"By an unforeseen twist of events and an irony which no longer belongs to history, it is through the death of the social that socialism will emerge—as it is through the death of God that religions emerge. A twisted coming, a perverse event, an unintelligible reversion to the logic of reason. (Jean Baudrillard)\textsuperscript{1}

It seems that the law as such should never give rise to any story. To be invested with its categorical authority, the law must be without history, genesis or any possible derivation. That would be the law of the law. Pure morality has no history . . . no intrinsic history. And when one tells stories on this subject, they can concern only circumstances, events external to the law and, at best, the modes of its revelation." (Jacques Derrida)\textsuperscript{2}

INTRODUCTION

Modern students of Islamic law have not sufficiently probed the relationship between law and theology.\textsuperscript{3} When jurists claim that their extrapolation

of the rules from the sources constitute “Allah’s law” (hukm Allāh), one immediately realizes that the law in Islam involves a transcendental dimension. One of the more intriguing questions encountered in the study of Islamic law concerns the legal ruling or rule (hukm). How is it possible for the jurist (faqīh) to conclude at the end of a very empirical evaluation and research of facts and texts that his conclusions constitute a transcendental and divine authority?

This article attempts to explore the manner in which jurists come to know the revealed rule. Its primary contribution is to insist that there is a cosmology underlying Muslim juristic theology or legal theory (usūl al-fiqh). This cosmological narrative enables us to bridge the discursive divide between the empirical and transcendental realms. In order to get a better view of this overlapping discourse, I take a closer look at how the rule is perceived in the juristic theology of the Ash'arī school. Despite the centrality of the hukm in legal discourse, it has hardly been adequately theorized. I explore this topic by looking at texts of usūl al-fiqh in middle Islam.

LAW AND THE HISTORY OF RELIGION

Among historians of religion, Wilfred Cantwell Smith stands out among those who did see Islamic law as a field deserving of study. He was a pioneer in the study of the legal theory and the history of legal thought in Islamic law. Smith shows that in the formative and classical periods of Islam the term shari'a, the systematic formulation of legal ordinances, was hardly in use. Instead, Smith argued that the term shari'a, meaning the moral imperative, had greater currency. In the early period, the two terms shari'a and shari'a were not interchangeable, as the practice had become in later periods. Smith's inquiry led him to formulate the difference between the two. Shari'a was an activity that took place in heaven, as God's ordaining human beings to act in specific ways: something that God did. The shari'a, on the other hand, was the explicit pattern and statement whereby human beings knew

Hallaq acknowledges that the legal theorists of Islamic law did have to countenance the presuppositions of theology, he argues that matters of theology in comparison to legal and juridical issues were few and marginal. While this point has to be accepted as moot, the overall impact of fundamental theological presumptions on juridical thinking still awaits a full examination. By contrast, scholars like Fazlur Rahman and Joseph Schacht seem to find a great interdependence between law and theology. See Fazlur Rahman, “The Functional Interdependence of Law and Theology,” in Theology and Law in Islam, ed. G. E. von Grunebaum (Wiesbaden: Harrassowitz, 1971), pp. 89–97; and Joseph Schacht, “Theology and Law in Islam,” in von Grunebaum, ed., pp. 3–23.

4 In English the term hukm can be translated as the legal “rule,” “determinant,” “assessment,” and “judgment.”


6 Ibid., pp. 90–91.

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they were obligated: something that humans heard. He thought the claims by Muslim and Western scholars were somewhat misleading in believing that obedience or transgression of the law was coterminous with obedience to God. The “rise of a concept of law as religiously absolute,” Smith argued, “may be correlated with a decline, if not of Islamic civilization, [then] anyway of the vigor of its intellectual and religious life.”

A concept like shariʿa as law comes into play “where one’s sense of God and His immediate intervention, and one’s sense of engagement, of one’s own immediate cosmic moral involvement, are weak or absent.” The notion of shariʿa for Smith was primarily a moral coordinate, not a legal one. In other words, the central fact of Islam as a religion was moral responsibility rather than the idea of law. To paraphrase Baudrillard, it appears that for Smith it will only be with the death of shariʿa as “law,” that shariʿa as “morality” will emerge. However, history weighs heavily against Smith, since the law and legal culture is highly developed in Muslim thought. One of the main difficulties with Smith’s thesis is that he does not explicitly state what model of law as morality he had in mind when he reflected on the shariʿa. His assumptions surely betray traces of a very Kantian and transcendental understanding of law more than anything else. Furthermore, this rather essentialist ideal type is not a very useful explanation as to why shariʿa as “law” materialized. In other words, Smith must also have the courage to state where and why Muslims had deviated in their understanding and practice of the shariʿa over several centuries. This is the net implication of his assumptions about the law that will have to be addressed in detail elsewhere.

Fazlur Rahman partially concurred with Smith’s thesis that the shariʿa was the moral ordaining of the way. He also argued that the term shariʿa was not employed in early Islam as much as the term din (following and submission) was used. For him shariʿa meant an ordained way, but the problem for him was the method to know the shariʿa. However, Fazlur Rahman did not dismiss the formulation of the legal ordinances

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7 Ibid., p. 105.
8 Ibid., pp. 99–100.
9 Ibid., p. 100.
11 Fazlur Rahman employed the two complementary “principles” of learning (ilm) and understanding (fiqh) to know the shariʿa. Learning (ilm) was the objective principle, an organized and disciplined body of data; understanding (fiqh) was the process or activity of understanding and deducing knowledge (Islam, p. 101). Fazlur Rahman’s search was to find an understanding of the shariʿa that integrates law, moral principle and theological metaphysics. He partially found this synthesis in the work of the twelfth-century thinker Abū Ḥamid al-Ghazālī (d. 450/111), who tried to formulate a creative integration of law and morality. However, the disciplinary boundaries between law, theology, and sufism did not encourage such a synthesis on a broader scale. See Rahman, “Functional Interdependence of Law and Theology,” pp. 89–97.
as the shari'a as an aberration. His primary concern was whether the shari'a in its manifestation as a positive law was consistent with the stated ethical and moral imperatives of the Qur'an. While Muslim jurists had refined the formal methodology of deriving rules from the revealed sources, Fazlur Rahman lamented the fact that they did not develop an equally rigorous ethical dimension of the shari'a. If apprehending the shari'a as a moral imperative was unclear, then the notion of a ḥukm was equally unclear.

Hanafi, in his attempt to formulate a grand narrative of the epistemological function of legal theory, described it as a trilateral structure representing three dimensions of Muslim conscience ("les trois dimensions de la Conscience"). Each "conscience" has a particular function. The historical conscience—al-shu'ūr al-ta'rikhī—constitutes the objective data of legal theory such as revelation, prophetic tradition, consensus and analogy. This conscience verifies the reliability and historicity of the data. The reflective conscience—al-shu'ūr al-ta'amuli—is the process of understanding, analysis, and theorization that is the essence of legal theory. This includes the interconnectedness of debates on language, logic, and law. Finally, the practical conscience—al-shu'ūr al-ṣamali—represents the search by jurists (fuqahā') and master jurisprudences (mujtahidūn) to discover the legal and moral value or rule in the canonical sources. Once discovered, the rule is applied to the practical affairs of life.

Reinhart recently argued that ʿusūl al-fiqh was best characterized as Muslim moral philosophy. He argued that the various topoi of this discipline over the centuries reflected the vagaries of historical conditions that Muslims experienced. He found that religious scholars conscientiously tried to figure out the significance of revelation for Muslims. Scholars in this discipline fell into two large groups: those who trusted innate human abilities and those who did not. ʿUsūl al-fiqh literature was thus a rich archive of patterns of Muslim moral thought and the complex issues with which scholars wrestled.

All the scholars briefly surveyed here dealt with legal theory in a general sense. They share a common repertoire of describing it as morality,

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15 Ibid., p. 179.
law, conscience, and moral philosophy. None of these studies inquire how jurists know the moral imperative, in the form of the transcendent rule. In order to understand what the rule is and how it is known, part of this article will revisit the question of revelation and divine speech, since the eternal rule is inseparably linked to revelation.

**LEGAL THEORY AND THE RULE (Hukm)**

By probing the nature and function of the rule, our understanding of the place of the transcendent order in the mundane affairs of Muslims may be sharpened. For any student of Islamic law, it does not take long to realize that the “revealed law” (shari‘a) provides the interface between the eternal and the temporal. We know that once jurists had arrived at a decision, they would usually say that the hukm, the moral-legal value, for an act is x, either prohibition or permission. The crucial intersection of the divine will into history occurs by means of the hukm. It represents the most powerful rhetorical and practical criterion that differentiates a religious existence from a nonreligious existence. In Muslim discourse it serves as a marker of a religious value system. In practical affairs, a conscientious Muslim would want to know what is the hukm shari‘i (rule of the revelation or moral rule) for an action (s)he is undertaking. It is the language of the hukm that distinguishes between a good and evil action, proper and improper conduct, or a pious and impious lifestyle.\(^\text{16}\)

There is a long history of ordering Muslim life in terms of the law, via the discourse of usul al-fiqh. The latter, in addition to being a moral philosophy, also informs the judicial order and provides the epistemology for a religious worldview. In the ninth century it was the achievement of Muhammad b. Idris al-Shafi‘i (d. 820) to confirm the coherence and the transcendent authority of the revelation. He argued that both the hermeneutic, as well as the “model for” interpretation of the Qur‘an were provided by revelation itself.\(^\text{17}\) Jurists and theorists like al-Shafi‘i and others not only gave form and shape to the content of Muslim juridical and moral practices but were instrumental in the production of Islamic reason (raison islamique) by means of legal theory. This directly

\(^{16}\) In the civil war of Islam, the zealous Khawarij (Sectsionists) sect popularized the centrality of the hukm of God in their epithet, la hukm illa illah—“there is no rule (hukm), but the rule of God”—as part of their political slogan. In the late twentieth century, various Islamist groups in different parts of the Muslim world are demanding that a political order be established in which the hukm will, rulership or sovereignty of God, will substitute secular governance. In other words, the “rule of God” must apply as a complete code of life, where “rule” is a synecdoche to the revealed law, the shari‘a.

affected the epistemological foundations of Muslim moral thought. Legal theory, however, did not only serve as a repository for epistemology. It was also the means by which a symbolic system was inscribed onto the Muslim intellectual tradition. In examining some of the medieval texts of legal theory, we will not only encounter the polemics of fierce contending ideological contests, read as theological and political polemics, but we will also begin to see the complex relationships of the symbolic and imaginary worldviews that legal-moral discourse inheres.

The task of dealing with the law was normally left to two kinds of scholars. Scholars of juristic theology or legal theorists (uṣūliyyūn), whose task was to develop the theoretical framework or metanarrative for the interpretation of the sources of the law. Then there are the practical jurists, called the fuqahāʾ, who apply the established legal axioms and theories in given contexts. Legal theory primarily deals with questions of epistemology as to what constitutes “probative evidence” or “indicators of rules” (adilla-t-iqlāb-ahkām) in concise terms. It also engages with issues of the “manifest aspects of signification” (wujūh al-dalāla), a cascading confluence of hermeneutics and linguistics. Classical theorists elaborated in detail the formalistic procedures and methodologies as to how the rule is derived from the source texts. The sources that legal theorists deal with include the Qurʾān, the prophetic traditions (sunnah), the consensus decisions reached by past jurists, and the role of reason in lawmaking, among other issues. It is the task of the legal theorist (uṣūlī) to construct a framework for the positive lawyers, in order that the latter may deal with practical legal questions. In this respect, it is mostly the judges (qādī), jurists who specialize in the substantive law (fuqahāʾ) and jurisconsults (muftiyūn) who are in search of God’s law in a given context, namely, to find the hukm through intellectual exertion (ijtihād). Of course, these are not exclusive professions. A positive lawyer may also be a legal theoretician and a judge may also be a legal theorist. Practitioners of the law assume that if the method of legal theory is properly applied, it would yield the correct or true hukm.

In Arabic the root word ḥ-k-m means to “restrain” (mānī) and “avert” (ṣarīf). We have to bear in mind that the term hukm is used in different senses. If a judge hands down a ruling, the judgment is called a hukm.

19 Al-Ghazālī, *al-Mustasfh fī ʿilm al-Uṣūl*, 2d ed. (Beirut: Dār al-Kutub al-ʿIlmiyya, 1403/1983), 1:5. See also Muhammad Abū Zahra, *Uṣūl al-Fiqh* (Cairo: Dār al-Fikr al-ʿArabi, n.d.), p. 8; Abd al-Wahhab Khalīf, *ʿilm Uṣūl al-Fiqh*, 4th ed. (Beirut: Dār al-ʿIlm, 1401/1981), p. 12. Legal theory covers the domain of moral philosophy underlying the rule of acts, the epistemological categories that make up our knowledge of rules, the linguistic arguments as to how knowledge is signified, and the authoritative transmission, as well as the veracity of the sources of knowledge that produce the rules.
When making a finding regarding the status of a hypothetical or a real-life question, the ruling or opinion provided by a jurisconsult is also called a *hukm*. When the legal theorist deliberates the epistemological and ontological categories of the “five moral rules” (*al-ahkām al-khamsa*), then the term *hukm* also applies. In this scheme an act is assessed to be one of five values: proscribed/interdicted (*harām*), obligatory (*wājib*), recommended (*mandūb*), disapproved (*makrūh*), and indifferent or permissible (*mubah*).

The figure of speech used to indicate that the jurist had exerted himself to provide a rule for a particular situation is the term *hukm*, often stated as the “rule of God,” *hukm Allāh*. However, one cannot avoid noticing that the term *hukm* is employed to describe two moves simultaneously: it involves an empirical judgment, as well as a transcendental judgment. In fact, the authority of the empirical dimension is dependent on its relationship with the transcendental and metaphysical *hukm*. If we do show some awareness of these two dimensions, we will begin to understand the complexity of the human-divine interaction in the process of discovering “God’s rule” in Islamic law. The *hukm* proper is a transcendental norm, of which the empirical *hukm* is but a temporal manifestation. It is in such a scenario that God is the real *hākim* (transcendent nomothete or sovereign ruler) and the real *shāriʿ* (Supreme Legislator). Given his proximity to the revealed texts, the empirical findings of the jurist are often seen as equivalent to the nomothetic authority that is inherent in the revealed text. This effect imbues the authority of the jurist with an aura of sacredness and often shields juristic opinion from being interrogated for its political and ideological motivations.

**LAW AND COSMOLOGY**

Surely myths, ontology, and metaphysics provide the modes of perception and organizing principles for creative activities in life. Law is such a creative activity. The way that law relates to myths and creative activity in Islamic law is not well explored, whereas in other religious traditions it is.\(^{20}\) In some instances, law is related to both cosmogonic and cosmological myths. Part of Islamic law is related to a myth before the creation of the world. As the legal system unfolds, it also provides us with a collection of images of the universe and moral system, a cosmology. At its deepest level, Islamic law is shaped by a transcendent myth that generates creativity.\(^{21}\) It is indeed the case that cosmogonic myths

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depict the “imaginative religious space and time that exist prior to the universe as normal habitation for human beings.” Burkhalter has correctly observed that to recount the myths of beginnings to the exclusion of myths of completion and realization is to misrepresent the breadth of cosmogony in Islam. However, myths of completion in Islam can be characterized by their continuity like those that shape the notion of moral authority (sharīʿa) and the practical ordinances of that authority in the shariʿa. Myths also provide us with notions of primordiality, especially primordial time. In Muslim thought, the primordial has a particular effect of ordering creation and the ethical life through a creator deity. Ordering a specie of creation which has volition, namely humans, takes place through the revealed law, the sharīʿa. And, the revelation in turn makes itself perceptible through the rule.

While there is no one-to-one relationship between myth and the ethics of a community, the former does indirectly and profoundly inform ethical thinking. Thus, by understanding a single element of Islamic law, the rule, we may be able to shed light on the complex relationship of myth and symbol on the one hand, and the manner in which these influence cognitive behavior and conditions of religious people on the other. At least we begin to get some idea not only as to what place the law occupies in the imagination of people who are devoted to a shariʿa-centered life but, more importantly, how the hukm interacts with the imaginary. Realist perspectives claiming that reality is fully transparent and completely within grasp, provided that one applies the correct rules of research, to a large extent occlude the imaginary discourse in law. This is further reinforced by the belief that law or any concept for that matter is knowable through approved methodologies and theories, despite growing evidence that the major concepts and ideas in religion and law are open to ambiguity and polysemy. However, we should not be surprised to discover that in medieval times, jurist-theologians seemed to have some sense of the role of the imaginary and the symbolic in the religiolegal discourse.

24 A “divine command morally incumbent and immediately personal,” in the words of Smith (n. 5 above), p. 99.

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WEB OF THE ḤUKM

In order to explore the question of the imaginary and the symbolic in legal discourse, we turn to one of the most celebrated medieval Muslim jurist theologians of Persia, Abū Ḥāmid al-Ghazālī (A.H. 450–504/A.D. 1058–1111). He stated, in al-Mustaṣfā (Quintessence), his work on usūl-al-fiqh, juristic theology, that the rule is intimately related to the "nomothetic discourse" or "dictum of revelation" (khīṭāb al-sharʿ). Framed in this "grammar," the ḥukm as the composite site of "dictum" and "revelation" is inserted into a sacramental realm of the unseen (ghayb) of Ashʿarī-Mohammidian cosmology. In a sense, al-Ghazālī gestures toward a kind of dialogics, in the Greek etymological sense of "dia-logue" and crossplay between the empirical realm of the rule and the transcendental realm of the dictum of revelation.26 Al-Ghazālī, who, according to some scholars, had an ambivalent relationship with the medieval Ashʿarī theological school, said:27 "a rule (ḥukm), according to us [the Ashʿarīs], denotes the dictum of revelation when it is linked to the acts of those made responsible" [inna l-ḥukm ʿindanā ʿibāra ʿan khīṭāb al-sharʿ idhā taʿallqa bi afʿāl al-mukallafin].28 There can be no doubt that on this point, his definition fell squarely within the Ashʿarī tradition, since the Māturīdi jurist-theologians of Transoxiana described the rule as an "eternal attribute."29

Reinforcing his description of a ḥukm as denoting the dictum of revelation, al-Ghazālī adds: "Know that once we have realized by speculative reasoning (al-nazar) that the source (asli) of rules (ṣūrān s. ḥukm) is only one, namely, the statement (qawl) of Allāh the Sublime, then the

27 George Makdisi, "Al-Ghazālī, disciple de Shāfiʿi en droit et en théologie," in his Religion, Law and Learning in Classical Islam (Hampshire: Variorum, 1991), pp. 45–55, is of the opinion that al-Ghazālī was less of an Ashʿarī and was more inclined to Shāfiʿism in both his law and theology.
28 Al-Ghazālī, al-Mustaṣfā, 1:55; Muḥammad b. al-Ḥasan al-Badakhshī, Manāḥīj al-Ṣūrūṭī (Beirut: Dār al-Kutub al-Ilmiyya, 1405/1984), printed with Jamāl al-Dīn ʿAbd al-Rāhīm al-Isnawī, Niḥāya t al-Sūrūṭī, 1:40. Al-Badakhshī says that the sharʿī meaning of ḥukm according to al-Ashʿarī is khīṭāb Allāh. One should bear in mind that this definition resembles in part the standard definition of faṣl (positive law) as: "That body of knowledge that deals with the five rules (ṣūrān) when they relate to the actions of those made responsible." See Ahmad b. Muḥammad al-Ḥanafī al-Ḥanawi, Ghamṣ, ʿUṣūn al-Abṣār Šahrūk Ḥizāb al-Ṣūrūṭī wa l-Naqṣī (Beirut: Dār al-Kutub al-Ilmiyya, 1405/1985), 1:18. Al-Ghazālī says faṣl is that body of knowledge that deals with those established revealed rules that relate to the actions of those made responsible" (1:4).
29 See ʿAbd al-Dīn al-Samarqandi, Maʿānī l-Ṣūrūṭī ʿayn al-Ṣūrūṭī, ed. ʿAbd al-Malik ʿAbd al-Rahman al-Safī (Baghdad: Maṭbaʿa al-Khulīfī, 1407/1987), which confirms the difference between the Asʿarī and Māturīdi definitions of the ḥukm. According to the Māturīdi school, ḥukm Allāh is "the eternal attribute of Allah and His action" [ḥukm allāh taʿallā ṣifa asliyya lahu wa fī him]. (p. 112).
statement of the Messenger of Allāh is not a rule (ḥukm) [on its own],
nor [is such a statement] binding in any sense. [More accurately] he [the
prophet] is an informant from Allāh the Sublime, that He determined
this or that. The rule [of things] belongs to Allāh alone.\footnote{30} He could not
have been more explicit in linking ʿḥukm to the “statement of Allāh,”
meaning the Qurʾān. Therefore, he can confidently proclaim that Allāh
alone is the Supreme Assessor (ḥākim). According to al-Ghazālī then, the
rule is entirely transcendent. In this passage, al-Ghazālī also seemed to
suggest that the dictum of revelation encompasses both linguistic and
nonlinguistic conceptual elements. The linguistic elements are obviously
the five rules. “If there is no such dictum of revelation,” says al-Ghazālī,
“from the Lawgiver (shārīʿ) then there is no rule (ḥukm).”\footnote{31} The nonlin-
guistic elements are less clear. This is because some of the key concepts,
such as shariʿa, “dictum” (khīṭāb), and “rule” (ḥukm), lack precise defi-
ition.\footnote{32} They may not have aroused any significant controversy in the
milieu of medieval Islam but they do so today. Al-Ghazālī himself was
extremely cryptic and offered no further explanation for either ʿḥukm or
khīṭāb. In al-Mustasfā, he discusses the rule in the context of how acts
are assessed to be morally good or detestable.\footnote{33} In our attempt to tease
out the significance of the rule, we discover that the concept is located
within a web of meanings. One of the most significant concepts on which
it depends is the notion of the “revealed dictum” that unfolds into two
categories: (1) “verbal or phonetic speech” (al-kalām al-lafzī) and (2) “inner
or psychic speech” (al-kalām al-nafṣī).

ASSESSING THE INNER SPEECH

Since we are interested in the nonlinguistic and transcendental dimen-
sion of the rule, we pursue al-Ghazālī when he mentions the concept of
“revealed dictum” in the context of moral liability (taklīf). In this in-
stance, he describes moral liability as “a special type of inner speech”
[nawwāb khāṣṣ min kalām al-nafṣī].\footnote{34} And, he goes on to say, “since there
is a certain amount of obscurity in understanding the origin of inner
speech, understanding any of its details would be even more abstruse.”\footnote{35}

\footnote{30} Al-Ghazālī, al-Mustasfā (n. 19 above), 1:100.
\footnote{31} Ibid., 1:55.
\footnote{32} Smith, in “Islamic law: Sharīʿah and Shariʿa,” says: “The evidence I have collected
strongly suggests that shariʿah is not a major concept for classical Islamic thinkers . . . the
shariʿah is a concept with which Islamic thinkers in the formative and classical periods
were not concerned” (pp. 90–91).
\footnote{33} See Reinhart (n. 14 above), for a detailed discussion of these topics.
\footnote{34} Al-Ghazālī, 1:88.
\footnote{35} Ibid.; italics added.
The notion of inner speech as raised by al-Ghazālī and others stems from a larger debate that ranged in the ninth century dubbed as the controversy around “the creation of the Qurʾān” (*khalq al-Qurʾān*). One cannot help but agree with Gibb, who observed that this controversy at first sight took on a “strange theological form.” Because the rule is intimately linked to revelation, it is imperative to revisit aspects of the controversy over the creation of the Qurʾān. This will help to clarify several aspects related to “inner” and “outer” speech and its impact on the *ḥukm*. At bottom the issues were metaphysical and theological, as well as a clash of different kinds of reasoning. At the risk of gross oversimplification, one can possibly say with the intended caution, that it was a confrontation between Hellenic and Semitic forms of interpretation, ethical worldviews, or different forms of rationality. More important, a point that will be raised in the course of this discussion, is the way that the Hellenistic doctrine of the Logos gets absorbed into the Muslim understanding of revelation. The umbilical cord tying law to revelation in Islam also ensures that this logos-centrism is continued in the law itself.

The Muʿtazila were a ninth-century rationalist-pietist group that began to formulate the Islamic faith in a language that was acceptable to the educated non-Arabs. That they were influenced by Hellenistic thought, there is no doubt. Their major intervention was on the issue of free will and predestination, a debate that was spawned by the political and dynastic conflicts of early Islam. For the Muʿtazila, it was God’s infinite justice that was at the center of their hermeneutic, whereas for their Ashʿarī opponents it was God’s infinite power that was a determining factor in interpreting religion. As a debate about the nature of God the argument centered on the kinds of divine attributes. Both the Ashʿarīs and Muʿtazila distinguished between two kinds of divine attributes: attributes of essence (*ṣifāt al-dhāt*) and attributes of act (*ṣifāt al-fāʿl*). Immutable attributes of essence like knowledge, power, and life can never be absent in God. The changeable ones like creation, speech, pleasure, and displeasure are attributes of act. They do not affect the immutable essence, and in the terminology of the *mutakallimān* (dialectical theologians) they were

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38 Smith, “Islamic Law: Shariʿah and Sharīʿa,” pp. 101–2; calls it the divergence between the Greek and Semitic; and Gibb, p. 111, sees it as the difference in Greek and oriental philosophies.
“other than” (ghayr) God and logically outside God. For the Ashūrīs, the Qurʾān stemmed from the attribute of essence, namely, God’s knowledge (ʿilm), and therefore it was immutable and eternal (qādim). 29 For the Muʿtazila the Qurʾān was a product of an attribute of act, namely, speech, and was thus mutable, created (makhlaq) and temporal (ḥādīth). 30 The Muʿtazila argued that only God’s essence was uncreated. For them accepting the Qurʾān as being from the attributes of essence meant it was coeternal with God. Such a belief would compromise pristine monotheism and the unity of God. This more general philosophical debate became hooked to the Qurʾān insofar as the revelation was the “speech of God” (kalām Allāh) and the question arose whether this speech was created or uncreated. 31 The Ashūrīs described the relationship between God and his speech in apophatic language: “God’s eternal speech is not God, nor something other than God; God is not His speech, nor something other than his speech.” 32 In these polemical exchanges, the Ashūrīs had to countenance the reality of a written Qurʾān in human language, by means of ink on paper and letters that produced sounds, alongside their claim that revelation was eternal and immutable. In response to these very cogent ideas, the Ashūrīs developed the argument distinguishing between “inner speech” (psychic speech) (kalām al-nafs) in opposition to “phonic speech” (kalām al-lafs). 33 They had to finally concede that

29 Abū al-Ḥasan al-Ashūrī, al-Ībān al-ʿan Usūl al-Dīya, ed. Fawqīyya Ḥasan Mahmūd, 2d ed., 2 vols. (Cairo: Dīr al-Kitāb, 1987), 2:88. Johannes Reinier Theodorus Maria Peters correctly observes: “The belief that the Qurʾān is eternal implies, for instance, that God preordained any event described in it and leads to a belief in God’s absolute predestination; who wants to deny this predestination must believe the Qurʾān to be created. And to mention yet another example, he who advocates the doctrine of God’s absolute unity and unicity (a central Islamic belief) and wishes to take this in the strictest sense, denies the existence of an uncreated Qurʾān [coexisting] together with God in all eternity” (God’s Created Speech [Leiden: Brill, 1976], p. 3).


31 The controversy became even more inflamed when it took on political overtones resulting in the Inquisition (Miḥna) in ninth-century Baghdad. This was when the Caliph al-Maʾmūn, a student of theology, decided to apply the Muʿtazila doctrines to matters of state and required all judges (qādīs) to subscribe to the view that God’s speech, the Qurʾān, was created. The backlash is now legend, propelling to fame the pious and traditionalist Ahmad b. Ḥanbal (d. 855), whose cause on this issue was later championed by a former student of Muʿtazilism, Abu’l-Ḥasan al-Ashūrī (d. 935), the founder of the Ashūrī theological tendency.

32 Peters, p. 332.

only a very special kind of revealed speech, a mythical one, was uncreated and eternal.\(^{44}\)

It was Gibb who first drew our attention to the ironical fact that it was the Ash\(^{\ast}\)aris, opponents of the pro-Hellenist Mu\(^{\ast}\)azila, who wittingly or unwittingly internalized the Hellenistic doctrine of the Logos.\(^{45}\) Gibb did not explain how the logos theory got entangled with the “creation of the Qur\(^{\ast}\)\(\text{an}^{\ast}\)” doctrine. However, if one reflects on the significance and function of the differentiation of “phonic speech” and “inner speech” in Ash\(^{\ast}\)ari theology, then one begins to get a sense of logos theory in Muslim theological discourse. The obvious question that comes to mind is, Why was it necessary to distinguish between various levels of revealed speech? The need was to say that the Qur\(^{\ast}\)\(\text{an}^{\ast}\) as God’s speech, despite its material manifestation, remained eternal and uncreated. It was a case of resolving the paradox of something having an apparent created form but also at the same time being uncreated.\(^{46}\) If, however, we momentarily and briefly reflect on what happened in early Christian theology, the parallel of logos theory in Islam may become apparent.

The question raised in early Christianity was, How could God who is unoriginate or ingenerate, indefinable and eternal, be related to the world of matter, through Jesus, without himself being changed by being related to the sphere of change?\(^{47}\) Hellenized Christianity had to overcome the problem of identifying Jesus with the divine. In the patristic period the Stoic description of logos was employed. The Greek logos was a problematic concept. In pre-Socratic thought, logos was applied to “speech, anything said or written, as well as to the exercise of reason.”\(^{48}\) These two meanings, reason and speech, became the difference between logos

\(^{44}\) Claud Salamé, “Muqaddima,” in Sa’d al-Din Mas‘ūd b. ‘Umar al-Taftazānī, Sharḥ al-‘Aqūd al-Nasafīyya fi Uṣūl al-Dīn wa ’l-Iltī al-Kalīm, ed. Claud Salamé (Damascus: Manshūrat Wazārāt lll Thaqīfā wa’l Irshād al-Qawmī, 1973), p. 20. This immateriality of the revealed word, or perhaps the “mythic” nature of revelation, characterizes the difference between the “created” revelation of the Mu’tazils and the “uncreated” revelation of the Ash’āris. Mu’tazila thought would not deny the transcendent nature and origin of revelation but found it easier to perceive revelation in an empirical and rational mode. The Ash’ārī argument was more complex, allowing for the role of the imaginary and myth in conceptualizing aspects of revelation.

\(^{46}\) In fact, al-Ash’ārī does not even permit anyone to say that he or she had “verbalized (yulūf) the Qur\(^{\ast}\)\(\text{an}^{\ast}\) ... the Qur\(^{\ast}\)\(\text{an}^{\ast}\) is in reality recited (yuqara’) and read aloud (yulūlī) ... for it is not permissible to say that a single part (shay) of the Qur\(^{\ast}\)\(\text{an}^{\ast}\) is created (makhlūq) because the Qur\(^{\ast}\)\(\text{an}^{\ast}\) is in its entirety uncreated (ghayr makhlūq)” (2:101).

\(^{47}\) Hubert Cumliffe-Jones, A History of Christian Doctrine (Edinburgh: T & T Clark, 1978), p. 32. I am grateful to Robert C. Gregg for his invaluable assistance in providing me with this and other references on the topic of logos in early Christianity.

endiaethetos (ratio), which connotes “immanent reason” in the human breast, as distinct from logos prophorikos (oratio) “uttered speech.”49 The debate within Christianity was brought into relief by what is now known as the Arian heresy. For the early Arians in the fourth century, even the cosmological Christ was a creature, no matter how exalted were the results of this creaturehood.50 For the Arians, the Creator Logos, as immanent reason, was sovereign and free and whose modus operandi was his will and the creatures that existed were the results of his pleasure.51 Therefore, Christ as the word was “begotten” or “became,” the Arians claimed, and was a creature. For Athanasius who represented the orthodox position, Christ was the very incarnation of the word (Logos). Before anything came into existence, God generated his Logos, making him external, as the firstborn of all creation.52 “In the beginning was the Logos, and the Logos was with God,” says John 1:1. Then we are told: “And the Logos was God; everything was made through him, and apart from him nothing was made” (John 1:1–3). Jesus was thus, according to the orthodox position, the uttered speech of the immanent reason or the Word turned flesh.

There is an uncanny resemblance between the debate in early Christianity over the status of Jesus and the controversy over the creation of the Qurʾān. The question was, How does God speak to a material world without His divine speech (the Qurʾān) being changed by the medium in which it was expressed and its relationship to a realm of change? Realizing the challenge that the Hellenic logos theory would pose to Islam’s sensibility of monotheism, the Muʿtazila, like the Arians, viewed any suggestion of independent eternal attributes of God, as separate from God’s essence to be anathema. For this reason, the Muʿtazila could not accept the Qurʾān as the speech of God and also being the equivalent of the eternal essence of God. While the early Ashʿarīs adopted the belief of the Qurʾān as the uncreated word of God, the later Ashʿarīs had to concede that the sounds, writing, and material on which the Qurʾān was written were created. The proper doctrinal formula was to say: “the Qurʾān is the uncreated speech of God the Sublime” [al-Qurʾān kalām Allāh taʿālā ghayr maḥliʿ].53 The reason for not simply saying “the Qurʾān is the word of God” was to prevent any erroneous exaggeration that the mate-

49 G. W. Lampe, A Patristic Greek Lexicon (Oxford: Oxford University Press, 1961). Of course, one had to contend with the fact that the term “logos” was polysemic and encompassed a variety of meanings, including divine plan, reason, mind, utterance, Son, articulation in creation and voice in history, rationality, word, and a notion of speech.
51 Ibid., p. 9.
53 Al-Taftāzānī, p. 56; italics added.

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rials on which it was written was also uncreated.\textsuperscript{54} For the Ash'arīs, the uncreated and eternal Qur'ān was the “inner speech” (\textit{al-kalām al-nafsī}). The Qur'ān as inner speech was the equivalent of the “immanent logos,” while the Qur'ān as “verbal speech” was the equivalent of the “expressed logos.” If in Christian thought Jesus is the “word” turned flesh, then in Muslim thought, the Qur'ān is the speech (\textit{kalām}) turned book (\textit{kitāb}).

Our detour has now taken us to the point that we can appreciate al-Ghazālī's version of the Ash'arī counter-polemics that the notion of “speech of God” (\textit{kalām Allāh}) was equivocal.\textsuperscript{55} The expression “God's speech” could mean two kinds of speech: “verbal/phonic speech” (\textit{kalām al-lafz}) and “inner speech” (\textit{kalām al-nafs}).\textsuperscript{56} This dualistic nature of speech, a mimesis of the duality of essence and nonessence, corresponded to a duality present in all languages: the duality of meaning (\textit{ma'āni}) and the emitted sound (\textit{lafz}), signified and signifier. “The attribute of the Word, subsisting in the divine Essence, is first and foremost this internal Word of God, which is eternal and uncreated, without future or past, without multiplication or division.”\textsuperscript{57} God then made this inner speech manifest, \textit{ad extra}, by means of sounds and letters, that are both created substances.

This kind of theological dualism or logocentrism made it easy for al-Ghazālī to assert that the “phonic speech” of God, is only figuratively called \textit{kalām Allāh} (speech of God). For instance, saying that one “heard” the speech of God, he argued, was like saying one “heard” the poetry of the Arabic poet, Abū l-Ṭayyib al-Mutanabbi (d. 354/965). The fact is that we did not ourselves hear the voice of the poet, but we heard it through the voice of someone else who recited his poetry. In other words, the “essence of speech” is attributed to al-Mutanabbi, while the emitted sounds were those of the person who recited the poetry. Likewise the “real” word of God is the “inner speech,” which constitutes the essence of the phonic speech and is uncreated.\textsuperscript{58} Inner speech is, of course, “located with the

\textsuperscript{54} Ibid. A proper study needs to be done in order to track the changes in Ash'arī theology vis-à-vis the Qur'ān. Have there been shifts similar to what occurred in Christian Eucharistic theology of doctrines of transubstantiation and consubstantiation in Muslim theology? The early Ash'arī doctrine that the Qur'ān was identical to the uncreated word of God, as articulated by Abū l-Ḥasan al-Ash'arī himself, is reminiscent of some kind of transubstantiation. However, the later Ash'arī doctrine that the Qur'ān is uncreated, while its words, language, and writing are at the same time created, shows signs of a doctrine of consubstantiation.

\textsuperscript{55} Al-Ghazālī, \textit{al-Mustaṣfa} (n. 19 above), 1:100.

\textsuperscript{56} Bernard Weiss, “Esoterism and Objectivity,” in Heer, ed. (n. 43 above), p. 54.

\textsuperscript{57} See \textit{Encyclopaedia of Islam}, 2d ed., s.v. "Kalām."

\textsuperscript{58} Al-Ghazālī, \textit{al-Mustaṣfa}, 1:339. In the case of the Qur'ān, the inference of al-Ghazālī's statement is that the Qur'ān as eternal and “inner speech” is entirely the speech of God, while as “outer speech” it was uttered by the Prophet Muḥammad. Fazlur Rahman's statement that the “Qur'ān is entirely the Word of God and, in an ordinary sense, also entirely the word of Muḥammad” makes perfect sense if viewed from this insight offered by al-Ghazālī (\textit{Islam} [n. 10 above], p. 31).
essence of Allāh (bi dhāt Allāh), the Sublime.”⁵⁹ God’s speech, al-Ghazālī continues, “is an eternal attribute from among His attributes. And, al-
al-kalām (Speech) is an equivocal noun (mushtarak: homonym). It could mean those words that signify what is in the mind/soul (nafs), . . . Or, it could mean the signified (madālīl) of expressions (‘ibārāt), which are significations (ma‘āni) in the mind/soul (nafs). As it was said by the poet [al-Akḥṭal]⁶⁰ Speech lies in the heart (fuṣūd al-nafṣ) And surely the tongue has been made a sign of what is in the heart.”⁶¹

In this passage, al-Ghazālī only hints at the possible relationship between inner speech and legal theory. To be fair, the cosmology of the transcendent rule can only be discerned implicitly in this statement of al-Ghazālī. But the relationship between inner speech and the transcendent rule becomes more evident in the texts of other legal theorists. The notion of inner speech in the context of legal theory that was not elucidated by al-Ghazālī was amplified by several scholars of dialectical theology (‘ilm al-kalām) and scholars of legal theory.

Among the many legal theorists who explore the issue of inner speech I have selected two. They are the Shāfi‘i legal theorists, Muḥammad b. al-Ḥasan al-Badakhšī (d. 716/1316) and Jamāl al-Dīn ‘Abd al-Raḥīm al-İsnāwī (d. 773/1370). They expand on this notion in their respective glosses on the work of their A.H. seventh-century (A.D. thirteenth-century) predecessor, al-Qāḍī Nāṣir al-Dīn al-Bayḍāwī (d. 685/1286). Al-Bayḍāwī also defined a rule as: “the dictum of God the Sublime [which is] related to the acts of those who have [accepted moral] liability/responsibility, in terms of demand or choice” [khiṭāb Allāh ta’ālā al-muta‘allaq bi ʿāl al-mukallafin bi‘l iqtiṣā ʿaw al-takhyīr].⁶² While neither al-Ghazālī nor al-Bayḍāwī make a distinction between an empirical and transcendent rule, both define the appearance of a rule as a relational concept. A rule, they say, is when a “revealed dictum” becomes “attached” or is “related” (ta‘allaqa) to the “actions of those who have accepted moral liability.”

Clearly, the references to revelation and God imply a transcendent sensibility, while the allusion of the rule being attached to human actions signifies the realm of the empirical. I would argue that unless one accepts a radical of immanence, there is hardly a chance of ignoring the dualism of the empirical and transcendental in Muslim legal cosmology. For the classical and medieval jurists, the term ḥukm was the locus for an amalgam of the eternal and temporal dimensions.

In order to understand the place of the ḥukm in the web of signifiers we need to cross a linguistic bridge and determine whether the terms

⁵⁹ Al-Ghazālī, al-Mustasfī, 1:100.
⁶⁰ The sobriquet of the Christian Arab poet, Ghiyāth b. Ghawth b. al-Ṣalt (d. 927/110), to whom this line is attributed (Encyclopaedia of Islam, 2d ed., s.v. “al-Akḥṭal”).
⁶¹ Al-Ghazālī, al-Mustasfī, 1:100.
⁶² Al-Badakhšī (n. 28 above), 1:41.
“revealed dictum” (khāṭīb) and “speech” (kalām) are identical and interchangeable.53 When al-Bayḍāwī and other Ashʿarī scholars construe the notion of “revealed dictum” as tantamount to being the “rule,” then khāṭīb in this context means “inner speech” (al-kalām al-nafsi). If this is the case, then the rule is nothing but the inner speech of revelation and a discourse of a transcendent order. The controversy over the creation of the Qurʾān also influences the language of the law. The Ashʿarīs view the ḥukm as eternal (qadīm), whereas the Muʿtazila view it as temporal (ḥādīth). Just as the “speech of God,” the Qurʾān, is “created” and thus temporal, so it is the case with the ḥukm too, according to the Muʿtazila. Ashʿarī scholars in turn point out that it is incorrect to say that a rule is temporal, since an eternal discourse like the speech of God (including the ḥukm) can generate only an eternal rule. The Muʿtazila had erred, they say, by confusing and conflating two different things. They failed to distinguish between an eternal rule, on the one hand, and the temporal “attachment/linking” (taʿalluq) of such acts to an eternal rule, on the other hand. It is the human effort and labor, in short the empirical activity of “linking” acts to rules, which is a temporal and created activity, and not the rule itself.54 In the Ashʿarī view the rule only becomes manifest (ibrāz/zuhūr) when the revealed dictum is attached to human actions. It is a kind of transcendental burst into history at the moment of action.

LAW IN WRITING AND SPEECH

Indirectly, the Ashʿarī preference for the eternal and divine inner speech meant that the “phonetic speech” (al-kalām al-lafẓī) was devalued. Ashʿarī metaphysics thus constituted itself on this disavowal of the written word, while privileging the inner speech of the soul. It is only through the inner speech, in which “speech hears itself” via the “inner” psychic substance, that the divine presents itself as the nonexterrior, nonmundane, nonempirical, and thus noncontingent signifier.

It was important to know not only how an eternal rule got attached to a temporal act but also how the legal discourse comprehended both the transcendental and the empirical dimensions. At the empirical level, jurists would search for the imperatives in the textual sources of the law so that they could know what is right from wrong. The legal subject responds directly to the commands of the sharīʿ, revelation. When morality is

53 For al-Bayḍāwī they were interchangeable, but not in the view of his two commentators. They say that it is a prerequisite for khāṭīb to have an addressee. Like some authorities, they also believe there is a significant difference between “dictum/discourse” and “speech.” Linguistically, discourse (khāṭīb) requires an addressee (mukhāṭib) and addressee (mukhāṭāb). And, khāṭīb only occurs when the addressee is capable of understanding it (see al-Badakhshī, 1:42). By contrast, speech (kalām) is an expression that can exist on its own without the need for a speaker and an audience (see al-Isnawi [n. 28 above], printed with al-Badakhshī, 1:42).

54 Al-Isnawi, 1:48.
derived from such imperatives, we call it a “deontological ethic.” While some Muslim legal theorists did formulate the law in this fashion, that was not the end of the enterprise. Legal theorists were primarily interested in formulating a legal-moral epistemology. This was accomplished by marshaling proofs for the various forms of rational discourse. In this form of argumentation, morality stems from ontological or metaphysical imperatives. It is through reason that one discovers what is good or bad, axiology. In fact, in treatises of legal theory one finds that both axiology and deontology coexist side by side. But epistemology does not explain how the transcendent rule becomes manifest.

How the eternal rule got “linked” to a human action was left to the explanatory power of the cosmological narrative. We return to the texts of al-Isnawi and al-Badakhsi to assist us. Most interesting, the example proffered by both deals with coitus. It is a known rule that permissible coitus between a male and female can take place only within a lawful marriage. When the law says that marriage makes coitus permissible, the ruling of permissibility is a rule attached to the act of marrying.65 Al-Isnawi and al-Badakhsi say that for marriage to become permissible a special kind of speech took place in a beginningless and continuing past (al-azal) when God said: “I permitted Zayd to copulate with Hind when he marries her.”66 In other words, the physical act of marriage and the legal rule are all prefigured in this mythical narrative in precreation. Al-Isnawi adds that it was God’s eternal decree of permissibility that became activated once the parties fulfilled the practical acts of “offer” (ijāb) and “acceptance” (qabīl), the formalities required for a valid contract. To say that a certain act was permissible (ḥalāl) was to assume that a rule of God preceded the act, which said: “I (God) lifted the impediment (ḥaraj) [of illicit sex] from the subject [of this act].”67 The example of marriage is the only one used by both theorists simply because it is an illustration of a prohibited act, sex, being made permissible by means of the law. This is a general aphorism in apothegmatic and rhyming forms that states: “The principle (ašīl) in all things is permission and the principle in coitus is prohibition” [al-ašīl fi’l-ashyā’ al-ībāḥa wa’l-ašīl fi’l-ibdār al-ṭahrīm].68 Thus, coitus only becomes permissible if there is a divine ruling on it. This divine decree or mythical narrative can be assumed to occur for every human transaction involving a moral act.

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65 There are detailed discussions in Muslim juristic theology that deal with the question as to whether the rule (jāmak) is an attribute that the legal subject deserves or whether it is a description of the essence of the legal subject. See al-Samargandi (n. 29 above), 1:120.
66 Al-Badakhsi, 1:48; al-Isnawi, 1:52.
67 Al-Isnawi, 1:52.
Ash′ari legal theorists and jurist-theologians were consistent in their commitment to the dual nature of language: inner speech versus outer speech. This dualism surfaces in the *hukm*, where the myth mediates the transcendent via the empirical. In effect, one can say that the *hukm* is in one sense the rule of humans, the empirical activity of rule finding by the jurist and in another sense the eternal rule of God. The story of God’s eternal decree in prefiguring the moral acts of human beings is an essential dimension to the discourse of Islamic law. This precreation myth makes it possible to speak of two realms existing simultaneously by simulating in the temporal realm what God had already decreed in a past without beginning, *al-azal*.

The consequence of this myth is that the transcendent *hukm* is always at an ontological remove, not immediately within grasp. It will be correct to say that a jurist does not “discover” the transcendent rule through independent thinking (*ijtihād*). Rather, he or she exerts him/herself to unveil the always already existing rule by “dis-covering” the empirical indicators (*adilla*) that signify the transcendent rule. The legal indicator serves as the iconic representation of the transcendent archetype. Thus, when a jurist states that he or she had found the rule of an act, it is a figurative utterance: synecdoche, stating the part, but signifying the whole. The jurist had found only the empirical part—the legal indicators contained in the outer speech that signified the rule, not the transcendent rule itself. The latter is beyond the jurist’s empirical reach. But once the jurist had grasped the empirical part, it is the closest he or she can claim to have come to the eternal rule without “con-fusing” the legal signs with the transcendental rule. So, one can talk about the sign/signifier/indicant (*dalil*) of a given *hukm*, but one cannot claim to have incontrovertibly “found” a transparent eternal *hukm* *simpliciter*. In a different way, one can say that as the jurist pursues the legal epistemology, simultaneously the inner speech silently and imperceptibly “slides” onto the temporal reality.

In the cosmological narrative, religious memory or myth is privileged to a providential prehistory in which God had decreed certain things. Al-Azmeh has correctly described such narratives as taking on the modality of performative statements, and these are contained in the Qurʾān and other texts of canonical status.69 Thus, he goes on to say, that the *hukm*, like the *‘il[āa* (legal cause), is neither naturalistic nor rational, but purely legal.70 By legal, he means, it follows the logic of a closed legal-moral system and is not based on rational foundations. The creator-God or

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70 Reynolds and Tracy, eds., p. 180.
nomothete has posited the legal rules or legal causes. If that is the case, then the answer to an ordinary legal question is then predetermined. What remains is for the rule to be disclosed in history. The implication is that the legal imaginary or aesthetics is self-referential. The rule, in its linguistic and nonlinguistic modalities, has no ground or reality as referent except its own. The rule is the "dictum of revelation" (khīṭāb al-shar') and only becomes "visible" at the moment it connotes human acts. In Ash'arī discourse, it means that there is no intrinsic link between a rule, that is, the value of an act, and the act itself. The link is a theological and mythical one. The rule has no reality outside itself and has no grounds to be contrasted with the real. In fact, the ḥukm absorbs the "real" into itself. So the person intending to undertake the contract of marriage in order to make coitus permissible, stands before the mystical authority of the unknown transcendental law, that is, the ḥukm, and at the same time stands before the legal indicators that signify it. This is analogous to the theological proposition that the existence of the world discloses or points toward the existence of the primordial Creator, but the world cannot be confused with the Creator. Given the radical separation between the empirical and the transcendental realms, it is impossible to asportio error to the jurist, who may have failed to "hit" the correct transcendental rule. In terms of Muslim theology, jurists are protected from the moral consequences of bona fide error. A correct and an incorrect rule are both subject to reward, albeit that the correct one elicits more reward than the incorrect one. This is because the transcendental rule is "unknowable" and not subject to epistemological refinement. Derrida's reflections on the law are perhaps apt here.

Here we "touch" without touching this extraordinary paradox: the inaccessible transcendence of the law before which and prior to which "man" stands fast only appears infinitely transcendent and thus theological to the extent that, so near him, it depends only on him, on the performative act by which he institutes it... an absolute performative whose presence always escapes him. The law is transcendental and theological, and so always to come, always promised, because it is immanent, finite and so already past. Every "subject" is caught up in this aporetic structure in advance.


72 Muslim jurists generally talk about the legal causes ("illāl") that are derived from textual sources. The absence and presence of such causes are associated with certain legal rules. One must bear in mind that marriage, divorce, leasing, and commercial transactions are not in themselves legal causes but are human acts that activate and invite specific revealed rules (al-ābkām al-shar'īyya). These acts are only "indicators" (ma'ārřīfāt) and point toward the appropriate rule. See al-Isnawi, 1:52.


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RULE AS SIMULACRUM

Within an Ash'ârî framework one can safely say that the transcendent rule precedes the empirical one in time.\textsuperscript{75} A form of simulation is also at work, a pretense to originate a rule that had always already been there. Using a different configuration, one could say that the “model for” the hukm preexists reality in its Platonic archetype. When the empirical rule is apprehended, and it will be remembered that this occurs when the rule attaches itself to an act, the transcendent rule (hukm) remains unaffected and unchanged by reality itself. The empirical hukm is thus a mere image of the transcendent hukm.

So, when the jurist or judge interacts with the revealed text—the Qur'ân, prophetic tradition—to find the hukm, they establish these texts-as-symbols, through the process of simulation. It is in the space of this text-as-symbol, as a displaced site of speech, where the legal subject, the hukm and/or act speaks as if a person.\textsuperscript{76} The function of cosmology in medieval Muslim legal aesthetics, to use the words of Goodrich in another context, is that of “putting in play the simulation of an order and method of institutional life that is made to appear as if it were regulated and lived according to the written law.”\textsuperscript{77} This does not mean that the hukm plays out only as symbol in Muslim law. To the contrary, the hukm is also the site for practices and it provides empirical rationales for these practices. Rather, we need to acknowledge the dual role of the hukm, that of symbol, in its transcendent guise, and as practice, in its empirical guise.

The Qur'ân as the immanent logos (al-kalâm al-naâﬁ) is represented by the “outer speech.” Similarly, the hukm, as part of the immanent logos, is the simulacrum, the representation of the deity. Thus, one can say that in Ash'ârî theology simulacrum is not in the form of a person, image, or icon, but a kind of transcendent moral imperative, hukm. From the Ash'ârî cosmology it becomes apparent that the hukm is the locus of divine authority incarnated in the “grammar” of the law. The divine will is known through the hukm, the moral guidance that is seen as a sign of God’s divine justice.

\textsuperscript{75} Reflecting on this cosmogonic narrative of the law, as detailed by the medieval Muslim jurists, there is more than a striking resemblance with Jan Baudrillard’s notions of simulations and simulacra. It was Baudrillard who boldly proclaimed that abstraction is no longer the double or mirror image of something, a referential being, or substance. Simulation in late modernity, he said, was being characterized as the “precession of the model” (Baudrillard [n. 1 above], p. 175). “It is the generation by models of a real without origin or reality: a hyperreal” (Baudrillard, p. 166). The illustration that Baudrillard provides is that of a map that represents the real space and then the territory itself. Simulation in this instance occurs when the map precedes the territory and is taken as “real” even before one gets to the material space itself. This is what he calls the precession of simulacra. In other words, the map is the allegory of the territory.

\textsuperscript{76} I have borrowed this idea from Peter Goodrich, Languages of Law: From Logics of Memory to Nomadic Masks (London: Weidenfeld & Nicolson, 1990), p. 284.

\textsuperscript{77} Ibid., p. 284.
On this point there may be, to some extent, a commonality between the theology underlying the Ash‘ari notion of the hukm and Christian Eucharistic theology. The Eucharist as a sacrament in the Catholic tradition represents human communion with the divine. Of course there are differences among theologians as to whether this encounter is with the “real presence” of the body of Christ or a symbolic communion. These differences aside, what is important though is the effect of this sacrament. One of the effects is union with Christ and the possibility that the one partaking in it may be restored to grace and live a moral and virtuous life.

Given the complexity of the nature of divine speech in Ash‘ari theology, Muslim jurist-theologians have not dwelt in any significant manner upon the nature of the human encounter with the eternal hukm. In Muslim theology, I have argued, the intimate engagement with divine speech is generally through the Qur‘ân and, more specifically, the hukm. And clearly the practices inspired as well as generated by the hukm also carry the imprint and stamp of religious moral approval or disapproval. By living a life that is guided and regulated by the divine hukm, the individual is ensured of both earthly and afterworldly felicity. Now, whether it is through the Eucharist or a life lived in proximity to the revealed norm (hukm), believers in both faiths have different kinds of encounters or communion with representations (simulacra) of the deity or with ultimate reality. In both instances the function is to ensure that the participants acquire a certain moral rectitude. At least they can begin to visualize the ideal model of such envisaged life of virtue, whether that be through nonocentric values of the shari‘a in the case of Islam, or the transforming effect of grace and love, in Christianity.

It is indeed in the hukm where moral authority transforms itself into legal authority and power. Given the proximity of the legal and moral discourse to the transcendent rule, it should come as no surprise why the

79 It is interesting to note that both al-Ghazâlî (d. 1111) and Thomas Aquinas (d. 1274) made statements about the obscure and mysterious nature of the “inner speech” and the Eucharist, respectively. Al-Ghazâlî said that the notion of kalam al-nafs (inner speech) was “obscure,” while Aquinas said that the Eucharist was a mystery that no theological explanation can hope to master (al-Ghazâlî [n. 19 above], 1:88; and Richard P. McBrien, ed., HarperCollins Encyclopedia of Catholicism (San Francisco: Harper, 1989), s.v. “Eucharist,” p. 485.
80 See Wilfred Cantwell Smith, “The True Meaning of Scripture: An Empirical Historian’s Nonreductionist Interpretation of the Qur‘ân,” International Journal of Middle East Studies, 11 (1980): 487–505. Smith observes that the Qur‘ân is the entry of the transcendent into history: The way Muslims relate to the Qur‘ân, he says, is to “enter into some sort of communion with ultimate reality—the former in a fashion that I have found it not irreverent to compare formally with the Christian eucharist.”
profession of law (fīqh) enjoys a privileged position in Islam. The association of the jurists (fiqhāhā) with transcendent knowledge (i‘lām) make them part of the class of learned scholars (‘ulamā‘). And, of course, there are prophetic reports that state that “the ‘ulamā‘ (the learned) are the true heirs of the prophets.”

This statement suggests that the prophets and the learned share knowledge of a transcendent origin. Therefore, the juristconsult (mufīt) is virtually God’s representative on earth. Past jurists explained that “the mufīt makes clear the ruling of God, and he is the inheritor of prophethood.” Shihāb al-Dīn al-Qarāfī, a thirteenth-century Egyptian jurist, confirms this view: “When a judge rules, by God’s permission, and his ruling on behalf of God is substantively correct, this ruling becomes as a text from God [kāna dhālika naṣṣan wāridan min Allāh] upon the tongue of His representative, who is His representative on earth and successor to His prophet, regarding this particular case.”

It is the tongue of the jurist, that is, his or her speech, that embodies the eternal rule. No wonder al-Ghazālī and other Ash‘ari jurists also insisted that even the “recitation” (tūlūwa) of the Qur‘ān/hukm was eternal (qadīm).

CONCLUSION

It is important to recognize that a combination of mythical, theological, and metaphysical conceptions shape Islamic law. By looking at the texts of legal scholars who adhere to the Ash‘ari theological school, one can begin to isolate the interface between law and theology. I have suggested that the rule, an essential element of legal discourse, has a dual character. It is simultaneously the carrier of both a transcendental and an empirical communication. It has been shown that the very nature of the hukm allows it to mediate the two realms by means of cosmogonic and cosmological myths. God, who prefigures all moral conduct in eternity, decrees the hukm as precreation. Muslim moral ontology generated by

82 Abū ʿHasan Taqī al-Dīn ʿAll b. Abī al-Kāfī al-Subktī, Fatawā al-Subktī, 2 vols. (Cairo: Maktabat al-Qudsī, 1365/1937), 2:543. Also see Sherman A. Jackson, Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfī (Leiden: Brill, 1996), p. 161. The duty of the mufīt to issue a fatwā compared with the work of the author-jurist, says Norman Calder, was “dangerous because it represented an arrogation of authority, making the mufīt a direct mediator between God and man” (Norman Calder, “al-Nasawi’s Typology of mufīts and Its Significance for a General Theory of Islamic Law,” Islamic Law and Society, 3 [June 1996]: 163). The truth of the matter is that the mufīt does play a mediating role. Furthermore, the legal tradition has not been reluctant to admit the intimate role of the jurist in mediating the divine rule.
83 Jackson, pp. 182–83.
Ash‘ari theology is rooted in this cosmology, which is generally ignored in favor of a rational and epistemological discourse.

The perception of revelation, the Qur‘an, which is the locus of the *hukm*, also determines our cognition of the rule. The debates over the creation of the Qur‘an invariably have an impact on the understanding of a revelation-based legal system. Logos theory as internalized by the early Ash‘aris in defense of the eternity of the Qur‘an also plays out in the rule. The dualism and paradoxical nature of the rule, being transcendent and empirical, eternal and yet associated with a temporal world in the same instant, cannot be ignored. It appears that the mythical narrative is capable of bridging the chasm between these opposing discourses.

The *hukm* lies at the core of the inner speech and is equally eternal. It is the *hukm* that makes the divine presence felt in history. Value is conferred on all acts via the *hukm*. As the immanent speech of God, the rule as allegory represents the deity. In some way, the *hukm* and the Eucharist in the Christian tradition have resembling functions and effects. Both are concerned with the encounter between the human and the divine, albeit radically different modes in each. The *hukm* is best understood to be a hybrid event. It participates in the transcendent by means of mythology and intervenes in the empirical realm by means of epistemology. It is the meeting place of an overlapping human and divine judgment that is made possible by a religious cosmology enumerated above.

The mythical discourse if pressed to its logical conclusion can subvert the rational legal epistemology and reduce it to a simulation of already-decreed divine archetypes. Yet this does not happen. It appears that the mythical, meaning the transcendent, authority of the law, has an appeal to induce compliance and obedience: the need to follow God’s law. But it does not have a more prominent role in legal discourse. Muslim legal discourse seems to have found a “fit” in which the transcendent and empirical are interdependent and at the same time they are also viewed as autonomous realms.

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