

# Islam: Philosophy and Law-making

## *Abstract*

Historically, ethical deliberations amongst religious scholars in Islam played a far more important role in determining ethical and social practices of Muslims than did analogous deliberations by philosophers. A common language was never developed between scholars of the two disciplines, a circumstance which still feeds into a growingly unhealthy relationship in Muslim society today between two registers, the religious and the rational. Primarily this was the result of the philosophers' dogma that theirs was a superior reasoning methodology to that of the jurists. Besides challenging this dogma by exposing the rational rigor practiced by jurists, this paper argues that a long-needed common language between the two registers is vital if modern Muslim society is to set a healthy course for itself in an ever-changing world.

## *Keywords*

philosophy, jurisprudence, Islam, translation, Reason.

## 1 The General Context

Sometime in the twelfth century the Andalusian philosopher Ibn Rushd/Averroes (d. 1198), who served as Judge in Cordoba and Mar-rakesh (present-day Morocco) under the Almohads, wrote *The Decisive Treatise* in which he tried to show why and how revealed Law (*shari'a*) and independent Reason (*hikma*) are compatible.<sup>1</sup> Writing

---

<sup>1</sup> See the translation by C. Butterworth, Brigham Young University Press, 2001. (Downloadable at: [www.andrsib.com/dt](http://www.andrsib.com/dt); last accessed on 25 September 2015). Averroes explains that the two truths of religion and philosophy cannot contradict one another. He continues to argue that in whichever particular matter there ostensibly

as a philosopher with a practical involvement in religious law the upshot of his argument was that the revealed Word of God (the Qur'an) legitimates the interpretation of the Law in a way that reconciles it with Reason wherever *the letter* of the former seems to conflict with it. As a devoted Aristotelian, what Averroes emphasized in introducing Reason was the methodology of demonstrative syllogisms, and the truths that are *deducible* by means of it – a methodology which he held to have a higher value than any other kind of syllogism – including, particularly, the *analogical*, that was in common use by legal scholars. While he introduces Reason this way – as a demonstrative methodology – he leads the reader to the more general conclusion that *falsafa*, or philosophy – the *paradigm* of *hikma* (wisdom) – has a higher value as a science than any of the other sciences prevalent at the time (e. g., Law). However, what he did *not* explicitly say – but one is justified to assume from the whole text he meant – is that such syllogisms would have to be constructed from universal truths as premises that are held to be such on rational grounds *rather than on faith*. In other words, that he considered statements in the Qur'an itself as well as the sayings of the prophet to be subject to the ruling that these (not just the legal corpus deduced from them) should be interpreted wherever they conflicted with Reason. Only then could they be used as premises in the demonstrative syllogisms. Therefore, what was and remains an issue is not so much the *deductive* nature of a reasoning methodology in contradistinction to the (supposedly) *inferential* nature of the analogical reasoning used by legal scholars – what he initially proposes as the flagging mark of Reason – as it is the *premises* themselves on which a demonstrative syllogism could be built: statements which are held to be true on the basis of faith.

Already, therefore, the scope of statements Averroes held to be ›interpretable‹ from the religious register would seem to be quite extensive. What about the interpretative operation itself? What did Averroes mean by it? This is what he tells us:

The meaning of interpretation is: drawing out the figurative significance of an utterance from its true significance without violating the custom of the Arabic language with respect to figurative speech in doing so – such as call-

---

seems to be a contradiction, the letter of the law could be translated (interpreted) such as to fit with Reason – as long as this interpretation abides by the relevant rules and grammar of language (e. g., the meaning of an expression, its implications, its presuppositions, etc.).

ing a thing by what resembles it, its cause, its consequence, what compares to it, or another of the things enumerated in making the sorts of figurative discourse cognizable (*ibid* III (13) ll.3–18: 9).

The restrictive condition (the non-violation of grammatical rules) is offset by what turns out to be quite an expansive margin allowed for translating a ›figurative‹ into a ›true‹ meaning: one need only imagine the many ways in which one signification can be replaced by any one of its many comparisons and resemblances – let alone by any one of its many causes and consequences. With these interpretative tools in hand, the re-articulation of a figurative (religious) register into a rational one can obviously be quite radical.

Did Averroes wish to use his argument for embarking on such a radical re-articulation of the Qur'an and the prophet's statements? Quite the opposite: in another of his works, *The Incoherence*,<sup>2</sup> where he takes up the challenge of responding to a major critique of philosophy by Al-Ghazali (d. 1111), he expresses extreme displeasure with an earlier philosopher, Ibn Sine/Avicenna (d. 1027), whom he thinks is to blame for having so popularized philosophical doctrines as to make philosophy itself victim to the kind of misunderstandings that led to that critique. Indeed, the main ›message‹ of Averroes's *Decisive Treatise* is that while the two registers, the religious and the rational, are compatible, they in fact should be kept apart. Conflating them at the popular level can lead to the kind of misunderstandings and ideological conflicts in the community as those that resulted from Avicenna's writings.

Why, then, take the trouble to argue in favor of interpretation? A logical answer would seem to be that – from the perspective of his role as lawmaker – what he had in mind was less to change peoples' beliefs about God or the Day of Judgment or the Afterlife than to establish Reason as the standard for informing the practical governance of the Muslim community. In other words, that it was less to do with wishing to intervene in the sphere of beliefs than it was to do with the sphere of practices.

One can perhaps better appreciate Averroes's project by invoking a modern-day debate: one can view his proposal (with a caveat, see below) as one of *translation* – that lawmaking (defining the norms by which a society lives) requires that religious discourse – specifically in

---

<sup>2</sup> *Averroes's Tahafut alTahafut*, S. Van den Bergh (ed. and trans.), The Gibb Memorial Series, No. 19, Cambridge: Luzac, 1978 [in English].

*this* field – be translated into rational terms. However, for Averroes, and unlike the case for contemporary liberal philosophers like John Rawls and Jürgen Habermas, the framework for the proposed translation was limited: for him, the *paradigm* was the Revealed Law – not secular law – and the *exception* were those parts of the Revealed Law that ostensibly conflicted with it.<sup>3</sup> After all, his age was religious and not secular. Even so, Averroes's proposal was earthshaking. In many ways, it still is. Modern Muslim Society – despite the introduction of new political structures and secular laws – is still largely defined, if not ruled, by Islamic Law. This binary immanence of authority – one religious and the other political/secular – has been and seems likely to continue to be a basic feature of it at least for some time to come. Essentially, the reason for this is historical: ever since the prophet's death in 632 political and religious authorities (who *rules* and who has the authority to *legislate*) started to diverge from one another, each eventually coming to assume its own self-legitimizing power. Being a Muslim and being a subject or citizen came to be two distinct registers, or identities. This being the case, and despite an uneasy relationship between the two authorities over time there never arose – as what happened in Christianity – a radical ›break-off‹ point where *the State* tried or needed to wrest *political* authority from *the Mosque*. The latter never had it to begin with. All it possessed, and claimed, was a legislative power – to *define* what being a Muslim is. But this is no mean power: it covers both what it means to *be* a Muslim – what the basic articles of faith are; and it covers what the right things for a Muslim to *do* are. If the former sphere is less likely to be an ongoing bone of contention between the two authorities (though episodic con-

---

<sup>3</sup> A major debate in current philosophy revolves around whether and how ›private‹ (typically, religious) reasons as opposed to ›public‹ (typically neutral or secular) reasons for holding (political) views are justificatory for admitting such views into a rational discourse for the purposes of positively feeding into an ongoing articulation of best governance policy. Liberalists – e.g., John Rawls and Habermas –, for whom a necessary condition for democratic governance is the existence of a free space for reasoned discourse – argue that private reasons must be *translated* into a ›universal‹ language that could be accepted by any rational citizen who does not share the same ›beliefs.‹ Habermas is in particular concerned with the formal discourse used for policy-formation – e.g., in Parliament. »Translation« thus comes to acquire a special meaning in this context – Is the requirement itself »democratic«? Is the translation meant possible in the first place? See, for example, B. Arfi, ›Habermas and the Aporia of Translating Religion in Democracy,‹ *European Journal of Social Theory*, December 2014, pp. 1–18.

frontations could take place, as they did throughout Islamic history), the latter as a quotidian space determining living practices is a natural area where *ruling* can easily begin to infringe on (religious) *legislating*. Indeed, the natural lawmaking demands of an expanding secular/political authority – even if not in some dramatic episode in history challenging religious law – continued over time and by necessity to widen its intervention in the sphere defining human action, thereby increasing the friction specifically in this area between religious and political legislating authorities. Had a common language existed from the beginning between jurists and philosophers, a positive intellectual engagement might have developed and in doing so laid the groundwork for a similar engagement today.

In a way, one can read Averroes's project as one by which he tried to forestall such friction by proposing that, where the practical governance of a community is concerned, the Revealed Law itself legitimates the interpretation of religious law in such a way as to make it compatible with what Reason dictates.

In this essay, it will be argued that the Averroes project for translation failed because of its (and philosophy's) presumption of its possession of a superior reasoning methodology to that of the jurists. While a common language is one that is shared by equal partners, and could draw such partners to the dialogue table, a ›translation initiative‹ is one that predefines the interlocutor as being rationally inferior. Muslim religious scholars could not possibly have been ›wooed‹ by such an initiative. Nor can they be today by a superior attitude of ›rationalists.‹

## 2 Reason in Islam

Perhaps a good place to start is Averroes's portrayal of Philosophy as the epitome of Reason: long before philosophy as a Greek body of science first came to be adopted in the Muslim world by Averroes's predecessors in the eighth century, Muslim scholars had already begun their own investigations into their religion and its implications. Two fields or disciplines that are worth mentioning in this context are those of law and hermeneutics: the former to fill in the gap concerning judgments to be passed on arising practices in the community, and the latter initially to understand and expound upon Qur'anic or the prophet's pronouncements on matters affecting political life and reli-

gious beliefs. The former field eventually branched off into what came to be known as the discipline of Jurisprudence (*fiqh*), covering both the foundational elements of law as well as an ever-expanding body of particular judgments; one component or offshoot of the latter with which we are concerned came to be called *kalam* – literally, ›speech‹ – and is often referred to as dialectics, speculative discourse, or even theology (although its content is as much about the world as about God). The earliest practitioners of *kalam* were religious scholars who were concerned with such matters as the rightful succession of political rulers, the rightness of resisting incumbent rulers, what freedom of the will means, and how that can be understood in the context of reward and punishment. Their *source* or ›material‹ for thinking and arguing about those matters was the Qur'an as well as the prophet's sayings. These were thoroughly analyzed for articulating positions on the issues in question. Over time, two schools in this discipline evolved, the *Mu'tazilites* and the *Ash'arites*, the former coming earlier in time, and generally described as the more ›rationalist‹ of the two schools for holding such views as that of the objective nature of moral values, and of free human agency; but more significantly for our purposes also for holding the view that the standard for deciding between two ›source statements‹ when these seemed to conflict with one another must be Reason. However, unlike Averroes's Reason, theirs was closer to what one might today call ›common sense‹ – a register arrived at through rational deliberation.

A major characteristic of *kalam* was the use of analogical reasoning: that new facts to be known can only become so on the basis of other known facts, the basis for knowing which are the sensory faculties. Primarily, the facts known by the sensory faculties are by necessity particulars and not ›universal truths,‹ or ›universals.‹ Among such facts, but having the special divine status they are held to have, are those expressed in the Qur'an and by the prophet, and which are transmitted through particular channels to their recipients. In terms of factual value, ›X said ...‹ and ›The Qur'an says‹ are on this score therefore equivalent. In terms of truth-value, however, the former is not self-validating whereas the latter is. The validation or repudiation of the former fact – i. e., the assessment of its content – depends on other facts, or other sensory experiences. The sacrosanct status of Qur'anic facts on the other hand cancels the need for validation. As to logical principles (e. g., the law of non-contradiction), these were typically held to be true *a posteriori*, i. e., in respect of sensory experi-

ence, and not *a priori*, i.e., as foundations of knowledge. The same holds for metaphysical statements that are claimed to be *a priori* – universally or generally true. These were considered to be such – to the extent it was possible to hold them so – only by virtue of analogical reasoning, and not by a cognition of some universal metaphysical truth. This held, in the first place, even for general empirical statements. That is, it was generally held that the *inference* that ›Heavy objects fall‹ is one that is not verifiable empirically, and therefore cognizable as an objective fact, given that infinite instances of heavy objects cannot possibly be captured. When it is held to be true then it is held so analogically, by associating one fact (the motion associated with a particular heavy object) with another. A *justified* association between two facts or events is one where the *reason* for one given particular fact being of such and such a description (the heaviness behind one object's fall) is found to obtain in another, making the second of that same description. This methodology (an arguably questionable technique to avoid generalization, see below) was also essential for the legal scholars in their work, as we shall see. But if it held for general empirical statements, it also held, more fundamentally, for the general metaphysical statements philosophers assumed to be *a priori* true. This is why deductions from these were tentative and not conclusive – not because of the deductive operation itself, but because of the inconclusive nature of the universal statements that make them up.

Indeed, religious scholars from the two aforementioned fields were not logically averse to the deductive operation itself. For example, if there were a rule in the Qur'an on a particular matter, such as alimony, or inheritance, then by deduction such a rule would be held to be applicable to a particular case before them. What they were averse to were those general statements (e.g. on the nature of the world) that were inferential in nature – these being empirically unverifiable – such as the claim that the spatio-temporal world is infinite, there being nothing beyond it; or that it is round. Such statements in metaphysics, offered by the philosophers as foundational, were held to be hypothetical and ill-chosen therefore as certain truths to be used as premises in the philosophers' logical system.

Although some common elements can be found in both Averroes and the Mu'tazilites, such as the objectivity of moral values, and the need for applying Reason when interpreting original sources, nonetheless Averroes shared with many of his predecessors in the *falsafa*

tradition the view that *kalam's* dialectical style of reasoning was inferior to the demonstrative style of the philosophers. As already stated, however, the bone of contention was not the deductive method *per se* (though this was flagged by the philosophers as being *the issue*), but the status of the general truths to which deduction should apply. The general assumption of the philosophers – as explained, for example, by Alfarabi (d. 950) – was that with Aristotle, and the refinement of the mathematical sciences, all previous methods for arriving at knowledge, including Plato's dialectical style, had become superseded. Henceforth, as in mathematics, certain knowledge could be demonstrably arrived at by deduction. But where does one begin? How does one come by those general truths that are needed for deduction? Do the metaphysical ›truths‹ proposed by the philosophers enjoy the same undisputed status as mathematical truths, rendering a metaphysical syllogism equivalent to a mathematical one? The religious scholars we have been considering did not think so. Using modern terminology, they did not believe there are synthetic *a priori* truths in this area, any statement seeming to be such being a *posteriori*, and therefore essentially unverifiable. The closest to achieving certainty about it – or, more specifically, *reliability* on it – is the use of analogical reasoning. The inferential nature of analogical reasoning proposes that a mental move from one particular fact or event to another depend upon the identification of the particular reason or cause for that first particular fact or event being of a specific description. Once that reason or cause has been identified, then it can be judged as one that either obtains or does not obtain with regard to the second particular fact or event being presented. If I identify why that object before me is a tree (or why I consider it to be such), then I can decide whether that other object before me is also a tree. The mental move involved is *lateral*. In the philosophical tradition, on the other hand, ›what a tree is‹ is held to be a general truth that comes to be cognized gradually through an incremental process of abstraction – sensory images of one particular after another eventually yielding the concept or idea of Tree, which then allows me to cognize a specific object now presented before me as an instance of the idea Tree. The mental move involved here is by contrast *vertical*. This approach would then apply to understanding the ›weightier‹ issues of such matters as Justice or Existence or Movement, etc., each being posited as a general idea possessed of some kind of independent existence. A further philosophical move would then be to propose that such ›concepts‹ or ›ideas‹



have some kind of ontological status in the metaphysical world about which general statements could be made and used as the bases for deductive syllogisms and knowledge, just as in the mathematical sciences.<sup>4</sup>

For the religious scholars, on the other hand, this entire approach to general ideas and the truths reflecting their relationship with one another was questionable. Indeed, they were altogether averse to holding that there exist independent entities (*viz.*, ideas) that abstract terms or nouns signify, and their deliberations on the whole remained pegged to analyzing words as parts of ordinary speech, and the psychological states of mind of speakers. The only ›metaphysical‹ truths that were reliable – they believed – could be found in the Qur’an and the prophet’s sayings. Otherwise, it was not via a process of abstraction that what is considered a general truth can be arrived at, but by analogy – a process that by its very definition remains particularized. As already stated, their route to avoid the inferential generalization proposed by philosophers was that of identifying the particular cause or reason for why something is as it is described to be. Arguably, however, identifying such a cause or reason to justify *sameness* (between two particulars) is to identify a *general* truth, akin to the philosophers’ *idea* or *concept*. Unfortunately, this matter was never dealt with by the philosophers. For them, it was part of a ›register‹ that did not concern the genuine seekers of truth and knowledge. The philosophers not only believed that the metaphysical truths they held onto were either rationally self-evident or verifiable, but also that those truths held by the religious scholars were only figurative, their real meanings being those articulated in the rational register. In sum, then, they believed that *kalam*’s source material (the Qur’an and the prophet’s sayings), besides *kalam*’s discourse methodology, were both epistemologically inferior to their own foundational ›rational‹ truths, as well as to their demonstrative methodology.

The philosophers’ patronizing attitude towards the reasoning methodology and tradition of the religious scholars was unfortunate. It meant they did not consider that a common language with them was possible. By ›common language‹ is not meant ›a translation manual‹ which would set out to reformulate one kind of discourse (that of

---

<sup>4</sup> Some of the discussion in this part of the paper is drawn from works by the famous religious scholar Ibn Taymiyah (d. 1328), and especially his work *The Response to the Logicians* (Beirut, n.d.) [in Arabic].

beliefs or a creed) into an infallible language of science. Rather, what is meant is the effort at reaching out to the religious scholars – who, after all, were a central feature of Muslim society – to try to develop in conversation with them a syncretic language. A dialogue in such a language would have benefited the two kinds of rational pursuits – both, still in need of mutual reinforcement – and kept them close to one another, and as a result kept the intellectual environment in society more intact. As it was, while the philosophers' ›haughtiness‹ reinforced the sense among Muslims that philosophers were somehow a different *genre* of people living in their midst, in more particular terms it meant that their input in shaping the identity of that society was minimal, if not nil. Theirs was a language that did not on the whole contribute to the intellectual or political shaping of Muslim identity, even though some, like Abu Nasr Al-Farabi, would devote much of his philosophical efforts on political theory. However, while his theory is today of interest to scholars, it was of no relevance to the politics of his day. Indirect influences (in both directions) are not being discounted here: what is being brought into focus is the near-absence of a direct positive dialogue where the two disciplines might have been able to lay the grounds for a common ground between them – one that might have become a solid foundation for a more general co-habitation in Muslim culture between religious and secular dispositions.

This was especially true in that area of religious scholarship, namely Law, whose effect on the shaping of Muslim identity remains dominant to this day. Like their *kalam* peers, but on the practical side, Muslim legal scholars were devoting their efforts at structuring that part of Muslim identity having to do with practices – what the *right things* for Muslims *to do* were. As can be gathered, this is a vast area determining society's code of ethics. The jurists' efforts should in theory have drawn philosophers influenced by the political writings of Aristotle and Plato – and who therefore had specific theories about what the *good life* or *happiness* consists in – to test these theories in light of a real-life context. Not only would they have been able then to participate positively in what was developing as an Islamic philosophy of Law: the exercise itself would have laid the grounds for the much-needed mature practice today of addressing arising problems faced by the contemporary Muslim in an integrated ethical frame, thus keeping the intellectual climate of the Muslim community intact. As it was, philosophers thinking and writing about how society

should best be ordered on the whole did this as though theirs was not a society that concerned them. Moral philosophy and Islamic Law as *disciplines* have as a result remained strangers to one another.

Once again, one of the main differences between the two disciplines that made for that alienation was the jurists' *analogical* as opposed to the philosophers' *deductive* methodology in reasoning; whereas jurists had to deliberate about how best to infer rules, and what such rules are, philosophers felt that they were possessed of definitive answers to all questions. Theirs, they felt, was a *science*. Curiously, though, they treated their ›science‹ as a religion. It provided all the answers. Jurists, on their part, felt an obligation to deliberate about how to apply their religion to the lived life of Muslims. This meant they had to *innovate*. It was not that they were averse to deductive reasoning; where clear rules existed in their *sources*, they would happily apply those rules to particular issues as those arose – for example, to declare the beginning of the fasting month on the sighting of the new moon. But since most of their ›sources‹ consisted of *examples* – such as the marriage of the prophet to a Christian, called ›Mariya‹ – it became incumbent on them to work out from such examples what the right thing to do was if another case of an inter-religious marriage came up for a legal opinion. Over time, it is these jurists' improvisations and mode of reasoning that have come to determine the nature of Muslim society.

Before closing this section, it is important finally to point out that, as already mentioned, not all philosophers necessarily shared the attitude towards *kalam* and its methodology described above. One prominent exception was Avicenna, whom Averroes criticized (in his *Incoherence*) for ›misrepresenting‹ Aristotelianism, but who was also criticized from the other side by the later religious scholar Ibn Taymiyah (in his *The Response*) as having philosophized *kalam*. In effect, both criticisms – coming as they did from opposite angles – reflected the sense that Avicenna's *oeuvre* was expressed in a new language – neither that exclusively of the philosophers, but nor that on the other hand of the religious scholars. In theory, it could be seen as an attempt to create a common language – one that was as open to the deliberative approach of the *kalam* scholars as to the discourse prevalent among the philosophers, and in many ways this new approach was to have more influence on the general intellectual climate than that, say, of Alfarabi earlier, or of Averroes later. Even so, the gulf separating religious and rational discourse, and between religious

and rational intellectual climates persisted. The climate was not ripe yet for bringing the two approaches to Reason to a par, where a common intellectual language would take hold and become a common register.

### 3 The Lawmakers

Immediately upon the prophet's death a debate arose among his followers (one which has not been settled to this day) whether his functions as political ruler and as religious adjudicator are best combined in his successors or kept separate. While the answer in favor of such a combination became fixed from early on among those who came to be identified as *shi'ites*, it remained in theory at least an open question among those belonging to Islam's mainstream, or the *sunnis*. From early on, scholars argued that ›living the Muslim life‹ is a matter that is best mentored by heads of households, and should not be the responsibility of the political ruler.

In practice, the two functions quickly diverged, religious authority (that of determining what being a Muslim *means*, in faith and practice) slowly becoming the domain of religious scholars (*'ulama*). If, among these, *kalam* scholars focused on the first component (what a Muslim should believe about God and the world), it was the jurists (*fuqaha'*) who slowly ›appropriated‹ the second task – that of determining practices, or what the *right things for Muslims to do* are.

As already stated, the jurists' *source* for their deliberations in their work consisted of the Qur'an, the prophet's sayings and deeds, as well as the prophet's companions' practices. Together, these were regarded as the *sunna* (from where the word *sunni* comes) – meaning the foundations of the religion. Where a general rule or statement in the sources existed, jurists would have no issue with *deducing* a particular adjudication from it. Where, on the other hand, the issue to be adjudicated was not covered by such a rule, jurists would employ analogy – inferring from a particular item in the sources a judgment on a particular practice.

However, jurists quickly came to realize that, left without guidelines, analogical reasoning could well end up being open to all kinds of interpretations, often depending on the nature of the scholar making them. Over time (and here the reference is to a cross-generational discourse among such scholars spread over several centuries) a legal

system was therefore felt necessary and was developed to provide the required guidelines – one that is arguably unprecedented in the history of the philosophy of law. Despite the eventual development of four major schools of Law in *sunni* Islam (named after four different respected scholars associated with them) the legal system in use remained essentially the same.

It may be worth bearing in mind – for a fuller appreciation of those jurists' deliberations – the parallel deliberations by European jurists over the past two centuries to determine the source of law's binding authority: does this derive from the authority of its propagator? its enforcement? its precedence? the deliberative nature of a consensus over it? its purpose?<sup>5</sup> Seeking a way to systemize their analogical practices – finding the appropriate example from their sources to apply to an arising case before them – Muslim jurists quickly came to the conclusion that their analogical inferences could be streamlined only if there were a clear *purpose* for the Law that they must make clear for themselves. Law's purpose would be a beacon acting as a guideline to distinguish between appropriate and inappropriate inferences – which otherwise may well be haphazard. In other words – and amazingly, given that the Law as they regarded it was primarily God's Law – they decided that the complying authority of its practical application – what came down to being their own adjudications or legal opinions – must be defined by its purpose. One cannot overemphasize the significance of the jurists' decision. What in effect it amounts to is to avail the jurists with the power to identify right and wrong practices, and hence to formulate a Muslim code of ethics out of a continuous process of adjudications – all informed by the *purpose* the jurists defined. In contrast to the fixed five articles of faith derived from the *source* that jurists concurred identify what *being* a Muslim is (see below), the open-ended domain of constantly-needed adjudications on right *practices* in arising cases (e.g., abortion, gender, genetic design, terrorism, etc.) obviously reach out to affect a far more extensive part of Muslim life, determining the better part of Muslim identity. The jurists' decision that Law is prudential, arguably a ›modern‹ interpretation, and clearly of radical significance to Muslim identity, thus came about through the curious circumstance of their adoption of that kind of reasoning which philosophers derogated them for

---

<sup>5</sup> See S. Delacroix, *Legal Norms and Normativity: An Essay in Genealogy (Legal Theory Today)*, Oregon: Hart Publishing, Oxford and Portland, 2006.

using. Their next task, however, was to identify what that purpose was.

It is a measure of their commendably rational approach that they converged on identifying that purpose as being ›the good‹ or ›the interest‹ of the Muslim. The significance of this still holds – an ›enlightened‹ focus on the individual's ›good‹ nowadays standing in sharp contrast with those interpretations of Islam which place it instead on some general entity such as the religion itself, or the community, resulting in a total disregard to individual human rights. It makes all the difference – in Islam or elsewhere – whether Law's purpose is viewed as being pegged to the *regime* or to its individual members, and the jurists' focus on the individual should have been a welcome sign for philosophers to engage with jurists on defining what that individual interest consisted in – that, after all, constituted an important part of the practical component of the philosophy they saw themselves as scholars of.

The next – and perhaps more difficult task for the jurists – was to decide on how to define that individual interest or good. It will be recalled that we are considering an inter-generational discourse – what might be called a ›process of deliberation,‹ where ideas from one generation would have been taken up, discussed, refined or rejected by scholars from the same or a later generation, eventually to crystallize as a single system. The deliberation over what ›the individual Muslim's good‹ is was therefore to some extent open-ended, with various items and priorities being proposed and discussed, and the ›field‹ being still open today for possible suggestions. On the whole, however, an almost unanimous consensus was reached over a list of five highest priority items, ordered as follows: (a) religion, (b) life, (c) intellect, (d) progeny, and (e) material goods.

It is well-worth pondering these interests or goods, as well as their ranking, given their deep significance to Islam's code of ethics. To begin with, it is important to understand what is meant by the first item on the list – the Muslim's religion. A ›conservative‹ jurist today might argue that by this is meant that the Law's purpose is first and foremost the safeguarding of Islam itself – that is, the *regime* or *religion* of Islam. However, from what was already stated, such an interpretation would miss the point, and would be inconsistent with the logic of the system, which was predicated on the individual: Law's (Religion's) purpose cannot surely be the safeguarding of itself (Religion)! The purpose of prescribing prayer, for example, cannot be the

safeguarding of the *institution* of prayer itself: prayer must have been prescribed for the good of the individual performing it. Indeed, behind the misinterpretation of this particular item would stand the school of thinking which argues in favor of *politicizing* Islam, or seeking the institution of a *regime* rather than the cultivation of ›the good Muslim.‹ Surely, however, what seems more reasonable to be understood by ›the Muslim’s religion‹ in this context – just as in the case of the other items on the list – is simply the individual’s religious conscience: the safeguarding of his/her freedom of religious beliefs or speculations. It is important to recall at this point that the major religious scholars in history to whom are attributed the origins of the different schools of law were themselves often in conflict with the political authorities, insisting on their *freedom* to hold on to the religious views they believed in. It is not meant here that a Muslim could hold beliefs inconsistent with those of Islam’s articles of faith (believing in God and the Afterlife, His prophets, and the Day of Judgment, as well as in the fulfillment of the obligations for Prayer and Pilgrimage, Fasting, and the extraction of percentage of one’s income for the poor). Not to hold to such beliefs and obligations would surely mean such a person was *not* a Muslim. But beyond these foundational articles of faith, the Muslim should be free to believe, for example, that the Word of God is eternal, or that it is legitimate to resist a corrupt political ruler, or that an efficient non-Muslim political ruler over a Muslim community is better than an inefficient or corrupt Muslim ruler over that same community.<sup>6</sup> A Muslim should not be bound by an ideology or a belief upheld by the regime’s authority (or one that is upheld or declared by a particular religious authority) that seems to him/her to be inconsistent with his/her religious conscience.

To appreciate Islam properly, given the above-stated priority listing, is to appreciate the high value accorded to religious conscience in

---

<sup>6</sup> There were the views, respectively, held by the founding fathers of Islamic Law: Abu Hanifa (d. 767) upheld the right to resist ›deviant‹ Caliphs; Ibn Hanbal (d. 856) upheld the right to believing and declaring – *contra* to then-ideology – that the Qur’an was eternal rather than created; and Ibn Taymiyah held the view that a necessary condition for rule is efficacy. He further believed (see below) that politics and religion should be separate from each other – that religion has more to do with faith than with citizenship. Both Abu Hanifa and Ibn Hanbal were incarcerated by their rulers, the latter reportedly also tortured. It is important for the modern reader to realize that it is these ›anti-establishment‹ scholars – rather than the Caliphs – who ended up defining Islamic Law, and commanding the following of the Muslim community.

contrast to that accorded to material well-being, and to understand what human life is about in that context: clearly, *life's worth* in this view is a function primarily of the freedom of religious conscience, and it is only lastly to be measured in terms of material well-being. Significantly, also, the individual's *intellect* – their reasoning capacity – comes high on the list, immediately after life, and higher even than the interest an individual has in their progeny. This, again, should have been – and continues to be – an incentive and an inroad for those placing a high value on Reason to engage positively in a dialogue with jurists in the determination of what ›a good social order‹ must look like. The logarithm, of course, is proposed as a complete set, each of the items being concerns or goods that Law's purpose is to safeguard. It is beyond the purpose of this work to criticize or defend this logarithm, only to show how jurists attempted to make the practical connection between the transcendent Word of God on the one hand, and the normal individual human being on the other: at the end of the day, it was the ›good‹ of the individual for which God's Word was transmitted through Muhammad. Given these scholars' effect on Islam's code of ethics, one cannot but feel sorry that philosophers on the whole disdained from engaging with them in the belief that their reasoning register and methodology was inferior to theirs.

Jurists did not satisfy themselves with itemizing what the interest or good of the individual is. Clearly, other problems faced them, such as when conflicts seemed to arise between different goods or interests. What is to be done in such cases? What is to be done in cases where a potential harm seems to conflict with the provision of a good? Which of these (the prevention of harm or the realization of a good) should take precedence? What about the principle of presumed innocence? What about extenuating circumstances where obligatory rules are explicit? Is extracting a confession through torture allowed? These and many similar matters came to be organized under what might be called ›rules of adjudication.‹ These, then, became part and parcel of what is known as Islamic Law.

The names of two scholars are worth noting in the conclusion to this section, both Andalusian, and each standing at opposite sides of the jurisprudential pole: the first is Ibn Hazm (d. 1064), made famous recently in the homily of Pope at Regensburg, being cited as an example of the ›non-rational‹ face of Islam.<sup>7</sup> While it is true that Ibn

---

<sup>7</sup> For a more elaborate exposition of the late Pope's homily in this regard, see my



Hazm was a ›literalist‹ who was critical of the legal tradition, it is important to point out that his critique – which in fact confirms rather than denies the rationalist face of the legal tradition – was inspired by his sense that that a self-appointed ›clerical elite‹ had unfortunately come over time to impose itself on what should have been a direct interaction between the God’s Word and the individual. In other words, his project was arguably more one of ›liberation‹ of the individual from what had by then become or was viewed as having become a rigid clerical hegemony, rather than as being a paradigm of the ›non-rationalism‹ face of Islam.<sup>8</sup>

The second scholar worth mentioning is al-Shatibi (d. 1388). With him we discover another rationalist ›leap‹ in that legal tradition: while jurists had all the time until then distinguished between their *source* and their *methodology*, al-Shatibi took the further bold step of proposing that analogical syllogisms (the methodology) be regarded as being embedded in the source as to be a part of it. Reasoning, in other words, was argued by him to be a necessary component of the source, rather than an accidental appendage to it, happening to be needed in order to understand the Law. As stated in the previous section, Averroes had pointed out some of the passages in the Qur’an exhorting the use of Reason. With al-Shatibi, this circumstance encouraged him to propose that Reason was therefore embedded in the Law.

#### 4 A Common Language?

Many Muslims today still ask themselves if it is in Islam’s nature to seek the materialization of itself in a State form. As stated above, this question was never settled among religious scholars in mainstream

---

»Violenza: Razionalità e Ragionevolezza,« *Dio Salvi La Ragionei, Benedetto XVI, et al.*, Siena: Cantagalli Publisher, 2007. An English version can be found at my website ([sari.alquds.edu](http://sari.alquds.edu)).

<sup>8</sup> It has been interestingly argued in a recent paper by Adam Sabra (see his »Ibn Hazm’s literalism: A critique of Islamic legal theory,« in C. Adang et al. (ed.), *Ibn Hazm of Cordoba: The Life and Works of a Controversial Thinker* (Brill 2013) that Ibn Hazm’s critique was inspired by a *liberalist* reaction against what by then had become a self-appointed class of ›clerics‹ (legal scholars or ›*ulama*›) who claimed a religious authority that Islam does not bestow on them. He therefore wished that the Qur’an be reclaimed by the people for whom it was revealed and who were not in need of scholarly mediators to understand it.

*sunni* Islam, and although Islamic Caliphates continued to exist following the prophet's death and right up to the First World War, political and religious authorities in effect remained separate from one another, a tense symbiotic relationship existing between them. While political authorities exercised physical power over their subjects, religious authority reigned over peoples' hearts – a dual system resulting in individuals constantly harboring a dual identity, along with a dual loyalty, political and religious. Each one of the two authorities was in need of the other for legitimating itself, with each one of them constantly having to take account of the power of the other. Islamic Law – defining practices – constituted the middle ground: religious scholars, appointed by political rulers or functioning independently, would both determine Islam's code of ethics, and adjudicate. This curious mode of co-existence essentially continued uninterrupted until, starting with the eighteenth century, the balance of power in the ›Old World‹ began to change, with Europe slowly replacing the Islamic world in its overall ascendancy. By the end of the First World War the die was cast, and ›the Muslim World‹ began to seek other pathways for meeting its new challenges. Given its history, the alternatives before it presented themselves either as that of the religious ›taking over‹ of politics – essentially, the recent ›Islamic State‹ movement is merely one radical face of this trend; the political ›taking over‹ of religion – essentially, the present counter-revolutionary regime in Egypt represents one anti-democratic face of this trend; or, finally, the maintenance of the pre-existing dual system, whether in some renewed form where either welfare or democratization measures (or both) are increased to maintain stability as in some Muslim countries in the region; or where stricter authoritarian measures are enforced, as in others.<sup>9</sup> In the Arab World, the ›seeds‹ of these different ›trends‹ and their offshoots began to be planted by the beginning of the twen-

---

<sup>9</sup> See A. Nai'm, *Islam and the Secular State*, Cambridge Mass.: Harvard University Press, 2010. The author eventually argues, after laying out the historic context of the relationship between religious and state laws, that for a healthy future symbiosis between the two state law should suffice itself with ensuring that basic human rights as expounded in various international charters are part of a legislation which otherwise should be ›given back‹ to religious legal scholars. While understandable, the author's argument risks invoking the ›classical trap‹ of portraying religious law on the moral level as belonging to a ›foreign‹ legal register. The argument forwarded in this paper, in contrast, supports a mutual effort aimed at formulating a single register. It is assumed that religious law, properly understood, is open to a moral deliberation that will underwrite those rights of the individual Nai'm is concerned with.

tieth century. In retrospect, two seminal ›projects‹ are worth pointing out in this context, that of Farah Anton's (d. 1922) secularist invocation of the rationalist tradition in Islam as best expressed by Averroes, and that of ›True Islam's‹ revivalism by Muhammad Abduh (d. 1905). More on them will be said below.

The question if and how religion (Mosque, Church or Synagogue) and State can co-exist is one faced by different countries, each in the context of its own specificities. What stands out in the Islamic context is first the historic separation and symbiosis alluded to, and second Law's direct relevance to the determination of the nature of the contact point or border between them. But this being the contact point, it is also the ground of possible friction. This friction can either be expressed in conflictual situations between political and religious authorities; or it can express itself more deeply within the community in the form of conflictual loyalties and identities. Given Islamic Law's foundational role in formulating Muslim social identity, conflictual situations at this level can prove to be more dangerous, as when communities may come to clash violently with one another over power. As we saw, Averroes's attempt at a reconciliation, significantly in the field of Law, sought to provide a ›translational‹ approach: to translate religious into a rational language whenever conflict arose. However, both his own attitude, as that of other philosophers, was based on the belief that religious discourse – even in the legal field – was not as rationally pure and decisive as philosophical discourse. As already stated, this belief was based on the assumption that ›Pure Reason,‹ expressed by Aristotelian logic and metaphysics, is superior to all other kinds of reasoning. But it was not just logic and metaphysics which philosophers could feel superior about: more effectively, it was also the field of the practical and mechanical sciences, which happened to be introduced into the Muslim world by the philosophers themselves, as part of the transmitted Greek traditions, whose main instruments they were. Philosophers could therefore understandably feel they were far more advanced in their knowledge than were the religious scholars. But this ›superior‹ attitude, coupled with the ›patronizing‹ translation proposal reflecting it, clearly had no chance of attracting the respect of religious scholars. After all, these viewed the philosophers' own register as being ›transmitted,‹ like theirs, but – significantly in the fields of logic and metaphysics – unlike theirs for being drawn from a far lesser authority. The only way a real dialogue could have taken place would have been if philosophers (who pre-

sented themselves as representatives of science) were open-minded both to the limitations of their own methodology as well as to the potential rigor of that of the religious scholars. *Had that existed, a positive intellectual engagement might have developed between the two, especially in the field of Law, allowing for the development of a common language between them, and therefore also between the two registers.* In its turn, a common language between the two registers would have helped create or consolidate a single frame of reference for the two world-views, where differences or disagreements are not such as to pose a threat to the cohesion of social identity. The need for such a common language holds even today, where the ›religious register‹ has come more and more to closed in on itself, and to take more distance from non-Islamic registers.

One could think of two meanings for ›a common language‹ – a deep meaning and a surface meaning. According to the first a wide-ranging and translucent deliberative discourse between religious and secular scholars would exist in which different positions and ideas would be proposed and defended, whether in the same or different writings, and where therefore a consensual frame for disagreements could be registered as equal contenders for truth, the judgment of which being the reader's choice. While a ›perfect‹ common language of this kind might be unrealizable, nonetheless one can imagine the possibility of its realization in different degrees and different contexts across a spectrum. Open societies and democracies are contexts where its spread is potentially most far-reaching, and where ideological confrontations are least threatening.

By a surface-meaning for a common language, on the other hand, would be meant one restricted to the determination of society's code of ethics – Law, and what the *right things to do* are: what effectively characterizes a Muslim's behavioral identity – those behaviors he or she feels define them as Muslims. On the other hand, by surface-meaning one would mean a meaning restricted to the determination of society's code of ethics: both Law as well as what the right things to do as a Muslim are (i. e., those behaviors he or she feels define them as Muslims). While this will necessarily widen the circle of participants in such a deliberation to include scholars and intellectuals from different backgrounds and with different expertise, the discourse itself need not be *about* those backgrounds, though it will be informed by them. A recent initiative by the Islamic Council of States (see below) may serve as an example of what is meant. Given

Islam's already-explained ›dual-system,‹ a common language in this context would not need to apply – as Habermas argues it should apply in Europe's context – to formal political institutions (the provenance of politics). Already, a common language in the domain of law and ethics – once it comes to exist in the fashion suggested – would preempt the need for a common *political* or ideological register: two ›world-views‹ in parliament could still be at odds with one another, numbers deciding between them. But laws determining ethical conduct being instituted in Parliament would already be culled by reasoned debate. The example of the recent abortion campaign in Morocco may serve here as an example: regardless of the ideological differences in Parliament, or in society at large, a reasoned debate among jurists and specialists on a best practice in this issue could produce and then present Parliament or decision-makers with a largely ideologically-neutral, but ethically best motion for debate.

The attempt to bridge between legal and secular legal languages in many Muslim societies has been tried in modern times through the incorporation of an article in the relevant constitution declaring that Islamic Law is (either) *a* or *the* source for that constitution. But this already confirms an existing ideological duality of loyalties and identities – a duality that underlies much of today's social instability: it leaves it an open confrontational question at the political level as to which of the two registers is superior, and therefore needing to be *translated* into the language of the other. At worst, a legal argument in a criminal court could be so selectively drawn from the two registers (in one paragraph, drawing on Islamic Law's focus on the good of the individual, but in another on the State Law's focus on ›internal security,‹ or the ›good of the state‹) in such a way as to suit a politically motivated prosecution against civil activists. Better than a double-standard, and rather than translation, or interpretation (as per Averroes), what would make for fairness and stability at this level is a matured common legal language that would bridge that divide between the two registers.

But if a bridging attempt, however it is viewed, has at least come to be seen as a necessity in the modern age, it was unfortunately not even considered by past philosophers, excepting Averroes. As already stated, Muslim legal scholars commendably and creatively engaged themselves in the development of Islamic Law – a project which, had past philosophers recognized for the importance it held for society, might have enticed them to contribute to it. Did such philosophers

have anything to contribute in this regard? Would their contribution have been well-received by the religious scholars? Let us consider the following possibility: we can imagine a past world where one of these philosophers – a non-believer – decides to step into the legal debate with a contribution of his own. He is driven by his belief in what he considers to be a morally rational principle – a basic moral rule which could be adequately transcribed into an ethical code prescribing rational moral behavior. Briefly, he believes that a human being behaving rationally would not seek the attainment of a pleasure for himself if the pain or harm ensuing from it exceeds it in quantity or quality. Viewing the areas of possible contributions in the legal debate before him – whether the Law has a purpose, what that is, and what adjudication rules might apply to it – he wisely decides that it would be best if he could make his ›principle‹ relevant to the adjudication rules as to be reflected by them: one adjudication rule the jurists could add to their list would be to ensure the enactment of this moral principle.

The formulation of the ›moral rule‹ the philosopher therefore chooses to propose is one that he sees must at once address his interlocutor's beliefs as well as his own. To choose otherwise is to preempt his chances for a fair hearing. It therefore incorporates the doctrine – in which he himself does not believe – of an afterlife. The doctrine of an afterlife with rewards and punishments being an essential ingredient of Islam, he formulates the rule in such a way as to address his own ethical concerns in this life, as well as those of his interlocutors in the afterlife. Thus the rule he proposes could be the following:

We should neither pursue a pleasure whose attainment precludes us from that afterlife, or one that will impose on us in this life a pain which in quality or quantity is greater than that of the pleasure chosen.

As is clear, there are two parts to this rule, one relating to a *this-life* and the other to an *after-life*, which significantly are combined together. While the rule is formulated as an imperative or a prescription (we *should* not), it is clearly predicated on a rational assumption (that ›we‹ *would* not). It is of course the *this-life* part that our philosopher is concerned with, where he thinks a person of sound mind and acting reasonably (the ›we‹ he has in mind) would not, by virtue of Reason alone, pursue a pleasure (a good) *in this life* which he knows will be out-measured by the pain (harm) to himself *in this life* resulting from it. Even, however, if the realization of such pleasure can be brought about by stealthy stratagems without therefore the risk of incurring

earthly pain (however we may define this), one who believes in the afterlife would by extension of the rule still regard this formula valid if thought about rationally, making the imperative applicable across worlds. In other words, though being entirely Reason-based, the proposed imperative would still have its binding value for a believer in the after-life.

Being well-acquainted with the Islamic jurists' rules of adjudication, our philosopher would propose to his interlocutors that this imperative goes well with their own basic rule which they believe the Law must safeguard, namely, the principle that the prevention of harm must outweigh the realization of a good. This being the case, perhaps a follow-up debate would then ensue about whether the ›good‹ or ›harm‹ to be measured should be understood as being specific to the person himself or as referring more generally to others (e.g., the community). The philosopher's formulation (*to himself*) might then encourage the discussion of an issue which lies at the heart of Islamic Law, namely, whether Law's purpose is the safeguarding of the good of the individual or that of the *regime* (of Islam), and how best to reconcile between these, or to understand the relationship between them – which of these two purposes presupposes the other. The philosopher might also encourage a debate about what might be meant by a ›quantitative‹ or ›qualitative‹ measurement – an issue in the adjudication rules which also needs clarification.

In theory, in other words, the grounds for a commonly formulated legal register was conceivable. What makes it seem more so is the fact that, as it happens, the above rule is found in *The Moral Life of the Philosopher*, the work of one of the philosophers most reviled by traditionalist scholars, Abu Bakr al-Razi (d. 925). In another of his works, *The Book of Spiritual Medicine*, Razi suggests that acting by such a rule would assure us of a just reward in the afterlife, given that ›the Original Source‹ (*al Bari* –his ambivalent reference to God) is absolutely knowledgeable, just and merciful (terms he knows were in common use by religious scholars).<sup>10</sup>

Why did such a profitable dialogue not take place? The sad answer is that in real life, al-Razi's metaphysical beliefs – as these were

---

<sup>10</sup> For excerpts and a summary of the former work as well as the translation of the second into English, see A. J. Arberry, *The Spiritual Physick of Rhazes*, London: John Murray, 1950. This is downloadable on ([http://files.libertyfund.org/files/1791/0955\\_Bk.pdf](http://files.libertyfund.org/files/1791/0955_Bk.pdf); last accessed on 5 November 2015).

reported – made him a target of scathing attacks by religious scholars, his potential contribution to the development of a common discourse or language with them thereby becoming totally impossible. Razi's dilemma (and its effect on the project of a common language) could be viewed as an example of the unfortunate relationship that existed between philosophical and religious scholarships. He clearly had something important to contribute to the moral debate formulating Islamic identity, but the chances of his being heard in the ›corridors of power,‹ where that identity was being formulated, were summarily preempted by his metaphysical beliefs (the accusations against him included the claim that he did not believe in prophecy). Arguably, of course, the fault was as much that of the religious scholars – for refusing to tolerate philosophy – as it was his, if not more. However, on the assumption – believed by the philosophers themselves – that they were smarter and more knowledgeable than the religious scholars, and could see better what a best human life should look like, it is surely more strongly arguable that – even on their own terms – it was more their responsibility to seek the religious scholars' ears than the other way round, and therefore to find a best way for doing so. This could not have happened by adopting a superior attitude. Alfarabi, possessed of a brilliantly analytic mind, had unfortunately already set the tone for this philosophical attitude: in many ways enlightened – but also blinded – by the received Greek tradition, he stuck to the elitist belief in a rigidly hierarchic system of knowledge and knowers' which are best kept separate from one another. The language of exchange between them, he thought, needs to be formulated in terms that are suitable for each one of the different levels – in other words, *translation*. Otherwise, he warned, philosophers in particular would find themselves outcast in their societies. As it turned out, however, his prescription was for a self-imposed exile from society. Even were one to accept that his concern was with the ›preventing of harm‹ to society in the ›deep‹ sense – so to speak, needlessly confusing a public incapable of a mature rational discourse – the application of his ›non-meddling‹ prescription to society's code of ethics must itself surely have had the opposite effect: the harm resulting from the stratification of two distinct and often conflicting ethical registers and two distinct and often conflicting identities.

As already stated, one of the salient marks of the introduction of philosophy into the Islamic milieu was science. Beginning with al-Kindi (d. 873), philosophers could be viewed as having been – among



other things – the harbingers of a practical field (e.g., medicine, astronomy, engineering) which was of immense value to Muslim society, and they were, in that capacity at least, made good use of by that society. Razi himself is best renowned for his contributions in the fields of health and medicine, and was gratefully recognized for serving society in that function. Arguably, his technical contributions in the legal field might have also been welcomed, had his ideological views not jarred with those of his religious interlocutors, for whom, unlike the case with medicine, this particular technical area was viewed as lying within their province. In a sense, then, one might well understand the logic of al-Ghazali's singling out in his critique of philosophers their metaphysical views, as well as Averroes's argument that philosophers should in effect keep these views to themselves. After all, as al-Ghazali argued, these views were essentially hypothetical, not possessed of the certainties of science. On the other hand, however, what was and remains a critical issue is whether and to what the extent Islam is viewed and projected as a religion that tolerates difference – a matter that could only be formulated through the combined efforts of open-minded legal and other Muslim scholars committed to seeing that religion is always ahead in its humanistic message of the constant advances in knowledge and moral reach.

## 5 Islamism and Secularism

As previously stated, the Arab world in particular began to witness new stirrings as the Ottoman Caliphate was nearing its demise towards the end of the nineteenth century, and these began to manifest themselves in specific ideological strands with the collapse of that Caliphate, the end of the First World War, and the creation of the ›national states‹ as these were conceived and even allotted by the victorious ›Allies.‹ New voices began to be raised for some deep soul-searching in the Arab society's then-prevalent modes of beliefs and habits, some calling for a renaissance of Islam's ›glorious past.‹ However, there was no agreement over what the ingredients of this past's glory were. Some saw it in religion itself. Others saw it in the scientific and rational feats of Islam that *followed* upon the institution of that religion, and that could now be rehabilitated through a ›nationalist‹ (albeit *pan*-Arabic) cause. Others still, influenced by Marxist thought, began arguing in favor of seeing the world through the dif-

ferent eyes of class dialectics, leaving behind antiquated theories of nationalism and religion.

In 1903 a Christian intellectual and journalist by the name of Farah Anton, originally Syrian, opened a new page in the intellectual scene by publishing a book on Averroes.<sup>11</sup> For him, the rationalist Averroes represented ›the best‹ of Islam's past that can be drawn upon for resuscitating the Muslim world – now as a ›virginal Eastern/Arab region‹ – from its slumber. Informed by the Averroist tradition, Anton argued, religion and politics could be made separate from each other, the former retaining its respectful place as the concern and practice of the individual, with the latter becoming a secular instrument of Reason that can empower the Arab world to navigate the modern challenges it now faced. For Anton, an Arab Christian, the ›Muslim Arab World‹ was more of a linguistic culture and civilization than a particular religion. In this culture, Christians (and Jews) ›belonged‹ as much as Muslims did. Islam's ›rationalist‹ tradition, he believed, would empower the slumbering world to renew its potential and to stand up to growing European domination.

But Farah Anton's was not the only voice proposing a ›way out‹ of the Arab-Muslim world's intellectual and political disarray. Viewing this disarray from an opposite perspective, the religious scholar Muhammad Abduh (d. 1905) – a younger colleague and student of the visionary and activist Jamal Eddin al-Afghani (d. 1897), and who later became the *mufti* in Cairo's al-Azhar – saw matters differently, and argued instead in favor of reviving Islam's original doctrine and system of rule, which he (and his teacher) believed to have been smothered by generations of corrupt practice. In what can be in retrospect considered a landmark debate between the two carried out in local Cairo magazines (*al-Jami'a* and *al-Manar*) – Anton, like many

---

<sup>11</sup> See W. Abu-'Uksa, ›Liberal Tolerance in Arab Political Thought: Translating Farah Anton (1874–1922),‹ *Journal of Levantine Studies*, Vol. 3, Issue 2, 2013, pp. 151–57. The exchange between Anton and 'Abduh was published in *al-Manar* and *al-Jami'a*, the latter being Anton's own journal. In recognition of its current significance, this exchange was recently collected and published in Beirut, Lebanon, alongside a reprint of Anton's work on Averroes (see: *Ibn Rushd wa Falsafatuhu*, intr. T. Tizini, Beirut: Dar Al Farabi, 1998, pp. 45–367). A second print of this was published by Edition ANEP, (Algeria: Alger, 2001). 'Abduh mistakenly understood Anton's critique of then-prevalent social mores as a criticism of Islam as compared with Christianity. The debate came against the background of a more general movement of modern reformists challenging Islamic ›values‹ and mores – for example, the status of women, the *hijab*, participation in parliamentary elections, etc.

other intellectuals, had moved there from Syria further away from Ottoman influence – the groundwork for the more general question that has come to capture today's reality in the Arab world was set. Does ›the way out‹ require that politics be separated from religion (Islamic Law), or does it instead require that ›unadulterated‹ Islamic Law be resuscitated and made to inform politics?<sup>12</sup>

As previously stated, in its more general form this question had been posed, but never resolved, right from the beginning of the institution of the Caliphate regime. In effect, religious and political authorities had developed side by side – a symbiotic duo with each side keeping a watchful eye on the other, and an underlying tug-of-war between them. Now with the replacement of the Islamic Caliphate *regime* by a political system of ›nation-states,‹ the lawmaking space becoming available for political authority suddenly expanded, becoming the paradigm. The right to prescribe basic laws – essentially, derived from the French and Mandatory British legal systems – came to be appropriated by the State, effectively expropriating what had primarily been the provenance of religious authority. However, mindful of religion's importance to the community, and by way of appeasement, newly emerging Arab countries came to cite Islamic law as *one* major *source* of Law in their constitutions. It would also be stated the the religion of *the state* is that of Islam. Religious courts were allowed to continue adjudications in family and inheritance matters. As recent historical events in the region have shown, this ›compromise formula‹ has not proven to be entirely satisfactory: how could the religion of the State be Islam and yet not have Islamic Law as its sole legal authority? Or, be a political regime and yet have Islamic Law as a major source of jurisdiction? Indeed, what does it mean to say the *state* has a religion? Is religion something a state (rather than an individual or a people) *has*? (Consider here the debate in Israel about whether it should remain a state *of* the Jewish people, or *itself* become a Jewish State).

---

<sup>12</sup> For an account of some of the seminal workshops held during the twentieth century in Kuwait and Cairo to which major Arab thinkers were invited, see I. Boullata, *Trends and Issues in Contemporary Arab Thought* (Albany: State University of New York Press, 1990). It may be important to point out that ›secularist thinkers‹ not only included Marxists or communists (most of whom declined to attend what they considered as ›liberal bourgeoisie‹ workshops), but also certain nationalist and pan-Arabist thinkers for whom religion was no longer thought to be relevant for steering the Arab world towards economic and social progress.

Meantime, in the Arabian Peninsula, political fermentations in the eighteenth century forged an alliance between the tribal founders of Saudi Arabia and the religious ideology of the scholar Muhammad Abd al-Wahhab (d. 1792) making for the type of Islam now governing that country and being proselytized by it throughout the Muslim world. Iran, on the other side of the Persian/Arab Gulf, and following the revolution against the secular *Reza* dynasty in 1979, developed into a full theocracy ruled by its own brand of *shi'ite* Islam – a brand originating in early disputes over rightful caliphate successions, and having adherents also in the Arab world.

It is in this fragmented context that the Anton-Abduh debate at the beginning of the past century on state and religion began to assume a new life, now splintering into many directions. This ›new life‹ only began to impress itself upon the political stage with the collapse – the failure to deliver political or economic returns – of the secularist/socialist/nationalist ›experiment‹ of major Arab countries (Iraq, Egypt, Syria); as well as with the weakening of Marxist movements and thought partly brought about by the collapse of the Soviet Union. At the intellectual level, in one case the Averroist line (viewed as representing a rationalist Islam) has been argued for quite strongly by the recently deceased Moroccan philosopher Muhammad Abid al-Jabiri (d. 2010). Another line of rationalism favored recently has been that of a religious movement, the *Mu'tazilites* school of *kalam*. This (now sometimes referred to as ›neo-Mu'tazilism‹), is perhaps most famously associated with another recently deceased Egyptian intellectual, Nasr Abu Zeid (d. 2010). (His writings, declared to be proof of his apostasy in a Muslim court, further led to the imposition on him of a divorce from his wife). Other contemporary ›reformists‹ have included the Egyptian scholar Hasan Hanafi, for whom Islam constitutes the backbone for, but not the restricting limit to the further expansion of its moral and rational reach. In all of the above cases, the inspiration for a renewed ›powerhouse‹ has been sought from those ›rationalist‹ elements of the ›glorious past‹ that are perceived to be relevant to Muslim society. On the other side of the spectrum, countering these calls, however, and with far greater impact on the political scene, have been those religious movements (described as *Islamist* of one kind or another) fighting for the reinstatement of their respective visions of an unadulterated Islamic Law. The main ideological confrontation, then, has in recent years been that between a rationalist school calling for subjecting State politics (and

its judiciary arm) to Reason – now in an ›Islamicized‹ form; and another calling for the subjection of politics to Islam as defined by its (conservative) Laws. In the aftermath of the general failure of other alternatives – Marxism and secular nationalism – the ›option‹ of subjecting religion (Islamic Law) to politics no longer proffers itself at the practical level as a realistic alternative. If, in what used to be a ›Christian‹ world the Canadian philosopher Charles Taylor has most recently argued (*contra* Habermas) in favor of at least recognizing religion as ›an option‹ among others to be admitted into the formal debates of lawmaking (without, therefore, the requirement for a *translation* into a secular or ›neutral‹ language), the required plea for ›optionality‹ in the Muslim world in contrast now has come to be needed in exactly the opposite direction: for the admission of a secular discourse into a religion-informed public sphere. One hundred years after the First World War and the sprouting of new ideas, in other words, the pendulum seems to have swung back, leading the region again into a religious era, almost as that which confronted the philosophers in the past, but now of the hardened kind. But significantly, to turn back to our earlier discussion, it would be a grievous mistake – as it has been in the past – to posit the present confrontation as that between a Reason-informed ideology and a non-rational (or rationally inferior) one: indeed, in many ways, given the apparent mismanagement of political rulers and authorities in the Arab world, and their characterization as self-serving and corrupt regimes, the Islamic State ideology – despite its terrorism tactics – has been proving itself on the ground to be possessed of a far more ›rational‹ methodology, while professing to offer a just vision for society.

Indeed, Reason or rationality is not the issue: the recently created Islamic State (IS) just happens to be another one of those political actors for whom violence is conceived as a rational means for the achievement of their ends.<sup>13</sup> For, consider the following: the *end-vision* of the so-called ›Islamic State‹ combatants (to set up a ›pure‹

---

<sup>13</sup> In May 2015 *The Project on Middle East Political Science* (POMEPS) published a series of memos (posted as POMEPS STUDIES 15, at: [pomeps.org](http://pomeps.org)), including one, ›The Islamic State as an ordinary insurgency,‹ by Reyko Huang, which compares the Islamic State's methods with that of other, religious and non-religious insurgency movements. Distinguishing between ›religion-centered‹ and ›actor-centered‹ frameworks for understanding such movements' strategies and tactics, the author emphasizes the role of the second of these factors in determining their well-reasoned plans and actions. The author's findings thus corroborate the point being made in this paper

Islamic polity in countries where Muslim majorities live) may of itself or from a given perspective seem far-fetched and arguably irrational. Significantly, however, their underlying ›program‹ to bring about that vision – though rooted in terrorism – is eminently rational: working from a Hobbesian framework that views a civic polity as one that emerges from chaos, and where that human chaos or state of nature is taken to be one of fear and of war of all against all, a total replacement of an existing religious polity by an entirely different one could arguably require returning to the blackboard through the recreation – through consciously conceived acts of brutal terrorism and the spreading of fear – of that primal state of chaos. Once such a state is created, a new ›social contract‹ between subjects and ruler could be established, rooted in what is conceived to be the pure Islamic message of the religion’s founder. The project would be that of a ›political reconstruction‹ – from scratch – of the religious polity.<sup>14</sup> While the analogy might seem provocative in this context, consider the simile Descartes uses of structuring a town anew rather than build on its existing layout for his rational reconstruction project in epistemology.<sup>15</sup> Abstracted from its moral context, one could say of IS’s strategy that ›though this be madness, yet there’s *method* in it,‹ as Shakespeare’s Polonius, commenting on Hamlet, is made to say. In short, what is absent from the reasoning employed by such actors, including Muslims, is not Reason *per se* but what might be considered *moral* Reason.

In particular, the Islamic State strategy is informed by two interdependent attitudes to politics and morality: a generic distinction between a *given* Law (a prefixed ethical code prescribing a best social order) and common moral-sense (a Reason-sensitive and ›open program‹ code of ethics); and that between ends and means – where, given a prefixed vision of a best social order, the moral characteriza-

---

that rational methodologies can describe the acts of fanatical as well as ›reasonable‹ actors.

<sup>14</sup> See one of their major manifestos, *The Management of Savagery*, W. McCants (trans.), downloadable at: <https://azelin.files.wordpress.com/2010/08/abu-bakr-najj-the-management-of-savagery-the-most-critical-stage-through-which-the-umma-will-pass.pdf> (last accessed on 25 September 2015).

<sup>15</sup> R. Descartes, *A Discourse on Method* (J. Veitch, trans., intro. A. D. Lindsay), London: Dent, 1965. See Part II. While Descartes does not recommend this approach as one to be used as a matter of course, he explains he has decided to use it for his own reconstruction of knowledge edifice.

tion of the means to achieve it becomes completely irrelevant. Taken together, it should not come as a surprise that these two attitudes could produce the kind of disastrous political landscapes as those described above. Chopping heads off can be viewed as a rational means for securing world peace or religious harmony. While, therefore, it is not Reason or Rationality *per se* that are at issue, what is at issue are the vision and the means to achieve that – both of which are *moral* rather than rational considerations: Should the focus of Islamic Law be on guaranteeing the good or interest of the individual, or should it be – as a prior obligation – on the good or interest of the ›order‹ of which the individual is member?

The second-option approach – one adopted by many Islamist movements – presupposes a unique vision of what that best order is. It is a vision of a fixed, or static order. It therefore allows for – indeed, even obligates – a group holding that vision to use all means to bring it about. This holds for this interpretation of Islam as for any other ›ideology‹ – including those ideologies in the past century that have led to the unprecedented deaths of millions in Europe. The first-option approach, on the other hand, cognizant of the dynamic nature of human lives, leaves the matter of characterizing a best order to the individuals themselves – indeed, it defines instances of right and wrong practices, as well as a number of rules, but above all it ›explains itself‹ as a Law whose purpose is to safeguard the ›good‹ or ›interest‹ of the individual Muslim. Safeguarding that good or interest would *eo ipso* guarantee a best Islamic order. Guided by Law's purpose, jurists are obliged to continue deliberating about the best answer for any number of newly-arising questions. Paradoxically, it is a ›liberalist‹ approach that leaves the door open (in theory at least) for determining what in practical terms a best order is. To draw on a contemporary legal model, jurists act more like judges in the British legal system (deliberating applicable principles based on past practices), rather than as lawyers (applying principles to cases at hand). While past religious scholars (both in *fiqh* and *kalam*) adopted rational methodologies consistent with this approach, philosophers on the whole – taken in by fixed Aristotelian or Platonic visions – adopted the opposite, fixed-division methodological approach. For them, Greek philosophy had all the answers. Philosophers therefore saw no value in ›stooping down‹ to the jurists' deliberations. During the past century, with the ascendancy of politics over religion, a regime of civil laws – essentially derived from the French and Mandatory British legal systems – has

come to define human relations and practices, with religious law retaining a secondary status (family and inheritance). In other words, civil and religious laws continued to reflect two different registers, as if derived from different sources, the one ›rational‹ (now in ascendancy) and the other ›religious‹ (as if a historic leftover). But given the widening gulf between the religious and secular perspectives on what ›the good life is,‹ or what ›a best order is,‹ it has now become more urgent than ever in the past that this presumed schism between the two approaches is bridged, a minimal common language needing to be formulated between them. Is this possible? Given the two approaches to Reason – the one deliberative (religion) and the other deductive (state) – is it possible, in particular, for the state legal system to begin a process of reformulating its laws through a deliberative engagement with religious scholars in such a way that a single code of ethics for Muslim society could emerge?

What is being posed as lying at the heart of the matter of instability in Arab Muslim countries is the question whether the general confrontation between the religious and secular world-perspectives can begin to be bridged through the creation of a common language between civil and religious laws. The formulation of such a language – to replace an existing dual system – would perhaps provide the stable foundation for a deeper-structured common language in society, and the kind of open space that could contain pluralism. In other words, the area being identified for the moment as a possible ground for a common language concerns practices that are informed by beliefs rather the beliefs themselves – not for example, about God, but about whether women should be allowed to drive cars or have abortions. A common language in the minimal sense would be one where deliberation would concern those practices. The question therefore is about whether, in this day and age, two different registers – religious and secular – can fuse into one.

Perhaps one could learn about what is possible from a specific initiative launched in 1981 by the Council of Islamic States: the »International Muslim Jurisprudence Form.« The forum includes members from forty-three Muslim countries, and was established so that Muslim jurists and scholars could debate and decide upon issues arising from modern developments in various fields (mostly in science as this affects society, but also in finance, public properties, road accidents, etc.), and which need the formulation of a Muslim legal ›position‹ regarding them. Several points are worthy of note in this con-



nection. The first is that the formulated ›position‹ – if one is commonly or by majority arrived at – is stated as a scholarly *ijtihad* (a considered opinion arrived at by *inference*). No claim of absolute ›truth‹ is made. The second is that such a considered opinion is formulated through a process of *deliberation* among a group of scholars, selected from different Muslim countries. No single ›authority‹ is turned to for a definitive answer. The third point is that this group invites specialists from different fields when the discussion involves matters that lie within those specialists' fields of expertise. The forum convenes once a year and is hosted by one of the participating Muslim countries. Its headquarters is in Jeddah in Saudi Arabia. It deals with all issues posed by modernity. As reported in a recent study, one area that has been a focus of special attention for scholars in this forum is medicine – questions having to do with treatment (e. g. by male doctors of female patients, or euthanasia, etc., transplants, birth control, AIDS, and fasting). The study shows how scholars would draw in those deliberations on Islamic sources, Law's purpose, the rules of adjudication, as well as relevant observations of past scholars belonging to the four main schools, and would then proceed to form a judgment. A cursory reading of the meticulous deliberations (e. g., on how to define ›a hopeless case‹ in the context of whether medical treatment should be continued) shows promise of a common-sense legal language – expressing both religious and non-religious concerns – that can address modern demands.<sup>16</sup>

---

<sup>16</sup> The study has been done as a Master's thesis at the Faculty of Religion at al-Quds University under the title ›A Study of the Contemporary Medical Decisions taken by the International Islamic Jurisprudence Forum,‹ by Dima Nashashibi (Jerusalem: Sa'ed, 2015; in Arabic). What seems to stand out in this Forum's work is the fact that it is underwritten by the government of Saudi Arabia – commonly (and justifiably) regarded as a ›conservative‹ Muslim country. The work of the Forum, however, seems to enjoy some independence on account of its international make-up, and on account of the fact that its umbrella organization is the *Council of Islamic States* rather than any particular Muslim country. It has more credibility, therefore, than that of functionaries (such as at al-Azhar in Cairo) or of ›renegade jurists‹ (such as al-Qardawi in Qatar). In both of these latter cases, the government of the host country plays the role of *maestro* – though, as reported recently in a study on al-Azhar's educational initiatives, there seems to be a large divide between the upper echelon at al-Azhar, and the real teachings of Islamic Law under al-Azhar's tutelage that seem to be taking place across the country, which do not reflect the *maestro's* policies – for this, see the article by H. Abou Zeid, ›Al-Azhar's ›Imcopotence,‹ published in *Al-Ahram Weekly* (Issue 1253, 2<sup>nd</sup> July 2015). This is downloadable in English at: [weekly.ahram.org.eg/News/12679/21/Al-Azhar's-`imcopotence'.aspx](http://weekly.ahram.org.eg/News/12679/21/Al-Azhar's-`imcopotence'.aspx) (last accessed on 5 November 2015).

In theory at least – especially assuming the intellectual independence of these scholars – such a forum seems to provide the perfect model for creating the kind of ›common language‹ referred to above. However, instead of religious law thus evolving by itself, what is argued is needed is that such a forum should in fact be one where ›a-religious‹ legalists and experts would be partners in this project. ›A-religious‹ need not mean people who are non-religious, or who are anti-religious: all it need mean are scholars and experts whose input is informed by what they consider to be a neutral or scientific register. These may also include moral philosophers. Legal opinions emerging from these deliberations can then be filtered into the laws of the state, these slowly coming to reflect indigenous social values rather than seeming to be an independent register derived from foreign sources. Importantly, the emergent common language meant would not be one formed by *translation* or *interpretation* – Averroes’s (or Habermas’s) condition: rather, it would be formed through deliberation by experts of equally-recognized scholarly standing from different fields alongside Muslim legal scholars. Although primarily focused on *practices* rather than *beliefs*, its effects on characterizing Muslim society would be far-reaching, and one can imagine that it could finally provide a veritable foundation for precisely that more general common language in society whose absence today is sorely missed, and where divergent beliefs or ideologies have come to express themselves in extremist and exclusivist forms.

In conclusion, then, this paper has proposed the argument that neither the philosophical, nor the so-called religious-informed rationalisms of the early period of Islam can by itself provide us today with that stabilizing foundation needed to bridge religious with political authorities: instead, what is needed is a minimal common language between them, one that can be developed through a deliberative discourse over society’s practices, or code of ethics. This – an exercise unfortunately ignored by past philosophers – may now constitute the firm and cohesive foundations for modern Muslim societies.

–Sari Nusseibeh, *Professor of Islamic and Political Philosophy, al-Quds University, East Jerusalem, Palestinian Authority Area*