins with a clear outlining of epistemology with arguments for three ways of obtaining knowledge *ʿiyān*,

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[382] This also fulfills a criteria of Brown: "Any effort to isolate the special Islamic element in shaping the political life of Muslims must give those peoples and regions outside of the Middle East due consideration." Brown, 2012, p.12.
[383] Rudolph, 1997, p.1-4 and Watt, 1973, pp. 312-313.
[384] Özervali, 1997, p. 23, 28. Discusses the obscure choice of language and lack of structure.
[385] Kitāb al-Tawḥīd: pp.215-217. The name Arasṭāṭilīs can be found on p.215.

perceiving, *'akhbār*, transmissions from others and *naẓar*, contemplation, on what is known.[386] This epistemology is already known and has been discussed by Ahmad Mohamed Ahmed El-Galli.[387] There is a use of philosophical foreign words.[388] The use of foreign words is much more prevalent than the other sources and the closest literature to compare it to would be Arabic medieval medicinal texts, in terms of number of loanwords. As noted by Martin & Woodwar & Atmaja there is danger in applying the world rationalism to non-western premodern intellectual-traditions due to the vast differences.[389] This master study still considers it rationalistic for the use of logic in its approach and the noticed use of Greek influences and Arabic terminology with a Greek bent in *Kitāb al-Tawḥīd,* as has been known by others.[390] This is part of the general Greek influence on the development of Islamic theology.[391] When viewing these traits of al-Māturīdī's *Kitāb al-Tawḥīd* together with the fact that he lived in the periphery of the Arabic-Islamic world it becomes clear that al-Māturīdī' existed in a niche between the Arabic-Islamic world and other foreign influences. *Kitāb al-Tawḥīd* was chosen deliberately to study what happens to the tendency's impact in the peripheral spheres. It is important as it is the greater theoretical framework with the overarching cultural niche that creates the conditions for the tendency of the ideal meme-plex and is thus a study of the influence of the ideals in absence of the fundamental assumptions behind it. As it is only one text it could be a skewed result, but *Kitāb al-Tawḥīd* was still the foundation for the later *al-Māturīdīya* theology in the form of its legacy, so it is representative due to success of the theology. It consequently serves the criteria of representing a widespread theology, as a meme-plex, and had not been studied from a political perspective before, as no other study was found that was relevant to *Kitāb al-Tawḥīd*.

8.3.2. Apolitical at First Glance and Postponement versus Divine Law

Before discussing how al-Māturīdī's theology, with regard to divine law, represents a syncretism, it should be pointed out that the text does not have much to do with politics, not directly in any case. It rather deals with what can be known about God and concepts of a meta-physical nature. The sections that deal with matters that touch upon politics are mostly

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[386] Kitāb al-Tawḥīd: pp.69-74.
[387] El-Galli, Ahmad Mohamed Ahmed, 1976, *Place of reason in the theology of al-Maturidi and al-Ash'ari*, PhD Dissertation, The University of Edinburgh, pp. 17-24.
[388] That in part makes the text hard to read with words as the Greek sūfisṭā'īya "sophism," Kitāb al-Tawḥīd: p.222 or the Persian loanword of *histīya*" physical existence" Kitāb al-Tawḥīd:p.70.
[389] Martin & Woodwar & Atmaja, 1997,pp. 10-11.
[390] Rudolph, 1997, pp. 352-354 on the use of Greek words. Al-Māturīdī's rational argumentation style can be seen described in detail by El-Galli, 1976, especially on pp.50-64.
[391] See Fakhry, Majid, *A history of Islamic philosophy* ,New York., Columbia University Press, 1970, pp. 56-80 and Rosenthal, 1979, pp. 196-203, 208-240, for examples.

minor things not important to the ideal meme-plex from the first stage. That is to say they can fall outside or inside of it without causing any major issues or are so indirect that they would not cause large issues even if there were antagonistic contradictions. If *Kitāb al-Tawḥīd* was written in the Semitic heartland like the other texts, in the first stage study, it probably would have had a much more political dimension. Since it is a product of different niche it is to be expected to be divergent with what it brings. Noticing the lack of political dimensions would have been ahistorical if the study had not established and assumed that there is a previous tendency of going towards the ideal meme-plex in the other cultures parallel to the Arabic-Islamic development. The theology of al-Māturīdī' after all represents a part of the process that created Sunni Islam. Sunni Islam could have gone in a divergent direction, even if al-Māturīdī was late in its development during the 10th century AD.

If one assumes the tendency to be true, and still has an influence because of cultural contact, then there is one part that is important to discuss and that is the matter of the divine law. This is especially with regard to the extinct *murji'a* sect that is mentioned in a polemical discussion.[392] Attacks against the *murji'a* in the Islamic traditions is not new and it is well known that the sect was heavily debated.[393] There are actually hadiths in the Sunni-tradition that condemn the *murji'a* sect as being outside of Islam.[394] So, memes antagonistic to the *murji'a* have existed before. The reason for this becomes clear if a more modern version of this meme is considered, such as by the neo-'atharī IS proclamation of the caliphate and their rhetoric.[395] The polemical stance is due to the fact that the *murji'a* sect excluded deeds and action from the faith and viewed disbelief as only being punished by God and rewarded by him in the afterlife, not in this life as a part of the faith.[396] This idea of suspending judgment to God for disbelief was called *ʾirjā'* and is the word from which their name, *murji'a* is semantically derived. If one considers the importance of the divine law it becomes clear that the *murji'a* view undermines the legitimacy of divine law in this life as the basis for the Semitic theonomocray, since a focus on acts and orthopraxy is what the divine law is based on and it is the base for an entire ideal meme-plex of state structure. This is why it is so important to have memes that attack memes arguing for the removal of acts from the faith and

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[392] Kitāb al-Tawḥīd: pp.309-310.
[393] Watt, 1962, pp. 27-35; 1973, pp. 136-143.
[394] Sunan Ibn Majah 1:65 which states that the *murji'a* sect will never have a share in Islam. Al-Māturīdī actually mentions the same hadith in Kitāb al-Tawḥīd: p.482.
[395] *So let those leaders be ruined. And let that "ummah" they want to unite be ruined – an "ummah" of secularists, democrats, and nationalists... an "ummah" of murji'ah (a sect that excludes deeds from faith), ikhwān (the "Muslim Brotherhood" party), and surūriyyah (a sect influenced by the ikhwān claiming to be Salafī).*Hadhā waʿd Allah.
[396] Izutsu, 2006, pp.57-59, 201.

why it is compared to other political ideas. However, al-Māturīdī in fact supports the theology of ʾirjāʾ and polemicizes against them in other matters such as regarding predestination.[397]

The defense of the ʾirjāʾ-doctrine goes back to a question of ʾīmān, belief, and the ensuing discussions of what is included in the term and may be considered as the basis of all theological thinking among early Muslims.[398] This is significant because *Kitāb al-Tawḥīd* focuses on a theology of orthodoxy with the view that the basis of belief is *"al-ʾīmānu huwa at-taṣdīqu"*,"Belief is the holding of something as true"[399] and since belief is in the heart it is up to God to decide,[400] Al-Māturīdī goes so far to claim that every act may be forgiven except disbelief, since there can be no rational reason for forgiving unbelief as it is not a temporal matter limited to time and earth.[401] Al-Māturīdī' uses examples from the Quran where God calls sinners, doing misdeeds, still believers to demonstrate that they indeed are not outside the faith.[402] Actions as part of the faith, which is the basis for the idea of orthopraxy, are not faith according to *Kitāb al-Tawḥīd*'s theology. Faith is based on belief which is only holding the existence of God as described in the Quran as true and,"Al-maturidi took great pains to defend the views that grave sin does not deprive the sinner of his belief".[403] Al-Māturīdī attacks outright the hypocrites that claim that outside appearances, such as acts, rather than belief is what matters and says" *ʾinnahum fi d-darki l-ʾasfal*","verily they are in the lowest pit" and Al-Māturīdī instead gives weight to what is in the heart.[404] This stands in comparison to the other two surviving mainstream Sunni Islamic theologies that believe that actions are part of belief the *al-ʾAshʿarīya* and *al-ʾatharīya*, the literalist tradition, that has actions as part of belief and developed in the Semitic heartlands of the Middle East. The difference is known from before;[405] but, it has not been taken as an aspect with regard to ideals of state structure based on divine law as part of an ideal meme-plex, that this work is viewed with influence from. Al-Māturīdī does mention divine law as a form of mercy and says: "[…]*ʾiqāmatu l- ḥaddi min ar-raḥmati*", "[…] establishment of the ḥadd punishment is of mercy".[406] He argues that the laws of God is guiding people from doing wrong and they are

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[397] Kitāb al-Tawḥīd: pp.479-486 about the ʾirjāʾ-doctrine. See El-Galli, 1976,pp. 318-321 for further reading about predestination and the *murjiʾa*.
[398] Izutsu, 2001, p.11.
[399] Kitāb al-Tawḥīd: p.426.
[400] Kitāb al-Tawḥīd: p.478.
[401] *"Wa sāʾiru l-maʾāthimi jāʾizun rafʿa l-ḥurmati fī l-ʿaqli wa ʾibāḥata mā lahu min al-ʿuqūbati//*and every other sin is allowed to get their forbiddance removed in accordance with reason and be declared lawful what has a punishment"* Kitāb al-Tawḥīd: p.459.
[402] Kitāb al-Tawḥīd: p.477 and quoted verses are Quran: 61:2-4, 9:28, 4:75.
[403] El-Galli, 1976, 433.
[404] Entire argument is in Kitāb al-Tawḥīd: p.471-474. Quote is from p.472.
[405] See Watt, 1973, 312-318.
[406] Kitāb al-Tawḥīd: p.448.

kafārāt, compensations, on this earth for wrongs in this life.[407] Doing sins that are punishable by these laws does not make one fall out from belief. But, divine laws can be seen as being a good idea to implement for this life though committing sins related to them does not make a disbeliever. The divine law is not abrogated, but it has a reduced secondary role. This theology is not going as far as certain western traditions in Europe[408] as this does not directly support the introduction of the concept of law not based on direct divine revelation, like natural law; but, it creates the space for allowing it, or implies it, by placing the importance on the right intentions rather than actions, so it has certain similarities. Al-Māturīdī as the writer of *Kitāb al-Tawḥīd* had more contact with its original Semitic culture, in comparisons to the people who standardized the western catholic Bible and built theology around it. He wrote in Arabic in comparison to the standardization of Christianity in the west that was influenced by Greek/Roman cultural norms with Greek/Latin as lingua franca instead of Hebrew. The Arabic-Islamic culture was a dominant culture instead of being a peripheral secondary culture as with Christianity in the European west with regard to the early Roman church's relation to the Jews, which according to Chadwick and Broadhead lead to the abandonment of a focus on the orthopraxy of Jewish law.[409] Even if the Arabic-Islamic polity was beginning to disintegrate during this age, the 10th to the 11th century AD, it still retained its cultural relevancy. It explains why the divine law is not outright rejected or stated to be co-equal with inherent natural law. It was needed due to operating partially in the Arabic-Islamic niche, with the tendency towards Semitic theonomocracy. The theology would have died out if it did not somewhat embrace direct divine law as that would have been antagonistic to a core meme-trait of Arabic-Islamic development and its culture niche that the theology was partially exposed to. It is important to note that Sunni Islam did not necessarily need to develop in a legalistic direction if not for the influence of the cultural niche behind the tendency. Sunni-Islam could have evolved similarly to certain traditions of Christianity in the west, ignoring rules contained in the scripture in favor of man-made law inspired by God. Al-Māturīdī's meme of every sin except disbelief being possibly justified and belief being as only holding true could be used to justify greater man-made lawmaking. It would allow for a much more absolutist rulership, which makes laws in place of God and breaks the divine law, since it can be forgiven, which would have been condemned outright in the other sources.[410]

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[407] Kitāb al-Tawḥīd: p.448, 458.
[408] See pages 49-52 about the discussion of different law traditions.
[409] Chadwick, 1993,11-21 and Broadhead,2010,pp. 390-391.
[410] See pages 66-72 for discussions of condemnation for breaking and altering the divine law.

This theology suits an environment where much more flexible legislation is needed since the geographical factors did not provide for example the needed stability and there were probably other traditions of how to give legitimacy to law and rulership from other cultures present in the cultural context of the text. However, a lingering influence of the tendency can be noticed as *Kitāb al-Tawḥīd* still had contacts with a culture with the tendency towards the ideal meme-plex.

8.3.3. Role of Reason, Muʿtazila and Tradition in Regard to Divine and Natural law

The polemics involving the use of reason and tradition in *Kitāb al-Tawḥīd* are demonstrative of the complexity and context of Al-Māturīdī's theology with regard to divine law. This is an important aspect that involves the divine law more indirectly than the discussion of the *murji'a* sect, but still demonstrates the theological view of divine law to a great extent. Most demonstrative is Al-Māturīdī's polemics with *al-Muʿtazila*, an extinct rationalist theological school within Islam, and their use of pure reason. Reason should here be seen as inherent God-given ability to make interpretation and structuring of religion depending on context rather than literal uncritical following of tradition and scripture in following the direct divine law.

In *Kitāb al-Tawḥīd* the *al-Muʿtazila* movement is attacked for having disregarded what is written although it is probably an exaggeration as noted by Martin & Woodwar & Atmaja.[411] However, Al-Māturīdī is sharing the *al-Muʿtazila* view with regard to reason and he attacks blind following without reason.[412] According to Al-Māturīdī reason makes clear the difference between good and evil,[413] like the *al-Muʿtazila* view. The discussion about reason and the *Muʿtazila* movement cannot be considered without taking into consideration the *Al-miḥna*, the tribulation 833–848 AD, of religious persecution made in favor of the *Muʿtazila* movement and caliphal efforts to centralize authority around a hundred years before Al-

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[411] *It is not surprising that opponents of the Muʿtazila often charge the Muʿtazila with the view that humanity does not need revelation, that everything can be known through reason, that there is a conflict between reason and revelation, that they cling to reason and put revelation aside, and even that the Muʿtazila do not believe in revelation. But is it true that the Muʿtazila are of the opinion that everything can be known through reason and therefore that revelation is unnecessary? The writings of the Muʿtazila give exactly the opposite portrait. In their opinion, human reason is not sufficiently powerful to know everything and for this reason humans need revelation in order to reach conclusions concerning what is good and what is bad for them.* Martin & Woodwar & Atmaja, 1997, p.187

[412] Kitāb al-Tawḥīd: pp.65-66, 161, 190, 303. Al-Māturīdī's condemnation of blind following and imitation is already known and described in El-Galli, 1976, pp. 29-32.

[413] Kitāb al-Tawḥīd: pp.166-168.

Māturīdī.[414] The *Muʿtazila* movement was a part in trying to give legislative authority to the caliph in order to make laws in an absolutist manner with a mandate from God, rather than following the written traditions.[415] A theology that gives primacy to reason opens the door for antagonism towards the divine law. The *Muʿtazila* movement was based upon ideas of only accepting what is logically true in the religious sources at face value and interpret the rest metaphorically using reason.[416] If a divine law could be rationally claimed not to work it becomes legitimate to replace it, undermining the divine law's power to control the central rulership's authority by the claim of standing above mortal revision. The thinkers of the *Muʿtazila* movement supported ideas of natural law as divine law inherent in the creation of men that was revealed in reason.[417] Against the *al-Muʿtazila*, Al-Māturīdī includes in his epistemology, *khabar*, transmission, meaning knowledge can be obtained directly from sources, such the Quran and the Hadiths. Al-Māturīdī attacks the *Muʿtazila* movement for introducing new categories between believers and unbelievers and argues from both what God has said and from consensus of what it means to be a believer and/or unbeliever citing various sources.[418] To Al-Māturīdī the sayings of the holy sources are still important and unlike the *Muʿtazila* movement he does not argue that everything should be interpreted metaphorically and certain passages disregarded or introduced to human whim. For Al-Māturīdī reason is a tool to understand God and not something that stands above him and his commands, rather reason clarifies the commands. Al-Māturīdī in addition points out the weakness of humanity, as humans are mentally fallible, in using reason as a method.[419]

Al-Māturīdī did not see a contradiction between reason and revelation. This goes together with a logic of following God and his commands, which is a supportive meme-trait to divine law, rather than an idea of abandonment the sources in favor of totally free human reason. Yet, it is not textual literalism like the *al-'athariya* tradition, texts still need to be regarded and interpreted in accordance to reason, and context, to determine if it is a reasonable interpretation. Al-Māturīdī's theology would imply or even follow what O'Manique calls theocentric natural law doctrine in Europe. Natural law as the idea that certain laws are inherent in the human nature in our creation, traditionally by a divine source, and that these laws can be understood universally through human reason applied to scripture rather than

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[414] For more information about the effect of *Al-miḥna* on theology see Watt, 1962, pp.62-81.
[415] As described in Berkey, 2003, pp.124-129.
[416] Martin & Woodwar & Atmaja, 1997, pp.83-84.
[417] Emon, 2005, pp.351-395.
[418] Kitāb al-Tawḥīd: pp.428-431.
[419] Kitāb al-Tawḥīd: pp. 246-247, 253-254.

direct uncritical adoption. Not directly made by the divine, but indirectly by a nature given by the divine, and revealed through reason and divine guidance.[420] This fits how Al-Māturīdī views reason as making clear the difference between good and evil but still needs the guidance of God in scripture.[421] This is divergent from the more direct divine legal approach of the other sources in the first stage study. This ought to be considered in conjunction with what happened among the later Ottomans, 1298- 1924 AD, who followed the *al-Māturīdīya* school. For example the Turkic Ottoman Empire usually had state control of the ʿulamāʾ and made several *qanūn* laws in addition to the sharia becoming more state controlled.[422] They made laws themselves and had more direct control that differs from the lack of control during the Arabic Umayyad and Abbasid dynasties and the non-absolutist ideal of the Semitic theonomocracy. Al-Māturīdī's theology is more permissive of this than the other sources used in the first stage of the study. The allowance of absolutist legislative rulership, discussed here and under the previous heading, would support Michael Curtis's conclusion about the existence of oriental despotism with no limits to central power.[423] Ironically, it is connected to a tradition that seems to have inherited more from non-Semitic cultures, and thus non-Middle-Eastern, than the other sources in this study. It even takes influence from western philosophical traditions. That the *Al-Māturīdīya* theology became the official theology of the Ottomans, which was one of the main subject empires of the discussions in Michael Curtis' book, possibly explains why it fits Curtis applied the logic of one strain of thought about state structure to a greater generalization. This is an example of why it can be dangerous to generalize, as it can hide counter examples. Although, the opposite of generalizing, such as the focusing on particularistic subjects or details, risks ignoring greater tendencies, such as the one discussed in the first stage.

It should be viewed as *Kitāb al-Tawḥīd* goes partially against statements that there was no concept of natural law in classical Sunni Islam during the Abbasid age and earlier.[424]Al-Māturīdī's theology allows it, and even implies it, with his focus upon intention, rationality and belief rather than actions being the focus in faith, but he has not abandoned the divine law either. It is as Anver M. Emon has noted regarding natural law and non-dominant groups,

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[420] O'Manique, 2003,pp 166-167. O'Manique has a memetic cultural Darwinist perspective as well so the similarities despite the differences in the material and environment ought to be due to a cultural niche with similar factors.
[421] Kitāb al-Tawḥīd:pp.166-168.
[422] Brown, 2012, 35; Berkey, 2003, 263-265; Linant de Bellefonds et.al, 2012 and Zubaida, 2003,pp. 60-66. All discuss the state control of the ʿulamāʾ and *qanūn* laws in the Ottoman empire.
[423] Curtis,2009, pp.299-311.
[424] Such as those made in Crone, 2004, pp.263-264; Makdisi, 1997, p.130 and Mikhail, 1995,pp. 53-56.

such as the *Muʿtazila* movement during the Abbasid age and like what the *Al-Māturīdīya* school was during the time of Al-Māturīdī, the matter becomes a lot more complex.[425] The synthesis is probably taken from Greek philosophy, considering all the Greek influences, and comparing it to the *al-ʾAshʿarīya* school has already been done by others and it is viewed that Al-Māturīdī created a combination between traditionalism and rationalism that went further than the *al-ʾAshʿarīya* school.[426] The theology stands between the *al-ʾAshʿarīya* and *Muʿtazila* movement with regard to reason and this has been noted by Sahilun A. Nasir[427] and far from the *ʾatharīya* rejection in favor of literalism.[428] This ought not to be seen as surprising considering the foreign non-Arabic influences upon *Kitāb al-Tawḥīd* and how common translations of Greek philosophical works were.[429]

Al-Māturīdī's theology leaves much more space for interpretation than literalist theology; but, it does not give complete primacy to human reason either, which means it becomes an ambivalent attitude towards the divine law. It becomes possible to argue for both the divine law and against it depending on context and rationality behind it, rather than only supporting literalist following of divine law or the total freedom of human reason. If Al-Māturīdī's theology was clearly against the primacy of direct divine law it could have caused the theology to die out. Since that was what happened to the *Muʿtazila* movement as it did not survive even in the peripheries and it had a theology that directly undermined the basis for the ideal meme-plex, the divine law, rather than a synthesis that can be argued to fit the influence from both niches. The *Muʿtazila* faced severe cultural selective pressure that made the *Muʿtazila* die out, but the Al-Māturīdī's school continued. The theology survived the cultural pressure by not being directly against the overarching cultural niche of the tendency as it still had a strong influence through cultural connection. It can be risky to argue from just one example, the *al-Muʿtazila* in the matter of law, as there could be a lot of other factors for its lack of survival and it could be a field for future studies.

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[425] Emon, 2005, pp. 351-395.
[426] As described by Rudolph, 1997, pp. 354-356.
[427] Nasir, Sahilun A.,2005, The Epistemology of Kalam of Abu Mansur Al-Maturidi , *Al-Jamiʿah,*Vol. 43, No. 2, 2005/1426 H., pp.333-364.
[428] As for how the literalist traditionalists might view the use of reason, see. Melchert, 1997,pp, 3-20. Christopher Melchert describes the founder of the *Ḥanbalīya* school of *fiqh*, the ninth century scholar, Aḥmad Ibn ḥanbal's criticism of various rationalist movements within Islam a hundred years earlier and how they ignored the sources, such as the hadith, as the foundation of divine law. See also Schacht, 1950, pp. 129-132.
[429] See Rosenthal, 2003, pp. 75-162 for examples of translated texts.

8.3.4. The Role of the Divine Law in the Theology of Al-Māturīdī

The role of the divine law is that following the divine law according to Al-Māturīdī's *Kitāb al-Tawḥīd* is not what makes one a believer, but it is still a good idea to implement, even if not necessary. This comes from a theology based on a combination of rationalism and textualism based on context and it ultimately means a flexible ambivalent position towards the divine law. Being ambivalent towards the divine law means being ambivalent towards the controlling of the rulership, through divine law, and that is a fundamental core meme-trait for everything else with regard to the ideal meme-plex. This indicates a limitation of the tendency towards the reoccurring ideal. The theology of Al-Māturīdī is a suitable match for the peripheral niche with its combination of not imposing clearly a direct divine law as a part of the theology and not giving other sources of law such as reason primacy either. Al-Māturīdī's theology is the only tradition of the three surviving major Sunni theology traditions that evolved outside the Semitic heartlands of the Middle-east, which indicate a geographical limit. Both of the other traditions, the *al-ʾAshʿarīya* school and the textualist literalist *al-ʾathariya* are more focused on orthopraxy. Yet, Al-Māturīdī's theology was confined to a peripheral niche, probably since its ambivalence towards divine law did not fit the niche in the Semitic heartlands, and did not spread into the middle-east until the Turkic migrations. When it entered the middle-east it encountered stiff opposition especially by legal schools such as the *al-Shāfiʿīya* and "the theological doctrine led to a major clash with the Shāfiʿīs, now identified with Ashʿarī theology".[430] This goes together with what was mentioned in the first stage about Turkic migrations bringing a new cultural niche. It was not until the Seljuq Turks 1037–1194 AD and the Ottoman Empire 1298- 1924 AD became established in the middle-east that the theology spread there, as those migrations brought with them a culture that supported a niche that Al-Māturīdī's theology could spread in. This tells us the extent of the cultural niche behind the reoccurring meme-plex and its ability to hinder other systems, and this could be an avenue for future studies. Most of what this study has said has already been gone through by previous studies but this master study offers a new perspective by focusing on the theology's political implications with regard to divine law.

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[430] Madelung, W. 'Māturīdiyya'.2012, *Encyclopaedia of Islam*, Second Edition. Ed. P. Bearman et al. Brill Reference Online. Web. 8 May 2019.

8.3.4.1. Relationship to the Tendency towards Theonomocracy and the Limits of the Ideal

That the theology in *Kitāb al-Tawḥīd* does not completely abandon the divine law explains a certain tendency of not challenging the foundation for the tendency towards Semitic Theonomocracy. However, the lack of other political stances related to the ideal meme-plex and the fact that the divine law has a secondary role that can be argued to not always need to be established does reveal that there are differences. The ideal weakens somewhat when the tendency is tried in a different context geographically and culturally, as would be expected when the cultural niche is dissimilar. Despite this change of niche it retains features such as the divine law to an extent by still being influenced by the cultural contacts to the Arabic language and culture. The theology integrates the Arabic-Islamic influences with other foreign influences, mainly a Greek-cultural influences in a peripheral cultural niche. It is a text trying to balance the Semitic Theonomocracy and other traditions with regard to the divine law. The tendency has a geographical or cultural limit in that it does not reveal itself as strongly in the peripheral niche of Al-Māturīdī's home-region, since the niche lacks several geographical features found in the Semitic heartlands that strengthened the survival of divine law. However, the influences of a tendency towards an ideal meme-plex of Semitic theonomocracy can still be regarded in how Al-Māturīdī created a surviving syncretic theology that survived in that peripheral cultural niche. This happened since the Arabic culture was dominant during the time of Al-Māturīdī instead of being a peripheral secondary culture, compared with Christianity in the European west with regard to the Jews. This development is under the assumption that the development was caused by the geographical and cultural factors in the cultural niche rather than personal factors regarding Al-Māturīdī.

9. Conclusion of the Study and Answering Questions about Ideal Semitic State Structure from a Long Perspective

9.1. Answering the Questions

The questions behind the two stages of the study needed answering in order to discuss the final matter about a tendency and bind it to the intention behind this study: to increase our knowledge about reappearing ideals of state structure among Semitic cultures from a long perspective. For the first stage the question was:

- Which shared interconnected traits of an ideal state structure with regard to concrete divine law, the judiciary role and the limitations of the earthly centralized rulership are reoccurring in 3 or more of these 4 cultures across the sources? Why are they reoccurring through the various sources of these cultures throughout several millennia?

The convergently evolving ideal meme-plex of state structure is based upon the divine law, hence Semitic Theonomocracy, rule by divine law. The divine laws are concrete with defined punishments and include laws regarding areas that are usually the domain of rulership such as property law and criminal law. The divine law is interpreted as being established in an early phase due to the need of having a legitimate law at a phase of establishment by borrowing concepts and laws through cultural interexchange. In addition, the divine law provides stability that fits a more stable environment. Divine law as a meme-trait creates a cultural niche for the men of religion as a judiciary class that are connected to being a local elite in a geography that grants some autonomous power. The divine law becomes a part of a power dynamic between central authority and local power when divine laws sets out a role for the rulership with a concept of limitations of the legislative power and execution of the rulership. These limitations include both memes of specific limitations and generally by the divine laws existence as being more legitimate than man-made law and is further strengthened by a lack of a concept of natural law in the sources. The divine laws grant legitimacy with holy lineage, but they bind the ruler to the religion and the divine law. Likewise, the divine law grants legitimacy to the men of religion as judges and the ones holding rulership responsible and nominating the rulership. Connected to this legitimacy are calls for the judges to not misjudge as that would threaten the legitimacy of the judges themselves. There is a process of the divine law being further codified by an internal process of interpretation and need to standardize laws, which further limit the legislative power as time goes on. These memes and meme-traits have been viewed as being borrowed from each other under constant cross borrowing. The memes developed convergently as the cultures shared many of the same geographical and cultural factors that impacted the development in a conflict between central

and local authority. These factors created a greater overarching cultural niche for the reoccurring and interconnected traits, as a tendency towards a Semitic Theonomocracy.

The code of Hammurabi does stick out by not having nomination of the rulership or clearly the men of religion as judges but mostly follows the traits of the other traditions, since everything else mostly fits with the other cultures and the men of religion were also powerful in the time of Hammurabi. In addition, there were issues such as holy lineage for the Ethiopic tradition developing later than the other traditions, depending on when the sources for the Kebra Nagast were made and what was within them. A lack of focus upon specific details or individuals, such as Maimonides, and their impact are an issue that can have influenced the conclusions. The sources mostly being directly religious was a problem, although it was not the case for every source. Considering that the men of religion were local elites it is not strange, because they were also the literary class. Since intention was less important, because of the perspective of the study, it reduces the issue of both a lack of focus upon individuals and the majority of the sources coming from direct religious sources, but it still ought to be mentioned. The number of religious sources could potentially be remedied by broadening the total number of sources for each culture in a future study, which would aid in establishing the reoccurring tendency over a larger number of sources with less large time gaps.

The Second stage was selected to study a specific outlier case and reveal how the tendency of the divine law has its limits, but it can still be used to explain certain developments. The question for the second stage was:

- How does *Kitāb al-Tawḥīd's* theology with regard to divine law, with assumed influence of a tendency towards a concrete divine law and the context behind the theology, indicate the geographical and cultural confines of the tendency towards the reoccurring traits of the ideal?

This question was answered with Al-Māturīdī's *Kitāb al-Tawḥīd* having an ambivalent view of the divine law, rather than being clearly in support of it or discarding it, in a combination between textualism and rationalism. Orthopraxy, which is the base of divine law, becomes a secondary issue to belief and not a direct part of salvation or damnation as a believer. The core meme-trait of divine law inside the ideal meme-plex exists, but the rationale behind it is weakened. The theology has taken a secondary role that is not an abandonment with a non-confrontational stance towards the core trait of the ideal meme-plex, the divine law. Since the physical environment where Al-Māturīdī's *Kitāb al-Tawḥīd* was made is different and the cultural influences from foreign meme-plexes are greater the theology needed to balance between the cultural niche favoring the tendency towards a concrete divine law through

cultural contact and other influences forming a different niche. This syncretism was the result of influence from the larger and dominant Arabic-Islamic culture meeting a local peripheral culture. The relationship was argued through comparisons to natural law and standardization of Christianity in Europe with regard to Jewish influence. It implied that that for a tendency to have an influence outside of the Semitic heartlands, the lowlands of the Middle-East and North Africa, it must be inside a context that is in the shadow of a culture where the ideals of the tendency are dominant. Nevertheless, the tendency towards the reoccurring ideal traits was affected by being outside the usual geographical region of the tendency, as the theology was ambivalent towards the divine law, which the entire ideal meme-plex rests upon.

The use of the second stage reveals a practical side of the tendency in application and its influence. It demonstrated that considering the political implications in it with regard to a specific case can be fruitful, since it reveals and explains what and how certain traits of ideals of state develop. It should be mentioned that the text does not discuss politics directly to any large extent and the personal context of Al-Māturīdī is relatively unknown, which are factors that can weaken the study.

After having discussed both the stages it will conclude with the question;

- Which factors and aspects in the study indicate the scope of the tendency towards the traits of the ideal with regard to geography, cultural influence and time?

Through the first stage study it was demonstrated that several interconnected meme-traits reoccurred through several sources spanning four Semitic cultures and over three millennia. As discussed at the end of the first stage, the study does not claim that there are no exceptions from Semitic theonomocracy. The exceptions in the sources are that the code of Hammurabi was lacking certain traits and the Arabic- Islamic culture was late with a clear role of men of religion as a judiciary class and the Ethiopic development was late with holy lineage. Nevertheless, generally, except those cases that can be due to time gaps or lack of material, the interconnected traits are reappearing and the material used represents a tendency since most of it was either officially endorsed or became canonized either religiously or as a part of literary cannon. Although, it should be mentioned that the amount of sources is still small considering the several millennia of history discussed. Because of the greater theoretical framework used to analyze the material and the choice of material the tendency should be seen a limited to widespread literature dealing with religion, law and rulership among the majority cultures. Another factor of error is with regard to the time distance among the sources and the points of comparisons to other systems of state structure. The tendency should

be viewed with the caveat that the study has viewed the other texts with a rather Arabist lens or literalist lens and has not read and interpreted all the texts in their original languages. A future study of the subject might be done by someone more capable in other Semitic languages than Arabic. It may also include more than the four cultures that was the basis of this study. The small number of only four cultures ought to be seen as a limiting aspect of how far the tendency can be viewed as being culturally influential.

Furthermore, the study has discussed practical scenarios where tendencies towards the meme-traits of the tendency, if taken into a practical context, could have been used to explain certain developments from a greater perspective.[431] The existence of a cultural niche favoring a tendency towards the meme-traits would for example explain why the caliphs began to lose power as a result of the codification of the Sunni Islamic religion and appearance of a class of men of religion, if taken as a general pattern. The influence of the tendency towards divine law was used, in the second stage, to reveal how a greater cultural niche can be seen influencing the development of a theology's political dimensions, as an influence from cultural contact. It was assumed that the Al-Māturīdī's *Kitāb al-Tawḥīd* was relevantly representative as it was a foundational text for one of the major Sunni schools of theology. This has beneficial implications for the use of the tendency for future studies to explain certain phenomena in a peripheral context. The second stage indicate the limits of the tendency with regard to geography and other cultural influences, as was discussed in the first stage with the Jewish scholar Isaac Abravanel that did not want a kingship to exist. Outside of the Semitic heartlands, the lowlands of the Middle East and North Africa, the tendency is weaker and should only be partially considered when a non-Semitic culture is influenced by a larger and more dominant Semitic culture, as was argued in the second stage.

In the case of using modern Islamist movements such IS it was to discuss the relevancy of the tendency even today. Although, it ought to be seen as a cultural legacy and living in a cultural niche that was formed previously by the geographical factors. Modernity has changed many of the physical factors that would have created the niche for the tendency. Modern cars and transportation reduce the logistical factors. Yet, they ought still to be considered as a legacy, as a result of a repeating tendency towards an ideal, and it is the belief behind this study that history needs to have relevancy and connection to the modern world. Linda T Darling points more of direct link; but, she focuses on state praxis in her circle-model and views them as a response to injustice in governmental praxis following a pattern going as far back as the early

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[431] See pages 82-86 about practical implications.

Mesopotamians.[432] The focus of the study was on state structure and viewed them as striving towards an ideal that on a certain meta-level is represented in the tendency towards the ideal-meme-plex of state structure. The implementation of an ideal as justice is a juncture between the ideal meme-plex and Darling's circle. This can be seen in how the IS announcement speech shared all the meme-traits with the other sources. There are limitations in using IS as they are an extreme case and was mostly chosen to be comparable to the other sources. Modern and other foreign influences, such as the nomadic Turkic influences after the migrations of the 10th century AD, upon the Middle East and North Africa means that consideration must be taken as to how far a tendency works when dealing with other sources as the introduction of a different cultural niche affects the ideals.

9.2. How this Study Differs from Various Previous Studies

This study of the ideals of Semitic state structure was based on long lasting historical geographical and cultural factors with a cultural Darwinist lens. It has tried to depart from the older absolutist views based on racialist thinking with the racial explanations of the past or views connected to methods of production and oriental despotism.[433] The focus of the study has been structures rather than practice such as Linda Darling's book.[434] The study has used a perspective giving emphasis to the legitimacy brought by religion and divine commands that made it different from both Linda Darling's book and others.[435]

The study used a large-scale comparative view focused on religious borrowing and not viewing the cultures in isolation with a particularistic perspective. This is why the study has disagreed with claims about unique religious relationships to concrete divine law in a state context.[436] These claims appear less unique in comparison with the other Semitic cultures from a historical perspective spanning several millennia using a broader general view. This is the case with particularly the Ethiopic tradition, which is rarely studied or compared to other cultures despite its contacts. Usually only the Jewish and/or Arabic-Islamic cultures are compared to each other, but the study wanted to go further and included the Ethiopic tradition and the Akkadian code of Hammurabi. The study has agreed with several earlier studies with

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[432] Darling, 2013, pp.200-212.

[433] Such as Wittfogel,1957, pp.22-34, 87-107 and in Minuti, Rolando: Oriental Despotism, in: *European History Online (EGO)*, published by the Leibniz Institute of European History (IEG), Mainz 2012-05 -03.

[434] Darling, Linda T.,. *A history of social justice and political power in the Middle East: the circle of justice from Mesopotamia to globalization*, London: Routledge, 2013.

[435] Such as Aziz al-Aẓmah's *Muslim Kingship,* 2001.

[436] Such as Fuad Khuri's claim that Islam is divergent from Christianity in its focus on concrete divine law in Khuri, 1990, pp. 18, 30-31 or in Akhtar,2011, pp.37-40,71-72; Brown, 2012, pp. 24-26 and Hamid, 2004, pp.83-85, about the claims of the same uniqueness of Islam. The same is true for David Polish's claims that the Jews developed a theocracy unique to the Jews with divine guidance through law in Polish, 1989, pp.33-40.

regard to their statements and observations regarding statecraft and law in these cultures but the comparative view has revealed a new and broader perspective on these issues as being part of a coherent whole. The study thus differed from Crone & Hinds and Jokisch, and others, who did not take into account comparisons between the Semitic cultures in, for example, divine law limiting rulership.[437] The study has used literature about western developments and compared with it to argue for how the sources differ from aspects found in the west, or in *Kitāb al-Tawḥīd's* case is close to it. This also explained why certain alternative models, such as the byzantine caesaropapist structure, would not fit what was observed in the sources. This has mainly been about the presence of a concrete divine law and ideals about the role of the rulership. The caveat in these discussions should be that it was a generalized discussion and that there are problems due to time-scale differences and heterogeneity of European history. There might thus be a risk of reductionist Occidentalism. The use of the influence of a tendency towards divine law in the second stage led to the adoption of a focus on the political aspects of the early theology of Al-Māturīdī, which covered an area previously not touched upon with regard to the divine law and its political implications.

By having a generalist comparative large-scale view over several millennia and cultures instead of focusing upon particularistic narratives, due to post-colonial fears of defining groups, it became possible to discuss historically significant structures and processes with historical effects. This counteracts what Michael Curtis describes as simplistic rejections of previous knowledge about the Middle-East due to post-colonial and post-modernist views.[438] To find a tendency in other cultures, civilizations or any group it is necessary to acknowledge the possibility of tendencies of fundamental features within them and to do that it is necessary to have definitions of a group and make generalizations and/or abstractions, which carry the danger of overgeneralization. However, through the comparison between the various sources of the cultures a certain reoccurring tendency can be observed that might not be a traditional Semitic theocracy or Oriental despotism but still complicates previous rejections of them among various authors.[439] Tendencies towards certain structures within Islam,[440] do have implications for Islamism, which is a relevant issue today as the IS speech was an example.

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[437] And thus did not notice the similarities in limiting the rulership through divine law such as Carmichael, 1985, pp. 26-29, 74-76,107-112; Charpin, 2012, pp.156-157; Crone & Hinds, 1986,pp. 97-110; Faur, 1993, pp.1660-1661; Jokisch, 2007, pp. 264, 280-285, 287- 293 and Neusner, 1991,pp. 75-82.

[438] Curtis, 2009, pp.6-18.

[439] Such as Bordoni, 2017, pp.103-106; Darling, 2013, pp. 6-7; Leander, 2013, pp.92-94; Said, 2000, pp. 186-187, 219-250 and Salaymeh, 2016, pp. 92-111.

[440] As mentioned in Curtis, 2009, pp.310-311.

Even today Islamic legal questions about loyalty and rebellion against rulers are important.[441] The historian should be concerned by ethical considerations towards the methods of a study if they directly affect a private person; yet, the historian should not be afraid of sensitive issues if there is an epistemological base for it. After all what kind of narratives does silence or denial reproduce? What is the role of a historian if not to uncover the past for the future?

9.3. Conclusive Summation

By adopting a comparative method on a large-scale this study managed to study a system of ideals with regard to the state based on divine law, a Semitic theonomocracy. Theoretically based not, as previous earlier literature, upon race or on production methods but on geography and cultural interexchange. This was done through a cultural Darwinist perspective that explains an ideal's reoccurrence through more than three millennia of history. In the study a focus has been upon the conflict between local authority and centralized rulership. The tendency towards Semitic theonomocracy and its implications of applicability and limitations has been argued in regard to how it has affected the development of the theology found in *Kitāb al-Tawḥīd*. It concluded that it adopted an ambivalent position with regard to divine law that does not directly oppose the niche of the ideal, but the influence of the tendency of reoccurring ideals was still limited. This goes back to the main intention behind this study; to increase our knowledge about reappearing ideals of state structure among Semitic cultures, from a long comparative perspective, with defined limits such as in time, culture and geography and causes for its existence based on those, summarized for future studies.[442]

9.4. How to Improve upon What Has Been Studied for Future Studies

Since this study has had a subject close to studies of religion and general Middle-Eastern studies there could be an avenue for further focusing on the religious aspect rather than the political and view the process from a reversed perspective. That is to say asking the question: How does the ideal influence religion rather than how the religious traditions, such as divine law, with the cultural niche lead to the tendency. It would be possible to go into modern history with regards to subjects such as Islamism or the religious nature of the laws in the Ethiopian constitution, when still being aware of the roots of the tendency. There could also be a turn towards a study of sources in peripheral cultures using the tendency, like what was done with regard to *Kitāb al-Tawḥīd,* especially Turkic and Ottoman history as they were

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[441] As pointed out by Abou El-Fadl, 2001, pp. 333-342.
[442] For a model derived from the answers of the study see appendix 6.

viewed as having brought a new cultural influence to the Middle-east. Smaller groups and extinct sects, such as the *Muʿtazila* movement, with regard to their developments could be beneficial to examine as well. However, this undermines the link between the greater theoretical framework and the tendency since smaller groups and sects are not the dominant cultural memes and it would be necessary to change the theoretical focus somewhat.

The study has not focused on ideals of administration-structure or the rulership's retinue structures since most of the material did not give such information and it would have turned away from the wish for a generalist perspective and instead focused on particularistic details. This applies to the existence of men of religion as judges and their internal hierarchies, which leaves room for a future study. A focus on a more detailed level would remove some of the problems with regard to treating all the Semitic cultures as the same, since it could put focus upon various strategies of actualizing the ideals. There are the divine laws themselves that could be further studied in detail. In this study they were only studied on a meta-level with a general structure of the laws, being concrete laws rather than principles, and rational behind them, being from the divine. Since the laws themselves does set different limits and are dissimilar, instead the focus was on the concept of the divine law being a limiter on to the power of rulership rather than the specifics of the laws themselves. This is an area for future research to fill that gap and weakness of this study. Since the study depended upon a generalist perspective and the meme-trait behind the divine law was considered more important than the details of each cultural system.

It would be beneficial to use more Akkadian material from the tradition of Hammurabi since the study did not have more than the code of Hammurabi and could thus not observe any changes in that tradition. Texts from other Semitic cultures, such as the south Arabians or the Phoenicians could be a fruitful avenue for further research since they could increase the understanding of the Semitic cultures that are not based on an Abrahamic faith. Especially since the Hammurabi text stood out somewhat, lacking a clear religious role of the judges. Material that was not included in the study due to its lack of spread and time from the later Akkadian Assyrian civilization could be included.[443]

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[443] For example Grayson, A. Kirk , *Assyrian rulers of the third and second millennia BC (to 1115 BC)* , Toronto ; London : University of Toronto Press. 1987. The work could be used as it is a collection of translated tablets about Assyrian kings and does include several of the traits discussed in the study.

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12. Appendix 1, Transcription system

Arabic alphabet	Transcription symbol
ء	'
ا	ā
ب	b
ت	t
ث	th
ج	j
ح	ḥ
خ	kh
د	d
ذ	dh
ر	r
ز	z
س	s
ش	sh
ص	ṣ
ض	ḍ
ط	ṭ
ظ	ẓ
ع	'
غ	gh
ف	f
ق	q
ك	k
ل	l
م	m
ن	n
ه	H
و	w, ū
ي	y, ī

Symbol	Transcription symbol
◌́	a
◌ُ	u
◌ِ	i
◌ّ	*Doubling the written consonant*
◌ٌ	Un
◌ً	An
◌ٍ	In

The transcription system is taken from the Romanization system from the library of the University of Lund

http://www.loc.gov/catdir/cpso/romanization/arabic.pdf(2019-04-28)

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13. Appendix 2, Glossary

ʿaqīda : A word meaning creed or more generally theology.

al-ʾAshʿarīya: One of the three main theological currents of Sunni Islam, founded by Abu al-Hasan al-Ashʿari.

ʾatharī: Literalist and traditionalist interpretation of the islam with literal reading of the Qur'an and the other religious sources as opposed to metaphorical interpretations of the sources.

al-ʾatharīya: A catch all term for those having ʾatharī views.

Caesaropapism: the ruler controls the religious and exercises supreme authority in religious matters by virtue of his autonomous legitimacy granted by the divine. It means a subordination of priests to secular power and authority.

Codification: Codification is the process of standardizing and defining law in written form.

Copt: A member of the indigenous Coptic Christian minority in Egypt.

Emic: Having the perspective of one who participates in the culture being studied

Fiqh: Islamic jurisprudence of the sharia based upon understanding of the religious sources through various methods.

Fuqahāʾ: Religious scholars learned in the art of fiqh plural of faqīh.

Hadith: A story based upon the Prophet Muhammad's way of life and his closest compatriots used as a model for fiqh and living an Islamic life

Halakha: Jewish religious law

al-Ḥanafīya: A school of islamic law, fiqh, founded by Abū Ḥanīfa al-Nuʿmān

al-Ḥanbalīya: A school of islamic law, fiqh, founded by Aḥmad Ibn ḥanbal

Ḥisba: The concept of holding someone responsable in accordance to the will of God with regard to various matters in Islam

Hierocracy: Priests make law and rule society and secular power and authority is subordinate to it.

Ḥudūd: Laws regarding crimes that require physical punishments in the Quran, is the plural of Ḥadd.

IS: The Islamic State, a radical literalist Sunni movement that from the year 2013 began to conquer territory in Syria and later also began to claim territory in Iraq

Levant: An area including modern day Israel, Jordan , Palestine, Lebanon, western Syria, the Sinai peninsula and Cyprus.

al-Māturīdīya: One of the three main theological currents of Sunni Islam, founded by Abū Manṣūr al-Māturīdīʾ

Mosaic law: the laws found in the old testament brought down by the prophet Moses.

Natural law: Is the idea of law based on the use of reason to reveal rules of behavior from the inherent nature/being of God's creation.

Oriental despotism: The idea that oriental societies were dominated by absolutist centralized states without any type of accountability.

Particularistic: only focused upon one culture, or detail in one culture, and being viewed as isolated in absence of a larger causative context with a comparative perspective.

Princely mirror: A literary genre focused on instructing rulers on aspects of rule and behavior.

Al-qāḍī: the judge who judges in accordance to the sharia

Rabbi: a Jewish religious scholar.

Sanhedrin: The name of the highest court of 71 judges in the Israelite-Jewish tradition that was disbanded the year 425 AD due to roman persecution.

al-Shāfiʿīya: A school of islamic law, fiqh, founded by Abū ʿAbdullāh Muhammad ibn Idrīs al-Shāfiʿī .

Shamash: A Sun-god among the ancient Mesopotamians

Sharia: the Islamic religious law

Tafsīr: Means explanation, but generally it means exegesis of the Quran.

Tanakh: The Hebrew Bible roughly equaling the Old Testament.

Theonomocracy: rule by divine law, a system where religious law defines what is to be done and not.

Two swords doctrine: A medieval theological theory of two separate but co-equal powers, separated in the sacred authority of the priesthood and the profane royal power, under God and all under a common Catholic Christian umbrella.

’usul: is a term for the principles of deriving Islamic law.

*ʿulamāʾ*: the plural of ʿalīm and means the learned men of religion within Islam.

14. Appendix 3

It should be remarked that the new universal power is not only non-Semitic for the first time in well-certified history, but controlled by a very pure Aryan stock, much nearer kin to the peoples of the West than any Oriental folk with which they have had intimate relations hitherto. The Persians appeared from the Back of Beyond, uncontaminated by Alarodian savagery and unhampered by the theocratic prepossessions and nomadic traditions of Semites. They were highlanders of unimpaired vigor, frugal habit, settled agricultural life, long-established social cohesion and spiritual religious conceptions. Possibly, too, before they issued from the vast Iranian plateau, they were not wholly unversed in the administration of wide territories. In any case, their quick intelligence enabled them to profit by models of imperial organization which persisted in the lands they now acquired. (Hogarth,1914,168-169)

The IS ideal summarized:

Without this condition being met, authority becomes nothing more than kingship, dominance and rule, accompanied with destruction, corruption, oppression, subjugation, fear, and the decadence of the human being and his descent to the level of animals. That is the reality of succession, which Allah created us for. It is not simply kingship, subjugation, dominance, and rule. Rather, succession is to utilize all that for the purpose of compelling the people to do what the Sharia (Allah's law) requires of them concerning their interests in the hereafter and worldly life, which can only be achieved by carrying out the command of Allah, establishing His religion, and referring to His law for judgment Hadhā waʿd Allah

15. Appendix 4, Map of the Semitic Heartland
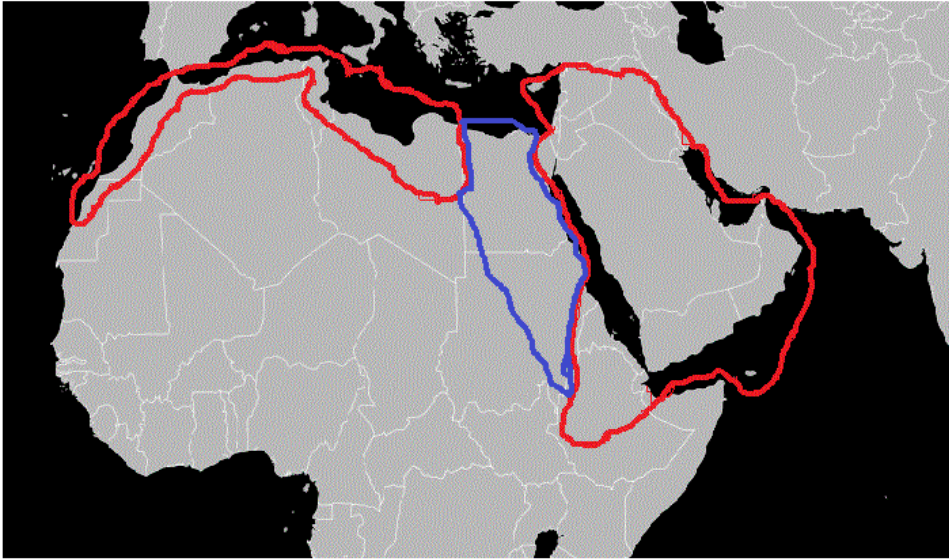
Red areas are the Semitic heartland inhabited by Semitic peoples even before the Arabic expansion and following the Arabic-Islamic conquests. The blue are the areas added only after the Arabic-islamic conquests.

16. Appendix 5, Picture of the Laws of Hammurabi

By unknown, CC BY 3.0,

17. Appendix 6, Semitic Theonomocracy

There is a tendency towards an ideal of state-structure among Semitic speaking cultures which include the following concepts:

- A concrete divine law that goes beyond simply what would be considered religious matters, such as worship, and includes laws governing greater society.

  o These laws are concrete and include punishment or definitions of when applicable, and contain matters that would be inside the preview of the laws associated with rulership such as criminal law, property law and regulations about rulership including nomination of rulership. It is not just about ritualistic behavior and/or laws about faith, which this study has generalized to have been the subject of religious law in certain traditions of the European west although there have been exceptions. It is not law based on inherent principles in creation revealed through reason like natural law.

  o These laws are divinely sourced and coming from the divine or through prophetic tradition. This stands in contrast to ideas of laws as made by human rulers in God's place or chosen to be implemented by them.

  o These laws are tied to religious responsibility to uphold them and to rest upon an idea of consequence/punishment in this life for breaking these laws.

- Men of religion that rules and/or judges in accordance with divine law, hold rulers in line with the divine law and nominate the rulership.

- The ideal of the ruler's function is the religious role of an executive follower of divine law.

  o There is condemnation and consequences of a ruler that does not follow the divine law. The idea being that it is the divine above the rulership that is the direct real legislative source. This differs from the notion of kingship were the ruler is rather given mandate to rule and create and implement laws in the place of the divine, like a pope or king making law by mandate of God. Concrete divine law is present and acts as a limiter to earthly power. It is thus against an absolutist ideal of legislative authority.

  o The legitimacy of rulership is based upon a direct religious basis through holy lineage that have a right to rule and upon knowledge of the divine. This differs from the nobility in the European tradition by being based on direct references to the religious sources or knowledge therein. Earthly authority is therefore mandated by the divine law and defined by it.

These traits should be considered the most strongly for the Semitic cultures in pre-modern times and within the Semitic heartlands, the lowlands of the Middle-East and North Africa. This is with regard to the dominant culture groups within these cultures and mainly for the Akkadian, Arabic, Ethiopic and Israelite-Jewish cultures as they were the basis of the study for the model. Outside of these parameters more care must be taken for other factors and tendencies although the model might still have an influence on the development of certain ideals outside of these parameters. The model's tendency might also be viewed as being able to influence practical history as to explain certain developments as some practical examples where shown in the study. Since a concrete divine law is at the core of the model, and it grew more codified in the study, the tendency towards the ideal should be viewed as being strengthened over time.