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The life of *Shari'a*

by

Youssef Belal

A dissertation submitted in partial satisfaction of

the requirements for the degree of

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in

Anthropology

and the Designated Emphasis

in

Critical Theory

in the

Graduate Division

of the

University of California, Berkeley

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Abstract

The life of *Shari'a*

by

Youssef Belal

Doctor of Philosophy in Anthropology

and the Designated Emphasis in Critical Theory

University of California, Berkeley

Professor Stefania Pandolfo, Chair

This dissertation is a conceptual inquiry about *Shari'a* exploring distinct and yet interrelated dimensions of the revealed law of Islam: (i) political, (ii) spiritual, (iii) ethical, (iv) epistemic and (v) rational. These dimensions are studied from the perspective of Sunni Islam in revolutionary and post-revolutionary Egypt on the basis of a fieldwork conducted in Al-Azhar Mosque in Cairo in 2012-2014, as well as of works by classical and contemporary Islamic scholars.

This study of *Shari'a* is guided by the following questions: What kind of political subjectivity is enabled by Islamic jurisprudence when dealing with revolutionary protests, power, and order? What kind of spirituality is entailed by *Shari'a* rules? To what extent is *Shari'a* a kind of law distinct from contemporary state law that gives shape to a form of ethical life based on the relationship between acts of worship and social interactions? Under what epistemic conditions does revealed speech call for deeds? How does the Islamic legal episteme involve the use of reason in relationship to revelation?

This dissertation shows that any attempt to deepen our understanding of *Shari'a* and the epistemic and cultural practices associated with it requires the study not only of jurisprudence (*fiqh*) and the sources of jurisprudence (*usul al-fiqh*) but also of other forms of knowledge such as Sufism, theology (*kalam*), and philosophy and the ways in which they are intertwined with the revealed law. It brings to light the epistemic language and the evidential regime displayed in shared assumptions and agreements between Islamic scholars versed in these disciplines as much as in disagreements between them.

In the light of this research, this dissertation reconsiders several theses which have been influential in the study of *Shari'a*. First, it reassesses the claim that *Shari'a* should be studied merely as a juridical law enforced by a central authority. Second, it revisits the thesis of *Shari'a*'s demise in modern times. Third, it recasts the thesis according to which *Shari'a* is set in opposition to spirituality, ethics, philosophy and rationality. Finally, if modernity is understood as the regime of separation of between knowledge, religion, law, ethics and politics understood as autonomous spheres within the modern polity, then my dissertation is an invitation to question this normative assumption and to think about the intertwinement of all these dimensions in Islam.

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Introduction

This dissertation is a conceptual inquiry about *Shari'a* and explores distinct and yet interrelated dimensions of the revealed law of Islam that are usually separated from each other in specialized scholarship: (i) political (ii) spiritual, (iii) ethical, (iv) epistemic and (v) rational. This work studies these dimensions of *Shari'a* from the perspective of Sunni Islam in revolutionary and post-revolutionary Egypt, as guided by my fieldwork conducted in Al-Azhar Mosque in Cairo—one of the oldest and most important centers of Islamic learning—in 2012-2014, as well as by works by classical and contemporary Islamic scholars in the fields of Islamic jurisprudence, philosophy, theology (*kalam*) and Sufism. I believe this area of study constitutes a key contribution to interdisciplinary fields such as anthropology and Islamic studies and is an invitation to a journey within the cultural distinctiveness of the revealed law of Islam that would help us understand its continuous significance for Muslims.

This dissertation explores the epistemic conditions of production of *Shari'a* knowledge (epistemic and rational) as well as the conditions of its reception by its subjects (spiritual and ethical dimensions) and by its community for regulative purposes (political dimension). It is an attempt to have a better understanding of the specificity of forms of knowledge and practices associated with *Shari'a* but also a way to question normative assumptions of modernity. If we understand modernity as the regime of separation between knowledge, religion, law, ethics and politics instituted as autonomous spheres within the modern polity, then my research is an invitation to think about the intertwinement of all these dimensions in Islam.

The western trajectory of law is the standard against which Islamic jurisprudence is usually assessed, not without prejudices. One of these prejudices as formulated for example in Legal Orientalism but also in more recent writings about *Shari'a* assumes that *Shari'a* is not law proper on the ground that it is based on revelation rather than the exclusive product of human reasoning. The intertwinement of Islamic jurisprudence with ethics is also considered as an “anomaly” as “rational law” should never be subjected to ethical considerations. According to one of the main scholars of Legal Orientalism, Joseph Schacht: “None of the modern distinctions, between private and public law, or between civil and penal law, exists within the religious law of Islam; there is even no clear separation of worship, ethics and law proper. The concept of any systematic distinction is lacking”¹. For Schacht, one should rely on “the broad systematic divisions of modern legal science to throw into relief not only what is peculiar to it but also what is missing there”². One may be easily tempted to reproduce the distinction made by Schacht between the legal and the non-legal in the study of Islamic jurisprudence because the regime of separation between “religion”, “law” and “ethics”, along with other categories (economy, politics) is constitutive of the narratives of modernity as well as the assumptions on which modern forms of social organization are based.

If one takes for example the relationship between law and ethics assumed by Schacht, the latter is based on the widely shared understanding that the (amoral) law exclusively authored by the state organizes collective life while morality belongs primarily to the realm of individual consciousness

¹ Joseph Schacht, *An Introduction to Islamic Law*, p.113.

² Joseph Schacht, *An Introduction to Islamic Law*, p.114.

exemplified by Kant's *Metaphysics of Morals*³. This conception of law and ethics has shaped, as much as it has been the result of the Lutheran Reformation as well as the emergence of the modern state's monopoly over legislation as theorized notably by Thomas Hobbes in the seventeenth century⁴.

In this dissertation, I am interested in studying Islamic law, or more precisely, Islamic jurisprudence with the following understanding: (i) Islamic jurisprudence relates revealed speech to facts, events and deeds, (ii) Islamic jurisprudence requires from scholars a work of interpretation of revealed speech and reasoning out of which rules can be formulated, and (iii) revealed speech as displayed in the Quran and the *Sunna* (reported sayings and deeds of the Prophet Muhammad) is the ground of evidence for jurisprudential reasoning and argumentation. Islamic scholars cannot utter a legal opinion without evidence grounded in revealed speech, and while they may not agree on which evidence can be relied on to formulate a rule, they still agree on what makes a textual passage from the Quran and the *Sunna* acceptable as evidence for legal reasoning. It is on the basis of this understanding of Islamic jurisprudence that I am interested in its relationship to politics, spirituality, ethics, knowledge and rationality that are, as I will show, constitutive dimensions of *Shari'a*.

For the lettered reader familiar with Islam, it may seem counter-intuitive to claim that a research on *Shari'a* involves the study of other disciplines such as Sufism and philosophy, or intellectual practices such as forms of argumentative reasoning that are not usually associated with a revealed law, let alone the revealed law of Islam. This inquiry may be better understood when recalling that I am interested in studying *Shari'a* as an episteme, or more precisely, I am interested in studying the forms of *Shari'a* knowledge that have been formulated and accumulated by classical and contemporary Islamic scholars in response to epistemic questions and problems raised in specific times and spaces. While *Shari'a* involves the continuous prescription and proscription of rules dealing with beliefs and deeds, it is not however a fixed set of immutable legal rules that can be merely identified and listed. Rather, it entails generative forms of knowledge involving certainty and conjecture in relation to situations grounded in time and space.

Hence, I study how classical and contemporary Islamic scholars deal with *Shari'a* following epistemic practices claiming the authority of the Revelation and *relating* truth-claims to evidences based on revealed speech as captured by the textuality of the Quran and the *Sunna* (the reported sayings and deeds of the Prophet Muhammad). I use and underline the word "relating" instead of using for example the word "grounding" because while several Islamic scholars would rely on revealed speech to support some of their truth-claims, they would not necessarily build their entire scholarly inquiry on evidence taken from the Quran and the *Sunna*. This is true not only for Islamic philosophers such as Ibn Rushd and Ibn Sina attempting to carve a space for reason to thrive autonomously from the Revelation, or Sufis relying on experiential knowledge but also for jurists such as Ibn Taymiyya who would refute the claims of the philosophers and *kalam* scholars on the basis of evidence involving *both* reason and revelation. Moreover, a discipline such as Islamic philosophy would not deal with revealed speech as its primary object but would nevertheless provide an account of the revelation and the revealed law and acknowledge their truth and authority for the regulation of the life of the community.

³ Immanuel Kant, *The Metaphysics of Morals*.

⁴ Thomas Hobbes, *Leviathan*.

Therefore, any attempt to deepen our understanding of *Shari'a* and the intellectual-cultural practices associated with it requires the study not only of jurisprudence (*fiqh*) or the sources of jurisprudence (*usul al-fiqh*) but also other forms of knowledge such as Sufism, *kalam* and philosophy and the ways in which they are intertwined with the revealed law. However, my inquiry should not be understood as an attempt to deny the distinctiveness of each of these disciplines and the disagreements between Islamic scholars. Rather, instead of confining *Shari'a* to jurisprudence and the sources of jurisprudence, I suggest that other forms of knowledge (Sufism, *kalam*, philosophy) deal with *Shari'a*, each one from its own perspective with a language and a set of *Shari'a* questions that were proper to it.

At the same time, when compared to modern forms of knowledge dealing with nature and with the “human” and contesting the claim to truth of the Revelation, disciplines such as jurisprudence, the sources of jurisprudence, Sufism, *kalam* and philosophy share a similar epistemic premise acknowledging the truth and authority of the Revelation and the revealed law. From this comparative perspective, all these disciplines can be grasped in their unity and are based on a distinct episteme that would encompass various forms of evidence (textual, speculative, and experiential) across disciplines and within each discipline. My dissertation is precisely an attempt to bring to light the epistemic language and the evidential regime displayed in shared assumptions and agreements between Islamic scholars of various disciplines as much as in disagreements between them. Now, my research is not only an invitation to better grasp the distinctiveness of the classical Islamic episteme, it is also an inquiry about the ways in which the modern rationalist episteme informs the scholarly work of contemporary Islamic jurists and thinkers relating classical forms of knowledge to modern life.

Methodologies

My inquiry about *Shari'a* is not raised only abstractly but is explored with Islamic scholars in Al-Azhar Mosque in the Egyptian revolutionary and post-revolutionary context (2012-2014). The five dimensions of *Shari'a* (epistemic, ethical, spiritual, political and rational) have been studied on the basis of several types of materials: (i) lessons about Islamic jurisprudence and Islamic theology delivered by Islamic scholars in Al-Azhar Mosque, (ii) interviews with Islamic scholars in Al-Azhar and the Sufi brotherhood known as the *Tariqa Shadiliyya*, (iii) interviews with students and disciples in Al-Azhar and the *Tariqa Shadiliyya*, (iv) observant participation notes in Al-Azhar and the *Tariqa Shadiliyya*, (v) classical books of jurisprudence, philosophy and Islamic theology relied upon by Islamic scholars in the lessons and the interviews, (vi) a selection of contemporary books of jurisprudence and Islamic theology mentioned by Islamic scholars in the lessons and the interviews and (vii) a selection of legal opinions (*fatawa*) formulated by Islamic scholars in response to the questions raised by the revolutionary protests in Cairo in 2011.

My approach does not consist in using these materials to retrace the social-political history of revolutionary and post-revolutionary Egypt viewed from Al-Azhar or to provide a catalogue of portraits on the basis of the trajectory of the main Islamic scholars interviewed. Rather, the use of the collected materials is guided by my conceptual questions and will be used (i) as evidence illustrating my conceptual claims, and (ii) as elements of a contextualized narrative situating my inquiry in time, space and a given social, cultural and political setting. When framed in my analytical framework, these materials are the contextual and evidential basis from which a

selection of influential works of anthropology and Islamic studies dealing with *Shari'a* as well as assumptions of modernity can be discussed.

Authoritative academic works dealing with *Shari'a* have either narrated the history of pre-modern *Shari'a*⁵ or the history of its dismantlement in modern times⁶. There are of course several works done on contemporary *Shari'a*, but they have dealt mainly with the enforcement of *Shari'a* rules in the modern court system⁷ or have studied the public debates around it⁸, or as part of the political project of Islamic movements within the modern state⁹. Most of these works about contemporary *Shari'a* have segmented its study and do not allow us to grasp the comprehensiveness of the revealed law of Islam nor the way it sustains itself over time, particularly from pre-modern times to modern times.

While I will discuss extensively scholarly works relevant to my dissertation in the following chapters, I would like to mention here that my approach is to study the life of *Shari'a* in contemporary times in terms that sheds light on shifts but also continuities between pre-modern and modern times that allow us to understand its continuous significance for contemporary Muslims¹⁰ and its encompassiveness¹¹. My academic inquiry, because it combines the study of classical and contemporary Islamic legal texts and practices with ethnography, is precisely an attempt to grasp the encompassivity of *Shari'a* and to take seriously the forms of knowledge it generates that relate Islamic jurisprudence to other Islamic disciplines (such as the sources of jurisprudence, Islamic theology and Sufism) the same way it brings together distinct dimensions of Muslim life.

Political subjectivity, legal order and the revolution

Closely related to its ethical and spiritual dimensions, the political dimension of *Shari'a* that I put under scrutiny is captured by the following question: What kind of political subjectivity is entailed by Islamic jurisprudence when dealing with revolutionary protests, power, and order? A careful study of legal opinions (*fatawa*) dealing with the 2011 revolutionary event and formulated by influential Islamic scholars may allow us to better grasp the constitutive tensions and continuities between “inner” states and “external” deeds in the relationship of the subject to *Shari'a*. These tensions are exemplified in the assessment of the political ruler’s faithfulness (*iman*), understood as the sum of his “external” deeds within the community and yet reflecting an “inner” moral state that is the argumentative basis allowing several Islamic scholars to authorize demonstrations against president Mubarak, and, more generally, the unjust ruler.

⁵ See notably Joseph Schacht, *An Introduction to Islamic Law*; Baber Johansen, *Contingency in a Sacred Law*; Wael Hallaq, *A History of Islamic Legal Theories*.

⁶ Wael Hallaq, *Shari'a: Theory, Practice, Transformations*.

⁷ Lawrence Rosen, *The Anthropology of Justice*; Zibar Mir-Hosseini, *Marriage on Trial*; Hussein Agrama, *Questioning Secularism*.

⁸ John Bowen, *Islam, Law and Equality in Indonesia*.

⁹ Yael Navaro-Yashin, *Faces of the State*; Jenny White, *Islamist Mobilization in Turkey*.

¹⁰ Talal Asad, *The Idea of Anthropology of Islam*.

¹¹ Brinkley Messick, *The Calligraphic State*.

The revolutionary moment, as well as the Muslim Brotherhood's subsequent rise and fall, raised anew the legal debate about the state to be built after the overthrow of Mubarak's regime. While several segments of Egyptian society advocated for the establishment of a "civil state" and for the removal of any mention of *Shari'a* in the new constitutive assembly, others remained committed to the reference to *Shari'a* as the "principal source of legislation" in the constitutional text. When related to my research project, this legal debate raises the following questions: To what extent the spiritual-ethical shaping of *Shari'a*'s subjects involves the enforcement of the rules of Islamic jurisprudence by the modern state? Or, put in another way: Is there a space for *Shari'a* in the political arrangements enabled by the modern state that is consistent with its epistemic, spiritual, and ethical dimensions?

Lawful spirituality and spirituality of the law

I devote several developments of my research to the question of *Sharia*'s spirituality: To what extent is spirituality grounded in *Shari'a* rules? What kind of spirituality is entailed by *Shari'a* rules? The knowledge of spiritual practices has most famously been associated with the science of Sufism (*'ilm at-tasawuf*). Islamic scholars do not share an identical understanding of what should be included in spiritual practices, particularly regarding their acceptability from the perspective of jurisprudence, but they all assume the existence of a specific knowledge devoted to spiritual ethics. As understood by Sufi Brotherhoods such as the influential Egyptian Branch of the *Tariqa Shadiliyya*, as well as by most contemporary Islamic scholars such as al-Qaradawi, lawful Sufism is an attempt to give its due place to "internal" emotional and affective states in Islamic practice that is based on, and confirmed by, textual truth enclosed in *Shari'a* sources, i.e. the Quran and the *Sunna*.

The genealogy of spiritual ethics in Islam can be traced back to classical scholars such as Abu Hamid al-Ghazali who shaped the intertwinement of *Shari'a* with spirituality and raise the following question: to what extent the knowledge of spiritual ethics can be considered as a discipline in its own right dealing with inner states while Islamic jurisprudence (*fiqh*) is devoted to "external" deeds? While the knowledge of spiritual ethics does not rely on procedural truth as displayed in the sources of jurisprudence (*usul al-fiqh*), and as used by scholars when producing legal rules in legal opinions (*fatawa*), it delineates nevertheless a topography of the inner self through a language of its own that opens the possibility to conceptualize the relationship between the truth and the good as well as the distinction between "doing" and "being" enabled by the twin knowledge of the law and the self.

Relational ethics: acts of worship and social interactions

Shari'a's spirituality is also related to distinct ethical practices and representations of the self and its relationship to God and to others. Exploring the ethical dimension of *Shari'a* is an invitation to answer the following question: To what extent is *Shari'a* a kind of law distinct from contemporary state law that gives shape to a form of life based on the relationship between acts of worship and social interactions? It is this distinctive feature of Islamic law—the regulation of both acts of worship and social interactions—that I explore through this question. For Islamic jurisprudence is not only a distinct set of rules prescribing or proscribing deeds, or against which deeds are assessed, but also a set of rules that gives shape to life as much as it reflects forms of life. Working closely

on the relationship between acts of worship and social interactions sheds light on the ways in which *Shari'a* is a law meant to be lived, entailing ethical practices picturing the self as a “relational” self, tied to God as well as to others within the community.

This account of the relationship between acts of worship and social interactions opens up the possibility to analyze the assumptions upon which the thesis of “*Shari'a*’s demise” in contemporary times is based, notably the regime of separation of law from “religion” and “ethics” constitutive of the main narratives of modernity. This perspective uncritically informs the preconceptions of several academic works on *Shari'a* rules, as the latter are usually considered a “law” only to the extent that they regulate social relations *and* are enforced by judicial authority, while the rules regulating worship are not considered as part of the law. By contrast, as understood by several contemporary Islamic scholars in Al-Azhar, *Shari'a* rules do not necessarily need to be enforced but rather lived by the subjects of law. Moreover, the distinction between the two categories of acts –worship and social interactions- is a way to insure the authoritativeness of the revealed law of Islam in modern times, as it posits “permissibility” and “divine exoneration” as the basis of all deeds in the sphere of social interactions. My dissertation studies these legal formulations and the extent to which they should be understood as a response to the constitution of “the new real” (also understood as “the present”) in modern times as an epistemic problem for Islamic legal knowledge calling for the reformulation of a set of generative rules (*usul*) upon which jurisprudential norms regulating collective life may be produced. This inquiry would allow us to better grasp the epistemic shift that claims the twin authority of foundational *Shari'a* as well as the social reality of the present.

The Islamic legal episteme

While *Shari'a* is often understood as a set of fixed and immutable rules, I start from the observation that rule production in Islamic jurisprudence (*fiqh*) is always a process in the making that can be better grasped when sharing with Islamic scholars the following question: “Under what conditions does revealed speech call for deeds?” Guided by this question, I study the ways in which *Shari'a* is constituted as generative law requiring Islamic scholars to deal with its foundational texts following the procedures delineated in the sources of jurisprudence (*usul al-fiqh*). The production of Islamic legal rules requires knowledge and training for the scholar to be able to give order, hierarchy and meaning to the textual authoritative sources (i.e. the Quran and the *Sunna*). Furthermore, studying the ways in which Islamic scholars relate the production of legal rules to the sources of jurisprudence allows us to better grasp what the reference to “*Shari'a*’s principles” in the Egyptian constitution in the 2011-2014 revolutionary and post-revolutionary contexts means from the perspective of Islamic legal knowledge.

A full command of the discipline of *usul a- fiqh* is usually associated with the practice of *ijtihad* (i.e. the formulation of rules by the most highly ranked scholars-jurists when confronted to new cases and for which the Quran and the *Sunna* are considered silent or unclear). I look closely at the ways in which contemporary Islamic scholars who practice *ijtihad* are subjected to contradictory pressures as they are expected to be the custodians of the legal normativity of Islam while they are required by the state and modernist elites to legitimize a set of social and economic changes associated with modern life.

Reason and revelation

The study of forms of knowledge mobilized for the purposes of rule production in Islamic jurisprudence raises the question of reason as related to *Shari'a*: To what extent does the Islamic legal episteme involve the use of reason in relationship to revelation? For Enlightenment inspired modern political thought and sensibilities, religion, because it does not allow the free use of reason and is a matter of private faith should not be involved in the legislation regulating the life of society and its individuals. *Shari'a*, associated with irrationality by influential social theorists such as Max Weber, became itself an object of knowledge and “rationalization” by different instantiations of modernist reason in the colonial and post-colonial contexts, which transformed the place of Islamic jurisprudence within Muslim societies and shaped the ways in which the relationship between reason and revelation was perceived and represented by Islamic scholars and thinkers.

This question allows me to analyze the extent to which what I call “Islamic reason,” is displayed not only in analogical reasoning (*qiyas*), or in the formulation of truth-claims about the hierarchy, authenticity, and meaning of revealed speech for legal purposes, but also in the way the world is apprehended—for example, when assessing the meaning and truth of facts, events, and situations. In light of the debates taking place in Al-Azhar Mosque in contemporary Egypt, I closely examine how the classical disciplines of Islamic philosophy and *kalam* (theology)—delineating the rational premises upon which revelation may be grounded—was mobilized by Muslim scholars and thinkers in order to articulate an epistemic language relating reason to revelation, and laying the (re)foundations for an Islamic polity re-assessing the guiding role of *Shari'a*.

Part I
Politics

Jurisprudence of the Revolution: Islamic law, Truth and Ethics

Part I

Chapter 1

Fatwa, Interiority and Jurisprudence of the Revolution

Any inquiry about ethical practices relies on a set of assumptions regarding the status of knowledge and truth. Several philosophers and social theorists¹² have argued that the divorce of knowledge from ethics notably initiated by Descartes, is one of the defining features of the modern age in the West. A worldview in which the task of science is devoted to the knowledge of the good life or in which the very act of knowing is considered to be moral, is either relegated to the past, notably Greco-Roman Antiquity, or needs to be reinvented, but does not belong to the present¹³.

Research about forms of knowledge shaped by ethical imperatives in the ethnographic present in non-western cultures runs the risk of being assimilated into “previous” practices from which European thinkers break in order to constitute themselves as “modern”. Yet, these practices, shaped by forms of knowledge inherited from the past and inscribed in collective memory¹⁴, are constituted by global contemporaneity as much as they are constitutive of it¹⁵.

The work of Michel Foucault on ethical practices in the antiquity and the way he relates them to present forms of ethics is not devoid of similar assumptions regarding what counts as “modern” and “non-modern”. Yet, his work raises conceptual questions regarding the relationship between knowledge and ethics that may be useful for comparisons of ethical practices across cultures: “In Greco-Roman culture, knowledge of oneself appeared as the consequence of the care of the self. In the modern world, knowledge of oneself constitutes the fundamental principle.”¹⁶ The hierarchy between the two principles –knowing and caring- is as important as their distinct enunciation. However, this chapter sheds light on a relationship between knowledge and ethical practices that is different from the ones mentioned by Foucault, either in the Antiquity or in modern times. I suggest here that, in Islam, ethical practices are not related to forms of knowledge whose direct object is the self. I am not saying that there is no interest in the self in Islamic culture or that ethical practices do not deal with the self. Rather, my purpose is to show that the knowledge of the revealed law as the site of the relationship to God determines the kind of relationship one may have to oneself and to others.

Although I will discuss some of the assumptions about Islamic ethical practices in recent anthropological and historical works, my text will be mainly devoted to the study of questions of knowledge, law, and ethics in the Islamic context in terms as close as possible to those structuring the works of Islamic scholars, and will consist in exploring procedures of truth seeking, modes of reasoning and hermeneutical techniques in the formulation of rules in legal opinions (sg. *fatwa*, plr.

¹² Adorno, *Minima Moralia*; Horkheimer, *Dawn and Decline*; Foucault, *The Essential Foucault*.

¹³ Foucault, *The Essential Foucault*.

¹⁴ Asad, *The Idea of Anthropology of Islam*.

¹⁵ Chakrabarty, *Provincializing Europe*.

¹⁶ Foucault, *The Essential Foucault*, 105.

Fatawa) authored by Yusuf al-Qaradawi¹⁷ (one of the most influential and respected contemporary Islamic scholars)¹⁸ at the time of the Egyptian Revolution (2011). This chapter will also explore the relationship between interiority and exteriority in ethical practices enabled by rules formulated in the *fatawa* and exemplified by the assessment of the ruler's faithfulness (*iman*), and will study the extent to which the very revolutionary gesture authorized in the *fatawa* informs al-Qaradawi's own legal and ethical practice and enlightens anew the relationship between the inner and the outer as well as between the self and others. Finally, I will analyze the articulation of Islamic law with the revolution in the Egyptian context and the ways in which its authoritativeness and ethical performativity are reenacted, in contradistinction to western liberal revolutions instituting a legal order declaring its rupture with the past law and indifferent to the individual's morality.

Anthropology of the fatwa and the question of legal knowledge

In a recent article dealing with the "anthropology of the fatwa" in the Egyptian context, Husein Agrama has shown that the fatwa's authority cannot be understood by referring merely to its "religious" or "traditional" character, for these kind of explanations rely on a series of essentialist assumptions about the kind of subjectivity associated with those terms¹⁹. I think that Agrama is right when he writes that a central dimension of the fatwa lies in the ability of the mufti to guide the individuals in their existential choices. It invites us to see how ethical agency is made possible by the submission to external authority in the Islamic context²⁰.

However, although Agrama acknowledges the contribution of scholarly approaches dealing with the doctrinal dimension of the fatwa to forwarding a better understanding of Islamic legal theory, he suggests that legal reasoning and argumentation need not be taken into account to understand the conditions under which the fatwa is ethically meaningful for both the mufti and the questioner: "In casting fatwas as doctrinal pronouncements, as formal judicial opinions and, thus, a species of law conventionally understood, this view of the fatwa undercuts an integral ethical dimension of its practice"²¹. Thinking of the relationship between the legal and ethical dimensions of the fatwa in exclusive terms does not allow us to understand the ways in which they are inter-related.

In fact, the mufti's ethical guidance is not conceivable without his knowledge, and his ability to utter the truth of the law. In classical books dealing with the "sources of jurisprudence" (*usul al-fiqh*), as well as the manual relied upon by the Egyptian Fatwa Council and written by its secretary general Sa'id 'Amer *Al-Fatwa bayna al-Asalah wa al-Mu'asara (The Fatwa, between Authenticity and Modernity)*, or al-Qaradawi's book on the subject *Al-Fatwa bayna al-Indhibit wa al-Tasayyub (The Fatwa between Order and Chaos)* the mufti needs to meet ethical requirements such as integrity and sense of justice (*'adala*), which are no longer valid if he attributes false words to God and the Prophet Muhammad or starts inventing rules²². Speaking about Islamic rules without the proper knowledge exposes the mufti to one of the greatest of sins²³. The mufti needs also to meet

¹⁷ Yusuf al-Qaradawi, 25 Yanayir.

¹⁸ On Yusuf al-Qaradawi's thought and influence see Qasim Zaman *Modern Islamic Thought in a Radical Age*. See also Graf, *Global Mufti: The Phenomenon of Yusuf al-Qaradawi*.

¹⁹ Agrama, *Questioning Secularism*.

²⁰ Asad, *Genealogies of Religion*; Mahmood, *Politics of Piety*; Hirschkind, *The Ethical Soundscape*.

²¹ Agrama, *Questioning Secularism*, 163.

²² Sa'id 'Amer, *Al-Fatwa*, 45.

²³ Sa'id 'Amer, *Al-Fatwa*, 47.

scholarly requirements such as “deep knowledge” of the Qur’an and the *Sunna*, “the perfect knowledge” of Islamic jurisprudence and its sources, and familiarity with doctrinal debates and differences between scholars. Hence, if on certain occasions, the mufti, does not display his reasoning or does not quote textual sources related to the case, this does not mean that legal knowledge is not constitutive of his authority. Rather, his status as mufti is “authorized” by the Fatwa Council that appoints scholars expected to be qualified to author the *fatawa*. The individual who comes to Al-Azhar looking for a clear answer to her question assumes, too, both the mufti’s scholarly skills and ethical commitment.

In his article, Agrama does not differentiate between two distinct operations occurring in the encounter between the mufti and the questioner (*al-mufta’i*), operations that are nevertheless related to each other: the utterance of the rule and advice. The mufti formulates clearly what is prescribed and what is prohibited according to his knowledge of the revealed law, and, at the same time, he is doing more than merely uttering the truth of the law because he gives the questioner guidance (*irshad*) and advice (*wa’dh*). In that moment, the scholar does not act only as a mufti, but also as a man of call and preaching (*da’wa*). For both mufti and questioner, it is a moment that allows them to get out of the casuistry of the law to recall and constantly expand the meanings of the law and its prescriptions. It is a way to put the law at a distance, not to reject it or to say it is peripheral in Islam, but rather to reaffirm its centrality and importance, and its ability to address the Muslim’s interiority and guide him in his existential choices. This ambivalence of the fatwa is illustrated by its double meaning, linguistic and legal. In Arabic, the verb *afta* refers to the act of showing (*abana*), making manifest (*idhar*) and guiding (*irshad*). In the science of jurisprudence (*usul al-fiqh*), the fatwa is understood as “the act of transmitting the legal rule from whoever knows it relying on evidence based on *Shari’a* (*dalil shar’i*)”²⁴. From this perspective, the guidance of the fatwa is not possible without the production of knowledge and the reenactment of the truth of the law that it entails.

All *fatawa* do not have the same authority in the community of scholars and Muslims, and certain *fatawa* are much more authoritative than others. Here, one should make a distinction between *fatawa* dealing with individual cases in a face to face oral exchange (or a written one) and allowing for a certain intimacy between the questioner and the mufti on the one hand, and, on the other hand, exemplary *fatawa* issued by classical (for example Ibn Taymiyya²⁵) as well as contemporary scholars (for example Yusuf al-Qaradawi²⁶) known for their skills and the depth of their knowledge and relied upon in the training of Islamic scholars or emulated by other muftis. Now the distinction is complicated by the fact that exemplary *fatawa* have often been issued to treat an individual case, in a face to face oral exchange, similar to the ones issued in the Fatwa Council in Al-Azhar or places such as the mufti’s house (*dar al-mufti*). It is also complicated when *fatawa* dealing with individual cases are issued on TV programs or on the Internet, addressing vast audiences in which forms of close interaction between mufti and questioner based on intimacy are not possible. Most important, one should also take into account the *fatawa* that are not a response to a question of an individual or a group of individuals but a formulation of a rule at the initiative of the mufti to enlighten the community about what to do in face of an event or a situation not

²⁴ al-Busnawi al-Aqahsani, *Samt al-Wusul*, 16. *Samt al-Wusul fi Ilm al- Usul* (The clear Path to the Sources of Jurisprudence) is a Hanafi book of jurisprudence currently taught at al-Azhar Mosque.

²⁵ Ibn Taymiyya, *Majmu’ al- Fatawa*.

²⁶ Yusuf al-Qaradawi, *Fatawa Mu’asira*.

previously encountered²⁷. From this perspective, a fatwa that has been put into a written form, or orally transmitted from one scholar to another (or from one questioner to another), may have a history of various usages that may enable different kind of ethical practices that are not necessarily related primarily to the self. As I will show in my study of al-Qaradawi's *fatawa* dealing with the Egyptian Revolution, the fatwa may allow for ethical practices related primarily to the community's life and the relationship to others rather than the self.

The task of truth seeking in Islamic jurisprudence as exemplified in the fatwa is related to the broader ethical-practical dimension of Islamic knowledge (*'ilm*) which includes other disciplines (exegesis (*tafsir*) of the Qur'an, the science of *hadith*, theology, the purification of the souls (*tazkiyat al-nafs*)). For both classical²⁸ and contemporary Islamic scholars and thinkers²⁹, knowledge is both desirable in itself and as a mean to the highest good understood as "happiness (*sa'ada*) in the hereafter". One cannot be closer to God without the appropriate knowledge that is not contemplative but practical, and which addresses the individual in his effective duties. From this perspective, there is a close relationship between knowledge and deeds, for any act -including worship- relies on a previous knowledge³⁰. Although a clear distinction is made between knowledge and deeds, with precedence to the former, the two are at the same time closely related to each other because the right knowledge is necessarily practical. Hence, the procedural search for truth in Islamic jurisprudence and other Islamic disciplines should constantly be balanced not only with an ethical commitment for truth but also with its ethical-practical *telos*, for the truth is meant to shape and nourish the Muslim's deeds. That is why it is difficult to grasp the ethical dimension of the fatwa without bearing in mind its intertwinement with truth and the very production of knowledge.

Truth seeking in the production of the fatwa

My analysis of the *fatawa* formulated by Yusuf al-Qaradawi at the time of demonstrations against the president Husni Mubarak, known as the Egyptian revolution among the Egyptians themselves, is informed by my exposure to several Islamic disciplines³¹ during a fieldwork of several months (2014-2015) in Cairo, which consisted of attending everyday sessions dedicated to the teaching of *Shari'a*'s sciences organized by scholarly circles meeting in Al-Azhar Mosque.

The fatwa is a legal opinion formulated by a qualified scholar, whose knowledge and skills are acknowledged by his peers. It is a way for an individual or for a group of people, ignoring what needs to be done regarding a specific question, or hesitating about what course of action needs to be taken, to address the law. Usually a response to a question asked by whoever is concerned with Islamic duties, the fatwa may also be formulated at the initiative of a mufti in order to orient the community regarding a new situation calling for a rule. The fatwa deals with all kinds of issues,

²⁷ Al-Qaradawi, *Al-Fatwa*, 16.

²⁸ Ghazali, *Ihya' 'Ulum al-Din*.

²⁹ 'Abd al-Rahman, *Su'al al-Akhlaq*.

³⁰ On the importance of the concept of knowledge in Islam, see Franz Rosenthal, *Knowledge Triumphant*, Brill, 1970

³¹ The Islamic disciplines included jurisprudence (*fiqh*), the Quran's exegesis (*tafsir*), the transmitted sayings of the Prophet (*hadith*), the sources of jurisprudence (*usul al-fiqh*), theology (*kalam*) and Sufism.

including beliefs, creed, acts of worship, marriage and divorce, social interactions and transactions, acts related to the community's political life³².

From the perspective of Islamic jurisprudence, new events and occurrences (*nawazil*) constantly call for a rule to be formulated dealing with the specific case. While Islamic jurisprudence has for a long time been portrayed as hermetic to social change³³, several contemporary scholars of Islamic law have shown over the last thirty years that the *fatawa* were the main site of articulation between the foundational legal principles and evolving reality³⁴ (Johansen 1999, Messick 1993). When dealing with cases for which there is no clear textual proof reaching certainty (*qat'i*), nor consensus among scholars (*ijma'*), and that have no legal precedent in the legal school (*madhab*) to which he belongs, it is expected from the mufti to rely on his personal effort to extract a new rule from the *Shari'a*'s sources (*ijtihad*).

It is relevant to note here that the Egyptian Revolution (and a few weeks before, the Tunisian Revolution) was among these *nawazil* (legal questions) for which Islamic jurisprudence had no precedent and no clear textual proof available i.e. a text explicitly talking about demonstrations and revolutionary protest. In this context, the only way for Islamic scholars to formulate a rule enlightening the people, and prescribing them what to do, is to rely on *ijtihad*.

In the practice of *ijtihad* in the fatwa, the mufti is very careful to rely on a good understanding of the Qur'an as well as the reports about deeds and sayings of the Prophet Muhammad (sg. *hadith*, plr. *ahadith*). The trustworthiness of the rule formulated in the fatwa lies in the choice and commentary of both relevant Qur'an's verses and *ahadith*. *Ijtihad* requires from the scholar to abide by the rules of truth-seeking and truth-finding as delineated by the discipline of *usul al-fiqh* (sources of jurisprudence). Yet, as a result of *ijtihad*, the rule formulated in the fatwa is not considered as the product of certainty (*qat'i*), but only as the result of probable thought (*zanni*) for the scholar who practices *ijtihad* (*mujtahid*) is never free from making mistakes.

On the one hand, the rule as formulated in the fatwa, and as a result of *ijtihad* does not produce absolute certainty, and leaves a space for doubt. On the other hand, the people asking a question to the mufti need a clear rule to follow, formulated by a trustworthy scholar, known for his knowledge and integrity. It remains the Muslim's choice to follow the rule uttered by the fatwa or not, and there may be situations in which he has to choose between contradictory rules formulated by different muftis as in Egypt, in the time of the Revolution.

Al-Qaraḍawi's *fatawa* dealing with the political events in Egypt, and more generally in the Arab world since the 2011 uprisings, are not only giving responses to specific cases, but institute a new sub-branch of Islamic law, which al-Qaraḍawi calls "jurisprudence of the revolution" (*fiqh al-*

³² In modern times, the control of fatwa issuance by the state in several Muslim majority countries makes it more difficult for muftis to give freely their opinions about the action of the government and other issues considered "political" or sensitive. In Egypt, it is the task of *Dar al-Ifta'*, supervised by the Mufti of the Republic, to issue "official" *fatawa* related to governmental decisions but also to all other questions raised usually by individuals or a group of individuals to the muftis. On these institutional developments see Jakob Petersen, *Defining Islam*.

³³ Schacht, *An Introduction to Islamic Law*.

³⁴ Hallaq, "Was the Gate of *Ijtihad* Closed?", Messick, *The Calligraphic State*; Masud et al., *Islamic Legal Interpretation*; Johansen, *Contingency in a Sacred Law*.

thawra)³⁵, which may be part of jurisprudence dealing with political matters (*al-fiqh al-siyasi*) he studied in a previous book entitled the *Lawful Politics (al-Siyasa al-Shar'iyya)*.

Although classical Islamic jurisprudence focused mainly on acts of worship (*'ibadat*), marriage, and social interactions and transactions (*mu'amallat*), “political” matters were not absent for there are also classical books of law dealing with political matters such as Ibn Taymiyya’s *Lawful Politics (al-Siyasa al-Shar'iyya)* or al-Mawardi’s *The Rules of Governement (Al-Ahkam al-Sultaniyya)*. In the latter, Islamic jurisprudence would usually emphasize the duties of the subjects and the ruler, and the conditions under which the latter may be deemed illegitimate. But this is the first time an Islamic scholar uses the expression “jurisprudence of the revolution” to designate a new sub-branch of Islamic law³⁶.

Al-Qaradawi’s *fatawa* are not only specific responses to questions raised during the revolutionary moment, they are also, for him, “moral lessons to the new generations” (*akhdh al-ajiyal al-'ibra*)³⁷. The notion of *'ibra* is often used to stress the moral teaching that may improve one’s life and which is formulated as a reflection upon a situation or an event in one’s personal life or in the community’s life. In Islamic culture, it is used in reference to moral lessons that can be learned from stories (*qisas*) narrated in the Qur’an but also by historians such as Ibn Khaldun to stress the ethical dimension of history in relationship to both human action and divine intervention³⁸.

Yet, this ethical and educative dimension of the fatwa is not conceivable without its argumentative ability to establish the truth. For al-Qaradawi’s concern in his *fatawa* was to demonstrate the falsity of other scholars’ sources and argumentation, and the legal validity of his owns. His *fatawa* are even a way to initiate a new branch of legal studies, “the jurisprudence of the revolution” (*fiqh al-thawra*) in a context where Islamic scholars did not have a unified position regarding the lawfulness of “revolutionary” political acts.

Three *fatawa* authored by al-Qaradawi are relevant for our study. The first one, is an answer to the question “Are peaceful demonstrations authorized by Islamic law?” and deals with the lawfulness of peaceful demonstrations and protests long before the mobilization of the “Arab Spring”. The second is a “response to the fatwa (issued by the mufti of the Republic) stating that the demonstrations are an act of defiance against the legitimate ruler”. The third is a response to the question: “Is the action of supporting peaceful demonstrations a support to the disorder (*fitna*)?”. Both the second and the third fatwa were issued after the demonstrations started in Egypt, following the fall of the Tunisian president Zin al-‘Abidin Ben ‘Ali.

³⁵ One should note the emergence of sub-fields of Islamic jurisprudence since the beginning of the twentieth century. They include all kind of themes interesting the life of contemporary Muslims such as the “jurisprudence of the call” (*fiqh al-da'wa*), the “jurisprudence of the family” (*fiqh al-usra*), or the “jurisprudence of Islamic economy” (*fiqh al-iqtisad al-islami*).

³⁶ Ahmed al-Raisuni, another influential Islamic scholar from Morocco, has also used the same words as a title for a book collecting his *fatawa* on the 2011 demonstrations.

³⁷ Al-Qaradawi, 25 *Yanayir*, 5.

³⁸ See Ibn Khaldun’s masterpiece *Kitab al-'Ibar* (The book of lessons), preceded by the famous *Muqadima*. In the latter, Ibn Khaldun stresses the ethical dimension of history by recalling that the “art of history (*fan al-tarikh*)” has “a noble finality (*sharif al-ghaya*) for it allows us to look at the ethical state of the nations who preceded us. It is a way for whoever asks for the states of the religion and the worldly life to benefit from their exemplarity (*fa'idat al-iqtida'*)” (p.13, vol.1).

According to the arguments of scholars who enjoined Egyptians to restrain from supporting the demonstrations, it is the Muslim's duty to be patient in the face of a corrupt and tyrannical ruler, to accept God's decree (*qadha' Allah*) and to wait for God's relief. The Muslim should not engage in any act of resistance in order to preserve the unity of, and avoid his exclusion from, the community. To support their prescription, these scholars quote the Qur'an, *Surat al-Nisa'*, 59 "Obey God, obey the Prophet and those in authority among you". They also rely on the following *hadith* (known as *hadith Hudhayfa*) in which the Prophet Muhammad is reported to have said to Hudhayfa³⁹: "There will be after me, Imams who will not be as well guided as I am, and who would not follow my practice. There will be among them men with devils' hearts in a human's body (*qulub al-shayatin fi juthman ins*)". "O God's Prophet, how can I behave in the face of them?". He answered "Listen to the ruler and obey him, even if he hits your back, or takes from your money, listen and obey"⁴⁰.

For al-Qaradawi, although this *hadith* is mentioned in the authoritative collection of *ahadith Sahih Muslim* in the chapter dedicated to government (*imara*), it cannot be considered among the "original sayings" (*ahadith al-usul*), which are the most reliable ones. Rather, it is a weak *hadith* for which there is a missing link in the chain of transmission has been interrupted (*mursal*)⁴¹.

Here, truth-seeking consists of relying on a procedure of authentication of *ahadith* as delineated by the discipline dealing with the sources of jurisprudence and the science of *hadith*. While the authentic *hadith* is the one which transmission from the Prophet to the time of its collection in authoritative books of *ahadith* has been continuous (*muttasil*), the doubtful *hadith* is the one which chains of transmission have been interrupted (*munqati'*)⁴². Usually, contemporary muftis use secondary sources coming from scholars known for their expertise in the matter of transmission to authenticate the *ahadith* they rely upon, or to question their truth. When a scholar succeeds in pointing out the inauthenticity of a *hadith* used in a fatwa, the rule formulated in the latter may no longer be considered valid.

The very process of formulating rules derived from the revealed law (*Shari'a*) consists in establishing their truth. The two foundational textual sources from which Islamic scholars formulate legal rules are the Qur'an, and the *Sunna* (which includes the *ahadith*). The main task of the discipline known as "the sources of jurisprudence (*usul al-fiqh*)" is to delimit the hermeneutical procedures securing the rule's truth.

In this truth inquiry, the scholar formulates rules that are differentiated among them according to several levels of certainty and doubt, which are themselves related to the levels of certainty and doubt of the original textual sources, i.e. the Qur'an and the *Sunna*. Since there is no doubt regarding the authenticity of the Qur'an, the main problem for Islamic scholars regarding the truth of the textual sources lies in the Prophet Muhammad's *ahadith*.

³⁹ Salim Mawla Abu Hudhayfa was one of the Companions of the Prophet Muhammad.

⁴⁰ Al-Qaradawi, 25 *Yanayir*, 146.

⁴¹ In the *hadith mursal*, the transmission is interrupted at the level of the Companions (*Sahaba*) of the Prophet.

⁴² In the *hadith munqati'*, the transmission is missing a link at the level of the successors (*tabi'in*), i.e. at a later stage of transmission than the *hadith mursal*. The reliability of *ahadith* can vary according to different criteria, including the reference to a particular authority, the number of reports, the reliability of the reporters, and the chains of transmission.

The rule's truth is not only related to the authenticity of sayings collected in books of *ahadith*, but also to the way the Qur'an's words should be understood. Islamic scholars whose work was dedicated to *usul al-fiqh* have developed a method securing the meaning of the verses of the Qur'an used for legal purposes. The discipline of *usul al-fiqh* is usually understood as the science allowing the scholar to secure (*ithbat*) the formulation of the rule relying on the law's sources and evidences (*adilla shar'iyya*).

In his attempt to shed light on the falsity of the rule enjoining the Muslims to obey the ruler, al-Qaradawi shows that scholars quoting *Surat al-Nisa'*, 59 ("Obey God, obey the Prophet and those in authority among you") in support of their position are relying on a wrong hermeneutical procedure, using a partial reading of the relevant passage of the Qur'an. Rather, they should take into account the particular group of people God is addressing in this verse by starting from its beginning: "O you who have been faithful, obey God, obey the Prophet and those in authority among you". Now that the last word "*minkum* (among you)" refers to the first words, i.e. the "faithful (*mu'minin*)", the meaning of the "verse" changes significantly. Obedience to rulers is no longer an absolute duty, for the rulers mentioned in this verse are not only those merely occupying a position of power, but should be among the faithful.

One of al-Qaradawi's main arguments in the fatwa authorizing peaceful demonstrations against the ruler is that the president Mubarak is not a legitimate ruler because he does not belong to the faithful. If we bear in mind that faithfulness is usually understood as an inner state, al-Qaradawi's point may suggest that he is able to know the internal truth of men. This point raises a more general and important question about the relationship of interiority and exteriority in the construction of truth in Islamic jurisprudence as well as in ethical practice that I will discuss in the rest of the chapter.

Truth, Faith and Interiority

Relying on the notion of "Kadi Justice"⁴³, Max Weber has famously argued that Islamic jurisprudence is "irrational" because it lacks a consistent relationship between *law making* ("the establishment of general norms which in the lawyer's thought assume the character of rational rules of law") and *law finding* ("the application of such established norms and the legal propositions deduced therefrom by legal thinking, to concrete facts which are subsumed under these norms")⁴⁴. Although the flaws of his perspective have been underlined on several occasions by anthropologists and legal historians⁴⁵, Weber nevertheless raised an interesting point related to the relationship between law and fact-finding that has been taken up by contemporary scholars⁴⁶.

Yet, I would like to explore here the question of fact finding starting from a set of questions different from the ones relied upon by Weber for his work relies on a set of evolutionary

⁴³ For Weber, "Pure Kadi-justice" is represented in every prophetic dictum that follows the pattern: "It is written...but I say unto you". "The more strongly the religious nature of the *kadi's* (or some similar judge's) position is emphasized, the more arbitrary –that is, the less rule-bound- will the judgment of the individual case be within that sphere where it is not fettered by sacred tradition", *Economy and Society*, (p.998)

⁴⁴ Weber, *Economy and Society*, 653.

⁴⁵ Rosen, *The Justice of Islam*; Powers "Kadijustiz or Qadi-Justice"; Johansen *Contingency in a Sacred Law*.

⁴⁶ Geertz, *Local Knowledge*; Rosen, *The Justice of Islam*.

assumptions about Islam and “rationality”. When related to the twin issues of truth seeking and ethics, the inquiry about law and facts raises the following question: What are the limits of what can be possibly known from man’s deeds and interiority for the purpose of rule formulation in al-Qaradawi’s fatwa, and more broadly, in Islamic jurisprudence?

In Islamic jurisprudence, the procedures of truth seeking command both the formulation of rules and the finding of facts. When al-Qaradawi writes that the president Mubarak does not belong to the faithful, he is producing a statement of truth. For in Islamic jurisprudence, the search for truth is not only displayed in the scholar’s attempt to establish the correct understanding of the texts, as well as their authentication (regarding the *ahadith*), but is also discernable in the way he assesses characters, deeds and events, and construct legal facts, for example when he is asked to give his opinion as a mufti. However, the ability of the scholar-mufti to have access to the truth of the fact reaches a limit and becomes problematic when he comes to assess an individual’s internal state in a specific case.

The scholar-jurist who teaches Islamic jurisprudence, but also the mufti or the judge, usually relates the rule to observable deeds. The discipline of *fiqh* itself is often defined as the legal science dealing with deeds. It is clear that the centrality of deeds in the *fiqh* is related to the limits of human knowledge as understood by Islamic scholars. Thanks to His exclusive access to the interiority of man and his intentions, only God is the ultimate judge of the consistency between interiority and exteriority in the individual, and may retribute him accordingly. In a court of justice, the judge, because of his inability to have access to the individual’s interiority, can formulate opinions and judgments only on the basis of what can be observable and adjudicated i.e., the body’s deeds and the uttered words. However, that does not mean that interiority has no part in the constitution of the Muslim legal subject or in the assessment of the individual’s deeds, either in books of *fiqh* or in legal practice⁴⁷, notably in the formulation of *fatawa*⁴⁸. Rather, there is a constitutive and productive continuity as well as tension between interiority and exteriority in the relationship of the subject to the revealed law (*Shari’a*) as exemplified by the way the *fiqh* is understood in classical books of jurisprudence that are taught today in several Islamic institutions and other spaces of learning (for example the mosques). In *Samt al-Wusul fi ‘Ilm al-Usul (The clear Path to the Sources of Jurisprudence)* a book authored by al-Busnawi al-Aqahsani (d.1616) and dealing with the sources of jurisprudence (*usul al-fiqh*) and currently taught in Al Azhar Mosque, the rule (*hukm*) is defined as God’s address (*khitab Allah*), related to the deeds of the worshipers (*af’al al-‘ibad*), which include the limbs (*jawarih*) as well as the acts of the heart (*fi’l al-qalb*) such as faith (*iman*) and the ability to reflect upon oneself and about things (*i’tibar*).

This ambivalence is also related to the interrelatedness of deeds with beliefs. Beliefs are foundational (*asliyya*), and prior to deeds⁴⁹. Moreover, the distinction between deeds and beliefs becomes more complicated when the latter, and more generally, inner states and feelings, are understood as “deeds of the heart” (*a’mal al qulub*) that are not spontaneously given but need to be worked out for classical scholars such as Abu Hanifa, al-Ghazali or Ibn Taymiyya.

⁴⁷ For example, even in the courtroom, the assessment of intent involves a series of assumptions about the relationship between interiority and exteriority.

⁴⁸ Johansen, *Contingency in Sacred Law*; Messick, “Indexing the Self”.

⁴⁹ Al-Busnawi, *Samt al-Wusul*, 66.

To what extent does al-Qaradawi, by referring to faith in his legal argumentation, rely on the assessment of Husni Mubarak's interiority? In fact, when al-Qaradawi states that the Egyptian president is not a legitimate ruler because he cannot be considered as belonging to the "faithful", he bases his judgment exclusively on Mubarak's deeds and his role in the community, and never on his interiority.

For al-Qaradawi, the president Mubarak is doing neither the lawful nor the good (*ma'ruf*) in the specific mandate expected from him. The deeds of a ruler who commits injustice, uses public money to increase his own wealth, falsifies elections, represses his own people and helps Israel suffocate the Palestinians cannot be considered to belong to the category of lawful and good (*ma'ruf*) actions at all. According to al-Qaradawi's interpretation of the revealed law (*Shari'a*), the ruler is a delegate (*wakil*), at the service of the community (*ajir al-umma*). He is responsible before God, and before the people regarding the material and moral interests of the community. The ruler's task is to protect everyone's rights that have been entrusted to him (*ada' al-amanat*) and to rule with justice (*'adl*) as suggested by the Qur'an's verses dealing with "the lawful politics" (*siyasa shari'yya*) and the organization of government among the people: "God enjoins you to render trusts to whom they are due, and when you judge between people, to judge with justice" (*ina Allah ya'murukum an tu'addu al-amanat ila ahliha wa idha hakamtum bayna al-nasi an tahkumu bi al-'adli*), *Surat al-Nisa'*, 58⁵⁰.

Here, faith is understood by al-Qaradawi in contractual terms (*ta'aqud al-iman*) in which the ruler did not fulfill his (external) obligations toward the community. However, it is less a reversal of the primacy of interiority over exteriority in the meaning usually associated with faith, or a commitment to the juristic tradition dealing mainly with the external deeds than a reenactment of the relationship between inner states and outer deeds, in which the latter reflects the former.

In fact, for al-Qaradawi, the cultivation of interiority as the site of faith is a central dimension of Islam, explored in two books, *Faith and Life (Al-Iman wa al-Hayat)* and *On the Path to God (Fi al-tariq ila Allah)*, which is inspired by al-Ghazali's masterpiece, *The Revitalization of the sciences of religion (Ihya' 'Ulum al-Din)*⁵¹. In the first volume of *On the Path to God* dedicated to "Spiritual life and knowledge", al-Qaradawi stresses the necessary "balance between jurisprudence (*fiqh*) of rules and knowledge (*fiqh*) of ethical behavior (*al-tawazun bayna fiqh al-ahkam wa fiqh al-suluk*)"⁵². Here, al-Qaradawi uses the word *fiqh* both in its juridical sense, and its non-technical meaning which may be translated as "insight" and "knowledge"⁵³. Although al-Qaradawi's aim in this book is to show how one may nourish one's own faith, this does not mean that "the jurisprudence of external rules (*al-ahkam al-zahira*) can be neglected. Rather, these rules are an obligation but the balance is also an obligation: the balance between the inner (*batin*) and the outer (*zahir*), between deeds of the limbs, and deeds of the heart"⁵⁴.

⁵⁰ It is on the basis of these verses that Ibn Taymiyya wrote his book entitled *The lawful politics (al-Siyasa al-Shar'iyya)*.

⁵¹ The title alludes to "the science of the path to the hereafter" (*'ilm tariq al-akhira*) initiated by Ghazali in the *Revitalization of the sciences of religion*. It refers also to the twin dimension of *Shari'a*, both the law and the path.

⁵² Al-Qaradawi, *Fi al-Tariq ila Allah*, 26.

⁵³ The verb *faqaha* refers more specifically to the grasping faculty of men.

⁵⁴ Al-Qaradawi, *Fi al-Tariq ila Allah*, 27.

In the Islamic tradition reclaimed by al-Qaradawi, the notion of faith (*iman*) refers primarily to an inner state that is not natural, but may be acquired through a series of deeds. For Abu Hanifa, whose name is attached to the legal school (*madhab*) relied upon in Egypt, “(God) did not constrain any of His creatures to be in a state of disbelief or in a state of faith, and He did not create them naturally faithful nor disbelievers, but He did create them as persons (*ashkhas*), whose faith or disbelief are the result of their deeds (*af'al*)”⁵⁵. These deeds consist in following the rules, notably those dealing with the acts of worship derived from the revealed law as prescribed by Islamic jurisprudence. However, the worshipper cannot reach the state of faith merely by making his body mechanically execute the rules, but needs to make his heart available to the revealed law. That is why most of classical and contemporary Islamic scholars, including al-Ghazali and Ibn Taymiyya, differentiate between “Islam” and “*iman*”, in which the latter is a higher stage in the relationship of the worshipper to God, but that cannot be possible without the former. Yet, the sphere of *iman* is not limited to the inner self for its effects can, and should be displayed in the inter-*actions* of the faithful with others. Hence, in the matters regarding government and the community’s life, the ruler is expected to act in a way reflecting a state of faith, i.e. to act with justice and goodness, because the faithful ruler cannot be unjust or bad for the community. From this perspective, in al-Qaradawi’s fatwa, the internal state of the president Mubarak is not proved, but assumed when one looks at his external deeds and the way he ruled the country, which are facts that cannot be contested. If Mubarak’s case reflects the relationship between interiority and exteriority as displayed in injustice, the exemplary deeds of the revolutionary youth reflect a state of faithfulness.

Justice, Truth and Ethical Exemplarity

In the revolutionary context, al-Qaradawi, through his ability to tell the truth of the law, is also an actor of the very social and political reality he assesses in his fatwa. For he is not only answering questions that have been asked regarding the lawfulness of the protest, he is also actively participating in the revolutionary movement against the president Mubarak. In the following paragraphs, this chapter studies the extent to which al-Qaradawi’s legal practice in his *fatawa* as well as his own ethics are informed and nourished by the revolutionary event and the ethical exemplarity and gesture of the revolutionaries. The truth of the law does not merely consist of producing the rule thanks to a logical procedure securing the authenticity and meaning of the foundational texts and mastered only by the skilled scholar. In the revolutionary moment, the truth of the law is both a rule and an ethical commitment to justice uttered by protesters as well as the mufti, which enlightens anew the relationship between the self and others as well as between the inner and the outer.

On February 2, 2011, in a public statement (*bayan*) that includes Islamic legal prescriptions and published in most of Egyptian newspapers, al-Qaradawi writes: “Islam enjoins the community to fight (*mujahada*) the unjust ruler” with “all the peaceful means”⁵⁶. He urges every Egyptian Muslim to participate in the Friday February 4 demonstration for it is “an obligation prescribed by the revealed law” (*wajiban shar’an*)⁵⁷.

⁵⁵ Abu Hanifa, *Al-Fiqh al-Akbar*, aphorism 42.

⁵⁶ Al-Qaradawi, 25 *Yanayir*, 55.

⁵⁷ Al-Qaradawi, 25 *Yanayir*, 59.

For al-Qaradawi, it is a legal duty to act to put an end to the corruption of rulers, which is harmful to the whole community. It is a struggle with real risks, involving the possible death of protesters and whoever stands against the ruler. Al-Qaradawi himself, in the opening of the third fatwa, recalls that many of the people of his entourage advised him to be more cautious, for the consequences on his own safety may be serious. Yet, he writes “Usually, the people in my position would be scared of death. However, I desire death in the path of God (*al-shahada fi sabil Allah*). This is what I pray God for, to end my life this way. This is my position, based on careful analysis and judgment”⁵⁸.

The people participating in demonstrations against the president Mubarak, (a peaceful mean of protest invented by the world (*ibtakaraha al-‘alam*)), are engaged in “a peaceful struggle” (*jihad silmi*), “a struggle with the tongue” (*jihad bi al-lisan*), that can be assimilated to the *hadith*: “What is the best of all struggles (*jihad*)? The word of truth said to the unjust ruler”⁵⁹(p.160). Al-Qaradawi also states that “whoever is harmed or imprisoned or tortured while saying the truth to the unjust ruler, is in the path of God, and if he loses his life, he is a martyr (*shahid*) for God”. The status of *shahid* is confirmed by the *hadith* quoted by al-Qaradawi about “the lord of the martyrs (*shuhada*’), Hamza Bin ‘Abd al-Muttalib, who was killed after he stood in the face of the unjust ruler to enjoin him to do the good and stop the wrong”.

At the limit of life, the struggle against injustice is both a form of self-sacrifice for the community and a way to bear witness to God’s presence. The self is no longer relevant as “something” that should be taken care of, for it is able to envision its possible imminent annihilation. Yet, it is still meaningful to the extent that it is the link to God and to others because its death is a promise of a better life of the community, and opens up the possibility of an encounter with God in the hereafter. In the revolutionary moment, the ethical gesture of the people and the scholar-mufti’s are one, for both are engaged in “the best of all struggles (*jihad*)”: speaking the truth (*haqq*) to the unjust ruler. The Arabic word “*haqq*” used in the *hadith* means both “truth” and “right”. Here too, truth and law are one and the same, in which, to use a terminology of Islamic jurisprudence, “the rights of God” (*huquq Allah*) and “the rights of God’s servants” (*huquq al-‘ibad*) have been violated. Yet, this identity between truth and right does not occur only in relationship to truth-seeking (as we saw earlier), but also in relationship to truth-uttering, a self-evident truth that does not need sophisticated legal arguments to be proven but requires common sense and a shared feeling of injustice.

Speaking the truth may be fatal as suggested by the possibility of death in the path of God (*shahada fi sabil Allah*). The *shahada* is also the profession of belief consisting in bearing witness that there is no god but God, and that Muhammad is His messenger. As a performative utterance establishing the very truth formulated by the Muslim, it is the first of the five acts of worship (*‘ibadat*), but is also said in the call for prayer five times a day. The *shahada*, as the testimony given by the witness (for example in the court), is also a truthful and trustful act in any procedure of truth-seeking. The *Sunna* (the second most important source of rules in Islamic jurisprudence), has been constituted on the basis of a reliable chain of transmission of trustful men that can be traced back to the original witness(es) who heard the words of the Prophet Muhammad or saw his deeds. From this perspective, the *istishhad*, understood as the act of desiring death in the path of God, is at the same

⁵⁸ Al-Qaradawi, 25 *Yanayir*, 147.

⁵⁹ Al-Qaradawi, 25 *Yanayir*, 160

time, reenacting the truth of God's presence and oneness, as well as the commitment to Muhammad's prophecy and exemplarity.

The struggle against the unjust ruler consists not only in an "external" deed such as speaking the truth and demonstrating, but also requires an internal struggle that one engages with oneself. Talking about injustice is not only mentioning "cold" facts about the situation of the country, it is also a matter of emotions for one "feels" injustice with one's "heart". This feeling of injustice may remain only enclosed in man's interiority, or it may be transfigured in deeds aiming at putting an end to the situation of injustice. Following a *hadith* quoted by al-Qaradawi in the third fatwa, it is "the struggle" (*jihad*) of the heart that is prescribed to believers in the face of the wrong. For al-Qaradawi, when facing endless injustices, the heart reaches a state of "ebullition" (*ghalayan*) and "anger" (*ghadab*) to the point of rebellion. The negative feelings such as hate are transformed into positive deeds such as peaceful demonstrations⁶⁰.

In the sermon (*khutba*) delivered during the "Victory's Friday" (*jumu'a al-nasr*), February 18 in Tahrir Square, one week after Mubarak stepped down, in front of an audience of several thousand people (according to Al-Jazeera) and broadcasted on Egyptian TVs as well as on Al-Jazeera, al-Qaradawi talked mainly about the fight against injustice that is not restricted to Islam, but transcends religious belonging.

Occurring right before the Friday's prayer, the *khutba* is an invitation to reflect upon a topic chosen by the Imam⁶¹. Although it belongs to a different genre than the fatwa, it also deals with the duties prescribed by the revealed law, but in a different way. While the fatwa is usually a response to a question often requiring an argumentation relying on a right usage of the *Shari'a* sources (i.e. Qur'an, *Sunna*, the consensus of scholars (*ijma'*) and analogical reasoning (*qiyas*)) as well as *ijtihad* (as in al-Qaradawi's *fatāwa*), and allows the questioner to know the rule to be followed, the *khutbah* is a moment in which the Imam tries to reach "the heart" of the Muslim by relying on admonishing styles such as advice (*nasihah*) rather than command (*amr*). It is an invitation to reflect upon oneself, one's relationship to God and to the community. It is also a way to make the Muslim available to the law, by expanding his understanding of it. However, it does not only address the grasping faculty of the Muslim, but also his/her ability to have feelings and emotions⁶². When the Imam focuses on an event in his *khutba*, it is usually a way to think about its meaning, and how it should be interpreted in relationship to God's intervention in the world. For al-Qaradawi, the address of February 18 is a moment in which one can reflect upon what has been learned from the Revolution⁶³. It was an educative revolution (*thawra mu'allima*), a moment

⁶⁰ Al-Qaradawi, *25 Yanayir*, 159.

⁶¹ In Egypt, as in several Arab countries, the government tries to have a control over the content of the *khutba* to avoid "political" topics.

⁶² Hirschkind, *The Ethical Soundscape*.

⁶³ Al-Qaradawi starts his sermon in an unusual way by speaking not only to Muslims, but also to the Copts: "O my sons and my daughters, O my sisters and my brothers [...], O Egypt's children, the *khutaba*' usually start their *khutba* with the words 'O Muslims'. I would like to say in this square: O Muslims and Copts, O Egypt's children, this is the day of all Egypt's children, and not a day for Muslims alone" (p.167). In his *khutba*, al-Qaradawi insisted several times upon the solidarity between Muslims and Copts and their ability to overcome confessional rivalries for "we (Muslims and Christians) all faithful (*kuluna mu'minun*) and we need to deepen our faith in God, we are all Egyptians and rebellious against injustice (*kuluna tha'irun 'ala al-batil*), we need to preserve this spirit [...]" (p.173). "In Tahrir square, our Copts brothers were standing to protect their Muslim brothers when they were praying, and I invite them, not only to protect them, but to prostrate with them (*yasjidu ma'ahum*) as a way to thank God the Almighty, for the

gathering people from all groups and classes: “rich and poor, educated and uneducated, workers and lettered, Muslims and Christians, men and women, young and old”, all became “one” (*shay’ wahid*) aiming at liberating Egypt from injustice (*dhulm*) and tyranny (*taghut*). Al-Qaradawi wants even “to kiss the hand of each one among the revolutionary youth because they raised our head with dignity”⁶⁴. The exemplary and virtuous conduct of Egyptian youth reminded al-Qaradawi of the *Ansar* (the people from Medina who helped the Prophet Muhammad right after the migration from Mecca), described in the Qur’an, *Surat al-Hashr*, 9 as “those who give preference to others over themselves even though they are in need” (*wa yu’athirun ‘ala anfusihim wa law bihim khasasatun*). Like the *Ansar*, the youth were able to sacrifice their own well-being for others, getting hungry and staying awake so the latter can eat, sleep and rest. For al-Qaradawi, this spirit (*ruh*) of the revolution, this virtuous link (*sila tayyiba*) and fraternity (*ukhuwwa*) need to be preserved by the youth. The Egyptian Revolution had an educative role, and should be remembered as an example of virtuous behavior (*husn al-suluk*), solidarity and sacrifice, full of lessons of guidance and ethics, and “wonders of faith” (*rawa’i’ al-iman*): “This is Egypt when she has faith” (*hadhihi misr hina tu’minu*)⁶⁵.

After the formulation of the rule in the fatwa authorizing demonstrations against the unjust ruler, right after the fall of Mubarak, the sermon is the time of reflection and collective introspection about the significance of the revolutionary event. For the interpretation of the revealed law (*shari’a*) is not only a way to formulate rules to be followed, but enlightens the events of worldly life, and is an invitation to reflect upon what it means to belong to the same community. As in his *fatawa*, al-Qaradawi’s sermon underlines the practical dimension of faith as exemplified not only in the act of protest against the unjust ruler, but also in relationships between individuals during the revolutionary moment. Here, the relationship to others and to the community in the form of fraternity and sacrifice is made possible by the relationship of the self to God through the mediation of the revealed law. It displays an articulation between interiority and exteriority in the relationship to others, and between morality and action that is constitutive of the Islamic polity.

Order, justice and the scope of scholarly disagreement

While injustice as related to unfaithfulness was the main lens through which al-Qaradawi declared the lawfulness of demonstrations against the president Mubarak, other prominent scholars who did not hold similar views did not try to prove that the president was just and faithful but rather relied on another set of arguments. ‘Ali Gom’a, Grand Mufti of the Republic at the time of protests, underlined that the Egyptians were not unanimously supporting the demonstrations against President Mubarak and that several segments of Egyptian society were worried about their effects on their everyday life. Gom’a’s fatwa did not prohibit the demonstrations against president Mubarak but rather authorized Egyptian Muslims not to attend the Friday prayer which is usually considered as mandatory by Islamic scholars. Gom’a stated that the call for demonstrations right after the Friday prayer is a legitimate reason to fear insecurity and possible violence threatening lives and properties⁶⁶. Moreover, for Gom’a, demonstrations would stop urban traffic, mobility

prostration (*sujud*) is relied upon by both Muslims and Christians” (p.173). For al-Qaradawi, faith is not specific to Islam, but shared by other religions, as he puts it in his book *Al-Iman wa al-Hayat*.

⁶⁴ Al-Qaradawi, *25 Yanayir*, 171.

⁶⁵ Al-Qaradawi, *25 Yanayir*, 5.

⁶⁶ www.youtube.com/watch?v=88XF7b9rjdM, last accessed 15 April 2017.

and economic activity within Cairo and other main cities, and would generate a major loss in a context where the people's main concern is to earn their everyday living. Gom'a's main argument stressed the need to avoid discord and disorder (*fitna*), and underlined the imperative to preserve the community's unity as prescribed in the following verse of the Qur'an, *Surat Ali 'Imran*, 103 : "And hold firmly to the rope of God all together and do not become divided" (*i'tassimu bi habli Allah jami'an wa la tafarraqu*).

While Gom'a and al-Qaradawi's *fatawa* formulated distinct and potentially contradictory prescriptions, they nevertheless shared the assumption that demonstrations may be a legitimate mean of action, depending on the context in which they occur, their demands and the way they are organized. From this perspective, Gom'a's argumentation was distinct from the kind of arguments relied on for example by several official scholars in Saudi Arabia⁶⁷ or some *Salafi* scholars in Egypt⁶⁸. For the latter, it is the very practice of demonstrations that is unlawful, notably because it is not a practice that the collection of the Prophet's sayings (*hadith*) can attest of, and is therefore deemed non-Islamic. Gom'a did not prohibit the demonstrations as a general mean of action but stressed their effects on the community and its unity. Unlike most *Salafi* scholars, the jurisprudential method relied on by both al-Qaradawi and Gom'a in their legal opinions does not prohibit a practice merely because it is not mentioned in the Qur'an, or is not attested by the Prophetic practice or is not explicitly authorized by the Prophet Muhammad's authentic sayings.

Al-Qaradawi and Gom'a share similar scholarly assumptions about Islamic jurisprudence, and both claim to be proponent of the school of the middle ground (*wasatiyya*). For them, the *Salafi* school remains subjugated to a literal-textual approach (*nassi wa harfi*), relying excessively on the *hadith* [reports on the sayings and deeds of the Prophet] without taking into account the procedures of rule-production delineated in the sources of jurisprudence (*usul al-fiqh*) or the ultimate and higher goals and objectives of the revealed law (*maqasid al-shari'a*). For the *Salafi* school, both al-Qaradawi and Gom'a are too lenient as they made lawful changes brought about by contemporary life that are not part of what it is viewed as proper Islamic practices. Yet, al-Qaradawi and Gom'a formulated legal opinions about the 2011 demonstrations that reflected potentially antithetic principles. While al-Qaradawi's fatwa was guided by the principle of justice, to which obedience to the ruler and the preservation of order are subjugated (i.e. the ruler is legitimate only to the extent that he acts with justice), Gom'a's fatwa was based on the principle of preservation of the community's concord under the existing order.

The tension between the right to stand before injustice and the duty to preserve order as expressed in al-Qaradawi's fatwa and Gom'a's has informed several Egyptian Muslims's decision as to

⁶⁷ On the Saudi Council of Scholars' fatwa declaring the demonstrations unlawful and issued on 7 March 2011, see <http://www.alriyadh.com/611507>, last accessed 16 April 2017. See also previous famous *fatawa* prohibiting demonstrations authored by prominent *Salafi* scholars such as the Saudi Muhammad Ibn al-Uthaymeen or Nasir Din al-Albani who was based in Syria and Jordan.

⁶⁸ See for example the fatwa authored by the Egyptian *Salafi* scholar Mustapha al-'Adawi's www.youtube.com/watch?v=pb6dxzRWNd0, last accessed 15 April 2017. In Egypt, *Salafi* scholars did not have a unified position and a few relied on an argumentation similar to Gom'a's to prohibit their followers to demonstrate against Mubarak. Yet, several *Salafi* scholars such as Muhammad 'Abd al-Maqsud endorsed the demonstrations and a significant number of demonstrators were affiliated to the *Salafiyya* movement. Other prominent Egyptian *Salafi* scholars such as Yasir al-Burhami and Muhammad Hasan distanced themselves from, or prohibited the participation in the demonstrations at the very beginning, and changed their position about the revolution subsequently.

whether they should participate in the demonstrations against the president Mubarak. In this context, Islamic jurisprudence does not produce a monolithic and unified ensemble of rules when it is requested to assess new events such as the 2011 uprisings. Rather, the production of Islamic legal knowledge in response to these new events occurs within the space of *ijtihad*, which is the space of probable thought (*zann*) rather than certainty (*qat'i*) that can be occupied by several scholars with different if not potentially contradictory opinions. The space of *ijtihad* and *fatwa* formulation, that carves a space of legitimate disagreement between scholars, goes along with the space of agreement about the authoritativeness of the Qur'an and the *Sunna* as the sources of evidence supporting the formulation of legal rules.

As exemplified in al-Qaradawi and Gom'a's *fatawa*, the assessment of the nature of a new event requiring the light of Islamic jurisprudence informs the production of legal opinions by Islamic scholars. To a great extent, the question as to whether a new event is identical to a previous one that formed the basis of which a legal opinion has been formulated (i.e. the precedent) usually guides the Islamic scholars's search. The 30 June 2013 demonstrations against the elected president Morsi and its subsequent ouster generated a legal debate among Islamic scholars similar to the one that occurred at the time of the January and February 2011 demonstrations against the president Mubarak. For al-Qaradawi, the 30 June 2013 demonstrations were not of the same nature as the 25 January 2011 demonstrations and should not lead to Morsi's ouster as the segment of the Egyptian people who participated in it cannot act on behalf of the vast majority. Moreover, for al-Qaradawi, when properly assessed, the president Morsi's deeds did not contravene any of the conditions necessary for the removal of the ruler listed in classical Islamic jurisprudence and which include committing a great sin, or forcing the people to abandon their religion. In contrast, for Gom'a, Morsi was no longer a legitimate president as his deeds destabilized the country and required his removal.

When comparing Gom'a's position and al-Qaradawi's about the 30 June 2013 demonstrations with their respective positions in January and February 2011, it appears that the labor of Islamic jurisprudence is less to formulate universal and immutable rules (for example to authorize or prohibit demonstrations against the ruler) than to allow scholars-*mujtahid* to rely on their judgment on a case by case basis while using the same sources of evidence offered by the Qur'an and the *Sunna* and the procedures delineated in the discipline of *usul al-fiqh* (the sources of jurisprudence). That is the reason why several Islamic scholars may formulate different rules in response to the same case, or why the same Islamic scholar may formulate different rules in response to similar cases over time and space.

Part I

Chapter 2

Law, Revolution and Sovereignty in Comparative Perspective

Chapter 1 was devoted to questions of jurisprudence, truth-seeking, and interiority, and has shown that the 2011 revolutionary event as understood and practiced by the scholar Yusuf al-Qaradawi displayed scholarly and ethical practices based on the relationship of faith to justice and centered on the ability of the self to serve the community and made possible by, and subjugated to the relationship of the self to God as mediated by the revealed law. Building on chapter 1, I would like in this chapter to discuss briefly the concepts of law, revolution and sovereignty as they have been raised in the Egyptian context in comparison with their western trajectories.

Revolution, Law and the State

For al-Qaradawi, the Egyptian Revolution is not an isolated event, and should be situated in a broader history of revolutions, including the American Revolution. The revolutionary event “allows the people to express their hope despite the government’s repression and attempt to break their will [...]”⁶⁹. Al-Qaradawi’s first fatwa dealing with the lawfulness of peaceful demonstrations and protests before the mobilization of the “Arab Spring”⁷⁰ states clearly that Muslims too, “like all humans”, have the right to organize and participate in demonstrations as a form of expression of their demands, for, in contrast to the individual’s voice, the collectivity’s voice (*sawt al-majmu’*), cannot be ignored. The community’s will is stronger than the individual’s will as recalled by God in the Qur’an *surat al-Ma’ida*, 2: “Support each other for the good and piety” (*ta’awanu ‘ala al-birr wa al-taqwa*) and the Prophet Muhammad in the *hadith*: “The believers are like the (foundations of a) house, they support each other”⁷¹.

Against Islamic scholars who declared demonstrations blameful innovations (*bid’a*) because no example of them can be found in the time of the Prophet Muhammad and his Companions, al-Qaradawi recalls that they are part of the habits and practices (*adat*) of civil life (*al-hayat al-madaniyya*). The rule in these matters is permissibility (*al-ibaha*), for “the original principle or all things is permissibility” (*al-asl fi al-ashya’ al-ibaha*), as agreed upon by the great majority of scholars and specialists of the sources (*jumhur al-fuqaha’ wa al-usuliyin*)⁷². Al-Qaradawi relies

⁶⁹ Al-Qaradawi, *25 Yanayir*, 6.

⁷⁰ The fatwa has been widely circulated and quoted during the revolutionary days. It is a response to a question quoting another fatwa of a scholar forbidding the demonstrations.

⁷¹ Al-Qaradawi, *25 Yanayir*, 25.

⁷² For al-Qaradawi, the forbidding rule is formulated only when relying on a valid and explicit textual source (*nass sahih al-thubut sarih al-dalala*). The sphere of forbidden acts in the *Shari’a* is very narrow, and the circle of the licit is very wide because there are only a very few valid and explicit texts with forbidding injunctions. All these permissible acts are part of the circle of God’s grace and mercy (*da’irat al-’afw al-ilahi*) as stated by the *hadith*: “What has been authorized by God in His Book is lawful (*halal*), what has been forbidden is unlawful (*haram*), and what is not spoken of is mercy (*’afw*), so accept from God His mercy (*fa aqbilu min Allah ’afiyatihi*), for God did not forget anything” (p.26).

on a rule (*qa'ida fiqhiya*) that was used both by Ibn Taymiyya (d.1328) and his disciple Ibn al-Qayyim (d.1350), and more generally Hanbali scholars to authorize all forms of contracts that were not explicitly forbidden by reliable textual sources. Hence, stating that practices that did not exist in the time of the Prophet Muhammad or his Companions are blameful innovations (*bid'a*), is relevant only for acts of worship. The ruling principle (*asl*) for worship matters is emulation and imitation [*itiba'*] while it is innovation for worldly ones. Islamic history is full of good innovations such as the creation of new sciences like the science of jurisprudence (*'ulum al-fiqh*), grammar... The fact that Muslims did not “invent” demonstrations is not a lawful reason to forbid them because it is part of the life of civilizations to take things and practices from each other that improve worldly life as recalled by God in the Qur'an, *Surat Ali 'Imran*, 140: “And these days, We alternate between the people” (*wa tilka al-ayamu nudawiluha bayna al-nas*)⁷³.

However, the parallel drawn by al-Qaradawi with other similar events, notably western liberal revolutions, does not mean that the Egyptian Revolution is their replication. The concept of “revolution”, closely related to political upheavals and intellectual transformations of the eighteenth century, is often associated with the institution of a new legal order. The revolution consisted not only in uprisings against the “ancient regime”, or the emancipation from imperial rule, but most importantly, in “a declaration of rights” to be protected through the foundation of a new law, along with new procedures and institutional arrangements for the production of rules. Although the institution of a new law was inspired by natural law, the revolutionaries, particularly in France, understood their own foundational constitutional gesture as a radical change putting an end to the previous legal order. While classical natural law was based on an articulation of internal duties leading to the realization of the good, modern law as thought by theorists such as Hobbes and Locke, and instituted by the eighteenth century revolutions allows for a constitution of an amoral sphere of individual choice and autonomy secured by the state. Hence, the post-revolutionary modern legal regime does not require the internalization of duties, but only the external imposition of constraints and limitations⁷⁴.

In the Egyptian context, the introduction of modern law, produced in Europe after the liberal revolutions, was initiated by Egyptian rulers under colonial pressure. One of the main objectives of these “reforms” was to separate the domain of morality from law, a distinction posited by the very law produced by colonial power⁷⁵ as well as by Egyptian jurists educated in modern universities⁷⁶. This new rearrangement was articulated to another distinction between the private and the public that relegated beliefs and worship in the former. Yet, these drastic changes did not put an end to Islamic law, nor to its relevance for contemporary Muslims. Rather, some

⁷³ Later in the fatwa, al-Qaradawi relies on two jurisprudential principles. The first is the notion of public interest (*maslaha mursala*) which includes the practices inexistent at the time of the Prophet Muhammad or the fourth Caliphs who succeeded him. These practices, whose good can be grasped by reason, should not deal with acts of worship, nor be in contradiction with a textual source. For al-Qaradawi this principle is considered a valid source for the formulation of legal rules or legal opinion or judgments, not only for the Maliki school, but all other Sunni legal schools. The second principle consists in determining the end (s) for which the means are used (*lil wasa'il hukm al-maqasid*), for the lawfulness of the latter is determined by its usages. Demonstrations organized in solidarity with political detainees, or against military trials of civilians, or putting an end to the state of emergency or in order to improve the living conditions of the people, have all a legitimate end (*maqasid mashru'*) and should be considered lawful.

⁷⁴ Habermas, *Theory and Practice*.

⁷⁵ Cromer, *Modern Egypt*.

⁷⁶ Asad, *Formations of the Secular*; Esmeir, *Juridical humanity*.

prescriptions of Islamic jurisprudence, notably those related to family affairs, have been framed and codified as state law, and enforced in modern courts⁷⁷. This transformation went along with the continuous transmission of *Shari'a*'s sciences in institutions of Islamic learning notably Al-Azhar, as well as in the space of *da'wa* (call) that have been formative for Islamic scholars like al-Qaradawi.

From the perspective of Islamic law as understood by al-Qaradawi, the revolution does not mean the institution of a new law in place of the older one but takes place within a tension between modern and Islamic law, and entails the reenactment of the *Shari'a*'s meaningfulness and authority. *Ijtihad* as performed by al-Qaradawi in his *fatawa* is the perpetuation of the very act of rule production in Islamic law and jurisprudence. As we saw earlier, when al-Qaradawi states that the president Mubarak does not belong to the faithful, he assumes a relationship between internal states and external deeds in the definition of faith that sheds light on the internalization of duties by the subjects of law. Reaffirming the authority of Islamic law is to presume a relationship between the inner and the outer and between morality and law that can be contradistinguished from the ones assumed by modern law relying on the distinction between private and public spheres in which morally virtuous persons are not required for collective life.

However, the reenactment of Islamic law's authority in the revolutionary context does not mean that an "Islamic state" is to be created⁷⁸. When the Arab uprisings started in 2011, the specter of an "Islamic" revolution, replicating the Iranian experience was the main concern among western media and governments. For, before the "Arab Spring", the notion of revolution in Islamic context was mainly associated with the Iranian Revolution that overthrew the Shah in 1979. Although the Iranian revolutionaries included a plurality of political and ideological positions, the Revolution soon meant the institution of "the Islamic scholar's government" (*wilayat al-faqih*) as theorized by Ayatollah Ruhollah Khomeini. Al-Qaradawi does mention the Iranian Revolution, but, for him, the institutions of the Islamic Republic of Iran are specific to Shiites and their intellectual and legal tradition⁷⁹, and cannot be used as an authoritative case for the countries where the Sunni are the majority of the people⁸⁰. Yet, the Egyptian Revolution was not couched in the same terms as the Iranian Revolution, neither was it a copy of western liberal revolutions. Rather, for al-Qaradawi, in his book *Min Fiqh al-Dawla fi al-Islam (Jurisprudence of the State in Islam)* published fourteen years before the 2011 events, the state should be "civil" (*madani*) with an Islamic reference (*marji'*), for there is no theocracy or "men of religion" (*rijal al-din*) ruling "the people's consciences" (*zama'ir al-nas*) in the name of divine rule⁸¹. In this state, the proper role of Islamic scholars is to give active advice (*nasihah*) to the government and enlighten the rulers regarding Islamic duties so they can act according to the revealed law's prescriptions.

⁷⁷ Petersen, *Defining Islam*; Hallaq, *Shari'a*.

⁷⁸ On the debate over the "Islamic" state and *Shari'a* see Abdullahi an-Naim, *Islam and the Secular State* and Wael Hallaq, *The Impossible State*.

⁷⁹ Al-Qaradawi recalls that the Imam, to which Khomeini was often associated, is an infallible political-religious leader that cannot be dismissed for the Shiites, while he is chosen by the people for the Sunnites, and can be dismissed by them.

⁸⁰ In the political and constitutional debates that followed the overthrow of the president Mubarak, the notion of "civil state" was relied upon by "secular" forces as well as Islamic movements, notably the Muslim Brotherhood, albeit with several differences regarding the relationship of religious authority with political power.

⁸¹ Al-Qaradawi, *Min Fiqh al-Dawla fi al-Islam*, 30.

As in other contexts, the relevance of the word-notion of “revolution” to describe the past and present events, as well as the question of its “success” or “failure”, are a matter of academic and political debate in Egypt. Was the military coup against Muhammad Morsi, the first elected president after the first fair and transparent elections in Egyptian history, an act faithful to the “January 25 Revolution” that overthrew the president Mubarak? Or was it the start of the “counter-revolution”? Whatever the answer is to these questions, the 2011 events became a foundational moment for Egyptians that nourishes the memory of sacrifice and collective emancipation as well as a horizon of hope. Islamic scholars such as al-Qaradawi produced a series of opinions that are now part of the Islamic legal corpus dealing not only with the “past” revolution but which may be relied upon in the context of future uprisings. It is also an ensemble of rules dealing with exemplary acts that may enable ethical practices related to the relationship of the self to others in the midst of exceptional events meaningful to the community.

Revolution and Sovereignty

In Western political history, the question of authorship of the law has been discussed in relationship to the emergence of the modern notion of sovereignty and was largely disputed at the time of the conflict between the Church and the temporal power in Europe. For European political theorists and philosophers (such as Hobbes or Rousseau), to raise the question “who is the sovereign?” is to answer the question “who is the author of the law?”. In the narratives of modernity, the transformation of political regimes consists in the “transfer” of sovereignty and authorship of the law from one entity to another (from the Church to the King, and from the King to the people). Although, in practice, the elected representatives make the law, it is only because they have been chosen and “authorized” to do so by the sovereign people who remain the source of legitimacy.

In contrast, in the pre-colonial Islamic polity, the rules organizing the life of the community and regulating social relations and transactions are derived from, or related to, the revealed law (*Shari'a*) whose author is God. However, *Shari'a* rules are not immediately available to the community, and need authorized interpreters to be disclosed to the latter. As scholars who are not entrusted with political authority, the main task of the *fuqaha* is “to extract” the rules from the *Shari'a*'s sources (i.e. the Quran and the *Sunna*), and never to enforce them. The ruler's main task is to preserve order and civil peace, and to appoint judges (who are often scholars) enforcing the rules regulating social relations and transactions. Hence, neither the scholars-jurists, nor the ruler, were ever entrusted with sovereignty understood as the authorship of laws, as in western-modern political theory and practice.

Although its theological genealogy may be traced back to the Church's law or to the King's law⁸² and remains tied to it as part of the secular-Christian identity, the notion of sovereignty is no longer understood in Christian theological terms in contemporary political theory and practice, at least since the eighteenth century liberal revolutions. Most important, there is only one legal order produced by the modern state and regulating the people's life and there are no other laws or supra-legal order to which they can refer to. They may refer to their moral values, and underline the subjective conflict between the moral and the legal. In contrast, several Muslims and Islamic scholars (as al-Qaradawi in his fatwa authorizing revolutionary protests) would refer to Islamic law as a supra-legal order that is distinct from modern state law, but that is not necessarily non-

⁸² Kantorowicz, *The King's Two Bodies*; Agamben, *The Kingdom and the Glory*.

compatible with the latter. While modern positive law is constitutive of the state, the revealed law does not address the state as such, but the individuals as well as the community of faith, and is constitutive of the latter. However, it is expected that political rulers as individuals who have the power to organize the community's life, should submit to the revealed law as interpreted by Islamic scholars.

While the question of sovereignty is relevant to better understand contemporary Islamic representations of the relationship between law and power, it is also related to the question of ethics. For the liberal-Kantian self-legislating subject in the moral domain is homologous to the self-legislating citizen *a la* Rousseau in politics. Rousseau's *Social Contract* was a major source of inspiration for Kant's theory of morality formulated in the *Critique of Practical Reason* or in the *Metaphysics of Morals*. Although Kant's conception of political power has been relatively marginal in his overall thought when compared to Rousseau's, they both offer a structural relationship between the sovereign moral subject and the sovereign juridical-political subject that have shaped the way we understand and live modern-liberal politics.

The 2011 Egyptian Revolution and more generally any project of political emancipation in Muslim majority countries raise the question of the consistency between the twin sovereignties, i.e. the moral and the juridical-political, across cultures. If the Arab uprisings were a moment in which "the people" reclaimed their right to revolt against injustice and their desire to live under a democratic regime, several of them did not do it as inheritors of the western liberal tradition of moral autonomy but as selves addressing the revealed law (*Shari'a*) and its authorized interpreters for guidance. Hence, in the Islamic context, democracy, understood as the regime in which political sovereignty belong to the people through the mediation of their elected representatives, may be grounded in a form of non-sovereign moral subjectivity that opens up the space for different juridical regimes. From the perspective of Islamic scholarship⁸³, the legal order of the state is ethically subjugated to the non-enforced supra-legal order of *Shari'a* as formulated by Islamic scholars. At the time of the Egyptian Revolution, Islamic scholars would often recall that their task is to formulate *Shari'a* rules and to enlighten the community but never to enforce them. As we saw above, when al-Qaradawi formulates a legal opinion (*fatwa*) authorizing peaceful demonstrations against the ruler in February 2011, it remains each Muslim's choice to follow or not follow the rule for it occurs in a space of non-enforcement of *Shari'a*.

⁸³ For example, from the perspective of the scholar Hasan al-Shafi'i who headed Al-Azhar's delegation in the constituent assembly at the time of the constitutional debate in 2012, Islamic scholars should never enforce *Shari'a* rules (see chapter 9).

Part II

Spirituality

Sharia's Spirituality and the Topography of the Self

Part II

Chapter 3

Spiritual Ethics in Contemporary Egypt

Islamic legal opinions about the right attitude to adopt against the unjust ruler raise several questions about the inner self. As we saw in chapter 1 and 2, Yusuf al-Qaradawi assessed President Mubarak's faith, understood in contractual terms, and, on this basis, declared him an unfaithful ruler against which demonstrations are lawful. Although al-Qaradawi assessed Mubarak's faith only from the perspective of the latter's external deeds, his legal opinion entails certain assumptions about inner self as related to deeds not only about Mubarak but also about the protesters. For al-Qaradawi as well as classical and contemporary Islamic scholars, following *Shari'a* rules as prescribed by jurisprudence (*fiqh*) involves not only the execution of deeds but also the cultivation of inner states.

Although the kind of spiritual topography of the self assumed by al-Qaradawi may be related to contemporary political turmoil such as the 2011 Egyptian Revolution, it opens up a time-space of spirituality that exceeds the temporality of the event for the self needs to cultivate spiritual ethics whatever the social-political context is. Justice requires beings prepared to act ethically in the world, and whose inner selves are educated to devote themselves to the well-being of the community as exemplified by forms of self-sacrifice and solidarity between Egyptians in Cairo's Tahrir square as well as in other spaces in 2011.

As a moment reenacting the authority of *Shari'a* for many Islamic scholars and protesters, but also as a moment in which the question of whether the latter should be the main source of legislation (as it was the case in the Egyptian constitution since 1971) was raised in the public debate, the Egyptian Revolution sheds light on the possibility for Islamic jurisprudence's rules to achieve the good and induce moral behavior when they are enforced by the state. On the one hand, the rules of jurisprudence are meant to regulate the individual's deeds as well as social relations and transactions in the Islamic polity. On the other hand, making the community follow these rules by relying on force does not make necessarily individuals good and may deprive Islamic law from its authority if people follow the rules only out of fear of state coercion.

Whether or not the rules derived from *Shari'a* are enforced by the modern state, the question of the inner self as related to the "externality" of deeds prescribed by jurisprudence remains central for any discussion of the good in Islamic context. For most of classical scholars, notably al-Ghazali, the regulation of the polity by Islamic jurisprudence does not necessarily make the community and its constituting selves good. Here, one should shift from the "objective" life of Islamic law and the procedures commanding the rules of its production, to the subjective perspective that opens up the space of spiritual ethics as related to the revealed law for there are questions that can be raised only for the individual consciousness. Among these questions, one may ask: "Does merely following *Shari'a* rules makes the self good under God's sight?"

One cannot explore ethical practices in Islam without studying a specific knowledge dedicated to them and associated with different names in the writings of classical and contemporary Islamic scholars: “the refinement of ethical conduct” (*tahdhib al-akhlaq*) for Miskawayah,⁸⁴ “the science of the path to the hereafter” (*ilm al-tariq ila al-akhirah*) for al-Ghazali, “the science of ethical conduct” (*ilm al-suluk*) for Ibn Taymiyya, or more recently the “knowledge of ethical conduct” (*fiqh al-suluk*) for al-Qaradawi. This knowledge about ethics refers primarily to the relationship between inner self and outer deeds. Through a language of its own, it develops a spiritual topography of the self giving name and shape to its inner states. Spiritual practices instantiate a space of relationality to God through which the self’s deeds in the world are mediated and assigned a moral value. From this perspective, spiritual practices are intertwined with ethical ones and open up a space of spiritual ethics.

The knowledge of spiritual-ethical practices has most famously been closely associated to “the science of Sufism” (*ilm al-tasawwuf*)⁸⁴. While many classical Islamic scholars such as al-Ghazali have been associated with Sufism, several others, like Ibn Taymiyya, were known for criticizing what they called the Sufi brotherhood’s “excesses” that may contravene *Shari’a* rules. However, they all shared with Sufism an exploration of the self and his spirituality as a necessary condition for ethical improvement. It is true that these scholars did not produce an identical understanding of what should be included in spiritual practices, particularly regarding their acceptability from the perspective of jurisprudence, but they all assumed the existence of a specific knowledge devoted to spiritual ethics and delineated its contours.

Shari’a’ spirituality

One way to raise the question of *Shari’a’* spirituality is to discuss Sufi knowledge and practices in relationship to jurisprudence and would include both spirituality entailed by *Shari’a* rules, but also the ways in which spirituality should be grounded in *Shari’a* rules. I will do so relying on an account of my encounter with the central branch of one of the main Sufi brotherhood in the Muslim world, the *Ashira Muhammadiyya* (Litt. The Prophet Muhammad’s cognate community) of the *Tariqa Shadiliyya* (The *Shadiliyya* path)⁸⁵.

The main site of the *Ashira* is a mosque situated in Cairo’s cemetery, adjacent to a building where it has its main activities, notably the Academy for Sufi Studies and the Heritage’s Sciences (*Akadimiyat al-Dirasat al-Sufiyya wa ‘Ulum al-Turath*). On the frontispiece of the mosque where the main branch of Sufi brotherhood I studied is located, one may read its full name: *The Sufi, Salafi and Lawful Shadiliyya Muhammadi Path (al-Tariqa al-Shadhiliyya al-Muhammadiyya al-Sufiyya al-Salafiyya al-Shari’yya)*. It is also written that the Quran and the Sunna are its foundational law (*dustur*), knowing and acting are its approach (*manhaj*), and exemplary ethics and worship its path (*husn al-khuluq wa husn al-‘ibada*). The full name of the *tariqa* emphasizes the lawfulness of its practices as well as its grounding in the Quran and the *Sunna*. This emphasis is not only a rhetorical way for the Sufi path to defend itself against attacks of many contemporary *Salafi* scholars who condemn several Sufi practices, it reflects also a commitment to live the revealed law (*Shari’a*) as spirituality⁸⁶.

⁸⁴ See for example Ibn Khaldun, *The Muqaddima*.

⁸⁵ The *Shadhiliyya* is associated with the name of its Moroccan founder Abu al-Hasan al-Shadhili (d.1258).

⁸⁶ The relationship between *Salafiyya* and Sufism will be developed extensively below.

For the founders of the Academy, their scholarly project consists in teaching *Shari'a* sciences as they are taught in Al-Azhar but with a much stronger emphasis on the Sufi perspective. Besides the classical books relied upon in the training of Al-Azhar's scholars, the Academy's training includes courses such as: the Sufi understanding of legal rules (*al fiqh al-sufi lil-ahkam*), the Sufi understanding of belief (*al-fiqh al-sufi lil-'aqida*), the Sufi understanding of the Quran (*al-fiqh al-sufi lil-tafsir*), the Sufi understanding of the hadith (*al-fiqh al-sufi lil-hadith*) and Sufi ethical behavior (*al-suluk al-sufi*). Usually referring to the discipline of Islamic jurisprudence, the word *fiqh* is used here in the broader sense of understanding and suggests the entwinement of Sufism with all the disciplines related to *Shari'a*. The Academy's educational and scholarly mission understood as "a revivification of the sciences of religion within the community" echoes al-Ghazali's eponym book, and is an attempt to ground Islamic ethics and exploration of interiority in *Shari'a's* sources and jurisprudence inspired by al-Ghazali's thought.

The spiritual practices prescribed by the sheikh are supererogatory and entail a commitment to the law's prescriptions. They address Muslims who are already performing obligatory acts of worship as prescribed by jurisprudence, and who are ready to do more than what the law requires. However, spirituality is not only located in the sphere of supererogatory deeds as defined by the law but is also related to the way the Muslim perform obligatory *Shari'a* rules, particularly in the acts of worship.

Several times a month, I attended the *hadhra* (literally: presence), the main collective ritual of the *Tariqa*, which consisted in a collective and aloud reading of several *surah* of the Quran. Although belonging to the category of worship acts, the *hadhra* is not obligatory from the perspective of jurisprudence but is considered supererogatory (*nafla*) for whoever wants to become "closer to God". Remembering God (*dhikr*) at the *hadhra* is an exercise of repetition that may help the participant reach a state of *tuma'nina* (serenity) and *sakina* (peacefulness). It is also a moment in which the link between the members of the community is reenacted as the collective performance strengthens the emotional effects of ritual utterances.

Besides the bi-weekly *hadhra*, each member of the *tariqa* is required to follow the everyday ritual prescriptions. After the execution of the obligatory prayers (*salat*) at the prescribed time, and the continuous reading of the Quran, and after a time devoted to instruction in matters of jurisprudence (*fiqh*), each member performs the *wird* (daily ritual assignments), preferably both in the evening and in the morning, and consists in repeating at least one hundred times the *istighfar* (seeking forgiveness from God), at least one hundred times the *salat 'ala al-nabi* (blessing upon the Prophet) and at least one hundred times the *tahlil* (declaration of God's Oneness). The *wird* may be recited either silently within the "heart" or out loud with the "tongue", but it is preferable to recite it both with the tongue and within the heart. If the adept is unable to recite each prayer one hundred times, he can reduce the number of repetitions as to avoid any interruption of the bond between him and God (*wa la yanqati' ma baynahu wa bayna Allah abadan*)⁸⁷.

The *tariqa's* members are also expected to recite several *surah* from the Quran notably *surat Yasin* after the sunset prayer and repeat *surat al-Ikhlās* after it. They should recite *surat al-Waqi'a* everyday day after the morning's prayer, *surat al-Kahf* before Friday's prayer and *surat al-Dukhan*

⁸⁷ Al-'Ashira al-Muhammadiyah, *Al-Ta'rif bi al-Tariqa (Knowing the Tariqa)*, p.10.

on Friday night. After each recitation, the adepts should repeat the ritual blessing upon the Prophet Muhammad (*salat 'ala al-nabi*) as much as possible. Moreover, they should also perform the supererogatory nightly prayers (*qiyam al-layl*) as well as other prayers (*salat al-tawba*, *al-haja*, *al-tasabih* and *al-shukr*).

However, the *Tariqa*'s members are not only dedicated to worship or the transmission of Islamic knowledge and the training of Islamic scholars, they are also involved in social and beneficence activities infused with ethics. The *Tariqa* has established medical centers, orphanages, nursery schools, workshops, professional training centers for girls, literacy classes in several poor neighborhoods of Cairo (such as *Qaytabani*, *al-Muqatam* and *al-Zhuwayqa*). One of the centers affiliated to the *Tariqa* gives a training regarding "the ethical dimension of the achievement of one's work including sincerity (*ikhlas*), dedication (*inkar lil-dhat*), trustworthiness (*amana*), truthfulness (*sidq*), exemplary behavior (*al-adab al-'ali*) and other noble ethics (*makarim al-akhlaq*)"⁸⁸.

The *Tariqa*'s members understand their broader role in Egyptian society as a "call" (*da'wa*) which main goals lie in educating people about religion, spirituality (*ruhaniyyat*), culture and ethics (*akhlaq*), as well as in making "God's law rule" (*al-'amal 'ala siyadat Shar' Allah*). It includes also "a global Sufi reform (*islah sufi shamil*)" grounded in the Quran and the *Sunna*, as a way to contribute to "Islam's awakening (*sahwat al-Islam*)"⁸⁹.

The two knowledges: divine illumination and jurisprudence

One night of Ramadan, after a session of *dhikr* in the mosque, the Sufi Brotherhood's sheikh recalled its members that they should always follow *Shari'a* rules as true Sufism says that spiritual truth can never be opposed to jurisprudence:

"By analogy to Al-Khidr⁹⁰, truth (*haqiqa*) is opposed to the revealed law (*shari'a*). There are people who claim to be Sufi, they think that once one reaches truth, one is no longer bounded by Islamic legal obligations. They rely on a false interpretation of *surat al-Hajr*, 99: "And worship your Lord until you reach certainty" (*wa a'bad rabaka hata ya'tika al-yaqin*), they say that *al-yaqin* means the stage of truth (*maqam al-haqiqa*) while in fact it means death. Saying that *haqiqa* is opposed to *shari'a* is a heresy (*zandaqa*). It is true that *shari'a* deals with the external and apparent dimensions of things (*zawahir al-umur*) and the appearances of worship (*suwar al-'ibadat*) and *haqiqa* has to do with the spirit (*ruh*) of things and the underlying reason of worship (*hikmat al-'ibadat*), but they are one and the same thing, and one cannot be without the other for they are like the spirit to the body".

⁸⁸ *Khatawat 'ala Tariq al-Islah (Steps on the Path of Reform)*, p.34.

⁸⁹ *Khatawat 'ala Tariq al-Islah*, p.18. In contemporary times, the notion of *da'wa* [call, preaching] has usually been associated with Islamic movements. It is true that Hasan al-Banna, the founder of the Muslim Brotherhood, is one of the first men of religion, in the modern context, to define himself, following Rashid Ridha as "a man of *da'wa*" and to use it in a systematic way to qualify the action of his movement. However, *da'wa* is not exclusive to Islamic movements and is a word widely relied upon by contemporary Islamic scholars from Al-Azhar, by Sufi brotherhoods or other religious groups that are not directly involved in the political sphere.

⁹⁰ Khidr is a figure of wisdom associated to Moses in the Quran, *surat al-Kahf*. See below.

In the Quran, *Surat al-Kahf (The Cave)* tells us a story about the encounter of Moses with a wise man, identified in a *hadith* (saying of the Prophet Muhammad)⁹¹ as Al-Khidr (Litt. the “green one”). Moses asks Al-Khidr to teach him his wisdom. The latter agrees at the condition that Moses never ask a question and remains patient. Several times, Al-Khidr acts against what seems good to Moses: he makes a hole in a boat they boarded to reach the seashore, he kills an apparently innocent young man and rebuilds a destroyed wall in a village without asking for compensation. Each time, Moses shows signs of perplexity, condemns Al-Khidr’s deeds and asks for explanations. Finally, Al-Khidr gives his motives to Moses and assigns a new meaning to facts and events as grasped by Moses’s experience (“I will tell you the true meaning of what you were not able to bear with patience” (*sa unabi’uka bi ta’wil ma lam tastati’ ‘alayhi sabran*), 78). He shows that what were apparently bad deeds were in fact virtuous ones for he had access to a knowledge that remained unavailable to the impatient Moses at the time of each action. As *Surat al-Kahf* tells us, although Al-Khidr had access to a higher form of knowledge issued by God to him, he did not act in his own capacity but was part of a divine plan (“I did not do it of my own accord” *wa ma fa’altuhu ‘an amri*, 82).

Several interpretations of the Quranic story emphasized the fact that the encounter between Moses and Al-Khidr is also the encounter between two forms of knowledge, for the former is the bearer of the law while the latter has received knowledge directly from God (*al-‘ilm al-laduni*) that gives access to the unseen world (*al-ghayb*) and called by al-Ghazali, in his *Risala Laduniyya*, the “knowledge of the unseen given directly by God” (*al-‘ilm al-ghaybi al-laduni*).

In classical as well as contemporary Islamic scholarship, the distinction between revealed law (*Shari’a*) and inner truth (*haqiqa*) refers to two kinds of knowledge that are constitutive of revelation itself. On the one hand, humans are able to know God’s will through hermeneutical reason dealing with the Quran and the *Sunna*, which textuality gives a ground for the distinction of truth from falsity. As jurisprudence (*fiqh*), *Shari’a* knowledge has been transmitted from generation to generation and may be taught and acquired among scholars but also by any Muslim asking for a rule on a specific matter. On the other hand, the knowledge of inner truth is only given by God to whom He chooses and can never be acquired through hermeneutical reason and sensorial experience. Yet, *Shari’a* addressing Muslims has been itself *revealed* to the Prophet Muhammad who transmitted it to mankind, the same way other laws (*Shara’i*) have been revealed to other prophets before Muhammad. *Shari’a* translates revelation (*wahy*) into the sensorial and material world of experience, and has been given shape into God’s words as transmitted by the Prophet, as well as into the Prophet’s proper sayings and deeds, which all became the foundational texts of Islam (Quran and *Sunna*).

In classical as well contemporary Islamic scholarship, there is no question that the two forms of knowledge exist for it is, as we saw, constitutive of Islam itself. The question that has been usually discussed was whether the knowledge of inner truth through revelation (*wahy*) is possible for any human after the last Prophet, i.e. Muhammad. Most Islamic scholars would acknowledge the possibility not of revelation but inspiration (*ilham*) after the prophecy, notably for God’s friends (*awliya’ Allah*). Yet, they would recall that, although someone may have been given this knowledge by God, it can never be considered as having legal authority.

⁹¹ The *hadith* is recorded in the authoritative collections of *hadith* such as Bukhari and Muslim.

When related to the story of Khidr and Moses, inspired knowledge is understood as a supersensible knowledge of the unseen world, that is nevertheless related to the sensible-visible world, for any human endowed with it may be able to know and do what is not accessible to other humans through sensorial experience or reason such as *karamat* (supersensible wonders) (for example, the ability to know future events in Khidr's story). Inspired knowledge, because of its very non-groundable nature, was excluded from *Shari'a* knowledge, and more generally from Islamic forms of knowledge that were considered a collective obligation (*fard kifaya*) of the community and part of scholars and jurists' training. However, the work of most Islamic scholars committed to hermeneutical reason and jurisprudence but also Sufi masters and thinkers was to draw a limit between what practices can be receivable and what cannot be accepted from the perspective of the revealed law rather than rejecting all Sufi practices and beliefs. Hence, as pointed out by the sheikh of the Sufi Brotherhood the knowledge of the inner truth should never be understood as opposed to the law and can never be considered as authorizing the inspired man to not submit to *Shari'a*.

In certain Sufi writings, the access to *al-ghayb* opens up another order of reality that may lead, in some situations, to the neglect of *Shari'a*. For paradoxically, as a revealed law that ultimately bounds Muslims to *al-ghayb* as well as to the hereafter (*al-akhira*), *Shari'a*, or mere precisely, jurisprudence (*fiqh*) grounds them into sensuous experience for it addresses the body's materiality. To a certain extent, the potential tension between *haqiqa* and *Shari'a* is less a tension between the world of experience and the world of imagination, than between two forms of experience. Islamic legal rules as prescribed by jurisprudence, call for embodiment but the access to spiritual truth entails a form of experience that is not grounded in the visual-objectifiable world, a paradoxical non-sensuous experience.

The unseen world

Revelation is the foundational event connecting humans with *al-ghayb*⁹². Mentioned several times in the Quran and the *hadith*-s, the unseen world (*'alam al-ghayb*) is an order of existence to which

⁹² In relation to the notion of *ghayb*, an anthropological inquiry of the invisible is required as it would be interested not only in divine presence but also in a phenomenological description of the invisible world as part of reality, and forms of interactions of the visible with the non-visible. Recent anthropological works have theorized forms of interaction and continuities between the human and the non-human that would not be reduced to the opposition subject/world, or nature/culture set by modern dualism (Descola, *Beyond Nature and Culture*). These works have tried to put aside modern epistemologies, including anthropology, which were not used to think of the spiritual life of non-humans in the natural world in non-oppositional terms. In the Islamic context, the non-human may include a spiritual world autonomous from the sensible world of nature and culture. To use the categories of Islamic thought (for example Ibn Khaldun as we will see below), the invisible world is neither located in the sensible world shared with animals, nor the intelligible world specific to humans, but in a third, autonomous space, which is nevertheless accessible to humans under certain conditions.

Of course, the anthropology of the invisible is also interested in what it is contradistinguished from, i.e. the visible. The invisible and the visible are not discreet domains which can be "objectively" defined for the purpose of anthropological inquiry, but are rather constructions. The anthropology of the invisible should deal with different constructions of the invisible and the visible as distinct domains, and their relationships of opposition and continuities, as they have been produced by different modes of being and knowing. In the modern West, the invisible has been relegated to the unknown, and excluded from what can be possibly be known by man. For example, according to the Kantian pure reason, the noumenal world, as opposed to the visible phenomenal world or world of appearances, should be left aside by rational inquiry. It is never accessible to human knowledge, for the latter is inherently limited by our intuition of space and time (Kant, *The Metaphysics of Morals*).

the *'ilm al-laduni* (knowledge given directly from God) gives access, and that is not usually accessible through sensorial experience. In the sixth introductory chapter of the *Muqaddima*, devoted to the question of access to the invisible world (*al-ghayb*)⁹³, Ibn Khaldun recalls that there is a category of humans (*bashar*) who interact with it either as a natural gift (*fitra*), or as a result of practice and exercise (*riyadha*). They have been chosen by God to be his instruments among the humans in order to guide them in the avoidance of evil and to show them the path of salvation (*najat*). The entities invisible to humans (*al-ka'inat al-mughiba*) can be known to them only through divine knowledge that has been transmitted by God to the elected men such as the Prophet Muhammad who said: "All I know is what God taught me (*'allamani*)". Revelation is the sign that distinguishes prophets from other humans and seems to generate a state of absence (*ghaybatan*) but is in fact a moment of encounter with the "spiritual angel" (*al-malak al-ruhani*)⁹⁴.

The existence of different forms of knowledge is predicated upon the cosmology of plural worlds as thought by classical Islamic scholars. For classical scholars such as Ibn Khaldun, man lives in three distinct worlds: the first is the sensible world (*'alam al-his*); the second is the world of thought that is over the first one; the third is the world of souls (*arwah*) and angels (*mala'ika*) which is located beyond the second one and has a direct influence (*athar*) on humans. The third world can be known through vision (*ru'ya*) and other manifestations in sleep, that may not appear to man when he is awake, but are nevertheless "real, belonging to the world of truth" (*innaha haqq*

This form of knowledge had also consequences on the kind of experiences which modern man was allowed to have. From Kant's perspective again, God (and angels) is the (invisible) noumenon *par excellence* that cannot be known for He does not belong to the (visible) field of experience, and cannot be grasped by our intuition of space and time. The relegation of God to the domain of the unknown and invisible has also been interpreted as "the disenchantment of the world" in which "the ultimate and most sublime values" have withdrawn from social and "public" life to "the transcendental realm of mystic life" (Weber, *Essays in Sociology*). What was known as the "invisible" in modern Europe did not fit the epistemological imperatives associated to the new modes of knowledge, and its association with the unknown was a way for modern science to delimit its proper domain. For the modern European states too, peace and order had to be secured from "enthusiasm" associated with people inspired by the invisible. In this context, people may claim a relationship to the invisible, and the inner life may be considered as invisible, but it cannot be a foundational element from which collective life and experience are organized.

The relationship between modes of representation, modes of knowing and modes of being as suggested by Heidegger in "The Age of the World Picture" sheds light on the constitution of the modern subject positing itself as the master of the world represented and shaped as an object. What can be known is what can be seen, and what should be subjugated to the subject's will. As Heidegger puts it: "The fundamental event of the modern age is the conquest of the world as picture. The word "picture" (*Bild*) now means the structured image (*Gebild*) that is the creature of man's producing which represents and sets before"[...]. Through this, whatever is comes to a stand as object and in that way alone receives the seal of Being. That the world becomes picture is one and the same event with the event of man's becoming *subiectum* in the midst of that which is" (Heidegger, *The Question Concerning Technology*, p.132). One may wonder if the positing of, and the relationship with, the invisible world sets ontological limits to the human's ability to know and act, and enables different forms of life and experience contradistinguished from the one described by Heidegger. As we will see below, the relationship to the invisible as described by Islamic scholars (for example al-Ghazali, Ibn Khaldun) should lead the human to humility for he can only have a limited knowledge of the *ghayb* (invisible) and the *batin* (interiority).

⁹³ Paradoxically, Ibn Khaldun is often celebrated in modern scholarship for his "secular" and "rational" theorization of human history and power (Toynbee, *A Study of History*; Gellner *Muslim Society*). And yet, little attention has been devoted to his work on the "invisible" (*ghayb*) in the *Muqaddima* itself. This reduction of Ibn Khaldun to a proto-sociologist who was an anomaly of his time and his milieu does not do justice to the complexity of his thought for he developed a knowledge of the invisible as a reality in its own terms that cannot be reduced to sensible reality, and yet, is related to it.

⁹⁴ Ibn Khaldun, *Al-Muqaddima*, vol.1, p.146.

wa min 'alam al-haq)⁹⁵. Dreams, occurring when thought is free from the senses (*ghiba mina al-hiss*), and when the grasping faculty has stored images in the inside (*batin*), are a clear proof of the existence of the spiritual world (*'alam al-ruhani*). However, the details of the third world are known mainly through the revealed law accessible through faith (*iman*).

In this triadic configuration, man lives in-between the first and the third world; he shares with animals the sensible world, while he shares with angels the world of reason and souls. In the latter, there are only entities abstracted from bodies (*jismaniyya*) and materiality (*madda*). It is a place of “pure reason” (*'aql sarf*) where reason, the reasonable (*'aqil*) and the reasoned (*ma'qul*) are all united⁹⁶. For man, there is always “a veil” (*hijab*) that makes the access to the third world uneasy but not impossible. He can unveil it (*kashf al-hijab*) through the repetition of remembrances (*al-riyadha bi al-adhkar*), which best one is the prayer (*salat*) or by performing the most important obligations like fasting, and by orienting oneself to God (*al-wujha ila Allah*)⁹⁷. In other words, the invisible world, like the first and the second world, does not need man to make it exist, it exists by itself, as part of God’s creation. But man can have access to it, either passively (sleep), or actively, through devotional duties.

It is relevant to note here, that, although the twin forms of knowledge, *Shari'a* and *'ilm laduni*, are related to the existence of two worlds, the visible and the invisible, they may produce two conflicting truths. On the one hand, no Islamic scholar can deny the existence of the unseen, and the knowledge associated with it, for they are both mentioned several times in the Quran. On the other hand, for jurists, to acknowledge the possibility of inspired knowledge to prescribe rules of conduct with legal authority for the whole community would bring the suprasensible and non-groundable truth into the material-sensible world. From their perspective, it is important to stick to the material truth groundable in *Shari'a*’s textuality, i.e. the Quran and the *Sunna* in order to secure the production of rules addressing individual obligations as well as regulating the life of the community. However, the production of legal truth based on *Shari'a* does not mean that the jurists would claim to produce absolute truth. Rather, the possibility of disagreements regarding the rules to be followed by the community was acknowledged *within* the same language and episteme, for procedural truth as delineated in the sources of jurisprudence (*usul al-fiqh*) secures the range and possibilities of disagreement regarding the production of legal rules rather than the formulation of one possible truth. Hence, the existence of the unseen world (*'alam al-ghayb*), as well as the possibility of inspired knowledge and *karamat* (supersensible wonders), were posited, acknowledged and even described by Islamic scholars following what the Quran and the *Sunna* tell us about it, but they would never consider it as a source of jurisprudence.

Now, if we return to the Sufi sheikh’s interpretation of the encounter between Khidr and Moses as narrated in the Quran, we can better understand how Sufism may be grounded in *Shari'a* without putting into question the existence of the unseen (*ghayb*) and the knowledge associated with it given directly by God (*al-'ilm al-laduni*), and without endangering the legal authority of *Shari'a*. However, another aspect of the sheikh’s oration was specifically related to the intertwining of spirituality with *Shari'a*, for, according to him, although *Shari'a* and inner truth are one and the

⁹⁵ Ibn Khaldun, *Al-Muqaddima*, vol.1, p.343.

⁹⁶ Ibn Khaldun, *Al-Muqaddima*, vol.1, p.344.

⁹⁷ Ibn Khaldun, *Al-Muqaddima*, vol.1, p.345.

same thing “like the spirit to the body”, *Shari’a* addresses primarily the external and apparent dimensions of things, while the inner truth deals with the spirit (*ruh*).

Like the status of the inner self as related to jurisprudence, the positing of, and belief in the unseen world (*‘alam al-ghayb*) raises too the problem of the limits of *fiqh* as a form of knowledge based on material and objectifiable experience when it assesses facts and deeds. The meaning of the world of material experience is shaped by the materiality of the texts, i.e. the Quran and the *Sunna*, which are themselves often mediated and embodied by the voice when they are recited or quoted as a textual proof. And yet, as knowledge of the revealed law, jurisprudence is also a bond to the other world for the revelation is the text-voice through which humans can know another order of existence that is not immediately available to the senses. The Quran and the *Sunna* are the sources from which both prescriptions organizing worldly and material life and references to the unseen world can be formulated. The tension and continuity between material and non-material forms of experience opened up by the revelation enables two forms of knowledge, juridical and spiritual, embodied and disembodied addressing external deeds and inner selves both in their unity and disharmony.

***Batin* and *Ghayb*: jurisprudence and the non-sensuous**

Although distinct from each other, and although they may have different uses, the *batin* (inner) is closely related to the invisible (*al-ghayb*). When referred to as the invisible world (*‘alam al-ghayb*), usually in contradistinction the visible world (*‘alam al-shahada*) as mentioned in the Quran, the *ghayb* is associated with an order of being and a cosmological reality that cannot be grasped by the senses. Although it can also signify the inner of things in the world, the *batin* is often used in reference to the self, whose inner thoughts, emotions and feelings are never accessible to other individuals in the community, but are known only by God. Neither *batin* nor *ghayb* can be grasped by the eye or any other senses for they are not located in sensuous and material reality. As such they open up the possibility of non-sensuous and non-material life. But while the *batin* may be shaped by the self to which it is constitutive, notably through acts of worship and spiritual exercises, the *ghayb* is an order of reality that exists independently from the individual’s sight and perception. Although the self’s deeds may have an effect and a meaning in the *ghayb*, it is never accessible to him, for only God has an absolute knowledge of this realm. Yet, as mentioned by Ibn Khaldun, but also for most classical and contemporary Islamic scholars, in certain circumstances, spiritual exercises may allow the self to have access to the spiritual world. In exceptional cases, thanks to their devotion, the very few can be prepared to receive supersensible knowledge directly from God, which can never be acquired and remains a divine gift.

Because both *ghayb* and *batin* are not perceptible by the senses, and as such do not belong to sensuous and material reality, they are not part of the territory of adjudicated jurisprudence (*fiqh*). Yet, for Islamic scholars *Shari’a* rules are not followed only for themselves, but also because it is expected that they would improve ethically the selves, both in their outer deeds and inner states. Although jurisprudence prescribes bodily deeds, it should nevertheless shape inner selves (*batin*) when related to spiritual and ethical ends as exemplified in the obligatory act of prayer (*salat*). Hence, while judges are not usually authorized to judge inner selves, scholars-jurists, notably when they act as muftis, they may assume certain forms of inner selves as related to past actions (as we

saw in al-Qaradawi's *fatwa* about the 2011 Egyptian Revolution), or may directly address the *batin* of a self in a response to a question involving future actions.

While the *batin*, because it is related to selves, is present in several ways in different instantiations of jurisprudence but also in other disciplines related to the latter, such as the science of ethical behavior (*'ilm* or *fiqh al-suluk*), the *ghayb*, although acknowledged as part of existence and although *Shari'a* is itself a bond to the invisible as we saw earlier, is nevertheless excluded from the field of intervention of *fiqh*. Of course a scholar-jurist may talk about the *ghayb* as it is mentioned in the Quran and the *Sunna*, but he would usually recall that only God knows this realm, and he would never claim the knowledge directly given by God (*al-'ilm al-laduni*) that would allow him to know what is beyond textual proof and sensible reality, as Khidr did with Moses in *Surat Al-Kahf*. Hence, although the *batin* and the *ghayb* are closely related to each other as we saw earlier, most classical and contemporary scholars-jurists such as al-Qaradawi would write extensively on the duties of the inner self (*batin*) for purposes of ethical improvement and would delimit a space of spiritual ethics, but would not adventure themselves in the *ghayb*.

Al-Qaradawi acknowledges that the knowledge produced by the heart (*ma'rifa qalbiyya*) in the *batin* is a form of direct awareness that does not rely on pure logic, and may refer to what is called today "the spirit" (*ruh*) or "consciousness" (*zamir*) or "vision" (*basira*)⁹⁸. As such, it opens up the possibility of grasping dimensions of existence that relate to *al-ghayb*. Although al-Qaradawi does not want to leave the door open to "illusions, lies and excesses", he still acknowledges the possibility of inspired knowledge (*ilham*), and unveiling (*kashf*) but only as God's gift as mentioned in the Quran, *Ali Imran*, 73-74: "Grace is between God's hands, He gives it to whom He wants"⁹⁹. The knowledge of *al-ghayb* are among the sciences that the Muslim cannot ask for, because it is beyond its rational and sensorial abilities and cannot be grasped by the senses nor reason (*ma ghaba 'ani al-hiss wa ghab 'ani al-'aql*)¹⁰⁰. Yet, although humans cannot know the *ghayb*, they are nevertheless required to believe in, and have faith in it as the Quran says (*surat al-Baqara*, 3).

The space of spiritual practices and jurisprudence

Although belonging to the space of Islamic lawfulness, spiritual practices as understood by Sufi scholars should never be considered as obligatory. Spirituality enables ethical improvement that is situated beyond the obligatory rules prescribed by jurisprudence. However, it does not mean that one can explore the inner self and engage with spirituality without following Islamic legal obligations. Rather, ethical improvement associated with spiritual practices is possible only after one has done what the law requires from each individual. Hence, while spiritual practices are not at the top of the hierarchy of legal obligations, they are nevertheless the only path for ethical improvement. This paradox is better understood when one listens to the fifteenth century Fes's scholar Ahmad Zarruq, quoted by one of the main scholars of the *'Ashira Muhammadiyya* who is also advisor to the Grand Imam of Al-Azhar, Muhammad Muhanna:

⁹⁸ Al-Qaradawi, *Fi al-Tariq ila Allah*, vol.1, p.155.

⁹⁹ Al-Qaradawi, *Fi al-Tariq ila Allah*, vol.1, p.157

¹⁰⁰ Al-Qaradawi, *Al-'Aql wa al-'Ilm fi al-Qur'an al-Karim*, p.169.

“The jurisprudence’s rule is general, addressing everyone (*hukm al fiqh ‘am fi al-‘umum*), while Sufism’s prescription is specific addressing a few (*hukm al-tasawwuf khas fi al-khusus*)”. For Muhanna, Zarruq’s sentence means that “the Sufi is obliged to go with what jurisprudence prescribes, and never the other way around (*lazama ‘al al-sufi al-nuzul ila hukm al-fqih la al-‘akss*). It means that jurisprudence (*fiqh*) formulates the minimal requirements for the good and the bad, for the lawful and the unlawful (*hasd adna min al-halal wa al-haram*). Sufism is a way to perfectibility (*kamal*) for yourself, as an individual, on the condition that you don’t do a wrong and contradict the general rule addressing everyone (*hukm al-‘umum*). That is why the Sufi needs to abide by the general rule of the jurisprudence’s scholar (*faqih*). But the reverse is not true, you cannot oblige the *faqih* to abide by the rule of the few (*hukm al-khusus*). The revealed law’s prescriptions take the form of either fatwa or spirituality (*al-ahkam taduru bayna al-fatwa wa al-taqwa*), and it is impossible to constraint the fatwa’s author to abide by spirituality (*taqwa*)¹⁰¹. However, the spiritual person needs to submit to the fatwa (*wa lakin nulzim sahib al-taqwa bi al-fatwa*)”.

Yet, the assessment of spiritual practices as related to the hierarchy of legal rules does not mean that the obligatory rules cannot be performed in a spiritual way. Rather, ethical improvement entails the cultivation of inner states when doing the obligatory rules. Ahmed Zarruq, like other authoritative figures of classical Islamic scholarship, is known for having practiced Sufism through jurisprudence. The passage Muhanna refers to in my discussion with him is taken from Zarruq’s most important book *The rules of Sufism (Qawa'id al-Tasawwuf)* whose purpose is to “give an introduction to the sources of Sufism from a perspective merging *haqiqa* (inner truth) and *shari'a*, and ties jurisprudence with the path (*tariqa*)”¹⁰². For Zarruq, there can be no Sufism without jurisprudence (*fiqh*) because it is only through the latter that one can know the “outward rules of God” (*ahkam Allah al-zahira*), and there can be no jurisprudence without Sufism because there can be no deed without truthfulness (*sidq*) and orientation (*tawajjuh*) towards God¹⁰³.

Sufism, as practiced by its great figures and founders of the main “paths” (*tariqa*) or by classical Islamic scholars does not consist in mere spirituality free from jurisprudence or which purpose would be to transgress the law or to liberate oneself from it. Rather, Sufism shapes a space for spirituality grounded in the prescriptions of the law. The self needs not only to fulfill the requirements of jurisprudence as formulated by its scholars (*fuqaha*) and muftis, but also to achieve them in a spiritual way. Jurisprudence is not separated from my spirituality, but is constitutive of it. The self is spiritual when he does the legal obligations, and achieve more than them regarding both his acts of worship and social interactions. For example, when the self performs prayer (*salat*) five times a day, he is doing what jurisprudence has set as an individual obligation and which he lives as a spiritual moment allowing him to be closer to God. Being spiritual is not about avoiding the law or transgressing it, but is about *how* he performs the law’s prescriptions in an attempt to make God present, and how he can do more than what the law enjoins him to do.

¹⁰¹ The word *taqwa* refers both to God fearing piety and spirituality.

¹⁰² Ahmed Zarruq, *Qawa'id al-Tasawwuf*, p.7.

¹⁰³ Ahmed Zarruq, *Qawa'id al-Tasawwuf*, p.9.

Al-Qaradawi and spiritual ethics

In contemporary Egypt, as well as in other Muslim countries, spiritual ethics is not associated only with Sufi brotherhoods, but it is rather constitutive of Islamic knowledge. In Al-Azhar, scholars would often recall that jurisprudence (*fiqh*) should be taught along with other forms of Islamic knowledge, notably the science of creed (*'aqida*) and the purification of the soul (*tazkiyat al-nafs*). Several contemporary scholars-jurists are known not only for their legal knowledge, but also for their teachings regarding spiritual ethics. The science of spiritual ethics, which addresses primarily the inner self (*batin*), does not rely on procedural truth as displayed in the sources of jurisprudence (*usul al-fiqh*) and used by scholars when producing rules in legal opinions (*fatawa*). However, as understood by al-Qaradawi and other contemporary and classical Islamic scholars, it is based on, and confirmed by, textual truth enclosed in *Shari'a* sources, i.e. the Quran and the *Sunna* as indicated by the title his book *On the path to God. The accessible knowledge of ethical behavior in light of the Quran and the Sunna (Fi al-Tariq ila Allah. Taysir Fiqh al-Suluk Fi Zaw' al-Qur'an wa al-Sunna)*.

In his book, al-Qaradawi is interested in giving shape to spiritual life (*al-hayat al-rabbaniyya*) in Islam. Like several classical Islamic scholars, al-Qaradawi uses the word *fiqh* in reference to the broader meaning of insight rather than mere jurisprudence. *Fiqh al-suluk*, understood as the knowledge of ethical behavior, is distinct from jurisprudence *per se* for it does not deal with the prescriptive or proscriptive injunctions of the law and, although it is tied to the foundational texts (Quran and *Sunna*) it does not rely on procedural hermeneutics to produce a legal rule to be followed by the Muslim. Yet, it is intertwined with *fiqh* as jurisprudence because it is not possible to improve ethically without obeying the rules prescribed by the law. As al-Ghazali's *Ihya' 'ulum al-din*, al-Qaradawi's *Fi al-Tariq ila Allah* is an attempt to give its due place to "internal" emotional and affective states in Islamic practice in harmony with the "external" deeds prescribed by the law.

When describing spiritual ethics as related to *Shari'a*, al-Qaradawi writes first about himself and gives an account of his own spiritual journey starting from his youth in Egypt. He recalls several figures from his social and academic milieu who introduced him to spiritual teachings partially shaped by Sufi practices in the 1940s and 1950s, either in the village where he grew up, or as a member of the Muslim Brotherhood or as a student at the College of the sources of religion (*kuliyat usul al-din*).

Al-Qaradawi refers to al-Ghazali as his first and most important master for his ethical and spiritual life. He first read al-Ghazali's masterpiece, *al-Ihya'* at the age of fifteen, under the guidance of a lettered man of his neighbors who was a member of a Sufi brotherhood in the village. In his formative period, al-Qaradawi read also other books and classical Sufi authors such as the Moroccan Ibn 'Ajiba¹⁰⁴ or the Egyptian 'Ab al-Wahhab Al-Sha'rani¹⁰⁵.

The encounter with the Muslim Brotherhood and its "spiritual call" (*da'wa rabbaniyya*) initiated by Hasan al-Banna, "a spiritual man", was a decisive moment for al-Qaradawi. The kind of education and guidance relied upon by the Muslim Brotherhood, and the centrality of practices

¹⁰⁴ Ibn 'Ajiba, *Iqaz al-Himam fi Sharh al-Hikam*.

¹⁰⁵ Al-Sha'rani, *Lata'if al-Minan*.

such as *dhikr* (remembrance of God), the recitation of the Quran, and invocations (*du'a*'), as well as their "love of the good for the people (*hubb al-khayr lil-nas*)" were reflecting Sufi teachings¹⁰⁶. Al-Qaradawi has also been influenced by two masters known for their spirituality at the College of the Sources of Religion, one teaching the sciences of *hadith*, the other philosophy, and both trained in Al-Azhar. As he put it, these encounters "deepened his spirituality" and were helpful in the work of call and preaching (*da'wa*). Meanwhile, al-Qaradawi was reading closely the works of the "Salafi School" (*al-madrasa al-salafiyya*) and its masters, Ibn Taymiyya and Ibn Qayyim, which allowed him "to reinforce (his) spiritual orientation in the light of Islamic legal rules" (*maqawwa 'indi al-tawajjuh al-rabbani bi-dhawabitih al-shar'iyya*)"¹⁰⁷.

Although al-Qaradawi disagreed with some aspects of contemporary Sufi brotherhoods practices related for example to creed (*'aqida*) or the acts of worship, he never condemned Sufism (*tasawwuf*) as such, and was influenced by Sufi teachings in his work, his religious practice and his way of behaving within the community. For him, Sufism was a form of thought, spirituality and ethics, and was not related to a pact with a sheikh or a commitment with a Sufi path. Moreover, since he was a member of the Muslim Brotherhood under the guidance of Hasan al-Banna, he never felt the need to be part of any Sufi brotherhood or to look for a guidance of a Sufi sheikh. For al-Qaradawi, it is crucial to show that the science of ethical behavior is not an "invention" of the Sufi masters and brotherhoods, but is based, first and foremost, on the most authoritative scriptural sources of the revealed law (*Shari'a*). Hence, Sufism should be brought back to its "Islamic roots" (*judhur islamiyya*), i.e. understood in light of the Quran and the *Sunna*. For example, some practices relied upon by the Sufis are based on weak and sometimes false sayings of the Prophet (*ahadith*), and may not be considered lawful¹⁰⁸. Several Sufis trust totally their sheikh, without ever being concerned with the lawfulness of his words and prescriptions. Moreover, they did not restrict themselves to the acts of worship prescribed by the revealed law but performed worship practices that have no trace in the Quran or the *Sunna*, and should be considered blameful innovations (*bida'*).

Salafism, Sufism and the authority of *hadith*

Several contemporary Muslims in Egypt and elsewhere would ask muftis: "Are Sufi practices lawful (*shar'iyya*) from the perspective of Islam?". These questions are raised today in a context, where several *Salafi* scholars have declared most of the Sufi practices unlawful. In this highly argumentative field, Sufi jurists and scholars, notably those trained in Al-Azhar, had to adopt new textual strategies to relate systematically their practices into the Quran and the *Sunna*. The book *Usul al-Wusul, Adilat Aham Ma'alim al-Sufiyya al-Haqqqa, min Sarih al-Kitab wa Sahih al-Sunna*, authored by Muhammad Zaki Ibrahim, the former head (*ra'ed*) of the Egyptian branch of the *Tariqa Shadilliyya*, has been written to a great extent, as a response to those who "accuse Sufis of unbelief (*kufir*) and heresy (*zandaqa*)"¹⁰⁹. In this book, and more generally in most of the contemporary polemics between Sufis and *Salafi-s*, the *ahadith* (reported sayings and deeds of the Prophet) are the main textual source allowing scholars to draw a limit between lawful and unlawful practices. Although these debates are possible only to the extent that both Sufi and *Salafi* scholars

¹⁰⁶ Al-Qaradawi, *Fi al-Tariq ila Allah*, p.9.

¹⁰⁷ Al-Qaradawi, *Fi al-Tariq ila Allah*, p.11.

¹⁰⁸ Al-Qaradawi, *Fi al-Tariq ila Allah*, p.25.

¹⁰⁹ Zaki Ibrahim, *Usul al-Wusul*, p.13.

already agree on the *Sunna*'s authoritativeness as such, they do not necessarily agree on the authority and relevance of the different categories of *ahadith* for truth-seeking inquiries.

In *Usul al-wusul*, Zaki Ibrahim reclaims the *Sunna* against those who “think they are the only people who inherited the *Sunna*'s knowledge, while, if they return to reality, they would see that the *Sunna*'s people are truthful *Sufis*”¹¹⁰. In this work, Zaki Ibrahim does not address the ethical states (*maqamat al-akhlaqiyya*) that one usually finds in the classical literature about spirituality and ethics. It is not written in the language of initiation but in the language of demonstration for its purpose is not *to initiate* the reader to spiritual-ethical practices but *to demonstrate* their lawfulness relying on a set of assumptions about the status of textual truth as related to *ahadith* as well as on a set of procedures of truth seeking. According to al-Nawawi (as well as several classical scholars)¹¹¹ quoted by Zaki Ibrahim, it is lawful and recommended (*yustahabbu*) to rely upon a weak *hadith* as long as it has not been falsely attributed to the Prophet Muhammad (*hadith mawdhu'an*) in matters related to virtuous actions and as a way to arouse fear or desire. For, unlike a false *hadith* (*makdhub*) that has no truth in it, there is a partial truth in a weak *hadith*. However, a weak *hadith* should never be used to determine jurisprudential rules (*ahkam*) or creed ('*aqida*).

The discussion about the status of *ahadith* according to their degree of authenticity is important for Sufi scholars because the use of weak ones has been the main critique against Sufi texts and practices as formulated by several contemporary *Salafi* scholars. For Zaki Ibrahim, it is true that the weak *ahadith* can never have the status of a legal obligation. Yet, they cannot be fully proscribed because they have a “space of lawfulness” (*majal shar'i*)¹¹² that is situated in the sphere of the recommended (*al-mustahabb*). For it is the degree of truth, or more precisely authenticity, of a text that determines the position of the deeds it prescribes (or proscribes) in the hierarchy of rules. As often in Islamic knowledge, this mode of reasoning is animated less by a binary logic opposing the true to the false than a form of thought allowing the formulation of a range of nuanced positions.

For several readers familiar with western scholarship on Islam, the use of name *Salafi* in conjunction with *Sufi* by the main branch of the *Tariqa Shadhiliyya* or by influential scholars-jurists such as al-Qaradawi to situate their method and practices may seem counter-intuitive. Indeed, the constitution of the categories of “Salafism”, “Sufism” but also “Islamism” refers to fixed and exclusive identities for purposes of *mapping* social reality. From this perspective, claiming to be *Salafi* and *Sufi* is an oxymoron that cannot be consistent with the premises and conclusions of several contemporary studies on Islam.

The practices of the *Tariqa Shadhiliyya* but also the teachings of al-Qaradawi show that the reference to *salafiyya* is displayed as an epistemological approach grounded in the Quran and the *Sunna*. While *salafiyya* is first and foremost a method (*al-manhaj al-salafi*) consisting in proving any claim by relating it to the hierarchy of texts and exemplary practices of the Prophet and his Companions, the reference to *tasawwuf* is a way to explore and develop spiritual practices related to the inner self. *Salafiyya* raises the issue of truth and falsity, for example when I am asking the question “Is such or such belief or deed authorized by the less disputable proofs of the Quran and

¹¹⁰ Zaki Ibrahim, *Usul al-Wusul*, p.14.

¹¹¹ Al-Nawawi, *Al-Adkar al-Muntakhaba min Kalam Sayyid al-Abrar*.

¹¹² Zaki Ibrahim, *Usul al-Wusul*, p.377.

the *Sunna* as transmitted to us by the previous generations until the time of the Prophet Muhammad?” *Tasawwuf* is concerned with the knowledge of the inner self and the set of practices expanding the space of spirituality that may or may not be grounded in the textual proofs of the Quran and the *Sunna*. Hence, there is no *a priori* contradiction between adopting a *Salafi manhaj* questioning any claim from the perspective of the Quran and the *Sunna* (or more specifically, the most valid sayings of the Prophet in the hierarchy of *hadith* in the *Sunna* according to their degree of authenticity), and expanding one’s spirituality through a set of teachings and without necessarily belonging to a Sufi brotherhood. From this perspective, not only one can rely on *salafiyya* and *tasawwuf* at the same time, but also ground *tasawwuf* on a *salafi* method as the members of the ‘*Ashira Muhammadiyya* or al-Qaradawi do.

The intertwinement of *salafiyya* and *tasawwuf* is far from rare in Egypt as well as other Muslim countries, particularly if we study closely the writings of contemporary influential Islamic scholars and thinkers such as Muhammad Abduh, Hasan al-Banna, Ali Gom’a, or Allal al-Fasi. Even before Ibn Taymiyya to whom the *Salafiyya* is today attached in western scholarship, al-Ghazali explicitly grounds his exploration of spirituality in the teachings of “*al-Salaf al-Salih*” in his *Ihya*’.

Although it was important to clarify the way I understand the names *salafiyya* and *tasawwuf*, I was not interested in developing here a sociological argument about “*Salafi*” or “*Sufi*” “groups” and forms of interaction between them than cannot be reduced to “competition” in Egyptian society as the literature on the subject often does. Rather, I have been interested in this chapter in the ways in which *Salafi* method and *Sufi* practices entail questions of proof, truth-seeking and spiritual ethics.

Part II

Chapter 4

The Spiritual Topography of the Self in Classical Islam

The previous chapter on *Shari'a's* spirituality has shed light on the ways in which Sufi brotherhoods such as the *Tariqa Shadhiliyya* and scholars-jurists such as al-Qaradawi grounded spirituality in jurisprudence. Their exploration of the inner self in spiritual ethics relies on a language developed by classical scholars and thinkers whose work have been foundational for the tradition that became later known as “Sunni Sufism” (*al-tasawwuf al-sunni*), i.e. in conformity with the Prophet Muhammad’s path. Both al-Qaradawi and the *Tariqa Shadhillya’* Sufi Scholars reclaimed al-Ghazali’s writings, and notably *Ihya’ ‘Ulum al-Din (The revivification of the sciences of religion)* as the most important classical work inspiring and guiding their spiritual practices.

In this chapter, I will explore more closely al-Ghazali’s writings as they open up the possibility to develop further the spiritual topography of the self in relationship to *Shari'a*. If al-Ghazali is the most well-known scholar in the Sunni Sufism tradition, one should mention also several other classical scholars who preceded him, notably Al-Harith Bin Asad al-Muhasibi (d.857) author of *al-Ri’aya li Huquq Allah*, Abu Talib al-Makki (d.996) author of *Qut al-Qulub fi Mu’amalat al-Mahbub*, Abu Nasr Saraj al-Tusi (d.988) author of *Kitab al-Luma’*, and Abd al-Karim al-Qushayri (d.1073) author of the *Risala al-Qushayria*. They produced and circumscribed a knowledge distinct from the *fiqh*, and yet related to it, whose purpose is to make the Muslim live the rules derived from the *Shari'a* through an exploration of the “inner” (*batin*) located in the “heart” (*qalb*). The language relied upon by these scholars shaped the spiritual topography of the self and includes words-notions such as *batin* (inner self), *qalb* (heart), *nafs* (soul and self) and *ruh* (spirit). They all refer to what cannot be grasped materially and is usually associated with a series of distinctions for example between *batin* and *zahir* (inner/outer), or between *qalb* and *jawarih* (heart/limbs).

Faith, inner self and jurisprudence: Abu Talib al-Makki and the knowledge of the heart

Before studying al-Ghazali’s writings, I will turn briefly to Abu Talib al-Makki’s *Qut al-Qulub fi Mu’amalat al-Mahbub (The Nourishment of Hearts in dealing with the Beloved)*, which contributed significantly to shaping the language that al-Ghazali relied on in his *Ihya’*. Al-Makki as al-Ghazali later, posits a distinct knowledge dealing with “the heart’s actions” and the way it should “behave” in relationship to God. This knowledge is not separated from the rules and obligations prescribed by the *fiqh* (jurisprudence), but rather building upon it, for the good scholar is the one able to know both God’s injunction (*amr*) and God himself (*‘alim bi-Allah*).

This duality of knowledge, spiritual and jurisprudential, is reflected in the way al-Makki explores the relationship between Islam and *iman* (faith), and between the science of the inner (*batin*) and the outer (*zahir*). If Islam consists in performing the five pillars prescribed by the *fiqh*, the *iman* includes seven ones: faith in God’s names and his attributes (*sifat*), faith in his Book and his prophets, faith in the angels and the devils, faith in heaven and the fire of hell, faith in resurrection

after death, faith in the fates of God, and faith in the authentic hadith of the Prophet Muhammad¹¹³. Following the path of the prophetic tradition and the community (*madhhab ahl al-sunna wa al-jama'a*), Islam and *iman* are intertwined, both in terms of meaning and rule (*hukm*). This distinction between, and intertwinement of Islam and *iman* is formulated in the famous *hadith* of *Jibril* (Gabriel): “What is *iman* (asked the archangel)? It is faith in God, His angels, His prophets, the resurrection after death, the judgment day, and destiny, both with its good and its evil. And he asked again: what is Islam? He (the Prophet Muhammad) mentioned the five obligations”¹¹⁴.

For al-Makki, if an individual is performing the acts of Islam externally (*zahiruhu*) without binding (*'uqud*) them with faith in the unseen world (*al-iman bi al-ghayb*), he is a hypocrite (*munafiq*) only imitating the community. Yet, if an individual has faith in the invisible (*ghayb*) without performing the rules (of faith (*iman*)) and without following the laws of Islam (*shara'i*), he is a disbeliever (*kafir*) who is not attached to the unicity of God (*tawhid*). Islam and *iman* are like “the heart with the body” for they are “not separable from each other (*la yanfakku ahaduhuma min al-akhar*). No inner *iman* is possible without an outer *Islam* (*la iman batin ila bi-islam zahir*), for Islam is the “outer” (*zahir*) of *iman* (faith), and is related to the acts of the limbs (*a'mal al-jawarih*), and *iman* is the “inner” of Islam (*batin al-islam*) and refers to the acts of the hearts (*'amal al-qulub*).

In order to work towards the unity of Islam and *iman*, Muslims should follow the teachings of the science of faith (*'ilm al-iman*), which overlaps with the science of certitude (*'ilm al-yaqin*) and the knowledge of God (*'ilm Allah*). The scholars of worldly life (*'ulama' al-dunya*) dealing only with the outer (*al-zahir*) do not have access to this science, which is known and practiced by the scholars of the hereafter (*'ulama' al-akhirah*) who developed the science of the inner (*al-batin*) and the hearts' actions (*a'mal al-qulub*).

The exploration of the inner should lead to a better knowledge of the evils of the self (*afat al-nufus*) in order to act upon it in an internal struggle (*mujahadat al-nafs*). This knowledge is the precondition of good intent (*al-niyya al-saliha*), which is itself the prerequisite of any good act (*al-'amal al-salih*). Here, intention is not only associated with the acts prescribed by the *fiqh*, but with all kinds of acts: eating, drinking, wearing clothes, and even sleeping. For intention refers both to the intention to do the act (as it is understood in the usual legal perspective of the *fiqh*), and to the pure and sincere (*ikhlas*) dedication of the heart to God and His face¹¹⁵. From this perspective, the acts, like the body, have a spirit (*ruh al-'amal*) given by intention (*niyya*), without which they would have no value as Al-Makki puts it in another book *The science of the hearts*. If God, as the hadith says, “does not look at your appearances, nor your acts but looks at your hearts”, it is because He knows the unseen (*'alam al-ghuyub*) lodged in the hearts and have access to the intent (*niyya*), understood as “the heart of the heart” (*qalb al-qalb*)¹¹⁶.

The dual knowledge (of the inner and the outer) recovers the meaning of the *Shari'a* according to al-Makki, for the latter should be understood as “the clear, straight and large path”, the encompassing path “integrating and gathering all the paths”. This meaning is found in the Quran when God mentions explicitly the *Shari'a*: “And then, you were given a clear path” (*thumma*

¹¹³ Al-Makki, *Qut al-Qulub*, vol.2, p.262.

¹¹⁴ Al-Makki, *Qut al-Qulub*, vol.2, p.265.

¹¹⁵ Al-Makki, *Qut al-Qulub*, vol.2, p.326.

¹¹⁶ Al-Makki, *Qut al-Qulub*, vol.2, p.164.

ja'alnakum 'ala shari'atin mina al-amr), or in other verses in which the path is mentioned as *al-sirat al-mustaqim*, *al-sabil*, or *al-minhaj*.

Al-Makki gave formal shape to the language shared among scholars of the first centuries of Islam versed both in Sufi spirituality and jurisprudence (*fiqh*) and paved the way for al-Ghazali's scholarly and spiritual work in the *Ihya'*. As several Sufi scholars before him, at a time where the science of jurisprudence (*fiqh*) has flourished, Al-Makki recalls that spirituality requires a knowledge in its own right that should be distinguished from jurisprudence, even when the latter deals with acts of worship, but nevertheless remains intertwined with it. The "science of faith (*'ilm al-iman*)" or "the science of the hereafter (*'ilm al-akhira*)" dedicated to the knowledge of "the hearts" and the "inner" self prefigured what al-Ghazali called in his *Ihya'* "the science of the path to the hereafter" (*'ilm tariq al-akhira*) dealing with the same issues. Moreover, as al-Ghazali later, his critique of "the scholars of worldly life (*'ulama' al-dunya*)" dealing only with "the outer (*al-zahir*)" is not a critique of jurisprudence *per se* but rather a critique of the way the jurists restricted themselves to a narrow understanding of Islamic duties. While Al-Makki's writings and his attempt to reclaim a distinct knowledge paved the way for al-Ghazali's more ambitious enterprise dedicated to the spiritual topography of the self, both framed their work not as the establishment of a "new" knowledge but rather as an "old" knowledge faithful to the revelation and recalling the forgotten truth and meanings overlooked by most scholars-jurists of their time.

The sources of jurisprudence and the logic of the law

Al-Ghazali's masterpiece *Ihya' 'Ulum al-Din (The Revivification of the Sciences of Religion)* is probably the book of classical Islam that is the most widely read, taught and cited by contemporary Islamic scholars, and more generally by Muslims today. In order to understand the task of al-Ghazali in the *Ihya'*, one has to go beyond the simplistic categories and polar oppositions (*either* Sufi or jurist [*faqih*]) drawn by some of the scholarship on Islam. Of course, one cannot deny the tension between the exoteric-legalistic and the inner-spiritual dimensions of the practical knowledge of the *Shari'a*. But it is precisely this constitutive and productive tension between the outer (*zahir*) and the inner (*batin*) that animates al-Ghazali's writing and needs to be explored with him in order to grasp how the "external" norm prescribed by the *fiqh* is fully interiorized and lived by the believer.

Although al-Ghazali was a well-known jurist whose works on Islamic law are still widely relied on by contemporary scholars¹¹⁷, *Ihya' 'Ulum al-Din* does not belong to the legalistic genres known as "jurisprudence" (*fiqh*) or "the sources of jurisprudence" (*usul al-fiqh*). In the introduction to his main work on the sources of jurisprudence, *Kitab al-Mustasfa*, al-Ghazali recalls that he dedicated much of his time to the writing of books of *fiqh* both in its branches (*furu'*) and its sources (*usul*) before he turned to "the science of the path to hereafter (*'ilm tariq al-akhira*) and the knowledge

¹¹⁷ If Al-Ghazali is a mainly known for the *Ihya' 'Ulum al-Din* or the *Munqid min al-Dalal*, he was, and still is, a recognized authority on questions of *fiqh*. When Al-Ghazali writes *Ihya' 'Ulum al-Din*, he is already an authoritative figure in the *fiqh*, and has extensively written about it. One of Al-Ghazali's first books has dealt with the sources of jurisprudence, *Al-Mankhul fi Usul al-Fiqh (The essential in the sources of the fiqh)*, written while he was still a student of the jurist-scholar al-Juwayni. *Kitab al-Mustasfa* which deals with the sources of jurisprudence (*usul-al-fiqh*) is cited by his contemporaries as well as his posterity, notably scholars such as Fakhr al-din al-Razi in his *Mahsul*, or Ibn Khaldun in the *Muqaddima*. Moreover, al-Ghazali's work on *usul-al-fiqh* has been widely used in Islamic colleges training scholars and muftis and mentioned in several subsequent commentaries.

of the unveiled secrets of religion (*asrar al-din al-batina*)” notably in his books *Ihya’ ‘Ulum al-Din*, or *Jawahir al-Qur’an* or *Kimya’ al-Sa’ada*¹¹⁸. It means that after having written the *Ihya’*, one may assume that al-Ghazali did not think of his masterpiece on the science of the hereafter and the heart as separated from his other works about the *fiqh*. Rather, the *Ihya’* is a way to go farther and deeper than the classical way of writing books of *fiqh* allows. At the same time, it is relevant to note here that al-Ghazali did not change his way of writings books of *fiqh* after he wrote the *Ihya’*, and remained faithful to the rules and categories of the genre¹¹⁹. From this perspective, jurisprudence (*fiqh*), the sources of jurisprudence (*usul al-fiqh*) and the science of the hereafter are three forms of *Shari’a* knowledge that should be considered in their intertwinement. While the *fiqh* formulates the rule to be followed, the *usul* formalizes the procedural operations relied upon to extract the rule from its sources, and the science of the hereafter the way tells us how the rule should be performed, lived and one may say embodied, beyond its exteriority

In order to better understand the tensions and continuities between al-Ghazali’s work on jurisprudence and the *Ihya’*, let’s first look more briefly at the content of his most important jurisprudential work, *Kitab al-Mustasfa*. Such a sketch would help us understand what al-Ghazali means by *fiqh* (jurisprudence) and how he relates to it the distinct “science of the hereafter” (*‘ilm tariq al-akhira*) in the *Ihya’*.

Like all works of the sources of jurisprudence (*usul al-fiqh*), *Kitab al-Mustasfa* is dealing with the procedural operations needed to literally “extract” the *Shari’a* rules from their sources (*adilla*). In contrast to books of *fiqh* produced by the different juridical schools (*madahib*) that include the rules to be followed by man without making explicit the method through which one may infer them from the sources, the *Kitab al-Mustasfa* delineates the generative procedures that should be relied on by scholars-jurists when dealing with the Quran and the Sunna.

The first part of the *Mustasfa* is devoted to the “science of logic” (*‘ilm al-mantiq*), considered by al-Ghazali as a useful preparation for the subsequent parts of the science of the sources (*‘ilm al-usul*), which include substantive developments on (i) the notion of rule (*hukm*), and (ii) its evidences and sources (*adillat al-ahkam*), (iii) the method of extracting it (*istithmar*), and (iv) as well as the qualifications of the *mujtahid*:

- (i) The rule (*hukm*), also called fruit (*al-thamra*), is defined by Al-Ghazali as the rule-discourse emanating from the revealed legal discourse (*khitab al-shar’*), that does not give a description of the acts as they are (*wasf al-af’al*), but deals with the acts as they should be.
- (ii) The rule is derived from three sources, also called by al-Ghazali the generative sources (*al-muthmir*): the Quran, the Sunna, and the consensus of the Companions of the Prophet and the scholars.
- (iii) The method of extracting rules from their sources (*istithmar*) consists mainly in the formulations of the linguistic rules and the forms of discourse allowing the scholar to include each act in the right category. The relationship between meaning and linguistic forms (*siagh lughawiya*) discloses in the text the imperative prescriptions (*al-amr*) and

¹¹⁸ Al-Ghazali, *Kitab al-Mustasfa*, p.32.

¹¹⁹ The fact that Al-Ghazali relied on the rules of the genre did not mean that he did not innovate, notably in the organization (*tartib*) of the contents, and the reliance upon examination (*tahqiq*) rather than mere imitation (*taqlid*).

proscriptions (*al-nahy*), as well as the general (*al-'umum*) and the particular (*al-khusus*)¹²⁰. The *istithmar* draws also the relationship between the presuppositions that are necessary for a proposition to be true or to be performed (*zarurat al-lafz wa iqtiza'uhu*), as well as what can be reasonably deduced from a proposition (*ma'qul al-lafz*), which is the condition of analogical reasoning (*qiyas*).

- (iv) In the last part dealing with the *mujtahid*, Al-Ghazali describes the qualifications of the *mujtahid* as well as the imitator (*muqallid*), their domain and the rules of *ijtihad*.

Paradoxically, although the *fiqh* and its *usul* reveal to man the path to the hereafter (*akhira*), their formal procedures do not leave room to the exploration of the invisible (*ghayb*) for it sticks to visible texts such as the foundational sources (the Qur'an, the Sunna, the accounts of the consensus of the Companions of the Prophet and the scholars) in order to determine legal rules.

In an episteme where textuality is the ground of truth, the rules of understanding a text, and of differentiation between truth and falsity are secured by the science of the *usul* which makes explicit the formal rules of reasoning. It deals with the comprehension (*idrak*) of singular nouns (*asami mufrada*) and draws between them relationships of negation-exclusion and affirmation-inclusion. The main task of the formal logic is to produce definitions (*had*) that are also limits differentiating between categories of acts according to their imperative nature, and including not only the proscribed and the prescribed, but also the permissible, the likable and the dislikable. Of course, the scholar with the rank of *mujtahid* has the latitude to formulate legal rules for cases for which there is no known categorical text (*nass qat'i*), usually in the form of a legal opinion (*fatwa*), but the latter is expected to be related to, and consistent with the original sources through analogical thought (*qiyas*).

Islamic law is heteronomous to the self to the extent that its foundational sources come from the revelation. Yet, this law is graspable by reason, and can be reconstituted by textual reasoning each time a scholar utters a jurisprudential rule and relates it to its sources. For scholars versed in *usul al-fiqh*, a rule that does not submit to the formal procedures of the discipline can be dismissed. As al-Ghazali puts it, in contrast also to other sciences relying either exclusively on reason (*'aqli mahz*) like mathematics or astrology which cannot lead man to the good of the hereafter, or exclusively on emulation (*naql mahz*) like the science of the *hadith* (reported sayings and deeds of the Prophet) for which only memory is needed, the discipline of *usul al-fiqh* relies on both reason and emulation, opinion (*ra'y*) and revealed law (*shar'*), for it is a science in which reason and revelation are constantly balancing each other¹²¹.

To sum up, and in order to understand how, in the Islamic context, the law is distinct from, and yet constitutive of man's inner life and ethics, let's keep in mind from al-Ghazali's conception of *fiqh* in *Kitab al-Mustasfa*, that knowing and following the law, as a reasoned construction derived from the foundational texts, does not give access, by itself, to what al-Ghazali calls "the path to the hereafter". It needs to be worked out, lived and embodied by the worshipper. The task of al-Ghazali in the *Ihya'* is precisely to show how this can be done. In other words, if one should know how to find the law, one needs also to know how to live it. That is why the *Ihya'* restates the

¹²⁰ Al-Ghazali, *Kitab al-Mustasfa*, p.41.

¹²¹ Al-Ghazali, *Kitab al-Mustasfa*, p.32.

importance of the *fiqh* (jurisprudence), and is, at the same time very critical of the way it is taught and practiced by several scholars of al-Ghazali's time.

The knowledge of the path to the hereafter: reclaiming the original *fiqh*

The *Ihya'* is a response to what al-Ghazali viewed as the perversion of *fiqh* that became an exterior knowledge disconnected from its inner counterpart and instrumentalized by scholars-jurists to secure worldly positions. Al-Ghazali disapproves all forms of knowledge that are reduced to a pure legalism or to a mere rhetorical discourse of confrontation or seduction. He is very critical of a wrong conception of *fiqh* that "made people believe that knowledge lies only in the opinion (*fatwa*) given to the authority helping the judge to solve disputes (*fasl al-khisam*), or in its polemical usage (*jadal*) by trying to shine and to win in a controversy, or an embellished prose of a preacher (*wa'iz*) attempting to seduce the public (*istidraj al-'awam*)"¹²². When adopting a dry technical language, and dealing exclusively with cases and subdivisions (*tafri'at*) related, for example, to divorce, marital disputations or commercial transactions, the *fiqh* makes the heart "stony" (*qasi*).

Al-Ghazali is reclaiming the "original" and fundamental meaning of *fiqh* as a science dealing with the heart. For al-Ghazali, the *fiqh* was originally understood as the science of the hereafter, and the knowledge of the evils of the self (*afat al-nufus*). The *fiqh* meant also the contempt of the worldly life, the intense aspiration to the grace of the hereafter, as well as the subjugation of the heart to fear. When, in the Qur'an, God talks about those who "have hearts with which they do not understand (*la yafqahuna biha*)", He is referring to the *fiqh* as related to the meanings of faith (*ma'ani al-iman*), and not in the jurisprudential sense that would include legal opinions (*fatawi*). Al-Ghazali is not denying the fact that since its first occurrences in the times of Muhammad's Prophecy, the *fiqh* refers to juridical knowledge and "the opinions about the exterior rules (*al-fatawi fi al-ahkam al-zahira*)". Rather, he recalls that this first meaning was conflated with, and subordinated to "the science of the hereafter" (*ilm al-akhira*) and "the rules of the heart" (*ahkam al-qulub*). As it was subsequently practiced by jurists, the *fiqh* deviated from its original meaning, for the work of the heart and the science of the hereafter are not compatible with positions of "power (*wilaya*), judgeship (*qaza'*), or prestige (*jah*), and money"¹²³.

All these wrong forms of knowledge led to an amnesia of "the knowledge of the path to the hereafter" (*ilm tariq al-akhira*), as it was practiced by "the good elders" (*al-salaf al-salih*) and "named by God in his book": "understanding (*fiqh*), wisdom (*hikma*), knowledge (*'ilm*), light (*nur*), guidance (*rushd*)"¹²⁴. From this perspective, the *Ihya'* is an act of remembrance that gives a new life, a new presence and a new actuality to the forgotten "sciences of religion". It finds its inspiration in the foundational time of the prophets and the methods (*manahij*) of the first imams (*al-a'ima al-mutaqadimin*). Hence, the problem of the absence of the heart can find its solution not by circumscribing it only to the *fiqh*, but by relying on the broader perspective of "the sciences of religion" (*ulum al-din*). This raises more general questions about what is expected from knowledge, and about the relationship between disciplines, notably between the *fiqh* and the science of the path to the hereafter.

¹²² Al-Ghazali, *Ihya' 'Ulum al-Din*, vol.1, p.8.

¹²³ Al-Ghazali, *Ihya' 'Ulum al-Din*, vo.1, p.34.

¹²⁴ Al-Ghazali, *Ihya' 'Ulum al-Din*, vol.1, p.8.

The knowledge of the path to the hereafter: an ethical-practical knowledge

Al-Ghazali uses often the syntagm “the science of the hereafter” (*‘ilm al-akhira*) or “science oriented towards the hereafter” (*al-‘ilm al mutawajjih ila al-akhira*).¹²⁵ This science includes two types of knowledge: the knowledge of unveiling (*‘ilm al-mukashafa*) and the knowledge of deeds (*‘ilm al-mu’amala*). The *Ihya’* deals only with the latter, for writing books about the former is not authorized (*la rukhsata fi ida’iha al-kutub*). The Prophets talked about the knowledge of unveiling only in the form of symbols (*ramz*) and allusions (*ima’*) for they knew the humans’ inability to grasp their meaning.

As heirs of the Prophets, the scholars can only follow their example and dedicate their work to the science of actions which includes the exoteric (*al-zahir*) science in reference to “the actions of the limbs” (*a’mal al-jawarih*) and the regulation of usages (*‘ada*) and worship (*‘ibada*) as delineated by classical jurisprudence (*fiqh*) on the one hand, and on the other hand, the esoteric (*al-batin*) science dealing with “the heart’s actions” (*a’mal al-qalb*) (emphasis is mine), its states (*ahwal*), and the soul’s ethics (*akhlaq al-nafs*). It is this subdivision of the knowledge of actions (*‘ilm al-mu’amala*) that inspired the composition of the book according to four volumes: acts of worship (*‘ibadat*), usages (*‘adat*), perditions (*muhlikat*) and salvations (*munjiyat*). For al-Ghazali, this composition of the book is also a way to make it agreeable to read and attractive to the hearts (*talatufan fi istidraj al-qulub*).

There is a close relationship between knowledge and deeds for any act, including worship, needs necessarily a previous knowledge. According to a (weak) hadith, the Prophet Muhammad replied to the question “which is the best of all deeds (*a’mal*)?” in the following manner: “the knowledge of God” (*al-‘ilm bi-Allah*) is the best of all deeds. But how can the Prophet give such an answer when the question was about deeds? He replied again: “deeds, even a few, are good when they goes along with the knowledge of God, but deeds, even a lot, cannot be good with the ignorance (*jahl*) of God”¹²⁵. Although a clear distinction is made between knowledge and deeds, with a precedence to the former, the two are at the same time closely related since the right knowledge is necessarily practical.

One of the criteria differentiating the good knowledge from the harmful one, is its ability to speak to the heart. Quoting an ascetic of the second century of Islam, Fath al-Mawsuli, al-Ghazali recalls that wisdom (*hikma*) and knowledge are to the heart what food and water are to the body, for without them the heart would die after three days. Those living without knowledge have a sick and dying heart, but they do not feel this sickness because their “love of the worldly life” (*hubb al-dunya*) annihilated their ability to feel and to have sensations (*ihsas*)¹²⁶.

In the passages devoted to “the virtue of knowledge” (*fadhilat al-‘ilm*) from the perspective of “the testimonies of reason” (*shawahid ‘aqliyya*), al-Ghazali recalls that knowledge, unlike things that have no value in themselves (money for example), is both desirable in itself and as a mean to the highest good understood as “the happiness (*sa’ada*) in the hereafter” and “the goodness of looking at the face of God” (*ladhat al-nadhar li-wajh Allah*). The only way to be closer to God is through

¹²⁵ Al-Ghazali, *Ihya’ ‘Ulum al-Din*, vo.1, p.12.

¹²⁶ Al-Ghazali, *Ihya’ ‘Ulum al-Din*, vo.1, p.12.

knowledge and deeds, and, as we saw earlier, the latter is not possible without the former. Moreover, knowledge, as the best of all deeds is “the source of happiness” not only in the hereafter but also in “the worldly life” (*dunya*).

The sciences of the *Shari'a*: jurisprudence and the knowledge of the path to the hereafter

Etymologically, the *Shari'a* is the path leading to the source. Following several classical Islamic scholars and commentators of the Qur'an (Ibn Kathir), *Shari'a* is both the revealed law and the path to be followed by man connecting worldly life to the hereafter. The *Shari'a* is sometimes used in the plural *Sharai'* and refer to the revealed law of other communities (Jews, Christians).

In the classical epistemic context, the *Shari'a* is the distinctive element differentiating between various forms of knowledge. As a duty for the community and a responsibility of the scholars (*fardh kifaya*), knowledge includes the sciences of the *Shari'a* (*'ulum shar'iyya*) and the other sciences (*ghayr shar'iyya*). The sciences of the *Shari'a* encompasses all the knowledge revealed and transmitted not only by the prophet Muhammad but by all the prophets (*ma ustufida mina al-anbiya'*). While sciences such as magic and sorcery are harmful and should not be acquired, other sciences (medicine, arithmetic) non related to *Shari'a* are nevertheless necessary for worldly life and its order.

An important distinction should be made here between *fiqh* (jurisprudence) and *Shari'a*. If the *Shari'a* is the revealed law (and Sufi scholars would add the path to be followed by believers), then the knowledge of the *Shari'a* is the *fiqh* or more specifically, the human knowledge produced about the *Shari'a* is mediated by the discipline of *fiqh*¹²⁷. However, not all knowledge about the *Shari'a* is limited to *fiqh*. For al-Ghazali and other classical Islamic scholars (for example Ibn Khaldun) the *tasawuf* (Sufism) or “the knowledge of the path to the hereafter” (*'ilm tariq al-akhira*) is part of “the knowledge of the *Shari'a*” (*'ilm shar'i*), or the *Shari'a* is the link between the Muslim and the invisible world (*'alam al-ghayb*).

Put in al-Ghazali's terms, the *fiqh* and the science of the path to the hereafter are both “branches” in the general architecture of the sciences of the *Shari'a*: (1) the sources (*usul*), including the Qur'an, the Sunna, the consensus of the community, and the teachings of the Companions of the prophet Muhammad; (2) the branches (*furu'*) dealing with worldly matters (found in most of the usual books of *fiqh*) and hereafter matters as well as ethics (the science of the heart's states which is the main content of *Ihya'*); (3) the propaedeutic (*muqaddimat*) such as language and grammar which are a mean [*ala*] to get to the science of the Book; (4) the complementary sciences (*mutammimat*) (the sciences of the Qur'an, the sources of jurisprudence [*usul al-fiqh*])¹²⁸.

¹²⁷ Today, the fact that *Shari'a* is often conflated with the *fiqh* may lead to some confusions and misunderstandings. Books of *fiqh* that have been produced by the main Islamic juridical schools describe at length the rules that should be followed by Muslims. What is sometimes called a *Shari'a* rule is in fact a rule that has been formulated by a school of *fiqh*.

¹²⁸ For al-Ghazali, there is a right way to acquire and use jurisprudence (*fiqh*) and the other *Shari'a* sciences that are considered “a collective duty” (*'ulum al-kifayat* or *furud al-kifayat*). The accomplished scholar should avoid an excessive accumulation of knowledge related to only one discipline and should rather look for a median position [*wasat*] that would allow him to reach the essential and the succinct (*iqtisar*) in each form of knowledge. More specifically, a student of Islamic knowledge should be progressive (*tadaruj*) in his acquisition of “the collective duty” and start with the science of Quran exegesis (*'ilm al-tafsir*) including the abrogating and the abrogated verses (*al-nasikh wa al-mansukh*) and the Sunna. Then the scholar can turn to the branches (*furu'*) of the *fiqh* which include, the

For al-Ghazali, the four Imams to which the four schools of *fiqh* are attached were true scholars of *Shari'a* because they were not only the scholars of the exoteric ('*ulama' al-zahir*), but also companions and disciples of the scholars of the esoteric ('*ulama' al-batin*). Al-Ghazali enjoins his contemporaries to follow their example in order to renew the science of religion that has been occulted by the scholars of evil (*ulama' al-su'*)¹²⁹. Biographical narratives of scholars like al-Shafi'i and exemplary events in which they were involved are a proof of their knowledge of the secrets (*asrar*) of the Qur'an. The founding scholars of the *fiqh* should not only be followed for their dedication to worship and spirituality, but also for their moral qualities and accomplishments in their interaction with people, rulers and other scholars.

Interiority and exteriority and the limits of the *fiqh*

What delimits interiority from exteriority from the perspective of the *fiqh*? The exterior is what is visible to the eyes of the members of the community (the scholar and those who can be witness of someone's deeds), or what can be heard by them. The visible/heard is also what is tangible and can be verified by the judge. One can even say that the knowledge (*fiqh*) about the *Shari'a* was constituted on the basis of the ability of the eye and the ear of the community to (externally) assess the deeds of the Muslim. But one can also say that this knowledge is constituting the way the community could talk about deeds, differentiating what can be verified from what cannot be verified.

The construction of interiority and exteriority in the *fiqh* is distinct from the relationship between acts of worship (*ibadat*) and social transactions (*mu'amallat*) for both involve "internal" and "external" acts. Several deeds prescribed by the *fiqh* in prayer take place both in the "exterior" body and the "interiority" of the Muslim (for example when he should utter in silence verses of the Qur'an or the profession of faith [*shahada*], or the invocation [*du'a'*]). The assessment of the Muslim's deeds is also based on the "internal" intention (*niyya*) which is "exteriorized" in the social and reciprocal transactions (*mu'amallat*) for example in contracts.

In the case of prayer, it may be but much more difficult to assess the deeds, for the inter-subjective relationship does not happen between two or more persons, but occurs between the worshipper and God, in this inner space of communication with Him. The construction of interiority (*batin*) and exteriority (*zahir*) is even more complex when one introduces moral qualities of sincerity, fear and devotion in the act of prayer. Although the worshipper is repeating in his interiority Quranic verses or uttering invocations (*du'a'*), he may do so as a mere way to conform to the prescribed rules. In this case, one may say, that, in his own interiority he is in a state of *exteriority* to himself and to the rule, unable to reach the path to the hereafter.

science of "the juridical school" (*madhab*), and the sources of the *fiqh* (*usul al-fiqh*). There is no need to expand in only one of these sciences, for they are means (*alat*) and propaedeutics (*muqaddimat*) that should not be desired for themselves, but as a way to reach the higher science (i.e. the science of the path to the hereafter). The right scholar must also avoid acquiring a secondary knowledge about the differences and points of discord between schools (*madahib*) or between members of the same school for it will prevent him from spending his time on the higher science. Otherwise, the scholar will be caught in meaningless polemics and endless competitions with others, which should be avoided like a mortal poison (*al-samm al qatil*).

¹²⁹ Al-Ghazali, *Ihya' 'Ulum al-Din*, vo.1, p.24.

In this case, what are the limits of the scholar's knowledge? Can the scholar (*faqih*) do more than give his opinion on external and visible acts? Al-Ghazali recalls that the scholar usually does not deal with "hearts, nor their secrets". When giving his opinion about the validity of one's prayer (*salat*), he sticks to its exterior conditions (*zahir al-shurut*). For example, the scholar agrees upon the validity of a Muslim's prayer, even if the latter's mind is absent throughout the ritual, thinking only of business and trade. Although reverence (*khushu'*) and heart's presence (*hudhur al-qalb*) are among "the hereafter's work" (*'amal al-akhirah*) making the purely exterior act a good one, they are not dealt with by the scholar¹³⁰.

In another passage, Al-Ghazali discusses the presence of the heart (*hudhur al-qalb*) in relationship to the utterance of "God is the greatest" (*takbir*) that rhythms the movement of the body in the prayer. Its absence during other moments of the prayer cannot be a criterion of its non-validity of prayer as the consensual opinion puts it. Here again, Al-Ghazali recalls that the scholars "do not deal with interiority" (*la yatasarrafuna fi al-batin*) nor the hearts, nor the path to the hereafter for they are interested in "the exterior side of the rules of religion" (*zahir ahkam al-din*) on the basis of "the exterior acts of the limbs" (*zahir a'mal al-jawarih*). If the latter are the elements taken into account by scholars, notably when their task is to preserve order, the interiority cannot be judged from the perspective of the *fiqh* for there can never be a consensus on it. Moreover, one cannot make of the presence of the heart in the whole prayer a necessary criterion for its validity, because men (*kul al-bashar*), except the very few, are unable to make it effective¹³¹.

Heart, body and estrangement through the law: an impossible unity of the self?

The construction of interiority and exteriority is not limited to the external gaze of the scholar who decides of the validity of the act available to the sight but is also related to the way the worshipper lives his relationship to God. Although the scholar can talk about the interiority of the believer and prescribe acts to make him improve his ethics, he does not have access to it. However, interiority is "interior" and veiled only for other humans, not for God, for Whom it is an interiority that can be unveiled and "exteriorized". Hence, the worshipper is in a triple relationship of interiority/exteriority: towards God, the community and himself.

The relationship between interiority and exteriority as it occurs in the self raises the problem of the unity of the latter, as a disunity may be displayed in the relationship between body and heart (*qalb*), in which the heart becomes estranged from the body. This risk of alienation is possible only because the heart is autonomous from, and yet tied to, the body. From this perspective, the whole *Ihya'* can be read as a phenomenology of the heart (*al-qalb*), for although the heart is the main site of interiority, it has its own deeds and can act on its own capacity. It is in this sense that the science of the hereafter is a knowledge of the deeds (*'ilm al-mu'amala*), for only the heart is able to act towards, and to know the invisible (*ghayb*), and make effective divine presence. In the first chapter of the fourth volume of the *Ihya'* devoted to the explanation of the heart's wonders (*'aja'ib al-qalb*), the human is honored to know God (*ma'rifat Allah*) with his heart and not with his body for only the heart knows God (*al-'alim bi-Allah*), looks for (*al-sa'ila*), and acts (*al-'amil*) for Him.

¹³⁰ Al-Ghazali, *Ihya' 'Ulum al-Din*, vo.1, p.23.

¹³¹ Al-Ghazali, *Ihya' 'Ulum al-Din*, vo.1, p.144.

However, the *Ihya'* is also an attempt to bring a unity to the self, through the proper articulation between the deeds of heart and body. The body's limbs should not be autonomous from the heart but subjugated to him, and illuminated by the light coming from worship. The prayer (*salat*) is the most important time-space in which the tension between heart and body is displayed, and at the same time, overcome in the physical and spiritual proximity to God. The spiritual act is not conceived independently from the physical one for the Muslim is literally brought closer to God in the act of prostration (*sujud*) as a hadith puts it "The worshipper is the closest (*aqrab*) to God when he is prostrated" or as the Quran says: "Prostrate and be closer" (*iqtarib*). The proximity to God is even visible on the body of the Muslim who performs his prayer "Their marks (*simahuhum*) are left on their faces as a trace of the prostration" (Quran). These physical signs are in fact produced by "the light of the reverence" (*nur al-khushu'*) rising from interiority to exteriority¹³².

The movements of the body in the prayer should go along with the "heart's deeds". If the Muslim performs the act of prayer in a state of heedlessness (*ghafila*), or if he is not able to liberate himself from "worldly thoughts" (*afkar al-dunya*), he will not be able to follow God's command: "Perform the prayer to remember me" (*Aqim al-salat li dhikri*) or "Do not be among those who forget" (*wa la takun mina al-ghafilin*). Moreover, the prayer of the "heedless" (*ghafil*) will not allow him to improve morally, for he will be in the same category of the Muslims described by the *hadith*: "those whose prayer will not prevent them from committing abominations (*fahsha'*) and reprehensible deeds (*munkar*) can only get farther (*bu'd*) from God". This state of heedlessness is a moment of estrangement in which the body performs the prescribed acts independently from the heart.

The relationship between body and heart is closely related to the relationship of exteriority/interiority of the law and to the law. To a certain extent, the heart's estrangement from the body lies in the ambivalence of the law, which is, at first sight, available to man only in its external face and its immediacy. The internal dimension of the law is never immediately and fully accessible to the believer, but should be mediated by the work of the heart. At the same time, the worshipper should perform the prescribed rule both externally and internally, and gives the mere externality an inner life. The reconciliation of body and heart and the unity of the self in the law are never a permanent and secured state, but only an elliptic promise that may occur in a certain time-space.

Al-Ghazali's concern for the ability of the worshipper to live the rule both externally and internally is reflected in the ambivalence of prayer. For each prescribed act of the conditions (*shurut*) and pillars (*arkan*) of the prayer (*salat*) as formulated by the *fiqh*, there is a corresponding act of the heart. For example, when the worshipper hears the call to prayer, he needs to respond actively to it and make present in this heart the terror (*hawl*) associated with the Resurrection Day (*yawm al-qiyama*). When he is performing the acts of purification (*tahara*), he needs not only to clean his skin and his body's members, but also his self (*dhat*) and his heart (*qalb*) through repentance (*tawba*) for God looks at the inward (*batin*). When the Muslim dissimulates the body's awful parts (*satr al-'awra*), he needs also to think of the awfulness of his inward (*batin*) and his secrets that are only known by God, and make his heart full of regret, shame and fear.

The unity of heart and body reflecting the ability of the worshipper to live the law both internally and externally is an exceptional state, known by the very few in the time-space of prayer and make

¹³² Al-Ghazali, *Ihya' 'Ulum al-Din*, vo.1, p.135.

them able to reach a state of certainty (*yaqin*). In this case, the worshipper is totally absorbed in a state of awe (*khushu'*) by his prayer, following the Prophetic examples in the hadith narrated by Aisha (“[The Prophet Muhammad] was talking to us and we were talking to him, but when the time of prayer occurred, it was like he did not know us and we did not know him”) or in the Quran (“O Moses, if you remember Me, remember Me while you are moving your members, and be absorbed in a state of awe (*khashi'an*) and serenity (*mutma'in*), and make your tongue preceding your heart [...]”). Al-Ghazali quotes also the story of Muslim Ibn Yasar who was so absorbed by his prayer that he did not even notice the fall of the one of the supporting columns of the Mosque.

For the heart to be co-present with the body, it needs to be available, free from all things that may orient him toward the wrong direction, and be a space for knowledge understood as the unity of words and action (*yakunu al-'ilm bi al-fi'l wa al-qawl*) occurring in the same time. Although thought may not be focusing exclusively on the prescribed words and deeds, the heart needs to be always remembering (*dhikr*) them. However, the heart may be present in the utterance of the word but absent as a site of meaning (*la yakunu hadiran ma'a ma'na al-lafd*). When it goes along with understanding, the heart reaches the meaning of the words and make the prayer able to put an end to abominations and bad deeds¹³³.

Following al-Ghazali, the rules derived from the *Shari'a* are not only a mere set of external rules to be followed by the Muslim. They are first and foremost *lived* by the believer, performed and embodied *by* and *in* him. It is both a mean leading to divine presence and an end in itself. The most important act of the *Shari'a* is the *salat* that instantiates divine presence and may be described as a movement of internalization of the external law. This internalization is at the same time a movement of opening to another world already present but not self-evident, not visible at first sight, and for which the body (notably the limbs, the eye, the ear, the touch) but also the heart need to be educated. Hence, the internalization transforms also the relationship of the worshipper to the world, inhabited and co-inhabited by the sensible and the spiritual, the visible and the invisible. The invisible may sometimes become visible to the eye of the believer, but its existence is beyond any doubt, and it is always knowable if one acquires the proper ethical-practical knowledge. It is the latter that gives the worshipper access to the invisible reality.

It is also the *salat* that shapes the subject to perform other duties prescribed by the *Shari'a*, and to engage with others in the *mu'amalat* that belong to the sphere of the good. The relationship of the subject to the world is mediated through divine's presence but also through the community. For it is recommended that the *salat*, should be performed collectively in the mosque, and instantiate the link between the subject and the others. Moreover, the instantiation of God's presence in the *salat* is at the origin of the Muslim's sense of good and evil and sense of duty that are the conditions of possibility of *the* law. Hence, the *salat* is not only carefully regulated by the law, it is also its condition of possibility in the consciousness of the subject.

¹³³ Al-Ghazali, *Ihya' 'Ulum al-Din*, vo.1, p.145.

Part II

Chapter 5

Spiritual Ethics: Truth of the Law and Truth of the Self

Truth and the good

One way to continue our inquiry about spiritual ethics as developed in the two previous chapters is to look for the good in Islam: where is the good located? The revealed law (*Shari'a*) is in itself the site of the good, for it has its sources in the revelation, which includes the words of God (the Quran) and the Prophet's sayings and exemplarity (the *Sunna*). Although the good is enclosed in the revelation and disclosed to the humans through prophecy, oral transmission and later textuality, it calls for a continuous work of truth-seeking. To look for, and formulate the truth of the law is to delineate the good to be followed by the individual.

The Quran and the Sunna articulate the differentiation between the good and the wrong to a narrative of God's intervention in the world. Here, the good does not merely take the form of prescriptions or proscriptions but includes also a cosmogony instituting an order to the universe, as well as stories giving meaning to human existence and constituting a source of moral exemplarity.

Looking for the truth in the foundational texts following the procedures relied upon in the *Shari'a's* sciences is also a way to have access to the good, for the truth *is* the good. The very event of the revelation is itself a foundational truth and tells us that all we need to know about existence and the order of the world is available to us in God's words. However, it is not only a contemplative truth that has been revealed to us, but also a practical one, that tells us how to live in the world. As the words of God, the truth is a blessing and is necessarily good. In other words, to look for the truth in the revealed law means to look for the good that will guide the individuals as well as the community in the practical life.

This relationship between the truth and the good, and between knowledge and ethics in Islam is in tension with modern thought which is based on the divorce of the two, at least since Descartes. As such, truth in modern science is not the site of the good but is "value-neutral"¹³⁴. It may allow us to better understand nature or the human but it does not tell us how to live a good life in the world. In line with modern science, contemporary western law regulates behaviors and protects interests. It is not tied to a foundational text or event revealing to us the truth-good nor does it tell us how one should live ethically. In Islam the truth is already given in the foundational texts and needs to be disclosed following hermeneutical procedures, while in modern thought the truth is not given or located in a text but produced by the subject following the rules of sovereign reason.

For scholars versed in the *Shari'a's* sciences, the production of knowledge is not done for its own sake but is an ethical act for it allows the individuals as well as the community to have access to the truth-good and to behave accordingly. The knowledge of the revealed law has an ethical value

¹³⁴ Weber, *Essays in Sociology*; Horkheimer and Adorno, *Dialectic of Enlightenment*.

in itself because it is the knowledge of the truth-good. Given their role in the guidance of the community, scholars have a moral responsibility regarding the way they carry out their duty for they may make a “truth” out of falsity, and lead not only themselves but also the community into error and sin. In the community where only a few are educated and knowledgeable enough to be considered scholars, it is the individual’s duty to ask them about the truth-good, and it is the scholars’ duty to guide them¹³⁵.

Although the good-truth has been made manifest through the revelation and the work of scholars, it does not make, in itself, the community and its individuals good, but require deeds from them. Yet, these deeds are “external” and part of the “exoteric” (*al-zahir*) and should be related to the inner life of the self (*al-batin*). It is in this relation between the inner and the outer that the space of spiritual ethics is shaped. Drawing on Ghazali’s writings and my ethnography of the *Tariqa Shadhiliyya*, I will in this chapter explore what the constitution of a space of spiritual ethics does to the Muslim self.

Knowledge of the law and knowledge of the self

To begin with, we saw how spirituality is grounded in, and intertwined with *Shari’a*. One needs to know first the truth of the law in order to know the truth of the self. For it is in the gap between what is expected from the self by the law and what the self *is* that the work on internal states takes place. The revealed law (*Shari’a*), rather than mere jurisprudence (*fiqh*), sets for the self an ideal *of* and *for* the self that can be contrasted to the actual self, and opens up a space *of* and *for* inner life. Yet, exploring the inner life is not only a matter of personal will, and the individual cannot just act ethically guided by his own judgment because he only wants to do so. Rather, there is a specific knowledge, i.e. the science of ethics that has been constituted by, and inherited from, classical Islamic scholars on the basis of the Quran and the *Sunna*, and transmitted over generations. Although it is associated with the inner life of the individual, spiritual ethics may be taught and learned. Contemporary Islamic scholars may introduce the self to the language of interiority and guide him in the task of improving ethically, as they enlighten the self regarding the rules prescribed by the revealed law. However, if one can read from books of ethics or learn from contemporary scholars it is not a contemplative knowledge, but a transformative knowledge that needs to be put into practice, and lived by the believer¹³⁶.

What kind of knowledge is the science of spiritual ethics? It is a knowledge that arises out of the revealed law, it is part of *Shari’a* knowledge, and yet it is not a legalistic/judicial knowledge formulating specific rules of action in the form of prescriptions or proscriptions. Rather, it is a

¹³⁵ Other forms of knowledge that are not directly related to the truth-good such as the science of language, or the science of logic, do not have an ethical value but they are still important in the hierarchy of knowledge because the *Shari’a*’s sciences (such as the science of belief ‘*aqida*’, jurisprudence [*fiqh*] and Quran’s exegesis [*tafsir*]) rely on them.

¹³⁶ As al-Qaradawi writes, each Muslim should know the fundamental elements of the science of ethics (*‘ilm al-akhlaq*) that allows her/him to orient his moral behavior according to *Shari’a* rules (*dawabit al-shar’*), doing what is prescribed by God and avoiding what has been forbidden by Him. Moreover, each Muslim should know the basics of “the science of the path to the hereafter” (*‘ilm tariq al-akhira*) and “the path to God” (*al-suluk ila Allah*) that helps him orient himself on the way until he/she purifies his/her soul (*yuzakki nafsah*) as God says in the Qur’an: “Succeeds whoever purifies his soul” (*aflaha man zakkaha*), *surat al-Shams*, 9 and elevates himself until he reaches the station of *ihsan* (p.28).

knowledge of emotional states as well as states of mind, that do not validate or invalidate the Muslim's deeds from a legal perspective, but are nevertheless related to the revealed law in several ways: they are "internal" states which go along with "external" deeds as they have been prescribed by Islamic jurisprudence, and they are grounded in the foundational texts of Islamic law, i.e. the Quran and the *Sunna*. The spiritual topography that one may find in the science of ethics is not separated from the law but is rather entwined with it. Whoever puts into practice this knowledge without any consideration for the law runs the risk to fall into unlawfulness and sin. But merely performing the deeds prescribed by the law without any work *on* and *of* the heart may only lead to a life without spirit¹³⁷.

As such, the rules formulated by the discipline of *fiqh* (Islamic jurisprudence) do not constitute a space for the internal life of the Muslim for they deal with his/her external deeds. One may perform the deeds prescribed by the rules mechanically, without involving any work on internal states. Although they may be valid according to jurisprudence, they may lack spiritual richness and ethical accomplishment. Yet, despite the fact that it is insufficient by itself, following the rules formulated by jurisprudence is a necessary condition for acting ethically.

The work of ethical practice presumes a disharmony between inner and outer self, between heart and body, and consists in producing a unified self. If the harmony between internal states and external deeds was already given, there would be no space for ethical transformation. While only the self and God know the extent to which there is a gap between the inner and the outer in the individual's behavior, others do not have access to his/her interiority, and interact only with what is "visible" to them. From this perspective, the dichotomy between internal states and external deeds overlaps with another dichotomy, between inner self and social self. In several situations, the social self may convey an image of moral rectitude to the community, while the inner self is performing exemplary deeds without involving his/her heart, for example if he/she does not believe in what he/she is doing and acting only out of interests.

The work of ethical practice raises questions about the self's own motives for performing an act of worship or a social interaction. The self may be asking the following question: Am I doing the prescribed act for God or in order to have a good image of myself in the others's eyes? This question is related to the ability to discriminate among motives and internal states. I should be able to tell my inner self the truth about myself in a moment of duplication of the self that allows me to look truthfully at myself in relationship to a deed. These questions about the motives are also

¹³⁷ For Qaradawi, the excessive position of some *Salafi* who think that everything in Sufism has nothing to do with Islam, and accuse the Sufis of relying on blameful innovations, is not acceptable. For him, the writings of the two most important masters of the *Salafiyya* school, Ibn Taymiyya and Ibn Qayyim, give its due place to lawful Sufi practices in Muslim life. What is lacking in several scholars belonging to this school is the ability to have emotions (*al-atifa*) related to the fear of God ("no eye tearing, no heart fearing, no body trembling") or the love of God. Like automatons, there is no spirit, nor life in them. On the other hand, several Sufis rely on emotions and a spirit full of love and fear, but without being regulated by, and subjugated to, the rules derived from the revealed law (*al-shar'*). For al-Qaradawi, the good cannot come from the excesses or lacks of one position or another, but is necessarily derived from a median position (*al-wasatiyya*). That is the reason why he calls for an intertwinement of Sufism and Salafiyya (*tasawwuf al-salafiyya wa taslif al-sufiyya*) in which each would take the best from the other, as exemplified by Hasan al-Banna (the founder of the Muslim Brotherhood) whose mode of reasoning was Salafi and spirituality Sufi.

related to the end toward which I am acting: am I de-centering myself and orienting my action toward God or am I prisoner of myself and his/her own appetites and interests?

To a great extent, acting ethically lies in the paradoxical ability of the self to get out of himself/herself in order to act for God. In ethical practice, the self is less negated than subjugated to God. Although the self needs to be posited in order to make this kind of practice possible, it is not a self-autonomous and atomistic self. Nor is it a relationship of unity with God for it would violate the fundamental principle of God's oneness and unicity and would make the individual fall into heresy (*zandaqa*). Rather, acting ethically entails a self who is himself/herself embedded in the relationality with God. The revealed law, both in its juridical and spiritual dimensions, embodies this relationality in specific deeds and internal states as disclosed by the foundational texts and the trustworthy and authorized community of scholars. Here, the truth of the self does not lie in the egotistic and disengaged self (for example the Cartesian self) but rather in the relational self tied to God with the revealed law.

The notion of sincerity captures a central dimension of the inner state that needs to go along with the self's deeds, and exemplifies the relational self. Inaccessible to others, the self's sincerity is yet relational, for it should reflect the exclusiveness of the self's relationship to God, Who cannot be associated to anything else. It raises the question of the self's ability to see the truth about himself, and to tell it to himself in order to correct his internal state. The self may be asking: Am I doing this good deed because I am expecting a worldly benefit in return (such as being considered a good person in the eyes of others), or am I doing it only for God? Here, ethics does not lie in the nature of the deed itself but rather in the combination of the deed with an intent exclusively dedicated to God. Paradoxically, while the deed needs to be posited first to make possible any ethical judgment, it becomes secondary, subjugated to the self's intent. It is the latter that enables the relationality between the inner self and God in a situation of action, which entails another relationality, between the inner self and the external deed he is performing.

Doing and Being

As we saw earlier, the discussion about ethical practice in Islam should be raised in relationship to the question of the unity of the relational self, for the deeds of the self's body may be in disharmony with his thoughts and inner state. There may be two kinds of disharmony: the self may perform the deeds prescribed by the law only because of constraint or fear of worldly sanction, or the self may want to perform them but not for the good reasons. In the first case, although the self does not want to act in conformity with the law, he is still performing the prescribed deeds in the midst of an internal struggle between his will and his body. In the second case, the self is willingly applying the law, he can even find a pleasure in the required actions, but his will is not oriented toward them for the good reasons. Hence, all the work around the inner self as delineated by the science of ethics deals not only with the orientation of the will in order to make the self desire what the law prescribes, but deals also with *the motives* of his will and their purity. For, the self needs not only *to act* outwardly in accordance with the law, but needs also *to be* in a certain inner state. That is the reason why the language of jurisprudence relies almost exclusively on verbs of action (*'amal*), while the language of spiritual topography is all about states (*ahwal*). The science of jurisprudence requires from the self *to do*, while the science of ethics expects the self *to be*. Yet, although distinct from each other, their truth is achieved only in the combination of the two. It is in the deed, in a

specific situation involving appetites, interests, worldly desires and temptations that the inner state reveals itself to the self in its ability to produce pure motives on the basis of which his will is enabled. Now, of course, doing and being as related to jurisprudence and ethics are not mutually exclusive, and several classical and contemporary Islamic scholars would talk about the “deeds of the heart” (*a‘mal al-qalb*) to emphasize the fact that a state, a way of being may be produced by the self and are not immediately given to him. Moreover, a state is paradoxically all but permanent for it requires a continuous work of shaping involving “inner” deeds.

Obedying the revealed law and doing whatever is commanded, is necessary for whoever wants to be good. Subjective ethical practice starts at the moment the self is asking questions about his relationship to the revealed law: Should I follow the law or not? Am I following the law? The very act of obeying or disobeying the law entails an ethical judgment about the self’s deeds. Hence, the rules as formulated by Islamic jurisprudence are not ethical or legal in themselves. Rather, it is in the relationality the self may have with the rules that creates a social space in which his actions are seen and judged by others as well as a space for the inner self to reflect upon his/her deeds in the world. Yet, merely doing what is prescribed by the law may be good in the eyes of others but does not make *me* good. Jurisprudence enjoins the self *to do*, but it does not tell the self *how to be* (in general), neither does it tell the self how to be while performing the prescribed deed (in a specific context). An important difference should be introduced here between *doing the good* and *being good*. The deed acquires in the social world a visibility and an objectivity that makes it autonomous from the self, and may be considered good in the eyes of the community. But the science of ethics takes the self back to the inner and relational self to reflect upon the goodness of the self in relationship to the deed, and more generally, upon the self being in-the-world.

Put in another way, ethical behavior is necessarily lawful, but the lawful is not necessarily ethical. The law as formulated in Islamic jurisprudence gives the self a kind of “standard” of ethical behavior, through which the self (or the Islamic scholar) can assess his own deeds. The work of ethics opens up the possibility of doing more than the legal obligations, and may be an open-ended work requiring recommended and superogatory acts which are also part of the lawfulness of Islamic law. However, all the good deeds that the self performs are not necessarily part of a way of *being* ethical for the self may be considered a “good” person and be praised in the eyes of others but not for God, because only Him knows the inner self. Hence, the self needs to be guided by the following questions: What is happening in my inner self when I am achieving good actions? What is my intent? What are my expectations when I am doing them?

The distinction between doing and being raises again the question of the unity of the self. As part of the sciences of the *Shari‘a*, and as related to the deeds prescribed by Islamic jurisprudence, the science of ethics allows the self to think himself in his/her unity, in which being encompasses both his internal states and his external deeds. Yet, it is life, understood as the continuous dis-unity between the inner self and the social-embodied self that calls for an open-ended work of shaping their unity. It presumes that the inner self and his external deeds, mind and body, are autonomous “spaces” that are not naturally in harmony with each other. From this perspective, ethics is not only a work about internal states as related to the self’s deeds, but opens up the possibility of producing a unity of the self in the very moments of thought, emotion and action.

The science of ethics is also a reminder that the self is accountable not only for his/her deeds before the humans but also for his/her thoughts and emotions before God. The very act of addressing the self contained in the revealed law, either in the Quran or in the Sunna, is constitutive of the distinction between the inner self and the embodied one. For example, there are Quran's verses as well as sayings of the Prophet prescribing specific embodied deeds while others are talking to, and about, the heart. It is in this foundational bivalence of the revelation's words that lies the potential duality of the revealed law as displayed in the sciences of jurisprudence and ethics, as well as the possibility of their unity.

One of the difficulties related to ethics is the twin question of education and communicability. If the inner state is specific to the self, and if it can be known only to God, how can the ethical self be emulated in the community? It requires a process of identification, naming and "externalization" of the inner state that opens up the possibility that it will be communicable to, owned and emulated by, the other through language. However, this inter-subjective interaction is grounded in textuality, for the Quran and the Sunna tells us how the inner self is and how he/she should be. Yet, the model of the ethical self to be followed by the Muslim does not emerge obviously from the foundational textuality of the Quran and the Sunna. Rather, a knowledge (the science of ethics) establishing the meaning of the texts has been constituted and structured in such a way by Islamic scholars as to give the actual self the possibility of understanding and emulating the ethical self.

The truth of the self and truth of the law

Any self-reflection about the self's inner states requires from the self the ability to tell the truth about his inner self to himself. It is the gap between the actual self and the ideal self as delineated by the revealed law in Islamic jurisprudence as well as the science of ethics that enables the work of ethical transformation and improvement. For the relational self, interiority is not a space where the "I" is alone, but is shared with God. The internal conversation that the "I" can have with myself is always triadic for God is always present with me and knows everything about my inner life. Speaking the truth about me and to me is also telling God the truth about me, a truth He already knows. From this perspective, sincerity and truthfulness about my inner self to myself is also about my inner self to God. Since God already knows the truth about myself, sincerity is one of the most important inner states required from me in my relationship to Him when I worship Him but also in all my deeds which should be achieved for Him.

To be able to know the truth about the self, the latter relies on language, which is the appropriate medium allowing him to name, locate, and differentiate between, several thoughts and emotions. The science of ethics consisted precisely in developing a specific language, a spiritual topography helping the self navigate in the complexities of his inner self in his/her relationship both to God and to the world, and giving life and shape to him/her.

Ethical realization lies in the encounter between the truth of the self and the truth of the revealed law. The truth of the revealed law as disclosed in the science of jurisprudence as well as the science of ethics and shaping for me the ideal self sheds light on the truth *of* and *about* my self. It allows me to see what are my limitations and my shortcomings and what I need to do for me to improve

ethically. The relationship between the two truths opens up a horizon of change for the inner self and correction of his deeds.

Although what the self needs to know in order to perform the prescribed deeds is located in foundational and subsequent texts (Quran, *Sunna*, and books of *fiqh*), it is not through reading that he learns how to perform the acts of worship or social inter-actions and transactions. For example, regarding the acts of worship, these prescribed deeds are already embodied in the others' bodies at home, in the mosque, in a brotherhood as he is able to see and hear them. It is in the visualization-imitation-repetition process enabled by the self's senses and his daily interactions with the community that he learns how to do these deeds correctly. In other words, it is embodied knowledge that allows the self to follow the revealed law.

The prescribed deeds are an end in themselves because they are part of the "ought" of the law, and as such they need to be achieved following a standard sequence of movements and positions of the body in order to be considered valid from the perspective of jurisprudence. Yet, these deeds are subjugated to a higher end where the good is located: the submission to God's will through the submission to His revealed law. The act of prayer is good because it exemplifies this submission which consists in subjugating my will to God's will. However, the goodness of the act has an "objectivity" that does not make it necessarily subjective for it is related to the ways in which the self performs it. To determine whether a person *is* good, one needs to know *how* he/she performs the deed, i.e. what are his/her internal states. While the truth of ethical objectivity (what should be done in order to be ethical according to the law?) can be known through the knowledge of the revealed law, the truth of ethical subjectivity (is this individual truly ethical?) remains inaccessible to the community as only God knows the inner self. From this perspective, to have access to the truth of ethical subjectivity located in the "heart" requires a dis-embodied knowledge, for this kind of truth can be deciphered neither in the movement of human bodies nor in actions available to the eye but only in the secret of the self. Yet, ethical accomplishment is neither merely being in certain states nor is it merely doing what jurisprudence prescribes but lies in the encounter between the truth of the law (ethical objectivity) and the truth of the self (ethical subjectivity).

The condition of possibility of both jurisprudence and the science of ethics lies in the gap between the "is" and the "ought". However, from the perspective of jurisprudence, the "ought" is related to doing ("you ought to do") while it is related to being ("you ought to be") from the perspective of the science of ethics. The revealed law, both in its jurisprudential and ethical dimensions, relates the present to the future and projects the self into an action to be done, or a state to be adopted. The labor of ethical practice consists in uniting the "is" and the "ought", in which the projection is sublated into the present. The duties prescribed by the law, notably the acts of worship, structure the flow of time, and organize the self's days and nights accordingly. Ethical doing and being are never secured for they call for a continuous work that ends only with death.

Shari'a's spirituality and the anthropology of Islam

For decades, anthropologists of Islam such as Clifford Geertz and Ernst Gellner relying on colonial and Orientalist literature understood the relationship between *Shari'a* and Sufism in oppositional terms. From the perspective of both colonial literature and Orientalism, the relationship between jurisprudence and spirituality was understood in oppositional terms, as if the submission to the law

would leave no space to spirituality and could not allow the self to become pious: “The predominance in religious learning of the tendency to search into the law, using the methods of casuistry gradually resulted in impressing upon the teachings of Islam the stamp of quibbling legalism. Under the influence of this tendency, religious life itself was seen from a legal point of view. This was not likely to strengthen true piety, the devotion of the heart”¹³⁸. The kind of binary statements made by Goldzhiher on the basis of polemical writings rather than a nuanced analysis of classical Islamic writings and practices did not allow the student of Islam to explore the ways in which the prescriptions of the law may be themselves the site of spirituality and devotion.

Goldzhiher reiterated the purported opposition between the two forms of knowledge when he studied Sufism and more specifically its rituals: “The liturgical element is connoted by the term *dhikr*, “mention”, which has retained its position throughout the evolution of Islamic mysticism. Official Islam limits liturgical prayer to specific times of day and night. The ascetic attitude broke through such limits and bounds by making the Quranic admonition ‘to remember God often’ (33:21) central to the practice of religion, and by raising the devotional exercises that it called *dhikr* to preeminence in practical religion. Next to *dhikr*, other religious practices suffered a great devaluation, and shrank into trivial and secondary things”¹³⁹. What Goldzhiher seemed to have overlooked, is that jurisprudence (or what he calls “Official Islam” or “Orthodox Islam”) does not “limit” the practice of worship to specific times. Rather, it makes a clear distinction between obligatory acts of worship and supererogatory ones. Jurisprudence devotes also several developments to the way supererogatory prayers such as *dhikr* should be performed. Moreover, Goldzhiher suggests that the Sufis neglect the *Shari’a*’s individual obligations as prescribed by jurisprudence, while they are in fact expanding their spirituality through *both* obligatory prayers and supererogatory ones.

The opposition between *Shari’a* and Sufism became not only a classical trope of Orientalism, but also was foundational in the anthropology of Islam for authors such as Geertz and Gellner, who relied heavily on colonial literature. For Geertz, the recourse to scripturalism by anti-colonial movements i.e. “the turn toward the Koran, the Hadith, and the Sharia, together with various standard commentaries upon them” was mainly a “reaction” against the “classical religious tradition”¹⁴⁰ assimilated to Sufism in pre-colonial times (“maraboutism” is the word used by colonial literature and relied upon by Geertz). Although Geertz wrote mainly about Morocco and Indonesia in *Islam Observed*, he identifies the rise of scripturalism and its effects with the diffusion of the ideas of the Egyptian scholar Muhammad Abduh, and more generally with the *Salafiyya* movement at the beginning of the twentieth century. What Geertz failed to see is that spirituality in Islam is grounded in *Shari’a*’s sources (or to use Geertz colonial terminology “maraboutism” is intertwined with “scripturalism”). As I suggested in this chapter and the two preceding ones, the intertwining of spirituality with jurisprudence as displayed in the writings of the most influential classical and contemporary scholars such as al-Ghazali and Qaradawi or in the most important Sufi brotherhoods such as the *Tariqa Shadhiliyya* is far from “peripheral” but rather is constitutive of Islam¹⁴¹.

¹³⁸ Goldzhiher, *Introduction to Islamic Theology and Law*, p.66.

¹³⁹ Goldzhiher, *Introduction to Islamic Theology and Law*, p.132.

¹⁴⁰ Geertz, *Islam Observed*, p.65.

¹⁴¹ Our inquiry about the relationship between law and spiritual ethics raised in this chapter can also be discussed in relationship to recent works of anthropology dealing with law (Messick), ethics (Mahmood) and psychoanalysis

Law, spirituality and inner self in comparative perspective

The history of the self in the West is usually related to a process of internalization of the “good” at least since Descartes. It posits the emergence of moral autonomy as a distinctive feature of the modern self, who emancipated himself/herself from any form of heteronomy. While the development of “the sense of inwardness” is a central aspect of the narrative of moral autonomization in the West¹⁴², I have studied in this chapter the ways in which the exploration of the inner self in Islam may be related to moral heteronomy (in which the good is located in the

(Pandolfo) which aim is nevertheless to answer very different research questions. In these works, the “exterior” has been conceptually understood as the space associated with social norms endowed with authority that is both subjugating the subject and shaping its interiority (Mahmood, *Politics of Piety*), or has been related to the textuality of the law that is “internalized” by the student in the learning process (Messick, *The Calligraphic State*) or can be associated with the healer’s curing practices authorized by the law (Pandolfo, *Knot of the Soul*).

The forms of transmission of *Shari’a*’s knowledge in Yemen before the advent of the nation-state as described by Brinkley Messick in *The Calligraphic State* are entwined with ethics. Textual practices (including recitational and oral practices) are also ethical ones for they enable the constitution of authority “in” texts as well as the authority “of” texts (p.1). The acquisition of knowledge is not ethically neutral but rather is itself a time-space of self-formation in which the text is literally embodied by the student (“humans are entextualized and texts are physically embodied” p.77), who is also expected to acquire moral behavioral dispositions. As I suggested in chapters 4 and 5, there is a structuring tension between the “exteriority” of the rules as formulated by the *fiqh*, and the desire to *live* them and embody them in the “interiority” of the believer. The forms of “entextualization” occurring with recitational practices described by Messick give us an anthropological account of the ways through which the external text-rule is “internalized” by the subject and shapes his character. Hence, an authorization (*ijaza*) to teach a book or a discipline of the sciences of the *Shari’a* delivered by the scholar to the student is not only about mere scholarly content, but implies also an assessment of his character for the acquisition and transmission of knowledge is both a good and a duty for the community.

In contradistinction to the liberal-Kantian formulation of moral autonomy, Saba Mahmood, has shown how Muslim women attending lessons of *fiqh* in piety circles in Cairo subscribe to a form of ethics that consists in the submission to an external religious authority. It is precisely the moral heteronomy grounded in the Islamic tradition that calls for a labor of ethical cultivation in which the external rule is literally embodied by the subject, for example in the act of prayer. Yet, one of the main problems for the Muslims who are part of the “Islamic Revival” is to organize the time-spaces in which forms of life, exceeding the limits assigned to them by the modern state, may occur. These practices are made possible by the transmission of knowledge that undergird the Islamic “discursive tradition” and make the present “intelligible through a set of historically sedimentated practices and forms of reasoning that are learned and communicated through processes of pedagogy, training and argumentation” (p.116). From this perspective, the meanings attached to these practices may differ from the ones formulated by Islamic scholars of previous times for they are co-produced by past subjective experiences, and by the social world in which they occur, at the very moment they are performed.

In *Knot of the Soul*, Stefania Pandolfo has showed how healing practices in the name of Islamic law, raise questions about the access to, and the integrity of, the self in a liminal experience. As it is practiced by the healer, the *ruqqiyya al-shar’iyya* deals directly with the soul and the self [*nafs*] in a situation of (dis)possession and intrusion of otherness. On the one hand, the *ruqqiyya*, although not belonging to the practice of jurisprudence [*fiqh*] as such, is, however, an object of legal opinion regarding its legal validity (what is the limit between authorized and non-authorized healing practices?). On the other hand, the writings about the *ruqqiyya* belong to the genre of prophetic medicine often developed by scholars of jurisprudence (for example Ibn al-Qayyim al-Jawziyya) and is considered, in certain contexts, as part of their expertise. As practiced by the healer-scholar (*faqih*), the *ruqqiyya* connects directly the law with the self as the site of juridical capacity, for the “healthy” soul is the precondition of *taklif*. Yet, it is also a practice that may be considered as the substitute to the usual “external” law for it speaks where the law is unable to speak. The *ruqqiyya* enlightens the limits set by the *fiqh* for its own intervention because it goes precisely beyond these very limits and claims the dangerous access to interiority where good and evil, light and darkness may no longer be recognizable and clearly delimited from each other.

¹⁴² Kant, *The Metaphysics of Morals*; Taylor, *Sources of the Self*.

revealed law) rather than autonomy, and to a form of spiritual ethics that does not necessarily fit the usual opposition between the two.

In the West, religious institutions are no longer considered as legitimate sources of legislation because the space of the inner self is set to be free from any legislating authority particularly for moral purposes in a context where the “external” law is no longer the site of the good as exemplified in Kant’s moral philosophy. On the other hand, the modern legal regime is described as the “rule of law”, which entails obedience to the law of the state but does not involve, in principle, any authority over the inner self.

In many respects, the Reformation is one of the most important shifts in the genealogy of the western moral self, for the latter became represented as “free” from any religious legal institution. While the law produced by the Church was the site of the good for theologians like Aquinas, it became suspicious both from the perspective of the believer after the Reformation, and the civil state whose power was growing considerably in the seventeenth century (although the conflict between the Church and the European states around questions of conflicting laws already started in the eleventh century with “the Investiture Controversy”). In the moral history of the West, Luther contributed decisively to the distinction between the autonomous “internal” state of the believer on the one hand, and the “external” law formulated either by the Church or by temporal power on the other hand¹⁴³. At the same time, a new space for the external law that was not the law of the Church emerged with the civil state (and was theorized by thinkers like Grotius and

¹⁴³ For Luther, the external law of the Church can never be the site of the good, nor an end in itself. In a worldview divided between “true believers” belonging to “the kingdom of God” and the others who are part of “the kingdom of the world”, the law is not relevant for the former, but only necessary to the latter. The faithful soul is self-sufficient and does not need the law. A true Christian is “the spiritual, inner man” who is free from the law and from the works prescribed by the law-institution. The Christian needs only “the most holy Word of God, the gospel of Christ” (p.597) and freedom is precisely the liberty to not follow the law because there is no need of it for the soul looking for salvation. However, the world is “flesh” and man needs to control his body and interact with other men. Man needs to discipline the body (for example through fasting and labor) and make it harmonious with faith. In the perpetual conflict between the inner man and the outer one, the law is needed to repress the body and make man available to faith. For Luther, Christians forgot that the law is only a mean to purify the body, not an end in itself. Disoriented by the Church, they believed that they can be saved through works (like gifts or fasting) prescribed by the law, and became preoccupied only with “ceremonies”. The distinction between the “inner” and the “outer” is also relied upon by Luther in his discussion of the obedience to the law formulated by temporal authority. Here too, the true Christians do not need the law because they have “in their heart the Holy Spirit” (p.663), which can only be source of justice. However, the law is needed to restrain “Christians in name [...] *outwardly* from evil deeds” (emphasis added), to preserve mankind from falling into chaos and “preserve an *outward* peace” (emphasis added, p.665). Although the true Christian does not need the civil law for himself, he should abide by the temporal rules, pay his taxes and serve the ruler for the preservation of order¹⁴³. One can see through the example of Luther how the construction of the “inner” as the space of the good and faith in Europe after the sixteenth century is based on the fierce and total rejection of the external law, either the law of the Church or the law of the state, as a site of goodness. The law may be necessary to repress evil-doers and preserve order, but following it does not make the Christian a better person for the law has no moral value in itself. There is of course a long western history of the category of “law” in its relationship to “spirit” that cannot be reduced to Luther’s writings or to the relationship between Catholicism and Protestantism, but should also take into account the way the Law of Moses and the Old Testament were represented in Christian theology, particularly in Paul’s *Epistle to the Galatians*. The opposition between “Spirit”, as well as the spirit of the law, on the one hand, and the letter of the law in the other hand, as it arises from numerous interpretations of Paul’s *Epistle to the Galatians*, informs contemporary western representations about religion, law, self and ethics (for example in the writings of Kant and Hegel). Yet, one can still succinctly suggest some elements of comparison between Islam and Christianity.

Hobbes). The obedience to the external law of the state autonomous from, and prevalent over the external law of the Church and from morality was not only an answer to the problem of war and self-preservation or to the conflict of laws as it was theorized by Hobbes, but also to the monopolization of legitimate (and one may say legal) violence, as Max Weber would put it.

While, in Islam, notably after al-Ghazali, the development of the space of the inner self through a language of spirituality and practices of its own was associated with the science of ethical behavior and intertwined with jurisprudence, the affirmation of the inner self in the West is related to the rejection of the law of the Church by Luther, as if, for the latter, there was no possible compromise between the Gospel-Spirit and Canon law. Faith became purely “internal” to the self and autonomous from the deeds prescribed by Canon law, which was less and less useful for the preservation of order and civil peace and the regulation of transactions within the community in a time where temporal power became increasingly in charge of this task. This shift shaped the modern distinction between private and public spheres, even for countries whose majority is Catholic for the development of state law marginalized the authority of Church law and its ability to regulate both worship and social relations.

In the pre-colonial Islamic polity, *Shari'a* rules were enforced by judges as well as the ruler's coercive means to the extent that they would secure order, civil peace and transactions. There were several *Shari'a* rules, notably those related to the acts of worship (prayer, Ramadan fasting, almsgiving, pilgrimage), that were not usually enforced. It was in this space of non-enforced *Shari'a* (particularly prayer), that the cultivation of spirituality occurred. Moreover, the formulation of a rule, even dealing with transactions or government, in the form of *fatwa* (legal opinion) was by its very (non-binding) nature non-coercive. This configuration is an invitation to think about the possibility of a law distinct from modern state law for it regulates the life of the community but is not necessarily enforced, and may enable spirituality and ethical practices. As a law addressing both the self's deeds in the material world, but also connecting the self to the spiritual world that cannot be grasped by sensuous perception, *Shari'a* shapes the self's life around the very distinction between, and intertwinement of, the material and the non-material, between embodiment and dis-embodiment. The very materiality of *Shari'a* rules, the fact that they address the body's deeds (and the body's interactions with other bodies) make it possible to be enforced by any external physical entity such as the modern state. To a certain extent, the truth of *Shari'a* rules is also inscribed in the materiality of the signs located in its textual sources, (i.e. the Quran and the *Sunna*) that have been made manifest to human perception through the revelation, and the subsequent scholarly tradition that transmitted them. And yet, *Shari'a* cannot be reduced to its materiality for the embodied deeds jurisprudence prescribes open up the possibility of spiritual life. Spirituality is cultivated in the space of non-enforced *Shari'a* because it requires from the self not only to perform the obligatory deeds (*wajibat*), but also to do more than what jurisprudence prescribes as mandatory. Spirituality entails that the self loves the revealed law, not for itself, but because it is God's will, and because it makes her closer to Him.

Excursus

Law and Ethics: A Western Genealogy

Excursus

Chapter 6

Ethics, Law and Interiority: A Western Genealogy

Why a genealogy of ethics, in its relation to law and interiority in the Western context is needed in a research project dealing with *Shari'a*? One cannot use the concept of ethics as if it were a-historical and transparent to the anthropologist, or use it in the Islamic context without putting it under critical genealogical scrutiny for it carries with it a plurality of meanings related to its usages in different epistemic and political contexts. Obviously, one cannot be exhaustive in such open-ended enterprise but one can still try to identify various formulations of ethics, in its relationship to law, and religion, as they are related to questions of interiority/exteriority, autonomy/heteronomy or free will/coercion. Moreover, relying on the concept of “ethics” without having in mind the sedimentation of its meanings over Western history may obscure the anthropological inquiry in the Islamic context, which would be caught in the binary opposition between otherness and sameness without being able to think difference.

If it is often taken for granted that ethics is distinct and autonomous from religion and law in the western context, one should have in mind the genealogical changes that made possible such a statement, but also different versions of the relationship between ethics, law and religion that takes into account their intertwinement, complementarity or even identity. Instead of relying on a linear account of “a secularization” of ethics, I am interested in the tensions between “autonomy” and “heteronomy”, between “interiority” and “exteriority”, between “free will” and “coercion occurring” at different moments of western history and as they may be reflected in theological and philosophical thought. For the moral autonomy of the subject is neither a matter of philosophical or sociological consensus nor an indisputable fact in modern societies. There is, however, a discourse on moral autonomy that was made possible by the theological, political and epistemic changes occurring in Europe since the sixteenth century. This conception of morality is notably mentioned in anthropological scholarship as the distinctive and contrasting features of the West when compared to non-western territories.

For this research, Kant’s ethics is a relevant starting point for it is both distinct from previous theological conceptions, and yet, related to them. It tells us something not only about the genealogical shifts that made the theory of moral autonomy possible, but also about the subsequent theorizations of morality in the new science of man. Although departing from Kant’s ethics and locating morality either in the social or the interplay of the conscious and the unconscious, both “founders” of sociology (Durkheim), and psychoanalysis (Freud) discussed his work and had to situate their own work in relationship to the thesis of moral autonomy.

In Kant’s own terms, *The Metaphysics of Morals* is an a priori inquiry that should be distinguished from “an anthropology” of morals for it is formulated independently from any experience and human motives occurring in concrete situations and specific cultural contexts. But one can say that Kant’s ethics is also the object of an anthropology of (European) morals to the extent that is a

philosophical formulation of autonomy reflecting the changes occurring in the culture of his space and time, in relationship to broader epistemic, religious, economic, social and political changes.

However, I am less interested here in doing such a cultural anthropology of moral philosophy than showing that one cannot merely use the theory of the moral autonomy of the subject in the anthropological field either to talk about western culture or about non-western culture in terms of sameness or difference, without having in mind its own historicity. More specifically, I would like to explore how the modern theorization of morality is predicated upon assumptions of the distinction between “interiority” and “exteriority” which overlaps with the distinction between “the visible” and “the invisible” and informs my anthropological inquiry about ethics and divine presence in the Islamic context. Of course, as we saw in the previous chapters, the differentiation between the external and the internal domain is not peculiar to the West. Yet, there is a specific western history of this distinction that is closely related to the figure of the thinking subject, not only through the Cartesian or Kantian philosophies, or the shifts that occurred in modes of knowledge and epistemes, but also through religious as well as political changes (the Reformation, the emergence of the modern state). Kant is able to think of ethics as the internal domain of the subject in contradistinction to the external domain of the juridical law because the state, either under the regime of “absolute” monarchies, or under the regime of bourgeois liberalism, has already constituted for itself the sphere of sovereignty regulated by laws. Although there is a specific Kantian theorization of the “inner” man as the site of ethical conduct, one cannot deny the strong affinities and the filiation with the Lutheran constitution of the inner as the domain of faith and moral freedom (in Luther’s sense) in opposition to the exterior law of the Church or the temporal state.

The Kantian moral autonomy

If one looks at the Kantian formulation of ethics in more detail, one can see that although Kant uses the syntagm “moral laws” in a broad sense, including all “the laws of freedom” which should tell us how man should act, he makes a clear distinction between juridical laws and ethical ones. It is the distinction between the mere juridical law and the ethical one that commands the subdivision of *The Metaphysics of Morals* according to two parts, the first one devoted to “the doctrine of right” and the second one to “the doctrine of virtue”. For Kant, the juridical laws dealing with rights, notably in relationship to reciprocal freedom and to the acquisition of things, are located in the *external* sphere. It is the task of the jurist to know “the external laws” and “to know them externally, that is, in their application to cases that come up in experience”¹⁴⁴.

While an action may be described as legal in relationship to its conformity to the law, the morality of an action deals with its maxim, i.e. “a rule that the agent himself makes his principle on subjective grounds”¹⁴⁵. The law may be the same for all, but several subjects may have different maxims when they conform their action to the law. In other words, the distinction between the law and the maxim opens up the question of morality understood as the possibility of different appropriations of the same law by several subjects. It is precisely the multiplicity of maxims necessarily leading to moral relativism (or one may say to moral subjectivism divorced from its universality) that is not acceptable for Kant. The categorical imperative (“act upon a maxim that

¹⁴⁴ Kant, *The Metaphysics of Morals*, p.23.

¹⁴⁵ Kant, *The Metaphysics of Morals*, p.17.

can also hold as a universal law”¹⁴⁶) is a way to secure the universality of morality, for the agent considers his actions first from the perspective of his subjective principles, and then he succeeds (or fails) in universalizing them. The only way to secure the morality of an action is to rely on the principle of duty, prescribed by reason to the subject “absolutely and so objectively (how he ought to act)”¹⁴⁷.

While the imperative requires from the subject only (external) conformity with the rule, the categorical imperative is not separable from the sense of duty and calls for a work of “necessitation” i.e. “the representation of the commission or omission of an action as a duty”¹⁴⁸. Hence, for Kant, “external lawgiving” is based only on external incentives and not on the idea of duty, while “ethical lawgiving” is recognizable when there is an “internal incentive to action (duty)” that must never be externally given.

The difficulty and paradox of the Kantian ethical law is that it should be formulated by the subject and, at the same time, be able to reach objectivity and universality. It must conflate action with duty, and make duty the incentive to action. If there is an incentive other than the idea of duty itself, it leaves the domain of the ethical for the sphere of the juridical-legal. To determine whether an action is ethical or not, one should always ask for the ground for such a choice, which lies in the inward of the subject, and is only known by him.

The Kantian (external) law of right creates an obligation to the subject (“act externally so that the free use of your choice can coexist with the freedom of everyone in accordance with a universal law”), but it is a mere necessity, and as such, does not address the ground for his action and does not call for an ethical inner work dedicated to the formulation and appropriation of ends (“no external lawgiving can bring about someone’s setting an end for himself (because this is an internal act of the mind), although it may prescribe external actions that lead to an end without the subject making it his end”¹⁴⁹).

Moreover, in the doctrine of right, Kant is mainly interested in securing the “external” life of the subject, notably his property rights. Relying on Hobbes and Rousseau, he makes of the transition from “the state of nature” to the civil condition the only way to protect “the possession of external objects”. For the civil state is an external lawgiver, which holds the power to enforce the law (“only in a civil condition can something external be mine or yours”¹⁵⁰). Even when conceived as “a collective general will” a la Rousseau, this coercive power remains a mere external force and is unable to shape the subject’s ends.

The movement from interiority to exteriority is also the movement of reason in its ability to produce transcendental knowledge. Although Kant is talking here about practical reason, the latter should follow the same rules as pure reason in order to build a firm knowledge about morals for it should determine, like pure reason in the first *Critique*, universal laws independently from experience (in the sense that is *not dependent* from it), and yet be related to it because it needs to

¹⁴⁶ Kant, *The Metaphysics of Morals*, p.17.

¹⁴⁷ Kant, *The Metaphysics of Morals*, p.17.

¹⁴⁸ Kant, *The Metaphysics of Morals*, p.15.

¹⁴⁹ Kant, *The Metaphysics of Morals*, p.31

¹⁵⁰ Kant, *The Metaphysics of Morals*, p.45.

be applied and supported by the sensible world of action (“reason commands how men are to act even though no example of this could be found”¹⁵¹).

In other words, the external law can never be ethical in itself, for the ethical is itself “a law” that can only be produced in the interiority of the subject in relationship to action and duty. Kantian ethics is a movement from interiority to exteriority, and from subjectivity to objectivity in which the ground for choice is transparent to the subject. It assumes the notion of choice itself, in which there is always a thinking related to a doing, and a thinking that always comes prior to doing.

From the Kantian perspective, collective life is independent from ethics for the latter has been completely internalized and subjectivized. In a polity grounded in a-moral foundations, the main task of the coercive civil state can never be the formulation of ethical laws for they can regulate only the interiority of the subject. Rather, the state should formulate laws regulating reciprocal constraints and freedoms, and securing property rights. Of course, the question of inter-subjectivity and the relationship to others is a central ethical concern for Kant, but ethics can never be relevant for the community or the external law as such, and should always be raised at the level of individual conscience. If each individual acts according to ethical imperatives, then the world, including the political sphere, may be moral. Even from the neo-Kantian perspective developed by John Rawls, it is the fictional institution of society under “the veil of ignorance” that is necessary for the theory of justice to be possible, for it cannot remain conditioned to the individual categorical imperative¹⁵².

However, in *The Religion within the Limits of Reason Alone*, Kant theorizes the institution of collective ethics in religion beyond the individual subject. Paradoxically, even if the autonomous subject is the only locus of ethics, religion, as the space of the community, remains a central ethical domain in his philosophy¹⁵³. Kant operates a reduction of religion to the ethical exemplified by Christianity which is the “pure”, “true”, and “universal” religion. Although (rational) morality is not based on religion, religion necessarily arises out of morality. The moral religion creates the

¹⁵¹ Kant, *The Metaphysics of Morals*, p.10.

¹⁵² Rawls, *A Theory of Justice*.

¹⁵³ It is true that in *The Metaphysics of Morals* Kant situates religion beyond the scope of moral philosophy because one cannot derive its necessity from a rational a priori inquiry about ethics. In *The Religion within the Limits of Reason Alone*, Kant recalls that man does not need God to do his duties but only the (internal) law to which he “binds himself through his reason” (p.3). Morality is grounded in free choice and does not require an end. The duty is performed as duty and not because it is tied to a distinct end: “for its own sake morality does not need religion at all (whether objectively as regards willing, or subjectively, as regards ability to act); by virtue of pure practical reason it is self-sufficient” (p.3). However, Kant leaves a room for religion in his ethical philosophy but mainly as a historical demonstration of the harmony of the teachings of the revelation with practical reason. If reason in its ability to determine “the “formal condition of the use of freedom” is autonomous from religion, it requires, however, religion when dealing with the consequences of man’s actions in the world. The question “What is to result from this right conduct of ours?” leads man to look for an end giving orientation to his actions. This higher and final end unites all the ends and duties of man, and brings them harmony. The idea “of a highest good in the world” is predicated upon the existence of “a higher, moral, most holy, and omnipotent Being” (p.5). Moral laws do not contain in themselves the idea of highest good (they just ask men to do their duty without being concerned with the outcome), but the latter adds to them the knowledge of the outcome of man’s actions. It unifies freedom and nature in practical reality, or more precisely their respective “purposiveness”. Hence, if morality is not based on religion, religion necessarily arises out of morality: “Morality leads ineluctably to religion, through which it extends itself to the idea of a powerful Lawgiver, outside of mankind, for Whose will that is the final end (of creation) which at the same time can and ought to be man’s final end” (p.6).

conditions for “the sovereignty of the good principle” which cannot be attained at the level of the individual only, but needs to be established at the level of a society endowed with a universal mission: “whose task and duty it is rationally to impress these laws in all their scope upon the entire human race”.

Even if the ethical collective state is distinct from the political one, they are, in fact, imbricated because the former cannot exist without the latter. The political-actual commonwealth contains in it the possibility of being at the same time the ethical commonwealth. Kant underlines both the distinction and the analogy-similarity of the two communities: “A union of men under merely moral laws, [...] may be called an *ethical*, and so far as these laws are public, an *ethico-civil* (in contrast to a *juridico-civil*) society or an *ethical-commonwealth*. It can exist in the midst of a political commonwealth and may even be made up of all its members; (indeed, unless it is based upon such a commonwealth it can never be brought into existence by man)”¹⁵⁴.

Although *The Religion within the Limits of Reason Alone* complicates the usual account of the Kantian moral autonomy in the dominant narratives of modernity, it remains a secondary text in the later appropriation of Kant as we will see in Durkheim and Freud’s works. Moreover, I am not interested here in proposing an exhaustive reading of Kant’s ethics but rather in studying it as a foundational moment in the modern accounts of morality that still informs the way the West is contrasted to the “Rest”.

Having suggested a reading of Kant that situates the formulation of his influential ethics in relationship to the construction of “the interior” and “the exterior” as distinct, and yet inter-related domains, in which the latter is subjugated to the former, I would like now to explore different shifts that made possible the formulation of the moral autonomy of the subject. The primacy of the inner over the outer is an inversion of the prevailing heteronomous morality that may be found in the writings of the scholastics until the sixteenth century, notably Aquinas and his followers for whom the external law is the site of the good. However, it is not a mere inversion for it occurs in a different episteme relying exclusively on “reason” and “science”. Luther’s conception of the good is already a (theological) inversion of the relationship between the inner and the outer, in which the subject is not determined by “rational” knowledge as it will be formulated later by Descartes or Kant, but by faith and grace. In order to understand these shifts and continuities, let’s first turn to Aquinas’ heteronomy.

The external law and the good: On Aquinas’ theological heteronomy

How can the external law make men good? For Aquinas, the subjugation of man to the law is in itself good for “the virtue of anything that is subject is to be fully subordinate to that by which it is governed”¹⁵⁵. Most important, the law makes men good because it is in itself the site of the good. If man is caught in the external conflict between good and evil, the best way for him to make himself good is to submit to “God Who instructs through law and helps us through grace”, understood as an “extrinsic principle”¹⁵⁶. Derived from Divine Will, the end of the law is “the common good”. A bad law would be an oxymoron for Aquinas, and only a perversion of law.

¹⁵⁴ Kant, *The Religion within the Limits of Reason*, p.86-87.

¹⁵⁵ Aquinas, *The Treatise on Law. Summa Theologiae, I-II*, p.191.

¹⁵⁶ Aquinas, *The Treatise on Law. Summa Theologiae, I-II*, p.117

There are different kinds of external law related to each other in a hierarchical way. First, there is the “eternal law” that rules the whole universe and is not accessible to man, but only to God Himself. Second, the unchangeable “natural law” allows man to participate in the eternal law and is tied to the rational capacity of man to have an end and act towards it. Through natural law, “the divine light” allows man to make a distinction between good and evil. Third, the changeable human law is produced by practical reason which legislates not on “universal” matters which is the matter of natural law, but only regarding “particular” ones.

The order of the world is consistently regulated by the different laws because they all participate in, and derived from, the foundational eternal law (“everything participates in some manner in the Eternal Law”¹⁵⁷) which leaves on man “an imprinting” that orient his acts and ends. This order is consistent with an ontological conception of truth located in the eternal law, for any true knowledge is an “irradiation” (or “participation”) of the foundational, and yet inaccessible “exemplar”. Human law is good only to the extent that it is participating in, and reflecting the eternal law for its goodness comes necessarily from the eternal Law. Quoting Augustine, Aquinas writes: “In temporal law there is nothing just or lawful except what men have derived for themselves from the eternal Law”¹⁵⁸.

To the three kinds of law, Aquinas adds the “divine law” which allows man to be guided in his “supernatural” ends with certainty and to participate in the eternal law “in a higher manner”. Moreover, human law deals only with external matters, and is unable to regulate the inner man. It is the task of the divine Law to regulate the interiority of the believer and order its inner acts: “man can only make a law about those things which he is able to judge. Now, man cannot judge about interior acts which are hidden but only exterior movements which are visible, and, yet, for the perfection of virtue man is required to act rightly in both kinds of acts”¹⁵⁹. Aquinas refers here to the New Testament (or the “New Law”) addressing the soul in contradistinction to the Old Testament (or the “Old Law”) that was directed at material and exterior things.

It is not enough that the law be good in itself, it needs also to be able to transform the subjects of law and make them virtuous. Aquinas, like other Christian theologians, believes in the shaping power of the law. However, the law does not automatically and instantaneously change man for the better for it is a transformation that can occur only over time. Quoting Aristotle on ethics, Aquinas writes: “Lawgivers, by habituating men to good acts, make men good”. Hence, although obeying a law out of fear of punishment is not virtuous, it may progressively change man and make him obeying the law willingly and enjoy this submission. Men have “a natural aptitude for virtue” but they need “a training” to fully develop this ethical potential and make it “an internal habit or disposition”¹⁶⁰, notably through the fear of punishment.

The ability of the law to transform its addresses is called by Aquinas “the effects of the law”, which include the power to make man better (“the proper effect of law is to make good those for whom it is made”¹⁶¹) but also the fear of punishment. Those who are already virtuous do not need the human law, and the latter is not coercive for them for they willingly submit to the natural law.

¹⁵⁷ Aquinas, *The Treatise on Law. Summa Theologiae, I-II*, p.209.

¹⁵⁸ Aquinas, *The Treatise on Law. Summa Theologiae, I-II*, p.215.

¹⁵⁹ Aquinas, *The Treatise on Law. Summa Theologiae, I-II*, p.171.

¹⁶⁰ Aquinas, *The Treatise on Law. Summa Theologiae, I-II*, p.316.

¹⁶¹ Aquinas, *The Treatise on Law. Summa Theologiae, I-II*, p.191.

Moreover, the human law encounters the natural law, (which participates itself in the eternal law), already inscribed in the heart of the good man. Since the virtuous are only a few in the community, the coercive human law is formulated for the great majority of the people and addresses the most serious vices.

All laws, except human law, are necessarily just. The condition for a human-positive law to be just is “to have the power of binding in conscience (*conscientiae*), a power which comes from the Eternal Law from which they are derived, Prov. Viii, 5, “Through me kings rule and the framers of laws decree what is just”¹⁶². Unjust laws, like the ones formulated by tyrants and idolaters do not bind in conscience for they are acts of violence against divine law. To be just, human laws need to be formulated by a lawgiver who does not exceed his power, and be directed at the common good, as well as preserving the proportionality of burden and loss between the different parts of the whole community.

When compared to Kant’s ethics, Aquinas’ conception of the good appears clearly as the primacy of the external over the internal, and of the given law over the individual. It is consistent with an order of things based on a foundational truth-law which is also an ontological “exemplar” and from which all laws are derived. In contrast, for Kant, although truth and ethics are divorced from each other for pure reason is only interested in the production of knowledge prior to any possible experience, they are both an outcome of procedural reason located in the subject. Hence, a relation between modes of knowledge and conceptions of ethics may be drawn in which the locations of (rational) truth and ethics are congruent.

For Luther too, the (theological) truth of faith and the good, although coming from God, are not located in the law but in the believer. Of course, one should bear in mind the difference between the Kantian “rational” formulation of ethics and the autonomy of the will, and the subjugation of Luther’s individual to God’s grace. Yet, for both Luther and Kant, it is in the interiority of the individual, and independently from any external instituted law or authority, that truth (of reason for Kant, of God for Luther) as well as ethics are to be searched for.

The external law and the inner man in Luther’s writings

While the law produced by the Church was the site of the good for theologians like Aquinas, it became suspicious both from the perspective of the believer after the Reformation, and the civil state whose power was growing considerably in the seventeenth century (although the conflict between the Church and the European states around questions of conflicting law already started in the eleventh century with “the Investiture Controversy”). Luther contributed decisively to the distinction between the autonomous “internal” state of the believer on the one hand, and the “external” law formulated either by the Church or by temporal power on the other hand. At the same time, a new space for the external law that was not the law of the Church emerged with the civil state (and was theorized by thinkers like Grotius and Hobbes). The obedience to the external law of the state autonomous from, and prevalent over the external law of the Church and from morality was not only an answer to the problem of war and self-preservation or to the conflict of laws as it was theorized by Hobbes, but also a new inescapable fact produced by the monopolization of legitimate (and one may say legal) violence, as Max Weber would put it.

¹⁶² Aquinas, *The Treatise on Law. Summa Theologiae, I-II*, p.324.

For Luther, the external law of the Church can never be the site of the good, nor an end in itself. In a worldview divided between “true believers” belonging to “the kingdom of God” and the others who are part of “the kingdom of the world”, the law is not relevant for the former, but only necessary to the latter. The faithful soul is self-sufficient and does not need the law. A true Christian is “the spiritual, inner man” who is free from the law and from the works prescribed by the law-institution. The Christian needs only “the most holy Word of God, the gospel of Christ”¹⁶³. The freedom of a Christian is precisely the liberty to not follow the law because there is no need of it for the soul looking for salvation. This is what Luther calls “the first power of faith”.

However, the world is “flesh” and man needs to control his body and interact with other men. Man needs to discipline the body (for example through fasting and labor) and make it harmonious with faith. In the perpetual conflict between the inner man and the outer one, the law is needed to repress the body and make man available to faith. For Luther, Christians forgot that the law is only a mean to purify the body, not an end in itself. Disoriented by the Church, they believed that they can be saved through works (like gifts or fasting) prescribed by the law, and became preoccupied only with “ceremonies”.

For Luther, the good is already present (or absent) in the Christian, and it is a movement from the inner to the outer that produces a harmony between the goodness of the believer and its deeds rather than the other way around (“Good works do not make a good man”; It is “always necessary that the substance or person himself be good before there can be any good works”¹⁶⁴). That is why people who do the works required by the law without faith will not be saved.

Responding to the accusation of being too literalist in his reading of the Scriptures, Luther gives his own interpretation of Paul’s quote: “The letter kills, the Spirit gives life”. Trying to put the Scriptures at the core of the Christian message and preserves it from the Church’s teaching and “the fathers’ book”, he makes of “the letters” the locus of true meaning. But Luther makes a crucial distinction between the Old Testament preaching the letter-law (inscribed in stone tablets) and the New Testament preaching the Spirit. According to Luther, it is in this sense, that Paul’s citation should be understood and reformulated: “The law kills, but the grace of God gives life”. Grace goes directly to the heart, and never through the letter-law, which is only a source of death. In fact, men need the letter of the law (to kill their “arrogance” in a world of flesh) insofar that it prepares them to receive grace. The Church commands canon law but is unable to preach the Spirit. It is “law without grace” and can only bring death without hope of life.

The distinction between the “inner” and the “outer” is also relied upon by Luther in his discussion of the obedience to the law formulated by temporal authority. Here too, the true Christians do not need the law because they have “in their heart the Holy Spirit”¹⁶⁵, which can only be source of justice. However, the law is needed to restrain “Christians in name [...] *outwardly* from evil deeds” (emphasis added), to preserve mankind from falling into chaos and “preserve an *outward* peace” (emphasis added), p.665. Although the true Christian does not need the civil law for himself, he

¹⁶³ Luther, *Martin Luther’s Basic Theological Writings*, p.597.

¹⁶⁴ Luther, *Martin Luther’s Basic Theological Writings*, p.613.

¹⁶⁵ Luther, *Martin Luther’s Basic Theological Writings*, p.663.

should abide by the temporal rules, pay his taxes and serve the ruler for the good of the non-Christians (or false Christians) and the preservation of order.

Having established the theological reason on which temporal power and civil law are based, Luther raises the problem of their limits. The temporal ruler formulates laws dealing with “life, property and external affairs on earth” but is not allowed “to prescribe laws for the soul”¹⁶⁶. The temporal power may have the delusion that it controls the soul, but the latter does not actually belong to the realm of worldly affairs and cannot be “killed” or given life. The power over the soul is the exclusive privilege of God.

One can see through the example of Luther how the construction of the “inner” as the space of the good and faith in Europe after the sixteenth century is imbricated with the fierce and total rejection of the external law, either the law of the Church or the law of the state, as a site of goodness. The law may be necessary to repress evil-doers and preserve order, but being obedient to it does not make the Christian a better person for it has no moral value in itself¹⁶⁷.

Moral Heteronomy after Kant: the moral heteronomy of the social

Durkheim dislodges morality from the autonomous (Kantian) subject to relocate it in “the social” which emerged as the encompassing space of an almost inexistent individual agency in the holist European sociology at the end of the nineteenth century. The subordination of the individual to the social whole is the condition of any possible morality. Moreover, the question of morality is central in his work, notably *The Division of Labor in Society*, *The Moral Education* or *The Elementary Forms of Religious Life*. Durkheim defines his own work as the “science of ethics” or “the science of moral facts”¹⁶⁸ which does not leave room for subjective moral autonomy, and its corollary, freedom.

One should not here that the critique of the moral autonomy of the subject as formulated by Kant was precisely the starting point of the Durkheimian social theory. In *The Division of Labor* as well as in *The Moral Education*, Durkheim discusses Kant’s moral theory at length, and, more generally, underlines the failure of any attempt to formulate an *a priori* definition of morality. One can even say that the Durkheimian moral theory is an inversion of Kant’s “metaphysics of morals”,

¹⁶⁶ Luther, *Martin Luther’s Basic Theological Writings*, p.679.

¹⁶⁷ It is relevant to note here with Niklaus Largier that the location of the moral in the “interior” realm in both Luther and Kant foreclosed the possibility of a set of experiences and relationships between the “inner” and the “outer” (see Largier, “Mysticism, Modernity and the Invention of Aesthetic Experience”, in *Representations*, vol.105), notably the kind of mystical experience that may be found in Aquinas and other Christian figures (on Aquinas the mystic see Paul Murray, *Aquinas at Prayer: The Bible, Mysticism and Poetry*). For Luther, the outer is conflated with the secular space of temporal power and law in which the meaning of the Scriptures is secured at a time where the printing techniques opened up new possibilities of scriptural exegesis, and in a context where the Church has no longer the legitimate authority to interpret solely the Scriptures. In the post-Reformation context, Kant was among those who subjugated the mystical to the labor of (secular) reason, and relegated it to the sphere of aesthetic representation. If the good is located only in the interiority of the subject, the relationship between the inner and the outer can no longer be the site of ethical cultivation as in the previous mystical individual and collective experiences. In a theology and epistemology where the secular-rational has a central regulative function, and where the external law is no longer associated with the good, the outer world is not a place where the goodness of the natural-eternal law may produce moral effects as in Aquinas, but a place of mere regulation of civil order, property and interests.

¹⁶⁸ Durkheim, *The Division of Labor in Society*, p.32.

moving from moral autonomy to moral heteronomy, from transcendentalism and its empiricism (the “moral facts” are the object of study) and from subjective freedom to social determinism. And yet, Durkheim relies also on the Kantian subject to a certain extent for, in order to be able to theorize the new domain of the social, he needs to posit the free rational and sovereign individual from which “society” is contradistinguished.

The moral is conflated with the social, for solidarity necessarily de-center the individual from himself and subjugate him to the relation with the other in a state of mutual and organic dependency rather than subjective autonomy: “Everything which is a source of solidarity is moral, everything which forces man to take account of other men is moral, everything which forces him to regulate his conduct through something other than the striving of his ego is moral, and morality is as solid as these ties are numerous and strong”¹⁶⁹.

The moral, like the social, is circumscribed by Durkheim in a relationship of exteriority to the individual who is subjugated to its rules: “morality as a system of rules, external to the individual which impose themselves on him from outside”¹⁷⁰. Society, like the Hobbesian state, is not a mere aggregation of individuals but has its own “personality” which is paradoxically constituted by them and yet autonomous from, and exterior to, them. The contribution of individuals is infinitesimal and can only be grasped over time and through the work and succession of generations. That is why morality is not an internal product of the individual subject, and is imposed upon him from the beginning by society: “the morality for our time is fixed in its essentials since the moment of our birth”. For Durkheim, in contradistinction to the Kantian autonomous will of the subject, “the individual will seems to be controlled by a law not of its own making. It is not we, in effect, who create morality”¹⁷¹.

Of course, the Durkheimian social heteronomy is not a “return” to the theological heteronomy of Aquinas, but a reformulation of the relationship between exteriority and interiority in a new epistemic context in which the science of man have emerged in Europe. And yet, the shade of the theological is never absent in Durkheim’s work, for he draws a parallel between God and society either in *The Moral Education* or *The Elementary forms of Religious Life*: “All that we needed was to substitute for the conception of a supernatural being the empirical idea of a directly observable being which is society”.

Hence, for Durkheim, the transition from “traditional” society to “modern” society is not characterized by a change from moral heteronomy to moral autonomy. Rather, it is a shift from one kind of moral heteronomy to another. In the organic solidarity type of society, collective conscience becomes more general and religious belief more “transcendent”. As the division of labor progresses, society becomes increasingly based on “individual variations” that are related to the growing specialization in different social activities and “functions”. It gives birth to a form of collective life in which individuals are not independent from each other, but remain subjugated to moral heteronomy through a “complex” system of obligations and “restitutive” justice. In this kind of society, “common morality” is replaced by “occupational morality” determined by the group (for example the professional group) which rules are as imperative as the former¹⁷².

¹⁶⁹ Durkheim, *The Division of Labor in Society*, p.398.

¹⁷⁰ Durkheim, *The Division of Labor in Society*, p.106.

¹⁷¹ Durkheim, *The Division of Labor in Society*, p.107.

¹⁷² Durkheim, *The Division of Labor in Society*, p.227.

The heteronomy of morality is also displayed in the relationship between ethics and law in Durkheim's work. If the study of ethics can be raised to the dignity of a science, it needs to be "measurable" which would make tangible and available to the eye of the sociologist the almost invisible morality. Durkheim finds in the law "the *external* index", and "the *visible* symbol" [emphasis added] of the impalpable morality. It even seems that morality is sometimes conflated with the law when Durkheim comes to define them for both consist in the combination of rule and sanction: the domain of morality englobes "all the rules of action which are imperatively imposed upon conduct, to which a sanction is attached, but no more"¹⁷³; the law "can be defined as a rule of sanctioned conduct"¹⁷⁴.

However, the process of modernization and individualization may lead to a state of anomia, where individuals are lost. In the modern context, man needs a new morality that is neither the metaphysical a priori morality of the philosopher nor the religious morality. In fact, this morality already exists in social reality but remains unknown to those who live in a state of anomia, or who think that modern society is a-moral. It needs the work of the sociologist to be unveiled and made available to the rest of society, as well as improved in the sense of justice ("our first duty is to make a moral code for ourselves"¹⁷⁵). For the science of the social is also "the science of ethics". It may have a moral role when it succeeds in reconciling science with ethics, and understands its task as an extension of the field of conscience ("science is nothing else than conscience carried to its highest point of clarity"¹⁷⁶). But here, conscience is less referring to the subject's interiority than to the collective social-moral, for the former is almost a mechanical reflection of the latter ("This human conscience that we must integrally realize is nothing else than the collective conscience of the group of which we are part"¹⁷⁷).

The moral heteronomy of the unconscious

If both Durkheim and Freud question the Kantian moral autonomy of the subject, the former conflates the moral in the social, while the latter locates in the interplay between the conscious and the unconscious. The Freudian individual is never transparent to himself, for there is always a complex of unconscious motives behind moral duties. However, Freud's perspective is not limited to a psychoanalysis of individual behavior, but relies also on an anthropological account of a foundational event at the origin of morality connecting the collective unconscious with the individual one by exploring the following questions: what is the origin of morality and the distinction between good and evil? How is the genealogy of morals imbricated with the origin of religion and law? How is the efficacy of the law related to the force of the sanction (notably death) and its interiorization?

Freud's interest in morality and moral imperatives in *Totem and Taboo* can also be read as an anthropological and psychoanalytical genealogy of the universal a priori formulation of Kantian morals: "Though expressed in a negative form and directed towards another subject-matter, they

¹⁷³ Durkheim, *The Division of Labor in Society*, p.53.

¹⁷⁴ Durkheim, *The Division of Labor in Society*, p.69.

¹⁷⁵ Durkheim, *The Division of Labor in Society*, p.409.

¹⁷⁶ Durkheim, *The Division of Labor in Society*, p.52.

¹⁷⁷ Durkheim, *The Division of Labor in Society*, p.396.

do not differ in their psychological nature from Kant's 'categorical imperative', which operates in a compulsive fashion and rejects any conscious motive"¹⁷⁸. Although Freud mentions Kant without discussing his moral theory, one can understand *Totem and Taboo* from two different perspectives. Either it would question the a priori Kantian formulation of morality as unable to take into account the psychoanalytical and anthropological dimensions of moral imperatives grounded in a foundational moment (the murder of the father and the institution of the totem); or it would consider the Kantian moral law as the rational formulation of the civilized man emancipated from his own primitiveness and any form of (totemic) moral heteronomy. It seems also that the Kantian imperative, and more specifically, the sense of duty, is itself an object of psychoanalysis for Freud. Fulfilling a duty only for its sake if not the result of a rational decision in which the free will of the subject is displayed. It is rather a compulsion that needs to be analyzed and related to its unconscious motives which are buried in the collective unconscious.

Freud relies on an anthropological depiction of the origin of humanity ("the prehistoric man")¹⁷⁹ similar to the state of nature's fiction that can be found in the writings of the contract's philosophers (Hobbes, Locke, Rousseau). Although historical and archeological materials are lacking, scholars interested in the description of the "primitive" man may find in the ethnographic present of the Aborigines of Australia ("the most backward and miserable of savages"¹⁸⁰) a fair picture of early human societies. The totem, either an animal or less likely a plant or a natural phenomenon, is associated with the law of exogamy which forbids sexual intercourse among the community (which is like a single family descending from the same totem) and punishes the transgressors with a death penalty.

Yet, the "primitive" is not only an anthropological reference to the Aborigines, but includes also the early stages of childhood for it has strong similitudes with the moral life of the savages. The prohibition of the incest in primitive societies informs the features of infantile life and the boy's attraction to forbidden object of loves (his mother and his sister) but also the neurotic's psychical "infantilism" which illustrates either the failure to get free from "incestuous longings"¹⁸¹ or a return to them in the form of regression.

It may be objected that the notion of taboo is distinct from moral or religious obligations and prohibitions as Freud himself, relying on ethnographic works points out in the beginning of chapter II ("Taboo and Emotional Ambivalence")¹⁸². Yet, Freud quickly departs from the precise ethnographic understanding of taboo to recall us that he is interested in the taboo which presents an "essential similarity" with moral prohibition¹⁸³, and to the extent that it can help him understand the origin of morality: "It may begin to dawn on us that the taboos of the savage Polynesians are after all not so remote from us as we inclined to think at first, that the moral and conventional prohibitions by which we ourselves are governed may have some essential relationship with these primitive taboos and an explanation of taboo might throw a light upon the obscure origin of our own 'categorical imperative.'"¹⁸⁴

¹⁷⁸ Freud, *Totem and Taboo*, p.X.

¹⁷⁹ Freud, *Totem and Taboo*, p.1.

¹⁸⁰ Freud, *Totem and Taboo*, p.1.

¹⁸¹ Freud, *Totem and Taboo*, p.17

¹⁸² Freud, *Totem and Taboo*, p.18.

¹⁸³ Freud, *Totem and Taboo*, p.71.

¹⁸⁴ Freud, *Totem and Taboo*, p.22.

To Freud, the anthropological inquiry about the taboo is also helpful in explaining the nature and origin of conscience (“Taboo conscience is probably the earliest form in which the phenomenon of conscience is met with”¹⁸⁵), for the taboo is associated with the sense of guilt, understood as “the internal condemnation of an act by which we have carried out a particular wish”¹⁸⁶, a rejection that does not need the support of any reason other than the certainty of itself.

However, taboos and more generally moral prohibitions are not only associated to the “internal” life of the subject but are closely related to the ability of an external authority to violently repress longings and desires through the most severe punishments, notably death. The work of internalization out of which taboos and prohibitions are permanently “fixed” and become “innate ideas” is the result of a long inter-generational process.

By internalizing prohibitions, repressing desires and the temptation to imitate the transgressors, punishment preserves the community from any form of contagion (“it is equally clear why it is that the violation of a certain taboo prohibitions constitutes a social danger which must be punished or atoned by *all* the members of the community”¹⁸⁷) and may explain the foundation of the human penal system¹⁸⁸.

Paradoxically, the Freudian moral heteronomy, like the Durkheimian one, needs to posit first the Kantian subject to make sense. The psychoanalytical and sociological heteronomies are not a “return” to the scholastic external moral law, for they are part of the new episteme dealing with the science of man and addressing questions of “free will” and humanly produced forms of determinism located in distinct and yet, encompassing spaces (the social, the unconscious). To a certain extent, they are both attempts to reassess the reality of individual freedom in the light of the “laws” of social and psychological behavior.

Beyond the opposition between moral autonomy and heteronomy

Another way to work through the relationship between internal morality and external law posited by Kant is to explore the ways in which it has been problematized in Hegel, notably in his *Early Theological Writings*. It may help us also complicate the opposition between moral autonomy and heteronomy as formulated in Kant’s moral philosophy (or later in Durkheim and Freud) by studying how the given law is appropriated by the subject and made his own, but also how the “internal” moral is “externalized” and “objectified”.

Like the *Religion within the Limits of Reason Alone* (or Locke’s *Reasonableness of Christianity*), Hegel’s *Early Theological Writings* belongs to a genre that may be called, following Kant, “a philosophical theology”¹⁸⁹, which is an incursion of “secular” philosophy in the realm of theology. In this kind of exercise, the philosopher needs “to borrow something from Biblical theology”¹⁹⁰

¹⁸⁵ Freud, *Totem and Taboo*, p.67.

¹⁸⁶ Freud, *Totem and Taboo*, p.68.

¹⁸⁷ Freud, *Totem and Taboo*, p.33.

¹⁸⁸ Freud, *Totem and Taboo*, p.72.

¹⁸⁹ Kant, *Religion Within the Limits of Reason Alone*, p.8.

¹⁹⁰ Kant, *Religion Within the Limits of Reason Alone*, p.9.

and one may ask not only whether this entwinement of philosophy with theology is already informed by the religious shifts occurring in Europe since the Reformation but also whether it is a theological intervention for it has consequences on the way Christians should practice their faith. The *Early Theological Writings* raises a general question about the meaning of obedience not only to religious laws, but also to laws of different kinds, notably civil laws. Why should one obey the law given by external authority? Should the law remain alien to the subject? Do I have *reasonable reasons* to obey the law? What are the conditions under which the law deserves obedience to the point that it makes man free? What differentiates the juridical law from the moral one? To a certain extent, the task of Hegel in this text is to answer these questions in a (partially) Christian language¹⁹¹.

For Hegel, the emancipatory law is the self-given rational law exemplified by Jesus' teachings located in his "heart" and referring to his "living sense of right and duty"¹⁹² in contradistinction to both to Judaism and the historically produced positivity of Christianity. Jesus' words and deeds began to be interpreted in a positive sense when reason became a mere "receptive faculty instead of a legislative one". The notion of positivity as used by Hegel refers to the arbitrary obedience to prescribed rules. It is also associated with "the letter of the law", mere "external religious exercises" and external authority¹⁹³ which one obey without grounding it in reason¹⁹⁴. One may be tempted to find in this conception a replication of the Kantian theory of moral autonomy. In fact, as we will see in the following pages, although relying on Kantian moral philosophy (at least the one produced in the *Metaphysics of Morals*), Hegel's ethics is more complex for it is explicitly at the intersection of autonomy and heteronomy.

Instead of merely opposing heteronomy to autonomy, Hegel suggests that one should rather understand the conditions under which the "external" law is "internalized" by the subject and made its own through ethical cultivation and practice: "The very conception of a positive religion permits us to assume that such a religion will be characterized by its exhibiting the moral law as something given; it is given, then virtue becomes an art of a very complicated kind in contrast with an uncorrupted moral sense which is in a position to decide any issue on the spot because it dares to make its decisions for itself. This complex moral art involves dexterity and skill of every kind"¹⁹⁵. The internal is also externalized through teaching, imitation, and the subjugation to an authoritative

¹⁹¹ Hegel's text too exemplifies the tension between on the one hand the reference to a specific religion -Christianity- and, on the other hand, forms of religion that can be "universalized". Although Christianity is a historical religion, for both Kant and Hegel it may produce forms -moral law, ethics, rationality- that are no longer recognizable as "Christian" and made available to humanity. These forms are abstracted from the specific context and history in which they have been originally shaped. Kant's and Hegel's philosophies of religion are themselves an important moment in this narrative of the Christian-secular modernity. Like Kant in the *Religion within the Limits of Reason Alone*, Hegel makes a series of assertions and assumptions regarding religion and morality in his *Early Theological Writings*. Religion is presumed to have an "essence" and a "truth" that can be extracted and abstracted from its historicity and "positivity": "the aim and essence of all true religion, our religion included, is human morality" exemplified in Jesus' original teaching (*Early Theological Writings*, p.68).

¹⁹² Hegel, *Early Theological Writings*, p.75.

¹⁹³ Hegel, *Early Theological Writings*, p.70-71

¹⁹⁴ "We shall in the main touch only on those features I the religion of Jesus which led to its becoming positive, i.e., to its becoming either such that it was postulated, but not by reason, and was even in conflict with reason, or else such that it required belief on authority alone, even if it did accord with reason" (*Early Theological Writings*, p.74).

¹⁹⁵ Hegel, *Early Theological Writings*, p.145.

model (“the founding of a faith on authority”¹⁹⁶) without which the moral message cannot be neither heard, nor followed as the example of Jesus shows¹⁹⁷.

Both positivity and morality are relational for they refer to the relationship of the individual subject or the collective one to a rule that has a force upon him, and calls for obedience. Although one may give examples of moral rules against positive ones, they do not have an immutable “content”. Both the positive and the moral are domains in which laws are formulated, and as laws, they are “unifications of opposites in a *concept*, which thus leaves them as opposites while it exists itself in opposition to *reality*, it follows that the concept expresses an *ought*”¹⁹⁸.

On the one hand, the form of the law does not give us a criterion to differentiate between the moral and the positive. In fact, the law is itself a form that draws relationships between opposites and give them a unitary shape. Its regulative role lies both in its ability to discriminate between, and gives unity to, elements. It posits the very opposite elements that it seeks to unite. However, this unity is only conceptual. It is a potentiality that may or may not be actualized for the law points to an “ought”. This claim may seem counter-intuitive, for today, we usually locate the space of morality in the gap between the “ought” and the “is”. Yet, in Hegel’s text, this gap, sets a space for the law, either moral or positive, to exist. Here, it is the internal life of the law, its conceptual consistency that is posited in contradistinction to the external reality (external from the perspective of the inner life of the law).

One of the fundamental traits of the moral is precisely to be the site of the relationship between the internal life of the law and the internal life of the subject: “if it [the concept] is treated as concept made and grasped by men, the command is moral”¹⁹⁹. To grasp is to make what seems to us, at first sight, alien, part of ourselves and our mental life. But, in this case, the internalization of the external law by the subject is possible because the law has an internal consistency to offer that allows for the work of reason. It is from this encounter between two interiorities that arises the moral law. Here, it appears clearly that, for Hegel, the morality of the law does not come from its content, nor its form but rather from the kind of relationality between subject and law. Yet, although the form as such is not the site of morality, it is the concept’s form (which seems to be equated with “the property of the concept”) that makes possible the work of thought and the process of internalization for it allows the subject to grasp the concept. On the other hand, the content, as a mere doing associated with external authority cannot be a source of morality.

This relationship between the inner life of the law and the interiority of the subject may raise a more general question about the meaning of thought and its relationship to morality. If thought and morality are distinct, there is an encounter between the two when the subject grasps the law’s concept. But one may ask what is distinctive about this form of thought when it is the condition of possibility of morality. For it is not a thinking for the sake of thought, but it is a thinking related to a doing, and presumes a thinking before a doing. It presumes that thought is not an act, (or at least, not an “external” one), and that, in its pure form, does not have practical-ethical

¹⁹⁶ Hegel, *Early Theological Writings*, p.75.

¹⁹⁷ “Jesus therefore demands attention to his teachings not because they are adapted to the moral needs of our spirit, but because they are God’s will” (*Early Theological Writings*, p.76).

¹⁹⁸ Hegel, *Early Theological Writings*, p.209.

¹⁹⁹ Hegel, *Early Theological Writings*, p.209.

consequences, for “pure” reason does not deal with an “ought” but, at least for Kant, only with the conditions of possibility of knowledge. What is considered as “practical” or “ethical” does not belong to the realm of pure reason (Hegel follows Kant on this point). The moral may be understood here as the “internal” activity of the mind in relationship to the “external” deed through the mediation of the concept. Yet, the very work of thought that is the condition of possibility of the moral, is not considered as an “act” for it is located in the realm of “interiority”. Entwined with the external, the practical is detached from, and opposed to, thought, which is associated with the internal. This paradox may enlighten the modern philosophical prejudice dissociating knowledge from ethics, or more precisely, setting a space for knowledge independent from ethics. Ethics may be considered as knowledge, but only a peculiar kind of knowledge, i.e. a practical one. However, if the subject’s relationship to deeds and their regulation by laws raise moral questions, deeds and laws are not all moral, for it is, as we saw earlier, a specific relationship between interiority and the ought of the law²⁰⁰.

The “ought” raises the question of its “reception” by the subject. The moral arises from the ought when it is not merely given, like an immutable object, but available for appropriation by the self-reflective subject. In contrast, the non-moral law is only “posited” and accepted by the subject without question or reflection, and at the exclusion of the work of thought. In the positive law, the ought is like an object that resist any abstraction that would make possible the work of internalization, for it is almost caught in its concreteness and its bind with the external authority that enunciates it. As if the content of the law is prisoner of its concreteness, resisting the work of form, which is the condition of its subjective appropriation. The content of the law is also prisoner of its arbitrariness for there are no necessary reasons to act in conformity with the ought.

There are passages in which Hegel seems to differentiate the moral law from the positive one according to their content and telos, for example when he writes: “civil laws delimit the oppositions between several living beings, while purely moral laws fix limits to opposition in one living being”²⁰¹. In fact, the telos is already determined by the answer to the following question: by whom is the law enunciated? What is the work of reason in the labor of law? If, for example the “‘ought’ [or ‘Thou shalt’] does not arise from the property of the concept but is asserted by an external power, the command is civil”²⁰².

It is clear that when the law is given externally, without the work of thought, it can never be moral. The positivity of the law is associated with enforcement, for the authority enunciating the rule has the power of sanction in case of transgression. Here, the external may be related to coercion and the materiality of force. Freedom is the internal work of thought that gives the subject reasons to follow the law.

The delimitation of the external from the internal is subject to change for the opposition between moral and positive laws is not definitive. A positive law may be the site of a conceptual work by

²⁰⁰ The paradox of the original moral precepts that have been constituted as mere external laws by the Church is that they leave no room for reason, and can no longer be moral: “The fundamental error at the bottom of a church’s entire system is that it ignores the rights pertaining to every faculty of the human mind, in particular to the chief of them, reason [...]. The powers of the human mind have a domain of their own, and this domain was separated off for science by Kant. This salutary separation has not been made by the church in its legislating activity [...]” (*Early Theological Writings*, p.143).

²⁰¹ Hegel, *Early Theological Writings*, p.210.

²⁰² Hegel, *Early Theological Writings*, p.210.

the subject through which it leaves the sphere of positivity to enter the sphere of morality. The reverse is also true for a moral law may become positive when it is associated with an external authority. As Hegel puts it: “If the laws are operative as purely civil commands, they are positive, and since in their matter they are at the same time moral, or since the unification of objective entities in the concept also either presupposes a nonobjective unification or else may be such, it follows that their form as *civil* commands would be canceled if they were made moral, i.e., if their ought became, not the command of an external power, but reverence for duty, the consequence of their own concept. But even those moral commands which are incapable of becoming civil may become objective if the unification (or restriction) works not as concept itself, as command, but as something alien to the restricted force, although as something subjective”²⁰³²⁰⁴. One may interpret this passage in two different ways. On the one hand, the same law may be either positive or moral according to the rules of its reception by the subject. In a given time-space, the same law would be positive for those who submit themselves to the external authority without any reflection, while it would be moral for those whose thought prescribes duty, independently from the authority enunciating the rule. On the other hand, it may be that the law, in concrete situations, is never purely either positive or moral, but is positive and moral at the same time (for example “In civil society only those duties are in question which arise out of another’s rights, and the only duties the state can impose, but I may for moral reasons impose on myself a duty or respect it, or I may not”). In both cases, the law is not ultimately bound to its primal author for it is this duality of authorship that allows the same law to be moral and positive. At the same time, it is the response to the question: “who is the author of the law?” but also to the question “who is the addressee of the law?” that give us a differentiation between the subject and the objective, and between interiority and exteriority. The author of the law is either me or not me. If it is me, the law is produced “internally” and “subjectively”. If it is not me, the law is produced “externally” and “objectively” from my perspective. Yet, the work of thought blurs this distinction for it allows me to be the author of a law that was not mine but given to me at the beginning.

But who is this “not me” that allows me to posit myself? The “not me” may be the state, the church, a sect, a corporation. All these entities are *author-ized* to formulate rules to which I may be compelled to obey. Yet, a distinction should be made between these entities (notably the most important of them, state and church) regarding the rules they prescribe. While the state has the *authority* to formulate rules in the judicial sphere, the religious collective entity has “the right to supervise my moral life, to give me moral guidance, to require me to confess my faults, and to impose penances on me accordingly”²⁰⁵. But the right of the religious “society” to give me moral rules is, in fact, authorized and given by me, for I am free to enter it, as well as to leave it (“these rights are based simply on my voluntary entry into the society and in turn they form the basis of voluntarily accepted duties”²⁰⁶). Although Hegel mentions the civil contract, he does not connect the state with the freedom to constitute it (as Hobbes and Rousseau and other philosophers of the contract have suggested) as if it was a mere external force that one should deal with. However, the analytical distinctions between state and church, and juridical rules and moral ones are blurred when Hegel explores the historical relationship between the two because “since the scope of this [spiritual] state is now the same as that of the temporal state, a man excluded from the spiritual

²⁰³ Hegel, *Early Theological Writings*, p.210.

²⁰⁴ Hegel, *Early Theological Writings*, p.95.

²⁰⁵ Hegel, *Early Theological Writings*, p.97.

²⁰⁶ Hegel, *Early Theological Writings*, p.97.

state is thereby deprived of his civil rights as well. This did not happen while the church was still circumscribed, still not dominant, and hence it is only now that these two kinds of state come into collision with one another”²⁰⁷.

The law, its authorship and its reception, becomes a central aspect determining who and what a subject is, and what is expected from him in terms of “inner” activity to be considered “active”, for “passivity” is never, from this perspective, a good quality of the subject. Yet, this activity is thought, which is not considered as a practical doing in the external world, but delimits the realm of my interiority. Here, the (active) subject is not the one doing what the law commands to do in the external world, but is rather the one who gave himself the space of thought in which (internal) acts of thought may occur. It is a space of projection in which the doing is abstracted of its mere materiality and externality to become an internal form, a presence within the subject. It is in this space that what is, at the beginning, external and alien to me, becomes internal to me without being me.

Hegel relies on the very Kantian opposition between moral autonomy and heteronomy he complicates in *The Early Theological Writings*. The distinction between thinking and doing, and the primacy of the former over the latter commands the distinction between the inner and the outer, and the primacy of interiority over exteriority in his text. It commands also the distinction between subject and object, and the precedence of subjectivity over objectivity, and does not leave room for a non-conceptual practice of ethics.

How is this conceptual discussion of ethics related to our inquiry about the *Shari'a*? On the one hand, the anthropology of Islam relies on such words-concepts and differentiations between law and ethics, or autonomy and heteronomy produced by western thought and social sciences. On the other hand, we cannot just “apply” these words-concepts if our task is to understand different cultural representations and practices as we cannot take for granted neither the positing of the Kantian “rational” autonomous subject, nor the Durkheimian “social” as the defining space of existence, nor the Freudian location of otherness in “the unconscious”, for they are both concepts *and* cultural constructions. Most important, this brief sketch of the relationship between law and ethics in the Western context opens up the possibility of making fruitful comparisons with practices and meanings associated with *Shari'a* in Islam. Such an anthropology would allow us to avoid a reduction of *Shari'a* to a mere expression of the non-rational, but would study Islamic “culture” in its own terms, and would be, at the same time, accessible to the community of anthropologists.

²⁰⁷ Hegel, *Early Theological Writings*, p.105.

Part III

Relational Ethics

Worship, Social Interactions and Islamic Legal Knowledge

Part III

Chapter 7

Worship, Social Interactions and the life of *Shari'a*

The study of the relationship between law and ethics in legal opinions dealing with the 2011 Egyptian Revolution has shed light on the relationship between inner self and outer deeds entailed by Islamic jurisprudence as formulated by Islamic scholars (Part I, Chapter 1 and 2). Although it raised specific questions of self-sacrifice for the well-being of the community, the relationship between inner self and outer deeds is relevant not only at the time of “exceptional” events such as the revolution, but also in the “everyday” life of Muslims in the post-revolutionary context. One way to study more closely this issue is to build on the discussion devoted to spiritual ethics (Part II, Chapter 3, 4 and 5) to take a closer look at relational ethics and more specifically, the relationship between acts of worship (*'ibadat*) and social interactions and transactions (*mu'amalat*) as it is understood by Islamic scholars in Al-Azhar Mosque. I would like, first, to situate the relationship between worship and social transactions within a broader understanding of what *Shari'a*, as “law”, means.

Studying worship as part of the law

Most of contemporary studies about *Shari'a* have approached it mainly as a law regulating social transactions and adjudicated in the courtroom. For colonial “experts” but also legal Orientalists such as Joseph Schacht, jurisprudence regulating the acts of worship did not belong to the domain of “law” proper but to the domain of “religion” and “ethics”. The very distinction between the legal and the non-legal in Islamic jurisprudence (*fiqh*) from the perspective of Legal Orientalism reflects the limits of categories such as “law”, “religion” and “ethics” when used to study other cultures. By identifying the lack(s) in Islamic law in comparison to western forms of law, the scholar would be able to explain the “gap” between Muslim societies and the West.

According to Schacht: “None of the modern distinctions, between private and public law, or between civil and penal law, or between substantive and adjective law, exists within the religious law of Islam; there is even no clear separation of worship, ethics and law proper. [...] The concept of any systematic distinction is lacking.”²⁰⁸ “In the present book, however, the subject-matter has been arranged not according to the traditional order [...] but according to the broad systematic divisions of modern legal science [...] in order to enable the reader to appreciate its doctrines against the background of modern legal concepts, to throw into relief not only what is peculiar to it but also what is missing there.”²⁰⁹

One may be easily tempted to reproduce Schacht’s distinction between the legal and the non-legal in the study of Islamic jurisprudence for the regime of separation between “religion”, “law” and “ethics”, along with other categories (economy, politics) is constitutive of the narratives of

²⁰⁸ Schacht, *An Introduction to Islamic Law*, p.113

²⁰⁹ Schacht, *An Introduction to Islamic Law*, p.114.

modernity as well as the assumptions on which contemporary governmentality is based. To a great extent, the colonial project of the nineteenth century which task was the “civilizing mission” has been nourished with liberal ideas promoting “good” and efficient government on the basis of differentiation and separation. One of the main problems faced by colonial viceroys and officers was mainly to differentiate religion from law in Islam such as to institute a space of rule production enabling colonial governmentality. At the same time, the distinction between the “religious” and the “legal” in *fiqh* has widely circulated between legal Orientalism and colonial administration.

While, from this perspective, the inclusion of worship in Islamic jurisprudence is an anomaly, I would like to show here that the underlying logic of *fiqh* does not put worship *outside* the law, but *within* the law. Moreover, Islamic jurisprudence requires precisely from the subjects of law to ground all their deeds (including the “worldly” ones), and more generally their being in the world in the acts of worship. For the distinction made by Islamic scholars is not between what is legal and non-legal in Islamic jurisprudence, but between different kinds of deeds, notably between worship and social transaction, *within* Islamic law. It is an invitation to think not only a different kind of law than contemporary state law that does not regulate worship, but also to understand a form of life based on the intertwined relationship between acts of worship and social relations. For the law is not only a distinct set of rules prescribing or proscribing deeds or against which deeds are assessed, but gives also shape to life as much as it reflects forms of life.

The distinction between Islamic jurisprudence and state law is relevant not only when studying Islamic and western cultures in comparative perspective but also when dealing with the meaning of *Shari'a* in colonial and post-colonial national contexts regulated by state law. Operating in distinct and yet overlapping registers, state law and *Shari'a* are related to different conceptions of time, space, and ontology and may enable, as well as reflect, different kinds of experience and different life-worlds.

The relationship between acts of worship and social relations is distinct, and yet related to the relationship between inner self and outer deeds, and between spirituality and materiality. Although worship, including obligatory prayer (*salat*) involves embodied material deeds, it entails also spirituality addressing interiority (*al-batin*). The rules of jurisprudence dealing with the acts of worship regulate the self's deeds but shape also his inner self in the moment of prayer, as well as in his relations and interactions with others. One of the recurrent problems faced by Muslims and raised by classical as well as contemporary scholars is related to the unity of the self over time. If worship is circumscribed to the deeds and time-space prescribed by jurisprudence, how can it still guide the self in the time-spaces in which there is no worship, such as his interactions with others?

Worship and social interactions in Al-Azhar Mosque

In order to better grasp the ways in which Islamic jurisprudence as formulated by classical and contemporary scholars-jurists not only regulates both acts of worship and social relations, but also assumes an organic relationship between them, I would like now to turn to an ethnographic account of a lesson delivered in Al-Azhar Mosque by a scholar-mufti also authorized to formulate legal opinions (*fatawa*) at Al-Azhar's Fatwa Council.

Several scholars giving lessons in the scholarly circles at Al-Azhar Mosque are entitled to give legal opinions (*fatawa*). In the Fatwa Council adjacent to the rooms where the scholarly circles

meet, they act not as scholars dispensing knowledge, but as Muftis (jurisconsults) giving legal advice. Although knowledge transmission and legal consultation are clearly distinct activities, it is relevant to note here that several scholars who teach jurisprudence and other Islamic sciences in scholarly circles after the prayer may also be consulted as Muftis. People usually come to the Fatwa Council not to acquire a “theoretical” knowledge, but to have a response to a question ranging from acts of worship (*‘ibadat*) to social transactions (*mu’amalat*), including marital issues. The fatwa is usually delivered orally to the person asking the question (*mustafti*) and is free of charge.

Usually right after the afternoon prayer (*salat al-‘asr*), one of the Muftis (jurisconsults), who spent the day giving legal opinions to whoever asks for it in the Fatwa Council, gives a lesson (*dars*) to the worshippers who performed the prayer. This lesson dealing with the meaning of Islam, takes the form of advice (*maw’iza*) and guidance (*irshad*). At this moment, the scholar does not act as a Mufti, but as a man of call and preaching (*da’wa*). Yet, the preach is about the meaning of the revealed law (*Shari’a*) in Islam, and the ways it should be understood and lived by Muslims, notably through the relationship between acts of worship (*‘ibadat*) and social relations (*mu’amalat*).

Worship and social relations are the two main spheres jurisprudence (*fiqh*) deals with. However, in a context of *da’wa*, the scholar is not responding to questions related to a specific case, and does not formulate a detailed rule prescribing or proscribing a given act. Rather, he tries to speak directly to “the heart”, and invites the audience to reflect upon the meaning of the duties prescribed by the law in Islam. For both the Mufti-*da’iya* and the Muslim, it is a moment that allows them to get out of the casuistry of the law to recall and constantly expand the meanings of the law and its prescriptions. It is a way to put the law at a distance, not to reject it or to say it is peripheral in Islam, but rather to reaffirm its centrality and importance, and its ability to address the interiority of the Muslim. It is also a way to underline that the two main ensembles of prescriptions of the law, acts of worship (*‘ibadat*) and social relations (*mu’amalat*) are not separated from each other, but inter-connected to each other and should be considered in their unity.

As implied in the names *maw’iza* (recall and advice), *irshad* (guidance) or *nasiha* (advice), preaching (*da’wa*) relies on linguistic forms that are not imperatives but suggestive, calling for a work on oneself, both internally and externally, to be able to perform the law properly and meaningfully. When a Muslim asks a mufti (jurisconsult) for a *fatwa* (legal opinion), he/she usually expects a clear response regarding the lawfulness of a given act: is the act in accordance with the law? What are the conditions making an act conform to the law? The fatwa addresses a specific case involving one or several individuals, and is often related to a previous or an expected act (or a series of acts). In the *da’wa* context, the general questions: “*why* and *how* does the Muslim follow the rules prescribed by the law?” are as much as important as the mere doing that she/he is expected to perform. In both moments, the mufti-*da’iya* (man of *da’wa*) speaks in the name of the law, albeit in different ways, in different scenes, with different audiences, and relying on different genres.

Let’s hear the mufti-*da’iya*, Sheikh Mamduh:

“God created us the best of all creatures (*ahsana kahlqan*), and He created the universe (*kawn*) before us, and for us and made it available for us (*musakharan*), for our will and our life (*masiratina*).

This precious education, the education of prayer (*salat*), the education of fasting, the education of almsgiving, the education of pilgrimage (*hajj*), all the acts of worship (*‘ibadat*), are a way to educate man. When we do all these educative acts, we are designated as the people of Islam (*ahl al-Islam*). I would like from here to talk about Islam and define it (*ta’rif*). When you are asked: are you Muslim? What does Islam mean? We usually think of it as the *shahada*, and as prayer, almsgiving, fasting.... True, it is an understanding of Islam, a signification among others of what Islam is, but when we look more deeply at its meaning, we can see that Islam came for the human (*al-insan*), from God to the human. Islam did not come only for worship, because if it was only for worship, God the Almighty has enough creatures doing bowing (*ruku’*) and prostration (*sujud*) honoring Him. So it is not only a matter of worship, but first of all, a specific kind of worship, the worship performed by the human (*al-‘ibada bi naw’i al-insan*).

All the acts of worship are complementary with each other. When I fast I’m not only doing a duty, I am also building my own self (*bina’ nafsi*) so I can act and behave properly (*ata’amala*) with others. Let’s follow the example of the Prophet.

An old man with white beard, dressed with white clothes, on whom the traces of travel were apparent, came to the Prophet, who was sitting with the Companions, and he started ask him: “What is Islam?” “Islam consists in bearing witness that there is no god but God, and Muhammad is the Prophet, and in performing prayer (*salat*), almsgiving (*zakat*), fasting the month of Ramadan and the pilgrimage.” We all know this *hadith* (reported saying of the Prophet), and let’s think of this question and the other part of the response of the Prophet Muhammad which clarifies for us that Islam is a relationship between you and God in the acts of worship that orients and guides you towards another relationship, the relationship between yourself and the people.

The Prophet then said: Islam consists in submitting your heart to God (*an yuslima qalbaka li Allah*)” and in making people submit to God through your tongue and hand (*wa an yaslama al-nassu min lisanika wa yadik*).

When we think of these two responses, they are two responses but the question is one. The first response establishes firmly the relationship between us and God regarding His Unity (*tawhid*) in prayer, fasting, almsgiving and the pilgrimage. The second response establishes firmly the source of the relationship between you and the people because you interact (*tata’amalu*) with the people starting from your heart (*qalbika*) and your limbs (*jawarihik*). Your heart is the site of your interaction with the people, and it is also the site of your interaction with God. When you look at the first response and the five pillars of Islam, it leads you, in its whole finality, to the second response, which consists in submitting your heart to God (*an yuslima qalbaka li Allah*)” and in making people submit to God through your tongue and hand.

Why these acts of worship have been instituted? Why praying? God says in the Qur’an, “The prayer prevents (the worshipper) from doing abominable sins and unlawful acts (*al-salat tanha ‘ani al-fahsha’ wa ‘ani al-munkar*). It allows you to avoid doing these acts when you interact with the people, and makes you avoid doing harm to the people. So, the prayer is a way to have a virtuous relationship (*‘alaqa hassana*) between you and the people. It is the same with fasting: “*kutiba ‘alaykum al-siyam kama kutiba ‘ala man min qablikum la’alakum tataqun*”, here the *taqwa* (awe and piety) is a form of prevention (*wiqaya*) from harming people, when you do not eat or drink...

If there is evil in the relationships between people, it means that our worship (*‘ibadatuna*) is rejected, and if the relationships between us are not good, it means that our acts of worship are no longer able to reach God (*al-‘ibadat tawaqafat ‘an su’udiha ‘an rabbi al-‘ibad*).

What is almsgiving? It is a purification (*tazkiyya-tahara*), and elevation (*tarqiyya*) from sins and bad deeds, you purify yourself morally (*tatahuran ma’nawiyen*), as when you do the ablutions it is a sensible purification (*tatahuran hissiyan*).

The main idea here is that the relationship between you and God prepares you and qualifies you (*tu’ahilluka*) for a virtuous relationship between you and the people. Islam addresses the limbs but also the heart. The tongue and the hands are important, for they are the ones able to harm the others the most.

Islam addresses the outer (*zahir*) and the inner (*batin*), and focuses on the submission of your heart to God. God does not accept from you an act of worship that is polluted (*mulawwath*) and full of hatred (*hiqd*) and hate towards the people. If the heart is full of hate, and envy, full of moral illnesses (*amraz ma’nawiyen*), you need to know that it is also part of your relationship with God. The Prophet focused on the inner and the secrets, for

the heart is the center of Islam, for the heart is a risky thing (*amr khatir*), for the heart is the site of love (*hub*) and hate (*bughdi*).

In this *hadith*, the Prophet tells us that the heart should submit to God. You orient yourself to God not only with your reason and sight but also with your heart. The heart is active, and it is suggested that God endowed the heart with limbs and senses: it sees, and hears. What is Islam? Islam is worship (*'ibadat*), and social relations (*mu'amalat*), and worship prepares you for the good interaction [*al-mu'amala al hassana*]. In the acts of worship and service to God (*'ubdiyya*), it is the self (*nafs*) that is central. Doing ablutions and moving the limbs is the easiest part, but the most difficult thing in Islam, and what is central in worship, is your relationship to the self (*nafs*), to fight (*tuqawima*) your heart and the ability to make it accountable (*an tuhasiba nafsak*), and to orient your heart and your limbs so you will not harm God's creatures".

Following Sheikh Mamduh, the acts of worship as prescribed by jurisprudence not only to orient oneself toward God in the specific time-space they are performed in, but are also a way to educate the self, and to prepare her to inter-act virtuously with others. The acts of worship constitute the self as *relational* self attached to God. Although the relationship of the self to God is distinct from her relationship to others, it is not separated from it for the former entails the latter. When the self has nurtured her relationship to God through the acts of worship over time, it has educated herself in such a way that she is prepared to behave morally with others for the deeds prescribed by jurisprudence address my heart through the limbs. As exemplified by the obligatory prayer (*salat*), it is not only my body that is submitting to God, it is also my heart. The submission of the heart to God does not only occur in the limited time-space of prayer, but becomes inscribed in, and constitutive of, the self in such a way that it is reflected back in, and illuminates his embodied deeds when he is involved in interactions with others as the sayings of the Prophet, quoted by Sheikh Mamduh suggests: "Islam consists of submitting your heart to God (*an yuslima qalbaka li Allah*) and in making people submit to God through your tongue and hand (*wa an yaslama al-nassu min lisanika wa yadik*)". The heart, educated by the prescribed acts of worship, shapes the self's exemplary deeds with others. As a model of virtue, these words and deeds ("your tongue and your hand") make the people with whom the self is interacting submit to God. From this perspective, the social self, enmeshed within interactions with others, should not be set apart from the worshipping self oriented toward God. Here, Islamic jurisprudence presumes the disharmony between social self and worshipping self. Its labor is not only to bring harmony between the two selves, but to produce their unity over time.

Hence, when evil occurs in the community, it should not be considered in isolation from the relationship of each Muslim to God through the acts of worship. Wrongdoing cannot be explained only in positivist terms for everything that happens in the community should make me think of the strength and truthfulness of my relationship to God. Avoiding the wrong and doing the good in the world is not self-contained in my relationship with others because it is always related to my own acts of worship, which shape the self in such a way that she is prepared to act ethically (as Sheikh Mamduh puts it: "If there is evil in the relationships between people, it means that our worship [*'ibadatuna*] is rejected, and if the relationships between us are not good, it means that our acts of worship are no longer able to reach God [*al-'ibadat tawaqafat 'an su'udiha 'an rabbi al 'ibad*]"). From this perspective, as God says in the Quran: "The act of prayer prevents from doing atrocious acts, from sins and injustice" (*al-salat tanhi 'ani al fahsha'a, wa al munkar wa al baghy, surat al-Nahl, 90*).

The importance of prayer for ethical behavior and its formative role regarding the self is better understood when one recalls that *Shari'a* rules do not have all the same temporality in the life of

the Muslim. While the individual is expected to perform *Shari'a* rules several times a day everyday regarding prayer, he may encounter *Shari'a* rules in the sphere of transactions (*mu'amalat*) only a few times in his life, either in the courtroom or as a question asked to the mufti, depending on the kind of activities he is involved in. Significant moments in which *Shari'a* rules are enacted may include marriage, divorce and inheritance. From this perspective, *Shari'a* rules, notably those regulating obligatory prayer (*salat*) structure the day of the Muslim and shape her experience of time.

But the Muslim should also be prepared to spend “a long time” in practice for it is the sedimentation of repetitive daily acts of prayer over the years that allows her to reach moral rectitude (*istiqama nafsyya*). This experience of time is related to the ability to leave the state of heedlessness (*ghafla*) for a state of full awareness (*yaqaza*) that becomes constitutive of the self over time (“It is like I wake up and I control myself with my self [*raqabat al-nafs*]”)²¹⁰.

Acts of worship, social interactions and the life of *Shari'a* in contemporary times

The relationship between acts of worship (*ibadat*) and social transactions (*mu'amalat*) is central for any attempt to understand *Shari'a*'s relevance for contemporary Muslim life. As long as obligatory *Shari'a* rules related to worship and addressing each individual (*fard 'ayn*), may be performed and shape the self in her relationship to God as well as to others, and as long as there are spaces of transmission and production of *Shari'a* knowledge in which Muslims address scholars for guidance, *Shari'a* remains meaningful for Muslims. The changes brought about by colonial power as well as post-colonial states have certainly modified the way *Shari'a* rules may regulate Muslims' life. However, it does not mean that these changes put an end to *Shari'a*'s meaningfulness for Muslims. Rather, one should look at the ways in which the relationship between *ibadat* and *mu'amalat* has been reformulated in the modern context, for although their time-space of occurrence may overlap with contemporary state law, they remain distinct from it.

The thesis of demise of *Shari'a* in modern times has been mainly advocated by Wael Hallaq in several of his works. For Hallaq, the encompassing powers of modern law and state have relegated *Shari'a* to the past. According to Hallaq, “beginning in the nineteenth century, and at the hands of colonialist Europe, the socioeconomic and political system regulated by the *Shari'a* was structurally dismantled, which is to say that the *Shari'a* itself was eviscerated, reduced to providing no more than the raw materials for the legislation of personal status by the modern state. Even in this relatively limited sphere, the *Shari'a* lost its autonomy and social agency in favor of the modern state; *Shari'a* was henceforth needed only to the limited extent that deriving certain

²¹⁰ The relationship between acts of worship and social relations raises the twin questions of time and change as related to the 2011 Revolution. If the good in the community requires an endless work of giving shape to the self notably through worship, the unexpected revolutionary event comes with the promise of a better life that is not necessarily in harmony with the time of improvement of the ethical self. Although the *maw'iza* of Sheikh Mamduh does not deal explicitly with the revolution, it is uttered in a post-revolutionary context, after the president Morsi has been ousted. Revolutionary change and ethical improvement of the self are not necessarily in contradiction with each other for the former requires self-sacrifice for the well-being of the community. But it may also be understood as an event that will bring the good to the community without involving any work on the self. In this context, the task of the Islamic scholar is to recall that whatever good and evil happens in the community, it should never lead to neglect the “timeless” labor on the self through worship and her relationships with others.

provisions from it-provisions that were reworked and re-created according to modern expediency-legitimized the state's legislative ventures"²¹¹. Moreover, colonial and post-colonial states have succeeded in separating law from morality in *Shari'a*, which remains "for the great majority of Muslims today [...] a source of religious and moral authority"²¹².

Although Hallaq recalls himself that *Shari'a* should not be understood as "law" in the modern sense, for it is at the same time law, religion and morality, he nevertheless relies on the very distinction (between law, religion and morality) he criticizes to make his statement about the relevance of *Shari'a* today not as law but as religion and morality. I am not saying here that the distinction between the legal, the religious and the moral is not possible or irrelevant when dealing with *Shari'a* and I agree with Hallaq that they are intertwined. Rather, I am arguing that any attempt to grasp the legal in *Shari'a* would fail if it is exclusively assimilated to its enforcement by a court of justice, either in the pre-modern or the modern contexts. Although the revealed law is the site of the good, Islamic jurisprudence is first and foremost a form of hermeneutical knowledge which logic is procedural. As long as *Shari'a* knowledge is transmitted among contemporary Islamic scholars and as long as these scholars rely everyday on procedures of truth-seeking to produce rules that guide Muslims in their life, for example in the form of *fatwa* (legal opinion), *Shari'a* as law remains relevant. The fact that the rules are not enforced by the court, or may not be followed by individuals, does not mean that Islamic jurisprudence (*fiqh*) is no longer a law, with its distinctive logic, modes of reasoning and ways of assessing facts and deeds. Because it is precisely a law in which the good is located, it does not need necessarily to be enforced to be meaningful or even effective.

The formulation of a "universal" definition of law by western jurists, notably "a pure theory of law" as Hans Kelsen put it, exemplifies the way contemporary legal science associates law with enforcement. Kelsen, who has been heavily influenced by Kant's theory of knowledge whose justification does not depend on experience, defines the "pure theory" of law as "the science of law" that "attempts to eliminate from the object of this description everything that is not strictly law: its aim is to free the science of law from alien elements."²¹³ In Kelsen's universal theory, coercion is the basis of all distinction between a legal system and a non-legal normative system: "As a coercive order, the law is distinguished from other social orders. The decisive criterion is the element of force-that means that the act prescribed by the order as a consequence of socially detrimental facts ought to be executed even against the will of the individual and, if he resists, by physical force."²¹⁴ In a way very similar to Hobbes for whom the rules produced by the Church have no legal authority because the physical power of enforcement of the state allows the latter to be the sole law-maker, Kelsen acknowledges the possibility of other norms regulating social behavior, but, for him, they can never be considered a form of law because they lack coercion. Hence, the (pure) law cannot be distinguished from any other norms on the basis of procedures of rule-production and truth seeking grounded in specific forms of reasoning (as I do regarding Islamic jurisprudence), but rather only on the basis of its enforcement by a central authority.

²¹¹ Hallaq, *The Impossible State*, p.ix.

²¹² Hallaq, *The Impossible State*, p.x.

²¹³ Kelsen, *Pure Theory of Law*, p.2.

²¹⁴ Kelsen, *Pure Theory of Law*, p.34.

Moreover, for Kelsen, “the object of regulation by a legal order is the relation of one individual in relation to one, several, or all other individuals –the mutual behavior of individuals” (p.32). Therefore, it can never be the task of the law to regulate the individual’s relationship to God. It is relevant to note here that if we rely on Kelsen’s theory of law to study *Shari’a* rules, but we would have to look for the two criteria formulated by Kelsen: (1) coercion and (2) the regulation of social interactions. Then we would not dismiss all *Shari’a* rules as non-law or impure law, but we would consider that the domain of social transactions and relations (*mu’amalat*) adjudicated before courts of justice and enforced by the ruler in pre-colonial times is law proper while the rules regulating the sphere of worship (*ibadat*) would be considered as religion or morality and never as law because they only regulate the relationship of each individual to God.

If, in the West today, it is clear that the law, associated with the state and the courts, does not regulate worship or determine its content, this configuration was not always the case, for there was a time where Canon law was not only regulating matters related to sacraments but also related to preserving civil order, administering penalties and other “temporal matters”. For centuries, notably from the Investiture Controversy in the twelfth century until the Peace of Westphalia in the seventeenth century, the Church was in conflict with temporal authorities regarding the nature and limits of its jurisdictional power over the laity. The development of the sphere of state law as theorized by jurists and theorists like Grotius and Hobbes in conjunction with the Lutheran Reformation which grounded salvation in inner faith rather than external works prescribed by Canon law contributed decisively to the exclusion of all other possible legal orders.

Hobbes’s *Leviathan* can be understood as work devoted to the formulation of arguments in favor of a mono-*nomos* political community in which the power to produce the law and to enforce it belongs exclusively to the state. For Hobbes, religious Scriptures may be relevant for the production of law, but by themselves, they do not have any power, or more precisely, they do not have any power as long as they are not formulated in the framework of state law and enforced by it. Subjects should obey the teachings of Scripture only to the extent that they are made laws by the sovereign “whose Commands have already the force of Laws”²¹⁵. Although the books of the New Testament are “most perfect Rules of Christian Doctrine”, they cannot be made laws “by any other authority than that of Kings or Sovereign Assemblies”²¹⁶. The Church has no “legislative power” and “whatsoever is propounded by every man” in the name of God cannot be considered as His law, particularly if “it is contrary to the Civill law, which God hath expressly commanded us to obey”²¹⁷.

²¹⁵ For Hobbes in his *Leviathan*: “He therefore to whom God hath not supernaturally revealed that they are his, nor that those that published them were sent by him, is not obliged to obey them by any Authority but his whose Commands have already the force of Laws; that is to say by any other Authority then that of the Common-wealth, residing in the Sovereign who has only the Legislative power”, p.267.

²¹⁶ Hobbes, *Leviathan*, p.362

²¹⁷ There may be several interpretations of Scriptures but if some injunctions of the latter should be made law, there can be only a unique and authoritative interpretation. Who is authorized to interpret Scriptures for the commonwealth? For Hobbes, it can only be the power able to produce law, i.e. the state. In Hobbes’ terms: “For, *whosoever hath a lawfull power over any Writing to make it Law*, hath the power also to approve, or disapprove the interpretation of the same” (emphasis added) p.268-269.

Hobbes's thought exemplifies the shift in the trajectory of the category of "law" and the practices associated with it²¹⁸. What was meant by "law" was no longer related to the Church and the domain of "religion", but became exclusively associated with the state. From this perspective, the modern state can be characterized not only as a structure with "the monopoly of legitimate violence" as Weber put it, but also as the entity that has the monopoly over law production. In modern times, we take for granted that the law is necessarily produced by the state and should be enforced in a court of justice because our current conception of what a law is, is closely related to the unique history of law, state and Christianity in Europe, and has determined the work of legal Orientalists on *Shari'a* but, also to a certain extent, the writings of their critiques such as Wael Hallaq.

From this perspective that informs uncritically the preconceptions of most scholarship (starting from Legal Orientalism) on *Shari'a* rules, the latter are usually considered a "law" only to the extent that they regulate social relations *and* are enforced by judicial authority while the rules regulating worship are not considered as part of the law. Moreover, a legal opinion (*fatwa*), because of its non-coercive nature, would not be considered as law proper, even if it deals with social relations. Hence, the thesis of *Shari'a* demise in modern times must be revisited and nuanced, for it is only a *certain* way of dealing with a *certain* category of *Shari'a* rules (i.e. the rules dealing with social interactions that are no longer enforced by the court) that may be consistent with this narrative. One cannot reasonably say that today, the most important rules in the hierarchy of Islamic jurisprudence (i.e. the acts of worship) addressing individuals without enforcement or the mediation of a court of justice are no longer applied. Now, of course, one may say that there has been a reconfiguration of *Shari'a* rules after the development of state law in colonial and post-colonial times, but any general statement about "*Shari'a*'s withdrawal" or "demise" cannot be true, unless one reenact again the modernist prejudice between the domain of law proper and the domain of religion and morality.

From this perspective, one should not conflate authority with force²¹⁹. It is true that the two can go together, notably in colonial and post-colonial times where new generations of Muslim jurists educated in modern universities would adopt the modernist definition of law enforced by the state. Yet, it does not mean that *Shari'a* has no authority today in Egypt, (and more generally, in the Muslim world) or that the time-space of application of legal rules by individuals and communities is restricted to the time-space of state law. For, as exemplified by Hobbes's *Leviathan* or Kelsen's *Pure Theory of Law*, it is precisely the claim of the modern state that only itself is entitled to utter and enforce the law addressing the population in a delimited territory. However, it remains a claim that is not necessarily true from the perspective of the people for whom *Shari'a* is meaningful in everyday life as well as in times of crisis and exceptional events. For example, the significance and authority of al-Qaradawi's legal opinion (*fatwa*) authorizing peaceful demonstrations against the president Mubarak in 2011 (see chapter 1 and 2), or more generally of Islamic legal opinions dealing with everyday life, cannot be grasped if one sticks to the *Shari'a*'s demise narrative or to the claim that state law successfully encompasses everything. It is true that the situation of crisis and legal uncertainty (if not failure and anomia) in an event such as the Revolution highlighted the

²¹⁸ One should note here that state law is superior to any interpretation of the Scriptures not in the name of "secular" reason that would be superior to theological discourse, but because it is also a religious duty to be subjugated to it. Scriptures are not the exclusive link to God. Another way to follow God's law is to follow the sovereign's laws.

²¹⁹ Although the distinction between authority and force in political theory and social sciences became a common place at least since Hannah Arendt's essay *On Violence*, it remains useful to recall it here.

authority of the fatwa. But al-Qaradawi's fatwa was meaningful and authoritative for several Muslims because *Shari'a* was *already* meaningful and authoritative for them in their everyday life *before* the 2011 Revolution in a time where state law was considered effective. In other words, it is not because several *Shari'a* rules that used to be enforced in pre-colonial times are not enforced in colonial and post-colonial times, that *Shari'a* as such is no longer authoritative. For its authority does not lie in fixed substantive rules but rather in the relationality it enables, for example when the Muslim needs to make a decision and addresses a scholar-mufti in a moment of uncertainty and doubt. Yet, I am not saying here that modern transformations did not have an effect in *Shari'a*'s authoritativeness, nor I think that they can be grasped by saying that *Shari'a* has "less authority" in the modern world. Rather, the task of the anthropology of Islam is to study the changes that occurred in the very production of Islamic legal knowledge and shaped the way contemporary scholars and Muslims relate to *Shari'a*. As I will show in the following chapter (chapter 8), in the late nineteenth and early twentieth centuries, the production of Islamic legal knowledge became the locus of contradictory demands related to the emergence of the "new real" as an epistemic problem.

Part III

Chapter 8

Worship, Social Interactions and Islamic legal knowledge

The distinction between acts of worship and social interactions in contemporary Islamic legal knowledge

Following the ethnographic and conceptual discussion of Part II (Chapters 4, 5 and 6), one way to illustrate the significance of *Shari'a* and its instantiation in the relationship between worship (*'ibadat*) and social interactions (*mu'amalat*) in the modern context is to look more closely at what contemporary Islamic scholars living in Muslim majority countries say about Muslim minorities in other societies, particularly in the West. Yusuf al-Qaradawi's legal opinions (*fatawa*) on this matter have been diffused among Muslims minorities but have also been widely discussed in Egypt and other Muslim majority countries and raised several questions about the encompassiveness of *Shari'a* rules according to time, place and social environment. As early as 1960, al-Qaradawi, at the request of the Grand Sheikh of Al-Azhar, wrote *The Lawful and the Unlawful in Islam (al-Halal wa al-Haram fi al-Islam)* whose intended audience was Muslims (but also non-Muslims) living in Europe and the United States, and which was destined to be translated into English. Yet, al-Qaradawi's book quickly became also a classic introduction to Islamic jurisprudence for believers living in Muslim majority countries for, as he wrote in the preface, it may enlighten any Muslim asking the following questions: "What is lawful to me? What is unlawful to me?"²²⁰.

In *Al-Halal wa al-Haram fi al-Islam*, al-Qaradawi posits permissibility as the basis for everything (*al-asl fi al-ashya' al-ibaha*)²²¹ in the sphere of social interactions (*mu'amalat*) (also called usages [*'adat*]), or put in another way, the permissibility of any deed that does not belong to acts of worship (*'ibadat*). Understood as the "first foundational principle" established by Islam, permissibility reflects the relationship to all things beneficial (*manafi'*) wanted by God for humans as exemplified in *surat al-Baqara*, 29: "He who created for you all of that which is on the earth". God did not create all these things for humans to then forbid the latter to gain benefit from them. That is the reason why "the circle of the unlawful deeds in the revealed law of Islam is extremely tiny, while the circle of the lawful deeds is extremely large"²²². Authentic texts with an explicit prohibition are very few, which leaves all other aspects of existence in the sphere of permissibility and divine exoneration (*da'irat al-'afw al-ilahi*) as the saying of the Prophet (*hadith*) puts it: "What God has authorized in His Book is lawful, and what He forbade is prohibited. And what He did not speak about is exoneration (*'afw*). Accept from God His exoneration for God does not forget anything. And then, he recited the verse (*aya*) from *surat Maryem*, 64 "Your Lord was never forgetful"²²³.

²²⁰ Al-Qaradawi, *al-Halal wa al-Haram*, p.13.

²²¹ Al-Qaradawi, *al-Halal wa al-Haram*, p.21.

²²² Al-Qaradawi, *al-Halal wa al-Haram*, p.21.

²²³ Al-Qaradawi, *al-Halal wa al-Haram*, p.21.

For al-Qaradawi, the fundamental truth of religion (*haqiqat al-din*) lies in God's worship (*'ibadat*) according to what has been prescribed by Him in the revealed law, which leaves no room for innovations in this matter. Yet, usages and interactions (*'adat wa mu'amalat*) are not instituted by God but by the people, and *Shari'a* came to correct them (*musahihan laha*) and as a way to refinement and virtuous education²²⁴. Although not as foundational and generative as for al-Qaradawi, the distinction between two different instantiations of *Shari'a* as related to acts of worship and social interactions has notably been relied upon by the jurist Ibn Taymiyya (d.1328) in his book on legal principles and precepts *al-Qawa'id al-Nuraniyya* (The Enlightening Precepts). For Ibn Taymiyya, there may be two categories of deeds: "the acts of worship through which (Muslims) perform religion in the right way and usages (*'adat*) needed for their worldly life. We know, by operation of induction from the *Shari'a*'s sources (*istiqra' usul al-shari'a*), that the acts of worship which God prescribed as obligatory or recommended can be established only through the revealed law. On the other hand, the foundational principle regarding interactions and usages is the absence of prohibition (*hadhr*) [...]. That is the reason why Ahmad [Ibn Hanbal] and other scholars of the people of *hadith* say: 'the foundational principle in the acts of worship is fixed and settled (*tawqif*), and nothing can be legislated upon in this matter outside what God legislated [...]. The foundational principle of usages is exoneration (*'afw*), and nothing can be prohibited in this matter unless it has been deemed unlawful by God. Otherwise, we would fall into what God says in *Sura Yunus*, 59: "Say: Have you seen what God has offered to you of living (*rizq*) of which you have made lawful and unlawful?" For Ibn Taymiyya, this distinction between the two forms of lawfulness "is a great and useful regulating principle (*qa'ida 'adima nafi'a*), and if agreed upon, allows us to say: the acts of selling, donating and renting and other forms of usages that people need for their living (*ma'ash*) –such as eating, drinking and dressing- are all usages for which *Shari'a* came for good behavior (*al-adab al-hasana*) [...]. Hence, the people may engage in whatever trading and rental activities they want, the same way they eat and drink as they want, as long as any of these activities is prohibited by *Shari'a*, even if some of them may be recommended or reprehensible"²²⁵.

Ibn Taymiyya's formulation suggests that individuals' deeds are *a priori* lawful in the sphere of social interactions and transactions, unless there is a clear proscription in the Quran and the *Sunna*²²⁶. While social interactions are not fixed in advance and open to diversity and change, individuals can do only what the rules prescribe regarding acts of worship. For example, they cannot add or subtract a prayer among the everyday five obligatory prayers or say that it is an obligatory rule to fast more (or less) than the whole month of Ramadan. From this perspective, the logic of jurisprudence entails distinct articulations between rule and deed, for, on the one hand the law tells the self in great minutiae what to do to worship God, while on the other hand, it does not tell him what to do when he is interacting with others, but only what is forbidden. This distinction

²²⁴ Al-Qaradawi, *al-Halal wa al-Haram*, p.23.

²²⁵ Ibn Taymiyya, *Al-Qawa'id al-Nuraniyya*.

²²⁶ In the section devoted to financial transactions in the treatise entitled *The Lawful Politics (al-Siyasa al-Shar'iyya)*, Ibn Taymiyya relies again on the same distinction between acts of worship and social transactions and quotes a verse (*aya*) from *surat al-Nissa'* 59: "Obey God, the Prophet and those who hold the authority among you, and if you disagree about a matter, address God and His prophet", and then, gives his interpretation: "The foundational principle (in this *aya*) is that in matters regarding transactions (*mu'amalat*), nothing is forbidden to the people unless it is proscribed in the Book and the *Sunna* the same way that there can be no prescriptions of worship (*'ibadat*) destined to be closer to God other than what the Book and the *Sunna* indicate" (p.177).

enlightens anew the formative role of worship in relationship to deeds, for the former are not subject to change (*thawabit*), and are expected to shape Muslim selves in their changing actions and interactions with others in the world. However, although jurisprudence does not give the self a positive prescription regarding what his deeds should be in the sphere of interactions, he can always address the revealed law by asking a scholar-mufti to assess the lawfulness of his past or future deeds.

While for Ibn Taymiyya, the distinction between the two different logics generated by *Shari'a* in regard to worship and social interactions was an introductory remark of the section dealing with contracts, it became, for al-Qaradawi, a foundational principle for Islamic jurisprudence and the way each Muslim should relate her life and deeds to *Shari'a*.

Besides the space of divine exoneration where permissible deeds take place, Islamic jurisprudence, according to a well-known principle, may allow Muslims to commit prohibited acts out of necessity (*al-dharura tubihu al-mahdhurat*). For al-Qaradawi, this principle takes into account the necessities of life (*dharurat al-hayat*) and has authorized humans to have recourse to the prohibited in extenuating (*qahira*) circumstances. However, unlike the space of exoneration that is already inscribed in the lawful, necessity does not change the rule of prohibition but acknowledges the possibility of its suspension in a specific case. Muslims can never take this suspension for granted and should always look for the best way to change the circumstances that would allow for the rule of prohibition to be respected again. Moreover, the deeds allowed by the suspension of the rule are not meant to be enjoyable or unrestricted but be proportionate to the necessity involved in the case (*al-dharura tuqaddaru bi qadriha*)²²⁷.

As in previous works of jurisprudence written in the first half of the twentieth century²²⁸, the structure of al-Qaradawi's *al-Halal wa al-Haram* exemplifies the contemporary concern for the lawfulness of social interactions (*mu'amalat*) as it does not include any section on the acts of worship but articulates substantives rules as formulated in previous books of jurisprudence to forms of life and principles of conduct and distributed according to subdivisions echoing the language constituted around the "social" as it emerged in the modern context: "The lawful and the unlawful in the private life of the Muslim (*al-hayat al-shakhsiyya*)", "The lawful and the unlawful in marriage and family life (*hayat al-usra*)", "The lawful and the unlawful in the public life (*al-hayat al-'amma*) of the Muslim". While the audience of concise pre-modern manuals of jurisprudence (*matn*) would be students (trained in spaces of knowledge transmission such as mosques) who would usually memorize their content in order to guide the local community in a non-literate society, books as al-Qaradawi's, and more generally contemporary forms of writing (for example in journals and newspaper) are destined to be read by Muslims who had access to education in a schooling system organized and regulated by the state. These more recent forms of writing would also be distinct from other pre-modern genres such as voluminous commentaries (*sharh*) of the basic manual which would be written for jurists looking to expand their knowledge of jurisprudence. While these commentaries articulate the rules formulated in the manual to the body of knowledge produced by previous and higher ranked scholars within the juridical school to which they belong, scholars like al-Qaradawi in *al-Halal wa al-Haram* are not concerned with re-inscribing their own writing within a previous chain of jurists of one of the main four juridical

²²⁷ Al-Qaradawi, *Al-Halal wa al-Haram*, p.41.

²²⁸ For example Rashid Rida in *al-Manar* or several writings of Hasan al-Banna.

schools of Sunni Islam for most of them authorize themselves directly from the Quran and the *Sunna*.

Two generations after the rise of the *Salafiyya*, al-Qaradawi and other scholars do not need to do again the work of critique of *madhab* (school) based juridical reasoning that was already done by Muhammad Abduh at the end of the nineteenth century and their audience do not expect them to do so. Yet, it does not mean that all contemporary scholars are *Salafi* or that modes of reasoning attached to the *madhab* are no longer relevant in contemporary Islamic legal knowledge. Rather, the transmission of *fiqh* (jurisprudence) in Al-Azhar but also in several centers of Islamic knowledge in the Muslim world is based on the *madahib* (schools). Although Al-Azhar has a tradition of teaching the four main *madahib*, it is the Hanafi *madhab* that is the most widely taught as it is the one that is still mainly relied upon in Egypt. For purposes of control, cohesion and arbitration between disputes, states such as Morocco would claim the continuous commitment to the “historical” *madhab* of the country (in this case the Maliki *madhab*). Hence, although writing on Islamic legal issues from a *Salafi* perspective (as al-Qaradawi does), is consistent with the dominant trends of the contemporary Muslim public, it nevertheless coexists with the affiliation to juridical schools claimed by several jurists. Moreover, relying on a *Salafi* method (based primarily on the Quran and the *Sunna*) does not mean to reject everything coming from the *madahib*. Rather, as we will see below, al-Qaradawi, in other writings, relies on opinions from the schools to formulate rules in *fatawa* (legal opinions) dealing with Friday prayer in non-Muslim contexts.

More than forty years after the publication of *Al-Halal wa al-Haram fi al-Islam*, at the request of “The Muslim World League (*Rabitat al-‘Alam al-Islami*)” (but also as a result of scholarly discussions within the European Council for Fatwa and Research [*Majlis al-Urubi lil-Ifta’ wa al-Buhuth*] founded in London in 1997 at the initiative of the Federation of Islamic Organizations in Europe [*Ittihad al-Mundamat al-Islamiyya bi-Uruba*] and whose president is al-Qaradawi), al-Qaradawi wrote a new book addressing primarily Muslims residing in non-Muslim countries in which he suggests that the rules dealing with their lives may be considered as a new field called “jurisprudence of Muslim minorities” (*fiqh al-aqalliyat al-muslima*).

For al-Qaradawi, *Shari’a* addresses each Muslim individual, who may be “a ruler or a subject, a man or woman, rich or poor, in the territory of Islam (*Dar al-Islam*) or outside of it, in a Muslim society or a non-Muslim society”. “Muslims, either in the Orient or the Occident, in Islamic countries or outside of them, in a country ruled by Islam or by secularism (*‘ilmaniyya*), are required to orient their lives according to the revealed law of Islam (*Shari’at al-Islam*) to the extent of their possibilities”²²⁹. *Shari’a* is not utopian but realistic (*waqi’iyya*) for it takes into account the reality of humans (*waqi’ al-insan*) and is aware of the effects of time, place and social environment on the people. *Shari’a* does not require from the Muslim to put herself in hardship (*‘usr*) but takes into account her circumstances (*dhuruf*), her necessities and needs wherever and whenever she lives.

Hence, *Shari’a* cannot be associated exclusively with a unique form of social-political life ruled by Islamic jurisprudence as described by scholars such as Hallaq. If we follow Hallaq’s perspective, Muslim minorities living in Western countries can never live according to *Shari’a*

²²⁹ Al-Qaradawi, *Fiqh al-Aqalliyat*, p.13.

rules because the latter are necessarily associated to pre-modern forms of life where jurists were autonomous from the state and judges basing their rulings according to moral considerations. In secular states regulated by modern amoral legal codes, *Shari'a* can never be applied. And yet, Islamic scholars such as al-Qaradawi never say that the regulation of life by *Shari'a* necessarily requires the enforcement of rules prescribed by jurisprudence (*fiqh*) nor a fixed political and judicial organization. Rather, when al-Qaradawi writes, in reference to *surat al-Baqara* 115: “There does not exist any Muslim living outside the scope of *Shari'a*” notably in “secular” western societies, he is clearly disconnecting *Shari'a* rules from their enforcement by a court of justice and political authority in a specific territory. However, he is not suggesting that *Shari'a* may be lived even by a solitary subject. Rather, *Shari'a* is always lived and appropriated by the individual subject who is already embedded within a community of faith and knowledge for, even if she lives in non-Muslim societies, she still needs to address a scholar-mufti for guidance and interact with other Muslims living in the same territory but also with non-Muslims.

Al-Qaradawi's approach of *Shari'a* relies again on the distinction between acts of worship (*ibadat*) and social interactions (*mu'amalat*), for as long as Muslims can do the former, notably the acts of prayer, they are following *Shari'a* rules, even in non-Muslim countries. Now, in these countries, the problem for Muslims is mainly related to interactions and transactions (including marriage) with Muslims and non-Muslims in a non-Muslim social environment. Here, instead of merely presenting legal opinions (*fatawa*) that he previously formulated about the subject, al-Qaradawi formulates a set of foundational rules and principles making explicit his mode of legal reasoning. Among these principles, al-Qaradawi recalls that *Shari'a* does not put humans in difficulty but, when properly understood, enables Muslims to remove hardship (*raf' al-haraj*) that may be associated with it. The task of scholars-muftis is precisely to be faithful to the co-extensiveness of ease (*yusr*) to Islam rather than difficulty (*usr*) when it comes to the formulation of rules to be followed by Muslims.

Although a mufti may take into account the local context in the production of rules regarding worship, he would do so differently than when dealing with interactions and transactions. As we saw earlier, al-Qaradawi waives the rule of interdiction of debt usury (*riba*) for Muslim minorities in the West. When dealing with acts of worship, the obligatory prayer (*salat*) as such can never be waived for qualified Muslims. However, for al-Qaradawi, who relies both on Hanbali and Maliki juridical schools 's jurisprudence, accommodations can be made regarding the time of the collective Friday Noon prayer (*salat al-dhuhr*). In several Muslim countries, the Friday is either a non-working day (as in Egypt) or a day in which people can leave their work for the Noon prayer. Since Muslim minorities live in countries with a subdivision of time that does not allow them to perform the Noon prayer as usually prescribed, al-Qaradawi's interpretation of the relevant textual sources allows Muslim minorities to perform it either before or after the prescribed time²³⁰.

For al-Qaradawi, the jurist-scholar (*faqih*) should have a thorough knowledge of all dimensions of reality and rely on other forms of non-juristic expertise before formulating the rule. For example, he should take into consideration what sociologists and economists say about the importance of owning a house for Muslim families living in the West as a way to preserve familial cohesion and to reduce financial hardship. In this case, the scholar-jurist should authorize Muslims to contract a loan from banks because it is a necessity (*dharura*) that supersedes the rule forbidding debt usury

²³⁰ Al-Qaradawi, *Fiqh al-Aqalliyat*, p.72.

(*riba*). Here, it is the task of social scientists to assess the necessity of owning a house for social and economic reasons²³¹.

More generally, one central aspect of the reality that should be taken into account by the scholar-jurist regarding the jurisprudence of Muslim minorities (*fiqh al-aqalliyat al-muslima*) is their twin belonging to the Islamic community, which includes “each Muslim in the world whatever may be her citizenship, tongue, race, or class”, on the one hand, and on the other hand, the society in which they live and “belong” (*yantamuna ilayhi*) for the scholar-jurist should always preserve a balance between these two dimensions. Hence, the reality in which Muslim minorities live call for a “specific jurisprudence” (*fiqh khas*) called “the jurisprudence of minorities” (*fiqh al-aqalliyat*) the same way other forms of *fiqh khas* have been constituted in relationship to financial and economic issues (*fiqh iqtisadi*) or political ones (*fiqh siyasi*)²³². The very operation of naming it “jurisprudence of minorities” is a not only a way to institute it as a sub-body of knowledge distinct from other sub-fields of jurisprudence on the basis of its object under the umbrella of “general jurisprudence” (*fiqh ‘am*), but is also a way to exemplify the open-ended process of rule-formulation in the sphere of interactions (*mu’amalat*) that is constitutive of social reality.

The constitution of the real as an epistemic problem for Islamic legal knowledge

As most contemporary Islamic scholars, al-Qaradawi, in his legal texts, posits a fundamental distinction between jurisprudence (*fiqh*) and reality (*waqi’*) in which reality is *external* to jurisprudence, and yet, *internal* to it. From this point of view, reality is not the mere space in which *Shari’a* rules are applied, it is also constitutive of jurisprudence itself for the scholar-mufti needs to have a thorough knowledge of contemporary social life and its complexity in order to formulate a legal opinion addressing a specific case. Hence, reality itself becomes part of rule production rather than the sphere where a blind application of an available stock of fixed rules occurs.

In pre-modern times, classical scholars would take into account local practices in the production of rules as Shafi’i famously did when he had to deal with a new social environment after he moved to Egypt from Iraq, an example frequently cited by contemporary and classical scholars. The jurisprudential category of “usage” (*urf*) has been notably used by muftis to formulate legal opinions taking into account the habits of local communities. Other scholars such as Ibn al-Qayyim would stress the fact that the mufti should “understand and grasp the real” (*fahm al-waqi’ wa al-fiqh fihi*) in each specific case as a process part of rule formulation²³³ for it is only through this knowledge that he can relate the case to the appropriate prescription to be applied in the social world. While mentioned in classical books of jurisprudence in relationship to cases to be adjudicated, the category of “the real” (*waqi’*) became increasingly used by Islamic jurists in modern times in connection to the emergence of discourses about “the social” and “the economy” in colonial administration as well as newly established universities²³⁴.

However, while the constitution of the real as a representational object of knowledge and intervention entailed the production of a new legal order by the state and its jurists as well as the

²³¹ Al-Qaradawi, *Fiqh al-Aqalliyat*, p.45.

²³² Al-Qaradawi, *Fiqh al-Aqalliyat*, p.32.

²³³ Ibn Al-Qayyim al-Jawziyya, *I’lam al-Muwaqqi’in*, vol.1, p.87-88.

²³⁴ Mitchell, *Colonizing Egypt*; Shakry, *The Great Social Laboratory*.

exclusion of *Shari'a* from, or its subjugation to it (for example in Family law)²³⁵, for Islamic scholars, the new “real” did raise questions about the very operation of rule production in Islamic jurisprudence (*fiqh*) and its effectiveness, but never about the relevance and significance of *Shari'a*. Of course, in the debates with Orientalists or intellectuals trained in Western universities, Islamic scholars (notably Muhammad Abduh) of the beginning of the twentieth century had to respond to the question: “Is Islam compatible with reason and modern civilization?” But *within* the community of Islamic scholars, it was the issue of *how* rules of Islamic jurisprudence grounded in *Shari'a* should be formulated that was debated and not whether or not *Shari'a* is able to regulate modern life. In other words, disagreement between Muhammad Abduh and Rashid Rida on the one hand, and on the other hand other Islamic scholars of their time was epistemological i.e. about the right procedures out of which *Shari'a* rules may be produced.

For Abduh, the social transformations brought about by the colonial order of the end of the nineteenth century deepened the gap between the rules of jurisprudence as formulated by Islamic jurists of his time and the new “reality”. For him, the rules condemning these changes, for example when related to the new banking system, have weakened the Muslim community as it was not able to develop its economy and wealth and was an easy prey for colonial powers. Even if debt’s usury (*riba*) is explicitly forbidden in the *Shari'a*’s foundational texts, it is in the higher interest of the community to allow it following a *Shari'a* principle, relied upon by classical Islamic scholars, and stating that the jurist should always prescribe the lesser of two evils (in this case, waiving a *Shari'a* rule in order to avoid colonial subjugation is part of *Shari'a* itself). For Abduh, the right attitude to have toward modern changes is neither to reject them nor to accept them totally but to examine them not on the basis of imitation (*taqlid*) of what the juridical schools of Islam (*madahib*) say about it but on the basis of a proper direct understanding of *Shari'a*’s sources, i.e. the Quran and the *Sunna*. Although Abduh is known for having authorized new practices that were rejected by most of the scholars of his time (and although he is often mentioned as “a liberal”), one should note here that these very legal opinions (but also his scholarly writings such as his exegesis [*tafsir*] of the Quran) were also a reenactment of *Shari'a*’s authoritativeness for they occurred in the name of the latter.

Abduh, and most importantly Rashid Rida, did not only contest the jurisprudential rules formulated by scholars faithful to imitation (*taqlid*) within each school (*madhab*), they also “recalled” the set of foundational principles and the corpus of texts upon which truth or falsity of claims may be assessed. For Rida, formulating these principles was also literally a “reduction” for there were “too much books” and “too much jurisprudential rules (*al-ahkam kathurat*) produced within the schools (*madahib*) and their branches”²³⁶ that made it more and more difficult for Muslims over centuries to learn the teachings of their religion. This operation of “reduction” is not only a way to (re)state what should be agreed upon, but most importantly, to state what is the scope of legitimate disagreement within the community of scholars. While in a jurisprudential context structured only around schools, disagreements between jurists only on the basis of the preferred/dominant opinion (*rajaḥ*) of the school they belong to are considered legitimate, they cannot be considered as receivable from a *Salafi* perspective (as advocated by Rashid Rida) if it is not supported by evidence from the Quran and authentic *hadith* of the *Sunna*. In the latter case, disagreements may

²³⁵ Esmeir, *Juridical Humanity*.

²³⁶ Rida, *Yusr al-Islam wa Usul al-Tashri' al-Islami*, p.7.

occur, but only over the right interpretation of the meaning of passages from the Quran or of authentic *hadith*.

Hence, the very act of reformulating a set of foundational rules (*usul*) upon which jurisprudential rules regulating collective life may be produced is a response to the constitution of “the real” as an epistemic problem for Islamic legal knowledge, which is itself related to the way scholars-jurists perceive the world in the late nineteenth and early twentieth centuries. It reinstates *Shari’a* less as a set of fixed substantive rules than as a generative relationality between the foundational texts and the world mediated by the jurist-scholar. In order to illustrate my point more extensively, I would like to study more closely the shift between “pre-modern” and “modern” forms of Islamic legal knowledge through an analysis of the logic of jurisprudence in eighteenth and early nineteenth centuries Egypt before returning to the twentieth century’s Islamic scholars.

Islamic legal knowledge and the juridical schools in pre-colonial times

In pre-colonial times, starting mainly from the second century of Islam, the transmission of jurisprudence occurred within communities of knowledge affiliated to one juridical school (*madhab*) among the main four in Sunni Islam. In a context where the everyday role of the scholar (*faqih*) was to his guide the local community, give legal opinions and teach its members Islamic legal rules, the *matn* (manual) describing the deeds to be performed and their conditions of validity was the most useful text. As it was usually destined to be taught and memorized by aspiring jurists, its main expected quality was concision (*ikhtisar*). They exemplify the rules to be considered the most widely used by, or the most important for, the juridical school, and what was expected to be known for a man to be considered a scholar able to enlighten the people. For example, *Kanz al-Daqa’iq* one Hanafi *matn* widely used in the nineteenth century in Egypt and mentioned by the late nineteenth century’s Islamic scholar Muhammad Abduh as an example of “decadent” scholarship did not display demonstrative forms of writing and the sources out of which the rules were derived. Its purpose was not *to prove* the truth of the rules but to allow for their easy appropriation by the scholar asked to give practical guidance.

However, the *matn* is not isolated from other forms of writing but is glossed over in commentaries, and related to collections of juridical opinions (*fatawa*). A *matn* may be “strengthened” by a commentary (*qawah al-sharh*), or even a commentary of a commentary that would made explicit the sources out of which the rules are derived, and include a hierarchy of authoritative voices *within* the juridical school leading to the eponym scholar-jurist i.e. one of the four Imams. For example one of the most important commentaries of the Hanafi school is the *Hashiyat Ibn-‘Abidin* (*Ibn ‘Abidin ‘s Commentary*) is a commentary of *Al-Dur al-Mukhtar* by Haskafi which is itself a commentary of *Tanwir al-Absar*, a *matn* by the sixteenth century jurist Tamartashi. Commentaries are not only ways to expand the meaning of the *matn*, or its primary commentary (through definitions and references to other works), or texts exposing differences of opinion and correctives to rules and claims made by other scholars of the same school, they are also works adding legal opinions to the jurisprudence of the school in response to new cases as the early nineteenth century’s scholar Ibn ‘Abidin puts it: “I added [to Haskafi’s commentary] several branches (*furu’*) [...], unveiled the problematic questions and showed the difficult cases (*kashf al-masa’il al-mushkila wa bayan al-waqai’ al-mu’dhila*)²³⁷.”

²³⁷ Ibn ‘Abidin, *Hashiyat Ibn ‘Abidin*, vol.1, p.4.

In a context where the production of knowledge is structured around the juridical schools, one does not need to master the procedures of extraction of the rules from the foundational sources (Quran, Sunna, consensus and analogical reasoning) to be recognized and authorized as a scholar-jurist (*faqih*)²³⁸. The latter name-title is deserved when one has memorized the rules related to the branches of jurisprudence (*hifzu al-furu'*) but does not necessarily know the sources²³⁹ and procedures out of which they are produced²⁴⁰. In this case, and in order to avoid any confusion with higher scholarly authorities, the scholar-jurist is also known as a *muqallid* (imitator). However, it does not mean that jurisprudence is autonomous from the *Shari'a* foundational sources. Rather, the rules are known to have been derived from them, but the *muqallid* is not required to display or to know the hermeneutical reasoning behind them.

Although, in the pre-modern period, jurists would claim a strong affiliation to their juridical school, they would acknowledge the existence of multiple juridical schools as a reality, as well as the possibility of disagreement and error that it entails²⁴¹ ("If asked about our school or the school of another jurist, we would respond: [we assume] that our school is right but is not free from errors, and [we assume that] the other school of is wrong but does not exclude right knowledge"²⁴²).

In the pre-modern context, procedures of truth seeking in jurisprudence were grounded in the knowledge produced within each of the four main juridical schools according to a hierarchy of sources, distinct from the foundational *Shari'a* sources (i.e. Quran, *Sunna*, consensus and analogical reasoning). In the *Hanafi* school, the hierarchy of sources also known as the "classification of issues" (*tabaqat al-masa'il*) is articulated around three categories: (i) *Zahir al-Riwaya* (reliable transmission) which includes six books authored by Muhammad Ibn al-Hasan al-Shaybani (*al-Mabsut*, *al-Ziyadat*, *al-Jami' al-Saghir*, *al-Sayr al-saghir*, *al-Jami' al-Kabir*, *al-Sayr al-Kabir*), (ii) *Masa'il al-Nawadir* are comprised of four books "*al-Kisaniyyat*", "*al-Haruniyyat*", "*al-Jurjaniyyat*" and "*al-Raqiyyat*" also authored by Muhammad Ibn al-Hasan al-Shaybani, (iii) *Al-Waqi'at* (also called *Nawazil* or *Fatawa*) and include several books such as *Nawazil al-Samarqandi*, *Majmu' al-Nawazil al-Natifi*, *Fatawa Qadi Khan*²⁴³.

For the *Hanafi* school, this hierarchy of sources is built upon the reliability of transmission of the legal rulings "formulated by the three" (*qawl al-thalatha*) in reference to Abu Hanifa and his two closest disciples, Abu Yusuf and Muhammad Ibn al-Hasan al-Shaybani. While the first category of sources (i.e. *Zahir al-Riwaya*) includes the most reliable sayings of the three scholars through multiple or well-known chains of transmission (*mutawatira aw mashhura*)²⁴⁴, the second category (i.e. *Nawadir*) refers to rulings still attributed to the three figures of the school but that are not as

²³⁸ As we will see below, only the higher ranked scholars-jurists called *mujtahid* are able to produce legal rules from these sources.

²³⁹ Unlike the science of the sources of jurisprudence which defines *fiqh* as the knowledge of the rules as produced from its sources (Quran, Sunna, consensus and analogical reasoning).

²⁴⁰ Ibn 'Abidin, *Hashiyat Ibn 'Abidin*, vol.1, p.25.

²⁴¹ Against the opinion saying that one should follow only the most knowledgeable of two contradictory opinions of two *mujtahid* should rely on what his heart tells him The *muqallid* should believe that the opinion of his Imam is probably right (*yahtamilu annahu al-haqq*).

²⁴² Ibn 'Abidin, *Hashiyat Ibn 'Abidin*, vol.1, p.160.

²⁴³ Ibn 'Abidin, *Hashiyat Ibn 'Abidin*, vol.1, p.226.

²⁴⁴ Ibn 'Abidin, *Hashiyat Ibn 'Abidin*, vol.1, p.226.

reliable as the ones found in the first category (they have been for example transmitted through only one chain rather than multiple or well-known ones). The third category encompasses the legal opinions (*fatawa*) formulated by later jurists (*al-mujtahidun al-muta'akhirun*) in response to questions for which they could not find statements about them (*wa lam yajidu fiha riwaya*) in the first two sources²⁴⁵.

In order to be able to produce legal opinions (*fatawa*), each jurist had to know enough about the scholars-jurists of his school and situate each one in “the hierarchy of jurists” (*tabaqat* or *maratib al-fuqaha*)²⁴⁶ which included seven classes: (i) the jurists able to produce rules from the *Shari'a*'s foundational texts (*tabaqat al-mujtahidin fi al-shar'*) and usually include the four Imams whose names are associated to each eponym juridical school, (ii) the jurists (such as Abu Yusuf and Muhammad Ibn al-Hasan al-Shaybani) able to produce rules *within* the juridical school following the principles set by their master Abu Hanifa (*mujtahidin fi al-madhab*) even if there may be differences of opinion with him regarding cases and branches (*furu'*), (iii) the jurists able to produce rules exclusively for new cases (*mujtahidin fi al-masa'il*) for which there is no textual precedent, and for which they follow the higher ranked jurists in the school, (iv) the “imitators” (*muqallidin*) who are not able to perform any form of *ijtihad* but can still “extract” rules for cases (*ashab al-takhrij*) for which there are ambiguous or unclear rules formulated by the higher ranked jurists, (v) the “people of juristic preference” (*ashab al-tarjih*) who are *muqallidin* able to show what is the preferable view between different views on the same issue within the school, (vi) the *muqallidin* able to differentiate between the weak and the most reliable transmitted views of Abu Hanifa and his disciples (and include jurists author of *mutun* and basic manuals such as *Al-Kanz* mentioned earlier), (vii) the *muqallidin* who do not have the abilities of the higher ranked jurists and are unable to differentiate between “the slim and the fat”²⁴⁷.

In this epistemic structure, social reality would be articulated into the body of authorized legal knowledge through the collection of recent legal opinions (*fatawa*). The incremental integration of recent cases would reenact the hierarchy of the sources of school (*madhab*)-based legal knowledge, which itself reflect the hierarchy of scholars-jurists. Their concern was not whether or not Islamic legal knowledge would constitute an obstacle for social “change” and “new” forms of collective organization (as it was the case for late nineteenth and early twentieth centuries scholars such as Muhammad Abduh and Rashid Rida), but whether or not recent legal opinions about new cases would be authoritative enough to be integrated into the existing hierarchy of knowledge. From this perspective, the present is a way to relate to the past rather than the other way around. The past is not constituted a way “to understand” or “explain” the present as modern forms of knowledge and sensibilities would do. Rather, it is the present that is constituted as a way to reenact the truth of, and the bond to, the foundational past.

In the modern context, knowledge is expected to describe the very “reality” that is has constituted as its object. Forms of knowledge that would not be able to tell us something about the present and the way we should envisage the future is considered “useless” and “outdated”. To a great extent, contemporary Islamic legal knowledge became the locus of the same expectations associated with social sciences. The thought of the late nineteenth and early twentieth centuries scholars such as

²⁴⁵ Ibn 'Abidin, *Hashiyat Ibn 'Abidin*, vol.1, p.226.

²⁴⁶ Ibn 'Abidin, *Hashiyat Ibn 'Abidin*, vol.1, p.253.

²⁴⁷ Ibn 'Abidin, *Hashiyat Ibn 'Abidin*, vol.1, p.256.

Muhammad Abduh and Rashid Rida exemplify these new demands put on forms of knowledge regarding the “new reality”. For them, opening up a space for the “new reality” as a representational object *within* Islamic legal knowledge was not possible by keeping the inherited *madhab* (school)-based forms of Islamic legal knowledge as well as their hierarchy of sources and jurists. Their scholarly project consisted in re-formulating the authoritativeness of *Shari’a* by “neutralizing” the authoritativeness of *madhab* (school)-based forms of Islamic legal knowledge. While *madhab*-based Islamic legal knowledge was subjugating the present to the past because its jurists did not have to deal with reality as an epistemic problem and had no doubt that the past was relevant for the present, the thought of both Muhammad Abduh and Rashid Rida was the locus of contradictory demands in a time of crisis: making the past relevant to the present while still subjugating the latter to the former. From their perspective, this could be done only by interrupting the inter-generational temporality of transmission and by reclaiming the foundational temporality of revelation. That is the reason why their work could neither be recognized as part of the work of their contemporaries following the *madahib* (schools) nor as part of “modern” forms of scholarly discourse but only as a kind of hybrid and unachieved intellectual project²⁴⁸.

All subsequent scholarly Islamic projects of the twentieth century, in a way very similar to Abduh and Rida’s writings, are the locus of tensions regarding the relationship between past and present. The very words of *tajdid* (translated as renewal), *islah* (translated as reformism) and *ihya’* (translated as revivification) relied upon by scholars to describe their own action exemplify the ambivalent temporality attached to contemporary forms of Islamic legal knowledge. Rejecting the inter-generational transmission because it does not speak to “the real” is already giving some authority to the present. And yet, the same present, whose authoritativeness has been acknowledged by the very operation of critique of the transmitted knowledge, should be subjugated to the past for the revealed law (*Shari’a*) and its foundational texts (the Quran and the *Sunna*) to remain authoritative. In other words, contemporary Islamic legal knowledge (and more generally contemporary Islamic discourse), claims the twin authority of foundational *Shari’a* as well as *the social reality of the present*. That is the reason why contemporary Islamic scholars and Islamic movements have been described by contemporary scholarship either as “traditional” or “modern”. This transformation is one of the most important shifts between previous and unprecedented forms of Islamic legal knowledge, and, more generally, is constitutive of the very distinction between the “pre-modern” and the “modern”.

The twin authority of past and present in contemporary Islamic knowledge is exemplified in al-Qaradawi’s jurisprudence and his attempt to articulate *tajdid* (renewal) with *asala* (authenticity). In his *Islamic Jurisprudence between Authenticity and Renewal (al-Fiqh al-Islami Bayna al-Asala wa al-Tajdid)* first published in 1986, al-Qaradawi raises questions about the relationship between the “old” (*al-qadim*) and the “new” (*al-jadid*) that are themselves words associated with unprecedented meanings enabled by a modern conception of time: “Authenticity does not mean to withdraw within the old and to reject everything that is new whatever harm is in the old and whatever good is in the new”²⁴⁹. Although al-Qaradawi condemns the refusal of “creativity” (*ibda’*) and personal effort (*ijtihad*) by those who stick to the “old”, he is also critical of the position accepting anything “new” for the motive that it would necessarily be “a progress” and a source of good. Al-Qaradawi is self-conscious of the emergence of these concerns in the modern context

²⁴⁸ See for example Albert Hourani’s assessment in *Arabic Thought in the Liberal Age*.

²⁴⁹ Al-Qaradawi, *al-Fiqh al-Islami Bayna al-Asala wa al-Tajdid*, p.24.

(“sound reason cannot accept the mere passing of time as the judge of the harmfulness of things”²⁵⁰), and suggests that renewal does not mean to destroy the old or to give it up, but means to preserve it, improve it and rehabilitate what has been damaged in it. Yet, any renewal in Islamic jurisprudence requires to understand the requirements of “the present time” (*hada al-‘asr*) whose “nature is rapid change” (*al-taghayyur al-sari*)²⁵¹.

The ease of Islam and the silence of the law

Published in 1928, Rashid Rida’s book *Yusr al-Islam wa Usul al-Tashri’ al-Islami* (*The Ease of Islam and the Sources of Rule Production in Islam*) is a compelling example of the way the “real” as a new category raises epistemological and methodological questions for Islamic legal scholarship that will inform the work of later scholars such as Yusuf al-Qaradawi. As the title suggests, Rida’s book is an attempt to show that *Shari’a* was not instituted to cause undue hardship (*‘usr*) but is meant to accommodate human life and the context in which its rules are formulated and applied. However, if the notion of ease (*yusr*) implies that the rejection of all forms of “modern” change has no ground in *Shari’a*, it does not mean “absolute permissibility” (*ibaha mutlaqa*) neither. Rather, it should be understood as “the path-method of the middle ground” (*manhaj al-wasat*) between on the one hand, the elites “supporting western civilization and positive legislation (*qawanin wadh’iyya*) and for whom Islamic law is no longer valid for our time”²⁵², and on the other hand, Islamic scholars (*fugaha*) who remain prisoner of imitation (*taqlid*) of their juridical school (*madhab*) and reject all forms of modern knowledge, technologies and social organization on the ground that they come from non-Muslims.

For Rida, the new real alludes to sciences, industry, “order” (*nizam*), “instruments of power” (*wasal al-quwwa*) and more generally to forms of materiality that cannot be contested for they are made self-evident, and can be grasped, by sensorial perception (*mushahadat hissiya*)²⁵³. In a context where the most important of these changes were rejected by the scholars sticking to their juridical school’s dominant opinion, the work of the right jurisprudential method is to authorize these changes for they are part of material life and competition between nations, unless there is an unequivocal textual passage from the Quran or an unequivocal *and* authentic text of the *Sunna* prohibiting it.

Rida posits the fundamental distinction between acts of worship (*‘ibadat*) and social interactions (*mu’amalat*), which will be also relied upon by Qaradawi in his jurisprudential works (starting from his *Lawful and Unlawful in Islam* published in 1960). As a way to reach happiness in worldly life as well as in the hereafter, the revealed law prescribes beliefs and acts of worship that do not vary according to time and place but leaves “worldly matters” (*al-umur al-duniyawiyya*) open to change in time and space in accordance with the humans’ interests (*masalih al-bashar*)²⁵⁴.

Rida’s understanding of the differentiation between acts of worship (*‘ibadat*) and social interactions (*mu’amalat*) is grounded in a prior distinction between utterance and silence in the

²⁵⁰ Al-Qaradawi, *al-Fiqh al-Islami Bayna al-Asala wa al-Tajdid*, p.25.

²⁵¹ Al-Qaradawi, *al-Fiqh al-Islami Bayna al-Asala wa al-Tajdid*, p.28.

²⁵² Rida, *Yusr al-Islam wa Usul al-Tashri’ al-Islami*, p.10.

²⁵³ Rida, *Yusr al-Islam wa Usul al-Tashri’ al-Islami*, p.14.

²⁵⁴ Rida, *Yusr al-Islam wa Usul al-Tashri’ al-Islami*, p.60.

revealed law, and more precisely, between what God and the Prophet Muhammad said and what they did not speak about. As a *hadith* relied upon by Rida (a *hadith* that will be also quoted by al-Qaradawi at the very beginning of his *Al-Halal wa al-Haram*), silence itself has a meaning and was given a normative status *within Shari'a*: “What God has authorized in His Book is lawful, and what He forbade is prohibited. And what He did not speak about (*wa ma sakata 'anhu*) is exoneration (*'afw*). Accept from God His exoneration for God does not forget anything, and then he recited this verse (*aya*) from *surat Maryem* 64: “Your Lord was never forgetful”²⁵⁵. The space of present and future deeds regarding interactions (*mu'amalat*) is not preempted by *Shari'a*'s positive or negative injunctions for, in the silence of the law, there is no clear prescription to do (as in worship) nor a clear prohibition from doing (as in interactions). Rather, the silence of the law exemplifies the ease (*yusr*) of Islam, and is a *call* to act in the world, and *speaks* for it.

For Rida, previous jurists (except a very few scholars), did not grasp the meaning of silence for jurisprudence and opened up a space of excessive questioning (*kathrat al-su'al*). This statement may seem paradoxical if we recall that it is through the possibility of question addressed to a scholar-mufti (*istifta'*) that the very operation of rule production (*ifta'*) is made possible over time and space when there is no available textual evidence from the Quran and the *Sunna*. Yet, it is precisely in this sphere of textual silence (in the Quran and the *Sunna*) that permissibility occurs for this silence *addresses* Muslims and tells them what God intended for them (as mentioned in the aforementioned *hadith*). Moreover, if we recall that for Rida, a *reduction* to a set of fundamentals is necessary to differentiate between true and false claims in Islam, everything that disturbs this reduction keeps Muslims away from the right practice of Islam. Hence, the excessive questioning gesture engendered an inflation of jurisprudential rules that have no ground in the Quran or the authentic sayings of the Prophet (*ahadith*), but were produced by an uncontrolled use of analogical reasoning (*qiyas*). As exemplified in Rida's legal thought, the very constitution of the “real” as a problem for Muslim life and Islamic legal knowledge, is itself part of the jurisprudential labor consisting in (re)formulating the generative rules (notably the grounding in the textuality of the Quran and the *Sunna*) through which substantive rules may be produced in accordance with “the needs” of the time and its space.

Yet, the “real” is not only constituted as an epistemic category calling for revisions in jurisprudential method but also a space of intervention. The production of the right Islamic legal knowledge is not circumscribed to a scholarly pursuit, but it is intertwined with its ability to shape the life of contemporary Muslims as exemplified by the notions of *islah* (usually translated as “reform”) and *tajdid* (usually translated as “renewal”). In contrast to what he described as the imitators of the juridical schools and to the intellectuals inspired only by the West, Rida presents his own approach as part of “*islah*” and “*tajdid*” whose goal are “the revivification of Islam (*ihya' al-islam*)” by relying on the foundational texts and exemplarity of the righteous predecessors²⁵⁶. The notion of *islah* means here the act of correcting the “wrong” jurisprudential method (and more generally “wrong” practices) as well as the act of doing the good in the world for the latter is possible thanks to the right knowledge. The man carrying out the enterprise of *Islah* is the *muslih* or the *salih* (derived from the same root *s-l-h*) who follows the model of the “righteous predecessors (*al-salaf al-salih*). *Tajdid* does not consist in producing the new but rather means the act of giving strength and vitality to Islam and its ability to guide the life of the community of faith

²⁵⁵ Rida, *Yusr al-Islam wa Usul al-Tashri' al-Islami*, p.61.

²⁵⁶ Rida, *Yusr al-Islam wa Usul al-Tashri' al-Islami*, p.10.

in the world. However, as we saw above, from Rida's perspective, *islah* and *tajdid* do not occur only in re-formulating the right utterances of the revealed law but also in the possibilities opened up by its silences. *Islah* and *tajdid* can be considered precisely as a way to revive the revealed law through a (re-) distribution and (re) articulation of the spoken and the unspoken in it.

The suspension of Islamic legal knowledge in the present

Another way to understand the constitution of the present and the “new real” as an epistemic problem for Islamic legal knowledge is to look briefly at the ways in which scholars such as Sayyid Qutb suspended the very production of Islamic knowledge. Because Qutb's position is not shared by almost any of contemporary Islamic scholars, it allows us to see precisely how the real-present is generative for Islamic jurisprudence.

For Qutb, it is no longer possible to address *Shari'a* and make it speak through jurisprudence (*fiqh*) because societies where Islam has been historically the religion of the majority of the people are no longer Islamic. Islamic jurisprudence can be alive only if it is grounded in Islamic forms of life in an Islamic society already existing in the present (*mujtama' islami waqi'i, mawjudun fi'lan*). Contemporary societies are facing problems and raising questions about forms of life that do not belong to the “Islamic society”, for the latter existed in the first times of Islam, or may exist in the future, but does not exist in the present “tense”. One cannot expect from, or ask Islam to come with jurisprudential solutions (*hulul fiqhiyya*) for a society that does know Islam or has left it (*hajara al-Islam*). From this perspective, the ability of jurisprudence to constantly produce new rules over time as a response to new situations and problems generated by contemporary life is not relevant for these situations and problems are not “Islamic” and would not arise in a “true” Islamic society²⁵⁷.

For Qutb, the transmission of Islamic legal knowledge from the past to the present is no longer possible not merely because its rules are not effective, but because Islam is no longer part of the real-present. In present times, Muslims live in a state of spiritual and moral defeat exemplified by the constitution of “reality”, rather than Islam, as an authoritative guide for their life: “The defeat consists in considering that the ‘real’ (*al-waqi'*), whatever it may be, is the basis [of everything] and the state which God's law should catch up with! But for Islam, God's path and His law come first and are the founding principles that should be followed by the people and for which the real needs to change in order to conform to”²⁵⁸.

Unlike al-Qaradawi who established a new legal sub-field about the jurisprudence of Muslim minorities in non-Muslim majority countries, particularly in the West, and for whom *Shari'a* speaks first to Muslims wherever the time-space they live in, Sayyid Qutb writes: “It is a laughable absurdity that we try for example to formulate Islamic legal rules dealing with the social and economic contexts in America or Russia [...]”²⁵⁹. While Islamic scholars such as Rashid Rida or Yusuf al-Qaradawi have constituted the real as a new major epistemic problem for Islamic legal knowledge reenacting *Shari'a* as a generative law for the present, particularly in the field of social relations and interactions (*mu'amalat*), Sayyid Qutb suspends the articulation of jurisprudence

²⁵⁷ Sayyid Qutb, *al-Islam wa Mushkilat al-Hadhara*, p.191.

²⁵⁸ Sayyid Qutb, *al-Islam wa Mushkilat al-Hadhara*, p.197.

²⁵⁹ Sayyid Qutb, *al-Islam wa Mushkilat al-Hadhara*, p.190.

with time because doing so would mean to acknowledge that the real is authoritative. For Rida and al-Qaradawi and almost all contemporary Islamic scholars, the jurist-scholar needs to respond to the contradictory demands of the past and the present, but for Qutb, there is no possible accommodation or negotiation because it is *either* Shari'a *or* the real that is authoritative²⁶⁰.

²⁶⁰ For Qutb, "Islam always faces the real (*al-waqi'*) but never submits to it. Rather, Islam makes the real submit to its vision, its path and its commands and keeps from what is natural [...] and expels what is corrupted.

Part IV
Episteme

Revealed Speech, *Ijtihad* and the Sources of Jurisprudence

Part IV

Chapter 9

Revealed Speech and the Sources of Jurisprudence: Order, Meaning and Deeds

For several Egyptians, the ouster of the president Mubarak after the demonstrations of January 25th 2011 opened up a horizon of possibilities but also of cleavages related to the nature of the political community to be formally (re-)constituted in the revolutionary context. Although the issue of the application of *Shari'a* by the state was raised by the Muslim Brotherhood as early as the 1930s and became a central element of the Egyptian political discourse since the 1960s, it was raised anew amid confrontation between “religious” groups (the Muslim Brotherhood or the *Salafi*-s) and “secular” movements (leftists, nationalists, liberals).

In March 2011, the constitutional declaration adopted by referendum put an end to the 1971 constitution and endowed the elected parliament with the prerogative to elect a constituent assembly of 100 members whose task was to write a constitutional project within a time-limit of six months, after which the project was presented for referendum. After the first constituent assembly was declared void on the ground that it offered too many seats to the Muslim Brotherhood and the *Nur* party labeled as *Salafi* comparatively to other socio-political currents, the parliament chose the members of a new constituent assembly that was considered more inclusive of the different political sensibilities of Egyptian society.

The constitutional debate that occurred in the revolutionary context was a unique moment of formulation of different conceptions of *Shari'a* and its relationship to the state. While several groups advocated for the removal of any reference to *Shari'a* in the new constitutive assembly, the Party for Justice and Liberty affiliated to the Muslim Brotherhood (whose president has been elected president in June 2012), and the *Nur* party remained attached to the reference to *Shari'a* in the constitutional text. However, while the Muslim Brotherhood pushed for the reference to “the *Shari'a*'s principles” as the main source of legislation²⁶¹, the *Nur* party battled for the adoption of “*Shari'a*'s commands” (*ahkam al-shari'a*) in the constitution.

It was amid the debate about the proper role of *Shari'a* in the new regime to be instituted by the Revolution that Sheikh Hasan al-Shafi'i, the head of Al-Azhar's delegation of scholars in the constitutional assembly, was asked to enlighten the latter regarding the meaning of *Shari'a*. For Sheikh al-Shafi'i, in a democratic state, Islamic scholars are part of a general institutional architecture based on the separation of powers and the independence of the judiciary system. As a collective entity such as Al-Azhar, Islamic scholars may have a constitutional status, they may be consulted to give legal opinions and their knowledge may be valued, but their prescriptions are only consultative and never coercive. It remains the prerogative of elected parliament members to

²⁶¹ The “*Shari'a*'s principles” were already mentioned as the main source of legislation in the 1971 constitution.

craft the law, and the task of judges to enforce it (“There is no rule of the scholar [*wilayat al-faqih*] in Sunni jurisprudence as the scholar’s task lies in the formulation of legal opinions [*ifta*’], advice [*nush*] and call [*da’wa*]”²⁶²).

As exemplified in Hasan al-Shafi’i’s approach²⁶³, the reference to “the principles of *Shari’a*” reenacts the latter as generative law requiring knowledge and skills rather than a set of fixed prescriptions. Most Al-Azhar’s Islamic scholars agree that claiming the authoritativeness of *Shari’a* rules for collective life does not consist in merely applying rules that would be immediately given in the Quran or the *Sunna*. From this perspective, the ability of the scholar to deal with the discipline known as the sources of jurisprudence (*usul al-fiqh*) is crucial for it precisely delineates the generative principles and procedures out of which legal rules may be formulated. Scholars who have a full command of this form of knowledge are usually qualified to practice *ijtihad* and are called *mujtahid*. However, if the *mujtahid* is at the top of the hierarchy of scholars, not all *mujtahid* have the same skills or the same authority for they may also be given a rank within a hierarchy of *mujtahid*. From this perspective, the reference to “*Shari’a*’s principles” in the constitutional debate does not mean the mere application of a set of an already available stock of rules but calls for an open-ended work of truth-seeking carried out by the *mujtahid*.

While for several classical scholars such as Muhammad Ibn Idris al-Shafi’i (d.820) analogical reasoning and *ijtihad* were synonymous and would occur only when there is no authoritative textual source (i.e. the Quran and the *Sunna*) out of which rules may be formulated, subsequent scholars would also refer to *ijtihad* as the formulation of rules on the basis of a comprehensive understanding of the foundational texts. The delineation of the skills and qualities required for *ijtihad* and the conditions under which a scholar may reach the stage of *mujtahid* were usually part of the last section of the books of the discipline known as *usul al-fiqh* (the sources of jurisprudence). For most classical and contemporary Islamic scholars, one cannot claim to be a *mujtahid* without a thorough knowledge of *usul al-fiqh*, along with other disciplines (notably commentary of the Quran, science of *hadith*, science of language).

The notion of *ijtihad* was central in the discussion about *Shari’a* at the time of the constitutional debate as it raised the question of the relationship between *Shari’a*, time and reality. The ability of Islamic legal knowledge to respond to “social change” was among the most pressing issues discussed in Egypt, as well as in Muslim majority countries long before the revolutionary context. Although the question of “change” in relationship to *Shari’a* is a modern concern raised in the colonial context and is closely related to the constitution of the “real-present” as an epistemic problem for Islamic legal knowledge described in chapter 8, it has also been discussed by post-colonial Arab intellectuals and Islamic scholars through the notion of *ijtihad*. In contemporary

²⁶²Hasan al-Shafi’i, *Shahadat Azhari M’uasir ‘ala Masar al-Tahawwul al-Dimuqrati fi Misr*, p.112.

²⁶³ For Hasan al-Shafi’i, the reference to “*Shari’a* principles” includes four elements that may inspire the act of legislation: (i) the sources of jurisprudence (Quran, *Sunna*, consensus, analogical reasoning, *istishan*, *istislah*), (ii) the general rules of jurisprudence such as “not being harmed nor harming others” (*la dharar wa la dhirar*)” or “the usage prevails (*al-‘ada muhkama*)” , (iii) the five *Shari’a* ends that include the protection of the self, religion, reason, offspring and property, (iv) the rules (*qawa’id*) relied upon by scholars (*mujtahidun*) in their effort to extract norms from *Shari’a* sources (for example the collectivity’s interest prevails over the individual’s interest), p.53.

times, Islamic scholars revisited the notion of *ijtihad* in a way that stresses the ability of *Shari'a* to generate new rules in response to social change²⁶⁴.

However, if *ijtihad* has been widely claimed in the twentieth century, as we will see below, the broader question of the ways in which the scholar should deal with *Shari'a* and its foundational sources for legal purposes –including *ijtihad*- is constitutive of Islamic legal knowledge at least since it was articulated in the first texts of *usul al-fiqh* (sources of jurisprudence) such as al-Shafi'i's *Risala* in the second century of Islam. From this perspective, any discussion about *ijtihad* entails a wider discussion about *usul al-fiqh* and the procedures out of which legal rules may be formulated.

In this chapter, I would like to study more closely the ways in which *Shari'a* is constituted as generative law requiring from the scholar-*mujtahid* to deal with its foundational texts following the procedures delineated in the sources of jurisprudence (*usul al-fiqh*) and involving other forms of Islamic knowledge. The production of Islamic legal rules is not available to anyone who can merely read the Quran and the *Sunna* but requires knowledge and training for the scholar to be able not only to give order and hierarchy to the textual sources and authenticate them when necessary –regarding the *Sunna*- but also to determine their meaning. Studying the ways in which Islamic scholars relate the production of legal rules to *usul al-fiqh* (the sources of jurisprudence) would allow us to better grasp not only what the reference to “*Shari'a*'s principles” means from the perspective of Islamic legal knowledge in the revolutionary and post-revolutionary constitutional debates in Egypt, but also more generally, the task, skills and labor of the scholar-*mujtahid* when engaging with the revealed law of Islam for this issue has not been raised only in 2011 or is even specific to the twentieth century but has been widely discussed among classical Islamic scholars. The revolutionary context, and more generally, modern times, did not put an end to the transmission of forms of Islamic knowledge such as the sources of jurisprudence. Rather, it shed light anew on the centrality of *Shari'a*'s procedural knowledge for regulative purposes within the Islamic polity in a context where concerns about the “ability” of Islamic jurisprudence “to accommodate” social change are raised.

As we will see below, *usul al-fiqh* (the sources of jurisprudence), as the discipline delineating the procedures out of which legal rules may be formulated for any scholar practicing *ijtihad*, gives order and hierarchy to the textual sources “capturing” revealed speech (i.e. the Quran and the *Sunna*) and deals with the linguistic conditions under which revealed speech calls for deeds. To a great extent, as understood by Al-Azhar's scholars such as Hasan al-Shafi'i, the reference to “*Shari'a*'s principles” in the Egyptian constitutional text reenacts the authority of the scholar-*mujtahid* mastering the discipline of *usul al-fiqh* (sources of jurisprudence) along with other Islamic forms of knowledge as the notion of “*Shari'a*'s principles” involves comprehensive generative procedures and inquiries rather than self-evident and immutable prescriptions. It sheds light on the ambivalence of revealed speech, whose manifest nature paradoxically requires perpetual decipherment from the scholars in charge of enlightening the community.

²⁶⁴ In the first passages of his *al-Ijtihad fi al-Shari'a al-Islamiyya (Ijtihad in Shari'a)*, al-Qaradawi recalls that *ijtihad* gives *Shari'a* its “fertility” (*khusuba*) and allows it to respond perpetually to new conditions of time, space and human change (p.6).

Al-Azhar and the transmission of Islamic knowledge

The scholarly sessions I attended in Al-Azhar Mosque in Cairo in Summer 2014, three and a half years after the January 25 uprisings, were an opportunity to have an ethnographic experience of the transmission of Islamic jurisprudence (*fiqh*) and other forms of Islamic knowledge in the post-revolutionary context. Although the lessons did not deal as such with the debates about the place of *Shari'a* in the modern state, the disciplines taught at Al-Azhar give us an idea of the Islamic forms of knowledge required for the training of contemporary scholars.

The lessons take place inside the mosque, in rooms devoted to scholarly activities. The scholar dispenses lessons of *fiqh* seating on a chair, while the students constitute a circle (in the literal sense) around him. During the month of Ramadan, the scholarly circles met every day from noon to 6 PM in Al-Azhar Mosque or in a *mazyafa* (guest house) made available to scholarly circles by a benefactor and used as a space dedicated to the courses on various disciplines of Islamic knowledge. The audience included Egyptians but also students coming from various parts of the Islamic world (Arab countries, Sub-Saharan Africa, Central Asia, South East Asia, the Balkans).

The courses of *fiqh* (jurisprudence) consist in reading a commentary (*sharh*) of a primal text formulating the main points of the jurisprudential school (*matn*). A student would read the text, and the sheikh would explain the main points. The oral commentaries of the scholar on the text of *fiqh*, which is usually itself a commentary of a commentary, help the addressee understand how the rules of *fiqh* should be formulated.

Islamic jurisprudence is taught along with other disciplines considered part of the “*Shari'a*’s sciences” (*ulum al-shari'a*): Arabic language (*ilm al-lughah*), commentary (*tafsir*) of the Quran, the science of *hadith* (sayings of the Prophet), the sources of jurisprudence (*usul al-fiqh*), *Kalam* (theology) and *Tasawwuf* (Sufism). When the scholarly’s circles members discuss the training required for a scholar to be able to practice *ijtihad*, they would usually say that it is required to know all these disciplines –except *Kalam* and *Tasawwuf*- but they would also particularly emphasize the importance of mastering the sources of jurisprudence and the science of language for these forms of knowledge, more than any other, enable the scholar to formulate rules out of the two foundational *Shari'a* sources, i.e. the Quran and the *Sunna*. Moreover, as we will see below, the sources of jurisprudence rely heavily on the science of language.

The genre of *usul al-fiqh* (the sources of jurisprudence) is particularly relevant for the anthropology of *Shari'a* as it offers the Islamic scholars’s self-reflexive insights on their labor of rule-production within the discipline of jurisprudence (*fiqh*). The formulation of legal rules is far from being arbitrary or based only on the memorization-transmission of the rules by the community of scholars. Rather, it displays an internal logic guided by the search for the (true) meaning of the Revelation’s texts (the Quran and the *Sunna*) for they are the site of the truth-good. For Islamic scholars, one cannot formulate Islamic legal rules by merely reading the Quran but needs to know how to articulate words and facts within the categories of Islamic legal knowledge as delineated in *usul al-fiqh*.

Although clearly distinct from each other, the disciplines taught in Al-Azhar Mosque and most Cairo's scholarly circles are also intertwined as they all deal with different aspects of revealed speech. These disciplines allow the scholar to address revealed speech according to three forms of inquiry: (i) the authenticity of the revealed speech's sources, (ii) the meaning of relevant utterances of authentic revealed speech, and (iii) the order and hierarchy of the revealed speech's sources for legal purposes. Although I will focus here on the sources of jurisprudence, other disciplines such as the science of *tafsir* (exegesis of the Quran) and the science of *hadith* (the sayings of the Prophet) will be also mentioned but only to the extent that they are related to the production of Islamic legal knowledge.

The sources of jurisprudence and revealed speech

As mentioned above, the works of *usul al-fiqh* (the sources of jurisprudence) are a distinctive genre of Islamic legal knowledge that delineates the generative procedures upon which legal rules may be formulated. While books of *fiqh* (jurisprudence) would describe the legal rules to be followed by Muslims usually according to a classification of deeds based on the distinction between acts of worship (*'ibadat*) and social transactions and relations (*mu'amalat*), they would not discuss the underlying assumptions and procedures out of which these very rules have been produced. It is true that the knowledge of legal rules for guidance within the local community does not require from the *faqih* (scholar) to know the generative procedures delineated in *usul al-fiqh* for it is sufficient to memorize the former. Yet, if the lowest ranks of scholars do not need to know *usul al-fiqh* for the tasks they perform, it is mandatory for any scholar performing *ijtihad* i.e. dealing comprehensively with the authoritative textual sources and producing legal rules in response to new cases wherever there is no available unequivocal and certain textual evidence.

The formulation of Islamic legal rules requires several forms of knowledge all related to the foundational speech of the Revelation. Classical disciplines relied on by Islamic scholars deal with speech from distinct and yet intertwined perspectives. As the time of the Revelation elapses and its direct witnesses are no longer among the living, the constitution of speech as the source of law across time and space requires from the community to establish what kind of speech is authoritative for legal purposes.

Although Islamic scholars share the general assumption that God's speech has been revealed to humans in order to be followed by them and instantiated in material deeds, not all divine speech is performative, and not all performative divine speech is homogeneously consequential. Works of *usul al-fiqh*, particularly in the part dedicated to the Quran (the first source of jurisprudence among the hierarchy of sources), allow jurists to differentiate between forms of speech and classify them for legal purposes. Under what linguistic –grammatical- conditions speech is expected to produce deeds, and be literally, materialized in the world? This relationship between speech and deeds is itself the condition of possibility of *Shari'a* as both Revelation and Law.

Revelation is already the foundational event, *the* speech-act instituting different orders of existence which reflect the duality, and coextensiveness of divine and human speeches. God's speech, as transmitted in the Arabic language, is perpetually generative of human deeds. Yet, although manifest, the meaning and the consequentiality of divine speech is not self-evident but requires the labor of (linguistic) reason, enlightened by the Prophet's deeds and sayings, to expect deeds

from words. That is why the production of a legal rule begins with the search for truth, or more precisely, with the search for the true meaning of the Quranic utterance, which is itself grounded in the knowledge, and right use of linguistic rules.

For classical Islamic scholars (for example al-Ghazali in his *Mustasfa*), although God's speech (*kalam Allah*) is incommensurable to human speech, it can still be transmitted and communicated to humans. God only is able to endow its creatures with the knowledge of His words without the mediation of any letter, sound or sign (*min ghayr tawasut harf wa sawt wa dalala*). Also, God alone may enable humans to hear His words without the mediation of any sound as it has been the case for Moses, Muhammad and all other Prophets. Even if humans have access to the words of God only through the mediation of angels and Prophets, divine speech remains unaltered for God speaks through them²⁶⁵. As such, the words of the Prophet Muhammad do not have legal authority, or more precisely, they have legal authority only to the extent that they reveal God's injunctions²⁶⁶.

At the time of the Revelation itself, the Prophet Muhammad made a clear distinction between the utterances that should be attributed to him, and the ones that are God's words. Both speeches are part of the Revelation (*wahy*), and both are transmitted to humans by the Prophet's tongue. God's words were memorized, recited and preserved by the *qura'*, but it was under the Caliphs Abu Bakr and 'Uthman - both Companions of the Prophet Muhammad-, that the Quran was collated in one volume. For the subsequent generations of Muslims the authenticity of the Quran, as well as its authoritativeness for the guidance of collective and individual life was without doubt. Since the second century of Islam, the main issue was whether the sayings of the Prophet Muhammad were binding, and if so, how one should relate them to Quranic speech.

Giving order and meaning to revealed speech: Shafi'i's *Risala*

How should one deal with revealed speech for "practical" ends, i.e. for legal purposes? To a great extent, the work of Muhammad Ibn Idris al-Shafi'i (d.820), *al-Risala* is a response to this question. As mentioned earlier, I mean here by legal the epistemic conditions under which speech calls for deeds. The labor of the *Risala*, and all subsequent works of *usul al-fiqh* (sources of jurisprudence) consists in producing differentiation *within* revealed speech (*wahy*) and allows Islamic scholars to think the differences and intertwinements between God's words -the Quran- and the Prophet's proper sayings -the *Sunna*- and their implication in terms of rule production.

Starting with the *Risala*, the works of *usul al-fiqh*, particularly when dealing with *ijtihad*, reenact Revelation as a generative speech even when it seems that it does not speak about new deeds, events and situations occurring in the life of individuals as well as the community. From this perspective, *usul al-fiqh* delineates the epistemic conditions under which revealed speech generates deeds, but also deeds generate revealed speech, or more precisely, make the silence of revealed speech speak. In other words, revealed speech gives life as much as life addresses revealed speech.

²⁶⁵ Al-Ghazali, *Al-Mustasfa*, p.192.

²⁶⁶ Al-Ghazali, *Al-Mustasfa*, p.189.

Muhammad Ibn Idris al-Shafi'i's *Risala* is one of the earliest attempts to give formal shape to the Revelation's speech according to its authoritativeness (who is the "author" of speech, God or the Prophet?) as well the explicitness of its utterances. Although Shafi'i does not use the name "*usul al-fiqh*" (the sources of jurisprudence), the *Risala* is considered as the first work delineating the contours of what will be known later as a proper genre-discipline²⁶⁷. Most importantly, the *Risala* posits the Quran, the *Sunna*, Consensus (*ijma'*) and *Ijtihad* as the four sources of jurisprudence, and establishes their hierarchy as well as the ways in which each one is related to the other. The *Risala* explores also the method upon which the meaning of utterances may be secured from the Quran and the *Sunna* as well as the extent to which the Prophet's reported sayings and deeds in the latter source are authentic.

As exemplified by the notion of *bayan* -the key notion explored in the *Risala*²⁶⁸, al-Shafi'i is interested in making the meaning of speech manifest. *B-y-n*, the root of *bayan*, refers to the act of separating, showing and making evident, unveiling and signifying. As used by al-Shafi'i, *bayan* may be understood as the ensemble of signs and significations (*ma'ani*) meant to be disclosed for whoever has been addressed by Quranic speech. Although Revelation is the speech-event that sustains itself by itself, and does not need any form of recognition by humans, it nevertheless establishes the possibility of transmission and communication between distinct ontological orders -as well as within the community- as it *addresses* speaking and listening beings. Yet, the signs of the *bayan* are not homogeneously explicit and require different labors of decipherment. Put in al-Shafi'i's words, "God's rules" (*ahkam Allah*) are either explicit (*nassan*) for the addressee or need to be formulated after the work of inferential reasoning based on evidence (*istidlal*).

The labor of *usul al-fiqh* consists in producing classifications of, and within revealed speech according to both its authorship and its degree of explicitness. More specifically, following al-Shafi'i's *Risala*, the signifying revealed speech includes four main categories:

²⁶⁷ Malik's *Muwatta'* offers another way to deal with the relationship between speech and deeds. While Muhammad Ibn Idris al-Shafi'i, in the *Risala*, offers a method of organization of the sources of revealed speech within a hierarchy of authority, and delineates the procedures out of which prescriptions may be "extracted" from, or deeds assessed against, what is instituted as the sources, Malik's *Muwatta'* is rather an attempt to record the Islamic prescriptions according to the practices of the community of Medina considered as the most faithful to the Prophet's exemplarity. If the *Risala* grounds the search for truth -or more precisely, the true prescription- in the relationality of the scholar with revealed speech orally transmitted and inscribed in texts and instantiates rule production as a generative process, the *Muwatta'* encompasses the rules to be followed by Muslims as already embodied practices transmitted from Medina's community. That is the reason why, in contradistinction to the *Risala* which does not formulate a set of deeds to be executed, the *Muwatta'* is organized according to the nature of the deeds to be performed starting with acts of worship (obligatory prayer, fasting the month of Ramadan, almsgiving, pilgrimage in Mecca) and including social interactions and transactions (marriage, contracts, punishments...), and reenacts Islamic prescriptions as a set of fixed rules-practices to be followed by the community of faith over time. However, although Malik does not make explicit the procedures upon which the rules are produced and does not articulate a hierarchy of sources-speeches, he nevertheless relies on assumptions about the authoritativeness of revealed speech, including the Prophet's sayings, that are similar to al-Shafi'i's.

²⁶⁸ Al-Shafi'i does not use the word *fiqh* (jurisprudence) or *Shari'a* (revealed law) in his *Risala* but puts at the center of his work the *bayan*.

- (i) What has been signified explicitly to “God’s creatures” (*ma abanuhu li khalqihī nassan*) in the Quran²⁶⁹ and refers to obligatory deeds (prayer, almsgiving, pilgrimage and fasting) as well as to prohibitions (such as wine and fornication and eating blood, the dead and pork).
- (ii) The detailed deeds associated with the general obligations (mentioned in the first category) and “signified by God through the tongue of His Prophet” (*bayyana kayf ‘ala lisan nabīyyihī*) such as the number and time of prayers.
- (iii) What has been instituted/legislated by the Prophet (*ma sanna rasul Allah*) and for which there is no textual/explicit rule (*hukm*) of God. Although this category of speech does not correspond to God’s speech, it is nevertheless authoritative and requires obedience from the addressees because God made obedience to His Prophet (*ta’a*) and his commands obligatory. Or put another way, the Prophet’s speech is authoritative only to the extent that it is God’s command.
- (iv) What God has prescribed as *ijtihād*. As an example of the latter, al-Shafi’i mentions the way one may determine the direction in which Muslims should pray (*qibla*) in a place where “the eye is not able to envision the Great Mosque of Mecca (*masjid al-haram*)”. In this case, “God has oriented his creatures (*khalqihī*) toward the use of *ijtihād* [...] which relies on reason (al-Shafi’i uses the plural *‘uqul*) that he endowed them with (*bi al-‘uqul allatī rakaba fihim*). Reason is not only the faculty able to produce differentiations (“reason distinguishes between things and their contrary”), but most importantly, the faculty able to distinguish between, and read, the signs (*‘alamat*) out of which the right orientation of prayer may be known in a situation where the Great Mosque of Mecca cannot be seen by the eyes. These signs are co-present to humans in the world and include “mountains, nights and days and winds” as well as “the sun, the moon and the stars which rise, set and positions can be known from the heaven (*al-falak*)”²⁷⁰.

As exemplified in al-Shafi’i’s *Risala*, unlike the “extraction” of rules from God’s words and the Prophet Muhammad’s sayings, *ijtihād* does not deal with revealed speech as such. Rather, it is an event, a deed or a situation for which the scholar cannot find a corresponding speech that makes him turn to *ijtihād*. And yet, it is precisely out of the possibility of addressing revealed speech in search for the rule that *ijtihād* is enabled. From this perspective, there is no difference between the production of rules directly from the Quran and the *Sunna* on the one hand, and on the other hand, from *ijtihād* as both are based on the relationality between scholar and revealed speech, and both reenact the authoritativeness of revealed speech. Now, of course, the difficulty of *ijtihād* lies not only in making revealed speech speak out of its silence, but also in the attempt to produce a rule that may or may not be true. That is why the very notion of *ijtihād* stresses the effort that one should rely on in search for the rule in a situation of silence and incertitude.

If the production of rules out of revealed speech (Quran and *Sunna*) as well as *ijtihād*, is the movement from revealed speech to life, enabling words to give life and shape to deeds, it exemplifies also the movement from life to revealed speech, making deeds (either past or potential deeds) the events addressing revealed speech, for there is no situation or case for which revealed speech cannot speak. However, when the scholar-jurist makes the revealed speech speak, it does not mean that his words are, or can be part of revealed speech for the integrity of the latter is clearly

²⁶⁹ Al-Shafi’i, *Al-Risala*, p.37.

²⁷⁰ Al-Shafi’i, *Al-Risala*, p.39.

differentiated and delimited from other forms of speech, and preserved in the double movement of writing and memory. Rather, the scholar, when performing *ijtihad* can only establish a relationship between his speech and revealed speech through analogical reasoning (*qiyas*) as revealed speech encloses not only rules to be followed, but also the forms and relations out of which new rules may be generated as a response to life and its events.

As implied in the very notion of analogical reasoning (*qiyas*), the production of rules occurring under this category is constituted through the relationality inscribed in analogy. The distinction between rules directly “extracted” from the Quran and the *Sunna*, and the rules produced by *qiyas* assumes the correspondence between (revealed) words and deeds as well as the possibility of their mismatch. When a deed, a case, a situation occurs where there is no corresponding utterance-prescription in revealed speech, the task of the scholar-jurist is precisely to find the elements of correspondence between them.

Words and deeds

After the death of the Prophet and his Companions, several questions regarding the conditions under which deeds may be prescribed or prohibited, or one may say, regarding the conditions under which one may speak in the name of revealed speech, were raised. For Islamic scholars of the first century such as al-Shafi’i, knowledge (*ilm*), grounded in the Quran, the *Sunna*, consensus and analogical reasoning, is required to utter judgments about deeds for “not anyone can merely say: ‘this is lawful or this is unlawful’”²⁷¹. The possibility of production of truth-claims about, and differentiations of deeds, is predicated upon the very notion of human knowledge of the foundational texts, distinct from, and mediating between revealed speech and unscholarly speech. The possibility of revealed speech, as mediated by knowledge, (re)-establishes the distinction between words and deeds, and enables the very notion of law, understood as the speech differentiating between, and calling for, deeds.

Knowledge of revealed speech requires the knowledge of Arabic language and its nuances as the former has been transmitted through the “Arab’s tongue” (*lisan al-‘arab*)²⁷². The linguistic distinction between forms of speech addressing the general (*‘amm*) and the particular (*khass*) determines to whom God is speaking in the Quran. As relied upon by Islamic scholars, this distinction grounds revealed speech in relationality, in which speech is not an end in itself but is instituted as a medium through which God apostrophizes the humans. For example, when God says “We created you men and women, and made you nations and tribes so you can know each other”, it is clear for al-Shafi’i that “each self has been addressed by this speech at the time of God’s Prophet, before and after it”²⁷³. But when God says “*Ina akramakum ‘inda Allah atqakum*” (the most noble among you are, for God, the most pious) in the same verse of *surat al-Hujurat* (13), He is differentiating between the people according to their piety, and referring specifically to those who are the most pious.

Within the community, not all individuals are required to perform acts of devotion such as the obligatory prayer (*salat*) and the fasting of Ramadan for these deeds are obligations only for those

²⁷¹ Al-Shafi’i, *Al-Risala*, p.47.

²⁷² Al-Shafi’i, *Al-Risala*, p.48.

²⁷³ Al-Shafi’i, *Al-Risala*, p.61.

mature and endowed with sound mind (*balighin 'aqilin*). Legal responsibility, understood as the call for –or avoidance of– deeds, is determined by the relationship between revealed speech and its addressees. Yet, the addressees of revealed speech are not self-evident and are identified by scholars on the basis of revealed speech itself. Only those who are endowed with reason, or more precisely, those able to grasp the significance of obligation, are constituted as addressees of revealed speech. For example, the insane (*majnun*) or the young boy (*sabi*) before reaching maturity (*bulugh*) are not considered as addressees of speech, and are not expected to perform the required deeds. Legal subjectivity is possible only at the moment one becomes addressed by revealed speech. Yet, the addressee is not necessarily the one who can read and understand the verses of the Quran, or the sayings of the Prophet. Rather, the addressee is the one who can grasp the notion of obligation itself, and be addressed by scholars who mediate between the knowledge and understanding of revealed speech and the community.

Revelation and forms of speech: Quran and Sunna

If Islamic scholars, and more generally Muslims, refer to revelation and revealed speech (*wahy*) as the foundational moment for the institution of law and the deeds it prescribes, they nevertheless make a clear distinction between God’s words and the Prophet’s sayings (*Sunna*). At the time of al-Shafi’i, it was not a matter of consensus that the Prophet’s speech would be authoritative for legal purposes. Al-Shafi’i’s *Risala* may be read precisely as an attempt not only to institute the Prophet’s words as authoritative in relationship to deeds but also to show how the Quran’s prescriptions should be understood in the light of the *Sunna*, and more generally, how to think the two forms of revealed speech in relationship to each other.

Several developments of the *Risala* are an attempt to show that obedience to the Prophet’s prescriptions is part of God’s command as proved by several Quranic verses such as *surat al-Nissa’* (80): “Whoever obeys the Messenger obeys God”. Faithfulness (*iman*) would remain incomplete if one has faith only in God but not in the Prophet Muhammad.

Establishing the relevance of the *Sunna* on firm grounds for performative purposes does not mean that the latter may have an authority superior, or even equal to, the Quran’s. Here, authority is determined by the following question: when the forms of revealed speech mention the same deeds in distinct or even divergent ways, which words prevail over the other? For Islamic scholars, if God’s voice and the Prophet’s voice are clearly distinct, they are never discordant. Assigning a formal status to the *Sunna* as al-Shafi’i does in the *Risala* goes along with the institution of a hierarchy of sources, in which the Quran is the highest source-speech from which prescriptions of deeds are derived. Hence, at the same time the proper authority of the *Sunna* is (re)established, the authority of the Quran over the *Sunna* is reaffirmed, as exemplified in the resolution of possible divergent prescriptions. The Prophet’s sayings can never “abrogate” the words of the Quran (*al-sunna la nasikha li-al kitab*)²⁷⁴ but are always in accordance with, and following the latter.

In *surat Yunus*, 15, God addresses specifically the question of revelation and Quranic revealed speech and the denial of the divine authorship: “Whenever Our messages are conveyed to them in their all their clarity, those who do not wish to meet Us say: ‘Come with a recited speech (*qur’an*) other than this, or alter it. Say [O Messenger]: ‘It can never be possible for me to alter it of my

²⁷⁴ Al-Shafi’i, *Al-Risala*, p.83.

own will; I follow only what has been revealed to me””. For al-Shafi’i, this verse shows not only that God has compelled His Prophet to follow only what has been revealed to him, and to never change God’s words for others, but also to never abrogate God’s speech with his own sayings. Moreover, the abrogation of Quranic utterances occurs only with the Quran, (i.e. with other Quranic utterances) as it is recalled in the Quran itself in *surat al-Ra’d*, 39: “God erases or confirms whatever He wants, for with Him is the source of the Writ”, or in *surat al-Baqara*, 106: “Any message We abrogate (*ma nansakhu min ayatin*) or assign to forgetfulness, We replace with a better [message] or a similar one.”

The formulation of prescriptions regarding the obligatory prayer (*salat*) is an illustration of the way the *Sunna* is related to the Quran. While, in *surat al-Nissae*, 103, God says: “the prayers have been prescribed to the believers according to specific times”, the prophet showed (*sanna*) the ways in which this prescription should be performed, notably the number of daily prayers, the number of *rak’at* (movement) for each prayer, the silent or out loud utterance of Quranic and devotional formulas at the opening and at the end of prayer²⁷⁵.

When al-Shafi’i, as most Islamic scholars, says that the Prophet Muhammad has shown the community how to perform certain deeds prescribed by the Quran, he is referring not only to the Prophet’s speech but also to his deeds. For the *Sunna* consists precisely in positing, showing and making clear (*sanna*) God’s speech, and is not, therefore, restricted to Prophetic speech. However, the description of the exemplary deeds of the Prophet is transmitted by their witnesses through speech, which has been put in writing and collated several generations after the Prophet’s death. These deeds literally embody God’s speech and show the community how to perform divine prescriptions. The twin nature of the *Sunna* – direct speech and witnessed deeds- reenacts the foundational relationship of speech to deeds in the institution of the law.

²⁷⁵ Al-Shafi’i, *Al-Risala*, p.115.

Part IV

Chapter 10

Revealed speech and *ijtihad*

Revealed speech and *ijtihad* in the modern polity

Keeping in mind the ways in which *usul al-fiqh* (the sources of jurisprudence) starting with al-Shafi'i's *Risala*, deals with revealed speech, the mention of “*Shari'a*'s principles” in the Egyptian constitution may be understood as the reference to revealed speech within a juridical-political language that authorizes itself from itself, or more precisely from the self-enunciatory capacity of the state, which does not require the reference to a speech other than the one that it utters. While the juridical-political language of the modern state mentions “the people” and “the nation” that it claims to represent as part of the same (worldly) order of existence, the reference to revealed speech introduces a distinct order of existence whose signs need to be deciphered and translated into the juridical-political language of the state.

For the community to be guided by the scholarly discussion of *usul al-fiqh* and *ijtihad*, the authority of revealed speech needs to be formally acknowledged within the language of the nation-state. The constitutional mention of *Shari'a* allows precisely the national community to have this conversation as it allows formally the voice of Islamic scholars to be heard. Yet, it is a possibility that does not predetermine the practical content of the reference to *Shari'a* as it enables the Islamic scholarly discussion of *usul al-fiqh*, with its distinct approaches and disagreements, rather than the adoption of set of fixed *Shari'a* rules.

In pre-modern times, there were also controversies about the authoritativeness of revealed speech. However, disagreements, (notably between *ahl al-hadith* [the people of hadith] and *ahl al-ra'y* [the people of reasoned opinion]) were about the ways in which revealed speech is authoritative, and notably whether the *Sunna* is authoritative for legal purposes. For example, within the *kalam* debates²⁷⁶, scholars among the *mu'tazila* such as al-Jahiz would not contest the authority of the Prophet or the Prophetic speech as such but would consider that Islamic scholars should remain skeptical about the legal authoritativeness of the *Sunna* as the accuracy of transmission and their overall authenticity is subject to too many uncertainties. In modern times, it is the authority of revealed speech as such, including both the Quran and the *Sunna*, that is contested. For seculars, the disciplines dealing with revealed speech can no longer pretend to be forms of knowledge out of which rules regulating collective life are formulated as it is now the realm of state law and modern juridical sciences to do so.

In modern times, the contemporary *mujtahid* is not only asked to deal with new cases but is required to deal comprehensively with *Shari'a* sources in response to the claims and constraints of the modernist legal-political order. His task is to carve a place for the Islamic episteme within the

²⁷⁶ Chapter 12 deals more extensively with the discipline of *kalam*.

modernist episteme as the former assumes the authority of revealed speech for the regulation of collective and individual life, while the latter does not acknowledge it. To a great extent, the contemporary *mujtahid* needs to speak and mediate between the two epistemic-legal languages while reenacting the authoritativeness of revealed speech.

Put another way, the main concern of contemporary Islamic scholars and several segments of Muslim societies, including Islamic movements, may be translated into the following question: how the authoritativeness of revealed speech for legal purposes can be insured within the contemporary polity structured by the language, forms and episteme of the modern state law? While several Islamic scholars suggested that they should have a more or less formal role within the modern polity, the extent to which this role should be constitutionally acknowledged within state-institutions has been debated. Most important, contemporary Islamic scholars wrote extensively on the qualifications and forms of knowledge required from the scholar-jurist for him to be authorized to deal comprehensively with *Shari'a* and speak in its name in the modern context. One of the main difficulties raised by the question of *Shari'a*'s authoritativeness may be captured by the following questions: To what extent revealed speech as collected in *Shari'a*'s textual sources - the Quran and the Sunna- is coextensive to specific forms of knowledge and life? Can inherited forms of knowledge dealing with revealed speech generate distinct forms of life and legal regulation in a context where forms of life have radically changed and generated new forms of knowledge and a new legal order?

The will to authenticate, decipher and give order to revealed speech, as well as the will to understand its nuances and subtleties has guided the development of various forms of Islamic knowledge for centuries. Yet, Islamic scholars, while regulating collective life and dealing with a multitude of cases in everyday life, never felt the need to develop what we call today the knowledge of "the social", "the real" and "the present". It was only at the end of the nineteenth century that "the real" was posited as a problem requiring a comprehensive approach and a reassessment of the Islamic episteme as the ability of inherited forms of knowledge to translate revealed speech into deeds in the modern context was questioned.

Following al-Shafi's *Risala*, major works of *usul al-fiqh* such as al-Ghazali's *Mustasfa*, or al-Shatibi's *Muwafaqat* that are relied on by contemporary Islamic scholars belong to the same episteme in which knowledge is produced in relation to revealed speech, as it is revealed speech and the meaning of its utterances that needs to be known for humans to live and act in accordance with the revealed law. Moreover, like al-Shafi's *Risala*, these works reenact the foundational authority of the Quran and the Sunna as the two fundamental sources of jurisprudence (followed by consensus and analogical reasoning) and carve the space of *ijtihad*.

Classical *ijtihad* and its requirements

Literally, *ijtihad* refers to the effort made by someone while doing difficult deeds. In Islamic jurisprudence, *ijtihad* refers not only to the effort made by the scholar in his attempt to formulate legal rules, but also to the specific knowledge produced by the scholar when the Quran and the Sunna are considered silent or in a situation of incertitude. In his search for the right legal rules notably when confronted to new cases, the *mujtahid* is expected to pursue his intellectual efforts until he reached his own limits and feels he cannot go further. For classical scholars such as al-

Ghazali, *ijtihad* refers also to the ability of the scholar to deal comprehensively with the Quran and the Sunna, which involves the mastering of the discipline of *usul al-fiqh*²⁷⁷.

For classical scholars, there are several epistemic conditions that need to be met for the scholar to reach the stage of *ijtihad* and being considered as a *mujtahid*. These epistemic qualifications are all dealing with revealed speech and related to the scholar's ability to grasp its order and meaning. The scholar is expected to know the Quran, and more specifically, the *ayat al-ahkam* (verses of the rules) out of which legal rules can be formulated and estimated to be around 500 *aya*²⁷⁸. The scholar should also know the *ahadith* (reported sayings and deeds of the Prophet) dealing with the rules and estimated to amount to several thousands.

Yet, this substantive knowledge of the relevant foundational texts does not necessarily mean that the scholar has the skills "to extract" from it legal rules. The scholar is also expected to master the procedural knowledge, including the linguistic rules under which revealed speech, while addressing the whole community or only a group of people, calls for deeds (or prohibits certain deeds) to be performed under certain conditions of time and space. Along with the science of *hadith* which determines the truthfulness of the transmitted reports about the sayings and deeds of the Prophet, the knowledge acquired by the classical *mujtahid* in the sources of jurisprudence (*usul al-fiqh*) is mainly co-extensive with the science of language (*'ilm al-lughah*) as the latter remains the most helpful discipline in the search for the meaning of revealed speech's utterances.

Although not dealing directly with revealed speech, the consensus of scholars and the use of reason are two other domains of knowledge that need also to be mastered by the *mujtahid*. While the knowledge of the scholars' consensus allows the *mujtahid* to not formulate legal opinions that would contravene what the scholarly community has already agreed upon, the use of reason enables the scholar to delimit the almost limitless space of human action unbound by the rules as extracted from revealed speech. In the latter case, the use of reason is associated with the original removal of rules (*mustanad al-nafy al-asli li al-ahkam*), i.e. the removal of hardship and difficulties for human deeds (*suqut al-haraj*)²⁷⁹. For any deed, fact or event that may be assessed against its lawfulness, the foundational principle remains the original "authorization" and "spontaneity" of human action that can be bound only by an explicit text or related to the textual sources through analogical reasoning. For example, the use of reason allows the scholar to determine that Muslims are not required to fast *Shawal*, the month following Ramadan as the textual proofs mention only the obligation of fasting for the latter. The use of reason allows also the scholar to establish that a sixth daily prayer is not a legal obligation for Muslims as the proofs unveiled by revealed speech show that the obligation covers only five prayers.

While the qualifications required from the *mujtahid* are all oriented toward revealed speech and the ability to grasp its meaning, the object of *ijtihad* itself is devoted to the formulation of new legal rules notably in response to events, facts and deeds as it opens up an epistemic space in which individual and collective life can perpetually be related to revealed speech on a case by case basis. Yet, the object of *ijtihad* should deal exclusively with matters that are not considered as belonging to the domain of certainty, i.e. for which there is no certain proof (*dalil qat'i*). For example, it is

²⁷⁷ Al-Ghazali, *Al-Mustasfa*.

²⁷⁸ Al-Ghazali, *Al-Mustasfa*.

²⁷⁹ Al-Ghazali, *Al-Mustasfa* p.528.

not expected that the scholar will rely on *ijtihad* to determine whether the five daily prayers or almsgiving are obligatory as these rules already belong to the domain of certainty as agreed by the community of scholars and proved by the textual source²⁸⁰.

***Ijtihad* in contemporary times**

Compared to classical works of *usul al-fiqh* where the main subject-matter is the procedures upon which legal rules may be formulated on the basis of the right understanding and use of revealed speech and in which the last chapter deals with *ijtihad* following others dealing with *Shari'a*'s sources, works by contemporary scholars since the beginning of the twentieth century have been increasingly devoted entirely to the specific question of *ijtihad*.

The question of *ijtihad* has also been part of the modernist discourse as contemporary Muslim thinkers showed an interest in it and believing that the reliance on it would allow Islamic normativity to better cope with the changes brought about by modern life. The “reopening of the gate of *ijtihad*” has been, and still remains, a widely circulated trope, as it is expected that it would lay the ground for an intellectual “re-foundation” of Muslim societies and systematize the adoption of “enlightenment thought” and modernist modes of reasoning. Yet, the meaning and scope of *ijtihad* as understood by modernist intellectuals remain distinct from its technical meaning and usage within Islamic legal knowledge.

Contemporary Islamic scholars are under contradictory pressures from different segments of Muslim societies. On the one hand, they are expected to be the custodians of the normativity of Islam and its effectiveness in a time where modern life and state legislation seem to threaten what is understood as the Islamic life and the authoritativeness of *Shari'a*. On the other hand, Islamic scholars are also required, particularly from the state and economic elites, to legitimize these very social, economic and political changes associated with modern life. In response to these contradictory pressures, several Islamic scholars claim that their role is precisely to rely on a balanced perspective that represent “the middle ground” (*al-wasatiyya*) between the two views.

The way texts are understood and relied on for the purpose of rules formulation is the main epistemic source of disagreement among scholars asked to give legal opinions about various aspects of contemporary life. For Islamic scholars who are proponent of the middle ground (*wasatiyya*), “the neo-*zahiri* school” (as they have been called by the latter scholars) remain subjugated to a literal-textual approach (*nassi wa harfi*), relying excessively on the *hadith* (reports of the sayings and deeds of the Prophet) without taking into account the procedures of rule-production delineated in the sources of jurisprudence (*usul al-fiqh*) or the ultimate goals and objectives of the revealed law (*maqasid al-shari'a*). For the proponents of the *wasatiyya*, it is on the basis of this literalism that some scholars have declared for example that technological innovations such as photography, television or cinema are unlawful on the basis of a literal interpretation of a *hadith* condemning the act of picturing. On the other hand, the *wasatiyya* scholars would also distantiate themselves from the “excess of permissiveness” which consists merely in making lawful “the real as it is”, or “as wished by political power”, as it reflects a form of defeatism in the face of western civilization and its way of organizing collective or individual

²⁸⁰ Al-Ghazali, *Al-Mustasfa* p.31.

life²⁸¹.

As the school of middle ground between permissiveness and harshness, the *wasatiyya* endeavors to reconcile the commitment to *Sharia*'s texts with its ultimate goals and objectives (*maqasid*)²⁸², in which the particular cannot supersede the holistic, or the probable what is certain. In this approach, the textual prescription that has been established as certain as regards both its authenticity (for the *hadith*) and its meaning (for example the obligation of fasting during the month of Ramadan) cannot be the object of *ijtihad*. In the meantime, the *wasatiyya*'s scholars underline the need to take into account the "spirit of the time" and "its needs" that reflect notably the industrial and technological revolutions and major epistemic changes, including the development of new forms of knowledge²⁸³.

In the contemporary Islamic scholarly field, the disagreements over the production of legal knowledge reflect not only distinct understandings of *Sharia*'s texts, but also a fundamental agreement about the relationship between "texts" and "reality", in which the community should get back to the latter to orient and regulate collective and individual deeds in "the real". Both assume that "texts" are distinct from "reality" as they belong to both divine and mundane orders of existence, and embody the bridge between the two. However, they are as "real" as the social reality they regulate but their content as well as their authoritativeness, notably the Quran's, is not subjected to the passing of time or the change of space. Hence, the delimitation of the intertwined spheres of "the certain" (*qat'i*) and "the probable" (*zanni*) within *Shari'a*'s texts determines the space of *ijtihad* and its limits, and determines the scope of disagreement among Islamic scholars.

Contemporary secular thought in Muslim societies assumes that *Shari'a*'s texts have no authority over the real but are rather part of the real and the production of human activity without being the ground on which rational truth may be based. These texts, like any other text, should be subjected to "critical reason" and to the same methods relied by human and social sciences to study the real. Their meaning can only be "historical", as a way to understand past Muslim societies but cannot be relied on to regulate their present and future without questioning as they represent one discourse among others in the public sphere and it remains the choice of each individual to follow that path in his private sphere²⁸⁴. Hence, there is no room for the central distinction between certainty (*qat'i*) and probability (*zanni*) made by both classical and contemporary Islamic scholars when dealing with *Sharia*'s foundational texts as revealed speech itself cannot be associated with certainty since the notion of revelation itself is contested and often depicted as closer to myths and can never pretend to be a form of knowledge.

The language of *ijtihad* instantiates the labor of time on the production of Islamic legal rules on the basis of the distinction between "immutable" rules and the ones that are subject to change as they reflect the movement of life. From this perspective, Islamic legal knowledge shapes collective and individual Muslim identities as it reenacts a hierarchy of rules to be followed by Muslims for them "to remain" Muslims in a context where several aspects of social change associated with modern life are perceived as having been, and still being, introduced by the Western other. Neither

²⁸¹ Al-Qaradawi, *Al-Ijtihad fi al-Shari'a al-Islamiyya*, p.232.

²⁸² I deal more extensively with the *maqasid* below.

²⁸³ Al-Qaradawi, *Al-Ijtihad fi al-Shari'a al-Islamiyya*, p.240.

²⁸⁴ On the "rationalization" of *Shari'a* in contemporary times see chapter 11.

a full rejection of social change, nor a full acceptance of it, *ijtihad* relies on the work of Islamic legal reason and the distinction between the certain and the probable within revealed speech that overlaps with the distinction between immutability and change, to judge of the lawfulness of practices and deeds displayed in contemporary life.

While classical works of the sources of jurisprudence (*usul al-fiqh*) did not raise the issue of knowledge of the real as such, it became an important scholarly requirement in contemporary ones. The scholar-*mujtahid* is expected to know at least the basic concepts and facts as taught in disciplines such as psychology, sociology, economics, history, political science, the science of education but also biology and natural sciences to be able to formulate legal opinions dealing with contemporary issues.

***Ijtihad* and *Shari'a*'s ultimate goals**

To what extent the prescriptions formulated in revealed speech's utterances need to be followed merely because they are part of the revelation? While this question has been raised by classical Islamic scholars, it is also a question that has been raised from a different perspective by several contemporary Islamic scholars since the beginning of the twentieth century, notably as an echo to comparisons between Islamic jurisprudence and modern state legislation. It is true that for classical scholars, *Shari'a* rules have been established in relation to underlying "reasons" (*ilal* or *hikam*) that can fully be understood and grasped by humans, except for some acts of worship²⁸⁵. Yet, the study of *Sharia* on the basis of its *maqasid* (ultimate goals) as developed by Abu Ishaq al-Shatibi and as used by contemporary scholars, particularly reformists, is distinct from the notion of *'illa* (ratio legis) that is usually associated to a particular rule as prescribed by a specific revealed speech's utterance as the *maqasid* are the broader goals to which the latter can be related.

While the jurisprudence based on *maqasid* was notably mentioned by al-Ghazali in the eleventh century and systematically developed by al-Shatibi in the fourteenth century, it was until the twentieth century that it became widely relied on by Islamic scholars interested in *ijtihad*, and more generally in a jurisprudential method that would allow for a comprehensive and "flexible" approach when dealing with new issues arising in modern times. The legal method known as *fiqh maqasidi* (jurisprudence based on the ultimate goals of *Shari'a*) relied on by several Islamic scholars when dealing with contemporary life reflects a language that may be understood, if not shared by the proponents of secular modernity. While the authoritativeness of Islamic legal rules is grounded in the act of revelation itself, the *fiqh maqasidi* assumes that there are broader goals to which a rule as prescribed in revealed speech is related. The scholars' task is to unveil these goals to have a better understanding of the specific rule, but also to orient its application by the addressees of revealed speech.

Both the *'illa* (ratio legis) and the *maqasid* (goals) allow to formulate a rule under which new events, facts and deeds occurring in the world can be subsumed. Yet, while the *'illa* (ratio legis) of a legal rule is displayed in the relevant specific *Shari'a*'s textual utterance, the *maqasid* (goals) are not listed as such in a specific textual passage and constitute a higher level of generality and abstraction. For example, although the Quran explicitly prohibits only alcohol derived from grapes (*khamr*), the *'illa* allowing scholars to extend this prohibition to other liquors or substances is the

²⁸⁵ Al-Qaradawi, *Madkhal li Dirasat al-Shari'a al-Islamiyya*, p.53.

intoxicating effects (a feature shared by all these liquors and substances) that cloud humans' judgment abilities. The approach in terms of *maqasid* would consider that the prohibition of *khamr* should be understood not only as an end in itself, but as a mean to achieve a higher goal, which is the protection of reason, alongside the four other higher *Shari'a* goals.

Although the jurisprudence based on *maqasid* does not refer to a specific textual passage, the five goals are formulated a priori. Rather, following al-Shatibi, scholars relying on the *maqasid* claim textuality and ground their approach in *Sharia's* texts. However, this approach is not based on a literal reading of a limited number of *Sharia's* texts passages but rather on a comprehensive reading of texts that goes beyond literalism. It delineates the five higher *Shari'a* goals that constitute also a typology of human deeds under which actions occurring in the world can be related to and subsumed.

For al-Shatibi, *usul al-fiqh* does not belong to the domain of probable thought (*zanni*) but rather to the domain of certainty as *usul* are part of *Sharia's* totalities (*kulliyat*). Open to doubt, probable thought cannot be dealing with *Shari'a's* totalities but only with particulars (*juz'iyat*). As the first and foundational *Shari'a* totality, *Shari'a's* source (*asl*), if addressed by probable thought would be subjected to doubt. Yet, for al-Shatibi, this approach cannot be valid in *usul al-fiqh* as it would also subjugate everything to doubt and disagreement among scholars, including the sources of religion (*usul al-din*) that are expected to provide the foundation of both religion and law.

As a set of procedural principles (*qawaanin*), the discipline of *usul al-fiqh* provides the generative rules establishing a hierarchy between totalities and particulars, and determines the validity of the particulars by relating them to the totalities. For al-Shatibi, a particular issue or prescription raised by a specific passage of revealed speech is the proper object of probable thought and disagreement between scholars and cannot determine the nature and meaning of *Sharia's* totalities.

On which grounds can certainty, associated with totalities, can be firmly based? Proofs (*adilla*) of certainty can be established by the intertwined work of reason and transmission of heard speech (*adilla sam'iyya*). On the one hand, transmission can be invoked if the meaning of the cited passages is certain (*qat'i al-dalala*) or whose meaning has been widely transmitted within the community (*mutawatira fi al-ma'na*) or as the result of a comprehensive and deductive reading of *Shari'a's* texts. On the other hand, reason is used in *usul al-fiqh* not as pure reason or as a source of independent meaning (*mustaqila bi al-dalala*) but as combined (*murakkaba*) with, and grounded in, transmitted proofs as reason cannot be legislating (*al'aql layssa bi-shari'*) as shown in the discipline of *kalam*²⁸⁶.

Almost all the proofs, when assessed on a case-by-case basis, still belong to the realm of probable thought (*zanni*). For example, even a textual passage that has been usually considered by scholars as widely transmitted (*mutawatir*) remains subjected to doubt and probable thought as it enters the realm of disciplines such as the science of language that are relied on to determine the meaning and legal consequentiality of the passage. Yet, while each individual textual passage remains subject to doubt when addressed separately from each other, it is their combination and aggregation through a comprehensive approach that produces one meaning considered certain. For example, it

²⁸⁶ Al-Shatibi, *Al-Muwafaqat fi Usul al-Shari'a*, vol.1, p.24.

is on this comprehensive basis that the five legal worshipping obligations of Islam (testimony of faith, prayer, fasting, almsgiving, pilgrimage) can be firmly established as certain.

Hence, for al-Shatibi, Islamic scholars did not stress the importance and centrality of the comprehensive approach as a methodological requisite for the discipline of *usul al-fiqh*, and relied instead on the recourse to individual Quranic *aya* (verse) or *hadith* (reported sayings and deeds of the Prophet) without aggregating them into a consistent ensemble of proofs²⁸⁷. A mere knowledge of transmitted revealed speech, or of a relevant Quranic *aya* or *hadith* relevant to a specific rule, does not constitute a sufficient proof in itself from the perspective of *usul al-fiqh*. Rather, any attempt to establish certainty and proofs in *usul al-fiqh* requires from scholars to rely on reason, a reason supporting revelation, and considering things through the lens of revealed law (*al-'aql yandhuru min wara' al-shar'*)²⁸⁸.

Al-Shatibi's approach requires from the scholar a continuous engagement with revealed speech as the formulation of a legal rule –according to this approach- cannot be based on one utterance of revealed speech that would be translated mechanically into a deed. While most classical works of *usul al-fiqh* delineate procedures under which a scholar can deal with an individual passage (or several individual passages) of revealed speech for legal purposes, the jurisprudence based on *maqasid* deals with revealed speech as a comprehensive object of inquiry allowing the scholar to determine the encompassing practical ends the revealed law aims to achieve.

When compared to a literalist approach, the approach in terms of *maqasid* seems less grounded in evidence. Actually, al-Shatibi initiates a shift regarding what constitutes an acceptable evidence for Islamic jurisprudence, as the evidence lies in the relationality between a particular textual passage and the hierarchy of higher practical ends as enabled by the scope of engagement with revealed speech. Hence, for al-Shatibi, the revealed law has been established to protect the five necessities (*al-dharuriyyat al-khams*), i.e. religion, self, reason, offspring and property which cannot be found mentioned as such in revealed speech. The knowledge of necessities has not been established by a specific evidence (*dalil mu'ayan*) as the legal meaning of each individual passage remains in the realm of probable though rather than certainty. Yet, it is the comprehensive approach and a combination of inductive and deductive reasoning that allow al-Shatibi to ground the principle of necessity (and the five necessities), as well as the foundational principles of jurisprudence, on certainty.

Al-Shatibi's principles give a shape to a space of interpretation in which individual passages become one element among others in the scholar's attempt to secure the meaning of revealed speech on a firm basis. It opens up a distinct hermeneutic circle that allows the scholar to deal with the Revelation's textuality with more freedom as it widens the space of interpretation and yet overlaps with the hermeneutic circle based exclusively on the literalism of revealed speech's individual utterances. That is the reason why al-Shatibi is the classical scholar whose work has been revisited the most by contemporary Islamic scholars (and some secular intellectuals) in the Arab 2011 revolutionary context, and more generally in the twentieth and twenty first centuries as

²⁸⁷ Al-Shatibi, *Al-Muwafaqat fi Usul al-Shari'a*, vol.1, p.24.

²⁸⁸ Al-Shatibi, *Al-Muwafaqat fi Usul al-Shari'a*, vol.1, p.25.

his methodology allows them to address potentially contradictory expectations of faithfulness to revealed speech's texts and the readiness to accept and own changes brought about by modern life.

Part V

Reason

Rationalization of *Shari'a* and Islamic Reason

Part V

Chapter 11

Modernist reason and the constitution of *Shari'a* as an object of knowledge and intervention

“The Muslim Brotherhood and the Salafis are fundamentalist movements, which means that they are committed to refrain from using the intellect when it comes to religious texts. Therefore, they are by necessity committed to stick to the past. They follow what has been said in the past to the letter. That is why they fight to include the phrase "*shari'a* rulings" in the constitution. If you oppose this, they try to get it into the preamble. They would do anything to shackle you to a specific tradition and to the past, thus abolishing the future. But a revolution is conducted for the sake of the future, not for the sake of the past”²⁸⁹.

This quote from an interview of the Egyptian philosopher Murad Wahba, known for his work on Ibn Rushd – called Averroes in the West- sheds light on the anxieties of thinkers who define themselves as “secular” (*ilmani*) in the revolutionary and post-revolutionary contexts where the place of *Shari'a* in state legislation was the main issue of the constitutional debate occurring from 2011 to 2013. These anxieties, and more generally, the debate itself, exemplify a shift in the relationship between Islamic legal knowledge and collective life that can be traced back to the emergence of new forms of knowledge grounded in instrumental rationality at the end of the nineteenth century. For, it was not only “the real” that emerged as an epistemic issue for contemporary Islamic legal knowledge as we saw in chapter 8, it was also *Shari'a* that was constituted as a “problem” for modernist reason in a context where *Shari'a*'s authority regarding the regulation of “the social” was not matter of consensus. Several segments of the Egyptian elite would rather ground the regulation of social life in “reason”, independently from any reference to *Shari'a*, which became sublated under the broader category of “religion”.

After the 1979 Iranian Revolution and the assassination of the president Anwar al-Sadate in 1981 by a member of the Egyptian group *al-Jihad*, large segments of Egyptian liberals and leftists expressed growing anxiety over the reference to *Shari'a* in public discourses coming from Islamic movements as well as state institutions. To a great extent, the “scientific” study of Islam is an intellectual project that is both as an indicator of, and a response to, this anxiety. Several liberals and leftists perceive expressions of Islam that are related to contemporary forms of religious authority in the public sphere as a threat to desires of freedom, and, they expect that this threat would be neutralized by the “rationalization” of Islam as suggested by Nasr Hamid Abu Zeid’s

²⁸⁹ Interview of Murad Wahba with MEMRI TV broadcast on November 15, 2013, <https://www.memri.org/tv/egyptian-philosopher-murad-wahba-there-has-been-no-real-revolution-egypt-mentality-has-not/transcript>.

Naqd al-Khitab al-Dini (Critique of Religious Discourse), which echoes Murad Wahba's intellectual project mentioned above.

For Nasr Hamid Abu Zeid contemporary claims about *Shari'a*, and more generally “religious discourse” should be studied as an “ideology” produced by institutions such as Al-Azhar as well as “extremist” movements. According to Abu Zeid, there is no substantial difference between Islamic scholars, Islamic movements such as the Muslim Brotherhood or Muslim thinkers like Hasan Hanafi -who initiated the “Islamic left” and advocated for a “progressive” interpretation of *Shari'a*- because they all rely on shared assumptions about the authority of the Islamic “canonical” texts. Abu Zeid's task consists in unveiling the way “instrumentalization” of religion for political purposes is relied upon by these actors but also in showing how religion, if analyzed and interpreted not on the basis of “superstitions” and “fables” (*khurafat*) but rather on the basis of “science” [*ta'wilan 'ilmiyyan*], can be a source of “progress”, “justice” and “freedom”. In this “battle” between “the forces of mythical thought” (*qiwa al-ustura*) attached to “the literal” meaning of texts and “the forces of progress and rationality” (*qiwa al-taqaddum al-'aqlaniyya*), the latter may help Muslims approach their religion “objectively” and enter the age of “secularism” (*'ilmaniyya*), which is the key “to science, progress and freedom” as exemplified by the trajectory of Europe since the Middle Ages²⁹⁰.

In this chapter, I would like to study more closely this shift in *Shari'a*'s regulative authoritativeness in a context where *Shari'a* became not only an object of “rational” knowledge and intervention but also where the reference to *Shari'a* became a discourse among others within the newly constituted “public sphere” rather than the language coextensive to the community through which claims and counter-claims about the rules to be followed were formulated. This shift, that is constitutive of the cleavages that unfolded in the revolutionary and post-revolutionary moments, can be traced back to the emergence of new concerns about “reason” and “rationality” as related to the legal-political regulation of the social order at the end of the nineteenth century.

Modernist reason and *Shari'a* in the colonial context

The introduction of the Mixed Courts (1876) and the National Courts (1883) applying rules based on the Napoleonic Code and dealing mainly with commercial and criminal cases instituted a system in which colonial power attempted to circumscribe the scope of Islamic jurisprudence for judicial purposes to “*Shari'a* courts” as well as to several dispositions of the Civil Code. This transformation not only instituted a duality between western legislation and substantive *Shari'a* rules *within* the newly established state law, it also introduced another duality between *Shari'a* rules as state law and *Shari'a* rules as formulated by Islamic scholars in the social sphere exemplifying the new distinction between “state” and “society”, in which the former is the sole author of the law regulating the life of the latter. Most important, this transformation was enabled by, and went along with, the emergence of modernist rationalism and science as a mode of knowledge that claimed to strip Islamic legal knowledge -and more generally all Islamic forms of knowledge- from its scholarly quality and very ability to define itself *as* knowledge, i.e. the ability to produce truth-claims.

²⁹⁰ Abu Zeid, *Naqd al-Khitab al-Dini*, p.63-64.

Rather than initiating a demise of *Shari'a*, these dualities casted the latter as the constitutive other that can never be domesticated by state law nor circumscribed in the time-space associated to the modern state. While *Shari'a* entails the reference to different orders of existence, and requires the decipherment of revealed speech by scholars for the law authored by God to be manifest, the state authorizes itself from itself when it utters the law, or one may say, authorizes itself from the very act of authoring the law.

For colonial officers and viceroys, the (re)-organization of the new legal order was the necessary condition for, as much as it reflected the “civilizing” process brought about by Europe and associated with the introduction of western rationality. For the British Consul General in Egypt, Lord Cromer, colonial administration succeeded in “material” reforms and in bringing “prosperity” to the Egyptians, but it failed in its attempt to craft a new Egyptian “rational” man. On the one hand, colonial experts had to address material problems, particularly “a persistent neglect of economic laws and a reckless administration of the finances of the state [...]”²⁹¹. Thanks to the British “genius”, “the material benefits derived from Europeanisation are unquestionably great”²⁹². The adoption of new modes of social organization enabled by rational forms of thought would allow Egypt, and more generally the Orient, to enter progressively the realm of “Civilization”. On the other hand, the “logical West” had to deal with the “illogical and picturesque East” and failed to make him rational because “religion enters to a greater extent than in Europe into the social life [...]”²⁹³. “Islam speaking not so much through the Koran as through the traditions which cluster around the Koran, crystallises religion and law into one inseparable and immutable whole, with the result that all elasticity is taken away from the social system”²⁹⁴. In other words, for Cromer, any attempt to make the “social” a space of intervention and transformation for colonial administration and expertise requires a differentiation between “religion” and “law” that, according to him, does not exist in Islam. Colonial knowledge and administration not only assumed a series of distinctions between state and society, and between religion, law and morality constitutive of European rationality but their task was precisely to actualize these distinctions and shape the conditions under which these fields should be intertwined or separated from each other.

Colonial knowledge and administration, as exemplified by Cromer’s writings about Egypt, were informed not only by Orientalism, but also by European thought of the end of the nineteenth century the same way the latter was informed by the colonial project. For both were engaged in the production of narratives of the development of European reason grounded in systematic comparisons with counter-places and areas, notably Muslim societies. In *The Protestant Ethics and the Spirit of Capitalism*, Max Weber devotes the introduction to a catalog of features of western rationalism in science, theology, art, state bureaucracy and capitalism that he considered

²⁹¹ Cromer, *Modern Egypt*, vol.1, p.5.

²⁹² Cromer, *Modern Egypt*, vol.2, p.231.

²⁹³ Cromer, *Modern Egypt*, vol.1, p.7.

²⁹⁴ Cromer, *Modern Egypt*, vo.2., p.135. For Cromer, the problem of Islam is that it is at the same time “a religion”- defined by “a faith”, “a creed” and specific acts of worship- and a “social system”: “Unfortunately, the great Arabian reformer of the seventh century was driven by the necessities of his position to do more than found a religion. He endeavored to found a social system.” Cromer quotes Stanley Lane-Poole, a British Orientalist. According to the latter: “Islam is great; it has taught men to worship one God with a pure worship who formerly worshipped many gods impurely. As a social system, it is a complete failure”.

“lacking” in non-western civilizations²⁹⁵. The contrast between the West and the non-West in these fields would explain the uniqueness of western rationalism. Following this approach, the task of the scholar working on the “non-West” has usually been understood as an attempt to make intelligible the causes of its “backwardness” (or more recently “its “underdevelopment” and its inability to “embrace modernity”). From this perspective, knowledge production becomes a mere exercise reenacting these dualities rather than questioning them.

Rationality and the constitution of *Shari'a* as an object of comparative knowledge

The constitution of *Shari'a* as an object of knowledge for social theory as formulated by Max Weber exemplified hierarchical comparisons between western and Islamic forms of thought and social organization as much as it was subjugated to them. As in *The Protestant Ethics and the Spirit of Capitalism*, the whole project of *Economy and Society* can be read as an enterprise devoted to the study of the “rationalization” process in Western history in contradistinction to other cultural areas. Along with religion and economy, the law is one of the main areas where modern rationality is displayed in a Weberian narrative, which is both historical and comparative. In his inquiry about “the extent and the nature of rationality of the law”²⁹⁶, *Shari'a* –exemplified by the notion of “Kadi Justice” in Weber’s writings- represents the archetype of the sacred, religious and non-rational law.

If, following Weber, *Shari'a* is a non-rational law and an arbitrary form of justice, then what is a rational law and a non-arbitrary form of justice? Weber starts from the distinction between *law making* (“the establishment of general norms which in the lawyers thought assume the character of rational rules of law”) and *law finding* (“the application of such established norms and the legal propositions deduced therefrom by legal thinking, to concrete facts which are subsumed under these norms”²⁹⁷). This distinction between general norms and their application is the starting point from which Weber differentiates between rational and non-rational forms of justice. While, for Weber, this distinction is absent in primitive forms of justice in non-western societies, it structures Roman law as well as forms of adjudications strongly influenced by it²⁹⁸.

Weber makes another fundamental distinction between *formal* and *substantive* law. A body of law is rational if, in law making, one can find a process of generalization, i.e. which relies on “a reduction of the reasons relevant in the decision of concrete individual cases to one or more principles”²⁹⁹. The formulation of legal propositions needs to reach a high level of abstraction (even “sublimation” in Weber’s words) on the basis of on an analysis of facts relevant to the juridical doctrine distinct from a simple analogical casuistry. From this perspective, the process of generalization/abstraction is a synthetic work of construction of legal relations illustrating the conceptualization of the legally relevant social relations.

Another component of the generalization/abstraction consists of the constitution of a doctrinal body i.e. “the integration of the legal propositions in such a way that they constitute a logically clear, internally consistent, and at least in theory, gapless system of rules”. The doctrine should be

²⁹⁵ Weber, *The Protestant Ethics and the Spirit of Capitalism*.

²⁹⁶ Weber, *Economy and Society*, p.456.

²⁹⁷ Weber, *Economy and Society*, p.653.

²⁹⁸ Weber, *Economy and Society*, p.654.

²⁹⁹ Weber, *Economy and Society*, p.656.

“theoretical” enough to be able to subsume all “conceivable fact situations”³⁰⁰. The justice is *formally* rational if it is based on the adherence to specific and permanent forms like the “adherence to external characteristics of the facts, the utterance of certain words, the execution of a signature or the performance of a certain symbolic act with a fixed meaning”³⁰¹. Thus, decisions of justice are *substantively* irrational if they are not taken according to a consistent doctrinal body but according to “ethical” “emotional” or “political” motives. Decisions of justice are *formally* irrational if the lawmaking or the law-finding are not controlled by reason but by “external magical” or “divine interventions” like oracles.

According to Weber, the Roman legal system, characterized by its highly analytical nature (notably the *reduction* of the lawsuit to the basic issues involved in concrete cases and the *reduction* of legal transactions to the most “elementary logical constituents”) is the first to be rational both *substantively* and *formally*³⁰². The modern rational justice is geographically and historically restricted to the systems that have been strongly influenced by Roman law i.e. in Europe³⁰³. But how did the transmission occur from the Roman period to Medieval times and subsequently to Modern Europe? The Italian *notaries* working closely with guilds were the main group who maintained and developed the Roman law, particularly in Venice where mercantile rationality was displayed in practices of documentary evidence.

Keeping in mind the Weberian argumentation about the rationalization of law and justice both *historically, substantively and formally*, it is now easier to understand his writings about Islamic law and Kadi Justice. Weber deals with these topics in two main sections of *Economy and Society*, the first in a chapter devoted to historical comparisons between different forms of substantive law, and the second on a chapter on Bureaucracy³⁰⁴.

Although “a far-reaching reception of Hellenic and Roman law” can be discerned in Islam, the constitution of secular law independently of the sacred norms never occurred, and perpetuated the irrationality of the law³⁰⁵. Moreover, Muslim jurists were unable to develop forms of legal thought based on generalization/abstraction without which no consistent legal theory is possible (“systematic lawmaking, aiming at legal uniformity or consistency was impossible”).

Islamic law was at the same time central to the life of Muslim societies and could not be applied because of its rigidity: “The sacred law could not be disregarded; nor could it, despite many adaptations, be really carried out in practice”³⁰⁶. So according to which principle was adjudication of cases rendered? By using local customs: “These courts are not concerned at all with the prohibitions of the sacred law but decided according to local custom, since every systematization of even the secular law was prevented by the continuous intervention of spiritual norms”³⁰⁷. At the same time, Weber writes that the diversity of opinions of the muftis did not allow the emergence

³⁰⁰ Weber, *Economy and Society*, p.656.

³⁰¹ Weber, *Economy and Society*, p.657.

³⁰² Weber, *Economy and Society*, p.796.

³⁰³ The “modern form of systematization developed out of Roman law”, Weber, *Economy and Society*, p.797.

³⁰⁴ Weber uses his findings on law to study the development of the judicial structure of Bureaucracy, notably courts and apparatuses of law enforcement.

³⁰⁵ Weber, *Economy and Society*, p.819.

³⁰⁶ Weber, *Economy and Society*, p.819.

³⁰⁷ Weber, *Economy and Society*, p.822.

of a unified body of doctrine. These opinions were like “the opinions of oracles” because they were re given “without any statement of rational reasons”³⁰⁸. They increased the “irrationality of the sacred law”³⁰⁹.

These features of Islamic law (religious, rigid and unable to be consistently theorized) can be understood as explanations of its marginalization during Islamic history, starting from the Omayyad and the prevalence of what Weber calls the “secular” law in reference to *qanun*. The latter prevailed in all matters except “tutelage, marriage, inheritance, divorce and to some extent settled lands”³¹⁰. Weber relies here on a linear history of decline of Islamic law and uses overgeneralizations without giving historical and geographical precisions about the evolution he describes. It seems that he is relying on the Ottoman case by using anachronistically and improperly the notion of *qanun* which is the law formulated by political authority and distinct from the jurisprudence produced by Islamic scholars.

Paradoxically, in the sub-chapter about the notion of “Kadi justice”, Weber does not develop his analysis on Islam but elaborates mainly on the English example. In fact, the syntagm “Kadi Justice” has been borrowed by Weber from Richard Schmidt, who was his colleague at Freiburg University and was interested in the problem of the “calculability” of judicial decisions³¹¹. Weber is mainly interested in the construction of an ideal-type of an irrational form of justice, and it seems that the justice in Islam is the “perfect” example from which he draws his counter-model of legal rationality. According to Weber:

“Pure Kadi-justice” is represented in every prophetic dictum that follows the pattern: ‘It is written...but I say unto you’. The more strongly the religious nature of the *kadi*’s (or some similar judge’s) position is emphasized, the more arbitrary –that is, the less rule-bound- will the judgment of the individual case be within that sphere where it is not fettered by sacred tradition”³¹².

This passage shows clearly that Weber draws the ideal type of the Kadi justice rather than deals with Islamic justice *per se*. But in elaborating his ideal type, he uses an interpretation of Islamic justice that is very questionable. Weber underlines the gap between on the one hand the prescriptions of the religious tradition, and on the other hand the judgment of the Kadi who utters a decision that does not follow the religious norm. This gap is the space in which the arbitrariness of the judge is displayed. In other words, Islamic law is not predictable for a litigant because *law finding* is not consistent with religious *law making* which is itself non rational³¹³.

³⁰⁸ Weber, *Economy and Society*, p.821.

³⁰⁹ One should note a strong contradiction in Weber’s writings: how can the religious law be rigid and at the same time allowing a diversity of legal opinions? Here too, Weber gives no clue to the reader to resolve this contradiction.

³¹⁰ Weber, *Economy and Society*, p.822.

³¹¹ Weber, *Economy and Society*, vol.3, Footnote n.2, p.1003.

³¹² Weber, *Economy and Society*, p.998.

³¹³ The most important developments on Kadi justice are not about Islamic law but are devoted to English adjudication and the failure of rational codification of law, “as well as the failure to receive Roman law [at the end of the Middle Ages], when this occurred elsewhere in Europe”. Weber uses the ideal type of Kadi justice to contrast the English system with other European systems and underline the resistance against rationalization due to “empirical” adjudication. The powerful lawyer’s guild did not allow the duplication of the Roman model in England and were opposed to “the technical necessity to place the trial procedure in the hands of rationally trained experts, which meant men trained in the universities in Roman law”. Moreover, Kadi justice prevails in England because it

Comparisons between presumably consistent historical and geographical ensembles known as “the West” and “Islam” on the basis of “rationality” as they have been formulated by social theorists like Weber or colonial administrators and scholars such as Cromer have also shaped the writings of Egyptian and Arab thinkers of the beginning of the twentieth century. Because of its very religious nature, *Shari’a* was deemed non-rational and unable to regulate the new socio-economic order brought about by colonial administration. As law regulating collective life, *Shari’a* was considered an obstacle to the development of European capital in Egypt and in other Muslim colonies, and had to be progressively replaced by European law securing property rights and economic transactions. Moreover, for the new educated Egyptian elite of the beginning of the twentieth century, the nation was no longer expected to be organized by legal norms derived from the divine. In a society organized by reason, *Shari’a* had to be subjugated to the regime of distinction between, and separation of, religion from the other orders of collective life, i.e. from law, economy and politics.

Although most Egyptian thinkers were engaged in the formulation of an intellectual project that would emancipate Egypt from colonial rule, they nevertheless shared with colonial administrators, orientalist and European social theorists (such as Cromer and Weber) the systematic comparisons between the West and Muslim societies, as well as several assumptions about the “superiority” of modern material civilization and the role of “reason” and “science” in the civilizing process out of which a series of lacks are “found”. Islamic “religion” - the category under which *Shari’a* was sublated- became a distinct object of knowledge and intervention whose significance and relevance for individual and collective life had to be assessed by endogenous reason -or put another way, by reason endogenous to Egyptians and Arabs- rather than the external voice-reason of the Europeans in a context where Egyptianity and Arabness (rather than Islam) became the new determining self-referential collective identities for several lettered Egyptians.

The knowledge produced by Europeans was part of a holistic enterprise of domination subjugating the temporality of the colonized to the temporality of the colonizer, in which the colonial project was a moment of reassertion of the narrative of ruptures endogenous to Europe and enabled by the “rationalization” process as reflected not only in the thought produced by individual thinkers but also instantiated in institutions and material civilization. But, as we will see in the following pages, for Egyptian, and more generally Arab and Muslim thinkers, the dual temporality engendered by the colonial encounter raised several questions about the collective self and its relationship to the past.

Modernist reason

For several members of the educated Egyptian elite of the late nineteenth and early twentieth centuries, the emergence of new forms of knowledge about “nature” and the “social” in the colonial context raised questions about the place and meaning of Islam in the modern world as exemplified by Farah Antun’s *Ibn Rushd wa falsafatuh* (Averroes and his Philosophy)³¹⁴ published in 1903 and which is a collection of a series of texts previously published in his journal *Al-Jami’a*. In *Ibn Rushd*

relies “on informal judgments rendered in terms of concrete, ethical or other practical valuations (Weber, *Economy and Society*, p.999).

³¹⁴ Antun, *Ibn Rushd wa Falsafatuh*.

wa Falsafatuh, Farah Antun addresses the new “public” (*al-jumhur*), and primarily the “rationalists of the Orient” (*‘uqala’ al-sharq*) among the new generations of Christians and Muslims who should be able to put their religion in “a sacred place” (*makan muqaddass*) and overcome their religious belonging in order to stand strong in the face of European domination³¹⁵. In “a time of science and philosophy (*zaman al-‘ilm wa al falsafa*)”, one can no longer claim that one’s religion is better than the other’s religion because this kind of attitude belongs to “the Middle Ages and the time of ignorance” and is against “human nature” (*al-tabi’a al-bashariyya*)³¹⁶.

For Antun, as in several accounts of modernity, the transmission of Ibn Rushd’s philosophy to the rest of Europe opened up the possibility of studying Greek philosophy, which was itself overtaken by modern philosophy and the new science of the sensible world as initiated by Francis Bacon and relying on observation, experimentation, examination and demonstration³¹⁷. In this narrative, the formulation by Ibn Rushd of a new understanding of causality in the universe in relationship to nature and human deeds initially based on Aristotle’s philosophy is the foundational event that paved the way for the emergence of science as action over the world that is at the origin of discoveries, inventions and industry constitutive of material civilization.

Two important points are implied by Antun’s *Ibn Rushd wa Falsafatuh*. First, the development of industry and material civilization cannot consist in merely using machines and adopting techniques invented by Europe but calls for the ability to produce a new order of things enabling the invention of these very techniques through science. Yet, the development of science, which cannot occur without an exclusive space of its own, requires the withdrawal of religion *as* knowledge from the world. Second, (re-) assigning religion a new place in the world in order to own the means of material prosperity and civilization should not be considered as a mere imitation of Europe but consists in reenacting the past by “returning” to what Muslim thought, as exemplified by Ibn Rushd’s philosophy, has already initiated without being the actual beneficiaries of its results.

From this perspective, the authoritativeness of *Shari’a* as a generative form of knowledge assigning meaning and truth to the world is contested. There is no middle ground between “science” and *Shari’a* for the latter, now subsumed under the category of “religion”, is not able to compete with the former regarding the production of truth. Islam, like Christianity, cannot claim to be knowledge and is assigned “the heart” as its exclusive site: “Science should be put in the sphere of reason because its rules are based on observation, experiment, and examination. Religion needs to be put in the sphere of the heart because, in this matter, one should submit to the books without inquiring about their origin”. If science, understood as “inquiry (*bahth*) about everything and every origin”, starts putting religion under scrutiny, it would destroy religion. Hence, reason and the heart, science and religion should be kept separated from each other for the sake of religion itself³¹⁸.

For Islamic scholars and thinkers such as Muhammad Abduh and Rashid Rida, the emergence of discourses about the subjugation of the “new real” to the authority of “reason” like Antun’s did

³¹⁵ Antun, *Ibn Rushd wa Falsafatuh*, p.41-42.

³¹⁶ Antun, *Ibn Rushd wa Falsafatuh*, p.50.

³¹⁷ Antun, *Ibn Rushd wa Falsafatuh*, p.157.

³¹⁸ Antun, *Ibn Rushd wa Falsafatuh*, p.210-211.

not put an end to the authoritativeness of *Shari'a* regarding its ability to regulate collective life. Yet, as we saw in chapter 8, they would critique the inter-generational mode of transmission of Islamic jurisprudence based on schools (*madahib*), and would call for, and work toward, the reformulation of procedures of truth seeking and rule formulation within Islamic legal knowledge grounded in the Quran and the *Sunna*. It was through this critique and re-foundation in response to the emergence of the “new real” as an epistemic problem for Islamic legal knowledge that *Shari'a* would keep its authoritativeness for the present. However, as exemplified by the polemics between Farah Antun and Muhammad Abduh about the legacy of Ibn Rushd (Averroes) and the place of religion in “a time of science”, the authority of *Shari'a* could not be taken for granted among Egyptians and Muslims themselves. The reference to *Shari'a* is now a discourse among others that is not necessarily authoritative for the whole collectivity and calls for arguments not only among those for whom *Shari'a* is authoritative (notably about the right procedures to produce Islamic legal knowledge) but also between those for whom *Shari'a* is *not* authoritative within the collectivity now identified as the “nation”.

Claiming *Shari'a* in the public space

While in pre-modern times, *Shari'a* was co-extensive to the polity, its authority, in modern times, needs to be reasserted in the new “public sphere” before it can be considered for regulative purposes. The reassertion of the authoritativeness of *Shari'a* for collective life is exemplified in the emergence of Islamic movements dedicated to preaching and call (*da'wa*) and addressing the new “public” particularly in big cities. In a “nation” envisioned as a social collectivity in which new discourses authorizing and reflecting new forms of life emerged, the transmission and authority of *Shari'a* are put at risk and call for its instantiation in a collective *voice among other voices*, espousing “civil” forms of action and organization.

For Hasan al-Banna, who founded the Muslim Brotherhood in 1928 in Ismailia, the crisis of transmission of *Shari'a* was also associated with moral decay, particularly in three spaces constitutive of contemporary life: the street of the modern city, the family and the school. Reviving Islam through *da'wa* (call) was the right response to this crisis: “Our Egyptian nation (*umma*) –as well as the Islamic one-, after all the changes and the political and social events that were harmful to its religion and ethics [...], is in need of a strong and effective *da'wa* able to guide her through the path of her Prophet, and the signs of her religion, and to save her from [...] her moral corruption.”³¹⁹

In this context, the constitution of a cohesive community with a strong internal life distinct from, and yet mirroring new forms of collective life, is as crucial as the act of preaching itself. For al-Banna, the Muslim Brotherhood was a movement based on “the strength and intensity of the bond and cohesiveness between the community’s members (*shadat tamasuk baynahum wa quwat rabitat jam'atihim*), which reflect the purity of the hearts and the inner self (*safa' al qulub wa naqa' al sara'ir*), faithfulness and the feeling of fraternity’s sacredness (*al-sh'uru bi qudsiyat al-ukhuwa*) and the illumination of the hearts with love in God”³²⁰. From this perspective, the ways

³¹⁹ Hasan al-Banna, *Fiqh al-Waqi'*, p.157.

³²⁰ Hasan al-Banna, *Fiqh al-Waqi'*, p.99-100.

in which *Shari'a* rules are lived and embodied *within* the community and make it distinctive of the rest of society is as much as important as its action in the public sphere.

As most subsequent Islamic movements throughout the Muslim world, the collective *da'wa* initiated by the Muslim Brotherhood relied on new mediums such as magazines and journals³²¹ (and later audiovisual and online mediums), new juridical forms such as the association³²² (and later the political party), and was involved not only in Islamic education in informal scholarly and pious circles but also in benevolence activities as well as in governmental politics. Paradoxically, the very constitution of religious communities dedicated to *da'wa* and the adoption of modern forms of collective actions (such as associations and political parties) whose aim is “to revive” *Shari'a* within the “civil” space is itself associating the public discourse about *Shari'a* with a segment of the Muslim majority collectivity rather than a language shared by all social-political actors.

***Shari'a* and the national politics of legal emancipation: Egyptianization and rationalization**

In the post-colonial context, although Islamic jurisprudence was reclaimed by Egyptian jurists in the shaping of a new “national” legal order, its relevance for state regulation was nevertheless assessed against the consistency and “rationality” of modern legal codes. Systematic comparisons between “Islam” and the “West” constitutive of the colonial encounter and displayed in the writings of orientalist, colonial administrators and Egyptian thinkers at the end of the nineteenth century was also structuring the writings of jurists in the 1950s, in a time where Egypt became free from British occupation.

In a context where social interactions and economic activities were regulated by a juridical order inspired by French law, the “revision” (*tanqih*) of the existing legislation was an ambitious intellectual and juridical enterprise whose aim was to “Egyptianize the law” (*tamsir al-fiqh*), in such a way that it would make it distinct from a mere imitation of European juridical systems and would reflect the “national life” (*al-yahat al-qawmiya*). As the notion of *tanqih* suggests, the new legislation does not claim to be in rupture with the previous legal order but would explicitly be built upon the existing juridical corpus inherited from the colonial period.

The voluminous *Al-Wasit fi Sharh al-Qanun al-Madani* by Abd al-Razaq al-Sanhuri consisted in articulating the existing legislation regarding civil matters into a consistent whole grounded in explicit general juridical principles. Abd al-Razaq al-Sanhuri, who was one of the most influential contemporary Arab jurists and the master architect of the new Code often called the “al-Sanhuri Code”, reclaimed “Islamic jurisprudence” (*al-fiqh al-islami*) for legislative purposes but subjugated it to state law.

In the new Code, Islamic jurisprudence became explicitly the third source of jurisprudence, ranked after the legislative texts (*nusus tashri'iyya*) and the practice of the judicial system (*'urf*), and before natural law (*al-qanun al-tabii*) and principles of justice (*'adala*)³²³. In this configuration,

³²¹ For example the magazine “*Al-Fath*” created in 1926 and in which Hasan al-Banna published his first article entitled “*Al-Da'wa ila Allah*” in 1928, see Al-Banna, *Fiqh al waqi'*.

³²² The association of the Young Muslims, association of *Makarim al-Akhlaq* and later the Muslim Brotherhood.

³²³ Al-Sanhuri, *Al-Wasit fi Sharh al-Qanun al-Madani*, vol.1, p.44.

Islamic jurisprudence is not the ultimate reference for the polity, but is rather encompassed as a consistent whole subjugated to, and assigned a place and a meaning by, the legal order of the state. The reference to *Shari'a* is not authoritative by itself and needs to be justified and authorized by the authors of the law, i.e. the legislative branch of the state. For the parliamentary committee in charge of the revision of the Civil Code, "*Shari'a*" is "a spiritual heritage" (*turath ruhi*) whose legal force has been interrupted by colonial power but which can be revived in the new legal order. Yet, the commission does not take for granted that *Shari'a* may be beneficial for regulative purposes and has to give *reasons* grounded in positivity and utilitarianism to justify the reference to it. the "return to *Shari'a* (*al-ruju' ila al-shari'a al-islamiyya*) does not put the stability of social interactions (*istiqrar al-mu'amalat*) at risk but, on the contrary, this return reinforces the conditions of stability through the reenactment of the good traditions (*taqalid al-saliha*) that have been in use in the country for hundreds of years"³²⁴. The work of al-Sanhuri consisted precisely in making the old-new juridical life of *Shari'a* preserve the "national" socio-economic order through its articulation to the prevailing legal code and its rationality.

In the new Code, Islamic jurisprudence is understood as a set of tangible rules but also as a juridical order that can be assessed against the rationality of European legal systems and whose significance is rendered in the language of European jurisprudence. For al-Sanhuri, besides the specific rules regulating social transactions and interactions produced by Islamic jurisprudence which have been integrated into other legal dispositions, the new Civil Code relied also on "general principles (*mabadi' amma*)" characterizing Islamic jurisprudence, such as its objectivism (*al-naz'a al mawdhu'iyya*) that can be also found in German law and can be contradistinguished from the "subjectivism" of Latin law.

When applying rules coming from Islamic jurisprudence, judges who want to inquire into the latter are instructed to refer first to the previous judicial practice within the Egyptian judiciary system, and second, if the judicial practice is not available, they should refer to the main usual books of jurisprudence (*al-kutub al-mu'tamada fi al-fiqh*). In the latter case, the judges should not restrict themselves to the dominant opinion of one school, or even to one school or to the fourth main juridical schools of Sunni Islam and may include the *Zaydi* and the *Imami* schools.

Two important points are implied by these procedures of use and interpretation of Islamic jurisprudence's rules. First, as exemplified by the order of procedures, judicial practice systematically prevails over texts of Islamic jurisprudence. Second, as displayed by the integration of Islamic rules within civil law, the reference to Islamic legal normativity is based on what the juridical schools have produced up to the present but never to the sources of *Shari'a* i.e. the Quran and the *Sunna*. Yet, it is not a *madhab* (juridical school)-based form of reasoning not only because it draws on all the juridical schools, but, most importantly, because the legal rules should be consistent with the Code.

The al-Sanhuri Code encourages the judges to rely on rules of Islamic jurisprudence. Yet, it states clearly that they are not authorized to do so if the Islamic rule contradicts the general rules of the Code because "the civil code would lose its consistency and harmony"³²⁵. Here, again, the rules of Islamic jurisprudence may have legal force only to the extent that they become part of the

³²⁴ Al-Sanhuri, *Al-Wasit fi Sharh al-Qanun al-Madani*, vol.1, p.1.

³²⁵ Al-Sanhuri, *Al-Wasit fi Sharh al-Qanun al-Madani*, vol.1, p.48.

legislative and judicial apparatus of the state after they have been assessed against the logic of the Code itself.

In this configuration, and in the time-space of the Civil Code and its enforcement by judges, the role of Islamic scholars-jurists is limited. Although the latter have been consulted during the revision process, it remains the task of the jurist trained in Egyptian state law to choose the rules produced by Islamic jurisprudence that would be integrated to the Civil Code and made consistent with it. Unlike the process of rule production exemplified in the formulation of legal opinions by authoritative Islamic scholars, the procedures of rule-production are not governed by truth seeking grounded in the Quran and the *Sunna* but are driven by its consistency with the Civil Code and the existing rules that it encompasses, which itself is related to the potential power of abstraction and generalization that the jurist, relying on compelling argumentation, may grant to the rule taken from Islamic jurisprudence.

Arab reason, time and Islamic legal knowledge

For several Egyptian and Arab intellectuals, the economic and geopolitical “failures” of the national and pan-Arabist projects of emancipation raised several questions about the “lacks” of the collective self highlighted by the comparison with the West, and which need to be properly addressed for the Arabs to become the masters of their own history. Among the numerous writings dealing with “reason” and “modernity”, the works of two Moroccan writers, Abdellah Laroui and Muhammad ‘Abd al-Jabiri, had considerable influence in the Arab world, particularly in Egypt, as they shaped the terms of the intellectual debate about “Islam” and “rationality” in Arab societies. Although the respective theses of Laroui and al-Jabiri have often been presented as formulating divergent views on the subject, they nevertheless shared a similar language and assumptions about time, history and the relationship to the western Other as well as a deep engagement with both Islamic and European thought.

The Contemporary Arab Ideology authored by Abdellah Laroui and published in 1967 exemplifies the way Islamic knowledge as produced by Islamic scholars at the beginning of the twentieth century is relegated to the past and considered as a moment of “Arab” thought in a narrative inspired by Hegelian dialectic. For Laroui, Islamic “reformism”, as initiated by Muhammad Abduh is only one form of contemporary Arab thought that coexists with political liberalism (as formulated by Lutfi al-Sayyed) and the technophile’s perspective (exemplified by Salama Musa). The ideas produced by these three figures –the cleric, the politician and the technophile- are successive moments in Egyptian, and more generally Arabic thought, that are not only shaped by questions raised by the West, but also the reenactment of previous moments of Western history. Hence, “le futur anterieur” is a future that is already written for Arabs who may know the history to come through the lenses of the Western past and are not free to reject it.

For Laroui, mobilizing Islam as an authoritative voice for the present as Muhammad Abduh and other Islamic scholars of the beginning of the twentieth century did, was a legitimate response, but it was legitimate insofar as it was a first response to Western colonialism that needs to be overcome because it remains inadequate to the demands of the present. The acknowledgement of the present requires from the Arab self to know himself truthfully, which means to acknowledge the way the West is already constitutive of himself. Henceforth, for Arabs, the best way to know the collective

self is to know the moments of Western history that corresponds to the “stages” of development reached by Arab countries.

From this perspective, reclaiming the Islamic past for the present is a vain enterprise that remains a mere call for authenticity for an “empty self” (*un moi vide*). The Arab contemporary self cannot be based on the reinterpretation of classical culture but needs to be built through the objective knowledge of the world-present, notably the acknowledgement of the desire of industrialization as a fact requiring from Arab countries to follow the European model. As long as industrialization is not achieved, the authenticity claim grounded in Islam will remain an abstract and empty wish because there will always be constitutive distortions and comparisons with the West in the way Arabs think of themselves³²⁶.

For Laroui, there is no “objective basis”, no material facts for the restoration of the preeminence of Islamic knowledge, for they are only “words” that need to be “read, vocalized and interpreted” and “gestures that need to be interpreted”. In the present, Islam as grounded in the *Sunna* is only one possibility among others, the same way it was a possibility when it prevailed over the abstract reason of the Mu’tazila. Moreover, the call to authenticity is not the privilege of religion, but may be articulated to other aspects such as language or worldly culture (*adab*) that are all signs where the continuity of the self may be postulated.

As for contemporary Islamic scholars and Arab thinkers, the twin questions of (collective) self and time shape Laroui’s reflection upon the significance of Islam for the “real-present”, two generations after the first formulation of “reformist” Islamic thought by Muhammad Abduh. Yet, unlike twentieth century’s Islamic scholars, Laroui thinks that the Islamic past has failed to be authoritative for the present not only because the present is already constitutive of these scholars’ voice but also because the latter has become one voice among other voices in a time where they are no longer the privileged, if not unique, chain to the past : “Le dogme qui devait garantir l’authenticité et la permanence de notre moi, le voici donc, malgré les efforts du clerc, qui se dissous dans nos choix d’aujourd’hui. Nous sommes tous fils du Présent, aucun de nous ne peut prétendre être le fils aîné et le seul héritier du patrimoine. Celui-ci est a la portée de tous ; libre a chacun d’y prendre ce qui lui donne équilibre et volonté d’agir »³²⁷.

If Arab thinkers and intellectuals rely on “objective knowledge” rather than an “ideological” reading of history, the question of the Islamic past, and more generally any past, as the repository of the self and its authenticity would be much less important for it would open up the possibility of “universality of reason” understood as the shared future with the West. Oriented toward the future, the self would be much less concerned by the past as a way to preserve authenticity. This rationality requires from Arab consciousness to be historical and critical as a way to own “universal history, its methods and its conclusions”³²⁸ because the mere call to Islamic authenticity does not change the facts, while “universality” is reconciliation with the facts. Yet, this rationality is not a mere imitation of the West, but requires “a double critical consciousness” of Arabs both with their past and the West as their true being is not located in the present (that is already inscribed in the Western past) but only in the future.

³²⁶ Laroui, *L’ideologie arabe contemporaine*, p.VII-XII.

³²⁷ Laroui, *L’ideologie arabe contemporaine*, p.85.

³²⁸ Laroui, *L’ideologie arabe contemporaine*, p.109.

The terms of Laroui's inquiry -rationality, time, the relationship to the Western Other- has shaped the intellectual debate in Arab societies since the late 1960s as much as it reflected the main concerns of Arab scholars and intellectuals. These very terms inform the work of another influential Moroccan thinker, Muhammad 'Abd al-Jabiri, albeit toward a different direction. If for Laroui, embracing the "universal" requires emancipation from the past, for Muhammad 'Abd al-Jabiri modernity should be grounded in the very past of Islam. As formulated in his trilogy published in the early 1980s, *Naqd al-'Aql al-'arabi* (The Critique of Arab Reason), *Takwin al-'Aql al-'Arabi* (The Formation of Arab Reason) and *Bunyat al-'Aql al-'Arabi* (The Structure of Arab Reason), the broader intellectual project of al-Jabiri consists in giving a new life to "Arab reason" and making it "contemporaneous" (*tahdith al-'aql al-'arabi*). The notion of *tahdith*, which may also be translated as "modernization" is better understood through the temporal lens (which is itself connoted by the notion of modernity [*al-hadatha*]) for Arab modernity does not mean that one should forget the past or put aside Islamic knowledge. Rather, as implied by the notion of renewal (*tajdid*), one should engage rationally and selectively with the past and more precisely, the *turath* (cultural heritage or legacy), in order to make *present* its rational elements. Yet, this renewal, as a way to build the present and the future, is not possible if Arabs do not liberate themselves from the blind submission to the authority of the past and the main components of the *turath* i.e. "language, *Shari'a*, creed (*'aqida*), and politics (*siyyasa*)"³²⁹. The task of contemporary intellectuals is precisely to revisit these elements of the *turath* relying on the very reason Arab culture has produced in the past, for, if Arab reason has been alive in the past it remains a potentiality for the present.

One way to reconnect with the foundational elements of Arab reason is to study its modes of instantiation in the production of knowledge. For al-Jabiri, since the fifth century of Islam, the three modes of knowledge (*bayan*, *'irfan* and *burhan*) that shaped Arab culture in the classical age have been in crisis and were unable to sustain a creative activity in the subsequent centuries. As exemplified in al-Ghazali's work, gnosis (*'irfan*) and demonstrative knowledge (*Burhan*) have been subjugated to the *bayan* [that I translate imperfectly as hermeneutics and which consists in producing meaning through textuality] and is displayed in jurisprudence (*fiqh*), grammar and theology (*kalam*). Although it is the *bayan* that still shapes contemporary Arab culture, it is only in the form of "preserving" and "remembering" not as a way to produce thought. Moreover, the hegemony of the *bayan* left no space for demonstrative knowledge and made Arab reason lose the "the authority (*sulta*) that makes it alive, an authority that allows [reason] to impose order on itself and on the world"³³⁰. Hence, the renewal of Arab reason requires from the lettered to revive demonstrative knowledge (*burhan*) as exemplified in the works of classical scholars such as Ibn Rushd, Ibn Khaldun, Shatibi or Ibn Hazm. Yet, reclaiming their thought should not lead contemporary Arabs to glorify them or as a way to be "alienated" from the present. Rather, they should be relied upon on the basis of the expectations of the present and the future and "the needs of contemporary times' thought (*fikr al-'asr*) and its logic"³³¹.

Muhammad 'Abd al-Jabiri, whose main intellectual project consisted in the critique of "Arab reason", was also interested in *Shari'a*'s relevance for the present. For al-Jabiri, modern times,

³²⁹ Al-Jabiri, *Bunyat al-'Aql al-'Arabi*, p.572.

³³⁰ Al-Jabiri, *Bunyat al-'Aql al-'Arabi*, p.511.

³³¹ Al-Jabiri, *Bunyat al-'aql al-'arabi*, p.572.

more than any other time, call for a renewal of Islamic legal knowledge through a reopening of *ijtihad*, which is in fact, an opening of Arab reason itself (*fath al-‘aql al-‘arabi*) for it is the latter that is in charge of the former. In pre-modern times, it was sufficient to know the science of Arabic language and other Islamic sciences such as *tafsir* (commentary of the Quran), *hadith* (reported sayings and deeds of the Prophet) and *fiqh* (jurisprudence) in a context where the nature of social, economic and political life remained relatively stable. The “scientific revolution” and the industrial civilization, the development of natural sciences as well as social and economic sciences are among the most important changes that make older procedures of Islamic legal knowledge less relevant for the present. Now, according to al-Jabiri, the majority of Islamic scholars do not have the skills to grasp the science and “thought of contemporary times” (*fikr al-‘asr*), and need to acquire them to be able to perform *ijtihad*.

For al-Jabiri, the task of the contemporary *mujtahid* (the scholar who performs *ijtihad*) is to look for and disclose the *rationality* and *reasons* behind *Shari’a* rules (*ma’quliyat al-ahkam al-shar’iyya*) for they have not been formulated arbitrarily. These reasons are distinct from what classical Islamic jurisprudence calls the *‘illa* (ratio legis) for the latter is formulated on the basis of the Quran and the *Sunna* and allows the scholar to know the intent of the Legislator, i.e. God. Yet, like the attempt of the judge to know the intent of the people in a courtroom, this form of knowledge is always based on probability (*zanni*) rather than certainty. Instead of looking for the intent of God, the method suggested by al-Jabiri consists in establishing that “the good of the people” (*maslahat al-nas*) or the “public good” (*maslaha ‘amma*) is the general goal of *Shari’a*, which is itself generative of the rationality of Islamic legal rules. For al-Jabiri, the question of the application of *Shari’a* (*tatbiq al-Shari’a*) often raised in the public space, notably by contemporary Islamic movements, should be understood on the basis of this generative rationality rather than as a fixed set of rules³³².

More specifically, if one takes the example of the corporal punishment reserved to thieves in the Quran (chopping off the thief’s hand), the classical jurisprudential method of *ta’lil* would consist in stating that the *‘illa* (ratio legis) for this rule is the protection of property but would not tell us why this specific sanction has been chosen among other possible sanctions (for example the prison). The approach suggested by al-Jabiri, grounded in the *asbab al-nuzul* (occasions and circumstances of the Revelation) would understand the rationality of the rule in the original time-space of its utterance. Such method would state that this specific punishment reserved to the thief existed in Arab society before Islam and was instituted by Islam as a legal rule in a nomadic society as a way to avoid any repetition of the misdeed and to warn the people who may subsequently encounter the thief. Most important, because in this kind of society living in the desert, no other punishments (for example imprisonment) were available, it is not necessary to keep the same punishment for contemporary times.

One should note that al-Jabiri does not suggest here that contemporary Muslims should be “free” from the authority of *Shari’a*’s foundational texts i.e. the Quran and the *Sunna*. Rather, for al-Jabiri, as for several contemporary Islamic scholars (see chapter 9), the “real-present” is constituted as an epistemic problem for Islamic legal knowledge and the task of *ijtihad* is precisely to find a solution to this problem while preserving the authority of the Revelation, and most notably the Quran. As we saw on the question of the thief’s punishment, it is temporality itself that is

³³² Al-Jabiri, *Fi Ghimar al-Siyasa, Fikran wa Mumarasa*, vol.3, p.174-176.

suggested as a solution to the time problem raised by the “real-present” for what was relevant at the time of the Revelation is not necessarily relevant for the present or the future. Here, it is through temporality that the understanding of the social, captured by the historical conditions of its instantiation, determines the relevance of the legal rule enclosed as a textual command in the Quran for the present as well as the future.

We saw in chapter 8 that the question of time (or more precisely the “present”) was constituted as an epistemic legal problem for contemporary Islamic legal knowledge. However, for most contemporary Islamic scholars, time is generative of legal change in a way that is clearly distinct from al-Jabiri’s approach. It is true that, for them, social change and conditions of time and space necessarily call for a continuous change in legal opinions, and extenuating circumstances may even allow for the suspension of an obligation uttered by the Quran. Yet, conditions of time and space and circumstances are assessed by the scholar-mufti regarding the case in hand, but never on the basis of an alternative formulation of the textual obligation enabled by the understanding of the original context where the command has been revealed (as suggested by al-Jabiri). Rather, accommodations and the suspension of the rule in a case reenact not only the authority of the textual command itself but also the authoritativeness of the text (of the Quran and the *Sunna*) over the context as well as the preeminence of performativity over the social conditions of the original utterance. Now, these very distinctions (text and context, performativity and social conditions) and the tensions they engender are of course produced by the inquiry of contemporary Arab philosophers (and other thinkers) into Islamic legal knowledge and the conditions of its production but are not considered by Islamic scholars as problems inherent to the limits of textuality itself that would call for a total revision of procedures of truth seeking as well as the notion of textual truth for legal purposes.

Part V

Chapter 12

Islamic Reason

Raising the question of reason in Islam

The question of reason and rationality informs contemporary representations about *Shari'a* among both western scholarship and the writings of modernist intellectuals in Muslim societies since the end of the nineteenth century. To a certain extent, *Shari'a* occupies the space formerly occupied by the Jewish law in Christian and secular European writings up to the twentieth century as the Judaism was represented, for example in philosophical writings by Kant and Hegel among others, as “the slavish obedience to statutory laws”³³³. *Shari'a*, like the *Halakha* in pre-twentieth century western writings, is represented in contemporary writings as requiring a blind obedience from its subjects.

For Enlightenment-inspired thought, modern societies should not be regulated by a religious law as it would contravene the principle of autonomy under which the law regulating collective life is the expression of individual and collective free human will³³⁴ rather than imposed God's will. From this perspective, the law is not only a matter of autonomous will claiming its independence from any heteronomous interference, but also a matter of rationality as it is the result of collective deliberation based on rational arguments determining the collective good in the public sphere usually through elected representatives of the people³³⁵. In this configuration, religion, because it is hermetic to rational argumentation, is associated with faith and beliefs that should remain in the private sphere rather than be the basis of public claims or inform the legislating process.

Yet, contemporary political thought and institutions are not necessarily reflecting this binary opposition between religion and modern political reason. Rather, it is also reflecting a hierarchy of religions according to their rationality and ability to generate (or absorb) modern civilization in the colonial and post-colonial contexts. Kant's *Religion within the Limits of Reason Alone* and Max Weber's comparative work on religions, including his *Protestant Ethic and the Spirit of Capitalism*, exemplifies the institution of Christianity, and Protestantism in particular, at the top of the hierarchy of religions in the light of philosophical, economic and political modernity.

It is within this tension between, on the one hand, the affirmation of a categorical opposition between reason and faith (and as related to the law, between free will and the subjugation to God's will), and on the other hand, the formulation of a hierarchy of religions according to their rationality that the representations about Islam, *Shari'a* and its purported irrationality have been usually understood.

³³³ Hegel, *Early Theological Writings*, p.68.

³³⁴ See Rousseau, *The Social Contract*; Kant, *The Metaphysics of Morals*.

³³⁵ Habermas, *The Structural Transformation of the Public Sphere*; Rawls, *A Theory of Justice*.

The debate about reason in Islam was not raised for the first time in the colonial context. If colonial times (and their post-colonial aftermath) are certainly a defining moment in the discussion about reason in Islam, the debates that occurred between classical Islamic jurists, theologians and philosophers represent an earlier defining moment (8th-13th centuries). Yet, although the terms of the colonial and post-colonial debates explicitly revived some of the terms relied on by classical Islamic thinkers, they are still part of a distinct narrative positing the duality between Islam and the West, in which the lack of rationality is a distinctive trait of the latter that explains other lacks (democracy, development...).

It is not my purpose here to formulate judgments about the rationality or the non-rationality of Islam against western standards, which would involve for example to start from Kant's work on reason or the Weberian definition of rationality to see if one can find their equivalent in the Islamic context (as Weber himself does in his comparative work on Islamic law). Rather, my purpose is to study the ways in which the notion of *'aql* (reason) and its associated notions such as *i'tibar* and *nazar* (reflection) have a cultural genealogy distinct from the western trajectory of rationality and is grounded in specific meanings and practices of rationality related to *Shari'a* and displayed in classical disciplines such as the sources jurisprudence (*usul al-fiqh*), philosophy, *kalam* (theology) and language that are still informing contemporary Islamic knowledge and culture.

Throughout the last third of the twentieth century up to the 2011 Arab uprisings, political debates about the constitutional status of *Shari'a* and its legislative place within the state have been primarily related to the social implications of its enactment for individual rights and freedoms. Contemporary claims about women's rights or individual freedoms within Muslim societies have been shaped as a conflict between *Shari'a*'s textual prescriptions on the one hand, and on the other hand, "international norms and standards". For these rights groups and several modernist intellectuals, this conflict of norms is also a conflict between modernity, that requires the use of reason, and tradition equated with religion.

While, in classical Islam, the debates involving discussions about the relationship between reason and revelation dealt with beliefs, creed and theological topics (such as God's attributes, the createdness of the Quran, causality and free will) in contemporary Muslim societies the debates about reason and revelation deal primarily with legal and practical matters such as individual rights and freedoms associated with western liberal democracy and its dominant way of life. In classical Islam, the debates about reason and revelation occurred among thinkers and theologians who all spoke as Muslims in the name of the Islamic community and all claimed their faithfulness to the revelation. In contemporary Muslim societies, the discussion about reason and revelation occurs within a divide between "secular-modernist" intellectuals and "religious-traditional" scholars that reflects a divide between "secular" and "religious-Islamic" groups within civil and political society in a context of duality between *Shari'a* norms and modern state-law rules that overlaps with the duality between Islamic and Western cultures.

Whatever were the divisions among classical scholars about the respective places of reason and revelation and about the authoritativeness of the *Sunna*, there was no doubt that *Shari'a* rules should regulate collective life even among the philosophers, and *kalam* (theology) scholars. For philosophers such as al-Farabi and Ibn Sina, *Shari'a* was a law that could be grasped and "translated" rationally, and was required for the polity's life. By contrast, in contemporary times,

the revelation's authoritativeness is itself questioned as, for secular-modernist groups, it is modern state-law, following international norms and standards, that should regulate the society's life.

Islamic reason: scriptural, legal and speculative reasons

The question of rationality and use of reason in relationship to *Shari'a* may be raised from two perspectives. On the one hand, as we saw in Part IV (chapters 9 and 10), Islamic scholars relied on procedures of reasoning securing the production-extraction of legal rules. Although the reliance on *qiyas* (analogical reasoning), along with the Quran, the *Sunna* and the consensus of scholars, was one of the sources of jurisprudence for almost all juridical schools, the use of reason in Islamic legal knowledge should not be understood in this narrow sense. Rather, forms of reasoning are also displayed in linguistic procedures securing the meaning of the two foundational texts (i.e., the Quran and the *Sunna*) for purposes of rule extraction. On the other hand, reason was also given a status by Islamic scholars *outside* jurisprudence and other forms of *Shari'a* knowledge. The status of reason in classical Islam, notably its relationship to revelation and knowledge, was reflected upon in the works of Islamic thinkers, and was discussed by prominent jurists themselves in classical disciplines that were not dealing with jurisprudence (*fiqh*) *per se* such as *kalam* (theology), philosophy and polemical works.

The Islamic episteme involves the use of reason in relationship to revelation that requires from the modern reader to think beyond the binary opposition between the "rational" and the "non-rational" for it would be mistaken to consider that reason can be relied on only independently from revelation or that there is no room for reason in Islamic legal knowledge. Reason is relied on to grasp the meaning and truth of the revelation, allowing the scholar, for example, to avoid the formulation of contradictory prescriptions from the Quran, when relating different verses on the same topic to each other, or when relating the sayings of the Prophet to the Quran. Reason is not only the instrument to formulate truth-claims about the hierarchy, authenticity –for the sayings of the Prophet- and meaning of revealed speech by relying on revealed speech itself, it is also a way to apprehend the world, for example when assessing the meaning and truth of facts, events and situations by relating them to revealed speech. Although classical Islamic scholars versed in theology (*kalam*), philosophy and Islamic legal knowledge such as al-Ghazali, Ibn Taymiyya and Ibn Rushd had different views on the role of reason as an instrument of truth-seeking, they nevertheless shared the same epistemic language positing reason and revelation and raising the question of their interrelations and respective authoritativeness.

As we will see below, there are three distinct types of intellectual activities related to the revelation which vary in complexity but are often combined in classical disciplines: scriptural, legal and speculative. Reason is an instrument to grasp the meaning of the revelation as captured by texts and mobilized to produce textual evidence for the formulation of truth-claims about the world and revelation itself (scriptural reason). Yet, while Islamic legal reason may rely, more or less, on scriptural reason, it is not limited to the production of textual evidence but oriented toward the formulation of generative principles as displayed in the discipline of *usul al-fiqh* (the sources of jurisprudence), and in the case of *ijtihad*, toward the production of legal rules mainly through the *fatawa* (legal opinions). Islamic speculative reason may be involved in disciplines such as *usul al-fiqh* but its main object is to formulate truth-claims that are not necessarily based on the revelation's textual evidences. Islamic speculative reason's historical development consisted in

shaping a space for speculative activities dealing with theological and worldly questions (God's attributes, causality, free will, the political organization of the community), displayed in the disciplines of *kalam* and philosophy that was autonomous from Islamic disciplines (such as the science of *hadith*) mobilized to produce scriptural evidence.

Islamic philosophy and speculative reason

Unlike subsequent philosophers such as Ibn Rushd, al-Ghazali or al-Razi who were skilled jurists, al-Farabi and Ibn Sina, although trained in jurisprudence (*fiqh*), did not leave any known work in this discipline or in the sources of jurisprudence (*usul al-fiqh*). Yet, al-Farabi and Ibn Sina discussed the relationship between revelation (*wahy*), revealed law (*Shari'a*) and philosophical truth, the role of prophecy and the place of jurisprudence (*fiqh*) in the regulation of collective life and in the government. They offered an understanding of the importance of *Shari'a* as assessed by speculative reason in a form of thought oriented toward the primacy of philosophical truth.

For al-Farabi, while religion is a form of theoretical and practical knowledge that gives access to truth, it is not the supreme form of knowledge³³⁶. Religion offers a cosmology and knowledge about God and the world (including prophecy, life and death, justice, happiness...). Religion, in the form of jurisprudence, offers also practical knowledge about the way the community should be ruled. While religion is similar to philosophy in that they both convey the same prescriptions and can both give access to truth, religion remains a distinct form of knowledge, (if not a lower form of knowledge) when compared to philosophy as what is known through the former has not been formulated through demonstrative reasoning but directly through revelation. Yet, religion's virtuous laws (*al-shara'i al-fadhila*) are all part of the "universals" of practical philosophy, and religion as a whole is part of "practical philosophy" (*falsafa 'amaliyya*).

Al-Farabi devotes several passages to jurisprudence and its place in the way the virtuous community should be ruled. For Al-Farabi, who writes about the relationship between revelation, jurisprudence and the art of government in general terms rather than mentioning Islam specifically, the ideal ruler should know the prescriptions of the revealed law (*shari'a*) as revealed directly by the Prophet, either directly through his words (*alfadh wadhi' al-shari'a*) or through the exemplarity of his deeds (in reference to the *Sunna* in Islam). These legal prescriptions should help the virtuous ruler in his task, which consists in preparing the community for virtuous worldly life and happiness in the hereafter. Al-Farabi even showed interest in the knowledge that the discipline of *usul al-fiqh* (the sources of jurisprudence) started delineating with regards to the formulation of legal rules on the basis of revealed speech with the help of the linguistic rules and categories that allow the scholar-jurist to differentiate between the general (*'am*) and the specific (*khass*), the absolute-unconditional (*mutlaq*) and the conditional-restricted (*muqayyad*), the metaphorical meaning and the literal one.

There should be a fundamental correspondence between the way the world is ruled by God and the way the city is ruled by the virtuous ruler. At the same time, God is still the ultimate ruler (*mudabbir*) of the community when the ruler act according to the revelation's prescriptions (*ma ya'tihi al-wahy min Allah ta'ala*). The order of the community should mirror the harmony between its components, the same way there is harmony between the components of the world under God's

³³⁶ Al-Farabi, *Kitab al-Milla*.

rule. Philosophy allows the ruler to know how God rules the world, and the divine exemplarity in the order and harmony of the world-cosmos should help the ruler unify the virtuous community's will and actions toward supreme happiness (*al-sa'ada al-quswa*).

Unlike Islamic scholars and jurists who produced forms of knowledge related to the Islamic revelation on the basis of the Islamic revelation itself, philosophers such as al-Farabi spoke in general terms about religion and the relationship between philosophical reasoning and revelation. Yet, al-Farabi shared with Islamic scholars and jurists a common understanding that revelation offers a valid theory about God, existence and the world, as well as a jurisprudence that should organize the life of the community. However, al-Farabi's views on the relationship between religion and philosophy imply that reason and demonstrative reasoning (*burhan*) are in a position to determine and assess the validity and truth of what has been conveyed through the revelation. Al-Farabi's views imply also that, for the philosopher at least, the discourse of the revelation or what believers hold to be the revealed truth cannot be accepted as mere truth but requires the work of demonstrative reason.

Ibn Sina shared with al-Farabi a similar conception about the primacy of philosophical truth when related to revealed truth. Philosophy (*falsafa*), includes for Ibn Sina theoretical knowledge such as the sciences of nature, mathematics and the *ilahiyat* (Litt. the knowledge of divinity but refers more broadly to metaphysics) and practical knowledge mentioned as ethics (*akhlaq*). Since the discipline of *ilahiyat* deals with the "first principle" and the "first cause" of existence (which is associated with God), it should be considered as "absolute wisdom" or "first philosophy" for it is foundational to all other forms of knowledge and sciences.

In this epistemology, Ibn Sina addresses questions of cosmology and God's existence and intervention in the world that overlaps with issues raised by the revelation. Yet, his *Kitab al-Shifa'* (The Books of Healing)³³⁷ does not provide a hermeneutical work of the revelation's texts or provide evidence based on revealed speech but rather displays the work of speculative and demonstrative reason dealing with forms of knowledge that are not related to the disciplines dealing with the revelation (such as jurisprudence [*fiqh*], the science of the Quran [*tafsir*] or the science of *hadith* [reported sayings and deeds of the Prophet]).

Nevertheless, Ibn Sina, echoing the theological debates of his time was also interested in "establishing the certainty of the prophecy" (*ithbat al-nubuwwa*). As in al-Farabi's writings, Ibn Sina mentions the prophecy and the revealed law in general terms rather than being specific to Islam and the Prophet Muhammad³³⁸. He does not rely on the Quran or the Sunna to prove the truth of the prophecy. Rather, he starts from the need for humans to live in social states and cities, and to engage in social interactions and transactions between them. These social activities entail "prescriptions and justice" (*sunna wa 'adl*)³³⁹ without which there would be no order and agreement between humans. Prophecy stems from this necessity for humans to have one indisputable legislation regulate their social activities, and whose author is a human delegated by

³³⁷ Ibn Sina, *Al-Shifa'*.

³³⁸ The section devoted to the acts of worship (*ibadat*) seems to refer more specifically to Islam as Ibn Sina mentions the ritual blessing that Muslims utter when referring to the Prophet Muhammad (*Sala Allah 'alayhi wa salam*). See Ibn Sina, *Al-Shifa'*, vol.1, p.443.

³³⁹ Ibn Sina, *Al-Shifa'*, vol.1, p.441.

God to perform this task through revelation. The prophet's first teaching which unveils that there is One Omniscient Creator Who should be obeyed with the promise of happiness, and whose decrees as uttered by the Prophet's tongue should be heard and obeyed constitute the basis of all the other teachings and rules to be followed by the community. The Prophet's task is also to mention God's attributes and intervention in the world through symbols that can be easily grasped by the people. Otherwise, a more sophisticated and truthful speech about God would confuse most people and may lead to excessive questioning and doubts and may be a source of disorder in the community³⁴⁰.

Ibn Sina recalls that, in order to avoid collective amnesia about the prescriptions and revealed laws (*sunan wa sharai'*) to be followed by the community decades after the Prophet's death³⁴¹, it was necessary for the Prophet to prescribe a series of repetitive deeds such as the obligatory acts of worship, including prayer and fasting, whose primary goal is to remember God and be closer to Him. Prayer is particularly important as it is a moment of conversation between the worshipper and God that is associated with piety, humility, fear and deference. It is through daily deeds that the revealed laws and its prescriptions can be preserved from loss and kept alive throughout centuries and generations.

For Islamic philosophers such as al-Farabi and Ibn Sina, the labor of reason is not meant to target revelation or to limit its scope but is a way to validate what revelation has already established as truth³⁴². Yet, if the overall goal and results of rational inquiry was not an issue to the extent that it was in agreement with revealed truth, the problem was rather the terms of the philosophical truth and the extent to which reason could thrive as a generative knowledge autonomous from the knowledge based on the revelation. Usually, in their truth-seeking project, philosophers would not rely on the revelation's texts to produce evidence. While some philosophers such as Ibn Rushd in *Fasl al-maqal* may engage in the interpretation of passages of the Quran to support their rational inquiry, the whole construction of the reasoned edifice, relying partially on Greek philosophical notions and reasoning, is not based on revealed evidence. The philosophers did not usually rely on the knowledge produced by the disciplines dealing directly with the revelation (jurisprudence (*fiqh*), science of the Quran (*tafsir*), and the science of *hadith* (reported sayings and deeds of the Prophet), but they acknowledged and relied on philosophical reasoning to demonstrate the importance of the revealed law for the regulation of human affairs as they were more interested in bringing to a reasoned unity encompassing God's existence, prophecy, cosmology, nature, the world of humans and revelation itself.

³⁴⁰ Ibn Sina, *Al-Shifa'*, p.443.

³⁴¹ Ibn Sina, *Al-Shifa'*, p.445.

³⁴² While Al-Farabi, Ibn Sina and more generally, the Islamic philosophers' voice did not oppose revelation to reason or Islamic knowledge to philosophy but rather acknowledge the rationality of religion and its truth in the name of philosophical truth itself, it is relevant to note that, in the modern context, both in Muslim and Western societies, it seems difficult to hear voices that may claim that the community should organize its life according to religion not because of faith but following rational-philosophical truth as the contemporary context reenacts the divide between reason and faith inspired by the Enlightenment.

***Kalam* and the entwinement of reason and revelation**

Displaying a unique combination of speculative reason and revealed speech, the discipline of *kalam* (Litt. speech, usually translated as rational theology), also known as the “sources of religion” (*usul al-din*) or the “science of [God’s] Unity” (*ilm al-tawhid*), was for centuries the main battlefield of disputes and disagreement between Muslim groups who were differentiated between each other according to their claims and positions about a series of questions related to God and His attributes, the world, prophecy and miracles, the Quran’s createdness and the nature of human deeds.

In the fourteenth century, in a time where *kalam* became much less significant in Muslim societies and where most of his disputes have been settled in favor of the people of the *Sunna* (*ahl-al-Sunna*), Ibn Khaldun’s definition of *kalam* in his *Muqaddima* underlines the intertwinement of revelation and reason and its polemical nature: “the defense of the beliefs related to faith based on rational evidence and the refutation of the blameful innovators who deviated from the beliefs and path of the predecessors and the people of the *Sunna*” (*ilm yatadhamanu al-hujaj ‘ani al-‘aqaid al-imaniyya bi al-adilla al-‘aqliyya wa al radd ‘ala al-mubtadi’a al-munharifin fi al-‘itiqadat ‘ani madhahib al-salaf wa ahl al-sunna*)³⁴³.

Although classical scholars were deeply divided regarding the respective roles of reason and revelation and the nature of evidence that can be relied on to formulate truth-claims, they all agreed that there is a specific knowledge dealing with prescriptions about beliefs, distinct from jurisprudence (*fiqh*) which formulates prescriptions about deeds as exemplified in a work attributed to Abu Hanifa (whose name is associated to the eponym jurisprudential school) entitled “the greater knowledge” (*al-Fiqh al-Akbar*). Ibn Taymiyya, known for his hostility towards *kalam* scholars and methods which he attacked in several of his writings, was nevertheless the author of the *Aqida Wasitiyya* stating what he considered as the true Islamic creed and prescribed beliefs. Like Ibn Taymiyya, scholars who wanted to clearly differentiate themselves from the polemics and rationalist claims associated with *kalam*, would then use the name “*‘aqida*” (creed) for the knowledge dealing with God’s attributes, the world, prophecy, the Quran’s createdness and the nature of human deeds.

In a time where Muslim groups were differentiated according to their claimed beliefs and creed, several classical Islamic scholars viewed *kalam* as the most important discipline without which no other forms of *Shari’a* knowledge can be established. For the twelfth century scholar Fakh al-Din al-Razi in his *Nihayat al-‘Uqul fi Dirayat al-Usul* (*The reasons’ end in the knowledge of the sources*), *kalam* is not only the noblest of all sciences because it deals with God “the Noblest of all objects of knowledge” (*ashraf al-ma’lumat*), it is also foundational and prior to all religious sciences (*al-diyanat kulluha mutawaqifa ‘ala hada al-‘ilm*) as, “without having established that the world has an Omniscient and Omnipotent Creator then how is it possible for the Quran’s exegete (*mufasssir*), the specialist of the *hadith* (*muhaddith*) and the jurist (*faqih*) to engage in their knowledge?”³⁴⁴

³⁴³ Ibn Khaldun, vol.3, p.23.

³⁴⁴ Al-Razi, *Nihayat al-‘Uqul fi Dirayat al-Usul*, vol.1, p.97-98.

Yet, it was not only the claim about the preeminence of *kalam* over all other disciplines that was rejected by several other scholars, it was also the constitution of *kalam* as a demonstrative discipline in its own right that was contested, notably by scholars from the Hanabali school. In response to these polemics, and to the argument that *kalam* knowledge was not explicitly prescribed by the Prophet Muhammad, Abu Hasan al-Ash'ari (whose name is associated with the eponym doctrine that is today the most widely shared among Muslim societies and claimed as the "official" creed of several countries) authored *Risalat Istihsan al-Khawdh fi 'Ilm al-Kalam* (Treatise on the Appropriateness of Inquiry into the Science of *Kalam*) to delimit a legitimate and lawful space for his discipline. For al-Ash'ari, the fact that the prophet Muhammad did not enjoin Muslims to be versed in *kalam* is not a valid argument because he did not prohibit it either. Moreover, a closer look at the revelation shows that there is an authoritative textual foundation to *kalam* in the Quran and the *Sunna* in which substantive topics such as God's Unity (*tawhid*) discussed by the discipline are mentioned in general terms. Yet, if the Quran and the *Sunna* are "the sources of *kalam*" (*usul al-kalam*), it does not mean that they provide a detailed knowledge about its substantive topics but rather requires from the scholar to rely on *ijtihad* [personal effort], the same way the Quran and the *Sunna* do not include all legal questions in jurisprudence and call for analogical reasoning (*qiyas*). Most important, while the branches and particulars are known only on the basis of knowledge acquired through audition and transmission (*al-furu' la tusdrak ahkamha illa min jihat al sam' wa al-rasl*), *kalam* belongs to the domain of rational matters (*al-masa'il al-'aqliyyat*) as it deals with the foundations and the sources (*usul*)³⁴⁵.

Classical scholars such as Ibn Taymiyya and Ibn Qudama who thought that *kalam* as practiced by their contemporaries could not be considered as a proper *Shari'a* discipline, relied not only on revealed speech's texts to prove their point, but grounded also their claims in forms of reasoning displayed in *kalam*. In his *Tahrim al-Nazar fi Kutub Ahl al-Kalam* (Treatise prohibiting the study of the books of the *kalam* people), Ibn Qudama aims to refute the claim, shared among several *kalam* scholars³⁴⁶, that there is an obligation for each Muslim endowed with reason to rely on his intellect to reflect on God's attributes and other creed topics.

For Ibn Qudama, the prophet Muhammad never enjoined Muslims to reflect on rational evidence (*al-nazar fi adillat al-'uqul*) for matters related to beliefs and creed³⁴⁷. Moreover, the common people (*'amma*) cannot be endowed with the individual responsibility to practice *ijtihad* (personal efforts) for the acquisition of knowledge on these matters as it would require from each individual to devote his time to this search instead of working on their respective productive tasks and would make collective life based on the division of labor impossible. That is the reason why there is a consensus among Islamic scholars that the common people are required to follow (*taqlid*) what the scholars say about the beliefs to be held (as in other jurisprudential matters) instead of relying on their own inquiry. Hence, topics such as God's unity (*tawhid*), Muhammad's prophecy, and the acts of worship are self-evident (*al-amr al-zahir*), do not require intellectual efforts and cannot be the object of *ijtihad*.

³⁴⁵ Al-Ash'ari, *Risalat Istihsan al-Khawdh fi 'Ilm al-Kalam*, p.10.

³⁴⁶ Ibn Qudama aims to refute more specifically the claims of a fellow hanbalite scholar Ibn 'Aqil. While the latter publicly disavowed his *kalam* views, Ibn Qudama undertook his project in order to discourage other scholars to engage in *kalam*.

³⁴⁷ Ibn Qudama, *Tahrim al-Nazar fi Kutub Ahl al-Kalam*, p.25.

The conflict of evidences

One of the most important contentious issues between classical scholars versed in, or hostile to *kalam* was the nature of evidences that can be provided to formulate truth claims regarding topics related to beliefs and creed and whether interpretation of revealed speech utterances taking some distance from the conventional meaning (as defined by the semantic conventions of language defined by scholars of language and whose theological-jurisprudential use are accepted and validated by the scholars of the time) was a sound method. In his *Nihayat al-'Uqul*, al-Razi, who shared with Abu Hasan al-Ash'ari the idea that *kalam* belongs to the realm of rational matters ('*aqliyyat*) and belonged himself to the *Ash'ari* school, raised the following question: Is it lawful to rely on transmitted evidence when dealing with matters belonging to reason (*hal yajuzu al-tamasuk bi al-adilla al-sam'yya fi al-'aqliyyat am la*)? Among the three categories of argumentation formulated by al-Razi and which included (i) truth claims requiring exclusively revealed evidence, (ii) truth claims requiring exclusive rational evidence and (iii) truth claims requiring revealed *and* rational evidence, it was the third one that raised the most significant difficulties as it may engender contradictions between reason and revelation.

More specifically, following the third case, what happens if the conventional and “outer” meaning of revealed speech (*zahir al-naql*) contradicts reason? The solution to this problem is either to reject reason as untrue (*takdib al-'aql*) or to interpret the revealed speech-evidence (*ta'wil al-naql*). For al-Razi, the scholar facing this problem should always rely on interpretation of revealed speech with the help of reason as the very validity of revealed speech as acceptable evidence can be established only by reason (*al-naql la yumkinu ithbatuhu illa bi al-'aql*). For the truth of the revelation needs to be demonstrated by reason before revealed speech can be accepted as true and constituted as a source of evidence, and this kind of demonstration requires from the scholar to establish the existence of the Creator and the truth of the prophecy³⁴⁸. Hence, any attempt to reject the work of reason to make transmitted speech prevail will result in weakening and belittling revealed speech (*tashih al-naql bi radd al-'aql qadhun fi al-naql*). To put it shortly, the dismissal of reason is, at the end, a dismissal of revealed speech³⁴⁹.

Al-Razi's principle giving preeminence to reason over revealed speech in a situation of conflictual evidence and previously formulated in a similar form by al-Ghazali in his book *Qanun al-Ta'wil* (The procedure of interpretation), became the object of Ibn Taymiyya's criticism in his *Dar' Ta'arud al-'Aql wa al-Naql* (Refutation of the contradiction between reason and revelation). Although Ibn Taymiyya started from al-Razi's central argument that “reason is the foundation of revelation” (*al-'aql asl al-naql*), his overall target was all scholars claiming “to know divine matters on the basis of their reason (*ma'rifat al-ilahiyyat bi 'uqulihim*)³⁵⁰”, i.e. the people of philosophy, *kalam* and those versed in rationalist matters (*ahl al-hikma wa al-kalam wa al-'aqliyya*). In response to al-Razi's argument and to all the “rationalists”, Ibn Taymiyya recalls that reason cannot be endowed with the authority to validate the truth of revelation (*shar'*) as the latter exists in its own right and by itself (*al-shar' thabit fi nafsihi*) and does not need the scholar's reason or knowledge to exist. Yet, the reverse is not true as reason, after its encounter with revelation,

³⁴⁸ Moreover, evidence based on revealed speech cannot be accepted as valid evidence for issues that belong to the realm of reason (*inna al-adilla al-naqlyya la yajuzu al-tamassuk biha fi al-masa'il al-'aqliyya*).

³⁴⁹ Al-Razi, *Nihayat al-'Uqul fi Dirayat al-Usul*, vol.1, p.143-146.

³⁵⁰ Ibn Taymiyya, *Dar' Ta'arud al-'Aql wa al-Naql*, vol.1, p.19.

becomes knowledgeable about it needs for its worldly life and afterlife, and acquires attributes (*sifat*) it did not have before that encounter³⁵¹. Moreover, Ibn Taymiyya questions the notion of reason as relied on by al-Razi and the rationalists on the ground that it is too general and too vague to be considered relevant as it may refer to several genres (*naw'*) relied on by different groups claiming the use of reason. For example, if what is meant by reason is the “natural faculty” (*ghazira*) then reason cannot be opposed to revelation as this form of reason is the necessary condition of all forms of knowledge, be it rational or revealed, the same way life is their necessary condition (*shart li kulli 'ilmin 'aqli aw sam'i ka al-hayat*)³⁵².

Another point raised by Ibn Taymiyya was that the kind of interpretation (*taw'il*) relied on by the *kalam* scholars and other rationalists is based on their opinion and use of metaphors rather than an attempt to be faithful to the intent of the speaker (*la yaqsiduna talab murad al-mutkallim bihi*)³⁵³. They even suggest that these meanings unveiled by interpretation and rational investigation may have not been known by the prophet or that the prophet knew it and did not want to disclose it. In either cases, for Ibn Taymiyya, this kind of statement is absurd, as the mission of the Prophet, as a messenger (*rasul*), is precisely to communicate the people the truth. This approach contravenes Prophet's speech, and may be considered as a dismissal of the Prophet and a form of unbelief (*takdib al-rasul kufr sarih*)³⁵⁴.

For Ibn Qudama, too, interpretation of revealed speech relied on by *kalam* scholars for example on matters related to God's attributes should be condemned because what needs to be known is already mentioned in revealed speech transmitted by the prophecy. Interpretation is a blameful innovation (*bid'a*) that oversteps the limits of what can be known about God as scholars can try to know the conventional-linguistic meaning of God's speech at best, but they can never know His intent and what He really meant. Any expression of a personal opinion (*ra'y*) about the Quran and the Sunna should not be allowed as it associates God with words He never said. Scholars, and more generally Muslims, need to have faith in God's words and the *ahadith* (reported sayings and deeds of the Prophet) and they should keep silent about the meanings that cannot be known. Moreover, the prophet Muhammad prohibited the pious ancestors (*salaf*) to engage in disputations about God's attributes and names or to cogitate about Him (*tafakkur fi Allah*).

For Ibn Qudama, there is no need of interpretative knowledge because it is not related to a deed and its object does not entail a legal obligation (*taklif*), and it is not an inquiry requested by God (*al-bahth 'an umur lam yukalifkum Allah ta'ala iyaha*). The only request is faith, and yet, faith does not necessarily involve the knowledge of the meanings associated to what is believed in, as one can have faith in what has been said in the Quran without knowing its meaning (*yumkin al-iman biha min ghayr 'ilm ma'naha*), for example when God enjoins humans to have faith in angels, the prophecy and the revelation³⁵⁵. At the end of the treatise, Ibn Qudama's last advice to those who are still interested in intellectual inquiry is to leave matters of creed aside and switch their efforts to the intricacies of jurisprudence (*fiqh*) or the abstraction of mathematics.

³⁵¹ Ibn Taymiyya, *Dar' Ta'arud al-'Aql wa al-Naql*, vol.1,p.89.

³⁵² Ibn Taymiyya, *Dar' Ta'arud al-'Aql wa al-Naql*, vol.1, p.89-90.

³⁵³ Ibn Taymiyya, *Dar' Ta'arud al-'Aql wa al-Naql*, vol.1,p.12.

³⁵⁴ Ibn Taymiyya, *Dar' Ta'arud al-'Aql wa al-Naql*, vol.1,p.10.

³⁵⁵ Ibn Qudama, *Tahrim al-Nazar fi Kutub Ahl al-Kalam*, p.32.

Lawfulness of speculative reason

Echoing both philosophical and *kalam* debates about the relationship between reason and revelation, Ibn Rushd's *Fasl al-Maqal fima bayna al-Hikma wa al-Shari'a mina al-Ittisal* (Decisive Treatise on the Link between Philosophy and the Revealed Law) raises the question of the lawfulness of the use of speculative reason: "Are philosophy and the science of logic permissible from the perspective of the revealed law (*mubah bi al-shar'*)? Or does it belong to any other category of Islamic jurisprudence?" i.e. from the perspective of the four other categories of Islamic legal reasoning (forbidden [*mahdhur*], prescribed [*ma'mur*] either as recommended [*al-nadb*] or as obligatory [*wajib*]). Ibn Rushd's book is a systematic exercise of analogical reasoning (*qiyas*) not only because the lawfulness of the latter outside the sphere of Islamic legal knowledge is discussed as such, but also because the text draws constantly parallels and analogies between Islamic legal knowledge and rational knowledge of the world.

For Ibn Rushd, it is an Islamic legal obligation (*wajib*) to rely on reason to grasp the meaning of the world, particularly in the form of philosophy which consists in "looking at beings and reflect upon them (*al-nazar fi al-mawjudat wa i'tibaruha*)³⁵⁶". The knowledge of the world and the knowledge of texts both require *qiyas* (Litt. analogical reasoning but can be understood more broadly as reasoning), called by Ibn Rushd either *qiyas 'aqli* (pure reasoning) when it deals with the former or *qiyas fiqhi* (jurisprudential reasoning) when it is related to the latter. Ibn Rushd quotes several passages of the Quran to support his position, notably *surat Al-Hashr*, 2: "*fa a'tabiru ya awli al-absar* (So reflect O people of vision), from which one can understand that the combined use of pure reasoning and legal reasoning (*al-qiyas al-'aqli wa al-shar'i ma'an*) is obligatory (*wujub*)³⁵⁷.

When defining the notion of reflection (*i'tibar*), Ibn Rushd uses the notion of *istinbat* (extraction) relied upon in Islamic legal knowledge, particularly in the sources of jurisprudence (*usul al-fiqh*), to describe the procedural operation of rule production as related to the Quran and the *Sunna*. Hence, the same way the discipline dealing with the sources of jurisprudence is defined as the knowledge of the procedures upon which legal rules may be *extracted* from *Shari'a* sources (the Quran and the *Sunna*), reflection consists in the *extraction* of the unknown from the known (*istinbat al-majhul mina al-ma'lum*).

Here, rationality is foremost a matter of sight and is related to the way man looks at the world. All the *ayat* quoted by Ibn Rushd stress the importance of the gaze, a sight with reason (*al-nazar bi al-'aql*), for rationality is understood as the way the subject apprehends, and perceives, the world he lives in. Ibn Rushd's use of reason in-the-world, outside the scope of Islamic legal knowledge, is consistent with the way the jurist uses his reason with *Shari'a* texts to produce a legal rule, or assesses facts and deeds as a mufti (or as a judge) for he sticks only to the visible (*zahir*). From this perspective, pure rationality, understood as a rationality that is not *a priori* tied to the revealed law (but still tied to God), shares with Islamic legal rationality the commitment to sensuous and material reality. However, this pure rationality has not its end in itself and for itself, but is another

³⁵⁶ Ibn Rushd, *Fasl al-Maqal*, p.22.

³⁵⁷ Ibn Rushd, *Fasl al-Maqal*, p.22.

way to know God (*al-‘arifū bi Allāh*) through the knowledge of the world and beings, the same way one knows the Artisan-Creator (*al-sani’*) through his creations-artifacts (*masnu’at*).

For Ibn Rushd, if pure analogical reasoning is an Islamic legal duty, it is also an Islamic legal duty to look at what has been written about reason by non-Muslims (*ghayr musharik fi al-milla*), notably those who preceded Muslims. The Muslim scholar cannot refuse *a priori* to look at their work, but on the basis of his own reasoning, he will endorse (or reject) entirely or partially their work³⁵⁸. Since the revealed law (*Shari’a*) is the truth (*haqq*), and enjoins man to know the truth, then demonstrative reason (*al-nazar al-burhani*) cannot contradict what the revealed law has established, for truth cannot be opposed to truth (*al-haqqā la yudhadu al-haqqā*), but is in harmony with it and testifies for it. If demonstrative reason comes to a result for which jurisprudence is silent, then there is no contradiction between the two. If jurisprudence speaks about the same matter, and formulates a judgment similar to what demonstrative reason has produced, then there is no contradiction too. However, if, in a case, the utterance of jurisprudence contradicts what demonstrative reason says, then the former needs to be reinterpreted (*tuliba ta’wiluhu*)³⁵⁹.

The Islamic legal episteme and reason

For classical Islamic scholars, the discipline of *usul al-fiqh* (the sources of jurisprudence) is not only a way to know the *reasons* behind the formulation of an already known legal rule transmitted as such within the Islamic community and formulated in the literature dealing with “the branches” (*furu’*), but also a way to be equipped with the necessary epistemic instruments when they have to deal with new cases and situations raised in the community’s life. In *Sharh al-Luma’* a classical book of *usul al-fiqh*, Abu Ishaq Ibrahim al-Shirazi recalls that without the knowledge of *usul al-fiqh*, the jurist “is unable to say what is the basis upon which the categorical prescription or proscription is formulated nor what is the proof (*dalil*) making such a command obligatory”³⁶⁰. Moreover, if the scholar “may know, through the branches of jurisprudence (*furu’*), which legal category an already established issue belongs to, he would not be able to know what is the right legal category to which a new issue should be assigned if asked about it”³⁶¹.

In the classical Islamic legal episteme as exemplified by Ghazali’s *Mustasfa fi Usul al-Fiqh (The essential in the sources of jurisprudence)*, several scholars dealing with the sources of jurisprudence would classify knowledge according to the way reason and transmission may be relied upon in each discipline. In this taxonomy, the sources of jurisprudence (*usul al-fiqh*) would be distinct from the sciences relying on rationality alone as well as from the knowledge relying only on transmission. “Pure rationality (*‘aqli mahdh*)” as displayed in disciplines such as arithmetic, geometry or astrology is neutral from the perspective of the revealed law. Although this kind of rationality may disclose the truth regarding the subject-matter, it does not have any ethical value for it does not help (nor hinder) the Muslim to get the reward of the afterlife [*akhira*]. On the other hand, the sciences relying on “pure transmission” (*naqli mahdh*)³⁶² such as the sayings of the Prophet Muhammad (*ahadith*), the commentaries of the Quran (*tafasir*) do not require more

³⁵⁸ Ibn Rushd, *Fasl al-Maqal*, p.28.

³⁵⁹ Ibn Rushd, *Fasl al-Maqal*, p.32

³⁶⁰ Al-Shirazi, *Sharh al-Luma’*, p.162.

³⁶¹ Al-Shirazi, *Sharh al-Luma’*, p.162.

³⁶² Al-Ghazali, *Al-Mustasfa*, p.12.

than “the force of memory” (*quwat al-hifz*) and leave no space for reason (*wa layssa majal li al-‘aql*). *Usul al-fiqh* does not rely on pure imitation (*mahdh al-taqlid*) for it cannot accept what has not been assessed and supported by reason, nor is it pure reason for it cannot accept what has been denied by the revealed law. Rather than set apart from each other as in other disciplines, the combination of reason and transmitted knowledge (*sam’*) are constitutive of *usul al-fiqh* as the latter relies on both judgment (*ra’y*) and the revealed law (*al-shar’*)³⁶³.

While the sources of jurisprudence (*usul al-fiqh*) is a discipline of its own right dealing with the generative procedures out of which legal rules may be produced, it was not uncommon for classical jurists to raise *kalam* questions and engage with their adversaries on contentious issues such as the status of knowledge, divine speech, prophecy or the nature of human deeds. For classical Islamic scholars such as al-Ghazali, it is assumed that *kalam*, in contradistinction to all other Islamic disciplines, including *usul al-fiqh*, is the holistic and “highest religious science”³⁶⁴ that determines the rational conditions of possibility of all other religious forms of knowledge and allows the scholar to examine “the whole” as such before dealing with the issues raised in the specialized fields of knowledge (*juz’iyyat*). However, for al-Ghazali, although the knowledge of *kalam* is a necessary condition for anyone claiming to reach the rank of *‘alim mutlaq*, it is not required from scholars for them to be authorized to deal with their respective fields in *usul al-fiqh*, jurisprudence (*fiqh*), comprehension of the Quran (*tafsir*) and the reported sayings and deeds of the Prophet (*hadith*) because they can rely, through imitation and transmission (*musalam bi al-taqlid*), on what has been already established by *kalam*. Hence, the scholar versed in *fiqh* “does not have to demonstrate again that humans endowed with legal responsibility have the ability to choose (*layssa ‘alayhi iqamat al-burhan ‘ala ithbat al-af’al al-ikhtiyariyya lil-mukalafin*)” in order to explore prescriptions and proscriptions as delineated in the revealed law. The scholar dealing with *usul al-fiqh* too does not need to rely on rational demonstration to establish the receivability of the revelation for legal purposes before inquiring about their authenticity and meaning for he already starts from this premise after *kalam* has demonstrated it³⁶⁵.

For al-Ghazali, *kalam* allows scholars to grasp the meaning of the world in rational and holistic terms. Yet, reason acknowledges that it is receiving “knowledge from the Prophet about God and the Day of Judgment”, which cannot be firmly established or refuted by reason alone (*la yastaqillu al-‘aql bi darkihi wa la yaqdhi aydhan bi istihalatihi*). Moreover, reason alone is unable to firmly establish or refute that obedience to the revealed law is a source of happiness in the afterlife³⁶⁶.

Besides *kalam* questions, several works of *usul al-fiqh* would also discuss jurisprudential reasoning in relationship to the science of logic and syllogisms. For scholars such as al-Ghazali, the science of logic was not unconsciously relied upon to delineate the generative principles commanding the operation of rule production in Islamic legal knowledge, but was an explicit constitutive foundation of the discipline of *usul al-fiqh*. However, although several scholars dealing with *usul al-fiqh* did not relate their discipline to the science of logic, they nevertheless all systematically ground their work in the rules of grammar and language. As exemplified by al-Ghazali’s *Mustasfa*,

³⁶³ Al-Ghazali, *Al-Mustasfa*, p.32-33.

³⁶⁴ Al-Ghazali, *Al-Mustasfa*, p.20.

³⁶⁵ Al-Ghazali, *Al-Mustasfa*, p.36-38.

³⁶⁶ Al-Ghazali, *Al-Mustasfa*, p.37.

the principles of logic not only display a structural homology with the rules of language, but are mirrored in the single and combined linguistic units and their usages for epistemic purposes.

For scholars such as al-Ghazali, one need first to agree upon the rules of deduction and inference, which reflect themselves the rules of language, because truth production in Islam legal knowledge, and more generally in Islamic sciences, require a prior agreement upon the general rules of use of words in utterances for reasoning and demonstrative purposes. In his *Mustasfa*, al-Ghazali starts with a chapter devoted to the knowledge of “Logic” (*mantiq*) delineating principles of distinction and separation between single words (or to use the terminology of Saussure’s linguistics, between “linguistic units” or “concrete units”) and the possibilities of their combination in utterances for demonstrative purposes (*burhan*).

For classical Islamic scholars versed in the science of logic and language, cognition consists in comprehending first the single entities (*al-dawat al-mufrada*) as designated by the single nouns. Secondly, it consists in relating these entities to each other through affirmation (*ithbat*) and negation (*nafy*), as it produces relationships between the qualifying (*wasif*) and the qualified (*mawsuf*) as well as effects of confirmation (*tasdiq*) and invalidation (*takdib*). In displaying the principles of cognition, al-Ghazali relies on the terminology of grammar as the single linguistic entity (*mufrad*) may be part of a truth claim when it is associated with a predicate (*nisba khabariyya*). These grammatical rules are coextensive to the rules of Arab logic and philosophy in which the single entity (*mufrad*) may be grasped as concept (*tasawwur*) constituting immediate knowledge (*ma’rifa*) distinct from the mediated knowledge (*‘ilm*) produced by conjectural reason (*al-zann*) and corresponding to combined utterances (*murakkab*). While immediate knowledge (*ma’rifa*) includes what is directly grasped by the senses (*mahsusat*) and the self (for example the state of existence [*wujud*]) but also what requires the utterance of a definition (*yutlab tafsiruhu bi-al-hadd*), mediated knowledge (*‘ilm*) encompasses premises, syllogisms and demonstrative reasoning (*Burhan*) establishing or infirming claims. For al-Ghazali, definitions (of single units) and demonstrations (combining different units) are the main tools to literally “hunt” (*yuqtanasu*) for knowledge³⁶⁷.

If most of the works of *usul al fiqh* do not start with a section on logic, they nevertheless display underlying forms of reasoning as formulated by al-Ghazali in his *Mustasfa*. Most important, they usually start each section of the book with the definition (*hadd*) of each single element before relating it to other elements, delineating its possible occurrences and raising disputed issues relying on syllogisms and demonstrative forms of enunciation.

The study of the science of logic was not restricted to the fourth and fifth century of Islam –usually described by the dominant narrative as the “golden age” of Islamic forms of knowledge followed by a decline - but was also part of the training of Islamic scholars in several centers throughout the Muslim world until colonial times³⁶⁸. In eighteenth and nineteenth century Egypt, several prominent jurists taught the science of logic in Al-Azhar. For example, the eighteenth century scholar Al-Damanhuri (d.1778), who wrote a commentary on a versed compendium of logic originally authored by the Moroccan scholar Akhdari, considers that the science of logic

³⁶⁷ Al-Ghazali, *Al-Mustasfa*, p.45-47.

³⁶⁸ El-Rouayheb, *Relational Syllogisms and the History of Arab Logic, 900-1900*.

strengthens the grasping faculty (*idrak*) and avoids doing mistakes “the same way whoever knows the rules of grammar does not make mistakes when formulating utterances”³⁶⁹.

The question of whether the science of logic is lawful was still debated in Al-Azhar in the eighteenth and nineteenth centuries, and al-Damanhuri would recall that while scholars such as al-Nawawi and Ibn Salah declared the transmission of the science of logic unlawful, the right and dominant opinion among jurists (*al-mashhur al-sahih*) is that scholars who are familiar enough with the Quran and the *Sunna* (*mumarissan li al-kitab wa al-sunna*) are authorized to do so³⁷⁰. If, for al-Damanhuri, scholars should still be cautious not to mix logic with speculative knowledge as the philosophers did (*al-mantiq al-mashub bi kalam al-falasifa*), the study of logic remains a collective legal obligation (*fard kifaya*)³⁷¹.

While Islamic scholars would not necessarily expect from the *mujtahid* to know the discipline of logic, they would nevertheless require a thorough knowledge of Arabic and its grammar for him to deal with revealed speech as written in the Quran and the *Sunna* as he should be able to differentiate between distinct meanings and uses of utterances. The possibility of plural meanings associated to the very use of language as understood by Islamic scholars determines the scope of possible and acceptable disagreement regarding the formulation of (legal) rules out of revealed speech. The knowledge of linguistic units and the rules of grammar is as much a way to acknowledge the possibility of divergences in rule-production among scholars as it is to secure the search for a rule and ground it in one definitive meaning.

Scholars of *usul al-fiqh* would rely on the science of language in order to classify linguistic propositions according to the degree to which their meaning is conveyed with more or less certainty. The meaning of the grammatically correct utterance (*al-lafz al-mufid*) may be explicit (*nassan*) without any other possible meaning, obscure (*mubahman*) or subject to several possibilities without being able to determine which one is the most probable (*mujmalan*). When the most probable meaning may be determined, it is called *zahir* (manifest) while the less probable is known as the *mu'awal* (hidden/allegorically interpreted)³⁷². When an utterance displays a strict correspondence between the word and the thing it refers to (*ma istu'mila fi mawdhu'ih*), it is called literal truth (*haqiqah*). When there is no literal correspondence between the word and the thing it refers to, it is called metaphor (*majaz*)³⁷³.

When related to specific normative injunctions, several scholars would ask whether the Quranic utterances reproducing the same grammatical form and formulating a seemingly general prohibition such as “Your mothers have been prohibited to you” “*hurrimat 'alaykum umahatukum*” or “The dead corpses have been prohibited to you” “*hurrimat 'alaykum al mayta*” would mean that all forms of interaction with mothers and with dead corpses have been prohibited. For al-Ghazali as most jurists, the linguistic usage of the Arabic speaking people (*'urf ahl al-lugha*) shows clearly that these utterances refer only to certain categories of deeds. In the first Quranic utterance, it is only the sexual intercourse with the mother that is forbidden, the same way one

³⁶⁹ Al-Damanhuri, *Idhah al-Mubham min Ma'ani al-Sullam*, p.36.

³⁷⁰ Al-Damanhuri, *Idhah al-Mubham min Ma'ani al-Sullam*, p.41.

³⁷¹ Al-Damanhuri, *Idhah al-Mubham min Ma'ani al-Sullam*, p.41-42.

³⁷² Al-Ghazali, *Al-Mustasfa*, vol.2, p21.

³⁷³ Al-Ghazali, *Al-Mustasfa*, vol.2, p.28-29.

should understand the following Quranic authorization “*Uhilat lakum bahimatu al-an'am*” as referring only to the act of eating the meat of the cattle.

Classical works of sources of jurisprudence (*usul al-fiqh*), philosophy and *kalam*, and forms of knowledge based on, and dealing with reason and revelation as discussed in this chapter inform the work of contemporary thinkers in Muslim societies. While there is no consensus among these thinkers as to whether one should deal with classical texts as a way to develop contemporary thought (see Chapter 11), several prominent thinkers suggest that these texts have a scholarly-ethical value and can help Muslims in the formulation of a renewed Islamic thought.

Reason and revelation in contemporary times

At the end of the nineteenth century, Muhammad Abduh, one of the first and most important Islamic scholar interested in the “renewal” (*tajdid*) and “revitalization” (*ihya'*) of Islamic knowledge in contemporary times, invested his scholarly efforts mainly in *kalam*, as it offered, more than any other discipline, the possibility of reexamining the relationship between reason and revelation on the basis of faithfulness to the divine message. Abduh was also interested in the discipline of Quran’s exegesis (*tafsir*) as the latter allowed for a direct engagement with God’s words and opened up possibilities of interpretation echoing the imperative of understanding and “cogitation upon God’s words” (*al-ta'qqul li kalamih*)³⁷⁴.

Abduh’s engagement with *kalam* occurred in a context where orientalists such as Ernest Renan, colonial experts as Cromer and Egyptian modernist intellectuals as Farah Antun questioned the rationality of Islam (see chapter 11). Colonial experts and orientalists offered an explanation of the “backwardness” of Muslim countries and justified “the need” for colonial domination on the basis of this purported “lack” of rationality. While Abduh’s writings are an attempt to renew the way Muslims deal with the world on the basis of both faithfulness to the revelation and the “necessities of the time” (*hajat al-'asr*) (for a more extensive analysis of the relationship between time and Islamic knowledge see chapter 8), he is also addressing, to a certain extent, the anti-rationalists prejudices and claims against Islam coming from some Islamic scholars of the past and the present as well as from western scholarship and rule of his time.

In his work devoted to *kalam* entitled *Risalat al-Tawhid (Treatise on [God's] Unity)*, Abduh recalls that this discipline, also called the “science establishing beliefs” (*'ilm taqrir al-'aqa'id*), relies on rational evidence (*dalil 'aqli*) to establish the existence of God (*wujud Allah*), His attributes and the prophets, and is also the discipline refuting the misconceptions held about beliefs and creed. For Abduh, Islam not only addresses reason but calls for reflection and the “intertwinement of reason and religion” (*ta'akhi al-'aql wa al-din*). It is only through reason that beliefs in God’s existence, the prophets, the revelation and the understanding of the revelation’s meaning is possible. There may be difficulties to understand some aspects of the revelation but there is nothing in it that is non-rational or impossible for reason to grasp (*fa la yumkin an ya'tiya bima yastahilu 'ind al-'aql*)³⁷⁵. Moreover, the revelation carves a central space for “those who reflect” (*al-nazirin*) as the right intellection leads to the belief in God (*nazar sahih mu'adin ila al-i'tiqad bi Allah*).

³⁷⁴ Abduh, *Al-A'mal al-Kamila*, vol.4, p.7.

³⁷⁵ Abduh, *Al-A'mal al-Kamila*, vol.3, p.374-375.

In the first part of *Risalat al-Tawhid*, entitled *ahkam al-wajib* (“the rules governing the necessity”) Abduh’s explores topics such as existence, eternity, knowledge, will, capacity, unity dealt with by classical *kalam* scholars and philosophers for which he relies exclusively on demonstrative reason (*Burhan*) and the three logical-ontological categories discussed by al-Farabi, Ibn Sina and Aristotle: the impossible, the possible and the necessary. In the second part, entitled *al-sifat al-sam’ah allati yajibu al-’itiqad biha* (“the revealed attributes requiring belief in them”), Abduh focuses on topics such as God’s deeds, human deeds, choice, good and evil, belief, miracles that can be known through the revelation but which are not rejected by reason and rather came to support what has been demonstrated by reason in the first part. Like *kalam* scholars and philosophers such as al-Razi and Ibn Rushd, Abduh states that in a situation where there may be a contradiction between reason and revelation, reason should prevail over the conventional meaning of revealed speech (*taqdim al’aql ‘ala zahir al-shar’ ‘inda al-ta’arud*) as the scholar should explore the possibilities of interpretation of the latter until it agrees with reason.

While Abduh acknowledges that the Quran is a source of jurisprudential rules dealing with acts of worship and social interactions, he underlines that the “practical legal rules that came to be known as jurisprudence are the less significant part of the Quran” (*al-ahkam al-’amaliyya allati jara ‘ala tasmiyatihā fiqhan hiya aqal ma ja’a fi al-Qur’an*)³⁷⁶. This remark from his introduction to his exegetical work on the Quran should not be understood as a “neglect” of jurisprudence from Abduh’s part who was also the Grand Mufti of Egypt and issued dozens of *fatawa* prescribing legal rules to be followed by his contemporaries. Rather, this remark should be understood as a way to stress the changing nature of jurisprudence’s rules over time compared to the a-temporality of the revelation and the fixity of its texts, and as way to underline the importance of the Quran’s spiritual-ethical dimension calling for “internalization” and reflection upon the world. Yet, the significance of the spiritual-inner life and the intellectualization-abstraction associated with Abduh’s views are less sought after in their own right than as a way to educate the individual and collective selves and guide their action toward the social life of the present. Hence, for Abduh the “true jurisprudence” (*al-fiqh al-haqiqi*) consists of “moral education and ethical refinement of the souls toward their happiness” (*tahdib wa da’wat al-arwah ila ma fihi sa’adatihā*), as much as it consists of their “liberation from ignorance to elevate them to the top of knowledge, and a guidance on the path to social life” (*wa irshaduha ila tariqat al-hayat al-ijtima’iyya*)³⁷⁷.

Abduh’s thought is the first systematic attempt to formulate responses to questions raised by the narrative of the encounter with the West. This narrative offers an “explanation” of the hegemony of the West over Muslim societies based on the “lacks” of the latter that can be identified through a comparative history. In response to this narrative, Abduh suggests that contemporary life does not require a rejection of the past or a selective reading of the past in terms dictated by orientalist and colonial officers, which involves for them the mere privatization of religion as it can no longer regulate collective life. Rather, there is a work of interpretation of the past that needs to be done by Muslim scholars and thinkers on behalf of the collective self to guide contemporary life in the light of both reason and revelation. That is the reason why Muhammad Abduh work was reclaimed by Islamic scholars interested in jurisprudence, but also discussed by modernist thinkers interested in the place of reason and the relationship between contemporary Muslim societies and the West.

³⁷⁶ Abduh, *Al-A’mal al-Kamila*, vol.4, p.9.

³⁷⁷ Abduh, *Al-A’mal al-Kamila*, vol.4, p.9.

Yet, Abduh's thought was also viewed as too "lenient" by some Islamic scholars or too "conservative" by several modernist thinkers.

The renewal of ethical reason

We saw earlier how contemporary thinkers such as Laroui called for a Hegelian overcoming of the thought produced by Muhammad Abduh and other Islamic scholars of the beginning of the twentieth century on the ground that reclaiming the Islamic past for the present is a vain enterprise that remains attached to an "empty self" (Chapter 11). Other thinkers such as al-Jabiri have criticized the classical dominance of Islamic hermeneutics (*al-bayan*) over other forms of inquiry and attempted to giving a new life to "Arab reason" through a revival of demonstrative reason epitomized in Ibn Rushd's thought (Chapter 11). More recently, another Moroccan thinker, in contradistinction to Laroui's thought and al-Jabiri's, Taha 'Abd al-Rahman advocated for a more generous relationship to the past and Islamic classical texts and thought (*turath*) on the basis of a different understanding of rationality and temporality.

For Taha 'Abd al-Rahman, the revival of Islamic thought grounded on the continuous transmission of classical works inherited from the past should rely on a close reading of these texts notably within the discipline of *kalam*³⁷⁸. 'Abd al-Rahman is particularly interested in grasping the logical conditions structuring the Islamic text (*al-shurut al-mantiyya li al-nass al-islami*) and its argumentative and dialogical construction³⁷⁹ as a way to build a model of Arab discourse and argumentation. Yet, for 'Abd al-Rahman, the tradition (*al-turath*) and its texts can no longer be assessed by a Cartesian type of rationality and its simplistic assumptions as reason should not be reduced to its logical operations nor equated with one form of rationality understood as the "universal" rationality. Rather, for him, rationality is always contextual, and takes shape in the linguistic practices of a given time, place and culture. Hence, in the typology of reasons in Islam delineated in *al-'Amal al-Dini wa Tajdid al-'Aql (The Religious Deed and the Renewal of Reason)*, 'Abd al-Rahman differentiates between abstract reason (*al-'aql al-mujarrad*), reason guided by jurisprudence (*al-'aql al musaddad*), and reason supported by spirituality and ethics (*al-'aql al-mu'ayyad*).

'Abd al-Rahman argues that the revival of Islamic thought, which is at the same time a renewal, should be grounded in "supported reason" (*al-'aql al-mu'ayyad*) rather than "abstract reason" (*al-'aql al-mujarrad*) or "guided reason" (*al-'aql al-musaddad*) as it builds on them. From the perspective of ethics, guided reason is preferable to abstract reason because guided reason is practical and deals with deeds oriented toward the good and the avoidance of the harm as "guided" by the revealed law (*shar'*) while abstract reason is limited to the knowledge of notions and attributes (*ma'rifat al-sifat*) without ethical-practical considerations. Yet, guided reason is not devoid of "ethical harms" (*afat khuluqiyya*), for example, when the self loses sight of the purposes (*maqasid*) of the prescribed deeds and is oriented toward the social benefit associated with these deeds or when the self is so oriented toward himself that he does no longer acknowledge the

³⁷⁸ For Taha 'Abd al-Rahman, the broader "Islamic revival" or "awakening" that Muslim societies have been witnessing the last decades lacks intellectual depth and grounding (*khuluw min al-sanad al-fikri*). To a certain extent, 'Abd al-Rahman's thought is an attempt to provide this revival with a philosophical foundation.

³⁷⁹ 'Abd al-Rahman, *Su'al al-Lugha wa al-Mantiq*, p.2.

others³⁸⁰. Hence, while guided reason is devoted to the knowledge of deeds (*ma'rifat al-af'al*) and deals with things in their external dimension, supported reason deals with the knowledge of beings and selves (*ma'rifat al-dawat*), their inner life (*batin al-dawat*) and more generally with the inner traits and the inner deeds of things (*al-awsaf al-batina wa al-af'al al-dakhiliyya li al-ashya'*) that are grasped through an experience full of life (*al-tajriba al-hayya*)³⁸¹.

Supported reason deploys the faculties of abstract reason in the knowledge of things, and the faculties of guided reason in the practical knowledge of the obligations prescribed by the law, but supported reason is interested in knowing more than the external aspect of things and in doing more than the obligations as it orients the self toward supererogatory practices and their spiritual meaning. Following Sufi teachings, these practices should elevate the self beyond the hardship of obligation and bring him serenity, peace of mind and tranquility (*sakina wa tuma'nina*). Hence, supported reason involves experiential ethics and requires sincerity (*ikhlas*) and the practical sight full of life (*al-nazar al-'amali al-hayy*)³⁸². Supported reason is also a reenactment of the entwining of knowledge and practice (*'ilm wa 'amal*), which should be reflected in all forms of jurisprudence, not only disciplines such as linguistics and logic³⁸³ but also for Islamic jurisprudence (*fiqh*), in which the “truth of the unseen” (*al-haqiqa al-ghaybiyya*) has been historically peripheral and divorced from the “scientific truth” (*al-haqiqa al-'ilmiyya*)³⁸⁴ as in each form of knowledge, the scholar should be able to relate to God, besides the subject-matter of his discipline³⁸⁵.

Supported reason requires not only a close reading of texts, but an ethical education through classical Islamic texts inherited from the previous generation (*al-turath*). It is true that the temporal distance from the past can be challenging to contemporary thinkers but when the latter deal with texts not as abstract, material or external things but as living texts capturing men's ethical exemplarity (*al-tanamduj*) then the “Islamic texts can return to us” (*ruju' al-nusus al-islamiya ilayna*) rather than the other way around. Here, the exemplary ancestors (*salaf*), when viewed through a practical sight full of life (*nazar 'amali hay*), are a source of practical inspiration (*al-tasaluf al-'amali*) and not only of abstract knowledge for the sake of knowledge³⁸⁶. 'Abd al-Rahman recalls that the transmission of the Prophet Muhammad's exemplarity was enabled by the close companionship of the “Companions” (*al-sahaba*) who taught the prophetic teachings to the subsequent generations³⁸⁷ through living and continued transmission (*ina lil-namudaj sanadan 'amaliyyan muttasilan*)³⁸⁸.

³⁸⁰ Abd al-Rahman, *Al-'Amal al-Dini wa Tajdid al-'Aql*, p.79.

³⁸¹ Abd al-Rahman, *Al-'Amal al-Dini wa Tajdid al-'Aql*, p.119.

³⁸² Abd al-Rahman, *Al-'Amal al-Dini wa Tajdid al-'Aql*, p.147.

³⁸³ 'Abd al-Rahman, *Al-'Amal al-Dini wa Tajdid al-'Aql*, p.140.

³⁸⁴ 'Abd al-Rahman, *Al-'Amal al-Dini wa Tajdid al-'Aql*, p.149.

³⁸⁵ 'Abd al-Rahman, *Al-'Amal al-Dini wa Tajdid al-'Aql*, p.148.

³⁸⁶ 'Abd al-Rahman, *Al-'Amal al-Dini wa Tajdid al-'Aql*, p.188-89.

³⁸⁷ 'Abd al-Rahman, *Al-'Amal al-Dini wa Tajdid al-'Aql*, p.201.

³⁸⁸ 'Abd al-Rahman recalls also the importance of the jurisprudential notion of “practice” of the people of Medina (reputed to be the closest to the practice of the Prophet and his Companions) in the Maliki juridical school that was captured by its authoritative figure, Imam Malik. Malik is known to have been reticent to put this practice into texts and is reported to have said that it is practice rather than narration that is expected from transmission (*laysa al-riwaya wa inama al-diraya*), *Al-'Amal al-Dini wa Tajdid al-'Aql*, p.192.

While supported reason displays a form of logic enlightened by divine legislation (*al-mushari' al-ilahi*), and guided by lawful deeds (*al-a'mal al-shar'iyya*), it bears ethical responsibility (*taklif takhliqi*) of proximity to God (*qurb*) and transmission to others that goes beyond the mere juridical responsibility associated with reason and expected in classical jurisprudence. Yet, several men of religion concerned exclusively with the limits of jurisprudence (*tasdid*) or dealing exclusively with the outer dimension of *Shari'a* texts (*zahir al-nusus al-shar'iyya*) are confined to harshness (*tashaddud*) and the mention of punishment, and inflict fear rather than communicating love and desire, and addressing “the ethics of the self and the secrets of the heart” (*akhlaq al-nafs wa asrar al-qalb*)³⁸⁹. At the same time, Muslims should avoid the reversed excess, which consists of focusing only on the inner self (*batin*) but should rather give its due place to the deeds prescribed by jurisprudence.

In a subsequent book, *Fi Su'al al-Aklhaq* (On the Question of Ethics), 'Abd al-Rahman, building on *Al-'Amal al-Dini wa Tajdid al-'Aql*, reclaims the unity between knowledge and ethics against both instrumental amoral rationality harmful to man³⁹⁰ and the juridicization of the *fiqh* (*taqnin fiqhi*) which is concerned only with the external conformity with the legal rules without giving its due place to their ethical meaning and performativity³⁹¹. Following classical Islamic scholars, Taha 'Abd al-Rahman does not disconnect the possibility of good action (*'amal salih*) from the good and practical science (*'ilm nafi*). It is in the reenactment of the unity between the ethical (*takhalluq*) and the legal (*tafaqquh*) that the rules of the *Shari'a* are performed both in the outer and the inner, for the ethical value (*qima khuluqiyya*) is the source and origin of the rule prescribed by jurisprudence (*asl al hukm al-fiqhi*)³⁹². Against a rationality abstracted from ethics, Taha 'Abd al-Rahman reclaims a rationality oriented toward and supported by ethics, in which reason is an act of the heart allowing for the full realization of man's humanity.

³⁸⁹ 'Abd al-Rahman, *Al-'Amal al-Dini wa Tajdid al-'Aql*, p.214.

³⁹⁰ 'Abd al-Rahman, *Fi Su'al al-Aklhaq*, p.97.

³⁹¹ 'Abd al-Rahman, *Fi Su'al al-Aklhaq*, p.153.

³⁹² 'Abd al-Rahman, *Fi Su'al al-Aklhaq*, p.153.

Conclusion

Several academic works on “religion and politics” in contemporary Muslim societies in western universities echoing dominant representations of Islam in the media and among several liberal Muslim thinkers assert that “the cause” of violence perpetrated in the name of Islam is *Shari’a*, considered as one of the biggest threats to democracy and human rights. In June 2017, a “National March against Sharia” has even been organized in several cities across the United States. While these anxieties are better understood in the light of the claims made by violent groups such as “The Islamic State in Iraq and Syria” (ISIS), they nevertheless mirror a poor understanding of *Shari’a*, as acts of violence, turned primarily against Muslims, have become the fallacious metonymic substitute that stands for a rich and complex epistemic, ethical and spiritual tradition.

In the last few decades, particularly after the 1979 Iranian Revolution, contemporary representations about *Shari’a* have undoubtedly been over-politicized and over-juridicized. Yet, this over-politicization and over-juridicization of *Shari’a* is not only related to the political activism of several Islamic movements since the beginning of the twentieth century whose project has often been pictured as the mere “application of *Shari’a*” but is rather consistent with modern modes of thinking giving primacy to the modern state and its enforced law in the regulation of collective life as any project of reform is described as requiring the mediation of state power to reach the whole of society.

The Life of Shari’a is in dialogue with both western academia and Muslim scholarly circles as it is an attempt to suggest that a unidimensional understanding of *Shari’a* through the modern juridical lens and its assumptions, does not do justice to the richness and complexity of the forms of knowledge and practices that are not only a “vestige” of the Islamic past and its classical scholars but are also continuously generated and lived in the present by several contemporary Islamic scholars and Muslims. From this perspective, my dissertation is an invitation to work on *Shari’a*, and more generally on Islam, in a way that is faithful to both its transmission over time and its multidimensionality.

In *What is Islam?* Shahab Ahmed recently suggested that the meaning of Islam, and the substantive “Islamic” understood as a scholarly category as used by the students of Islam in Western academia had to be revisited as they were unable to encompass contradictory norms and practices that have been historically relied on by Muslims, mainly in “the Balkans-to-Bengal” territories. Shahab Ahmed’s main critique was turned against academics who privileged a definition of Islam based exclusively on the legal normativity of *Shari’a* and considered for example that Sufism or philosophy were not properly “Islamic” on the ground that they were not authoritative enough among Muslims and remained peripheral in their scholarly and religious practices. Against “the supremacy” and “egalitarianism” of the legal lens, Shahab Ahmed reclaims the significance of exploration and hierarchy as they have been historically displayed by Muslims in the Balkans and parts of Asia.

While Shahab Ahmed is certainly right that the meaningfulness and significance of Sufism, *kalam*, philosophy and ethics need to be reassessed in contemporary studies dealing with Islam, he nevertheless opposes these very disciplines to jurisprudence (*fiqh*) as if they have been historically

constituted in opposition to *Shari'a*. My main point of contention with him is that any attempt to expand our understanding of Islam would be shortsighted and inaccurate if it posits contradictions and dual oppositions between jurisprudence and Sufism, or between jurisprudence and philosophy. Paradoxically, if Shahab Ahmed deplors the narrowness of the dominant understanding of Islam that remained limited to legal normativity, he is however relying also on a narrow understanding of *Shari'a* and the limits between disciplines to make his point when he writes for example: “This totalizing ‘legal-supremacist’ conceptualization of Islam as law, whereby the ‘essence’ of Islam is a phenomenon of prescription and proscription, induces, indeed constrains us to think of Muslims as subjects who are defined and constituted by and in a cult of regulation, restriction and control. As a matter of social analysis, it fails to come to terms with the human and historical phenomenon adumbrated in Chapter 1: the pervasive historical fact of real societies in which Muslims who were very much in the ‘social mainstream’ set up, valorized positively, celebrated, and lived *by norms that were in theoretical and practical contradiction of the totalizing legal discourse* that we are told here is ‘the core and kernel of Islam’[...] The primacy that is given to the constitutive determinacy of legal discourse over other discourses serves to distort our perspective and selectively prevents us even from recognizing—let alone understanding—that, historically, Muslims have constructed normative meaning for Islam in terms that allowed them to live by and/or with norms other than and at odds with those put forward by legal discourse.” (emphasis added)³⁹³ While contemporary academia needs certainly to revisit methodologies and concepts in the study of Islam, this revision should not be done at the expense of what is meant by *Shari'a*. Efforts to comprehend distinct practices and dimensions of life within what is meant by the “Islamic” should not be set apart from the conceptual thinking about *Shari'a* as these inquiries inform each other. Instead of merely reenacting the purported oppositions between *Shari'a* and Sufism, between *Shari'a* and philosophy, or between “the legal” and “the ethical”, students of Islam should rather work on their respective sub-fields of interest keeping in mind their interrelatedness. My approach in this work has been precisely to show how distinct Islamic disciplines and practices are entwined with *Shari'a* and should be studied in relationship to jurisprudence.

Another point of contentious with *What is Islam?* is that it takes for granted the possibility to successfully conceptualize a proper name and an epithet referring to it, i.e. “Islam” and “Islamic”. For Shahab Ahmed, “A meaningful conceptualization of ‘Islam’ as theoretical object and analytical category must come to terms with—indeed, be coherent with—the capaciousness, complexity, and, often, outright contradiction that obtains within the historical phenomenon that has proceeded from the human engagement with the idea and reality of Divine Communication to Muḥammad, the Messenger of God”³⁹⁴. If we keep in mind that for Shahab Ahmed, the “conceptualization” of Islam is *the* task of his book, then the disciplines (Sufism philosophy, ethics, *kalam*) he mentions should not be relied on only as mere materials providing evidence for his claims about their opposition to jurisprudence and about the importance of contradictions within Islam³⁹⁵. Rather, one should conceptualize what the distinctiveness of each discipline and

³⁹³ Ahmed, *What is Islam?* p.120-121.

³⁹⁴ Ahmed, *What is Islam?* p.6.

³⁹⁵ Shahab Ahmed writes for example: “The second question: when Sufis make their culminating assertion that virtuosos “friends of God” (*awliyā' Allāh*; singular: *walī*) who are at experiential oneness with the Real-Truth, *al-ḥaqīqah*, are no longer bound by the specific forms and strictures of Islamic law and ritual practice, *al-sharī'ah*, that confine less spiritually and existentially developed souls, is this an Islamic or an un-Islamic truth-claim?”, *What is Islam?* p.19.

the disagreements between scholars tell us about their shared assumptions with regard to the truth of the revelation, and what forms of knowledge and practice it entails. The approach that I relied on in this dissertation started from the premise that Sufism, ethics, *kalam*, philosophy and jurisprudence should be studied as forms of knowledge producing truth-claims about the revelation, but also from the premise that they cannot be acknowledged as forms of knowledge without their own acknowledgement of the truth of the revelation and their constitution as forms of speech related to revealed speech. My dissertation is precisely an attempt to go beyond the mere purported dual and categorical oppositions between these disciplines to study their entwinement and the ways in which they are all tied to the revelation understood as *the* foundational truth. From this perspective, it is the forms of knowledge tied to the revelation and scholarly practices (including forms of evidence to produce truth-claims) and social-cultural practices they entail that can be conceptualized rather than “Islam” itself or the epithet “Islamic”.

As initiated in my dissertation, the study of the entwinement of distinct Islamic disciplines underlines the significance of *Shari'a* and invites us to think about jurisprudence (as I stressed several times in this work) not as a mere set of fixed legal rules but as a fundamental relationship between speech, and more precisely, between revealed speech and deeds. From this perspective, *Shari'a* should not be studied exclusively through the juridical lens but raises spiritual, ethical, theological and philosophical questions as it involves meaning, reasoning and being. Conversely, classical disciplines entwined with jurisprudence were also dealing with *Shari'a* as they were interested in the relationship between revealed speech, speculative reasoning and non-revealed forms of knowledge (philosophy), between revealed speech, speculative reasoning and beliefs (*kalam*), and between revealed speech and experiential and inner states (Sufism). Each discipline privileged a distinctive form of knowledge and inquiry related to the revelation that reflects a distinct dimension of life.

My research raises a more general question about the limits of conceptual language as related to the trajectory of categories such as “law”, “ethics”, “religion”, “knowledge” or “rationality” relied upon to give an account of different forms of human experience in contemporary scholarship. For example, as I mentioned earlier, modern discourses and representations about ethics have been heavily influenced by the Kantian formulation of moral autonomy which dislodged ethics from the juridical law³⁹⁶. It tells us something not only about the genealogical shifts that made the theory of moral autonomy possible, but also about the subsequent theorizations of morality in the new sciences of man that emerged in the nineteenth and twentieth centuries. This conception of ethics is often mentioned in modern scholarship as one of the distinctive and contrasting features of the “West” when compared to non-western cultures. An inquiry about the relationship between ethics and Islamic jurisprudence as formulated in this dissertation may help us not only complicate the usual opposition between moral autonomy and heteronomy through the description of the ways in which *Shari'a* rules are lived by Muslims and made their own, but also understand the “naturalization” of historically produced conceptions of ethics in the “West”.

Anthropology and critical thinking should allow us to engage in a dialogical reflection that questions the closure of meaning attached to a “word-concept” either in western academia, the media but also in several settings in Muslim countries. Yet, my approach is not only an invitation to keep in mind the limits of words-concepts such as “the law” to understand distinct cultural

³⁹⁶ Kant, *The Metaphysics of Morals*.

practices, it is also a way to expand the concept of law, (and more precisely the revealed law), as it is understood today to be able to explore, in the Islamic context, its episteme and rationality, its spirituality and ethics. Most important, the students of Islam should look beyond the word and its usual meanings to explore the fundamental relationship between revealed speech and the doing, but also between revealed speech and the believing, thinking, feeling and being.

One may object that *Shari'a* as studied in this dissertation, notably its spiritual, theological (*kalam*) and philosophical dimensions, may have existed in the past but is no longer part of Muslims' present as it is not what is "visible" to the media and many observers. While I understand that the dimensions of *Shari'a* that I explored in this work may not be "visible" for narrow empiricists interested in picturing and mapping Muslim societies, I would recall that the task of thought, including anthropological thought, is not to merely "describe" but is also to draw relations between phenomena and dimensions of life that are not necessarily occurring in the same time-space. Echoing an Islamic trope, the task of thought is precisely to unveil what is not immediately available before us, and to help us decipher and reflect upon the signs which seem self-evident to us.

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