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# *The Present of Shari'a: A Law With(out) Worship?*

*This paper is a modified version of Part III of my book manuscript. The outline below situates the paper in the wider project about Shari'a and state law.*

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### *The Present of Shari'a: A Law With(out) Worship?*

*Abstract: Through engagements with Islamic jurists and contemporary scholarship on both the Shari'a and modern state law, this paper is an invitation to raise four questions: (i) What does it mean to study acts of worship ('ibadat) as an integral part of Islamic jurisprudence (fiqh)? (ii) What does their omission tell us about assumptions regarding the categories of law and Shari'a in contemporary scholarship? (iii) To what extent does the inclusion of acts of worship in their relation to social interactions (mu'amalat) entail revisiting the thesis of the Shari'a's demise in present times? (iv) How have contemporary Islamic scholars revisited the relationship between acts of worship and social interactions as a response to the constitution of "the present" as an epistemic problem for Islamic legal knowledge?*

## Studying worship as part of the law

Most contemporary studies about *Shari'a* have approached it as a law regulating social transactions and adjudicated in the courtroom. For colonial experts and legal Orientalists[1] 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". By identifying the lack(s) in Islamic law in comparison to western forms of law, one 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."[2] "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."[3]

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

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[1] The idea of a lack of constitutive distinctions between religion, law and ethics in Islamic jurisprudence can be traced back to Dutch Orientalist Hurgronje: "Le *fiqh* se distingue du droit romain et du droit moderne en ce sens que c'est une déontologie dans le sens le plus large du mot et ne se laisse pas diviser en religion, ou morale, et droit", in Snouck Hurgronje, *Selected Works*, p.261. For Hurgronje, the religious is equated with the acts of worship: "the religious parts proper of the *fiqh*, the 'five pillars' and connected duties are in the nature of things impervious to all efforts to adapt them" (p.74). The lack of differentiation between religion and law informs Max Weber's comparative sociology of law and the category of "sacred law" (*Economy and Society*, 1979). See also the French orientalists and jurists such as Milliot (*Introduction a l'Etude du Droit Musulman,* 1953) and Bousquet for whom "la Loi musulmane possède a un haut degré un des caractères des législations primitives ou droit, morale, et religion sont intimement confondus" in Bousquet, *Les Grandes Pratiques Rituelles de l'Islam*, 1949, p.8. Opposing the "legal" "proper" to ritual practices, Bousquet studied the acts of worship as the "rituel orthodoxe de l'Islam".

[2] Joseph Schacht, *An Introduction to Islamic Law*, 1983, p.113.

[3] Ibid., p.114.

modernity as well as the assumptions on which contemporary governmentality is based. The colonial project of the nineteenth century has been promoting "good" and efficient government on the basis of differentiation and separation. One of the main problems faced by colonial viceroys and officers (such as Macaulay, Cromer, Lyautey) was 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.

**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[4].

Most 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. 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[5].

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[4] The lesson was delivered in July 2015.
[5] 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 (who spent the day formulating legal opinions to whoever asks for it in the Fatwa Council) gives a lesson 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 in Islam, and the ways it should be understood and lived by Muslims through the relationship between acts of worship (*'ibadat*) and social relations (*mu'amalat*).

Worship and social relations are the two main spheres of 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 for a *fatwa* (legal opinion), 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 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 came 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'nawiyan*), 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'nawiyya*), 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 (*'ubudiyya*), 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 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 her heart through the limbs. As exemplified by the obligatory prayer (*salat*), it is not only her body that is submitting to God, it is also her 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 her embodied deeds when she 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 the self think of the strength and truthfulness of her relationship to God. Avoiding the wrong and doing the good in the world is not self-contained in her relationship with others because it is always related to her 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*]"). As stated 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 she 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 nafsiyya*). 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.

**Enforcing the law**

It is clear by now that 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.

Hence, 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 whose logic is procedural. Islamic 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). 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 and relevant in everyday life.

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."[6] 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."[7] 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.

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).

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[6] Hans Kelsen, *Pure Theory of Law*, 1967, p.2.
[7] Ibid., p.34.

Therefore, it can never be the task of the law to regulate the inner self or the individual's relationship to the divine. It is relevant to note here that if we rely on Kelsen's theory of law to study *Shari'a* rules, 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 regulate the relationship of each individual to God.

If, in the West today, 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 eleventh century until the seventeenth century), the Church was in conflict with temporal authorities regarding the nature and limits of its jurisdictional power over ecclesiasts, the worldly ruler, and 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 a 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 scriptures only to the extent that they are made laws by the sovereign "whose Commands have already the force of Laws"[8]. 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 Soveraign Assemblies"[9]. 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"[10].

Hobbes's thought exemplifies the shift in the trajectory of the category of "law" and the practices associated with it[11]. 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

[8] Thomas Hobbes, *Leviathan*, 1996, p.267.
[9] Ibid. p.362
[10] 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.
[11] 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.

Weber put it, but also as the entity that has the monopoly over law production. In contemporary 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.

From this perspective that informs the preconceptions of most scholarship (starting from Legal Orientalism) on *Shari'a*, the latter is usually considered a "law" only to the extent that it regulates social relations *and* is enforced by judicial authority while the rules regulating worship are not considered 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, 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 the narrative of *Shari'a*'s demise under which modern state law *replaced* Islamic jurisprudential rules. 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 *dis-placement* of *Shari'a* in conjunction with the development of state law in colonial and post-colonial times.

**Material shifts and *Shari'a*'s relationality**

The inclusion of acts of worship not only as an integral part of *Shari'a* but also as its central component is related to a more fundamental question about the extent to which modernity, and more specifically the nation-state, have affected Islam. This major theme of scholarly debate entails an understanding of how to study "pre-modern" Islam ("formative", "classical", "post-classical") in relation to the (anthropological) present, and raises the question as to whether certain forms of life (associated with the "pre-modern") are possible in contemporary times.

In *Shari'a: Theory, Practice, Transformations*, Wael Hallaq narrates a "macro-history" of *Shari'a* and its "structural demise" focusing on the "systemic components of *Shari'a*" rather than "other contingent features that vary from one place or time to another". For Hallaq, "until the dawn of modernity, there always existed within the *Shari'a* structures of authority and discursive and cultural practices that did not change over time and space –that is until they met their structural death in the nineteenth and early twentieth centuries". Hallaq locates those structural characteristics in educational practices and functions of "the jurisconsult (*mufti*), the judge (*qadi*), the author-jurist (*musannif*), the law professor (*shaykh*), the notariy (*shuruti*), the court scribe (*katib*)" who embodied *Shari'a* through their scholarly, social and ethical practices. These distinctive structural features of *Shari'a* include also forms of social solidarity and charitable practices and institutions such as the *waqf*, and the "Circle of Justice" informing good government and judiciary practices. Those "structural mechanisms, procedures, substantive laws, values and ethic of adjudication followed a unified notion of justice"[12].

In Hallaq's account, with the advent of the nation-state, the distinctive features defining pre-modern *Shari'a* were doomed to disappear as the two "systems" were incompatible. The demise of *Shari'a* is the result of the nation-state's assault on the social, scholarly and judicial institutions

[12] Wael Hallaq, *Shari'a: Theory, Practice, Transformations*, 2009, p.1-23

(*waqf*, madrasas, *qadis*) and the introduction of new substantive legal areas of law (commercial, criminal, civil) replacing Islamic jurisprudence (*fiqh*) and regulating new capitalist activities. What remains is a residue of substantive law regulating the personal status that has been, however, uprooted from the logic and socio-institutional environment of *fiqh*, and transformed into state law.

Hence, *Shari'a* cannot exist without "the social order it presupposed and by which it was sustained", a social order precluded by the nation-state. *Shari'a* cannot survive under the power of the modern state, understood by Hallaq as an omnipotent structure that leaves no space for other legal regimes: "the intractable presence of the state- the virtually all-powerful agent exercising the option of reengineering the social order- has preempted any vision of governance outside its parameters. To practice law in the modern era is to be an agent of the state. There is no law proper without the state, and there is no state without its own, exclusive law."

Hallaq's account is better understood as an analysis of the material changes brought about by the nation-state ("the material, bureaucratic and military powers of the state"[13]) and how they affected the institutional trajectory of *Shari'a* and its relevance in modern times. Contemporary *Shari'a* is no longer (pre-modern) *Shari'a*, but a "marker of identity". Hallaq stresses that *Shari'a* has been "transformed from a worldly institution and culture to a textuality". What remains is a surviving "residue "foreign, in substance and function, to any possible genealogical counterpart"[14].

Yet, Hallaq's macro-historical, material and institutional analysis of *Shari'a* in modern times never addresses the question of the relationship between (pre-modern) *Shari'a* and the self, and the extent to which the nation-state precludes such a relationship. This theme is significant because Islamic jurisprudence (*fiqh*) is initially defined, starting with Abu Hanifa (one of the earliest scholars of *Shari'a* whose name is associated with the eponymous juridical school), as "the knowledge of the self about the rights for her and upon her" (*ma'rifat al-nafs ma laha wa ma 'alayha*). The self matters also as a contemporary concern raised in relation to the meaning of individual life and the extent to which it should be guided by the Islamic "religion" in contradistinction to secularism, and whether Islam should be equated with *Shari'a*.

The question of *Shari'a*'s relevance should therefore start with the ways in which *Shari'a* addresses the self, and how it enables the self to inhabit time and space, and instantiate her relationship with God and the unseen. The question of *Shari'a*'s significance in the present and the future is important for the believer (and practitioner) who organizes (or not) her life around *Shari'a* rules regulating the acts of worship (*'ibadat*). In the hierarchy of Islamic jurisprudence, the rules of worship, mainly the act of prayer, come not only prior and higher than the rules regulating social interactions, but enable a distinct and unique time-space of communication and interaction with the divine involving outer deeds and inner self.

The profession of faith is not only uttered by new converts to Islam, but also declaimed by the muezzin and heard by the community of Muslims five times a day, and uttered by the Muslim in his prayers several times a day. The act of prayer (*salat*) is the *Shari'a* act performed five times a

[13] Ibid., p.367
[14] Ibid., p.543-547

day, at home or at the mosque, individually or collectively, that structures the daily temporality and life. Fasting the month Ramadan is another *Shari'a* rule offering a daily temporality distinct from the other months of the year. Giving the due alms (*zakat*) is an act of solidarity by which the self is also attentive to the needs of others. Performing the pilgrimage (*hajj*) in Mecca for those who can afford it is the event of a lifetime.

Hallaq underlines the centrality of the regulation of worship in Islamic jurisprudence[15], and recalls that "their priority in the overall corpus of the law (…) was not merely an emblem of symbolic importance (…); rather it had a function which made this ritualistic grouping a logical and functional antecedent. The function was subliminal as well as psychological, laying as it did the foundations for achieving willing obedience to the law that was to follow, that is, the law regulating human affairs." For Hallaq, "to oust these pillars from the *fiqh* is to disengage the moral foundations of the law, to render it devoid of the most compelling impulse for jural observance"[16].

Yet, paradoxically, while Hallaq stresses the importance of the acts of worship in his study of pre-modern *Shari'a*, he doesn't analyze, in the last part of the book dedicated to modern transformations, the extent to which they inform his thesis of modern demise of *Shari'a*. Actually, the material changes described by Hallaq do not preclude the inhabiting of *Shari'a* rules regulating the acts of worship by Muslim subjects in contemporary times. Each day, contemporary Muslims are performing a multitude of micro-acts regulated by *Shari'a*. From this perspective, the forms of life that *Shari'a* enables, in pre-modern as well as in modern times, are better understood as fragments in the daily life of the self in specific times and spaces.

If *Shari'a* is practiced by Muslim selves through the daily acts of worship that are the most important prescriptions in the hierarchy of Islamic jurisprudence, then the question of *Shari'a*'s relevance in contemporary times should be reformulated to tackle more specifically the status of *mu'amalat* (social interactions), in addition to the relationship between *mu'amalat* and *'ibadat*., The time-space of *Shari'a* is distinct from the state's, although they may overlap. Unlike state law, *Shari'a* enables an intimate relation between self and law through the mediation of knowledge, and more specifically, of those who know (*'alim, faqih, mufti*) addressed through the very act of asking a question (*istifta'*).

From this perspective, *Shari'a* is fundamentally relational, based on a relationship between *Shari'a* holders and Muslim selves, that is those who produce knowledge and those who seek responses to abstract questions (about beliefs, the unseen and non-material life) and practical questions (about the right deeds). More specifically, the relevance of Islamic jurisprudence can be grasped in the distinct time-spaces of worship and social interactions through habitual practices (as way to inhabit and live the most important *Shari'a* rules) and the relationality between knowledge production and its reception, that is between on the one hand, believers and practitioners, and on the other hand, those who know.

Now, the institutional and material forms (such as the madrasa, the *waqf*…) studied by Hallaq are the concrete social world of Islamic jurisprudence and one historical form that should not be

[15] "Occupying as much as one-quarter to one-third of the entire body of works [of *fiqh*]" Hallaq, *Shari'a*, p.223.
[16] Ibid., p.225-226

equated with *Shari'a* as a relationality. The disjunction between on the one hand, given material and institutional conditions for the production of knowledge, and, on the other hand, the production of knowledge does not mean that *Shari'a* is no longer generative of knowledges under new conditions, particularly in the specific time-spaces of the Sufi brotherhoods, the Islamic movements of *da'wa* (preaching), the mosque, in contemporary universities, but also in public places (such as Tahrir Square during the 2011 uprisings) and digital spaces. The task of anthropology is to study the production and reception of those knowledges in distinct time-spaces.

It could be objected that identifying contemporary *Shari'a* in the time-spaces of its instantiation is already an indication of its marginalization by state law. However, *Shari'a* in pre-modern times was not a totalizing law (to which the nation-state law is associated) but was also existing in specific time-spaces of production of *Shari'a* knowledges and their reception (including as fragments for selves) despite the claim that the duty of both power holders (rulers, governors and judges), and scholars was to uphold *Shari'a* rules. Paradoxically, studying pre-modern *Shari'a* as a totality, and arriving at the conclusion that *Shari'a* does no longer exist because it can no longer sustain itself as a totality in modern times, mirrors the moderns' narrative interested in "purification" and in "interpreting the heterogeneous arrangements as systematic totalities in which everything would hold together"[17].

It is true that the nation-state's law, unlike the multiplicity of laws ordered under the normative hierarchy of the Medieval Christian episteme, does not recognize any law but itself. State law enables, and is enabled by, a constitutive act of sovereignty attached to a clearly delimited and demarcated territory coupled with the means to enforce its rules. It acknowledges only other similar (state) entities endowed with the same attributes of legislative sovereignty over distinct and discreet territorial domains.

Yet, the advent of state law is not a replacement of *Shari'a* but its *dis-placement* into a new normative duality entailing distinct, and yet overlapping time-spaces requiring a nuanced analysis of the relationship between the production of *Shari'a* knowledges and their reception by the *Shari'a*' selves, who are also the state-law' subjects. The regulation of bodies and material deeds by state law excludes any episteme of the unseen, be it the inner self or any other realm of existence. In contrast, while Islamic jurisprudence takes as its object material and bodily deeds, it nevertheless reenacts, notably through the acts of worship (but also through other *Shari'a* knowledges such as *kalam* and Sufism), the relationship between the seen and the unseen, between body and soul, between external deeds and inner self.

An additional distinction between the modern claim of effectiveness[18] and ethical agency (enabled by its internal link to revealed truth) should be introduced here. The ability to enforce enunciated rules is an important component of the state law's effectiveness (in a given territory) as the latter

[17] Bruno Latour, *We Have Never Been Modern*, 1993, p.73. "The antimoderns firmly believe that the West has rationalized and disenchanted the world, that it has truly peopled the social with cold and rational monsters which saturate all of space, that it has definitively transformed the premodern cosmos into a mechanical interaction of pure matters. But instead of seeing these processes as the modernizers do - as glorious, albeit painful, conquests - the antimoderns see the situation as an unparalleled catastrophe" (Latour, p.116).
[18] On effectiveness as one of the distinctive features of the moderns' conception of the moral, see Macintyre's *After Virtue,* 2007.

is neither interested in (metaphysical) truth nor in ethics, and does not seek to be desired and inhabited by willing subjects. State law does not see the subjects' submission to the rules as an instantiation of a higher truth or as a way for them to improve ethically, although contemporary state law may intervene in the shaping of inner selves through the definition of the *forum internum* and the *forum externum*. By contrast, the rules regulating the daily multitude of acts of worship (that are the most important duties of Islamic jurisprudence), but also the rules regulating social interactions and enunciated in the time-space of the fatwa (involving a question, a questioner and a scholar-mufti) are neither adjudicated in a court of law nor enforced as it is understood that the *Shari'a* subjects are acting ethically and cultivating virtues through their devoted submission to, and performance of, the prescriptions linking the seen with the unseen and reenacting the truth of the revelation. Hence, failures, repeated attempts, partial performance are also part of the ethical life of the *Shari'a* subject. In other words, ineffectiveness, that could also be the result of the effectiveness of state law and its overlap with Islamic jurisprudence, is an integral part of ethical agency.

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

The inclusion of acts of worship and its relationship to social interactions in the study of *Shari'a* opens up the possibility to understand contemporary Islamic legal knowledge in a new way as it sheds light not only on how Islamic scholars deal with the question of modern overlap between the space of jurisprudence (*fiqh*) and state law, but more fundamentally on the epistemic change providing the "present" and the "real" with an authority it did not have. Here, I will study what the distinction between worship and social interactions in Yusuf al-Qaradawi's work in comparison to classical genres of jurisprudence tell us about changing representations of the "present" and the "real" and how they have shaped the production of legal knowledge for contemporary scholars, starting with Muhammad Abduh and Rashid Rida in the early twentieth century.

In *Al-Halal wa al-Haram fi al-Islam*, the scholar Yusuf al-Qaradawi posits permissibility as the basis for everything (*al-asl fi al-ashya' al-ibaha*)[19] 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 mirrors 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 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"[20]. 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 forbad is prohibited. And what He did not speak about is exoneration (*'afw*). Accept from God His exoneration for God does

[19] Al-Qaradawi, *al-Halal wa al-Haram*, 1960, p.21.
[20] Ibid., p.21.

not forget anything. And then, he recited the verse (*aya*) from *surat Meryem*, 64 "Your Lord was never forgetful"[21].

For al-Qaradawi, the fundamental truth of religion (*haqiqat al-din*) lies in the worship of God (*'ibadat*) in accordance with 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 education[22]. 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 none of these activities are prohibited by *Shari'a*, even if some of them may be recommended or reprehensible"[23].

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*[24]. 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

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[21] Ibid., p.21.
[22] Ibid., p.23.
[23] Ibn Taymiyya, *Al-Qawa'id al-Nuraniyya*, 1979.
[24] In the section devoted to financial transactions in the treatise *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" *al-Siyasa al-Shar'iyya*, 1998, p.177.

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 and the conditions under which a transactional act is valid. This distinction 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*)[25].

**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 actual (facts)" (*fahm al-waqi'*

[25] Al-Qaradawi, *Al-Halal wa al-Haram*, 1960, p.41.

*wa al-fiqh fihi*) in each specific case as a process part of rule formulation[26] 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 universities[27].

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 exclusion of *Shari'a* from, or its subjugation to it (for example in family law), 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

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[26] Ibn Al-Qayyim al-Jawziyya, *I'lam al-Muwaqqi'in*, 1996, vol.1, p.87-88.
[27] Timothy Mitchell, *Colonizing Egypt*, 1991; Omnia Shakry, *The Great Social Laboratory*, 2007.

much books" and "too much jurisprudential rules (*al-ahkam kathurat*) produced within the schools (*madahib*) and their branches"[28] 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 (*rajah*) 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 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 reinstantiates *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 its epistemic shifts**

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 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*). The *matn* 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

[28] Rida, *Yusr al-Islam wa Usul al-Tashri' al-Islami*, 1956, p.7.

example one of the most important commentaries of the Hanafi school is the *Hashiyat Ibn-'Abdin* (*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 put 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*)[29].

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*)[30]. 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 sources[31] and procedures out of which they are produced[32]. 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.

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*[33].

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

[29] Ibn 'Abidin, *Hashiyat Ibn 'Abidin*, 1987, vol.1, p.4.
[30] As we will see below, only the higher ranked scholars-jurists called *mujtahid* are able to produce legal rules from these sources.
[31] 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).
[32] Ibn 'Abidin, *Hashiyat Ibn 'Abidin*, 1987, vol.1, p.25.
[33] Ibid. p.226.

multiple or well-known chains of transmission (*mutawatira aw mashhura*)[34], the second category (i.e. *Nawadir*) refers to rulings still attributed to the three figures of the school but that are not as 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 sources[35].

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'*)[36] 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"[37].

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 as 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.

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[34] Ibid. p.226.
[35] Ibid. p.226.
[36] Ibid. p.253.
[37] Ibid p.256.

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 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 project[38].

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[39]. The very words of *tajdid* (renewal), *islah* (reformism) and *ihya'* (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

[38] See for example Albert Hourani's assessment in *Arabic Thought in the Liberal Age*, 1983.

[39] 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 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 forbad 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 Meryem* 64: "Your Lord was never forgetful". 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.

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"[40]. 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 ("sound reason cannot accept the mere passing of time as the judge of the harmfulness of things"[41]), 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'*)[42].

[40] Al-Qaradawi, *al-Fiqh al-Islami Bayna al-Asala wa al-Tajdid*, 1999, p.24.
[41] Ibid. p.25.
[42] Ibid. p.28.